

JUN 1932

#1012

COMMONWEALTH

V. *N.S.* Felony (murder)

TOM WARE

July-19
jailed

Andrew Woolf
P. C. Fitzwater
C. J. Riddle
Theo. O. Rock
H. M. Bowman
Mr. H. Maddox
Jacob R. Layman
Oa. Arley
A. C. Garber
G. C. Carpenter
E. L. Klefoy
F. G. Gould

Shop cost
rent 1.50
small items 24.00
Exp June 1.50
Con July 50
\$27.50

Conw
v
Ware
Refused
11/21/13

INSTRUCTION NO. 27

X

The Court instructs the jury that if they believe from the evidence in this case that the defendant did nothing to warrant the deceased, Turner, in shooting the defendant; and if the jury believe from the evidence that the defendant, Ware, believed and had reasonable ground to believe that he was in actual and imminent danger of death or great bodily harm from the hands of the deceased Turner, and that the defendant, so believing, shot and killed Turner, then the Court tells the jury that they should find the defendant not guilty; although they may believe from the evidence that the defendant was not in actual and imminent danger of death or great bodily harm from the deceased and that the deceased, in fact, was not armed, if the jury further believe that the appearances at the time of the shooting by the defendant were such that would make an ordinarily reasonable and prudent person believe that he was in actual and imminent danger from the hands of the deceased.

x

INSTRUCTION NO. 12

Case
v
State
Defendant
Turner

The Court instructs the jury that if they believe from the evidence in this case that the defendant did nothing to warrant the deceased, Turner, in shooting the defendant; and if the jury believe from the evidence that the defendant, Ware, believed and had reasonable ground to believe that he was in actual and imminent danger of death or great bodily harm from the hands of the deceased Turner, and that the defendant, so believing, shot and killed Turner, then the Court tells the jury that they should find the defendant not guilty; although they may believe from the evidence that the defendant was not in actual and imminent danger of death or great bodily harm from the deceased and that the deceased, in fact, was not armed, if the jury further believe that the appearance at the time of the shooting by the defendant were such that would make an ordinarily reasonable and prudent person believe that he was in actual and imminent danger from the hands of the deceased.

Corn
v
Ware
HWTB

Instruction No. 1

The court instructs the jury that the rule of law is that a man shall be taken to intend that which he does, or which is a necessary consequence of his acts.

Com
v
Ware
HUB

Instruction No. 2

The court further instructs the jury that whenever the killing is wilful, deliberate, and premeditated, the law infers malice from this fact.

Com
v
Ware
HWD

Instruction No. 3

The court instructs the jury that every ^{unlawful} homicide in Virginia is presumed to be murder in the second degree. In order to elevate the offence to murder in the first degree, the burden of proof is upon the Commonwealth, and to reduce the offence to manslaughter, the burden ~~is~~ is upon the prisoner.

Cover
2
Warrant
10/15

Instruction No. 3

unlawful

The court instructs the jury that every homicide in Vir-
ginia is presumed to be murder in the second degree. In order to
elevate the offense to murder in the first degree, the burden of
proof is upon the Commonwealth, and to reduce the offense to
manslaughter, the burden of proof is upon the prisoner.

Com
a
Ware
HWS

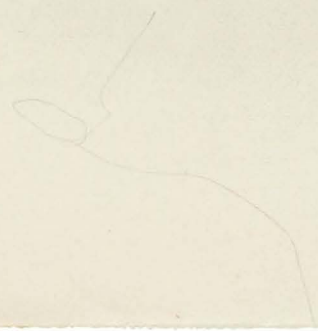
Instruction No. 4

The court instructs the jury that whoever kills a human being with malice aforethought is guilty of murder; that a murder which is perpetrated by lying in wait, or any other kind of wilful, deliberate, and premeditated killing is murder in the first degree.

Page
10
11
12

Instruction No. 4

The court instructs the jury that whoever kills a human being with malice aforethought is guilty of murder; that a murder which is perpetrated by ~~various~~ lying in wait, or any other kind of willful, deliberate, and premeditated killing is murder in the first degree.



Com
Ware
HWB

Instruction No. 6

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, ~~and the weight of the evidence is 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 the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

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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 are to weigh the weight of the testimony~~, 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 the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

Comm
v
Ware
1913

Instruction No. 7

The court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to any substantial and material fact essential to prove the offence charged. Reasonable doubt must be based upon the evidence, or that is suggested by the evidence, or grows out of the evidence itself. It must not be 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 material fact or facts necessary for the jury to believe to find a verdict of conviction, and not of immaterial and non-essential circumstances.

Corn
v
Ware
H.W.B.

Instruction No. 8

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 doubt to justify an acquittal must be a reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same kind of doubt interposed in the graver transactions of life it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence you can say that you have an abiding conviction of the truth of the charge, you are satisfied beyond all reasonable doubt. On the other hand, the jury must not go beyond the evidence to hunt up inferences of guilt.

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for
the
jury

The court instructs the jury, as a matter of law, in con- sidering 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 doubt to justify an acquittal must be a reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same kind of doubt interposed in the gravest trans- actions of life it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence you can say that you have an abiding conviction of the truth of the charge, you are satisfied beyond all reasonable doubt. On the other hand, the jury must not go beyond the evidence to hunt up inferences of guilt.

Copy
of
Walt
Hess

Instruction No. 9

The court instructs the jury that 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.

Copy
of
Ware
ITWB

Instruction No. & 10

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.

Comm
of
Mass
1873

Instruction No. 11

The court further instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer, without any provocation, or even with slight provocation, is prima facie, wilful, deliberate, and premeditated killing, and throws upon the prisoner the necessity of showing extenuating circumstances.

Hand
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Date

upon the prisoner the necessity of showing extenuating circumstances.
facile, willful, deliberate, and premeditated killing, and throws
without any provocation, or even with slight provocation, is prima
fide given with a deadly weapon in the previous possession of the slayer.
The court further instructs the jury that a mortal wound

Instruction No. VI

Comm
of
Ware
HUB

Instruction No. 12

The court further instructs the jury that in determining the weight to be given 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 whilst testifying; their apparent intelligence; their means of information, and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled to.

Wm
v
Ware
1887

Instruction No. 10

The court instructs the jury that where a homicide is proven by the use of a deadly weapon, and the plea of self-defense is relied upon, the burden of proving such defense rests upon the prisoner, and to avail him, the facts and circumstances showing such defense must be established by a preponderance of the evidence.

Page
10
1777

Instruction No. 10

The court instructs the jury that where a homicide is
proven by the use of a deadly weapon, and the plea of self-defense
is relied upon, the burden of proving such defense rests upon the
prisoner, and to avail him, the facts and circumstances showing
such defense must be established by a preponderance of the evidence.

INSTRUCTION NO. 20

The Court instructs the jury that circumstantial evidence is legal and competent evidence in a criminal case and the jury have the right to consider such evidence in this case and to give it such weight as they may deem just and right, when considered together with all the other evidence.

INSTRUCTION NO. 4

The Court instructs the jury that circumstantial evidence

is legal and competent evidence in a criminal case and the jury have the right to consider such evidence in this case and to give it such weight as they may deem just and right, when considered together with all the other evidence.

Com
v
Ware
1873

INSTRUCTION NO. A

The Court instructs the jury that the fact that the defendant is of a different race from the jury and is a negro man should be given no consideration whatever by the jury and it is their duty, under their oaths, to give the defendant a fair, just and impartial trial just as if he were a white man on trial for the crime charged in the indictment.

INSTRUCTION NO. A

The Court instructs the jury that the defendant is of a different race from the jury and is a negro man should be given no consideration whatever by the jury and it is their duty, under their oaths, to give the defendant a fair, just and impartial trial just as if he were a white man on trial for the crime charged in the indictment.

Given
to
the
jury

INSTRUCTION NO. C

m
v
Ware
11/2/43

The Court instructs the jury that the fact that the defendant stands indicted for the offense charged against him in the indictment creates no presumption whatever of guilt as against the defendant; the Court, in fact, tells the jury that the defendant is presumed to be innocent of the crime charged against him in the indictment and that this presumption of innocence goes with the defendant throughout the trial and applies at every stage of the case. And the Court further tells the jury that they cannot find the defendant guilty because they may believe from the evidence that it is more probable that he is guilty than that he is innocent, nor can they find him guilty upon mere suspicions of his guilt, nor can they find him guilty because they may believe that a mere preponderance of the evidence is in favor of the guilt of the defendant; for the Court tells the jury that the Commonwealth must go further than this in its proof and must establish the guilt of the defendant clearly and conclusively beyond all reasonable doubt, and if the jury after considering all of the evidence believe that the Commonwealth has failed in this, they ought to find the defendant not guilty.

LAW OFFICES
CURRY AND CARTER
STAUNTON, VA.

Case
No.
W. H. H.

The Court instructs the jury that the fact that the defendant stands indicted for the offense charged against him in the indictment creates no presumption whatever of guilt as against the defendant; the Court, in fact, tells the jury that the defendant is presumed to be innocent of the crime charged against him in the indictment and that this presumption of innocence goes with the defendant throughout the trial and applies at every stage of the case. And the Court further tells the jury that they cannot find the defendant guilty because they may believe from the evidence that it is more probable that he is guilty than that he is innocent, nor can they find him guilty upon mere suspicions of his guilt, nor can they find him guilty because they may believe that a mere preponderance of the evidence is in favor of the guilt of the defendant; for the Court tells the jury that the Commonwealth must go further than this in its proof and must establish the guilt of the defendant clearly and conclusively beyond all reasonable doubt, and if the jury after considering all of the evidence believe that the Commonwealth has failed in this, they ought to find the defendant not guilty.

Com
v
Wall
HUT

INSTRUCTION NO. 8

The Court 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 convictions, he will not be held criminally responsible for mistake as to actual danger, where other judicious men would have been mistaken, for, when a man attempts to injure another, it gives the injured man the right to make use of such means to prevent injury as the behavior and situation make necessary.

~~Hodges case, 89 Va. 272.~~

Done
at
St. Louis
Mo

The Court 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 convictions, he will not be held criminally responsible for mistake as to actual danger, where other judicious men would have been mistaken, for, when a man attempts to injure another, it gives the injured man the right to make use of such means to prevent injury as the behavior and situation make necessary.

Case
2
Walt
HNB

INSTRUCTION NO. 4

The Court instructs the jury that if there is any reasonable theory arising out of the evidence in this case upon which the jury can find the defendant not guilty of the crime charged against him in the indictment, then it is the duty of the jury to give the defendant the benefit of such theory and find a verdict of acquittal in his favor.

INSTRUCTION NO. 12

The Court instructs the jury that if there is any reasonable theory arising out of the evidence in this case upon which the jury can find the defendant not guilty of the crime charged against him in the indictment, then it is the duty of the jury to give the defendant the benefit of such theory and find a verdict of acquittal in his favor.

Case
No. 12
1912

LAW OFFICES
CURRY AND CARTER
STAUNTON, VA.

Row
Wall
HWB

n INSTRUCTION "M"

The Court instructs the jury that although they should believe from the evidence in this case that improper relations existed between the defendant and Nettie Williams, the Court, nevertheless, instructs the jury that that did not warrant him in assaulting or shooting the defendant, if they believe from a preponderance of the evidence that Turner did first assault and shoot the accused, when he found the defendant and Nettie Williams on his land and believed that he and Nettie Williams were associating together.

were associated together.

With me on his mind and believed that he and Messrs MILLIONS
stood the accused, when he found the defendant and Messrs
by consequence of the evidence that JAMES W. WILKINSON was
resisting or assisting the defendant, if they believe from a
testimony, therefore the jury that they are not relevant him to
or between the defendant and Messrs MILLIONS, the Court, there-
fore leave them the evidence in this case that JAMES W. WILKINSON exist-
-ing and therefore the jury that witness they should be-

THE COURT INSTRUCTIONS "A"

Commonwealth
v.
State

INSTRUCTION NO. 10

The Court instructs the jury that upon full consideration of all the evidence in this case, the burden rests on the Commonwealth to establish the guilt of the defendant as charged in the indictment, *beyond all reasonable doubt.*

Page
2
of
10

INSTRUCTION NO. 10

The Court instructs the jury that upon this considera-
tion of all the evidence in this case, the burden rests on
the Commonwealth to establish the guilt of the defendant as
charged in the indictment.

Handwritten signature or initials

INSTRUCTION "D"

The Court instructs the jury that if they believe from a preponderance of the evidence that Andrew Turner on the night of the shooting, when he found the accused, Sam Jackson and Nettie Williams at the fence, asked the question as to what was going on and that the accused replied "I don't know and don't give a damn" and that Turner said "You don't give a damn" and thereupon started to shoot at Ware, the fact that Ware was on the land of Turner and that he said "I don't give a damn" in anger, was no justification or excuse for Turner to attempt to shoot the accused, if he shot, and that if they further believe that the accused, because of the act of shooting at him by Turner, believed that he was in imminent danger of death or serious bodily harm, fired the fatal shot in defense of his person, then they should find the accused not guilty.

Cow
Ware
HWA

INSTRUCTION "D"

Q
A
Q
A

The Court instructs the jury that if they believe from a preponderance of the evidence that Andrew Turner on the night of the shooting, when he found the accused, Sam Jackson and Nettie Williams at the fence, asked the question as to what was going on and that the accused replied "I don't know and don't give a damn" and that Turner said "You don't give a damn" and thereupon started to shoot at them, the fact that there was on the land of Turner and that he said "I don't give a damn" in anger, was no justification or excuse for Turner to attempt to shoot the accused, if he shot, and that if they further believe that the accused, because of the act of shooting at him by Turner, believed that he was in imminent danger of death or serious bodily harm, fired the fatal shot in defense of his person, then they should find the accused not guilty.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Page
Kemper James, Sam
Jackson, Lizzye Hallingsworth, Ethel
Riddle, Nettie Williams, Howard Hensley,
Medford Heiston, Amos Campbell,
Walter Davis, Garfield Carter,
Geo. A. Lawson & J. S. Dofflemeyer

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,

at ~~10~~^{9:30} o'clock, a. m., on the *19th* day of *July* 19 *32*,

to testify and the truth to say in behalf of the Commonwealth against

Sam Waxe

who stands charged with and indicted for a felony misdemeanor.

And this *they* 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 *15th* day of *July* 19 *32* and in the *15th* year of the Commonwealth.

J. Robert Switzer, Clerk
Raymer

Executed July 16 1932, By delivering a true copy of the within summon to Kemper Turner, Sam Jackson, Lizzie Hollinworth, Ethel Riddle, Nettie Williams, Howard Hensley, Melford Heiston, Amos Campbell, Walter Davis, Garfield Carter, G.A. Lawson, and T.I. Dofflemyer each in person.

W. Deves Deputy for
C.R. Fawley, S.R.C.

Name of the Commonwealth of Virginia

To the Sheriff of Rockingham County, Virginia

Cam

Tom Ware

ROBERT ZWITNER, Clerk of our said Court, at the Court House of the County of Rockingham, Virginia, do hereby certify that the within copy of the summons is a true and correct copy of the original.

2861

61 July 19

Clerk

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon *Elliott Williams*
Garfield Carter, L. H. Bruce, Lizzie
Hollandworth, George Bryan, Dr. Schuler,
Joe Fry, Claude Barker, George Stambarger,
Amos Guss, Rev. Perry, Joe Beasley, Haver
Willis, Charles Strathairn, Rex Stephenson, &
Albert Falls

to appear before the Judge of the Circuit Court of Rockingham County, at the Court
House thereof, at ~~10~~^{9:30} o'clock, a. m., on the *19th* day of *July* 19*32*
to testify and the truth to say in behalf of the Defendant in the prosecution of the Common-
wealth, plaintiff, against

Tom Ware

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
15th day of *July* 19 *32*, and in the *17th* year of the Commonwealth.

J. Robert Switzer, Clerk.
By Margaret Bennett
d.c.

Executed July 16 1932, By delivering a true copy of the within summon to Evert Williams, Garfield Carter, L.H. Bruce, Lizzie Hollandworth, George Bryant, Dr Schuler, Joe Fry, Claud Baker, George Stoneberger, Amos Furr, Joe Beasley, Homer Willis, Chas Strother, Ras Stephson, and Albert Falls, each in person. Rev Perry not found in my bailwick,

W. Lucas Deputy for
C.R. Fawley, S.R.C.

Tom Ware

*ads
Com.*

1932

July 17

In the Name of the Commonwealth of Virginia: *Page*

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

You are hereby commanded to summon

*Flora Stamberger,
Mary Stamberger, Bessie Stamberger,
Francis Burns, Orvil Burns, Marshall
Stamberger, Francis Stamberger, and
Frank Lucas*

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,

at ~~10~~^{9:30} o'clock, a. m., on the *19th* day of *July* 19 *32*,

to testify and the truth to say in behalf of the Commonwealth against

Tom Ware

who stands charged with and indicted for a felony misdemeanor.

And this *they* 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 *15th* day of *July* 19*32*, and in the 15 *7th* year of the Commonwealth.

J. Robert Switzer, Clerk
Margie Brown

Executed July 18-32 by delivering a true copy
of the within summons to Anna Hinckley Mary
Northrup, Bebe Northrup, Oliver Burns,
Olav Burns, Mabel Northrup Jones
Northrup & Grandfather

each in person. W. E. Lucas 298 For
L. R. Francis S. R. 6

Case
w.
Tom Ware

1932
July 19

In the Name of the Commonwealth of Virginia:

To the Sheriff of ~~Rockingham~~ ^{Page} County, Greeting:

You are hereby commanded to summon.....

*Edrick
Ray Stoneberger*

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at ^{7:30} ~~10~~ o'clock, a. m., on the *10th* day of *August* 19 *32*,
to testify and the truth to say in behalf of the Commonwealth against

Tom Ware

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 *8th* day of *August* 19 *32*, and in the 15 *7th* year of the Commonwealth.)

J. Robert Switzer, Clerk
By McBrannin, D.C.

Executed by delivering a true
copy of the within instrument in
front of me before Elizabeth Stenderberger
in the County of Spotsylvania

Marie Phelan of County
Stafford
Stafford County, Virginia
Aug 1932

Commonwealth

vs

Tom Ware

Aug. 10, 1932

Ray Storerberger

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Pearl Stoneberger

Mabel Hilton + Strother Davis

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at ^{9:30} 10 o'clock, a. m., on the *15th* day of *August* 19 *32*,
to testify and the truth to say in behalf of the Commonwealth against

Tom Ware

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

And this *they* 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 *9th* day of *Aug.* 19 *32* and in the 15 *7th* year of the Commonwealth.

J. Robert Switzer, Clerk
By [Signature]

Commonwealth

vs

Tom Ware

Aug 10, 1932

Executed Aug 9-32 by delivering a true Copy of the
within Summons to Beal Stambager
in person Wade Hester Stratton
Medear & Far & Rowley etc

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Walter Heaston,
John Stonebarger, Jasper Davies,
J. J. Looker, John Looker, James
Looker, Charles Shirkie &
Robert Shirkie

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at ^{9:30} ~~10~~ o'clock, a. m., on the *10th* day of *Aug.* 19*32* to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth, plaintiff, against

Tom Ware

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 *9th* day of *Aug.* 19*32*, and in the *14⁵⁷*th year of the Commonwealth.

J. Robert Switzer, Clerk.

Tom Ware

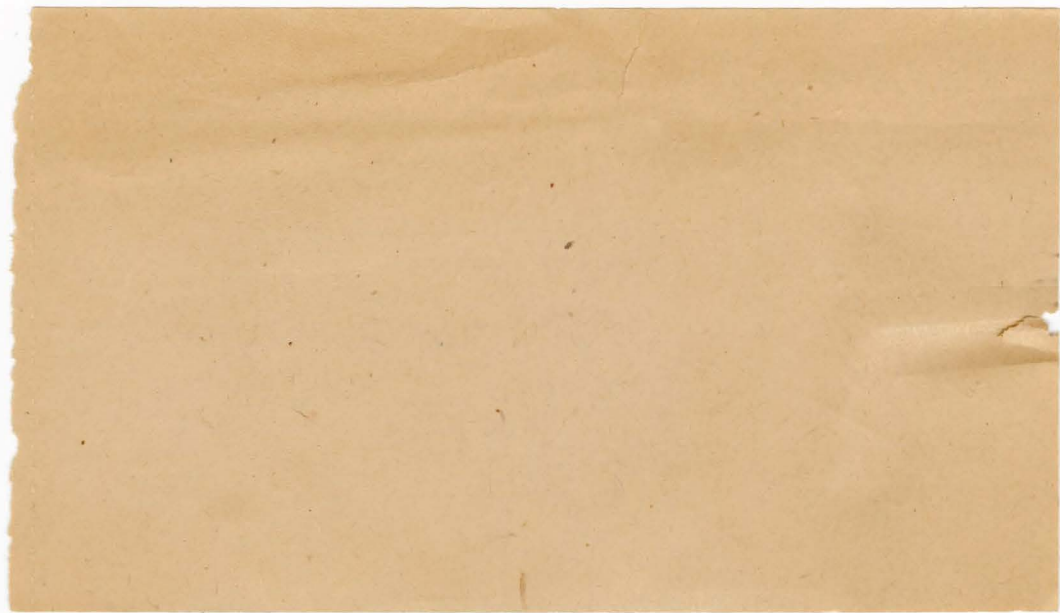
Commonwealth of Virginia
To the Sheriff of Rockingham County, Greeting:
ads
Com.

Recd'd Aug. 7-32 B.S. doeliving
a true copy of the within
sums to Walter Hester. John -
- ~~Sturtevant~~ J. J. Hester
John Hester. James Hester.
Thomas Hester. Robert Hester.
Meddewar & J. Hester
- vice

1932
Aug. 10

Miss Stornelinger informed
me Ellick was the Boy
the Court wants.

Jay had his summer



COMMONWEALTH :
v. : Charge to the Jury
TOM WARE :

Your charge is to inquire whether the accused is guilty of the felony as charged in the indictment or not guilty.

If you find him guilty of murder, as charged in the indictment, and that the same was committed with malice aforethought and was wilful, deliberate and premeditated, then you shall find him guilty of murder in the first degree and ascertain his punishment at death, or, in your discretion, by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him guilty of murder, as charged in the indictment, and the same was committed with malice aforethought, but was not wilful, deliberate and premeditated, then you shall find him guilty of murder in the second degree, and ascertain his punishment by confinement in the penitentiary for not less than five nor more than twenty years.

If you find him not guilty of murder in the first degree, or of murder in the second degree, but that he killed Andrew J. Turner without malice aforethought, actual or implied, upon a sudden heat, or reasonable provocation, or in mutual combat, you will find him guilty of voluntary manslaughter, and ascertain his punishment by confinement in the penitentiary for not less than one nor more than five years.

If you find him not guilty of murder in the first degree or of murder in the second degree, or of voluntary manslaughter, but guilty of involuntary manslaughter as charged in the indictment, you will say so and ascertain his punishment by confinement in the penitentiary for not less than one nor more than five years, or, in your discretion, assess a fine against him of not exceeding \$1,000.00 or by confinement in jail for not exceeding one year, or both.

If you find him not guilty, you will say so and no more.

com
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were
referred
HMS

deyer

INSTRUCTION NO. B

The Court instructs the jury that the fact that the defendant tried to make an escape under the circumstances shown by the evidence in this case raises ^{and creates} ~~no~~ presumption of guilt against him.

LAW OFFICES
CURRY AND CARTER
STAUNTON, VA.

*Copy
of
the
original
document*

copy

INSTRUCTION NO. 13

him.
The evidence in this case raises ^{and creates} no presumption of guilt against
defendant tried to make an escape under the circumstances shown by
The Court instructs the jury that the fact that the de-

Refused because *D. given by court*

*can
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wave
over*

INSTRUCTION NO. 74.

The Court instructs the jury that if they believe from the evidence in this case that the deceased, Andrew Turner, shot the defendant without justification, and if the jury further believe from the evidence that the defendant had reasonable grounds to believe and did believe from appearances that he was in actual and imminent danger of death or great bodily harm at the hands of the deceased, Turner, and that the defendant, so believing, shot said Turner and killed him, then the jury ought to find the defendant not guilty.

INSTRUCTION NO. 4

Reference to case of...

*can
be
done
with*

The Court instructs the jury that if they believe from the evidence in this case that the deceased, Andrew Turner, shot the defendant without justification, and if the jury further believe from the evidence that the defendant had reasonable grounds to believe and did believe from so nearness that he was in actual and imminent danger of death or great bodily harm at the hands of the deceased, Turner, and that the defendant, so believing, shot said Turner and killed him, then the jury ought to find the defendant not guilty.

Cour
Ware
Referred
11/11/44

Dept

INSTRUCTION NO. K

The Court instructs the jury that if, after considering all of the evidence in this case, they should entertain a reasonable doubt as to whether or not the defendant acted in self-defense as defined in another instruction, then they must find the defendant not guilty.

defendant not guilty.

defense as defined in another instruction* when they hear that the

jury should be to whether or not the defendant acted in self-

defense in this case, they should entertain a reason-

able doubt. It is the duty of the jury to consider

INSTRUCTION NO. 15

Handwritten notes in the bottom left corner, including the words "defendant", "jury", and "doubt".

Handwritten initials or a signature in the bottom center.

Comm
v
Ware
H-10-19

Refused Dept.

Instruction No. 17

The Court instructs the jury that all the evidence in this case offered by the Commonwealth to show or to tend to show that improper relations existed between the defendant and Nettie Williams is immaterial and should not be considered or given any weight by the jury.

Case
of
the
State
vs
K. Williams

Defendant
Draft

Instruction No. 12

The Court instructs the jury that all the evidence in this case offered by the Commonwealth to show or to tend to show that improper relations existed between the defendant and Nettie Williams is immaterial and should not be considered or given any weight by the jury.

LAW OFFICES
CURRY AND CARTER
STAUNTON, VA.

*Case
v /
Ware
1910
Refused*

modified & given as modified

Instruction No. 12

The Court instructs the jury that although they should believe from the evidence in this case that improper relations existed between the defendant and Nettie Williams, the Court, nevertheless, instructs the jury that this was no personal concern of the deceased and did not warrant him in assaulting or shooting the defendant when he found the defendant and Nettie Williams on his land and believed that he and Nettie Williams were associating together.

were associating together.
Williams on his land and believed that he and Nettie Williams
shooting the defendant when he found the defendant and Nettie
corn of the deceased and did not warrant him in assaulting or
nevertheless, instructs the jury that this was no personal con-
existed between the defendant and Nettie Williams, the Court,
lieve from the evidence in this case that improper relations
The Court instructs the jury that although they should be-

Instruction No. 10
Instruction No. 10

Page 5
10
11
12

Coun
v
Ware
Refused
1913

Substitute
Court order D

INSTRUCTION NO. 5

The Court instructs the jury that the fact that the defendant was standing on the land of the deceased, Turner, did not warrant Turner in shooting the defendant; nor did any words uttered by the defendant give Turner the right to assault or shoot the defendant.

INSTRUCTION NO. 2

Substitute
Case No. 2

Case
No. 2
Substitute

The Court instructs the jury that the fact that the defend-

ant was standing on the land of the deceased, Turner, did not
warrant Turner in shooting the defendant; nor did any words utter-
ed by the defendant give Turner the right to assault or shoot the
defendant.

LAW OFFICES
CURRY AND CARTER
STANTON, VA.

Com

&

Ware
HARRIS

Refused

Com

Instruction No. 5

The court instructs the jury that murder is distinguished by the law in Virginia as murder in the first degree and murder in the second degree.

Allen

Instruction No. 2

Com
or
or
Referred

The court instructs the jury that murder is distinguished
by the law in Virginia as murder in the first degree and murder
in the second degree.

Open
2
Ward
HWA

Com

Refused

Instruction No. 14.

The Court instructs the jury that where the plea of self defense is relied upon in a trial for murder, the law is that the plea of self defense is not available to a party unless he was without fault in bringing about the difficulty, and, in any case the necessity relied upon to excuse the killing must not arise out of the prisoner's own misconduct.

out of the prisoner's own misconduct.

case the necessity relied upon to excuse the killing must not arise
was without fault in principle about the difficulty; and, in any
the plea of self defense is not available to a party unless he
defense is relied upon in a trial for murder, the law is that

The Court instructs the jury that where the plea of self

Instruction No. 11.

2/11
8/11
and
Refined

Green

conv
v
Ware
1401
Refused

Reple

INSTRUCTION NO. 1

The Court instructs the jury that if they believe that the evidence in this case shows that the deceased had feeling against the defendant because of his supposed association with Nettie Williams, and if they further believe from the ~~the~~ evidence that the deceased told his friend, Tom Looker, that he (the deceased) intended to shoot the defendant if the deceased ever found the defendant on the deceased's premises with Nettie Williams; then the Court tells the jury that the jury should consider this evidence together with all the other evidence in the case and to give this evidence such weight as they deem fair and just, when they have considered it together with all the other evidence in the case.

12/1/21

Wm
C
H
P
P

INSTRUCTION NO. 11

The Court instructs the jury that if they believe that the evidence in this case shows that the deceased had feeling against the defendant because of his supposed association with Nettie Williams, and if they further believe from the evidence that the deceased told his friend, Tom Locker, that he (the deceased) intended to shoot the defendant if the deceased ever found the defendant on the deceased's premises with Nettie Williams; then the Court tells the jury that the jury should consider this evidence together with all the other evidence in the case and to give this evidence such weight as they deem fair and just, when they have considered it together with all the other evidence in the case.

Cover
v.
Ware
H.W.B.
Refused

crossed by H as given by C. W. B.

INSTRUCTION NO. H

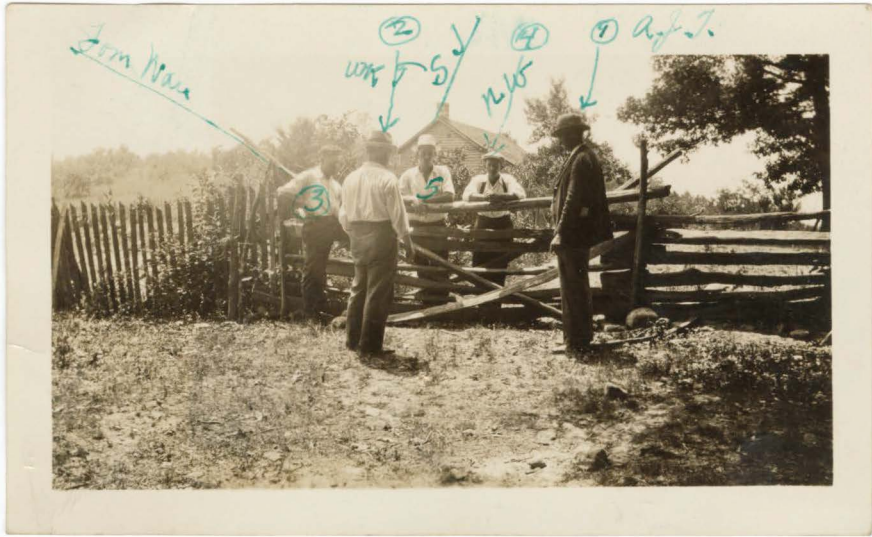
The Court instructs the jury that if they believe from the evidence in this case that the defendant, Ware, was standing at the line fence between the lands of the deceased and Lizzie Hollands worth and on the Turner side of the fence and was talking to Sam Jackson who was on the opposite side of the fence, on the night of Saturday, June 4th, 1932; and that the deceased, Andrew Turner, and his brother, Kemper Turner came up to where the defendant and Jackson were talking; and that Andrew Turner, the deceased, asked "What is going on in the Hollandsworth house" and that Sam Jackson said there was nothing going on that he knew of and that the deceased, Andrew Turner then said to the defendant "Who is in there?" (referring to the Hollandsworth house) and that the defendant replied that he did not know and did not care a damn; and that the deceased Turner then said "You say you don't care a damn"? and drew his pistol and shot the defendant in the arm and then shot him in the body and that the defendant, believing and having reasonable grounds to believe that he was in actual and imminent danger of death or great bodily harm at the hands of the deceased, drew his gun and shot Turner, then the jury ought to find the defendant not guilty.

Crossed by the defendant's counsel

*Can
be
used
in
evidence*

44 INSTRUCTION NO.

The Court instructs the jury that if they believe from the evidence in this case that the defendant, Ware, was standing at the line fence between the lands of the deceased and Liza Holland and on the Turner side of the fence and was talking to Sam Jackson who was on the opposite side of the fence, on the night of Saturday, June 4th, 1932; and that the deceased, Andrew Turner, and his brother, Kemper Turner came up to where the defendant and Jackson were talking; and that Andrew Turner, the deceased, asked "What is going on in the Hollandsworth house" and that Sam Jackson said there was nothing going on that he knew of and that the deceased, Andrew Turner then said to the defendant "Who is in there?" (referring to the Hollandsworth house) and that the defendant replied that he did not know and did not care a damn; and that the deceased Turner then said "You say you don't care a damn?" and drew his pistol and shot the defendant in the arm and then shot him in the body and that the defendant, believing and having reasonable grounds to believe that he was in actual and imminent danger of death or great bodily harm at the hands of the deceased, drew his gun and shot Turner, then the jury ought to find the defendant not guilty.



Tom Wase

②
Wase

③

④

⑤

N.W.

⑦

A. J.

Rx K W

AMH

8/10/32

58



Eq 281

JHMS

8/10/52

53

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 June term, 1932, upon their oaths present that Tom Ware, on the 4th day of June, 1932, in the said county, feloniously did kill and murder one Andrew Turner, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of Kemper Turner, Sam Jackson, Nettie Williams, and C. R. Fawley, witnesses sworn in Court and sent before the grand jury to give evidence.

The jury find the accused Tom
Ware guilty of murder in the second
degree as charged in the indictment
and pay him punishment at ten years
in the state penitentiary

Andrews
Foreman

Murder

Commonwealth

vs) Indictment

Tom Ware

Felony

June term, 1932.

A True Bill:

J. N. Swank
Foreman

Witnesses:

Kemper Turner ✓
Sam Jackson
Nettie Williams
C. R. Fawley ✓

vs

D. W. Earman
Commonwealth's Attorney

We, the jury find the defendant,
Tom Ward, guilty of murder
in the second degree, and
fix his punishment by con-
finement in the penitentiary
for a period of Ten (10) years

Andrew D. Wolf
Foreman

Law & evidence & verdict
evidence and that jury were
misinstructed - reversal

