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.

of 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.

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Commonwealth's Attorney

COMMONWEALTH





COMMONWRALTH 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 Jounty 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/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

.s. by the means aforesaid, relouising, wilfully, and the means aforesaid.

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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.

0 Commonwealth vs. Madison Brown April term, 1920. A true bill Per 7 her gray D.W. Earnen Commonwealth's Attorney

The Court instructs the jury that the credibility of whitnesses 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 demessor 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.



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Every unlawful homicide must be either murder or manslaughter, and whether it be one of 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, be is not an unlawful homicide, but a justifiable homicide, and the perpetrator of the act is not guilty of any crime.



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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 premedianted murder is murder in the first degree; all other murder is murder in the second degree.

Halide or malice eforethought 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 lew into murder in the first degree and murder in the second degree.

THETRICCION NO. 4.

Harder which is perpetrated by polson, lying in wait, starving, or any other wilful, deliberate and premedianted murder is murder in the first degree; all other murder is murder in the second degree.

INSTRUCTION MO. 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.

IMBTENCTION NO. 5.

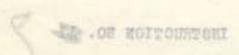
Every unlawful bomicide is precumptively murder in the countries in the countries to murder is the Commonwealth, and to reduce to a property of the countries to reduce to monelaughter the burden is on the private.

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.

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On unnoticing to deliber the intensity that the intensity to bill enough willing it is not necessary that the intensity to bill enough of the enter our particular limits of time patter to the intensity of the patter of the time of the time.

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.



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INSTRUCTION No. 4.

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 inxwimm voluntary manulaughter, 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, be is guilty of maniflaughter punishable in this State by from one to five years in the penitentiary.

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The Court instructs the jury that provention alone, no matter has great, can never justify a man in taking the life of emeries at earlies the life of entire the struct that can be allowed to provention to the way of mitigation or excuse, in a case of homboide, is to the way of mitigation or excuse, in a case of homboide, is to reduce the grade of the collection of the courter of invaint voluntary manalantities, and that only when our provention is a gravious one, sufficient to the contains of the interest a marking that to the contains of the interest a morning when the to the interest of the interest of that in the structure.

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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.



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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 witnessess 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.



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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.

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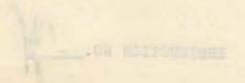
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The Court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to some substantial and meterial fact essential to the proof of the offence charged. A reasonable doubt must be based upon the evidence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

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The Court instructs the jury that if they believes from the evidence, that the prisoner, at the time he shot Clifford Gibson, acted under 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 the hard 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.



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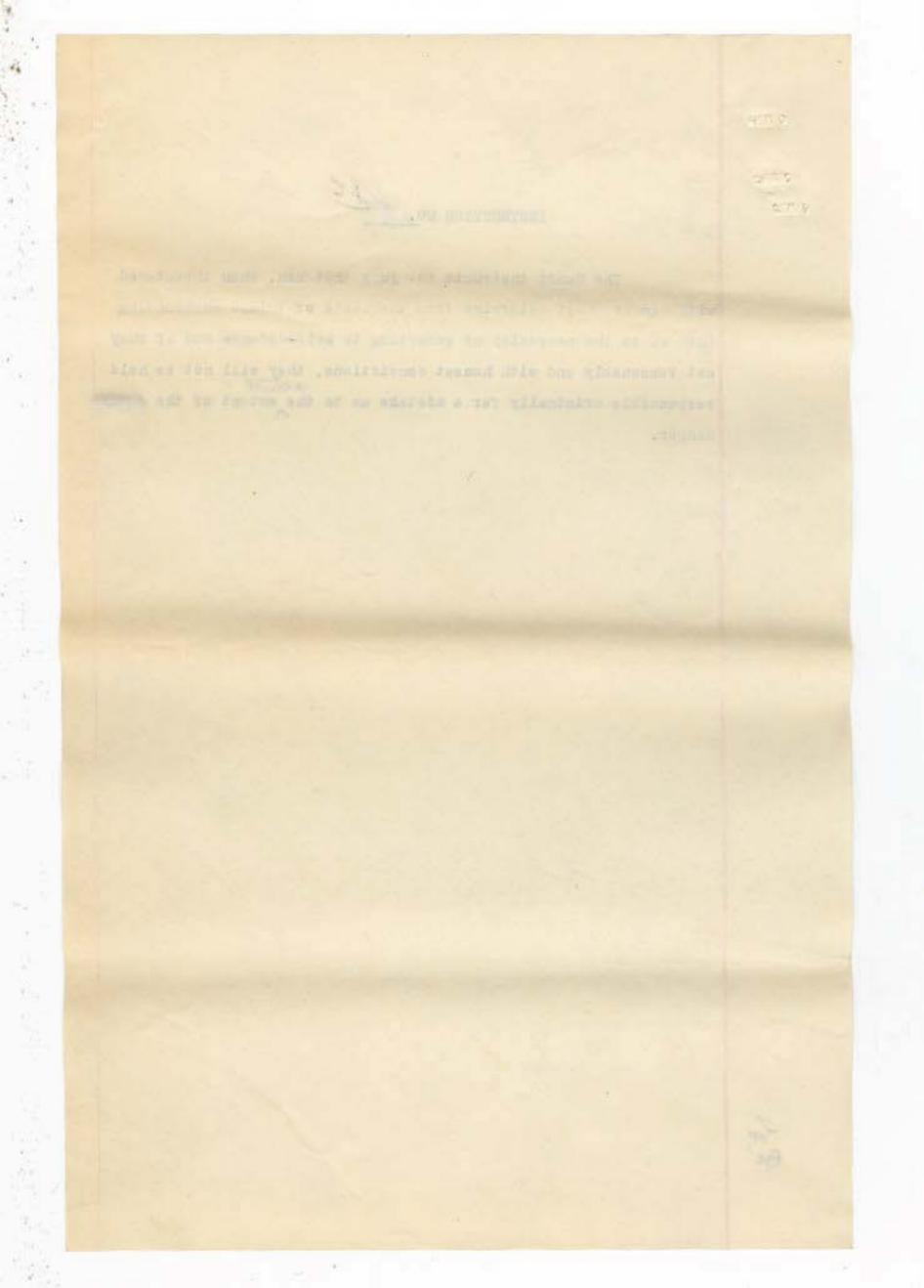
INSTRUCTION NO. 15 The just further instructs that in order to determine the necessity of the prisoner killing the said Gibson, and defending himself against the said Gibson, the prisoner had a right to take in to consideration any bad feeling if any which the jury may believe the evidence discloses the said Gibson had against bim, the prisoner, together with any threats or previous attempts by Gibson shown by the evidence to do him, the prisoner, serious bodily harm.

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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 extent of the actual danger.





INSTRUCTION NO.

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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 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.



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Rep.

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, to the 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.



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The jury are instructed that if they believe from the evidence that the prisoner for a policy 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 a prisoner had the right to repel the threatened assault by such force as a prisoner to the extent of killing the said Gibson, and the prisoner of 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.

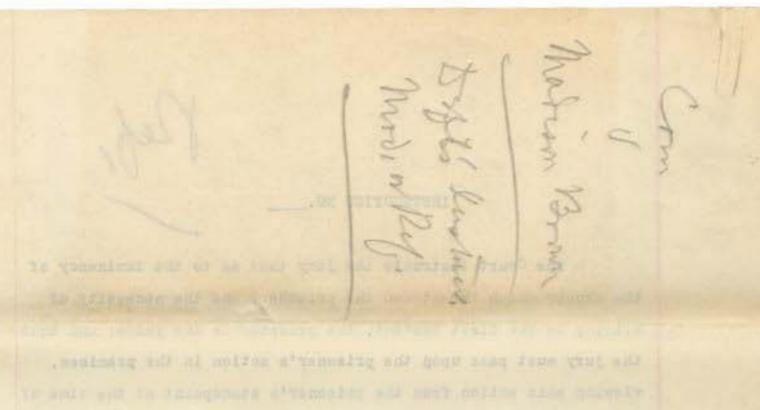
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INSTRUCTION NO.

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 herm, 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.



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State of Virginia County Och of sa to the clark of that around Court of said County I go beaples a Justice of said city do hereby certify that I have this day Commilled make . Provod to the gail of said County That he voray by tried before The Cerouit Court of saile County for a gelong by him Committed in this that he on the set day of march 1920 in social City ded short aged Kill Cuffers Kilson unlawfreey This 25th day of March 1920 Jatesper Ja



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Circuit Court of Rockingham County,

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Arrest Warrant

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before

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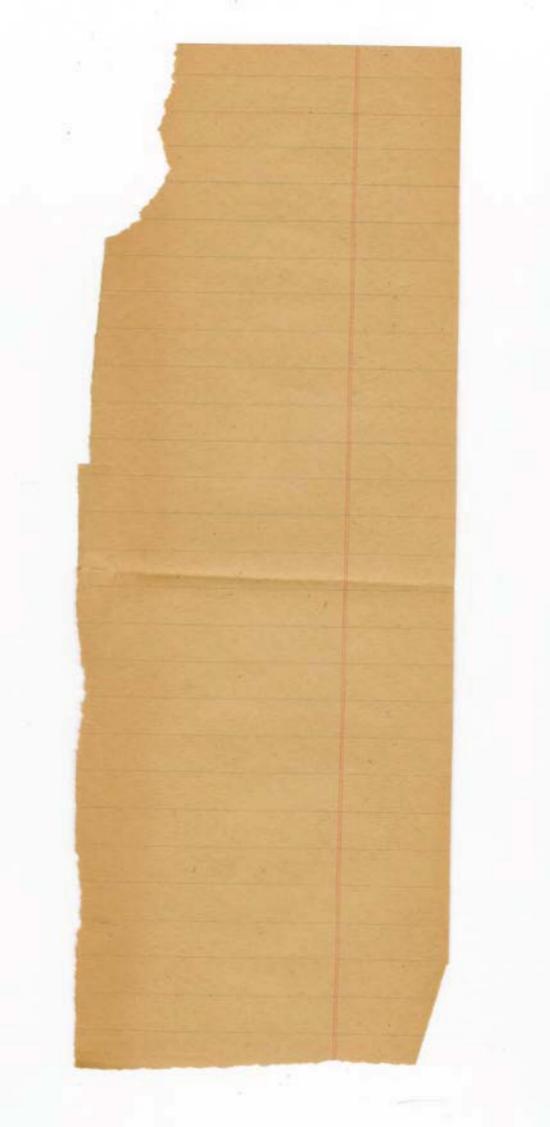
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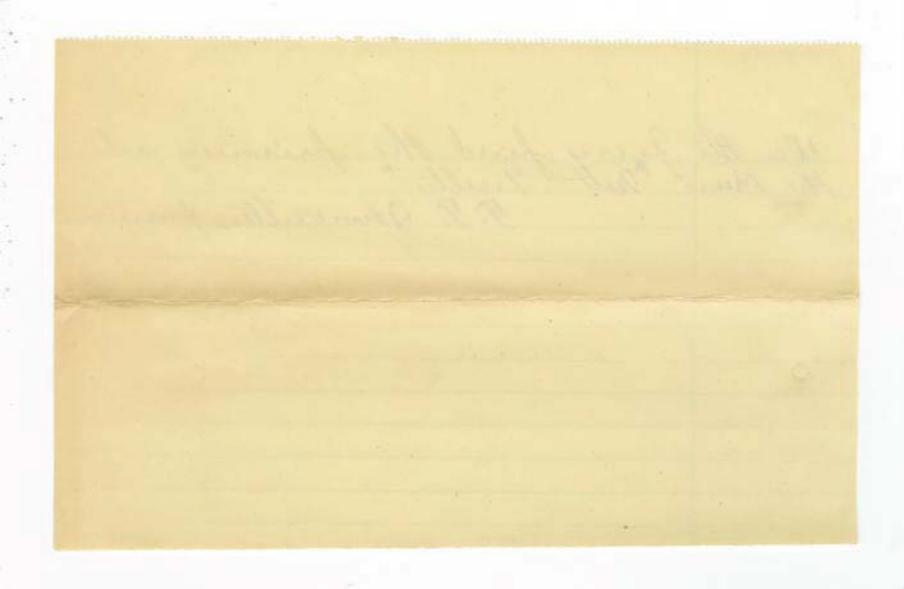
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Constable of Rockingham County.

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