

MARTIN *v.* STATE.

Opinion delivered January 20, 1908.

INSTRUCTIONS—EXCEPTION EN MASSE.—An exception *en masse* to several instructions given by the court was properly overruled if any one of them was correct.

Appeal from Union Circuit Court; *George W. Hays*, Judge; affirmed.

*William F. Kirby*, Attorney General, and *Daniel Taylor*, Assistant, for appellee.

No specific exceptions to the instructions given were saved.

BATTLE, J. Henry Martin was tried upon an indictment for murder in the first degree, and was convicted of murder in the second degree. He filed a motion for a new trial in which he asked that the verdict of the jury be set aside because it was contrary to the law and evidence, and the court erred in giving certain instructions numbered 4, 5, 6, 7, 8, 9 and 10, and because the court erred in refusing to give an instruction as asked for by him. The court overruled the motion, and he appealed.

The verdict of the jury was sustained by the evidence.

The exception to the instructions was *en masse*, and, one if not all of them being correct, was properly overruled. But an examination of them will show that no prejudicial error was committed in the giving of any of them.

In the amendment of the instruction asked for, and in giving it as amended, no prejudicial error was committed. It related to murder in the first degree, and the defendant was convicted of murder in the second degree, and it was of no effect; it undertaking to say to the jury, under certain circumstances stated, they should not find the defendant guilty of murder in the first degree.

Judgment affirmed.