

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. 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. 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, and I wish the stenographer to take it down, and we propose to prove every fact stated in the motion unless the court will state that he knows the facts and will take cognizance of them without proof.

"First. That counsel requested before this trial began that the court room be cleared of spectators.

"Second. When the court declined to rule out the evidence as to other alleged transactions with women, by Jim Conley, the audience in the court room, who occupied nearly every seat, showed applause by the clapping of hands and stamping of feet and shouting in the presence of the court; the jury was in a room not over twenty feet from the court room—that room back there (indicating), and heard the applause. The court refused to declare a mistrial or to clear the court room on motion of the defendant.

"Third. That on Friday, August 22nd, when the trial was on and the court had just adjourned for the day, and the jury was about 200 feet from the court house proceeding north on Pryor Street, as Mr. Dorsey, the solicitor general, was leaving the court house, a large crowd assembled in front of