

## *Payne Boyd*

WEST VIRGINIA

ONE traveling through the southern part of West Virginia on a summer's day will always remember it as a land of contrasts—beautiful rolling hills, the homeland of the “mountaineers,” dotted with squalid, colorless mining communities, swarming with laborers who spend most of their time underground picking coal for shipment to the industrial centers of Pennsylvania and Ohio.

In May, 1918, there lived in Modoc, Mercer County, West Virginia, a certain negro miner named Cleveland Boyd. He had been one of the small group of negroes to invade this mining district, which was manned principally by Italian workmen. Boyd had proved himself to be rather a quarrelsome fellow, though he was popular among the negroes. He had won and married Charlie Boston's daughter—a mark of distinction.

When Cleveland Boyd was haled before Squire H. E. Cook on Christmas Eve, 1917, and sentenced for participation in a drunken brawl, he boldly threatened that he would get even with the Squire. On May 30, 1918, he was again arrested by the sheriff—this time on vagrancy complaints. Squire Cook sentenced Boyd to thirty days' imprisonment (or road work) and fined him \$25. As the Squire and the deputy sheriff, A. M. Godfrey, were preparing to take the prisoner to the jail at Matoaka, Boyd made a special plea that he be permitted to go to his home, about a hundred yards up the tracks (the trial was held in the offices of the coal company), to exchange the new shoes he was wearing for older and more comfortable ones. The request was granted. The Squire, deputy sheriff, and prisoner went to Boyd's shack. Boyd entered while the Squire stood on the porch and the deputy sheriff out front. In a flash Boyd re-appeared in the doorway firing a revolver. The Squire crumpled, mortally wounded by two shots in the chest, and the deputy sheriff ran for his life.

The shooting attracted attention, but before aid arrived, Cleveland Boyd had fled to the hills.

Squire Cook belonged to one of the oldest and best families of Mercer County, and there was widespread indignation at this cold-blooded murder. The murderer was well known by numerous citizens. A description was prepared and broadcast so that police authorities might be on the lookout.

Six years later, in the spring of 1924, the police of Richmond, Virginia, arrested a negro on an inconsequential minor offense. He gave his name as Payne Boyd of Winston-Salem, North Carolina. As usual, records of persons wanted were checked, and to the surprise of the police, this prisoner fitted the description of Cleveland Boyd which they had received from Mercer County six years before. The Richmond police mailed a photograph of their man to Princeton (Mercer County seat), and the authorities came to identify him. Boyd was lined up in the Richmond jail with other negroes and was promptly identified. Thereupon he was surrendered to the officials of Mercer County and taken to Princeton, where he was lodged in jail on May 2, 1924. The unsolved murder of 1918 was revived as the principal talk of the county. On Sundays and holidays hundreds of people visited the Princeton jail to see the prisoner. Some said that he was positively Cleveland Boyd. Others were absolutely certain that he was not. Many could not be sure, after the lapse of six years. The prisoner always denied that he was Cleveland Boyd, and that he had ever been in Mercer County before. Nevertheless, upon the positive identification of some prominent local citizens, he was indicted for the murder of Squire Cook.

He was brought to trial on February 5-8, 1925, before Judge George L. Dillard in the Criminal Court of Mercer County. Walter V. Ross, the prosecuting attorney, was assisted by special counsel, H. G. Woods, and by A. J. Lubliner, assistant prosecuting attorney. John Kee and C. B. Martin represented the defendant. A verdict of guilty of first-degree murder was returned, but the court set the verdict aside on technical grounds and ordered a new trial. The second trial was held from April 29 to May 2, 1925. A verdict of guilty was again returned and sentence of life imprisonment was pronounced.

In both of these trials the facts concerning the murder committed by Cleveland Boyd were conceded by all. The only issue was whether the prisoner before the court was Cleveland Boyd. Of the twenty-six witnesses introduced by the state, twenty-four testified on matters of identity and swore that they had known Cleveland Boyd in 1917. Eight of these twenty-four persons were positive in their identification of the prisoner—two of them testifying that Cleveland had a scar over his left eye (a remnant of which could be found on the prisoner), and three testifying that Cleveland had a scar under his left jaw (as did the prisoner) resulting from a mule kick while working in the mine. Four of the twenty-four identification witnesses of the state believed that the prisoner was Cleveland Boyd, while the remaining twelve testified that he looked the same, but they were not sure enough of it to swear that he was Cleveland Boyd. The state's witnesses were public officials, mining company supervisors, and some men who had worked with Cleveland Boyd.

The defense called thirty-nine witnesses, thirty-one of whom had known Cleveland Boyd and testified with absolute conviction that the prisoner was not he. Many of the defense witnesses were negroes, admittedly intimate with Cleveland Boyd before he left the community, such as his father-in-law, the minister who married him, persons present at the wedding, neighbors, fellow workmen, etc. They testified as to the points of dissimilarity between the two, as to height, weight, complexion, hair, lips, feet.

The defense, by six additional witnesses from Roanoke and Winston-Salem, and the defendant himself, endeavored to prove that he was Payne Boyd, born and reared in Winston-Salem, and that he had lived in these two cities only. The scar on the prisoner's neck was said to be the result of a childhood attack of scrofula; and the defendant himself testified that the scar over his eye came from a wound received in a stone quarry while with the American army in France. The prisoner was said to have lived in Roanoke and Winston-Salem during the spring of 1918 and up to the date of his enlistment in the army, July 15, 1918. Certified

copies of Payne Boyd's draft registration card, draft questionnaire filled out in Roanoke before the date of the murder (May 30, 1918), and honorable discharge certificate dated July 16, 1919, were submitted in support of this alibi. The defendant, on the witness stand, denied that he had ever been in Mercer County before and that he had ever been in a coal mine. He had never seen any of the fifty-five witnesses at the trial who had known Cleveland Boyd but who differed about him.

With this evidence before the court it seemed evident that there was a person, Payne Boyd, separate and distinct from the murderer Cleveland Boyd. The jury had to decide, however:

1. Whether the prisoner was Cleveland Boyd
  - (a) and that he really had no connection whatever with Payne Boyd, but was only endeavoring to use the latter's records, or
  - (b) that he might have been Payne Boyd before coming into Mercer County in 1916, and returned to Winston-Salem to use that name for enlistment in the army on July 15, 1918, after committing the murder on May 30, 1918, and using some other Payne Boyd records for events prior to May 30, 1918.

or

2. Whether the prisoner was Payne Boyd, and had no connection with Cleveland Boyd and the murder of Squire Cook.

As related above, the prisoner was found guilty at both trials, and after the second trial, Judge Dillard imposed a sentence of life imprisonment. An appellate court set the verdict aside, and, upon motion, a change of venue was granted. The next trial was ordered for Cabell County. It was held in October, 1925, in Huntington, before Judge Thomas R. Shepherd. Prosecutor Via of Cabell County joined with Prosecutor Ross of Mercer County in submitting the case.

At about this time Garfield Rose, fingerprint expert of

the Huntington Police Department, became interested in the case. He took the fingerprints of the prisoner. These were compared with the prints of Payne Boyd on record in the War Department in Washington, and found to be exactly the same. Thus, it was established to the satisfaction of all that the prisoner was Payne Boyd of Winston-Salem and Roanoke, with a war record just as he had always claimed. Other new data were also received corroborating Payne Boyd's story that he had no connection whatever with Cleveland Boyd. This evidence was all submitted to the Cabell County jury, which returned the following verdict on October 13, 1925: "We, the jury, being convinced that the prisoner at the bar is Payne Boyd and not Cleveland Boyd, find him not guilty. . . ."

Payne Boyd was released immediately, having spent a year and a half in custody and gone through three trials because to some people he looked like Cleveland Boyd.

. . . . .

It may seem difficult to explain why any jury should have convicted Payne Boyd when, of the fifty-five witnesses produced, only eight were positive that he was Cleveland Boyd. Thirty-one were positive that he was not Cleveland Boyd, twelve said he looked like Cleveland Boyd but they would not swear, and four merely believed that he looked like Cleveland Boyd but entertained doubt. The explanation probably lies in the fact, not unusual in similar cases, that a murder having admittedly been committed it seemed necessary to avenge it, and the prisoner presented a sufficiently close resemblance to the criminal to warrant the jury in resolving any doubt against him. The fact that a change of venue was granted might indicate that the appellate court considered that local prejudice was operating against the accused. Just why the fingerprint method of identification was postponed until the third trial is not easy to understand, for it was available to both sides from the beginning. At least his war service helped Payne Boyd to establish his identity beyond challenge, and with the verification of his other assertions that he had always been in Roanoke and

Winston-Salem, especially in May, 1918, when the murder was committed, it became apparent that he could not have been the guilty Cleveland Boyd. It took one and one-half years to establish that fact to the satisfaction of the judicial authorities of West Virginia, during which time an innocent man was incarcerated. Payne Boyd appears never to have been indemnified for the wrongs he suffered at the hands of the people of West Virginia.

#### BIBLIOGRAPHY

1. *State of West Virginia v. Cleveland Boyd*. Record in the office of the Clerk of the Circuit Court, Cabell County, W.Va., containing a 411-page transcript of the trial testimony.
2. Law Order Book No. 30, p. 380, Circuit Court, Cabell County, W.Va.
3. Acknowledgments: Mr. Douglas C. Tomkies, Huntington, W.Va.; Mr. Garfield Rose, Huntington, W.Va.; Mr. L. T. Reynolds, Princeton, W.Va.