

Bail, in Murder Cases. Defendant, Charged With Murder, Admitted to Bail When.

A defendant charged with murder is entitled to be admitted to bail, unless the county attorney makes a showing satisfactory to the court that the proof of his guilt is evident or the presumption thereof great.

The sufficiency of such showing is addressed to the sound discretion of the court; and, as a rule, would not be disturbed unless a manifest abuse of discretion was shown.

Helena, Montana, March 23, 1910.

Hon. W. S. Towner,
County Attorney,
Fort Benton.

I am in receipt of your letter of March 19, regarding the admission to bail of one Mark Cockrill, against whom you have filed an information charging him with the crime of murder in the first degree.

You state that upon application for bail being made, you introduced the testimony taken at the coroner's inquest; also, an affidavit of an additional witness; that the court, after considering such affidavits and evidence, and the affidavit submitted by the defendant in support of his application for bail, admitted the defendant to bail in the sum of \$25,000. You further state that the court, in admitting the defendant to bail, expressed some doubt as to what was meant by the word "some," as used in the quotation "some showing that the proof is evident or the presumption great," which appears in the decision in the case of *State ex rel., Murray v. District Court*, 35 Mont. 504.

Our understanding of the law, and of the opinion in the above case, is that the defendant is entitled to be admitted to bail unless the county attorney makes a showing which satisfies the court that the proof of his guilt is evident or the presumption thereof great. In other words, the county attorney must make a showing of his evidence in opposition to the application for bail; otherwise the application would be granted, and

when he makes a showing, then the sufficiency thereof is addressed to the sound discretion of the court, and his ruling would not be disturbed by the supreme court unless the state could show a manifest abuse of such discretion.

You state in your letter that it is very doubtful, in your mind, that a conviction for murder in the first degree would be obtained. Therefore, if you think the evidence sufficient to raise such a doubt it would be impossible to show a manifest abuse of discretion on the part of the district court in the event of appealing the case. I do not believe it would be advisable, under such circumstances to take an appeal.

Very truly yours,

ALBERT J. GALEN,

Attorney General.