

At the Police Commission, Acting Sergeant Michael Toomey gave evidence of his questioning of Day on the morning of 30 December 1898.

Part of his evidence follows:

Acting Sergeant Michael Toomey, of the C.I. Branch, deposed to going to Gatton with Inspector Urquhart.

Several men's names were mentioned as being suspected, and he was engaged in locating them on the night of the murder.



Q. Tell us first about Day. When did you first hear about him?

A. I found out about him myself.

Q. In what way?

A. I called at Clarke's on the morning of the 30th.

Q. Without having heard anything-or any rumours?

A. Without having heard anything at all. I made inquiries to ascertain if anybody was seen about. That is to say, after making a search in the paddock round the scene of the murder in company with a black tracker. I do not know who I spoke to first at Clarke's. I asked if there were any strangers there and was told "Yes; a man had been hired here about a fortnight ago." I inquired where he was and was told. I went to see him. It was the man Day. I said to him "Terrible affair up here (meaning the murders). Do you know anything at all about it?" "No," he said, "I never heard anything." I said, "Where were you on the night of the murders?" "Well," he said, "I was about; I was in bed. I had tea at seven o'clock. I usually have tea in the evening, at that time. I left the kitchen and went to bed." I said, "Did you not go out after that?" He said "No." I said, "You are supposed to have been seen on the road." He said, "No, I was not." I said, "Who saw you go to bed?" He said, "I do not know anyone did. I am fond of reading. I went into my room. I read for a little and went off to sleep." I said, "Didn't you hear anything at all during the night?" He said "No." I said, "That is very strange. This girl in the house heard screams and reports of firearms."

Q. (By Mr Sadleir) The girl Lowe?

A. The girl Theuerkauf who was in the employ of Clarke at the time.

Q. (By Mr Dickson) How far away would he sleep?

A. About fifty yards [*forty-five metres*]-not that; but it would make a great difference, because she had the back door open and was not in bed. She got up to put some cats out, and she would have every opportunity of hearing what was going on. I inquired where he came from, and he said he came from Brisbane. He came over from Sydney in a boat, but came from Brisbane by road. He got hard-up, and Mr Clarke employed him. He said he thought he was not going to stay there long. I said, "How is that?" "Oh," he said, "Clarke is a man who never keeps

anyone long, I am told, and I do not care for the place." I said, "Would you mind me having a look through your room?" He showed me into his room. I looked through everything. There was very little, just a singlet or two, two blue jumpers, I think two pair of pants, a couple of straps, and a blanket. I looked through his clothes, and examined them very carefully. I found that, just about here [*pointing to a spot on the inner side of the arm, near the elbow-joint*], on the right sleeve of a blue jumper, a patch of blood. The blood was perfectly dry. It did not appear to me to be very recent-any way, at the time. I never said anything, but passed it over, until I had everything examined. I turned the sleeves of the jumper inside out to see if there was blood inside, and I found none. I said, "How did you get this blood on your jumper?"

Q. What size was the patch of blood?

A. Quite small; it would not be an inch square [*twenty-five mm square*] by any means. I said, "How do you account for this blood?" and he said, "Well, I was down at the yard one day, and got wet, and I only have two jumpers. I put on that one, and I then took meat into Gatton and I must have got it off the meat."

So I said "Who saw you wearing this jumper on that day?" and he said "Mr. Clarke did." I then made a thorough search of the premises where he was, and of the lofts overhead, underneath, and a boiler, all round the place, and under the boards, and found nothing that would arouse my suspicions in any way, with the exception of this one patch of blood, and I thought that was a very natural thing for a butcher to have on his clothes. I then went and saw Mr Clarke, and said to him, "Is it a fact that this man was wearing a new jumper?" In fact I brought Day with me, and the jumper, which I took away again after showing it to Clarke. I said, "Do you remember Day wearing that jumper any day last week?" and I think I mentioned Friday or Saturday. I said, "Do you remember Day getting wet and changing the jumper which he had on?" He said, "Yes, I do remember he was wearing it at the slaughter yard." I said, "Was he taking meat into Gatton that day?" and he said, "Yes." I did not take possession of the jumper. I did not think there was any need. In fact I do not think so now. I then said to Clarke, "What clothes did Day bring with him?" and he said, "I saw him when he came. There was only a swag, and I think he had only a singlet or two, a shirt or two, a couple of pairs of trousers, and a couple of jumpers, as far as I could see, but I think he got a few articles in Gatton since then." He said he had given him some money and he had bought a few little articles in Gatton. I then asked Clarke what kind of a man Day was, and he told me he appeared to be a very quiet fellow. I asked him if there were any firearms in the place that would carry a .380 cartridge, and he said, "No." I asked him if Day had any firearms, and he said, "No"; and in fact I made every possible inquiry to satisfy myself.

Q. Did you ask Day who he associated with?

A. He told me he had no associates.

Q. Did he talk about Cox?

A. Cox was not there at the time.

Q. *(By Mr Garvin)* Was he cool and collected?

A. Perfectly cool and collected.

Q. There was nothing to indicate that he was insane?

A. Oh, no: nothing whatever.

Toomey was then asked three questions by a member of the Commission.

Q. *(By Mr Dickson)* You said to Day, "You are supposed to have been seen on the road"?

A. That is what a man in my line of business would say. I wanted to get a clue.

Q. Did you tell him anyone had seen him on the road?

A. No. In fact, nobody had seen him as far as I then knew. I tried to get him on the road.

Q. You had not been told that he had been seen on the road?

A. No. I had heard nothing of his being on the road, but a man in my line of business has often to tell a lie.

Toomey was further questioned by the members of the Commission regarding Day:

Q. *(By the Chairman)* Did Day tell you where he was born?

A. I never asked him.

Q. Or why he came there?

A. I never asked him.

Q. You made no inquiry into his antecedents?

A. All he told me was that he had come from Brisbane, and had swagged it along the road. I was perfectly satisfied after what Clarke had told me; the blood on the jumper was natural enough, he being a butcher.

Q. *(By Mr Garvin)* Did he appear to be in any way frightened?

A. No, he was perfectly cool and collected and quiet.

Q. *(By Mr Dickson)* Did he tell you he had been working for a man named Wilson, in New South Wales?

A. That was some time after. I was present when his statement was taken, and heard that.

Q. Was his statement correct according to what he had told you before?

A. Yes; but I did not ask him if he had been working for a man in New South Wales.

Q. *(By Mr Sadleir)* Was there anything inconsistent with his former statement?

A. There was nothing inconsistent about it.

Q. (*By Mr Garvin*) When did you first hear that he was supposed to be the man at the sliprails?

A. On that very afternoon.

Q. Go on and tell us.

A. I do not know who told me; but, however, I was told that afternoon that young Carroll saw a man—that he and his mother were near the Murphys when they passed the sliprail, saw a man as they passed by, and had a good view of him. I saw young Carroll that afternoon. Asked, "Were you at the Mount Sylvia races?" He said, "Yes." I said, "What time did you come in?" and he told me. I said, "Did you see the Murphys?" and he said, "Yes, we passed them." I said, "Did you see a man when you passed the sliprails?" and he said, "Yes." I said, "Can you give a description of him?" and he told me his height and the hat he was wearing, but he said he did not see his face, so I said, "Did your mother see him?" and he said, "Yes." I said, "Do you think he was anything like Clarke's man?" I mentioned the man to him at the time, and he said, "Yes; I told my mother that I thought it was Clarke's man." I think if you turn up my statement you will find that I mentioned the matter to him, but he never said anything to me about the man being Clarke's man until I mentioned it.

Q. (*By Mr Dickson*) Did the description of the clothes he was wearing correspond with the clothes that Day was wearing?

A. I asked him how the man was dressed, and he said he might have been wearing a shirt, or he might have been wearing a coat, or he might have been wearing a jumper. I said, "Was he wearing a jumper like the one Clarke's man had on?"

Q. Did you mention the colour?

A. Yes; I told him a blue jumper, and he said he thought it was a blue shirt or a blue jumper.

Q. (*By Mr Garvin*) Did you ask him if he could identify him?

A. Yes, and he said he could not. I would have been only too happy at the time if he could have given me a clue.

Q. (*By Mr Dickson*) Did he say what sort of trousers he had on?

A. He did not.

Q. Did he say what kind of a hat?

A. Yes, a grey slouch hat.

Q. Did that correspond with Day's hat?

A. Day had a hat of that description.

Q. Did you ask him about the trousers?

A. He said he did not know.

Q. (*By Mr Garvin*) Was it immediately after they passed that he said to his mother, "That is Clarke's man"?

A. That is what he told me.

Q. Did you ever hear that that boy had said on the ground before the bodies were removed, "The man I saw at the sliprails on the night of the twenty-seventh was Day?"

A. No, I did not. I may state that this boy is a boy who, I believe, will tell a yarn as other boys will. He might tell a civilian whom he met in the street that it was Clarke's man, or some other man, he saw at the sliprails, but when he came to be tested by the police he would not say in any shape or form that it was Clarke's man.

Q. Did you question Mrs Carroll?

A. Yes.

Q. What did she say?

A. She said she did not know the man, but that her son had told her that he thought it was Clarke's man.

Q. She could not describe the man or give any idea of his age?

A. No; I tried her very hard on that point.

Q. (*By the Chairman*) If the boy was right, Day lied when he told you that he was in bed?

A. If the boy was right, certainly.

Q. (*By Mr Garvin*) Could the boy in any way be deceived in the two men, Day and Burgess?

A. I cannot possibly see how he could, for Day and Burgess are as different from another as chalk is from cheese.

Q. Were they different in height?

A. Yes.

Q. And in other respects?

A. Yes, Day was a different man altogether, a man fully 5 feet 9 inches [175 cm] or 5 feet 10 inches [178 cm] in height.

Q. Was he a young man?

A. Yes.

Q. What age would he be?

A. About twenty or twenty-one; he was quite a young, overgrown fellow.

Q. What sort of a fellow was Burgess?

A. He was a man of over forty years of age.

Q. What build would he be?

A. He was thick set, and about 5 feet 6 inches [168 cm] high.

Q. (*By Mr Dickson*) Had Day a beard when you saw him?

A. No, he could not grow a beard; he had only what is called "cat's hair" on his face; nothing more.

Q. Did you find out that he had bought a razor, and had had a shave?

A. Yes, I heard all about that-that he bought a razor at Smith's, at Gatton.

Q. Was it necessary, do you think, for him to shave?

A. Of course, a man having a little overgrowth of hair on his face might do anything with it.

Q. *(By Mr Garvin)* You say he left Clarke's shortly afterwards?

A. It was some time after.

Q. How long after?

A. I cannot say exactly, but it must have been ten days after.

Q. Do you know where he went after that?

A. He went to Toowoomba by rail. He told me he had had a row with Clarke, and was going to leave him. I asked him where he was going, and he said he was going up the line looking for work.

I asked him if he would call at Toowoomba and see if he could identify Burgess as the man he had seen between Brisbane and Gatton. He said he would, and I spoke to Inspector Urquhart about him, and got him a free railway pass for that purpose.

Q. Where did he go after leaving Clarke?

A. To Toowoomba.

Q. How long did he stay there?

A. I don't know.

Q. Did he eventually join the military?

A. I heard so.

Q. You cannot say of your own-knowledge?

A. No.

Q. You had long conversations with him?

A. I had.

Q. And you questioned him on all those occasions?

A. I spoke to him about nothing but the murder every time I met him.

Q. You were satisfied in your own mind that he had nothing to do with the murders?

A. Yes, and I will go further, and say that after the boy Carroll had made that statement, although he would not say it was Day he had seen at the sliprails, yet we did not fail to examine the matter thoroughly. Sub-Inspector Galbraith, Sergeant Johnson, myself, and another man went out and watched Day's hut at night. We remained about four or five hours, and we took him by surprise between one and two

o'clock in the morning. He had on a portion of his clothes when we entered the room; I think he slept in his pants. We told him that we required him to go to the police station. He said, "What for?" We told him in connection with the murder. He said, "All right." He seemed quite cool and not a bit flurried. We brought him into Gatton, and he conversed all the way. We kept him at the station till the following morning. I may tell you here that at the time I first visited him I examined him so far as his hands and face—that is, the visible portions of his body—were concerned, to see if there was any scratch or mark on him, and saw only just a little scratch on his arm. At the station he made the statement, which has been referred to in this inquiry, and we had him stripped and examined, but found no signs of any marks on him.

Q. When did you first show him to the boy Carroll?

A. Carroll saw him every day and knew him well.

Q. You gave him an opportunity of having a good look at Day?

A. Yes. I was with Carroll one day when Day was passing with some meat to the shop. I said, "Here is Day now." He said, "What do you think of it?" He said, "Look here, I could not say."

Q. Well?

A. Of course, I was testing him every time I came across him to see whether he would come to the conclusion that it was Clarke's man he saw at the sliprails, but I did not press him, as I did not want him to mislead me.

Q. (*By Mr Unmack*) Did it not strike you that the boy might have been put up to denying the identification of the man, so that he should not be mixed up in a matter of that kind in a small place like Gatton?

A. No, I think the boy would have come forward and told us if he had known the man, as the mother was so anxious about the matter, and was a great friend of the victims.

Q. (*By Mr Garvin*) Did you ever ask him whether he had said to his mother that it was Clarke's man?

A. I did, and he said it struck him that it was Clarke's man.

Q. (*By Mr Dickson*) But he still persists in saying that he thinks it was Day?

A. He does, but I do not know how he can after picking out Burgess.

Q. Still he does say so?

A. I have related to you what he stated to me. If he had said that he was pretty certain, or pretty sure, or strongly believed that it was Clarke's man, I should not have missed the opportunity, but he would not say that in any shape or form.

Q. (*By Mr Garvin*) Did you ask him if he knew McNeil?

A. I did, and he said "No."

Q. Did you ever point McNeil out to him?

A. No, I did not; but I think he must have seen him, because McNeil was about the road and in Gatton every day.

Q. Did you ever on any occasion ask this boy if he had seen McNeil at all?

A. Oh, yes.

Q. What did he say?

A. I asked him if it was McNeil he saw at the sliprails, or was the man anything like him, and he said he could not say.

Q. Did he say he would know McNeil if he saw him?

A. No, he did not.

Q. Did you ask him that question?

A. I asked him so many questions that I could not say.

Q. Could the boy make a mistake between McNeil and the man Day?

A. I do not think he could make a mistake in the two men.

Q. I mean, could he mistake the one for the other?

A. I do not see how he could. He never could tell who the man was he saw at the sliprails.

Q. However, you put it point blank to him if it was McNeill?

A. I am. certain I did.

Q. And he said "No"?

A. Yes. I may also say that I examined at Clarke's place thinking anything would be burned or done away with. There was a boiler there, and I rooted out the ashes with a stick and examined them. I went down to the slaughter yard and examined everything where the cattle had been killed. There was also a revolver there, hanging up on the verandah of Clarke's house, but it was .340 bore. I asked Clarke whether he had any cartridges, and he said he had. He brought out the box, and I got him to count them. He did so, and said that he did not think any were missing. I think he also had a double-barrelled breech-loading gun.

Q. (*By the Chairman*) What were the cartridges?

A. .340 bore, I think.

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