JUN 1949

Docket No. 2707.

COMMONWEALTH of VIRGINIA

VS.) Felony #3 (adultery)

HURDLE HENSLEY

Geo. D. Conrad, Com. Atty.

Sam P. Conrad)
Chas. A. Hammer, Jr.,) p. d.
Own (x) Appointed ( )

1948
Dec. 20. Indictment Returned.
" " Motion to quash & sec 2 3
" " Bail refused & exception 7
Dec. 23. Motion to quash overruled & 7/416 414
1949
Jan. 28. Motion to set for trial refused. 7/431
July 13. Nolle pros. 8/5

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.

Keystone Envelope Co., Phila., Pa.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

THE COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

PLEA IN ABATEMENT AND MOTION TO QUASH

The said Hurdle Hensley in his own proper person, comes into court and having heard the said indictment read, says that he ought not to be compelled to answer or plead to the same because he says and contends of his plea in abatement and motion to quash as follows to-wit:

(1) That the Attorney for the Commonwealth appeared before the Grand Jury ~~and~~ that returned this indictment against this defendant while the said Grand Jury was deliberating on the indictment against this defendant and that he, the said Commonwealth's Attorney, was not sworn as a witness for appearing before said Grand Jury; and,

(2) That the said Commonwealth's Attorney submitted to the said Grand Jury for their inspection and guidance, a certain proported statement allegedly given the Attorney for the Commonwealth by the prosecutrix in this case and thereby allowed the Grand Jury to consider ext~~raneous~~ and improper hearsay evidence, that by so doing the Commonwealth's Attorney attempted to do indirectly that which he is prohibited by law from doing directly. The said Grand Jury had already examined the witnesses sent before them under oath, including the prosecutrix , and ~~they sent~~ that said written instrument submitted to them on instructions of the Commonwealth's Attorney to Glen Hensley to ~~defend~~ examine the same. That Same was used by the Grand Jury as a basis for interrogation of the witnesses before the Grand Jury and as the basis of returning an indictment against this defendant, although the same had been ~~rejected~~ repudiated by the prosecutrix and other witnesses heard by the grand Jury; and,

(3) that the said Grand Jury had no legal nor proper evidence before them on which to found the indictment returned by them against this defendant; for the reason that no legal evidence have been presented to the aforesaid

Hurdle Hensley

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

Grand Jury, the indictment is void, inasmuch as the Grand Jury says that said indictment was found upon the testimony of Cornelia Hensley and Glen Hensley, who were the only witnesses upon whose proported testimony before said Grand Jury was found the indictment, as shown by the return into open Court of said indictment wherein it is stated, "This indictment is found upon the testimony of Cornelia Hensley and Glen Hensley".

This defendant files herewith the affidavit of the witnesses, Cornelia Hensley (the prosecutrix) and Glen Hensley, and prays that they may be made and read as a part of this plea, from which affidavit it appears that no competent evidence was given by them before said Grand Jury upon which it ~~is~~ found an indictment, and it appears from said affidavits that the Attorney for the Commonwealth appeared before the Grand Jury during its deliberation on the indictment against this defendant. It further appears from said affidavit that the witnesses sworn before the Grand Jury, Glen Hensley, one of the witnesses, presented the pupported written statement of the prosecutrix to the Grand Jury at the request of the Attorney for the Commonwealth.

And this, the said Hurdle Hensley, is ready to verify; wherefore he prays judgment of the said inditement, and that the same may be quashed.

Hurdle Hensley

COMMONWEALTH OF VIRGINIA

VS. (AFFIDAVIT)

HURDLE HENSLEY

State of VIRGINIA, at Large, to-wit

_____ ~~of~~ _____ ~~to-wit~~:

On this 22nd day of December 1948, personally appeared Hurdle Hensley, the above named defendant, before the undersigned Notary Public in and for the State ~~and~~ of Virginia at large aforesaid whose commission expires on the 5th day of Feb. 1950, and made oath that the matters and things set forth in the foregoing plea are true to the best of his information, knowledge and belief.

Given under my hand this 22nd day of December 1948.

C. Clinton Lee, Notary Public

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

CHARLES A. HANNER
ATTORNEY-AT-LAW
SON FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

Grand Jury, the indictment is noty nissmuch as the Grand Jury were first asked indictment was found upon the testimony of Cornelia Hensley and Glen Hensley, who were the only witnesses upon whose proposed testimony before said Grand Jury was found the indictment, as shown by the return into open Court of said indictment wherein it is stated, "Into indictment is found upon the testimony of Cornelia Hensley and Glen Hensley".

Into defendant titles petently the sitiksvitf of the witnesses, Cornelia Hensley (the prosecutrix) and Glen Hensley, and prays that they may be made and test as a part of this bles, from which sitiksvitf it appears that no competent evidence was given by them before said Grand Jury upon which to ground an indictment, and it appears from said sitiksvitfs that the Affonvey for the Commonwealth appeared before the Grand Jury during its deliberation on the indictment against this defendant. If further appears from said sitiksvitf that the witnesses were sworn before the Grand Jury. Glen Hensley, one of the witnesses, presented the proposed written statement of the prosecutrix to the Grand Jury as the testimony of the Affonvey for the Commonwealth.

Wherefore the said Hurtle Hensley is ready to verify; wherefore he prays judgment of the said indictment and that the same may be dismissed.

Hurtle Hensley

COMMONWEALTH OF VIRGINIA

vs. (VERIDAVIT)

HURDLE HENSLEY

Rockingham County, to-wit:

VIRGINIA:

This day came Hurtle Hensley, personally appeared before me, the undersigned Notary Public in and for the State aforesaid, the above named defendant, who upon his oath doth state that the facts set forth in the foregoing plea are true to the best of his information, knowledge and belief.

Given under my hand this 10 day of December 1918.

Notary Public

AFFIDAVIT OF

G L E N N H E N S L E Y

Re: Grand Jury.

Harrisonburg, Virginia
December 21, 1948

C. OVERTON LEE
Shorthand Reporter
HARRISONBURG, VA.

STATE OF VIRGINIA, AT LARGE, To-wit:

I, C. Overton Lee, a notary public in and for the State of Virginia, at large, of Harrisonburg, Rockingham County, Virginia, do certify that this day personally appeared before me, at 10:40 a.m., in the office of Charles A. Hammer, Jr., First National Bank Building, Harrisonburg, Virginia, this 21st day of December, 1948, and in the presence of Charles A. Hammer, Jr., Esq. and Sam P. Conrad, Esq., affiant GLENN HENSLEY who, after being duly sworn by me to tell the truth, the whole truth, and nothing but the truth touching and concerning the matter herein, deposed:

BY MR. HAMMER:

Q You are Glenn Hensley?

A Yes, sir.

Q And you are the brother of Cornelia Hensley?

A Yes, sir.

Q Mr. Hensley, you were summoned as a witness before the grand jury of Rockingham County, Virginia, which met on yesterday, December 20, 1948; is that correct?

A Yes, sir.

Q Your sister was also summoned?

A Yes, sir.

Q In the case of Commonwealth against Hurdle Hensley, who is your father?

A Yes, sir.

STATE OF VIRGINIA, AT LARGE, To-wit:

I, C. Overton Lee, a notary public in and for the State of Virginia, at large, of Harrisonburg, Rockingham County, Virginia, do certify that this day personally appeared before me, at 10:40 a.m., in the office of Charles A. Hammer, Jr., First National Bank Building, Harrisonburg, Virginia, this 21st day of December, 1948, and in the presence of Charles A. Hammer, Jr., Esq. and Sam P. Conrad, Esq., affiant GLENN HENSLEY who, after being duly sworn by me to tell the truth, the whole truth, and nothing but the truth touching and concerning the matter herein, deposed:

BY MR. HAMMER:

Q You are Glenn Hensley?

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A Yes, sir.

C. OVERTON LEE
SHORTHAND REPORTER
HARRISONBURG, VIRGINIA

Glenn Hensley

Q Will you state just what evidence you gave before that grand jury?

A When I went in, they asked me why wouldn't my sister talk? and I told them I didn't know. And then they asked me was all this so about it and I told them no. And they asked me what made my sister and I do that and I told them that the reason we done it, that daddy wanted to correct us when she went with bad boys and when I went with bad girls. He thought it was the wrong kind of people. He would correct us about that and me and her just decided to put him out of the way for a couple years.

Q In the examination of you by the grand jury, did you deliver to them any papers or any statements?

A The statement that my sister gave to the Commonwealth, I delivered that.

Q How did it happen that you delivered that paper to the grand jury?--just tell us, narrate the circumstances under which--

A The Commonwealth brought it up and give it to me and told me to give it to the grand jury.

Q Where were you at the time the Commonwealth's Attorney handed you the statement?

A In the hallway, right in front of the jury's door.

Q What was it that he told you?

A To take it in and give it to the grand jury when I

Glenn Hensley

Q Will you state just what evidence you gave before that grand jury?

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Q What was it that he told you?

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Glenn Hensley

went in.

Q And did you do that, acting under his instructions?

A Yes, sir.

Q At any time, did you make any statements to that grand jury indicating that the charges against your father were true or not?

A No, sir, I didn't.

Q Did the grand jury read this statement that you gave them?

A They wouldn't at first but I think the Commonwealth had talked to them and they called me back in there again and read it.

Q At that point, let me ask you this. Did the Commonwealth's Attorney enter the jury room after any of the witnesses had been in there?

A Yes, sir.

Q After you had been in?

A Yes, sir, after I had been in.

Q And while they were deliberating on this case of yours?

A Yes, sir.

Q The Commonwealth's Attorney entered the jury room?

A Yes, sir.

Q Do you know whether or not any members of the grand jury sent for the Commonwealth's Attorney?

went in.

Q And did you do that, acting under his instructions?

A Yes, sir.

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Q At that point, let me ask you this. Did the Commonwealth's Attorney enter the jury room after any of the witnesses had been in there?

A Yes, sir.

Q After you had been in?

A Yes, sir, after I had been in.

Q And while they were deliberating on this case of yours?

A Yes, sir.

Q The Commonwealth's Attorney entered the jury room?

A Yes, sir.

Q Do you know whether or not any members of the grand jury sent for the Commonwealth's Attorney?

Glenn Hensley

A I think they did, because I remember the sheriff that was standing there in the hall, one of the jurymen came to the door and said, "Send for the Commonwealth Attorney."

Q Were you in the jury room at the time the Commonwealth's Attorney entered?

A No, sir.

Q You were not?

A No, sir.

Q Who was in the jury room at that time?

A Just the jurymen.

Q The jurymen were in there at that time?

A Yes, sir.

Q And they had already heard evidence on the indictment against your father?

A Yes, sir, that's right.

Q Where were you standing when the Commonwealth's Attorney entered the room?

A I was setting on the chair right next to the door when he went in.

Q Were any of the officers around at that time?

A The sheriff was standing there in the hallway.

Q You mean the sheriff or the deputy sheriff?

A It is the one that stood there in the hallway right at the head of the steps calling the names for them to go in.

Q Did you hear any statements or any questions by the

Glenn Hensley

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Q Did you hear any statements or any questions by the

Glenn Hensley

grand jury asked the Commonwealth's Attorney?

A No, sir, I did not.

Q The door was closed?

A Yes, sir.

Q Had your sister testified before you or after you?

A Before me.

Q And after the Commonwealth's Attorney and you had both testified, were you again recalled to the grand jury room after the Commonwealth's Attorney had been in and talked to them?

A Yes, sir.

Q What was said to you at that time?

A Well, he started reading these papers out to us then, the grand jury.

Q What papers are you referring to?

A That my sister had gave a statement on. And the jury before that the Commonwealth came in, they was ready to dismiss the case.

Q Did you hear them state that?

A Yes, sir. Well, they said, "So far, everybody is free. Everybody is free"--like that.

Q After they started reading this statement to you, were you and your sister present then, at that time?

A No, sir, they called the Commonwealth up and then they called me in after the Commonwealth had gone--no, they

grand jury asked the Commonwealth's Attorney?

A No, sir, I did not.

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A No, sir, they called the Commonwealth up and then they called me in after the Commonwealth had gone--no, they

Glenn Hensley

called my sister and then they called me.

Q Then what did you tell them in regards to the statement after they called you in the second time?

A I told them all was lies.

Q Were you in there at all when your sister was in there?

A No, sir.

Q Did your sister, after the grand jury had adjourned yesterday and you had gone home, or on your way home from the court room, did your sister tell you what she had told them?

A She told them that she had not said a thing each time she came out of the room.

Q She told you that she refused to answer the questions each time?

A That's right. And the deputy sheriff and Commonwealth took her in that room, you know, in the room where all of the people was setting, by herself, and the Commonwealth questioned her and couldn't get nothing out of her, and the sheriff did, and then they went on downstairs and never asked her anything else.

Q And what you have stated here are the true transactions of what occurred there yesterday before the grand jury?

A Yes, sir.

Q Is your sister in town today or at home?

called my sister and then they called me.

Q Then what did you tell them in regards to the statement after they called you in the second time?

A I told them all was lies.

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Q She told you that she refused to answer the questions each time?

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Q And what you have stated here are the true transactions of what occurred there yesterday before the grand jury?

A Yes, sir.

Q Is your sister in town today or at home?

Glenn Hensley

A At home.

Q Glenn, just one more question I want to ask you. Is what you told the grand jury the truth? or is what you told the Commonwealth's Attorney the truth?

A What I told the grand jury yesterday.

Q And no one has intimidated you or discussed this case with you or made you any threats or promises or rewards of any nature, have they?

A No, sir, they have not.

Q Neither have counsel for your father nor anyone associated with him?

A No, sir.

Q Has any member of your family talked to you or discussed what your testimony should be or what you should have told?

A No, sir.

Q Has any member of your father's family done it?

A No, sir.

BY MR. CONRAD:

Q Your father's counsel have always asked you to state absolutely the truth in these statements you have made?

A Yes, sir.

Q And those statements have all been made before Mr. Overton Lee?

A That's right.

A At home.

Q Glenn, just one more question I want to ask you. Is what you told the grand jury the truth? or is what you told the Commonwealth's Attorney the truth?

A What I told the grand jury yesterday.

Q And no one has intimidated you or discussed this case with you or made you any threats or promises or rewards of any nature, have they?

A No, sir, they have not.

Q Neither have counsel for your father nor anyone associated with him?

A No, sir.

Q Has any member of your family talked to you or discussed what your testimony should be or what you should have told?

A No, sir.

Q Has any member of your father's family done it?

A No, sir.

BY MR. CONRAD:

Q Your father's counsel have always asked you to state absolutely the truth in these statements you have made?

A Yes, sir.

Q And those statements have all been made before Mr. Overton Lee?

A That's right.

And further this deponent saith not.

Glenn Hensley

I further certify that affiant Glenn Hensley affixed his signature to each and every of the eight pages comprising this affidavit for purposes of identification.

Given under my hand at Harrisonburg, Virginia, this 21st day of December, 1948.

C. Overton Lee
Notary Public

My Commission Expires February 5, 1950

And further this deponent saith not.

Glenn Hensley

I further certify that affiant Glenn Hensley affixed his signature to each and every of the eight pages comprising this affidavit for purposes of identification.

Given under my hand at Harrisonburg, Virginia, this 21st day of December, 1948.

Notary Public

My Commission Expires February 5, 1950

AFFIDAVIT OF

C O R N E L I A H E N S L E Y

Re: Grand Jury.

Harrisonburg, Virginia
December 21, 1948

* * * *

C. OVERTON LEE
Shorthand Reporter
HARRISONBURG, VA.

STATE OF VIRGINIA, AT LARGE, To-wit:

I, C. Overton Lee, a notary public in and for the State of Virginia, at large, of Harrisonburg, Rockingham County, Virginia, do certify that this day personally appeared before me, at 1:41 p.m., in the office of Charles A. Hammer, Jr., First National Bank Building, Harrisonburg, Virginia, and in the presence of Charles A. Hammer, Jr., Esq. and Sam P. Conrad, Esq., affiant CORNELIA HENSLEY who, after being duly sworn by me to tell the truth, the whole truth, and nothing but the truth touching and concerning the matter herein, deposed:

BY MR. HAMMER:

Q Cornelia, did you, on Monday, the 20th day of December, 1948, appear before the grand jury of Rockingham County, Virginia, as a witness in the case of Commonwealth against Hurdle Hensley?

A Yes, I did.

Q Would you state, please, just what was said and was told the grand jury at that time?

A Well, I never told them anything at all. They asked me if that was so what was down there and I denied it.

Q When you say they asked you what was so that was down there, you are referring to what?--are you referring to the statement that you had given to the Commonwealth's Attorney?

A That's right.

Cornelia Hensley

STATE OF VIRGINIA, AT LARGE, To-wit:

I, C. Overton Lee, a notary public in and for the state of Virginia, at large, of Harrisonburg, Rockingham County, Virginia, do certify that this day personally appeared before me, at 1:41 p.m., in the office of Charles A. Hammer, Jr., First National Bank Building, Harrisonburg, Virginia, and in the presence of Charles A. Hammer, Jr., Esq. and Sam P. Conrad, Esq., affiant CORNELIA HENSLEY who, after being duly sworn by me to tell the truth, the whole truth, and nothing but the truth touching and concerning the matter herein, deposed:

BY MR. HAMMER:

Q Cornelia, did you, on Monday, the 20th day of December, 1948, appear before the grand jury of Rockingham County, Virginia, as a witness in the case of Commonwealth against Hurdle Henley?

A Yes, I did.

Q Would you state, please, just what was said and was told the grand jury at that time?

A Well, I never told them anything at all. They asked me if that was so what was down there and I denied it.

Q When you say they asked you what was so that was down there, you are referring to what?--are you referring to the statement that you had given to the Commonwealth's Attorney?

A That's right.

Q Did you ever tell the grand jury or any members thereof under the questioning by them, at any time, that your father had had sexual relations with you on any occasion?

A No.

Q Did you deny before that grand jury that your father had raped you?

A Yes, I did.

Q How many times did the grand jury examine you and call you back into the room, Cornelia?

A Well, it was two times before I was out for lunch. I was called back at 1:30 and I went in one time after that.

Q You were called in two times?

A Before.

Q What did you tell them on the first occasion and what occurred there when you were first interviewed by the grand jury?

A Well, they asked me if that was all true that was down there and I first said, no, I said I couldn't talk because I would incriminate myself. That's what I told them.

Q All right, then what happened?

A Well, they kept on asking me questions like that and I told them the same thing.

Q You told them again the same thing?

A Yes.

Q Did you ever tell them that that statement was true?

Q Did you ever tell the grand jury or any members thereof under the questioning by them, at any time, that your father had had sexual relations with you on any occasion?

A No.

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A Well, they asked me if that was all true that was down there and I first said, no, I said I couldn't talk because I would incriminate myself. That's what I told them.

Q All right, then what happened?

A Well, they kept on asking me questions like that and I told them the same thing.

Q You told them again the same thing?

A Yes.

Q Did you ever tell them that that statement was true?

Cornelia Hensley

A No, sir.

Q At any time?

A They tried to but I denied it. I told them my brother and I had just made it up against him.

Q Did you tell them why you had made it up against your father?

A Yes, I did. I told him the reason--told them the reason we made it up was because he kept interferring with me and my boy friend and kept watching and I got mad at him.

Q Then after the first time they called you, what happened?--was anyone else called into the room?

A Glenn, he was called in after I was.

Q Glenn was called in after you were?

A That's right.

Q Did he take that paper into the grand jury? or how did they get it, do you know?

A The yellow piece of paper?

Q Yes, that you had signed.

A Oh, the Commonwealth's Attorney taken that in.

Q Did he give it to your brother?

A He give it to my brother.

Q And your brother then took it in?

A That's right.

Q Then did they call you back in and ask you if that statement is true?

A No, sir.

Q At any time?

A They tried to but I denied it. I told them my brother and I had just made it up against him.

Q Did you tell them why you had made it up against your father?

A Yes, I did. I told him the reason--told them the reason we made it up was because he kept interferring with me and my boy friend and kept watching and I got mad at him.

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Q Did he give it to your brother?

A He give it to my brother.

Q And your brother then took it in?

A That's right.

Q Then did they call you back in and ask you if that statement is true?

Cornelia Hensley

A That's right.

Q Did the Commonwealth's Attorney go into the jury room at any time while you were in there?

A Not while I was in there but I seen him when I went in one time.

Q Was that after they had examined you and talked to you?

A Yes, it was. I mean when he was in there first. I don't know what he did. It was before I was ever called in or before Glenn was called in. Then I saw him when I went in again.

Q In other words, he was in the room on two occasions?

A Yes, sir.

Q After the Commonwealth's Attorney entered the room, then what happened? did they call you back again?

A That's right.

Q Then what was the line of questioning that the grand jury asked you at that time?

A Well, they asked me the same thing over.

Q Did they have this paper the first time that you went into the grand jury room?

A I don't know. It seemed like it was to me.

Q Seemed like they had it the first time?

A Yes, sir.

Q You went in before Glenn, didn't you?

A That's right.

Q Did the Commonwealth's Attorney go into the jury room at any time while you were in there?

A Not while I was in there but I seen him when I went in one time.

Q Was that after they had examined you and talked to you?

A Yes, it was. I mean when he was in there first. I don't know what he did. It was before I was ever called in or before Glenn was called in. Then I saw him when I went in again.

Q In other words, he was in the room on two occasions?

A Yes, sir.

Q After the Commonwealth's Attorney entered the room, then what happened? did they call you back again?

A That's right.

Q Then what was the line of questioning that the grand jury asked you at that time?

A Well, they asked me the same thing over.

Q Did they have this paper the first time that you went into the grand jury room?

A I don't know. It seemed like it was to me.

Q Seemed like they had it the first time?

A Yes, sir.

Q You went in before Glenn, didn't you?

Cornelia Hensley

A Yes, sir.

Q Then the second time, did you continue to deny it and tell them that you had done this because you were mad at your father?

A That's right. I told them the same thing again.

Q And you told them you would not testify because you might incriminate yourself?

A That's right.

Q And you denied that the statements you gave the Commonwealth's Attorney were true?

A That's right.

Q And told them that you and your brother, as I understand you, had made this up so that you could get your father away to keep him from interferring with you and your boy friends?

A That's right. And the grand jury--all of the men there except one said, "As far as I can see the thing, it is all clear." And then there was a man there had glasses on said, no, he wasn't clear, and he said he was going to get this Alger boy and the man I rode up with that night. He wanted them up there as witnesses. But they never called them. I don't know what they decided.

Q All right, and then they adjourned for lunch and then you were called back the third time; is that correct?

A That's right.

A Yes, sir.

Q Then the second time, did you continue to deny it and tell them that you had done this because you were mad at your father?

A That's right. I told them the same thing again.

Q And you told them you would not testify because you might incriminate yourself?

A That's right.

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Q All right, and then they adjourned for lunch and then you were called back the third time; is that correct?

A That's right.

Cornelia Hensley

Q What transpired there the third time, Cornelia?

A Well, the sheriff came in, wanted to know what they was waiting on, said the witness was out here. So they called me back in and asked me these questions over. And they asked me about this here Alger boy, that I had been with him and had affairs with him, and I told him yes. And he asked me if I had been out with my---no, he asked me why did I come up around 2:00 or 3:00 otlock at the police station and tell them my story? They said it wasn't true. They asked me why was I afraid to go back home? And I told them I didn't know. I told them I stayed up at the hotel with my brother.

Q Now on any occasion, did you ever admit to the grand jury, or ever indicate to them by anything you may have said, that your father ever had relations with you in any way or in any manner?

A I never. I denied all that.

Q And what you told the grand jury---

A And they had me to write my name too. I first said that I hadn't signed that, you know. Then they told me to write my name. So I did and they said it was the same handwriting. So then I told them I did write it. Then they asked me--they said, "Then this statement that you have here is so?--is true about my da ddy, and I told them, no, my brother and I had just made that up.

Q What you told the grand jury was true and the

Q What transpired there the third time, Cornelia?

A Well, the sheriff came in, wanted to know what they was waiting on, said the witness was out here. So they called me back in and asked me these questions over. And they asked me about this here Alger boy, that I had been with him and had affairs with him, and I told him yes. And he asked me if I had been out with my---no, he asked me why did I come up around 2:00 or 3:00 oclock at the police station and tell them my story? They said it wasn't true. They asked me why was I afraid to go back home? And I told them I didn't know. I told them I stayed up at the hotel with my brother.

Q Now on any occasion, did you ever admit to the grand jury, or ever indicate to them by anything you may have said, that your father ever had relations with you in any way or in any manner?

A I never. I denied all that.

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Q What you told the grand jury was true and the

Cornelia Hensley

and the statement to the Commonwealth's Attorney was not true; is that correct?

A That's right.

Q Has anyone, either Mr. Sam Conrad or myself, talked to you at any time since you were questioned by the grand jury about this matter until now?

A No.

Q Have any members of your family discussed this matter with you or attempted to get you to change your evidence in any way?

A What do you mean?--to say it wasn't so?

Q Have any members of your family advised you to change your testimony? has your brother or your mother or any of your family attempted to intimidate or threaten you or offer you anything if you would change your evidence in this case?

A No, sir.

Q Has any member of your grandfather's family, your grandfather or your grandmother, made any efforts to have you change your evidence in this case?

A No, sir.

Q Have they discussed the matter with you, that is, Uncle Layton or your grandmother, and asked you to change your evidence?

A No, they have just told me to do what was best to

and the statement to the Commonwealth's Attorney was not true; is that correct?

A That's right.

Q Has anyone, either Mr. Sam Conrad or myself, talked to you at any time since you were questioned by the grand jury about this matter until now?

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A No, sir.

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A No, sir.

Q Have they discussed the matter with you, that is, Uncle Layton or your grandmother, and asked you to change your evidence?

A No, they have just told me to do what was best to

Cornelia Hensley

do. They said it was left up to me what I wanted to do.

Q You have always been told by counsel for your father to always tell the truth about this matter; isn't that correct, Cornelia?

A Yes, sir.

Q And what you have told us here today and told the grand jury yesterday; is that the truth?

A Yes, sir, that's true.

Q You have not been promised anything by anyone for telling or making this statement?

A No, sir.

Q And you have come here voluntarily on your own free will today; is that correct?

A That's right. The Commonwealth and sheriff both questioned me after the grand jury had, before I went in the last time.

Q You mean by that that the Commonwealth and the deputy sheriff questioned you after you had already been before the grand jury as a witness?

A The second time, after I was in the second time. One of the jurymen came out and asked the sheriff for the Commonwealth. So when he come up there, why all of us witnesses was in one room. He told them all to leave the room but me. So I stayed in there. He asked me who got me to change my mind.

Cornelia Hensley

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Cornelia Hensley

Q You mean that was before the grand jury?

A After the grand jury.

Q After you had been called twice, but this did not occur in the presence of the grand jury?

A No. Oh, the Commonwealth called Glenn and I in there the first time. We got up here about 9:30. We went in his office but he didn't question me about anything.

Q Did he question you at all while the grand jury was in session and while they were in your presence?--did the Commonwealth's Attorney ask you any questions up in the grand jury room while they were there?

A No.

Q What was this conversation and questioning by the sheriff and Commonwealth's Attorney after you had been before the grand jury on these two occasions and before you had been back the third time?

A Well, the Commonwealth came in and asked me why I changed my story and who got me to change it. And I told him nobody, I didn't change my mind at all. He kept on questioning me like and he said, I know somebody did get you to change your story because," he says, "I'm not---" he says, "I'm not that big a fool", or something like that, he says, "I know somebody told you." And the sheriff come in there then and said, "What's this all about? What's wrong now?" And he said, "Somebody's got her to change her mind again."

Q You mean that was before the grand jury?

A After the grand jury.

Q After you had been called twice, but this did not occur in the presence of the grand jury?

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A No.

Q What was this conversation and questioning by the sheriff and Commonwealth's Attorney after you had been before the grand jury on these two occasions and before you had been back the third time?

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Cornelia Henaley

Q Did they make any statement to you about what you had to do or anything like that?

A Well, the Commonwealth asked me, says, "Are you going to tell the truth?" I said, "I don't know." He says, "You want to go down before the judge?" I said--I told him I didn't know. He says, "Do you want to go down before the judge or wait here?" I says, "I'll just wait here." He says, "Are you going to tell me the truth?" And I didn't say anything.

Q What you did tell that grand jury was the truth?

A That's right.

Q And you now deny on your oath that the statement you gave the Commonwealth's Attorney is true?

A What do you mean? the statement I wrote down there is true?

Q Yes.

A No, I denied it. It was all lies.

Q And you say now that is not the truth and that your father has never had anything to do with you?

A That's right.

Q But that you did this because you were mad at your father and wanted to get him out of the way for a while; is that correct?

And further this deponent saith not.

Cornelia Hensley

Q Did they make any statement to you about what you had to do or anything like that?

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A That's right.

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A No, I denied it. It was all lies.

Q And you say now that is not the truth and that your father has never had anything to do with you?

A That's right.

Q But that you did this because you were mad at your father and wanted to get him out of the way for a while; is that correct?

And further this deponent saith not.

Cornelia Hensley

I further certify that affiant Cornelia Hensley affixed her signature to each of the foregoing ten pages comprising this affidavit for purposes of identification.

Given under my hand at Harrisonburg, Virginia, this 21st day of December, 1948.

C. Overton Lee
Notary Public

My Commission Expires
February 5, 1950.

Cornelia Hensley Affidavit
Taken: December 21, 1948

I further certify that affiant Cornelia Hensley affixed her signature to each of the foregoing ten pages comprising this affidavit for purposes of identification.

Given under my hand at Harrisonburg, Virginia, this 21st day of December, 1948.

Notary Public

My Commission Expires
February 5, 1950.

State P.M.
320 P.M.

Prisoners Report of Rockingham Jail

Name Hurdle Hensley Date Arrested 11-29-48

Date Bailed Out _____ Again Placed in Jail _____

Male ✓ Female _____ Age 44 Race W Single _____ Married ✓ Divorced _____

Separated _____ Widow _____ Widower _____ Illiterate _____ Gr. School _____ High Sch. _____

Vocational _____ College _____ Drug Addict _____ Inebriate _____ Occupation Farmer

Employed yes Reason for Being in Jail Held for trial

Reason for Release from Jail _____

Amount of Fine _____ Cost _____ Sentence Time _____

State ✓ County _____ City _____ Town _____

Federal _____ Army _____ Navy _____ Others _____

Offense Adultery Fel. ✓

Miscellaneous _____ ABC _____ Ins. _____

Date Committed 11-29-48 Date of Trial _____ Date of Release _____

Court Committee From _____ Type of Court _____

Transferred From _____ Transferred To _____

Reason for Transfer _____

Physical Condition _____ Contagious Disease, If Any _____

Fine After Prisoner at Jail; Amount to State $_____ Amount to City $_____

Date Reported 2 Nov '48 _____ Deputy and Jailor

31 Dec '49

31 Jan

28 Feb.

31 Mar.

30 apr.

31 May

30 June

31 July

_____ Sheriff

Paid
Transferred

Prisoners Report of Rockingham Jail

Name ..... Date Arrested .....

Date Bailed Out ..... Again Placed in Jail .....

Male ..... Female ..... Age ..... Race ..... Single ..... Married ..... Divorced .....

Vocational ..... College ..... Drug Addict ..... Industrial ..... Occupation .....

Employed ..... Reason for Being in Jail .....

Reason for Release from Jail .....

Amount of Fine ..... Cost ..... Sentence Time .....

State ..... County ..... City ..... Town .....

Federal ..... Army ..... Navy ..... Others .....

Offense ..... Fel. .....

Miscellaneous ..... ABC ..... Misd. .....

Date Committed ..... Date of Trial ..... Date of Release .....

Court Committed from ..... Type of Court .....

Transferred from ..... Transferred To .....

Reason for Transfer .....

Physical Condition ..... Contagious Disease, If Any .....

Fine After Prisoner at Jail: Amount to State $ ..... Amount to City $ .....

Date Reported ..... Deputy and Jailor

..... Sheriff

..... Clerk of Superior Court

3.

Filed 3/7/49

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

Comes now the defendant, Hurdle Hensley, by counsel, and moves the Court to quash the venire facias impaneled at this term of Court for irregularities appearing upon its face.

Filed 3/7/49

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

Comes now the defendant, Hurdle Hensley and files this his plea of res adjudicata, autreforis acquit of codefendant, estoppel, and plea in bar and says as follows:

(1) That he is indicted and charged in this Court with having committed adultery with one, Cornelia W. Hensley, on to-wit: the 27th day of November, 1948.

(2) That on to-wit: the 12th day of January, 1949, Cornelia W. Hensley was tried by jury in this Court on Warrant charging that the said Cornelia W. Hensley did on the 27th day of November, 1948, "Did unlawfully commit fornication with one, Hurdle Hensley, a person whom she is forbidden by law to marry, in violation of Section 4543 of the Code of Virginia." That on the date aforesaid, the jury impaneled in the case heard that day, in the case of Commonwealth of Virginia V. Cornelia W. Hensley, returned the following verdict, "We, the Jurors, find the defendant not guilty." Lyle M. Armentrout, Foreman.

(3) That this petitioner says that the charge against him and against the said Cornelia W. Hensley, manifestly and of a necessity, if any offense was committed was one that required the joint act of both the petitioner and the said Cornelia W. Hensley, that a jury having been duly impaneled and having heard the evidence of the Commonwealth in the case of Commonwealth V. Cornelia W. Hensley and having found the said Cornelia W. Hensley not guilty, that the same is now a bar against further proceedings against this defendant for the alleged identical charge contained in the warrant against Cornelia W. Hansley and the indictment against this petitioner. Attached to this petition and prayed to be read as a part thereof is a copy of the warrant in the case of Commonwealth V. Cornelia W. Hensley. In the copy of the warrant of Commonwealth V. Cornelia W. Hensley together with a copy of the verdict of the jury returned thereon and is asked to be read as a part hereof as by the record thereof more fully and at large appears; which said judgment remains in full force and effect and the said Hurdle Hensley

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

vs.

HORACE HENSLEY

Comes now the defendant, Horace Hensley and files this his brief in ten enumerated, succinct and concise paragraphs as follows:

(1) That he is indicted and charged in this court with having committed malicious wounding with one, Cornelia W. Hensley, on 20th day of November 1958.

(2) That on 20-mar: the 15th day of January, 1959, Cornelia W. Hensley was tried by jury in this court on warrant charging that the said Cornelia W. Hensley did on the 20th day of November, 1958, "did unlawfully commit contraction with one, Horace Hensley, a person upon who he is forbidden by law to marry, in violation of Section 2243 of the Code of Virginia." That on the date aforesaid, the jury impaneled in the case heard that qwy, in the case of Commonwealth of Virginia v. Cornelia W. Hensley, reformed the said judgment remains in full force and effect and the said Horace Hensley

(3) That this petitioner says that the charge against him and against the said Cornelia W. Hensley, manifestly and of a necessity, if any offense was committed was one that required the joint act of both the petitioner and the said Cornelia W. Hensley, that a jury having been duly impaneled and having heard the evidence of the Commonwealth in the case of Commonwealth v. Cornelia W. Hensley and having found the said Cornelia W. Hensley not guilty, that the same is now a part against further proceedings against this defendant for the alleged identical charge contained in the warrant against the said Cornelia W. Hensley and the indictment against this petitioner. Affected

to this petition and prayer be read as a part thereof at a copy of the warrant in the case of Commonwealth v. Cornelia W. Hensley. In the copy warrant in the case of Commonwealth v. Cornelia W. Hensley forwarded with a copy of the verdict of the jury reformed thereon and it asked to be read as a part hereof as if the record thereof were fully and at large appears: which said judgment remains in full force and effect and the said Horace Hensley

avers and in fact says, that he, the said Hurdle Hensley, and the said Hurdle Hensley referred to in said warrant of Commonwealth V. Cornelia W. Hensley is one and the same person; and that the charge of which the said Cornelia W. Hensley was arrested and acquitted as aforesaid and the felony of which the said Hurdle Hensley is now indicted is the same act alleged to having been committed by Cornelia W. Hensley, who was acquitted of the charge; and this the said Hurdle Hensley is ready to verify.

Wherefore the said defendant prays judgment, and that he may be dismissed and discharged by the Court here from the premises in the present indictment specified.

Hurdle Hensley

Charles Henderson

were and is still alive, that is, the said Hurdle Henderson, and the said Hurdle Henderson referred to in said warrant of Commonwealth v. Cornelia W. Henderson is one and the same person; and that the charge of which the said Cornelia W. Henderson was arrested and adjudged an alcoholic and the terms of which the said Hurdle Henderson is now indicted at the same act alleged to have been committed by Cornelia W. Henderson, who was adjudged to the charge; and that the said Hurdle Henderson is legally to verify.

Wherefore the said defendant prays judgment, and that he may be discharged and discharged by the Court here from the premises in the present indictment specified.

Charles Henderson

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

To the Sheriff of Said County:

Whereas, Geo. D. Conrad, Commonwealth's Attorney of said County, has this day made complaint and information on oath before me, J. C. Swartz, Clerk of Trial Justice Court (T. J. or J. P.) of the said County, that Cornelia W. Hensley on the 27th day of November, 19 48, in the said County, did unlawfully commit fornication with one Hurdle Hensley, a person whom she is forbidden by law to marry, in violation of Section 4543 of the Code of Virginia, 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 Cornelia W. Hensley

to answer the said complaint and to be further dealt with according to law.

Given under my hand this 27th day of December, 19 48.

/s/ J. C. Swartz
Clerk ~~T. J. or J. P.~~

Memo. of Commonwealth Witnesses:

Name	Address

JUDGEMENT

Hensley
Issued 1/12/49
Trial Justice Court

December 29th, 1948

Upon the hearing of the within charge,

the defendant is found guilty, and the Court suspends the imposition of sentence in this case on good behavior of the defendant for a period of one year. Given under my hand hand this 29th day of December, 1948.

Criminal Docket No. A 2493

Commonwealth

vs. { Arrest Warrant

Cornelia W. Hensley

Executed the within warrant by arresting and delivering the body of

Cornelia W. Hensley

before _____

_____

this 29th day of

December, 1948.

B. L. Kiser, Dep.

Fine - - - - - - -	$
Issuing Justice's Fee -	$ 1.00
Clerk's Fee - - - -	$ 1.25
Trial Justice Fee - -	$ 2.00
Arrest and Mileage -	$ 9.64
Summoning Witness	$ .50
Witness Attendance and Mileage	$
Commonwealth's Attorney - - - - -	$ 2.50
Jail Fees - - - - -	$
_____	$
Total - - - -	$ 16.89

PORTER R. GRAVES
Trial Justice

Officer's Mileage

Miles travelled by officer - -	72
Miles carried prisoner - -	36
Total mileage - - -	108
	8
	864

Plea Guilty
12-29-48

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

I, ..., in and for the County of Rockingham, State of Virginia, do hereby certify that ..... and ..... T. J. or J. P. or Bail Commissioner ..... 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 ....., 19....., 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 the ..... day of ....., 19.....

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

Appeal noted and granted to Circuit Court of Rockingham County, Va. on Jan. 6, 1949.

PORTER R. GRAVES, T.J.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

No. 1

We, the Jurors, find the defendant not guilty.

Lyle M. Armentrout, Foreman

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

vs.

HOWARD HENSLEY

No. 1

We, the jurors, find the defendant not guilty.

DATE M. Armentrout, Foreman

Filed 3/7/49

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

THE COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

PLEA IN ABATEMENT AND MOTION TO QUASH

The said Hurdle Hensley in his own proper person, comes into court and having heard the said indictment read, says that he ought not to be compelled to answer or plead to the same because he says and contends of his plea in abatement and motion to quash as follows to-wit:

(1) That the Attorney for the Commonwealth appeared before the Grand Jury that returned this indictment against this defendant while the said Grand Jury was deliberating on the indictment against this defendant and that he, the said Commonwealth's Attorney, was not sworn as a witness for appearing before said Grand Jury; and,

(2) That the said Commonwealth's Attorney submitted to the said Grand Jury for their inspection and guidance, a certain purported statement allegedly given the Attorney for the Commonwealth by the prosecutrix in this case and thereby allowed the Grand Jury to consider extrinsic and improper hearsay evidence that by so doing the Commonwealth's Attorney attempted to do indirectly that which he is prohibited by law from doing directly. The said Grand Jury had already examined the witnesses sent before them under oath, including the prosecutrix, and that said written instrument submitted to them on instructions of the Commonwealth's Attorney to Glen Hensley to examine the same. That same was used by the Grand Jury as a basis for interogation of the witnesses before the Grand Jury and as the basis of returning an indictment against this defendant, although the same had been repudiated by the prosecutrix and other witnesses heard by the Grand Jury; and,

(3) That the said Grand Jury had no legal nor proper evidence before them on which to found the indictment returned by them against this defendant; for the reason that no legal evidence having been presented to the aforesaid Grand Jury, the indictment is void inasmuch as the Grand Jury says that said indictment was found upon the testimony of Cornelia Hensley and Glen Hensley, who were the only witnesses upon whose purported testimony before said Grand Jury was found the indictment, as shown by the

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

THE COMMONWEALTH OF VIRGINIA

AS.

HONDLE HENSLEY

PLEA IN ABATEMENT AND MOTION TO QUASH

The said Hondle Hensley in his own Proper Person, comes into court and praying

leave of the said indictment here, says that he ought not to be compelled to answer or

plead to the same because he says and contends that this plea in abatement and motion

lies to the same for the reasons and grounds set forth in the following paragraphs, to wit:

(1) That the attorney for the Commonwealth appeared before the Grand Jury that

returned this indictment against this defendant while the said Grand Jury was deliberating

on the indictment against this defendant and that he, the said Commonwealth's Attorney,

was not sworn as a witness for appearing before said Grand Jury; and,

(2) That the said Commonwealth's Attorney supplied to the said Grand Jury for

their information and guidance, a certain documented statement allegedly given the

Attorney for the Commonwealth by the prosecutrix in this case and thereby allowed the

Grand Jury to consider extraneous and improper hearsay evidence that by no stretch the

Commonwealth's Attorney attempted to do indirectly that which he is prohibited by law

from doing directly. The said Grand Jury had already examined the witnesses sent before

them under oath, including the prosecutrix, and that said written instrument supplied

to them on instructions of the Commonwealth's Attorney to Glen Hensley to examine

the same. That same was used by the Grand Jury as a basis for interrogation of the

witnesses before the Grand Jury and as the basis to return an indictment against

this defendant, although the same had been rebutted by the prosecutrix and other

witnesses heard by the Grand Jury; and,

(3) That the said Grand Jury had no legal nor proper evidence before them on

which to found the indictment returned by them against this defendant; for the reason

that no legal evidence hearing been presented to the aforesaid Grand Jury, the indictment

is void insofar as the Grand Jury says that said indictment was found upon the

testimony of Cornelia Hensley and Glen Hensley, who were the only witnesses upon whose

testimony the Grand Jury was informed, as shown by the indictment, as to the

important testimony before said Grand Jury was found the indictment; and

WHEREFORE, the said defendant prays that the said Commonwealth's Attorney

supplied to the said Grand Jury for their information and guidance, a certain documented statement allegedly given the

witness been sworn as a witness for appearing before said Grand Jury; and,

(5) That the said Commonwealth's Attorney supplied to the said Grand Jury for

their information and guidance, a certain documented statement allegedly given the

witness been sworn as a witness for appearing before said Grand Jury; and,

(6) That the said Grand Jury had no legal nor proper evidence before them on

which to found the indictment returned by them against this defendant; for the reason

that no legal evidence hearing been presented to the aforesaid Grand Jury, the indictment

is void insofar as the Grand Jury says that said indictment was found upon the

testimony of Cornelia Hensley and Glen Hensley, who were the only witnesses upon whose

testimony the Grand Jury was informed, as shown by the indictment, as to the

important testimony before said Grand Jury was found the indictment; and

return into open Court of said indictment wherein it is stated, "This indictment is found upon the testimony of Cornelia Hensley and Glen Hensley."

This defendant files herewith the affidavit of the witnesses, Cornelia Hensley (the prosecutrix) and Glen Hensley, and prays that they may be made and read as a part of this plea, from which affidavit it appears that no competent evidence was given by them before said Grand Jury upon which it found an indictment, and it appears from said affidavit that the Attorney for the Commonwealth appeared before the Grand Jury during its deliberation on the indictment against this defendant. It further appears from said affidavit that the witnesses sworn before the Grand Jury, Glen Hensley, one of the witnesses, presented the purported written statement of the prosecutrix to the Grand Jury at the request of the Attorney for the Commonwealth

And this, the said Hurdle Hensley, is ready to verify; wherefore he prays judgment of the said indictment and that the same may be quashed.

Hurdle Hensley

COMMONWEALTH OF VIRGINIA

VS. (AFFIDAVIT)

HURDLE HENSLEY

VIRGINIA

COUNTY of ROCKINGHAM to-wit:

On this 8th day of MARCH, 1949, personally appeared Hurdle Hensley, the above named defendant, before the undersigned ~~Notary~~ DEPUTY CLERK Public in and for the ~~State and~~ COUNTY aforesaid ~~whose commission expires on the~~ ____ ~~day of~~ ____, ~~19~~____, and made oath that the matters and things set forth in the foregoing plea are true to the best of his information, knowledge and belief.

Given under my hand this 8th day of MARCH, 1949.

Margie Bowers
Notary Public

COMMONWEALTH OF VIRGINIA

(VERDICT)

v.s.

HAROLD HENSLEY

VIRGINIA

CLARKE of KOCHINSKAM to-wit:

On this 8th day of MARCH, 1948, personally appeared Harold Hensley, the above named defendant, before the undersigned Notary Public in and for the State and County aforesaid whose commission expires on the ____ day of _____, 19__, and made oath that the matters and things set forth in the foregoing pleas are true to the best of his knowledge and belief.

Given under my hand this 8th day of MARCH, 1948.

_____
Notary Public

COMMONWEALTH OF VIRGINIA

v.s.

HAROLD HENSLEY

VIRGINIA

CLARKE of KOCHINSKAM to-wit:

On this 8th day of MARCH, 1948, personally appeared Harold Hensley, the above named defendant, before the undersigned Notary Public in and for the State and County aforesaid whose commission expires on the ____ day of _____, 19__, and made oath that the matters and things set forth in the foregoing pleas are true to the best of his knowledge and belief.

Given under my hand this 8th day of MARCH, 1948.

_____
Notary Public

returns into open court of said indictment wherein it is stated, "this indictment is found upon the testimony of Cornelia Hensley and Glen Hensley."

This defendant files herewith the affidavit of the witnesses, Cornelia Hensley (the prosecutrix) and Glen Hensley, and prays that they may be made and taken as a part of this plea, from which affidavit it appears that no competent evidence was given to them before said Grand Jury upon which it found an indictment, and it appears from said affidavit that the Attorney for the Commonwealth appeared before the Grand Jury during the deliberation on the indictment against this defendant. If further the affidavit of the Attorney for the Commonwealth appears before the Grand Jury, Glen Hensley, the prosecutrix and one of the witnesses, [illegible] the important written statement of the prosecutrix to the Grand Jury at the request of the Attorney for the Commonwealth.

And this, the said Harold Hensley, is ready to verify! wherefore he prays judgment of the said indictment and that the same may be dismissed.

_____
Harold Hensley

Filed 3/1/49

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

V.

HURDLE HENSLEY

Now comes the accused, Hurdle Hensley, and moves this Court for the dismissal of the indictments filed against him on the 20th day of December, 1948, and for a dismissal of any further prosecution thereof for the following reasons: that on the 12th day of January, 1949, a jury was impaneled in the case of Commonwealth V. Cornelia Hensley. The warrant in the cases of Cornelia Hensley. These cases charged the said Cornelia Hensley, did on, to-wit: "The 23rd day of November and the 27th day of November, 1948, commit adultery with one, Hurdle Hensley, against the peace and dignity of the Commonwealth." That all issues of fact and evidence in that case were resolved in favor of the defendant, Cornelia Hensley, when the jury by their verdict found the defendant, Cornelia Hensley, not guilty of adultery with Hurdle Hensley. A fortiori when the jury found the defendant, Cornelia Hensley, not guilty of adultery as charged in the warrants and which warrants carrying the identical charge against this defendant, the jury by its verdict found that this defendant and the defendant in the case then heard were not guilty of adultery. Wherefore this defendant prays judgment of the court.

Hurdle Hensley

_____

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

V.

HURDLE HENSLEY

Now comes the accused, Hurdle Hensley, and moves this Court for the dismissal of the indictments filed against him on the 20th day of December, 1948, and for a dismissal of any further prosecution thereof for the following reasons: that on the 12th day of January, 1949, a jury was impanelled in the case of Commonwealth V. Cornelia Hensley. The warrant in the cases of Cornelia Hensley. These cases charged the said Cornelia Hensley, did on, to-wit: "The 23rd day of November and the 27th day of November, 1948, commit adultery with one, Hurdle Hensley, against the peace and dignity of the Commonwealth." That all issues of fact and evidence in that case were resolved in favor of the defendant, Cornelia Hensley, when the jury by their verdict found the defendant, Cornelia Hensley, not guilty of adultery with Hurdle Hensley. A fortiori when the jury found the defendant, Cornelia Hensley, not guilty of adultery as charged in the warrants and which warrants carrying the identical charge against this defendant, the jury by its verdict found that this defendant and the defendant in the case then heard were not guilty of adultery. Wherefore this defendant prays judgment of the court.

Hurdle Hensley

_____

V.

Filed 3/7/49

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

Comes now the defendant, Hurdle Hensley, and moves the Court to quash the venire summoned in this cause and assigns as his reasons therefor that on the back of each ballot drawn from the box there appears to be the initial of the different districts and the City of Harrisonburg thereon; that there should be no identifying marks upon said ballot to identify them from any other ballot in the jury box; that in drawing said jury it is mandatory that the statute be followed and that as the jury is drawn from the box, their names shall be listed in the order drawn constituting the venire and no consideration may be given as to the districts or city of which they are residents except in such cases as provided by statute.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH OF VIRGINIA

v.

HARDIE HENSLEY

Comes now the defendant, Hardie Hensley, and moves the Court to dismiss the charge against him in this cause and assigns as his reasons therefor, that on the ballot at each polling place in the Town of Bridgewater, there appeared to be the initials of the district officers and the CIVY of Harrisonburg, Virginia; that there should be no identifying marks upon each ballot to identify them from any other ballot in the Town Box; that in the Town Bridgewater, that if it is mandatory that the statute be followed this that as the ballots were taken from the box, there should be listed in the order given consecutive numbers as to the districts or city of which the voter is a resident except in such cases as provided by statute.

STATE 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 the Circuit Court of said County, at its December term, 1948, upon their oaths do present that HURDLE HENSLEY, on or about the 27th day of November, 1948, in said County, then and there unlawfully and feloniously did commit adultery with his daughter, Cornelia W. Hensley, age eighteen, in violation of Section 4543 of the Code of Virginia, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of Cornelia W. Hensley and Glen Hensley, witnesses sworn in court and sent before the grand jury to give evidence.

2

Adultery

COMMONWEALTH #2206

V.) INDICTMENT Jail 2

HURDLE HENSLEY

Nab

Willem to guard

Felony
December term 1948

A true bill:

P. H. Hardy

Foreman

Witnesses:

1. Cornelia W. Hensley
2. Glen Hensley

George D. Conrad
Commonwealth's Attorney

1st Trial

INSTRUCTION NO. 1

The Court instructs the jury that the act of sexual intercourse between a married man and an unmarried woman constitutes adultery. The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused, Hurdle Hensley, on or about the 27th day of November, 1948, committed adultery with his daughter, Cornelia Hensley, then you shal find him guilty, as charged in the indictment.

HH

Jury Trial

INSTRUCTION NO. 1

The Court instructs the jury that the act of sexual intercourse between a married man and an unmarried woman constitutes adultery. The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused, Hurdle Hensley, on or about the 27th day of November, 1948, committed adultery with his daughter, Cornelia Hensley, then you shall find him guilty, as charged in the indictment.

HH

INSTRUCTION NO. 2

The Court instructs the jury that one charged with crime may be convicted upon circumstantial evidence alone, or upon circumstantial evidence connected with other evidence, if the jury believe beyond a reasonable doubt from such circumstantial evidence, that the person so charged is guilty of the crime alleged against him in the indictment; therefore, the court instructs the jury in this case that they have the right to convict the defendant upon circumstantial evidence alone, or upon circumstantial evidence coupled with other evidence, if the jury from such circumstantial evidence or from such circumstantial evidence connected with other evidence, believe the guilt of the defendant to have been proved beyond reasonable doubt.

HH

INSTRUCTION NO. 32

The Court instructs the jury that one charged with crime may be convicted upon circumstantial evidence alone, or upon circumstantial evidence connected with other evidence, if the jury believe beyond a reasonable doubt from such circumstantial evidence, that the person so charged is guilty of the crime alleged against him in the indictment; therefore, the court instructs the jury in this case that they have the right to convict the defendant upon circumstantial evidence alone, or upon circumstantial evidence coupled with other evidence, if the jury from such circumstantial evidence or from such circumstantial evidence connected with other evidence, believe the guilt of the defendant to have been proved beyond reasonable doubt.

HH

INSTRUCTION NO. 3

The Court instructs the jury that the burden resting upon the Commonwealth to prove the accused guilty beyond all reasonable doubt of an offense and every material element thereof, charged against the accused, does not mean that it is necessary for the Commonwealth to establish the guilt of the accused to an absolute certainty or beyond all possibility of mistake or to do more than satisfy the jury that upon the evidence as a whole the accused is guilty thereof beyond all reasonable doubt.

WAJ

INSTRUCTION NO. 3

The Court instructs the jury that the burden resting upon the Commonwealth to prove the accused guilty beyond all reasonable doubt of an offense and every material element thereof, charged against the accused, does not mean that it is necessary for the Commonwealth to establish the guilt of the accused to an absolute certainty or beyond all possibility of mistake or to do more than satisfy the jury that upon the evidence as a whole the accused is guilty thereof beyond all reasonable doubt.

MAS

1st Trial

INSTRUCTION NO. D

The Court instructs the jury that the failure of the accused to take the stand and to testify creates no presumption against him and in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider.

INSTRUCTION NO. E

The Court instructs the jury that even though they may believe from the evidence that the witnesses, Cornelia Hensley and Glenn Hensley, may have made statements in conflict with or in contradiction of the evidence given by them on the witness stand, in considering the guilt or innocence of the accused of the crime with which he is charged, the jury are not at liberty to take into consideration any such contradiction or conflicting statements of the said witnesses or either of them, but must consider the case of the accused as if the witnesses had never made the statements except that they may consider the statements for the sole purpose of determining whether said witnesses or either of them are worthy of belief.

H.H.

INSTRUCTION NO. 4

The Court instructs the jury that even though they may believe from the evidence that the witnesses, Cornelia Hensley and Glenn Hensley, may have made statements in conflict with or in contradiction of the evidence given by them on the witness stand, in considering the guilt, or innocence of the accused of the crime with which he is charged, the jury are not at liberty to take into consideration any such contradiction or conflict in statements of the said witness or either of them, but must consider the mind of the accused as if the witnesses had never made the statements except that they may consider the statements for the sole purpose of determining whether said witnesses or either of them are worthy of belief.

INSTRUCTION NO. F

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offence as charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction, but the evidence must be of such a character and tendency as to produce a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

HJ

INSTRUCTION NO. 7

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offence as charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction, but the evidence must be of such a character and tendency as to produce a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

INSTRUCTION NO. 4

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until his guilt is established by the Commonwealth beyond a reasonable doubt and this presumption of innocence goes with the prisoner through the entire case and applies to every stage thereof and in all doubtful cases there is a legal presumption of innocence. Mere suspicion, no matter how strong, is not sufficient evidence upon which to convict, ~~the~~ and circumstantial evidence must be scanned with great caution and ~~that~~ where circumstantial evidence is relied upon the time, place, means, opportunity, motive, and conduct must all concur in pointing out the accused beyond reasonable doubt as the guilty party.

INSTRUCTION NO. N

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until his guilt is established by the Commonwealth beyond a reasonable doubt and this presumption of innocence goes with the prisoner through the entire case and applies to every stage thereof and in all doubtful cases there is a legal presumption of innocence. Mere suspicion, no matter how strong, is not sufficient evidence upon which to convict. Circumstantial evidence must be scanned with great caution and where circumstantial evidence is relied upon the time, place, means, opportunity, motive, and conduct must all concur in pointing out the accused beyond reasonable doubt as the guilty party.

N

INSTRUCTION NO. H

The Court instructs the Jury that in this case as in all criminal cases the burden is upon the Commonwealth to prove the corpus delicti beyond all reasonable doubt. It is not sufficient that there may be suspicion or probability of the guilt of the accused, but that the proof offered by the Commonwealth must be such as to establish his guilt beyond a reasonable doubt.

HTK

INSTRUCTION NO. H

The Court instructs the Jury that in this case as in all criminal cases the burden is upon the Commonwealth to prove the corpus delicti beyond all reasonable doubt. It is not sufficient that there may be suspicion or probability of the guilt of the accused, but that the proof offered by the Commonwealth must be such as to establish his guilt beyond a reasonable doubt.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Frank N. Beery, O. B. Wine, Lyle Armentrout, Shirley White, Chas. S. Smith, M. E. Burgess, S. C. Gladwell

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 *o'clock, a. m., on the* 17th *day of* January 1949 *to testify and the truth to say* ***in behalf of the Defendant*** *in the prosecution of the Commonwealth against* Hurdle Hensley

who stands charged with and indicted for 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* 13th *day of* January 1949, *and in the* 173 *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

Executed 1-14-49 by delivering a true copy of the within summon to Shirley White, C. B. Wine, Frank H. Berry & Chas. J. Smith, M. E. Bergstrand & S. E. Gladwell

each in person.

Sam H. Gallenden
S.R.C.

Thurlo Hendley
Adv.

Com. $ 2.00

Returned Feb. 17, 1949

C.A.H.

Not finding Lyle Armentrout at his usual place of abode, Executed 1-14-49 by delivering a true copy of this Summon to Mrs Lyle Armentrout his wife in person, at said Lyle Armentrout usual place of abode Mrs Lyle Armentrout being a member of his family above the age of 16 years, and explaining the purport thereof to her.

Wm. A. Rhodes Shf. for.
Sam H. Gallenden S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Joe Roadcap and Dr. F.L. Byers

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 January 1949, to testify and the truth to say in behalf of the Commonwealth against

HURDLE HENSLEY

who stands charged with and indicted for 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 January, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

Executed the within summons at the office of Dr. F. L. Byers, in the Professional Building, S. Main St., Harrisonburg, in Rockingham County, Virginia, the usual place of business of Dr. F. L. Byers, by delivering a true copy thereof and giving information of its import to Elizabeth T. Green, the person found in charge of such place of business, this 15th day of January, 1949.

Wm A. Rhodes, Dep.
for Sam H. Callender, S.R.C.

COMMONWEALTH

V.) Witness Subpoena

HURDLE HENSLEY

To January 17, 1949 at
9:30 a.m.

Sheriff Fees $1.80

EXECUTED 1-15-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summon TO Joe Roadcap IN PERSON.

Wm A. Rhodes Dep for
Sam H. Callender S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Hugh T. Frey, Nelson T. Huffman, Robert D. Liskey, A. J. Fitzwater, E. F. Early, C. W. Ewing, and P. H. Hardy,

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 *o'clock, a. m., on the* 17th *day of* January, 19 49 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth against*

Hurdle Hensley

who stands charged with and indicted for a felony ~~XXXXXXX 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 11th *day of* January, 19 49, *and in the* 173d *year of the Commonwealth.*

J. Robert Switzer, *Clerk*
By W. M. Barbour, D. C.

1070

HURDLE HENSLEY

ADS.) Wit Spa

COMMONWEALTH

Chas. A. Hammer, Jr.

Sheriff Fees 2.80

1949

January 17

not finding C. W. Ewing at his usual place of abode. Executed 1-15-49 by delivering a true copy of this summons to Mrs. C. W. Ewing. Hurdle in person, at said C. W. Ewing's usual place of abode being a member of his family above the age of 16 and explaining the purport thereof to her.

C. W. Ewing

Sam Fitzhugh Deputy for

1-14-49 by delivering a true copy of this within summons to E. F. Easley

G. S. Fitzhugh, Robert H. Fitzhugh

Hugh T. Grey, Sidney T. Hammond

and L. P. H. Hardy

each in person.

E. F. Easley

G. T. Fitzwater

Sam Hazlewood

S. R. C.

11/5/36 (jury) 6/1 & 3

Com v Hurdle Henley

w. g. } housebreaking 4 yrs. Pen.

plea guilty } fel. assault - one yr.
(no jury) (Concurrent sent.)

[illegible]

ch: [illegible]

[illegible]

Tuesday 1/18/49

Commonwealth

v.

Hurdle Hensley

This day came again the attorney for the commonwealth, and the accused, Hurdle Hensley, came in the custody of the sheriff of this county and by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; and the jury impanelled and sworn for the trial of this case came pursuant to adjournment, and having heard the evidence introduced ~~by the attorney for~~ on behalf of the commonwealth, thereupon, the accused, by counsel, moved the court to strike said evidence offered by the attorney for the commonwealth, which motion the court takes time to consider, and this case is adjourned until tomorrow morning at ~~ten~~ o'clock.

127

COMMONWEALTH

v.

Hartle Housley

This day came again the attorney for the common-
wealth, and the accused, Hartle Housley, came in the custody
of the sheriff of this county and by his attorney, Charles A.
Hammer, Jr., and Sam P. Conley; and the jury impanelled and
sworn for the trial of this case came herein on adjournment,
and having heard the evidence introduced xxxxxxxxxxxxxxx
on behalf of the commonwealth, therefrom, the accused, by counsel,
moved the court to strike said evidence offered by the attorney
for the commonwealth, which motion the court takes time to
consider, and this case is adjourned until tomorrow morning at
nine o'clock.

1/19/49 Wednesday

Commonwealth

v.

Hurdle Hensley

This day came again the attorney for the commonwealth, and the accused, Hurdle Hensley, came in the custody of the sheriff of this county and by his attorneys, Charles A. Hammer,Jr., and Sam P. Conrad; ~~the~~ and the jury impanelled and sworn for the trial of this case came pursuant to adjournment, ~~and~~ And the court having considered the motion of the accused made on yesterday ~~the~~ to strike the evidence offered on behalf of the commonwealth, doth overrule said motion and refuse to strike said evidence, to which action of the court the accused, by counsel, excepted. And thereupon, ~~the~~ the evidence ~~herein~~ ~~continued~~ completed, ~~behalf of the accused~~ was ~~heard~~, at the conclusion of which the said accused, by counsel, renewed his motion to strike the evidence offered on behalf of the commonwealth, and his plea of res adjudicata, which motion and plea the court again overruled and to which the accused, by counsel, excepted.

And having received the instructions of the court and heard the argument of counsel, the jurors were sent to their room to consider their verdict,

Commonwealth

v.

Hurdle Hensley

This day came again the attorney for the commonwealth, and the accused, Hurdle Hensley, came in the custody of the sheriff of this county and by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; the jury impanelled and sworn for the trial of this case came pursuant to adjournment, ~~xxxxxxxx~~

And the court having considered the motion of the accused made on yesterday ~~xxxx~~ to strike the evidence offered on behalf of the commonwealth, doth overrule said motion and refuse to strike said evidence, to which action of the court the accused, by counsel, excepted. And thereupon, ~~xxxxxxxxxxxx~~ the evidence herein ~~xxxxxxxxxxxxxxxxxxxx~~ was ~~xxxxx~~ continued completed, at the conclusion of which the said accused, by counsel, renewed his motion to strike the evidence offered on behalf of the commonwealth, which motion and his plea of res adjudicata, the court again overruled and to which the accused, by counsel, excepted.

And having received the instructions of the court and heard the argument of counsel, the jurors were sent to their room to consider their verdict.

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

Filed by leave of court 1/17/49

COMMONWEALTH OF VIRGINIA

V.

HURDLE HENSLEY

Comes now the defendant Hurdle Hensley and files this his plea of res adjudicata, autrefois acquit of codefendant, estoppel, and plea in bar and says as follows:

(1) That he is indicted and charged in this Court with having committed adultery with one, Cornelia W. Hensley, on to-wit: the 27th day and the 23rd day of November, 1948.

(2) That on to-wit: the 12th day of January, 1949 Cornelia W. Hensley was tried by jury in this Court on Warrants charging that the said Cornelia W. Hensley did on the 23rd day of November, 1948 and on the 27th day of November, 1948, "Did unlawfully committ fornication with one, Hurldle Hensley, a person whom she is forbidden by law to marry, in violation of Section 4543 of the Code of Virginia." That on the date aforesaid, the jury impaneled in the two cases heard that day, in the case of Commonwealth of Virginia V. Cornelia W. Hensley, returned the following verdicts, "We, the Jurors find the defendant not guilty." Lyle M. Armentrout, Foreman.

(3) That this petitioner says that the charges against him and against the said Cornelia W. Hensley, manifestly and of a necessity, if any offense was committed was one that required the joint act of both the petitioner and the said Cornelia W. Hensley, that a jury having been duly impaneled and having

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

CHARLES A. HAMMER
ATTORNEY-AT-LAW
Sou First Nat. Bk. Bldg.
HARRISONBURG, VIRGINIA

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

Indictment
Felony

COMMONWEALTH OF VIRGINIA

v.

HUNTER HENSLEY

Comes now the defendant Hunter Hensley and files this his bill of exceptions, entitled in the cause aforesaid, and prays in the same and says as follows:

(1) That he is indicted and charged in this court with having committed adultery with one, Cornelia W. Hensley, on the 5th day and the 25th day of November, 1948.

(2) That on the 15th day of January, 1949 Cornelia W. Hensley was tried by jury in this court on warrants charging that the said Cornelia W. Hensley did on the 5th day of November, 1948 and on the 5th day of November, 1948.

"Did unlawfully commit fornication with one, Hunter Hensley, a person known and is forbidden by law to marry, in violation of Section 4848 of the Code of Virginia." That on the date aforesaid, the jury impaneled in the two cases heard that day, in the case of Commonwealth of Virginia v. Cornelia W. Hensley, returned the following verdicts, "we, the jurors find the defendant not guilty." Lyle M. Armentrout, Foreman.

(3) That this bill of exceptions says that the charges against him and against the said Cornelia W. Hensley, namely, adultery and, if necessary, if any offense was committed was one that required the joint act of both the defendants and the said Cornelia W. Hensley, that a jury never been duly impaneled and having

heard the evidence of the Commonwealth in the cases of Commonwealth V. Cornelia W. Hensley and having found the said Cornelia W. Hensley not guilty, that the same are now a bar against further proceedings against this defendant for the alleged identical charges contained in the warrants against Cornelia W. Hensley and the indictments against this petitioner. Attached to this petition and prayed to be read as a part thereof is a copy of the warrants in the case of Commonwealth V. Cornelia W. Hensley. In the copy of the warrants of Commonwealth V. Cornelia W. Hensley together with copies of the verdicts of the jury returned thereon and are asked to be read as a part hereof as by the record thereof more fully and at large appears; which said judgements remain in full force and effect and the said Hurdle Hensley avers and in facts says, that he, the said Hurdle Hensley, and the said Hurdle Hensley referred to in said warrants of Commonwealth V. Cornelia W. Hensley are one and the same person; and that the charges of which the said Cornelia W. Hensley was arrested and acquitted as aforesaid and the felonies of which the said Hurdle Hensley is now indicted are the same acts alleged to having been committed by Cornelia W. Hensley, who was acquitted of the charges; and this the said Hurdle Hensley is ready to verify.

Wherefore the said defendant prays judgement, and that he may be dismissed and discharged by the Court here from the premises in the present indictment specified.

Hurdle Hensley

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

CHARLES A. HANKER
ATTORNEY-AT-LAW
308 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

Harold Henley

Upon the evidence of the commonwealth in the cases of Commonwealth V. Cornelia W. Henley and having found the said Cornelia W. Henley not guilty, that the same are now a bar against further proceedings against the defendant for the alleged identical charges contained in the warrants against Cornelia W. Henley and the indictments against this defendant. Affected to this petition and prayed to be taken as a part thereof is a copy of the warrants in the case of Commonwealth V. Cornelia W. Henley. In the copy of the warrants of Commonwealth V. Cornelia W. Henley forsaken with copies of the verdicts of the jury returned thereon and are asked to be taken as a part thereof as by the record thereof more fully and at large appears; which said judgements remain in full force and effect and the said Harold Henley were and in said cases, that he, the said Harold Henley, and the said Harold Henley returned to in said warrants of commonwealth V. Cornelia W. Henley are one and the same person; and that the charges of which the said Cornelia W. Henley was attested and sworn to as aforesaid and the defendant of which the said Harold Henley is now indicted are the same acts alleged to having been committed by Cornelia W. Henley, who was sworn to of the charges; and this the said Harold Henley is ready to verify.

Therefore the said defendant prays judgement, and that he may be dismissed and discharged by the court here from the charges in the present indictment specified.

VIRGINIA, ~~COUNTY~~ City OF ~~ROCKINGHAM~~ Harrisonburg, to-wit:

I F. H. Koontz a Notary Public in and for the State and ~~County~~ City aforesaid, whose commission expires on the 1st day of January, 1950, do hereby certify that Hurdle Hensley whose name is signed to foregoing plea res judicata autrefois acquit and estoppel, has this day personally appeared before me in my said ~~county~~ City and made oath that the matter and things setforth in the foregoing plea are true.

Given under my hand this 15th day of January, 1949.

F. H. Koontz
Notary Public

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

CHARLES A. HANNER
ATTORNEY-AT-LAW
304 First Nat. Bk. Bldg.
HARRISONBURG, VIRGINIA

VIRGINIA, ~~COUNTY OF ROCKINGHAM~~, to-wit:

I _____ a Notary Public in and for the State and County aforesaid, whose commission expires on the _____ day of _____, 19__, do hereby certify that Hardie Henderson whose name is signed to foregoing bill of sale, has this day personally appeared before me in my said county and made oath that the matter and statements set forth in the foregoing bill are true.

Given under my hand this _____ day of _____, 19__.

_____
Notary Public

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

To the Sheriff of Said County:

Whereas, Geo. D. Conrad, Commonwealth's Attorney of said County, has this day made complaint and information on oath before me, J. C. Swartz, Clerk of Trial Justice Court (T. J. or J. P.) of the said County, that Cornelia W. Hensley on the 27th day of November, 1948, in the said County, did unlawfully commit fornication with one Hurdle Hensley, a person whom she is forbidden by law to marry, in violation of Section 4543 of the Code of Virginia, 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 Cornelia W. Hensley

to answer the said complaint and to be further dealt with according to law.

Given under my hand this 27th day of December, 1948.

J. C. Swartz
Clerk ~~T. J. or J. P.~~

Memo. of Commonwealth Witnesses:

Name	Address

Docket No. 2216

JUDGEMENT

December 29th, 1948

Upon the hearing of the within charge, the defendant is found guilty, and the Court suspends the imposition of sentence in this case on good behavior of the defendant for a period of one year. Given under my hand this 29th day of December, 1948.

Fine - - - - - - -	$
Issuing Justice's Fee -	$ 1.00
Clerk's Fee - - - -	$ 1.25
Trial Justice Fee - -	$ 2.00
Arrest and Mileage -	$ 9.64
Summoning Witness	$ .50
Witness Attendance and Mileage	$
Commonwealth's Attorney - - - - -	$ 2.50
Jail Fees - - - - -	$
	$
Total - - - -	$16.89

PORTER R. GRAVES
Trial Justice

Copy for Cornelia W. Hensley

Issued 1/12/49

Trial Justice Court

Criminal Docket No. A 2493

Commonwealth

vs. { Arrest Warrant

Cornelia W. Hensley

Executed the within warrant by arresting and delivering the body of

Cornelia W. Hensley

before

this 29th day of

December, 1948.

B. L. Kiser, Dep.

Officer's Mileage

Miles travelled by officer - -	72
Miles carried prisoner - -	36
Total mileage - - -	108
	8
	864

Plea Guilty
12-29-48

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

I, ..., in and for the County of Rockingham, State of Virginia, do hereby certify that ..... and ..... as his suret ....., have this day acknowledged themselves indebted to the Commonwealth of Virginia in the sum of ..... dollars ($ .....) 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 ..... 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.

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

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

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

Appeal noted and granted to Circuit Court of Rockingham County, Va. on Jan. 6, 1949.

PORTER R. GRAVES T.J.

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

To the Sheriff of Said County:

Whereas, Geo. D. Conrad, Commonwealth's Attorney of said County, has this day made complaint and information on oath before me, J. C. Swartz, Clerk of Trial Justice Court (T. J. or J. P.) of the said County, that Cornelia W. Hensley on the 23rd day of November, 1948, in the said County, did unlawfully commit fornication with one Hurdle Hensley, a person whom she is forbidden by law to marry, in violation of Section 4543 of the Code of Virginia, 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 Cornelia W. Hensley

to answer the said complaint and to be further dealt with according to law.

Given under my hand this 27th day of December, 1948.

J. C. Swartz
Clerk ~~T. J. or J. P.~~

Memo. of Commonwealth Witnesses:

Name	Address

Docket No.2217

JUDGEMENT

December 29th, 1948

Upon the hearing of the within charge,

and upon a plea of guilty the defendant was found guilty and the Court suspends the imposition of sentence in this case on the good behavior of the defendant for a period of one year, Given under my hand this 29th day of December, 1948.

Fine - - - - - - -	$
Issuing Justice's Fee -	$ 1.00
Clerk's Fee - - - -	$ 1.25
Trial Justice Fee - -	$ 2.00
Arrest and Mileage -	$ 1.00
Summoning Witness	$
Witness Attendance and Mileage	$
Commonwealth's Attorney - - - - -	$ 2.50
Jail Fees - - - - - -	$
	$
Total - - - -	$ 7.75

PORTER R. GRAVES
Trial Justice

Copy for Cornelia W. Hensley

Trial Justice Court

Criminal Docket No A2492

Commonwealth

vs. { Arrest Warrant

Cornelia W. Hensley

Executed the within warrant by arresting and delivering the body of

Cornelia W. Hensley

before

this 29th day of

December, 1948.

B. L. Kiser, Dep.

Officer's Mileage

Miles travelled by officer - -

Miles carried prisoner - -

Total mileage - - -

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 ..... 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, the ..... day of ....., 19 ..... day of ....., 19 ....., at ..... , 19 ..... .

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

Appeal noted and granted to the Circuit Court of Rockingham County, Va. on Jan. 6, 1949.

Porter Graves T.J.

Plea Guilty 12-29-48

#1

We, the jurors find the defendant not guilty.

Lyle M. Armentrout, Foreman

#2

We, the jurors find the defendant not guilty.

Lyle M. Armentrout, Foreman

Plea of res adjudicata

Filed 1/17/49

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon O. D. Baker

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at ~~2:30~~ 6:00 o'clock, P.m., on the 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against

Hurdle Hensley

who stands charged with and indicted for 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~~ George D. Conrad, Commonwealth's Attorney of our said Court, at the Court House, the 8th day of March, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Geo D Conrad, ~~Clerk~~ Commonwealth Attorney

THE SERVICE PRESS

EXECUTED 3/8/49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summon

TO O. D. Baker

IN PERSON.

B. L. Kiser Dep. for

Sam H. Callender S.R.C.

In the Name of the Commonwealth of Virginia:

Sergeant of City of Norfolk,

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

You are hereby commanded to summon TURNER CUSTER

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 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 28th day of February, 1949, and in the ~~76~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

By calling at the office of

Turner Curtis

and not finding him there, I left a notice of the within process with

Mr. Saunders

and gave him information of its purport, during business hours, on the

2 day of March 1949

in the City of Norfolk, Virginia

LEE F. [illegible],

Sergt. City of Norfolk, Va.

By J. R. [illegible] Deputy

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon C. Overton Lee, Dr. F.L. Byers

~~And Turner Custer~~

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 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 1st day of March, 19 49, and in the ~~16~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

COM.

V.) Witness Subpoena

HURDLE HENSLEY

To March 9, 1949 at
9:30 a.m.

Sheriff Fees $4.00

Not finding C. Preston Lee at his usual place of abode, Executed 3-2-49 by delivering a true copy of this Summon to Mary W. Lee his wife -- C. Preston Lee in person, at said usual place of abode Mary W. Lee, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

Wm A. Rhodes Dep. for
Sam H. Ballenger S.R.C.

EXECUTED 3-2-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summon TO C. P. Lee IN PERSON.

Wm A. Rhodes Dep. for
Sam H. Ballenger S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Beulah Shifflett, Linwood Alger, and Joe Roadcap

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 9th day of March 1949, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 1st day of March, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Geo. Carrier, ~~Clerk~~
Commonwealth's Attorney

THE SERVICE PRESS

COM.

V.) Witness Subpoena

HURDLE HENSLEY

To March 9, 1949 at
9:30 a.m.

Sheriff's fees $1.20

3-2-49

I have served the within summon to Beulah Shifflett
Leonard Algee Jr Coakley
each in person.

E. O. Deal, Dep. for
Jam H. Calhoun S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon William Blakey

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 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 7th day of March, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Geo Conrad, ~~Clerk~~
Commonwealth's Attorney

THE SERVICE PRESS

COM.

V.) Witness Subpoena

HURDLE HENSLEY

To March 9, 1949 at
9:30 a.m.

Sheriff fees, 40

EXECUTED 3/7/49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summons TO William Blakey IN PERSON.

B. N. Triplett Dep for
Sam H. Collinder S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Walton Taliaferro and Mrs. Walton Taliaferro

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 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 7th day of March, 19 49, and in the ~~16~~ 173rd year of the Commonwealth.

~~, Clerk~~
Commonwealth's Attorney

THE SERVICE PRESS

EXECUTED 3-8-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN summons TO Walton Taliferro IN PERSON.

Sam H Ballenclu
S. R. C.

COM.

V.) Witness Subpoena

HURDLE HENSLEY

To March 9, 1949 at 9:30 a.m.

Sheriff Fees $1.86

Not finding Mrs Walton Taliferro at his usual place of abode. Executed 3-8-49 by delivering a true copy of this summons to Walton Taliferro. her husband in person, at said Mrs Walton Taliferro usual place of abode Walton Taliferro, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

Sam H. Ballenclu
S. R. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon CORNELIA HENSLEY, GLEN HENSLEY, SHERIFF CALLENDER AND B. L. KISER

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 9th day of March 19 49, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 1st day of March, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

COM.

V.) Witness Subpoena

HURDLE HENSLEY

To March 9, 1949 at
9:30 a.m.

Sheriff Fee $1.00

3-2-49 Executed by delivering a true copy of the within summon to Cornelia Hensley
Sheriff Calhoun & Lou Hensley
and B. F. Kiser

E. O. Reel Dep for
Sam H. Calhoun Shff.

and in person.

1/17/49

Commonwealth

vs. On an indictment for a felony

Hurdle Hensley

This day came the attorney for the commonwealth, and the accused, Hurdle Hensley, came pursuant to his recognizance and by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad. And thereupon, the defendant, by counsel, moved the court for leave to withdraw his plea of not guilty heretofore entered, which motion was granted by the court, and said plea was accordingly withdrawn. And the said accused, by counsel, thereupon, with the consent of the court, filed in writing his plea of res adjudicata, to which plea the attorney for the commonwealth demurred and moved the court to strike said plea, which demurrer and motion to strike said plea, the court sustained, and said plea was accordingly stricken. And thereupon, said Hurdle Hensley, by counsel, moved the court to re-instate his plea of not guilty, and the court ordered that he be re-arraigned, and being re-arraigned on the charge set out in the indictment herein, said accused again pleaded not guilty thereto.

And thereupon, said accused, in person and by counsel, again filed his plea in abatement and motion to quash the indictment returned by the grand jury against him, in this case, and

~~(and after hearing evidence in support of and in opposition to said motion and plea, and argument of counsel thereon,~~

the court, after having heard evidence in support of & in opposition to said motion & plea & argument of counsel thereon, being of opinion that the defendant, Hurdle

Commonwealth

vs. On an indictment for a felony

Hartle Hensley

This day came the attorney for the commonwealth, and the accused, Hartle Hensley, came personally into in his recognizance and by his attorney, Charles A. Hammer, Jr., and Sam P. Conley. And the defendant, the defendant, by counsel, moved the court for leave to withdraw his plea of not guilty heretofore entered, which motion was granted by the court, and said plea was accordingly withdrawn. And the said accused, by counsel, thereupon with the consent of the court, filed in writing his plea of tes sd-

Indicted, to which plea, attorney for the commonwealth de-

~~[illegible]~~

the court, moved the court to strike said plea, which demurrer and motion to strike said plea, the court sustained, and said plea accordingly stricken. And thereupon, said Hartle Hensley, by counsel, moved the court to re-instate his plea of not guilty, and the court ordered that he be re-arraigned, and pleads re-arraigned on the charge set out in the in-

document herein, [illegible] said accused guilty.

said plea, not guilty thereto.

in person and said

And thereupon, said accused, by counsel, filed his plea in abatement and motion to quash the indictment returned by the grand jury against him, [illegible] this case

(see state ex rel. Hensley v. Commonwealth, and similar motion and demurrer.)

[illegible]

[illegible]

Hensley, has not carried the burden imposed upon him by law, upon the p lea of abatement and motion to quash, the same is overruled.

~~The defendant,~~ The defendant, by counsel, excepts to the ~~motion~~ action of the court in overruling said plea in abatement, and motion. The defendant, by counsel, further excepts to the refusal of the court to allow him to summon the members of the grand jury who returned the indictments in these cases to testify on behalf of the defendant as to the sufficiency of the evidence produced before them)

The accused, by counsel, moved that the court question the members of the venire hereto on their voir dire as to whether they have read a newspaper account ~~relating~~ reporting the trial in the case heretofore tried of Commonwealth vs. Cornelia Hensley, and the comment contained therein, which motion the court overruled, and to which action of the court in overruling said motion the accused, by counsel, excepted.

Hensley, has not carried the burden imposed upon him by law, upon the p lea of abatement and motion to quash, the same is overruled.

~~xxxxxxxxxxxxxxxx~~ The defendant, by counsel, excepts to the ~~xxxxx~~ action of the court in overruling said pleas in abatement, and motion. The defendant, by counsel, further excepts to the refusal of the court to allow him to summon the members of the Grand Jury who returned the indictments in these cases to testify on behalf of the defendant as to the sufficiency of the evidence produced before them.

The accused, by counsel, moved that the court direct the members of the Grand Jury who returned the indictments in these cases to testify on behalf of the defendant as to what transpired before them, which motion the court overruled, and to which action of the court in overruling said motion the accused, by counsel, excepted.

And from persons summoned by the sheriff under writs of venire facias, twenty persons were examined by the Court and found duly qualified and free from exception. Whereupon, a list containing the names of said twenty persons was handed to the attorney for the commonwealth and the accused who each alternately struck therefrom the names of four persons, the remaining twelve, namely: Arthur Matheny, Raymond Weaver, George W. Miller, Olin S. Senger, J. W. Spencer, J. K. Koontz, Ralph Crist, C. V. Bert, E. F. Showalter, Weldon W. Flory, F. P. Brunk, and Carl B. Lively, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence, And on motion of the attorney for the commonwealth, it is ordered that all of the witnesses summoned to testify herein and all spectators be excluded from the court room during the trial of this case. Thereupon, the jury, having received the charge of the court and having heard a portion of the evidence, were adjourned until tomorrow morning at ten o'clock.

Order of 1/17/49

Second Trial Granted

INSTRUCTION NO. 1

The Court instructs the jury that the act of sexual intercourse between a married man and an unmarried woman constitutes adultery. The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused, Hurdle Hensley, on or about the 27th day of November, 1948, committed adultery with his daughter, Cornelia Hensley, then you shall find him guilty, as charged in the indictment.

HH

Second Trial
Unreported

INSTRUCTION NO. 1

The Court instructs the jury that the act of sexual intercourse between a married man and an unmarried woman constitutes adultery. The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused, Hurdle Hensley, on or about the 27th day of November, 1948, committed adultery with his daughter, Cornelia Hensley, then you shall find him guilty, as charged in the indictment.

HPP

INSTRUCTION NO. 2

The Court instructs the jury that one charged with crime may be convicted upon circumstantial evidence alone, or upon circumstantial evidence connected with other evidence, if the jury believe beyond a reasonable doubt from such circumstantial evidence, that the person so charged is guilty of the crime alleged against him in the indictment; therefore, the court instructs the jury in this case that they have the right to convict the defendant upon circumstantial evidence alone, or upon circumstantial evidence coupled with other evidence, if the jury from such circumstantial evidence or from such circumstantial evidence connected with other evidence, believe the guilt of the defendant to have been proved beyond reasonable doubt.

HW

INSTRUCTION NO. 7

The Court instructs the jury that one charged with crime may be convicted upon circumstantial evidence alone, or upon circumstantial evidence connected with other evidence, if the jury believe beyond a reasonable doubt from such circumstantial evidence, that the person so charged is guilty of the crime alleged against him in the indictment; therefore, the court instructs the jury in this case that they have the right to convict the defendant upon circumstantial evidence alone, or upon circumstantial evidence coupled with other evidence, if the jury from such circumstantial evidence or from such circumstantial evidence connected with other evidence, believe the guilt of the defendant to have been proved beyond reasonable doubt.

INSTRUCTION NO. 3

The Court instructs the jury that the burden resting upon the Commonwealth to prove the accused guilty beyond all reasonable doubt of an offense and every material element thereof, charged against the accused, does not mean that it is necessary for the Commonwealth to establish the guilt of the accused to an absolute certainty or beyond all possibility of mistake or to do more than satisfy the jury that upon the evidence as a whole the accused is guilty thereof beyond all reasonable doubt.

NOT

INSTRUCTION NO. 3

The Court instructs the jury that the burden resting upon the Commonwealth to prove the accused guilty beyond all reasonable doubt of an offense and every material element thereof, charged against the accused, does not mean that it is necessary for the Commonwealth to establish the guilt of the accused to an absolute certainty or beyond all possibility of mistake or to do more than satisfy the jury that upon the evidence as a whole the accused is guilty thereof beyond all reasonable doubt.

Refd

INSTRUCTION NO. 4

The Court instructs the jury that, in determining the weight to be given the testimony of the different witnesses in this case, they 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 the trial; their temper, feeling or bias, if any has been shown; their demeanor while testifying; their apparent candor and fairness; their apparent intelligence or lack of intelligence; and from all surrounding circumstances appearing from the trial, determine which witnesses are more worthy of credit and what is the relative weight of any such testimony, and to give credit accordingly.

W.H.T.

INSTRUCTION NO. 4

The Court instructs the jury that, in determining the weight to be given the testimony of the different witnesses in this case, they 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 the trial; their temper, feeling or bias, if any has been shown; their demeanor while testifying; their apparent candor and fairness; their apparent intelligence or lack of intelligence; and from all surrounding circumstances appearing from the trial, determine which witnesses are more worthy of credit and what is the relative weight of any such testimony, and to give credit accordingly.

INSTRUCTION NO. D

The Court instructs the jury that the evidence that a witness made contradictory statements is for the purpose alone of impeaching the veracity of the witness, and does not give such contrary statements the effect of evidence against the accused. Therefore, the statements of the witnesses Callender, Kiser, Byers, ~~xxxxx~~ and Mr. and Mrs. Taliaferro as to what was told them by Cornelia Hensley would not be evidence against the prisoner. The jury is further instructed that proof of prior inconsistent statements made by Cornelia Hensley at the preliminary hearing in this case is admissible solely for the purpose of impeachment and cannot be considered as evidence against the accused.

W.H.

INSTRUCTION NO. 9

The Court instructs the jury that the evidence that a witness made contradictory statements is for the purpose alone of impeaching the veracity of the witness, and does not give such contrary statements the effect of evidence against the accused. Therefore, the statements of the witnesses Gallender, Kiser, Byers, ~~Xxxxx~~ and Mr. and Mrs. Taliaferro as to what was told them by Cornelia Henaley would not be evidence against the prisoner. The jury is further instructed that proof of prior inconsistent statements made by Cornelia Henaley at the preliminary hearing in this case is admissible solely for the purpose of impeachment and cannot be considered as evidence against the accused.

INSTRUCTION NO. E

The Court instructs the jury that the evidence that a witness made contradictory statements is for the purpose alone of impeaching the veracity of the witness, and does not give such contrary statements the effect of evidence against the accused. Therefore the statements of the witnesses Callender, Kiser, Custer, Baker, Devier and Mr. and Mrs. Taliaferro as to what was told them by Glen Hensley would not be evidence against the prisoner.

W.H.

INSTRUCTION NO. 7

The Court instructs the jury that the evidence that a witness made contradictory statements is for the purpose alone of impeaching the veracity of the witness, and does not give such contrary statements the effect of evidence against the accused. Therefore the statements of the witnesses Callender, Kiser, Custer, Baker, Henslin and Mr. and Mrs. Taliaferro as to what was told them by Glen Hensley would not be evidence against the prisoner.

W.P.

INSTRUCTION NO. 15

The Court instructs the jury that the failure of the accused to take the stand and to testify creates no presumption against him and in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider. The jury is further instructed that by his plea of not guilty, the accused denies each and every element of the charge against him.

M.H.

INSTRUCTION NO. 7

The Court instructs the jury that the failure of the accused to take the stand and to testify creates no presumption against him and, in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider. The jury is further instructed that by his plea of not guilty, the accused denies each and every element of the charge against him.

INSTRUCTION NO. 4

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until his guilt is established by the Commonwealth beyond a reasonable doubt and this presumption of innocence goes with the prisoner through the entire case and applies to every stage thereof and in all doubtful cases there is a legal presumption of innocence. Mere suspicion, no matter how strong, is not sufficient evidence upon which to convict, and circumstantial evidence must be scanned with great caution and where circumstantial evidence is relied upon the time, place, means, opportunity, motive, and conduct must all concur in pointing out the accused beyond reasonable doubt as the guilty party.

W.K.J.

INSTRUCTION NO. 4

The Court instructs the jury that the law presumes every person charged with a crime to be innocent until his guilt is established by the Commonwealth beyond a reasonable doubt and this presumption of innocence goes with the prisoner through the entire case and applies to every stage thereof and in all doubtful cases there is a legal presumption of innocence. Mere suspicion, no matter how strong, is not sufficient evidence upon which to convict, and circumstantial evidence must be scanned with great caution and where circumstantial evidence is relied upon the time, place, means, opportunity, motive, and conduct must all concur in pointing out the accused beyond reasonable doubt as the guilty party.

INSTRUCTION NO. K

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offence as charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction but the evidence must be of such a character and tendency as to produce a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

INSTRUCTION NO. K

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offence as charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction but the evidence must be of such a character and tendency as to produce a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

INSTRUCTION NO. 4

The Court instructs the jury that in the application of circumstantial evidence to the determination of the case, the utmost caution and vigilance should be used. Such evidence is always insufficient where, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis may still be true, for it is the actual exclusion of every other reasonable hypothesis which invests mere circumstances with the force of truth. Where the evidence leaves it indifferent which of several hypotheses is true, or establishes only some finite probability in favor of one hypothesis, such evidence cannot amount to proof, however great the probability may be.

Therefore, although the jury may believe, from the evidence in this case, that there is a strong probability that the accused is guilty of the offense charged in the indictment, still, if upon the whole evidence, there is any other reasonable hypothesis consistent with his innocence, they cannot find the accused guilty, and this is true, although it may appear from the evidence that the probabilities of his guilt are greater than the probabilities of his innocence.

W.H.

INSTRUCTION NO. 2

The court instructs the jury that in the application of circumstantial evidence to the determination of the case, the utmost caution and vigilance should be used. Such evidence is always trustworthy when, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis was still be true, for it is the moral exclusion of every other reasonable hypothesis which invests mere circumstances with the force of truth. Where the evidence leaves it indifferent which of several hypotheses is true, or establishes only some limited probability in favor of one hypothesis, such evidence cannot amount to proof, however great the probability may be.

Therefore, although the jury may believe from the evidence in this case, that there is a strong probability that the accused is guilty of the offense charged in the indictment, still, if upon the whole evidence, there is yet other reasonable hypothesis consistent with his innocence, they cannot find the accused guilty, and this is true, although it may appear from the evidence that the probabilities are the most against the accused guilty, he must be acquitted.

2nd Trial
Refused

INSTRUCTION NO. 1

The Court instructs the jury that if they believe from the evidence in this case that Cornelia Hensley between the time the act is alleged to have taken place and the time she made the complaint to Turner Custer had the time and opportunity and, in fact, did plan the story which she subsequently told to Custer, that then that story or statement made to Custer and as testified to by him may be considered by the jury solely for the purpose of impeaching Cornelia Hensley and cannot be considered as evidence against the accused.

Refused, Res Gestae
W.K.T.

2nd Trial
Refused

INSTRUCTION NO. 7

The Court instructs the jury that if they believe from the evidence in this case that Cornelia Hensley between the time the act is alleged to have taken place and the time she made the complaint to Turner Custer had the time and opportunity and, in fact, did plan the story which she subsequently told to Custer, that then that story or statement made to Custer and as testified to by him may be considered by the jury solely for the purpose of impeaching Cornelia Hensley and cannot be considered as evidence against the accused.

Refused, Per Curiae
H.H.T.

INSTRUCTION NO. A

The Court instructs the jury that the evidence of Sheriff Callender, Deputy Sheriff Kiser, Turner Custer, Mr. Baker, Mr. and Mrs. Taliaferro, and the stipulation as to what would have been the evidence of C. Overton Lee if he had been called to the stand can be considered by the jury only for the purposes of impeaching the testimony of Cornelia Hensley and Glenn Hensley and cannot be considered as evidence against the accused on the charge against him set forth in the indictment.

Refused,
W.H.

INSTRUCTION NO. 4

The Court instructs the jury that the evidence of Sheriff Callender, Deputy Sheriff Kiser, Turner Custer, Mr. Baker, Mr. and Mrs. Ingleferio, and the stipulation as to what would have been the evidence of C. Overton Lee if he had been called to the stand can be considered by the jury only for the purposes of impeaching the testimony of Cornelia Hensley and Glenn Hensley and cannot be considered as evidence against the accused on the charge against him set forth in the indictment.

Refused
HH

INSTRUCTION NO. B

The Court instructs the jury that the evidence of Sheriff Callender, Deputy Sheriff Kiser, Mr. Baker, Mr. and Mrs. Taliaferro, and the stipulation as to what would have been the evidence of C. Overton Lee if he had been called to the stand can be considered by the jury only for the purposes of impeaching the testimony of Cornelia Hensley and Glenn Hensley and cannot be considered as evidence against the accused on the charge against him set forth in the indictment.

Refused not restricted to prior inconsistent statements

W.T.S.

INSTRUCTION NO. 16

The Court instructs the jury that the evidence of Sheriff Callender, Deputy Sheriff Kiser, Mr. Baker, Mr. and Mrs. Tallaferro, and the stipulation as to what would have been the evidence of C. Overton Lee if he had been called to the stand can be considered by the jury only for the purposes of impeaching the testimony of Cordelia Hensley and Glenn Hensley and cannot be considered as evidence against the accused on the charge against him set forth in the indictment.

Refused not relating to proper
impeachment testimony
MCT

INSTRUCTION NO. C

The Court instructs the jury that under the law of Virginia, the jury cannot consider evidence of contradictory statements made by a witness, as proof of the facts alleged in the indictment, nor may the jury, even though they believe that one or more witnesses may have testified falsely, assume or infer from such false testimony, that the charge alleged in the indictment against the defendant, is true.

Refused
W.H.T.

INSTRUCTION NO. 6

The Court instructs the jury that under the law of Virginia, the jury cannot consider evidence of contradictory statements made by a witness, as proof of the facts alleged in the indictment, nor may the jury, even though they believe that one or more witnesses may have testified falsely, assume or infer from such false testimony, that the charge alleged in the indictment against the defendant, is true.

Refused
H.C.J.

CHARLES A. HAMMER
ATTORNEY-AT-LAW

COPY

HARRISONBURG, VA.

To: J. H. Lollinder, B. F. Kiser, Mr. Harper, Mr. + Mrs. Cornelius Hershberger, and the F. F. Court of evidence before the

INSTRUCTION NO. C-1

~~The Court instructs the jury that under the law~~ of Virginia, the jury ~~cannot~~ consider evidence of prior contradictory statements made by a witness, ~~as proof of the facts alleged~~ in the indictment, nor may the jury, even though they believe that one or more witnesses may have testified falsely, assume or infer from such false testimony, that the charge alleged in the indictment against the defendant, is true.

Refused
H.H.

CHARLES A. HAMMER
ATTORNEY-AT-LAW

COPY

HARRISONBURG, VA.

INSTRUCTION NO. G-1

~~The Court instructs the jury that under the law of Virginia, the jury cannot consider evidence or contradictory statements made by a witness, as proof of the facts alleged in the indictment, nor may the jury, even though they believe that one or more witnesses may have testified falsely, assume or infer from such false testimony, that the charge alleged in the indictment against the defendant, is true.~~

Refused
W.C.H.

Instruction No E.

The Court instructs the jury that even though they may believe that one or more witnesses may have testified falsely, they may not assume or infer from such false testimony, that the charge alleged in the indictment against the defendant, is true

covered by D + E

W.H.

INSTRUCTION NO. J

The Court instructs the jury that in this case the Commonwealth relies wholly upon circumstantial evidence to establish the guilt of the accused, and therefore in determining his guilt or innocence the jury must be governed by the following rules of law, which are binding upon you in the case:

1. It is essential that all the circumstances from which the conclusion of defendant's guilt is to be drawn by the jury shall be established by full proof, and the Commonwealth is bound to prove every single circumstance which is essential to the conclusion of guilt, in the same manner and to the same extent as if the whole issue had rested upon the proof of each individual and essential circumstance.

2. All the facts and circumstances, when established by full proof, must be consistent with the hypothesis of the guilt of the accused.

3. It is also essential that the circumstances should be of a conclusive nature and tendency. Evidence is always indefinite and inconclusive when it raises no more than a mere or limited probability in favor of the guilt of the accused, as compared with some definite probability of his innocence, whether the precise proof can or cannot be ascertained. Such evidence is always insufficient where, assuming all to be proved which the evidence tends to prove, some other hypothesis may still be true; for it is the actual exclusion of every other hypothesis which invests mere circumstances with the force of proof. Whenever, therefore, the evidence leaves it indifferent which of several hypotheses is true, or merely establishes some finite probability in favor of one hypothesis rather than another, such evidence cannot amount to proof, however great the probability may be.

4. It is likewise essential that the circumstances relied upon to prove the guilt of the accused shall to a moral certainty exclude every hypothesis but that of his guilt.

Refused
W.H.T.

INSTRUCTION NO. 5

The Court instructs the jury that in this case the Commonwealth relies wholly upon circumstantial evidence to establish the guilt of the accused, and therefore it devolves upon them to determine the guilt or innocence the jury must be governed by the following rules of law, which are binding upon you in the case:

1. It is essential that all the circumstances from which the conclusion of defendant's guilt is to be drawn by the jury shall be established by full proof, and the Commonwealth is bound to prove every single circumstance which is essential to the conclusion of guilt, in the same manner and to the same extent as if the whole issue had rested upon the proof of each individual and essential circumstance.

2. All the facts and circumstances, when established by full proof, must be consistent with the hypothesis of the guilt of the accused.

3. If is also essential that the circumstances should be of a conclusive nature and tendency. Evidence is always insufficient and inconclusive when it raises no more than a mere or limited probability in favor of the guilt of the accused, as against the proofs of innocence, whether the proofs are of a positive nature or of circumstances. Such evidence is always insufficient where, although it may be consistent with some definite probability of his innocence, it leaves it indifferent which of several hypotheses is true, or merely establishes some slight probability in favor of one hypothesis rather than another, such evidence cannot amount to proof, however great the probability may be.

4. It is likewise essential that the circumstances relied upon to prove the guilt of the accused shall of a moral certainty exclude every hypothesis but that of his guilt.

Executed 3/10/49 by delivering a true copy of the within summon to J. K. Koontz, J. W. Spencer, Geo. W. Miller, Nelson T Huffman and Ralph Crist

each in person. B. L. Kiser Dep. for Sam H. Callender S.R.C.

Executed 3-10-49 by delivering a true copy of the within summon to Hugh T. Fry and C. V. Berk

each in person.

E. O. Reed. Dep for
Sam H. Callender S.R.C.

Not finding F. P. Brunk nor any member of his family above the age of 16 years at his usual place of abode, executed March 10, 1949, by posting and leaving posted a true copy of the within summons on the front door of the said F. P. Brunk's usual place of abode.

R. L. Shawdumon, Dep.

for Sam H. Callender, S. R. C.

Not finding Oland S. Langer. at his usual place of abode, Executed 3-10-49 by delivering a true copy of this summon to Carlan Langer her daughter in person, at said Oland S. Langer. usual place of abode Carlan Langer., being a member of his family above the age of 16 years, and explaining the purport thereof to her, R. L. Shawdumon dep for Sam H Callender.

Executed 3-10-49 by delivering a true copy of the within summon to P. H. Hardy. and Robert D. Lisby.

each in person. R. L. Shawdumon dep for. Sam H Callender RCS

Executed 3-10-49 by delivering a true copy of the within summon to E. F. Earley
E. F. Showalter and
Earl B. Direly

each in person.

Wm A. Rhodes Dep for.
Sam H. Ballender S.R.B.

A. J. Fitzwater not found in my Bailwick 3-10-49

Wm A. Rhodes Dep for.
Sam H. Ballender S.R.B.

Sam H. Callender. NCS

Not finding Weldon W. Flory at his usual place of abode, Executed 3-10-49 by delivering a true copy of this summons to Francis Flory his wife in person, at said Weldon W. Flory usual place of abode Francis Flory, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

Sam H. Callender
S. R. C.

EXECUTED 3-10-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN summons TO Weldon W. Flory IN PERSON.

Sam H. Callender
S. R. C.

Not finding Raymond Weaver at his usual place of abode, Executed 3-10-49 by delivering a true copy of this summons to Maude Weaver his wife in person, at said Raymond Weaver usual place of abode Maude Weaver, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

Sam H. Callender
S. R. C.

EXECUTED 3-10-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN summons TO Arthur Brathery IN PERSON.

Sam H. Callender
S. R. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Hugh T. Frey, Nelson T. Huffman, Robert D. Liskey, A. J. Fitzwater, E. F. Early, C. W. Ewing, P. H. Hardy, Arthur Matheny, Raymond Weaver, Geo. W. Miller, Olin S. Senger, J. W. Spencer, J. K. Koontz, Ralph Crist, C. V. Bert, E. F. Showalter, Weldon W. Flory, F. P. Brunk, and Carl B. Lively,

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 *o'clock, a. m., on the* 11th *day of* March, 19 49 *to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against*

Hurdle Hensley

who stands charged with and indicted for a felony ~~xxxxxxxxxx~~

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 10th *day of* March, 19 49, *and in the* 173rd *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

Maude Weaver

HURDLE HENSLEY

ADS.) Wit Spa

COM.

Chas. A. Hammer) p.q.
Sam P. Conrad)

Sheriff Fees $7.60

1949

March 11

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

To the Sheriff of Said County:

Whereas, GeorgeD. Conrad, Commonwealth's Attorney of said County, has this day made complaint and information on oath before me, J.C. Swartz, Clerk of Trial Justice Court (T. J. or J. P.) of the said County, that Hurdle Hensley on the 27th day of November, 1948, in the said County, did unlawfully and feloniously commit adultery with his daughter, Cornelia W. Hensley, age eighteen, in violation of Section 4543 of the Code of Virginia, against the peace and dignity of the Commonwealth

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 Hurdle Hensley

to answer the said complaint and to be further dealt with according to law.

Given under my hand this 29th day of November, 1948.

J. C. Swartz
Clerk ~~T. J. or J. P.~~

Memo. of Commonwealth Witnesses:

Name	Address

JUDGEMENT

Dec. 6, 1948

Upon the hearing of the within charge, and there being probable cause found, the defendant is held for action of the Grand Jury.

Fine - - - - - - -	$
Issuing Justice's Fee -	$ 1.00
Clerk's Fee - - - -	$ 1.25
Trial Justice Fee - -	$ 2.00
Arrest and Mileage -	$ 1.50
Summoning Witness	$ ---
Witness Attendance and Mileage	$ ---
Commonwealth's Attorney - - - - -	$ 2.50
Jail Fees - - - - -	$ ----
	$
Total - - - -	$ 8.25

Porter R. Graves
Trial Justice

#2206

Trial Justice Court

Criminal Docket No. A 2370

Commonwealth

vs. { Arrest Warrant

Hurdle Hensley

Executed the within warrant by arresting and delivering the body of

Hurdle Hensley.

before Jail.

this 29 day of

Nov. , 1948

R. L. Shawdy
deputy Sam H. Callender.

Officer's Mileage

Miles travelled by officer - - .....

Miles carried prisoner - - .....

Total mileage - - - .....

Rec.

N.G. - To 12-6-48 10:AM.

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

I, ..., T. J. or J. P. or Bail Commissioner, in and for the County of Rockingham, State of Virginia, do hereby certify that ..... and ..... as his suret ....., have this day acknowledged themselves indebted to the Commonwealth of Virginia in the sum of ..... dollars ($ .....) 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 ..... 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, the ..... day of ....., 19 .....

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

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

V. CHARGE TO JURY

HURDLE HENSLEY

If you find the accused, Hurdle Hensley, guilty of ADULTERY WITH HIS DAUGHTER, as charged in the indictment, you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than ten years, or, in your discretion, by confinement in jail not exceeding twelve months and by a fine not exceeding five hundred dollars ($500.00).

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

Com

v.

Hurdle Hensley

Charge to the jury

Com

v.

Hurdle Hensley

Charge to the Jury

Filed 3/21/49

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

VS.

HURDLE HENSLEY

?

Comes now the defendant, Hurdle Hensley, in person and by counsel and moves the Court to set aside the verdict of the jury returned on the 14th day of March, 1949, finding this defendant guilty of adultery with his daughter, Cornelia Hensley, and fixing his punishment at five years in the penitentiary upon the following grounds to-wit:

(1) That the Court erred in overruling the motion of said defendant that this charge be dismissed on the grounds of autrefois acquital of co-defendant;

(2) That the Court erred in the admission of certain evidence offered by the Commonwealth and objected to by the defendant;

(3) That the Court erred in the exclusion of certain questions asked the Court's witnesses and the Commonwealth's witnesses by the defendant;

(4) That when the stipulation was admitted as to what the evidence of C. Overton Lee, if called to the stand to testify as a witness for the Commonwealth concerning the statements made by Cornelia Hensley at the preliminary hearing, the Court erred in refusing to instruct the jury as requested by the defendant; that such evidence was admissible solely for the purpose of impeaching Cornelia Hensley and was not admissible as evidence against the accused and in admitting such evidence as general evidence;

(5) That the Court erred in admitting the evidence of Turner Custer, a witness called on behalf of the Commonwealth, as part of the res gestae and in refusing to instruct the jury that such evidence was admissible solely for the purpose of impeachment and should not be considered as evidence against the accused;

(6) That the Court erred in refusing to sustain the motion of the defendant to strike the evidence at the conclusion of the Commonwealth's evidence in chief;

(7) That the Court erred in refusing to sustain the motion of the defendant to strike the evidence again made after the Commonwealth had rested, the defense had rested, and after the rebuttal evidence had been introduced.

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

Filed May 1947

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

vs.

HURDLE HENSLEY

Comes now the defendant, Hurdle Hensley, in person and by counsel and moves the Court to set aside the verdict of the jury returned on the 11th day of March, 1949, finding this defendant guilty of adultery with his daughter, Cornelia Hensley, and fixing his punishment at five years in the penitentiary upon the following grounds to-wit:

(1) That the Court erred in overruling the motion of said defendant that this charge be dismissed on the grounds of autrefois acquital of co-defendant;

(2) That the Court erred in the admission of certain evidence offered by the Commonwealth and objected to by the defendant;

(3) That the Court erred in the exclusion of certain questions asked the Court's witnesses and the Commonwealth's witnesses by the defendant;

(4) That when the stipulation was admitted as to what the evidence of C. Overton Lee, if called to the stand to testify as a witness for the Commonwealth concerning the statements made by Cornelia Hensley at the preliminary hearing, the Court erred in refusing to instruct the jury as requested by the defendant; that such evidence was admissible solely for the purpose of impeaching Cornelia Hensley and was not admissible as evidence against the accused and in admitting such evidence as general evidence;

(5) That the Court erred in admitting the evidence of Turner Custer, a witness called on behalf of the Commonwealth, as part of the res gestae and in refusing to instruct the jury that such evidence was admissible solely for the purpose of impeachment and should not be considered as evidence against the accused;

(6) That the Court erred in refusing to sustain the motion of the defendant to strike the evidence at the conclusion of the Commonwealth's evidence in chief;

(7) That the Court erred in refusing to sustain the motion of the defendant to strike the evidence again made after the Commonwealth had rested, the defense had rested, and after the rebuttal evidence had been introduced.

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

(8) That the Court erred in the granting of certain instructions offered by the Commonwealth and objected to by the defendant.

(9) That the Court erred in refusing to grant certain instructions tendered by the defendant.

The defendant further moves the Court to set aside the verdict of the jury on the grounds that the verdict of the jury was contrary to the law and to the evidence and is plainly without sufficient evidence to support same, and that, in particular, there has been no sufficient proof of corpus delicti in this case.

That the Court erred in it's refusal to quash the venire summoned to try the case of your petitioner on the 8th day of March, 1948.

That the Court erred in refusing to declare a mistrial and in allowing the Commonwealth to prove statements made by the witness Cornelia Hensley, which statements related to other acts and not to act charged in the indictment.

That the Court erred in allowing the Commonwealth to introduce rebuttal evidence, after the Commonwealth had rested it's case and the defendant had likewise rested his case without introducing any evidence on his behalf.

3/9/49
Court takes time consider
+ asked for bail.

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

(8) That the Court erred in the granting of certain instructions offered by the Commonwealth and objected to by the defendant.

(9) That the Court erred in refusing to grant certain instructions tendered by the defendant.

The defendant further moves the Court to set aside the verdict of the jury on the grounds that the verdict of the jury was contrary to the law and to the evidence and is plainly without sufficient evidence to support same, and that, in particular, there has been sufficient proof of corpus delicti in this case.

That the Court erred in it's refusal to quash the venire summoned to try the case of your petitioner on the 8th day of March, 1948.

That the Court erred in refusing to declare a mistrial and in allowing the Commonwealth to prove statements made by the witness Cornelia Hensley, which statements related to other acts and not to act charged in the indictment.

That the Court erred in allowing the Commonwealth to introduce rebuttal evidence, after the Commonwealth had rested it's case and the defendant had likewise rested his case without introducing any evidence on his behalf.

Grounds of Motion to set aside verdict

3/31/49
Court to be term Beginning
+ ended for trial

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

3/9/49. Wednesday. BW 7/449 P.

Com v Hurdle Hensley

This day came the attorney for the commonwealth, and the accused, Hurdle Hensley, was brought into court by the sheriff of this county, and came also by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad.

And thereupon, the defendant, by counsel, moved the court to quash the venire now in attendance, upon the ground that the draft of the order of yesterday (which at this time has not been actually spread upon the minutes) does not show that good cause has been shown for drawing more than twenty-four names, as is provided under Section 4895 of the Code of Virginia. And the court, of its own motion, amended the draft of the order because it does not correctly state the ruling of the court, the ruling of the court being as follows: "It appearing to the court that a panel of twenty free from exception cannot be obtained if only twenty-four are selected from the list, it is ordered that a venire facias issue as provided by Section 4896 of the Code for thirty-four jurors selected by the court from the regular jury list, thirty of whom shall be summoned to appear on the 9th day of March, 1949, for the trial of this case . . . " And said drafted order, when actually spread upon the minutes, will show that "it appearing to the court that a panel of twenty free from exception cannot be obtained if only twenty-four are selected from the list, it is ordered that

a venire facias issue as provided by Section 4896 of the Code for thirty-four jurors selected by the court from the regular jury list, thirty of whom shall be summoned to appear on the 9th day of March, 1949, for the trial of this case . . ."

And thereupon, the defendant, by counsel, again moved the court to quash the venire because no "good cause has been shown", and the order does not so recite; which motion the court overruled, and the defendant, by counsel, excepted thereto.

And said defendant, by counsel, again moved the court to quash said venire on the further ground that the return of the sheriff shows that the various veniremen were summoned by Sam H. Callender, S. R. C., when in truth and in fact said persons were in most instances summoned by his deputies, and offered to call the sheriff in support of said motion and to avouch the record; whereupon, the court being of opinion that the said return of the sheriff is conclusive, overruled said motion, to which action of the court the defendant, by counsel, excepted.

And from persons summoned by the sheriff under a writ of venire facias issued on yesterday pursuant to order of the court, twenty-one persons were examined by the court and twenty thereof were found to be duly qualified and free from exception, W. D. Maddox, after being examined by the court, having been excused from the trial of this case and from further attendance upon this term because of

a venire facias issue as provided by section 4889 of the Code for fifty-four jurors selected by the court from the regular jury list, fifty of whom shall be summoned to appear on the 9th day of March, 1949, for the first of this case . . ."

And thereupon, the defendant, by counsel, again moved the "Good cause has been shown," court to draw the venire because no overturned said motion, to which action of the court the defendant, by counsel, excepted.

Now from persons summoned by the sheriff under a writ of venire facias issued on yesterday pursuant to order of the court, twenty-one persons were examined by the court and twenty further were found to be duly qualified and free from exception, W. D. Maddox, sitet being examined by the court, having been excused from the trial of this case and from further attendance upon this term because of

S. R. C., when in truth and in fact said persons were in most instances summoned by his deputies, and offered to call the sheriff in support of said motion and to vouch the record; whereupon, the court being of opinion that the said return of the sheriff is conclusive, overturned said motion, to which action of the court the defendant, by counsel, excepted.

And thereupon, the defendant, by counsel, again moved the court to draw the venire because no "Good cause has been shown," and the order does not so recite; which motion the court overturned, and the defendant, by counsel, excepted thereto.

And said defendant, by counsel, again moved the court to draw said venire on the further ground that the return of the sheriff shows that the various venitemen were summoned by Sam H. Callender,

deafness; and a list containing the names of the remaining twenty persons was handed to the attorney for the commonwealth and to counsel for the accused, who each alternately struck therefrom the names of four persons, the remaining twelve being, namely: Herman A. Scott, John G. Heatwole, Chas. H. Bowman, L. P. Fitzwater, K. B. Menefee, Allen Coffman, Roy L. Coffman, Geo. A. Bowers, M. W. Crowe; Orville O. Cooley, F. H. Harrison, and Glen H. Emswiler. Whereupon, the said twelge persons, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. Whereupon, the court ordered that all witnesses and spectators be excluded from the court room during the trial of this case. And having heard a portion of the evidence, this case is adjourned until tomorrow morning at ten o'clock.

1/449

desirous; and a list containing the names of the remaining twenty persons was handed to the attorney for the commonwealth and to counsel for the accused, who each alternately struck from the names of twelve persons, the remaining twelve petit, namely: Herman A. Scott, John C. Hearmote, Chas. H. Bowman, L. P. Eifermafer, K. B. Mengtee, Allen Coltman, Roy L. Coltman, Geo. A. Bowers, M. W. Crome; Orville O. Cooley, E. H. Hattison and Glen H. Emswiler. Whereupon the said twelve persons selected as aforesaid to constitute the jury were sworn to well and truly try and the delivered make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. Whereupon the court ordered that all witnesses and spectators be excluded from the court room during the trial of this case. And having heard a portion of the evidence, this case is adjourned until tomorrow morning at ten o'clock.

7/450

3/10/49. Thursday

Com v Hurdle Hensley

This day came again the attorney for the commonwealth and the accused, Hurdle Hensley, was brought into court by the sheriff of this county and came also by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; and the jury impanelled and sworn for the trial of this case came pursuant to adjournment; and having heard a further portion of the evidence, were adjourned until tomorrow morning at ten o'clock.

3/10/49. Thursday

COM v Hurdle Hensley

This day came again the attorney for the commonwealth and the accused, Hurdle Hensley, was brought into court by the sheriff of this county and came also by his attorneys, Charles A. Hammer, Jr., and Sam P. Conley; and the jury impanelled and sworn for the first of this case came herein and to wit; and having heard a further portion of the evidence, were adjourned until tomorrow morning at ten o'clock.

1/450

3/10/49. Thursday

In Re: Cornelia Hensley.

It appearing that in the trial this day of the case of Commonwealth vs. Hurdle Hensley on an indictment for a felony, Cornelia Hensley, a witness duly summoned on behalf of the commonwealth, has refused to answer certain questions propounded to her by the attorney for the commonwealth and by the court, after having been directed by the court so to do, it is ORDERED that the said Cornelia Hensley be committed to the jail of this county until tomorrow morning at ten o'clock in an effort to allow said witness opportunity to purge herself of contempt of this court in refusing to answer such questions propounded to her as aforesaid, and the sheriff of this county shall produce her before this court tomorrow morning at ten o'clock for further action.

3\10\49. Thursday

IN RE: CORNELIA HENSLEY.

If appearing that in the trial this day of the case of COMMONWEALTH vs. HARLIE HENSLEY on an indictment for a felony, CORNELIA HENSLEY, a witness duly summoned on behalf of the COMMONWEALTH, has refused to answer certain questions propounded to her by the attorney for the commonwealth and by the court, after having been directed by the court so to do, the court hereby ORDERED that the said CORNELIA HENSLEY be committed to the jail of this county until tomorrow morning at ten o'clock or until she shall willingly to answer such questions propounded to her as aforesaid. ~~xxxxxxxxxxxxxxxxxx~~ The sheriff of this county shall produce her before this court\for further action.

tomorrow morning at ten o'clock

Com v Hurdle Hensley Monday 3/14/49.

This day came again the attorney for the commonwealth, and the accused, Hurdle Hensley, was brought into court by the sheriff of this county, and came also by his attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; and the jury impanelled and sworn for the trial of this case came pursuant to adournment; and having completed the hearing of the evidence introduced by the commonwealth, thereupon the defendant, by counsel, moved the court to strike said evidence introduced on behalf of the commonwealth, which motion the court overruled and the defendant, by counsel, excepted thereto. And the defendant, by counsel, having announced to the court that he does not wish to introduce evidence on his behalf, thereupon, the attorney for the commonwealth introduced ~~xxxxxxxx~~ evidence in rebuttal, at the conclusion of which the defendant, by counsel, moved the court to strike all the evidence ~~offered~~ introduced on behalf of the commonwealth, which motion the court overruled, to which action of the court said defendant, by counsel, excepted. And the jury having received the instructions of the court and having heard the argument of counsel, ~~xxxxx~~ retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "We, the jury, find the accused, Hurdle Hensley, guilty as charged in the indictment and fix his penalty at 5 years in the penitentiary. (signed) Chas. H. Bowman, foreman." And thereupon, said accused, by counsel, moved the court to set aside the verdict of the jury and grant a new trial on grounds hereafter to be assigned in writing within ten days from this date. And this case is continued.

OK

COM v HARDIE HENSLEY Monday 3/11/19.

This day came again the attorney for the commonwealth, and the accused, Hardie Hensley, was brought into court by the sheriff of this county, and came also by his attorneys, Charles A. Hammer, Jr., and Sam P. Conley; and the jury impanelled and sworn for the trial of this case came personal to wordwment; and having combined the hearing of the evidence introduced by the common-wealth, thereupon the defendant, by counsel, moved the court to strike said evidence on behalf of the commonwealth, which motion the court overruled and the defendant, by counsel, excepted thereto. And the defendant, by counsel, having announced to the court that he does not wish to introduce evidence on his behalf, thereupon the attorney for the commonwealth introduced xxxxxxxx evidence in rebuttal, at the conclusion of which the defendant, by counsel, moved the court to strike all the evidence offered on behalf of the commonwealth, which motion the court overruled, to which action of the court said defendant, by counsel, excepted. And the jury having received the instructions of the court and having heard the argument of counsel, xxxxx retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "We, the jury, find the accused, Hardie Hensley, guilty as charged in the indictment and fix his penalty at 5 years in the penitentiary. (signed) Chas. H. Bowman, foreman." And thereupon, said accused, by counsel, moved the court to set aside the verdict of the jury and grant a new trial on grounds hereinfor to be assigned in writing within ten days from this date. And this case is continued.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon LINWOOD ALGER

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 day of JANUARY 1949, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 12 day of JANUARY, 1949, and in the 173 year of the Commonwealth.

J. Y. Conrad, ~~Clerk~~ Commonwealth's Attorney

THE SERVICE PRESS

EXECUTED 1/14/49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summon

TO Linwood Alger

IN PERSON.

B. L. Kiser Dep. for

Sam H. Collinder S.R.C.

Cond

v

Hurdle Hensley

Summons Fee $.40

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon TURNER CUSTER

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 day of JANUARY 1949, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 12 day of JANUARY, 1949, and in the 173 year of the Commonwealth.

J. R. Switzer, Clerk
Commonwealth's Attorney

THE SERVICE PRESS

Com.

HURDLE HENSLEY

Sheriff Fees $1.40

Turner Custer

EXECUTED 1-13-49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN summons TO Turner Custer IN PERSON.

Sam H. Gallander
S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon JOE ROADCAP

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 day of JANUARY 1949, to testify and the truth to say in behalf of the Commonwealth against HURDLE HENSLEY

who stands charged with and indicted for 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 JANUARY, 1949, and in the 173 year of the Commonwealth.

J. R. Summers, Clerk

Commonwealth's Attorney

THE SERVICE PRESS

EXECUTED 1/14/48 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summons TO Joe Roadcap IN PERSON.

B. F. Kiser Deputy

Sam H. Rollinder S.R.C.

COM.

v

HURDLE HENSLEY

Sheriff fee $.40

Joe Roadcap

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Beulah Shifflett

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 January 1949, to testify and the truth to say in behalf of the Commonwealth against HURDIE HENSLEY

who stands charged with and indicted for 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 13th day of January, 19 49, and in the ~~16~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

COMMONWEALTH

V.) Witness Subpoena

HURDLE HENSLEY

To January 17, 1949 at
9:30 a.m.

Sheriff Fee $.40.

EXECUTED 1/14/49 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summons TO Beulah Shifflett IN PERSON.

B. L. Kiser Dep. for
Sam N. Callaway S.R.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon C. Overton Lee

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 January 1949, to testify and the truth to say in behalf of the Commonwealth against Hurdle Hensley

who stands charged with and indicted for 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 13th day of January, 1949, and in the ~~16~~ 173rd year of the Commonwealth.

Geo. L. Carrad, ~~Clerk~~
Commonwealth's Attorney

THE SERVICE PRESS

COMMONWEALTH

V.) Witness Subpoena

HURDLE HENSLEY

To January 17, 1949 at
9:30 a.m.

Executed the within Spa ~~notice on the~~
within named

C. Overton Lee

on January - 14 - 1949

by handing him a true copy hereof in
person within the City of Roanoke, Va.,

~~where he resides.~~

Edgar L. Winstead
Sergeant, City of Roanoke, Va.

By A. Burney Cannaday.
Deputy Sergeant

We, the jury find the accused Hurdle Hensley guilty as charged in the indictment and fix his penalty at 5 years in the penitentiary

Signed

Chas. H. Bowman Foreman.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Cornelia W. Hensley and Glen Hensley,

to appear before the Judge of the Circuit Court of Rockingham County, Harrisonburg, at the Court House thereof, forthwith ~~at 9:30 o'clock, a.m.~~, on the 23rd day of December, 19 48, to testify and the truth to say in behalf of the ~~Commonwealth against~~ DEFENDANT Hurdle Hensley

who stands charged with and indicted for 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 23rd day of December, 19 48, and in the 173rd year of the Commonwealth.

J. Robert Switzer, Clerk
By M. Bowman, D.C.

THE SERVICE PRESS

Commonwealth

v.

Hurdle Hensley

Sheriff Fee $.80

1948

Dec. 23 (forthwith)

Executed 12-23-48 by delivering a true copy of the within summon to Cornelius W. Hensley and Glen Hensley

Sam H Ballenden
S.R.C.

#2206

Trial Justice Court

Criminal Docket No. A 2370

Com'th

V.

Hurdle Hensley

AW Date Arraigned 11-30-48

Trial date

12-6-48 10 a.m.

Probable cause found, held

~~Upon a plea of guilty held~~

for action of the Grand Jury

12-6-48

a 20 - 1

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

V.

HURDLE HENSLEY

This 23rd day of December, 1948, came the accused in person and by counsel, and filed his plea in abatement and motion to quash the three indictments returned by the grand jury against him. After hearing evidence in support of and in opposition to said motion and plea, and argument of counsel thereon,

The court being of opinion that the defendant, Hurdle Hensley, has not carried the burden imposed upon him by law, upon the plea of abatement and motion to quash, the same is hereby overruled.

The defendant, by counsel, excepts to the action of the court in overruling said plea in abatement, and motion. The defendant, by counsel, further excepts to the refusal of the court to allow him to summon the members of the grand jury who returned the indictments in these cases to testify on behalf of the defendant as to the sufficiency of the evidence produced before them.

ENTER: _____

CHARLES A. HAMMER
ATTORNEY-AT-LAW
204 FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

CHARLES A. HANNER
ATTORNEY-AT-LAW
SOM FIRST NAT. BK. BLDG.
HARRISONBURG, VIRGINIA

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

V.

HUNDLE HENSLEY

This 5th day of December, 1949, came the accused in person and by counsel, and filed his plea in abatement and motion to quash the three indictments returned by the Grand Jury against him. After hearing evidence in support of and in opposition to said motion and plea, the argument of counsel thereon, the court being of opinion that the defendant, Hundle Hensley, has not certified the burden imposed upon him by law, upon the plea of abatement and motion to quash, the same is hereby overruled.

The defendant, by counsel, excepts to the action of the court in overruling said plea in abatement, and motion.

The defendant, by counsel, moved the court to allow him to summon the members of the Grand Jury who returned the indictments in these cases, to testify on behalf of the defendant as to the sufficiency of the evidence presented before them.

ENTER: _____

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Cornelia Hensley and Glenn Hensley

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 January 19 49, to testify and the truth to say in behalf of the Commonwealth against Hurdle Hensley

who stands charged with and indicted for 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 23rd day of December, 1948, and in the ~~16~~ 173rd year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS

Commonwealth
vs
Hurdle Hensley
Sheriff Fees $.90

Executed 12-23-48 by delivering a true copy
of the within summon to Cornelia Hensley
and Glenn Hensley

each in person.

Sam H. Callender
S.R.C.

COMMONWEALTH VS. Hurdle Hensley

DESCRIPTION OF PRISONER

Last known address McGayesville Va

Color White Height 5-7 Inc Eyes Blue Hair Brown Weight 135 lbs

Marks

Age 44 Occupation Farming

Date of Trial Female date 7/13/49

Result adultery

COMMONWEALTH VS. Horace Harding

DESCRIPTION OF PRISONER

Last known address: Fire Hollyvaville Pa

Color White Height 5'-7" Eyes Blue Hair Brown Weight 135 lbs

Marks

Age 44 Occupation Farming

Date of Trial Friday Sept. 7 1934

Result Acquitted

Jan. 19, 1949

We, the jury of Rock-Circuit Court find the accused Hurdle Hensley guilty as charged in the indictment, and fix his punishment by confinement in the penitentiary for a period of eight (8) years.

Signed: Geo. W. Miller
Foreman

Hurdle Hensley ads. Com.

Lyle Armentrout	1.50	3 da.		4 mi	1 way
Shirley White	4.80	3 da	66	16 "	" "
Chas. D. Smith	1.50	3 da		—	
M E Burgess	1.50	3 da		—	
S. C. Gladwell	3.90	3 da.	48	13 mi.	" "
Hugh T. Frey	5.40	3 da	78	18 "	" "
Robert D. Liskey	1.50	3 da		2 "	" "
A. J. Fitzwater	3.90	3 da	48	13 "	" "
P. H. Hardy	1.50	3 da		—	
Frank H. Berry	3.00	3 da.	30	10 "	" "
O. B. Wine	6.90	3 da.	108	23 "	" "
Nelson T. Huffman	2.40	3 da	18	8 "	" "
E. F. Early	3.90	3 da.	48	13 "	" "
C. N. Ewing	1.50	3 da		—	
	43.20	41 da	444 mi		

16 66
5 .05
11 3.30
.05
22 3.90

Copy

v

Hurdle Hensley

Witness attendance
(Defendant)

1/13/49

Com v Hurdle Hensley #2

This ~~day of~~ 13th day of January 1949, came the accused, Hurdle Hensley, in the custody of the sheriff and by his counsel, Charles A. Hammer Jr.; and also came the attorney for the Commonwealth, and thereupon the accused by counsel made the following motions:

(1) Cont

(1) That the indictments returned in this Cause be dismissed for the reason that the jury in the case of Commwth vs. Cornelia Hensly has passed upon the facts & evidence and has by their verdict of "Not Guilty" rendered therein ~~has~~ in effect found that there is no basis for the indictment returned against Harold Hensly, to be tried, as by their verdict they have found that no adultery was committed between the said Cornelia Hensly & the said Harold Hensly &

he should be dismissed

(2) That the jury which heard the case of Commwth v Cornelia Hensly, ~~in~~ is incompetent to hear the case of Commwth v Harold Hensly - for they have already by their verdict formed an opinion in the case of Commwth v Harold Hensly - - therefore a new venire should be empannelled -

(27)

~~upo~~ And after hearing argument on said motions, and mutually commendering the same, the court doth over-rule the motion to dismiss the indictment; and the court also over-rules the motion to empanel a new venire because ~~such motion~~ the reasons for such motion do not

effect the legality of the venire facias, and the incompetency of any individual juror cannot be raised at this time by such motion but must be raised when such juror is called for service in this case -

Deft by Counsel excepts to the ruling of the Court in overruling his objections & further ~~says~~ that the entire venire for this term of Court is incompetent for the reason that said venire was summoned for the trial of all Criminal Cases of this term including the Cases of Comwth v Hurdle Hensley & Comwth v Cornelia Hensley -

Enclosure #2

Letter #2

3/8/48 Tuesday

Commonwealth

vs. On an indictment for a felony (adultery) #2

Hurdle Hensley

This day came the attorney for the commonwealth, and the accused, Hurdle Hensley, was brought into court by the sheriff of this county, and came also by the attorneys of his own choice, namely, Charles A. Hammer, Jr., and Sam P. Conrad. And thereupon, said accused, by his attorneys, again tendered his plea of res adjudicata, autrefois acquit of co-defendant, estoppel, and plea in bar, plea in abatement, and motion to quash the indictment herein; and the court having already ruled thereon as shown by order heretofore entered of record, and deeming it unnecessary to again file the same, doth so order.

And said accused, by counsel, moved the court to quash the venire facias summoned in this cause on the ground that on the back of each ballot drawn from the box there appears to be the initial of the different districts and the City of Harrisonburg thereon; that there should be no identifying marks upon said ballot to identify them from any other ballot in the jury box; that in drawing said jury it is mandatory that the statute be followed and that as the jury is drawn from the box, their names shall be listed in the order drawn constituting the venire and no consideration may be given as to the districts or city of

Commonwealth

vs. On an indictment for a felony (adultery) #2

Hurdle Hensley

This day came the attorney for the commonwealth, and the accused, Hurdle Hensley, was brought into court by the sheriff of this county, and came also by the attorneys of his own choice, namely, Charles A. Hammer, Jr., and Sam P. Conrad. And thereupon, said accused, by his attorneys, again tendered his plea of res adjudicata, autrefois acquit of co-defendant, estoppel, and plea in bar, plea in abatement, and motion to quash the indictment herein; and the court having already ruled thereon as shown by order heretofore entered of record, and deeming it unnecessary to again file the same, doth so order.

And said accused, by counsel, moved the court to quash the venire facias summoned in this case on the ground that on the back of each ballot drawn from the box there appears to be the initial of the different districts and the City of Harrisonburg thereon; that there should be no identifying marks upon said ballot to identify them from any other ballot in the jury box; that in drawing said jury it is mandatory that the statute be followed and that the jury is drawn from the box, the names shall be listed in the order drawn constituting the venire and no consideration may be given as to the districts or city of

~~Said~~ it appearing that a panel of 20 jurors free from exception cannot be obtained if only 24 are selected from the list

which they are residents except in such cases as provided by statute; and the court having examined said venire and being of opinion that the letter appearing on the face of such ballot is not an identifying mark, overruled said motion, to which action of the court, the accused, by counsel, excepted.

And said accused, by counsel, thereupon further moved the court to quash said venire facias on the ground that the order entered directing the issuance of such venire does not meet the requirements of the statute, which motion the court sustained, and such venire facias is hereby quashed; and it appearing to the court that the venire facias heretofore issued for the trial of this and other cases at this term of court has this day been quashed, and it appearing that in order to have a jury for the trial of this case, and other cases at this term of court, ~~and to have sufficient number of jurors free from exception for the trial of this case and other cases to be heard at this term of court,~~ a panel of twenty (20) jurors free from exception cannot be obtained if only twenty-four (24) are selected from the list, it is ORDERED that a venire facias issue as provided by Section 4896 of the Code for thirty-four (34) jurors selected by the court from the regular jury list, thirty (30) of whom shall be summoned to appear on the 9th day of March, 1949, for the trial of this case, and such other cases as may be set for trial at this term of the court.

7/448

Page 5.

which they are residents except in such cases as provided by

the court

article; and having examined said venire and being of opinion

that the letter appearing on the face of such ballot is not an

identifying mark, overruled said motion, to which action of the

court, the accused by counsel, excepted.

And said accused, by counsel, thereupon further moved

the court to quash said venire issued on the ground that the order

entered directing the issuance of such venire does not meet the

requirements of the statute, which motion the court sustained, and

such venire issued is hereby quashed; and it appearing to the court

that the venire issued heretofore issued for the first in this and

other cases at this term of court has this day been drawn and

in order to have a jury for the first of this case, and other cases

at this term of court, and to have sufficient number of jurors free

from exception for the first of ~~XXXXXXXX~~ this case and other cases to be heard at this

term of court, it is ORDERED that a venire issue as provided

by section 4896 of the Code for fifty-four (54) jurors selected by

the court from the jury list, fifty (50) of whom shall be summoned to

appear on the 9th day of March, 1949, for the first of this case,

and such other cases as may be set for first at this term of the court.

Carr
v
Hensley
2/8/49

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

To the Sheriff of Said County:

Whereas, George D. Conrad, Commonwealth's Attorney of said County, has this day made complaint and information on oath before me, J.C. Swartz, Clerk of Trial Justice Court (T. J. or J. P.) of the said County, that Hurdle Hensley on the 23rd day of November, 1948, in the said County, did unlawfully and feloniously commit adultery with his daughter, Cornelia W. Hensley, age eighteen, in violation of Section 4543 of the Code of Virginia against the peace and dignity of the Commonwealth

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 Hurdle Hensley

to answer the said complaint and to be further dealt with according to law.

Given under my hand this 29th day of November, 1948.

J. C. Swartz
Clerk ~~T. J. or J. P.~~

Memo. of Commonwealth Witnesses:

Name	Address
Cornelia W. Hensley	c/o Warren Hotel, Harrisonburg, Va.

JUDGEMENT

12-6-48

Upon the hearing of the within charge, and there being probable cause found, the defendant is held for action of the Grand Jury.

Fine - - - - - - -	$
Issuing Justice's Fee -	$ 1.00
Clerk's Fee - - - -	$ 1.25
Trial Justice Fee - -	$ 2.00
Arrest and Mileage -	$ 1.50
Summoning Witness	$ ----
Witness Attendance and Mileage	$ ----
Commonwealth's Attorney - - - - -	$ 2.50
Jail Fees - - - - -	$ ---
	$
Total - - - -	$ 8.25

Porter R. Gomer
Trial Justice

Trial Justice Court

Criminal Docket No. A 2369

Commonwealth

vs. { Arrest Warrant

Hurdle Hensley

Executed the within warrant by arresting and delivering the body of

Hurdle Hensley.

before Jail.

this 29 day of

nov. , 19 48

R. L. Chandler
dep for Sam N. Callender.
HCS

Officer's Mileage

Miles travelled by officer - - .....

Miles carried prisoner - - .....

Total mileage - - - .....

Rea:

N.G. TO-12-6-48 10:A.M.

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

I, ..., T. J. or J. P. or Bail Commissioner, in and for the County of Rockingham, State of Virginia, do hereby certify that ..... 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 ..... o'clock A. M., on the ..... day of ....., 19....., at ..... 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, the ..... day of ....., 19.....

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

Trial Justice Court

Criminal Docket No. A 2369

Com'th

V.

Hurdle Hensley

AW Date Arraigned 11-30-48

Trial date

12-6-48 10 A.m.

Probable cause found. Held for action of the Grand Jury.
12-6-48.

Q 20-1

STATE 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 the Circuit Court of said County, at its December term, 1948, upon their oaths do present that HURDLE HENSLEY, on or about the 23rd day of November, 1948, in said County, then and there unlawfully and feloniously did commit adultery with his daughter, Cornelia W. Hensley, age eighteen, in violation of Section 4543 of the Code of Virginia, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of Cornelia W. Hensley and Glen Hensley, witnesses sworn in court and sent before the grand jury to give evidence.

#2207 Adultery

COMMONWEALTH

V.) INDICTMENT

HURDLE HENSLEY

Felony
December term 1948

A true bill:

Foreman

Witnesses:

1. Cornelia W. Hensley
2. Glen Hensley

George D. Conrad
Commonwealth's Attorney

Docket No.

COMMONWEALTH of VIRGINIA

VS.) Felony (adultery)
) #2
)

HURDLE HENSLEY

Geo. D. Conrad, Com. Atty.

Sam P. Conrad)
Chas. A. Hammer, Jr.) p. d.
Own (x) Appointed ( )

1948
Dec. 20. Indictment returned.
Motion to quash-to Dec. 23.
Bail refused-& exception
7/413

Dec. 23. Motion to quash overruled &
7/416

1949
Jan. 17 + 18. Evidence, verdict
+ motion set aside. 7/428

Jan. 28. Argument on motion
court takes time to consider.
appl. for bail renewed. 7/430

Apr. 7. Motion overruled
+ sent. + susp. &
7/460

3/9/49 2nd Trial

July 13. appeal abandoned;
sent. to jail to be immed.
transported to St. Pen.
8/5

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.

JUN 1949

2206

1st Trial

1. Arthur Mathiny
2. Raymond Weaver
3. Geo. W. Miller
4. Olin S. Singer
5. J. W. Spencer
6. J. K. Koontz
7. Ralph Crist
8. C. V. Best
9. E. F. Shamatter
10. Nelson W. Flory
11. H. P. Brunk
12. Carl B. Linly

3/9/49 2nd Trial

1 Herman A Scott
2 John G Heatwole
3 Chas. H. Bowman
4 L. P. Fitzwater
5 H. B. Mcnefee
6 Allen Coffman
7 Roy L Coffman
8 Geo. A. Bowers
9 M. W. Lerove
10 Orville A. Cooley
11 J. H Harrison
12 Glen H. Encarler