(1)

No. 1

I~~NSTRUCTION NO. 8~~.

The court instructs the jury that whoever kills a human being with malice aforethought is guilty of murder. A murder which is perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, and premeditated killing is murder in the first degree; all other murder is murder in the second degree.

No. 2

~~INSTRUCTION No. 15.~~

Malice aforethought as used in the foregoing instruction means any formed design of doing mischief ~~to the deceased~~ whether arising from hatred and revenge against the deceased or from a perverse malignity and depravity of heart in general.

No. 3

When the killing is wilful, deliberate and premeditated the law infers malice from this fact.

(9)

No. 4

On a charge of murder, malice is presumed from the fact of killing. When the killing is proved and is unaccompanied with circumstances of paliation the burden of disproving malice is thrown upon the accused.

~~(2) By (7)~~

No. 6.

~~1st.~~ That every

The Court instructs the jury: ~~That every~~ unlawful homicide is presumed by law to be murder in the second degree; if the Commonwealth would elevate the offence to murder in the first degree, it must prove the characteristics of that offence, and if the prisoner would reduce the offence, the burden of proof is on him.

No. 6

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.

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.

(~~4~~) (5)

No. 7

A mortal wound given with a deadly weapon in the previous possession of the slayer, without any or upon very slight provocation is prima facie wilful, deliberate and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances.

~~(e).~~ No. 8

If the jury believe from the evidence that the killing ~~aforesaid~~ was malicious but not wilful, deliberate and premeditated, then such killing ~~was~~ is murder in the second degree.

No. 9

If the jury believe from the evidence that the prisoner killed the deceased in execution of a malicious purpose to do the deceased a serious personal hurt by wounding him the offence is murder.

No. 10

The Court instructs the jury that where on a charge of murder the prisoner pleads self defence, then the burden is upon the prisoner to prove to the satisfaction of the jury that he acted in self defence.

No. 11

~~INSTRUCTION NO. 12.~~

~~As a qualification of the foregoing instruction (No. 10)~~ The jury are further instructed that the bare fear of bodily harm, however honestly and seriously entertained, will not of itself constitute a justification of a homicide on the principle of self defense, but there must be some act menacing present peril, or some thing in the attending circumstances indicative of a present purpose on the part of the deceased to make the apprehended attack. The act so done by the deceased, or the circumstances thus existing, must be of such a character as to afford a reasonable ground for the prisoner's believing at the time that the deceased intended then to kill him or to do him serious bodily harm.

~~INSTRUCTION No. 20.~~ No. 12

The court instructs the jury that proof of motive is not essential to the conviction of the prisoner, so that even though they believe from the evidence that no motive has been directly proven or only a seemingly inadequate motive is proven in the case, the jury may nevertheless convict the prisoner where the evidence is in other respects sufficient under the other instructions in the case; but the absence of any motive, or of any adequate motive, is a circumstance which the jury are entitled to take into consideration in determining the guilt or innocence of the prisoner, or in fixing the grade of his offence.

~~[illegible]~~ No. 13

The court instructs the jury that voluntary manslaughter is the unlawful killing of a person without malice, actual or implied, upon a sudden heat, on reasonable provocation, or in mutual combat.

11

No. 14

The Court instructs the jury as a matter of law, 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 crimorical or conjectural. A reasonable doubt must be based upon the evidence or grow out of the evidence. It must not be an arbitrary doubt without evidence to sustain it. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or facts necessary for the jury to believe to find a verdict of conviction and not of immaterial and non-essential circumstances.

See Williams v. Commonwealth 85 Va. 807.

See McCue v. Commonwealth 102 Va. 870.

No. 14

The court instructs the jury that upon the trial of a criminal case by a jury the law contemplates a concurrence of twelve minds in the conclusion of guilt before a 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 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 of the evidence in this case, and after consultation with his fellow-jurors, should entertain a reasonable doubt as to the degree of the 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.

Com.
Jno. T. Phillips
Chas. Jno. Eaton
Lindemeier
Frank Brit
Frederick

No. 15

INSTRUCTION NO. 6.

The court instructs the jury that the credibility of witnesses is a question exclusively for the jury, and the law is that where a number of witnesses testify directly opposite to each other, the jury is not bound to regard the weight of the evidence as equally balanced; the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, and their apparent candor and fairness, their apparent intelligence, and from all of the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

No. 16

(2).

If the jury believe from the evidence that previous to the time of the killing, there was a grudge on the part of the prisoner towards the deceased, and that the prisoner killed the deceased because of this aforesaid grudge, then such killing was wilful, deliberate and premeditated, and is murder in the first degree.

No. 1

The jury are instructed that the prisoner is presumed to be innocent and that he can not be convicted unless and until his guilt is proven beyond very reasonable doubt.

The Court instructs the jury that the burden of proof is on the prisoner to show, by preponderance of evidence, that the shooting of Warren Davis was in self defense.

(3)

The jury are instructed that if defendant on his part was without fault in bringing about the conditions, which surrounded him at the time he shot Warren Davis, and those conditions were such as reasonably, to cause him to fear that he was in imminent danger of receiving serious bodily harm from Warren Davis, then the defendant is entitled to be acquitted, even though the apparent danger was not real, but if defendant's own misconduct brought about the necessity to shoot in his own defense, then the shooting cannot be justified.

No. 4 4

The jury are further instructed that the prisoner, from his point of view, had a right to presume that he was in imminent danger of serious bodily harm, if the appearances reasonably indicated that the deadly weapon in the hands of said Davis would be used upon him, and such appearances are of themselves sufficient to raise the presumption that the accused did believe that he was in imminent danger of serious bodily harm, and no other evidence is necessary to prove that the accused was in imminent danger of serious bodily harm; and they are further instructed that for the purposes of this case, it is immaterial whether the said Davis really meant to do him such harm or not, if the appearances, from the point of view of the accused were such as to indicate that he was in such imminent danger of serious bodily harm. But shooting to protect himself from imminent peril does not justify the plea of self defense if the imminent peril was brought upon defendant by his own misconduct.

If Defendant approached Davis at the time of combat between his brother and Davis, or immediately afterward, then the jury are to consider the manner and circumstances and purposes of such approach, in determining whether the Defendant was without fault in bringing about a condition of peril upon himself. But while defendant had the right to approach the scene of combat between his brother and Warren Davis for a lawful purpose and in a peaceful manner, yet if the jury believe from the evidence that he advanced on Warren Davis with a shot gun in such threatening manner as to cause Warren Davis to honestly and reasonably believe, that there was immediate and imminent danger of attack from him with a deadly weapon, then the jury are instructed defendant cannot rely upon self defence as a justification of his shooting of Warren Davis no matter how great his peril was at the time he shot, his own conduct being responsible for such peril. Such conditions, however, may be considered in mitigation of the offense.

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Oscar Shifrin