

be innocent until he is proved guilty beyond a reasonable doubt; and the law allows him to testify in his own behalf, and the jury should fairly and impartially consider his testimony, together with all the other evidence in the case, and if from all the evidence the
7. 21 jury have any reasonable doubt as to the guilt of the prisoner they should give the prisoner the benefit of the doubt and acquit him.

J. M. W. Linsay,
Atty for Deft.

No 5.

The Court instructs the jury that the information charges that the defendant Antonio Benedict, of the County of Gilpin, State of Colorado, on the 11th day of June, 1894, feloniously, wickedly and against the order of nature had venereal affair with a certain cow and then and there feloniously, wickedly and against the order of nature did carnally know the said cow, and then and there feloniously, wickedly and against the order of nature with the said cow did commit and perpetrate the abominable, detestable and infamous crime against nature of buggery and the Court instructs the jury that if from the evidence they entertain a reasonable doubt concerning any material allegation contained in the information, then your verdict should be "not guilty."

7. 22.

J. M. W. Linsay
Atty. for Deft.

No 6.

The Court instructs the jury that among the material facts or elements required to be proven ^{and} of course beyond a reasonable doubt, is the fact or element of penetration; 4.23. and the court further instructs the jury that if from the evidence in this case they entertain a reasonable doubt concerning the matter of penetration then their verdict should be for the defendant.

J. M^{ch} Linnay
Atty. for Def.

No 10.

The Court instructs the jury, that the credibility of the witnesses is a question exclusively for the jury; that in determining the weight to be given to the testimony of the different witnesses in this case the jury are authorized to consider the relationship of the witnesses to the parties, if the same is proved; their temper feeling or bias, if any have been shown; their demeanor while testifying; their apparent candor ^{and} fairness; their apparent intelligence or lack of intelligence; the reasonableness of the story told by them; their means of information, and all the evidence and circumstances tending to corroborate or contradict such witnesses, if any such are proved, ^{and} to give such credit to the testimony of such witnesses, under all the circumstances, such witness seems to be entitled to.

James M^{ch} Linnay
Atty. for Def.

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Thereupon comes the defendant ^{and} submits the following instructions which were refused by the Court. Said instructions are in words ^{and} figures as follows to wit:

Refused
Clayton F. Becker
Judge

7.26

No. 7. The Court instructs the jury that the criminal code of this state provides that drunkenness shall not ^{be an} excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense, still, if you believe from the evidence in this case that the prisoner at the time of the alleged perpetration of the crime charged in the information was drunk or intoxicated to such a degree that he did not know the nature or quality of the act or did not know what he was doing, or that what he was doing was wrong, or that he was utterly unable to form any intention at all, then you should acquit him.

Refused to give excepted to
by deft. J. M. W. Linney Atty. for Deft.

J. M. W. Linney
Atty for deft.

No 8.

Refused
Clayton F. Becker
Judge
Page 17.

The Court instructs the jury, that the wrongful intent is the very essence of gist of a crime, without which it cannot exist, ^{and} if the jury believe from the evidence that at the time of the alleged perpetration of the crime charged

7. 27. in the information the prisoner was drunk or intoxicated to such a degree that he was unable or incapable of forming an intention, then you should acquit him.

Refused to give excepted to
by Deft & J. M^oW. Liversay
Atty for Deft.

J. M^oW. Liversay
Atty for Deft.

No 9.

The Court instructs the Jury that there is only one criterion by which the guilt of men is to be tested, ^{and} that is whether the mind is criminal; that the essence of an offence is the wrongful or evil intent, without which it cannot exist; that there must be a union or joint operation of act ~~&~~ intention ^{and} if under the evidence in this case either element was lacking, then your verdict should be for the defendant

J. M^oW. Liversay
Atty for Deft.

Refused to give, excepted to
by Deft & J. M^oW. Liversay
Atty for Deft.

And all of said instructions have an endorsement thereon.

"Filed in District Court June 21st/894

Richard Harvey
Clerk."

The defendant submitted the following form of verdict which is in words & figures as follows to wit.

Richard
Clayton L. Barber Judge