

MR. CORRIGAN: The State rests,
your Honor.

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THEREUPON THE STATE OF OHIO RESTED

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MR. BAILEY: May we approach the
bench?

THE COURT: If you please,
counselors.

You ladies and gentlemen at the back,
if you wish you may now leave.

(Thereupon counsel and the Court conferred at the
Court's bench out of the hearing of the jury,
as follows:)

MR. BAILEY: May we have time to
present and argue certain motions?

THE COURT: Yes, you may, Counselor.
How much time do you think you need or want?

MR. BAILEY: Well, we have in mind
a motion for directed verdict, the question of
insufficiency of the evidence.

It might be best if we both had overnight
to prepare argument. Does that go along with your
desire?

MR. CORRIGAN: That is perfectly

all right with me. I would be just as pleased to go forward now.

THE COURT: Counselor, I am not going to insist that you go forward, but if you feel that you need time to prepare argument on any motions that you may want to present at this time to the Court now, the Court will give you the time.

MR. BAILEY: Well, this is the only motion we have in mind, and mechanically we challenge the ability of this evidence, all of which I think is concededly circumstantial, there is no direct evidence of guilt, to meet the test pointing to the defendant, excluding every reasonable hypothesis consistent with innocence, as a matter of law, that is to say, that twelve reasonable men cannot disagree as to whether that has been accomplished.

And I suppose if we go forward and argue first we can point out the hypothesis consistent with innocence and inconsistent with guilt, and at the same time which I think the State would argue the motion that the facts and circumstances derived from the evidence would satisfy the requirements.

THE COURT: Gentlemen, my inclination

is to dismiss the jury now, and hear the arguments, hear the motion and the arguments, for and against the motion at this time.

MR. BAILEY: Very well. I will do the best I can. It is not all right at my fingertips, but I will proceed if that is your inclination.

THE COURT: Do you feel that you need the time overnight to do the job?

MR. BAILEY: No, I think the evidence is plainly insufficient.

THE COURT: I think I can handle this motion this afternoon, and hear arguments.

MR. BAILEY: All right, let's dismiss the jury and do it, then.

THE COURT: All right.

(Thereupon proceedings were resumed within the hearing of the jury, as follows:)

THE COURT: Ladies and gentlemen of the jury, as you have heard in open court, we have reached the point in this proceeding now where the State of Ohio has rested its case.

The time has now come for the Court to hear legal issues which Counselor may or may not decide to present to the Court for its consideration

outside the hearing of the jury. You will remember that you are the finders of facts, and the Court has the sole responsibility for determining the law. And we are going to go forward now in your absence, in consideration of legal issues, that counselors wish to draw to the Court's attention.

For your purposes this case will be recessed for the day. However, I am going to request the court constables to keep you here as a matter of convenience, inasmuch as I have need for one or more of the court constables until such time as you are returned to your hotel.

So you will be on your recess, even though it amounts to an adjournment, you will be upstairs in your jury room until the constables are available to return you to your hotel.

While you are away on this adjournment, you will bear in mind the instructions given you on each occasion when you leave the room. You shall not discuss this case or what you have heard of it amongst yourselves. You shall not permit anyone else to do so, nor shall you permit yourselves to overhear anything that relates to this cause by any media of communication.

Insofar as you ladies and gentlemen

are concerned, you are recessed for this afternoon. Will you escort the jury, Mr. Patrick, to the jury room.

(Thereupon the jury was excused from the courtroom, and the following proceedings were had in the absence of the jury:)

THE COURT: Counselor Bailey
or Sherman?

MR. BAILEY: If it please the Court, the defendant Sam H. Sheppard challenges the sufficiency of the evidence with which the State of Ohio has rested, and applies for a discharge by the Court as a matter of law, under Section 2945.15 of the Ohio Code; specifically referring to that portion of that section which says, "An accused person where there is not sufficient evidence to put him on his defense may be discharged by the Court, but if not so discharged shall be entitled to an immediate verdict of the jury in his favor."

(Thereupon counsel for the respective parties argued to the Court with respect to the above motion.)

THE COURT: The motion of the defendant for discharge, or for a verdict on the part of the jury, directed verdict on the part of

the jury finding him not guilty, are hereby jointly and severally overruled.

Let the record show that this court will stand adjourned until 9:15 tomorrow morning.

(Thereupon an adjournment was taken to 9:15 a.m., Thursday, November 10, 1966, at which time the following proceedings were had:)

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