State of California }
County of Napa } ss

I C B Seeley Clerk of the County Court in and for Napa County do hereby certify that the within is the original Indictment presented and filed in said County Court on the 8th day of December 1874 and on motion Dennis Spencer District Atty it was ordered by said Court to be certified by me to the District Court of the 7th Judicial District of the State of California in and for the County of Napa for trial according to Statute,

In Witness Whereof I have hereunto set my hand and affixed the Seal of the County Court this 8th day of December 1874

C. B. Seeley Clerk

In the County Court.

The People of the State of California
AGAINST
Edward J. Muybridge

INDICTMENT

FOR

Murder

A TRUE BILL.

P. L. Bottorff
Foreman of the Grand Jury.

Dennis Spencer
District Attorney.

Presented and filed in open Court, this 8th day of December A. D. 1874

C B Seeley Clerk.

Names of Witnesses Sworn and Examined before Grand Jury:

J. M. McArthur
A. H. Connelly
Geo. F. Wolfe
Michael C. Murry
B. S. Prickett
Charles McCrory

REGISTER PRINT, NAPA.

Filed December 8/874
C B Seeley
Clerk
Dist Court

Property of
Napa County Historical Society

State of California.

The People of the State of California,

AGAINST

Edward J. Muybridge

In the County Court of Napa County, State of California, December *Term, A. D. one thousand eight hundred and seventy-*four

Edward J. Muybridge is accused by the Grand Jury of the County of Napa, State of California, by this Indictment, of the crime of Murder

committed as follows, to-wit:

The said Edward J. Muybridge on the 17th day of October A. D. 1874 and before the finding and presentation of this Indictment, did, at the County of Napa ~~aforesaid, to-wit.~~ and State aforesaid feloniously willfully unlawfully and of his malice aforethought kill and murder one Harry Larkyns

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the People of the State of California.

Dennis Spencer

District Attorney.

In the 7th District Court Napa County State of California

The People &c.
vs
Edward J Muybridge

Instructions asked for by District Attorney –

Given
Wm C. W.
5-9

1 The defendant Muybridge is charged with the Murder of one Larkins and it is for the Jury to decide whether or not the proof establishes the guilt of the accused

Given
Wm C. W.
5-9

2 Murder is the unlawful killing of a human being with malice aforethought

Given
Wm C. W.
5-9
×

3 Such malice may be express or implied – It is express when there is manifested a deliberate intention unlawfully to take away the life

of a fellow creature – It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart

Given Wm C. W J.J

4 If the Jury find from the evidence that the defendant unlawfully took the life of the deceased they must then decide the grade of crime of which he is guilty

Given Wm C. W J.J

5 The unlawful killing being proved the law presumes in the absence of evidence to the contrary that ~~the~~ a crime ~~of murder~~ has been committed"

Given Wm C. W J.J

6 Murder is divided into two degrees viz – murder in the first degree and murder in the second decree – The test of murder in the first degree is that there existed an express intention to take the life of the deceased and the killing was willful deliberate

and premeditated"

7 The Jury may infer the intention with which an act is done from a consideration of the act itself in the light of the circumstances connected with and attending its commission and they may reasonably conclude that the defendant intended the ordinary consequences of that which the evidence may show to have been his voluntary deliberate act

Given Jnº G. W. D. J.

8 If the Jury find from the evidence that the defendant unlawfully took the life of the deceased and that the killing was wilful (that is intentional) deliberate and premeditated then they must find the defendant guilty of murder in the first degree unless the defendant has proved to your ~~entire~~ satisfaction that at the time of firing the fatal shot he defendant was insane"

Given Jnº G. W. D. J.

x

9 The unlawful Killing must be accompanied with a deliberate and clear intention to take life in order to constitute murder in the first degree But there need be no appreciable space of time between the intention to Kill and the act of Killing, they may be as instantaneous as successive thoughts of the mind. If therefore you find from the evidence that the defendant unlawfully took the life of the deceased and that the act of Killing was preceded by a deliberation and premeditated purpose to take the life of the deceased it matters not how rapidly the act of Killing may have followed such purpose it was wilful deliberate and premeditated and murder in the first degree

Given
Wm. C. F.

11 If the Jury find from the evidence that the defendant unlawfully took the life of the deceased and that the Killing was wilful deliberate and premeditated

Refused
Wm C W
5-9

then the evidence in the case fails to show any justification or provocation in law sufficient to excuse the act or reduce the grade of the crime below murder

12 That even though the deceased had been guilty of adultery with the wife of defendant and the defendant upon learning it and induced by such ~~a~~ adultery as a provocation had sought the deceased and taken his life such adultery would not be regarded in law as affording any justification or excuse for the homicide"

Given
Wm C W
5-9

13 A man who commits adultery with another mans wife does not forfeit his life nor does the law regognize any right in the husband to kill him, adultery is no justification for homicide. If therefore you were satisfied by proof that the deceased had committed adultery with the

Given
Wm C W
5-9
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defendants wife and that acting under such provocation the defendant had taken the life of deceased under such circumstances as would constitute murder had there been some other provocation, under the law you would have to render a verdict of guilty of murder. ~~For the same reason if the defendant had learned that the deceased had been criminally intimate with his wife and believed it and in consequence of such belief sought the deceased and Killed him he was not justified in so doing and he was guilty of murder notwithstanding such provocation provided the act was attended with circumstances in other respects characterizing murder as already explained to you by the Court~~

14 If the Jury believe from the evidence that the defendant took the life of

Given Wm. C. M. J.

deceased but that he was irrisponsible by reason of mental disease or insanity they must acquit him and in returning their verdict they must state this as the ground of their verdict as for example "not guilty ~~because~~ by reason of insanity" but as on a trial for crime the accused is presumed to be sane until the contrary is made to appear by evidence the fact of insanity must be proved to your satisfaction by the defendant by a preponderance of evidence and it will not be sufficient for the defendant by evidence to raise a doubt in the minds of the Jury as to the sanity of the defendant but his insanity is his defense and must be affirmatively and sufficiently proved to satisfy your minds otherwise it must be disregarded by you

15 Every man is presumed to be sane

in the absence of proof to the contrary but as men are frequently found to be insane and frequently under the effects of a diseased mind commit deeds of violence insanity is a sufficient & legitimate defense when satisfactorily established in a criminal prosecution, but this defense must be made out by proof sufficient to satisfy the minds of the Jury that the alleged criminal act was the act of an insane person. It will not be sufficient for the defendant by evidence to raise a doubt in the minds of the Jury as to his sanity at the time the act was done, but he must by a preponderance of evidence satisfy the Jury that he was insane"

Given
Wm. C. N.
J

16 Neither will it be sufficient for the defendant to show that at the time of the commission of the act he was insane without showing that the act

Given
No. 6. N 29

was done in consequence of his insanity, for there are various kinds and degrees of mental disease and every kind and degree of insanity does not so affect the mind as to render it incapable of responsible action — A Mans mind may be unsound in many respects indeed he may be a monomaniac upon a given subject, and yet his mind may be sound in all other respects, such a man though quite capable of judging between right and wrong in regard to an act of the nature of that of which he may be accused cannot be said to be possessed of a sound mind — yet he would be held responsible for the commission of such criminal act unless his partial unsoundness or monomania was involved in and occassioned the perpetration of the act — If therefore you are satisfied from the evidence that the defendant was at the time of the homicide insane or mentally diseased you must next enquire whether or

X

19 In order to render a person irrisponsible for an act on the ground that when he committed it he acted from an irrisistable and uncontrolable impulse, it must be shown that such impulse was an insane one and the produc of mental disease for if the accused be not insane add the act be prompted by anger hatred or other violent passion however apparently irrisistable and uncontrolable the law holds him responsible as every rational person is deemed capable of restraining his passions and required so to do

Given
Wm. C. W. 9

20 If therefore you find that the defendant at the time of the homicide was of sound mind and not affected with any mental disease but that the act was done under a sense of great wrong and from a desire for revenge, however intense

Given
Wm. C. W. 9

x

memory intelligence and reason to enable him to distinguish between right and wrong in regard to the particular act about to be done, to know and understand that it will be wrong and that he will lay himself liable to punishment by committing it, yet if an act be palpably wrong in itself, if it be manifestly injurious to the rights of another as by destroying his life maiming his person taking away his property or burning his dwelling and the like it is reasonable to assume that every sane man knows that such acts are wrong and must subject him to punishment by law, and therefore it may be assumed for all practical purposes and without injustice in a criminal action that a defendant knows such an act as I have described to be contrary to law unless it be shown by evidence that in consequence of mental disease he did not

Grim
Vol 6
No 8

his feelings may have been or however violent may have been his anger or however irrisistable may have seemed his desire for revenge he was responsible in law for the act.

21 The Jury must guard against mistaking the violent outburst of passion, for the frenzy of madness mere impulse however powerful does not excuse the commission of an unlawful act if it be the impulse of excited passion arising from revenge, from resentment or from intention to do an act which is a crime and the person committing it is aware of it — If the accused ~~accused~~ in such case be more liable to such outbursts in consequence of peculiarities of temperament or disposition or even of physical illhealth yet if the act be the product of passion and not of mental derangement, the accused will not be excusable. ~~For~~

Given
Wm: C. M. J. S

x

~~a person must not give way to unholy passions to excited feelings to a disposition for revenge or resentment because it is just those feelings that the law punishes a person for indulging and holds him responsible for not restraining as the law holds that sane men are able to curb their passions.~~

22 If the defendant then in committing the homicide acted from violent and apparently ungovernable impulse it must have been the frenzy of insanity or mental disease and not the outburst of excited and inflamed passions or he will be responsible for the act.

Refused Wm C W J