

When the solicitor first sought from the witness Conley the evidence here sought to be excluded the defendant objected because the evidence sought to be brought out would be immaterial. The Court ruled that such evidence would be immaterial, but after this ruling the solicitor brought out the direct testimony here sought to be ruled out and excluded. After the direct testimony supra had been brought out after the Court's ruling, the cross testimony supra here sought to be withdrawn was also brought out in an effort to modify or explain the direct evidence. Under the circumstances the Court ought to have granted the motion to exclude and withdraw all such evidence and for failing to do so committed error.

Movant assigns as error the action of the Court in allowing this evidence to go before the jury because the same was illegal, irrelevant, immaterial and hurtful to the defendant.

15. Because the Court permitted, over the objection of defendant's counsel made when the evidence was offered, that such evidence was irrelevant and immaterial, the witness Conley to swear that the police officers took him down to the jail, and to the door where Frank was, but that he never saw Frank at jail and had no conversation with him there.

The Court erred in permitting the introduction of this evidence, for the reasons above stated. It was hurtful for the reason that the solicitor contended, in his address to the jury, that Frank declined to see Conley, and that such declination was evidence of his guilt.

16. Because the Court, over objection of the defendant, made at the time the evidence was offered, that the same was irrelevant, immaterial, and not binding on Frank, permitted the witness, Mrs. White, to testify that Arthur White, her husband, and Campbell are both connected with the Pencil Company, and that she never reported seeing the negro on April 26th, 1913, which she testified she did see, in the pencil factory, to the City detectives until May the 7th, 1913.

For the reasons above stated, the Court erred in not excluding the evidence, and for the reason that the solicitor, in his address to the jury, contended that the fact that there was a negro (which he contended was Conley) in the factory the morning of April 26th was concealed from the authorities, and that such concealment was evidence of Frank's guilt.

17. Because the Court permitted, over the objection of defendant's counsel made when the same was offered, that the same was irrelevant and immaterial, the witness Mangum, to testify that Conley and another party went down from the pencil factory to the jail, that he had a conversation with Mr. Frank about confronting Conley, Frank then being on the fourth floor of the jail; that Chief Beavers, Chief Lanford, and Mr. Scott, with Conley, came to the jail to see Frank, and they asked him if they could see him; that he said: "I will go and see; and, if he is willing, it is all right;" that he went to Frank