

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Evelyn Joseph

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *15th* day of *October* 19 *34*,
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY.....

Walter Berry

who stands charged with a felony misdemeanor.

And this you 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 *October* 19 *34*, and in the *159th* year of the Commonwealth.

Robert Switzer, Clerk

Evelyn Joseph

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Evelyn Joseph

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a.m., on the 10th day of October, 1904,
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY

Robert Switzer

who stands charged with a felony misdemeanor.

And this you shall not do until you are paid the sum of \$100. And bear this and there this Writ.

Witness, I, ROBERT SWITZER, Clerk of our said Court, at the Court House, the 10th

day of October, 1904, and in the 12th year of the Commonwealth.

Clerk

Robert Switzer

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Mrs. John Lam

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *15th* day of *October* 19 *34*,
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY.....

Walter Berry

who stands charged with a felony misdemeanor.

And this you 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 *October* 19 *34*, and in the *15th* year of the Commonwealth.

Robert Switzer, Clerk

Mrs. John Lam

Commonwealth of Virginia:

To the Sheriff of Rockingham County, County.

You are hereby commanded to summon

Mrs. John Lam

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

at 9:30 o'clock, a.m., on the 12th day of October, 1934.

to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY

Walter B. Bury

who stands charged with a felony misdemeanor.

And this you shall not omit under penalty of \$100. And date this and these this 12th

Witness, J. ROBERT SUTTER, Clerk of our said Court, at the Court House, the

day of October, 1934, and in the 12th year of the Commonwealth.

Robert Sutter, Clerk

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Evelyn Joseph & Mrs John L. Lamm

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *15th* day of *October* 19 *34*,
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY.....

Walter Berry

who stands charged with a felony misdemeanor.

And this you 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 *October* 19 *34*, and in the *159th* year of the Commonwealth.

J. Robert Switzer, Clerk

Commonwealth

vs.

Walter Berry

Evelyn Joseph
Mrs. John Lam

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon *Edgar Russell, George Baynes, Casper Branner, John Coffman, Shilue Powell, Margaret Davis, Charlie Galt, Charlie Harmon, J. B. Burkholder, Lee Pitt, Harry Hattisale, and Lee Coffman & Sailor Reff*

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 9:30 o'clock, a. m., on the *12th* day of *Nov.* 19*34* to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against

Walter Berry

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 *7th* day of *Nov.* 19*34*, and in the *159th* year of the Commonwealth.

J. Robert Switzer, Clerk

Executed on the 8 Day of Nov, 1934 by delivering a true copy of the within surmon to Edgar Pursell, George Boyers, Casper Branner, John Coffman, Shine Powell, Margaret Davis, Charlie Filtz, Charlie Harmon, Iny Burkholder, Lee Pitt, Harry Heatwole, Mrs Lee Cpffman Saylor Neff. each in person.

S.F. Macman Deputy for C.R. Fawley S.R.C.

Walter Berry

ads.

Com.

C.R. Winfield,
p.d.

1934

Nov. 12

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Grace Calhoun

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *17th* day of *Nov.* 19 *34*,

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

Walter Berry

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

And this *she* 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 *Nov.* 19 *34*, and in the *15th* year of the Commonwealth,

J. Robert Switzer, Clerk

Nov 9 - 1934

executed by delivering a true copy of the

within Summons to Grace Callahan

— in person.

R. F. Newman Deputy for
C. R. Pawley M.R.C.

Corn.

Walter Berry

1934
Nov. 12

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

W. F. Willis

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
feathersmith at 9:30 o'clock, a. m., on the *17th* day of *Nov.* 19 *34* to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against.....

Walter Berry

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 *12th*
day of *Nov.* 19 *34*, and in the *159th* year of the Commonwealth.

J. Robert Switzer, Clerk

Apr 12 - 1934 by delivery

executed May 12 by delivering a true Copy of the

V-8 Pills

Dr C R Farveloy A.M.C

Dr C R Fawcett R.N.R.

Nov. 12

1934

1037

Walter Beatty

ad

Com.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon *D. F. L. Byers, C. R. Gaudin,*
J. H. Deice, John Logan, Clarence Luake, Ella Gries
Black, Edna Gries, Everett Gries, Arthur Rasser
David L. Gries, Dennis Rasser, K. M. Higgs, Dennis
Nelson, Ruth Lam, Abe Hay, E. H. Miller,
Clint Ray, Joe Nielsen

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *12th* day of *Nov.* 19 *34*,

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

Walter Berry

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 *8th*
day of *Nov* 19 *34*, and in the 15 *9th* year of the Commonwealth.

Robert Switzer, Clerk

Executed on the 9 Day of Nov, 1934 by delivering a true copy of the within summon to Dr F.L.Byers, C.R.Fawley, J.H.Boyce, John Logan, Clarence Leake, Ella Fries Black, Edna Fries, Everett Fries, Authur Rosser, David L.Fries, Dennis Rosser, K.M.Giggs, Dennis Clint Ray, and Joe Neilson each in person.

S.F. Newman Deputy for C.R.Fawley, S.R.C.

Done

Walter Bury

1934

Nov. 12

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

J. J. Kingston and

J. J. Kingston

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *12th* day of *Nov* 19*34* to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against

Martin Beary

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 *12th*
day of *Nov*. 19*34*, and in the *159th* year of the Commonwealth.

J. Robert Switzer, Clerk

executed Mar 12 - 1934

by delivering a true Copy of the

within Summons to

cod

in person.

*J. Knigobert J. Knigobert
AP - Newman elected
for C. R. Rawley R. R. S.*

Walter Berry

add.

Com).

1934
Nov. 12

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon *Adlene Lamm, Glen Smith,*

Dr. H. L. Byers, C. R. Frawley, J. H. Baice,

Clarence Leake & John Logan

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *15th* day of *Oct.* 19 *34*

to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY *n.*

Walter Berry

who stands charged with a felony misdemeanor.

And this you 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 *12th*
day of *Oct.* 19 *34*, and in the *159th* year of the Commonwealth.

J. Robert Switzer, Clerk

Executed Oct 12-1934 by delivering a true copy

of the within summon to Arline Lamm

Klem Smith & F. L. Byers, C.R.

Fawley, J. B. Boyce, Clarence Lewis

John Logan

each in person.

St. M. Murnan
deputy for C.R. Fawley & B.L.

Cam.

W.

Walter Berry

1934

Oct. 15

The Commonwealth of Virginia, } To-wit:
Rockingham County,

To the Sheriff of said County:

Whereas, D. Wampler Egan of said County, has this day
made complaint and information on oath before me, Hamilton Haas, Trial Justice
of the said County, that Walter Berry T. J. or J. P.

of the said County, on the 30th day of Sep., 1934, in the said County, did
unlawfully and feloniously and with
malice aforethought shoot, kill, and
murder one Gleason Calhoun,
against the peace and dignity of
the Commonwealth of Virginia

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring
before the Trial Justice of the said County, the body of the said

Walter Berry
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, this 3 day of Oct., 1934.

Hamilton Haas
T. J. or J. P.

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

I, _____, in and for the County of Rockingham, State of Virginia, do hereby certify that _____ (T. J. or J. P. or Bail Commissioner) _____ and _____

_____ as his suret _____, have this day acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ dollars (\$) as to which they severally waived their exemption, to be made and levied of their goods and chattels, yet upon this condition: That the said _____ shall appear before the Trial Justice Court of Rockingham County at _____, on the _____ day of _____, 193 _____, at _____

o'clock A. M., and not depart hence without leave of said Court, 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 said charge, and then and there answer the Commonwealth of Virginia concerning the within charge until the same is finally disposed of, then this recognizance shall be null and void; otherwise to remain in full force and effect.

Given under my hand this, _____ day of _____, 193 _____.

T. J. or J. P. or Bail Commissioner

Trial Justice Court

Criminal Docket No. _____

Commonwealth

vs.

Arrest Warrant

Walter Boney

Executed the within warrant by arresting and delivering the body of

Walter Boney
of Rockingham County
before _____

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

of *October*, 193*4*.

C. B. Sauter D.R.C.

JUDGMENT

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

Fine	- - - - -	\$.....
Issuing Justice's Fee	- - - - -	\$.....
Clerk's Fee	- - - - -	\$.....
Trial Justice Fee	- - - - -	\$.....
Arrest	- - - - -	\$.....
Summoning Witness	- - - - -	\$.....
Witness	- - - - -	\$.....
Attendance & Mileage	- - - - -	\$.....
Commonwealth's Attorney	- - - - -	\$.....
Jail Fees	- - - - -	\$.....
Total	- - - - -	\$.....

Trial Justice

Comm
at
Berry
11/10/19

11

The jury are instructed that a mortal wound given with a deadly weapon in the previous possession of the slayer *without provocation or even on slight provocation* is prima facie, wilfull, deliberate and premeditated killing, and thrown upon the defendant the necessity of proving extenuating circumstances; and that before the accused can rely upon self defense there must have been some act by the deceased meaning present peril or something in the attending circumstances indicative of the present purpose on the part of the deceased to make the apprehended attack. The act so done or the circumstances thus existing, must have been of such a character as to afford the accused reasonable grounds for believing that deceased intended to do him some serious bodily harm and that there was imminent danger of carrying such design into immediate execution.

Case
No. 100
1000

The jury are instructed that a mortal wound

given with a deadly weapon in the previous possession
of the slayer, is prima facie, willful, deliberate and
premeditated killing, and throws upon the defendant the
necessity of proving extenuating circumstances; and that
before the accused can rely upon self defense there must
have been some act by the deceased meaning present peril
or something in the attending circumstances indicative
of the present purpose on the part of the deceased to
make the apprehended attack. The act done or the
circumstances thus existing, must have been of such a
character as to afford the accused reasonable grounds
for believing that deceased intended to do him some
serious bodily harm and that there was imminent danger
of carrying such design into immediate execution.

Refused

Cow
a
Benny

Refused

Exception on ground that instruction correctly
propounds the law

INSTRUCTION A.

The court instructs the jury:

1- That the law defines and treats as Murder the voluntary killing of a person, of malice prepense, or aforethought. No conviction, or verdict, of guilty of murder could properly be found or sustained unless the evidence established to the mind of the jury, beyond all reasonable doubt, that the killing was done both voluntarily and of malice aforethought;

2- It is expressly provided by the statute law of Virginia that " Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit arson, rape, robbery, or burglary, is murder of the first degree. All other murder is murder of the second degree."

The burden of proof of malice in order to raise the offense to murder is on the Commonwealth. When the fact of killing is proved by satisfactory evidence and there are no circumstances disclosed tending to show justification or excuse there is nothing to rebut the natural presumption of malice, and the burden of rebuttal of such presumption of malice would be cast on the accused. But proof of a voluntary killing, when there is excuse or justification apparent on the proof offered in support of the prosecution, or arising out of the circumstances attending the homicide, would leave the accused entitled to the benefit of the presumption of law that he acted without malice, and would cause the burden of proof to rest on the Commonwealth to establish to the mind of the jury beyond all reasonable doubt, that the accused willfully and maliciously did the shooting which caused the death.

A

Comm

v

Berry

Refused

Refused

4- B- Excepted to on ground that instruction
correctly performs the law

INSTRUCTION A.

The court instructs the jury:

1- That the law defines and treats as Murder the voluntary killing of a person, of malice prepense, or aforethought. No conviction, or verdict, of guilty of murder could properly be found or sustained unless the evidence established to the mind of the jury, beyond all reasonable doubt, that the killing was done both voluntarily and of malice aforethought;

2- It is expressly provided by the statute law of Virginia that " Murder by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit arson, rape, robbery, or burglary, is murder of the first degree. All other murder is murder of the second degree."

The burden of proof of malice in order to raise the offense to murder is on the Commonwealth. When the fact of killing is proved by satisfactory evidence and there are no circumstances disclosed tending to show justification or excuse there is nothing to rebut the natural presumption of malice, and the burden of rebuttal of such presumption of malice would be cast on the accused. But proof of a voluntary killing when there is excuse or justification apparent on the proof offered in support of the prosecution, or arising out of the circumstances attending the homicide, would leave the accused entitled to the benefit of the presumption of law that he acted without malice, and would cause the burden of proof to rest on the Commonwealth to establish to the mind of the jury beyond all reasonable doubt, that the accused willfully and maliciously did the shooting which caused the death.

Washburn's Manual of Criminal Law, p. 74, 79.
Horton's Case, 99 Va. 848, 851 etc.
Commonwealth vs. Thompson, 131 Va. 847, 109 S.E. 447. *pp. 454*
Hodge's Case, 89 Va. 270. 269 etc.
Stapleton vs. Commonwealth, 123 Va. 825, 829,
96 S. E. 801.

a

Cow

Berry

Refused

~~Refused~~ - Refused - Exception
1847

The Court instructs the jury if they believe from the evidence that the deceased bore the general reputation of being a man of a quarrelsome and combative disposition, and such general reputation was known to the accused, then ~~the jury~~ if the jury believe that a prima facie case of self defence has been made out by the accused, then the jury have the right to ~~take~~ consider this evidence of general reputation, along with all the other facts & circumstances in determining whether the accused acted in self defence -

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA.

COMMONWEALTH

v.

Charge to the Jury

WALTER BERRY

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 willful, 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, and was not willful, 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 Gleaves Calhoun without malice aforethought, actual or implied, upon a sudden heat, on 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, 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.

If you find him not guilty, you will say so and no more.
one year, or both.

not exceeding \$1,000.00; or by confinement in jail for not exceeding
than five years, or, in your discretion, assess a fine against him or
sent by confinement in the penitentiary for not less than one nor more
of involuntary manslaughter. You will say so and ascertain his punish-
of murder in the second degree, or of voluntary manslaughter, but guilty
years.

If you find him not guilty of murder in the first degree or
guilty of voluntary manslaughter, and ascertain his punishment by con-
on reasonable provocation, or in mutual combat, you will find him
without malice aforethought, actual or implied, upon a sudden heat,
or of murder in the second degree, but that he killed Gleaves Calhoun
If you find him not guilty of murder in the first degree
than twenty years.

by confinement in the penitentiary for not less than five nor more
guilty of murder in the second degree, and ascertain his punishment
was not willful, deliberate and premeditated, then you shall find him
disent, and the same was committed with malice aforethought, and
tentary for life, or for any term not less than twenty years.

Commonwealth

v.

Walter Berry

Charge to the Jury

If you find him guilty of murder, as charged in the in-
ment at death, or, in your discretion, by confinement in the peni-
him guilty of murder in the first degree and ascertain his punish-
and was willful, deliberate and premeditated, then you shall find
disent, and that he same was committed with malice aforethought
If you find him guilty of murder, as charged in the in-
disent, as charged in the indictment, or not guilty.
Your charge is to inquire whether the accused is guilty

WALTER BERRY

v.

Charge to the Jury

COMMONWEALTH

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA.

Copy
of
Berry
H. 1003

Instruction No ^B....

The Court instructs the Jury that Walter Berry is presumed to be innocent until his guilt is established by the Commonwealth beyond all reasonable doubt. This burden of proof resting upon the Commonwealth never shifts, and this presumption of innocence goes with the accused throughout his trial and applies at every stage thereof. If the Jury entertain a reasonable doubt as to any fact necessary to establish the guilt of the accused, then, under the law, the accused is entitled to the benefit of the doubt, and the Jury must find him not guilty.

~~125 Va 736; 133 Va 529.~~

Instruction No. 1

The Court instructs the jury that Walter Berry is presumed to be innocent until his guilt is established by the Commonwealth beyond all reasonable doubt. This burden of proof rests upon the Commonwealth never shifts, and this presumption of innocence goes with the accused throughout his trial and applies at every stage thereof. If the jury entertain a reasonable doubt as to any fact necessary to establish the guilt of the accused, then, under the law, the accused is entitled to the benefit of the doubt, and the jury must find him not guilty.

INSTRUCTIONS TO THE JURY

Comm

v

Berry

Refused. C

11/10/10

Instruction No C----

The Court further instructs the Jury that the fact
the accused may have been drinking did not deprive him
of the right of self defence.

Com
w
Berry
Mrs

do

The Court instructs the Jury if they believe from the evidence that Walter Berry was without fault in bringing on the difficulty with the deceased, and if they likewise believe that Berry, from the circumstances as they appeared to him, reasonably apprehended that Calhoun would do him bodily harm, and that he, Calhoun, was in the act of making an assault upon him, then in such circumstances Berry had the right to repel such assault, or attempted assault, by all the force he deemed necessary, the Court telling the Jury that Berry was not compelled to retreat, but might in turn become the assailant, inflicting bodily wounds until his person ~~was~~ out of danger.

Com
v
Berry
11/11/11

INSTRUCTION 8.

The court instructs the jury that if they, upon all the evidence considered as a whole, have any reasonable doubt that the killing was done without malicious motives they should not find a verdict of guilty of murder;

If the jury should be satisfied from the evidence, beyond all reasonable doubt, that the act of the accused in shooting Gleaves Calhoun, decd., was an unlawful act, but was not done maliciously, they would be justifiable in finding a verdict of manslaughter. And on the other hand, if the jury should believe from the preponderance of the evidence that the accused was acting in self defense they should find that the killing was justifiable, and should acquit the accused of any crime.

Conn
v
Berry
1873

INSTRUCTION 7.

The court further instructs the jury that if they believe from the evidence that Gleaves Calhoun did any overt act indicating an intention to kill or do serious bodily injury to the defendant, or that there were circumstances brought about by him of such a character as to afford the accused a reasonable ground for believing that the said Calhoun designed to kill him or to inflict great bodily harm upon him, and that there was imminent danger that Calhoun would carry such design into immediate execution, then under such circumstances the killing would be excusable; although it may have turned out afterward that the appearances were deceptive and there was no design on the part of Calhoun to kill or injure the accused, or to do him great personal injury, and the jury should acquit the accused.

7

Cow
v
Berry
Hurt

INSTRUCTION NO. 41

The Court instructs the jury if they entertain a reasonable doubt as to whether the accused is guilty of murder in the first degree or of murder in the second degree it is their duty to give the accused the benefit of the doubt and find him guilty of murder in the second degree; furthermore, if the jury entertain a reasonable doubt as to whether the accused is guilty of murder in the second degree ~~and~~^{or} voluntary manslaughter, then it is their duty to solve the doubt in favor of the accused and find him guilty of voluntary manslaughter.

INSTRUCTION NO. 11

The Court instructs the jury if they entertain a reasonable doubt as to whether the accused is guilty of murder in the first degree or of murder in the second degree it is their duty to give the accused the benefit of the doubt and find him guilty of murder in the second degree; furthermore, if the jury entertain a reasonable doubt as to whether the accused is guilty of murder in the second degree or of voluntary manslaughter, then it is their duty to advise the doubt in favor of the accused and find him guilty of voluntary manslaughter.

Com
v

Berry
H. H. B.

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

Berry
KMB

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
Berry
HUBB

INSTRUCTION NO. 3

The Court instructs the jury that every 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 of proof is upon the prisoner.

Com
v
Berry
HUBS

INSTRUCTION NO. 4

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, ^{and} The Court ^{tells} ~~instructs~~ the jury that murder by poison, lying in wait, imprisonment, starving or any wilful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery, or burglary, is murder of the first degree. All other murder is murder of the second degree.

Com
o
Berry
HUB

INSTRUCTION NO. 5

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.

Com
v
Berry
Hurt

INSTRUCTION NO. 6

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.

Com
v
Berry
Hurt

INSTRUCTION NO. 7.

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.

Come
d
Berry
HWS

INSTRUCTION NO. 8.

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.

com
v
Berry
Hilly

INSTRUCTION NO. 9.

The Court tells the jury that ^{mere} words, howsoever grievous,
cannot justify taking life, nor will they reduce the grade of
homicide below murder or excuse the same.

com
a
Barry
HWA

INSTRUCTION NO. 10

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 is not bound to regard the weight of the evidence as 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.

Cover
v
Berry
Stuart-

INSTRUCTION 12.

The court instructs the jury that where death ensues on a sudden provocation or upon a sudden quarrel without malice prepense, the killing is manslaughter, and, in order to reduce the killing to self defense, the prisoner must prove two things: First, that before the mortal shot was fired he had declined any combat and had retreated as far as he could with safety, or was in such position that it was not practicable to make retreat; and, Second, that he killed his adversary through mere necessity .

INSTRUCTION No. 1

The court instructed the jury that where death ensued on a sudden provocation or upon a sudden quarrel, without malice premeditated, the killing is manslaughter, and, in order to reduce the killing to self-defense, the prisoner must prove two things: First, that before the mortal shot was fired he had declined any combat and had retreated as far as he could with safety, or was in such position that it was not practicable to make retreat; and, second, that he killed his adversary through mere necessity.

Given & accepted by accused
HWT

INSTRUCTION 11.

The court instructs the jury that where death ensues on a sudden provocation or upon a sudden quarrel without malice prepense, the killing is manslaughter, and, in order to reduce the killing to self defense, the prisoner must prove two things: First, that before the mortal shot was fired he had declined any combat and had retreated as far as he could with safety, or was in such position that it was not practicable to make retreat; and, Second, that he killed his adversary through mere necessity.

OCT
1934

1934

DEC

1934

#1227

COMMONWEALTH

V.) Felony (homicide)

WALTER BERRY

fail
v.g.
Nov 12

5
530

Jackson

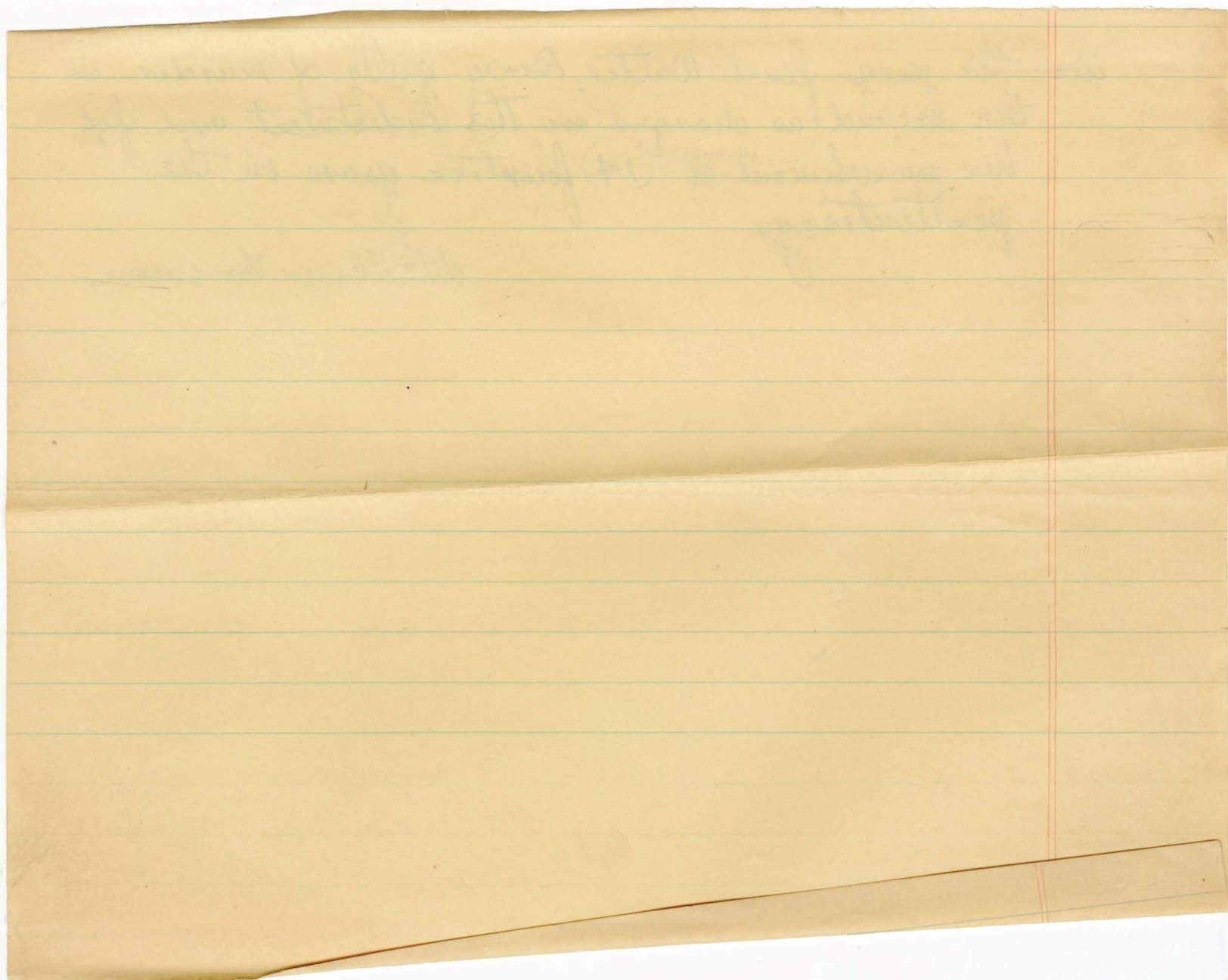
1. Baugher
- 3 J. A. Lamm
- 4 M. G. Penman
- 5 Roger Lamm
- 6 Glen Messick
- 7 A. A. Shoenaker
- 8 H. B. Allen
- 9 E. L. Harper
- 10 Ray L. Clark
- 11 L. L. Leard
- 12 Harry E. Krueger

Shuff Cost
over 130
snow mess up 350
" " 950
dirt Jony 100
dirt Jke 50
1650

Committed Oct. 2 -
Trid prior 12 -
Audit 42 days

We the jury find Walter Berry guilty of murder in
the second as charged in the indictment and fix
his punishment at (14) fourteen years in the
penitentiary

W. Allen Foreman



COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, To-wit:

In the Circuit Court of said County:

Grand
The [^]jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the said Court at its October Term, 1934, upon their oaths do present, that Walter Berry, on or about September 30, 1934, in said County, feloniously did kill and murder one Gleaves Calhoun, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of Arlene Lam, Glenn Smith, Dr. F. L. Byers, C. R. Fawley, J. H. Boice, Clarence Leake and John Logan, witnesses sworn in Court and sent before the grand jury to give evidence.

We the jury find the deceased Walter
Berry guilty of murder in the second
degree as charged in the indictment
and yet not premeditated by conspiracy
in the penitentiary for the term of
fourteen years.

Walter Berry - Foreman

Homicide Felony

COMMONWEALTH

V. Indictment

WALTER BERRY

October Term 1934

True

A True Bill

J. N. Smith
Foreman.

Witnesses:

Arlene Lam ✓
Glenn Smith
Dr. F. L. Byers
C. R. Fawley
J. H. Boice
Clarence Leake
John Logan

C. R. Fawley ✓

D. W. Earman,
Commonwealth's Atty.

This 12 day of
Nov. 1934

5/529

It appearing that there are not a
sufficient number of jurors of the regular
panel ~~present~~ free from objection, present
to try the case of Commonwealth vs
Walter Berry, it is ordered that the following
named persons selected from the
regular jury list as provided by law
be summoned to appear forthwith and
serve as jurors in the trial of said case ^{if selected,} viz:

W. B. Berman - Judge

11/12/34



Prisoners Report of Rockingham County Jail

Name Walter Berry Month of 1934
Date Committed Oct. 2-
Male yes Female Age 21 Race N Single yes Married Divorced
Place of Birth Harrisonburg Foreign Born Time in U. S. years months
Physical condition Good Is person a drunkard? or drug victim?
Can read? yes write? yes Occupation Labor Offence Committed Murder of
City Ordinance State Held for Grand Jury George Calhoun
Held for trial Sentence years 14 1/2 months
Fine Costs Time in jail Held for penitentiary yes
Held as insane Held for other authorities
Behavior Date of discharge

DESCRIPTION OF PRISONER

Height 5-11 Weight 124 # color of eyes Brown Color of hair Light Brown
Teeth marks Hand marks
Arm marks Face marks
Shoulder marks Back marks
Thigh Marks Knee marks
Calf of leg marks Foot marks
Fingers off Mole marks
Neck marks Breast marks
Left arm marks Right arm marks
Left leg marks Right leg marks
Fine after prisoner at jail; Amount to State \$ Amount to City \$

..... Deputy and Jailor.

..... Sheriff.

