

DOCKET NO.

FILE NO.

*Commonwealth*VS } IN } s
of Frank Shipplett

p. 4.

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FINAL ORDER

191

1920

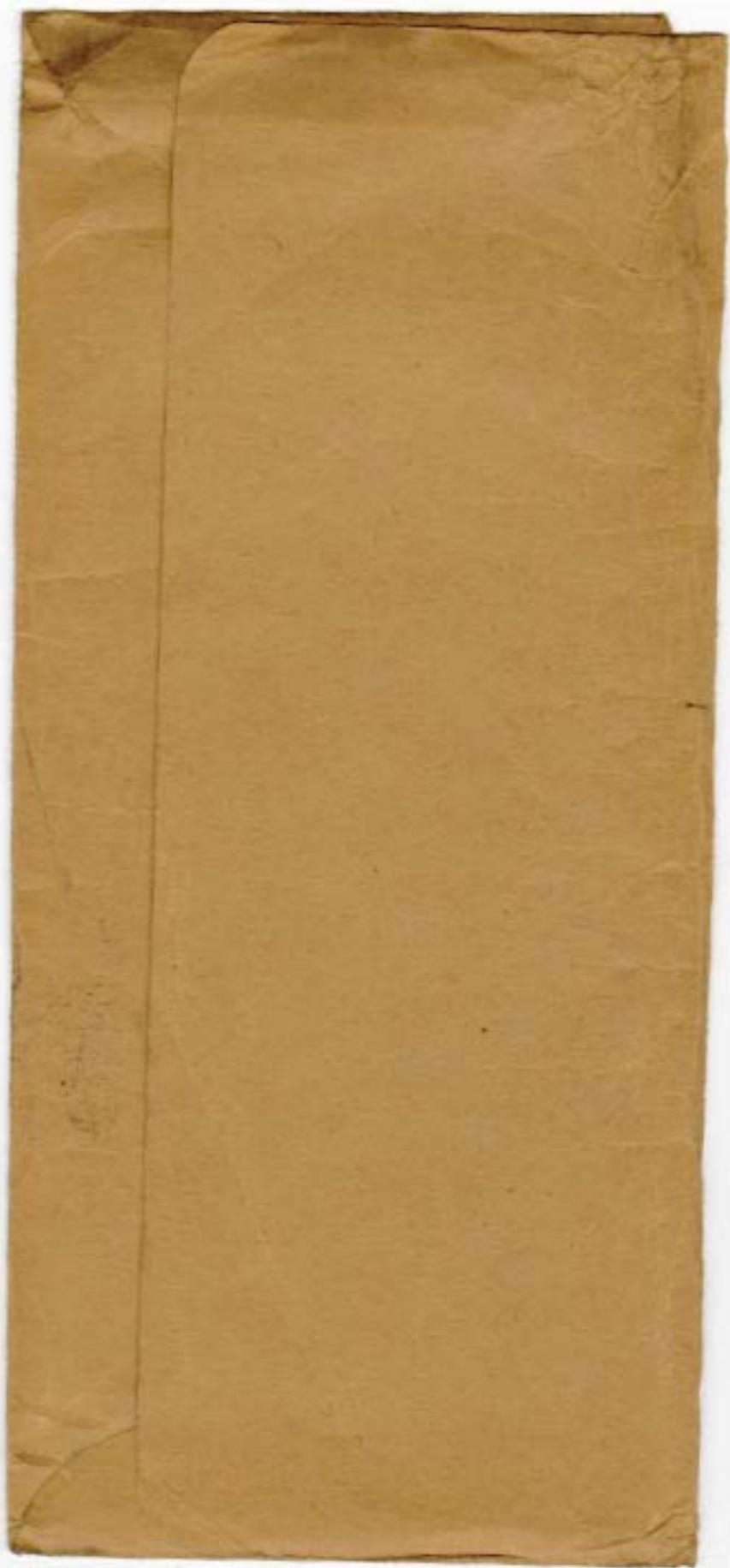
PROCEEDINGS

Memo:

Filed:

Process Issued:

July 1920



Arrest Warrant

COMMONWEALTH OF VIRGINIA, } TO WIT:
ROCKINGHAM COUNTY, }

To The Sheriff or Any Constable of said County:

Whereas, W.E. Lucas of the said County, has this day made complaint and information on oath before me, R.H. Bridges, a Justice of the said County, that

Frank Shifflett of the said County, on the 2 day of November 1917, in the said County, did

feloniously and of his malice
did kill and murder one Buster Shifflett,

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 of the said County, the body of the said

Frank Shifflett, to answer the said complaint and to be further dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 6 day of November, in the year 1917

R.H. Bridges, J. P. (Seal)

Commonwealth

vs.

Arrest Warrant

Frank Shifflett,

Executed the within warrant by arresting
and delivering the body of

Frank Shifflett
in to the custody of the jailer
at the Shinn Weir by the Jailer
a Justice of Rockingham County, and by sum-
moning the within named witnesses in person.

this 3rd day of *March* 1919

W E Lucas Deputy for

Constable of Rockingham County.

W E Lucas S.R.

Comm.

vs.

Frank Shipflett,

Jno R. Trumbull,

J. F. Fulk,

D. A. Swanke,

E. A. Layman,

J. L. Spencer,

W. H. Davis,

R. E. Melhorn,

A. R. Miller,

W. Y. Willinger,

W. H. Homan,

S. H. Will,

W. M. Cooley,



Circuit Court of Rockingham
County - Harrisonburg Va

Franklin Street
No. 10

Jan 15 1864

J. A. Smith

Wm. Brown

E. J. Taylor

J. L. Johnson

Wm. H. Davis

Wm. C. Miller

A. D. White

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Wm. H. Wilson

Commonwealth

vs.

Frank Shifflett

Charge to the Jury.

If ^{you} ~~the jury~~ find the accused, Frank Shifflett, not guilty you will say so and no more.

If you find him guilty of murder in the first degree as charged in the indictment you will say so and ascertain his punishment with death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him not guilty of murder in the first degree but guilty of murder in the second degree you will say so and ascertain his punishment by confinement in the penitentiary not less than 5 nor more than 20 years.

If you find him not guilty of either of the felonies aforesaid, but guilty of voluntary manslaughter you will say so and ascertain his punishment by confinement in the penitentiary not less than 1 nor more than 5 years.

If you find him not guilty of any of the felonies aforesaid, but guilty of involuntary manslaughter you will say so and ascertain his punishment by confinement in the penitentiary not less than 1 nor more than 5 years; or, in your discretion, by a fine not exceeding \$1,000, or by confinement in jail not exceeding 1 year, or both.

Copy

Commonwealth

VS.

Frank Shifflett

Charge to the Jury

Charge to the Jury.

If you find him not guilty of murder in the first degree, you will say so and ascertains his punishment by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him not guilty of murder in the first degree, but guilty of voluntary manslaughter you will say so and ascertains his punishment by confinement in the penitentiary not less than 5 nor more than 20 years.

If you find him not guilty of any of the felonies above named, but guilty of involuntary manslaughter you will say so and ascertains his punishment by confinement in the penitentiary not less than 1 nor more than 5 years; or, in your discretion, by a fine not exceeding \$1,000, or by confinement in jail not exceeding 1 year, or both.

Instructions to the Jury

The court instructs the jury that every homicide is presumed by law to be murder in the second degree. If the Commonwealth would elevate the offense to murder in the first degree, she must prove the characteristics of that offense; and if the prisoner would reduce the offense, the burden of prove is on him.

The jury are instructed that if they 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 he killed the deceased when such grudge existed then such killing was wilful, deliberate and premeditated and is murder in the first degree.

The jury are instructed that the premeditated design to kill need not have existed for any length of time; but if the design at the time of the killing was then formed, and the killing was done without provocation then or recently received it is murder in the first degree.

The jury are instructed to disregard the testimony of the witness Mrs. Margaret Shifflett, mother of the accused, in so far as the same related to her conversations with her son, Floyd Shifflett and his wife, Emma Shifflett, in their home.

The court instructs the jury to make out self-defense the accused must show that such defense was necessary to protect his life, ^{or} to protect himself from grievous bodily harm and that, the accused had not in any way wrongfully occasioned that, ^{namely,} unless he was without ^{fault} ~~show~~ in bringing that on himself.

The court instructs the jury that the bare fear that a man intended to commit murder, however, well grounded, unaccompanied by any other act indicating such intention will not warrant killing the party by way of prevention, but there must be some act of eminent danger at that time.

The court instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer

Ref. in Bank

Instruction No. _____

141

The Court instructs the jury that the burden is upon the Commonwealth to prove every fact or circumstance necessary to convict the accused of any offense whatever, and if they have any reasonable doubt as to any fact or circumstance 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 of 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.

100-100000

Investigation No. _____

The Court instructs the jury that the burden is upon the Government to prove every fact or circumstance necessary to establish the guilt of the accused. It is not necessary for the Government to prove every fact or circumstance necessary to convict the accused as a matter of course. It is sufficient if the Government proves the facts and circumstances which, taken together, establish the guilt of the accused. The Government is not required to prove every fact or circumstance necessary to convict the accused as a matter of course. It is sufficient if the Government proves the facts and circumstances which, taken together, establish the guilt of the accused. The Government is not required to prove every fact or circumstance necessary to convict the accused as a matter of course. It is sufficient if the Government proves the facts and circumstances which, taken together, establish the guilt of the accused.

*Ref. Criminal by
am. 150*

Instruction No _____

The Court further instructs the jury, as matter of definition, that if a man kill another in the heat of passion arising on a sufficient provocation, or in the heat of mutual combat, it is voluntary manslaughter. If it be done in the commission of an unlawful act not felonious, by a means not likely and not intended to cause death or great bodily harm, it is involuntary manslaughter.

A homicide committed in selfdefense, or in defense of a near relation, under circumstances justifying that plea, it is not an unlawful homicide but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.

100
100
100

Investigation No. _____

The Court further instructs the jury, as matter of definition, that if a man kills another in the heat of passion arising on a sufficient provocation, or in the heat of mutual combat, it is voluntary manslaughter. It is done in the commission of an unlawful act not felonious, by a means not likely and not intended to cause death or great bodily harm, it is involuntary manslaughter. A homicide committed in self-defense, or in defense of a near relation, under circumstances justifying that plea, it is not an unlawful homicide but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.

Ref.

Instruction No. _____

The Court instructs the jury that if they believe from the evidence that the accused entered the home of his brother Floyd Shiflett on the night of November 2nd for the purpose of preventing serious bodily injury to his brother Lonnie Shiflett, the accused had the right to so enter said house and then to use such means as then reasonably appeared to the accused necessary to defend his said brother or himself from immanent bodily harm.

123
Instruction No. _____

The Court instructs the jury that if they believe from the evidence that the accused entered the home of his brother Lloyd Shillett on the night of November 2nd for the purpose of preventing serious bodily injury to his brother Lennie Shillett, the accused had the right to go onto said house and then to use such means as then reasonably appeared to the accused necessary to defend his said brother or himself from imminent bodily harm.

Frank Shiflett
Buster Shiflett
Floyd Shiflett
Ref.

Instruction No. _____.

The Court instructs the jury that though they believe from the evidence that Frank Shiflett made an unjustified assault on Buster Shiflett in the house of Floyd Shiflett and that after such assault, said Buster Shiflett made an attack on Frank Shiflett on the outside of said house, then said Frank Shiflett had the right to repel such attack to such an extent as ~~was~~ ^{seemed} to him reasonably ~~apprehended~~ necessary for the protection of his body from serious harm.

Phonetic

Case

v

Frank Shiffert

Inclusion but

Defense Re-

Page 2 of 2

Exhibit No. 1

The Court instructs the jury that though they believe from the evidence that Frank Shiffert made an unjustified assault on Hunter Shiffert in the house of Floyd Shiffert and that after such assault, said Hunter Shiffert made an attack on Frank Shiffert on the outside of said house, then said Frank Shiffert had the right to retaliate such attack to such an extent as was to him reasonably apprehended necessary for the protection of his body from serious harm.

Exhibit

INSTRUCTION No 1.

Every unlawful homicide must be either murder or manslaughter, and whether it be one or the other depends upon the means by which it was accomplished and on whether the person who perpetrated it did it with malice or not. If the act was done with a deadly weapon, or by means likely to cause death or serious bodily harm, and with malice, it is murder. If done in the heat of a sudden passion arising on sufficient provocation, or in the heat of mutual combat, it is voluntary manslaughter. If it be done in the commission of an unlawful act not felonious, by a means not likely and not intended to cause death or great bodily harm, it is involuntary manslaughter.

A homicide committed in self defense, or in defense of a near relation, under circumstances that would justify such relation on a plea of self defense, if he himself had inflicted the fatal wound, ~~it~~ is not an unlawful homicide but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.

Every unlawful homicide must be either murder or manslaughter, and whether it be one or the other depends upon the means by which it was accomplished and on whether the person who perpetrated it did it with malice or not. If the act was done with a deadly weapon, or by means likely to cause death or serious bodily harm, and with malice, it is murder. If done in the heat of a sudden passion arising on sufficient provocation, or in the heat of mutual combat, it is voluntarily manslaughter. If it be done in the commission of an unlawful act not felonious, by a means not likely and not intended to cause death or great bodily harm, it is involuntary manslaughter.

A homicide committed in self defense, or in defense of a near relation, under circumstances that would justify such relation on a plea of self defense, if he himself had inflicted the fatal wound, is not an unlawful homicide but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.

INSTRUCTION No 2.

Malice or malice aforethought is any formed design of doing mischief, whether arising from ^a ~~the~~ feeling of hatred or revenge against the deceased or from wickedness of the heart in general.

³
Murder is distinguished by the law into murder in the first degree and murder in the second degree.

⁴
Murder which is perpetrated by poison, lying in wait, starving, or any other wilful, deliberate and premeditated murder, is murder in the first degree; all other murder is murder in the second degree.

⁵
Every unlawful homicide is presumptively murder in the second degree. In order to elevate the offense ~~xxxxxxx~~ to murder in the first degree, the burden is on the Commonwealth, and to reduce the offense to manslaughter the burden is on the prisoner.

Malice or malice aforethought is any formed design of doing mischief, whether arising from the feeling of hatred or revenge against the deceased or from wickedness of the heart in general.

Murder is distinguished by the law into murder in the first degree and murder in the second degree.

Murder which is perpetrated by poison, lying in wait, awaiting, or any other wilful, deliberate and premeditated murder, is murder in the first degree; all other murder is murder in the second degree.

Every unlawful homicide is presumptively murder in the second degree. In order to elevate the offense to murder in the first degree, the burden is on the Commonwealth, and to reduce the offense to manslaughter the burden is on the prisoner.

INSTRUCTION No 6.

The court instructs the jury that a man who is in imminent danger of death or serious bodily harm at the hands of an assailant, may, if he is without fault in bringing on the difficulty, or though being in some fault if he has declined further combat and retreated as far as he can with safety, resist the attack of his assailant with such force as may be necessary under the circumstances to his protection from death or serious bodily harm.

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INSTRUCTIONS
Instruction No. 642.

The Court instructs the jury that men, when threatened with danger, must determine from the state of things surrounding them as to the necessity of resorting to self-defense and if they act reasonably and with honest convictions, they will not be held responsible criminally for a mistake as to the extent of the actual danger.

The accused is not to be held responsible on the plea of self-defense unless the jury believe he was provoked and acting in the heat of passion. If the jury believe that the accused was provoked and acting in the heat of passion, they should find him guilty of manslaughter. If the jury believe that the accused was not provoked and acting in the heat of passion, they should find him guilty of murder. If the jury believe that the accused was provoked and acting in the heat of passion, they should find him guilty of manslaughter. If the jury believe that the accused was not provoked and acting in the heat of passion, they should find him guilty of murder.

6/1

Instruction no.

The first section of the first part of the
 instruction is the subject, which is the name of the
 person or thing to which the instruction is given.
 The second section is the object, which is the thing
 to be done or the result to be achieved.
 The third section is the manner, which is the way
 in which the thing is to be done or the result
 is to be achieved.
 The fourth section is the time, which is the time
 when the thing is to be done or the result is to
 be achieved.
 The fifth section is the place, which is the place
 where the thing is to be done or the result is to
 be achieved.
 The sixth section is the person, which is the person
 to whom the instruction is given.

INSTRUCTION No 7.

When death results from an injury inflicted in the heat of a sudden combat, without malice aforethought, the killing is voluntary manslaughter; and in order to justify the act on the ground of self-defense, the burden is on the prisoner to show, first, that he either was without fault in bringing on the difficulty, or, ~~being~~ ^{that} in some fault, he quit or renounced the fight and retreated as far as he could with safety before the mortal blow was given; and, secondly, that he killed the deceased through necessity to preserve his own life or to save himself from great bodily harm.

8
The accused is not to be held excusable on the plea of self-defense (though the jury believe he was pursued and attacked by the deceased after he had declined further combat) if he killed the deceased to protect himself from a mere beating when there was no apparent design against his life or to inflict great bodily harm upon him, unless the jury should further believe from the evidence that the mortal injury was given by a means not calculated nor intended to produce death, in which case the killing should be referred to misadventure and held excusable.

When death results from an injury inflicted in the heat of a sudden combat, without malice aforethought, the killing is voluntary manslaughter; and in order to justify the act on the ground of self-defense, the burden is on the prisoner to show, first, that he either was without fault in bringing on the difficulty, or, being in some fault, he quit or renounced the fight and retreated as far as he could with safety before the mortal blow was given; and, secondly, that he killed the deceased through necessity to preserve his own life or to save himself from great bodily harm.

The accused is not to be held excusable on the plea of self-defense (though the jury believe he was pursued and attacked by the deceased after he had declined further combat) if he killed the deceased to protect himself from a mere beating when there was no apparent danger against his life or to inflict great bodily harm upon him, unless the jury should further believe from the evidence that the mortal injury was given by a means not calculated nor intended to produce death, in which case the killing should be referred to misadventure and held excusable.

INSTRUCTION NO 9

INSTRUCTION NO 10

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 doing of the deed. Such intention may come into existence for the first time at the time of the killing. It is necessary to protect his own life, or to protect himself against grievous bodily harm; and that with regard to the necessity that will justify the killing of another in self defence, the accused must not have voluntarily provoked the necessity, and he must not in any way justify the killing of another by a course of conduct, unless he were without fault in bringing this conduct upon himself.

To constitute a willful, deliberate and premeditated killing,
it is not necessary that the intention to kill should exist
any particular length of time prior to the doing of the deed.
Such intention may come into existence for the first time at the
time of the killing.

INSTRUCTION No. 10.

The Court instructs the jury that where a homicide has been committed with a deadly weapon the law implies malice from the use of such weapon and a man who is found to intend that which

The Court instructs the jury that to make out a case of self defense in a case of homicide, the accused must show to the jury that the defense was necessary to protect his own life, or to protect himself against grievous bodily harm; and that with regard to the necessity that will justify the slaying of another in self defense, the accused must not have wrongfully occasioned the necessity, for a man shall not in any case justify the killing of another by a pretense of necessity, unless he were without fault in bringing that necessity upon himself. Is it your belief from the evidence that Frank McFalls wilfully, deliberately, premeditatedly and with malice aforethought killed the deceased, then he is guilty of murder in the first degree.

The Court instructs the jury that in a case of self defense in a case of homicide, the accused must show to the jury that the defense was necessary to protect his own life, or to protect himself against serious bodily harm; and that with regard to the necessity that will justify the slaying of another in self defense, the accused must not have wrongfully occasioned the necessity, for a man shall not in any case justify the killing of another by a pretense of necessity, unless he was without fault in bringing that necessity upon himself.

11

The Court instructs the jury that where a homicide has been committed with a deadly weapon the law implies malice from the use of such weapon and a man must be taken to intend that which he does or which is the immediate or necessary consequence of ~~the~~ ^{his} ~~act.~~
~~use of that weapon.~~

12

The jury are instructed that even though they may believe from the evidence that the deceased and Emma Shiflett were criminally intimate this would not in law, justify or excuse the defendant in killing W. M. Shiflett. So if you believe from the evidence that Frank Shiflett wilfully, deliberately, premeditatedly and with malice aforethought, killed the deceased, then he is guilty of murder in the first degree.

Instruction No. 13.

The Court instructs the jury that in this case, as in all criminal cases, the accused's plea of not guilty raises a presumption of innocence in his favor and puts on the Commonwealth the burden of proving his guilt beyond reasonable doubt. If therefore, upon a consideration of the whole case, the testimony of the witnesses and the circumstances shown in evidence, there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, they should find him not guilty.

4.

The first thing I saw when I got out of bed
in the morning was the sun shining brightly
and the birds singing in the trees. I felt
very happy and content. I had been thinking
about the future and how I was going to
spend the rest of my life. I was going to
travel and see the world. I was going to
meet new people and learn new things. I was
going to live a life of adventure and
discovery. I was going to be free.

INSTRUCTION No. 14

A reasonable doubt is that state of the case which, after comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the guilt of the accused.

the offense charged. A reasonable doubt must be based upon the evidence or be such as is suggested by the evidence or grow out of the evidence itself, or out of the absence of material evidence. It must not be an arbitrary doubt. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or of material facts necessary to be believed by the jury in order to find a verdict of conviction, and not an immaterial and unnecessary circumstance.

A reasonable doubt is that state of the case which, after comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the guilt of the accused.

INSTRUCTION No 15.

The Court instructs the jury that a reasonable doubt is such doubt as may be honestly and reasonably entertained as to some substantial and material fact essential to the proof of the offense charged. A reasonable doubt must be based upon the evidence or be such as is suggested by the evidence or grow out of the evidence itself, or out of the absence of material evidence. It must not be an arbitrary doubt. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or of material facts necessary to be believed by the jury in order to find a verdict of conviction, and not of immaterial and unnecessary circumstances.

THE STATE OF NEW YORK

IN SENATE,
January 10, 1891.
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE,
IN ANSWER TO A RESOLUTION
PASSED BY THE SENATE,
MAY 1, 1890.
ALBANY:
J. B. LEECH, STATE PRINTER,
1891.

Instruction No. 16.

The Court instructs the jury that if they have a reasonable doubt as to the grade of offense of which the prisoner may be guilty, that they shall resolve that doubt in his favor, and find him guilty of the lower grade; to illustrate, if they have reasonable doubt as to whether he is guilty of murder in the first degree or the second degree, they should find him guilty in the second degree. If they have reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, they should find him guilty of manslaughter, and if they have a reasonable doubt as to whether he be guilty at all, they must resolve that doubt in favor of the accused and acquit him.

7

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 Circuit Court of said County, at its December term, 1919, UPON THEIR OATHS DO PRESENT, that Frank Shifflett on the 2nd day of November, 1919, in said County, with force and arms in and upon the body of one Wm. M. Shifflett, in the peace of the said Commonwealth then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that the said Frank Shifflett a certain knife, commonly known as a pocket knife, which he, the said Frank Shifflett, then and there had and held in his hand, did then and there feloniously, wilfully and of his malice aforethought, strike, stab, cut and thrust at, upon and into the said Wm. M. Shifflett, inflicting on the said Wm. M. Shifflett, in the abdomen of the said Wm. M. Shifflett, one mortal wound; of which mortal wound he, the said Wm. M. Shifflett, shortly thereafter and on the same day died. And so the jurors aforesaid, upon their oaths aforesaid do say that the said Frank Shifflett him, the said Wm. M. Shifflett, 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.

This indictment is found on the testimony of _____

H. E. Lucas

_____, witnesses sworn in

Court and sent before the Grand Jury to give evidence.

We the jury find the accused Frank Shipplett guilty of voluntary manslaughter as charged in the indictment and fix his term of confinement at one year in the penitentiary.

A. R. Miller

Foreman

December term, 1919.
Murder

COMMONWEALTH

vs. Indictment

FRANK SHIPPLETT

FOR A FELONY

A TRUE BILL

J. Shipplett
Foreman

H. M. Strickler

Harry M. Strickler
Commonwealth's Attorney.

we The Jurors find ^{the} accused.
The one Frank Shifflet of.
Voluntary Manslaughter and fix
his confinement at one (1) year
in ^{the} Penitentiary.

A. R. Miller
Foreman

