

THE UNITED STATES SUPREME COURT DEFIED

The Murder of Ed Johnson

TY GOODWIN LOOKS AT THE ONLY CRIMINAL CASE TO BE HEARD BEFORE THE UNITED STATES SUPREME COURT

The thick brace of clouds that hovered over Chattanooga, TN, on the evening of 19 March 1906, threatened yet another round of rain for the city, but Ed Johnson was not thinking about the weather. Three stories below his cell at the Hamilton County jail, the forces of his fate were beginning to stir. A faint rumble of voices grew into a riotous din of hammer blows and shouts as a mob of citizens began working against the locks and heavy metal doors that secured the building. There were no deputies present to stop this attack on the jail because Sheriff Joseph Shipp inexplicably sent his men home earlier that evening. Only one officer, the elderly Jeremiah Gibson, was left to stand watch. This was odd, especially given the local unrest resulting from the stay of execution issued for Johnson by the U.S. Supreme Court the previous day. Chattanooga had been incensed by this interference from the powers in Washington, DC. Their local courts had found Johnson, a black man, guilty of the assault and rape of Nevada Taylor, a young white woman. They didn't need the federal government to tell them how to administer justice in their town.

The stay of execution was itself noteworthy. The U.S. Supreme Court was historically not inclined to become involved in state-court criminal cases, but Associate Justice John Marshall Harlan had granted an audience to Noah Parden, a prominent black Chattanooga attorney who had filed a petition under the Habeas Corpus Act, which allowed state defendants to appeal to federal court in certain situations. Parden, who along with fellow black attorney Styles Hutchins, had been tasked with appealing Johnson's guilty verdict, knew that such a petition was a long shot given the federal court's reluctance to become involved in state matters. He did not waste his opportunity with Justice Harlan,

making a compelling argument that Ed Johnson's rights had been severely infringed and as a result, he stood to lose his life for a crime he did not commit. Harlan agreed and took the petition to the other Supreme Court justices who unanimously voted to review the case. Justice Harlan immediately issued the stay of execution pending the Court's review. It was this order that incited the horde of enraged citizens who now gathered at the jail in Chattanooga to take matters into their own hands.

When the mob finally broke through to his cell, Ed Johnson met his fate with quiet dignity. He made no attempt to resist his assaulters as they cursed him and tied his hands. A reporter for the

Chattanooga News wrote of the moment: "The prisoner was the calmest person in the jail. Not a quiver of the lip or utterance of a sound betrayed the slightest terror." Johnson's attackers dragged him out of the jail and marched their prize to nearby Walnut Street Bridge. Several men worked to loop a length of rope around the girders high overhead before slipping the noose at one end around their prisoner's neck. Just before he was lifted into the air, Ed Johnson looked into the seething mass of angry faces and uttered his last words – "God bless you all. I am innocent."

The justices were stunned when word of the execution reached them the following day. The explicit orders of the United States Supreme Court had been utterly disregarded and an innocent man had perished. Vigilante law had carried the day, instigated, or at least permitted it seemed, by local law enforcement. Speaking to a Washington Post reporter, Justice Harlan expressed his disbelief – "whether guilty or innocent, he had a right to a fair trial, and the mandate of the Supreme Court has for the first time in the history of the country been openly defied by a community."

Outraged, the justices moved swiftly, consulting with President Theodore Roosevelt and federal

authorities to determine the next steps. President Roosevelt did not mince words, stating that the actions of the citizens of Chattanooga were “an affront to the highest tribunal in the land that cannot go by without proper action being taken.”

Although U.S. Attorney J.R. Penland, whose jurisdiction included the Eastern District of Tennessee, was confident that the federal government had the power to bring contempt charges against Johnson’s assailants, the justices themselves weren’t so sure. The Court announced that prior to proceeding with the contempt case against Shipp and other defendants, a hearing would be held to determine definitively whether the Supreme Court did indeed have legal jurisdiction. In this preliminary session, Solicitor General Henry Hoyt, speaking for the U.S. government, argued powerfully in the affirmative. Hoyt stated that although the Court historically had rightly refused to intervene in most state matters, the justices still maintained the power to step in when the egregious facts of a case required it. Hoyt also noted “*This is the first time in the history of the country and of the Court that an order of the Court has been disobeyed and its authority condemned.*” The Court, Hoyt argued, had every right to vindicate its authority in the face of such brazen contempt.

Presenting the other side of the issue was Judson Harmon, a Cincinnati attorney hired by Sheriff Shipp as his defense lawyer. Harmon asserted that there was no evidence to show that Ed Johnson’s constitutional rights were violated, and he thus had no legal right to appeal to the Supreme Court. Since he did not have this right, Sheriff Shipp and the other defendants could not possibly be charged with contempt. The justices, however, were not impressed

with Harmon’s position and sided with Hoyt, stating “... *this court, and this court alone, has jurisdiction to decide whether the case is properly before it ... and has authority to make orders to preserve existing conditions, and a willful disregard of those orders constitutes contempt.*” Accordingly, the first and only criminal trial to ever be heard before the United States Supreme Court would proceed.

Because the Supreme Court is an appellate court, the justices would not hear witnesses on the case against Sheriff Shipp and the other 26 defendants. All testimony would be heard in a separate trial in Chattanooga. James D. Maher, a deputy clerk of the Supreme Court, would preside over this hearing and then present a final report to the justices, who would review this summary and render a decision.

The historic proceedings commenced on Tuesday, 12 February 1907, in a packed courtroom. The prosecution team, led by Assistant Attorney General Edward Terry Sanford, called their first witness and began building the case that not only did Sheriff Shipp and his deputies know that a lynching would likely occur, but they actively stood down to allow it to happen. Witness after witness confirmed the prosecution’s assertion that tensions were high in the city as a result of Ed Johnson’s stay of execution. Sheriff Shipp, they stated, should have been aware of the likelihood of a lynching attempt. The anger brought about by the stay was widely known and discussed throughout the city. Even witnesses friendly to the sheriff acknowledged that a lynching attempt should have been expected given the local unrest. Other witnesses, familiar with the jail and the deputies who worked there, likewise confirmed that it was highly unusual for the jail to

be manned by a single deputy. Testimony revealed that deputies used the jail as a place to socialize and often spent the night there. Overall, the prosecution called 31 witnesses to support their contention that Shipp clearly knew the lynching would occur and had purposely left the jail undefended.

The defense, led by Harmon and Chattanooga attorney Robert Pritchard, worked hard to discredit the prosecution’s witnesses through cross-examination and by bringing in witnesses of their own to vouch for the integrity of the men on trial. The defense called family members, friends and business associates of the defendants to speak to their impeccable moral integrity and, in most cases, provide alibis. Almost all the defendants claimed to be nowhere near the bridge or the jail on the night of Ed Johnson’s murder, even though witnesses for the prosecution had positively identified several of them as active participants. Those who did admit to being present stated that they were merely observers and did not participate in the lynching itself.

Shipp in his testimony maintained that neither he nor his deputies had any reason to anticipate trouble. Upon cross-examination, Shipp acknowledged he had been called to the jail as the mob was gathering, but stated several men threatened him when he arrived at the scene. He asserted he was powerless to act against such a large crowd. Each of Shipp’s deputies also took the stand for the defense and likewise claimed no prior knowledge that a lynching would likely take place. Each deputy also denied being present at the jail or the bridge that evening. After calling their army of witnesses to counter the prosecution, the defense rested on 29 June 1907, to complete the evidentiary phase of the trial.

Maher submitted his final official report of over 2,000 pages for the justices to review. Before the review began, it was decided that charges against 17 of the 27 defendants would be dropped due to lack of evidence. After hearing final oral arguments from each side before rendering verdicts on the remaining defendants, the justices spent several weeks reviewing Maher's report. On 24 May 1909, the Court held an open session to render the verdicts.

Chief Justice Melville Fuller presented the court's opinion, noting that the justices found Shipp's assertion that he did not anticipate a lynching attempt to be absurd. The court further felt that it was clear that Shipp and the members of the mob, including Shipp's deputies, clearly resented the stay of execution for Ed Johnson. *"The assertions that mob violence was not expected and that there was no occasion for providing more than the usual guard of one man for the jail in Chattanooga are quite unreasonable..."* Fuller stated. *"Only one conclusion can be drawn from these facts, all of which are clearly established by the evidence – Shipp not only made the work of the mob easy but in effect aided and abetted it."* In a 5-3 decision, the justices found Sheriff Shipp and five other men guilty of contempt.

On 15 November 1909, Shipp and the other defendants again appeared before the justices for sentencing. Sheriff Shipp and two of his co-defendants were sentenced to 90 days in prison. Three other defendants were sentenced to 60 days. They would serve their time in the federal prison in Washington, D.C., although none of the defendants would serve the full lengths of their sentences. Upon his early release, Sheriff Shipp returned to Chattanooga to a hero's welcome. Over 10,000 citizens greeted his train as it entered the station, and a monument was later erected to honor him. He never again held the office of sheriff but was appointed to several state positions by governors in his later years. Noah Parden and Styles Hutchins never returned to Chattanooga after receiving numerous threats against their lives. Nevada Taylor never recovered from the trauma of her



Ed Johnson's grave stone at Pleasant Garden Cemetery in Ridgeside, Tennessee.

ordeal and died in Ohio on 14 May 1907, at the age of 23.

Today, the case continues to be the only criminal case to be heard before the United States Supreme Court. It is an important catalyst for the federal court system's increasing willingness over the following decades to assert its authority in state cases to protect the rights of defendants when necessary. The great Supreme Court Justice Thurgood Marshall, when interviewed by *Contempt of Court* author Mark Curriden about the case, stated "The import of the Sheriff Shipp case on the federal court's authority over state criminal cases should not be underestimated." *Hm*

NOTE: The definitive resource for this case is *Contempt of Court – The Turn of the Century Lynching that Launched a Hundred Years of Federalism* by Mark Curriden and Leroy Phillips, Jr. This book was the primary source for this article and is highly recommended for those interested in the full story of this remarkable episode in history).



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