

We did not know during the trial nor until after the motion for the new trial had been overruled that Mrs. Mamie Edmunds (formerly Mamie Kitchens) would testify as she has testified in her affidavit here to the court shown, dated April 13, 1914. Mamie Kitchens was a witness for the State at the original trial and was cross-questioned at length by one of ~~the exponents~~ us and we did not know, nor did we have any reason to suppose that the facts existed as set out in her affidavit to the court shown at the hearing.

(Exhibit A, attached to said affidavit is as follows)

"EXHIBIT "A"

Ground 65. (a) On August 6, 1913, during the trial, the defendant's counsel, moved to rule out the testimony of the witness Conley tending to show acts of perversion and acts of immorality, on the part of the defendant, wholly disconnected with and disassociated from this crime. The Court declined to rule out said testimony and, immediately upon the statement of the court that he would let such testimony remain in evidence before the jury, there was instant, pronounced and continuous applause throughout the court room where the trial was being had, by clapping of hands and by striking of feet upon the floor.

While the jury was not then in the same room where the trial was being had, they were in a room about fifty feet from where the Judge was sitting and about twenty feet from portions of the crowd applauding, and so close that perhaps the jury could have heard the applauding.

(b) And again, during the trial, Mr. Arnold, one of the counsel for the defendant, in the presence of the jury, objected to a question asked by the Solicitor, and the following colloquy took place:

Mr. Arnold: I object to that your Honor, that is entering the orders on that book merely; that is not the question he is asking now at all.

The Court: What is the question he is asking now?
(Referring to questions asked by Solicitor-General.)

Mr. Arnold: He is asking how long it took to do all this work connected with it. (Referring to work done by Frank that day of the murder.)

The Court: Well, he knows what he is asking him.
(Referring to the Solicitor General.)

Upon this suggestion of the Court that the Solicitor knew what he was doing, the spectators in the court room applauded by striking their hands together and by striking their feet upon the floor, creating a demonstration. Defendant's counsel complained of the conduct of the spectators in the court room. The Court gave no relief, excepting directing the Sheriff to find out whom was making the noise.

(c) During the examination by Mr. Arnold, counsel for the defendant, of V.H. Kriegshaber, a witness for the defendant, there was laughter in the audience sufficiently generally distributed throughout the audience, and loud enough, to interfere with the examination. Mr. Arnold called the court's attention to the interruption for the purpose of obtaining some action from the court thereon.

The Court stated that, if there was other disorder, no one would be permitted in the court room the following day, and requested the sheriff to maintain order.

(d) That during the trial, on Friday, August, 22nd, 1913, when the court had adjourned for the day, and the jury was about 300 feet away from the court house, proceeding north on Pryor Street