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.Kisling, 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. Kisling; 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. Kisling in and upon the right side of the neck in the jugular vein of him, the said J. W. Kisling; giving to him, the said J. W. Kisling, 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 jugular vein, the said J. W. Kisling one mortal wound; of which said mortal wound, he, the said J. W. Kisling, 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. Kisling, 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 C. W. Dove, ~~James Kisling,~~ ~~Simmons~~, Wm. J. Henkle, and Robert M. Burke, ~~George H. Kisling, Broadus Gibson, and Jacob Ramsley,~~ witnesses sworn in Court and sent before the grand jury to give evidence.

We the jury find the accused not guilty.

J. B. Bolton Foreman

~~Murder~~

Commonwealth

v} Indictment

Lee Caldwell

Felony

December term, 1927

A True Bill:

J. C. Bradford
Foreman

arraigned & set for Jan 2nd

D. W. Zarman
Commonwealth's Attorney

INSTRUCTION~~S~~ 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
Exception.

Defendant's Instructions

INSTRUCTION NO.____ Defendant

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 Va 641 for reference

Refused as explain

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.

Com

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

Refused

Gen

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 180 Va. 649

Refused

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

Refused

INSTRUCTIONS- CALDWELL CASE.

Refused

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 as to the guilt of the accused, ~~the evidence of the Commonwealth may be allowed to resolve the doubt in his favor.~~ then they should acquit him

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 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 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 the s[illegible] from great bodily harm, apparently attempted to be committed by force, and~~ defense of home, property, or person, against one who apparently endeavors, by violence or surprise, to commit a felony on either.

Refused

D.

The court further instructs the jury that, where a man is threatened with imminent danger, a person 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, ~~where other justifiers would not have mistaken.~~

E

Refused

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.

Arrest Warrant

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

To Sheriff, a Constable of said County:

Wheras, W W Eppman of the said County, has this day made complaint and information on oath before me, L S A 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 involuntary did Shoot and Kill one Wilbert Kisling

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.

L S A Bruce J. P. [Seal]

Lee Caldwell, come before me and have a justice of the Peace for Rockingham County and the Caldwell as surety thereupon I have the Caldwell & Jno. Caldwell as surety on the same & have executed a bond and bond with my for the Sureyship of Lee Caldwell jurnal offense in the Circuit Court of Rockingham & Lee Caldwell 1927 and that he will be & appear before said Court, & do & perform & do what shall be required of him this day & year 1927

Commonwealth

vs.

Judgment

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

Fine - - - - .....

Clerk's Fee - - - .....

Justice's Fee - - - .....

Arrest - - - - .....

Summoning Witness - .....

Witnesses Attendence and Mileage .....

Total - - - .....

.....

Justice of the Peace.

Commonwealth

vs. } Arrest Warrant

Lee Caldwell

Executed the within warrant by arresting and delivering the body of

before .....

a justice of Rockingham County, and by summoning the within named witnesses in person

this ..... day of ..... 192.....

.....

Constable of Rockingham County

We the Jurors find the accused not guilty—

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.

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.

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.

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.

4

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

The court instructs the jury that the evidence in this case does not warrant a conviction for voluntary 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.

INSTRUCTION NO. 3

The Court instructs the jury that if they believe from the evidence that the deceased did any act, or that they 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.

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.

452

Dec. Term 1927

COMMONWEALTH

VS. Felony

LEE CALDWELL

Jury —

C. E. Falty
M. O. Deputy
J. M. Wilbarger
J. E. Shirley
Elmer A. Jordan
E. L. Harper
J. Frank Fulk
H. E. Bolton
Glenn Moreick
Ben S. Lane
Ray F. Stline
J. W. Fulk

Fees —
Sheriff — Jury — 1.50
Sum — 1.50