

prejudice in the minds of the jurors against the defendant; and, not to illustrate the question of whether he was or was not the murderer of Mary Phagan. The Court overruled these objections and let the testimony go to the jury; and in doing so, movant contends, erred for the reasons above stated.

79. Because the Court permitted the witness, Harlee Branch, at the instance of the solicitor-general, to testify to incidents at the pencil factory, wherein Conley, after having made the third affidavit, purported to re-enact the occurrence of the murder between himself and Frank, wherein the body of Mary Phagan was taken from the office floor to the cellar of the factory, the testimony permitted by the Court being substantially as follows:

"I will have to give you the time of Conley's arrival at the factory, approximately. I was up there at twelve o'clock, and I was a few minutes late. Conley had not arrived there then. We waited until they brought him there, which was probably ten or fifteen minutes later. The officers brought Conley into the main entrance of the factory here and to the stair-case—I don't know where the stair-case is here—yes, here it is (indicating on diagram) and they carried him up here and told him what he was there for, and questioned him, and made him understand that he was to re-enact the pantomime. After a few minutes conversation, and a very brief conversation, Conley led the officers back here and turned off to his left to a place back here; I guess this is it (indicating on diagram), right where this is near some toilets, and he was telling his story as he went through there, and he said when he got up there, he went back and found this body in that place. He was talking constantly—all the time; I don't know how he made out a part of his story. Well, when he got back— After reaching this point at the rear left side of the factory, describing the position of the body, as he stated it, he stated the head was lying towards the north and the feet towards the south, as indicated, and there was a cord around the neck. He didn't state how long it took for the various movements. I didn't time it; I know the time I arrived there and the time I left the factory. Conley said when he found the body he came up to Mr. Frank—called to him some point along here I should judge (indicating on the diagram). I don't understand this diagram exactly. And he told him the girl was dead, and I don't know just exactly what Frank said. I will try to eliminate as much of that conversation as I can. Anyhow, he said he came on up to where Mr. Frank was, and that he was instructed to go to the cotton room, which he showed us; I don't know, it must be on the same side of the building about here, I judge (indicating) and he went in there. He showed us the cotton room, and he said he went back, and he did go back, led us back, and told about taking up the body, how he brought it up on his shoulder, and then, in front of a little kind of impression on the wall, he said he dropped it, and he indicated the place, and then he come up and told Mr. Frank about it—that he would have to come and help him or something like that—and that Mr. Frank came back and took the feet, I believe he said, and he took the head, and they brought the body up to the elevator and put it on the elevator. He was enacting this all the time and talking all the time. He described how the body was put on the elevator, and he said Mr. Frank run the elevator down, and he went down on the elevator. On this trip he went down in the elevator to the basement, and he said Mr. Frank helped to take the body out, and they dropped it there, and Mr. Frank told him to take it up and