

In the afternoon Mr. Sheeks announced that the defense rested their side of the case.

#### LEHI DANIELS

was called for the prosecution, and testified—I did not go upstairs to the room where Sergeant Pike was carried; I was 50 to 75 feet from Pike at the time of the shooting; did not see him make a motion to draw a weapon.

Leonard Phillips was called for, but was not present.

#### DR. J. M. DART

testified—I am a practicing physician and surgeon; have been such 14 years; was educated in New York, at the Homeopathic College; have treated injuries to the skull, but not any serious ones; have not observed serious cranial injuries; I know what such injuries are likely to produce; where a young man, 21 or 22 years of age, suffers a crushing in of the skull and a rupture of the brain, as stated in the Spencer case, and actions follow as testified to by the witnesses for the prosecution, I would say the actions were those of a sane person; such an injury may or may not produce insanity.

To Mr. Brown—Such an injury does not tend to produce a healthy condition of mind; it would tend to produce disease; I have seen persons fully recover from injuries to the skull; sometimes a removal of part of the brain will injure, and sometimes not; usually it injures the mind; I have had no such cases as this of the defendant's in my experience; an injury such as the wound on Spencer's head shows it to have been has been inflicted without producing disease of the mind; the immediate result would be to affect the mind; it might or might not last six months or longer.

#### DR. EWING

testified—I have had occasion to treat severe cranial diseases; I think that where a person receives such an injury as Spencer did, and acts as detailed here by the prosecuting witnesses, such actions are those of a sane man; such an injury is generally, but not necessarily productive of insanity.

To Mr. Brown—So far as my observation goes, such an injury produces insanity; it is very likely to do so; it would also be likely to continue; such insanity would manifest itself more greatly under excitement; where a person acts contrary to his usual nature, the actions would probably be those of an insane person; I have had very little experience with insane persons; extracting a part of the brain generally produces insanity, or at least disease of the mind.

#### LEONARD PHILLIPS

testified—Sergeant Pike made no effort to draw a weapon; he had no pistol; I took his belt off myself.

The prosecution rested.

#### MR. HILES,

after some preliminary remarks, said, in substance: The law guards with jealous and scrupulous care human life, and it is for the reason that hu-

man life, once taken, cannot be restored. If I take your property I may restore it, but this cannot be done with life. Murder is the greatest injury man can inflict upon his fellows. You have listened patiently, and it is upon the testimony here that you must make up your verdict, guided by the instructions of the court as to what the law is applicable in the case. I said at the opening that we should show a case of deliberate, premeditated killing. You have observed that the defenses set up are inconsistent; they cannot all go together. Their first proposition is that the defendant did not kill Sergeant Pike; the second that it was done in self-defense; and third, that he was insane. Before I am through I shall show you that none of these are true. We say that the defendant killed Sergeant Pike, and the evidence upon that point is as strong as an iron chain. There is nothing in the evidence upon which you can hang a reasonable doubt. A reasonable doubt is a term familiar to the hearing of laymen as well as lawyers, but it is not as well understood as it ought to be. What is it? If when you have taken all the evidence in the case and compared it, and then you believe that he did not do the act, you have a reasonable doubt. I say that upon the testimony produced there is no chance for a reasonable doubt but that Spencer killed Pike. You must not expect all witnesses to testify exactly to the same state of facts.

Variety with consistency is the best test of the truth. The testimony all points to the fact that the defendant was the principal actor in the killing. But there was a conspiracy between him, Stringam, Luce and Hickman. Steve Taylor asked the defendant not to do anything in the matter, but let the law take its course, and the defendant said he did not think he would get any justice, but he would wait and see. There was a conspiracy, and the testimony of George B. Spencer corroborates Cushing upon this point. George B. Spencer himself admitted that he had feelings against the deceased. Cushing is also corroborated in many other ways. Alma Williams says he does not know whether the man he was chasing, whom he was so close to as to almost touch, was Howard Spencer or not. I do not ask you to believe him on that point. His best judgment is, or ought to be, that it was Spencer he was chasing. The death-bed statement of Pike that Spencer shot him is of itself the strongest testimony, and when it is corroborated, as it is, it seems to me to leave no doubt that Howard Spencer slew Sergeant Pike.

Self-defense is always permissible. A man has a right to defend himself at any and all times. I believe that the story told by Orlando Herron is a base fabrication. Pike had no pistol upon him, and yet this scoundrel gets upon the stand and swears that he saw a pistol in the belt of the deceased, after he had been carried upstairs. I rejoice to say that I believe Herron is the only witness

who has deliberately gone upon the stand and swore to that which he knew to be false.

Insanity is a good defense, and always will be. An insane man does not know what he is doing, and if he does not know he is not able to distinguish right from wrong. We have had the testimony of physicians here upon hypothetical questions. They are, I say, entitled to but little weight. After all, when we come to judge as to whether a man is sane or insane we must call upon our hard common sense. I say the testimony, if you apply the reason, the experience of every-day life, is utterly confounded. A long time had elapsed since the receiving of the injury and the killing. If he had been insane, his friends would have known it, and yet even his sister, who was on the stand, did not dare to say under oath that he was insane. If he was insane, why did John Y. Green send Steve Taylor to reason with him? Don't you suppose that Green knew whether he was crazy or not? I say there is no case that has ever been known where three sane men entered into a conspiracy with an insane man, and the latter rationally carried out the compact. After the interview with Taylor we find him arming himself, acting in concert with Stringam, Luce and Hickman. Men who contemplate a compact of that kind don't usually pick up an insane man as a party. When the defendant stepped up to Pike and shot him, he came out from behind Stringam, Luce and Hickman. He stepped up to the sergeant, said, "Is that you, Pike?" shot, waited to see the effect of it, and then, when Hickman steps up to him and said "Git," he went. Isn't that the act of a sane man? He ran a foot race with Alma Williams and climbed a fence with considerable agility. Would this indicate that he was in a bad physical condition? And I say that he was just as strong mentally as he was physically at the time he committed that assault. It is not pretended that he is insane now. He is a man who has reared a family and performed the ordinary duties of life. It must be remembered that this killing was done out of motives and feelings of revenge.

It makes no difference whether Pike was in the right or wrong in striking the defendant the blow. It is said it was an unprovoked assault. We could not go into that. The chances are that it was not an unprovoked assault. Pike was there in the discharge of his duty, acting under military law. It must be true that there was a quarrel there between the two men, that there were words, and from all that appears in the testimony, Pike may have had just provocation. There is testimony showing that Pike ordered Spencer to leave, and that he refused to go. At the time he was killed, Pike was in the custody of the law for the offense, and there was no excuse, no justification for his being assassinated in the street. There is no pretense that this man was snarling under a great sense of wrong—under the effects of a cruel injury. If there