

The Thieving Squirrel

By Lars Sigurdssen

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“Thomas Harding, have you anything to say why sentence of death should not be passed upon you?”

“I didn’t kill him! I’m innocent! Why won’t anyone believe me?!”

“Mr. Harding, you have been convicted of murdering Frederick Abernathy on October 24, 1934. It is considered and ordered by the Court that you, Thomas “Shanks” Harding, suffer the punishment of death by the inhalation of lethal gas in the San Quentin death chamber within the week beginning on Sunday, the tenth day of July, in the year of our Lord one thousand nine hundred and thirty-seven. This is the sentence of the law.”

Shanks collapsed. Two court officers lifted him by his armpits and began dragging him from the courtroom. His feet were useless to him. Trying to hide his face with cuffed hands, he sobbed, “Oh God! No! No!”

Sheriff Robert McNulty watched the scene unfold from the court gallery, staring intently at Shanks’ face. He felt numb. He had done his duty. But throughout the investigation, he had grown to like Shanks genuinely. He felt deeply sorry for him. Shanks reminded McNulty too much of his own father, a down-and-out loser, always trying to do the right thing and provide for his family during the desperate years of economic collapse throughout America. Finally, his father turned to crime and was killed by a policeman’s bullet during a botched bank robbery. He

never judged his father, never believed there was anything to forgive. But his career on the police force sometimes seemed to him like an attempt to erase the past. The widow of Fred Abernathy, crying woefully, came up to Sheriff McNulty crying woefully and thanked him. As he walked out of the courtroom a man came up behind him and patted him on the back.

“Nice work, McNulty,” he said, “You’re a good man. There’s not enough swift justice in this country anymore. Too many of these thugs get away with it.”

McNulty turned around and looked at him. The man was smiling. The sheriff returned a vacuous look and replied, “We’re all just trying to survive.”

Fred Abernathy took the day off from his law practice to do something he had loved doing ever since he was a boy, a solitary walk through the forests of Yosemite National Park. No kids or wife to distract him, no phones, no meetings to attend or clients to interview. Just him and the sounds of nature. As he walked down a beaten path through thick groves of towering pine trees he began whistling his favorite opera, Rossini’s *The Thieving Magpie*, a piece that invariably heightened his spirits and filled him with joy. He didn’t even notice the clatter of the huge pine cone as it ricocheted chaotically through the branches, descending from near the top of the sugar pine 220 feet up. The missile steadily gained speed finally intersecting with his precise geometric point on the path. The foot-long pine cone struck him squarely on the back of his head killing him instantly. He fell face-forward onto the path. A pool of blood rapidly spread around his crushed skull.

A large gray squirrel with a black swath of fur cresting his head like a Mohawk spotted the prized cone lying in the dirt, chocked full of pine nuts, from his perch high up in the giant tree. He scampered down, nervously crossing the path, and began frantically tugging and pulling the pine cone with teeth and claw to move it to a safer place behind the tree out of sight of competition and predators. He then immediately set about mining it for the delicious nuts.

Minutes later Shanks Harding came strolling down the same path, occasionally stopping to nip at a hip-pocket bottle of whiskey. He hadn't found any work for over a month, forcing his wife and kids to have to move back to Oregon and stay at her brother's farm. He usually shared his bottle with a friend or two; but, today Shanks was feeling exceptionally vulnerable. He needed the whole bottle for himself to numb his feelings of despair. Rounding a tight corner, he discovered the body lying in the middle of the path. "Hey! Hey! You all right, mister?" He ran up to the prone figure and stopped stiff when he saw the pool of blood surrounding Fred's head. He immediately knew from the expanse of the crimson pool that the man was dead. There was nothing to be done for him. Then he saw the bulge of a wallet in the back pocket. The whiskey was talking to him. Talking to him with the voice of Mr. Hyde since Dr. Jekyll had left the room when he started gulping from the bottle. He fished the wallet out of the pocket, opened it, and pulled out all the cash. He made a fan out of three crisp twenty dollar bill, two tens, a five and several ones. Slowly, nervously he put the empty wallet back into Fred's pocket as if he were afraid Fred might suddenly wake up. Then he spotted the watch on the outstretched arm. The whiskey talked to him again. He wrestled the watch off of the lifeless wrist and shoved it into his

own pocket. Assuring himself that no one had seen his crime, he spun around and briskly walked back down the trail to Carstens Road and back onto Highway 140 where he hitched a ride into dusty Midpines, “*The Gateway to Yosemite.*”

Two hikers on the trail later did the right thing. It was immediately obvious to them that Mr. Abernathy was dead. They left the crime scene undisturbed and made fast tracks for the ranger station. Ranger Jenkins was on duty that day. Performing animated gestures, the two excited hikers described the grotesque scene to Officer Jenkins. All the rangers at Yosemite knew Sheriff McNulty quite well. He was a respected and well-liked veteran of Mariposa County law enforcement. Yosemite had been part of his beat for the past fifteen years. Ranger Jenkins called Sheriff McNulty who grabbed his gun and hopped into his Ford radio patrol car after enlisting a crime lab technician from the office to accompany him. He had walked most of the trails in Yosemite many times, and as he was driving, he pictured in his mind the exact place where the body was reported to be. Within an hour he and the technician were standing next to Ranger Jenkins at the crime scene.

The boot prints encircling the body and the wallet devoid of any cash drew McNulty toward a quick conclusion. This was no accident. Mr. Abernathy never saw his attacker. Your basic mugging. A crime of opportunity for a handful of cash—the lowest common denominator of crime. The ragged hole in the back of the head was created by some hard, pointed object delivered with significant force. But no murder weapon was found after twenty intense minutes of beating through the immediate bushes. He instructed his crime technician to make plaster

casts of the boot prints around the body and dust the wallet for fingerprints and then proceeded to track the boot prints back toward the road as far as he could. They quickly became unreadable, lost in the helter-skelter of all the other footprints. McNulty took one last look at the body, pondering the scene before heading back to Midpines. Nobody should ever have to die that way. How much cash could have been in that wallet? Certainly, not enough to keep someone happy for very long. The senseless waste of life was a part of his job with which he had never been able to come to terms. Never could understand it.

Shanks was rich. He found \$88—more than a month and a half of day-laborer wages—in that wallet. And he still didn't know what the watch would bring. He planned to send two of the twenties to his wife and kids in Oregon. The rest would keep him going until he found a real job—a permanent job. No more sleeping in flophouses or hobo camps for him. But first, he had to celebrate a bit. His favorite bar in Midpines was The Mad Duck. That's where he could always find a few of his friends. He entered the bar with an arrogant stride that he had not felt for many long months. He wanted to laugh and sing and hang with his buddies into the wee hours of the morning. Everybody liked Shanks. The whiskey started to flow, as did the bullshit, and he bought round after round for his friends.

He counted the bartender, Sammy, as one of his best friends, a connected friend who knew everybody in Midpines and in whom he could trust and confide. The whiskey told him to show Sammy the watch. “Whaddaya think it's worth, Sammy?”

“Gee! Nice, Shanks. Where'd ya get it?”

“My wife’s father give it to us as a sorta wedding present. Hate to part with it. But, I really need the money, until I can get back on my feet.”

“Tell ya what, Shanks. It’s gotta’ be worth twenty bucks easy. That’s about the nicest watch I ever seen. I’ll give you ten and hold it for you until you can buy it back. That way, it stays in your family.”

And that was Shanks’ undoing. He took the ten, Sammy took the watch, and the next day, Sheriff McNulty dropped into the bar and asked Sammy if he knew anyone who has been throwing a lot of money around lately. Never one to turn on a friend, but honest to a fault, Sammy told the Sheriff about Shanks’ loose spending and the watch from the night before. McNulty had his man. He hopped into his radio patrol car and drove down to the hobo camp at the south end of town. There he quickly found Shanks and arrested him on suspicion of the murder of Frederick Abernathy, respected attorney at law.

The boot print casts matched Shanks’ boots. But the watch became the key piece of evidence at the trial. Widow Abernathy identified the watch as undoubtedly belonging to her late husband. A murder weapon would have made it an airtight case. McNulty was extremely thorough and hated loose ends. However, the district attorney was sure he had enough facts for his conviction. Shanks changed his story several times, which didn’t do much to help him out of his situation. Eventually, he told the whole truth and admitted to stealing. But, it was too late. No one believed him.

Three years later, Shanks had a morning appointment with the gas chamber at San Quentin. His anguish had slowly turned to resignation. All his friends had abandoned him. His wife had divorced him. His kids became strangers. Shanks was ready to die. In his mind, he had deluded himself into wondering if he really had murdered Mr. Abernathy. Maybe it was the whiskey. Maybe he had gone crazy for just that brief, fateful moment, then blanked it all out.

Sheriff McNulty kept busy those three years solving other crimes. After solving a case and convicting the bad guy, he usually put a crime out of his mind and moved on to the next one. However, today was different. Today, he knew this was the day Shanks was destined to die in the gas chamber, and his mind kept picturing Shanks sitting in his death row cell counting down the hours, counting down the minutes. But he didn't see Shanks' face. He saw his father's face.

It was a slow day for crime. While he was cruising in his patrol car, a call came in to settle a dispute that had escalated into a fistfight over a fence line between two neighbors up in Briceburg. As his Ford Model A wound up Highway 140, he found himself driving near the trail where Mr. Abernathy's life had ended, and Shanks' life had begun to end. He was compelled to stop the car and decided to walk to the spot where the murder had taken place. He wasn't sure what was driving him to go there. Just a whim, an idle impulse, a feeling.

He rounded the corner in the path and there it was—the exact spot. As he walked toward it, he heard a loud clattering above him. When he looked up, he was struck a hard, glancing blow on the side of his forehead. He was hit so hard that it knocked him back on his butt. Head went foggy. Blood started streaming down his face. He fought hard not to lose consciousness. After a

minute, his head started to clear, and he pulled a handkerchief from his pocket and started dabbing the throbbing lump on his forehead to stay the bleeding. As he sat there trying to understand what had just happened, his eyes locked on the offending pine cone embedded deep in the dirt next to the path. A large gray squirrel with a black swath of fur cresting his head like a Mohawk appeared near the pine cone. McNulty watched curiously as the squirrel tugged and pulled on the big cone with all its might. Eventually the squirrel and the pine cone disappeared behind the tree.

McNulty suddenly went rigid. His eyes opened wide. “Well, I’ll be goddamned!” he said out loud. “It was the squirrel! The thieving squirrel! That *goddamned* squirrel stole the murder weapon!”

He dashed back to his car. The ranger office was twenty minutes up the road. He didn’t have a second to lose. He burst into the ranger office. “I need to use your phone!” Ranger Jenkins was completely startled. “Sure, Bob. What’s up?”

McNulty was across the room in two strides. He snatched the phone receiver off of the drop hook and clamped it to his ear, toggling the drop hook rapidly with the mouthpiece pressed to his lips. On the other end of the line, Effie, the operator, said, “Nummmber pleeaazzzz.”

“Effie, McNulty here. Get me the County DA’s office. This is *urgent!*”