

102. Movant further says that a new trial should be granted because of the following:

The Solicitor-General, in his concluding argument, in referring to act of Judge Roan discharging the witness, Conley, from custody, stated:

"Judge Roan did it, no reflection on the Sheriff, but with the friends of this man, Frank, pouring in there at all hours of the night, offering him sandwiches and whiskey and threatening his life, things that this Sheriff, who is as good as the Chief of Police but no better, couldn't guard against because of the physical structure of the jail, Jim Conley asked, and His Honor granted the request, that he be remanded back into the custody of the honorable men who manage the police department of the City of Atlanta."

Whereupon the following occurred:

Mr. Rosser: No, that's a mistake, that isn't correct, your Honor discharged him from custody, he said that under that petition your Honor sent him back to the custody where you had him before, and that isn't true. Your Honor discharged him, vacated the order, that's what you did.

Mr. Dorsey: Here's an order committing him down there first—you are right about that, I'm glad you are right one time.

Mr. Rosser: That's more than you have ever been.

Mr. Dorsey (resuming): No matter what the outcome of the order may have been, the effect of the order passed by His Honor, Judge Roan, who presides in this case, was to remand him into the custody of the police of the City of Atlanta.

Mr. Rosser: I dispute that, that isn't the effect of the order passed by his Honor, the effect of the order passed by his Honor was to turn him out, and they went through the farce by turning him out on the street and carrying him back. That isn't the effect of your Honor's judgment. In this sort of case, we ought to have the exact truth.

The Court: This is what I concede to be the effect of that ruling: I passed this order upon the motion of State's counsel, first, is my recollection, and by consent of Conley's attorney.

Mr. Rosser: I'm asking only for the effect of the last one.

The Court: On motion of State's counsel, consented to by Conley's attorney, I passed the first order, that's my recollection. Afterwards, it came up on motion of the Solicitor-General, I vacated both orders, committing him to the jail and also the order, don't you understand, transferring him; that left it as though I had never made an order, that's the effect of it.

Mr. Rosser: Then the effect was that there was no order out at all?

The Court: No order putting him anywhere?

Mr. Rosser: Which had the effect of putting him out?

The Court: Yes, that's the effect, that there was no order at all."

Mr. Dorsey (resuming): First, there was an order committing him to the common jail of Fulton county; second, he was turned over to the custody of the police of the city of Atlanta, by an order of Judge L. S. Roan; third, he was released from anybody's custody, and except for the determination of the police force of the City of Atlanta, he would have been a liberated man, when he stepped into this Court to swear, or he would have been spirited out of the State of Georgia, so his damaging evidence, couldn't have been adduced against this man.

The Court erred in allowing the Solicitor-General to make the foregoing argument, over objection, which was not authorized by the evidence, and in not rebuking and correcting the Solicitor-General; and because of such failures