

Langford, justice of the peace; Walkey fired two shots; he was going to shoot again when my husband killed him; he only had one cartridge left in his rifle, which was a Winchester.

To Col. Kaighn—The gun was cocked when Deputy Franks picked it up; it was De Mott's gun; Walkey was in his employ; De Mott came up just after my husband left for town; he was armed with a shotgun; he said "Where's Gilmore?" I said, "Mr. Gilmore's all right." He asked about the sheep and I told him I was going to keep them till the damage was paid for; he asked for the herder, and I told him he was over there; he went and saw him on the ground, and said, "Oh, Joe, are you dead?" I wanted my husband to get to town, because if he stayed there would be more shooting; Walkey began to bring his gun up before my husband moved; my husband had his gun up, and lowered it and shot; he had his gun to shoot rabbits; I know of no trouble between my husband and Walkey; my boy said that Walkey had made threats against my husband; we have seen shots in our granary, and found balls; there has been no shooting lately, that I know of; I saw the bullet picked up near my little girl, and it was the same size as Walkey's gun; there was a dog with Walkey; my husband shot the dog in the foot after Walkey was killed; we are frequently annoyed by De Mott's sheep; they were there yesterday; on the morning of the shooting one of the boys went with my husband, and the other went with me; it was hard to drive the sheep; I saw Walkey coming from De Mott's house with a gun, and I knew there would be trouble.

To Judge McKay—There was a dog shot by my husband after he killed Walkey, and before he left for town; he shot the dog because he was trying to get the sheep away; that was after his master was dead; he would have got the sheep away if my husband had not shot him; this was five or ten minutes after Walkey was killed; I took no interest in the dog.

At this point a recess was taken till 3 p.m.

This afternoon Charles Francis Gilmer, son of the defendant, testified—I was fourteen years old last Spring; was with father on last Monday morning; we went to dig a rabbit out that my father had shot the day previous; I do not know how long we were at the rabbit hole, but we did not get the rabbit; after we gave up the rabbit saw old DeMott's sheep on our land; about 700 or 800 of them came on the land altogether; they all came on to the land while we were at the rabbit hole; we were about two hundred yards from where the sheep came on; we went from the rabbit hole and started to drive the sheep home—about a mile distant; it would have been easier to have driven them off the land the same way they came on than to have driven them down to the house; the reason we drove them down to the

house was because we wanted to corral them; it took us about three quarters of an hour to drive them down; I had known Joe Walkey for more than a year, but I have no idea how old he was; he told me once that if my father ever took any of his sheep he would kill him; on the morning Walkey was killed I first saw him about one and a half miles west of our house; we were about two hundred yards west of the house when he first fired his gun, the bullet from which very nearly struck my little brother; I know it nearly struck him because he told me so; we paid no attention to the shooting, but kept on driving the sheep; soon afterwards another shot was fired, and this time Walkey was about three hundred yards away; he kept coming towards us but did not say anything, but father said, "Oh, Frank, see how near the bullet came to Nellie;" it plowed up the ground about a foot and a half away from her; he walked rapidly towards us, but we paid no attention to him; just before father shot Walkey, he asked him: "What do you mean by shooting at my folks?" Walkey did not say anything in reply, but started to raise his gun, when my pa raised his gun and fired and killed Walkey; the only remark Walkey made was, "Oh, God!" and this was just before his knees bent and he fell over backwards; he did not move after he fell to the ground; we then tried to get the sheep in the corral, but were annoyed by the dog, which my papa shot; pa did not go near the body at all; he paid no attention to it, but attended to the sheep; I never had any trouble with Walkey; and I do not think pa ever had any; he was talking about a suit we had with Henry Williams, when he made the remark about killing father if he ever took any of his sheep; the Williams case was one in which my pa sued Williams for trespass, because the latter's sheep ran on our land; last spring Walkey said we were "the damndest folks on earth;" there was no trouble between Walkey and my folks that I know of; the deputies got out there in the afternoon, some hours after the killing, which occurred about 8 or 9 o'clock; the body was lying where it fell when the officers came there; they went and looked at the body, and I told some of them how it happened; pa was about two rods from Walkey when he shot.

To Colonel Kaighn—Walkey was working for De Mott, I believe; pa came to town pretty quick after the shooting occurred; he went to your house and then to the court building; the shot covered a round place on Walkey's breast about six inches across; the shots used were No. 3, I believe; when we first started to drive the sheep a young son of DeMott's came out and "seeked" his dog on the sheep, when pa told him to take his dog away, but he wouldn't do it; the boy then went home to DeMott's.

To Mr. McKay—I picked up one of the bullets fired from Walkey's gun.

Eddie Gilmore, a younger son of the defendant, was the next witness

called. He testified—It was broad daylight when pa and Frank went to dig a bunny up, so they could get some work done that day; they took a shovel and a shotgun with them; I loaded some shells on Sunday—putting in four drachms of powder and one and an eighth ounce of No. 2 shot; I milked six cows while they were gone; when I saw pa and Charley returning, they had a bunch of sheep with them.

This witness told a similar story to that related by his elder brother, alleging that the first time Walkey shot, the bullet just grazed his arm and plowed up the ground near him; he closed with the statement that "when Walkey raised his gun pa raised his and dropped him."

The examination was continued before Commissioner Greenman this morning, C. W. Morse, Esq., appearing for the prosecution.

The first witness was Frankie Gilmore, son of the defendant. Before this witness began to testify, several others were excluded from the room.

When father went out to dig out the rabbit he fired four shots, one accidentally, the other three at two dogs. Walkey fired two shots, making six in all. Could see no person when we went out after the sheep; if anyone had been within half a mile or a mile, I would have seen them; when DeMott's boy got to his house, I saw two men leave it together; one of them was Walkey; the other came only a short distance.

Cross-examined—I and my father were about one-fourth of a mile from DeMott's house, when his boy left us to go home, and about one mile from our house. The country between our house and DeMott's is level. There is a hollow about one hundred yards south of our house; we drove the sheep towards this hollow to avoid a fence. When we were driving the sheep I plainly saw two men leave DeMott's house. Could not recognize them at that distance; lost sight of one of them; the other was Walkey, who came up near me and my father; don't know how far the men were from us when they parted.

The witness yesterday testified that Walkey fired a shot which drew his attention to him, but said nothing about another man leaving De Mott's with him. Today he said his attention was not drawn to Walkey by a shot fired by the latter.

This witness answered a few unimportant questions put by Mr. Kaighn, when Bergen De Mott was placed on the stand by the prosecution.

Had resided in North Point five or six years; had known defendant about that length of time; saw Joseph Walkey last alive on Monday morning, Dec. 23. That morning my little boy went after my sheep; I was out doing some chores, when I heard a shot, followed soon by another. A few minutes later my little boy came home crying. In a few minutes Walkey started from my house towards Gilmore's; had no conversation with Walkey before he