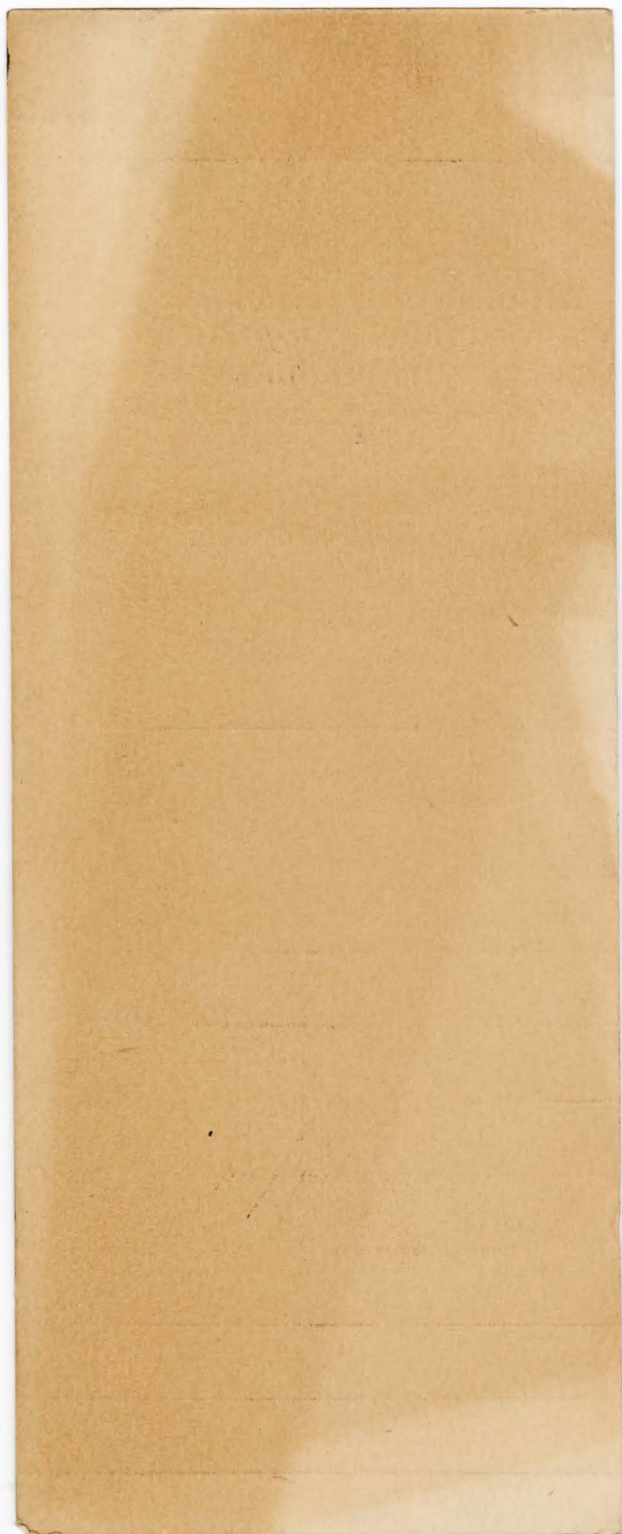


Commonwealth

vs.

John F. Shifflett <sup>and</sup> Bolton  
~~Received of the Clerk of the Circuit  
Court of Rockingham County, the  
original papers in the above case.~~

- 1 | John F. Brown
- 2 | John R. Bowman Jr
- 3 | Jas. D. Templin
- 4 | Edward Gove
- 5 | D. G. Raylor
- 6 | A. J. Sowers
- 7 | Robert S. Brown
- 8 | Christian A. Bolton
- 9 | E. K. Myers
- 10 | W. P. Oliver
- 11 | J. S. Carver
- 12 | Chas. D. Hornberger





STATE OF VIRGINIA, COUNTY OF ROCKINGHAM, TO-WIT:

TO THE SHERIFF OR ANY CONSTABLE OF THE SAID COUNTY:

Whereas E. J. Carriekhoff of the said county, has this day made complaint and information on oath before me, WM. J. POINTS, a Justice of the Peace of the said county, that

John Shiflett alias John Eaton  
of the said county, on the 17<sup>th</sup> day of August, 1907, in said county, ~~did~~

feloniously and of his malice aforethought  
did kill and murder one Marvin Shiflett

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 John Shiflett alias John Eaton to answer the said complaint and to be further dealt with according to law.

Given under my hand and seal this 21<sup>st</sup> day of August, 1907  
W. J. Points, J. P., [SEAL.]

Summon the following witnesses:

Charles Davis, W. A. Shiflett & Asby Lawson



Executed this 24<sup>th</sup> day of August, 1907, by arresting the above named

and bringing him before W. J. Potts, J.P.

Judgment on the 24<sup>th</sup> day of August, 1907.

Defendant John Shifflet alias John Eaton found guilty upon the testimony on oath of W. R. Shifflet, Wilbert Shifflet and Chas. W. Davis as charged in the above warrant, and

it is adjudged that he be sent on for further trial before the Circuit Court of Rockingham County, and W. R. Shifflet, Wilbert Shifflet and Chas. W. Davis recognized in the penalty of \$100.00 each for their appearance on Sept. 16/07 before the Circuit Court as witnesses in behalf of the Commonwealth.  
W. J. Potts J.P.

Commonwealth of Virginia

No. 1 { Warrant - No. 1

John Shifflet, alias  
John Eaton

Costs

Issued  
Issuing Warrant 1.00  
Issuing case 50  
\$1.00

File my info  
50 for Mary  
cert



STATE OF VIRGINIA, COUNTY OF ROCKINGHAM, TO-WIT:

TO THE SHERIFF OR ANY CONSTABLE OF THE SAID COUNTY:

Whereas E. J. Carrickhoff of the said county, has this day made complaint and information on oath before me, WM. J. POINTS, a Justice of the Peace of the said county, that

John Shiflett alias John Eaton  
of the said county, on the 17<sup>th</sup> day of August, 1907, in said county, did unlawfully, maliciously & feloniously did shoot one Ashby Lawson with intent to maim, disfigure, disable & kill him the said Ashby Lawson

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 John Shiflett alias John Eaton to answer the said complaint and to be further dealt with according to law.

Given under my hand and seal this 21<sup>st</sup> day of August, 1907  
Wm. J. Points, J. P., [SEAL.]

Summon the following witnesses:



Executed this 24<sup>th</sup> day of August, 1907, by arresting the above named

John Shufflet alias John Eaton and bringing him before  
Wm. J. Proudt J.P.

Judgment on the 24<sup>th</sup> day of August, 1907.

Defendant John Shufflet alias John Eaton found guilty upon the testimony on oath of

W. R. Shufflet, Wilbert Shufflet and Chas. W. Davis.

as charged in the above warrant, and

it is adjudged that he be sent on for further trial before  
the Circuit Court of Rockingham County.

Wm. J. Proudt J.P.

Commonwealth of Virginia

Warrant No. 2

John Shufflet alias

John Eaton

Filed Aug 24/07  
at the Magistrate's Court

Costs

Gratuity

Issuing Warrant .50

Trypan cost .50

1.00



CERTIFICATE OF COMMITMENT FOR TRIAL.

VIRGINIA, COUNTY OF ROCKINGHAM---To-wit:

To the Clerk of the Circuit Court of said County:

I, *Wm. J. Poindexter*, a justice of the peace of said county, do hereby certify that I have this day committed *John Shifflet alias John Eaton* to the jail of said county, that he may be tried before the circuit court of said county, for a felony by him committed, in this, that he, on the *17<sup>th</sup>* day of *August*, 190*7*, in the said county, *feloniously and of his malice aforethought did kill and murder one Marvin Shifflet.*

Given under my hand and seal, this *24<sup>th</sup>* day of *August*, 190*7*.  
*Wm. J. Poindexter*, J. P. [L. S.]

Comm<sup>th</sup> of No

No. { Certificate of  
Commitment

John Shufflet alias  
John Eaton

No. 1.



# The Commonwealth of Virginia.

To the ~~Constable~~ <sup>Sheriff</sup> of Rockingham County District ~~District~~ Greeting:

You are hereby commanded to summon

Charles Davis, W.R. Shifflet and  
Ashby Lawson  
to appear before Wm. J. Points, a Justice of said County ~~District~~ at  
Harrisonburg on the 24<sup>th</sup> day of  
August, 1907, to testify and the truth to say on behalf of

The Commonwealth of Virginia against  
~~in a certain matter of controversy in said Court depending and undetermined, between~~  
John Shifflet alias John Eaton

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

Witness Wm. J. Points, Justice of the Peace, the 21<sup>st</sup>  
day of August, 1907, and in the 32<sup>nd</sup> year of the Commonwealth.  
Wm. J. Points J. P.

Comm<sup>th</sup> of Va  
vs. { Comm<sup>th</sup> of Pa  
John Shufflet alias  
John Eaton

Summons

Charles Davis  
Wm. R. Shufflet  
Ashby Lawson

To

Aug. 24/07

Executed, August 23, 1907, by  
delivering true copies of the within  
to each of Ashby Lawson, Wm. R. Shufflet,  
and Charles Davis in person.

A. G. McQuinn  
for W. R. Shufflet, 8/26/07



CERTIFICATE OF COMMITMENT FOR TRIAL.

VIRGINIA, COUNTY OF ROCKINGHAM---To-wit:

To the Clerk of the Circuit Court of said County:

I, *Wm. J. Proudt*, a justice of the peace of said county, do hereby certify that I have this day committed *John Blufflet alias John Eaton* to the jail of said county, that he may be tried before the circuit court of said county, for a felony by him committed, in this, that he, on the *17<sup>th</sup>* day of *August*, 190*7*, in the said county,

*unlawfully, maliciously and feloniously did shoot one Ashby Lawson, with intent to maim, disfigure and kill him, the said Ashby Lawson*

Given under my hand and seal, this *24<sup>th</sup>* day of *August*, 190*7*.

*Wm. J. Proudt*, J. P. [L. S.]

Comm<sup>th</sup> of Va

W<sup>th</sup> Certificate of  
Commitment

John Shufflet alias  
John Eaton

No. 2



INSTRUCTION NO. 1

The Court instructs the jury that under the indictment in this case, if warranted by the evidence, you may find one of the four following verdicts, to-wit: (1) Malicious wounding or injury; (2) Unlawful wounding or injury; (3) Assault and battery; (4) Not guilty.

You are further instructed that malicious wounding or injury is committed when one person unlawfully, wilfully, feloniously and maliciously wounds or causes bodily injury to another, intending thereby either to maim, disfigure, disable or kill such other. Unlawful wounding is committed when one person wounds or causes bodily injury to another unlawfully, wilfully, and feloniously, but not maliciously, intending thereby either to maim, disfigure, disable or kill such other. Assault and battery is any physical injury done to another in an angry, rude or insolent manner.

*G. L. Allen*

INSTRUCTION NO. 1

The Court instructs the jury that under the indictment in this case, if warranted by the evidence, you may find one of the four following verdicts, to-wit: (1) Malicious wounding or injury; (2) Unlawful wounding or injury; (3) Assault and battery; (4) Not Guilty.

You are further instructed that malicious wounding or injury is committed when one person unlawfully, wilfully, feloniously and maliciously wounds or causes bodily injury to another, intending thereby either to maim, disfigure, disable or kill such other. Unlawful wounding is committed when one person wounds or causes bodily injury to another unlawfully, wilfully, and feloniously, but not maliciously, intending thereby either to maim, disfigure, disable or kill such other. Assault and battery is any physical injury done to another in an angry, rude or insolent manner.



INSTRUCTION NO. 2

The Court instructs the jury that the burden resting upon the Commonwealth to prove the accused guilty beyond all reasonable doubt of an offense and every material element thereof, charged against the accused, does not mean that it is necessary for the Commonwealth to establish the guilt of the accused to an absolute certainty or beyond all possibility of mistake or to do more than satisfy the jury that upon the evidence as a whole the accused is guilty thereof beyond all reasonable doubt.

*Gives*





INSTRUCTION NO. 3

The Court instructs the jury that malice as applied to this case is used in a technical sense. It may be either express or implied. It includes not only anger, hatred and revenge, but every unlawful and unjustifiable motive. It may be inferred or implied from any deliberate and cruel act done without reasonable provocation or excuse. Malice in law is every evil design in general; and by it is meant that the act has been attended with such circumstances as are ordinarily symptoms of a wicked, depraved and malignant spirit, and carries with them the plain indications of a heart regardless of social duty, and fatally bent upon mischief.

*Gimm*

of social duty, and largely rest upon misapprehension.  
Society with them the basis of indignation of a people's indignation  
symptoms of a marked, deliberate and systematic effort, and  
has been arranged with such circumstances as are ordinarily  
easily and readily in evidence: and as it is meant that the act  
without reasonable provocation or excuse. Justice in law is  
referred to and referred from and referred and other acts done  
thereby, but easily and readily and immediately visible. It may  
express or implied. It includes not only such, but also and  
so that such is used in a descriptive sense. It may be either  
the only purpose the only such justice as referred



INSTRUCTION NO. 4

The Court instructs the jury that the malicious intent may be proved like any other fact, by either direct or circumstantial evidence or by a combination of both; and if facts, surrounding circumstances and conditions are proven which warrant and justify an inference therefrom of the existence of such malicious intent, the same may be inferred therefrom.

*Gium*





INSTRUCTION NO. 5

The Court instructs the jury that one who is present at the scene of a crime, <sup>intentionally</sup> aiding and abetting or participating therein is guilty as a principal in such crime. The Court further tells the jury that any encouragement or act of assistance constitutes participation in such crime.

The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the prisoner, Lawrence Dean, aided and abetted by Floyd Shifflett, assaulted H. E. Taylor, then you shall find the prisoners, Lawrence Dean and Floyd Shifflett, guilty, and fix their punishment in accordance with the charge to the jury in this case.

*Given.*

2  
INSTRUCTION NO.

The Court instructs the jury that one who is present  
at the scene of a crime, <sup>intentionally</sup> aiding and abetting or participating  
therein is guilty as a principal in such crime. The Court  
further tells the jury that any encouragement or act of  
assistance constitutes participation in such crime.  
The Court further instructs the jury that if you  
believe from the evidence beyond a reasonable doubt that the  
prisoner, Lawrence Dean, aided and abetted by Floyd Shifflet,  
assaulted H. E. Taylor, then you shall find the prisoners,  
Lawrence Dean and Floyd Shifflet, guilty, and fix their  
punishment in accordance with the charge to the jury in this

case.

*Shifflet*



INSTRUCTION NO. 6

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and the law is that, where a number of witnesses testify directly opposite to each other, the jury is not bound to regard the number of witnesses who may have testified on one side as against the number who testified on the other side; the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, determine which witnesses are more worthy of credit and what is the relative weight of any such testimony, and to give credit accordingly.

Gunn

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and the law is that, where a number of witnesses testify directly opposite to each other, the jury is not bound to regard the number of witnesses who may have testified on one side as against the number who testified on the other side; the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, to determine which witnesses are more worthy of credit and what is the relative weight of any such testimony, and to give credit accordingly.

*[Handwritten signature]*



INSTRUCTION NO. A

The court instructs the jury that the law presumes every person charged with crime to be innocent until their guilt is established by the Commonwealth beyond all reasonable doubt, and this presumption of innocence goes with the accused through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against them in the indictment, it is their duty to give the accused the benefit of the doubt, and find them, not guilty.

Given





INSTRUCTION B

The Court instructs the jury that malice is one of the elements of malicious assault and that the burden is upon the Commonwealth to prove malice beyond a reasonable doubt in order to convict either of the defendants of malicious assault; and the Court further instructs the jury that malice is not presumed from the use of fists as a weapon.

Grier.

INSTRUCTION 13

The Court instructs the jury that malice is one of the elements of malicious assault and that the burden is upon the Commonwealth to prove malice beyond a reasonable doubt in order to convict either of the defendants of malicious assault; and the Court further instructs the jury that malice is not presumed from the use of fists as a weapon.

Given

INSTRUCTION NO. C

The court instructs the jury that any tussle which the defendant, Floyd Shifflett, may have had with H. E. Taylor did not, of itself, constitute an assault, and unless the jury believes from the evidence, beyond a <sup>reasonable</sup> doubt, that defendant, Floyd Shifflett, <sup>thereby intentionally</sup> aided and abetted the defendant, Dean, in committing an assault upon the said H. E. Taylor, they shall find the defendant, Floyd Shifflett, not guilty.

Given



C INSTRUCTIONS NO.

The court instructs the jury that any facts which the

defendant, Floyd Griffith, may have had with H. E. Taylor did not

of itself, constitute an assault, and unless the jury believes from

the evidence, beyond a doubt, that defendant, Floyd Griffith, <sup>intentionally</sup> aided

and abetted the defendant, Dean, in committing an assault upon the

aid of H. E. Taylor, they shall find the defendant, Floyd Griffith,

not guilty.

Three

## INSTRUCTION

D.

The Court instructs the jury that in order to find Floyd Shifflett guilty under this indictment, they must believe from the evidence in this case, beyond a reasonable doubt, that he made an actual assault upon H. E. Taylor, or that he aided and abetted Lawrence Dean in committing an assault upon the said H. E. Taylor; and the Court tells the jury in connection with the latter that mere presence is not sufficient to constitute one an aider and abettor, and that whenever reasonable doubt exists as to the intentions of one charged as an aider and abettor, he cannot be found guilty; and the Court further tells the jury that mere consent is not sufficient to constitute one an aider and abettor, but, to find Floyd Shifflett guilty of aiding and abetting, it is incumbent upon the Commonwealth to prove beyond all reasonable doubt that Lawrence Dean committed an assault upon H. E. Taylor and that Floyd Shifflett was present and shared in the criminal intent.

*Given* ,

INSTRUCTION

The Court instructs the jury that in order to find Floyd Shifflett guilty under this indictment, they must believe from the evidence in this case, beyond a reasonable doubt, that he made an actual assault upon H. E. Taylor, or that he aided and abetted Lawrence Dean in committing an assault upon the said H. E. Taylor; and the Court tells the jury in connection with the latter that mere presence is not sufficient to constitute one an aider and abettor, and that whenever reasonable doubt exists as to the intentions of one charged as an aider and abettor, he cannot be found guilty; and the Court further tells the jury that mere consent is not sufficient to constitute one an aider and abettor, but, to find Floyd Shifflett guilty of aiding and abetting, it is incumbent upon the Commonwealth to prove beyond all reasonable doubt that Lawrence Dean committed an assault upon H. E. Taylor and that Floyd Shifflett was present and shared in the criminal intent.



INSTRUCTION NO. F

The court instructs the jury that if they believe from the evidence in this case that H. E. Taylor was the aggressor and that Lawrence Dean reasonably apprehended bodily harm, then he had the right to use such force as was necessary to protect himself, and if you believe that the said Dean <sup>under such circumstances</sup> used only such force <sup>as</sup> ~~under such circumstances~~ as he reasonably deemed necessary to protect himself, then you should find him not guilty.

*Given*

F

INSTRUCTIONS NO.

The court instructs the jury that if they believe from the evidence in this case that H. E. Taylor was the aggressor and that Lawrence Dean reasonably apprehended bodily harm, then he had the right to use such force as was necessary to protect himself, and if you believe that the said Dean used only such force as he reasonably deemed necessary to protect himself, then you should find him not guilty.

*James*

INSTRUCTION F

The Court instructs the jury that in order to find Lawrence Dean and Floyd Shifflett, or either of them, guilty of malicious or felonious assault, they must believe from the evidence in this case, beyond a reasonable doubt, that the said Lawrence Dean and Floyd Shifflett, or either of them, caused bodily injury to the said H. E. Taylor with the intent to kill or permanently maim, disable or disfigure him.

Given ~

Submitted 1. Comm  
165-00-799



F INSTRUCTION

The Court instructs the jury that in order to find Lawrence Dean and Floyd Shifflett, or either of them, guilty of malicious or felonious assault, they must believe from the evidence in this case, beyond a reasonable doubt, that the said Lawrence Dean and Floyd Shifflett, or either of them, caused bodily injury to the said H. E. Taylor with the intent to kill or permanently maim, disable or disfigure him.

Given

22 June

No. 1.

The court instructs the jury that whoever kills a human being with malice aforethought is guilty of murder. A murder which is perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, and premeditated killing is murder in the first degree; all other murder is murder in the second degree.





No. 2.

Malice aforethought as used in the foregoing instruction means any formed design of doing mischief whether arising from hatred and revenge against the deceased or from a perverse malignity and depravity of heart in general.



No. 3.

When the killing is wilful, deliberate and premeditated the law infers malice from this fact.





No. 4.

On a charge of murder, malice is presumed from the fact of killing. When the killing is proved and is unaccompanied with circumstances of palliation the burden of disproving malice is thrown upon the accused.





No. 5.

The court instructs the jury that ~~that~~ every unlawful homicide is presumed by law to be murder in the second degree, if the Commonwealth would elevate the offence to murder in the first degree, it must prove the characteristics of that offence, and if the prisoner would reduce the offence, the burden of proof is on him.



No. 5.

The court instructs the jury that ~~that~~ every unlawful homicide is presumed by law to be murder in the second degree, if the Commonwealth would elevate the offence to murder in the first degree, it must prove the characteristics of that offence, and if the prisoner would reduce the offence, the burden of proof is on him.





No. 6.

The court further instructs the jury that to constitute a wilful, deliberate, and premeditated killing it is not necessary that the intention to kill should exist any particular length of time prior to the actual killing. It is only necessary that such intention should come into existence for the first time at the time of killing, or any time previously.





No. 7.

A mortal wound given with a deadly weapon in the previous possession of the slayer, without any or upon very slight provocation, is prima facie wilful, deliberate and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances.

No. 7.

A mortal wound given with a deadly weapon in the previous possession of the slayer, without any or upon very slight provocation is prima facie wilful, deliberate and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances.

No. 8.

If the jury believe from the evidence that the killing was malicious but not wilful, deliberate and premeditated, then such killing is murder in the second degree.



No. 8.

If the jury believe from the evidence that the killing was  
malicious but not willful, deliberate and premeditated, then such killing  
is murder in the second degree.

No. 9.

If the jury believe from the evidence that the prisoner killed the deceased in execution of a malicious purpose to do the deceased a serious personal hurt by wounding him the offence is murder.





No. 10.

The court instructs the jury that where on a charge of murder the prisoner pleads self defense then the burden is upon the prisoner to prove to the satisfaction of the jury that he ~~aided~~<sup>acted</sup> in self defense.





No. 11.

The jury are further instructed that the bare fear of bodily harm, however honestly and seriously entertained, will not of itself constitute a justification of a homicide on the principle of self defense, but there must be some act menacing present peril, or something in the attending circumstances indicative of a present purpose on the part of the deceased to make the apprehended attack.

The act so done by the deceased, or the circumstances thus existing, must be of such a character as to afford a reasonable ground for the prisoner's believing at the time that the deceased or those in his company intended then to kill him or to do him serious bodily harm.





No. 12.

The court instructs the jury that proof of motive is not essential to the conviction of the prisoner, so that even though they believe from the evidence that no motive has been directly proven or only a seemingly inadequate motive is proven in the case, the jury may nevertheless convict the prisoner <sup>if</sup> ~~where~~ the evidence is in other respects sufficient under the other instructions in the case; but the absence of any motive, or <sup>of</sup> any adequate motive, is a circumstance which the jury are entitled to take into consideration in determining the guilt or innocence of the prisoner, or in fixing the grade of his offence.





No. 13.

The court instructs the jury that voluntary manslaughter is the unlawful killing of a person without malice, actual or implied, upon a sudden heat, on reasonable provocation, or in mutual combat.



No. 14.

The court instructs the jury as a matter of law, in considering the case, the jury are not to go beyond the evidence to hunt up doubts, <sup>nor</sup> ~~not~~ must they entertain such doubts as are merely <sup>Chimerical</sup> ~~criminal~~ or conjectural. A reasonable doubt must be based upon the evidence or grow out of the evidence. It must not be an arbitrary doubt without evidence to sustain it. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or facts necessary for the jury to believe to find a verdict of conviction and not of immaterial and non-essential circumstances.

~~See Williams v. Commonwealth 25 Va. 607.~~

~~See McCue v. Commonwealth 103 Va. 270.~~





No. 15.

The court instructs the jury that the credibility of witnesses is a question exclusively for the jury, and the law is that where a number of witnesses testify directly opposite to each other, the jury is not bound to regard the weight of the evidence as equally balanced; the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, and their apparent candor and fairness, their apparent intelligence, and from all of the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and x to give credit accordingly.





No. 16.

If the jury believe from the evidence that previous to the time of the killing, there was a grudge on the part of the prisoner towards the deceased and that the prisoner killed the deceased because of this aforesaid grudge, then such killing was wilful, deliberate and pre-meditated, and is murder in the first degree.





No. 17

~~INSTRUCTION~~ No. 1.

~~First:~~ The court instructs the jury that if they believe from the evidence, that the prisoner, at the time he shot Marvin Shifflett, acted under reasonable belief that he was in imminent danger of serious bodily harm at the hands of Marvin Shifflett, Ashby Lawson, and Bob Shifflett, or any of them, and that it was necessary for him to defend himself to avoid serious bodily harm, which was apparently imminent, then they are instructed that the prisoner was justifiable in defending himself by such means as were reasonably necessary, <sup>even</sup> ~~even~~ to the extent of killing said Marvin Shifflett or said Ashby Lawson or said Bob Shifflett and even though the jury should believe that appearances were deceptive and that there was in fact no design on the part of said three men, or any of them, to kill the prisoner or to do him serious bodily harm.



INSTRUCTION No. 1.

First: The court instructs the jury that if they believe from the evidence, that the prisoner, at the time he shot Marvin Shifflet, acted under reasonable belief that he was in imminent danger of serious bodily harm at the hands of Marvin Shifflet, Ashby Lawson, and Bob Shifflet, or any of them, and that it was necessary for him to defend himself to avoid serious bodily harm, which was apparently imminent, then they are instructed that the prisoner was justifiable in defending himself by such means as were reasonably necessary, even to the extent of killing said Marvin Shifflet or said Ashby Lawson or said Bob Shifflet and even this the jury should believe that appearances were deceptive and that there was in fact no design on the part of said three men, or any of them to kill the prisoner or to do him serious bodily harm.

No. 18

~~INSTRUCTION No. 2.~~

~~Second~~ The court instructs the jury that the prisoner is presumed to be innocent, until every fact essential to his conviction is proven beyond every reasonable doubt and to the exclusion of every reasonable hypothesis consistent with his innocence.





No. 19

~~INSTRUCTION NO. 5.~~

~~The~~ The court instructs the jury that any threats made by Marvin Shifflett and Ashby Lawson to the prisoner prior to the time of the killing, as well as any made by the said Marvin Shifflett, Ashby Lawson and Bob Shifflett, which were communicated to the prisoner, are to be considered by them in the determination of the question as to whether the prisoner had, at the time of the killing, a reasonable ground to apprehend that they intended to do him, the prisoner, serious bodily harm.

INSTRUCTION NO. 3.

The court instructs the jury that any threats made by Marvin Shifflet and Ashby Lawson to the prisoner prior to the time of the killing, as well as any made by the said Marvin Shifflet, Ashby Lawson and Bob Shifflet, which were communicated to the prisoner, are to be considered by them in the determination of the question as to whether the prisoner had, at the time of the killing, a reasonable ground to apprehend that they intended to do him, the prisoner, serious bodily harm.

No. 20

~~INSTRUCTION No. 4.~~

~~Findings:~~ The court instructs the jury that if they believe from the evidence that Marvin Shifflett, Bob Shifflett and Ashby Lawson, were dangerous men, then they can consider these facts, together with all the other facts and circumstances in the case in determining whether or not the prisoner at the bar, had a reasonable ground of belief, and did believe, at the time of the killing, that they intended to do him, the prisoner, serious bodily harm.





No. 21

~~XXXXX~~: The jury are further instructed that in order to determine the necessity of the prisoner killing the said Marvin Shifflett, and defending himself against the said Marvin Shifflett, Ashby Lawson and Bob Shifflett, the prisoner had a right to take in to consideration any bad feeling which the jury may believe the evidence discloses the said Marvin Shifflett, Ashby Lawson and Bob Shifflett had against him, the prisoner, together with any threats or previous attempts by them, <sup>shown by the evidence,</sup> to do him , the prisoner, serious bodily harm ~~XXXXXX~~  
~~XXXXXX~~.





No. 22

The jury are instructed that where a man in the pursuit of his business is attacked and where from the nature of the attack there is reasonable ground to believe that there is a design to take his life or to do him great bodily harm and the party attacked does so believe then the killing of the assailant under such circumstances will be excusable or justifiable.



No. 22

The jury are instructed that where a man in the pursuit of his business is attacked and where from the nature of the attack there is reasonable ground to believe that there is a design to take his life or to do him great bodily harm and the party attacked does so believe then the killing of the assailant under such circumstances will be excusable or justifiable.



Ms. 5

1875

The jury are instructed that where a man in the pursuit  
of his business is attacked and where from the nature of the attack  
there is reasonable ground to believe that there is a design to  
take his life or to do him great bodily harm and the party attacked  
does so believe then the killing of the assailant under such circumstan-  
ces will be excusable or justifiable.

No. 23

The court instructs the jury that upon the trial of a criminal case by a jury the law contemplates a concurrence of twelve minds in the conclusion of guilt before a conviction can be had. Not only is this true with respect to the guilt of the accused, but it is likewise true with respect to the degree of crime. Therefore, although the jury may believe from the evidence, that the accused is guilty of the killing of the deceased, still, if any individual member of the jury, after having duly considered all of the evidence in this case, and after consultation with his fellow-jurors, should entertain a reasonable doubt as to the degree of the guilt of the accused, it is his duty not to surrender his own convictions as to such degree of guilt simply because the balance of the jury entertain different convictions with respect to such degree.



Commonwealth

vs

Jos. J. Shifflett

alias Jos. Eaton

Instructions Given

The court instructs the jury that upon the trial of a criminal case by a jury the law contemplates a concurrence of twelve minds in the conclusion of guilt before a conviction can be had. Not only is this true with respect to the guilt of the accused, but it is likewise true with respect to the degree of crime. Therefore, although the jury may believe from the evidence, that the accused is guilty of the killing of the deceased, still, if any individual member of the jury, after having duly considered all of the evidence in this case, and after consultation with his fellow-jurors, should entertain a reasonable doubt as to the degree of the guilt of the accused, it is his duty not to surrender his own convictions as to such degree of guilt simply because the balance of the jury entertain different convictions with respect to such degree.



1st. The court instructs the jury that if they believe, from the evidence, that the prisoner, at the time he shot Marvin Shifflett, acted under reasonable belief that he was in ~~imminent~~<sup>imminent</sup> danger of serious bodily harm at the hands of Marvin Shifflett, Ashby Lawson and Bob Shifflett, or any of them, and that it was necessary for him to defend himself to avoid serious bodily harm, which was apparently ~~was~~<sup>was</sup> imminent, then they are instructed that the prisoner was justifiable in defending himself <sup>by such means as were reasonably necessary</sup>, even to the extent of killing said Marvin Shifflett or said Ashby Lawson or said Bob Shifflett, <sup>and even tho' the jury should believe that if persons were deceived and that there was in fact no design on the part of said 3 men or any of them</sup>

2nd. The court instructs the jury that the prisoner is presumed to be innocent, until every fact essential to his conviction is proven beyond every reasonable doubt and to the exclusion of every reasonable hypothesis consistent with his innocence.

3rd. The court instructs the jury that <sup>any</sup> ~~the~~ threats made by Marvin Shifflett and Ashby Lawson to the prisoner prior to the time of the killing, as well as <sup>any</sup> ~~those~~ made by the said Marvin Shifflett, Ashby Lawson and Bob Shifflett, which were communicated to the prisoner, are to be considered by them in the determination of the question as to whether the prisoner had, at the time of the killing a reasonable ground to apprehend that they intended to do him, the prisoner, serious bodily harm.

4th. The court instructs the jury that <sup>if they believe from the evidence</sup> ~~the bad character of~~ Marvin Shifflett and Ashby Lawson, <sup>Bob Shifflett</sup> ~~as shown by the evidence, as dangerous~~ <sup>where</sup> ~~men, together with all the other facts and circumstances in the case~~ <sup>that</sup> ~~are to be considered by the jury in determining whether or not the~~ <sup>it is to be considered by the jury</sup> prisoner at the bar, had ~~a right to~~ <sup>and did believe</sup> a reasonable ground of belief, at the time of the killing, that they intended to do him, the prisoner, serious bodily harm.

5th. The jury are further instructed that in order to determine the necessity of the prisoner killing the said Marvin Shifflett, and defending himself against the said Marvin Shifflett, Ashby Lawson and Bob Shifflett, the prisoner had a right to take in to consideration <sup>any</sup> ~~the~~ bad feeling which the said Marvin Shifflett, Ashby Lawson and Bob Shifflett had against him, the prisoner, together with <sup>the jury may believe the evidence discloses</sup> ~~to~~ threats <sup>any</sup> ~~or~~ <sup>by them</sup> and previous attempts to do him the prisoner, serious bodily harm, <sup>as disclosed by the evidence</sup>

~~and previous attempts to do him the prisoner, serious bodily harm,~~



1st. The court instructs the jury that if they believe, from

the evidence, that the prisoner, at the time he shot Marvin Shifflett,

acted under reasonable belief that he was in imminent danger of serious

bodily harm at the hands of Marvin Shifflett, Ashby Lawson and Bob Shiff-

lett, or any of them, and that it was necessary for him to defend him-

self to avoid serious bodily harm, which was apparently imminent, then they

are instructed that the prisoner was justifiable in defending himself.

even to the extent of killing said Marvin Shifflett or said Ashby Lawson

or said Bob Shifflett.

2nd. The court instructs the jury that the prisoner is pre-

sumed to be innocent, until every fact essential to his conviction is

proven beyond every reasonable doubt and to the exclusion of every

reasonable hypothesis consistent with his innocence.

3rd. The court instructs the jury that the threats made by

Marvin Shifflett and Ashby Lawson to the prisoner prior to the time of the

killing, as well as those made by the said Marvin Shifflett, Ashby

Lawson and Bob Shifflett, which were communicated to the prisoner, are

to be considered by them in the determination of the question as to whether

or the prisoner had, at the time of the killing a reasonable ground to

believe that they intended to do him, the prisoner, serious bodily

harm.

4th. The court instructs the jury that the bad character of

Marvin Shifflett and Ashby Lawson, as shown by the evidence, are dangerous

and together with all the other facts and circumstances in the case

are to be considered by the jury in determining whether or not the

prisoner at the bar, had a reasonable ground of belief, at the

time of the killing, that they intended to do him, the prisoner,

serious bodily harm.

5th. The jury are further instructed that in order to deter-

mine the necessity of the prisoner killing the said Marvin Shifflett

and defending himself against the said Marvin Shifflett, Ashby Lawson

and Bob Shifflett, the prisoner had a right to take in to consideration

the feeling which the said Marvin Shifflett, Ashby Lawson and Bob

Shifflett had against him, the prisoner, together with the threats

and previous attempts to do him the prisoner, serious bodily harm, or

either or all of them.



6

The jury are instructed that where a man in the pursuit of his business is attacked and where from the nature of the attack there is reasonable ground to believe that there is a design to take his life or to do him great bodily harm and the party attacked does so believe then the killing of the assailant under such circumstances will be excusable or justifiable.

7

*Refused - already covered*

The Court instructs the jury that if they believe from the evidence that at the time the said defendant is alleged to have shot Marvin Shiflett the circumstances surrounding the defendant were such as in reason would justify or induce in his mind an honest belief that he was in danger of receiving from Marvin Shiflett, Ashby Lawson and Bob Shiflett, or any one of them, some great bodily harm and that the defendant in doing what he then did was acting from the instinct of self preservation then they must find him not guilty.



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The jury are instructed that where a man in the presence of his business is attacked and where from the nature of the attack there is reasonable ground to believe that there is a design to take his life or to do him great bodily harm and the party attacked does so believe then the killing of the assailant under such circumstances will be excusable or justifiable.

7

The Court instructs the jury that if they believe from the evidence that at the time the said defendant is alleged to have shot Marvin Shiffert the circumstances surrounding the defendant were such as in reason would justify or induce in his mind an honest belief that he was in danger of receiving from Marvin Shiffert, Harry Lawson and Bob Shiffert, or any one of them, some great bodily harm and that the defendant in doing what he then did was acting from the instinct of self preservation then they must find him not guilty.



of murder in the first or second  
degree not guilty of voluntary  
manslaughter but guilty of  
involuntary manslaughter you  
will say so and ascertain his  
punishment - which shall be  
fine of not less than \$500 or  
confinement in jail, either or  
both.



Leah  
at  
Bible



W. H. ROY  
If you find the prisoner <sup>not</sup> guilty-  
you will say so & no more

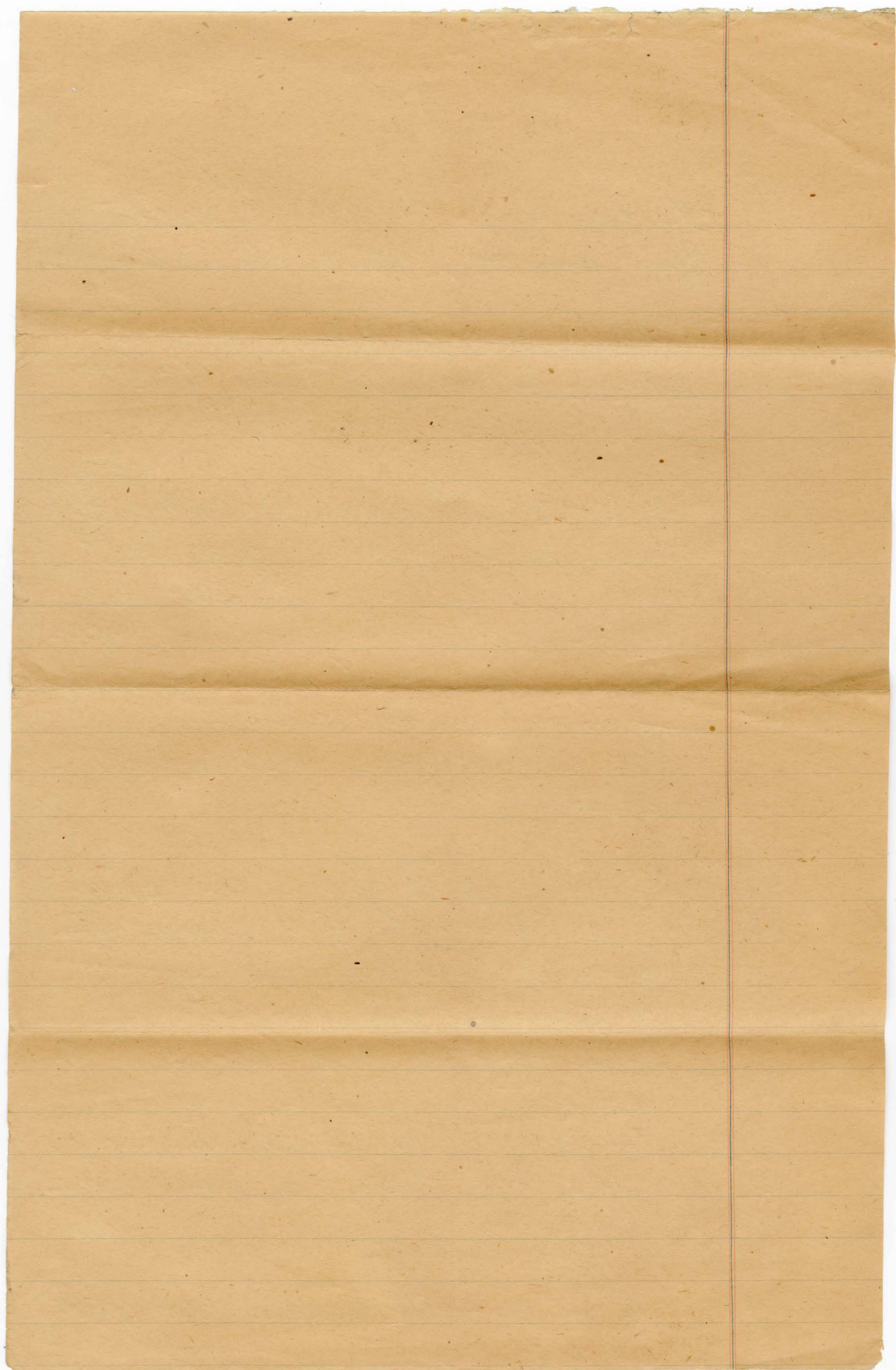
If you find the prisoner guilty- of  
murder in the first-degree <sup>as charged in the indictment-</sup> you  
will say so and no more.

If you find the prisoner not guilty- of  
murder in the first-degree but-  
guilty- of murder in the second  
degree you will say so and ascer-  
tain his punishment which shall be  
confinement in the penitentiary not-  
less than 5 years nor more than  
18 years -

If you find the prisoner not-guilty-  
of murder in the first-degree ~~nor~~  
second degree but-guilty-  
of voluntary manslaughter you  
will say so and ascertain his  
punishment which shall be  
confinement in the penitentiary  
not-less than one nor more  
than five years

If you find the prisoner not-guilty-







Commonwealth of Virginia,

COUNTY OF ROCKINGHAM, To-wit:

IN THE CIRCUIT 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 September term, in the year 1907,

upon their oaths present that

John J. Shiflett alia  
John Euton

on the 17<sup>th</sup> day of August, in the year 1907, in the said County,

did

with a certain pistol then and there loaded  
with gunpowder and leaden ball, feloniously  
and of his malice aforethought - did shoot - one  
Ashby Lawson with intent him the said Ashby  
Lawson then and there to maim, disfigure  
disable and kill

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of

W. R. Shiflett, alias W. Davis

.....witness... sworn in open Court and sent to the  
Grand Jury to give evidence.

.....Clerk.



Commonwealth

vs.

INDICTMENT. a

Melony.

John T. Shiflett alia

John Eaton

A TRUE BILL.

D. B. Lites

Foreman.

arranged & N. S.

not Pro



COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, TO-WIT:

IN THE CIRCUIT 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 September term, in the year 1907, upon their oaths present that John T. Shiflett alias John Eaton on the 17th day of August, in the year 1907, in the said County, did with force and arms in and upon the body of one Marvin Shiflett in the peace of said Commonwealth then and there being, feloniously, wilfully and of his malice aforethought, did make an assault, and that the said John T. Shiflett alias John Eaton a certain pistol then and there charged with gunpowder and one leaden bullet, which said pistol, he, said John T. Shiflett alias John Eaton in his hand then and there had and held, then and there feloniously, wilfully, deliberately and of his malice aforethought, did discharge and shoot off, to, against and upon the said Marvin Shiflett; and that the said John T. Shiflett alias John Eaton, with the leaden bullet aforesaid out of the pistol by the said John T. Shiflett alias John Eaton discharged and shot off, as aforesaid, then and there feloniously, wilfully, deliberately and of his malice aforethought, did strike, penetrate and wound the said Marvin Shiflett in and upon the left side of the breast of him the said Marvin Shiflett; giving to him the said Marvin Shiflett, then and there with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the said John T. Shiflett alias John Eaton in and upon the left breast one mortal wound; of which said mortal wound he the said Marvin Shiflett then and there instantly died.

And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said John T. Shiflett alias John Eaton, him the said Marvin Shiflett in the manner and by the means aforesaid, feloniously, wilfully, deliberately and of his malice aforesaid, <sup>thought</sup> did kill and murder,



The Jurors of the Commonwealth of Virginia, do hereby certify that the following is a true and correct copy of the proceedings in the case of the Commonwealth of Virginia vs. John T. Shiffert, as charged with the murder of one Marvin Shiffert, in the year 1907, upon their sworn present that John T. Shiffert alias John Nelson on the 17th day of August, in the year 1907, in the said County, did with force and arms in and upon the body of one Marvin Shiffert in the peace of said Commonwealth feloniously, wilfully and of his malice aforethought, did take an unlawful, and that the said John T. Shiffert alias John Nelson a certain pistol then and there charged with gun-powder and one leaden bullet, which said pistol, he, said John T. Shiffert alias John Nelson in his hand then and there had and held, then and there feloniously, wilfully, deliberately and of his malice aforethought, did discharge and shoot off, so, against and upon the said Marvin Shiffert; and that the said John T. Shiffert alias John Nelson, with the leaden bullet aforesaid out of the pistol by him said John T. Shiffert alias John Nelson discharged and shot off, as aforesaid, then and there feloniously, wilfully, deliberately and of his malice aforethought, did strike, penetrate and wound the said Marvin Shiffert in and upon the left side of the breast of him the said Marvin Shiffert; giving to him the said Marvin Shiffert, then and there with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the said John T. Shiffert alias John Nelson in and upon the left breast one mortal wound; of which said mortal wound he the said Marvin Shiffert then and there instantly died.

And so the Jurors aforesaid, upon their sworn present, do say, that the said John T. Shiffert alias John Nelson, him the said Marvin Shiffert in the manner and by the means aforesaid, feloniously, wilfully, deliberately and of his malice aforethought, did kill and murder.



against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of W. R. Shifflett & W. Davis

Witnesses sworn in open Court and sent to the Grand Jury to give evidence.

Clerk.

*Handwritten notes and signatures:*  
Clerk  
Shifflett  
Davis  
[Other illegible signatures and notes]

[Faint, mostly illegible text from the reverse side of the page, appearing as bleed-through or ghosting.]



No the jury find the prisoner John D. Shiflett alias John  
Eaton not guilty

Ed. Karmesberger Foreman

Commenced

the indictment

as for murder

John D. Shiflett alias  
John Eaton

a true bill

D. B. Bates

Foreman

arraigned & M. S.

7/2



We the Jury find the  
prisoner Not Guilty  
Ed. H. Rosenberg  
Foreman

