

ns-mg

(Thereupon the jury retired to consider its verdict, and the following proceedings were had in the absence of the jury):

MR. CORRIGAN: The defendant requested a written charge, and such written charge has been written and a copy thereof has been given to defendant's counsel; and now, in presence of the Court and in presence of counsel for the State, the defendant takes the following exceptions to the written charge:

No. 1. On page 10 is the following charge in regard to character and reputation evidence:

"Some evidence has been given in this case concerning the claimed general conduct and reputation of the defendant and it is proper to present such evidence for your consideration. It is not admitted because it furnishes proof of guilt or innocence but because it is a matter of common knowledge that people of good character and reputation do not generally commit serious or major crimes. Such evidence, if believed, may be of some help to you in your consideration of the total evidence and the situation as a whole. The Court wishes to caution you, however, that good character and a good reputation will not avail any person charged with

a crime against proof of guilt beyond a reasonable doubt."

The defendant takes exception to that part of the charge, and requests the Court to charge that"

"If evidence of reputation and character shall be considered by the jury in connection with all the other evidence in the case, and if the evidence of good reputation and character, taken in consideration with the other evidence, raises a reasonable doubt of guilt, the defendant may not be found guilty."

The Court overrules that.

The second exception to the written charge is as follows, beginning at the bottom of page 9 and continuing over to page 10, the Court has charged as follows:

"It is necessary that you keep in mind, and you are so instructed, that where circumstantial evidence is adduced it, together with all other evidence, must convince you on the issue involved beyond a reasonable doubt and that where circumstantial evidence alone is relied upon in the proof of any element essential to a finding of guilt such evidence, together with any and all other

evidence in the case, and with all the facts and circumstances of the case as found by you must be such as to convince you beyond a reasonable doubt and be consistent only with the theory of guilt and inconsistent with any theory of innocence. If evidence is equally consistent with the theory of innocence as it is with the theory of guilt it is to be resolved in favor of the theory of innocence."

The defendant takes exceptions to that particular part of the charge and asks the Court to instruct the jury as follows:

"Where reliance for conviction is placed on circumstantial evidence, the jury is instructed that the facts and circumstances upon which the theory of guilt is based should be shown beyond a reasonable doubt, and when taken together must be so convincing as to be irreconcilable with innocence and admit of no other hypothesis than guilt."

THE COURT:                    Exceptions overruled,  
and exceptions noted to the defendant.

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