

June

100.00

Com. Atty 5.00

Clerk 5.00

Co. Court 2.50

Sheriff 1.50
2.50 6.50
2.50

J. P. (Lake) 2.00

Jury 57.98

78.98

178.98

Paid
4/26/62

Jury April 26, 1962
Forrest Radar

William D. Wampler

Nelson S. Diehl

Hampton Sampson

Thomas O. Brack

Docket No. 3948

APR

1962

COMMONWEALTH of VIRGINIA

VS.

Misd. (appeal)

JOHN CLIFFORD GABBERT

25 E. Wayne Ave.

Silver Spring, Md.

Wm. A. Julius

p. d.

Own () Appointed ()

1962

February 26. Docketed.

April 26. Jury impanelled, &c.; evidence heard, verdict of guilty returned, and punishment fixed at fine of \$100.00

11/12.

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.

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



• NOV • 6 •

CmN

~~Ex~~ #1

4-26-62

H. H.

Nov. 20, 1961

Quist

Welder

Bishop

Margaret

3948

COUNTY COURT

Criminal
Docket

Nº 36823 A

Commonwealth

V.

John Clifford Gilbert
Defendant

JRF Appearance Date 12-19-61

Trial Date 2-13-62

2/16/62

2-23-62

Appeal noted granted +
referred to Circuit Ct. of
Essex Co. Va. then 13th day of
Feb. 1962 P.R.G. Jacob

WS-4
WS-1 Def.

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

Betty Armentrout
Joan Heiden
Carol Bishop
Margaret Wallace } Madison College
Harrisonburg, Va.

to appear before The County Court of said County, sitting at Harrisonburg, Virginia, in said County, on

13th day of Feb, 1962, at the hour of 2 P.M. of that day

to give evidence in behalf of Com. 4

in the pending case of Com. 4

v. John Clifford Gabbert

Given under my hand this 12th day of Feb, 1962

Ade C. Swartz Clerk
Asst. Clerk

Witness Subpoena

Commonwealth of Virginia:
County of Rockingham, to-wit:

To the Sheriff of said County, Greeting:

The County Court

Docket No. 36823

Com 74

V. { Witness Subpoena

John Clifford Gallet
10 Feb 13, 1902 at 2 P.M.

Asst. Clerk
Clerk

Witness Subpoena

(Copy)

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

Betty Armentrout
Joan Helder
Carol Bishop
Margaret Wallace

Madison College

to appear before The County Court of said County, sitting at Harrisonburg, Virginia, in said County, on

13th day of Feb, 1962, at the hour of 2 P.M. of that day

to give evidence in behalf of Com. th

in the pending case of

Com. th

v.

John Clifford Garrett

Given under my hand this

12th

day of

Feb.

1962

Ade C. Swartz, Clerk

Clerk
Asst. Clerk

Witness Subpoena

Commonwealth of Virginia:
County of Rockingham, to-wit:

To the Sheriff of said County, Greeting:

The County Court

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

Docket No. 96823

Com. 4

to appear before The County Court of said County, sitting at Harrisonburg, Virginia, in said County, on
the 13 day of Feb, 1982, at the hour of 2 P.M. of that day

V. { Witness Subpoena

John Clifford Sabbath

To Feb. 13, 1982 at 2 P.M.

Clerk
Asst. Clerk

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

Betty Armentrout

Joan Helder

Carol Bishop

A.F.

Margaret Wallace

Madison College

to appear before The County Court of said County, sitting at Harrisonburg, Virginia, in said County, on

13th

day of

Feb

1962

, at the hour of

2 P.M.

of that day

to give evidence in behalf of

Com. th

in the pending case of

Com. th

v.

John Clifford Gabbert

Given under my hand this

12th

day of

Feb.

1962

Ade C. Swartz, Clerk

Clerk
Asst. Clerk

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

J. R. Berry, Elkton, Virginia, works at Brill Funeral Home

to appear before The County Court of said County, sitting at Harrisonburg, Virginia, in said County, on
13th day of February, 1962, at the hour of 2:00 P.M. of that day
to give evidence in behalf of John Gabbert

in the pending case of Commonwealth

v. John Gabbert

Given under my hand this 7th day of February, 1962.

Adm. C. Swartz Clerk
Asst. Clerk

WE THE JURY FIND THE DEFENDANT
JOHN GABBERT, GUILTY AS CHARGED,
AND FIX HIS PUNISHMENT BY A FINE
OF \$100.00

FOREMAN
Hampton Simpson

We the jury find the defendant

John Gabbert, guilty as charged.

and fix his punishment by a fine

of \$100.00

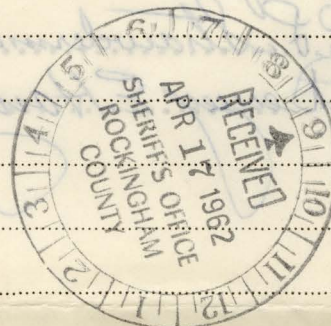
Foreman
Humphreys

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Raymond O. Berry, c/o Brill Funeral Home, Elkton, 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 26th day of April, 1962, to testify and the truth to say in behalf of the Defendant in the prosecution of the Commonwealth against

John Gabbert

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 16th day of April, 1962, and in the 186th year of the Commonwealth.

William A. Julias, p.q.

George W. Kump, Clerk
By M. F. L. L. L.

EXECUTED 4-24-62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE

COPY OF THE WITHIN *Summons* You are hereby commanded to summon

TO *Raymond O. Berry* IN PERSON *Raymond O. Berry, c/o Brill Funeral Home*

A. F. Strawderman S. R. C.

By *James E. Hanes* D. S. R. C.

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 *Saturday* of *April*, 19*62*, to testify and the truth to say in behalf of

the Defendant in the prosecution of the Commonwealth against

John Gabeert

who stands charged with and indicted for a felony misdemeanor.

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 *16th* day of *April*, 19*62*, and in the *1862* year

of the Commonwealth.

William A. Julius, p. p. Clerk

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Trooper J. R. Failes

Betty Armentrout - Gifford Hall, Madison College

Joan Helder - Gifford Hall, Madison College

Carol Bishop - " " " "

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 26th day of April, 1962, to testify and the truth to say in behalf of the Commonwealth ~~before the Grand Jury~~, against

John Clifford Gabbert

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 11th of April, 1962, and in the 186th year of the Commonwealth.

James R. Sipe

Commonwealth's Attorney

2.00

EXECUTED 4/13/62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO J. R. Paiter
IN PERSON.

A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

EXECUTED 4/13/62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Betty Annen Trout
IN PERSON.

A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

EXECUTED 4/17/62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Joan Helela
IN PERSON.

G. L. Strawderman S. R. C.
By F. L. Martin D. S. R. C.

EXECUTED 4/17/62 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Carol Bulf
IN PERSON.

G. L. Strawderman S. R. C.
By F. L. Martin D. S. R. C.

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

STATE OF VIRGINIA—COUNTY OF ROCKINGHAM, to-wit:
I, _____ a Judge of the County Court in and for the County aforesaid, State of Virginia, do certify that JOHN CLIFFORD GABBERT
and JOHN CLIFFORD GABBERT, as his surety, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of FIVE HUNDRED Dollars (\$ 500.00), 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 JOHN CLIFFORD GABBERT, shall appear before the Circuit Court of ROCKINGHAM County, on the 9th day of APRIL, 1962, at 9:30 A. 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 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 13th day of FEBRUARY, 1962.
BY John C. Gabbert (SEAL) John C. Gabbert Judge, J. P.

DOCKET NO. _____	
COMMONWEALTH	
WARRANT OF ARREST	
vs. _____	
Executed this, the _____ day of _____, 19____	
Upon the examination of the within charge, I find the accused _____	
APPEAL BOND	
The following witnesses were recognized to appear before the _____ Circuit Court of _____ County, 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 _____	\$ _____

STATE OF VIRGINIA
COUNTY OF _____

To-Wit:

No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, _____

has this day made complaint and information on oath before me, _____

(Name)

_____ of the said County, that _____

(Title)

_____ in the said County

did on the _____ day of _____, 19____: Unlawfully _____

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 _____	<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 _____ day of _____, 19____

_____ (Title of Issuing Officer)

(Seal)



S. P. 82 REV. 7-21-58

DEPARTMENT OF STATE POLICE

C 559850

County or City of

Rockingham

Date

11-20-61

M

JOHN CLIFFORD GABBERT

You are hereby summoned to appear in the

Rockingham

County Court at

HARRISONBURG

on

12-19-61

at

2:00

AM

PM,

to answer for violating the motor vehicle laws of Virginia, to wit:

Reckless Driving ☐

Speeding

MPH in a

MPH Zone ☐

Chauffeurs

No Operators License ☐

Illegal

☐

Other

DRIVING UNDER THE INFLUENCE OF INTOXICANT ☐

I hereby promise to appear at the time and place specified above

Summons issued under Title 46.1—Section 178, Code of Virginia. Failure to comply with this summons constitutes a separate offense.

Defendant's
Signature

Trooper

Shield No.

J. R. FAILES

256

All traffic fines for State violations are paid into the Literary Fund for Educational purposes.

COMMONWEALTH OF VIRGINIA
DIVISION OF MOTOR VEHICLES
RICHMOND

If this abstract relates to a conviction of exceeding a speed limit, the Court is requested to state rate of speed and zone.

DEFENDANT		RACE	SEX	WEIGHT	HEIGHT	CODE
JOHN CLIFFORD GABBERT		W	M	190	5'10"	
ADDRESS		EYES	HAIR	MONTH BORN	YEAR BORN	
25 E WAYNE AVE		BL	GRFY	FEB	1907	
CITY		OPER. OR CHAUF. LICENSE NO.		STATE		
SILVER SPRING MD.		G-163-429-119-106		MD		
JURISDICTION, COUNTY, CITY OR TOWN		VEHICLE	YEAR	MAKE	TYPE	
Rockingham		59	59	CHEV	SDN	
NAME OF COURT		VEHICLE LICENSE NO.		YEAR	STATE	
County		KD 65-30		61	MD	
OFFENSE DATE		PLEA		CONVICTED OF		DATE
11-20-61		GUILTY <input type="checkbox"/>		Driving under the influence of intoxicant		2-13-62
PENALTY IMPOSED		NOT GUILTY <input checked="" type="checkbox"/>		LICENSE SUSPENDED?		
One Hundred fifty dollars				YES <input checked="" type="checkbox"/>		NO <input type="checkbox"/>
PERIOD SUSPENDED	LICENSE SURRENDERED	SIGNATURE OF JUDGE OR CLERK				
1 year	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>				
NAME OF ARRESTING OFFICER		TITLE OF COURT OFFICIAL				DATE
J. R. FAILES		Judge				2-13-62

C 559850

This abstract is filed by the Judge or Clerk of the Court having jurisdiction of this case as required by Section 46.1-413, of the Code of Virginia, as amended.

STATE OF VIRGINIA

COUNTY OF Harrisonburg

City

To-Wit:

No. _____

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, J.R. Faileshas this day made complaint and information on oath before me, John G. LeakeJustice of The Peace

City

(Name)

(Title)

of the said County, that

John Clifford GabbertRockingham
in the said County

did on the 20th day of November, 1961: Unlawfully operate a motor
 vehicle while under the influence of alcoholic beverages, 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
Rockingham
 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 20th day of November, 1961John G. Leake

(Title of Issuing Officer)

(Seal)

JUSTICE OF THE PEACE

City Harrisonburg
STATE OF VIRGINIA—COUNTY OF _____, to-wit: City
I, John C. Leake a Judge of the County Court in and for the County aforesaid, State of Virginia, do certify
that John Clifford Gabbert
and BY *[Signature]* as his surety Y, have this day each acknowledged themselves indebted
to the Commonwealth of Virginia in the sum of Two Hundred and Fifty Dollars
(\$ 250.00), 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 John Clifford Gabbert, shall appear before the Circuit Court
of Rockingham County, on the 19th day of December, 1961,
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 20th day of November, 1961.
GLOTH AND LOVELL
BY *[Signature]* (SEAL), John C. Gabbert Judge, J. P.

DOCKET NO. 36823
COMMONWEALTH

vs. WARRANT OF ARREST

John Clifford Gabbert

Executed this, the 20 day of Nov., 1961

[Signature]

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

Guilty and fine the defendant one -
hundred fifty dollars and costs and
revoke his operator's license for the
period of one year.

Given under my hand this 13th day of
February, 1962.

[Signature]
ROCKINGHAM COUNTY JUDGE

Appeal noted, granted and perfected
to Circuit Court of Rockingham County.

[Signature]
ROCKINGHAM COUNTY JUDGE

10-2-13-62 2:15 P.M.
Fine _____
Costs _____
Total _____

The following witnesses were recognized
to appear before the Circuit Court of _____ County,

Virginia, at _____
Virginia, at _____ M., on the _____ day of _____, 19____
under penalty of \$ _____

COSTS

Warrant \$ 2.00
Trial 2.00
Bail AB .50
Arrest _____
Mileage _____
Clerk 1.25
Jail Fee and Board _____
Witness Attendance _____
Summoning Witnesses 2.50
Commonwealth Attorney _____
Total Costs \$ 8.25
Fine 150.00
Total \$ 158.25

COMMONWEALTH

V.

GABBERT

CHARGE TO JURY

If you find the accused guilty of operating a motor vehicle while under the influence of alcohol or ardent spirits, as charged in the warrant, you will say so and fix his punishment by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by confinement in jail for not less than one month nor more than six months, either or both.

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

COMMONWEALTH

V.

GABBERT

INSTRUCTION 1

The Court instructs the jury that the gist of the offense of which the accused stands charged is the operation of a motor vehicle while under the influence of alcohol, or any beverage containing alcohol. Therefore, the test to be applied in this case is not whether John Gabbert was completely drunk, or whether he was operating a motor vehicle while completely drunk, nor whether he had the ability to operate such vehicle with safety to himself and others, but whether or not he was under the influence of intoxicants and was driving said motor vehicle while in such condition and this question is one of fact which must be determined by the jury, from the evidence introduced in this case.

H. H.

COMMONWEALTH

V.

GABBERT

INSTRUCTION 2

The Court instructs the jury that any person who has drunk enough alcoholic beverages to so affect his manner, disposition, speech, muscular movement, general appearance or behavior, as to be apparent to observation, is deemed to be under the influence of alcohol.

H. H.

COMMONWEALTH

v.

JOHN GABBERT

INSTRUCTION NO. 3

The Court instructs the jury that the law presumes the defendant to be innocent until he is proved guilty as charged in the warrant of 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 warrant, 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 warrant, unless such evidence amounts to proof beyond every reasonable doubt.

H. H.

COMMONWEALTH

JOHN GABBERT

INSTRUCTION NO. 3

The Court instructs the jury that the law presumes the defendant

to be innocent until he is proved guilty as charged in the warrant of 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 it, 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 warrant, 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 warrant, unless such evidence amounts to proof beyond every

reasonable doubt.

COMMONWEALTH

v.

JOHN GABBERT

INSTRUCTION NO. 4

The Court instructs the jury that in this case as in all criminal cases the burden is upon the Commonwealth to prove the accuseds' guilt beyond a reasonable doubt and not on the accused to prove himself innocent. If, therefore, upon a consideration of the whole case the testimony of the witnesses and the circumstances shown in evidence there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, they should find him not guilty.

H. H.

COMMONWEALTH

v.

JOHN GABBERT

INSTRUCTION NO. 4

The Court instructs the jury that in this case as in all criminal

cases the burden is upon the Commonwealth to prove the accused's guilt
beyond a reasonable doubt and not on the accused to prove himself innocent.

If, therefore, upon a consideration of the whole case the testimony of
the witnesses and the circumstances shown in evidence there exists in
the minds of the jury a reasonable doubt as to the guilt of the accused, they
should find him not guilty.

H. H.

COMMONWEALTH

V.

GABBERT

INSTRUCTION 5

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 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.

A. 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 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 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.

COMMONWEALTH

v.

JOHN GABBERT

INSTRUCTION NO. 6

~~The Court instructs the jury that the warrant charges the defendant with driving a motor vehicle while under the influence of an intoxicant, and that before he may be convicted of such offense, the Commonwealth must prove his guilt beyond a reasonable doubt to the satisfaction of the jury.~~

The Court further instructs the jury that before they may find the defendant guilty of this charge, they must believe beyond a reasonable doubt that the accused was driving the motor vehicle while under the influence of an intoxicant, and even though the jury may believe from the evidence that the defendant had one or more drinks of an alcoholic beverage, this alone is not sufficient evidence, nor is the fact that the defendant may have been driving badly sufficient evidence in itself upon which to convict him; but the fact, if it existed, that the defendant was under the influence of an intoxicant like every other material fact, must be proved beyond a reasonable doubt and must have been clearly apparent from his general appearance, his muscular movement, his manner of speech or in some similar way.

H. H.

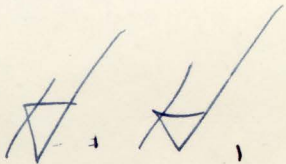
COMMONWEALTH

V.

GABBERT

INSTRUCTION 7

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.

GABRIEL

INSTRUCTION 7

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.