

(1) The substance of the defendant's claim is that Ripley improperly had bullets in his possession during the course of the trial.

(2) That he examined those bullets.

(3) That he compared them with the Vanzetti bullets.

(4) That he showed them to other jurors.

(5) That he discussed them with other jurors.

(A) If it is claimed that such act or acts constitute misconduct by a juror in the jury room, such act or acts cannot be proven by the testimony of the jurors themselves.

(B) If the above point is not well taken, it is submitted that the only evidence of comparison comes through the mouth of the defendants' counsel, Mr. McAnarney, in purporting to quote the deceased Ripley, and that such a statement of a deceased person is not admissible under the statute, because,-

(1) A trial in the criminal court of an indictment is not "an action contemplated by the statute".

(2) The statement was not made before any action was started, as a motion for a new trial does not constitute an action.

(C) No juror can testify as to any discussion had with another juror in reference to the case.

(D) It is further submitted that, for the same reasons, no juror can testify what another juror showed him or pointed out to him in reference to the case.

(E) As a matter of fact, the court should find on the evidence of the affidavits of the eleven surviving jurors

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that no bullets other than lawful exhibits were shown, seen or discussed during the deliberations of the jury.

(F) On the basis of these same affidavits the court should find as a fact that at no time during the trial were the so-called Ripley bullets examined or discussed with reference to the cases on trial.

(G) There is no evidence that any mark or marks were placed upon the bullets during the course of the trial.

(H) There is no evidence from which the court can find that the jury were prejudiced by the presence of these bullets in Ripley's possession, or that they affected the jury in reaching its verdict.

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