

cutted, the killing is murder in the first degree; as if one without uttering a word should strike another on the head with an axe, this would be deemed premeditated violence within our act; it will constitute the offense, if circumstances of wilfulness and deliberation were proven, although they arose and were generated at the period of the transaction. If the party killing had time to think, and did intend to kill, for a moment as well as an hour or a day, it is a deliberate, wilful and premeditated killing, constituting murder in the first degree."

The principle of inferring intent from the nature and character of the weapon and wound runs through a long series of judicial inquiry, and is as well established as any other principle governing the administration of the criminal law. The State might with safety rest the proof of malice upon this fact alone, but there are other facts and circumstances bearing so directly upon this point that I cannot let them pass without notice. The concealing of the body also furnishes evidence of malice. Mr. Wright thinks but little importance can be attached to this, as an innocent person, through extreme fear, might do the same. I can well imagine a case in which it might occur. A very timid man might slay another in self-defense, when no other person was present to witness the transaction, and the fear of being charged with murder without his being able to prove the justification might induce him to conceal the body; but such a person would not appropriate the property of the deceased.

Worrell, moreover, had Bruff with him to prove the personal conflict, if any had taken place. Besides this he is a bold, daring, reckless adventurer, not having the fear of God or man to molest him. In his case, then, the circumstances attending the concealing of the body furnish abundant evidence of malice. He also rifled the pockets of Gordon and took and appropriated his horse, watch, saddle, bridle and saddlebags with their contents. This leaves no doubt as to the motive for the commission of the crime. About this time the company was collecting county and individual subscriptions for stock, and as Gordon was on his way to St. Louis,