COMMONWEALTH

VS.

MADISON BROWN

CHARGE TO THE JURY

If the jury find the accused, Madison Brown, not guilty they will say so and no more.

If you find him guilty of murder in the first degree as charged in the indictment you will say so and ascertain his punishment with death, or by confinement in the penitentiary for life, or for any term not less than twenty years.

If you find him not guilty of murder in the first degree, but guilty of murder in the second degree you will say so and ascertain his punishment by confinement in the penitentiary not less than five nor more than twenty years.

If you find him not guilty of either of the felonies aforesaid, but guilty of voluntary manslaughter you will say so and ascertain his punishment by confinement in the penitentiary not less than one nor more than five years.

COMMONWEALTH

VS.

MADISON BROWN

CHARGE TO THE JURY

D.W.Earman
Commonwealth's Attorney

COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

IN THE 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, upon their oath present, that Madison Brown, on the 24th day of March, 1920, with force and arms, in the County aforesaid, in the City of Harrisonburg, in and upon the body of one Clifford Gibson, in the peace of said Commonwealth then and there being, feloniously, wilfully, and of his malice aforethough, did make an assault; and that the said Madison Brown, a certain pistol, of the value of _____ Dollars, then and there charged with gunpowder and one leaden bullet, which said pistol, he, the said Madison Brown in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against and upon the said Clifford Gibson; and that the said Madison Brown, with the leaden bullet aforesaid, out of the pistol by the said Madison Brown discharged and shot off, as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound the said Clifford Gibson in and upon the left breast, right above the heart, of him the said Clifford Gibson; giving to him, the said Clifford Gibson, then and there with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said Madison Brown, in and upon the left breast, right above the heart of him, the said Clifford Gibson, one mortal would; of which said mortal wound, he, the said Clifford Gibson, shortly thereafter and on the same day, died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Madison Brown, him, the said Clifford Gibson, in the manner and

by the means aforesaid, feloniously, wilfully, and of his malice

by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of John L. Logan, Madison Brown, Bertha Brown, Dr. J. M. Beidler, and W. L. Dillard, witnesses sworn in open court and sent to the grand jury to give evidence.

Commonwealth

vs.

Madison Brown

April term, 1920.

A true bill

H. P. R. Weaver
Foreman

Plea of not guilty

D.W. Earman
Commonwealth's Attorney

We the jury find the accused not guilty.
D. D. Shoemaker Foreman

INSTRUCTION NO. 18

The Court instructs the jury that the credibility of witnesses is a matter exclusively for the jury, and that, in determining the weight to be given to the testimony of the different witnesses, they have a right to consider their interest in the result of the case; their relationship to the parties concerned; their temper, feeling or bias, if any is shown; their demeanor or bearing while testifying; their intelligence; their means of information; the reasonableness or unreasonableness of their statements; and all the facts and circumstances appearing on the trial; -- and to give such credit to the testimony of the different witnesses, or any of them, as under all the circumstances the jurors consider them entitled to.

INSTRUCTION No. 1

Every unlawful homicide must be either murder or manslaughter, and whether it be one or the other depends upon the means by which it was accomplished, and on whether the person who perpetrated it did it with malice or not. If the act was done with a deadly weapon or by means likely to cause death or serious bodily harm, and with malice, it is murder. If done in the heat of a sudden passion arising on a sufficient provocation, or in the heat of mutual combat, it is voluntary manslaughter.

A homicide committed in self defense, under circumstances that would justify a plea of self defense, is not an unlawful homicide, but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.

INSTRUCTION NO. 2.

Malice or malice aforethought is any formed design of doing mischief, whether arising from a feeling of hatred or revenge against the deceased or from wickedness of the heart in general.

INSTRUCTION NO. 3

Murder is distinguished by the law into murder in the first degree and murder in the second degree.

INSTRUCTION NO. 4.

Murder which is perpetrated by poison, lying in wait, starving, or any other wilful, deliberate and premeditated murder is murder in the first degree; all other murder is murder in the second degree.

3. ON MOTIVATION

To make best of your at disposal when to solve problems or to
bring about. Motivation a most important factor in the first degree: It
affects your ability. Utility. deliberate and Intermediate
motive at motive in the first degree: All other motive at motive
motive at motive in the second degree.

2. ON MOTIVATION

and at motive and well and yet bedeliberate at motive
Motive at disinterested in the second degree and at motive and zero
degree.

4. ON MOTIVATION

Motive and purely. nose yet bedeterpreg at doing motive
motive and purely. Time at motive

INSTRUCTION NO. 5.

Every unlawful homicide is presumptively murder in the second degree. In order to elevate the offense to murder in the first degree the burden is on the Commonwealth, and to reduce the offense to manslaughter or to justify it on the ground of self defence the burden is on the prisoner.

INSTRUCTION NO. 5.

Every unlawful homicide is presumptively murder in the second degree. In order to elevate the offense to murder in the first degree the burden is on the Commonwealth, and to reduce the offense to manslaughter the burden is on the prisoner.

INSTRUCTION NO. ~~9~~ 6

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 doing of the deed. Such intention may come into existence for the first time at the time of the killing.

INSTRUCTION NO. 11 7

The Court instructs the jury that where a homicide has been committed with a deadly weapon the law implies malice from the use of such weapon, and a man must be taken to intend that which he does or which is the immediate or necessary consequence of his act.

INSTRUCTION NO. 7

The Court instructs the jury that where a homicide has been committed with a deadly weapon the law implies malice from the use of such weapon, and a man must be taken to intend that which he does or which is the immediate or necessary consequence of his act.

INSTRUCTION NO. 8

The Court instructs the jury that even though they may believe from the evidence that the deceased took liberties with the wife of the accused, and that she told ~~xxxxxx~~ her husband of the same, and though they may further believe that the deceased threw a rock or rocks at the accused on the night before the ~~murder~~ shooting, the same does not justify or excuse the accused for the killing of Clifford Gibson.

INSTRUCTION NO. 6

The Court instructs the jury that even though they may believe from the evidence that the deceased took liberties with the wife of the accused, and that she told ~~thereby~~ her husband of the same, and though they may further believe that the deceased threw a rock or stone at the accused on the night before the ~~[illegible]~~, the same does not justify or excuse the accused for the killing of deceased.

INSTRUCTION No. 9.

The Court instructs the jury that provocation alone, no matter how great, can never justify a man in taking the life of another or excuse him for it; only the necessity of striking in self defense can do that. The utmost effect that can be allowed to provocation in the way of mitigation or excuse, in a case of homicide, is to reduce the grade of the offense from murder to voluntary manslaughter, and that only when the provocation is a grevious one, sufficient in the opinion of the jury to influence a normal man to the point where he is lost to self-control, and the fatal wound is given in sudden heat of blood excited by the provocation.

While the law so far has regard for human passion excited by a great wrong as to allow the effect of mitigation or partial excuse of an act of violence done under its influence, it never justifies or wholly excuses a man for taking the law into his own hands to right or avenge his wrongs. If a man takes another in the act of adultery with his wife and, in the heat of passion naturally excited by such a wrong, seizes a weapon and slays him, he is guilty of voluntary manslaughter punishable in this State by from one to five years in the penitentiary.

THE COURT THEREFORE THE JURY FIND PROVOCATION ALONE, OR WHETHER
THERE WAS ANY PROVOCATION AT ALL, THEY WILL BE ENTITLED TO TAKE INTO
ACCOUNT THE WHOLE OF THE EVIDENCE BEFORE THEM, INCLUDING THE EVIDENCE
OF THE ACCUSED HIMSELF, AND TO DECIDE WHETHER OR NOT THE PROVOCATION
WAS, IN THEIR OPINION, SUFFICIENT TO DEPRIVE A REASONABLE MAN OF THE
POWER OF SELF-CONTROL. THE JURY MUST ALSO BE SATISFIED THAT THE
ACCUSED ACTUALLY DID LOSE HIS SELF-CONTROL, AND THEN THEY MUST
CONSIDER WHETHER OR NOT THE ACCUSED HAD TIME TO COOL AFTER THE
PROVOCATION WAS GIVEN TO HIM. IF THE JURY FIND THAT THE ACCUSED
HAD TIME TO COOL, THEN THE PROVOCATION WAS NOT SUFFICIENT TO REDUCE
THE OFFENCE TO MANSLAUGHTER. IT IS NOT ENOUGH TO REDUCE THE OFFENCE
TO MANSLAUGHTER THAT THE ACCUSED ACTUALLY LOST HIS SELF-CONTROL,
BUT THE PROVOCATION MUST BE SUCH AS TO DEPRIVE A REASONABLE MAN OF
THE POWER OF SELF-CONTROL. IN THE PRESENT CASE, THE ACCUSED
MAINTAINS THAT HE WAS PROVOKED BY THE DECEASED TO THE EXTENT THAT
HE LOST HIS SELF-CONTROL. THE DECEASED STATED THAT HE WAS ALLOWED
TO PROVOKE HIM AND THAT HE DID NOT LOSE HIS SELF-CONTROL. THE
ACCUSED MAINTAINS THAT HE WAS PROVOKED TO THE EXTENT THAT HE LOST
HIS SELF-CONTROL, AND THAT HE HAD NO TIME TO COOL. IF THE JURY
FIND THAT THE ACCUSED ACTUALLY LOST HIS SELF-CONTROL, IT IS
ENTIRELY A QUESTION OF FACT TO DECIDE WHETHER OR NOT THE PROVOCATION
WAS SUFFICIENT TO DEPRIVE A REASONABLE MAN OF THE POWER OF SELF-
CONTROL, AND WHETHER OR NOT THE ACCUSED HAD TIME TO COOL AFTER THE
PROVOCATION WAS GIVEN TO HIM. IF THE JURY FIND THAT THE ACCUSED
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CONTROL, AND WHETHER OR NOT THE ACCUSED HAD TIME TO COOL AFTER THE
PROVOCATION WAS GIVEN TO HIM. IF THE JURY FIND THAT THE ACCUSED
HAD TIME TO COOL, THEN THE PROVOCATION WAS NOT SUFFICIENT TO REDUCE
THE OFFENCE TO MANSLAUGHTER.

INSTRUCTION No. 10

The Court instructs the jury that to make out a case of self defense in a case of homicide, the accused must show to the jury that the defense was necessary to protect his own life, or to protect himself against grievous bodily harm.

INSTRUCTION NO. 14

The court instructs the jury that in this case, as in all criminal cases, the accused's plea of not guilty raises a presumption of innocence in his favor and puts on the Commonwealth the burden of proving his guilt beyond reasonable doubt. If, therefore, upon a consideration of the whole case, the testimony of the witnesses and the circumstances shown in evidence, there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, they should find him not guilty.

INSTRUCTION NO. 12

A reasonable doubt is that state of the case which, after comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they can not say that they feel an abiding conviction to a moral certainty of the guilt of the accused.

13 ~~11~~

The Court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to some substantial and material fact essential to the proof of the offence charged. A reasonable doubt must be based upon the evidence or be such as is suggested by the evidence or grows out of the evidence itself, or out of the absence of material evidence. It must not be an arbitrary doubt. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or of material facts necessary to be believed by the jury in order to find a verdict of conviction, and not of immaterial and unessential circumstances.

INSTRUCTION NO. 14

The Court instructs the jury that if they believe from the evidence, that the prisoner, at the time he shot Clifford Gibson, acted under a reasonable belief that he was in imminent danger of serious bodily harm at the hands of said Gibson, and it was necessary for him to defend himself to avoid serious bodily harm, which was apparently imminent, then they are instructed that the prisoner was justifiable in defending himself by such means as were reasonably necessary, even to the extent of killing said Gibson, and even if the jury should believe that appearances were deceptive and that there was in fact no design on the part of the said Gibson to kill the prisoner or to do him serious bodily harm.

INSTRUCTION NO. 15

The ~~jury~~ Court further instructs the jury that in order to determine the necessity of the prisoner killing the said Gibson, and defending himself against the said Gibson, the prisoner had a right to take in to consideration any bad feeling if any there was which the jury may believe the evidence discloses the said Gibson had against him, the prisoner, together with any threats or previous attempts by Gibson shown by the evidence to do him, the prisoner, serious bodily harm.

INSTRUCTION NO. 16

The Court instructs the jury that men, when threatened with danger, must determine from the state of things surrounding them as to the necessity of resorting to self-defense and if they act reasonably and with honest convictions, they will not be held responsible criminally for a mistake as to the actual extent of the danger.

16

INSTRUCTION NO. 17

The Court instructs the jury that if they have a reasonable doubt as to the grade of offense of which the prisoner may be guilty, that they shall resolve that doubt in his favor, and find him guilty of the lower grade; to illustrate, if they have reasonable doubt as to whether he is guilty of murder in the first degree or the second degree, they should find him guilty in the second degree. If they have a reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, they should find him guilty of manslaughter; and if they have a reasonable doubt as to whether he be guilty at all, they must resolve that doubt in favor of the accused and acquit him.

INSTRUCTION No. ____

The Court instructs the jury that if they have a reasonable doubt as to the guilt of defendant which the evidence may be capable of, then it would be their duty to give the benefit of the doubt to the defendant, and find him not guilty of the lower grade; to illustrate, if they have reasonable doubt as to whether he is guilty of murder in the first degree or the second degree, they should find him guilty in the second degree. If they have reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, they should find him guilty of manslaughter; and if they have a reasonable doubt as to whether he is guilty at all, they must resolve that doubt in favor of the accused and acquit him.

Refs.

INSTRUCTION NO._____

The Court instructs the jury that any threats made by Clifford Gibson to the prisoner prior to the time of the killing, as well as any made by the said Gibson, which were communicated to the prisoner, may be considered by them in the determination of the question as to whether the prisoner had, at the time of the killing, a reasonable ground to apprehend that he intended to do this, the prisoner, serious bodily harm.

Changes made by Court & then refused because covered by previously approved

JMH

INSTRUCTION NO. _____

The jury are instructed that if they believe from the evidence that the prisoner [redacted] had a reasonable right to believe that the deceased, Gibson, was about to commit an assault upon him with such a weapon or weapons as would put him, the prisoner, in immediate danger of serious bodily harm, then the prisoner had the right to repel the threatened assault by such force as [redacted] was [redacted] necessary to protect himself, even to the extent of killing the said Gibson. ~~and that in order to determine the necessity for such killing he had a right to take into consideration the relations between himself and the said Gibson and any knowledge on the part of the prisoner of previous difficulties in which the said Gibson had been engaged.~~

Refr

INSTRUCTION NO.___

The Court instructs the jury that as to the imminency of the danger which threatened the prisoner, and the necessity of killing in the first instant, the prisoner is the judge; and that the jury must pass upon the prisoner's action in the premises, viewing said action from the prisoner's standpoint at the time of the killing; and if the jury believe from all the facts and circumstances in the case, viewed from the standpoint of the prisoner at the time of the killing, that the prisoner had reasonable ground to believe, and did believe, the danger imminent, and that the killing was necessary to preserve his own life, or to protect him from great bodily harm, he was excusable for using a deadly weapon in his defense and the jury should find the defendant not guilty.

State v. Donahue, 79 W. Va. 260, 265, 90 S. E. 834, citing State v. Cain, 20 W. Va. 680, point 8 of the Syllabus.

Con
Madam Brown
Bitte benutzen
Mordi w Pogo

State of Virginia
Rockingham County
City of Harrisonburg

To the Clerk of the Circuit Court of said County

I J.C. Stapleo a Justice of said City do hereby certify that I have this day Committed Matt. Brown to the Jail of said County That he may be tried before the Circuit Court of said County for a felony by him Committed in this that he on the 24th day of March 1920 in said City did shoot and kill Clifford Kibson unlawfully

Given under my hand this 25th day of March 1920

J.C. Stapleo J.P.

THE TIRE
THAT
GIVES
SATISFACTION
TO
THE USER

6m
vs
Madison Brown

1 - Jno M. Shoemaker
2 - Jacob L. Shank
3 - L.B. Hamman
4 - S.C. Arey
5 - C.B. Anthony
6 - L.M. Shiver
7 - J.G. Whitmore
8 - R.L. Germantant
9 - J.W. Henkel
10 - J.J. Showalter
11 - J.L. Thompson
12 - R.P. Kegel

Circuit Court of Rockingham County, ... Te

ORDERED, That .....

..... *a witness for* ..... *in*

..... *vs* .....

..... *Dollars and* ..... *cents for* .....

days' attendance and traveling ..... *miles and* .....

Cents Toll. *Atteste:*

$ .....

Arrest Warrant

COMMONWEALTH OF VIRGINIA, ROCKINGHAM COUNTY, } TO WIT:

To Sheriff Sergeant or Officer, a Constable of said ~~County~~ City:

Whereas, Dr J. B. Bierer of the said ~~County~~ City, has this day made ~~complaint and~~ information ~~on oath~~ given before me, J. C. Stables a Justice of the said ~~County~~ City, that that a man had been killed on Johnston St

of the said ~~County~~ City, ~~on the day of~~ 19 , in the said ~~County~~ City, ~~did~~

An Inquest was held. The verdict of the Jury was that Clifford Gibson had come to his death from a Pistol Shot at the hands of Mat. Brown.

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before me, or some other Justice of the said ~~County~~ City, the body of the said Mat. Brown

to answer the said complaint and to be further dealt with according to law. And you are required to summon

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this 25 day of May, in the year 1920

J. C. Stables J. P. (Seal)

No. 388

NEWS-RECORD CO., HARRISONBURG, VA.

Commonwealth

vs. } Arrest Warrant

Mat Brown

Executed the within warrant by arresting and delivering the body of

.....

before .....

a Justice of Rockingham County, and by summoning the within named witnesses in person,

this ..... *day of* ..... 19....

.....

Constable of Rockingham County.

1	8	Jno M. Shaemaker
2	6½	Jacob L. Shank
3.	6½	L. B. Harmon
4	10	S. O. Arey
5	10	C. B. Aitchison
6	10	L. M. Weiser
		~~C. A. Barney~~
		~~E. A. Farnsle~~
		~~J. W. Pritchard~~
7	7	J. L. Schulmeier
		~~J. L. Wiley~~
		~~Jno C. Smith~~
8	9	R. L. Armentrout
9	10	J. W. Hunkel
10	10	J. T. Shoemaker
		~~B. F. Dugan~~
11	7	J. L. Thompson
		~~Jno C. Dugan~~
12	5	R. P. Kuzik
		~~J. R. Wheeler~~

We the Jury find the prisoner at the Bar "Not Guilty"

F. P. Showalter foreman

DOCKET NO. _____ FILE NO. _____

Commonwealth

VS { IN Felony } $

Madison Brown

p. q.

p. d.

FINAL ORDER _____ 191

1920 PROCEEDINGS

	Memo:	Filed.	Process Issued.
	April Term		

CIRCUIT COURT, ROCKINGHAM CO., VA.