



The Proof in the Dead Man's Pockets

BY FRANK GIBBARD

Robert B. McDowell was not a famous man. He was an illiterate, bowlegged cowboy who worked a homestead in Morgan County in the early 1900s. But we know more details about him, his habits, and his personal possessions than we do about most famous historical figures. That's because those personal details, recorded in a Colorado Supreme Court decision, helped prove McDowell was murdered.

The Disappearance

McDowell disappeared one day in April 1904.¹ At the time of his death, he was an affluent man. Five years earlier, in 1899, he had homesteaded

at a ranch on the Wildcat Creek, about 8 to 10 miles from Fort Morgan. In addition to his 160-acre homestead, he leased 640 acres of school land where he made improvements and ran horses and cattle.

Shortly before McDowell's disappearance, two men named John Ausmus and Zara Moon pitched a camp around a mile south of the McDowell ranch. On April 26, 1904, Ausmus approached a local cattle baron named Raugh and offered him 140 head of McDowell's cattle, and 26 of his horses, for \$1,440.

Ausmus produced a power of attorney supposedly signed by McDowell, under which Ausmus claimed authority to sell the cattle. The

power of attorney was dated April 14, 1904. It was signed with the illiterate McDowell's typical "double X" signature and witnessed by Moon.

Ausmus's offer was surprisingly low. A stockman named Frank Shugart had previously offered to buy some cattle from McDowell at \$15 a head, and McDowell had turned him down. Now Ausmus was offering the cows to the firm of Munn & Raugh at roughly half that price.²

Ausmus explained to Raugh that he was selling the cattle at a rockbottom price because McDowell had gone into hiding and was planning to flee the country. Perhaps Raugh weighed the improbability of this story against the great bargain he was being offered before deciding to go forward with the sale. When Raugh's partner, Munn, offered to issue a check payable to McDowell for the price of the cattle, Ausmus balked and repeated his story: McDowell was in hiding and had to get out of the country. He needed cash.

Munn agreed to pay cash. He would write out a bill of sale and a receipt for the cattle. He gave the cash to Ausmus and instructed him to get McDowell's signature on the documents and bring them back to him. A few days later, Ausmus returned with the documents. Like the power of attorney, it was signed with an "XX" signature, witnessed by Ausmus and Moon.

Having sold off McDowell's cattle and horses, the two men proceeded to divide his other worldly goods between them. They took over the homestead and the school lands, along with the improvements McDowell had constructed on them. When the school land lease later came up for renewal, Ausmus renewed it in his own name.

The two men soon opened bank accounts in Brush, a town some distance from the ranch. There, they deposited large sums of cash. Ausmus also gave his fiancée sums of money that she kept hidden in her room for him until she later deposited the money in the bank in Brush.

The Scheme Unravels

Ausmus and Moon might have enjoyed McDowell's property in perpetuity had it not been for Jacob Jochim. Jochim was a 20-year-old hand who had done some work on the McDowell ranch. A few weeks before McDowell disappeared, he

had quit his job at the ranch. McDowell had promised to mail his final paycheck, for \$18, to Jochim's address in Snyder, Colorado. But the paycheck never arrived.

On April 15, Jochim went by the McDowell ranch to see about his check. Entering the house, he found personal property belonging to McDowell but was unable to locate McDowell himself. Jochim later tracked down Ausmus, who was now running the ranch with Moon, and told him about the paycheck. Ausmus paid him the \$18 in cash. He told Jochim that McDowell had given him the money with instructions to deliver it to Jochim.

There was just one problem with Ausmus's story: McDowell had already made other arrangements to pay Jochim. On March 28, the same day Jochim quit, McDowell had purchased a draft for \$18 from a Fort Morgan bank, to be mailed to Jochim in Snyder. But a new cashier at the bank, unfamiliar with Jochim's name, had addressed it to "Yochum" when he mailed it. The post office, finding no one named "Yochum" in Snyder, had returned the envelope containing the check to the bank. And there it sat, unbeknownst to McDowell, who believed he had satisfied the debt. But, of course, Ausmus didn't know about the misdirected bank draft when he claimed McDowell had asked him to pay Jochim in cash.

In addition to the suspicious circumstances about Jochim's paycheck, other odd, loose ends at local banks eventually surfaced. The banks were holding credits and accounts due to McDowell that he would have been expected to collect. But he never did.

Ausmus and Moon soon made an even more critical mistake. They hired Jochim to work at the McDowell ranch. It was there, in 1905, that Jochim made a grisly discovery. In a gulch near the McDowell house, he found some human bones. Jochim told Moon about the find, but Moon inexplicably did nothing about it.

Nearly two years later, in 1907, Jochim began telling other people about the makeshift grave he had found on the McDowell ranch. He agreed to lead several people, including the coroner, to the place where he found the bones.

Upon digging into the soil at the bottom of the gulch the remains of a man about six

feet tall were discovered and exhumed. The soft tissues and the ligaments, tendons and cartilages of the remains had disappeared, and decay had proceeded so far as to render it impossible for any one to recognize the features, or to identify the bones found in the grave.³

The skeleton was that of a man with a protruding forehead, prominent cheek bones, and small feet. All these characteristics fit McDowell. The manner of death was also clear from the skeletal remains: the cattleman had been shot from behind in the head.

The Contents of the Dead Man's Pockets⁴

If the physical description of the skeleton suggested who its former owner might be, the items buried with it seemed to remove all doubt. Whoever dug the makeshift grave had made little effort to remove personal property from the deceased's body. The coroner found the following:

[a] pocketknife such as McDowell carried during life; a trunk key fastened to a leather strap attached to a cloth band as McDowell had carried his; a door key such as McDowell carried, which, on trial, fitted the lock on the door of his former home; [and] a pair of shoes such as McDowell occasionally wore, the strings of which were tied by a peculiar bowknot such as McDowell used during life.⁵

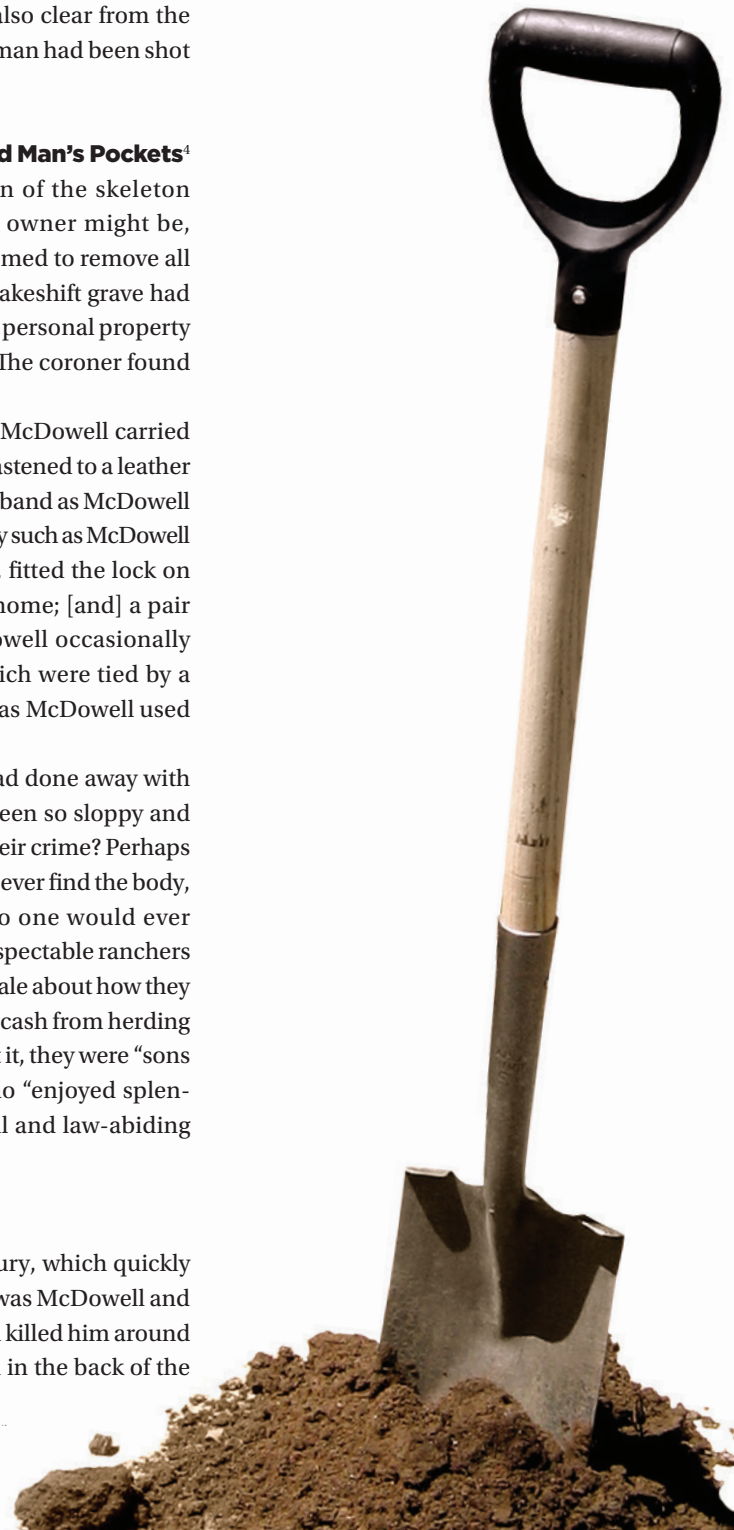
If Ausmus and Moon had done away with McDowell, why had they been so sloppy and casual about covering up their crime? Perhaps they believed no one would ever find the body, or that if it were found, no one would ever suspect them. They were respectable ranchers who could tell a believable tale about how they had acquired large sums of cash from herding cattle. As the Court later put it, they were "sons of respectable parents" who "enjoyed splendid reputations as peaceful and law-abiding citizens."⁶

Trial and Conviction

The coroner impaneled a jury, which quickly determined the dead man was McDowell and that Ausmus and Moon had killed him around April 1904 by shooting him in the back of the

head.⁷ Among other evidence at the inquiry, cashiers from local banks testified that the double X signatures on the power of attorney and bill of sale that Ausmus and Moon had produced did not match the signatures on documents McDowell had signed at their banks.⁸ The signatures had been forged.

Ausmus and Moon were arrested and given a preliminary examination before a justice of



the peace. But the preliminary examination went surprisingly poorly for the state. Their defense attorney called a Denver doctor as an expert witness. He testified that the skeletal remains had been in the ground for at least five years, which meant they could not possibly be McDowell's.⁹ The justice of the peace discharged Ausmus and Moon. For the moment, they were free men.

But the prosecutor was not done with them yet. He filed an information in the district court of Morgan County charging the two men with murder. Their first trial resulted in a hung jury, but a second jury convicted them of first-degree murder, and they were sentenced to life imprisonment.

The Appeal

Ausmus and Moon appealed to the Colorado Supreme Court, where they raised numerous issues. The most interesting issue involved whether the state had proved that the murdered man was McDowell. Ausmus and Moon raised several objections to the jury's conclusion on this point:

- The skeleton did not show evidence of a broken leg bone, but McDowell had broken his leg during his lifetime.
- McDowell was a bowlegged man, but the skeleton's leg bones were straight.
- McDowell wore size 8½ to 9 shoes, but the shoes found with the skeleton were size 7.
- The extent of decomposition suggested the deceased had been dead for at least five years, but McDowell had disappeared less than three years before the trial.
- The hair found in the grave was light red or brown, but McDowell's hair was black or dark brown.¹⁰

Having described all the items found with the body that pointed to it being McDowell's, and having explained at some length why the identity of the deceased was not technically an essential part of the legal concept of "corpus delicti,"¹¹ the Court rejected each of the defendants' arguments. Although there was evidence that McDowell had told people his leg had been broken, there was other, contradictory evidence about what he had said, and, crucially, there had been no medical testimony on the point.


Although some witnesses described McDowell as bowlegged, the Court noted testimony that "all cattlemen accustomed to riding the range, such as McDowell was, assume that appearance."¹² As for the corpse's undersized shoes, which were smaller than McDowell's size, they could have shrunk from exposure to the elements. McDowell's body also could have been reduced to a skeleton in fewer than five years, given his "sudden death, the body interred at the shallow depth of 12 or 18 inches in a gulch, the soil of which was impregnated with alkali, and over and through which water frequently flowed, and into which the sun intensely shone."¹³ The alkaline soil might have also explained the lightening of McDowell's hair color, and in any event, the descriptions of the hair color of McDowell while alive and the corpse were not really that different. Finally, the jury had evidently given little credence to testimony that a witness had seen McDowell in the mountains after his alleged disappearance. In sum, there was sufficient evidence that the deceased was McDowell.

The defendants raised many other issues on appeal. They challenged the information filed in their case; the admission of evidence presented at trial, such as the expert handwriting evidence; the jury instructions; and a prejudiced juror. The Court rejected all of their challenges. It concluded that the evidence was "sufficient to remove every rational doubt."¹⁴ The Court added, "It may be barely possible that the crime alleged was never committed, but until the faculties of man are unfolded and expanded so that all things are known we must act on circumstances as they appear, logical deductions made and presumptive proof, or leave the worst crimes unpunished."¹⁵ It therefore affirmed the convictions.

Aftermath

Ausmus's and Moon's convictions proved controversial. Even after the jury's verdict was affirmed, many in Morgan County believed the men were innocent. Notwithstanding the forensic evidence, discussed at some length in the Court's decision, some people still did not believe that McDowell was even dead. A Presbyterian pastor appeared before the parole

board in 1911 and testified that "McDowell is not dead. He is as much alive as you or I. He skipped out from Brush because the hand of the law was about to be laid on him."¹⁶ Another witness claimed to have spoken to McDowell in 1910 in Wyoming, where he allegedly was going by the alias of James Sullivan.¹⁷

Advocacy with the parole board and the governor by prominent supporters eventually paid off for Ausmus and Moon. The two men, who were said to have been model prisoners, were paroled in May 1917.¹⁸ 



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NOTES

1. Except as otherwise noted, the facts are taken from *Ausmus v. People*, 107 P. 204, 206 (Colo. 1909).
2. See "Murder Charge Against Ausmus and Moon at Fort Morgan," *Wray Gazette*, p. 6, col. 3 (Feb. 8, 1907) (hereinafter, "Murder Charge").
3. *Ausmus*, 107 P. at 207.
4. The title of this subsection alludes to a famous short story by Jack Finney, "Contents of the Dead Man's Pockets" (*Collier's* Oct. 26, 1956).
5. *Ausmus*, 107 P. at 207.
6. *Id.* See also "Murder Charge," *supra* note 2 (noting that Zara Moon's father, Mason Moon, had been a Republican candidate for county sheriff).
7. See "Murder Charge," *supra* note 2.
8. See *id.*
9. "Accused Men Freed," *Castle Rock J.*, p. 2, col. 2 (Feb. 22, 1907).
10. See *Ausmus*, 107 P. at 209.
11. See *id.* at 208-10.
12. *Id.* at 210.
13. *Id.*
14. *Id.* at 217.
15. *Id.*
16. "Ausmus and Moon," *Brush Tribune*, p. 1, col. 1 (Sept. 29, 1911).
17. See *id.*
18. "Ausmus and Moon Get Parole," *Brush Tribune*, p. 1, col. 2 (May 11, 1917).



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