

No. 5151

Name Stephenson, Gilbert H.

Prison

STATE OF MINNESOTA
BOARD OF PARDONS

LEWIS & HUNT
Attorneys and Counselors
800 Lonsdale Building
Duluth, Minnesota

I. K. Lewis
Rollo F. Hunt

April 9, 1921.

Board of Pardons,
State Capitol,
St. Paul, Minn.

Gentlemen:-

Mr. Wallace Stephenson of Duluth has prepared and wishes to file an application for pardon on behalf of Gilbert Henry Stephenson, convicted of Riot in St. Louis County, and sentenced to the State's Prison in January. The application was to have been mailed so as to reach the board today, but has been delayed because the County Attorney has not found time to go through the statement of the evidence prepared by Mr. Stephenson, and make the required indorsment (sic) as to its correctness. We expect the County Attorney will complete the examination of the statement so as to enable us to mail it by the forepart of the week. Will you kindly advise us whether the matter can be heard at this meeting of the board. It would be greatly appreciated if this were possible.

Yours truly,

Rollo F. Hunt
for Lewis & Hunt

RFH:

April 11, 1921.

Lewis & Hunt,
800 Lonsdale Building,
Duluth, Minnesota.

Gentlemen:

Acknowledgement is made of your letter of the ninth, addressed to the Board of Pardons, with reference to the application of Gilbert H. Stephenson.

The rules of the Board require that application shall be on file at least fifteen days before the day of meeting. The meeting of the Board was to be held the eleventh but has been postponed to the twenty-fifth of this month. Under these circumstances, I do not know that the application which you contemplate filing can be heard at this meeting. The next meeting is in July.

You speak of the endorsement of the County Attorney as th (sic) the correctness of the evidence contained in the application. This endorsement is no longer required by this Board. We have other sources of information as to the facts in these cases.

Very truly yours,

Clerk of the Pardon Board

LEWIS & HUNT
Attorneys and Counselors
800 Lonsdale Building
Duluth, Minnesota

I. K. Lewis
Rollo F. Hunt

April 21, 1921

Hon. Board of Pardons
State Capitol,
St. Paul, Minn.

Gentlemen: RE: APPLICATION OF GILBERT HENRY STEPHENSON.

We enclose to you herewith Application for the pardon of Gilbert Henry Stephenson who was convicted in St. Louis County of the crime of riot. The application is made in his behalf by his brother Wallace C. Stephenson and is accompanied by a statement of the evidence verified by Hon. Mason M. Forbes, Assistant County Attorney of this county, who represented the State at the trial.

We have your letter of April 11th, advising that in order for this application to be taken up at the meeting of the Board this month, it should have been on file at least fifteen (15) days before the meeting. Owing to waiting for the Assistant County Attorney to verify the statement of the evidence prepared by us, the filing of this application has been delayed. The applicant would like, of course, to have the application considered at this meeting of this Board or at an adjourned meeting, if possible, so as not to have to wait until the July meeting; however, if this can not be done consistently with your rules and the convenience of the Board, it will have to come on in its regular order. We would appreciate it if you will on filing of this application, give us information as to the date when it can be heard.

Yours truly

Rollo F. Hunt

RFG-DG

For LEWIS & HUNT

APPLICATION FOR PARDON

of

GILBERT HENRY STEPHENSON

To the Honorable Board of Pardons of the State of Minnesota:-

Application is hereby made for the pardon of Gilbert Henry Stephenson, convicted of the crime of Riot in the District Court of St. Louis County, Minnesota, and the petitioner respectfully represents to the Board the following:

1. The name under which the convict was indicted is Gilbert Henry Stephenson, which is his true name, and he has never been known by any alias.

2. He was sentenced on January 22, 1921, for the crime of Riot, the sentence being an indeterminate one, and in the manner and form following,

"It is the judgment and sentence of the court that you, Gilbert Henry Stephenson, as punishment for the crime of Riot, of which you have been duly convicted, be taken by the sheriff of this county to the Minnesota State Prison at Stillwater, in this state, and there confined according to the laws of this state."

3. The trial judge was the Hon. Bert Fesler, and the county attorney of St. Louis County, Minnesota, was the Hon. Warren E. Greene, who was represented at the trial by the Hon. Mason M. Forbes, First Assistant County Attorney of St. Louis County, and the defendant was tried in St. Louis County, Minnesota.

4. A succinct statement of the evidence adduced at the trial, with the certificate and indorsement (sic) of the county attorney who tried the case is annexed hereunto and marked Exhibit "A" and made a part hereof.

5. The defendant Gilbert Henry Stephenson is 34 years of age. He was born in the State of Iowa near Des Moines, on January 13th, 1886, the child of James Madison Stephenson and wife. He has resided in Duluth, Minnesota, during the five years immediately preceding conviction. His occupation was foreman for contracting firms, unloading gravel, cement, lumber, coal, carpenter helper, truck driving for furniture companies, and was truck driving for Bloom & Company of Duluth, when arrested.

6. He has never before been arrested or indicted or convicted of any crime.

7. The grounds upon which the pardon is sought are the following:

That there is reasonable doubt as to the guilt of Gilbert Henry Stephenson of the Crime for which he stands convicted, and his conviction was a miscarriage of justice.

These grounds are more fully specified by summarized reference to the evidence adduced at the trial, which for the convenience of the Board we have prepared and attached hereto, marking the same Exhibit "B".

8. That this application is made on behalf of the convict by his brother Wallace C. Stephenson, of Duluth, Minnesota.

WHEREFORE, the applicant prays that the Board exercise clemency in the consideration of this petition, and grant the pardon applied for.

Dated April 7, 1921.

Wallace C. Stephenson
Applicant, on behalf of
Gilbert Henry Stephenson.

[Exhibit "A"]

SYNOPSIS
IN THE CASE
of

State of Minnesota

-VS-

GILBERT HENRY STEPHENSON

* * * * *

Evidence of Oscar Olson, State's witness:

Oscar Olson testified that he had been on the police force for the City of Duluth since May 1st, 1908, and on June 15, 1920 was Sargeant (sic) of Police. He reported for duty at 7:35 P. M. on that day. The tree negroes, McGhie, Jackson and Clayton were confined in the City Jail which is in a building also occupied as Police Headquarters in the City of Duluth. These men had been confined since 7:30 in the morning of that day. Olson was on duty until 12 o'clock at night. About 7 o'clock in the evening his attention was attracted to an unusual number of people on the street and to the fact that the crowds were becoming noisier and increasing in volume. They were gathering on the streets adjacent to the jail in which the negroes were confined. People were amking considerable noise and yelling, but he could not tell what they were saying. At sometime between 6:30 o'clock and 8 o'clock, the crowd had assumed the proportions of a mob and were throwing stones and bricks at the jail. They were driven off by the police from different sides if the jail and finally overpowered the police and gained an entrance to the police station. The Police used a fire-hose to turn water on the crowds, but the hose was soon cut by the mob and later another hose was taken from the firemen and used

by the mob against the police. Nearly all of the windows in the police station were broken and the outside and inside doors to the jail were forced open. A hole was made in the wall about 3 feet by 1 ½ feet in dimensions, just west of the entrance to the jail on the Second Floor. The mob broke into the cellroom where the three negroes were confined, using a large timber as a ram against the outside of the jail door, also using crowbars, hammers and other instruments. Four or five of the locks on the cells were broken. The street was densely packed with people and also the police headquarters and jail, and the people were constantly yelling and attempting to get possession of the negroes.

It was about 10:30 at night when the mob finally broke into the jail and broke the door of the big cell. They obtained possession of the three negroes and removed them and they were hanged that evening in the public streets in the City of Duluth.

The police attempted to disburse the mob and several parties made speeches to quiet the people.

Testimony of William P. Lashells, State's witness:

William F. Lashells resided at 109 East Fifth Street and was an engineer employed on the Mesabi Dock. Upon the night of June 15, he was in the front of Police headquarters when the rioting began, about 6:15. About 8 o'clock there was a good sized crowd there and there was a truck going up and down Superior Street upon which there were about eight or nine people who were yelling and holding a rope behind and calling to people on the street to come and join a necktie party. The truck made a number of trips up and down the street adjacent to the jail and was finally

parked near the police station. The police officers were using the hose on the mob and the crowd got the hose away from the police and turned it on the police. They were yelling and calling such phrases (sic) as "Get the Negroes". About 8 o'clock or shortly afterwards, the mob got control of the hose and the defendant was on the hose at the nozzle in the middle of the street with another man. This was directly in front of the police headquarters. The police mere in turn trying to turn their hose on these men. As soon as the mob got the hose, they drove the police back using both the original hose and another. They turned the later into the police headquarters breaking the windows and getting possession of the building, they abandoned the water and forced their way into the cellroom. The witness at that time was right at the door of the police station and went on in with the mob. This was about 9 o'clock. It took the mob sometime to break into the cells they used sledge hammers and bars breaking the locks and doors. They finally went into the cellroom but this witness stayed on the outside of the cellroom but inside of the building. When he was in there, he saw the defendant breaking one of the locks with a sledge hammer. The witness was standing just back of the defendant, possibly six or seven feet from him. The defendant was hitting the lock and it finally gave way. After the lock broke, he did not see the defendant again. He did see that the negroes were in the cell into which the defendant was breaking. The negroes were taken out and hanged. The witness's recollection as to the hours at which the various acts were done does not claim to be exact as he had no timepiece with him and he was only estimating the time. He had never seen the defendant before nor since until several days afterwards when he identified him at the county jail.

On the night of the hanging, the defendant was dressed in an overall jumper and the witness thought he had on overalls; he was wearing a cap. At the time when the witness saw the defendant using the hose, he was not more than seven or eight feet from him. He could not identify the others who were helping the defendant hold the hose. He was absolutely sure of the identity of the defendant.

Testimony of Nate Natelson.

Nate Natelson resides at 1905 West Second Street Duluth, Minnesota, and arrived at police headquarters on the night of the riot at about 9:15. He testifies that he saw the defendant Stephenson outside of the building and across the street from the police headquarters with a fire hose in his hands. He was facing the police station when the water was turned on and he was directing the water toward the door of the police headquarters. Later the witness saw Stephenson again in the cellroom on the main floor of police headquarters and at that time Stephenson was breaking locks to the cell doors with a sledge hammer. At the time that the witness saw him, he was working on the lock of the door to the left. There was one colored man in the cell of the door which Stevenson was breaking open.

On cross, examination, Natelson testified that he was under indictment himself on the charge growing out of this same riot, but that no promise had been made to him with reference to his testifying. He said that Stephenson was dressed in dark blue, overalls a black sateen shirt and was without a hat the night of the riot. That it was .about 10 o'clock in the evening when he first saw him and it was a dark night. He had never seen Stephenson before and since the riot saw him once about four weeks before the trial at the County Attorney's office where he went for the purpose of identifying him.. At that time Stephenson was dressed in working clothes. Natelson was released on bond about five days after his arrest and has been out on bond since. He testifies that the negroes were taken out from the cellrooms and three of them were hanged. He says that he went into the cellroom under orders or at the suggestion of Lieutenant Barber. That Lieutenant Barber had said the negroes should have a fair chance and the witness acted as one of the judges. Four other men also acted as judges, two of whom were know to him by name. It was

about a half hour after he first saw Stevenson (sic) use the hose that the mob broke into the jail and at the suggestion of Lieutenant Barber, the witness went into the cells with the other judges. The names of the other judges known to him were Burr and Carson. Burr was also indicted in connection with the riot.

The witness says he listened to what the negroes had to say but gave no decision and protested against the others taking the negroes out. They were brought in to one of the cells one at a time and questioned as to their guilt. The witness says that he stayed in the cell when the three negroes were finally hung, and when he left, turned them over to Lieutenant Barber and two or three other officers and told Barber that he didn't think these three negroes were guilty, and that they should be protected, to which Lieutenant Barber did not reply. The so-called trial was concluded about half past eleven.

The witness lived in the city for more than ten years and knows a great many people here but did not see any one whom he recognized in the mob except the defendant and never saw the defendant before.

There were about twenty-five other men helping the defendant handle the nozzle (sic) of the hose.

At the conclusion of his testimony, the witness was asked to look at the defendant who was in the court room and stood up and the witness thereupon said that he could not say for certain that the defendant was the man that had charge of the hose. Upon being reexamined, by the State, he said he was sure the defendant was the man he had seen breaking the lock to the cells.

During the examination of this witness on several occasions he refused to answer questions put to him by the

defendant's counsel on the ground that he might incriminate himself. After refusing to answer several times, upon the advice of counsel, he finally waived his claim of privilege and completed his testimony.

Testimony of J. N. Nystrom.

J. N. Nystrom lives at 130 East Fifth Street, Duluth, Minnesota, and has been a police officer for six years. On the night of the riot, he went off duty at four P. M. but was called by headquarters about 7:30. At that time there was no public gathering in front of the police headquarters but the crowd commenced to gather in about forty minutes. There was some yelling such as "Let's get the niggers", "We got a rope" etc. There were the usual lights at the front of the police headquarters and one big light just outside of the large bay window. He saw the defendant helping handle the hose about fifteen or twenty feet from the front of the police station and directing the water from the hose upon the officers. The defendant had hold of the nozzle (sic) and they turned the water through the windows, breaking the windows and then upon the officers Olson and Sorenson and through the front door. All of the windows were broken and considerable water was on the floor of the building, and those inside had to fall back, whereupon the mob rushed through the windows and the front door. The witness was then in front on the sidewalk and testifies that the defendant was the first man through the door. The witness says he was about ten feet from the defendant when he went through the door, but did not see him after that.

The witness never saw the defendant Stephenson before, that he knew of, but saw him since that at the County Jail about two weeks after the arrest. He cannot remember how

Stevenson was dressed at she time of the riot. At times he was half way across the street and was driven back from time to time, but always on the south side of the street car tracks and between them and the police headquarters, during which time, this witness say him. He identities him bay his face. At the close of his examination on being asked as to identity of the defendant he said " That looks like the one". The record shows, however, that in picking out the man the witness picked the defendant's brother who was in the courtroom instead of the defendant,

[Handwritten] but who was sitting along side of the defendant, and who closely resembles the defendant.

Note: The record does not show the fact of resemblance but as a matter of fact the two brothers did look very much alike. MMF.

Testimony of Lieutenant Barber, State's witness:

This witness testified that he had been on the police force for 18 ½ years and was at present Lieutenant of Police. He was off duty on the night of the riot but was called on at 9 o'clock in the evening. He arrived at the police station at 9:10, and quite a crowd was there. They had stretched a hose into the police station but were not using it when he arrived; about fifteen or twenty minutes later, they began to use the hose. When the crowd got into the police headquarters, it was very near dark. They went into the cellroom coming through the front door, the toilet window, up the fire-escape, and through the battery room. They broke down the door into the cellroom and the cellroom was about half filled with members of the crowd. The witness saw Natelson there, also officers Walker, Sundberg, Nesgoda and several others. He got into the cellroom after the door was broken and called several officers to go in with him. Stephenson, the defendant, was there. When the witness first saw him, he was on the left hand side as you go into the big cellroom near the corner of the cell and was pounding the lock of the cellroom with a sledge hammer. This was the lock of the first cell on the left hand side of the big tier of cells. The witness does not know, whether Stephenson broke it or someone else, but knows that it was broken. He and Walker were the only officers inside.

The witness testifies that he was talking to Stephenson outside of the cell before they broke in and had an argument with him about breaking down the door and taking the negroes out. He said they were going to get the negroes and that the witness would do the same thing if it were his sister concerned. The witness says that he told him that they would wait until the rest were brought from Virginia and that it wasn't right

to take these negroes out as some of them were innocent . After this talk, he saw the defendant Stephenson inside and is sure that he is the man. His attention was also called to Stevenson (sic) by Officer Walker who asked him if he knew who Stevenson (sic) was and he said he did not. On cross-examination, he testified that the Chief of Police, the Captain and Chief of Detectives were all supposed to be in Virginia; that night when they telephoned him to come down, he received his first intimation of a riot, although at two o'clock that morning, he had learned that the Police Department knew of the intended raid in the middle of the day but he had no knowledge of it. A policeman there that evening told him that the police were not to do any shooting and to his knowledge, the police did not use clubs to drive the people back and made an attempt to keep the mob back but only half heartily. The witness does not believe he has ever seen the defendant before and thinks he had on working clothes that night. He saw him again the day he was arrested in the County Jail and shook hands with him and talked with him. He asked him if he remembered the witness being there the night of the riot and t the defend-slit said "No". The defendant denied that he knew the witness at all. The witness does not remember saying to the jailer when he came out that he had nothing on the defendant but says "I might have thought that, possibly.-"

Testimony of Carl Sundberg, State's witness:

The witness testifies that he has been on the police force at Duluth for ten years and was on duty the night of the riot. He was called to headquarters between eight and nine o'clock and when he got there, there was a mob. They had stretched a hose into the police headquarters but were not using it when he arrived. Officer Olson had starred to use a hose

on the crowd and the crowd managed to use their hose between nine and ten o'clock. The witness was inside most of the time and was in the basement when the mob broke down the door leading to the cellroom. Officers Barber and Nesgota (sic) were there. When the witness got into the cellroom, he saw the defendant close to the door where he was going into the cells. The defendant was right in front of the witness and had in his hands a sledge hammer. He raised the hammer up and the witness s looked at him, whereupon he dropped it, then hoisted it again and said to the witness, "Get out of here". The witness got out and the defendant threatened to strip him although he did not do so. He is sure that the defendant is the man.

On cross-examination, this witness testified that he had never seen the defendant before the night of the riot nor since then except two or three weeks ago at the County Jail, where he went for the purpose of identifying him. At that time the defendant was the only man there and the witness did not pick him out of a crowd. He was told that the defendant Stephenson was there and to go there and look at him which he did. He did not recall the clothing worn by the defendant on the night of the riot and says that he was considerably excited that night. He did recall seeing a number of other persons there whom he named. He saw one man making a speech in favor of lynching.

TESTIMONY OF STANS NESGODA, STATE'S WITNESS:

The witness testified that he was a member of the police force and was called to report at headquarters on the night of the riot at 9:30 P. M. At that time, there was a crowd there but no one on the inside of the station. The police had started to use the hose and then the mob turned on the hose at the police and they fought until someone cut the hose , so the police could get no more water. The mob then went into the headquarters and the witness was there when they got in. He did not see the door broken but went back into the cellroom and saw the defendant there. The defendant was around cell No. 5, which is on the left hand side of the corner and was using a sledge hammer in pounding in the door. The witness say him have some trouble with Officer Sundberg. The defendant raised the sledge hammer at Sundberg and was going to hit him. The witness had his gun with him and when the defendant attempted to strike Sundberg with the sledge hammer, he pulled his gun but did not point it at Stephenson. He was sure that Stephenson is the man who had the sledge hammer.

The police were afterwards put out of the cellroom but Lieutenant Barber stayed. The witness saw the defendant working

on the second door on the inside of the jail. He was within a foot of him, but had never seen him before and has not seen him at all since, until the trial. He did not notice the clothes that the defendant was wearing, although he was looking at him for at least two minutes steadily. He knew that the men wanted to take the negroes out as they said so and they were yelling that they would get the negroes. He says that he tried every way to stop them but the crowd gave the police no choice. He had no orders not to use his gun or club. He was under the impression that the defendant had on working clothes but could not remember exactly whether he had on a collar or a hat. The defendant stood up at the trial and the witness claimed he could positively identify him.

LIEUTENANT BARBER- STATE'S WITNESS.

Lieutenant Barber was recalled for the purpose of identifying certain photographs known as Exhibits, A, B, and C, which were pictures of police headquarters showing the cells, doors and windows.

The state rested at this point.

TESTIMONY OF CLARENCE T. LE MASUIER (sic):

This witness testified that he was a married man and lived at 326 East Second Street, Duluth, where he had resided altogether for fifteen years. His business is truck driving and that at the time of the trial was employed by St. Germain Brothers. The defendant Henry Stephenson rooms at the witness's home where he has been a steady roomer for about two years. At about 8:30 on the night of the riot, the witness was down town at the Liberty Theatre which is located between First and Second Avenues about the center of the block on the South side of Superior Street. It is about a block and a half from police headquarters. He had not attended the performance of the theatre but was there on business

and was in the basement talking to a Mr. Carter. When he came up he noticed crowds of people coming from the west. It was quite dark. He stood looking at the crowd for about five minutes and out of curiosity walked behind the crowd to see what was going on and stepped into a cigar store and called up his wife and asked if Henry Stephenson the defendant was there. She replied that he was and he told her to come down town and to bring Stevenson (sic) with her. She came down with Stevenson (sic) and the witness met them between Second and Third Avenues East about nine o'clock. Together they walked to the corner opposite the police station at the Orpheum Building and stayed there for about twenty minutes. They then crossed the street in front of the City Hall. This was about a half hour after the defendant Stephenson came down town. They then stopped there in front of the City Hall until about an hour after Stevenson (sic) came down town and saw the crowd turn the hose on the police. During all that time, the defendant was with the witness and his wife, except when jostled aside by the crowd for a few moments. During all the time, the hose was played, the defendant Stephenson was with this witness and his wife and neither the witness nor Stephenson took any part in the use of the hose on the police headquarters. He saw the police using the hose on the crowd but Stephenson did not participate in any way. While they were still there at the City Hall, he saw the crowd surge out of the jail and up Second Avenue East. At that time he was standing right at the corner of the City Hall. Prior to that he had heard pounding in the jail for about thirty-five minutes. During all that time, defendant Stephenson was with him and in his sight. Stevenson (sic) did not leave him until after the pounding ceased and while they were all there, the crowd surged up Second Avenue with one of the negroes. At the time the crowd started pushing out of the jail and going across

the street, Stephenson became separated from the witness and wife and they did not see him again. He was dressed with a blue suit and a green hat, which was the same outfit that he wore in court. The witness saw the negroes hung but Stephenson stayed with him until after the crowd went up the hill with the negroes. He was jostled aside by the crowd but was home when the witness and his wife reached there. They stood around about an hour after the crowd surged up the hill with the negroes.

The witness testified that he had made a previous statement to some officer in the County Attorney's office which was typewritten, read over and signed by him. This statement was introduced in evidence and marked Exhibit D. It was made a day or so after Stevenson's (sic) arrest. It was substantially ,what the witness told Mr. Brown at the time he made the statement. The witness said that he was hurried at the time he made the statement and was not particular about some of the details; that he came into the office of the County Attorney and was asked several questions and he couldn't swear that all the things that were in the statement were said by him. The officer who took the statement used his own language in writing it down, instead of the language of the witness. He read over some of it but was in a hurry and didn't read it all. At the time he signed it, he did not know its exact contents and it was not read over aloud to him. He also said he did not swear to it.

On cross-examination, this witness testified that he had been married by a civil ceremony two days before the trial but had been living as man and wife with the woman whom he married for about nine years and that they had taken each other for husband and wife by common law marriage and during all that time had been holding each other out as lawful spouse. The statement given by him in the County Attorney's office known as Exhibit "D", recited that he and his wife at no times stood on the Orpheum corner and that they stood on the corner known as the dry cleaners corner as evidence, for ten or fifteen minutes and then went over to the City Hall and there met Stephenson who stayed with them about fifteen minutes after which they lost track of him, that shortly afterwards, they came back to the dry cleaners corner across the street a second time where they saw the defendant again, that after the lynching, the witness went home to get his daughter and that at that time Stephenson had not returned home. The statement also said that the witness saw Stephenson only a few minutes at a time for three times during the evening. The witness testified however that none of these statements just referred to were made by him and he did not know they were incorporated in the statement which he signed; that he signed this statement in a hurry and did not know who the officer was taking the statement nor read it over carefully before he signed it.

TESTIMONY OF JOHN CLARK, WITNESS FOR DEFENDANT:

The witness testified that he was a prisoner, a trusty in the County Jail at the time Stephenson was confined there and that Stephenson occupied cell No. 20 for the first ten days of his confinement. This cell is located on the east side of the jail upstairs.

TESTIMONY OF MRS. LE MASUIER (sic), WITNESS FOR DEFENDANT:

She testified that her husband called her by telephone about nine o'clock P.M., telling her to get the defendant and come down town; the defendant was in the kitchen at the time and was dressed up in the same suit he wore at the trial which was a blue suit and was clean shaven with a white collar on. He wore a green felt hat. He did not wear overalls or a black sateen shirt. She and the defendant went down town together and met her husband on the Orpheum side of the street opposite the City Hall where there was a large crowd. They stayed there about a half hour and then went across to the City Hall side where they also stayed for about a half hour. They saw the crowd turning the hose on the police, and Stephenson remained with them and took no part in using the hose. It was dark during the time they were there. After they had crossed to the police headquarters side of the street, the crowd did not use the hose at all. They heard sounds in the City Hall about an hour after they had arrived. While they were standing in front of it and during all the time, this pounding was going on, Stephenson was with them, except ten or fifteen minutes when he would be separated from them by the crowd. They saw the crowd rush up the avenue with a negro. Stephenson was with them just before the crowd went up the avenue, up until this time they could see him nearly all the time and know that he took no part in handling the hose.

On cross-examination, the witness admitted signing a statement which was typewritten in the County Attorney's office. She read only a part of it and signed it because she was in a hurry to go home for her husband was waiting for her. She says it was nearly eleven o'clock when Stephenson left them the night of the riot.

TESTIMONY OF FLORENCE LARSON, WITNESS FOR DEFENDANT:

The witness works at the Peerless Laundry and rooms at

the Le Masuier (sic) house. She was acquainted with the defendant Stephenson who was in the kitchen with her and her sister and the Le Masuier (sic) girl until about nine o'clock on the evening of the riot. At about that time the telephone rang and Mrs. Le Masuier (sic) asked Stephenson to go down town with her and they left together. He was dressed in a blue suit with a white shirt and collar and was clean shaven. .

TESTIMONY OF ETHEL LARSON, WITNESS FOR DEFENDANT:

The witness is a sister of Florence Larson and rooms with her at the Le Masuier (sic) home. They were together with the defendant Stephenson in the Le Masuier (sic) kitchen from about seven o'clock until nine o'clock on the night of the riot. Stephenson was dressed in a navy blue suit with a green felt hat such as he wore in the court room. He went out with Mrs. Le Masuier (sic) about nine o'clock.

TESTIMONY OF ILDE LE MASUIER (sic)

The witness is the daughter of Mrs. Le Masuier (sic) and is fifteen years of age. She testifies that Stephenson was in the kitchen of their home from about 6:30 o'clock until nine o'clock or later on the evening of the riot. She knew it was after nine because she heard the curfew blow at nine o'clock. Stephenson wore the same suit as he wore in the court room. He was dressed up, and asked her to go to the show with him. It was dark outside and the lights were lit in the house. She answered the telephone when her father called up and asked for her mother who thereupon asked Stephenson to go down town.

with her saying "Something had happened but she did not know what it was".

The suit Stephenson wore was navy blue. She did not see Stephenson after he left the house a again until about fifteen minutes to twelve when she saw him at the corner of Second Avenue East and First Street and went home with him. At that

time he was dressed the same as he was when he left the house.

TESTIMONY OF EARL CONNORS:

The witness is 21 years of age and rooms at the Le Masuier (sic) home. He is a truck driver. He says that Stephenson returned from work about 5:30 and had supper and shaved himself. The witness and Stephenson with the two Larson girls and Ilde Le Masuier (sic) were in the kitchen of the Le Masuier (sic) home about and a half after supper. Mr. Le Masuier (sic) left the house about 5:30 and later called up by telephone. Mrs. Le Masuier (sic) then talked with her hand over the telephone and told Stephenson that she wanted him to go down town with her. After this the witness went down town and was at the police headquarters and saw the negroes taken out of the jail. The door was broken when he got there. He could see the people that were going in and out in the downstairs but not the upstairs. He saw the last negro taken out but did not see Stephenson at all until after the hanging when he saw him about a quarter to twelve and that time Stephenson was dressed as he was before he went down town. He had on a blue a suit such as he wore in the court room and a hat.

On cross-examination the witness admitted that he had signed a statement in the County Attorney's office which he had not read over, although he had an opportunity to read it and was asked to read it. He signed it thinking it was an oath. This statement which was Exhibit "E", had in it a statement to the effect that when Stephenson left the house with Mrs. Le Masuier (sic), he wore his working clothes which consisted of a blue shirt, light-weight material, and gray trousers and a dark green hat. The witness however testified that he had not made this statement and that he did not know it was incorporated in the papers that he signed. He testified that after the hanging he went home sad got Ilde Le Masuier (sic) and

took her down to see the negroes hanging on the pole. It t that t was while they were down there that they saw Stephenson. They met him and went home with him.

THE DEFENDANT STEPHENSON'S EVIDENCE:

The defendant took the stand in his own behalf and testified that he was 34 years of age, born in Iowa, of Irish descent; that he had lived in Duluth between eight and nine years during which time he had worked for contractors most of the time. He had worked for George H. Lounsberry and for MacLeod & Smith. He had worked as a carpenter helper; he also worked driving a truck for Popkin and Bloom & Company, hauling furniture. He was working for Bloom & Company when arrested. He had lived at the Le Masuier (sic) home for about two years where he had a room and did his own cooking. He is unmarried and has four brothers. His mother is not living and his father is living and 81 years of age.

At 5:30 on t he night of the riot, he was home at the Le Masuier (sic) house. He went upstairs, shaved himself, changed his clothes, got his supper, and then spent part of the evening in the house with the Larson girls and Ilde Le Masuier (sic); Earl Connors was also present and Mrs. Le Masuier (sic). They were in the kitchen and the defendant was dressed at the time in the same suit that he wore at the trial and had on a white collar and a white shirt and black stripes. He intended to go to the show and had asked the Le Masuier (sic) girl to go with him. They were going to the Grand Theatre to the second show which begins at 9 o'clock. Before they left the house the telephone rang and was answered by Ilde; she called her mother and afterwards Mrs. Le Masuier (sic) called the defendant and told him that her husband had asked them to go down to Second Avenue right away. He put on the same hat that he was wearing at the trial and they walked down and met Mr. Le Masuier (sic)

between Second and Third Avenues East and Superior Street. They went to the corner of the Orpheum on the upper side of the street shortly after nine o'clock and stayed there possibly a half hour. There was a large crowd on the street and the police were turning the hose on the crowd. Close to the dry cleaners corner which is on the upper side of the street, the Le Masuiers (sic) were there at the time he was there and they were together while the police played the hose on the crowd fifteen or twenty minutes. At about ten o'clock they went across in front of the City Jail. This was after the crowd had turned the hose on to the jail and the defendant took no part in it. He was at least thirty or forty feet from those who had hold of the hose. They stood in front of the City Jail about a half hour or three-quarters of an hour, all of which time the Le Masuiers (sic) were with him; although

the y we re separated a little bit for five or ten minutes at a time, he could see them all the time and they could see him. He heard pounding in the City Jail but never went inside. He never used a sledge hammer on the locks of the jail or at any time threatened Officer Olson, or any one. He does not know Officer Olson or Lieutenant Barber nor talked with them in the City Jail. He does not believe a Lieutenant Barber is the man who came to the County Jail to identify him. He was in cell No. 20 in the County Jail, which is on the east side, until the 14th of August, 1920; to his knowledge, he never saw Lieutenant Barber until he took the witness stand or Lieutenant Olson. He did not threaten to strike any one with a sledge hammer for he never had a sledge hammer on the night of the riot. He did not have on his working clothes any of the time that evening nor was he bare-headed. At the time the negroes were taken up the hill, he was standing at the corner of Second Avenue East by the City Hall and it was about 10:30 that night that he was separated from the Le Masuiers (sic). That was the last he saw of them until he reached home. He is unacquainted

with Lashells and to his knowledge never met him. On the 8th day of August, 1920, between two and three o'clock, he was attending a church service in the jail which lasted until nearly four o'clock and shortly after two o'clock his brothers came to the jail to visit him and were there until after four o'clock. He also testifies that he never saw Natelson until he testified on the witness stand; to his knowledge he had never had any conversation with Barber or Sundberg outside of the cell in the City Jail in which he told him that he was going to help get the negroes or made any statement whatever. He was never kept downstairs in the County Jail where Lieutenant Barber testified he thought Stevenson (sic) was kept at the time he identified him. He never saw Officer Sundberg in his life until the day he was arrested. He was never closer than thirty feet to the City Jail on the night of the riot. His working clothes which he wears when he works, consists of a suit of brown khaki trousers and a blue shirt. He testifies that in talking to Deputy Sheriff Brown just before his arrest that he had made a statement that Mr. and Mrs. Le Masuier (sic) and their daughter could account for him during the whole evening of the riot and he was not out of any of their sight for over twenty minutes.

The defendant rests.

LIEUTENANT BARBER, STATE'S WITNESS;

The witness testified as to hearing sounds of pounding from the front part of the jail where he was stationed. The pounding was in the jail on the first floor of the Superior Street entrance of the big cell door and was also on the Boys' Department between the First and Second floors. The pounding was made by sledge hammers, battering rams and pinch bars. This was about ten minutes after nine and continued until the last negro was taken out, which was around eleven o'clock.

J. C. BROWN, STATE'S WITNESS:

The witness was a Deputy Sheriff of the County and the person who took the statements from Mr. and Mrs. Le Masuier (sic) and Connors. He testified that every one of these witnesses read over the typewritten statements made by him before they signed them and that the statements contained just what the witnesses told him. He testifies to a conversation with the defendant when the defendant told him that Connors came to the house about eight o'clock the night of the riot and said there was a crowd in front of police headquarters and there was going to be something doing and after that he and Mrs. Le Masuier (sic) and her daughter all went down together and stood on the corner of the Orpheum Drug Store until they all went home together.

-23-

CERTIFICATE

STATE OF MINNESOTA

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COUNTY OF ST. LOUIS

I, Mason M. Forbes, do hereby certify, that I am and at all times mentioned in this certificate have been First Assistant County Attorney of St. Louis County Minnesota and in such capacity appeared as counsel for the State at the trial of the case of The State of Minnesota v. Gilbert Henry Stephenson, wherein the defendant Stephenson was convicted of the crime of Riot in the District Court of St. Louis County, Minnesota,

That I have examined the foregoing statement of the evidence used at the trial, which statement has been prepared for use in connection with an application for the pardon of Gilbert Henry Stephenson, and said statement is substantially correct.

Dated April 21st 1921.

Mason M. Forbes

EXHIBIT "B"

The main issue at the trial was the identity of one member of the mob that forcibly took three negroes from the custody of the police in the city jail of the City of Duluth, and hanged them. The State sought to prove that this man was Gilbert Henry Stephenson the defendant. He denied it. If he was the man who took the part claimed by the state he is justly convicted, otherwise the conviction is a miscarriage of justice.

The evidence of the State on the question of identity was that of:

WILLIAM F. LASHHELLS, an engineer employed in Duluth, who was on the scene of the riot from 6:15 p. m.. until after the hanging, and who testified that he did not know the defendant and had never seen him before that night, but saw him that night with the mob using the hose on the police shortly after 8 o'clock and breaking a cell lock with a sledge hammer around 9 o'clock, that he was wearing an overall jumper, and he thought overalls, and a cap. It was dark, and he could not identify any other members of the mob,

NATE NATELSON, of Duluth, member of the mob crowd and under indictment for riot, who on cross-examination repeatedly refused to testify on grounds of self-incrimination, but who was apparently induced by the prosecutor to withdraw his refusal, and who testified he arrived at the scene of the riot at 9:15 p.m., and then saw the defendant handling the firehose against the police, and later trying to break cell locks with a sledge hammer, and who said he had never seen Stephenson before or known him, and that he was dressed in dark blue overalls and working clothes, and that it was 10 o'clock when he first saw him, and who admitted that he was one of the mob who acted as a court to try the negroes and determine their guilt before they were hanged,

OSCAR OLSON, police officer, who did not see the defendant the night of the riot,

J. N. NYSTROM, police officers (sic), who swears he saw Stephenson holding the hose on the police, and that Stephenson was the first member of the mob to break into the jail, who had never seen Stephenson before, could not remember how he was dressed, and when asked at the trial to identify him picked out another man,

LIEUTENANT BARBER, police officer, who said he saw Stephenson in the cell-room pounding on the lock with a sledge hammer, and had a conversation with him, and thinks he had on working clothes that night, and who testifies that the police had orders not to shoot or use their clubs, and only halfheartedly fought the mob although they knew a raid was intended in the middle of the day, and this witness was in the cellroom while the so-called trial was held, and had never seen Stephenson before,

STANS NEGODA, police officer, who identified Stephenson as the man who tried to break the cell-room lock with a sledge

hammer and threatened to strike another officer with it, and who thought the defendant wore working clothes, and who had never seen Stephenson before,

CARL SUNDBERG, police officer, who had never seen Stephenson before, but identified him as the man who tried to strike him with the sledge hammer the night of the riot, although he says he was much excited and does not know what clothes Stephenson was wearing,

The defendant produced as witnesses,

MR. AND MRS. LE MASURIER, at whose home he roomed, and who proved that on the evening of the riot he was at their home until after 9 o'clock in the evening when Mr. Le Masurier called his wife by telephone and asked her to bring Stephenson and come down town. Stephenson had spent the evening in the Le Masurier kitchen with Ilde Le Masurier, a fifteen year old girl, two working girls by the name of Larson, and a young working man named Connor, all of whom roomed at the Le Masurier home. He had come home at 5:30, shaved himself, changed his clothes and had asked Ilde Le Masurier to go to the show with him at 9 o'clock. He wore a navy blue suit white shirt and collar, and green felt hat. He and Mrs. Le Masurier went down town together, met Mr. Le Masurier and the three of them watched the mob until after they took the negroes up the hill to hang them. He was in their sight almost every moment that evening.

ILDE LE MASURIER, CONNOR, and THE LARSON SISTERS, all corroborated defendant's testimony as to the events up until after 9 o'clock in the evening,

LASHELL'S testimony as to the hours when he saw Stephenson and his manner of dress make it quite probable that it was someone else he saw. Aside from the suspicion attached to Natelson's evidence by reason of his interest, and his being under indictment, his description of the man he thought was Stephenson makes it clear that it could not have been Stephenson. Natelson himself was a member of the mob court who tried the negroes. His evidence should, not be weighed heavily.

Aside from Lashells and Natelson, the state's case rests on the testimony of the police officers who violated their oaths and practically made no objection to the outrage perpetrated, even admitted that they used neither clubs nor guns, and only objected half-heartedly. Of these, Nystrom identified the wrong man, and the others gave wrong description of his clothes, and their evidence is open to grave suspicion.

The defendant produced the only people with whom he spent the evening, and there is no reason to discredit their evidence. Unfortunately the people with whom he roomed had not been married by a civil ceremony, although they were unquestionably man and wife by common law. This feature brought out at the trial could not but act to the disadvantage of the defendant, although it really was no just ground for depriving him of the value of their testimony.

The public feeling of humiliation among thoughtful citizens at the outrage of the lynching, which indeed appears to have been dwelt upon by the prosecutor in his argument to the jury, might well have created an atmosphere such as to deny Stephenson the benefit of a fair trial. In the reaction

Minnesota. Board of Pardons.
Gilbert Henry Stephenson: Application No. 5151.
Pardon Application.
File no. 5151, 1921.
Application [Transcript].

33

-2-

caused by the outrage, good citizens might find it difficult to properly weigh the evidence so as to give the defendant a fair trial. Under ordinary circumstances the defendant would have been given the benefit of the doubt which certainly existed. To justify his conviction the doubtful evidence of the very officers who were responsible for the crime must be believed, and the testimony of one of the self constituted judges of the mob trial is given greater weight than the credible evidence of the defendant and his witnesses.

There is reasonable doubt that the defendant was guilty. He bears a record of industry and frugality, and has worked his way since a small child upward through honesty and faithful service. He has no criminal record. These things ought to avail him something in the hour when he's stands charged with crime. No proper weight was given them by the jury who tried him.

For the foregoing reasons, which will be found to be fairly taken from the record, the applicant insists that just grounds exist for the pardon of Gilbert Henry Stephenson.