



THE STATE OF KANSAS V. WILD HOG, ET AL.

TODD D. EPP

MUCH HAS been written concerning the desperate flight of the Northern Cheyenne in 1878 from their reservation in Indian territory, through western Kansas and Nebraska, and their return to their ancestral hunting grounds. The problems leading to the Cheyenne outbreak, the trek through miles of hostile territory, the commission of murders in Kansas, and the Cheyennes' capture and re-escape from Fort Robinson, Neb., have been studied at length in various books and articles such as Marie Sandoz' *Cheyenne Autumn*. However, most of these sources only give perfunctory treatment to the murder trial that took place after the Indians' subsequent capture. This article will attempt to document with newspaper stories, eye-witness accounts, and recently examined court records, the story concerning the first-degree murder trial of Wild Hog, Run Fast, Frizzly Head, Young Man, Old Man, and Crow (Wild Hog, et al.).

Title-page photo: In September, 1878, more than 40 settlers in western Kansas were killed by a band of Northern Cheyenne Indians who had fled from their reservation in Indian territory to return to their ancestral hunting grounds in the north. The Indians, led by Dull Knife and Little Wolf, were captured and six of the tribe were subsequently charged in Kansas courts with first-degree murder. In the photograph, seven of the Indians in Dull Knife's band are seated in front of the Dodge City courthouse with George Reynolds, an interpreter. Wild Hog, named with five others in the case that was finally dismissed in Douglas county in October, 1879, is seated at Reynolds's right.

The first order of business, at least as far as the people of western Kansas and Gov. George T. Anthony were concerned, was getting the Northern Cheyenne from the military authorities in Nebraska to the civil authorities in Kansas. However, there seemed to be some problem concerning the extradition process when it involved Indians. Kansas authorities believed that there was a precedent of turning over Indians to civil officials for prosecution based on a court decision in Texas in 1872 over the Indian chief Satanta. In a letter to the War Department in Washington, Governor Anthony wrote:

On mature reflection, and with reference to the demands of law and justice, I feel it an imperative duty to call upon you for a surrender to the proper officers of the civil court of Kansas, for trial and punishment under its laws, the principal chiefs, "Dull Knife," "Old Crow," "Hog," "Little Wolf," and others, whose identity can be established as participants in the crimes of murder and woman ravishing. I believe there is a precedent for this demand, in the surrender to the civil courts of Texas of "Satanta," and one other chief, in the year 1872. But if there is no precedent, public necessity and simple justice would, I believe, be ample justification for this demand.¹

On December 31, 1878, Maj. Gen. John Pope

1. "Marking an Epoch—The Last Indian Raid and Massacre," Kansas State Historical Society, *Eighteenth Biennial Report, 1910-1912* (Topeka: State Printing Office, 1913), pp. 29-30.



Dull Knife, *above right*, and Little Wolf, *left*, chiefs of the Northern Cheyenne, led the flight of their people north across Kansas and Nebraska from the Cheyenne and Arapahoe agency, Indian territory. From White Tail creek in Nebraska the chiefs took separate routes north toward the Yellowstone river. The U.S. army in pursuit captured Dull Knife's band on Chadron creek in Nebraska in October, 1878. Little Wolf's band was captured farther north in March, 1879. In the photograph above several of Dull Knife's band are shown after their capture in 1879.

wrote Anthony that the army would turn over the Cheyennes suspected of murder and other crimes in the raids that occurred the previous September to the Kansas authorities. However, Pope did add a note of sympathy for the Cheyennes who had been held for months in the Nebraska snow and cold:

As it is desirable not to keep these Indians here longer than necessary, I have to request that such persons as may be needed for the identification of the criminals be sent to meet the Indians on their arrival here.²

It is probably with some reason that Pope wanted just the "culprits" taken to trial rather than all of the Cheyennes in the outbreak party. In the murder charges issued from Ford county for the murder of rancher Washington O'Connor, a very open-ended warrant was issued.

The State of Kansas, Plaintiff, versus Dull Knife and one hundred and fifty Cheyenne male Indians, commonly known as Warriors, whose names are each unknown and cannot be given. . . .³

Finally, in February, 1879, the Cheyennes were returned to Fort Leavenworth⁴ where a Dodge City posse headed by W. B. "Bat" Masterson was waiting to take the Indians back to Dodge City. However, it was the Cheyennes who drew the interest, not the more famous lawman. The Dodge City *Times* lamented: "The Sheriff of Leavenworth county and the Marshal and Mayor of Lawrence [Leavenworth?] were more eager to pay homage to the stinking savage rather than to render assistance to the officers."⁵

This notoriety followed the Cheyennes to Dodge City, where they were to be tried for murder. According to Dennis Collins, a self-proclaimed "expert" on Indians who visited the Cheyennes while they were in jail in Dodge City, notoriety had followed them westward to the scene of the crime.

I called upon these notable characters while they were supposed to be in durance vile, and found them the most conspicuous and best entertained men in prison. The representatives of different illustrated newspapers were there, sketching their pictures, and treating them to cigars. It was certainly a very novel sight to me, and I thought it strange that the citizens of Dodge City had not formed a necktie

party for the entertainment of the whole party of savages. . . . I came to the conclusion that Dodge City was a very law abiding city. . . .⁶

IN JUNE of 1879 Wild Hog, Run Fast, Frizzly Head, Young Man, Old Man, and Crow were formally indicted for murder in the first degree of Washington O'Connor.⁷ They were represented by Salina attorney J. G. Mohler. Representing Ford county was Mike W. Sutton, county attorney. According to the Dodge City *Times*, Sutton was the man to prosecute and win revenge for the whites' deaths: "The examination will be conducted by County Attorney M. W. Sutton, whose recent successful prosecutions have been the admiration of a law-abiding people and a terror to evil-doers."⁸

Before the "terror to evil doers" had a chance to bring the Indians to justice, Mohler petitioned Judge Samuel R. Peters for a change of venue, charging that Peters was "prejudiced against the said defendants." Mohler stated that "during the time of that said Judge has been on the bench he has been in close social contact with the people of his district," and that the Indians were incapable of having a "fair and impartial trial before him in said District." Mohler also said his defendants could not have a fair trial in two other judicial districts, the 13th and 14th, before Judges N. D. Campell and E. B. Peyton.⁹

Filing in amicus for the county were "Bat" Masterson and a less-famous person, A. J. Peacock. Masterson stated that he did "not believe there exists any prejudice against any of the above named defendants."¹⁰ Peacock also expressed his view that Judge Peters could neither entertain "malice, ill will, or prejudice against any of them [the Cheyennes]."¹¹

However, this support did not sway Judge Peters, and he granted a change of venue to

6. Dennis Collins, *The Indians' Last Fight, or the Dull Knife Raid* (Girard: Press of the Appeal to Reason, 1915), p. 261.

7. Indictment for murder in the first degree, state of Kansas, county of Ford *v.* Wild Hog, *et al.*, June term, 1879, filed September 6, 1879, CR 663, in office of Douglas county clerk of the district court.

8. Dodge City *Times*, February 22, 1879.

9. Petition for change of venue, 9th district court, Ford county, filed June 25, 1879, CR 663, in office of Douglas county clerk of the district court.

10. W. B. Masterson, Ford county affidavit on application for change of venue, filed June 25, 1879, CR 663, *ibid.*

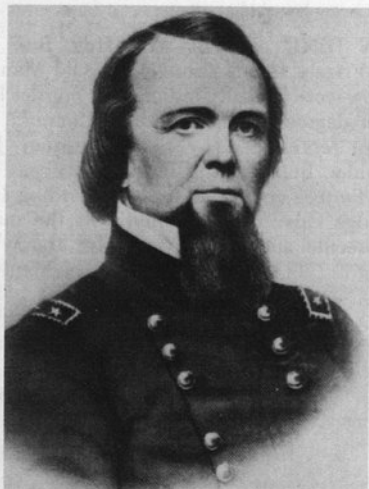
11. A. J. Peacock, Ford county affidavit on application for change of venue, filed June 24, 1879, CR 663, *ibid.*

2. *Ibid.*, p. 30.

3. Complaint for murder in the first degree, Ford county, Kansas, filed September 6, 1878, issued January 15, 1879, Criminal case 663 (CR 663), in office of Douglas county clerk of the district court, Lawrence.

4. "Marking an Epoch—The Last Indian Raid and Massacre," p. 30.

5. Dodge City *Times*, February 22, 1879.



Maj. Gen. John Pope (1822-1892), *left*, commander, Department of the Missouri, and Col. Nelson A. Miles (1839-1925), *right*, Fifth infantry, U.S. army, were among 40 persons subpoenaed by the defense in the trial of six Northern Cheyenne Indians for the murder of a western Kansas rancher in a raid in September, 1878. General Pope, war-hardened after long engagement with the Indian problem, was nevertheless sympathetic and insightful into the Cheyennes' dilemma when he replied to Governor St. John's letter asking for extradition of the Indians.

Douglas county,¹² saying that he always granted such changes of venue when requested. Apparently the change of venue sapped the western Kansans' confidence in getting a conviction. The *Ford County Globe* decried the decision in the following manner:

This is generally considered to be the last of the Indian farce. The prospect for convicting them at this term was not very flattering, even at this distance from the scene of the outrages. Now that they are allowed to be taken three hundred miles away all hope of conviction is lost.¹³

Even an eastern Kansas paper, the *Atchison Daily Champion* carried a letter from a western Kansan, E. C. Towe, who wrote:

This [change of venue] makes the case hopeless, so far as justice and punishment is concerned. . . . This mode of judicial procedure in the case of the Cheyenne Indian murderers is equivalent to a positive acquittal of the prisoners.

In the name of justice and humanity, I protest, as all the

citizens of western Kansas will, against this most unheard of and iniquitous mode of proceeding of Kansas justice.¹⁴

As the westerners suspected (or feared), the climate in eastern Kansas towards the Cheyennes was very different from the attitudes in the western part of the state. In a news story that was sympathetic to the Indians but certain to outrage most western Kansans, the *Lawrence Standard* ran nearly a full page interview with Wild Hog, one of the Cheyenne chiefs on trial. Instead of detailing the murders, rapes, and animalistic tendencies of the Cheyenne captives as most newspaper reports tended to do, the *Standard* reported Wild Hog's story of broken treaties, the miserable life on the Indian territory reservation, and his attempt to keep the younger men of the tribe from participating in any atrocities against the white populace. Typical of the article was the following passage:

12. Certified copy of Ford county district court journal entry, *Kansas v. Wild Hog, et al.*, filed October 1, 1879, CR 663, *ibid.*

13. *Ford County Globe*, Dodge City, July 1, 1879.

14. *Atchison Daily Champion*, June 29, 1879.

Wild Hog, one of the seven Cheyenne prisoners now in jail here, is an Indian of more than ordinary sagacity, and is distinguished in the councils of his tribe. He relates the history and troubles of the Northern Cheyennes that have resulted in almost total annihilation within the last few years.¹⁵

BETWEEN the time of the trial in Dodge City and the trial in Lawrence, Mohler was busy finding witnesses for his case and issuing subpoenas to over 40 people. Among those called were the following notables: Col. Nelson A. Miles, Fifth infantry, U. S. army, who was asked to bring "all papers and documents in his possession or under his control in any way pertaining to or affecting the Indians known as the Northern Cheyennes . . .";¹⁶ Maj. Gen. John Pope, commander, Department of the Missouri;¹⁷ Dr. L. A. E. Hodge, agency physician, Cheyenne agency, Indian territory;¹⁸ the wife and daughters of the defendants;¹⁹ and Carl Schurz, secretary of the interior. Mohler's request to Schurz was quite extensive:

Bring with you any and all Treaties made between the Government of the United States of America and the Band, Tribe or Nation of Indians commonly known by the name of Cheyenne or Northern Cheyenne . . . with reference to their removal from their agency at or near the Red Cloud Indian agency to the Southern Cheyenne Indian Agency at or near Fort Reno Indian Territory. . . .²⁰

Meanwhile, Mohler's foe, Sutton, was having a harder time acquiring his witnesses. Sutton argued that the change of venue made it impossible for him to round up his witnesses since they were scattered all over the U.S., and it was therefore "impossible . . ." to secure a conviction. . . ." Sutton concluded bleakly in writing to the attorney general that he did not think he could continue prosecuting the case.

In my judgment all that is to be done is to enter a Nolle. Intended to talk this matter over with you while in Topeka

but missed you. If you think that you can, submit this matter to the Governor.

Respectfully,
M. W. SUTTON
Co. Atty.²¹

There is, however, some evidence that Sutton did not wish to continue prosecuting the case, not because he could not find his witnesses, but because he was getting married. The following account is given of Sutton's courtship:

In late summer, 1879, Mike Sutton was in love. That spring, Miss Florence Estelle Clemons of Gloversville, New York, visited in Dodge at the home of her uncle, A. B. Webster, then a political foe but later an occasional ally of Mike [Sutton].²²

Sutton and his bride were married on October 1, 1879, spent their honeymoon in Kansas City and St. Louis, then returned to Dodge City on October 9, just four days before the start of the trial in Lawrence.²³

REGARDLESS of Sutton's excuse for not wishing to prosecute, he failed to appear for the state at the October 13 trial. There was now some confusion as to who would prosecute the Indians; the Douglas county attorney, Atty. Gen. Willard Davis, or someone from the attorney general's office. The *Kansas Tribune* described the events:

No one present seemed to have charge of the prosecution, but it was suggested by County-Attorney [sic] Greene that the train from the west would doubtless bring some one [sic] authorized by the Attorney General to act for him. After waiting a few minutes Mr. Jetmore appeared, having just come in on the train, and presented a letter from the Attorney-General [sic] of the state, stating that Mr. Jetmore was authorized to take charge of the cases.²⁴

Since it was obvious to the prosecution that their case was in a shambles, they asked the court for a continuance of one week. The defense announced that it was ready for trial, demanded to go to trial, and objected to the postponement.²⁵ The Lawrence *Standard* reported that the defense had a number of arguments against a continuance.

15. "The Captive Cheyennes," *Lawrence Standard*, October 9, 1879.

16. Precipe for subpoena for Col. Nelson A. Miles from Douglas county district court, issued August 20, 1879, CR 663, in office of Douglas county clerk of the district court.

17. Precipe for subpoena for Maj. Gen. John Pope from Douglas county district court, issued August 19, 1879, CR 663, *ibid*.

18. Precipe for subpoena for Dr. L. A. E. Hodge from Douglas county district court, issued September 8, 1879, CR 663, *ibid*.

19. Precipe for subpoena for Old Crow [and] Wife & Daughter[s] [of defendants] from Douglas county district court, issued August 19, 1879, CR 663, *ibid*.

20. Subpoena for Hon. Carl Schurz from Douglas county district court, issued September 8, 1879, CR 663, *ibid*.

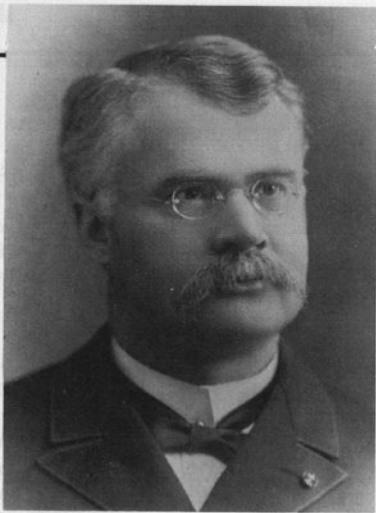
21. M. W. Sutton to Kansas Atty. Gen. Willard Davis, September 30, 1879, Douglas county district court journal J, p. 469, microfilm roll 5-6, *ibid*.

22. Paul E. Wilson, "Reflections on Mike Sutton," *Journal of the Kansas Bar Association*, Topeka, v. 45, no. 4 (Winter, 1976), p. 277.

23. *Ibid.*, p. 278.

24. *Kansas Tribune*, Lawrence, October 16, 1879.

25. Douglas county district court journal J, October 13, 1879, p. 469, microfilm roll 5-6, in office of Douglas county clerk of the district court.



In June, 1879, Wild Hog, Run Fast, Frizzly Head, Young Man, Old Man, and Crow were formally indicted in Ford county for murder in the first degree of Washington O'Connor. They were represented by Salina attorney, J. G. Mohler (1843-1904), who petitioned for a change of venue, charging that the judge who would try the case was prejudiced against the defendants.

Samuel R. Peters (1842-1910), judge of the Ninth district, granted the change of venue from Ford county to Douglas county, saying that he always granted such changes of venue when requested. The decision was unpopular in western Kansas and was protested by many who were convinced that the removal of the trial 300 miles away made conviction of the crime impossible.



Mike W. Sutton (1848-1918), Ford county attorney, was called by the *Dodge City Times* "a terror to evil-doers" and the right man to win revenge for the whites' deaths. After the change of venue, however, Sutton complained that it was impossible for him to get witnesses for the state's case. An additional reason for his not continuing the prosecution may have been the fact that he was getting married about the same time the trial was to start in Lawrence.



It would be an unwarrantable hardship for these witnesses to be kept here a week, and it would be no furtherance of justice to keep the defendants longer in prison, they having already been there a great while, unless there was assurance that the case should be tried very soon.²⁶

The *Standard* also reported that the prosecution could not assure the defense that they could be ready any sooner, and Judge N. T. Stephens denied the motion for a continuance.²⁷ Since the denial virtually destroyed any chance of the prosecution winning, Jetmore filed a *nolle prosequi*, dismissing charges against the Cheyennes. Judge Stephens then ruled:

It is therefore considered and adjudged by the Court that the said defendants Wild Hog, Run Fast, Frizzly Head, Young Man, Tall Man and Old Man [charges against Crow had been dropped earlier] and they each are hereby discharged from the said charge . . . to go hence without delay and that the County of Ford in the State of Kansas defray the Costs of this prosecution taxed at \$ and hereof let fee bill issue.²⁸

The defendants were then turned over to John D. Miles, a Quaker who had been their Indian agent at the Indian territory reservation.²⁹ Thus ended the legal ordeal of the leaders of the Cheyenne outbreak.

IT WAS obvious in 1878 as it is obvious today that someone killed over 40 settlers in western Kansas. On September 30, 1878, alone, 19 Kansans lost their lives in Decatur county from the Dull Knife band. The Cheyennes needed provisions and horses for their trek to their homeland, and the only place they could have obtained them was from the white settlers in the area who were not willing to give such supplies up easily. According to many eyewitness reports, the Cheyennes "indulged in an orgy of destruction, killing cows, pigs, chickens, even cats, burning homes and raping several women."³⁰ One might ask if the Northern Cheyenne wanted only to go home, why did they participate in these other atrocities? Although it certainly was not right, the killing of soldiers and settlers so they could

proceed to their homeland makes some sense. The other atrocities certainly do not. It is obvious that the people of western Kansas and the governor would want the Indians brought to trial and justice done.

On the other hand, there was much justification for their outbreak, or at least some sympathy for it. Even army officers realized that the Wild Hog case was not one of the army's finer moments, and they had sympathy for the Cheyennes' plight. An officer at the Indian territory reservation expressed his concerns over the conditions there:

The Indians are subjected to many aggravations and men of more gentle nature would not be slow to complain. It seems proper for me to present all the facts for the consideration of the Department Commander, that he may urge through the War Department a more kind and humane treatment of these savages. If necessary that the attention of the President be called to the subject that he may lay the matter before Congress.

Our recent experience shows the necessity of making good our agreements with the Indians sent to Indian territory.

J. K. MIZNER
Major 4th Cavalry
Commanding³¹

Even war-hardened General Pope, in responding to Governor St. John's letter asking for extradition of the Indians, was sympathetic and insightful into the Cheyennes' dilemma:

In consideration of the terrible suffering and tragic fate of nearly this entire band of Indians, I most respectfully suggest to you that the ends of justice have probably been reached in this case and that no further punishment to the feeble remnant of the band would appear to promise any results not already secured.³²

As far as the Indians were concerned, they wanted to go home. They tried to avoid the settlements and obviously did not want to be seen.³³ According to an interview with Wild Hog, the Cheyennes believed they had every right to go back to their homeland:

We thought we had the rights to come, because the government had not kept its treaty with us in any respect. . . . Did I leave the reservation like a man who wanted to fight? I did not take a horse which did not belong to me, nor touch anything. That is all I have got to say.³⁴

26. Lawrence *Standard*, October 16, 1879.

27. *Ibid.*

28. Douglas county district court journal J, October 13, 1879, p. 470, microfilm rql 5-6, in office of Douglas county clerk of the district court.

29. Gary L. Roberts, "The Shame of Little Wolf," master's thesis, Abraham Baldwin Agricultural College, Tifton, Ga., no date, p. 13, "Gary L. Roberts Misc. Collection," manuscript department, Kansas State Historical Society.

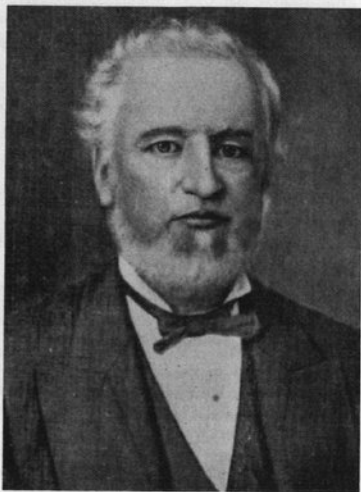
30. *Ibid.*, pp. 16, 19.

31. J. K. Mizner, Fort Reno, Indian territory, to assistant adjutant general, Department of the Missouri, September 19, 1878, adjutant general's records, National Archives, Washington, D. C.

32. Maj. Gen. John Pope to Gov. J. P. St. John, February 5, 1879, *ibid.*

33. George Bird Grinnell, *The Fighting Cheyennes* (New York: Charles Scribner's Sons, 1915), p. 389.

34. "Captured Cheyennes," Kansas City (Mo.) *Daily Times*, February 15, 1879, p. 2.



The attorney appointed to prosecute the case in Douglas county asked for a continuance to allow time for him to prepare his case. Judge N. T. Stephens (1820-1884) denied the motion for a postponement, and the prosecution, believing it was impossible to win the case, filed a *nolle prosequi* dismissing charges against the Cheyennes. Stephens ruled that the defendants be discharged and Ford county defray the costs. Thus six Cheyenne Indians, part of a raiding party that killed more than 40 western Kansas settlers, won some sympathy for their outbreak which some said was justified, and in the ordeal of their capture and trial were given every legal safeguard, finally obtaining a dismissal of murder charges in the white man's court.

FINALLY, the federal government had the last word on the entire ordeal, fully realizing it was not completely innocent of provoking the event. In an 1880 report the U. S. senate select committee on the removal of the Northern Cheyennes stated:

And so it is that five thousand idle people, without hope, without aspirations, feeling always the chains of bondage, and brooding over wrongs, actual or imaginary, are left to drag out their days in sullen despair. . . .³⁵

The amazing aspect about the case of the State of Kansas *v.* Wild Hog, *et al.* is that six Cheyenne Indians, with hardly a friend in the world (or at least in Kansas) could obtain a dismissal of murder charges in the white man's court. It appears every legal safeguard was granted to the Cheyennes; right to counsel, change of venue, right to confront witnesses, and the right to subpoena. All of this is a slightly different view of frontier justice than the common notion of "the only good Indian is a dead Indian." Perhaps the Kansas frontier was not as uncivilized as television, movies, and even some histories would lead us to believe.

35. U. S. senate, *Reports, 1879-1880*, 46th Cong., 2d Sess. (Washington: Government Printing Office, 1880), v. 7, no. 708, p. xxv.