

whole blood.

Q You have never been successful in sub-grouping dried blood?

A Not for the R-h factors, no.

Q Did you ever take two samples of O blood of known different origin and simulate the tests that you read in Doctor Kirk's affidavit that he performed?

A No, I never did.

MR. BAILEY: That is all.

MR. SPELLACY: Nothing further.

THE COURT: May I see counselors?

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

MR. BAILEY: The defense in order to rebut a possible charge in final argument, if one might be made, that Doctor Horace Don, who testified about a certain threatening statement made by Coroner Gerber early in July of 1954, a charge that this statement on the part of Doctor Don was recently fabricated for purposes of this trial, was not true, the defense is able to offer the testimony of Mr. R. E. Dwight of Willoughby, Ohio, who would say that prior to the 1954 trial Doctor Don told him about this incident, and after

the 1954 trial Mr. Dwight said to Doctor Don, "Did you bring this evidence?" and Doctor Don said, "No, but I told the defense attorney and he didn't use it, and I don't know why."

These are the two conversations I would use to --

THE COURT: Mr. Corrigan, do you have any further rebuttal to offer for and on behalf of the State at this time?

MR. CORRIGAN: No, we do not.

THE COURT: Let the record show that the Court having been advised that there is no rebuttal on the part of the State, the Court regards the evidence as suggested by Mr. Bailey by way of proffer as being hearsay at its very best, and also the Court does not feel that there is any necessity for allowing sur-rebuttal in this case, and accordingly is ruling that sur-rebuttal of the type suggested by Mr. Bailey is not in order, and accordingly would not be admitted if this witness were called.

MR. BAILEY: Your Honor, may we at this time put our request on the record for a written charge in this case, put our request on record for a written charge?

THE COURT: Yes, let the record so show, that the defense has requested a written charge, which charge will go to the jury.

MR. BAILEY: And after you dismiss the jury, and prior to final argument, the defense has several motions to make.

THE COURT: We are going to hear those tomorrow, gentlemen.

MR. BAILEY: That will be fine, your Honor, but may we have on the record that the evidence is closed?

THE COURT: Yes. As I understand it, there is no further rebuttal on the part of the State, is that right, Mr. Corrigan?

MR. CORRIGAN: That's correct.

THE COURT: And there will be no sur-rebuttal. You have no other sur-rebuttal you wish to offer?

MR. BAILEY: No, your Honor.

THE COURT: Except as indicated. So there will be no further testimony in this case. Tomorrow we will proceed with the matters of law, and I would instruct the jury that they probably will not be called or needed here until about 10:00. (Thereupon proceedings were resumed within the

hearing of the jury, as follows:)

THE COURT: Counselor Corrigan?

MR. CORRIGAN: May it please the Court,  
the State rests.

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THEREUPON THE STATE OF OHIO RESTED.

" " " "

THEREUPON THE DEFENDANT RESTED.

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TESTIMONY CLOSED.

THE ABOVE AND FOREGOING, TOGETHER WITH  
THE EXHIBITS OFFERED AND RECEIVED IN EVIDENCE,  
WAS ALL OF THE EVIDENCE OFFERED AND RECEIVED  
UPON THE TRIAL OF THE ABOVE-ENTITLED CAUSE IN  
SAID COURT OF COMMON PLEAS, CRIMINAL BRANCH,  
IN AND FOR CUYAHOGA COUNTY, OHIO.

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THE COURT: Ladies and gentlemen  
of the jury, as you have just heard, the State of  
Ohio now has rested insofar as rebuttal is concerned,  
and there will be no further evidence or testimony  
taken in this case.

The next matter that the Court will take  
up will be issues or matters of law with counselors.

The Court will do this tomorrow morning rather than this afternoon. It is anticipated, ladies and gentlemen, that arguments will not commence in this case much before 10:00 or 10:30 tomorrow morning.

Depending upon what the day brings tomorrow by way of time consumed for arguments, the Court will either charge you or give you its charge of law or instructions of law tomorrow afternoon, or possibly on Wednesday morning. We will make that determination tomorrow.

But you can reasonably expect that this matter will be given over to you for your deliberations some time late tomorrow or possibly on Wednesday morning. That can be your expectation.

So while you are away, ladies and gentlemen, on your overnight adjournment, you will bear in mind the instructions given you on each occasion when you leave this room. You shall not discuss this case even now, you shall not discuss this case, or what you have heard of it amongst yourselves.

You shall not permit anyone else to discuss it with you; nor shall you permit yourselves to overhear anything that relates to this case,

by any means of communication, having in mind the specific instructions given you with respect to reading, you are forbidden to read written material, to listen to radio, or television, with respect to this case or comments thereon.

We will stand adjourned until -- well, ladies and gentlemen, we will adjourn until 9:15, but we can work out arrangements for you so that we will not expect need of your services much before 10:00 or 10:30 tomorrow morning, but that will be worked out with your court constables with whom you are so familiar.

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

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