

to commit a felony, and as he is not so charged in the indictment, he cannot be convicted of murder in the first degree.

3d. That there is no evidence of express malice, which is essential to constitute murder in the first degree.

4th. That admitting that Worrell committed the offense charged in the indictment, still he was at the time laboring under mental alienation, or that condition of mind called homicidal monomania, complicated with epilepsy.

I shall endeavor in my argument to follow the path the learned counsel has opened for me, and take up each proposition in the order in which he has discussed them.

It is in evidence that Sturgeon and Walker left St. Louis for St. Charles in the train on the 13th of January, 1856, for the purpose of taking a trip up the line of the North Missouri Railroad as far as its intersection with the Hannibal & St. Joseph Railroad. Gordon was to accompany them and started from St. Louis on horseback. Previous to starting he purchased, at the suggestion of Walker, a pair of fur gloves, similar to those shown in court by Walker. The three met in St. Charles on the evening of the same day and stayed all night at the house of Mr. Wentz, a division engineer. On the next morning (the 14th) Walker, Sturgeon, Gordon, Wentz, Pratt and a negro boy belonging to Wentz started up the line of the road. On reaching Burlington, in the northern part of Boone County, they had two daguerrotypes taken, each containing a group. They then proceeded up to the intersection, and it was arranged that on Gordon's return he should take one of the daguerrotypes (which had been left with the artist to be finished) to St. Charles to be deposited in the office of Wentz. The party started back and reached Huntsville, in Randolph County, on the evening of the 20th. On the next day (21st) about noon they left Huntsville; Walker, Sturgeon and Pratt for Jefferson City, and Gordon for St. Louis. Wentz had a short time before started down the line of the road, and at Warrenton sent the negro boy ahead to St. Charles. Walker's party remained one day in Jefferson City and then started for St. Louis by way of the Pacific Railroad, reaching the latter place on the 26th. They