COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of said County:

The grand jurors of the State of Virginia, in and for the body of the county of Rockingham and now attending said Court at its December term, 1930, upon their oaths present that J. R. Hayden, on the 27th day of October, 1930, in the said county of Rockingham, feloniously and unlawfully did kill and slay one Donal Ferree, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of C. R. Fawley, A. E. Conquist, and C. E. Long, witnesses sworn in Court and sent before the grand jury to give evidence.

We the jury find the accused, J. R. Hayden, not guilty. — P. S. Lowe Jr Foreman

In. Manslaughter

Commonwealth

v) Indictment

J. R. Hayden

Felony

December term, 1930

A True Bill:

M. H. Harrison
Foreman

Cont To. Feb Term

D. W. Earman
Commonwealth's Attorney

We the Jury find the accused
J. R. Hayden Not guilty

A. S. Cassidy Foreman

[illegible]

[illegible]

[illegible]

Commonwealth of Virginia,
Rockingham County, To-Wit:

BE IT REMEMBERED, that on the 28th day of October 1930, J. R. Hayden, principal and Bryan Gordon surety, who justified to his sufficiency, came before me, Stephen L. Dove Bail Commissioner, of the said County of Rockingham,
(J. P. or Bail Commissioner)
and acknowledged themselves to be indebted to the Commonwealth of Virginia each in the sum of One Thousand — Dollars, ($1,000.00), to be levied of their respective goods and chattels, lands and tenements, for the use of the Commonwealth of Virginia rendered, and they each severally waived their homestead exemption to their recognizance; yet upon this condition:

That if the said J R Hayden shall personally appear before the Circuit Court of Rockingham County, at the Courthouse of said County, on the 1st day of the December 1930 Term thereof, being the 15 day of December, 1930, and at such other time or times to which the proceedings may be continued or further heard, and before any court or judge hereafter having or holding any proceedings in connection with the said charge, and then and there answer the Commonwealth of Virginia concerning a certain felony whereof the said J R Hayden stands charged, and be bound under said recognizance until the charge is finally disposed of or until it is declared void by order of a competent court, then the above recognizance shall be null and void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, I hereunto affix my signature this 28 day of October, 1930.

Stephen L. Dove
(J. P. or BAIL COMMISSIONER)

J.R. Hayden
$1,000.00
To 1st Day
Dec-1930
Term

#835

FEB - 1931

COMMONWEALTH

VS. #1) Felony (manslaughter)

J. R. HAYDEN Bail

Set for 20th

3-4

X 40 R. J. Weaver ✓✓✓
X - C. F. Leixt ✓✓✓
81 G. Luther Miller ✓✓✓
11 E. R. Lambert ✓✓✓
- A. S. Cassidy ✓✓✓
- Frank A. Colbert ✓✓✓
X 60 - J. B. Jones ✓✓✓
9 H. E. Funkhouser ✓✓✓
X 10 F. S. Bauerman ✓✓✓
X 200 J. A. Fulk ✓✓✓
- F. M. Berry ✓✓✓
7 Frank H. Stewalter ✓✓

ALVAH BUSHNELL COMPANY
Bushnell
PHILADELPHIA, PA.

28 4761

COMMONWEALTH

V

J. R. HAYDEN

CHARGE TO THE JURY

If you find the accused, J. R. Hayden, not guilty, you will say so and no more.

If you find him guilty, 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, or in your discretion, by confinement in jail for a period not exceeding one year or by fine not exceeding $1000 or by both such imprisonment and fine.

Com
vs — Charge
J.R Hayden

INSTRUCTION

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 felloneously, or in the improper or negligent performance of a lawful act; and, that when a homicide follows as a natural and probable consequence of such a reckless or culpably negligent act as is incompatible with a proper regard for human life, the law imputes a criminal intent to the offender and he may be punished.

The court tells the jury that, in determining the weight to be given to the testimony of different witnesses in this case, the jury are authorized to consider the relationship of the witnesses to the parties, if the same is proved; their interest, if any, in the result of this case, their temper, feeling, or bias, if any has been shown; their demeanor while testifying; their apparent intelligence, and their means of information; and to give such credit to the testimony of such witnesses as under all the circumstances such witness seems to be entitled to.

The court further instructs the jury that circumstantial evidence is legal and competent in criminal cases, and if it is of such a character as to exclude every hypothesis other than that the defendant is guilty is entitled to the same weight as direct testimony.

The Court tells the jury that it is a law of this State, that when the operator, conductor, or driver of any machine approaches a curve, bend, or any place where the roadway is not plainly visible for a distance of 300 feet ahead, he shall at all times keep his machine on the righthand side of the roadway sufficient to allow ample room on the opposite side for the passage of another machine or vehicle, irrespective of whether another machine or vehicle is approaching or not. And the Court further tells the jury that if they believe from the evidence in this case that the accused, J. R. Hayden, violated the foregoing statute, and that Donald Ferree's death was caused thereby, then ~~you will find the said Hayden guilty as charged in the indictment.~~ defendant was guilty of negligently operating his car.

INSTRUCTION E

The Court instructs the jury that even if the jury believes from the evidence that the defendant, Hayden, is chargeable with some actionable negligence in the operation of his car when the collision occurred or immediately before, yet that would not be a crime unless his negligence was so gross and culpable as to indicate a callous, or hardened disregard of human life and of the probable consequences of his act.

[redacted]

I

INSTRUCTION

The Court instructs the jury that even if the jury believes from the evidence that the defendant, Hayden, is chargeable with some actionable negligence in the operation of his car when the collision occurred or immediately before, yet that would not be a crime unless his negligence was so gross and culpable as to indicate a reckless or hardened disregard of human life and of the probable consequences of his act.

INSTRUCTION A-1

The court instructs the jury that mere suspicion or probability of the guilt of the accused, howeverx strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction his guilt must be proved so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

Brown's Case 97 Va. 792

INSTRUCTION A-1

The court instructs the jury that mere suspicion or probability of the guilt of the accused, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction his guilt must be proved so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

INSTRUCTION D

Refused - & excepted to. See grounds noted on bottom of Commonwealth's Issues.

The jury are instructed that even though they believe from the evidence that the accused was guilty of reckless or negligently driving under the Motor Vehicle law of Virginia yet this alone is not sufficient to justify a conviction of the accused under the indictment in this case.

= Since the giving of Instruction #5 for Commonwealth, the above instruction is re-offered as amended & refused & exception is noted.

H. W. B. Judge

INSTRUCTION _____ 7

The jury are instructed that even though they believe from the evidence that the accused was guilty of reckless driving under the Motor Vehicle law of Virginia yet this alone is not sufficient to justify a conviction of the accused under the indictment in this case.

The Court tells the jury that it is a law of this State, that when the operator, conductor, or driver of any machine approaches a curve, bend, or any place where the roadway is not plainly visible for a distance of 300 feet ahead, he shall at all times keep his machine on the righthand side of the roadway sufficient to allow ample room on the opposite side for the passage of another machine or vehicle, irrespective of whether another machine or vehicle is approaching or not. And the Court further tells the jury that if they believe from the evidence in this case that the accused, J. R. Hayden, violated the foregoing statute, and that Donald Ferree's death was caused thereby, ~~then~~ Then ~~you will find the said Hayden guilty as charged in the indictment.~~ defendant was guilty of negligently operating his car

Objected to because 1st. Section 2143 of Code (Acts 1922 p. 418 + 747) was repealed by Acts of 1926 p. 763 Chap. 474 -

2d. Because ~~the Act~~ The Act of 1926 does not make such acts (over)

~~the point~~ as are stated in the instruction "reckless" driving under that act.

3d Because the instruction should, if given, go further & state that such acts as are stated in the instruction do not, standing alone, justify a conviction of manslaughter.

4th Because, if given, ~~the instruction should~~ it eliminates the gross negligence & reckless indifference to life which supplies the criminal intent in such a case as this.

HWB

INSTRUCTION D

The jury are instructed that even though they believe from the evidence that the accused was guilty of reckless driving under the Motor Vehicle law of Virginia yet this alone is not sufficient to justify a conviction of the accused under the indictment in this case.

Refused & Exception noted

The giving of the instruction positively advises the jury that though they may consider the accused violated the Statute on reckless driving yet they have no right on that account alone to find him guilty of manslaughter. It misleads them against such an error

H.W.B. Judge

D

INSTRUCTION _____

The jury are instructed that even though they believe from the evidence that the accused was guilty of reckless driving under the Motor Vehicle law of Virginia yet this alone is not sufficient to justify a conviction of the accused under the indictment in this case.

INSTRUCTION

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 felloneously, or in the improper or negligent performance of a lawful act; and, that when a homicide follows as a natural and probable consequence of such a reckless or culpably negligent act as is incompatible with a proper regard for human life, the law imputes a criminal intent to the offender and he may be punished.

Obj. to - unless the words gross recklessness be substituted for the word "reckless" in the third line from the bottom.

HWB

Cm vs J. R. Hayden

R. J. Weaver
C. H. Crist
~~W. J. Laymon~~
G. Luther Miller
~~B. H. Harter~~
J. R. Lambert
~~F. X. Reid~~
A. S. Cassidy
Frank A. Calvert
J. D. Jones
~~E. C. Homer~~
W. E. Funk Jones
F. S. Bannerman
J. A. Funk
~~E. M. Snow~~
~~L. C. Duff~~
J. M. Berry
Frank H. Shawalter
~~C. H. Frank~~
~~H. E. Armstrong~~

Entered July for Mar 3rd

Feb 26 —

Frame ✓
Weaver ✓
Bauerman ✓
Hoover ✓
Crist ✓
Funkhouser ✓
Reid ✓
~~Schneider~~ Gisher
Jones ✓
Zaysman ✓

Mr J.B. Gish

Arrest Warrant

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

To ....., a Constable of said County:

Whereas, ... of the said County, has this day made complaint and information on oath before me, ... a Justice of the said County, that .....

of the said County, on the 27 day of Oct., 1930, in the said County, did unlawfully kill Donald Ferree in an automobile wreck

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 .....

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 27 day of Oct, in the year 1930.

John F. Byerly J. P. [Seal]

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

I, ..., a Justice of the Peace in and for the County of Rockingham, Virginia, do hereby certify that .....and .....as his suret....., have this day acknowledged themselves indebted to the Commonwealth of Virginia in the sum of..... .....Dollars ($.....) to be made and levied of their goods and chattels, upon this condition: That the said.....shall appear before the undersigned or the Circuit Court of Rockingham County, on the .....day of....., 19....., and not leave hence without leave of the said Court, to answer the charge in this warrant, or to appear the action of the Grand Jury of the said County upon the within charge.

Given under my hand this, the.....day of....., 19.....

....., J. P.

Commonwealth

vs. } Arrest Warrant

J. P. Kagelen

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.....19.....

Constable of Rockingham County

JUDGMENT

.....

Upon the examination of the within charge, I find the accused

Fine - - -	$.....
Clerk's Fee - -	$.....
Justice's Fee - -	$.....
Arrest - - -	$.....
Summoning Witness -	$.....
Witness Attendence and Mileage	$.....
Commonwealth's Attorney -	$.....
Jail Fees - -	$.....
Total - - -	$.....

.....

Justice of the Peace.

In the Name of the Commonwealth of Virginia: Augusta

To the Sheriff of ~~Rockingham~~ County, Greeting:

You are hereby commanded to summon

A. C. Gilkeson

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 30 *day of* March *19*31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. ROBERT SWITZER, *, Clerk of our said Court, at the Court House, the* 24th *day of* July *19*31*, and in the* 155*th year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

News-Record, Harrisonburg, Va.

J. R. Hayden

vs.

Can

EXECUTED Feby 24 1931

as to A. L. Fitzkerson

by delivering a copy of the within Summons

to Him In person

Dept.

For W. B. Nelson S. A. C.

Sheriff fee Paid

1931

Mar. 3

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon P. B. F. Good,

Hugh Neff, Julian Brock, Ott Willis,

Lupton Kaylor, & Saylor Crist

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d *day of* Mar *19* 31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against* J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, ..., *Clerk of our said Court, at the Court House, the* 17th *day of* Feb *19* 31, *and in the* 155 *th year of the Commonwealth.*

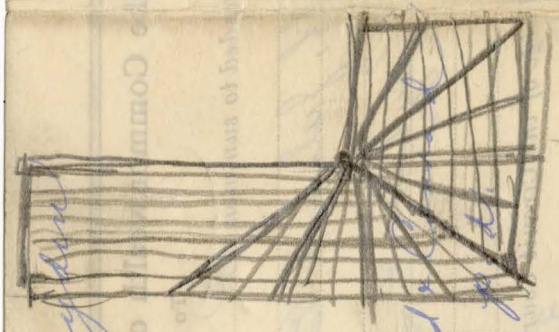
J. Robert Funkhouser, *Clerk.*

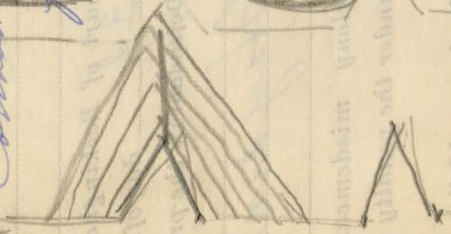
News-Record, Harrisonburg, Va.

Executed Feb-24-31 by delivering a true copy of the within summon to P. B. T. Good Hugh McK. Julian Brock, Ott Willis Tupton Hayes and Taylor Christ

each in person.

A. F. Newman Deputy for C. R. Tawley S.R.C.





J. B. Hayes
Dam
Canal
Lufkin
1931
March 3

In the Name of the Commonwealth of Virginia:

To the Sheriff of ~~Rockingham~~ Shenandoah County, Greeting:

You are hereby commanded to summon

J. M. Dawson

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d *day of* March 19 31, *to testify and the truth to say in behalf of the Commonwealth against*

J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this he *shall not omit under penalty of £100. And have then and there this Writ.*

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 28th *day of* Feb. 19 31, *and in the* 155th *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

P & L. PRESS, HARRISONBURG, VA

Executed on the 2nd day of March, 1931 within the County of Shenandoah, by delivering a true copy of the within summons in writing to J. M. Dawson. in person.

L. G. Shultz Sheriff; of Shenandoah, County, Va.

In the Name of the Commonwealth of Virginia:

To the Sheriff of ~~Rockingham~~ Augusta County, Greeting:

You are hereby commanded to summon Edward Patterson, Zachariah Daniels, R. P. Little, W. L. Johnson, Judge Jas. A. Glasgow, & M. B. McFarland

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 31 *day of* Mar. *19*31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against* J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, ..., *Clerk of our said Court, at the Court House, the* 19th *day of* Feb *19*31*, and in the* 155*th year of the Commonwealth.*

J. Robert Huntzer, *Clerk.*

News-Record, Harrisonburg, Va.

EXECUTED July 24 1931

as to Edward Pattinson

Jachosiah Daniels.

R. P. Little.

by delivering a copy of the within Summons

to Each In person

W. N. Gregory Dept.

For W. B. Wilson S. A. C.

Augusta

EXECUTED July 24 1931

as to W. S. Johnson

Judge Wm. H. Gloggower

W. B. McFarland

by delivering a copy of the within Summons

to Each. In person

W. N. Gregory Dept.

For W. B. Wilson S. A. C.

Sheriff Fee Paid

1X6.

J. K. Hayden

aide.

Com.

Ret. 1/3

Ret. 1/31 Agent

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Frederick A. Foshall, Mrs. Frederick A. Foshall, Mrs. H. M. Schultz, ~~J. M. Dawson, Jr. and Mrs. J. M. Dawson~~,

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 23rd *day of* March *19*31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against* J. R. Hayden

who stands charged with and indicted for a felony ~~*misdemeanor*~~.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. ROBERT SWITZER, *Clerk of our said Court, at the Court House, the* 13th *day of* Feb. *19*31, *and in the* 155th *year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

By M. Bowers, D.C.

News-Record, Harrisonburg, Va.

I hereby accept service of the within summons.

Frederick A. Foxhall

Mrs Frederick A. Foxhall.

Mrs H M Shultz

J. R. Hayden

adv

Cam)

Conrad & Conrad

p. q.

1931

Feb. 20

In the Name of the Commonwealth of Virginia: Rockbridge

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

John Critcher

Lashen

Va.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d *day of* Mar *19*31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, ..., *Clerk of our said Court, at the Court House, the* 19th *day of* Feb *19*31*, and in the* 145th *year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

News-Record, Harrisonburg, Va.

J. R. Hayden
adq
Com

Rockbridge

I accept service of
within summons.

John Critcher

1931
Mar. 3

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

J. M. Dawson, Jr. and Mrs. J. M. Dawson Jr.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d ~~Fourth~~ *day of* March ~~July~~ *19* 31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

J. P. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. ROBERT SWITZER, *, Clerk of our said Court, at the Court House, the* 13th *day of* Feb. *19* 31*, and in the* 155 *th year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

By M. Bowers D. C.

I hereby accept service of the within summons.

J. M. Lawson Jr.

Mrs. J. M. Lawson Jr.

J. P. Hayden

Atty.

Com.

Conrad & Conrad

J. P.

Feb 20

1931

In the Name of the Commonwealth of Virginia:

To the Sheriff of ~~Rockingham~~ Prince William County, Greeting:

You are hereby commanded to summon

Thos. Ryan

Manassas, Va

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d *day of* Mar. *19* 31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, ..., *Clerk of our said Court, at the Court House, the* 19th *day of* Feb. *19* 31, *and in the* 155th *year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

News-Record, Harrisonburg, Va.

J. R. Hayden
ads
Com.

Price Williams

I accept service of
within summons
Wm. R. Lair

1931
Mar. 3

In the Name of the Commonwealth of Virginia: Arlington

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Bryan Gordon

Abscendan

Va.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 3d *day of* Mar. *19*31 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against*

J. R. Hayden

who stands charged with and indicted for a felony misdemeanor.

And this he *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, ..., *Clerk of our said Court, at the Court House, the* 19th *day of* Feb. *19*31*, and in the* 145*th year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

News-Record, Harrisonburg, Va.

J. P. Haydn

adv

Cam.

Arlington

I accept service on
within summons.

Bryan Gordon

1931

Mar. 3