

jailer, had interviewed Lee just before the present trial.

The solicitor, over the objections of Frank's atty's that the evidence offered was immaterial, irrelevant, and the expression of an opinion, was permitted by introducing said evidence to draw a comparison of the time occupied by Frank and Arnold to their respective interviews, and, in doing so, the Court erred because the evidence offered was immaterial, irrelevant and the expression of an opinion.

3. Because the Court permitted the solicitor, over the objection of defendant made at the time the evidence was offered that the same was irrelevant and immaterial, to show by the witness J. N. Starnes that the witness Lee, the morning the body was found, while in the office of the pencil factory and when under arrest was composed. Said evidence was objected to as illegal, unwarranted and hurtful to the defendant and movant now says that its admission was error for the same reasons.

This evidence was hurtful, because used by the solicitor in his address to the jury in contrasting the deportment of Frank who was claimed to be nervous and excited.

4. Because the Court erred in permitting the witness Starnes, over objection of the defendant, made when the evidence was offered, because it was a conclusion, to say that his conversation with Frank over the telephone the morning of the finding of the body, was guarded—that he was guarded as to what he said.

This evidence was objected to as unwarranted and a conclusion, and movant here assigns its admission as error for the same reasons.

Movant contends this was hurtful to the defendant, and there was a dispute as to what Starnes said to Frank in that conversation, and the solicitor contended that Frank's words and conduct in connection with that conversation was evidence of his guilt. Starnes's statement that he was guarded in that conversation as to what he said, tended to impress the jury, that he was accurate in his memory as to the words of the conversation.

5. Because the Court admitted what purported to be a picture of the second or office floor, the street floor and basement of the factory. On this picture was traced red dotted lines extending from the back of the office floor, down the elevator to the basement, and down the basement near the back of the building. There