

CHARGE OF THE COURT

Ladies and gentlemen of the jury:

At this time it becomes the duty of the court to endeavor to correctly state the law which governs this case. A related and equally important obligation rests upon the jury, and that is to receive and accept the law as the court states the law to be, to adopt it as your guide throughout your entire deliberation, to apply it to the facts as you find the facts to be and then to render your verdict accordingly. This you are required to do independent and apart from any notions or opinions of any kind or nature which you may have ever possessed as to what the law is or what it ought to be concerning the facts of this particular case.

It also follows that in strict keeping with your oath, you will refuse absolutely to be moved or swayed or influenced by considerations such as sympathy for, or bias, or prejudice either against the State of Ohio or the defendant in this case.

In this case, the State of Ohio prosecutes the defendant, Sam H. Shoppard, upon the charge of

murder in the second degree.

The indictment constitutes the charge in this case.

While this indictment in express language charges the defendant with murder in the second degree, it also includes and embraces within its terms the lesser offense of manslaughter, first degree and in order to assist you there is a form of verdict which will be given to you to enable you to return a verdict under either degree of the offenses that you may find proper.

For the purpose of assisting you, if possible, in better understanding the issue which you are called upon to determine, the court will permit a copy of the indictment to go with you to your jury room.

At the very outset the jury will understand that the mere fact that the defendant has been indicted by the Grand Jury of this county raises no presumption of the guilt of the defendant. The indictment itself is simply the means created by law for the presenting in a formal way of a criminal charge, and you are instructed that you will not consider the fact that an indictment has been returned as in any way or manner constituting evidence of the guilt of the defendant.

At the very commencement of this trial, counsel for the State and counsel for the defendant addressed to the jury what we generally refer to as opening statements. In such statements both counsel sought to present an outline of what they believed the testimony and the evidence would disclose as the trial progressed.

When the presentation of all the evidence was completed counsel for the State and counsel for the defendant addressed to the jury what we have come to refer to as closing arguments and in those closing arguments they set forth and develop the inferences and the conclusions which they believe may be reasonably drawn from all the evidence in the case.

Such opening statements and closing arguments are permitted in an effort to assist the jury in understanding and reaching the conclusions as to the issue which the jury is called upon to decide. You are instructed that such opening statements and closing arguments do not constitute evidence in the case and will not be so considered by the jury.

Whenever reference is made to the evidence upon which this case is to be decided, the jury will understand that we mean the testimony as you have heard it from the mouths of the several witnesses

who have testified throughout this trial together with the exhibits which have been offered and received in evidence and which exhibits will go with you to your jury room together with any and all stipulations agreed to in open court between counsel for the State and counsel for the defendant.

By stipulations of counsel, the testimony of several witnesses as given upon a prior trial of this case, was read to you. Testimony of such witnesses constitutes part of the evidence in this case and will be considered by you the same as if such witnesses were personally present and testified from the witness stand.

To the indictment as returned by the Grand Jury and as read to you by the court, the defendant has entered a plea of not guilty.

By such plea, the defendant denies the existence of each and every element and ingredient which, as a matter of law, goes to make up or constitute the crime or offense charged in the indictment and the existence of each and every element and ingredient which, as a matter of law, goes to make up or constitute any other crime or offense which may be included in the crime or offense charged in the indictment.

The plea of not guilty as so tendered by the defendant has, as a matter of law, the effect of placing upon the shoulders of the State of Ohio the burden of proving beyond a reasonable doubt the existence of each and every material allegation and averment of the indictment.

The plea of not guilty entered by the defendant has as a matter of law a further effect. Such plea clothes the defendant with the legal presumption of innocence. This presumption is not a mere matter of form, but rather it is a shield which the law throws about the defendant. This presumption of innocence is to be accorded to the defendant throughout the entire trial and during the examination into every fact and proposition necessary to be proven by the state. The presumption of innocence is only overcome or overthrown when you as a jury find the proof is such as to exclude every reasonable doubt of the guilt of the defendant.

The Legislature of Ohio has been so concerned that a jury in a criminal case understand the correct legal meaning of the term "reasonable doubt" that it has by statute defined that term and enjoined upon the trial court the duty of reading that definition verbatim to the jury in a criminal case.



Ohio Revised Code, Section 2945.04, reads  
as follows:

"A defendant in a criminal action is presumed to be innocent until he is proved guilty of the crime charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he shall be acquitted. This presumption of innocence places upon the state the burden of proving him guilty beyond a reasonable doubt."

"Reasonable doubt is defined as follows: It is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

We come now to a consideration of the elements and ingredients each and all of which, as a matter of law, must exist in order to constitute the crime of murder in the second degree. The indictment in this case is based upon the violation of Section 2901.05, Revised Code of Ohio, which reads as follows:

"No person shall purposely and maliciously kill another."

Then follows the penal provision of the section of the Code. I want to caution you at this time, members of the jury, that the question of punishment, in the event you should find the defendant guilty of the offense charged in this indictment or of the included offense, must not be considered by you in your jury room or in your determination of the facts in this case. The question of punishment is within the sole and exclusive province of the court.

The indictment in this case, which I have previously read to you, eliminating its caption and certain formalities, charges:

"That Sam H. Sheppard on or about the 4th day of July, 1954, at the County aforesaid unlawfully,

purposely and maliciously killed Marilyn Sheppard contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio."

The mention of "county aforesaid" in the indictment has reference to Cuyahoga County.

You will note that the charge in the indictment is based directly on the section of the Revised Code just quoted. You have been instructed that in order to arrive at a verdict of "guilty", it is essential that each and every element of the crime charged be proven beyond a reasonable doubt. It, therefore, becomes important to determine what those elements are. They must be found in the law itself without diminution or enlargement by any thoughts or notions entertained by us.

The elements, as they appear in the statute, are these:

(1) "No person"

That expression embraces the entire population. It singles out no particular person, and, for that reason, there must be, before guilt can be established, an identity of person. Only one



person is accused in the indictment in this case. That person is Sam H. Sheppard, and unless you are able, under the evidence in this case, to eliminate all other persons, and, further, to establish that Sam H. Sheppard is the person who committed the act charged, you need go no further and would be obligated to render your verdict in his favor.

(2) "Shall purposely"

This relates to killing. To do an act purposely is to do it intentionally and not by some mischance or accident. Intent is a state of mind and we have not yet found the means of peering into the mind and viewing within it an "intent" there formed. We must, therefore, resort to an appraisal of those things which generally become the form of expression of an intent. Hence, in determining "purpose" or "intent", you may look to all the surrounding circumstances; what was said or done at the time; the manner of inflicting the injuries; the force that was used and its tendency to cause the death of another and the place upon the body where the injuries were inflicted; and you must bear in mind the presumption of law, that everyone is presumed to intend the natural and probable consequence of his voluntary acts, unless the

circumstances are such as to indicate the absence of such intent.

(3) "and maliciously"

When we speak of malice in common parlance and in everyday affairs we usually refer to ill-will, bitterness, hatred, spite or jealousy. "Malice" relates to the moral qualities of a man's acts. Its general use in law is to express an act done without a sufficient reason or just cause, where the act is wrong in itself and designed and intended to injure another. It is an act expressive of a disregard of social duty and of a heart bent on mischief.

(4) "kill another"

There must be a killing. The mere fact that a death occurred does not, of course, mean that a murder has been committed. It must be shown that the death of the person claimed to have been killed was caused by the acts charged.

The jurisdiction of this court in criminal matters does not extend beyond the boundaries of Cuyahoga County so that before any verdict of guilt of any crime is rendered here, the offense involved must be found to have been committed in this county.

If, therefore, you find that Sam H. Sheppard

purposely and maliciously killed Marilyn Sheppard in Cuyahoga County it will be your duty to find him guilty of murder in the second degree.

While the indictment in this case charges only murder in the second degree it embraces and includes within its terms a crime of an inferior degree, namely:

"manslaughter, first degree".

It is, therefore, possible for you to find that the defendant in this case is not guilty of murder in the second degree, but that, nevertheless, the elements of manslaughter, first degree are present and that he is guilty of manslaughter, first degree.

Section 2901.06 of the Revised Code of Ohio provides that:

"No person shall unlawfully kill another."

Such an act is designated as manslaughter, first degree.

The words "first degree" in the section and in this connection are of no vital importance in this particular case. The legislature of our State undertook to divide the crime of manslaughter into two classes: one being manslaughter, first degree, being one in which no motor vehicle is involved; and manslaughter, second degree, being

one in which the operation of a motor vehicle is involved.

If you find that Sam H. Sheppard is not guilty of murder in the second degree on the basis of the evidence and the rules which I stated to you, it will be your duty to move a step further and to determine whether the elements of manslaughter, first degree, are present. We look to the law itself for those elements.

Again, we have:

(1) "No person"

I shall not repeat what I have said about the necessity of find that Sam H. Sheppard is the person. What was said in that connection within the requirements in the case of murder in the second degree has equal application here.

(2) "shall unlawfully kill another"

A killing is unlawful when it is without cause. It is an intentional or unintentional killing but without being prompted or motivated by malice of the character I have described to you. It is that killing which is done in the heat of passion due to some provocation, and takes place before enough time has elapsed to permit such passion to cool down and thereby avoid the killing.

If you find Sam H. Sheppard not guilty of murder in the second degree, but do find that he did unlawfully kill Marilyn Sheppard in Cuyahoga County under the conditions last recited to you, it will be your duty to find him guilty of manslaughter, first degree.

You are in no event to find Sam H. Sheppard guilty of any offense outlined to you unless each and every element of that particular offense is found by you to have been proven beyond a reasonable doubt. On the other hand, it is not your privilege to be generous by rendering your verdict finding him guilty of the lesser offense when and if in the judgment of the twelve of you the evidence discloses beyond a reasonable doubt he is guilty of the higher offense.

If you find that the evidence in this case does not, under the rules outlined to you, disclose Sam H. Sheppard guilty beyond a reasonable doubt of either of the offenses mentioned, it will be your duty to find him not guilty.

A portion of the evidence in this case is circumstantial in nature and character as distinguished from other evidence which is direct and positive in character. If a witness testified from his personal knowledge to the commission of an act to be proven



in order to establish an offense, that is called direct or positive evidence. It is not always possible to ascertain the truth by evidence of this character, hence the law permits the introduction and consideration of what is called circumstantial evidence. By circumstantial evidence is meant the proof of certain facts and circumstances from which the jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind and which connected facts tend to show the guilt or innocence of the person charged with the commission of a crime.

You, as jurors, are the sole judges of the weight to be accorded to such circumstances and facts, and the sole judges of the credibility to be assigned to the witness or witnesses testifying to such facts and circumstances. When circumstantial evidence is of a nature and character that it satisfies and convinces the minds of the jury beyond a reasonable doubt then such circumstantial evidence, alone, is sufficient upon which to base a verdict of guilty.

However, to warrant you in finding the defendant guilty on circumstantial evidence alone, each material and important link in the chain of

circumstances relied upon for conviction must be proven to your satisfaction beyond a reasonable doubt.

Further, before you as a jury can return a verdict finding the defendant guilty, which verdict is based upon circumstantial evidence alone you must find that the circumstances are not only consistent with the defendant's guilt, but that such circumstances are inconsistent with any other reasonable conclusion and such as to leave no reasonable doubt in your minds as to the guilt of the defendant.

Further, you would not be warranted in basing a verdict of guilty on circumstantial evidence alone if you find the facts constituting the circumstantial are reconcilable with innocence, or if you find that the facts constituting such circumstantial evidence can be reconciled with either innocence or guilt. In either of these last two events the law requires that you give to the defendant the benefit of the doubt.

By process of reasoning or as a result of common experience you may conclude that when certain facts exist certain other facts usually co-ordinate therewith. A conclusion so deduced or drawn from a proven fact or facts is what we refer to as an

inference. In considering the evidence in this case, whether direct or circumstantial, you may draw inferences from proven facts. You are instructed, however, that you are not permitted to base one inference upon another inference. Each inference must be predicated or based upon a proven fact or facts; two or more inferences may be drawn from the same proven fact or from the same proven facts and additional facts in evidence.

The Law does not require the State to prove motive in this case. The presence or absence of motive shown by the evidence may be considered by you in determining intent, or its presence or absence in the mind of the defendant, Sam H. Sheppard, so that if you find beyond a reasonable doubt that the defendant is guilty of either offense under these instructions, then you should find him guilty whether or not a motive has been established.

In reaching your verdict it follows that you will be called upon to determine the degree or measure of credibility which you see fit to assign or ascribe to the various witnesses who have testified throughout this trial. In reaching a conclusion as to the latter purpose, you have a right to and should consider their candor or lack of candor if any was

manifested while testifying, their relationship, if any, to the outcome of this trial, the probability of their knowing the truth of the facts and circumstances concerning which they have testified and in fact every circumstance developing throughout the trial which enables you as a jury to determine the degree or measure of credibility which you see fit to assign or ascribe to the several witnesses who have testified throughout this trial.

As a matter of law, you may believe a portion of the testimony of a particular witness and disbelieve the rest of his testimony. You may believe all the testimony of a particular witness or you may disbelieve all the testimony of a particular witness.

In this case there was testimony received from a number of witnesses which we sometimes classify and title as "expert witnesses", that is, they follow a certain profession, vocation or line of work which, after years of practice, is supposed to make them skillful and learned in that line of work.

In addition to stating facts and findings, these so-called expert witnesses were permitted to state their opinions based upon certain findings, or alleged findings, which they claim to have made.

The mere fact that these witnesses may be following a vocation, trade, science or profession does not warrant the jury in giving more or less credence to their direct or opinion testimony but you should apply the same tests to their testimony that you apply to the testimony of the other witnesses and in the light of all the evidence decide what credence or weight you will give to such direct and opinion testimony.

The purpose of this testimony is to assist you in arriving at a just and correct verdict. You are instructed, however, that such testimony is not to supplant but rather to supplement your judgment.

The defendant has seen fit to exercise his constitutional right of not testifying from the stand in his own behalf. In making this decision he was within his legal rights.

The fact that the defendant did not testify must not be considered by you for any purpose in arriving at your verdict. You are not permitted to draw any inference from his failure to testify.

The State, in closing argument, referred to certain uncontradicted or unrefuted testimony presented by the State. I charge you as a matter of law that any intimation or inference in such argument attempting



to place the burden on the defendant himself to deny such testimony must be wiped from your mind and memory and disregarded by you in your deliberations.

Evidence has been offered in this case as to acts and statements of the defendant. It is the duty of the court to caution you that testimony as to statements or declarations made by the accused should be carefully examined and considered by you. In this class of testimony there is always the danger that the person making such declarations or statements may not fully understand and there is also danger that the witness who repeats it may not remember it all or exactly repeat it, but if you are satisfied that such statements or declarations were made and correctly understood by the witness and correctly repeated in court, then it is for you to say what effect is to be given to them, taking into consideration all the circumstances under which they were made, if they were made.

Numerous police officers have testified in this case. In determining the weight or credence to be given their testimony, you should apply the same rules that you apply in determining the weight and credibility of other witnesses. Merely because they are police officers does not warrant the jury in

giving their testimony more or less weight or credence than that of other witnesses.

When you retire to your jury room, you will have with a copy of the indictment in this case. The court again admonishes you that the indictment is not evidence and while you may read the indictment as often and as carefully as you like, the court cautions you that you are to bear in mind that neither the fact that the indictment has been voted by the Grand Jury nor the contents of the indictment itself are to be considered as any evidence of the guilt of the defendant and should not be considered in any manner against the defendant. The evidence in this case consists of the sworn testimony of the witnesses, all of the exhibits that have been admitted in evidence and which will be with you in the jury room, and any and all stipulations made by and between counsel during the trial of the case.

You were permitted to view the premises where the homicide is alleged to have occurred.

You were instructed that this was done for the single purpose alone of enabling you to understand and apply the evidence as you heard it detailed by the witnesses. What you saw on this view is not evidence, and must not be so regarded

by you. The view was for the sole purpose of giving you such a sense of relation as would enable you to better understand and apply the evidence.

This is a criminal case and under the law requires the concurrence or agreement of all twelve of your number. That is to say, that before you can consider that the jury has returned a verdict the entire twelve jurors must agree in and sign the verdict.

As you may have already gleaned from these instructions, any one of three verdicts may be returned in this case. Forms of verdict will go with you to your jury room and with a little study they should prove almost self-explanatory. You will, of course, employ and use the form which expresses your verdict. You are hereby instructed that you will attach no significance to the order in which the court will read forms of verdict.

The first form is one finding the defendant guilty of murder in the second degree as he stands charged in the indictment.

The second, is a verdict finding the defendant guilty of manslaughter, first degree.

The third, is a verdict finding the defendant not guilty.

You will have with you in your jury room a copy of the instructions which I have just read to you and you may refer to it for guidance if you should find it necessary to do so.

Upon your retirement you will immediately proceed to select one of your number foreman or forelady. When you have reached a verdict all twelve of you will sign the verdict.

During your deliberation and until you have reached a verdict or are otherwise discharged by the court, you will not be allowed to separate except for such temporary separation as circumstances may demand. If any such temporary separation becomes necessary, it will be permitted only under such rules as the court may prescribe.

If you desire to address any communication of any kind in reference to this case, or otherwise, to the court you will reduce such communication to writing, signed by your foreman or forelady, and cause it to be delivered to one of the court's sworn constables in whose exclusive charge and control you will be throughout your entire deliberation.

Ladies and gentlemen, you are here for one purpose and one purpose only, and that is to ascertain the truth, the whole truth, and nothing but the truth

in this case, and to so ascertain it as nearly as the truth in human affairs can be ascertained. As the court has already indicated, you will do this without sympathy for or bias or prejudice against either the State of Ohio or the defendant.

The law in constituting a jury of twelve jurors contemplates that each and every one of you shall give your individual consideration to and judgment upon the evidence. The rules of law which are explained to you in these instructions are binding upon the individual conscience and judgment of the members of the jury.

While you are deliberating each juror should give careful consideration to the views which his or her fellow jurors may have to present. A juror should not turn a deaf ear to his or her associate jurors and without listening to their reasons or arguments obstinately stand upon his or her own opinion regardless of what may be said by another juror or jurors. It must be the object of all of you to arrive at a common conclusion, and to that end you should deliberate together with calmness and in a dispassionate manner, being considerate of each other's views.

You should have in mind two propositions



of equal importance: first, that the laws are enacted for the benefit of all members of organized society; and when a jury is convinced beyond a reasonable doubt of a defendant's guilt the jury should so say in its verdict because no person found guilty of committing a criminal offense should be permitted to escape the punishment provided by law; and, second, that no defendant should be convicted of a crime when the jury is not convinced of such defendant's guilt beyond a reasonable doubt.

Having carefully weighed all the evidence in this case and applied the law as stated in these instructions, let your verdict be fair and impartial, thus assuring that you have been mindful of your oath to well and truly try and true deliverance make between the State of Ohio and Sam H. Sheppard, the defendant in this case.

Now, may I please have the attention of the alternate jurors, Mrs. Horndeski and Mrs. Pipoly. You have sat through the entire case in pursuance to the statute permitting the impaneling of alternate jurors and inasmuch as all of the jurors have been able to attend court regularly and are now here, Mrs. Horndeski and Mrs. Pipoly, you will be excused with the thanks and I am sure the sincere appreciation

of counsel for the parties and the court for attending the same as the other twelve. It is my duty, however, to instruct you as alternate jurors to refrain from any discussion of this case and from expressing any opinion relative to the merits of this case until the verdict of this jury has been returned in open court. Thank you.

Members of the jury, after you have reached a verdict, you will contact this room at which time you will be brought back into open court. You may now retire.

(Thereupon the jury retired to deliberate upon its verdict.)

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