

Com v Cubbage
Jury - NOV 21, 1962

Geo W. Abbott
Scott Fawley
Merwin Branner
R.C. Templeman
Sumner E. Hesse
Alma Z. Wampler
John Gitchell
Ray Earle
Rosemary Seese
L.E. Birt
Mary Gunn
William G. Blase

Docket No. 4004.

OCT 1962

COMMONWEALTH of VIRGINIA

VS. Indictment } Felony (murder)

BENJAMIN FRANKLIN CUBBAGE, JR. *hail*

J. L. Lucas, Luray, Va. p. d.
Own (x) Appointed ()

1962

Oct. 15. Return of Grand Jury. 11/33

Oct. 15. Accused arraigned and plea n.g.
Set for Nov. 21. 11/34

Nov. 21. Jury impanelled, etc., and
verdict of acquittal returned.
11/51

*Photographs are
in file Z-3
(upstairs)*

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.

KEYSTONE ENV. CO., PHILA 33, PA.
NO. 34758

COUNTY COURT

Criminal
Docket

Nº 39236 A

Commonwealth

v.

BENJAMIN FRANKLIN CUBBAGE, JR.

Defendant

*L. L.
Lurray - Va.*

Appearance Date 7-30-62

Trial Date 8-28-62

To - 9-14-62 D.P.H.

*GRAND JURY 9-14-62
P.R.G. John*



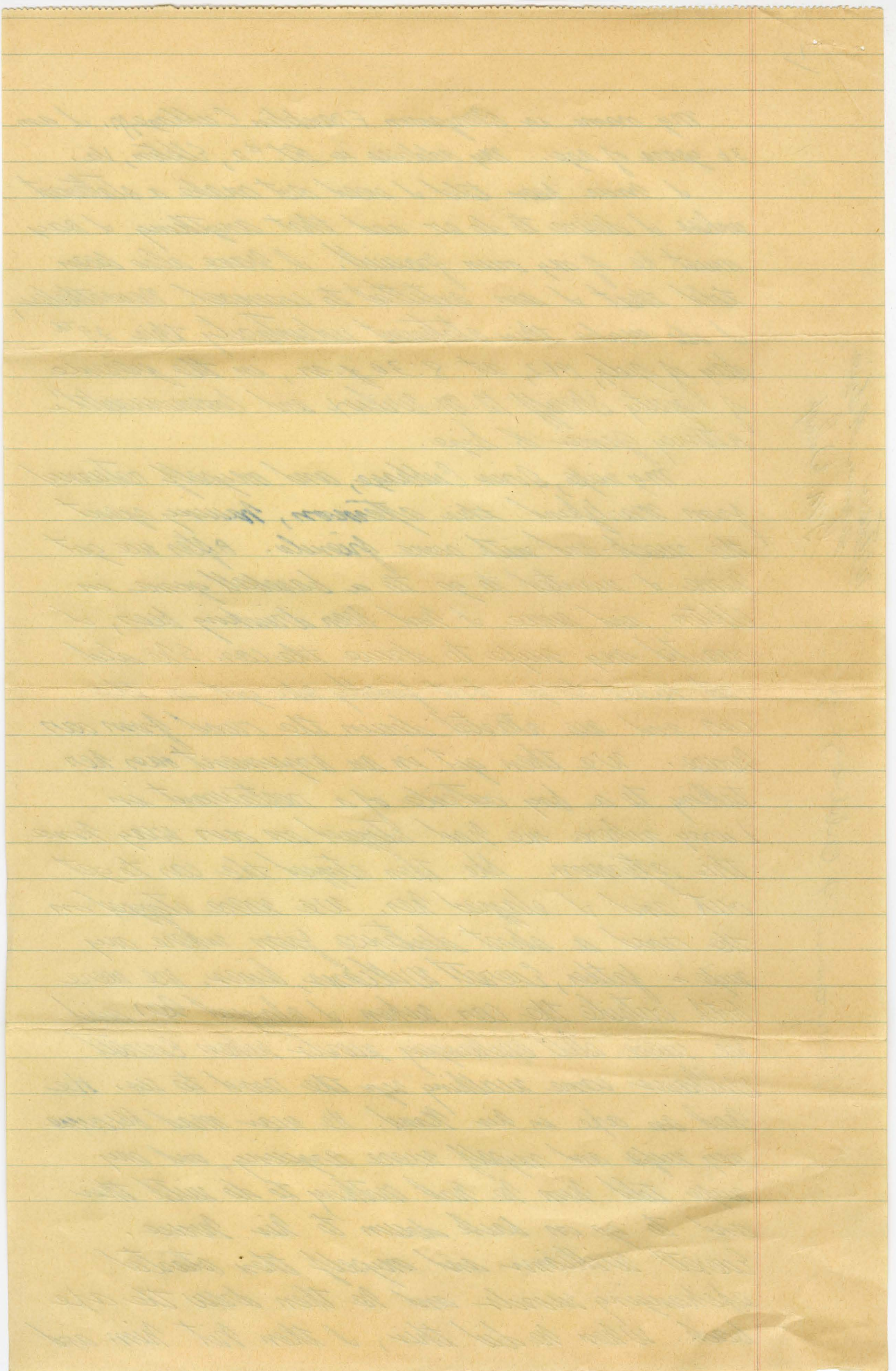
1
My name is Benjamin Franklin Cabbage, Jr. I am 36 years of age. My address is Rt. #2, Elkton, Va.

I have been told I need not make a statement unless I desire to do so and that anything I say must be of my own free will. I have also been told that I am entitled to counsel. Nevertheless, I do make this statement voluntarily this 29th day of July, 1962, at 8:30 p.m., in the presence of Deputy Sheriff L. M. Wilcox and Commonwealth's Attorney James R. Sipe.

My wife, Doris Cabbage, and myself returned from Maryland this afternoon, having spent the week-end with some friends. After we got home I wanted to go to a baseball game in Elkton, and since I had been drinking beer, I wanted my wife to drive the car. She did not want to go, but finally she got in the car and we started down the road from our house. We then got in an argument over her talking to a boy outside of a restaurant in Luray where we had stopped on our way home this afternoon. She then stopped the car to get out and I stopped her. We were stopped on the road a short distance from where my wife's father, Everett Williams, lives. We were both outside the car when I stopped her and we were still exchanging words when Everett Williams came walking up the road to us. He had an axe in his hand. He was mad because my wife and myself were arguing, and my wife told him he had nothing to do with this and to go on back down to his house. Everett Williams and myself then started exchanging words and he then drew the axe back. When he did this, I then hit him and

Witness
L. M. Wilcox
J. M. Wilcox

Benjamin F. Cabbage, Jr.



21
He fell down on his back. I did not see him
more after he fell down. My wife took off
up the hill towards our house after
I hit him. I then tried to pick him up
but couldn't get him up. I then went on
up the hill to see if my wife was home.
After I got to the house I couldn't find
my wife and I then started walking back
down the hill to where I had left my
father-in-law. My brother, Sam, and a
mennonite preacher were coming up the road
towards me. I told them what had
happened. Sam told me that we had better
go get a doctor. The preacher stayed there
and Sam and myself drove into Elkhon,
stopping on the way to tell Dr. Nicholson
to go up to see about Mr. Williams. We
then went into Elkhon and told the police
what had happened.

I hit Everett Williams once with
my fist. I may have hit him twice or
three times. I was mad at the time
and I don't remember exactly how many
times I hit him. After I had knocked
him down I picked the rope up in
case he would get up again. I don't
recall exactly what time this happened, but it
was this afternoon ~~at~~ a short time after we
got back from Maryland that this happened.

I have read the above statement and it
is true and correct to the best of my knowledge.

witness:
James A. Sipe
G. M. Wilcox

Benjamin F. Culbage Jr

Comth Ex C

HA

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Maggie Brown, Mrs. Della Williams, Curry Williams,
Edward Turner, and Dr. W. H. Nicholson,

.....

.....

.....

.....

.....

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 21st day of November, 1962, to testify and the truth to say in behalf of
the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cabbage, Jr.

.....

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

In witness whereof I hereunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va.,
at the Court House thereof, this, the 15th day of November, 1962, and in the 187th year
of the Commonwealth.

George W. Kemper
....., Clerk

EXECUTED 11-20-62 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO *Maggie Brown* IN PERSON.

By *C. J. Burnett* D. S. R. C.

EXECUTED 11-20-62 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO *W. H. Nicholson* IN PERSON.

By *C. J. Burnett* D. S. R. C.

EXECUTED 11-20-62 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO *Della Williams* IN PERSON.

By *Curry Williams* D. S. R. C.

EXECUTED 11-20-62 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO IN PERSON.

By *C. J. Burnett* D. S. R. C.

EXECUTED 11-20-62 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO *Edward Turner* IN PERSON.

By *C. J. Burnett* D. S. R. C.

Clerk

George W. Temple

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Dr. G. G. Tanner - Grottoes, Va.
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

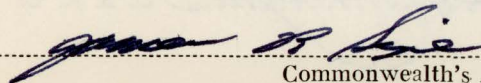
to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 9:30 o'clock, a. m., on the 21st day of November, 1962, to testify and the truth to say in behalf of the Commonwealth ~~before the Grand Jury~~, against

Benjamin Franklin Cabbage, Jr.
.....
.....

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, JAMES R. SIPE, Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia, at the Court House, the 19th of November, 1962, and in the 187th year of the Commonwealth.



.....
Commonwealth's Attorney

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Dr. G. E. Tanner - Gloucester, Va.

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 21st day of November 1872 to testify and the truth to say in behalf of the

Commonwealth before the Grand Jury, against

Benjamin Franklin Cuppage, Jr.

EXECUTED 11-19-62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN [Signature]

TO Dr. G. E. Tanner
IN PERSON.

A. L. STRAWDERMAN

S. R. C.

By [Signature] D. S. R. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Barbara Ann Cabbage - Route #2, Elkton

Phyllis Cabbage - Route #2, Elkton

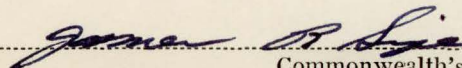
to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 9:30 o'clock, a. m., on the 21st day of November....., 1962, to testify and the truth to say in behalf of the Commonwealth ~~before the Grand Jury~~, against

Benjamin Franklin Cabbage, Jr.

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, JAMES R. SIPE, Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia, at the Court House, the 19th of November....., 1962, and in the 187th year of the Commonwealth.



Commonwealth's Attorney

EXECUTED 11-20-62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN Summons

TO Barbara Ann Cabbage
IN PERSON.

..... A. L. STRAWDERMAN S. R. C.

By A. J. Burnett D. S. R. C.

EXECUTED 11-20-62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN Summons

TO Phyllis Cabbage
IN PERSON.

..... A. L. STRAWDERMAN S. R. C.

By A. J. Burnett D. S. R. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

G. M. Wilcox

.....

.....

.....

.....

.....

.....

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 21st day of November, 1962, to testify and the truth to say in behalf of the Commonwealth ~~before the Grand Jury~~, against

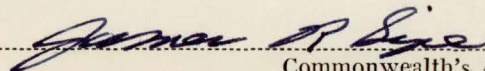
Benjamin Franklin Cabbage, Jr.

.....

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, JAMES R. SIPE, Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia, at the Court House, the 19th of November, 1962, and in the 187th year of the Commonwealth.



Commonwealth's Attorney

EXECUTED *11/20/62* IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons*

TO *P. M. Wilder*
IN PERSON.

A. L. Strawderman S. R. C.

By *J. L. Gault* D. S. R. C.

to appear before the Judge of the Circuit Court of Rockingham County at the Court House thereat at 10 o'clock a.m. on the *20th* day of *November* 18*62* to testify and the truth to say in a bill of the Commonwealth against *Benjamin Franklin Cabbage, Jr.* who stands charged with and indicted for a felony misdemeanor -
And that you shall not omit under penalty. And have them and have this writ.
Witness JAMES H. SIBB, Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia at the Court House, the *18th* of *November* 18*62*, and in the *1872* year
of the Commonwealth.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Chief Deeds (Elkton, Va.)

.....
.....
.....
.....
.....
.....
.....

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 21st day of November, 1962, to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cabbage, Jr.

who stands charged with and indicted for a felony ~~in this case~~

In witness whereof I hereunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va., at the Court House thereof, this, the 19th day of November, 1962, and in the 187th year of the Commonwealth.

George W. Kemper, Clerk
My Atty. General
D.C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Chief Deeds (Eikton, Va.)

Chief Deeds

not found

In my bailiwick ... 11-20-1862

..... A. L. STRAWDERMAN S. R. C.

By *A. J. Burnett* Deputy Sheriff

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 18th day of November, 1862, to testify and the truth to say in behalf of

the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cuppage, Jr.

who stands charged with and indicted for a felony

In witness whereof I herunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va.,

at the Court House thereof, this 10th day of November, 1862, and in the 18th Year

of the Commonwealth.

Clerk

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Chief Deeds (Elkton, Va.)

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

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 21st day of November, 1962, to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cabbage, Jr.

.....

.....

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

In witness whereof I hereunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va., at the Court House thereof, this, the 19th day of November, 1962, and in the 187th year of the Commonwealth.

George W. Kempfer, Clerk
By [Signature]
D. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Chief Deeds (Rixson, Va.)

Chief Deeds

in my bailwick 11-20, 1962, not found

A. L. STRAWDERMAN

S. R. C.

By *C. J. Burnett* Deputy Sheriff

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 11 day of November, 1962, to testify and the truth to say in behalf of

the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cuppage, Jr.

who stands charged with and indicted for a felony murder

In witness whereof I hereto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va.,

at the Court House thereof, this 19th day of November, 1962, and in the 1875th year

of the Commonwealth.

Clerk

James M. ...

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon ^{re: file} Edgar Martin (Harrisonburg, Va.)

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 21st day of November, 1962, to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against Benjamin Franklin Cabbage, Jr.

who stands charged with and indicted for a felony ~~in the name of~~

In witness whereof I hereunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va., at the Court House thereof, this, the 15th day of November, 1962, and in the 187th year of the Commonwealth.

George W. Kempfer, Clerk
My Maggie Powers, D. ©

J. Lynn Lucas, Atty

Not finding Edgar Martin at his usual
place of abode, Executed Nov-20, 1962 by delivering a
true copy of this Summons to Mr. Edgar Martin
his wife in person, at said Summons
usual place of abode Mr. Edgar Martin, being a member of
his family, above the age of fourteen years, and explaining the purport thereof
to her.

A. L. STRAWDERMAN S. R. C.

Benjamin Franklin Carpenter By F. L. Martin Deputy Sheriff
the Defendant in the prosecution of the Commonwealth against

o'clock, p. m., on the 21st day of November, 1962, to testify and the truth to say in behalf of
to appear before the Judge of the Circuit Court of Rockingham County at the Court House thereof at 9:30

You are hereby commanded to summon Edgar Martin (HARRISONBURG, VA.)

To the Sheriff of Rockingham County, greeting:
In the Name of the Commonwealth of Virginia:

In the Name of the Commonwealth of Virginia:

To the Sheriff of ^{Page} ~~Rockingham~~ County, Greeting:

You are hereby commanded to summon J. W. Batman (Shenandoah, Virginia);
H. Frank Aleshire (Stanley, Virginia); and R. P. Good (Shenandoah, Virginia);

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 21st day of November, 1962, to testify and the truth to say in behalf of
the Defendant in the prosecution of the Commonwealth against
Benjamin Franklin Cabbage, Jr.,

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

In witness whereof I hereunto set my hand, as the Clerk of the Circuit Court of Rockingham County, Va.,
at the Court House thereof, this, the 15th day of November, 1962, and in the 187th year
of the Commonwealth.

George W. Kemper
My Margie Bowens, S. C.
Clerk

J. Lynn Lucas, Atty for defendant

In the Name of the Commonwealth of Virginia:

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

You are hereby commanded to summon J. W. Bateman (Shenandoah, Virginia);
H. Frank Aleshire (Stanley, Virginia); and R. P. Good (Shenandoah, Virginia);

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 1st day of November, 1962, to testify and the truth to say in behalf of
the Defendant in the prosecution of the Commonwealth against

Benjamin Franklin Cuppage, Jr.
Executed on the 16 day of Nov., 1962 in the County of
Page, Virginia, by delivering a true copy of the above mentioned papers attached
to each other, to J. W. Bateman R. P. Good

H. Frank Aleshire
in person.
In witness whereof J. W. Bateman

at the Court House, in the County of Page, Virginia, this 16 day of November, 1962, and in the
Year 1874
SHERIFF, COUNTY OF PAGE, VA
BY A. W. Heston DEPUTY SHERIFF

Clerk
Wm. H. Heston

COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

In The Circuit Court of Rockingham County, October Term, 1962

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 Benjamin Franklin Cabbage, Jr., on the 29th day of July, 1962, in the County of Rockingham, Virginia, feloniously did kill and murder one Everett Williams, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Deputy Sheriff G. M. Wilcox, witness sworn in open court and sent to the Grand Jury to give evidence.

murder

4004

COMMONWEALTH

V.

CUBBAGE

vs. 78m bail

*St. James Court
and W. J.
Nov. 21*

A TRUE BILL

ant. p. m. H. ...
Foreman

James R. Sipe
Commonwealth's Attorney

COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, Co-wis:

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Deputy Sheriff G. M. Wilcox



to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 9:30 o'clock, a. m., on the 15th day of October, 1962, to testify and the truth to say in behalf of the Commonwealth before the Grand Jury, against

Benjamin Franklin Cabbage, Jr.

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, JAMES R. SIPE, Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia, at the Court House, the 6th of October, 1962, and in the 187th year of the Commonwealth.

Commonwealth's Attorney

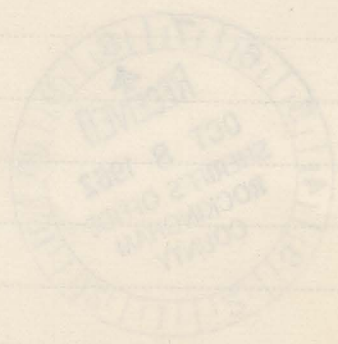
EXECUTED ^{10/9/02} IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN ^{Summons}

TO ^{G. M. Wilcox}
IN PERSON.

..... A. L. STRAWDERMAN S. R. C.

By ^{J. R. Carter} D. S. R. C.



to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10:30
o'clock a.m. on the 15th day of October, 1902, to testify and the truth to say in behalf of the

Commonwealth before the Grand Jury, against
Benjamin Franklin Cabbage, Jr.

who stands charged with and subjected to a felony aforesaid.
And this you shall not omit under penalty. And have then and there this writ.
Witness JAMES R. SIBB, Commonwealth's Attorney for Rockingham County and the City of Harrison
burg, Virginia, at the Court House, the 6th of October, 1902, and in the 1875th year
of the Commonwealth.

[Signature]
Commonwealth's Attorney

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM

To-Wit:

No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, JAMES R. SIPE

has this day made complaint and information on oath before me, IVAN D. LOKER
(Name)

JUSTICE OF THE PEACE

(Title)

of the said County, that

BENJAMIN FRANKLIN CUBBAGE, JR.

in the said County

did on the 29th day of JULY, 1962: Unlawfully AND FELONIOUSLY

DID KILL AND MURDER ONE EVERETT WILLIAMS, 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, 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 29th day of JULY, 1962

Ivan D. Loker (Seal)

(Title of Issuing Officer)

JUSTICE OF THE PEACE

City
 STATE OF VIRGINIA—~~COUNTY~~ OF Harrisonburg, to-wit: City
 I, John G. Leake a Judge of the County Court Justice of the Peace in and for the County aforesaid, State of Virginia, do certify that Benjamin Franklin Cabbage, Jr.

and Ben Cabbage as his suret Y, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of FIVE THOUSAND Dollars (\$ 5000.00), 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 Benjamin Franklin Cabbage, Jr., shall appear before the Circuit Court of Rockingham County, on the 28th day of August, 1962

at 2 P M., at Harrisonburg, 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 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 30th day of July, 1962
John G. Leake Judge. J. P.

DOCKET NO. 39236
 COMMONWEALTH
 WARRANT OF ARREST
 vs. BENJAMIN FRANKLIN CABBAGE, JR

Executed this, the 29th day of July, 1962
John G. Leake
Rockingham Co.
 Upon the examination of the within charge, I find the accused

There being sufficient probable cause the defendant is held for action by the Grand Jury.

Given under my hand this 14th day of September, 1962.
John S. [Signature]
 ROCKINGHAM COUNTY JUDGE

To - 8-28-62 2 P.M.
BOND \$5000.00

Fine _____ \$ _____
 Costs _____ \$ _____
 Total _____ \$ _____

Rem. N.Y. 7-30-62
J.P.P. [Signature]

The following witnesses were recognized to appear before the _____ Circuit Court of _____ County, Virginia, at _____ M., on the _____ day of _____, 1962, under penalty of \$ _____

COSTS	
Warrant	\$ 2.00
Trial	2.00
Bail	
Arrest	1.00
Mileage	<u>3.20</u>
Clerk	<u>1.25</u>
Jail Fee and Board	<u>1.50</u>
Witness Attendance	
Summoning Witnesses	
Commonwealth Attorney	<u>5.00</u>
Total Costs	\$ _____
Fine	\$ _____
Total	\$ _____

11-21-62

We the jury find the defendant
Benjamin Franklin Cabbage not guilty,

R.C. Trueman, Foreman

11-21-65

For the very first time
I have been able to
see the difference between
the two specimens.

1

COMMONWEALTH

V.

CUBBAGE

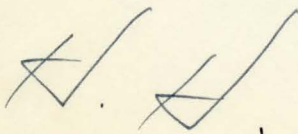
CHARGE TO JURY

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

If you do not find the accused guilty of either of the above felonies, but find him guilty of assault and battery, you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

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

Handwritten signature or initials, possibly "A. S.", written in dark ink at the bottom of the page.

COMMONWEALTH

v.

CUBAGE

CHARGE TO JURY

If you find the accused, Benjamin Franklin Cubage,

is guilty of voluntary manslaughter, as charged in the indictment, you will say so and fix his punishment as confinement in the penitentiary for not less than one nor more than five years.

If you find him not guilty of voluntary manslaughter,

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

If you do not find the accused guilty of either of the above felonies, but find him guilty of assault and battery, you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

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

more.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION _____

The Court instructs the jury that where death ensues on a sudden provocation, or sudden quarrel, without malice, the killing is manslaughter, and in order to justify or excuse such killing as being done in the lawful exercise of the right of self-defense, the accused must prove that he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm, or that there was reasonable ground to believe that the killing was necessary to preserve his own life or to save himself from great bodily harm.

COMMONWEALTH

v.

CURRAGE

INSTRUCTION

The Court instructs the jury that where death ensues on a sudden provocation, or sudden quarrel, without malice, the killing is manslaughter, and in order to justify or excuse such killing as being done in the lawful exercise of the right of self-defense, the accused must prove that he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm, or that there was reasonable ground to believe that the killing was necessary to preserve his own life or to save himself from great bodily harm.

JAMES R. SIPE
 ATTORNEY AT LAW
 HARRISONBURG, VA.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION 1

The Court instructs the jury that 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.

Involuntary manslaughter is the unintentional killing of another by the accused while engaged in the prosecution of some unlawful wrongful act.

H. H.

COMMONWEALTH

V.

CUBAGE

INSTRUCTION

The Court instructs the jury that 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. Involuntary manslaughter is the unintentional killing of another by the accused while engaged in the prosecution of some lawful or wrongful act.

[Handwritten signature]

[Faint, illegible text]

INSTRUCTION NO. 2

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the Commonwealth has established his guilt by evidence so strong, so clear, and so conclusive, that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an abiding presumption, and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection, the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty; or that by the preponderance of the testimony, his guilt is more probable than his innocence; for until his guilt has been proved beyond all reasonable doubt in the precise and narrow terms as charged in the indictment, the presumption of innocence still applies, and they must acquit him.

A. A.

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the Commonwealth has established his guilt by evidence so strong, so clear, and so conclusive, that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an aiding presumption, and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection, the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty; or that by the preponderance of the testimony, his guilt is more probable than his innocence; for until his guilt has been proved beyond all reasonable doubt in the precise and narrow terms as charged in the indictment, the presumption of innocence still applies, and they must acquit him.

A. A.

INSTRUCTION NO. 3

The Court instructs the jury that every fact necessary to constitute the offense charged must be proven beyond a reasonable doubt, and that if there is a reasonable doubt, arising out of the evidence, as to any such fact, they shall acquit; that the result of the evidence must be to exclude every reasonable hypothesis of innocence, and be consistent only with the guilt of the accused; that the jury is not at liberty to guess, and where a fact is equally susceptible of two interpretations, one of which is consistent with the innocence of the accused, they cannot arbitrarily adopt that interpretation which incriminates him.

A. H.

The Court instructs the jury that every fact necessary

to constitute the offense charged must be proven beyond a reasonable doubt, and that if there is a reasonable doubt arising out of the evidence, as to any such fact, they shall acquit; that the result of the evidence must be to exclude every reasonable hypothesis of innocence, and be consistent only with the guilt of the accused; that the jury is not at liberty to guess, and where a fact is equally susceptible of two interpretations, one of which is consistent with the innocence of the accused, they cannot arbitrarily adopt that interpretation which incriminates him.

[Handwritten signature]

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION 4

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 immessential 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 otherhand, 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.

A. A.

4
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 unessential 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.

[Handwritten signature]

INSTRUCTION NO. 5

The Court instructs the jury that the indictment in this case shall not be considered by the jury as any evidence of the guilt of the accused.

AH

2 INSTRUCTION NO.

The Court instructs the jury that the indictment
in this case shall not be considered by the jury as any
evidence of the guilt of the accused.

4/11/44

INSTRUCTION NO. 6

If the jury believe from the evidence in this case ~~that the actions of the accused in this case resulted from the fact that he was assaulted by the deceased and that the assault was made with such display of force or violence that the accused believed himself to be in imminent danger of loss of life or great bodily harm; then, in that case, the accused was not bound to retreat, but had the right to stand his ground, repel force with force, and, if need be, kill his adversary, to prevent the loss of his own life, or to prevent his receiving great bodily injury; and it is not necessary that the jury believe the deceased would, in fact, have taken the life of the accused, or inflicted great bodily harm upon him, but only that the accused was under an apprehension that the decedent would do so.~~

that the actions of the accused in this case resulted from the fact that he was assaulted by the deceased and that the assault was made with such display of force or violence that the accused believed himself to be in imminent danger of loss of life or great bodily harm; then, in that case, the accused was not bound to retreat, but had the right to stand his ground, repel force with force, and, if need be, kill his adversary, to prevent the loss of his own life, or to prevent his receiving great bodily injury; and it is not necessary that the jury believe the deceased would, in fact, have taken the life of the accused, or inflicted great bodily harm upon him, but only that the accused was ^{reasonably} under an apprehension that the decedent would do so.

H. H.

NOTARY
BOND

If the jury believe from the evidence in this case that the accused was not bound to retreat, but had the right to stand his ground, repel force with force, and, if need be, kill his adversary, to prevent the loss of his own life, or to prevent his receiving great bodily injury; and it is not necessary that the jury believe the deceased would, in fact, have taken the life of the accused, or inflicted great bodily harm upon him, but only that the accused was under an apprehension that the deceased would do so.

H. H.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION 7

The Court instructs the jury that in determining whether or not the deceased was the aggressor they may take into consideration the reputation of the deceased as to whether he was a dangerous and violent man.

A. H.

COMMONWEALTH

v.

CUBAGE

INSTRUCTION 7

The Court instructs the jury that in determining whether or not the deceased was the aggressor they may take into consideration the reputation of the deceased as to whether he was a dangerous and violent man.

H. H.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION 8

The Court instructs the jury that where death ensues on a sudden provocation, or sudden quarrel, without malice, the killing is manslaughter, and in order to justify or excuse such killing as being done in the lawful exercise of the right of self-defense, the accused must prove that he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm, or that there was reasonable ground to believe that the killing was necessary to preserve his own life or to save himself from great bodily harm.

COMMONWEALTH

v.

CUBAGE

8 INSTRUCTION

The Court instructs the jury that where death ensues on a sudden provocation, or sudden quarrel, without malice, the killing is manslaughter, and in order to justify or excuse such killing as being done in the lawful exercise of the right of self-defense, the accused must prove that he killed the deceased through the necessity of preserving his own life or to save himself from great bodily harm, or that there was reasonable ground to believe that the killing was necessary to preserve his own life or to save himself from great bodily harm.

COMMONWEALTH

V.

CUBBAGE

INSTRUCTION 9

The Court instructs the jury that evidence of the good reputation of the accused may be considered by the jury along with other evidence in the case in determining the guilt or innocence of the accused.

H. A.

COMMONWEALTH

V.

CUBBAGE.

INSTRUCTION 10

The Court instructs the jury that if they believe
from the evidence ^{beyond reasonable doubt} that the accused assaulted the deceased otherwise
than in the exercise of self-defense, and further ^{believe from the evidence} that the
death ^{might have reasonably} resulted from some cause other than the assault, then the
jury should find the accused guilty of assault and battery.

A. H.

L.

COMMONWEALTH

v.

CUBBERG

10 INSTRUCTION

The Court instructs the jury that if they believe
 from the evidence that the accused assaulted the deceased otherwise
 than in the exercise of self-defense, and further that the
 death resulted from some cause other than the assault, then the
 jury should find the accused guilty of assault and battery.

A. A.
 J.

Almanford
 1911

COMMONWEALTH

V.

CUBBAGE

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.

A. S.

COMMONWEALTH

v.

GUBBAGE

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.

Handwritten notes and signatures at the bottom of the page, including a large signature that appears to read "W. H. ..."