

law in this case, the defendant did not have to go into the question of his good character for peace and quietude and law and order, and in that event the State likewise could not have gone into the character of the prisoner, but since the prisoner did place his character in issue, with reference to peace and quietude and law and order, and should the jury find the defendant's good character, in that regard, if such has been shown, special weight should be given in determining as to the guilt or innocence of the accused, and such good character, if shown, might alone raise a reasonable doubt in the minds of the jury as to the guilt or innocence of the accused, and in that event the jury should find the defendant, Clarence Stephenson, not guilty.

Objected to by State.

Given
NAAMAN JACKSON
Judge

" STATE

VS:

CLARENCE STEPHENSON

DEFENDANT'S INSTRUCTION NO. 13.

The court further instructs the jury that the defendant, Clarence Stephenson, was a competent witness in his own defense, and that the jury cannot arbitrarily disbelieve his evidence simply because he is the defendant, and the jury

is further instructed that it should weigh the evidence of the defendant under the same rules that it would weigh the evidence of any other witness. They should take into consideration in weighing such evidence, his ability and opportunity for knowing the things concerning, which he has testified.

Given
NAAMAN JACKSON,
Judge.

"STATE

VS:

CLARENCE STEPHENSON

DEFENDANT'S INSTRUCTION NO.14.

The court further instructs the jury that in weighing the evidence of any witness or considering any fact or circumstance in the case, if there is a reasonable doubt in the minds of the jury as to the truthfulness of such evidence, or as to any fact or circumstance in the case, it is the duty of the jury to take the side of safety and resolve such doubt in favor of the accused and to adopt that theory most favorable to him.

Objected to by State

Given
NAAMAN JACKSON
Judge

STATE

VS:

CLARENCE STEPHENSON

DEFENDANT'S INSTRUCTION NO.15.

The court further instructs the jury that if there are two or more theories based upon the evidence as to the guilt or innocence of the accused and either theory is consistent with his innocence and the jury is in doubt as to which theory to adopt, then and in that event it is the duty of the jury to take the side of safety and adopt that theory most favorable to the prisoner and find him not guilty.

Objected to by State.

Given
NAAMAN JACKSON
Judge

*STATE

VS:

CLARENCE STEPHENSON

DEFENDANT'S INSTRUCTION NO.16.

The court instructs the jury that the failure of the evidence to disclose any other criminal agent than the

accused is not a circumstance which may be considered by the jury in determining whether or not he is guilty of the crime wherewith he is charged. The prisoner is presumed to be innocent until his guilt is established and he is not to be prejudiced by the inability of the state to appoint any other criminal agent, nor is he called upon to vindicate his own innocence by naming the guilty person.

Objected to be State.

Given
NAAMAN JACKSON
Judge.

*STATE

VS:

CLARENCE STEPHENSON

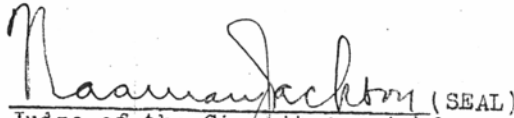
DEFENDANT'S INSTRUCTION NO.17.

The court further instructs the jury that the instructions given are all the instructions of the court, and must be considered as a whole.

Given
NAAMAN JACKSON
Judge.

to the ruling of the court in refusing to give said instructions Numbers 1, 2, 9, 10 and 11, the said defendant at the time excepted; and inasmuch as the matters and things hereinbefore set out do not fully appear of record, the defendant tenders to the undersigned Judge of the said Circuit Court of Logan County, West Virginia, who presided at the trial of said case, this his Bill of Exceptions, marked for identification, "Bill of Exceptions No.3", and prays that the same may be signed, sealed and saved to him and made a part of the record in this case, which is accordingly done this the 23 day of February, 1933, within the time granted by the court for the signing of Bills of Exceptions.

Given under my hand and seal this the 23 day of February, 1933.



Judge of the Circuit Court of
Logan County, West Virginia

BILL OF EXCEPTIONS NO.4.

In the Circuit Court of Logan County, West Virginia.

STATE OF WEST VIRGINIA

VS: MURDER

CLARENCE STEPHENSON, Defendant.

BE IT FURTHER REMEMBERED: That upon the trial of the above entitled cause, after the jury was sworn to try the issue joined in this cause, the state, to prove and maintain the said issue on her part, offered to introduce the following evidence:

The following questions were asked the witness, Roy Hall, while he was being examined as a witness by counsel for the State, as shown by the transcript of the testimony which is set out in the defendant's Bill of Exceptions No. 1, which is hereby referred to and made a part of this Bill of Exceptions. (See Pages 258 and 259, of the Record).

* Q You grabbed Frank Gibson? A Yes, sir
Q What did you do with Frank? A I jerked him.
Q Did you say anything to him? A Yes, sir
Q What did you say?
Q What did you say to Frank Gibson when you grabbed him and jerked him off the road?

A I says, "Frank, you had better watch out",
I said, "that nigger liked to have hit you."

To which questions and the answering thereof the defendant objected, which objection was overruled and the witness was permitted to answer said questions, to which ruling of the court the defendant excepted.

While L. P. Hager, a witness for the State, was being cross-examined by counsel, ^{for the defendant,} as shown by the transcript of the testimony which is set out in the defendant's Bill of Exceptions No. 1, which is hereby referred to and made a part of this Bill of Exceptions, (See Record, Page 337, 338 and 339), the following questions were asked and the following answers were made, as shown by said Bill of Exceptions No. 1:

" Q And that is a virtual admission, and was at the time, that you didn't have any evidence to convict anybody, wasn't it?

JUDGE DAMRON: We object to that, your Honor.

THE COURT: I am going to sustain the objection.
He need not answer it.

(Exception saved by the defendant.)

BY MR. CHAMBERS:

Q Mr. Hager, do you know a man by the name of Bill Young? A I am not sure whether I do or don't.

Q Did you talk with a colored man after this reward was posted who claimed to have seen this defendant on Trace Mountain throw the body over the bank?

A No, sir

Q Did you talk with that girl--Brown girl--Myrtle Brown? Did you talk with her?

MR. CHAFIN: We object to that unless they intend to follow it up and connect it with something material in this case.

THE WITNESS: I think that would be in the nature of a conversation--

MR. CHAMBERS: Let me ask you this: --

MR. CHAFIN: Let's have a ruling on this other first. THE COURT: Are you going to withdraw the question?

MR. CHAMBERS: No.

THE COURT: I will sustain it, then.

(Exception saved by the defendant.)

BY MR. CHAMBERS:

Q I will ask you this, Mr. Hager, if there wasn't a woman named Myrtle Brown that appeared here at the preliminary trial and told you and Mr. Scaggs she was walking back from Trace Mountain on the night of this supposed murder, and that she saw Clarence Stephenson go up the hill with a woman in the car?

JUDGE DAMRON: That is another improper question.

THE WITNESS: Your Honor--

THE COURT: I am going to sustain the objection.

MR. SCAGGS: Myrtle Brown left here long before the reward was offered.

MR. CHAFIN: She is not here as a witness today.

MR. CHAMBERS: You gentlemen had her and knew what story she told you.

MR. CHAFIN: Yes, sir, and we didn't put her on the witness stand because we knew she was lying about it.

THE COURT: I will sustain it. All the questions and answers in regard to this Brown woman will be stricken, and the jury may disregard it when you go to your room to make up your verdict.

To which ruling of the court in refusing to permit the witness to answer the questions propounded and the striking from the consideration of the jury all the questions and answers in regard to the Brown woman, the defendant at the time excepted.

The defendant placed on the witness stand a witness by the name of John Conley. At the conclusion of his testimony counsel for the defendant stated that was all. Thereupon the following took place: (See Record, Page 528).

JUDGE DAMRON: All of what ?

MR. CHAMBERS: That is all of his examination.

JUDGE DAMRON: There is nothing to cross-examine him on. MR. CHAMBERS: I move to strike that remark from this jury, your honor.

THE COURT: Well, it may be stricken.

MR. CHAMBERS: And ask the jury not to consider it.

THE COURT: The jury will not consider it.

JUDGE DAMRON: Your honor, we do not care to cross-examine him.

MR. CHAMBERS: Those remarks are highly improper and should not be made.

JUDGE DAMRON: Your honor, I don't know it, and I would not say it if it were. It is a difference of opinion. "

While the witness, Harry Robertson was being examined by defendant's counsel, as shown by the transcript of the testimony which is set out in the defendant's Bill of Exceptions No. 1, which is hereby referred to and made a part of this Bill of Exceptions, the following question was asked him:

Q-"Now, you told the jury on your direct examination that you had been intimate with the deceased, and told about some of the trips that she went ^{out} with you fox-hunting or elsewhere. I want you to tell the jury whether or not you know of her intimate relations with any other man? "

To which question and the answer thereof the State objected, which objection was sustained and the witness was not permitted to answer said question, to which ruling of the court the defendant excepted. (See Record, page 546).

While the defendant, Clarence Stephenson, was being cross-examined by counsel for the state, as shown by the transcript of the testimony which is set out in defendant's Bill of Exceptions No. 1, (see Record, Page 775 and 776), which is hereby referred to and made a part of this bill of Exceptions, the following question was asked him:

" Q Isn't it a fact that on that night when you were looking for Mrs. Thurman with that Ford sedan you picked her up here in the City of Logan and pretended to her that Harry Robertson was waiting for her on Trace Mountain?

A That is not a fact.

Q Wait until I finish the question. And didn't you take her up onto Trace Mountain there and try to force her to have intercourse with you? "

To which questions and the answering thereof the defendant objected, which objection was overruled and the witness was permitted to answer said question, to which ruling of the court the defendant excepted and the witness answered as follows:

" A It is a fact that I never seen Mrs. Thurman that night at all. "

Thereupon counsel for the defendant moved the court to strike the question and the answer because the Prosecuting Attorney was drawing upon his imagination and doing so without any evidence to predicate such question upon. The court overruled the objection, to which ruling of the court the

defendant at the time excepted.

While the defendant, Clarence Stephenson, was being cross-examined by counsel for the State, as shown by the transcript of the testimony which is set out in the defendant's Bill of Exceptions No. 1, at page 782, which is hereby referred to and made a part of this Bill of Exdeptions, the following question was asked him:

" Q Do you tell this jury that you have had improper relations with her?"

To which question and the answering thereof the defendant objected, which objection was sustained and the witness was not permitted to answer said question.

Just a moment later (See Record, page 783), the following question was propounded by counsel for State:

" Q Well, what do you say now about it? Do you say you did have or didn't have ? "

To which question and the answering thereof the defendant objected, which objection was sustained and the witness was not permitted to answer said question.

while the defendant, Clarence Stephenson, was being further cross-examined counsel for the State produced what purported to be a written statement sworn to and signed by the defendant, and began to read from said purported written statement and propound certain questions relative to the defendant having improper relations with the deceased, which

questions and answers thereto are as follows:

" Q You told the jury a while ago that you had not told Mr. Robertson, if I understand, on Saturday night, that you had had improper relations with Mrs. Thurman, and that she was not his equal. Now you say you don't remember whether you did or not; and reading from this statement I will ask you if you did not make this answer: "I told Mr. Barry this on last Saturday night, that he ought to quit this woman, because she wasn't his equal, and he asked me what did I mean, and I told him that other men had intercourse with her and that I had, and that she also told me that she had got ten dollars out of it." There is a part there, your honor, just a word or two, I left out. I don't like to read it here.

THE COURT: Leave it out.

BY MR. CHAFIN:

Q (continuing) "He asked me did she tell me this, and I told him she absolutely did. He asked me why would I have intercourse with her and I told him because she rubbed it on and was willing, and he asked me did I know of these other fellows, and I told him I did not, but that I seen her getting into a brown Chevrolet sedan. He asked me if I knew the man, and I told him I did not. He asked me if I would know the car again and I told him I would not, because there was too many alike. He asked me to get the license number of the car I seen her get in, and I told him I would try to do so. He also told me to kind of watch around and see who she would

get in cars with and let him know." Now tell the jury whether or not you made that statement.

To which questions and the answering thereof the defendant objected, which objection was overruled and the witness was permitted to answer said question, to which ruling of the court the defendant excepted, and the witness answered as follows:

" A I don't remember making all that statement."

While the defendant, Clarence Stephenson, was being further cross-examined as shown by the transcript of the testimony, which is set out in the defendant's Bill of Exceptions No. 1, which is hereby referred to and made a part of this Bill of Exceptions, the following question was asked him: (See Record, Page 785).

" Q I will ask you, then, this question: "Did you on that occasion make this part of the statement I have just read to you: "I told Mr. Robertson that she was not his equal; that I (meaning yourself) had had improper relations with her and he ought to break away from her." Did you make that part of the statement, or anything in words or substance like that?"

The defendant objected to this question and the answering thereof, which objection was overruled and the witness was permitted to answer said question, to which ruling of the court the defendant excepted and the witness answered as follows:

" A I don't remember whether I made that statement or not, Mr. Chafin."

The witness, C. A. Thompson, was asked the following question while he was being examined by counsel for the State, as shown by the transcript which is set out in Defendant's Bill of Exceptions No. 1, page 793, which is hereby referred to and made a part of this Bill of Exceptions.

" Q At the time his nose bled or commenced bleeding, was there anything said to him immediately before that as to his having raped Mamie Thurman out on the hill on Tuesday night? "

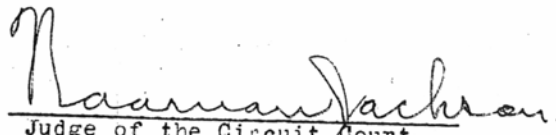
To which question and the answering thereof, the defendant objected, which objection was overruled by the court and the witness was permitted to answer the question, to which ruling of the court the defendant excepted and the witness answered said question as follows:

" A That question was asked him but his nose commenced bleeding and he never did answer it."

To all of which rulings of the court, overruling objections to questions, allowing the same to be answered and to remarks of counsel representing the State and to the rulings of the court in refusing to strike from the record the statements of witnesses and in sustaining objections to

questions and refusing to permit witnesses to answer same, the defendant by his counsel excepted, and tenders this, his Bill of Exceptions No. 4, which he prays may be signed, sealed and made a part of the record in this cause, and the same is accordingly done this the 23 day of February, 1933, and within the time granted by the court for the signing of Bills of Exceptions.

Given under my hand and seal this 23 day of February, 1933.



Judge of the Circuit Court
of Logan County, W. Va.

BILL OF EXCEPTIONS NO. 5.

In the Circuit Court of Logan County, West Virginia.

STATE OF WEST VIRGINIA,

VS: MURDER

CLARENCE STEPHENSON, Defendant.

BE IT FURTHER REMEMBERED: That after all the evidence had been introduced before the jury and both the State and defendant had rested and the court had given to the jury certain instructions as the law in the case, counsel representing both the State and the defendant argued the case before the jury. John Chafin, special counsel representing the State, made the closing argument on behalf of the State, and in the course of his argument made the following statement:

"She trusted him. Clarence Stephenson has his passions the same as any other man. He had been hauling this woman out in that automobile on different occasions. He knew they had a date to take her out that night; but Clarence Stephenson cancelled that date. He was out there looking for her, according to his own evidence, with that Ford automobile until almost nine o'clock that night. This evidence shows, to my mind, gentlemen of the jury, that he found that woman there and has told her that Harry Robertson was on trace

Mountain waiting for her, and that woman would have gone anywhere with you under those circumstances. He has done that for the purpose of having improper relations with her; he has taken her up on that mountain with that believe; he has tried to force himself upon her, gentlemen of the jury, she has resisted, and Clarence Stephenson, in that brutal manner, shot her brains out, cut her throat and broken her neck. I can't see anything else, gentlemen of the jury, in this case but that. You bring in here tonight a verdict of not guilty and maybe tomorrow night your wife--

MR. CHAMBERS: We except to that.

THE COURT: You need not go into that, Mr. Chafin.

MR. CHAFIN: All right, your Honor. Whoever committed that crime, gentlemen of the jury, was very beastly, wasn't he? Where do we find that shoe and that hat? Thrown some forty or fifty feet away from the main body. Where do we find that pocketbook? Did you examine that pocketbook that had lain out there all that time and was perfectly dry, and it was one of the hardest rains you ever saw? Listen, gentlemen of the jury: Mr. Chambers told you about Myrtle Brown's evidence. I want to say to you gentlemen of the jury that we examined Myrtle Brown. I didn't believe Myrtle Brown's story, and for that reason we never put her on this witness stand. We had two or three others that told us the same kind of story, but we traced it down and checked up on it, gentlemen of the jury, but we

did not believe it, and for that reason we never put them on this witness stand.

I have been practicing criminal law for about twenty-five years, and if I can't convict a man of a crime except by bringing in evidence I won't believe, I won't ask a jury to believe it. We have brought to the jury evidence we have considered worthy. We have not put a thing before you but what I believe to be absolutely the honest truth. You can discard the evidence of every witness you want to in this case, if you care to discard the evidence of any witness that testified in this case, you can take the circumstances and they alone are sufficient to break the neck of Clarence Stephenson. Gentlemen, I thank you for your attention. *

The defendant, by counsel, at the time excepted to said statements so made and inasmuch as the matters and things hereinbefore set out do not fully appear of record the defendant tenders to the undersigned, Judge of said Circuit Court of Logan County, West Virginia, who presided at the trial of said case, this his Bill of Exceptions, marked for identification, "Bill of Exceptions No. 5" and prays that the same may be signed, sealed and saved to him, and made a part of the record in this case, which is accordingly done this the 23 day of February, 1933, and within the time given by the court in which said Bills of Exceptions might be signed.

Given under my hand and seal this 23 day of

HERMAN N. PUGH
SHORTHAND REPORTER
HUNTINGTON, W. VA.

February, 1933.

Naaman Jackson (SEAL)

Judge of the Circuit Court of
Logan County, West Virginia

BILL OF EXCEPTIONS NO.6.

In the Circuit Court of Logan County, West Virginia.

STATE OF WEST VIRGINIA,

VS: MURDER

CLARENCE STEPHENSON, Defendant.

BE IT FURTHER REMEMBERED: That the defendant, Clarence Stephenson, is a colored man and a resident of Logan County, West Virginia; that the jury commissioners of said county in making up a list of persons to serve as grand jurors for the year 1932 failed to include in the list any colored persons; that at the time the list was made there resided in Logan County one thousand or more negroes, who were registered voters and qualified under the laws of the United States and the State of West Virginia to serve as grand jurors; that the reason the Commissioners excluded negroes from the list was solely on the ground of their race and color; and that such discrimination denied the defendant, Clarence Stephenson, as a member of that race, the equal protection of the law guaranteed by the constitution.

AND BE IT ALSO REMEMBERED: That the jury commissioners of said Logan County, in making up a list of persons to serve as petit jurors for the year 1932, likewise failed to include

in the list any colored persons; that at the time the list was made there resided in Logan County one thousand or more negroes who were registered voters and qualified under the laws of the United States and the State of West Virginia to serve as petit jurors; that the reason said jury commissioners excluded negroes from the list was solely on the ground of their race and color; and that such discrimination denied him, the said Clarence Stephenson, as a member of that race, the equal protection of the law guaranteed by the constitution.

And inasmuch as the matters and things hereinbefore set out do not appear of record, the defendant tenders to the undersigned Judge of said Circuit Court of Logan County, West Virginia, who presided at the trial of said case, this his Bill of Exceptions, marked for identification, "Bill of Exceptions No.6" and prays that the same may be signed, sealed and saved to him, and made a part of the record in this case, which is accordingly done this the 23 day of February, 1933, and within the time given by the court in which said Bills of Exceptions might be signed.

Given under my hand and seal this 23 day of February, 1933.

Naaman Jackson (SEAL)
 Judge of the Circuit Court of
 Logan County, W. Va.