

As to Ground 17. The State, recognizing that the law is that a new trial could never be granted upon the mere ground that some witness sworn in a case has repudiated the evidence given on the stand, has not made any great effort to locate J. E. Duffy, the witness referred to. The law is that, before a verdict can be set aside, the witness repudiating his evidence must be convicted of the offense of perjury. The State asserts that Duffy has not only not been convicted, but that no effort whatsoever has ever been made to obtain his conviction. If the law of the land is applied to the case of the State against Leo M. Frank, convicted of the offense of murder in this case, as the Judges and Courts have applied it in other cases, this constitutes no ground for setting aside the verdict and granting a new trial, even if it should be true; first, because, as a naked proposition, no matter how material the evidence may have been; and second, because the evidence of J. E. Duffy was only material in impeaching evidence introduced by the defendant through a witness by the name of Lee. The State insists that the evidence of Lee itself, on its face, was ridiculous and absolutely so false that no honest jury could have given credence thereto; and the State insists that in no view of the facts with reference to Duffy's evidence, could Leo M. Frank expect a different result than a verdict of guilty.