

**TERRITORY V. MCDONALD, 1904-NMSC-031, 12 N.M. 423, 78 P. 56 (S. Ct. 1904)**

**TERRITORY OF NEW MEXICO, Appellee,  
vs.  
J. E. McDONALD**

No. 1054

SUPREME COURT OF NEW MEXICO

1904-NMSC-031, 12 N.M. 423, 78 P. 56

September 13, 1904

Appeal from the District Court of Eddy County, before William J. Mills, Chief Justice.

**SYLLABUS**

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1. In the absence of a bill of exceptions in a criminal case, this court is confined to a consideration of the case upon the record proper.
2. An examination of the record proper shows no error in this case.

**COUNSEL**

E. L. Bartlett, Solicitor-General, for appellee.

C. R. Brice for appellant.

Errors stated in such a general and indefinite way as not to point out to the trial court the matters complained of so that they could have been corrected at the trial or on motion will not be considered in the Supreme Court.

Beall v. Terry, 1 N.M. 518; Archibeque v. Miera, 1 N.M. 160; Territory v. Anderson, 4 N.M. 214-228; Schofield v. Territory, 9 N.M. 534-538; Cevada v. Miera, 10 N.M. 62; Territory v. Guellen, 66 Pac. 531; Territory v. Cordova, 68 Pac. 919; Territory v. Gonzales, 68 Pac. 928.

For definitions of the words, "feloniously, willfully, deliberately, malice aforethought, malice express and implied, and premeditated," see

1 Bouvier's Law Dict.; Bishop on Crim. Law, sec. 615; 2 Thom. on Trials, secs. 2209-2210; Webster's Dict.; 2 Bish. Crim. Law, sec. 310; 1 Bish. Crim. Law, sec. 428.

As to the propriety of these definitions, see

Territory v. Guellen, 66 Pac. 530; Territory v. Gonzales, 68 Pac. 928, 931; See, also, Territory v. Baker, 4 N.M. 117; Taulkner v. Territory, 6 N.M. 487.

Authorities as to sixteenth instruction.

2 Thom. on Trials, secs. 2994, 2995; Chavez v. Territory, 6 N.M. 463; Blashfield, Insts. to Juries, pp. 288-289-291 and 730; Territory v. O'Donnell, 4 N.M. 196; U. S. v. De Amador, 6 N.M. 173; Territory v. Anderson, 4 N.M. 226; 2 Thom. on Trials, sec. 2173; Ruhe v. Abren, 1 N.M. 250; U. S. v. Beena, 8 N.M. 102.

As to the conduct of the jury.

Mattox v. U. S., 146 U.S. 140; Territory v. Edie, 7 N.M. 189, and 6 N.M. 567; Territory v. Roper, 7 N.M. 255-262; 12 Ency. Pl. and Pr., 550, 552, 555.

## **JUDGES**

Pope, J. Baker, McFie, Parker and Mann, JJ., concur. Mills, C. J., did not sit in the case, having presided in the court below.

**AUTHOR: POPE**

## **OPINION**

{\*424} OPINION OF THE COURT.

{1} The defendant was indicted for murder at the October term, 1903, of the district court of Eddy county. He was found guilty of murder in the second degree and sentenced to serve fifteen years in the penitentiary. The transcript filed in this court contains an order of the trial judge extending the time for settling the bill of exceptions, but no bill of exceptions was apparently ever tendered or signed. The court is therefore relegated to a determination of the case upon the record proper. Territory v. Archibeque, 9 N.M. 403, 54 P. 758, and upon a careful examination of this we find no error.

{2} The judgment below is accordingly affirmed.