

In the case of the State v. Bower, 5 Mo. 364, in which the defendant was convicted of murder in the first degree, malice was inferred from the character of the weapon and wound. The proof was in substance: That on the night preceding the homicide the prisoner and deceased stayed all night at the house of Mrs. Roussiere, two miles from the place where the murder occurred; that they appeared friendly while there; that they left her house together the next morning on foot, still appearing friendly. Prisoner carried a large stick in his hand; they were seen together about 200 yards from the place where the body was found; beyond this prisoner was seen alone wearing a cap afterwards identified as the cap deceased wore when he left Mrs. Roussiere's; the body of the deceased was found with several bruises on it, and the skull was smashed in as if done with a club and the hat and club of prisoner found close by it. There were other circumstances in the case, and some confessions, but nothing to show malice except what I have stated. Judge McGirk, in delivering the opinion of the Court, said: "If Bower did the act at all, the fact of the stick being carried three miles, and the evidence of bruises, and the skull being smashed in, proves wilfulness and premeditation, so that the case comes within the general description of those murders placed in the first degree. That the stick was used, the appearance of the body, the skull beat in, the breast and head bruised, abundantly prove this; that the killing with the stick was premeditated before the killing took place, is proved by the fact where the prisoner got the stick, how he carried it, etc."

The same principle was recognized by the Supreme Court in case of State v. Dunn, 18 Mo. 519. Dunn was an Irishman and deceased a German. They got into a discussion about the relative merits of Germany and Ireland, when Dunn took up the handle of a shovel and struck deceased with it, producing a wound which resulted in his death. There was no evidence of any difficulty between them prior to that time. Judge Scott in delivering the opinion of the Court said, "Whenever it appears from the whole evidence that the crime was at the moment deliberately or intentionally exe-