

"When the witness Conley was still on the stand his testimony not having been finished, the defendant, by his attorneys, moved to rule out, withdraw and exclude from the jury each and all the above questions and answers, because the same are irrelevant, immaterial, prejudicial, and deals with other matters and things irrelevant and disconnected with the issues of this case. After hearing argument of counsel, the Court overruled the motion to rule out, withdraw or exclude said above stated questions and answers from the jury, but permitted the same to remain before the jury."

In making said order and declining to rule out, exclude and withdraw said questions, and each of them, as well as all of the answers and each of them, the Court erred, for the reason that said questions and answers, each and all of them, were irrelevant, immaterial, illegal, prejudicial, and dealt with other matters and things wholly disconnected with the issues on trial, and the same amounted to accusing the defendant of other and independent crimes.

Defendant contends that this ruling of the Court was highly prejudicial to the defendant, tending to disgrace him before the jury and expose him to a conviction, not because he had committed murder, but because he was accused of depravity and degeneracy.

When the third of the direct questions here sought to be excluded was asked by the solicitor the defendant objected because the evidence sought would be immaterial. The Court sustained the objection but the solicitor continued with the balance of the direct questions and answers here objected to and the cross-questions were thereafter asked and the answers given. The Court therefore erred in not excluding and withdrawing all of said testimony.

14. Because the Court erred in not ruling out, excluding, and withdrawing the following evidence direct and cross of the witness Conley, upon motion of defendant's counsel, made while Conley was still on the stand.

"I always stayed on the first floor like I stayed April 26th and watched for Mr. Frank while he and a young lady would be up on the second floor chatting. I don't know what they were doing; he only told me they wanted to chat. When the young ladies would come there, I would sit down at the first floor and watch the door for him. I watched for him several times. There will be one lady for Mr. Frank and one lady for another young man who was there. Mr. Frank was there along on Thanksgiving Day. I watched for him several times. A tall, heavy built lady come there that day. He told me when the lady came he would stamp and let me know that was the lady, and for me to go and lock the door. Well, the lady came, and he stamped, and I locked the door. He told me when he got through with the lady he would whistle for me to go and unlock the door. . . . And he says: (on April 26th) 'Now, when the lady comes, I will stamp like I did before' . . . I have seen Mr. Frank there in the office two or three times before Thanksgiving, and a lady was in the office, and she was sitting down in a chair and she had her clothes up to here, and he was down on his knees, and she had her hands on him. I have also seen Mr. Frank another time with a young lady lying on the table. She was on the edge of the table. I don't know the name of the woman that was there Thanksgiving Day; the man that was there was Mr. Dalton. . . . The lady that was there was a tall built lady, heavy