

8. Because the Court refused to permit the witness Black to testify on cross examination that when he found a bloody shirt in the bottom of a barrel in Newt Lee's house, that he carried the shirt to the station house showed it to Lee, and, when Lee was asked by the witness if the shirt was his, the solicitor objected that the witness should not be allowed to answer the question: "Did he (Lee) say that the shirt was his?"

The Court would not permit the witness to give Lee's answer that the shirt was his.

This answer of Lee's was, as movant contends, part of the res gestae of the shirt transaction, and Lee's answer ought to have been heard.

The Court erred, as movant contends, in ruling out the answer of Lee and not allowing it to come out as a part of the entire transaction.

9. Because the Court, over objection made by the defendant at the time the same was offered, that it was immaterial and irrelevant, permitted the witness Darley to testify that on the morning the body was found Newt Lee was composed.

Defendant objected to this evidence as illegal, irrelevant and prejudicial to defendant which objection was overruled and movant assigns its admission as error for said same reasons.

This evidence was not only irrelevant and immaterial as movant contends but hurtful, because this evidence was heard upon the theory of comparison between the conduct of Lee and Frank.

10. Because the Court erred in failing, refusing and declining upon motion of the defendant made while the witness Conley was on the stand, to rule out, withdraw and exclude from the jury each and all of the following questions and answers of the witness Conley:

Q. "What did he mean?"

A. "Well, what I taken it to be, the reason he said he wasn't built like other men. I seen him in a position I hadn't seen any other man in that was got children."

Q. "What position?"

A. "I have seen Mr. Frank in the office there about two or three times before Thanksgiving and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here