

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

vs. AGAINST #4482 Murder in the First Degree
John Martin and
Alf Banks, Jr.

Appearances: John E. Miller, Prosecuting Attorney, 1st Dist.
Fink & Dinning, Attorneys for Defendants.

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 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 for Phillips County, Arkansas, were duly examined, selected and sworn as follows, to-wit:- C. L. Moore, Jr., T. W. Keese, C. L. Bernard, J. Pedro, J. W. Denison, James H. Billow, 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.

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Court met pursuant to adjournment Tuesday morning at nine o'clock A- M-. , October 28th, 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 Sheriff 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. 4482, State of Arkansas, Vs. John Martin, Alf Banks Jr., and
Will Wordlow,, Murder in the 1st degree, No Bail;

(and others)

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

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INDICTMENT

State of Arkansas

Phillips Circuit Court

against

John Martin

Alf Banks, Jr.,

Will Wordlow

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Indictment

The Grand Jury of Phillips County in the name and by the authority of the State of Arkansas, accuse John Martin, Alf Banks, Jr., and Will Wordlow of the crime of Murder in the First Degree committed as follows, towit: The said John Martin, Alf Banks, Jr., and Will Wordlow 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 premeditation, kill and murder one W. A. Adkins, by shooting him, the said W. A. Adkins, with a certain gun which they the said John Martin, Alf Banks, Jr., and Will Wordlow, then and there had and held in their hands, the said gun being then and there loaded with gun powder and leaden balls, against the peace and dignity of the State of Arkansas.

Jno. E. Miller,
Prosecuting Attorney.

Endorsed:

No. 4482, State of Arkansas

vs.

John Martin, Alf Banks, Jr., Will Wordlow.

A. TRUE BILL

H. E. McRae, Foreman.

INDICTMENT FOR

Murder in the First Degree

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Filed in open Court in the presence of all the Grand Jurors;
this 28th day of October 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:

Chas Pratt
Kit Collins
John Ratiliff
Dave Hays
Joe Morshon
Henry Mason
Sol Geary
Lit Summers
Will Curry, Sr.,
Sikes Fox
Amos Jarman
Dick Dalzell

State of Arkansas
County of Phillips

Copies served on each of the Defendants.

10-28-19.

A. G. Burke, Clerk.

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Bill of Exceptions,

Filed, Jany 7th, 1920.

A. G. Burke, Clerk

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IN THE PHILLIPS COUNTY CIRCUIT COURT

October Term 1919.

STATE OF ARKANSAS.....Plaintiff,

v.

JOHN MARTIN and ALF BANKS.....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 Phillips Circuit Court, the above entitled cause came on for hearing before Hon. J. M. Jackson, Judge, and a jury duly empaneled to hear the same, and the defendants appearing in person and by attorneys W. G. Dinning and Jacob Fink and the State being represented by Hon. J. E. Miller, prosecuting attorney, and both parties announcing ready for trial, thereupon, said cause proceeded to trial and the following evidence was introduced, heard and submitted; objections and exceptions to testimony; instructions asked, given and refused, and other things had and done in said cause, as follows:

STATE'S TESTIMONY.

Charley Pratt, 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 Charley Pratt?

A Yes sir.

Q Where do you live?

A Helena,

Q What is your business?

A Deputy sheriff.

Q Did you know W A Adkins?

A I did, yes sir

Q Were you deputy sheriff on the 1st day of October of this year?

A Yes sir.

Q On the morning of October 1st where were you?

A On the morning of October the 1st I was between Hoop Spur and Lakeview.

Q Did you go down to Elaine that night, the night of September 30th?

A I was on my way to Elaine.

Q On the night of the 30th?

A Yes sir.

Q Of September?

A Yes sir.

Q Who went with you?

A Mr Adkins and the trusty.

Q Who was the trusty?

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A Kit Collins.

Q How were you traveling?

A In a Ford automobile.

Q Where were you and Mr Adams sitting in the car?

A ^{Adkins} Mr/Adams was driving the car and I was sitting by the side of him and the trusty was in the back seat.

Q You know where Hoop Spur is? You knew where it was?

A Yes sir

Q Did anything happen when you got down there?

A Yes sir

Q What was it?

A There was a shooting affair.

Q Did you fellows stop there?

A We did, yes sir.

Q Why did you stop?

A We stopped the car; Mr Adkins was driving the car, and we came to the bridge, right up to the bridge, and right up to the bridge I called Mr Adkins' attention to it and I said let's go around side of the bridge instead of going over it, and he says very well, we will get out and take a leak.

Q And while you were standing there, what happened?

A There was a crowd of negroes, eight at least, I presume, and possibly a dozen of them by the side of the car all carrying guns.

Q Did you have any conversation with them?

A Yes sir.

Q What if, anything, was said there?

A Why, a negro asked me--

Q Did you know Alf Banks?

- A No sir.
- Q Did you know John Martin?
- A No sir.
- Q Do you know whether either one of these negroes were that at that time?
- A No sir.
- Q Did you know any of the negroes?
- A No sir.
- Q What happened then? You need not tell what was said?
- A They commenced shooting.
- Q Who commenced shooting?
- A These negroes.
- Q What were they shooting at?
- A Shooting at us.
- Q What effect did the shots have?
- A Well, it killed Mr Adkins and they shot me in the knee.
- Q Where was Mr Adkins?at the time he was killed?
- A Standing at the left rear wheel of the automobile, right next to the fender.
- Q Where were you then?
- A Standing by the side of him.
- Q Now the bridge, do you remember which side of the ~~xxx~~ bridge the car was on?
- A We didn't reach the bridge, we was just at the approach of it.
- Q On which side of the road was the bridge at that time?
- A The bridge was in the center of the road.
- Q I know, but with reference to where the car was?
- A Just ahead of us.
- Q Could you tell from where the shots were coming?
- A Seemed like they were coming from everywhere.

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Q How many shots were fired?

A Well, I don't know, I haven't any idea. I presume 50 or 75, possibly 100, they were continuous and fast, I didn't have time to count them.

Q Did you see Mr Adkins when he was shot?

A Yes sir.

Q What did he do?

A He just made a groan or two, a faint groan, and reeled falling to the right.

Q You see him falling?

A I didn't see him hit the ground but I saw him in the act of falling.

Q And you left there?

A No sir, I went to the hind wheel on the right hand side when I got hit and that knocked me down in the ditch.

Q Did you see Mr Adkins' body any more?

A I saw the outline of his body, I was positive it was his body when I got to the top of the road there, he was lying there, it was visible, he didn't have on a coat he had on a light shirt and it was visible.

Q What County and State was that in?

A Phillips County State of Arkansas.

Q What time of the night was that?

A I presume it was 20 minutes to 1, possibly a quarter to one o'clock, right in that neighborhood, it was between 12:30 and 1 o'clock.

Cross Examination.

Q The public road runs along by the side of the railroad there?

A Yes sir.

Q How far from the railroad was it?

A I presume 20 feet.

Q Do you know where the little bridge is there, 40 or 50 yards, a culvert in the railroad?

A Yes sir, that is the one I had reference to.

Q I mean the one in the railroad?

A No sir.

Q You didn't notice any culvert or bridge there?

A Which way, north or south?

Q Either way?

A If I remember correctly, it seems that north there was a culvert, I am pretty sure there was. From where the shooting occurred.

Q You know how far off it was?

A No sir.

Q Then you had passed that culvert at the time the shooting took place?

A Yes sir.

Q Do you know how far it was, that culvert?

A No sir, I don't know.

(witness excused).

A G Burke, having first been duly sworn, was called as a witness by the State and testified as follows:

Q Did you know W A Adkins?

A I did not. I had seen him around here, I had never met him.

Q Did you go down to where this trouble was?

A Yes sir, left here 2 or 2:30 in the morning.

Q What morning?

Q The morning of October 1st.

Q Wednesday morning?

A Yes sir.

Q Did you find a body down there any place?

A Yes sir--we got there between 4 and 5 o'clock in the morning.

Q Got where?

A Right on this side of the bridge; we were told it was Mr Adkins, he was dead and on the right hand side of the car stretched out full length.

Q Was that near that little church there?

A Yes sir, there was a church south of thereabout 50 yards, I suppose.

Q You know what church that was?

A No sir, it was a little church just before you got to Hoop Spur.

Q It was near Hoop Spur was it?

A Yes sir, right on the side of Hoop Spur.

Q What was the condition of the man's body you found?

A I noticed only one wound, looked like a shot gun wound;

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he was shot in the stomach, the one I noticed and part of his intestines were sticking out.

Q Did you make an examination of the body?

A No sir.

Q He was lying there by the car?

A Lying there to the right of the car; the car was headed south.

Q What did the examination of the car disclose?

A It was shot all to pieces, we didn't count them but it looked like there must have been 15 or 20 bullet holes all through it, and the shield and everything was just shot to pieces. Just shattered; and in the back of it there was a shot gun load that had been fired right in the back of it, looked like you could stick your fist in it.

Q Did you know whose body that was?

A Only from what they told me; can I tell what Dr James told me he was in the car with me.

Q No?

A I didn't know Mr Adkins personally.

Q Was Mr Jarman there with you?

A Yes sir.

Cross Examination.

Q--You are familiar with the way a shot gun load is discharged aren't you? That is, the effect of it?

A Why, Mr Dinning I didn't make any--it jusy looked that way to me through the shirt.

Q You anything about a shot gun load, as to whether ornot

it was at close range?

A It looked to me like it was; of course I didn't take his shirt off; he was lying in his shirt sleeves and I could see a whole load had gone through there, either from the back or from the front.

Q And from the effect of what you know of a shot gun load it was discharged at close range?

A Yes sir.

Q And also from the load in the back of the auto?

A Yes sir, it looked like it was almost up against it.

Q Do you remember that railroad trestle that is close there?

A Yes sir.

Q You know how long it is?

A The railroad trestle, well it must be something like; the railroad right of way is 100 feet, and it must be 60 or 65 feet.

Q From the place where this shooting took place?

A Yes sir; and there is one thing about the trestle, that trestle is a little bit south of where the shooting was, it is a kind of an angle, just a little bit ~~xx~~ south of it.

Q Was it on the east of west of the railroad?

A The railroad is west of the road.

Q That would be on the right hand side going down?

A Yes sir.

(witness excused).

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John Ratliff, having first beenduly sworn, was called as
a witness by the State and testified as
follows:

Q What is your name?

A John Ratliff.

Q Where did you live prior to October 1st?

A I stayed with Joe Michon.

Q Near what place?

A The closest place was Hoop Spur.

Q Did you belong to the farmer's union down there?

A Yes sir.

Q Which Union did you belong to?

A The Hoop Spur.

Q Did you know John Martin and Alf Banks?

A Yes sir.

Q They belonged to the Union?

A Yes sir.

Q Were ^{you} ~~they~~ at the union meeting on Tuesday night
September the 30th?

A Yes, I was there..

Q At what union was that?

A The Hoop Spur.

Q Did you see Alf Banks and John Martin there?

A Yes sir.

Q You saw both of them there?

A Yes sir.

Q Now where did you see them?

A When I come out of the house and started home, they was,

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Alf Banks I don't know just exactly where he was at that time, but any how the boys-

Q I don't care anything about the boys you went there with?

A I was trying to get it straight, I was looking for them; and I saw John Martin and Wm. Wordlow right there at the little ~~xxxxxxx~~ bridge.

Q What bridge was that?

A At the little bridge there, the railroad bridge and the public bridge sorter stood apart.

Q Which bridge was it you saw them at, the public bridge or the railroad bridge?

A At the public bridge.

Q You saw John Martin and Will Wordlow there?

A Yes sir.

Q What were they doing there?

A They had their guns there.

Q You mean John Martin and Wordlow did?

A Yes sir.

Q Then did you see the automobile?

A No sir, not at that time.

Q Did you later see it?

A yes sir, later I seed it.

Q Did you see it come up there?

A Yes sir, I seen it come up there

Q When it came up there and stopped what happened?

A The car come up there and stopped and put out the lights and fooled around there a little bit, I thought maybe the car was broke down or something, it stopped there, so the boys they begin to get together, that was at night.

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Q What did these boys have with them?

A They had guns.

Q What did Alf Banks have? What kind of a gun?

A I aint never specified just exactly what kind of a gun he had; I saw one in his hand alright.

Q Was it a shot gun or a Winchester?

A I taken it to be a shot gun.

Q What kind of a gun did Martin have?

A A shot gun.

Q Did he have any other kind?

A Not unless it was a pistol.

Q After the car came up what happened?

A After it stopped the boys they begin to ~~mk~~ make down that way.

Q Down which way?

A Down towards the car; they was up towards Elaine; they begin to drop down that way and one of them says--

Q Alf Banks wasn't there when that one was talking to you?

A No sir, he got into the crowd after they passed me.

Q He got into the crowd after they passed you , going which way?

A Towards the car.

Q Did you see him get into the crowd?

A No sir, I didn't exactly see him get with the crowd altogether, but after he got down far enough this man had a flash light, and after he got down to the flash light I saw him.

Q Which man had a flash light?

A The one that stooped there in the car, some of them in the car.

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Q Was it a white man that had the flash light?

A Yes sir, I could see his white hands, that is all the parts I seen of him, I saw his white hands as he threwed the light out.

Q Who did you see then?

A He throwed the light on Alf Banks and the two Becoe boys; they was right together, all there; a part of the crowd stepped back, they seemed like they wasn't as heady as the others; and these three boys sorter went on past the car and then they turned and come back, and when they was coming this man asked them where they was going with their guns, was they going coon hunting or what, and of course where I was at I couldn't hear what the conversation was.

Q Well, at that time where was John Martin?

A He was over on the other side, this was on the right hand side and he was on the left hand side of the road.

Q How close was John Martin to the car?

A I suppose as far as from here to that window.

Q About 30 feet?

A Yes sir, somewhere about that.

Q Who was with him there?

A Will Wordlow.

Q And Martin had what kind of a gun did you say?

A A shot gun.

Q And what happened then?

A Whenthey started, when these boys started back, this man in the car had the conversation--

Q Go ahead and tell what happened?

A When they turns back, I don't know exactly the conver-

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sation, but I heard this man say, you all get on away from here, and that time he threwed the light out and the gun fired and by the time that one fired there was two more fired, and it looked like it sorter ceasted; then three shots was made in a minute, and then after that it looked like everything blazed up again the second time.

Q Where from?

A Looked like to me from every which a-way, you couldn't tell whether them on that side or them on that side started it but it was all around.

Q Did you see John Martin during that time?

A Where I saw him at, I could see the blaze of the gun, right where he was at.

Q Who was with him?

A Will Wordlow.

Q Do you know whether or not him and Will Wordlow ~~xxx~~ were the only ones over at that little bridge?

A No sir, I couldn't say they were the only ones.

Q You know they were there?

A Yes sir.

Q Were they on the bridge or at the end or where?

A I believe it was brother Martin come out from under the bridge.

Q John Martin?

A Yes sir, and Will Wordlow was on the other side kinder.

Q You saw him come out from under the bridge--did you see any flashes of guns over there where Martin was?

A Yes sir.

Q What kind of flashes did you see there?

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A They first started with the shot guns from the way the blazes looked.

Q How close were you to them?

A I suppose as far as from here to that wall over yonder.

Q After the shooting died down there did you see John Martin?

A Yes sir.

Q Where did you see him?

A He was at the car.

Q Did you see Alf Banks?

A Yes sir.

Q Where did you see him?

A He was at the car.

Q What else was there at the car?

A When the shooting was over they come up towards the church house and I goes back with them, behind them, but I didn't go right up in the crowd, I suppose I was as far as from here to that rail (about 25 feet) maybe a little further, and they goes on around the car and they gets the flash light.

Q Who got it?

A I don't know which one.

Q Was John Martin and Alf Banks along there?

A Yes sir.

Q And they got the flash light and did what?

A I don't know who had it, but any how they looks all in the car and Becoe says--

We object

Objection overruled

We except.

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A Becoe says let's take this car, and I told him he better let that car set right where it is, and I heard some of them says let's shoot him again, and I says you better not shoot that man any more--

Mr Dinning: We object to what people in this crowd said; if John Martin or this other man said anything, that's alright, but if some member of the crowd said let's shoot them again, we object to it.

Court: These defendants are not bound by what somebody said--the objection is sustained.

Q Did you hear John Martin say anything?

A Now to specify that it was him, I couldn't; they had the flash light down on the ground, and somebody spoke about stomping him, kicking him.

Q Unless you saw John Martin or Alf Banks doing that, don't state it?

A I didn't see them just to specify which one.

Q Was the man dead?

A Yes sir, I was close enough to see he was bound to have been dead.

Cross Examination.

Q What is your name?

A John Ratliff.

Q You were there that night?

A Yes sir.

Q You were a member of that organization?

A Yes sir.

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Q How long had you been a member of it?

A About 3 or 4 weeks.

Q How many meetings had you attended?

A Three.

Q You attended all the meetings that were held there?

A No sir, I hadn't been there to all the meetings.

Q You were placed on the outer guard that night yourself?

A No sir.

Q Well, what caused you to be on the outside?

A I started on back home, I wasn't staying until the meeting was over because the Grand Deputy was to meet us there and he didn't.

Q Who was he?

A Hill.

Q You were on your way home?

A Yes sir.

Q Which direction did you leave from that church?

A I had to go a little beyond--I lived a right square west of the church.

Q Then what were you doing out there in the road?

A That was my way out, you see I didn't have no way to go straight across the field, I had to go up the road to ~~xxxx~~ Hoop Spur and then--

Q Did you start north or south?

A I started south.

Q How far did you get from the little church there?

A Not far.

Q How far?

A As far as from here across this room, maybe a little

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further.

Q How much further, a hundred yards?

A Well, I will say something like a hundred yards from the church.

Q Did you have your gun with you?

A Yes sir.

Q What did you carry your gun there for?

A I carried it there to go coon hunting on my way back home.

Q Are you going to tell a lie in addition to the other things you are telling here?

A I brought my coal oil and everything and left it on the far side of the field--

Q Are you going to tell the jury that you brought this gun there to go coon hunting?

A That's what I brought it for.

Q You brought it to go coon hunting?

A Yes sir.

Q And you expect the jury to believe that as much as you expect them to believe this other story that you have told?

We object to that, it is argumentative.

Objection sustained.

We except.

Q You had gone a hundred yards south of that bridge on your way home?

A Yes sir, I will say about that distance.

Q What man did you see you went out of the church?

A Well, there was a mighty few that I knowed, because I was a kind of a stranger there, I couldn't specify all.

Q How long have you known John Martin?

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- A For over a year.
- Q How far from that church does John Martin live?
- A About two or two and a half miles.
- Q How long have you been knowing Alf Banks?
- A Right around two years.
- Q Was that a dark night or a light night?
- A It was a dark night, wasn't real dark, but it was tolerable dark.
- Q The railroad there is about 50 feet from the bridge isn't it?
- A I don't know about how far it is, I never paid much attention to it.
- Q Well, point out in this room how far it is?
- A Somewhere from where to them ~~banisters~~ banisters back there.
- Q You say some body said something about an automobile coming way up there at Wabash?
- A Yes sir.
- Q Who said that?
- A That was the boys on towards Elaine.
- Q What caused you to be up there?
- A That was my way home. My way out.
- Q Elaine was south wasn't it of Hoop Spur?
- A Yes sir.
- Q Then some boys down the road towards Elaine --they tell you that ~~xxxxxxx~~ was the lights in a car coming from Wabash?
- A I heard them speak about it, they wasn't speaking to me.
- Q Did John Martin speak about it?
- A No sir.
- Q Did Alf Banks speak about it?
- A No sir.

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- Q Where were they?
- A Back here next to the church.
- Q On which side of the bridge?
- A They was on the left hand side, Alf Banks was.
- Q Where was John Martin?
- A He was over next to the bridge.
- Q Was he over there by the railroad dump?
- A No sir.
- Q How do you know he was over there if it was dark?
- A Because I seed him when he come out from under the side of the bridge, when I was looking for these other boys, I was looking for them, I promised to go back with them and that is how come me searching around looking.
- Q Under what Bridge Was John Martin?
- A Under the little one, the public one.
- Q How high is that bridge?
- A About that high (indicates about 4 feet)
- Q What was he doing under there?
- A I couldn't say, but he sure was when he come out from under there--
- Q Now in spite of the fact that you were 100 yards way towards Elaine--
- A Not at that time, I wasn't.
- Q Did you stand there in the road until the car came up?
- A No sir, I went up there to the corner of the fence, and when these boys come on by I followed them a piece back.
- Q What boys?
- A The ones in the road there towards Elaine.
- Q Were John Martin and Alf Banks with those boys?

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Q Was the automobile up there at the bridge at that time?

A No sir, it hadn't got there.

Q Where were they going?

A Going back towards it.

Q Why did you go back?

A I told them boys to be careful, they ought to be careful.

Q You can't tell what you told them--you told them something to help you out in case of an emergency didn't you?

A No sir, I didn't tell anything to help me out altogether

Q What did you go back with them for?

A There was some bony promised to come from Wabash down there and they asked me to vouch for them and I thought it was them that was in the car, after the car come that far and stopped I thought it was them in the car.

Q At 1 o'clock in themorning?

A It wasn't that late.

Q At 12:30?

A I don't think it was that late.

Q You thought they would be coming to join that time of the night?

A I didn't have no time piece or nothing of that kind, but I don't think it was that late.

Q Where were you standing when the shooting took place?

A nearbout in front ofthe church.

Q How far from the church?

A Well, about 25 or 30 steps.

Q Say as far as the back of the house there?

A Yes sir, about as far as from me to the back of the house.

Q You say three boys passed by the car and then came

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back and they were the ones that did the shooting?

A That was the first ones that made the shots.

Q Was Alf Banks one of those?

A He was in the crowd passing the car and coming back, as near as I could see by the flash light ~~thxx~~ thrown on him and on the boys.

Q Where did Alf Banks get in the road from?

A He got in the road down there nearbout to the church.

Q Are you going to swear on your oath that Alf Banks was one of those that went by the car and then came back?

A From what I could see by the flash light.

Q Did you see his face?

A Yes sir, I could see him all up and down, the man run the flash light all over them.

Q I thought you said a minute ago you didn't know who they were, I thought you stated that Alf Banks was over at the bridge at the time the shooting took place, didn't you state that a moment ago?

A No sir, not Alf Banks.

Q I mean John Martin?

A Yes sir.

Q And you saw some flashed from that direction?

A He was on the other side of the road; I was talking about the bunch that went down to the car.

Q Was he in that bunch?

A No sir, Martin wasn't in the bunch that went to the car, until after the shooting was over.

Q He didn't go to the car until after the shooting was over and you don't know exactly where he was?

A Yes sir.

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Q Where was he?

A At the foot of the bridge when the shooting ~~was~~ taken place; they had kinder come up on the side of the bank there.

Q Was he on the right hand or left hand side of the road?

A On the left hand side.

Q That on the same side of the road the church was?

A No sir, on the other side

Q Where was this man that was killed, which of the car was he standing on?

A He was in the main road.

Q Was he on the same side of the car that the church is?

A There is one road comes around the bridge--

Q Was he between the car and the church?

A No sir, he wasn't between the car and the church.

Q Was he on the same side of the car that the church was?

A No sir. When this flash light was throwed on these boys -- I don't know just exactly whether it was throwed on them across the car or just over behind it, it looked like to me it was from in behind the car like.

Q Who were the three men that passed the car and then came back?

A Alf Banks and the two Becoe boys.

Q And they were the ones that first started the shooting?

A Yes sir.

Q And they were the ones that were standing in front of Mr Adkins at the time he was shot weren't they?

A Yes sir.

Q And at that time John Martin was standing off by the bridge?

A Off on the other side, yes sir.

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Q And he was some 30 or 40 feet away?

A Something like that, yes sir.

Q You don't know whether he ever discharged his gun or not do you?

A I didn't see anybody else there to shoot but him.

Q You said a while ago there was another man with him?

A I mean him and Wordlow, they was together.

Q You don't know whether there was but one of them shot their gun?

A They was both bound to shoot because one man couldn't have shot that fast.

Q Were the reports both shot guns or was one a pistol or a rifle?

A There was a shot gun and a pistol too from the way I could see it.

Q The only reason why you say John Martin discharged his gun was because the shots were coming pretty fast?

A I could see the flashes of them apart about that far (about 4 feet indicated).

Q Could you see the bodies of the men?

A Not at that time, they had their backs to me.

Q But you don't know whether it was John Martin or not, you just knew he was there sometime before, at the end of the bridge downthere, you don't know whether he had moved or not do you?

A When?

Q At the time this shooting took place, was John Martin at that place there or not?

A He was right there, because when these boys come by he come

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out.

Q Howfar ~~xx~~ away were you?

A About from here to that door.

Q Could you tell a man in the dark that far, when he had his backto you?

A When I had been with him all the time, of course it wasn't real dark, you could tell a man further than that, if you was real used to him you could tell him. Take a man ~~xxx~~ a sort of a stranger and you couldn't do it.

Q This man is being tried for his life now and we don't want to take any assumptions on your part?

A If I didn't do him no good I sure don't want to do him no harm.

Q Are you sure it was John Martin that came out of the side of the bank at that road?

A Yes sir, because I well know him.

Q You well knew him, though it was dark?

A And I had seen him there.

Q And that was the reason you thought it was John Martin wasn't it?

A And then he told me he was there.

Q What was there about him that enabled you ~~xxxx~~ to tell John Martin at a distance of 50 yards in the night?

A Because I know his motions.

Redirect Examination.

Q You say he told you he was there?

A Yes sir.

Q When did he tell you he was there?

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A That same night, Wordlow was the man that first exposed it.

And that Becoe boy--

Q What did he say?

A Just how it all come up now I don't recollect just exactly.

Q But Wordlow first told you about him and Martin being over there and then Martin told you?

A I am trying to think what he said about it himself.

Q You remember what Martin said about it?

A That's what I am trying to think about it now. I know something another was said--

(witness excused).

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

- Q What is your name?
A Sykes Fox.
Q You know John Martin?
A Yes sir.
Q You know Alf Banks?
A Yes sir.
Q Where were you on Tuesday night September 30th?
A About 10 or half past ten o'clock I come to the church.
Q To the Hoop Spur church?
A Yes sir.
Q Were you there when the shooting took place?
A At the first shooting yes sir.
Q Now were there any men on the outside with guns?
A The only ones I seen with the guns, close around, was Will Brown and the others was off.
Q Did you see Alf Banks there?
A No sir, I didn't see all that was posted, when I got there they had done put them off.
Q You mean placed the guards at their places?
A Yes sir.
Q You know John Martin?
A Yes sir.
Q Did you have a conversation with him the next day?
A Yes sir.
Q About what?
A About this shooting on Wednesday.
Q Now which shooting?

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A The Tuesday night shooting.

Q Where did you have that conversation with him?

A When I had that conversation with John Martin I was on my way to work--

Q Where did you see John Martin?

A I just met John, seen him in his house.

Q And that was the next day?

A Yes sir, that was Wednesday morning.

Q What did he tell you?

A I says Martin what did you all out yonder X last night, well he says, we had a time out there last night, I says how was that, he says, well, he says I most know we got two of them; I say got two what and he says two men. I says got them how, he says, killed them, and he says I think one of them was old man Deck House; I says No, he says, yes, I think we got old man Deck in that drive, I says you know the other one, he says no but I went close enough to him to take my feet and shove his head, shoved him in the head, I says Martin ~~xxx~~ don't you know you done wrong, well he says, we got to kill a but a lot of these suckers for to do the thing what is right. I says that's wrong, you mustn't take that what you can't give.

Q Did he tell you anything else about the shooting?

A No more than about the ones that killed the man.

Q Did he tell you where he was when the man was killed?

A He said he was under the trestle, he was first under the trestle and after the first two shots was made he walks out and went to the car.

Q Did he tell you where he was under the trestle; did he tell you where he went from the trestle?

A No sir, he didn't tell me.

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Q Now that was the next day was it?

A Yes sir.

Cross Examination.

Q You were a member in good standing in that order?

A Yes sir.

Q How many times did you attend the meetings?

A Twice.

Q What kind of a gun did you carry down there?

A None at all.

Q What was the matter?

A I didn't feel like carrying one.

Q Were you instructed to bring one?

A No sir.

Q Were you ^{not} going coon hunting as you went back home?

A No sir.

Q You were not going coon hunting?

A No sir.

Q Now you were in the house at the time this shooting took place

A This first shooting?

Q Wasn't you there while all the shooting took place?

A No sir, because I was out and gone, after it calmed down I lit out from there.

Q You knew the pickets were on the outside didn't you?

A I know they told me they was out there.

Q That is all the information you had about it?

A Yes sir.

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Q ~~Exaxxx~~ Is what they told you?

A Yes sir.

Q Which way did you approach this bridge, from the north or south?

A I went--the church sets to the right, just like in that way, and I goes right across the railroad and go straight across the field and out that day.

Q Did you cross the dirt road where that bridge is?

A No sir, that is below the bridge.

Q How far were you from the bridge at the time you crossed the road?

A Well, I can't just zactly tell.

Q 10 or 15 or 20 feet?

A Further than that because it is further than that from the church.

Q In going up to the church I believe you said you saw a man named Brown?

A With the gun--when I come out of the church I did.

Q As you went up to the church you didn't see anybody at all?

A Yes sir, I seen sveral, but I suppose several was up talking--

Q I am talking about on the outside of the church?

A When I come to the outside of the church the shooting was going on then and a lot of them was laying down under the church and all scattered off, all excepting Will Brown and old man Robinson.

Q At the time you had this conversation with John Martin the next day, wasn't there some fighting going on about that time? Did you hear any of the reports--

A No sir, that was early that morning.

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- Q. You were going to your work?
- A Yes sir, going to the lot to get my team.
- Q How far did you live from Martin?
- A I stays about 150 or 200 yards.
- Q And he was going to work himself?
- A No sir.
- Q What was he doing?
- A He was out there in the road getting wood I suppose.
- Q And John Martin told you when the shooting took place he was there under the trestle?
- A Yes sir, under the trestle.
- Q And he went up there after they had all scattered away and he shot at the car?
- A Yes sir.
- Q He didn't come up there until after they had all scattered
- A No sir, when the first two or three shots was made and they went across the railroad then he walks up out from the trestle.
- Q That was after the first shooting had taken place?
- A Yes sir, he says when they was running they come right over
on
his head ~~xxxxx~~/the trestle
- Q He was under the trestle?
- A Yes sir, he was under the trestle.
- (witness excused).

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Joe Michon, having first been duly sworn, was callas a witness
by the State and testified as follows:

Q Your name is Joe Michon?

A Yes sir.

Q Where do you live?

A On Mr Deck House's place.

Q Near Hoop Spur?

A About 2½ miles from Hoop Spur

Q Do you know Alf Banks?

A Yes sir.

Q Where were you on Tuesday night that the trouble took
place at the church?

A I was in the church.

Q Were you a member of that Union there?

A Yes sir.

Q Were you there when the shooting took place?

A Yes sir.

Q You know Alf Banks you say?

A Yes sir.

Q Did you have a conversation with Alf Banks about it?

A Wednesday evening, I did, just about dusk, first dusk.

Q Where did you have that conversation with him?

A He come over to my house.

Q What did he say to you?

A I asked him did he know who it was done the shooting
out there and he told me yes, I says who was it, he says him
and the Becoe boys.

Q What did he say about that?

A He said they killed a man.

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Q Him and the Becoe boys?

A Yes sir. The Becoe boy had the automatic pistol and he said he had the flash light.

Q Did he tell you where he got those things?

A He said he got them over there.

Q From whom?

A From the men they killed.

Q Is that all you know about it?

A That's all I know about it.

Q Do you know who were stationed out there as guards that night?

A No sir.

Q Did you see John Martin there?

A No sir.

Q You saw him inside of the church didn't you?

A Yes sir.

(no cross Examination)

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J.G.Burke, having first been duly sworn, was called as a witness
by the state and testified as follows:

Q Your name is J G Burke?

A Yes sir.

Q Do you know Alf Banks and John Martin?

A Yes sir.

Q Did you hear them make a statement either to you or in your
presence relative to the killing of W A Adkins at Hoop Spur?

A I did.

Q Where were you when that statement was made?

A In the county judge's office down stairs.

Q At the time the statement was made, who else was present,
if you remember?

A Mr Pipkin, and I don't remember whether you were or not.

Q Was the statement a volunteer one, or was it made under
coercion or threats, force or intimidation?

A No sir,

Q Were there any threats made?

A No sir.

Q Any promises?

A No sir, I made no promises and no one else made promises that
I know of.

Q In other words were questions asked these two men--

A Sometimes questions were asked and sometimes they were not;
they asked them to make a statement, and then if there were any
particular question they wanted to ask to bring it out, they
asked it.

Q Was that a meeting of the municipal court, or just a
committee there?

A It was a committee, I would term it. It was impossible at

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that time to hold court.

Q What did Alf Banks and John Martin say?

A Well, Alf Banks made the statement that he was up at Hoop Spur Tuesday night when Mr Adkins was killed--

Mr Dinning: May I asked the witness a ~~few~~ questions, your honor?

COURT: Certainly.

Mr Dinning: Was that testimony reduced to writing?

A The substance of it was but it was not signed.

Q Go ahead?

A Well, as I stated he said that he went to the meeting that night and he carried a pump gun and when he got there old man Charley Robinson put him out as one of the outside gaurds; that h he was out there in a buggy, it seems that there was a buggy out there in front of the church, I think he said him and Albert Giles set out there in that buggy until about the time this car came up, this automobile, south , from towards Wabash, and he said when the shooting started there he fired 3 shots at the automobile, and after that he said he went around there--I have forgotten now how long he said he stayed there after that before he left the church.

Q What did Martin say?

A Martin, said I believe that he lived on Mr Nelson's place and that he went to the church and that he carried an automatic shot gun, as I recall, and a 38 Smith & Wesson pistol. He also claimed that he fired 3 shots. at the automobile.

Q Did he tell you where he was?

A No sir. I don't remember that he said where he was; he said he made three shots and after the shooting was over he

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went home. And we asked him if he did kick this man, while he was dead, or lying there in the road, and he said, as I remember it, that he didn't kick him that he just took his foot and turned him over to see who he was. That is/near ^{as} as I can get at it on that particular point; he denied that he kicked him, but merely turned his head over with his foot to see if he could recognize him.

Q That was immediately after the shooting had ceased?

A Yes sir.

Cross Examination.

Q Do you recall that he said he was under the railroad trestle at the time the shooting took place?

A I don't recall where he said he was.

Q He simply said he shot three times?

A He said he fired three times as I recall it; and Alf Banks said he fired 3 shots at the automobile; Martin said he fired three shots.

Q Did he say whether he directed those shots at any person?

A I don't remember.

Q If he did tell you would you recall it?

A I don't know that I would, there were so many of them.

(witness excused).

State Rests.

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DEFENDANT'S TESTIMONY.

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

Q Your name is John Martin?

A Yes sir.

Q How old are you?

A 53 years old.

Q How long you been living in Phillips County?

A I have been in Phillips County 3 years.

Q Were you a member of that Union down there?

A Yes sir.

Q How many meetins did you attend?

A I attended 3 times.

Q You were down there the ~~xx~~ night that Mr Adkins was killed?

A Yes sir.

Q You had a gun with you?

A Yes sir, I had my gun.

Q Tell the jury just what part you had in this killing, and tell them in just as few words as you can?

A Well, I was there that night, they put me out to guard, and I didn't much want to go out there and they told me I had to go, well I went. When the shooting come off I was down under the trestle about 50 yards from that bridge, from the car, and when the shooting come up, I didn't shoot narry one until mighty nigh the last, I made air shots, and the reason I made air shots I was under an obligation not to rebel against anything like that, I had to make them air shots for a sham; I was scared they would kill me if I didn't.

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Q What did they say they would do to you if you didn't take part in it?

A They would kill me, I didn't want to go out there, they told me I had to go out there or die, and I shot air shots.

Q Who was it told you that you had to do that?

A This old man Robinson and Ed Ware.

Q Did Robinson tell you that you had to do that or else?

A Yes sir, either obey the law or die, but I didn't shoot in no car.

Q You were under the trestle at the time?

A Yes sir, I was under the trestle.

Q You didn't shoot in the direction of the car?

A No sir, I didn't shoot in the direction of it?

Cross Examination.

Q You took your gun and 12 shells there didn't you?

A Yes sir, and I didn't shoot but 3 shots.

Q What kind of a shot gun was it?

A Automatic.

Q What other kind of gun did you take with you?

A I didn't take no other kind but my pistol. But I didn't shoot it.

Q What kind of a pistol was it?

A 38 Smith & Wesson.

Q You took that?

A Yes sir.

Q You didn't go in the house at all, did you?

A Just in there a few minutes, and they put me right out.

Q Who was your partner over there?

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Q Then who joined you out there?

A Wm Wordlow he come over there and two more men ,but I don't know who they was.

Q And after the car stopped there you came up to that little bridge over the public road didn't you?

A No sir, I didn't leave from where I was.

Q How far were you from the car?

A I was about 50 yards.

Q Which end of the car was nearest to you?

A I was south from the car.

Q How far south?

A About 50 yards.

Q you didn't come up to the church?

A Not until after the shooting was over.

Q Not until after the man had been killed?

A Yes sir.

Q Then it was you came up there?

A Yes sir.

Q Now who was it shot him after he was down there on the ground?

A I didn't do nothing like that.

Q Didn't you shoot him?

A No sir.

Q Were you not the man that shot him through the bowels?

A No sir.

Q You were the man that went up to him and took your foot and moved his head around?

A I walked up to him because it was dark and I wanted to see who he was, and I was so close to him I took my foot and

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moved his head sorter like that. (shows).

Q Who had that flash light?

A I couldn't tell you, they told me, they says Alf Bank and the Becoe boys, one had the flash light and theother one had the automatic.

Q You were robbing him wern't you?

A I wasn't robbing him, whoever took his flash light and pistol was robbing him.

Q You were right there in the bunch?

A No sir, they took them off of himbefore I got there; Lit Simmons knows more about it thanI do.

Q Who was it said there let's shoot him again?

A I couldn't remember nobody saying that.

Q You don't know whether they said it or not?

A No sir, because I want there.

Q You know John Ratliff?

A Yes sir.

Q You saw him around there that night?

A Yes sir.

Q He was there?

A Yes sir.

Q Now at the time this shooting was going on you and Will Wordlow were together?

A Yes sir, and two other men, which was strangers to me.

Q What kind of guns did they have?

A Two single barrel shot guns.

Q And you were armed with an automatic?

A Yes sir.

Q And what was Wordlow armed with?

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A A shot gun.

Q What kind?

A Single barrel.

Q You were the one that had the automatic in that bunch?

A Yes sir.

Q And you shot it three times?

A Yes sir, I made air shots with it.

Q You talked to that old fellow Sykes Fox next day didn't you?

A No sir, Sykes Fox, me and him went home together that night; Sykes Fox knows who all--

Q Did you talk to him next morning?

A No sir.

Q Did you see him next morning?

A Yes sir, but they was around after all of them and said them that didn't come and fight they was going to kill them; I left home.

Q Didn't you have a conversation with Sykes Fox the next morning in which you told him that you had something to do with the shooting? the night before?

We object, he didn't testify that.

Q Didn't you ~~xxx~~ talk to Sykes Fox in which conversation you told him you had a time at the church last night?

A No sir, because Sykes already knowed it.

Q And that you had killed a man that you thought they had killed old man Deck House?

A No sir.

Q Did you tell him that you had killed a man?

A No sir.

Q You had no conversation with him next day?

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- A No sir, no more than Sykes Fox knows all went on there.
- Q And you did tell Judge Burke about it didn't you?
- A Yes sir, I told him just Like xi Told you
- Q You told him you fired three shots.
- A Yes sir, and I told him they was air shots.
- Q And that you fired them because of an obligation?
- A Yes sir, that I had taken 9 years ago in another lodge.
- Q In another lodge?
- A Yes sir, the K.of P&s
- Q The K of P's wouldn't let you kill a man?
- A I didn't want to killnobody.
- Q And that was ll that kept you out of it?
- A No sir, I done got too old for it, I didn't kill narry one in my young days and I didn't want to kill narry one one in my old days.

Redirect Examination.

- Q What was the name of the man that Mr Miller asked you about a while ago?
- A Sykes Fox.
- Q He was right there?
- A Yes sir, he was there.
- Q And he knew as much about it as you did?
- A Yes sir.
- Q You didn't tellyx him you had killed a man did you?
- A No sir.
- Q And you didn't mention Mr Deck House's name to him?
- A No sir, I did not.
- Q He stated to the jury here that he asked you about what

happened down there and as a matter of fact he knew as much as you did?

A Yes sir, he knowed just as much about it as I did.

Q You didn't shoot this gentleman or try to shoot him, or want to shoot him?

A No sir, I didn't try to shoot him and I didn't want to shoot him.

Defendant Rests.

State Rests.

THIS WAS ALL THE TESTIMONY IN THE CASE.

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INSTRUCTIONS

Oral.

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

"Gentlemen of the jury, the defendants, John Martin and Alf Banks, Jr., have been indicted charged with the crime of murder in the first degree. 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 takeaway 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 laying in wait or by any other kind of wilfull, deliberate, 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

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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 the malice existed so that it existed and preceded and caused the homicide; no deliberation or 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 deliberation and premeditation means thought of before hand; deliberation means 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.

"The State, gentlemen of the jury, in this case as in all others of a criminal nature is required to prove all of the material allegations in the indictment and to prove them to your minds beyond a reasonable doubt; a reasonable doubt is not a mere possibility or imaginary doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt, but it is such a doubt as would cause a prudent man to pause or hesitate in the graver transactions of life, and a juror is satisfied beyond a reasonable doubt if from a fair and candid consideration of all the evidence in the case, he has an abiding conviction of the truth of the charge.

"The defendant is presumed to be innocent and that presumption attends and protects him ~~xxx~~ until such time as it is overcome by legal and competent evidence upon the part of the State.

"This indictment also includes murder in the second degree,

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and if you should find from the evidence in the case 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, you should give them the benefit of that doubt and find them guilty of murder in the lower or lesser degree, that is, murder in the second degree.

"You are instructed that one who aids, assists, abets, advises or encourages, and who is present aiding, assisting and advising in the commission of a felony shall be deemed, in law, a principal and be punished accordingly; so if you find from the evidence in this case that the defendant or either one of the defendants were present and that they were aiding, assisting, advising and encouraging in the commission of the homicide, then they would be just as much guilty as if they had fired the fatal shot.

"If you find the defendants guilty as charged in the indictment, there are two forms of verdicts, one of which is: "We, the jury, find the defendants, John Martin and Alf Banks, Jr., guilty as charged in the indictment, of murder in the first degree", and sign it by one of you as foreman. In the event that you return that kind of a verdict, the law fixes the punishment at death by electrocution. The other form of verdict is: "We, the jury, find the defendants, John Martin and Alf Banks Jr., 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 within the discretion of the jury as to whether the death penalty or life imprisonment shall be inflicted.

"Punishment for murder in the second degree is confinement in the state penitentiary for some period of time, not less than

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five nor more than 21 years. If upon the whole case you should entertain a reasonable doubt of the defendants guilty, then 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".

"These defendants, gentlemen, John Martin and Alf Banks, Jr. have been indicted jointly, so you gentlemen can find both of the defendants guilty, or you can find one guilty and acquit the other, or you can acquit both of them. You gentlemen understand that you 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 testifying; and, furthermore, you consider the means and opportunities that the witnesses have for knowing that about which they testify; and, again, you consider the reasonableness or unreasonableness of the statements made by the witnesses; and, again, you consider the interest that any and all witnesses 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 character some conflicts will spring up in the evidence; you as jurors, are not required to reconcile conflicts, you may do so if you are able to do so; in the event, however, that 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 as you deem worth of belief or consider to be true and to

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reject any testimony you deem unworthy of belief.

Mr Dinning: I would like for your Honor to make it
a little plainer that they can find them
guilty in different degrees of murder.

COURT: I thought I made it plain.

"Of course, gentlemen, you understand that you can find both of these defendants guilty of murder in the first degree, if you are satisfied beyond a reasonable doubt of their guilt; or you can find them guilty of murder in the second degree, if the evidence sufficiently convinces you beyond a reasonable doubt of their guilt. I believe I made it plain to you also, gentlemen, that you can find one of them guilty and find the other not guilty, or both of them guilty, or find both of them not guilty. And you can also find one guilty of murder in the first degree and one guilty of murder in the second degree".

COURT: Is that what you wish Mr Dinning?

Mr Dinning: Yes sir, I think so.

To the above oral instruction of the Court to the jury, defendants, at the time, duly excepted and caused their exceptions to be noted of record.

Instructions
THIS WAS ALL THE ~~INSTRUCTIONS~~ IN THE CASE.

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Thereupon, the jury retired to consider of their verdict and in due time returned into court with the following verdict:

VERDICT

"We, the jury, find the defendants, John Martin and Alf Banks, Jr guilty as charged in the indictment.

C T McMellon,

Foreman".

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

Thereupon, counsel for defendants filed a motion for a new trial, which said motion is in the following words and figures to-wit: