

SOMEBODY'S LYING!

It is Herman Umberger's Pocketbook,

But the Nicely's One and All Swear that it is Not the One Sent by Dave to His Wife.

WHERE DID IT COME FROM?

An Unsuccessful Alibi.

The Father, Mother, Wives, Brothers and Sisters of the Defendants Testify.

THE DEFENSE CLOSES, AND THE COMMONWEALTH OPENS IN REBUTTAL.

THE CASE WILL BE GIVEN TO THE JURY TODAY.

AN EVENING SESSION.

Although when Court adjourned Tuesday evening it adjourned to meet at 8 o'clock Wednesday morning, it was a quarter of eight when the bell rang and the surprised attorneys, witnesses and others hastened to the court room. The court house clock must be out of gear. It needs regulating, at least. The Sheriff and his deputies marched in with the prisoners and they took their accustomed seats at the table with their counsel. The aged father and mother of the prisoners were there, and in a short time Mrs. Joseph and Mrs. David Nicely, the latter with a six months' old child in her arms, came in and took their seats beside their husbands. Watson Menoher, a brother-in-law of the prisoners, was the first witness called.

WEDNESDAY MORNING SESSION.

Watson Menoher recalled—I had the \$100 in my possession about two days.

Cross-examination—Showed the pocketbook to George Nicely.

George Nicely—Live in Ligonier; on Tuesday March 5 last, Watson Menoher and I went to Jeannertown; on the way over we met Mr. Thomas and some men this side of the mountain; was present when Thomas handed the pocketbook to Menoher; saw it again the next morning at the National Hotel in Ligonier; the pocketbook exhibited is not the one; was present when Lewis Vaneer testified before Judge Baer at the hearing; on our way back went to the place where Vaneer had been cutting wood; the place where he claimed to have seen the Nicely boys pass on the pike; two went down to the stump and the others stayed up on the pike; could only see a part of their bodies; at the east end of the flat could only see about one-third of a man's body; other places could only see top of their heads; some places could not see any part of a man's body; could not recognize any one.

Cross-examination—Am a second cousin to the Nicely boys; I saw the pocketbook handed to Menoher by William Thomas; I saw it again the next morning at the National Hotel; there was no money in it; there were some papers in it; some tax receipts; do not know what was in it when it was handed to Menoher as I did not see it at that time; went to examine the ground mentioned by the two Vaneers in their testimony; what is called the Sandy Flats; there were four or five stumps; do not know from what stump it was from which the Vaneers claim to have seen the Nicely boys pass along the pike; the track was in the middle of the road in February; Mac Nicely was along; he is a half-cousin of mine and a full cousin of the defendants; also Jas. Barron; he is a brother-in-law of the defendant's; William Thomas and some others were with me; Mac Nicely and I went down to the stump to look up; did not have any instrument to level; it was fifty-five steps from the pike to the nearest stump; I step pretty long; there was at least fifty feet of an elevation from the stump to the pike; cannot tell what day it was when we went there; it was about a month and a half ago; I have helped to work up the case; I subpoenaed some witnesses; was over in Bedford county to see a detective; did not go along with Ezra Nicely to Mark's house at night for the purpose of making some investigation; went with Watson Menoher on Wednesday evening after the Nicely boys were arrested.

Re-direct—I was acquainted with Dave Nicely's pocketbook before it was handed to Watson Menoher; I have seen him have that pocketbook for the last four or five years. [The witness identified the papers exhibited in Court as being the ones that were in the pocketbook at the time he examined it at the

National Hotel.] Made examination of the land at Sandy Flat when we were going home from the hearing before Judge Baer; the day after the hearing; we examined the stump nearest the road; the pike is about forty feet wide at that point.

Cross-examination—I did not measure the width of the pike.

Mrs. Ella Menoher, re-called—There was a pocketbook handed to me by my husband. [The witness was shown the pocketbook and said it was not the one.] I examined the pocketbook when it was handed to me; had seen my brother Dave's pocketbook before; this is not the pocketbook.

Cross-examination—I looked at the pocketbook when Mr. Menoher handed it to me, and also looked at it the next day.

Elizabeth Nicely—Saw the pocketbook that was brought to our house by Watson Menoher. [Witness was shown the pocketbook exhibited in court and said it was not the same one.] Had seen Dave's pocketbook before at different times; it had receipts and a few other papers in it; that is not the pocketbook that I gave to the officers.

Cross-examination—Mr. Rauch and two other men were there when I handed the pocketbook to them; when I gave them the pocketbook did not say that I had seen the pocketbook before; never denied that there was a pocketbook in the house; I was in the kitchen when they came in; Mr. Nicely called me into the room and said there were some men there and they wanted to get Dave's pocketbook; I went up stairs and got it and handed it to them.

Re-direct—When I handed the book to them one of them said they would take it to Ligonier to show it to Mr. Thomas and would then give it to Watson Menoher to bring back.

Cross-examination—They did not say that if it turned out to be David's pocketbook they would return it.

A. A. Nicely, recalled—I was there when the pocketbook was handed to the officers; I think it was Dave's pocketbook. [The witness was here shown the pocketbook exhibited in court and said it was not Dave's pocketbook.] This is not the pocketbook handed to the officers; they promised to bring it back; said they wanted to show it to William Thomas to see whether it was the pocketbook that Menoher handed over to him; said they would then give it to Watson Menoher to bring back; they did not return it.

Cross-examination—Did not say they wanted the pocketbook and if they found it was Dave's they would return it; when they came there I did not tell them that there was no pocketbook there; they asked me if there was any money in it, and I said there was not; said I had the money after Menoher came in; there was Mr. Rauch, Mr. Camp and another man; they all three came back after ten or fifteen minutes from the time they left the first time; Watson Menoher came back with them; I had the money in my pocket; told them it was part mine and part Dave's; cannot say how much I had; might have had \$140 to \$160 in my own pocketbook; Watson Menoher handed me \$60, and said he had used \$10; I have never denied having the money; when the officers came there I denied that the money was in the pocketbook.

Re-direct—When the officers came there and asked for the pocketbook I told them that it was in the house, but I did not know where it was, but could find it for them; called Mrs. Nicely, and told her that the gentlemen wanted Dave's pocketbook; she went up stairs, brought it down, and handed it to one of the officers; I denied that there was any money in the pocketbook; when the pocketbook was brought there, there was no money in it; that is what I said.

Cross-examination—I got the pocketbook first; cannot tell when I got the money; it was some days afterwards; Mrs. Menoher told me that Watson brought the pocketbook; Watson brought the money.

Re-direct—The pocketbook was not in my possession, but the money was.

Sarah Barron—Live in Ligonier valley a quarter of a mile from Anthony Nicely; am wife of Joseph Barron; was at home on the 27th of February; saw Dave Nicely on that day; he came to our house between 1 and 2 o'clock; he was there, I suppose about 1 hour and then started for home; did not see him again that day; did not look as if he was well; made inquiry as for teams to Ligonier; he asked me for some butter; I told him that I could not give him any that day, but that he could get some on Thursday evening; I fix the day as being Wednesday the week before they were arrested; his wife came for the butter the next day; was at my father's house when the pocketbook was taken away by the officers. [Witness was shown the pocketbook exhibited in court and said it was not the same pocketbook that was handed to the officers.]

Cross-examination—Live about one-half mile from Dave and further from Joe's; knew it was Thursday night when Dave's wife got the butter, because I know I churned on Thursday and I told Dave he could not get any butter on Wednesday; was at my father's house when the pocketbook was handed to the officers; they had both pocketbooks in their possession and I was sitting close to them; I was there when they came and was there when they left; Watson Menoher came back with them after they had

gone out; I was sitting handy to the window and got over in the corner; do not know whether I have seen that pocketbook which was exhibited here in court until I came over here; I do not know what day the pocketbook was handed over to the court; do not know whether it was on Monday; I saw it one evening this week at Mr. Coffroth's office; John Menoher, my father, my mother, George Nicely and Mr. Thomas were present; think Mrs. Nicely and Ezra Nicely were there; do not know who first described the pocketbook belonging to Dave; heard George Nicely describing the pocketbook; it was not from that that I got my description of the pocketbook.

Re-direct—When the officers took the pocketbook, they said that they would take it to Ligonier to show to Mr. Thomas to see whether it was the pocketbook handed to him and that they would return it by Watson Menoher; I described the pocketbook from my own knowledge.

Hettie Nicely—Was at home on the 27th of February; was at David Nicely's a little while in the evening; as near as can tell it was between 5 and 6 o'clock; Dave's wife came to our house for milk and apple butter; I was milking; told her that when I was through milking I would bring the milk up; saw Dave; he was sitting in the house on a rocking chair by the stove; knew it was the Wednesday before he was arrested; was at home when Dave's pocketbook was brought there; often saw his pocketbook; was there when the officers came there. [Witness examined the pocketbook shown in court and said it was not the pocketbook.] One of the officers said he would take it to Ligonier to show it to Wm. Thomas to see if it was the same one handed to him and would then send it back by Watson Menoher.

Cross-examination—Fix the day as being February 27th from the fact that the boys were arrested the next Monday, and know that it was prayer meeting evening; do not think I stayed at Dave's house more than ten minutes.

Catharine Nicely—Am wife of David Nicely; was at home on the 27th of February; my husband was at home in the forenoon; went out after dinner and as near as I can tell got back between 3 and 4 o'clock; he did not go out again; I went to his father's shortly after he came home; I went for apple butter and milk; came back about 5 o'clock; brought the apple butter along, but did not bring the milk; my husband was at home with the children when I got back; Hettie Nicely came after that with the milk; my husband did not go away from home that evening; fix the day as being the 27th of February because I know it was the day before the arrest and I know what I done every day that week before Wednesday; got the butter on Thursday evening from Mrs. Barron; David was sawing wood for Mr. Kimmell on Monday; he was home on Tuesday; he is not a well man, and has not been ever since I know him; he was sick on Monday night; on Monday I washed, and ironed some; on Tuesday I baked; on Wednesday afternoon I ironed balance of my clothes; Monday I washed and done up some shirts and collars; did not make any special preparation more than that; I did it because he was going to Pittsburgh; he was sick on Monday night and was not well enough to go; he was not very well on Tuesday; he was not very well on Wednesday; did not get any medicine on Wednesday; he went over to Barron's and came back about three o'clock and was at home that evening; on Thursday evening I went over to Barron's to get the butter; my husband was at his father's Thursday morning; he left about sun-up; he was not gone very long; about half an hour, or maybe more; my husband was arrested on the following Monday; I patched his overcoat Thursday night; I know my husband's pocketbook; he has had it ever since I knew him; [witness was shown the pocketbook exhibited in court and said it was not the pocketbook]; I was at home the day he was arrested; [witness was shown the grayish colored overcoat, which she identified as belonging to her husband]; I put the patches on the overcoat Thursday evening after I came back from Barron's; he was arrested on the Monday following and wore his coat when he left the house; at the time of his arrest it was hanging on the wall in the kitchen; I put the patch on in the front and one on the inside on the lining; [witness was shown a number of red handkerchiefs that had been exhibited in court and said that she could not tell anything about the handkerchiefs, and that her husband had a great many red handkerchiefs; she was also shown a pair of overalls exhibited in the court; he had a pair of overalls that looked like these; they may be the same ones; at the time of his arrest they were in the room that he called the shoe shop; they were thrown with the dirty clothes; [witness was shown the cap and said that her husband had not worn that cap for more than a year] think it is his or one like it; the last time he had worn the overalls was on Monday when he sawed wood; he took them off on Monday evening after he came home and threw them into the dirty clothes.

DON'T BURN ANY PAPERS.

Cross-examination—I washed on Monday; was not my regular wash day; any day that suited me was my wash

day; he had the overalls on was the reason they were not washed; know John Sheehan; he is a brother-in-law of Joseph's; his wife owns the property we live on; he came there on Wednesday, February 27th; saw him in the yard; I didn't tell him that my husband had gone down the Valley with George Nicely to buy some timber; I would know whether it was on Monday; I saw it one evening this week at Mr. Coffroth's office; John Menoher, my father, my mother, George Nicely and Mr. Thomas were present; think Mrs. Nicely and Ezra Nicely were there; do not know who first described the pocketbook belonging to Dave; heard George Nicely describing the pocketbook; it was not from that that I got my description of the pocketbook.

Dr. Beubaker—Am a practicing physician; live in Somerset; have been practicing 38 years; have been attending David Nicely since the 11th of March; found him suffering from heart disease. [The doctor produces a diagram of the heart and explains the heart's functions to the jury.] From this disease his general health has given away as it always will; the left wall of his chest has been very much bulged out by the increased action of the heart; the heart in health is usually the size of a person's fist; the wall of the chest on the left side is bulged out to twice the thickness of my hand; when he is in a sitting posture his heart beats 84 per minute.

What effect would violent exercise have upon his heart? was asked the witness. In reply he started in to describe several tests he had made, having the prisoner run up and down stairs, etc. [Objected to by Mr. Cessa.]

I made a test of his condition; my object was to test his capabilities for physical exertion; his disease has certainly existed for some length of time; it would be impossible to say how long; from the appearance of the walls of his chest it has existed for several years; men with heart disease can do ordinary work as well as other men; it is running or fast walking that affects them.

Cross-examination—I first saw David Nicely on 11th March; Dr. Miller, of Ligonier, called and placed him under my professional care; he was then in the jail; I am not the regular jail physician; heart disease may come upon a man with a great deal of suddenness; a person affected with heart disease, witnessing or committing murder would probably be made worse by the mental excitement. I visited David Nicely two or three times per week since I took charge of him; I was treating him for stomach trouble as well as for heart trouble; I had cautioned the patient as to his diet.

Re-direct—It is organic heart disease and not functional that David Nicely is suffering from; at no time that I ever visited him did I find his heart beat over 84.

Counsel for defense ask that David Nicely be allowed to exhibit his naked chest to the jury. [Objected to and overruled; the prisoner, David Nicely retires to the library room with Dr. Brubaker and returns and exhibits his naked chest to the jury.]

Constables Huston and Scott called, sworn, and the jury given into their charge; Judge Baer cautions the Constables about speaking or allowing any one to speak to any of the jurors and tells them to be especially careful that they do not get to see a Somerset paper.

Court adjourned till 1:30 p. m. AFTERNOON SESSION.

Court called promptly at half-past 1 o'clock and David Nicely resumed his seat on the witness stand.

In reply to a question he said that he had his overcoat on at the hearing at Squire Ranch's.

Dennis Myers—Witness took the stand with a large map in his hand showing country along the pike from Umberger's to Ligonier and from there to the Nicely's home; showing location of different roads, etc.; said he had no personal knowledge of the country but had made maps from atlases and from what papers from that section told him; said there were no distances marked on the map.

Commonwealth's counsel objected to admission of the map and the witness was withdrawn for the present.

Albert C. Brenhizer—Live in Ligonier; saw Charles Vaneer the Saturday after the murder; he told me he and Lou were cutting timber on "Sand flat" and saw two men pass up the mountain that day; said he could only see the tops of their heads and could not recognize them from where they were, but thought they

LOOKED LIKE THE BETTER BOYS.

James Richardson—Live in Ligonier; know Lou Vaneer; after the report of the Umberger murder; I asked him if it was true that he had seen two men pass up mountain that day; he said he had, but was so far down he could only see their heads and shoulders.

Cross-examination—Lou was 4 or 5 rods away when I was talking to his father; I don't know where they had been working the day before; I took no measures or levels; I didn't go to the stump they had been surveying the day before to see if I could recognize anyone on the pike from there.

John W. Koontz—On Monday morning, February 28th, I went over the mountain; stopped at Sand Flat where the two Vaneers were at work; asked Charley if he had seen any men go up the mountain yesterday; he said he hadn't; men

might have gone up; but they were so busy they didn't see them; I asked him if he had heard of the murder; told him about it; he said it was here; this was between 10 and 11 o'clock in the morning; Lou was down below just; Charley called to him; I looked up toward the place when I started to go; I couldn't recognize anyone from where I was unless I knew them very well and they would stop and look down; I was traveling on foot.

Chas. McCracken—Live in Ligonier; remember 27th of February; was working for Charles Vaneer; remember when Coll Hamilton was arrested; he lived close to where I was working; Charley and Lou Vaneer told me that they had seen a couple of fellows going up the mountain walking fast; I asked them who they were and they said they did not know; I remember hunting timber out from where they were working on the 27th of February; it was near about 5 o'clock when I left with the last last load of timber; the place where I loaded the timber was about 75 yards from the pike; they were there when I left; Lou was down with me and Charley was up further, about three or four yards; they cut some after I left, above there; I was where timber was cut; there was some cut above there before that day; the nearest that was cut was about 50 yards from the pike as near as I can tell.

Cross-examination—Hauled the timber out on the pike; the last trip I made was about four o'clock; do not remember when I made the trip before that, but think it was about four o'clock; don't remember how many trips I made that day; am now working for Watson and Foster Menoher at Ligonier; they are brothers.

Charles Vaneer, recalled—Know Noah Marker; may have told him that on the afternoon of the murder I had seen a couple of men going up the mountain but could not tell who they were, but do not remember having any conversation with him.

Cross-examination—If I told him that I could not recognize the men it was because I did not deem it wise nor prudent to do so.

Noah Marks—Live in Ligonier; know Charles Vaneer; had a conversation with him after the murder of Umberger, in my store; he told me that he had seen two men go up the mountain that night, but could not tell who they were; Lou Vaneer said nothing to me.

Cross-examination—It was before the Nicely boys were arrested.

J. M. Hamilton—Live in Ligonier; know Lou Vaneer; he told me that he and his father were sawing a cut up the mountain on the day of the murder and saw two men pass but they were too far away to tell who they were.

Cross-examination—He told me this in the barber shop, on Saturday previous to the arrest of the Nicely boys.

W. M. McIlvain, Jr.—On the 27th of February met Lewis Belven and Ed. McCracken on this side of Ligonier; I met them with a carriage; saw McCracken afterwards on the 27th of March; he told me that he and Boener met a man on the mountain; that he was a little heavier than myself with sandy hair and heavy moustache and fair complexion; that neither he nor Boener knew him; that he had asked Boener if he knew the man and that he said that he did not; he heard him say on the day of the hearing that he did not know the man; that he was about my size with light or sandy moustache and hair and light complexion; heard him say this in Mr. Coffroth's office.

Cross-examination—Am no relation of defendants; went down to see McCracken on the 4th of March; did not offer him a drink of whiskey to come down and testify about passing a man on the mountain; simply offered him a drink and he refused it; Anthony Nicely went with me; was subpoenaed as a witness at the hearing by the Nicely's, but was not called; could not tell whether all the witnesses were at Coffroth's office.

George Nicely, recalled—Heard him say at Mr. Coffroth's office on the day of the hearing that the man he met on the mountain was about the size of McIlvain, with a heavy moustache, light or sandy in color, light hair and fair complexion.

Cross-examination—He did not say I saw a man but never saw him before, and when asked to give a description of him say that he could not answer until he went to the jail and saw the prisoners; do not know that he went to the jail and came back and said that he could be of no use; do not think he said anything when he came back.

Wm. N. Nicely—Testified to the same conversation as given above by Geo. Nicely, and said, I live in Ligonier; on my return from the hearing made an examination of the ground at Sand Flat; Geo. Nicely and I went down the hill and the other parties with us stood up on the road; we told them to go along the road; when they were in the middle of the road could see about 1/3 of their bodies; when they were at the bottom of the Sand Flat could only see their heads and part of their shoulders; could not recognize any one; was standing at the first stump below the road; am pretty well acquainted with the roads around Ligonier valley; [witness was shown a map and asked to point out the various roads and locations on the map.]

Cross-examination—Am a second cousin to the Nicely boys; I saw the pocketbook handed to Menoher by William Thomas; I saw it again the next morning at the National Hotel; there was no money in it; there were some papers in it; some tax receipts; do not know what was in it when it was handed to Menoher as I did not see it at that time; went to examine the ground mentioned by the two Vaneers in their testimony; what is called the Sandy Flats; there were four or five stumps; do not know from what stump it was from which the Vaneers claim to have seen the Nicely boys pass along the pike; the track was in the middle of the road in February; Mac Nicely was along; he is a half-cousin of mine and a full cousin of the defendants; also Jas. Barron; he is a brother-in-law of the defendant's; William Thomas and some others were with me; Mac Nicely and I went down to the stump to look up; did not have any instrument to level; it was fifty-five steps from the pike to the nearest stump; I step pretty long; there was at least fifty feet of an elevation from the stump to the pike; cannot tell what day it was when we went there; it was about a month and a half ago; I have helped to work up the case; I subpoenaed some witnesses; was over in Bedford county to see a detective; did not go along with Ezra Nicely to Mark's house at night for the purpose of making some investigation; went with Watson Menoher on Wednesday evening after the Nicely boys were arrested.

Re-direct—I was acquainted with Dave Nicely's pocketbook before it was handed to Watson Menoher; I have seen him have that pocketbook for the last four or five years. [The witness identified the papers exhibited in Court as being the ones that were in the pocketbook at the time he examined it at the

National Hotel.] Made examination of the land at Sandy Flat when we were going home from the hearing before Judge Baer; the day after the hearing; we examined the stump nearest the road; the pike is about forty feet wide at that point.

Cross-examination—I did not measure the width of the pike.

Mrs. Ella Menoher, re-called—There was a pocketbook handed to me by my husband. [The witness was shown the pocketbook and said it was not the one.] I examined the pocketbook when it was handed to me; had seen my brother Dave's pocketbook before; this is not the pocketbook.

Elizabeth Nicely—Saw the pocketbook that was brought to our house by Watson Menoher. [Witness was shown the pocketbook exhibited in court and said it was not the same one.] Had seen Dave's pocketbook before at different times; it had receipts and a few other papers in it; that is not the pocketbook that I gave to the officers.

Cross-examination—Mr. Rauch and two other men were there when I handed the pocketbook to them; when I gave them the pocketbook did not say that I had seen the pocketbook before; never denied that there was a pocketbook in the house; I was in the kitchen when they came in; Mr. Nicely called me into the room and said there were some men there and they wanted to get Dave's pocketbook; I went up stairs and got it and handed it to them.

Cross-examination—Did not say they wanted the pocketbook and if they found it was Dave's they would return it; when they came there I did not tell them that there was no pocketbook there; they asked me if there was any money in it, and I said there was not; said I had the money after Menoher came in; there was Mr. Rauch, Mr. Camp and another man; they all three came back after ten or fifteen minutes from the time they left the first time; Watson Menoher came back with them; I had the money in my pocket; told them it was part mine and part Dave's; cannot say how much I had; might have had \$140 to \$160 in my own pocketbook; Watson Menoher handed me \$60, and said he had used \$10; I have never denied having the money; when the officers came there I denied that the money was in the pocketbook.

Re-direct—When the officers came there and asked for the pocketbook I told them that it was in the house, but I did not know where it was, but could find it for them; called Mrs. Nicely, and told her that the gentlemen wanted Dave's pocketbook; she went up stairs, brought it down, and handed it to one of the officers; I denied that there was any money in the pocketbook; when the pocketbook was brought there, there was no money in it; that is what I said.

Cross-examination—I got the pocketbook first; cannot tell when I got the money; it was some days afterwards; Mrs. Menoher told me that Watson brought the pocketbook; Watson brought the money.

Re-direct—The pocketbook was not in my possession, but the money was.

Sarah Barron—Live in Ligonier valley a quarter of a mile from Anthony Nicely; am wife of Joseph Barron; was at home on the 27th of February; saw Dave Nicely on that day; he came to our house between 1 and 2 o'clock; he was there, I suppose about 1 hour and then started for home; did not see him again that day; did not look as if he was well; made inquiry as for teams to Ligonier; he asked me for some butter; I told him that I could not give him any that day, but that he could get some on Thursday evening; I fix the day as being Wednesday the week before they were arrested; his wife came for the butter the next day; was at my father's house when the pocketbook was taken away by the officers. [Witness was shown the pocketbook exhibited in court and said it was not the same pocketbook that was handed to the officers.]

Cross-examination—Live about one-half mile from Dave and further from Joe's; knew it was Thursday night when Dave's wife got the butter, because I know I churned on Thursday and I told Dave he could not get any butter on Wednesday; was at my father's house when the pocketbook was handed to the officers; they had both pocketbooks in their possession and I was sitting close to them; I was there when they came and was there when they left; Watson Menoher came back with them after they had