

are almost invariably committed under circumstances of secrecy. The murderer abides his time and goes forth in the dark hours of the night to do his bloody work. Conscious that no eye is upon him but the Almighty's, he strikes the fatal blow, and under the cover of darkness makes his escape. If he cannot be made to suffer the penalty of the law except upon the testimony of an eye-witness, the sooner your penal code is abolished the better, for then man will look to himself alone for protection and provide means accordingly.

But, gentlemen, we are not confined in this case to circumstantial evidence. The declarations of the prisoner to Cousins and Wentz at Smyrna, and to Sturgeon and Taylor in the St. Louis jail, establish his participation in the homicide, but I shall reserve my comments upon these confessions for another branch of the case. But Major Wright says that the State has failed to prove that the prisoner inflicted the wound which resulted in the death of Gordon. If he means by this that the State has not produced a witness who saw the transaction, then he is correct; but if he means that the State has produced no evidence tending to show that Worrell did inflict the wound, then we differ widely in opinion. The evidence disclosed the fact that Worrell was the leading man of the two; that he had a pistol in his possession capable of producing such a wound as was found on Gordon's head; that he loaded the pistol at Hutchinson's; that he was afterwards found in possession of Gordon's horse, watch, saddle, saddlebags, bridle and daguerrotype case, and that he told Mr. Sturgeon and Mr. Taylor that Gordon did not suffer after he was shot. These and other facts in the case leave no doubt as to who was the prime instigator of the act. But for the purposes of this prosecution it is wholly immaterial whether Worrell or Bruff inflicted the wound.

The first count in the indictment charges that Worrell did it, and that Bruff was present aiding and abetting. The second count charges that Bruff did it, and that Worrell was present aiding and abetting. That they were both engaged in the transaction is clearly shown by the testimony, and it is a well-settled principle of law "that if two or more