

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. #4482

Murder in the First Degree

Will Wordlow.

Appearances:

John E. Miller, Prosecuting Atty., First Dist.

L. A. Semmes,

Attorney for Defendant.

I N D E X

Order of Court - - - - -	1
Organization of Grand Jury - - - - -	1
Special Bailliff C. N. Biscoe - - - - -	2
Report of Grand Jury - - - - -	3
Indictment - - - - -	4
Bill of exceptions filed - - - - -	6 & 7
Testimony of Charles Pratt - - - - -	8
Cross examination -"- -"- - - - - -	11
Re-direct examination "	11
Testimony of H. L. Smith - - - - -	12
Cross-examination - - - - -	12
Testimony of Dave Hays - - - - -	14
Cross examination "	17
Re-direct examination - - - - -	18
Testimony of Alf Banks Jr - - - - -	19
Cross examination "	21
Re-direct examination - - - - -	23
Re-cross examination - - - - -	26
Testimony of E. M. Pipkin Jr., - - - - -	27
Oral instructions of the Court - - - - -	29
Verdict - - - - -	32
Order as to motion for new trial - - - - -	33
Judge's Certificate - - - - -	34
Order of Court and Order of severance - - - - -	35
Judgment - - - - -	35
Sentence - - - - -	36
Motion for new trial - - - - -	37
Affidavit of William Wordlow - - - - -	43
Order as to motion for new trial - - - - -	45
Clerk's Certificate - - - - -	46

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'Oclock A-M-.. It being the day fixed by law for hold said Court. There was present and presiding the Hon. J.M. Jackson, Judge of the said Court, A. G. Burke, Clerk and F. F. Kitchens, when after due proclamation by the Sheriff, Court 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 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. Dennison, James H. Pillow, C. A. Wooten, Joseph Trumper, 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. Biscor, 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. Glatworthy, 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 Speward, A. P. Coclidge, Polk Agee, R. G. Foster, M. Nesly, 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 Petit 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 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.

2 { Now on this day comes the Sheriff in open Court
in a body, all answering to their names as the same were called
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.

INDICTMENT

State of Arkansas	}	Phillips Circuit Court
against	}	
John Martin	}	Indictment
Alf Banks, Jr.,	}	
Will Wordlow	}	

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, to-wit: The said John Martin, Alf Bands, 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

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.

6

STATE

VS

WILL WORDLOW

Bill of Exceptions

Filed: Jany, 7th, 1920

A. G. Burke, Clerk

IN THE PHILLIPS CIRCUIT COURT

October Term 1919.

STATE OF ARKANSAS.....Plaintiff,

v.

WILL WORDLOW.....Defendant.

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 and foregoing cause came on for hearing before Hon.J.M.Jackson, Judge, and a jury duly empaneled to hear the same; the defendant appearing in person and by attorney g L.A.Semmes and Peter^{Beasley}, and the State being represented by Hon.J.E.Miller, District Attorney and both parties announcing ready for trial, said cause proceeded to trial and thereupon 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, to-wit:

STATE'S TESTIMONY.

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

- Q Your name is Charles Pratt ?
- A Yes sir.
- Q What is your business?
- A Deputy Sheriff.
- Q Where do you live?
- A Helena, Ark.
- Q Were you deputy sheriff on the 1st day of October of this year?
- A Yes sir.
- Q Where were you going on the night of September 30, 1919, or the early part of the morning of Oct. 1st?
- A I was going to Elaine.
- Q Who was with you?
- A W.A. Adkins and the negro trusty.
- Q How were you travelling?
- A Mr Adkins was driving and I was sitting by him in the front seat and the trusty was in the back seat.
- Q Are you familiar with the Hoop Spur church?
- A Not particularly so, I have observed it passing there.
- Q You know where it is?
- A Yes sir.
- Q What time did you get down to the Hoop Spur church that night?
- A I am not positive, but it was in the neighborhood of 20

minutes to 1:00 o'clock.

Q What happened when you got there?

A Why the shooting affray.

Q Was the car stopped for any purpose?

A Yes sir.

Q Now at the place the car was stopped was there anything in the road, any crossing or anything there?

A Yes sir, there was a bridge, a culvert, a small bridge.

Q Which way was the church from the car?

A On the left hand side, the car facing south.

Q What was on the right hand side of the road?

A The Railroad.

Q Now about how close to the church did your car stop?

A O, I presume, I don't know, about 50 yards.

Q Where was Mr Adkins at the time the shots were fired?

A Standing on the ground.

Q Whereabouts?

He was standing at the rear of the car, on the left hand side of the car.

Q Next to the railroad?

A No sir, on the other side; the car was facing south--

Q I mean next to the church?

A Yes sir.

Q He was at the rear of the left hind wheel?

A Yes sir.

Q Do you know who fired the shots?

A I do not.

Q How many shots were fired?

A They were too numerous to mention.

Q Several were there?

A Yes sir.

Q Where were the shots being fired from?

A They were coming from north, south, east and west, from all directions.

Q What effect did that have upon Mr Adams?

A Killed him immediately.

Q Did you see him fall?

A I saw him falling.

Q I believe you were injured?

A Yes sir, but not by the same volley.

Q Which volley was it that killed him?

A The first, he didn't know what hit him.

Q Do you know how many shots were fired in the first volley?

A No sir, I don't know.

Q Do you know where they came from?

A They came from all around.

Q The first volley did?

A Yes sir.

Q Now had any negroes passed by the car at that time, had you spoken to any negroes at that time?

A No sir, not in passing, we had spoken to some.

Q How many had you spoken to?

A I spoke to one in a party, but there was a number in the party.

Q Did the negroes have anything with them?

A They all had guns.

Q You had spoken to them before the shots were fired?

A Yes sir.

Q Now what County and State was that in?

A Phillips County, State of Arkansas.

Q On October 1st?

A Yes sir, it was October 1st, but it was September 30th when we left Helena.

Cross Examination.

Q You didn't know any of these negroes you saw down there?

A No sir.

Q You don't remember seeing Will Wordlow down there?

A No sir, it was in the night time.

Q Did you know who fired the first shot?

A I did not.

Redirect Examination.

Q You know whether the first shot came from one of you fellows?

A I know positively Mr Adkins or I either one didn't have our guns out of our scabbards.

Q You know whether Kit Collins fired first?

A If he did, I don't know it; he was in the rear of the automobile.

(~~XXXXX~~ Witness excused).

H.L.Smith, having first been duly sworn, was called as a witness by the State and testified as follows :

Q Mr Smith, did you W A Adkins?

A Yes sir.

Q Did you see him sometime, or his body, on October 1st?

A Yes sir.

Q Where?

A Down on the side of the road, down at Hoop Spur.

Q Where was his body?

A Lying down on the side of the road across from the car.

Q Did you make any examination of the body?

A Yes sir.

Q What did the body show?

A He was shot in the stomach, and shot in here (shows) and and there was a hole in the back of the head.

Q What had he been shot with?

A Shot guns and rifles.

Q Was he dead at the time?

A Yes sir.

Q And the bullets you say went out at the back of the head?

A Yes sir; he was shot here, in the throat.

Q And he was shot in the stomach?

A Yes sir.

Cross Examination.

Q What time did you go down there?

A I left here at 2 o'clock in the morning and got there about 4:30.

Q You didn't see this defendant down there did you?

A No sir, I didn't see a negro there when I went down there.
(witness excused).

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

Q Your name is Dave Hays?

A Yes sir.

Q You know Will Wordlow?

A Yes sir.

Q How long have you known him?

A I got acquainted with him in the spring, about May

Q Where were you on the night of September 30th, Tuesday night?

A I was at the church part of the night.

Q At what church?

A The Baptist church up the road there.

Q At what church? The Hoop Spur church?

A Yes sir.

Q Did you see the Defendant there, Will Wordlow?

A Yes sir. You asked me did I see him?

Q Yes?

A I didn't see him at the church but I saw him pass my house.

Q What time did he pass your house?

A About 7 o'clock, between 6 and 7 o'clock.

Q Did he have anything with him?

A It was dark and I couldn't see.

Q Did you have a conversation with Will?

A Afterwards, I did.

Q When?

A The next morning.

Q About what Will had done at the church there that night?

A Yes sir.

Q Now where did that conversation take place?

A At my house.

Q What time?

A It was real early about 7 o'clock.

Q What did he tell you about what he had done at the church there the night before?

A On Tuesday night?

Q Yes?

A He told me he shot.

Q What else did he say?

Q Why he showed me how he lifted his gun up that way.

Q And made a shot?

A Made a shot, yes sir.

Q What did he say he was shooting at?

A He didn't directly say, but he said he was into the shooting.

Q In what shooting?

A Up there at the church.

Q Up there at the Hoop Spur Church, at the littlebridge?

A Yes sir.

Q What did he say he was shooting at?

A Why, I don't know sir, right now what he said rne was shooting at, but he told me he was in the shooting.

Q What kind of shooting were you talking to him about?

A I was talking to him about the shooting there at the car.

Q About anybody getting killed?

A He told me about the man getting killed.

We object to the way he is questioning this witness--

Q Just tell us what he said about it?

A He told me there was a man got killed there.

Q What did he say he did there?

A He said he shot.

Q Was that all he said?

A Was all he told me.

Q Did you have any more conversation with him?

A No more.

Q- Did you belong to the Union up there?

A No sir, not there.

Q But you belonged to the same union?

A Yes sir.

Cross Examination.

Q This was about 9 o'clock in the morning was it?

A Yes sir.

Q That conversation between you and the defendant?

A About 7 or 8 o'clock.

Q Had you heard about the killing at that time?

A Yes sir, I had heard about it.

Q What time of the day did you hear about it?

A I heard about it a little bit before that; a fellow, I never could call his name, he was a stranger to me, but he was passing my house, he told me about it.

Q What time was that?

A That was about sun up.

Q What was the defendant doing over at your house that morning?

A Well, he come up out of the woods, and his wife was at my house.

Q He told you that he was at the Hoop Spur church the night that Mr Adkins was killed did he?

A Yes sir, he said he was there.

Q And he said he fired a shot?

A Yes sir.

Q Did he show you how he held his gun when he made that shot?

A Yes sir.

Q Just show the jury how he said he lifted his gun?

A In that position. (Illustrates)

Q Almost straight up?

A Yes sir.

Q And he told you he fired his gun one time?

A He fired his gun, he said he held it in that position.

Q Did he say he was shooting at any body?

A No sir, he didn't say he was shooting at nobody.

Q All he told you was he fired his gun one time?

A Yes sir.

Redirect Examination.

Q Did he tell you where he was?

A Yes sir.

Q Where did he tell you he was?

A He told me he was behind a post.

Q Any place else?

A You mean when he fired the gun?

Q Yes?

A He said he was behind the post, it is a sill kinder, a big sill under the bridge. (witness excused).

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 You were at the Hoop Spur Church the night Mr Adkins ~~WERE~~ was killed ?

A Yes sir, right there.

Q You were a member of that lodge?

A Yes sir.

Q Where were you in the church, or on the outside of the church--were you one of the armed guards put out around the church?

A Yes sir, I was.

Q To see that nobody came there and broke up the meeting?

A Yes sir.

Q Were you our there when Mr Pratt and Mr Adkins came?

A I was sitting in the buggy near, the car run up and I jumped out of the buggy and went towards the car, towards that bridge.

Q There was a little bridge right south of the car?

A Right in the center of the road.

Q How far did the car stop from the little bridge?

A Looked like the front wheels didn't lack much being up on the bridge.

Q When the automobile stopped you were sitting in a buggy somewhere around there?

A I was sitting in Jim Miller's buggy.

Q How far from the car?

A On the left hand side of the church.

Q Just off a little piece from the car on the bridge?

A Yes sir.

Q What did you do?

A I jumped out of the buggy and run on towards the car, and the other boys was in the road.

Q Did you see the defendant, Will Wordlow, before the shooting occurred?

A I never seed him until the shooting started.

Q Who did the shooting?

A Every man looked like what had a gin did shooting.

Q Did you see Will Wordlow do any shooting?

A Yes sir.

Q Where was he when you first saw him?

A8 He was in the road coming right direct up to the bridge and had a double barrel shot gun, and John Martin was with him. He emptied his shot gun, and he had a little bright handled Smith & Wesson pistol with no hammer on it and he jerked this pistol out and emptied it.

Q Which direction was he pointing this pistol?

A Right towards the car.

Q Did you see this man Adkins when he was shot?

A I saw him after he was shot because Martin walked up there and shoved him with his foot.

Q Martin and Wordlow was together?

A Yes sir.

Q And they were shooting right at the car?

A Right at the car, right up to the car, right where the white man was immediately killed; this here William Wordlow was pointing his gun right there.

CROSS EXAMINATION

Q Where were you?

A Where was I when the shooting started first--well I was right in that little flew where the bridge crosses, and I walked up to the tree, right on by the tree and walked on towards the car, and they was shooting in there so fast, I walked up to that little tree, I don't know whether it was a gum tree or what it was, but I backed up to that tree to keep him from shooting me, and I says this is your friend, and he says back back out of the way, and they was shooting them shot guns and rifles, shooting around there scan'lous.

Q You have been convicted of murder in the first degree?

A Yes sir.

Q For the killing of this white fellow at the church, Mr Adkins?

A Yes sir.

Q When was the first time you saw Will Wordlow at the church?

A I seen him when the shooting started, he was coming right straight--

Q Where were you when the shooting started?

A At the corner of the fence in this buggy.

Q Do you know where that culvert is that goes under the railroad trestle?

A That trestle?

Q Yes?

A The trestle aint far from the bridge, the same slough that the bridge crosses, that's where the trestle crosses at, you

72
see the slough runs kinder angling that way.

Q Wasn't Wm. Wordlow at that trestle?

A If Wm Wordlow was at the trestle--when I saw him he was in the road coming right towards the car shooting.

Q How long after the first shot was it before you saw William?

A Whenthe first shot fired, in about 5 minutes him and Martin come past.

Q It was at least 5 minutes from the time the first shot was fired until you saw Wm Wordlow?

A Yes sir.

Q How many shots were fired before you saw Wm. Wordlow?

A O, I couldn't tell you.

Q About a hundred?

A Looked like about that many, because them men that had them long rifles they broke and run out of the church and they went to shooting.

Q There was at least 100 shots fired in the direction of the deceased before you saw William Wordlow?

A Yes sir, about that many any how.

Q And there was at least five hundred from the time the first shot was fired before you saw Wm. Wordlow?

A When I did see William and Martin?

Q From the first shot?

A They said these Becoe boys--

Q Wasn't you there when the first shot was fired?

A I was at the corner of the fence when the first shot was fired; they throwed the flash light before the first shot was fired because I backed up, and I heard one of the boys say we don't allow nobody here, and the shot was made that ~~quax~~ quick.

Q Did the shooting come from the direction of the car?

A It was not from the automobile, if any shot was made from the automobile I don't know nothing about it.

Q How far was William Wordlow from the automobile when you first saw him?

A He was about as far from the bridge where the car was setting to that little place right there, that runs across there.

Q Those banisters there?

A Yes sir.

Q About 30 feet from the automobile when you saw him?

A Yes sir, he was just about 30 feet from the car.

Q Who was with him?

A John Martin.

Q Anybody else?

A I didn't see nobody else, nothing but them two.

Q How far were you from them?

A They was right in the road and I was at the little gum tree in the bushes.

Q Did you hear William Wordlow tell anybody to shoot?

A No sir, I didn't hear him tell nobody to shoot; but I know him and Martin was coming up there shooting, because that automatic was shootin' so fast every man got out of the way of that thing.

Q As a matter of fact Adkins was killed and dead before you ever saw this defendant make a shot wasn't he?

A Yes sir.

Redirect Examination.

Q They came right up in the road towards the car shooting though

did they?

A Yes sir, and that automatic was shooting so fast I got out of the way.

Q You know whether Mr Adkins was dead before they shot him or not?

A I don't know, but he was lying down

Q You don't know whether they helped to finish him with the shot guns and pistol or not?

A No sir, but I know they come shooting up the road at the car.

Q Bid you hear any one say let's take another shot at the man there?

A No sir.

Q You were a guard there that night?

A Yes sir.

Q What was William Wardlow and John Martin's business, were they guards there that night?

A Yes sir.

Q All of you men out there had guns?

A They put out 30 mens to guarding.

Q Where did all of them go?

A All around the church, some on the lefthand side and some on the right hand side and some standing out in front.

Q What did they instruct you in that lodge that night to do, when you went out there?

I object to that.

Objection overruled.

Note an exception.

A When they put us out there they says don't let nobody

come up here unless they give you the pass word.

Counsel for Deft: Who said that?

A Ed Ware and Jimm Miller.

Q That was inside of the house before you went out?

A Yes sir.

Q And this fellow Will Wordlow was one of the guards?

A Yes sir.

Q Those were the instructions given to you and other guards that went out there?

A Yes sir.

Q And those instructions were what?

A Not to let nobody pass unless they give the pass word.

Q These men that drove up in the car didn't give the pass word?

A No sir (laughs), didn't give no pass word.

Q What did they tell you, in case they didn't give the pass word, anyone?

A Told us for just to kill them, don't let them come in there, and this Ware and this old man told us--

Q That old man that got killed, that 80 year old negro--

A He was the man, standing up in the chair and calling the men and telling them to go out.

Q Giving orders and telling them what to do?

A Yes sir.

Q What was the pass word?

A "We've just begun"

Q And the shooting began just as soon as these fellows came up there and couldn't give the pass word?

A You are right.

Recross Examination.

Q Did this defendant ever give any orders?

A I didn't hear him give no orders.

Q He was not one of the leaders in the lodge?

A No sir.

Q And he was not an officer in the lodge?

A No sir.

Q He had nothing to do with the management of the lodge?

A No sir, all he had to do was to follow their commands, when they told him what to do he went and done it.

Q All you know about it is that he was present that night?

A Yes sir.

Q And he guarded out there at the bridge?

A Yes sir.

Q And fired his gun?

A Fired his gun.

(witness excused).

E.M.Pipkin, having first been duly sworn, was called as a witness by the State and testified as follows:

Q Were you present down here in the County Judge's office, down stairs, with Mr Burke and others when they were trying to find out the facts about the killing, about this trouble?

A Yes sir.

Q Was the defendant, Wordlow, before you people down there, and did he make any statement in your presence as to what part he took in it?

A Yes sir.

Counsel for Deft: I would like to ask him a few questions, your honor.

Court: Alright.

Q You are the deputy prosecuting attorney?

A Yes sir.

Q- This hearing took place before the municipal court judge?

A Well, he was present.

Q And the defendant was brought in before you all ~~xxxx~~ by an officer, or deputy sheriff?

A No sir, I think he was brought in by one of the soldiers.

Q Did you make any promises or threats, in case he didn't answer your questions?

A No sir, I didn't, and no one else there with me.

Q Do you know whether or not he was ever cursed in any manner prior to bringing him before that body?

A Not to my knowledge.

Q If he was you don't know anything about it?

A I do not.

Q Was his statement voluntary or--

A It had every appearance of being voluntary, there was no coercion at the time.

Q You didn't make any promise of immunity to him did you?

A No sir.

(end of Mr Seemes' inquiry).

Q Now Mr Pipkin, tell the jury what he said with reference to the part he took in the killing of Mr Adkins?

A He said that he got there, as I remember it about 10 o'clock, and that he brought a shot gun with him, and that he was one of the outer guards and that he was stationed out in front of the church, or in the road there somewhere, I don't exactly remember, but I do remember that he said he was there with a shot gun and was one of the outer guards. I don't remember whether he made any statement about whether he shot or not.

Q He did admit that he was there as an armed guard and was there present at the time of the shooting?

A Yes sir, he did.

(no cross Examination)

State Rests.

Defendant Rests.

THIS WAS ALL THE TESTIMONY IN THE CASE.

INSTRUCTIONS

ORAL

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

"Gentlemen of the jury, Will Wordlow has been indicted charged with murder in the first degree, and under this indictment it is sufficient, if the proof justifies it, to convict the defendant of murder in the first degree, or to convict him of manslaughter or to acquit him. 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 manifest 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 defendant, 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 ~~committed~~ perpetrated by means of poison or by lying in wait, or by any other kind of wilfull, deliberate, malicious 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 precede and cause 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 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 do exist and precede the killing. The distinction, gentlemen, between murder in the first degree and murder in the second degree is, there need not be a specific intent to take human life at the time the fatal shot is fired, nor need there be any ~~premeditation~~ premeditation or deliberation in murder in the second degree.

"The state is required to prove all of the material allegations in the indictment and to prove them to your minds beyond a reasonable doubt. The defendant is presumed to be innocent and that presumption attends and protects him until such time as it is overcome by legal and competent evidence upon the part of the state.

"It is not necessary that you should find from the evidence in the case that the defendant actually fired the shot that took the life of Mr. W. A. Adkins, but if you should find from the evidence, beyond a reasonable doubt, that the defendant was present, aiding, assisting, advising and encouraging in the shooting, then you will find him guilty as charged in the indictment

21

"You gentlemen are the sole and exclusive judges of the evidence, that is the facts in the case and the credibility of the witnesses. If you find the defendant guilty as charged in the indictment, there are two forms of verdict, one of which is: "We, the jury, find the defendant, Will Wordlow, 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 you return that kind of a verdict the law fixes the punishment at death by electrocution. The other form of your verdict is: "We, the jury, find the defendant, Will Wordlow, guilty as charged in the indictment, of murder in the first degree and fix his punishment at life imprisonment in the state penitentiary".

"The punishment for murder in the second degree, is not less than five nor more than 21 years in the penitentiary. And if, upon the whole case, you entertain a reasonable doubt of the defendant's guilt, you should give him the benefit of that doubt, and in that event the form of your verdict would simply be: "We, the jury, find the defendant not guilty".

To which oral instruction of the Court to the jury, counsel for defendant, at the time, duly excepted and caused his exceptions to be noted of record.

THESE WERE ALL THE INSTRUCTIONS IN THE CASE.

Thereupon the jury retired to consider ~~of~~ its verdict and presently returned into court the following verdict:

VERDICT

"We, the jury, find the defendant, Will Wordlow, guilty as charged in the indictment.

Fred Seeman,

Foreman".

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

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