

State
~~Chancery~~ Cause No 20

2^d Circuit
Gaines Co

John Vance In Error
vs
The State

Transcript of
Record
The State
vs
John Vance
Murder
" " " " " "
Gaines Co

affirmed

Rec'd & Filed Sept 9th 1864 -
Nels. Prisoner in Jail.

W. L. Patterson & Co.

James G. Shields for P. lff in Error.

Atto. Genl. and James R. Burke for State.

David

Index to Transcript.
The State vs John Nance - Murder.

Affidavit for warrant page 1.	
Warrant	" 1 & 2
Judgment	" 2.
Caption of Court	" 2, 3 & 4.
Appointment atty. Genl. pro. tem.	4 & 5
Judgment	5, 6, 7 & 8
Habeas Corpus	8 & 9
Empaneling jury	9 & 10
Return of Jury	11 & 12
Verdict of Jury	13 & 14
Bill of Exceptions from 14 To page 42.	
Continuance	42
Bill of Costs 42, 43, 44, 45, 46,	
Clerks Certificate	47-
Motion for new trial	48 & 49.
Diagram & notes by cell B	50

(1)

Be it Remembered, that on the 27th day of March, 1866, R. K. Skaggs, made and Subscribed the following affidavit to wit:

State of Tennessee } Personally appeared before
Granger County } a Justice of the Peace for
Said County R. K. Skaggs and made Oath in due
form of Law, that as he is informed and believes, that
One John Nance did in the Month of October, 1864,
in the County aforesaid, Wilfully and Maliciously
Murder and Kill One Wm. McBee, with a Stick and
Rock against the Peace and dignity of the State

"R. K. Skaggs"
Sworn to and Subscribed before me this 27th day
of March, 1866. "John A. McKinney Justice
of the Peace"

And thereupon, the following Warrant Issued
Which is in the following word and Figures, to wit:
State of Tennessee } To the Sheriff or Any Constable

Warrant: "Granger County } For Said County "Greeting"
"Whereas Robert, K. Skaggs hath Complain'd before
me on Oath that as he is informed and believes, that
One John Nance, did in the Month of October, 1864,
in the County aforesaid, Wilfully & Maliciously mur-
der and Kill One Wm. McBee with a Stick and
Rock, against the Peace and dignity of the State.
These are therefore to Command you in the Name
of the State, to take the body of the Said John Nance
and him safely keep so as to have him before Some
Justice of the Peace for Said County to be—

(2)

"dealt with as the law requires-

"Given under my hand this 27th day of March, 1866.

"John A. McKinney Justice
of the Peace"

Endorse "Warrant, The State of Tennessee vs John Nance Es.
27th March, 1866, R. R. Skeggs Prosecutor, Came

"to hand the same day, and executed and set for trial

"On the 29th March, 1866, before J. A. McKinney & Me. St.,

"Ston Esqr. R. R. Skeggs, Const.

"This Cause continued until tomorrow the 30th Inst,

"by Consent for the want of witnesses this 29th March

"1866. "John A. McKinney" Justice of the Peace"

"State of Tennessee Crainer County"

"The State"

"vs" It is considered by us in this case

"John Nance" that the defendant is guilty of

"Murder, in the first degree, as charged in the warrant,

"and therefore that he be committed to the jail of the

"County to be further dealt with as the law directs, this

"the 30th day of March 1866, "John A. McKinney"

"Me St. Ston Justice of the

"Peace"

Caption Monday April 23rd 1866.

of the Court State of Tennessee - Be it remembered that at a

Circuit Court began and held for the County of Crainer

in the State of Tennessee, at the Court House in Rutledge

on the 4th Monday being the 23rd day of April in

the year of Our Lord one thousand eight hundred and

(3)

"Sixty Six, present and presiding the Hon. James P.
"Swann, One of the Judges of the Circuit Courts in the
"State of Tennessee, and assigned to hold the Circuit
"Courts in the Second judicial Circuit, the following
"proceedings were had in open Court, to wit:

"John F. Nae high Sheriff, of Greninger County returned
"into open Court, the States writ of Venue Facias
"issued from the office of the County Court clerk
"of said County, executed upon the following
"named persons, all good and lawfull men
"of said County, as Jurors to the present term
"of this Court - to wit: 1 James Clark 2 Stephen Estis
"3 B. K. Lowe 4 William Ramsey 5 G. W. Rich 6
"John Mays 7 James H. Lambden 8 Robert Joyce
"9 James Pendleton 10 George Collins 11 James H.
"Mitchell, 12 M. H. Stone 13 Robert Corum 14 Jesse
"L. Manady 15 William Hammers 16 P. A. Shirley
"17 J. B. Hammers 18 Henry Jackson 19 Anderson
"Daltrow 20 Henry Welch 21 Stephen Ruth, 22 J.
"H. Starnes 23 Carlisle Haynes 24 Lea A. Monroe
"25 Thomas D. Aouff Said Sheriff also returned
"that by said writ of Venue Facias he has summoned
"and J. K. Mitchell a constable to attend and wait
"upon the Grand Jury for and during the present
"term of this Court"

And thereupon from the Jurors summoned and
"present as aforesaid, the Court proceeded as
"the Statute in such Case made and provided

caption of Court

(4)

"directs to empanel a grand jury for the present
 "term of this Court whom are elected the following
 "named persons, to wit: 1 George W. Rich 2 Patrick
 "A. Shurley 3 James Clark 4 Stephen Peith 5 James Pond
 "ton 6 James R. Hammers 7 Henry Jackson 8 Robert
 "Corum 9 Lew A. Mourad 10 James H. Lambden
 "11 Carlisle Haynes 12 George Collins and 13 Andrew
 "son Sutors of whom the Court appointed
 "George W. Rich Foreman, who together with
 "the rest of said Grand jurors being duly empanelled
 "sworn and charged to enquire for the body of the
 "County of Graninger, retired to consider of present
 "matters in charge of James K. Mitchell, who was
 "duly sworn according to law to attend and wait
 "on said jury"

Met at the Court House, New York, 18th Decr.

The following further proceedings were had to wit:

The State 3 Murder.

35 3 In this case the defendant having
 John Stance 3 been arrested on a warrant issued
 by a Magistrate upon a charge for murder, in
 the first degree, the attorney General for this State
 James Mourad Mel B. Mourad the Court to appoint
 an attorney General pro tempore to prepare an
 Indictment and prosecute the case on behalf
 of the State in his stead owing to his incompetency
 on account of having been the Council on this

captions of the Court

att. Genl. pro temp.

Atty - Genl. protest

"Charge for the said John Nance before his appoint
 "ment as attorney General, and upon the ground
 "that he had been employed to defend the defendant
 "if he should be prosecuted. The attorney General
 "refused to prosecute, feeling himself to be incompetent
 "thereupon the court appointed Lewis A. Goetz Esq.
 "a practicing attorney of this Court to act as attorney
 "General for the State in prosecuting this cause, there
 "upon appeared the said L. A. Goetz and took the
 "Oath to Support the Constitution of the United States
 "and of the State of Tennessee, and to demean him
 "self as an attorney General in the prosecution
 "of this cause. and also the Oath against dueling
 "Tuesday April 24th 1866.

"The following further proceedings were had in
 "said cause, to wit:

"The State }
 "vs } "Murder,"
 "John Nance }"

"The Grand jurors came into Court
 "in a body headed by their Foreman, and returned
 "a Bill of Indictment against this defendant
 "for Murder which is in the words and figures
 "following, to wit:

Indictment "State of Tennessee } Circuit Court April
 "Grainger County } term, A. D. 1866.
 "The Grand jurors for the State of Tennessee, having
 "been duly summoned elected, empanelled, sworn
 "and charged, to enquire for the Body of the

(6)

"County of Graniger, in the State aforesaid, upon their
"Oath aforesaid, present that John Named Son of
"Clement late of Said County laborer, not having
"the fear of God before his eyes, but being moved
"and Seduced by the instigations of the Devil, on
"the first day of January A. D. 1865, With force and
"Arms in the County of Graniger, aforesaid, in and
"upon one William C. McRee, in the peace of God
"and the State then and there being, Wilfully, deliberate
"ly, and of his Malice aforethought, did make an
"assault, and that the Said John Named Son of
"Clement, with Certain Rocks, Sticks, bludgeons, Clubs
"Knives, Pistols and Staffs, of the Value of Five hundred
"Dollars, which Rocks, Sticks, bludgeons, Clubs, Knives,
"Pistols and Staffs, he the Said John Named, Son
"of Clement in his hand then and there had, and
"held, to against and upon, the Said William, C.
"McRee, then and there Wilfully, deliberately,
"premeditatedly, Maliciously, feloniously, and of
"his malice aforethought, did throw, cast, beat,
"Stab, cut and thrust with, and then the Said
"John Named Son of Clement, with the Rocks,
"Sticks, bludgeons, Clubs, Knives, Pistols and Staffs
"aforesaid, so throw cast beat Stab cut and
"thrust with as aforesaid, the Said William C
"McRee in and upon the head breast and body
"of him the Said William C McRee, then and

Indictment

(7)

"thru wilfully, deliberately, premeditatedly, malicious
"ly, feloniously, and of his malice aforethought
"did strike, penetrate, and wound, wound, giving
"to the Said William C. McRae, thru and thru with the
"Rocks, Sticks, bludgeons, Clubs, Knives, Pistols, and
"Stuffs aforesaid, throw cast, beat stab cut, and
"thrust, with as aforesaid by the Said John Staneson
"of Clement, in and upon the head breast, and
"body of him the Said William C. McRae did
"Mortal wound of the depth of eight inches, and of
"the breadth of three inches, of which Said mortal
"wound, the Said William C. McRae, on the first
"day of January, A.D., 1865, in the County of
"Granger aforesaid instantly died - and So the
"Jurors aforesaid upon their Oath aforesaid
"do Say, that the Said John Staneson Son of Clement
"the Said William C. McRae in manner and form
"aforesaid Wilfully, deliberately, premeditatedly
"Maliciously, feloniously, and of his malice afore
"thought, did thru and thru kill and murder
"in the first de Contary to the form of the
"Statute in such Case made and provided
"and against the peace and dignity of the
"State - Louis. A. Gray Attorney, Genl
"Pro. Tem"

Indictment
Endorsed, N. 38. Indictment, The State vs John Staneson, Son of
Clement - Murder - Robert R Skaggs, prosecutor

"At true Bill George W. Rich foreman of the
"Grand jury.

"Witnesses for the State - R. R. Skagg, John Jones, Joseph
"Toot. Joseph Branch Ferdinand Keland. Sworn
"in open Court & Seat before the Grand jury this the
"24th day of April, 1866. Tho. S. Guthrie Clerk"

"Clerk Summons for the State

"Robert R. Skagg, John Jones, Joseph Toot,
"Joseph Branch, Ferdinand Keland - William

"Jones, J. P. Pintfroe, Pissilla Maples, David Lawrence
"Marcus Smith, William Large, J. P. Trout, John Lee

"Aaron Lewis, James A. Seagg, John Vineyard, P. P.
"Newell, James S. Grady, attor Genl. pro tem"

"Wednesday April 25th 1866.

"The following further proceedings were had
"in said Cause to wit:

"The State vs John Vance - Murder: Came the
"defendants attorney and moved the Court, to have
"the imprisonment of defendant examined into ally
"ing, that the defendant, was unlawfully imprisoned
"and for a writ of habeas Corpus It is ordered by the
"Court - on this motion that the Sheriff forthwith
"bring the defendant, out into Court to have his
"imprisonment examined into, and justice done
"here, and Came the State by attorney General
"and the defendant being brought to the bar, and
"having Council, and Came on this Cause to be

Evidences in indictment

Habeas corpus

Habeas Corpus

(9)

"and on the motion for writs of habeas Corpus
"and by consent of the Attorney General, the affid-
"avit of the defendant is ~~for~~ ~~sworn~~, and the further
"hearing of this Cause on the motion for writs of
"habeas Corpus is continued until the 8th day of
"May at the Court House in Dandridge in Jefferson
"County Tennessee, and the presents of the on such
"of amercement is waived -

Wednesday December 26th 1866

The following further proceedings were had in
this Cause, to wit:

The State } Murder;

John Nance } This Cause being this day Regularly
 } Reached on the docket and being called
for trial, according to the practice of this Court, and
Louis A. Graves Esq, an attorney of the Court, who
by order of this Court - had heretofore been appointed
a Special Attorney General pro tem, to prosecute on
behalf of the State in this Cause, failing to appear
and prosecute as required by said order and
appointment, and the Regular Attorney General of
the State being incompetent, and delinquent in this
Case - It is therefore ordered by the Court that
Thomas C. Champeau an attorney of this Court -
be and he is hereby appointed Special Attorney
General pro tem to prosecute on behalf of the State
in this Cause - Thereupon the said Thomas C. Cham-
peau appeared in open Court, and took the

Special atty. Genl.

"Oath Required by law to be taken by Attorney General
 "for the State and being duly qualified according
 "to law, entered upon the discharge of his duties in this
 "Case. Thereupon Came the Attorney General for the
 "State, and the Defendant in his own proper person
 "being brought to the Bar in Custody of the Sheriff
 "and said Defendant having heard the Indictment
 "read for the same, Says he is not Guilty in manner
 "and form as charged therein, and for his trial puts
 "himself upon the Country and the Attorney General
 "to take the like, and thereupon Came a jury of Good
 "and lawful men of said County, to wit: Samuel
 "S. Vinson Plaintiff L. Greenlee, George Hopper
 "N. S. McShaney Philip Roberts, Samuel Ferguson
 "John Calkley, John Roach, Henry Winsted Isaac
 "Daniel Richard Ray, and Henry Jones, who
 "being sworn to try and elect and sworn
 "to try the issue of ^{from rendering their verdict} ~~traverse~~ joined, between the
 "State of Tennessee and the said Defendant at the
 "Bar, are admitted, until tomorrow, and placed
 "under the charge of Thomas Bates a sworn officer of
 "this Court, to be continued together in some conven-
 "ient apartment separate and apart from other
 "Citizens until they return into Court, at the
 "meeting there of tomorrow, and placed in charge
 "of said sworn officer.

Empanelling Jury-

(11)

Thursday December 27th 1866. The following further proceedings were had in this Cause, to wit:

The State } Murder.

"VS } Came the State by the Attorney General
 John Nance } and the defendant being at the bar
 "in his own proper person, as well as by Council
 "and thereupon came the same jury who were respited
 "on yesterday from rendering their verdict in this
 "Cause until to day, to wit: 1 Samuel S. Vinyard 2
 "Pleasant L. Greenlee & George W. Hopper 4. N. S.
 "McElhenny 5 Philip Roberts 6 Samuel Ferguson
 "7 John C. Kelly 8 John Roach 9 Henry C. Linsted 10
 "Isaac Daniel 11 Richard Ray and Henry Jones
 "who were again respited from rendering
 "their verdict until to morrow, and placed in
 "charge of Thomas Cates a constable, who was
 "duly sworn according to law.

Friday December 28th 1866.

The following further proceedings were had in this Cause, to wit:

The State of Tennessee } Murder.

"VS } Came the State by the
 John Nance } Attorney General, and
 "thereupon the defendant was brought to the
 "bar in custody of the Sheriff in proper person
 "as well as by Council, and then came the same
 "jury who were respited on yesterday from
 "rendering their verdict in this Cause until to

Respite of Jury

Verdict of the Jury

Verdict of the Jury-

"day to wit: Samuel S. Vineyard Pleasant L. Green
 "by George W. Hopper & S. M. Elhany Philip Roberts
 "Samuel Ferguson John Oakley John Roach Henry
 "Winster Isaac Daniel Richard Ray and Henry
 "Jones who upon their Oaths aforesaid do say
 "they find the defendant John Nance guilty of
 "Murder in the first degree, in manner and form as
 "Charged in the bill of Indictment, and thereupon
 "Said jury was discharged, and the defendant
 "Comanded to jail

" Saturday December 29th 1866

The following further proceedings were had in this Cause, to wit:

" The State of Tennessee } Murder.

" vs

" John Nance } Came the State by the Attorney
 " his Council, and thereupon Defendants Council
 " entered a motion to show Cause why a new trial
 " should be granted in this Cause -

Tuesday January first 1867.

The following further proceedings were had in said Cause, to wit:

" The State of Tennessee } Murder.

" vs

" John Nance } This day Came the State
 " the defendant being brought to the bar in the custody
 " of the Sheriff and having his attorney present

Motion for new trial-

(13)

"and then came on the rule heretofore entered to
"show cause why a new trial should be granted,
"which said rule after argument, and the premises
"being fully seen and understood by the court is
"discharged and a new trial is refused, and
"the attorney general moved the court for judgment
"against the defendant upon the finding of the jury
"in this cause, and the defendant having nothing
"further to say why judgment should not be entered
"and pronounced against him, it is therefore
"considered by the court, that the defendant John
"Nance for such his offense be taken to the jail
"of Granger County Tennessee and therein kept
"in close confinement until the eighth day of
"February in the year of our Lord one thousand
"eight hundred and sixty seven, and that he the
"said John Nance on the said eighth day of Febru-
"ary A. D. 1867, to be taken to some place of public
"execution within one mile of the Town of Rutledge
"and between the hours of two and four o'clock of
"that day, that he the said John Nance be hung by
"the neck until he is dead, and that the Sheriff of
"Granger County Tennessee, carry this judgment
"into execution, and that the State of Tennessee
"recover of the said John Nance all of the costs of
"this cause for which execution may issue
"And from the judgment in this case the
"defendant prays an appeal in the nature

Rule for new trial

"of a writ of error to the next term of the Supreme
 "Court of the State of Tennessee to be held at the
 "Court House in Knoxville on the Second Monday
 "of September next 1867, which said appeal is
 "granted and the record ordered to be certified
 "and the defendant tendered his bill of exceptions
 "in this Cause which is signed and sealed by
 "the Court and ordered to be made a part of the
 "record in this Cause - and it is ordered that
 "the Sheriff of this County have the body of said
 "defendant before said Supreme Court on the
 "Second Monday of September next -

"And the following is the Bill of exceptions filed and
 "certified in this Cause, to wit:

"The State } Bill of Exceptions,

"VS }
 "John Nance } Be it remembered that on the trial of
 "this Cause, the following was the testimony
 "submitted to the Jury - R. R. Skeggs for the State - In
 "the year 1864, Oct 8 day I was going to B^{ts} Road - I met
 "Gordon, McRae and John Nance Son of Clement. James
 "Reutfra^{in company} was with me, on this occasion in the road near
 "Gordon Jones, a conversation took place between James
 "Reutfra and John Nance. Nance proposed to swap Reutfra
 "was a match for a pony - after this conversation, I proposed
 "to go on to the + Road - I and Reutfra did so - Rock found
 "in about 15 Steps from where the body lay - also hair on
 "the Rock - a stick was also there - Rock & Stick near the

Evidence for
 the State -

"Body and blood around, McBe & Nance were 3/4
 "Mile from + Road when I met them - If they continued
 "going on the same Road - they would have passed my house
 "the Road led to Richland Court, Stick and Rock near in the
 "Road where the body lay - by the Side of the Road near the
 "Road, The place where the blood Stick and Rock, by the Side of
 "the Road was Rocky, Rock weighed three or 4 pounds and had
 "hair on it - Stick 3 feet long Size of Chair post, and partially
 "Seasoned & fine, but tough, and was broken recently, there
 "was a mark from the Road to where he lay, as though he had
 "been dragged by the feet - Witness saw body about an hour
 "after he had seen Nance & McBe in the Road - there was a
 "barn on the place I lived, the body was about 400 yards
 "from it - the barn was out of Site of the place where he
 "was killed - the place could not have been seen from
 "the drawbar near the barn - There are two Roads at the barn
 "One turns to the Right and goes to Richland met McBe and
 "Nance, on the Road running by my house, to main Stage Road
 "the body was lying stretched out - seemed to have been
 "dragged there - his pocket book lying out, open, - there
 "was some hundred dollars in bank notes & some
 "Confederate money, the money on the out outside looked
 "light it was old bank money & Confederate money lying
 "in the Road - The Road from where I live to where he was
 "killed is skirted by wood - At the time I met them
 "McBe was drunk, and did not seem to know me,
 "and Nance was drinking - the place where I found
 "the body was rather retired, and the Situation of

Evidence for the State

+

(16)

"drawing him out Seemed to have been to Secure him -
"The Road on which he was Killed was not traveled much -
"There were 3 wounds on the head, one was just between
"the ear, and the jaw mashed in - this wound was about
"the Size the Coak would have made - One wound was in
"the back of the head, and was 3 or 4 inches round, and
"Seemed to have been made with a Coak, There was one
"wound on the Top of the head, The wound were Suffi
"cient to Cause death, and in my opinion did produce his
"death - The pocket book was by the Side of the body, and appeared
"to have been tied, and something taken out, the String with
"which it had been tied, was lying near the pocket book
"I don't know about Defendants trying to escape before
"he broke jail - I arrested him at James Hargis
"house, in Granger Co, in his neighborhood - took him
"to Stones Mills & he stood his trial, and then took him
"to jail - I arrested him the 2^d time after he broke jail -
"he kept himself concealed all the time, after he broke
"jail - This time I arrested him at 10 o'clock at night
"in the Road I and four others surrounded him - I
"had been watching him for three or 4 months, hunted
"for him a gradual - The place of this arrest, was on
"a Small Road in the direction of where - lives

Cross Examination.

"Met Nance on the Road leading from the Knoxville
"Road to Richland 1/2 mile from the Knoxville Road
"It leaves the Knoxville Road 1/2 mile above the Knoxville

Evidence for the State

(17)

"Road 1/2 mile above the + Road - the day was Saturday -
"after I met Nance it was near an hour before I
"found the dead body - found the Coak and Tick in
"the Road near where I found the body - found the pocket
"book by the side of the body A. C. Mussingill, Broggin
"J^{ms}, Jones, P. Nance & John Vineyard were along when
"I arrested him in Mar. 1865, at Harger, 5 from Oct. 1864,
"to March 1865, I had seen him often, he is in this period as
"not know that he had left the neighborhood, and I do
"not know of him trying to secrete himself - After he
"broke jail he secreted himself - do not know how long he
"was in jail - I arrested him the 2nd time in August 30th
"1866, he made no resistance in this arrest, in Oct. 1864
"there were troops at the Straw Plains, and troops
"were frequently out - Distance from Strawberry Plains to
"house of witness is 7 or 8 miles - on the day he was found
"dead there were some soldiers at my house after forage
"from the plains. From the 10 Michigan Regt. After he
"broke jail Vineyard told me that he saw Mr. Nance
"and that Mr. Nance told him he had a notion to come
"in and stand his trial provided he could get a part
"of the Reward - I told him to tell Nance that if he would
"do so he should have a part of the Reward, but Nance
"never come in, I do not know that Nance ever belong
"ed to any Regt, except in a Rebel Regt. he was over
"two years in their service, I saw him for the first time
"after he had left the Rebel service after Burnside's
"Come to Knoxville - about the time of the breaking

Evidence for the State -

"up of the Siege, Never Saw him in the Rebel Service
 "after Burnside's Campaign, But Saw him in the Federal
 "uniform, he was arrested by the 10 Michigan he
 "Claiming to be a Federal Soldier, and was so arrested,
 "he Claimed to belong to the 17th Cavalry. My understanding
 "is there was never such a Regiment made up but
 "such a One was Commenced - When Burnside's Campaign
 "in he Claimed to be a Federal Soldier & so dressed, the
 "17 Regt was put into the 13 Regt, don't know that he
 "belonged to the 13th or any other Regt. Saw him with the
 "Federal Soldiers Cant Say how often, but have seen him
 "different times -

"Re-examination"

"Saw him with Federal Soldiers never saw him
 "drilling or marching with them, he was at home
 "staying with his wife, Saw him in the Ranks of the
 "Rebels, before the Conscription went into operation in
 "1864, It was arrested by the 10th Michigan not a
 "great while after the murder, and before I arrested him
 "Saw no Soldiers on that day except the foregoing party
 "from Straw Plains, they seemed to be quite an order by
 "there were five, in number came before the door and
 "left some time in the evening - When I left home, I
 "left these men loading hay - When I returned the
 "Waggons were not out of sight, the Soldiers were kept
 "under strict orders - + Examination, "Name & I
 "Never had any falling out - before but I have seen

"min I like better (John Vineyard, I Saw the
 "body of McBr. late in the evening above the house of
 "Skagg about $\frac{1}{2}$ or $\frac{1}{4}$ mile from Skagg, Saw blood in
 "the road, on the ridge and Saw the man lying in the
 "road side a short distance, when I went to it I found
 "a Mr. McBr it was 15 or 20 yars from the blood in the
 "road - Saw a trail from the place of the blood, toward
 "the body, but it did not extend all the way, he was lying
 "on his back, his pocketbook, was picked up by some
 "one, Saw one wound on his head, on the side, his skull
 "was broken in - Saw a Rock & Stick - did not examine
 "them to see if there was any blood or hair on them - The Stick
 "was broken, did not pick either up - This was an un-
 "frequented place - I Came from B. + Road that day by
 "Skagg, to get some peaches, Payer & New were with me -
 "Skagg, when I came by his house was in a field where
 "some one was plowing, this was on Oct 2^o: two years
 "ago. Saw the money taken from the pocket-book when
 "the money was unrolled, the first bill I saw was a Confederate
 "bill - I was considerably excited that day it was late
 "in the evening, when I Saw the body, Place in the road
 "the body was found $\frac{1}{4}$ to $\frac{1}{2}$ mile from Skagg's House
 "in Crainyer County, the spot where the blood Stick
 "and Rock were found was in Crainyer County -

" + "Examination"

"Saw the body $\frac{1}{4}$ to half mile from Skagg's House
 "Saw his pocket book, a Stick & Rock. don't know how
 "he came to his death, I Saw a track of horse & mule

(20)

"Coming down into this Road from the Road leading from
"B + Roads to Nances Ferry, could not see till whether
"they were old or ^{fresh} tracks, follows the track to the creek
"a mile off - No body saw any person passing that way
"On that day, they there were several horses along the Road
"Federal troops were at that time at Strawberry Plains -
"When the troops were at the + Roads, they were straying
"over the country - "Re Gam" did not see any signs
"of the horse and mule having been stopped at the
"body - Knew the body to be McPee's -
"J. P. Nance. In Oct. 8th 1864, as I came home by Iron
"Junction & Skaggs I came up with some blood in the
"Road, and supposed some one had killed a hog, looked
"out to where it had been done, and saw a man lying and
"upon going to it, afterwards found it to be the body of a
"dead man - Saw a stick and foot, but did not examine
"them to see any blood or hair - Foot weighed two or
"three pounds - Body was lying just off the Road in the
"bushes - his left ear had blood in it, and I supposed
"his skull was broken, did not examine particularly
"his pocket book was on the ground - Right at his left
"pocket - Took the money out of the book and counted it -
"the book was open - was 1/4 mile from Skaggs house -
"The Road was not a wagon Road - was very gravelly -
"Beyond the body, in a soft part of the Road, I saw two an-
"imal tracks, Enquired if any person had been seen pass on
"that day, but no one had been seen to pass, Cannot say

Evidence for State -

(21)

"Saw whether the track had been made that day or before—
 "Witness was acquainted with the neighborhood and surround-
 "ing Country, and explained Diagram—here copy
 "Insert diagram— (Note by CB, there is no
 "Such Diagram on file in the case.) "Examination,
 "I live about six miles from Strawberry Plains at that time—
 "There were Soldiers at Skagg's On that day—Soldiers were
 "frequently passing over the Country, seeing the horse tracks
 "My Impression was that the Soldiers had committed the
 "Murder, On the soft places the tracks could be seen—One track
 "was a horse track—the other a mule track—do not know
 "whether McBe had a horse, that day or not—there
 "were some \$148— in the pocket book—

"Re "Ev"—The body I suppose was about
 "five miles from the plains, did not see the tracks at the
 "place where the man was killed, the Road there was firm
 "and a track would not show much—

"James. A. Skagg—"I remember the day the body was found
 "Nance & McBe was going on the Road toward Nances
 "Ferry— I was standing near Father's Stable— And saw them
 "going up the Ridge Road toward the Nances Ferry Road—
 "they passed within about 100 yards Nance was on horse
 "back twenty steps before the other who was walking—
 "this was so when I last saw them— was not over an hour
 "after they passed before the news came, that a man was
 "killed— Heard some one hallow soon after they passed—
 "do not know how long after they passed— before Father

Diagram & note by eeb.

State evidence

(22)

"Came up, when he came he went to the field to sprouting -
"did not see the dead body. While I was throwing in the trees
"Mr. Nave & Vineyard came by and soon reported that
"a man was killed. Mr. Thompson came to get better and
"said they were looking for bush-whackers - he came from
"towards the plains - he was a soldier. The plains are not in
"the direction of Stones Mill, from our house -
"X "E" I did not know Mr. Beck had never seen him before
"Saw two men on horseback, the other on foot - the one on foot
"was John Nave. One was riding a black horse and had
"on a black coat - white hat & pants - did not see the man
"after he was killed, they would not allow me to go
"James Trout moved the body that night - I was 1000
"200 yds. from the men as they passed, one walking had on
"black hat & James coat - saw him have no stick, after they got
"out of site - heard one hollow - did not scream like one
"in distress - I saw the man's face who was walking
"but do not know what kind of pants he wore, I knew
"him to be John Nave - man riding, was behind the
"man walking, and was galloping, some soldiers two
"eat dinner with us on that day, but they did not go in
"that direction - they and others had their getting hay
"but only two eat dinner - When I was examined before
"I stated that from the distance looked like John
"Nave -"

"Marcus Smith, do not know the time Mr. Beck was killed
"Saw him the day I afterward learned he was killed -"

Evidence for State -

(23)

"Met him 1 or 2 miles from B & Road near Skaggs."
"He told me he had enrolled his name and considered
"himself a Federal Soldier. I went with him and
"started after my train, and they went towards
"Skaggs barn on the Road where his body was found.
"McBee was on horseback, the other was a foot - think he
"had on mixed furs. They started out from Skaggs to go
"out on the Ridge Road - no others went out that way
"that I saw - When I saw introduced McBee to me, I
"think he called him John - My Muggons went down thro, an
"old field and turned off 1/2 mile from Skaggs - From
"Skaggs house to the plains it is some 6 or 8 miles, the news of the
"death beat me to the plains - I heard of it when I arrived -
"I "Ocean" it was about one o'clock when I met McBee
"and Nancy - I was not raised in the neighborhood, and
"not familiar with it - When I met McBee he told me
"he considered himself a Federal Soldier, the troops were
"at the plains from the Spring of 1864, to the Fall of 1864,
"was not with them many minutes - the two
"when we met and drank together seemed friendly - I
"had no guards with my train, on that day -
"James Neufraun Refused - Several witnesses testified the place where
"the body was found and the Rock & Stick & plots of blood in the Road
"were all in Grainger County Tennessee"
+ J. P. Toontman, found him murdered on same evening after was
+ present to the Road to be enrolled, McBee On that day had on
+ white pants yellowish white hat was wearing horse of darkest
+ color - McBee & Nancy stopped together took a drink and

Evidence for State -

"appeared friendly, when I met them, left them at the Road
 "did not see Nance any more, than day & when next I saw
 "Nance he was lying dead, Saw Stick & Rock - Stick broken in
 "3 or 4 pieces - did not examine the Stick, examined the Rock - It had
 "hair on it - like Mr Bush's, Stick large as but and mans thumb - &
 "fine, found Stick and Rock in the Road, after night when I
 "got there, Saw a place looked like a man had been dragged from
 "the Road to where it was found, body was lying as tho, he had
 "been caught by the heels and dragged, Saw the pocket book,
 "Some of the men had it - Went to the body to haul him home -
 "One wound was on the side of the head ear & pan bursted, &
 "looked like it was made by a Rock - two other bad wounds
 "on his head - One wound in the head you could have laid the
 "hand edge wise in - lived $\frac{1}{4}$ or $\frac{1}{2}$ mile from trace at that
 "time - wounds were sufficient to cause death, and looked like
 "they had caused it - did not find Mr Bushs horse at that time
 "his horse was a bay horse & clumsy old creature - He being
 "led him that morning of an old negro -
 "I can't tell exactly what kind of a coat Mr Bush
 "had on - Was riding a worn out bay horse - Was not at the
 "body till night when I went to haul him home - Don't
 "know whether he had been moved before I got there - Rock &
 "Stick, was 20 or 30 yds from the body, & body, 10 Steps from
 "the Road - the ground was gravelly hard & firm - It is hard
 "to track a horse on such land -
 Joseph Branch - Don't know John Nance, Saw him at
 Straw - Plains & heard others say it was him - Heard him say

(25)

"at Strawberry Plains - up there in that grove - yard lay one
"daniel Paskell that I killed, which was W^m McBe" and if
"they did not watch, he, I kill some more of them, for
"Foot & Jones heard this declaration, witness recognized
"the defendant at the bar as the one who made the foregoing
"declaration" - "I claim" this was last fall yo, ago, had
"been to the plains & was coming home - don't know how the
"conversation came up - they were talking about Rebels &
"Union men, we were union men & were talking about
"Rebels, don't recollect how the conversation came up - don't
"recollect what any one else said before this remark or
"after - We had been drinking some, but knew what we
"were about - we said nothing when this remark was
"made" - "Re claim", this remark was the most forcible
"remarkable thing said, the reason I remember it"

"John Jones, am acquainted with deft. I heard him say these
"lay one Daniel Paskell & that was W^m McBe in his grove
"he killed, and if they didn't watch, he would kill some more
"of them, there were Jo. Branch Jo Foot Um - Verbury &
"Myself & Henry Nance, present, he pointed to the grove
"yard, Nance was married at the time McBe was killed
"don't know how this conversation came up - We had
"drinking that day but not much" - He spoke this 1 year
"ago at the plains to the crowd - saw Nance under guard
"before this time at Knoxville, Nance had been in
"the Rebel army" - "I claim" this conversation was
"last month a year ago, in the fall of 1865, we went
"to the plains and our spring around - Myself Nance

Evidence for State -

(26)

"then was some drinking together. Dont know how
"the Conversation Came up, talked nothing about
"the case, got to the plains soon in the morn & was
"there all day - pretty much, never had any falling
"out with Nance, he married my Cousin, I told this
"Conversation to Robt. McBeu last Spring, Got to the
"Plains before breakfast - took perhaps ten drams
"before breakfast - Nance said he had come up from
"Knoxville that day & had a bottle of liquor with him
"Henry Nance on that eve lay under the bridge drunk
"E Exam" Wm McBeu was buried at the Plains
"I remembered this declaration, because he explained
"it in the Court & an other man told him to hush this
"man was said to be Wms Overbay"

"J. P. Trout, & called; Wm McBeu was buried at the
"Graveyard at the Plains."

+ Joseph Trout - know defendant, heard him say at the
+ "plains, there lay a son of bitch Wm McBeu, he killed and
+ "if they didnt mind he, a Riv some more" Wms Overbay
+ " & Robt Shuck his head at him, at this remark, he, a
"been drinking but dont think he was drunk - my wife
"is related to his wife, Dont know any reason why
"I remember this declaration - We were facing the grave
"yard & he pointed to it" - "E Exam" We just went
"to the plains to be going - had no particular business
"got there after breakfast - Nance came up from
"Knoxville afterward - Dont know whether Nance

Evidence for State -

(27)

"had a bottle - when he came or not - Don't recollect
"what they were talking about - when the fellow
"Shook his head - there was no more said about it -
"don't mind any conversation afterwards - It was
"along before 12 O'clock - I Staid all night at the
"Plains & Nance came up after I got breakfast - & I
"Branch had been to the grocery before Nance came -
"When Nance came we were at the Grocery - Don't know
"whether Nance drank or not" "Re Escam" at the
"time of this conversation, Overbay, Jones, my self &
"Henry Nance & Branch were present - we had recently been
"discharged from the U.S. Army - Henry Nance was
"drunk He's a Brother of John Nance -
"Priscilla Naples - I know deft. was living with
"his Sister. when McBe was killed - he came there the
"night after the murder - he never eat any breakfast -
"or supper - I ask him what was the matter - he said he
"had killed McBe - Struck him with a stick & a rock
"about 6 miles from his Sisters to B & Road, he came
"there an hour in the night there was a muster at B &
"Road that day - he appeared to be wrong some how -
"he did not say he got any money from him - said he
"hit him with a rock & then killed him with a pine
"stick" & "Escam" I have been acquainted with deft
"three years. Nance came to where I lived very often
"there are two rooms to the house - we had four beds in
"it - I & Nance had been on more friendly than any one else -

Evidence for State -

"We are now as friendly as we always have been, dont
 "know when he married. He came thru in the Fall, never
 "told any body what he said. No body was present
 "when he told me. Went out behind the Chimney, to ask
 "him what was the matter. We didnt talk very loud -
 "No one else ask him what was the matter - this was some
 "time after breakfast. No body heard him say he'd killed
 "McBe but my self. They few out loud giving the
 "damned lie. He s^d McBe give him the damned lie - I was
 "Summoned last Saturday. I never talked with any
 "of the Witnesses about it. I started to tell my husband
 "of the talk once and he made me hush. Nance was arrested
 "after McBe was killed. I went to the plains while he was
 "under arrest. I did not offer to swear that Nance was
 "Innocent." "U" Escam" Nance stayed at our
 "house on that day till evening. he went toward home
 "Hills lived close by about 300 yards."

* Haron Lewis. - I know dont, heard him say at Story
 "Plains. that he killed McBe for his money. mentioned
 "that they were coming from same place. Said some
 "thing about Rob & Stick. that he got \$500, & odd dollars
 "and that he'd buy goods with it. This was during the
 "time I was a Soldier. this over several present. one
 "of these was my uncle Fran Smith. I remember this
 "Conversation from the Circumstances under which
 "it was made." "U" Escam" I live in Cochr this
 "Conversation took place before I was discharged."

Evidence for State -

(29)

"It was at the Plains just beyond a Grocery - Don't
"Know whether they were drinking or not - Did not
"Know deft previous to that time - they were talking about
"Union men Rebels - Nance Claimed to be a soldier, I regarded
"it a Company of Soldiers - Nance remarked he killed McBe
"for his money - was going to put up a Store - Don't know
"how long they had been near the grocery before I went
"up, think some of them were drinking - "The Exam"
"I recognize him now as the same man -
"David Lawrence - know John Nance - heard him say while
"talking to a young lady at the Plains) that he killed Nance
"knocked him down with a Peck & killed him with a stick
"I am brother in law to Nance - when he said he killed
"McBe - I ask him how, and he said he ~~knocked~~ ^{knocked} him down
"with a Peck & beat him with a stick - Nance never
"belonged to the Federal army - "The Exam" this was in
"August 1865, he was talking to Miss Polly Wright -
"Don't know what brot about the conversation it was
"at the ladies house - Nance was not drinking that
"day - I married his Sister -
"John Lew, - knew deft - I heard him say at
"Stray Plains - that he killed Wm McBe - don't know any
"one present at the time - there were about five present -
"not remember the time of the year - It was in the latter part
"of the summer - last summer a year ago - he just said
"he killed - didn't say how or why he killed him -
""The Exam" Don't mind the year don't know the name
"of any one present - I think a man named -

Evidence for State

"Nelson was present - he lives below Story Plains in
 "Knox County - "Re Exam" I was not acquainted
 "with any of the men present - heard Nelsons name
 "called -

+ "Fred Keeland" - Now Capt. John Nance, he told me in Sept.
 "1865. he'd killed one James Pascoe and had him put in

+ "prison for it - & if they didnt mind he'd kill some more -

+ "I understood him to mean "John McBe" - this was in
 "Knoxville didnt say how or why he killed him -

X ""Re Exam" did not say why he killed any one, this
 "was on Gray Street on the corner of Gay & Cumberland

"on the corner toward the Depot - I think he was drinking

"on that day" "Re Exam" he seemed to understand what
 "he was doing - he said he'd killed one Pascoe & laid in pris

"on for it - and he'd some more of them if they didnt
 "mind -

+ ""Wm. George" - Now Capt. John Nance - I met up with

+ "him in Knoxville jail - I ask him what they had him

+ "there for - he said for the killing of McBe, but thought

+ "it would amount to much - as he was a Federal Soldier -

+ "McBe a d. a rebel - he witness was put in

+ "jail Oct. 28th 1864, the Military had Control of the

+ "Country then" "Re Exam" I was Captured by Gies

+ "on at Morristown - by Gillum the day before this

X and put in the Knoxville jail - He Nance was dressed

+ "as a Federal Soldier - He said they could prove that

+ "he killed McBe as he was the last one seen with him -

(31)

"did not deny he had killed him - Did not hear any one
"in jail make any threats - if he did not tell it, he killed
"him -

"W^m Geo. Groves - In Oct. 1864, the military authority was
"in force - My understanding was that 10th Michy was arrested
"left - A person near the Chestnut lot could see a person
"passing along the road - Name at that time lived on
"this side of the river - near the river - the Chestnut lot is
"about 100 yards from the road - Mr. Maples lived on the
"other side of the river - some two or three miles from
"where name lived - It is the size of six miles from her
"house - to R + Road - From Skaggs to Story Plains is
"about 6 or 7 miles - "I" "Exam" Mr. Maples has a
"bad character in some things - lived woman - as to her
"credibility I cant say -

Q Mr. Skaggs - I called - did you say you had left arrested
"to keep suspicious from your self? There was something
"said - dont mind what I did say -

"Geo. Groves - went to hear the trial - Skaggs told me he
"was prosecutor - he told me the report had gone abro
"ad that he had killed him - and that he had prosecuted
"him to show that he was innocent -

Q Geo. Groves - Recall when you found Mr. Maples
"his coat was heavy of dark stone good - brown worn
"good deal - somewhat ~~light~~ light pants - white
"vest - wore shoes & white socks - Did not see any
"hat - "Cross Examination" The woman's character
"is not good - dont know whether she credible or not -

Evidence for State -

"H.G." can't know any thing against her character for
"honesty"

depts -

"For the Defendant"

Witness - James Brooy - In Oct. 1864, started to hunt some horses
 "which were stolen from the Regt - went into the neighbor
 "hood where I was Prisoner - Got a qt. of whiskey at
 "Perrins Still house - went by Wm Jones from Pickland
 "Cross - who lived to left of B + Road - Turned off
 "Nancies ferry to left - on a road - went 1/2 or 3/4
 "miles and heard a quarrel - did not know what it meant -
 "went on and saw two men quarling - one on horse &
 "one on foot - Saw a man on foot strike with a ^a Pocket
 "knife on horse in face & horse down him some distance -
 "ask him who he was killing - he said no body but a Rebel -
 "then turned our course & crossed the river at Daleys
 "Ford - and went on to our Regt - at Bulls Gap - was
 "previously acquainted with McRee - he first struck him
 "with a Pocket - then with a stick in the side of the head - his
 "foot hung in the stirrups & was dragged some ten steps - I
 "saw a mule - the man with one - rode a horse - the road
 "was gravelly & hard, our Regt. at the time was stationed
 "at Bulls Gap - Can't say how many shoes my mule
 "had on - I ask who he was killing - he said a d. a Rebel
 "Wm McRee - I know John Nance well before the
 "killing - I am certain the man who killed him
 "was not Nance - "I Can". I have been confined
 "with Nance in jail - for the last 4 months

depts. witness

(33)

"Go + I were sent out to hunt two horses lost - got for
"Persons sent on - We crossed the River on our way
"down at Spear Ferry came into Knoxville Road at
"Buffalo Creek - to James Masts Store & turned down
"Knoxville Road - Stopped at one or two houses on our
"way to the Nances Ferry Road - We understood the horses
"was at Barleys Ford. Did not see any body at Barleys
"Ford - On our way I met Mr. Nance - doors were
"open on our way - Passed some men Passed Preston
"Watson & several others - passed no body who noticed
"me particularly - Saw Mr. Perrins - I have been confined
"here 4 months - Was not in jail when this case was
"examined on Habeas Corpus - Was at Dandridge then -
"Nance and made no effort to get out of jail - Cant
"say deft. & I are very good friends - met a man named
"Adam Footman, as we were going upon the march
"in Oct. told me about the horses being at Barleys Ford -
"Barleys Ford between Story Plains & Mill Ferry - Started to
"Jefferson Nance - Did not go - because the man with me
"was afraid - "Go + I" was not acquainted with the
"Country, We went by Clem Nances, a mile below
"Richland Creek - From Richland we came down south
"of the river - to Clem Nances & got of whiskey & went
"from there out to G. Jones where we thought to
"find one of the horses - I knew Gen. McBee belonged to the
"Publ Army, and when I knew the place of the killing -
"I turned my course - Gen. McBee had on light looking
"clothes - The Soldier struck McBee two or three

Defts Evidence

(34)

"licks Pass on Nances Ferry twice - on that way - as I
"was coming up to the place of the killing I don't
"remember which side of the road the body was on - Did
"not talk this matter over in jail & again to come
"into Court & tell a fabricated tale - Did not talk it over
"On last Sunday - night did not go back home after I
"was discharged - have not been back since - have not
"told who killed him to any one in the neighborhood -
"I am in jail for murder when I heard the soldier knock
"him off the horse - It was sometime in the evening - after
"this we went to Barley's Ford same day & to Nances Barn
"same day - It was about dusk - when we got to the barn
"we staid in the Barn that night - we came through
"Russwells - turned off at that place on the right & came
"out to a mill near there - at the mill we turned to the
"left and came on a road between Newmarket Valley
"road & the river - From the place of the murder we turned
"and went to Barley's Ford - Did not say any thing to
"Mr. Vance, when I got there - we told no body of it -
"till we got to the Regt we told it to the Regt but to no
"body in particular - I didnt tell John Jones & J. Foot of
"it because they were in prison at Annapolis - told it
"frequently in the Company - "The Ocean" 10th Mich,
"was stationed at the Plains - I am charged with the
"murder of John A. Thornhill -
"James Cox" I did not know W. M. Rice - I was in co,
"with Perry at the time we went in search of some

Capt. evidence

"Horses down the country. Saw a man knock a man
 "off a horse - with a rock & then struck him with a stick
 "Cant say exactly the date of this - My self & Perry went
 "from B. Gap on the hunt of some horses - I rode a horse
 "and Perry a mule - I was within ten steps when
 "he struck with the rock - think his foot hung in the
 "stirrup & the horse dragged him off the road a piece -
 "he struck with the stick before & after he dragged him
 "off, he told me he killed the man because he was a
 "Rebel - We staid in a barn on the other side of the
 "River that night & went to the Gap next day - Parsons
 "was my boat, Perry & I belonged to Sam Rept - I heard
 "the Soldier & other men quarling before I got to them -
 "struck only once with the rock - Soldier said he belonged to
 "the 10th Mich - that he wanted the mans horse & he refused to
 "give him up & that was what they was quarrelling about
 "it - the man I saw there was not named - Cant see what
 "kind of dress he had on - think his clothes were of
 "light color - Stayed there but a short time - Considered the
 "place dangerous to be in - went on & stayed in a
 "barn that night - "The Quarrel" The place that a man
 "was quarrelling was on a ridge, in a path in the woods -
 "ground hard - didnt see any cleared land about
 "there - Was only one road there - It was about 4 o'clock
 "when I saw the quarrel - dont think we came there any
 "time on our way from the Gap - turned off to the right
 "before we got to Russellville 2 or 3 miles before we
 "crossed the River between Russellville & B. Station -

depts Evidence -

"Left B. Station to the right but Cant tell what Road we
 "took then Dont Recall or passing Mays Mill that
 "day. think we passed Massengills Mill - never noticed
 "any Mill after we turned off, to the right above Russ
 "ells - Stopped at Several Houses that day on this side
 "of the River Left B. Gap in the morning after daylight -
 "Cant tell how far we went after turning out to the
 "right above Russells before we came to the River -
 "Suppose it was 7 or 8 miles - Dont know the name of
 "the Ford where we Crossed the river - think there were
 "Some islands near the Ford where we Crossed -
 "Think it was Lobs Ford - No Ferry at the Ford - we
 "Forded early in the day - think we had traveled about
 "15 miles - when we Crossed the river - Dont know what
 "Road we took after Crossing the River - Dont mind seeing
 "the River afterwards on the Road met no body that day
 "I know - Stopped to get something to drink but dont
 "know where - It was a good while after we Crossed
 "the river - Col. Parsons sent us after the horses - We started
 "to come down about Darleys Ford - saw a good many
 "persons here some of them - Found no horse Darleys Ford
 "enquired for him & couldnt find him - the horse I
 "had been riding was not taken - Perry enquired for the
 "horse saw horse in field which looked like one of
 "ours - Dont know whose either horse was at when
 "we started - Perry said something about going to the
 "House where he was raised - Nothing was said about

"going to Smiths house - we went back into the Big
 "Road from the place where the Murder was done
 " & then went to Barley Ford & then went to a barn
 " and stayed that night - we were about an hour going
 " from the place of Murder to the barn - we ask the man for
 " God that night - or Perry said he ask for it - the road
 " we found the man on was a Bridle-way - the body
 " was on the left hand side - the rock was some larger than
 " the fist - have been in the same room with Nance in jail
 " Nance did not tell me what the States witnesses had
 " said - Jeff & Riggs had been in jail together - never told
 " any one what the 10 Mich. man, did & never heard
 " Perry tell it - I have been under arrest about 3 months
 " did not know Jeff had been arrested for the killing
 " of McKee until I was put in jail - did not travel
 " very fast from the Gap - never had any conversation
 " with Nance & Perry about what I would swear
 " we had no conversation about what we would swear
 " on Sunday night -
 " "Examination" I am in prison here for taking a vote
 " from some one - we started early from the Gap -
 " think we had something to eat along with us -
 " know I did - we got the liquor in the after part of
 " the day on this side of the river - don't know the names
 " of any of the fords - on the river - think I passed through
 " Russells - Cant. Cernem whether we passed through
 " Russells on our way down or not - think we
 " passed a mill - Perry spoke of going to Jeff

deft. evidence

"Nance, I was raised on Clinch river in dry Valley
 "not far from New Evans."

"Henry Nance - Remember coming from Knotville
 "with dept. to Story Plains, and that he made some statements
 "in reference to the killing of McBe at that time &
 "place & he was drunk. I was with him all that day because
 "he was drunk & I heard him or no other say anything
 "about the killing of McBe, Jones & Toat, were there on that
 "day, they two were drunk - Dept talked wildly when he
 "is drinking - 'I Exam' I had a bottle of whiskey
 "with me, from Knotville - I don't know how many drinks
 "I had taken - perhaps I drank 5 drinks during the
 "day. I was not drunk, my self. I went to sleep under
 "the bridge, & John Nance came to me, got rather sobered &
 "lay there some hours and a half, he might have went to the
 "grocery while I was asleep - & talked of the killing of
 "McBe - dept. was put in jail at Knotville - I don't know
 "for what - I have been with him several times when he
 "was drunk, never was with him but once or twice when
 "he was very drunk."

"John Rice - I am acquainted with the country where this
 "murder was committed - It is 1/4 of a mile from Jones to Rags
 "+ "saw Nance & McBe there - Nance left 10 or 15 minutes
 "+ "before McBe took in the road just above Rags turn
 "+ "one going right the other to the left - the body was on the left
 "+ "of road - they seemed to be friendly when I saw them.
 "+ "Liquor makes Nance talk pretty wildly - 'I Exam'"

deft evidence

evidence state

"Dont know that he is any more wild than other men when
 "doubt - Dont know that Nance had a whiskey bottle - Nance
 "was walking & McBee riding, McBee had on dark coat,
 "was on bay horse - horse in bad order - no danger of him jumping
 "from under a man - McBee took the same road Nance went -
 "Re Exam - Nance started 10 or 15 minutes before McBee
 "Mr Jones & I live below 3rd Road in site of the Road in which
 "McBee was killed - 1/4 of a mile from Skaggs, McBee & Nance
 "were at my house on that day - Nance left 10 or fifteen minutes
 "before McBee - Exam; Some time after 12 o'clock when
 "they left - saw Nance have a bottle - it was empty when he
 "came there - live about 1/4 of a mile from Skaggs, Gibbs live
 "about 1/2 mile off the Road - they were tracking - Nance got
 "some Whiskey of me that day & took some off with him -
 "H. M. Nance - I am the father of debt - I have seen him inter-
 "dicted some 3 times when he was perfectly drugged, twice
 "since he left my house - He commenced using liquor very
 "young - would get drunk and abuse the family - & conse-
 "quently had to leave home - have not seen him drink a gradual
 "since he left my house - his head was hurt in the side
 "when very young - dont know that his mind was altered by
 "this - but he seemed to be more unruly in his disposition
 "afterwards - and I had to take him from school, there were
 "two men at my house on the day the murder was done -
 "One a Soldier the Soldier was James Perry - I let the other
 "have some liquor - this on an election occasion - dont
 "know what the Election was for - Exam."

Evidence for State -

"left, had only been at home a day & a piece when he got
 "drunk at my house - I don't know whether he had been drinking
 "or not. He was wild - tried to ride into the house & over every
 "body, thought something was after him - Saw him at New
 "Market 2 or 3 years before drunk - he was trying to hit every
 "body - Knocking the depot with his fist - don't know how long
 "he had been drinking - he was 7 or 8 years old when he got
 "knot - took him from school twice - he was always a bad
 "Boy - These two men who came to my house - one was
 "riding the footman - Perry was on the horse - Soldier said his
 "Command was at Knoxville - It was 9 or 10 o'clock in the
 "morning when they came to my house - did not see them
 "any more that day -

John Mitchell, Am acquainted with the general char
 "acter of Prissilla Maple - So far as her vivacity is concerned
 "it is good, she is entitled to credit -

Samuel J. Jones, I am the jailor at this place, I went up
 "last Sunday night to listen, Mr. Mann & Perry were
 "talking the story which each was to tell was fixed up
 "between them - Perry was to say in case he was accused
 "of swearing a lie - "do you think I would come here and
 "swear a pint blank lie" &c They were to see they started
 "from Bulls Gap - In case of their swearing Mann out
 "he was to help get them out of jail - "Exam", First thing
 "I heard was Mann told Perry to tell it over and see if he
 "could tell it right neither one said what they were
 "saying was untrue. Mr. Lawson was in jail with them

Evidence for State

(40)

"He said that train of evidence would clear him -

"Berry was expecting for Capt. Vance first
"began to tell it"

"John Jones - I was a member of the 9th Tenn
"Cavalry - Don't know where it was Oct. 9th 1864,

"unless it was at Bull's Gap -

"F. Exam, I heard of McBees death while I was
"at Bull's Gap" - "Re Exam" never heard Berry
"or Capt. say anything about it -

"Lawson was in prison in the jail here last
"Sunday night I paid no attention to what

"the Boys were saying - I have been in a good
"deal of trouble - there was something said about
"having them brought out but don't know ^{what}

"Don't know of them concocting any plan -

"Don't remember saying that chain of evidence
"would clear them -

"George Jennings McLox was with me Oct. 18th

"1864 he was a soldier in the Rebel army then and
"had been with me all summer - Don't know that

"there was any Federal troops at Bull's Gap

"On Oct. 8th 1864, Capt had never been in the Federal

"army - "F. Exam" I have heard all the testi-
"mony in this Cause."

"This was all the evidence in this Cause.

"There was no exception to the charge of the

"Court - The defendants asked for a new trial
"being overruled - he excepts to the actions

"of the Court in so doing - and tenders

"this Bill of exceptions - which is signed

Evidence for State

"and sealed by the Court - and ordered to be made
part of the record" - January the 1st 1867.

"James P. Swann Esq Judge"

This entry made August 31st 1866.

In this Cause in open Court and being
omitted to be entered in this transcript
in its proper Connection - is entered
here for these - to wit:

"Friday August 31st 1866."

"The State of Tennessee vs John A. Lane, murderer,
"Came the State by the Attorney General, and
"the defendant being brought to the bar
"in his own proper person, and thereupon
"this Cause was continued, as on affidavit
"of the prosecutor until the next term of
"this Court - and the defendant remanded
"to jail"

Bill of Costs

"The State of Tennessee
vs
"John A. Lane
"of Murder in the first degree. Judgt. vs him for all
"Costs - An appeal prayed and granted -
State Tot \$3.50

"City & Genl. Prothonaire
"Gatz & Champion fee } 20.00
"W. B. Thomas Sathins Filing justices
"papers 75. Indictment 25. Copying
"the same on minutes of Court 575. heard 57. } 1.57
this amt - carried down } 25.07

Bill of Cost

(43)

Amount Brought Forward \$25.07
 " Clerk Latham - 3 dockets 30, 18 Subpoenas
 " for State \$1.80, 21 Probates for State \$1.05,
 " 8 Subpoenas for deft. 80, 2 probates for
 " deft. 10, Motions to appoint atty. Gen,
 " Protempore 25, Order appointing Same 25,
 " Motion for writ of Habeas Corpus 25,
 " Order to bring deft into Court, 25, 2
 " Continuances 50, 2 Orders 50, plea and
 " Charge 25, Jury 50, 3 Respects of Jury
 " 75, Verdict of Jury 25, Motions for new
 " Trial 25, deft. brought to the bar 25, Plea
 " for new trial disallowed 25, Motions
 " for Judgt. 25, Judgment final 75, Order
 " for Shff. to execute deft 25, Motions
 " for appeal 25, Appeal 25, Order to Certi
 " fy Record 25, Order to Shff. to convey deft
 " to Andover 25, Certificate and Seal to Sam
 " 50, Taping Bill of Cost 50, \$11.80
\$36.87

Bill of cost

Cell. Latham for writing this Transcript
 11,000 words at 10 pr. hand, \$11.00
 Certificate and Seal to the Same \$ 50 11.50
 Aggregate amount of Cell Lathams
 Costs in this Cause (~~\$~~ \$24.87)
 To this amount Carried to page 44) \$48.37

(44)

To this amount brot forward	\$ 48.37
D. Shiff, "John Michell, Summoned 4 witnesses for "the State \$1.00, Summoned 8 witnesses for "deft \$2.00.	3.00
L. Shiff Alexander Morgan, Summoned 2 witnesses "for the State 50.	50
S.D. Shiff "R. K. Skaggs Summoned 3 witnesses "for the State 75.	75
Witnesses "Joseph Trott 9 days 100, m, State -	13.00
" "John Jones 9 days 96 m, for State -	12.84
" "Joseph Branch 9 days 100, m, State	13.00
" "F. Keiland 9 days 88, m, State -	12.52
" "James C. Skaggs 10 days 70, m, State -	12.80
" "R. K. Skaggs 10 days - 70, m, State -	12.80
" "P. P. Vance 7 days, 56 m, State -	9.24
" "James Ruffin 4 days 44 m, State	5.76
" "William Jones, 5 days 30 m - State	6.20
" "Pissilla Maples 5 days 38 m, State -	6.52
" "David Lawrence 5 days 44 m, State	6.76
" "Marcus Smith 5 days, 60 m, 2 for State -	7.40
" "William Large 5 days, 48, m, State -	6.92
" "J. P. Trout 5 days, 36, m, State	6.44
" "John Lew 5 days, 40, m, State	6.60
" "John Jones 5 days, 48, m, State	6.92
" "Haron Lewis 5 days 64 m, 3 for State -	7.56
" "Samuel J. Jones 5 days, State	5.00
" "W. G. Gore 4 days 30 m, deft -	5.20
" "John Rice 4 days 22 m, deft -	4.88
Carried to page 45 -	\$ 220.61

(45)

	To this amount Prot forward	\$220.61
Landlord	Thomas Dalton Keeping jury 3 days	} 37.00
"	" 4 nights at \$9.00 each	
Doctor	Joseph Hoffmaster Medical attendance	} 12.50
"	" on deft. while in Prison	
	Bill of Costs before Justice trying deft.	
Justice	" John A. McKinney, deft. 10, Warrant 25, jury	} 3.55
	" 75, docketing Cause & 15, Mitimus 50, 1 cont	
	" 10, De? 6 Subpoenas for State 15 names of 1, 20 De?	
	" 5 Subpoenas for deft 50.	
Const	" R. R. Keags 1 arrest of 1.00, Guarding deft.	} 8.20
	" 3 days & nights of 3.00, Summoned 4 witnesses of 1.00	
	" Conveying prisoner to jail & returning 37 m, travel	
	" at 10 of 3.20	
D Shff	" John Mitchell Summoning 4 witnesses for	} 1.00
	" the State of 1.00	
D Shff	" J. D. Lyle Summon 2 witnesses for State 50.	50
S D Shff	" C. L. M. B. Summon 2 witnesses for State of 1.50,	1.50
Guard	" A. McBlapp Guarding prisoner 3 days & nights of 3.00	} 4.60
"	" " " Conveying prisoner to jail 32 ms of 1.60	
"	" W. E. Bowman Guarding deft. 2 days & nights of 2.00	} 3.60
"	" " " Conveying deft. to jail 32 ms at 5. 1.60	
"	" J. Kulew Conveying deft. to jail 32 m. at 5 1.60	1.60
"	" Westley Bull Guarding deft. 2 days & nights of 2.00	} 3.60
"	" " " Conveying deft. to jail 32, m. at 5 of 1.60	
"	" Riley Wallace, Guarding deft. 2 days & nights of 2.00.	2.00
"	" Jefferson Bull Guarding 3 days & nights of 3.00	3.00
"	" C. D. Price " 3 " " " of 3.00	3.00
"	" W. E. Bowman " 1 " " " of 1.00	1.00
	Amount Carried forward	297.26

	To This Amount brot forward		\$ 297.26
Guards	"Lewis Bailes Guarding deft 1 day	\$ 1.00	1.00
"	"Wm Hall " " 1 "	\$ 1.00	1.00
"	"Rufus Griffin " " 1 "	\$ 1.00	1.00
"	"Calvin Mitchell " " 1 "	\$ 1.00	1.00
"	"George Griffin " " 1 "	\$ 1.00	1.00
Witness	"H. Kilday 1 day for Stale	50	50
"	"John Tinsyard 1 day " "	50	50
"	"Joseph Branch 1 day " "	50	50
"	"Joseph Froth 1 " " "	50	50
"	"John Jones 1 " " "	50	50
"	"Wm Kayes 1 " " "	50	50
"	"W. H. Stone 1 " for deft	50	50
"	"James Mills 1 " " "	50	50
"	"Geth Bales 1 " " "	50	50
"	"Wm Weedon 1 " " "	50	50
"	"A. J. Hargues 1 " " "	50	50
Sawdler	"Martin Frost, 28 Meals for Guard &		
"	"Prisoner of 7.00. Room & fuel 2 days & night of 4.00		11.00
Sawdler	"H. J. Reutbrod for 17 Diets for Guard &		
"	"Prisoner of 4.25. Fuel for 6 horses all night &		
"	"Guards & Prisoner next day for dinner of 4.50		8.75
			<u>\$ 327.57</u>

Jailor. Samuel J. Jones. Keeping & boarding prisoners
 in Jail from April 29th 1864 to Sept 7th 1864
 making 132. day at 60 per day \$ 79.20

1 Penn Day 50 50
 70 \$ 79.70

Sworn to & subscribed
 before me Sept 10th 1864
 W. C. Patterson att. C.

Samuel J. Jones
 Jailor

State of Tennessee 347
Graham County 3 I Thomas Tatham Clerk
of the Circuit Court for said County and in
the said State - do hereby Certify - that the
foregoing transcript ~~contains~~ ^{is} a full
true and perfect transcript of all the
Record and Papers as it appears in my
office - and that the bill of Costs that
accrued in said Court is correctly
Copied from the Executions docket
of said Court - and that the Bill of Costs
furnished by the justice is also correctly
Copied - Witness my hand and official
Seal of said Court - at office in Rutledge
the day of June A.D. 1867.
Thomas Tatham Clerk

John Vance In Court
The State. 3 Murders

Rept Shff Samuel J. James. Grainger County.

For conveying prisoners to prison
Rattap to Knoxville for himself

82 miles @ per mile. \$6.50

Board. 5 meals @ per meal 2.50

For prisoners 82 miles @ per mile \$4.10 \$9.06

Board - 2 meals @ per meal 1.00

5.10

Gaonds. John D. Shetow - 82 miles - @ per mile -

+ Board 5 meals @ per meal -

7.42

" J. D. Gallion 82 " @ per mile

+ Board 5 meals @ per meal

7.42

Sworn to & subscribed

before me Sept 9th 1864

M. L. Patterson Clerk

S. J. James

John Vance vs The State
 State of Tennessee vs M. D. Bearden
 Sheriff & Jailor of Knox County Tenn
 To keeping and boarding the defendant
 in the County Jail of said County
 from Sept 8th 1867 to Dec 26 1867
 109 days at 60 cts per day \$65.40
 To Six Turnkeys 50^{cts} each 3.00
 To Conveying the defendant from Knoxville
 to Rutledge by order of Court going and
 and returning 64 miles at 10^{cts} 6.40
 To ~~four~~ four guards going and returning
 64 miles each at 5 cts per mile 12.80
 To Cash paid for defendant's
 Draveling 32 miles at 5 cts per mile 1.60

~~\$88.20~~
 \$90.20
 M. D. Bearden
 Sheriff & Jailor

John Nance

vs.

The State of Tennessee.

Brief for Plff in Error

By James G. Shields

The plaintiff in error was indicted in the Circuit Court of Craig County for the murder of William M. Bee; was tried at the December term, 1866; convicted of murder in the first degree, and judgment of death upon the verdict was pronounced against him.

It is earnestly maintained in behalf of the plaintiff in error that the testimony in this case does not warrant the infliction of the extreme penalty of the law; in other words, that the jury had not testimony before them to warrant them in finding the plaintiff in error guilty of murder in the first degree; and upon this ground we ask this court to reverse the judgment of the court below, and grant the plaintiff in error a new trial.

If there is sufficient evidence in this record to show that the homicide was committed with that premeditation, deliberation and wilfulness which are necessary elements of the crime for which the plaintiff was convicted, we are unable to see it.

What the circumstances of the homicide were no man, save the plaintiff, is now known, for no other living man was present, and no witness testifies as to them. The commission of homicide by the plaintiff is established alone by circumstances and his own subsequent declarations. If he did the act - and we are not here to deny that is the fact of the evidence in this record - no one saw him, and it is impossible to know under what circumstances it was done. Whether it was done maliciously and premeditatedly, or in the heat of blood under provocation, or in a sudden quarrel, or in self-defense, are questions as to which we have no proof whatever.

It appears from the proof that

3.

on the day on which Mr. Bee was killed, which was in the month of October, 1864, there was an assemblage of citizens at Blair's + Roads, in Linnæus county, for the purpose of enrolling as militia under an order, perhaps, of Gov. Johnson. The plaintiff in error and the deceased were both there; they left together, and traveled together towards their homes, over several roads, among others over one that passed over a wooded ridge, or on near the top of which the dead body of Mr. Bee was found the same day. Several persons met them on the road; all the witnesses say that they seemed to be on terms of friendship; they were both drinking freely; and one introduced the other to one of the witnesses as "his friend". All the witnesses agree that both were drinking. They went up the road over the ridge together in this condition — friendly, excited with liquor, and with no previous, or old quarrel to disturb the existing harmony.

4.

A short time afterwards the body of Mr. Bee was found, who had evidently been killed by blows inflicted on the head with a rock and a stick. His pocket book, containing old bank notes and Confederate money was lying by his side. The body had been drapped, and the pocket book may have thus fallen out. There is no proof that he had any other money. There is no proof that Stamer was seen with any considerable amount of money afterwards.

But it is no proof, by several witnesses, that Stamer on several occasions admitted he had done the deed. He is a man addicted to drinking, and on some of these occasions was indulging freely.

One witness says that Stamer told him he had killed for his money, and that he had got over five hundred dollars. But it is apparent that Stamer never had any such sum. As, before stated, there is no proof that he ever had any money after the day

5

of the homicide. If he had had this money, or any other considerable sum, he would have exhibited on some of these occasions, near the close of the war, when men were unrestrained in their conversation, and like Stames, indulged in vain boasting and drunken bravado. But there is no such proof. And the fact that the pocket book was left on the ground, with valuable bank notes in it, is conclusive that robbery was not the motive of the homicide.

The witness, Missella Maples, p. 27, who is a witness for the State, and who it is to be inferred was on terms of great, perhaps commercial intimacy, with Stames, proves that Stames came to her house that night, seemed in great trouble and distress, refused to eat, and next morning on being pressed by her admitted that he had killed Mr. Bee with a stick and a rock, in a sudden quarrel - that "he had span him the day before, and he struck him off. Here is a statement made soon

after the deed was done, while his cool reflection, to one to whom he evidently confided, and when he was in a state of mind. He then spoke the words of truth, and doubtless the account he then gave was the correct one, and of that he swears, he is not guilty of murder is the first degree.

If he had taken money from the body of Mr. Bee he would have certainly shown it to this woman, but she says he did not do so. Now, these are the material facts, and from them ~~now~~ the jury authorized to infer that this was a case of murder is the first degree.

No previous malice is proved.

The parties were friendly within a very short time before the fatal blow was struck.

But the most fact to rebut the idea of that state of mind which leads to this high crime, is the parties were drinking freely. They were in a condition for a sudden

affray - for a quarrel, and a case of manslaughter.

The mode of the killing itself indicates that the assault was sudden, and that there was no previous preparation. It was done with a stick, a common pine stick, and a rock, doubtless picked up on the spot. It was a pine stick, and a pine stick is never carried as a walking cane. It was a stick, doubtless, that chanced to be there on the ground; and no witness speaks of anyone having had a stick of any kind on the road.

Yet the jury gave him the benefit of none of these most cogent circumstances, and run to the conclusion in the grips, that it was murder in the first degree in a thing that is only known to Heaven, for no mortal eye was there to intercept the unhappy wretch.

Drunkness, it is well settled in this State, is a proper subject for the consideration of a jury in determining

whether the homicide be murder in the first degree. The question in such a case is, what is the mental status? Is it one of self-possession, favorable to a fixed purpose, by deliberation and premeditation, or did the act spring from existing passion, excited by inadequate provocation, acting, it may be, on a peculiar temperament, or upon one already excited by ardent spirits? In such case it matters not that the provocation was inadequate; or the spirits voluntarily drunk; the question is did the act proceed from sudden passion, or from deliberation, or premeditation. What was the mental status at the time of the act, and with reference to the act? In these remarks the court intended to be understood, as distinctly indicating that a degree of drunkenness by which the party was greatly excited, and which produced a state of mind unfavorable to deliberation and premeditation, although not so excessive as to render the party absolutely incapable of forming a deliberate purpose, might be taken into consideration by a jury

9
in determining whether the killing
was done with deliberation and pre-
meditation. *Swann v. The State*, 4
Hump. p. p. 141-140, and comments in
Wharton's Homicide, p. 370; *Burke v.*
The State, 9 Hump. 663.

It is in proof that the plaintiff
in error has a peculiar temperament,
and that ardent spirits greatly excite
him; (C. C. Vance, p. 39.) It is proved
beyond all doubt that just before the
homicide he was drinking freely;
and when we look to the manner,
and the weapons used in the com-
mission, of the homicide, it does
seem that under a proper charge
on this point, the jury should have
found the plaintiff in error guilty
of a smaller crime.

But all these facts and prin-
ciples of law are lost sight of, and
in the absence of any ~~proof~~ as
to what did actually occur, the
jury presume that it was a
case of murder in the first degree.
We maintain that the jury had
no right to make this presumption.

It is conceded that when the State proves the homicide and the use of a deadly weapon, that the law presumes the homicide to be murder, and that the onus of removing that presumption is upon the defendant.

But it is denied that the law presumes it to be murder in the first degree. This is a common law presumption, and is as to the malice alone — murder in the first degree being a distinction unknown to the common law. The killing and the weapon ~~proves~~ prima facie presumption of malice, and no more; if the State wishes to show the homicide to have been murder in the first degree, it must prove the facts of deliberation and premeditation, and not ask the jury to presume them, as was done in this case.

One thinks this proposition clear upon principles; but we have direct authority.

In Virginia and Ohio it has been expressly held that where

11.

the homicide is proved, the presumption is that is murder in the second degree only. If the prosecutor would make it murder in the first degree he must establish the characteristic of that crime, and if the prisoner would reduce it to manslaughter the burden is on him. Hill's case 2. Crockett's N.Y. Rep. 594; State vs. Sumner, Wright's Ohio Rep. 20; which cases are repeatedly cited by Wharton, approximately, p. p. 386, 372, Homicide, and Crim. Law, p. 520, Sec. 944, 1 Vol.

Now, as we have repeatedly said, these facts, these circumstances, are not proved. The state at the most must stop with the common law presumption; and we well might argue that the whole of the facts might reduce the crime to manslaughter.

In favor of life, we earnestly insist, that this record, taken all together, will well warrant this court in granting the plea of not guilty, and in granting another trial, before another jury of his peers.

It appears that J. M. Meek, the alto gen.,
refused to prosecute, and thereupon the
 court appointed L. A. Cratz, to act as
 alto general, and whose name appears
 to the indictment, p. 4 & 5.

But it further appears that L. A.
 Cratz failed to appear on the trial,
 and of course his office ceased, and
 it became necessary to appoint an
 other general pro tem.

This was done, and Thomas
 B. Champion was appointed.

He maintains that in law Cham-
 pion was appointed in the place of Meek,
 and that the order appointing him
 should show that Mr. Meek still
failed, or refuses to prosecute.

This the order, p. 9, does not
 show, and we submit that the ver-
 dict is a nullity.

See Meigs v. Big. Sec. 177, 1 vol.
 See Pippin v. The State, 2 Sneed, 49.