

ceded by the State that these dotted lines and crosses were no part of nor represented any part of the building but were put in the picture for the purpose of illustrating the theory of the State, as showing where the body was found and where it was carried.

The admission of the picture in evidence, with the lines and crosses thereon, was, when offered, objected to because, as movant contends, it was argumentative, representing and illustrating the State's view of the case by means of red lines and crosses, which was no part of, nor illustrated any part of the building.

The admission of said diagram and drawing was error for the same reasons as set out in the above objections, the objection being that the same was illegal and prejudicial, and movant assigns error in their admission for the same reason.

6. Because the Court, over objection made when the evidence was offered, that the same was a conclusion, permitted the witness Black to testify that in a conversation had with Frank months before the tragedy that he didn't remember anything that caused him to believe that Frank was nervous, the hurtful purpose being to compare his then conduct with that after the tragedy.

This evidence here objected to was illegal, a conclusion, and prejudicial, and movant says its admission was error for said reasons.

7. Because the Court, over objection made when the evidence was offered that the same was irrelevant, permitted the witness Black to testify that Frank had counsel, Messrs. Rosser and Haas about eight or eight thirty o'clock Monday morning while Frank was in the station house, brought there by detectives Black and Haslett.

Movant contends the employment of counsel, under the circumstances was no evidence of guilt; but the Court's conduct in submitting the fact to the jury was greatly hurtful to the defense.

Said evidence was illegal, irrelevant and prejudicial and its admission over objection is here assigned as error for said reasons.

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.