


Appendix I

Sample Motion
for Jury View

2
3 IN THE CLEVELAND MUNICIPAL COURT
4 CUYAHOGA COUNTY, OHIO

5 STATE OF OHIO

Case No.

6 Plaintiff

Judge

7 vs.

8 MOTION FOR VIEW OF
PREMISES BY JURY

9
10 Defendant

11 The State of Ohio, through the Prosecuting Attorney, hereby
12 moves this Honorable Court to order that the jury be conducted
13 in a body, together with the defendant, under the charge of the
14 Court security officer or bailiff, to the place of the alleged
15 criminal conduct, _____ located
16 at _____, Cleveland, Ohio,
17 and that the same be shown to them. The ground for this motion
18 is that one important and essential element of this crime of
19 Pandering Obscenity under R.C. 2907.32(A)(4) is that of scienter
20 and a view of the premises surrounding and within the above
21 named business establishment would be the best evidence of
22 physical circumstantial evidence of facts proving the
23 defendant's knowledge of the character or the contents of
24 material involved.

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A memorandum of reasons and citations of authority in support of this motion is attached and made a part hereof.

Respectfully submitted,

Chief Police Prosecutor
City of Cleveland

Assistant Prosecutor
2001 Payne Avenue
Cleveland, Ohio 44114
Prosecuting Attorneys

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MEMORANDUM OF LAW

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5 The Revised Code of the State of Ohio provides for the
6 authority of trial courts to order the jury to view the area or
7 premises at which a material fact in issue occurred when such
8 viewing is proper in the sound discretion of the Court. The
9 statute, R.C. 2945.16, entitled "View of Premises," reads as
10 follows:

11 When it is proper for the jurors to have a view
12 of the place at which a material fact occurred, the
13 trial court may order them to be conducted in a body,
14 under the charge of the sheriff or other officer, to
15 such place, which shall be shown to them by a person
16 designated by the court. While the jurors are absent
17 on such view no person other than such officer and
18 such person so appointed, shall speak to them on any
19 subject connected with the trial. The accused has the
20 right to attend such view by the jury, but may waive
21 this right.

22 The expense of such view as approved by the court
23 shall be taxed as other costs in the case.

24 The view of premises by the jury must be ordered by the
25 trial court and may take place over the defendant's objection.
26 As stated in State v. Pigott, 1 App.2d 22 (1964), R.C. 2945.16
27 does not limit the viewing by jurors of the place where the
28 crime for which the trial is being held occurred; and the trial
court may, over objection by the defendant, in the exercise of
sound discretion after it has been fully informed of the nature
of evidence to be offered and proper safeguards are taken to
protect the rights of the defendant, permit the jurors to view
premises where similar acts are alleged to have been committed
by the defendant. This decision exemplifies the broad use and
proper scope of this section and also recognizes the importance

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3 of such a jury view to the presentation of the prosecutor's case
4 in chief.

5 In addition to the foregoing reasons, the prosecutor is
6 ready to present evidence that the premises presently reflect an
7 accurate and substantial condition as they bore on the
8 defendant's scienter concerning material on the date of the
9 alleged crime.

10 This motion to view the premises of the establishment in
11 which the defendant was arrested is not taken for purposes of
12 delay and is important and directly related to proof of the
13 defendant's knowledge of material involved. The United States
14 Supreme Court, in establishing the judicial mandate of the
15 required element of scienter, stated in Smith v. California, 361
16 U.S. 147, at 154 (1959):

17 It is argued that unless the scienter requirement
18 is dispensed with, regulation of the distribution of
19 obscene material will be ineffective, as booksellers
20 will falsely disclaim knowledge of their books'
21 contents or falsely deny reason to suspect their
22 obscenity. We might observe that it has been some
23 time now since the law viewed itself as impotent to
24 explore the actual state of a man's mind. . . .
25 Eyewitness testimony of a bookseller's perusal of a
26 book hardly need be a necessary element in proving his
27 awareness of its contents. The circumstances may
28 warrant the inference that he was aware of what a book
contained, despite his denial.

29 We need not and most definitely do not pass today
30 on what sort of mental element is requisite to a
31 constitutionally permissible prosecution of a
32 bookseller for carrying an obscene book in stock. . .
33 . (Emphasis added)

34 The defendant has, by his not guilty plea, denied each
35 element of the offense, including that of scienter. The proof

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offered by the State on that element consists of circumstantial evidence, much of which concerns the nature and appearance of the surrounding environment within the premises in which the defendant was arrested and material shown and confiscated. The requested view of the premises is therefore of high importance and relevance to a fair determination of the issue of scienter.

For all the foregoing reasons, the Prosecuting Attorney respectfully moves this Court to order the jury to view the premises involved in this case.

Respectfully submitted,

Assistant Prosecutor
Attorney for Plaintiff

SERVICE

A copy of this Motion for View of Premises by the Jury was delivered to the attorney for the defendant, Mr. _____, on this _____ day of _____, 1977.

Assistant Prosecutor
Attorney for Plaintiff

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3 IN THE CLEVELAND MUNICIPAL COURT
4 CUYAHOGA COUNTY, OHIO

5 STATE OF OHIO

6 Plaintiff

7 vs.

8
9 Defendant

Case No.

Judge

ORDER FOR JURY TO
VIEW PREMISES

10
11 It being proper, in the opinion of the Court for the jury
12 to have a view of the place and premises of the alleged criminal
13 conduct, _____ located
14 at _____, Cleveland, Ohio,
15 it is ordered that said jury be conducted in a body, under the
16 charge of the Court security officer or bailiff, to the said
17 place and premises, and that the same be shown to them.

18 IT IS SO ORDERED,
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21 Dated: _____

22 Judge
23 Cleveland Municipal Court
24 Cleveland, Ohio
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FORM 43.10

Motion for jury to view place, etc.
(RC 2945.16)

[Caption as in Form 43.05, substituting title of motion for "Demand"]

Comes now, the defendant [or, the Prosecuting Attorney] in the foregoing action, who moves the Court to order that the jury be conducted in a body, together with the defendant, under the charge of . . . [name of law enforcement officer] . . ., to the place of the alleged criminal conduct [or, to the place in which . . . [any material fact] . . . occurred]; and that the same be shown to them by The ground [or, grounds] for this motion is [or, are] that . . . [here state the grounds for the necessity of the jury viewing the place] . . .

A memorandum of reasons and citations of authority in support of the motion is attached hereto.

Respectfully submitted,
.....
Attorney for Defendant
...[address]...
[or]
.....
Prosecuting Attorney

Date:, 19

FORM 43.11

Entry—order for jury to view place, etc.
(RC 2945.16)

[Caption as in Form 43.05, substituting title of entry for "Demand"]

It being proper, in the opinion of the Court, for the jury to have a view of the place of the alleged criminal conduct [or, of the place in which . . . [any material fact] . . . occurred], it is ordered that said jury be conducted in a body, together with the defendant, under the charge of the Sheriff [or, other law enforcement officer], to the said place; and that the same be shown to them by And that they return tomorrow morning at o'clock.

.....
Judge

Date:, 19

FORM 43.15

Entry—jury formed in capital cases
(RC 2945.18)

[Caption as in Form 43.05, substituting title of entry for "Demand"]

This day came the Prosecuting Attorney on behalf of the State of Ohio, the defendant, . . . [name of defendant] . . ., being brought into Court in the custody of the Sheriff, and his counsel also coming.

And the venire facias for the jury in this case heretofore issued according to law, returnable this day, was duly returned by said Sheriff, with his indorsement thereon, as follows: . . . [copy in full] . . .

And said venire facias being called in open Court, all of the above-named persons appeared in answer thereto, except F.G., J.H., etc.; and the Court ordered that a rule be issued for F.G.

And also the alias venire facias heretofore issued according to law, returnable this day, was duly returned by said Sheriff, with his indorsement thereon, as follows: . . . [copy in full] . . .

And said alias venire facias being called in open Court, all of the above-named persons appeared in answer thereto.