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Stella Kenney: A Little Problem in Evidence

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Stella Kenney: A Little Problem In Evidence

BY RICHARD H. UNDERWOOD*

....
It was clear that he had got her in a family way;
And to let the child be born
Would not do.

...
(After listening to the story of the buggy ride.
And the finding of Zora in the ditch,)
The first thing I saw . . .
Was the hatchet!

....¹

I. Introduction

I have always found the *Spoon River Anthology* to be interesting reading. It perfectly captures what some have called "Courthouse America"—the now lost America that existed before our entry into World War I.² To my surprise, I learned that many of my contemporaries had never heard of Edgar Lee Masters or the *Spoon River Anthology*—even my colleagues from Illinois. No doubt this is more proof of my eccentricity and not some possible alternative.

To a lawyer, one of the more interesting poems in the *Spoon River Anthology* is *Barry Holden*, which tells the story of a crazy farmer who, upon hearing of the acquittal of a Dr. Duval for the murder of Zora Clemens (whom Duval had impregnated), was inspired to murder his pregnant wife with a hatchet. The *Barry Holden* poem came to mind when I was researching the origin of a Kentucky murder ballad called *Stella Kenney*.³ Poor Stella (whose real name was Kinney) was from Olive Hill in Carter County, Kentucky. She had been sent by her father to help her

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uncle, Robert Frasure,⁴ take care of his pregnant and ailing wife. During Stella's extended stay, Frasure got her pregnant. When Stella's father asked that she return home, her uncle decided to take desperate measures. On the buggy ride back to Olive Hill Frasure killed Stella, probably with a hatchet. He was tried six times (juries hung three times) and convicted three times, and the final conviction stuck. The case not only gave us a ballad, but also a ghost story. Several sources report that the killing occurred either on or near a big rock, which the locals later called "Bloody Rock" because the rock would "bleed" whenever it rained. Unfortunately, the road was widened and the rock was buried.⁵

At first, I thought that the Olive Hill murder might have inspired lawyer-poet Masters,⁶ but it did not. Stella was killed in May of 1915, after the publication of the *Spoon River Anthology*. Furthermore, John E. Hallwas's new annotated edition of Masters's famous work alludes to the true murders that inspired *Barry Holden*. I must relegate what I know about those murders to a footnote, so that I can get on to the matter at hand.⁷

II. The Ballad

Several variants of the *Stella Kenny* ballad were collected by the editors of the *Kentucky Folklore Record*.⁸ The longest consists of eighteen stanzas and is attributed to a song-writer named Rassie Ges. While I was unable to find a date for its composition, it closely tracks the actual facts of the murder as it was reported in the newspapers and in the reported appellate opinions in the case. In this regard the ballad is unusual, because most "traditional" murder ballads tend to stray from the actual facts of the underlying cases and tend to be formulary.⁹

Early news accounts were conflicting. An initial account from the *Ashland Independent*¹⁰ stated that a girl named Hall and a boy named Frazier had been the victims of a hold-up and assault near Olive Hill. It went on to state that the girl was dead, and that the boy was thought to be dying from blows to the head. More accurate accounts quickly followed in the *Carter County Herald*,¹¹ the *Carter County News*,¹² and the *Lexington Herald*.¹³

Here are selected portions of the testimony of witnesses presented at a preliminary hearing before Special Judge G. W. Armstrong.¹⁴

[Witness] Jas. T. Binion then testified:

Q: Where do you live?

A: Near Olive Hill.

Q: Where were you on last Sunday evening?

A: At Nancy Clark's, on Garvin Ridge.

Q: Do you know where this girl was killed?

A: Yes, sir; me and "Mammy" Clark were the first to find her.

Q: How came you to find her?

A: We heard shouting, and I thought it was some one drunk until they insisted that someone was in distress, and we took a pine torch and went to see

Q: About what time was it when you found her?

A: Between seven and eight o'clock.

Q: What did you see when you got there?

A: The man called to me and said he was hurt and his niece had been killed and they wanted help.

Q: What did the man say when you went to him?

A: He said he had been robbed of some money, and asked me to assist him to walk about until he could get straightened out.

Q: What else did you see?

A: I saw the girl lying there on the upper side of the road, with something under her head.

Q: Did you examine her wounds or his?

A: No, sir, except I saw his hands were cut.

Q: Did you see anything of the horse and buggy?

A: No, sir.

Q: What did Frazier tell you had happened?

A: He told me that a man stepped out in the road and caught the horse's bridle, and the girl remarked, "I know you," and about the same time another man stepped out from behind and demanded their whisky. Frazier started to get out of the buggy, and was struck with a club, which knocked him down. He grappled with the man behind, who overpowered him, took his money and got on his stomach with both knees, which made him sore and sick. The man then caught him by the heels and dragged him some distance, which caused the mud to be on his shirt. The girl

screamed and the man hit her twice with a club, which caused her to sink down in the buggy. After he had recovered sufficiently, he crawled to where he found the body of the girl. Said that the cuts on his hands were made by barbed wire in his tussle with the man. Said they took \$28 in money and a \$30 check from him

Dr. Rose [then testified:]

Q: On last Sunday were you called to see Stella Kinney?

A: Yes, sir.

Q: Did you make an examination of her?

A: Yes, sir.

Q: Was she dead or alive?

A: Alive.

Q: Where was she when you were called?

A: On Garvin or Clark hill.

Q: About what time was this?

A: About 10 o'clock Sunday night.

Q: Did you make a thorough examination of her wounds at the time?

A: No, sir, I did not. The circumstances would not permit it.

Q: Did you make another examination?

A: Yes, sir.

Q: Where did this take place?

A: At the city hall at Olive Hill.

Q: What wounds did you find?

A: I found seven wounds on her scalp.

Q: State where those wounds were located.

A: One near the margin of the hair in front, one over the right ear, two on the top of the head, a cross wound on the back of the head, and a small one lower down on the back of the head.

Q: Were they all clean, clear-cut wounds?

A: They were: Four cut to the bone, two cracked the bone, one cut through the bone exposed the brain.

Q: [T]he county attorney produced a hickory standard and asked: "Could those wounds have been made with this club?"

[There was a defense objection, and the court ruled that the witness could answer whether the wounds were made with a sharp instrument. The witness answered that they were made with a sharp instrument, like a hatchet or small ax.]

Q: In your opinion, could these wounds have been made with this club?

A: No, sir, they could not.

Q: Was [sic] there any other wounds except those mentioned?

A: No. sir.

Q: Where did you next see her.

A: At her father's home.

Q: Did you make any other examination at that time?

A: I did, in conjunction with Dr. O'Roark.

[Here both doctors agreed that the girl was to be a mother.]

Judge A. J. Counts then took the stand and told the story of how the buggy and then the girl were found, and the story of what had happened according to Frasure. The girl had been staying at Frasure's home for about ten months, and he had been taking her home. She had not had any "sweethearts,"¹⁵ and Frasure claimed that he had not known that she was pregnant.

Here are some of the more interesting ballad lyrics, the details of which jibe perfectly with the newspaper reporters' stories.

It was on a stormy night
The second day of May
That Stella Kenney was murdered
While for home she was on her way.

From her Uncle Robert Frasure's
Where she had been to stay
And spent ten months with him
Before [that] fatal day.

It was on one Sunday morning
On the second day of May
That they left Fleming County
For her home they made their way.

It was on that rainy night,
While the rain and wind did sweep,
That a horse and empty buggy
Was found upon the street.

The officers they were summoned,
Each one his place did fill,
They found poor Stella murdered
Upon the Garvin Hill.

She was carried to the City Hall
Where she gave some awful sighs,
And the sight of her muddy clothes,
Would have brought tears to your eyes.

There was her dear old father,
Kneeling by her side,
"With seven gashes in her head
No wonder Stella died"

She was carried home to Mother,
Upon a cot she lied
And in five minutes later
Her darling Stella died.

Her clothes were wet and muddy,
The rain was very cold,
But the weapon used to kill her
Has never yet been told.

Robert Frasure pleads not guilty
It was robbers he did say
"They took from me my money
And in my buggy drove away."¹⁶

III. The Little Problem In Evidence

Frasure had told his story, and now he was stuck with it. It was pretty clear that Stella's wounds had been inflicted with something like a hatchet, and not a club.¹⁷ Although the road was muddy, there were no tracks tending to show that "robbers" had been at the scene.¹⁸ More critical was his claim that he had not known of Stella's pregnancy. The prosecution had a letter, supposedly written by Frasure to a relative, a Dr. Walker Stumbo, requesting that the doctor send Frasure an abortive remedy. The letter was received by Dr. Stumbo "about the first of May." The

murder occurred on May 2.¹⁹ This is what the letter said according to Mrs. Stumbo (the original having been destroyed):

Dr. Walker Stumbo. Dear friend: Will you please send me some medicine for a friend, who has missed a month and one half or two months Send me some medicine for a friend, who has missed for some time, and send me statement and I will send you the amount of the bill. And at the close of the letter he insisted that he send the medicine.²⁰

The Commonwealth's theory of the case was that Frasure had been "the author of the ruin of the girl and the cause of her pregnancy, and that, to hide the humiliation, shame, and disgrace to himself and her, he committed the murder, and that this was the motive which prompted him to do so."²¹ The letter supplied the motive. "The evidence of his guilt is very much assisted by the establishment of a motive for the murder upon his part, and any evidence tending to prove such motive is most material."²² For his part, Frasure stuck to his story of ambush, robbery, and murder by two other men.²³ The case was tried six times. The first and second trials were in Carter County; the first ending in a hung jury, and the second with a verdict of guilty and a sentence of life imprisonment. This conviction was reversed. After the court granted a change of venue, the case was retried four times in Lawrence County.²⁴ The two reversals were grounded in the prosecution's failure to lay the proper foundation for the admission of the letter to Dr. Stumbo. The case provides an interesting example of the basic problems associated with documentary evidence—authentication, best evidence, and hearsay. The defense lawyers made the prosecutors "turn square corners," and the prosecutors were not particularly adept. The case is also noteworthy for the fact that Frasure's second and third appeals were handled by a young lawyer from Louisa named Fred Vinson, who would later serve as Chief Justice of the United States Supreme Court from 1946 to 1953.²⁵

IV. If At First You Don't Succeed, Try, Try The Case Again

Again, Frasure's first Carter County trial in June 1915 ended with a hung jury. He was retried in the October term, convicted, and given a life sentence. The trial was pretty straightforward,

except for the presentation of the letter supposedly written by Frasure to Dr. Stumbo. Here is the testimony. The witness on the stand is Dr. Stumbo and not Mrs. Stumbo.

Q: Now, if you remember what the substance of that letter was, state it.
[Objected to by defendant.]

By the Court: You are only required to state the substance of the letter.
[Objection overruled. Defendant excepts.]

A: I can state that — My best recollection, my wife read the letter to me herself.
(Objected to by defendant.)

By the Court: You were present when she read it?

A: Yes, sir; she was the only person present.
(Objection overruled. Defendant excepts.)

A: (continued). The way I remember the contents of the letter, that he would — Frasure would — it was from a Mr. Frasure, whatever Mr. Frasure it was. I don't remember that it was Mr. R. S. Frasure at all; don't remember the post office that it was from; my wife called my attention to it at the time, and said this man — called his name — and asked me where the post office was. I says, "I don't know where this post office is," and called it, and says "I don't know," and the way I remember the contents of this letter he wanted some medicine for a woman that was sick, and that she had missed her periods either a month and a half or two months and a half; the half was to it, but I am not stating that it was two and a half or one and a half, or what it was; I don't remember, but the half was there. He said the woman had missed this long, missed this much, missed her period already that much, and that he would like for me to send her medicine that would help her if I could do so, and that is about all there is to that part of it at the present time.²⁶

The importance of this evidence was clear. "If . . . advice is sought from a great distance [Dr. Stumbo was some 75 miles away] and from a relative and boyhood associate, . . . [t]hese acts would show deep solicitude and display more than ordinary interest upon the part of one seeking the information and give color to the belief that some sinister motive prompted the inquiry."²⁷ It was important evidence, but it had been improperly admitted. It had not been shown that Frasure had written or even signed the letter, and assuming that the original had been lost or destroyed (satisfying the best evidence rule), the

witness testifying of its contents had not seen the contents. The letter had been read to Dr. Stumbo by his wife. His testimony was hearsay. The conviction was reversed and the case remanded for a new trial.²⁸

The new trial was in Lawrence County, and Frasure was once again convicted on the same evidence. Again he appealed, arguing that the letter had been erroneously admitted over his objection. This time Mrs. Stumbo had taken the stand, and the hearsay problem was avoided.²⁹ She stated that the letter had come around May 1, before the murder, and that she had opened it and noted that it was signed by the name *R. S. Frasure*. She did not remember the date of the letter nor the post office from which it was mailed. She opened the letter, read it, and at once destroyed it. She testified as to its contents. While the destruction of the original made parol proof of its contents admissible, there still had been no authentication, "by proof of the handwriting, or by some other competent evidence of its execution by the person against whom the writing [was] offered as evidence."³⁰ How could the prosecution have not learned its lesson?³¹ The conviction was again reversed, and the case was sent back for yet another round.

V. The Sixth Time Would Be A Charm

Frasure was tried three more times in Lawrence County, and after two mistrials, he was convicted and sentenced to life imprisonment.³² Did the prosecution finally get it right? How did the prosecution get the "letter" (the parol report of what the letter said) authenticated? How do you authenticate a letter that has been lost or destroyed? There would be no signatures to compare to an exemplar or to be analyzed by experts or jurors.³³ Could there have been authentication by circumstantial evidence,³⁴ or was Frasure convicted without the evidence of the letter to Dr. Stumbo? That was the mystery for me. Mark Stone of the Kentucky Department for Libraries and Archives searched in vain for a transcript of the last trial. The trial record was not sent up on the final appeal, which would suggest that the reporter's shorthand notes probably were never transcribed. The final and unsuccessful appeal was on points of law³⁵ relating to the sufficiency of the indictment and the composition of the jury panel.³⁶ The "evidence heard upon the trial [did] not appear

in the record."³⁷

With the assistance of the staff of the Lawrence County Library,³⁸ I was finally able to determine that Frasure's last trial took place in early December 1917. The trial took three days, from a Monday through a Wednesday, with a verdict on Thursday. The *Big Sandy News*, a weekly newspaper in Louisa, Kentucky, covered the trial only briefly; but my mystery was solved. According to the paper, "[t]he evidence on which the Court of Appeals gave new trials was eliminated this time."³⁹

The six trials were estimated to have cost the State a whopping \$15,000.⁴⁰

Notes in the *Kentucky Folklore Record*⁴¹ indicate that Frasure was pardoned by William J. Fields, who served as Kentucky Governor from 1923-1927.⁴² Fields was a lawyer from Carter County, and he would have been keenly interested in the case. The *Kentucky Folklore Record* preserved oral history provided by one "Aunt Mal Owens, age 88, of Olive Hill . . . [dated] July 26, 1961,"⁴³ to the effect that the ailing Frasure was pardoned because of the efforts of his sister. According to Owens, most folks believed he was guilty of the crime, and he was unable to return to the area after his release from prison.

So ends our little evidence tutorial.

ENDNOTES

1. EDGAR LEE MASTERS, *Barry Holden in SPOON RIVER ANTHOLOGY* (1916).

2. HERBERT K. RUSSELL, EDGAR LEE MASTERS: A BIOGRAPHY 69 (2001). In preparing this Article, I came upon a fascinating piece by lawyer Steven Richman, *Edgar Lee Masters and the Poetics of Legal Realism*, 31 CAL. W. L. REV. 103 (1994). Richman alludes to one of Masters' critics as having characterized Spoon River as "the great blot upon . . . Masters' work, . . . one long chronicle of rapes, seductions, liaisons, and perversions" *Id.* at 113. I guess the critic did not think that such things went on in small towns. In fact, Masters based his long list of "perversions" on actual events that have now been documented by John Hallwas. *See infra* note 7. For my part, I enjoy the "chronicle," and I have even toyed with the idea of writing a piece about "The Crime On Spoon River."

With regard to the world time line at the time of Stella Kinney's murder, the headlines of the *Lexington Herald* announced that Turkish forces were inflicting "serious damage" on British forces attempting an invasion in the Dardanelles, while the Russians were being "beaten back in West Galicia" by Austro-German forces. *See Turks Inflict Serious Damage on Allied Forces*, LEXINGTON HERALD, May 4, 1915, at 1.

3. *Stella Kenney*, 8 KENTUCKY FOLKLORE RECORD 113-24 (1964).

4. One of the mysteries in the case is the fact that his name was spelled a number of different ways in the newspapers and even in the published testimony and court opinions, sometimes Frazier and sometimes Frashure. In the version of the ballad quoted here, the name is spelled Frasure, and I will use that spelling. Frashure was the spelling in the "style" or case name of the second of three appellate opinions, which alludes to testimony that he spelled his own name as Frashure on an important letter. *See infra* note 20 and text at *infra* notes 30 and 31. Note, however, that I report the spelling actually used by reporters and witnesses in any quoted material.

5. *See* Richard Underwood & Carol Parris, *Crimesong: Some Murder Ballads and Poems Revisted*, 13 J. SOUTH. L. HIST. 5, 10 (2004) (citing <http://hauntedky.50megs.com/carter.htm>). So much for historic preservation! Don't you hate it when they do that? Incidentally, the website cited is somewhat ghostlike itself, having previously appeared, and then disappeared, at <http://www.ghosthuntersinc.com/haunted/kentucky.htm>. A more recent incarnation of the "Bloody Rock" story can be found in Landon Howell, *Haunted Places in Kentucky*, available at

http://www.juiceenewsdaily.com./0105/news/haunted_kentucky.html.

6. Masters was torn between his poetry and his law practice, which he hated. At one time he was a partner of Clarence Darrow. Darrow treated him as Darrow treated others—badly. See HERBERT K. RUSSELL, *EDGAR LEE MASTERS: A BIOGRAPHY* (2001). See also Daniel J. Kornstein, *The Double Life Of Wallace Stevens: Is Law Ever The "Necessary Angel" Of Creative Art?*, 41 N.Y.L. SCI. L. REV. 1187 (1997). Incidentally, Masters once wrote a law review article. See E.L. Masters, *Trial by Jury in Illinois*, 4 U. ILL. L. REV. 408 (1910).

7. According to John Hallwas, editor of *Spoon River Anthology: An Annotated Edition*, the Barry Holden poem was based on farmer Charles Houlden's ax murder of his wife. See EDGAR LEE MASTERS, *SPOON RIVER ANTHOLOGY* 387 (John E. Hallwas, ed. 1992). Houlden had supposedly attended or at least followed the murder trial of Orin Carpenter, who was charged with the murder of a pregnant prostitute named Missouri "Zura" Burns. The facts of that case are reported in Beverly Smith, *Murder In A Rural Setting: Logan County Homicides 1865-1900*, 13 W. ILL. REGIONAL STUDIES 61, 75-76 (1990). It was believed that Carpenter had impregnated "Zura," and to escape his predicament had cut her throat during the course of a buggy ride. The jury acquitted Carpenter, and Carpenter would go free, but only after narrowly escaping an assassination attempt by Zura's father. According to another source, REV. R. D. MILLER, *PAST AND PRESENT OF MENARD COUNTY* (1905), a source Masters would have been familiar with (Mitch Miller, the son of Reverend Miller, was Masters' childhood friend, and his tragic death is commemorated in the Anthology in the poem *Johnnie Sayre*), Houlden murdered his wife after hearing the news of Carpenter's acquittal. Rev. Miller reports that Mrs. Houlden's throat was cut from ear to ear, she had been stabbed fifteen or twenty times, her head had been crushed with an ax, and the body had been "terribly bruised by the bootheels of her murderer." *Id.* at 113-14. Houlden told authorities "that he remembered about going to the house after inquiring about the result of the Carpenter trial, sitting down at the supper table and beginning to drink a glass of milk, but after that all was blank till he came to himself, as they were hauling him to Petersburg." *Id.* at 114. He was hanged in the Petersburg jail on May 15, 1885. *Id.* at 113-14. By the way, Hallwas says that Masters used the name Duval, instead of Carpenter, to take a shot at a down home politician whose name was Duval.

8. See 5 KENTUCKY FOLKLORE RECORD (1959) and 8 KENTUCKY FOLKLORE RECORD 113-24 (1962). The ballad was also "collected" in G. MALCOM LAWS, JR., *NATIVE AMERICAN BALLADRY* 210 (1964).

9. See Underwood & Parris, *supra* note 5, at 5.

10. The *Ashland Independent's* account was reprinted in the *Lexington Herald*, along with a more accurate story attributed to the Associated Press. See *Girl Murdered and Uncle is Arrested*, LEXINGTON HERALD, May 4, 1915, at 2.

11. *Young Girl Dead as Result of Assault*, CARTER COUNTY HERALD, May 6, 1915, at 1.

12. *Murder Charge Against Robert Frazier, of Fleming County*, CARTER COUNTY NEWS, May 6, 1915, at 1.

13. *Merchant Held on Charge of Killing Niece*, LEXINGTON HERALD, May 4, 1915, at 1.

14. The regular County Judge, Judge Thornsberry, was related to the defendant, and disqualified himself from presiding. *Young Girl Dead as Result of Assault*, CARTER COUNTY HERALD, May 6, 1915, at 1. Assisting in the defense was Calhoun B. Wilhoit, one of a long line of distinguished Kentucky lawyers and judges. The testimony is from *Murder Charge Against Robert Frazier, of Fleming County*, CARTER COUNTY NEWS, Thursday, May 6, 1915. I have added "Q:s" and "A:s", which do not appear in the news account before the questions and answers.

15. An account by one Myrle Kinder relates that Stella's mouth "was deformed in some way . . . in the palate of her mouth." See *Stella Kenney*, *supra* note 3, at 119. An accompanying account by one Alma Gloré described her as a "robust" girl who was "somewhat 'retired' and timid in her disposition and did not participate in the usual festivities of young people as do most girls of her age. She had few if any young men visitors who paid her attention, and she did not encourage them. She was, nevertheless, a very industrious, sensible, and good girl." *Id.* at 121. [I have put quotation marks around Alma Gloré's words, but they were not hers — she got them from the opinion of Justice Thomas in *Frasure v. Commonwealth*, 185 S.W. 146 (Ky. 1916). So it does not appear that her notes were necessarily based on first hand knowledge.] The same source claims that Frasure was crippled, suffering from "white swelling." *Id.* at 148. It is alleged that this loathsome condition (whatever it was) made one of his legs "four inches shorter than the other." *Id.* You would think this might make him prone to circling. He carried a walking stick. This is consistent with Frasure's words and actions at the crime scene — i.e., that he needed assistance in walking. Again, could this have been the weapon, or the club he was talking about, or was this all, as the jury suspected, an elaborate cover story?

16. See *Stella Kenney*, *supra* note 3, at 113-16.

17. Folks suspected that he had buried the hatchet, so to speak. See *Stella Kenney*, *supra* note 3, at 119 (from the manuscript of Myrle Kinder).

18. Note that the rain and mud, and the prompt arrival of others milling around, could have cut both ways. On the other hand, by sticking to his ambush story, Frasure gave up other options and was denied manslaughter and self-defense instructions. See *Frasure v. Commonwealth*, 185 S.W. 146, 150 (Ky. 1916). He was either “an innocent and much ill used man, or . . . a great criminal and deserving of the most condign punishment.” *Frashure v. Commonwealth*, 195 S.W. 409, 410 (Ky. 1917) Could it have been that he and Stella had gotten into a dispute over what should be done about her condition. If Frasure was as sickly as some sources suggest, she might have put up a good fight. In this regard, his case adumbrated that of the recent, sensational, California Scott Peterson case?

19. Oddly enough, in affirming Frasure’s conviction in *Frashure v. Commonwealth*, 195 S.W. 409 (Ky. 1917), Justice Hurt not only styled the case *Frashure v. Commonwealth*, consistent with the assumed spelling of the name on the letter, but also described the letter as having been received “about May 1st, . . . the homicide occurred shortly thereafter, on May 26th.” *Id.* at 410. May 26th was the date of the *indictment* for the May 2nd murder. See *Frasure v. Commonwealth*, 185 S.W. 146, 146 (Ky. 1916). Did he get the spelling of the name wrong too? Perhaps the spelling of the name as Frashure in the case name and in the text of the opinion reporting the signature on the letter as R. S. Frashure was simply a mistake. One assumes that if the defendant consistently spelled his name Frasure, and if the letter had been signed Frashure, much would have been made of it!

20. *Frashure v. Commonwealth*, 195 S.W. 409, 411 (Ky. 1917).

21. *Frasure v. Commonwealth*, 185 S.W. 146, 149 (Ky. 1916).

22. *Frashure v. Commonwealth*, 195 S.W. 409, 410 (Ky. 1917).

23. See *Frasure v. Commonwealth*, 185 S.W. 146 (Ky. 1916) for a summary of the facts of the case, which is consistent with the above mentioned news accounts and the preliminary hearing testimony.

24. The *Carter County Herald* reported that there were a total of six trials. See *Frazier Gets Life*, CARTER COUNTY HERALD, Dec. 20, 1917, at 2. Mark Stone, of the Kentucky Department of Libraries and Archives, was able to locate the “order Book” for the Lawrence County Circuit Court, which he noted was “quite active.” The next to the last trial in Lawrence County ended in a mistrial in late October, 1917, when the vote was five for conviction and seven for acquittal. See *Jury Disagreed in the Frasure Case*, BIG SANDY NEWS, Oct. 26, 1917. According to the news accounts, the defense surprised the prosecution by offering no evidence, and the prosecutors could not present evidence that they had held back for rebuttal. The same report noted that there had been two

prior convictions and three prior “disagreements.”

25. Vinson graduated from the Centre College School of Law in Danville, Kentucky, in 1911. See <http://www.Centre.edu/edu/web/library/SC/records/cc036.html>. Before researching the Stella Kinney murder, I had not known that there was such a law school, although I was aware that there was once a Law Department at Transylvania University in Lexington.

26. *Frasure v. Commonwealth*, 185 S.W. 146, 150-51 (Ky. 1916).

27. *Id.* at 151.

28. *Id.*

29. That is, she would be stating her first hand observations, and the contents of the letter would be an admission (non-hearsay or within a hearsay exception) if it could be tied to the defendant (authenticated as his writing).

30. *Frashure v. Commonwealth*, 195 S.W. 409, 411 (Ky. 1917).

31. For a contemporary case in which the prosecution did not think the evidence issue through and tie critical writings to the defendant, see *United States v. Vigneau*, 187 F.3d 70 (1st Cir. 1999).

32. Try, Try, Try, Try, Try the case again!

33. See KY. R. EVID. 901(b)(1), (2), and (3).

34. See KY. R. EVID. 901(b)(4).

35. The *Carter County Herald* noted that “[t]he Judge in all his ruling[s] gave the defendant all points in his favor this time to avoid another trial of the case, which seems to us will be a sustenance [sic] of the verdict and he will then have to appeal to the Governor for freedom.” See *Frazier Gets Life*, CARTER COUNTY HERALD, Dec. 20, 1917, at 2.

36. In the final trial the judge sent the sheriff all the way to Madison County to get jurors who were not familiar with the case. “They were an excellent set of men, all farmers. Sheriff J. T. Shannon caught a lot of tobacco growing farmers in Richmond when he went there to summon the venire.” *Life Sentence for Frasure*, BIG SANDY NEWS, Dec. 14, 1917, at 1. The defense appealed on the ground that Madison was not an adjoining county, a statutory requirement. The court of appeals affirmed the conviction on the ground that the error, if any, was not reviewable. *Frasure v. Commonwealth*, 202 S.W. 653, 654 (Ky. 1918).

37. *Frasure v. Commonwealth*, 202 S.W. 653, 654 (Ky. 1918).

38. Thanks also to lawyer-library student John Roberts for his detective work in the University of Kentucky newspaper collection.

39. *Life Sentence for Frasure*, BIG SANDY NEWS, Dec. 14, 1917, at 1.
40. *Id.*
41. 8 Kentucky Folklore Record 113, 119-120 (1962).
42. Governor Fields had his share of interesting pardon cases, including that of Condy Dabney. Dabney had been convicted of murdering Mary Vickery in or around Harlan, Kentucky; but the forensic evidence that the alleged body was indeed Mary Vickery was slim at best. Later, the victim turned up alive and well in Williamsburg, Kentucky. She had been "just a travelin 'round." She knew that Dabney had been convicted of her murder based on the testimony of a perjured witness, but when asked why she never came forward, she said, "I just never thought of that." See Richard Underwood, *Perjury: An Anthology*, 13 ARIZ. J. INT'L & COMP. L. 307, 330-31 (1996). I am told that Fields's campaign song went "Honest Bill, from Olive Hill, never stole and he never will."
43. 8 KENTUCKY FOLKLORE RECORD 113, 119 (1962).