

Supreme Court

(Before Mr. Justice Kent.)

When the trial of Albert George Benson charged with the murder of his nephew, Walter John Sheppard, was resumed yesterday afternoon the following witnesses were called:—

Simeon Boyd King, sworn, examined by Mr. Fox. Witness knew the accused and also his nephew, Walter John Sheppard. He was a nice little boy. He was tall but not so very stout. He was nine years and nine months old. On January 21st he saw the accused just down from his house. In a conversation witness asked accused what had happened John Sheppard and he answered he did not know. He said he left the boy to pull down some logs and when he looked he saw him lying face down among some small trees. This was about 12 o'clock. After dinner witness went to the house of accused and there saw the dead body of Walter John Sheppard. There was a mark on the boy's temple and also bruises on his lips. He was not sure if the accused was in the house at that time. The next day, Thursday, witness called up Mr. Frost, sub-sheriff, by telephone, and asked him if he could bury the body; but he was not allowed to do so.

The next day, with Benson, Robbins and Bell Squires, they went into Bayley's Cove path. They went up to a Scrape which led to a hill off Bayley's Cove path. There they saw a bunch of dogwood trees, and also some spruce trees, but nothing else. They then went into Bayley's Cove path, away from St. John's. Within they went about thirty feet and saw some blood marks, they were on the right side of the path. The snow at the spot appeared as if it had been trampled on. The trees there were low fir trees. Bayley's Cove path is just a side path and is different widths. After that witness came home. He had no further conversation with the accused after Wednesday, January 21st. The boy's body was sent to St. John's. In their conversation accused said he had found the boy half way down the hill, he could not speak. Accused said there was life in him when he picked him up.

Cross-examined by Mr. Bradley, he had only one conversation with Albert George Benson. At the time witness was unloading his sleds near his house. Accused said he was going to tell his brother David. It was about twelve o'clock when witness saw the accused. On Friday witness went in to make an investigation. On Thursday night previous to that it rained. The blood marks appeared to be scattered around, there were two spots there on the right side of the road going away from St. John's. Within the marks did not look fresh. They appeared as if they had been trodden over. If they had been trodden over, due probably to the rain. Witness saw no footprints, but it seemed as if some one had trampled over the snow previous to the rain. The rain had the snow in such a condition that no footprints could be seen, as a matter of fact he did not know if there were any footprints or not. When witness was speaking to the accused he was told the boy was almost gone. The boy was not dead at 12 o'clock on Wednesday. Accused went to tell his brother when he left witness.

Re-examined by Mr. Fox, accused said the boy was almost gone at 12 o'clock.

William James Frost, sworn, examined by Mr. Hunt. Witness lives about 5 miles from St. John's. Within there is a road connecting. There is a telephone system connecting. In January witness heard a boy had been killed. He received a telephone message about 11 o'clock in the morning. Accused called at the store of the witness that evening to get the burial outfit. When accused handed the order for the coffin trimmings, which was signed by his brother, David, he asked what had happened. Accused said that he and the boy went in the woods to get some whitebait. Coming down the hill, where the sticks were, the boy tripped and when he came down to him the boy was dead.

Cross-examined by Mr. Bradley, witness said the only conversation held with the accused. The order was from David Benson, brother of accused.

Constable Robert Pittman, sworn, examined by Mr. Fox. Witness is attached to the detective force of the Constabulary Department, and is stationed at St. John's. On January 21st accused left for St. John's within on instructions of the Inspector General, with orders to enquire into the death of a boy Sheppard that had been reported. On arrival there on the afternoon of the 24th, witness began to make enquiries. He saw the body of the boy at the home of Benson, and made a casual examination. There were some dark marks on the left temple and some other marks on the face. These were all the marks witness saw. Witness had no conversation with the accused about what happened. The next day the accused accompanied the witness to where he said the accident occurred. Accused said he left his horse and sled at the foot of the path leading to Bayley's Cove path. (Witness points out spot on map.) The boy was left about 40 feet up the Scrape to remove some logs down to the slide, and accused went further up the Scrape, about 60 feet. Later he saw Walter John Sheppard lying face down in the snow

with his head on some alder bushes. Witness made a thorough examination of the place where he had been told the accident occurred. Going farther in Bayley's Cove path witness saw some blood stains scattered around. There had been rain but there were still quite a number of marks around. Accused was standing near at the time and he could not account for the blood marks. He said he thought they might be caused by a horse's foot having been cut. The snow with the blood marks on it was taken to St. John's. About twenty feet beyond the blood marks, he saw an old coat lying on a tree. Accused said it belonged to him but said he had left it there several days before. Where the blood marks were there were only small trees. The top of the tree was about sixty feet also from where the boy had been left according to Benson's story. The body of the boy, and also the accused, were then brought in to St. John's. The accused was given the usual case. After arriving in St. John's, after morning Robert Miller came after him to go in and show what had happened to the boy. The boy's father was telegraphed that morning. Accused did not read and write very well. On Saturday night he first saw Constable Pittman who came into his house and asked accused to go in the next morning to where the accident happened, and they both went in. Accused was arrested on Sunday after they came out of the woods. He had a conversation with Mr. Pittman, in the Court House, downstairs. He then told the constable that because he was frightened at first he told an untrue story, and the correct thing was then told. He lodged the boy down at the spot where the blood marks were. The boy was not bleeding, but he was not prepared to say that the marks found were not blood marks, nor that they were not the blood of the boy. He was not prepared to swear anything about them. The boy was a good boy. The boy did not disobey the accused that morning, and he never struck the boy in his life. He had no stick in his hand, and he did nothing at all to injure him. He would say the marks on the face and temple would be caused by the limbs of the tree; the limbs would also cause the marks on the back of the arms, but witness could not say what caused the marks on the back of the thighs.

Cross-examined by Mr. Hunt. When his sister was dying, it was her wish for him to take this boy, his brother another, and his other sister the girl. After about four or five months he had been receiving five dollars a month for keeping the boy, from his father. When the boy was brought his father said he would do anything he could to keep him. There was no arrangement made for payment. The boy was a nice size boy for his age. He was never sick. In January he was well. He was in the woods two or three times before that, with the accused. When he went in he would go out of sight and would generally be setting rabbit slips. Every time he went in the woods he went after rabbits. On this day he went with the intention of going to his rabbit slips. Just clear of the hill, on Bayley's Cove Path, there is a marsh. On the way in they went to the snares, there were no rabbits there. The boy had two or three snares and accused had two. There were no rabbits. The day was not a cold day, it was a fine day, the wind was westward; it was squally. There had been a spell of mild weather and a spell of frosty weather. They went over the marsh to the rabbit slips; it was frozen over. They had to leave the sleds to go to the snares; both saw all the snares. The horse was stopped down from the scrape. They were about five or ten minutes at the snares. They then went up to the top of the hill. Before coming to the scrape he did not like to let the boy go home by himself, so he took him up to the top of the hill with him. He was talking about the slips; he was wondering why they got no rabbits. The boy was not asked to do any work at any time. He was standing about 8 or 10 feet away. There were other trees standing around but this tree was open for the length of the tree around where it was going to fall. This was the first tree that was cut. It would take about five minutes to cut, it took about 8 or 10 chops on either side to cut. If the tree had fallen the way he thought it would go the boy would have escaped, or if he had come towards him he would have escaped. The limbs of the tree came on him. He had to make two or three more chops when a squall of wind came and struck the tree. When the tree fell the boy was about four or five feet from the tree, and the boy put his hands up, and the tree struck him in the face; as he came to the tree his right side was towards him. The tree fell up hill. He did not see the boy falling. He saw him with his hands up and made a cry for him to get out of the way. The tree was at the time green; the limbs of the tree struck him. Where the tree went down it was level. The top of the tree would be between the snare and the south. When he saw the boy first all his body was under the limbs. When he saw the tree on the boy he took it off. When the tree fell it was in one piece; at that time nothing was done with it. About half past twelve he went in and cut the tree up. He went in after his hatchet and gear. After lifting the tree off the boy he made a couple of groans. The boy had not bled at all. The horse was not turned around until the boy was down.

three parts of the tree up struck the boy. He then lifted the tree off the boy and picked him up; he then took the boy in the path and laid him down on a bag of hay. He was taken in the path because on the other side there was a marsh. He took him in thirty feet because he wanted room to turn the horse. It took about half an hour to come out. After getting in the woods that was the first tree he started to cut. On the way out he heard the boy groan several times. His wife asked him what was wrong with the boy and he said he did not know. He then sent for his brother's wife and Mrs. Brown but when they came the boy was dead. He then went in the woods to tell his brother about the occurrence. On the way in he met Mr. King. He met his brother just clear of the woods. That evening he made ready to go to Hillview to get the trimmings and the casing for the coffin. He wanted to get them from Mr. Frost and carried to him a note from his brother. On Thursday morning Robert Miller came after him to go in and show what had happened to the boy. The boy's father was telegraphed that morning. Accused did not read and write very well. On Saturday night he first saw Constable Pittman who came into his house and asked accused to go in the next morning to where the accident happened, and they both went in. Accused was arrested on Sunday after they came out of the woods. He had a conversation with Mr. Pittman, in the Court House, downstairs. He then told the constable that because he was frightened at first he told an untrue story, and the correct thing was then told. He lodged the boy down at the spot where the blood marks were. The boy was not bleeding, but he was not prepared to say that the marks found were not blood marks, nor that they were not the blood of the boy. He was not prepared to swear anything about them. The boy was a good boy. The boy did not disobey the accused that morning, and he never struck the boy in his life. He had no stick in his hand, and he did nothing at all to injure him. He would say the marks on the face and temple would be caused by the limbs of the tree; the limbs would also cause the marks on the back of the arms, but witness could not say what caused the marks on the back of the thighs.

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Re-examined by Mr. Bradley witness said he did not know why he did not seek assistance at the nearest house. He wanted to get him home as quickly as possible. The boy was standing about 5 feet away when the tree fell. At 11 a.m. Mr. Bradley began his address to the jury. First he dwelt on the history of the boy for the two years he was living with the accused, dwelling particularly on the boy's proclivity for going in the woods. Then he reviewed the story as told by the accused. He urged that too much reliance could be put on the story of what particular part of the tree struck the boy. Falling on him it would have crushed him. It was evident that the trunk did not strike him. Mr. Bradley, continued the story of the occurrence as related by the prisoner and claimed that he squared with the proven facts. He said he did not propose to impeach the veracity of the Crown witnesses, and admitted their evidence as told. The scratches and abrasions on the face and arms were such as could be made by the limbs of a tree. As to

the marks on the boys buttocks, neither he nor his client could account for them, but it possibly could be done by one of the lowest limbs on the tree. He claimed that the Crown had produced no evidence to show that the accused had put any of the marks on the boys body. Had he been beaten there would be bruises. There was no evidence of his being beaten by a stick and unless the accused clawed the boy he could not produce the scratches. Dealing with the lying statements, he said it was natural judging from the type of man the accused was that he should fear what would happen him because of the boys death. He knew he was morally responsible in allowing the tree to fall on the boy, and in this state of mind he was full of fear that he might be held responsible, and it was human for him to tell lies in order that he would not be brought into trouble. The stories told by the witnesses were, he claimed, in toto a clumsy attempt of the accused to disassociate himself from the death. Regarding the blood marks found on the snow, he claimed that had a murder being committed, the accused would have removed this evidence. Further there was no evidence that the blood was that of the boy. There was absolutely no evidence against the accused beyond that which was circumstantial. There was no evidence that the accused had beaten or throttled the boy, and he had gone in the box and sworn that he had not beaten him, and his testimony was unshaken. Nor was there any evidence to show any reason why the accused should wish to get rid of the boy. In conclusion, Mr. Bradley asked that the jury should give the facts their closest consideration, bearing in mind that no direct evidence had been produced against him, and he felt sure they would do every justice to the accused knowing that his life rested in their hands.

THIS MORNING'S SESSION.

When the trial began this morning the prisoner was again placed on the Witness Stand and his cross-examination by Mr. Hunt resumed. Asked if he had cut the tree away before the squall came, witness said it wanted four or five more chops. When he returned after bringing the boy home he did he cleared it from the stump. His reason for going out to the wood the second time was to see his brother, and for no other reason except to get his hatchet and saw. He told his brother the same story as he told Mr. King that he left the boy to gather some logs whilst he went to cut some more. Witness declared that what he told his brother was false. It never entered his mind that it was best to let the tree alone until the authorities saw it. At Hillview he met Mr. Frost and he repeated to him the same as witness said. The accused admitted that this also was a false story. Witness on further cross-examination said his story to Mr. King was false. He did not know why he told all the people that the boy was found lying face down. It was a falsehood that he sang out to the boy and then came down the hill towards him. On the way out of the woods with the dying boy he passed seven or eight houses and it never came in his mind to get any assistance. After arriving home he left the boy there and returned again to the woods. Four days after he brought Constable Pittman to the scene of the accident and told him about finding the boy by the dogwood trees, and gave other particulars. Witness said all the story he gave the policeman was false. To either his wife, brother nor the first or six other people did he tell a true story, and the first time he spoke of the boy being killed by the tree was when he was in the lockup at St. John's.

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april 13, 1925

MINARD'S LINIMENT FOR THE GRIPPE.

At this stage adjournment was taken until ten o'clock this morning.

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MINARD'S LINIMENT FOR THE GRIPPE.

STAR MOVIE

The Famous
Wm. S. Hart
with Kathleen O'Connor, Ethel Grey Terry and James Farley.



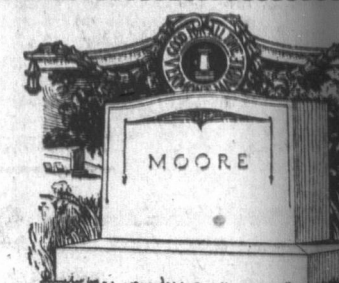
William S. Hart in the Paramount Picture "Wild Bill Hickok"

TO-DAY

In a Picture filled with Thrills and a pretty Love Story running thro.

MONDAY--POLA NEGRI in "SHADOWS OF PARIS"

A Story of a Society Woman in the most Notorious Underworld Den in Paris



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"Wild Bill" Hickok "Killer"

BUT ONLY TO PRESERVE PEACE.

Probably few men have been more misunderstood than some of the famous gunmen who flourished in the palmy and romantic days of the old west.

It was a brave and fearless crew, who daily risked their lives in the pursuit of duty as peace officers. They were Bat Masterson, who died in New York recently, Wyatt Earp, who still lives, Charlie Bassett, Bill Tishman, Luke Short, Joe Holliday, Chalk Beeson and that most famous of all old

time gunmen, Wild Bill Hickok, in which role William S. Hart makes his return to the screen, and which Paramount picture will be shown at the Star Theatre to-day.

Wild Bill first won fame as a scout. He drifted farther west in the vanguard of civilization and one day engaged in a desperate fight with a notorious gang of stage robbers, the McCord outlaws.

Hickok's fame was great. He became marshal of Hays, Abilene and Ellsworth. Wild Bill never killed a man until forced to. To uphold the law he had to kill forty-six men. For a time Wild Bill worked as a faro dealer in Dodge City. Bat Masterson was sheriff of Dodge City and he de-

cided the place needed change. He appealed to Wild Bill to on his six-gun and help him. It is in his true light, the Bill's picturesque career is the thrilling and faithful dramatization by William S. Hart, come from retirement to the "Wild Bill Hickok," for release.

First of nine special Paramount productions which Mr. Hart will under the direction of Clifford Gray Terry, Kathleen O'Connor, Gerard, Jack Gardner, James and others.

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