VIRGINIA

ROCKINGHAM COUNTY TO WIT:

IN THE COUNTY COURT OF SAID COUNTY:

The jurors of the Commonwealth of Virginia in and for the body of the County of Rockingham and now attending the said Court at it's November term 1899, upon their oaths present that James Henderson on the 28rd. day of August 1899, did divers bank notes and silver coin, current in this Commonwealth, of the value of six dollars and twenty-five cents, the denomination whereof is unknown, of the moneys and coins of the said Perry Shipe then and there from the person of him the said Perry Shipe feloniously did steal, take and carry away against the peace and dignity of the Commonwealth.

Taylor Nawee
~~Wm Nawee~~ Perry Shipe
John Rice
Shade Knight
John Arrier

Witnesses sworn and sent by the Court to the grand jury to give evidence November-20th. 1899. & upon whose evidence this indictment is found

_____ Clerk.

Commonwealth
vs
James Henderson
for grand larceny

A true bill
H. Beer
Foreman.

VIRGINIA

ROCKINGHAM COUNTY TO WIT:

IN THE COUNTY COURT OF SAID COUNTY:

The jurors of the Commonwealth of Virginia in and for the body of the County of Rockingham and now attending the said court at its November term 1889, upon their oaths present that James Henderson on the 28rd day of August 1889, did divers bank notes and silver coin, current in this common wealth, of the value of six dollars and twenty-five cents, the denomination whereof is unknown, of the bank notes and coins of the said Perry Snipe then and there from the person of him the said Perry Snipe feloniously did steal, take and carry away against the peace and dignity of the Commonwealth.

Witnesses sworn and sent by the court to the grand jury to give evidence November-20th.1889.

~~John Wise~~ Henry Wise
John Cole
Chas Hugh
John Foster

Clerk.

State of Virginia, Town of Harrisonburg, to-wit:

To the Chief of Police, or Any Policeman of the Said Town:

Whereas Perry Shipe, *of the said town, has this day made complaint and information on oath before me,* ~~O. B. ROLLER~~ S. M. Switzer, *Mayor of the said town, that* James Henderson *of the said town, on the* 23d *day of* August, 189 9, *in said town did* divers bank notes & silver coin, current in this Commonwealth, of the value of six dollars & twenty five cents, the denomination whereof is unknown, of the monies & coins of the said Perry Shipe then & there from the person of him the said Perry Shipe feloniously did steal, take & carry away

These are therefore in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before me or some other Justice the body of the said James Henderson *to answer the said complaint and to be further dealt with according to law.*

Given under my hand and seal this 24th *day of* August, 189 9.

S M Switzer (SEAL.)
Mayor.

Summon the following witnesses: Jno. A. Switzer, M. N. Effinger, John Rimel & Taylor Hawse

---

Executed this 24 *day of* August, 189 9, *by arresting the above named* James Henderson *and bringing* him *before* S. M. Switzer, Mayor

---

Judgment on the ____ *day of* August, 189 9.

Defendant ~~found~~ ~~guilty~~ *upon the testimony on oath of* Jno. A. Switzer, M. N. Effinger, John Rimel, Taylor Hawse, Perry Shipe, Jno. Reiter & Robt Switzer, *and it is adjudged that* the Defendant be committed to the County jail to await the action of the Grand Jury of the County Court of Rockingham Co. Va.

S M Switzer Mayor
& Coroner of Harrisonburg & ex officio J.P.

Commonwealth

vs

James Henderson

2nd Indictment

Rockingham County, to wit:

To Geo. W. Willis .....Constable of said County, and to the keeper of the jail of said County:

These are in the name of the Commonwealth of Virginia, to command you, the said Constable, forthwith to convey and to deliver into the custody of the keeper of the said jail, together with this warrant, the body of James Henderson, charged before me D. M. Switzer, Mayor of Harrisonburg + as such a justice of said County, on the oath of Perry Shipe with a felony by him committed, in this, that he, the said James Henderson on the 23d day of August 1899 in said County did divers bank notes & silver coin, current in this Commonwealth, of the value of Six Dollars & twenty five cents, the denomination whereof is unknown, of the monies & coins of the said Perry Shipe then & there from the person of him the said Perry Shipe feloniously did steal, take & carry away

the said James Henderson having failed and refused, and still failing and refusing to furnish recognizance according to the law in such case made and provided, in the sum of $....., as was required by me, justice as aforesaid; and you the keeper of the said jail, are hereby required to receive the said James Henderson into your jail and custody, that he may be tried for the said offence before the County Court of said County, and him there safely keep until he shall be discharged by due course of law.

Given under my hand and seal this 24th day of August 1899.

D. M. Switzer (Seal.)

Mayor of Town of Harrisonburg ex officio J.P.

Pocahontas County, to wit:

To .....Geo. W. Hinkle.....constable of said County, and to the keeper of the jail of said County:

These are in the name of the Commonwealth of Virginia, to command you, the said constable, forthwith to convey and to deliver into the custody of the keeper of the said jail, together with this warrant, the body of James Hinkle

A resident of Pocahontas County, Va.

of said County, on the oath of Perry Stalnaker with a felony by him committed, in this, that he, the said James Hinkle, on the 23rd day of December, 1908, in said County, did drive stakes & ditches from Government land in the Government of the State of Virginia & taken away & appropriated to his own use the same & thus did steal & carry away the property of the said Perry Stalnaker.

James Hinkle

Taking note that he may be called for the said offense before the County Court of said County, and his bond duly forfeited in case he shall be discharged by the course of law.

Given under my hand and seal this 27th day of January, 1909.

.....(Seal.)

Rockingham County, to wit:

To J.S. Messerley Clerk of the County Court of said County:

I, D. M. Switzer Mayor of the town of Harrisonburg & as such a justice of said County, do hereby certify that I have this day committed James Henderson to the jail of said County, that he may be tried before the ~~County~~ County Court of said County for A felony by him committed, in this, that he, on the 23d day of August 1899 in said County, did divers bank notes & silver coin current in this Commonwealth of the value of Six Dollars & twenty five cents, the denomination whereof is unknown, of the monies & coins of the said Perry Stipe then & there from the person of him the said Perry Stipe feloniously did steal take & carry away

Given under my hand this 24th day of August 1899

D. M. Switzer Mayor
of town of Harrisonburg & ex officio
J.P.

Commonwealth

Papers.

James Anderson.

To the Sheriff of Rockingham County.

The following list of persons of the County of Rockingham, residing remote from the place where the offence is charged to have been committed, and in other respects qualified to serve as Jurors, is furnished you, from which you shall take the Veniremen summoned by you to serve as Jurors upon the trial of Turner Green *charged with felony, set for the* 3rd *day of this* July *Term, 1899, of the County Court of the County aforesaid, being the* 19 *day of* July, *1899*

A. G. Sheffey
John S. Stuber
Joel D. Miller
Geo. E. Bowman

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon Three *persons of the county of Rockingham, to be taken from a list furnished by the* ~~*Judge of the*~~ *County Court of Rockingham, residing remote from the place where the offense is charged to have been committed, and qualified in all other respects, to serve as Jurors, to attend and appear before the County Court of Rockingham County, at the County Court House,* ~~*on the*~~ ..... ~~*day of the*~~ Forthwith ~~*Court next,*~~ ~~*being the*~~ ..... ~~*day of*~~ ..... 189..... *to serve as Jurors upon the trial of* Turner Green *charged with felony.*

And this they shall in no wise omit, under the penalty of £100. And have then and there the names of said persons and this writ.

Witness, J. S. Messerley, *Clerk of our said Court, at the Court House, the* 19th *day of* July, 189 9 *and in the* 124 *year of of the Commonwealth.*

J. S. Messerley *Clerk.*

Executed by summoning the three persons named in the list furnished by the Court & herewith returned

W. C. Switzer D. S.
for Jno. A. Switzer
SAC

TO THE SHERIFF OF ROCKINGHAM COUNTY.

The following list of persons of the County of Rockingham, residing remote from the place where the offence is charged to have been committed, and in other respects qualified to serve as Jurors, is furnished you, from which you shall take the Veniremen summoned by you to serve as Jurors upon the trial of James Henderson, *charged with felony, set for the* 5 *day of this* June *Term, 1899, of the County Court of the County aforesaid, being the* 2nd *day of* June, *1899.*

James W. Stimespurg
J. A. Stone 10
L. V. Bennett 25
Noah W. Bowman 10
Samuel S. Wilhar 14
F. L. Byerly
B. F. Strickler
David M. Sollar 18
W. J. Sollar 24
John W. Meyerhoeffer 16
Jacob M. Strickler 20

Wm M. Meyerhoeffer
W. F. Haney 25
J. H. Garrickhoff 25
A. J. Thompson 06
Calvin Miller
Geo. E. Nattan

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon Sixteen *persons of the county of Rockingham, to be taken from a list furnished by the Judge of the County Court of Rockingham, residing remote from the place where the offense is charged to have been committed, and qualified in all other respects, to serve as Jurors, to attend and appear before the County Court of Rockingham County, at the County Court House, on the* 5th *day of the* June *Court next, being the* 23rd *day of* June *189* *to serve as Jurors upon the trial of* James Henderson *charged with felony.*

And this they shall in no wise omit, under the penalty of £100. And have then and there the names of said persons and this writ.

Witness, J. S. Messerley *, Clerk of our said Court, at the Court House, the* 20 *day of* June *, 189*9 *and in the* 123rd *year of of the Commonwealth.*

J. S. Messerley *Clerk.*

Commonwealth.

vs. } Jamie Francis

James Henderson

To 5th. day of June ult.
being June 23. 1899

Executed by summoning the sixteen jurors named in the list furnished by the Court, whereon they returned.
J. A. Lentzner S. & C.

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ROCKINGHAM COUNTY---GREETING:

You are hereby commanded to summon Patrick Kavanaugh & Alexander Conrad

to appear before the Judge of the County Court of Rockingham County, at the Court-House, at 10 *o'clock a. m.,* ~~*on the*~~ ~~*day of the*~~ forthwith ~~*Court next*~~, *being the* 18th *day of* July 1899, *to testify and the truth to say in behalf of the Commonwealth against* James Henderson

who stands charged with and indicted for Housebreaking

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the 18 *day of* July, 1899, *and in the* 124*th year of the Commonwealth.*

J. S. Messerley, *Clerk.*

Form 68—Berlin.

Commonwealth

vs 3 Witnesses

James Henderson

1st & 2

Patrick Kavanaugh
Alexander Conard

Forthwith.

Executed finally 1899
To J. Conrick Sheriff
by Frank A. Livingston Bible

TO THE SHERIFF OF ROCKINGHAM COUNTY.

The following list of persons of the County of Rockingham, residing remote from the place where the offence is charged to have been committed, and in other respects qualified to serve as Jurors, is furnished you, from which you shall take the Veniremen summoned by you to serve as Jurors upon the trial of James Henderson *, charged with felony, set for the* Second *day of the* July *Term, 1899, of the County Court of the County aforesaid, being the* 18th *day of* July *, 1899.*

1 David H Shull a ✓
2 W E Shumack a ✓
3 C F. Sanfley a ✓
4 Chas. R Coffman a ✓
5 S. H. Crawford a ✓
6 W. J. Conger a ✓
7 E E Conner a ✓
8 Josiah H Diehl a
9 John S. Garber a ✓
10 Gabriel S Heatwole a ✓
11 W. J. Kayler a ✓
12 Saml L Layton a
13 John H Morgan a
14 C L Rodgers a ✓
15 A G. Sherfey a
16 M. B. Ruebush a
Joel D. Miller a ✓

Geo. E. Earman

Form 84—Berlin.

Executed July - 15th day of July, 1899 by summoning the following sixteen persons taken from the list furnished by the Judges as follows

W. S. Shull, M. E. Shimnock, C. F. Sawtley
Chas. L. Hoffman, A. A. Greene Jr., M. J. Bowen
E. E. Broome, John S. Harper, Gabriel S. Heatwole, M. J. Kaylor, C. S. Rodgers
A. H. Sherfy, Joel D. Miller, J. H. Monger & Saml. S. Layton, M. B. Burgamy.

W. C. Switzer D. S. Jr.
J. A. Switzer S. R. C.

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon Sixteen *persons of the county of Rockingham, to be taken from a list furnished by the Judge of the County Court of Rockingham, residing remote from the place where the offense is charged to have been committed, and qualified in all other respects, to serve as Jurors, to attend and appear before the County Court of Rockingham County, at the County Court House, on the* 2nd *day of the* July *Court next, being the* 18th *day of* July 1899 *to serve as Jurors upon the trial of* James Henderson *charged with felony.*

And this they shall in no wise omit, under the penalty of £100. And have then and there the names of said persons and this writ.

Witness, J. S. Messerley, *Clerk of our said Court, at the Court House, the* 5th *day of* July, 1899 *and in the* 124th *year of of the Commonwealth.*

J. S. Messerley *Clerk.*

Commonwealth

vs

Vanni Faciar

James Henderson

To 2nd. day of July Ct
being July 18 1899

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA:

TO THE SHERIFF OF Augusta COUNTY---GREETING:

You are hereby commanded to summon D. B. Hisey

to appear before the Judge of the County Court of Rockingham County, at the Court-House, at 10 *o'clock, a. m., on the* 5 *day of this* June *Court* ~~next~~, *being the* 23 *day of* June 1899, *to testify and the truth to say in behalf of the Commonwealth against* James Henderson

who stands charged with and indicted for Felony

And this he *shall not omit under the penalty of* £100. *And have then and there this Writ.*

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the 20 *day of* June, 1899, *and in the* 123~~d~~ *year of the Commonwealth.*

J. S. Messerley, *Clerk.*

Form 68—Berlin.

D. B. Hiscy, of Edinburg.

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF Augusta COUNTY---GREETING:

You are hereby commanded to summon D. B. Hisey

to appear before the Judge of the County Court of Rockingham County, at the Court-House, at 10 *o'clock, a. m., on the* 5 *day of this* June *Court* ~~next~~, *being the* 23 *day of* June 1899, *to testify and the truth to say in behalf of the Commonwealth against* James Henderson

who stands charged with and indicted for Felony

And this he *shall not omit under the penalty of £*100. *And have then and there this Writ.*

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the 20 *day of* June, 1899, *and in the* 123~~rd~~ 125th *year of the Commonwealth.*

J. S. Messerley, *Clerk.*

Form 68—Berlin.

Commonwealth

No 3 1c

James Henderson

D. S. Hiery

To 5th day June Court
being June 23. 1899.

D S Hiery is hereby sworn to be
sworn to Blue Ridge Va
Jun 23/99

Michael Sec

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon Five *persons of the county of Rockingham, to be taken from a list furnished by the* ~~*Judge of the*~~ *County Court of Rockingham, residing remote from the place where the offense is charged to have been committed, and qualified in all other respects, to serve as Jurors, to attend and appear before the County Court of Rockingham County, at the County Court House, on the* 2nd *day of the* July *Court* ~~*next,*~~ *being the* 18 *day of* July 1899 *to serve as Jurors upon the trial of* ..... *charged with felony.*

And this they shall in no wise omit, under the penalty of £100. And have then and there the names of said persons and this writ.

Witness, J. S. Messerley, *Clerk of our said Court, at the Court House, the* 18 *day of* July, 1899 *and in the* 124 *year of of the Commonwealth.*

J. S. Messerley *Clerk.*

Executed July 18 1899. by summoning the five persons named in the list furnished by the Court and herewith returned.

J. H. Lentzner S.R.C.

TO THE SHERIFF OF ROCKINGHAM COUNTY.

The following list of persons of the County of Rockingham, residing remote from the place where the offence is charged to have been committed, and in other respects qualified to serve as Jurors, is furnished you, from which you shall take the Veniremen summoned by you to serve as Jurors upon the trial of James A. Henderson, *charged with felony, set for the* 2nd *day of the* July *Term, 18*99*, of the County Court of the County aforesaid, being the* 18th *day of* July*, 18*99*.*

Samuel C. Miller
Worth M. Logan
W. T. Detrick
J. G. Moyers
R. H. Gaither
Geo. Gwathmey

Form 84—Berlin.

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ROCKINGHAM COUNTY---GREETING:

You are hereby commanded to summon P. F. Spitzer John Wakenight Jr. Lee Wells John Long Robt Walls James H Dyer George Gatewood M M Fall. D S Dizey Turner Green Geo W Wellis Joseph Neiman Thomas Phalen Hunter Hankley M D Rhinehart D B. McFall

to appear before the Judge of the County Court Rockingham County, at the Court-House, at 10 *o'clock, a. m., on the* 5 *day of the* June *Court next, being the* 23 *day of* June 1899, *to testify and the truth to say in behalf of the Commonwealth against* James Henderson

who stands charged with and indicted for Flory

And this they *shall not omit under the penalty of* £100. *And have then and there this Writ.*

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the 20 *day of* June, 18, *and in the* 123d *year of the Commonwealth.*

J. S. Messerley, *Clerk.*

Form 68—Berlin.

Commonwealth

1016

Chas.

James Henderson
P. F. Spitzer
John Wakeling Jr
Lee Wells
John Long
Robert Ralls
James H. Dwyer
George Galewood
W. S. Fallis
D. S. Hersey
Turner Green
Geo. W. Wild
Joseph Newma
Thomas Phaley
Stanley Worthy
W D Rhinehart
S. B. McFate

To 5th Day of June let
leaving June 2 1899

Executed June 21 1899
E. J. Boardman Chief
Wm. H. Kilgus Jr

To the Sheriff of Rockingham County.

The following list of persons of the County of Rockingham, residing remote from the place where the offence is charged to have been committed, and in other respects qualified to serve as Jurors, is furnished you, from which you shall take the Veniremen summoned by you to serve as Jurors upon the trial of James Henderson *charged with felony, set for the* 5 *day of the* June *Term, 1899, of the County Court of the County aforesaid, being the* 23rd *day of* June, *1899*

Jonas H Blosser

Geo. Huffman

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA.

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

You are hereby commanded to summon One *persons of the county of Rockingham, to be taken from a list furnished by the Judge of the County Court of Rockingham, residing remote from the place where the offense is charged to have been committed, and qualified in all other respects, to serve as Jurors, to attend and appear before the County Court of Rockingham County, at the County Court House, ~~on the~~* ..... *~~day of the~~* Forthwith *~~Court next~~, ~~being the~~* ..... *~~day of~~* ..... 189 *to serve as Jurors upon the trial of* James Henderson *charged with felony.*

And this they shall in no wise omit, under the penalty of £100. And have then and there the names of said persons and this writ.

Witness, J. S. Messerley, *Clerk of our said Court, at the Court House, the* 23rd *day of* June, 1899 *and in the* 123rd *year of of the Commonwealth.*

J. S. Messerley *Clerk.*

Executed by summoning the person named in the list of the levied herewith returned

G. A. Strutzer S.P.C.

Commonwealth

vs

Dennis Travis

James Anderson

Trespass

IN THE NAME OF THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ROCKINGHAM COUNTY---GREETING:

You are hereby commanded to summon Patrick Kavanaugh. Id N. Conrad Peter S. Thomas. James W. VanLear

to appear before the Judge of the County Court of Rockingham County, at the Court-House, at 10 *o'clock, a. m., on the* 2nd *day of this* July *Court* ~~next~~, *being the* 18 *day of* July 1899, *to testify and the truth to say in behalf of the Commonwealth against* James Henderson

who stands charged with and indicted for Felony

And this they *shall not omit under the penalty of* £100. *And have then and there this Writ.*

Witness, JOSEPH S. MESSERLEY, Clerk of our said Court, at the Court-House, the 18 *day of* July, 1899, *and in the* 124*th year of the Commonwealth.*

J. S. Messerley, *Clerk.*

Form 68—Berlin.

Commonwealth

1844

Chas.

James Henderson

Forthwith

Executed July 18th 1844

W. Walters D. Sher

Geo. A. Hunter

A.M.P.C.

The Court further instructs the jury that any fact or facts sufficient to produce a reasonable doubt as to the guilt of the prisoner need only to be established by proof that would be satisfactory to establish such fact or facts in a Civil trial and the prisoner is not bound to prove the same beyond a reasonable doubt, but only by a preponderence of evidence

Instruction given by the court in lieu of instruction No 3 offered by the prisoner & not given

Commonwealth

@

James Henderson

D. H. Shull	25
~~W E Shuinvell~~	
C F. Sanfley	22
Chas. L. Coffman	08
S. H. Crawford	24
M. J. Conger	14
E E Comer	22
~~John S. Garber~~	16
~~Gabriel S. Heatwole~~	20
M. J Kaylor.	16
~~Joel D Miller~~	18
Samuel C Miller	18
Newth M Logan	2
W F. Detrick	8
J. G. Myers	22
R H Gaither	08

4.

not given

The Court further instructs the jury that the possession of money by the prisoner when arrested cannot be considered by the jury in this case as proof or tending to prove that he stole the same from the firm of Spitzer & Hess on the night of March 10th., 1899.

5.

not given

The Court further instructs the jury that in the absence of proof beyond every reasonable doubt by the Commonwealth, that the money found in the possession of the prisoner when arrested was the same money stolen from the firm of Spitzer & Hess on the 10th. of March, 1899, such possession is no proof against the accused that he committed the crime charged in the indictment.

6.

not given

The Court further instructs the jury that, although they may believe from the evidence that the money found in the possession of the prisoner is the same money stolen from the store-room of Spitzer & Hess on March 10th., 1899, yet such possession alone is not to be considered as any proof or tending to prove the accused guilty of the offense charged in the indictment.

4.

The Court further instructs the jury that the possession of money by the prisoner when arrested cannot be considered by the jury in this case as proof or tending to prove that the money came from the firm of Spitzer & Hess on the night of March 10th., 1899.

5.

The Court further instructs the jury that in the absence of proof beyond every reasonable doubt by the Commonwealth, that the same money in the possession of the prisoner when arrested was the same money stolen from the firm of Spitzer & Hess on the 10th. of March, 1899, such possession is no proof against the accused that he committed the crime charged in the indictment.

6.

The Court further instructs the jury that, although they may believe from the evidence that the money found in the possession of the prisoner is the same money stolen from the store-room of Spitzer & Hess on March 10th., 1899, yet such possession alone is not to be considered as any proof or tending to prove the accused guilty of the offense charged in the indictment.

The Court further instructs the jury that any fact ~~or facts sufficient to produce a reasonable doubt as to the guilt of the prisoner~~ (sought to be proven by the prisoner) need only be established by proof that would be satisfactory to establish such fact ~~or facts~~ in a civil trial and the prisoner is not bound to prove the same beyond a reasonable doubt, but only by a preponderence of evidence.

not given

No 3

The Court further instructs the jury that any fact sought to be proven by the prisoner needs only be established by proof that would be satisfactory to establish such fact in a civil trial and the prisoner is not bound to prove the same beyond a reasonable doubt, but only by a preponderance of evidence.

Prisoners Bills of Exceptions

#:#:#:#:#:#:#:#:#:#:#

Commonwealth

Vs). In the County Court of Rockingham

James Henderson.

Prisoner's First Bill of Exception.

Be it remembered that, upon the trial of this cause, after the Commonwealth had introduced P. F. Spitzer, who testified as a witness in its behalf, the Commonwealth, to further maintain the issue on its part then introduced Jehu Long, to whom the Attorney for the Commonwealth propounded this question: "Did he (meaning the prisoner) make any statement about the money he had in his possession when he was arrested?" to which question, by the Commonwealth's Attorney, the prisoner, by Counsel, objected, on the ground first, that possession of stolen property was not even prim facie evidence of housebreaking; second, that until the money found on the person of the prisoner, when arrested had been identified as the property of Spitzer & Hess, the persons alleged in the indictment as owning the stolen goods beyond every reasonable doubt, the possession of money by the prisoner when arrested, or any statement as to whence he got it, was not admissible against him, unless the purpose was to prove a confession by the prisoner that he obtained the same from the store-room of Spitzer & Hess by breaking and entering the same, as charged in the indict~~ed~~ment, but the Court over-ruled said objection and permitted said question to be asked the witness, after he had stated that no threat was made or inducement offered to the prisoner, which he answered as follows: "He

Commonwealth

vs. *In the County Court of Northampton*

James Henderson.

Prisoner's First Bill of Exception.

Be it remembered that, upon the trial of this cause, after the Commonwealth had introduced P. Spitzer, who testified as a witness in its behalf, the Commonwealth, to further maintain the issue on its part then introduced John Long, to whom the Attorney for the Commonwealth propounded this question: "Did he (meaning the prisoner) make any statement about the money he had in his possession when he was arrested?" to which question, by the Commonwealth's Attorney, the prisoner, by Counsel, objected, on the ground first, that possession of stolen property was not, even prima facie evidence of housebreaking; second, that until the money found on the person of the prisoner, when arrested had been identified as the property of Spitzer & Hess, beyond every reasonable doubt, the possession of money by the prisoner when arrested, or any statement as to whence he got it, was not admissible against him, unless the purpose was to prove a confession by the prisoner that he obtained the same from the store-room of Spitzer & Hess by breaking and entering the same, as charged in the indictment, but the Court over-ruled said objection and permitted said question to be asked the witness, which question was follows: "He

said he ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ met Turner Green in front of ~~Heffett~~ Taliaferro's store the night of the breaking and Turner said 'I made a good haul to-night," and he (the prisoner) said, 'whereabouts,' and Turner said, 'at Spitzer & Hess' store.' Prisoner said 'how much did you get?' Turner Green answered, 'about $80.oo.' Jim (meaning the prisoner) said, 'if you don't give me some I'll tell on you,' Jim said he gave him $7.50,--that is all he said on that subject." To which action of the Court in over-ruling said objection of the prisoner and permitting said witness to answer said question as aforesaid, and permitting the said answer to be received as evidence in the cause, the prisoner, by Counsel, excepted, and prays that this, his first Bill of Exceptions, may be signed, sealed and enrolled, and made part of the record in this cause, which is accordingly done.

Geo. Guthrie (Seal)

Prisoner's Second Bill of Exceptions.

Be it remembered, that upon the trial of this cause, after the Commonwealth had introduced P. F. Spitzer, John Long, and John T. Wakenight, who testified to maintain the issue on its part, to further maintain the issue on its part the Commonwealth introduced J. H. Dwyer, to whom ~~the Court, of its own motion~~ was propounded the following question: "Did he (meaning the prisoner) make any statement in regard to the money he had when arrested--if so, what was it?" to which question, the prisoner, by Counsel, ob-

jected upon the following grounds: 1st, that possession of stolen property is not even prima facie evidence of housebreaking; 2nd, that until the money found on the person of the prisoner, when arrested has been identified as the property of Spitzer & Hess, the persons alleged in the indictment as owning the store-house alleged to have been broken and entered by the prisoner, beyond every reasonable doubt, the possession of money by the prisoner when arrested, or any statement from whence he obtained it, is not admissible against him, unless the purpose is to prove ~~xxx~~ a confession by the prisoner that he obtained the same from the store-room of Spitzer & Hess by breaking and entering the same, as charged in the indictment; but the Court overruled said objection and otherwise had the witness was asked said question, which he answered as follows: "He (meaning the prisoner) only said that Turner Green had given him $7.00;" to which action of the Court, in over-ruling said objection of the prisoner, and permitting said answer to be received as evidence in the cause, the prisoner, by Counsel, excepts, and prays that this, his second Bill of Exceptions, may be signed, sealed and enrolled, and made part of the record in this cause, which is accordingly done.

Geo. Guillan (Seal)

had stated that he had made an indictment against the prisoner

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Prisoner's Third Bill of Exceptions.

Be it remembered that upon the trial of this caus the Prisoner, by Counsel, prayed the Court to give the jury six several instructions, which instructions are as follows (here insert instructions offered by prisoner) to the granting of the third, fourth and sixth of which instructions, the Commonwealth's Attorney objected, and the Court sustained said objection, and refused to give said third, fourth and sixth instructions, or any of them, but gave the first instruction prayed for by the prisoner, and the Court then, upon its own motion, refused to give the second and fifth instructions prayed for by the prisoner, and in lieu of said second, third, fourth, fifth and sixth instructions prayed for by the prisoner, upon its own motion, gave the following instructions: (here insert instructions given by the Court); to which action of the Court, in sustzining the objection of the Commonwealth's Attorney to the 3rd, 4th and 6th instructions, and refusing to give the same, or any of them, and to the action of the Court in refusing, upon its own motion, to give the second and fifth instructions, or either of them, as prayed for by the prisoner, and to the Court's action, upon its own motion in giving th the aforesaid instructions in lieu of the 2nd, 3rd, 4th, 5t and 6th instructions prayed for by the prisoner, the prisoner, by Counsel, excepts, and prays that this his third Bill of Exceptions may be signed, sealed and enrolled, and made part of the record in this cause, which is accordingly done.

Geo Bratton Seal

Prisoner's Fourth Bill of Exceptions.

Be it remembered that upon the trial of this caus after all the evidence on behalf of the Commonwealth and th prisoner had been heard by the jury, and the instructions of the Court had been read to the jury, and arguments of Counsel, the jury retired to their room to consult of their verdict, and, after some time, returned into Court, and rendered the following verdict: (here insert). Which v verdict, the prisoner, by Counsel, moved the Court to set aside, as contrary to the law and the evidence and grant the prisoner a new trial, but the Court over-ruled said. motion, and refused to set aside said verdict and grant the prisoner a new trial, to which action of the Court in refusing to set aside said verdict and grant the prisoner a new trial, the prisoner, by Counsel, excepts, and prays that this, his fourth Bill of Exceptions, may be signed, sealed and enrolled, and made part of the record in this cause, which is accordingly done.

Geo. Hutton (Seal).

Prisoner's Fifth Bill of Exceptions.

Be it remembered, that upon the trial of this cause, after the jury had returned the verdict therein as set forth in the fourth Bill of Exceptions, and the Court had over-ruled said motion for a new trial, as set forth in the fourth Bill of Exceptions, the prisoner, by Counsel, moved the Court to arrest the judgment of the Court upon said verdict, and discharge the prisoner from custody, upon the ground that the said verdict is not responsive to the the

indictment under which the prisoner was tried, in this, that the prisoner is charged in said indictment, with breaking and entering xxxxx "a certain store-house, the property of P. F. Spitzer and G. W. Hess, partners doing business under the firm name of Spitzer & Hess," with the intent to commit larceny," whereas the verdict of the jury finds the prisoner "guilty of breaking and entering the storehouse of Spitzer & Hess, with intent to commit larceny, in manner & form as charged in the indictment" entirely different parties the prisoner alleges from those stated in the indictment, or parties who have no existence, but the Court over-ruled said motion, and refused to arrest said judgment and discharge the prisoner from custody, and rendered judgment upon said verdict, against the prisoner; to which action of the Court in so over-ruling the said motion to arrest said judgment, and refusing to discharge said prisoner from custody, the prisoner by Counsel, excepts, and prays that this, his fifth Bill of Exceptions, may be signed, sealed and enrolled, and made part of the record in this cause, which is accordingly done.

Geo. Bratton (Seal)

The court further instructs the jury that the possession of money by the prisoner when arrested cannot be considered as sufficient proof that he stole the same from the firm of Spitzer & Hess, or that he committed the crime charged in the indictment but if the jury believe from the evidence, that the prisoner did ~~not~~ have money on his person when arrested that is a fact which the jury have a right to consider in connection with all the other evidence adduced before them, and it is for the jury upon consideration of the whole of the evidence introduced for the commonwealth, and for the prisoner, to say whether or not the prisoner is guilty of the crime with which he is charged beyond any reasonable doubt –

~~The~~ Instruction given by the court in lieu of instructions no 4-5 & 6 offered by the prisoner & ~~not~~ not given –

#:#:#:#:#:#:#:#

I

The Court instructs the jury that the prisoner is presumed to be innocent until he is proven to be guilty beyond every reasonable doubt by the Commonwealth, and that the burden of proving the guilt of the accused rests upon the Commonwealth, and that to warrant a conviction of any offense every fact necessary to establish his guilt must be proven beyond every reasonable doubt by the Commonwealth, and especially is this true where, as in this case, a conviction is sought upon circumstantial evidence alone, which is always to be acted on with the utmost caution.

Prather's case, 85 Va., 125-6.

2.

The Court further instructs the jury that circumstances of suspicion, no matter how grave or strong, are not ~~evidence~~ proof or evidence of guilt and that the accused must be found not guilty, unless the fact of his guilt is proven beyond every reasonable doubt to the actual exclusion of every reasonable hypothesis of his innocence, ~~[illegible]~~ consistent with the facts proven

Court strikes out "evidence" & adds words at bottom

3.

The Court instructs the jury that the prisoner is presumed to be innocent until he is proven to be guilty beyond every reasonable doubt by the Commonwealth, and that the burden of proving the guilt of the accused rests upon the Commonwealth, and that it must establish by competent evidence every fact necessary to establish his guilt must be proven beyond every reasonable doubt by the Commonwealth, and especially is this true where, as in this case, a conviction is sought upon circumstantial evidence alone, which is always to be acted on with the utmost caution.

Prather's case, 85 Va., 128-6.

The Court further instructs the jury that circumstances of suspicion, no matter how grave or strong, are not evidence of guilt and that the accused must be found not guilty, unless the fact of his guilt is proven beyond every reasonable doubt to the actual exclusion of every reasonable hypothesis of his innocence.

State of Virginia, Town of Harrisonburg, to-wit:

To the Chief of Police, or Any Policeman of the Said Town:

Whereas James H. Dwyer, Chief of Police *of the said town, has this day made complaint and information on oath before me,* ~~O. B. ROLLER~~, A. H. Snyder, Acting *Mayor of the said town, that* James Henderson *of the said town, on the* 10th *day of* March, 1899, *in said town,* in the county of Rockingham, in said State, *did* feloniously, in the night-time of that day, break and enter a certain store-house the property of P. J. Spitzer and G. W. Hess, partners doing business under the firm name of Spitzer & Hess, with intent the goods & chattels of the said P. J. Spitzer & G. W. Hess, partners doing business under the firm name of Spitzer & Hess, in said store-room then & there being, feloniously to steal, take, & carry away

These are therefore in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before me or some other Justice the body of the said James Henderson *to answer the said complaint and to be further dealt with according to law.*

Given under my hand and seal this 11th *day of* March, 1899.

A. H. Snyder, *(SEAL.)*
Acting *Mayor.*

Summon the following witnesses:

Executed this 13th *day of* March, 1899, *by arresting the above named* James Henderson *and bringing* him *before* A. H. Snyder, Acting Mayor.

Jas H. Dwyer C P

Judgment on the ____ *day of* ____, 189__.

Defendant found ____ *guilty upon the testimony on oath of* ____ *and it is adjudged that* ____

82 8/- money -

Commonwealth

vs

James Henderson

Filed March 25. 1899
J. S. Mennley Clerk

Hearing continued until
Saturday, March 18, 1899,
at 10 o'clock, A. M.

A. N. Snyder, Acting Mayor

March 13/99.

Case heard and the prisoner James Henderson sent on to the County Court of Rockingham County Va to await the action of the Grand Jury -

Given under my hand and seal this 22nd day of March 1899-

S. N. Snyder - Seal
Mayor - T. Harrisonburg

In the Circuit Court of Rockingham County, In Vacation(Jany.27.1900)

VIRGINIA:

In the Supreme Court of Appeals, held at the State Libray Building, in the City of Richmond, on Thursday the 25th, day of January, 1900.

James Henderson	Plaintiff)	
	)	Upon a Writ of
against	)	
	)	error and Super-
The Commonwealth of Virginia	)	
		sedeas to a Judg-

ment rendered by the Circuit Court of the County of Rockingham, on the 1st day of November, 1899, affirming a judgment rendered by the County Court of said County on the 25th, day of July, 1899, in a prosecution by the Commonwealth against the plaintiff in error for a felony-

This day came again as well the plaintiff in error by his counsel, as the Attorney General on behalf of the Commmonwealth, and the Court having maturely considered the transcript of the record of the Judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record that there is no error in the said judgment; it is therefore considered that the same be affirmed and that the Commonwealth recover against the plaintiff in error thirty dollars damages and also her costs by her about her defence herein expended, in cluding the costs of printing the record.

Which is ordered to be certified to the said Circuit Court of Rockingham County, and after being entered in the order book of said Circuit Court shall be certified by the Clerk of the said Circuit Court to the said County Court

Commonwealths costs in)
) $35.75
Supreme Court of Appeals) A Copy

Teste, Geo.K.Taylor, C.C.

A Copy.

Teste: D. H. Lee Martz Clerk.

Henderson

vs } Copy Judgment.

Commonwealth

Copy

Filed January 29 1900.

Recorded in Minute Book No 14
Page 35. County Court of Rockingham Co.

Teste J. S. Meneley
Clerk

COMMONWEALTH VS JAMES HENDERSON:-

COUNTY COURT JULY 18, 1899.

P. F. SPITZER:-

My name is P. F. Spitzer. I am engaged in the stationery business, in the firm of Spitzer & Hess, on South Main Street, in the town of Harrisonburg, Va. My said place of business was broken open on the night of the tenth of March. The window light in the transom over the door in rear of building was cut out and entrance was made by crawling through the sash, from which the light was taken out.

The store faces on South Main Street. There is a rear door with a transom over it. The window light taken out was 10 by 16 inches. The window pane was taken out. I closed the store that night, and was the first the next morning to come to the store. I had closed everything as usual. The breaking and entering was between 8 o'clock P.M. and 6.30 A.M. the next morning.

I lost about $75 in money and several checks; in all about $100. (Spitzer shows how the box was broken open). The box was in a frame work of wood, and that was broken away. We had the safe on the day lock. If you know how to do it, it only requires turning to get it open. All that was necessary to do was to turn the knob to a certain point. The safe was opened and the iron money box therein taken out. I dont know exactly; there were about 6 five dollar bills, 3 tens and one two dollar bills, and I think 200 pennies, and the rest was in silver, in twenty five cent to dollar pieces. The money drawer under the counter was broken open and its contents taken. Mr. Long came for me, to my ~~window~~ residence two blocks from the store, and I had nt gotten up then. I went immediately down, and it was about 6.30 A.M. when I reached the store. I found the rear door standing open; it had been unlocked and the wooden bar which had been placed across the door from the inside had been taken down. ~~and~~ Found glass in transom ~~in glass~~ over door broken.

(Exhibits to Jury the money drawer, and the bar that closes the rear door. Shows blood prints on the bar, and tells how the bar was found).

The blood spots were small. There were also blood spots on this drawer. The blood spots were small there too as if from a prick from the finger. Store boxes were piled up just outside the rear door, nearly the height of the door. There was also mud on the bar, and on the inside of door from the feet of the person who entered through the transom. The sash was put in with putty on the inside, and th e stick that runs up and down was cut off so that a knife could be run in, and the glass was cut out. There were several particles of glass on the bottom of the sash and sill, projecting from the bottom of the transom, w/ blood found on these particles of glass. Have nt got those particles. They were seen by a number of people. Mr. Dwyer, John Wakenight and others. It was about 6.30 when I got there next morning. We have the poi nt of a knife freshly broken off. It lay just below where the glass was broken. Mr. Fallis found it. It was freshly broken. The safe is in the rear of the store, on the right hand side as you enter from the front door, and the left as you come in the rear door. The money drawer is in the rear of the store, but further towards the front of the store than the safe. We found a lot of burnt matches lying near the safe in front of it on the floor. The window pane taken out of the transom is large enough for me to get through. I tried it. The prisoner could get through it.

CROSS EXAMINATION:- This was the tenth of March. It was Thursday night. It was the morning of the tenth when we found it. We found it broken on Friday night. I dont know what day it was. Well it was the night of the 9th or the morning of the 10th. (A calendar was here exhibited abd it was shown that March 9, 1899 was Thursday instead of Friday as witness had at first believed). You will have to ask Mr. Harrison, former Commonwealths Attorney, who told him the time; I dont know. I dont know when it was done, whether it was before or after midnight. I dont know who told Mr. Harrison when it was done.

The window light was 10 by 16. I can go through it. There was blood on this bar. There were two spots of blood on under side

of the bar where the right hand would rest in lifting the bar from its position. Dont know whether there is blood on it now or not. It was there. Yes it was blood. Mr. Dwyer took ir to Dr. neff to put it under a microscope. There were two spots of blood under the money drawer. There were one or two more small blood spots where the right hand would rest in pulling it out. My safe was a combination safe; you could not just open it. You had to turn it around to a certain point. It was standing on the day lock. Mr. Long was with me that morning. Later Mr. Dwyer came. That is about all, I think. There were some checks, and there were about 200 pennies in there. There were five or six fives, two tens and all the rest in silver. There were a good many quarters.

JEHU LONG:-

I am a policeman in Harrisonburg. I found that box and things in what we call federal alley. That alley runs along back of Spitzer & Hess' store. There is a vacant lot and also a vacant alley where the stable now stands. I was watching upon a vacant lot back of the stable. I found this box in Federal alley right at a crossing. I found this box and a bondle of papers, and a check which had been rubbed out.

I found these about five o'clock in the morning when I was com ing down. I fell down and grabbed some papers. It was then dark and I carried them to the light at the Revere House, where I saw Spitzer & Hess' name on the papers, (receipts &c.) X I then found iron box out of safe. This was about five o'clock in the morning. Iwent back down to Spitzer & Hess' back door and found a glass out of the transom. X I sat out on the fence till about six o'clock. X X We went back and found some more papers. I had been sitting watching. I went for Mr. Spitzer and found that it was his things. We went in the store; all his money was gone. We found those boxes piled up four or four and a half feet at the rear door. I saw blood marks on the money box; did nt pay nuct attention to that. Mr. Dwyer directed my attention to it. There were small spots of blood on the money ~~box~~ drawer.

This was

This was Friday morning that I discovered this. I saw Jim Henderson on Friday norning, on Friday afternoon, and then the next time was Friday night. I did nt see him again till Monday. Saturday was the day he was arrested. We went up to the B & O and asked Mr. Shehee if Jim Henderson had gone. He said Jim had taken the freight train. I had hlm stopped at Pleasant Valley. He had disappeared when I got there. I saw him next in jail. I talked to hmm Monday morning.

Question:- Did he make any statement in regard to any money he had in his possession when arrested? If so what was it?

Counsel for prisoner objected to this question. The Court inquired of the witness if he had made any threat against prisoner or offered him any inducement to make any statement and witness said he had not, and the court permitted him to answer.

Answer:- He said he met Turner Green in front of Taliaferro's store, on Thursday night, the night the store was broken open, about 11 o'clock, and Turner said: "I made a good haul to-night". and the prisoner said: "Where abouts"?, and Turner Green said: "At Spitzer & Hess' store" , the prisoner said:- "How much did you get?" Turner Green said: "About $80.00" Jim said- "If you dont give me some, I will tell on you" Jim said he gave him $7.50. That is all he said on that subject.

CROSS EXAMINATION:- It was dark when I found those papers. It was dark and slippery and had been a misty night.

I saw Jim Henderson on Friday morning, and Friday and Friday night. It might have been before noon, and then upon the corner at night right in front of the bank. I did nt see him saturday morning. I told the agents at the station of the B & O R R, if Jim got on any train to let me know. This witness also testified that he saw the blood spots on the box and money drawer, as described by P. F. Spitzer.

Late saw Friday morning that I discovered that I was ill hen-
forson on Friday afternoon, on Friday afternoon, and then the next
time saw Friday night. I did not see him again till Monday. Saf-
ter saw Friday night. I did not see him at all on Saturday morning
or Sunday morning. We went up to the B & O and
saked Mr. Spence if Mr Henderson had gone. He said Mr had taken
the Friday train. I had Mr Spencer's address at Pleasant Valley. He had
gone home I got there. I was ill next in jail. I talked
disappointed when I got there. Saturday morning.
of Mr Monday morning.

Question:- Did he make any statement in regard to any money
he had in his possession when arrested? If so what was it?
Question for Prosecution when arrested? If so what was it?

Answer:- He said he had Turner Green in front of Lafayette's
store. on Thursday night. The night the store was broken open.
about 11 o'clock. and Turner said: "I made a good haul to-night".
and the Prisoner said: "Where abouts?" and Turner Green said:
"At Spencer & Hess, store" . the Prisoner said:- "How much did
you get" Turner Green said: "About $80.00" Mr Hess said- "It
won't do" Turner said: "Why no let let I will feel on you"
you don't give me some. I will feel on you" Mr Hess he give him
$7.00. That is all he has on that subject.

CROSS EXAMINATION:- If was dark when I found those papers. If
was dark and slippery and had been a misty night.
I was with Henderson on Friday morning. and Friday and Friday
night. If might have been before noon. and then upon the corner of
Pike and Fraley streets. I did not see him anything
night right in front of the bank. I did not see him anything
morning. I told the agents of the action of the B & O R R.
It was foggy on was frosty of let me know. Date witness also testi-
fied that he was the blood spots on the box and money drawer. as
described by P. T. Spencer.

JOHN W~~RAITNIGHT~~ aknight:- Lives on N main St in Harrisonburg Va.

I am a clerk in Spitzer and Hess' store. I know Jim Henderson; dont know how long I have known him. Some time before I went to Spitzer & Hess'. He came in there about a week before the store was robbed, & bought news-papers several times and saw him several times about a week before the store was robbed. He came in in the evening about a week before the store was broken into. ~~M~~ I think he generally went right out. Once he stood there and looked at the paper a little, I think there ~~at~~ in the store.

I got there a little before 7 o'clock. I saw the broken window. I was not there when Mr. Spitzer closed up. I saw the window that was broken in; it was large enough for me to get in. There was a point of a knife found by Will Falls on the sill. I saw it. It looked like a freshly broken point. I saw blood spots on the money drawer. There was one blood spot or something else. I saw the blood on the box on the ~~box~~ lower Mr. Dwyer cut one spot out from the box. I saw where it was. (Explains how to take the bar out)

I saw the matches in front of safe on the floor.

Part of the eight-hour week work is when [illegible]

CROSS EXAMINATION:- Jim Henderson came in about a week before the robbery to get a paper. Did nt stay much longer than other people, if any. We run the store to sell papers. Once Jim stood and looked at the paper a little. I did nt notice whether he looked at any thing else or not.

JAMES DWYER:-

I am chief of police in the town of Harrisonburg; since the first of January last. I visited the store of Spitzer & Hess after the robbery. There was such a crowd in the store after the robbery that I did nt examine. The first evidence I got was this bar. The bar was used in barring the back door. A pane of glass had been cut out of the transom over door on the right hand side of the door from the interior of the store. I saw tracks leading down from the window that was broken to the box. I found some blood marks, one of which I cut out in order to ascertain whether it was blood or not. I cut that peice out and had it examined by Dr. Neff (Exhibits piece he had examined). My attention was also called to small blood marks on this box. (Shows blood marks on money drawer). I ~~had~~ saw nothing more at that time.

JOHN ~~MCKINNON~~:- I am a clerk in Spitzer and Hess, store. I know Mr Henderson: don't know how long I have known him. Some time before I went to Spitzer & Hess, He came in there about a week before the store was robbed. And was in several times about a week before the store was robbed. He came in in the evening about a week before the store was broken into. I think he generally went right out. Once he stood there and looked at the paper a little. I think there at the store.

I got there a little before 7 o'clock. I was the window. I saw the window that was broken in: it was large enough for me to get in. There was a board broken off there when Mr. Spitzer closed up. I was the window that was broken in. Spitzer closed up. I was the window. I saw it was. (Examine him to take the pen out)

blood spot or something else. Mr. Dwyer out one out. I was there

broken board. I was blood spots on the money drawer. There was one of a knife thrown by Mr Little Bottle. I saw it. It looked like a threaty

JOHN ~~MCKINNON~~:- I am a clerk in Spitzer and Hess, store. I know Mr Henderson: don't know how long I have known him. Some time before I went to Spitzer & Hess, He came in there about a week before the store was robbed. And was in several times about a week before the store was robbed. He came in in the evening about a week before the store was broken into. I think he generally went right out. Once he stood there and looked at the paper a little. I think there at the store.

I got there a little before 7 o'clock. I was the window. I saw the window that was broken in: it was large enough for me to get in. There was a board broken off. Spitzer closed up. I was the window that was broken off there when Mr. Spitzer closed up. I was the window. I saw it was. (Examine him to take the pen out)

CROSS EXAMINATION:- Mr Henderson came in about a week before the robbery to get a paper. Did my area known longer than other people. He stood there and looked at the paper a little. He came in there about a week before the store was robbed. I think he generally went in. Spitzer & Hess. He came in there about a week before I went to Spitzer & Hess, store. I know Mr Henderson: don't know how long I have known him. Some time

I inquired at the depot if Jim Henderson had gone away. X X X A telephone message was sent to Staunton to apprehend and hold him till we reached there. I went up to Staunton on the 2 o'clock train. On the way up we looked for Henderson but did nt see him, but on the return on the freight train that afternoon, after we got below Verona, I saw Jim between the train and the bank. As soon as he got on the tradk behind the train, he began running towards Staunton. I sent Mr. Dorsey Hisey to take him, and gave him my pistol. He ran up the track and Mr. Hisey followed, and by the time I got there, Mr. Hisey had him. He handed me this pocketbook with a $5 bill and some silver money in it. We took him back to the car and searched him and found this piece of candle, which had been lighted, this pocket knife with the point broken off the large blade, three two matches, three small piece of twine, three piece of lead pencil, three memo. book, three tobacco ~~xxxx~~ bag, and three bag of tobacco. The pocketbook was handed to me by Mr. Hisey when he came back with Henderson. We searched him when we got back on the train. He made no statement. We brought him back to Harrisonburg and put him in jail, and he made his statement to me in the jail. I told him I was an officer. We did not offer him any inducement, or make any threat, but I warned him before he made the statement that I was an officer.

Question:- Did he make any statement in regard to any money which he had when arrested, and if so what was it?

Memo:- Stephenson objects to this question.

But without having stated that he admonished him that he was an officer, and that no threat or offer of inducement was made to procure the answer he gave

Answer:- He only said that Turner Green had given him ~~the~~ $7.00

This knife had been ground quite recently when I took it from his person, and the point had the appearance of having been recently broken off from it. I have not the point which was broken off: I think Mr. Fallis has it. I was present when the point of the knife was found on the ledge above the door just below the broken glass.

I got to the store between 7 and 8 o'clock on the morning of the tenth. The robbery was committed on the previous night.

These things are some of the evidences of the crime. These things came from Jim's person. One matter I forgot to bring out. When I arrested him I found that he had his two fingers on his right hand punctured. There was a cut on the side of the forefinger and there was a slight cut in the end of his middle finger. I saw that as soon as he was brought into the car. It would have made a very little bleeding. I found a little--puncture on his finger. I examined it then; both fingers had had punctures or cuts in them by glass.

CROSS EXAMINATION:- I saw them again about a week after the commission of the offence at the call trial, or I expect it was ten days and there was not much evidence of cuts then. The fingers looked as if they had been rubbed to hide the scars. I did not see Jim Friday after the crime, I saw him Friday night. I did not see him Friday morning. I arrested Jim Hendersin only for this offence. I had Harry Walker and Rob Walker for the same offence. I arrested Goodloe for the same thing, and found I was mistaken, and turned them loose. I also arrested Turner Green for same offence, but he acquitted by the mayor. I went up to the R.R. station and told them to let me know if Jim left on ~~that~~ any train. I did nt tell them to keep a lookout for the other fellow. Did not arrest them then; after I put Jim in jail I arrested the others. When I put Jim in jail he enquired for Harry Walker. I felt the jar of the slowing up of the train, and looked out and there saw Jim walking along between the R. R. track and the bank of the R.R. cut, and when the train stopped, I saw him running up the track. When I got there they had Jim arrested.

(The bar that closed the store door, when shown him, had a small chip cut out, and he said:) " I cut that chip out of there and took it to Dr. Neff to see if it was blood on it. In my opinion that was blood. I said I was going to have a microscope put over it. I wanted it to be as perfect as possible. I had no doubt of its being blood. This blood, when I saw it had the appearance of having been recently put on there. I believe that it is blood now.

These things are some of the evidences of the crime. These things came from Miss's person. One matter I forgot to point out. When I arrested him I found that he had his two triggers on his right hand pounded. There was a cut on the side of the forefinger. I asked him how he got it. He said he had had it for some time. I also arrested Turner Green for same offence, but he had been accidentally in the house. I went up to the station and told them to keep him. I left my card with the officers. When I got home I found that he had left the city. I sent a telegram to the other fellows. Did not arrest them then! After I a looking for the other fellow. When I got home I arrested the offender. I left my card to the sheriff of Hunter County. I left the jail to go to the stowing up of the stream, and looked out and there was Miss walking along between the stream, and when the train got to the R.R. track and the bank on the R.R. out, and when the train stopped. I was him running up the track. When I got there they arrested him with Green.

(The man that closed the store took, when shown him, and a man a little taller, and he said:) " I out that quite out to there and look quite out out. And he said: Miss yes I know that it of to see it it saw blood on it. Mr. Hunter found that it was blood. I saw I also I saw Young go to the house a man of Young saw a microscope and over it. I went to the house as soon as Dentist as so as it was the appearance of natural and blood. That blood, when I saw it had the appearance of natural blood. I believe that it is blood now. Been recently and on there.

WILLIAM FALLIS:- I live in Harrisonburg. I am superintendent of water works. I was at the store of Spitzer & Hess the norning afte it was broken open. I found this point of a knife right under the transom on the ledge, Tuesday morning after the crime. (Exhibits knife and point to jury.) The ledge is about 8 or9 inches wide. I got up there on the step ladder and found it right over the door. I saw this knife (refering to knife found on person) soon after Jim was arrested. This knife blade was recently ground, within 48 hours. It had the point broken. The original point of the knlfe was off. Upon examination under a microscope, I found the grain on the broken point corresponds to the grain of the metal in the knife blade. The bevel on the back of the knife fits exactly to the bevel here on this broken point found by me. This point is the point of this knife. The metal is the same as the metal of this knife. This knife blade had been ground within 48 hours. The point of the knife had been ground in some. I noticed the blood on this bar and drawer. They were very small spots like the blood from a slight wound. The size of the glass was, I think, ten by sixteen. I have been through smaller places.

I saw mud on the bar and the door, and I saw burnt matches lying on the floor in front of the safe. I never saw Jim Henderson before this time. That is all I saw.

CROSS EXAMINATION:- I am not an expert on knives. I have made a few. I dont know how many knives there are like this,(referring to knife found on prisoner) in the country, I suppose. I dont think you could find that point (referring to point found below transom), to fit any other knife. yes there are lots of other knives just like this one. I dont swear to the circumstances. There is only one knife that this point can fit. It is said that no two egg shells break alike, so with knife points. I never saw 20,000 broken knives in my life. I am not an expert on egg shells. If you were to break 20,000 knife points, no two would be alike. Dont know how many I have examined. I cant swear to anything I

dont know anything about. I dont know why it is that two egg shells dont break in the same place. I found this knife point on sill below the transom, on Tuesday after the burglary was committed. It was committed on Thursday night. I got up on the step ladder to examine and found the point. My attention was called to the blood on this bar and drawer. I am not certain that it is blood. I dont know whether I saw Mr. Dwyer cut that chip off or not. (This witness stated that it was only his opinion that the point found by him was the point broken off the knife found on the prisoner.

RE-DIRECT:- I am a machinist and have worked in metals all my life and in that capacity have had a good deal to do with metals. My statement is based on my experience.

I got the point of the knife on Tuesday after the house was broken and entered. I am the first man that found the knife point.

I don't know anything about. I don't know why it is that two egg albumen don't clash in the same place. I found this knife bottle on this chair. Yesterday after the murder was committed. below the fireman. On Tuesday night I got up on the area ladder to it was committed on Thursday night. The affection was called to the blood examine and found the bottle. My opinion is that it is blood. I don't no this pair that quarter. I am not certain that it is blood. I know whether I was in. Never saw this chip off or not. (Exhibit Affness afraid that it was only his opinion that the bottle found it was the bottle broken off the knife found on the Exhibit. BR-DIRECT:- I am a machinist and have worked in Masala all my life. This is a good deal to do with Masala. My knowledge that it has been on my experience. affairment is based on my experience.

I got the bottle to the knife on Tuesday after the house was broken and entered. I am the first man that found the knife bottle.

MR. WINKLEY, THE brakeman on freight train.

I live in Harrisonburg; am a brakemna on the train, from here to Staunton. I was on the train when Jim Henderson was taken in charge at Pleasant Valley. I was unloading freight when he was found. I did not see him till after he was taken from the cattle car. He said he came from Winchester. He did nt say where he was going. We left him at Pleasant Valley; I saw him next running towards Staunton that afternoon. That was a quarter of a mile this side of Verona. Hisey and I went after him we caught him. He was running to get away from us. Hisey shot, and Jim whirled and went up the bank. I hollered for Hisey to shoot. Jim dropped his right hand into his pocket and stuck his hand under his cap. He put his pocketbook in his cap. (Identifies the pocketbook the pocketbook in evidence). We went back to work. Mr. Dwyer searched him and found $5.00 bill in the pocketbook. some silver I saw him partly while he was searched. We saw Mr. Dwyer empty a bag of tobacco.

He was put back on the train. He was beating his way that morning. We got a telephone message that morning that two negro boys were beating their way at Verona. They called my attention to the cut on his finger, just a small one. Just a slight wound on both fingers on right hand that looked like they had been done a day or so only. They seem very delicate cuts or nicks We got a telephone message that there were two boys beating their way on the train at Pleasant Valley. We found only one boy, and tied his arms and put him in a box car. Jim said he was under a culvert when the passenger train went up.

The train had passed him when I first saw him. We all saw what the train had stopped for. We heard at Pleasant Valley that two colored boys were beating their way on the train. Yes, he was identified.

MR. THOMAS:-

I live in Harrisonburg and am engaged in the plumming business. I have been accustomed to handling knives. The metal in the knife (referring to knife in evidence) is the same as far as I can see as the metal in the point. The knife has been ground away. I cant tell about the grain without a magnifying glass. I have seen some knives that resemble this before. It is nothing uncommon to see the point of a knife broken.

Witness further stated that he could not swear that the point came off the knife shown him ~~except upon inspection but upon inspection he stated by the cut~~ He could only give his opinion

Witness to the broken point in evidence who said it looks as if it had been broken off

MR. WINKLER. THE PHENOMENON ON THE FRONT PLATE.

I have in Hertfordshire! An a phenomenon on the front.

MR. THOMAS:- Yes, I saw Mr. Henderson was taken in charge. I saw automobile freight train he was towing. I did not see him till after he was taken from the car. He said he came from Hunsdonbury. He did it was where he was going. We felt him at Bleasant Valley: I was his next witness Edward Stanton. That was a duster to a mile this side of Verona. Hisey and I went after him he caught him. He was running to get away from us. Hisey shot, and he went up the park. I hollered for Hisey to shoot. He dropped his right hand. We shook his hand under his cap. He but his pocketbook in his cap. (Identifies the pocketbook) We went back to work. Mr. Dwyer searched him and found $8.00 in the pocket- pocket. I was his partner while he was searched. We was Mr. Dwyer. company a pad of tobacco.

He was but pack on the train. He was pesting his way that morning.

MR. THOMAS: I was on the train when Mr Henderson was from near to Stanton. I saw on the train when Mr Henderson was taken in charge. I saw automobile freight train he was towing. I did not see him till after he was taken from the car. He said he came from Hunsdonbury. He did it was where he was going. We felt him at Pleasant Valley: I was his next witness Edward Stanton. That was a duster to a mile this side of Verona. Hisey and I went after him he caught him. He was running to get away from us. Hisey shot, and he went up the park. I hollered for Hisey to shoot. He dropped his right hand. We shook his hand under his cap. He but his pocketbook in his cap. (Identifies the pocketbook) We went back to work. Mr. Dwyer searched him and found $8.00 in the pocket- pocket. I was his partner while he was searched. We was Mr. Dwyer. company a pad of tobacco.

He was but pack on the train. He was pesting his way that morning.

CAPT. PHALEN:-

I am a conductor on a freight train. I found Henderson in the rack of a cattle ~~car~~ car. I saw that he was concealing himself. We got him out and put a rope around him and put him in a box car on the side track to wait till the officers came.

A message came to see if there was not one or two black boys on there

We put him in the box car and fastened the car.

When we saw him next that afternoon at Verona he ran when we stopped. He ran towards Staunton. I did nt see him when he was searched. I did nt see his hand. I did nt hear him make any statement as to where he was when the passenger train went up that evening.

We found Jim beating his way on the train. I told him I believe, he was wanted in Harrisonburg. ~~He must have~~ The yard master at Southern sent me the message ~~of him~~ that two negro boys were beating their way on train over ~~that~~ ~~in the~~ and we found him at Pleasant Valley

JOSEPH NEWMAN:-

I am one of the crew of ~~this~~ the freight train and was present at ~~the x x~~ Pleasant Valley that morning. Henderson said he was from Winchester. He said he did nt know any one in Winchester. I saw him that afternoon before the train stopped. I was one that ran after him, but the others got ahead of me. I was not in the car when he was searched. He came back fifteen steps before he put his hand in his pocket. ~~Saw no x x on him.~~

ALEC CONRAD:-

I am the engineer on the freight train. I got back there about the time they got him to the car they left him in at Pleasant Valley. He said he was not from Harrisonburg. Said he left Winchester Thursday night. I saw them about the time they put him in the box car. When train came back that afternoon from Staunton saw him near Verona

He was sitting in a cut crouching on his haunches when I saw him out of cab window. When the train got to him the boy ran. I said to my fireman ~~X X X~~ then to the boy. He was sitting on the side of the bank and we were ~~running~~ six or eight feet from him.

Report - in Hospital until Sept 12th 1899

CAPT. BRAYLEN:-

I am a commercial on a freight train. I lived Hempstead

in the back of a car. I was first he saw concerning himself. We

got him out and put a rope around him till the officers came.

A message came to see if there was not one or two black boys on there

we put him in the box car and carried the car.

When we came right next the man when he stopped. He was somewhere

fon. I did not see him when he was searched. I did not see his hand.

I did not hear him make any statement as to where he was when the

passenger train went up first evening.

We found him sitting his way on the train. I told him I believe.

He was searched in Hempstead. He was sitting on the seat

eight feet from him.

MARTIN CONRAD:-

I am the engineer. I got back there about the time

the passenger came to see if there was not one or two black boys on there

when we came right next the man when he stopped. He was somewhere

fon. I did not see him when he was searched. I did not see his hand.

I did not hear him make any statement as to where he was when the

passenger train went up first evening.

We found him sitting his way on the train. I told him I believe.

He was searched in Hempstead. He was sitting on the seat

eight feet from him.

MAINWARING:-

I am one of the crew of the train and was present at

the time he was searched in Hempstead. He was sitting on the seat

eight feet from him.

George

GATEWOOD:-

On the 10th of March last I was a policeman. I saw Jim Thursday night down at Laucks corner a little before twelve o'clock. about ½ hour 12 Telephoned at Pleasant Valley ~~Telegraphed~~ for them to hold him till we got there. Received a message that he was there. When we got there he was gone. It was ~~between 11 and~~ about 12 o' clock when ~~xx~~ I saw him. I saw Jim on the xxx Friday morning. It was after tweive o'clock when I saw him at Laucks Corner. It was the night the store was broken into. It was by Lauck's. Looked at the time in the Revere house. There was only one light there. I was on beat that night, I went off at 12 o clock & I remember going right into the Revere house & found it was a quarter past twelve. There was a light in the bank 150 yards away.

~~I was around at the jail, and they were talking in a low tone.~~

I know what time it was when I saw Jim; I looked at the clock.

HOPKINS RAY:-

I was in the jail while Jim was there. I was there the time they broke jail. It was about three weeks before I got out. They got into the hall and went to work on the brick with a pair of shears. After prying loose in ~~jam~~ inn by the cell He said he would not be in forty miles of here the next day. Jim helped in the breaking They took a lot of the bricks out, and put the bricks in place when day came. He said he was going to get his money from Pat Walker and then was going to Mcheysville. He said he would be forty miles from here next morning. He did nt say anything about where he got the money. I was in jail for steal ing sheep- for killing sheep. I was not going to stay there if they got out but going out with them. There was no use for me to stay. Charles Eaton was the leader of this thing. a white man Day light came before they finished breaking out of getting out through the wall & they were discovered

PAT KAVANAUGH:-

I was put in the jail for being drunk ~~xx~~ but I was not drunk. Jim Henderson said somebody had some of his money. He said he was going to Walker & get his money if he got out & in a day and a half 40 miles from here. They all thought I was asleep, but it happened I was not. And they said they were going to break jail & get out.

~~Pat knew the name of Walker.~~

DR. NEFF.

The bar had blood on it; no doubt of it. Could nt tell without a microscope. Examined the piece given me by Mr Dwyer under a microscope & determined it was blood. Would not swear the moment I say it was blood.

Store on Main St. Pleasant Valley & Newspaper

Mchy Gatewood

Memo The ~~se~~ articles referred to in the testimony
namely, the wooden bar to door with spot on it, the money drawer with spot on it,
the chip of wood cut from bar by Dwyer, the iron box
from safe, the piece of candle found in mouth when arrested, the knife with point of large blade
broken, the knife point found on ditch below the transom by Fallis, the two matches, the memo. book
the string, the pocket-book + five dollar bill + silver
money, the small pencil referred to by witnesses, were on time of the
case exhibited in evidence & identified according to
the testimony.

Memo: The articles referred to in the evidence as the bar with the spot on it, the chip cut from the bar, the money drawer with spot on it, the iron box from safe, the point of a knife broken off and found by Fallis, below the transom, and the knife with the point broken off, the piece of candle, pocket-book with $5 bill and silver in it, memo. book, matches pencil, and string found on person of prisoner, were produced and examined by the jury.

The detectives referred to it the evidence as the pen with the
[illegible] on it. The quite cut from the pen. The money wrapper with [illegible]
on it. The item box from size. The bottom of a knife broken off and
found by Lulla. Below the fireman. And the knife with the bottom
broken off. The piece of candle. Pocket-book with $8 bill and
little. Memo. book. Matches benefit. And entire [illegible] no per-
son to [illegible]. Were discovered and examined by the jury.

Evidence for defense

S. B. McFall introduced on behalf of the prisoner testifies as follows

Resides in Mississippi was on freight train on Saturday March 11th 1899 in afternoon when prisoner was arrested by trainmen and police. Examined his hands at request of police on train Mr Dwyer ~~[illegible]~~ pointed out to him that I noticed he called as a witness as to condition of his hands. Examined hand particularly for that reason found a very small scratch on one finger, fore-finger, a very insignificant-thing, cant tell what made it, dont think it was made by a cut from glass. Dont know whether it could have made blood points or not. He, said he had cut ~~or has~~ his finger either cutting bread or sewing on a button witness did not recall which he said, I think like cut had been made a day or two.

Commonwealth

vs. } Evidence

James Henderson

The within fourteen pages contain the evidence as taken down in the above case

Geo Gratton
Judge

Circuit Court of Rockingham County -
Oct. Term (Nov 10th) 1899

James Henderson Plaintiff-in-Error

v

Commonwealth Deft-in-Error

upon a Writ of Error and Supersedeas to a judgment of the County Court of Rockingham rendered at the July term 1899. of said Court, on an Indictment for Housebreaking

This day came again the plaintiff-in-Error by his Attorney, as well as the Attorney for the Commonwealth, and the Court having seen and inspected the transcript of the record of the judgment aforesaid, and maturely Considered the argument of Counsel, is of Opinion that there is no Error in said Judgment. It is therefore Considered by the Court that the Judgment aforesaid be affirmed, and the Writ of Error and Supersedeas be dismissed; All of which is ordered to be certified to the County Court of Rockingham.

(Nov. 2d) On motion of the Plaintiff-in-Error by Counsel. It is ordered that the judgment entered on yesterday in this case affirming the judgment of the County Court

of Rockingham, be suspended for a period of thirty days to enable said plaintiff-in-error to apply for an appeal to the Supreme Court of Appeals of Va.

A Copy - Teste -

D H Lee Martz

Clerk

James Henderson
vs
Error on Appeal
Commonwealth

Copy

Filed 8/99

State of Virginia, Rockingham County, to=wit:

In the County Court of the said County:

The Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the said Court, UPON THEIR OATH PRESENT, that James Hendrson on the 10th day of March in the year 1899, in the said county, a certain ~~outhouse, called a~~ Store-House the property of ~~one~~ P. F. Spitzer and G. W. Hess partners doing ~~not adjoining to or occupied with the dwelling house of the said~~ business under the firm name of Spitzer & Hess ~~there situated~~ in the night time of that day, feloniously did break and enter, with intent the goods and chattles of the said P. F. Spitzer and G. W. Hess partners ~~in the said outhouse then and there being, feloniously to steal, take and carry away. And~~ doing business under the firm name of Spitzer & Hess, in the said store house then & there being feloniously to steal take and carry away

~~of the goods and chattles of the said~~

~~in the said outhouse, then and there being found, then and there feloniously did steal, take and carry away~~, against the peace and dignity of the Commonwealth of Virginia. And the Jurors aforesaid, upon their oath aforesaid, do further present, that James Hendrson on the 10th day of March, in the year 1899, in the said County, a certain ~~outhouse, called a~~ Store-House, the property of ~~one~~ P. F. Spitzer and G. W. Hess partners doing ~~not adjoining to or occupied with the dwelling house of the said~~ business under the firm name of Spitzer & Hess ~~there situated~~, in the day time of that day feloniously did break and enter, with intent the goods and chattels of the said P. F. Spitzer and G. W. Hess ~~in the said outhouse then and there being, feloniously to steal, take and carry away. And~~ partners doing business under the firm name of Spitzer & Hess in the said store-house then & there being feloniously to steal, take and carry away

~~of the goods and chattels of the said~~ ~~in the said outhouse, then and there being found, then and there feloniously did steal, take and carry away~~, against the peace and dignity of the Commonwealth of Virginia. And the Jurors aforesaid, upon their oath aforesaid, do further present, that James Hendrson, on the 10th day of March, in the year 1899, in the said County, a certain ~~outhouse, called a~~ Store-House, the property of ~~one~~ P. F. Spitzer and G. W. Hess partners doing un-, ~~not adjoining to or occupied with the dwelling house of the said~~ der the firm name of Spitzer & Hess, ~~there situated~~, in the night time of that day feloniously did enter, without breaking the same, with intent the goods and chattels of the said P. F. Spitzer and G. W Hess partners ~~in the said outhouse then and there being, feloniously to steal, take and carry away. And~~ doing business under the firm name of Spitzer & Hess in the said store-house then & there being feloniously to steal take and carry away

~~of the goods and chattels of the said~~ ~~in the said outhouse then and there being found, then and there feloniously did steal, take and carry away~~, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of P. F. Spitzer, Jas. H. Dwyer, Wm S. Fallis D. S. Hisey witnesses sworn in Court and sent before the Grand Jury to give evidence.

We the jury find the prisoner James Henderson guilty of breaking and entering the Store-House of Spitzer and Hess with intent to commit Larceny, in manner and form as charged in the indictment, and ascertain the term of his Confinement in the Penitentiary at Two and one half years.

J. G. Smyers Foreman.

Commonwealth
vs
Indictment
James Henderson
For Housebreaking
A true bill
B. L. Blodock
Foreman

Filed May

We, the Jury find the prisoner, James Henderson, guilty as charged in within indictment - and fix as his term of confinement in the Penitentiary at two and a half years

J. G. Smyers

Commonwealth

vs

James Henderson