Commonwealth
vs
Pink Barbour, (colored)

Be it remembered that upon the trial of this case the Commonwealth to maintain the issue on ~~this~~ its part, introduced the following evidence, to-wit:

W. D. Garber testified, that on July 4th last he was keeper of a ~~he keeps a livery and~~ feed stable, and that on that day James M. Lee was one of his employes, that said stable is located on the north side of East Water Street in the town of Harrisonburg, in Rockingham County, Virginia; that a man, whom witness afterwards ascertained to be Pink Barbour, came to ~~that~~ stable door, about 2 o'clock P.M. made a cigarette, and lighted it, and asked witness if he might go back to the horse stalls. Witness told him that he could not go into the stable with a lighted cigarette, whereupon Barbour laid the cigarette upon a step just inside the main entrance of the stable, which step led into the stable office, and then commenced to wander around amongst a lot of buggies, with which the stable was filled, and witness noticed Barbour taking ~~began collecting up~~ buggy whips; that witness called Lee asked him what he was doing with the whips, and Barbour stuck the whips behind him, with his back to the witness, who was looking at him, and turned facing Lee told Lee that he was looking at them. Lee told him to put the whips back, and get out; that Barbour put the whips back and walked about half way out of the stable, when witness told him to get out, or he would call the police. Barbour went near to the main entrance of the stable and stopped, whereupon Lee picked up a white pine board, twenty-two inches long, three inches wide, and three-fourths of an inch thick, and said that he would paddle him out; that Barbour went out, ~~and remarked as he went, "I'll get even with them". Witness did not know, whom Barbour meant "By them".~~ Lee walked back ~~into the stable~~, dropped the board on the way. Barbour returned ~~to in~~ front of the main entrance of the stable, where upon Lee picked up the board again,- witness, whose attention at this point was attracted to something else, turned away. When he looked again,

Lee had gone around the corner of the entrance into the street.- Next ~~he~~ witness heard was a pistol shot and he ~~sprang~~ broked out into the street; when ~~three~~ two other shots were fired, witness dodged back into the entrance way. ~~It appeared to~~ Had witness ~~when he~~ glanced out of the entrance way ~~there~~ Lee was leaning in a window of the office, with his back to witness, ~~which~~ window faces on Water Street, and Lee was about four feet west of the entrance way with the stick still in his right hand. Barbour was standing about eight or ten feet beyond Lee on Water Street, west of the entrance way; that there was a slight interval between the first and the last three shots. Lee came back into the office door with his hands holding his left breast, and exclaimed, "I'm shot, don't let that darkey get away". Lee sank down upon the office step, and was from there carried into the office, and placed on a cot, where he soon expired. Lee was a man of about sixty years of age, five feet, ten inches high, active, and had a pretty high temper, when aroused, that the stick which Lee had in his hand was found outside of the office window, where Lee was seen to have been standing, while the shots were being fired; that there was a big crowd in town that day, and a great many people were around his place of business; that in front of his place of business, and extending some distance west on Water Street, was a long row of buggies, that a path way had been left between this row of buggies and the buildings abutting on the Street. On this path way beyond where Babour was standing, were many people moving back and forth. Out in the middle of the street beyond the line of buggies, there were also many people moving back and forth; that witness noticed nothing in the appearance of Babour to indicate that he was intoxicated.

Dr. J. M. Biedler, ~~County Coroner~~, ~~testified~~,- that Lee had received but one wound, the shot having entered the left breast, and taken a course through the body, lodging just under the skin of the back, on the right hand side, and had been deflected upward slightly by coming in contact with one of the back ribs, and that it was from this wound that Lee had died.

J. T. Lam,- testified that he was sworn in as a special officer for the Town of Harrisonburg for the 4th of July, 1910;- that he was standing at the corner of Main and Water Streets, which is about 225 feet from the stable entrance, that he heard a pistol shot, which, at the time, he thought was the noise from firing a fire cracker; that other shots followed, and he ran up Water Street towards the stable. After going about a 150 feet, he saw Pink Babour, crossing the street, half walking, half running, from the north to the south side of Water Street, ~~and~~ the was siezed by several men, and thrown down on the side walk, on the south side of the Street. Witness ran up and got hold of Babour, and took from his right hip pocket a revolver, the barrel of which was still warm. At this time Deputy Sheriff Croushorn arrived, getting to the spot immediately after witness, and together they released Babour from the grasp of the men who had him, and started with him to jail. On the way to jail, Babour ~~[illegible]~~, but that he stepped ~~[illegible]~~ in crossing Water Street." Upon arriving at the jail they placed the prisoner in a cell at the top of the jail building, where he, Barbour, sat down on a stool, with his head against the wall, and after about three/fourths of an hour threw up. In about an hour after Barbour's arrival at the jail, he fell off the stool on to the floor in a stupor, out of which he aroused, at about twelve or one o'clock that night; that the witness stayed on duty, and guarded Barbour until five o'clock on the ~~morning~~ of the ~~[illegible]~~ of July; that witness thought Barbour knew what he was doing, because after he had

arrived at the jail, and was being searched, he stated that they had not gotten all of his money, that he had thirty dollars, whereupon he pulled out of one of his pockets, three advertisements, having the appearance of ten dollar bills, and which were described by the witness as "Floating bills." The revolver taken from the prisoner was exhibited by the witness. Witness described the revolver as a five shooter, thirty-eight calibre, self acting Iver and Johnson Hammerless, and had in it five empty shells, when taken from Babour; that the ~~revolver was in a~~ leather holster, which was also exhibited, ~~and which~~ had also been taken from Babour.

Flint Gasaway (colored) testified,- that he was a barber that he was in the stable before the shooting occured, that he had gone there to attend to some business, and his attention was first attracted to Lee, and the prisoner, by loud talking on the part of Lee. To witness it seemed as though Lee was driving some one, his language was loud and abusinve, that he observed Babour coming from behind a buggy and going towards the entrance of the stable. Lee followed him, with a board in his hand, and appeared to be driving him out of the stable; that Babour stepped out of the stable into the street, and that Lee after walking nearly to the entrance of the stable, dropped the board and turned around; that witness stepped towards Mr. Lee, intending to state his business, but before speaking to Mr. Lee, Lee glanced over his shoulder, and saw Babour re-appear ~~standing~~ in ~~front of~~ the entrance to the stable, picked up the board from the ground, and started after Babour again, with the board up raised in his right hand as if to strike; that Lee was mad, and that Babour started down Water Street. Lee stepped outside of the stable and turned down the street after Babour. Witness stepped ~~outside~~ to the left of the entrance to the stable, and just as he did so, he saw Babour pull the pistol from a holster, at a point about ~~eight or~~ ten or twelve feet beyond Lee, and begin shooting; that Lee was about four feet from the stable entrance, and still had the stick up raised in his

that at the time of shooting Lee's back was towards witness and accused was facing witness hand ~~as though going to strike~~; that witness could not say whether Lee was moving toward Babour when Babour pulled out his pistol ~~began to shoot~~ or not, but it appeared to witness that Lee stopped at the sight of the revolver; that he did not hear Babour at any time say a word, that he did not have ~~had~~ the appearance to him of being drunk but seemed to know what he was doing. ~~under the influence of something~~. Witness thought Babour was not normal but appeared as though he had been using drugs or something; ~~had been using drugs or [illegible]~~; that certainly he did not appear to be normal. Witness further stated that he, Barbour, looked to him three days later when he saw Barbour in jail, ~~on~~ the day the call trial was held, as he appeared to him at the stable, but that he looked different upon the trial of the case, from what he appeared at the stable; but the difference might be due to the light in which he saw him or something of that sort; that after the firing of the shots, Lee turned and walked into the stable, saying "I'm shot". Lee sank down upon the step, leading into the office, from which place, witness and others, immediately removed him into the office, and laid him on a cot; that Lee shortly thereafter expired. Witness remained at the stable for some time, standing at one of the office doors as a guard to prevent the intrusion of the large crowd.

Chas. A. Sandy testified,- that he was on the walk on Water Street beyond Shaver's Bar, going towards the stable entrance; that he saw Babour stop, and draw his pistol, turn around and fire at Lee; that he thought there was but three shots fired, that at the time shots were fired he seemed to be leaning on the window at H. Stike's and that Babour started diagonally across the street, ~~and fired as he walked~~, that witness ~~he~~ grabbed Barbour, as he was walking away on the south side of the street. Barbour said "If you don't let me go, I'll shoot you"; that Chas. A. Johnson, a man from Staunton had grabbed Barbour first, and that Barbour fell on the side walk, and at about that time Officers Lam and Groushorn arrived and took charge of Barbour. Sandy stated that he did not think Barbour showed any appearance of being ~~was very~~ drunk ~~as he did not seem to be staggering~~. The excitement at the time was very great. Witness was about 50 feet from Barbour when shots were fired & witness did not see a stick in Lee's hand when shots were fired.

great, and there was nothing to call witness's special attention to Barbour's condition.

Chas. A. Johnson testified:- that he resides in Staunton, Virginia, that at the time of the shooting he was in Harrisonburg, and was standing in front of Shaver's saloon, which is situated on the North side of Water Street; and about 27 steps from the stable entrance that he saw Barbour when he shot, that Barbour was walking toward within 4 paces and pistol out and turned toward Lee and shot ~~as he walked.~~ That he was the first man to lay hands on Barbour. He did not think Barbour was intoxicated. He, Johnson, had taken several drinks himself, that day; but was not intoxicated that Lee was standing perfectly still, when he was shot, and witness further stated that there no stick in Lee's hand; that at no time did he see a stick in Lee's hand; that he saw Barbour, when he came out of the stable, with Lee following behind him; and that there was a slight pause before third & fourth shot and that the walk was clear between himself and Barbour. The excitement was great at the time, and there was nothing to call witness's special attention to Barbour's condition.

J. T. Minnick stated, that he was standing near the door to Shaver's saloon, by East Water Street, the same side Barbour stabe was on heard three, perhaps four shots fired, as fast as a man could pull the trigger, with no interval between the shots, that looking he saw smoke from the revolver; people were standing all over and on the side walk; he saw Barbour coming down the walk, and saw him turn out into the street, and cross it; did not see Lee at all;- the whole thing happened very quickly;- ~~"He (Barbour) looked to me, like he knew what he was doing."~~ "looked back to see if any one was after him". There was nothing to ~~call witness's attention to the condition of Barbour~~ indicate that Barbour did not know what he was doing, and that the excitement at the time was very great. Witness, couldn't say that he paid special attention to Barbour's condition

E. R. Minnick testified;- that he was passing along Water Street, about six feet behind Lee, when the first shot was fired, he heard Lee tell Barbour ~~to~~ go on, ~~or~~ he would call the police. Barbour

was ten or twelve feet down the street in front of Lee. As appeared to witness Lee was leaning with his right arm ~~as witness thought~~, on the window of the stable office when shots were fired. Barbour looked mad, and when witness heard the first shot pass his head, he got into the stable entrance, as quickly as possible. Witness saw no stick in Lee's hand - Shots were fired - Lee came into the stable, and said, "Boys, I'm shot;" did not know whether Lee had a stick or not; when Lee came in stable - in fact ~~was not looking for sticks~~ at that time;- ~~said he~~ Witness was scared and excited. Witness back was toward witness & Barbour facing witness when first shot was fired -

Earl Houdabush testified;- that he was standing on the south side of Water Street below the door to Graham's Harness shop, and was looking in the direction of stable entrance when he saw Barbour turn and pull revolver from a holster which was stuck in his trousers band in front, on the right side. Barbour turned as he pulled the revolver;- witness heard four shots fired very quickly. Lee was standing near the office window, with a stick in his hand when shots were fired. From what witness saw Barbour did not appear to be drunk; ~~in fact~~, did not notice Barbour's condition particularly in the excitement that followed. but he appeared to witness as he did at the time the fire was in progress - When Barbour came across Walnut Street, witness was one of those who helped catch Barbour -

J. H. Hockett stated, that he saw Barbour on the Street and spoke to him several hours before the shooting occurred; that at the time he spoke to Barbour, Barbour was slightly intoxicated was not drunk but he had been drinking

John S. Good testified, that he was standing on the south side of Water Street about mid-way between the front and rear of the Masonic building, heard four shots, with a slight interval between the first and the last three shots; upon looking in the direction of the shots, he saw Barbour, whom he knew and recognized, ~~came out from~~ behind the line of buggies, and crossed from the north to the south side of the street, where he was caught by several men. Witness did not assist in the capture of Barbour; ~~did not notice his condition~~ ~~but~~ did not get close enough to him to notice Barbour's condition especially. saw nothing to indicate Barbour was intoxicated but that he was not related to deceased;

Ben Lee, stated, that he was sitting ~~in~~ by a buggy inside the

stable, engaged in a conversation with a man, named Myers; that he only saw Barbour when he came out of the stable, and that Barbour at this time had his back to witness. + witness could not say whether Barbour was drunk or not

And this being all of the evidence introduced by the Commonwealth, in chief, to sustain the issue on his part; the defendant to sustain the issue on his part, introduced the following evidence.

Ben Lee, who was recalled, testified that Lee followed Barbour out of the stable with the stick, and that Lee used abusive and rough language towards Barbour, and told him, that "he would beat him up, or mash his head, if he did not get out". That Lee had the stick up when they were in the stable + witness saw nothing of them after they got out side. raised as though to strike and moved quickly towards Barbour; ~~since Barbour staggered as he went out.~~ did not That Lee did not get within striking distance of Barbour while in sight of witness.

Dr. Frank Miller, testified:- that he is a practicing physician in, and a resident of the County of Rockingham, that he was in Harrisonburg, on the 4th of July, 1910, and that some time after dinner possibly at about two o'clock in the afternoon of that day, he met Barbour on Main Street, in front of Williamson's Drug Store, that Barbour who owed him a bill, was accompanied by several other men. Stopped witness + said he wanted to pay his bill. That the bill which Barbour owed him was for medical service rendered in treating his, Barbour's foot, through which he had run a nail; that Barbour at that time appeared to be under influence of drink but is not sure ~~was drunk, as an indication whereof~~, that Barbour pulled a hand-full of change from his pocket, and ~~was unable to~~ that witness pick out the correct amount which he owed witness; and that witness or someone else had to take the correct amount from Barbour's hand, that Barbour insisted upon paying more than he owed. Barbour dropped some of his money on the street, which he made no effort to recover, and which was picked up and handed to him by parties standing by; that Barbour kept wagging his head to and fro, and Barbour seemed to be so happy he didn't care whether he picked it up -

wabbling back and forth over the side walk;"that he was pretty jolly and talkative".

Jesse Hughes testified that he was in the stable on the afternoon of the 4th of July, 1910, and that he heard Lee fussing with Barbour about some buggy whips, saw Barbour come out from behind the buggies, followed by Lee with a stick in his hand, and saw Barbour go out of the entrance into the street; saw Lee, as he, witness, glanced out of the door, Lee had board up raised in his hand; witness stepped back into the stable, and immediately heard shots fired in rapid succession; turned and started out of the stable, and met Lee stumbling in. Barbour looked like he was drunk, as he staggered by witness when he first came into the stable.

D. E. Croushorn testified;- that he helped to arrest Barbour; and that at the time the shots were fired, he, Croushorn was standing on Main Street, near the corner of Main and Water Streets, and upon hearing shots fired, immediately ran in the direction whence the sound came; that when he arrived upon the scence Special Policeman Lam and several other parties had hold of Barbour and some were trying to strike him; that witness with the assistance of Lam immediately proceeded to take Barbour to jail, that Barbour appeared to be under the influence of liquor, and held back on the way to the jail,"walking stiff legged. On the way to jail, Barbour said, "Don't take me to jail," to which Lam replied, "Yes, I'll take you to jail, you killed that man, I got your gun, and it's still hot". Barbour said," I did'n't shoot any man, the man shot me." Witness noticed on the way to the jail that Barbour appeared to have been drinking, and witness thinking that maybe Barbour had been shot, as he said, upon arriving at jail, made an examination, but found no wounds upon Barbour. That Barbour when witness reached Barbour on Water Street knew what he was doing, and looked scared. That when taken to the cell in the jail, Barbour leaned his head against the wall. Witness then left Barbour to attend to the crowd

outside, and when he next returned to the cell about dark, found Barbour, apparently "in a drunken stupor on the floor", and saw where Barbour had thrown up on the floor. Barbour woke up about midnight, 11 or 12 o'clock, and asked for some water. Witness further testified that he had had a great deal of experience as deputy sheriff in watching and taking charge of drunken men, and that in nine cases out of ten, after recovering from the effects of being intoxicated, "drunks" who had been put in jail claimed not ~~men who had been very drunk called entirely~~ to remember what had occurred during their state of intoxication, although during the time of the intoxication, and when under his charge, they had seemed to know what they were doing, and seemed to understand what was going on around them.

Amos Smith testified:- that he was standing on the corner of Water and German Streets, after two o'clock on the afternoon of July 4th, and saw Barbour, who was "a pretty drunk man"; that his attention was especially attracted to Barbour, because of the fact that he got near being run over by an automobile; that Barbour staggered back in getting out of the way of the machine, he did not stagger from side to side. Witness is employed by Mr. Carickhoff, the sheriff, and works at the County Jail; that he recognized Barbour, when brought to the jail, by the officers, as the same man, whom he had previously seen drunk on the street corner; that at the time of the automobile incident, he, Smith, was watching the parade. ~~[illegible]~~.

Ed. Morris testified, that on the morning of July 4th, he got on the train at McGaheysville for Harrisonburg; that at Penn Laird, a station between McGaheysville and Harrisonburg, Barbour got on the train, which train arrived at Harrisonburg, at about nine-thirty on the morning of July 4th; and that witness, together with Henry Morris and Barbour, immediately went to a bar room and each drank three glasses

of beer. Witness and Barbour then went to the Colored Baptist Church and got a snack, returned from the church and went to another bar, where they each drank a bottle of beer; that he saw Barbour ~~subsequently, about one or two o'clock in the afternoon~~ four or more later, when Barbour was paying Dr. Miller. Barbour was tossing his head, and wabbling back and forth; that witness stepped up beside Barbour, while he was paying Dr. Miller, and looked on. The reason that he stopped at the time, being, because he knew Barbour and saw the fix he was in. Witness did not talk to Barbour at this time, but walked on and saw no more of Barbour. ~~When he first left Barbour at about eleven o'clock in the morning, Barbour was not then drunk.~~

Henry Morris stated, that he came to Harrisonburg with Ed. Morris on the morning of the 4th of July, that he took a drink or two with Barbour; that he was the party who went with Ed. Morris and Pink Barbour to a bar, immediately upon arriving in Harrisonburg, and that each of them took three glasses of beer; that he again met up with Barbour about the middle of the fore-noon, and they went to another bar and there each drank a bottle of beer; that Ed. Morris was not present at this time; ~~that he and Barbour then went to another bar room and each drank several bottles of beer~~; and that he left Barbour a little after twelve o'clock; that he was present when Barbour paid Dr. Miller at about two o'clock in the afternoon; that Barbour "was pretty full then"; that at that time, Barbour dropped his money on the street, and wanted to pay Dr. Miller more than he owed him, "was shaking his head from side to side and talking, all along." That witness walked on down to Water street, and shortly thereafter Barbour came up to him and asked him to come take a drink; witness declined at first, but on Barbour's insisting, he went with him to a bar where they each drank a glass of beer; that Barbour seemed "pretty full at that time"; witness then left Barbour in front of ~~Conner's~~ Dr. Miller's bar. ~~After leaving Barbour shortly after twelve o'clock, witness later saw Barbour with a crowd of men from~~

~~Grottoes, and at one time, noticed Barbour entering a saloon, "with the Grottoes Boys."~~

Ed. Knight (colored) testified that he came to Harrisonburg on the same train with Barbour; that he saw Barbour several times before dinner; and that they drank beer twice together (before dinner); once, two bottles of beer, when Henry Morris was present; on the other occasion, one bottle of beer, when neither ~~of which occasions, either~~ Ed. Morris or Henry Morris were present; that after dinner he again drank a couple bottles of beer with Barbour; that he last saw Barbour at the corner of Water and Main Streets, just before witness went to the depot to take his train, which was to leave at three o'clock; that witness's wife was with him; and he asked Barbour to "come on and go home", to which Barbour replied, that he was going to do so. Witness noticed at the time that Barbour appeared, "to be pretty full", and he did not know whether Barbour knew his way home or not. Witness with his wife then went on to the depot, and saw no more of Barbour.

Madgie Johnson (Colored) testified;- that she resides in Harrisonburg, and is acquainted with Barbour; that she saw him on the street on the morning of the 4th of July, just before dinner; that witness was with her mother; that Barbour came up to them and spoke to them. Witness noticed that Barbour was in a jolly humor; that Barbour was at that time pretty drunk, but seemed to know what he was doing; talked to witness only a short while, asking them, how they were, and then walked on.

Barbour in his own behalf, testified that he boarded the train at Penn Baird on the morning of the 4th of July, for Harrisonburg, and that upon the arrival of the train at Harrisonburg, he together with Ed. Morris and Henry Morris went to a bar room on Water Street,

where each drank three glasses of beer; that he then went with Ed. Morris to the Baptist Church and got a snack to eat; that he and Ed. Morris came back from the Baptist Church and went to another bar, where each drank a bottle of beer; that he afterwards met Henry Morris, took several drinks with him, and also drank with Ed. Knight. He later ran across some men from Grottoes, whom he knew, and had a number of drinks with them; he was drinking pretty much the whole day; he started drinking glasses of beer, and then got to drinking bottles; that he remembered paying Dr. Miller, some money which he owed him; that he could recall the events of that day up to + including H. Sullivan - and Dr. Miller thought it was a dollar; that he can recall nothing after that time, until waking up in jail in the night; he did not know Lee, and had never before seen him that he remembers;- he did not know that he had been up to the stable, and did not know why he should have gone there; that he did not know that he had shot Lee, until he was informed by the Sheriff on the morning of the 5th of July; that until informed of the true state of affairs by the Sheriff, he thought he had been locked up for being drunk; recalls speaking to Madgie Johnson and her mother on the morning of the 4th; but does not recall having seen or spoken to Hockett, except at Penn Laird, when he boarded the train; that he had his breakfast on the morning of the 4th, between five and six o'clock, which meal consisted of one piece of bread and some gravy; and that he had nothing to eat, during the day, except the sandwich, which he got at the Baptist Church; that he drank beer, whenever he could get it, but did not often get the chance; that he had been to Harrisonburg only ~~a couple times in the last three years~~ three times in the last year; that it had been three years since he came out; that the last time he had been drunk prior to the 4th of July, 1910, was winter before last; that he weighs about one hundred and thirty one pounds, and is twenty-four years old; that on Sunday night, he drove from Goods Mill, where he was working, over to McGaheysville to see a girl; that it rained very hard Sunday night, and he did not go back to Goods Mill;

that he carried his pistol with him when he left Goods Mill to drive over to McGaheysville on the night of the 3d of July; that because of the heavy rain, he spent the night near McGaheyevile; and that early on the morning of the 4th, he decided to come to Harrisonburg, and came on to Penn Laird where he took the train; that in the meantime he had no opportunity to go back to Goods Mill to change his clothes, and it was for that reason that he happened to have the pistol along with him in Harrisonburg.

And this being all the evidence, the Court instructed the jury as follows:

(Here insert instructions that were given)

And the case having been argued before the jury by the attorney ~~xx~~ for the Commonwealth and by counsel for the defendant, the jury upon retiring to consider of their verdict, returned into Court and rendered the following verdict:

(Here insert verdict).

Thereupon ~~xxxxxxxx~~ the defendant, by counsel, moved the Court to set aside the verdict on the grcund that it was contrary to the law and the evidence, and to grant a new trial to the defendant; whereupon the Court overruled such motion and entered the following order:

(Here insert order).

To which action of the Court in overruling said motion as aforesaid and in refusing to grant the defendant ~~and asking judgment~~ a new trial, the defendant, by counsel, excepted; and tendered this his bill of exceptions No. 1 and prays that the same may be signed, sealed, and enrolled and made a part of the record in this case, which is accordingly done ~~at the July term of Court 1910 this ____ day of July, 1910.~~ This 8th day of August 1910, in the vacation of the Court and within 30 days from the adjournment of the July term 1910 at which said case was tried

J. R. Hoge, Judge (Seal)

Bill of Exceptions No. 2.

Be it remembered that upon the trial of this case, after all the evidence had been introduced as set out in Bill of Exceptions No. 1, which is prayed to be treated as part hereof, the Commonwealth, by its attorney, prayed the Court to give the following instructions, to-wit:

(Here insert instructions ~~given~~ refused on behalf of Commonwealth).

To the giving of which instructions and to the giving of each one of which, the defendant, by counsel, objected; whereupon the Court overruled said objections to ~~said~~ the giving of said instructions, and to each one of them and granted the said instructions and each of them; and in lieu of instruction No. 12 asked by the Com. & of instruction No. 1 asked by the Com's instructions given, and in giving said instruction No. 7 of those given the jury and to the action of the Court in so overruling said objections and in granting said instructions and each one of them, the defendant, by counsel, excepted. And tendered this his Bill of Exceptions No. 2 and prays that the same may be signed, sealed, and enrolled and made a part of the record in this case, which is accordingly done ~~at the July term of Court 1910 this ____ day of July, 1910.~~ This 8th day of August 1910, in the vacation of the Court and within 30 days from the adjournment of the July term 1910 at which said case was tried.

~~Judge.~~

J. M. Hoge, Jr. Judge. (Seal)

Bill of Exceptions No. 3.

Be it remembered that upon the trial of this case, after all the evidence had been introduced as set out in Bill of Exceptions No. 1, which is prayed to be treated as a part hereof, the defendant, by counsel, prayed the Court to give the jury the following instructions:

(Here insert instructions asked for by defendant ~~and refused~~).

To the giving of which instructions, the Commonwealth, by its attorney, objected; whereupon the Court sustained the objection of the Commonwealth as to ~~said~~ No — &c. (here insert prisoner's instructions refused) instructions, and refused to grant them or any of them. To which action of the Court in sustaining the objection of the Commonwealth and in refusing to grant said instructions asked for on behalf of the prisoner and refused, or any of them, and in refusing to grant each of them, the defendant, by counsel, excepted; and tendered this his Bill of Exceptions No. 3 and prays that the same may be signed, sealed, and enrolled and made a part of the record in this case, which is accordingly done ~~at the July term of Court 1910 this ____ day of July, 1910.~~ this 8th day of August 1910, in the vacation of the Court and within 30 days from the adjournment of the term at which said action was taken -

J. N. Haas, Judge.

H. C. CARTER, PROP.

ORKNEY SPRINGS HOTEL

ORKNEY SPRINGS, VA., Aug. 8, 191 8

Col. D. H. Lee Moritz,

Dear Col,

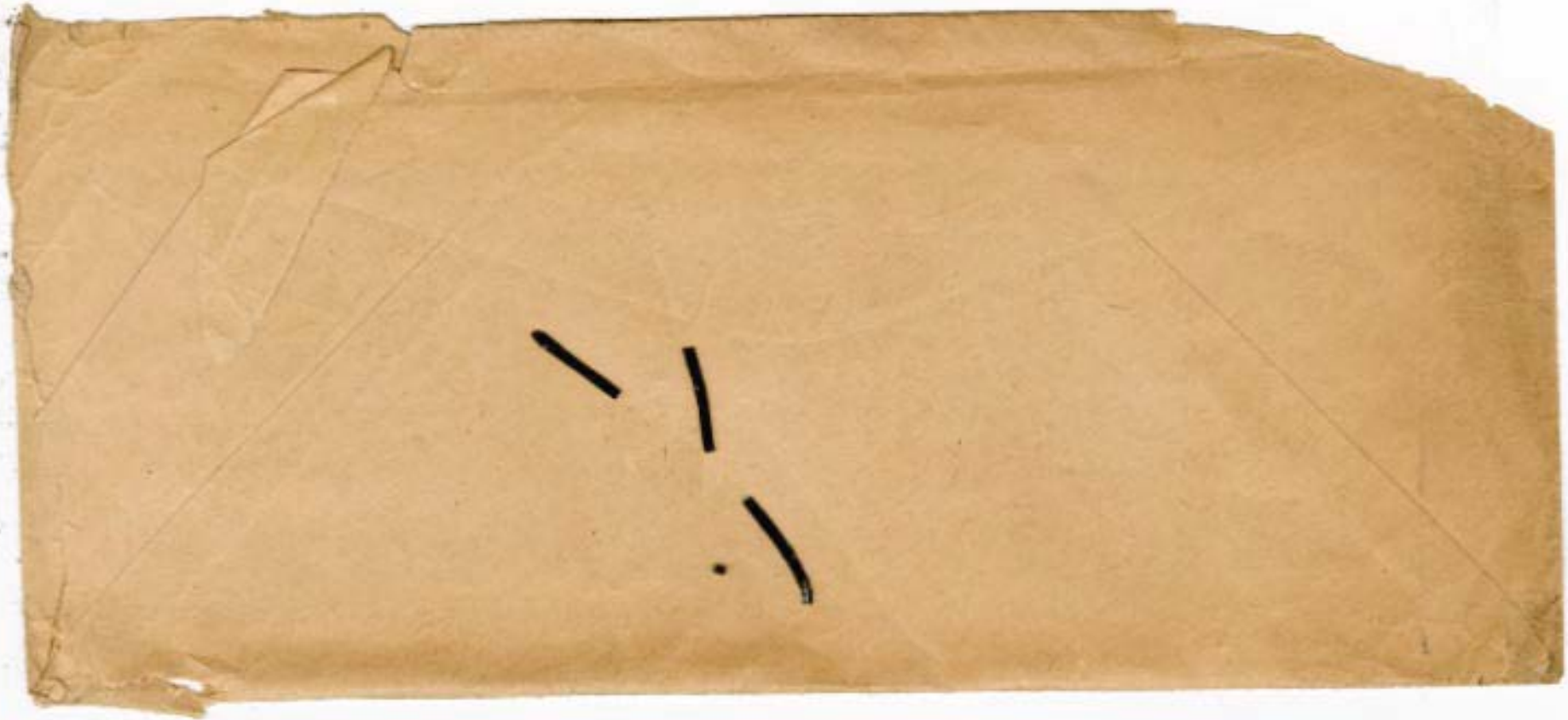
I have you herewith the bills of exceptions in the Paul Barbour case, which were sent down here, duly signed. I am afraid you may have some difficulty - with Mrs Barbour relating to the instructions, and it may be necessary for you to wait until I come home & mark them or otherwise help you to separate them - I will certainly be home by the middle of next week - perhaps by the last of this week. If I am needed I will come earlier. Call the attention of counsel to the bills.

Yours &c J. N. Harris

...AT-LAW,
...ALEXANDRIA, VA.

Bambrick
Past

Col. D. H. Lee Mortz. Clerk,
Harrisonburg
Va.



1

G.N.C. Paul Mary

Commonwealth

Jury }

Pierce Barbour

1 T. C. Yates.
2 John M. Hill x
3 M. H. Ashbaugh
4 B. Frank Rodeffer
5 Charles B. Cline
6 Elisha F. Harnsberger
7 Jacob J. Cole
8 Benjamin Hilbert
9 F. J. Arquilla
10 W. H. Myers x
11 Andrew W. Miller x
12 J. L. Marshall

Court's 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.

Court's 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.

(Com's No. 4)

Court's No. ~~4.~~ 3

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

Court's No. ~~3.~~ 4

(Com's No. 5)

The court instructs the jury 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 to manslaughter the burden of proof is on him.

No. 3

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. 4

The court instructs the jury 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 characterizing of that offence, and if the prisoner would reduce the offence, the burden of proof is on him.

Com's no 6

Court's No. 5

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.

Com's no. 7

Court's No. 6

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.

Com's No. 8

Court's 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.

Pers No. 8

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.

Can's No. 9

Court's 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.

Part 1 No. 9

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.

Court No. 10.

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

Com's No. 13

Com'ts' No. 11

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 worthy of credit, the extent to which they are to be credited, and to give credit accordingly.

Ins. No. 17

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 worthy of credit, and to give credit accordingly.

Premises No. 9

Courts No. 12

The court instructs the jury that to constitute murder in the first degree the evidence must clearly and distinctly prove, beyond any reasonable doubt, that the prisoner was not only incited to the killing of the deceased by malice and desperate wickedness of heart; but such killing must have been a wilfull, deliberate, and premeditated act on the part of the prisoner; in other words, at the time of the killing the prisoner must have distinctly understood what he willed and intended to do; he must also have reflected and deliberated and premeditated that he would kill the deceased, or do him some serious bodily injury, the probable result of which would be death. And if there be a reasonable doubt whether he had willed, and deliberated and premeditated to kill the deceased, or do him some serious bodily injury, which would probably occasion his death, they cannot find him guilty of murder in the first degree.

Prisoner's No. 10

Court's No. 13

The Court instructs the jury that if they believe from the evidence that the prisoner fired the fatal shot without premeditation and without malice, they can find him guilty of no higher offence than that of manslaughter.

Court's No. 14

Court's No. ~~12~~ 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, nor must they entertain such doubts as are merely chimerical or conjectural. A reasonable doubt must be based upon the evidence or lack of 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.

Case 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, nor must they entertain such doubts as are merely chimerical or conjectural. A reasonable doubt must be based upon the evidence, or else 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.

Instruction No. 1.

The Court instructs the Jury that if there is any reasonable theory arising out of the evidence given in this case, except the theory that the accused committed a felonious assault and battery upon C. L. Moyerhoeffer, as charged in the indictment, then the accused is entitled to such theory.

Instruction No. II.

The Court instructs the Jury that the law presumes that the accused is innocent of the offense charged in the indictment, and that this presumption goes with the accused through the entire trial and applies at every stage of the case.

Instruction No. III.

The Court instructs the Jury that even if they believe that the evidence in this case demonstrates the probability of the guilt of the accused, still, if it fails to establish beyond a reasonable doubt the guilt of the accused, then it is their duty to acquit him, for the jury are instructed that mere probalities are not sufficient to warrant a conviction; nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment; nor is it sufficient that it is more probable that the accused is guilty than it is that he is innocent. To warrant a conviction of the accused he must be proved to be guilty so clearly and conclusively that there is no reasonable theory upon which he can be innocent, when all of the evidence of the case is considered together. Tucker's Case 88 Va. 22
Prather's Case 85 Va. 122
Anderson's Case 83 Va. 329
Gordon's Case S. E. R. 746.

Instruction No. IV.

The Court instructs the Jury that they may believe from the evidence that there are circumstances which afford strong grounds of suspicion against the accused, but circumstances of suspicion merely, without more conclusive evidence, are not sufficient to warrant a conviction of the accused.

Tilly vs. Commonwealth, 90 Va. 105.

Instruction No. 5.

The Court instructs the Jury that every man in the eye of the law is innocent until he is proven guilty; and not only is the burden of proving the guilt of the accused on the Commonwealth, but to warrant a conviction, his guilt must be proven to the exclusion of every rational hypothesis, consistent with his innocence. Circumstances of mere suspicion are not sufficient; and that before you can convict you must be satisfied not only that the circumstances are consistent with the accused having committed the assault and battery as charged, but you must also be satisfied that the facts are such as to be inconsistent with any other rational hypothesis than that the accused is guilty, if you doubt this, then you must acquit the accused.

Tuckers Case, 88 Va. 22

Instruction No. 6.

The Court instructs the Jury that the burden is upon the Commonwealth to prove every fact necessary to convict the accused, and if they have any reasonable doubt as to any fact necessary to convict the accused as aforesaid, they are bound to give him the benefit of such doubt and find him not guilty; and the court tells the jury that a reasonable doubt is : "That state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge.

Andrews Case,
Webster's Case, 5 Cush. 320.
3 Greenleaf on Evid. (15 Ed.) Sec. 29.

Instruction No. 7.

The Court instructs the Jury that to warrant a conviction the evidence should be such as, if true, would exclude all rational doubt of the guilt of the accused. The accused is presumed to be innocent until his guilt is established, and he rests secure in that presumption of innocence until proof is adduced which establishes guilt beyond reasonable doubt, and whether the proof be direct or circumstantial it must be such as excludes any rational hypothesis of the innocence of the accused, the guilt of the accused is not to be inferred because the facts proved are consistent with his guilt, but they much be inconsistent with his innocence.

Chas. Bassett

2

Court's No. 7

If the jury believe from the evidence that the prisoner killed the deceased, James M. Lee, without adequate provocation, but, at the time of doing so, his condition was such from intoxication as to render him incapable of doing a wilful, deliberate and premeditated act, he is not guilty of murder in the first degree, but is guilty of murder in the second degree; for, while drunkenness is admissible in evidence to show that the accused was incapable of premeditation, it is no excuse for or mitigation of crime, and is not admissible to disprove malice, which the law implies from an unlawful killing, or to reduce an unlawful homicide from murder to manslaughter.

Commonwealth of Virginia,
Rockingham County, To-wit:

To the sheriff or any one of his deputies and to all or any one of the constables of said County:

Whereas M. D. Garber of said County, has this day made complaint and information on oath before me, George G. Herring, a Justice of said County, that Pink Barbor on the 4th day of July, 1910, in said county, feloniously and of his malice, did kill and murder one James M. Lee;

These are, therefore, in the name of the Commonwealth of Virginia to command you forthwith to apprehend the said Pink Barbor and bring him before me or some other justice of said County, at Harrisonburg, in Central Magisterial District in said County, to answer the said complaint, and be further dealt with according to law. And you are, moreover, required to summon M. D. Garber and F. A. Gasoway to appear at the same time and place to testify as witnesses on behalf of the Commonwealth touching the matter of the said complaint.

Given under my hand and seal this 12th day of July, 1910.

George G. Herring J. P. (SEAL).

Executed July 12, 1910, by arresting the within-named Pink Barbour & bringing him before Geo. G. Heming, J. P., & by summoning the within-named witnesses

E. J. Carrashoff, Sheriff
Rockingham Co., Va.

The within named defendant waiving trial is committed for trial by the Circuit Court of Rockingham County this 12th day of July 1910 George G. Heming J.P.

N. H. Garber claims attendance, 50¢
F. A. Conway claims attendance, 50¢

Commonwealth
vs
Warrant
Charge
Pink Barbour

If you find the prisoner not guilty you will say so and no more.

If you find the prisoner guilty of murder in the first degree as charged in the indictment, 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 ascertain his punishment which shall be confinement in the penitentiary not less than five nor more than eighteen years.

If you find the prisoner not guilty of either murder in first or 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 of either murder in the first or second degree or voluntary manslaughter but guilty of involuntary manslaughter you will say so and ascertain his punishment which shall be a fine of not less that Five ~~Hundred~~ Dollars (~~$500.00~~) or confinement in jail or both.

Dear Barbara
Sincerely Lo Hill Gray

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 July term, in the year 1910

upon their oaths present that Pink Barbour

on the 4th day of July, in the year 1910 in the said County,

with force and arms in and upon the body of one James M. Lee 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 Pink Barbour a certain pistol of the value of Three Dollars ($3.00) then and there charged with gunpowder and leaden bullet, which said pistol he the said Pink Barbour in his hand then and there had and held, then and there feloniously, wilfully and of his malice aforethought did discharge and shoot off, to, against and upon the said James M. Lee: and that the said Pink Barbour with the leaden bullet aforesaid out of the pistol by the said Pink Barbour discharged and shot off as aforesaid then and there feloniously, wilfully and of his malice aforethought did strike, penetrate and wound the said James M. Lee in and upon the left chest of him the said James M. Lee: giving to him the said James M. Lee then and there with the leaden bullet aforesaid so as aforesaid discharged and shot out of the pistol aforesaid by the said Pink Barbour, in and upon the left chest or side of him the said James M. Lee, one mortal wound: of which said mortal wound he the said James M. Lee immediately died. And so the jurors aforesaid upon their oath aforesaid do say that the said Pink Barbour, him the said James M. Lee, in the manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought did kill and murder

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Flint Gasaway, D. M. Biedler and Williams Harber witness... sworn in open Court and sent to the Grand Jury to give evidence.

Clerk.

We the Jury find the prisoner Pink Barton guilty of Manslaughter in the first degree as charged in the indictment

J. L. Marshall Foreman

Commonwealth

vs.

INDICTMENT, for a Felony

Pink Barton

A TRUE BILL.

D. W. Allgood

Foreman.

1910

Guilty of Manslaughter in the first degree

Jury fined Defendant Sudden Death

July 21 — 1910

Barbour: You have been tried according to law on the charge of murdering James M. Lee on July 4th, in this town. You were tried by an intelligent, impartial and just minded jury. You have had the services of able and earnest counsel in your defence, and they made as strong a defence for you as the evidence would admit of. After a patient hearing of the evidence and of the arguments of counsel, the jury has rendered a verdict saying that you are guilty of murder in the first degree, which means that you killed James M. Lee not only with malice but ~~with~~ deliberately and with premeditation. The evidence supports the verdict, and the Court has overruled your motion to set aside the verdict and grant you a new trial. The punishment established by law for murder in the first degree is death by electrocution. It only remains for the Court, ~~therefore~~ to sentence you to death in execution of the law and the verdict of the jury.

The sentence of the Court, therefore, is that on Friday the 23d day of September next, within the confines of the State penitentiary, in the City of Rich-

mond, the Capital City of this Commonwealth, between the hours of sun rise and sun set of that day, you shall be electrocuted by the Superintendent of the penitentiary or his proper assistant, until you are dead - And may Almighty God have mercy on your soul.

In the mean time you will be confined in the jail of this County until removed to the penitentiary in accordance with law for the execution of this sentence,

~~It is therefore considered by the Court~~

It is therefore considered by the Court that ~~he, the said Pink Barton~~ on Friday the 23d day of September next, within the confines of the State penitentiary, in the City of Richmond, ~~the Capital City of this~~ Commonwealth, between the hours of sun rise and sun set of that day, he, the said Pink Barton, shall be electrocuted by the Superintendent of the penitentiary, or his proper assistant, until he is dead - and ~~therefore~~ the prisoner was remanded to the jail of this County there to be kept until

removed to the penitentiary of this State in accordance with law for the execution of this sentence.

Ed. S. Conrad,
Notary Public.

Geo. N. Conrad,
Commonwealth's Attorney
for Rockingham County.

CONRAD & CONRAD,
ATTORNEYS-AT-LAW.

HARRISONBURG, VA., August 5, 1910.

Hon. T. N. Haas,

Orkney Springs, Va.

Dear Sir:

Enclosed you will find Bill of Exceptions and record of testimony in the case of Commonwealth vs. Pink Barbour. Mr. Paul and I have gone over the testimony and have agreed upon the same except as follows:

On page 4 of Gassway's testimony and on page 5, same witness, I do not agree that Gassway used the words "upraised" or the words "as though to strike." We also disagree as to whether Gassway said (page5) that Barbour did not have the appearance to him of being drunk. Mr. Paul contends that Gassway testified that Barbour "appeared to him to be under the influence of something." And Mr. Paul does not concede that Gassway testified that Barbour "didn't have the appearance of being drunk." In the testimony of same witness, Mr. Paul contends that Gassway testified that the prisoner looked different upon the trial of the case from what he appeared at the stable, but that the difference in appearance might be due to the light in which he saw him or something of that sort.

In the testimony of Henry Morris (page 16) we disagree as to whether this witness testified that he saw Barbour with a crowd from Grottoes enter a saloon.

These are the only differences except as to the matter of Bill of Exceptions No. 4. In order to present the difference in our views, I have prepared a Bill of Exceptions upon that point, which is attached to the one prepared by Mr. Paul.

Encs.

Very truly,

Geo. N. Conrad
J. Boyce Paul

G/C.

275

Wil $3.75 before Grand Jury
" 2.25 " barrel
atte 10.00
Clerk 2.50
Sheff 1.53
" 4.80

Leaving Jury 18.75
Jailing 46.20

Yates 4.00 $115.24 Louis Burton
Hill 4.00
Allbaugh 3.80
Rodgers 3.35
Colson 3.90
Hornsberger 4.00
Cole 3.90
Hutchil 4.00
Argenbright 3.50
M.H. Myers 3.75
Mister 4.00
Marshall 4.00

$46.20

We the Jury find the prisoner guilty of murder in the first degree

J. L. Marshall Foreman

7-22-10

Virginia,

Rockingham County, to-wit:

This day personally appeared John Paul, before the undersigned and made oath that he is one of the attorneys appointed by the Circuit Court of Rockingham County to defend Pinckney Barbour in the case of Commonwealth vs. Pinckney Barbour, charging the said Pinckney Barbour with a felony; and upon the trial whereof in said Circuit Court said Barbour was found guilty of murder in the first degree and sentenced to be electrocuted on Sept. 23d, 1910. And that an appeal from said judgment to the Supreme Court of Appeals is desired, and that said Pinckney Barbour is without means or property wherewith to pay the costs of such appeal.

Aug 18th 1910

Geo. T. Fauntleroy

Notary Public.

Bill of Exceptions No. 4.

Be it remembered that upon the trial of this case, after all the evidence had been introduced and the jury instructed as set out in Bill of Exceptions No. 1, which is prayed to be treated as part hereof, and after opening argument by the attorney for the Commonwealth and argument by counsel for the accused, the attorney for the Commonwealth, during the closing argument of the case, after referring to the plea of counsel for the accussed, that the accused was poor and ignorant, that the State was strong and well equipped in detecting crime and procuring evidence, and dwelling upon the rights of the accused regardless of color or condition, and warning the jury against invasion of those rights by their verdict, by way of reply to that plea, referred to the duty and responsibility of the jury toward the State and society and in this connection said in substance that while the jury should guard against error toward the prisoner, it was equally their duty to guard against the error of failing to inflict proper penalties when the State had properly made out its case, and that, while the law provided an avenue for correction of errors committed against the prisoner, no such avenue existed for the correction of error toward the State and society. To which reference as to the right of appeal by the accused, the defendant, by counsel, objected. And the Court sustained the objection, and advised the jury that it had nothing to do with the prisoner's right of appeal, that the prisoner was entitled to a just verdict on the law and the evidence as it appeared in his trial before the jury, and thereupon the attorney for the Commonwealth stated that the said statement made by him, to which objection had been made, was withdrawn, and that it had not been intended by what he had said to indicate anything other than that the jury should render a just verdict according to the law and the evidence as it appeared in the trial of the accused. To which action and statement on the part of the attorney for the Commonwealth, after argument had closed and the jury had retired to consider of their verdict defendant by counsel excepted and tendered this, his Bill of Exceptions No. 4 and prayed that the

same be signed, sealed and enrolled and be made a part of the record in this case, which is accordingly done ~~at the July term, 1910, this _____ day of July, 1910.~~ This 8th day of August 1910, in the vacation after Court and within 30 days from the adjournment of the term at which said case was tried.

S. M. Haas (Seal)
Judge

Prosecution Req. 1

Req.

The Court instructs the jury that when a homicide has been commite ted by a person in such a dondition of drunkenness as to render him incapable of a wilful, deliberate, and premeditated purpose, the jury cannot find the prisoner guilty of murder in the first degree.

Refused

Premises No. 2

The Court instructs the jury that even though they believe from the evidence that the deceased, Jas. Lee originally intended to use the board shown to have been held by him, in defense of the property of his employer, yet if they further believe from the evidence that prior to the firing of the fatal shot, the accused had desisted from any unlawful purpose which he may have entertained with reference to such property, and that after he had so desited the deceased continued to pursue him with a board held in a threatening position, such continued pursuit of the prisoner by the deceased was not justifiable, and the deceased thereby became an aggressor whose assault the prisoner had a right to repel by such force as from his point of view, was reasonably necessary.

Prosecutor's Rq. 3

Refused

The Court instructs the jury that if they believe from the evidence that at the time of firing the shot that killed the deceased, the prisoner from his point of view reasonably believed that an assault was about to be committed upon him by the deceased so as to place the accused in imminent danger of death or of serious bodily harm, then the prisoner was entitled to repel such apparent assault by the use of such reasonable force, even to the extent of killing, as from the prisoners point of view was reasonably necessary.

Prosecutor's Rq. 4

Refused

And the Court instructs the jury that in determining whether or not the prisoner did, from his point of view, reasonably believe that such an assault was about to be committed upon him or that the force used by him was reasonably necessary, the jury are entitled to take into consideration the effect if any produced upon the prisoner's mind by the result of his previous use of intoxicating liquors

Refused

Prosecution No. 5

The Court instructs the jury that if they believe from the evidence that at the time of the homicide the condition of mind of the prisoner, caused by his being drunk, was such that a reasonable doubt exists as to ~~xx~~ his having acted deliberately and with premeditation, they cannot find him guilty of murder in the first degree; and if his condition of mind, caused by his being drunk, was such as to prevent his having acted maliciously, even though he was capable of knowing and understanding what he did, he cannot be convicted of a higher degree of crime than manslaughter.

Premises No. 6

Refused

The Court instructs the jury that if they believe from the evidence that the deceased armed with a board attacked the defendant and that the defendant, from the conditions actually, or only apparently, existing, from his point of view, had reasonable cause to believe and fear and that he did believe and fear that great bodily harm was about to be inflicted on him, and that under the influence of such belief and fear, he fired the said shot with intent to defend or protect himself, then he is not guilty.

Premises No. 7

Refused

The Court instructs the jury that if they believe from the evidence that the deceased did any act or that circumstances were brought about by him of such a character as to afford the accused reasonable ground to believe, from his point of view, that the deceased designed to kill him or to inflict on him great bodily harm, and that there was imminent danger of carrying such a design into immediate execution, thenx the killing is excusable, although it may have truned out that the appearances were deceptive, and no such design existed.

Ref.

Phennis No. 8

The Court instructs the jury that if they believe from the evidence that the prisoner unlawfully killed Jas. M. Lee without malice aforethought but upon a heat of passion in a sudden quarrel, or on a sufficient provocation, then they cannot find the prisoner guilty of any crime of greater degree than manslaughter.

The word "quarrel" misleading here. This instruct^n is so far as good covered by the other instructs, manslaughter given the -

Frank Armstrong

Cocaine

where

No. 10. Def'

Comt 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 acted in self defense.

If any instructions are offered + given for prisoner on self defense, then I offer this & the 11th

Can's No. 11

1

Reg.

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 ~~[illegible]~~ intended then to kill him or to do him serious bodily harm.

Com's No. 3

No. X.

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

No. 3.

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

Mr. 5
Repeat

Com's Inst. 12

Ref.

The Court instructs the jury that if they believe from the evidence, ~~that~~ beyond a reasonable doubt that the prisoner gave the deceased the wound ~~from which he died~~, as charged in the indictment and that the prisoner ~~though~~ was though intoxicated at the time he inflicted said wound ~~but was still~~ capable of knowing the nature and probable consequences of his act and if the jury shall further believe from the evidence that said wound was ~~so~~ inflicted by said prisoner with the willful, deliberate and premeditated purpose of killing James M. Lee without adequate provocation from wrecklessness, then the jury are instructed that they should find the prisoner guilty of murder in the first degree.

Reid's Case 98 Va. 828
Bosworth's case 20 Grat 869
Hansford's case 81 Va. 290

In this connection the Court further instructs the jury that in a case like this ~~when the prisoner sets up the defence of~~ irresponsibility produced by voluntary intoxication he can not rely simply on having raised a rational doubt in the minds of the jury as to whether he was so drunk at the time he shot the deceased as not to be responsible thereby, but the burden is upon him to prove this fact to the satisfaction of the jury.

Longley's case 99 Va. 812-14

The Penitentiary,

RICHMOND, VA.

September 23, 1910.

Clerk, Circuit Court,

Rockingham County.

This is to certify that the order of the Circuit Court of Rockingham County dated July 23, 1910, directing the electrocution of PINK BARBOUR on the 23rd day of September 1910, was this day executed at 7.27, A. M.

J. S. Wood

Superintendent, Virginia Penitentiary.

Com Vs Pink Barber

Commonwealth

v.

Pink Barber

FILED
4 1910
D. H. LEE MARTZ,
CLERK.

Criminal
1
352