

November 1869

State

vs.

Graham, John

Maliciously killing a hog

Killed hog belonging to John Huskey;
Jeremiah Hestington, African American,
originally charged with defendant before
JP, but discharged; depositions, bill
of exceptions; Supreme Court

State of Maine } Prosecution for
John Graham } Grand Larceny
Jeremiah Herrington } before Justice James
C. Porter -

John Huskey Sr. being sworn
on the part of the State deposes
& says, & on this day, last one
of the boys went out turkey
hunting, my boys came
and told me that ^{one of my hogs was} ~~they had~~
killed ~~a~~ ~~of my hogs~~ & I went
& seen it, I found ~~the~~ ^{my} hog per-
haps ~~a half~~ between a quarter
& a half a quarter from my
house, perhaps a half mile
I went and seen it, the boys says
to me what will you do about
it, I said that I was going to wait
there and see who would come
& get it, I ~~waited~~ remained there - I
went up ~~and~~ hid myself in the
bushes so that I could see them
when they come, John Graham &
Jeremiah Herrington come, they had a wagon
& two mules. They came up & stopped
when they came on our sign & stood
there a little bit, and I then heard
Graham say something I could
not tell what, & Jerry he started
the mules & drove up to the hog

& then one of the boys rose out
of the bushes & started to them
As soon as they seen as they
stopped the mules, says I I have
catch~~ed~~ed you at last, or
somehow that way, Graham
says catch~~ed~~ed me, caught me
what can you make of it, I
~~said~~ it is a wild hog, I said
it is my hog that is what I can
make of it, Says I There's the
mark, Graham says I know
it is in your mark, And said
he knew it was my hog, I don't
deny that it is your hog, I said
didn't you follow the black hog
and he said yes, that he felt
lured the other after he shot
this one - ~~the~~ Miller told me that he
knew it was my hog ^{when} ~~when~~ he come back
with the wagon - & Graham said I don't deny shooting
the hog, he did not tell me when he
discovered that the hog was mine -
My son Charles asked Graham
when he found out that it was
Daddy's hog why did you not
come & tell him, & Graham said
what time would it have been
if I had went and told you

Patton & then took the hog to Sam Herringtons & cleaned it,

Graham said to Jerry come & look at him & see what big teeth he has got. Jerry left the team & came and looking at the hog, & ~~and~~ turned up his ears & let him examine his teeth, and Jerry said that Sam Herrington owns no such hog, as that if he did he has never seen it, I told Elee to go home & get our wagon to haul him home. Elee started, and ~~and~~ then they started with their wagon back home, I took the hog home, and Graham said to me what will you give me to kill the other hog the black one, I said to him let him alone. let him alone says he. The hog they killed was 5 or 6 years old, and run in brush between me & Sam Herringtons, the hog was of the Berkshire breed mostly black, white faces and a few white spots on him, & was marked in my mark, and my mark is - a crop off the right ear ~~the left side, and half ear~~ and upper half crop off the left. He was laying like any other hog

shot, there was a bed there
& the hog was laying by it. The
hog was shot in the right side of the
head just under the ear, the
~~smooth cropper~~. The ball did not
come out. I found another
hole in him, looked like the
wound had been made the day
before, I saw my boys run their
fingers into the wound in the
neck, I told them to do it,

there was snow on the ground
~~on~~ the morning ^{of the day}, that my hog
was killed, there was the track
of another hog, at the place
where this one was killed, I took
the track of the other one and
it appeared that some one ~~was~~
& had followed it, I ~~follow~~ did
not follow the track of the other
hog far. It was bushy where the
hogs were, it was so bushy that
you could not travel with a
wagon in the night. Me and my
sons went forty or 50 yards from
where the hog was killed and sat down
in the brush to ~~is~~ see who would
come after it. The brush was so
thick that in some places you would

have to get close to a hog to shoot it & in other places you could shoot them at a greater distance. My black hog was marked in my mark, he was about 2 years old past & not as large as the one killed. The one that was killed weighed just two hundred ^{after dressing}, and was worth about twenty dollars. The hog that was killed I am positive was mine. I don't know where Graham has been living for the past 2 years. He has not been living where he now lives. It was about 8 or 10 o'clock when I found my hog dead. I sat and waited about 2 hours before Graham & Jerry came for the hog, it is about 2 miles from ~~the~~ where the hog was killed to Sam, Hennington's. The boys said that the wagon was Sam Hennington's. The wagon had no key on.

XXX

The ^{that was} hog killed was 5 or 6 years old, I killed all his mates, but he was so cunning that I could not get hold of him, ^{without a heap of trouble} and I had plenty to do me. The hog was black and some white spots on him about. I called him a black & white spotted hog. The brush was very thick where the hog was killed. Some places were open & you could shoot a good ways & other places very thick. I ~~think~~ would, by the way he was laying judge that the hog was shot laying down.

~~Graham said he knew.~~

Graham said that he shot the hog & went and looked at the mark and then said he knew that it was my hog, I Graham said after he shot it ~~he~~ knew it was my hog,

When Graham & I met he said he knew that it was my hog,

Question - Did Mr Graham use this exact language, "I knew that hog was yours before I saw you,"

Answer - No I can't say that he used that language -

~~Question~~ ~~Mr Huxley~~ I commenced the conversation when Graham came up with the wagon, I said ~~I~~ have caught you at last, and Graham said "caught me caught me" & then Graham said what can you make up it he is a wild hog, I told him I would tend to or have it tended to and we would see what could be done with him for killing the hog, ~~he~~ I don't recollect the next that he said, ~~he~~ I think that Graham made light of the matter, ~~he~~ but I can't say exactly what words he used,

We were at the hog when this conversation was going on, He observed that it might be some one else's hog, I told him

that there was but two in the country, that
 marked in that mark & that was his
 Patchen & my Jim, and Lyrahm said
 yes that is so, I have stated pretty
 much all the conversation between me & Lyrahm
 up to this time, ~~for~~ Lyrahm looked at
 the mark of the hog & then agreed that it
 was my hog, When he ~~first~~ came up
 and I told him that I had caught him,
 I told him that it was my mark and
 he said yes it was, ~~as soon~~ When I told
 him that the hog was in my mark he then
 said the hog was mine, ~~I don't recollect~~
~~of Lyrahm saying that he knew it was my~~
~~hog before he went for the wagon,~~

Question — Did you at any time Mr Lyrahm
 at any time during the conver=
 sation at the hog — tell you that
 he knew it was your hog before
 he went for the wagon?

Answer — I understood him that when he shot
 the hog & went & examined it, he then
knew it was my hog from the mark.
~~Mr Lyrahm did not say that~~ I don't
 remember that Lyrahm told me
 that he knew my mark before I told
 him what it was,

Before we went & looked at the ears ~~he~~
~~told me that he knew it was my hog~~

Graham said that when he went
& looked it he knew it was my
hog from the mark -

Graham has not lived ^{any} near me for
at any time, than he does now,

Graham has never lived in my neigh-
borhood, I don't know that Graham
stated how that he knew my mark,
Question, Did Mr Graham say that he knew
your mark before you told
him what it was?

Answer - I understood him that when ~~not~~ he
shot the hog and went up and seen
it he then knew it was my mark
& my hog.

Question, Did Mr Graham ~~say that~~ he tell you
that he knew your mark before
you told him what it was?

Answer - Why yes,

Q - what did he say your mark was

Ans. He didn't say - he only said he knew
it - ~~Mr Graham did not~~

I don't recollect that Graham told
me how long he had known
my mark -

He said that when he seen the hog
he knew it was mine,

My sons Charles & ~~Charles~~ Huskey and
Jackson ride men were with me

during a greater part of ~~our~~ my
 conversation with Abraham
 Charles staid all the time that
 we were conversing, ~~then~~
 & this took place in Jefferson
 County in the State of Missouri
 John Husky

Charles Huskey on the part of the State
 being sworn deposes and says,
 I am acquainted with John Abraham
 & Jeremiah Hennington, Abraham lives
 on the waters of Big river near Sam
 Hennington, about 2 miles from my
 father's I saw a son of John Huskey
 Sr. & live with him. I went with my
 brother to hunt a hog of my father's, we
 found it a little over a half mile from
 my father's, my brother Elie was
 with me. We found the hog dead, it had
 been shot ~~in~~ the side of the head, on the
 right side just below the ear, there was
 the track of one man where the hog was
 killed. The track went toward where
 the hog was lying and then went off
 after the track ^{did not follow the track} of another. I then
 staid there - and sent my brother
 Elie after my father,

my father & brother Elie came back,
Then I went after the fellows
truck & the other hogs, I tracked
them about a quarter of a mile, I found
them that he had quit that track - I
found out that he had left the track
by making a circuit on the North
hill side where the snow was on
the ground and found the hog track
but not his - I then went back to my
father - We then hid in the brush and
watched till he came, Jeremiah & John
Graham come, with mules and a
wagon - We watched them a little bit
to see what they would do - They began
to drive the mules & wagon up to put the
hog on - then we went down to where
they were - My father says well I have
caught you this time - well says Graham
what of it if you have caught me -
says Graham it is a wild hog -
* My father asked Graham what he was
going to do with it, Graham says I knew
it was your hog - said I to Graham
why didn't you send him word that
it is his hog, Graham said against
I could have sent you word or went
& told you it would have been too
late to have ^{taken it to Henningsons and} cleaned it - He said

that he knew it was my fathers hog when he shot it down & went up & seen it — & then it was when he said that, that I asked him why he didn't inform my father, — Graham said to Jerry come and look what teeth it has got. Jerry was then still on the wagon.

Jerry got off the wagon and came to the hog — My Father says I don't think that Sam has got any such hogs in the woods. Jerry said I don't think he has either if he has I've never saw them.

Graham said he followed the other hog & would have killed him if he could. Graham went off & said to my father what will you give me to kill the other one, and my father said do you let the other one alone — said Graham let him alone — ha! Graham then drove off with the wagon & left the hog. My ~~brother~~ we took the hog home with us. I am satisfied that the hog found in the woods was my fathers — My Fathers mark is a smooth crop off the right ear and an upper half crop in the left that hog was in that mark. My Father raised that hog & had, had him some years. The hog had ranged between my fathers & Sam Merringtons on what was called the brushy ridges

we found another wound on the hog's shoulder
I examined that wound and put our fingers
in it as deep as a finger would go,
X V X

The 2nd wound is on the right shoulder, the
hog was shot in the right side of the head
the 2nd wound is on the same side - the
second wound is about a foot from the
wound in the hog's head, There was not
much snow on the ground the day the hog
was killed, but enough to track a
man very easy, It was about ten
o'clock when the hog was found, the
snow was about gone at that time.

The snow was gone on the north hillside
and not on the South hillside, I followed
the man's track after the other hog about
1/4 of a mile, they went up the South
hillside - ~~there~~ we could not have
tracked them had it not been for the
mud, it was very muddy about 10 o'clock

They were going west - Sam Herrington
lives northwest from our house, I was
~~not~~ present all the time ~~all that~~ with my
father & Graham after Graham came with
the wagon till Graham left, - Graham
said he followed the black hog and would
have killed him had he got a chance.
I don't think I said anything to my father

about what I could swear about
 this case — Nobody told me what my
 father swore in court — My father
 never told me what he could swear
 nor I never told him what I could
 swear in this case. Mr. Graham
 never told me that he knew the hog
 was my father's before he shot it.
 My ^{Dad} showed Graham the mark of the hog.
 Graham looked at the mark
 Charles ^{his} Huskey
 mark

Alexander Huskey being sworn on the part
 of the State deposes & says,

I was present in the woods the
 other day where Graham, My Father
 Charles Huskey Jeremiah Herrington — ~~were~~
 were — Graham said that he knew
 that the hog was my father's after
 he had shot it and went & looked
 at —

XX I saw other hog tracks and
 a man's track — Graham said
 that he followed the other hog, and
 said that he allowed to kill it if
 he could — My father did not
 make any reply — My father is hard of hearing
 Graham was talking to all of us — I don't

know that any of ~~the~~ language
~~was used~~ & inquiring was made
to Lyrahann why he did not
come and tell my father that
he had killed his hog, Myself
& Jack Wideman went after the
wagon and left my father and
Charles where the hog was, Lyrahann
& Jerry was still there with my
father & Charles, I am certain that
Lyrahann & Jerry had not left
when we & Wideman went after
the wagon Alexander ^{his} ~~x~~ ^{man} ~~man~~ ^{husky}

Jackon Wideman on the part of the State
being sworn deposes & says —
I went ~~out~~ up into the woods where there
was a hog of ~~father's~~ killed belonging
to my father-in-law — Lyrahann said that
he had killed the hog and allowed to
take it to Mr Herringtons & clean it.
He said that he knew that it was
old man Huskey's after he had killed
it, — He did not say how long ~~he kept~~
it was after he killed it that he
found, but that it was ^(I mean by the old man) the old man's
hog — He said that he would have

have killed ^{the other}, it if he could — I don't
 recollect that ~~he~~ I heard him say how long
 it was after he killed it that he found
 out it was the old man's — He said he
 knew it was the old man's hog — before
 he went after the wagon, — I don't
 recollect of Charles asking him any
 question —

X X X.

I was there in the bushes when Graham
 & Jeremiah came with the wagon, — we all
 came out of the bushes together, that is
 the old man Elie Myself & Charles, the old
 man said you have played thunder
 killing my hog — Graham avowed that
 he killed it, Charles Huskey was there,
 I don't recollect that Charles said anything
 to Graham, If Charles had said any-
 thing I could have heard it — It was
 a minute or two after that when we
 started for the wagon, — we left
 Graham there — I don't think that Graham
 told me that Hennington told him
 when he went home that Hennington
~~said that~~ it was Huskey's hog if
 Graham said so I don't recollect
 it, it was between 1 & 2 o'clock when Graham came for the hog

Jackson ^{was} + Wideman
 moral

Charles P.
Plaintiffs

Jeremiah Herrington being informed specifically of the charge against him - and that he is not bound to answer any question put to him, unless he sees proper to do so, Says, that he will make no statement about it -

Samuel Herrington on the part of the Defendant being sworn deposeseth & says,

I know John Graham and Jeremiah Herrington, Graham lives just above my place - has been living 2 or 3 months for the 2 years past he has lived on one of my places on the other side of big river - has never lived in my neighborhood for four or five years, Graham is my son-in-law, I have heard that he killed one of John Huskey's hogs, I had some hogs and William Huskey & me killed some of them & one of them we could not kill - This has been some 2 or 3 years ago, The hog that we did not kill was a yellow & red & black spotted - his color was principally black he had some white spots on him though not a great deal - I never killed this

hog - he was in the woods unless some
 one killed ^{him} ~~it~~ - I told Graham and
 the other boys that if they seen my
 hog and killed him they should have
 half of him. I told him that I had
 a large wild hog in the woods 5 or 6
 years old and if they killed him they
 should have half of him. I told
 Graham that it was a black spotted
 hog, had some white spots on him,
 Graham said whenever there come a
 snow he would go out and kill him,
 Graham & Jerry went to kill him ~~but~~
 and tracked him & could not find
 him ~~& did that time~~ I did not kill him,
 I ~~never~~ did not know that Graham went
 out to kill the hog again, but he come
 to my house the morning after this
 last little snow, he come to my house
 and said I have killed that hog - I was
 in bed sick - I then asked him what
 was the mark and he said that it
 was a drop off the right ear and
 an upper half crop in the left, I then
 told him that it was not my mark and
 not my hog - I then said to him that
 it was uncle Jack's mark and uncle
 Jack's hog - Graham then said what
 shall I do about it. I said you had

better go and get him in and have him
cleaned - Graham then said that he could
not bring him as he had no way to
do it - I told him to go down to
my clearing and get one of the boys
& my team
A to go and help him bring him in
and clean him - and then to go
and tell uncle Jack that it was
his hog ~~and~~ and to come & get it - if
it was his - Jerry & Graham ~~or~~ started
about eleven o'clock from house
to get the hog - and was gone awhile
and came back without it - and said
that Mr. Huskey was there & claimed the hog

X X X

My hog that was running in the woods
was marked with a crop off the left ear
& a split & underbit in the right - I
don't think that my hog had a white face -
I am not certain, ~~I think that~~ I have not
seen my hog for 20 or 30 years - but the boys
have seen him & described him & from the
description I think he was my hog -
Graham never told me that he had seen
the hog - Graham ~~was to kill the~~
never saw the hog and was to kill him
him from my description - I told
him that he was a big spotted hog,
I told him he was marked in my mark

I think that Graham knew my mark - When he came to me he told me that he had killed that hog - ~~the one that I had described to him~~ - And he said that the hog he killed was marked with a crop off the right ear & an upper half crop in the left, -

~~Me~~ When he came & told me that he had killed the hog and described it I told him it was not my mark. The last time that my hog was seen he was on the ridges between my house & Mr Smith's and some times he ranged between my house & Uncle Jacks, - I did not say anything to Graham about Uncle Jack having any big hogs out. It has been 3 or 4 years ^{last fall} since I killed the mates of my big hog, I saw him the next fall after I killed his mates -

Question - Why did you not tell the boys to go and haul the hog to Uncle Jack's

Answer - Nor did I know it was Uncle Jack's hog -

Question - Did you not state just now that you told Graham that the hog he had killed was in Uncle Jack's mark and that it was Uncle Jack's hog -

Answer - Of course I said that it was in Uncle Jack's mark and of course it must be his hog.

there is four of my neighbors that mark in in
my mark on in the same mark that
I mark with — He said the hog was
killed between Mr Huskies' & Mr Smiths
or over in that country some place
I never asked him particular —
When they come back and did not
have the hog, Jerry said that uncle Jack
was there & claimed the hog, but did not
say much about it — Jerry, never that,
I know of saw my hog in the woods, ~~the one~~
Lyrene Williams was working in the clearing
when Graham got Jerry to go with him
after the hog, and Lyrene Williams had
seen what he supposed was my hog, &
told Lyrene, Jerry & several of the boys to kill
the hog, I did not tell Graham that
Lyrene Williams had seen the hog — I told
Graham that Lyrene Williams had
told ^{me that he had seen} a hog that answered the description
of mine —

Re-Examined —

When Graham come back
he said that he had killed that hog,
or he might have said that he had
killed the hog or my hog — or something
to that effect, —

I could not say that Graham knew my mark
he had seen my hogs ~~near~~ that were marked & supposed
that he knew it —

(11)

after he told me he had killed the hog
I asked him what was the mark of it,
and he told me - and I said it was
uncle Jacks ~~hog~~ mark & it must
be his hog - And Graham remarked
that from the mark it must be
uncle Jacks hog - I Samuel Hering Jr

State
no 2781

John Graham
Deputy Sheriff

Recd Sep 17th 1869
Wm J. Henry Clerk

The State of Missouri

To the Constable of Central
Township or the Sheriff of Jefferson
County - Meeting:

Whereas information has this day
been given to me a Justice of the peace
written and for Jefferson County Missouri
on the oath of John Nuskey Sr. that
on the 4th day of February 1869 at
the County of said John Graham
and Jeremiah Hennington (Colored) did
feloniously kill one hog, the personal
property of the said John Nuskey Sr. of
the value of twenty dollars with the intent
then and there to feloniously take that
and carry the same away and to convert
the same to their own use.

These are therefore to command
you to take the bodies of them the said
John Graham and Jeremiah Hennington
if they be found in your County and
them forth with being before me said
Justice at my office in Hillsboro in
said County to be there dealt with
according to law.

Witness my hand this 5th day of
February 1869. Jas. C. Powers

I executed the within warrant at the Court of Sessions
State of Missouri on the 5th day of February 1869 by
meeting the within named parties John Graham
& Jeremiah Newington (Colored) and keeping
them in custody till the 6th day of February
1869 when I brought them before the
within named Justice Jas. C. Jones at
Hickoria Mo in said County.

E. Cases Constable
By John King and Deft.

State
vs
Jno Graham

Constable fees 200

Filed July 17th 1869

Edw W. Correy Clerk

Know all men by these presents that one
John Graham as principal and
Samuel Herrington
as sureties acknowledge ourselves in-
debted to the State of Missouri in the sum
of three hundred dollars upon the
Condition. That whereas, the said
John Graham was this day arrested
and brought before Justice James
C. Power a Justice of the peace in
and for Jefferson County Missouri
and tried for Grand Larceny ^{whereof} and it
appearing to said Justice ~~and~~ that
an offence of grand larceny had
been committed & that there was
probable cause to believe
the said Graham guilty thereof.

Now if the said Graham shall be
and personally appear before the
Jefferson Circuit Court on the
first day of the next Term thereof
to be held at Hillsboro in said County
on the 7th Monday after the fourth
Monday of March next to answer
to an indictment to be preferred against
him for said offence and not
depart said Court without leave
then this bond shall be void
otherwise it shall remain in full

force and effect.

Witness our hand and seal, this 6th
day of February 1869.
John M. Graham

Ed
Ed

Samuel King to

John M. Graham

Witness and approve
of this 6th day of Feb
1869 J. M. Graham
J. P.

Subscribed July 17th 1869

Edwin J. Mearns
Witness

State of Missouri Plaintiff
 against
 John Graham &
 Jeremiah Herrington Defendants

Fee Bill

James C. Power Justice fees
 To Docten case

10

Under case

10

affidavit

15

warrant

35

Swearing 8 witness at 5 cts per

40

Process 2 Subpoenas

70

Judgement

50

Taken Bond

35

Taken Depositions 3000 Words at 15 cts

per hundred words

450

Transcript

50

Total Justice fees

\$7.65

John Wray and Constable fees

To Swearing Two Defendants

200

To Swearing 6 Subpoenas

170

370

Total amount

\$11.35

The above Fee Bill

is True and correct

as I have seen my Pocket

This 14th day of Feb 1869 Jacob C. Power Justice
 of the Peace

Stack 2781

John Graham
Free Will

Added July 17th 1865
Oliver P. Hooley Clerk

State of Missouri Plt
against
John Graham and
Jeremiah Herrington Dfs

affidavit filed February 5th 1869 made
By John Huskeyser that on the 4th day of
February 1869 at the County of Jefferson
State of Missouri John Graham and
Jeremiah Herrington Colored did feloniously
Kill one hog the personal property of this
affiant of the value of Twenty Dollars
with the intent then and there feloniously
to Take Steal and Carry the same away and
to convert the same to their own use
warrant issued directed to the Constable
of Central Township or the Sheriff of
Jefferson County and placed in the
hands of John Vinyard Constable
James C. Palmer Justice of the Peace
nam on the 6th day of February 1869 the
Constable returned the warrant to be taken
with the above named persons John Graham
and Jeremiah Herrington Colored and
both the State as well as the Defendants
being ready for Trial and by motion
of the said Jeremiah Herrington he was
Tried apart and apart the Justice
setting to Try the cause who after
hearing the proofs and allegations

of the parties Discharged him and says
he can go there off with out Date,
and the same allegation and proofs
being submitted to the Justice in regard
to the said John Graham which
was considered by the Justice the said
John Graham was Gilty as charged
in the affidavit it was therefore
considered by the Justice that he the
said John Graham be Bound over
in a Bond of Three hundred Dollars for
his appearance at the next Term of the
Circuit Court of Jefferson County
Missouri to answer to an Indictment
that might be preferred against him
which Bond was taken and approved
by the Justice James C. Powers Justice
of the peace

State of Missouri
County of Jefferson

The State of Missouri Plff
against

John Graham &

Jeremiah Herring to Plff

I James C. Powers Justice of the peace
within and for the Township of Centerville
in the County of Jefferson aforesaid
hereby certifying that the above and

foregoing is a full True and complete
the Transcript of all the Entries
made in my Pocket relating to said
Cause of the State of Missouri
plaintiff against John Graham
and Jeremiah Herring to Calawa
and that such Transcript is accom-
panied by all the processes and other
papers filed to Justice relating
to such suit Given under my
hand this 12th day of February 1869
Jas. L. Powers Justice
of the Peace

State of Missouri
County of Jefferson

Fifteenth Judicial Circuit
November Term AD 1862

The Grand jurors of the State of Missouri
duly sworn and charged to
inquire within and for the body of the
County of Jefferson upon their oath do pre-
sent that John Graham late of the
County of Jefferson and State aforesaid
on the fifth day of February AD 1862
at the County of Jefferson State of Missouri
did then and there willfully feloniously
and maliciously kill one hog being then
and there the personal property of & belong-
ing to John Huskey which hog was then
and there of the value of twenty dollars
against the peace and dignity of the
State

Ira E. Leonard

Circuit Atty

State of Missouri
 vs
 John Graham

Maliciously killing
 hog

Witnesses
 Wm Huskey Jr
 Alex Huskey
 Char Huskey
 Jack Weidenmann

A true bill
 Wm Mockler

Forfeiture

Filed Nov 26th 1869
 E. J. Honeycutt

COUNTY OF JEFFERSON, Sct.

THE STATE OF MISSOURI,

To the Sheriff of the County of Jefferson—Greeting :

We Command you to take.

John Graham

if he be found in your County, and *him* safely keep, so that you have *his* body before the Honorable Judge of our Circuit Court *on the first Monday of March 1870*

at Hillsboro, within and for the County of Jefferson, then and there to answer unto an Indictment found against *him* by the Grand Inquest for the body of the County of Jefferson, for

Maliciously Killing hogs

contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

E. H. Honey

WITNESS, ~~SAMUEL A. REPPY~~, Clerk of our said Circuit Court,

with the Seal thereof hereto affixed, at Office, this

20th

day of *February*

A. D. 18*70*

Elias O. Honey

Clerk Circuit Court.

By L. A. Hayes D.C.

State
vs
John Graham
Capias

THE STATE OF NEW YORK
COUNTY OF ALBANY

Know all Men by these Presents, That John Graham

as principal, and M. Graham John B. Stewart
as securities, are held and firmly bound unto the State of Missouri, in the full and just sum of
five hundred dollars, for the true payment whereof, well and truly to be made,
we bind ourselves, jointly and severally, firmly by these presents. Sealed with our seals and dated this
25 day of February, A. D. 1867.

The Condition of this Obligation is such That if the above bounden John
Graham shall personally be and appear before the Circuit Court of Jefferson county, on the
first day of the next term thereof, to be begun and held at the Court House, in the town of Hillsboro,
within and for the county of Jefferson, on the ~~first Monday of~~ 7 day of March next, to answer an
indictment preferred against him for Maliciously Killing
Boys

and from day to day and from term to term, and not depart said court without leave thereof, then this
bond to be void; otherwise to remain in full force and effect.

John B. Graham [SEAL.]

Chadwickson Greenham [SEAL.]

John B. Stewart [SEAL.]

TAKEN and approved by me this 25 day of February, 1867.

Fred Schumayer Sheriff
By Fred Vollmar
Deputy

State
against
John Graham } In The Jefferson County
 } Circuit Court March
 } Term 1870
 } Indictment for
 } Maliciously killing a hog

~~The~~ The Hon Judge
of The Jefferson County Cir-
cuit Court the undersigned
John Graham the above
named defendant respects-
fully represents to the honorable
Court that the minds of
the inhabitants of the county
of Jefferson in which the
above cause is pending are
so prejudiced against him
that a fair trial cannot
be had therein, & therefore
prays that a change of
venue be granted to some
other county in this circuit
where a fair trial can be
had

Sworn to & subscribed } John B. Graham
before me This 10th day }
of March A.D. 1870 }
Elias McKimy Clerk }
By L. H. Alfred Deputy }

State of Missouri } ss
County of Jefferson }

James B Stewart
being sworn says that the
matters as stated in the
foregoing Petition he believes
to be true

subscribed & sworn
to before me this 10th
day of March A.D. 1870

John B Stewart
Minister

Elias P. Henry Clerk

By J. H. Allen D.

State of Missouri } ss
County of Jefferson }

J. H. Hetterbrand
being sworn says that the
matters & things stated in
the within petition he believes
to be true

subscribed & sworn
to before me this 10th day
of March 1870

J. H. Hetterbrand
Minister

E. Henry Clerk

By J. H. Allen D.

Letter

against

John. Graham

Petition for
Change Name

Feb March 10th 1876
Geo. W. J. Housack

State of Missouri } In the Circuit
 } Court of
John ^{vs} Graham } Jefferson
 } County

John Graham the defendant on his oath says that he can not safely proceed to trial at this term of the Court for want of material witnesses for his defence that he has used due diligence to obtain said absent witnesses so as to have them used on the trial of this cause as witnesses on the part of the defendant the names of said witnesses being John H. Widman and Jerry Herrington are not absent through the procurement or connivance of the defendant and that he has duly ordered subpoenas for them and that he believes that if an adjournment of this cause be allowed till the next term of this Court he can procure said witnesses to be used on his trial, that said witnesses are within the

Reach of the process of
this Court and that there
is not now in attendance
upon this Court any other
witness or witnesses by
whom the same facts can
be proved as those which
the said absent witnesses
will testify to nor are
there any other witnesses
living by whom the same
facts can be proved

Sworn to and
subscribed
before me this
17th day of March
1870

Elias H. Kony, etc.
By L. H. Ford, D.

(John B. Graham

State,

against

John Graham

Application for
continuance

held March 17th 1884

E. J. H. W. C. H.

3rd The Court further instructs the Jury that whether the Defendant at the time of killing Huskey's dog intended to convert the same to his own use or not is not a question for the consideration of the Jury in the trial of this Cause.

4th The Court further instructs the Jury that the word "Wilfully" as used in the first instruction signifies intentional not accidental and that the word "Maliciously" signifies a wrongful act intentionally done without just cause or excuse.

5th The Court further instructs the Jury that if upon the whole evidence in this cause they have a reasonable doubt of the defendants' guilt they should acquit.

State

21

York and

Instructions for
Deputies

2nd March 1786

Refused

State
of
Massachusetts

The Court instructs the
jury that if they believe
from the evidence that
the Defendant killed the
hog with the intention
to convert the same to his
own use they will
acquit

Filed March, 17th 1870
Elias F. Conner C. J.

The Court further instructs the jury that even though they may find from the evidence that Defendant killed Muskog without authority so to do yet unless the act was done from malicious motives the Defendant is not guilty of the offence charged in the indictment and it is immaterial whether ^{he} ~~the~~ at the time thought he had a right to kill said Muskog or not,

Filed. March 5 1878
E F Henry CR

No. 7

Refused
The court instructs the jury
that unless they believe from
the evidence they defendant
knew it was a trap for
poison he killed it they
will acquit

State
Graham }
Trust

Filed March 18/80
E. J. Knapack

State
John Graham

13^c the Court instructs the Jury
that to constitute the offence charged in the
indictment the killing of the priest must
be willfully and maliciously done,
and even though the jury may
believe from the evidence that Defendant
killed Buckley's dog yet unless they
further believe from the evidence
that the killing of it was done ~~maliciously~~
~~and~~ done from malicious motives their
verdict should be for the Defendant,

Nov 1869

1 If the jury believe from the evidence that the defendant John Graham, in the County of Jefferson, State of Missouri, within three years before the finding this indictment feloniously, wilfully and maliciously killed the hog mentioned in the indictment the property of John Huskey the jury will find ~~for~~ ^{guilty} the defendant. And as to his punishment by imprisonment in the penitentiary not less than two nor more than three years or by imprisonment in the County jail not less than six months or by a fine not less than two hundred and fifty dollars or by both a fine not less than one hundred dollars and imprisonment in the County jail not less than three months.

Wilfully signifies intentionally, not accidentally.

2 Malice in law denotes a wrongful act done intentionally, without just cause or excuse.

3 If the jury have a reasonable doubt of defendant's guilt they will

give him the benefit of the doubt
and acquit - but the doubt -
should be a rational doubt - not
not a mere possibility
of defendants innocence,

State of Missouri } In the Circuit
 } Court of
John Graham } Jefferson County
 } Missouri

store at this day comes the
Defendant and moves the
Court to set aside the
Verdict of the Jury and
Grant him a new ~~trial~~
Trial in the above Cause
for the following Reasons
to-wit,

- 1st Because the verdict of the jury is against the Law
- 2nd Because it is against the evidence in the Cause
- 3rd Because the Court erred in ~~refusing to allow the~~ including proper and legal evidence offered by the Defendant on the Trial of the Cause
- 4th Because the Court allowed the State to introduce illegal, & incompetent evidence against Defendant on the Trial of the Cause, against Defendants objections

- 5th Because the jury disregarded to evidence in the Cause and the instructions of the Court
- 6th Because the jury found against the instructions of the Court.
- 7th Because the evidence does not support the verdict of the jury.
- 8th Because the Court erred in refusing to give instructions No: 2, 3, 4, 5, 6 & 7 asked by the Defendant, on the trial of the Cause,
- 9th Because the Court erred in allowing Counsel for the State in the argument of the Cause to the jury to misstate the Law against the objection of the Defendant made at the time in this viz, in allowing such Counsel to tell the jury that it was a presumption of Law in this case that the Defendant killed the Hog from malicious motives and that the burden of proof was upon him to show to the satisfaction of the jury that the killing was

not done from malicious
motives

10th Because the Court erred after
the jury had returned their verdict
into the Court in sending them back
to their room with verbal instructions
to return a different verdict
against defendant's objections,

Reppy, W. H. H. Thomas &
Williams
Attys. for defendant,

State

vs

John Graham

Motion for new
Trial

Filed March 18 1876

Elieis F. Henry At

State of Missouri } In the Circuit
against } Court of Jefferson
John Graham } County Missouri.

Be it remembered that at the March term of the Circuit Court of Jefferson County, Missouri, for the year 1870 the Deft. filed in said Court a petition for a change of venue in the above cause.

Supported by the written affidavit of himself and two witnesses, namely J. B. Stewart & S. K. Wilderbraun, which said affidavits are in words following, to wit (Clerk here copies the same) Whereupon the Court refused to make an order granting the change of venue until the truth of the facts set out by the Deft in his affidavit was sustained by the oral testimony of at least two creditable witnesses, resident citizens of the County - to which action of the Court ~~is~~ the Deft at the time excepted - and therefore the Deft. produced two or more witnesses and proceeded to examine them in open Court as to the truth of the matters allegedly Deft. as ground for ^{granting him a} ~~his~~ change of venue, and the Court having heard said testimony over-ruling said application & refused to order a change of venue; to which action of the Court in over-ruling the same & in refusing to grant a change of venue the Deft at the time excepted.

And afterwards, to wit on the 17th day of March 1870 the said cause being called for trial and the State being ready for trial & the Defendant being asked if he was ready answered that he was not. and thereupon prepared & filed in said Court an affidavit for a continuance which is in the following & words to wit (Clerk here copies affidavit)

for a continuance) which application for a continuance being seen by the court and fully understood, was by the court overruled, to which action of the court in overruling said application, the Defendant at the time excepted & thereupon immediately after the overruling of said application for continuance on the 17th of August March 1870, said cause coming on to be tried by a jury, ~~at~~ all the witnesses on behalf of the State were called into court & sworn by the clerk & ordered to be kept out of the court room during the trial ~~unless~~ until specially ~~called~~ called for; and also, ^{all} the ~~the~~ witnesses subpoenaed on the part of the defendant were called into court & appeared before the clerk of said court (the said Jeremiah or Jerry Harrington & John W. Wadman on account of whose absence the deft. had heretofore applied for a continuance being also among them) and were also duly sworn & ordered to be kept out of the court room during the trial until called for specially, and thereupon the State to support the indictment introduced the following witnesses, who each testified as follows, to wit

John Henckey Sr. being sworn on the part of
the State deposed as follows ^{testified as follows} about — ~~the 1st of January~~ ^{the 1st of January}

1869 one of the boys went out turkey hunting,
my boys come and told me that one of
my hogs was killed & I went and seen it,
I found my hog between a quarter and
a half a quarter from my house — per-
haps a half mile — I went and seen it
The boys says to me what will you do about
it, I said that I was going to wait there
and see who would come and get it —
I remained there — I went up and hid
myself in the bushes so that I could
see them when they come — John Graham
and Jerry Herrington come — they had a
wagon and two mules, they come up and
stopped when they come on our sign &
stood there a little bit, and I then heard
Graham say something I could not tell
what, and Jerry he started the mules
and drove up to the hog & then me and
the boys arose out of the bushes and star-
ted to them — As soon as they started seen
us they stopped the mules. Says I, I
have caught you at last, or somehow
that way, Graham says caught me,
Caught me, what can you make
of it, it is a wild hog, I said it is my
hog that is what I can make of it

Says I there is the mark, Graham said I know it is your mark - and said he knew it was my hog, I don't deny that it is your hog - I said didn't you follow the black hog? and he said yes - that he followed the other after he shot this one, He told me that he knew it was my hog when he come back with the magsen & Graham said I don't deny shooting the hog - He did not tell me when he discovered that the hog was mine, ~~My son Charles~~ asked Graham when he found out that it ~~was~~ ~~Daddy's~~ hog why did you not come & tell him, & Graham said ~~what time would it have been if I had went and told your father & then took the hog to Sam Herrington & claimed it,~~ Graham said to Jerry come & look at him & see what big teeth he has got, Jerry left the team & come and looked at the hog & we turned up ~~its~~ ears and let him examine his teeth, and Jerry said that Sam Herrington owned no such hog as that, if he did he has never seen it, I told Elec to go home and get our wagon to haul him home, Elec started, then they started with their wagon back home

Took the hog home, and Graham said to me what will you give me to kill the other hog the black one? I said to him let him alone, let him alone says he? the hog they killed was 5 or 6 years old and run in the brush between me & Sam Herington the hog was of the Berkshire breed mostly black white face and a few white spots on him & was marked in my mark, and my mark is a crop off the right ear, and an upper half crop off the left, He ~~was~~ laying like any other hog shot, there was a bed there & the hog was laying by it the hog was shot in the right side of the head just under the ear, The ball did not come out, ~~I found another hole in his~~, ~~looked like the wound had been made the day before~~, ~~down my legs ran their fingers into the wound in the mark~~, ~~I told them to do it~~, there was snow on the ground on the morning of the day that my hog was killed, there was the track of another hog, at the place where this one was killed, I took the track of the other one and it appeared that some one had followed it, I did not follow the track of the other hog far, It was bushy where the hogs were - it was so bushy that you could

not travel with a wagon, in the night, me and my sons went 40 or 50 yards from where the hog was killed and sat down in the brush to see who would come after it, the brush was so thick that in some places you would have to get close to a hog to shoot it & in other places you could shoot them at a greater distance, my black hog was marked in my mark he was about 2 years old past & not as large as the one killed, the one that was killed weighed just two hundred pounds after dressed, and was about worth about twenty dollars, the hog that was killed I am positive was mine, ~~I don't know where Abraham has been living for the past 2 years~~ ~~He has not been living where he now lives~~, it was about 8 or 10 o'clock when I found my hog dead, we sat and waited about 2 hours before Abraham & Jerry come ~~for~~ the hog, it is about 2 miles from where I live (the hog was killed to Sam Herington, ~~the hog saying that the wagon was Sam Heringtons~~, the wagon had no bed on,

Crop Examined - The hog that was killed was 5 or 6 years old, I killed all his mates, but he was so cunning that I could not get hold of him, with out a heap of trouble he was wild, and I had plenty to do me, the hog was black and some white spots on him, ~~about~~ I called him a black & white spotted hog.

The brush was very thick where the hog was killed, some places were open & you could shoot a good way & other places very thick I would, by the way he was laying judge that the hog was shot laying down, Graham said that he shot ^{the} hog & went and looked at the mark and then said he knew that it was my hog - Graham said after he shot it he knew it was my hog, When Graham and I met he said he knew that it was my hog.

Question - Did Mr Graham use this exact language "I knew that hog was yours before I saw you,"

Answer No I Can't say that he used that language,

I commenced the conversation when Graham come up with the wagon, I said I have caught you at last, and Graham said "Caught me, Caught me", then Graham said what can you make of it he is a wild hog, I told him I would tend to or have it tended to and we would see what could be done with him for killing the hog, I don't recollect the next that he said, I think that Graham made light of the matter, but I can't say exactly what words he used We were at the hog when this conversation was going on, ~~He observed that it~~

~~might be some one else's hog, I told him~~
^{that time}
that there was but two in the Country that
marked in that mark & that was his father
and my Jim, and Graham said yes that
is so, I have stated pretty much all the
conversation between me and Graham
up to this time, Graham looked at the
mark of the hog & then agreed that it was
my hog, when he come up and I told
him that I had caught him I told him
that it was my mark and he said yes
it was, when I told him that the hog
was in my mark he then said the hog
was mine,

Question - Did Mr Graham, at any time during the
conversation at the hog tell you that he knew
it was your hog before he ^{shot him} ~~went for the nags?~~

Answer I understood him that when he shot the
hog & went & examined it, he then knew it
was my hog from the mark, I don't
remember that Graham told me that he
knew my mark before I told him what it
was, Before we went and looked at the ear
Graham said that when he went & looked at it
he knew it was my hog from the mark
Graham has not lived any nearer me at
any time than he does now, Graham has
never lived in my neighborhood, I don't know
that Graham stated how that he knew
my mark

Question - Did Mr Graham say that he knew your mark before you told him what it was?

Answer - I understood him that when he shot the hog and went up and seen it he then knew it was my mark my hog,

Question - Did Mr Graham tell you that he knew your mark before you told him what it was?

Answer - Why Yes,

Question - What did he say your mark was,

Ans - He didn't say he only said he knew it,

I don't recollect that Graham told me how long he had known my mark, He said that when he seen the hog he knew it was mine - My sons Charles & Elec and Huskey and Jackson Mideman were with me during a greater part of my conversation with Graham, Charles staid all the time that we were conversing, This took place in Jefferson County in the State of Mississippi

Charles Huskey on the part of the State being sworn ~~deposed and says~~ ^{testified by the following} I am acquainted with John Graham ~~Jeremiah Herrington~~, Graham lives on the waters of Big River near Sam Herrington about 2 miles from my father, I am a son of John Huskey Sr, & live with him, I went with my brother to hunt a hog of my fathers we found it a little over a half mile from my fathers

My brother Elic was with me, we found the
hog dead, It had been shot in the side of the
head, on the right side just below the ear
there was the track of one man where the
hog was killed, The track went toward
where the hog was laying and then went
off after the track of another I did not
follow the track, I then staid there, and
sent my brother Elic after my father
My father and brother Elic came back
Then I went after the fellows track & the
other hog I tracked them about a quarter
of a mile I found them that he had quit
that track, - I found out that he had left
the track by making a circuit on the
north hill side where the snow was on
the ground and found the hog track
but not his, I then went back to my
father, we then hid in the brush and
watched till he came, ~~Jeremiah~~ John
& Jerry ^{Wernington} ~~Graham~~ come with mules and a
wagon, we watched them a little bit
to see what they would do, they ^{were} ~~then~~ ^{towards}
✓ ~~to~~ driving the mules & wagon up ~~to~~ ^{where} ~~the~~ ^{the} hog ^{was}; then we went down to where
they were - My father says well I have
Caught you this time, well says Graham
what of it if you have Caught me, says
Graham it is a wild hog -

my father asked Graham what he was
 going to do with it, Graham says I
 knew it was your hog, ~~said I to Graham~~
~~why didn't you send him word that it~~
~~was his hog - ~~but he said~~ ago it~~
~~could have sent you word or even~~
~~told you it would have been too late to~~
~~have taken it to Harrington and~~
~~it~~, He said that he knew it was my
 fathers hog when he shot it down and
 went up & seen it, ~~then it was when~~
~~he said that, that I asked him why he~~
~~did not inform my father -~~ Graham
 said to Jerry come and see what
 teeth it has got. Jerry was then still
 on the wagon - Jerry got off the wagon
 and come to the hog - My father says
 I dont think that Sam Harrington has
 got any such hogs in the woods, Jerry
 says I dont think he has either, if he has,
 I never saw them. Graham said he
 followed the other hog & would have killed
 him if he could, Graham went off
 and said to my father, what will you
 give me to kill the other one, and my
 father said, do you let the other one
 alone, said Graham let him alone ha?
 Graham then drove off with the wagon.
~~and left the hog.~~

We took the hog home with us, I am satisfied that the hog found in the woods was my fathers, my fathers mark is a smooth crop off the right ear and an upper half crop in the left that hog was in that mark my father raised that hog and had had him 5 or 6 years the hog had ranged between my fathers & Sam Herringtons on what was called the ~~brushy ridge, we found another wound on the~~ ~~hog's shoulder, I examined that wound and~~ ~~put my finger in it as deep as a finger~~ ~~would go,~~

Crop Examined, ~~The second wound is on the~~ ~~right shoulder, the hog was shot in the right~~ ~~side of the head, the 2nd wound is on the same~~ ~~side - The second wound is about 4~~ ~~from the wound in the hog's head, There was~~ ~~not much snow on the ground the day the hog~~ ~~was killed, but enough to track a man~~ ~~very easy - It was about ten O'clock when the~~ ~~hog was found, the snow was about gone~~ ~~at that time - The snow was gone on the~~ ~~South hillside and not on the north hillside~~ I followed the mans track after the other hog about $\frac{1}{4}$ of a mile they went up the south hillside - we could not have tracked them had it not been for the mud. It was very muddy about 10 O'clock

could - I don't recollect that I heard him
say how long it was after he killed it
that he found out it was the old man's
~~He said he knew it was the old man's hog~~
~~before~~ - I don't
recollect of Charles asking him any
question.

Cross Examined - I was there in the bushes when
Graham & Jeremiah came with the wagon
we all come out of the bushes together
that is the old man, Elic myself & Charles
The old man said you have played
thunder killing my hog, Graham owned
that he killed it, Charles Hurskey was
there ~~I don't recollect that Charles said~~
~~anything to Graham~~ - ~~If Charles had~~
~~said anything I could have heard it~~
It was a minute or two after that
when we started for the wagon
we left Graham there, ~~I don't think~~
~~that Graham told me that Herrington~~
~~told him when he went home that~~
~~it was Hurskey's hog if Graham~~
~~said it, I don't recollect it~~ - it was between
10 & 12 o'clock when Graham come for the hog

and the foregoing was all the
evidence on the part of the State

They were going west I saw Herington
lives northwest from our house, I was
present all the time with my father
and Graham after Graham came with
the wagon till Graham left, Graham
said he followed the black hog and would
have killed him had he got a chance. ~~I~~
~~don't think I said anything to my father~~
~~about what I could swear in this case~~
~~Nobody told me what my father swore~~
~~in court, my father never told me~~
~~what he could swear nor I never told~~
~~him what I could swear in this case -~~
Mr Graham never told me that he
knew the hog was my fathers before
he shot it, my father showed Graham
the mark of the hog, Graham looked at
the hog -

Alexander Huekey Being sworn on the part
of the State ~~deposed~~ ^{testified as follows} and page, I was
present in the woods where Graham
my father, Charles Huekey & Jeremiah
Herington were, Graham said that he
knew that the hog was my fathers
after he had shot it and went &
looked at it,
Cross Examined - I saw other hogs tracks and a
mans track, Graham said that he

allowed to kill it if he could, my
father did not make any reply, my
father is hard of hearing, Graham was
talking to all of us. ~~I don't know that~~
~~a bargain was made to Graham why he~~
~~did not come and tell my father that~~
~~he had killed his hog~~, myself and Jack
wideman went after the wagon and left
my father and Charles where the
hog was Graham and Jerry was still
there with my father & Charles, I am
certain that Graham and Jerry had not
left when ~~me~~ wideman went after
the wagon

Jackson Wideman on the part of the State
being sworn ^{testifies as follows.} ~~deposes that and swears~~

I went up into the woods where there
was a hog killed belonging to my father-in-law
Graham said that he had killed the hog ~~and~~
~~allowed to take it to his house~~
~~clean it~~ He said that he knew that it
was old man Huskey after he had
killed it - He did not say how long
it was after he killed it that he found
out that it was the old man's ^{hog} - I mean
by the old man) Mr Huskey, he said that
he would have killed the other if he

4
To the admission of said testimony the pliff. objected, on the ground that it was irrelevant & improper; & that it was if true evidence attempted to be made by the defendant in his own behalf after the commission of the offense; which objection was by the court sustained & the

The Defendant then introduced Samuel Herrington as a witness to support his defence to said indictment, and ~~offered to~~ proved by said witness that he was the father-in-law of the Defendant, and also offered to prove by him said witness that he had some wild hogs ~~about the~~ running in the woods in the neighborhood of John Huskey Sr about & before the time Defendant killed the hog of said John Huskey Sr & that he directed his son in Law the Defendant to kill them for him, shortly after which Defendant came in to the house of said witness & told ~~to~~ said witness that he had just shot a wild hog in the mark of John Huskey Sr & asked witness what to do about it, & that the witness told Defendant to take the wagon & mules & Jerry Herrington & take the hog to Mr. Huskey & that then Defendant took his wagon, & mules & Jerry Herrington & started to do as witness told him,

Defendant also offered to prove the same facts by ~~insert here what is on the margin~~
But the Court

Excluded such Evidence so offered to be introduced by Defendant

and would not allow Defendant
to prove the same to which
action of the Court the Defendant
at the time Excepted.

The ~~Defendant~~ forgoing
evidence was all the evidence
offered by the Defendant, the
~~Defendant~~ Court then of its own
motion ~~asked~~ instructed the
Jury ^{being instructions Nos. 1, 2, 3, 4, 5} as follows, (here copy
instructions given by the Court
of its own motion) to the giving of
which instructions the Defendant at
the time Excepted, the Defendant then
asked the Court to give to the Jury the
following instructions Nos. 1, 2, 3, 4, 5, 6 & 7 (Here
^{copy instructions asked by Defendant})
and the Court gave the instructions
Nos. one and refused to
give instructions Nos. 2, 3, 4, 5, 6 & 7 — to
which action of the Court in refusing
to give said instructions to the
Jury the Defendant at the time
Excepted, and thereupon Counsel
for the Defendant as well as
Counsel for the State proceeded
to argue said Cause before the
Jury and while ^{so} arguing the
same before the Jury the Counsel

for the State who argued the said Cause, stated to the Jury as follows, ~~viz, that from the fact that the Defendant Killed Huskey's Hog~~, viz, "that the Defendant having Killed Huskeys hog the presumption of Law was that he did it from Maliciously" and the Defendant at the time objected to said Counsel being permitted to make such statement to the Jury on the grounds that the same was not the Law & was calculated to mislead the Jury ~~but the Court permitted said Counsel for the State to make such statement to the Jury to which the Defendant at the time objected~~ the Jury then rendered a verdict against the Defendant and assessed his punishment at a fine of Two hundred & fifty Dollars, and thereupon the Court rendered judgment on said verdict as follows, to wit, (Here copy judgment) The Defendant ~~then~~ afterwards in due time, viz, on the 18th day of March 1870 filed in said Court a motion to set aside the verdict and for a

new trial which motion is
in words and figures as follows
to wit, (Here copy motion for a
new trial) which motion
being seen by the Court and
fully understood was by
the Court overruled to which
action of the Court in overruling
said motion the Defendant at
the time Excepted, and now
~~tenders this his Bill of Exceptions~~
~~which he prays may be signed~~
~~sealed and made a part of the~~
~~Record which is done~~

and thereupon the State by her
Attorney consenting the Court allowed
the Defendant ^{by an entry of} ~~time till the~~ ^{Record (clocking copy entry)} ~~3rd Monday~~
~~May 1870~~ to prepare his Bill of Exceptions
affidavit for an appeal and Bonds
for an appeal by the said entry of Record
being in words as follows, to wit, (Here
copy same) in accordance with which
the leave of Court the Defendant now
on this ^{12th} ~~5th~~ day of May 1870 tenders
to this his Bill of Exceptions which
he prays may be signed sealed and made

a part of the Record which is
done accordingly

J. H. Vail, Judge

seal

State
John Graham

Bill of Stephens

Decd May 13th 1870
O. W. B. B. B. B.

State of Missouri Plaintiff } In the
against } Jefferson
John Graham Defendant } County
Circuit Court
March Term
A.D. 1870

Indictment for Maliciously
Killing a hog,

Now at This day comes
The defendant in the above
entitled cause & makes
oath and says that the applica-
tion for an appeal by John
Graham the defendant in
the above entitled cause, is
not made for vexation or
delay, but because this affiant
believes that the appellant
is injured by the judgment of
the circuit court,

Presented & sworn to before } John H. Graham
on this 22 day of March }
A.D. 1870, Elias F. Honeyaker }
By L. A. Hayford D.C. }

State
against
John. Graham

Affidavit for
Appeal

Filed May 13th 1870
E. H. Hume

State
 John^{rs} Graham }
 Jeremiah Hemmings }
 Jos LeBaron J.P.

1110.

Docket 10^t Ind 10 affd 15, amount 35^t = 70

Income 8 rit 40 2 shw 70 put 50 1,60

Deposits = 3000, wds 4,50 4,50

Bond 50 trans 50 — 1,00

John Vinyard Cust. 7,60

Senec Mount. p 2,00 2,00

Sm. 6 shw, 210 210

4,10

ET Henry clk,

Filis 40. Docket 10 Ind 10. 60

He Brie 200 1,00

Copm ent jud Cr aty 150. 150

3,10

14,80

21 days of May 1869

State

^{to}
John Graham

\$14.80

In the Supreme Court held at St. Louis, of the State of Missouri,

October — Term 1871

October 31st 1871

The State of Missouri
P.E.

vs
John Graham D.E.

Error to Second
District Court.

Now again come the parties aforesaid, by their respective attorneys, and the Court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said Second District Court be in all things affirmed and stand in full force and effect, and that the said Defendant in Error recover of the said Plaintiff in Error his costs and charges herein expended, ~~and~~ ~~have execution therefor.~~ Opinion filed.

STATE OF MISSOURI, SS.

A. T. Fishback

I, ~~ANDREW W. MEAD~~, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In Testimony Whereof, I have herunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, this thirtieth day of December A. D. eighteen hundred and seventy.

A. T. Fishback Clerk.

P. B. Bandy Jr.

Supreme Court of Missouri.

State of Missouri,
v.

John Graham, D.E.

MANDATE.

Judgment of 3rd Dist. Court
Affirmed.

Jefferson Circuit Ct.

Filed Dec 10th 1870.

W S Boyce Clerk

By Thos Hume D.E.

State } In the Circuit Court
 vs } of Jefferson County
 John Graham, }
 Jeremiah Kerrington. } Missouri.

No Bill found against Jeremiah Kerrington. Bill of indictment found against Defendant Graham - Nolle Prosequi - entered and deft discharged March Term 1871.

Free Bill

James O. Power Justice,

Socket ¹⁰ Ind ¹⁰ affd ¹⁵ warrant ⁵⁵ 8 oaths ⁴⁰ 2 Shas ⁷⁰ \$ 1.80

Judgt ⁹⁰ Bond ³⁵ Dep Bond words & fig ¹⁵ \$ 4.50

3.35

Transcript

50 7 65

John Vinograd Const.

2 Warrants ^{2.00} 6 Shas ^{1.70}

3.70

E. F. Macey Clerk

affd cont ²⁵ rule ²⁰ Smear & entjuring ⁵⁰ vero ¹⁵ Judgt. ⁵⁰ \$ 1.60

Recog ⁵⁰ Ent Bill & ³⁵ ord granting appeal ³⁵ \$ 1.20

ord for Trans. ¹⁵ 1 attach ⁵⁰ 10 Shas ^{2.50}

3.15

Capias ^{1.00} 11 files ⁵⁵ Indict ⁵⁰

2.05 8 00

John Williams Sheriff

Serving 5 Shas. @ 50c.

2.50

St. Luchtemeyer 1 attach ^{1.00} 18 Shas ^{9.00} \$ 10.00

Capias ^{1.00} Bond ⁵⁰

1.50 11.50

Amt Carried forward

\$ 33.35

Amount Bro't Forward \$33 35
 Witness March Term 1871

Wilson Williams	2 days 10 miles		2 80
Samuel Herrington	1 " 12 " paid July 21 '78	3	1 96
Jno H Wideman	1 " 10 "		1 80
Delafayette Huskey	1 " 10 "		1 80
Samuel Russell	3 " paid July 19 '78	4	3 00
Jno. B. Stewart	5 " 10 " paid July 21 '78	3	5 80
J L Davis	7 " 12 "		7 96
Jerry Herrington	8 " 12 "		8 96
Merideth Williams	9 " 12 "		9 96
Green Williams	8 " 12 "		8 96
S H Helderbrand	7 " 11 paid July 21 '78	3	7 88
Jno Huskey Sr	9 " 6 " due 7.51		9 48
Charles S Huskey	9 " 6 " " 7.51		9 48
Alexander Huskey	9 " 6 " " 7.51		9 48
Wm J Wideman	9 " 6 " paid May 7 '78		9 48

March Term 1871

Samuel Herrington	4 days 10 miles paid July 21 '78	3	4 80
Jerry Herrington	3 " 10 miles		3 80
Jno Huskey	3 " 6 " pd		3 48
Chas Huskey	3 " 6 " pd		3 48
Alex Huskey	3 " 6 " pd		3 48

Amount paid by Jno Graham for making Transcript &c. \$13.00

Docket fee in District Court \$10.00 23.00

W. S. Boyce clerk files 7 Nolle Pross 50

This Fee Bill cert of Judge & Cir atty 75

Copy of same after allowance 960 words @ 10 96 2 26

Total \$176.45

deduct amt paid by Jeff & Jeff \$23.00

\$153.45

the items of Transcript - \$13.00
 & Dist. Ct. Docket fee 10.00
 Total 23.00
 Dr. District atty by Judge & Cir atty
 J. H. Allen

State of Missouri } In the Circuit Court
County of Jefferson } We the Judge and circuit attorney
of the Fifteenth Judicial Circuit of the State of
Missouri do hereby certify that we have strictly
examined the foregoing Bill of Costs during the
sitting of the Circuit Court, at the September
Term A.D. 1871 and find the same amounting
to one hundred and ~~seventy three~~ ^{fifty three} dollars and forty
five cents to be correct and the County of
Jefferson is liable for the payment thereof
We further certify that a Walle Prosequi
was entered and defendant discharged
that the offence charged ~~was~~ punishable
by fine or imprisonment in the County Jail
and that the services were rendered for which charges
are made and that compensation is allowed by
law for the services for which charges are
made - The clerk of this Court will therefore
certify the foregoing bill to the County Court
of said County for payment.

Given under our hands in Term time
this Sept 28 1871

J. H. Hall — Judge (seal)
Geo. D. Hughes, Cir atty (seal)

Free Bill

State
vs
Ino Graham et al

Co. # 17 B. 45

James Hemmings	29 ⁵ miles	4.80
James Hemmings	24 - 10 -	3.80
Jim Hemmings	3 - 6 -	3.48
Chas Hemmings	3 - 6 -	3.48
Cole Hemmings	3 - 6 -	3.48

March 3 1870

Wilson Williams	2-10-	2,80
Saml Herrington	1-12-	1,96
Jno H Wideman	1-10-	1,80
DeLafayette Hussey	1-10-	1,80
Saml Russell	3 - -	3,00
Jno H Stewart	3-10-	3,80
J L Davis	7-12	7,96
Jerry Herrington	8-12-	8,96
Meredith Williams	9-12	9,96
Green Williams	8-12	8,96
L K Helderbrand	7-11	7,88
Jno Hussey Sr	9-6	9,48
Charles T Hussey	9-6	9,48
Alon Hussey	9-6	9,48
Mrs J Wideman	9-6	6,48

~~Entaff~~
affo cont ²⁵ rule ²⁰
Shr & ent pay ³⁰ vend ¹⁵ Inogh ³⁰
Recog ³⁵ Entrofile Bill Exp ³⁵ ord granting appeal ³⁵
ord for Trans ¹⁵ attach ²⁰ 10 Spas ^{2,50}
Capias ^{1,00} Bond ⁵⁵ 11 files ⁵⁵ Ino ⁵⁰

Ino Williams affo pens 5 Spas 250.

Wd Boyce Rolle pens 50 3 Spas 75

Suchtemayer attach ¹⁰⁰ 18 Spas ^{9,00}

Capias ^{1,00} Bond ⁵⁰