

THE PROCTOR CASE.

George and Frank Proctor, Accused of Murder of Tomas Elias Jr., an Trial in the Superior Court.

In the Superior Court of Santa Cruz County, State of Arizona, Thursday morning of the present week, George and Frank Proctor, accused of the murder of their step-father, Tomas Elias Jr., on the thirteenth day of September last, at Sopori, was called for trial, the defendants appearing in court accompanied by their uncle, Mr. Frank Proctor of Cananea fame, residing now in Hollywood, California.

The State of Arizona was represented by County Attorney S. F. Noon, with whom was associated Senator A. A. Worsley of Tucson.

The defendants' counsel were Thomas K. Richey Esq. of Tucson; Frank J. Duffy Esq., and Ernest R. Pardum Esq., both of Nogales.

The panel of twenty-nine trial jurors prescribed by law was drawn into the jury box, the jurors were sworn and examined as to their qualifications as jurors in this case, several being challenged and excused for cause, their places in the panel being filled by calling other jurors.

At noon the panel was filled with jurors passed for cause, and the respective counsel arranged to exercise their pre-emptory challenges during the noon recess.

When the court convened Thursday afternoon the pre-emptory challenges were presented, the jurors so challenged were excused, and the following twelve men, good and true were left in the box as a jury to try the case which they were sworn in due form to do: Lew C. Quinn, E. E. Bethell, William D. Hart, A. E. Saxon, James Kane, W. E. Holt, James A. Harrison, Ben Powell, R. E. Butcher, J. F. Williams, T. F. McCollum, A. H. Glidewell.

The information against the accused was read to the jury by the clerk, the County Attorney made the opening statement for the State, and the trial then commenced.

Before the jury was sworn the County Attorney asked the indulgence of the Court and stated that Antonio Grijalva, a witness for the State, had been successful in evading the service of subpoena, that it was reported that the witness had departed on the train going toward Tucson at 1:40 o'clock, and asked that the testimony of Grijalva be taken later, out of order.

After some talk and consultation among counsel that was agreed, and submission of testimony began.

The first witness called was J. M. Orozco, who testified that on the (13th) day of September he saw the deceased Tomas Elias at the Proctor ranche at Sopori, and that Elias was wounded badly, and could not talk. He died then and there.

W. S. McKnight, testified that he is sheriff of Santa Cruz County, that about 9 o'clock in morning of September 13th he answered a telephone call and was informed that George Proctor was on the other end of the line at Amadoville. Proctor stated that he had shot a man, and that he did not know whether he was dead or not, Proctor asked what he should do, await the sheriff or come in on the train coming from Tucson to Nogales, which was about due at Amadoville. Witness asked Proctor why he had done so, and the latter replied that he had to do so. He said he had shot Tomas Elias. The witness advised Proctor to come on the train.

Shortly afterward witness was called on phone by Mrs. Proctor who asked him to come and bring a doctor. Witness then telephoned to Amadoville to hold Proctor there and went out in an automobile accompanied by a physician.

At Amadoville witness found Geo. Proctor and Gabriel Angulo. The latter gave witness a gun that he was informed that it was the weapon that Proctor had used in the homicide.

Witness testified that something had been said about another gun having been used. Proctor said he had used the gun of his brother Frank. The gun was never delivered to the witness. Frank Proctor was arrested in Tucson and brought to Nogales by a Pima County sheriff, who brought no gun.

Upon cross examination of witness. Defendants' attorney drew an admission that there had been given him at the home of Tomas Elias at Sopori a certain gun, which he was asked to bring into court and witness did so.

Defendants' counsel requested that the gun be marked for identification, to which most strenuous objection was made by they State. Several efforts were made to get the gun into the case at that time; but the court sustained all objections, and the witness was excused.

Doctor W. F. Chenoweth testified that on the thirteenth of September he went to Sopori to the house of Tomas Elias Sr. Found there Tomas Elias, Jr., who was dead. Had received five gunshot wounds—some in the head one in an arm and one in the stomach. G. E. Angulo testified that he was at Amadoville store on the morning of September 13th, and that there he had overheard Geo. Proctor state to Demetrio Amado that he had been at his mother's house that morning with his brother Frank; that there was a horse tied in front of the house. The front door was opened, and they went through the hall; Saw Tomas Elias, who reached for his gun, but he (Proctor) "beat him to it" and shot Elias five times.

Cross-examined witness admitted he is cousin to Elias. He had heard Geo. Proctor state to Demetrio Amado what he related. He had told Mr. Richey the same

story at Nogales—not quite so fully in detail perhaps, but substantially the same.

The State then stated that the witness Antonio Grijalva was their only remaining witness and asked a continuance to get him. The continuance was granted, and the jury excused until Friday morning.

The jury had hardly got down the hill when Grijalva showed up at the court house.

Friday morning the missing witness Antonio Grijalva was put upon the witness stand for the State testified had known defendants since they were born—They were at the Proctor place about 8 o'clock in the morning the day Tomas Elias was killed. They passed horseback. Talked with Frank when he returned alone. When they were both together I talked with George. Frank, said that George had shot Tomas five times, Frank told me what had happened, I told them I did not believe it. I did not quiz him any more. I asked if Tomas had made a defense. He said George did not give him time, cross-examination waived.

State rests its case.

The Defendant's attorney, T. K. Richey stated that as some of their witnesses desired to get away from town the defense would ask the indulgence of the court and would put in their testimony without following the usual course, so the character witnesses were put upon the stand before the main testimony.

Joseph E. Wise of Calabasas was the first witness who testified to the good character of the defendants, whom he had known from childhood.

J. H. McVey of Las Jarillas rancho who had know defendants nine years, testified to the same effect.

William Lowe of Tubac, justice of the peace, testified in the same line. Had known them nine years, and had never heard a word against them.

Carl Schofield of Rosemont, U. S. Forest Ranger, testified to the general reputation of defendants as peaceful and law abiding citizens. He had known them five years.

Walter W. Bailey of Arivaca, mounted Inspector in the U. S. Customs Service testified to acquaintance with defendants six or seven years, and that their reputation is good as peaceful, law abiding citizens.

Harry J. Saxon, former Sheriff of Santa Cruz County, testified that he knew of the defendants, but that he knows their general reputation is good as peaceful, law abiding citizens.

Frank Proctor, one of the defendants, a boy about, seventeen of years, was then put upon the witness stand. Testified, On September 12th had a conversation with my mother.

Admission of the conversation was objected to by the state.

Counsel for defendants maintained that the conversation is a part of the "res gestae" in the case.

Counsel for both sides con-

ferred with the court, apart, not within hearing of the jury, submitting what the defence expected to prove from the conversation.

The question of the conversation was withdrawn.

On morning of 12th I went to my brother's ranche, near Helvitia and told George that mother had married Elias, and it would be good if someone went home and cheered up the girls, who felt bad about it. Rancho near Helvitia is about twenty-five miles from Sopori ranche.

Morning of 13th. We got up early and started to Sopori ranche got there little after 8 o'clock. We started through the house. At the front gate we found front gate locked. Went around house and crawled into kitchen. We went over house. No one in house at that time. Went out to let calves to cows to suckle. Calves were in a small corral. Went back to the house, sat there waiting for the girls. Went out with George and turned out cows—Then returned to the house. Went in through kitchen, back door, which we had opened. Inside I walked ahead, saw Tomas Elias there, near a table, in a sitting position. Elias made as if to grab me, and made as if to get his gun. I drew my gun as quick as I could, fired several times and turned and ran. George fired also. We ran out to corral, saddled up, and got off as quick as we could. Saw him go for his gun. Thought he was going to kill both of us. We had trouble with him. Trouble was in the summer sometime. I told him that I wanted him to keep away from our home. He said he would whip me. I walked away.

Later—on another occasion he said he would whip me at any time he wanted to. I was afraid of Elias.

I asked for my share of the estate of my father, that I might to get away. I was afraid of this man.

Cross-examined: I was afraid of Elias a long time—Perhaps a year. As soon as we had shot we went out saddled up, and went to Amadoville. When we went into the house the last time I saw Elias. He came as if to grab me. Then he went after his gun. Then I drew my gun and shot until my gun was empty. George shot also, emptying his gun also, I don't know where I hit him. I was excited and didn't know where I shot. I am not a good shot. I sent away for the gun. I cannot tell where Elias was in the room when I fired. It was a little after daylight when we got to the ranche. The three Mexican passed on horseback just as we were getting there. Did not notice who they were. Were waiting for the girls. I had an idea they were at Elias' house. I was afraid to go to Elias' house. When we shot Elias was trying to get his gun. He stood by the table, trying to get his gun. He did not fall on the table. He

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stood there with his right side toward us trying to get his gun. I started shooting when he made a start to get his gun. We rode all the way right from the ranche near Helvitia to get to the ranche at Sopori. The day I went over to the ranche near Helvitia was the twelfth of September—right after my mother had married Elias. We had never talked over the marriage before it occurred. Had not talked the matter with the girls.

The calibre of my gun is thirty-eight. I don't know the calibre of George's gun. I don't know how long I have carried a gun. I am eighteen years old. I emptied my gun. Don't know how many cartridges. I carried my gun because I am riding around considerably. Did not remove our guns while we were at the house. I intended staying there. I never thought about my gun. Don't remember the make of my gun—nor of George's. Do not always carry a gun doing chores around the house.

When I first saw Elias neither of us spoke a word. I don't know what he was doing. He might have had horse shoes in his hand. When I first saw him Elias was looking at me. He never said a word. Elias never spoke or hollered. He just stood there trying to get his gun. We stood there and kept firing until all the cartridges in our guns were fired, and then we turned and ran.

Met Grijalva. Did not talk much. George told me to go into town (Tucson) I don't think George tried to grab my gun. Don't know where my gun is now. Mr. Richey says he has it. I left it with my cousin in town and told him to give it to my brother Charles. We were so excited and afraid Elias would follow us that we went to the station.

Cannot say how far away Elias was from me when we commenced shooting, George stepped up alongside me to shoot.

Redirect: I did not tell Grijalva that George shot Elias five times.

At the ranche we slept a while, got up and made some coffee and then started for Sopori.

Re-cross examination: I saw Grijalva at his blacksmith shop later in the morning. I asked him about the stage, George had told me to get to Tucson in the automobile.

Friday afternoon Defendant Geo. Proctor was sworn for the Defense. Testified that in his father's life time they had trouble with Elias, and that on April 13th 1912, Elias and his father had words, and his father had told their mother that he feared Elias would kill them both. Later witness met Elias at fence of their ranche, and had high words.

Frank came to Helvetia September 12th and told me that mother had married Elias, and the girls were heartbroken.

Tried to communicate with my brothers Charles and Henry, who had gone to Tucson. Could not get them. Then that night after

tails of the shooting as given by Frank.

I followed Frank into the house, saw Elias crouching. He raised and went toward Frank in a menacing attitude. When Elias saw me he reached for his gun. Then I drew my gun and began shooting. Frank commenced shooting also. I believed that Elias would kill Frank and myself both.

We ran out saddled our horses and rode to Amadoville Mrs. White got sheriff McKnight for me, on the phone I told McKnight what had happened, and asked him what to do. He said come in on the train. Went to the depot. A man came and told me McKnight had phoned me to wait for him. Angulo came and I gave him my gun. I saw Ramon Amado.

Told Ramon Amado that I did not like like Tomas Elias since he killed my father. I left Sopori and went to Helvitia because I was afraid of him.

When I shot Elias was standing with his right side turned toward us and his hand on his gun. When I ran out he still had his hand on his gun.

Cross-examination. I went over to Helvetia about September 1st, 1914. Frank came to Helvetia September 12th to telephone to my brothers at Tucson. Went to Mrs. Thompsons to phone. Did not tell her I was going to Sopori.

I returned to the ranche, and went to bed, I lay there thinking of two broken hearted sisters.

I did not go to Elias' house at Sopori because Frank told me mother had said the girls would go to the Elias house with her, but that they could go to the Proctor house daytimes, and we expected they would come there.

Going to Amado we rode through the brush fearing Elias would follow us.

We saw Grijalva at his blacksmith shop. Did not stop and talk with him. Both my brother and myself were riding on a lope, when we passed the shop.

At Amadoville I phoned to Mrs. Tompson at Helvetia that the ranche was alone, and asked her to send someone there to look out for it. I did not say to her that "I had done what I said I would." I left the Sopori ranche six or seven months before I received my share of my father's estate. The cattle were not given me before I left the ranche at Sopori.

Frank told me my sisters were broken hearted and did not want to live at Elias ranche.

At the house Elias had the gun half out of his pocket. I don't know why he did not draw the gun all the way out. He was still standing in that position when we ran out of the house.

Redirect: At Amadoville I told the Sheriff I had used my brother's gun, after my own was empty. I wanted to protect my brother from any result.

When I was told by McKnight to come to Nogales on the train I told my brother to go to Tucson because I thought it was for the best.


Charles R. Proctor testified: I have known Tomas Elias ever since I can remember. I am twenty six years of age.

Counsel for Defense asked that the jury be excused while

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Counsel for defendant averred they desired to present a line of evidence showing that Elias had been guilty of the practice of acts of violence, threat against the Proctors and others, extending over a period of about fourteen years, all of which it will be claimed led up to the homicide and justified the defendant in the belief that when confronting the deceased their own lives were in jeopardy.

The court ruled that the testimony would be admitted and that four witnesses to testify in that line could be sworn and examined.

The jury returned and testi-

said we would settle with pistols. I told him there would be no sense in that and left him.

Upon several occasions he tried to get an argument but I always refused to talk with him.

He showed me one time how quick he was in fighting. He showed his knife in his boot and how quick he could draw and wield it, whenever he wanted to do so.

Another time he was at our house. He wanted a gun. Father wouldn't give it, said he wanted to kill a lot of sons of b... at Temporal. He became so ugly that father gave the gun to him, and he went.

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Cross-examined. He did not go to Temporal and kill any one because the gun was taken away from him.

We had trouble about water. He said would settle with a pistol I kept away from him because I feared him.

Manuel Rascon testified that four years ago he lived at the ranche of Juan Elias, called "Middle Temporal" knew Tomas Elias. I saw him at my place with a rifle. I took it and put away because I feared it might discharge and harm my family.

Jose Valencia testified that he knew Tomas Elias. At Kelvin, Elias put a pistol to my breast and threatened to fire. An officer took the pistol away.

Cross-examined: Elias took my wife away. That was about thirteen years ago. I came from Sopori to testify in this case.

Jose Gastelun testified: I knew Elias. At my father's house twelve years ago Elias offered a drink to a lady who refused. He went outside and returned with a pistol. He pointed the gun to a corner. Some one threw up his arm and the gun discharged and the bullet went into the roof. The girl was in the corner, and as he pulled the gun she ran into another room.

Cross-examined: That was all the trouble I ever had with him. I don't think he was going to kill himself because she wouldn't love him. The girl is now my wife.

Bird G. Yoas testified that on the morning of September 13th last he was at Proctor's ranche, saw Tomas Elias Jr, lying on cot. He was alive at that time, but he died shortly afterward. Witness took pistol from Elias. It was loaded, witness identified a pistol that was produced.

Cross-examined: I did not examine the gun. I don't like an automatic. It was in the holster it is in now.

Redirect: The gun was handed to Tomas Elias Sr., who put on a shelf, and afterward put it in his pocket. It was delivered to the officers.

W. T. Bailey and Geo. N. Sayre testified as character witness for defendants.

The defense closed their case, and further trial went over until this morning when the state will put in rebuttal evidence.

This morning the State proceeded to introduce testimony in rebuttal, calling as the first witness Mrs. White of Amadoville.

Defendants counsel then averred that they anticipated the line of testimony of the witness would prove objectionable, and they asked that the jury be excused pending argument.

Objections of the defense were sustained and Mrs. White was withdrawn.

Doctor Chenoweth was recalled by the State and testified that in his opinion a man shot in the head would fall, but on cross-examination he admitted he might rise to his feet again.

That closed the evidence.

The jury was excused and the time until noon was taken in discussing instructions to be given the jury.

Argument by Counsel will be had this afternoon.