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United States Western District Court of  
Arkansas records, 1839-1908

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**1877 November 30: Voucher, to J. McWeir, of Sebastian County, Arkansas, for assisting J.R. Rutherford, U.S. deputy marshal, in U.S. v. Isaac Johnston and John Smith, assault with intent to kill; Stephen Wheeler, clerk; D.P. Upham, U.S. marshal**

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The United States of America,

1877

To

J McWeir

Dr.

For 14 days' services as posse comitatus, from Nov. 7<sup>th</sup> to Nov. 25<sup>th</sup> 1877, both days inclusive, at \$3.00 per day, \$57.00

UNITED STATES OF AMERICA, }  
Western District of Arkansas.

I, J. McWeir, of the State of Arkansas, in the County of Sebastian and District aforesaid, being duly sworn, depose and say, that on the twenty-fifth of November, 1877, I was employed under and by virtue of the third section of the Act of Congress of June 14, 1858, by J. R. Rutherford, U. S. Deputy Marshal for said District, at my usual place of residence,

as one of his posse comitatus, to assist in executing the following capias writs, to-wit: A capias writ for Isaac Johnston & John Smith indicted as one Smith & other prohibited & charged with assault with intent to kill in the Indian country before the U. S. District court of the Western District of Arkansas

issued by one of the District courts of the United States of America, U. S. Commissioner for the Western District of Arkansas, within the jurisdiction of the said District, returnable to the office of said Commissioner, at Fort Smith Arkansas in before said court County, Arkansas, 1877; and that as such posse

comitatus, I immediately proceeded in company with said Marshal to the Indian country to wit the Cherokee Nation and on arriving within twenty miles north East of Vinita Ok. I succeeded in arresting and apprehending Isaac Johnston on the 17<sup>th</sup> day of November A. D. 1877. That apprehending the whole party of John Smith indicted as one Smith we at once proceeded from the place of said first arrest and after diligent search I succeeded on the 18<sup>th</sup> day of November A. D. 1877 in arresting the said Smith about five miles from the place where the first arrest of Isaac Johnston had been made and from there we returned without delay

to Fort Smith Ark before the U. S. Commissioner; that no posse comitatus could have been employed at a nearer point to the place where the said Deputy informed me he expected to find the said Isaac Johnston and one Smith et al

to wit: at the Cherokee Nation Near Vinita

than my place of residence aforesaid; that I actually traveled from my said residence to said place of arrest for the purpose aforesaid 34.0 miles, and in the transportation of said defendants, and was actually and necessarily employed 14 days, as set out in the foregoing account as posse comitatus, solely in the execution of said processes and transportation of the said defendants as aforesaid; that I furnished the means of or actually paid for my own travel or transportation, and that I have received from said Marshal and signed duplicate receipts therefor, the sum of dollars, in lawful currency of the United States, in full satisfaction and payment of my said expenses and services; that I have never received or been paid, or agreed to receive, or expect to be paid any other compensation, remuneration or consideration what ever for said expenses and 14 days' services, from any other person or persons, or sources whatever: So help me God.

Subscribed and sworn to before me this 30<sup>th</sup> day of November 1877, by the above named J McWeir who personally appeared before me and was by me known to be the identical person he represents himself.

J McWeir

Stephen Wheeler

Clerk U. S. Dist. Court West. Dist. Ark.

e-p

G. Walling

I, J. R. Rutherford do solemnly swear that I am duly and regularly commissioned as a Deputy U. S. Marshal for said district, that the employment of a posse comitatus at Fort Smith, Arkansas under the act of Congress of June 14, 1858, was actually and indispensably necessary to enable me to serve the warrants in my possession, and that I could not without great peril have attempted to serve the warrants entrusted to me without the assistance of a posse comitatus; that I have examined the within account and certify that the services were performed and actually rendered as therein stated, and that the amount charged therefor is reasonable and just, and that I have no interest in the same.

J. R. Rutherford  
Deputy U. S. Marshal.

Sworn to and subscribed before me this 30<sup>th</sup> day of November, A. D. 1877, by the above named J. R. Rutherford, who personally appeared and was by me known to be the identical person he represents himself.

Stephen Wheeler  
Clerk U. S. Dist. Court West. Dist. Ark.

I, D. P. UPHAM, U. S. Marshal for the Western District of Arkansas, do certify that I have carefully inquired into the matters set forth in the foregoing affidavits, and that the matters and things therein set forth are true and the services of the posse comitatus employed by my Deputy were absolutely necessary to the due and proper service and execution of said warrants; and that a posse comitatus could not have been obtained any nearer than the place said posse comitatus was employed.

D. P. Upham  
U. S. Marshal Western District of Arkansas.

Received payment of D. P. UPHAM, U. S. Marshal for the Western District of Arkansas, in the sum of Fifty Seven dollars, in full of the within account.

J. M. Weir

VOUCHER NO. 5

—TO—

ABSTRACT NO. 6.

Term, 187

Refer to Voucher No. 3 Abstract 4.

FILED  
JAN 18 1878  
CLERK

D. P. UPHAM,  
U. S. Marshal Western Dist. Arkansas.

Duplicate