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District Court

The Moore and McClellan Case

The most important case that has been tried at this term of the District Court came off this week. Our readers will remember the excitement generated in Grant County last summer caused by the killing of James D. Burns, who met his death at the hands of A. W. Moore, City Marshall of Silver City, and W.P. McClellan a Deputy Sheriff of Grant County. Moore and McClellan were arrested and had their examinations before Justices of the Peace and were finally taken before Judge Bristol on a writ of habeas corpus; they were remanded to jail without bail, and remained in prison until the verdict of the jury was rendered in their case on last Wednesday.

The case was brought to this county from Grant, by change of venue and was called for trial on Monday morning last. A jury was obtained during the forenoon and Judge Newcomb opened the case for prosecution, the balance of the day was occupied in taking the testimony for the prosecution. Several witnesses swore that Burns was in the Centennial Saloon at Silver City on the night of the killing, that there was some difficulty in which Burns drew a pistol and defied Moore the City Marshall who tried to arrest him, that finally he was disarmed and Moore told him that he would go his bond to appear before the Justice's Court next day and answer; about half or three quarters of an hour afterward Moore and McClellan came in, the latter has a paper in one hand holding it up, both had pistols drawn, they went up to Burns, McClellan said "I have a warrant for you, hold up your hands" and immediately after fired, several

shots were fired, three by Moore after Burns had fallen, there was some discrepancy of testimony among the witnesses of the prosecution as to the position of Burns' hands when the fatal shot was fired, some said he raised his hands about the height of his waist, but made no demonstration to draw a pistol, one witness for the Territory, John Ross, testified that when McClellan told Burns to give up, that he had a warrant for him, Burns retreated two steps and threw his hand behind him as if to draw a pistol, the shots were then fired. This testimony did not agree with that of the prosecution who testified that the deceased made no demonstration whatever.

On Tuesday, Mr. Fountain opened the case for the defense, he insisted that under the evidence already introduced by the prosecution he might rest the case and demand a verdict of acquittal, but that he desired, not only to acquit but to vindicate the defendants. On the part of the defendants, witnesses were introduced who testified that on the afternoon of the day of the killing, Burns was on the war path trying to "run the town," he went into Erskine's saloon, drew a pistol on a man named Kerr, abused him, and challenged him to mortal combat; this was in presence of McClellan who was a Deputy Sheriff. About 10 o'clock the same evening Burns went into the Centennial Saloon armed, Moore the City Marshall tried to arrest him, Burns refused to be arrested, drew his pistol and said he was "a fighting s_o of a b_h from Texas" and that no officer could arrest him, that he "didn't do it" and wouldn't be arrested. He gave his pistol up however to John Gilmo, Moore then told him that he would go his (Burns) bail to appear the next morning. Moore and McClellan then went away and Gilmo returned the pistol to Burns who went out; he came back in about half an hour and commenced an altercation with Tucker, just when Moore and McClellan returned, McClellan held a paper up in his hand and said "Burns, hold up; I've got a warrant for you, give up." Burns retreated two steps backward, threw his hand on his pistol and drew it half out of the scabbard. The shots were then fired, the whole thing did not occupy a minute; the

demand of Burns to surrender, his handling his pistol and the firing by defendants were almost simultaneous. The case was argued by Judge Newcomb for the prosecution and Major Fountain for the defense; it is needless to say that both arguments were brilliant and formable.

The charges of the court, was regarded by the bystanders as being rather favorable to the defendants. The jury retired at 5 o'clock p.m. on Tuesday and remained out until 8 o'clock p.m. on Wednesday, when they returned a verdict of not guilty.

Transcribed from a digital copy of the original newspaper, by Clay Riley, December 12, 2013.



While researching this ex Brown County Deputy Sheriff's Death in New Mexico, I came across this newspaper article. Further searching in Grant County, New Mexico records, I located a list of burials in the City Cemetery in Silver City, known now as Memory Lane Cemetery. This cemetery was started in 1881. The map below marks the most likely place of burial. The information of his burial there was from an obituary in the local newspaper, which researchers used for additions to the records of burials.

James D. Burns, son of Pioneer Brown County Rancher, Col. Samuel P. Burns. Photo brought by Brownwood Public Library History Branch, Brownwood, TX and shared by a descendant of the S.P. Burns family.



Clay Riley
January 12, 2014

This is how he is listed in the burial index.

Burns	James D.	(place of death)
Silver City	(birth)1860	(burial) 25 AUG
1882		