

# The Stolen Fiddle—or Music As Evidence in Court

By

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*This mss. is given to Mary Colvig as a keepsake*

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One of the most unique, and at the same time, most pathetic incidents that I ever knew to occur in the trial of a criminal case happened some years ago when I was prosecuting attorney in a district embracing a portion of Eastern Oregon.

The compensation of such officer at that time consisted almost entirely in fees fixed by statute; as for instance, a conviction for misdemeanor brought the public prosecutor a fee of ten dollars; for a felony less than murder, fifteen dollars; for murder, twenty-five dollars; and failure to convict in any case, was rewarded by only one-half of the prescribed fee.

This condition of the office undoubtedly insured a vigorous enforcement of the laws, but it often caused one to rake the general public with a "fine-toothed comb." In order to find cases enough to pay the heavy expenses incurred in attending court in counties far distant from my home.

At the time of which I speak the circuit judge and I had been swinging around the circle of our district, holding court in the different counties, and upon reaching L\_\_\_, the county seat of K\_\_\_ county, I immediately examined the trial docket, and came to the sorrowful conclusion that the "picking" was not going to be very good at that town.

I worked diligently with the Grand Jury for three or four days, trying to find some one who had "gone wrong," but aside from a few cases of unlawful gaming, there seemed to be "nothing doing" in the way of crime.

There is an old saying that "the darkest hour is just before day," and I found it so. We were sitting in the Grand Jury room discussing local politics, and other matters of gossip, when a citizen of the town, by the name of Patterson, came rushing into the court house and in a very excited manner inquired for the sheriff.

*"My fiddle has been stolen from my house!"* he exclaimed.

Now, a fiddle in a cow-boy country is an article of great value, and consequently much interest was immediately manifested by all who had heard the owner detail the circumstances of the theft.

It appeared that an old man—who was called by the few who had met him “Jimmy the Tramp”—had been wandering about the streets of the little town for several days past. No one seemed to know from whence he came, or whither he was travelling. Tramps seldom, if ever, strayed so far from the main lines of travel as to visit such an isolated place as this inland county seat; and when any trampish-looking stranger did appear on the streets, he was more particularly noticed than he would have been at other places.

Patterson’s residence was an unpretentious box house, situated immediately at the side of the only street of the village. A passer-by could easily see from the sidewalk about all there was in the sitting room—a box stove, two or three crippled chairs, an old lounge, and a fiddle; the latter enclosed in a silken bag, and hanging on a nail, just over the lounge, and in full view from the sidewalk.

About noon on this particular day, a young man who happened to be standing on the porch of a brewery just opposite, saw “Jimmy the Tramp” walking slowly down the street, and upon reaching a place right in front of Patterson’s house, saw him stop for an instant, then hastily disappear within the open door. In a moment afterwards he came out, and apparently had something concealed under his old ragged coat, and appeared to be nervously watchful of detection. He passed over the street—by the brewery—through the Indian camp on the edge of town, and was last seen by some of the Indians, ascending a high rocky hill, whose precipitous sides crowded the little town into a long string of houses around the margin of a small lake.

The witness was suspicious that the old man’s actions were not correct. He thought he had seen the neck of a fiddle protruding from beneath his coat; so when Patterson came out from the rear of the house, where he and family had been eating their noon-day meal, the young man related what he had seen.

Although the instrument was not a rare old Stradivarius, nor anything more than a common fiddle, yet Patterson thought more of it than he did of his wife. He rushed to the front door, took one hasty look, and then excitedly said,

*“My God! My fiddle is gone!”*

The sheriff and his deputies, upon receiving this information, were soon in pursuit of the thief. They met the old man as he was coming down the hill. The officer told him that he was wanted for larceny in a dwelling house (which, by the way, is a penitentiary offense, without regard to the value of the property stolen).

The accused said, *“You are mistaken sir. I have not stolen anything.”*

The sheriff replied, *“You are charged with stealing a fiddle from a dwelling house, and I guess, old man, from the evidence you have, that you had better own up and tell us where it is.”*

*“I did not take it, nor do I know where it is,”* said the prisoner.

One of the deputies took charge of the old man while the sheriff and others made search for the stolen instrument.

They found it hidden in a cleft of the rocks on the very summit of the hill. The evidence was now complete, and the prosecuting attorney had a “victim.”

In about an hour after the arrest, the grand jury had returned into court a formal indictment, charging the prisoner with the crime, and he was immediately brought before the bar for arraignment.

I had not seen the defendant until this time; and when he did appear, I paid no particular attention to his looks. I noticed that he was old—that he had long hair and beard that were as white as snow; that he was poorly clad; and seemed resigned to the fate, which I thought most surely awaited him as a result of the pending prosecution.

My vocation had had the effect of curbing, to some extent, the sentiments of pity which ordinarily control our feelings when we are looking upon hopeless misery and wretchedness. Stern duty! Cold, inexorable Justice! And the vindication of outraged law! Had always been my shibboleth in the management of criminal cases.

In fact, I had such a reputation for possessing these attributes of a public prosecuting officer, that I felt the least bit proud of being characterized as a “Bloodthirsty Prosecuting Attorney.”

The presiding judge of the district was a cold, gray-eyed man. His heart was so strongly fortified with a sense of austere justice that the *Angel of Mercy* never dared to enter unless she was accompanied by the *Goddess of Reason*. He was so much inclined in this direction as seemingly to favor the prosecution in criminal trials and the attorneys of the local bar, in speaking to me of him, would refer to the judge as “your partner on the Bench.”

The old prisoner being penniless and without friends, it became necessary for the court to appoint an attorney to defend him. Courts usually select some fledgling of the law for such purposes, they need the practice which the occasion furnished and the older attorneys cannot spare the time necessary. The public pays no fee for such services, yet attorneys are required under their oath of office to accept an appointment of the kind, whenever called upon by the court.

On this occasion there was only one lawyer present who was not busy with other matters, and that was Col. N.B. Knight of Salem, Oregon—a very eminent member of the bar, and the father of Portia Knight, the actress who my readers may remember, created a sensation in London in 1901 by suing the Duke of Manchester for breach of promise.

“Colonel Knight, I will have to ask you to look into this old man’s case, and defend him should you find that he has any defense,” said the judge.

The Colonel arose and beckoned the defendant to follow him into the consultation room; after a few minutes they returned and counsel for the prisoner announced that the defendant would enter a plea of not guilty, and that he was ready for trial.

“Is the State ready?” enquired the judge.

It seemed to me that it was rushing matters a little, to try the prisoner on the same afternoon of his arrest, and within a few hours immediately following the commission of the crime; but as all the witnesses for the prosecution were in court and believing that the case was one, from which, under the law and the evidence there was no escape from a conviction—I replied that the State was ready.

The crime having been so recently committed and the accused being a stranger in the community, there was no trouble in getting a jury from the regular panel. When the jury was completed, they

were sworn to try the case, and “a true verdict render in accordance with the law and the evidence.”

In the opening statement for the prosecution I set forth the facts which would be established by the evidence, and concluded with this assurance,

*“Gentlemen of the Jury,”* said I,

*“When you have heard this testimony, you will have no trouble in finding a verdict of guilty as charged.”*

Col. Knight waived making any opening statement for the defense, and the trial proceeded. Each of the witnesses for the State testified to what he had seen and there was no cross-examination. The fiddle was identified by the owner, and admitted as an Exhibit of Evidence. The case made out for the prosecution seemed to be, at every point, as impregnable as cast iron. I felt so sure of a conviction that I almost hear the jingle of my fifteen dollar fee. With this confidence in the result I announced that the State “rested.”

*“We will call the defendant and have him sworn as a witness in his own behalf,”* said Col. Knight.

After the old man had been sworn, he took a seat facing the jury, when the following examination took place:

*“Please state your name, age, occupation, and place of residence.”*

*“My name is James Marshall; I am sixty-six years of age; I have no residence, nor any occupation.”*

*“Have you a family?”*

When this question was asked, the prisoner turned his head and looking at his attorney, answered.

*“I once had, Judge, but they are all dead, except my baby. She married some years ago and moved out to the Pacific Coast somewhere. I have been seeking her for years but cannot find her.”*

*“Where did you live when you had your family about you?”*

*“In Northern Michigan.”*

His attorney then said, *“Uncle Jimmy, you took this fiddle from Mr. Patterson’s house, did you not?”*

The defendant replied, *“I did Judge, and when the sheriff asked me about it, I denied taking it.”*

*“I wish that you would tell the jury all about the matter, and why you took it,”* said his counsel.

Looking squarely in the faces of the twelve men in the jury box, the old man replied, *“I do not know, gentleman, just why I took it. When passing along the street I caught a glimpse of it through the open door. I stopped, and said to myself ‘There is the only friend that can speak to me of the other days,’ and a sudden impulse urged me to take it.”*

*“Are you a musician?”* his attorney asked.

*“In my younger and happier days I was; and the violin was my favorite instrument,”* replied the accused.

*“What kind of music did you play?”* enquired one of the jurors.

The old prisoner turned toward the questioner and said, *"Any and all kind written for the violin. It has been years since I have had the opportunity to play, and when I saw this instrument hanging on the wall, it recalled the memories of a time long past; the years when I live in my log cabin home in far-off Michigan! When my dear wife, who is now dead, was toiling at my side, ever kind and loving and faithful! A time when a group of happy children filled my heart and my home with sunshine and gladness! It was a joy in those days, when labor had ended and the shadows of night had fallen, to gather these loved ones around me in front of the cheerful hearthstone and listen to some of the old times that always speak to the heart! I could not help it, gentlemen, I took the violin from the house of the owner, but God know, I had no thought of stealing it. I went upon the hill, back of town, and for an hour I lived again in the Past, dreaming over memories that only music could awaken and forgetting the misery and wretchedness of my homeless life. No, I did not intend to steal it! I hid it in the rocks where it was found with the intention of returning to it when night had come, and after enjoying another hour of joy and music, to carry it back and leave it in the doorway of the owner."*

All this was spoken by the old man in a tone of voice but little louder than a whisper, but so musically sweet, and so pleasantly modulated not a word was lost by either court or jury.

As I looked into the dark and brilliant eyes of the prisoner while he was making this statement, I well-nigh forgot the interest that the State of Oregon had in the case. They were beautiful eyes; and I could not help but feel that the soul which shone from beneath their dark lashes was not the soul of an ordinary tramp.

When the defendant had finished speaking his attorney said, *"Mr. Prosecuting Attorney, I would like to have the prisoner confirm what he has just said, by rendering before the jury what ever musical selection he may be able to execute on this old instrument. While I am well-advised that such a proceeding may not be admissible under the strict rules of evidence, yet I hope that you will not interpose any objection to it."*

*"Go ahead, Colonel,"* said I. *"I shall not object, yet it is not admissible as evidence, and is certainly without precedent."*

When the old defendant took the violin from the hand of his attorney, I knew at once that it was in the hands of a Master. His preliminary movements exhibited a certain technique that plainly revealed the fact that he was an artist in its use.

*"Please play one of those old favorite tunes of which you have spoken, in order that the jury here may know that you have told them the truth,"* said Col. Knight.

The old man, in response, slowly brought the instrument to its proper position, and leaning his careworn cheek fondly upon it, paused for a moment as if in deep thought. He then commenced and without break of note, or discordant tone, he made the old violin sing, one of the sweetest, saddest songs that I ever heard. It was a theme, in which the refrain of "Home, Sweet Home" could be heard throughout. At times, the bells of the far-off village church would lend their chimes to the story, and again the joyous glee and gladness of childhood would break forth in the rippling mirth. It was a song of the sunshine and shadows of a human life, telling its joyous hopes and weeping over its gloomy sorrows, and when the last mournful notes had died away in the silence it seemed like the curtain of that life had been rung down in the stillness of tragedy.

When he had finished, he laid the violin down on the table at his side. More than one tear had fallen from his eyes during the recital, nor from his only, for several of the jury had been seen brushing aside the tears that came unbidden as they listened to the story of a life—told in music

The courtroom was a still and silent as the grave, when Col. Knight arose and said, *"May it please the court—that is our case. The Defense rests."*

*"Proceed with the argument,"* said the judge.

I arose to address the jury. The spell of the music, with all its melody and sadness, controlled me to such an extent, that I simply said, *"Gentlemen of the Jury, if in this case you should return a verdict which accords with the dictates of your heart, it will satisfy the great State of Oregon."*

And they did so. Col. Knight waived argument and the jury, without leaving their seats, said,

*"Not Guilty."*

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*[Transcribed from original hand-written document - KN]*