

When it was announced that the jury had agreed upon a verdict crowds had thronged the court room to such an extent that the Court felt bound to clear the court room before receiving the verdict.

This the Court did. But, when the verdict of the jury was rendered, a large crowd had thronged the outside of the court house; some one signaled to the outside what the verdict was, and the crowd on the outside raised a mighty shout of approval. So great was the shouting and applause on the outside that the Court had some difficulty in hearing the response of the jurors as he called them.

The defendant was not in the court room when the verdict was rendered, his presence having been waived by his counsel. This waiver was accepted and acquiesced in by the Court, because of the fear of violence that might be done the defendant were he in Court when the verdict was rendered.

When Mr. Dorsey left the court room, he was met at the court house door by a multitude, was hurrahed, cheered, taken upon the shoulder of a part of the crowd and carried partly to the building opposite, wherein he had his office.

This defendant contends that the above recital shows that he did not have a fair and impartial jury trial, that a new trial ought to be granted, and that the court failing to grant such new trial, will commit error.

In support of this ground of the motion movant refers to the affidavits hereto attached marked Exhibits J to AA inclusive, and hereby made a part of this motion for new trial.

76. Because the Court erred in not leaving it to the jury to say whether or not, under the facts, the witness Conley was an accomplice.

The state insisted that Conley was watching for Frank to enable him to have connection with some girl, naturally or unnaturally; and Frank seeking to get her consent and failing killed her to insure her silence, and then employed Conley who had previously been watching for him to enable him to conceal her body. If Conley was aiding and abetting Frank in his transactions with Mary Phagan, and if, as a natural and probable result of