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BRIEFER CONTRIBUTIONS

VIGNETTES FROM THE CRIMINAL COURTS

MISTAKEN IDENTITY IN A MURDER CASE

CHARLES C. ARADO¹

The defendant was a man about forty years of age, with the ashen color of one confined in prison for a long time. There was a gleam of worry and tenseness in his eyes.

On January 23rd, a Sunday, a dentist arose at noontime in his quarters at a close-in-hotel on the north side. He leisurely arranged his dress, had something to eat, and then took a drive in his lately-acquired roadster. This was at three o'clock in the afternoon. In the course of a long trip throughout the city he stopped at a grill and had a few drinks of gin. After this stop he met with an accident wherein his car scraped the fenders of a cab. He returned to his room in the late afternoon and in a short time was visited by a friend. They started out on another ride at eight o'clock in the evening. They had driven to the far south side and turned the car in an easterly direction. They were driving along the curb, on the wrong side of the street. The car was stopped. They stepped out and walked back to the corner to see the street sign in order to find out where they were. They had walked but a few steps when the doctor felt something stuck in his ribs. He looked back into the face of a man commanding him to lift up his hands. The bandit ordered both of the men to face an iron fence surrounding the

building at the corner. He searched them and took what valuables he could find. He then commanded them to walk west and not look back. They complied and had advanced about a block when they met a policeman in uniform. The dentist told the officer about the hold-up and they all returned to the scene. They reached the intersection when the doctor pointed to a man ascending the steps of a building a little south of this spot. He shouted, "That's the man." The officer ran toward him, with the doctor and his friend about 25 feet behind. Some words ensued between the officer and the hold-up man, followed by two flashes of fire from the bandit's gun. The officer fell to the ground, the hold-up man fleeing from the scene. The doctor placed the officer in his car and drove east. The Monroe Memorial Hospital was about four blocks from the scene of the shooting. We find the doctor, however, driving the wounded man downtown, along the outer drive. He turned east on one of the viaducts but does not remember whether it was at 11th Street or Jackson Boulevard. All he remembers now is that when he made the turn into Michigan Avenue, he collided with a DeLuxe cab. After this mishap the cab driver rushed the wounded man to the nearest hospital. The doctor was arrested for driving a

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car while intoxicated and held in custody for three days.

The scene shifts to the locale of the shooting, the next evening, when two officers in a "flivver" car are attracted to a man they see walking down the street. In their testimony they inject the usual police inferences. The man answered the description of the supposed slayer of Officer Cassidy. They walked up to this man, commanding him to raise his hands. Both hands were in his outer coat pockets. He complied with the order and they searched him. They found a 45-caliber revolver, fully loaded. This man was the defendant in this case. He is rushed to the hospital of the dying man, in shackles, and escorted to his room. Some of the policemen were in uniform and others in civilian clothes. The question is asked, "Do you see the man who shot you?" The police testified that the officer raised his right hand and pointed at the defendant. The accused denied that any identification was made upon this occasion.

The scene shifts again. We are now in the cell occupied by the dentist. The defendant is brought before him and the dentist says, "That is the man." The accused denies this identification.

The state's case is built around the dentist's testimony and that of the policemen who attended the alleged identification by the officer a short time before his death. The state is placed in the unfavorable position of having to rely upon the identification of a witness who had been drinking on the day in question, who had collided with two cars during the evening, and who was later arrested and charged with driving a car while intoxicated. His faculties were not in such con-

dition that he could observe clearly or remember well what he had seen. Two days later he would be apt to point at anyone the police suggested was the bandit in order to cooperate with the authorities and lessen the force of the prosecution against himself for driving a car while intoxicated.

It was an unusual sight to observe the defending attorney call the prisoner to the stand as his first witness. The history of the defendant's life, which in a case of this character would be of vital interest to the jury, was not developed. Here was a man who had apparently never been involved in any criminal trouble. His was a life of hard work to support a mother and father at the time of his arrest. He was a widower of a few years and the father of a daughter, about seven years of age. Perhaps, the defending attorney did not want to bring out this feature of his life because of the fact that the accused, in his alibi, was placing himself in suspicious surroundings with a negress, at whose house he stayed all night on the evening of the alleged offense. Regardless of these circumstances, it appeared to have been advisable to bring out the facts that a little daughter was awaiting the verdict as well as the defendant's parents. The jury would undoubtedly wonder what the defendant did from the time that he reached his working age. From the testimony before them, they would have to speculate upon what he did during this period. There would be at least one juror who would argue that if the defendant's previous life had not been shady, counsel would have traced that life from the cradle. It was apparent that the defendant was not a highly intelligent man, from the manner

that he answered the questions put to him on the stand. He was a type who had to be drilled in connection with his testimony. It appeared that there had been little of such rehearsing with him. He placed his hand over his mouth and it was difficult to understand him. He denied his guilt in a weak manner. It appeared that he was self-conscious and apprehensive. If he were innocent, as the evidence indicated, he should have boldly asserted himself. It was natural for him to have been emotionally wrought-up in a case where the state was demanding his life. It was a sorrowful sight to see the man whose story should have clinched his case, floundering. The defense started out with a handicap instead of a lead which should have been increased by the testimony of the other defense witnesses.

On cross-examination the prosecutor asked him whether he had been to a certain drug store on the night of the shooting. He thus laid a foundation for calling this druggist in rebuttal. He realized that he had the defendant in an embarrassing position and he hammered at the relations existing between him and the negress. The defendant admitted that he frequented the house about once a week but he claimed that she did the sewing for his family. The prosecutor might have asked the defendant whether or not his mother did any sewing, in order to bring out the fact that the defendant called upon the negress for ulterior purposes.

It was surprising that the prosecutor did not go into the question of the gun which was found upon the defendant at the time of his arrest. Of course the accused might have

claimed that he carried the gun because he had been held up in his neighborhood, which was in fact the scene of many recent hold-ups. The defense had not brought out this point during its direct examination. Anyone familiar with the neighborhood would know that it was extremely dangerous to walk down the streets in the evening, unarmed. The judge had ruled that from this evidence of the gun found on his person, the state could argue the fact that the accused had done the shooting and that he had used this gun found upon his person at the time of his arrest. But the judge further ruled that this gun could not be actually introduced in evidence inasmuch as it had not been identified as the gun which had been used on the evening of the murder. The defense had laid the foundation for contradicting the dentist by asking him, "At the preliminary hearing before Judge on the day of, did you say in open court, "I am not sure that he is the man," (referring to the defendant). The defense now called the attorney who had represented the accused at that hearing. Without qualifying him as a lawyer, the direct question was asked, "Were you present at the preliminary hearing in this case on the day of, and did you hear a man by the name of Dr. Johnson say, referring to the defendant in this case, "I am not sure that he is the man?" The witness answered, "I did." The doctor was not called into the courtroom to be personally identified as the witness on this occasion.

The defendant's sister was called to the stand as a character witness. While this inquiry, strictly speaking, should have been in reference

to the defendant's character for honesty and integrity, and also as a peaceable and law-abiding citizen, counsel asked her, "Was this defendant the support of your mother and father? Was he industrious and did he work regularly?" As long as the state's attorney did not object to these questions, they helped the defense cause. The only possible grounds for their admissibility lay in the fact that in a murder case they might have had a bearing upon the severity of the sentence, since the jury fixes the penalty for this crime. The prosecutor brought out in cross-examination that the witness did not know the whereabouts of two of her other brothers. This testimony was designed to show that the defendant came from a wayward family.

The man for whom the defendant worked was now called to the stand. There was no question about his honesty and veracity. He testified that the defendant had been working for him for several months and that he had been paid about \$60 a week as a carpenter. The defendant had worked on Monday, the evening of which the defendant was arrested for this crime. The prosecutor tried vainly to break down this witnesses' story but the more questions he asked the more certain it was that he was telling the truth. This testimony was of vital importance to the defense because the argument could be made: "Would a man who had killed a policeman after a brazen hold-up, go to work as a carpenter on the following day? Was it consistent with human nature for a working man, earning \$60 a week, to conduct himself in this way? The only person that would commit such a deed would be a desperate criminal, accustomed to a life of outlawry.

It was inconceivable that a man in the defendant's circumstances would have perpetrated the deed." Defense counsel might have dealt at length with this witness. He could have been asked, for instance: "When did the defendant go to work on Monday? What did he do that day? Did you notice any nervousness? Did you talk to him? Did he seem to be any different that day than on any other day?"

On the following day of the trial, the cab driver whose car was damaged in the first collision, took the stand. The fender of his car had been torn away by reason of the dentist running through the stop lights. He upbraided the dentist at the time of the collision and testified in no mistaken terms that he was so drunk that he could not stand up. He saw the dentist's car, with a Michigan license on it, after a collision with another cab on the same day; that he talked to the policeman stationed at Jackson and Michigan, the scene of the later accident; and that he went to the police station and identified the dentist as the driver of the car which had run into him a few hours before. He added, "I saw the doctor in the captain's office and he was still so drunk that he was asleep on a chair. A negro was brought into the room and the doctor identified him as the man who had done the shooting." The defending attorney wisely asked that the doctor be brought into the courtroom. The witness was then asked, "Is this the man who drove the car which collided into yours on Sunday, January 23, last year? Is he the man whom you later saw in the Captain's office and who identified a negro as the perpetrator of the murder?" The witness unhesi-

tatingly pointed at him and said, "He is the man." There could now be no question about the doctor's intoxication upon the evening of the offense. Here was a witness testifying to a fact which flatly contradicted the testimony of the police in charge of the doctor after the second collision. If the police would lie as to this fact, wasn't it reasonable to expect that they would lie in reference to the alleged identification by the dying officer? Of course the prosecutor might argue that this witness was angry because of the collision. He might have inquired on cross-examination, what damages had been done his car. Also, whether he had received any compensation for them.

The defense attorney made a favorable move when he asked, "The police took your name when you told them what you knew about the dentist, did they not? Now, did you receive a subpoena from the state asking you to come in and tell what you knew about this affair?" With this foundation, the defense attorney could argue that the prosecutor was not showing good faith, by failing to call all witnesses who might shed light upon the matter, and it had therefore become necessary for the defense to produce this witness.

The cab driver of the second collision would have told a similar story in reference to the extreme drunken condition of the dentist. As a matter of fact, he was now a resident of New York at the time of the trial. Under these circumstances, counsel might have introduced a stipulation into the record to the effect that the driver of the Grey Cab, which was struck by the doctor's car on the evening of the offense, was out of the jurisdiction of the court.

The defendant's landlady then took the stand. She testified that she had known the accused for three years, that she had seen him every day during this period, that he apparently was the sole support of his mother and father; that she received telephone calls from those who desired the defendant to do odd carpentry jobs for them; that he worked steadily as far as she knew, and that he paid his rent regularly. She made an exceedingly impressive witness. A person of the type she described was not one to shoot down a police officer in uniform after a robbery. Her sincere expression of confidence in him spoke volumes for his innocence.

A hardware merchant on North Clark Street testified that he had business relations with the defendant, that the latter paid his bills, and that his reputation in the community was good.

The defense then called a South Park Traffic Officer who was at the corner of Jackson and Michigan upon the evening of the murder, at the time of the collision between the doctor's car and the second cab. He admitted being approached by the driver of the first cab. He was then asked whether he observed the condition of the doctor for sobriety. He answered that he smelled a little liquor and that the doctor admitted that he had a few drinks. The witness was careful to point out, however, that the doctor was not drunk. Defense counsel was compeller to ask, "Didn't you talk to me about an hour ago in the corridor, and didn't you say that the doctor was drunk at the time of the collision?" The policeman answered, "No." He was a safe witness for the prosecutor because he desired to answer questions only in

a manner which would help the state. He was about to be excused when the judge asked him, "Tell us just what you saw at the time of this collision? How was your attention first attracted to it?" The officer replied that he had his back turned to the scene at the time that the doctor drove into the North and South traffic. The judge immediately asked, "Do you mean that he drove into the boulevard against the lights?" The officer was obliged to answer in the affirmative. This was an extremely important point. The witness would have left the stand, not revealing it, had the judge not taken a hand in the examination. Coming from the judge, the jury would be very much impressed by this evidence.

The doctor was then called as a rebuttal witness. He testified that he did not see the cab driver in the captain's office. He was not so drunk that he fell asleep in a chair in the station. He added, "A negro was brought before me but I told the police it was a white man who had done the shooting."

The state then called a druggist who testified that he saw the defendant upon the evening of the murder. He remembered the accused because he wore a cap much too small for him. He was then asked whether he had seen the three articles, marked for identification, before this occasion. When he answered in the affirmative the state's attorney asked, "Where?" The witness replied that he saw them in the home of the negress referred to in a previous paragraph, on the evening following that of the shooting. He testified further that the defendant purchased these very goods on the previous evening. When the prosecutor asked to have them introduced as evidence, de-

fense counsel objected and was sustained. He inquired of the witness, "How can you tell that these goods are the very same articles that you sold to this defendant?" The witness answered that he couldn't swear that they were the identical goods but that he sold similar articles to the accused upon that evening. Of course, it was impossible to prove that they were the identical articles. But having proved that similar articles were sold to a man identified as the accused, and that these were the very articles found in the negress' flat, the state sought to prepare a basis for the following argument: The defendant had testified that he entered the flat of the negress at about six o'clock on this Sunday evening and had not stepped out of it until the next morning. So we see that the evidence of the purchase at the drug store contradicted the alibi. The argument could be made that if he would lie as to one thing he would lie as to other things. Of course the argument might have been made for the defense, "What an unusual scene, for the murderer of a policeman to step into a drug store, within a block from the shooting and his home, a few hours after the affair. The defense might have created a striking scene by admitting the evidence because it in fact indicated that the defendant was innocent.

The state's attorney argued for a conviction and penalty of death. In less than an hour, the jury returned a verdict of not guilty.

This case illustrates how easy it is for a man to become involved in circumstances leading to a murder charge. Had the defendant not been carrying a loaded revolver at the time of his arrest it is ex-