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In

THE SUPREME COURT

of the

STATE OF UTAH

THE STATE OF UTAH,

Plaintiff and Respondent

vs.
C. H. CHEALEY,

Defendant and Appellant

ABSTRACT OF RECORD

In the City Court of Salt Lake City, Before W. H. Burton,
City Judge and Ex-Officio
Justice of the Peace.

COMPLAINT

5 On this 26th day of October, A. D. 1939, before me, W. H. Burton, City Judge and Ex-Officio Justice of the Peace of the City Court within and for Salt Lake City, Salt Lake County, State of Utah, personally appeared J. H. Scheib who, on being sworn by me, on his oath, did say that C. H. Chealey on the 16th day of September, A.D. 1939, at the County of Salt Lake, State of Utah, did commit the crime of INVOLUNTARY MANSLAUGHTER, as follows,

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to-wit:

That the said C. H. Chesley, at the time and place aforesaid, killed Harlan Junior Kofold without malice; contrary to the provisions of the Statute of the State aforesaid, in such cases made and provided, and against the peace and dignity of the State of Utah.

J. E. SCHAIB

Subscribed and sworn to before me, the day and year first above written.

W. M. BURTON
City Judge and Ex-Officio
Justice of the Peace.

Attest:

ETHEL MACDONALD, Clerk of City Court.

By J. BRYANT MORETON, Deputy.
(Seal)

I approve of the issuance of a warrant upon this complaint.

H. H. WALLACE,
County Attorney.

By H. D. LOWRY, Deputy.

It appearing to me that the offense in the within complaint mentioned has been committed, and that there is sufficient cause to believe the within named C. H. Chesley

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guilty thereof, I order that he be held in answer to the same, and I have admitted him to bail to answer by the undertaking hereto annexed.

W. M. BURTON
Justice of the Peace,
Salt Lake City Precinct.

Filed October 26, 1939.

INFORMATION

(TITLE OF COURT AND CAUSE)

The defendant C. H. CHEALEY, having been heretofore duly committed to this Court by W. M. BURTON, a committing magistrate of Salt Lake County, State of Utah, to answer to this charge, is accused by CALVIN W. RAWLINGS, District Attorney of the Third Judicial District, State of Utah, by this Information, of the crime of INVOLUNTARY MANSLAUGHTER, committed as follows, to-wit:

That on the 16th day of September, A.D.1939, at the County of Salt Lake, State of Utah, the Defendant, C. H. Chealey, did unlawfully and without malice kill Harlan Junior Kofold; contrary to the provisions of the Statute of the State

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of Utah, in such case made and provided, and against the peace and dignity of the State of Utah.

December 8, 1939 defendant arraigned — waives time to plead. Defendant enters plea of not guilty. Trial set for December 12, 1939 at 10 A. M.

CALVIN W. RAWLINGS,
District Attorney of the Third Judicial
District, in and for Salt Lake
County, State of Utah.

By BRIGHAM E. ROBERTS,
Deputy District Attorney

WITNESSES FOR THE STATE

J. H. Scheib, Sheriff's Office.

Lote Kinney, Police Department.

Deputy Larson, Sheriff's Office.

Mr. Williams, Utah Liquor Control Commission.

Thurland Smith, R.F.D.#1, Box 100, Sandy, Utah.

Duane Sjoblom, R.D.#1, Box 108, Sandy, Utah.

Clifford Cook, 2067 Fowler Street, Ogden, Utah.

Donald Beck, Centerfield, Utah.

Filed December 1, 1939.

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ENTERED ORDER

(TITLE OF COURT AND CAUSE)

This being the time heretofore set for the arraignment of the within named defendant, said defendant being present in person and represented by J. Lambert Gibson, as counsel and Brigham E. Roberts Assistant District Attorney appearing in behalf of the State of Utah. Whereupon the defendant is duly arraigned, a copy of the Information being handed him. The defendant waives time in which to plead and enters now a plea of Not Guilty to the crime as charged in the Information. It is ordered that the within case be set for trial Monday, December 18, 1939 at the hour of 10:00 o'clock A. M.

OSCAR W. McCONKIE, Judge.

Dated December 2, 1939.

Case assigned to Honorable Will L. Hoyt, (Pro Tem) for trial, January 22, 1940.

ENTERED ORDER

(TITLE OF COURT AND CAUSE)

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11 This case comes now on for trial, the defendant appearing in person and being represented by his counsel, J. Lambert Gibson and Charles Welch, Jr., and Calvin W. Rawlings, District Attorney appearing in behalf of the State of Utah. Whereupon a Jury of eight persons is impaneled and sworn to try the within case as follows, to-wit:

CLIVE D. [illegible]

ALBERT CAP[illegible]

VANE F A[illegible]

MRS. HANNAH [illegible]

ARTHUR McARTHUR

ALDEN O. [illegible]HILL

MRS. [illegible] GILLMOR

C. E. LAMBERT

WILL L. HOYT, Judge.
(Pro Tem)

Dated January 2[illegible], 1940

BILL OF EXCEPTIONS

(TITLE OF COURT AND CAUSE)

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Trial commenced January 22, 1940, before Honorable Will L. Hoyt, District Judge. Calvin W. Rawlings, District Attorney appeared as counsel for the State, and J. Lambert Gibson and Charles Welch, Jr. appeared as counsel for the defendant. After selection of eight jurors, a statement was made to the jury by respective counsel.

TESTIMONY OF WITNESSES FOR

STATE

DELMAR LARSEN, called as a witness for the State, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:

My name is Delmar Larsen. I live at 836 South Fifth East, Salt Lake City, Utah. I am employed as a deputy sheriff and have been for about eight months. On that 18th day of September, I had occasion to go out near the intersection of the Draper road with State Street in Salt Lake County where I investigated an accident. I made and understand the drawing on the blackboard herein this room which purports to be the scene of the same accident. I arrived at the scene of the accid-

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and about 5:30 P. M., which accident occurred about a block south of the Draper Cross Roads and State Street in Salt Lake County. (The witness then went to the diagram and explained the diagram which he had previously placed upon the blackboard.) On each side of the cement strip there is a gravel shoulder about six feet wide. On the side of the road there are also some disc reflectors. These disc are on posts two or three feet tall, off the hard surface. The car which was involved in the accident which I went to investigate had gone between two of these discs. When I arrived at the scene of the accident I saw a Ford truck with a flat rack just to the east side of the road, the front on the gravel shoulder. I also saw over by the side of the telephone pole, the victim of this accident. The ambulance was there at the time. The truck was upright when I got there, but had been damaged. I saw evidence along the road to show that a car had been running into the dirt. These tracks pointed back from the telephone pole, toward the highway. I saw Marlin Hofeld lying right on the north side of that telephone pole. He

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was dead when I got there. There was also a big crowd of people around there at the time. I called the sheriff's office and an ambulance came out for Mr. Kofold. The accident occurred on Saturday afternoon. On the following Tuesday morning I found a bottle of liquor in the beet fields just about directly east of the telephone pole, that is about thirty feet east.

Q. What kind of liquor was it?

MR. GIBSON: I object to this as wholly immaterial, no connection with the accident, that was Saturday, and the liquor was found Tuesday, three days intervening. I object to that as wholly irrelevant and immaterial.

MR. RAWLINGS: We will connect it up.

THE COURT: The objection to the present question is overruled.

It was "Gold [illegible]" whiskey I found out there in the field, a pint bottle. I picked it up myself and took it down to the sheriff's office. I took the license number of the car, this was a Ford truck. It was registered in the name of the Jordan Transportation Company. I can't recall right now if that is correct.

CROSS EXAMINATION:

By Mr. Gibson

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These dies along the side of the road are about thirty feet apart. None of them were knocked down. The day of the accident I stepped off my measurements, but I came the following morning with a tape measure and measured them. There were a lot of tracks around where the accident occurred. There was blood near the telephone pole from Marlin Enfeld. There was also gas and oil cans around the truck. This pole was the fourth pole south of the Cooper Cross Roads. I had never seen the deceased person. I went through his pockets and found his billfold and in it I found his social security card. That is how I found out his name and address. I phoned to the sheriff's office and they notified them. These dies are right on the edge of the gravel road where it starts sloping down to the barrow pit. In my opinion the concrete portion of the road would be 18 or 19 feet wide. I would judge that these oiled strips on the side were about four feet wide so that the pavement would be 18 or 19 feet, the hard surface. I left the place Saturday night about an hour after the accident or a little after six. I looked for liquor Saturday and did not find any. I went

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back Tuesday morning with Mr. Lote Kinsey and found a bottle of liquor in the beet field.

REDIRECT EXAMINATION:
By Mr. Rawlings

I arrested the defendant and put him in jail. The Ford truck had license No. 6440-347.

RECROSS EXAMINATION:
By Mr. Gibson

I determined that this was a 1934 V-8 Truck by inquiring at the scene of the accident. I had no knowledge of my own until I inquired of a person there whom I knew.

MR. RAWLINGS: Call Mr. Rich.

MR. GIBSON: Your Honor, I would like to object to the questioning of Mr. Rich, on the ground that his name was not one supplied to the defendant, we had no knowledge whatsoever that he would be a witness, the defendant should have been supplied with the name at the time of the arraignment.

THE COURT: The objection is overruled.

LEROY RICH, called as a witness on behalf of the State, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

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My name is Leroy Rich. I am 19 years of age. I live at Cove, Utah. On the day of the accident, the 18th day of September of last year, I was hitch-hiking and a Ford truck stopped and picked me up at Provo, and at the time of the accident, I was riding in the back of the truck with the little Beck boy and Kofold. As far as I know we were just going along and ran off the road. The next thing I knew the rack of the truck was on me, and I didn't know any more. When I came to I Kofold by the telephone pole.

Q. Was he dead?

A. Yes.

MR. GIBSON: I object to that as a legal conclusion, of the witness, he doesn't know. He says that he was under the rack and Kofold was over by the telephone pole. No evidence that he ever got close enough to see him.

MR. GIBSON: I move to strike the answer out.

THE COURT: The objection is denied.

I first saw Kofold in Provo. He and the Beck boy were riding on the rear of the truck at that time. Mr. Chealey was driving the truck when it left the road. The

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car stopped in Pleasant Grove. I do not know where the defendant Cheeley went but he was gone five or ten minutes.

CROSS EXAMINATION:
By Mr. Gibson.

A The back of the truck was just a flat rack with a tire on the back. We were sitting on the tire. I was knocked unconscious when the truck left the road and when I came to I started hollering for help. Someone lifted the truck off of me. After I got out of the truck I went over and looked at Mr. Hofold. He was lying beside the telephone pole. I rode with my back facing the direction which we were going and paid no attention to what was happening.

REDIRECT EXAMINATION:
By Mr. Rawlings

A I did not observe any truck just prior to the accident or shortly afterwards.

RECROSS EXAMINATION:
By Mr. Gibson

But I was not paying any particular attention to the traffic.

DELMAR LAMB resumed the witness stand and further

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testified as follows:

REDIRECT EXAMINATION:
By Mr. Rawlings

I first saw Exhibit A in a beet field about thirty feet east of the telephone pole and the bottle was in the same condition then as it is now as far as the contents are concerned.

RECROSS EXAMINATION:
By Mr. Gibson

I picked up the bottle and wrote out a label, marked it, and pasted it on the back and locked it in Chief Deputy Sheriff Beckstead's office in his desk. This was done by Mr. Beckstead and myself on the Tuesday after the accident happened and I haven't seen the bottle from that day until this day when I got it out of the desk. I put the note on the bottle on the day I brought it in and at all times Mr. Beckstead and many others had access to the desk in which it was located.

REDIRECT EXAMINATION:
By Mr. Rawlings

I would say the amount of fluid in this bottle is about the same quantity as when I put it in the desk. On the back of the bottle is a certain label which I

wrote myself and put on the day I found the bottle.

DONALD BECK, being called as a witness on behalf of the State, being first duly sworn, testified in substance as follows:

6 DIRECT EXAMINATION:
By Mr. Rawlings

My name is Donald Beck. I was nine years of age on the 8th day of May, 1930. I live in Centerfield, Utah with my parents. In September Mr. Cheeley was living with us. He is herein the courtroom. (Witness indicates). He had been living with us for about two weeks.

7 He was digging a well over at the sugar factory. I came to Salt Lake City with Cheeley. When we left Centerfield I was riding in the cab with Mr. Cheeley. We came also was with us. We picked a man up just as we were going out of Gunnison. I do not know his name. I got into the cab and I sat in the center. Cheeley was driving.

10 We picked up another man before we got to Nephi. His name was Tofold. He sat on the rack of the truck. This rack was just a flat rack. I know where Nephi is. We stopped there, but I did not get out of the car. They had purchased some Fisher Beer. I went in to the store

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and watched them each drink a bottle. Mr. Cheeley and
and the man we picked up in Gunnison are the ones who
drank the beer. I believe they got some whiskey at
Nephi. They took it out of a paper sack when they were
in the truck. I was sitting in the cab between Cheeley
and the other man. It was about the same size as the
10 bottle (indicating the bottle of whiskey, in response to
Mr. Rawlings' question, that had been picked up by Mr.
Larsen). They passed the bottle back and forth, and I am
pretty sure they drank all of it. I got out of the cab
and got on the back of the truck some place south of
Provo. There were two other men back there with me.
Leroy Rich was one of them. The truck stopped in Pleasant
Grove, but I do not know where Mr. Cheeley went. Cheeley
was driving the truck all the time. I remember that we
had an accident. I do not see any one who is injured
after the accident. I don't remember what happened. The
first thing I remember after the car left the road was
Cheeley talking to me. The next thing I knew, I was in
an ambulance. I had a broken leg. I never felt any pain.
They bought just one bottle of whiskey in Nephi. They
did not buy the Fisher beer in Nephi but I don't know

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where they got it. They each had a pint bottle of beer.

CROSS EXAMINATION
by Mr. Gibson:

I know that Chealey was driving after we got back in the car at Provo. Chealey picked up five or six people on the way. After the accident Chealey did not talk to me very long. He seemed to be quite anxious about how I was feeling.

LEROY L. WILLIAMS, called as a witness on behalf of the State, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

My name is LeRoy L. Williams, and I live at 1575 Dearborn. I have been employed by the Liquor Control Commission of the State of Utah since May 27, 1935. The original records and files are under my jurisdiction. In order for a person to buy intoxicating liquor it is necessary for them to get a permit and in order to get a permit they have to sign an application and we keep the duplicate copy with the applicant's signature on it.

Q. Have you any permits, or duplicate copies of per-

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mits that were in the name of Carroll E. Cheeley, Carroll Cheeley, or C. E. Cheeley, that is, having been executed prior to the 16th day of September, 1939?

MR. CIARKE: I object to that on the two grounds, first it is incompetent, irrelevant and immaterial, and secondly if he is trying to prove anything by means of the handwriting at all, he hasn't qualified the witness as an expert to identify the handwriting.

MR. RAWLINGS: It is preliminary.

(Argument)

THE COURT: Unless it is connected it would be subject to a motion to strike. Taking counsel's statement that it is preliminary, will be connected up, it will be received at this time, that is, the present objection will be overruled.

I have the carbon copy of the original application herewith me. The copies were written with a no-blot ink or pencil and cannot be erased or changed and are made at the same time the original is made. All applications for liquor purchased by the names I have mentioned here introduced into evidence in the court below. (The Clerk had them and brought them forth. Exhibits were marked

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Exhibit B and C and handed to the witness.) These are sales tickets and the name J. W. Cheeley appears upon them and they are applications to purchase liquor. One is made out at Agency 3[illegible] at Lehi for one pint "Gold Band" and the other, dated on the same date, September 10th, for one pint of Gold Band, purchased at Agency 37, Pleasant Grove.

MR. GIBBONS: I renew the objection, and move to strike that as immaterial.

MR. RAWLINGS: I intend to show whose writing the "J. W. Cheeley" that appears on this exhibit is.

THE COURT: What was your objection?

MR. GIBBONS: I move to strike, not only on the grounds that the writing has not been proven, but on the ground that there is no connection shown between the purchase of his liquor and this accident. He might have bought ten gallons of whiskey that day and still there be no connection with the accident.

THE COURT: The motion will be denied at this time. You will have the right to renew the motion, unless there is some further evidence in reference to the signatures.

When an application for a permit is made a description

is taken of the applicant. I have here a copy of the description of the applicant filled in the name "[illegible]" prior to September 16, [illegible]. (Witness handed the slip marked Exhibit ..) This is the stub for the permit, purchase No. [illegible], the first permit, purchased July 3, 1930, at Agency 4, and it is the custom and practice of the Liquor Agency to require these to be signed by the applicant. The name C. E. Chealey appears on this application. There are several blanks which were filled out by L. S. Peterson our authorized official who made out the permit. In my experience I have had cause and occasion to compare the handwriting on permits to determine whether or not they are made out by the same individual. I have been doing that for four years, and during that time I have been called upon to give opinion as to whether writing made by persons on different instruments are made by the same hand and I have testified in such matters in courts of record.

Q. Now, I hand you what has been marked for identification three proposed exhibits, A, B, and C, and I call your attention first to State's proposed exhibit A, on which appears the name Carroll E. Chealey. Will

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you examine that, please? (Witness examines documents.)

Q. Have you seen that before?

A. No sir.

Q. Will you examine it?

(Witness examines paper.)

Q. At the same time examine Exhibit, State's proposed Exhibits B, C, and D, and in particular the name C. E. Chesley which appears on those instruments.

(Witness examines exhibits)

Q. Now, then have you an opinion as to whether those signatures are written by the same hand?

A. They are identical, sir.

MR. GIBSON: I object to that, and move it be stricken on the ground he has not been qualified as an expert to determine whether the handwriting is the same.

MR. [illegible]: He has indicated for four years he has had charge of the permits, worked for the Liquor Control Commission.

(Argument by counsel)

THE COURT: The motion is denied.

MR. GIBSON: Voir dire of witness.

Before I started work for the Liquor Control Com-

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mission I was a traveling salesman. I have never gone to school nor taken any courses of study in handwriting. I never had any course at the university. I have had no special training but just picked it up.

MR. GIBBS: We renew the motion. He is not an expert.

MR. RAWLINGS: He has stated he worked for the railroad, and for fouryears he has had the duty and responsibility of appearing in the district court.

(Answer read, as follows: "A. They are identical, sir.")

THE COURT: The ruling will stand.

In my opinion the signature of State's proposed Exhibits F and G, that is written in the name of Carroll and of C. E. Chesley are written by the same hand as with State's proposed Exhibits B and C, and that the signature C. E. Chesley which appears on State's proposed Exhibit D was written by the same hand that the wrote the signature C. E. Chesley, Carroll Chesley and Carroll E. Chesley, written on State's Exhibits A, E, and F.

MR. GIBSON: I object on the ground the evidence shows he is not qualified as an expert.

THE COURT: The objection is overruled.

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CROSS EXAMINATION:
By Mr. Wilson

As an expert I identify the handwriting and determine whether or not it is the same by the slant that is used in the signature, and peculiarity of the C. W. and H and the flourishes on the "y" at the end. I know these are not a forgery because I am the only man who sees these permits after they leave the agency. A man did not go into the agency and forge Mr. Chesley's name because it is not often done. We require a man to furnish his permit and our agent usually sizes him up according to his height, weight, color of hair and color of his eyes, and this is always done when a person buys liquor from an agency or at least it is observed more often in the agencies than in the stores. The number of the permit was [illegible], but that is not the same permit under which these purchases were made.

REDIRECT EXAMINATION:
By Mr. Rawlings

The reason the purchases were not made under this permit is because another one was purchased on the 27th of July as the first one was apparently lost. The one purchased on the 27th of July has been marked Exhibit E. In my opinion the signature C. H. Chesley on State's

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proposed Exhibit H is written by the same hand that wrote the signature which appears on State's Exhibits E, F, and G.

MR. [illegible]: I would like to renew my objection.

THE COURT: On the same ground as before?

MR. [illegible]: Also on the ground, your Honor, that these State's proposed Exhibits F, E, and G, there has been no connection whatsoever shown with the case.

MR. [illegible]: Well, I intend to show that.

THE COURT: The objection is overruled at this time. You may have leave to move to strike later if you contend that the connection has not been established.

REDIRECT EXAMINATION:
By Mr. [illegible]

Q It is impossible from these applications to determine the time of the purchase. I can only determine the date and place of purchase. Except for the signature on the application I do not know whether the person who purchased the Colt Band which fitted the description on the permit or whether it might not have been a woman.

(The jury is admonished and excused from the courtroom.)

(Court reconvened.)

[illegible] would like to make a motion to strike

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all the evidence of the last witness, on the ground that he is not qualified as an expert, incompetent, irrelevant and immaterial, none of these writings are shown as the handwriting of the defendant in this case.

MR. RAWLINGS: I haven't offered any of them in evidence yet.

THE COURT: The motion is denied at this time. You may have the right to make an objection when the exhibits are introduced, if they are not connected up.

HEBER C. SMITH, called as a witness on behalf of the State, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

My name is Heber C. Smith. I am employed for 3½ years by the Salt Lake County Sheriff's office as jailer at the County Jail. The custom and practice when a person is brought into jail is that he is handed a card to sign with his name, age and address. After he has signed this card he is searched and usually sent to the identification bureau for fingerprinting and photographing. It is the practice of the Sheriff's Office to require a signature of

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an inmate prior to delivering his mail. I have seen Mr. Chealey more than once. I saw the defendant, Carroll R. Chealey, sign his name on what has been marked State's proposed Exhibits 3 and 4.

CROSS EXAMINATION:
By Mr. Gibson:

At the time these cards were signed there were present with me the officers who brought him from the City Jail. I do not remember who they were. The signing was done about 3:00 or 3:30 o'clock in the County Jail at the office. Every time a person is brought in they sign a slip like this. Many times there are as many as fifteen or twenty people brought in each day and all these people sign cards in my presence, but in this particular case I have a definite recollection of his signing these cards in my presence.

REDIRECT EXAMINATION:
By Mr. Rawlings

The purpose of having people sign these cards is two-fold, one to obtain their signature and the other is the authorization that the mail is to be censored as it comes in.

J. H. SCHEID, called as a witness on behalf of the State, having been first duly sworn, testified in substance

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as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

My name is J. H. Scheib. I have been employed by the Salt Lake County Sheriff's Office since January 5, 1936. At the present time I am Chief Deputy, traffic Division. I saw the defendant Cheeley write his name on State's proposed Exhibit G and he wrote it in my presence.

STERLING D. SMITH, called as a witness on behalf of the State, having been first duly sworn, testified in substance, as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

My name is Sterling D. Smith. I am 12 years of age and I live at the Draper and Riverton crossroads with my parents. On September 16th I saw the truck turn over. I did not see any traffic immediately before or after the wreck occurred. The car was going north.

CROSS EXAMINATION:
By Mr. Gibson

At the time the accident took place I was by some chicken coops on the back of our truck getting ready to

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jump off the back of the truck. I did not see the truck until I heard a noise, the truck looked like it hit the telephone pole and started to turn over. I did not notice the truck until I heard the noise and saw it hit the telephone pole. The first time I saw it, it was off the road.

J. E. SCHMID recalled as a witness, further testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

I saw Mr. Cheney on the 16th day of September of this year in the County Jail at about 8 o'clock, between 7:30 and 8:00 o'clock in the evening.

STERLING D. [illegible], recalled as a witness on behalf of the State, further testified in substance as follows:

REDIRECT EXAMINATION:
By Mr. Rawlings

The accident occurred between five and five-thirty.

CROSS EXAMINATION:
By Mr. Gibson

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119 I am just guessing at the time.

REDIRECT EXAMINATION:
By Mr. Rawlings:

A patrol arrived at the accident about twenty minutes after it occurred.

RECROSS EXAMINATION:
By Mr. Gibson

I am just guessing at the twenty minutes.

D. LAMAR LARSEN, recalled as a witness on behalf of the State, further testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

I received a call to go to the vicinity of the accident at seven minutes after five. I got there about twenty minutes after the call came.

CROSS EXAMINATION:
By Mr. Gibson

The general procedure in sending a call over the air is that someone at the accident calls the Sheriff's office and they immediately put it over the radio. I do not know who called in at the Sheriff's office and I have no idea how long after the accident

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occurred the call was put in to the sheriff's Office and so far as I know it might have been an hour later.

REDIRECT EXAMINATION:
BY Mr. Rawlings

The call was reported as an accident with some-one injured. It was not the custom to wait a half or three-quarters of an hour after an accident before making the call.

RECROSS EXAMINATION:
By Mr. Gibson

10 It is about 14 miles from where the accident oc-curred to where the call was sent out over the air and it requires a long distance telephone call to send the information in to Salt Lake and I have no knowledge whatsoever how long after the accident occurred before the call was sent in.

J. E. SCHMID resumed the witness stand and further testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

11 During my experience as a police officer and deputy sheriff I have on many occasions seen men under the influence of intoxicating liquor. I not only at-tended the F.B.I. school, but also a number of

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schools where the matter of accumulating evidence was discussed and where there were discussions and tests as to the method of determining whether or not a man is under the influence of liquor. In my opinion the defendant, C. E. Conley was under the influence of liquor about 8 o'clock September 16th. He was very incoherent, could not talk very plain, could not hold himself erect, and was very relaxed, had a glassy stare in his eyes and was very obviously drunk.

CROSS EXAMINATION:
By Mr. Gibson

At the schools I attended they taught us to some extent the distinctions between a person who is under the influence of intoxicating liquor and one who is under the influence of shock due to a major accident. At this time I cannot remember exactly what those distinctions are. The two conditions are very similar. The main distinction is that in the case of drinking there is a "sour, smelly smell". In the course I took I learned nothing about the influence an accident or extreme nervous excitement would have on the

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nervous system or the digestive process of a man. Although I have no knowledge and I am only going by my experience, I do not believe it would be possible for a man to have one drink of liquor and lapse of extreme excitement that his stomach would be upset so that it would have a sour effect. The person involved in a major automobile accident who has not been drinking is usually hysterical and completely upset. While Mr. Cheeley was in the County Jail I asked him several questions. He stated that the reason he ran off the road is that if he had not done so he would have hit an oncoming car which was passing a truck headed on his side of the road.

REDIRECT EXAMINATION:
By Mr. Rawlings

Mr. Cheeley was very incoherent and said many things. At first he could not draw a map of where or how the accident occurred, but later he did so and explained the position of the cars. At the point of the accident there is no obstruction on the road and a person can see in either direction three or four miles.

RECROSS EXAMINATION

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About a quarter of a mile south of the ac-

129 cident is a slight "S" curve.

REDIRECT EXAMINATION:
By Mr. Rawlings

130 People suffering from shock from an accident no matter how badly they are hurt do not have a distinct odor of whiskey or alcohol on their breath. The defendant was not hysterical and did not appear to be injured and did not have any medical treatment in the jail and he neither made any complaint nor did I observe any injuries on him.

RECROSS EXAMINATION:
By Mr. Gibson

131 I do not remember that the defendant told me that he was hurt, that his leg was bruised and that it was quite painful. I do not know whether or not he was taken to the County Hospital. There was no cause for me to believe there was any injury.

(The jury is admonished and excused from the courtroom.)

(Court reconvened.)

Exhibits B, C, E, F, G, and H were offered in evidence.

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MR. [illegible]: I would like the record to show at this time I renew the objection to Exhibits C, E, and H, on the grounds that they are incompetent, irrelevant immaterial and no connection with the case whatsoever.

Exhibits B, C, E, F, G and H were admitted into evidence.

LOUIS E. GOFF, called as a witness on behalf of the State, having been first duly sworn, testified in substance, as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

My name is Louis E. Goff and I am a mortician at Midvale, Utah under the name of C. L. Goff & Sons Mortuary. I was managing that company on the 16th day of September, 1950. On that day I sent an ambulance to the Draper Crossroads to get a body which was brought back in the ambulance to my establishment. A person giving me the name of Sarah Kofold came from Boston, Idaho and claimed the body. She stated that she was the mother of the boy. The information she gave me

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concerning the boy I filled in on what is marked Exhibit 1, which is the death certificate covering the body which came to my establishment. The back of the skull, the head, of the body was fractured. The fluids were running from the ears showing that the bones of the skull were broken inside. The neck was broken, the chest crushed and several ribs were broken. I delivered the body to a mortician in Idaho who called for it.

CROSS EXAMINATION:
By Mr. Welch

A I do not know of my own knowledge whose body that was nor how the injuries were incurred.

DUANE SJOBLOM, called as a witness on behalf of the State, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

A My name is Duane Sjoblom. I live on the Draper and Riverton Cross Roads and from that point I have an unobstructed view of where the accident occurred. For a mile and a half north you have an unobstructed view [illegible] for [illegible] miles south. There is a slight

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"S" curve on the road which does not affect the sight. I was the first person to get to the scene of the accident. It was about five o'clock in the afternoon. At that time the truck was turned over on its side. The roof had been torn off. Mr. Chesley climbed out of the cab of the truck. A little fellow was partly under the truck. Mr. Smith was still in the cab of the truck with his legs out of the cab and his head and the top part of his body in it. Mr. Rich was sitting up against the fence unconscious. The boy by the telephone pole was on the north side of the post, wrapped around the post at that time, and was dead when I got there. I would say that he was about fifteen years old. I saw the ambulance come and pick him up. I observed a bottle of liquor in the neighborhood of the truck when I got there. To the best of my knowledge I would say that the bottle here in court is one and the same bottle.

MR. [illegible]: We offer, your honor, State's proposed Exhibit [illegible].

MR. [illegible]: I object to it, your honor, on the ground that it has not been identified as being in

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the accident, or in the car at the time. I would like some more identification if your Honor is going to receive it.

144 THE COURT: Do you wish to question the witness?

MR. GIBSON: Yes.

MR. GIBSON: Voir dire of witness.

All I know is that the bottle of whiskey was a gold band bottle, pint bottle of Gold Band whiskey. I have no personal knowledge that this is the same bottle and so far as I know, any other bottle might have been it.

MR. GIBSON: I renew my objection, this has not been tied into the accident in any way.

MR. HAMLIN: We have introduced two exhibits showing two bottles of Gold Band Whiskey were purchased by the defendant, we have introduced evidence to show that this was found in the field. We have introduced evidence that the officers were directed, the officer said that the reason they went there, I think, was that they had been told it was there.

(Argument)

THE COURT: Exhibit A will be received in evidence.

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The record will show the objection of the defendant is overruled.

MR. RAWLINGS: That is all at this time.

CROSS EXAMINATION:
By Mr. Welch

I did not actually see the accident. I heard a noise, saw a cloud of dust, and ran down to the position of the accident. I was twenty yards west of the intersection of the road going to Riverton standing there talking to another fellow and was facing east at the time. When I reached the accident Mr. Cheeley climbed out of the cab and assisted me and we took the little fellow underneath the cab. Another fellow stopped and the three of us tipped the cab up.

FERRIS JONES, called as a witness on behalf of the State, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

140 My name is Ferris Jones. I am the director of the motor vehicle department of the State Tax Commission and have charge of all the records relative

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to cars licensed in the State of Utah. The Ford Truck bearing the number 46,347 was issued to [illegible]. T. Chealey, [illegible] South West Temple, Salt Lake City, Utah.

149 Stipulation was made between counsel that the Ford Truck bearing license number 46,347 was issued to the father of the defendant.

(The jury is admonished and excused from the courtroom.)

(Court reconvened.)

MR. GIBSON: A motion was now made by Mr. Gibson on behalf of the defendant for dismissal of the action on the ground that there was no connection between any unlawful act and the death of the deceased.

THE COURT: The motion is denied.

(The Court recessed at this time.)

(The Court readjourned.)

[illegible], called as a witness on the behalf of the defendant, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:

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My name is Luther Smith and I live in Florida.

180 I have been in Utah for about two years, living at Salina at the C.C.C. there. I drive a truck and cook, check tools, gas, and oil on road construction. I left Salina about 10:30 in the morning of September 16th, 1930 to go to Salt Lake City. I caught a ride from Salina to Gunnison and at Gunnison I got a ride with Cheeley. At the time I got the ride there was one other person in the truck with Cheeley and that was Donald Beck. I sat in the cab on the right-hand side. We stopped at Lehi to buy

181 whiskey. We bought some Gold Band whiskey and I paid for it. It was purchased in Mr. Cheeley's name. It was my bottle of whiskey. The guy we picked up hit the booze pretty heavy. I drank most of it. I would say that Mr. Cheeley took of that pint bottle one inch and one-half in the pint bottle. We picked up two other people, I think this side of Springville. I don't know just where. All the people that we picked up on the road were hitch-hikers. I was picked up around Gunnison, Utah at about 11:30.

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We bought another bottle of whiskey that day and I

152 paid for it. That bottle was not all drunk. I don't believe there was as much gone out of the bottle (out of the bottle which was placed in exhibit). There was not as much whiskey gone out of the bottle as was gone out of the bottle on exhibit. I drank the amount of whiskey taken out of the second bottle. Mr. Chesley did not drink any. We were driving at about 35 or 40 miles per hour. At the time we passed the point of the mountain between Salt Lake and Provo, just Mr. Chesley and myself

153. were riding in the cab of the car. We were involved in an accident south of the Draper road. There was a truck coming south towards us and a car with a California license driving south, came around the truck. There was not room left for Mr. Chesley to pass the oncoming cars. Mr. Chesley turned off the road to the right between two of the posts along the side of the road. The truck then turned over.

154 I was knocked unconscious for a little while, but when I came to I was asking people around to help me. The switchboard was across my stomach, the

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lower part. When I got to where I could see, there

155 were people gathered all around. I don't know who

picked me up. I don't remember seeing Mr. Cheeley

at the scene of the accident. They later took me

to the General Hospital in Salt Lake City in an

ambulance. (Mr. Smith then went to the board and

drew a diagram of the scene of the accident.) There

156 was a truck coming this way (indicating south.) There

was a car back here pulling around the truck. The

car that pulled around the truck had a California

license plate on it, but I did not get the license

157 number. The car passed the oncoming truck just about

10 or 15 feet in front of Mr. Cheeley. Mr. Cheeley

was driving about 35 or 40 miles an hour when he

was coming down the road. He was staying on his

side of the road. Just before the accident, Mr.

Cheeley seemed to have his car under complete con -

trol. I don't remember him passing any other cars.

I didn't notice particularly the amount of the

traffic coming from around the point of the mountain.

CROSS EXAMINATION

By Mr. Rawlings

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158 I realize that I was sworn to tell the truth and nothing but the truth. I was going to Salt Lake City for a visit. I have lived in Salinas since the accident. At the time of the accident, I was bruised inside and sore. I was not hurt bad. After the accident things were not clear. I remember things pretty clearly that happened before the accident. After the accident, I was taken to the hospital. I was there I guess an hour or two. I was then released and went to the Fort Douglas Hospital on the 16th. I was there for 10 days. I was suffering during the first two or

159 three days. I knew where I was. The man who had charge of the hospital was Major Craig. I do not remember seeing Mr. Kinney at the hospital two days after the accident. I don't remember seeing him come in with an orderly. I had never seen him before. I remember seeing people on the morning of the 16th. I believe on the morning of the 17th I saw a slim guy (this is in response to question by Mr. Rawlings as to whether he had seen

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Mr. Kinney and another gentleman come up there). I

140 remember a couple of guys and I was asked questions about the accident. (Mr. Smith indicated that the man at Mr. Rawlings' right, Mr. Kinney, was the man that asked the questions.)

141 MR. GIBSON: Objected to the questioning on the ground that the man was not under oath.

MR. RAWLINGS: Claimed that he was laying a foundation for impeachment.

THE COURT: Objection overruled.

MR. GIBSON: Further objected that the testimony had shown that Mr. Smith was "dizzy" at the time, and that Mr. Smith had no clear recollection of what was being stated at the time of the questioning.

THE COURT: Objection overruled.

CROSS EXAMINATION:
By Mr. Rawlings

I have never talked to Mr. Gibson before yesterday. I never talked to anyone else about the accident before yesterday except to some people around the camp. I did not talk to anyone else in the Court room about the accident except Mr. Gibson. I did not

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talk to Mr. Welch yesterday in the Court room about the case. He asked me how I was getting along. Chesley drove the truck all the time. He was driving it at the time of the accident. The liquor was purchased by Chesley and Mr. Chesley's permit was used. We had a discussion about buying whiskey before any was purchased. Mr. Chesley didn't have any interest

102 in buying the liquor. We stopped the car at Nephi. We bought some beer at Levan. There is no liquor store in Levan and that is why we didn't buy whiskey there, so we bought a small bottle of beer. Mr. Chesley was willing to stop and buy some whiskey and was willing to buy it on his permit. He paid for it with my money. Mr. Chesley carried it out of the store. When we got back to the car each one of us drank out

103 of the bottle. We passed it back and forth traveling upon the road. That bottle was consumed completely. Mr. Chesley probably drank one-third of the bottle. We finished this pint before we got to Pleasant Grove and we decided to stop there and get another pint. Chesley went in and bought it himself. A little boy was in the back end of the truck. I be-

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184 lieve that he got in the back and at Springville.

There was only Chesley and myself left in the cab of

the truck at this time. I wasn't drunk when I drank

the second pint, and knew everything that was going

185 on. At times, I didn't know what was going on. One

of these times was when we were coming around the

mountain before we came up to this State Street. Just

before our truck turned off the road to the east

side, I saw another truck coming--a kind of a transfer

truck. I did not notice any name on it. I didn't

notice what kind of a truck it was coming up the road.

I was not startled or upset at the time until I saw

the other car coming around the truck. I was excited

then. At that time it was too late to notice what

187 kind of truck it was. The kind of a car that came

around it had a California tag on it. It was a two-

seated car--so on I guess. The best I remember,

it was a kind of a green. I noticed this other car

turned out around the truck when we were about 12

feet from it. (Mr. Rawlings, now in an effort to

impeach Mr. Smith refers again to the time Mr. Smith

was in the hospital and the questions which were asked

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him?

MR. OLSEN: I object to this line of questioning on the grounds that it was hearsay.

THE COURT: The objection is overruled.

165 I remember Mr. Linney asking me this question, "Tell me what you saw when this accident happened." I remember my answer "I was in the cab leaning back and was sleeping. I had been up the night before pretty late." "When he started to turn over I woke up." "--and I guess I went out of the front and was knocked out. When I woke up there was a bunch of people there and they were picking up parts of the truck off of me." I said these things. I told Mr. Linney that I was sleeping at the time of the accident. It was not the truth. I lied to him.

MR. OLSEN: I object to the question "why". The reasons are immaterial.

THE COURT: The objection is overruled.

170 I lied to Mr. Linney because I didn't think anything about it. I told him that I was asleep at the time of the accident, but it was a lie. I was not asleep at the time of the accident. I answered

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"No sir" to this question by Mr. Kinney. "Did you see any other cars approaching you before this accident." That statement was not true. I lied about it. I didn't think anything about it. I don't remember these gentlemen telling me where they were from. I did not ask them where they were from. I didn't know who they were and wasn't concerned who they were. I was not thinking at the time, and I don't know why.

MR. GIBSON: I objected to Mr. Rawlings' question "Think for a minute and see if you can think why you lied to them."

THE COURT: He may answer.

171 I don't know why I lied. (Mr. Rawlings objected that this was not an answer at all, but the Court ruled that the question had been answered.) It is not my practice to lie without reason. I talked to Mr. Cheeley after the accident when he came up to the hospital and asked how I was getting along. I have not talked to Mr. Cheeley since the accident. I talked to Mr. Cheeley after I talked to Mr. Kinney.

REDIRECT EXAMINATION:

By Mr. Gibson

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Yes, I remember a man from the Sheriff's office by the name of Mr. Scheib, being on the stand yesterday. Mr. Scheib was over here in the corner yesterday with me. I couldn't say whether Mr. Scheib or Mr. Larsen was talking. They got me off in the corner and tried to interrogate me regarding this case. They told me that they wanted me to testify a certain way for them. I was unconscious for a short time after the accident.

RECROSS EXAMINATION:
By Mr. Rawlings

1 78 (Mr. Rawlings asked Mr. Dean to Stand up.)

I don't remember Mr. Dean going with me. I remember going to the County Hospital. My mind was clear enough to recall that, but I do not recall getting any treatment there. I was there until seven or eight o'clock on the night of the accident. I don't remember Mr. Dean asking me how the accident happened.

MR. GIBSON: I object to this line of cross examination because it was not gone into on redirect examination.

THE COURT: The objection is overruled.

I do not remember that it happened, but it might have. If I did tell him at that time, I had reason

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173 to him because I was pretty full of liquor and had just been in an accident. I was not intoxicated. I was under the influence of liquor but was not drunk.

(The jury is admonished and excused from the courtroom.)

(Recess of Court until two o'clock P. M.)

174 (The Court readjourned on Tuesday, January 23, 1940 at 2 o'clock P. M.)

NICK V. MELIS, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION:
By Mr. Gibson

175 My name is Nick V. Melis. I know the defendant Mr. Chesley. I am not related to him. I saw the defendant, Mr. Chesley, on September 10th between the hours of 7:30 and 8:00 P. M. in the County Jail. I talked to him at that time. He talked all right. (Discussion between Mr. Gibson and Mr. Rawlings as to whether this questioning is proper. Mr. Rawlings claiming it is self-serving and hearsay. Mr. Gibson

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withdrew the previous question as to what was said.)

I did have a conversation with Mr. Chealey at that time. His mother was there.

MR. RAWLINGS: I object to the question "What was said at that conversation?"

170 THE COURT: The objection is sustained on the ground that it was hearsay.

Mr. Chealey was not doing anything at the time we put up the bond and then took him out of jail. He walked all right and I didn't see him stagger. He talked to me all right. He talked plain to me.

CROSS EXAMINATION:
By Mr. Rawlings

I am a professional bondsman. Mrs. Chealey, Mr. Chealey's mother, called me to put a bond to get him out of jail. The amount of the bond was $500. He still owes me some money on the bond. His mother and father guaranteed the money. They are pretty good people. They haven't given it to me by now.

178 REDIRECT EXAMINATION:
By Mr. Gibson

Yes, his mother and father are guaranteeing this amount.

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REDIRECT EXAMINATION:
By Mr. Rawlings

I have known the boy for five or six years, but

170 I didn't take his agreement alone.

CARROLL HOWARD CHEALEY, the defendant, herein, called as a witness on his own behalf, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Gibson

My name is Carroll Chealey, and I am thirty-three years of age. I was coming north on State Street at about 6:30 P. M. on September 18th. Just before I approached the Draper cross roads, there was a large truck coming down the highway and all at once a car shot out from behind the truck, directly in my lane of traffic. It was either a matter of hitting the truck headon or going off the side into the barrow pit, and I chose to go off the road. Immediately after the accident, I crawled out of the truck cab door and ran around to see if anyone was hurt. There was one boy under the cab. I helped lift the truck off the boy and got him out. Then, I went

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around to see if the other boy was hurt, and I saw this boy by the pole. Someone said he was dead. There was nothing I could do for him. I went around to see how the rest of them were. I walked up to the service station to put in a call for the Sheriff's Office. I am the defendant in this action.

CROSS EXAMINATION:
by Mr. Rawlings

100 I was not under the influence of liquor. I had not been drinking considerably. I did buy two bottles.

MR. GIBSON: I object to the cross examination on the ground that it is not responsive to the direct examination in any way.

(Argument.)

THE COURT: The objection is overruled.

I know of Mr. Kinney. I didn't know who he was when he interviewed me at the jail. I don't remember his stating to me that the statement I made would probably be used against me. Mr. Kinney was present on the night of the accident. I don't recall answering "One did" in response to a question by Mr. Kinney "Did either of these hitch hikers have any whiskey?". There were two men writing down. I don't know who the

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other fellow was. I believe it was Mr. Schmid, but I am not certain. I think Mr. Kinney was writing something down. I don't believe I did answer "One did".

181 (This is a repeat of the above question.)

MR. RAWLINS asked the witness whether he had answered in a certain way to a series of questions which had been put to him by Mr. Kinney, and to each question Mr. Chesley answered he didn't answer that way, or that he did not make the statement.

MR. RAWLINS continues in an effort to impeach the witness.

Q. Have you a liquor license?

182 A. Yes, but it has been a long time since I bought any. I think it is about a month ago and then I bought a quart of wine in Gunnison.

I made a statement about a liquor license, but I didn't say anything about it is a long time since I bought any. I didn't say "I think it is about a month ago and then I bought a quart of wine in Gunnison." I told Mr. Kinney that I could stop my truck in less than thirty feet. I told Mr. Kinney that I did not apply my brakes before the car overturned. I was not asked "How far ahead of you did that happen."

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I did not answer (referring to the other car coming around the truck) "I judge around 300 feet, or at least that." I didn't make any such statement at all.

185 The defense rested.

GORMAN DEAN, called as a witness on behalf of the State, on rebuttal, having been first duly sworn, testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

186 My name is Gorman Dean. I am connected with the Salt Lake County Sheriff's Office as Deputy Sheriff. I did not talk to the defendant in the County Hospital. I talked to him on the way to the hospital. I talked to Mr. Smith, one of the witnesses, who testified for the defendant, between the hours of six and eight o'clock.

187 MR. GIBSON: I object on the ground that it is hearsay as to the defendant.

The witness answered "Yes Sir" to a question propounded by Mr. Rawlings asking whether Mr. Dean had

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asked the witness Smith in substance and effect how the accident occurred and Mr. Smith in response and in substance answered that he didn't know because he was asleep at the time of the accident.

CROSS EXAMINATION:
By Mr. Gibson

I have been employed by the Sheriff's Office for seven years. I work on everything. During that time, I have worked under and with Mr. Rawlings.

[illegible], recalled as a witness on behalf of the State, on rebuttal, further testified in substance as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

108 I was standing thirty or forty yards west of the intersection at the time of the accident. There was no obstruction between where I was standing and where the accident occurred. From where I was standing I could see an "S" bend in the road, about 500 yards on from where the accident occurred. From where I was standing, our house obstructs the view from the north. I was at least a block north from

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where the accident occurred. I didn't observe any traffic on the road immediately prior to the accident nor immediately afterwards.

CROSS EXAMINATION:
By Mr. Welch

189 I was facing east at the time I was standing thirty or forty rods west of the road. I was engaged in conversation with another man at that time. I was not paying any attention to the traffic coming or going on the highway.

REDIRECT EXAMINATION:
By Mr. Rawlings

I would be facing towards the highway. There was no obstruction between me and the highway.

RECROSS EXAMINATION:
By Mr. Welch

I was facing the highway, but I was not particularly looking at the highway.

[illegible], called as a witness on behalf of the State, having been first duly sworn testified as follows:

DIRECT EXAMINATION:
By Mr. Rawlings

...this is more or...

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My name is Lote Kinney. I am connected with the County Attorney's office as a special investigator. I have been so engaged for five years. I have had experience in taking shorthand and typing up notes since 1909. At that time, I worked for four different railroads. I went up to Fort Douglas and interviewed Mr. Smith. Before going in to see Mr. Smith, I saw his commanding officer. I took a statement of all the questions that were asked him and all the answers. I also went to the County Jail to see the defendant.

190 I interviewed Mr. Chaley on September 16th, at about 7:15 P. M. I told him that the statements he would make would be furnished to the County Attorney's office and he said that was agreeable with him. I asked Mr. Chealey "At the time you tipped over had both of these southbound cars passed you?" He answered, "I don't know." I asked him "Did either of these hitch hikers have any whiskey?" He answered "One did."

191 MR. RAWLINGS then asked a series of questions which had been asked by Mr. Kinney in his questioning of Mr. Chealey on the night mentioned. Mr. Kinney agreed to all questions and answers. This is more completely

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set out in page 126 of the transcript, Sequa.

[illegible], D[illegible]:
By Mr. [illegible]

193 I am employed by Salt Lake City and Salt Lake County. I am employed by the District Attorney's office. My duty is to assemble evidence for trial for the use of the County Attorney or the District Attorney. I saw the defendant on that day at 7:15. At that time he told me that the accident was caused by an oncoming car passing a truck. He had to leave the road in order to avoid hitting it head-on. He said "A large truck with a trailer was coming south and as it approached him, a light car came around the rear of the truck and trailer and occupied his half of the highway and to avoid a collision he ran off the road." Mr. Chesley told me the other car came around in front of the truck 300 feet ahead of his truck. I talked to the defendant 45 minutes. Mr. Soleib and Mr. Lean were there at the time. This was on September 16th. Mr. Mellis did not come in while I was there. I remember pretty well in my own mind what was said at that time. I investigate criminal matters every day. I investigate many people every

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every -a,. I have read the transcript of this case several times. There is just one point on which Mr. Chenley had difficulty. Otherwise I understood him perfectly. He had no trouble in understanding what I said, and I understood him.

REDIRECT EXAMINATION
by Mr. Rawlings

197 Mr. Chenley was confused about the direction he was going at the time of the accident. Mr. Chenley thought he was going south. He got straightened out when I explained it to him.

The Prosecution rests at this time.

(The jury is admonished and excused from the courtroom.)

DEFENDANT'S MOTION TO DISMISS

MR. GIBSON: At this time I would like to move for a dismissal of the action or directed verdict, on the ground that there is no connection between the drinking and the accident. The law of the State of Utah states that in every crime there must be a joint act and intent or act of criminal negligence. There has been [illegible] negligence shown

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in this case, or that the death of the boy was as a result of criminal negligence.

DEFENDANT'S REQUESTS FOR INSTRUCTIONS

(TITLE OF COURT AND CAUSE)

Comes now C. H. Chanley, the above named defendant, and requests this court to instruct the jury in this cause in accordance with the requests hereto attached.

J. LAMBERT GIBSON

CHARLES WELCH JR.

Attorneys for defendant.

DEFENDANT'S REQUEST FOR INSTRUCTION NO. 1

In every crime or public offense there must exist a union or joint operation of act and intent, or criminal negligence.

Given.

BILL L. HOYT, District Judge

DEFENDANT'S REQUEST FOR INSTRUCTION NO. 2

You are instructed that the term, Criminal Negligence, under the laws of the State of Utah does not merely mean the failure to exercise ordinary care or that degree of care which an ordinary prudent person

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would exercise under like circumstances. It means gross negligence. It is such negligence as amounts to a reckless disregard of the consequences and of the rights and safety of others.

Refused, but given in effect with modification.

WILL L. HOYT, District Judge

DEFENDANT'S REQUEST FOR INSTRUCTION NO. 5

You are instructed that in order to find the Defendant guilty, you must find that the death was the direct and proximate result of the Criminal Negligence of the Defendant.

Given in effect.

WILL L. HOYT, District Judge.

DEFENDANT'S REQUEST FOR INSTRUCTION NO. 6

If the jury finds that the Defendant acted as a reasonable prudent man would act under the circumstances to avoid an accident then he is not liable for the unforseen consequences of his act and is not guilty.

Refused.

WILL L. HOYT, District Judge.

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INSTRUCTIONS TO THE JURY

(TITLE OF COURT AND CAUSE)

LADIES AND GENTLEMEN OF THE JURY:

1.

15 In this case the defendant Carroll Howard Chesley, otherwise known as C. H. Chesley, is accused in an information filed by the District Attorney with the commission of an indictable misdemeanor, to-wit, involuntary manslaughter, committed as follows, to-wit: That on the 16 day of September, A. D. 1938, at Salt Lake County, Utah, the defendant did unlawfully and without malice kill Harlan Junior Kofold.

When the defendant was arraigned upon this information he entered a plea of not guilty. This plea puts in issue each of the aforesaid allegations of said information, and before you can find the defendant guilty you should be convinced beyond a reasonable doubt from the evidence presented herein that the said defendant at Salt Lake County, Utah, wrongfully caused the death of Harlan Junior Kofold.

2.

You are instructed that the filing of the informa-

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ation is not to be considered any proof of guilt, and the defendant is to be presumed innocent until you are convinced of his guilt by evidence presented in open court which satisfies you beyond a reasonable doubt.

3.

16 You are instructed that involuntary manslaughter is the unlawful killing of a human being without malice (1) in the commission of an unlawful act not amounting to a felony, or (2) in the commission of a lawful act which might produce death, in an unlawful manner, and without due caution and circumspection.

The expression "due caution and circumspection" means that degree of caution, care, and regard for the safety of others which an ordinarily prudent person would exercise under similar circumstances.

4.

You are instructed that the maximum penalty provided by law for involuntary manslaughter is imprisonment in the county jail for a term of one year.

5.

You are instructed that at the time referred to

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in the information herein, to-wit, September 10, 1939, the following acts were unlawful, to-wit:

17 (a) It was unlawful for a person to drive a motor vehicle upon a public highway at a speed greater than was reasonable and prudent, having due regard to the traffic, surface and width of the highway, the hazard at intersections, and the safety of other persons.

(b) It was unlawful to drive a motor vehicle upon a public highway at a speed which was greater than would permit the driver to exercise proper control of the vehicle and to decrease speed or stop as might have been necessary to avoid colliding with any other person or a vehicle driven by any other person who was lawfully upon the highway and who was exercising due and reasonable care on his part.

(c) It was unlawful to drive a motor vehicle upon a public highway at a speed in excess of fifty miles per hour.

(d) It was unlawful to drive a motor vehicle upon a public highway carelessly and heedlessly in wilful

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or wanton disregard of the safety of others, or without due caution or circumspection, at such a speed or in such a manner as to endanger any person.

(e) It was unlawful for a person to drive a motor vehicle upon a public highway while he was under the influence of intoxicating liquor to such an extent that his ability to see objects ahead, or to foresee the possibility of danger to others, or to operate such vehicle in an ordinarily careful manner, was diminished in any substantial degree.

10

6.

You are instructed to ask yourselves these questions:

(a) Did the defendant at Salt Lake County, Utah, on September 16, 1939, commit one or more of the foregoing acts which are referred to as being unlawful?

(b) Was one of such unlawful acts the proximate cause of the death of Harlan Junior Kafeld?

"Proximate cause" as used herein means the act or happening which set in motion the chain or course of events which, by a natural order or sequence of things, and without any independent cause, resulted

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19 in the death of Harlan Junior Kofold.

7.

If you find from the evidence beyond a reasonable doubt and unanimously agree that the defendant committed one of the above mentioned unlawful acts and that such unlawful act was the proximate cause of the death of Harlan Junior Kofold, without there being any independent intervening cause, then you should bring in a verdict of guilty of involuntary manslaughter as charged in the information. If you do not so find beyond a reasonable doubt from the evidence herein that the defendant committed one of said unlawful acts and that it was the cause of the injury and death of Harlan Junior Kofold, then you should bring in a verdict of not guilty.

20 Also, if you do not unanimously agree that the defendant committed the same one of the above mentioned unlawful acts, and that such act was the proximate cause of the death of the deceased, then you should return a verdict of not guilty. In other words, you should not find the defendant guilty if some of you believe that the death of the deceased was caused by the act of the defendant in driving while under the influence of intox-

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icating liquor, while others of you do not believe that he did such act, but do believe that the death of the deceased was caused by some other act of defendant. If, however, you find beyond a reasonable doubt and unanimously agree that defendant committed the same one act of those declared to be unlawful, and that it caused the death of the deceased, it matters not that you disagree as to whether defendant committed others of the above acts.

8.

21 In this case there has been some testimony to the effect that, at the time of the overturning of the truck driven by the defendant herein, the defendant turned out of his course to avoid colliding with a car approaching from the north. Referring to such testimony, if you find that a car, or cars, were approaching from the north and that one of them turned into the part of the road on which the defendant was driving and that he turned out of the road to avoid colliding with such car, and that the overturning of his truck was due to his attempt to avoid colliding with another car and not due to any wrongful or negligent act

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on his part, then you must not find the defendant guilty. Also, if after due consideration of this evidence and all other evidence in this case, you have a reasonable doubt that the death of the deceased was due to defendant's wrongful or negligent act you should find the defendant not guilty.

9.

You are instructed that in every crime or public offense there must be a union or joint operation of act and intent or criminal negligence. Criminal negligence as applied in this case means a wanton or reckless disregard for the safety of other persons.

10.

22 You are instructed, and the court requests you to remember, that statements made by counsel on either side are not to be considered as evidence in the case.

11.

A reasonable doubt is a fair doubt, growing out of the evidence or lack of evidence in the case. It is not a mere imaginary, captious, or possible doubt, but a fair doubt, based upon reason and common sense. It is such a doubt as leaves your mind, after a careful

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examination of all the evidence in the case, in that condition that you cannot say that you have an abiding conviction to a moral certainty of the guilt of the defendant. A doubt to justify an acquittal should be reasonable, and should exist after a candid, honest and impartial consideration of all the evidence admitted in the case.

12.

For you are the sole judges of the facts proved, of the credibility of the witnesses, of the weight and effect of the evidence, and of the inferences to be drawn therefrom, and in determining these matters you are to exercise your best judgment, based upon your experience in life. You may take into consideration the conduct and manner of the witnesses while testifying before you; their intelligence and means of observation; their opportunities to know and their capacity to remember and to state the facts to which they testify; their interest or lack of interest, if any has been shown, in the result of the trial; their prejudice or bias, if any has been shown, and the probability or improbability of the truth of their state-

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ments in view of all the other evidence. You are not bound to believe all that any witness may have testified to, nor are you bound to believe any witness. You may believe one witness as against many, or many witnesses as aginst one. If you believe any witness has wilfully testified falsely as to any material fact in the case you are at liberty to disregard the whole or any part of the testimony of such witness, except as such witness, except as such witness may have been corroborated by a credible witness or credible evidence in the case. In case there is a conflict in the testimony of the witnesses it is your duty to reconcile such conflict so far as you can, but it is still for you to determine for yourselves where the ultimate truth of the matter lies.

13.

23 It is your duty to consider the evidence all together, fairly, impartially, conscientiously and without prejudice of any kind. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should not consider nor be influenced by any evidence offered which was not admitted by the court. nor are you to consider any evidence given, if

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the same was afterwards by the court ordered stricken out. You should not be influenced by, nor should you consider, any rumors or expressions of opinion you may have heard or read out of court, nor by the fact, if you believe it to be a fact, that a public sentiment exists in favor of or against the defendant.

14.

You are instructed to keep in mind the responsibility that is yours as jurors in this case. Your duty is to determine from the evidence received in open court whether or not the defendant committed the crime charged in the information. You should not be influenced by any prejudice against the defendant or sympathy for the defendant, nor by any desire to bring punishment or to avoid bringing punishment to a fellow creature. You are judges of the facts

in this case. You should determine what the facts are respecting the defendant's guilt or innocence calmly, dispassionately, honestly, fairly to both the people of the State and the defendant. You should realize and remember that if jurors in criminal

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cases are persuaded by appeals to either passion, prejudice or sympathy to go against their judgment as to what were the facts, they are not performing their sworn duty as jurors. Therefore the court admonishes you to decide, without being influenced by either prejudice or sympathy, what were the facts in this case. If, from the whole evidence you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged in the information, it is your duty, regardless of appeals to sympathy, to render a verdict of guilty according to the facts found. On the other hand, if after careful consider-

84 ation of the whole evidence, you have a reasonable doubt as to defendant's guilt, you should render a verdict of not guilty.

16

After you have considered the evidence fully, fairly and impartially and have consulted together as to what your verdict should be, if you cannot agree upon a verdict, you should so report to the court. Each juror should decide according to his own conviction. This does not mean, however, that a juror should not

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consider carefully the views and opinions of his fellow jurors. You should discuss the evidence carefully and calmly together. No juror, from mere pride of opinion hastily formed or expressed should refuse to agree, nor on the other hand should he surrender any conscientious view founded on the evidence. It is the duty of each juror to reason with his fellow jurors concerning the facts with an honest desire to arrive at the truth and with a view of arriving at a verdict. If you can agree upon a verdict without a violation of individual conscientious conviction you should do so. To that end you should deliberate together with calmness and due consideration for the views and opinions of fellow jurors.

16.

These instructions are to be considered and construed together as a whole; each instruction should be read and understood with reference to and as a part of the entire charge, and not as though any instruction was intended to present the whole law of the case on any particular point.

28 17.

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When you retire to deliberate you will select one of your members as foreman. Your verdict must be in writing, signed by your foreman, and when found must be returned by you into this court. Your verdict must be unanimous.

WILL L. HOYT, Judge

Dated January 25, 1940

Filed January 25, 1940

DEFENDANT'S EXCEPTIONS TO INSTRUCTIONS

MR. GIBSON: Comes now the defendant and excepts to the instruction of the court as given, as follows:

Defendant excepts to the giving of the court's Instruction No. 3.

Defendant excepts to the giving of Instruction No. 6.

Defendant excepts to the refusal of the court to give the defendant's proposed Instruction No. 2.

Defendant excepts to the refusal of the court to give defendant's proposed Instruction No. 4.

(The jury retired to deliberate January 25, 1940).

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VERDICT

(TITLE OF COURT AND CAUSE)

27 We, the jurors impaneled in the above case, find the defendant Carroll Howard Cheeley guilty of the crime of involuntary manslaughter as charged in the information.

ARTHUR [illegible], Foreman

Dated January 23, 1940

Filed January 23, 1940.

ENTERED ORDER

(TITLE OF COURT AND CAUSE)

An Information having been filed herein charging the defendant C. H. Cheeley, whose full name is Carroll Howard Cheeley, with the Commission of an indictable misdemeanor, to-wit, Involuntary Manslaughter, and said defendant having pleaded not guilty to such charge, and having been duly tried before a jury, and the jury having heretofore found the defendant guilty as charged, and this day having been fixed for imposition of sentence, the

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defendant came into court with his counsel J. Lambert Gibson, Esq., and Charles Welch, Esq., and having announced himself ready for sentence, the court pronounced judgment and sentence as follows:

It is the Judgment and Sentence of this Court that the defendant Carroll Howard Jhomley is guilty of the crime of Involuntary Manslaughter, and that the defendant shall be imprisoned in the County Jail of Salt Lake County for a term of one year; provided, however, that as to the last four months of said imprisonment execution of the sentence shall be stayed, subject to the further order of the court, and with the requirement that the defendant refrain from the drinking of intoxicating liquor and beer and that he comply with the laws of the State of Utah and the ordinance of cities or counties where he may be. Also, that the defendant report to the Bureau of Adult Probation and Parole of the State of Utah at such times as it shall require. The Defendant consented

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to the Stay of Execution of the latter part of said sentence upon the terms stated.

Counsel for defendants thereupon presented a motion for new trial which was argued to the Court by counsel for defendant and by the District Attorney Calvin W. Rawlings, and was overruled and denied by the court. Counsel for defendant thereupon moved for a Stay of Execution pending preparation of an Appeal. The Court granted a Stay of Execution until Friday February 2nd, 1940, at 10 o'clock A. M., and directed that a commitment be issued at that time, unless a Bond on Appeal is filed.

WILL L. HOYT, Judge

Dated January 26, 1940

MOTION FOR NEW TRIAL

(TITLE OF COURT AND CAUSE).

Comes now the defendant, C. H. Chesley, and moves the above entitled Court to set aside the verdict heretofore rendered herein and to grant a new trial of the above entitled cause, and for grounds of said motion specifies:

1. Irregularity in the proceedings of the State whereby a witness for the defendant was arrested in

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the presence of some members of the jury thereby prejudicing the rights of the Defendant.

2. Insufficiency of the evidence to justify the verdict and that the verdict is against law.

3. Error in law occurring at the trial.

Dated this 26th day of January, 1940.

[illegible] & GIBSON

By: CHARLES [illegible] JR.

J. LAMBERT GIBSON,

Attorneys for Defendant

Received a copy of the foregoing Motion for New Trial this 26th day of January, 1940.

CALVIN W. RAWLINGS,

District Attorney

Filed January 26, 1940

NOTICE OF APPEAL

(TITLE OF COURT AND CAUSE).

To the Clerk of the Above-entitled Court:

Please take notice that the Defendant in the above entitled action hereby appeals to the Supreme Court of the State of Utah from the judgment therein ordered in the above Court on the 23rd day of January

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1940 and from an order denying a new trial and from the whole thereof.

Dated this 2nd day of February, 1940.

[illegible] [illegible] JR.

J. LAMBERT [illegible],

Attorneys for Defendants

Received a copy of the foregoing Notice of Appeal this 2nd day of February, 1940.

CALVIN W. RAWLINGS,

District Attorney.

Filed February 2, 1940.

[illegible] ORDER

(TITLE OF COURT AND CAUSE).

Good cause appearing therefor, it is ordered that the Bail Bond on Appeal in the above entitled case be fixed in the sum of One Thousand Dollars ($1000.00).

[illegible] [illegible], Judge

Dated February 2, 1940

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AFFIDAVIT OF IMPECUNIOSITY

(TITLE OF COURT AND CAUSE)

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

J. R. Chealey, being first duly sworn upon his oath, deposes and says: That he is the Defendant in the above entitled case, that he believes and has been informed that he is fully entitled to an appeal in said above entitled case and that he has no money wherewith to pay the costs of obtaining a transcribed copy of the reporter's notes taken on the trial of said case and that he is informed that a transcript of same is necessary for an appeal on his behalf. Nor is he able to pay any other costs incurred in said appeal.

J. R. CHEALEY

Subscribed and sworn to before me this 7th day of February, 19[illegible].

J. LAMBERT [illegible]
Notary Public residing at
Salt Lake City, Utah

Filed February 9, 1960.

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[illegible] ORDER

(TITLE OF COURT AND CAUSE).

Upon motion of J. Lambert Gibson and pursuant to the affidavit of the defendant, J. H. Chesley, it is ordered that a transcript of said proceedings be written and obtained for the said defendant J. H. Chesley, at the expense of the State. It is further ordered that the execution of the order of the Court sentencing the defendant to eight months in the County Jail be stayed pending said appeal.

WILL L. HOYT, Judge

Dated: February 9, 1940.

ORDER

(TITLE OF COURT AND CAUSE).

It appearing by the affidavit of the defendant, J. H. Chesley, that he is impecunious and unable to pay the costs of obtaining a transcript of the records and that he is unable to pay the costs of appealing said above entitled cause,

IT IS ORDERED that a transcript of said proceedings be written and obtained for the said Defendant, J. H. Chesley, at the expense of the State.

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Dated this 9th day of February, 1940.

WILL L. HOYT, Judge

Attest:

40 WILLIAM J. [illegible], Clerk

By A. T. Rogenson, Deputy Clerk

Filed February 9, 1940.

ORDER OF PROBABLE CAUSE

(TITLE OF COURT AND CAUSE).

41 The above named defendant having been convicted in the above entitled Court for the crime of involuntary manslaughter and the motion for a new trial having been denied in said matter and the Defendant having taken an appeal from the order denying a new trial and it appearing to the Court that said appeal was taken in good faith and that there is probably cause for the taking of the same and the Court having sentenced the Defendant to a term of eight months in the County Jail, and the Defendant having been admitted to bail and the Court being fully advised in the premises,

IT IS ORDERED that the execution of the order of the Court sentencing the Defendant to eight months

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in the County Jail be stayed pending said appeal.

Dated this 9th day of February, 1940.

[illegible] L. HOFF, Judge

Attest:

WILLIAM J. [illegible], Clerk

By [illegible], Deputy Clerk.

Filed February 9, 1940.

NOTICE

(TITLE OF COURT AND CAUSE).

TO DISTRICT ATTORNEY, CALVIN W. RAWLINGS:

You are hereby given notice that J. Lambert Gibson, one of the attorneys for the Defendant in the above entitled cause, will appear before the Honorable Oscar W. McConkie, one of the Judges of the above entitled Court, on Monday, the 18th day of March, 1940, at 10 A. M., and then and there move that the time for settling and filing the Bill of Exceptions be extended to June 2, 1940.

J. LAMBERT GIBSON,
Attorney for Defendant

Received a copy of the foregoing Notice this 16th day of March, 1940.

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CALVIN W. RAWLINGS

Filed March 18, 1940.

(TITLE OF COURT AND CAUSE)

Upon motion of J. Lambert Gibson, counsel for the defendant herein and good cause appearing therefor, it is order that the time for settling and filing defendant's Bill of Exceptions herein be, and the same hereby is extended to June 2nd, 1940.

H. J. [illegible], Judge

Dated March 18, 1940.

ORDER

(TITLE OF COURT AND CAUSE)

Pursuant to the Notice served on the District Attorney and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for settling and filing Defendant's Bill of Exceptions be and same is hereby extended to June 2, 1940.

H. J. [illegible], Judge

Dated this 18th day of March, 1940.

Attest:

WILLIAM J. [illegible], Clerk

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[illegible]

(TITLE OF COURT AND CAUSE).

16 Good cause appearing therefor IT IS HEREBY ORDERED that the time for settling and filing Defendant's Bill of Exceptions be and the same is hereby extended to July 2, 1940.

OSCAR W. McCONKIE, Judge

Dated May 29, 1940.

Attest:

WILLIAM J. KORTH, Clerk

By J. E. Lewis

Filed May 29, 1940.

EXTENSION ORDER

(TITLE OF COURT AND CAUSE).

16 Good cause appearing therefor, it is ordered that the time for settling and filing defendant's bill of Exceptions be extended to July 12, 1940.

OSCAR W. McCONKIE, Judge

Dated July 2, 1940.

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ORDER

(TITLE OF COURT AND CAUSE).

Good cause appearing therefor, IT IS HEREBY ORDERED that the time for settling and filing Defendant's Bill of Exceptions be and same is hereby extended to July 12, 1940.

OSCAR W. McCONKIE, Judge

Dated July 2, 1940.

Attest:

WILLIAM J. KORTH, Clerk

By Richard Rohling.

Filed July 2, 1940.

[illegible] ORDER

(TITLE OF COURT AND CAUSE).

Upon application of J. Lambert Gibson, counsel for the defendant herein and good cause appearing therefor, it is ordered that the time for settling and filing the Bill of Exceptions herein be and the same hereby is extended to and including July 26, 1940.

R. J. [illegible], Judge

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ORDER

(TITLE OF COURT AND CAUSE).

49 Good cause appearing therefor, it is hereby ORDERED that the time for settling and filing the Bill of Exceptions in the above entitled cause be, and the same is hereby, extended to and including Jul[illegible] [illegible]6, 19[illegible].

C. J. [illegible], Judge

Dated July 1[illegible], 1940

Attest:

WILLIAM J. [illegible], Clerk

By Jacob [illegible]elles

Filed July 12, 1940

[illegible] ORDER

(TITLE OF COURT AND CAUSE).

50 Good cause appearing therefor, it is hereby ordered that time for settling and filing the Bill of Exceptions in the above entitled cause be and the same is hereby extended to August 26, 1940.

CLARENCE [illegible]. BAKER, Judge

Dated July [illegible], 1940

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ORDER

(TITLE OF COURT AND CAUSE)

Good cause appearing therefor, it is hereby ordered the time for settling and filing the bill of exceptions in the above entitled case be and the same is hereby extended to August 30, 1940.

CLARENCE E. [illegible], Judge

51 Dated July 26, 1940

Attest:

[illegible] J. [illegible], Clerk

By C. L. Countryman

Filed July 30, 1940.

FURTHER ORDER

(TITLE OF COURT AND CAUSE).

Upon motion of J. Lambert Gibson, counsel for the defendant, it is ordered that the time for the filing and settling of the Bill of Exceptions be and the same is hereby extended to the 30th day of September, 1940.

A. C. [illegible], Judge

Dated August 26, 1940.

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ORDER

(TITLE OF COURT AND CAUSE).

Good cause appearing therefor, it is hereby ordered the time for filing and settling the Bill of Exceptions be and the same is hereby extended to the 30th day of September, A.D. 1940.

F. C. EVANS, Judge

Dated this 26th day of August, A. D. 1940.

Attest:

WILLIAM J. KORTH, Clerk

53 By R. A. Sorensen, Deputy Clerk

(Seal)

Filed August 26, 1940

SECOND ORDER

(TITLE OF COURT AND CAUSE)

Good cause appearing therefor, it is ordered that the time for settling and filing the Bill of

54 Exceptions be and is hereby extended to October 30, 1940.

CLARENCE E. BAKER, Judge

Dated September 30, 1940

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ORDER

(TITLE OF COURT AND CAUSE).

Good cause appearing therefor, it is hereby ORDERED, that the time for settling and filing the Bill of Exceptions in the above entitled case be and is hereby extended to October [illegible]th, A.D.1940.

CLARENCE E. BAKER, Judge

Dated this 30th day of September, 1940.

Attest:

[illegible] J. [illegible], Clerk

By C. L. Countryman, Deputy Clerk

(Seal).

Filed September 30, 1940.

AMENDED ORDER

(TITLE OF COURT AND CAUSE).

Pursuant to notice served on District Attorney and good cause appearing therefrom it is ordered that the time for settling and filing defendant's Bill of Exceptions be and the same is hereby extended to and including November 15, 1940.

CLARENCE E. BAKER, Judge

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Dated October 30, 1940

ORDER

Pursuant to the Notice served on the District Attorney and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for settling and filing Defendant's Bill of Exceptions be and the same hereby is extended to and including November 18, 1940.

[illegible] E. BA[illegible], Judge

Dated this 30th day of October, 1940.

Attest:

WILLIAM J. [illegible], Clerk

By C. L. Countryman, Deputy Clerk.

(Seal).

Filed October 30, 1940.

CLERK'S CERTIFICATE

Clerk's Certificate to Transcript, in due form.

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ASSIGNMENTS OF ERROR

(TITLE OF COURT AND CAUSE)

Comes now the above named defendant and appellant, Carroll Homer Chesley, and makes the following assignment of error, as the errors committed by the lower court upon which he seeks a reversal of the judgment and sentence of the District Court and appellant alleges:

I.

That the court erred in refusing to grant the defendant's challenge for cause of the juror Edwin Bliss for the reason that said juror expressed a decided prejudice toward drinking of intoxicating beverages. (Tr. 62-67, A 7.)

II.

That the trial court erred in denying the motion of the defendant for the dismissal of the case at the conclusion of the State's evidence for the reason that there was no causal connection shown between any unlawful act and the death of the deceased. (Tr. 149, A 29.)

III.

That the trial court erred in refusing the defe-

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endant's motion for a directed verdict at the end of the case for the reason that there was no causal connection shown between the drinking and the accident which resulted in the death of the deceased, and that there was not shown any joint act or intent or act of original negligence as is required by the law of the State of Utah. (Tr. 197, A 60.)

IV.

That the court erred in overruling the defendant's objection to the introduction of evidence regarding the finding of a certain bottle of whiskey on the Tuesday morning following the day of the accident, which was the preceding Saturday, and which bottle of whiskey was found in an adjoining beet field some fifty feet from the highway and from the scene of the accident; the court erred in admitting said bottle of whiskey into evidence as the State's Exhibit A. (Tr. 144, A 37.)

V.

That the court erred in allowing the State to place into evidence the testimony of LeRoy Rich, for the reason that his name was not given to the defendant

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at the time of the arraignment, or any time before the trial. (Tr. 79, A 12.)

VI.

That the court erred in refusing to grant the defendant's motion to strike the evidence of LeRoy D. Williams in regard to the applications to purchase liquor on September 16, 1935 for the reason that there was no evidence to show the connection between the purchase of the liquor and the accident; and the court further erred in admitting into the evidence State's Exhibits B and C, which were the applications for liquor purchased in the name of [illegible] Chesley, for the reason that they were incompetent, irrelevant and immaterial. (Tr. 1[illegible]7, A 25.)

VII.

That the court erred in permitting the witness LeRoy D. Williams to testify as an expert on handwriting, for the reason that he was not properly qualified as an expert on his own testimony. (Tr. 131, A 22.)

VIII.

That the court erred in overruling the defendant's objection to the conversation between Luther

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[illegible]. Smith and Lote Kinney at a time when the defendant was not present, for the reason that said conversation was hearsay as to the defendant.

(Tr. [illegible].)

[illegible].

That the court erred in refusing to grant defendant's proposed instruction #2, which instruction reads as follows:

"You are instructed that the term, Criminal Negligence, under the laws of the State of Utah does not merely mean the failure to exercise ordinary care or that degree of care which an ordinary prudent person would exercise under like circumstances. It means gross negligence. It is such negligence as amounts to a reckless disregard of the consequences and of the rights and safety of others."

(Tr. A 61)

[illegible].

That the court erred in refusing to grant defendant's proposed instruction [illegible], which instruction

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reads as follows:

"You are instructed that in order to find the defendant guilty, you must find that the death was the direct and proximate result of the criminal negligence of the defendant."

(Tr. A 62.)

11.

That the court erred in refusing to grant defendant's proposed instruction #4, which instruction reads as follows:

"If they jury finds that the Defendant acted as a reasonable prudent man would act under the circumstances to avoid an accident then he is not liable for the unforeseen consequences of his act and is not guilty."

(Tr. A 62.)

WHEREFORE, defendant and appellant respectfully prays that the judgment of the lower court and the sentence imposed upon him by the lower court be reversed and set aside, and that the information be

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dismissed; and that the appellant be granted such other relief as shall be deemed appropriate and just by this Honorable Court.

J. LAMBERT GIBSON

CHARLES WELCH, JR.

Attorneys for Defendant and Appellant.

Due service and receipt of a copy of the foregoing Assignments of Error acknowledge this 10th day of December, A. D. 1940.

JOSEPH CHEZ,

Attorney General of the State of Utah

By. . . . .

Deputy

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