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THE FOULKE TRIAL.

Charge of Judge Craven to the Jury.

The readers of the Ledger will find on the inside of this paper the conclusion of the testimony in this case. Last week we gave the proceedings up to Thursday morning; our report this week begins with Thursday morning and continues up to the rendering of the verdict on Sunday morning. It will be found of great interest. The following is the charge of Judge Craven to the Jury, which he concluded reading at 11:30 Saturday night. It is in many respects similar to his charge at the last trial:

Gentlemen of the Jury:

The defendant has been indicted and is now on trial before you on a charge that he, Amasa J. Foulke, on the 16th day of November, A. D. 1873, at the county of Hamilton, in the State of Indiana, did, then and there, unlawfully feloniously and purposely and with premeditated malice kill and murder Lucette Foulke, by then and there unlawfully, feloniously, purposely, and with premeditated malice shooting and mortally wounding the said Lucette Foulke, with a certain pistol, then and there loaded with gunpowder and leaden ball, which the said Amasa J. Foulke then and there had and held in both his hands, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Indiana.

The statute provides that if any person of sound mind shall purposely and with premeditated malice, or in the perpetration or attempt to perpetrate any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill any human being, such person shall be deemed guilty of murder in the first degree, and upon conviction thereof shall suffer death.

The statute further provides that any person convicted of treason or murder in the first degree may, instead of being sentenced to death, in the discretion of the jury, be imprisoned in the State prison during life.

The indictment is for murder in the first degree, but under the charge in the indictment, the defendant may be found not guilty of murder in the first degree, and guilty of murder in the second degree, and if you believe from the evidence, that the defendant is not guilty of premeditated murder, but that the defendant did purposely and maliciously, but without premeditation, kill and murder the said Lucetta Foulke, on or about the time alleged in the indictment, in the County and State aforesaid. And the statute provides that, "if any person shall purposely, maliciously, but without premeditation, kill any human being, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof shall be imprisoned in the State prison for life."

The statute further provides that "if any person shall unlawfully kill any human being without malice express or implied, either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act, such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the State prison not more than twenty-one, nor less than two years."

But with the various shades and distinctions of homicide as provided in the our statute, I deem it unnecessary to dwell, but simply to refer to them, as I understand the counsel for the State to assume, and the counsel for the defense to concede, that the offense, under the circumstances of this case, by whomsoever committed, is murder in the first degree, and

that, if the defendant is guilty at all, that his crime is that of murder in the first degree.

But to the charge thus made against the defendant he has been arraigned before you, and pleads not guilty.

Under the issue thus joined before you the burthen of proof is on the State, and the State is bound to prove to your satisfaction, beyond a reasonable doubt, each and every material allegation of the offense so charged in said indictment.

Your oaths, under the provisions of the statute, require that you will well and truly try the matters in issue between the parties, that is, between the State and defendant, and a true verdict give, according to the law and evidence.

This oath is significant, and ought not to be overlooked by you, nor should it be misunderstood, and you will discern at once that it requires you to regard the law, and to draw your conclusions of fact from the evidence, as introduced and testified to before you.

You will therefore discard all suggestions and deductions from any hypothesis assumed in the case, that does not have a foundation in the actual evidence, as adduced and testified to before you. It is upon that rock of truth, established by the evidence in the cause beyond a reasonable doubt, that you start from in every deduction and conclusion that you arrive at in this case.

Testimony may be direct and positive, as when an eye witness has stood by and observed the commission of a crime and in his own proper person appears in Court and testifies to the commision of the crime.

Again, testimony may consist in admissions of the accused of his guilt.

Or, it may consist of proof of circumstances without any direct testimony of any eye witness to the deed or any admissions of the accused as to his guilt, and in such case the evidence is purely circumstantial, and in view of the fact that the State is demanding the conviction of the defendant in this case upon the circumstances proved, I desire to say that

State of Indiana, vs. Amasa J. Foulke, } In the Hamilton Circuit C.

The defendant, asks the Court in the above entitled cause, to charge the Jury in writing, and to charge as follows

1. Before a conviction upon circumstantial evidence alone can be sustained, the circumstances must be of such a character as to exclude every other hypothesis except that of guilt. And each and every circumstance in the chain must be proven by the State beyond a reasonable doubt. And a failure by the State to prove beyond a reasonable doubt any one circumstance necessary to make the chain of evidence complete entitles the defendant to an acquittal.

2. The fact that the defendant was present and in the room when the deceased received her fatal wound is not controverted but is admitted by the defendant. That it was physically possible for him to shoot and kill her in the manner she was shot and killed is also admitted by the defendant, if the State has proved him at the time possessed of a pistol with which she was shot. But it was no crime for him to be present. She was his wife and it was both his right and duty to be there. And the fact that it was physically possible for him to shoot and kill her is by itself no proof even tending to show or prove that he did the act.

3. And in connection with the preceding instruction you should review the whole evidence and determine for yourselves whether the defendant had any motive that would likely induce him to murder her. Had their lives together been unhappy? Had either of them been in habit of abusing the other so as to create a bitterness or ill feeling between them? Was he jealous of her love or doubting her chastity? Was he engaged in illicit loves himself? Was her life insured that he might reap a pecuniary reward from her death? Did she have any estate that he as her surviving husband would inherit at her death? Does the evidence show any one or all of these facts to exist so as to create a motive in him to take her life? If so you will consider such fact or facts as a circumstance in the chain of evidence against him tending to establish a motive. But if on the

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contrary the evidence shows that during all their married life they have lived happily together manifesting a fondness and tenderness for each other and a desire for each other's society, and that neither cruel treatment by either of the other has occurred; that illicit loves have never estranged them from each other; that no jealousy has been proven to exist between them; that pecuniary benefit to him has not been shown to be anticipated by him in her death, you should treat such condition of affairs as a strong circumstance in his favor, and tending to disprove the existence of any motive on his part for taking her life.

4. Again, you may take into consideration any evidence tending to show a natural viciousness or a tendency on the part of the defendant to acts of cruelty or murder or the absence of any such tendency as developed by the evidence on either side for the purpose of determining whether he would out of a spirit of wanton cruelty or a diabolical wickedness seek the destruction of his wife without any other motive than such natural organization. On this question the defendant has put his own character in issue before you, and thus opened the way for the State to prove all she can on the subject, and if the State has so proven that he has sustained heretofore such a character for acts of cruelty and bloodshed, it is a strong circumstance against him. But if the evidence on this question sustains his good character, it is just as strong a circumstance in his favor.

5. If you discover any apparent conflict in the evidence on any material question, it will be your duty to try and reconcile such testimony, so as to believe it all if you can reasonably do so. But if you cannot reconcile such conflicting evidence so as to believe it all, then you will believe such portions of the testimony as you may think the most worthy of credit, and disbelieve such as you think the least worthy of credit. And if you find such apparent conflict in the testimony to be upon an immaterial question, then you will pay no attention whatever to it nor make any effort to reconcile it.

6. The State has made an effort to prove that the defendant has made contradictory statements out of Court as to whether the tall man, the small man, or the short man shot him, while the defendant insists that he always meant to say that his belief was that he was shot by the tall man. Now it is wholly immaterial in this case as a matter of fact which shot him, or whether either of them shot him, or whether he was shot at all. The testimony on this question is only admitted as an incident connected with the whole case and can establish no link in the consistent chain of circumstances which the State is required to prove to sustain her case against the defendant.

7. Then if you believe from the evidence that the defendant did shortly after the homicide, say in answer to questions on that subject, that the small man, or the short man, or the low heavy set man shot him and that he on this trial testifies and has heretofore said to others, that it was the tall man that shot him, then it will be proper for you to consider this fact in all its bearings and judge for yourselves what it amounts to in the light of human experience. If he encompassed the death of his wife, if as the indictment charges and the prosecution insists, he planned and premeditated her death and deliberately executed his purpose by shooting her, would he in a few hours afterwards be telling to different persons different and contradictory stories as to the events that transpired in connection with the murder thus deliberately premeditated, planned and executed by him? Or would he if thus guilty, have had his story for the public well studied and matured in his mind, and have told it at all times and in all places, and to all persons, precisely the same so as to avoid exciting suspicion against himself by reason of contradictory statements? These are vital questions in this case for you to determine, and you determine them for yourselves, judging from human experience and human transactions.

8. If the defendant was guilty of the crime charged, the law presumes that all his statements on the subject at the time of its occurrence or afterwards were deliberately and willfully made in his own interest for the purpose of covering up and concealing his guilt. But if he was innocent of the crime, and was laboring under the effects of fright, was suffering bodily

pain and was distracted by the sudden calamity that had befallen his household, it would not only be contrary to law, but contrary to reason and all human experience to hold him responsible for any statements or acts made or done under such circumstances. And I charge you, gentlemen, that the defendant cannot be convicted of the offense charged in this case upon circumstantial evidence until the State has proved to your satisfaction beyond a reasonable doubt that the defendant was present at the time of her murder with the necessary weapon of death, and the physical ability to commit the act. But the physical ability, I will say, is sufficiently proved by his presence in ordinary health. But that fact raises no presumption whatsoever, as to the weapon used, and you will bear in mind that the defendant is not required to prove his innocence, but that the State is required to make the necessary proof, and if the State has not made such proof it is your duty to acquit the defendant. And this is true whether the evidence be circumstantial or direct.

9. Again; did he make contradictory statements as to the amount of money he had on hand at the time; or contradictory statements as to his big pocket book, or on any other subject about which he ought to be well informed? If so, you will apply the rule laid down above, for the purpose of determining for yourselves, why he should make different statements on these subjects to different witnesses, about the same time, if he did make such contradictory statements at all. If he deliberately planned and executed this murder, you may well ask yourselves why he did not deliberately plan and tell to every one the same story?

10. But you will determine for yourselves, whether he made such contradictory statements all or not; whether he may not have been misunderstood, or did not, under excitement, fright, and grief, fail to fully or clearly express his own meaning. And this leads me to the consideration of the subject of admissions or confessions of guilt, or the statements of parties out of Court, which are testified to in Court by other parties. Mr. Greenleaf, in his excellent work on evidence, says: "With respect to all verbal admissions, it may be observed that they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake; the party himself either being misinformed, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say." Much of the testimony in this case is of and concerning facts and circumstances that were transpiring in the midst of very exciting circumstances, and the admissions and statements of witness as to what the defendant said and did, relate to the same time generally, and were received under the same circumstances, and therefore it is but reasonable to suppose that they would be less accurate and less reliable, than if given and received under different circumstances; and you have only to refer to the testimony of witnesses of, and concerning the scenes at the bed of the deceased in her last hour, and her statements then and there made, and you find among all the witnesses testifying in relation to her statements, perhaps no two witnesses can be found that exactly corroborate each others statements. Why should the witnesses in regard to the defendant's statements be more accurate? and why should he be accused of mis-stating the facts because the witnesses do not agree as to what he said? Do they not agree as well on that as anything else?

11. The theory assumed by the defense in this case is, that the statements and admissions of the defendant, of and concerning the alleged murder are true, and that he, in his statements and in his testimony on that matter, stands uncontradicted by any witness on the main and most material points of his evidence; not only that he stands uncontradicted, but that he is corroborated in this, that two suspicious characters were seen in the vicinity of the murder, from some time on Friday evening until three o'clock, on Saturday evening of the night on which the murder was committed; that they then mysteriously disappeared from the sight of the people of the neighborhood, and did not leave by the usual route of travel, but by some means unknown to the people of the neighborhood, they disappeared, and have not been seen since. That in addition to that, the house of a near neighbor was disturbed the evening previous, and that in the neighborhood a man was seen by the wayside standing, at about the hour of three o'clock in the morning. That in addition to that, horse tracks were seen, that were made from indications, at an early hour in the morning, and before daylight. These facts and circumstances are well worthy of your serious consideration, and may tend to an intelligible solution of this mysterious crime. And if these facts, taken in connection with all the other evidence given in the cause, raise a reasonable doubt as to the defendant's guilt, he is entitled to the benefit of such doubt, and it is your duty to acquit him.

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12. Our statute law provides and says that: "The defendant is presumed to be innocent until the contrary is proved." "When there is a reasonable doubt whether his guilt is satisfactorily shown he must be acquitted." "When there is a reasonable doubt in which of two or more degrees of an offense he is guilty, he may be convicted of the lowest degree only."

13. On the subject of reasonable doubts, our Supreme Court of this State says: "A juror in a criminal case, ought not to condemn unless the evidence excludes from his mind all reasonable doubt as to the guilt of the accused—that is, unless he be so convinced by the evidence, no matter what the class of the evidence—of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest personal interests under circumstances where there was no compulsion resting upon him to act at all.' [31 Ind. 492.]

14. As I stated to you in one of the previous charges, the evidence in this case on the part of the State is largely circumstantial, and to sustain a conviction for murder on circumstantial evidence, the facts proved, must be susceptible of explanation upon no reasonable ground consistent with the innocence of the accused. It is not enough that the mystery of the crime cannot be solved from the evidence, except upon the supposition of the defendant's guilt. [29 Ind. 336; Shuiser case].

15. It has been gravely assumed in argument in this case that a burglar would not be guilty of murdering an innocent and inoffensive woman in the robbing of a house; and it is assumed by the same counsel that a husband without any evidence of malice, or apparent motive, did do the act. The probability and improbability of such an act, and of such a marked difference in favor of the burglar and against the husband, is a matter that I leave to your determination, from your knowledge of human nature and human experience, for I know no better way of judging human transactions than by human experience. You will bear in mind, however, that you are the exclusive judges of all questions of fact.

But I would not have you overlook the theory of the prosecution in this case. That the whole admissions and statements of the defendant in relation to the commission of the alleged crime are false and a fabrication on his part, for the deliberate purpose of screening himself from the merited infamy and punishment that would inevitably befall Him in case he made an honest and truthful disclosure of the facts in relation to the crime; and for the purpose of sustaining that theory of the case, they call your attention to his conduct after the commission of the crime, claiming that he made much ado over a slight wound, that he says was inflicted by one of the robbers; that he was concerned about himself, and that he manifested little or no concern about his wife; that he went after the doctor to get his wound dressed when he should have staid at home and taken care of his wife; that after arriving at home, instead of coming around the sick and dying bed of his wife, that he went into the kitchen and feigned sickness, pretending to vomit; that he made a show outwardly of weeping by feigning tears; that his statements are contradictory in relation to the man that

he says shot him in the kitchen, and some other matters too tedious for to allude to here.

Now in relation to these facts and circumstances, so far as they are satisfactorily proved before you, they are properly matters for your calm and deliberate consideration; and if you believe from the facts and circumstances established in evidence before you, that the statements and admissions of the defendant are untrue, it will be your duty to disregard his evidence as unworthy of belief; and if you so believe in your deliberations, you will discard that evidence in toto, and look to the other evidence as testified to before you for the purpose of determining the guilt or innocence of the defendant.

But I will say to you, that I know of no rule of evidence by which the testimony of witnesses is accepted in evidence to prove the contrary of what the witness testifies to. He may be unworthy of credit; and if so, ought to be disbelieved; but to assume that because he is incredible and unworthy of belief, that therefore his testimony shall be taken as evidence contrary to what he has testified to, is a rule unknown to the law.

Again; it is assumed in argument that the defendant acted strangely under the circumstances, and many suggestions have been made to you as how the defendant would have acted had he been innocent, and had his wife been murdered as he testifies she was murdered. It is not sufficient for the State to show that he acted strangely, but the State must show he acted as a criminal and not as an innocent man would do; and upon that question as to how a man would act, I am unable to advise you. Counsel may know, I do not, having had no experience under such unfortunate circumstances, and therefore have no suggestions to make, knowing no rule of conduct recognized by the law of the land or by human experience as to how a man would act under the circumstances. If you do, apply it in this case, for it is your right and duty to judge human transactions by human experience.

If it is your deliberate judgment that if he was innocent, he should have set down by the bedside of his wife and waited for something to turn up, instead of calling in his neighbors, relatives, and a physician, hold him responsible for his act. But, if calling his neighbors, relatives, and a physician, was a rational and humane transaction, give him credit for it.

Now gentlemen, you will not lose sight of the real issue in this case, and will not therefore imagine that the real question in the case is whether the long man, or the short man, or the heavy set man, or the low chunky man shot the defendant Amasa J. Foulke, but did Amasa J. Foulke shoot, kill and murder his wife, Lucette Foulke.

For the purpose of establishing that fact, the State introduces the admissions and statements of the defendant, Amasa J. Foulke, before the coroner's inquest, and to numerous outside parties, each and all, so far as I can discover without contradiction or disagreement, testify substantially to the same fact as to the death of Lucette Foulke, and as to the person by whom she was killed, viz: the man that stood by the bedside. And the defense offers the defendant himself as a witness, who testifies in open Court before you, to the same fact, and it would seem to be a happy state of facts in this case, that the evidence on behalf of the State, and that on the part of the defendant, each perfectly harmonize with the other on the essential and all important facts of this case—that is, that Lucetie Foulke was killed and murdered by a robber at her bedside, and there it would seem that the case might rest quietly forever, or until such time as the burglar might be ferreted out and bro't to punishment.

But the counsel for the State say true, we prove that, but not because we believe it, but for the purpose of showing how he has falsified the facts, for they tell us that that statement is wholly untrue. Now, I have already suggested to you, that you act upon the evidence before you, and not upon the beliefs or unbeliefs of any men, but upon the facts established by the evidence; and I therefore respectfully inquire of you, which inquiry you will answer in your deliberations, what man, woman or child testified that that statement is untrue? What fact or circumstance in evidence in this case is established beyond a reasonable doubt, (and if any fact or circumstance is not established beyond a reasonable doubt in this case, you cannot consider such fact or circumstance as evidence, in the case, but must wholly discard such fact or circumstance from your consideration), then I say, what fact or circumstance so established contradicts that statement as to her manner of death?

Now I will say, that if a witness has sworn to the contrary of such facts, or any circumstance so proved contradicts this fact, it will be your duty to consider such evidence; but if nothing has been proved to the country, it is your duty to recognize as true the corroborating evidence of the State and this defendant, and to act upon it, and to acquit the defendant without hesitancy.

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But as already suggested to you, the prosecution denies the truthfulness of said evidence, and gravely assumes that is false in toto. Of the truthfulness or falsity of that evidence you are the sole judges; therefore let us consider the case in that light to the end that you may see where you and as sworn jurors in this case.

Now understand, we admit for the sake of the argument, that the prosecution has put in successive hours of time in this Court, proving that which they do not believe, and the defense has proven the same fact, and that after all that is done, we are agreeing that the whole evidence of that kind is a falsehood, and a willful fabrication, then I respectfully ask what evidence is there left in this case for you to count upon, for you convict upon the evidence, or acquit upon the want of evidence and not upon the faith or want of faith of counsel.

But have I yet presented to your consideration fairly the position of counsel for the prosecution? I think not. They go one step further; they assume that the defendant has lied about the transaction, and that therefore he should be convicted. I will say to you, that I know of no law of this State that authorizes a jury of the County or the Courts to suspend any man by the neck until he is dead, or to send him to the penitentiary for life for lying. Nor do I know of any law on our statute, or in the law books, nor any law of logic or ethics, that admits and takes for granted as true, the the very reverse of what is proved. So far as I know this is a new proposition in this generation of men, and the first time in the world's civilization, announced in this case.

But gentlemen, I would not have you misunderstand the situation, your duties and responsibilities.

For the time being the responsibility of the case is upon you. I could not relieve you from it, if I would. I could only instruct touching the law and the evidence of the case, but after that is done the responsibility of the case passes completely under your control, and you are the judges of the law and of the facts, without regard to what I may say.

Yes, gentlemen, the liberty or the life imprisonment of the defendant is in your hands; nay, more, his life and his death.

Deal with him according to the law and the evidence in the case, and you shall have done your duty.

If you find the defendant guilty, the form of your verdict will be:

We, the jury, find the defendant guilty as charged in the indictment, of murder in the first degree, and that he suffer death.

Or may be:

We, the jury, find the defendant guilty as charged in the indictment, of murder in the first degree, and that he be imprisoned in the State's prison during life.

Or if you believe the evidence makes a case of murder in the second degree only, then the form of your verdict will be:

We, the jury, find the defendant guilty as charged in the indictment, of murder in the second degree, and that he shall be imprisoned in the State's prison during life.

If you find the defendant not guilty the form of your verdict will be:

We, the jury, find the defendant not guilty.

You will appoint one of your number foreman, whose duty it will be to sign your verdict for you.

HARVEY CRAVEN.