74. Because the juror Johenning was not a fair and impartial
juror, in that he had a fixed opinion that the defendant was
guilty prior to, and at, the time he was taken on the jury and
was not a fair and impartial and unbiased juror. Affidavits showing
that he was not a fair and impartial juror are hereto attached and
marked Exhibits E. F. G. K.and I, and made a part of this motion
for new trial.

The opinion, conduct and state of mind of this juror prior
to, and at the time of, his selection as a juror shows that the
defendant did not have a fair and impartial trial, as provided by
the laws and the Constitution of this State; and, because of the
unfairness and impartiality of this juror, a new trial should be
granted, and the Court will commit error in not granting it.

75. Because this defendant, as he contends, did not have a
fair and impartial jury trial, guaranteed to him under the laws
of this State, for the following reasons , to-wit.

Public sentiment seemed to the Court to be greatly against him.
The court room was a small room, and during the argu ment of
the case so far as the Court could see about every seat in the
court room was taken, in and without the bar, and the aisles at
each end of the court room were packed with spectators. The Jury,
in going from the jury seats to the jury room, during the session
of the court, and in going to and from from the court room morn-
ing, evening and noon, were dependent upon passage-ways made
for them by the officers of Court. The bar of the court room it-
self was crowded, leaving only a small space to be occupied by
counsel in their argument to the jury. The jury box, when
occupied by the jury, was inclosed by the crowd sitting and
standing in such close proximity thereto that the whispers of the
crowd could be heard during a part of the trial.

When the Court's attention was called to this he ordered the
Sheriff to move the crowd back, and this was done.

During the argument of the solicitor, Mr. Arnold of counsel
for the defense, made an objection to the argument of the

135.