STATEMENT ENCLOSED

GARBER, GALEN

CEE

murder

7/27/61 - waived g.h. in writing -

8/21/61 - A True Bill

8/22/61 - arraigned & entered plea of n.g. -

9/11/61 - Trial -
Verdict of guilty of 1st degree murder, & sentenced to 20 yrs. in penit.

... Martin
(statement)

(2) Frank Richards - step-father
present

(3) Rose Richards - mother
present

(4) Dr. Byers - coroner
examined body

story -
took pictures

(1)

Evid. in locker:
(1) .12 gauge shotgun
(2) cartridge
(3) shirt
(4) hammer

10/20/61 - motion to set aside verdict -
overruled -

(hit w/ brick - celebrating dem. victory)

Horsley's case, 81 Va. 283 (292 + 295-296) - ✓ - when
evid. warrants inst - verbatim from Hill's case, 2 Matt. 606

Jones case, 100 Va. 842, 855 - (iron post diggers - ✓

Mealya case, 135 Va. 588 (591) -

Adams case, 163 Va. 1053 -

~~Barley's case, 151 Va. 510 -~~

McMurray's case, 143 Va. 490 -

Richardson's case, 128 Va. 691 - (being choked at time) -.
provocation more than very slight -

Green's case, 122 Va. 862 (870) - (diff under forts) -

Wilkins case, 176 Va. 580 -

Jacobs case, 132 Va. 681 - (choking mother)

~~(1) Other instruction where provocation (ext circumstance)~~
(2) given in other cases -
(3) certainly ~~more than~~ only "slight" provocation" -
(4) defense - accident

Haney -
Clark -
Earman -

+ in -
Sat. -

COMMONWEALTH

V.

GARBER

INSTRUCTION____

The Court instructs the jury that if Garber, with a deadly weapon which he had previously taken into his possession, shot and killed Charles Hollar, without any or upon very slight provocation, such killing is presumed to have been wilful, deliberate and premeditated, and the burden rests upon Garber to remove or rebut such presumption from the evidence heard, that for the Commonwealth as well as for the accused.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

COMMONWEALTH

V.

CAREER

INSTRUCTION

The court instructs the jury that if Carper, with a deadly weapon which he had previously taken into his possession, shot and killed Charles Holler, without any or upon very slight provocation, such killing is presumed to have been willful, deliberate and premeditated, and the burden rests upon Carper to remove or reput such presumption from the evidence heard, that for the Commonwealth as well as for the accused.

Tues - 19th
9:30

Motion to set aside verdict -

(1) contrary to law & evid - & evid did not support murder in 1st degree

(2) error in granting of Com'th's instruction on presumption from use of deadly weapon —

Argument

I Instructions: 1- definition

II Facts: (don't have deceased to testify) ✓

(1) Mr. Richard –

✓ (a) ~~not~~ "appeared to be angry"

✓ (b) "you had better stay where you are, gun in hand"

✓ (c) "did not get close enough to hit gun"

✓ (d) "Oh, why did I do it"

✓ (e) not ground for hunting

(2) Martin & Dick –

(a) physical facts –

(b) # of feet away –

(c) said nothing about going hunting –

(d) said he was mad –

(3) Bryan –

(a) death

(b) some distance away (8 to 10' - maybe a little more)

(c) gezpendicular

☆☆☆

(4) Halen – (statement)

(1) hit him w/ hammer

(2) did not back up

(3) was mad (statement + Mr. Richard)

(4) words that way

(5) Chorlen –

"If you don't take gun from Halen, I will have to"

☆ hammer had to be brought back | cap ☆ - not suff to discharge shotgun shell

III (a) can shoot person — & only need to say accident —

(b) Value of life so little, that a person can shoot another,

(b) Duty

(c) punishment

1

My name is Frank Richard. I am 55 years of age. My address is Rt #1, Singers Glen, Va.

I hereby make the following voluntary statement this 27th day of July, 1961, in the presence of Commonwealth's Attorney James R. Lee and Deputy Sheriff T. L. Martin.

This morning about 7:00 a.m. my two step-boys got in an argument at the breakfast table over some food that I had brought. The two boys are Galen Harder and Charles Holler. They got up from the table to fight, and Galen picked up a hammer and told Charles that he was going to beat his brains out. Galen hit Charles a couple of times over the head with the hammer, causing Charles to bleed. My wife then told them that if they were going to fight to get outside and fight fair. They then went outside and fought several minutes. They then both came in the house and Galen went upstairs. He then came back downstairs with my .12 gauge single barrel shotgun which Galen keeps in his room. Galen then walked into the living room and Charles walked from the dining room into the doorway leading from the dining room into the living room. I was seated at the table in the dining room and could see everything that could happen. Charles stopped in the doorway, and Charles saw Galen with the gun in his hands and told him to put the gun down. Galen then said "you had better stay where you are, the gun is loaded." Then Charles took a couple of steps towards Galen, and when he was still several feet away, Galen pulled the trigger of the gun and shot Charles in the chest. Galen

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then threw the gun down and said "why did I do it." Carter then fell down and died almost immediately.

My wife was standing over towards the telephone in the dining room with a baby in her arms. She did not see exactly how the shooting occurred.

The above statement has been read to me and it is true to the best of my knowledge.

Frank Richard.

Witnesses

Jasper H. Sipe
G. L. Martin D. S. R. C.

Dr. Byers:

✓ (1) medical examiner

✓ (2) Time examined

✓ (3) cause of death

→ (4) any other injury to him (manner blow)

(5) path of gunshot –

★ (6) powder burns –

– relatively –

★ no more than 8 to 10'

Sheriff Strauderman :

Ted:

✓ (1) Time called + date

✓ (2) conditions when he arrived

✓ (3) statements of accused at that time

✓ (4) B'nam Co —

"wicked & Nod not shot him" —

7:30 arrived 7:40

Guid:

✓ (1) pictures

✓ (2) gun + ~~shell~~ cartridge

(3) ~~Hammer~~

✓ (4) Statement

Frank Richard —

(1) didn't he say "you had better stay
(2) never said anything about going around hog hunting

wife next to wall —
— upset + nervous —

☆ "Did not get close enough to ~~hit~~ hit gun" —
→ "never been around hog hunting"
☆ "Or, why did I do it" "rushed in on him"

☆ "Appeared to be angry when he came ~~down the~~ ale in LR w/ gun" —
"you had better stay where you are, the gun is loaded" —

Galen:

"I wasn't happy" —
been fooling w/ gun night before — suffering alcohol —
~~and~~ "I ~~knew~~ said to myself I go get gun while he cooled down"
couldn't find shells — never found any — I had one slug in my pockets — don't know whether gun cocked or not — come downstairs into LR — always go out back door — "said he was going to take the gun away from him" — ~~Fam~~

"Probably pulled it back" wasn't aiming at him — "upset at time"

Cross:

~~guardh~~
✓ (1) mad —
(2) ~~why~~ why aim gun at him — (6) 6'
✓ (3) working w/ shooting —
(4) hit him w/ hammer —
(5) Did you back up

Charles walked in — gun went off — I did not intend to shoot him — don't know whether gun cocked — thought gun was unloaded —
Fam called ambulance —

Earl Funk -

"I shot my brother" -

Bolton -

Think he was around hunting once before -

Mrs. Richard -

Last I saw Baker was when he was in the backyard -
Charles said to Frank "If you don't take the gun from Baker, I will have to" -

saw gun, but not Baker -

"can't see at all"

"I then passed out" -

Kept telling Frank to take me to Charlie -

"don't know how Charlie got to hall" -

~~(1) "Never had any trouble w/ Baker"~~

T. L. Martin -

Rebutted

(1) "Oh why did I do it" (certainly may be upset afterward)

→ (2) why did the mother faint if nobody scared –

(3) Reasonable doubt

(4) opening statement –
Aimed hit the gun & it went off –

My name is Galen Garber. My address is Singers Glen, Va. I am 23 years of age.

I have been told that I need not make this statement unless I desire to do so; that everything I say must be of my own freewill, and that anything I say can be and will be used against me in a criminal prosecution. I have also been told that I am entitled to counsel. Nevertheless, I do make the following statement voluntarily this 27th day of July, 1961, in the office of the Commonwealth's Attorney, Court House, Harrisonburg, Virginia, in the presence of Commonwealth's Attorney James R. Sipe and Deputy Sheriff T. L. Martin.

This morning, July 27, 1961, I shot and killed my brother, Charles Hollar. Both of us were staying with our mother, Bessie Richards, and our step-father, Franks Richards, on the property owned by Earl Funk which is located about 2 miles southwest of Singers Glen, in Rockingham County, Va. My step-father works part of the time for Mr. Funk and Mr. Funk lets us stay there in a house as part of the wages.

This morning about 7 a.m., my brother, Charles Hollar, and myself got in an argument over some food that we had bought. He had eaten the food which we had bought to take out in the woods while we worked. We got in the argument in the house, and my mother told us that if we were going to fight to go outside the house. We then went outside and got into a fight. We fought for several minutes. I then went in the house, went upstairs and got a .12 gauge single barrel shotgun which belongs to my step-father. The gun was in my room. I was mad at the time I went to get the gun. After I got the gun, I went downstairs into the living-room. My brother, Charles Hollar, was standing in the doorway between the living room and the dining room. I walked up to a distance about 6 feet from him and aimed the gun in his direction. I told him he had better not bother me anymore. He then started coming in my direction and I shot the gun one time. He was hit on the right side of the chest with one shot from the .12 gauge gun, and he died almost immediately.

The above statement has been read to me, and the facts stated therein are true and correct to the best of my knowledge.

_____

WITNESS:

_____

_____

Frank

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

Frank

_____

_____

WITNESS:

_____

I am 23 years of age.

My name is Carlen Carper. My address is Singers Glen, Va.

I have been told that I need not make this statement unless I desire to do so; that everything I say must be of my own free will, and that anything I say can be and will be used against me in a criminal prosecution. I have also been told that I am entitled to counsel. Nevertheless, I do make the following statement voluntarily this 27th day of July, 1961, in the office of the Commonwealth's Attorney, Court House, Harrisonburg, Virginia, in the presence of Commonwealth's Attorney James R. Sipe and Deputy Sheriff T. L. Martin.

This morning, July 27, 1961, I went and killed my brother, Charles Holland. Both of us were staying with our mother, Bessie Richards, and our step-father, Clemmie Richards, on the property owned by Earl Funk which is located about 3 miles southwest of Singers Glen, in Rockingham County, Va. My step-father works for Mr. Funk and Mr. Funk lives on again there part of the time for Mr. Funk and Mr. Funk lives on again there in a house as part of the wages.

This morning about 7 a.m., my brother, Charles Holland, and myself got in an argument over some food that we had bought. He had eaten the food which we had bought to take out in the woods while we worked. We got in the argument in the house, and my mother told us that if we were going to fight to go outside the house. We then went outside and got into a fight. We rolled for several minutes. I then went in the house, went upstairs and got a .12 gauge single barrel shotgun which belongs to my step-father. The gun was in my room. I was back at the time I went to get the gun. After I got the gun, I went downstairs into the living-room. My brother, Charles Holland, was standing in the doorway between the living room and the dining room. I walked up to a distance about 6 feet from him and aimed the gun in his direction. I told him he had better not bother me anymore. He then started coming in my direction and I shot the gun one time. He was hit on the right side of the chest with one shot from the .12 gauge gun, and he died almost immediately.

The above statement has been read to me, and the facts stated therein are true and correct to the best of my knowledge.

_____

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION ___

The Court instructs the jury that accidental killing is not a crime, unless the accused in causing such death is so grossly and culpably negligent as to indicate a callous disregard for human life, in which event the crime is involuntary manslaughter.

COMMONWEALTH

v.

GALEN CARBER

INSTRUCTION

The Court instructs the jury that accidental killing is not a crime, unless the accused in causing such death is so grossly and culpably negligent as to indicate a callous disregard for human life, in which event the crime is involuntary manslaughter.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION ____

The Court instructs the jury that where the Commonwealth has established a prima facie case and the accused relies upon the defense of accident, the burden is upon him to prove it, not beyond a reasonable doubt, nor by a preponderance of the evidence, but by such evidence, as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the accused.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION

The Court instructs the jury that where the Commonwealth has established a prima facie case and the accused relies upon the defense of accident, the burden is upon him to prove it, not beyond a reasonable doubt, nor by a preponderance of the evidence, but by such evidence, as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the accused.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION ___

The Court instructs the jury that if they should entertain a reasonable doubt as to the accused's guild they should find him not guilty, although they jury might not be able to find that the accident was fully proven..

COMMONWEALTH

v.

GULEN GUNEK

INSTRUCTION

The court instructs the jury that if they should enter-tain a reasonable doubt as to the accused's guilt they should find him not guilty, although they may not be able to find that the accident was fully proven."

COMMONWEALTH

V.

GARBER

INSTRUCTION _____

The Court instructs the jury that if they believe from the evidence that the deceased came to his death from the discharge of a shotgun at the time in the hands of the accused, or while in his possession, but which shotgun was not maliciously or intentionally pointed or aimed at the deceased by the accused, or voluntarily discharged by him, and that these facts were accidental and without culpable fault on the part of the accused, that then it is the duty of the jury to find the accused not guilty.

LAW OFFICES
D. WAMPLER EARMAN
HARRISONBURG, VA.

HARRISONBURG, VA.
D. MANGER ERMAN
LAW OFFICES

COMMONWEALTH

v.

GARBER

INSTRUCTION

The court instructs the jury that if they believe from the evidence that the deceased came to his death from the discharge of a shotgun at the time in the hands of the accused, or while in his possession, but which shotgun was not maliciously or intentionally pointed or aimed at the deceased by the accused, or voluntarily discharged by him, and that these facts were accidental and without culpable fault on the part of the accused, that then it is the duty of the jury to find the accused not guilty.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION 2

The Court instructs the jury that the accused is presumed to be innocent of the crime with which he is charged and that this presumption follows the accused throughout every stage of the trial. By his plea of "not guilty" the accused has denied every essential allegation of the indictment and has put upon the Commonwealth the burden of proving every element of the crimed charged and the accused's guilt beyond every reasonable doubt.

This presumption of innocence is not a mere form to be disregarded by you at pleasure but it is an essential and binding part of the law of the land, and you must give the accused the full benefit of such presumption.

You are further instructed that while you may be suspicious that the accused committed the crime with which he is charged, this is not sufficient to convict nor is it sufficient if you feel that he is probably guilty or more likely guilty than not guilty, but to warrant the conviction of this accused, his guilt must be proved so clearly that there remains not one reasonable theory consistent with the evidence upon which he can be innocent.

This burden, as so imposed on the Commonwealth, does not shift but remains throughout the entire trial. The accused is under no requirement to prove or establish his innocence, and, if after considering the evidence you entertain a reasonable doubt of the accused's guilt, you must give him the benefit of such doubt and find him not guilty.

COMMONWEALTH

v.

GAREY GAREY

INSTRUCTION 5

The court instructs the jury that the accused is presumed to be innocent of the crime with which he is charged and that this presumption follows the accused throughout every stage of the trial. By his pleas of "not guilty" the accused has denied every essential allegation of the indictment and has put upon the Commonwealth the burden of proving every element of the crime charged and the accused's guilt beyond every reasonable doubt.

This presumption of innocence is not a mere form to be disregarded by jurors as frivolous and it is an essential and fundamental rule of the law of the land, and you the accused the benefit of such presumption.

Now are instructed that while you may be satisfied that the accused committed the crime with which he is charged, that is not sufficient to convict nor is it sufficient if you feel that he is probably guilty or more likely guilty than not guilty, but to warrant the conviction of this accused, his guilt must be proved so clearly that there remains not one reasonable theory consistent with the evidence upon which he can be innocent.

This burden, as so imposed on the commonwealth, does not shift but remains throughout the entire trial. The accused is under no burden to prove to establish his innocence, and, if it later considering the evidence you entertain a reasonable doubt to the accused's guilt, then you give him the benefit of doubt and find him not guilty.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION 3

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

COMMONWEALTH

v.

CARL CARBER

3 INSTRUCTION

The court instructs the jury that the indictment in this case is a mere accusation or charge against the accused, and has brought the accused before the court to answer the charge against him. It is not, of itself, any evidence of the accused's guilt; and no inference should permit himself to be influenced against the accused because of an account of the indictment in this case.

COMMONWEALTH

V.

GARBER

INSTRUCTION ____

The Court instructs the jury that the defense of accidental killing of the deceased goes to the very gist of the charge and denies all criminal intent, and throws upon the Commonwealth the entire burden of proving criminal intent beyond a reasonable doubt. Therefore, although you may believe that the accused shot and killed the deceased, yet unless you believe that such shooting was done intentionally to kill or wound him, you must find the accused not guilty of ~~malicious and unlawful~~ murder shooting.

The Court further instructs the jury that if the evidence in the case, taken all together, raises in the minds of the jury a reasonable doubt as to whether the accused killed Charles Hollar intentionally or accidentally, they should not find the prisoner guilty of a higher offense than that of involuntary manslaughter.

COMMONWEALTH

V.

CARREN

INSTRUCTION

The Court instructs the jury that the defense of accident

killing of the deceased goes to the very first of the charge and denies all criminal intent, and throws upon the Commonwealth the entire burden of proving criminal intent beyond a reasonable doubt. Therefore, although you may believe that the accused shot and killed the deceased, yet unless you believe that such shooting was done intentionally to kill or wound him, you must find the accused not guilty of ~~malicious and unlawful~~ shooting.

The Court further instructs the jury that if the evidence in the case, taken all together, raises in the minds of the jury a reasonable doubt as to whether the accused killed Charles Holland intentionally or accidentally, they should not find the prisoner guilty of a higher offense than that of involuntary manslaughter.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION ___

The Court instructs the jury that there is never a burden upon the accused in a criminal case to prove his defense or to disprove the case for the Commonwealth. Under the law of this land, the Commonwealth must prove each and every material allegation contained in the charge beyond all reasonable doubt, and if the evidence on behalf of the accused or the Commonwealth raises a reasonable doubt as to any material allegation in the charge, then you must find the accused not guilty.

The Court further instructs the jury that if you believe the evidence to be susceptible to two reasonable interpretations, one of which is consistent with the innocence of the accused, then you must adopt the interpretation most favorable to him and find the accused not guilty.

COMMONWEALTH

v.

GALEN GARBER

INSTRUCTION

The court instructs the jury that there is never a burden upon the accused in a criminal case to prove his defense or to disprove the case for the commonwealth. Under the law of this land, the commonwealth must prove each and every material allegation contained in the charge beyond all reasonable doubt, and if the evidence on behalf of the accused or the commonwealth raises a reasonable doubt as to any material allegation in the charge, then you must find the accused not guilty.

The court instructs the jury that it you believe the evidence to be susceptible to two reasonable interpretations one of which is consistent with the innocence of the accused, then you must adopt the interpretation most favorable to him and find the accused not guilty.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION ___

The Court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the concurrence of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the guilt of the accused before he can, under his oath, consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind must be convinced beyond a reasonable doubt of the guilt of the accused before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered the evidence in this case, and after consultation with his fellow jurors, should entertain such reasonable doubt of the accused's guilt as is set forth in other instructions of the Court, it is his duty not to surrender his own convictions simply because the balance of the jury entertain different convictions.

COMMONWEALTH

v.

CALEB CARREN

INSTRUCTION

The court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the conference of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the guilt of the accused before he can consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should reflect that his own mind must be convinced beyond a reasonable doubt of the guilt of the accused before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered the evidence in this case, and after consultation with his fellow jurors, should entertain such reasonable doubt of the accused's guilt as is sufficient in other transactions of the world, it is his duty not to entertain his own convictions simply because the balance of the jury entertain different convictions.

COMMONWEALTH

V.

GARBER

INSTRUCTION ___

The Court instructs the jury that even though you should believe the accused guilty of one of the offenses charged in the indictment in this case, but have a reasonable doubt as to which one of said offenses he is guilty, you should give the accused the benefit of such doubt and find him guilty of the lesser offense; for instance: If you have a reasonable doubt as to whether he is guilty of first degree murder or second degree murder, you should find him guilty of second degree murder; if you have a reasonable doubt as to whether he is guilty of second degree murder or of voluntary manslaughter, you should find him guilty of voluntary manslaughter; if you have a reasonable doubt as to whether he is guilty of voluntary manslaughter or involuntary manslaughter, you should find him guilty of involuntary manslaughter; and the Court further tells you that if you have a reasonable doubt whether he is guilty of involuntary manslaughter, you should find the accused not guilty.

LAW OFFICES
D. WAMPLER EARMAN
HARRISONBURG, VA.

HARRISONBURG, VA.
D. MANNERS FARMAN
LAW OFFICES

COMMONWEALTH

V.

CARBER

INSTRUCTION

The Court instructs the jury that even though you should believe the accused guilty of one of the offenses charged in the indictment in this case, but have a reasonable doubt as to which one of said offenses he is guilty, you should give the benefit of such doubt and find him guilty of the lesser offense; for instance: If you have a reasonable doubt as to whether he is guilty of first degree murder or second degree murder, you should find him guilty of second degree murder: If you have a reasonable doubt as to whether he is guilty of voluntary manslaughter or of involuntary manslaughter, you should find him guilty of voluntary manslaughter: If you have a reasonable doubt as to whether he is guilty of involuntary manslaughter or of involuntary manslaughter, you should find the accused not guilty.

COMMONWEALTH

V.

GALEN GARBER

INSTRUCTION____

The Court instructs the jury that the good character of the accused as being a peaceful, law-abiding citizen, as shown by the evidence, may be received and weighed by the jury along with all the evidence in the case.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

COMMONWEALTH

v.

GALEN CABBER

INSTRUCTION

The court instructs the jury that the good character of the accused as being a peaceful, law-abiding citizen, as shown by the evidence, may be received and weighed by the jury along with all the evidence in the case.

☐ Resident

☐ Non-resident

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
404-406 NORTH 12TH STREET
RICHMOND 19, VA.

RECEIVED JUL 28 1961 OFFICE OF CHIEF MEDICAL EXAMINER

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

DECEDENT CHARLES (First name) HOLLAR (Middle name) (Last name) AGE: 21 SEX: M RACE: W

ADDRESS (Number and Street) ROCKINGHAM (City or County) M W S D OCCUPATION: LABORER

TYPE OF DEATH: In prison ☐ Suspicious ☐ Unusual ☐

Sudden in apparent health:
- Instantaneous without obvious cause ☐
- After unexplained coma ☐
- After unexplained rapidly fatal illness ☐

suspected / means
Unattended by a physician:
- Found dead without obvious cause ☐
- Unattended during fatal illness ☐
- Stillbirth attended by midwife ☐

Violent or Unnatural ☑

Means: 12 GAUGE SHOTGUN

IF MOTOR VEHICLE ACCIDENT CHECK ONE OF THE FOLLOWING
DRIVER ☐
PASSENGER ☐
PEDESTRIAN ☐

	LAST SEEN ALIVE	INJURY OR ILLNESS	DEATH	MEDICAL EXAMINER NOTIFIED	VIEW OF BODY	POLICE NOTIFIED
DATE	7-27-61	7-27-61	7-27-61	7-27-61	7-27-61	7-27-61
TIME	7:20 A.M.	7:20 A.M.	9:20 A.M.	8 A.M.	8:30 A.M.	9:40 A.M.

NOTIFICATION BY: SHERIFF A.L. STRAWDERMAN ADDRESS HARRISONBURG, VA.

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E. G., HOSPITAL, HOTEL, HIGHWAY, ETC.)
INJURY OR ONSET OF ILLNESS		ROCKINGHAM	RESIDENCE
DEATH		"	"
VIEWING OF BODY BY MEDICAL EXAMINER		"	"

DESCRIPTION OF BODY
CLOTHED ☑ UNCLOTHED ☐
PARTLY CLOTHED ☐ HAIR
BEARD MUSTACHE
CIRCUMCISED ☐ PUPILS: R. L.
EYES: Color OPACITIES, ETC.

	NOSE	MOUTH	EARS
BLOOD			
FROTH			
OTHER (Sand, dirt, water, etc.)			

WEIGHT LENGTH 66"
BODY HEAT:

NON FATAL WOUNDS
ABRASION ☐ BURN ☐
CONTUSION ☐ STAB ☐
GUNSHOT ☐ INCISED ☐
LACERATION ☐
FRACTURE ☐
DISTRIBUTION: SCALP ☐ FACE ☐ NECK ☐ CHEST ☐ BACK ☐ ABDOMEN ☐ ARMS ☐ LEGS ☐

RIGOR
JAW ☐ ARMS ☐
NECK ☐ CHEST ☐
BACK ☐ ABDOMEN ☐
LEGS ☐

LIVOR
COLOR
ANTERIOR ☐ POSTERIOR ☐
LATERAL ☐
REGIONAL

FATAL WOUNDS:

TYPE (GUNSHOT, INCISED, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION
GUNSHOT	4-5 CM. 12 GAUGE	ROUND	RIGHT CHEST	STRAIGHT THROUGH

Probable cause of death: HEMORRHAGE AS RESULT OF SHOTGUN WOUND

Manner of death: (Check one only)
Accident ☐ Suicide ☐ Homicide ☑
Natural ☐ Unknown ☐ Pending ☐

DISPOSITION OF CASE:
1. Not a medical examiner case ☐
2. Autopsy authorized ☐
By:
Pathologist

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause of death in accordance with Section 19.1-42, Title 19 of the 1950 Code of Virginia as amended; and that the information contained herein regarding such death is true and correct to the best of my knowledge and belief.

7-27-61 (Date) ROCKINGHAM (City or County of Appointment) F. L. Byers Med Ex (Signature of Medical Examiner)

A COPY TESTE: JUL 27 1961
H. H. Mossmiller M.D.
Acting Chief Medical Examiner

981

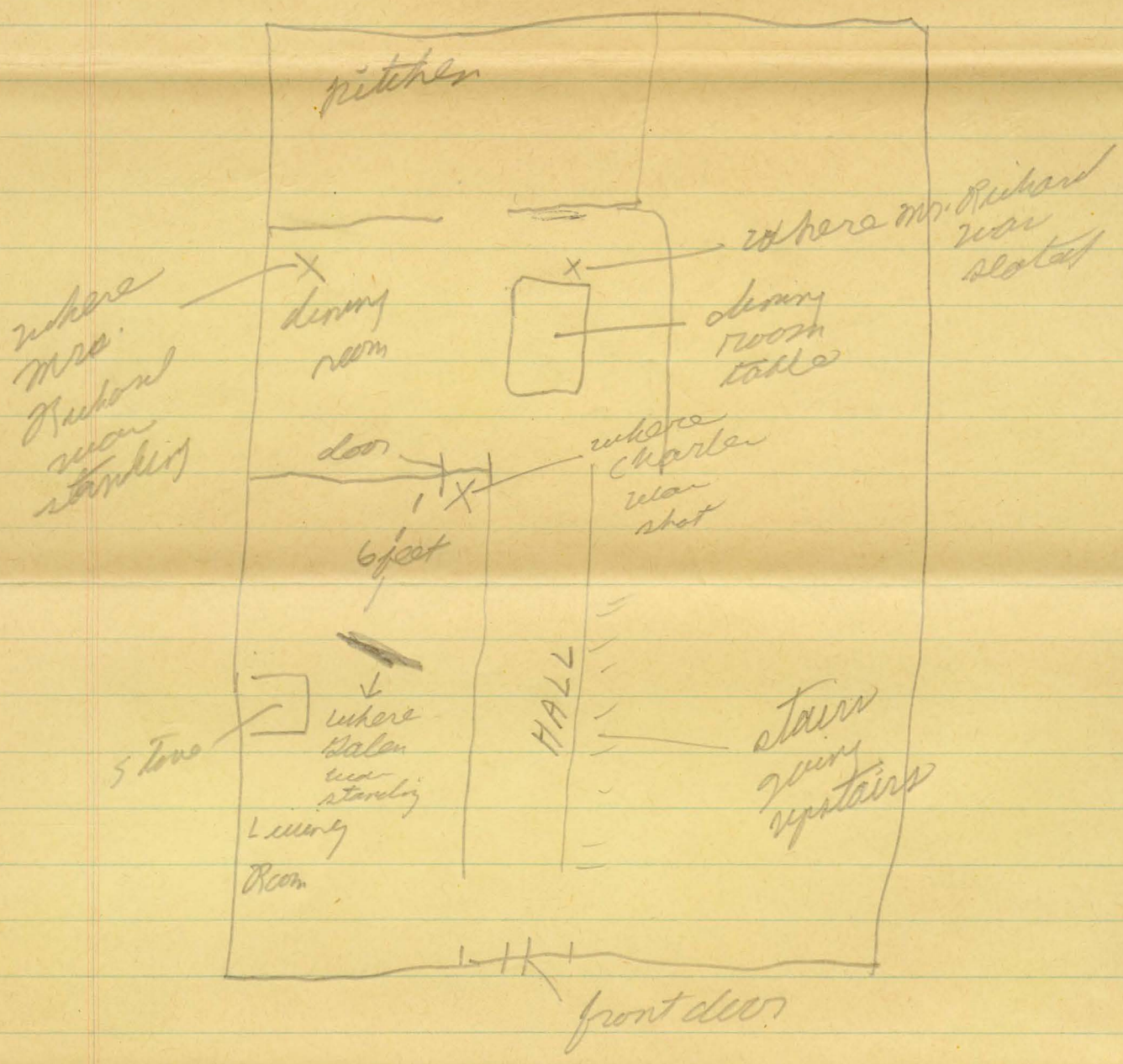
CME Form No. 1—Revised 11-59

18988

Com. v. Walen Barber (age 23)

July 27 - Thursday - 7:20 A.M.
Charles Hollar - age 21
12 Gauge Shotgun - rt. chest - at Throat
cause of death - "hemorrhage as result of shotgun wound"
mother - Bessie Bullard; step-father - Frank Bullard
Prop - owned by Earl Funk (2 mi. SW of Surgem Elm)
Argument - over food -
Fight -
went upstairs & got 12 gauge shotgun
Mad at time I got the gun -
6' from him & aimed the gun in his direction -
"I told him he had better not bother me anymore"
"He then started coming in my direction &
I shot the gun one time"
[Ted - Walen demonstrated to him where
Hollar was when he shot him]

Nurse



Baker demonstrated to Ted ~~that~~ where he was standing - & where Charles was when he shot Him - (that Charles was still some distance from Him when he shot Him)

Comp. Form 18

Copy

STATE OF VIRGINIA
COUNTY OF Harrisonburg
~~City~~

To-Wit: No.

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, James R. Sipe, Commonwealths Attorney

has this day made complaint and information on oath before me, John G. Leake (Name)

Justice of The Peace (Title) of the said ~~County~~ City, that

Galen Garber in the said ~~County~~ Rockingham

did on the 27th day of July, 19 61: Unlawfully and feloniously

kill and murder one Charles Hollar ~~[illegible]~~, against the peace and dignity of the

Commonwealth of Virginia

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the County Court of the said ~~County~~ Rockingham, 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 _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

as witnesses.

Given under my hand and seal, this 27th day of July, 19 61

John G. Leake (Seal)
(Title of Issuing Officer)

JUSTICE OF THE PEACE

STATE OF VIRGINIA—COUNTY OF _____, to-wit:

I, _____ a Judge of the County Court / Justice of the Peace in and for the County aforesaid, State of Virginia, do certify that _____

and _____, as his suret_____, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ Dollars ($_____), 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_____, shall appear before the Circuit / County Court of _____ County, on the _____ day of_____, 19____, at _____ M., at _____,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. Nonappearance shall be deemed to constitute a waiver of trial by jury.

Given under my hand, this_____ day of_____, 19____.

_____ Judge. J. P.

DOCKET NO. _____

COMMONWEALTH

vs.

WARRANT OF ARREST

_____

Golden Gate

_____

Executed this, the _____ day of _____, 19____

_____

_____

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

Fine $

Costs

Total $

The following witnesses were recognized to appear before the Circuit / County Court of _____ County, Virginia, at _____, Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of $_____

COSTS

Warrant $

Trial

Bail

Arrest

Mileage

Clerk

Jail Fee and Board

Witness Attendance

Summoning Witnesses

Commonwealth Attorney

Total Costs $

Fine

Total $

COMMONWEALTH

V.

GARBER

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 find inferences of guilt.

Furthermore, the jury should bear in mind that any 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 non-essential 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.

JAMES R. SIPE
ATTORNEY AT LAW
HARRISONBURG, VA.

COMMONWEALTH

V.

CARNEY

INSTRUCTION

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, bear in mind that the Commonwealth's contention is 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 imaginary or fanciful doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In keeping 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 doubt arising from lack of evidence, from conflicting testimony or from direct 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 non-essential circumstances.

In other words, 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 process, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

JAMES R. SIPE
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COMMONWEALTH

V.

GARBER

INSTRUCTION____

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the opportunity of the witnesses to know whereof they speak, the relationship of the witnesses to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, the jury has the right to determine which witnesses are more worthy of credit and what is the relative weight of any such testimony and to give credit accordingly.

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COMMONWEALTH

V.

CARREN

INSTRUCTION

The Court instructs the Jury that the credibility of witnesses is a question exclusively for the Jury; and from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the opportunity of the witnesses to know whereof they speak, the relationship of the witnesses to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, the Jury has the right to determine which witnesses are more worthy of credit and what is the relative weight of any such testimony and to give credit accordingly.

COMMONWEALTH

V.

GARBER

INSTRUCTION 1

The Court instructs the jury that murder in the first degree is any wilful, deliberate and premeditated killing of one human being by another with malice.

Murder in the second degree is the wilful killing of one human being by another with malice, but without any deliberation and premeditation.

Voluntary manslaughter is the intentional killing of one human being by another without malice, in the heat of sudden passion engendered or brought about by reasonable provocation or in mutual combat.

Involuntary manslaughter is the unintentional killing of ~~one~~ another by the accused while engaged in ~~accidentally, contrary to the intention of the parties, in~~ the prosecution of some unlawful, ~~but not felonious~~, act; or, in the ~~improper~~ criminally negligent performance of a lawful act.

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COMMONWEALTH

V.

GARBER

INSTRUCTION 1

The court instructs the jury that murder in the first degree is any killing, deliberate and premeditated killing of one human being by another with malice.

Murder in the second degree is the willful killing of one human being by another with malice, but without the deliberation and premeditation.

Voluntary manslaughter is the intentional killing of one human being by another without malice, in the heat of sudden passion engendered or brought upon by reasonable provocation or in mutual combat.

Involuntary manslaughter is the killing of one ~~accidentally, contrary to the intention of the parties, in the prosecution of some unlawful act, but not felonious~~ act; or, in the ~~improper~~ performance of a lawful act.

COMMONWEALTH

V.

GARBER

CHARGE TO JURY

If you find the accused, Galen Garber, guilty of murder, as charged in the indictment, and that the murder was committed with malice aforethought, and that it was wilful, deliberate and premeditated, you will find him guilty of murder in the first degree and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

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

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

If you find him not guilty of murder in the first degree, nor of murder in the second degree, nor of voluntary manslaughter, but find him guilty of involuntary manslaughter, you will say so and fix his punishment at confinement in the penitentiary for not less than one nor more than five years, or,

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CHARGE TO JURY

If you find the accused, Calen Carper, guilty of murder, as charged in the indictment, and that the murder was committed with malice aforethought, and that it was willful, deliberate and premeditated, you will find him guilty of murder in the first degree and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him guilty of murder, as charged in the indictment, and that the same was committed with malice aforethought, but that it was not willful, deliberate and premeditated, then you will find him guilty of murder in the second degree, and fix his punishment at confinement in the penitentiary for not less than one nor more than five years, or, not less than five nor more than twenty years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, nor of voluntary manslaughter, but find him guilty of involuntary manslaughter, you will fix his punishment at confinement in the penitentiary for not less than one nor more than five years.

If you find him not guilty of murder in the first degree, nor of murder in the second degree, but that he killed Charles Hollar without malice aforethought, accidentally or implied, upon sudden heat, on reasonable provocation, or in mutual combat, you will find him guilty of voluntary manslaughter and fix his punishment at confinement in the penitentiary for not less than one nor more than five years.

COMMONWEALTH

V.

CARPER

in your discretion, by a fine of not exceeding one thousand dollars, or by confinement in jail not exceeding one years, or by both such fine and imprisonment.

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

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in your discretion, by a fine of not exceeding one thousand dollars, or by confinement in Jail not exceeding one year, or by both such fine and imprisonment.

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

COMMONWEALTH

V.

GARBER

INSTRUCTION____

The Court instructs the jury that murder in the first degree is any wilful, deliberate and premeditated killing of one human being by another with malice.

Murder in the second degree is the wilful killing of one human being by another with malice, but without any deliberation and premeditation.

Voluntary manslaughter is the intentional killing of one human being by another without malice, in the heat of sudden passion engendered or brought about by reasonable provocation or in mutual combat.

Involuntary manslaughter is the unintentional killing of another by the accused while engaged in the prosecution of some unlawful act; or, in the criminally negligent performance of a lawful act.

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COMMONWEALTH

V.

CARTER

INSTRUCTION

The Court instructs the Jury that murder in the first degree is only willful, deliberate and premeditated killing of one human being by another without malice, in the heat of sudden passion engendered or brought about by reasonable provocation or in mutual combat.

Involuntary manslaughter is the unintentional killing of another by the accused while engaged in the prosecution of some unlawful act; or, in the criminally negligent performance of a lawful act.

Murder in the second degree is the willful killing of one human being by another with malice, but without any deliberation and premeditation.

Involuntary manslaughter is the intentional killing of one human being by another without malice, in the heat of sudden passion engendered or brought about by reasonable provocation or in mutual combat.

Involuntary manslaughter is the unintentional killing of another by the accused while engaged in the prosecution of some unlawful act; or, in the criminally negligent performance of a lawful act.

COMMONWEALTH

V.

GARBER

INSTRUCTION____

The Court instructs the jury that to constitute a wilful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist for any particular length of time prior to the actual killing, it is only necessary that there was some deliberation and premeditation given by the accused to his purpose at the time of the killing or at any time previously.

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COMMONWEALTH

V.

EVANS

INSTRUCTION

The court instructs the jury that to constitute a willful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist for any particular length of time prior to the actual killing, it is only necessary that there was some deliberation and premeditation given by the accused to the purpose at the time of the killing or at any time previously.

COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

In ~~The Circuit~~ Court of Rockingham County, ~~August~~ Term, 1961

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, now attending the Circuit Court of the said County, upon their oaths present that ~~Galen Garber~~, Wm. Ray Smith on the ~~27th~~ 4 day of ~~July~~ 3, 1961, in the County of Rockingham, Virginia, feloniously did kill and murder one ~~Charles Hollar~~ Samuel Pleasant Smith, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Deputy Sheriff T. L. Martin, Frank Richard and Sheriff A. L. Strawderman, witnesses sworn in open court and sent to the Grand Jury to give evidence.

A

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COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

In the circuit court of Rockingham county, August term, 1981

The grand jurors of the commonwealth of Virginia, in and for the body of the county of Rockingham, now attending the circuit court of the said county, upon their oaths present that Calvin Carter, on the 5th day of July, 1981, in the county of Rockingham, Virginia, feloniously did kill and murder one Charles Holley, against the peace and dignity of the commonwealth of Virginia.

Upon the evidence of Deputy Sheriff T. L. Martin, Frank Barbour and Sheriff A. L. Strickler, witnesses sworn in open court and sent to the grand jury to give evidence.

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