

this is sufficient to acquit him and it is not necessary that he should go further in his proof and exclude every possible idea of his guilt. No such burden is upon 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 in declining to give it committed error, although the general principle involved may have been given in the original charge

63. (jjj). Because the court declined to give the following pertinent legal charge in the language requested:

" No presumption can arise against the defendant, because of failure to cross examine any witnesses put up by the State, that the defendant was guilty of any particular acts of wrong doing. You should not, therefore, consider that this defendant because of such failure to cross examine any state's witnesses, has been guilty of any particular acts of wrong doing".

The above request was submitted to the court in writing before the jury retired to consider their verdict and before the charge was given to the jury.

The above is a correct statement of the law and applicable to the present issue, and the court erred in declining to give it.

The failure to give it was prejudicial to the defendant, for the reason that quite a number of character witnesses were introduced by the state and not cross examined by the defendant. The solicitor urged before the jury that this failure to cross examine was evidence of the fact that a cross examination would have brought out particular acts of wrong doing which would have affected the defendant's character.

64. (kkk) Because the court erred in declining to grant a mistrial on motion of the defendant made by his counsel made after the argument of the Solicitor and before the charge of the court.

~~The Motion made by defendant for a mistrial is as follows.~~

" I have a motion to make, Your Honor, for a mistrial in this case, and I wish to state the facts on which I base it,