

BERRY BENSON

New York Times (1857-1922); Dec 27, 1914;

ProQuest Historical Newspapers The New York Times (1851 - 2008)

pg. 12

SAYS HIS ANALYSIS VINDICATES FRANK

Berry Benson of Georgia Digs Out Facts Pointing to Conley as the Murderer.

LIED ABOUT THE WARDROBE

Negro's Story Exploded by Five White Witnesses—Elevator a Dumb but Convincing Accuser.

AUGUSTA, Ga., Dec. 26.—Five prominent Georgians recently joined in a letter to Berry Benson, a well-known Augustan, who had made a painstaking investigation and analysis of the Frank case, asking him to give them his conclusions.

"We understand," they wrote, "that you have taken a large interest in the Frank case, that you spent some days in Atlanta investigating it, and that you believe Frank to be innocent. We would be glad if you would give us your reasons for this conclusion."

Mr. Benson responded in the following letter, which is published in The Augusta Chronicle:

MR. BENSON'S CONCLUSIONS.

Augusta, Ga., Dec. 19, 1914. Messrs. F. H. Barrett, Warren Walker, J. P. Doughty, A. B. Von Kamp, E. H. Hook.

Dear Sirs: I have your letter asking my reasons for believing Leo Frank innocent of the murder of Mary Phagan. I am willing to give you some few of my reasons on one condition—that you will not reply, as some of my good friends have done, "Oh, hell, the jury found him guilty." As though "Oh, hell" were a proof of an argument; or as though juries had not made wrong verdicts hundreds and hundreds and hundreds of times. So many times found wrong too late—when the victim of their judgment was beyond recall to the life they had taken away.

My reasons are many and strong. In the short space of a letter I can give you but a few of these many.

I have made a close study of the case from the beginning. As a rule I refuse to read accounts of crime, these being distasteful to me, as much so (or nearly as much so) as are the repulsive caricatures of humanity in the so-called funny papers. But this case was a problem: Who killed Mary Phagan? And the problems fascinate me.

Mystery of \$200 Hush Money.

As the trial progressed I was unable, from the conflicting testimony given, to form a conclusion. But when the negro testified that after Frank and he had taken the child's body to the cellar (as he swore) and that Frank, in his office, had given him \$200 as hush money, and then taken it back, I saw a light. For I knew, from long experience as an accountant, that it is extremely rare a wholesale house has in hand \$200 in money after bank hours. And men who carry \$200 in their pockets are exceedingly few.

I wrote to the contending attorneys, Dorsey and Rosser, a joint letter, the same to both, stating my grave doubt of the truth of this testimony, and suggesting that they bring into court the cash book and the check book of the factory, and ascertain whether, at that time \$200 was in the drawer. This is easily done by subtracting from the cash book balance the amount in bank; the difference is the cash in drawer.

Both attorneys replied courteously, thanking me for the suggestion. The books were brought into court, and the cash drawer balance was found to be \$26.20. There was not \$200 in the drawer to give to the negro. As for Frank having \$200 of his own money, it was found on examination of Frank's private checkbook that he had been drawing \$5 from his bank every few days—April 3, \$5; April 15, \$5; April 24, \$5. (The murder was on the 26th.) Would a man with \$200 in his pocket be drawing small \$5 checks at short intervals? I asked Conley, in the jail:

"Jim, if Mr. Frank took the money back, how did you know it was \$200?" "I didn't know it," he replied. "Mr. Frank said it was \$200." Any how, it was a big roll. The negro lied. As was his habit. And he was lying to save his life.

In my article in The Chronicle of June 18, "How Could Mary Phagan Be in Two Places at One Time?" This was my argument:

Conley's Wardrobe Story.

At the trial the negro, confessing he had perjured himself four times, told a fifth and a different tale. He swore that after Frank and himself had taken the child's body by the elevator to the cellar they went then to Frank's inner office and were there talking when Frank, walking into the outer office, exclaimed, "My God, here comes Quincy Hall and Emma Freeman; get in this wardrobe, damn it, quick." That Frank hustled him into the wardrobe, that he heard the ladies come in, heard them say, "Good morning, Mr. Frank," heard their voices talking low, but he did not hear Mrs. Freeman call her husband through the telephone. As she did. Being asked if he heard it, he was afraid the question was a trap, he was afraid to say yes, and he was afraid to say no. So, cunningly, he said he didn't hear the call through the telephone when he had just heard their voices "talking low." It was safe enough to say he heard, "Good morning, Mr. Frank," of course they would say that.

These ladies did come to Frank's office. The negro learned that by reading the papers or by being coached. But, as to the time they were there, he makes it an hour and a half later than the time they were actually there! And by doing so he makes it evident that his whole story of the elevator and the wardrobe is pure fabrication.

These two ladies both swear that they came there about 11:35, used the telephone, and left about 11:45. Miss Hattie Hall, stenographer for Montag

Bros., who was there writing letters for Frank from before 11 o'clock till 12:02, (she looked at the clock on quitting, so she told me,) swears she was there when these two ladies came and went; that they were there from about 11:35 to 11:45, and that Conley did not come there at all. Two men, also, came to the office at that time, E. K. Graham and O. Tillander, and their testimony confirms that of these three ladies.

Five Against the Negro.

Unless, then, we are ready to believe that these three good Southern women and these two good Southern men, whose reputations for truth are unchallenged, swear falsely, and that this four times self-confessed perjurer speaks the truth, we must believe that the time the two ladies were there was about 11:35 to 11:45, and not an hour and a half later.

The negro swears that the child was killed about half an hour later before they went to Frank's office; that it took them that time to dispose of the body. That would make the murder, then, about 11:05 A. M. (For the two ladies came at 11:35.)

But at 11:05 Mary Phagan was at home, helping her mother in the house-keeping; I learned that from her mother myself.

At 11:35 A. M., when the negro swears he was being hustled into the wardrobe, Mary Phagan was at home, eating her dinner, so her mother swears.

At 11:45 A. M., when the negro swears he was being let out of the wardrobe, Mary Phagan was leaving home for the car, so her mother swears.

And at 12:02 o'clock, when Miss Hattie Hall was leaving the office, (the child being then dead, according to the negro, an hour,) Mary Phagan was on the car, on her way to the factory, so the conductor and motorman swear.

How could Mary Phagan be in two places at one time?

Conley's tale of the murder of Mary Phagan by Frank by strangling her with a cord; of Frank and himself taking the body to the cellar on the elevator; of Frank taking him to his office and there giving him \$200 as hush money, and then taking it back; of Frank's then hiding him in the wardrobe, half an hour after the murder, to conceal him from the two ladies coming into the office—all this is true, or it is not true.

If it is true, Frank killed Mary Phagan.

If it is not true, it is a lie told by the negro with but one possible motive—to escape the consequences of the crime committed by himself. No other motive is conceivable.

Therefore, if the tale of the elevator and the wardrobe is a lie, the negro killed the child.

It can be proved—it has been proved—that it is a lie.

Not Realized by Jury.

Let us review the argument. Her mother and the carmen swear that Mary Phagan took the 11:45 car from home. The carmen swear that she got off the car (on time) at 12:07—five minutes' walk to the factory. Frank says she arrived at his office about 12:15, got her money, \$1.20, went out, and he saw her no more. She must have been killed, then, about 12:30.

The negro swears that half an hour after the murder (which would be about 1 o'clock) he was hustled into the wardrobe on account of the arrival at the office of the two ladies. Five white people swear these ladies arrived at or near 11:35.

Both these accounts cannot be true. Either the five white people swear falsely, or the negro does. If we believe the white people, then we must believe the negro lies, and his whole story of the murder tumbles to pieces. And as he can have no motive for falsely accusing Frank but to escape punishment for the crime committed by himself, then the negro did the murder, and Frank did not.

But if we can believe that Frank did the murder, then we must believe the negro's story to be true; we must believe that the two ladies came to the office about 1 o'clock, and not about 11:35. That means that we must believe that these three good white Southern women and these two good white Southern men, with reputations for truth unchallenged, swore to a lie, and that the drunken, obscene negro jailbird, four times self-confessed perjurer, spoke the truth, although he was swearing for his life.

This argument is as exact as mathematics. Its conclusion is as certain as simple addition. If any one believes Frank to be guilty, he must believe these five white people to be guilty of perjury.

Are we to believe, then, that the twelve jurymen were so recreant to their race, so oblivious to the fair name of Georgia, as deliberately to ascribe perjury to their white fellow-citizens,

deliberately to exalt above theirs the word of this base, self-admitted negro perjurer? I do not believe that.

I believe that the twelve jurymen are Southern enough, and white enough, to believe, in this, exactly as I believe. But, in the clamor and turmoil of the trial, they lost sight of the fact, obscured by the smoke of the battle, that right here lay a vital crux of the question; they did not realize that these testimonies were in direct and irreconcilable conflict; that if they gave credit to the negro's story of the wardrobe they brand these five good white people as liars unmitigable. But if these twelve jurymen will study the case as I have studied it they cannot fail to see—and see clearly.

Testimony of a Physical Fact.

Now we may dispute oral testimony if we will; we may disbelieve five respectable white people and believe, if we will, one dissolute, perjured negro swearing for his life; but there is one testimony it is impossible to dispute—a physical fact.

One such physical fact is that, with all the controversy about stains on the floor, as to whether they were blood or paint, no blood was found on the elevator.

Another incontrovertible physical fact is this: The negro swears that about two hours before the murder he went to the basement and there deposited on the ground certain offensive matter, the elevator itself being at a floor above. He did do this, for the next morning when the police came and went down through the trapdoor by the ladder they found this matter there untouched. Later when they used the elevator, the elevator came down on it and flattened it.

Now it is the testimony of every one in that factory that whenever the elevator goes to the basement it is always allowed to strike the bottom. Conley himself at the trial swore: "When the elevator goes to the basement it hits the dirt." The reason for this is natural. The elevator moves slowly, the jar is hardly perceptible; it is dark down there, so that if one going down should stop it purposely he would likely step a foot or two above the ground, and might get hurt getting off in the dark.

I went down with Mr. Schiff, the head clerk, with a lamp. The elevator struck the ground gently. "Now I will show you," said Mr. Schiff, "that it is not customary to stop the elevator purposely." With that he grasped the chain, as though to stop the elevator, and showed me his hand. The palm was red with iron rust. I saw at once that if it were customary to stop the elevator purposely there would be no iron rust there—the frequent contact of hands with the chain would keep it free from rust. And, remember, Conley himself says, "It hits the dirt."

Then if the child's body was taken down on the elevator two hours after the negro's peccadillo, why was not this increment then mashed as it was mashed the next day, when the police first used the elevator? There is but one answer to his question: The negro perjurer lied; the elevator was not used the whole day of the murder. Therefore, the body of Mary Phagan was not taken down on the elevator—the negro pushed her down through the trapdoor. "He push me down that hole," so the murder note reads.

Mama that negro hire down here did this he push me down that hole long tall black negro that hoo it was long tall sleam black negro. Conley being short and chunky and brown, this clumsy effort to foist his crime upon an unknown negro (the antithesis of himself, please notice) was made at the time of the murder, long before Frank was accused. He was brought to see the utter folly of this claim, and then when Frank was suspected he turned his accusation against Frank, claiming that Frank dictated the notes to him on the day before the murder!

Sometimes I think it must be wonderfully amusing to satan to hear all this clamor against Frank, and to see the real criminal slipping through the rigid fingers of the law, escaping justice. I imagine the grin on his face.

I could give you many other reasons—good ones—why Frank did not kill Mary Phagan, and why Conley did; but if these will not convince you neither would the rest—not if told by an angel from heaven. Yours very truly,
BERRY BENSON.