924

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term 19 07

To the Clerk of the Circuit *Court*

of Baldwin *County—Greeting:*

Whereas, in the matter of

Clyde Delbridge, *Appellant*,

vs.

Liebell, *Appellee*,

recently pending in the Court of Appeals of Alabama, on appeal from the said

Court of *County,*

our Court of Appeals did on the 15 *day of* June, 19 08

render a judgment of affirmance reversed

in said cause; and,

Whereas, a certificate of such action of the Court of Appeals was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 28 *day of* June, 19 08

Now, it is hereby certified, that our Court of Appeals, or one of the Justices thereof, did, on the 28 *day of* June, 19 08 *order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.*

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 28 *day of* June, 19 08

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

October Term, 1947

1st *Div.,* No. 573

Clyde Deltraap
Appellant,

Hillhalia
Appellee,

From Baldwin *Court.*

CERTIFICATE OF RECALL

On Application for Rehearing.

THE STATE OF ALABAMA,
Baldwin County.

Filed this 30th day of June 1948

Alice J. Leuck
Clerk

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 19 47

To the Clerk of the Circuit Court of Baldwin *County, Greeting:*

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

Clyde DeGraaf, *Appellant*,

and

The State, *Appellee*,

wherein by said Court, at the ..... *Term, 19* ....., *it was considered adversely to said appellant*....., *were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant*.....

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 15th *day of* June *19* 48, *that said judgment of said Circuit Court be reversed and annulled, and* judgment rendered, discharging defendant. ~~the cause remanded to said County for further proceedings thereon, and that it was further considered that the appellee pay~~

~~the costs accruing on said appeal in this Court and in the Court below~~

Witness Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 15th *day of* June *19* 48

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

AUG 3 1948 opinion rendered APPLICATION FOR REHEARING Bricken

The Court of Appeals of Alabama

*October Term, 19*47

1st *Div. No.* 573

Clyde DeGraaf

Appellant,

v.

The State

Appellee,

From Baldwin *Circuit Court*

CERTIFICATE OF REVERSAL

The State of Alabama,
Baldwin *County.* } *Filed*
this 16th *day of* June 19 48

Avis J. Veach
clerk

BROWN PRINTING CO., MONTGOMERY, 1929

SHERIFF'S APPEARANCE BOND. Moore Printing Co.

THE STATE OF ALABAMA
Baldwin County

We, Clyde W. Grant, as principal, and undersigned as sureties, agree to pay THE STATE OF ALABAMA, the sum of Two Thousand DOLLARS unless the said Clyde W. Grant appear at the Nov. 3 Term, 1947 of the Circuit Court of Baldwin County, Alabama, and from term to term thereafter until discharged by law, to answer a criminal prosecution for the offense of Robbery

We hereby waive as to all amounts that may become due hereunder the benefit of all laws exempting personal property from levy and sale under execution or other process for the collection of debt, by constitution or laws of the State of Alabama, and we hereby severally certify that we have property over and above all debts, liabilities, exemptions and this bond to the amount of: real property of the value of $2,000.00 and personal property of the value of $1,000.00.

Clyde W. Grant

Sworn to and subscribed before me this the _____ day of _____, 19____

_____, Baldwin County, Ala.

N. P. Cooper (Seal)

Lynn Harrison (Seal)

L. L. Hammond (Seal)

C. de Grafenreid Jr. (Seal)

Taken and approved this the 7th day of Nov 1947

Taylor Wilkins, Sheriff

By _____, Deputy Sheriff

No. _____

The State of Alabama,
BALDWIN COUNTY

Circuit COURT

SHERIFF'S OFFICE

The State

VS.

Clyde De Groof

Sheriff's Appearance Bond

Amount of Bond, $_____

Filed _____, 19____

_____, Clerk

CAPIAS

Moore Printing Co.

THE STATE OF ALABAMA,
Baldwin County

To Any Sheriff of the State of Alabama:

An indictment having been found against

Clyde De Broaf

at the Fall Term, 1947, of the Circuit Court of Baldwin County, for the offense of

Robbery

you are, therefore, commanded forthwith to arrest the said Defendant and commit him

to jail, unless _____ give bail to answer said indictment, and that you return this Writ according to law.

Dated this 5th day of Nov 1947

Alice J. Kenick
Clerk Circuit Court of Baldwin County.

THE STATE OF ALABAMA,
Baldwin County.

We, _____, as principal and

the other undersigned as sureties, agree to pay the State of Alabama _____

Dollars, unless the said _____ appears

at the _____ Term of the Circuit Court of Baldwin County, and from Term to Term

thereafter until discharged by law, to answer a criminal prosecution for the offense of _____

_____

In signing the above bond we and each of us hereby waive all legal rights of exemptions allowed us by the Constitution and Laws of Alabama.

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

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

Taken and approved _____ day of _____ 194____

_____
Sheriff of Baldwin County.

CAPIAS

No. 13

THE STATE

vs.

Clyde De Graaf

Bail Fixed in This Case in Open Court at

$

By
Judge Presiding.

Attest :
Clerk.

Executed this 6 day of Nov 1947

By arresting the within

named Defendant

and placing him in Jail

Taylor Wilkins Sheriff.

Kevin B. Griffin Deputy Sheriff.

No-Miles

AUG 3 1948

On rehearing.

9.

HARWOOD, JUDGE.

Appellant has filed a motion to dismiss this application for rehearing on the grounds that the paper, labeled a Brief and Argument, is in no sense a brief, and therefore the application is not accompanied by a brief as required by Supreme Court Rule 38.

For the purposes of this opinion the pertinent portions of Rule 38 are as follows:

"All applications for rehearing must be filed with the Clerk of the court, accompanied by brief for the applicant * * * *. No application shall be received or filed which is not presented in strict compliance with this rule, * * * *."

The entire paper labeled a "Brief and Argument" filed in this cause by the applicant is as follows:

"BRIEF AND ARGUMENT

"The Court of Appeals has reversed and rendered the judgment of the trial court in this case, for the reason that appellant, Clyde DeGraaf, charged with robbery, was found guilty of assault with intent to rob and not robbery.

"True, the only defense presented by appellant was that he was not a party or conspirator to commit the crime of robbery. It is also true that the evidence presented by the State shows that the crime of robbery was completed. It is insisted, however, that to hold that the jury's verdict is a compromise verdict not supported by the evidence, and to discharge the defendant results in a miscarriage of justice.

"Whatever the rule of law is or should be under this state of evidence, the result--discharge of a defendant found guilty by a jury--cannot be correct.

"On this rehearing we insist on each and every point presented by the State in its original brief.

"We also request the Court of Appeals to state as a fact in its opinion that the trial judge, in his oral charge, instructed the jury both on the crime of robbery and on the crime of assault with intent to rob (R. 78). We make this request in order that there will be no doubt as to whether or not the Supreme Court may consider this fact if certiorari is applied for.

"We also request that it be noted in the opinion that defense counsel made no objection to this instruction (R. 78).

"It is submitted that this cause should be affirmed."

Under the provisions of Section 389, Title 15, Code of Alabama 1940, no assignment of errors is necessary in a criminal case, and it is the duty of the appellate courts of this state to consider all questions apparent on the record. Under this section it is unnecessary even to file a brief in a criminal case. Hymes v.

State, 209 Ala. 91, 95 So. 383; Bertalsen v. State, 20 Ala. App. 539, 103 So. 480.

If Supreme Court Rule 38 is to have any field of operation in criminal cases however, the conclusion is necessary that Section 389, supra, has application to the consideration of criminal cases on original submissions, and not to motions for rehearings in such cases. Indeed, our Supreme Court has specifically held that Rule 38 obtains in criminal as in civil cases. Caraway v. State, 207 Ala. 588, 93 So. 548.

After an appellate court has discharged its duty by full consideration of the questions raised in a record, and has issued its opinion, then clearly it is the duty of an applicant challenging the correctness of that opinion to point out clearly and intelligently the errors which he alleges infect the opinion and decision. The only way this can be done is of course in a proper brief filed in support of the application for rehearing.

While we do not think it entirely applicable, because of the limited scope of an application for a rehearing as distinguished from the broad sweep of an original submission, yet Supreme Court Rule 10, pertaining to the contents of an appellant's brief furnishes some basic criteria for determining the adequacy of the alleged brief filed in this proceeding. Among other things it is set forth in Rule 10 that an appellant's brief "shall contain, under a separate heading of each error relied on, separately numbered propositions or points together with the authorities relied on in support of them and in citing cases, the names of parties must be given, with the book and page where reported."

The alleged brief filed by the applicant is entirely defective in formal construction. Regardless, an analysis of this paper discloses that the only allegation of error it asserted is that the conclusion reached by this court that the defendant be discharged results in a miscarriage of justice, and cannot be correct.

After careful consideration and study we have of course reached a contrary conclusion. A mere statement of opinion

by counsel, unsupported by any citation of authority, that our opinion is incorrect, serves no useful purpose in so far as enlightening this court is concerned. Any other view by counsel for an applicant would be surprising, and disastrous to his application.

It is further noted that in the alleged brief counsel sets forth that: "On this rehearing we insist on each and every point presented by the State in its original brief."

Having already carefully considered each and every point presented by the State in its original brief, this attempt to refile such brief in no way facilitates the work of this court. In a brief on rehearing the alleged errors in an opinion should be specifically and clearly called to the court's attention. Refiling in the Supreme Court of briefs filed on submission, and in support of application for rehearing in this court, is not permitted. Ex parte Locklear, 205 Ala. 236, 87 So. 712. The same principle is applicable to counsel's efforts in this instance in his insistence on reconsideration of each and every point presented in his original brief.

While the appellate courts of this State have been inclined toward a liberal construction of Rules 10 and 38 in determining the adequacy of briefs, yet as stated by the Supreme Court in Ogburn-Griffin Company v. Orient Insurance Company, 188 Ala. 224, 66 So. 434, "we cannot permit them"(the rules)"to be ignored or entirely disregarded, however innocently, for they are framed and adopted to facilitate the business and be an aid to the court in its prompt and orderly disposition, a result which the profession and those whom it represents are greatly interested."

The office of an appellate brief is to aid an appellate court to understand quickly the issues involved, and by points, propositions and argument, supported where possible by citation of authority, present to the court the questions in controversy. Measured by this test, it is apparent that the paper filed in support of this application, under a most liberal construction, cannot be characterized as a brief.

It is therefore the conclusion of this entire court sitting en banc, that the motion to dismiss this application for rehearing on the grounds asserted is well taken, and dismissal is so ordered.

Motion to dismiss application for rehearing because of non compliance with Supreme Court Rule 38 granted.

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1947-48.

1 Div. 573.

Clyde DeGraaf

v.

State

Appeal from Baldwin Circuit Court.

HARWOOD, JUDGE.

This appellant was indicted for the robbery of Ermie Beverly. His jury trial resulted in a verdict of guilty of assault with intent to rob.

According to the tendency of the testimony of Odelle Goode and Elmore Byrd, who, under their testimony, were accomplices of the appellant, they met the appellant in Mobile, on 6 September 1947, and he permitted them to ride with him in his truck to Robertsdale. These three men had known each other previously.

On the ride the three entered into a conspiracy to rob Ermie Beverly, the proprietor of a pool hall in Robertsdale.

Before reaching Robertsdale Goode and Byrd wanted to clean up, so appellant drove them out to Blackwater Creek about three miles distance from Robertsdale.

Appellant left Goode and Byrd at the creek, but returned about 7 P. M. and drove them into Robertsdale.

Thereafter appellant contacted them in about two hours in Robertsdale and told them that Beverly, the intended victim was in Postles' Place, in Robertsdale.

They then went to an ice plant, where appellant bought some ice and took it to his home about two miles out from Robertsdale.

In about 45 minutes they returned to the business section of Robertsdale and waited for Beverly to leave Postles. They could not see in Postles Place from the point where they waited, and had left no one to watch for Beverly. However, in a few minutes they saw Beverly leave Postles.

Appellant then drove them to within about a block of where the robbery took place, and Goode and Byrd got out of appellant's truck. Appellant was to wait for them while they perpetrated the crime.

When Beverly came along Goode hit him with a stick, then threw him down, and took his wallet contsining $67.00. They then rejoined appellant and he drove them into Pensacola.

Ermie Beverly testified that after closing his business on the night of the robbery he went to Marshall's Place to drink beer. In a few minutes he was joined by the appellant, with whom he had always been on friendly terms. Appellant bought him

a bottle of beer and they conversed in a friendly fashion until it was closing time at Marshall's Place. They left this place together, but separated immediately, and Beverly did not see the appellant again that night.

Beverly then went on to Postles' Place where he stayed for about an hour, leaving there about 12:30 A. M. for his home.

Just before he reached his home and near a tree and some bushes, he was hit on the back of his head. After he had fallen he saw the man who had attacked him but did not recognize him. This man then took at least $60.00 from him.

A waitress at Marshall's Cafe testified as to having seen Beverly and appellant together in the Cafe until closing time on the night of the robbery.

Ira Turner testified that he knew appellant and had seen him drive a maroon Ford pickup truck. He also knew the spot where Beverly was robbed. On the night of the robbery, and near the place of its commission he saw a maroon Ford pickup truck stop and two men get out. This was between 10 and 10:15 P. M. The two men who left the truck walked toward the ice plant. The truck drove off down the road, but he did not know how far.

Sheriff Taylor Wilkins and Deputy Sheriff W. R. Duckworth testified as to statements made to them by the appellant in their investigation of this robbery. According to the testimony of these officers the appellant told them some five days after the robbery that he had met up with Goode and Byrd in Mobile and had driven them back to Robertsdale, first letting them out at Blackwater Creek and then later returning for them.

Again that night he ran into them at the bus station, and still later he rode them to Pensacola

Under the above testimony of witnesses other than Byrd and Goode, tending to show appellant's proximity, chronologically and geographically, to the alleged offense, particularly the fact that this appellant, after midnight, drove Goode and Byrd from Robertsdale to Pensacola, was a sufficient corroboration of the accomplice's testimony to meet the requirements of Section

307, Title 15, Code of Alabama 1940. Its weight was for the jury. Segars v. State, 19 Ala. App. 407, 97 So. 747; Ross v. State, 74 Ala. 532.

The lower court therefore did not err in denying appellant's motion to exclude the State's evidence made at the conclusion of the State's case on the grounds that the testimony of the accomplices, Goode and Byrd, had not been sufficiently corroborated.

In his own behalf the appellant testified that after riding Goode and Byrd from Mobile he left them at Blackwater Creek to bathe. He then went to his home and ate supper. Then he returned to the Creek and, as they had requested, rode Goode and Byrd into Robertsdale. He left them at Klumpp's Filling station. He then returned to his home, first leaving some eggs at the ice plant. He and his wife then carried their baby by his mother's, and they went to a picture show. They left the show around 10 o'clock and he returned his wife to his mother's. He then went back down town to drink beer and get some ice. On this trip he again saw Goode and Byrd and rode them to the corner near which Beverly was robbed. This was about the time Ira Turner saw two men get out of a truck at this place. Appellant said he then went to the ice plant, bought ice, and proceeded on to Marshall's Cafe. There he saw Beverly, and the two drank beer together. When Marshall's closed he took the ice home, and while there fixed himself a sandwich. He then returned to Robertsdale, and was stopped by Goode and Byrd in front of the Bus Station. This was about 12:30 A. M. After about a fifteen minute conversation he agreed to drive Goode and Byrd to Pensacola, a distance of some 36 miles. This he did, letting the pair out near the railroad station in Pensacola. No charges were made by appellant for this trip.

The appellant strenuously denied that any agreement or conspiracy was ever made between him and his alleged accomplices as to committing any robbery, or that he knew any robbery had been committed by this pair at any time during their contacts on

that night. Instead of getting part of the proceeds of the robbery, as alleged by Goode and Byrd, appellant alleges he loaned Byrd $10.00 on the trip to Pensacola.

Under the testimony of Goode, Byrd and Mr. Beverly, witnesses for the State, it can only be inferred that the crime of robbery was fully consummated. Under the appellant's testimony, the only inference is that he in nowise was connected with the crime. The jury's verdict, and the court's judgment entered pursuant thereto, however, found the appellant guilty of assault with intent to rob.

Appellant's motion for a new trial raises the question of the sufficiency of the verdict under the law and the evidence of this case.

In the quite recent case of Sammy Lee Edwards v. The State, 6 Div. 434 (Ct. App. Ms.) this court, through Bricken, Presiding Judge, held that where all the evidence adduced shows either the complete, consummated crime, or no offense at all, a jury is warranted only in returning a verdict of guilty of the offense charged, or a verdict of not guilty, depending of course upon whether the jury accepts the evidence presented by the State, or by the accused. On this point Judge Bricken wrote:

"As stated the only evidence adduced upon the trial of this case as to the commission of the alleged offense by appellant was that of the named injured party, which evidence was unsupported by any other evidence in the case. Said evidence tended to show that the crime of robbery itself was completed, that is to say under said evidence the crime was fully consummated. However the verdict of the jury acquitted the defendant of the offense of robbery, and, as noted, found the defendant guilty of an assault with intent to rob. Said verdict was unsupported by the evidence and was manifestly a compromise verdict which the law does not approve or contemplate. It also shows the exercise of a discretion by the jury not based upon the law or facts; hence in law, was contrary to the law and the evidence, as contended by appellant.

"Section 323, Title 15, of the Code of Alabama 1940 provides:

"'When the indictment charges an offense of which there are different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, or of an attempt to commit the offense charged; and the defendant may also be found guilty of any offense which is necessarily included in that with which he is charged, whether it be a felony, or a misdemeanor.'

"Section 42, Title 14, of the Code of Alabama 1940, also provides:

"'Upon the trial of an indictment for any offense, the jury may find the accused not guilty of the offense charged in the indictment, but, if the evidence warrants it, guilty of an attempt to commit such offense, without any special count in the indictment for such attempt.'

"Neither of said sections, however, can be construed to vest in the jury a pardoning power. Said sections properly construed mean where the evidence fails, under the required rule as to measure of proof, to show that the actual offense charged in the indictment has been committed as charged, then, if the evidence warrants it, the provisions of such sections may be applied and a conviction had for a lesser offense which necessarily included in the offense with which he is charged."

In Broadhead v. State, 24 Ala. App. 576, 139 So. 115, this court held:

"An attempt to commit a crime consists of three elements: (1) The intent to commit the crime; (2) performance of some act toward the commission of the crime; and (3) the failure to consummate its commission. In other words, in order that there may be an attempt to commit a crime, whether statutory or at common law, there must be some overt act in part execution of the intent to commit the crime, but which falls short of the completed crime; the difference between attempt and commission being that the act or step fails to produce the result intended.

"A criminal attempt to commit a crime consists of two important elements: First, an intent to commit the crime; and, second, a direct ineffective act done towards its commission. It follows that a failure to consummate the crime is as much an element of an attempt to commit it as the intent and the performance of an overt act towards its commission; and, where a crime has been actually committed, the second element or ingredient of an attempt is necessarily lacking, and a prosecution or conviction for an attempt to commit a crime could not be sustained for this reason."

A similar doctrine was also enunciated in Brazier v. State, 25 Ala. App. 422, 147 So. 688, and Hill v. State, 27 Ala. App. 160, 167 So. 606.

We have found no decision by our Supreme Court on this point, though in Kelly v. State, 235 Ala. 5, 176 So. 807, it was held that while an attempt to commit a crime is impliedly included in an indictment charging the crime, though it makes no reference to an attempt, it is proper to refuse a charge as to an attempt when the evidence did not support such an offense.

An "assault with intent" is an attempt plus something else. The attempt or offer is the basic ingredient of every assault. The chief difference between an assault and an attempt is that an assault presupposes a present apparent ability to commit the offense attempted. Lane v. State, 85 Ala. 11, 4 So. 730; People v. Stanton, 106 Cal. 139, 39 P. 525; 40 Yale L. J. 53, at

p. 65. In general therefore the legal principles pertaining to attempts are equally applicable to assaults.

There is substantial authority to the effect that when an accused is found guilty of an attempt under an indictment charging a crime, he is not thereby prejudiced, since the jury by their verdict have disregarded his defense, and he is in no position to complain that the jury, having the power under the evidence presented to render a verdict of guilty of the greater offense charged saw fit to render a verdict of guilty of a lesser included offense. See Calicoat v. State, 131 Miss. 169, 95 So. 318 and authorities therein collected.

Five states provide by statute that an accused may be found guilty of an attempt even though the evidence establish the consummation of the offense charged. See Ariz. Code Ann. (1939) Sec. 43-6108; Penal Code of Calif. (1937) Sec. 663; Idaho Code Ann. (1932) Sec. 17-305; Rev. Code of Mont. (1935) Sec. 11590; Nev. Comp. Law, (1929) Sec. 9975.

However, there is also substantial authority in accord with doctrine announced by this court in the Broadhead, Hill, Brazier, and Edwards Cases, supra. See 14 Am. Jur. Criminal Law, Section 65, note 12. It also appears that such was probably the doctrine of the common law. Regina v. Nicholls, 2 Cox C. C. 182.

Again we have found five states whose statutes preclude a conviction of an attempt or an assault with intent where the evidence discloses consummation of the charged offense. See Georgia Code, (1933) Sec. 27-2508; Gen. Sts. of Kan. (1935) Sec. 21-104; Rev. Sts. Mo. (1934) Sec. 4836; Okla. Sts. (1941) T. 21, Sec. 41; Miss. Code (1942) Sec. 2018.

The Mississippi statute, supra, reverses the doctrine developed judicially in Calicoat v. State, supra.

A defendant is entitled to be tried upon the issues made by the evidence. When under the evidence presented only a verdict of guilty, or a verdict of not guilty, is rationally supported, it cannot be said, with confidence, that a verdict reflecting a misleading instruction to the jury that they may return

a verdict of guilty of a lesser offense which is unsupported by the evidence, is harmless. Such an assertion overlooks the practical court room fact, well recognized by those familiar with jury trials, that juries are sometimes prone to compromise. Where some of the members might, under the evidence presented, hesitate or refuse to render a verdict of guilty of the serious offense charged, with its accompanying heavy penalty, such hesitation may be dissipated and overcome if instructions be given by the trial court inviting a verdict of guilty of a lesser offense carrying with it a lighter penalty.

Clearly in such a case an accused is prejudiced for his conviction results from a compromise, and is not a true verdict rendered on the evidence presented.

Under Section 389, Title 15, Code of Alabama 1940, the duty is placed upon us to consider all questions apparent on the record and render such judgment as the law demands. This section makes the right of appeal in criminal cases one of substance imposing on the court a duty to search the record for errors. Wesson v. State, 238 Ala. 399, 191 So. 249.

The verdict in this case, a part of the record, is, under the doctrine established by the decisions of this court cited above, unsupported by the evidence presented. The cause must therefore be reversed.

The verdict of the jury finding this accused guilty only of assault with intent to rob acquits him of the charge of robbery. It is only this offense that is spelled out by the State's evidence. Further prosecution is effectively barred by basic legal principles. An order of rendition is therefore indicated. It is therefore ordered that this case be reversed and rendered and the defendant be discharged from further prosecution.

REVERSED AND RENDERED.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

1 Div., No. 573

Clyde DeGraaf, Appellant,

v.

The State, Appellee,

From Baldwin Circuit Court

The State of Alabama,
City and County of Montgomery.

I, Charles Bricken, Jr., Clerk of the Court of Appeals 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 Court of Appeals in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 15 *day of* June, 19 08

Charles Bricken Jr.
Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

1 Div., No. 573

Clyde DeGraaf
Appellant

vs.

Li Estate
Appellee

From Baldwin County Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 3946

Filed 6-16-48
Ariel J. Drach
Clerk

THE STATE OF ALABAMA,
Baldwin County.

Circuit Court, Fall Session ~~Term~~, 1947

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

Clyde De Graaf, Odell Goode and Elmore Byrd, whose names are to the Grand Jury otherwise unknown, feloniously took Sixty Dollars of the lawful currency of the United States of America, of the value of Sixty Dollars, the property of Ermie Beverly, from his person, and against his will, by violence to his person, or by putting him in such fear as unwillingly to part with the same,

against the peace and dignity of the State of Alabama.

G. D. Elliott
Solicitor of the Twenty-First Judicial Circuit.

No. .....

THE STATE OF ALABAMA,

BALDWIN COUNTY

Circuit Court

Fall Session ..... Term, 1947

THE STATE

Vs.

Clyde De Graaf, Odell Goode and Elmore Byrd

INDICTMENT

Robbery

No Prosecutor.

WITNESSES:

Ermie Beverly ✓
H. F. Hall
Zollie Griffin
Pete Sellers
W. R. Duckworth
W. T. Allen
Ira Turner ✓
Cecil Mattingly ✓

Baldwin Times Print

GRAND JURY NO. 13

A TRUE BILL

Faux Earle

Foreman Grand Jury.

Filed in open Court and in the presence of the Grand Jury on the 3rd day of Nov, 1947.

Alice J. Reuter, Clerk.

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

Alice J. Reuter

Clerk.

Bail fixed $ 10,000 each

Joseph P. Pettis Jr.

Judge.

We the jury find the defendant guilty of assault with intent to rob as charged in the indictment.

Foreman

Charge A.

The Court charges the jury that if you believe the evidence in this case you will find the defendant not guilty.

Refused
E. T. Hobart
Judge

Charge B.

The Court charges the Jury that you cannot convict the defendant in this case on the testimony of Odell Goode and Elmore Byrd alone; you must further believe beyond a reasonable doubt the corroborating testimony tending to connect the defendant with the commission of the offense

Duncan
E. M. Hathaway
Jun 8 [illegible]

Charge No. 17.

The Court charges the jury that proof of good character of the defendant, when considered along with the evidence in the case, may be sufficient to generate a reasonable doubt and entitle the defendant to an acquittal at your hands, even though without such proof of good character you would not entertain such a reasonable doubt of his guilt.

Reinier
E. B. Kilbreth
Judge

Charge No. 1

The Court charges the Jury that if, from the testimony there is a probability of defendant's innocence, that is just ground for a reasonable doubt; and, if such probability exists in this case, you cannot convict the defendant.

Count No. 1

The Court charges the jury that if, from the testimony there is a probability of the accused's innocence, that is just ground for a reasonable doubt; and, if such probability exists in this case, you cannot convict the defendant.

Viviam v. State
Charge

Charge No. 2

The Court charges the jury that a reasonable doubt may exist, though there is no probability of defendant's innocence from the testimony; and if they have not an abiding conviction, to a moral certainty, of defendant's guilt, then they should acquit the defendant.

Reiner
E. D. Kobrick
Judge

Charge No. 5

The Court charges the jury that the 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.

Charge No. _____

The Court charges the jury that the 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.

Charge No. 6

The Court charges the jury that a conviction of robbery cannot be had on the testimony of accomplices, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and such corroborative evidence, if it merely shows the commission of the offense or the circumstances thereof, is not sufficient.

Given
E. Hitchcock
Judge

Charge No. 7

The Court charges the jury that the fact that more than one accomplice testified against the defendant, does not change the rule that their testimony must be corroborated by other testimony connecting defendant with the commission of the offense charged, before you can convict the defendant.

Charge No. 7

The law arraigns the jury, that the fact that more than one good police testified against the defendant, does not change the rule that their testimony must be corroborated by other testimony connecting defendant with the commission of the offense charged, before you can convict the defendant.

Charge No. 8, Refused
Fuller

Charge No. 8

The Court charges the jury that a conviction cannot be had in this case upon the uncorroborated testimony of accomplices in the crime for which the defendant is being tried.

Minnie E. Hoffman
Judge

Charge No. 9

The Court charges the Jury that the legal presumption of innocence is to be regarded by the jury in every case as a matter of evidence, to the benefit of which the accused is entitled; and, as a matter of evidence the presumption of innocence attends the accused until his guilt is, by the evidence, placed beyond a reasonable doubt.

Himan
E. M. Hufstedler
Judge

Charge No. 10

The Court charges the jury that the burden is upon the State, and it is the duty of the State to show, beyond a 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.

Charge No. 10

The Court charges the jury that the burden is upon the State, and it is the duty of the State to show, beyond a 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.

Given
E. R. H. Ellis
Judge

Charge No. 11.

The Court charges the jury that under the statute forbidding conviction of a felony on the uncorroborated testimony of accomplices, such testimony required in corroboration must be of a material fact tending to connect this defendant with the commission of the offense charged, and if it only relates to the commission of the offense, it is not sufficient.

Brian
E. Hibbler
Judge

Charge No. 12.

The Court charges the jury that if they find there is no other evidence in this case tending to connect Clyde De Graff with the offense charged, except that of accomplices in said offense, they cannot convict the defendant.

Charge No. 13.

The Court charges the jury that you cannot convict this defendant of a felony on the uncorroborated testimony of accomplices, and further that the corroboration necessary for such conviction must be of some material fact connecting the defendant with the commission of the offense charged, and must not merely relate to the commission of the offense or the circumstances theeof.

Given
E. D. Kilburn
Judge

Charge No. 14.

The Court charges the jury that if the only evidence in this case connecting the defendant with the commission of the robbery charged is the testimony of accomplices in the crime, you cannot convict the defendant; and evidence merely showing the commission of the offense or the circumstances thereof is not sufficient as corroboration.

Brian E. Fitzpatrick
Judge

Charge No. 3

The Court charges the jury that if there is, from the evidence, a reasonable probability of defendant's innocence, the jury should acquit the defendant.

Renen
Attorney at Law
Juriste

Charge No. 4

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

Winen
v. Hufstedler
Judge

Charge 15

The Court charges the jury that proof of good character, when taken and considered with all the evidence in the case, may be sufficient to generate a reasonable doubt of the defendant's guilt and entitle him to a verdict of not guilty, even though without such proof of good character you would not entertain such reasonable doubt.

Kleiner
E. Imbrecht
Judge

Charge No. 16.

The Court charges the jury that proof of good character, if proven to your satisfaction may be sufficient, when taken and considered with the other evidence in the case, to generate in your minds a reasonable doubt as to the defendants guilt, and entitle him to a verdict of not guilty.

Steiner
E. Hoffstetter
Judge

Steiner
E. Hoffbrick
Judge

CITATION OF APPEAL

TO A. H. ELLIOTT, SOLICITOR TWENTY FIRST JUDICIAL CIRCUIT OF ALABAMA:

WHEREAS, CLYDE DE GRAAF, HAS ON 3rd DAY OF DECEMBER 1947, obtained an appeal to the Court of Appeals from a judgment rendered against him in the Circuit Court of Baldwin County, Alabama to that certain cause in said Circuit Court, in which the State of Alabama is Plaintiff and Clyde De Graaf is Defendant, which said judgment was rendered on to-wit: December 3, 1947.

NOW, THEREFORE, this is to notify you to appear at the next term of the said Court of Appeals to defend against said appeal if you shall think proper to do so.

WITNESS my hand this the 10th day of March, 1948.

Alice J. Leach
Clerk, Circuit Court Baldwin
County, Alabama

I hereby accept service of a copy of the within citation of Appeal, and waive any further, other or additional notice of the same.

This 11 day of March, 1948.

Solicitor 21st Judicial Circuit of Alabama.

_____Div. No._____ CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 924

Baldwin County, Circuit Court

Clyde DeGraaf, Appellant

VS.

The State of Alabama, Appellee

The State of Alabama,

Baldwin County, The Circuit Court of Baldwin County.

I, Alice W. 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 [illegible] day of December 19[illegible], and the defendant convicted by a Jury of the offense of Assault with Intent To Rob, and that on the 3rd day of December 19[illegible], said defendant was sentenced to a term of Ten Years, which said sentence was suspended pending an appeal to the Court of Appeals Court of Alabama.

I further certify that on this the 3rd day of December 19[illegible], the defendant gave notice in writing of an appeal to the Court of Appeals Court of Alabama.

Witness my hand and the seal of this Court, this the 13th day of March 19[illegible].

Alice J. Duck
Clerk of Circuit Court of
Baldwin County, Alabama,

(BOX 474)

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS that Clyde DeGraaf as principal and the undersigned as sureties are held and firmly bound unto the State of Alabama in the sum of Five Thousand Dollars ($5,000.00) for the payment of which well and truly to be made we bind ourselves, and our heirs, executors and administrators, separately and severally firmly by these presents and we and each of us waive our rights to exemption under the Constitution and Laws of the State of Alabama as against this Bond.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above bound Clyde DeGraaf was on the 3rd day of December, 1947, convicted in the Circuit Court of Baldwin County, Alabama, for the offense of assault with intent to rob and was on the 4th day of December, 1947, sentenced to a term of ten years in the penitentiary, from which sentence the said Clyde DeGraaf has this day prayed and obtained an appeal to the Court of Appeals of Alabama.

NOW is the said Clyde DeGraaf shall appear and abide such judgment as may be rendered by the Court of Appeals and if the Judgment of conviction is affirmed or the appeal is dismissed the said Clyde DeGraaf shall surrender himself to the Sheriff of Baldwin County, Alabama, at the County Jail within fifteen days from the date of such affirmation or dismissal, then obligation to be null and void, otherwise to remain in full force and effect.

Given under our hands and seals this 4th day of December, 1947.

Clyde DeGraaf SEAL

Linos Garrett SEAL

W. L. Hammond SEAL

Arthur DeGraaf Jr. SEAL

Approved this 5 day of December, 1947.

Alice J. Lucas

Clerk of the Circuit Court of Baldwin County, Alabama.

ORIGINAL — DEFENDANT SUBPOENA

Printed by The Baldwin Times, Bay Minette.

THE STATE OF ALABAMA
Baldwin County.

COUNTY COURT

SUB NO. _____
Case No. 924 Term, Fall, 1940

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon R. M. Mundine, Le Roin Thompson

personally to be and appear before the County Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 3rd day of Dec., 1940, at 9:00 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, wherein the State of Alabama is Plaintiff and Clyde De Graff Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 2nd day of Dec. A. D., 1940

Alice J. Duck
~~R. S. DUCK~~, Clerk.

Received in office 12-2, 1947.

Executed this 12-2, 1947.

By serving in Full

Taylor Wilkins
H. T. Hall Sheriff.
P. 5-

ORIGINAL

For

No. 924 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

County Court

THE STATE
Vs.

Clyde McGraw.

STATE SUBPOENA

Issued this 2nd day of

Dec, 1940

Alice J. Weeks Clerk.

ORIGINAL — DEFENDANT SUBPOENA

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

CIRCUIT COURT

THE STATE OF ALABAMA
Baldwin County.

SUB. No. _____

Case No. 924 Term. Fall, 1947

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon Phil Cooper, Grover Hobbs, Nolan Cooper, Bill Cooper, Newt Cadwell, Wm. Amos Garrett, Walter Hammond, Ed Cooper, Albert Kendricks, Bill Campbell, Walter Hales, Willard Burgoreau, Mathe Mae Brille

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 3rd day of Dec, 1947 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, wherein the State of Alabama is Plaintiff and Clyde De Graaf Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 18 day of Nov A. D., 1947

H. S. DUCK, Clerk.

Executed

Not Executed

Received in office 11-18, 1947

Executed this 11-19, 1947

By Serving in Full

Taylor Wilkins

H. E. Hall

Sheriff.

D. S.

ORIGINAL

For

No. 924 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE
Vs.

Clyde De Graaf

STATE SUBPOENA

Issued this 18th day of

Nov, 1947.

Dick J. Lucas

Clerk.

ORIGINAL — DEFENDANT SUBPOENA

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

THE STATE OF ALABAMA
Baldwin County.

CIRCUIT COURT

SUB. No. _____

Case No. 924 Term. Fall, 1947

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are Hereby Commanded to Summon

Marie Steiner
Robertsdale, 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 3rd day of Nov, 1947 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, wherein the State of Alabama is Plaintiff and Clyde De Graaf Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 26 day of Nov A. D., 1947

Alice S. DUCK, Clerk.

Received in office 11-26, 1937

Executed this [illegible], 1937

By [illegible]

Taylor Walker
[illegible] Sheriff.
D.S.

ORIGINAL

For

No. 924 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court

THE STATE
Vs.

Clyde De Graaf

STATE SUBPOENA

Issued this 26th day of

Nov, 1937

Alice J. Clerk
Clerk.

THE STATE OF ALABAMA
Baldwin County

Justice Court of FRANK P. PROPST, Notary Public, Ex-Officio Justice of the Peace. Precinct 4, Bay Minette, Alabama

To Any Sheriff of the State of Alabama:
You Are Hereby Commanded to Summon Ernie Beverly. W. R. Duckworth
T. J. Hall Pete Sellers. Zollie Griffin W. L. Allen J Elmore Byrd - Adell Good
personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office on the 24 day of Sept 2 P.M, 19 47, 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 Clyde Degraaf Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 20 day of Sept A. D. 1947

Frank P Propst
Justice of the Peace, Precinct No. 4

Executed in full, this the

22 day of

Sept, 19 47

Taylor Wilkins
Sheriff

H T Hall
Deputy Sheriff

Moore Printing Co., Bay Minette, Ala.

ORIGINAL—STATE SUBPOENA

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT

Sub No. _____

Case No. 924 Term Fall, 1947

To Any Sheriff of the State of Alabama:

You are hereby commanded to Summon Ernie Beverly, Odell Goode, Elmore Byrd, H. F. Hall, Zolie Griffin, Pete Sellers, W. R. Duckworth, W. L. Allen, Ira Turner, Cecil Mattingly, Mattie Mae Brill

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 3rd day of December, 1947, 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 Clyde Ue Graf

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

Witness my hand this 13 day of Nov A. D. 1947

R. S. DUCK, Clerk.

Received in office 11-14, 1947

Executed this 11-28, 1947

By Lemington Smith

Joyce Wilkins

Joyce R. Griffin Sheriff

DS.

ORIGINAL

For

No. 924 Page

The State of Alabama,
Baldwin County.

CIRCUIT COURT

THE STATE
Vs.

Clyde W. Graf

STATE SUBPOENA

Issued this 13 day of

Nov, 1947

Alice J. Renick
Clerk.

GRAND JURY SUBPOENA—ORIGINAL

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,
Baldwin County

No. 13

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon Ernie Beverly, Odell Goodle, Elmore Byrd, H. F. Hall, Zollie Griffin, Pete Sellers, W. R. Duckworth, W. L. Allen

to be and appear on the 4th day of Nov, 1947, 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 13 day of Oct A. D., 1947

Verie J. Veach Clerk.

Robert Dodd

ORIGINAL

No. 13

GRAND JURY SUBPOENA

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

Ernie Beverly
H. F. Hall
W. D. Duckworth
Pete Sellers
W. L. Allen
Julia Griffin

this 22 day of Oct, 1947

Taylor Wilkins, Sheriff

Moore Printing Co., Bay Minette, Ala.

Pete Sellers

AFFIDAVIT

STATE OF ALABAMA
BALDWIN COUNTY } In the Justice Court of FRANK P. PROPST

Before me, FRANK P. PROPST, Justice of the Peace

in and for said County, personally appeared, Taylor Wilkins 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 Sept 13 - 1947 that one Clyde De Graaf Feloniously took money of the value of $67.00 (Sixty-Seven Dollars) the property of Ernie Beverly from his person and against his will - by hitting him on the head with a stick or by putting him in such fear as unwillingly to part with the same.

against the peace and dignity of the State of Alabama

Sworn to and subscribed before me this 13 day of Sept A. D., 1947

Frank P Propst, J. P.

Taylor Wilkins

WARRANT

THE STATE OF ALABAMA
BALDWIN COUNTY }

TO ANY LAWFUL OFFICER OF SAID COUNTY, GREETINGS:

You are hereby commanded to arrest Clyde De Graaf and bring him before me to answer the State of Alabama on a charge Robbery

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

Witness my hand this 13 day of Sept, 1947

Frank P Propst J. P.

Ernie Beverly

No. 299 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

JUSTICE COURT OF

FRANK P. PROPST
NOTARY PUBLIC, Ex-Officio
JUSTICE OF THE PEACE

AFFIDAVIT

THE STATE OF ALABAMA
vs.

Clyde De Graaf

WITNESSES FOR THE STATE:

Jernard Brooke
Grace Pyrd

Moore Printing Co.

JUSTICE COURT OF
BALDWIN COUNTY

WARRANT OF ARREST

The State of Alabama
vs.

Clyde De Graaf

Executed this 13 day of Sept, 1947

By arresting the within

named Defendant

and placing him in Jail

Taylor Wilkins, Sheriff
Willie B. Griffin, Deputy Sheriff

THE STATE OF ALABAMA,
BALDWIN COUNTY

No. 13

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon Odelle Goode

if to be found in your county, at the instance of the State of Alabama, to appear before the Circuit Court of Baldwin County, at the Court House thereof, in said County, on the 4th day of Nov., 1947, and from day to day thereafter, until discharged, to give evidence and the truth to speak before the Grand Jury of said county, concerning certain matters to be investigated by the said Grand Jury.

Herein fail not, and have you then and there this Writ.

Witness my hand this 13 day of Oct A. D., 1947

Attest: Alice J. Duck, Clerk

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,
BALDWIN COUNTY

No. 13

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETINGS:

You are hereby commanded to summon Elmore Byrd

if to be found in your county, at the instance of the State of Alabama, to appear before the Circuit Court of Baldwin County, at the Court House thereof, in said County, on the 4th day of Nov., 1947, and from day to day thereafter, until discharged, to give evidence and the truth to speak before the Grand Jury of said county, concerning certain matters to be investigated by the said Grand Jury.

Herein fail not, and have you then and there this Writ.

Witness my hand this 13 day of Oct. A. D., 1947

Attest:

Alice J. Duck, Clerk

Moore Printing Co., Bay Minette, Ala.

State of Alabama

vs.

Clyde De Graff.

Comes the defendant and demurs to the indictment filed against him in this case and assigns the following grounds of demurrer:

1. Said indictment does not sufficiently describe the property taken from Ernie Beverly.

2. Said indictment does not give the denomination or description of the lawful currency taken from Ernie Beverly, nor does it aver that this information was unknown to the Grand Jury.

3. Said indictment does not specifically describe the currency taken from Ernie Beverly, does not give the number or denomination of the bills taken, and does not aver that a more particular description of said property was unknown to the Grand Jury.

Hefner & Chason

Attys for Defendant

State of Alabama
vs
Clyde De Groff

Demurrer to Indictment

Filed Dec 3, 1947

Alice J. Huck
Clerk

THE STATE OF ALABAMA
Baldwin County

Justice Court of FRANK P. PROPST, Notary Public, Ex-Officio Justice of the Peace. Precinct 4, Bay Minette, Alabama

To Any Sheriff of the State of Alabama:

You Are Hereby Commanded to Summon W. R. Duckworth - Pete Sellers Zollie Griffin H. J. Hall - W. R. Duckworth -

personally to be and appear before the Justice Court, to be holden for Baldwin County, at my office on the 24 day of Sept 2 P. M, 1947, 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 Clyde De Graaf Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 20 day of Sept A. D. 1947

Frank P Propst
Justice of the Peace, Precinct No. 4

Executed in full, this the

22 day of

Sept, 1947

Taylor Wilkins
Sheriff

H T Hall
Deputy Sheriff

Moore Printing Co., Bay Minette, Ala.

SHERIFF'S APPEARANCE BOND. Moore Printing Co.

THE STATE OF ALABAMA
Baldwin County

We, Clyde De Graaf, as principal, and undersigned as sureties, agree to pay THE STATE OF ALABAMA, the sum of Ten Thousand DOLLARS unless the said Clyde De Graaf appear at the Fall Term, 1947 of the Circuit Court of Baldwin County, Alabama, and from term to term thereafter until discharged by law, to answer a criminal prosecution for the offense of Robbery

We hereby waive as to all amounts that may become due hereunder the benefit of all laws exempting personal property from levy and sale under execution or other process for the collection of debt, by constitution or laws of the State of Alabama, and we hereby severally certify that we have property over and above all debts, liabilities, exemptions and this bond to the amount of: real property of the value of $2,000.00 and personal property of the value of $1,000.00.

Sworn to and subscribed before me this the _____ day of _____, 19____

_____, Baldwin County, Ala.

Clyde De Graaf (Seal)

H. W. Lammerson (Seal)

N. P. Cooper (Seal)

Amos Sherrett (Seal)

Taken and approved this the 24th day of Sept 1947

C. de Graaff Jr

Tyler Wilkin, Sheriff

By _____, Deputy Sheriff

No. _____

The State of Alabama,
BALDWIN COUNTY

_____ COUR'T

SHERIFF'S OFFICE

The State

VS.

Clyde De Graaf

Sheriff's Appearance Bond

Amount of Bond, $_____

Filed _____, 19____

_____, Clerk

Fed. No. 482
Reg. No. 3758

DR. W. C. HOLMES
FOLEY, ALA.

Date 11/29/4

Office Hours: 9 to 12 a m and 2 to 6 p m except Sunday and Thursday afternoons

FOR To whom it May
ADDRESS

℞ Concern –
This is to Certify that
Newton Cadmee has
been my Care for
the past six weeks for
Amoebic Dysentery and
he is not physically fit
to attend Court for the
next two weeks

DR W C Holmes

JURY LIST
Baldwin County Circuit Court
Fall Term — December 1, 1947

	Name	Occupation	Residence
S1	~~Harlow Sharretts~~, Jr.,	farmer,	Summerdale
2	John N. Standard,	merchant,	Bay Minette
3	~~Joseph Frolick, farmer, Silverhill~~		
S4	~~H. G. Wallin,~~	drug clerk,	Robertsdale
S5	~~Thomas E. Hollis,~~	Gulf Gas Agent,	Robertsdale
6	Luther V. Street,	farmer,	Point Clear
7	F. E. Rhodes,	Farmer,	Summerdale
D8	~~Norman A. Racine, laborer, Robertsdale~~		
D9	~~Hayes Dunk,~~	ship yard,	Cross Roads
10	~~Lilbert Wilson, bookkeeper, Stapleton~~		
11	~~Bennie McComb, farmer, Elberta~~		
12	Bruce Cleveland,	farmer,	Foley
D13	~~Grady Hill, barber, Robertsdale~~		
D14	~~Joe Goittler, farmer, Elberta~~		
15	Maiben Phillips,	farmer,	Little River
S16	~~Jerry Heidelberg,~~	farmer,	Silverhill
17	Evens S. Higbee,	farmer,	Belforest
S18	~~W. V. Ellison, farmer,~~		Robertsdale
S19	~~L. W. Neese, merchant, Robertsdale~~		
D20	~~John Flowers, farmer, Foley~~		
D21	J. O. Driskell,	farmer,	Loxley
D22	~~Robert Gill, cafe, Robertsdale~~		
D23	~~C. Agnew Thompson~~,	turpentine,	Bay Minette
D24	~~Homer C. Singleton~~,	farmer,	Foley
D25	~~Rudolph Dourhava~~, Jr.,	farmer,	Silverhill
26	~~Louis Davis~~ Moore,	farmer,	Summerdale
D27	~~Sherman E. Teem, farmer, Foley~~		
D28	~~Willie R. Cooper,~~	farmer,	Rosinton
29	B. B. Kinnaird,	Gulf Serv. Manager,	Bay Minette
30	John Arthur Rich,	laborer,	Foley
S31	~~Jesse M. Smith,~~	real estate,	Bay Minette
S32	~~Curtis Capps~~,		Bay Minette
D33	~~Herman Dreso~~,	farmer,	Elberta
S34	~~Clyde H. Byrne, merchant, Bay Minette~~		
35	~~Albert Keuler, salesman, Loxley~~		
D36	~~J. Clay Dickman~~,	farmer,	Bay Minette
D37	~~John Blackmon, laborer, Foley~~		
D38	~~Joe B. Smith~~,	engineer,	Tensaw
D39	~~George Boehn~~,	farmer,	Summerdale

D ~~40 R. Howard Vaughn, Jr., farmer, Robertsdale~~

D ~~41 Preston Fu~~lford, seafood dealer, Bon Secour

D ~~42 A. J. Engel, farmer, Summerdale~~

~~43 Edward Kane Parker Silverhill~~

44 Ed J. Lamerice Newport Bay Minette

45 Robert E. Stapleton Merchant Fairhope

~~46 J. L. Hope Farmer Loxley~~

D ~~47 [illegible] Griffith~~ Farmer Foley

48 Thomas B. Rhodes Farmer Summerdale

~~49 [illegible] White~~ Navy Yd. Robertsdale

S ~~50 [illegible] Fulgham, Alderman~~, Bay Minette

D ~~51 David H. Dorn Farmer~~ Lottie

~~52 George A. Charrette~~ Barber Foley

~~53 Joseph Neal Farmer Robertsdale~~

S ~~54 Howard Brooks~~ Barber Robertsdale

55 Lawrence E. Callaway Fisherman, Bonscour

~~56 [illegible]~~ Asse. School Prin.
Bay Minette

S ++++++++++++

D HHHHHH ~~HHH~~ HHHHH

State vs.
Clyde De Graaf.

JURY LIST
Baldwin County Circuit Court
Fall Term — December 1, 1947

Name	Occupation	Residence
~~Eugene~~ Stearns, Jr.	farmer	Summerdale
John N. Standard	merchant	Bay Minette
Joseph Frolich	farmer	Silverhill
~~W. O. Williams~~	drug clerk	Robertsdale
~~Thomas Mosley~~	Gulf Gas Agent	Robertsdale
Luther C. Street	farmer	Point Clear
F. E. Rhodes	farmer	Summerdale
~~[illegible]~~	~~farmer~~	~~Robertsdale~~
~~Horace [illegible]~~	~~ship yard~~	~~Cross Roads~~
~~Albert Wilson~~	~~bookkeeper~~	~~Stockton~~
~~Lonnie McClure~~	~~farmer~~	~~Elberta~~
Bruce Cleverdon	farmer	Foley
~~[illegible]~~	~~farmer~~	~~Robertsdale~~
~~[illegible] Gollion~~	~~farmer~~	~~Elberta~~
Marion Phillips	farmer	Little River
~~[illegible]~~	~~farmer~~	~~Silverhill~~
Ervine S. Hughes	farmer	Perdido
~~H. H. Ellison~~	~~farmer~~	~~Robertsdale~~
~~[illegible]~~	~~[illegible]~~	~~[illegible]dale~~
~~[illegible]~~	~~[illegible]~~	~~[illegible]~~
J. C. Driskell	farmer	Loxley
~~[illegible]~~	~~[illegible]~~	~~Robertsdale~~
~~Alfred Thompson~~	~~turpentine~~	~~Bay Minette~~
~~[illegible]~~	~~[illegible]~~	~~Foley~~
~~Rudolph Luchtel~~, Jr.	farmer	Silverhill
~~Henry Louis Moore~~	farmer	Summerdale
~~Clarence E. Team~~	lumber	Foley
~~Wiley P. Kemp~~	farmer	Rosinton
E. H. Kennedy	Gulf Serv. Manager	Bay Minette
John Arthur Rich	laborer	Foley
~~Grover M. Reed~~	real estate	Bay Minette
~~[illegible] Capps~~		Bay Minette
~~Herman Hoppe~~	farmer	Elberta
~~Ollie E. Byrne~~	merchant	Bay Minette
Albert Keebler	salesman	Loxley
~~Bradley Dickman~~	farmer	Bay Minette
~~John Mickelson~~	laborer	Foley
~~Lee E. Smith~~	engineer	Tensaw
~~Edward Bahn~~	farmer	Summerdale

State
vs
Clyde
Lee Grady

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

ATTORNEYS	CASE	CHARGE
H.M. Hall	THE STATE OF ALABAMA	Robbery
No.	Vs.	
John Charm Hubbard	Clyde De Graaf	

DISPOSITION OF CASE

Affidavit made and Warrant Issued to Taylor Wilkins Sheriff

Returnable

Witness—For State Ernie Beverley, Odell Goodes, Elmore Byrd, H.F. Hall, Collie Griffin, Pete Sellers, W.R. Auchmuth, W.L. Allen

Tried before me Sept 25-1947.

From the evidence before me I have bound the defendant Clyde DeGraaf over to the action of the Grand Jury of the fall term of the Circuit Court Baldwin Co. under bond of 10,000.00 Ten thousand & 00/100

Frank P. Probst Justice of the Peace. Precinct 4 Bay Minette Ala.

FEES	AMOUNT
JUDGE'S FEES	
Warrant at 50c, Affidavit at 25c	75
Bond at 50c, Sci. Fa. at 50c	
Witnesses' Recognizances at 25c	75
Subpoena or Notice at 25c	2 00
Continuance at 25c	
Trial of Misdemeanor at $1.00	1 00
Mittimus at 25c	25
Judgment on Forfeited Bond at 25c	
Taking Bond, etc., on Appeal at $1.00	
Execution of costs at 25c	
CONSTABLE'S FEES	
Subpoena or Notice at 25c	
Carrying Defendant before Justice, each mile for himself and guard at 10c	
Arrest, 50c	
SHERIFF'S FEES	
Arrest, $2.00; Bond $1.00; Sci. Fa., 50c	2.00
Committing, $1.00; Releasing, $1.00	1.00
Subpoenas at 25c Day's Board at 30c	1.00
WITNESS FEES	1.00
Days at 50c	4.00
" 50c	
" 50c	
" 50c	
" 50c	
" 50c	
" 50c	
" 50c	
DEFENDANT'S COSTS	
Witnesses' Recognizance at 25c	
Subpoenas at 25c	
Executing Subpoenas	

920