

Guard Your Pistols and Your Pronouns

BY FRANK GIBBARD

At this murder trial, Henry Covington admitted he was “pretty well tanked up” the night he was accused of shooting Winnie Adams.¹ In fact, he claimed to have little recollection of the ordeal. But eyewitness testimony left little room for reasonable doubt, and he was found guilty of murder in the second degree. Even an egregious error in the indictment wasn’t enough to overturn his conviction.²

A Visit to the Adams House

By the time he arrived at the Adams house on the evening of January 4, 1905, Covington was under the influence of a significant amount of whiskey.³ Several other people were present: Samuel Terry, Bailey Trimble, and Fred Hopkins. Hopkins and Adams were outside the house talking when Covington arrived. He stepped past them into the house.

Hopkins and Adams stayed outside, conversing, for another 30 to 45 minutes. Eventu-

ally they reentered the house. There, Hopkins approached Covington to shake hands. In response Covington drew a revolver and said, “Don’t come any nearer me, I will shoot you.”⁴

Hopkins backed off. Covington said, “No, I didn’t mean to hurt you or anybody.”⁵ He threw his gun to the floor, saying, “I don’t mean to hurt anybody. I want to show you that it is a safety. It is as safety [sic] a gun as a man can carry.”⁶

By now it should have been clear that excessive consumption of alcohol had rendered Covington emotionally unstable and potentially dangerous. Hopkins picked up the gun and put it on a table or dresser. He went over to the stove to warm his hands.

Sometime later, Covington said, “I believe I will go home. Give me my gun.”⁷ Hopkins returned his revolver to him. As he departed, Covington told Terry, “I want to see you.”⁸ The two men left the house together.

As the two men stood outside talking, Adams decided to go get some coal for the stove.

She opened the door. Light from inside the house flooded the yard, startling or annoying Covington.

Adams bent over to pick up the coal. She called to Terry to help her.

Terry asked Covington to excuse him and began to walk away. He managed about four or five steps before he heard Covington fire his gun.

The bullet grazed the fourth finger on Terry’s right hand before striking Adams. She cried out, “Oh, I am shot! I am shot!” and ran back into the house.⁹ Terry followed her inside.

Covington told them to close the door and turn off the lights. To enforce his demand, he fired another shot into the air.

The first bullet had split Adams’s right kidney, passed through her liver, and lodged beneath her left breast.¹⁰ She died two days later.

The Day After

Covington went home to sleep it off. The next morning, he got up, ate breakfast, and headed for the mines to put in his shift.

At the mine, a man named Leftwich told him about the shooting the night before. Covington told Leftwich he didn’t know anything about it.

Then Covington saw Terry, who worked with him at the mine. Covington said, “Good morning, Sam. I hear I shot you last night, and Miss Adams. Can it be so?”¹¹ Terry replied, “yes.” Covington said, “I am awfully sorry.”¹²

Not as sorry, presumably, as he was after the jury returned its verdict. At trial, Covington testified he’d had no trouble with anyone at the Adams house that night. He said he couldn’t remember anything after Hopkins went to the stove to warm his hands. When asked whether he fired his gun intentionally, he claimed he didn’t remember firing it at all. But the jury convicted him of second-degree murder, and he was sentenced to 10 to 12 years in the state penitentiary at hard labor. He appealed to the Colorado Supreme Court.

Wrongful Use of a Pronoun

The indictment charging Covington with murder was not a model of clarity. It alleged:

Henry Covington, on the 4th day of January, A.D. 1905, at the said county of El Paso, did then and there in and upon the body of

one Winnie Adams feloniously, unlawfully, willfully, and of his malice aforethought commit an assault, *and she, the said Winnie Adams, then and there feloniously, unlawfully, willfully, and of his malice aforethought did kill and murder.*¹³

It seems obvious in light of the facts of the case that Winnie Adams was the intended object of the italicized clause (i.e., the person who was murdered), as opposed to its subject (the person who murdered someone). But the clause was so poorly drafted it was hard to tell who shot whom.

The problem resulted in part from use of an inverted word order. The usual word order in English is subject-verb-object. But a grammatical device called “anastrophe” permits the inversion of word order for poetic or rhetorical effect.¹⁴ (The Star Wars film character Yoda is famous for it.) Anastrophe was used here by

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placing the object of the murder, Winnie Adams, before the verb (“Henry Covington . . . the said Winnie Adams . . . did kill and murder”).

Use of anastrophe would have been fine—it would have conveyed the drafter’s intent, albeit

in rather stilted terms—if the drafter had not also used the subject pronoun “she” in referring to Adams, rather than the object pronoun “her.” This error made the sentence especially confusing. It allowed Covington to argue that “by using the pronoun ‘she’ the pleader charges the deceased [Adams] with the commission of murder, and that the defendant [Covington] is simply charged with an assault.”¹⁵

After his conviction, Covington had filed a motion for arrest of judgment, asserting that due to this error the indictment did not state facts sufficient to charge him with murder. The trial court denied the motion.

Covington renewed the issue on appeal. Would the Colorado Supreme Court reverse his conviction for a misused pronoun? As it turns out, it would not. The Court held that “grammatical errors should be disregarded if the real intention and meaning of the information

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is not obscured thereby.”¹⁶ It lamented “that those who write affidavits and warrants guard their pronouns with so little vigilance” but was unwilling to hold “that their bad grammar vitiates the documents.”¹⁷ The Court therefore affirmed the trial court’s denial of Covington’s motion.

Other Appellate Issues

Covington raised a number of other appellate issues. He complained that the jury was instructed that he could be sentenced to death, arguing that this violated the Colorado death penalty statutes at the time, which prohibited a sentence of death based on circumstantial evidence alone.¹⁸ Covington contended there was no direct evidence of the murder because Terry didn’t see him fire the shot. Terry’s testimony that Covington shot the victim was therefore based on an inference rather than observation and was thus circumstantial. The Court disagreed, pointing to the facts that Terry stood at an angle to Covington rather than with his back to him, he saw Covington holding the gun just before he fired, and shortly thereafter he heard the shot and felt the bullet graze his finger. Also, when Adams was asked before she died who shot her, she replied “Henry Covington.”¹⁹

Covington also challenged an instruction that allowed the jury to infer that he acted “unlawfully, willfully, feloniously, and [with] malice aforethought” if it found that he “intentionally fired a deadly weapon.”²⁰ The Court concluded that “this instruction as a whole correctly states the law, and left it to the jury to determine from the evidence whether [Covington] intentionally fired the fatal shot.”²¹ The Court also upheld an instruction on intoxication that incidentally presumed Covington had fired the fatal shot, stating it “was not the purpose of this instruction to call the jury’s attention to the fact of the shooting, but to the condition of the defendant at the time.”²²

The Court further upheld the trial court’s refusal of instructions Covington had tendered. It held that the existing instructions adequately informed the jury of the elements of second-degree murder, the need for proof beyond a reasonable doubt, and the presumption of innocence. Nor was Covington entitled to an instruction

on accidental killing, given that there was no evidence that he killed Adams accidentally or from carelessness.


During voir dire, Covington’s counsel had asked a question that the trial court found objectionable. The court remarked that counsel was “misleading the jury.”²³ Although the Court found this remark “ill-advised, since it might have been understood by the jury as a reflection upon the good faith of counsel, and have conveyed to the jury the impression that he was not treating them fairly in his examination,” any error was not sufficiently prejudicial to require reversal of the judgment.²⁴

During closing argument, the district attorney argued that Covington “may have had a good reputation, but he has gone wrong. He has gone out there and established a reputation for being a gun man.”²⁵ Covington had admitted during cross-examination that in a prior altercation he had fired two shots at another man. The Court opined that “[t]his circumstance, taken in connection with the fact that he owned and carried a gun in a peaceable community without any legitimate excuse for so doing, and had on the night in question drawn it on Hopkins, and later, in order to enforce his demand that the door to Winnie Adams’ house be closed and the

lights extinguished, fired into the air, and shortly after 9 o’clock on the same night was seen outside of his own house with the gun in his hand while carrying a bucket of coal,” sufficiently justified the district attorney’s remark.²⁶

Noting that “while some of the objections urged might have been avoided by the exercise of more care and liberality on the part of the trial judge,” the Court concluded that none of the errors sufficiently prejudiced Covington to the extent that the verdict should be set aside.²⁷ It therefore affirmed the judgment.

Conclusion

The use of anastrophe and the unguarded misuse of a pronoun did not prove to be a catastrophe in Covington’s case. But the resulting unforced error serves as a reminder to proofread with vigilance. 



Frank Gibbard is a staff attorney with the Tenth Circuit Court of Appeals—(303) 844-5306, frank_gibbard@ca10.uscourts.gov.

NOTES

1. *Covington v. People*, 85 P. 832, 834 (Colo. 1906).
2. In 1909 the State Board of Pardons commuted Covington’s sentence to six to 12 years. See “Sentences Commuted,” *Salida Record* at 3. (Jan. 15, 1909). Newspaper articles concerning the commutation revealed that Covington was African American, a fact that the Colorado Supreme Court did not mention in its decision.
3. See *Covington*, 85 P. at 833.
4. *Id.* at 834.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. “Murderer in a Mine Defies the Officers,” *Leadville Herald Democrat* at 1 (Jan. 6, 1905).
11. *Covington*, 85 P. at 834.
12. *Id.* A later article reported that Covington hid in a mine and stated he would not be taken alive. See “Murderer in a Mine Defies the Officers,” *supra* note 10.

13. *Covington*, 85 P. at 833 (emphasis added).
14. Merriam-Webster defines anastrophe as “inversion of the usual syntactical order of words for rhetorical effect.” <https://www.merriam-webster.com/dictionary/anastrophe>. (And strong this webpage is with references to Yoda.)
15. *Covington*, 85 P. at 833.
16. *Id.*
17. *Id.*
18. See *id.* at 834 (citing 1176, Mills’ Ann. Stat., as amended by Laws 1901, p. 153, ch. 64).
19. *Id.* at 835.
20. *Id.* (internal quotation marks omitted).
21. *Id.*
22. *Id.*
23. *Id.* at 836 (internal quotation marks omitted).
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*