

COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of said County:

The jurors of the Commonwealth in and for the body of the county of Rockingham and now attending said Court at its December term, 1927, upon their oaths do present that Lee Caldwell, on or about the 26th day of November, 1927, with force and arms, in the county aforesaid, in and upon the body of one J.W. Kislring, 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 Lee Caldwell, a certain shot gun then and there charged with gun powder and leaden shot, which said shot gun, he, the said Lee Caldwell 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 J. W. Kislring; and that the said Lee Caldwell, with the leaden shot aforesaid, out of the shot gun by the said Lee Caldwell discharged and shot off as aforesaid, then and there feloniously, ~~wilfully, and of his malice aforethought,~~ did strike, penetrate, and wound the said J. W. Kislring in and upon the right side of the neck in the ^{carotid} jugular vein of him, the said J. W. Kislring; giving to him, the said J. W. Kislring, then and there with the leaden shot aforesaid, so as aforesaid discharged and shot out of the shot gun aforesaid by the said Lee Caldwell, in and upon the right side of the neck in the ^{carotid} jugular vein, the said J. W. Kislring one mortal wound; of which said mortal wound, he, the said J. W. Kislring, then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Lee Caldwell, him, the said J. W. Kislring, 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.

Department of Virginia

Office of the Secretary

In the Circuit Court of this County

The Honors of the Commonwealth in and for the County of

Virginia, do hereby certify that the following is a true and correct copy

of the original as filed in the office of the Secretary of the

County of Virginia, this 15th day of January, 1907, with legal fees

paid in full, and that the same is a true and correct copy of the

original as filed in the office of the Secretary of the County of

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Department of Virginia

[Faint handwritten text at the top of the page]

This indictment is found on the testimony of C. W. Dove,
~~James Kieling,~~ ~~Simmons,~~ Wm. J. Henkle, ^{and} Robert M.
Burke, ~~George H. Kieling,~~ ~~Broadus Gibson,~~ and ~~Leath Mansley,~~ wit-
nesses sworn in Court and sent before the grand jury to give evi-
dence.

We the jury find the accused, Lee Caldwell
not guilty.

H. E. Bolton Foreman

[Faint, illegible text, likely bleed-through from the reverse side of the document]

Indictment

Commonwealth

v) Indictment

Lee Caldwell

Felony

December term, 1927

A True Bill:

[Handwritten signature]
JOSEPH

[Handwritten note]
Arraigned for
for Jan 2nd

D. T. Gattman
Commonwealth's Attorney

INSTRUCTIONS NO. _____

The Court further instructs the jury that, where a man is threatened with imminent danger to ^{his} person ~~or to commit a felony on his property~~ the law authorizes him to determine, from appearances, and the actual state of things surrounding him, as to the necessity of resorting to force; and, if he acts from reasonable and honest conviction, he will not be held criminally responsible for the mistake as to the actual danger.

*Given as modified
objection as to modification - overruled
exceptum.*

INSTRUCTIONS NO. _____

The Court further instructs the jury that, where a man is surrounded with imminent danger to person or to property, the law excuses him in determining, the degree of the danger, and the actual state of things surrounding him, as to the necessity of resorting to force; and, if he acts from reasonable conviction, he will not be held criminally responsible for the result as to the actual danger.

Carroll
Robert E. Quinn

INSTRUCTION NO. _____ *Dependent*

Refused

The Court further instructs the jury that justifiable homicide is the killing of a human being in the necessary, or apparently necessary, defense of home, property, or person, against one who apparently endeavors, by violence or surprise, to commit a felony on either.

See 135-2a 641 for refusal

*Refused
exception*

INSTRUCTION NO. _____

The Court further instructs the jury that justifiable homicide is the killing of a human being in the necessary, or apparently necessary, defense of home, property, or person, against one who apparently endeavors, by violence or surprise, to commit a felony on either.

20 1112-241 for review

Referred by applicant

Comm

INSTRUCTION NO. _____

The Court instructs the jury that life may be taken only
in the protection and preservation of life and not when mere
property rights are at stake.

Pierce v Commonwealth 135 Va. 649

Referred

Com

EXHIBITION NO.

The Court instructs the jury that life may be taken only
in the protection and preservation of life and when such
property rights are at stake.

Price v Commonwealth 180 Pa. 640

Accepted

Com

INSTRUCTION NO. _____

The Court instructs the jury that if they believe from the evidence that Lee Caldwell was guilty of negligence in coming to the conclusion that he was in danger, and under these circumstances he killed J. W. Kisling, he is guilty of involuntary manslaughter.

Clark Criminal Law 181.

Refused

Can

EXHIBIT NO. _____

The Court instructed the jury that it may believe from the
evidence that the defendant was guilty of negligence in causing
to the conclusion that he was in danger, and under these cir-
cumstances the jury may find that the defendant was negligent.

State District Law 101.

Referenced

Referred

INSTRUCTIONS- CALDWELL CASE.

Referred

A

The court instructs the jury that the burden of proof is on the Commonwealth to prove, beyond a reasonable doubt, every essential ingredient necessary to constitute the offense charged in the indictment, and if the jury from the evidence have any ~~reasonable doubt~~ ^{reasonable doubt} as to the guilt of the accused, ~~then they should acquit him~~ ^{then they should acquit him}.

OK B

The court further instructs the jury that if they believe from the evidence that the deceased did any act, or that the circumstances brought about by his acts of such a character as to afford the prisoner at the bar reasonable ground for believing that the deceased designed to kill him, or to inflict on him great bodily harm, and there was imminent danger of carrying such design into execution, under such circumstances the killing would be excusable, although it may turn out that appearances were deceptive, and that there was no design on the part of the deceased to kill prisoner, or to do him great injury.

C

The court further instructs the jury that justifiable homicide is the killing of a human being in the necessary, or apparently necessary, ~~defense of one's life, from great bodily harm, apparently attempted to be committed by force, or defense of home, property, or person, against one who apparently endeavors, by violence or surprise, to commit a felony on either~~

Referred B

~~to person or to commit a felony on his property~~ ^{to person or to commit a felony on his property} ~~imminent~~ ^{imminent}
The court further instructs the jury that, where a man is threatened with danger, the law authorizes him to determine, from appearances and the actual state of things surrounding him, as to the necessity of resorting to force; and, if he acts from reasonable and honest conviction, he will not be held criminally responsible for the mistake as to the actual danger, ~~where other parties~~

Referred B

The court further instructs the jury that if upon the whole evidence in the case, there is any rational hypothesis consistent with the conclusion that the homicide was excusable or justifiable, the accused cannot be convicted.

3/10

MEMORANDUM FOR THE RECORD

The following information was obtained from the files of the Department of the Interior, Bureau of Land Management, on the subject of the land grant to the State of California for the purpose of the establishment of a State University.

On the 29th day of August, 1850, the President of the United States, Zachary Taylor, issued a Proclamation in which he set apart certain lands for the purpose of the establishment of a State University in California. The lands were to be held in trust for the State of California until such time as the State should have established a State University.

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Arrest Warrant

Commonwealth of Virginia,)
Rockingham County,) To-Wit:

To Sheriff, a Constable of said County:

Whereas, W W Epperson of the said County, has this day made complaint and information on oath before me, J P Bruce a Justice of the said County, that Lee Caldwell

of the said County, on the 26 day of Nov, 1927, in the said County, did unlawfully and involuntarily shoot and kill one Wilbert Husley

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 Lee Caldwell 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 26 day of Nov, in the year 1927.

J P Bruce J. P. [Seal]

Commonwealth
 vs.
 Commonwealth
 Arrest Warrant

Lee Calwell
 Judgment

That the Defendant found guilty and fined
 and costs as follows:

Fine	- - -	Executed the within warrant by arrest- ing and delivering the body of
Clerk's Fee	- - -	
Justice's Fee	- - -	
Arrest	- - -	
Summoning Witness	- - -	before
Witnesses Attendance and Mileage	- - -	a Justice of Rockingham County, and by sum- moning the within named witnesses in person
Total	- - -	this day of 1922

Justice of the Peace.
 Constable of Rockingham County

Lee Calwell, come before me with a
 Justice of the Peace for Rockingham County and
 John Calwell as surety there upon \$1000
 in Calwell's favor. Calwell, as surety in
 the sum of Ten hundred dollars of bond
 and cashed money for the sum of \$1000
 of Lee Calwell, personal appearance in
 1922 (due 1922) and not report the sum
 of \$1000 to the Court, 1922 before me this
 26 day of May 1922. J. P. [Signature]

As the juror find the accused not
guilty -

Blank lined paper with a small hole.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

v

LEE CALDWELL

If you find the accused, Lee Caldwell, not guilty, you will say so and no more.

If you find him guilty of voluntary manslaughter as charged in the indictment, then you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than five years.

If you do not find him guilty of voluntary manslaughter, but find him guilty of involuntary manslaughter as therein charged, then you will say so and fix his punishment by confinement in the penitentiary for not less than one nor more than five years, or, in your discretion, by confinement in jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both such fine and imprisonment.

IN THE COURT OF COMMONS, PARLIAMENT

1871

1871

IN THE YEAR OF OUR LORD ONE THOUSAND SEVEN HUNDRED AND SEVENTY ONE

AND OF OUR SOVEREIGN LADY VICTORIA THE FIFTH

IN THE FIRST YEAR OF THE REIGN OF OUR SOVEREIGN LADY VICTORIA

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INSTRUCTION NO. 1

The Court instructs the Jury that involuntary manslaughter is the killing of a person accidentally or unintentionally while in the doing of some unlawful act, not felonious, or in the improper or negligent performance of a lawful act.

INVESTIGATION NO. 1

The Court instructs the jury that involuntary manslaughter is the killing of a person accidentally or negligently while in the course of some lawful act, not felonious, or in the improper or negligent performance of a lawful act.

2

The court instructs the jury that the law presumes the accused innocent of any offense until his guilt is established by evidence beyond all reasonable doubt.

4

The court instructs the jury that the law presumes the accused
innocent of any offense until his guilt is established by evidence
beyond all reasonable doubt.

3

The court instructs the jury that if they are the sole judges of the weight and credibility to be given to the testimony of the witnesses.

The court instructs the jury that it is the sole
judge of the weight and credibility to be given to the testimony
of the witnesses.

4

The court instructs the jury that the evidence in this case does not warrant a conviction for ~~v~~voluntary manslaughter, there being absent in the evidence certain essential elements of that offense.

4

The court instructs the jury that the evidence in this case
does not warrant a conviction for involuntary manslaughter, there
being absent in the evidence certain essential elements of that
offense.

INSTRUCTION NO. 5

The Court instructs the jury that if they believe from the evidence that the deceased did any act, or that the circumstances brought about by him were of such a character as to afford the prisoner at the bar reasonable ground for believing that the deceased designed to kill him, or, to inflict on him great bodily harm, and there was imminent danger of carrying such design into execution, under such circumstances the killing would be excusable, although it may turn out that appearances were deceptive, and that there was no design on the part of the deceased to kill the prisoner, or to do him great injury.

8 INSTRUCTION NO.

The Court instructs the jury that if they believe from the evidence that the deceased did not, or that they circumstances brought about by him were of such a character as to allow the prisoner of the bar responsible, to believe that the deceased designed to kill him, or, to believe on his great bodily harm, and there was imminent danger of carrying such design into execution, under such circumstances the killing would be excusable, although it may turn out that appearances were deceptive, and that there was no design on the part of the deceased to kill the prisoner, or to do him great injury.

INSTRUCTION NO. 6

The Court further instructs the jury that, where a man is threatened with imminent danger to his person, the law authorizes him to determine, from appearances, the actual state of things surrounding him, as to the necessity of resorting to force; and, if he acts from reasonable and honest conviction, he will not be held criminally responsible for the mistake as to the actual danger.

INSTRUCTION NO. 1

The Court further instructs the jury that, where a man
is charged with homicide by his gun, the law requires
him to determine, from appearance, the actual state of mind
of the person, and to the necessity of resorting to force; and
if he acts with culpable and human conviction, he will not be
held criminally responsible for the murder or for the actual
murder.

452

Lee Caldwell

1927

COMMONWEALTH

VS.

Felony

LEE CALDWELL

July

C. E. Falty	v v
M. O. Deputy	v v
J. M. Wilburger	v v
J. E. Shierkey	v v
Edwin A. Jordan	v v
E. L. Harper	v v
J. Frank Fulk	v v
H. E. Bolton	v v
Glenn Musick	v v
Ben N. Lane	v v
Ray F. Oline	v v
J. W. Fulk	v v
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July	-	1.50
Aug	-	1.50
Sept	-	