

Now, jurors, let us inquire if every possible hypothesis but the one sought to be proved is satisfactorily negatived in this case. Gordon died from a single shot wound in the head; it was in the back part of the head. If the locality of the wound excludes the hypothesis of suicide the wound itself excludes the hypothesis of two actors. There was but one shot; that shot might have been accidental. There may have been by the person who shot no intention to kill at the time of the shot. All that is proved may have been the result of after-thought. The idea of appropriating the property of the dead may have arisen after the accidental death and led to the hiding of the body and every subsequent step. Remember, the State assumes that two horses had already been appropriated and one of them sold the day previous. If a man had been found dead on the road, his horse near him and his watch on his person, the State has gone far to satisfy us that the property would have been taken. You see that the hypothesis of death by the accidental discharge of a pistol in the hands of either Bruff or Worrell and the subsequent appropriation of the property of Gordon, will explain all the circumstantial evidence in the cause. You do not know whether the shot was intentional or accidental. You can't know. You are reasoning to find out by deductions from what you do know how the fact was. You are reasoning on circumstantial evidence. The fourth rule tells you, as is told the jury in the case of the girl, that every hypothesis, but the one sought to be proved, must be excluded to a moral certainty before you can convict. How can you exclude to a moral certainty the hypothesis of an accidental shot and subsequent appropriation of the property? It explains the evidence and establishes guilt (if Worrell can be held responsible), but not the guilt of murder.

I stop a moment, jurors, here, to ask what you will say to this hypothesis, the hypothesis of an accidental shot and a subsequent appropriation of the property? You tell me it is not so probable as that the shot was intentional. You tell me "an intentional shot is much the best solution of the circumstances." Granted! Be it so! But what then? Are