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John Speer, Editor

The Maddox Trial

Charge of Judge Valentine

So much interest is taken in this trial that we give the entire charge of Judge Valentine to the jury. It will commend itself for its ability. Through the entire trial the upright rulings of the curt, without prejudice or partiality, secured the encomiums of all who listened to this interesting trial.

GENTLEMEN OF THE JURY: The defendant, George Maddox, is charged with murder in the first degree; with the felonious killing of one John Zane Evans. The offense of murder, at common law, had no degrees, and was punished by death. But the statute of this State, in its humanity, has divided it into two degrees, and inflicts the penalty of death only for murder in the first degree.

Murder, at common law, is where a person of sound memory and discretion unlawfully kills any reasonable creature in being, and in the peace of the State, with malice prepense or aforethought either express or implied.

Murder in the first degree, under the statute, contains all the elements of murder at common law, with the addition that the killing must be willful, deliberate and premeditated.

Murder in the second degree, is the same as murder in the first degree, but without deliberation and premeditation.

Every other felonious homicide is manslaughter, of which there are four degrees under the statute.

There are also justifiable homicide and excusable homicide, which are not felonious.

The defendant in this case may be found guilty, if proven to be so, of any degree of felonious homicide, or murder in the first degree, or murder in the second degree, or of manslaughter in first, second, third or fourth degrees, as the evidence shall warrant. But he is presumed by the law to be innocent, not only of murder in the first degree, but of every offense, until the contrary is proved, and if there be a reasonable doubt as to whether his guilt is satisfactorily shown, he must be acquitted; or if there be a reasonable doubt as to which of two or more degrees of the offense of felonious homicide, he is guilty, he can be convicted of the lowest degree only. But such doubt to be reasonable must be actual and substantial, not mere

possibility or speculation; for everything relating to human affairs, and depending upon moral evidence, is open to some possible or imaginary doubt.

The jury are the exclusive judges of all questions of fact, and of the credibility of witnesses, and of the weight of testimony; but you receive the law of the case from the court.

Before you can convict the defendant of any offense you must find that a felonious homicide, such as charged in the indictment, was actually committed, that some person or persons did kill John Zane Evans, in the county of Douglas, in the State of Kansas, by means of a pistol shot or a gun shot wound in the head and before the __ of December, A.D. 1863, the time that the indictment was found by the grand jury; and if you should find the homicide to be only manslaughter, you must find that it was within two years before the finding of the indictment.

In order to comply with a late decision of the Supreme Court, I will have to read to you the law in reference to manslaughter, and justifiable and excusable homicide, although I suppose that if the defendant is guilty of any offense that it is murder. I will read the statute law defining homicide that can possible have any application to this case:

1. Justifiable homicide.—[Compiled Laws, page 287, sec. 4] 2. Excusable homicide—[1d. 288, sec. 5] 3. Manslaughter in the fourth degree—[1d. 290, secs. 22 and 21.] 4. Manslaughter in the third degree—[1d. 289, sec. 14 and 13.] 5. Manslaughter in the second degree—[1d., 288 and 290, sec.s 12 and 11.] 6. Manslaughter in the first degree.—[1d. 288, sec. 7] 7. Murder in the second degree.—[1d. 287 sec. 2] 8. Murder in the first degree –[1d. 287. Sec 1.]

The malice, or malice prepense, or malice aforethought, requisite to murder, must exist before the act that produces the death, but it is not necessary that it should exist for any considerable length of time before. Malice in its legal sense denotes a wicked intention to do an injury. It is a fact to be proven by evidence, and to be found by the jury. It may be proven expressly by external circumstances discovering the inward intentions, as laying in wait, antecedent menaces, former grudges, and concerted schemes to do an injury; or it may be proven impliedly from the manner of committing and the nature of the act itself. Malice may, in the absence of any evidence to the contrary, be inferred from the killing alone; and generally where the act is committee deliberately, with a deadly weapon, and is likely to be attended with dangerous consequences, the malice requisite to murder will be presumed, for the law infers that the natural or probable effect of any act deliberately done, is intended by its author.
The malice may be toward the particular person killed, or towards another, as where a blow aimed at one person lights upon and kills another; this is murder. Or it may be a general malice or depraved inclination to do evil, fall where it may; as where an action unlawful in itself is done with deliberation, and with the intention of mischief or great bodily harm to individuals, or of

mischief indiscriminately, fall where it may, and death ensue, against or beside the original intention of the party, it will be murder.

Deliberation and premeditation, characteristics of murder in the first degree, are also facts which must be proven by the evidence, and must be found to have existed before the act that produced the death, but not for any considerable length of time before, in order to convict.

To deliberate means to balance in the mind—to weigh and consider—to estimate the changes—the means to be used and the probable consequences of the act.

To premeditate, means to think on—to consider and to revolve in the mind beforehand, and to contrive and design previously.

Deliberation and premeditation can be proved only by circumstances—by previous preparations—by prior declarations and subsequent admissions, and by other acts and declaration of the parties committing the act, and by the manner of committing the act and the means used.

It is not necessary that there should have been a deliberate and premeditated design to kill John Zane Evans in particular, but if it is sufficiently shown that there was a deliberate and premeditated design to kill the people of Lawrence indiscriminately, of whom he (Evans) was one, and that his death was the natural consequence of that design, then deliberation and premeditation are fully and sufficiently made out.

If the jury find that the homicide charged in the indictment—either murder or manslaughter—are actually committed, then your next inquiry will be whether the defendant is guilty of committing it or not; and if you find that that someone else committed it, and that he voluntarily counseled, aided or abetted in any manner, by word or act, in the commission of the offense, at the time of the commission of the offense, or any time before, in this State or in the State of Missouri; whether he was present at the time and place where it was committed, or absent; whether he was present at the time and place where it was committed, or absent; whether he was in one part of Lawrence or in some other part, or in the State of Missouri, at the time the offense was committed, you will find him guilty of the offense that you find was committed.

The State claims that the offense was committed in pursuance of a common purpose and common object, preconcerted beforehand by a band of men in the State of Missouri, which purpose and object were to murder and rob the people of Lawrence, or a portion of them, and to burn their houses and steal their property. If you find this to be true—and whether it is true or not is a question to be determined from the circumstances of the case—then every person who voluntarily contributed to it in any way is guilty or murder in the first degree. The man who assisted in forming such unlawful purpose, by his open approval of the same, or otherwise, is as guilty in law as the man who fired the fatal shot, and may be found guilty (illegible line**********) place of firing the fatal shot, or remained in the

State of Missouri; unless he withdrew his approbation before the consummation of the final act; --in which latter case he would not be guilty. For if the person who advises or counsels a felony to be committed, afterwards repent, and before the felony is committed actually countermand such advice or counsel, and the principal, notwithstanding, commit the felony, the accessory will not be guilty.

In order to rebut or disprove the theory that the defendant was present in Lawrence, aiding and abetting in the commission of the offense, the defendant introduces testimony to prove that he was in Missouri, to prove what is in law termed an alibi. If the defendant proves that he was somewhere else at the time of the commission of the offense, or if he proves that he was so far away immediately before or immediately after the offense was committed, that in the very nature of things he could not possibly have been present at the time and place where the offense was committed, then of course you cannot convict the defendant under that theory of the prosecution.

The evidence of verbal confessing of guilt is to be received with great caution, for such confessions may be imperfectly heard, or inaccurately understood, or not precisely remembered by the witness, or the confessions themselves may be carelessly made, and it is always difficult to disprove them. But deliberate and voluntary confessions of guilt, if made while the confessing party is not under duress, and entirely free to confess or not at his option, are among the most effectual proofs in the law, and are deserving of the highest credit, and if duly made and satisfactorily proven, are sufficient along to warrant a conviction without any corroborating evidence, if the offense itself has been proven to have been committed; and declarations of a third person, made in the presence of a defendant, and assented to by him, are admissible evidence against him, and stand upon an equal footing, with admission of himself. And also, when (illegible line**********) themselves together to do an unlawful act, everything said or done by any one of the parties in reference to the unlawful act while carrying it into execution is evidence against all the parties.

You cannot convict the defendant of this charge, because he may have been a bushwhacker or rebel, or because he may have been engaged in any unlawful enterprise, except the one that resulted in the death of John Zane Evans.

If you shall find that the defendant was an accessory after the fact only, you cannot convict him under this indictment. But if you find him guilty of being an accessory before the fact, you will find him guilty the same as though he were a principal. It is not necessary to make him an accessory before the fact that he counseled, aided, or abetted in the commission of the offense by direct means, but it s sufficient if the defendant evinced an express liking, approbation or assent to the feloniary design of the other persons engaged in it, and it is sufficient if any one or more persons become the medium through whom the work is done. The concealment of the knowledge that a felony is to be committed will not make the party concealing it an accessory before the fact; nor will a tacit acquiescence or words which amount to a bare permission, be sufficient to constitute this offense.