

COMMONWEALTH :  
v : CHARGE TO THE JURY  
GEORGE CAVE :

If you find the accused, George Cave, not guilty, you will say so and no more.

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

If you do not find him guilty of murder in the first degree as charged in the indictment, but find him guilty of murder in the second degree as therein charged, then you will say so and fix his punishment by confinement in the penitentiary for not less than five nor more than twenty years.

If you do not find him guilty of murder in the first degree or murder in the second degree, as charged in the indictment, but find him guilty of voluntary manslaughter as therein charged, then you will say so and fix his punishment by confinement in the penitentiary for not less than one nor more than five years.

If you do not find him guilty of either of the felonies aforesaid as charged in the indictment, but find him guilty of *in*voluntary manslaughter as therein charged, then you will say so and fix his punishment by confinement in the penitentiary for not less than one nor more than five years, or, in your discretion, by confinement in jail for a period not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

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Commonwealth

v)

George Cave

Charge to the Jury

It is the duty of the jury to find the facts as charged in the indictment, and to return a verdict accordingly. The law is given to you by the judge, and you are to apply it to the facts as you find them. You are to find the facts as you believe them to be, and you are to return a verdict accordingly. You are to find the facts as you believe them to be, and you are to return a verdict accordingly.

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INSTRUCTION NO. 1.

The court instructs the jury that whoever kills a human being with malice aforethought is guilty of murder; that 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.*

INSTRUCTION NO. 2.

The court instructs the jury that whoever kills a person with malice, but not wilfully, deliberately, and premeditatedly, is guilty of murder in the second degree.



INSTRUCTION NO. 3.

The court instructs the jury that every <sup>unlawful</sup> homicide in Virginia is presumed 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 to reduce the offence to manslaughter, the burden of proof is upon the prisoner.

INSTRUCTION NO. 4.

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



INSTRUCTION NO. 5.

The court further instructs the jury that voluntary manslaughter is the killing of a person without malice; that involuntary manslaughter is the killing of a person accidentally or unintentionally while in the doing of some unlawful act, not felonious or in the improper or negligent performance of a lawful act.

INSTRUCTION NO. 6.

If the jury believe from the evidence, beyond a reasonable doubt, that the prisoner shot the deceased, as charged in the indictment, and that he was, though intoxicated at the time of shooting deceased, capable of knowing the nature and probable consequences of his act, and so knowing the nature and probable consequences of his act, shot the deceased, as charged in the indictment, with the wilful, deliberate, and premeditated purpose of killing her, without adequate provocation, and from reckless wickedness of heart, then they are instructed that they should find the prisoner guilty of murder in the first degree.

INVESTIGATION

The first witness... the second witness... the third witness... the fourth witness... the fifth witness...

It was further stated... the witness... the witness... the witness... the witness... the witness...



7

The Court instructs the jury that the rule of law is that a man shall be taken to intend that which he does, or which is a necessary consequence of his acts.

INSTRUCTION NO. 8

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



INSTRUCTION NO. 9.

The court further instructs the jury that a mortal wound given with a deadly weapon in the previous possession of the slayer, without any provocation, or even with slight provocation, is prima facie, wilful, deliberate, and premeditated killing, and throws upon the prisoner the necessity of showing extenuating circumstances.

INSTRUCTION NO. 10.

The court further instructs the jury that in determining the weight to be given the testimony of different witnesses in this case, the jury are authorized to consider the relationship of the witnesses to the parties, if the same is proved; their interest, if any, in the result of this case; their temper, feeling or bias, if any has been shown; their demeanor whilst testifying; their apparent intelligence; their means of information, and to give such credit to the testimony of such witnesses as under all the circumstances such witnesses seem to be entitled to.

INSTRUCTION NO. 2

The first section of the act...  
...of the...  
...in...  
...and...

INSTRUCTION NO. 3

The second section...  
...the...  
...of...  
...and...  
...the...  
...the...  
...the...  
...the...  
...the...  
...the...

Article 10

INSTRUCTION NO. 11.

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 the other surrounding circumstances appearing on the trial, which witnesses are more worthy of credit, and to give credit accordingly.

INSTRUCTION NO. 12.

The court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to any substantial and material fact essential to prove the offence charged. Reasonable doubt must be based upon the evidence, or that is suggested by the evidence, or grows out of the evidence itself. It must not be 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 material fact or facts necessary for the jury to believe to find a verdict of conviction, and not of immaterial and non-essential circumstances.



INSTRUCTION NO. 13.

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.

INSTRUCTION NO. 14.

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.

INSTRUCTION NO. 13

The first instruction is that the jury shall be sworn  
and that the court shall read the indictment to them.  
The second instruction is that the jury shall find the  
guilt or innocence of the accused according to the  
evidence and the law.

INSTRUCTION NO. 14

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and that the court shall read the indictment to them.  
The second instruction is that the jury shall find the  
guilt or innocence of the accused according to the  
evidence and the law.



INSTRUCTION No. 15

The jury are instructed that voluntary immediate drunkenness is not admissible to disprove malice or reduce the offense to manslaughter. But where, by reason of it, there is wanting that deliberation and premeditation which are necessary to elevate the offense to murder in the first degree, it is properly ranked as murder in the second degree.

INSTRUCTION No. 16

The jury are instructed that the burden is on the accused, if he relies on intoxication as a defense, to prove that when he committed the offense his condition from intoxication was such as to render him incapable of doing a wilful, deliberate and premeditated act.

11 INSTRUCTIONS

The jury are instructed that voluntary intoxication is  
not a defense to a charge of murder in the first degree,  
and that the fact that the defendant was intoxicated at the  
time of the commission of the crime does not constitute a  
defense to a charge of murder in the first degree.

12 INSTRUCTIONS

The jury are instructed that the fact that the defendant  
was intoxicated at the time of the commission of the crime  
does not constitute a defense to a charge of murder in the  
first degree.

INSTRUCTION No 17.

If the jury believe from the evidence that at the time of the killing the accused was under the influence of liquor voluntarily taken by him, then said intoxication so produced is in law no excuse for the act done by him, unless they believe from the evidence that such intoxication was such as did in fact deprive him at the time of killing, of the mental capacity to form a malicious purpose to kill, in which event they may find him guilty of murder in the second degree or manslaughter.

EXHIBIT NO. 1

If the facts from the evidence that at the time of the  
the accused was in the presence of the victim  
and that the accused was in the presence of the victim  
at the time of the crime, unless they believe from the evidence that  
such intention was not in fact operative at the time of  
the crime, the accused is guilty of the crime of  
murder in the first degree.

A

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.

*[Illegible handwritten text follows, appearing to be a series of scribbles or crossed-out lines.]*



B

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, if guilty at all, 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 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 which he be guilty at all, they must resolve that doubt in favor of the accused and acquit him.

17

The first part of the paper is devoted to a  
 description of the general character of the  
 country, and the nature of the soil. It is  
 found that the soil is generally of a  
 light sandy nature, and is well adapted  
 for the culture of the sugar cane. The  
 climate is also very favorable for the  
 growth of this crop. It is found that  
 the sugar cane will grow to the height  
 of 15 or 20 feet, and will produce a  
 large quantity of sugar. The paper  
 concludes with a description of the  
 various methods of cultivating the  
 sugar cane, and the different ways  
 of preparing the sugar.



Geo. W. Darrow ✓  
~~E. R. Harmon~~

G. L. Newton ✓

~~H. H. Pasternak~~

~~Jacob E. Egan~~

~~Allen S. White~~

C. B. Holley ✓

E. E. Brown ✓

~~J. B. Stirling~~

~~J. T. Rogers~~

C. W. Judd ✓

J. R. Kirby ✓

J. E. Stoneham ✓

~~W. H. May~~

~~John W. Harmon~~

O. J. Soble ✓

M. S. Kyger ✓

~~J. E. Hedrick~~

Geo. A. Bowers ✓

19 Clarence F. May ✓  
20

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In the Circuit Court of Rockingham County,

Term 190 . . .

this day presented in Court an account against the Court  
of Rockingham for the sum of \$ . . . for Service

which being sworn to, was examined and approved by the Court, and ordered to be certified to the Treasurer of  
this county for payment.

Clerk.

*Handwritten notes at top of page, including "The Commonwealth of Virginia" and "County of Rockingham".*

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 said Court at its February term, 1929, upon their oaths do present, that George Cave, on the 13th day of January, 1929, with force and arms, in the county aforesaid, in and upon the body of one Maida McDonald, in the peace of said Commonwealth, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said George Cave, a certain pistol, then and there charged with gunpowder and two leaden bullets, which said pistol, he, the said George Cave, 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 Maida McDonald; and that the said George Cave, with the leaden bullets aforesaid, out of the pistol by the said George Cave discharged and shot off, as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound the said Maida McDonald, in and upon the body of her, the said Maida McDonald; giving to her, the said Maida McDonald, then and there with the leaden bullets aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said George Cave, in and upon the body of her, the said Maida McDonald, mortal wounds; of which said mortal wounds, she, the said Maida McDonald, then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said George Cave, her, the said Maida McDonald, in the manner and 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.

This indictment is found on the testimony of ~~S. P. P. P.~~, Lewis McDonald, Alma McDonald, J. W. Michael, and W. E. Lucas, witnesses sworn in Court and sent before the grand jury to give evidence.

We the jury find the accused <sup>Guilty</sup> guilty of murder in the first degree and fix his punishment at twenty five years in the State Penitentiary

J. M. Decker Foreman

Murder

Commonwealth

v) Indictment

George Cave

Felony

February term, 1929

A True Bill:

J. G. Shewalter  
FOREMAN

D. W. Barrman

Commonwealth's Attorney

H. W. BERTRAM, Judge

J. R. SWITZER, Clerk

DEPUTIES  
SAMUEL BELTZEL  
Harrisonburg, Va.  
W. E. LUCAS  
Elkton, Va.

CHAS. R. FAWLEY  
SHERIFF ROCKINGHAM COUNTY  
HARRISONBURG, VIRGINIA

DEPUTIES  
F. S. NEWMAN  
Grottoes, Va.  
J. T. LONG  
McGabeysville, Va.

PHONES:  
Office, 311  
Jail, 205

We the jury find the <sup>prisoner</sup> ~~person~~ guilty  
of murder in first degree, and  
fix his punishment for 25 years in  
the penitentiary.

Signed

J. M. Lee *J. M. Lee*

W. W. BRYAN

W. W. BRYAN

DEPT. OF JUSTICE  
WASHINGTON, D. C.

CHAS. R. FAWLEY  
SHERIFF ROCKINGHAM COUNTY  
HARRISONBURG, VIRGINIA

RECEIVED  
DEPT. OF JUSTICE  
WASHINGTON, D. C.

RECEIVED  
DEPT. OF JUSTICE  
WASHINGTON, D. C.

*The jury find the prisoner guilty  
of murder in first degree, and  
for his punishment for 99 years in  
the penitentiary.*

*J. M. Brown*

#574

COMMONWEALTH

VS. Felony (murder)

GEORGE CAVE

Plas Not Guilty

Approved - file of next  
guilty - set for 23<sup>rd</sup>  
remanded to jail.

- 7 J. M. Hearse
  - 8 G. L. Hunt
  - 17 G. B. Hall
  - 17 G. E. Brown
  - 5 G. W. Judd
  - 2 J. R. Linkey
  - J. E. Stonebrink
  - ~~7~~ W. H. Madge
  - 17 B. G. Seale
  - 13 M. E. Hyger
  - 20 Geo. A. Brown
  - 8 Clarence F. May
- #