

'Confessions' Stall McLeod Trial

By Leslie Cheek
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The Arlington murder trial of jailhouse poet Fergus Neil MacLeod recessed an hour ahead of schedule yesterday to allow Circuit Court Judge William D. Medley to decide on the admissibility of two confessions MacLeod alleged he made after his arrest, and of evidence obtained from them.

Before dismissing them, Judge Medley warned the jurors against reading news accounts of the trial.

MacLeod, 48, is charged with the fatal shooting of Carol Spencer, 56, an attendant at the Suburban Animal Hospital, 6879 Lee Hwy., Arlington, the night of Aug. 17, 1964.

Acting at his own attorney, the slim, graying MacLeod has pleaded innocent to the charge by reason of self-defense, and what he called "absolute necessity," in his opening statement to the jury Tuesday.

Fingerprints Protested

The issue of MacLeod's alleged confession arose yesterday as FBI fingerprint examiner George J. Bonebrake was about to link a pair of fingerprints found at the murder scene to fingerprints taken from MacLeod after his indictment and arrest three months after the shooting.

Richard C. Shadyac, one of MacLeod's court-appointed "advisory" attorneys, interrupted Bonebrake and asked Judge Medley to excuse the jury. Citing a 1965 ruling by the Virginia Supreme Court of Appeals, he said:

"These fingerprints are in-

admissible because they were taken from this defendant after his indictment, against his will and without the advice and presence of counsel."

Judge Medley observed that the ruling dealt with confessions, not fingerprints, and asked, "How do you fingerprint him before his indictment if you haven't found him?" MacLeod was arrested a month after his indictment in absentia.

Judge Medley overruled Shadyac's objection to the fingerprints but warned prosecutor Russell King that "if you're planning to introduce his confessions, you'd better read this case."

"We will show the court," King replied, "that when this man was arrested in New York

by three FBI agents, he was clearly and distinctly advised of his . . . right to counsel.

"But he repeatedly said, 'I realize this, but I don't want a lawyer, and when this case comes to trial, I won't have a lawyer.' The defendant has consistently waived the right to counsel (and) made the admissions without being asked."

"He's never waived his right to counsel," Shadyac retorted. "Once he's in the accusatory (as opposed to investigatory) stage, he has an absolute right to counsel."

"I gather," Judge Medley said, "that . . . a confession made by a person after indictment is inadmissible without the presence of counsel." He "is there any difference," he

asked, "between admitting a statement made under these circumstances and admitting evidence obtained (from it)?"

"What about the gun? I haven't read anything, but I assume he (MacLeod) told them (the FBI) where to find it."

Police have said publicly that the weapon identified as the one used in the slaying was found in a vacant lot near the animal hospital exactly where MacLeod told the FBI it was.

"We take the position, poisoned tree doctrine," Shadyac replied, "that any evidence gathered as a result of the confession is inadmissible." After further argument,

Judge Medley recalled the jury, told them he needed time for research, and recessed the trial until 10 a.m. today.

Earlier in the trial's second day, Arlington Medical Examiner John H. Judson testified that Spencer died of "multiple gunshot wounds" inflicted by four .38-caliber slugs fired into him.

Police Pvt. Charles Taylor said he had lifted the two fingerprints later used for comparison by the FBI from a pair of eyeglasses found at Spencer's feet after the shooting.

"Could you describe the glasses?" MacLeod asked the policeman.

"They were very similar to the ones you have on," Taylor replied.