

Mr. Dorsey: Holloway says when he got back Monday morning it was hung up in the office, but Boots Rogers said this man Frank—and he was sustained by other witnesses—when he came there to run that elevator Sunday morning, found that power box unlocked.

Mr. Rosser: That's not what you said.

Mr. Dorsey: Yes, it is.

Mr. Rosser: You said Frank had the key in his pocket next morning, and that isn't the evidence, there's not a line to that effect.

The Court: Do you still insist that he had it in his pocket?

Mr. Dorsey: I don't care anything about that; the point of the proposition, the gist of the proposition, the force of the proposition is that old Holloway stated, way back yonder in May, when I interviewed him, that the key was always in Frank's office; this man told you that the power box and the elevator was unlocked Sunday morning and the elevator started without anybody going and getting the key.

Mr. Rosser: That's not the point he was making; the point he was making, to show how clearly Frank must have been connected with it, he had the key in his pocket. He was willing to say that, when he ought to know that's not so.

The Court: He's drawing a deduction that he claims he's drawing.

Mr. Rosser: He doesn't claim that. He says the point is it was easily gotten in the office, but that's not what he said."

The Court: You claim that's a deduction you are drawing?

Mr. Dorsey: Why, sure.

The Court: Now, you don't claim the evidence shows that?

Mr. Dorsey: I claim that the power box was standing open Sunday morning.

The Court: Do you insist that the evidence shows he had it in his pocket?

Mr. Dorsey: I say that's my recollection, but I'm willing to waive it; but let them go to the record, and the record will sustain me on that point, just like it sustains me on the evidence of this man Rogers, which I'm now going to read.

Movant says that the Court erred in not rebuking the Solicitor-General for the foregoing improper argument which was not warranted by the evidence, and erred it not stating to the jury that there was no evidence that Frank had the key in his pocket, and in allowing the Solicitor-General to proceed unrebuked and uninterrupted with said illegal argument, and in not making a square and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor-General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions, and failures to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor-General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

"It wouldn't surprise me if these able, astute gentlemen, viligant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you."