

Murder: Circumstantial Evidence

In the court room in Vinton, Iowa, on November 10, 1897, Frank A. Novak sat beside his attorney. Across the table was the county attorney. The two had not seen each other for a little more than a year, when the younger man was campaigning for election. Then, Novak had actively supported his candidacy and those efforts were a factor in electing M. J. Tobin to the office of County Attorney of Benton County.

Friends then, the situation was now reversed. The roles were prosecutor and accused. At Tobin's side sat Louis Boies, a skillful Waterloo lawyer who had been engaged by the State to assist the young county attorney. Afterwards Tobin often expressed his appreciation for the skillful help of Boies, and his gratitude for Boies' generosity in giving his younger associate all of the favorable opportunities for credit.

Novak's counsel was Tom H. Milner, a fiery lawyer from Belle Plaine, whose stationery bore the colorful inscription. "The red headed legal Napoleon of the Slope" "Fees are the sinews of war." And at his side was J. J. Ney of Iowa City a former district judge, experienced and astute in the practice of criminal law.

In his opening statement, the county attorney informed the jury that the defendant was presumed to be innocent until proven guilty beyond a reasonable doubt, and that the evidence would prove him guilty beyond doubt. The State's evidence would be indirect, Tobin pointed out.

Circumstantial evidence is evidence which shows certain facts, certain acts and certain circumstances, which when linked together, will lead you to find another fact—the guilt of the defendant. The Supreme Court on numerable times has held there are times when circumstantial evidence is as strong and convincing as direct testimony.

And, County Attorney Tobin continued, although no one had seen Novak commit the murder—Murray was dead. The State's evidence would satisfy the jury he had been drugged, killed, and his body burned beyond recognition. The circumstances would so directly connect Novak with the fire, and with Murray's death, that no one except Novak could have committed the crime; his flight corroborated all the other circumstances to show it was Frank Novak who had killed Murray and burned the building to conceal the murder.

The opening statement for the defense was that there was no evidence Novak had committed the crime, that his flight was due to temporary insanity brought about by gas which he inhaled and a shock at being unable to save his friend.

The State's evidence first established the *corpus delicti*—the foundation of the crime—the identifi-

cation of Murray as the dead man. The skull was introduced as an exhibit and a dentist produced his records of gold fillings for Murray's teeth which were identical with those in the exhibit. Around the neck of the corpse had been found a St. Joseph's cord, a religious emblem which, strangely, had not burned. Such a cord had been given to Murray several years before. He had always worn it thereafter. This was in accordance with the practice of persons of the Catholic faith, that after once putting on such a cord it was to be worn throughout life. Other witnesses testified Murray had been wearing a checkered shirt the night of the fire. Under the armpit of the body was found a small piece of checkered cloth. Murray's sister, Mrs. Shea, testified she had made the shirt for her brother as a Christmas present.

The bones of the skull were badly crushed. Expert witnesses testified convincingly the fractures were of such a nature and severity, and at such a part of the head, that they could not have resulted from a fall, nor any other means except a very hard blow from a heavy instrument applied directly to that part of the head, and that the blood clots showed the blow had been received while the man was still alive, and in such a way as to cause his death.

Next came proof that although Novak and Murray had not been intimate friends, they had been together most of the day of the fire. That

evening they had had several drinks at a nearby tavern and upon returning to the store Murray had been quite intoxicated. He continued drinking so much that Novak, in the hearing of others, stated it was unsafe for Murray to try to go home; that he should stay overnight with Novak, whose turn it was to stay in the store to guard against robbers operating in the neighborhood.

Detective Perrin was permitted to testify to admissions volunteered him by Novak on the way back to Iowa. One of the statements made to him by Novak was that Murray had taken several drinks from a bottle of whiskey containing morphine which had been put out in a noticeable location, for would-be robbers; that Murray had become so intoxicated that Novak had carried him to an upstairs room and placed him on a cot having metal springs; when he, Novak, was awakened by the fire, he tried to get upstairs to get Murray out but was unable to get past the flames; he groped his way to the cash register and took out \$160, then got a heavy coat and a shotgun and a lunch which he had put together earlier in the evening planning to go hunting the following morning, and felt his way out of the building. Outside he felt greatly confused from gas he had inhaled, and became frantic because Murray was inside and he would be blamed, "So he decided the best thing he could do was to fall off the earth for awhile."

Next the evidence was introduced that Mur-

ray's body was found in the basement lying on a metal bed springs on top of a layer of coal. Underneath his body was found a pair of scissors and check, both belonging to Novak, and which could not have been there except placed there by design.

Finally the State's evidence proved motive—Novak's desperate financial involvement and his recent purchase of \$27,000 of life insurance.

Reporters from Chicago, St. Louis and other city newspapers were in continuous attendance. The trial lasted thirteen days. The State introduced testimony of thirty-six witnesses and the defense forty witnesses. The Court reporter's transcription of the testimony, 1,600 pages—voluminous for those days—are preserved in the State Historical Society at Iowa City.

Novak did not take the witness stand in his own behalf. His counsel recognized the danger of exposing him to rigorous cross-examination. Instead, they placed their greatest hope on several legal propositions. But the trial judge submitted the case to the jury with instructions which fully and clearly stated the law. The jury returned a verdict of guilty of murder in the second degree and recommended imprisonment for ten years. Judge Burnham disregarded the recommendation and sentenced Novak to imprisonment for life.

After twelve years imprisonment, Novak was pardoned by Governor Albert Baird Cummins, and thereafter led a quiet and uneventful life.

During the trial Perrin became acquainted with Murray's widowed sister, Nellie Shea, courted her, and later married her.

In his book—*Pioneer Recollections*—J. H. Ransom said, "The case was not only a famous case but was a model of legal procedure and is used as an example of brilliant handling of a difficult matter in different law schools." The successful prosecution and conviction started M. J. Tobin upon his career as an eminent trial lawyer.

The case appears to have been the first in Iowa in which a conviction for homicide, based solely upon circumstantial evidence, was sustained.

The Fifth Amendment to the Constitution of the United States, protecting an accused from admissions against his interest, was given careful consideration by the trial judge. The Supreme Court affirmed the instructions of the Trial Court. It further held that the circumstances in which Novak's admissions were voluntarily made by him were such that Perrin's testimony of those admissions was properly received in evidence. The now famous Miranda Rule of "the right to remain silent" was not to be expressly enunciated for another 67 years. But in 1899 the rights of an accused were given the careful protection which the Miranda doctrine now requires.

JOHN W. TOBIN