

defendant, made as above stated and in doing so committed error, for the reasons herein stated.

This was prejudicial to the defendant, because the Solicitor General contended that his failure to sooner report the finding of the club and the envelope to the police were circumstances against Frank. These detectives were not employed by Frank, but by Frank for the National Pencil Company, and movant contends that he is not bound by what they did or failed to do.

The Court should have so instructed the jury.

43 (00) Because the Court permitted the witness Irene Jackson, at the instance of the solicitor General and over the objection of the defendant, that the testimony was irrelevant, immaterial, illegal to testify as follows:

Q. "Do you remember having a conversation with Mr. Starnes about something that occurred.

A. Yes sir.

Q. Now what was that dressing room incident that you told him about at that time?

A. I said she was undressing.

Q. Who was undressing?

A. Ermilie Mayfield, and I came in the room, and while I was in there, Mr. Frank came to the door.

Q. Mr. Frank came in the door?

A. Yes sir.

Q. What did he do?

A. He looked and turned around and walked out.

Q. Did Mr. Frank open the door?

A. Yes, he just pushed it open.

Q. Pushed the door open?

A. Yes sir.

Q. And looked in?

A. Yes sir.

Q. And smiled?

A. I don't know whether, I never notice to see whether he smiled or not, he just kind of looked at us and turned around and walked out.

Q. Looked at you, stood there how long?