

the poll of the jury, which was then in progress, and not finished. Indeed, so great was the noise and confusion without that the Court heard the responses of the jurors during the polling with some difficulty. The Court was about 10 feet from the jury. In the court room was the jury, lawyers, newspaper men, and officers of the court, and among them there was no disorder.

The polling of the jury is an important part of the trial. It is inconceivable that any juror, even if the verdict was not his own, to announce that it was not, in the midst of the turmoil and strife without.

The exhibits J to AA inclusive are hereby made a part of this ground, and the Court will err if it does not grant a new trial on this ground.

67. Because the Court erred in failing to charge the jury that if a witness knowingly and wilfully swore falsely in a material matter, his testimony shall be rejected entirely, unless it be corroborated by facts and circumstances of the case or other creditable evidence.

The Court ought to have given this charge, although no written request was formally made therefor, for the reason that the witness Jim Conley, who testified as to aiding Frank in the disposal of the body, was attacked by the defendant as utterly unworthy of belief, and he admitted upon the stand that he knew that he was lying in the affidavits made by him, with reference to the crime and before the trial.

Especially ought this charge to have been given, because the Court, in his charge to the jury, left the question of the credibility of witnesses to the jury, without any rule of law to govern them in determining their credibility.

68. Because the Court permitted to be read to the jury, over the objection of the defendant made at the time the testimony was offered, that same was immaterial, irrelevant, incompetent, and not binding upon Frank a part of an affidavit made by the witness Minola McKnight, as follows:

"They pay me \$3.50 a week, but last week she paid me \$4, and one week she paid me \$6.50. Up to the time of this murder I was getting \$3.50 per week and the week right after the murder I don't remember how much she paid me, and the next week they paid me \$3.50 and the next week they paid me \$6.50, and the next week they paid me \$4, and the next week they paid me \$4. One week, I don't remember which one, Mrs. Selig gave me \$5, but it wasn't for my work, and they didn't tell me what it was for, she just said 'Here is \$5 Minola.'"

The Court permitted this part of the affidavit to be read to the jury over the objections above stated, and in doing so erred for the reasons stated.

This was prejudicial to the defendant, inasmuch as it permitted the affidavit of the witness Minola McKnight to be read to the jury as to transactions between herself and the Seligs, with which Frank had no connection, but which the solicitor-general insisted showed that Frank's relatives were seeking to influence this darkey by paying her money in addition to that which she earned. The Seligs and Minola McKnight had been asked