

36. Because the Court permitted, at the instance of the solicitor the witness Sig Montag, to testify over the objection of defendant, made at the time the testimony was offered that same was irrelevant, immaterial, and incompetent, that he got the reports made on the crime by the Pinkertons and that they were made. That these reports came sometimes every day and then they did not come for a few days and then came again. That he practically got every day's report; that he got the report about finding the big stick and about the finding of the envelope, that he got them pretty close after they were made; that he knew about them having the stick and the envelope when he read the report. That he did not request Mr. Pierce, representing the Pinkertons, to keep from the police and the authorities the finding of the stick and the envelope.

The Court, over the objections of the defendant, on the grounds stated, permitted this testimony to go to the jury and in doing so erred.

This was prejudicial to the defendant because the solicitor insisted that the finding of the envelope and stick were concealed from the authorities.

37. Because the Court erred in permitting the witness Leech, a street car inspector, at the instance of the solicitor and over the objections of the defendant that same was irrelevant, immaterial, and incompetent, to testify that he had seen street car men come in ahead of their schedule time. That he had seen that often and had seen it last week. That he, Leech, had suspended a man last week for running as much as six minutes ahead of time. That he suspends them pretty well every week and that he suspends a man for being six minutes ahead of time just like he would for being six minutes late. It frequently happens that a street car crew comes in ahead of time and that they are given demerits for it and that he sometimes suspends them for it. That the street car crews are relieved in the center of town; that sometimes a crew is caught ahead of time when they are going to be relieved. That it is not a matter of impossibility to keep the men from getting ahead of time, although that does happen almost every day. That there are some lines on which the crew does not come in ahead of time because they can not get in. It frequently happens that the English Avenue car cuts off the River car and the Marietta car. It often happens that these cars are cut off. That when there is a procession or anything moving through town, it makes the crew anxious to get through town, that they are punished just as much for coming in ahead of time even a day like that as they would be any other day. They do their best to keep the schedule, but in spite of it they sometimes get off.

The Court permitted the testimony of the witness Leech over the objection of the defendant that the same was irrelevant, immaterial and incompetent, and in doing so committed error.

This was prejudicial to the defendant, because the crew on the English Avenue car upon which the little girl, Mary Phagan, came to town, testified that she got on their car at ten minutes to twelve. That under their schedule they should reach the corner of Broad and Marietta Streets at 7½ minutes