

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott, with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see: and, if he is willing, it is all right": that he went to Frank and said: "Mr. Frank, Chief Beavers, Chief Lanford and Scott and Conley want to talk with you, if you want to see them?" that Frank said: "No my attorney is not here, and I have got nobody to defend me; that his lawyer was not there, and that no one was there to listen to what might be said.

The Court erred in admitting this evidence for the reasons above stated.

The solicitor in his argument pressed on the jury that the failure of Frank to face this negro and the detectives was evidence of guilt, and movant contends same was prejudicial.

18. Because the court erred in permitting the witness, DR. M. F. MARRIS, over the objection of the defendant, made at the time the testimony was offered that the same was irrelevant and immaterial, to testify:

". I might preface my remarks on this by saying that more than 12 or 15 years ago someone told me that the reason that cabbage was considered indigestible was because they were ordinarily cooked with meat or grease, and with the idea of settling this question, on my clinic I got a lot of patients whose stomachs were not in very good condition, and made a number of experiments, particularly to determine the matter as to whether or not this was the case. During the course of the experiment that I made at that time, I was struck by the fact that the behaviour of the stomach after taking a small meal of cabbage and bread, either corn bread or biscuit,---that the behaviour of the stomach was practically the same as after taking some biscuit and some water alone. 74.