DEC -1933

COMMONWEALTH

V. ) Felony (fa) #/

DENNIS VIA and J. L. KELLEY

1 16 H- & Blose 2 & f. Hay 3 Wraeter M. Life 4 M.b. Engly 5 9. 8. Filler 6 N. H- Keesell 7 Jus & Helfest 9 J. P. Bennett 10 M. C. Meduar 11 6 & Heeffuse 12. J- N - Lewn

In the Name of the Commonwealth of Virginia:
To the Sheriff of Rockingham County, Greeting:
You are hereby commanded to summon Jarry Craun, Robert
10.000,4-01
Shifflett, Hanner Kunnedy, Jack Kennedy
Isaac Gooden Claude Roach, Prentis
Via & Schyler Ralston
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 17 th day of 19 3/to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against
Dennis Via
V. 18 - 3 - Ala 3 - 2
who stands charged with and indicted for a felony misdemeanor.
And this 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
day of year of the Commonwealth.
I Robert Suretyn, Clerk

FORM NO. 5

THE SERVICE PRESS, HARRISONBURG, VA.

Dennis Via Circuit Court of Rockingham County, at the Select House thereof, shill not omit noder penalty of \$100. And have then and a true copy

In the Name of the Commonwealth of Virginia:  To the Sheriff of Rockingham County, Greeting:
You are hereby commanded to summon
alea Herring - Mrs. alea Herring
Mrs. Laura Painer Isaac Goodwin
+ Dennis Via
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 day of day of 19 3 to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against
A.A.
J. J. Nelley
who stands charged with and indicted for a felony misdemeanor.
And this
there this Writ.
Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the J
day of January 1934, and in the wear of the Commonwealth.
THE SERVICE PRESS, HARRISONBURG, VA. FORM NO. 5

Mrs. alec Herring

Mrs. Laura Rainer - Port Rqube

Isaac Goodwin Dennis Via

In the Name of the Commonwealth of Virginia:  To the Sheriff of Rockingham County, Greeting:
You are hereby commanded to summon John Henry Smith
C. R. Frauly, S. Fr. Mewman, Lingie
Smith & Lean Smith, Dr. & G. Jauner
Habart Garman + Dr. Shelton
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 Judge of Law of
to testify and the truth to say in behalf of the Commonwealth against  Sunsis Via × J. L. Kelly
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
day of Jan. 1934, and in the 158 the year of the Commonwealth. Clerk

Com	
mmonwealth of Virginia &	
J.L. Kelley	O. R. Franky
Econ Smith, Dr.	
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	Note this Test.
CEPR, Clerk of our said Court, at the Court Hone, and in the 150 year of the Consessed of t	
Jan. 17	

0 P 1/10		Month of Jan	17 1913 4
Name L / Celler		Date committed	
Male Age Age	3. Race	Single Married	Divorced
Place of Birth Time Is If F	oreign Born	Time in U. S.	years months
Physical condition			
Can read? write?Occ	upation	Offence Committed S.	Duy Durch he
City Ordinance			
Held for trial	Sentence	years	months
Fine Costs	ime in jail	Held for peniter	ntiary
Held as insane	Held for o	ther authorities	
Behavior 700		Date of discharge	
DES	CRIPTION OF	PRISONER	
Height 5 - Weight / Weight /	S. color of	eyes Brown Color	of hair Brun
Teeth marks	Hand	1 marks	
Arm marks			
Shoulder marks	Back	marks	
Thigh marks	Knee	e marks	
Calf of leg marks	Foot	marks	
Fingers off	Mole	marks	
Neck marks S.J.	Brea	st marks	
Left arm marks	Righ	t arm marks	
Left leg marks	Righ	t leg marks	
Fine after prisoner at jail; Amount to	State \$	Amount to City \$	·
Fine after prisoner at jail; Amount to	DEC 6 A	1-1933	Deputy and Jailor
uss authord	" /	1105	Sheriff.
1 11 1 111			

						Held to means Held for other authorhives	TESCHIPTION OF P	Teeth marks. Band marks	Arm marks											
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Month of Jane	19 3 0
Name Date committed	
Male Remale Age 2 O. Race Single Married	Divorced
Place of Birth M. Refuelli Foreign Born. Time in U. S.	
Physical condition Is person a drunkard) or of	rug victim?
Can read? Write? Occupation Offence Committed	with- wife &
City Ordinance State Held for Grand J	
Held for trial Sentence — Meany years	months
Fine Costs	
Held as insaneHeld for other authorities	
Behavior	
DESCRIPTION OF PRISONER	
Height 7 Weight 140 color of eyes Brown Color	of hair Black
Teeth marks	
Arm marks Face marks	
Shoulder marks Back marks	
Thigh marks Knee marks	
Calf of leg marks	
Fingers off Mole marks	
Neck marks Breast marks	
Left arm marks	
Left leg marks	
Fine after prisoner at jail; Amount to State \$	
	Deputy and Jailor
	Sheriff

O G et les
Name / Fire to filed the committed FE - 13 - 196 3
Male Hemale Age C. Race Single Married A. Divorced
Physical condition ls person a druntardy or drug victim
Can read? write? Occupation Offence Committee?
City Ordinance State Held for Grand July
Fine Costs Time in jail Held for penitentary
Rehavior Date of discharge
DESCRIPTION OF PRISONER
Teeth marks Hand marks
Gali of leg marks

DENNIS VIA and J. L. KELLEY

If you find the accused, or either of them, not guilty, you will say so and no more.

If you find them guilty, or either of them, of malicious shooting, as charged in the indictment, then you will say so and fix their punishment by confinement in the penitentiary for a period of not less than one year nor more than ten years.

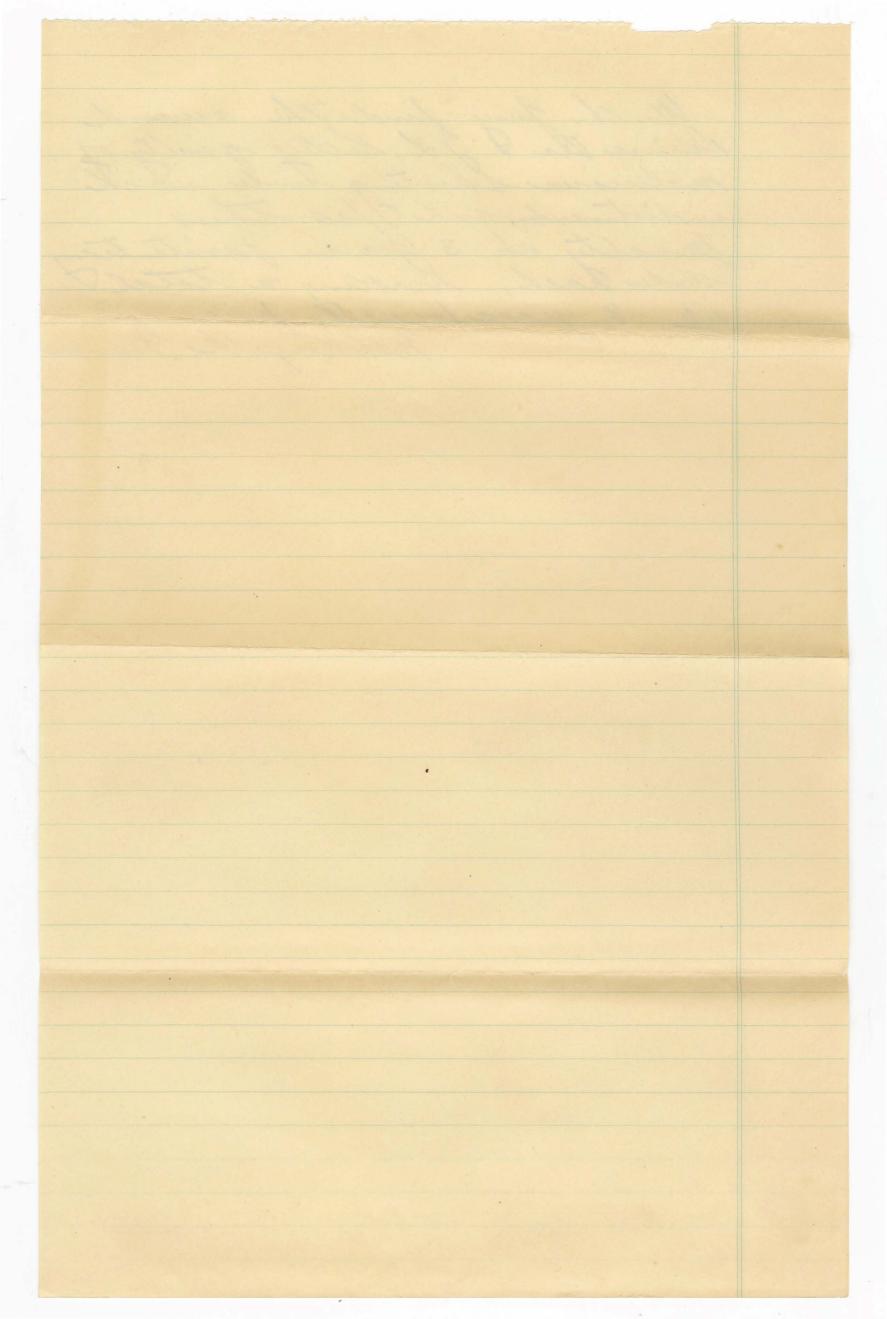
If you do not find them guilty, or either of them, of malicious shooting, as charged in the indictment, but find them guilty, or either of them, of unlawful shooting, as therein charged, then you will say so and fix their punishment by confinement in the penitentiary for a period of not less than one year nor more than five years, or, in your discretion, by confinement in jail for a period not exceeding twelve months and by a fine not exceeding five hundred dollars.

If you do not find them guilty, or either of them, of either of the felonies aforesaid, but find them guilty, or either of them, of assault and battery, as charged in the indictment, then you will say so and fix their punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Commonwealth

v) Charge to the Jury Dennis Via and J. L. Kelley

Dennis that July find the accused penalty at 3 gra in penitentiary under hach, hearting a total of of 9 gene forest prisoner



Via & Hally

## Instruction No. 3.

The Court further instructs the jury that the malice necessary to constitute the crime of malicious shooting may be either express or implied. The word "malice" includes not only anger, hatred, and revenge, but every unlawful and unjustifiable motive. It is not confined to ill will to anyone or more particular persons, but is intended to denote an action flowing from any wicked or corrupt motive done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them the plain indication of a heart regardless of social duty and deliberately bent on mischief; therefore malice is implied by law from any wrongful, deliberate, and cruel act against another however sudden.

Marine State

## Instruction No. 3 .

The Court further the erime of malicious shooting may be either express or implied. The word "malice" includes not only anger, hatred, and revence, but every unlawful and unjustifiable motive. It is not confined to ill will to anyone or more particular persons, but is intended to denote an sotion flowing from any wicked or corrupt for the act has been attended with such circumstances as to carry where the sot has been attended with such circumstances as to carry in them the plain indication of a heart regardless of social duty and deliberately bent on mischief; therefore melice is implied by law from any wrongful, deliberate, and oruel sot against another however sudden.

Com & Kelly

Instruction No. /.

The Court further instructs the jury that a man is taken to intend that which he does, or which is the natural or necessary consequence of his own act. Therefore, if the prisoners, or either of them, wounded the Smiths, or any of them, by the deliberate use of an instrument likely to produce death, the presumption of law is that they intended the consequences that resulted from said use of said deadly instrument.

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Instruction No. / .

The Court further instructs the jury that a man is taken to intend that which he does, or which is the natural or necessary consequence of his own act. Therefore, if the prisoners, or either of them, wounded the Emiths, or any of them, by the deliberate use of an instrument likely to produce death, seeks as an instrument likely to produce death, seeks as an analysamment the presumption of law is that they intended the consequences that resulted from seid use of seid deadly instrument.

vin & Kelly

# Instruction No. 2.

The Court instructs the jury that if they believe from the evidence in this case beyond a reasonable doubt that the accused, or either of them, shot John Henry Smith, Elizabeth Smith, or Leon Smith, or any of them, with intent then and there unlawfully, maliciously, and feloniously to maim, disfigure, disable, or kill, the said Smiths, or any of them, then the jury should find the accused guilty of malicious wounding, as charged in the indictment; if the jury believe from the evidence that the acts were done unlawfully, but not maliciously, then the jury should find them guilty of unlawful wounding, as charged in the indictment. And the Court tells the jury that the difference between malicious shooting and unlawful shooting depends upon whether or not if death had resulted the prisoner would have been guilty of murder, or manslongliker.

Commenced of the state of the s

Instruction No. . .

the prisoner would have been guilty of murder, or documents

Cow Relly Viax Kelly

Instruction No. #.

The Court instructs the jury that if you believe from the evidence that the accused. Dennis Via. did not shoot John Henry Smith, Elizabeth Smith, and Leon Smith, or any of them, with the intent to maim, disfigure, disable, or kill, as charged in the indictment, then you will find him not guilty of actually shooting and maiming John Henry Smith, Leon Smith, and Lizzie Smith, or either of them: but if you should believe from the evidence that he attempted to shoot said Smiths. or any of them, with the intent aforesaid, then you find him guilty of attempted shooting, and fix his punishment by confinement in the penitentiary for a period of not less than one nor more than five years, or, in your discretion. by confinement in jail for a period not exceeding twelve months.

Mary was

### instruction No.

tempted to shoot said Smiths, or any of them, with the intent aforeby confinement in fail for a period not exceeding twelve months. This Kelly

# INSTRUCTION NO. 5.

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.

The Market

### INSTRUCTION NO.

The Court instructs the jury that a resconsble 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 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.

via & Kelly

A

The Court instructs the jury that the law presumes the accused to be innocent until he is proved guilty beyond a reasonable doubt, and if there is upon the minds of the jury any reasonable doubt of the guilt of the accused, the law makes it their duty to acquit him, and that mere suspicion or probability of his guilt, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderence of evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved so clearly and the evidence thereof so strong, as to exclude every reasonable hype thesis of his innocence.



The Court instructs the jury that the law presumes the ecoused to be innocent until he is proved guitty beyond a reasonable doubt, and if there is upon the minds of the jury thy reasonable doubt or the rolls of the accused. Its law makes it their duty to acquit him, and that norm scapitote of probability of his guilt, however strong, is not sufficient to derence of evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved so clearly and the evidence thereof so strong, as to exclude every reasonable hyps thesis of the innocence.

not so by:

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Crw On & Helly

B

The Court instructs the jury in determining the weight to be given the testimony of different witnesses in this case the jury are authorized to consider relationship of the witnesses to the parties, if the same is proven, their interest, if any, in the result of this case, their temper, feelings, 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 of the circumstances such witnesses seem to be entitled to.

The Sourt instructs the jury in determining the weight to be given the testimony of different witnesses in this case the jury are authorized to consider relationship of the witnesses to the parties. If the testime is proved, that interest, it cay, in the rosult of this case, their tempor, focilings, or bide, if any has been shown, their demeanor whilst testifying, their apparent intelligence, their means of information, and to give such are to the testimony of such witnesses as under all of the direct.

Vin \* Kelly

The jury are instructed that in order to convict the accused of the crime alleged against him in the indictment every material fact necessary to constitute such crime must be proved beyond a reasonable doubt, and if the jury have a reasonable doubt upon a material fact or element necessary to constitute the crime it is their duty to give the prisoner the benefit of such doubt and acquit him.

Brown's Case, 97 Va. 798.

The jury are instracted that in order to convict the geometric the crime sileged against him in the indictment geometric the crime indictment of the entries and crime must be every material fact necessary to constitute such crime must be constituted able doubt upon a material fact or element necessary to constitute the crime it is their duty to give the prisoner the benefit of such doubt and acquit nim.

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over Kelly

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The Court instructs the jury that if they believe from the evidence that the defendants Kelley and Via, on the night of December 5. 1933, were, though in the possession of firearms, nevertheless, proceeding peacefully and lawfully along the public road past the premises of John Henry Smith and that while so passing the said premises of Smith, the said Kelley and Via were fired upon and shot by Smith or someone with him, who used a 12 gauge shot gun, then the said Kelley and Via were justified in defending themselves from this attack by such means as reasonably appeared to them to then be necessary, and if you further believe from the evidence that the said defendants Kelley and Via in returning the fire of their assailant, acted under the then existing circumstances, in the belief that it was reasonably necessary to protect themselves from serious bodily harm, and such danger was imminient, then you should find a verdict of not guilty as to both of said defendants.

The Court instructs the jury that if they believe from
the evidence that the defendants galley and via. on the night of
December 5. 1933, were, though in the presention of irreards.

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read they the process of gaits, the test selected and via deep tree
ing the waid promises of gaits, the test selected and via deep tree
upod and shot by Smith or someone with him, who used a 12 gauge
ohot, gan, then the said Xelley and via were justified in defending themselves from this attack by such neurs as reasonably
from the evidence that the said defendants (autor the faller
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exterming the fire of their secsions, autor that the reasonably
extering oirosmetances, in the belief that it was reasonably
and despor was instingent, then the healed that they social barm, and
applicy as to both of said defendants.

con Vin + Kelly

# INSTRUCTION NO. 6

The Court instructs the jury that in determining whether the defendants acted under a reasonable apprehension that they were in danger of serious bodily harm at the hands of Smith and others with him, then they were instructed that they should consider all the facts and circumstances disclosed in the evidence as they may reasonably have appeared to the defendants at the time they shot.

.Jode Vedy

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The Court instructs the jury that if they believe from the evidence that J. L. Kelley fired the shots that struck John Henry Smith, Lizzie Smith and Leon Smith, then the motive or intent with which the said Kelley fired the shots apply to each and all alike in the three indictments, that is to say that if you believe from the evidence that, at the time the defendant Kelley fired the shots, he was acting under the reasonably belief that it was necessary so to do to save himself from seriously bodily harm, then the said Kelley is entitled to an acquital under all three indictments, irrespective of the persons struck by said shots.

The Court instructs the jury that if they believe from the evidence that J. E. Keliey fired the shots that atruck form meany Smith. Sizzie Shith and Jean Tolts, that the the case of intent with which the said Kelicy fired the shots apply to each and all slike in the three indictments, that is to say that if you believe from the evidence that, at the time the defendant felley fired the shots, he was acting under the reasonably belief that it was necessary so to do to save himself from agricusty bedily herm, then the said Keliey is entitled to an acquited under all three indictments, irrespective of the persons atruck by said shots.

Vin Keeles

Instruction No.

The Court instructs the jury that if they believe from the evidence beyond a reasonable doubt that Via before Smith fired any shot at him shot at and into the house where the Smiths were residing, then they are told that Via was the aggressor and cannot avail himself of the law of self-defense in this case, unless and until it is shown by the evidence that he retreated as far as he safely could before shooting at the Smiths with the intent to maim, disfigure, disable, and kill; and they are further told that if they believe from the evidence beyond a reasonable doubt that Kelly was present aiding, counselling, or abetting Via in his shooting at and into the house of the Smiths, then said Kelly was likewise an aggressor and cannot avail himself of the law of self-defense. unless and until the end discloses that he retreated as far as he safely could before shooting at the Smiths; but they are further advised if they believe from the evidence that Kelly did not aid. counsel, or abet Via in his shooting at and into the house of the Smiths, and that after such shooting John Henry Smith fired his and wounded grew, shot gun at Vine and wounded him, and that Kelly reasonably believed that he himself was being attacked and reasonably believed that it was necessary to shoot the said John Henry Smith in order to protect himself from death or serious bodily harm, then they should find the said Kelly not guilty under his plea of self-defense.

And Lines

Instruction No.

The Court instructs the jury that if they believe from the safely could before shooting at the Smiths with the intent to maim. distigure, disable, and kill; and they are further told that if they was present aiding, counselling, or abetting Via in his shooting safely could before shooting at the Smiths; but they are further shot gud at Vis a description, and that Helly reasonably believed was necessary to shoot the said John Henry Smith in order to m otect the said Welly not guilty under his plea of self-defense.

Com. Dennis Via g. X. Killy 35 4.30 4.50 4.30 3.55 3.60 3.05 4.00 250 250 3.70 3.0 0 3.9 0 42.90% 38.61 177.22



Como Dennis Frat 6.44 J.L. Kelly 6.44 36 Nitueses 1.19 1.05 1.05 3.1 1.0 1.0 1.05 1.05 1.05 35 2/1288\* 1644 3/6.44 1.07 2/420



























COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of said County:

The grand jurors of the Commonwealth of Virginia, in and for the body of said county of Rockingham, and now attending said Court at its December term, 1933, upon their oaths do present that Dennis Via and J. L. Kelley, on or about December 5, 1933, in said county, feloniously and of malice aforethought did shoot Lizzie Smith with intent her, the said Lizzie Smith, then and there to maim, disfigure, disable, and kill, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of John Henry Smith, C. R. Fawley, and S. F. Newman, witnesses sworn in Court and sent before the grand jury to give evidence.

Commonwealth

v) Indictment

Dennis Via & J. L. Kelley

Felony

December term, 1933

A True Bill:

Witnesses: John Henry Smith
C. R. Fawley
S. F. Newman

D. W. Earman Commonwealth's Attorney

RETURN IN FIVE DAYS TO
CHAS. R. FAWLEY
SHERIFF OF ROCKINGHAM COUNTY
HARRISONBURG, VA.

