

State of Texas v. Joe M. Mayes  
Cause Number 5223

Evidence Taken in *Habeas Corpus* Hearing, May 5-6, 1893

STATE WITNESSES

G.L. Evans, being sworn, says I am acquainted with defendant Joe Mayes and was deputy under him; was not personally acquainted with Russell Embree. I saw the trouble. It came up at the Buckhorn Saloon; came up at night. The fuss came up about a shave Embree wanted, a shave after twelve o'clock. Mr. Hammersmith wanted a shave first; it was in O'Reilly's Barber Shop. The barber was standing in the door. Hammersmith was the first to talk. Cannot tell what passed. They were both mad and talking. Mayes and Embree were talking. Mayes and Embree were about to go together. This was in the saloon near the door of the barber shop. I did not see any blows passed. Embree said he could whip Mayes. Mayes said he could not. Embree told Mayes if he would take off his gun he would whip him; pulled Mayes off Jno. Perry and someone went East with Mayes. I held Embree. Hammersmith asked M. Jones to give Embree a pistol and Embree asked Jones to give him a pistol. Jones said he did not have any. He then went to the back door. I stepped near the door where he was. When he started out the door I grabbed him. He got out of the house and I went out. I had Emby [*sic*] by the arm when the shot was fired. Embree was out. Mayes fired the shot. Mayes fired the second shot; it was about ten or fifteen feet from Embree when the first shot was fired. Mayes was standing East from the door. Embree moved from near the door to about the middle of the walk. They were both near the middle of the walk when the last shot was fired. I did [not] see any one until after the first shot. I turned loose after the first shot. I did [not] see any weapon in Embree's hands; did not see him try to draw a weapon of any kind. I was armed with a six-shooter. Mayes had a pistol. It was on Saturday night, 12<sup>th</sup> of March. Embree never spoke after he was shot. Don't know how long he lived. Don't know where he was wounded. Did not see Embree with any kind of weapon that night. The front door was closed. I think M. Jones closed the door. Do not know how long it was after they started to the door until the shooting.

Cross-Examination

I had been in the saloon only a few minutes. I had not been in there long until Mayes came in. Don't know when he came in. I had my back to the East when I saw Mayes. The trouble came up about a shave. The talk was first between Hammersmith and O'Reilly. Hammersmith wanted a shave. O'Reilly told him he could not shave him; said it would cost him fifty dollars; did not hear him say why. I saw them drinking. Mayes said close up, it is time to close. The clock had just struck twelve. Don't know when Jones closed the door. Do not know when I saw Mayes first. Do not know what door he said close; suppose he referred to the barber shop. Do not know what Hammersmith said to Mayes. Don't know what he did not say. There was others had a better chance to hear than I did. They had some words before Embree said he could whip Mayes. When Mayes and Hammersmith were talking Embree was in the barber shop. I pulled Embree back toward the counter. He was going the direction Mayes went. I caught him and pulled him back; I thought there was going to be a difficulty. I think I pulled Embree back three times. He was talking in a rough manner. It was after Mayes went out. He quieted down. There was no drinking after Mayes went out. I think

Hammersmith said get a pistol and fight him right. Mayes was not in the house at the time. Embree asked Jones to lend him a pistol. Jones said he did not have any. Embree started to the door using language I could not understand. He opened the door himself. About the time he got to the door the glass fell. I tried to catch him as he went out the door. Did not tell Mayes I had hold of Embree. Someone had hold of Embree; I do not know who it was. I was behind as we went out the door. I did not see Mayes move. Embree stopped or staggered near the center of the walk. Mayes was East of the door. Embree said something; can't remember what he said. Never knew of any difficulty between Embree and Mayes previous to that time. I have known Joe Mayes nearly three years. Don't know whether Mayes is rich or poor. Live about one mile from him.

Redirect Examination

I think it was Jno. Perry and someone else holding Embree. Did not try to arrest Embree. Don't know whether Mayes was drinking or not. Saw him take one drink. There was no one outside except Embree, Mayes and myself.

G.L. EVANS

**D.E. Patterson**, being sworn, says I knew Russell Embree. I was about one hundred yards east of him when he was killed. Heard the first shot and saw the second one. I turned around and came back. The man I saw I took to be Mayes was standing nearly in the center of the walk. Embree was lying on the sidewalk; he was lying on his side. Tried to get him to speak but he could not. We carried him to the store and laid him on the counter. Could not tell how far the man was from the back door.

Cross-Examination

I was about a hundred [yards] west of the shooting. We caught up with Mr. Short and a friend of his. I examined the wounds. Did not find any weapon of any kind. I found some papers and a small flask. Did not know what it was; took it to be whiskey. Do not know where Bob Hefley was. Did not see Otto.

D.E. PATTERSON

**Thomas O'Brien**, being sworn, says I live in Belton. Have lived there two months. Am acquainted with Joe Mayes, Frank Ellington, and R. Embree. I walked down the street by the Buckhorn. Saw Joe Mayes and George Evans holding him. He was waving his pistol saying he was going to kill someone.

Cross-Examination

I think it was Evans holding him. I have used the words that Mayes used. I had four bottles of beer; had drank four or fives glasses at Hurt's. Was not drunk. Did not have to take me out of the house. Did not vomit in the house. Went back in about an hour. The body was moved when I got back. Ellington, Dan Mayes and others were with me at the hotel. We had all been at Hurt's. I have no enmity towards Mr. Mayes. He arrested me once; was charged with being drunk. I was at the Cook Corner at the time of the shooting. No one came back with me. I have had several men ask me what I knew but did not tell anyone. I talked the matter over with Ellington on Peyton Corner.

THOMAS O'BRIEN

**Frank Ellington**, being sworn, says I lived here on the night Russell Embree was killed.

Heard the shot that killed [him]. I saw Mayes and O'Reilly at the east door of the Buckhorn. O'Reilly had his hand on Mayes' shoulder. Mayes had a pistol in his hand. Mayes says if he don't keep away from me, I will kill him. Mayes was about ten feet east of the door. We were about one hundred and twenty-five yards from the shooting, between [behind?] Coop's Corner and [the] Commercial Hotel. Heard two shots. There was a light on the corner.

Cross-Examination

Did not see Mayes wave his pistol over his head. Was walking side by side with O'Brien. He was with me when the shots were fired. We went on to the hotel. Don't know whether he vomited in the room or not. We were sitting on the step and someone came along and said Mayes had killed Embree. Saw Otis Chalk and Dan Mayes standing on Coop's Corner. Do not know where Chalk went. Dan Mayes went to the hotel.

F.M. ELLINGTON

**John Richards**, being sworn, says my name is John Richards. I was acquainted with Russell Embree and Joe Mayes. Was in town the night Embree was killed. Was not in the saloon when the fuss commenced. When I went in O'Reilly was putting Mayes out of the northeast door. Embree was quarreling. Don't know what he was saying. Don't know how long Mayes was in there. I think he had is pistol in his coat pocket. Russell Embree was talking when Mayes pulled his pistol. Mayes told Embree to let him alone or he would kill him. "Russell, I have not got a damn thing, but am not afraid of you." They took Mayes out the back door and carried Russell toward the front door. It was about three minutes after [midnight]. Mayes went out before Embree went out. Embree said he was not afraid of the son of a bitch and could fight him. After the second shot I heard someone on the outside say, "now die, damn you."

Cross-Examination

I saw Ruff Hovar that night. I got with Hovar at the barber shop. We went in the saloon at the side door. Embree and Hammersmith were talking and drank a bottle of beer. It is not a fact I was in Otto [ric] at the time of the shooting. We were at Stone's [?] shop when I said I would go to Otto and get some candy. I heard someone quarreling in the Buckhorn and went in. I left Hovar about twenty-five minutes before the shooting. Saw Otto and his wife going home. I was on the Hefley corner. My father was the first one I told about the killing. Did not tell anyone except him and Mr. Shannon. I came out right after the shooting. I think I saw Hartly. I think he was standing by Russell after he was shot. I was nearly in the door when Russell went out. Did not hear Embree say anything as he came to the door, but heard him say "I am not afraid of the son of a bitch." I think someone had hold of Russell. Did not see anyone on the outside when I first went in the saloon. I saw Gus Greathouse before and after the shooting. Did not hear any remarks made on the outside. After the shooting I walked by Hammersmith. I saw Mr. Patterson; he was at the place where Russell fell. I saw two men trying to get in the side door of the saloon. Did not say anything to them. They went in the saloon and I went in right after. They were in the saloon when the shooting took place. I think Jones was near Embree. I know Ned Chaney did not see him until after the killing. Don't know what became of him or the three who went in ahead of me; they looked like country men. Don't know where I was when the clock struck twelve. I walked to the jail with Ruff Hovar. I think I saw a pistol in Mr. Stone's hand.

J.B. RICHARDS

**Frank Johnson**, being sworn, says I live in Belton. I work with Alex Grey. I was in town the night Russell Embree was killed. I passed the Buckhorn just before the shooting. I saw Joe Mayes. He was about the middle of the building. He said "if he comes out and jumps at me, I will kill [him]." As I went in the door I heard two shots fired. Do not know who went after the doctor.

Cross-Examination

The man I saw running north was on the street [that] my boarding house is on. I was playing dominoes at Hunt's. Do not know, but one of the men I was playing with, he was a bartender one [?]; name Billy, a stone cutter. I saw Mayes standing by the back door of the Buckhorn saloon. Two or three men were behind him. No one had hold of Mayes. Billy was in bed when I went to my room. He left the saloon about a half an hour before. I did was not [sic] in bed while the shooting was going [on]. I know an old man who cooks at Pecora's; he sleeps in the room with me. Don't know whether I waked him or not; his bed is about thirty feet from mine.

FRANK (his x mark) JOHNSON

**Joe Perry**, being sworn, says I live in Belton. On the 11<sup>th</sup> of March I lived in Belton; was in town the night Russell Embree [was] killed. I saw Embree and Mayes in the Buckhorn. The first trouble I saw between Mayes raised his hand and said, "You goddamn fellows cannot run over me." Don't know what he said. Embree said he did not have anything. Someone took Mayes out of the saloon. I was standing by the billiard table and Joe told them to let him loose. He told me to let him loose again and I turned him loose and walked. As Mayes came in the door I reached around him and caught the pistol. Mayes said, "You damn fellows can't run over me." I did not see the shooting. I did not examine the body. Did not see Embree with any weapon. Did not hear Mayes say he was the oldest or newest Marshal in the town. He told me to go after Denman.

Cross-Examination

Did not see Embree with a knife or pistol. Hammersmith said something about making Mayes break out. Mayes said he was not breaking [?] out as fast as they thought. Embree was standing against the counter when Mayes raised his hand. First words I remember Embree said he was not armed. They were both mad. Think they had been drinking a little. Mayes went out twice. I went out with him the second time. When Mayes went out we all followed him. I was inside the house between the door and the stove when he went out the first time. Don't know whether anyone had hold of Embree or not. Embree asked Jones for a pistol. Jones said he did [not] have any. Embree was making towards Mayes. Evans and Hammersmoth pulled Embree back twice. I had hold of Mayes' pistol when he told me to turn him loose, "Goddamn you, turn me loose." I went out and he came out and told me to go for Pink Denman. I saw young Mr. Hefley on the way to the jail.

Redirect-Examination

I suppose Mayes was drinking. I drank with Embree and Mayes; both drank with Mayes at Hunt's. I think he drank a toddy.

J.A. PERRY

**Mart Jones**, being sworn, says I live in Belton. Am acquainted with Mayes and Embree. Worked at the Buckhorn on March 11<sup>th</sup>. I saw Mayes and Embree that night in the saloon five minutes. I went to close and Mayes started by the door. I told him to come in and get his meal. Hammersmith called for some beer. Hammersmith wanted a shave. O'Reilly said he could not shave

him, it was after twelve o'clock. Mayes said "close up, boys, it is twelve o'clock." Hammersmith asked him "what in the hell he had to [do] with it." Hammersmith told Russell to get a gun, "this fellow is armed." Embree said he could whip Mayes without a gun. O'Reilly took Mayes out the back door. When Mayes went out the second time the shots were fired there were two shots fired. Did not see Embree after the shooting.

#### Cross-Examination

When I was closing the door Mayes was passing, I called to him, I had closed the all door [sic] except the west door; it was closed but not locked. When Embree spoke to Mayes, Mayes had not said anything to Embree. When Embree said he could whip Mayes, Mayes raised his hand. Both raised their hands. Do not know of any previous difficulty between Mayes and Embree. O'Reilly and Ed Yates, Jno. Perry, Pink Perry, Negro Ned, Richards and Hovar had been in but left. There was no strangers in the saloon. When Joe went out the last time I asked him to go out and he went. As soon as he went out, Embree asked for a pistol. About a minute after Mayes went out, Embree tried to go out. Hammersmith and myself had hold of him. Hammersmith turned him loose and walked off. Embree asked me to open; he said he was going out. Did not see Richards or any stranger at the door. Did not see Richards or Hovar in the house any time after they left. Did not see anyone except the ones I have mentioned. Did not see George Evans when Russell went out. When Russell Embree went out did not see anyone go out after Embree. When the shot was fired I had just closed the door. Was about four feet from the door when second shot was fired. It looked impossible for anyone to go out without me seeing them. Did not hear anyone say, "now goddamn you, die." House was well lighted except back door. Have known Mayes six or seven years. Do not know if he is rich or poor.

Do not know whether Richards was in the saloon at time of shooting. Did not hear Mayes tell Perry to turn him loose. Did not see anyone under the tables. Did not see Richards after I closed the front door. Don't know where Perry was when Mayes went out. Do not know who went out after the shooting.

M. JONES

**John Hammersmith**, being sworn, says I am acquainted with Mayes. Knew Embree. He is dead. Died March 11<sup>th</sup> or 12<sup>th</sup>. Do not know what caused his death. I went after the doctor after the shooting. Do not know exactly what caused the trouble. Was caused by Embree and myself wanting a shave. Mayes said it is time to close the shop. Embree and Mayes got to quarreling. Do not know the words they used. They were in the saloon. Embree was close to the barber shop door. Embree started toward Mayes and Mayes drew his pistol. Embree gave him to understand he did not have a pistol. Told Mayes he did not have a pistol. Don't know whether Mayes went out or was taken out.

The shot and the crash of the door was about the same time.

I thought the trouble was over when Mayes went out. Heard the shooting; did not see it. Don't know if Mayes came back after he went out. If he did, did not see him. They were about 8 or 10 feet apart when Mayes drew his pistol. I was about the stove when the shot was fired. Both shots were right together. Do not know who was in the house. I was not gone very long after the doctor. Embree had been moved when I got back.

#### Cross-Examination

We had not done anything wrong. I did not know [the] Marshal [was] absent. I supposed Mayes was Deputy Marshal. After Embree and Mayes were separated, Mayes went out or was put

out. I had not done anything to be arrested for. I went out at the side door. Do not know for certain which door I used [?]. Went out by myself. Was excited. Mayes and Embree, both men were excited; Mayes especially so.

#### Redirect-Examination

Mayes seemed to be mad and excited both. Do not know if Mayes came back the second time. Do not know of any difficulty previous to this time between Mayes and Embree.

JNO. HAMMERSMITH

**Morris Brown**, being sworn, says I was at the Buckhorn saloon on the night Russell Embree was killed. Heard the fuss between Mayes and Embree. Hammersmith and Embree wanted a shave. Mayes told them they could not get a shave. They were cursing. Do not know who was cursing. O'Reilly went out with Mayes. He came back in about two minutes. Before Mayes went out the first time he had his pistol out. Don't know what happened when Mayes came back. Both of them were mad and talking. Mayes pulled his pistol again. Mayes went out again. I was under the arch standing up. There were six or seven men in the saloon. About one-half minute after Embree went out, the shot was fired. I went out [of] the saloon after the shooting. Did not see any[one] with a pistol except Mayes. Think Embree said he was not armed.

Do not know which was advancing when the last shot was fired. I was about 15 feet from the door. Heard nothing said on the outside. Do not remember who was there. Saw Ned before the shooting. Don't remember seeing any countrymen. I don't remember seeing Richards. Saw O'Reilly, Jones and Hammersmith. I saw Richards before the shooting. Hovar and Richardson came in together. Did not see them at the time or after the shooting. I don't remember seeing any country people in there.

MORRIS BROWN

#### DEFENSE WITNESSES

**J.D. O'Reilly**, being sworn, says I was in the Buckhorn saloon on the night of the killing. I was in the barber business in the saloon. Between 10 and 11 o'clock Hammersmith and [no name written] came in; stayed until 5 minutes after twelve. Did not call on me for a shave until after the shop was closed. After 12 o'clock I told a man in there it was after twelve and could not shave him. It was Morris Brown. I went in the saloon. Hammersmith says, "Pat, I want a shave." I told him I could not shave [him]; it was a fifty-dollar fine. He said he would pay the fine. When I said I had to close, Mayes said, "Yes boys, it's time to close." Hammersmith asked him what in the hell he had to [do] with it. Hammersmith said in a sarcastic way he admired the city authority. Mayes told him he did not want any trouble. Embree told John to go fight Mayes. Hammersmith did not say anything. Embree said he could whip Mayes. Embree said "pull off your gun and I will fight you." Embree started toward Mayes and Mayes pulled his pistol and pushed Embree back. He looked as if he intended raising his pistol as a club. He could have shot if he had wanted to. I went in between them. I took Mayes to the back door. Do not know who took hold of Embree. I went out with Mayes by myself. I stood outside the door with my hand on Mayes' shoulder. He said, "keep Russell away from me." I was with him all the time on the outside. When I came back he followed. Did not hear him say "if he comes through that door I will kill him." If he had said anything I would have heard

him. I had my hand on him all the time we were outside. Mayes did not wave or flourish his pistol. Did not have his hand raised. Did not hear him say "that racket must stop." When I went out, did not see anyone. Did not see Hovar nor Jno. Richards. Did not see them at any time. If anyone followed us in the saloon, I did not see them. Saw Yalie [?] Hammersmith, Evans, Mart, Jones, Morris Brown. Did not see any countrymen in the saloon. Did not see any strangers in the saloon. As I came back, Russell was up toward the stove and started toward Mayes, and I caught Embree and held him until they got Mayes out of the door. Jones and I think Hammersmith took Mayes out. When Mayes went out I thought the door was locked and turned Embree loose. He went to the door and jerked it and broke the glass and jerked again and the door opened. Went out, saying he could lick the son of a bitch. Mayes was only trying to keep Embree off. I am not positive who asked for a pistol. Someone called for a pistol once or twice. I had turned Embree loose when I heard the remark about the pistol. It was 4 or 5 seconds after I heard the crash at the door. I went in the shop. Was in there when both shots were fired. When I heard the crash, looked and saw Embree going out. Did not see anyone go out except Russell. The door was locked as soon as Embree went out. Don't think it was possible for anyone to have gone out after them before the door was locked. Did not see any countrymen in or around the billiard tables. I went out the door back of the one Embree went out. Jones went out with me. Did not see Richards as I went out. Some of them went out through the shop. Richards, Hovar nor any countrymen went out through the shop.

#### Cross-Examination

"I was sober; had not drank anything. Embree was drunk; Mayes was not. Mayes did not arrest Embree; did not call for anyone to help arrest Embree. Did not hear Mayes curse. Embree did all the cursing. Did not see Embree with a pistol. Saw Mayes with a pistol in his hand.

Mr. Evans was there. The first time they started together was not trying to see Richards; don't know where he was. Mayes was in good humor when he came in. Was mad when [he] drew his pistol. Did not hear Embree ask for a pistol. I went out with Mayes the first time. Mayes was mad was mad [sic] both times he went out. Did not see him have his pistol out on the outside. Had his hand either in his pocket or had his hand hanging by his side. When Mayes drew his pistol they were between the shop and the bar. Was in the shop when the shot was fired. Was out with Mayes about 1 minute. Mayes followed me in immediately. Did not hear Mayes say to Perry, "Goddamn you, turn me loose." Suppose Mr. Mayes killed the man. Did not go out to see the man. When Embree went out, I was half-way between the bar and the shop door. Am positive no one went out with Embree. Don't know if Evans went out with Embree. Took Mayes out by myself; someone helped me near the door; do not know who it was. Mr. Yalie was in the shop when the shot was fired. The chairs were full when the boys came in. Embree told Mayes he had no pistol. I told Mayes to let the trouble drop, or if he did not, to have it in the house, and he said "keep Russell away from me." Don't know if Jno. Perry took hold of Mayes or not. Mayes was behind me.

#### Redirect Examination

The body had been moved when I went out. Russell and I were good friends. Did not give the body any attention. I supposed there were someone there to take care of the body. Saw several standing there. He was a friend of mine and did not want to see him [sentence ends]

J.D. O'REILLY

**Mr. Hartley**, being sworn, says I remember hearing of the killing of Russell Embree. I was

passing the Buckhorn saloon going east along the sidewalk. I was [with?] Tom O'Brien and Frank Ellington. I saw O'Reilly and Joe Mayes on the sidewalk near the side door of the saloon. I heard Mayes say, "I will kill him if he comes out here." I heard the shooting. Was north of Cook and Cochran Building in the street.

C.C. HARTLEY

**Pink Denman**, being sworn, says was at the jail the night Embree was killed. Had been in town until eleven o'clock. Was there to assist Mayes. Mayes was sober when I left. Was sober after I next saw him at the jail about 15 or 20 minutes after twelve. Store had charge of him. Don't know if there was fire in the Buckhorn saloon or not. He had three different ways to carry his pistol. I think he had his pistol in his overcoat pocket. He only drank one drink that I know of; he drank a sour toddy.

PINK DENMAN

**Ed Yates**, being sworn, says I was at the barber shop the night of the killing. It was about 12 o'clock. I saw Mayes. There was some trouble about that time. Hammersmith said he wanted a shave. O'Reilly said he could not shave him and said here stands the Marshal. Hammersmith said, "what has he got to do with it?" Mayes said he had enough to say to close up everything. Hammersmith said he was [a] nice specimen of city authority. Embree told Hammersmith he was not afraid to fight Mayes. They were both standed [sic] together and O'Reilly took Mayes to the door and went out. I was at the barber shop door. Did not hear anything on [the] outside. Hammersmith [said] to Embree to ask Jones for a gun. Jones said he did [not] have any. Mayes went out the second time. Don't remember when he drew his pistol. When he came back they went towards each other. Mr. O'Reilly and Jones, Evans, and myself were keeping them apart.

O'Reilly took hold of Mayes the first time. O'Reilly and Jones went between them. Jones had Embree and O'Reilly had Mayes. As I went in the shop I heard the door slam as Embree went out. Heard two shots fired. I was in the barber shop. Do not know if the door was fastened after Embree [went] out. I went out the door of the barber shop.

Cross-Examination

Did not see Mayes [with?] a pistol. Did not see him with his pistol drawn. Heard Embree tell Mayes he did not have a pistol. They were on the outside of the saloon 5 or 10 minutes. Do not know which came in first. Mayes and Embree went towards each [other] when Mayes came in. When they were stopped Mayes was about the first billiard table, about 15 feet from the door. They were quarreling. Mayes said he did not want to have any trouble. O'Reilly took Mayes out the second time. Had his meat or his gun in his hand, do not know which. I think I heard Mayes say to Perry, "God damn you, turn me loose." Think Perry and O'Reilly went out with Mayes the last time. About 2 or 3 minutes after Mayes went out, Embree went out. Did not hear Embree say anything as he went out. I think Jones and Hammersmith were at the door. It was about 3 or 4 minutes after the crash of the door I heard the shots. Did not see anyone go out with Embree. Did not see the shots fired. The shots were one right after the other.

ED YATES

**John Richards**, recalled, being sworn, says he went out the side door before the difficulty.

Came back in by the same door. Mr. O'Reilly and Mayes were in the door. They went in the saloon and I followed. The countrymen went in ahead of me. There were three men. I saw Perry and Jones. Did not speak to anyone. Spoke to Hammersmith after the shooting. He was standing by the shop. Asked me if Russell was hurt. I was the closest one to the door. Saw Jones lock or latch the door. The shots were fired before the door was locked and Jones said "that settles it." Do not know where Jones was when the shot was fired. Think he was near the door. The three strangers went in behind Mayes and myself. Do not know what nationality; were not Negroes. Do not know if the one nearest me was dark or light complected, had mustache darker color than the others. Two of them had light or red mustache. I think his clothes were dark. Do not know what kind of a hat he had on. Don't know if it was a derby. Don't know if he was wearing boots or shoes. He was [a] medium sized man, slender. Do not know if he was young or old. Suppose he was about 38 years old. He was standing by the billiard table. Jones was with Mayes about ten feet from this man. Hammersmith was with Embree. Did not see Ned. These men were standing northeast of the table. The table is east of the door. The oldest man had [a] red mustache. It was just [an] ordinary mustache. Don't know what kind of a hat he had on. He looked like a countryman. Do not know their names. Don't know how old he was. Don't think he was sixty years old; think between 20 and 40. They were all slender. Don't know when they went out.

Cross-Examination

Never played on any of the tables. Do not know how many there is in there. Never was in there more than three times. The tables stand north and south.

J.B. RICHARDS

**Gus Greathouse**, being sworn, says I lived in Belton. 11<sup>th</sup> day of March last was in restaurant business back of Buckhorn saloon. Joining it was on the sidewalk (in my restaurant) [sic] Talking in the saloon attracted my attention. Saw Mr. Patterson, Wyatt Short and Mr. Merrill. When I went out saw Mayes and O'Reilly standing at the side door, about 13 feet from me. Could not hear all the conversation. They were out there when I went out. Did not see Ellington, O'Brien and Hartley. Heard Joe say, "I will not take any the worst of it." They went back in the house. A Negro went in after they did. Did not see anyone go in after him. Did not see anyone else go in. I could see the door. No one but the Negro went in. Did not see any countrymen go in. I went to the They went in at stayed until Jones told Mayes [sic]. I came first, Joe next and Perry and George Evans. Joe told Perry to go after Denman. He went. The door was closed. Mayes was on the sidewalk about the edges of the walk when Embree came. Joe was further down the walk about 14 feet from the door as Embree came out. He said, "You damn son of a bitch; I will beat the face off of you," and then Mayes shot. Embree reeled and started back toward the sidewalk north. Mayes did not say "Now goddamn you, die." Did not hear anyone make such a remark. Do not know who was the first to come up. I saw Stone; he came first, him and Hovar. Mayes gave up to Stone and he went towards the jail with [him]. Hovar went with them. Don't know if anyone joined them on the way.

Cross-Examination

It was about 12 o'clock; looked at the clock as I went out the door. I was in the house when Mayes and O'Reilly were on the sidewalk. Did not hear O'Reilly tell Joe not to go back. Did not swear to Judge Estill [that] O'Reilly told Joe not to go back. Did not tell Jno. Sanford anything. Did not tell Durnett I was in the back of [the] house. Did not tell Jim Smith I did not see it. Told Clarence

Walker I did not see it; told him I did not know anything about it. Don't think I said I had closed up and gone home. Was not asleep. What I told Clarence Walker was not so. After the shooting I stepped back in the door. Was about four feet from Mayes when he shot. Did not see Embree with any weapon. Did not have anything in his hand. Did not go up to Embree. Went up in about 4 or 5 feet of him. He did not refuse to sell me goods on credit; did go there to buy anything. When I was out there Joe Mayes and Evans were there. Saw O'Reillyt and Joe on the walk. Don't know if joe had his pistol out. Was about 13 feet from them. I saw the pistol in the house first. Joe and Russell were scuffling over a chair. Don't know who had hold of Mayes. Some one was holding him at his back. Did not see Mayes and Perry scuffle over a pistol in the house. Don't know how many men had hold of Russell. Don't know how many men were in the saloon. I went in behind Mayes and O'Reilly. I was standing in the [end of sentence]. Did not see anyone go in. I was just inside the door when I backed out. Joe came out and Jno. Perry came next. Joe did not say "if the damn son of a bitch comes out, I will shoot him." Joe did not speak to me. Mayes stayed in the saloon 2 or 3 minutes before he came out. In a minute or two Russell came out. Evans was toward the east of the door. Embree opened the door himself. Mayes shot Embree. Mayes shot twice. I saw him raise his hand. Did not try to keep him from shooting. When Joe shot, Embree moved towards the north. Saw him throw his hands up to his breast. I don't know if he needed attention. Evans did not have hold of Embree. May have told Durrett I did not see it; don't remember. No one said "Damn you, die now." I stayed there 3 or 4 minutes.

Redirect-Examination

I saw Mr. Patterson. He borrowed a lamp from me. Merrill [?] brought the lamp back Monday. The first one to the dead body was John Hammersmith. Ned came out ahead of me and went in the saloon. Conry [?] Boone was in the back of the house eating a lunch. There are two doors in the side of the saloon. The door they came out was the farthest one from me. The other door had been locked 15 minutes. I heard him fasten the door. Did not see him.

A. GREATHOUSE

**W.J. Stone**, being sworn, says I heard the shot that killed Embree. I was at my desk. As soon as I heard the shot, I went up there. I passed Greathouse's Restaurant. I think I saw him. Joe Mayes gave up to me. Gave me his pistol and carried him to jail and turned him over to Denman. Gave Denman the pistol. I was about 50 or 60 feet from the shooting. After we started to the jail he said he was sorry it happened or something to that effect.

W.J. STONE

**J.K. Mayes**, being sworn, says I know of Mayes' private business. He does not own any property. Don't know if his bond is already made. Don't know if he could give bond. Don't know of anyone who would go on his bond. Think Mr. Moon [Moore?] of Temple will go on his bond.

J.K. MAYES

**Jno. Bishop**, being sworn, says am acquainted with Mayes' private business. Do not know of his ability to give bond. I spoke to Mr. Elliott and Mr. Moore, who said they might go on his bond. Don't know what they are worth.

JOHN BISHOP

**Chas. D. Moore**, being sworn, says am acquainted with Joe Mayes. Have known him about 8 years. Am acquainted with his financial ability. He is not worth anything. Do not know how much bond he can give. Think he could give a reasonable bond.

CHARLEY D. MOORE

**John Durrett**, being sworn, says am acquainted with Sanford and Greathouse. Sanford asked Greathouse if he saw the killing. Greathouse shook his head and said, "no." Pointed to the back of the house. Do not know of any inquest.

JOHN B. DURRETT

**Jim Smith**, being sworn, says Gus Greathouse told me the night of the killing that he did not see the killing; that he was on the inside of the restaurant.

J.E. SMITH

I hereby certify that the foregoing thirty pages contains a full statement of the evidence taken before me on May 5<sup>th</sup> and 6<sup>th</sup>, 1893, in the above entitled cause.

BELTON, Texas, May 6, 1893

W.A. BLACKBURN  
Judge, 27<sup>th</sup> Judicial District