

FRED W. HOWELL, called as a witness on behalf of the State, and being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. MECUM:

Q. State your name, residence and occupation.—A. Fred W. Howell, Newcastle, Wyo. Machinist, Burlington Railroad.

Q. Were you acquainted with one William H. Miller, sheriff of Weston County?—A. Yes, sir.

Q. I will ask you if you are acquainted with any of these men you see before you?—A. Not personally acquainted with them.

Q. Have you ever seen them before, or any of them?—Yes, sir; three of them I have seen before.

Q. What are the names of those you have seen before?—A. Jesse Little War Bonnet, Broken Nose, and Charging Wolf.

Q. Where was it you first saw them?—A. Dry Fork of the Cheyenne River.

Q. That was on what day?—A. Thirtieth. I think it was Saturday. No, it was Friday.

Q. In October?—A. Yes, sir.

Q. Do you remember the date? Was it the time the posse went to the Indian camp?—A. Yes, sir.

Q. How did you happen to be there?—A. I was deputized by Mr. Miller.

Q. What was your purpose in going there?—A. To arrest the Indians for killing game.

Q. You can recognize three of these men that you saw there that day?—A. The first day.

Q. How many Indians did you see there that day?—A. I could not tell exactly, but think there was between twenty-two and twenty-five men.

Q. Any others besides the men?—A. There were some squaws—women and children.

Q. Any wagons or ponies?—A. Fifteen wagons. I don't know how many ponies—quite a bunch of them.

Q. Go on and state to the court so he can hear just what you did going to this Indian camp—what was said and done—everything.—A. The first of all we rode up there and met one Indian; I don't see him here. That man there, Jesse Little War Bonnet, was off on a hill, and Mr. Miller rode up to him and come back and said that the chiefs wasn't there, that Brown or Charley Smith wasn't there. We rode around the camp a little while and sat down there. We went over to Brown's tent—one of them told Mr. Miller she could talk English. We had dinner there. During the time Mr. Smith come in, and Mr. Miller went over to him and read the warrant to him, and he told him he wouldn't go to Newcastle. And then we waited around there, and Mr. Miller said he didn't want to do anything rash; he wanted to give them time, and he waited until Mr. Brown came in, and read the warrant to them again.

Q. Did you see the warrant read to either Mr. Smith or Mr. Brown?—A. I saw it read to Mr. Brown; I didn't see it read to Mr. Smith. I saw Mr. Miller over there with a paper in his hands at a distance.

Q. Who was present?—A. All of us were around close.

Q. Any Indians present besides Mr. Brown?—A. A lot of them. Mr. Brown and Mr. Smith and several others.

Q. How many of the Indians were there that could talk English or did talk English?—A. Mr. Brown and Mr. Smith was the only ones that talked English then.

Q. I will ask you what was next done?—A. Mr. Brown said "All right, we will go," or something like that. He said "All right, we will go," and the Indians started to take down their tepees or tents and load up their wagons and pull out. We was riding up alongside. They went across the road and Mr. Miller went up to see Mr. Smith and turn them.

Q. How far was that from where the Indian camp had been?—A. To the best of my recollection it was half a mile from where they crossed the road.

Q. Before the Indians broke camp and after this warrant you say had been read to Mr. Brown, how long was it before the Indians began to break camp?—A. Wasn't but ten or fifteen minutes. Mr. Brown first of all talked to them. They talked among themselves, and he said, "All right, we will go."

Q. State what happened there at the crossroad?—A. Mr. Miller went up to Mr. Smith and wanted him to turn down to Newcastle, turn down that road, and he wouldn't do it. Then he went down to Mr. Brown and Mr. Brown told him he would go if Smith would. Then Mr. Miller rode up to Brown again. I didn't hear

what they said. Again he rode up and stopped the leader, and Smith loped up behind him.

Q. Rode up behind the sheriff?—A. Rode up behind the sheriff, and one of the boys, I don't remember which it was, and then Jesse Little War Bonnet rode up behind him. Then they all went; then our boys kind of opened when they come up. The wagons was going on. The Indians all went by there and they motioned that way and they started, and the rest of the posse was stopped when I rode up.

Q. Was there any attempt made to take the Indians by force at this time?—A. No, sir.

Q. Why wasn't it done?

Mr. Burke. I object to the question; it calls for an opinion of this young man.

Q. The sheriff didn't arrest the Indians on this 30th day of October?—A. No, sir.

Q. Did you see the Indians after this?—A. Not until the next day.

Q. Did you see these same Indians the next day?—A. Yes, sir; only one I saw the next day was Jesse Little War Bonnet.

Q. Where were you at that time?—A. That was on Lightning Creek.

Q. Were you with the posse that day?—A. Yes, sir.

Q. Where were you when you first saw the Indian Jesse Little War Bonnet?—A. He rode on top of the hill outside the fence when I first saw the Indians.

Q. Will you please examine this map and look at it and see if it is a fair representation of the Mills cabin, the creek, the road, the sheep pens, where you saw the Indians on the second day?—A. Yes, sir; it looks like it.

Q. Can you see plainly from where you are?—A. Yes, sir.

Q. Go and take that pointer and point where you were when you first saw the Indians.—A. Right on top of the hill near No. 2.

Q. Where did you go from?—A. Right here.

Q. State what it is.—A. Looks to me like it was made to represent that old house.

Q. How did you happen to go around there by figure No. 2?—A. By the road.

Q. Where were you when you first saw the Indians?—A. Right here at No. 2.

Q. What did you do next?—A. We rode off down here a little ways and got down to near where No. 3 is.

Q. Where were the Indians now when you came around there by figure No. 2?—A. I seen some here and some on down further—down here [indicating on map].

Q. Had any of the Indians passed through the gate?—A. No, sir; I didn't see them pass through the gate.

Q. You stated you went down there by figure No. 3. What was the next thing you did?—A. We dismounted from our horses and went down the creek about here—about by figure No. 9.

Q. How far from No. 2 would you judge it was to this square block marked for the corral?—A. I should judge it was about 600 or 700 yards.

Q. How far from the creek, where you were located, was it to the road?—A. Between 50 and 60 yards.

Q. When you got through the wire fence and were looking toward the road, did you see the Indians then?—A. Yes, sir.

Q. What were they doing?—A. I seen only two dismounting going behind a tree down here. I didn't look this way [indicating] at all—about six.

Q. Was the sheriff with you at that time?—A. Yes, sir.

Q. What did the sheriff do?—A. The sheriff went down here [indicating] and went out of the creek and over there, and told them to surrender—he and Mr. Owens both.

Q. Did you hear them ask the Indians to surrender?—A. Yes, sir.

Q. Did you know which Indians he was talking to or any one in particular?—A. No, sir.

Q. Did you see him when he did that as well as hear him?—A. Yes, sir.

Q. Tell the court exactly what you saw him do.—A. I saw him have his gun in this hand and hold up his right hand this way and hollow to them to surrender. Hollowed to them three times. I think Mr. Owens hollowed twice. Both carried their guns and had their hands up this way.

Q. Did he speak loud enough so a person could hear fifty or sixty yards?—A. Yes, sir.

Q. What did you see next?—A. Next I heard a shot fired.

Q. Where were you when you heard that shot?—A. Right down here by No. 9, on the creek.

Q. How far would that be from the wire fence?—A. I judge I was about 100 yards below the wire fence, as near as I can remember.

Q. Which direction from you was it you heard that shot?—A. It sounded to me like it was down in this direction, by the corral (south).

Q. Did you see the man that fired the shot—the smoke from his rifle?—A. I saw the smoke raise there, but I didn't see the man that fired the shot.

Q. Which direction from that corral was it you saw that flash of smoke?—A. I judge it was up here right close to the corral.

Q. How far was that from where the sheriff was?—A. I judge it was about 100 or 150 yards. I could not say exactly.

Q. Who, if anyone, was in sight of the Indians at the time that first shot was made?—A. Mr. Owens and Mr. Miller.

Q. And the rest of you were out of sight?—A. I was, but I could see Mr. Miller and Mr. Owens.

Q. Now, on this day, and at this time and place, did you see any of these men before you?—A. I saw Jesse Little War Bonnet after a little while; I saw him directly after Mr. Miller was shot.

Q. What was he doing?—A. He was down on the ground with a gun in his hands.

Q. What was he doing with the gun, or what did he appear to be doing?—A. When I saw him he appeared to be loading it.

Q. Was he pointing the gun toward anyone?—A. When I first saw him he was lowering it this way. He had it pointed in our direction.

Q. Point out on the map about where you think he was at that time?—A. Right in about east and south of the corral. Right between the corral and the creek.

Q. How many other Indians did you see while you were there?—A. Right there I saw four with him.

Q. Where were the different ones located?—A. Located just a little below him.

Q. What was he doing?—A. There was a horse, and he was starting across this way.

Q. What was he doing?—A. The other three Indians?

Q. Tell me where you saw these other three Indians, and what they were doing?—A. I saw them horseback, and they were riding toward this creek.

Q. Where did you see any other Indians?—A. I saw this Jesse Little War Bonnet right in here between the creek and the corral.

Q. Did you see any up there right straight west of where Mr. Falkenburg fell?—A. No, sir; I didn't look that way. I wasn't looking that way.

Q. How many men were there in your posse at this time?—A. Thirteen.

Q. How many wagons did you count in the Indian train at this time?—A. All I seen was four or five. I could not tell how many there were down below. I could see a dozen or more teams coming along. I could not tell distinctly.

Q. You mentioned the first shot. Where did the next shot come from?—A. I could not tell. It was general, from all over.

Q. How many do you think, by judging from the noise or seeing the smoke, were shot at the posse?—A. I could not tell exactly. Seemed to be a whole lot. Probably 15 or 20.

Q. Did it seem as if all the Indians were firing?

Mr. BURKE. We object to the question. It is calling for an opinion.

Q. State how it looked to you at that time?—A. It seemed to me like I heard 15 or 20 shots, but I could not count them distinctly. I didn't try to, but it seemed like about that many.

Q. How long did this shooting continue?—A. As near as I could tell between three and five minutes, possibly five minutes.

Q. What did the Indians do after the shooting began?—A. Some of them was running away. A little while after a volley or two was fired, I got up out of this creek bed by No. 9, if that is meant for a tree.

Q. Are there any trees along there?—A. Yes, sir; there are trees along there. I got right up in between this tree and there was another tree here. There was a big tree where Mr. Miller fell, and another tree. I got up between the two trees. I seen shots coming from that way and striking in front of me.

Q. Was there any one killed as a result of this shooting you have been telling about?—A. Yes, sir; Mr. Falkenburg and Mr. Miller.

Q. Any Indians killed?—A. Yes, sir; three Indians killed.

Q. Where were Mr. Falkenburg and Mr. Miller killed? Point it out on the map.—A. What I remember of the country, Mr. Miller was right behind a tree—a little bit to one side of a tree. When he was shot, he fell over and crawled behind the tree.

Q. You saw Mr. Miller?—A. I never seen Mr. Falkenburg hit. I wasn't looking that way.

Q. On which side of the tree was Mr. Miller when he was shot—up the creek or down the creek?—A. Down the creek.

Q. You say there were three Indians killed?—A. Yes, sir.

Q. Any wounded?—A. There was a woman wounded we met afterwards and brought back.

Q. Where were they when you found them?—A. I wasn't with them when they brought them in. I was at the ranch.

Q. You say this lasted three to five minutes. What did you do after that, after the firing ceased?—A. Went and got Mr. Miller and took him down stream and carried him up to the cabin.

Q. Did the Indians during the time this shooting occurred—did they disappear?—A. They all disappeared. I could not see any more after the shooting ceased.

Q. State whether or not there was any shooting after the Indians disappeared?—A. No, sir; there was not.

Q. Did you see where Mr. Falkenburg or Mr. Miller were shot?—A. Yes, sir.

Q. Where were they shot?—A. Mr. Falkenburg was shot in here below his neck. I never watched to see where it come out, but it went in right here [indicating].

Q. Where was Mr. Miller shot?—A. Shot in the leg. [Indicating right thigh.]

Q. How long did Mr. Miller live?—A. Mr. Miller lived about thirty minutes.

Q. Was the wound he received there the direct cause of his death?—A. I think so. Yes, sir.

Q. Can you name the Indians that were killed there?—A. Yes, sir.

Q. Who were they, and where did you find them, or where were they found?—A. The names I was told—what they told me their names was. That lady they had at the cabin told me her grandfather was killed and her father was killed.

Q. Do you know what the names were?—A. Yes, sir. She told me their names were Black Kettle and Gray Bear, and I knew Charley Smith. He died last.

Q. There was a boy?—A. Yes, sir; there was a boy killed. I don't know his name.

Q. Did you examine the Indian wagons to see what was in them, at this time or afterwards?—A. We examined them after the battle—next day.

Q. What did you find in them?—A. Found lots of antelope meat and antelope hides.

Q. How many wagons did you examine?—A. Three.

Q. How many antelope or deer hides did you find in those three?—A. Between 25 and 30.

Q. When did you first join the posse?—A. Friday, the 23d.

Q. Where did you first strike the trail of the Indians?—A. First bunch we took into Newcastle.

Q. This bunch?—A. First found them on Porcupine Creek.

Q. What county is that?—A. Weston County.

Cross-examination by Mr. BURKE:

Q. I think you said when Mr. Miller read the warrant to Mr. Brown he said he would go?—A. Yes, sir.

Q. And you say you didn't arrest them on that day?—A. No, sir; they wouldn't go with us.

Q. No arrest made then?—A. I don't exactly know what you mean.

Q. On this second day how many Indians did you see—how many Indian men that you actually saw?—A. When we first came over the hill we saw about eight or nine.

Q. They were near the gate?—A. They were close to the gate and below the gate.

Q. They were driving a bunch of horses or ponies?—A. I never seen them drive any ponies. I saw two or three wagons.

Q. Any ponies there?—A. Was some in wagons; some riding.

Q. Did you see any girl there?—A. No, sir.

Q. You left the road and came up the bed of the creek?—A. Yes, sir.

Q. Did you see Mr. Smith when he fell?—A. No, sir.

Q. You don't know which way he was facing when the shooting commenced?—A. No, sir.

Q. He was down in the bed of the creek; you were over the bank?—A. He was below; I was up the other way from where the other boys were.

Q. He and Mr. Owens were the first ones to go up over the bank?—A. Mr. Miller and him.

Q. You say they raised their hands and demanded them to surrender?—A. Yes, sir.

Q. Who did they address that to?—A. I suppose to them all in general.

Q. It was in English?—A. Yes, sir.

Q. Was there any Indian in his hearing that could understand English?—A. Yes, sir.

Q. What one was that?—A. I don't know any certain one, but they was all around. They were closer to him than we were, I should judge.

Q. You don't know there was anyone there that understood English in his hearing?—A. Mr. Smith was there.

Q. Where was Mr. Smith?—A. I didn't see him at the time.

- Q. You saw him afterwards?—A. Yes, sir.
- Q. West of the road?—A. Yes, sir.
- Q. How far?—A. I could not tell exactly.
- Q. You say the first shot came from where? West of where you were? If the top of the map is west, it came from west of where you were?—A. It came from the corral across that way.
- Q. It came from over in the direction in which Mr. Smith was, toward Mr. Miller and Mr. Owens?—A. It came toward Mr. Miller and Mr. Owens. It was in front of them. I seen the smoke.
- Q. You heard, as I understand you, about 20 shots?—A. I expect between 15 and 20 shots.
- Q. That is all you heard?—A. That is all I heard at one time, I thought; but there was more after that. That is what I thought I heard in one volley.
- Q. About that number in one volley?—A. Yes, sir.
- Q. Did you fire?—A. Yes, sir.
- Q. All those with you fired, did they?—A. I don't know; I didn't see them.
- Q. Where were you when you first commenced to fire?—A. I was on the right of Mr. Miller, between two trees.
- Q. You were up on the bank, then, were you?—A. Yes, sir.
- Q. He was toward the Indians from you?—A. Mr. Miller? He was in front of us.
- Q. You didn't see Jesse Little War Bonnet fire any shot?—A. No, sir.
- Q. What kind of a gun did he have?—A. I could not tell.
- Q. Was it a breechloader or a muzzle-loader?—A. I suppose it was a breech-loader, but I wasn't close enough to tell.
- Q. Why'did you say you thought he was loading it?—A. If it was a breech-loader he would not have been loading it from the muzzle. I was not close enough to examine his gun, but I suppose it was a breech-loader.
- Q. You don't mean to say that you saw him fire any shot?—A. I never saw him fire a shot.
- Q. Which way was he running?—A. He wasn't running at all when I saw him.
- Q. Which way did he run?—A. Ran down the creek; that way where I saw the other three.
- Q. Nearly all of them turned and ran away?—A. After they had fired a lot they ran away.
- Q. Left you and your posse on the field, didn't they?—A. Yes, sir.
- Q. What became of the wagons?—A. They went, too.
- Q. That is, everybody turned and fled out from that center—all the Indians?—A. I could see some going down the creek.
- Q. Some went up the creek from the direction they were coming?—A. I meant up the creek.
- Q. Some went over the ridge to the west?—A. I never saw them.
- Q. You captured several of the wagons and their ponies?—A. Next day we got some wagons; that night some of the ponies. I don't know how many ponies they got that night, I think it was eighteen, but I ain't sure, and took some over to Newcastle. I ain't sure whether there were eighteen or not, I know there were several.
- Q. Going back to the first day, it was after Mr. Brown talked to the Indians he said they would go?—A. Yes; after he talked with the Indians he said, "All right; we will go."
- Q. The only Indians you recognize that were there that first day are Jesse Little War Bonnet and Charging Wolf, and one other was there?—A. Yes, sir.
- Q. Which one was that?—A. Broken Nose.
- Q. These are the only three Indians among these you recognize as being there that first day?—A. Yes, sir.
- Q. The only Indian you recognize as being there the second day is Jesse Little War Bonnet?—A. Yes, sir.
- Q. You can't say that any one of these Indians fired a shot at you or your posse?—A. Yes, sir; there was one fired a shot at me, but I could not say it was any of them right here.
- Q. You can't say that any one of these Indians fired a shot?—A. No, sir.
- Q. You don't know of their having agreed to fire any shots or shoot you, do you?—A. No, sir.
- Q. It all happened very suddenly, didn't it?—A. Yes, sir.
- Q. You don't know where Mr. Brown was or where Mr. Smith was when the trouble commenced?—A. No, sir.
- Q. You don't know where Jesse Little War Bonnet was when the trouble commenced?—A. Not when the trouble first started, but after they had been shooting a while, I seen him.
- Q. You didn't see Brown there anywhere?—A. No, sir; I didn't the second day.

Q. You didn't see but about 9 Indians the second day?—A. As near as I could judge.

Q. The first day you saw something like 20 or more?—A. Between 22 and 25, as near as I could judge.

Q. How many wagons did you see the second day?—A. Between 2 and 3 wagons.

Q. The first day how many wagons did you see?—A. Fifteen.

Q. So, from all you know, all of these Indians may have been off in another party the second day, with the exception of Jesse Little War Bonnet?—A. Yes, sir.

Redirect examination by Mr. MECUM:

Q. I understood you to say that when Sheriff Miller and Mr. Owens demanded their surrender they were about as near the Indians as they were to you?—A. Yes, sir.

Q. And you could understand them when they made the call?—A. Yes; I could hear distinctly.

Cross-examination by Mr. BURKE:

Q. What was it he said to them, the words?—A. He said "Surrender."

Q. Just the one word?—A. Yes, sir; "surrender."

Q. That was the word he used?—A. Yes, sir.

Q. Did he say who he was the second day?—A. No, sir; I didn't hear him say. I just heard him say surrender; he said surrender twice, then Mr. Miller said "surrender" three times. I think Mr. Owens said surrender twice. After he said it the second time he said, "You are prisoners."

Q. Mr. Miller said that?—A. No, sir; Mr. Owens said that.

Redirect examination by Mr. MECUM:

Q. You say you only saw three wagons; where were those wagons you saw?—A. They were going down; travelling back again.

Q. Turned around and going back the way they came?—A. Yes, sir.

Q. On this first day when you were talking with the Indians on this crossroad you spoke of, did all of the Indians seem to understand and agree to do what Mr. Smith directed them to do?—A. Yes, sir.

Mr. BURKE. We object to that question; it is irrelevant and immaterial.

Q. Did you see Mr. Smith when he motioned the guide to go on?—A. Yes, sir.

Q. At that time what did the Indians do?—A. Most of them rode up, was going by, and motioned with their hands the same way as they did to the guide.

Q. All of the Indians along in the train did the same?—A. Yes, sir.

Q. Of these Indians how many were in that train at that time? Was this Charging Wolf and Jesse Little War Bonnet and Broken Nose all in that wagon train then?—A. Yes, sir.

Q. On this first day near this crossroad on which you wished to go, state a little more fully what was done by the Indians when the sheriff tried to get them.—A. Most of them rode up there and most of our boys, and I and Mr. Hackney was behind them. Just nearly behind us one or two got off their horses and stood there, and one old Indian threw dirt up in the air.

Q. How many Indians were behind you?—A. They were on all sides; I could not tell exactly.

Q. All of the Indians of the party?—A. Some of them were ahead of me, some on this side, some on that side, a few behind me, and some in the lead, then in the place where Mr. Miller and the rest of them were.

Q. You say one Indian threw up dust; do you know who that was?—A. No; I could not see.

Q. Did he say anything when he did that?—A. No; he did not say anything. One of the squaws was singing a song; I know it was kind of a blood-curdling song.

Q. How long did it continue?—A. When they first started to ride up in the lead, the last I heard of them; when they drove away it was the last I heard.

Q. What was Jesse Little War Bonnet doing at the time?—A. When they all went away we caught up with the rest of them and we was talking. Mr. Miller was talking about going to the Fiddleback; he was behind us and rode close and rode through us a time or two; when we stopped he rode along then and rode between us; when we stopped he stopped. He said (Miller) he didn't think there was any show to take them; they wouldn't go; he said maybe there was a hill that we could get up to, and maybe we could get behind that, then we could get them to surrender and they would go with us. He had no more than said it than Jesse War Bonnet rode up toward two or three others.

Q. When you say this dust was thrown up in the air, and this woman sang a song, what did the other Indians do?—A. When he first began it they all rode ahead, then he threw up the dirt and they didn't do nothing; they was kind of all around us.

JAMES O. DAVIS, a witness called on behalf of the State, being duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Examination by Mr. Mecum:

- Q. Please state your name and residence.—A. James O. Davis, Newcastle, Wyo.
- Q. Were you acquainted with Sheriff William H. Miller, of Newcastle?—A. I was.
- Q. What county was he sheriff of?—A. Weston County.
- Q. Are you acquainted with any of these Indians before you?—A. Yes, sir.
- Q. Who do you recognize here that you have seen before?—A. Jesse Little War Bonnet.
- Q. Where did you see him?—A. It was on Dry Cheyenne River.
- Q. When was that?—A. It was on the 30th of October.
- Q. Of what month?—A. Last month.
- Q. Was that in this county or Weston County?—A. In this county.
- Q. Did you ever see him after that time?—A. I did.
- Q. When and where was that?—A. At the fight.
- Q. That was the next day?—A. Yes, sir.
- Q. Are there any of these other Indians that you can identify as seeing on the 30th or 31st day of October, 1903?—A. I can identify two I saw on the 30th.
- Q. Which are they?—A. James White Elk and Red Paint.
- Q. Which day was this?—A. The first day.
- Q. On the second day how many of them do you remember seeing?—A. War Bonnet is the only one.
- Q. Did you see him the second day?—A. I did.
- Q. Were you with the sheriff's posse that went out to arrest the Indians on the 30th?—A. Yes, sir.
- Q. Go on and state to the court what the sheriff did, and what the Indians did; what you saw there; what you heard stated by the sheriff or his men to the Indians, and by the Indians that talked to the sheriff?—A. It was on the 30th day we went into the camp on Dry Cheyenne River and the chief of the camp was not in at that time, so we sat around there and waited, I guess, until about 4 o'clock; and when this Mr. Charles Smith came in, Mr. Miller went over to him and asked him if his name was Smith, and he said it was. He said, "I have a warrant for your arrest," and he took out the warrant and read it to them; and he said, "Mr. Miller, I know your business as well as you do; I am no fool, and I am not crazy." He says, "As far as you taking me to Newcastle, I will not go; I don't live there." Then Mr. Miller says, "You know that my business as a sheriff, as I have a warrant, is to take you, if possible, without any trouble." He said if we was looking for trouble we would get all we wanted.
- Q. The sheriff made known to him what he wanted?—A. Yes, sir.
- Q. Did he read the warrant to him, or show it to him?—A. He read it to him; then showed it to him.
- Q. Where was this?—A. On Dry Cheyenne River.
- Q. Was it at the Indian camp?—A. In the Indian camp.
- Q. Who else was present?—A. Johnston, Hackney, Mr. Moore, myself, and Sheriff Miller, and Zerst.
- Q. Were any other Indians besides Mr. Smith present?—A. Yes, sir.
- Q. How many?—A. I could not tell you exactly; I never counted them; they were standing around close by.
- Q. How long after this did you remain at this camp?—A. About 4 o'clock or a little afterwards, when they broke up camp and started, as we supposed, to go on into town with us.
- Q. During this time did the ones that could talk English, Mr. Smith and Mr. Brown, talk to the Indians about this warrant?—A. They did. They hold a conversation while we were talking by ourselves. We went out, the whole camp started to go, and we supposed they had made up their minds to go along without any trouble; instead of that, when we got to the road they pulled right straight across the road.
- Q. What led you to suppose they would go with you?—A. Because Mr. Brown said he would go if Mr. Smith would. They went and talked by themselves, and we supposed they were going without any further trouble.
- Q. How many wagons and Indians did you find there at that time?—A. Fifteen wagons.
- Q. How many Indians did you see?—A. Twenty-four bucks, as near as I could count them; the squaws I never counted.
- Q. Go on and describe what occurred after you left the camp.—A. We started to go to the road, and we saw they were not going to town with us. Mr. Miller rode

up alongside and wanted to know what had better be done. I told him to go and talk to Mr. Smith. He came back after a little and said he could not do anything with him. Said he said he didn't live in New Castle, and made the remark or statement as before. We got together to find out what we could do about it. We found out we could not do anything without having trouble; we had better pull out and let them go at that time. So this War Bonnet there kept riding with us, all the time bucking his horse into us, trying to get a fight out of us if he could; that was his business.

Q. Anything else you saw there?—A. At that time we left. That was all I seen, and after that we went down back to the Fiddleback; the whole of us, and stayed there overnight.

Q. Where did the Indians go?—A. They went down Dry Creek as near as I could tell. They were going pretty nearly south or southeast.

Q. Where did you stop that night?—A. At the Fiddleback.

Q. How far was that from the Indian camp?—A. About twenty miles.

Q. Did you see these Indians again?—A. Yes, sir; next evening about 4 o'clock.

Q. Where was that?—A. Down on Little Lightning.

Q. How many were there?—A. I didn't see but one I could describe. I know there was all the way from fifteen to twenty there anyway.

Q. Did you recognize the same wagons, the same horses, and the same men?—A. Yes, sir.

Q. You identified them as the same men you had seen the day before?—A. Yes, sir.

Q. You were not one of those that followed the Indians?—A. No, sir.

Q. Where were you when you first saw the Indians on Saturday?—A. When we first saw them we was just about going down Little Lightning Creek. We saw the Indians come out. Three wagons had got through the fence at that time. We started down the road to meet them. We got pretty near to them, and they started to get off their horses. We saw their going to get off their horses meant business, and we left the road and rode down to this wire fence.

Q. This square of lines is made to represent Mills's cabin. This is meant to represent the Lightning Creek, running in a northeasterly direction. Will you go to the board and point out where you were when you first saw the Indians, then what you did?—A. As near as I can tell, we started over here. We started from Mills's cabin. We come around, I should judge, to about here (No. 10). Here's the wire fence. We came in here (3); put our horses here. We went to No. 11; then Mr. Miller went up here to No. 12; then the sheriff went over in here somewhere near No. 13 and holloed to them three times. They wouldn't stop. Mr. Owens holloed to them; They wouldn't stop. About the time Mr. Owens got through holloing there was a shot from over in there somewhere. Then we all jumped out on the bank.

Q. Where were the Indians at the time Mr. Miller called for them to halt?—A. Along over in here; Nos. 14, 15, 16.

Q. Where was it from where you heard the first shot?—A. It was over in here some where.

Q. (By Mr. Burke.) Near the road?—A. Right near the road some place.

Q. Where were you at this time?—A. Down here under the bank.

Q. Point on the creek where you were about.—A. On the bank of the creek.

Q. Who else was with you at that time?—A. All the posse was with us at that time.

Q. Who was it fired after this first shot you heard?—A. I could not tell. As far as the first shot, I think, Mr. Owens.

Q. How much firing was done and how long did it last?—A. About three minutes.

Q. Very many shots fired?—A. I should judge there was a good many shots fired; 30 or 40 shots, I should judge.

Q. How many Indians were firing?—A. It seemed to me all the way from 15 to 20.

Q. When you rode around the bend and first saw the Indians what were they doing, if anything?—A. They were coming down the road; when they saw us coming they jumped off their horses and prepared to fight.

Q. Where was it you saw Jesse Little War Bonnet?—A. On the 31st.

Q. Yes.—A. That was down on the river, just as I showed you, coming out of the road down toward the bank; jumped off his horse and drawed his gun; had his gun in his hand ready to fire.

Q. Was he standing up or lying down?—A. He was standing up; he jumped off his horse.

Q. You say he was ready to fire?—A. Yes, sir; he was pointing his gun.

Q. How far was he from you?—A. Probably 150 yards from me; he was closer to some of the other boys than he was to me; I was at the upper end.

Q. Did you examine any of the wagons this day or the next day to see what was in them?—A. I didn't; I wasn't there at that time. I left the next day with the bodies; I didn't have any time to examine the wagons.

Q. You say there were 15 or 20 Indians firing there. How many did you see any time during the time you were firing or they were firing?—A. I said all the way from 15 to 20.

Q. Which way were they firing, from the west or the southwest?—A. They were firing from all over, as I can get at it, from the front down to the back.

Q. Who, if anyone, was killed at this time? Who was hurt?—A. Sheriff Miller was shot and killed, and so was Mr. Falkenberg.

Q. Did you see whether or not any Indians were killed?—A. Yes, sir; there were four that I know of.

Cross-examination by Mr. BURKE:

Q. It was pretty exciting there for a minute or two, wasn't it?—A. I thought so.

Q. Everybody seemed to be shooting around you?—A. Yes, sir.

Q. You think 30 or 40 shots were fired?—A. I should judge so.

Q. Did you fire some?—A. Yes, sir; I did.

Q. Were you scared?—A. No, sir; I was not scared.

Q. And the others of the posse fired?—A. Yes, sir.

Q. And of the total, you think there were thirty or forty shots fired? Now call on your memory. Don't make any guess at all. You know it is an awful serious thing to guess in a criminal case where a man's life is at stake. I don't make any threat, only call your attention to it, because the legislature has made the penalty of death for swearing falsely when a man's life is at stake. How many Indians did you see?—A. I will say 20.

Q. Are you sure you saw 20?—A. Yes, sir; I saw 20.

Q. Where did you see them?—A. I saw them on the road near the gate.

Q. How many were there by the gate?—A. I saw four at the gate.

Q. How many teams were there through the gate?—A. Three teams through the gate.

Q. Where did you see any more?—A. All along down the line.

Q. Were there teams and horses?—A. Yes, sir.

Q. How long was the line?—A. I should judge 150 or 300 yards long, scattered out along; wasn't close together.

Q. You didn't have any opportunity to see any more than anybody else of the posse?—A. Just the same.

Q. So when others of the posse say they didn't see more than 9, how could have you seen 20?—A. I could have seen 20 if I looked sharp. I saw them; I saw 20 of them.

Q. You didn't stop to count them?—A. Yes, sir; I did count them. I had time enough to count them while Mr. Sheriff Miller was going up to talk to them.

Q. How long was the line?—A. I should judge, as I told you, about 150 or 300 yards.

Q. How many wagons were in that line 150 yards long?—A. Twenty men, 15 wagons.

Q. Did you count the wagons?—A. Yes, sir; I did.

Q. They were scattered along one after another?—A. Yes, sir.

Q. How close were they together?—A. I could not tell you how far they were apart.

Q. What became of the wagons as soon as the shooting started?—A. They commenced turning and running in all directions; some one direction, some another.

Q. Some of the Indians commenced to run in all directions?—A. They did after while; some went over the wire fence, some over the hill, some back in the timber.

Q. You didn't see Jesse Little War Bonnet fire any shots?—A. He pointed his gun, but whether he fired any shots I could not tell you.

Q. Wouldn't you have seen the smoke if he had fired?—A. I expect I would.

Q. You didn't see any smoke?—A. No; I didn't see any smoke.

Q. You say that the first shot fired was fired by Mr. Owens?—A. I didn't say so.

Q. What did you say?—A. I didn't say he fired the first shot.

Q. So that what you meant to be understood, Mr. Owens fired the first shot on the part of the posse?—A. The Indians fired the first shot, just as I said before.

Q. Where did it come from?—A. Down from the south—some place along there—I could not tell exactly where.

Q. Did you see Mr. Miller when he fell?—A. I didn't see him when he first started to fall.

Q. Did you see Mr. Miller when he went up on the bank?—A. Yes, sir; I did.

Q. What did you say he said?—A. He told them to halt three times; then Mr. Owens did.

Q. Did he tell them to surrender?—A. Yes, sir.

Q. Did he say anything else?—A. He said he had a warrant for them; they were under arrest.

Q. Did he read the warrant to them?—A. He didn't have time to read it before they commenced the shooting.

Q. He told them to halt, to surrender, they were under arrest. You remember all that?—A. Yes, sir.

Q. Did you see the first shot strike or hear it strike?—A. I heard the shot.

Q. The buzz in the air, or did you hear it strike?—A. I didn't hear it strike.

Q. You heard the report?—A. I heard the report and heard the bullet whizzing.

Q. Where were you at that time?—A. I was down at the bank, under the bank at that time, because Mr. Miller told us to stay there until he could go out to these wagons and see if he could not get them to stop without trouble; told us not to do anything.

Q. You were out of sight of Mr. Miller?—A. No, sir; we were not out of sight of Mr. Miller.

Q. You were not out of sight of the Indians then?—A. No, sir; we were not.

Q. How high a bank was that?—A. It would come up to about here. We simply stood there to see if Mr. Miller could not surrender these Indians without trouble, as he said he was going to try to do.

Q. Did you know where Mr. Smith was?—A. I could not locate Mr. Smith.

Q. Did you see Mr. Brown there at all?—A. I didn't see Mr. Brown.

Q. The only one of these Indians you remember being there the second day was Jesse Little War Bonnet?—A. Yes, sir.

Redirect examination by Mr. MECUM:

Q. Did you see the Indian they call Black Kettle that day?—A. I saw him after he was dead.

Q. You didn't see him while he was fighting?—A. No, sir.

Q. Were your eyes on Jesse Little War Bonnet all the time, or were you looking for other Indians?—A. The way I come to notice him, he started to go down the creek on a horse, and he jumped off his horse and drew up his gun as I was getting my own gun ready; that's the way I noticed him.

Q. You didn't watch him all the time?—A. No, sir; I didn't. I could not watch everything.

Q. Did you watch him to see what he did after his gun was loaded?—A. He started to run.

Q. Which way did he go, up the creek or down the creek?—A. Down the creek.

Q. When the first firing occurred, did the Indians start to run, or did they make a stand?—A. They made a stand and fought for a while.

Q. How many times did they shoot after the first shot was fired?—A. I said I thought they fired about 40 shots. Of course, I don't know what our men fired.

Q. How long after Mr. Miller went up, or how far had he gone from the bank before this first shot was fired?—A. As near as I can tell from where I was standing he went within about 40 yards of them.

Q. Of the Indians?—A. Yes.

Q. Were Mr. Miller and Mr. Falkenberg shot right away at this first volley or soon after; were they shot about 40 yards from the Indians, or near the bank?—A. They were on top of the bank.

Q. Had they retreated (Mr. Miller and Mr. Falkenberg)?—A. No, sir; they stood right there.

Recross-examination by Mr. BURKE:

Q. I understand you heard about 40 shots. Do you now say you heard the Indians shoot about 40 times?—A. The Indians shot 40 times; I am not saying how many times we shot.

Q. You counted 40 shots?—A. I said as near as I could tell.

Q. Could you distinguish between their shots and the posse's shots?—A. Yes, sir; I can tell where a sound comes from.

Q. They were firing very rapidly, were they?—A. Yes, sir.

Q. You could tell the difference between their shots and the posse's shots? So you think they fired 40 times?—A. Yes, sir.

Mr. MECUM. Did you distinguish by smoke or location?—A. Location of sound.

R. B. HACKNEY, called as a witness on behalf of the prosecution, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. MECUM:

Q. Please state your name, residence, and occupation.—A. R. B. Hackney; occupation kind of mixed; handle a little stock, and rest of the time I work around at anything I can find to do. I live in Newcastle.

Q. Were you acquainted with William H. Miller, the sheriff, there?—A. Yes, sir.

Q. Were you with him on the 30th day of October, 1903?—A. Yes, sir.

Q. How did you happen to be with him?—A. Simply because he wanted me to go with him for the purpose of looking after some Indians who were reported killing game.

Q. Where did you go from Newcastle?—A. Mr. Miller wasn't with us the first day; he had other business. He didn't start with us the day we left Newcastle; I believe it was the morning of the 23d. We went from there to the Lamb & Carlson ranch.

Q. What county was that in?—A. Weston County, I believe. I ain't enough posted to answer correctly.

Q. Did you go to the Indian camp on October 30?—A. Yes, sir.

Q. Do you know what county that was in?—A. No, sir.

Q. Do you know how far it was from the line?—A. No, sir, I don't. I believe it to be in Converse County, but I could not answer, for I never asked.

Q. Who did you see at the Indian camp?—A. I saw a number of Indians there.

Q. Do you recognize any of these Indians before you as the Indians you saw there that day?—A. Yes, sir.

Q. Which ones do you recognize as being men you saw there the day of the 30th?—A. This man Oharging Wolf—that is the name you have got over him. That man with the blue tie—Jesse Little War Bonnet—that is one I am positive that was there.

Q. Any others?—A. I wouldn't like to say positive. I think they look familiar, but I wouldn't like to say I knew positively.

Q. They all look familiar?—A. Yes; they all look familiar, but I wouldn't be positive.

Q. How many did you see at the camp that day?—A. I didn't count them myself.

Q. Anything but Indian men there?—A. Yes, sir; there were a number of Indian women and some children.

Q. Any wagons?—A. They was camped there. This was the 30th you are speaking of. They were there in camp around their camps.

Q. Did you see the sheriff serve the warrant on any of the Indians?—A. I saw him read the warrant to this man that answered the name Smith.

Q. Go on and tell just what he did.—A. There were others around there, but what ones I could not say.

Q. How many Indians were around there?—A. I could not answer that accurately; there were a number, but how many I could not say.

Q. About how many?—A. I should say there were a dozen.

Q. Was there any conversation besides reading the warrant?—A. Mr. Miller read the warrant to this man Smith. This man then talked in his own language to the other Indians, but what he said, or what the conversation was, of course, I know not. Smith simply told Miller that he wasn't going; that he didn't live in Newcastle.

Q. I will ask you if Mr. Brown was present?—A. Yes, sir; but not when he first read the warrant to him.

Q. Do you say he read the warrant twice?—A. Yes, sir; he read it to Brown and Smith afterwards together. There was then some of the Indians around.

Q. What did the Indians say after the warrant had been read to them and the officers talked to them about going with them?—A. I could not tell you what they said.

Q. What did Mr. Brown and Smith say?—A. Brown didn't appear to have much to say. Smith told him (Miller) he didn't live in Newcastle, and wouldn't go, and he couldn't take him; if he wanted trouble, he could have it. Miller told him he didn't want trouble, and he was simply wanting him to go along peacefully. Smith told him, "I know the law, and I know your duty as well as you do, and what they expect of you, but you can't take me."

Q. What did the Indians do after this?—A. After they talked amongst themselves a short time—I wouldn't say but a short time—Smith said they was going to hitch

up, and they all hitched up their horses and started, and we supposed they were going to go with us; we naturally supposed that; but when they started, in place of going the way Miller wanted them to, they took across the prairie. Miller tried to get them to stop. He tried to get this man Smith to stop; tried to get Brown to stop. I didn't hear this; only what Miller says. He said, Brown says he would go if Smith would, but I wasn't near enough to hear that. That is only hearsay. When they wouldn't stop Miller went ahead. They had a man that rode in the lead and the rest followed; and Mr. Miller went ahead and stopped him, and they all came up then, and Miller tried to get them to turn and go down the main road, and they wouldn't. I don't think there was a man in the bunch, not an Indian, but what motioned to their leader to go on, and the consequence was the man that was leading the way went on and the wagons followed.

Q. Did you see the Indians after this?—A. When they done that Miller called us all up together and wanted to know what we would do, and we told him he was the man that was running the outfit; to use his own judgment; and the Indians then, when they came up, all formed around us. Some of them—they was all riding horses—got off their horses and had their guns in their hands. They said nothing, but they was all around us, and this man that I spoke of, Little War Bonnet, he was on a horse and he made it a special business while we was there together to ride through and back and across again, and so on, amongst us. Whether it was friendly or not, I could not answer you, but we did not consider it a very friendly act.

Q. That was the first day?—A. That was on this first day. Finally Mr. Miller decided we wasn't strong enough to do anything, so we left them.

Q. Did you see them on Saturday, the 31st day of October?—A. Yes, sir.

Q. Where was it when you first saw the Indians on that day?—A. We left this ranch, I suppose it—

Q. What ranch was it?—A. I believe they said it belonged to a man by the name of Mills; it was on Lightning Creek; and when the boys came in and reported the Indians were coming, we expected to meet them somewhere on Lightning. We had been reenforced. When that report came in we saddled our horses and went to meet them; started from this ranch and rode up the creek.

Q. Can you point on this map about the way you traveled?—A. I think I could give you an idea from that.

Q. State where it was.—A. As the boys came in and told us they were coming, we got our horses out and saddled, and we followed up the road, and when we got in about this neighborhood, about between 2 and 10, somewhere about here, we saw the Indians coming along here; the leader was coming close to the fence. We followed the road down a little further here. The Indians, soon as ever they saw us, a few of them got through the gate, just how many I wouldn't say, a small bunch of horses and two or three wagons—I wouldn't pretend to tell you exactly how many—they got through the gate here, and they began to file off here and get off their horses. Along in here south of the gate there was some trees. Some began to head along down here toward the road. When we saw them doing that, Miller and Owens were riding ahead; he said, "We will turn into the creek, boys." We turned into the creek—that I suppose is the creek. We rode up close to the wire fence here; there we could not get across it, so we jumped off our horses and left them here. We goes through the fence, Miller and Owens was on the lead, and I guess I was about the next man to them, and somewhere, not far from the fence, just how far I don't know, but it was close. After we got through the fence Owens and Miller ran up the creek, somewhere along in here. It wasn't a great ways from the fence, and they holloed to the Indians, both holloed for them to stop, throw up their hands, holloed for them to stop. I think it was three times, but I will swear positive it was twice, but I think it was three times, and then the answer that came back was from some gun over down here, from the Indians in here some place down toward the road; the rest of us was in the creek, at least all I saw was in the creek bed, down under the bank like, and when that shot was fired we all got up this bank, and quicker than I have taken time to tell you firing commenced in general.

Q. About how many Indians did you see there?—A. I could not say; there was quite a group of them here close to the fence; then they was strung clear along down here, even as far as this corral, but just how far down I could not answer you.

Q. About how many Indians were firing at the white men?—A. I could not tell you how many; it seemed as though the whole bunch was.

Q. Can you identify any of these Indians as men you saw there at that time shooting?—A. This man—War Bonnet—I am positive I saw that man; he was up here close to the fence, and went back on his horse to somewhere in here, and then got off his horse, and I am positive he was one that was firing. I don't know I would have taken so much notice of him but he had taken so much notice of us the day before. He was the only man I could recognize that took any part in the firing.

- Q. Did you see him when he got off his horse?—A. Yes, sir.
- Q. What did he do?—A. Got off and got down to the ground close and went to firing, but how long he fired I can not say.
- Q. Did you see any other Indian fire?—A. Yes, sir; but I could not tell you what ones.
- Q. About how many were firing at you?—A. I wouldn't pretend to say. It seemed to me as though every one else there had a gun he was shooting a couple of times apiece at once.
- Q. Was anyone killed or hurt?—A. There was two of the white men killed—Billy Miller and a man I had never seen before until that day. I believe they called him Falkenberg.
- Q. Was he shot by the Indians?—A. He undoubtedly was.

Cross-examination by Mr. BURKE:

- Q. Did you see this man Jesse Little War Bonnet fire his gun off, or was he simply in position to fire it?—A. I am positive he shot once, but I wouldn't say he shot more than once.
- Q. He was not firing at the beginning of the shooting? You say he got off his horse after the shooting began.—A. It was just about the time the first shooting commenced.
- Q. It wasn't the first shot?—A. It wasn't the first shot. I wouldn't say he didn't shoot the first shot, but I didn't see the man who fired the first shot.
- Q. Do you know where Black Kettle was, the man that was killed?—A. No; I didn't see him. I will explain to you. I didn't know nothing of the fellow; because we didn't examine the ground that night and I got my ankle badly sprained and never went back to the field next morning, so I know nothing of the location.
- Q. And that is the only Indian that you can identify among these that were shooting?—A. That is the only one I can say was shooting.
- Q. He fled up the stream from there?—A. The last I saw of him he was running up the stream.
- Q. They all fled away, the women, the children, and the wagons?—A. I should think they staid and fired, I will say about two or three rounds apiece, guessing now, before they ran.
- Q. Then they all ran?—A. Yes, sir.
- Q. You say the sheriff said "stop," is that the word he used?—A. That they are the exact words, I don't like to say, but it was to the effect to stop; and not only the sheriff, but Owens holloed as hard as they could seemingly hollo to them.
- Q. And they stopped didn't they?—A. They stopped; yes.
- Q. The procession was led by a small bunch of horses?—A. I think the horses was ahead; they was coming through the gate.
- Q. Did you see any girl there with the horses?—A. Yes; there was one. I didn't see her with the horses, but it was back of the gate. I could not answer very much in regard to what happened here at the gate, as I was up this way the furthest and my attention was drawn in this direction, and I know not what happened about the gate. This man Falkenberg was somewhere close to the fence; he was killed; I never knew that man was killed until it was all over.
- Q. Did you see Brown?—A. I saw Brown the first day but not the second.
- Q. Brown was willing to go with the sheriff?—A. That was all I know about it; that was what the sheriff reported. I didn't hear him say so.
- Q. You dined there at Brown's that day?—A. Yes, sir; we ate dinner at Brown's camp.
- Q. And the whole relation at that time was pleasant?—A. Yes; they treated us like gentlemen; Mrs. Brown seemed to be a perfect lady.
- Q. They had their children along with them, and their wives?—A. Yes, sir.
- Q. And their conduct was respectful, was it?—A. In so far as the women folke was, I call it respectful; but as far as the Indians was—that is, they refused to go with Mr. Miller, and treated us very cool.
- Q. And they were then on their way out of the State?—A. They were simply camped there. I don't know which way they were going.
- Q. From that camp they started toward their home, out of the State, east?—A. Started south.
- Q. And traveled in the neighborhood of 60 miles that night, toward getting out of the State?—A. I could not answer you as to the distance. I am not enough acquainted with the country.
- Q. About 50 or 60 miles?—A. I would suggest it was in the neighborhood of 50 miles.
- Q. That was about 4 o'clock in the afternoon they had hitched up?—A. We left them; I had no watch; it was about sundown when we went away from them.

Q. The next day you met them about 50 miles from there, still traveling toward the east in a general direction?—A. Yes, sir; they were traveling down Lightning Creek.

JACK MOORE, called as a witness on behalf of the prosecution, and being first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. MECUM:

Q. Please state your name and residence.—A. Jack Moore, Newcastle, Wyo.

Q. Were you with the sheriff's posse on the 30th and 31st days of October, 1903?—A. Yes, sir.

Q. Were you acquainted with one William H. Miller?—A. Yes, sir.

Q. What official position, if any, did he occupy?—A. Sheriff of Weston County.

Q. How did you happen to be with him?—A. I was sworn in as a deputy sheriff.

Q. For what purpose were you sworn in as a deputy sheriff?—A. To go out and arrest some Indians that were violating the game law.

Q. Did you go with the sheriff?—A. Yes, sir.

Q. Did you see any Indians?—A. Not for some time.

Q. Did you see any Indians at all on this expedition?—A. Yes, sir.

Q. Where was it you first saw them?—A. Two bunches; the first bunch the second day we were out; we came up to them about noon, on the Cheyenne River.

Q. What time was that you saw them; what day of the month?—A. I think it was the 24th of October.

Q. What did you do with these Indians, if anything?—A. Read the warrant to them, put them under arrest, and sent them back to Newcastle.

Q. Did you see any Indians after that?—A. Yes, sir.

Q. Where was that?—A. On the 30th of October we ran on a bunch of them on Dry Cheyenne, just below "the 74 pens."

Q. Is that in this county or Weston County?—A. Converse County.

Q. Had you been trailing these Indians before that?—A. Yes, sir.

Q. Where was it?—A. Heard of them above the Church ranch.

Q. In what county is that?—A. Southwest part of Weston County, I believe; very near the line.

Q. At this time that you saw them on the 30th, how long had they been at that camp?—A. Not knowing, I could not say.

Q. Do you know how long before this time that they were at the place you mentioned a moment ago?—A. No, sir; I don't.

Q. Do you know whether or not they had been hunting in your county?—A. I could not swear to it myself, the supposition is they were.

Q. You found their trail in that county, and that was the general report?—A. Yes, sir.

Q. State now, after you went to the Indian camp on Friday afternoon, Friday, the 30th of October, just what the sheriff did, what was said by the sheriff and by the Indians, and what was done there at the camp.—A. When we found the camp the sheriff rode up to the camp and started to talk to one of the Indians; he didn't seem to understand him very well. He asked where Smith was; he said Smith was out hunting. One fellow rode down the creek and acted like he was trying to get away somewhere; this Indian that was talking to Miller told him there was an Indian that would go out for Smith, and went to him and brought him back. Meantime we stayed around there. After this man came back he went out looking for Smith.

Q. Did you see Sheriff Miller serve any warrant upon the Indians?—A. Not at that time.

Q. Any time during this day?—A. Yes, during the day, when Smith came into camp.

Q. Will you please look at these men and state whether you recognize any of these Indians as being persons who were at that camp on the 31st day of October?—A. One of them I recognize. The fellow with a blue handkerchief or green handkerchief, Jesse Little War Bonnet.

Q. Any others you remember seeing there that day?—A. One I did, Fool Heart; that is all I recognize.

Q. About how many Indians were present that day?—A. Between 20 and 25 bucks.

Q. Women, children, and wagons were there?—A. Yes, sir.

Q. Did you see them the next day?—A. Yes, sir; I saw them the next day.

Q. Where was that?—A. The first time I saw them the next day was Dry Creek, I believe, they call it. I don't know the lay of the country. I could not tell, but as far as I could see it was north of the Beaver dams, wherever that is. I had been following them all day.

- Q. Were you one of the men that followed them north of the Fiddleback ranch?—
A. Yes, sir.
- Q. Were these the same Indians you had seen the day before?—A. Not knowing, I could not say whether they were or not at that time.
- Q. Did you see their tracks or trail?—A. Yes, sir; we went back where we left them the day before, took their trail, and followed them on through.
- Q. Was this on some traveled road or across the country?—A. I could not say it was a very well traveled road; wasn't much road there; it went through the Dry Creek breaks.
- Q. Could you plainly see where they traveled?—A. Yes, sir.
- Q. How did you know it was an Indians' trail you were on until you came up to them?—A. It was just a supposition it was the Indians' trail. There we saw many pony tracks and wagon tracks.
- Q. When you overtook them, about how many Indians did you see and how many wagons?—A. Fifteen wagons.
- Q. How far did you follow them?—A. I could not say how far it was; must have been somewhere between 25 and 35 miles; they drove all night.
- Q. Are you one that rode ahead to notify the posse the Indians were coming?—
A. Yes, sir.
- Q. How near where the posse were were the Indians when you left them? How near were the Indians to this battle ground before you left them, when you last saw them?—A. Must have been between three and four miles.
- Q. Which way were they traveling; on what road?—A. I don't know which way they were traveling. I don't know the lay of the country, but I should say they were traveling southeast or east.
- Q. They were traveling down Lightning Creek?—A. They were not on Lightning Creek, they were on Dry Creek, the beaver dams, whichever creek they was on, right in the bend.
- Q. Did you see the same Indians again that day, after you gave notice to the posse?—A. That was when the fight took place, that was the next time I saw them.
- Q. How far were you from the Indians when you first saw them before the fight?—
A. I should judge the first time I saw them was about—must have been at least half a mile.
- Q. You were going toward the Indians?—A. Yes, sir.
- Q. Was the country such that you could see the Indians, and they could see you coming?—A. Certainly, I think they could if they were looking; we saw them have some field glasses.
- Q. How were they traveling?—A. On horseback. They had field glasses and so did I.
- Q. You were at the battle were you?—A. Yes, sir.
- Q. Will you look at these men and see how many you can identify as being present at that battle?—A. Only one I can swear to, Jesse Little War Bonnet.
- Q. Where was he when you saw him?—A. Riding in the lead. Eight of them were riding in the lead.
- Q. Where with reference to this wire fence were they; had they passed through the wire fence, or had they got to the wire fence?—A. Yes; some of them were inside the wire fence, if I remember right; three wagons at least, and a few ponies.
- Q. Which way were the Indians traveling at that time?—A. Seemed to be traveling down Lightning.
- Q. What did the sheriff do after he got up near the Indians?—A. Asked them to surrender, lay down their arms.
- Q. Did you hear him ask the Indians to surrender?—A. Yes, sir; I was within 30 feet of him.
- Q. How far was he away from you, and how far from the Indians?—A. Thirty feet from me when he first hallooed to them. He could not have been over 25 yards from them.
- Q. Was there any shooting occurred there?—A. Yes, sir; shooting occurred.
- Q. Did you hear the first shot, or see it?—A. I could not say I saw it; I heard it.
- Q. Where were you when the first shot was fired; can you locate it on this map?—
A. I could not locate it on that map.
- Q. Can you state where you were?—I could draw a better map than that myself.
- Q. Can you locate about where you were with reference to the Indians on the map?—A. I could not; no, sir.
- Q. How far were you from the Indians?—A. I was probably any where between 30 yards and 50.
- Q. How far was this Jesse War Bonnet from you?—A. This Indian here?

Q. Yes; how far was he from you?—A. When I first saw him he wasn't very far, but by the time he got through running he was a long ways. He started to run about the time we rode up to him.

Q. What do you say he did, if anything?—A. I saw him turn and run, and stop and take one shot and turn and run again.

Q. With reference to this gate or wire fence, where was he?—A. Inside the wire fence.

Q. That is north of the wire fence?—A. I don't know whether it is north or not.

Q. Did you see him shoot any after that?—A. No, sir.

Q. What were all these other Indians you saw there doing?—A. I could not say I saw any of these there.

Q. How many of these did you see at the fight?—A. I can say at least eight.

Q. Were all of those eight taking part in the fight?—A. That's all I noticed taking part in it.

Q. Did you see any other Indian men that were not taking part?—A. No, sir; I didn't.

Q. Was there anyone killed or wounded as the result of this fight?—A. Yes, sir.

Q. You say you heard the first shot; which direction from you was it?—A. Right in front of me, a little to my left—must have been west, the sun was just setting.

Q. You were with the posse?—A. Yes, sir.

Q. Who, if anyone, was killed at this time?—A. Sheriff Miller was shot; Louis Falkenberg was shot.

Q. Were they both killed?—A. Louis Falkenberg, you might say, was killed instantly; Sheriff Miller lived about 30 or 40 minutes after he was shot.

Q. About how many shots did you hear coming from the direction the Indians were located?—A. I don't know how many shots; they were coming pretty fast. I should judge from 75 to 100 shots at least.

Q. After this first shot, who fired the next shot, do you know?—A. No, sir; I don't.

Q. Was it a white man that shot that first shot?—A. No, sir; not that I know of.

Q. These Indians that you saw, did they shoot while they were running, or stand still to shoot?—A. I didn't see a man stand still to shoot; they all dodged behind something or tried to get away.

Q. All the Indians you saw seemed to be resisting the officers, firing toward them?—A. Yes, sir.

Q. I will ask you if you examined any of the wagons after this battle?—A. Yes, sir.

Q. How many did you examine?—A. Three.

Q. What did you find in them?—A. Found jerked meat and antelope hides.

Q. About how many antelope hides?—A. Between 20 and 25; I just forget the number; anyway between 20 and 30. If I remember right there were 23.

Q. Did you know how long this band of Indians had been in Weston County?—A. I know about when I saw them when they went through Newcastle.

Q. How long?—A. I should judge about three weeks.

Q. Did you talk with them or hear the sheriff talk with them to see where they were from—where they belonged?—A. Yes, sir; I talked to them myself.

Q. Where did they say they were from?—A. Pine Ridge Agency.

Cross-examination by Mr. BURKE:

Q. So you don't know who fired the first shot?—A. No, sir; I could not swear who fired it; I could not swear what Indian fired it.

Q. Did you locate where Black Kettle fell? He was one of the Indians killed.—A. Yes, sir.

Q. Did you locate where he fell?—A. After the fight was over.

Q. And the first shot came from the direction of where he was?—A. Near about; yes, sir; it was in that direction; I wouldn't say positively it was down that far.

Q. And the only Indian of these here that you recognize as being there participating in that fight is the man Jesse Little War Bonnet?—A. That is the only one I recognize as being in the fight.

Q. And you say you first saw him near the head of the procession of Indians?—A. Yes, sir; there were eight of them riding abreast.

Q. Where was he when he shot?—A. I should judge he was probably 30 yards from the gate at the time he shot.

Q. And fleeing to the rear?—A. Yes, sir.

Q. They were shooting at him and the others when he shot back?—A. I could not say anybody was shooting at him; he was too far; he was up to the right of where the fight started; was trying to get back there.

Q. Was trying to get away?—A. Yes, sir.

- Q. Then they all tried to get away?—A. Those that stood there didn't try to get away.
- Q. What became of the wagons?—A. The wagons all turned but one.
- Q. They fled away?—A. They left their men there and the squaws pulled out.
- Q. They were traveling with their wives and children, going in the direction that would lead them out of the State—that would lead them home?—A. Yes, sir.
- Q. You say they traveled all the night before?—A. Yes, sir.
- Q. And it was in the general direction of getting out of the State?—A. Yes, sir; they knew it was about time to get out of the State.
- Q. What did Sheriff Miller say? What was his language when he went up out of the creek bottom there?—A. He asked them to surrender, to lay down their arms.
- Q. Was that his language?—A. It was to the same effect.
- Q. Did you see Smith there at that time?—A. I did not.
- Q. Or Brown?—A. No, sir; not at the time Miller asked them to surrender, because I was under the bank.
- Q. Miller and Owens went up first over the bank?—A. Yes, sir.

CHARLEY HARVEY, called as a witness on behalf of the prosecution, and being duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. MECUM:

- Q. State your name, residence, and occupation.—A. Charles Harvey; Hampshire, Wyo., Cheyenne River.
- Q. What is your occupation?—A. Ranchman.
- Q. Were you acquainted with Sheriff William H. Miller, of Weston County?—A. Yes, sir.
- Q. State whether or not you were with him on the 30th day of October, 1903?—A. Yes, sir.
- Q. How did you happen to be with him?—A. He deputized me to go with him.
- Q. For what purpose?—A. To arrest some Indians, I believe.
- Q. Where were you on that day—the 30th?—A. Was at the Fiddleback ranch on the 30th; went from there to the Lightning Creek.
- Q. Were you at the Indian camp on the 30th with the sheriff?—A. Yes, sir.
- Q. Tell just what the sheriff did in your presence.—A. At the fight?
- Q. That day, or after you got to where the Indians were.—A. He said at the Cow camp, "We will go up and arrest the Indians if we can." We got up there, and he went up there and asked them to surrender, I believe. They didn't do it, and I believe some shots were exchanged there.
- The Court. He is asking you about the first day.
- A. I wasn't with them the first day they met them.
- Q. Were you at the battle on the second day?—A. Yes, sir.
- Q. Will you please look at these men and see if there are any you can identify as being present at this battle?—A. One I recognize; that young fellow in the middle with the light pants on.
- Q. Jesse Little War Bonnet?—A. Yes, sir.
- Q. Any others you recognize?—A. No, sir.
- Q. How far were you away from Jesse Little War Bonnet or any of the Indians that were firing that day?—A. About 25 yards, I should judge.
- Q. How many Indians did you see there?—A. About 20, I should judge.
- Q. How many wagons did you see?—A. I seen about 10.
- Q. What did the sheriff do—the first thing he did after getting down on the creek?—A. He says, "I will go up and arrest the Indians, and you boys follow." When he got up on the bank he asked them to surrender, and about the next thing I remember of was somebody shooting.
- Q. Where were you, with reference to the wire fence and the creek?—A. About 25 yards above the wire fence, I believe.
- Q. In the creek?—A. Creek bank.
- Q. With reference to your position, where was that first shot fired from?—A. Right straight out in front of us.
- Q. Did you see the one that fired the shot?—A. No, sir.
- Q. What occurred after that?—A. I believe he says, "Come on, boys." We got up on the bank—all got up on the bank—and some of them turned to get away.
- Q. I didn't understand the last part.—A. They started to run when he said surrender.
- Q. Did you see any of the Indians firing?—A. Yes, sir.
- Q. Which way were they firing?—A. I thought they was firing towards the bunch of us; I can't say, but I think they was; I think they was firing at some of us.

- Q. Did they stand and fire where you could see them?—A. Yes, sir.
- Q. What proportion of these were taking part in the firing?—A. I should judge every one of them.
- Q. Did they make a stand and fight you?—A. Yes, sir.
- Q. Who, if anyone, was hurt—anyone shot?—A. White men?
- Q. Which ones?—A. I believe Louis Falkenberg was shot the first one—I knew nothing about Miller.
- Q. That is, Sheriff Miller?—A. Sheriff Miller.
- Q. Do you know who he was shot by?—A. No, sir.
- Q. Was he shot by the Indians or white men?—A. Yes, sir; he was shot by the Indians.
- Q. How long did he live after this shot?—A. About half an hour.
- Q. From where you stood, where did this firing seem to come from; any one place?—A. Came from different directions; from about three different directions, west, north, and south.
- Q. Where did these wagons go to?—A. They pulled up the country pretty lively, most of them.
- Q. Did you examine the wagons, any of them, to see what was in them after this fight?—A. I did two days later.
- Q. How many?—A. Ten.
- Q. Where were they?—A. On the divide of the Twenty-Mile and Lightening.
- Q. Did you trail the wagons?—A. Yes, sir.
- Q. You recognized them as being the same wagons the Indians had?—A. I did—some of them.
- Q. What did you find in the wagons in the way of game?—A. Found a lot of meat, some dried beef, and beef hides, sheep hides, and antelope meat.
- Q. Any antelope pelts?—A. Yes, sir.
- Q. About how many?—A. There must have been a hundred.
- Q. Was it in one wagon or strung along?—A. In all the wagons; different wagons.
- Q. About how many were in a wagon?—A. On an average about 25—something like that.
- Q. Do you know where these Indians had been hunting previous to the time you went out there?—A. I had heard about it, but had not seen them.
- Q. You live near the place where they were first apprehended?—A. Yes, sir.
- Q. Do you know where the Indians had been hunting?—A. Had been hunting in Little Thunder Basin most of the time.
- Q. What county is that?—A. Weston and Converse, right on the line.
- Q. Did you hear any answer from the Indians after the demand of the sheriff?—A. Nothing; only the report of a gun was the next thing I heard after he asked them to surrender.

Cross-examination by Mr. BURKE:

- Q. You don't know who fired that first shot, do you?—A. No, sir.
- Q. You were in the creek bottom, were you not?—A. Yes, sir.
- Q. You don't know whether that was one of the posse or whether it was the Indians who fired the first shot?—A. I could not say.
- Q. You had as good an opportunity to observe as any of the posse from where you were?—A. No, sir.
- Q. That is, any but Mr. Miller and Mr. Owens?—A. No, sir; they were in the lead.
- Q. They were in the lead and had the best opportunity to observe; otherwise you had as good an opportunity as anybody else?—A. Yes, sir.
- Q. Why do you say Mr. Miller was shot by the Indians?—A. I saw an Indian shoot at him.
- Q. You didn't see any of these Indians shoot at him?—A. I could not say.
- Q. That was after the shooting had become pretty general?—A. Yes, sir; it was getting pretty warm around there about that time.
- Q. The Indians generally were fleeing?—A. No, sir.
- Q. The wagons had turned?—A. Some of them had; some of them had not.
- Q. Were there some of them fleeing?—A. Not at that time.
- Q. Now the procession was headed, was it not, by a bunch of horses—of ponies?—A. Yes, sir.
- Q. Did you see a girl driving them, or some one driving the ponies?—A. Yes, sir.
- Q. The wagons were going along with men in the wagons, and some of them riding horseback?—A. Yes, sir; most of them were horseback.
- Q. None of them walking when you first saw them?—A. No, sir.
- Q. They were on their way east going home?—A. I suppose so.