

imminent, and that is all the instruction required, and is all the instruction requires in the case at bar.

The instructions must be considered as a whole, and, when considered together, if they fairly and correctly state the law applicable to the case, they will be sufficient.

The special instructions requested by defendant and refused by the court are in principle covered by the general instructions.

The question of the sufficiency of the instructions and the action of the court in refusing to give special instructions must always be considered and determined by the facts in each case in which they arise. *Anderson v. State*, 8 Okla. Cr. 91, 126 Pac. 840, Ann. Cas. 1914C, 314.

Defendant contends that the punishment of 20 years is excessive. The evidence of the state set out in this opinion is a sufficient answer to this contention.

For the reasons stated, the cause is affirmed.

DAVENPORT, P. J., and EDWARDS, J., concur.

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### FRANK POSEY v. STATE.

No. A-7794. Opinion Filed Feb. 28, 1931.  
(296 Pac. 527.)

(Syllabus.)

1. **Homicide—"Unwritten Law" not Recognized in State.** The so-called unwritten law, "the right to avenge a wrong done a female member of a defendant's family by killing the wrongdoer," does not exist in this state.
2. **Same—Conviction for Murder Sustained.** Record examined, and held, that the evidence sustains the verdict and judgment and is free from prejudicial error.

Appeal from District Court, Tulsa County; Saul A. Yager, Judge.

Frank Posey was convicted of murder, and he appeals. Affirmed.

Jno. L. Ward, for plaintiff in error.

J. Berry King, Atty. Gen., for the State.

EDWARDS, J. The plaintiff in error, hereinafter called defendant, was convicted in the district court of Tulsa county on a charge of murder and was sentenced to life imprisonment in the penitentiary.

The case was tried the latter part of September and first part of October, 1929. The appeal was lodged in this court April 2, 1930. No briefs in support of the appeal have been filed, and no appearance for oral argument was made at the time the case was submitted. We have read the record with care to ascertain if defendant had a fair trial or if any errors substantially prejudicial were committed.

The record discloses that on April 16, 1929, Sam Frost and his wife lived at the town of Bixby; that about midnight of that date defendant and his wife drove from their home in Leonard to Bixby, and the wife remained in the car with the engine running and defendant went on the porch and knocked at the door and awakened Frost and his wife; that Frost went out on the porch, and defendant immediately shot him with a pistol, from which death resulted almost instantly. Defendant then returned to the car and they drove away. The defense is what is sometimes referred to as the unwritten law; that is, that Frost had been criminally intimate with the wife of defendant covering a period of about two years prior thereto. Both defendant and his wife testified to the homicide substantially as stated. It is apparent from the record that defendant knew of illicit relations between his wife and

the deceased and deliberately decided to take the law into his own hands and kill Frost. There is also some evidence which tends to indicate that a money consideration between them was discussed. The fact that deceased was guilty of an offense in his relations with the wife of defendant did not justify defendant in seeking out and killing deceased. "The right to avenge a wrong done a female member of one's family by killing the wrongdoer" does not exist in this state. It is not permitted one thus wronged to take the law into his own hand and wreak private vengeance on the wrongdoer. *January v. State*, 16 Okla. Cr. 166, 181 Pac. 514; *Pickett v. State*, 40 Okla. Cr. 289, 268 Pac. 732. The record amply sustains the verdict and judgment.

The case is affirmed.

DAVENPORT, P. J., and CHAPPELL, J., concur.

HOMER HINKLE v. STATE.

No. 4-1726. Opinion Filed Feb. 25, 1931.  
(1931 Pac. 126.)

(Syllabus.)

*Trial*—Reversible Error in Instruction Shifting Burden of Proof. It is reversible error to instruct the jury that, if the state proves that the defendant had more than one quart of wine, as charged in this case, beyond a reasonable doubt, then the jury should bring in a verdict of guilty, unless the defendant proves to their satisfaction that he did not have it with the intent to violate the law.

Appeal from County Court, Washita County; Jesse Stovall, Judge.

Homer Hinkle was convicted of unlawfully possessing intoxicating liquor, and he appeals. Reversed.

Ash, Jones & Wesner and Mathers & Mathers, for plaintiff in error.