

Court before the jury had retired to consider of their verdict and before the Court began his charge to the jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court in declining to give it committed error, although the general principle involved might have been given in the original charge.

61. Because the Court refused to give the following pertinent legal charge in the language requested:

" If the jury believe from the evidence that the theory or hypothesis that James Conley may have committed this crime is just as reasonable as the theory that the defendant may have committed this crime, then, under the law, it would be your duty to acquit the defendant."

This request was submitted in writing and was handed to the Court before the jury had retired to consider of their verdict and before the Court began his charge to the Jury.

This request was a legal and pertinent one, particularly adjusted to the facts of the case and should have been given, and the Court indeclining to give it committed error, although the general principle involved might have been given in the original charge.

62. Because the Court refused to give the following pertinent legal charge in the language requested:

" The jury are instructed that in all cases the burden of proof is upon the State. The State only half carries that burden when it establishes a hypothesis of guilt, but also leaves a hypothesis of innocence. If both theories are consistent with the proved facts, the very uncertainty as to which is correct requires that the jury shall give the benefit of the doubt to the defendant. But when the defendant relies upon circumstantial evidence, he is not obliged to remove the doubt. It is sufficient if he create a reasonable doubt. He is not obliged to prove his innocence. He may rely upon the failure of the State to establish his guilt. If the proved facts in the case establish a hypothesis consistent with the defendant's innocence and sufficient to create a reasonable doubt of his guilt,