

## ‘ . . . Not Near Free . . . ’

### THE LAST SMELLEY CASE

**L**ike a rotating cyclorama of Southern life, where symbols and landscaped figures blur the boundaries between past and present, right and wrong, Hugo Black’s last appeal to an Alabama jury about guilt and innocence began on the road to Ashland, where his own values and ambitions first emerged. After two decades of struggling amid warring factions in Birmingham’s courtrooms, Black ended his career as a practicing lawyer face-to-face with the reenactment of a childhood tragedy. By the time the case unraveled, Hugo Black discovered amid the South’s conflicted nature, along the crooked timbers of humanity, perhaps for the first time how fidelity to one virtue may defile another.

The case began on an ordinary holy day almost two years before the state’s white citizens elected Black to the U.S. Senate. It was a chilly, cloudy Sunday morning in December 1924, when Will Smelley stuffed \$30 in his trousers pocket and left his farmhouse outside Talladega. Smelley later joined his family in church where he quietly placed a ten-dollar bill, the congregation’s largest donation, in the collection plate. As the biggest local farmer, Smelley had a reputation for generosity. Recently, he had furnished hired hands to build the local high school athletic field and was considered a fair man in dealing with white neighbors and black tenants.

After church, Smelley fetched Luke Ware, a gray-bearded black handyman from his farm. Smelley also met up with his brother-in-law, Will Farmer, and his son-in-law, Leland Haynes. All four men rode in a Model T over unpaved roads toward Clay County in a search for black tenants to farm Smelley’s land in the coming spring. Ware had been reared in Clay, and Smelley trusted his houseman to help find the most reliable workers.

On the way back to Talladega, as nightfall approached, Smelley opened a jug of moonshine whiskey, and the four men emptied the bottle by the time they stopped a few miles from the Smelley farm. Once warm and friendly, the men's loud slurred voices were now sour with disagreement and anger.

Later, when Leland Haynes arrived alone in Talladega, news quickly spread that Will Smelley had been shot. The sheriff's men arrived an hour later at the scene, and they found Will Farmer standing like a nervous sentry. Smelley's body was crumpled under the Ford's steering wheel. He was dead from two bullets. Both Haynes and Farmer claimed they had heard gunshots and turned to see Luke Ware next to Smelley.

At dawn, deputies discovered Ware near his house on the Smelley farm, headed towards Leland Haynes's place. Ware drew a pistol and threatened to blow out his own brains if Smelley was dead. The sheriff informed Ware of the truth only after he had thrown down his gun. The pistol had three empty chambers. In jail, the African American remembered nothing, except that he was drunk. He pleaded that he would not have killed Mr. Smelley for anything in the world.<sup>1</sup>

The coroner convened a jury amid rumors and worried conversation. The facts, as discovered by the sheriff's office, did not square with the two white men's stories. If Ware had shot Smelley within the closeness of the front seat of the Ford, why were there no traces of gunpowder on Smelley's clothing? Why were bloodstains on the rear fender of the car? Why would Luke kill the man who had promoted him from field work to handyman? And why was Luke headed towards Haynes's house after his wife informed him he was wanted for shooting Smelley?

Talladega's "big man in body and heart" was laid to rest in the Oak Grove Methodist Church cemetery, as the coroner's jury visited the site of his killing and took statements from witnesses to his death. Will Farmer testified for almost an hour. He admitted that Haynes and his father-in-law argued but insisted he and Haynes were far beyond the automobile when shots were fired.

Haynes made two differing statements to the coroner's jury. At first, Haynes's testimony matched his earlier statement to the sheriff, but, when informed that the jury did not believe he had told the whole truth, Haynes offered a second version of events on December 7. He confessed that, after everyone started drinking, Smelley and he argued about the farm. But he insisted that the disagreement had passed before he left the car. Now, Haynes remembered

a new, relevant fact: As the two white men were leaving the Model T, he heard Smelley say to Ware: "Give me that twenty dollars, you robber!" Shortly afterwards, gunshots were fired.

Ware's memory also improved once he was informed of Haynes's new testimony. Ware swore Haynes and Smelley quarreled, and, when Smelley stopped the car, his son-in-law was cursing. At that point, Haynes took a pistol from Ware's overalls pocket and told the Negro to get lost in the woods. Ware said that after going thirty to forty yards, he heard two or three shots. He wandered further into the woods until he fell asleep drunk. Later, awakened by rain, Ware returned to the roadside where he stumbled onto his gun. Before daybreak, Ware reached home on foot.

By late Wednesday afternoon, the coroner's jury charged all three men with the unlawful death of W. D. Smelley, and the sheriff placed the two white men in the county jail with Ware. "In fact since Monday morning when Luke Ware was arrested the question had been in many minds of the negro being the only one implicated in the crime," reported Talladega's newspaper editor.<sup>2</sup> Within twenty-four hours, Will Smelley's body was exhumed for an examination by Dr. E. B. Wren and a team of local physicians. Circuit solicitor J. B. Sanford wanted to determine the kind of weapon that killed Smelley. "The state has no other decision than to develop the truth in its investigation and to establish the guilt of the party or parties involved," the solicitor stated.<sup>3</sup>

The three men spent the Christmas holidays in jail. The next grand jury met on January 12 and examined more than twenty witnesses relating to Smelley's murder, including the three prisoners. Four days later, Leland Haynes and Will Farmer walked the streets of Talladega as free men while Luke Ware remained in jail now under indictment for murder in the first degree.

IN MARCH 1925, as temperatures oscillated too widely to confirm a change of seasons, Luke Ware stood trial for his life in a rural community that was neither hill country nor flat land, a small town at the crossroads of an Old South and its new aspirations. Since before the days of Hugo Black's youth, Talladega had been a commercial center with railroads bringing salesmen, passengers, and dry goods daily. Its name was taken from the Muskogee Indian word for "frontier town," but its local theater, opera house, and public library were monuments to the small town's appreciation of culture, learning, and reason as important guides in the life of a settled community. Alabama's most renowned educator,

J. L. M. Curry, had lived here. In addition, on the town's outskirts sat Talladega College, one of the state's few private black schools of higher learning, started by white missionaries during Reconstruction. With the largest black population of any rural north Alabama county, white Talladega understood the practical advantages of peaceful, respectful race relations while it remained faithful to the region's longstanding social customs.

“Whatever Mr. Jake said, that was it,” remembered an elderly black man who witnessed the events of 1925. “As long as that white man said that Luke was guilty, they were going to put him up for a lifetime.” Or worse. By Southern custom, only one man could have protected Ware. He was the white man who could extend protection by assuring the white community that he knew *this* black man and *this* black man could not have done the killing. That white man was now dead, and Luke Ware faced life in prison or death on the gallows.

In early March, both black and white men crowded into the segregated seating of the second-floor courtroom. More than a hundred other people stood in the corridors on the first and second floors. Others milled about the lawn, following the sun's warmth from east to west as the day progressed. Inside the courtroom, a local Episcopal rector blessed the proceedings with a plea for God's help after Circuit Judge R. D. Carr gavelled for order. The black man who bowed his head amid a coterie of white men—lawyers, jurymen, deputy sheriffs, clerks, and judge—had every reason to believe that it would require divine intervention to extend his life beyond his current fifty years.

The state's case was presented by Solicitor J. B. Sanford, whose crippled leg and nurtured distemper earned him a reputation as a fearsome prosecutor who “could really take it off.” He called several witnesses who established Smelley's death and Ware's arrest with possession of the gun that killed the white farmer. Other white witnesses stated that Ware was unreliable and dangerous. “This nigger had a bad reputation about getting drunk and mean when he got drunk,” testified one white witness. The prosecutor's key witnesses were Haynes and Farmer, who repeated their last statements to the coroner's jury.

On cross-examination, Ware's court-appointed attorney from Anniston attempted to show that Haynes had given the coroner's jury two different stories. The solicitor protested, and the judge barred that line of questioning. Ware took the stand on his own behalf. He told his version of the killing. It contrasted sharply with the sworn testimony of the state's white witnesses. There was nothing more the defendant could do.

Shortly before supper on Tuesday, March 3, after closing arguments ended, Judge Carr charged the jury on the law. He told them that Luke Ware “is presumed to be innocent until he is proven guilty beyond a reasonable doubt by the evidence in this case.” At the same time, the judge admonished the jury that the case’s evidence tended “to impeach the defendant’s character for veracity.” After five hours of deliberation, the jury brought back a verdict to an almost empty courtroom. Luke Ware was guilty—but of first degree manslaughter, not murder. He was sentenced to ten years in prison, the maximum penalty, and his lawyers filed a routine notice of appeal.<sup>4</sup>

The verdict appears a compromise between conflicting views within the jury room and the community. In the minds of many white citizens, there was no doubt that Luke Ware had done the crime. “He told them that he had stumbled on the gun . . . You couldn’t have found that gun that night with a flashlight,” protested one of Talladega’s lifelong white residents who remembered the case vividly sixty years later. “Somebody else did it and dropped the gun,” continued the elderly man, parroting Luke Ware’s basic story. “It just didn’t make sense.”

Others, both black and white, were not deaf to Leland Haynes’s conflicting stories. Black folks knew that the worst evidence against Ware was that he was at the scene of the crime with the wrong skin color. No wonder he threatened to kill himself if Smelley was dead. A black man would pay for the crime regardless of the facts. They knew. Quietly, African American leaders discussed forming a local NAACP chapter to mount a new local “movement.” In some of Talladega’s handsome homes, white women took aside their trusted black maids to say confidentially, “I know he didn’t kill Will Smelley.” Others believed that demon whiskey was the real culprit. “The evidence in this case discloses that at the time of this homicide,” an appeals court judge later wrote, “all of the parties present . . . were ‘tanked up’ on wild cat whiskey.”

These untidy facts could not easily be hidden or denied under any racial code in a town like Talladega. They had spared Luke Ware’s life. Had he been more prosperous, Ware also could have had his freedom for a time, since the judge set bail while the appeal was pending. But neither Ware nor his friends could post the cash bond, and he remained in the jailhouse.

A few nights after the verdict, on Friday, March 13, Ware was in his cell when the courthouse caught fire. Volunteer firefighters could not control the fire, and the courthouse burned leaving only the brick walls and the gray stone

columns. The flames had brightened the sky for miles, and many circuit court records were destroyed. No one ever determined the cause of the fire, the worst in Talladega's history.<sup>5</sup>

AFTER MORE THAN A YEAR, the courthouse was renovated. The new building had no cupola clock. Gone, too, were the balconies once imitating those on which ancient Greeks stood to address their slaves. Talladega's revived house of justice was, nonetheless, an ambitious menagerie of symbols. The building's brick lines matched those on England's Buckingham Palace. The restored columns on the north and south sides were copied from the palace of Nepal. The new tapered bricks above the windows resembled heads of growing wheat, a motif taken from ancient Mesopotamia where the size of the wheat crop often determined life or death.<sup>6</sup>

Luke Ware also had new life. On May 25, 1926, the Alabama Court of Appeals overturned his conviction, holding that two substantial errors were made at trial. Judge Carr's refusal to let Ware's lawyer impeach Haynes's testimony was erroneous, as was the judge's charge to the jury discounting Ware's veracity.

Despite the legal victory, Ware remained in jail awaiting his new trial. And he waited. For reasons that no record can explain, Ware's case languished off the trial docket for almost thirteen months. It was as if white folks simply wanted the Ware case to disappear. During this time, Ware may have been consoled by the fact that he was closer to his wife and children than he would be as a state inmate. And, he did not face the darkness and dangers of Alabama's mines where he would be sent as a state convict. Also, in his second trial, Ware could not receive a punishment stiffer than his original sentence of ten years. Even so, when he finally returned to a remodeled courtroom for his new trial on Monday, May 30, 1927, Ware had served two and a half years in jail without a lawful conviction.

In Ware's second trial, Solicitor Sanford and his assistant Gordon Welch called Sheriff S. O. Wesley, who was the deputy arresting Ware in 1924. The Sheriff suggested the Negro threatened to kill himself because he was guilty of murder. As before, the main witnesses for the state were Will Farmer and Leland Haynes. Farmer kept to his earlier story, but Haynes's testimony was more specific. This time he testified that Ware shot Smelley when the farmer refused the Negro's demand for his pocket purse. From a distance, he said, he turned back and saw Luke Ware shoot Smelley.