

# WOULD YOU CONVINCE ON CIRCUMSTANTIAL EVIDENCE? A CHANCE SHOT A TRUE STORY

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**EUGENE A. PHILBIN**, formerly District Attorney of New York county, says—

"It is difficult to lay down hard and fast statements concerning circumstantial evidence as opposed to evidence direct, since each case takes its own peculiar form and must be approached in a different way. I believe, however, that circumstantial evidence is perfectly safe and that it has the advantage in that it does not so freely admit of perjury.

"When two or three witnesses swear to having seen the actual transaction in question it is quite conceivable that they have invented the story deliberately. You may say that the same is conceivable concerning a witness who presents a circumstance, but here is the distinction:—In a case of circumstantial evidence the links in the chain usually are supplied by many unrelated individuals, each testifying to a separate, simple fact. The safety is in the number of them.

"It is practically impossible that there should be understanding among so many persons for purposes of perjury. A circumstance is picked up here, another there, many miles away, and in order to convict there must be no single flaw, no contradiction in the whole collection of statements. When a case of circumstantial evidence is complete—and it must be so to stand—when it points to only one possible end, that of guilt, there is no reason to distrust it."

**H**ATE as primitive as in the age of crawling things brought the two young men, with tense, ready muscles and out thrust jaws, face to face and eager for battle. A motive old as life itself impelled them each toward the other's throat—the disputed favor of a woman. And here intruded the note of a higher development and civilization, for instead of standing aside in savage content the woman threw herself between the two.

Each hands outstretched she mutely motioned them apart. For a second they hesitated, then each took his leave formally and left her, white faced and alert, among the shadows on the porch. Tyler was the first to go, and he awaited Bell at the garden gate. Their figures stood clear in the moonlight and the girl watched anxiously, but the red face of instant rage had left them fiercely cold and unrelaxed.

"Come Bell," said Tyler, "this is no place for a showdown, but I'll make it my business to see that you answer to me some time."

This other, without pausing, moved past through the door, but turned at the other side.

"I reckon you know where to find me when you're ready," Tyler. "We'll arrange our little differences where we won't be interrupted and whenever you're lookin' for some trouble."

"That's me," remarked Tyler briefly. They parted, one walking toward the town, the other toward his tethered horse at the post, without a backward glance. The girl, who had listened intently, remained until the footsteps of Tyler had died away down the path and Bell's mount had vanished over a swelling rise. Then, filled with a dread she felt powerless to remove, she hurried into her home, closing the door.

It was a Sunday night when the cartel of defiance, in accepted Kentucky manner, was exchanged between the rival admirers of Elsa McDonald. The quarrel had been a matter of slow growth, the outcome of the Blue Grass beauty's coquetry and frequent meetings on contested ground. She had given neither particular encouragement, but each grew to believe himself obstructed and slandered by the other, after their common persistence had driven other candidates from the field. The cause of their enmity had played the familiar game, and at first with safety. But these were men of the soil, virile, masterful, impatient, and the inevitable spark had been struck.

Tyler lived in the town, on the outskirts of which stood the McDonald place. Bell, recently fallen heir to a considerable estate and breeding farm, occupied his family mansion about six miles distant along the county road.

Early on the following Thursday morning the employees on the Bell farm, swarming to work from breakfast, found the favorite horse of their employer, the one he most frequently rode, standing outside the gate to the stable yard, lathered and exhausted. The animal was spattered with mud, part of the bridle had been torn away, the girth had loosened and the saddle hung awry against one flank with dragging stirrup. The stableman, stepping by force of habit to adjust the displacement, even before he had exclaimed upon the singularity of it, cried out as he placed a hand upon the pommel. The saddle leather on the right side was streaked and splashed with blood.

## The Man Hunt.

The alarm spread with scarce a word spoken, and men about the place were being collected by the overseer of the farm, Mason, before the stableman had removed the broken bridle. It was a matter calling for instant action, and action was something that Mason understood. A few sharp questions brought out that young Bell had started out the preceding evening about seven o'clock, heading at a brisk gallop toward the town.

"There's only one place he'd be like to go on that road, 'less he passed it," was the stableman's comment.

"And that's to the McDonalds," added the overseer. "He hasn't missed a week time out of mind sparlin' that girl."

Four of the farm hands, under the lead of Mason, quickly saddled and mounted, and the group made off down the highway at top speed. They drew rein before the McDonald house while the family was still at breakfast, and the overseer, hat in hand, walked into the room without ceremony.

"Beg pardon, Miss McDonald," he asked abruptly, "but did Mr. Bell come to see you last night?"

The young woman, startled and coloring under the sudden question, answered that she had not seen Bell since Sunday night. The man turned to her father with his word of explanation.

"He started, I suppose, for your place last night. His horse came home this morning with blood on the saddle. There's been some deviltry between there and here."

McDonald instantly volunteered his services, and the men left the house. The girl, alone with her mother, sat with compressed lips and flushed cheeks. For her the affair had a greater significance than she cared to acknowledge. There was an element of fear and self-reproach in her reflections, but she was not given to subtleties and she set herself to await the outcome of the search.

While one of the farmhands pressed forward into the town to notify the authorities of the facts the rest of the party was split up under the direction of Mason, and the laborious work of investigation along five miles or more of road was begun. It was evident that Bell's thoroughbred had travelled far and through rough country, but the natural supposition was that its wanderings had been those of a riderless steed. The thought of foul play was uppermost, and the likeliest spot for violence was along the highway. Within a few hours nearly a hundred of the townsmen, mounted and afoot, came to aid the searchers. The day closed barren of results.

The task was resumed the next day, and the next. Public excitement, which had ranged high with the first word of murder, began to subside. It was advanced as possible that the wealthy young landowner had left the country for a lark, or perhaps was being held for ransom. No one could suggest a feud in which he might have become involved. The residents of the village returned to their accustomed round, only Mason and his handful of assistants clinging to a wearying and seemingly hopeless search. The overseer, having examined every foot of the roadway and its fringes, widened the strip of ground to be covered on both sides and caused his men to ride up and down the length as if following successive furrows. This led them ultimately into the woods on either side.

The first few fruitless days wore out Mason's impatience and it became after that a matter of dogged loyalty. He let it be known that he would pursue his tactics for a month if there were need, or until some word or a clue to the whereabouts of Bell came to light. One other member of the community, Elsa McDonald, followed the progress of Mason's work with an interest equal to his own.

## Finding the Body.

It was a full week after the Thursday on which the horse had returned without his owner when the discovery was made. Mason himself came upon it. The body of George Bell was found in a heavily wooded section about a hundred rods off the road and midway between his own home and that of the McDonalds. It had been divested of coat, shirt and boots. There was a wound almost as large as the palm of a hand under the left shoulder blade. Subsequent medical investigation showed that the contents of both barrels of a shotgun had practically torn away the left side.

Rigid examination of the spot failed to reveal any clue. The revolver which Bell had been known to carry was missing, as was the belt from which the holster had hung at the back of the right hip. No trace could be found of the missing garments. A small sum of money and a pocket knife, completing the inventory of what the young man was known to have had with him, were gone. The autopsy established that death must have been instantaneous. The course taken by the shot had been on an upward angle toward the opposite shoulder. From this it appeared beyond all question that the victim had been murdered while riding his horse and oblivious to danger.

Mason made a close inspection of the features of the surrounding ground. He found that almost in a straight cast to the highway a thick clump of bushes grew on both sides of the ditch, affording a close covert, against which wagon wheels brushed in transit. There could have been designed no better place for the ambushing of an unsuspecting traveller. He sought for marks that might have been left by a concealed assassin, but could discover none. He was more successful in finding proof that the body had been dragged directly from the road to its hiding place. In the dust of the wagon track stains were easily obliterated, but through the thick, close woven underbrush he discovered frequent marks of blood. He noted as worthy of remembrance that the Wednesday night in question had been misty and overcast. When he left the spot the overseer had a clear picture of the method by which the murderer had accomplished the crime.

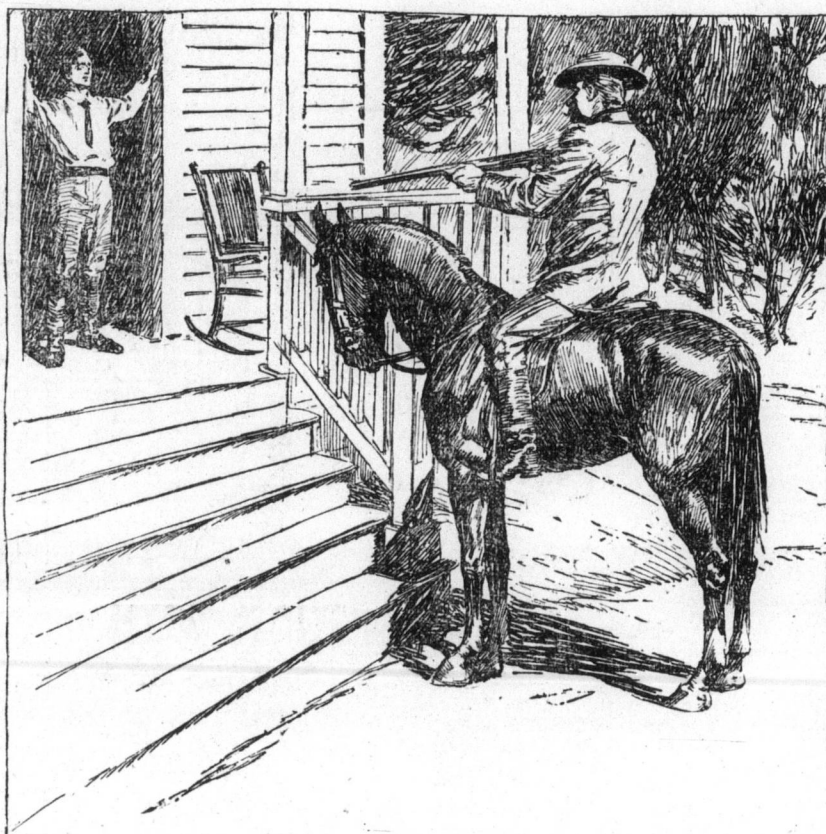
While the coroner's jury was hearing the case the next day a buggy drove up to the town hall. From it alighted Elsa McDonald, and the crowd made room for her as she moved into the building and sought entrance to the room in which the inquest was being held. She was agitated and under stress of deep emotion, but there was no hesitation in her manner. During the time since the disappearance of Bell she had taken herself severely to task. She had formed the resolution to tell everything she knew if there should prove to be a fatal outcome to the mystery, and she was now present to keep that resolve. The coroner had been notified of her desire to appear as a witness and she was called to the stand.

Without pose or sentimentalism she related the source of differences between Bell and Tyler and

the scene on her porch. She repeated the phrases with which the men had parted, holding threat of a speedy settlement of scores. Her recital was brief and dramatic, and the crowd sat breathless while she described her postponement of a furious quarrel by stepping between the enemies. When she came to an end with Tyler's phrase, "You'll have to answer to me some time," there was a stir in the room, and several men started quietly and unobtrusively for the doors.

## His Inward Rage.

The movement did not escape the quick eye of the Sheriff. He whispered a moment with three of his deputies and despatched them hurriedly. After further testimony by Mason and members of his party the coroner called for Tyler. There was no response. One of the Sheriff's men returned and the coroner was informed that deputies had visited the Tyler home, but could not find the young man. It further had been learned that Tyler had not been at his home for about a week.



THE YOUNG MAN STOOD STARING AT THE WARLIKE APPARITION.

Mason was a man whose most marked characteristic was a need of rendering absolute fidelity to some one. His relations with Bell had been closer than those of master and man and he had accorded to his employer unreserved devotion. The tragic death of the young landowner filled him with slow burning rage and the unreserved determination to devote himself to applying what assistance lay in his power toward the ends of justice. His mind was rather narrow but intensive and he possessed an admirable power of application. Meanwhile he was just and clear headed and was not the one to allow one set of appearances to outbalance another in favor of vengeance. He did not merely demand of himself that some one must suffer for this thing, but that the guilty man must suffer.

It was this quiet, strong, forceful personality that now became dominant in the case. He followed the obvious track indicated by the testimony of Elsa McDonald and applied himself to tracing Tyler's relations with Bell. He learned, in the first place, that there had been no opportunity for a meeting between the rivals after the throwing down of the gauntlet up to the time when Bell left his farm on Wednesday evening for the purpose, so far as could be judged, of visiting the girl. Neither of them had been seen at the McDonald house after Sunday night. His inquiry was then directed toward discovery of any communication that might have passed between them, for it ran in his mind that a place of meeting had been appointed at which they were to submit their quarrel to the arbitration of personal combat. The precision with which Bell had been waylaid argued, to Mason's mind, that Tyler knew where and at what time to expect his enemy.

The intelligent, clear eyed quality of the man instinctively found its complement in Elsa McDonald before he had taken many steps into the affair. Her attitude toward the case was much the same as his own, and although she had not loved Bell she felt a loyalty to his memory not unmixed with a desire to remove the shadow of reproach cast by her unthinking aggravation of a quarrel. If Tyler were innocent it was in her interest to prove him so. In any event she wanted the truth as keenly as did Mason.

The overseer visited her immediately after the inquest and obtained from her all details that might have a bearing on the crime. She supplied one fact of first importance. She said that on Tuesday she had received a note from Bell announcing that he would call to see her on Wednesday in the hope of finding her at home. Might it not be that some one had obtained word of the young man's movements from this note? She added that she suspected one of her servants, a negro, of aiding Tyler in his courtship through information concerning the McDonald family and its affairs.

Pursuing the investigation, Mason questioned the negro and elicited the fact that he had been employed in some such capacity by Tyler. Under pressure he admitted that the kitchen of the McDonald place was a busy clearing house for gossip; that rumors of an impending quarrel between the suitors had been discussed and that one of the maids had learned of Bell's intended visit to her mistress. This bit of news, he said, being of the kind which he had communicated to Tyler on several occasions, he had sought that young man on Tuesday night and informed him concerning the note.

Here was an important advance into the surrounding circumstances. Tyler, already stamped as Bell's enemy, was now clearly indicated as one of the very few persons who could have known beforehand of the plans of the land owner and the time at which he would be likely to pass along the road.

While engaged in these preliminaries the overseer had not neglected to keep an eye upon the pursuit of Tyler which was being pushed by the Sheriff and his aids. There had been no result. No one had seen

him leave the town, nor could any member of his family give information as to the exact time of his departure or his present whereabouts.

## Fifty Dollars for the Hint.

Gaining no further result from inquiries into the complications that had preceded the murder, Mason now threw his own work parallel with that upon which the Sheriff was engaged. He saw some possibility of aid in the negro who had acted as Tyler's spy. The man had been discharged following the revelation of his secret transactions, and the overseer sought him out.

"Have you any idea what has become of Tyler?" was his direct question.

"No more'n you," came the sullen answer.

"Look here, you're out of work, aren't you?"

"Yes, I am, 'cause I couldn't hold my blamed tongue. I ain't goin' to make no more plays like that."

"Well," said Mason, "it's pretty clear you haven't got much to expect from Tyler now. Here's fifty dollars. You get it the minute Tyler is landed in jail. I don't know and don't care, just now, whether he's innocent or guilty. What I want is to get him."

The negro glanced at the money but made no reply.

The next day he sought the overseer.

"Have you looked 'er him at his uncle's house, 'bout ten miles down river?"

Ten minutes later Mason was galloping, rifle in hand, down the river road in the direction indicated by the negro. He had known in a vague way that Tyler's uncle lived in the county, but no one among the authorities had thought to look for him at such a place. They inclined to the belief that he had taken to the mountains or had headed for Louisville.

Mason rode up to the home of Benjamin Tyler, a tobacco planter, in the early afternoon. He did not dismount, but thrust his horse close in to the steps, thus bringing himself on a level with the porch and directly before the door. He waited until the clatter of his arrival should bring him a response, alert for danger and with his weapon ready in the crook of his elbow. There came leisurely footsteps along the hall inside, and a figure appeared in the doorway. Mason's rifle came to his shoulder in a flash, and it was along the steady sights that he opened the conversation.

"Just keep your hands where they are, John Tyler."

The young man stood leaning with a hand on either side of the doorway, and staring at the warlike apparition thus suddenly projected from the sunshine of a summer day. Finally, having adjusted himself in some part to the situation, he spoke with a hard smile.

"What's wrong, Mason; taken to stickin' up folks for a livin'?"

"Don't try to work that game with me," said the overseer, sharply. "You know well enough what I'm here for. I'm a deputy sheriff, and I arrest you for the murder of George Bell."

Tyler started slightly and then sneered.

"I don't know what you're talkin' about. Nuther

do you, I reckon. If you'd given me half a chance you wouldn't be sittin' there so sassy with your gun. Well, what next? Want my roll? 'Taint very big. Mason did not restrain a grim smile of admiration. "You're smart, Johnny," he said. "I'd never be the one to deny it. Just march over and turn your back to me, and keep your arms lifted. That's it. Likely little pop shooter you got there."

It was growing dusk when the townspeople flocked to the street to watch the passing of a strange little cavalcade. Tyler sat on Mason's horse with his arms bound behind him. The overseer walked ahead, holding the bridle over his arm, and with his rifle at a trail.

## Weaving the Web.

With the prisoner safely in jail Mason and the Sheriff made the trip to Benjamin Tyler's again the next day to gather facts as to his nephew's arrival there. The planter said that on the Wednesday night of Bell's disappearance John Tyler had spurred up to his door about eleven o'clock. The young man, he said, carried no baggage, but announced that he had come to stay for several days, declaring that he was tired of town life. The two had talked for some time. The elder man admitted that his nephew looked worried and tired and ill at ease.

"What has he been doin' since he came?" asked Mason.

The visitor had been sitting and shooting, the planter said. He had been out of the house much of the time.

"What arms did he bring with him?"

"A shotgun and a revolver."

The shotgun, a double barreled weapon, was discovered in the house, as were a number of cartridges. When these were examined on return to town it was found that the shot exactly corresponded in size with that taken from the body of Bell.

There remained but two more links in the case against Tyler. One of these was supplied by a knife fixed in his possession when he was searched at the jail. Mason and others at the Bell mansion could swear that it was identical with the one belonging to their employer which he had carried with him, customarily, every day.

The trial of John Tyler, which took place at Louisville, was carried to a speedy and satisfactory conclusion. The general good character of the accused afforded practically the only basis for the defence. An attempt at an alibi was demolished by the final circumstance in Mason's structure of evidence. Three men were put upon the stand and swore to having seen Tyler, on horseback, at different points along the road between the Bell and McDonald residences early on the evening of the murder.

The jury was out only thirty minutes, returning with a verdict of "guilty." The date for execution was set eight weeks off.

During the interval of imprisonment Tyler was visited one day by Elsa McDonald, who had urged her father to accompany her to the city once more after the trial for this purpose. The convict was sullen and answered her questions shortly or not at all. The ordeal through which he had passed had wrought a strange change in him. He seemed to have retained no affection for the woman to whom he had been utterly devoted but a short time before. He had shrunk from his former strength and it was feared by the prison authorities that he had developed consumption.

The girl had undertaken the mission for but one purpose—to hear from the lips of the condemned man a confession that would set at rest all fear of a possible wrong. She found that she could make no impression upon Tyler. After repeated questioning he avowed his innocence, but without fire and in a mechanical manner. To her instinct, however, there crept the beginning of a doubt as to the man's guilt. With eyes fixed intently upon him she demanded a full confession of conviction that she was looking at the murderer of George Bell. But the response she could gain from herself was halting. She was not satisfied.

She was able to induce her father to obtain the services of a Louisville detective, Kittredge, a middle aged man of ripe experience and a long record of successes. Kittredge returned to the town with them and was placed in possession of all the facts. His instructions from Elsa McDonald were to go over the crime in all its details in a final attempt to discover some flaw in the case or some mitigating circumstance that might have been overlooked. The detective was not hopeful of uncovering fresh material after such a lapse of time, but applied himself to the task.

## The Vital Discovery.

For two weeks there was no result from the supplementary investigation. McDonald, who had yielded to his daughter's whim in recognition of the importance of the question to her, began to grumble at the useless trouble and expense. Even Kittredge wished to give over an undertaking that seemed to include no promise of satisfaction for his employer.

Three days before the date appointed for Tyler's execution the detective announced a discovery. In making random inquiry along the Ohio River about half a mile from the scene of the crime he had caught a party of negroes which had been seen moored to a bank in the vicinity during the week of the murder. The occupants of the boat, as he learned, were a worthless and savage lot, who had lived upon the proceeds of raids through farms and plantations during their progress down stream.

The clew did not offer much, but Kittredge, at Elsa's urging, proceeded down the river in an attempt to discover the houseboat. He obtained word of it at a town twenty miles below. There had been a fight among the negroes on board. One of them had been shot in the knee and thrown overboard. He had been rescued and taken to a hospital, where it had been necessary to amputate his leg. He was now convalescent. Following the fight the houseboat had been run down by a steamer and all the remaining occupants had been drowned. Knowledge of this, however, had been kept from the patient.

Kittredge, with but two days left for his purpose, determined upon a desperate, random thrust, knowing that this was his last hope. He engaged a physician and a nurse to be present and approached the negro who lay on his cot.

"Johnson," he said, "I've got the whole outfit, and what do you suppose they're tryin' to do? They've cooked up a story that you did the killing all 'one."

The sufferer rolled his eyes upon the detective.

"They is, huh? Well, I guess I kin fix 'em. They done kill him theyse'f when they was lookin' fo' a pig to steal. I was soun' asleep on 'o'd, I was. Every one of 'em was in it but me. They tried to kill me 'cause they was afraid I'd tell 'em."

There was quick work getting the facts before the Governor together with a petition for a reprieve, but Elsa McDonald had the satisfaction of knowing that delay had been granted when the morning set for the execution dawned. Later Johnson was carefully examined and was able to prove to the satisfaction of the authorities that his companions had murdered Bell.

Tyler had had no thought of waylaying his rival. His threat had been intended to mean that a time suitable to both they should fight for the girl, with fists for weapons. His inability to win Elsa had made him distraught and nervous and he had been seized with a sudden impulse to leave her behind and to attempt to forget his infatuation. According to this he had stopped at his home only long enough to take his shotgun, with an eye to possible hunting trips, and had galloped to his uncle's place. The pocketknife he carried was not Bell's but his own, a duplicate of the other. It was true that he had been informed of Bell's intended visit to the McDonald place, but he formed no plan to molest him.

The negro criminals, it appeared, had gone ashore on a raid. One of them carried a shotgun. When near the road they had heard an approaching horse. Murder and robbery had been planned and carried out.

When these facts were made clear Tyler was pardoned. It was too late. He had developed a fatal disease in prison and he wasted rapidly to his end. Elsa McDonald did what she could to make him comfortable during his last few months and to repay, in some part, for her share in the disaster that had come upon him.