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NESTOR BOUND OVER TO COURT TO AWAIT TRIAL

Required to Give a \$3,000 Bond for his Appearance at Next Term of Court, Charged with Killing Wm. Johnson on February 9.

Sheriff Haynes brought Harvey Nester back from Tennessee last Friday and the preliminary hearing was before Esq. T. B. McCargo Saturday evening. Much interest has developed in the case and a hard fight will be made to clear him. Attorneys W. F. Carter, V. E. Holcomb and L. L. Harkrader have been employed to defend and Mr. John Folger will aid the Solicitor. It is currently reported that Nester was to have been married the day following the killing and had been to get some liquor for the wedding feast when he happened to pass by the saw mill and the disturbance followed. After the hearing before the magistrate's court Nester was allowed to give bond in the sum of three thousand dollars, and while the bond has not yet been made, it will be, so we are told. In the meantime, Nester is being guarded here in Mt. Airy. The bond will have to be approved by a Judge and some days may elapse before the case is finally disposed of.

A number of witnesses were here but only two or three were examined and below we give the testimony as it was written down, in short form, by the Magistrate.

State vs. Harvey Nester. Witnesses for the State. This case coming on to be heard Walter Reynolds, being duly sworn, deposes and says:

I remember day Wm. Johnson was killed, Feb. 9th, 1909, at the mill of Johnson and Miller in Surry County. I went to mill that day, got there about 11 o'clock A. M. I found Mr. Miller, Mr. Johnson, J. E. Childress, David Thrower, Charlie Thrower and Jimmie Reynolds there.

They were sober when I got to the mill. I first saw Harvey Nester going through the fence at Cleve Millers. I did not speak to him. That was before I got to the mill. I saw him between there and the mill at a distance in front of me. I saw him at the mill. He came up between 1:00 and 2:00 o'clock. There was no one with him. He came and called out Dave Thrower and left. They were gone near half hour. He came back to the mill with Charlie Thrower, David Thrower and Cephus Lewis. He got off his horse and took a fruit can he had in a sack and sat it down near some lumber. He had whiskey in the can. Cephus Lewis had a pint bottle with about 3 gills whiskey in it. He, Nester, had a drink or two, he looked like, when he came down there. The crowd ate dinner there. Nester ate out of Lewis' basket. I drank some of the liquor. Mr. Johnson drank some. Mr. Miller, Lewis, Childress, David Thrower, Charlie Thrower all drank some. I saw T. L. Brim there. He did not drink any. I drank with Nester so did Johnson.

All were feeling their liquor. Nester was drinking right smart. He was nothing like drunk, Johnson was the drunkest one there. Johnson staggered when he walked. Nester went out there where Johnson was standing out on the log yard. Nester got on his horse to leave when Nester went to where Johnson was I was about 20 steps of them, Nester got on his horse to leave, Johnson got hold of the bridle. Nester got down off his horse Johnson walked up to him and laid his arms around him with his knife open. Cephus Lewis told Nester to get away—that he was up against a knife. Nester started with Johnson after him with his knife open, telling him he would cut him in two if he ever got in reach of him. Nester crossed the branch. I went on told (him) to get away that he was going to get hurt. I

got in front of him and he, Nester, came after me—telling Johnson not to follow him. I saw Johnson walking. He was staggering a little. Nester offered to make friends with Johnson.

Nester was standing about 12 feet from Johnson—offered to shake hands with Johnson, Johnson says I'll come and I'll kill you if ever I get to you. Nester walked some few steps further—I didn't measure the distance—and stopped. When he stopped I told him, Nester to come on and get on his horse and he was stooped over as if trying to vomit. I told him to come on. He mumbled something I did not hear. At that time Nester had his back turned to me, face in direction Johnson was coming from. Then I said you stay there and I walked off about three steps from him. Just about the time I was walking the third step I heard the pistol fire and as I turned around he shot the second shot, and Johnson was still coming on him with his knife open, and when he shot the third shot he threw him to the ground. Mr. T. L. Brim was the first man that got to Johnson after he fell. There was no one nearer to Nester than I at the time of the shooting.

After Johnson fell it was about two minutes before Mr. T. L. Brim came up. I showed Mr. Brim where Nester was standing when he fired. It was near a persimmon tree. I did not measure the distance between the persimmon tree and where Johnson was lying. I did not go back to where the body was lying. After the shots Nester got on his horse and rode off. I saw him next day. I left standing at Will Lawson's stable—about one quarter mile from his home. Nester did not go back to Johnsons body where it was lying.

I went back to place where he was shot on Sunday after the shooting. I noticed where Johnson carried his watch—in his breast pocket in his shirt on the left side. When I went back I found the parts of a watch. They were lying at the spot where he fell. I found the stem and ring. I did not find anything else there.

Cross Examined.

The trouble took place at Johnson and Millers mill. Johnson was the man who was killed. I had been there about 2 hours I saw liquor there before, Jim Childress had it. I had not seen anybody drinking at that time.

Good many people were about the mill. When Nester rode down to a lumber pack and took a sack off his horse with something in it and set it down. He went then into the crowd where Johnson and all were. It was somewhere between ten and fifteen minutes I saw Cephus Lewis with liquor. He kept it in his pocket, did not see anybody drink any of his.

There was no disturbance as I saw before Nester went to leave. The first talk of drink Mr. Johnson started it. He told Harvey Nester to bring his liquor out. Nester remarked as long as he had any his friends should have it. He went and brought his liquor out and all had a drink including the deceased, and then Nester sat down and ate dinner with Cephus Lewis. They drank and wasted together about 3 pints. I poured the last in bottle and gave it to Nester when he started to leave.

I was in the crowd and saw Johnson and Nester all the time Nester was there. There was no trouble between Johnson and Nester up to that time. Nester had no words with any one that I heard up to that time. Nester got his horse to go home Johnson got his (Nesters) horse by the bridle with the left hand and swung on. Nester told him to turn his horse loose he wanted to go home. Johnson said nothing until Nester got off his horse then

hugged him (Nester.) They were on the opposite side of the horse. Cephus Lewis told Nester to get away, etc. I was on the opposite side of the horse and did not see the hugging. Nester had made one or two steps and Johnson was after him with his knife. Nester was walking backwards, Johnson following with knife out. The horse was across the branch. Charlie Thrower got the horse. I did not see him attempt to get on the horse but once and that was the beginning when he did get on. He had gone backwards something over 100 yds. before Nester offered Johnson his hand.

Nester had nearly got to the place where he did the shooting when I saw him take out his pistol the first time. I was there at the place until Nester backed off a piece and then I saw Johnson gaining on him and I went on to get Nester away, Johnson was going backwards and Johnson going towards him. I got in front of Nester. He still kept coming walking sorter sideways at Johnson who was coming on too. I got in front of Nester pretty soon after he began to back away and Johnson to follow.

Nester warns Johnson not to follow him. Johnson says nothing but kept coming. Nester stopped at end of about 100 yds. and offered Johnson his hand. Nester told Johnson to come and make friends with him, that he was not mad with him. Johnson told him that he would come and would kill him if he ever got to him. Johnson was coming on Nester with his knife open. Johnson was in about 20 feet of Nester when he offered him his hand. I was still to the front of Nester and trying to get him away. About this time Nesters horse was about 6 or 8 feet above him, to his rear. Charlie Thrower had the horse.

Nester was backing in direction of his horse. Deceased was following him. Nester was about 5 or 6 feet of horse when he shot, still facing the deceased. I did not see the first shot, saw the second shot. Second shot did not stop Johnson from advancing. When Nester shot the third time he was in about 20 feet of Johnson. Charlie Thrower carried horse up there, never heard Nester say anything about carrying horse there. If he took his pistol out while advancing I did not see it until just before the shooting I was at his back but in direction he was backing.

Mr. T. L. Brim was down about the mill when the shooting took place—about 200 yds. away. The place where the shooting occurred was in an old log road, woods on both sides. The horse was standing crosswise of the road. Nester shot in about 5 or 6 feet of horse while Johnson was following him with knife open.

When Johnson fell I walked off down the road, went to Mr. Childress—about a mile away. I went back and went in the shack where Johnson was. He Johnson asked who shot him. He knew every body but was suffering. Seemed to be in great agony.

Redirect Examination.

Nester had got about 50 yards from where he and Johnson commenced the fuss before I overtook them.

Re-cross.

The way I aimed to explain that when Johnson began to fuss with Nester at the horse.

[Signed] Walter Reynolds.

Dr. J. T. Smith, being duly sworn deposes and says:

I saw him at 8:30 p. m. the evening of the shooting. He was suffering some, but not in region where he was shot. Suffering from shock. He was not thoroughly conscious. During the time I staid he became more conscious. I examined him. He had a wound in abdomen to the left side. He asked who shot him. Someone replied Nester. He said I do not know what in the hell he was shooting me for—that he had not done anything to him. This is all the statement he made to me about the shooting, the rest was about his suffering. He lived two days and two nights from time I saw him. Died from hemorrhage and peritonitis resulting from the gun shot wound. It was a punctured wound, three

inches to the left of the median line of the abdomen about 3 inches below the line of naval. The ball ranged downward and to the right and into the right leg, judging from range of ball, punctured the bladder lodging near the juncture of the leg and body. (Dr. R. S. Martin, Dr. Moyer Martin and Dr. J. J. Leake assisted in postmortem examination.) Council for defendant objects to any statements made by the deceased.

(Signed) J. Thos. Smith. M. D.

T. L. Brim, being duly sworn deposes and says: I was out on mill yard when shooting occurred. I first went to where the boys were holding Cleve Miller. Cephus Lewis, one of the Throwers and Walter Reynolds. I heard the gun shot then I looked up the road and saw Johnson, the deceased, lying on the bank of the road. I made inquiries and got no information and went to Johnson. Miller and Walter Reynolds went with me. Deceased was lying on his side, doubled up. I did not see any knife, nothing in his hand. I saw his watch. (Defendant council object to any statement made by deceased) I asked him what was the matter. He said Jim Childress had shot him. He said that five or six times. Walter Reynolds was there. It was some time before I knew who had shot him. I inquired who shot him. (Defendants council objects to any conversation between witness and deceased in absence of defendant.) Walter Reynolds asked deceased several times if he was certain Jim Childress shot him. He answered yes. It was ten or fifteen minutes after I reached deceased before I could find out who shot him. Walter Reynolds showed me where Harvey Nester stood when he shot deceased. It was some 20 feet or more, I stepped it from where he said he made his first shot and it was 18 steps. Deceased was 6 or 7 feet to right of a dirt (line) to Nester. That road leads out to the Mt. Airy road.

[Signed] T. L. Brim.

The Presentiment Was True.

Confident that some terrible calamity had befallen a member of his immediate family, E. L. Johnson, of Clayville, Powhatan county, who since February 7th has been an inmate of the Memorial Hospital, yesterday requested his nurse to withhold from him all letters, and to carefully read all his postals before allowing him to see them. "I am confident that some one very dear to me is dead," said Johnson to his nurse.

Mr. Johnson's condition has been such that it has been thought inadvisable to tell him of the recent fire in which his brother, Walter G. Johnson, was burned to death in his home at "North-east," Powhatan county. "I feel that anything excitable would cause a relapse," the patient said, "and I am in no condition to hear bad news."

He entered the hospital suffering from a severe of acute appendicitis. An operation proved successful, even though, from the advanced stage of the disease, he has been desperately ill since. It will be several weeks before he will be allowed to return home. Until yesterday he had been cheerful, but a recent dream has to become morose.

"I had a horrible dream last night," he yesterday told one of the nurses. "I know that something has happened you have not told me. I awoke and laughed, but yet I realize that the presentiment is true, and that I am destined to hear bad news. Don't tell me what it is until I am strong again. There's a death to it."

Simple Remedy for La Grippe.

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Mr. Roosevelt and his Record.

Charlotte Observer, 4th.

To-day at noon President Roosevelt retires from his his high office and becomes a private citizen—a new role for him for he began holding office in 1882, when only twenty-four years old and has been in office almost continuously since. He has been President seven and a half years succeeding President McKinley upon the death of the latter September 14, 1901. In this time he has won a unique and enduring place in history. The country has never had so spectacular an administration as he has given it. Individually he is a theatrical person and he has carried this characteristic into all of his offices, markedly so into the presidency. He has smashed precedent time and again and these violations, while they would have been shocking in another, have but augmented his popularity. His eccentricities in conduct and speech and writing, especially as manifested in his outbursts of passion, have been so conspicuous as to have brought him under the charge of excessive indulgence in drink, but this will hardly lie. We observe that a writer in The American Magazine for March declares that "he has been made angry by certain mean and, of course, utterly unfounded insinuations against his personal habits," and this writer adds: One of the most abstemious of men, whose pride in his physical condition if nothing else would hold him to the greatest care in his habits, he could afford to laugh at these fictions."

Mr. Roosevelt is not distinguished as "one of the most abstemious of men." He is not a total abstainer but it is not just to say that he is an excessive drinker, as that term is understood. His odd behavior and intemperate language on occasion are to be laid rather to his natural impulsiveness, which has more than once gotten him into situations from which he could not extricate himself except by deviation from the straight and narrow path of truth. He has promised a great deal that he never performed he has uttered many threats that he never executed, he has often "stirred up the animals" to no good purpose whatever. He has trenched upon the ground of Congress and the courts and has taken action outside the limitations of his office, sometimes with the most beneficent results. In this connection may be mentioned his settlement of the Pennsylvania coal strike a few years ago and more recently the bringing about of peace between Japan and Russia. He has brought chief criticism and chief ridicule upon himself by denouncing as falsifiers many persons of whom it has been proven that they had told the absolute truth about the matters of which he accused them of having lied, the opprobrium of falsehood coming back on himself. This was most conspicuous in the case of Judge Parker and the Bellamy Storer, the charges of Judge Parker in the campaign of 1904 having been afterwards fully established and the statements of the Storer corroborated by Arch-

bishop Ireland. Did the President retract or apologize in either of these cases or in any other in which he has been caught with the goods? Not at all.

But he is a great man; a man of splendid ability, elegant culture and a tremendous force. Perhaps the country has enjoyed nothing so much as his having whipped Congress to a frazzle. Whenever it has gone to the White House for wool it has come back shorn. It has not been with the Democrats of the legislative branch so much as with the Republicans that he has had his encounters, and so thoroughly has he tamed them that even within three days of his retirement and when he would be stripped of power, the Senate judiciary committee has whitewashed him in the Tennessee Coal and Iron Company merger case, when every lawyer in the body knows that he acted in the matter without authority of law.

He is a president who has done things. When the Panama canal is completed he will deserve chief credit for it. The Filipinos have been pacified as a result of his "policies" and the wise execution of them by Judge Taft. He has scared the malefactors of great wealth out of their wits and while he has put none of the trust officers or railroad owners in jail he has taught them that they are creatures of the law and has made the way for railroad regulation easier. He has sent around the world the most magnificent fleet of battle-ships ever assembled, quickening the national pride and hesitating American position in Europe. The army and the navy are on a better footing than ever before and, thanks to his insistence, our navy is now the second in the world, that of England alone out-classing it. He has won for his country the friendship of China by returning millions of the money collected from it as indemnity on account of the consequences of the Boxer rebellion and has lately composed troubles in California which, had they continued would probably have embroiled us in difficulty with Japan. He carries a Big Stick and talks much and well of the importance of being prepared for war, but the things he has actually done have made for peace. This country was never before on so good a footing with the South American governments and we are on not only good but cordial relations with all the world. But time would fail. Mr. Roosevelt will rank in history as one of the five great Presidents of the United States. We would name as the paeceeding four Washington, Jefferson, Lincoln and Cleveland. He has done more in the last eight years to impress himself upon the world than any other man in it, not excepting William of Germany. And notwithstanding his infirmities of character and temper, his frequent follies and even worse, he is, we believe, the most popular man in the United States today.

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