

Putnam County Circuit Court Criminal Minutes Putnam County, TN – Vol. 14
(1935 – 1937) to Vol. 15 (1937 – 1940)

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 18,
MURDER, RESET, MAY 28, 1935 - - Judge Harry Camp Presiding.

Came the Attorney General, on behalf of the State and, also the defendant, Homer Robert, on a charge of Murder, when by agreement this case is reset for trial on May 28, 1935 of the present term of this court.

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 18,
MURDER IN FIRST DEGREE. TRIAL BEGUN, JURORS SELECTED, AND
RESPITED.

Came the Attorney General on behalf of the State. Also came the defendant Homer Robert, in proper, person and by counsel on a charge of Murder in the First Degree. Whereupon the defendant, being arraigned and charged upon the indictment against him in this case, charging him Murder in the First Degree, for plea there to, says that he is not guilty, of Murder in the first degree as charged in the indictment against him in this case and for his trial put himself upon the country, and the Attorney General for the State doth the like.

THEREUPON, the Court proceeded as the law directs, to select and empanel a Jury to try this case. When the following good and lawful men of Putnam County, Tennessee, were selected, to Witt: J.P. Romines, Thomas Carter, Clarence Maddux, Bud Tays, Sam Ford, Mitchell Stamps, Riley Haney, M.H. Wakefield, Chas Jackson, Byron Bartlett were selected and there not being time on account of the lateness of the hour in which to complete the selection of the Jury in this case, the ten Jurors already selected, were placed in charge of N.K. Mathews and Johnnie Bohanan, Duly appointed, qualified and acting deputy sheriffs of Putnam County, Tennessee, sworn in due and legal form of law to take charge of the Jury in this case to keep them together, separate and apart from all other persons, said officers of the Jury being directed by the Court, to return the ten Jurors already selected into open Court at the meeting thereof tomorrow morning.

Thereupon Court adjourned until 8:00 o'clock a.m. tomorrow morning.

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO.
18, MURDER IN FIRST DEGREE. TRIAL RESUMED, JURY COMPLETED,
EVIDENCE HEARD, APRT OF COUNSEL HEARD AND JURY RESPITE.

Came again the Attorney General on behalf of the State, and also came again the defendant, Homer Roberts, in proper person and by counsel on a charge of Murder in the First Degree. Also came again the ten Jurors drawn, elected, tried and empanelled in this

case on yesterday, in charge of N.K. Mathews and Johnnie Bohanan, their sworn officers as aforesaid.

AND THEREUPON, the court proceeded as the law directs to select the remaining two jurors in this case. When Robert Lowe and John Lee, were drawn as Jurors in this case, said two Jurors so drawn together with the Jurors drawn on yesterday compose and constitute the Jury in this case. Said Jurors, being duly and legally drawn, elected, tried, and empanelled as the law directs. Were sworn in due and legal form of law, to well and truly try the issues joined between the State of Tennessee, and the defendant, Homer Roberts, on a charge of Murder in the First Degree, and a true verdict render according to law and the evidence, and said Jurors, after hearing all of the evidence introduced on the trial of this case and a part of the argument of counsel, and there not being time on account of the lateness of the hour to proceed further with the hearing of this case on today, the Jury was permitted to retire in charge of N.K. Mathews and Johnnie Bohanan, their Sworn officers aforesaid, Said officers of the Jury being directed by the Court to return the Jury into open Court at the meeting thereof on tomorrow morning, at 8:00 o'clock, a.m.

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 18, MURDER IN THE FIRST DEGREE. VERDICT GUILTY OR VOLUNTARY MANSLAUGHTER, TWO YEARS IN PENITENTIARY, MOTION FOR NEW TRIAL TO BE HEARD JUNE 1, 1935.

Came again the Attorney General on behalf of the State. Also came again the defendant, Homer Roberts, in proper person and by counsel, on charge of Murder in the First Degree. Also came again the same Jurors, drawn, elected, tried and empanelled and sworn in this case on a former day of the present term of this court, to wit: J.P. Romines, Thomas Carter, Clarence Maddux, Bud Tays, Sam Ford, Mitchell Stamps, Riley Haney, M.H. Wakefield, Chas Jackson, Byron Bartlett, Robert Lowe and John Lee, in charge of N.K. Mathews and Johnnie Bohanan, their sworn officers, as aforesaid, and said Jurors after hearing the remainder of the argument of counsel and the charge of the Court, which charge of the court was in writing, retired, in charge of their sworn officers aforesaid, to consider of their verdict, carrying with them said written charge of the Court and also the Indictment in this case, and after due deliberation, said Jurors returned into open Court in charge of their sworn officers aforesaid, and returned their verdict in open Court, and upon their oaths aforesaid, do say that they find the defendant Homer Roberts guilty of Voluntary Manslaughter, and that they upon their oaths aforesaid, do assess the penalty of the defendant, therefore at confinement in the Penitentiary of the State of Tennessee, for a period of Two Years.

THEREUPON the defendant moved the Court to set aside the verdict of the Jury, and grant him a new trial, and for satisfactory reasons appearing to the Court, the filing and hearing of said motion is set for Saturday, June 1, 1935, of the present term of this Court.

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 18,
MURDER, MOTION FOR NEW TRIAL, RESET FOR HEARING ON JUNE 17, 1935.

Came Attorney General on behalf of the State, and also came the defendant Homer Roberts in proper person and by counsel, on a charge of Murder, and the motion for a new trial heretofore in this case by the defendant, having been set for hearing today and there is not being time to hear said motion today the same is reset for hearing on June, 17, 1935, of the present term of this Court.

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 18,
MURDER. MOTION FOR NEW TRIAL, HEARD, OVERRULED, AND APPEALED.

Came again the Attorney General on behalf of the State, and also, came again the defendant, Homer Roberts, in proper person and by counsel on a charge of Murder. Whereupon, the defendant filed his motion for motion for a new trial, which motion is as follows:

- I. There is no evidence to support the verdict of the Jury.
- II. The evidence preponderates in favor of the theory and contentions of the defendant and against the theory and contentions of the State.
- III. Different members of the Jury have told the defendant and his counsel that the conviction in the case was had upon the testimony of the officers who went to the scene the next morning after the shooting - - that is, that they believed the lower right panel had not been split, bursted or kicked out of the door and that if they had believed the panel was split, bursted or kicked out of the door that they would have returned a verdict of not guilty in favor of the defendant.

This being the sole issue of fact upon which the verdict turned, the defendant respectfully submits the following newly discovered evidence with reference thereto: Carl Burgess and F.C. Johnson, at different times early the next morning after the shooting passed by the premises where the shooting occurred, before the officers, Charlie Norton, Dorman Grider, Oscar Gaw, Burf Henry and John Peek came there to make an investigation and they saw and know that at that time the lower right panel of the door had been split and bursted out.

Affidavits in support hereof are as follows:

AFFIDAVIT OF HOMER ROBERTS.

Homer Roberts, being duly sworn, says that he did not know that Carl Burgess or F.C. Johnson, or either of them passed by the scene of the shooting early the following morning and saw that the lower right panel had been split, bursted or kicked out; that he did not know this at the time or before the trial; that he had no way of knowing these facts and he could not have known them by the use of reasonable diligence.

Homer Roberts ----- subscribed and sworn to before this 17th day June 1935.
Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF H.H. CLARK, F.E. HARRIS, JOHN D. HOLLADAY:

F.E. Harris, H.H. Clark and John D. Holladay, being duly sworn say that they are all of counsel representing Homer Roberts in this case; that they did not know at or before the trial that Carl Burgess or F.C. Johnson, knew anything about the circumstances of this case, nor could they have, by the use of reasonable diligence, ascertained these facts.

H.H. Clark, F.E. Harris, John D. Holladay - -Subscribed and sworn to before me this 17th day of June 1935.

Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF CARL BURGESS

Carl Burgess, being duly sworn, says that he was at the rent house on the Homer Roberts property early the next morning after Homer Roberts shot Otis Loftis and that he was looking about the premises before the officers, Charlie Norton, Dorman Grider, Oscar Gaw, Burf Henry and John Peek came there to investigate and that he saw that the lower right panel in the door that had been shot through was split and bursted out as if it had been kicked or struck a violent blow.

That he had not communicated this fact to the defendant, Homer Roberts, not to his counsel until after the trial of the case in Criminal Court.

Carl Burgess - - Subscribed and sworn to before me this 17th day of June 1935.

Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF F.C. JOHNSON

F.C. Johnson, being duly sworn, says that he remembers the night that Homer Roberts is said to have killed Otis Loftis and that next morning early before the mail passed the Roberts house, he was by the rent house where the shooting is said to have taken place and that he saw the front door at that time. He saw a hole that appeared to have been made by a shot diagonally through the center part of the door and the right lower panel was split out of the door.

He swears that he is not related to the defendant, Homer Roberts, in any way and does not have any interest in the outcome of the lawsuit except that justice be done and these facts were not communicated to Homer Roberts or any of his lawyers before the trial or during the trial and they had no way of knowing about his having seen the things detailed above, at or before the trial.

If place on the Witness stand, he will there swear the same things set out in his affidavit. June 10, 1935.

F.C. Johnson - - Subscribed and sworn to before me this 10th day of June 1935.

Elizabeth Clouse, Notary Public, Putnam County, TN

- IV. During the trial of the case, Sam McCulley and Charlie Norton, both of whom as Deputy Sheriffs in Putnam County, swore that the defendant, Homer Roberts, threatened the life of Otis Loftis on an occasion when the defendants property was searched for whiskey under a search warrant.

This testimony is wholly false and the defendant submits the following affidavit to show as much:

AFFIDAVIT OF W.A. HERREN

W.A. Herren, being duly sworn, says that he is a Constable of Putnam County, that he is the officer who read the search warrant to Homer Roberts at the time a search was made of his premises when Otis Loftis, Charlie Norton, Sam McCulley, W.T. Hickey and Arthur Massa, were present and that he knows positively that Homer Roberts did not make any threatening statements to Otis Loftis or about him on that occasion. He says further that he walked along the road from the Roberts property to the home of J.S. Herren, Justice of the Peace, immediately after the arrest and that during the entire time nothing was said by the defendant with reference to the deceased, Otis Loftis.

W.A. Herren -- Subscribed and sworn to before me this 1st day of June 1935.
Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF W.T. HICKEY

W.T. Hickey, being duly sworn, says that he is a Deputy Sheriff of Putnam County, and he was along with Otis Loftis, Charlie Norton, Sam McCulley, W.A. Herren and Arthur Massa, at the time they searched the premises of Homer Roberts.

He further says that at the time the search warrant was read to the defendant, Homer Roberts, that he was eating dinner and that he went back to his meal and finished it and that he never did at any time on that occasion says that he would get even with the deceased, Otis Loftis, nor did he threaten him in any way.

He further states that he was summoned to appear as a witness in the Homer Roberts case on behalf of the State of Tennessee but that he was not used.

W.T. Hickey - - Subscribed and sworn to before me this 1st day of June 1935.
Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF ARTHUR MASSA

Arthur Massa, being duly sworn, says that he is not an officer, of the law but that he was present a the time Otis Loftis, Charlie Norton, Sam Mccully, W.T. Hickey and W.A. Herren, came to Homer Roberts' house and searched his premises.

He further says that he was present all of the time that said search was in progress and while these parties were on the premises and that he went with said parties on down to the home of Justice of the Peace, J.S. Herren, and that he knows positively that the defendant, Homer Roberts, never threatened the deceased, Otis Loftis in any shape, form or fashion nor did he threaten any of the officers or say that he would get revenge on them.

Arthur Massa - - Subscribed and sworn to before me this 1st day of June 1935.
Elizabeth Clouse, Notary Public, Putnam County, TN

AFFIDAVIT OF V.P. MAXWELL

V.P. Maxwell, being duly sworn, says that he is a resident of the 16th Civil District of Putnam County, Tennessee, and that shorth while after the shooting of Otis Loftis, he was in Baxter standing in a group of men, discussing the shooting and that one, Thomas Carter, who was later taken on the Jury that tried Homer Roberts, for killing Otis Loftis, was standing there also and that he expressed his opinion by saying that he thought the defendant, Homer Roberts, should have found out who was at the door before he shot, or works to that effect.

He further states that he had never discussed this conversation with the defendant, Homer Roberts, nor was he present in the Court room when Thomas Carter was taken for Jury service, but told the defendant and his counsel about this matter later.

V.P. Maxwell - - Subscribed and sworn to before me this 1st day of June 1935.
Elizabeth Clouse, Notary Public, Putnam County, TN

WHEREFORE, the defendant moves the Court to set aside the verdict of the Jury and grant him a new trial for the foregoing reasons, so that the ends of Justice may be met.

F.E. Harris, Holladay, & Clark - - Attorneys for defendant.

Which motion being seen, heard, and understood by the Court, after due consideration thereof, by the Court, the same is overruled and the disallowed by the Court.

To which action of the Court, in overruling and disallowing his said motion for a new trial, the defendant excepted at the time and now excepts.

The defendant, thereupon moved the Court in arrest of Judgement, and for grounds thereof assigns the same reasons set out in his motion for a new trial.

Which said motion in arrest of Judgement being seen, heard and understood by the Court, after due consideration thereof by the Court, the same is overruled and disallowed by the Court.

To which action of the Court in overruling and disallowing his said motion in arrest of Judgement, the defendant excepted at the time now excepts.

The Court then inquired of the defendant if he had anything further to say why the Court should not proceed to Judgement and execution thereof against him in this case, when the defendant nothing further saith then heretofore he has said.

It is, therefore the Judgement of the Court, that in accordance with the verdict and finding of the Jury in this case, the defendant, for his said offense of Voluntary Manslaughter be confined at hard labor in the penitentiary of the State of Tennessee, at Nashville, Tennessee, for period of not more than two years nor less than two years, and that he pay the costs of this prosecution, for which execution will issue, and that he suffer all the pains and penalties imposed by the Statute in such cases.

To which action of the Court in overruling his motion for a new trial and his motion in arrest of Judgment, and in pronouncing sentence upon him in this case, the defendant excepted at the time and now excepts, and prays an appeal to the next term of the Supreme Court at Nashville, Tennessee, which to his is granted, and for satisfactory reasons appearing to the Court the defendant is allowed 60 days from this date in which to prepare, have signed by the Court and file with the Clerk of this Court shall be and become a part of the record in this case. But the Bill of Exceptions must be placed in the hand of the Attorney General for his inspection within 40 days from this date.

The bail of the defendant is fixed at \$1000.00 by the Court, which he will make to the Sheriff of Putnam County, Tennessee.

HOMER ROBERTS VS THE STATE - - PROCEDENDO - - FILED APRIL 22, 1936,
I.G. RODGERS, CLERK

To the Honorable Judge of the Circuit Court of Putnam County, holding and presiding at Cookeville, Tennessee: WHEREAS, in our Supreme Court at Nashville, at its December term 1935, it was adjudged and ordered in the cause, Homer Roberts VS the State, appealed to our said Court from said Circuit Court that he be remanded thereto for further proceedings and final determination therein.

THESE ARE, THEREFORE, To require you, the Court as aforesaid, that you proceed with the execution of this Judgement of our said Supreme Court, by such further proceedings in your Court as shall effectuate the objects of this order to remand, and attain the ends of Justice.

WITNESS, DAVID S. LANSDEN, Clerk of our said Court, at office in Nashville, the first Monday of December, 1935.

David S. Lansden, Clerk - - Fiat Justitia, Ruat Coelum, Supreme Court, Nashville

STATE OF TENNESSEE

BE IT REMEMBERED, that a Supreme Court of Errors and Appeals, begun and held at the Capitol, in the City of Nashville, on the first Monday of December 1935 it being the first Monday of December, 1935 when the following proceedings were had, to wit:

HOMER ROBERTS VS THE STATE, PUTNAM CRIMINAL

Came the plaintiff in error in proper person and by counsel, and also came the Attorney General on behalf of the State, and this cause was on the transcript of the record from the Circuit of Putnam County; and upon consideration thereof the Court is of opinion that there is reversible error on the record for the reasons stated in the opinion, filed.

It is, therefore ordered by the Court that the Judgement of the Court below be reversed, the verdict of the Jury set aside, and the cause remanded to the Circuit Court of Putnam Country for a new trial. The State of Tennessee will pay the costs of the Appeal, which will be certified to the Comptroller for payment in the manner required by law. The plaintiff in error may be admitted to bail on bond or recognizance in the penalty of \$1000.00, with below; and in default of such bond or recognizance he will be remanded to the custody of the Marshall of this Court and by delivered to the Sheriff of Putnam County, to be safely confined until he be again tried or legally discharged.

OFFICE OF THE CLERK OF THE SUPREME COURT OF THE MIDDLE DIVISION OF THE STATE OF TENNESSEE.

I Preston Vaughn, Clerk of said Court, do hereby certify that the foregoing is a true, and complete copy of the Judgement of said pronounced at its December Term 1935, in the Case of Homer Roberts VS the State, as the same appears of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of the Court, at office in the Capitol, at Nashville, on this the day of April, 1936.

David S. Lansden, Clerk

Fiat Justitia, Ruat Coelum - - Supreme Court, Nashville

THE STATE OF TENNESSEE VS HOMER ROBERTS – FELONY DOCKET, NO. 7, MURDER, JURY, VERDICT “NOT GUILTY.”

Came the Attorney General on behalf of the State, and also, came the defendant, Homer Roberts in proper person and by counsel, on the charges of Murder in the First Degree. Whereupon, the defendant being arraigned and charged upon the Indictment against him in this case, charging him with Murder in the First Degree, for plea thereto says that he is not guilty as charged therein and for his trial put himself upon the country, and the

Attorney General for the State, doth the like. Thereupon the proceeded as the law directs, to select and empanel a Jury to try this case, when the following good and lawful men of Putnam County, Tennessee, were selected to wit: Oscar Tucker, Noah Webb, John Ferguson, Lonnie Phillips, E.M. DuBois, Pierce Loftis, Polk Tallent, Lige Knight, Monroe Mayberry, Winton Anderson, Addison McCaleb, and John Judd, Said Jurors being duly and legally drawn, elected, tried, and empanelled as the law directs, were sworn in due and legal form of law, as the law requires, to well and truly try the issues joined between the State of Tennessee and the defendant, on the charge of Murder in the First Degree, and a true verdict render according to law and the evidence, and Said Jurors, after hearing all of the evidence, introduced on the trial of this case, argument of counsel and the charge of the Court, after due deliberation upon their oaths aforesaid do say that they find the defendant not guilty of Murder in the First degree, as charged in the indictment, against him in this case. It is, therefore, ordered by the Court, that the defendant be discharged, and that he go hence without day, and recover of the State of Tennessee, all the legal costs accrued in this case on behalf of the State of Tennessee, and the Clerk of this Court will certify the same to the Comptroller of the Treasury of the State of Tennessee, for payment as provided by law.