TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 98

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, AND OLEN MONTGOMERY, PETITIONERS,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,795)

( )

SUPREME COURT OF THE UNITED STATES

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[fols. a-1]

[Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, and EUGENE WILLIAMS

INDICTMENT—Filed March 31, 1931

THE STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT, SPECIAL MARCH TERM, 1931

The Grand Jury of said County charge that before the finding of this indictment Haywood Patterson, E-ge-e Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarency Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

H. G. Bailey, Solicitor for Ninth Judicial Circuit.

No. 2402. State of Alabama, Jackson County. The State vs. Haywood Patterson et al. Indictment. Rape. No Prosecutor. Witnesses: Ruby Bates, Victoria Price, Orvall Gilley, Dr. R. R. Bridges, Dr. Linch, C. M. Latham, C. S. Broadway, C. F. Simmons, Tom Taylor Rousseau, Jim [fol. 2] Broadway. A true bill. J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT

No. 2402

WRIT OF ARREST

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson et als at the Special term, 1931 of the Circuit Court of Jackson County for the offense of Rape. You are therefore commanded forthwith to arrest the said Haywood Patterson et als and commit them to jail, unless they give bail to answer such indictment at the said Curcuit Court of Jackson County in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

Executed by arresting the within named Defendants and Jail.

3-31-3.

M. L. Wann, Sheriff.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE

vs.

HAYWOOD PATTERSON et als.

JUDGMENT ENTRY

April 8th, 1931.—Comes H. G. Bailey who prosecutes for the State of Alabama in this behalf and came also the defendants, Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery in their own proper person and by their attorneys of record and the said defendants demanded a severance in this case, and the same was granted by the Court, the said defendants did also file motion for change in venue to which the court overruled and the defendants did except to the ruling of the Court; The said defendants being now in open Court were duly arraigned and having the indictment read over to them and each individually for his plea thereto said that he was not guilty;

Issues being joined, there came a jury of good and lawful men to wit, Lem R. Jones and eleven others, who being empannelled and sworn, according to law, upon their oaths do say: "We the jury find the defendants guilty of rape as charged in the indictment and fix their punishment at death.

(Signed) Lem R. Jones, Foreman.

April 9, 1931.—The said defendants, the said Eugene [fol. 3] Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery being now in open Court and being asked by the Court if they had anything to say why the sentence of the law should not now be pronounced upon them and the said defendants and each of them says nothing. It is therefore considered by the Court and it is the judgment of the Court and the sentence of the law that the said defendants the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery be sentenced to death by electrocution at Kilby Prison in the City of Montgomery, Montgomery County, Alabama, on Friday the 1st day of July, 1931.

April 18, 1931, the Clerk of this Court did write death warrants for the said Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery and the same directed to the warden of Kilby prison commanding him to fail not in executing the said sentence and make his return as to how and when he executed the same.

Defendants appeal to Supreme Court and sentence suspended pending said appeal.

IN CIRCUIT COURT OF JACKSON COUNTY

THE STATE OF ALABAMA

vs.

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, and EUGENE WILLIAMS

Bill of Exceptions—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 8th day of April, 1931, present and presiding the Honorable A. E. Hawkins, Judge of said Court, the following proceedings not otherwise appearing of record, were has, to-wit:

On the 6th day of April, 1931, the defendants Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams filed in said cause their petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendants in this cause, to-wit: Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, was granted upon motion of the State.

Said petition for change of venue is in words and figures as follows, to-wit:

PETITION FOR CHANGE OF VENUE

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that [fol. 4] the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county

had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflam-atory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked Exhibit "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

Ozie (his X mark) Powell. Haywood (his X mark) Patterson. Eugene (his X mark) Williams. Charlie (his X mark) Weems. Roy (his X mark) Wright. Willie (his X mark) Roberson. Andy (his X mark) Wright. Olen (his X mark) Montgomery. Clarence (his X mark) Norris.

Sworn to and subscribed before me this 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

Said Exhibit "A", attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

[fol. 5]

Nine negro men rape two white girls, charge.

Threw white boys from freight train and held white girls prisoners until captured by posse.

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National Guard called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls' home Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county.

Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to the jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of the two white girls they held prisoner on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 19 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Carter and Orville Gilley.

All of these white men gave addresses in other states except Gilley, who stated his home was at Albertfille in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault. The negroes, as hard looking lot as ever marched into jail [fol. 6] here gave their names as Ozey Powell, Chas. Weems, Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson

of Columbus, Ga. These last four named negroes were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty ones and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and white boys, the two girls and seven white boys were in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one by one of the black brutes overpowered them and threw them over the side of the car.

One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham, of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both

sides of the railroad and stopped the train and got every negro brute as he dropped from the cars.

The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

The negroes were lined up at Paint Rock and Sheriff [fol. 7] Wann and the posse brought all nine of them to Scottsboro where they were identified by two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and pled for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Guntersville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here within less than three hours' notice from the time his men were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the sheriff and many of his deputies who had been on watch throughout the night. Today it was decided to send the negroes to Gadsden and the Nation- Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in Country

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most atrocious crime charged in our county, that

the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by a legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey arrived in Scottsboro Thursday morning and immediately went into conference regarding a special term of the grand jury and circuit court. The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court, [fol. 8] to reconvene the Monday following. April 6th, County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict and be a part in keeping peace in this time when it is hard to be lawabiding. Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Guntersville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charges of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of the country.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

[fol. 9] Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday Morning investigating the case and Tuesday morning reported twenty indictments for rape against the nine negroes. There were nine individual indictments against the negroes for the alleged rape of Victoria Price, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This place- three indictments against each negro for the alleged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpowering or throwing from a moving freight train seven white boys who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week.

They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although these case charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary [fol. 10] attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places. It is understood that the Scotts-

boro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards here next Monday. Major Starnes will command picked Troops at trial next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was in the night and his men had to be notified at their homes in many parts of Marshall and Etowah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of the Jackson Circuit Court which will try the nine negroes in-
[fol. 11] dicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, Lm. M. White, Bridgeport, W. C. Lind-

say, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Bash, James D. Allen, Rash, Lee Hicks, Olalee, Ed Matthews, Ollalee, Arthur Gamble, Olalee, C. C. Allen, Olallee, A. L. Starkey, Hollywood, Wade S. Rowe, Pishgah, Will G. Sartin, Pishgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Scottsboro, Tom W. Flowers, Scottsboro, L. D. Dean, Scottsboro, J. Exum Sumner, Scottsboro, John L. Staples, Scottsboro, J. W. Austell, Scottsboro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Limrock, W. B. Clark, Princeton, J. F. Wilkins, Wininger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn to supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to draw them as needed. The following jurors also report next Monday morning:

Wm. E. Moore, Pisgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Limrock, Lee Golden, Princeton, W. Gordon Harris, Hollywood, John L. Blevins, Stevenson, Wm. E. Glover, Limrock,

Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub. F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, [fol. 12] Princeton, John Golden, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoga, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Joe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

Jaskson County Sentinel

Scottsboro, Ala., April 2, 1931.

Alleged Negro Attackers and Their Victims

(Picture Appearing in Newspaper)

[fol. 13] Jackson County Sentinel

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes. This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any

men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter. But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocense before a verdict is rendered. If they cannot prove innocense the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Every body is urged to keep down any and all friction with the troops. They are nice, gentlemanly young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

[fol. 14] The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on the pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and

assault. This white boy was bruised and scratched, he said by the negroes choking and beating him.

The Sentinel is not trying to convict the negroes without a trial, it just resents the insinuations of those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train. How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car. How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beasts of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

[fol. 15] The terrible story of the ride on that freight train between Chattanooga and Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it. The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted

(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned ro respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word, to the impassioned men without, that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes. The circumstances were peculiarly trying. Some of the negroes have confessed that 12 of them attacked two white girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be because it has been the policy of public officials, especially Governors, and the policy of newspapers, for many years to condemn mob action. Alabama Governors generally have been vigorous in their efforts to combat the mob spirit. Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was *was* wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime. In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

[fol. 16] Defendants separately and severally offered in evidence, in support of their petition for change of venue,

said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally. In support of said petitions for change of venue, defendants separately and severally offered the following oral testimony:

M. L. WANN, having been duly sworn, testified as follows:

My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit so accompany the prisoners to court when they were brought here several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard.

Cross-examination:

The Solicitor for the State propounded the witness the following question:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Defendants separately and severally objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony.

The court overruled the objection; to this ruling of the Court defendants separately and severally reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than

it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. [fol. 17] I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

JOE STARNES, having been duly sworn, testified as follows:

Direct examination:

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National

Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court.

Several days ago I had a picked group of twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call — the State Adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued orders to my men not to let any come in the Court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the Court on every appearance [fol. 18] of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants I have brought them here and have carried them away. After these men were arrested I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden; then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have *have* made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any

of these defendants. I have seen a good deal of curiosity but no hostile demonstration. *My* my judgment the crowd here was here out of curiosity, and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

ORDER OVERRULING PETITION FOR CHANGE OF VENUE

"The petition for change of venue having been heard on this — day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and disallowed. It is, therefore, ordered and is the judgment of the court that the defendants' petition for a change of venue is this cause be and the same is hereby dismissed. The defendants duly excepted to the action of the court in dismissing their petition for a change of venue."

Upon motion of the State the court granted a severance as to the defendants in this case, to-wit, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene [fol. 19] Williams, and the case proceeded against said defendants.

Before proceeding to strike the jury in this case defendants separately and severally demanded a special venire in addition to the regular venire for the trial of this case.

The court declined to allow a special venire for this case and required the defendants to strike a jury from the regular venire drawn for the week and the special venire drawn in the case of the State of Alabama vs. Charley Weems and Clarence Norris, to which action of the court in not allowing them a special venire in this case, and requiring them to select a jury from the regular venire and the special venire drawn in the case of the State of Alabama vs.

Charley Weems and Clarence Norris, defendants separately and severally reserved an exception.

Thereupon, after the striking of the jury for the trial of this case, the following proceedings were had:

Victoria Price, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Victoria Price. I live at Huntsville. I am twenty-one years old. I was before the grand jury ar this term of the court.

Before that grand jury, on or about the 25th of March, I was on a freight train traveling through Jackson County, from Stevenson to Paint- Rock. I got on the train at Chattanooga. Ruby Bates was on the train with me; there was nobody else. I had left my home at Huntsville the day before and rode on a freight train to Chattanooga. Ruby Bates was with me the day before. On the 25th of March I saw these defendants over there five of them, back there on that first row, on that freight train. The train was right on this side of Stevenson in Jackson County, when I first saw them. I saw these defendants come over the top of the car box. I was in a gondola car at that time. That is a car without a top to it, with sides extending up. Gravel or chert was in that car. It was not full to the top with gravel; it was up about waist high. These defendants came over the top of a box car which was next to the gondola car. As these defendants came over the top of the box car I was in the end of the gondola next to where they came over. There were seven white boys and the Bates girl and I in there as these defendants came into the gondola car, and all of these defendants got into the gondola car where we were. When the defendants got into the gondola car they began to knock the boys off and told them to unload; they began to knock them off and after they got them all off they attacked us two girls. The first one of these five defendants [fol. 20] that put his hands on me was the one sitting there with the sleepy eyes, Olen Montgomery; he ravished me; he had intercourse with me. His private parts penetrated my private parts. While he was having intercourse with me that one sitting yonder, Eugene Williams, was telling

me I had better keep my legs open. He had a knife open in his hand. He was standing up right over me, almost. While Olen Montgomery was having intercourse with me this Eugene Williams said if we told it any way at all he would kill us if he had to come to the house and hunt us up. The rest of the defendants were standing there waiting on him, standing up over me, at the time Olen Montgomery was having intercourse with me. Each one of the defendants had a knife in his hand. While Olen Montgomery was having intercourse with me they told him to hurry up. They said the train would soon stop and they wanted their share. When Montgomery was having intercourse with me that defendant sitting right there had me by the leg, that one sitting there on the end, that one with his hands on his jaw. I don't know his name. There were twelve of them that came into the car, and these defendants were included in the twelve. They engaged in a fight with the white boys, putting them off the train. While Olen Montgomery was having intercourse with me and the other one hold me, the others were going up by the side of the car, looking and keeping the white bous off, telling them that they would kill them, that it was their car and we were their women from then on.

They had knives in their hands at that time. There was one of these white boys, that Gilley boy, on the train. I got off the train at Paint Rock. These defendants were in the car there when the train stopped at Paint Rock. When the train stopped at Paint Rock I climbed on the side of the gondola after I got my clothes fastened up, and started to get off and fell off. I had on overalls and a shirt and this coat and hat. That old big one sitting back yonder took my overalls off. That defendant sitting yonder with his hand up to the side of his head helped him take my overalls off me. I stayed in Paint Rock after I got off the train about an hour and twenty minutes, I guess. I was sitting in the store in Paint Rock when I came to myself. Ruby Bates got off the train at the same time and went with me into the store.

They put me in a chair and taken me up there. When I left Paint Rock I came here. Ruby Bates was with me. Some doctors made an examination of me that afternoon. [fol. 21] About an hour and a half or two hours after I got

off the train at Paint Rock the two doctors made an examination of my person in Scottsboro. All five of these defendants were in that car there with their knives open. They came over together and jumped into the car of gravel.

Cross-examination:

When I got on the train at Chattanooga I intended to go to Huntsville to my home. When the train stopped at Paint Rock nobody suggested or told us to get off. We got off of our own account. I did not know any officers were at Paint Rock but there was several there and had the train surrounded. I got off the train there because I did not want to go any further. I wanted to see what they done with those negroes. I knew they were going to get them because they had the train surrounded and they called up from Stevenson. I learned that after the train got to Paint Rock. About an hour and a half or two hours after I got off the train at Paint Rock I went to the doctor. I went to the doctor's office myself. I had my right sense when I was at the doctor's office. That big one back there is the first one of these boys I saw coming over the top. That is one of the defendants. When the boys came over we were standing in the corner, and as the white boys went to get off one came to where I was; I threw my legs over to get out and one jerked me back by the legs and threw me back. That old big boy is the one that did that. He threw me down.

It took three of them to get off my overalls. There was so many hands you could not tell which three of them took off my overalls, but he was the ring leader. I could tell two of the others that held me; one is the big one sitting back there, I said, and the other one is the one that was sitting in the chair this morning. I testified yesterday the big one took off my overalls first. I do not know his name. I don't know the names of any of them. I saw knives in the hands of every one except two, and they had guns, and he got hold of a knife some way after he put the gun down and held it to my throat. I see the men that had the guns now. There was two that had guns absolutely, a .38 and a .45 I did not see the men searched. All except two carried knives. They had the knives open when they came over the box car down into the gondola. I did not board the gondola at Chattanooga. I was on an oil tank when I left Chattanooga. I first saw the negroes at Stevenson. I did not say all five of these defendants had intercourse with me. There was six that had intercourse with me. There was three of these defendants that had intercourse with me. [fol. 22] The one sitting right yonder, and that one sitting yonder, and that one over yonder had intercourse with me. There was three *three* that had intercourse with the other girl. The ones that had intercourse with her did not have intercourse with me. I absolutely saw them have intercourse with the other girl. I did not take a good look at their faces but I knew they were over there where she was. I did not testify yesterday which one had intercourse with me first and go on down the line with six of them. I did not point out on yesterday the six that had intercourse with me. I know the faces of the ones that had intercourse with me. I could not tell which was the first, second, third, fourth, fifth and sixth, because they began to get down so fast I could not keep account of it. I could not recognize them all the way down. I had plenty of sense, and I remember the faces of the six that had intercourse with me. That old big one is the first one that had intercourse with me.

Redirect examination.

That defendant right there next to the last one had intercourse with me (Andy Wright); also that old sleepy eyed one (Olen Montgomery), the second from this end there, and also the last one (Eugene Williams). While one was having intercourse with me the others were running up and down the car box hallering, "Pour it to her, pour it to her." They had knives in their hands at that time. While the first and third ones were having intercourse with me on that occasion that first one there (indicating) was holding a knife against the Gilley boy, the white boy that was on the car. While this was going on the third one over there with the other girl a part of the time and was back there with Gilley boy. He had an open knife in his hand.

The third one, Willie Roberson, was one of them that was running up and down inside of the car. That third one held me; he pulled my legs apart once or twice. That is Willie Roberson. He is the one that had me by the legs and he and the others said, "Jerk her legs this way" and he just caught hold and jerked my legs that way.

Recross-examination:

The guns were not held on me all the time. They drew their guns on us once when I went to get off and when he drawed the gun on me I told him to shoot me and then all commenced surrounding us up there and threw us down there, that old big one did, and the other boys in the car walked up and down inside of the gondola keeping the white boys off and shot five times over the gondola where the [fol. 23] boys were. I didn't testify yesterday there was only one shot. I know what I said yesterday. I say today there — seven shots fired in all, from the time the racket started until it ended. I have lived in Huntsville eleven years. I live at 313 West Arm Street.

Ruby Bates, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Ruby Bates; I live at Huntsville. I am seventeen years old. On or about the 25th of March of this year I was on a freight train running between Stevenson and Paint Rock in Jackson County, Alabama. Victoria Price was with me. There was no one else with me. I was riding on a gondola car shortly after the train left Stevenson. There was gravel in that car. Victoria Price was in there with me. I saw those five negroes on the front row, these five defendants, in that car after the train left Stevenson, Alabama. I saw all five of them. When I first saw them they came over the end of the car box. That car box was attached to the gondola I was in. They all came over in a bunch. They had guns and knives in their hands. They had two pistols, and I saw some knives in their hands. The knives were open. At the time they came over that box car there were seven white boys in that gravel car besides Victoria Price and I. Victoria Price and I were in the end of the gondola at the time these negroes came over the box car. We were in the end next to the boxcar. When these defendants came over the box car they told the white boys to unload, and then they attacked us girls after they got the white boys off the train.

They hit two of the white boys in the head with pistols and drawed the knives on the rest of them, and the guns. These negroes were in the bunch that came over the box car. All five that I am now looking at got down into that gondola car. All five of them were engaged in that fight with the white boys. The white boys got off the train. They fought these negroes until they couldn't fight them. I had on overalls and shirt on that occasion. I had a coat on over the overalls and had a hat on. My overalls were taken off me. None of my other clothes were taken off; just the overalls. The colored boys ravished me then. They put their hands on me.

Cross-examination.

The overalls were the only article of wearing apparel taken off me. One of the colored boys took them off; I could not say which one. I could not point him out at all. [fol. 24] I don't know whether he is one of the defendants or not, but I know he was one of the colored boys. They all came over in a bunch, including the five now being tried, all right behind the other, as soon as they could get down in the gondola. There were twelve altogether. I don't know which one of them ravished me. I just know an intercourse was held with me. I was ravished six times. I came from Huntsville to Chattanooga on the 24th. I stayed all night in Chattanooga at Mrs. Brochie's. A boy that lived in Chattanooga directed us to Mrs. Brochie's house. I did not, neither did Victoria know him. I just met him on the street. He did not go with me to this home. I have not seen him since. Mrs. Brochie lived on Seventh Street, but I do not know whereabouts on Seventh Street; I could not tell that. I have never since seen the boy that directed me out there. There were some boys in the car with me going from Huntsville to Chattanooga. I did not talk with them, didn't say a word to them. I don't know how many there were in the car. There were several white boys in the car, but I don't know how many. I was not acquainted with them. Victoria did not talk to them. There wasn't a word passed, and we were in the same car.

There were seven boys in the car on the 25th when we started back to Huntsville. They were not the same boys or any of the same boys that were on the train with us the

day before. I had never seen any of these seven before. I had not talked with them; had not had any conversation at all; I had never seen any of those boys before. I just don't know who of them had knives but all of them except them that had guns; I don't know whether them that had guns had knives or not. Just two had guns. Every one of the colored boys I say that day had intercourse with me or with Victoria. I could not be mistaken about that. I was not so excited that I didn't know and couldn't point out any of them.

Redirect examination:

I went to Chattanooga looking for work. Victoria Price went along with me. We were both dressed in overalls. We went to Chattanooga on Tuesday and started back on Wednesday. We rode a freight train up there and rode a freight train back the next day.

Recross-examination.

I rode a box car from Huntsville to Chattanooga, and there were several white boys in that box car.

Dr. R. R. Bridges, a witness for the State, being duly [fol. 25] sworn, testified as follows:

Defendants' counsel stated to the court that the qualifications of the witness as a physician were admitted.

I recall the day it is said this freight train was stopped down at Paint Rock and some negroes taken off. On that day I made an examination of the women, Victoria Price and Ruby Bates. I was in my office when I made that examination. It was about four o'clock or a little later, in the afternoon. I found that both girls had a few minor scratches on their hands and arms and the Bates girl had some bruises on the lower part of the groin right in there on each side about the size of a nickel or a little larger, and she had a bruised place on her shoulder, and the Price girl, if I remember, had a bruise place or blue place here on the throat and on her hip behind, in the lower part of the back, right along the lower part of the hip, and a few

scratches on the forearm, and they both had vaginal secretions that showed male germs, the spermatozoa. That is about all I think we found as I remember. I found semen in the vagina of each one. I put that under a microscope. In my judgment as a physician sexual intercourse had been had with each one of these women. I could not say as to the minute or the hours how long it had been since they had had sexual intercourse, but the vagina was still loaded with secretions, and especially in the Bates girl; her vagina had more secretions than Mrs. Price; both had plenty of the semen in there, plenty of the male germ. There were no recent lacerations. In my judgment as a physician six negroes could have gone to these women without lacerating them or tearing the genital organs.

Cross-examination:

The semen did not move, and we don't swear as to whether it is dead or alive unless we see it move. There was nothing to indicate as to how long it had been since intercourse. I could not swear as to the time. I have observed and examined the privates of one of these defendants, Willie Roberson. He is diseased with syphilis and gonorrhea, a bad case of it. He is very sore. It would not be very painful for him to have intercourse; I think it would be painful but not very painful; it is according to how much anesthesa, how much deadening he has. I do not know how much deadening he has. I just conducted a superficial examination. It is possible for him to have intercourse. I have seen them that had it worse than he [fol. 26] has. I think it would be attended with some pain.

Redirect examination:

The territory between Stevenson and Paint Rock on the Southern Railroad here is in Jackson County, Alabama.

Recross-examination:

I testified I did not find any recent lacerations. I could tell from the appearance of their organs that there was present intercourse and from Mrs. Price there were three tags of lacerated hymen. I could not say how old it was. It might have been a slight laceration from child birth. I believe she admitted a miscarriage. It could have been done

there or the first intercourse. Mrs. Price admitted intercourse with her husband, and the other said she had.

Redirect examination:

Mrs. Price admitted to me that she had miscarried, and also admitted she had been married.

TOM TAYLOR ROUSSEAU, a witness for the State, having been duly sworn, testified as follows:

I live at Paint Rock, Alabama. I was out there at Paint Rock in this county on the day when these negroes were taken off the train there. I saw those five on the front row over there about the train that day. They were on the freight train when I first saw them. They were in a gondola car. I saw some women there; they were in the back end of the same car. I saw the women when they were in the car and saw the negroes when they were in the car. The negroes were still on there as far as I know right then. I later saw them after I got down there. The next time I seen them they were bringing one of the girls up in a chair. They brought her up there in town in front of the doctor's office. That was Victoria Price. She was unconscious. She was in a chair and they were toting her and her head was over this way and her eyes closed, from the depot to the doctor's office. I saw those five negroes there in that car where the girls were. I seen them get out of the car. I did not see anybody else in that car at Paint Rock.

Cross-examination:

I did not talk with the girls when they got out of the train. I could not tell you who did talk with them. All I know is some of the fellows brought her up there, W. A. Mize, the signal man for the Southern Railway. I don't know whether he took her off the train. I was not there when they removed the girls at all. I don't know any thing about what went on on the train except what I have [fol. 27] heard. I just saw the negroes on the *time*; I just saw them coming out of the car. I helped to catch them and from my observation of them one time I ought to recognize all of them. I went to the station for the purpose of helping catch them.

T. M. LATHAM, a witness for the State, having been duly sworn, testified as follows:

I am a deputy sheriff. I live at Trenton. I was down at Paint Rock the day these negroes were taken off the freight train there. I saw those five defendants on the front row on or about that train on that occasion. They were in the coal car, or gravel car, rather, when I first saw them there. That car is known as a gondola car. I saw these girls Victoria Price and Ruby Bates after they got out on the ground. I saw them get out of the gondola car, the same car the negroes were in. One of these women, Victoria Price, could not walk. They took them up in the boiler room of the hosier- mill there at Paint Rock first; then I think they took them to the doctor's office. I had charge of the prisoners and I did not go with them.

Cross-examination:

All I know is that I got word to go do*nw* to the station and arrest them and I took them off the train.

T. L. DOBBINS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live this side of Stevenson, about thirty yards, I guess, from the right-of-way of the Southern Railroad. I live about two miles this side of Stevenson. I remember the day it is said these negroes were taken off this train down at Paint Rock. On that day I observed a freight train passing along the railroad near my place up there headed this way toward Huntsville. I guess that was about twelve o'clock, between eleven and one o'clock somewhere. I seen several people on that train as it passed. I could not tell much what they were doing only I seen some people in a gondola and they were scuffling and I jumped to the door

and before I could see to tell what they were doing my view was cut off. That was a gondola car. I could not tell whether they were white or black. I saw some scuffling going on. I did not see anybody get off the train or thrown off the train. There was a fellow running back this way [fol. 28] on a box car, back in behind. I knew him. That was Will Cox. After the train passed I did not pay any attention to anybody along the right of way there. I just saw it pass.

Cross-examination:

I just saw the train pass on that day with people in the gondola car. I don't know anything about who they were.

See Adams, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson. I recall the day it is said this train was stopped at Paint Rock and some negroes taken off it. On that day I was near the railroad when the train passed coming this way going toward Huntsville. I saw a bunch of people in a car box, negroes, in a coal car. I don't know the name of the car, but they were in a coal car. I was on the left hand side of the railroad and I saw striking this way (indicating), and the train ran on a little piece and I saw a man go out over the car over on the right hand side of the road from me, on the opposite side from me. He went off down on the other side from me. I just saw him go over. The backs of the men doing the striking were to me. After the train passed I saw two white men coming back up the railroad, going in haste back towards Stevenson.

Cross-examination:

Those men had th*ere* backs to me and were striking that way and then of course, there was a whole raft of negroes—no, they were negroes in the car—some were sitting on the side of the car and some were standing up. I know they were negroes. They were standing looking on, looking

that way, in the gondola car. There was a whole host of them standing there looking on, somewhere around ten or twelve or fifteen, something like that. They were fighting and scuffling; not all of them; I saw, I think two personally and the others were standing around looking on.

At this point the State rested its case.

[fol. 29] Defendants' Evidence

Ozie Powell, one of the defendants, having been duly sworn, testified as a witness in behalf of the defendants as follows:

My name is Ozie Powell. I was on that freight train traveling out of Chattanooga toward Huntsville on the 25th of March. I boarded the train at Chattanooga. That boy right there (indicating) was with me when I boarded the train. I met him in Chattanooga. That is the only boy I knew, and I did not know him real good. My home is in Atlanta.

I got on a crosstie car, got on the flat car with crossties on it, and there was just one boy with me when I got on the trai*l*. I just met him in Chattanooga. I did not run on the other boys. I crossed over and got between the gondola and a box car and I did not see him until I got to Chattanooga again; that is when I missed him, down to Paint Rock; that is when I missed him, when I got down between them cars. I was not with him on that train; he was going to Memphis and I was too. I was not in the fight that took place on the train. I do not know what car on the train the fight took place. I don't know when it first started up but when I seen it, it was in the gondola car.

I saw the fight then. When they were fighting in the gondola I was between the gondola and the box car. This fight was going on in the gondola. I could not tell you about how many gondolas there were in the train; a right smart, I know, though. I do not know how many negroes and white boys were in this gondola fighting. I had not been with any of them. I did not see any women in that car. I did not see no women until I got to Paint Rock. I never

said anything to any woman on that train. I did not grab any woman. I did not hear anything said about women before I got to Paint Rock. I did not hear nobody say nothing about no women until I got to Paint Rock. That is where I found this buddie of mine that was with me; after I left him on the crosstie car and gown down between the gondola and the box car. I never did get over in the gondola; I never was in the gondola. I did not have a knife. The officers searched me and didn't find a knife. I did not have a pistol. I had not thrown away a knife. I did not even have any knife.

Cross-examination:

I don't know what negro I was with. They call him Willie, the one standing right yonder, the one in the front [fol. 30] seat on that side on the end. When I looked over in the gondola I didn't see him over there. I got on the train in Chattanooga. I got on a car that had crossties on it. I didn't know how many cars was between that car and the gondola car where I saw these negroes all in there; there were about three or four. There wasn't anybody over there when I crossed over from the crossties to the gondola. I crossed over on a box car and then I climbed down between the box car and the gondola. I did not see anybody up on top of the box car, did not see a soul. While the fight was going on I seen some over my head, coming in the gondola, and I saw fighting going on in the gondola. I did not see any pistols or knives. I did not know any negroes fighting in there. They were fighting with white boys. I don't know what they did with the white boys. The white boys hopped off. I don't know how many hopped off. I don't know what part of the road that happened on. I don't know nothing about the road at all.

We stopped one place from the time we left Chattanooga until we got to Paint Rock. I don't know the name of that place. I would know it if I heard it. It was Stevenson. That is not where I changed over.

I had done changed over. I did not know these other negroes were on the train. I knew there was a gang on there, but I did not know all of them. I did not see them and the white boys together up at Stevenson. I did not see any at Stevenson. While I was at Stevenson I was

between the gondola and the car. I crossed over from the crosstie car to the gondola car when I first come through the tunnel, I left the crosstie car and came to the gondola car because the wind was blowing and I got down in there to keep the wind from striking me. I- would not have been better to have stopped between the box car and the gondola car to keep the wind off, because a gondola car made like this you can get up under them. I was sitting back under there. That kept the wind off me. I did not see the white boys or the negroes walking along the ground while I stopped at Stevenson. I rode from just after I passed through the tunnel down to Stevenson under that gondola. While I was stopped at Stevenson I did not see any of these negroes at all. I don't know what became of my bu*nch*. I knew he was on the train when I left him, but I don't know where he went. I did not see any of these boys or girls or negroes either all along the road until I got to Paint Rock. I did not see them after I left Stevenson crossing over, getting in that gondola. I did not see them at all. Right after I passed Stevenson I saw them jump off the box car into the gondola. I saw the negroes going [fol. 31] into the gondola, crossing up overhead above me. They would not come down on the place I was. They just jumped over the gondola from the top of the car. I don't know how many crossed over. I did not count them. There was a gang of them. I did not hear them say anything.

I heard them cursing. I heard fighting. I heard some boy say, "Get off," I don't know who it was. The other boy said he was not going to get off unless they threwed him off. I did not hear anybody throw him off. I seen him climb off. I saw the boys getting out of there. There were seven white boys. I did not hear a pistol fire. I sat there from Stevenson all the way to Paint Rock and never heard a pistol. I heard two or three words cursing in there. I did not hear a woman scream in there. I didn't hear a woman holler. I didn't look up in there to see who was in there and I don't know who was in there. I don't know whether any girls were in there or not then. Nobody saw me back under there.

I guess the white boys seen me after I poked my head around. I never did see the girls.

Redirect examination:

There was a good deal of noise made by the train. I don't know exactly where the train was when the fighting first started, but it was on this side of Stevenson. That is the first I knew of any fighting.

There were a good many negro boys on that train that are not here now. There was a gang of them. I don't know what became of them. I don't know anything about them at all.

WILLIE ROBERSON, one of the defendants, having been duly sworn, testified as a witness for the defendants as follows:

Direct examination:

My name is Willie Roberson. I live at Memphis, Tennessee. I had not known any of these boys before that day I met them on the train. Ozie Powell and I got on the train together at Chattanooga. I met Ozie Powell in Chattanooga. He got on one end and I got on the other. I was by myself when I got on the train at Chattanooga. I don't know what became of Ozie Powell. He got on one end and I got on the other. After I got on the car I stayed where I got on it, between two box cars and after it stopped at Stevenson I walked back and got in an empty box car by myself, the third car from the caboose. I got on a log car, a flat car, when I first got on at Chattanooga. That car [fol. 32] had a lot of logs on it. Then I rode until it stopped, and after it stopped I walked back down and got in a box car and laid down. I continued to stay in the box car until I was taken off the train at Paint Rock. I did not see the other boys on the train going down. I did not see but one, and that was Ozie Powell, and I saw him when I first got on the train in Chattanooga. I did not see any other negroes on the train until I was taken off at Paint Rock. I did not know anything about the fight. I did not know there had been a fight on the train until I was told about it at Paint Rock. I am the boy that the doctor testified was suffering from syphilis and gonorrhea. I went to Atlanta to the Grady Hospital for that. I have had that trouble four months. They did not take me in the Grady Hospital. They asked me if I stayed in Georgia and I told them no, sir, and he told me to come in and they would give me a treatment for gonorrhea and syphilis.

They said they could not take me in Atlanta because I wasn't registered there. I suffer now from both diseases, syphilis and gonorrhea. I have chancres. They are swollen and sore. I could not have intercourse. I am in such shape that I could not have intercourse. I exhibited my person to the doctor yesterday. That trouble I have is painful. It pains and hurts me all the time. I was sick on the train, lying down in the box car. I was in the box car from the time I left the flat car until I got to Paint Rock. A man came in and throwed a pistol on me. I was not armed in any way. I did not have a pistol. I did not have a knife. The officers did not find a pistol or knife on me. I knew about none of these other negroes except Ozie Powell.

The reason Ozie could not find me on the train was because I was in a box car, in there lying down on one end. There was something the matter with my privates down there; it was sore and swelled up. It hurt me to walk. I can not lift anything. I am not able to have sexual intercourse. I couldn't have.

Cross-examination:

My name is Willie Roberson. I just met Ozie Powell in Chattanooga.

I am the one that had syphilis and gonorrhea too. I didn't hold the other little girl's legs while the other one ravished her. I did not hold her legs open and say "Hold your durn legs open." I did not take my hands and pull her legs apart for two of them while two ravished her. I swear that I did not do that. I was traveling in a box car when they arrested me in Paint Rock. They took me out of a box car. I never saw any of the other negroes anywhere along there. I went in the box car after it stopped [fol. 33] there. I was feeling bad and I walked back down there and got in the box car and stayed there all the time. I am not the one that held her legs open while two of the other negroes had intercourse with her.

ANDY WRIGHT, one of the defendants, being first duly sworn, testified:

Direct examination:

My name is Andy Wright. My home is in Chattanooga, Tennessee. I have lived there all of my life. I drive a

truck for the B. L. Tally Produce Company there; he is a wholesale produce dealer. I am nineteen years old the 23rd day of this month. I got on this train at Chattanooga. Haywood Patterson, Roy Wright and Eugene Williams were with me. Ozie Powell nor Willie Roberson was with us. I had not seen them in Chattanooga. I did not know they were on the train; I did not find out they were on the train till after I got to Paint Rock. I boarded an oil tank car, and stayed on that car until the train was going into Stevenson. I got off the train at Stevenson. When I got on the train again, I got on a gravel car, and at that time Eugene Williams, Roy Wright and Haywood Patterson *with* with me. There was nobody in the gravel car at that time but just we fou*d* boys. The gravel car was a gondola; there were six or seven of them in the train. They were not all in line, about four in line and them some others, and then box cars in between the gondolas. I did not see any girls. I saw some fighting between those colored boys and the white boys; I saw some hop off; I heard a boy hollowing and went to see what was the matter with him, and he told me to help him and I caught him in the belt and picked him up and helped him back on the train; that was a white boy. I did not see any girls in that car; I did not see the girls. I do not know whether there were any other negroes on the train other than those I was with.

I saw some negroes getting off of the train after I saw the white boys getting off. Those negroes are not here in court. I do not know how many got off the train; three got off before we got to Scottsboro, and then I saw two get off a little below there. The train did not stop at Scottsboro. I did not have a pistol or knife on me. The officers searched me at Paint Rock, but did not find any knife or weapon of any sort on me.

I did not have intercourse with a woman on that train.

I did not even see a woman on the train; I saw them after I got to Paint Rock; I saw two there, the two women [fol. 34] who are here in the court. That is the first time I had seen them. I had nothing whatever to do with them. I did not hit any of the white boys; I was not engaged in the fight. All I did was to reach out and help pull a white man back up in the train. I do not know how many white men left the train; I do not know what started the fight.

Cross-examination:

My name is Andy Wright. I saw the woman sitting over there in Paint Rock; I never saw her before I got to Paint Rock. I did not see that woman; I did not ravish her or curse her. I did not say to her, "God damn you, if you hadn't been so damn smart and fought like you did, we wouldn't have bothered you." I did not tell her, when I got through ravishing her, "Yes, you will have a baby after this." I did not have any such talk as that; I swear that I was not in that car where the women were; I never saw this woman; I never had any talk like you stated, none at all. I will stand on a stack of Bibles and say it.

Olen Montgomery, one of the Defendants, being first duly sworn, testified:

Direct examination:

I am Olen Montgomery; I live at Monroe, Georgia. I got on the train in Chattanooga, on an oil tank. I was alone; no one was with me. I did not see any other negroes on the oil tank; I was the only one there where I was. I stayed on that car from Chattanooga to Paint Rock; I did not see anything of this fight; I did not know anything about it until I got to Paint Rock. I did not know there were other negroes on the train. I was not acquainted with any of the other boys at that time. The only acquaintance has been since I was arrested. I did not know women were on the train. I did not have anything to do with raping those girls; I had not seen them. If I had seen them, would not have known whether they were men or women; I cannot see good. I first saw them at Paint Rock. I did not see any of the other boys on the train because I was away back the seventh from the end. I was on an oil tank car. I do not know how many oil tank cars there were in the train; I saw four. I do *now* know how many cars there were in the train, about forty cars. The tank car on which I was riding was away back at the lower end of the train, the seventh from the end. I do not know where the gondola was that they were fighting in; I did not see in it and was not in the gondola.

[fol. 35] Cross-examination:

I did not know any of the boys. I live at Monroe, Georgia, forty-eight miles below Atlanta. I was going to Memphis. I left my native town on Tuesday before, I came to Atlanta. I was going to a clinic hospital in Memphis, to have my eyes worked on. I did not know of any these boys on the train; I was just on the oil tank. I reckon I could be seen on the oil tank; I did not see anybody on that oil tank. I rode all the way from Chattanooga to Paint Rock on that tank. I did not get off at Stevenson. I did not see any negroes or boys pass my car. I did not see anybody at Stevenson. I just stayed on there and went on to Paint Rock, and they took me off that oil tank when the train reached there. There were six cars between me and the caboose of that train. I do not know how many were between me and the engine, but a good many. I did not see the gondola that they claimed the fight was in when I got to Paint Rock. I did not see any of those boys up there at Stevenson; I did not see them walking along the track or anything. I can see the woman sitting over there. I will swear to the jury that I never saw that woman before. I am not one of the boys that ravished her on that occasion; I did not have anything to do with it. The negro, Willie Roberson, did not hold her legs while I raped her in that gondola car; I did not have anything to do with her.

I did not hear any shooting or any cursing on that train. I heard the brakeman and conductor talking back there at the caboose. They could have seen me if they had tried to do so. I do not know whether they saw me or not. I was back there alone. I did not have anything to do with those girls.

Eugene Williams, one of the Defendants, being first duly sworn, testified in his own behalf, as follows:

Direct examination:

I am Eugene Williams. My home is at Chattanooga, Tennessee. I have lived here all of my life. My parents work there. I do not work there. I live with my parents. I was going to Memphis, Tennessee; just going over there

to be going, just riding. I had been to Memphis before; I have been there two or three times, and I was going back over there just to be riding. I was with Andy Wright, Haywood Patterson and Roy Wright when I caught the train. I do not know this Roberson boy or Ozie Powell. I do not know when they got on the train.

[fol. 36] I got on an oil tank. I did not see Olen Montgomery. I do not know him. I did not see him or know that he was on the train until after I got to Paint Rock. The oil car on which I got was pretty close to the cab of the train, that is the *rail* end of the train. The gondola where the fight started was not so very far from the car that I boarded. I stayed on this oil car until we got to Stevenson. I got off the train there, and the other boys with me also got off the train there. I had not joined any other boys on the train before I got to Stevenson; I had seen some boys sitting on the side of a cross-tie car. I do not know how many of them there were, about seven or eight. They were still on that flat car when the train left Stevenson. I did not go to the flat car where they were. I went over in this gondola when the train left Stevenson. There was nobody in there when we went over there. After we got in there, some others came over the top going toward the engine. I had come over the top of the box car down into the go-dola. There were no others in this car when we went down there except we four. There were no girls in there at all. I did not see any girls until we got to Paint Rock. A fight took place there in the gondola; we fought those white boys. I do not know how many white boys there were, about seven or eight. There were eight or nine of us boys. The girls were not in there. I did not see the girls at all until we got to Paint Rock. No shooting took place in that car; I did not hear any shots fired. One boy had a gun, a long tall, yellow boy with duck overalls on. He and two other boys jumped off the train. About five or six boys that were not arrested left the train; five or six got away. I had a knife; it was like that man had there; that was my knife. I did not use that knife in this fight, but kept it in my pocket. I was in this gondola car when I was arrested at Paint Rock. We started up toward the engine and saw a crowd down there with guns and things. I do not know whether they had the girls down there at that time. When

we got up to the depot, a man cam- running up there and said we raped those girls.

I had not done anything. I had not seen them until we got to Paint Rock. Olen Montgomery was not with us; I reckon he was by himself. I had not seen him. The names of the boys with me were Andy Wright, Roy Wright and Haywood Patterson; I was with them; they are the only defendants I saw; I got on the train with them. Some of the boys are over there that were fighting down in that car, but I did not see Olen Montgomery, nor did I see Roberson. I did not see him until we got to Paint Rock. I saw Ozie Powell. He helped to fight the boys but he did not touch [fol. 37] the girls. Andy Wright helped to pull one of the boys back up on the train; he was just helping him back on the train to keep him from falling off; I did not see anybody rape the women on the train. There were a good many negroes on that train, a right smart of them. About five or six left the train.

Cross-examination:

The train did not make a stop between Stevenson and Paint Rock. They jumped off of the train while it was running. I had that long knife that you (Solicitor) had this morning. (Witness is handed knife.) This is my knife. I did not lend it to anybody. I did not rape any girls.

I did not rape that one over there. I did not hold this knife at her throat while anyone raped her. I did not see anything of that kind.

This is my knife. The man down in Paint Rock took it off of me. He got it off of me. I did not lend it to anybody else. I kept it all the time in my pocket. I did not have this knife at that girl's throat while the other negroes raped her.

Here the defendants rested their case.
Defendants rest.

Rebuttal Evidence—State

Victoria Price, a witness for the State, being called in rebuttal, testified:

Direct examination:

I saw the negro that was just on the witness stand. (Witness is handed a knife.) I have seen this knife before. I saw it in the hands of two of the boys; one of them is the big boy sitting over there (indicating) and that one just now on the stand. The big one sitting over yonder (indicating) is the first one that had the knife, and the last one in the — also had it. The last one in the chair raped me; that was Eugene Williams. After he raped me, he gave the knife back to the big boy and he commenced holding it to throat, and held it there while Eugene Williams raped me. This is the knife, and those are two that raped me.

Cross-examination:

My companion and I have been held in jail since the 25th of March last month; her name is Ruby Bates. We have been in confinement here in jail ever since. I have gone to [fol. 38] the Doctor's office and to the barber shop with the deputies, with Mr. Wann here and with Mr. Charley. They keep us locked up at the jail, both of us locked up there.

Redirect examination:

On Monday, Mr. Wann took us to the drug store. We were only kept there for the purpose of being a witness in these cases. There were no charges against us. We were in the run-around of the cell. We go out in the hall or in the nurse's department of the jail. We are not confined down there.

Willie Roberson, a witness for the Defendants, being recalled by the State, testified:

Direct examination:

I have testified that I was sick; I am suffering with syphilis. I went up in a box car; that box car was just in front of the caboose, the third car from it. I got in the car on the right-hand side going toward Paint Rock. The door was not open; I went there and pushed it open; it was closed. I crawled in the car and lay down. I did not go to sleep; I

was suffering. I pulled the door half way to as I went in. One door was pushed back and I left it half open. When I got to Paint Rock, I was taken out of that door. I do not know whether it was the officers who took me out or not; it was white men that took me off at Paint Rock. They got me out of that car; I did not jump off of that gondola and run. A man right behind a sand pile up there did not put a gun in front of me and tell me to stop. I did not apologize for running nor tell him that anybody would run under the circumstances; I did not do that. The door was half open all the time.

C. M. LATHAM, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a Deputy Sheriff down at Paint Rock. I saw Roberson that day at Paint Rock. I was on the West side of the train as it came into town; I was not on the East side. When I first saw this negro, he was up in the bunch and had his hands up. He was up there at the front of the train. I was not on top of the train, but was on the ground.

TOM TAYLOR ROSSEAU, a witness for the State, being called [fol. 39] in rebuttal by the State, testified:

Direct examination:

I suppose that I was deputized to assist in the arrest of these negroes down at Paint Rock; I was asked to go with them. I was on the left-hand side of the train the way it was going, which would be on the left hand side *of the train the way it was going, which would be on the left hand side,* or West side, as it came into the town. I did not see any doors open on the West side; I do not know about the East side; I was not on that side. When I first saw this negro here, the one on the end in front, he was up close to the engine on the train. He was between the gondola and the engine. They all came out of the gondola, going toward the engine, running on top of the freight train. I saw him

between the gondola and the engine; that was before the train stopped. They started coming out when the train came around the curve right below town and I could see them that far; that is the first I saw of him.

Cross-examination:

I recognize the defendant as the man I saw when the train was coming around the curve. They were all on there. All of them came out of the gondola. I reckon they all did. They could not have been stuck on there anywhere else; there was nothing else for them to get in. There was nothing open on the West side of the train for them to have been in. There was only one got off any way back there and he got off about as far as the back end of the court room right below me. We got them off of the train; we took them all off in a bunch. We took off eight on our side and the other one was taken off on the East side. He got off one car below me, I think. They were all scattered over about three box cars on this train. I did not count the number of cars in this train; it was a pretty reasonably long train; it wasn't so very short and wasn't so very long, between thirty-five and forty cars.

MR. BRANNON, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was one of a number of citizens who assisted in the arrest of these negroes down at Paint Rock the other day. I was on the right-hand side of the train as it came into Paint Rock; that is what we call the East side. I think that I saw that negro over there on the corner, on the end of the front row, on the top of the gondola car.
[fol. 40] He got off the train on the opposite side from me; I do not know who arrested him. I was watching the train as it came in; -here were no box car doors open on the right-hand side; none of them was open. I was looking for an open box car and came back up the train and none was open. The first time I saw this negro over there he was sitting on an old oil stove up there by a brick building. He was already off of the train at that time. He got off the

front part of the train, just ahead of the gondola the girls were in; I saw him getting off. He was not *a* inside of any box car; he was not inside a box car there.

Cross-examination:

There were box cars on the train. I don't know whether they were sealed, empty or what; I did not pay any attention to whether they were loaded or not. I gave a little attention to the boy who got off on my side of the train; it was my intention to get every negro off of the train; that was what the wire said. I could not be absolutely positive about where I got that particular boy; I can pick out the boy I arrested.

I could swear positively that he was riding on the gondola; he got off that; he passed by me on top of the train. I could not say just where he had been riding, but that is where he was when I saw him. I saw him about the time the train passed the depot. I did not get on the train before it stopped; it was slowing down some when I saw it. I do not know whether this boy was walking or crawling on top of the trains; he was on all-fours. I do not know how many negroes I saw; I did not count them. I would think that all the negroes are now in court. We looked the train over and got the bunch that was on the train. I know how many we took off the train. At the time I saw them, I could now tell how many there were of them. When I first saw them, they were something like one hundred and fifty or two hundred yards or something like that, from me. At that time, I saw him begin to get up and as he passed me, they were all crawling, some on all-fours and some looked like they were trying to get off; that was near the front of the train. I was on the east side of the train. I do not know but just one certain officer that assisted in making the arrests; I was not an officer, but was deputized to assist. I know two that were deputized, myself and another man.

Mr. Keel, a witness for the State, being called in rebuttal, testified:

Direct examination:

I was down there at the time the freight train came into [fol. 41] Paint Rock. I was on the side-hand side as it was going toward Huntsville; that is what is known as the East side. I was not instructed to look specially for open doors of box cars; I was instructed to look for negroes on there, and naturally was looking for them to be in box cars.

I have seen the negro Roberson; I saw him after we got them up town; I don't remember seeing him down on my side of the train. I did not see an open door in any box car on my side of the train; I did not get any negro out of any box car. I did see a bunch of negroes on the gondola; I did not know one from another. I did not see anybody get a negro out of a box car on my side of the train, and I was there until they got all of them.

Mr. Gilley, a witness for the State, being called in rebuttal, testified:

Direct examination:

I am a son of Sim Gilley that used to live in the upper end of this county. I now live at Albertville, in Marshall County. I was one of the boys on that train that day. I saw all the negroes in that gondola. The one on the end there was in the gondola.

Counsel for the State asked the question:

Q. How many in that row there, look at that row of five sitting on the front—Get up and walk over there if you cannot see them?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrelevant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered: I saw those five in the car.

The Witness (continuing): I saw every one of those five in the gondola.

Counsel for the State asked the question:

Q. Were the girls in there?

Counsel for defendants, separately and severally, objected to the question, because it was immaterial, irrele-

vant, illegal and incompetent and because it was a reopening of the case, which objection was overruled, to which ruling the defendants, separately and severally, duly and legally reserved an exception.

The witness answered:

A. Yes, sir.

[fol. 42] The Witness (continuing): I saw all five of them in that gondola.

The above and foregoing was the evidence and all the evidence adduced upon the trial of this cause.

Thereupon, after the close of the testimony, the court inquired of counsel for the State whether he desired to argue the case to the jury to which he replied in the affirmative, and, upon a like inquiry being propounded to counsel for defendant, a negative answer was given, whereupon the court stated to counsel for the State, "Well, go ahead to the jury."

(Argument to jury on behalf of State)

Thereupon, at the close of the opening argument of the State to the jury, the court inquired of counsel for defendant whether defendan*d* wished to argue the case to the jury, and upon a negative answer being given thereto, asked counsel for the State whether the State wished tô further argue the case to the jury, the reply being in the affirmative, counsel thereupon objected, separately and severally to further argument to the jury on behalf of the State, which objection was overruled, to which ruling of the court, the defendants, separately and severally, duly and legally reserved an exception.

(Argument to jury on behalf of the State.)

Thereupon, upon the conclusion of the argument on behalf of the State, the court charged the jury orally as follows:

CHARGE TO JURY

GENTLEMEN OF THE JURY: The indictment in this case charges nine defendants jointly, I believe, with the offense

of rape; only five are on trial before you at this time, that is Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery. The others are not on trial before you at this time, only the five I have named.

The State charges that these defendants, together with others, some time ago, while on a freight train passing through this county, that they forcibly ravished Victoria Price a woman, against the peace and dignity of the State of Alabama.

In answer to this indictment, gentlemen of the jury, the defendants, each of them, plead not guilty. That puts the burden of proof on the State to satisfy you of the matters [fol. 43] set out and the charges made in this indictment, beyond a reasonable doubt, before you can convict these defendants, or any of them. Our law sets out what it takes to constitute rape, gentlemen of the jury, and it is as follows:

"To sustain an indictment for rape proof of actual penetration is sufficient when the act is shown to have been committed forcibly against the consent of the person assaulted." Rape, in short, is where carnal knowledge is performed by a male against a female, or on a female when it is done forcibly and against her consent, then, under our law, gentlemen of the jury, that is rape.

The state charges that these defendants, as I stated to you a while ag*a*o, in company with several others, went into a freight car that was a part of a train going through this county, sometime ago where this prosecutrix was, together with another girl, and that these defendants there in conjunction together forcibly and against the will of this Victoria Price had intercourse with her; insists that while one was having intercourse forcibly and against her will, that these others were also in connection there with them having intercourse at the same time, or that they aided and abetted each other in the performance of that offense.

As I said awhile ago, the defendants plead not guilty, and that puts the burden of proof on the State, of course, to convince you of their guilt beyond a reasonable doubt, before they can be convicted. If one is guilty, or if two or three are guilty, and the others are not, were not there aid-

ing and abetting and helping the others to commit the offense, then they would not be guilty.

How that was, gentlemen of the jury, is for you to say and for you to pass on. If they were all there aiding and abetting each other in the performance of that act, and it was committed, and if it was committed by them, or either of them, and they were all together aiding and assisting in the commission of the crime, then they would all be equally guilty, whether they all had intercourse or not. If, however, any one of them, or any of them, or several of them, took no part, did not aid or assist others in the commission of the offense, did not have anything to do with the girls themselves, made no assault on them, or have anything to do with them, the fact if they were there if they were not there for the purpose of aiding or assisting in the offense, or having carnal knowledge of these women, of course, they would not be guilty. How that is, gentlemen of the jury, is for you to settle.

[fol. 44] If a man is guilty, and you are convinced of it beyond a reasonable doubt, then it would be your duty to so find. If, from the testimony, you are not convinced of the defendants' guilt, or any portion of them, then it would be your duty to acquit them. In other words, gentlemen of the jury, it is a question for you to settle.

The testimony comes to you, and you are the sole judges of it; you have heard the witnesses, the parties, and the defendants testify; you have seen them on the witness stand, and you take their testimony and weigh it, says our law, in the light of the interest of the parties or the lack of it, their reason for knowing or not knowing the facts about which they testify, and from all that, gentlemen of the jury, take the testimony and revolve it in your minds when you get to your jury room and endeavor to do what is right and just between the State on one side and the defendants on the other, and let your oaths as jurors bind you in the performance of your duty in this case.

As I said to you before, gentlemen of the jury, this is a matter in which I have nothing to say; it would be improper for me to intimate in the slightest what I think of the testimony or the testimony of any witness, or any part of it; that is improper on my part. You are the sole judges of the testimony from start to finish, and you take this case

and you do what you think is right and proper as good, law-abiding citizens.

If the defendants are guilty, and you are convinced of it beyond a reasonable doubt, it is your duty to return a verdict to that effect.

If they are not guilty, it is equally your duty to acquit them.

Every man, gentlemen of the jury, comes into court with the presumption of innocence in his favor, and these five defendants on trial before you now come into this court with the presumption of innocence in their favor, and that presumption remains with them throughout the trial of this case and till you are convinced from the testimony of their guilt beyond a reasonable doubt. Not beyond every doubt, but beyond all reasonable doubt, gentlemen of the jury, is the rule.

Now, you take the case and take the testimony and go to your room and do what is right and just between the State, as I said to you a while ago, and these defendants.

Gentlemen of the jury, under our law, — is punishable by death or by imprisonment in the penitentiary of this State for not less than ten years. The indictment, gentlemen of [fol. 45] the jury, by implication of *of* law also covers the lesser degree of an assault, or of an assault with intent to rape. If you are not convinced of the defendants' guilt of the higher offense you may, under this indictment, and it is my duty to outline and tell you this, the law is that you may find them guilty of an assault with intent to rape, or find them guilty of an assault and battery. The punishment for an assault with intent to rape is not less than two or more than twenty years, and for an assault and battery, a fine of not more than five hundred dollars.

The form of your verdict, gentlemen of the jury, I will give you the forms in the respective offenses charged and covered by this indictment.

If you find them guilty of the higher offense, as charged in the indictment, this is the form of your verdict: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—so long, not less than ten years. If one is guilty, or more than one is guilty, of the higher offense, and the others are not guilty, from the testimony in your judgment beyond a reasonable

doubt, why, then you may find them guilty of whatever offense in your judgment is proven beyond a reasonable doubt. The punishment may be the same for all, or it may be different for the different defendants; that is another matter that comes to you to settle. You may find them all guilty of the higher offense, and you may fix their punishment at the same, or you may fix the punishment differently for each one of them; that is for you to settle.

The same in the next offense of an assault with intent to rape.

The punishment, gentlemen of the jury, you have nothing to do with that; you may find some guilty of the higher offense, and some guilty of the lower offense of an assault with intent to rape, or in that you may find some guilty of the higher offense and some of the lower offense, and some of the other charges of assault and battery. Gentlemen of the jury, if they are not guilty of any of the charges under this testimony, if you are not convinced of it beyond a reasonable doubt, then they are not guilty, and the form of your verdict is: "We, the jury, find the defendants not guilty."

I don't know whether I gave you the forms or not: "We, the jury, find the defendants guilty of rape, as charged in the indictment, and we fix their punishment at death or at imprisonment in the penitentiary for"—any number of years, not less than ten.

[fol. 46] Under the second charge I outlined to you, or the second offense of assault with intent to rape, it is: "We, the jury, find the defendants guilty of an assault with intent to rape, as charged in the indictment, the defendant or defendants," or "We, the jury, find the defendants guilty of an assault and battery, as charged in the indictment, and assess a fine against them of"—so much, or "We, the jury, find the defendants not guilty".

It means you may find there is a scale; you have five defendants on trial before you; if you don't find a verdict as to all for the same thing, then you designate which defendant for this or for that offense; or, in other words, if you find a different verdict as to some and different as to other-, then you state: "We, the jury, find the defendant, so and so, guilty of, so and so, and the defendant, so and so (naming them) and the offense, so and so, then it would take a separate verdict: "We, the jury, find the defendant, so and so (naming him) guilty of some offense I have outlined to you, and fix his punishment at"—whatever it is; it is for you to say, gentlemen.

Gentlemen, that is this case.

Thereupon, on the 9th day of April, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendants a new trial, which said motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE POWELL, WILLIE ROBERSON

MOTION FOR NEW TRIAL

Comes the defendants and moves the court to set aside the verdict of conviction in this cause for that:

1st. The Court was in error in refusing to grant the petition of defendants asking for a change of venue and removing this cause to another county.

2nd. The defendants allege that before this trial came the jurors before whom they were tried were around and about the courtyard at the time the jury reported the death sentence in the case of Clarence Norris and Charlie Weems. That at same time of said report of said jury there occurred [fol. 47] a tremendous demonstration in the court room loud enough to be heard a block away. That immediately the same demonstration by clapping of hands and yells occurred on the outside of the court room and in the court house yard where the jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this cause.

Rody & Moody.

[File endorsement omitted.]

On the 6th day of May, 1931, the defendants separately and severally filed in said cause and spread upon the motion

docket of said court an amendment to the foregoing motion for new trial, which said amended motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

VS.

EUGENE WILLIAMS, OLIN MONTGOMERY, ANDY WRIGHT, OZIE POWELL, WILLIE ROBERSON, Defendants

AMENDED MOTION FOR NEW TRIAL

Comes the defendants named in the above styled cause, Eugene Williams, Olin Montgomery, Andy Wright and Willie Roberson, by their attorneys and move the court to set aside the verdict of the jury and to grant them a new trial and for cause of new trial assigns the following reasons and causes separately and severally:

1

Because the court erred in refusing to grant the petition of the defendants asking for a change of venue and removing this cause to another county.

2nd

Because the defendants allege that before this trial came before whom they were tried were around and about the court yards at the time the jury reported the death sentences in the case of Clarence Norris and Charlie Weems; that at same time of said report of said jury there occurred a tremendous demonstration in the Court room loud enough to be heard a block away; that immediately the same demonstration by clapping of the hands and yells occurred on the outside of the court room and in the court house yard where jurors who tried the defendants could have and did hear it. That such conduct was liable to have influenced the jury in this case.

[fol. 48]

3rd

That there is no evidence to support the verdict of the jury and the evidence preponderates against the verdict of the jury in this case.

4th

That a new trial should be granted because the defendants were not given a fair and an impartial trial as contemplated by the Constitution of the State of Alabama, and the laws of the State of Alabama in such cases made and provided. Section 6 of the Constitution of the State of Alabama provides, "That in all criminal prosecutions, the accused has a right to be heard by himself and counselor either; nor be deprived of life, liberty or property except by due process of law; etc. etc."

5th

A new trial ought to be granted because the rights of the defendants under the Fourteenth Amendment to the Constitution of the United States which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law," and these defendants are about to be deprived of their lives in violation of their rights under this provision of the Constitution because they were not given a fair and an impartial trial before a fair and impartial jury, free from excitement, free from indignation, and free from personal demonstrations against the defendants, and that such a demonstration occurred only the day before these defendants were placed on trial and while they were in the court house awaiting trial in this case, when the jury reported its verdict in the case against Norris and Weems.

6th

A new trial should be granted because the court failed to interrogate the jurors as to whether or not they held racial prejudice against the defendant on the ground that they were negroes, and the court should have explained to the jury, that the defendants held certain legal rights under the Constitution of Alabama to sit on juries as a matter of law, and that while all negroes had been excluded from the jury box in Jackson County and none were summoned to sit on the jury trying the defendants, that equal and exact justice should be done to all persons in court irrespective of the race, color, creed, and irrespective of the charge

made against them. The defendants' rights were violated in this regard, and this was error.

[fol. 49] 7th

A new trial should have been granted because the Court refused to continue this case, on application of the defendants at the time it was called for trial.

8th

A new trial ought to be granted because the punishment imposed upon these defendants, in view of their ages, is too harsh. cruel and inhuman.

9th

A new trial ought to be granted because they were not given reasonable time to engage attorneys and to prepare their cases for trial, and in this way they were denied their legal rights to a fair and an impartial trial before an unbiased jury where they could present their evidence and show their innocence of the charges made against them.

10th

A new trial ought to be granted because of the fact that it was necessary to call out the militia officers and men in order to guard the court house to prevent violence towards the defendants and to preserve order at the trial, with machine guns and rifles, such weapons as are used in warfare.

11th

A new trial should be granted because the court failed to grant a special venire or special jury on motion of their attorneys when the case was called for trial.

12th

A new trial should be granted because of the matters set out in Exhibit No. 1, attached hereto, containing the testimony and the proceeding preliminary to the trial of Clarence Norris and Charlie Weems, with the motion for a change of venue and for a continuance and for a special venire, which proceedings and testimony is made a part

hereof as fully as if copied herein, and is desired to be made a part of this motion with the same force and effect as if set out and copied here in full.

G. W. Chamlee, Attorney.

EXHIBIT No. 1

To motion for New Trial in Case State of Ala. vs. Eugene Williams, Olin Montgomery, Andy Wright, Ozie Powell, and Willie Roberson

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

[fol. 50] STATE OF ALABAMA

vs.

CHARLIE WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Appearances:

H. G. Bailey and Proctor & Snodgrass Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this the 9th day of April, 1931, before his Honor, A. E. Hawkins, Judge presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson et al., what says the State?

Mr. Bailey: We are ready if the Court please.

Mr. Roddy: If the Court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as your Honor knows, I was here several days ago and appears again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint, but, I would not appoint counsel if you are

appearing for them, that is the only thing I am interested in—I *would* to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case. I would like to appear along with counsel your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it——

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the *cu*rcumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for [fol. 51] the purpose of arraigning the defendants and then of course I anticipated them to help if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of your Honor.

The Court: Of course I give you that right; well are you all willing to assist?

Mr. Moody: Your honor appointed us all and we have been proceeeing along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, yet did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint—to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the Court appointing anybody, if they haven't counsel of course I think it is up to the Court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and no body I am interested in had me to come down here and has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to [fol. 52] turn it over to counsel but I am here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have *w*poken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it. I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned if I represent these defendants it will be from a high sense of duty I owe to the State and to the Court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am

a member of the bar and I could not refuse to do what I could for the Court if the Court saw proper to appoint me.

The Court: I understand your situation Mr. Parks, just as an officer of the Court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it. I am interested to that extent.

The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see Mr. Roddy, how I can make a qualified appointment or a limited appointment, of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in any thing I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

[fol. 53] Mr. Moody: I am willing to do that for him as a member of the bar. I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment I met Mr. Roddy and had a talk with him and I gathered from Mr. Roddy that he would be employed in the case and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case and I recognized the principle involved and the fact that I took it for granted that Mr. Roddy would be here as employed counsel and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I though- under the circumstances I was. I am not trying to shirk my duty, and I know my duty is whatever the Court says about these matters but I did accept employment on the side of the State and have conferred with the Solicitor with reference to matters pertaining to the trial of the case

and I think it is due the Court, I was not trying to shirk my duty whatever and I want the court to understand my attitude in the matter, I am ready to obey any order of the court.

The Court: Of course that is a matter with counsel, I know nothing about those affairs.

Mr. Proctor: I wanted the Court to understand why it was I agreed to become assisted with counsel for the State, thinking they had counsel I accepted employment on this side, thinking of course they had counsel and I would be relieved from that duty, and I have been conferring with the deputy solicitor about matters pertaining to the trial. I am ready to do whatever the Court thinks is proper thing to do.

The Court: I will leave that with the attorney interested Mr. Proctor because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me and I am willing to appear with their assistance they will go ahead with me in trial of these cases.

The Court: All right, now what says the defendant.

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue, shall I pass it to your honor?

[fol. 54] The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your honor please, while the Solicitor is reading that I wish to call the Court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have reasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue I think in the first place comes too late.

The Court: I would not require you of course—I will give you time to answer it.

Mr. Bailey: That is the first ground. If your Honor permits the filing of it I move to strike it because it is nothing except conclusions there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning this newspaper article, no affidavit attached and no witnesses in support of this. Now, we first object to the filing and the consideration of it. If your Honor permits them to file it we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time Solicitor, I know the circumstances some time but I expect under the circumstances that is proper.

Mr. Bailey: Then, we move to strike it because the substance of it is setting out a mere conclusion; the proof even of a newspaper article alone is not sufficient, there is no affidavit attached in support of it. Now your Honor might permit me to offer testimony on it but we move to strike it and to demur to it.

Mr. Roddy: Your Honor, I might suggest that the petition does not only base conclusions but it tells facts about troops being here, and your Honor please we offer the Sheriff at this time to show the reason for it and why. The [fol. 55] matters set out in the petition itself.

The Court: Well, do you want time to answer it—have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff if the Court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes sir.

M. L. Wann examined as witness on defendant's petition:

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this County?

A. Yes sir.

Q. Did you deem it necessary to call out a unit of the National Guard to bring these defendants to court to trial?

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I see any guns there or anything like that and I did not hear any threats but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court.

Mr. Wann: Today?

Q. Yes, sir.

A. Yes, sir I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As Sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir, I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here but people all over the county——

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination:

Examined by Mr. Proctor:

[fol. 56] Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse have you?

A. No sir.

Q. Is it your idea as sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. Not any higher here than in any adjoining counites.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No sir.

Q. Is it your judgmtnt that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the population of this county if they could have a fair and impartial trial in this case in Jackson County.

A. I think they can.

Q. Is that your judgment?

A. Yes sir.

Q. You have heard nothing of any threats or any thing in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes sir.

Mr. Proctor: That is all.

Redirect examination:

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the courthouse?

[fol. 57] A. Yes sir.

Q. And there is a great throng around the courthouse right now that would come in if you did not have the troops?

A. Yes sir, they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them, there are several from Madison and Marshall and De Kalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No sir, that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir, I thought it was duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

Q. Have you have five units of the state militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Moody: I might ask Major Starnes.

Major Joe Starnes, witness for Defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defendants?

A. 107 enlisted men.

Q. How many units of National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

[fol. 58] A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now your units of the National Guard have protected these men and have been with them on every appearance they have made in this court house?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes sir.

Q. After these men were arrested when did you first bring them back?

A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?

A. That is right.

[fol. 59] Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?

A. Yes sir.

Q. And you have been here under his orders ever since?

A. That is correct.

Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard any threats made against any of these defendants?

A. I have not.

Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defe-dants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment the crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Q. And not as a hostile demonstration toward these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all your Honor.

The Court: Anything further for the State?

[fol. 60] Mr. Bailey: No, sir, we don't care to offer anything further; now was our objection to the newspaper article noted?

The Court: Well, the motion is overruled gentlemen.

Mr. Roddy: We want to except to your Honor's ruling.

The Court: Yes, I will give you an exception—let the motion be filed Mr. Clerk—I give you an exception to it Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.

The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages to the court.

The Court: We will see about it when we get to it.

Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, sir, we don't demand a severance.

The Court: No severance is demanded—now, do you want to try them all?

Mr. Bailey: The state demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the Court please I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think if you can you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

[fol. 61] The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as this age is not presented to the Court we want to proceed.

Mr. Roddy: Before these boys are placed on trial we would like for your Honor to pass on that.

The Court: I will pass on that but we can do that possibly some night when we are not engaged up here with the jury, of course, that is a matter if it is raised it comes up to be passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right—call your witnesses.

(Witnesses called by the clerk for the defendants.)

Mr. Roddy: We want our witness if the Court please or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. Amos, he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody if the Court please but we want our witnesses here, all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos of course, I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for these witnesses?

Mr. Roddy: Yes, sir, we would like to get them here, if we cannot get them here then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come,—Sheriff, at the noon hour you call these witnesses and I expect they will come right on.

(Court adjourned for noon recess.)

[fol. 62] The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here and if your Honor will grant me a few minutes I might simplify these matters, I want to be of all the help I can with the Court and every one concerned but there are some very material facts in the case, I have no motive in this world in appearing down here except to get the absolute truth about this matter and if your Honor will indulge me a few minutes——

All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know your Honor please about our witnesses?

The Court: What about the witnesses Mr. Sheriff—all right gentlemen, if we don't get the witnesses here I will allow you a showing for them, is that all right?

Mr. Roddy: Yes, sir.

Mr. Bailey: Subject of course to legal objections.

The Court: All right sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the Court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under the rule, except as to the other defendants not on trial excused from the rule by the Court.

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION, 1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

[fol. 63] EXHIBIT TO AMEND MOTION FOR A NEW TRIAL, SECTION 12—Above

Appearances:

H. G. Bailey and Proctor & Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury, when the following proceedings were had and done, to-wit:

The Court: All right, the first case Solicitor is the case of State vs. Haywood Patterson, et als., what says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these deefndants but people who are interested in them have spoken to me about it and as Your Honor knows I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I would not like for Your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

[fol. 64] Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Roddy: I see his situation of course and I have not run out of anything yet, of course if Your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it.

Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the court appointing anybody, if they haven't counsel of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me *on* come down here and pay counsel. If they should do it I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at [fol. 65] it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go — these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they under-

stand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants it will be from a high sense of duty I owe to the State and to the court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it, I am interested to that extent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or limited appointment; of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I could not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right.

[fol. 66] On the 6th day of May, 1931, the defendants, separately and severally filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

No. —

In Circuit Court of Jackson County

The State of Alabama

vs.

Haywood Patterson et als., Defendants

Petition of Claude Patterson et als.

To the Honorable E. A. Hawkins, Judge of the Circuit Court of Jackson County, Alabama:

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama v. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the petitioners, Ada Wright and Mamie Williams desire that the case against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto the court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee, as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scotts-

boro, Alabama, and that they had not employed any other attorney and they had not authorized any other attorney to present them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham jail stated to these petitioners that they had likewise signed such contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to *to* make any reason-
[fol. 67] able investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatever with the defendants.

Petitioners carried their attorneys with them and was informed that if their attorney had not been with them that they could not have seen their boys and that they would soon be removed from Birmingham to Kilby prison at or near Montgomery, Alabama. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Alabama, and on April 29th, 1931, their attorney communicated with the Warden of Kilby Prison and was informed that no one could see the defendants except upon written order of -his Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of the motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and

were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Alabama that the parents of children under twenty one years of age, when in company with responsible and reputable counsel, have a lawful right to conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing the cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to
[fol. 68] have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition that the hearing be had at Montgomery, Alabama, or at Kilby Prison so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the hearing of a motion for a new trial ought to be continued from May 6th, 1931 until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits, from witnesses of whom they have heard, and which said witnesses one of whom is reported to be at Paint Rock

claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friend of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affidavit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems and [fol. 69] Norris, and gave them a verdict of death, that the people in the Court house clapped their hands and some of them hollowed, and a few people left the court house and went outside and in a minute or two the crowd outside commenced hollowing and that there was great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and he was utter helpless, at and before the trial, as far as rendering any assistance to his boy was concerned or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

Affiants further state that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain where it had to go through a tunnel and that there was about twenty or twenty five negroes on the train besides the white girls and boys, and

that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or permitting that counsel for Haywood Patterson et al. be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patter-
[fol. 70] son, and for the appeal of the cases against the other defendants who have been tried.

II

That an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if

the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

On this the 19th day of May, 1931, the defendants separately and severally filed in said cause, in support of their motion for new trial, the following affidavit:

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

[fol. 71] HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE MONTGOMERY, ANDY WRIGHT, OLEN MONTGOMERY, EUGENE WILLIAMS

AFFIDAVIT OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAM-

The undersigned affiants make oath in due form of law that they were defendants in the above styled cause, tried at the special session of the Circuit Court of Jackson County in April, 1931, at Scottsboro, Alabama.

Affiants further state that when the court was organized and their cases called for trial, that they did not know who would be their counsel and that they had been in jail ever since they were arrested, March 25th, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinfolks or friends and had no chance to procure witness and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces with 107 men and officers with six or eight machine guns and rifles commonly used in military warfare to guard the courthouse and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or someone of the defendants and while these guards were on duty the case against Clarence Norris and Charlie Weems was tried and there was great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and thereupon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets [fol. 72] of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public street and long in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspaper and press circulated stories through

Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unofortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next to be tried were exposed to these demonstrations and celebrations, and the effect upon the jurors could not help but *to* adverse to the defendants then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a general holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There will be a hot time in the Old Town tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the next [fol. 73] jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants and adversely affected the defendants and necessarily denied to them a fair

and impartial trial by free and unbiased and impartial jurors.

Affiants further state that because of the enormity of the charge in the first instance they were not given a fair trial. Second, that because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial. Third, that the alleged victim was a white woman. Fourth, publications in newspapers aver-ing that the proof of guilt was most po-itive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public through Jackson County was made to believe that such were the facts, rendered an impartial jury impossible; the fact that the defendants were compelled to go to trial represented by attorneys, who by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by counsel retained by them or any one on their behalf authorized to make such retainer, nor was such counsel appointed by the court as trial counsel, according to the record of pages one to eight of the Weems, Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretentions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, merely present as an observer by his own admission and made no pretentions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Moody agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to [fol. 74] this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded to the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer

their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsboro and to by force of arms disburse this hostile and enraged gathering and to require them to leave the town of Scottsboro and from the county of Jackson the trial jury for all the defendants had to be selected and by reason of custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and the irresistible conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did

[fol. 75] not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in his cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it *they had known about it* they had no chance to have procured it and to produce it on the trial at Scottsboro to attend the trial and lived out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities to keep jurors, not yet placed on the jury separate and apart from the people in general and these jurors were exposed to excitement, hostilic and prejudicial newspaper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant-, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials con- [fol. 76] firmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give to a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsboro there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hositility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial without the rights to select or to be consulted about selecting the jury to try these cases.

These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constitution the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy. There was a number of white boys on this train who were available

as witnesses for the State and were not introduced by the State and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Willie (his X mark) Robertson. (Signed) Charlie (his X mark) Means. (Signed) Eugene (his X mark) Williams. (Signed) Raymond (his X mark) Patterson. (Signed) Andy (his X mark) Wright. [fol. 77] (Signed) Clarence (his X mark) Norris. Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heustees, Notary Public. My commission expires Feb. 27th, 1935. (Seal.)

[File endorsement omitted.]

EXHIBIT No. 1 TO AFFIDAVIT OF THE EIGHT DEFENDANTS

STATE

vs.

HAYWOOD PATTERSON et als.

Special Session, 1931

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

Appearances:

H. C. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins,

Judge presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of The State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I would—to know if you appear for them?

[fol. 78] Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you all willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course, if they have counsel, I don't see the necessity of the court appointing anybody; if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

[fol. 79] The Court: I think you are right about it, Mr. Parks, and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it, I would be glad to turn it over to counsel, but I am merely here at the

solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that ex-
[fol. 80] tent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for arraignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to shirk any duty whatever, and I want the court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, this is a matter with counsel; I know nothing about those affairs.

[fol. 81] Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with

their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have seasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper [fol. 82] article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitors; I know

the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion. The proof even of a newspaper article alone is not sufficient; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but we move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why,—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. D. Wann examined as witness on defendant' petition.

Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?

A. Yes, sir.

Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial.

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: You did call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

[fol. 83] Q. Yes, sir?

A. Yes, sir; I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir; I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here, but people all over the county—

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes, sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the g-ounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counites?

A. Not any higher here than in any adjoining counites.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

[fol. 84] Q. I will ask you whether or not this county,—if it is your judgment or opinion from association among the

population of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think t-*ye* can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trials?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understand Major Starnes, or five.

[fol. 85] Q. You have five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

Major Joe Starnes, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commission privates.

Q. How many officers?

A. Eleven officers.

Q. Those men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from *my* two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P.M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

[fol. 86] Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?

A. That is correct.

Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes, sir.

Q. After these men were arrested, when did you first bring them back?

A. On Tuesday of the past week, is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?

A. That is right.

Q. Then when did you bring them back?

A. Brought them back and arrived here at 5:15 this morning.

Q. You have had them here twice from Gadsden?

A. That is right.

Q. You bring them here and then carry them back?

A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here, of course, under orders from the Governor?

A. Yes, sir.

Q. And you have been here under his orders ever since?

A. That is correct.

Q. You say you made how many trips here from Gadsden?

A. This is the third trip.

Q. In your trips over to Scottsboro, in Jackson County, and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants.

A. I have not.

[fol. 87] Q. From your knowledge of the situation, gained from these trips over here, I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?

A. I think so.

Q. Have you seen any demonstration, or attempted demonstration, toward any of these defendants?

A. Absolutely none; a good deal of curiosity but not hostile demonstration.

Q. Your judgment that crowd here was here out of curiosity?

A. That is right.

Q. And not as a hostile demonstration *two*ard these defendants?

A. That is right.

Mr. Bailey: That is all.

The Court: Anything else for the defendants?

Mr. Roddy: That is all, Your Honor.

The Court: Anything further for the State?

Mr. Bailey: No, sir, we don't care to offer anything further. Now, was our objection to the newspaper articles noted.

The Court: Well, the motion is overruled, gentlemen.

Mr. Roddy: We want to except to Your Honor's ruling.

The Court: Yes, I will give you an exception. Let the motion be filed Mr. Clerk—I will give you an exception to it Mr. Roddy.

The Court: Now, is the State ready to go ahead?

Mr. Bailey: Will your Honor have our witnesses called; we have some we are not sure about.

The Court: Call the State witness, Mr. Clerk.

(Witness called by the Clerk for the State.)

.Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.

The Court: Well, we will see which one we will try first.

Mr. Roddy: We can show their ages*t* to the court.

The Court: We will see about it when we get to it. What says the State?

[fol. 88] Mr. Bailey: The State is ready for trial.

The Court: Which one do you want to try first, Solicitor?

Mr. Bailey: Is there a severance demanded?

Mr. Roddy: No, we don't demand a severance.

The Court: No severance is demanded? Now, do you want to try them all?

Mr. Bailey: The state demands a severance, and we will try under the first joint indictment, Clarence Norris, Charley Weems and Roy Wright first.

Mr. Roddy: If the court please, I would like to inquire about these two boys that are under the age of 16.

The Court: Are they in that group?

Mr. Bailey: Roy Wright is, yes sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these two boys.

The Court: I understand, but I don't want to take that up now. I want to proceed with the others.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call the witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Rody: Yes, sir.

The Court: I expect it would not be right to attach Mr. Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

The Clerk: Yes, sir.

[fol. 89] The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for these witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect every one of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out there and if Your Honor will grant me a few minutes, time, I might simplify these matters. I want to

be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here except to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Hon*ro* please about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

Defendants Charley Weems and Clarence Norris arraigned and plead not guilty. Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State [fol. 90] are put under the rule, except as to the other defendants not on trial excused from the rule by court.

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 19th day of May, 1931, defendants separately and severally filed in said c-use, in support of their said motion for new trial the separate and several affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher, the joint affidavit of Henry Cokley, Susie Cokely, and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY, ALABAMA

No. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ROBERTA FEARN

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with *with* this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them. She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fear*sn.*

Subscribed and sworn to before me May 18, 1931.
(Signed) Lewis C. Colson, Notary Public. Hunts-
[fol. 91] ville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF BERTHA LOWE

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White who as affiant is told formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at times affiant would see them often and again she would not see them for a month *of* longer. She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as that is where she saw them, in negro section of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 18, 1931.
(Signed) Lewis C. Colson, Notary Public, County of ——, State of Alabama. My commission expires on the 1 day of May, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF WILLIE CRUTCHER

[fol. 92] The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the case of the State of Alabama v. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Colson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ALLEN CRUTCHER

The undersigned affiant makes oath in due from of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the case of the State of Alabama v. Haywood Patterson, and eight other boys recently tried in this Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right [fol. 93] near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates and Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Colson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935. (Seal.)

[File endorsement omitted.]

In Circuit Court of Jackson County

No. —

State of Alabama

vs.

Haywood Patterson and Eugene Williams et al., Defendants

Affidavit of Henry Cokle, Susie Cokle, and Georgia Haley

State of Georgia,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9th, 1916, and that Eugene Williams her son, was born on December 6th, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro, Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of [fol. 94] Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely.
(Signed) Georgie (her X mark) Haley.

Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk Superior, Haralson County, Georgia. (Seal.)

[File endorsement omitted.]

Chambers of Judge Superior Courts, Tallapoosa Circuit, J. R. Hutchenson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

In Circuit Court of Jackson County

No-. 2402, 2404, and 2406

The State of Alabama

vs.

Haywood Patterson, Eugene Williams, Ozie Powell, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

Affidavit of Percy Ricks

Percy Ricks, makes oath that he was on the train that the above defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

[fol. 95] That, when the train got to Stevenson, that he saw the two girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Ala., going towards Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the other one had on a dress, and that he saw them get

on the train and they went into a freight box car. Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola in which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and load- within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour. Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Ricks.

Subscribed and sworn to before me on this the 16th day of May, 1931. Geo. W. Chamlee, Notary Public, Hamilton County, Tennessee. (Seal.)

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 5th day of June, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said Court a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

[fol. 96] In Circuit Court of Jackson County

No. 2402

State of Alabama

vs.

Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, Defendants

Second Amended Motion for New Trial

Come the defendants, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, in the above styled cause of the State of Alabama *vs.* Ozzie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams, and move the court to set aside the verdict and judgment rendered in this case No. 2402 against them on the 8th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant them a new trial and they assign the following reasons and causes separately and severally, to wit:

I

The indictment on which the defendants were tried was void and illegal; (a) In that it was vague, indefinite and uncertain; (b) in that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendant; (c) in that it failed properly to appraise and inform the defendants of the exact nature, basis and grounds of the charge against them and which they were called upon to meet; (d) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment the defendants could not properly and adequately prepare to meet and defend themselves at the trial: (e) in that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment the defendants have become and are subject for the same offense to be twice put in jeopardy of life or limb in violation of said defendants rights under the Constitution of the United States, amendment 5, which provides: — nor shall any person be subject for the same offense to be twice put in jeopardy of life and

limb'' and the rights under the constitution of the State of Alabama, Article 1, Section 6; (f) in that the said indictment by reason of its vagueness indefiniteness and uncertainty was a denial of the defendants' rights under the Constitution of the United States, amendment 14, Section 1 which provides ''—no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'', and under the constitution of the [fol. 97] State of Alabama, Article 1, Section 6 which provides; ''That in all criminal prosecutions, the accused—shall not be deprived of life, liberty, or property, except by due process of law.'' For these reasons the judgment ought to be arrested and a new trial granted.

II

The defendants on trial for their lives were entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influence and communications which might tend to disturb or distract their minds from a free, impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in advance of the trial that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's minds would be or become influenced against the defendants by the prevailing sentiment and feeling of hostility in the said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendants of their right under the Constitution of the United States, Amendment 14, Section 1, and the constitution of the State of Alabama, Article 1, section 6, and was an abuse of judicial discretion and constituted reversible error. A new trial should therefore be granted.

III

A new trial should be granted in that the rights of the defendants under the Constitution of the United States,

Amendment 14, Section 1, and under the constitution of the State of Alabama, Article 1, Section 6, were violated for the following reasons: (a) Defendants, while under arrest were not afforded nor did they have an opportunity to employ counsel to aid and advise them: (b) they had no opportunity to employ an attorney to represent them: (c) they had no opportunity or sufficient time in the 13 day period between their arrest and trial to prepare properly for the trial on the outcome of which their lives and property depended: (d) they were in prison in a jail situated in a city far away from their homes, where their parents and kinfolks resided and they had no opportunity to communicate with such parents and kinfolks, who, when they finally learned of defendants plight, dared not visit them for fear [fol. 98] of personal violence from a hostile and excited populace; (e) due to race feeling and prejudice which prevailed in the county where the trial was held, they could not have and were denied a fair and impartial trial before an unbiased and unprejudiced jury; (f) immature in years and lacking the advantages of an education, they were too ignorant and did not know how to prepare for trial or how to obtain the attendance of their witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and they were entirely unacquainted and ignorant of the rules and principles of law; (g) repeatedly threatened, intimidated and put in fear of death, they neither knew how nor could communicate with their parents to employ an attorney in their case and to advise them about their rights until the very day when the case was called for trial: (h) continuously and throughout the trial a crowd of people dominated by prejudice and hostility towards the defendants filled up the Court room and bearing and demeanor influence the jury adversely to the defendants: (i) that while these defendants were on trial a crowd of people to the number of ten thousand gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court house and enacted demonstrations hostile to the defendants, all of which the jury could not but have known: (j) that the defendants were tried in a county where mob hostility towards them raged with such violence that the Sheriff of said

county and the governor of the State of Alabama deemed it necessary to call out a military force to protect these defendants against a threatened lynching by the mob which assembled around the jail where they were held, and to guard them on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendants and to guard them after the trial back to jail; all to prevent the threats, repeatedly made, to lynch the defendants, from being carried out; (k) that the trial of the defendants, who, with four other negro boys, were charged with the crime of rape, alleged to have been committed against two white women, was conducted und*re* stress of great excifement, mob hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which [fol. 99] published in advance of and during the trial of the defendants, the supposed details of the defenants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to vicious and degraded lynch sentiment which they roused in and fed to the people of this county and the adjacent counties, thereby making it impossible for these defendants, as well as for the other defendants, to have the benefits of a fair and impartial trial, and rendering the verdict of the jury and the judgment entered thereon illegal and void; and for these reasons a new trial should be granted.

IV

The court's refusal to grant the defendants a special jury or a special venire of jurors upon the demand therefor by defendants' counsel was a denial to these defendants of their rights under the constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was in contravention and violation of the jury law of the State of Alabama as provided by the Statutes of Alabama.

V

The Court erred in not questioning and in failing to qualify the trial jurors as to race prejudice and as to whether

or not they could and would, in view of the fact that the defendants were negroes, and the complainants and prosecuting witnesses a white woman, give the defendants a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors; and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not, in view of the fact that the defendants were negroes and the complaint and prosecuting witnesses a white woman, give the defendants a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the Court in this respect was a denial of the defendants' rights under the Constitution of the United State-, Amendment 14, Section 1. For this reason a new trial should be granted.

VI

The exclusion of negroes from the list of jurors from which the defendants' jury was drawn was a denial of the defendant's rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

[fol. 100]

VII

The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

VIII

A new trial should be granted in that public sentiment and feeling against the defendants and the crime charged and the language of the newspapers which published the same throughout the northern part of the State of Alabama and in the State of Tennessee and Georgia were of such a character that the defendants could not get a fair, impartial and unbiased jury.

IX

The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence that they are against the weight of evidence and against the law, and that all the creditable evidence adduced at the trial failed to establish the guilt of these defendants beyond a reasonable doubt; for these reasons a new trial should be granted.

X

A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendants are innocent of the charge made against them, and which said evidence the defendants did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

XI

The court erred in refusing to permit the defendants' counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

XII

The court permitted error in refusing to permit defendant's counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a venereal [fol. 101] disease. A new trial should therefore be granted.

XIII

The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses and for this reason a new trial should be granted.

XIV

A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendants, al-

though they knew of the severity with which the crime of rape is punished and the swiftness with which such punishment is visited in the south, remained on the train and made no effort to flee, a circumstance which, together with their conduct on the day of their arrest, supports the inference of defendant's innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XV

A new trial should be granted in that the State, although it had in its control a number of white boys who were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who, the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witness to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witness, and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the State offer any reason for not producing these witnesses. The State's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that those boys, and especially Gilley, in the control of the State, were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefited the prosecution but would have benefited the defendants, and moreover, would have exonerated the defendants.

XVI

[fol. 102] A new trial should have been granted in that proof in the record of the trial establishes the following; that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen Negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time that this train reached Paint Rock, Ala-

bama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however conceding, that all this trouble occurred while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the Negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

XVII

A new trial should be granted to Eugene Williams because the Circuit Court of Jackson County had no jurisdiction to try and pronounce sentence upon him on account of his being under sixteen years of age (Code 1928, Sec. 3528, 22 Ala. App. 135, 113 So. 471).

XVIII

A new trial should be granted to Eugene Williams in this cause because it is shown from affidavits filed that he is under fourteen years of age and conclusively presumed, as a matter of law, incapable of committing crime and therefore is entitled to a new trial.

XIX

A new trial should be granted all the defendants in this case because the Court failed to charge that if it appeared that any of them were under fourteen years of age they were prima facie presumed incapable of committing any crime and that the burden was upon the State to establish by the evidence the contrary to the satisfaction of the jury beyond a reasonable doubt, and the Court was in error in not charging the jury as to all defendants, that if any of them were under the age of sixteen that it was not the intent of the law to incarcerate children in jail, but merely to hold them for safe keeping and dispose of them as provided by the juvenile laws of the State of Alabama, unless the cases had been heard in the juvenile court and trans-
[fol. 103] ferred to the Circuit Court in the manner provided by law. For this error a new trial should be granted.

Respectfully submitted.

G. W. Chamlee, Attorney.

[File endorsement omitted.]

Thereupon, on the 13th day of June, 1931, the defendants, separately and severally, filed in said cause, in support of their motion for a new trial, affidavit of Stephens R. Roddy, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF STEPHEN R. RODDY

STATE OF ALABAMA,
Jackson County:

Personally appeared before me, a Notary Public, in and for the State and County, aforesaid, Stephen R. Roddy, of Chattanooga, Tennessee, who being first duly sworn, deposed as follows:

That he appeared as one of the Attorneys for nine negro boys who were tried and convicted in the Circuit Court, at Scottsboro, Alabama, on or about the sixth day of April last on the charge of rape of two white girls and during the progress of said trials, one of the defendants, Eugene Williams, told affiant he was fifteen years of age and later and before his trial, he voluntarily told affiant in the presence of witnesses, he had misstated his age to officers and affiant and that his actual age was nineteen years instead of fifteen. That he insisted on affiant or his associate Mr. Milo Moody tell the Court he was nineteen instead of fifteen years. That Messrs. Moody and Joe Hunter Attorneys were called and heard the said statement of defendant and all three attorneys closely questioned the defendant because they were apprehensive some sort of pressure had been brought to cause the said negro to change his statement as to his age. That the next day asked affiant if he had told the judge that he was nineteen years of age and upon being told that he had not as yet done so, the defendant insisted upon going before the Judge and so informing him. That he was informed that he would be given the opportunity to inform the Court at the proper time and during the day and while on the witness stand he stated he was nineteen years old.

That a few weeks after being tried and convicted and while lodged in the County Jail at Birmingham, Ala., said Williams told affiant his true age was fifteen years and he had changed his statement to nineteen years as aforesaid, [fol. 104] because he had been threatened, abused and bluffed while in the jail at Scottsboro or Gadsden into saying he was nineteen years of age.

Stephen R. Roddy.

Sworn to and subscribed before me 12th day of June, 1931. C. F. Grigg, Notary Public, ex Off. Justice of the Peace. My commission expires ——— — ———.

[File endorsement omitted.]

The hearing of said motion as amended was continued by the Court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. Elkins, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't know where I was, only I guess I was up at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoope," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that.

I heard a band some time but I don't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions [fol. 105] as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got there. I was put on Jury No. 3. That was the jury that tried the five defendants. I was in Davis store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house.

I couldn't say what time of the day the Norris and Weems jury reported.

I didn't pay any attention to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for. However, I saw no indication of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd

off the court house grounds. They also had them inside of the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 106] G. W. Sartin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there — several thousand people around here. I don't know how many there was. Around the Square is where I heard the hollering. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing.

I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the Court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were soldiers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be after court had adjourned and the soldiers were ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the square. The playing of the band or the hollering did not [fol. 107] in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began me and Mr. H. H. Hennegan were standing there talking. I don't know what the hollering was about. When I heard the band playing I didn't know what that was about.

Redirect examination:

Later I heard first one and other state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I sent on the jury and the five I knew what this demonstration was about in the other case. Somebody had already

told me but I don't know everything people tell me. When I went on the jury that tried the five negroes, case No. 3 I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house I didn't measure it. It is a short ways down to the corner. I can not tell how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollowing. I do not know what that band was playing.

Recross-examination:

During the time of the trial I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. Jones, a witness for movant, having been duly sworn, testified as follows:

My name is L. R. Jones. I live about three miles from Bridgeport.

I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury reported its verdict in the first case tried. I was at home, or on my way home. I had left the court room, and left Scottsboro. I didn't hear any demonstration of any sort.

[fol. 108] J. M. Barnes, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Bridgeport. I was on one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was

the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere betwe-n Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

Willie J. Wells, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the Negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't have any time-piece, and don't remember what time it was. I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I r-member the questions that were asked me beofore they put me on the jury.

Counsel for movants then propounded to the witness the following question:

Q. What did they ask you to qualify to as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

[fol. 109] The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Richard Hill, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported I was in town somewhere. I was outside of the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the eveni-g sometime. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all round the court house and inside as well; I was not up here. I don't know as I later saw national guardsmen in the court house. I was not back up here that evening. Later when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury reported. Nobody told me what that hollering was about. I never did learn what it was about. I have heard them talking since what it was about. I heard that sometime the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

Roy Kilbourne, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I

had gone home that evening when the jury reported in this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported. I don't know as I heard about the demonstration the next morning. I heard about the verdict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then [fol. 110] all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel for movants thereupon propounded to the witness the following question:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

W. C. Scogin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the one that tried five of them. When the jury reported in the first one of those cases I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't think there was a brass band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets and playing. I- could have

been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house. When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in [fol. 111] the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movants thereupon propounded to the witness the following questions:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants then propounded to the witness the following question:

Q. When you were qualified as a joror, where you asked as to whether or not you held racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

B. M. Holloway, a witness for movants, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of those negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for this demonstration. I just heard them yelling. It was generally understood by [fol. 112] everbody that was the reason for it. I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial I heard the organ and learned the fact that it was the Ford

agency playing the organ. I heard they had different kinds of Ford cars going around.

Re-direct examination:

I didn't see that. I was in the court room.

Counsel for movants thereupon propounded to the witness the following question:

Q. Before you went on the jury did anybody tell you what those negroes were going to be tried for?

The State objected to the question, the court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

C. C. Allen, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the *the* first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later [fol. 113] on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was out of town. I heard a little about the demonstration, but not much said about it. I did not hear any one of the other trials. When they tried the first case I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles a*s*away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

Lee Hicks, a witness for movants, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movants thereupon propounded to the witness the following question:

Q. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

[fol. 114] The State objected to the question, the Court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

Outher Ballard, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the

third jury, the one that tried five of them, I believe. When the jury in the first one of those reported, I was between here and Stevenson, or at Stevenson.

I was outside of the city of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear abybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

JOHN VENSON, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. I live in Scottsboro. I am a Ford dealer here. While the trial of these negroes was in progress here the Ford p*d*ople made a demonstration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a par-de here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at sic o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That wss about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. [fol. 115] They broke up our demonstration, and I went

over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I remember while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't — there were ten thousand. I woul*nd*'t think there were five thousand. I woul*nd*'t gu-ss there was five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just remember while we were down there *a*that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them be*o*fore. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizes*n* from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them co*n*e in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

[fol. 116] Redirect examination:

Guard mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollards, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2042 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superintendent, Secretary and Treasurer, and paymaster, respectively, and in the order in which our names are signed of The Margaret Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mill during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year. We have this day examined the pay roll records in our office and find that Victoria Price was in our constant employ during the months of October, November, December, 1929 and January, February, March and April 1930. The records show that she worked each week during the above months. We further certify that she was — good worker

and her character around and in the Mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. B. Reynolds, (Signed) W. M. Wellman,
(Signed) J. V. Pollards, Affiants.

[fol. 117] STATE OF ALABAMA,
Jackson County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public.

[File endorsement omitted.]

On June 6, 1931, the State filed in said cause, a rebuttal of the foregoing affidavits filed by defendant, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF L. L. MAYNOR

IN CICUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Affidavit

THE STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts I have lived in Madison County, Alabama, and for about the last 8 years I have

lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Ala., to board and have been boarding in her home since that time. She is the mother of Ruby Bates who together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago. During all this time that I was at Mr. Bates I was either hauling logs off the mountain or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee any time during 1929 or 1930. Ruby Bates was a quiet, modest girl and much of the time while I was there she would go to church and Sunday School and I never heard any question of her character up until just a little while before this trouble, and that was after she had begun to associate with Victoria Price. There are dozens if not hundreds of people in Huntsville who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

[fol. 118] Sworn and subscribed to before me this the 6 day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendant, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, et als.

AFFIDAVIT OF P. W. CAMPBELL

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizen of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County

Sentinel, a newspaper published at Scottsboro. Some four weeks ago I went to Chattanooga, Tennessee in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chattanooga, concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hacket and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After considerable effort we located some of them with the following results: We found Asberry Clay and his wife Savannah Clay and Solicitor Thompson read to them the affidavits which they were said to have made. They both said that there was certain statements in the affidavits which they did not make and which they did not know where in there. Especially with reference to these women living with Negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which [fol. 119] he made. We then found Tom Landers whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the Attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping. We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters where we talked with Mrs. Croft, Police Matron, who said

that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with any offense and that if they had she would have had some recollection of it. On the other hand the Police Records in Chattanooga do show that two of the Chattanooga negroes, to-wit, Haywood Patterson and Roy and Andy Wright have had police records and the police authorities stated that they were very bad negroes and had given them quite a great deal of trouble. Dated this the 15th day of June, 1931.

(Signed) W. P. Campbell, Affiant.

Sworn and subscribed to before me this 13th day of June, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendants separately and severally offered in evidence, in addition to the foregoing oral evidence, in support of their said motion, the following separate and several affidavits:

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fern, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, affidavit of Percy Ricks, affidavit of Stephen R. Roddy. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

[fol. 120] The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollardo; affidavit of L. L. Maynor and affidavit of P. W. Campbell. Said affidavits were admitted in evidence, and are heretofore fully set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of said motion to set aside the verdict and judgment founded thereon and to grand defendants a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL

On June 22nd, after hearing and considering said motion, the Court overruled the same and refused to set aside the verdict of the jury and the judgment founded thereon and to grant the defendants a new trial, and to this action of the court defendants then and there separately and severally reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, and Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendants in said cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions of the trial and proceedings in said cause, the same is accordingly signed and -llowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of Nov. 1931.

A. E. Hawkins, Judge.

[File endorsement omitted.]

[fol. 121] IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 121 inclusive contain a full, true, correct and complete tran-

script of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff and Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Eugene Williams were defendants.

I further certify that the said defendants did obtain an appeal to the Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and Seal of Office this the 24th day of December, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[fol. 122] IN SUPREME COURT OF ALABAMA

EUGENE WILLIAMS, OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

ORDER GRANTING WRIT OF CERTIORARI—Jan. 14, 1932

It is ordered that a Writ of Certiorari issue to the Clerk of the Circuit Court of Jackson County, Alabama, commanding him to make and certify to this Court by Thursday of the next call of the 8th Division, January 21st, 1932, a true and correct copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants in the case of Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery vs. The State of Alabama, pending in said Court.

[fol. 123] IN SUPREME COURT OF ALABAMA

WRIT OF CERTIORARI—Filed Jan. 16, 1932

THE STATE OF ALABAMA,
Judicial Department:

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-1932

To the Clerk of the Circuit Court of Jackson County, Greeting:

Whereas, In a case now pending in our Supreme Court, by appeal from a judgment of said Circuit Court between

Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, Appellants, and State of Alabama, Appellee, the said appellee has to the Supreme Court suggested, that the transcript of the record of said Circuit Court, filed in same Supreme Court on December 28th, 1931, is incomplete in this: the same fails to set forth a full and complete copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants.

We therefore command you to make diligent search of the records and proceedings in your office in the above cause, and certify together with this writ, a full and complete transcript of said above named records and proceedings to our said Supreme Court, by Thursday, January 21, 1932, at Montgomery.

Witness Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of January, 1932.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

[File endorsement omitted.]

[fol. 124] IN SUPREME COURT OF ALABAMA

RETURN TO WRIT OF CERTIORARI

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the court house in Scottsboro on Monday the 30th day of

March, 1931, to consider such matters as may be submitted to it by the Court, or that deserve their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greeting:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to recall and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Court House at Scottsboro, Alabama, on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call:

Chas. Morgan, Jas. H. Rogers, J. H. Cox, G. W. Minton,
[fol. 125] Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoninh all the within named Grand Jurymen this March 30th, 1931.

M. L. Wann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

STATE OF ALABAMA,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County, is hereby order- to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

[fol. 126] SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consists of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regular-drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of said jurors so drawn, both regular and special, the said list showing which are regular and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 127] Certificate to Certiorari and Appeal of Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright, and Olen Montgomery

The State of Alabama,
Jackson County:

I, C. A. Wann, Clerk Circuit Court in and for said County and State hereby certify that the foregoing pages from 1 to 5 inclusive, contain a full, true and correct record and proceedings in the case of the State vs. Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery demanded by Certiorari by the Clerk of the Supreme Court on January 14th, 1932, and the same belongs to the transcript in the above cause filed with the Clerk of the Supreme Court on December — 1931; to all of which I hereby certify to the said Court of Appeals as being inadvertently left out of said transcript in the case wherein the State of Alabama was plaintiff and Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery were defendants and the same being appealed to the Supreme Court of Alabama.

Witness my hand and seal of office this the 18th day of January, 1932, at the Courthouse in Scottsboro, Alabama.

C. A. Wann, Clerk Circuit Court.

[fol. 128] In Supreme Court of Alabama

The Court met pursuant to adjournment.
Present: All the Justices.

8th Div., 322

Eugene Williams, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery

vs.

State of Alabama

Jackson Circuit Court

Argument and Submission—Jan. 21, 1932

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 129] In Supreme Court of Alabama, October Term, 1931-32

8 Div., 322

Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, and Eugene Williams

vs.

The State of Alabama

Appeal from Jackson Circuit Court

Judgment

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, in so far as Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery are concerned, there is no error. It is therefore considered that the judgment of the Circuit Court as to Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery be in all things affirmed. The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoners, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, to the Warden of Kilby prison at Montgomery, Alabama, and that said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday, the 13th day of May, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the bodies of Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the Appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, pay [fol. 130] the costs of appeal of this Court and of the Circuit Court.

It is also considered that in the record and proceedings of the Circuit Court as to Eugene Williams, there is manifest error. It is therefore considered that the judgment of the Circuit Court as to Eugene Williams be reversed and annulled, and the cause remanded to said Court for further proceedings therein, with directions to the Circuit Court to ascertain, by proper evidence, the age of the defendant Eugene Williams, before again putting this defendant on trial, and if it be ascertained that he is under sixteen years of age, that he be transferred to the Juvenile Court of Jackson County, to be there dealt with as a Juvenile delinquent, pursuant to the statute in such cases made and provided.

It is further ordered that the prisoner, Eugene Williams, be detained in custody until discharged by due course of law.

[fol. 131] In Supreme Court of Alabama, October Term, 1931-32

8 Div., 322

Ozie Powell et al.

v.

State of Alabama

Appeal from Jackson Circuit Court

Opinion—March 24, 1932

Knight, J.:

Ozie Powell, William Roberson, Andy Wright, Olen Montgomery and Eugene Williams were jointly indicted, along with three others, by a grand jury of Jackson County, charging them, and each of them, with the offense of rape. The victim of their alleged offense was Victoria Price, a young white woman who lived at or near the city of Huntsville, in this State, and who, at the time of the commission of the alleged offense, was riding upon a freight train between Stevenson and Paint Rock, in Jackson County.

[fol. 132] The trial of the appellants was had in the Circuit Court of Jackson County, on April 8, 1931, resulting in the conviction of the defendants of the offense of rape, as

charged in the indictment, and the imposition of the death penalty upon each. And on April 9, 1931, each of the defendants was sentenced to death in accordance with the verdict of the jury. These sentences were, upon motion of the defendants, suspended pending this appeal.

With respect to the appellant Eugene Williams, in addition to the matters presented for review and which are brought forward by each of the defendants, a further question is raised by this appellant growing out of, and based upon, the contention made by him that he was, at the time of his trial, under sixteen years of age, and that the Circuit Court of Jackson County therefore had no jurisdiction over him, or over his case. We will first consider the record with reference to any errors that may there appear, and which affect all the defendants, leaving the question, that is presented upon age of appellant Williams, to be later discussed and considered in this opinion.

The State's theory of the case is, that the woman Victoria Price, and her companion Ruby Bates, had been on a trip to Chattanooga for the purpose of seeking employment; that on March 25, 1931, while these two women were returning to Huntsville, riding in a gondola car, attached to a freight train, and between Stevenson and Paint Rock, the defendants and other associates, all negroes, climbed over and into this gondola car, engaged in a fight with seven white boys, who were riding in this gondola car with the [fol. 133] two white women, and finally, after beating up and overpowering these white boys, either threw them bodily out of the car, or forced them to leave it; that the defendants then proceeded to rape both Victoria Price and Ruby Bates. Some five or six of the negroes, by force and threats had intercourse with the said Victoria Price, while others, at the same time, ravished Ruby Bates. The testimony introduced by the State tended to support, and if believed by the jury, did support the above facts, and the State's testimony further tended to show, and if believed by the jury did show, that after the defendants had gotten into the gondola car, and after they had expelled the white boys therefrom, one of the defendants seized the said Victoria Price, and proceeded to rape her, and while he was doing this, one of the defendants with knife open in hand and drawn, stood over the prostrate form of Victoria Price threatening to kill her if she did not submit to the outrage

then being perpetrated upon her, while some one of them held her by the legs. That six of the assailants on that occasion, by force, had intercourse with Victoria Price, and a number of them with Ruby Bates; and that all of the defendants took part in the raping of the two girls. The testimony for the State further tended to show that while the girls were being ravished, the others of the defendants kept the white boys out of the car, and, to quote the language of Victoria Price, while on the stand, "telling them (the white boys) that they would kill them, that it was their car and we were their women from then on." The evidence for the State tended to show, and if believed by the jury did show, that each of the defendants, either himself ravished the girl Victoria Price, or that each was present aiding and abeting those who did actually, and forcibly, have inter- [fol. 134] course with her. If the two girls, Victoria Price and Ruby Bates, are to be believed, the defendants were guilty of a most foul and revolting crime, the atrocity of which was only equaled by the boldness with which it was perpetrated.

The defendants each denied on the stand that they, in any way molested the girls, each in most positive terms denied that they had ravished her. One or more of them admitted that there was a fight between the white boys and the defendants, and that one of them had a pistol, and at least one of them had a knife.

We have deemed it best not to rehearse the testimony in detail in this case, as in ma-y respects it is too revolting, shocking, to admit of being here repeated.

In this connection, however, we think it proper, now and here, to call attention to the fact that many of the utterances in the printed brief, and oral arguments addressed to this Court of counsel for appellants, are not supported by the record submitted on this appeal in this case.

The indictment in this case is in the following language, omitting the caption:

"The grand jury of said county charge that before the finding of this indictment Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the grand jury are otherwise unknown than as stated

forcibly ravished Victoria Price a woman, against the peace and dignity of the state of Alabama."

The sufficiency of this indictment was not tested by demurrer or otherwise, at any time before or during the trial. On motion for new trial, after conviction and sentence, the appellants for the first time question the sufficiency of the indictment. It will be noted that the indictment pursues the form prescribed in the Code, and this Court has uniformly [fol. 135] held that indictments following the Code forms are sufficient. In the case of Jinright v. State, 220 Ala. 268, 125 So. 606, this Court was again called upon to consider, and to pass upon the sufficiency of an indictment prescribed by the Code, and it was there said:

"The power of the legislature to prescribe the form of indictment is part of its general legislative power. Broadly speaking, it is curtailed only by constitutional limitations, such as the right of the accused to be informed of the nature and cause of the accusation, and to have a copy of same.—Bill of Rights, section 6.

"The indictment must reasonably disclose an offense known to the law in force during the period covered thereby, and reasonably inform the accused of the accusation he is called upon to answer. Subject to these qualifications, statutory forms have from our early jurisprudence been held sufficient, although facts essential to a conviction may be omitted.—Noles v. State, 24 Ala. 672, 692; Schwartz v. State, 37 Ala. 460, 466; Doss v. State, 220 Ala. 30, 123 So. 231."

The indictment in the present case is not subject to the criticism that it is vague, indefinite and uncertain. The nature and cause of the accusation are definitely stated, and the name of the woman, the subject of the crime, is set forth in the indictment. The form here used was approved by this Court in the case of Leoni v. State, 44 Ala. 110. This decision was rendered by this Court in 1870, and its correctness has not since been questioned, nor its soundness doubted. There is no merit in this contention of the appellants.—Schwartz v. State, supra; Smith vs. State, 63 Ala. 55; Whitehead v. State, 16 Ala. App. 427, 78 So. 467; Leonard v. State, 96 Ala. 108, 11 So. 307; Walker v. State, 96 Ala. 53, 11 So. 401; Long v. State, 97 Ala. 41, 12 So. 183;

Reeves v. State, 95 Ala. 31, 11 So. 158; Huffman v. State, 89 Ala. 38, 8 So. 28; Bailey v. State, 99 Ala. 145, 13 So. 566; Coleman v. State, 150 Ala. 64, 43 So. 715; Jinright v. State, 220 Ala. 268, 125 So. 606; Doss v. State, supra; Malloy v. State, 209 Ala. 219, 96 So. 57.

[fol. 136] It therefore follows that no rights of the appellants under the State or Federal Constitutions were ignored or invaded by reason of any supposed vagueness, indefiniteness or uncertainty of the indictment. The terms of the indictment fully and sufficiently informed the defendants of the nature and cause of the accusation against them, and, in this regard, it fully complied with all requirements of the Federal and State Constitutions.

The indictment was returned into open court on March 31, 1931, duly authenticated by the signature of the foreman of the grand jury. This return is in all respects regular, and in accordance with law.

On March 31, 1931, after the return and filing of the indictment, the defendants, Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, and Clarence Norris, alias Clarence Morris, whose names are otherwise unknown than stated, attended by their counsel, came personally into open court, and were duly and legally arraigned, and pleaded "not guilty," and which plea was duly entered of record, and thereupon in open court, in the presence of the defendants, and their attorneys, the court set the trial of the cause for Monday, the 6th day of April, 1931, and by due and proper order, ordered and directed that one hundred jurors be allowed as the venire from which to select the jurors for the trial of the cause, the said venire to consist of the seventy-five regular jurors drawn to serve as jurors for the week during which the cause was set for trial, and twenty-five jurors to be drawn from the jury box of Jackson County, and thereupon the said jury box was brought into court, and after being well shaken, the court in the presence of the defendants and their counsel, and according to law publicly drew therefrom the names of twenty-five special jurors, in compliance with the [fol. 137] order of said court to complete the venire for the trial of said cause. It also appears that the Court, by proper order, directed that the sheriff summons all of said jurors, regular and special, to appear in court on the day

the case was set for trial, and also to serve forthwith on defendants a list of all jurors so drawn, regular and special, together with a copy of the indictment in the case.

Thereafter, on April 4, 1931, the sheriff of Jackson County made his return to the court showing that he had fully and completely complied with said above order of the court. It thus appears that every step in the proceedings in said cause was regular, and according to law, as respects the indictment, the return thereof into court, the arraignment of the defendants thereon, the setting of a day by the court for the trial of the cause, the order for a special venire, the drawing of the same, and the service of a list of the jurors upon the defendants, together with a copy of the indictment.

Section 5570 of the Code provides "When two or more defendants are jointly indicted, they may be tried, either jointly or separately, as either may elect."

At common law, it was within the sound discretion of the court, whether the trial would be joint or several. Section 5570 of the Code confers on the defendants the unqualified right to elect and demand separate trials. In the case of Whitehead v. State, 206 Ala. 288, 90 So. 351, it is held that where two or more defendants are jointly indicted, and they do not demand a separate trial, then whether the trial shall be separate or joint rests in the sound discretion of the court. This has been the uniform holding of this Court through the years, and in ordering a severance in the case, the court but exercised a discretion confided to it by the common law, and not abrogated by statute.

[fol. 138] The complaint of appellants at this action of the court can avail them nothing. And besides, no objection was made thereto and no exception was reserved. Jackson v. State, 104 Ala. 1; Wright v. State, 108 Ala. 60; Wilkins v. State, 112 Ala. 55, 21 So. 56; Charley v. State, 204 Ala. 687, 87 So. 177.

This brings us down to a consideration of appellants' motion for a change of venue in the cause, which was made by the appellants, and overruled by the court upon consideration of the motion, and the evidence offered in support thereof, and counter proof offered by the State.

In their petition or motion, the appellants represented to the Court "that they nor either of them can have a fair and impartial trial in this county; that the newspapers published in this county have so persistently tried the cause

asserting the guilt of defendants in such terms, as to influence the public mind to the extent that the sheriff of said county had the Governor of this State to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflammatory statements contained in said newspapers, which are circulated all over this county, the mind of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publications are hereto attached marked Exhibit 'A' and 'B' and made a part of this petition. Wherefore, petitioners pray your honor to make an order removing this trial to some other county and defendants make oath that all the foregoing statements are true." This motion is sworn to by each of the nine defendants.

[fol. 139] It will readily appear from the motion or petition that the main or chief ground of apprehension that defendants could not secure a fair and impartial trial was due to newspaper accounts of the affair, published in the Jackson County Sentinel, a newspaper published at Scottsboro, the county site of Jackson County. That the publications of the accounts of the affair inflamed the public mind to the extent that the sheriff had the Governor of Alabama to call out the National Guard to protect the defendants, and that upon the arrival of the troops "hundreds of people gathered about the jail, where they were confined, apparently in a threatening manner." It will be observed, however, that the petition does not charge that any actual violence, or threatened violence was offered the prisoners, or any one of them. Nor does it any where appear that the "hundreds of people who gathered about the jail" were armed, or disorderly in any wise, or to any extent. That the crime of which the defendants were charged was one calculated to arouse the people of any community, county, or state, cannot be denied; that it was news that newspapers, the world over, would print and convey to their readers must also be borne in mind. Newspapers, observing due proprieties, have the right to keep the public informed of the happenings throughout the country. Such is the sphere and scope of their enterprise. They exist for the purpose, and sole purpose of conveying to the public the happenings of the day, whether it be of crime com-

mitted, or of events in the social world, or of matters of commerce or business. So long as they exist, we may expect them to carry accounts of crime committed, not only within the radius of their circulation, but elsewhere. Accounts of crime committed on the other side of the Atlantic often appear in the press on this side within a few hours after it has happened,—the extent of the accounts varying with the atrocity of the crime.

[fol. 140] In the case of Godau v. State, 179 Ala. 27, 60 So. 908, this Court had occasion, on consideration of the application made by the defendant in the lower court for change of venue, based in part on newspaper publications, to give expression to some principles of law here applicable, and it was there said: "So long as we have newspapers we may expect to have through them the report of crimes, and it is not to be unexpected that, when a homicide is committed and discovered under circumstances like the present—even if the defendant's account of the entire matter is the truth—newspapers of the community, answering the public interest, will furnish the defendant some material upon which to base an application similar to the one under discussion." But newspaper accounts, of themselves, cannot be made the sole basis for a change of venue. It must be made to reasonably appear to the judicial mind that these accounts have, by their circulation, so moulded and fixed the public opinion as to make it appear that the cause should be removed to some other locality not so affected for trial.

In the case of McClain v. State, 182 Ala. 67, 62 So. 241, it appears from the original record that Jacob Lutes and his wife, Marcella, were murdered in their home on the 6th or 7th of November, 1911. The murder was committed with a hatchet, and was most brutal and bloody in the manner and circumstances of its execution, and was followed by robbery of the murdered couple of a considerable sum of money. This murder was followed by great public excitement and indignation, and extraordinary activity by officers and citizens looking to the prompt discovery and punishment of the perpetrators of the crime. Hundreds of people from St. Clair and Etowah counties hurried to the scene.

[fol. 141] The discussion of the crime was constant and general throughout both counties both among the people and in the newspapers. About two thousand people were in Ashville during the preliminary trial, and heard or were

informed of the testimony, and of the alleged confession of one of the defendants; and a full report of the evidence, on the preliminary trial, was published in the local and in the Gadsden daily papers, with sensational headlines and comments, and with repeated statements that defendants were undoubtedly guilty, with one statement that the defendant was regarded as the ringleader. Numerous exhibits of the newspaper reports were attached to, and made a part of, the motion for a change of venue from St. Clair county, the county in which the crime was committed. These newspaper reports were equally as sensational and damaging as are the reports attached to the petition in the instant case, but like the present case they disclosed no actual violence offered defendants, and no disposition was exhibited to take the law into their own hands by the citizens. Commenting upon these newspaper reports, Mr. Justice Somerville remarks:

"It may be fairly asserted that these conditions accompany or follow the commission of all very brutal crimes, also, that newspaper reports of such crimes, accompanied by sensational comments and denunciations of the accused, are likely to inflame the sentiments of certain classes of the people and to engender in their minds a passive conviction, more or less permanent, of the guilt of the accused.

"We are not prepared to concede, however, that the sensational language of a newspaper reporter or special correspondent used in 'writing up' such cases as this may be safely taken as a reflection of general public sentiment; nor that it may be lightly assumed that such statements as those here shown are capable of permanently molding and fixing the opinions of the more intelligent classes of the people to the extinction of their sense of fair play, and the suppression of their sober second thought."

[fol. 142] Most people, of fair judgment, are honest in their convictions, and do not arrive at convictions, where life and death are at stake, until after due consideration of the facts of the case. And we may also add, that under the laws of Alabama, only such classes are permitted in the jury boxes of the State.

In the McClain case, supra, the court following the directions of the Act of August 26, 1909, now section 5579, Code, after full consideration of the petition for change of

venue, and the proof submitted in support of it, upheld the ruling of the Circuit Court of St. Clair County, overruling the petition and denying to the defendant a change of venue. In that case, this Court, in affirming the case, used this presently pertinent language:

"Upon the principles and reasoning stated in the recent case of Godau v. State, 179 Ala. 27, 60 So. 908, not unlike this in its material aspects, we are constrained to hold that the trial court did not err in overruling the application. We have considered its merits de novo, as required by the amendatory Act of August 26, 1909 (Acts, Sp. Sess. 909, p. 212), and we are not reasonably satisfied that it should have been granted."

It is insisted that the publications made exhibits to the application inflamed the public mind to the extent that the sheriff of said county had the Governor to call out the National Guard to protect the lives of the petitioners. The testimony offered upon the hearing of the petition does not support the statement as to the inflamed condition of the public mind, or that it was necessary to assemble the National Guard to protect the prisoners from threatened violence. In this connection, it should be stated that the judge of the court, did not direct the sheriff to call for the militia, nor did the judge of the court make any request upon the Governor for the militia. The sheriff re-
[fol. 143] quested the presence of the guard, on his own initiative, out of abundance of precaution, and we may assume, realizing the gravity of the charges against the prisoners. Up to the time the call was made, no violence had been offered any of the prisoners, and, so far as the testimony discloses, no violence was threatened them. There was, as the testimony shows, quite a large crowd in Scottsboro during the trial, made up not wholly of Jackson County citizens, but of citizens of other counties. We can well understand that such a happening, made the basis of the charge against the defendants, was calculated to draw to Scottsboro, on the occasion of the trial, large crowds. It would be surprising if it did not. But that does not mean that the gathering was for the purpose of reaking summary vengeance upon the defendants. It will be noted that in the application for change of venue, it is stated

"that after the arrival of said troops, hundreds of people gathered about the jail, where they (defendants) were confined, apparently in a threatening manner." There is absent from this record a single statement of fact, which tends to show in the remotest degree any offer of violence to the defendants, and, as for that, any threatened violence.

In support of the application for change of venue, the defendants called as witnesses and examined, ore tenus, the sheriff and Major Starnes, the commanding officer of the unit of National Guard ordered to Scottsboro by the Governor. The sheriff's testimony throws much light upon the situation prevailing at Scottsboro during the period of this trial, and the cause or causes leading up to, and culminating in his calling upon the Governor for the dispatch of a unit of the National Guard to that place.
[fol. 144] The sheriff, while testifying that he had asked for the National Guard to protect the defendants, also testified, "It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment I heard on the outside. I have not heard anything as intimated from the newspapers in question that has aroused any feeling of any kind among a posse. It is my idea, as sheriff of this county, that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial."

The defendants in support of their application for change of venue also called, had sworn, and examined Major Starnes, who was in charge of the units of the National Guard on duty at Scottsboro during, and before, the trial of the defendants. Major Starnes testified that he was the commanding officer of the National Guard at Scottsboro, and that he had made three frips to that place. With reference to the feeling prevailing at Scottsboro at the time these defendants were brought up for trial, we quote, in

part, the testimony given by Major Starnes to the court, on the hearing of the defendants' application for a change of venue:

[fol. 145] "I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson County and my association with the citizens in this county and other counties, *I have not heard any threats made against any of these defendants.* From my knowledge of the situation gained from these trips over here, I think these defendants *can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants.* I have seen a good deal of curiosity but *no hostile demonstration.* In my judgment the crowd here was here out of curiosity, and not as a hostile demonstration toward these defendants. (Italics supplied.)

The accounts published in newspapers, and which were introduced in evidence, while condemning in strong terms the crime, alleged to have been committed against two defenseless white girls, did not advocate violence against the defendants, but rather appealed to the citizenship of Jackson County for a fair trial for the defendants, and for an opportunity for the facts of the case to be tried by a jury. The character of the crime was such as to arouse the indignation of the people, not only in Jackson and the adjoining counties, but every where, where womanhood is revered, and the sanctity of their persons is respected. That many should have been attracted to Scottsboro during the days covered by the trial, and the preliminaries incident thereto is no small wonder, considering the character of the crime charged against the defendants. The alleged victims were not citizens of Jackson County, and it is more than possible that they were not known to a citizen of that county, but they were, if the testimony is to be believed, two young white women, unknown, and entirely defenseless. No matter whether their sins were as scarlet, it neither gave justification nor excuse to any man to lay a violent hand upon [fol. 146] them, or to force them to submit, against their will, to the violation of their persons. The record of facts

in this case, notwithstanding the atrocity of the crime charged, does not disclose a single act done by the populace to show a disposition to take the law into its own hands. If the record truly gives the facts in the case, and we have no right to doubt it—the defendants at no time were in danger of mob violence, and it wholly fails to show that the court, jurors or officers were inflamed against the defendants. To the contrary, considering the nature of the crime and its revolting features, the people seem to have conducted themselves with a commendable spirit and a desire to let the law take its due course.

The burden of proof was upon the defendants to show that they could not get a fair and impartial trial in Jackson County, before the court would have been justified in granting the change of venue moved for. In the case of Malloy v. State, 209 Ala. 219, 96 So. 57, this Court, in an opinion written by Justice Miller, said:

"When the defendant makes application for a change of venue, the burden rests upon him to show 'to the reasonable satisfaction of the court that an impartial trial and an unbiased verdict cannot be reasonably expected' in the county where the defendant was found.—Seams v. State, 84 Ala. 410, 4 So. 521."

The defendants have vigorously pressed upon our attention the case of Thompson v. State, 117 Ala. 67, as an authority not only justifying, but requiring, that this Court should reverse the lower court in refusing the defendants' application for a new trial. A careful reading of the facts in the Thompson case, supra, will disclose that this insistence is not well taken.

[fol. 147] In the Thompson case, supra—which was a case in which the offense charged was rape—it was made to appear to the court by "affidavits and other evidence" that the public were so greatly aroused against the defendant that "it required the promptest and most vigorous action of the executive officers of the State, from the governor down, and including the military, to protect the defendant from mob violence and summary execution," and that the feeling continued down to and through the trial. No such state of facts are shown in this case, and no such disposition on the part of the public was exhibited against these defendants at Scottsboro.

Much has been said in brief and oral argument by counsel for appellants about the case of Moore, et al. vs. Dempsey, Keeper of the Ark. State Penitentiary, 261 U. S. 86, in which the opinion was written by Justice Holmes, and in which Justices McReynolds and Sutherland dissented.

It requires no close scrutiny to see, and no argument to demonstrate, and there is no parallel between the facts of that case and the case now under consideration. By no stretch of the imagination can it be said that the case under consideration resembles, in the remotest degree, in any of its salient facts, the facts made the basis for habeas corpus, in the Moore case, supra.

The case of Downer v. Dunaway, (No. 6286) 53 Fed. Rep. (2d) p. 586, is cited in support of appellants' contention that they should have been granted a change of venue. We have carefully read the report of this case. The facts superinducing the majority opinion written by Judge Bryan in that case are so unlike the facts in the instant case, and the circumstances attending that trial so differ-
[fol. 148] ent in all essential features, that it is not an authority in point. Anyone reading the facts in the two cases would see, and comprehend, that the cases are wholly dissimilar, and in no true sense can the decision in the Downer case, supra, be said to support the contention of appellants in this case.

Observing the plain mandate of section 5571 of the Code, but without conceding that the legislature had the right to so legislate, we have carefully considered the application, and the evidence submitted in support thereof, of appellants from a change of venue, without indulging any presumption in favor of the judgment and ruling of the lower court on said application. The burden of proof was on the defendants to show the reasonable satisfaction of the court that a fair and impartial trial could not be had in Jackson County. This burden of proof appellants did not, in our opinion, meet and discharge. The evidence fails to show that their trial was dominated by a mob or mob spirit, or that there was at any time any mob present at, or during, the trial, or that the jury was inflamed against the defendants to the point where they could not, or did not, give the defendants a fair and impartial trial; nor does the evidence show there was any violence, actual or threatened against the defendants, from the time of their arrest to the conclusion of their trial.

We are at the conclusion that the lower court committed no error in overruling appellants' motion for a change of venue. Baker v. State, 209 Ala. 142, 95 So. 467; Malloy v. State, 209 Ala. 219, 96 So. 57; Godau v. State, 179 Ala. 27, 60 So. 908; Adams v. State, 181 Ala. 58, 61 So. 352; McClain v. State, 182 Ala. 67, 62 So. 241; Hawes v. State, 88 Ala. 37, 7 So. 302; Byers v. State, 105 Ala. 31; Gilmore v. State, 126 Ala. 20; Riley v. State, 209 Ala. 505, 96 So. 599; Hendry v. State, 215 Ala. 635, 112 So. 212.

[fol. 149] There is no merit in the exception reserved by the defendants to the action of the court with reference to a special venire for the trial of the defendant. The record proper shows, as heretofore pointed out, that these defendants, along with their co-defendants, and before any severance was granted, appeared in open court, attended by counsel, and were each, along with their co-defendants—nine in number—in open court duly and legally arraigned upon the indictment, pleaded not guilty; and the court, then and there pursuant to the statute, set a day for the trial, and ordered that the venire for their trial should consist of one hundred jurors, to be composed of the seventy-five regular jurors drawn for the week of the trial, and twenty-five special jurors to be drawn, as the law directs, in open court, by the presiding judge from the jury box of Jackson County. This was done in all respects according to the statute, in such cases made and provided, and a list of these one hundred jurors, by order of the court, together with a copy of the indictment was served upon each of the defendants. This was a strict compliance with the law of the case.—Code, § 8644. And, besides, section 8649 provides:

"Whenever the judge of any court trying capital felonies shall deem it proper to set two or more capital cases for trial *on the same day*, said judge may draw and have summoned one jury or one venire *facias* of petit jurors for the trial of all such cases so set for trial on the same day." (Italics supplied.)

This section, as was the manifest purpose of the legislature, removed the necessity of drawing a special venire for

each capital case set for trial on the same day. But, be [fol. 150] this as it may, when the court ordered and allowed, a special venire of one hundred jurors to try this case, it stood upon the docket as one case, and against these defendants, as well as against their co-defendants. It results that appellants can take nothing by this exception, as the record affirmatively shows that the court had given them a special venire consisting of one hundred jurors, the maximum allowed by law.—Code, section 8644.

During the progress of the trial only two exceptions were reserved by the defendants to the ruling of the court on admission of evidence. While Sim Gilley was on the stand, testifying on behalf of the State, and after he had testified that he was "one of the boys on the train that day"—referring to the day on which the alleged rape occurred—and that he saw all the negroes in that gondola, he was asked by counsel for the State, "How many in that row there, look at that row of five sitting on the front—get up and walk over there if you cannot see them?" The defendants separately objected to the question, upon the grounds "it was immaterial, irrelevant, illegal and incompetent, and because it was reopening of the case." The court overruled this objection and defendants duly excepted. The evidence was clearly admissible. Whether it was in rebuttal, strictly speaking, we cannot affirm, but if not, the propriety of admitting it was addressed to the sound discretion of the court. There was no error in this ruling of the court.

After the witness had testified that he saw "every one of those five in the gondola," counsel for the State thereupon propounded this question to the witness Gilley: "Were the girls in there?" The defendants separately objected to that question, the court overruled it, and defendants duly [fol. 151] excepted. The objection was without merit. The question called for relevant, material and competent testimony.

It was clearly within the discretion of the court to allow counsel for the State to have a second argument, although defendants' attorneys had declined to make argument. Southern Bell Tel. & Tel. Co. v. Miller, 192 Ala. 346, 68 So. 184; Mobile & M. Rwy. Co. v. Yeates, 67 Ala. 164; Hall v. State, 216 Ala. 336, 339, 113 So. 64; Sheppard v. State, 172 Ala. 363, 55 So. 514.

After the verdict was rendered against the defendants they filed motion for new trial on the 9th day of April, 1931, and thereafter amendments to the motion were made, and filed in the cause.

It is not necessary to a proper understanding that the motion be set out at length. The principal argument in support of the motion relates to motion for a change of venue which in the main has been heretofore treated in this opinion.

It is insisted, among other things, that the demonstration made when the other verdict or verdicts were brought in greatly prejudiced their case. There was considerable testimony offered on this phase of the case, and it does not support appellants' contention. A number of the jurors testified on the hearing of the motion, and it does not appear that the appellants' cause was prejudiced by any alleged demonstrations. Certain it is also that defendants never, at any time, made any objection or reserved any exceptions to anything that occurred with reference to demonstrations or applause. Nor does it appear that the court failed promptly to suppress any misconduct that came to its notice. We hold that no error is made to appear from the ruling of the court on defendants' motion for a new trial based on the above ground—Hendry v. State, 215 [fol. 152] Ala. 635, 112 So. 212.

It is also insisted by defendants that a new trial should have been granted them, because, inter alia, they were not given time to prepare their cases for trial. No motion for a continuance appears in the record. Therefore, this contention cannot avail defendants, made for the first time after verdict. Application, based upon proper grounds, should have been made to the court before the trial was entered upon.

It is also urged that the defendants are entitled to a new trial because the court erred in not interrogating, and in failing to qualify, the trial jurors as to race prejudice, and as to whether or not they could and would, in view of the fact that the defendants were negroes, and the complainant and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, etc. It should suffice to say that the court will not be put in error for not assuming that there exists here in Alabama, and

particularly in Jackson County, racial prejudices. No doubt had counsel for the defendants assumed such to exist, and had, acting upon such assumption, requested the court to interrogate the jurors on that subject, the court would have complied with their request.

It is also insisted, however for the first time on motion for new trial, that "exclusion of negroes from the list of jurors," from which defendants' jury was drawn, was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, section 1. It should suffice to say that the defendants made no objection whatever to the venire upon any such ground, nor does the record, in point of fact, sustain any such contention. Having made no objection to the personnel of the jury on account of race or color, the defendants are in no position to put the court in error, in the contention made for the first time on motion for new trial. By failing to object [fol. 153] to the personnel of the jury, the defendant must be held to have waived all objections thereto.—Batson v. State, 216 Ala. 275, 113 So. 300; Herndon v. State, 2 Ala. App. 118, 56 So. 85; Carson v. Pointer, 11 Ala. App. 462, 66 So. 910; 20 R. C. L. 241; 18 L. R. A. 475; 68 L. R. A. 885; 16 Corpus Juris 1158; Eastman v. Wright, 4 Ohio St. 156; State v. Jones, 89 S. C. 41, 71 S. E. 291; Ryan v. Riverside, 15 R. I. 436; 8 Atl. 246; Stewart v. Eubanks, 3 Iowa 191; State v. Whiteside, 49 La. Ann. 352, 21 So. 540; Ferrell v. State, 45 Fla. 26, 34 So. 220; Whitehead, 206 Ala. 288, 90 So. 351.

Without regard, however, to the foregoing, there is no merit in the appellants' above stated contention. The State of Alabama has the right, within constitutional limitations, to fix qualification for jurors.—Thomas v. Texas, 212 U. S. 278. The jury laws of Alabama do not exclude any man from jury service by reason of race or color. The qualifications of jurors are fixed and defined by section 14, Acts of Legislature of Alabama 1931, pages 55 et seq., and by this Act the jury board is required to place on the jury roll and in the jury box the names of "all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment." The jury boards of the State are required to observe these positive requirements of the statute, and

there is nothing in the record to show that the jury board of Jackson County failed of their duty in any respect with reference to the jury roll or jury box in that county. The contention of the appellants in the respect here pointed out is without merit.—Ragland v. State, 197 Ala. 5, 65 So. 776.

[fol. 154] It is also urged upon our attention that the trial court committed reversible error in not granting defendants a new trial because of newly discovered evidence. It is insisted earnestly that they should have had an opportunity to prove that the said Victoria Price had the reputation of being a common prostitute. There was no evidence offered to show that she had ever had intercourse with negroes. This evidence could only be admissible as tending to show consent. The entire theory of defendants' case was that they had not touched the woman, and had no intercourse with her. The question of consent, vel non, was not therefore an issue in the case. The evidence was wholly irrelevant to any issue in the case as presented and tried.—Rice v. State, 35 Fla. 236, 17 So. 286.

It is insisted that the defendants were put to trial so soon after the alleged commission of the offense that they were unable to prepare their defense, and at a time when the public mind was so inflamed that they could not secure a fair and impartial trial.

Article VI, Constitution of the United States, provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense."

And Section 6 of the Constitution of Alabama secures to all persons, within her territorial limits the same fundamental and constitutional rights.

[fol. 155] The record before us fails to show that any right guaranteed to the defendants under the Constitution of the United States or of the State of Alabama was denied to the defendants in this case: on the contrary, the record

shows that every such right of the defendants was duly observed, and accorded them.

The appellants complain of the speed of the trial. There is no merit in the complaint. If there was more speed, and less of delay in the administration of the criminal laws of the land, life and property would be infinitely safer, and greater respect would the criminally inclined have for the law.

On the 6th day of September, 1901, at 4:07 P. M. in the city of Buffalo, in the State of New York Czolgosz, an assassin fired two bullets into the body of the then most illustrious and beloved man in the United States—President William McKinley. This foul crime was committed in the presence of thousands of the citizens of Buffalo. The crime shocked, and aroused the indignation of people everywhere. Within less than ten days after the burial of Mr. McKinley, the murderer was placed on trial for his life, in the city of Buffalo, where the crime was committed. It is recorded that the trial was presided over by Judge Truman C. White, "one of the oldest and most experienced of the Supreme Court justices." It required "exactly eight hours and twenty-six minutes" to conclude the trial, and it is further recorded that "in less than one hour after Justice White began his charge to the jury, the verdict of 'guilty' was brought into court." On October 29, 1901, less than two months after the crime was committed Czolgosz, the murderer, was executed for his crime. This verdict, sentence and execution were approved by good citizens, North, South, East and West, in fact on both sides of the Atlantic.

[fol. 156] True this Czolgosz verdict was rendered in a case where a human life had been taken in a most dastardly manner. But we are of the opinion that some things may happen to one worse than death, at the hands of an assassin, and, if the evidence is to be believed, one of those things happened to this defenseless woman, Victoria Price, on that ill-fated journey from Stevenson to Paint Rock, on March 25, 1931.

As to the defendants Ozie Powell, William Roberson, Andy Wright and Olen Montgomery, we find no error in the record, and none as to defendant Eugene Williams, unless it be on account of the asserted fact that he was, at the time of his trial, under sixteen years of age. This we will now proceed to consider. The question presented is not

without its difficulties, due to the fact that our statutes on the subject of juvenile delinquents do not furnish rules of procedure by which such delinquents, when indicted for crime, and brought before a court of competent jurisdiction for trial, on such indictments, shall present to the court the fact that they are under the age of sixteen years, and, therefore, not subject to trial upon such indictment. Courts must follow the plain, positive and unambiguous provisions of the statutes, whether rules for their guidance in such cases are given along with such statutes or not, and they may prescribe, for their procedure such reasonable rules and regulations not inconsistent with the statute, as may be deemed reasonable and proper.

The presently pertinent sections of the Code dealing with juvenile delinquents, and the disposition of cases in which such delinquents are brought before the courts are found in sections 3528, 3529 and 3539. Section 3528 defines juvenile delinquents. Section 3529 confides to the courts of [fol. 157] probate, except in the several counties of the State in which special courts have been given exclusive jurisdiction over children under sixteen years of age, original and exclusive jurisdiction of all proceedings coming within the provisions and terms of Chapter 100, dealing with juvenile delinquents; and it confers upon such probate courts original and exclusive jurisdiction to hear, determine and adjudicate all questions and cases falling or coming within the provisions of said statutes. To this extent jurisdiction in the circuit court is denied, or excluded. Section 3539 provides:

"Nothing in this chapter shall be construed as forbidding the arrest, with or without warrant, of any child as is now or may hereafter be provided by law, or as forbidding the issuance of warrants by magistrates as provided by law. Whenever a child under sixteen years of age is brought before a magistrate of any court in the county other than the juvenile court, charged with any offense, such magistrate or court shall forthwith, by proper order, transfer the case to the juvenile court of the county. Any criminal court or any court exercising criminal jurisdiction in any county coming under the provisions of this chapter before which any child between the ages of sixteen and eighteen years is brought, charged with the commission of a crime,

shall have authority, if such court shall deem it to be in the interest of justice and of the public welfare, to in like manner transfer such child by proper order to the jurisdiction of the juvenile court of said county to be dealt with as a delinquent child under the terms of this chapter and when so transferred such child shall come under all terms and conditions of this chapter and be so dealt with as other children are dealt with under this chapter. All information, depositions, warrants, and other processes in the hands of such magistrate or court shall be by him or by the judge of said court forthwith transmitted to the juvenile court and shall become a part of the records of the juvenile court. The juvenile court shall thereupon have jurisdiction of the cause and shall proceed to hear and determine the case so transferred to it, in the same manner as if the proceedings had been instituted in the juvenile court by petition as hereinbefore provided."

[fol. 158] Our statute upon the subject of juvenile delinquents are not unlike the laws on the same subject in a number of other states. The general provisions of our statutes are very similar to the statutes, on the same subject, in Kentucky and Tennessee.

In the case of Sams v. State, 180 S. W. 173, 133 Tenn. 188, 193, the question now before this Court received the attention of the Supreme Court of Tennessee. In that case (Sams) the plaintiff in error, was indicted for a criminal offense. To the indictment he filed a plea raising the question that the circuit court was without jurisdiction to try him upon the charge, in as much as he was under sixteen years of age. This plea on motion of the state was stricken. There was a jury and verdict of guilty, and sentence of the court thereon. It then appears in the minute entry that defendant filed motion in arrest of judgment. This motion was overruled by the court, defendant excepting. On appeal to the Supreme Court, the court observed:

"But the most difficult question in the present case is how plaintiff in error shall be dealt with in the circuit court upon remandment of the cause; in other words, what is the jurisdiction of that court in respect of the charge in the indictment set out against this particular plaintiff in error under the facts of this case and our existing statutes."

Continuing, this court further observed:

"The question of the jurisdiction of the circuit court is directly presented in the cause, when we come to consider the assignment of error based on the action of the court in overruling the motion in arrest of judgment. That motion was based on the lack of jurisdiction in the circuit court. The court could then see from the proof in the cause that the plaintiff in error was under the age of sixteen years at the time of his arrest, and indeed under such age at the time of the court's action on the motion in arrest of judgment, and of course under such age at the time the indictment charged the offense to have been committed. These facts clearly appeared without dispute in the evidence which had been introduced before the jury."

[fol. 159] Continuing, the court said:

"When these facts appeared to the trial court, it should have sustained the motion in arrest of judgment, for the reason that, under chapter 58, Acts 1911, plaintiff in error was a 'delinquent' child within the meaning of section 1 of that act. That section defines a delinquent child under the age of sixteen years who violates any law of the state."

The court in the Sams case, supra, held that the motion in arrest of judgment should have been sustained, and the trial court should have transferred the case to the juvenile court.

In the case of Talbott v. Commonwealth, 166 Ky. 659, 179 S. W. 621, under statutes almost identical with our own, the Supreme Court of Kentucky held:

"That, as the circuit court was without jurisdiction of the person of the defendant (he being under sixteen years of age) the question could be made at any time, and was available for reversal, even though the question was raised for the first time in this court on appeal. It therefore results that this defendant did not lose the right to raise the question because of his failure to do so during the progress of the trial."

This question again came before the Supreme Court of Kentucky, in the case of Mattingly v. Commonwealth, 188 S. W. 370, 171 Ky. 222, and the court again re-affirmed the conclusion and holding in the Talbott case, supra.

The Court of Appeals of Alabama, in the case of Hart v. State, 22 Ala. App. 135, 113 So. 471, held, that where the defendant was under sixteen years of age, the trial court, under existing statutes, was without authority to pronounce judgment of conviction against him, being without jurisdiction of the person of the defendant, other than to forthwith, by due and proper order to transfer the case to the juvenile court of the county.

[fol. 160] In support of the motion of appellant, Eugene Williams, for a new trial, based on the ground that he was under sixteen years old, when brought before the court for trial, are the affidavits of three persons who claimed to have known him from his birth. They swear that he was born on December 6, 1916, and that affiants were living with this defendant's mother when he was born. In opposition to this evidence, no proof was offered by the State, so far as the record shows. While these affidavits may be false, yet there is nothing in this case to show their falsity. It also appears that the age of this defendant was brought to the attention of the court before the trial was entered upon.

Since the statute declares a juvenile delinquent the ward of the State, it became the duty of the trial court upon suggestion that the defendant, Eugene Williams was under sixteen years of age, or if his personal appearance suggested a doubt as to his age, to ascertain his age, and if found to be under sixteen years of age, to transfer the cause as to said defendant, Eugene Williams, to the Probate Court, as the Juvenile Court of Jackson County.—Code, Sections 3529, 3539.

If the Probate Court, as the Juvenile Court of Jackson County, upon due investigation or trial of disciplinary measures in the institution provided for the purpose, becomes convinced such delinquent cannot be made to lead a correct life and cannot be properly disciplined, he has authority to retransfer the cause to the circuit court to be tried as other cases.—Code, section 3540; Berry v. State, 209 Ala. 120, 95 So. 453.

[fol. 161] Under the plain mandatory terms of the statute, the State offering no testimony to show that the defendant was sixteen years of age, or over, it became and was the duty of the court to grant this defendant a new trial on this ground of his motion, and none other. In failing to do so, the court committed error, as to the appellant Eugene Williams, necessitating a reversal of this cause as to said appellant Eugene Williams.

There are no errors in the record as to the other appellants, viz., Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and the cause as to them will be here affirmed.—Agee, et al. v. State, 190 Ala. 19, 67 So. 411. As to the appellant Eugene Williams the cause is reversed, with directions to the court below to ascertain, by proper evidence the age of defendant Eugene Williams before again putting this defendant on trial, and, if it be ascertained that he is under sixteen years of age, that he be transferred to the juvenile court of Jackson County, to be there dealt with as a juvenile delinquent, pursuant to the statute, in such cases made and provided.

The several matters which impel Chief Justice Anderson to dissent as shown by his dissenting opinion have received the careful consideration of the court in conference.

The speedy trial and presence of the military seems to be regarded as enough to have a coercive influence on the jury. We cannot approve the idea that speedy trials should not be had because the gravity of the charge is such as to arouse public interest and indignation. The presence of the militia, instead of having a coercive influence on the jury, was notice to everybody that the strong arm of the State was there to assure the accused a lawful trial. Any [fol. 162] good citizen would interpret this to mean a fair trial in which the guilt or innocence of defendants should be determined on the evidence and punishment meted out accordingly.

We would consider it a dangerous precedent to declare that, because, out of abundance of caution in cases of this character, it was deemed best to have militia present, safeguarding the prisoners, this should furnish a ground for setting aside the verdicts of juries and granting a new trial. As stated in the opinion, not only is there a lack of evidence that the citizenship of Jackson County intended other than a legal and fair trial of these cases, but direct evidence that such was the general expression.

Touching alleged applause upon a return of the verdict in one of the cases, we have noted evidence negativing any prejudicial effect; but would not make it plain that affidavits prepared and submitted on this line on the motion for a

new trial, related to matters occurring on the main trial and in the presence of the court hearing the motion. The bill of exceptions, prepared by experienced counsel now appearing, is entirely silent as to what did occur. The bill of exceptions made up under the safeguards of law is the method of presenting such matters.

The trial judge was under the duty to consider affidavits, if at all, in the light of his own knowledge of such incidents. If these affidavits did not accord with his own knowledge, it was his duty to disregard them.

Under all the rules sustaining the trial Judge unless error affirmatively appear, his ruling on this question is not presented for review.

[fol. 163] We think it a bit inaccurate to say Mr. Roddy appeared only as amicus curiae. He expressly announced he was there from the beginning at the instance of friends of the accused; but not being paid counsel asked to appear not as employed counsel, but to aid local counsel appointed by the court, and was permitted so to appear. The defendants were represented as shown by the record and pursuant to appointment of the court by Hon. Milo Moody, an able member of the local bar of long and successful experience in the trial of criminal as well as civil cases.

We do not regard the representation of the accused by counsel as pro forma.

A very vigorous and rigid cross-examination was made of the State's witnesses, the alleged victims of rape, especially in the cases first tried. A reading of the records discloses why experienced counsel would not travel over all the same ground in each case.

Whether benefit or hurt would have attended an effort to present an argument for the accused is purely conjectural.

It is a recognized rule that if manifest error appear an appellate court is not primarily concerned with the guilt of the accused, but merely the question of a fair trial under the rules of law. But when we come to consider the granting of a new trial on account of atmosphere as affecting the verdict, we think the manifest and obvious guilt of [fol. 164] the accused is to be regarded.

We think in such case the finding of the jury and the action of the trial court should be credited to a conviction of duty under the evidence; while in a very doubtful case

the question of coercive influence should be carefully scrutinized.

We cannot, therefore, agree with the Chief Justice that these cases should be reversed on the grounds set out in his opinion.

And it appearing to the Court that the day fixed by the Circuit Court of Jackson county for execution of the death sentence imposed by that court upon the said defendants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, has passed, it is ordered by this Court the 13th day of May, 1932, be and the same is hereby set and fixed for the execution of the sentence of death heretofore passed upon them by the Circuit Court of Jackson County, Alabama.

Affirmed as to appellants Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and reversed and remanded as to the appellant Eugene Williams.

Gardner, Thomas, Bouldin, Brown and Foster, JJ., concur.

Anderson, C. J., dissenting as indicated, holding that a new trial should have been granted.

[fol. 165] DISSENTING OPINION

ANDERSON, C. J. (dissenting):

While the Constitution guarantees to the accused a speedy trial, it is of greater importance that it should be by a fair and impartial jury, ex vi termini, a jury free from bias or prejudice, and, above all, from coercion and intimidation.

Whether or not these defendants should have been granted a change of venue may be questionable for, as was stated by the sheriff, when a witness, they could probably get as fair a trial in Jackson as any nearby county and there is no reason why this was not true. None of the defendants or the injured girls resided in Jackson County and the prejudice aroused, if any existed, was due largely to the nature of the crime and which was of such a revolting character as to arouse any Caucasian county or community, but the indictment was found and the trial had within a few days after the alleged commission of the

offense and when the entire atmosphere was at fever heat.

Every step that was taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers removed the defendants to Gadsden for safe-keeping, soldiers escorted them back to Scottsboro for arraignment, soldiers escorted them back to Gadsden for safe-keeping while awaiting trial, soldiers returned them to Scottsboro for trial a few days thereafter, and soldiers guarded the court house and grounds during every step in the trial and, after trial and sentence, again removed them to Gadsden. Whether this was essential to protect the prisoners from violence, or because the officials were over apprehensive as to the condition of the public mind, matters little as this fact alone was enough to have a coercive influence on the jury.

[fol. 166] Under the statute, the defendants being unable to employ counsel, it was the duty of the trial judge to appoint counsel, not exceeding two—Section 5667 of the Code of 1923. The court did not name or designate particular counsel, but appointed the entire Scottsboro Bar thus extending and enlarging the responsibility and, in a sense, enabling each one to rely upon others. Not only this, and notwithstanding the appointment of the entire bar, we find one of the leading, if not the leading, firm subsequently appearing throughout for the State and actively participating in the trial of the cases. This is not intended as a criticism of said firm as the senior member stated to the trial court that when the Chattanooga lawyer, Roddy, appeared upon the scene in behalf of the defendants, he then accepted employment to prosecute and the trial court accepted the explanation. This Chattanooga lawyer, however, declined to appear as employed counsel and only did so as an amicus curiæ. Again, these defendants were confined in jail in another county during most of the time from the arrest to the trial and local counsel had little opportunity to confer with them and prepare their defense. They were non residents and had little time or opportunity to get in touch with their families and friends who were scattered throughout two other states, and time had demonstrated that they could or would have been represented by able counsel had a better opportunity been given by a reasonable delay in the trial of the cases judging from the number and activity

of counsel that appeared immediately or shortly after their conviction.

Another pertinent suggestion, and which is not intended as a harsh criticism of the local counsel that did attempt to represent the defendants throughout the trial, as we can appreciate the position of a lawyer appointed to defend an indigent defendant whom he may feel is guilty and as against whom public sentiment is at fever heat, the record indicates that the appearance was rather pro forma than [fol. 167] zealous and active and which is indicated by a declination on the part of counsel to argue the case notwithstanding the solicitor insisted upon the right to open and close and the State did, in fact, have the benefit of two arguments and the defendants none. We, of course, realize that a defendant can sometimes gain an advantage by agreeing to submit a case without argument as the State has the opening and closing, but where there is no agreement and the solicitor or prosecutor makes two arguments and the counsel for the defendant makes none, it is bound to make an unfavorable impression on the jury.

It also appears that when the jury returned the verdict in the first case tried the court house was not only crowded but there was great applause and demonstration of approval and this was bound to have some influence over those to try the succeeding cases.

There is still another point that would indicate that the juries that tried these cases were coerced by public feeling or sentiment actuated through passion or prejudice. The punishment for the offense for which these defendants were tried, and which is to be fixed by the jury, runs from ten years in the penitentiary to death, and the jury, as to each of the eight defendants, went the extreme notwithstanding there may have been some facts, such as difference in age, leadership, etc., that would render the conduct of some less culpable than others, yet we find no discrimination whatsoever in the fixation of the punishment.

As to whether or not these defendants are guilty is not a question of first importance, the real one being did they get a fair and impartial trial as contemplated by the bill of rights? The accused being entitled to a trial by an impartial jury is deprived of this right when the jury is overawed or coerced by outside influence, pressure or conduct. According to the State's theory, the crime was brutal and

harrowing and calculated to arouse the indignation of everyone and even stir the blood of the cooler and law [fol. 168] abiding citizen.

"'But the law should prevail, without any reference to the magnitude or brutality of the offense charged. No matter how revolting the accusation, how clear the proof, or how degraded, or even brutal, the offender, the Constitution, the law, the very genius of Anglo-American liberty, demand a fair and impartial trial. If guilty, let him suffer such penalty as an impartial jury, unawed by outside pressure, may under the law inflict upon him. He is a human being and is entitled to this. Let not an outraged public, or one which deems itself outraged, stain its own hands—stamp on its soul the sin of a great crime—on the false plea that it is but the avenger of the innocent.'"—Seay v. State, 207 Ala. 453.

It may be that neither of the foregoing reasons, if standing alone, should reverse these cases, but when considered in connection with each other they must collectively impress the judicial mind with the conclusion that these defendants did not get that fair and impartial trial that is required and contemplated by our Constitution. Therefore, in justice to the defendants and to the fair name of the State of Alabama, as well as the County of Jackson, these cases should be retried after some months of cooling time have elapsed and by their vigilant employed counsel.

I think that the trial court erred in refusing to grant a new trial in each of these cases and therefore feel constrained to dissent from the affirmance of same.

[fol. 169] Clerk's certificate to foregoing paper omitted in printing.

[fol. 170] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY, Appellants,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING

[fol. 171] [Title omitted]

Comes the appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, and hereby make application for a rehearing of said cause and moves the Court to set aside the judgment of conditional affirmance rendered in said cause and to grant them a new trial, and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

Geo. W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Schrieber, Attorneys for Appellants.

[fol. 172] [Title omitted]

Now comes the appellants, Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, in the above cause and presents this their application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellants or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument in support thereof.

I.

The Court erred and misconstrued appellants' assignment of errors, as set out in their brief and in this cause, and that their motion and petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled them to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative of their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 173]

II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment

forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legislature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 174] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the

special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting witness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due *rp*ocess of law, and the judgment against them was void.

[fol. 175]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in controvention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should

be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of their legal and constitutional rights to be informed legally of the charge against them.

Geo. W. Chamlee, (Signed) J. R. Brodsky, (Signed) Irving Schwab, (Signed) G. W. Chamlee, Jr., Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 176] In Supreme Court of Alabama, October Term, 1931-32

8 Div., 322

Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, and Eugene Williams

vs.

The State of Alabama

Appeal from Jackson Circuit Court

Order Overruling Application for Rehearing

Application for rehearing having been filed by Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery, in this case, on March 25th, 1932, and each and all grounds of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and said application for rehearing be and the same is hereby overruled.

[fol. 176½] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, Appellants

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The Petitioners, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Appellants, in the above styled cause most respectfully represent that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon these petitioners and fixing May 13, 1932, as the date of their execution, and that they filed their petition for a rehearing in this Honorable Court, which was overruled and disallowed on April 9, 1932, and they desire to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon them to give them and their counsel time to comply with the legal requirements in the preparation and filing of their petition for certiorari in the Supreme Court of the United States at Washington, D. C. for the purpose of having their case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioners make this application under the provisions of Section 9(d) of the Act of Congress of February 13, 1925, (U. S. Code title 28, section 350), and in support thereof present the following:

Your petitioners feeling themselves aggrieved by the judgment of this Court and as they are advised by their attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 177] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioners of their lives and liberty without due process of law and has denied to your petitioner the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioner although duly applied for compelling your petitioner to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioners of the charge against them with the certainty required.

(c) Your petitioners were denied an opportunity to employ counsel or to be properly represented by counsel and to prepare their case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioners their right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioners are advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 subd. 1). Your petitioners are advised by their counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 178] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioners may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioners are advised by their attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioners respectfully ask this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 179] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioners, and your petitioners have been advised that it will take your petitioners and their counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioners respectfully ask this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioners respectfully submit that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Charlie Weems et al. vs. State of Alabama, and Haywood Patterson vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the wirt of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioners respectfully submit to this Honorable Court that a stay of execution is necessary in order to give your petitioners an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. They respectfully pray that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Andy Wright, (Signed) Olen Montgomery,
(Signed) Ozie Powell, (Signed) Willie Roberson,
by (Signed) G. W. Chamlee, Atty.

[fol. 180] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Jr., Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, Atty. (Signed) Irving Schwob, Atty.

[fol. 181] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause is to made to appear to the Court by petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932, to June 24th, 1932, it is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity

of sufficient intensity to cause death to pass through the bodies of said Ozie Powell, Willie Roberson, Andy Wright [fol. 182] and Olen Montgomery until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 183] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court.

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith,
2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith,
3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.
4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.
5. The petition for a rehearing, a copy of which we submit herewith.
6. The final judgment and decision of the Supreme Court of the State of Alabama.
7. The copy of this præcipe.

. Your certificate to the record that it is a complete
ord in said cause.
Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

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ol. 184] Clerk's certificate to foregoing transcript omitd in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 181] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, and OLEN MONTGOMERY

vs.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause is to made to appear to the Court by petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932, to June 24th, 1932, it is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Ozie Powell, Willie Roberson, Andy Wright and Olen Montgomery to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity

of sufficient intensity to cause death to pass through the bodies of said Ozie Powell, Willie Roberson, Andy Wright [fol. 182] and Olen Montgomery until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 183] IN SUPREME COURT OF ALABAMA

No. 322

OZIE POWELL, WILLIE ROBERSON, ANDY WRIGHT, OLEN MONTGOMERY, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court.

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1. The record on appeal in said cause, a copy of which we submit herewith,
2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith,
3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.
4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.
5. The petition for a rehearing, a copy of which we submit herewith.
6. The final judgment and decision of the Supreme Court of the State of Alabama.
7. The copy of this præcipe.

Your certificate to the record that it is a complete
rd in said cause.
ated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for
Appellants.

File endorsement omitted.]

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l. 184] Clerk's certificate to foregoing transcript omit-
in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.