

People v. **Harris**

Decision Date: 17 January 1893

Citation: 33 N.E. 65 , 136 N.Y. 423 

Parties: PEOPLE v. HARRIS.

Court: New York Court of Appeals Court of Appeals

Case Analysis

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Legal issue "Can a murder conviction be based solely on circumstantial evidence, particularly concerning death by administered poison?"

Headnote

5 Get Started

CRIMINAL LAW. EVIDENCE. The case involves an assessment of circumstantial evidence and its applicability in a conviction for murder in the first degree caused by administering a lethal dose of morphine. The court emphasized the validity and weight of circumstantial evidence, requiring that it should present facts from which the inference of guilt could be conclusively drawn, and which excluded any other hypotheses.

CRIMINAL LAW. HYPOTHETICAL QUESTIONS AND EXPERT WITNESSES. Expert witnesses were questioned on hypothetical scenarios relevant to the case. The court maintained that such hypothetical questions are only considered valid if they are founded on facts that are either accepted or disputed, with the judgement on such disputes resting with the jury.

CRIMINAL LAW. PRESUMPTION OF INNOCENCE. The case brings light to the legal principle of "presumption of innocence" until proven guilty beyond a reasonable doubt. The trier of fact, while determining guilt or innocence, was guided to reconcile all disparities in favor of the accused where the evidence presented could support multiple interpretations.

EVIDENCE LAW. RELEVANCE. The case involves the admissibility of evidence relating to the defendant's adulterous affairs and his conversation concerning the use of poison. The court deemed such evidence as admissible, arguing that documentary proof of the adulterous relationship provided a substantial motive for the murder and was hence not extraneous or irrelevant. Further, the trial court was directed to consider this evidence in relation to all other factors when determining the defendant's frame of mind and possible intentions.

Key Paragraphs

Highlight key paragraphs

"...The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for a criminal act is sought to be performed in secrecy, and an intending wrongdoer usually chooses his time, and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible.,All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts...."

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Key Phrases Murder in the first degree. Circumstantial evidence. Morphine poisoning. Secret marriage. Prosecutorial errors.

136 N.Y. 423

33 N.E. 65

PEOPLE

v.HARRIS.

Court of Appeals of New York.

Jan. 17, 1893.

Appeal from court of general sessions, New York county.

Carlyle W. **Harris** was convicted of murder in the first degree, committed upon Helen Neil Potts by administering to her a sufficient quantity of morphine to cause her death, and defendant appeals. Affirmed. *424

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William F. Howe, for appellant. *425

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De Lancey Nicoll, Dist. Atty., and Henry B. B. Stapler, Asst. Dist. Atty., for the People. *427 427

GRAY, J.

The defendant was charged with the crime of murder in the first degree, committed upon Helen Neil Potts by administering to her morphine in a large enough quantity to cause her death. His indictment was followed by a trial in the court of general sessions of the peace of the city and county of New York, at which he was convicted upon the verdict of the jury. From the judgment of that court, and from the order denying his motion for a new trial, he appeals to this court. He says that justice demands that he should *428 be granted a new 428 trial for errors, which he points out as having been committed upon his trial, and because his conviction was not justified by the evidence.

A careful reading of the evidence contained in this very voluminous record, and a conscientious consideration of the facts disclosed, must inevitably lead to the formation of an opinion that the verdict of the jury was not only justified, but that no other conclusion could have been reached by the fairest mind. The death of the young woman was not disputed, but the cause of her death was. The great bulk of this record is made up of the evidence given on behalf of the people to establish a poisoning by morphine as the cause of

the death, and to demonstrate the guilt of the accused; while the evidence in his behalf was confined to the examination of several medical experts, for the purpose of proving that the death of the deceased might be attributed to other *67 causes than to morphine poisoning. 61
The evidence connecting the accused with the commission of the crime charged was wholly circumstantial. There was neither testimony by some eyewitness of the giving of the poison, nor of any admission by the accused.

All evidence is, in a strict sense, more or less circumstantial, whether consisting in facts which permit the inference of guilt, or whether given by eyewitnesses of the occurrence; for the testimony of eyewitnesses is, of course, based upon circumstances more or less distinctly and directly observed. But, of course, there is a difference between evidence consisting in facts of a peculiar nature, and hence giving rise to presumptions, and evidence which is direct, as consisting in the positive testimony of eyewitnesses; and the difference is material according to the degree of exactness and relevancy, the weight of the circumstances, and the credibility of witnesses. The mind may be reluctant to conclude upon the issue of guilt in criminal cases upon evidence which is not direct, and yet, if the facts brought out, when taken together, all point in the one direction of guilt, and to the exclusion of any other hypothesis, there is no substantial reason for that reluctance. Purely circumstantial evidence may be often more satisfactory, *429 and a safer form of evidence, 429
for it must rest upon facts which, to prove the truth of the charge made, must collectively

tend to establish the guilt of the accused. For instance, if any of the material facts of a case were at variance with the probabilities of guilt, it would be the duty of the jury to give to the defendant the benefit of the doubt raised. A fact has the sense of, and is equivalent to, a truth, or that which is real. It is in the ingenious combination of facts that they may be made to deceive, or to express what is not the truth. In the evidence of eyewitnesses to prove the facts of an occurrence we are not guaranteed against mistake and falsehood, or the distortion of truth by exaggeration or prejudice; but when we are dealing with a number of established facts, if, upon arranging, examining, and weighing them in our mind, we reach only the conclusion of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eyewitnesses. The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for a criminal act is sought to be performed in secrecy, and an intending wrongdoer usually chooses his time, and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible. All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from those facts.

The two questions which, upon all the circumstances detailed in the evidence, the jury had to pass upon in coming to their verdict were, in the first order, whether the deceased came to her death by morphine poisoning, and, having determined that in the affirmative, then

whether the defendant was guilty of the charge of having administered it to her with a deliberate intent to cause her death thereby. The extent of the case developed by the prosecution, some peculiar features of the evidence, and some apparent difficulties suggested in connection with it, the gravity of the accusation *430 under which the accused 430 lay, and the responsibility imposed upon us by the statute in capital cases, seem to me to demand, for a clearer understanding of the correctness of the judgment, a somewhat extended review of the facts elicited upon the trial as they relate to each branch of the case.

Helen Potts, the deceased, had entered Miss Comstock's boarding school, in New York city, in December, 1890, and was 19 years of age at the time of her death. On Saturday, January 31, 1891, in the evening, she was with Miss Day, the principal of the school, in the sitting room, engaged in conversation and in reading. She was and had been in good health, and seemed very cheerful and happy. About 10 o'clock Miss Day retired, and a few minutes later the deceased also retired to her room. Her roommates—three young girls—returned from a concert at about half past 10 o'clock. The deceased awaked a few minutes after they came into the room, and talked with them. She said that she felt as if she was going to die; that she felt a choking sensation, and could not swallow; that she felt numb. She also spoke of having experienced pleasant symptoms, and of having had 'such lovely dreams that she wished they would go on forever.' After they had gone to bed, they were awakened by the moans of the deceased. One of them arose, and with her hands rubbed her friend's head;

but the deceased said she could not feel the rubbing. The moans continuing, and the breathing becoming loud and hard, Miss Day was called in about midnight. She tried to lift the deceased; found her unable to move, and unconscious; and immediately sent for Dr. Fowler, the physician of the school. He came in about 15 minutes, and was followed by an assistant physician, Dr. Baner. The deceased was found in a state of profound coma, very cold and pale, and the surface of the skin was pale and blue, and covered with profuse perspiration. There were very labored respirations, of about two a minute, with a distinct interval between the inspiration and the expiration. The pupils of the eyes were symmetrically contracted to an almost imperceptible point, and there ^{*431} was no 43' sensitiveness of the surface of the eyeballs. There was an entire inability for any voluntary motion whatever. The two physicians immediately proceeded to apply remedies. During the night they kept up artificial respiration by certain movements of the arms. They gave injections of black coffee, and hypodermic injections of atropine, caffeine, whisky, and digitalis. They used electricity and oxygen gas, but feared to use the stomach pump, believing, because of the very labored respirations, which had become reduced to one in two minutes, that the use of it would destroy life. No such change ^{*68} was indicated as had 68 been hoped for in the use of atropine, and the only betterment apparent occurred after some three hours of work, when the respirations became more frequent. This improved condition lasted only about half an hour, when a relapse occurred, and the respirations

decreased to only one in two minutes and a quarter. The patient gradually sank until 11 o'clock on Sunday morning, February 1st, when she died. Towards morning, the attendant physicians had called in Dr. Kerr, another physician, to aid them. The symptoms of the deceased caused Dr. Fowler to think the case one of poisoning by morphine or opium. In the room was found an empty pill box, bearing upon its label the defendant's initials, 'C. W. H., medical student;' and Dr. Fowler, having sent for defendant early in the morning, asked him about it. He was told it had contained capsules, each filled with about four grains and one sixth of a grain of sulphate of quinine and one sixth of a grain of sulphate of morphine. Dr. Fowler told him that one sixth of a grain, or even one grain, of morphine, could not have produced the condition; that it was one of the most profound cases of opium poisoning he had ever witnessed, and advised him to go at once to the druggist, to see if any mistake had been committed in reversing the proportions of the drugs. This the defendant pretended to do, reporting shortly afterwards that the medicine had been prepared exactly according to the prescription, which was written by him.

I have thus related the occurrences covering the period of *432 time between the retirement⁴³¹ of the deceased, in apparent good health and spirits, and her death; being some 13 hours. In the account of her condition, of her various symptoms, and of the treatment and results, the testimony of the attendant physicians agrees, and they all testified, in the most positive manner, that the deceased came to her death from an overdose of morphine. They based

their testimony in that respect upon the appearance and existence of conditions upon and in the person which negated or precluded the possibility of any other cause of death. Dr. Fowler was a physician who had been over 35 years in extensive practice, and whose experience covered many cases of opium poisoning. He testified that it was not an ambiguous case, and that the three stages of a pleasurable excitement, of coma, and of the entire nervous prostration, with an almost entire dilation of the pupils of the eyes before death, were a group of symptoms which, in connection with other observable conditions of the patient, enabled him to state as a fact that she had had an overdose of morphine. To quote his language: 'The whole condition, from beginning to end, was a picture of morphine or opiate poisoning, and a picture of nothing else.' To questions embodying the facts relating to the conditions and medical treatment preceding the death of the deceased, addressed to physicians of high standing and experience, called as experts, they agreed in the expression of their opinions that the cause of death was opium poisoning, and that the symptoms as a group indicated death from no other cause.

An autopsy was made some 55 days after death, in which the examination of the body was remarkably facilitated by its good state of preservation, a circumstance due to the fact that the body, having been embalmed, had been interred in a brick vault kept dry by the gravelly soil surrounding it. Two experienced physicians, accompanied by an experienced chemist, were present at the disinterment and at the autopsy following it. The physicians testified to

finding no evidence of disease in the heart or kidneys; nor were there any conditions *433 of 433 pregnancy. There was the congested appearance of the brain, which is described as a post mortem evidence of opium poisoning. The chemical expert removed certain portions of the body, necessary to his proposed examination, and an elaborate analysis, which he testified to in detail and at great length, resulted in the finding of morphine in the contents of the stomach and in the membrane, and an absence of quinine in detectable quantities. It was testified to that quinine is as stable as morphine, and should have been found, if it had been taken in similar quantity. It also appeared that the fluid used for the embalming contained no morphine. It may be observed, in this connection, that, as the deceased lived for 12 hours after being taken ill, and as the absorption of morphine is very quick, the finding of morphine in the analysis of the contents of the stomach would be a fact significant of the taking of an excessive dose of that drug. A minimum dose to produce the conditions narrated of the deceased would be, according to the evidence, from two to three or four grains. In connection with all this evidence of symptoms during the attack, of the results of the autopsy, and of the opinions of medical experts, we have certain other facts bearing in an important degree upon the question. The deceased was described as a young woman of fine and healthful appearance, and with a well-nourished body. Excepting sick headaches, she had not been a sufferer from ill health, and there had been no evidence, and none was subsequently discovered, of any organic disease. That she had no constitutional

idiosyncrasy as to morphine would seem well evidenced from her having been given, during the previous summer, in her illness, doses of one quarter of a grain of morphine every three hours for some twelve hours and one sixth of a grain thereafter every four hours for twenty-four hours. Furthermore, during some ten days previous to her last illness, she had taken three doses of one sixth of a grain each, compounded with quinine, under a prescription of the defendant. The defendant endeavored, by the cross-examination of the witnesses for the people, to establish the theories of uraemic poisoning from a diseased *434 condition of the kidneys; or of a hemorrhage of the pons varolii,—a lower part of the 434 brain. He also, in his own behalf, examined witnesses, called as medical experts, who, in answer to questions embodying the same facts as propounded to the plaintiff's *69 69 witnesses, testified that no accurate opinion could be given of the cause of death, and that the symptoms were compatible with various conditions. He endeavored to cast a doubt upon the reliability or the correctness of the results of the autopsy and of the chemical analysis of the contents of the stomach. In connection with the possible existence of kidney disease, he sought to show that, with a constitutional idiosyncrasy or intolerance for morphine, the effect of an ordinary dose of morphine would be to intensify the action of the drug, and to produce symptoms similar to those observed. Without, however, discussing these theories in detail, and while fully alive to the fallibility of the opinions of medical practitioners, and being conscious of the inexactness of medical practice as a science, I am

convinced that the jury could not have come to any other conclusion upon this evidence than that the deceased came to her death by morphine poisoning. While, undoubtedly, cases of death do occur of which an autopsy may not reveal the causes, and while the evidence of witnesses did show that there were instances of death from other causes than that of morphine poisoning where some symptoms were exhibited similar to those observed in this instance, the group of these peculiar symptoms, which are admitted to belong to narcotic poisoning, considered with the proof of a constitutional tolerance for the drug, and with the positive testimony as to the discovery of morphine by subsequent chemical analysis, gave a basis for a judgment as to the cause of death which I see no way of doubting or of disturbing. I may add that, in my opinion, which I derive from a careful consideration of the professional evidence given, the theories of uraemic poisoning, or of the hemorrhage in the brain suggested, were contradicted either by the actual combination of symptoms or from the absence of essential symptoms. I may instance that, as I understand it, the fact of the deceased being ⁴³⁵able to speak with clear articulation and ⁴³⁶rationally, when her roommates returned and awaked her from her sleep, is significant, and something which is not deemed possible where a person is attacked with uraemic coma, or by hemorrhage of the pons in the brain, while quite possible in the first stage of morphine narcosis. The sense of exhilaration first noticed, from her remark about having such pleasurable dreams, would not seem to comport with any disease of the brain, or with

uraemic poisoning. That symptom, with the comatose condition ensuing, with the symmetrical contraction of the pupils of the eyes to an almost imperceptible point, and their lack of sensitiveness, and with the peculiar respirations, were all symptoms usually found together in narcotic poisoning. The determination as to the cause of death can rest, in my judgment, safely upon a group of symptoms which in variably accompany and characterize poisoning by opium or morphine, upon the subsequent revelations by autopsy and analysis, and upon the previous constitutional conditions of the deceased, all of which together preclude a diagnosis of any other physical disturbance differing from that made.

The question of what was the cause of death was one the determination of which, upon sufficient evidence, belonged to the province of the jury, and the statement of my opinion has been made solely to express a conviction that the necessary prior determination of that question by the jury was altogether correct. We have no right, and there is no reason, to interfere with the judgment on this branch of the case.

I come now to the next question, which was for the jury to determine, and that was whether the defendant was guilty of the charge that he had administered the morphine poison to the deceased with the intent to kill her. The evidence upon which this question turned was, as I have said, circumstantial, or indirect, and it will be necessary at some length to review it, in order to appreciate its probative force as a whole.

The defendant had formed the acquaintance of the deceased, in the summer of 1889, at Ocean Grove, N. J., where her family were residing. When they moved to the city of *436 436 New York for the winter, the acquaintance continued, and on February 8, 1890, obtaining a permission from her mother to take her to see the stock exchange, he went with her before an alderman, and they were married under the assumed names of Charles **Harris** and Helen Neilson. He was at the time pursuing his studies as a medical student in that city, and he continued to visit the deceased until her family returned, in May following, to Ocean Grove. He followed them there soon afterwards. Mrs. Potts, the mother of deceased, testifies that there was a falling off in his attentions to the deceased, and a marked change appeared in his manner towards her, which seemed to worry her. A young friend of the deceased—Miss Schofield—coming to visit her in June, upon the occasion of a walk, the defendant informed her, because, as he said, the deceased had insisted upon it, that they were secretly married. Upon Miss Schofield's saying she should beg the deceased to tell her mother, the defendant became very angry, and said she should not do so; that his prospects would be utterly ruined; and that he would rather kill her (the deceased) and himself than have the marriage made public, and expressed the wish that 'she [the deceased] were dead, and he were out of it.' Later in the day he went out with the deceased; was absent for several hours, and, upon their return to the house, she appeared pale and ill, and went directly to her room. Shortly after this, in the latter part of June, she went to Scranton, Pa.,

and visited an uncle, Dr. Treverton. While there Dr. Treverton discovered that she was with child, and treated her accordingly; but subsequently was obliged to remove from her a foetus of five months' formation, and which had been dead for some time. After the operation, she recovered her health completely, and returned, in the first part of September, to Ocean Grove. While she was at Dr. Treverton's, and about the end of July, the defendant *70 came, upon a telegram from the deceased and a letter from Dr. Treverton, and remained a few days. The operation for the removal of the foetus was made while he was there. *437 Dr. Treverton testified to conversations with the defendant upon the occasion of his visit, in which defendant said he had performed two operations upon the deceased, and had thought everything was removed. He boasted of his previous intrigues with other women, and of his success in not having had any trouble before. His remarks are unnecessary to be wholly repeated, from their revolting depravity; but, in the course of them, he said he had been 'secretly married to at least two young ladies,' and by one had a fine child. During the same visit he had a conversation with the witness Oliver, then visiting the Treverton's, in which he spoke boastingly of his experience with women, and of the facility with which he could gain sensual control of them. He said that in two instances he had to overcome their scruples by a secret marriage ceremony, but was ready to stand by them. Upon the witness asking him how he could stand by both, he answered, in substance, that there would be no trouble, as the first one was glad to be rid of him; and

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he went on to tell the circumstances of their relations, and, as the final result, that, after a child was born, the woman expressed her disgust with him, and wanted to see no more of him. To neither Treverton nor Oliver does it appear that he admitted a contract of marriage with the deceased. While the deceased was at Treverton's her mother joined her, and then learned of the secret marriage, and what had happened.

In the first week of September the defendant was at an hotel in Canandaigua, N. Y., under an assumed name, with a young woman named Drew. His conduct towards her was demonstrative in its affection, and her friends there, discovering their illicit relations, compelled him to leave. During his stay, witness Latham overheard a conversation between him and the Drew woman, in which he advised her to marry some old gentleman with lots of money, and, upon her asking what if she did, he is said to have replied, 'Oh, we can put him out of the way;' and upon her inquiring how, he further said: 'You find the old gentleman, and we will give him a pill. I can fix *438 that.' After the return of the deceased 438 and her mother from Scranton they met the defendant in New York city, and lunched together. They talked about the secret marriage, of which the mother had been informed at Scranton. He offered to satisfy Mrs. Potts of its legality, and took her to the office of his lawyer, Mr. Davison. The defendant told her he had burned the original marriage certificate, but sent for and obtained a copy from the records, and, upon Mr. Davison's suggestion, attached to it an affidavit, made by him, stating his marriage with the deceased

under assumed names before an alderman. During a conversation at the office he asked if Mr. Potts knew of the marriage. She said it was no time to tell him then, and asked him if he had told his mother. He said, 'No, he would not have his family know of it for half a million of dollars.' He suggested to Mrs. Potts that if she was so unhappy about the marriage, it could easily be broken, and no one would be the wiser. Upon her expressing herself in indignant refusal of the suggestion, and insisting upon a 'ministerial' marriage, he objected to it at the time, alleging as an excuse that it would connect her name with certain club scandals in which he was involved at Asbury Park. He promised, however, to have the ministerial marriage at any time in the future that Mrs. Potts should say. He expressed his gratification at her not pushing the matter of the marriage at that time; that, if she had, he would have been obliged 'to leave everything, and go west.' Upon that occasion he suggested putting the deceased at Miss Comstock's school, to fit her, as he said, for the society in which they were to move, to which suggestion Mrs. Potts acceded. At his request she promised to write to Dr. Treverton, and express her satisfaction with the marriage, and to prevent the doctor from making any trouble for him at the medical college, as he had all he could do, he said, to meet the charge of keeping a disorderly house. Upon leaving the lawyer's office, they joined the deceased at the ferry; he crossing with them. The deceased learned of her mother's being satisfied about the marriage, and she seemed to be made very happy in consequence. In December the deceased was placed *439 439

at school, and, as a friend of the family, the defendant received permission to visit her. During her visit to her home in the holidays he wrote to deceased, asking that no announcement should be made of their engagement at this time. In reply to a letter from Mrs. Potts, in the first week of January, he wrote, suggesting that there should be no further question of marriage for two years longer, and that her daughter should take a collegiate course. About January the 18th or 19th Mrs. Potts wrote to defendant, expressing herself strongly upon the hardship of her daughter's position, with a delay of three years as an unacknowledged wife, and for no apparent reason; that her daughter's illness at Scranton had been commented upon; that, if he should die, it would be humiliating to publish a marriage under the circumstances of its contracting; that her husband might meet Dr. Treverton, and be told of the illness at Scranton, and of the doctor's doubts about a marriage. She concluded by asking him to keep his word, and to do as he has promised her, and demanded of him to go, upon the anniversary of the first marriage, February 8th, and be married before a minister of the gospel, and give her the certificate to hold, which she would make public at such time as she chose. To this he replied that he would do all she asked of him, if no other means of satisfying her scruples could be found. On Tuesday, January 20th,—a day after he received Mrs. Potts' letter,—the defendant went to the shop of McIntyre & Sons, druggists, in New York city, and at first ordered some capsules of sandal wood to be *71 put up. Upon the clerk's mentioning that it would take some time, he 7'

said he could not wait. He then handed the clerk a prescription, asking if it would take long to prepare, and, upon learning that it would take a few minutes, waited for it. It called for twenty-five grains of sulphate of quinine and one grain of sulphate of morphine, mixed in six capsules, with a direction to take one before retiring. The prescription was put up by the clerk with minute care, being aided by another clerk, who checked the amount and weight of the morphine, according to a custom adopted where poisons *440 are put up. The box, 440 properly labeled, containing six capsules, each capsule containing one sixth of a grain of morphine and four grains and a fraction of quinine, was taken by him. He never called for the sandal wood capsules. The following day—being Wednesday, January 21st—he was at the school reception, and saw the deceased. The testimony in the case shows that the defendant stated to both coroner and deputy coroner, when shown and asked about the pill box taken from the room of the deceased, that it was the one that he had given to her on Wednesday, January 21st, and he described the prescription as above, stating that he had given it to her for headaches, and that he had given her only four of the capsules. It was also shown by the testimony of several witnesses from the medical college that in the latter part of December and the first part of January lectures were given upon opium and its effects when used feloniously. The sulphate of morphine, contained in wide-mouthed bottles, had been passed around among the students, of whom the defendant was one, and they were allowed to take it out, and to handle it when they chose. After meeting the deceased at the

reception on Wednesday, January 21st, the defendant left for Old Point Comfort, Va., and did not return until a week later. While there, it appears that she wrote to him that the medicine had not relieved her headache, and rather made her worse; to which he replied, advising her to continue taking it.

On Saturday, January 31st, deceased, her mother, and the defendant met at the school, and walked together. The deceased seemed perfectly well, and very bright and happy. Mother and daughter returned to the school, and, when in the bedroom of the deceased, she showed her mother the pill box, with one capsule left in it, and remarked she had been taking some capsules that Carl (the defendant) had brought her. She complained of their making her feel ill, and of her dislike to take them. She said she was tempted to toss it out of the window, and then to tell Miss Day, the principal, she had taken it. Her mother advised her to take it, remarking that quinine was apt to make one feel wretched, and that she might have been malarious. *441 Her mother left, and then occurred the scenes of 44' illness and death in that night, which I have before described. The defendant was sent for towards daylight by Dr. Fowler, who, stating that he believed it to be a most profound case of opium poisoning, wished to learn what had been contained in the pill box in her room, and which not only was the only evidence of anything like medicine about the room, but which, according to her roommates, was the only medicine in the room that day. The defendant told him what had been its contents, and of his having prescribed the capsules

for headache, insomnia, and the like. Dr. Fowler said one sixth of a grain could not produce the condition, and advised him to go at once to the druggist, and to ascertain if the proportions of the drugs had been reversed. He pretended to go immediately, and, when he shortly after returned, stated to Dr. Fowler that the medicine had been prepared exactly according to his prescription. The evidence shows that he did not go to the druggist's that morning, as supposed by Dr. Fowler, nor until 11 o'clock, and after the death, when Dr. Kerr told him to go and try to get the original prescription if he could. During the time he was in the room where the deceased lay he surprised the physician by his composure and general lack of interest or of affection, except when, upon her death, he exclaimed, 'My God, what will become of me!' He spoke to the physicians of being 'somewhat interested in the girl,' and mentioned a possible future engagement to her. He asked them repeatedly if they thought he could be held responsible for the death. To them and to the coroner he said he was merely a friend of the deceased, and pretended hesitation as to her correct given names. In the evening of the Sunday he met Mrs. Potts at the ferry house, and stated to her that her daughter had died of morphine poisoning, and represented it 'as the druggist's awful mistake.' Mrs. Potts says, when she told him, as the deceased was the mother of his child, she must be buried under his name, that his terror was frightful, and that he said that it could not be; that he would do anything, but that the knowledge of the marriage coming at this time would destroy him; *442 that he would 'answer just the same if it was Queen 442

Victoria's daughter, 'she cannot be buried under my name;' and he urged as a pretext consideration for the reputation of the school. The coroner met them at the school in the evening. The defendant said he had one of the capsules prescribed for the deceased, and gave it to the coroner, telling him to analyze it, and it would be found all right. Subsequent chemical analysis of it proved the correctness in preparing the prescription. The mother, in order, as she says, to get a permit to take the body, as soon as possible, out of the house, and to New Jersey, represented falsely, as she also admitted, that her daughter had heart trouble. She left the next day with the body. Somedays later the defendant stated to Dr. Hayden, in conversation about the occurrence, and when rebuked for writing prescriptions, that 'these capsules would not hurt any one, and no jury would convict me, because I have two capsules which can be analyzed, and be found to contain the correct dose.' Of the druggist's clerk, witness Powers, at an interview at the store on February 7th, when obtaining some *72 medicine, he asked if he had seen the account of the death in the papers, and whether he believed it, and, upon the witness expressing his belief that the girl died of heart disease, he said, 'So do I.' They talked about the putting up of the prescription, and the defendant said there was no doubt it was all right. To Dr. Peabody, whom he went to see with an introductory letter from his medical preceptor, a day or two after the death, and to whom he stated the circumstances attending it, he described the prescription, and for what given, and alleged as an excuse for keeping out two of the capsules that it was

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injudicious to put as much as a grain of morphine in a girl's school. Later in February, in a conversation with Dr. White, he said he did not know whether the druggist had made a mistake, or whether there was a brain tumor, which would account for the fact that the morphine in the capsule had been the cause of death. A few days before the coroner's inquest, which was held on February 27th, the defendant met Mrs. Potts, and said that the coroner's *443 inquest would exonerate him, and that he was innocent; and, upon her 444
remarking, 'If innocent, how did she die?' he replied that 'it was the druggist's mistake.' She asked how that could be, when he had said the capsules, upon being analyzed, would prove it to be all right; and said the statements conflicted. He merely replied that he would have the capsules analyzed himself. He ascertained from her that neither Mr. Potts nor Dr. Treverton knew of her fears. He then endeavored to obtain from her the affidavit of the marriage, saying that he must have it; that it was more valuable than he dare tell her. She said he could not get it; 'it is not here.'

Perhaps at too great length, I have given in chronological order, from this very large record, the salient occurrences of the year elapsing between the secret marriage and the death of the young wife. In my opinion, it offers the advantage of furnishing a view of the events which aids the judgment in apprehending their several and collective force upon the questions of the defendant's connection with the cause of death, of an intent to put her out of the way, and of the existence of a motive for such an act. Taking them in any

combination, is there anything to help out the presumption of the defendant's innocence, and do not every incident and fact, with greater or less significance, form a chain of circumstantial evidence which subjects and hold him to the consequences of an intentional destruction of the life of the woman, to rid himself of whom no other way seemed open? I can reach no other conclusion. Unable to gratify his passion for her except by making her a wife, he persuades her to a secret marriage under assumed names. He soon tires of her. He endeavors unsuccessfully to remove the fruit of their marriage. He forms an illicit connection with another woman, to whom, with greater or less seriousness, he proposes a scheme for her enrichment by a marriage, with a way to again becoming free, which suggests his sharing in the result. He forbids his wife to tell of the marriage. He manifests anger when her friend being told of it, says the mother should be informed; wished his wife dead, and said he would rather kill her and *444 himself than to have the marriage made 444 public. When her mother learns of it, and presses for a public marriage, with sacred forms, he lulls her suspicions by showing the marriage to be legal, and gives her an affidavit. He persuades her to put her daughter at school to train her. He again tries to put off the publicity of marriage for two years longer, and, when finally the mother insists upon a clerical marriage on the anniversary of their secret marriage, he pretends to assent. Immediately he prescribes for the deceased a remedy of quinine and morphine in capsules, harmless to life, but improper, as it was said, for the trouble prescribed for. He a waits the

preparation by the druggist of those capsules, though he could not wait for the other order, and he retains them in his possession until the following day, when he gives to the deceased four of the six capsules. He immediately leaves the state, and is absent a week, for no apparent cause. He wrote to her to continue taking them, despite her objection that they affected her unpleasantly, and gave her no apparent relief. He returns, and she has taken three of the capsules; the remaining one she thought of throwing away, but is advised by her mother to take it,—a ghastly incident, I may remark, in this tragedy. Immediately she sickens and dies, with every symptom of what the physician describes as profound morphine poisoning. She had good health. She had no motive to kill herself. She was happy and cheerful, and before her laid the prospect of the announcement of her marriage, and the freedom from the burden weighing upon her conscience. The defendant had acquired some knowledge of morphine and its effects about the time at his medical lectures, and he had the opportunity to obtain the drugs there, if not elsewhere freely procurable. In the retention of the capsules for a day he had the opportunity of substituting in one of them the poisonous dose of morphine. There was motive for the crime in the fear that discovery would inculcate him as a bigamist, because of his previous secret marriages; and, subordinately, there may have been the motive, with his utterly depraved nature, to prevent putting an end to his apparently successful career of *445 seducing and ruining young girls. 445 He had a motive in a fear, if he persisted in his refusal to acknowledge her as his wife, of the

social, professional, or legal consequences to himself, if his operations to cause a miscarriage, and which killed the child in his wife's womb, should be revealed. The terror and the agitation of feeling which he manifested to Mrs. Potts, when it was a question of publishing the marriage, plainly had their source in some great fear of serious consequences to himself. His irreconcilable statements to some that the druggist must have made a mistake, and to others that the prescription had been put up all right; his extraordinary conduct *73 upon the morning of the day of the death, in professing to have 75
complied with the physician's request to ascertain from the druggist if there could have been a mistake in the proportions of the drugs, when, in fact, he never went there until after the death; his composure and utter absence of affection or of emotion at the deathbed of his wife, until, when dead, he expressed only fear of being held responsible; his subsequent endeavor to get from Mrs. Potts the marriage certificate and affidavit; and, I may add, his unintelligible act in reserving for future exhibition and evidence two of the six capsules,—all of this conduct envelopes him with the atmosphere of guilt, and is inexplicable except upon the theory of guilt.

In the chapter of events it was written that their happening would be in such order as to subvert the probable expectations of the defendant. Instead of taking the poisoned capsule among the first, in which case the defendant would have been absent, and thus could not have been associated with the scenes of death, it so happened that it remained as the last

one to be taken. Had it been taken earlier, the remaining capsules would have exhibited by analysis the harmlessness of their preparation. Then, too, instead of taking the capsule under the presumably usual circumstances of retiring to bed, it so happened that she took it while her roommates were out for the evening at a concert; and their return, a wakening her so soon after going to sleep, enabled them to observe her condition, and to give evidence in that respect, important in aid of *446 the discovery of the cause of death. By the 446 alarm created, the attendance of physicians was secured, through whose observations and efforts further important evidence was added relating to the conditions and symptoms of the deceased. Had these events not occurred, it is probable that she would have passed, in her sleep, from life into death, and the difficulties of detection would have been added to.

It is my opinion, too, that there was strong evidence of the defendant's guilt in the fact that in no way, under the circumstances, do I see that the druggist could have made such a mistake in putting up the prescription. The three capsules first given to and taken by the deceased were harmless, as were the two retained out by the defendant, and the fourth must have contained the poisonous dose upon which the deceased was immediately seized with illness. In no way that I can conceive of could the druggist have reversed the proportions of the drugs in only one capsule. Any mistake of his would have been evidenced in all of the capsules. In the absence of some inconceivable design on the part of the druggist to administer a poisonous dose, his mixture of the sulphates could not but

have been substantially correct. One capsule could not have been charged with a dose of three or four grains of morphine, sufficient to take life, while the others were harmless; and those retained by defendant, and submitted to chemical analysis, were shown to be according to the prescription. In the case of a mistake by the druggist, either the deceased would have been affected before, or the capsules reserved by defendant would have revealed the mistake if he spoke the truth. In my opinion, the evidence not only warranted the verdict of the jury, but I do not see that any other could have been rendered which would be consistent with the evidence.

Evidence, as I have suggested, is not to be discredited because circumstantial. It has often more reliable elements than direct evidence. Where it points irresistibly and exclusively to the commission by the defendant of the crime, a verdict of guilty may rest upon a surer basis than when rendered *447 upon the testimony of eyewitnesses, whose memory must be⁴⁴⁷ relied upon, and whose passions or prejudices may have influenced their testimony. If taken together, it leads to a conclusion of guilt with which no material fact is at variance, it constitutes the higher form of evidence which the law demands where the life or the liberty of the defendant is at stake, and neither jurors nor the court can conscientiously disregard it. Nor can I think that the conclusion of guilt is unduly influenced by the unusual depravity of nature which the evidence exhibits in the defendant. The evidence seems to overwhelm the accused with his guilt, and leaves the mind unfitted to accept any other belief than that

he intended to make away with his wife in order to free the field of his own life, and to escape from the imminent danger of disgrace or punishment, and that with cold deliberation he planned her death by methods which should conceal him as its author. The circumstances preceding and attendant upon the death of the deceased were such as to associate him inevitably with its cause, and to forge the chain which has drawn him to the bar of justice.

The successive steps in this drama seem plainly defined from the secret marriage, on February 8, 1890, up to the tragic close of the victim's life, on February 1, 1891. There were the weariness following upon satiety of desires; the destruction of the fruit of the marriage he had been obliged to contract in order to possess the woman; the continued effort to avoid disclosures which would jeopardize his reputation, and perhaps his liberty, lulling the mother into fancied security and into a satisfaction with a temporary concealment of the marriage; and finally, when pressed, and no longer seeing a way to put off disclosure, he accomplishes the destruction of his wife's life, a few days before the date set for the fulfillment to his promise to have the ceremonial marriage. I think that justice does not demand that this defendant should have a new trial, unless there were errors committed upon the trial in the admission, or exclusion, of evidence, or in the charge of the recorder,

which affected any substantial *448 rights of the accused. As his counsel has insisted upon 448
their existence, it is necessary that some of the errors which he pointed out should be
carefully considered by us.

He insists that it was error to receive the testimony of Dr. Treverton, a witness *74 for the 74
people. He was uncle to the deceased, with whom she remained for some two months at
Scranton, and who operated upon her, and removed a dead child of five months. The
objection relates to his testifying to a conversation with the defendant, and is based upon
its being privileged, under that statutory prohibition which seals a physician's mouth; and
upon its tending to prove the defendant guilty of another crime, namely, of abortion. The
first ground of objection is untenable for several reasons. In the first place, the witness was
not employed by the defendant. In the second place, he acquired no important information
from the defendant, or any which he was not already possessed of, or which was necessary
for him in order to act in a professional capacity. Lastly, the statutory privilege was not
conferred to shield a person charged with the murder of the patient, as was held in Pierson
v. People, 79 N. Y. 424. I should never be willing to assent to a construction, or to believe in
a legislative intent, which would operate to convert a statutory provision protecting a
patient from a damaging or objectionable disclosure into a protection for a person on trial
for the murder of the patient. The second ground of objection is also untenable, because the
evidence shows, or tended to show, the existence of motive on the part of the defendant. It

went to show the endeavor of the defendant to keep the marriage secret. To prevent the obligation of having to recognize the marriage, he endeavored to destroy its fruit, and had been willing to do that by criminal means. Then the knowledge by the mother and uncle of this criminal act placed him more or less in their power to compel him to comply with their request. The remarks upon the question of privileged communications in the instance of Dr. Treverton's testimony, to the effect that the statute should not be construed to be applicable to *449 protect a person accused of the murder of the patient, apply to Dr. Hand's testimony, and with even greater force to the instances of the testimony given by physicians Fowler, Kerr, and Baner, who were called in to attend the deceased upon the night before she died. 449

The testimony of the witness Oliver, disclosing a conversation with the defendant, in which, after boasting of his previous extensive intercourse with women, and of his successful methods for violating their persons, he admitted having previously contracted two secret marriages, made necessary to overcome the scruples of the women, was clearly admissible on the question of motive. It threw light upon it. With a previous secret marriage, the publicity of his later marriage with the deceased would have stamped him as a bigamist, and have ruined his reputation, if it would not have subjected him to criminal prosecution.

The argument against the admissibility of the evidence of the witness Latham presents more difficulty, perhaps, at first glance; but when we consider the importance of showing motive in a case, where the evidence to charge the accused is wholly circumstantial, the difficulty disappears. It may be remarked, in connection with this evidence from the witnesses Latham and Oliver, that, while evidence merely to show previous bad and vicious character is inadmissible against one on trial for the commission of a criminal offense, if the depraved acts offered to be shown evidence, or throw light upon, motive, they become admissible. That the accused has suffered from the unconscious influence upon opinion of the record of a bad life is not to be assumed as against jurors who have sworn to convict upon evidence only which establishes the guilt of the accused. The evidence of witness Latham exhibited the defendant with a young woman at an hotel in Canandaigua, in September, 1890, and proved that they held illicit intercourse with each other; and that a conversation was overheard, in which the defendant suggested her marrying some old man with plenty of money; and that, if she found one, they could give him a pill *450 and get him⁴⁵⁰ out of the way. I consider that this evidence was admissible, because it bore upon the question of motive, and tended to repel that strong presumption which would militate in favor of a husband when on trial for the murder of his wife. The rule that evidence in criminal cases should be confined strictly to the question in issue is not infringed upon, because the evidence offered, while tending to prove some essential fact in the guilt of the

accused, may also prove the commission of another offense. Such evidence is relevant and admissible whenever its presence goes to sustain the charge by showing scienter or motive, for these facts are essential elements of a crime. *Stout v. People*, 4 Parker, Crim. R. 71. So, in the present case, proof of the existence of the element of motive is aided, in some degree, by showing what were the defendant's relations and feelings toward his wife, as evidenced by his conduct and his remarks, when with others.

Wharton, in his work on Criminal Evidence, says (section 51) that on the trial of a husband for the murder of his wife the state has a right to prove his adultery with another, as illustrating a desire to get rid of the marital relation; and he cites in support of the rule *Stout v. People*, supra, and several authorities in other states. In *Stout v. People* the defendant was accused of the murder of Little, and the prosecution offered evidence to show incestuous intercourse between defendant and Little's wife, who was defendant's sister. The evidence was held admissible to show motive, and that it was no objection that it tended to prove a distinct felony, namely, the incest. Welles, J., with whom Johnson and Smith, JJ., concurred, delivered the opinion of the general term in that case, and they placed its competency upon the ground of its establishing a motive to get the deceased out of the way. And see *State v. Watkins*, 9 Conn. 47. The evidence of witness Latham tended to show that defendant had ceased to hold his wife in such affection as the law presumes to exist from the marital relation. It tended to contradict the existence of natural motives to

prefer, cherish, *75 *451 and care for her. The real difficulty in the propriety of the admission of this testimony relates to the suggestion of the defendant to the Drew woman, in this conversation, that, if she found and married some old man with plenty of money, he could be gotten rid of by a pill. If this testimony was irrelevant upon the question of motive, it was not material upon the point in issue, and its effect could hardly be other than to prejudice, more or less seriously, the defendant in the minds of the jury. But such testimony was relevant upon the question of motive. It strongly characterized the nature of the defendant's relations with this woman, and illustrated their closeness, and the underlying intensity of feeling. The evidence of an illicit intercourse went to exhibit what were the defendant's feelings to wards his wife, and bore upon his desire to get rid of the marriage relation; but the further evidence, in what he proposed to his mistress that she could or should do, went to exhibit how strongly he desired the permanence of their relations, and to point out a way by which, in the future, they could secure that permanence with such advantages in their surroundings as the possession of wealth would procure. If this conversation, so overheard by the witness, furnished any clue to the existence of motives, we cannot assume or say that it was meaningless or immaterial. The weight and importance to be attached to it were for the jury to consider in the light of all the circumstances. It did tend to prove that the defendant's feelings to wards his mistress were not transient or ephemeral in their nature, but that they were sufficiently intense to give

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rise to a desire that their relations should be made durable. His marriage was unknown, and he was determined that it should not be made public. He saw a way, which his strong passion for the woman led him to propose, by which, through a criminal act, they might be able to continue together in the future more advantageously. To this she listened. What was the situation? The adulterous connection had assumed such intensity of character that a scheme was broached and listened to which in its conception indicated, and in its execution would menace, jeopardy to the life of *452 defendant's wife, for its very hostility to the 452 restraints of the existing marriage tie. Its adoption bound him and his paramour closer together in a partnership in a criminal project, and placed each, more or less, in the power of the other. I think these considerations are sufficient to show the relevancy of the evidence, as characterizing the exceptional nature and intensity of the adulterous relation, and, in that respect, bearing upon the existence of motives to get rid of his wife. It was none the less relevant as indicative of this genuine and powerful motive because it tended to show the tendency of his mind, and that he regarded marriage as a means to an end, and the marital relation as but a light burden, from which relief could readily be obtained by the skillful and secret use of a deadly pill. It was proper for the jury to receive and to weigh, in connection with all the other circumstances, and in considering the probabilities of the defendant's harboring an intention, unrestrained by the ordinary influences of love and affection, or the fact of marriage, to destroy the life of the deceased.

Many cases might be referred to in this state and elsewhere where any evidence is considered to be admissible if illustrating the mutual relations and the relative feelings of husband and wife, where one is on trial for the murder of the other. This link in the evidence to charge the defendant was of itself inconclusive, of course, but it was not wholly irrelevant or immaterial to be considered upon the existence of motive. It contributed some strength to the chain of circumstances, because it tended to eliminate that weakness which otherwise it would possess from the natural abhorrence of the mind to presume a capacity in the defendant for such a crime upon his wife.

A motion was made to strike out evidence as to the disappearance of a letter from Dr. Fowler to Mrs. Potts, upon an occasion when the defendant was in her room, and the denial of the motion was excepted to. The argument is that it tended to throw discredit upon defendant, as indicating his having abstracted it. The evidence of Mrs. Potts had been received *453 without objection being made. Subsequently, when the motion was made and⁴⁵³ denied, the recorder, after a discussion, instructed the jury that the evidence simply established the fact that the letter received by Mrs. Potts subsequently was missed by her, and that they were not to connect the defendant in any way with the letter on the evidence. On both grounds the matter of error is disposed of, and there is no room for any argument that the defendant was prejudiced.

Certain hypothetical questions asked by the defendant's counsel of medical experts, who testified for the people, were excluded, and the error of their exclusion is argued. Inasmuch as there was no foundation in the case for the facts assumed by the questions put, the ruling was correct. Such questions, to be properly asked of purely expert witnesses, must rest upon facts which are either admitted, or which, being in conflict upon the evidence, the jury are to pass upon.

I see no reason for discussing any other assignments of error. None were important or prejudicial to the defendant. The charge of the recorder was remarkably able in its exposition of the law, most impartial in its presentation of the facts, and very clear. He instructed them that, 'if the facts and circumstances, taken together, are susceptible of two constructions,—one pointing towards guilt and the other towards innocence,—in criminal cases, the accused is bound to receive the most favorable construction;' and, again, he said to them that, before the defendant could be convicted, 'the evidence must satisfy you of his guilt beyond a reasonable doubt; * * * the district attorney must establish to your satisfaction and beyond a reasonable doubt the guilt of this defendant.' Indeed, the counsel for the accused only finds it necessary to present in his *76 brief as an error the refusal of the recorder to charge the fifth request, which was that the jury should always act upon the presumption that the accused was innocent, and should reconcile all the circumstances with that side of the question. The recorder had previously received written requests from

defendant's counsel, and when asked by him, after the conclusion of his charge, what had been his disposition of them, he said that if *454 there was anything in them not embraced 454 in the charge he might except, whereupon he excepted specifically to the refusal to charge each request. The particular request now in question I think had been fully covered and its matter emphasized by the charge, and the refusal to specifically charge it was discretionary, and constituted no error to the prejudice of the defendant. Upon the most careful consideration of this record and of the questions raised by that consideration, or by the counsel for the appellant, I fail to discover the existence of any substantial errors, and, in my opinion, no ground exists for a warding to him another trial upon this indictment.

Some questions are raised and are discussed in the appellant's brief in relation to the impaneling of jurors. Some are covered by the opinion of this court in *People v. McGonegal*, 32 N. E. Rep. 616, lately handed down, and need no discussion here. The others suggest no error in the rulings. The judgment, therefore, should be affirmed. All concur.