

## STATEMENT OF FACT

The trial court did error by giving misstated instructions to the jury

While instructing the jury the courts gave the charge as to the law for the crime of murder (tr.p 538 lines 1-12)

Black Law Dictionary: Murder. Murder is the killing of any person with malice, aforethought, either expressed or implied.

However the courts made remarks based on proof offered by the state that showed the charge of murder was inapplicable to appellant as such appellant did not kill the victim. (tr.p 539 lines 22-24).

Appellant asserts Fifth Amendment prohibits the courts to convict a defendant for a charge that does not apprise to him (tr.p 539 lines 22-24).

Appellant asserts this right was violated when the proof offered by the state did not meet the elements of the offense charged. (tr.p 539 lines 22-24).

Nevertheless the courts abused it's discretion by seeking and asking for a conviction at the hands of the jury under the theory of mutual combat (tr.p 539 lines 24-25 & tr.p 540 line 1).

SC. 355 SCD1114 784: Mutual Combat. Everyone is presumed to know the consequences of his acts and if one voluntarily enters into mutual combat where deadly weapons are used knowing that they are being used, and death results to one of the participating parties everyone engaged in such combat is equally guilty.

Appellant asserts that the doctrine of mutual combat which the courts charged to the jury was inapplicable to appellant as such victim was an unrelated uninvolved unparticipating third party which courts was cognizant. (tr.p 558 lines 1-8).

Appellant asserts that the impropriety of these inflammatory misstated instructions along with other flagrant remarks seriously affect the integrity of the judicial proceeding and trial counsel knew it, despite failing to object. (tr.p 564 lines 3-25 & tr.p 565 lines 1-15).