

May - 5 - 1952

- 1 Fred K. Betts ~~III~~ III
- 2 J. B. Eyl
- 3 Ellis F. Matheny
- 4 Layton O. Concutant
- 5 Ray T. Lerove
- 6 H. H. Almond
- 7 Raymond A. Weaver
- 8 R. L. Ramegard
- 9 Herman A. Scott
- 10 Milton S. Alender
- 11 Herman Kuhl
- 12 Arthur J. Baden

Keystone Envelope Co., Phila., Pa.

Charge 23 months

12.50

12.30

1.00 JWG

2.00

102.05 JWG

9.10 Mt

.50 jul fee

4.80 Sheriff

# 144.45

Docket No. <sup>Ephibite</sup> ~~2607~~ <sup>law</sup> Term 1952 <sup>File</sup> Z-2

~~Apr Term 1952~~

COMMONWEALTH of VIRGINIA

VS.

} Felony (manslaughter)

JOSEPH FRANCIS BURKE <sup>hail</sup>

Harry Blatt

p. d.

Own (x) Appointed ( )

1952

March 3. Return of G.J.

<sup>81</sup>  
to be arraigned May 5-52

5/5/52 arraigned + plea of N.G.

July 4 20 to 12-

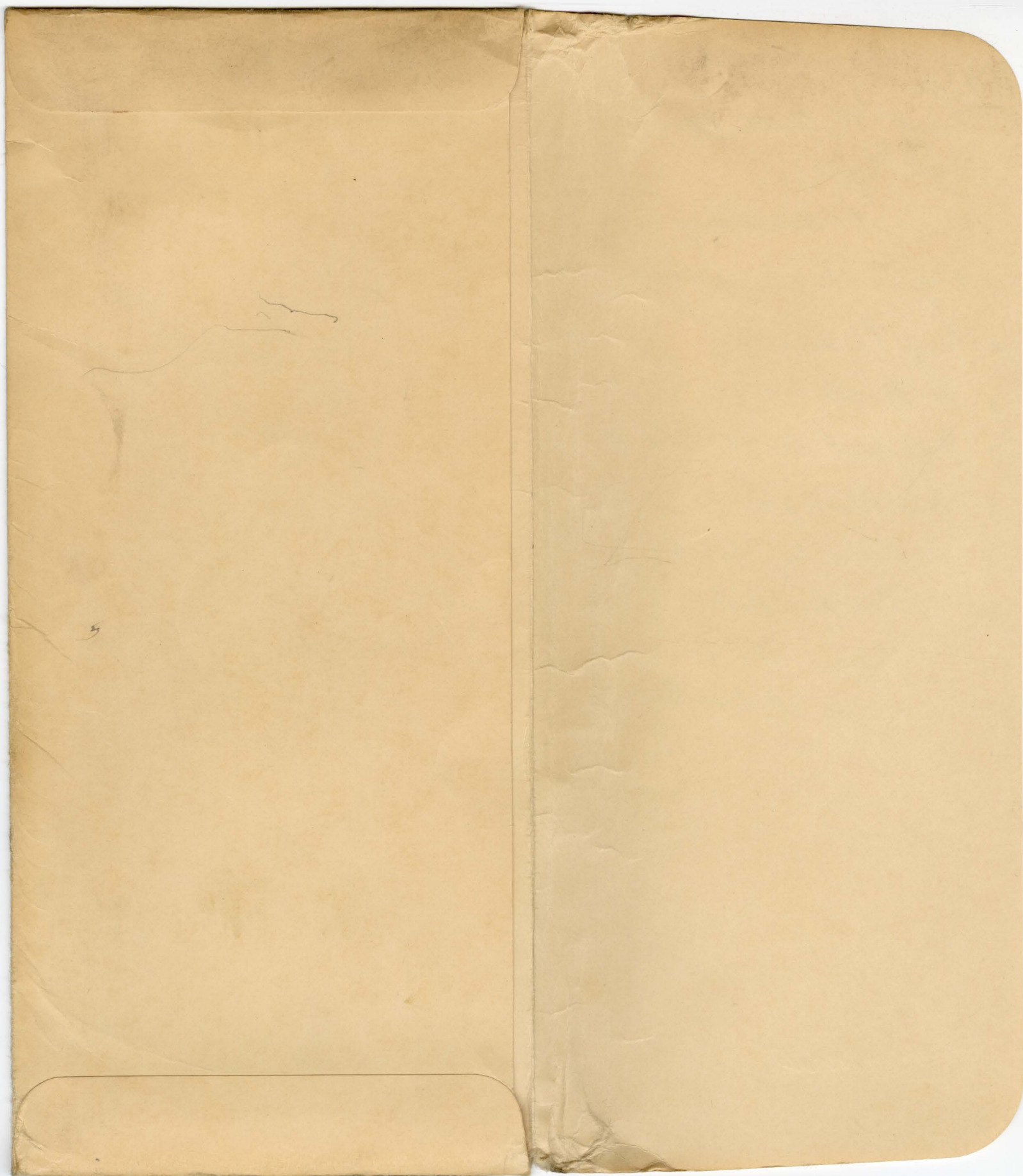
Motion accused - witnesses ex-

cluded - evidence

6 mo + 500.00.

<sup>8</sup>  
349

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.



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 the said County, at its February term, 1952, upon their oaths do present that JOSEPH FRANCIS BURKE, on or about the 13th day of October, 1951, in said County, then and there <sup>did</sup> unlawfully and feloniously kill and slay one Bessie Gerrard Garcia, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of Trooper D. M. Slane and Russell William McDonaldson, witnesses sworn in court and sent before the grand jury to give evidence.

*Handwritten:* 2607  
Apr. 22

COMMONWEALTH

V. INDICTMENT

JOSEPH FRANCIS BURKE

*Handwritten:* A. M. M. M.

FELONY

*Handwritten:* Not on file

February Term, 1952

A true bill:

*Handwritten signature:* J. T. [unclear]  
Foreman

WITNESSES:

Trooper D. M. Slane  
Russell William McDonaldson

George D. Conrad  
Commonwealth's Attorney

*Handwritten notes:*  
Mrs. St. J. [unclear] Joseph Francis  
Burke - guilty and sentenced to  
prison for 12 months and a fine  
of \$500.00  
Norman A. Scott Foreman  
May 5 1952

Circuit Court of the County of Rockingham on Monday, the 5th day of May, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Haas, Judge.

Commonwealth

Vs. On an indictment for a felony (manslaughter)

Joseph Francis Burke

This day came the attorney for the Commonwealth and the accused, Joseph Francis Burke, came pursuant to his recognizance and by his attorney, Harry Blatt; and being arraigned on the indictment, the said Joseph Francis Burke entered a plea of not guilty thereto. And from persons summoned by the sheriff under a writ of venire facias, <sup>twenty</sup> ~~20~~ persons were examined by the Court and found duly qualified and free from exception; whereupon, a list containing the names of said <sup>twenty</sup> ~~20~~ persons was handed to the attorney for the Commonwealth and the accused who each alternately struck therefrom the names of <sup>four</sup> ~~4~~ persons, the remaining <sup>twelve</sup> ~~12~~, namely: Fred K. Betts III, J. B. Eye, Ellis L. Matheny, Layton O. Armentrout, Ray T. Crowe, H. H. Almond, Raymond A. Weaver, R. C. Bumgardner, Herman A. Scott, and Minor G. Rhodes, Herman Buhl, Arthur S. Bader, 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. Thereupon, the accused by counsel objected to the form of the charge to the jury in that it is not in the language of the statute, which objection was overruled by the Court and the accused by counsel excepted thereto. The accused by counsel further moved the Court to exclude all witnesses from the courtroom during this trial, which motion the Court sustained and the witnesses were excluded. And having heard the evidence, having received the instructions <sup>of</sup> the Court, and ~~having~~ heard the argument of counsel, the jurors were sent to their room to consider their verdict and after some time, they came again into Court and returned the following verdict: "We, the jury,

Circuit Court of the County of Rockingham on Monday, the 5th day  
of May, in the year of our Lord, nineteen hundred and fifty-two.  
Present: Hon. Hamilton Haas, Judge.

Commonwealth  
Vs. On an indictment for a felony (manslaughter)

Joseph Francis Burke

This day came the attorney for the Commonwealth and  
the accused, Joseph Francis Burke, came pursuant to his recognizance  
and by his attorney, Harry Blatt; and being arraigned on the indict-  
ment, the said Joseph Francis Burke entered a plea of not guilty  
thereto. And from persons summoned by the sheriff under a writ  
of venire facias, <sup>twenty</sup> persons were examined by the Court and found  
duly qualified and <sup>free</sup> from exception; whereupon, a list containing  
the names of said <sup>twenty</sup> persons was handed to the attorney for the  
Commonwealth and the accused who each alternately struck therefrom  
the names of <sup>four</sup> persons, the remaining <sup>seventeen</sup>, namely: Fred K. Betts III,  
J. B. Eye, Ellis L. Matheny, Layton O. Armentrout, Ray T. Crowe,  
H. H. Almond, Raymond A. Weaver, R. C. Bumgardner, Herman A. Scott,  
Minor G. Rhodes, Herman Buhl, <sup>and</sup> Arthur S. Bader, selected as aforesaid  
to constitute the jury, were sworn to well and truly try and true  
deliberance make between the Commonwealth and the prisoner at the bar  
and a true verdict render according to the law and the evidence.  
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to the jury in that it is not in the language of the statute, which  
objection was overruled by the Court and the accused by counsel  
excepted thereto. The accused by counsel further moved the Court  
to exclude all witnesses from the courtroom during this trial, which  
motion the Court sustained and the witnesses were excluded. And  
having heard the evidence, having received the instructions the Court  
and ~~having~~ heard the argument of counsel, the jurors were sent 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 Joseph Francis Burke guilty of <sup>in</sup>voluntary ~~is~~ manslaughter of Bessie Gerrard Garcia as charged in the indictment and fix ~~his~~ sentence at 6 months in jail and a fine of \$500.00. Herman A. Scott, foreman. May 5, 1952." And it being inquired of the prisoner if anything he had or knew to say why the Court should not pronounce sentence on him, and nothing being offered or alleged in delay there of, it is therefore considered by the Court that the Commonwealth recover of the said Joseph Francis Burke Five Hundred Dollars, the fine aforesaid, and <sup>the</sup> costs incident to this prosecution, and that he be ~~be~~ held to hard labor on the State Convict Road Force for the term of <sup>six</sup> ~~5~~ months and thereafter until said fine and costs are paid. And he is committed to jail until he can be delivered to an officer of the State Convict Road Force to be held as a member of said road force for the term and purposes aforesaid.

8  
349

find Joseph Francis Burke guilty of <sup>in</sup> ~~voluntary~~ manslaughter of  
Bessie Gertrude Garcia as charged in the indictment and fix ~~this~~  
sentence at 6 months in jail and a fine of \$500.00. Herman A.  
Scott, foreman. May 5, 1952. " And it being inquired of the prisoner  
if anything he had or knew to say why the Court should not pronounce  
sentence on him, and nothing being offered or alleged in delay thereof,  
it is therefore considered by the Court that the Commonwealth recover  
of the said Joseph Francis Burke Five Hundred Dollars, the fine afore-  
said, and <sup>the</sup> costs incident to this prosecution, and that he be held to  
hard labor on the State Convict Road Force for the term of <sup>six</sup> months  
and thereafter until said fine and costs are paid. And he is committed  
to jail until he can be delivered to an officer of the State Convict  
Road Force to be held as a member of said road force for the term and  
purposes aforesaid.

347A





DEPARTMENT OF STATE POLICE

B 148454

City ROCKINGHAM  
County \_\_\_\_\_

Date 10-13-51

M JOSEPH FRANCIS BURKE you are hereby summonsed to appear before:  
(Name of Defendant)

Trial Justice GRAVES of HARRISONBURG on 11-15-51 at 2:00 o'clock P M  
(Place of Trial) (Date)

to answer for Violating the Motor Vehicle Laws of Virginia, to-wit: Reckless Driving  Exceeding Speed Limit  No Operator Chauffeur License

Improper  MANSLAUGHTER

Defendant \_\_\_\_\_ Address 2311 3RD ST. N.E. WASH. D.C. - FORT MEADE, MD.

Oper. or Chauff. License No. D.C. 541919 License Plate No. MD 603-723 State Police DM Slane

Summons required under Title 46 — Section 193, Code of Virginia. Failure to comply with this summons constitutes a separate offense.

Shield No. 290 Harr.  
(Address)

## TRAFFIC VIOLATIONS DO CAUSE ACCIDENTS

Main violations indicated from Virginia Accident Analysis are:

Speed too fast for conditions  
Did not yield right of way  
Improper passing

Following too closely  
Failed to signal turn or stop  
Disregarded stop sign

Operating wrong side of road—not overtaking

### FOR YOUR INFORMATION:

The trooper who has issued this summons is paid a straight salary and has no interest in any fines or costs which may be imposed on you by the court. All traffic fines for State violations are paid into the State Literary Fund and used for educational purposes. The cost of State Traffic Law Enforcement in Virginia is paid from Highway Funds.

*Jim Sheppard*  
*to this*

STATE OF VIRGINIA

COUNTY OF Rockingham

To-Wit:

No. \_\_\_\_\_

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, Trooper D. M. Slane

has this day made complaint and information on oath before me, J. C. Swartz, Clerk of the

(Name)

Trial Justice Court of the said County, that

(Title)

JOSEPH FRANCIS BURKE in the said County

did on the 13th day of October, 19 51: Unlawfully and feloniously

kill and slay [REDACTED], Bessie Gerrard Garcia, against the peace and

dignity of the Commonwealth of Virginia.

DOCKET NO. 9125 V

|   |          |           |           |
|---|----------|-----------|-----------|
| Executed this the _____ day of _____ 19__ | at _____ | Witnesses | Signature |
| _____                                     | _____    | _____     | _____     |
| _____                                     | _____    | _____     | _____     |
| _____                                     | _____    | _____     | _____     |
| _____                                     | _____    | _____     | _____     |

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Trial Justice Court of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon

|       |             |               |                          |
|-------|-------------|---------------|--------------------------|
| _____ | color _____ | Address _____ | <input type="checkbox"/> |
| _____ | color _____ | Address _____ | <input type="checkbox"/> |
| _____ | color _____ | Address _____ | <input type="checkbox"/> |
| _____ | color _____ | Address _____ | <input type="checkbox"/> |
| _____ | color _____ | Address _____ | <input type="checkbox"/> |

as witnesses.

Given under my hand and seal, this 15th day of October, 19 51

J. C. Swartz  
(Title of Issuing Officer) (Seal)

The following witnesses were recognized

STATE OF VIRGINIA COUNTY OF Hamsonbury City Hamsonbury, to-wit:  
 I, James H. Lincowman a Trial Justice Justice of the Peace in and for the County aforesaid, State of Virginia, do certify  
 that Joseph Francis Burke  
 and The Traveler Indemnity Co., as his surety, have this day each acknowledged themselves indebted  
 to the Commonwealth of Virginia in the sum of Two Thousand 00/100 Dollars  
 (\$ 2000<sup>00</sup>), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to  
 be rendered, yet upon this condition: That the said Joseph Francis Burke, shall appear before the Circuit Court  
 of Roekingham County, on the 15<sup>th</sup> day of November, 1951,  
 at 2 P. M., at Hamsonbury, Virginia, and at any time or times to which the proceedings may be continued  
 or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer  
 for the offense with which he is charged, and shall not depart thence without the leave of said court, the said obligation to remain in full force  
 and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that  
 the said \_\_\_\_\_ shall keep the peace and be of good behavior for a period of \_\_\_\_\_ days  
 from the date hereof.

Given under my hand, this 15<sup>th</sup> day of October, 1951  
Margaret A. Burke  
Joseph F. Burke  
The Traveler Indemnity Co.  
Wm. J. Lincowman Attorney-in-fact  
James H. Lincowman, J.P.

DOCKET NO. 8152 A

COMMONWEALTH

vs.  
 WARRANT OF ARREST  
Joseph Francis Burke

Executed this, the 15<sup>th</sup> day of Oct, 1951  
Jpr. J.M. Stone

Judgment  
 Upon the examination of the within charge, I find  
 the accused there is sufficient probable cause and  
 this case is sent on for action of the  
 Grand Jury.

Given under my hand this 29th day of  
January 1952.  
Wm. J. Lincowman Trial Justice.

Total Costs \_\_\_\_\_  
Fine \_\_\_\_\_  
Costs \_\_\_\_\_  
Total \_\_\_\_\_  
Wm. J. Lincowman

The following witnesses were recognized  
 to appear before the Circuit Court of \_\_\_\_\_  
Trial Justice \_\_\_\_\_  
 County, \_\_\_\_\_

Virginia, at \_\_\_\_\_  
 Virginia, at \_\_\_\_\_ M., on the \_\_\_\_\_  
 day of \_\_\_\_\_, 1951  
 under penalty of \$ \_\_\_\_\_

Warrant \$ 1.00

Trial 2.00

Bail \_\_\_\_\_

Arrest \_\_\_\_\_

Mileage \_\_\_\_\_

Clerk 1.25

Jail Fee and Board .50

Witness Attendance 3.50

Summoning Witnesses 2.00

Commonwealth Attorney 2.50

Total Costs \$ 12.75

Fine \_\_\_\_\_  
 Total \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH  
OFFICE OF THE CHIEF MEDICAL EXAMINER  
RICHMOND, VIRGINIA

October 16, 1951

Date of Report

LABORATORY REPORT

#1029

NAME Joseph Francis Burke

Coroner

Material submitted: Blood (8cc) for alcohol

SUBMITTED BY: Dr. Paul S. Hill

DATE RECEIVED: 10/16/51

RESULTS:

**Volatile Poisons:**

Alcohols  
Phenol  
Chloral Blood: 0.10% alcohol  
Cyanide  
Phosphorus  
Other

**Alkaline-Ether Soluble Poisons:**

Atropine  
Cocaine  
Codeine  
Quinine  
Strychnine  
Other

**Gases:**

Carbon Monoxide  
Other

**Special Procedures:**

**Acid-Ether Soluble Poisons:**

Barbiturates  
Antipyrine  
Acetanilide  
Salicylates  
Other

**Ammonia-Ether-Chloroform Soluble Poisons:**

Morphine  
Theobromine  
Apomorphine  
Other

**Metallic Poisons:**

Arsenic  
Antimony  
Bismuth  
Mercury  
Other

This is a sub-lethal and a sub-intoxicating level of blood alcohol.

Orig: D. M. Slane  
Box 87  
Harrisonburg, Va.

*Sidney Kaye*  
Toxicologist

Sidney Kaye

Com' R

v.  
Joe. Francis Burke

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH  
OFFICE OF THE CHIEF MEDICAL EXAMINER  
RICHMOND, VIRGINIA

Com' R. # 6

5-5-52

H.H.

LABORATORY REPORT

1029

NAME Joseph Francis Burke

Coroner

Material submitted: Blood (Sec) for alcohol

SUBMITTED BY: Dr. Paul S. Hill

DATE RECEIVED: 10/16/51

RESULTS:

Volatile Poisons:

- Alcohol
- Phenol
- Chloral
- Cyanide
- Phosphorus
- Other

Blood: 0.10% alcohol

Acid-Ether Soluble Poisons:

- Barbiturates
- Antipyrine
- Acetanilide
- Salicylates
- Other

Alkaline-Ether Soluble Poisons:

- Atropine
- Cocaine
- Codaine
- Quinine
- strychnine
- Other

Ammonia-Ether-Chloroform Soluble Poisons:

- Morphine
- Thebromine
- Apomorphine
- Other

Metallic Poisons:

- Arsenic
- Antimony
- Bismuth
- Mercury
- Other

Gases:

- Carbon Monoxide
- Other

Special Procedures:

This is a sub-lethal and a sub-intoxicating level of blood alcohol.

Sidney Kaye

Toxicologist

Orig: D. M. Slane  
Box 87  
Harrisburg, Pa.

Sidney Kaye

COMMONWEALTH  
V.  
JOSEPH FRANCIS BURKE

INSTRUCTION 9

The Court instructs the jury that even though you may believe from the evidence that Bessie Garrard Garcia, who was killed in the accident, was drinking or under the influence of intoxicants at the time of the accident, or that she voluntarily rode in the car which Burke was driving knowing that the said driver was <sup>drinking or</sup> under the influence of alcohol, none of these facts constitute any defense as to the accused, Joseph Francis Burke, in this case.

Referred  
5-5-52  
H.H.

2  
INSTRUCTION

The Court instructs the jury that even though you may believe from the evidence that Leslie Edward Garcia, who was killed in the accident, was drinking or under the influence of intoxicants at the time of the accident, or that she voluntarily rode in the car which Burke was driving knowing that the said driver was under the influence of alcohol, none of these facts constitute any defense as to the accused, Joseph Francis Burke, in this case.

2-7-72  
184



COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTION 10

The Court instructs the jury that if from all the evidence they entertain any reasonable doubt as to whether or not the defendant is guilty of gross, culpable negligence, they should find the defendant not guilty.

*Refused or covered up*

*5-5-52*

*H.H.*

COMMONWEALTH

JOSEPH FRANK BURKE

10 INSTRUCTION

The Court instructs the jury that in all the evidence they entertain any reasonable doubt as to whether or not the defendant is guilty of gross, culpable negligence, they should find the defendant not guilty.

Received a check  
1-2-72

H.H.

COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTION 11

The Court instructs the jury that the violation of one or more of the statutes defining reckless driving, and the statutes prescribing "The Rules of the Road" is negligence sufficient to support a civil action if such negligence was the proximate cause of the injury or damage sustained. But mere violation of one of these statutes is insufficient to bring the negligent act within the common law definition of involuntary manslaughter, unless the proof discloses that the act, or acts, of negligence charged are so flagrant, so culpable and wanton as to indicate a reckless disregard of human life.

Referred ✓  
5-52  
H.H.

COMMONWEALTH

JOSEPH FRANCIS BURKE

INSTRUCTION

The Court instructs the jury that the violation of one or more of the statutes defining reckless driving, and the statutes prescribing "The Rules of the Road" in negligence sufficient to support a civil action if such negligence was the proximate cause of the injury or damage sustained. But mere violation of one of these statutes is insufficient to bring the negligent act within the common law definition of involuntary manslaughter, unless the jury discloses that the act, or acts, of negligence charged are so flagrant, so culpable and wanton as to indicate a reckless

disregard of human life.

*Handwritten notes:*  
 1-2-34  
 1-2-34  
 1-2-34

COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTION 12

The Court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to any substantial and material fact essential to prove the offense charged.

*Revised - already revised + 2*

*5-5-52*

*H.H.*

COMMONWEALTH

v.

JOSEPH FRANCIS BERRY

INDICTMENT

The Court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to any essential and material fact essential to prove the offense charged.

Refused - already refused & H

2-1-05  
14-14

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

V.

CHARGE TO JURY

JOSEPH FRANCIS BURKE

If you find the accused, Joseph Francis Burke, guilty of involuntary manslaughter, as charged in the indictment, then you will say so and fix his punishment at confinement in the penitentiary for a period of not less than one nor more than five years, or, in your discretion, by confinement in jail for a period not exceeding one year or a fine not exceeding One Thousand Dollars (\$1,000.00) or by both such fine and imprisonment.

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

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH

CHARGE TO JURY

v.

JOSEPH FRANCIS BURKE

If you find the accused, Joseph Francis Burke, guilty of involuntary manslaughter, as charged in the indictment, then you will say so and fix his punishment at confinement in the penitentiary for a period of not less than one nor more than five years, or, in your discretion, by confinement in jail for a period not exceeding one year or a fine not exceeding one thousand dollars (\$1,000.00) or by both such fine and imprisonment.

If you find him not guilty, then you will say so

and no more.



COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTION 1

The Court instructs the jury that the indictment in this case is of itself a mere accusation or charge against the defendant, and is not of itself, any evidence of the defendant's guilt; and no juror should permit himself to be influenced against the defendant, because or on account of the indictment in this case.

5-5-52  
H.H.

COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTIONS

The Court instructs the jury that the defendant in this case is of itself a mere accused and should be treated as such; and is not of itself, any evidence of the defendant's guilt; and no juror should permit himself to be influenced against the defendant, because on account of the indictment in this case.

2-2-22  
M

COMMONWEALTH

v.

JOSEPH FRANCIS BURKE

INSTRUCTION 2

The Court instructs the jury that the law presumes the defendant to be innocent until he is proved guilty as charged in the indictment by the Commonwealth, by evidence beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence. This presumption of innocence goes with the defendant throughout the entire case, and applies at every stage thereof, and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to give the defendant the benefit of the doubt and find him not guilty. Mere suspicion or the probability of the guilt of the defendant, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved by the evidence beyond all reasonable doubt.

5-5-52  
H.A.

INSTRUCTION

The Court instructs the jury that the law presumes the defendant to be innocent until he is proved guilty as charged in the indictment by the Commonwealth, by evidence beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence. This presumption of innocence goes with the defendant throughout the entire case, and applies at every stage thereof, and if, after hearing both sides of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to acquit him. The probability of the guilt of the defendant, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved by the evidence beyond all reasonable doubt.

1-2-72  
K.K.

COMMONWEALTH

v.

JOSEHP FRANCIS BURKE

INSTRUCTION 3

The Court instructs the jury that the gist of the crime charged against the defendant is criminal negligence; by the term criminal negligence is meant not simply such negligence as might be the foundation of a suit for damages by the person injured or by his personal representatives if killed, but something more than that; in order to be criminal negligence, as distinguished from such negligence as is necessary for a civil damage action, it must be shown that the negligence of the accused was gross or culpable negligence; culpable or gross negligence is that which indicates a callous disregard of human life and of the probable consequence of his act; criminal liability cannot be predicated upon every act carelessly performed merely because such carelessness results in the death of another, but in order for criminal liability to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death; the crime is imputed because of recklessness, and where there is no recklessness, there is no crime.

J-S-J  
H H

INSTRUCTION

The Court instructs the jury that the fact of the crime charged against the defendant is criminal negligence; by the term criminal negligence is meant not simply such negligence as might be the foundation of a suit for damages by the person injured or by his personal representative if killed, but something more than that; in order to be criminal negligence, as distinguished from such negligence as is necessary for a civil damage action, it must be shown that the negligence of the accused was gross or culpable negligence; culpable or gross negligence is that which indicates a careless disregard of human life and of the probability of death or serious injury to the person injured. It is not every act carelessly performed merely because such carelessness results in the death of another, but in order for criminal liability to result from negligence, it must necessarily be reckless or wanton and of such a character as to show disregard of the safety of others under circumstances likely to cause injury or death; the crime is founded because of recklessness, and where there is no recklessness, there is no crime.

2-2-25  
H. H.

COMMONWEALTH  
V.  
JOSEPH FRANCIS BURKE

INSTRUCTION 4

The Court instructs the jury that involuntary manslaughter is the killing of one accidentally, contrary to the intention of the accused; in the prosecution of some unlawful, but not felonious act; or in the improper performance of a lawful act.

5-5-52  
H.H.





COMMONWEALTH  
V.  
JOSEPH FRANCIS BURKE

INSTRUCTION ✓

The Court instructs the jury that under the laws of the State of Virginia, an operator who drives an automobile upon the highway recklessly, or when not under proper control, or in a manner such as to endanger the life, limb or property of any person, is guilty of reckless driving.

The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the death of Bessie Garrard Garcia resulted from injuries received by her while a passenger in an automobile driven by the accused, Joseph Francis Burke, and that such accident resulted from Burke's operation of said car in an unlawful or reckless manner, and further that such act or series of acts charged against the accused are of such reckless, wanton or flagrant nature as to show utter disregard of the safety of others under circumstances likely to cause injury, then you shall find him guilty of involuntary manslaughter as charged in the indictment.

5-5-52  
H A,

INSTRUCTION

The Court instructs the jury that under the laws of the State of Virginia, an operator who drives an automobile upon the highway recklessly, or when not under proper control, or in a manner such as to endanger the life, limb or property of any person, is guilty of reckless driving.

The Court further instructs the jury that if you believe from the evidence beyond a reasonable doubt that the death of Beatie Garrard Garcia resulted from injuries received by her while a passenger in an automobile driven by the accused, Joseph Francis Burke, and that such accident resulted from Burke's operation of said car in an unlawful or reckless manner, and further that such act or acts of acts charged against the accused are of such reckless, wanton or flagrant nature as to show utter disregard of the safety of others under circumstances likely to cause injury, then you shall find him guilty of involuntary manslaughter as charged in the indictment.

2-2-41  
H.A.

COMMONWEALTH  
V.  
JOSEPH FRANCIS BURKE

INSTRUCTION 6

The Court instructs the jury that circumstantial evidence is just as legal and just as effective as any other, provided the circumstances are of such character and force as to satisfy the minds of the jurors of the defendant's guilt, beyond a reasonable doubt.

5-5-5  
H.A.

2  
INSTRUCTION

The Court instructs the jury that circumstantial evidence is just as legal and just as effective as any other, provided the circumstances are of such character and force as to satisfy the minds of the jurors of the defendant's guilt, beyond a reasonable doubt.

2-7-22  
H.H.

INSTRUCTION 7

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable, or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences of guilt.

Furthermore, the jury should bear in mind that any such doubt arising from lack of evidence, from conflicting testimony, or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and nonessential circumstances.

If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

S-S-S  
H. H.

INSTRUCTION

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable, or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to draw inferences of guilt.

Furthermore, the jury should bear in mind that any such doubt arising from lack of evidence, from conflicting testimony, or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and nonessential circumstances.

If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the Commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

2-2-22  
H. H.

COMMONWEALTH  
V.  
JOSEPH FRANCIS BURKE

INSTRUCTION 8

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury and 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 intelligence, and their means of information; and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled.

5-5-52  
H.H.

8  
INSTRUCTION

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury and 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 intelligence, and their means of information; and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled to.

2-2-22  
H.A.



In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Russell William McDonaldson, 3 mi. west of Elkton, on Rt. 33 <sup>18 mill</sup>

Elwood Lamb, Elkton Rt. 2, (beside of McHones Store) <sup>13 mill</sup>

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at 10:00 o'clock, a. m., on the 5th day of May 19 52  
to testify and the truth to say in behalf of the Commonwealth against.....

JOSEPH FRANCIS BURKE

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

And this you shall not omit under penalty. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 28th day of April, 19 52, and in the 176th year of the Commonwealth.

*[Signature]*  
Clerk  
Commonwealth's Attorney

COMMONWEALTH

V. ) Witness Subpoena

JOSEPH FRANCIS BURKE

To May 5, 1952, at

10:00 a.m. 3 mi. west of Eikton, on Rt. 33

Eikton R. 2. (beside of McHones Store)

to appear before the judge of the Circuit Court of Rockingham County at the Court House

at 10:00 o'clock a.m. on the 5th day of May 1952

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

to the within summon to

*Russel William McDonaldson*

*Elwood Lam*

Witness

person

*for Dewey E. Hany Dep*

A. L. STRAWDERMAN

SHERIFF

ROCKINGHAM COUNTY

*4.90*

**Commonwealth of Virginia:**

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Russell William McDonaldson, Rt. #2, Elkton, Virginia.....

Trooper D. M. Slane.....

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at ~~5:00~~<sup>10:00</sup> o'clock, a. m., on the 3rd day of March 1952,

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

against JOSEPH FRANCIS BURKE.....

who stands charged with a felony ~~misdeameanor~~.

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 26th  
day of February 1952, and in the 176th year of the Commonwealth.

*Robert Switzer*....., Clerk

Included 2-27-52 by delivering a true copy

if the within summon to

Russel William McDonald  
D. M. Lane

Delivered in person by  
Dorothy E. Haney Dep  
for  
A. L. STRAWDERMAN  
SHERIFF  
ROCKINGHAM COUNTY

COMMONWEALTH

V. ) Grand Jury Summons

JOSEPH FRANCIS BURKE

To March 3rd, 1952,  
at 10:00 A.M.

Sheriff's Fee  
.80

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

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

- ✓ Trooper D. M. Slane *663 2. Rock*
- ✓ Roy Guthrie, ~~310 Collicello St.,~~ Harrisonburg, Va. *2-79 HWS*
- ✓ R. S. McCoy, 218 Broad St., Harrisonburg, Va. *2-79 HWS*

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,  
at 10:00 o'clock, a. m., on the 5th day of May 1952,  
to testify and the truth to say in behalf of the Commonwealth against.....

JOSEPH FRANCIS BURKE

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

And this you shall not omit under penalty. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 28th  
day of April, 1952, and in the 176th year of the Commonwealth.

*[Signature]*  
Commonwealth's Attorney, Clerk

COMMONWEALTH

V. ) Witness Subpoena

JOSEPH FRANCIS BURKE

To May 5, 1952, at  
10:00 a.m.

EXECUTED 4/18/52 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN Summons

TO Trooper Glenn, Roy Guthrie + R.S. McCoy  
IN PERSON.

E. J. Strawderman Dep for

**A. L. STRAWDERMAN**

**SHERIFF**

**ROCKINGHAM COUNTY**

*Sheriff Fee  
1.20*

Witness Subpoena

Commonwealth of Virginia:

County of Rockingham, to-wit:

To the Sheriff of said County, Greeting:

You are hereby commanded, in the name of the Commonwealth of Virginia to summon

|  |            |      |
|--|------------|------|
| Elwood Lamb at House beside McHones Store          | 26 mi @ 5¢ | 1.30 |
| ✓ Roy Guthrie 310 Collicello St. Harrisonburg, Va. | att.       | .50  |
| ✓ R. S. McCoy, 218 Broad St., Harrisonburg, Va.    | att.       | .50  |
| Russell W. McDonaldson, 3 mi. w. of Elkton Rt 33   | 24 mi @ 5¢ | 1.20 |

to appear before the Trial Justice Court of said County, sitting at Harrisonburg, Virginia  
in said County, on 29th day of January, 1952, at the hour of 2:00 3.50  
of that day to give evidence in behalf of Com'th

in the pending case of Com'th

v. Joseph Francis Burke

Given under my hand this 24th day of January, 1952.

J. B. Swartz  
Clerk.

RECORDED 1-26-52

of the within summons

*Edward Sam*  
*Edward W. Mc Donald*

*Edward E. Henry*

A. L. STAWDERMAN  
SHERIFF  
ROCKINGHAM COUNTY

**Trial Justice Court**

Docket No. 8152 A

Com'th

V. { Witness Subpoena

Joseph Francis Burke

To Jan. 29, 1952 at 2:00 P.M.

*Alice*

EXECUTED 1-24-52 THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE  
COPY OF THE WITHIN summons  
TO By J. F. Burke and P. S. Mc Coy  
IN PERSON.

Ed Stawderman S/P



COMMONWEALTH VS.

*Joseph Francis Burke*

DESCRIPTION OF PRISONER

Last known address *4607 3RD Place S. W. Wash. D.C.*

Color *W* Height *6'0"* Eyes *Blue* Hair *brown* Weight *170*

Marks *none*

Age *28* Occupation *Carpenter*

Date of Trial *5-5-52*

Result

COMMONWEALTH VS [faint handwritten text]

DESCRIPTION OF PRISONER

Last known address: No 7 3rd Floor 2 W. Wash D.C.  
 Color: W. Height: 6'0". Eyes: Blue. Hair: Brown. Weight: 170.  
 Marks: none.  
 Age: 35. Occupation: Carpenter.  
 Date of Trial: 2-2-23.  
 Result:

Docket No. 8152 A

Harrisonburg, Va., Jan. 17-51 1950

**Memo for Clerk of T. J. Court:**

Kindly summons the following as witnesses for the Commonwealth of Virginia in the case of  
(MANSLAUGHTER)

Com'th V. JOSEPH FRANCIS BURKE to appear in Trial

Justice Court on the Trial Date, JAN. 29-1952 2pm 1950:

| Name of Witness                                | Address of Witness              | or<br>Witness works for | or<br>Where Witness can be Seen                            |
|--|---------------------------------|-------------------------|--|
| <u>ELWOOD LAMB</u>                             | <u>M'HOWES STORE</u>            |                         | <u>HOUSE BESIDE M'HOWES STORE</u>                          |
| <u>ROY GUTHERIE</u>                            | <u>310 COLLICELLO ST. HARR.</u> |                         | <u>WORKS AT MERCK</u>                                      |
| <u>R.S. M'COY</u>                              | <u>218 BROAD ST. HARR.</u>      |                         | <u>WORKS AT MERCK</u>                                      |
| <u>RUSSELL W. M'CDONALDSON - Rt. 2, ELKTON</u> |                                 |                         | <u>DUPLAN AT GROTOES.<br/>OR 3 MI. W. OF ELKTON, AR 33</u> |
| _____  | _____                           | _____                   | _____  |
| _____  | _____                           | _____                   | _____  |

By Sp. D. M. Slane  
Va. State Police Officer.

Docket No. 2122 A

Harrisonburg, Va. Jan. 17-21 1950

Memo for Clerk of T. J. Court:

Kindly summons the following as witnesses for the Commonwealth of Virginia in the case of

Joseph Francis Burke (MANSLAUGHTER) to appear in Trial

Justice Court on the Trial Date JAN. 22-1950

| Name of Witness | Address of Witness | Witness works for | Where Witness can be Seen |
|-----------------|--------------------|-------------------|---------------------------|
| ...             | ...                | ...               | ...                       |
| ...             | ...                | ...               | ...                       |
| ...             | ...                | ...               | ...                       |
| ...             | ...                | ...               | ...                       |

By J. B. M. [Signature] Va. State Police Officer

TRIAL JUSTICE COURT

Criminal  
Docket

Nº 8152 A

Com'th

V.

Joseph Francis Burke

Defendant

AV DMS

*TP. & AW /  
DMS.*

Appearance date 11-15-51

*2 P.M.*

Trial Date

*10-1-29-52 2:P.M.*

*Sufficient Probable Cause  
To Stand Jury.*

TJ 3 AW 1 to DMS

W & Com

Sufficient  
Probable  
Cause  
This case  
is sent  
on for  
action of  
the  
GRAND  
JURY