MORGAN COUNTY CIRCUIT COURT

STATE OF ALABAMA,

Plaintiff,

-vs-

HAYWOOD PATTERSON,

Defendant.

TESTIMONY

A P P E A R A N C E S

FOR THE STATE

Attorney General Knight
Assistant Atty. Gen. Lawson

FOR THE DEFENDANT

Hon. Joseph R. Brodsky

Testimony taken before the Hon. James E. Horton at Decatur, Alabama, on April 17th, 1933, on the motion for a new trial.

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MR. BRODSKY: I would like to request of the Court that the Sheriff who had the jury in custody be called to the stand, I desire to ask him some questions, which I intend to include in my motion for a new trial.

COURT: At the time of the motion I will take that up. The Court will have the bailiff examined at the proper time.

MR. BRODSKY: I will tell you why, if the Court please, I want to call him at this time; the reason for it is, we have information that while the jury sat on the case of Haywood Patterson in their deliberations they received and made telephone calls, and I want to inquire from the bailiff whether that is a fact.

COURT: Is Mr. Britnell in court. I will ask this for my own information.

MR. BRITNELL, called as a witness after being duly sworn testified as follows:

MR. BRODSKY: I object to the Prosecutor speaking to the bailiff now.

COURT: He said he objected to you speaking to the bailiff in court.

GENERAL KNIGHT: That is rather a strange proceeding, I just want to ask him about the telephone conversations.

MR. BRODSKY: I think we should have that in the record, and we object.

GENERAL KNIGHT: Object all you went to, I have a perfect right to talk to any witness in this court and expect to.

COURT: I will let him talk to him if he wants to.

MR. BRODSKY: I except.

COURT: Mr. Britnell, there was a statement made here in regard to some of the jurors talking over the telephone?

A They did with my permission; one juror that was sick called the druggist, then they had to have clean clothes sent up, and Mr. Groves called his wife twice who was sick.

COURT: Were all the conversations in your presence.

A Yes sir.

MR. BRODSKY: There was a telephone there wasn't there?

A Yes sir.

MR. BRODSKY: In the room the jury occupied?

A Yes sir.

MR. BRODSKY: There were several telephone calls during the time.

A Several came through my room, they couldn't talk over any telephone but that one I had, because I had the Manager cut them all out but that one.

MR. BRODSKY: You didn't hear what the persons at the other end said?

A No sir.

MR. BRODSKY: I want the record to show Mr. Knight

the Prosecutor called him into the witness room to talk with him before he was put on the stand, may the record show that.

GENERAL KNIGHT: I would like for the record also to show the Attorney General of this State asked the permission of the Court to talk to the bailiff, with a view of ascertaining whether or not the jury conducted itself properly. It is highly proper in my opinion for the Attorney General to see that the jury does properly — conduct itself in its deliberations.

MR. BRODSKY: I will make a motion to set aside the verdict on the ground it clearly appears the jury did receive communications from the outside.

COURT: You can put that in your motion, I don't care to take the motion up in piece meal.

A. If I understood the instructions they were not to talk about the case; nothing was said about them calling up about medicine, sick folks and clean clothing or anything like that. There wasn't anything said about the case and that is what I was instructed not to let them talk about.

MR. BRODSKY: Didn't you understand as a part of

your duty in having custody of the jury was to keep them free from outside communications?

A About the case.

MR. BRODSKY: You don't know what it was or who it was, you didn't hear what the people said on the outside?

A I didn't hear them talk about the case, that is the question.

MR. BRODSKY: You didn't hear what was said by the person who called up the jury?

A Not from the other end, no sir.

GENERAL KNIGHT: You never heard any one of these parties discuss this case in the presence of one of the jurors?

A No sir.

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STATE OF ALABAMA)
)
MORGAN COUNTY)

I, HAROLD HARLIN, Official Reporter of the Eighth Judicial Circuit hereby certify that I was the Official Reporter who took down the tesimony of the witness Britnell taken on the motion for a new trial in the case of State of Alabama vs. Haywood Patterson, commencing on the 17th day of April, 1933, and that the foregoing is a true and correct transcript of said testimony as transcribed by me personally.

This June 11th, 1933.

(SGD) HAROLD HARLIN
Official Reporter.

MORGAN CIRCUIT COURT

STATE OF ALABAMA, Plaintiff)
VS.) June 22. 1933
HAYWOOD PATTERSON, Defendant.)

The defendant in this case has been tried and convicted for the crime of rape with the death penalty inflicted. He is one of nine charged with a similar crime at the same time.

The case is now submitted for hearing on a motion for a new trial. As human life is at stake, not only of this defendant, but of eight others, the Court does and should approach a consideration of this motion with a feeling of deep responsibility, and shall endeavor to give it that thought and study it deserves.

Social order is based on law, and its perpetuity on its fair and impartial administration. Deliberate injustice is more fatal to the one who imposes than to the one on whom it is imposed. The victim may die quickly and his suffering cease, but the teachings of Christianity and the uniform lessons of all history illustrate without exception that its perpetrators not only pay the penalty themselves, but their children through endless generations. To those who deserve punishment, who have outraged society, and its laws on such an impartial justice inflicts the penalties for the violated laws of society, even to the taking of life itself; but to those who are guiltless the law withholds its heavy hand.

The Court will decide this motion upon the sole consideration of what is its duty under the law. The Court must be faithful in the exercise of the powers which it believes it possesses as it must be careful to abstain from the assumption of those not within its proper sphere. It has endeavored with diligence to enlighten itself with the wisdom declared in the cases adjudged by the most pure and enlightened judges who have ornamented the Courts of its own state, as well as the distinguished jurists of this country and its Mother England. It has been unstinted in the study of the facts presented in the case at bar.

The law wisely recognizes the passions, prejudices and sympathies that such cases as these naturally arouse, but sternly requires of its Ministers freedom from such actuating impulses.

The Court will now proceed to consider this case on the law and evidence only making such observations and conclusions as may appear necessary to explain and illustrate the same.

There are a number of the grounds of the motion. The Court has decided that no good purpose may be subserved in considering a number of these; without deciding whether these grounds are well based or not, the Court sees no need of their being considered. These omitted grounds are such as probably would not re-occur in another trial, and

if they did they would certainly be under a different form. The vital ground of this motion, as the Court sees it, is whether or not the verdict of the jury is contrary to the evidence. Is there sufficient credible evidence upon which to base a verdict?

The first consideration is what is the law of Alabama on the question of setting aside verdicts of juries on this ground. The cases are numerous and only a few will be cited.

The case of Caraway vs. Graham, 218 Ala. 453; 118 So. 807 was a suit against a surgeon for malpractice. The lower court refused to grant a new trial, but the Supreme Court reversed the lower court. Judge Sayre delivered the opinion of the Court stating:

"The Court here should proceed with great caution; but it should leave no evident mistake unrighted. 'This Court has not renounced its duty nor neglected its power' - certainly it ought not to do so - 'to revise the verdicts of juries, and the conclusions of the trial judges on questions of facts, where, in our opinion, after making all proper allowance and indulging all reasonable intendments in favor of the court below, we reach a clear conclusion that the finding and judgment are wrong.' Twinn Tree Lumber Co. vs. Day, 181 Ala. 565, 61 So. 914, 915.

It cannot be said that there was no contradiction in the evidence and its tendencies; the question for decision was one for the jury, in the first place, at least. Nevertheless, ultimately and within reasonable limits it is the right and duty of the Court to revise the finding of the jury. The case at bar was in a peculiar sense one to be decided on the expert testimony. The great weight of that testimony was with the defendant, and our judgment is that the motion for new trial should have been granted."

In Yarbrough vs. Mallory, 225 Ala. 579; 144 So. 447, a decision most recently rendered Judge Bouldin granted a new trial because in his opinion the verdict was clearly unjust and declared that the court need not determine what wrongful influence resulted in gross miscarriage of justice. In defining these influences he stated: "Bias 'means to incline to one side. 'Passin' means moved by feeling or emotions, or may include sympathy as a moving influence without conscious violation of duty. 'Prejudice' includes the forming of an opinion without due knowledge or examination."

We note that Judge Bouldin says that a jury may be moved by passion thus vitiating the verdict, and states that passion may include sympathy as a moving influence; and there need be no conscious violation of duty.

Again in the case of Birmingham News Co. vs. Lester, 222 Ala. 503, 133 So. 270, the same judge, Judge Bouldin declared:

"That the credibility of witnesses is involved, that opinion evidence of value, not conclusive upon the trier of fact is to be considered, and that there is no yardstick to measure the damages for

physical pain and suffering, does not withdraw the case from the supervisory power of the trial court over the verdicts of juries. In all these matters he is in like position with the jury, and clothed with the power and duty to relieve against verdicts which allowing all reasonable presumptions in their favor, are still found to be clearly wrong and unjust from any cause, whether by reason of passion and bias, or from mistake, inadvertence or failure to comprehend and appreciate the issues."

In Roan vs. State, 143 So. 454, a case of conviction of murder in the first degree, the Supreme Court, speaking through Thomas, J. declared:

"We may conclude by saying that after allowing the reasonable presumptions in favor of the correctness of the verdict rendered - guilty of murder in the first degree- we are clear to the conclusion that on the evidence before the preponderance thereof is against all verdict rendered." And a new trial was granted.

These are the latest decisions of our Supreme Court. They could be multiplied.

Turning to the Court of Appeals we will consider a few cases rendered by that Court.

The case of Black vs. State 24 Ala App. 433; 136 So. 425, was a case of carnal knowledge, a case of like nature as rape. The evidence is set out in much detail and the Court will not attempt to state it except that the prosecutrix testified positively to the fact. The Court of Appeals speaking through Bricken P. J. concludes its decision in these words: "As stated, the evidence as to the defendant's carnal knowledge of Rachel Davis was in conflict, but it is insisted that when her evidence as to the unlawful act is considered in the light of human experience and common knowledge, the defendant's motion for a new trial should have been sustained, and that the weight of evidence against the verdict is so great that, "The substantial ends of justice require the examination of the facts by another jury."

The case of Skinner vs. State, 22 Ala. App. 457; 115 So. 806 was a case of rape. In that case Rice, J. declared: "As for sustaining the conviction for the offense of rape suffered by appellant, we feel impelled to say that under and in obedience to the well established rule prevailing in this state, it is our opinion, and we so hold that the evidence was entirely insufficient and the trial court erred in not setting aside the verdict and granting a new trial.

Culbert vs. State, 23 Ala. App. 557; 129 So. 315, was likewise a case of rape where the Court of Appeals set aside the verdict and granted a new trial.

It is unnecessary to further cite the decisions as to the duties of courts in setting aside the verdicts of juries. The law is practically uniform.

Another question to be considered by the Court is how far a Court should go in referring to the evidence in a case upon granting or refusing a motion for a new trial on account of the insufficiency of the evidence. The English courts appear to be very careful in refraining from setting out the evidence. This does not appear to be the prevailing doctrine either in this State or the other states, as well as the Supreme Court of the United States. Our Courts do not hesitate to set out any part or all the evidence when requisite in considering its sufficiency or insufficiency.

The Court will next consider the law as especially applicable to the crime or rape.

In the case of Boddie vs. State, 52 Ala. 395, Chief Justice Brickell in speaking of the evidence of a prosecutrix who appeared to lack chastity declared the law as follows:

"Her known want of chastity may create a presumption that her testimony is false or feigned. Whether it creates such presumption, the jury must determine from all the evidence. She may be of ill fame for chastity, but she is still under the protection of the law, and not subject to a forced violation of her person, for the gratification of the propensities of the man who has strength to overpower her. No principle of law forbids a conviction on her uncorroborated testimony, though she is wanting in chastity, if the jury are satisfied of its truth. Her testimony should be cautiously scrutinized and the Court and jury should diligently guard themselves from the undue influence of the sympathy in her behalf which the accusation is apt to excite. If she did not conceal, but immediately discovered the offense, and the offender if known to her; if the place of its commission was such that if she made outcry, it would not probably be heard, and bring her assistance and defense, - these and other circumstances should be considered by the jury. The manner in which she testifies - the consistency of her testimony should also be carefully considered."

In Barnett vs. State 83 Ala. 45; 3 So. 612, Judge Somerville said:

"In prosecutions for rape it is very proper for the jury to be exceedingly cautious how they convict a defendant on the uncorroborated testimony of the prosecutrix, especially where there is evidence tending to impeach her credibility; for the experience of courts in modern times has amply attested the assertion of Lord Hale, that the charge of rape is "an accusation easy to make and hard to be proved, and harder still to be defended by the party accused though ever so innocent."

The U.S. Supreme Court in the case of Mills vs. U.S. 164 U.S. 644; 41 Law Ed. 584, in setting aside a verdict of a jury convicting a defendant and sentencing him to death thus declared the law:

"The crime itself is one of the most detestable and abominable that can be committed, yet a charge of that nature is also one which all judges have recognized as easy to be made and hard to be defended against; and it has been said that very great caution is requisite upon all trials for this crime, in order that the natural indignation of men which is aroused against the perpetrator of such an outrage upon a defenseless woman may not be misdirected, and the mere charge taken for proper proof of the crime on the part of the person on trial.

33 Cyc. P. 1485, declares the general holding of all the courts to be as follows:

"The Courts have repeatedly approved Sir Mathew Hale's statements in regard to the crime of rape, that, "it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent;" and that we should "be the more cautious upon trials of offenses of this nature wherein the Court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over hastily carried to the conviction of the person accused thereof by the confident testimony, sometimes of malicious and false witnesses."

The law as to granting new trials in cases of rape is thus summed up in 33 Cyc. P. 1497.

"But defendant should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of unreliability or improbability, and particularly when it is contradicted by other evidence; and where the evidence preponderates in favor of defendant, or the verdict appears to have been influenced by passion or prejudice, it should always be set aside unless there is corroboration of prosecutrix."

With the law so written, let us now turn to the facts of the case. The Court will of necessity consider in detail the evidence of the chief prosecutrix, Victoria Price, to determine if her evidence is reliable, or whether it is corroborated or contradicted by the other evidence in the case. In order to convict this defendant, Victoria Price must have sworn truly to the fact of her being raped. No matter how unreliable the testimony of the defendant and his witnesses, unless the State can make out a case upon the whole evidence a conviction cannot stand.

The claim of the State is that this defendant raped Victoria Price; that is the charge. The circumstances under which the crime was claimed to have been committed appear as follows:

On March 25th, 1931, the prosecutrix, Victoria Price, and Ruby Bates, her companion, boarded a freight train at Chattanooga, Tennessee, for the purpose of going to Huntsville, Alabama. On the same train were seven white boys, and twelve negroes, who it appears participated, or are charged with participating in the occurrences on such train. All were tramps or "hoboing" their way upon this same freight train. About Stevenson, Alabama, a fight occurred between the negroes and the white boys and all the white boys, except one named Gilley, got off the train, or were thrown off the train, a short time after the train left Stevenson, Alabama. The distance from Stevenson to Paint Rock is thirty eight miles. The train was travelling between twenty five and thirty five miles an hour. Some of the white boys, who were thrown off the train returned to Stevenson, Alabama, and the operator there telegraphed to Pain Rock, a place down the line, reporting the fight, causing a posse and a large crowd to form at Paint Rock and took therefrom nine negroes, one of whom was this defendant, the two white girls, and their white companion, Gilley. The negroes were arrested and lodged in the Scottsboro jail as well as the two women, and the seven white boys. The two women were forthwith carried to the office of a physician in Scottsboro, arriving there from one hour to one and one half hours after they claimed a rape was committed upon them, and were examined by two skilled physicians, Drs. Bridges and Lynch. It was while the train was travelling between Stevenson and Paint Rock, between shortly after noon and three o'clock that the alleged rape was committed.

There have been two trials of this case; one at Scottsboro and the other the recent trial at Decatur. The trial at Scottsboro was reversed by the Supreme Court of the United States, who declared the defendants did not have the assistance of counsel. The motion in this case is upon the result of the trial at Decatur. The evidence at the trial at Decatur was vastly more extensive and differed in many important respects from the evidence at Scottsboro.

Much of the evidence at Scottsboro was introduced at the trial at Decatur, and the Court will consider the entire evidence submitted as it may appear necessary in considering this motion. The Court shall endeavor in quoting the evidence to quote it substantially, and sometimes literally as given, only stating its substance when requisite to make its meaning clear.

As stated the State relies on the evidence of the prosecutrix, Victoria Price, as to the fact of the crime itself, necessarily claiming that her relation is true. The defense insists that her evidence is a fabrication - fabricated for the purpose of saving herself from

a prosecution for vagrancy, or some other charge.

The Court will, therefore, first set out the substantial facts testified to by Victoria Price and test it as the law requires, as to its reliability, or probability, and as to whether it is contradicted by the other evidence.

She states that on March 25, 1931, she was on a freight train travelling through Jackson County from Stevenson to Paint Rock; that Ruby Bates was with her on the train; that she had boarded the train at Chattanooga, Tennessee; that when she first boarded the train she got on an oil tank car. That at Stevenson, she and Ruby Bates walked down the train and got on a gondola car - a car without a top. That the car was filled with chert, lacking about one and one half or two feet of being full. That the chert was sharp, broken rock with jagged ends; that as the train proceeded from Stevenson seven white boys got in the car with them and that they all sat down in one end of the car, next to a box car; that in about five or ten minutes twelve colored boys jumped from the box car into the gondola, jumping over their heads. That the defendant was one of them. That the colored boys had seven knives and two pistols; that they engaged in a fight with the white boys ejecting all from the train except one, Orville Gilley; that this white boy stayed on the gondola, remained there and was still on the car when Paint Rock was reached, and saw the whole thing that thereafter occurred on this car. That one of the negroes picked her up by the legs and held her over the gondola, and said he was going to throw her off; that she was pulled back in the car and one of the negroes hit her on the side of the head with a pistol causing her head to bleed; that the negroes then pulled off the overalls she was wearing and tore her step-ins apart. That they then threw her down on the chert and with some of the negroes holding her legs and with a knife at her throat, six negroes raped her, one of whom was the defendant; that she lay there for almost an hour on the jagged rock, with the negroes lying on top of her, some of whom were pretty heavey; that the last one finished just five minutes before reaching Paint Rock and that her overalls had just been pulled on when the train stopped at Paint Rock with the posse surrounding it. That she got up and climbed over the side of the gondola and as she alighted she became unconscious for a while, and that she didn't remember anything until she came to herself in a grocery store and she was then taken to Scottsboro, as the evidence shows, in an automobile and that in about an hour or an hour and one half Dr. Bridges and Dr. Lynch made an examination of her person.

This witness further testified that she was wet on her private parts; that each negro wetted her more and more; that her private parts were bleeding; that the blood was on her clothes; that her coat had semen on it; that when Dr. Bridges and Dr. Lynch examined her they saw her coat and it was all spattered over with semen; that her dresses had blood and semen on it; that she had them on when the doctors examined her; that the coat was cleaned and that she washed the dresses in the jail before the trial. The evidence further shows without dispute that all nine negroes were taken in charge by the officers and carried to the Scottsboro jail.

With seven boys present at the beginning of this trouble with one seeing the entire affair, with some fifty or sixty persons meeting them at Paint Rock and taking the women, the white boy, Gilley, and the nine negroes in charge, with two physicians examining the women within one to one and one half hours, according to the tendency of all the evidence, after the occurrence of the alleged rape, and with the acts charged committed in broad day light, we should expect from all this cloud of witnesses or from the mute but telling physical condition of the women or their clothes some one fact in corroboration of this story. Let us consider the rich field from which such corroboration may be gleaned.

1. Seven boys on the gondola at the beginning of the fight, and Orville Gilley, the white boy, who remained on the train, and who saw the whole performance.

2. The wound inflicted on the side of Victoria Price's head by the butt end of a pistol from which the blood did flow.

3. The lacerated and bleeding back of the body, a part of which was stripped of clothing and lay on jagged sharp rock, which body two physicians carefully examined for injuries shortly after the occurrence.

4. Semen in the vagina and its drying and starchy appearance in the pubic hair and surrounding parts.

5. Two doctors who could testify that they saw her coat all spattered over with semen; who could testify to the blood and semen on her clothes, and to the bleeding vagina.

6. Two doctors who could testify to the wretched condition of the women, their wild eyes, dilated pupils, fast breathing and rapid pulse.

7. The semen which must have eventually appeared with increasing evidence on the pants of the rapists as each wallowed in its spreading ooze. The prosecutrix testified semen was being emitted by her rapists, and common sense tells us six discharges is a considerable quantity.

8. Live spermatozoa, the active principle of semen, would be expected in the vagina of the female from so recent discharges.

9. The washing before the first trial by Victoria Price of the very clothes which she claimed were stained with semen and blood.

The Court will now present the evidence which will show:

That none of the white seven boys, or Orville Gilley, who remained on the train were put on the stand, except Lester Carter; that neither Dr. Bridges nor Dr. Lynch saw the wound inflicted on the head by the pistol, the lacerated or bleeding back which lay on jagged rocks; that

the semen they found in the vagina of Victoria Price was of small amount; that the spermatozoa were non-motile, or dead; that they saw no blood flowing from the vagina; that they did not testify as to seeing the semen all spattered over the coat or blood and semen on the clothes; any torn garments or clothes; that these doctors testified that when brought to the office that day neither woman was hysterical or nervous about it at all, and that their respiration and pulse were normal; and that the prosecutrix washed the clothes evidencing the blood and semen.

Taking up these points in order what does the record show: None of the seven white boys were put on the stand, except Lester Carter, and he contradicted her.

Next was Victoria Price hit in the head with a pistol? For this we must turn to Dr. Bridges. It was agreed in open court that Dr. Lynch, who in company with Dr. Bridges at Scottsboro examined the two girls would testify in all substantial particulars as Dr. Bridges, and Dr. Lynch was excused with that understanding when Dr. Bridges completed his examination. In considering Dr. Bridges' testimony we observe he was a witness placed on the stand by the State. His intelligence, his fair testimony, his honesty and his high professional attainments, impressed the Court, and certainly all that heard him. He was frank and unevasive in his answers. The Court's opinion is that he should be given full faith and credit. In further considering his testimony it was shown that he was examining these women with the most particular care to find evidence of a rape upon them, and that the women were accusing the negroes, and were being required to co-operate and exhibit whatever indicated they had been abused. Returning to the pistol lick on the head. The doctor testifies: I did not sew up any wound on this girl's head; I did not see any blood on her scalp. I don't remember my attention being called to any blood or blow on the scalp. And this was the blow that the woman claimed helped force her into submission.

Next, was she thrown and abused, as she states she was, upon the chert - the sharp, jagged rock?

Dr. Bridges states as to physical hurts; we found some small scratches on the back part of the wrist; she had some blue places in the small of the back, low down, in the soft part, three or four bruises about like the joint of your thumb, small as a pecan, and then on the shoulders a blue place about the same size, and we put them on the table, and an examination showed no lacerations. The evidence of other witnesses as well as the prosecutrix will show that the woman had travelled from Huntsville to Chattanooga, and were on the way back. There is other evidence tending to show they had spent the night in a hobo dive; that they were having intercourse with men shortly before that time. These few blue spots, and this scratch would be the natural consequence of such living; vastly greater physical signs would have been expected from the forcible intercourse of six men under such circumstances.

Victoria Price testified that as the negroes had repeated intercourse with her she became wetter and wetter around her private parts; and that they finished just as they entered Paint Rock, and that she was taken in an automobile immediately to the Doctor's office. There Dr. Bridges and Dr. Lynch, as has been shown, examined her. They looked for semen around her private parts; they found on the inside of her thighs some dirty places. These dirty places were hardly dry, and were infiltrated with dust about what one would get from riding trains. It was dark dirt or dust. While the doctor did not know what this drying fluid was, his opinion was that it was semen, but whatever it was, it was covered with heavy dust and dirt. He next examined the vagina to see whether or not any semen was in the vagina. In order to do this he takes a cotton mop and with the aid of a speculum and headlight inserts the cotton mop into the woman's vagina and swabs around the cervix, which is the mouth of the uterus or womb. He extracts from this vagina the substance adhering to the cotton after he has swabbed around the cervix, and places this substance under the microscope. He examines this substance to see if spermatozoa are to be found, and what is the condition of the spermatozoa. Upon the examination under the microscope he finds that there are spermatozoa in the vagina. This spermatozoa he ascertains to be non-motile. He says to the best of his judgment that non-motile means the spermatozoa were dead. For any fluid escaping from the vagina to become infiltrated with coal dust and dirt this dirt under the circumstances in this case must have gradually sifted upon the drying fluid, and necessarily a considerable period of time would be required for such an infiltration. The fresh semen emitted by so many negores would have a tendency rather to wash off any dirty places around the vagina, and it must have remained there for a considerable period for it to become thus infiltrated with dust and coal dust. Around the cervix the spermatozoa live under the most favorable conditions. While the life of the spermatozoa may be variable, still it appears from the evidence that in such a place as this it would have taken at least several hours for the spermatozoa to have become non-motile or dead. When we consider as the facts hereafter detailed will show that this woman had slept side by side with a man the night before in Chattanooga, and had intercourse at Huntsville with Tiller on the night before she went to Chattanooga. When we further take into consideration that the semen being emitted, if her testimony were true, was covering the area surrounding the private parts, the conclusion becomes clearer and clearer that this woman was not forced into intercourse with all of these negroes upon that trian, but that her condition was clearly due to the intercourse that she had had on the nights previous to this time.

Was there any evidence of semen on the clothes of any of the negroes? In the case of, State vs. Cowing, 99 Minn. 123; 9 Am. & En. Ann. cases, 566, the Court said the physicians who testified stated that the semen would have remained on the clothes and could have been found after the expiration of several days. And this is probably a well known fact. Though these negroes were arrested just after the alleged acts, and though their clothes and pants were examined or looked over by the officers, not a witness testified as to seeing any semen or even any wet or damp spots on their clothes.

What of the coat of the woman spattered with semen, and the blood and semen on the clothes and the bleeding vagina?

Dr. Bridges says he did not see any blood coming from her vagina; that Mrs. Price had on step-ins, but did not state that they were torn or had blood or semen on them. Not a word from this doctor of the blood and semen on the dress; not a word of the semen spattered over the coat. And this was a doctor so conscientious and thorough in his examination as to make the woman undress and to examine with care every part of her body; a doctor who in his search for semen went to the extent of swabbing out the vagina and of examining its contents under the microscope.

What of the physical appearance of these two women when the doctors saw them? Dr. Bridges says that when these two women were brought to his office neither were hysterical, or nervous about it at all. He noticed nothing unusual about their respriation and their pulse was normal.

Such a normal physical condition is not the natural accompaniment, or result of so horrible an experience, especially when the woman testified she fainted from the injuries she had received.

The fact that the women were unchaste might tend to mitigate the marked effect upon their sensibilities but such hardness would also lessen the probability of either of them fainting. If the faint was feigned then her credibility must suffer from such feigned actions. And this witness' anger and protest when the doctors insisted on an examination of her person was not compatible with the depression of spirit likely to be caused by the treatment she said she had received.

Lastly, before leaving Dr. Bridges let us quote his summation of all that he observed:

"Q. In other words the best you can say about the whole case is that both of these women showed they had had intercourse?

"A. Yes, sir."

Is there corroboration in this? We think not, especially as the evidence points strongly to Victoria Price having intercourse with one Tiller on several occasions, just before leaving Huntsville. That she slept in a hobo jungle in Chattanooga, side by side with a man. The dead spermatozoa, and the dry dirty spots would be expected from those earlier acts.

Victoria Price testified that she washed her clothes which were stained with semen and blood before even the trial as Scottsboro.

The Supreme Court of Minnesota in the case of State vs. Cowing, 99 Minn. 123, 9 Am. & En. Ann. cases, 566, in setting aside a conviction of rape laid great stress and largely based its actions upon such conduct of the prosecuting witness; this Court said:

"While not without some corroboration, the testimony of prosecutrix is aided most largely by that of her sister; but, that corroboration is to be weighed in connection with the fact, that she and her sister, by washing the skirt, which if her testimony were true, would probably have borne evidence of blood and semen, effectually destroyed the best possible evidence under the circumstances."

Is there any other corroboration? There was a large crowd at Paint Rock when the freight arrived there. While they differed in many details as to the make up of the train and the exact car from which the different persons were taken, all of which is apparently unimportant, all agreed upon the main fact, that the nine negroes, the two women, and the white boy were all taken from the train. This undisputed fact constitutes about the whole extent of their evidence, except a statement by Ruby Bates that she had been raped which experience the said Ruby Bates now repudiates. This statement by Ruby Bates appears to have been made under the following circumstances: There were three witnesses who testified to having seen the women at Paint Rock. One of the witnesses first saw them after they had gotten off the car and were both standing. Another witness did not see them for some time, he having first rounded up all the negroes. The third witness saw them as they were getting off the car. He states they first started to run toward the engine and as they approached a crowd of men they turned and ran back in the opposite direction, and met a part of the posse who stopped them. Mr. Hill the Station Agent then came up to the women and asked them if the negroes had bothered them. Thereupon Ruby Bates stated that they had been raped. The facts appearing that the women instead of seeking the protection of the white men they saw were at first frightened, and the question propounded was in itself suggestive of an answer. Mr. Hill also states that the negroes were in a coal car and they were trying to climb over the sides, were pulling themselves up, trying to get off. This clearly indicates that the negroes were not in the car filled with chert as the prosecutrix claims.

For any other corroboration in the evidence we now return to the freight train as it passes along the track just after leaving Stevenson. The witness, Lee Adams, at a point about one quarter of a mile from the train sees a fight between a number of white and colored boys; this is an admitted fact in the case.

The evidence of Ory Dobbins was admitted in corroboration of Victoria Price. When his evidence is studied it is found it does not corroborate her, or if so slightly. The good faith of this witness need not be the slightest questioned, only the lack of correspondence of his testimony with hers. He stated that he lives three miles from Stevenson near the railroad as it ran toward Scottsboro; that as he walked to his barn he saw a freight train; that as it passed his house he saw a white woman sitting on the side of a gondola and a negro put his arm around her waist and throw her back in the car; that he saw the car as it passed; that it was in his line of vision for a few feet, pointing out a door in the court room as the distance. His reason for stating it was a woman is as follows:

"Q. You know it was woman don't you?

A. She had on woman's clothes.

COURT: She had on women's clothes?

Q. What kind of clothes, overalls?

A. No, sir, dress."

The very basis of his statement that she was a woman because she had on a dress does not apply to the women in this case, who were dressed in overalls.

He said it was in a coal car and there were five or six people in the car. Victoria Price says when they took hold of her that it occurred in a car almost filled with chert, and there were fifteen people in the car. The witness Dobbins said the gondola was between two box cars, while the evidence shows the gondola in which the woman was was the fifth of a string of eight gondolas.

The witness further stated that the car upon which he saw this occurrence was back toward the caboose. On the other hand the official make up of the train shows the freight train consisted of forty cars; that the women were in the eleventh or twelfth car from the engine and there were twenty eight or twenty nine cars between this car and the caboose. In view of the fact that it was along this vicinity that the fight occurred between the negroes and the white boys, and as his reason for saying it was a woman was on account of the dress, and all agree these women had on overalls, this can at its best be only slight corroboration.

This is the State's evidence. It corroborates Victoria Price slightly, if at all, and her evidence is so contradictory to the evidence of the doctors who examined her that it has been impossible for the Court to reconcile their evidence with hers.

Next was the evidence of Victoria Price reasonable or probable? Were the facts stated reasonable? This is one of the tests the law applies.

Rape is a crime usually committed in secrecy. A secluded place or a place where one ordinarily would not be observed is the natural selection for the scene of such a crime. The time and place and state of this alleged act are such to make one wonder and question did such an act occur under such circumstances. The day is a sunshiny day the latter part of March; the time of day is shortly after the noon hour. The place is upon a gondola or car without a top. This gondola according to the evidence of Mr. Turner, the conductor was filled to within six inches to twelve or fourteen inches of the top with chert, and according to Victoria Price up to one and one half feet or two feet of the top. The whole performance necessarily being in plain

view of any one observing the train as it passed. Open gondolas on each side. On top of this chert twelve negroes rape two white women; they undress them while they are standing up on this chert; this prosecuting witness is then thrown down and with one negro continuously kneeling over her with a knife at her throat, and one or more holding her legs, six negroes successively have intercourse with her on top of that chert, as one arises off of her person, another lies down upon her; those not engaged are standing or sitting around; this continues without intermission although that freight train travels for some forty miles through the heart of Jackson County; through Fackler, Hollywood, Scottsboro, Larkinsville, Lin Rock and Woodville, slowing up at several of these places until it is halted at Paint Rock; Gilley a white boy, pulled back on the train by the negroes, and sitting off according to Victoria Price in one end of the gondola, a witness to the whole scene; yet he stays on the train, and he does not attempt to get off of the car at any of the places where it slows up to call for help; he does not go back to the caboose to report to the conductor or to the engineer in the engine, although no compulsion is being exercised upon him, and instead of there being any threat of danger to him from the negroes, they themselves have pulled him back on the train to prevent him being injured from jumping off the train after it had increased its speed; and in the end by a fortuitous circumstance just before the train pulls into Paint Rock, the rapists cease and just in the nick of time the overalls are drawn up and fastened, and the women appear clothed as the posse sight them. The natural inclination of the mind is to doubt and to see further search.

Her manner of testifying and demeanor on the stand militate against her. Her testimony was contradictory, often evasive, and time and again she refused to answer pertinent questions. The gravity of the offense and the importance of her testimony demanded candor and sincerity. In addition to this the proof tends strongly to show that she knowingly testified falsely in many material aspects of the case. All this requires the more careful scrutiny of her evidence.

The Court has heretofore devoted itself particularly to the State's evidence; this evidence fails to corroborate Victoria Price in those physical facts, the condition of the woman raped, necessarily speaking more powerfully than any witness can speak who did not view the performance itself. The Court will next consider her credibility, and in doing so, some of the evidence offered for the defendant will also come in for consideration. In considering any evidence for the defendant which would tend to show that Victoria Price swore falsely the Court will exclude the evidence of witnesses for defendant, who themselves appear unworthy of credit, unless the facts and circumstances so strongly corroborate that evidence that it appears true.

Lester Carter was a witness for the defendant; he was one of the white boys ejected from the train below Stevenson. Whether or not he is entitled to entire credit is certainly a question of great doubt; but where the facts and circumstances corroborate him, and where the failure of the State to disprove his testimony with witnesses on hand to disprove it, the Court sees no reason to carpriciously reject all he said.

Victoria Price denied she knew him until she arrived at Scottsboro; it became a question to be considered as to whether Lester Carter knew her at Huntsville and saw her committing adultery on several occasions with one Tiller just before leaving for Chattanooga, and returning on the freight the next day; the facts he testified to might easily account for the dead spermatozoa in her vagina. He says he met Victoria Price and Tiller while in jail at Huntsville. That all three were inmates of the jail at the same time. That Ruby Bates visited Tiller and Victoria Price while they were in jail, and he, Carter met her at the jail. That after all had gotten out, and he had finished his sentence, he stayed in the home of Tiller and his wife, and he and Tiller would go out and be with these girls. That they all planned the Chattanooga trip together, and that just before the trip, or the night before all four were engaged in adulterous intercourse. Victoria Price stated on the stand that Tiller, the married man, was her boy friend and was in her home the night before she left for Chattanooga; that he had a right there, and he was corresponding with her. Tiller was in the State's witness room then and identified by Lester Carter, when he was brought out of the witness room by the Court's order. Tiller though there in court was not put on the stand to deny what Carter said. There is no reason to doubt Carter was telling the truth then. Next Carter said that when he and Ruby Bates and Victoria Price arrived in Chattanooga about eight o'clock at night, all went to what is known as the "Hoboes Jungle", a place where tramps of all descriptions spent the night in the open; there are numerous witnesses who corroborate him in this statement; that they met the boy Gilley and all four slept side by side, he by the side of Ruby Bates, and Victoria by the side of Gilley. Victoria Price, said that she and Ruby Bates went to Chattanooga seeking work; that they went alone and spent the night at Mrs. Callie Brochie's, a friend of hers formerly living in Huntsville, but had moved to Chattanooga. Was this true? The Chattanooga Directory was introduced in evidence; residents of Chattanooga, both white and colored, took the stand stating that no such woman as Callie Brochie lived in Chattanooga and had not ever lived there so far as they knew. Though Victoria Price first made this statement more than two years ago at Scottsboro, no witness was offered either from Chattanooga or Huntsville showing any such woman had ever lived in either such place.

Victoria Price said the negroes jumped off a box car over their heads into the gondola, where she, Ruby Bates, and the seven white boys were riding with seven knives and two pistols and engaged in a fight with the white boys; the conductor of the train who had the official make-up of the train stated there were eight gondola cars together on the train; that the women were in one of the middle cars, and that there were three gondola cars between the car in which they were riding and the nearest box car. Lester Carter stated that he was one of the seven boys engaged in the fight with the negroes; that he did not see a single knife or pistol in the hands of the negroes. And although these seven white boys were kept in jail at Scottsboro until after the first trial no one testified to any knife or pistol wounds on any of them.

Further there was evidence of trouble between Victoria Price

and the white boys in the jail at Scottsboro because one or more of them refused to go on the witness stand and testify as she did concerning the rape; that Victoria Price indicated that by so doing they would all get off lighter.

The defendant and five of the other negroes charged with participating in this crime at the same time went on the stand and denied any participation in the rape; denied they knew anything about it, and denied that they say any white women on the train. Four of them did state that they took part in the fight with the white boys, which occurred on the train. Two of them testified that they knew nothing of the fight, nor of the girls, and were on an entirely different part of the train. Each of these two testified as to physical infirmities. One testified he was so diseased he could hardly walk, and he was examined at Scottsboro according to the evidence and was found to be diseased. The other testified that one eye was entirely out and that he could only see sufficiently out of the other to walk unattended. The physical condition of this prisoner indicates apparently great defect of vision. He testified, and the testimony so shows that he was in the same condition at Scottsboro and at the time of the rape. He further testified that he was on an oil tank near the rear of the train, about the seventh car from the rear; that he stayed on this oil tank all of the time and that he was taken off of this oil tank. The evidence of one of the trainmen tends to show that one of the negroes was taken off of an oil tank toward the rear of the train. This near blind negro was among those whom Victoria Price testified was in the fight and in the party which raped her and Ruby Bates. The facts strongly contradict any such statement.

History, sacred and profane, and the common experience of mankind teach us that women of the character shown in this case are prone for selfish reasons to make false accusations both of rape and of insult upon the slightest provocation, or even without provocation for ulterior purposes. These women are shown, by the great weight of evidence, on this very day before leaving Chattanooga to have falsely accused two negroes of insulting them, and of almost precipitating a fight between one of the white boys they were in company with and these two negroes. This tendency on the part of the women show that they are pre-disposed to make false accusations upon any occasion whereby their selfish ends may be gained.

The Court will not pursue the evidence any further.

As heretofore stated the law declares that a defendant should not be convicted without corroboration where the testimony of the prosecutrix bears on its face indications of unreliability or improbability, and particularly when it is contradicted by other evidence. The testimony of the prosecutrix in this case is not only uncorroborated, but is also bears on its face indications of improbability and is contradicted by other evidence, and in addition thereto the evidence greatly preponderates in favor of the defendant. It, therefore, becames the duty of the Court under the law to grant the motion made in this case.

It is, therefore, ordered and adjudged by the Court that the motion be granted; that the verdict of the jury in this cause, and the judgment of the Court sentencing this defendant is hereby vacated and set aside and a new trial is ordered.

James E. Horton
Judge of Morgan Circuit Court