



**ILLINOIS STATE
BAR ASSOCIATION**

Illinois State Bar Association
424 South Second Street
Springfield, IL 62701

2003 Illinois State Bar Association High School Mock Trial Invitational

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University of Illinois at Springfield - Public Affairs Center

Hosted by:

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And

University of Illinois at Springfield - Legal Studies Department

*With the Assistance and Expertise of the
Illinois Historic Preservation Agency - Papers of Abraham Lincoln
Christopher Schnell, Assistant Editor*

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While this mock trial scenario is based on fact, the majority of the story is fiction. For the factual basis, see the letter from A. Lincoln to Mr. Sneed, contained in these materials. Also see the transcript of the public meeting, which absolves the Traylor family of the murder of Archie Fisher.

Illinois State Bar Association
High School Mock Trial Invitational
Problem Materials - 2003

People v. Willie Trailor

Sangamon County, Illinois
1841

Prosecution Witnesses:

Mayor Ashton Wickersham
Postmaster Leslie Keys
Shawn Hickox, Miller

Defense Witnesses:

Willie Trailor
Henny Trailor
Dr. Casey Gillmore

Deceased/Missing Archie Fisher

(Lives/lived near Willie Trailor in Oakford, at the time of disappearance was actually living at the Willie Trailor residence as a boarder doing seasonal farm work for pay. 28 years old. Economical habits, serious. Sustained a head injury when young that sometimes still causes lapses in memory. Carries money in a distinctive red wool sock.)

Unavailable:

A.C. Trailor is not available to either prosecution or defense as a witness and his absence may **not** be referred to by either side.

Stipulations, 2003 Illinois State Bar Association
High School Mock Trial Invitational

1. All parties know that there are strict laws, fines and punishments against public drunkenness and gambling, as well as public fighting. Fines and punishments can be as high as a month's income or significant jail time.
2. As there was no official police department or sheriff, it was the duty of public officials, like the Mayor, Attorney General, and/or Postmaster to serve in a variety of capacities, including examination of those accused of a crime and/or possible witnesses to a crime and testify as to what was said during those interviews¹.
3. Doctor Gillmore is a doctor in the sense that he/she has a reputation for healing and learned his/her trade as apprentice to another doctor. Doctor Gillmore received no official medical training at a college or university or other special school. Doctor Gillmore does suffer from lumbago² and acknowledges taking laudanum³ for the pain. Doctor Gillmore, at the time of trial, is 53 years old. Life expectancy in the mid-1800's was considerably lower than it is today. Thus, Doctor Gillmore would have been considered elderly.
4. The sock found at the millpond site is the red wool sock that belonged to Archie Fisher and is recognized as being the same sock Archie used to carry his money.
5. For purposes of this mock trial problem, the night Doctor Gillmore may have seen Archie walking beside the road there was a full moon. Don't check lunar or other calendars or almanacs for date matching. Doesn't matter.
6. Henny's original statement was published in the local newspaper and may be introduced by any party in this trial.
7. Under no circumstances may any testimony about the sighting of the victim be made, other than by Doc Gillmore, or by referring to Doc Gillmore's statement.

¹ There were county sheriffs (who hired deputies) and constables, but these officers rarely served as investigators. State's attorneys and grand juries carried out most investigations. The unusual circumstances in this case (no body) inspired local officials, the mayor and Attorney General (who, back then served as state's attorney for the Eighth Judicial Circuit, which included Sangamon County) to take charge of an investigation. Of the 43 murder and manslaughter cases in the Lincoln Legal Papers, this is the only case where there was no body in evidence. From Lincoln's descriptions it seems like the mayor and AG headed up a posse style search.

² Rheumatism in the muscle, accompanied by pain in the lumbar (back) region.

³ A medicinal compound made up of opium taken to ease pain.

8. The law does not require that the prosecution produce a body in order to prove murder.
9. Timeline, witness affidavits, maps and additional materials contained in the trial packet are stipulated as accurate.
10. A.C. Traylor is not available to either prosecution or defense as a witness and his absence may **not** be referred to by either side.

TIMELINE

May 22, Willie, A.C., Henny and Archie plan on leaving for Springfield

May 23, early a.m., travel to Springfield, arrive early afternoon

May 23, evening, something happens at Hickox's Millpond

May 24, Willie, A.C. and Henny search for Archie on own

May 24, afternoon, Willie, A.C. and Henny give up search and head for home

May 25, Henny returns to Springfield to place ad in newspaper

May 26, ad appears in newspaper and search begins

May 27, search continues

June 2, Doc Gillmore sights someone he believes to be Archie Fisher

**In case there are discrepancies in the
affidavits, this timeline controls.**

Witness Affidavit/Defense

Willie Traylor

1. My name is Willie Traylor and I deny having anything to do with the supposed murder of Archie Fisher. In fact, I'd bet my life that Archie will turn up right as rain and as alive as you or me someday soon. On May 23 I was meeting Henri(etta), we call Henny, and my brother A.C. to go to Springfield.
2. I guess I can understand how I came to be accused of this horrible crime; after all, I was seen with Archie right before the disappearance. But Archie disappears routinely and for long periods of time. Why think that something awful has happened just because Archie hasn't turned up for a few days? I know that folks in these parts have heard that I spent time in jail for fighting about 11 years ago and that about 20 years ago I was arrested for supposedly killing Mayor Wickersham's cousin. The Mayor's been after me ever since I was acquitted of murder. It was self-defense.
3. Folks in these parts recognize Archie, because Archie is a good worker. Does all sorts of jobs and stays at folk's houses while doing them. Got a great set-up, Archie does. Lives just fine out on the road, or at other folk's homes while doing his jobs. Saves tons of money that way. Archie was working for me and was staying at my place when he up and disappeared.
4. On May 22, Archie Fisher and I waited for Henny and A.C. to arrive. They had been traveling around Oakford visiting friends and relations. We had made plans to travel together to Springfield. Early on May 23 we three, Henny, Archie and I came to Springfield. Archie and I were in a buggy and Henny was riding on horseback. Our first stop in Springfield was at Myres', the Dutch carpenter. Archie had some business there, as Archie often does carpentry work.
5. Then I remember Archie took out that old red wool sock of his and paid the carpenter for some materials and then stuffed the old thing back into a coat pocket. I remember thinking that, given the state of Archie's old blue coat that the pockets would have to be pretty secure if there was as much money in the sock as people say there is. Could fall out any time through a hole.
6. After meeting at the carpenter's shop, we decided to walk down by the millpond to see about getting in a bit of fishing. Henny didn't want to go so stayed behind. Archie offered to bring a sack of food, which was nice of him. We stopped by the inn and Archie pulled out that sock again and paid for our food. Seems like Archie was in a really good mood that day, and he was being generous too, which was nice for all of us. I remember thinking that he must have more money in that red wool sock than I would ever see.

7. When we got to the millpond, it turned out old Miller Hickox had posted a no-fishing sign on the property. It was getting on towards dark, which is the best time to be fishing in my book, but we couldn't and we didn't. Hadn't even brought our fishing gear. Funny, when I think of that now. What were we planning on fishing with? We decided to sit for a while and visit and eat some of the bread and cheese Archie had brought, and then we decided to play a few hands of cards since I had some in my pocket. We weren't gambling, if that's what you think, although Archie is always ready to bet on a hand of cards.

8. We all took off our coats, as it was getting warmer as evening progressed instead of cooler. Maybe a storm was going to blow in. It was humid too; I remember that. We talked about taking off our shoes and putting our feet in the millpond. Instead we played cards.

9. After a few hands of cards, Archie yelled that we were trying to cheat him. We laughed and asked what were we cheating about? We hadn't been betting on anything, and if it was just whether you won or lost a hand...then who cared? It was just a game. But Archie got all flustered and red in the face and that's when A.C. and I decided it was time to get back to town and have some dinner. We picked up our jackets and walked off, leaving Archie to stay on a bit and enjoy the scenery and maybe simmer down some. His temper had got the better of him.

10. I heard that the Mayor got Henny to say that maybe A.C. and me had beat up on Archie somehow to get to his money. I think Henny was tired and confused is what I think. Henny is pretty easy to confuse. Henny hasn't been right since being a kid. It's like he/she never fully grew up in the head. Last thing our Ma and Pa said to us was, "Watch out for Henny," and that's what A.C. and I try our best to do. But the Mayor must have asked some confusing tough questions of our Henny. Got Henny to say stuff that just isn't right.

11. That evening at suppertime we were all supposed to meet up. Archie, Henny, and A.C. and me...but Fisher didn't show up. Like I said, Archie Fisher sometimes did things like that, got a spur of the moment job offer and took advantage...sometimes forgetting to notify folks where he is going. So, when we didn't see Archie the next morning either, we did ask around a bit, but again, we weren't worried. This happened with some regularity.

12. By that afternoon, around 1 o'clock p.m. on the 24th I'd guess, we'd asked neighbors and business folks that Archie might know if they'd seen him but no one had. We wondered if maybe Archie had just gone home? Wherever Archie was, we had no suspicion that there had been any foul play or mischief. Maybe a miscommunication, but that's about all.

13. Before starting home I took the time to go out to the Miller's house to pay off a debt I owed him for milling some corn a few years back. I also paid for

Henny's bill and A.C.'s at that time, as I'd come into some cash from the sale of some hogs to a man on a raft on the Sangamon River who was on his way to New Orleans. Now everyone's using that against me and saying it was Archie's money I used to pay off that debt. That's just a pack of lies to make me look bad.

14. Sometime after 1:00 p.m. Henny, A.C. and I started home toward Oakford without having heard a word more from Arch. When we got to Henny's, I mentioned to quite a few people in the neighborhood that Archie had disappeared during our trip to Springfield and pretty much everyone laughed about it, as they knew Archie had a way of going off once in awhile. Everyone seemed to just hope that Archie had a good job opportunity and was taking advantage. I don't think anyone was all that concerned, really. I know I wasn't. After all, it hadn't even been a full week and Archie had certainly been on out of sight for that long before with no one going crazy about it.

15. Henny got to fussing about Archie and he/she managed to talk two of his/her friends into making the trip back to Springfield to check on Arch. I think they just wanted time off from their regular work, it being such fair weather and all.

16. Before they packed up and left, I asked if they'd thought of going to Arch's house over near mine in Oakford to see Archie had returned home but they ignored me. I remember pulling Henny aside and asking why on earth he/she was fretting so much. One would think that Henny suspected something foul had gone on. Off they went to Springfield, on a fool's errand I thought, and paid good money to advertise in the local papers that Archie had mysteriously disappeared. Henny paid for the advertising with a gold coin I'd gotten off of Archie. I'd given the coin to Henny to pay for some goods I needed in town. Archie had paid off a debt he owed me during our trip to Springfield, that's how I came to have the coin. He owed me for some tools I'd stored for him over winter and for some other business. I had to ask Archie for payment over and over again, and Archie finally paid up. Coin Archie paid me with was a funny looking thing, good gold piece though. Had a nick out of a corner. Archie told me a dog had bitten it.

17. Seems that the article in the paper was enough to send the community into a real uproar and people started asking Henny all sorts of questions about Archie and if we'd all had a fight and things like that. Henny evidently told someone that I had mentioned foul play in one of our conversations. Henny took that to mean, I suppose, that A.C. and I had something to do with the possible foul play and told folks that they should start looking for a body.

18. I heard later that a millpond was drained and massive searches undertaken to locate a body. No one was found. Wasted time and money there, I'd say. They say they found Archie's precious red wool sock, empty, in

the spot where we were playing cards. Must have done like I thought, fallen out of his pocket, because we sure didn't see it lying there when we left. Fact that it was empty was no mystery. I think someone in the search party must have come by and found the goods and just left the sock. They say also that there was blood on the sock. If there was, I sure don't know how it got there. They also found the stick I always kept with me when I traveled. Used that stick for years to ward off mad dogs. If there is blood on that stick, it's from a crazy dog, not from Archie.

19. Folks must be awfully angry about taking all that time to look for someone who probably isn't even dead. What they did find was a small place in some brush by the millpond that looked like a scuffle had gone on. Looked like, they said, a person had been dragged along a pathway and hidden in this thicket. That would certainly explain the messed up markings on the weeds and grasses. But, everyone took it to mean that a fight had occurred and they blamed A.C. and me, no thanks to Henny and the wild stories he/she was making up.

20. Last time I saw Archie Fisher he was as alive as we are here today. I admit we'd had a disagreement and that I had one of Archie's coins in my possession after Archie disappeared, but I'm still willing to bet my own life that Archie will turn up sometime soon and prove that all this speculation and wild activity has been for naught.

21. Heck, Doc Gillmore say's he/she saw Archie walking down a country road some days ago. I'm a good friend of the Doctor's and I believe what that good person says. Archie is out there somewhere just waiting to be found.

22. I hope someday I'm able to laugh at all of this business. Right now, it's pretty frightening. I know I didn't hurt Archie, and I sure don't know where he is right now.

Witness Statement/Defense

Henny Trailor

1. My name is Henny Trailor and I was arrested for this crime but I have been let go. The Mayor and postmaster took charge of me and asked me all kinds of questions about Archie Fisher and where Archie might be. They set their wits to getting a story out of me one way or another. I never felt so awful in my life. Questions from the Mayor coming at me it seemed like night and day. I've always been a bit easy to confuse and I know A.C. and Willie were concerned about me.

2. To the best of my recollection, the Mayor told me that a story was going around that Willie and A.C. had taken Archie Fisher to the millpond to go fishing. I knew that was true as Willie had told me so; I wasn't there but I did see A.C., Willie and Archie all walking toward the millpond area. They were carrying a sack with them. I was in town all day long. That was May 23. I don't like to fish. I don't like the worms. But, as I knew where they were, I did head out that direction later that day after they'd been gone so long and I heard Willie, A.C. and Archie fussing as I drew near to the millpond. As I got closer, I knew a fight was brewing, in fact I could see them through the trees, all standing up and arguing. I left. I never did see any fight. I know I told the Mayor something different but that was because I was just so blasted tired during that interview and thought that's what he/she wanted to hear. I wanted to go to bed...and I also thought if I told the Mayor that, it would make sure I'd not hang for the murder of Archie.

3. It was my idea to put an ad in the Springfield newspaper to ask if anyone had seen or heard from Archie. I paid for that ad with a coin I'd gotten from Willie. It was a gold coin. Had a funny nick out of a corner. Willie said that a dog, of all things, had bitten it! I paid that coin to the Postmaster to write the advertisement and get it in the newspaper and now the Postmaster is saying that the coin is proof that A.C. and Willie hurt Archie Fisher. Later Willie told me that was the coin that Archie had used to pay off a debt to Willie. Archie owed for some kind of business or another, I don't know what. Willie didn't say, but that gold piece was strange looking.

4. The Mayor told me that Archie had started a fight with A.C. and Willie, and I said that didn't really surprise me as Archie could sometimes get in a bad mood and say things that were mean spirited. Besides, Willie had told me that Archie had gotten mad beside the millpond and they'd left him there to stew in his own juices. A.C. and Willie aren't fighters. They're peaceable people who won't start a fight, but they'll defend their own rights and protect each other when it comes right down to it like siblings should.

5. The Mayor also said that there had been a search around the millpond and the searchers had found a spot where a fight had taken place and there

had been blood in the grass and weeds. They think it must have been Archie's blood as we've all seen both A.C. and Willie since and neither one of them had a mark on them that would have left that kind of blood. On the ride home, we all stopped and did some swimming in a creek, just to wash off some of the travel dust. I saw both A.C. and Willie as naked as jaybirds and there wasn't a mark on either one of them I hadn't seen before. There were old scars from accidents here and there, but no new bruises or anything.

6. The search party folks all said that it looked as if someone had been killed near the millpond; there was so much blood. I think it was a dog that got hold of a duck, or maybe something else, but I don't think Willie and A.C. did anything bad to Archie.

7. I know the spot they were talking about. It's on the edge of the millpond and it's a good fishing spot. Whole town knows about it. There's a no fishing sign posted there now as Hickox is trying to get people to stay off his/her property. This was the spot everyone saw the other day, along the path, the spot where there were branches and grass all flattened and the signs of a struggle and more signs that someone had been dragged to a buggy. They are saying that it was A.C. and Willie dragging Archie.

8. I know that the whole town ran to Hickox's millpond and worked long and hard to find that body. They even drained the pond and that made Hickox madder than I don't know what. They never did find Archie though. They raked and fished and walked all through that muddy pond bottom looking for a body but there was none. If old Archie was in that millpond, it's a mystery to me how Archie got out of there.

9. With the whole town in such a flutter about this business I don't know how anyone with any sense would think that the millpond bank could give any evidence that could be true and real. After all, almost every person in the community and the surrounding area has visited it. No wonder the place is trampled, there have been buggies and wagons and people and pets out there daily since the first alarm was sounded. I think it was a miracle that the Mayor found Archie's red wool sock in the dirt.

10. I can't remember how long the Mayor talked with me about Archie, A.C. and Willie, but I remember that I was tired and hungry and getting confused about all the questions. They kept me up late and woke me up early in the morning to keep on questioning. Asking the same thing over and over.⁴

11. I don't understand why the Mayor thought we'd had anything to do with Archie going away. I remember telling the Mayor that Archie did that

⁴ Note, there were no *Miranda* warnings at the time.

sometimes, went away for weeks at a time, working odd jobs and staying at other folk's houses while he worked.

12. I also remember telling the Mayor that A.C. and Willie would never hurt anyone unless someone else started a fight. Maybe that's what happened. Maybe Archie got angry about something and started something with A.C. and Willie. Would be natural for them to defend themselves, but it would have been two against one. But if that happened, they didn't tell me about it and I didn't see for myself. The Mayor also told me that if Willie, A.C. and I did murder Archie, we'd all hang. I don't want to hang and I don't want Willie to hang and I don't want A.C. to hang. The Mayor kept telling me if I told the truth, everything would come right so that's what I'm doing.

13. I just don't believe that A.C. or Willie would have left Archie alone, bleeding, if that kind of thing had happened. If Archie had been hurt in any kind of fight or accident, A.C. and Willie would have helped or gone for help for Archie. That's one thing I'm sure of.

14. I heard that Doc Gillmore saw Archie. Why are we still going through all of this if Archie's been seen and is healthy as we all are? Doc wouldn't lie, that's a sure thing. My family has known the Doc for years. Doc helped Ma when I was born. I was special then and always have been. Some folks call me slow, but Ma always just said I was special and Doc said so too. My family loves the Doc and he loves us too.

Witness Statement/Defense

Dr. Casey Gillmore

1. My name is Casey Gillmore and I'm a doctor and have been for over 25 years. I studied under old Doc Kopecky for 8 years and the old Doc was one of the best in the area. I am 53 years old and I live and practice in and around Oakford, Illinois and know all of the Traylor folks by sight and have known Archie Fisher for at least 20 years. I was present at Henny's birth, which was a difficult one. Henny's always been a bit slow but the Traylor family has always watched out for Henny's best interests.

2. I started hearing rumors that something had happened to Archie Fisher and that he had mysteriously disappeared sometime after May 23rd or 24th when Archie had visited Springfield with the Traylor folks. At first I didn't think much of the rumors, as, like everyone else, I knew that Archie took work as it came and often left to go live at a worksite while the work was being done. Archie answered to no one but him/herself and didn't take kindly to being questioned about his whereabouts.

3. Archie had an accident as a child and I've treated him/her since that time. A tree limb fell in a high wind and knocked Archie in the head. Archie was unconscious for almost three full days and was never quite the same after that. Sometimes there have been periods as short as a few minutes, or for some days, when Archie is confused, disoriented, and doesn't make much sense when talking. You can always understand what Archie's saying, but sometimes the words just don't make sense.

4. Archie has always paid in cash and carries a red wool sock full of gold coins concealed in his clothes. Archie has made payment quite often for medical work performed and the money always comes out of that sock. Archie has also been known to show off a few of the more unusual gold pieces in the sock, like the gold piece that was used to pay Willie Traylor for a debt Archie owed.

5. Folks in Oakford know Archie, and I heard rumbles about his "disappearance" that grew louder after an article was published in the Springfield newspaper asking for information on Archie's whereabouts. I also heard that the article or advertisement was paid for by one of the Trailors and one of Archie's coins, that very coin with the chink out of the rim was used to pay for the article. Well, I can tell you that really got folks up at arms. That one coin was enough for some to come to believe that Archie had been murdered and hidden away by the Trailors so they could get to Archie's money. If that's so, then the Traylor family has been very careful with what they stole as they haven't spent one more gold piece. Had they, this community and the Springfield community would have probably lynched them then and there.

6. Anyhow, I guess I'm being questioned because I knew all the parties involved and may have some information that could be useful in solving this mystery. See, I think I actually saw Archie Fisher after May 31.

7. I was driving my buggy home from a late call one evening in early June and I saw a man sort of stumbling along side the road. I was out driving, as that seems to ease the pain of my lumbago⁵. This time the laudanum⁶ just wasn't working, so I took a bit more to help ease the pain. I've doubled the dose before and I know how much I can take without affecting my abilities. Be that as it may, the person in question was wearing an old blue coat with some pretty distinctive patches, very like the one Archie wears almost daily. There was a full moon that night, I remember, as I hadn't had to light the buggy lamps in order to see the roadway.

8. Anyhow, as I approached this person, I began to wonder if they might need assistance, as he was walking irregularly and putting his hand to his head once in awhile, as if his head ached very badly. I called out, but got no response. I called out again, and by that time the horse was almost alongside the person. Right then, the person turned and waved me away, as if bothered by being asked if they might need help. When the person waved, his arm crossed in front of his face, but I could see hair, and it was hair just like Archie's, and the coat was just like Archie's, and the voice, when it finally responded, was Archie's voice. Archie said, "No, leave me be. I got what I deserved."

9. I remember driving past and then turning around and looking back. The person, Archie, was staggering along, looking very tired. The walk was just like how Archie walks when he is having one of his spells of disorientation. Possibly like a drunken stagger, but not quite. It's hard to explain but it's very distinctive. That walk made me believe firmly that the person I had just passed was, in fact, Archie Fisher. I remember thinking to myself, the fresh air would help Archie, and if I'd seen him, then others surely would as well. To my knowledge though, no one else has come forward to confirm seeing Archie since the night he disappeared.

10. I didn't know what to make of the statement Archie made, about getting what he deserved, but later I heard that the A.C. and Willie Traylor admitted that they had had a disagreement with Archie over something or another, I figured that Archie had maybe gone and nursed his hurt feelings with some drink.

⁵ Lumbago, rheumatism in the muscle, accompanied by pain in the lumbar (back) region.

⁶ Laudanum, a medicinal compound made up of opium taken to ease pain. May be addictive and too much may cause confusion and/or mild hallucinations. Commonly used in the 1800's as a way to control pain. Not, at that time, an illegal substance.

11. In hindsight, I probably should have stopped and made a better effort to help Archie, but his actions weren't all that out of the ordinary, and he sure sounded just fine to me, maybe a little confused and stumbling a bit. Besides, I hadn't taken it all that seriously that Archie was missing. The Archie I saw was managing just fine when I passed him by that night. And, I figured that if I'd seen Archie, then others surely had too. I recall that I was making a house call on the Widow Boucher that night. It's marked on my calendar as June 2, so I can testify that the date I saw Archie walking was, indeed, after the supposed murder.

12. Unfortunately, I've not seen Archie again since then. Some folks said that I saw the ghost of Archie Fisher that night, but what I saw was real enough to satisfy me that Archie Fisher is alive and well somewhere out there.

13. I know that some folks are saying ghost or real, I'm as daft as can be, what with the laudanum and the mistake I made in January. Frozen body was brought to me for identification. I confirmed that the body was that of Jesse Roberts, but I was proved wrong when Jesse walked into the room and said that it was his older brother by one year, James. I felt bad about the mistake, but folks all agreed that Jesse and James looked alike enough to be twins and didn't blame me any for the mistake.

14. What Archie meant by getting what he deserved, I just don't know. But I'd swear on my reputation as a doctor that Archie is alive and well somewhere out there. And, speaking as a doctor, I'm not at all sure that anyone should give too much credence to what Henny says. Henny's been under a lot of pressure and Henny Traylor is easily confused and easily led. Even Abraham Lincoln, one of our better-known local attorneys, called Henny "simple minded."

15. It's been my experience that when something awful happens, like a murder or disappearance, that a crowd mentality takes over and there's usually a rush to judgment. It's my belief that the Trailors are innocent of the murder of Archie Fisher. It is also my firm belief that the Mayor and the Postmaster are working very hard to make sure that there's a conviction in this case, even if they convict the wrong person or people, without even finding a body. Elections are coming up and it's important to make people feel safe and convince them that you're doing your job. Both the Mayor and Postmaster are paid political positions. The Mayor and Postmaster like their jobs and the pay, powers and perks that come with them. They want re-election.

16. I can also tell you that the Mayor is well known in these parts for forcing convictions on people whose innocence is later proved. Happened once to my brother-in-law who was, admittedly, in the wrong place at the wrong time. That poor man almost hung for a crime he knew nothing about. Good thing the real culprit came forward before the wrong person swung. My family was fit to be

tied over that one and it's taken us years to get over it. My brother-in-law is a virtual recluse; never leaves his farm. Too afraid of being wrongly accused. Being wronged like that can ruin a person for life. It is by far the better policy to continue searching and investigating until a crime can be proved beyond a reasonable doubt. In this case, I swear that there is much, much more than a reasonable doubt. There is considerable doubt. Willie is being railroaded toward an unjust conviction by a pack of zealots.

Witness Affidavit/Prosecution
Mayor Ashton Wickersham

1. My name is Ashton Wickersham and I am the Mayor of Springfield. I've currently served six years in this office and one of my duties is to interrogate suspects of capital crimes, such as this. It fell to me to question Henny Trailor when he/she was brought in for the murder of Archie Fisher.
2. It was also my responsibility to authorize and assist in the search for Archie Fisher that was undertaken when we began to suspect foul play. Examinations were made of cellars, wells, and pits of all descriptions. We searched anywhere that we thought a body might be hidden. We even went so far as to dig up new graves to make sure someone hadn't buried an extra body. This search commenced on Friday and continued through Saturday afternoon, without success. It was when the search produced absolutely nothing that we determined that we needed to question Willie and Henny Trailor. I dispatched deputies to their respective houses and had them brought in for questioning.
3. As they were being brought in, we continued the search effort.
4. I'd been warned that Henny Trailor was a bit soft in the head, that's Willie Trailor's term, not mine, but I found Henny to be an articulate and cooperative witness. All the questions I asked were answered to my satisfaction. From what Henny told me, I will set forth the story I believe to be true as relates to the disappearance and murder of Archie Fisher.
5. Henny said that A.C., Willie and Archie went off to go fishing at Hickox millpond, but weren't able to due to a no fishing sign posted by Mr. Hickox. Based on evidence found at the site, there was an obvious fight and someone lost quite a significant amount of blood. I visited the site myself on the 26th and witnessed the trampled grasses, bent bushes and the blood. It looked to me as though a significant fight had taken place. Someone, I can't remember who, found an old red wool sock lying along the millpond bank. It was muddy and there was some blood on it. We also found a few playing cards lying about so it was obvious that games were being played, and if the empty sock was any indication, some betting must have been going on as well. I also found a large stick, we later identified as belonging to Willie Trailor, in fact Willie admitted it was the stick he used when traveling. There is a large amount of blood on the stick, and the blood looked fresh to me.
6. Both A.C. and Willie have admitted to being at the location, and Henny has confirmed this statement. Both A.C. and Willie have admitted to being the last people to see Archie Fisher alive...and it was at the millpond that Fisher was last sighted. I completely discount the Doctor's testimony that Archie was seen after his disappearance. The good Doc just isn't credible. It was dark, it was late, the Doc was dosing with laudanum.

7. Henny believes there may have been a fight. In fact, Henny said that he heard a fight and saw Willie with a stick, and that Willie used that stick on Archie. Archie then fell into the water. Now Henny isn't admitting that anymore, but he/she signed a statement saying that's what happened. Henny's statement was given voluntarily and without duress. I told Henny that if he told the truth, there was little chance that he/she would hang. I believe there must have been a tremendous fight as well and I believe that the two Traylor siblings in question, A.C. and William, got the best of Archie and somehow hid the body.

8. I think Willie is saying they didn't go fishing because of the no fishing sign so it appears that Willie and A.C. are good upstanding citizens who follow the law. But, it is my firm conviction that they are not willing to say what really went on at the edge of the millpond. Henny may not be hiding anything but I'm certain that Willie is. I also had the opportunity to interrogate Willie and found him/her to be very clever and thoughtful in responding to questions. Each answer was given after long thought and deliberation. Would have been easy for a clever person to keep track of their lies when taking that long to respond.

9. Willie is hiding something. I've known Willie to be a troublemaker for years. He's also a gifted storyteller. He killed my cousin and talked the jury into believing it was self-defense. Got off free as a bird. How did Willie come to possess the coin that he admits he obtained from Archie? Was it in payment for an honest debt or were these folks engaged in some illegal activity, like gambling, beside the millpond? Did he really sell hogs to some mystery person floating on the Sangamon River? Willie's the only one telling that particular story. I can see how A.C. and Willie might have won a substantial amount of money off of Archie Fisher. Archie was known to carry around a small fortune in a red wool sock. Carried a life's worth of hard work in that sock, some folks said. When I went with nearly the entire community to the millpond to search, I was there when they found that old red sock. Crumpled there on the shore, all muddy and full of blood. Only reason I can see for Archie to let go of that sock was if someone robbed him or if it was just plain empty and of no good use, then maybe Archie would have pitched it. But, come to think of it, Archie wouldn't do that. That sock meant too much. Sort of good luck, I'd say.

10. The fact that old Doc Gillmore says he/she saw Archie Fisher on some dark road is just plain bunk. The old Doc has been self-medicating for years with laudanum. Says it's for his lumbago, but I think it just makes him feel so dang good all over he takes it whenever he feels the lumbago, but I think Doc might be addicted to the stuff. Even a child knows that taking too much laudanum can cloud the mind. I'm thinking maybe Doc Gillmore saw something out on the road that night while he was driving the buggy, but it could have been a tree stump or a deer for all we know. And the fact that Doc

Gillmore says whatever it was talked back and answered? Well that could have been the wind in the trees, a bird, or any such thing. Or it could have been human, and Doc just didn't recognize the right person. Heck, earlier in the year Doc Gillmore declared one of the Robert's brothers dead and gone but it was the wrong brother that had froze to death. Doc said it was Jesse but it turned out to be James.

11. There's also the fact that Doc Gillmore and Willie Traylor are long time friends. Is what Doc's saying true or is the Doc trying to save Willie from a life in prison or worse?

12. It's true that I'm running for re-election but that doesn't mean that I don't take this matter seriously. Election or not, if there's a murderer among us, he/she must be brought to justice!

13. Archie Fisher has met a bad end and someone needs to be held accountable. As Mayor of this community it's my job to ferret out the truth and the truth as I see it is that A.C. and Willie Traylor have too much stacked against them to be innocent of this crime.

Witness Affidavit/Prosecution
Postmaster Leslie Keys

1. My name is Leslie Keys and I have served as Postmaster of Springfield for the past ten years. Postmaster takes care of the mail, the telegraph, and I run a general store as well. Because the newspaper office is right behind my building, I also write their advertising and some articles of general interest for the newspaper and if people want to place ads, they come to me and make their payment.

2. Some folks think I'm a busy body in this town, but I ain't got nothing on old lady Green, the local gossip...but I only have my eyes open and my ears perked up to hear news that can be used in the paper. I don't read anyone's mail, unless they ask me to. Some folks in these parts don't have much education and so I read them their letters as they come in, and sometimes write their responses for them as well and then see that they get posted. It's election time and I'm very conscious of doing a good job now, when the eyes of the community are really watching. Not that I'm not serious about the postmaster position all the time; I like what I do and I would very much like to be re-elected. If folks see me doing a thorough and honest job now, I hope they'll remember come election time.⁷

3. So, as postmaster, I know quite a bit about what goes on in Springfield and the surrounding community. I knew there was going to be trouble when old lady Green came in tsk-tsking about the three people she'd seen heading toward the mill pond looking like they were up to no good. Mrs. Green said one of those people was going to get used up. She sure was right. When I first saw the Traylor folks and Archie Fisher pull into town, I thought nothing of it. They were here pretty regularly, especially when they needed supplies or wanted to have a good time. There's a pretty nice tavern, and I know the Trailors and Archie Fisher all get along well with the Dutch Carpenter down the road.

4. I did see A.C. and Willie Traylor walking toward the millpond with Archie late in the afternoon of May 23. They had a sack, like they were going on a picnic or something. I thought to myself, nice weather for a meal down by the pond, but didn't think much else about it until later in the evening when I heard that all the Trailors were looking for Archie and asking questions about if anyone had seen him.

5. I thought that was strange. They'd been with Archie just a few hours before and then they'd lost track of him? Archie does odd jobs around town and these parts and sometimes boards with the people he's working for, but I

⁷ Postmasters were actually appointed by the President at this time, usually at the specific request of a Congressman or Senator; however, for purposes of this mock trial problem, postmasters are elected officials.

honestly think that someone would have seen or heard something. This town isn't all that big and so many of us know what goes on. This kind of disappearance just wouldn't happen.

6. A few days after the mysterious disappearance of Archie Fisher, Henny Traylor came to the general store and asked to place an ad in the Springfield newspaper asking for information on the whereabouts of Archie Fisher. That was on the 25th of May. I immediately felt suspicious, but not about Henny. Henny's like a child. Innocent and kind, slow. Henny wanted to pay in full right up front and pulled a gold piece with a big dent in it out of his/her pocket. It was sort of nicked in a corner, just exactly like the one Archie Fisher liked to show off. Archie had a great story about how a dog bit the corner off the coin when it was trying to bite Archie.

7. Archie loved that coin. Archie wouldn't have paid any debt with that coin unless it was the last one Archie had and the debt absolutely had to be paid. Willie Traylor is saying that Archie paid a debt with that coin and I just don't believe it. Sounds made up. Like I said Archie loved that coin. Wouldn't part with it without a fight, I just know it.

8. Henny paid with that coin and I asked where he/she had gotten it. Henny said that Willie had given it to him/her and had said that Archie had used it to pay off a debt. I can certainly believe what Miller Hickox is saying about there being a fight. Hickox has been around and would recognize the difference between trampled grass and the scene of a fight. I'll bet my store and all the goods inside it that there was gambling going on and that Archie lost, thought the Trailors were cheating, and started to thrash them for their underhanded ways. Two against one isn't fair. I think the splash Hickox heard was Archie going under. Maybe A.C. and Willie went back later and moved the body, but I firmly believe that Archie met his end on the banks of the millpond and it was because of a gambling debt.

9. The Mayor authorized a comprehensive search and I fully agreed and took part. We searched pretty much every location in town where a body could be hidden and we found nothing. I even drew a map of the area so we'd know where we'd already searched. The Mayor and I walked the entire town with the search party, organizing and witnessing the investigation. That's part of our jobs. We found no clues; at least not until we searched around the area of the millpond at Hickox's place. There was an area all torn up that looked like some awful fight had taken place.

10. I was, as usual, with the Mayor when he/she found Archie's red wool sock at the shore of the millpond. Even with all the mud and blood on the old thing, you could still make out that it was the same sock Archie always carried around. From my experience with Archie, and witnessing the way he cherished that sock full of money, there's just no way I can see Archie parting with that

sock without a fight. And the fight would have been a good one. That's how jealous Archie was of that sock and the money in it! Heck, anyone would want to protect what was his own hard earned money.

11. To my knowledge, there has been no credible sign of Archie since the last time anyone saw him in town.

Witness Affidavit/Prosecution

Shawn Hickox, Miller

1. My name is Shawn Hickox and I'm a miller. I own the mill known as Hickox Mill and I own the land around the millpond where the fight took place that I think killed Archie Fisher.
2. I'd posted a no fishing sign on that very spot, along the shore, because that land is dangerous. Sometimes the banks get slippery after a rain and the land can just crumble under your feet. I didn't want any accidents there. After I slipped there myself and ended up in the pond, I was fully aware of the danger and did the only thing I could think of to warn the community. I told folks about the danger and posted that sign. It's deep at that spot!
3. On the evening in question, I was outside locking my barn and out buildings when I heard shouting coming from the millpond area. At first I thought someone was in trouble, maybe they'd been fishing and had fallen in. I ran toward the spot. But, by the time I got close enough to hear better, I realized that the commotion was three people arguing. If anyone was in trouble, it had nothing to do with the slippery land around the millpond. I heard a person yell, "you cheated, you dirty skunk" and then I heard a slapping sound like someone got hit and hit hard, and that was followed by a thud, like someone falling.
4. Then someone else yelled something I couldn't make out and I heard thrashing. Then another voice yelled, "Put that stick down, Archie." It must have been Archie Fisher and the Traylor's I'd heard. I peeked through some bushes and realized I was right. It was the Traylor's with Fisher.
5. Next thing I heard was the third person say something that sounded like, "Willie, watch out," and then some grunting. I was standing perfectly still and I know those folks didn't see me. I had a good vantage point, even behind the bushes, so it wasn't all that hard to see. I remember thinking I didn't want any part of a fight. That Willie Traylor is bigger than I am and I'd for sure lose any physical tangle we might get into. That, plus I was clean outnumbered. As I turned to leave, I saw a stick come up into the air. That's when I knew it was time to leave.
6. I heard a grunt, and then a little splash. Then I saw two people run past where I was standing, but I was behind some bushes so they couldn't see me. I went to the spot where the fight had taken place and started looking around, but I sure couldn't see anything. I started to think that maybe the other person had run the opposite direction. That splash wasn't loud enough to have been a person falling into the water, I thought it must have been someone got the stick away from Archie and pitched it into the water. But with Archie being gone for so long, when word came that they wanted to drain the millpond, I

was a little put out but agreed to them doing it. I wanted to be sure that my property wasn't the scene of a murder.

7. I'd gone back to the spot the next morning, the morning of the 24th, after I heard folks were looking for Archie, and had seen with my own eyes a large stick, probably the one that the people had yelled for Archie to put down, and some blood all over the ground. Maybe Archie had clubbed one of the others, or maybe one of the others had gotten the better of Archie. All I know is there was a fight that night and I know that the people involved were Archie and Willie. I overheard Archie Fisher arguing and fighting about something that could involve cheating, like gambling maybe. There were also wagon tracks that next morning so I'm thinking that maybe the Traylor's came back later that night and moved Archie's body.

8. The next day, Willie Traylor came to the mill and paid off a rather significant debt. Paid his/her debt and those for A.C. and Henny as well. I was a might surprised. After asking for payment for almost a year, I was finally paid off. Made me wonder if they knew I'd been there and had heard and seen what was going on. I tried not to act too suspicious though, as like the night before, I was outnumbered.

9. The whole town was in an uproar about this fellow disappearing. Murder was on everyone's mind. Mine too. The town was turned inside out looking for the body but none was found.

10. When the whole community came to look at the site and help drain the millpond, the Mayor and the Postmaster were looking around real careful. They were the ones that found Archie's sock on the bank of the pond. All full of blood, it was, and filthy, but they could still tell it was Archie's sock. I saw it too and I'd agree. Based on all I've heard, it must be Archie's sock. They also found the stick. Thing had blood on it. Ugly business.

11. You know, gambling is illegal. If they were gambling, I don't think any of them would admit it, unless they felt like they were going to be hanged for murder. Heck, then they'd confess, I'd imagine. A heavy fine and some jail time aren't all that bad considering the alternative. Swinging from a rope.

12. Besides all that, Doc Gillmore's story that he saw Archie Fisher just doesn't ring true. How come Doc's the only one who's seen Archie? I think maybe the good doctor had a little too much laudanum that night for the old lumbago and saw a bush moving and maybe heard an owl hooting and thought, wishful thinking, that Archie was talking to him. Doctor's a good person, honest as the day is long, but for goodness sake, folks in these parts knows that if you need serious treatment for an illness you need to go elsewhere. Doc's good for cuts and bruises and the like, but he/she is getting on in years and the laudanum is certainly influencing his/her actions and

judgment. Ask any of the Roberts family about Doc's eyes not being what they used to be. James Roberts froze to death in a stream early in January but Doc stood there insisting it was Jesse, at least until Jesse walked in and made the correction. Poor Doc just isn't what he used to be.

13. Doc's reputation for hitting the laudanum hard is universal, as is his friendship with Willie Traylor. I wonder if the Doc is just trying to help out an old friend by telling everyone that Archie was spotted on the roadside.

Sworn Statement of Henny Traylor,
published in local newspapers after disappearance of Archie Fisher

My name is Henny Traylor and I swear that what I'm about to say is the whole truth as I know it.

It's true that Willie, A.C. and Archie Fisher all went to the millpond to fish on the afternoon in question. That's what they said they were going to do and I have no reason not to believe it. I was in town all that day, as I don't like to fish, and I tend to get fussy and nervous and that makes the others impatient with me. It was better that I stayed away. I ran errands and visited a bit with some of the folks in town that I knew but when it started getting late I decided it was time to go find Willie and A.C. and Archie.

I decided to walk out to the millpond and look for them. I hoped that was where they still were. It wasn't too long a walk and I got there in good time. As I approached a part of the pond that has nice trees and grasses around it, good place for fishing, I guess, I heard Willie, A.C. and Archie fussing. As I came closer, I could tell from the sound of their voices that there was a fight coming on. And I could see them through the trees. They were all standing up and shaking fists at each other. I still couldn't hear what they were fighting about, but it was getting pretty loud and I was worried someone else might hear them. I'd seen the no fishing sign posted and knew they weren't supposed to be there.

It was darkish, but I could tell it was Willie and the rest from their voices. I thought for a second that I heard something else, like bushes moving, off to the side, but their voices got louder and I forgot all about that. I saw a stick rise up from out of nowhere and swing down against Archie's back. I couldn't tell who did the swinging. Willie and A.C. are built alike...both big, but I did see Archie fall and when he fell, he went into the water.

I ran. I didn't know what else to do. I was just plain afraid. I remember hoping as I ran that Willie and A.C. would pull Archie out of that pond and bring Archie back to town. But they didn't. Later, when no one had seen Archie for a while, I even put a notice in the newspaper asking for help finding Archie.

It's my guess that Archie started a fight with A.C. and Willie, and that wouldn't surprise me as Archie could sometimes get in a bad mood and say things that were

mean spirited. Besides, when Willie and A.C. did come back to town Willie told me that Archie had gotten mad beside the millpond, but Willie also said that they'd left him there to stew in his own juices. I took that to mean that they had pulled Archie out of the water and settled their fight. See, A.C. and Willie aren't fighters. They're peaceable people who don't start a fight, but they'll defend their own rights and protect each other when it comes right down to it like family should.

INFORMATION
In the Circuit Court of
Sangamon County, Illinois

| | | |
|----------------------------------|---|--------------|
| People of the State of Illinois, |) | |
| Prosecution |) | |
| |) | |
| v. |) | No. 424 2003 |
| |) | |
| Willie Traylor, |) | |
| Defendant |) | |

First Degree Murder

State's Attorney Turley Underwood, representing the People of the State of Illinois, complainant, now appears before The Circuit Court of Sangamon County and states that Willie Traylor, defendant, has, on or about May 23, 1841 in Sangamon County, State of Illinois, committed the offense of First Degree Murder in that he, without legal justification, knowingly caused the death of Archie Fisher, by beating Archie Fisher about the head and body with a wooden club and throwing Fisher's body into a mill pond, and when the defendant did so, he intended to kill or do great bodily harm to Archie Fisher; or he knew that such acts would cause death to Archie Fisher; or he knew that such acts created a strong probability of death or great bodily harm to Archie Fisher.

Involuntary Manslaughter

Should trier of fact find inconclusive on the charges of first degree murder, State's Attorney Turley Underwood, representing the People of the State of Illinois, complainant, would ask that Willie Traylor, defendant, be found guilty of involuntary manslaughter, as on or about May 23, 1841 at Springfield, Illinois, Willie Traylor did perform the acts which caused the death of Archie Fisher, and the defendant performed those acts recklessly.

Signature: _____
 Turley Underwood, State's Attorney, Sangamon County

I have examined the above complaint and the person presenting same and have heard evidence thereon, and am satisfied that there is probable cause for filing same. Leave is given to file said complaint.

Summons issued by Judge Lyman Berry

JURY WAIVER

IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS

| | | |
|--------------------------------------|---|-------------------|
| The People of the State of Illinois, |) | |
| Prosecution |) | |
| v. |) | Charge for Murder |
| Willie Traylor, |) | No. 424 2003 |
| Defendant |) | |

I, the undersigned, do hereby waive jury trial and submit the above entitled cause to the Court for hearing.

Dated: _____

Signed: _____
Willie Traylor, Defendant

JURY INSTRUCTIONS

7.00 Homicide

7.06X Issues where Jury Instructed on First Degree Murder and Second Degree Murder (belief in justification) and Involuntary Manslaughter.

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Archie Fisher, and

Second Proposition: That when the defendant did so,

1. he intended to kill or do great bodily harm to Archie Fisher; or
2. he knew that such acts would cause death to Archie Fisher; or
3. he knew that such acts created a strong probability of death or great bodily harm to Archie Fisher.

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Archie Fisher, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was

unreasonable.

If you find from the consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

7.07 Definition of Involuntary Manslaughter

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual [without lawful justification] by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

7.08 Issues in Involuntary Manslaughter

To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Archie Fisher, and

Second Proposition; That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

7.15 Causation in Homicide Cases

In order for you to find that the acts of the defendant caused the death of Archie Fisher, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Illinois Compiled Statutes
Criminal Offenses
Criminal Code of 1961
720 ILCS 5/

(720 ILCS 5/)

ARTICLE 9. HOMICIDE

(720 ILCS 5/9-1)

Sec. 9-1. First degree Murder - Death penalties - Exceptions - Separate Hearings - Proof - Findings - Appellate procedures - Reversals.

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

- (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
- (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
- (3) he is attempting or committing a forcible felony other than second degree murder.

(b) Aggravating Factors. [Excluded as sentencing is not a factor in the mock trial process. Section B discusses the death penalty for persons 18 years of age or older.]
(720 ILCS 5/9-2)

Sec. 9-3. Involuntary Manslaughter and Reckless Homicide.

(a) A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft, in which case the person commits reckless homicide.

(b) In cases involving reckless homicide, being under the influence of alcohol or any other drug or drugs at the time of the alleged violation shall be presumed to be evidence of a reckless act unless disproved by evidence to the contrary.

(c) For the purposes of this Section, a person shall be considered to be under the influence of alcohol or other drugs while:

1. The alcohol concentration in the person's blood or breath is 0.08 or more based on the definition of blood and breath units in Section 11-501.2 of the Illinois Vehicle Code;
2. Under the influence of alcohol to a degree that renders the person incapable of safely driving a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft;
3. Under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely

driving a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders the person incapable of safely driving a motor vehicle or operating a snowmobile, all-terrain vehicle, or watercraft.

(d) Sentence.

(1) Involuntary manslaughter is a Class 3 felony.

(2) Reckless homicide is a Class 3 felony.

(e) Except as otherwise provided in subsection (e-5), in cases involving reckless homicide in which the defendant was determined to have been under the influence of alcohol or any other drug or drugs as an element of the offense, or in cases in which the defendant is proven beyond a reasonable doubt to have been under the influence of alcohol or any other drug or drugs, the penalty shall be a Class 2 felony, for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

(e-5) In cases involving reckless homicide in which the defendant was determined to have been under the influence of alcohol or any other drug or drugs as an element of the offense, or in cases in which the defendant is proven beyond a reasonable doubt to have been under the influence of alcohol or any other drug or drugs, if the defendant kills 2 or more individuals as part of a single course of conduct, the penalty is a Class 2 felony, for which a person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 6 years and not more than 28 years.

(f) In cases involving involuntary manslaughter in which the victim was a family or household member as defined in paragraph (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, the penalty shall be a Class 2 felony, for which a person if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

(Source: P.A. 91-6, eff. 1-1-00; 91-122, eff. 1-1-00; 92-16, eff. 6-28-01.)

INFORMATIONAL ITEMS

REMAINDERS OF THE MATERIALS, PROVIDED FROM THIS POINT ON,
ARE EDUCATIONAL/INFORMATIONAL ONLY AND MAY NOT BE USED OR
REFERRED TO IN THE MOCK TRIAL CASE AT HAND.

Springfield
June 19, 1841

Dear Speed:

We have had the highest state of excitement here for a week past that our community has ever witnesses; and although the public feeling is somewhat allayed, the curious affair which aroused it is very far from being over, yet cleared of mystery. It would take a quire of paper to give you anything like a full account of it, and I therefore only propose a brief outline. The chief personages in the drama are Archibald Fisher⁸, supposed to be murdered; and Archibald Traylor, Henry Traylor, and William Traylor, supposed to have murdered him. The three Trailors are brothers: the first, Arch, as you know, lives in town; the second, Henry, in Clary's Grove⁹; and the third, William, in Warren County; and Fisher, the supposed murdered, being without a family, had made his home with William.

On Saturday evening, being the 29th of May, Fisher and William came to Henry's in a one-horse dearborn and there staid over Sunday, and on Monday all three came to Springfield (Henry on horseback) and joined Archibald at Myres', the Dutch carpenter. That evening at supper Fisher was missing, and so next morning some ineffectual search was made for him; and on Tuesday at 1 o'clock p.m., William and Henry started home without him. In a day or two Henry and one or two of his Clary's Grove neighbors came back for him again, and advertised his disappearance in the papers.

The knowledge of the matter thus far had not been general, and here it dropped entirely till about the 10th inst., when Keys received a letter from the postmaster¹⁰ in Warren county that William had arrived home and was telling a very mysterious and improbable story about the disappearance of Fisher, which induced the community there to suppose he had been disposed of unfairly. Keys made this letter public, which immediately sent the whole town and adjoining country agog. And so it has continued until yesterday. The mass of the people commenced a systematic search for the dead body, while Wickersham was dispatched to arrest Henry Traylor at the Grove and Jim Maxcy to Warren county, to arrest William.

⁸ Described in Mr. Lincoln's article appearing in the Quincy Whig as "somewhat above the age of fifty; had no family, and no settled home; but who boarded and lodged a while here and a while there, with persons for whom he did little jobs of work. His habits were remarkably economical, so that an impression got about that he had accumulated a considerable amount of money."

⁹ Clary's Grove is near present day Tallula, Illinois, approximately 20 miles outside Springfield

¹⁰ Charles Stice

On Monday last, Henry was brought in and showed an evident inclination to insinuate that he knew Fisher to be dead and that Archie and William had killed him. He said he guessed the body could be found in Spring creek between the Beardstown road and Hickox's mill. Away the people swept like a herd of buffalo to cut down Hickox's mill-dam *nolens volens*¹¹ to draw the water out of the pond, and then went up and down and up the creek fishing and raking and raking and ducking and diving for two days, and after all no dead body found. In the meantime a sort of scuffling ground had been found in the brush, in the angle or point where the road leading into the woods past the brewery and the one leading in past the brick grove meets. From the scuffle ground was the sign of something about the size of a man having been dragged to the edge of the thicket where it joined the track of some small wheel carriage drawn by one horse, as shown by the road tracks. The carriage track led off toward Spring creek. Near this drag trail, Dr. Merryman found two hairs which, after a long scientific examination, he pronounced to be triangular human hair, which term he says includes within it the whiskers, because the ends were cut, showing that they had flourished in the neighborhood of the razor's operations.

On Thursday last, Jim Maxcy brought William Trailor from Warren. On the same day Archie was arrested and put in jail. Yesterday (Friday) William was put upon his examining trial before May and Lavelly. Archibald and Henry were both present. Lamborn prosecuted, and Logan and Baker and your humble servant defended.

A great many witnesses were introduced and examined, but I shall only mention those whose testimony seems most important. The first of these was Capt. Ransdell. He swore that when William and Henry left Springfield for home, on Tuesday before mentioned, they did not take the direct route which you know leads by the butcher shop, but that they followed the street north until they got opposite or nearly opposite May's new house, after which he could not see them from where he stood; and it was afterwards provided that in about an hour after they started, they came into the street by the butcher shop from towards the brickyard. Dr. Merryman and others swore to what is stated about the scuffle ground, drag trail, whiskers, and carriage tracks.

Henry was then introduced by the prosecution. He swore that when they started for home, they went out north, as Ransdell stated, and turned down west by the brickyard into the woods and then met Archibald; that they proceeded a small distance farther, when he was placed as a sentinel to watch for and announce the approach of any one that might happen that way; that William and Archie took the dearborn out of the road a small distance to the edge of the thicket, where they stopped and he saw them lift the body of a man into it; that they then moved off with the carriage in the direction of Hickox's mill, and he loitered about for something like an hour, when William returned with the carriage but without Arch, and said they had put him in a safe place; that they went, somehow, he did not know exactly how, into the road close to the brewery and proceeded on to Clary's Grove.

He also stated that some time during the day William told him that he and Archie had killed Fisher the evening before; that the way they did it was by him (William) knocking him down with a club and Archie choking him to death.

¹¹ nolens volens - whether willing or not.

An old man from Warren called Dr. Gillmore was then introduced on the part of the defense. He swore that he had known Fisher for several years; that Fisher had resided at his house a long time at each of two different spells once while he built a barn for him, and once while he was doctored for some chronic disease; that two or three years ago Fisher had a serious hurt in his head by the bursting of a gun, since which he had been subject to continued bad health and occasional aberration of mind. He also stated that on last Tuesday, being the same day that Maxey arrested William Trailor, he (the doctor) was from home in the early part of the day and on his return, about 11 o'clock, found Fisher at his house in bed and apparently unwell; that he asked him how he had come from Springfield; that Fisher said he had come by Peoria and also told of several other places he had been at, more in the direction of Peoria, which showed that he at the time of speaking did not know where he had been wandering about in a state of derangement.

He further stated that in about two hours he received a note from one of Trailor's friends advising him of his arrest and requesting him to go on to Springfield as a witness to testify as to the state of Fisher's health in former times, that he immediately set off, calling up two of his neighbors as company, and riding all evening and all night overtook Maxey and William at Lewistown, in Fulton county; that Maxey refusing to discharge Trailor upon his statement, his two neighbors returned and he came on to Springfield.

Some question being made as to whether the doctor's story was not a fabrication, several acquaintances of his (among whom was the same postmaster who wrote to Keys as before mentioned) were introduced as sort of compurgators, who swore that they knew the doctor to be of good character for truth and veracity and generally of good character in every way. Here the testimony ended and the Trailors were discharged, Archie and William expressing, both in word and manner their entire confidence that Fisher would be found alive at the doctor's by Calloway, Mallory, and Myres, who a day before had been dispatched for that purpose; while Henry still protested that no power on earth could ever show Fisher alive.

Thus stands this curious affair. When the doctor's story was first made public, it was amusing to scan and contemplate the countenances and hear the remarks of those who had been actively engaged in the search for the dead body. Some looked quizzical, some melancholy, and some furiously angry. Porter, who had been very active, swore he always knew the man was not dead and that he had not stirred an inch to hunt for him. Langford, who had taken the lead in cutting down Hickox's mill-dam and wanted to hang Hickox for objecting, looked most awfully woebegone; he seemed the "wictem of hunrequited affection," as represented in the comic almanacs we used to laugh over. And Hart, the little drayman that hauled Molly¹² home once, said it was too damned bad to have so much trouble and no hanging after all.

I commenced this letter on yesterday, since which I received yours of the 13th. I stick to my promise to come to Louisville. Nothing new here except what I have written. I have not seen Sarah since my last trip and I am going out there as soon as I mail this letter.

Yours forever, A. Lincoln

¹² Lincoln's affectionate name for Mary Todd Lincoln

CASE LAW

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. FRED GRABBE,
Defendant-Appellant

No. 4-85-0660

Appellate Court of Illinois, Fourth District

148 Ill. App. 3d 678; 499 N.E.2d 499; 1986 Ill. App. LEXIS 2962; 101 Ill. Dec. 911

September 15, 1986, Filed

SUBSEQUENT HISTORY: [***1]

Modified on Denial of Rehearing November 17, 1986.

PRIOR HISTORY: Appeal from the Circuit Court of Clark County; the Hon. Paul C. Komada, Judge, presiding.

DISPOSITION: Reversed and remanded.

COUNSEL: Frederick F. Cohn, of Chicago, Larry B. Jones, of Paris, and Max Cohen, of Merrillville, Indiana, for appellant.

Neil F. Hartigan, Attorney General, of Springfield (Roma Jones Stewart, Solicitor General, and Mark L. Rotert and Terence M. Madsen, Assistant Attorneys General, of Chicago, of counsel), for the People.

JUDGES: JUSTICE GREEN delivered the opinion of the court. McCULLOUGH, P.J., and MORTHLAND, J., concur.

OPINIONBY: GREEN

OPINION: [*680] [**501] On November 8, 1984, defendant, Fred Grabbe, was charged in the circuit court of Clark County with the July 24, 1981, murder (Ill. Rev. Stat. 1981, ch. 38, par. 9 -- 1(a)(1)) of his wife, Charlotte Grabbe, who had disappeared. He was subsequently charged with attempted subornation of perjury (Ill. Rev. Stat. 1981, ch. 38, par. 32 -- 3). After a trial by jury, he was convicted of both offenses on June 24, 1985. On September 11, 1985, he was sentenced to natural-life imprisonment for murder and 120 days' imprisonment for the attempt offense. [***2] He has appealed. We reverse and remand for a new trial as to both offenses.

Defendant makes numerous claims of error. We deem it necessary to discuss in detail only his contentions that the evidence was insufficient to support the murder conviction and those which

require a new trial. The question of the sufficiency of the evidence is crucial, because, if the evidence did not support a jury determination of his guilt of murder beyond a reasonable doubt, he would be entitled to a reversal without remandment rather than a new trial. The errors which require a new trial are: (1) admission into evidence, over defense objection, of testimony of statements made by defendant that [*681] he had committed prior murders; and (2) the refusal to instruct the jury concerning accomplice testimony. Other questioned rulings will be discussed only to the extent necessary to give guidance in regard to retrial.

The evidence was undisputed that the alleged decedent, Charlotte Grabbe, and the defendant, her husband, had lived together on a farm near Marshall in Clark County and that she disappeared on July 24, 1981. Except for testimony of one witness who purported to have seen her from a [***3] distance in Terre Haute, Indiana, and a witness who purported to have recognized her voice over a telephone, there was no other evidence of her subsequent existence. Most of the evidence that defendant killed the decedent came from the testimony of Vicki McCalister, a young woman with whom defendant had been keeping company. One other witness testified to a statement made by defendant which could have been interpreted to constitute admission of elements of the offense. The rest of the evidence relied upon in support of the conviction was circumstantial.

McCalister testified to having met the defendant in her mother's tavern some weeks before July 1981. She admitted that she had "dated" defendant and had sexual intercourse with him prior to the disappearance of Charlotte. The evidence indicated that defendant and his wife were having marital problems and dissolution proceedings were in progress. McCalister testified that defendant had indicated a wish to divorce the decedent. McCalister also described a fight that occurred between defendant and decedent at some farm buildings on land owned by defendant and called "Pickens Place" on July 7, 1981. McCalister [**502] [***4] testified that she spent the day of July 24, 1981, with defendant at Pickens Place.

McCalister testified to the following chain of events which occurred on July 24, 1981. Several times during the afternoon, defendant left for the stated reason of finding where his wife was working in nearby fields so that he could talk to her. Defendant and McCalister then went to a tool shed near a field where he had found Charlotte to be plowing. He told McCalister to stay inside the shed so that his wife would not know she was there. Defendant's truck had been backed into the shed. While defendant was attempting to load a trash barrel on the truck to be taken to McCalister's trailer for her use, he had what appeared to be an epileptic seizure but soon recovered. She had seen this happen to him before. As defendant regained control of himself, they could hear the decedent's tractor getting closer. McCalister heard the tractor pull up to the shed and enter it, and the motor turned off. She heard the decedent and defendant arguing [*682] and then heard something fall. She then saw defendant sitting on the decedent and choking her. While choking her, defendant loosened his grasp on her [***5] throat several times and then tightened it until she went limp. During this time, defendant stated to McCalister that he "bet" his wife would die with her eyes open while he also told his wife that he "bet" she was now sorry she had given him so much trouble.

McCalister then gave the following explanation of how disposal was made of the victim's body. Defendant immediately put the body in a barrel on his pickup truck and covered it with used

inner tubes. At defendant's direction, she drove the victim's automobile to Terre Haute while he was driving the truck. They left the victim's vehicle in Terre Haute. They then eventually returned together to Clark County where they took the body to a secluded place near a river. In the meantime, defendant had injected the body with grease. The body was then covered with diesel fuel and burned. Some remains were thrown in the river that day while others were burned further the next day and then thrown into the river.

Judy Lark testified for the State. She related that she was present during a conversation between her husband, who was deceased at the time of trial, and defendant concerning the decedent's disappearance. She said that [***6] approximately one week after Charlotte's disappearance, her husband asked defendant "[w]hat did you do -- grind her up and feed her to the hogs?" She said that defendant responded "[i]f you know what's good for you, you'll keep your mouth shut, or you'll end up the same way." The jury could properly have interpreted defendant's statement as an admission that he had killed the decedent.

Other evidence had some tendency to corroborate McCalister's version of events. Warren Horsley testified that on July 24, 1981, in an area not far from the alleged scene of the killing, he saw defendant driving a pickup truck followed by Charlotte's car driven by a woman whose hair was lighter than that of Charlotte. Dorothy Dixon gave similar testimony, but both testified that they saw nothing in the bed of the truck. Conflicting expert testimony was presented by the State and by the defendant as to whether Charlotte's body could have been destroyed by burning in the manner described by McCalister. Similarly, conflicting expert testimony was presented as to whether inspection of the trees in the alleged burn site indicated that any petroleum fire had taken place there. In regard to both types [***7] of evidence, the jury could have found that of the State to be more convincing.

[*683] The testimony concerning defendant's disputes with his wife and that concerning his relationship with McCalister had some probative value in indicating that defendant had a motive to kill Charlotte. Some evidence was presented indicating that Charlotte would have been unlikely to have run away. No evidence was presented that she had taken anything of value with her. She had left her purse at home. Her daughter-in-law testified that she was looking forward [**503] to a reunion that was to take place on July 26, 1981.

Defendant testified that he had been staying at Pickens Place on the nights of July 23 and 24, 1981, and that on the 24th, he saw Charlotte at the tool shed and they exchanged angry words. He contended that he drove away in his pickup truck, she followed in her car, and he never saw her again. Defendant presented some evidence that corroborated this testimony, but the major thrust of his case was the impeachment of McCalister's testimony for various reasons. The grounds upon which she could be impeached are discussed in more detail in connection with rulings [***8] on instructions. The most important impeachment of her testimony arises because she must be treated as an accomplice, and because she would be able to receive a reward upon defendant's conviction. However, neither her status as an accomplice (*People v. Wilson* (1977), 66 Ill. 2d 346, 362 N.E.2d 291) nor her eligibility for a reward (*People v. Williams* (1959), 17 Ill. 2d 193, 161 N.E.2d 295), necessarily requires a determination that the proof failed.

Defendant maintains that a conviction based on testimony of a witness who would be paid solely if a conviction is obtained cannot stand. He cites *Williamson v. United States* (5th Cir. 1962), 311 F.2d 441. There, the witnesses involved had a contingent reward contract entered into before the offense for which the accused was on trial occurred. Here, as we will explain, McCalister could have received a reward if defendant were convicted, but the reward was offered only after the offense was committed. *Williamson* is not in point, and no Illinois case is cited in support of defendant's contention.

The testimony of McCalister together with the direct evidence arising from the testimony of Judy Lark and the corroborating [***9] circumstantial evidence are of sufficient strength that a rational jury could conclude beyond a reasonable doubt that defendant was guilty of the murder. (*Jackson v. Virginia* (1979), 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781.) Defendant is not entitled to an acquittal. However, the great dependence of the State upon the testimony of a witness as impeachable as McCalister requires us to consider with special care some of defendant's claims of error.

[*684] Over defense objection, McCalister was permitted to testify that during the first night, while Charlotte's body was being burned, defendant told her that he had killed three other people in the past. One killing was stated to have occurred when defendant was about 14 years old. The victim was a person who had killed the defendant's dog. The other killings were apparently stated to have occurred a number of years later, when defendant and another person killed two women because of a dispute over a union matter. In admitting the testimony, the court orally instructed the jury that the evidence was to be considered "solely on the issue of defendant's intent" and not for any other purpose. The court later gave a [***10] written instruction which was in the form of Illinois Pattern Jury Instruction, Criminal, No. 3.14 (2d ed. 1981) (IPI Criminal 2d) and stated:

"Evidence has been received that the defendant has been involved in offenses other than those charged in the information. You are not to consider such evidence as any proof that the defendant did commit such other crimes. This evidence has been received solely on the issue of the defendant's *motive*. This evidence may be considered by you for the limited purpose for which it was received." (Emphasis added.) IPI Criminal 2d No. 3.14.

Evidence that an accused has committed other crimes is inadmissible to show a propensity to commit crime. Its probative value in that respect is far outweighed, because it "overpersuades the jury" that the accused is a bad person. (*People v. Lindgren* (1980), 79 Ill. 2d 129, 137, 402 N.E.2d 238, 242; see also *Michelson v. United States* (1948), 335 U.S. 469, 93 L. Ed. 168, 69 S. Ct. 213.) The prejudicial effect of this type of evidence is [**504] strongest where, as here, the accused is charged with murder, and the collateral offenses are murders. Nevertheless, evidence of other [***11] offenses by the accused is admissible to prove a material issue such as the motive for the crime charged, the intent with which the accused acted in committing the offense or the *modus operandi* of the accused. *People v. Stewart* (1984), 105 Ill. 2d 22, 473 N.E.2d 840; *People v. McDonald* (1975), 62 Ill. 2d 448, 343 N.E.2d 489.

Here, the State contended that the evidence of defendant's statement to McCalister that he had

committed three other murders was admissible for the limited purpose of explaining why McCalister had failed for several years to come forward to law-enforcement authorities to tell them of how defendant had murdered Charlotte. She testified that she did not do so because she was afraid of defendant, and the State contends that his admissions of the murders helped explain [*685] why she feared him. In orally explaining to the jury that the evidence was admitted to show "intent" and in instructing the jury in writing that it was intended to show "motive," the court was apparently attempting to explain that the evidence could be considered in regard to McCalister's intent and motive in failing to report the crime. However, the oral instruction did [***12] not tell the jury that McCalister's intent was the target of the instruction, and the written instruction specifically referred to defendant's motive.

Defendant's admission of prior murders had no relevance to either his intent or motive in regard to the crime with which he was charged. The evidence as explained and limited by the instructions merely had the purpose of "overpersuading" the jury that defendant was a very bad person. The failure to refer to McCalister's intent in the oral limitation given to the jury was probably inadvertent, regardless, however, substantial error resulted. Because of the suspect nature of the testimony of McCalister, the State's principal witness and the only eyewitness, a new trial is required for this reason alone.

The foregoing error was compounded by the court's ruling on a difficult question of instruction concerning the impeachability of McCalister. The evidence showed that McCalister had been granted transactional immunity in exchange for her testimony. She had been charged by information with the murder, but the charge was withdrawn. The evidence showed that she would receive a \$ 20,000 reward offered by Charlotte's family if defendant [***13] were convicted. The defendant also contended that, under the evidence, she was shown to be an accomplice. The defendant requested that the jury be instructed separately as to how all three matters affected her credibility. The court refused each of the instructions but did give the following instruction as to the credibility of witnesses in general:

"In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case." IPI Criminal 2d No. 1.02.

The general policy in this State in instructing juries in criminal cases is not to comment on particular types of evidence. (IPI Criminal 2d No. 3.00; see also *People v. McClellan* (1978), 62 Ill. App. 3d 590, 378 N.E.2d 1221.) The format of IPI Criminal makes no provision for instructing the jury with specific reference to immunity given the witness or to the possibility that the witness might receive a reward upon conviction of the accused. Defendant calls our attention [*686] to *United States v. [***14] Garcia* (5th Cir. 1976), 528 F.2d 580. There, the prosecution's case depended entirely upon the uncorroborated testimony of an accomplice who stood to receive monetary gain from testifying. As here, a general instruction on credibility of witnesses was given, but no instruction keyed upon the specific ways in which the witness was subject to impeachment.

[**505] In the days before IPI Criminal, precedent existed for requiring specific instruction

which told the jury that a witness testifying for the prosecution had received immunity. (*People v. Lake Temple* (1920), 295 Ill. 463, 129 N.E. 85; *People v. Rees* (1915), 268 Ill. 585, 109 N.E. 473.) However, we interpret the intent of IPI Criminal to leave comment on such obvious factors affecting credibility as leniency and possibility of reward to argument of counsel and to the general coverage of such matters by the general instruction on the credibility of witnesses (IPI Criminal 2d No. 1.02 (2d ed. 1981)). We conclude that the court properly refused instructions on those issues.

The question of whether to give an instruction as to the untrustworthiness of accomplice testimony is a different matter. Traditionally, [***15] a special instruction on accomplice testimony has been required when an accomplice testifies for the prosecution. (*People v. Cobb* (1983), 97 Ill. 2d 465, 455 N.E.2d 31.) An instruction on that issue is provided for by IPI Criminal 2d No. 3.17. Such an instruction was tendered here by the defendant and refused. It told the jury that the testimony of an accomplice "is subject to suspicion and should be considered by [them] with caution." (IPI Criminal 2d No. 3.17.) We conclude that the refusal to give this instruction was also error.

The State objected to defendant's tendered accomplice instruction on the ground that the evidence did not indicate that McCalister had participated in the preparation for the killing of Charlotte Grabbe or the killing itself. Rather, the State asserted that her participation was after the fact of the killing, and, accordingly, no evidence indicated that she was guilty either as a principal or under the accountability rule of section 5 -- 2(c) of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 5 -- 2(c)). The trial court first indicated that it would give the instruction, because McCalister had been charged with the murder. However, [***16] it later decided not to give the instruction when it was revealed that the charges against McCalister were brought by information, and no probable cause hearing had ever been held.

As stated in *Cobb*, the test as to whether the instruction must be given is whether the prosecution witness alleged to be an [*687] accomplice could have been indicted for the offense. (*People v. Cobb* (1983), 97 Ill. 2d 465, 476, 455 N.E.2d 31, 35; see also *People v. Nowak* (1970), 45 Ill. 2d 158, 258 N.E.2d 313.) Whether the witness could have been indicted depends, of course, upon whether probable cause exists to believe the witness was guilty of the offense for which the defendant is charged, either as a principal or by accountability. (*People v. Robinson* (1974), 59 Ill. 2d 184, 319 N.E.2d 772.) Probable cause arises from a showing which is less than that necessary for a *prima facie* case. *Illinois v. Gates* (1983), 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317.

Although the evidence indicates that any participation in the murder by McCalister was passive in nature and not great, we conclude that probable cause was shown of her guilt by accountability under the provisions [***17] of section 5 -- 2(c) of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 5 -- 2(c)). That section states that one is accountable for the conduct of another if, before the offense is committed, he or she aids the other with the intent to facilitate the commission of the offense.

McCalister admitted on cross-examination that in a short period of time before July 24, 1981, defendant had twice told her that he intended to kill Charlotte. When questioned as to her

reaction to one of the statements, she responded that she considered defendant's threat as being the type of statement that a spouse was likely to make during a marital dispute. As to the other statement, McCalister indicated that her reaction was that defendant's intentions were none of her business. A trier of fact could reasonably conclude from the evidence that McCalister knew defendant intended to kill Charlotte.

McCalister admitted that a few days before July 24, 1981, she called Charlotte at [**506] defendant's request, to attempt to persuade her to come to a restaurant in Terre Haute. McCalister testified that she did this hoping to lure Charlotte there so she could talk to defendant, [***18] and that this would aid in an attempt at reconciliation. However, McCalister admitted she told Charlotte that the reason she wanted Charlotte to come there was so that she, McCalister, could give Charlotte some information that would be helpful to Charlotte in obtaining a divorce from defendant. In view of the relationship that McCalister had with defendant at that time, a trier of fact could reasonably conclude that McCalister was not attempting to lure Charlotte to Terre Haute in aid of reconciliation, but in aid of defendant's intent to kill Charlotte.

McCalister testified that she was with defendant at Pickens Place on July 24, 1981. She explained that she drove towards that place in [*688] a pickup truck, but that defendant required that she park the vehicle some distance away so that Charlotte and members of defendant's family would not know of her presence. She also explained that later, when the tractor Charlotte was driving approached the tool shed, defendant had her hide so that Charlotte would not see her. If McCalister hid knowing that defendant intended to kill Charlotte, and did so intending to help him kill Charlotte, she would be guilty of murder by accountability [***19] under section 5 -- 2(c) if the fact she remained hidden, did, in fact, facilitate the killing. McCalister clearly admitted to being of aid to defendant in disposing of the body. This conduct would not be part of the offense of murder but the *Cobb* court considered after-the-fact aid given by an alleged accomplice as bearing upon the nature of an alleged accomplice's conduct prior to the offense.

We hold that probable cause existed to charge McCalister with the murder of Charlotte.

The State was permitted to introduce into evidence portions of a note, purportedly written by Charlotte a few days before July 24, 1981. Those portions stated that (1) she and defendant were getting a divorce; (2) she feared for her life; and (3) she was trying to obtain the farm for her son and herself. Evidence of statements of intent have been considered admissible, as an exception to the hearsay rule to show the intent of the declarant. (E. Cleary & M. Graham, Illinois Evidence sec. 803.4 (4th ed. 1984).) The evidence was admitted here to show that Charlotte did not intend to leave this area. However, in *People v. Cole* (1975), 29 Ill. App. 3d 369, 329 N.E.2d 880, a majority of this court, [***20] in holding that no reversible error resulted from admitting such evidence, stated that this exception to the hearsay rule was not proper in a criminal case. The indicated reason for that *dictum* was that the evidence violated the defendant's right of confrontation. Other districts of the appellate court have held to the contrary. *People v. Jones* (1980), 84 Ill. App. 3d 896, 406 N.E.2d 112; *People v. Reddock* (1973), 13 Ill. App. 3d 296, 300 N.E.2d 31; see also Fed. R. Evid. 803(3).

Consistent with the decisions of our brethren in other districts and other persuasive authority, we choose to rescind the *dictum* of *Cole* and to follow the special concurrence of Justice Trapp in that case. (*People v. Cole* (1975), 29 Ill. App. 3d 369, 380-81, 329 N.E.2d 880, 889-90 (Trapp, J., specially concurring).) As he pointed out, evidence of such statements are an accepted exception to the hearsay rule and bears a sufficient indicia of reliability to be admissible even against a defendant in a criminal case. (See *Dutton v. Evans* (1970), [*689] 400 U.S. 74, 27 L. Ed. 2d 213, 91 S. Ct. 210.) Defendant's contention that admission of this testimony here violated [***21] his right of confrontation is not well taken. On retrial, such testimony should not be refused for that reason. Whether it will otherwise be admissible will be a question for the court to decide upon retrial depending upon the situation at that time.

Our brief comments on defendant's other claims of error are as follows. He complains of limitation placed upon the cross-examination of defendant's son, [**507] daughter, and daughter-in-law. We conclude that the limits placed upon the cross-examination were well within the discretion of the court in view of the fact that the witnesses did not give highly significant testimony. Defendant's complaints concerning discovery involve information that is now available to the defense. Under the circumstances here, we find no error in the trial court's exclusion of defense testimony concerning epileptic seizures suffered by defendant after July 24, 1981. Whether such evidence is admissible on retrial will depend upon the state of the evidence at that time. Whether an instruction on prior inconsistent statements need be given on retrial will also depend on the state of the record. The question of whether to permit expert testimony [***22] in regard to the types of grease guns available is a matter within the sound discretion of the court.

As we have indicated, we deem the errors described to require a new trial as to both offenses. No question is raised as to the sufficiency of the evidence to support the attempted-subornation-of-perjury conviction, and it was not dependent upon the testimony of McCalister. However, we deem the prejudice from the admission of the evidence of defendant's commission of prior murders to require retrial of that issue as well as the murder charge. Accordingly, we reverse the judgments of convictions entered and the sentences imposed thereon. The cause is remanded to the circuit court of Clark County for a new trial.

Reversed and remanded.

Note: This case was remanded on grounds other than failure to produce a body. The subsequent trial was successful and Mr. Grabbe is currently serving time.

CORPUS DELECTI

It is possible to prove a homicide without a body.

An edited summary from *Perkins on Criminal Law*, 1969, Foundation Press, Mineda, NY (A Hornbook), pages 100-102.

Time and again courts have gone out of their way to emphasize that finding the dead body of the victim is not indispensable in a murder prosecution. Disposing of a piracy case in 1705, an English court said: "By the '*corpus delicti*', subject of the crime, is not meant that the subject of the crime must be so extant as to fall under the senses; but that the loss sustained is felt and known. As for example: in the crime of murder, though the body cannot be reached, yet the particular loss is known." *Captain Green's Trial*, 14 How.St.Tr. 1199, 1246 (Scot.Adm. 1705).

On the other hand, it must be mentioned that proof of the unexplained disappearance of the alleged victim is never sufficient in itself to establish the *corpus delicti*. "It is...dangerous to infer the death of a person from...his sudden and unaccountable disappearance, even when followed by long continued absence." *Edmonds v. State*, 34 Ark. 720, 744 (1879).

PUBLIC MEETING

At a large and respectable meeting of the citizens of Springfield, held on the evening of the 22nd inst., for the purpose of expressing the feelings of the community in relation to the late supposed murder in this city.

On motion, WM. D. Herndon, Esq. Was called to the chair. And J.N. Francis appointed Secretary.

At the request of the Chair, Dr. E.H. Merryman, in a few remarks, stated the object of the meeting.

On motion by CHAS. R. HURST, a committee was appointed, consisting of C. R. Hurst, E.D. Baker, E.H. Merryman and James Gourly, to draft resolutions expressive of the sense of the meeting.

After a short consultation, the committee reported the following preamble and resolutions, which were unanimously adopted.

WHEREAS, great excitement has been created in the city of Springfield and its neighborhood, by a report that one Archibald Fisher had been murdered in or near this city some time since, which report has been widely circulated; and whereas, a most diligent search and examination has been made by the public authorities and private citizens to ascertain the truth of said report, and the said Archibald Fisher has been produced in Springfield alive and uninjured, and identified

to our satisfaction to be the same individual who was supposed to have been murdered, and whereas we deem it due to the community and to the individuals who have been accused of the murder, that the reports which have gone abroad should be corrected, and the apprehension of the public quieted. RESOLVED, That we are satisfied that there remain no grounds for suspicion that any murder has been committed in this vicinity. RESOLVED, That we deeply regret that our fellow citizen, ARCHIBALD TRAYLER, should have been suspected of so foul a crime; and that the respect we have long entertained for his integrity and upright deportment, has been in no wise diminished by the accusation made against him before those circumstances were known; and that we are convinced that all such suspicions and accusations are utterly unjust and untrue, and are not justified by the circumstances developed on the examination, but are strongly repelled by his past peaceful conduct and amiable character. On motion, the city papers were requested to publish the proceedings of the meeting. Meeting adjourned.

WM. D. Herndon, Ch'm.

J.N. Francis, Sec'y