

PLEAS BEFORE THE HON. J. M. JACKSON, JUDGE OF THE
FIRST JUDICIAL CIRCUIT OF THE STATE OF ARKANSAS,
Phillips County, Arkansas,
October Term, 1919, November 4th, 1919.

STATE OF ARKANSAS

AGAINST. 4481 Murder in the First Degree.
Albert Giles and
Joe Fox.

Appearances: John E. Miller, Prosecuting Attorney, 1st Dist.

Greenfield Quarles and
Leo Mundt and Edwin Bevans, Attys. for Defendants

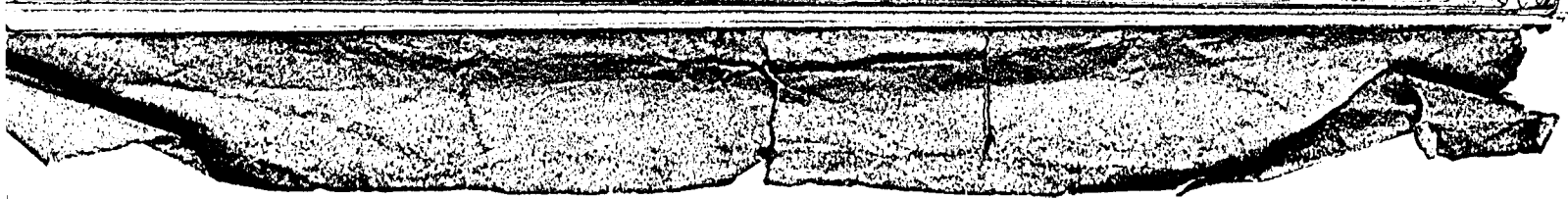
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The undersigned, Clerk of the Court, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

Dated this _____ day of _____, 19____.

Clerk of the Court



State of Arkansas.

County of Phillips.

Be it remembered that the Circuit Court of Phillips County, Arkansas, met at the Court House in the City of Helena Arkansas, October 27th, 1919, at 10 o'clock A-M-. It being the day fixed by law for holding said Court. There was present and presiding the Hon. J. M. Jackson, Judge of said Court, A. G. Burke Clerk and F. F. Kitchens, when after due proclamation by the Sheriff, Court was opened when the following proceedings were had to-wit:-

In the matter of the organization of the
of the Grand Jury.

Now on this day comes the Sheriff in open court and returns the venire heretofore issued by the Clerk of this Court for the Grand Jurors, which were selected by the Jury Commissioners at the April term, 1919 of this Court, from which venire the following qualified electors of Phillips County, Arkansas, were duly examined, selected and sworn as follows, to-wit:- C. L. Moore, Jr., T. W. Keesee, C. L. Bernard, J. J. Pedro, J. W. Denison, James H. Pillow, C. A. Wooten, Joseph Truemper, H. E. McRae, S. A. Wooten, B. A. Dunlap, S. Straub, Abe Lupkin, E. P. Govan, Jr., and Jas. C. Rembert and Si Frank, and who having been duly sworn, were empaneled to serve as Grand Jurors at the present term of this Court.

Thereupon the Court charged said Grand Jury as to their duties and appointed H. E. McRae, one of their number as Foreman; They then retired to consider of their duties.

In the matter of C. N. Biscoe
sworn in as Special Bailliff to Grand Jury.

Now on this day comes the Sheriff in open court and presents the name of C. N. Biscoe, a duly qualified elector of Phillips County, Arkansas, who having been found to possess the necessary

qualifications, was duly sworn as the law directs as special Bailliff to the Grand Jury. He then proceeded to the discharge of his duties,

In the matter of the organization of the Petit Jury.

Now on this day comes the Sheriff in open court and returns the venire heretofore issued by the Clerk of this Court for Petit Jurors, who were selected at the April term 1919 of this Court by the Jury Commissioners, from which venire the following qualified electors of Phillips County, Arkansas, were selected and sworn as follows, to-wit:- John L. Turner, D. J.

Clatworthy, A. D. Adams, Andrew Friberg, E. M. Allen E. P. Moore Harry Ball, E. R. Crum, J. Beilenson, John King, S. L. Mundt, and S. H. Swenson for the 1st panel, and Chas Afflick., I. A. Metz, Tom Wallace, J. C. Brown, C. T. O'Brien, John Shepard, A. P. Coolidge Polk Agee, R. G. Foster, M. Neely, W. H. Elsesser and E. P. Bloom for the 2nd panel, who having been duly examined, were duly sworn and empaneled to serve as Petit Jurors at the present term of this Court.

The Court then charged said Grand Jury as to their duties.

Circuit Court Record "U" page 62, October 27th, 1919.

Court met pursuant to adjournment Tuesday morning at nine o'clock
A- M- October 28, 1919. There was present and presiding the Hon.
J. M. Jackson, Judge of said Court, A. G. Burke, Clerk and F. F.
Kitchens, Sheriff, when after due proclamation by the Sheriff,
Court was opened when the following proceedings were had to-wit:-

In the matter of the report
of the Grand Jury.

Now on this day comes the Grand Jury in open court
in a body, all answering to their names as the same were called by
the Clerk, through their Foreman, presented seventeen (17) bills
of indictments, each endorsed a "True Bill" and signed by the
Foreman; Said indictments were each filed and numbered which
are as follows, to-wit:-

(among which were)

No. 4481, State of Arkansas, Vs. Albert Giles, Milligan Giles and
Joe Fox, Murder in the 1st degree, No Bail;

(and other)

There being no further business to report said Grand Jury
retired to further consider of their duties.

INDICTMENT

State of Arkansas

Phillips Circuit Court

against

Albert Giles

Indictment

Milligan Giles

Joe Fox

The Grand Jury of Phillips County in the name and by the authority of the State of Arkansas, accuse Albert Giles, Milligan Giles and Joe Fox of the crime of Murder in the First Degree committed as follows, to-wit: The said Albert Giles, Milligan Giles and Joe Fox in the County and State aforesaid, on the 1st day of October A.D. 1919, did unlawfully, willfully, feloniously and with malice aforethought and after deliberation and promeditation kill and murder one James Tappan, by shooting him the said James Tappan with a certain gun which they the said Albert Giles, Milligan Giles and Joe Fox then and there had and held in their hands, the said gun being then and there loaded with gunpowder and leaden balls, against the peace and dignity of the State of Arkansas.

Jno. E. Miller,
Prosecuting Attorney.

Endorsed:

No. 4481

STATE OF ARKANSAS

vs.

Albert Giles

Milligan Giles

Joe Fox.

A TRUE BILL

H.E. McRae, Foreman.

Indictment for

Murder in the first Degree

Filed in open Court in the presence of all the Grand Jurors;

This 28th day of Oct 1919.

A. G. Burke, Clerk.

By

D.C.

Issued Bench Warrant and require Bail in the sum of NO BAIL.

J.M. Jackson,
Judge.

WITNESSES:

Alf Banks, Jr.,

Cleola Miller

Henry Armstrong

Dave Hays

A. G. Burke.

State of Arkansas

County of Phillips

I, have duly served a copy of the within indictment to the named defendants Albert Giles, Milligan Giles and Joe Fox, this the 28th day of October, 1919.

A. G. Burke, Clerk.

STATE

IN SENATE

ALBERT GILES AND JOE FOX

Bill of exceptions,

Filed; Jany 7th, 1929

A. G. Burke, Clerk

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IN THE PHILLIPS CIRCUIT COURT

OCTOBER TERM 1919.

STATE OF ARKANSAS.....Plaintiff,

v.

Albert Jiles and Joe Fox.....Defendants.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on this the 4th day of November 1919 a day of the regular October 1919 Term of the Circuit Court of Phillips County, the above entitled cause coming on to be heard before the hon J.M.Jackson, Judge, and a jury duly empaneled to hear the same; the defendants appearing in person and by attorney^s Leo Mundt and W G Dinning and the State being represented by Hon J.E.Miller, District Attorney, and both sides announcing ready for trial, thereupon said cause proceeded to trial, and the following testimony was introduced, heard and submitted; objections and exceptions to testimony; instructions askedm given and refused, and other things had and done in said trial as follows:

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STATE'S TESTIMONY.

Herbert Thompson, having first been duly sworn, was called
as a witness by the State and testified
as follows:

(Direct Examination by P R Andrews).

Q Your name is Herbert Thompson?

A Yes sir.

Q Where do you live?

A Helena.

Q Did you know James Tappan during his life time?

A Yes sir.

Q Were you with him when he was shot?

A Well, within 30 feet of him.

Q Where was he when he was shot?

A He was just west of what is known as Yellow Banks
Plantation house, near Hoop Spur.

Q Near whose house?

A Jim Miller's house.

Q How far from Jim Miller's house?

A O, about 110 or 115 yards.

Q Which way from the house?

A A little north of east.

Q What time during the day was it?

A Around the noon hour.

Q What were you and Mr Tappan doing down there?

A We were a member of a posse sent by the sheriff's office
assist in, as we thought, capturing bootleggers, or whoever
killed Mr Adams on the previous night.

Q Did you see or hear the report of the gun that killed Tappan?

A Yes sir, I heard them all, and I am reasonably positive that I saw the flash from the gun that killed Tappan?

Q Where was the parties--was there considerable shooting from the same place?

A Yes sir, a great deal of shooting.

Q Where were the parties ~~xxx~~ situated that were doing the shooting?

A The name of the bayou I don't know, there is a bayou there that is perhaps 30 or 40 feet wide, and it has grown all up in a thicket, and they were in this thicket.

Q Now who had charge of the posse directing the deputies?

A Mr. _____ was first in charge, and Mr Dalzell from the sheriff's office and I was in charge of the Ex-Service men; they were down there as members of this posse.

Q Now prior to the shooting were you and Mr Tappan and the officers advised that any negroes were in the thicket there?

A Yes sir.

Q Did you know it?

A Yes sir. I can't say that every man knew it, but practically all of them in the posse knew there were men in this thicket.

Q Did you communicate with the men in the thicket, and if so how?

A By word of mouth, I told them in this thicket myself if they would come out they would not be hurt and if they didn't come out we would come in there and bring them out.

Q Did you speak those words loud enough for them to carry

any considerable distance?

A I would say that it could easily have been heard 125 yards.

Q How about the extent of the thicket.

A You could easily hide in it.

Q Well, did you receive any answer from the thicket?

A A shot from a rifle.

Q And that was the only answer you received?

A Yes sir.

Q Now up to that time had the posse fired in shots into the thicket?

A No sir.

Q Now how long a time after that was it before Mr Tappan was shot, if he was shot?

A Well, between 5 and 15 minutes

Q Now what was he doing when he was shot?

A Mr Tappan?

Q Yes sir?

A Well, I can't say exactly, he was in the performance of his duty trying to get these men out of the thicket, but just what his specific act was at that minute, I can't say.

Q Did you see him at the time he was shot?

A Very shortly afterwards.

Q Where was he? shot?

A In the right side of the face and the neck.

Q With what?

A To me it appeared to be buck-shot.

Q Shot with a gun?

A Yes sir, it was a gun shot wound.

Q A gun containing several balls?

A Yes sir, buck-shot.

Q Then what did you do with Tappan?

A We took him up and carried him out from the thicket
and put him/ⁱⁿan automobile and took him to Mr McCoy's house.

Q And then turned him over to a medical man?

A Yes sir, Dr Parker, when he was put in the automobile Dr
Parker was with him.

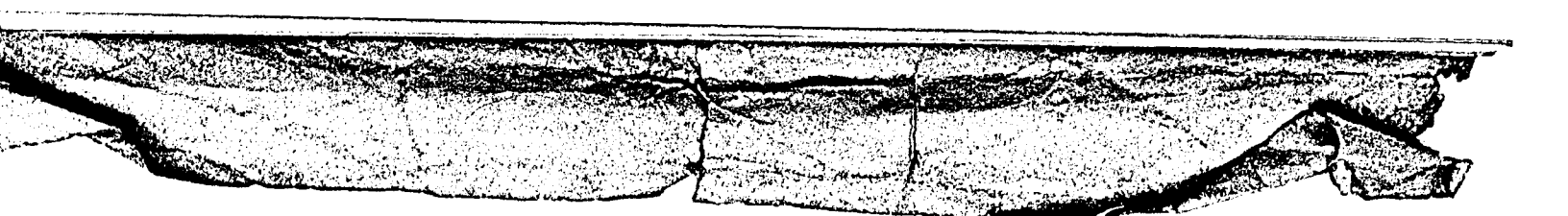
Q Did you know how many negroes there were in the thicket
then?

A No sir, I couldn't say definitely, but from the movements
I saw in there of the weeds, there were anywhere from 6 to 8
or 9.

Q That occurred in what County and State?

A In Phillips County, Arkansas.

(no cross examination).



Dr.O.Parker, having first been duly sworn, was called as a witness by the State and testified as follows:

Q What is your name?

A O.Parker.

Q What is your profession?

A I am a physician.

Q Did you know James Tappan?

A Yes sir.

Q Did you attend James Tappan in a profession manner at any time?

A I did.

Q When?

A Sometime during the day on Wednesday October 1st.

Q What did you find him suffering with--in what condition did you find him?

A Well, he was shot with buck-shot; I took a slug out of his mouth, one slug with a brass cap lining of some sort, it was mashed all to pieces, but it had a brass lining around it. It was supposed to be a rifle ball lined with brass.

Q He was shot with buck-shot and a rifle ball?

A Yes sir, I got that out of his mouth; I suppose it was a rifle ball, it was a slug when I got it out, that long probably (shows).

Q You know whether it was a pistol ball or from a rifle?

A No sir, I couldn't say.

Q Just a slug of lead?

A Yes sir, it was evidently a pistol ball or a rifle ball.

Q What was the nature of his wounds, doctor?

A Well, he was shot in the right side of the face with seemingly, at least, two loads of buck-shot; there were about, as well as I can remember, I believe there were as many as 15 holes in the side of the face, I will say 10 or 12 any way; and his jaw was torn to pieces and showed evidences of a base fracture of the skull.

Q From the nature of the wound would you or not say the wound was fatal?

A Yes sir.

Q Now what did you do with him?

A Well, we got him up out of the thicket and carried him to Mr McCoy's house, and I gave him first aid, dressed the wound and put him in an automobile and brought him to Helena.

Q I don't believe you were with him here?

A No sir, as soon as I got him in the hospital I went back to Elaine.

(No cross Examination).

Dr J.B.Ellis, having first been duly sworn, was called as a witness by the State and testified as follows:

Q Your name is Dr J B Ellis?

A Yes sir.

Q What is your business?

A Physician.

Q Did you know James Tappan, doctor?

A Yes sir.

Q Were you called to treat him in a professional manner?

A yes sir.

Q When, doctor?

A October 1st in the afternoon.

Q What condition did you find him in?

A Hewas in a dying condition.

Q Were you with him when he died?

A Yes sir.

Q Did he die?

A Yes sir.

Q What did he die as a result of?

A Gun shot wound in the head and shoulder and neck.

Q Did you make an examination of the wound to see the nature of it?

A Some of the wounds were so large (shows), there were two or three larger than a buck shot, but most of the wounds looked about the size of buck-shot.

Q In other words some of the wounds were larger than the others?

A Yes sir.

Q About how many were there?

A I think fully 25 wounds in his head, neck and shoulders.

Q And they were not all the same size?

A No sir, there were about two or three that were larger than the average buck-shot.

(no cross Examination).

ALF BANKS, having first been duly sworn, was called as a witness by the State and testified as follows:

Q Your name is Alf Banks?

A Yes sir.

Q Do you know Joe Fox?

A Yes sir.

Q Do you know Albert Jiles?

A Yes sir.

Q Were you with them on Wednesday October 1st?

A Yes sir.

Q You know where Jim Miller lived?

A Yes sir.

Q Were you with them on that day near his house?

A Yes sir, right down in front of his house in that little thicket; I was right down in the thicket.

Q Who was in there with you?

A Joe Fox, Albert Jiles, Milligan Jiles, Jim Miller, and Washington, I don't know the other part of his name.

Q Arthur Washington?

A Yes sir. And there was another strange fellow in there, but I didn't know his name; he was dressed up in soldier clothes.

Q What was your business in there, what were you doing in there?

A You see I run up on this gang, I had been looking for my father and they stopped me at the little bridge right at the little thicket. Jim Miller he was placing them all about, telling them which a-way to get, he said the white people was coming; me and Jim Miller first went together.

I object unless these two defendants were there.

Q Were you in the thicket with these two boys here? These two defendants?

A With them two boys, yes sir.

Q How close were you to these two boys?

A That Albert Jiles, me and him and his brother Milligan Jiles, we was right together, and Joe Fox he was off from us in an opening like.

Q About how far from you?

A About as far as from here to the chair, right there at the end of the table.

Q That is not very far out then?

A No sir.

Q And the Jiles boys you were right at them?

A Yes sir, right at them.

Q Alf, did you see the white men when they came down there?

A We never seed them, but we heard them talking, but when they got opposite us in the thicket, one spoke and says I am going to this opening without going through the cotton field and another says I will go with you, well when they started on across Joe Fox and Washington started to shooting at them, and afterwards Albert shot that way with a double barrel shot gun and it jumped all to pieces, it jumped from the stock, and he jerked out his 32 special pistol and went to shooting it, but Joe Fox was shooting a 38Colts pistol; when he shot this fellow that had on this striped shirt, I was looking right at this fellow when he fell, and this boy made five shots with this Colts.

Q Which boy?

A Joe Fox. And the washer of his pistol loss off and it

went to snapping.

Q Which one of them was it shooting the shot gun?

A And Joe Fox after his pistol went to snapping, he run back to me, I was lying flat of my stomach, and jerked my shot gun out of my hand and run back in the open~~ing~~, and ~~he~~ says come on out in the opening boys, I got a clear way for us to get out, and me and Jim Miller run as ~~fast~~ far as a thicket--

Q Which one of these boys was it that shot the shot gun that busted?

A Albert Jiles there.

Q Who did he shoot at?

A I didn't see the white people, but he shot at the white fellow coming across there. There was two white fellows coming across and Joe Fox and Washington was shooting at them, and after the boy jerked my gun he says come on out and I tried to get albert to come on and me and him and Jim Miller--

Q Who did you say killed one?

A Joe Fox, I know he killed one, but after we got in the corn field he said he killed both of them.

Q He said he killed one coming this way and the other from the corn field?

A Yes sir. One was coming across the corn field., both of them was coming across but they wasn't together, one was away from the other about as far as from here to the door. Well, the tall one, I saw him, Joe Fox shot~~xxx~~ him down, and after he shot him down, well he run back to me, his pistol had gone to snapping, wasn't but one bullet left in it.

Q What kind of a pistol was that?

A It was a 38 Colts. Then he run back to me.

Q What kind of a pistol was it that this other fellow had?

A Albert Jiles had a 32 Special.

Q Do you know how that gun of Albert Jiles was loaded?

A No sir, but I know when he shot through the cotton field, the barrel jumped off the stock and he was trying to get it back on the stock and he couldn't get it ~~back~~ like he wanted, and he jerked out my pistol and he shot right over my side, powder or something hit me in the eyes.

Q How long had you boys been in the thicket before that thing happened?

A Not more than 20 minutes.

Cross Examination.

Q How come you to go in the thicket?

A Well, the way, we heard the shooting at Ed Ware's house, we was hiding; they had surrounded this--

Q Nobody told you to go in there?

A The head man, the superintendent, Jim Miller, told us to go in there.

Q What did you go in there for?

A They said to try to protect themselves.

Q How ~~did~~ do you mean protect yourself?

A Well, I reckon hiding, he placed the fellows all around, he says now two men go that way and two go this way and two go behind my house; he wanted them first to get up in the crib, and then he says get behind the house in the sorghum, I don't know whether any men got in there or not, but I know they all got down there in the thicket.

Q Who commenced the shooting?

A Joe Fox and Washington.

Q Did you hear any body holler?

A The white fellows they sure hollered, they says come on out and give up, we aint going to hurt you; well after all this shooting started, we know if we got up we would have got shot. I was lying as flat on the ground as I could get on my stomach..

Q How long had you been knowing Albert Jiles?

A Ever since he was in Louisiana.

Q What time did ~~them~~ and Albert Jiles come down there thatday?

A When I run up on Jim Miller he was--when I left home I went around to his house looking for my father, well I come on down to Jim Millers house and that is where I run on them.

Redirect Examination.

Q Alf, where is that Arthur Washington?

A He got killed.

Q He was killed there?

A Yes sir.

Q And that was the tall fellow that had on a striped shirt?

A Yes sir, a tall white fellow had on a light shirt with a kind of snuff colored looking stripe that run down it.

(witness excused).

Cleola Miller, having first been duly sworn, was called as a witness by the State and testified as follows:

- Q Your name is Cleola Miller?
- A Yes sir.
- Q Whose wife are you?
- A Jim Millers'.
- Q Do you know Hoe Fox and Albert Jiles?
- A I know Albert Jiles I don't know Fox.
- Q You know him now do you?
- A Yes sir.
- Q Did you see those boys on the morning of October 1st? Wednesday morning?
- A Yes sir.
- Q After the difficulty at Hoop Spur that morning?or night?
- A Yes sir.
- Q Where were those boys, the defendants there?
- A I left them there in front of my house in the thicket.
- Q Who was inthe thicket there?
- A My husband Jim Miller, Arthur Washington, Albert Jiles, Milligan Jiles.
- Q Was there anybody else?
- A Yes sir, another fellow, I don't know his name.
- Q You know these two men over here, Joe Fox and Albert Jiles were in the thicket there?
- A Yes sir
- Q Did you see them go in the thicket?
- A Yes sir.
- Q Where were you when the shooting took place?
- A I was at Alf Bank's wife's house.

Q How far was it from there?

A It wasn't very far, right over by the side of the railroad.

Q Was it as far as from here to those buildings out yonder?

A Yes sir, it was further than that, about a half a mile I reckon.

Q Do you know when those boys came out of the thicket?

A No sir.

Q You don't know about that?

A No sir.

Q You know whether or not there was anybody else in there besides that bunch?

A If they was they come in there after I left.

Q Those you named were the only ones that went in there before you left home?

A Yes sir.

Q Did you hear any shooting up there?

A Yes sir.

Q How long had you been gone before you heard that shooting?

A I reckon I was gone about an hour when I heard the shooting.

(no cross Examination)

HENRY ARMSTRONG, having first been duly sworn, was called as a witness by the State and testified as follows:

Q Your name is Henry Armstrong?

A Yes sir.

Q Where do you live?

A Well, I was staying over there at Mr Lingard's at that time, picking cotton for him.

Q At what time?

A On that Monday and Tuesday.

Q The time they had the trouble down there?

A Yes sir, down there in that slough. I went over there Wednesday morning to pick cotton.

Q You were living down there at the time?

A Yes sir.

Q Do you know Albert Jiles?

A Yes sir.

Q You know Joe Fox?

A Yes sir, I got acquainted with Joe Fox since I have been here.

Q Did you see these two boys the day of that trouble down there?

A Well, if I seen that Fox boy I don't know it, but I seen Albert.

Q Where did you see Albert Jiles?

A They was right down side of the slougher, right at the edge of the bushes.

Q What slough was that?

A Right there in front of Miller's house.

Q Jim Miller's house?

- A The biggest one, yes sir.
- Q What were they doing in there?
- A Well, now I don't know sir.
- Q How many did you see in there?
- A It looked like it was about 5 or 6 I reckon, and might have been more.
- Q Where did you go from there?
- A Went over to Bank's.
- Q Alf Banks?
- A Yes sir.
- Q Did you hear any shooting over there?
- A Over in that thicket.
- Q Was it the same thicket that you saw these boys in that you heard the shooting in?
- A Yes sir.
- Q How long after you saw them in there before you heard the shooting?
- A O, it was a pretty good while.
- Q You wasn't present at the shooting yourself?
- A No sir.
- Q You knew nothing about it?
- A No sir, only I heard it, I don't know who shot or did it, I was at Alf Bank's house, I just heard it that is all.
- Q Did you have anything to do with the trouble down there?
- A No sir, no way, shape, form or fashion.
- Q And you have not been indicted?
- A No sir.
- Q You were just down there in the field and saw those boys in the thicket?
- A I just seen them going on back, after they wouldn't let me

pick cotton.

Q Who wouldn't let you?

A The Miller boys told me I couldn't pick cotton.

(No cross Examination).

State Rests.

DEFENDANT'S TESTIMONY.

Joe Fox, having first been duly sworn, was called as a witness ^{in his own behalf} and testified as follows:

Q What is your name?

A Joe Fox.

Q Joe, you are charged with murder, just tell the jury how this thing happened, if you were there, just tell them about it, and why you were there, down at Jim Miller's house?

A I was there, Jim Miller told us to go in the thicket; there was a woman come running down there and told us the white folks was coming, and Jim Miller told us to go in the thicket and we went in the thicket, he scattered us around in there, he told us if they didn't bother us don't bother them, let them go by, and the white people started to shooting a little before they got to us and we started to moving around in there, and some says yonder they is now, and some went over in the thicket towards the lane and some went in Jim Miller's house--when they come back down there, that is the time the shooting took place, and when this here fellow, this white fellow what got killed when he come in the bushes, I didn't see him when he come in the bushes, and when he come in there I seen this fellow Washington throw up his Winchester and I looked and I seen him, and when Washington throwed up his gun and shot, Jim Miller and Alf Banks ^{shot} I guess there was 6 or 7 shots made from them 3, and the white fellow fell, and when this white fellow fell I told Alf Banks and Jiles to come on, and Albert wouldn't do it and I taken his gun away from him and Jim Miller come on out behind me. We come on back and went over in the woods.

Q Did you shoot anybody?

A No sir.

Q Did you shoot at anybody?

A No sir.

Q Why did you go in the thicket?

A Jim Miller told us to go in the thicket.

Q Why did he tell you go go in there?

A He told us to go in there because a woman come there running and said the white folks was coming down the road

Q Is there anything else you want to tell about the case?

A No sir.

Cross Examination.

Q What kind of a gun did you have?

A I had a pistol 38 Colts.

Q What other kind?

A That is the only kind.

Q What kind of a gun did this boy over here have?

A He had a shot gun.

Q That was Albert?

A Yes sir.

Q Who was ~~ye~~ shooting at ?

A I wasn't shooting at nobody, when the fellow started to shooting, when Miller told us to shoot, I held my pistol up and shot four times.

Q Now what did you do with Tappan's gun?

A Alf Banks got it, I picked up Tappan's gun when I was coming out of there, I just looked at it and put it down, and

- A Yes sir, and that caused me to look around.
- Q Who shot Mr Tappan with a shot gun there?
- A I don't know who it was, two shot guns shot.
- Q Who was shooting those two shot guns?
- A Alf Banks and Jim Miller.
- Q Jim Miller you said was shooting a Winchester?
- A No sir, Arthur Washington.
- Q What kind of a gun did this fellow over here have?
- A He had a shot gun.
- Q He was shooting a shot gun too?
- A I don't know sir, he was back on that side.
- Q But he had a shot gun?
- A Yes sir.
- Q Did you see that gentlemen when he came out there and walked up to the thicket and asked you darkies to come out of there?
- A No sir, I never seen him.
- Q You heard him?
- A No sir, I heard somebody says yonder he is in there.
- Q Washington, you say, fired the first shot?
- A Yes sir, Washington and Alf Banks and Miller fired about the same time.
- Q And then you joined in?
- A No sir, I didn't shoot--I made four shots then when this fellow was killed.
- Q You had made four shots before they shot any hadn't you?
- A No sir, I had done shot.
- Q When this fellow came in the thicket you had shot four shots?
- A Yes sir.

Q You shot just to show he was coming in there?

A No sir, the reason I shot they was hollering shoot, shoot, this fellow Washington and Banks and Miller, telling all of us to shoot, and I was down on my knees, I had my pistol laying across that way; I shot four shots.

Q When did you hear Albert Jiles shoot?

A I don't know sir, I couldn't tell whether he was shooting or not on account of the fellows on the other side of where he was shooting. Albert was next to Jim Miller's house.

(witness excused).

Albert Jiles, having first been duly sworn, was called as a witness in his own behalf and testified as follows:

Q Your name is Albert Jiles?

A Yes sir.

Q You are charged with murder in the first degree, just go ahead and tell the jury if you helped to shoot anyone, and all about it?

A I haven't made narry one single shot, I can swear that. The shooting begin when these white people was coming up; they had done surrounded us some way or another, I don't know how it was, but they had shot a lot before they got to us; some of them shot up there; some of them said something but I don't know what it was they said and they made two or three shots, I saw Miller holler all lay down close, he says they are going to catch us in here and kil us all, and so they surrounded us up in there, and after that them fellows, one fellow what was behind me shot me in this arm and I commence trying to move, and they shot me right inthere and the ball come out over there and I aint know no more, and we was all scattered out. He had us to scatter out up on the slough, some on the outer edge and some in themiddle; he told me and my brother to go first and we went up from the gang up next to the cotton field. They shot me in the head and through this arm right here and through the head here.

Q How come you to get into the thicket?

A Jim Miller ordered us to.

Q Why did he tell you, what authority did he have?

A He was the head of the lodge, the Secretary of it; he told us the white people was coming and kill everybody.

Q Did you hear anybody tell you to come out of the thicket?

A No sir.

Q Who commenced the shooting in the thicket down there?

A It commenced from the people on the outside, they shot before they ever got to us.

Q Did you shoot your gun?

A No sir, I didn't make narry shot.

Q What became of your gun?

A I take it out of there and left on the side of the cotton field somewhere.

Q Did you take yourself out of there?

A I taken myself out of there about 2 o'clock, we come out of there.

Q Why did you stay in there so long?

A I aint know nothing.

Q You were shot so bad you didn't know anything?

A No sir, I didn't know nothing; when I did come to myself I was trying to get up.

Q Were you captured that day?

A No sir, that Thursday the soldiers come and got me.

Q What house did you go to first?

A Went to Joe Michon's.

Q Where did you go from there?

A Somebody come along and told them just about day light that the white people was coming and you better get out of the house and they all run and left me in the house by myself, I was in bed I couldn't get up, and they went on

to the woods I reckon somewhere, and they stayed off until 9 o'clock and come back, and when they come back why they carried me down to Joe Ligon's house.

Q How long did you stay there?

A I stayed there until along in the evening about 1 or 2 o'clock and the soldiers come.

Q Who looked after your wounds?

A Well, they just did what they could for it around there, the womens.

Q You had no medical attention before the soldiers came?

A No sir.

Q The soldiers dressed your wounds?

A Yes sir.

Q Where did you go then?

A They dressed it there at the house and taken me away from there, they put a board under my arm and wrapped it up and carried me away, and they carried me over there and brought me to the hospital.

Q When you went into the swamp or thicket how many of you were in there?

A It was 7 of us, that is how many exactly; one of them was a strange fellow I don't know who he was.

Q Did you ever see any white man at all when you were in the thicket?

A No sir, I aint never see nobody.

Q You know whether any white men was in there or not?

A No sir, I didn't know it until I got down to Joe Ligon's.

Q Did you walk over a white man that was shot when you started out of there?

A No sir, because I come out the way I was lying, I was lying with my head towards the cotton field.

Q Did you hear anybody say come out of there and you will be protected?

A No sir, I never heard nobody say it.

Q Then I understand you to say that you never shot your gun at all?

A No sir, I never made narry shot because I got shot down before I come out.

Cross Examination.

Q How come you to go down to Jim Miller's house armed?

A Ed Ware come up to the house and says was you out to the Church last night and I says yes I was there until they started to shooting and I got out of the window and left there; he says the white people is killing everybody they see, they shot two womens in the church last night, and they shot old man Alf Banks, and they shot Miller's brother, he says go down there and see about Miller's brother. He says get your gun and go on down, and Miller's brother was glazed on his knee where he was shot. And I stayed down there a little while and Jim Miller says go back and get your sister from off the road; he got the news that the white people was coming down the ~~the~~ road and killing everybody that belonged to the Union, so I went back to my sisters.

Q You were up at Hoop Spur the night before?

A yes sir.

Q You had your gun up there?

A No sir.

Q You were out there and helped to shoot those men?

A No sir.

Q At Hoop Spur?

A I got witness that I wasn't there.

Q Did you go home that night and go to bed at all?

A Yes sir.

Q And got up and went over to Jim Miller's the next morning with your gun?

A Yes sir, Ed Ware come there and told me; I went over there, to see about Jim; he said the white folks was killing everybody.

Q What kind of a gun did you have there in the thicket?

A I had a single barrel shot gun.

Q And what other gun?

A I didn't have no other gun.

Q Did you have a pistol?

A No sir.

Q The shot gun busted didn't it?

A It jumped to pieces.

Q How come it to jump to pieces?

A The shot gun come unlooseded, I didn't shoot it, when they shot me I feel--

Q It jumped to pieces when you shot it?

A No sir, I was shot--when they shot me I fell and the gun unbreeched, when I picked it up there was nothing the matter with it.

Q What did you have your gun loaded with?

A I didn't have my gun loaded with nothing, I didn't have no shell in it at all.

- Q Where did you get your ammunition?
- A I bought my ammunition from Elaine.
- Q Didn't Jim Miller give you some ammunition that morning?
- A No sir.
- Q Didn't he have a big sack full giving it to you?
- A Not to me, no sir.
- Q You didn't shoot the gun at all?
- A I did not.
- Q In the thicket?
- A Yes sir.
- Q Who was with you, right there by you?
- A My brother was a little bit above me.
- Q Alf Banks was by you too?
- A No sir, he was back there.
- Q How close was Alf Banks to you?
- A We was all scattered, some was as far as from here to the corner yonder.
- Q How close was Alf to you?
- A He was back there.
- Q Where was Joe Fox?
- A That's him yonder I am talking about.
- Q I thought you said Alf was back there?
- A Joe Fox and Alf was.
- Q And you and your brother was off over there?
- A Yes sir.
- Q You mean to tell the jury the white men began to fire into the thicket before any of you fellows fired?
- A Yes sir.
- Q Where were they?

A Whenthey was coming, some fired just above us, not far from us.

Q Now when they came up there and heard you boys in there they tried to get you to come out of there didn't they?

A No sir.

Q And you wouldn't come out and then somebody fired on them?

A No sir, I aint heard it.

Q You know as a matter of fact someone made a rifle shot there?

A No sir, when I got shot why I don't know.

Q I know, but that was before you got shot?

A No sir, because I got shot right in the worst of the shooting; I know they was a lot of white people shot a lot before they got to us, and Miller shot when they first shot, and hollered lay close and says if they pass on by let them pass us by, lay close in there.

Q They couldn't see you?

A Seen us moving around in there.

Q But they couldn't see you if you were laying close?

A They commenced shooting and we commenced moving around.

They shot where ^{we} was moving at and they shot me.

Defendant Rests.

State Rests.

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INSTRUCTIONS

Oral.

6 Thereupon, the Court orally instructed the jury as follows, to-wit:

"Gentlemen of the jury, the defendant, Albert Jiles and Joe Fox, have been indicted by the grand jury charged with the crime of murder in the first degree to-wit:"The said Albert Jiles and Joe Fox in the County and State aforesaid on the 1st day of October 1919, did unlawfully, wilfully, feloniously and with malice aforethought and after deliberation and premeditation kill and murder one James Tappan, by shooting him the said James Tappan with a certain gun which they, the said Albert Jiles and Joe Fox, then and there held in their hands, the said gun being then and there loaded with gun powder and leaden balls"

"It is sufficient, gentlemen, if the proof justifies it, to convict the defendants of murder in the first degree or of murder in the second degree, or to acquit them.

"Murder is the unlawful killing of a human being in the peace of the state with malice aforethought, either express or implied; the manner of the killing is not material further than it may show the disposition of mind or the intent with which the act was committed. Express malice is that deliberate intention of mind unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof; malice shall be implied when no considerable provocation appears, or when all of the circumstances of the act manifests

an abandoned or wicked disposition. The killing being proven, the burden of proving circumstances of mitigation that justify or excuse the homicide, shall devolve upon the accused, that is, the defendants, unless by the proof on the part of the prosecution it is sufficiently manifest that the offense amounted only to manslaughter, or that the accused was justified or excused in committing the homicide.

"All murder which shall be perpetrated by means of poison or by lying in wait, or by any other kind of wilfull, deliberate malice, or premeditated killing, shall be deemed murder in the first degree; all other murder shall be deemed murder in the second degree.

"You will observe that in order to constitute murder in the second degree it is necessary to show that the killing was unlawful and done with malice aforethought; it is immaterial for how long the malice existed so that it did exist and preceded and caused the homicide; no deliberation and premeditation is necessary in murder in the second degree. To raise it to murder in the first degree, there must not only be malice aforethought but the specific intent to kill, and premeditation and deliberation; and premeditation means thought of before hand. Deliberation means the having in mind the consequences of a course of conduct as distinguished from acting on a sudden impulse without the exercise of the reasoning powers. It is immaterial for how long the premeditation and deliberation exists so that they did exist and precede the killing. The distinction, gentlemen, between murder in the first degree and murder in the second degree, is that murder in the second

degree there need not be any premeditation or deliberation nor a specific intent to take human life at the time the fatal shot is fired.

"The State in this case, as in all other cases, is required to prove all of the material allegations in the indictment and to prove them to your minds beyond a reasonable doubt. The defendants are presumed to be innocent and that presumption attends and protects them until such time as it is overcome by legal and competent evidence upon the part of the State.

"The defendant in this case, gentlemen, have entered a plea of not guilty, and they say that the reason that they went into the thicket where this shooting occurred and where the killing occurred, where Mr Tappan was killed, were because they was instructed by some one who was supposed to be in charge of them, to go into this ticket, and that they proceeded to this ticket for the reason that they were frightened, and were afraid not to go; in other words, that they were afraid to disobey the orders of the leaders of this lodge, of which the defendants were members.. So if you find from the evidence in this case that the defendants went into this ticket because they were ordered so to do, and not for the purpose of killing the defendant or any one else, and you further find that they did not kill the deceased, James Tappan, or that they were not present, aiding, assisting and advising and encouraging the killing, then you will find the defendants not guilty. On the other hand if you find from the evidence in the case that these defendants armed themselves and went into the thicket for the purpose of committing murder, and

that they shot the deceased, James Tappan, and as a result of the wounds received by the deceased, he afterwards died, then you will find the defendants guilty as charged in the indictment. Or, if you find from the evidence in this case beyond a reasonable doubt that these defendants, Albert Jiles and Joe Fox, were present in the thicket, aiding, assisting and advising and encouraging in the commission of the crime charged in the indictment, then you will find them guilty as charged.

"You can find one or both of the defendants guilty or you can find one of them not guilty, or both of them not guilty, just as the evidence in the case shows; and before you can be warranted in finding the defendants, or either of them guilty, you must be satisfied, from the evidence in the case, beyond a reasonable doubt, that the defendants are guilty. If you should find from the evidence that the defendants are guilty but entertain a doubt as to whether they are guilty of murder in the first or murder in the second degree, then it becomes your duty to give them the benefit of the doubt and find them guilty of murder in the second degree; and if upon the whole case you entertain a reasonable doubt of their guilt, you should give them the benefit of that doubt, and in that event the form of your verdict would simply be: We, the jury, find the defendants not guilty.

"You gentlemen are the sole and exclusive judges of the evidence, that is the facts in the case and the credibility of the witnesses; you judge of the weight and sufficiency of the evidence and the credibility you will attach to the same by considering the manner or demeanor of the witnesses while tes-

tifying; furthermore, you consider the means and opportunities that the witnesses have for knowing that about which they testify; again, you consider the reasonableness or unreasonableness of the statements made by the witnesses; and, also, you consider the interest that any and all witness have, if any, in the result of your verdict.

"These are the rules you will apply so as to ascertain what force and effect you will give to the evidence; ordinarily in trials of this nature some conflicts will spring up in the evidence; you, as jurors, under the law, are not required to reconcile conflicts, you may do so if you are able to do so, in the event, however, you find conflicts in this testimony that you are unable to reconcile one with the other so as to make each and every witness speak the truth, then it becomes your duty as jurors to accept such testimony as you deem or consider to be true, and to reject any and all testimony you deem unworthy of belief.

"If you find the defendants guilty as charged in the indictment, the form of your verdict would be: "We, the jury, find the defendants (naming them) Albert Jiles and Joe Fox, guilty as charged in the indictment, of murder in the first degree", and sign it by one of you as foreman; and in the event that you return that kind of a verdict, the punishment is death by electrocution. The other form of verdict is: "We, the jury, find the defendant, Albert Jiles and Joe Fox, guilty of murder in the first degree, as charged in the indictment, and fix their punishment at life imprisonment in the State penitentiary"; in other words, gentlemen, it is optional or in the discretion of the jury as to whether the death penalty or life imprisonment is inflicted, provided you find the defendants guilty of murder in the first degree. The punishment for murder in the second degree

is not less than five nor more than 21 years in the State penitentiary; and if upon the whole case you should entertain a reasonable doubt of the defendant's guilt, the form of your verdict would simply be, "We, the jury, find the defendants not guilty!"

"These defendants, gentlemen, are indicted jointly and tried jointly, and as stated to you before, you can find both of them guilty or both of them not guilty, or one of them guilty and one not guilty, just as you are convinced from the evidence in the case.

COURT: Gentlemen, are there any special instructions you wish.

Mr. Mundt: No, I believe not.

Mr. Miller: I haven't.

To the giving of which oral instructions, defendants, at the time excepted, and caused their exceptions to be noted of record.

THESE WERE ALL THE INSTRUCTIONS IN THE CASE.

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Thereupon the jury returned to consider of its verdict and present returned into the court room with the following verdict, to-wit:

VERDICT

"We, the jury, find the defendants, Joe Fox and Albert Jiles guilty as charged in the indictment,

John H. Krickel,

Foreman".

To which verdict of the jury defendants, at the time, duly excepted and caused their exceptions to be noted of record.

Thereupon, the defendant, within due time, filed a motion for a new trial, which said motion is in the following words and figures to-wit: