

the court house and, in the hearing of the jury, cheered and shouted 'Hurrah for Dorsey' in the hearing of the jury.

"Fourth. That on Saturday, August 23, 1913, while the trial was still on, and when the court adjourned and Mr. Dorsey emerged from the court room a large crowd, standing on the street, applauded and cheered Mr. Dorsey, shouting 'Hurrah for Dorsey.' The jury at this time was in a cafe at lunch, about 100 feet away, and a portion of the crowd moved up in front of the cafe, at which the jury were at lunch, and in the hearing of the jury shouted 'Hurrah for Dorsey.'

"Fifth. On the last day of the trial, a large crowd, including many women, had assembled in the court room before court opened, taking up every seat in the court room. The jury were in their room not over 20 feet from the court room, and as Mr. Dorsey entered the room, the crowd applauded loudly by clapping of hands and stamping of feet, all in the hearing of the jury. The court admonished the people that if the applause was repeated, he would clear the court room.

"Now, we move upon those facts, which tend to coerce and intimidate and unduly influence this jury, that the court here and now declare a mistrial, and we stand ready to prove each and every fact there and we offer to prove them. Now, if your Honor will take cognizance of those facts as stated, then, of course it will dispense with proof. If your Honor does not take cognizance of them, we are ready to prove them by numbers of people who heard them, including myself; I have heard it, all of it, and the conduct has been most disgraceful. The defendant has not been accorded anything like a fair trial and I am disgusted, may it please your honor, with the unfairness of those members of the public who make such an exhibition of themselves when a man is on trial for his life. I am not afraid of them; I hope nobody else is afraid of them; but the natural tendency is to intimidate a jury, to coerce a jury, and I have never seen a trial so hedged in and surrounded with manifestations of public opinion. I make the motion to declare a mistrial and stand ready to prove these facts. If the court knows them, the court can take cognizance of them."

Upon this motion the Court stated that as to part of the facts he knew and part he did not know. That what occurred on August 25, 1913, the last day of the trial, he did know, as it took place in his presence; that he did hear cheering when Mr. Dorsey went out on the occasion mentioned, but as to what the crowd said, outside of the whooping and hollering, he did not know, and that he did hear the applause in the court room when the court declined to rule out the evidence as to several alleged transactions with women, by Jim Conley.

In support of this motion to declare a mistrial, the following evidence was introduced:

Mr. Deavours testified that he was a deputy sheriff of Fulton County in charge of the jury on Saturday when Mr. Dorsey was applauded in front of the court house as he left that house. When the applauding begun, the jury was in or near the German Cafe, where they went to dinner. When the applause first begun they were about 100 feet from the court house, entering the cafe. That he heard the applause, but did not hear the crowd holler "Hurrah for Dorsey;" he heard the hollering and cheering and the jury could have heard what he did. That the applause he heard was outside of the cafe, he did not hear the cheering from the inside of the cafe. That he did not remember how many people came up in front of the cafe. No one came in the cafe into the room where the jury was, that is, in the room in the rear.