G. N. C. 60 40

Commonwealth

(1)

Amos Wallace

1 W. S. Coffman 32

2 J. W. Funkhouser 22

3 D. R. Liskey 4

4 Madison H. Thomas 24

5 Arch. S. White 18

6 Layton C. Dixon 16

7 John M. Hill 20

8 Newton A. Neff 26

9 D. F. Carman 14

10 J. S. Moore 22

11 C. P. Bowman

12 C. E. Bare 26

Hurst's Standard Forms, Annotated. } No. 3.

Certificate of Commitment for Trial.

{ Hurst & Company, Luray, Va.

[Code, §§3970-71.]

VIRGINIA, COUNTY OF Rockingham, TO-WIT:

To the Clerk of the County Court of said County:

I, H. C. Hale, a justice of said county, do hereby certify that I have this day committed Amos Wallace to the jail of said county, that he may be tried before the ~~county~~ Circuit court of said county, for a felony by him committed, in this, that he, on the 30 day of May, 1904, in the said county, did unlawfully, maliciously and feloniously shoot one John Hoskins with intent to maim disfigure disable and kill him, the said John Hoskins

Given under my hand and seal, this 3rd day of June, 1904

H. C. Hale, J. P. [L. S.]

[For certificate, where accused is bailed, see Hurst's Guide & Manual, p. 112, No. 5.]

Mary Walker

INSTRUCTION NO: "1":

Given

The court instructs the jury that the law presumes every person charged with crime to be innocent until his guilt is established by the commonwealth beyond a reasonable doubt, and this presumption of innocence goes with the accused through the entire case and applies at every stage thereof; and if, after having heard all of the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact, essential to prove the charge made against him in the indictment, it is their duty to give the prisoner the benefit of the doubt and find him not guilty.

INSTRUCTION NO: "A":

The court instructs the jury that the law presumes every person charged with crime to be innocent until his guilt is established by the commonwealth beyond a reasonable doubt, and this presumption of innocence goes with the accused through the entire case and applies at every stage thereof; and if, after having heard all of the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact, essential to prove the charge made against him in the indictment, it is their duty to give the prisoner the benefit of the doubt and find him not guilty.

INSTRUCTION NO. 2:

Given

The court further instructs the jury that upon the trial of this case, if a reasonable doubt of any fact, necessary to establish the guilt of the accused as charged in the indictment, be raised by the evidence or lack of evidence, such doubt is decisive and the jury must acquit the accused, since the verdict "not guilty" means no more than that the guilt of the accused has not been established in the precise, specific and narrow form prescribed by law.

INSTRUCTION NO. 3:

Given

The court instructs the jury that murder by ~~poison~~, lying in wait, ~~imprisonment, starving~~ or any wilful, deliberate and premeditated killing or in the commission of, or attempt to commit arson, rape, burglarly or robbery is murder in the first degree. All other murder is murder of the second degree.

INSTRUCTION NO. 2:

The court further instructs the jury that upon the trial of this case, if a reasonable doubt of any fact, necessary to establish the guilt of the accused as charged in the indictment, be raised by the evidence or lack of evidence, such doubt is decisive and the jury must acquit the accused, since the verdict "not guilty" means no more than that the guilt of the accused has not been established in the precise, specific and narrow form prescribed by law.

INSTRUCTION NO. 3:

The court instructs the jury that murder by poison, lying in wait, imprisonment, starving or any willful, deliberate and premeditated killing or in the commission of, or attempt to commit arson, rape, burglary or robbery is murder in the first degree. All other murder is murder of the second degree.

INSTRUCTION NO. 4

Granted

The court instructs the jury, even if they are satisfied from the evidence beyond a reasonable doubt that the accused took the life of the deceased, then the jury are instructed that the law prima facie presumes that such killing was murder of the second decree, and burden rests upon the commonwealth to elevate the offence to murder in the first degree, by proving beyond a reasonable doubt that it was a wilful, deliberate and premeditated killing.

INSTRUCTION NO. 4

The court instructs the jury, even if they are satisfied from the evidence beyond a reasonable doubt that the accused took the life of the deceased, then the jury are instructed that the law prima facie presumes that such killing was murder of the second degree, and burden rests upon the commonwealth to elevate the offence to murder in the first degree, by proving beyond a reasonable doubt that it was a wilful, deliberate and premeditated killing.

INSTRUCTION NO: 5;

Given

The court instructs the jury that if, upon the whole evidence in the case they believe there is any reasonable hypothesis, consistent with the innocence of the accused, they must find him not guilty.

INSTRUCTION NO: 9

The court instructs the jury that if, upon the whole evidence in the case, there is any reasonable hypothesis, consistent with the innocence of the accused, they must find him not guilty.

INSTRUCTION NO: 6:

Given

The court instructs the jury that, upon the trial of a criminal case by a jury, the law contemplates the concurrence of twelve minds in a conclusion of guilt before conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the defendant's guilt, before he can under his oath consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind must be convinced beyond a reasonable doubt of the defendant's guilt before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered all the evidence in this case, and after consultation with his fellow-jurors, should entertain such reasonable doubt of the defendant's guilt, it is his duty not to surrender his own conviction, simply because the balance of the jury entertain different convictions. The court instructs the jury that upon the trial of a criminal case by a jury, the law contemplates the concurrence of twelve minds in the conclusion of guilt before conviction can be had. Not only is this true with respect to the guilt of the accused, but it is likewise true with respect to the degree of the crime. Therefore, although the jury may believe from the evidence that the accused is guilty of the killing of the deceased, still, if any individual member of the jury, after having duly considered all the evidence in this case, and after consultation with his fellow-jurors, should entertain a reasonable doubt as to the degree of guilt of the accused, it is his duty not to surrender his own convictions as to such degree of guilt, simply because the balance of the jury entertain different convictions with respect to such degree .

INSTRUCTION NO: 10:

The court instructs the jury that, now the trial to a criminal case by a jury, the law contemplates the concurrence of fewer minds in a conclusion of guilt before conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt to the defendant's guilt before he can render his also a verdict of guilt. Each juror should test the consent of a verdict of guilt by an honest judgment as to the reasonableness of the evidence in the case, and after consultation with his fellow-jurors, he should enter-tain such reasonable doubt to the defendant's guilt, it is his duty not to surrender his own conclusions because the majority of the jury, simply because the majority of the jurors to secure a verdict of guilty, as of such degree of guilt as the evidence in the case warrants a reasonable doubt as to the degree of guilt to which the defendant is entitled. The court instructs the jury that, upon the trial of a criminal case by a jury, the law contemplates the concurrence of fewer minds in a conclusion of guilt before conviction can be had. Not only the conclusion of guilt before conviction can be had, but the agreement of the jurors must be as to the degree of the crime. Therefore, if upon the evidence that the jury can believe from the evidence that the accused committed the crime, but the evidence leaves the jury in doubt as to the degree of the crime, it is the duty of the jury, after having duly considered the evidence in the light of the fellow-jurors, and after consultation with his fellow-jurors, to give the defendant the benefit of such reasonable doubt, as of the degree of guilt, because of the paucity of the evidence to secure the defendant a fair and impartial trial.

No 7

Given

The jury are instructed that if they believe from the evidence that the prisoner, from his point of view, had a reasonable right to believe that the deceased, Hoskins, was about to commit an assault upon him with a deadly weapon, and that thereby the prisoner would be put in immediate danger of serious bodily harm, then the prisoner had the right to repel the threatened assault by such force as, from his point of view, was reasonably necessary to protect himself, even to the extent of killing said Hoskins, and that, in order to determine the necessity for such killing he had a right to take into consideration the relations of the parties, any recent quarrel between them, any threats by said Hoskins against the prisoner of which the prisoner was aware, and the prisoner's knowledge of a habit on the part of Hoskins of carrying about his person a deadly weapon, which they may believe to be established by the evidence in the cause.

No 8

Given

The jury are instructed that in order to warrant the prisoner in shooting the deceased Hoskins, under the last instruction, it was not necessary that said Hoskins should, at the time of such shooting, have been in actual possession of a deadly weapon, but that such shooting was justifiable if the conduct of the said Hoskins, taken in connection with a a habit on his part of carrying deadly weapons, which habit was known to the prisoner, was such as to reasonably lead the prisoner to believe that said Hoskins was armed, and was about to commit an assault upon him with a deadly weapon, so as to threaten the prisoner with immediate serious bodily harm.

Wright No 9

The jury are instructed that the expression "lying in wait" means, under the law, a concealing of one's self in the path of an intended victim for the purpose of killing him, accompanied by a deliberate and premeditated seeking of an accasion to effect the deadly purpose, and that unless they ~~find~~ believe from the evidence that the prisoner, Wallace, did, in fact, conceal himself in the path of the deceased, Hoskins, for the purpose of killing him, and deliberately and premeditatedly sought an occasion to effect such killing, they cannot find him guilty of murder by "lying in wait."

1961.

COMMONWEALTH

vs.

AMOS WALLACE.

If you find the Prisoner not guilty you will say so and no more.

If you find the Prisoner guilty of murder in the first degree you will say so and no more.

If you find the Prisoner not guilty of murder in the first degree but guilty of murder in the second degree you will say so and ascertain his Punishment which shall be confinement in the Penitentiary not less than five nor more than eighteen years.

If you find the Prisoner not guilty of murder in the first or second degree, but guilty of voluntary man-slaughter, you shall say so and ascertain his Punishment which shall be confinement in the Penitentiary not less than one nor more than five years.

If you find the Prisoner not guilty of murder in the first or second degree nor guilty of voluntary man-slaughter, but guilty of involuntary man-slaughter you will say so and ascertain his Punishment which shall be fine not less than five dollars or confinement in the County jail, either or both, in your discretion.

GOVERNMENT

vs.

WAR AUTHOR.

It now turns out that Smith's non-attendance in the first

quarter was due to his being not more than eighteen years

old.

It now turns out that Smith's non-attendance in the first

quarter was due to his being not more than eighteen years

old.

It now turns out that Smith's non-attendance in the first

quarter was due to his being not more than eighteen years

old.

It now turns out that Smith's non-attendance in the first

quarter was due to his being not more than eighteen years

old.

It now turns out that Smith's non-attendance in the second quarter was due to his being not more than eighteen years old.

It now turns out that Smith's non-attendance in the second quarter was due to his being not more than eighteen years old.

It now turns out that Smith's non-attendance in the second quarter was due to his being not more than eighteen years old.

It now turns out that Smith's non-attendance in the second quarter was due to his being not more than eighteen years old.

COMMONWEALTH

vs.

AMOS WALLACE.

Given

The Court ~~further~~ instructs the jury that murder is the unlawful killing of any person with malice aforethought.

COMMONWEALTH

vs.

AMOS WALLACE.

2

Given

The Court instructs the jury that murder is distinguished by the law of Virginia as murder in the first degree, and as murder in the second degree.

COMMONWEALTH

vs.

AMOS WALLACE.

3

Given

The Court instructs the jury that every homicide in Virginia is presumed in law to be murder in the second degree. In order to elevate the offence to murder in the first degree, the burden of proof is upon the Commonwealth, and in order to reduce the ~~evidence~~ offence to manslaughter, the burden of proof is upon the prisoner.

COMMONWEALTH

vs.

AMOS WALLACE.

4

Malice

The Court instructs the jury that on a charge of murder, malice is presumed from the fact of killing. When the killing is proved, and is unaccompanied with circumstances of palliation, the burden of disproving malice is thrown upon the accused.

COMMONWEALTH

vs.

AMOS WALLACE.

5

Malice

The Court further instructs the jury that whenever the killing is willful, deliberate, and premeditated, the law infers malice from this fact.

COMMONWEALTH

vs.

ALICE WALLACE.

The Court instructs the jury that on a charge of murder, malice is presumed from the fact of killing. When the killing is proved, and is unaccompanied with extenuating circumstances of palliation, the burden of disproving malice is thrown upon the accused.

COMMONWEALTH

vs.

ALICE WALLACE.

The Court further instructs the jury that whenever the killing is willful, deliberate, and premeditated, the law infers malice from this fact.

COMMONWEALTH

vs.

AMOS WALLACE.

6

Given

The Court further instructs the jury that to constitute a willful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist any particular length of time prior to the actual killing, it is only necessary that such intention should come into existence for the first time at the time of killing, or any time previously.

COMMONWEALTH

vs.

AMOS WALLACE.

The Court further instructs the jury that to constitute a wilful, deliberate and premeditated killing, it is not necessary that the intention to kill should exist any particular length of time prior to the actual killing. It is only necessary that such intention should come into existence for the first time at the time of killing, or any time previously.

COMMONWEALTH

vs.

AMOS WALLACE.

7

Given

The Court instructs the jury that in law, muder in the first degree is murder by poison, lying in wait, imprisonment, starving or any willful, deliberate, and premeditated killing; or in the commission of or attempt to commit arson, rape, robbery or burglary, and that murder in the second degree is all other murder than murder in the first degree.

COMMONWEALTH

vs.

AMOS WALLACE.

8

Given

The Court instructs the jury that man slaughter in law, is the unlawful killing of another without malice, expressed or implied, and it is either voluntary or involuntary man slaughter. That voluntary man slaughter is the unlawful killing of a person without malice, actual or implied, upon a sudden heat, on reasonable provocation, and in mutual combat.

That involuntary man slaughter is the killing of one accidentally, contrary to the intention of the party, in the prosecution of some lawful but not felonious act; or in the improper performance of a lawful act.

9

COMMONWEALTH

vs.

AMOS WALLACE.

The Court instructs the jury that if Amos Wallace deliberately shot John Hoskins with intent to maim, disfigure, disable or kill said Hoskins and death ensued from the commission of the act, though contrary to the ~~xxxxxxx~~ prisoner's original intention, he will nevertheless be guilty of murder, which is prima facie murder in the second degree, unless the said shooting was done in self defence.

10

COMMONWEALTH

vs.

AMOS WALLACE.

The Court instructs the jury that if they believe from the evidence that the prisoner willfully inflicted upon said John Hoskins a wound calculated to endanger or destroy life and that death ensued therefrom within a year and a day, the prisoner is none the less responsible for the result, although he might have recovered, but for lock jaw having set in as the result of said wound.

COMMONWEALTH

vs.

AMOS WALLACE.

Given

The Court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical conjectures. A doubt to justify an acquittal, must be reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction, of the truth of the charge, you are satisfied beyond a reasonable doubt.

CONMONWEALTH

vs.

AMOS WALLACE.

The Court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical conjectures. A doubt to justify an acquittal, must be reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction, of the truth of the charge, you are satisfied beyond a reasonable doubt.

12

COMMONWEALTH

vs.

AMOS WALLACE.

Given as modified

The Court instructs the jury that if they believe from the evidence that the prisoner shot John Hoskins on the _____ day of June 1904 and that said prisoner immediately thereafter attempted to escape, the jury may consider such attempt along with other facts and circumstances tending to establish the guilt or innocence of the accused.

See Wharton's Law of Evidence Section 1 Page 647

and that if they believe that he did not attempt to escape but peacefully submitted to arrest, this circumstance may be considered as, with other circumstances, tending to establish his innocence.

COMMONWEALTH

vs.

AMOS WALLACE.

13

Instructions

The Court instructs the jury that if they believe from the evidence that a mortal wound was given John Hoskins by a deadly weapon in previous possession of said Amos Wallace, the accused, without any or upon very slight provocation, it is prima facie willful and premeditated killing, and throws upon the accused the necessity of proving extenuating circumstances.

See Hartman case 99 Va. 848.

Instructions

COMMONWEALTH

vs.

AMOS WALLACE.

14

Evidence

The Court instructs the jury that on a trial for murder, the law of self defence is the law of necessity and the necessity relied on to justify the killing must not arise out of the prisoner's own misconduct; and if the jury shall believe from the evidence that the prisoner assaulted John Hoskins and thereby brought about the necessity of killing the deceased, should they believe there was any such necessity, then the prisoner can not justify the killing of the deceased by a plea of necessity, unless he, the prisoner, was without fault in bringing that necessity upon himself.

Using epithets - Too provoked to forbear - 98 Va. 843-5

Leonard Marks case 28 Gratt. 1925

COMMONWEALTH

vs.

AMOS WALLACE.

15

Given

obj

The Court instructs the jury that if they believe from the evidence that the prisoner shot John Hoskins and that said Hoskins died as a result of said gun shot wound, the prisoner is presumed to be guilty of murder in the second degree.

16

COMMONWEALTH

vs.

AMOS WALLACE.

Given

The Court instructs the jury that though they believe from the evidence that John Hoskins was frequently seen carrying a concealed weapon prior to the difficulty of May 30, 1904, between him and the accused, yet the fact of his having so carried such weapon before said event is evidence for your consideration, only as to whether he was carrying such weapon at the time of said difficulty, and is no defense for the accused for shooting said Hoskins, except in so far as you may consider that such previous occasions of carrying such weapon tend to show that ~~he~~ prisoner reasonably believed he had it and was in the act of drawing it on the accused at the time he (Hoskins) was shot.

HELLAMMONDS

-vs-

"SOMA AVILLAGE"

The court instructs the jury that though they believe from the evidence that John Hopkins was frequently seen carrying a concealed weapon prior to the difficulty of May 30, 1884, between him and the accused, yet the fact of his having so carried such weapon before that event is evidence for your consideration, only as to whether he was carrying such weapon at the time of said difficulty and it is no defense for the accused for shooting said Hopkins except in so far as you may consider that such previous occasions of carrying such weapon tend to show that the fact (Hopkins) was in the act of drawing it on the accused at the time he was shot.

HELLAMMONDS

-vs-

"SOMA AVILLAGE"

The court instructs the jury that if they believe from the evidence that the defendant shot John Hopkins and that said Hopkins died as a result of said gun shot wound, the defendant is presumed to be guilty of murder in the second degree.

[Code, §§3989, 3999, 4000, 4011, 4045; Hurst's Guide & Manual, pp. 537 (3), 540-5, 546, 617-18.]

Commonwealth of Virginia,

COUNTY OF Rockingham, *TO-WIT:*

IN THE ~~COUNTY~~ Circuit *COURT OF SAID COUNTY:*

The jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, *and now attending the said Court at its* September *term, in the year* 1904, *upon their oaths present that* Amos Wallace

on the 30th *day of* May, *in the year* 1904, *in the said County,*

in and upon one John Hoskins then and there being, did feloniously, willfully and of his malice aforethought make an assault, and that the said Amos Wallace ~~had~~ a certain gun, then and there charged with gun powder and shot, which said gun he, the said Amos Wallace, in his hand then and there had and held, then and there feloniously, willfully and of his malice aforethought, did discharge and shoot off, at, against and upon the said John Hoskins, and that the said Amos Wallace with the shot aforesaid, out of the gun by the said Amos Wallace discharged and shot off as aforesaid, then and there feloniously, willfully and of his malice aforethought, did strike, penetrate and wound the said John Hoskins in and upon the thigh of the right leg of him, the said John Hoskins, giving to him, the said John Hoskins, then and there, with the shot aforesaid, so as aforesaid discharged and shot off out of the gun aforesaid, by the said Amos Wallace in and upon the thigh of the right leg of him, the said John Hoskins, one mortal wound, of which said mortal wound he, the said John Hoskins, from the said 30th day of May 1904 to the 12th day of June, 1904, in the County aforesaid, did languish, and languishing, did live, on which said 12th day of June, 1904, the said John Hoskins, in the County aforesaid, of the said mortal wound, died; and so the jurors aforesaid, upon their oaths aforesaid, now say that the said Amos Wallace, him the said John Hoskins in the manner and by the means aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder,

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Dr Bidler, J B Koogler, J W F Miller, Tom Temple, Mrs John Hoskins

witness sworn in open

Court and sent to the Grand Jury to give evidence.

, Clerk.

We the Jury find the prisoner Amos Wallace guilty of Murder in the Second degree in manner and form as Charged in the Indictment and ascertain his punishment at Confinement in the Penitentiary for the term of ten years

W. H. Thomas Foreman

No. 35.

Commonwealth

INDICTMENT FOR A Felony

vs.

Amos Wallace

A TRUE BILL.

J. E. Lee Brick

Foreman.

Sept 1896

Instructions
Costuh
&
Wallace
Cox v DON
12/13/2016 -

We the Jury, Find the Prisoner guilty of murder in the Second Degree and fix his punishment at Ten years in the Penetentiary

W. H. Thomas Foreman

James, Wallace