

(Thereupon the following proceedings were had within the hearing of the jury:)

THE COURT: Ladies and gentlemen of the jury, it is now the privilege of counsel for the State and counsel for the Defense to present to you what are usually referred to as closing statements or closing arguments. What counsel will now say to you is not evidence, and it is not to be considered by you as evidence at all at any time or for any purpose.

The purpose of these presentations is to permit counsel to present to you their views of what they conceive the testimony to have been from this witness stand and, of course, to urge upon you the fair inferences which they believe may be drawn from part of the testimony or all of the testimony put together.

The State, as you have already been informed, has the burden of proof in a case of this kind, and for that reason the State may present a word of opening statement and then require the Defense to present its total statement, following which the State may have a closing word with you.

More than one counsel on each side may participate in these presentations, and they

will divide their own time on each side as they see fit.

I state these things to you now so that you will understand the procedure when it comes into action.

Now, who will open for the State?

MR. DANACEAU: Mr. Parrino.

THE COURT: Mr. Parrino.

MR. PETERSILGE: Before the State starts, your Honor, we have certain requests for written charges before argument. We have served a copy on the State.

(Thereupon the following proceedings were had outside the hearing of the jury:)

(Thereupon the Defendant, at the close of all of the testimony, before the beginning of the arguments, requested the Court, in writing, to give to the jury the following Special Instructions:)

"I. The Court instructs you that neither the Indictment itself, nor the fact of it having been found and presented by the Grand Jury, constitutes any evidence, or warrants or justifies any presumption or inference as to the guilt of the defendant to the offense charged.

"II. Defendant has entered a plea of 'not guilty' in this case, by which plea he denies each and every

material allegation set forth in the Indictment, and thereby places upon the State of Ohio the burden of proof.

"III. I instruct you that from the beginning of the trial until the end, the State of Ohio has the burden of establishing beyond a reasonable doubt every fact essential to the conviction of the defendant; the defendant has no burden to sustain; it is enough to warrant your verdict of 'not guilty' that is evidence, taken together with that of the State of Ohio, raises a reasonable doubt as to his guilt of the offense charged.

"IV. I instruct you that under the law the defendant is presumed to be innocent of the offense charged in the Indictment; that this presumption continues throughout the trial and the deliberations of the jury, and remains with the defendant in the examination of every fact and proposition necessary to be established on the part of the State of Ohio.

"V. I instruct you that if you can fairly reconcile all the material facts and circumstances proved in this case upon the theory of innocence, it is your duty to find the defendant 'not guilty'.

"VI. A 'reasonable doubt' may exist in this case, when, after a full consideration and comparison of

all the evidence, you are unable to say that you have an abiding conviction to a moral certainty of the guilt of the defendant to the offense charged.

"VII. I instruct you that evidence is 'direct' when the facts in dispute are related or communicated by witnesses who have actual knowledge of them.

"VIII. I instruct you that evidence is 'circumstantial' where a fact which is not directly or positively known is presumed or inferred from one or more facts or circumstances which are established.

"IX. I instruct you that any inference to be drawn from circumstantial evidence cannot be based upon conjecture, surmise or speculation.

"X. I instruct you that an inference of fact cannot be predicated upon another inference, but must be predicated upon a fact established by the evidence.

"XI. I instruct you that to warrant a conviction on circumstantial evidence alone, the facts and circumstances should not only be consistent with the defendant's guilt, but they must be inconsistent with any other rational conclusion or reasonable hypothesis, and such as to leave no reasonable

