

PRISON MUSEUM POST

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THE TRIAL OF BARCLAY PEAK For the Murder of Katie Anderson

A long-forgotten murder trial in Mt. Holly garnered national attention in 1887. The subject of the trial was the murder of Mary Catherine "Katie" Anderson by Barclay Peak.



Peak was the brother of the beautiful Lizzie Peak, who was brutally killed in 1892 by her lover, Wesley Warner. The PMA has always been familiar with the Warner story because a sensationalized account of it was recorded at the time in a widely-distributed pamphlet that survives to this day. (We sell copies in the gift shop.) It mentions the ironic fact that at the time of her murder, Lizzie's own brother, Barclay Peak, was himself serving a 20-year sentence for killing *his* girlfriend. We didn't know much else about the Peak case until now. As it turns out, the story is not only an amazing piece of Americana, but also a fascinating example of American jurisprudence: the trial took more days to try, attracted more attention and was the most

expensive in the history of the New Jersey criminal courts to that time.

The Peaks were a large and lively Burlington County clan whose escapades provided local tabloid fodder in the late 1800s and early 1900s. Barclay, 19 years old at the time of the murder, was the son of Joseph and Mary Jane Peak, who lived on Eayrestown Road. They had several other children, including Lizzie. Barclay loved the 16-year-old Katie Anderson, whose parents, Joanna and Nathan William Anderson, lived on Smithville Road. Katie's father disapproved of the relationship primarily because Katie and Barclay were first cousins - Mrs. Anderson, herself a Peak, was Barclay's father's sister.

In the fall of 1886, Katie moved to the home of her employer, Stratton Colkitt, on his farm near Newbold's Corner (now Lumberton), located not far from the Peaks' home. Barclay worked for farmer John Black, of the "Wigwam Farm" in Southampton. Among other things, he threshed rye.

About 6:30 p.m. on Monday, February 7, 1887, Katie left the Colkitt home to take a walk. Though it was February, she went out with only a shawl thrown over her head. Early the next morning, Tuesday, February 8, local farmer Amos Johnson and his son Freddie were driving along Eayrestown Road to the mill when they spotted Katie lying at the bottom of an embankment, stiff with cold and shot in the head. She was taken to the Peak home, which was close to where she was found. There a Dr. Brown of Mt. Holly examined her at about noon. The wound was in the left temple, one inch above her ear. Dr. Brown determined that the bullet had crushed through her skull, perforated the left lobe of her brain and lodged in the right lobe. She was delirious but, to the doctor's amazement, still alive.



A few hours earlier, another neighbor, Rachel Brewer, had been walking on Eayrestown Road on the way to the Colkitt farm to do laundry. She saw, about 300 feet from where Katie had been found, some vomit and near it a pistol, one chamber of which had been discharged. She took the pistol to the Colkitt home and later showed it to a young man named Witcraft, who recognized it as a pistol he had traded to Barclay the week before. It was an old and broken weapon, the chambers of which did not revolve and had to be turned with the fingers.

On Wednesday (February 9), Burlington County "Prosecutor of the Pleas" Charles Hendrickson, along with the local Justice (Naylor) and Constable (Carr) went to the Peak home to see Katie and to ask Barclay (under oath) if he could explain how a bullet from his pistol came to be lodged in Katie's brain. He testified that the pistol was in fact his. He went on to say that he and Katie had taken the gun out on Sunday for target practice and that she insisted on taking it with her when they parted. He had no idea how she came to be shot, and he was home with his parents

all of Monday evening and night. Unfortunately for Barclay, Andrew Brewer (the husband of the woman who found the gun) appeared at this impromptu hearing and testified that he noticed Barclay walking by his home around 7 p.m. on Monday night. Both Mr. and Mrs. Brewer also testified that the week before, while at their house, Katie told them that Barclay would kill any girl who refused him. Barclay was arrested and taken to the Jail, where he augmented his testimony by saying that Katie probably attempted suicide because of problems with her family. Upon Barclay's arrest, Katie's parents moved her to their house in Smithville.

You may be wondering why Barclay's lawyer wasn't present when he was being interrogated. This was 1887, 79 years before all that you-have-the-right-to-remain-silent-Law-and-Order-stuff. (If any of you are wondering about the origins of suspects having to be told about a right to a lawyer, google "Miranda warning".)

On Friday, February 11, something very interesting happened. Katie became lucid enough to respond "Barclay" when asked by her sister Eva who had shot her. Dr. Brown and Mrs. Peak were present. Later that day, Justice Naylor, Constable Carr and Prosecutor Hendrickson went to the Anderson home and asked Katie who had shot her, and she again replied "Barclay". She miraculously survived another 29 days, until Saturday, March 12, 1887, when she finally passed from this world. Although she was semi-conscious and unresponsive most of this time, on four more occasions (February 12, 13, 16 and 19), she repeated, when asked, that Barclay had shot her. She said this in the presence of her parents and various doctors.

On Sunday, March 13, Dr. Brown went to Philadelphia to fetch a Dr. Pancoast to conduct an autopsy, which was apparently performed at the Anderson home. The coroner was ready to go with an inquest the very next day, Monday, March 14, at 10 a.m. Those present included Prosecutor Hendrickson, who summoned and questioned the witnesses, Robert Gaskill, Barclay's attorney, a couple of policemen, newspaper reporters, the jurors and about 100 spectators. Justice Naylor and others testified that when asked who shot her, Katie replied "Barclay". The last to testify was Dr. Pancoast, who concluded that the bullet wound was the cause of death and that the wound had not been self-inflicted as there were no powder marks. Moreover, he said, the bullet had "decided momentum" when it entered her skull. The hearing concluded at about 9 p.m. The jury was out for only a few short *minutes* before finding that Barclay should be indicted for murder.

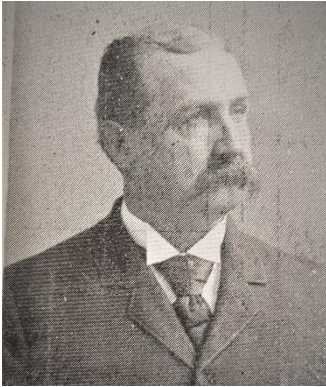
Katie's funeral was held on Wednesday, March 16. Friends and family viewed her earthly remains at the home of Caleb Huff, a neighbor of the Colkitts. His home was selected because it was larger than the Andersons' modest cottage. She was laid to rest in the Lumberton Methodist Church graveyard.

The Grand Jury convened on April 19 and had a busy two-day session where they reviewed numerous matters and presented 18 bills of indictment, including one for Barclay. As with the inquest, the Grand Jury proceedings were open to the public. The Courtroom was packed. The names of the witnesses and jurors were a matter of public record and widely reported. The Grand Jury heard all the witnesses who testified at the inquest, including at least three of the doctors who performed the autopsy.

There was more than ordinary interest in these grand jury proceedings because two murder indictments were returned. Burlington County was not a hotbed of crime, and it was unusual to have one murder, let alone two. The second indictment was of Palmyra resident William Agnew for the murder of his wife. Mr. and Mrs. Agnew were alcoholics who celebrated New Year's Day 1887 for about three days, at the end of which time an argument ensued in which Mr. Agnew beat Mrs. Agnew to death with a rocking chair and then slept with her corpse for a week. But that's a story for another issue. It was reported that Barclay wasn't happy about sharing the 8' by 8' murderer's cell (the "dungeon") with Mr. Agnew.

Of further interest was that the grand jury was called upon not only to indict two murderers, but also Burlington County itself. Judge Joel Parker charged the jury to make a recommendation that the County either erect a new Jail or remodel the old one to address "sanitary arrangements, which (had) been bad for a long time". The Jail was 76 years old and woefully outdated. It was overcrowded because of the wholesale commitment of tramps to the jail instead of the almshouse (which would later become Buttonwood Hospital). The Grand Jury did in fact condemn the Jail as unfit for the demands of the County, and urged the Freeholders to make an investigation of the matter. It would be another 88 years, however, before the Freeholders finally closed the Jail. While the judicial branch moved swiftly in those days, the executive and legislative branches were another story.

THE TRIAL



The trial of Barclay Peak started on May 25, 1887 and continued every day until it concluded on June 14, 1887. Judge Joel Parker presided along with two lay judges (James Glasgow, pictured on the left, and Benjamin Wills). The State was represented by Prosecutor Charles Hendrickson and Barclay was represented by Robert Gaskill and Samuel Robbins.

The same witnesses who testified at the inquest and the grand jury proceeding testified again at the trial, including Dr. Brown, Katie's parents and sister Eva, all of whom swore that Katie told them that Barclay shot her. Only this time, it was a trial in a court of law, and the "rules of evidence" applied. One of the rules of evidence is that witnesses cannot testify about what other people tell them. This is called "hearsay". Barclay's attorney, Robert Gaskill, objected to any evidence of Katie telling anyone that Barclay shot her. The prosecutor argued that there is an exception to the "hearsay rule" - the "dying declaration" exception. The idea is that a dying person making a statement explaining the circumstances of his or her impending death is unlikely to lie. Barclay's attorney counter-argued that the exception applied only when the person has utterly no hope of recovery, and that the evidence showed that Katie hoped to recover. He pointed to the testimony of Dr. Brown, who said that on February 11 he told Katie that the only chance she had to live was through an operation. He also pointed to the testimony of Katie's sister Eva. Eva told Katie that she would buy her a new pair of shoes when she got well. Katie said she would never need them. Eva then asked her if she wanted to get well, and Katie replied that she did. The prosecutor argued that never once did Katie express any expectation that she would survive.



Judge Parker overruled the objection, and told the jury that they could consider the dying declarations as evidence. He noted that about ten different witnesses had testified that Katie said Barclay shot her. While she expressed to a couple that she *wished* to get well, she expressed to all of them that she didn't *expect* to.

Testimony concluded on June 13. At 10 a.m. on June 14, Judge Parker took to the bench and commenced "charging the jury". This is where the judge outlines for the jurors the issues of the case and what verdicts they might render based on testimony they determine to be true. Often the lawyers ask the judge to make "special charges". In this case, Barclay's lawyers asked the court to give the jury about 20 more instructions. Judge Parker agreed to read all but one. It took him until noon to "read the charges". The jurors then retired to deliberate. It took them only two hours to agree on a verdict of first-degree murder.

The *Times*, a Philadelphia paper, gave a colorful description of those in attendance;

"Hundreds of gayly dressed women were there, but the anxiety to see and hear everything was so great that the men forgot their gallantry and jostled the less muscular sex in a struggle for standing territory... Women and children were promenading the main road, groups of men were thickly scattered on the grassy lawn of the court House, the two old inns of the town were filled with people when the bell, full of omen, rang out its summons at exactly 2 o'clock...the jury and the prisoner were told to stand up and look upon each other. It meant life or death to him, but Peak never faltered as he stood erect, looking into the faces of the jury and heard Foreman Endicott in a distinct voice say: 'We find the prisoner guilty of murder in the first degree.'...Several women wept, but the crowd was silent, when Lawyer Gaskill said that he and his colleague would probably make a motion for a new trial and then Crier Beecher Thompson said the court was adjourned."

Barclay was thereafter sentenced to hang on September 1, 1887.

THE APPEAL

The execution was stayed when Barclay's lawyers appealed. The defense team was now joined by a third attorney, J. Frank Fort, a retired judge from Newark. The case was argued in the New Jersey Supreme Court in the fall of 1887. The record of the case was 13,000 pages long.

The defense attorneys appealed not only the admission of the dying declarations but also the manner in which the jurors had been selected. The gist of the latter point was that the prosecutor had a hand in selecting the jurors. It was an interesting issue but beyond the scope of this article. Anyone interested can read the 56-page-long opinion which can be found in at 50 NJ 179.

On February 24, 1888, the opinion of the Court was delivered by Chief Justice Beasley, who reversed the murder conviction, finding that the jury was improperly selected and that the dying declarations should have been excluded because the prosecution failed to meet the "burthen" (that is how "burden" was said in 1888) of showing that Katie had no hope whatsoever of recovering. Justice Dixon wrote a dissent. He agreed that the verdict should have been reversed because the jury was improperly selected. He objected, however, to the Supreme Court overturning Judge Parker's finding that Katie had no hope of recovering. He noted that whether or not Katie had hope for recovery was a matter of fact, not law, and that Judge Parker had been in a better position, after observing several witnesses over countless hours, to determine what her mental condition was. It was the Supreme Court's job only to make sure that Judge Parker properly applied the law to the facts as he found them.

Judge Beasley's opinion is remarkable because at one point he veered way off course and ruminated on how he thought the murder occurred. This is not what a court of appeals is supposed to do at all; again, they are not there to determine the facts. He said there was no "homicidal motive" despite testimony by more than one person that Barclay was enraged with Katie for walking home from church with a man named Louis Rossell, who had given her a ring. Then he went on to suggest that even if Barclay *had* killed her, it was unlikely a first-degree murder. Rather, the judge surmised, Barclay probably got fresh with her, she grabbed the gun and got shot in the ensuing struggle. He went so far as to say he was suggesting this scenario so that it would be considered at the retrial.

THE RETRIAL and CONFESSION

The other remarkable thing the Supreme Court did was order that the retrial would be held by a special circuit of the Supreme Court rather than by the Burlington County Court. Judge Parker would not have reheard the case in any event as he died shortly after the trial.

Newly appointed Supreme Court Justice Charles Grant Garrison presided over the second trial in May of 1888. Garrison, a Merchantville native, graduated from the University of Pennsylvania with a medical degree in 1874 and went on to graduate from law school in 1878. He was appointed to the Supreme Court in January of 1888 at the age of 39.

The prosecution was ready for the retrial. They couldn't use the dying declarations, but they had plenty of new witnesses to testify that Barclay was jealous of Katie's relationship with Rossell and that she wanted to obey her father and break off the relationship. They also had other people, including a ten-year-old named Jennie Brown, who saw him on Eayrestown Road on the evening of the murder. Shortly after the trial started, Barclay's attorneys, after consultation with Judge Garrison, persuaded him that the case was going south. He confessed on May 26. He said he had been walking with Katie that night and that he had the gun in his pocket. She took it out of his pocket, fooled with it a little and then gave it back to him. He then started to fool with the broken chamber of the gun and it went off. She fell over and he thought she was dead, so he ran home and went to bed. The judge then told the jury that there was no evidence of premeditation, and that they therefore could not find a verdict higher than second degree murder. Upon the jury pronouncing a verdict of murder in the second degree, the crowd, unhappy with the reduced verdict, became unruly. One man, Ike Lewis of Uniontown, urged them to break into the jail and lynch Barclay. The mob dispersed only after sheriff's officers intervened.

On June 14, 1888, Judge Garrison sentenced Barclay Peak to 20 years in prison. According to the *Philadelphia Times*, as Barclay was being led to the Jail, his father approached Katie's father on the courthouse steps and said, "Hope there are no hard feelings." The men shook hands and parted.

EPILOGUE

Barclay was paroled in August of 1902 after serving 14 of his 20-year sentence. He got a job as a streetcar conductor in Trenton, where he took up residence, professed Christianity and joined the Wesley Methodist Episcopal Church. But a zebra rarely changes his stripes, and he was back in the news in January of 1911, as you will see if you keep reading.

WALT WHITMAN AND OTHER INTERESTING TIDBITS

The case really was a cause celebre. Everyone was talking about it, even Walt Whitman, who at the time resided in Camden. Horace Traubel was a writer and close friend of Whitman. In 1905, about a decade after Whitman's death, Traubel published *With Walt Whitman in Camden*, a collection of his notes of conversations Whitman had with him and others. One of those conversations was in 1888

between Whitman and his publisher, Thomas Biggs Harned, about the Peak case. The spirited discussion occurred on the day Peak confessed. The men argued about the Supreme Court's ruling to exclude the dying declaration. Traubel noted that



“Harned presented the legal and Walt the moral argument. W. repeatedly spoke of certain rulings in the case as being ‘possibly good law but bad sense, the refinement of refinement of technicality, instances in which justice is surrendered to legality’ adding: ‘I supposed judges were more independent and juries had more freedom of disposal.’ Harned said something about the ‘truth’. W. interrupted him to cry out: ‘Little do judges and juries – especially judges- know about the truth: lots of men are just liars – remember that, too. On the whole the law is as likely to defraud you as give you justice- quite as likely.”

Whitman wasn't the only person disturbed by Justice Beasley's rulings. Here are some excerpts from local papers:

The Camden Morning Post: “It is to be feared that Jersey justice has received a wrench if not a severe sprain....the allowing of the “exceptions” will not disabuse the public mind of the impression that Peak wantonly murdered the poor girl... in coming to the rescue of a man who richly deserves the extreme penalty for his crime, 99 out of 100 will conclude that the criminal court went out of its way to shield a criminal.” *The Philadelphia Inquirer*: “The bad old rule that the person wounded must be considered a liar unless in immediate fear of death has been stretched to its utmost limit in this decision. It is a kind of Jersey justice that does Jersey no credit.” *The North American*: “Several persons convicted of murder in NJ have within the past 2 or 3 years escaped the gallows, and the Peak case will deepen the feeling that somehow or other Jersey justice is losing its grip.”

Despite the fact that most seemed to believe that Barclay killed Katie and should be punished, many were sympathetic to the “illiterate young country boy, whose only attraction is a pair of black eyes that sparkle like jet beads”. Even Katie's parents couldn't bring themselves to appear in court for the verdict, telling reporters that “we're sorry for Barclay, and that it would pain us to have the boy atone for his crime on the gallows.” Warden Taylor and his wife babied him for a while during his stay at our Jail. They fed him from their private table, including “many little delicacies prepared by the deft hands of Mrs. Taylor”. They fed him so much, in fact, that he started getting fat and the Freeholders complained about the food bill, after which time he “went back to prison soup and unbuttered bread”.

Some, especially young women, were not only sympathetic, but downright enchanted. Imagine a convicted felon being the object of hero-worship; that would never happen today, right?

The *New York Sun* reported: Burlington County does not contain all the girls who admire him. Philadelphia and even Brooklyn have sent admirers... When Sheriff Harbert (who was the County executioner and part-time blacksmith) was asked if Barclay Peak had many callers, he smiled. 'Yes, Barclay is popular with the ladies, and nearly every day we have to refuse some who call to see him and present him with favors. But Barclay is cute. He has the right to see relatives, and so he has elevated all his particular lady friends to the rank of cousin. Turnkey Taylor and myself believe that the Peak family is the most extensive in the world. It is a family of all cousins, but not many uncles and aunts.'

His real family was actually more scandalous than the daft but beautiful "cousins" who brought him flowers and cookies. Most of his many siblings did not attend the first trial, though his two very young sisters testified (probably falsely) that Katie had threatened suicide by ingesting "paris green". His two brothers did attend, the older one of whom had just been released from Trenton State Prison after serving a long term. He had at least seven other sisters, all of whom were known for their beauty - - and their escapades. Alice lived in Philadelphia, Sadie in Savannah and Julia in Brooklyn. One of the sisters married a man named Shinn and appeared in the *Camden Courier Post* in 1905, where it was reported that she had cut her husband's arm with a knife or glass bottle in a drunken brawl.



Lizzie, who would later meet the same fate as Katie, played no role in Barclay's trial as she had lately run off with Martin McClintock, who had come to Beverly from out west to collect for his brother, A.H. McClintock, a "prosperous installment man". The "dashing cow-boy" claimed to speak Native American and to be engaged to a Native American princess. He was popular with the girls, and got into trouble when the beau of one of them challenged him to a duel. Shortly thereafter, he and Lizzie went missing until September 23, 1887, when, according to the *Courier Post*, A.H. received a letter from him explaining that he and Lizzie had taken \$200 of the money he had collected and they were "en route to the plains, where McClintock will again don the sombrero and take his chances with the buffalo and the Indians." The affair was

apparently just a flash in the pan, though: Lizzie was soon back in Burlington City running a boarding house and engaged in a romance with Wesley Warner, the married father of four who would in 1892 slice her throat on Pine Street in Mt. Holly.

There couldn't be any more to this story, right? Wrong. We leave you with yet a few more interesting facts related to the case:

- While in our Jail Barclay struck up a relationship with a Burlington City character named John McNulty, who called himself Coal Oil Johnny after the real Jed Clampett-esque character who in the 1860s struck oil only to shortly thereafter fritter away his fortune. McNulty was a snake oil salesman who travelled around Burlington County doctoring diseases with crude petroleum. The charismatic charlatan with prominent cheekbones, swarthy complexion and long black hair suffered a business interruption when he was thrown in the Jail on a drunk and disorderly offense. After his release, he travelled around giving speeches promoting Barclay's innocence and was thought to have hatched a scheme to provide the young man with the means of suicide should he be sentenced to death.
- The trial jury deliberation was apparently more fun than one might guess as appears from a bill for whiskey purchased for their use by the Freeholders.
- One of the grand jurors, Michael Newbold of Wrightstown, died a day or two after the indictment was returned. He was an archeologist of note and had one of the finest collections of Native American relics in the country.
- Barclay's employer, John Black, owner of the Wigwam Farm in Southampton, kept a journal between 1842 and 1861. The 800-page account of his farm business is preserved in the archives of Princeton University.
- The day before she died, six doctors, some from Philadelphia and New York, attempted to locate the bullet in Katie's brain by way of an "induction balance", a device that Alexander Graham Bell invented specifically to find the bullet that caused the death of President James Garfield in 1881. As with Garfield, the wound was deemed inoperable and the procedure probably hastened death.

- Most of the witnesses were simple country folk. While none were Rhodes scholars, William Prickett struck one newspaper reporter as particularly dense. Prickett was one of many called to rebut Barclay's alibi that he was home all evening the night of the murder. The Wilkes-Barre Semi-Weekly Record reporter wrote:

William Prickett is a loose-jointed country lad, with a small, ill-shaped head and a dull, expressionless face. His testimony convinced this court and jury that his countenance did not belie him, and that if he ever got sued for libel, he would have a hard time to get a verdict in his favor. If Mr. Robbins ever pumped a stupider witness, he must have drawn upon the resources of a home for imbeciles. The young fellow was so dull that he could not understand half the questions, and once or twice the lawyer's patience- and he has a pretty good stock of it- was sorely tried. The performance was very amusing and made everyone laugh, while genial Judge Parker rapped on his desk for order and smiled.

- And the topper: The Washington, DC *Evening Star* reported that on March 31, 1887,

"several strange faces have been seen ...at the grave of Katie Anderson...At first nothing was thought of the appearance of the strangers until they were seen by one of the section-men at the railroad, as he was returning home at dusk. He noticed two men acting rather suspiciously in that part of the cemetery...As they saw him approach, they stooped down as if trying to avoid discovery...One of them carried something that looked like a shovel...on seeing they were followed they walked hurriedly down the street toward Mt. Holly, and were not seen again. Whether they intended to rob the grave of the body of the murdered girl cannot be positively stated, but their actions gave sufficient ground for suspecting them.

PAROLED MURDERER IS AGAIN JAILED

Barclay Peak, Slayer of Katie Anderson, Wields Blackjack

PHILADELPHIA
Special to The Inquirer.

(1911)

BURLINGTON, N. J., Jan. 15.—Charged with murderous assault upon relatives living on Earl street, Barclay Peak, slayer of Kate Anderson and now on a parole from a twenty-year sentence in the State Penitentiary, was lodged in the city jail last night after a tussel with policemen, who took from him a blackjack with which it is alleged he tried to beat out the brains of Clarence Freck.

The police say they have been uneasy about the presence of Peak since he was released from prison. Once before, they declare, he violated his parole and was sent back, but powerful influences gained him his liberty again. Peak last night, it is charged, entered Freck's home with the avowed determination to "clean house," and when Freck resisted his efforts to drive the occupants into the street, he was beaten.

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In Memoriam

Jay B. Tomlinson 1893-1967
David A. Kimball 1930-2021

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