

## *Shannon and Clements*

TEXAS

**P**HIPPS and English were partners in a grocery supply store, wholesale and retail, in the town of Currie, Texas, near the boom oil fields of Mexia. They were men of good reputation. Shannon and Clements, two young men under thirty, ran a small shop about two miles from Currie and were regular customers of the house of Phipps & English.

On Sunday evening, March 15, 1925, at about nine o'clock, English and two of his friends—Boone and Kelly—in order to while away the time, were playing dominoes at a table near the back of the store, some thirty feet from the entrance. Boone and Kelly could be seen from the entrance, but English was screened by a tall seed box with a crack in it, which permitted him to see something of what was going on in the store.

About nine or nine-thirty, the door of the store opened and a man stepped inside without attracting any attention until he said, "Well, boys, you can stick 'em up." The players were concentrating upon the domino game and did not move at the order. "God damn it, I said stick 'em up!" At this, English became curious, and looking through the crack in the seed box saw a well-built man, wearing a hat, and having a blue handkerchief tied over his face. He was pointing a revolver at the other two players. These men, being unprotected, put their hands up. The robber advanced toward the cash register. English, from behind the seed-box barrier, called out loudly the name of a nearby neighbor, Mr. Meador, when he was ordered to "shut up." A second man with kerchief-covered face and a revolver appeared around the seed box and ordered English's hands up. The first man ordered all three to face the wall. He was obeyed.

As the cash register was being tampered with, English turned and glanced to the right to see what was going on. "Yes, trying to watch, are you? Turn that head back and keep them hands high, or I will come around there and bust your brains out." English got several pistol pokes in the

back. The receiver and mouthpiece were torn from the store telephone. This was the sole telephone in Currie. The cash register was rifled, and the domino players were relieved of their change.

"Everything is all right outside, boys!" came the word from a third robber, who put his head in at the door. He was apparently acting as guard; and his face below the eyes was also covered with a handkerchief. The three men withdrew and drove off in a car, taking with them approximately \$200.

Phipps, the senior partner, came on the scene about five minutes later, when a small crowd had begun to gather. Although the robbers were masked and had hats on, exposing but little more than their eyes, English informed his partner that he recognized the first of the stick-up men as Clements. Phipps thereupon went out to Clements and Shannon's place. When he arrived, Clements was coming outdoors with a couple of buckets and did not return during the five or ten minutes Phipps was there. Shannon and some other persons were in the shop. Phipps entered into conversation with Shannon, and at Shannon's subsequent trial testified that Shannon appeared excited and nervous, asked how Currie was, what was going on in Currie, and how they were getting along there.

After Phipps got back to Currie, Shannon's name, for the first time, gets into the case. Phipps testified that at about eleven o'clock that night, his partner English told him that the man at the door who had shouted, "Everything is all right outside, boys!" was Shannon. In Phipps's talk with Shannon's attorney, however, just before the trial, Phipps said that English could not identify any of the persons who robbed the store except Clements. The trial judge would not permit the attorney to give his testimony; and on this ground, Shannon's conviction, presently to be mentioned, was reversed by the appellate court (284 S.W. 586). English himself claimed that he recognized Shannon at once, though Shannon was masked and hatted, was at the doorsill for only a fleeting moment, and the distance was some thirty feet. He claimed to have recognized him by his build, eyes,

and voice. The other players, one of whom had known Shannon for four years, could not recognize the third man as Shannon, though Boone "thought" he recognized the first man as Clements. Kelly could not recognize either one. English, on the stand, could not tell what Shannon had on, except that he had a shirt, collar, and tie.

English had not mentioned Shannon's name to any of the assembled crowd; and he had not mentioned it to his partner Phipps until two hours later, because, he explained on the stand, he did not wish to make it public. At eleven o'clock Sunday night, the telephone having been fixed, he had called up a peace officer of Wortham, a neighboring boom town, to look out for the robbers, who were commonly suspected by members of the crowd to be the Davis brothers, who lived in Wortham. When asked in court why he called up the sheriff of a neighboring town when he knew, as he claimed, that the culprits were right near him, English explained that he wanted all suspects rounded up. His partner Phipps also visited Wortham on Monday morning, spoke to Peace Officer Miles, and did not apparently mention Clements and Shannon. Instead, he asked whether Miles had seen anything of the Davis boys, according to Miles's testimony. When Constable Jones of Currie came to the scene the next morning, English did not say that he thought Clements and Shannon had done the job, English's explanation for the omission being that he did not think Jones, an old, unreliable man, could give them any help. Neither did he go to the County Attorney on Monday morning, his explanation being that he wanted to be sure before he took any steps.

Monday, about noon, Phipps made his regular rounds among his customers to take orders and collect bills. In the shop of Clements and Shannon, he had a bill of some \$10.55 to collect. Shannon paid him in one-dollar bills; and among these bills was one mutilated bill with a cigarette burn, which Phipps claimed to have recognized as one of those in his cash register before the robbery. It had been set aside by him for exchange at the bank. Phipps was now sure that Clements and Shannon were the guilty men, and had them arrested and indicted. The prosecution worked out a theory that the

second robber was a man named Halsey, a brother-in-law of Shannon, who occasionally visited them.

Shannon and Clements were tried separately. Shannon claimed that he and Clements had been at their home, in which their shop was located, the entire time from sunset Sunday until Monday afternoon. He explained the mutilated one-dollar bill by saying that when Phipps called he had a twenty-dollar bill, but that he had changed it in the room next to the store with a man named Murry, who gave him twenty one-dollar bills. Murry, Shannon testified, had been in a poker game all night in Wortham before he came to Shannon's place Monday morning. There were four other persons in the room, including Clements, but none of them was apparently called as a witness to verify Shannon's story. Murry was a roving character and could evidently not be located. Phipps, on the other hand, swore that Shannon had not left the store to change a bill, but had paid him from a roll or stack of bills which he drew from a bag under the counter. Shannon had never been indicted, but had once, two months before the Phipps robbery occurred, been arrested for robbery on complaint of a watermelon peddler, been in jail two weeks, and had been then released without trial.

On Shannon's trial, some ten character witnesses were called to testify to Phipps's good character, though the reputation of Phipps was not in issue. Possibly the purpose was to sustain his veracity in the conflict with Shannon's testimony as to the circumstances attending the payment of the \$10.55.

Whether Shannon's one arrest had an influence on the jury, it is hard to say. At all events, the jury concluded that Shannon was guilty, and he was sentenced to five years in the penitentiary. The jury evidently believed that the mutilated dollar bill had found its way into Shannon's hands by direct action, and not by the circuitous route Shannon had described. Shannon was released on bond pending the appeal of his case; but after the reversal of his conviction, mentioned before, he was never retried, for reasons which will presently appear.

In the trial of Clements, his identification as one of the

robbers was more definite than had been that of Shannon. Clements was also found guilty and received a five-year sentence. His case was also appealed; but on two occasions in 1927 (106 Tex. Cr. Rep. 628 and 106 Tex. Cr. Rep. 631), the appellate court denied his motion for a rehearing. Although defense counsel were certain that Clements had had nothing to do with the robbery, there was nothing further that could be accomplished for him. Protesting his innocence, Clements surrendered himself at the penitentiary.

Within the penitentiary walls, Clements met a man who had been convicted of highway robbery from another county. His name was Blackie Davis. Davis confessed to Clements that he had committed the robbery at the Currie grocery store, and gave his deposition to that effect. The Governor was unconvinced by Davis' admission, and a pardon was denied to Clements. A sixty-day furlough was, however, granted, to enable Clements to locate the accomplices implicated in the crime by the confession of Davis. Leonard A. Wassum was found. He surrendered to the authorities. Haled before the court under criminal indictment for the Phipps & English robbery, he pleaded guilty to the charge and received sentence.

Upon an application indorsed by the district judge, the prosecuting attorney, and all of the jurors who tried Clements, the Governor of Texas granted him a pardon in May, 1929. Clements had served between two and three years for a crime with which he had had no connection.

Clements had suffered humiliation, the loss of his business and reputation, and had incurred great expense. The charge against his partner Shannon was dropped. He shared all of Clements' sufferings, except the years in the penitentiary.

It is not necessary to conclude that Phipps and English were dishonest in giving their testimony. It is quite probable that the deep sense of injury and the eager desire to find the guilty persuaded them to be too easily convinced that the men they accused were indeed guilty. The finding of the mutilated dollar bill sealed their conclusion of Clements and

Shannon's guilt; and what was before then only the faintest suspicion, so faint that English had not even mentioned Shannon's name, became the firmest of convictions. It is not impossible that English rationalized his identification of Shannon from his supposed recognition of Clements. Why suspicion and identification should have turned to Clements is not clear. There may have been some prior grudge. When English mentioned the name Clements, Boone evidently thought he also recognized Clements. Although there was much evidence that Phipps and the crowd thought the Davis boys to be the robbers, pursuit of that trail was dropped after the mutilated dollar bill entered the case. The County Attorney utterly disbelieved Shannon's story of the changed twenty-dollar bill, and impressed the jury. Why witnesses to the changed bill were not called is unclear; possibly they had all moved away. In boom towns in Texas, things are unstable, and permanence of residence is probably an exception. The defense was ably conducted, and the judge was fair. It was the circumstances that were against Clements and Shannon. Phipps and English were altogether too sure of themselves and far too partisan. A gross miscarriage of justice occurred, without inexcusable fault on the part of anybody.

#### BIBLIOGRAPHY

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2. *Shannon v. State* (June 2, 1926, Court of Criminal Appeals of Texas), 284 S.W. 586.
3. *H. A. Clements v. State* (February 16, 1927, Court of Criminal Appeals of Texas), 106 Tex. Cr. App. 628-633.
4. *Washington Star*, May 22, 1929, p. 6; *Dallas Morning News*, May 22, 1929, pp. 1, 16.
5. Certified copy of the Pardon Proclamation by Gov. Dan Moody on May 24, 1929.
6. Acknowledgments: Mr. T. W. Lovett, Corsicana, Texas; Mr. J. F. Sutton, San Angelo, Texas.