

643

Notice: This Bond must be signed with Ink and will not be approved if signatures are made with Pencil.

APPEARANCE BOND

THE STATE OF ALABAMA

Baldwin County

THE

J.P.

COURT OF *Baldwin* COUNTY

We,

Walter S. Jones Principal,

and

sureties, agree to pay to the State of Alabama

One Hundred

Dollars,

unless the said

appears before the

J.P.

Court of

Baldwin County

on the *16*

day of

March

194*3*,

and from day to day, and from term to term, thereafter, until discharged by due course of law, to answer a criminal prosecution for the offense of

And we, and each of us, hereby waive all rights of claim of exemption we or either of us have now, or may hereafter have, under the Constitution and Laws of the State of Alabama, and we hereby severally certify and solemnly swear that we have property free from all encumbrance, to the full amount of the above bond.

Witness our hands and seals this _____ day of _____ 194 _____

Approved this the _____ day of _____

, 194 _____

Arresting Officer.

By _____

Sign Top Line

NAME

ADDRESS

W. S. Jones (L. S.)

(L. S.)

(L. S.)

(L. S.)

WARNING

Any person who willfully violates the above written bond, and fails to appear on the date and time set, shall be guilty of a misdemeanor punishable by fine and imprisonment regardless of the disposition of the charge above made.

627

The State of Alabama,
Baldwin County.

Justice Court of Chocoma
Precinct No. 4, Bay Minette Ala.

To Any Sheriff of the State of Alabama:
You are hereby commanded to summon

J. Kendrick & D. D. Rippen

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office, on the 20 day of Mar 1933 and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and H. S. Solomon

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15 day of Mar A. D. 1933
W. S. Crawford

Notary Public and ex-officio J. P.

Executed in Full thro
3/15/43

W R Stuart Sheriff
By Cha by Nell D

1

THE STATE OF ALABAMA } CIRCUIT COURT, Spring TERM, 1943
Baldwin County }

The Grand Jury of said County charge that before the finding of this indictment Mack Desilvey, alias Mack De Silvey unlawfully and with malice aforethought, killed Ruby Desilvey, alias Ruby De Silvey, alias Ruby Sims, by some means to the Grand Jury unknown;

against the peace and dignity of the State of Alabama.

Ralph L. Jones

Solicitor of the Twenty-first Judicial Circuit.

No. _____

RECORDED

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

Spring Term, 1943

THE STATE

vs.

Mack Desilvey, alias

Mack De Silvey

INDICTMENT

Murder, First Degree

No Prosecutor

WITNESSES:

Willis Colbert,

Ed Hammons,

Lillian Colbert

Hamp Catrett

Trudie Colbert

J. L. Barrow

Marvin Turberville

Mrs. Marvin Turberville

Clara Booth

Rachael Howady (Widow)

Lucy Desilvey

Theresa Folsie

Albert Baggett

A. P. Pruitt

Taylor Wilkins

W. R. Stuart

Dr. Nelson E. Grubbs

GRAND JURY NO. 1

A TRUE BILL.

Henry Bryars
Foreman Grand Jury.

Filed in open Court and in the presence of
the Grand Jury on the 14th day of

April, 1943.

Rodrick, Clerk.

Presented in open Court to the presiding
Judge by the Foreman of the Grand Jury, in
the presence of 7 other Grand Jurors.

Rodrick, Clerk.

Bail fixed at

Judge

~~Let the Jury
find the defendant guilty as
charged in the indictment
murder first degree
sentenced to electric chair
James Alex Bertalla~~

We, the jury, find the defendant
guilty of Murder in the first degree
as charged in the indictment and
fix his punishment at death by
electrocution.

James
Alex Bertalla

ORIGINAL---STATE SUBPOENA

MOORE PRINTING COMPANY BAY MINETTE, ALA.

THE STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643.

Term, _____

April. 1943

To Any Sheriff of the State of Alabama :

You are Hereby Commanded to Summon Willis Colbert.

Lillian Colbert.

Trudie Colbert

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April. 1943, at 8:30 a. m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack Desilvey.

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A.D., 1943.

R. S. Duck
R. S. DUCK, Clerk.

Received in office 4-19 1943

Executed this 22 April 1943

By Summers

Willie Colbert
Sullivan Colbert
Fredrick Colbert

ORIGINAL

For _____

No. 643. Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY
CIRCUIT COURT

THE STATE

vs.

Mack DeSilvey.

STATE SUBPOENA

Issued this 15th day of

April. 1943

E. E. Nicholas
Sheriff.
Monroe County

R. Duch
Clerk.

STATE OF ALABAMA,
BALDWIN COUNTY.

DEATH WARRANT.

I, R.S. DUCK, clerk of the circuit court of Baldwin County, Alabama, do hereby certify that on the 28th day of April, 1943, a petit jury of Baldwin county, Alabama, rendered a verdict finding the defendant MACK DESILVEY alias MACK De SILVEY Guilty of Murder in the first degree, and further found that the said MACK DESILVEY alias MACK De SILVEY, suffer death by electrocution, and that on the ~~28~~ 30 day of April 1943, the circuit court of Baldwin County, Alabama, in open court adjudged the said MACK DESILVEY alias MACK De SILVEY, guilty of murder in the first degree as charged in the indictment, and sentenced the said MACK DESILVEY, alias MACK De Silvey, to suffer death by electrocution, on the 11 day of June 1943.

NOW THEREFORE, the Warden of Kilby Prison at Montgomery, Alabama, is hereby commanded to proceed on the 11 day of June 1943, at sometime before the hour of sunrise on the 11 day of June 1943, inside the walls of Kilby Prison of the State of Alabama, in a room or place designated for the purpose of executing the sentence of death on convicts, to put the said MACK DESILVEY, alias MACK De SILVEY, to death, by causing to pass through the body of the said MACK DESILVEY, alias MACK De SILVEY a current of electricity of sufficient intensity to cause death and applying and continuing said current until the said MACK DESILVEY, alias MACK De SILVEY, is dead.

Herein fail not and make due return of this Warrant with your endorsement thereon showing how and when you have executed the same.

IN WITNESS WHEREOF, I Have hereunto placed my name as clerk of the Circuit Court of Baldwin County, Alabama, and affixed the seal of the said Court on this the 30 day of April 1943.

Clerk of the Circuit Court of Baldwin County,
Alabama,

STATE OF ALABAMA,)
BALDWIN COUNTY.)

It is considered and adjudged by the Court that you, MACK DESILVEY, alias MACK DeSILVEY, are guilty of MURDER in the First Degree, as charged in the indictment, and that the State of Alabama, for the use of Baldwin County, have and recover of you, MACK DESILVEY, alias MACK DeSILVEY, the costs of this prosecution, and that the Warden of Kilby Prison at Montgomery, Alabama, or in case of his death, disability or absence, his deputy, shall at anytime before the hour of sunrise on Friday, the 11th day of June, 1943, inside the walls of said Kilby Prison at Montgomery, Alabama, in a room arranged for the purpose of Electrocuting convicts sentenced to death by electrocution, cause to pass through your body, MACK DESILVEY, alias MACK DeSILVEY, a current of electricity of sufficient intensity to cause your death, and the application and continuance of such current through your body until you, MACK DESILVEY, alias MACK DeSILVEY, be dead.

And may God Almighty have mercy on your soul.

It being made to appear to the Court that the defendant has heretofore broken jail and has on two or more occasions attempted suicide, the Sheriff of Baldwin County, Alabama is ordered to remove this convict to Kilby prison for safe keeping -

Defendant having given notice of appeal this sentence is suspended pending appeal

This Jul 30th 1943 -

J. W. Hare
Judge

THE STATE OF ALABAMA,
Baldwin County }

No. 1

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon Willis Tolbert ✓
Lillian Tolbert

to be and appear on the 12 day of April, 1943, before the Grand Jury of said County, at the Court House thereof, then and there to testify and give evidence on behalf of the State of Alabama. Herein fail not, and make due return of this writ with your endorsement thereon.

Witness my hand this _____ day of _____ A. D., 194_____

R. Luck Clerk.

ORIGINAL

No. 1

GRAND JURY SUBPOENA

I have executed this Subpoena by serving a copy thereof on the following persons, to-wit:

Willie's Robert
Lillian Robert

this 8 day of April, 1943

E. E. Nichols, Sheriff

THE STATE OF ALABAMA,
Baldwin County }

No. 1

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon

Trusa De Sisey Folsom
359th Michael St

to be and appear on the 12th day of April, 1943, before the Grand Jury of said County, at the Court House thereof, then and there to testify and give evidence on behalf of the State of Alabama. Herein fail not, and make due return of this writ with your endorsement thereon.

Witness my hand this 30th day of March A. D., 1943

R. D. Duct

Clerk.

Folsom 74 Bush

829
FD

ORIGINAL

DeSilvey

No. 1

12

GRAND JURY SUBPOENA

I have executed this Subpoena by serving a copy thereof on the following persons, to-wit:

Jesse DeSilvey Folsom

3817

this 8 day of April, 1943

W. H. Holcomb Sheriff

Moore Printing Co., Bay Minette, Ala.

4-7-43

THE STATE OF ALABAMA, }
Baldwin County }

No. 1

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon Dr Nelson Grubbs.

to be and appear on the 12th day of April., 1943, before the Grand Jury of said County, at the Court House thereof, then and there to testify and give evidence on behalf of the State of Alabama. Herein fail not, and make due return of this writ with your endorsement thereon.

Witness my hand this 30th day of March. A. D., 1943

R. Decker

Clerk.

Mobile County

J. E. Silvey
auth

8/10/13

ORIGINAL
grubbs

No. 1

12

GRAND JURY SUBPOENA

I have executed this Subpoena by serving a copy thereof on the following persons, to-wit:

M. DeSoto

T. P.

H. S. Searched

3/28/13
Dr. Nelson Grubbs

this 9 day of April, 1913

W. H. Searched
Sheriff

4913

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

J. RENDER THOMAS
CLERK

January 13, 1944

Mr. R. S. Duck
Clerk Baldwin Circuit Court
Bay Minette, Alabama

In re: 1 Div. 206
Mack DeSilvey v. The State of Alabama

Dear Sir:

The Supreme Court today overruled the application for rehearing in the above case. No opinion was written on rehearing, but on page 8 of the opinion as originally announced December 16th, 1943, 3rd line from top of page, 16 C. J. 48 should be 16 C. J. 763. I will thank you to make this change.

Yours very truly,


Clerk, Supreme Court.

JRT:D.

Mobile County

ORIGINAL — DEFENDANT SUBPOENA

Baldwin Times, Bay Minette 3 - 24 - 39 - 1M

THE STATE OF ALABAMA }
Baldwin County. }

CIRCUIT COURT

SUB. No. 643,

Case No. _____

Term, April, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Mr Durham & Mrs Durham
171 Butler St Prichard, Ala. Mr Murry Busby Mrs Murry Busby Rt 1
Wolf Ridge Ala. Mr Davis Justice Peace, Pritchard Ala.

Ed Bertrand Police Station Mobile. Ret Smith Cafe Pritchard Ala.

Bud Palmer, Whistler Ala. Walter Ernest Spring Hill Ave Mobile.

Dr Reaves VanAntwerp Bldg Mobile.
personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court

House thereof, in Bay Minette, on the 28th day of April, 1943 at 8:30 a.m., and
from day to day of said term and from term to term thereafter until discharged, to give evidence and
the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where-

in the State of Alabama is Plaintiff and Mack Desilvey

_____ Defendant, and have you then and
there this Writ, with your endorsement thereon.

Witness my hand this 22 day of April, A. D., 1943.

R. S. Duck
R. S. DUCK, Clerk.

844
1001
Mobile County

Received in office 4/23, 1943

Executed this 4/23 + 4/24, 1943

By A. V. Farmer
Moss Bernstein

Mr. Durham

Mrs. Durham

Mr. Murray Busby

Mrs. Murray Busby

Mr. Davis

Ed Bertrand

Ret Smith

Bud Palmer

Mr. Reeves

Walter Ernest is
in the army & can
not be served

W. H. Holcomb

Sheriff.

ORIGINAL

211

For Mobile 28

No. 643.

Page

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE
Vs.

Mack Desilvey

STATE SUBPOENA

Issued this 22 day of

April., 1943

As Deek

Clerk.

4-23-43

THE STATE OF ALABAMA }
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643. Term, April. 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Mrs Dow Paul. Joe Little.

Jesse Little.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April., 1943, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where- in the State of Alabama is Plaintiff and Mack Desilvey

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 22 day of April, A. D., 1943.


R. S. DUCK, Clerk.

Baldwin County

ORIGINAL

Received in office 4/22, 1934

Executed this 4/26, 1934

By Quinn in full

For _____

No. 643, Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE
Vs.

Mack Desilvey.

STATE SUBPOENA

Issued this 22 day of

April., 19343

W. R. Stewart

Sheriff.

Clerk.

THE STATE OF ALABAMA
Baldwin County.

CIRCUIT COURT

Case No. 443

Term. April, 1933

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon

Walter Ernest Army
Spring Hill Ave, Mobile on 176 DuSelle

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April, 1933, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where in the State of Alabama is Plaintiff and Mack W. Silvey

there this Writ, with your endorsement thereon.

Defendant, and have you then and

Witness my hand this 22nd day of April A. D., 1933.

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA }
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643

Term, April, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Ce C Myers 447. E Division St
Mr Jabbo Service Sta Mgr Main & Division St.

Nick Gidridge 1008 LeeSt. Mrs Nathan Jordon. Back Bay Lumber Co
Main Office. Boloxi Miss.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court
House thereof, in Bay Minette, on the ^{28th} ~~28th~~ day of April, 1943, at 8:30 a.m., and
from day to day of said term and from term to term thereafter until discharged, to give evidence and
the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where-
in the State of Alabama is Plaintiff and Mack Desilvey.

_____ Defendant, and have you then and
there this Writ, with your endorsement thereon.

Witness my hand this 22 day of April, A. D., 1943.

R. S. Duck
R. S. DUCK, Clerk.

Received in office 4/22, 1934

Executed this _____, 193_____

By _____

ORIGINAL

For _____

No. 643. Page 6

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE
Vs.

Mack Desilvey.

STATE SUBPOENA

Issued this 22 day of

April., 19343

F.S. Luck

Sheriff.

Clerk.

THE STATE OF ALABAMA }
Baldwin County.

CIRCUIT COURT

Case No. 643 Term, April, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Mrs. Nathan Jordan
Back Bay Lumber Co, Main Office,
Biloxi, Miss

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 2nd day of April, 1943, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where- in the State of Alabama is Plaintiff and Walter W. Selvey

there this Writ, with your endorsement thereon. Defendant, and have you then and

Witness my hand this 2nd day of April A. D., 1943

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA
Baldwin County.

CIRCUIT COURT

Case No. 643 Term, April, 1923

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Nicko Gidridge
1008 Lee St., Biloxi Miss

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April, 1923, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where in the State of Alabama is Plaintiff and Maack De Silvey

there this Writ, with your endorsement thereon.

Defendant, and have you then and

Witness my hand this 27th day of April A. D., 1923.

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA }
Baldwin County.

CIRCUIT COURT

Case No. 643 Term, April, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon

Mr. Jabbo
Bilopi, Miss. (Service Sta mgr. Manist Division)

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April, 1943, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where in the State of Alabama is Plaintiff and Mackie De Silvers

there this Writ, with your endorsement thereon.

Defendant, and have you then and

Witness my hand this 27th day of April A. D., 1943

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA }
Baldwin County.

CIRCUIT COURT

Case No. 443 Term, April, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Comanded to Summon C. C. Myers
Biloxi, Miss 447 E. Division St.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April, 1943, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE DEFENDANT in a prosecution now pending in said Court, where in the State of Alabama is Plaintiff and Mark W. Silvey

there this Writ, with your endorsement thereon. Defendant, and have you then and

Witness my hand this 22nd day of April A. D., 1943

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN THE JUSTICE COURT OF
CHAS. C. HAND

Before me, CHAS. C. HAND, Justice of Peace

in and for said County, personally appeared Ben Kucera

who, being duly sworn, deposes and says on oath that he has probable cause for believing and does believe that in said County, on or about April 23, 1942, that one

M. A. De Silvey, alias M. D. De Silvey, alias Mack De Silvey,
unlawfully and with malice aforethought, killed Ruby De Silvey,
by means unknown to affiant,

against the peace and dignity of the State of Alabama

Sworn to and subscribed before me this

18th day of November A. D., 19 42

Chas. C. Hand

J. P.

Ben Kucera

THE STATE OF ALABAMA,
Baldwin County

TO ANY LAWFUL OFFICER OF SAID COUNTY—GREETINGS:

You are hereby commanded to arrest M. A. De Silvey, alias M. D. De Silvey, alias Mack De Silvey
and bring him before me to answer
the State of Alabama on a charge of murder of the first degree

and have you then and there this writ, with your return thereon

Witness my hand this 18th day of November, 19 42

Chas. C. Hand

J. P.

No. _____

Page 284

THE STATE OF ALABAMA
BALDWIN COUNTY

JUSTICE COURT OF

Carl Ward

THE STATE

vs.

M. De Silvey alias M. De Silvey

alias Mack De Silvey

WARRANT AND AFFIDAVIT

WITNESSES FOR THE STATE:

Executed this 2 day of Dec 1942

By arresting the within

named Defendant

Mack De Silvey

and holding him in jail

W.R. Stewart
Sheriff

By *C. K. Keeter, Capt of Police*
Ogden, Utah

W. R. Stewart
12-2-42

ORIGINAL---STATE SUBPOENA

MOORE PRINTING COMPANY BAY MINETTE, ALA.

THE STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643

Term, April

1933

To Any Sheriff of the State of Alabama :

You are Hereby Commanded to Summon Theresa Felse

359 St Michael St., Mobile, Ala -

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April 1933, at 8:30 a. m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack De Silver

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April A. D., 1933.

R. S. DUCK, Clerk.

Theresa Folsie
Bernstein

Received in office 4/20 1943

Executed this 4/21 1943

By ~~W. H. Halcomb~~
Mose Bernstein

By serving
Subpoena on
Theresa Folsie

ORIGINAL

For _____

No. 615 Page 28

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

THE STATE

vs.

Mack De Silvey

STATE SUBPOENA

Issued this 4-15 day of

1943

W. H. Halcomb
Sheriff.

R. S. ...
Clerk.

4-20-43

Transcript of Criminal Cases from Justices Court of Baldwin County, Ala.

ATTORNEYS	CASE	CHARGE
No.	<p>THE STATE OF ALABAMA</p> <p>vs.</p> <p><i>MA De Silvey - alias MD De Silvey</i> <i>alias Mack De Silvey</i></p>	<p><i>Murder of the first degree</i></p>
	<p>DISPOSITION OF CASE</p> <p>Affidavit made and Warrant issued to</p> <p>Returnable</p> <p>Witness--for State</p> <p><i>Mrs. M. M. Jones</i> <i>Everett Wilcox</i> <i>Willie Colbert</i> <i>Lillian "</i> <i>Trudie "</i> <i>Marrin Tuberville</i> <i>Mrs. "</i> <i>Chara Booth</i> <i>Dr. Nelson Grubbs</i> <i>W. M. Richerson</i> <i>Lucy De Silvey</i> <i>Theresa De Silvey - False</i> <i>Albert Baggett</i></p> <p><i>Jan. 4 - 1943</i> <i>Def. given preliminary</i> <i>hearing and found</i> <i>to Grand Jury</i> <i>without fail -</i></p>	<p>FEEES</p> <p>JUDGE'S FEES</p> <p>Warrant at 50c Affidavit at 25c 25</p> <p>Bond at 50c Sci Fa at 50c</p> <p>Witnesses' Recognizances at 25c</p> <p>1/3 Subpoena or notice at 25c 3 25</p> <p>Continuance at 25c</p> <p>Trial of Misdemeanor at \$1.00</p> <p>Mittimus at 25c</p> <p>Judgment on Forfeited Bond at 50c</p> <p>Taking Bond, etc. on Appeal at \$1.00</p> <p>Execution for Costs at 25c</p> <p>CONSTABLE'S FEES</p> <p>Subpeona or Notice at 25c</p> <p>Carrying defendant before Justice, each mile for himself & guard at 10c</p> <p>Arrest 50c</p> <p>SHERIFF'S FEES</p> <p>Arrest \$1.00 Bond \$1.00 Sci Fa 50c 6 00</p> <p>Committing \$1.00 Releasing \$1.00</p> <p>1/3 Subpoenas at 25c Days's Board at 30c 6 50</p> <p>WITNESSES FEES</p> <p>Days at 50c</p> <p>" 50c</p> <p>" 50c</p> <p>" 50c</p> <p>" 50c</p> <p>" 50c</p> <p>" 50c</p> <p>" 50c</p> <p>DEFENDANT'S COSTS</p> <p>Witnesses' Recognizance at 25c</p> <p>Subpoenas at 25c</p> <p>Executing Subpoenas</p>

The State of Alabama,
Baldwin County.

Justice Court of
Precinct No.

Prasastand
4, Bay Minette Ala.

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

Mrs & Mrs Marvin Tuberville *W M Richelson* *Everett Killip* *Mrs DeSilvey*

Albert Baygott

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office, on
the *29th* day of *January* - *10 10 57* 19*57*, and from day to
day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in
behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is
Plaintiff and *Wack De Silvey*

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this *29th* day of *December* A. D. 19*57*

Prasastand
Notary Public and ex-officio J. P.

Executed in full
12/31/42

W. R. Stuart
Shriff

764

THE STATE OF ALABAMA

BALDWIN COUNTY

Justice Court of

Chas C. Rank

Precinct No. 4

Bay Minette

Ala.

To Any Sheriff of the State of Alabama :

You are Hereby Comanded to Summon

Clara Booth

Huxford, Ala

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office on the

4th

day of

Jan

10⁰⁰ P.M.

19*43*

from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and *Mrs. W. S. Silvey*

Defendant, and have you then and

there this Writ, with your endorsement thereon.

Witness my hand this

29th

day of

Dec

A. D., 19*42*

Chas C. Rank

NOTARY PUBLIC AND EX OFFICIO J. P.

The State of Alabama,
Baldwin County.

Justice Court of Crossland
Precinct No. 4, Bay Minette Ala.

To Any Sheriff of the State of Alabama:
You are hereby commanded to summon

Mrs W M Vines & Everett Killip
Mrs & Mrs Marvin Tuberville - W M Richardson - Mack De Silvey

Albert Baggett

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office, on
the 10th day of January - 1912, and from day to
day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in
behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is
Plaintiff and Mack De Silvey

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 19th day of December A. D. 1912
Crossland

Notary Public and ex-officio J. P.

Received 31 Day of December 1962
and on 2 Day of January 1963
I served a Copy of the within Subpoena
on Dr. Nelson Grubbs and
Willis Colbert
by service on _____

W. H. FULCOMBE, Sheriff
By Mose Bernstein D.S.

284
4

Original
The State of Alabama,
Baldwin County.

Justice Court of Rosestand
Precinct No. 4 Bay Minette Ala.

To Any Sheriff of the State of Alabama:
You are hereby commanded to summon

Dr Nelson Grubbs and
Walter Calbert

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office, on the 4th day of Jan 1933 and from day to day of said term. and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack De Selvey

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 29 day of Dec A. D. 1932

Rosestand
Notary Public and ex-officio J. P.

950
225-882

Original
The State of Alabama,
Baldwin County.

Justice Court of

Precinct No.

Chas. A. Kaud

H. Bay Minette

Ala.

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

Willie Colbert - Lillian Colbert
and Gracie Colbert

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office, on the *4th* day of *Jan* - *1933*, and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court wherein the State of Alabama is Plaintiff and *Mack De Silver*

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this

29

day of

December

A. D. 193

Chas. A. Kaud
Notary Public and ex-officio J. P.

Executed by Jimmy @fy,
on all the with drl Pastors
this 30 decy DEC 1942

J.P. Brown
Shiff

The State of Alabama,

vs.

Mack Desilvery, alias
Mack De Silvey

No. _____

On this the 14th day of April, 1943, the Defendant, being in open Court in person, and it being made known to the Court that the Defendant in this case is indicted for a capital offense and that he is unable to employ counsel, it is ordered by the Court that H. E. Smith, who is a regularly licensed attorney practicing in this Court, be, and is hereby appointed counsel for the Defendant in this case.

On this the 14th day of April, 1943, the Defendant being in open Court in person, and attended by his counsel, is duly and legally arraigned upon the indictment, and for his plea thereto says that Not Guilty

On this 14th day of April, 1943, in the cause of the State of Alabama against Mack Desilvery alias Mack De Silvey wherein the Defendant is charged with the offense of Murder in the first degree the Defendant in person being then and there in open Court and attended by his counsel, the following proceedings were had and orders made in open Court in the presence of the Defendant and his counsel :

It is ordered and adjudged by the Court that the 28th day of April, 1943, it being Wednesday of the Second Week of this Term of the Court, be and the same is hereby fixed for the date of the trial of this cause, and that the Sheriff of this Court summons _____ persons in this cause, including those persons drawn on the regular juries for the second week of this term of this Court.

It is ascertained and adjudged by the Court that 60 persons have been drawn on the regular juries for the said Second Week of this Term of this Court. And the Court ordered that the legal jury box of this County be brought into open Court, and the Court ascertained and adjudged that said order had been obeyed, and that said box was, in open Court, well shaken. The Court then and there in open Court, publicly drew from the said jury box the names of 5 persons, the same being the number of persons required, with the regular juries drawn for the Second Week of this Term of this Court, to make the number of persons the Sheriff was commanded to summons in this cause by order of the Court hereinbefore set forth. The Clerk of the Court, in the presence of the Court, immediately made a list of the names drawn by the Court from the jury box in this cause. And it is ordered and adjudged by the Court that the said Clerk forthwith issue a mandate to the Sheriff of this County, commanding him to summons said persons whose names the Court drew from the jury box in this cause and the regular jurors drawn for the Second Week of this Term of this Court to appear in this Court as jurors in this cause at the Court

House of this county at 9 o'clock on Wednesday morning of the Second Week of this Term of this Court, the same being the 28th day of April 1943

It is ordered and adjudged by the Court that the Sheriff of this County forthwith serve on the Defendant a list of the names drawn in this cause by the Court from the jury box, and a list of the names of all the jurors drawn for the Second Week of this Term of this Court, together with a copy of the indictment in this cause.

Fl. FA. NO. 643.

Case No. 643.

THE STATE OF ALABAMA,
Baldwin County.

Circuit. COURT

THE STATE
Vs.

Mack Desilvey

Issued May 17th, 1944.

Fee Book Cds Page

Execution Docket Page

Fl. FA. STATE

Defendant's Attorney.

Filed in Office of Clerk Circuit, Court

May 17th, 1944

R. Duck
Clerk.

Received in Office

5/17, 1944

W.R. Stuart, Sheriff.

*Returned June 20th
1944 No property of
Mack D. Silvey found
in Baldwin County
W.R. Stuart
Sheriff*

THE STATE OF ALABAMA,
Baldwin County.

By virtue of the within Execution, I have levied

R. S. Duck

Circuit Clerk

BALDWIN COUNTY

Wm. Desalmy

THE STATE OF ALABAMA

Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643, Term, Spring, 19343

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Dr Nelson Grubbs.

Mobile Ala.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April., 19343 at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the

State of Alabama is Plaintiff and Mack Desilvey.

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A. D., 19343.

R. S. Duck
R. S. DUCK, Clerk.

Received in office 4/20, 1943

Executed this 4/21, 1943

By Mose Bernstein

By serving subpoena
on Dr. Nelson Grubb

W. R. Holcombe

Sheriff.

278 / 12 Bernstein
Dr. Grubb

ORIGINAL

For Mobile County

No. 643

Page 28

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE

Vs.

Mack Desilvey.

STATE SUBPOENA

Issued this 15th day of

April., 1943

Rodriguez

Clerk.

Received in Sheriff's Office

this 16 day of April, 1943.

W. R. STUART, Sheriff

4-20-43

THE STATE OF ALABAMA, {
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643.

Term, April. 19343

To Any Sheriff of the State of Alabama :

You are Hereby Commanded to Summon Marvin Tuberville .

Mrs MarvinTuberville. Loxley Ala.

Everett. Kilcrease. Bay Minette Ala

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the ^{28th} ~~XXVIII~~ day of April. 19343, at 8:30 a. m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack Desilvey.

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A.D., 19343


R. S. DUCK, Clerk.

Received in office _____ 193

Executed this 4-17 1943

By service in full

ORIGINAL

For _____

No. 643. Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

THE STATE

vs.

Mack DeSilvey.

STATE SUBPOENA

Issued this 15th day of

April 19343

W. R. Stuart

Sheriff.

B. S. Queen

R. Deuch

Clerk.

ORIGINAL---STATE SUBPOENA

MOORE PRINTING COMPANY BAY MINETTE, ALA.

THE STATE OF ALABAMA, }
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643. Term, _____ 193

To Any Sheriff of the State of Alabama :

You are Hereby Comanded to Summon Corp., Albert. Baggett.

HQS H A. DET "ND PRO, BN. Chalmette N O P E.

New Orleans. La

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April. 193 43, at 8:30 a. m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack De Silvey.

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A.D., 193_____


R. S. DUCK, Clerk.

Received in office _____ 193_____

Executed this 4-17 1935

By service in full

ORIGINAL

For _____

No. 643. Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

THE STATE

vs.

Mack DeSilvey.

STATE SUBPOENA

Issued this 15th day of

April. 1935

W.R. Stuart

Sheriff.

B.F. McNeal

R. Duval

Clerk.

THE STATE OF ALABAMA,
Baldwin County }

No. 3

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon A P Pruitt B F Kucera. W R Stuart

to be and appear on the 12th day of April, 1943, before the Grand Jury of said County, at the Court House thereof, then and there to testify and give evidence on behalf of the State of Alabama. Herein fail not, and make due return of this writ with your endorsement thereon.

Witness my hand this 30th day of Mar. A. D., 1943

R. Duich Clerk.

No Bill

ORIGINAL *False*

No. 5

GRAND JURY SUBPOENA

I have executed this Subpoena by serving a copy thereof on the following persons, to-wit:

Serving in full

this 10 day of April, 1943

W R Stewart, Sheriff

THE STATE OF ALABAMA,
Baldwin County }

No. 2

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon A P Pruitt. B F Kucera. and W R Stuar art.

to be and appear on the 12th day of April., 1943, before the Grand Jury of said County, at the Court House thereof, then and there to testify and give evidence on behalf of the State of Alabama. Herein fail not, and make due return of this writ with your endorsement thereon.

Witness my hand this 30th day of Mar. A. D., 1943

R. M. Jones Clerk.

DeSilva

ORIGINAL

No. 2

GRAND JURY SUBPOENA

I have executed this Subpoena by serving a copy thereof on the following persons, to-wit:

Deering in Jail

this 10 day of April, 1943

W R Street, Sheriff

No B

CERTIFICATE IN LIEU OF LOST OR DESTROYED

DISCHARGE CERTIFICATE



To all Whom it May Concern: # 726181

Know ye, That Mack Deilvey, a Private 1st
Company H Eleventh Infantry
United States Army, who was selected
on the eleventh day of August, one thousand nine
hundred and seventeen, at Jefferson Barracks, Mo.
to serve for period of emergency was Honorably Discharged
from the service of the United States on the twenty-second day of November,
one thousand nine hundred and twenty, by reason of
demobilization

This Certificate is given under the provisions of the Act of Congress approved July 1, 1902,
"to authorize the Secretary of War to furnish certificates in lieu of lost or destroyed discharges," to
honorably discharged officers or enlisted men or their widows, upon evidence that the original discharge
certificate has been lost or destroyed, and upon the condition imposed by said Act that this certificate
shall not be accepted as a voucher for the payment of any claim against the United States for pay,
bounty, or other allowances, or as evidence in any other case."

Given at the War Department, Washington, D. C., this twenty-second day of
January, one thousand nine hundred and twenty-nine

By authority of the Secretary of War:

W. B. Chickering
Adjutant General

TRANSCRIPT FROM RECORD OF SERVICE.

Prior service None

Battles, engagements, expeditions Meuse-Argonne

Wounds received in action July 2, 1918

Decorations, service medals, citations, awarded None

Service overseas France

Sailed from U. S. April 24, 1918

Arrived at port on return to U. S. October 18, 1920

Character given on discharge Good

Certificate in Lieu of Lost or Destroyed Discharge Certificate previously issued in this case

None

707

Jury List, Second Week

Spring Term, April 26, 1943

No.	Name	Occupation	Address
1	Dennis B. Howell	barber	Bay Minette 92
2	John J. Lewis	auto dealer	Foley
3	Joseph Lynd	clerk	Bay Minette
4	Elbert Boone	oil truck	Foley
5	Harry Beemis	Oysterman	Bon Secour
6	Frank A. Propst	farmer	Bay Minette 83
7	J. Emory Johnson	grist mill	Silverhill 52
8	Herman O. Krueger	farmer	Magnolia Springs
9	Aaron R. Rider	farmer	Bay Minette 84 813
10	Charles W. Barnhill	farmer	Loxley 56
11	Leon P. Comstock	contractor	Loxley
12	Calvin J. Long	clerk	Rahon 25
13	James M. Weekley	farmer	Rahon 26
14	Mack Aylin	forester	Bay Minette 27
15	Julian Hilary Brown	cobbler	Bay Minette 28
16	Curtis B. Daniels	merchant	Greers, Bay Minette
17	Shelby Folmer	farmer	Bay Minette 210
18	Edward D. Noonan	Newport	Bay Minette 29 59
19	Frank M. Feminear	clerk	Bay Minette 29
20	Michael A. Weeks	farmer	Foley 54
21	D. Arky Beech	farmer	Foley
22	William Lenz	garage	Elberta
23	Norman Racine	clerk	Robertsdale
24	Joseph X. Krob	farmer	Silverhill
25	Frank J. Knowles	electrician	Bay Minette 217
26	Mack Baggett	merchant	Daphne
27	Alex Bertolla	farmer	Daphne
28	R. Howard Vaughn, Jr.	farmer	Robertsdale
29	Connie A. Gaston	editor	Fairhope
30	Louis Brannan	turpentine operator	Foley 57
31	Toney J. Klumpp	auto dealer	Fairhope 51
32	Mack J. Moore	merchant	Magnolia Springs
33	Peter J. Morris	farmer	Gateswood 214 51
34	John J. Jurkiewicz	merchant	Summersdale
35	George Holt	merchant	Foley 218
36	Otto Anacker	salesman	Foley 55
37	Joseph W. Pittman	school bus	Gateswood 212
38	Ludie N. Scarborough	farmer	Bay Minette 211
39	Claude S. Woodson	furniture	Bay Minette 215
40	Charles J. Ebert	real estate	Foley
41	John T. Hadley	laborer	Foley
42	Walter A. Hall	farmer	Foley 216
43	Joseph E. Smith	surveyor	Fensaw 52
44	Adrian Ray	mechanic	Bay Minette 510
45	Luther Street	farmer	Point Clear 51
46	Harry C. Hill	farmer	Loxley 219

510 | IIII IIII
 219 | IIII IIII IIII IIII

10/19 41/19

State

Wood DeSoy

March 1st 1892

643

Name EUGENE KEE

Occupation LABORER

Residence Address FOLEY

Business Address FOLEY

Name LUTHER STREET

Occupation FARMER

Residence Address POINT CLEAR

Business Address POINT CLEAR

Name ADRIAN RAY

Occupation MECHANIC

Residence Address BAY MINETTE

Business Address BAY MINETTE

Name Joseph B. Smith

Occupation Surveyor

Place of Residence Tensaw

"

Place of Business _____

Name Charles E. Gantt

Occupation Turpentine Operator

Place of Residence Little River

Place of Business Little River

The State of Alabama, }
Baldwin County

Circuit Court, Spring Term, 1945

The Grand Jury of said County charge that before the finding of this indictment

Mack Desilvey, alias Mack De Silvey unlawfully and with malice aforethought, killed Ruby Desilvey, alias Ruby Desilvey, alias Ruby Sims, by some means to the Grand Jury unknown;

against the peace and dignity of the State of Alabama.

Ralph I. Jones
Solicitor of the Twenty-first Judicial Circuit.

No. _____

THE STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT

Spring Term, 1933

The State
VS.

Mack Desilvey, alias

Mack De Silvey

INDICTMENT

Murder, First Degree

No. _____ PROSECUTOR.

WITNESSES:

Willis Colbert,

Ed Hammons,

Lillian Colbert

Hamp Catrett

Trudie Colbert

J. L. Barrow

Marvin Turberville

Clara Booth

Rachael Hornady

Mrs. Marvin Turberville
Lucy Desilvey

Theresa Folst

Albert Baggett

A. P. Pruitt

Taylor Wilkins

W. R. Stuart

Dr. Nelson E. Grubbs

GRAND JURY NO. 1

A TRUE BILL.

Henry Bryars

FOREMAN GRAND JURY.

Filed in open court and in the presence of the

Grand Jury on the 14th day of

April 1933

R. S. Duck

Clerk.

Presented in open Court to the presiding
Judge by the Foreman of the Grand Jury, in
the presence of 17 other Grand Jurors.

R. S. Duck

Clerk.

Bail fixed at

Judge

THE STATE
VS.

In the Circuit Court of Baldwin County,

Mack Desilvey

Spring Term, 1943

Venire of the jurors in the above stated cause, names herein stated from No. 1 to No. 5 both inclusive, being the special jurors drawn in open Court by the presiding Judge, in said cause, and the other names, from No. 6 to No. 65, both inclusive, being the regular jurors drawn and summoned for the Second week of the Spring Term of said Court, the said cause having been set for trial on the 28 day of April 1943, which is a day of said week of the Spring Term of said Court, to-wit:

No.	NAME	Occupation	Residence Address	Business Address
1	Charles E. Gantt	Turpentine Operator	Little River	Little River
2	Joseph B. Smith	Surveyor	Tensaw	Tensaw
3	Adrian Ray	Mechanic	Bay Minette	Bay Minette
4	Luther Street	Farmer	Point Clear	Point Clear
5	Eugene Kee	Laborer	Foley	Foley
6	Dennis B. Howell	Barber	Bay Minette	Bay Minette
7	John J. Lewis	Auto Dealer	Foley	Foley
8	Joseph Lynd	Clerk	Bay Minette	Bay Minette
9	John W. Pittman	Farmer	Gateswood	Gateswood
10	Elbert Boone	Oil Truck	Foley	Foley
11	Frank T. Peterson	Farmer	Gateswood	Gateswood
12	Harry Beemis	Oysterman	Bon Secour	Bon Secour
13	Frank A. Propst	Farmer	Bay Minette	Bay Minette
14	J. Emory Johnson	Crist Mill	Silverhill S	Silverhill
15	Herman O. Krueger	Farmer	Magnolia Springs	Magnolia Springs
16	Aaron R. Rider	Farmer	Bay Minette	Bay Minette
17	John P. Bertolla	Farmer	Loxley	Loxley
18	Charles W. Barnhill	Farmer	Loxley	Loxley
19	Leon P. Comstock	Contractor	Loxley	Loxley
20	Calvin J. Long	Clerk	Rabon	Bay Minette
21	Robert M. Chaffin	Farmer	Stockton	Stockton
22	James M. Weekley	Farmer	Rabon	Rabon
23	Mack Aylin	Forrester	Bay Minette	Bay Minette
24	W. Hence Bail	Merchant	Bay Minette	Bay Minette
25	Julius Hilary Brown	Cobbler	Bay Minette	Bay Minette
26	Curtis B. Daniels	Merchant Greer	Bay Minette	Bay Minette
27	Shelby Fohmar	Farmer	Bay Minette	Bay Minette
28	Edward D. Noonan	Newport	Bay Minette	Bay Minette
29	Frank M. Feminear	Clerk	Bay Minette	Bay Minette
30	Michael A. Weeks	Farmer	Foley	Foley
31	Emett Howell	Turpentine	Foley	Foley
32	D. Arky Beach	Farmer	Foley	Foley
33	William Lenz	Garage	Elberta	Elberta
34	Harry C. Bill Jr.	Farmer	Robertsdale	Robertsdale
35	Norman Racine	Clerk	Robertsdale	Robertsdale
36	Fred R. Walker	Farmer	Foley	Foley
37	William W. Manning	Barber	Foley	Foley
38	Julio Corte	Farmer	Loxley	Loxley
39	Joseph X. Krob	Farmer	Silverhill	Silverhill
40	Frank J. Knowles	Electrician	Bay Minette	Bay Minette
41	Hendon H. Hurley	Farmer	Daphne	Daphne
42	Mack Baggett	Merchant	Daphne	Daphne
43	Ernest D. Corte	Produce	Daphne	Daphne
44	Alex Bertolla	Farmer	Daphne	Daphne
45	R. Howard Vaughn Jr.	Farmer	Robertsdale	Robertsdale
46	Connie A. Gaston	Editor	Fairhope	Fairhope
47	Louis Brannan	Turpentine Operator	Foley	Foley
48	Benard D. Hendrickson	Office Manager	Bay Minette	Bay Minette
49	Toney J. Klumpp	Auto Dealer	Fairhope	Fairhope
50	Mack J. Moore	Merchant	Magnolia Springs	Magnolia Springs
51	Peter J. Morris	Farmer	Gateswood	Gateswood
52	William A. Allen	Farmer	Summerdale	Summerdale

No.	NAME	Occupation	Residence Address	Business Address
53	John J. Jurkiewicz	Merchant	Summerdale	Summerdale
54	George Holk	Merchant	Foley	Foley
55	Otto Anacker	Salesman	Foley	Foley
56	Andrew C. Renton	Farmer	Bon Secour	Bon Secour
57	Max Davis	Merchant	Foley	Foley
58	Joseph W. Pittman	School Bus	Gateswood	Gateswood
59	Ludie N. Scarborough	Farmer	Bay Minette	Bay Minette
60	John Russell	Saw Mill	Loxley	Loxley
61	Claude S. Woodson	Furniture	Bay Minette	Bay Minette
62	Charles J. Ebert	Real Estate	Foley	Foley
63	Joseph a Vaughn	Clerk	Perdido	Perdido
64	John T. Hadley	Laborer	Foley	Foley
65	Walter T. Nall	Farmer	Foley	Foley
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82				

I hereby certify that the foregoing is a correct list of the venire in the case of the State vs. Mack DeSilvey charged with Murder First Degree; that the names of jurors from No. 1 to No. 5, both inclusive, are the special jurors drawn by the presiding Judge, in open Court, and that the names of jurors from No. 6 to No. 65, both inclusive, is a correct list of the regular jurors drawn and summoned for the Second week of the Spring Term, 19343, of the Circuit Court of Baldwin County, Alabama. I further certify that the foregoing copy of the indictment is a true and correct copy of the the indictment in this case.

Witness my hand this 15 day of April 19343

W R Stewart
Sheriff Baldwin County, Ala.

Executed by serving a copy of the indictment and a correct list of the jurors in this case, on this the 15th day of April, 1943, upon Mack De Silvey the Defendant

W R Stewart Sheriff.

The State of Alabama
Baldwin County

CIRCUIT COURT

LIST of JURORS and COPY of INDICTMENT

STATE

vs.

Mack De Silvey

INDICTMENT

THE STATE OF MISSISSIPPI }
Harrison County }

June Term, A. D. 194²
HARRISON COUNTY CIRCUIT COURT

The Grand Jurors of the State of Mississippi, taken from the body of the good and lawful men of Harrison County, elected, empaneled, sworn and charged to inquire in and for Harrison County, at the term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that

Mack M. DeSilvey

in the County aforesaid, on the 28th day of March, A. D. 194²
then and there being a male person, did then and there unlawfully,
wilfully and feloniously commit the detestable and abominable
crime against nature by then and there having unnatural carnal
intercourse with one Ruby DeSilvey, a female human being, by
then and there placing his penis in her mouth;

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

R. C. Cowan District Attorney

State of Mississippi, County of Harrison:

I, A.J.Ramsay, Clerk of the Circuit Court of said county and state, do hereby certify that the instrument of writing on the reverse side hereof is a true, correct and complete copy of the Indictment returned against one Mack M. DeSilvey in the Circuit Court of Harrison County, Mississippi, and filed on the 11th. day of June, 1942, in the case of the State of Mississippi versus Mack M. DeSilvey, defendant, No. 9672, as the original of said Indictment appears of record and remains on file in my office; and of which record I am legal custodian.

Given under my hand and official seal, at my office in Gulfport, Harrison County, Mississippi, on this the 22nd. day of April, 1943.

A. J. Ramsay
Clerk of the Circuit Court of
Harrison County, Mississippi.

No. 9671

INDICTMENT

CIRCUIT COURT
HARRISON COUNTY, MISS.

Term June, 1942

THE STATE OF MISSISSIPPI
vs.

Mack M. DeSilvey

CHARGE

Crime Against Nature

A TRUE BILL:

F. T. Rea

Foreman of the Grand Jury

WITNESSES' NAMES:

Lucy DeSilvey, Ruby DeSilvey,
Patricia DeSilvey, Henry
Cook, Alonzo Gabrich & Joe
Mattine

Filed this the 11th day of
June, 1942

A. J. Ramsay, Clerk

By E. G. Lindsey, D. C.

Recorded Record of Secret Indictments,

Book No. 7 Page 156

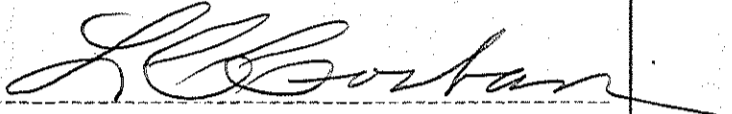
Bond, \$

CERTIFICATE TO SIGNATURE OF CLERK.—See Sec. 905, Revised Statutes U. S.

THE STATE OF MISSISSIPPI

I, L.C. Corban, sole presiding Judge of the Second Judicial Circuit Court District, of the State of Mississippi (said District including the County of Harrison) do hereby certify that A.J. Ramsey, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the Clerk of the Circuit Court of Harrison County, in said State, duly elected and qualified, and that his said attestation is in due form.

Witness my signature, this the 22nd. day of April, A. D. 19 43.



 Judge.

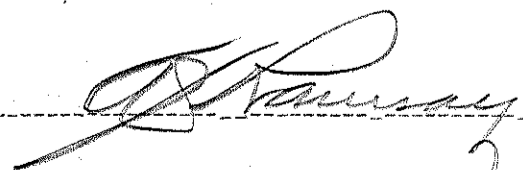
Certificate of Clerk to Signature. See Sec. 906, Revised Statutes U. S.

THE STATE OF MISSISSIPPI

HARRISON COUNTY.

I, the undersigned Clerk of the Circuit Court of the County of Harrison, in said State (said Court being a court of record, and having an official seal), do hereby certify that L.C. Corban, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Judge of the Second Judicial Circuit Court District of said State, which said District includes the said County of Harrison, and that said L.C. Corban as aforesaid, is now, and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office, at Gulfport, Mississippi, this the 22nd. day of April, A. D. 19 43.


 _____, Clerk.

ORAL CHARGE OF THE COURT:

GENTLEMEN OF THE JURY:

Fortunately, the law with respect to this case is very simple and, therefore, I won't be long in charging it to you.

This defendant is charged by indictment with murder in the first degree for having killed one Ruby Desilvey. And before you can convict this defendant you must believe from the evidence beyond all reasonable doubt, and to a moral certainty, that Ruby Desilvey is dead, and that she came to her death by the agency of this defendant. If you do so believe, then it is for you to say whether he is guilty of murder in the first degree, murder in the second degree, or manslaughter in the first degree. It is, therefore, necessary for me to charge you what constitutes those three crimes, each one of which is embraced within this indictment.

Murder in the first degree is the willful and malicious killing of one human being by another, with premeditation and deliberation. All of those four elements must concur and co-exist at the time of the death of the deceased to constitute murder in the first degree. And "willful" as used in that definition, means simply that the act was an intentional act, rather than an accidental act. Malice may mean ill will or hatred by one person towards another, but in law it is the doing of an act injurious to another, without justification,

extenuation or excuse. It is the product of a wicked and depraved heart regardless of the rights and life of another person.

Premeditation and deliberation mean that the party must have intended beforehand, and thought out and decided that he would commit the act, and that he would do the injury and strike the blow, or use whatever instrument or means that was used to cause death, and that death would result from it. It is not necessary for him to think about it any specific length of time, but just so long as he did have time to think before committing the act, and did in fact think and form in his mind ^{THE INTENT} that he would do the act, and that death should be the result, then the elements of premeditation and deliberation exist.

Now, murder in the second degree is the intentional and malicious killing of one human being by another, but without premeditation and deliberation -- without having thought itx out in advance.

And manslaughter in the first degree is the intentional and unlawful killing of one person by another, but without malice, either expressed or implied.

It is for you to say, in the first place, whether or not this man is guilty and, if so, which one of these three offenses he is guilty of. And you must believe from the evidence beyond all reasonable doubt, and to a moral certainty, that he is guilty before you can convict him.

Now, this defendant enters upon the trial clothed with a presumption of innocence in his behalf, which presumption of innocence is a matter of evidence in his behalf, and is sufficient to protect him from a verdict of guilty at your hands, until the evidence becomes so strong and so cogent as to convince you beyond all reasonable doubt, and to a moral certainty, of his guilt. If the evidence does reach that degree of strength, and you are convinced beyond all reasonable doubt, and to a moral certainty, of his guilt, then that presumption of innocence falls to the ground, and is no longer a protection to him, and it becomes your duty to bring in a verdict of guilty.

Now, this defendant, as I say, is presumed to be innocent, and you must believe from the evidence beyond all reasonable doubt, and to a moral certainty, that he is guilty before you can bring in a verdict of guilty against him.

Now, there is evidence in this case of the good character of the defendant. Good character, when established to your reasonable satisfaction, may be sufficient to generate a reasonable doubt of the defendant's guilt, when taken and considered with all the other evidence in the case. But good character alone cannot be sufficient and is not sufficient, under the law, when it is established to your reasonable satisfaction, to generate a reasonable doubt of his guilt. It must be taken and considered in connection with all the other evidence in the case, and when so considered, the law

says it is sufficient to generate in your minds a reasonable doubt of his guilt, when but for such evidence of good character you would not entertain such a reasonable doubt.

It is for you to say whether or not, in the first place, good character has been established in this case. And as I said, if the defendant has established a good character to your reasonable satisfaction, then when that evidence of good character is taken and considered with all the other evidence in the case, it may be sufficient to generate in your minds a reasonable doubt of his guilt, and to entitle him to an acquittal.

✓ It is permissible for the defendant to take the stand and testify in his own behalf, and just because he is the defendant you should not capriciously disregard his testimony, but ~~may~~^{weigh} it in the light of any interest he may have in the case, just as you would that of any other witness who has taken the stand before you. In that connection, it is permissible for the State to show, if it can, that he had been convicted of a crime involving moral turpitude, such as receiving and concealing property knowing it to have been stolen.

Now, the credibility of the witnesses is a matter for your determination, and your determination alone. You are to consider whether or not any of the witnesses are interested in the result of the prosecution, whether they have shown on the stand that they are frightened or fearful, and whether any influence has been shown to have been brought to bear on them, and, if so, has any of that in any way colored their testimony ?

You are the sole judges of the credibility of the testimony, gentlemen, and it is for you to weigh each witness' testimony carefully, and to arrive at the true facts in the case, using your own good common sense and judgment in weighing the testimony and in arriving at a true and righteous verdict in the case.

Now, you cannot convict the defendant unless all twelve of you agree. If some one or more of you believe from the evidence beyond all reasonable doubt that he is guilty, and some entertain a reasonable doubt of his guilt, then there will be neither a conviction or an acquittal, but a mistrial. All the jurors must agree before there can be any verdict in the case.

Now, gentlemen, there is no question of self-defense and, therefore, there is nothing to be said in my charge with respect thereto.

The law permits a defendant in a criminal case to request written instructions as to what the law is, and it becomes the duty of the court, when such written instructions are requested, to read them to the jury if they are correct statements of law. In this case, the defendant has rather abundantly availed himself of that privilege, and I now read you these written statements, which you will take and consider in connection with the oral charge of the court. They are not in conflict with anything I have said in my oral charge but perhaps in some instances are duplications of what I have

already said. At any rate, I will now read these written charges to you:

(Reads charges)

Now, gentlemen, if you are convinced from the evidence beyond all reasonable doubt that this defendant is guilty of murder in the first degree his punishment is in your hands, and in your discretion, is either death by electrocution, or imprisonment in the penitentiary for life. And if the ~~event~~ ^{event} you do believe from the evidence beyond all reasonable doubt that he is guilty of murder in the first degree, the form of your verdict would be: "We, the jury, find the defendant guilty of murder in the first degree, as charged in the indictment, and fix his punishment at -- either death by electrocution, or at imprisonment in the penitentiary for life."

If you are not convinced of his guilt of murder in the first degree but are convinced from the evidence beyond all reasonable doubt of his guilt of murder in the second degree, that is, that the killing was done -- if it was done ~~o-~~ without premeditation and deliberation, and done willfully and maliciously, it would be your duty to bring in a verdict of guilty of murder in the second degree, the penalty for which is imprisonment in the penitentiary for not less than ten years. And the form of your verdict in that event would be: "We, the jury, find the defendant guilty of murder in the second degree, as charged in the indictment, and fix his punishment at imprisonment in the penitentiary for ____ years, not less than ten."

If you entertain a reasonable doubt of his guilt of murder in either degree, but are convinced from the evidence beyond all reasonable doubt that he is guilty of manslaughter in the first degree, that is, that he ^{guiltily} killed the deceased without malice, and without premeditation and deliberation, then the punishment is not less than one year nor more than ten years, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty of manslaughter in the first degree, as charged in the indictment, and fix his punishment at -- so many years -- not less than one nor more than ten.

If you entertain a reasonable doubt of the guilt of the defendant of any offense, then he would be entitled to that reasonable doubt, and to an acquittal, and the form of your verdict in that event would be: "We, the jury, find the defendant not guilty." Whichever form your verdict takes let one of your number reduce it to writing on the back of this indictment, and sign it as foreman.


THE COURT: Satisfied, gentlemen?

MR. TAYLOR: Yes, sir.

STATE OF ALABAMA,)
BALDWIN COUNTY.)

I hereby certify that the foregoing pages, numbered 1 to 7, both inclusive, contain a true and correct transcript of the oral charge of the court in the case of the State of Alabama vs. Mack Desilvey, which said case was tried on April 28, 1943, in the Circuit Court of Baldwin County, Alabama.

Witness my hand, this the 10th day of May, 1943.


Official Court Reporter, 21st
Judicial Circuit of Alabama

State of Alabama

vs
Frank Resurvey

Oral Charge
of the Court

Filed May 9th 1943

Robert
Clerk

THE STATE OF ALABAMA,

VS

MACK DE SILVEY, ALIAS
MACK DESILVEY.

)
:
)
:
)
:

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Comes the defendant in the above entitled cause and moves the Court to set aside the verdict of the jury and judgment of the Court, and for grounds of his said motion sets down and assigns the following, separately and severally:

1. The verdict of the jury is contrary to the evidence.
2. The verdict of the jury is contrary to the law.
3. The verdict of the jury is contrary to the evidence and the law.
4. The verdict of the jury is such as to indicate bias or prejudice or other improper motive.
5. The Court made innumerable errors in ruling on timely objections to the introduction of testimony.
6. The Court made innumerable errors in ruling on the admissibility of evidence.
7. The Court made innumerable errors in ruling that answers made to questions propounded by the solicitor were admissible, when in fact in law said answers were inadmissible.
8. The Court erred in sustaining objections made by the solicitor to questions of the defendant propounded to witnesses testifying in behalf of the defendant.
9. The Court erred in sustaining objections made by the solicitor to questions propounded by the defendant to witnesses testifying in behalf of the State.

10. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

"Reporter's Note: Mr. Jones, Solicitor for the State, in stating the case to the jury, stated among other things, that the State expected to show that the deceased had instituted proceedings against the defendant, Mack Desilvey, in Mississippi, only a short time before it is alleged the deceased was killed in this case. Whereupon, the following proceedings were had:

MR. TAYLOR: Now, I object to some charge that may have been made in Biloxi against Mack Desilvey.

THE COURT: I understand it is to show motive.

MR. JONES: Yes, sir, it is limited to the motive entirely.

THE COURT: I overrule the objection.

MR. TAYLOR: We except.

REPORTER'S NOTE: Mr. Jones further stated to the jury that the State expected to show contradictory statements having been made by the defendant, Mack Desilvey.

MR. TAYLOR: Now, I object to contradictory statements that he has made.

THE COURT: Overrule the objection.

MR. TAYLOR: We except."

11. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

"Q. Now, I will ask you, please, m'am, if at the time you all left Biloxi to come over here, Miss Theresa, if there was a charge pending against Mack Desilvey over there on a complaint that Ruby had made against him?

MR. TAYLOR: We object to that; incompetent, irrelevant, illegal and immaterial, and has no bearing on this case.

THE COURT: Overrule the objection. I understand it is to show motive.

MR. TAYLOR: We except.

Q. Was there a charge pending there in Biloxi against Mack Desilvey on a complaint that Ruby made against him?

MR. TAYLOR: Judge I want to be sure to get my exception in.

THE COURT: Yes, sir, you have your exception. He just repeated the question.

Q. Did you understand the question, Miss Theresa?

THE COURT: Was there any charge pending against him in the courts of Mississippi, preferred by Ruby Desilvey, at the time you all came up here?

A. The police brought me up there to sign some papers; I don't know."

12. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

"Q. Well, I will ask you, Miss Theresa, if your sister Ruby left your house one night over there in March, and went to make a charge against Mack Desilvey?

MR. TAYLOR: I object to that. It calls for hearsay evidence, and is incompetent, irrelevant, illegal and immaterial, and has no bearing on this case.

THE COURT: If you have other proof here I will let it in.

MR. JONES: What I am trying to do is to get---in order to get that, I will offer this indictment in evidence at this time.

MR. TAYLOR: I object to that. I haven't seen it and know nothing about it.

REPORTER'S NOTE: Whereupon Mr. Jones hands said paper sought to be introduced in evidence to Mr. Taylor.

MR. TAYLOR: I am going to object further, and if he wants to insist on it I would like for the Court to exclude the jury.

MR. JONES: I have a properly authenticated record here that it is a certified copy. Your Honor knows that we went to Gulfport and had that certified as a true and correct copy, as shown here.

THE COURT: You can state your objections, Mr. Taylor.

MR. TAYLOR: We object because it is not certified under the Acts of Congress; I object because it is not properly authenticated. It is not evidence of any conviction and has no bearing in this case, and

is incompetent, irrelevant, illegal and immaterial, and only tends to prejudice the minds of the jury against the defendant without in itself being legal and proper evidence.

MR. JONES: I will state at this time that the State introduces it and limits it solely for the purpose of showing motive for this crime.

THE COURT: I think it is admissible for that. I will overrule your objection and give you an exception, Mr. Taylor. It is limited simply to show motive.

MR. TAYLOR: We except.

MR. JONES: This paper that is introduced is a certified copy of the record and ---

MR. TAYLOR: I object to his making a statement explaining it.

THE COURT: Overrule the objection. The paper speaks for itself.

REPORTER'S NOTE: Whereupon Mr Jones, the Solicitor, reads to the jury the paper hereinabove referred to.

MR. TAYLOR: Now, if the Court please, in order to take advantage of any error we want to move to exclude the evidence of the paper just read on the ground that the corpus delicti has not been proved, and it is illegal, irrelevant, incompetent and immaterial.

THE COURT: I overrule the objection.

MR. TAYLOR: We except."

13. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

"Q. Did he tell you all there at that time, Miss Theresa, about the time you were leaving that the folks had told him if you all were not there to appear against him in court the case would be thrown out?

MR. TAYLOR: I object on the ground it is a leading question, and the witness is not an unwilling witness.

THE COURT: The Court takes judicial knowledge of the fact that the witness appears to be an unwilling witness, and takes judicial knowledge that leading the witness is proper on the part of the State. You may answer the question."

14. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

"Q. Well, did you at that time say she had on a green coat with a kind of plush collar, "smooth you know"-did you say that?

MR. TAYLOR: I am going to object to that, to him quoting the court reporter's record. He can ask him the questions but--

THE COURT: The law requires him to do it Verbatim. That's the way for him to do it. I will give you an exception.

15. The Court committed irreparable injury and irretrievable damage to the cause of this defendant at a point in the trial thereof when the following proceedings, among other things, were had and done:

MR. TAYLOR: We would like to see that paper; ordinarily we have that courtesy.

THE COURT: Provided you won't tear it up I will let you see it.

MR. TAYLOR: I promise you that, sir."

16. The Court erred in permitting the State to introduce in evidence, over timely objection of defendant, the skull and the parts and other bones, and the hair and the clothing and the white shoe and the black shoe and the two pictures testified to by State's witnesses.

17. The Court erred in permitting the State to introduce in evidence, over timely objection of defendant, the Court Reporter's transcript of evidence of Lucy Desilvey, a witness on behalf of defendant.

18. The Court erred in permitting the State to introduce evidence, over timely objection of defendant, of the contents of a statement purportedly signed by Lucy Desilvey, a witness on behalf of defendant, at Biloxi.

19. The Court erred in refusing motion of defendant to exclude all of the evidence offered by the State in words as follows:

"STATE RESTS

MR. TAYLOR: The defendant moves the Court to exclude all of the evidence offered by the State, on the ground that there is no evidence which tends

to connect this defendant with having murdered Ruby Desilvey, alias Ruby DeSilvey, nor of having conspired with anyone else to do so; nor does the evidence show that Ruby Desilvey, alias Ruby DeSilvey, has been murdered, or whose life has been taken, nor is this defendant shown to have committed such an act as charged in the indictment. The defendant moves on the further ground that the ~~State~~ has failed to establish the corpus delicti in this case by: first, by offering evidence by which this jury could infer beyond a reasonable doubt that the offense charged in the indictment has been committed; second, that the State has not offered evidence with which this jury could infer beyond all reasonable doubt that the defendant is the author, or one of the authors, of the said offense; nor has the State made out a prima facie case.

THE COURT: I overrule your motion.

MR. TAYLOR: We except."

20. The Court erred in refusing to the defendant written charge being numbered 1, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"1. The Court charges the Jury that if you believe the evidence in this case, you cannot find the defendant guilty under the indictment."

21. The Court erred in refusing to the defendant written charge being numbered 10, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"10. The Court charges the jury that no matter how strong may be the facts, if they can be reconciled with the theory that the death of the deceased was accidental, then the guilt of the defendant is not shown by the full measure of the proof which the law requires."

22. The Court erred in refusing to the defendant written charge being numbered 19, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"19. The Court charges the jury that you are not bound by the opinion of experts, or by the apparent weight of evidence, but you may give your own conclusions."

23. The Court erred in refusing to the defendant written charge numbered 25, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"25. I charge you, gentlemen of the jury, that in this case there have been several witnesses who have testified as experts, and I further charge you, gentlemen of the jury, that you are not bound by the opinion of such witnesses on matters as to which they express their opinion as experts."

24. The Court erred in refusing to the defendant written charge numbered 31, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"31. The Court charges the jury that under the evidence in this case it is your duty to acquit the defendant."

25. The Court erred in refusing to the defendant written charge numbered 38, which charge was requested in the presence and hearing of the jury, and before the jury retired, which charge was in words and figures as follows:

"38. The Court charges the jury that if you believe the evidence in this case, that you must find the defendant not guilty."

W. C. Taylor
H. E. Smith
Attorneys for the defendant.

Presented this the 19th day of May, 1943, and set down for hearing before me at Bay Minette, Alabama, at 1 o'clock P.M. on the 28 day of May, 1943.

F. W. Hare
Judge.

TO HON. R. L. JONES, CIRCUIT SOLICITOR OF BALDWIN COUNTY, ALA.:

Take notice that the above and foregoing motion will come up before the Hon. F. W. Hare, Judge, on 28 day of May, 1943, at 1 o'clock P.M. at his usual place of holding court.

388 W. C. Taylor
H. E. Smith
Attorneys for Defendant.

We, the undersigned attorneys of record for the defendant in the above entitled cause, hereby certify that we did on the 19 day of May, 1943, serve a copy of the above and foregoing motion on Hon. R. L. Jones, Circuit Solicitor of Baldwin County, Alabama. This 19 day of May, 1943.

W. A. Taylor
H. E. Smith
Attorneys for defendant.

I hereby accept service of the above and foregoing Motion. Witness my hand this the 19th day of May, 1943.

R. L. Jones
Circuit Solicitor, Baldwin
County, Alabama.

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA,—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Miller Parrish.

at the instance of the Defendant., if he should be found in your County, personally
to be and appear before the Circuit Court of Baldwin County at the present term thereof, to be holden at the Court
House Bay Minette Ala., to wit: on the 28th, day of May., 1943
at 1 0 clock P. M. and to bring with him and produce at the time and place aforesaid, to be used as evidence

(here describe it).

Stenographic Notes Taken During the Trial of Mack DeSilvey.

and then and there testify and the truth to speak concerning all and singular those things of which he may have knowl-
edge, or the said instrument of writing doth import of, and concerning, and concerning a certain suit now pending and
undetermined in said Court, wherein State of Ala. Plaintiff
and Mack Desilvey. Defendant.

And this he shall in nowise omit, under penalties of what the law directs, and shall have you, then and there this writ
with your endorsement thereon in what manner you have executed same.

Witness my hand, this 24th day of May. 1943

R. D. Deuel
Clerk.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

THE STATE OF ALABAMA,

VS

MACK DE SILVEY, ALIAS
MACK DESILVEY.

Filed May 19 1943
R. S. Smith
Reg

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA,—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Miller Farrish.

at the instance of the Defendant., if he should be found in your County, personally
to be and appear before the Circuit Court of Baldwin County at the present term thereof, to be holden at the Court
House Bay Minette Ala., to wit: on the 28th, day of May, 1943
at 1⁰ clock P. M. and to bring with him and produce at the time and place aforesaid, to be used as evidence
(here describe it):

Stenographic Notes Taken During the Trial of Mack DeSilvey.

and then and there testify and the truth to speak concerning all and singular those things of which he may have knowl-
edge, or the said instrument of writing doth import of, and concerning, and concerning a certain suit now pending and
undetermined in said Court, wherein State of Ala. Plaintiff
and Mack DeSilvey. Defendant.

And this he shall in nowise omit, under penalties of what the law directs, and shall have you, then and there this writ
with your endorsement thereon in what manner you have executed same.

Witness my hand, this 24th day of May, 1943.

R. S. Deuel
Clerk.

Executed Ref.
Serving a copy
of summons on
Miller Farrish
on 5-26-43

E. E. Nichols
Sheriff Mendocino County

Monroe County.

No. _____

THE STATE OF ALABAMA
Baldwin County

State of Ala.

Plaintiff

VS. SUBPOENA DECUS TECUM

Mack Desilvey.

Defendant.

CIRCUIT COURT

WITNESSES:

Miller Farrish.

SET FOR TRIAL

28. day of May 1943

GILL PTG. CO., MOBILE

"THE STATE OF ALABAMA,

VS

MACK DESILVEY, ALIAS
MACK DESILVEY.

) NO. 643 (Criminal Docket)

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA.
)

Now comes Mack DeSilvey, alias Mack DeSilvey,
the defendant in the above entitled cause, and appeals
to the Supreme Court of the State of Alabama from the
judgment against him in the said cause.

Dated this the 16th day of August, A. D. 1943.

W. C. Taylor

H. E. Smith

Attorneys for Defendant.

243

State of Michigan

Notice of appeal

For filing 1/12/43
R. J. [unclear]

ORIGINAL...STATE SUBPOENA

MOORE PRINTING COMPANY BAY MINETTE, ALA.

THE STATE OF ALABAMA,
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 643.

Term, April. 1943

To Any Sheriff of the State of Alabama :

You are Hereby Commanded to Summon Clara Booth.

H. S. Duck
R. S. Duck

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April. 1943, at 8:30 a. m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack Desilvey.

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A.D., 1943.

R. S. Duck
R. S. DUCK, Clerk.

Escambia County.

Received in office _____ 193_____

Executed this 4/26 1933

By Serving in full

ORIGINAL

For _____

No. 643. Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

THE STATE

vs.

Mack DeSilvey.

STATE SUBPOENA

Issued this 15th day of

April. 1933

R. DeSilvey
Clerk.

J. R. Raley
Escambia Co. Ala.
Sheriff.

THE STATE OF ALABAMA }
Baldwin County. }

CIRCUIT COURT

SUB. No. 1

Case No. 643

Term Spring, 1943

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Ed Hammons + Hampt Catrett.

✓ J L Barrow. Rachel Hornady. Lucy Desilvey Thresa Folsie .

✓ A P Pruitt Taylor Wilkins. + W R Stuart. + Everette Kilsness

~~Mack Desilvey~~ Willie Green Mobile Ala
Co Gulf Ref Co.

South Coast

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April., 1943, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the

State of Alabama is Plaintiff and Mack Desilvey.

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April. A. D., 1943.

R. S. Duck
R. S. DUCK, Clerk.

THE STATE OF ALABAMA }
 Baldwin County. }

CIRCUIT COURT

SUB. No. Case No. 643 Term Spring, 19343

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Ed Hammons ⁺ Hampt Catrett.J L Barrow. Rachel Hornady. Lucy Desilvey Thresa Folse .A P Pruitt Taylor Wilkins. W R Stuart. Enerette NilcreaseMack Desilvey Willie Tress mobile Ala
Up Gulf Rep Co.
South Coast after 5

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 28th day of April., 19343, at 8:30 a.m., and from day to day of said term and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Mack Desilvey.

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 15th day of April., A. D., 1933.

R. S. Duck
 R. S. DUCK, Clerk.

In the Name and by the Authority
of
The State of Alabama

I, CHAUNCEY SPARKS

Governor of the State of Alabama

To all Sheriffs, Keepers of Prisons, Civil Magistrates and others

to whom these Presents shall come—GREETINGS:

WHEREAS, at the Spring Term, 1943 of the Court
held for the County of Baldwin
Mack DeSivley alias Mack DeSivley was convicted of the crime of
Murder - 1st Degree and sentenced to
Death - February 18, 1944

And Whereas, for divers good and sufficient reasons it appears to me that the said

Mack DeSivley alias Mack DeSivley is a fit subject for Executive Clemency;

Now, Therefore, I, CHAUNCEY SPARKS, Governor of the State of Alabama, by virtue of the power and authority in me vested by the Constitution and laws of the State of Alabama, do by these presents, order that
the sentence of death imposed herein be commuted to life imprisonment in the
State Penitentiary.

Witness my hand, and the Great Seal of the State at
Office, in the City of Montgomery, this 17th day
of February, 19 44

Chauncey Sparks
Governor of Alabama.

BY THE GOVERNOR:

W. M. Turner
Secretary of State.

Div. No. _____

CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 643.

BALDWIN. County, Circuit Court.

MACK DESTILVEY. Alias. Mack De Silvey.
Appellant

VS.

The State of Alabama,
Appellee

The State of Alabama,

BALDWIN. County, The Circuit Court of BALDWIN.
County.

I, R.S.DUCK. Clerk of the Circuit Court
of BALDWIN. County in and for said County and State, do
hereby certify that in the above stated case, which was tried and
determined in this Court on the 28th day of April. 1943, and the
defendant convicted by a Jury of the offense of Murder in the First Degree.
_____ and that on the 28th day of April. 1943,
said defendant was sentenced to a term of DEATH BY ELECTROCUTION.
_____, which said sentence was suspended
pending an appeal to the SUPREME. Court of Alabama.

I further certify that on this the 16th day of August.
1943, the defendant gave notice in writing of an appeal to the
SUPREME. Court of Alabama.

Witness my hand and the seal of this Court, this the 17th
day of August. 1943.

R.S. Duck

Clerk of Circuit Court of

BALDWIN. County, Alabama.

The State of Alabama)

VS)

Mack De Silvey, alias)
Mack DeSilvey.)

No. 643 (Criminal Docket)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

Now comes Mack De Silvey, alias Mack DeSilvey,
the defendant in the above entitled cause, and appeals
to the Supreme Court of the State of Alabama from the
judgment against him in the said cause.

DATED this the 16th day of August, A.D. 1943.

W. C. Taylor

H. E. Smith

Attorneys for Defendant

State
vs
Mark DeLilling

Statement of appeal

Filed August 16 1943
R. M. C.

DEC 16 1943

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1943-44.

1 Div. 206

Mack Desilvey, alias
Mack DeSilvey,

vs.

State of Alabama,
Baldwin Circuit Court.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered that the judgment of the Circuit Court be in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner Mack Desilvey, alias Mack DeSilvey, having expired pending this appeal, it is now

ordered that Friday, February 18th, 1944, be fixed as the date for the execution of the Defendant Mack Desilvey, alias Mack DeSilvey. It is therefore ordered that the Sheriff of Baldwin County deliver the Defendant Mack Desilvey, alias Mack DeSilvey, to the Warden of Kilby Prison at Montgomery, Alabama, and that the said Warden of Kilby Prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, February 18th, 1944, before the hour of sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said Mack Desilvey, alias Mack DeSilvey, until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 206

Mack Desilvey, alias Mack DeSilvey, Appellant,

v.

State of Alabama, Appellee,

From Baldwin Circuit Court.

The State of Alabama, }
City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from one to two inclusive, contain a full, true, and correct copy of the Judgment affirming the Judgment of the Circuit Court and setting the date for the execution of the death sentence for Friday, February 18th, 1944, made and entered December 16th, 1943, by * * * * *

said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme

Court of Alabama, this the 16th day of

December 19 43.

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

1st Div., No. 206

Mack Desilvey, alias Mack

DeSilvey,

Appellant,

v.

State of Alabama

Appellee.

From Baldwin Circuit Court.

Certified Copy of

Judgment of Affirmance
December 16th, 1943

BROWN PRINTING CO., MONTGOMERY, ALA. 1928

Filed Dec 18 1943
R. H. [Signature]

32. The court charges the jury that if you believe the evidence in this case, your virdict will not be guilty.

Refused to follow judge

35. The court charges the jury that if there is a reasonable in your mind from the evidence, as to whether the killing was done with malice defendant cannot be convicted of murder at all.

Refused
V. W. Stone Judge

1. - The Court charges the Jury that if you believe the evidence
this case, you cannot find the defendant guilty under ~~C. 10.01~~
~~of~~ the indictment.

Refused
J. W. Hare, Judge

*Richard
W. Moore
Judge*

10. The Court charges the jury that no matter how strong may be the facts, if they can be reconciled with the theory that the death of the deceased was accidental, then the guilt of the defendant is not shown by the full measure of the proof which the law requires.

*Richard
S. Moore
Judge*

13. The Court charges the jury that all the evidence against the defendant in this case is circumstantial, and her innocence should be presumed by the jury until her guilt is established by the evidence, in all the material aspects of the case, beyond a reasonable doubt, and to a moral certainty.

*Advised
W.H. Hargrave
Judge*

19. The Court charges the jury that you are not bound by the opinion of experts, or by the apparent weight of evidence, but you may give your own conclusions.

31. The Court charges the jury that under the evidence in this case
it is your duty to acquit the defendant.

Refused
W. H. Jones

*Referred
to
the
jury*

26. I charge you gentlemen of the jury that, that in this case there has been some witnesses who have testified as experts, and I futher charge gentlemen of the jury, that you are not bound by the opinion of such witnesses on matters as to which they express opinions as experts.

38. *Refused Judge*
W. H. H. H.

I charge you gentlemen of the jury that if you believe the evidence in this case, that you must find the defendant not guilty.

*Edward
W. Wilson
James*

25. I charge you, gentlemen of the jury, that in this case there have been several witnesses who have testified as experts, and I further charge you, gentlemen of the jury, that you are not bound by the opinion of such witnesses on matters as to which they express their opinion as experts.

Handwritten signature

14. The Court charges the jury that all the evidence against the defendant in this case is circumstantial, and her innocence must be presumed by the jury until the case is proved against her, in all its material circumstances, beyon a reasonable doubt, and that to find her guilty, as charged, the evidence must be strong and cogent; and unless it is so strong and cogent as to show the defendant's guilt to a moral certainty, they must find the defendant not guilty.

*Revised
B. W. Stone
J. C. [unclear]*

15. The Court charges the jury that if they believe, from the evidence in this case, that the witness, Hugh Mullen, has willfully and corruptly sworn falsely as to any material fact in this case you, may, in your discretion, disregard his testimony entirely.

*Wm. Miller
George*

2. The Court charges the jury that if, after considering all the evidence in the case, that tending to show guilt, together with that tending to show innocence, there should spring up involuntarily in the minds of the jury from any part of the evidence, a probability of the innocence of the defendant, the jury must acquit.

*George
H. Moore
Judge*

3. The Court charges the jury that if you are reasonably satisfied that any witness has willfully sworn falsely on any material fact at issue in this case, then you may disregard the entire testimony of such witness.

*From
affidavit
George*

4. The Court charges the Jury that good character itself may, in connection with all the evidence, generate a reasonable doubt and entitle the defendant to an acquittal, even though without such proof of good character you would convict.

5. The Court charges the jury that the testimony of a witness for the prosecution, who is shown to be unworthy of credit, is not sufficient to justify a conviction without corroborating evidence; and such corroborating evidence, to avail anything, must be a fact tending to show the guilt of the defendant.

*W. H. Moore
Judge*

6. I charge you, gentlemen of the jury, as a matter of law, that the highest type of character is often one whose character is never discussed by those who know him or her.

*W. H. Moore
Judge*

7. I charge you, gentlemen of the jury, that every person is presumed to have a good character, and the fact that the character of the person is never discussed among those of his or her acquaint-

*W. H. Moore
Judge*

tance, or by others in the community in which he or she lived, is the best evidence that such person is of good character.

8. I charge you, gentlemen of the jury, that every person is presumed to have a good character, and the fact that the character of the person is never discussed among those of his or her acquaintance or by others in the community in which he or she lived, is evidence that such person is of good character.

*W. H. Moore
Judge*

9. The court charges the jury that the test of sufficiency of circumstantial evidence in a criminal case is whether the circumstances as proven are capable of explanation upon any reasonable hypothesis consistent with the defendant's innocence, and, if they are capable of such explanation, then the defendant should be acquitted.

*W. H. Moore
Judge*

*Witness
for State
Judge*

11. The court charges the jury that the burden is upon the State, and it is the duty of the State to show, beyond all reasonable doubt, and to the exclusion of every other reasonable hypothesis every circumstance necessary to show that the defendant is guilty; and, unless the State has done that in this case, it is your duty, gentlemen of the jury, to render a verdict of not guilty.

12. The Court charges the jury that if the evidence of the State consists in the statement of a witness, of the truth of which the jury has a reasonable doubt, they cannot convicce on such evidence, although they may not believe the testimony of the defendant's witness.

*Given
J.W. Stare
Judge*

*Review
of
Judge*

16. The Court charges the jury that if you believe from the evidence that any witness in the case has knowingly sworn falsely as to any material facts in this case, you may disregard the testimony of this witness entirely.

17. The Court charges the jury that under your oath, if you or any one of you have a reasonable doubt from the evidence ^{in this case} as to defendants guilt, then you can not convict him.

*Review
of
Judge*

*Review
of
Judge*

18. The Court charges the jury that you are not bound by the opinion of experts, and you may be guided by your own conclusions based on the facts presented to you by the evidence.

20. The Court charges the jury that you are not bound by the opinion of experts.

*Given
J. M. Stare, Judge*

21. The Court charges the jury that you may, in the exercise of your discretion, disregard any opinion expressed to you by an expert.

*Given
J. M. Stare, Judge*

22. The Court charges the jury that the testimony of an expert, such as a physician, in good standing, is admissible on medical questions, not as being positively binding on the jury, but as throwing light on the question about which such physician testifies, and the testimony of such physician goes to the jury for what it is worth, not to be absolutely binding unless the jury find so, in its opinion and discretion.

*Given
J. M. Stare, Judge*

23.-- I charge you, gentlemen of the jury, that it is within your province to accept or reject any or all the testimony of expert witnesses on matters as to which they express an opinion.

*Given
J. M. Stare, Judge*

24. I charge you, gentlemen of the jury, that when the testimony of any expert witness in regard to matters of opinion, is contrary to your common knowledge, you do not have to accept the statement of such expert witness in regard to such matters of opinion.

*Given
J. M. Stare, Judge*

*Given
Oswald
Judge*

27. I charge you gentlemen of the jury that in evaluating the testimony of any witness who has testified as an expert, it is within your province, to consider, in connection with his testimony, in regard to matters as to which he has expressed an opinion as an expert, the qualification of such witness as an expert on the question, as to which he so testifies.

28. The court charges the jury, that if there is one single fact proved to the satisfaction of the jury, which is inconsistent with defendant's guilt, this is sufficient to raise a reasonable doubt, and the jury should acquit defendant.

*Given
Oswald
Judge*

*Given
Oswald
Judge*

29. The court charges the jury that defendant cannot be convicted in this case unless each and every juror, is not only reasonably satisfied from the evidence of defendant's guilt, but is satisfied from the evidence, and the evidence alone, beyond all reasonable doubt and to a moral certainty, of his guilt.

30. The court charges the jury that ^{if} after a full consideration of all the evidence, the guilt of the defendant is not proven to a moral certainty, then the jury must find defendant not guilty.

*Given
Oswald
Judge*

33. The court charges the jury that if there is a probability of the innocence of the defendant, you must acquit him.

Gibson
W. H. Hare Judge

34. The Court charges the jury, that good character may be taken by you in connection with all the rest of the evidence, and taken thus may generate within your mind a reasonable doubt as to defendant's guilt in this case, and in that event, it will be your duty to acquit him.

Gibson
W. H. Hare Judge

36. The court charges the jury that unless each of you is convinced beyond a reasonable doubt, from the evidence in this case, of the guilt of defendant, then you can not convict him.

Given
F. W. Place Judge

37. The court charges the jury that if any individual juror is not convinced, from the evidence of defendant's guilt, beyond all reasonable doubt, and to a moral certainty, you cannot convict him.

Given
F. W. Place Judge

LUCY DeSILVEY, having been first duly and legally sworn, testified
as follows:

DIRECT EXAMINATION, by Mr. Jones:

Q. Is your name Lucy DeSilvey ?

A. Lucy DeSilvey, correct.

Q. Are you the wife of Mac DeSilvey ?

A. Yes, sir.

Q. Did you raise a girl named or called Ruby DeSilvey ?

A. Yes, I helped to raise her.

Q. Was she your daughter or the daughter of your husband ?

A. No, sir.

Q. How long has she lived with you ?

A. I think she lived a little better than five years with me now,
because I think she was eight years old, I believe.

Q. Where were you living at the time Ruby DeSilvey disappeared ?

A. Biloxi.

Q. On the morning of the day Ruby disappeared where did you all
go from Biloxi ?

A. We come right here.

Q. Here to Bay Minette ?

A. Right here to Bay Minette, yes.

Q. Who all was along ?

A. Me and my husband and Theresa and Ruby and the baby.

Q. When you got to Bay Minette what did you all do ? Just tell
the part about going to the hotel.

A. He got some fish and--

Q. Who was that, your husband ?

- A. Yes, sir. He got some fish and we cleaned the fish and fried them, and then my husband taken my daughter Ruby to his niece's, Clara Booth. And then I asked him why couldn't we all go together and he said, "Never mind, you do as I tell you and fry them fish and I will be right back."
- Q. Where were you and Theresa going ?
- A. We was staying at the hotel.
- Q. I mean where were you going on this trip, to whose home ?
- A. To Lillian Colbert's.
- Q. Where was Ruby going ?
- A. He was supposed to take her to his other niece's, Clara Booth.
- Q. Does Lillian Colbert live at Little River ?
- A. Yes, sir.
- Q. And Clara Booth at McCollough ?
- A. Yes, sir.
- Q. Did you ask your husband, Mac DeSilvey, anything about letting all of you go on the same trip ?
- A. Yes, sir, and he said, "No, you do as I tell you and fry them fish; I will be right back."
- Q. And did he leave you and Theresa here at the hotel in Bay Minette then ?
- A. Yes, sir.
- Q. Who left with him ?
- A. Just him and Ruby.
- Q. Just the two of them left together, Ruby DeSilvey and your husband, Mac DeSilvey ?
- A. Correct.

Q. How long was your husband, Mac DeSilvey, gone ?

A. He was gone, I know, every bit of about five hours.

Q. When he came back was Ruby with him ?

A. No, sir.

Q. What did he tell you became of Ruby ?

A. He said he had a flat tire and he was fixing the flat tire, and he said it was a truck passed by with two boys in the truck and she hopped on the truck with the two boys and left. And I asked him, "Why didn't you go and get the child ?" And he said, "I couldn't let the car stay there by itself, it was on three wheels." And that's all he told me.

Q. Then what did he do with you all ?

A. Then he taken us over to Lillian's at that Little River, and then we left the oldest girl over to her house.

Q. At Lillian Colbert's ?

A. Yes, sir.

Q. What did he tell the Colberts with reference to Ruby's clothes-- did he have Ruby's clothes in the car ?

A. Yes, sir, her clothes was in the car.

Q. What did he tell the Colberts with reference to those clothes of Ruby DeSilvey ?

A. He said if Ruby come back there to just go ahead and give her her clothes, and if she didn't show up to divide the clothes among those two girls, Theresa and Trudy.

Q. What kind of shoes was Ruby wearing when she disappeared ?

A. White.

Q. You say she had on white shoes ?

A. Yes, sir.

Q. What kind of shoes were they ?

A. It was white pumps with open front.

Q. What kind of coat did she have on ?

A. It was a green coat.

Q. With what kind of collar ?

A. Green, with a kind of velvet plush collar; smooth, you know.

Q. Did Mr. Stuart, the sheriff, show you some clothes since you have come here to the jail ?

A. Yes, sir.

Q. What all did he show you ?

A. He showed me part of her coat collar and a piece of her sweater pocket; it was a red sweater.

Q. Did he show you the shoes ?

A. Yes, sir.

Q. Do you know that the things he showed you were parts of the sweater and coat and shoes that Ruby was wearing when she disappeared ?

A. Yes, sir, I know it.

Q. You couldn't be mistaken about that ?

A. No, sir; No, sir; No, Cap, I guess not.

Q. You couldn't be mistaken about them being parts of the clothes she was wearing when she disappeared ?

A. No, sir.

Q. Had either one of the girls prosecuted Mac DeSilvey over at Biloxi ?

- A. The little girl, Ruby, went and had him arrested and then they come and got the oldest girl, too, to testify against their Daddy.
- Q. Was that in connection with something he had done to them ?
- A. Well, he was trying to do it to the oldest girl and I raised too much Cain.
- Q. Was that prosecution still pending in Biloxi when he brought you all to Baldwin County ?
- A. Yes, sir.
- Q. What had he said to you about getting the girls out of the way to head off that prosecution ?
- A. He told me if the girls would go ahead and stay with their aunts in the country and as long as they didn't come back down there they would throw the case out of court.
- Q. Did he tell you at anytime he had to get rid of the girls to keep them from testifying ?
- A. No, sir.
- Q. He told you he was bringing them to the country so they wouldn't testify in the case, and he would get the case thrown out ?
- A. That's right.
- Q. Was this girl Ruby afraid of Mac ?
- A. They are both afraid of him, I am telling you the truth.
- Q. Are you afraid of him ?
- A. I am myself more than the kids was.
- Q. And he told you when he came back after taking Ruby off that she had got on a truck with two strange boys while he was fixing a flat tire ?

DEC 16 1943

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1943-44.

1 Div. 206

Mack Desilvey

v.

The State of Alabama

Appeal from Baldwin Circuit Court.

GARDNER, Chief Justice:

The appeal is from a conviction of murder in the first degree with infliction of the death penalty.

Defendant is charged with the murder of one Ruby Sims, who had been informally adopted by the defendant and his wife (a childless couple) as a member of the family when she was something over nine years of age. At the time of this alleged crime she was fourteen. Defendant's conviction rests wholly upon circumstantial evidence.

Of course, in every criminal prosecution the burden is on the State to prove beyond a reasonable doubt the crime charged has in fact been committed and that the

2.

accused is the person who committed it. It is well settled that circumstantial evidence may afford satisfactory proof of the corpus delicti. Winslow v. State, 76 Ala. 42.

True, the Court must first be convinced, at least prima facie, that an offense has been committed before it will consider who perpetrated the crime. As pointed out, however, in Ducett v. State, 186 Ala. 34, 65 So. 351, this does not mean that the fact that a crime has been committed should be shown by evidence wholly independent of the relation of the accused to the offense charged. The evidence that defendant committed the crime may be so inextricably blended with proof of the corpus delicti as to make a separation impossible. As to whether or not a prima facie case of the corpus delicti has been made to appear depends, of course, upon the facts of each particular case.

Defendant, a veteran of World War I, while overseas in 1920 met and married a Belgian woman, who is now known as Lucy Desilvey. She is uneducated and unable to read or write English. They came to this country, living at different times in Biloxi, Mississippi, and Mobile, Alabama. They adopted a girl when quite small named Theresa. Theresa is grown and married, but was a member of the family, living with defendant and his wife and Ruby Sims at the time here involved.

As a motive for the crime, it may be here added that, while in Mississippi, Ruby had charged the defendant with the commission on her of the crime against nature, and he had been indicted for that offense. Defendant had stated that if the two girls were out of the State of Mississippi, the charge against him would be dropped. Of course, it is

3.

clear enough that this was competent evidence to show motive. Hodge v. State, 97 Ala. 37, 12 So. 164.

In April, 1942, defendant with his wife and a little boy drove his car from Biloxi, Mississippi, to Mobile where Ruby and Theresa joined them. He then drove to the hotel at Bay Minette, and left all there except Ruby. He left the hotel about 8 a. m. in the car with Ruby, ostensibly to carry her to the home of one Clara Booth, who lived at Huxford in Escambia County, and was to return and carry the others to the home of his niece, Lillian Colbert. He did return in a few hours, and stated that he first had motor trouble and later, while delayed with a flat tire, Ruby hailed a passing truck and went off on it. Later the same day (about noon) the members of the party went to Lillian Colbert's. We may add in this connection that the testimony of Clara Booth is to be interpreted as showing that she did not anticipate any such visit; that Ruby had never visited her before, nor had the defendant been there with her; and they did not come to her house on that day. At Lillian Colbert's defendant inquired if Ruby had been there.

Lillian Colbert reported Ruby's disappearance shortly after this visit. No inquiry appears to have been made of Clara Booth, either by the defendant or anyone else. The only testimony tending to show Ruby has since been seen or heard from is that of the defendant himself, who states he thought he saw her on a street car with a soldier in New Orleans. He claimed, also, to have reported her disappearance to the Chief of Police of Mobile, or some authority there, without result. His testimony is further to the effect that Ruby had run away from their home on

4.

two other occasions. On the same day of Ruby's disappearance and the defendant's visit to Lillian Colbert's he stated to the two girls, in the presence of Lillian Colbert, that if Ruby came back, there were her clothes (which he had in a pasteboard box), and if she didn't come back, the girls could divide them between themselves.

Late in November, 1942, following Ruby's disappearance the previous April, one Kilcrease, while out hunting in the woods, found a skeleton of a human being off some distance from a very dim road which led to the edge of a swamp, and in the underbrush. He found the skull, rib, leg, and pelvis bones; a white shoe with open toe; a part of a green coat; the pocket of a red sweater; and some woman's hair fixed in a hoop-like curl, with bobby pins still intact. The hair was brown, but the evidence is that it was slightly darker than Ruby's hair. There were two parts of cloth large enough to indicate they formed a part of a green coat. When Ruby left the hotel at Bay Minette with the defendant, ostensibly to go to Clara Booth's, she wore a green coat which corresponded with the cloth found with this skeleton, and a red sweater which bore much correspondence to the pocket of a red sweater found at the same place. She also had on white shoes open at the toe. A black shoe belonging to Ruby was in the box of clothes defendant brought to Lillian Colbert's, and this shoe was offered in evidence by the State for a comparison by the jury with the shoe found at the place where the human bones were located.

Shortly after the discovery of this skeleton and these articles, a search was begun by the Sheriff's office for the defendant; and in the early part of December he was arrested in Ogden, Utah, a little over two thousand miles away.

5.

Being brought back to Baldwin County, he told the officer that he had not been in Baldwin County for a period of 18 months. While the defendant insists that he went to Ogden as a mere change of work, yet we think the jury could well infer and consider this testimony as evidence of flight. Fruitt v. State, 232 Ala. 421, 168 So. 149. And after his incarceration in the Baldwin County jail he made his escape, but was promptly recaptured. This, too, was of course competent proof for the jury's consideration on the question of flight. Jones v. State, 174 Ala. 85, 57 So. 36.

The State offered the testimony of one Nelson Grubbs, who has been in the employ of the State of Alabama as a toxicologist with headquarters at Auburn for a period of four and a half years. He had studied under a number of those engaged in that character of work, and has made many investigations of death, and as a part of his training he made a study of the human anatomy. He was readily able to discern that the skeleton, of course, was that of a human being, and he testified to the approximate height of the person; and from the size of the skull and underjaw and the bones, reached the conclusion that it was the skeleton of a young person, though he was unable to fix any definite age. Counsel for defendant insist that the proof did not show sufficient qualification for him to testify as to these matters, and the court overruled objections interposed. Whether a witness is shown to possess requisite qualifications is a preliminary question largely within the discretion of the trial court. Ex parte Barlow, 181 Ala. 88, 61 So. 912, cited in Wilson v. State, 243 Ala. 671, 11 So. (2d) 563. We are unwilling to hold in this case that the trial court

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abused its discretion in permitting this witness to testify to these facts.

The skull also indicated slightly protruding teeth, and enlarged camera pictures of Ruby were offered in evidence from which the jury could infer slightly protruding teeth; and these pictures also show white shoes with open toe worn by her at the time the pictures were taken. These photographs, shedding some light upon a material inquiry in the case, were properly admitted. Grissett v. State, 241 Ala. 343, 2 So. (2d) 399; Wilson v. State, supra.

The argument of counsel for defendant is largely addressed to the insufficiency of the proof to show the corpus delicti. As we have indicated, the corpus delicti is a fact, proof of which may be made by circumstantial evidence. If there is a reasonable inference deducible from the evidence of its existence, the court should submit the question of the sufficiency and weight of the evidence tending to support that inference for the jury's consideration. We are persuaded from a consideration of the evidence offered by the State, a broad outline of which hereinabove appears, that the jury could reasonably infer that the parts of the skeleton found in the woods was that of Ruby Sims, and that she came to her death by the hands of this defendant. McDowell v. State, 238 Ala. 101, 189 So. 183; Hill v. State, 207 Ala. 444, 93 So. 460; Ducett v. State, supra; State v. Williams, 46 Ore. 287; Lee v. State (Fla.), 117 So. 699.

The case, as we view it, presents no difficulty from the standpoint of legal questions that are raised. The question of difficulty, however, arises upon a consideration of the action of the court in denying the motion for a

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new trial based upon the theory that the verdict was not sufficiently supported by the proof. The trial court, as well as the jury, had much the advantage in this particular case. They had before them, not only the defendant himself and the witnesses testifying in the cause, but the pieces of clothing, including the shoe found at the place where the skeleton was located.

The examination of the defendant's wife by the State was in the line of legitimate cross-examination, and elicited harmful proof against the defendant in contradiction of her previous testimony on direct examination that he had always been good to her and the girls. This cross-examination disclosed the opposite, and that in fact defendant might be classed as a sexual pervert, and that she and the girls were afraid of him. That this had its weight with the jury cannot be questioned. Nevertheless, it was legitimate proof properly elicited on cross-examination of the defendant's witness.

We recognize the rule that courts should bear in mind the probable deficiencies that inhere in circumstantial evidence, and that if it merely arouses suspicion it is insufficient. Jordan v. State, 229 Ala. 415, 157 So. 485. As observed in Ex parte Agree, 63 Ala. 234, "The humane provisions of the law are that a prisoner charged with a felony should not be convicted on circumstantial evidence unless it shows by a full measure of proof that the defendant is guilty." And though we are in accord with the current of authority that circumstantial evidence, forming the basis of conviction, should be acted on with great caution (16 C. J. 763; Gunn v. State, 24 Ala. App. 494, 136 So. 870), yet

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it must be conceded that a well connected train of circumstances may be as cogent of the existence of a fact as any array of direct evidence. 16 C. J. ~~763~~ 763

The Court has given careful consideration and examination to the evidence in this case in consultation, and after carefully viewing all the circumstances in connection with the disclosed motive, the evidence of flight, and the defendant's inconsistent conduct and statements, the conclusion has been reached that this Court would not be justified in pronouncing the verdict palpably wrong and unjust. We are unwilling, therefore, to declare the action of the trial court in denying the motion for a new trial error to reverse. Caldwell v. State, 203 Ala. 412, 84 So. 272; Cobb v. Malone, 92 Ala. 630, 9 So. 738.

All the Justices concur in this opinion except Justices Foster and Livingston, who entertain the view that the motion for a new trial should be granted, and that the judgment should be reversed upon this ground.

Duly mindful of our duty in cases of this character, the record has been examined for any error, whether pressed upon our attention by counsel or not. We find, however, that defendant's counsel have argued all questions calling for serious treatment.

It results that we find no error to reverse, and that the judgment of the court below should be affirmed. It is so ordered, and the date of the execution of the sentence of the court is hereby fixed at Friday, the 18th day of February, 1944.

Affirmed.

THOMAS, BOULDIN, BROWN, and STAKELY, JJ., concur.
FOSTER and LIVINGSTON, JJ., dissent as indicated.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 206

Mack Desilvey, Appellant,

vs.

State of Alabama, Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to eight inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 16th day of

December, 1943

J. Render Thomas
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19...43-44

1st Div., No. 206

Mack Desilvey

Appellant,

vs.

The State of Alabama

Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, ALA. 1943

*Filed 11/18/43
Clerk*

A. That's right.

Q. And he said that was the last he saw of her ?

A. Yes, that's what he told me; I was taking the man's word. You know, I thought maybe the girl got scared after he was fixing the tire, and I thought maybe she thought that was a chance to get away from him, and I didn't give it anymore thought. I just thought maybe the poor girl got scared and left him.