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State of Alabama v. Norris

(Morgan County)

December 1, 1933

Hon. W. W. Callahan, Judge

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E. P. KINGSBERRY
Official Reporter,
Huntsville, Alabama.

STATE OF ALABAMA.

MORGAN COUNTY.

IN THE CIRCUIT COURT. No. 1977

THE STATE OF ALABAMA - - - - - PROSECUTOR.

vs.

CLARENCE NORRIS - - - - - DEFENDANT.

Tried before Hon. W. W. Callahan and a Jury. Prisoner arraigned, in company with balance of defendants under joint indictment, Monday November 20th, 1933, and entered a plea of not guilty.

- - - - -
Motion to change venue of trial in this same case, No. 1977, was heard and overruled by the court.

- - - - -
Motion to quash the joint indictment in this same case, No. 1977, was heard, and overruled by the court.

- - - - -
Both of the above motions were heard and passed on by the court, during week beginning November 20, 1933, as shown by docket entries in said case.

On November 20th, 1933, the court drew a panel of 50 Jurors to serve as regular jurors for the week beginning November 27th, 1933. In addition thereto on, to-wit: November 23rd, the court drew a special venire of 50 additional jurors to serve in the case of the State of Alabama v. Clarence Norris, and set the case of Clarence Norris for trial on Thursday,

November 30, 1933, and the sheriff was instructed to serve a copy of the regular and special jurors on the defendant forthwith

On the morning of December 1, 1933, the case of the State of Alabama was called for trial and the following were the appearances:

FOR STATE:

Attorney General, Thomas E. Knight, Jr.
Assistant Atty. Gen'l; Thomas S. Lawson
H. B. Bailey, Solicitor, Jackson County.
Wade Wright, Solicitor, Morgan County.

FOR DEFENDANT:

Hon. Samuel S. Leibowitz
Hon. Joseph R. Brodsky
Hon. G. W. Chanlee.

MR. LEIBOWITZ: The only motion left to take up in this case, is the motion to quash the venire, and we are willing to consent that the evidence submitted on a similar motion for Haywood Patterson be considered by the court on this motion, provided, however, that the conditions have not changed, that is the status with reference to the jury roll. To make it clear, may I start all over again: Will the state stipulate that there has been no change in the status of the state's contention, or the state's evidence, on the question of the motion to quash the jury venire, - in Morgan County, - since the hearing on that motion in the Patterson case, we will stipulate that the evidence be now received as evidence in this

case.

MR. KNIGHT: The state will stipulate that, certainly.

COURT: The court's ruling on that motion will be the same, and I'll make the proper entry on the record.

COURT: Now, gentlemen, the Jackson County authorities, only sent down one certified copy of the joint indictment, and I reckon the jury that is out ought to have that indictment.

(It was then agreed that the clerk make a copy of the joint indictment and give it to the jury in the Haywood Patterson case, then deliberating on said case.)

THEREUPON, the jury was called, examined, selected and sworn, as jurors in this case.

VICTORIA PRICE, being sworn as a witness for the State, testified as follows:

DIRECT EXAMINATION

MR. BAILEY:

Your name is Mrs. Victoria Price?

A Yes sir.

Q Where do you live?

A Huntsville, Alabama.

Q Where were you living on the 25th day of March,

1931?

A Huntsville, Alabama.

Q Mrs. Price, on that day, on the 25th of March, 1931, were you riding on a freight train that was traveling through Jackson County, Alabama, along the Southern Railway, from Stevenson, Alabama, to Paint Rock, Alabama?

A Yes sir.

Q Were you on that train when it reached Stevenson, Alabama?

A Yes sir.

Q Was any one riding with you on that train?

A Yes sir, Ruby Bates.

Q What part of the train were you riding on after the train left Stevenson, Alabama, coming this way in the direction of Paint Rock?

A In a gondolier.

Q In a gondola car?

A Yes sir.

Q Who was in the car with you?

A Ruby Bates and several white boys.

Q Was it empty or loaded, the car?

A It had chert in it, what I heard called chert.

Q About how full was the car?

A It lacked about a foot and a half or two feet of being full.

Q Did you see this defendant on that occasion, Clarence Norris?

A Yes sir.

Q Where was he when you first saw him on that train

3
4
running between Stevenson and Paint Rock?

A They was coming over the box car.

MR. LEIBOWITZ: We move to strike that out; that don't mean anything.

COURT: Who was coming over?

A (Continued) That defendant and some more.

Q More colored men with him?

A Yes sir.

Q You saw him coming over the box car into the gondola?

A Yes sir.

Q How many of them were there?

A There was twelve of them at that time, to the best of my count and recollection.

Q Did all of these twelve come over into that gondola car?

MR. LEIBOWITH: We object to that.

COURT: I'll overrule the objection.

MR LEIBOWITZ: We except.

A Yes sir.

Q After they got into that car, what if anything did this defendant do?

A He helped to knock the white boys off.

MR. LEIBOWITZ: We move to struke that out.

COURT: That motion is well take. Sustained.

Q Just tell what you saw him do?

A I saw him as he come over with the rest of them and he commenced to knock the white boys around the gondola -

COURT: Saw him help knock the white boys off?

A Yes sir, he knocked the white boys off.

MR. LEIBOWITZ: We move to strike that out.

COURT: I sustain that motion.

Q Did you see him strike any of the white boys?

MR. LEIBOWITZ: We object to that. He is putting the answer in her mouth. I want to ask that the witness be instructed by the court to answer "Yes or no".

COURT: I am not going to give any such instructions as that. I will wait and see what she says. (To witness) You don't have to answer "Yes sir" or "No sir". Just answer the questions asked you.

WITNESS: They was fighting in there, Judge.

MR. LEIBOWITZ: We object to that.

COURT: I sustain the making objection.

Q How did they come into that car, were they all together, or did they come singly, how did these twelve men come into that gondola car?

A They all jumped into the gondolier over mine and Ruby Bates head.

Q Did you hear any of them say anything as they came into the gondola car?

MR. LEIBOWITZ: I am objecting to all this, your Honor, unless this defendant is the one that said it.

COURT: I'll overrule the objection.

MR. LEIBOWITZ: Exception.

A Yes sir, as they came over, I did. Some one of them, I don't know which one it was, he said "All you white sons of bitches unload".

Q Did either of these men have any pistols, or guns that you saw?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir, there was two of them had pistols to the best of my recollection.

Q Do you know whether or not this defendant had a pistol?

A No sir, I wouldn't be positive.

Q What else, if any thing, did any of them have in their hands as they got into the gondola car?

A Knives.

Q Were they open or shut?

A I wouldn't say, but to the best of my knowledge some of them had them open.

Q After one of them said "All you white sons of bitches unload", what then happened on that car, between this man or anybody else?

A Well, they knocked them off and begun to run up and down the side to see that they did not get back on.

Q Who?

A The white boys they had knocked off, except Gilley.

Q After the white boys were knocked off, then what happened?

A They commenced to attack us girls, me and Ruby Bates.

Q Did they put their hands on you?

A Yes sir.

Q Tell the jury what they did?

A After they got the white boys off, I went to the corner of the gondola to get over, and one of the crowd in the back of the car, "We are not going to hurt you" and when I started to make my jump he hit me, he hit me, and one of them pulled off my clothes, my overalls -

MR. LEIBOWITZ: I object to "one of them" or "somebody"; this defendant is on trial and what he did is the issue.

COURT: I'll overrule the objection.

MR. LEIBOWITZ: Exception.

A (Continued) they taken my overalls off and then they taken me and threw me over on the chart, and one of them

held my legs, and one held a knife on me there, and then one of them raped me and Ruby Bates.

MR. LEIBOWITZ: We move to strike out "Ruby Bates".

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Did this defendant have sexual intercourse with you?

A Yes sir.

MR. LEIBOWITZ: We object to that as leading.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Did his private part penetrate your private part?

A Yes sir.

Q While he was having sexual intercourse with you was any one holding you in any way?

MR. LEIBOWITZ: We object to that as leading. He is putting the answer in her mouth.

COURT: I'll overrule the objection.

MR. LEIBOWITZ: Exception.

A Yes sir, one of them held a knife at my throat and one of them held my legs.

Q How are you dressed on that occasion?

A I had on a pair of step-ins, three dresses, a pair of overalls, shirt, girl's coat and a girl's hat.

Q Where did you get off of that train?

A Paint Rock.

Q Were these colored men in the car, the gondola car, where you were, when the train came to a stop?

MR. LEIBOWITZ: We object to that as leading. He is putting the answer in her mouth.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A They were running out of the gondola car towards the engine when the train stopped.

A All of them?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q When the train stopped what did you do?

A When I straightened up, I got up in the gondola and was looking to see what was going on, and I started over the side of the gondola to get off, and when I got to the last step I fell, and I didn't know anything else until I come to myself in PaintnRock, in a store.

Q Was that store some distance from the depot and the track?

A Yes sir.

Q How many of them had sexual intercourse with you on that car on that occasion?

MR. LEIBOWITZ: We object to that.

A Six, to the best of my recollection.

Q After they had sexual intercourse with you, did any of them say anything to you?

A Yes sir, they said -

MR. LEIBOWITZ; We object to that unless the person that said it was this defendant.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A (continued), - they said they were going to take us north and make us their women, or else throw us in the river one.

Q That before the train reached Paint Rock?

A Yes sir.

Q (By the court) That while this raping was going on?

A No sir, afterwards, just before the train stopped at Paint Rock.

COURT: I'll sustain that objection unless you can show who it was that said it.

Q How long was it after the sexual intercourse that you have testified about, was it, about, before you reached Paint Rock and the train stopped there, about how long?

A Before the train stopped?

Q Yes?

A Well, the train stopped in five or ten minutes after they had stopped. I had done put my clothes on me and

got to one side.

Q You had gotten up and put on your clothes?

A Yes sir.

Q Anybody assist you?

A Yes this, this fellow Gilley and Ruby Bates.

Q Orville Gilley is a white man?

A Yes sir.

Q When you got into the car at Stevenson, that gondola car, was any one else in there when you and Ruby got in there?

A No sir.

Q Did anybody else get in there from the time the seven white boys got in, until these colored men came into the car?

A No sir.

Q What part of that car were you riding in when the seven white boys got into it?

A We was in the end towards the caboose of the train.

Q In the gondola, on the chert?

A Yes sir.

Q When the white boys got in the car, where did they go, and what did they do?

A They climbed in and lay down on their stomachs feet towards us, and their heads towards the engine.

Q Where were they?

A In the other end.

Q Is that about the position you were in in that car

when these colored boys came into it?

A Yes sir.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q Your name is Mrs. Price, is it?

A Yes sir.

Q Is that your true name or is it an alias?

A It is my true name.

Q You are not Mrs. Price, are you?

A No sir.

Q Your husband's name is not Price is it?

A No sir.

Q What is your husband's name?

A My last husband's name is McClendon.

Q What is his first name?

A Enna.

Q McLendon, how do you spell it?

A M-e-L-e-n-d-o-n.

Q Where were you married to Mr. McClendon?

A Huntsville, Alabama.

Q Can you give us the date of your marriage?

MR. KNIGHT: We object to that.

COURT: Sustained.

Q How long was it before this rape that you were married to Mr. McLendon?

A I don't know, I had been married to him over a

a year or two.

Q A year or two before this trouble happened?

A Yes sir, over a year.

Q Did you assume the name of McClendon?

A No sir.

Q You never went by your husband's name?

A No sir.

Q You had another husband too?

A Yes sir.

Q What was his name?

A Henry Presley.

Q Where did you marry him?

A Fayetteville, Tennessee.

Q How long before you married your second husband did you marry your first husband?

A I don't know exactly.

Q About how long?

A I don't know exactly how long it was, a couple of years.

Q A year, or two years, how long was it?

A I wouldn't be positive, I would say a couple of years.

Q Where did you say that you married Presley?

A Fayetteville, Tennessee.

Q By a Justice?

A Yes sir.

Q Can you give us the date of that marriage?

A No sir.

Q Did you have any other husband besides those two?

A No sir.

Q One living now in Texas?

A No sir.

Q Did you ever use the name "Presley, your first husband?

A No sir.

Q Who did you start out to Chattanooga with the day before - I withdraw that - you ever been convicted of a crime?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: I haven't finished my question.

COURT: It sounded like it to me.

Q Wasn't you convicted of a crime involving moral turpitude - (Look this way please, not over that way!)

COURT: Now, Mr. Leibowitz, don't proceed along that line any more.

Q Were you ever convicted of a crime involving moral turpitude, under the name of Victoria Presley, in the year 1927?

MR. KNIGHT: I object to that.

COURT: I doubt whether this witness knows what moral turpitude is; I doubt whether half the lawyers know it or not.

MR. LEIBOWITZ: That is on the question of credibility.

COURT: Ask if she has been convicted and I can then determine whether that involves moral turpitude.

Q. What were you convicted of?

MR. KNIGHT: We object to that.

COURT: I sustain the objection.

MR. LEIBOWITZ: Your Honor just told me to ask it.

COURT: No, not that way, - you misunderstood me.

MR. LEIBOWITZ: May I have an answer to my previous question?

COURT: I sustained the objection to both of them.

MR. LEIBOWITZ: Exception.

COURT: You can ask her if she has ever been convicted of a certain offense, and I can then determine whether you can ask that kind of question.

Q. Were you ever convicted of the crime of adultery?

MR. KNIGHT: We object to that.

COURT: I sustain the objection. (To the jury): Gentlemen of the jury, when a question is asked and I sustain an objection to that question, that question and all that involves and all inferences from it, is out of the case, and not evidence in

in the case, and you must not consider it in arriving at your verdict.

MR. LEIBOWITZ: Exception.

Q Were you ever convicted of the crime of fornication?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q Were you ever convicted of for a violation of the prohibition law?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q Were you ever convicted of vagrancy and drunkenness?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q Were you ever convicted of any crime under the name of Victoria Presley?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q You wasn't working on March 24, 1931, were you?

A No sir.

Q Neither was Ruby Bates?

A No sir.

Q Did you leave your home town which is Huntsville, I believe, on March 24, 1931, with a man named Lester Carter?

A No sir.

MR. LEIBOWITZ: Have Lester Carter brought in please. (Carter is brought in)

Q (By court) Do you know Lester Carter when you see him?

A Yes sir.

Q (By court) That is he?

A Yes sir.

Q Did you see Lester Carter at the time you left Huntsville on the freight train to go to Chattanooga?

A No sir.

Q Was he, at any time, with you and Ruby Bates, on the same freight car, going to Chattanooga?

A No sir, if he was I ~~wasn't~~ didn't know him.

Q Had you ever spoken to Lester Carter before March 24, 1931?

A If I had I don't remember it.

Q Never saw him before in your life?

A Not as I know of.

Q You left Huntsville sometime of the afternoon before the day you claim this trouble happened?

A Yes sir.

Q You rode on to Chattanooga?

A Yes sir.

Q You were going to Chattanooga for what purpose?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q You did get to Chattanooga?

A Yes sir.

Q When the train arrived in Chattanooga, was it about evening?

A It was getting along towards dark.

Q When you got off the train was Lester Carter with you?

A No sir.

Q Did you meet a man named Gilley at the train?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q Do you know Gilley?

A Yes sir.

Q Where was the first place you claim that you met Gilley, on the train when you were coming back - had you ever seen Gilley before that time?

A Not as I remember.

Q Not that you know of?

A No sir.

Q You hadn't spoken to Gilley in Chattanooga, had you?

A I probably had and didn't know who he was.

Q Did you speak to some white hobe in Chattanooga?

COURT: I don't see any occasion for that.

Q Mrs. Price, did you speak to any person in Chattanooga, just "Yes" or "No" please?

MR. KNIGHT: We object to that.

COURT: Sustained.

MR. LEIBOWITZ: Exception.

Q Did Gilley bring you some food in Chattanooga?

A Yes sir.

MR. KNIGHT: We object to that.

COURT: I sustain the objection. Gentleman, she made answer to the question. That is excluded because I have held that the question is illegal.

MR. LEIBOWITZ: ~~XXXX~~ Exception.

Q I will ask you, Mrs. Price, where you spent the night in -

MR. KNIGHT: I object to that.

MR. LEIBOWITZ: I am not going to continue this examination if I am to be interrupted.

COURT: You are going on with the examining-

tion, and I am not going to allow you to be interrupted. Wait until you are certain that he is through with his question, Mr. Attorney General, before you make any objection.

Q I am going to ask you, Mrs. Price, if you spent the night in Chattanooga in a wooded section near the railroad yards?

COURT: I see that you have gone far enough with it, myself, to make that question illegal and I sustain the objection to it.

MR. LEIBOWITZ: We except.

Q I must ask just one more question, - don't answer it until objection is made and ruled on by the court. Did you, there that night, in and about the railroad yards in Chattanooga, have sexual intercourse with one Lester Carter, or one Gilley, in company with Ruby Bates?

MR. KNIGHT: We object to that.

COURT: I sustain the objection. Mr. Leibowitz that question was so palpably illegal that you ought not to have asked a question like that.

MR. LEIBOWITZ: I except to the admonition of the court and move for a mistrial.

COURT: The motion is overruled.

MR. LEIBOWITZ: Your Honor sustained the objection to the question?

COURT: Yes sir.

MR. LEIBOWITZ: Exception.

COURT: Certainly, I don't see how you can conceive that question to be legal.

MR. LEIBOWITZ: Will your Honor permit me state the grounds upon which I ask the question, not in the presence of the jury?

COURT: No sir, but when you come to make up the record, I will let you add as grounds any thing that enters your mind that would make it legal. You can do that when you make up your record.

MR. LEIBOWITZ: Very well, sir.

Q You say that the gondola in which you were riding was right next a box car?

A Yes sir, to the best of my recollection it was.

Q You have told the story that you are telling here now a number of times, as to what happened?

A Yes sir, to the best of my knowledge.

Q You have told it at least eight times in the court from the witness stand?

A Yes sir.

Q You told it before the grand jury?

A Yes sir.

Q Four times in Seottsbore?

A Yes sir.

Q You told it before Judge Horton last Spring?

A Yes sir.

Q You told it here the other day?

A Yes sir.

Q And you are telling it here again today?

A Yes sir.

Q Did the man by the name of Gilley give you a little box of snuff in Chattanooga?

MR. KNIGHT: We object to that.

COURT: The objection is sustained.

MR. LEIBOWITZ: Exception.

Q Now, you were sitting in this gondola, next the box car, which was behind you?

A Yes sir.

Q You had your back towards the box car?

A Yes sir.

Q You were sitting with your back up against the end of the gondola?

A Yes sir.

Q And saw these colored boys jump over your head into that gondola?

A Yes sir.

Q That was after you left Stevenson?

A Yes sir.

Q When you boarded that train, did you get on the train with Gilley, Lester Carter and Ruby Bates, you four together as one party?

A I never paid any attention whether Lester was on

there close to us or not.

Q You didn't have to notice whether they were next to you, or where they were, - in other words you didn't get on the train together?

A Me and Ruby Bates did.

Q Were you together with Lester Carter and Orville Gilley?

A No sir.

Q Had you been with Lester Carter and Gilley just before you got on the train, you four in a party together?

A No sir, if I was with them I didn't know who it was. There was several standing there.

Q Did you, Gilley, Lester Carter and Ruby Bates, did you four stay together on that train, to Stevenson?

A No sir.

Q When the train came to Stevenson, didn't you and Ruby Bates, Lester Carter, and Orville Gilley leave the train together, or in one crowd?

A No sir.

Q Did you speak to anybody on that train from Chattanooga to Stevenson?

A I spoke to some; that was scattered all around on the oil tank.

Q You spoke to some boys on the oil tank?

A Yes sir.

Q Have conversation with them?

A No sir.

Q What did you say to them?

A Good morning.

Q At that time you didn't know Lester Carter?

A No sir. I had seen him a time or two, but I didn't know his name.

Q May I ask this question, - isn't it a fact that you and Lester Carter were together in the very same jail in Huntsville?

MR. KNIGHT: We object to that.

MR. LEIBOWITZ: On the question of credibility, your Honor.

COURT: I sustain the objection.

MR. LEIBOWITZ: Exception.

Q Do you know a man named Jack Tiller?

A Yes sir.

Q He is your boy friend?

A He is my guard.

Q He is your friend isn't he?

A Yes sir, he has been.

Q He is a married man, isn't he?

A Yes sir, he used to be.

Q While he was a married man, you were convicted with him on the charge of adultery?

COURT: I think you have gone far enough on things like that; that is the same legal point and that has been raised; that is what you are entitled

to, and you don't have to keep bringing it in. After I have ruled once on that point, the legal effect is the same, as if you do it a dozen times.

Q Isn't it a fact, that after you got into the gondola car, and had left Stevenson, you with Gilley, Lester Carter and Ruby Bates, - you four alone got into that gondola?

A Before we got to Stevenson?

Q No, after you left Stevenson?

A No sir.

Q Isn't it a fact that while in such gondola car Orville Gilley was lying on the chert singing hobo songs, while Lester Carter was blowing on the mouth organ?

A No sir.

Q Did you see or hear Lester Carter blowing a mouth organ at any time on that train?

A No sir.

Q Did you hear Orville Gilley recite any poetry, or sing any hobo songs, while riding on that train that day?

A No sir.

Q Did you have a snuff box with you?

A I wouldn't be positive.

Q Did you have snuff in your mouth?

A Yes sir.

Q You got that snuff out of a box?

A Yes, I got it out of a snuff box.

Q Did you put that snuff in your mouth while riding on the train?

A No sir.

Q Where had you put the snuff in your mouth?

A Chattanooga.

Q And that came out of a snuff box?

A Why yes.

Q Did you lose that snuff box that day - did you have any snuff box when you got to the jail at Scottsboro?

A I wouldn't be positive whether I did or not.

Q You didn't have any snuff box in jail?

A No sir.

Q It was lost, wasn't it?

A Yes sir.

Q As a matter of fact, didn't you lose that snuff box on the gondola on which you were riding?

A No sir.

Q Wasn't that gondola where you were riding, and there the snuff box was found, the fourth or fifth gondola, one of the middle cars here (indicating)?

A No sir.

Q You claim that you remained in this gondola all the morning?

A Yes sir.

Q And stayed there until you got off the train, after leaving Stevenson?

A Yes sir.

Q When these colored boys jumped into the gondola

they fought in the same gondola?

A Yes sir.

Q That is your story?

A Yes sir.

Q You and Ruby Bates?

A Yes sir.

Q Did you stand up after the colored boys got on the gondola?

A Yes sir, we were standing up in the fight.

Q Watching the fight?

A Yes sir.

Q After all of the twelve got in there, twelve of them started to fight with the white boys, didn't they?

A Yes sir.

Q These twelve negroes were fighting with the white boys?

A Yes sir.

Q Every one of the twelve negroes were taking part in the fight with the white boys?

A Yes sir.

Q And right next to you was a box car?

A Yes sir.

Q How long after the fighting started before the white boys were thrown from the train, five or ten minutes?

A Somewhere along there.

Q How far away were you from the end of this car - right close to it?

A Yes sir.

Q You had on overalls at that time?

A Yes sir.

Q And a woman's cloak?

A Yes sir.

Q The cloak have some fur on it?

A Yes sir.

Q Fur collar?

A Yes sir.

Q Was that when you were in a position to sep from the gondola car and get on this box car?

A Yes sir.

Q How far away from that box car were you, just the partition of the gondola, - right next the box car?

A Yes sir.

Q How long did you stay there?

A Until the fight was over.

Q You stood there with Ruby Bates?

A Yes sir.

Q It was then that you claim that you were assaulted?

A Yes sir.

Q After five or ten minutes standing there (indicating), next this end of the car?

A Yes sir.

Q Were you interested in watching the fight?

A Yes sir.

Q Did you look at it to see how it was going on?

A Yes sir.

Q You didn't do anything at that time?

A No sir.

Q You stood there looking at the fight?

A Yes sir, I was wanting to get out.

MR. LEIBOWITZ: We move to strike that out.

COURT: Well, that is not evidence.

Q There was nothing to stop you/ from getting out from the gondola onto the box car?

A Yes sir.

Q The colored boys were engaged in the fight with the white boys for five or ten minutes, is that right?

A Yes sir.

Q Did you see the white boys get off the train?

A I saw them being put off, yes sir.

Q On both sides, or one side, - did they get off on both sides or one side?

A I can't tell you that. My best recollection is that they got off on one side.

Q On which side?

A On the left.

Q On the left looking towards the engine?

A Yes sir.

Q How many got off on that side?

A Well, I wouldn't say positive how many got off.

Q You are positive that twelve negroes came into the car, did you count them?

A Not as they come over.

Q Did you count them?

A Yes sir.

Q Did you say, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,

12?

A No sir.

Q When was it that you counted them, while they were fighting?

A No sir.

Q After they finished raping me and Ruby Bates.

Q Then you counted them?

A No sir, there was nine in there, and three got off.

Q You didn't see the three get off?

A Yes sir.

Q That while you were being raped?

A Yes sir, they stepped over my head and got on the side of the box car.

Q Did you see them jump to the ground?

A No sir.

Q How do you know they got off the car?

A I know they got out of the gondola.

Q That is all you have to say?

A I know they got out of the gondola.

Q Then you counted nine others?

A Yes sir, there was nine there.

Q Were you conscious enough to count?

A I wasn't unconscious.

Q Your mind was clear?

A Yes sir, my mind was clear.

Q You were conscious and calm enough to stand there and count them, after these men had had intercourse with you?

COURT: That's a good deal like argument, it looks to me, but I'll let her answer.

MR. LEIBOWITZ: Let me withdraw that, please.

COURT: Very well.

Q I want to ask when it was, how many minutes before you got to Paint Rock, that you counted these men, maybe we can get at it this way?

COURT: Let me ask her a question. Did you count or see how many there was there?

WITNESS: I seen how many was there, and I seen three get off.

Q Did you count them and take note of how many there were?

A I counted them when we got down to Paint Rock.

Q When was it that you counted them?

A I counted them while I was lying down.

Q While the raping was going on?

A No sir?

Q Afterwards?

A Yes sir.

Q You counted them while lying on your back?

A Kin'ly on my side.

Q You counted them all over the car, they were all over the car, wasn't they?

A No sir, they wasn't all over the car.

Q All here about your place?

A Kin'ly around there pretty close to me.

Q Some behind you?

A No sir.

Q Some in front of you?

A Yes sir.

Q Some on the side of you?

A Yes sir.

Q What do you mean, counted their feet?

A No sir.

Q How long before you got to Paint Rock did you count them?

A I wouldn't be positive how long it was.

Q About how long?

A I wouldn't be positive.

Q When did the raping stop, how long before you got to Paint Rock?

A Five or ten or fifteen minutes. Five minutes or a little over before the train stopped.

Q It was after that, that you counted them, in that five minutes?

COURT: I think you have taken enough time as to when she counted them.

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Q Did you count them for any particular reason that you had in mind?

A No sir.

Q So that you would know how many raped you?

A No sir.

COURT: I think you have spent enough time on questions of that kind.

Q Were you lying on the side at any time, turn over on your side any time during that trip from Stevenson to Paint Rock?

A After they quit raping me and Ruby I was kin'ly on the side.

Q Your face on the chert?

A No sir.

Q You hold your face up?

A No sir.

Q How heavy was the heaviest negro that had intercourse with you?

MR. KNIGHT: We object to that.

COURT: I sustain the objection.

MR. LKIBOWITZ: We except.

Q Were they large negroes?

A Some of them.

Q Heavy?

A Yes sir, kin'ly.

Q Rough?

A Kin'ly.

Q Before you got down on the chert, you were hit in the head, were you?

A Yes sir.

Q With a gun?

A Yes sir.

Q Where was it they hit you with a gun?

A Well, between my eye and top of my head; hit me along there (indicating); I wouldn't be positive where they hit me.

Q On your forehead?

A Yes sir.

Q Did it bleed?

A A little bit.

Q Make your head swollen there?

A No sir.

Q Not at all?

A Well, a little bit.

Q Was it up something like this (indicating)?

A I wouldn't say.

Q Do you know the calibre of the gun?

A No sir, I don't know the make of any gun.

Q Do you know what calibre means?

A No sir.

Q Do you know a .38 from a .45?

A No sir.

Q Did you ever know anything about the calibre of any guns?

A No sir.

Q No time in your life?

A No sir.

Q Did he hit you with the front end of the gun or the back end?

A All I know is that he had the barrel in his hand and hit me with the other end.

Q Which is the barrel?

A The end the smoke comes from.

Q Where did you find that out?

COURT: I don't see any use in taking up time with that. I would imagine that any one with common sense would know which was the barrel of a pistol.

MR. LEIBOWITZ: I want to except to the court's statement in reference to the cross-examination.

Q Did he hit you with the end of the gun?

A I didn't say the end.

Q Did he hit you with the butt?

A Yes sir.

Q Which is the butt?

A I don't know, I reckon the handle is the butt.

Q You know the other day on the Patterson trial, didn't you - you knew the other day which was the butt end?

A The handle is the butt end; I know that.

Q He hit you with the handle of the gun on your

head?

A I don't know which way it was.

Q You told us the other day it was the butt end of the gun?

A I told you it was the butt end of the gun?

Q Yes, the butt?

A I probably might. I don't know anything about it.

Q Whichever part he hit you with, he hit you on the head between the eye-brow and the top of the head?

A Yes sir, right along here (indicating) somewhere.

Q As you told us, when he hit you, some blood came out?

A Yes sir, a little bit.

Q Were you standing up when he hit you?

A Yes sir.

Q When he hit you, that raised a lump on your head?

COURT: You have already asked her that, and she has answered it.

Q Very well. When he hit you, that knocked you down?

A He didn't hit me -

COURT: The question is, did he knock you down?

A (Continued) No sir.

Q Now, along with that motion that he hit you, did he punch you - did he also punch you?

A I said he hit me.

Q That is, with the gun?

A They was all scuffling around me there.

Q I want to know, after the man hit you with the butt end of the pistol, which caused a wound on your head that bled a little, did he also punch you?

A I don't know whether he did or not; I don't remember.

Q Way back in Scottsboro, you knew something about the calibres of guns, didn't you, "Yes" or "No", didn't you?

A I just has been told what they called guns.

Q You knew all about the calibres of guns in Scottsboro, didn't you?

A No sir.

Q Let's see, the very first trial you testified in, in Scottsboro, hardly a week or ten days after this supposed rape, do you remember, testifying before Judge Hawkins?

A Yes sir, before Judge Hawkins, I did.

Q Do you remember being asked these questions and making these answers?

"Q That one yonder, Charley Weems?

A Yes sir.

Q With a gun or pistol?

A A pistol, a 45"

COURT: Do you remember whether you said that or not?

A I probably did, Judge, your Honor.

Q Now, in the Patterson case, I will ask you if you were not asked this question, and make these answers:

"Q What did you see this defendant do in that fight?

A I seen him knock a boy in the head.

Q What with?

A A gun.

Q A pistol?

A A .38"

Q Did you say that?

A I don't know whether I did or not; I don't remember.

MR. LEIBOWITZ: May it be stipulated that this testimony is the official record, the same as it was in the other trial, so that I will not have to bring the stenographers down here? I want to use them for the same purpose?

MR. KNIGHT: I agree that it is the record made by the official stenographer, and that the stenographers reported the testimony correctly.

MR. LEIBOWITZ: And that I am reading it correctly.

MR. KNIGHT: Yes sir.

Q Were you not asked these questions and make these answers in the Powell, Roberson, Wright, Montgomery and Williams case:

"Q Did you see the two men who carried the guns?

A Sure.

Q They were both there?

A There was two that had guns absolutely, a .38 and a 45."

Q Did you say that?

A I don't remember whether I did or not.

Q If you said it, was it a fact?

A I don't know the make of a gun.

Q You don't know a .38 from a KX .50?

A To the best of my judgment that is what I called them. I heard them called that. I don't know what they was.

MR. LEIBOWITZ: Is it stipulated that she said that.

COURT: That's already stipulated.

Q How many men punched you in the face?

A I didn't count them.

Q More than two?

A I don't know whether there was or not.

Q Did they punch you in the face at all?

A Sure, they knocked my head around.

Q Did they punch you in the face?

A I wouldn't be positive.

Q Slap you?

A Jerked me around.

Q Did they slap you?

A Yes sir, once.

Q Slap you hard?

A Kin'ly.

Q Did you say that your nose was swollen?

A No sir.

Q Didn't your nose swell up?

A A little bit, but not much.

Q Your cheeks swollen?

A A little bit.

Q Your lips cut?

A Kin'ly, yes sir.

Q Was they bleeding?

A A little bit inside.

Q You mean you were cut inside of your lips?

A Yes sir, a little.

Q The place where you were struck, your lips were bleeding?

A Yes sir, they was kin'ly busted.

Q Your cheek also cut on the inside?

A I don't remember about that.

Q Your whole face was swollen up?

A Yes sir, and bruised.

Q Black and blue?

A Yes sir, kin'ly.

Q Did you find any blood on your back, after you got to the jail at Scottsboro, after the trouble?

A I didn't examine my back, as far as my remembrance goes, I didn't.

Q On the trial before Judge Horton, did you test-

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tify, - page 64 of the record before Judge Horton, - were you asked these questions and did you make these answers:

"Q You lay on your back there for close to an hour on that jagged rock screaming?

A Yes sir.

Q Was your back bleeding when you go to the doctor?

A I couldn't say.

Q When you got to the jail did you find any blood on your back?

A A little bit"

Q Do you remember saying that?

A I probably did.

Q When you said it, it was true?

A Yes sir, if I said it, it was the truth, but I don't remember saying it.

Q Did you find any blood on your back?

A I have answered your question.

Q When you got to the jail at Scottsboro and looked yourself over, did you find any blood on your back?

A I told you I might have. I don't remember. that's been nearly three years ago.

Q This kind of rock that was in the gondola, was that the kind you find down on the railroad track?

A I don't know sir.

Q Was it small, more like sand?

A Yes sir.

Q And different shapes?

A I didn't look at it that close.

Q It wasn't fine sand, was it?

A No sir.

Q Show us on your finger what size it was?

A I wouldn't try to measure it.

Q Give us some idea about it?

A I know it is called chert.

Q I don't care whether it is called "chert" or "chat" or "chet", the name means nothing to me?

A I can't tell you.

Q You can't or won't, - which is it?

COURT: That question is improper and you have no right to ask it. It is my business to see that the witness is fairly treated.

MR. LEIBOWITZ: She is fairly treated.

COURT: I don't think so. I think that question was entirely improper.

MR. LEIBOWITZ: We respectfully except.

Q Give the jury there some idea how large that rock was that you lay there on?

A I said I couldn't and I can't.

Q Can't you give us some idea, can you tell us whether it was as fine as sand or larger?

A No sir, as large as the end of my little finger, down on smaller is the best I can say, but I wouldn't be positive.

Q When you were knocked down - you were knocked down?

A I wasn't knocked down.

Q Put down then, you were put down?

A Yes sir, picked up and laid down.

Q Very gently?

A No.

Q Kind of hard?

A Yes sir.

Q On this rock?

A Yes sir, on the chert.

COURT: You have gone over the ricks, looks to me like enough.

Q Look this way, please - did you testify in the previous trial that you were slammed down there on that rock?

A No, I don't think I did.

Q Well, by the time you were thrown down, you were all sore were you, from the manhandling and pummeling that you got?

A Yes sir.

Q All over your body?

A Yes sir, I was sore, kin'ly.

Q Was there one negro that pushed your head down and kept it down?

A Yes sir, he pushed me down.

Q He kept your head down, did you try to get up?

A Yes sir, I was trying to resist all I could.

MR LEIBOWITZ: We move to strike that out.

COURT: Sustain the motion.

Q I am asking you if you were trying to get up?

A I was trying to resist, yes sir.

MR. LEIBOWITZ: We move to strike that out.

COURT: Were you trying to get up and get away from them, is what he wants to know.

WITNESS: Yes sir, I was trying to get up.

Q When you were trying to get up, he pushed your head back down on the chert?

A Yes sir.

Q Banged your head up against the rock?

A No sir, he didn't salm my head down.

Q Kept your head down?

A Sure, he had a knife at my throat.

Q Kept your head down with a knife in your face?

A No, no.

Q When he put his hand on your face, did he do it roughly?

A Kin'ly.

Q He didn't spare you in any way, he wasn't easy with you in any way?

A No sir.

Q They did hurt your face?

A Naturally, yes sir.

Q Of course your face was all scratched up with

pummeling, pushing and mauling?

A No sir, my face wasn't all scratched up. It was scratched a little bit, but not much.

Q Scratches on your cheeks?

A My face was bruised.

Q All over?

A Kin'ly.

Q That the first negro that got on top of you, the one that threw you down, is that right, was that the first negro that got on top of you?

A I don't know whether it was or not.

Q But that is the first negro that got on top of you, according to your story?

A I wouldn't say that the one that threw me down was the first one that raped me or not.

Q Well, some negro got on top of you?

A Yes sir.

Q These negroes were milling all over the car?

A Yes sir, they was running up and down the side; some of them raped me and some of them Ruby Bates.

Q While these white boys were trying to get back on?

A One or two of them was.

Q Get my question please, so there will be no mistake about it, you claim that while being raped, as the car was going along, some of the negroes that wasn't doing any raping were running up and down the side of the car to keep the white boys from getting back in the gondola?

A Right after they knocked the white boys off they did.

Q I am asking you Mrs. Price, while you were being raped, some of the negroes that were not raping you were running up and down the side of the car -

A Yes sir, they was walking up the side of it.

Q To keep the white boys from getting back on?

A No, no.

Q Just taking a walk - you saw all that, of course?

A Sure.

Q So, according to your statement, while that raping was going on, the boys were hollering out?

A Which, - you mean the negroes were hollering?

Q Yes?

A Sure, they was laughing and cuttin' up, telling each other to hurry up.

Q To hurry up and get through and let him get to it, and things like that?

A Yes sir.

Q This coat that you had on, what kind of lining did it have?

A Dark blue.

Q Was it dark enough so that white spots would show against it?

A Yes sir, it was a real dark blue.

Q You were lying in that coat while you were being raped?

A I don't know whether my hips were on it or not.

Q I didn't ask you about your hips, - did you have step-ins on?

A Yes sir.

Q You had your step-ins on while you were being raped?

A Yes sir. They had tore them apart.

Q Tear them off your body?

A No sir.

Q Portions of your step-ins were on your body?

A Yes sir, they have elastic in them.

Q You still had them on while you were being raped?

A Yes sir. They tore them apart like I said.

Q Have dresses on too?

A Yes sir, I had on three.

Q You had on three dresses while being raped, is that the way of it?

A Yes sir.

Q Each of these negroes that had intercourse with you, discharged in you, didn't they?

A Repeat that question, please.

(Question is read to witness by reporter).

COURT: Do you know whether they did or not?

A No sir, I don't know.

Q When the first man got through with you, that wet you all over didn't it?

A No sir.

Q Wet you at all?

A A little bit.

Q Wet you around your private parts?

A Kin'ly.

Q When the second man got through, you were still more wet?

A Yes sir.

Q When the third man got through, you were still more wet?

A A little bit.

Q So that, as each man got off you were more and more wet?

A Yes sir.

COURT: Do you know that of your own knowledge, - did you notice at the time that you were, or did you pay any attention to that?

WITNESS: I didn't pay any attention.

MR. LEIBOWITZ: I most respectfully except to the court's question.

COURT: It's the court's business to ask a question at any time during the progress of a trial that he wants to, and if you want to reserve an exception the law gives you that right. You have your exception. Go ahead.

Q When the six men finished, you were real wet, wasn't you?

A I don't remember whether I was or not.

Q Do you say that because of the question asked you by the judge?

A No sir, I don't remember. That has been nearly three years ago.

Q Do you remember the appearance of this negro that is sitting here?

A What do you mean by that?

Q You haven't seen this defendant for three years?

A Yes sir. I have seen him in court.

Q Are you able to identify this negro?

A Yes sir, by his face.

Q Can you identify all nine of them?

A I wouldn't try to point them out one by one.

Q You don't identify the defendant as being on the gondola, do you?

A Yes, I know that he was on the gondola.

Q You recognize him after three years?

A Yes sir.

Q Can you tell us all that happened after three years?

A There's lots of things that have happened that will pass from your mind in three years.

Q When they intercourse with you, were they pretty rough about it?

A No so rough.

Q Your private parts bled, didn't they?

A I don't remember. You have asked me that before.

Q You wasn't quite so hairy about it on the last ix

trial when you testified, were you?

A I was kin'ly bloody, a little bit.

Q Did you - will you say that blood came out of your private parts on to your clothes?

A No sir, I don't say it came out on my clothes.

Q On page 65 of the record of the last trial, before Judge Horton last Spring, were you not asked this question:

"Q Were you bleeding from your private parts?

A A little bit."

did you say that?

A I said a little bit.

Q Just before you got to Paint Rock, you said that just before the train got into Paint Rock, you started to adjust your clothes, and that Gilley helped you to pull on your pants?

A Yes sir, Gilley helped me to put on my pants.

Q Do you know a boy by the name of Gleason?

A No sir.

Q Did you later meet a boy in Scottsboro, in the jail there, one of these boys that was on the freight train, and you found out that his name was Gleason?

A I don't remember his name.

Q The boy known as "Texas"?

A Yes sir, that is what they called him.

Q Did you see "Texas" at Paint Rock?

A No sir.

Q Did you see one of the white boys on the train,

beside Gilley, at Paint Rock?

A I didn't look for them. I don't know whether I did or not.

Q Was Gilley, at any time, thrown off that train, while you were being raped?

A I can't answer that question, nosir.

Q Did you see whether or not Gilley was thrown off the train, while the raping you claim was going on?

A They put him off, but he climbed back.

Q While the raping was going on?

A Yes sir.

Q You are sure of that?

A Yes sir. He climbed back over after they started back.

Q After the other boys had been thrown off?

A Yes sir.

Q While you were being raped, as you claim?

A When the attack started, he come back in the gondolier.

Q When they hit you on the head with the gun?

A When they started attacking us.

Q When was that?

A When the got all the white boys off.

Q When they hit you on the head with the gun, they started attacking you?

A No, no.

Q The very first part of the attack was when you received a blow from somebody's fist or hand?

A No, not in the first of it.

Q What was the very first violence that was done to you?

A They grabbed me and asked me was I going to put out, and I says "No sir, I don't know what that means" and he says "You will or die" and I said "I would rather die".

Q That is talking, I am asking for violence?

A I pushed them back, and when I pushed back, one of them grabbed me and hit me on the head, and pulled me down.

Q Grabbed at you, - where did they put their hands?

A The first that grabbed me?

Q Yes?

A My legs and shoulders and held me over the gondola.

Q Was that before you were hit or after?

A I wouldn't say which it was.

Q Did any one of these negroes grab you by the breast when he was raping you?

A I don't remember whether he did or not.

Q Some of them held you by the shoulders while having intercourse with you, did any grab you around the waist?

A No, not while they was raping me.

Q Any one of the six?

A No sir.

Q Did some one of them grab you by the private parts, or manhandle you in that way?

A No sir.

Q Was it painful, did you suffer pain?

A I don't know what that is.

Q Don't you know what pain is?

A I don't know what it is to a man.

Q Did you suffer pain?

A I did, sure.

Q Were they rough with you?

A Sure they was kinder rough.

Q They were tearing your insides wasn't they?

A No sir.

Q Did some of them kick you?

A I don't know whether they did or not.

Q A portion of your skin was scraped while they were raping you, a portion of your body was scraped?

A The skin was torn in several places on my body.

Q Where was it, on what part of your body was your skin torn, give us some of the places?

A Well, on my throat and on my face. (Indicating)

Q On your side?

A No, I didn't say on my side.

Q Where else?

A On my back.

Q Where else?

A I had one spot on my leg.

Q Where the skin was torn?

A To the best of my remembrance it was ~~be~~ skinned a little bit.

Q Where else?

Q Where else?

A I wouldn't say about where else.

Q How about the skin on your stomach?

A I wouldn't say.

Q Was your stomach bruised?

A Yes sir, I had some blue spots.

Q On your stomach?

A I wouldn't say.

Q Has your stomach sore?

A Yes sir, kin'ly.

Q Hurt when you touch it?

A Yes sir.

Q Were you black on your hips while lying on the rocks while these six negroes raped you?

A I don't know whether I was or not.

Q Don't you know afterwards, - your hips were sore wasn't they?

A Kin'ly.

Q Your back, that was sore from lying on those rocks, wasn't it?

A Yes sir.

Q You stood up in this gondola, didn't you, when the train stopped at Paint Rock?

A After the train stopped, I did.

Q You sat down while it was coming along, until it stopped, and then you got up on the edge when it stopped?

A Yes sir.

Q You are sure of that?

A. I was lying in Gilley's lap until it stopped, with my head in his lap.

Q When was it that you put your head in Gilley's lap?

A After the negroes had quit raping me.

Q How long before the train stopped?

A Five or ten minutes.

Q The intercourse was over then?

A Yes sir.

Q What were you doing?

A I wasn't doing anything.

Q Just standing around?

A No I wouldn't say positively that I did.

Q Where was Ruby?

A She was with one of the negroes with his arm around her neck.

Q Standing up?

A Sitting down.

Q You were lying down and she was sitting down?

A Yes sir.

Q Were you lying down when the train passed the station?

A No sir, I was standing up then looking.

Q The car that you were in, did that pass the station or not?

A I don't remember.

Q After the train stopped you and this Gilley got

A Gilley did.

Q You too?

A I did in a couple of minutes.

Q You were still lying in the gondola on the chert for two minutes?

A I said for a couple of minutes.

Q Wait a minute lady, I want to be clear on that, I want you know if your are telling us ~~ixix~~ that you were lying on your back for a couple of minutes after the train stopped, and then got up, is that what you say?

A I was sitting up when the train stopped.

Q You said you were lying down, isn't that what you said?

A I was lying down when it stopped, when the train stopped Gilley got out of the car, and I sit up like I am now.

Q Did you continue to lay in the gondola after the train stopped?

A No sir, no sooner than the train stopped than Gilley got out, and I sit up.

Q Did Gilley climb out of the gondola after he got up?

A No, he didn't stay in there.

Q Did you or Gilley call out to any man along there for help, or say "Hey", and call the attention to any one?

A I don't know anything about that. They were all hollering and going on around there.

Q When you sat up, were you alone for two minutes there while Gilley was gone?

A No sir, Ruby was still standing there.

Q Was Ruby standing there doing nothing?

A Ruby started to climb out. I wasn't in there after the train stopped over a second.

Q Ruby climbed down?

A Yes sir.

Q And you got out?

A Yes sir.

Q After Ruby climbed down, that was the first time you ever got up?

A The first time I stood up by the gondola.

Q Gilley didn't wait to help you off the gondola did he?

A No sir.

Q Then you started to climb down after Ruby got down?

A Yes sir, started to.

Q You were still in the last car in this string of gondolas next to the box car?

A Yes sir.

Q You are as sure of that as anything you have testified?

A Yes sir, we was ~~xxx~~ in the gondolier next to the box car.

Q In the gondola where the raping took place, and that is the car?

A Yessir.

Q You are sure of that?

A Yes sir.

Q When you got off, did you see Gilley standing there?

A No sir, when I got off I fell.

Q Before you got off, did you look to see if Gilley was still there?

A I didn't see him; I didn't look for him.

Q You don't know what happened to Gilley?

A No sir.

Q Did you climb off, or fall off of this gondola where you had been?

A I fell there beside the gondola.

Q This gondola (indicating)?

A No that gondola, that ain't the one.

Q The last gondola in that string, that's the one you got off and fell off of?

A The gondolier I was on is the one I fell off.

Q That was the last one next to the box car?

A Yes sir.

Q Towards the caboose?

A Yes sir.

Q After you fell there, you don't know what happened until you got to the store?

A That's right.

Q You were taken to the doctor's office in about an hour or hour and a half?

A I was taken to the store and the doctor called.

Q A doctor looked at you in the store?

A They said he was a doctor.

Q This man they said was a doctor, did he examine you?

A Yes sir.

Q Have you seen that doctor since, in court?

A No sir, I don't know him.

Q In any of the trials that have taken place, the seven trials?

A No sir, he told them to rush me to Scottsboro.

Q Told them to rush you to Scottsboro?

A Yes sir.

Q They sent you on to these other doctors because you were in such a bad condition?

A Yes sir.

Q You were in a very bad condition at Paint Rock?

A Yes sir.

Q They told them to rush you to the doctors at Scottsboro?

A Yes sir.

Q From Paint Rock, you were in Scottsboro in about an hour?

A About an hour or hour and a half.

Q The doctors that examined you were Dr. Bridges and Dr. Lynch?

A Yes sir.

Q They first examined you in the jail?

A No.

Q Where did they first examine you?

A They examined me in the hospital room.

Q That is in the jail?

A On the side of the jail.

Q Connected with the jail?

A Yes sir, on the side of the jail.

Q They didn't examine you much there?

A No, not much in the jail.

Q They looked you over?

A Yes sir, kindly looked us over.

Q You still had on your coat, your cloak, with the blue lining?

A Yes sir.

Q Your over-alls?

A Yes sir.

Q The three dresses and the step-ins?

A Yes sir.

Q And the shirt?

A Yes sir.

Q You had a shirt on that day too?

A Yes sir, and a hat.

Q Shoes and stockings?

A Yes sir.

Q You had on those clothes right in the jail?

A Yes sir.

Q After Dr. Bridges looked you over in the jail, he then took you to his office?

A Yes sir.

Q You still had on those same clothes?

A No sir, I had taken off my overalls and two of my dresses, and washed and cleaned up in jail before I went to his office.

Q Where?

A In the hospital room.

Q You didn't wash your clothes in the jail, did you?

A Yes sir, but not that day.

Q Did you wash any of your clothes in the Scottsboro jail before the doctors made an examination of you?

A No sir.

Q You did go to the doctor's office with your coat on, didn't you?

A I would be positive; I don't know whether I did or not.

Q You were positive of the overalls, wasn't you? You said on the other trials that you went there with your coat on?

A I don't know whether I did or not.

Q Did you have on your overalls in the doctor's office?

A No, I told you I pulled my overalls off and two of my dresses.

Q You had on one dress?

A One dress.

Q Your step-ins too?

A Yes sir.

Q Your stockings, did you have them on?

A Yes sir.

Q The doctor made an examination of you in his office?

A Yes sir.

Q Did he tell you to take your clothes off?

A Yes sir.

Q You did that?

A Yes sir.

Q He looked you over on his table?

A Yes sir.

Q At his office was your face still bruised and swollen?

A Yes sir.

Q Your nose swollen?

A Yes sir, a little bit.

Q Your lips were cut, as you said?

A Kin'ly on the inside.

Q Your cheek - the skin was scratched off in the places you told us?

A Kin'ly scratched a little bit.

Q Scratched in the different places you told us?

A Yes sir, a few places.

Q The doctor looked at your face, didn't he?

A Yes sir.

Q And examined you?

A Yes sir.

Q Had you turn around and looked at your back?

A Yes sir.

Q Looked at your legs and stomach, looked you all over?

A Yes sir.

Q Had you washed your head in Scottsboro?

A I had washed my face.

Q I am asking you about the hair on your head, had you washed that too?

A Yes sir, I washed my hair.

Q You washed you hair?

A Yes sir.

Q And combed it?

A Yes sir.

Q Do that your hair was all combed and dressed?

A Not before I went to the doctor's office, I didn't.

Q Didn't you say you washed your head before you went to the doctor's office?

A Why didn't you ask me that; no, I didn't wash my head before I went to the doctor's office.

Q So that the dust and dirt you had in your head when you got off the train was still there when you got to the doctor's office?

A I had combed my hair before I went to the doctor's office.

Q You were nervous and excited in the doctor's office?

A Kin'ly nervous.

Q And excited too?

A I don't know whether I was or not.

Q ~~Who did all the talking at the doctor's office?~~

A Ruby Bates ^{done} ~~did~~ it, mostly.

Q ~~You did very little talking?~~

A Very little, yes sir.

Q By the way, while we are waiting for this bit of evidence, let me ask you, did you see any of the negro boys pull Gilley back in the train, pull him back in the car?

A I don't know, he was in the far corner.

Q You couldn't see him?

A Yes I could see, but I wasn't paying any attention. To the best of my knowledge and remembrance I think I did see him.

Q Did you see him pulled back in by one of the negroes?

A I think they was pulling at something.

Q Then finally Gilley was pulled up?

A I seen Gilley in the corner.

Q Did you see him pulled back on the train?

A I wouldn't say to be sure. My best recollection is they pulled him back. I wouldn't say for sure that they pulled him back.

Q Now that same question, the facts as you state them now, are that while you were being raped, the negroes pulled back into the car, the boy named Gilley, and let him stay there on that car all the time that these negroes

were raping you and Ruby Bates?

A Yes sir, he was there in the corner of the gondolier.

MR. LEIBOWITZ: This witness testified at least on a half dozen different occasions that she had on her coat in the doctor's office, but we haven't found it yet.

MR. KNIGHT: The state has no objection to your reading it when you find it.

MR. LEIBOWITZ: That's all now.

REDIRECT EXAMINATION.

MR. BAILEY:

Q Mrs. Price, I will ask you to examine this garment, and tell us, please, if these are the step-ins you had on on that occasion? (Hands to witness)

A Yes sir, that's them.

Q I will ask you whether or not, after this occurrence you washed these step-ins?

A Yes sir.

Q About how long after you got to jail before you washed them?

A I washed my clothes the next day, part of them, all them except my over-alls, I wasn't able to wash them.

Q You washed these step-ins?

A Yes sir.

Q Did you keep these step-ins in your possession up until the trial held in this court room last spring?

A Yes sir.

Q They were your possession?

A You mean I held them?

Q I mean, were they in your possession from the time you washed them until the trial held here last Spring?

A Yes sir.

MR. BAILEY: We offer the step-ins in evidence. No objection was offered, at that time.

Q Examine this knife, Mrs. Price? (Hands knife)

MR. LEIBOWITZ: We are objecting to the introduction of the step-ins. I would not have objected if they had been brought in with all the dirt and stuff on them. But when she brings in something that she later washed, I am objecting to their introduction.

COURT: The objection is overruled.

MR. LEIBOWITZ: Exception.

Q Is that you knife?

A Yes sir.

Q Did you have a knife in this gondola during the occurrence you have testified about?

A Yes sir.

Q What became of your knife?

A One of these negroes taken it off'n me.

Q When did you next see the knife?

A In the court room at Scottsboro.

Q Who had it then?

A One of the law.

Q Who had the knife when you next saw it?

A Mr. Woodall brought my knife out of the court
room.

Q Mr. Woodall brought the knife out of the court
room?

A Yes sir, they asked me if that was my knife.

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q That is the time you next saw it?

A Yes sir.

COURT: About the step-ins, of course you will
have to follow that up and show that they are
in the same condition they were in at the time
she washed them.

Q Mrs. Price, examine this garment, and tell us
whether or not that garment is in the same condition now as
it was when brought into court back in the Spring, in this
court room?

A Yes sir.

COURT: Are they in the same condition they were
in immediately after the rape, except that you
have washed them?

WITNESS: Yes sir. They are just like they was when I took them off.

Q Is that knife in the same condition?

A Yes sir.

MR. LEIBOWITZ: We object to the knife.

MR. BAILEY: She has identified the knife and testified that one of these defendants took the knife away from her.

COURT: The step-ins are in evidence, but I will exclude the knife for the present.

RECROSS EXAMINATION.

MR. LEIBOWITZ:

Q Did it take several grabs to tear these drawers apart, to tear them up in that way, it is ripped in several places?

A There was four hands grabbed at me (indicating), this way.

Q In ripping these things open this way, didn't they scratch you all around in the crotch?

A I don't know whether they scratched me or not.

Q Were there any scratches at all?

A There was a few, to the best of my remembrance.

Q Did you bleed from the scratches, when they ripped these drawers apart?

A I never paid no attention to that.

Q By the way, did all of these negroes wear dark

clothes when they had intercourse with you?

A I don't know what they had on.

Q Some of them have on overalls?

A I didn't pay attention.

Q They had on pants - they wasn't naked?

A No.

Q The had clothes on?

A Yes sir.

Q While they were having intercourse with you?

A Yes sir, they had on clothes, sure they did.

Q When you were assaulted and while you were resisting, did you scratch any of these negroes in the face?

A I don't know whether I did or not.

Q Did you strike any of them?

A I struck at them.

Q Did you hit any of them?

A Yes sir, until they held me.

Q Did you kick some of them?

A I don't know whether I did or not. I don't remember.

Q Did you tear the clothes of any of them?

A No sir.

Q You put up a fierce battle, didn't you?

A No.

Q Let me ask you this question, on page 48 of the official report before Judge Horton last spring, were you not asked this question, and did you not make this an-

SWER:

"Q Of course when Dr. Bridges and Dr. Lynch examined you, they saw your coat at that time and it was all spattered overwith semen?

A Yes sir."

did you say that?

COURT: Do you remember whether you said that or not?

WITNESS: No sir.

Q Can you read?

A Yes, I can read.

Q You heard me read the question and answer?

A Yes sir.

Q Will you read it?

COURT: You can read it over again if you want to.

Q You remember Judge Horton?

A Yes sir, I remember Judge Horton, I sure do.

Q Wasn't you asked this question before Judge

Horton: "Of course when Dr. Bridge and Dr. Lynch examined you they saw your coat at that time and it was all spattered over with semen" and you ~~answered~~ answered: "Yes sir",

COURT: Do you remember that?

WITNESS: No sir, I don't remember it. I don't remember saying it. I don't think I made that statement.

W. H. HILL, sworn for the State, testified:

DIRECT EXAMINATION.

Q On the 25th of March, 1931, were you the station agent of the Southern Railway at Paint Rock, Alabama?

A Yes sir.

Q How long had you been employed there at that time?

A Forty-four years yesterday.

Q On that day, were you present at the station when a freight train traveling west was stopped, or stopped there?

A Yes sir.

Q Did you see some colored men on there?

A Yes sir.

Q When you first saw them, on what part of that train were they on?

A They were on a coal car, or what we call a chat car.

Q Is that the same as a gondola car?

A You may call it a gondola.

Q What part of the car were they in when you first saw them, and what were they doing?

A They were all over it, you might say, you could see they were all over, and when the car stopped they were taken off.

Q By the people there at Paint Rock?

A Yes sir, by the officers.

Q Did you see any white women there at that time?

A The first I saw of the two women, they had reached the ground.

Q They were on the ground?

A Yes sir.

Q You saw them standing on the ground?

A Yes sir.

Q Where were they when you saw them on the ground, where were they standing with reference to the gondola on which you saw the colored boys?

A At the side of the car, at the east end.

Q The same car that you saw the colored men in?

A Yes sir.

Q Do you know Victoria Price, the witness that testified here?

A Yes sir.

Q Was she one of the women that you saw there?

A Yes sir.

Q What was her appearance at that time, Mr. Hill?

A Apparently she had fainted.

MR. LEIBOWITZ: We move to strike that out.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Did any one carry her away from the car?

A Ruby Bates had her arm around her supporting her.

Q Where did they go?

A They went across to a shade tree near the track.

Q Did Victoria Price walk over there, or did any one carry her?

A I don't know; I couldn't say. I wasn't looking and didn't notice the women as they walked away.

Q Did you at that time, or immediately after you saw them standing on the ground here, hear this woman, or either one or both, make any complaint of the treatment they had received?

A Yes sir.

Q Which one made the complaint?

A Ruby Bates.

MR. LEIBOWITZ: We object to that on the ground it was not by the witness Price.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q They were both together at that time?

A Yes sir.

Q You said one of them was in a faint?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Where were they standing when this complaint was made?

A Right by the side of the car, just at the end where the ladder comes down the side of the taxi.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q I am showing you a picture here, and will ask you if you can see a shade tree, in between the station and coal chute, and if that is the shade tree where those women were taken to?

A Yes sir.

Q Pick out the tree where these women were taken?

A That's it right there (indicating).

Q Right opposite the water tank?

A Near the water tank?

Q That is the tree?

A Yes sir.

MR. LEIBOWITZ: First let me offer this in evidence as No. 2; that is the same number it was marked in the Patterson trial. We offer this in evidence. (No objection.)

Q The tree you have pointed out, I am going to mark with a cross, - is that the shade tree?

A Yes sir.

Q I have marked over that cross "Shade Tree" am I right?

A Yes sir.

Q Where is that water tank?

A That is the tank there (indicating).

Q I am going to mark in there a black mark near the shade tree, an arrow pointing upwards, and mark that the

water tank, is that right?

A Yes sir.

Q Now, these women standing at the side of this gondola car, this coal car, they walked across to that shade tree?

A Yes sir, I said they did.

Q Now then, looking this way, at Paint Rock Station, towards Huntsville and Decatur, that located the station on the left side of the train?

A Yes sir.

Q So that a train coming into Paint Rock going to Huntsville, the station is on the left side?

A Yes sir.

Q Then there is a water tank right at the edge of the platform station?

A No sir.

Q About 200 feet from the Station?

A Yes sir, something like that; that is a maintenance house at the end of the walk.

Q Let me get at it this way, the water tank is 200 feet past the station on the way to Huntsville?

A About that, yes sir.

Q About 200 feet from the water tank, along the line is a coal chute on the other side of the track?

A Yes sir.

Q It is on the right side of the track, and not on the side where the station is?

A Yes sir.

Q When you saw these women, please pay attention to this, particular attention, these women, when you saw them on the side of the gondola it was somewhere in between where the tank would be and the coal chute, and they walked across to this shade tree?

A That is about right, the car was about mid-way between this house and the coal chute.

Q You say that the women you saw, when you saw them opposite that gondola car, were about the same distance from the coal chute and the water tank?

A They were nearer the water tank.

Q Please make a cross on this about where you saw this car, from which you say these men were taken from?

A I would say about there (indicating).

Q Mark your initials there, also please?

(Witness does so).

A Yes sir.

Q That is where the car was that the women got off of?

A Yes sir.

Q From there they were taken over to the shade tree?

A Yes sir.

EXHIB MR. LEIBOWITZ: May I show this to the jury.

COURT: Yes sir. (Photograph is handed the jury).

Q This photograph is a photograph looking towards

Huntsville, and shows a portion of the station platform towards Huntsville and Decatur, which would be west, it shows a portion of the station platform, does it not, Mr. Hill?

A A portion of it, yes sir.

Q (By the court) I want to ask the witness a question. How far is it from the platform down to the water tank?

A I would say 200 feet.

Q Does the engine stop there to take on water?

A No sir.

Q Where does it stop for water?

A At the coal chute; it takes water and coal at the same time.

Q How far is it from the coal chute back to the station?

A Well it is about 200 feet further than the water tank.

MR. KNIGHT: I would like to ask one more question.

Q You are familiar with the territory traversed by the ~~MEMPHIS~~ Southern Railroad track between Stevenson and Paint Rock?

MR. LEIBOWITZ: There is no question raised as to the venue.

RECROSS EXAMINATION.

MR. LEIBOWITZ:

Q Did you see a white boy where these girls were?

A Yes sir, I saw him. I saw him get off the train, he was off the train before I saw him.

Q Did you see any other white boys there at Paint Rock?

A I saw two of them later up town.

Q At the train?

A No, I didn't see them get off the train.

Q Any of the white boys speak to you at all?

A Not at the train, up town they did.

Q Did any white boy say anything to you about what happened?

A Not to me.

Q Or in your presence?

A No sir.

Q You heard no white boy white boy speak up and say anything in the presence of the girls, as to what happened?

A No sir.

**REEXAMINATION.
REDIRECT EXAMINATION.**

Q How far is Stevenson from Paint Rock?

A 38 miles.

Q What time did that train reach Paint Rock?

A Around two o'clock in the afternoon, 1:50 or two o'clock in the afternoon.

COURT: Mr. Attorney, General, I am going to change my ruling and exclude the statement of the witness Mr. Hill as to what Ruby Bates said about their

having been mistreated on that train. Gentlemen, pay no attention to it; remove it from your minds as if it was never said.

PERCY RICKS, being sworn for defendant, - out of order, testified as follows:

MR. LEIBOWITZ: I offer in evidence the same photographs that I offered in the Patterson case; they are defendant's exhibits Nos. 1, 2, 3, 4 and 5. I offer them in evidence representing the view in and about the station. I think it is necessary for the jury to be able to follow this witness, that they have these photographs before them. (Explains pictures to jury)

Q Are one of these box cars about 40 feet long?

A Yes sir.

Q How many feet is there between two box cars hooked up together?

A About three feet.

Q If you had seventeen cars back of the tender, - fifteen cars back of the tender, am I right in saying the distance would be fifteen times 40 feet, plus three feet between each car?

A Yes sir.

Q If you stop a train that had an engine and tender, with fifteen cars behind it from here to here (indicat-

ing miniature train), would that last car, am I right in saying, would be about 700 feet from that coal chute?

A Yes sir, approximately.

Q Am I right in saying that the station is about 400 feet from the coal chute?

A About that.

Q So that the fifteenth car in that train, when the engine pulls up to the coal chute, - the fifteenth car in that train would be about 300 feet past the station?

A Approximately/

Q This fifteenth car would not reach the station by about 300 feet?

A Yes sir.

Q The fifteenth car wouldn't be along about the station, but would be way back up the line, wouldn't it?

A Yes sir.

Q You were fireman on this train wasn't you, on the Southern Railroad?

A Yes sir.

Q You have been fireman for the Southern for how many years?

A Fifteen years.

Q Year after year, is that right?

A Yes sir.

Q You remember that train leaving Chattanooga?

A Yes sir.

Q You were the fireman on the train when it left Chattanooga?

A Yes sir.

Q Coming out of the tunnel this side of Chattanooga, through the mountain there, on the way to Stevenson, does the train slow up after coming out of the tunnel, is it up grade there?

A Yes sir.

Q How slow would you say that train would be running along there, about how many miles an hour?

A This side of the tunnel?

Q Yes, after you get out of the tunnel towards Paint Rock, how fast was that train running?

A Well at Wahatchie -

Q How fast was the train running when it came out of the tunnel after leaving Chattanooga?

A Well, after we left the tunnel we was running slow, and we got down to about two miles an hour because we had to receive orders to cross over the the N. C. & St. L.?

Q Practically stopped, you mean?

A Yes sir, around ~~two~~ two or three miles an hour. Then after we leave Wahatchie, we are going up the mountain, and gets down to around twelve miles an hour, and from the top of the mountain down the speed would range from fifteen to forty miles an hour.

Q Was there an additional freight car taken on that train at Stevenson?

A Yes sir.

Q Where was that car hooked into, at the end or where?

A About a car length back of the engine as I remember. We set out some cars and backed up and picked up one car at Stevenson. We crossed from the N. C. & St. L. over to the Southern tracks at Stevenson.

Q Did you see anything of any white hobos or black hobos along the line?

A Yes sir, I saw two white ~~men~~ women and a white man get out of a box car after we crossed over to the Southern.

Q Did you see them any more after that?

A The next place I saw them was at Paint Rock.

Q Did you see them get on the train again at Stevenson?

A I saw them going back towards the end of the train. I didn't pay any particular notice to them, where they got on.

Q When the train pulled in around that bend, - the bend shown on that picture, - can you see that picture?

A Yes sir.

Q There is a bend there before you get to Paint Rock?

A Yes sir.

Q When you got to that point, did you slow up?

A Slowed down, yes sir.

Q The brakes were being put on?

A Yes sir, the brakes were being put on.

Q As the train slowed up coming around that curve did you notice any men on each side of the track with rifles?

A Yes sir.

Q Did you notice them way up here up the line at the station to where the coal chute was?

A Yes sir.

Q Men on each side of the track?

A They was mostly on one side.

Q On the left where the station is?

A Yes sir.

Q Am I right in saying there were 50 to 75?

A Yes sir, approximately.

Q Some with guns and some with pistols?

A Yes sir.

Q Stretched along that entire piece of track?

A Yes sir.

Q Did you get up on top of the tender when you got to the coal chute?

A I was there when we got to the coal chute.

Q Is the coal chute the place where that train stopped?

A Yes sir.

Q Everything back of the engine was back of the coal chute?

A Yes sir.

Q That is where that train stopped isn't it?

A Yes sir.

Q Step down and show these men on the jury where you stood when you got up on the tender?

A (Does so) I was standing there. (Indicating about the center of the tender on miniature train).

Q That is the coal tender?

A Yes sir.

Q Is that tender higher or lower than the roof of the box cars?

A The engine I was on has a platform running from this point here (indicating), which makes it about the same height as the box car.. The Southern tenders is flat top; that is a round one.

Q When you stopped you saw all these men on both sides of this train?

A Yes sir. When I got on this board here (indicating I could see all the way down, and I looked back to see what was happening on that side.

Q Could you see on both sides of the train?

A Yes sir.

Q Tell this jury what you saw?

A At Paint Rock after I had gotten on top of the water tank, the train came to a stop -

Q You were up there looking on both sides?

A Yes sir. As we approached there they began to swarm the train, before we stopped.

Q Tell us what you saw when it stopped?

A I saw the men surround the oil tank way back, it seems that the first man was taken off there first.

Q You mean colored men, don't you, you said you saw them way back down this way (indicating) taking somebody off?

A Yes sir.

Q What I want you to tell the jury is what you saw with reference to any women?

A I saw the women get off about the center of that string of gondolas.

Q That would be, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 - 11, - that would be about the eleventh car from the engine that you saw the women get off that car?

A Yes sir.

Q You were standing up on the tender?

A Yes sir.

Q Did you see anybody else get off that car besides women, did you see any colored men get off that very same gondola?

A No sir.

Q When you saw these women get off this gondola on to the ground, did they get off on the station side, or the other side, - on the side next to where the station is?

A They were on the right hand side.

Q That would be next to the station?

A Yes sir.

Q When they got off there at that point, tell us what they did?

A They started towards the engine.

Q Did they - these women - run or walk?

A They started hurriedly.

Q Running or walking?

A I would say they started to run.

Q Towards the engine?

A Yes sir, about two car lengths, practically, I mean two car lengths towards the engine.

Q Now, as they were running towards the engine, were they finally stopped by a crowd of men that surrounded them?

A Yes sir, they first started towards the engine, and turned in as the group closed in on them.

Q Then they finally stopped?

A Yes sir.

Q Let me show you this picture (No. 4), look at this, do you see that shade tree there?

A Yes sir.

Q Do you know whether that is the water tank there?

A Yes sir.

Q And that is the coal chute where you stopped?

A Yes sir.

Q The water tank was on the other side of the track, 200 feet away?

A Yes sir.

Q And you saw this shade tree there?

A Yes sir.

Q Did you see these women, after they stopped, taken across to this shade tree?

A No sir, nobody didn't go there.

Q You don't remember that?

A No sir.

Q You were on the tender of your engine on that day?

A Yes sir.

Q You say that they began there to get off the box cars, that the colored boys were taken off the box cars below the tank car?

A Seemingly they was taken out of the box car.

Q How far below the tank car was that box car?

A I don't remember exatly how far it was; it was somewhere back there.

Q Didn't you know that every one of these box cars were loaded and sealed?

A I know there was some empties backthere, because they got out of them; they couldn't get out of a loaded car; they were taken out of box cars, and they must have been empty.

Q Loaded cars are sealed aren't they?

A Yes sir.

Q Do you know Mr. Hill, the gentleman that is station agent at Paint Rock?

A No sir.

Q Do you know Mr. Tom Taylor Rousseau at Paint Rock?

A No sir.

Q Do you know Mr. Brannum at Paint Rock?

A No sir.

Q You do know that you saw two taken out of a box car near the tank car?

A Yes sir.

Q Below it wasn't it?

A I am not sure.

Q Didn't you tell me a minute ago that they were taken out of a box car behind the oil tank?

MR. LEIBOWITZ: We object to that. Sustained.

Q Was it below or in front?

MR. LEIBOWITZ: We object.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Were these cars empty or loaded?

A I don't know which were loaded. I know they were taken out of a box car near that tank.

Q You don't know whether it was before or after the tank?

A I don't remember whether it was in front of the tank or behind.

Q Did you see Haywood Patterson on the tank car?

A No sir.

Q Do you know Clarence Norris, the defendant there?

A No sir, I wouldn't know him.

Q I believe you stated that you didn't know whether the cars behind the tank car were loaded or empty?

MR. LEIBOWITZ: We object to that. Overruled.

A I don't know. I know that two men was taken out

of a box car near the tank. I don't remember whether it was in front or behind it.

Q Did you see either one of them walking with a stick?

A These men I saw?

Q Yes?

A I didn't see that. I saw them taken out of the car. I didn't see any stick.

Q These box cars being 40 feet, and leaving a space of three feet, would make 43 feet to each car, and that would be about 800 feet from this tank car to where you were standing on the tender of the engine, wouldn't it, - it would be over 800 feet?

A I could see the rear of the train.

Q I didn't ask you if you could see, I asked you if it wasn't over 800 feet?

A Maybe I don't understand the question.

Q It is over 800 feet from the tender back to the oil car, that is what I asked you?

A I seen the cars -

Q (By the court) The question is, not what you could see, by what your judgment is as to the distance, - he wants to know if it wasn't over 800 feet from where you were standing back to where you saw the oil tank car there, the first one?

A I can't say that, I haven't figured that out.

Q The oil tank or box car, which is the highest?

A A box car is the highest.

Q How much higher?

A The oil tank is probably two or three feet lower than the box car.

Q Could you see the oil tank car from where you were standing on the tender of your engine?

A Yes sir. I know what I had on the train and I watches back.

Q Was the train on a bend, or in a straight line?

A On a straight line.

REDIRECT EXAMINATION

MR. LEIBOWITZ:

Q Isn't it so that there is more than 400 feet between the station and the bend, - do you know what I mean?

A Yes sir.

Q You see this picture here, that is looking back towards the east?

A Yes sir.

Q Standing on your engine, that tank car was not around the bend, is it?

A No sir.

TOM TAYLOR ROUSSEAU, sworn for the State, testified:

DIRECT EXAMINATION.

Q This is Mr. Tom Taylor Rousseau?

A Yes sir.

Q Where do you live?

A Paint Rock.

Q Were you in Paint Rock on or about March 25, 1931,

when a freight train was stopped there at Paint Rock?

A Yes sir.

Q Which side of the track were you on, Mr. Rousseau?

A I was on the left of the track the train came in on, looking toward Memphis.

Q Same side the depot is on?

A Yes sir.

Q Did you see some colored men taken off the train?

A Yes sir.

Q How many did you see taken off?

A There was nine in all, seven got off on the side that I was on, and two on the other side.

Q Did you see these other two men?

A I seen them get down on the far side, and then they brought them back between the cars next to me.

Q Where were these nine men the first you saw of them?

A The first I saw of them, they were getting out of the gondola crawling on the box car ahead, towards the engine.

Q Did you see the two girls, Victoria Price and Ruby Bates?

A No sir.

Q Did you see them after they got off the train?

A Yes sir.

Q Do you know which gondola car they were beside of when you first saw them?

A I didn't pay any attention. I noticed they were

getting out of a gondola car.

Q I will ask you whether or not these colored boys that you saw taken from the train, were they getting out of the same car that you saw the girls get out of?

A I didn't see the girls in the car.

Q Do you know - did you notice the condition of the girls on that occasion when they got off?

MR. LEIBOWITZ: He didn't say that he saw the girls get off the car.

Q After these defendants were arrested how long was it before you noticed the girls?

A They were lined up - Three or four minutes, or five, I guess.

Q State to the jury the appearance of Victoria Price and Ruby Bates when you first saw them there on that occasion?

A I was coming from the track the first time I saw them. She was sitting in a chair -

Q (By the court) Who was - Victoria Price?

A Yes sir. They were going from the depot towards town, towards the main street.

Q (By the court) Was she being carried in a chair?

A Yes sir. She had her head down this way (indicating) with her eyes closed.

Q Now, with reference to being clean or dirty, describe what her appearance was?

A Looked pretty nasty to me, as far as I could see.

I was pretty close to them but I never paid them much mind when they went by.

Q Do you know Percy Riels?

A No sir.

Q You acquainted with the firemen on these trains?

A No sir.

Q Could you point out on this train here (indicating miniature train) about where you saw the negroes, the first time you saw them, assuming that that train is a fair representation of the one you saw there on that occasion?

A My recollection is they were getting out of a gondola something like this far back. (Indicating).

Q (By the court) You mean that first gondola there?

A Yes sir, somewhere along there, climbing out on the box car next to it.

Q (By the court) Who was climbing on the box car?

A These negroes.

Q That is the first time you saw them?

A No, they were in the gondola.

Q Please point out what you mean, come down here and point out?

A The first time I saw them was about three fourths of a mile away, as the train came around the bend, about 3/4 of a mile away. I seen a bunch of them.

Q (By the court) What direction were they going when you first saw them?

A They were all standing up, like they were coming

forward, like that -

MR. LEIBOWITZ: We move to strike that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A (Continued) I got up the track a piece further, I knew the engine would stop at the coal chute, and next time I turned around and noticed them they were getting out of the gondola on top of the box car.

Q Did you see any one take anybody off about this oil tank car, or out of any box cars immediately near it?

A No sir.

Q Did you see all the men who were taken off the train?

MR. LEIBOWITZ: We object to that because it is leading, and puts the answer in the witness's mouth.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q There was one negro that you took off yourself?

A Yes sir, I had a little trouble getting one off.

Q I want to know if one negro is all you took off?

A I helped to take them all off, too.

Q Did you take them all off?

A Not personally by myself, I didn't.

Q Some other men took them off?

A Yes sir.

Q Some on the right and some on the left?

A Yes sir.

Q The ones you took off were on the side nearest
the station?

A Yes sir, on the left.

Q You saw some men in some car way up here around
the ben, some negroes getting out of a gondola on a box car?

A Yes sir.

Q You were all watching to see what you could see?

A Yes sir.

Q Did you see any women get off the train?

A No sir, I saw no women there at all.

LEE ADAMS SWORN FOR THE STATE, testified as follows:

DIRECT EXAMINATION.

Q Your name is Lee Adams?

A Yes sir.

Q Where do you live, Mr. Adams?

A I live at Stevenson.

Q Do you remember where you were on or about March

25, 1931?

A Yes sir, I was up there on the side of the
Southern Railroad hauling cross-ties.

Q How far from Stevenson, Alabama?

A About a mile.

Q In what direction?

A Towards Scottsboro.

Q Were you at or near the Southern Railway track?

A Yes sir.

COURT: He said towards Scottsboro, I suppose there is no question that Scottsboro is on this side of Stevenson?

MR. LEIBOWITZ: No sir.

Q How far did you say you were from Stevenson?

A About a mile from Stevenson towards Scottsboro.

Q Did you see a freight train on that occasion?

A Yes sir.

Q Did you see anybody on that freight train?

A Yes sir, I seen some people in a gondola car on the railroad.

Q About how many people, did you see, according to your judgment?

A Well, there was something between, I expect fifteen or twenty people altogether.

Q At that time, how far away were you from the track?

A About half a quarter.

Q State to the jury what you saw these people doing, if anything?

A Well, I saw them fighting, knocking and scuffling

like there was a fight in the car. I saw a man strike this way (indicating), and then looked like he picked something up -

Q (By the court) That is the way it appeared to you?

A (Continued) Yes sir, looked like he threw some person out of the car, out over the top of it.

Q Could you tell how many threw that person out?

A They were all in the car there, but there was two standing near together, and I seen one strike down this way (indicating) the second time, down in the car, and then the car passed out of my seeing, but it looked like he threw another person out.

Q Do you know how many persons were engaged in putting that person out of the car?

A Well, there was a good many in there, and the train was going fast, about 30 miles an hour.

Q If you know how many, say so?

A Well, there was two of them.

Q Could you tell whether any of these persons in that gondola were white or colored?

A There was some negroes in the car - some of them had their backs to me.

Q Could you tell whether or not they were white or black?

A Yes sir, there was some negroes in there with them.

Q (By the court) Did you see any whites?

A They were all in the car.

MR. LEIBOWITZ: The judge asked you did you see

any whites in the car.

COURT: Did you?

WITNESS: Yes, I saw two white men.

COURT: Were they the two that were thrown off?

WITNESS: I don't know whether they was the two I saw throw off or not.

Q These parties that you saw thrown off, which side of the train from you were they put off on?

A Say the train goes this way (indicating) I was over this way (Indicating)

COURT: Let me ask him a question, I am sorter acquainted with that road along there, was you on what is called the north side of the track or the other?

Well, now, Judge -

COURT: I will put it this way, if you were going from Paint Rock to Stevenson, were you on the right or left side going towards Stevenson?

WITNESS: I was on the right side going that way.

Q Were these men put off on the opposite side of the train from you, or on the same side?

A On the opposite side from me.

Q Now, as the train pulled on away, did you see these men any more, did you see any men after the train rolled on?

A Yes sir, I saw two.

Q Did they come anywhere near you, or did you get near them?

A Well, they come on up the railroad, I would say I was, I expect, 30 or 40 steps from me. After they got down in the cut, I was on top of the cut, and I saw them, and one of them had a handkerchief in his hand wiping his head this way (indicating), and it was red, and then he taken his shirt sleeve in this position (indicating) and wiped the blood off his face and head that way.

Q Did his head appear to be bleeding?

A Yes sir.

Q What about the other one?

A The other one was walking along there; they were walking along up the railroad.

Q Did he appear to be hurt?

A I couldn't tell; they was walking along side by side.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q You didn't see any women in that gondola car where that fighting was going on?

A Well, no sir.

Q You didn't see any women did you?

A Well, the most I seen was a lot of folks in the train; it was going very fast.

Q (By the court) The question is did you see anybody in there that you took to be women, could you tell whether there were women in there or not?

A There was a lot of folks in the car.

Q You don't claim that you saw any women in that car, do you?

A Well, I tell you -

Q Do you say now that you saw women in that car?

COURT: You can answer that "Yes" or "No", - do you know whether you did or not.

A (By the witness) Well, now Judge, that train was going so fast -

COURT: Never mind about how fast the train was going, did you see or discover that some on that car were women?

A (By witness) Well, like I tell you -

COURT: You needn't tell me unless you are going to tell me "Yes" or "No".

Q Will you answer the Judge's question, he has asked you three times now?

COURT: Did you see any women in that car?

A (Witness) I seen these folks all in that car.

COURT: Can you tell whether there were women in the car - could you tell whether they were women or men?

A (Witness) They were all in the car there, Judge.

COURT: That's enough.

W. E. BRANNUM, sworn for the State, testified:

DIRECT EXAMINATION.

Q Where do you live?

A Paint Rock.

Q Were you in Paint Rock the day that freight train stopped there?

A Yes sir.

Q And some parties taken off the train?

A Yes sir.

Q Which side of the track were you on?

A On the right hand side coming towards Huntsville.

Q On the other side from the station?

A Yes sir, on the other side from the station.

Q Did you see anybody on that train before the train stopped?

A Yes sir.

Q How far away were these people, these colored boys, if you saw any, from the station before the train stopped, did you see them?

A When I saw them?

Q Did you really see any colored boys on the train?

A I did.

Q Whereabouts were they when you first saw them?

A You mean on the train - the first time I saw them they was on the train.

Q How far were they from you at that time?

A Between a quarter and a half quarter.

Q Could you tell what kind of a car they were on?

A I couldn't tell until the car got closer up to me.

Q State whether or not you continued to watch them as the train approached the station?

A I don't understand the question.

Q (By the court) Did you keep on watching them until they got up closer?

A Yes sir.

Q Do you know whether or not they were on the same car that you first saw them on?

A I don't think they was.

Q Go ahead and tell the jury what these men did from the time you saw them until the train stopped?

A Well, the first I saw of them, they was up, in this gondola car, I think it was, and they climbed out of that and tried to make their get-a-way -

MR. LEIBOWITZ: We move to exclude that.

COURT: Sustain the motion. Gentlemen that last statement is not evidence.

A (Continued) I couldn't see what they was doing. They elimed out of this car.

Q On the ground or on another car?

A On another car.

Q When the train pulled up there, did you see any women on that car?

A No, I didn't.

Q Did you see any/ women at all on that occasion?

A As I was going down the train I saw one woman

climb down, like on the end of a gondola car, and as I got to where I could see between the cars, this woman sunk to the ground.

Q Do you know who that woman was?

A No sir.

Q Have you found out since then who that woman was?

A All I can tell -

Q (By the court) What he wants to know is have you found out who that woman was, or what they called her?

A No.

Q How many women did you see there?

A I saw this one at the car.

Q Do you know what was done with her, or what she did, whoever it was that sank to the ground?

A No sir, the next time I saw the woman supposed to be her, they had her in a chair toting her up in town.

Q Did you notice the appearance of this woman that you say sank to the ground?

A No, we didn't take time.

Q Did you have anything to do with taking these negroes off the train or arresting them?

A Yes sir.

Q Do you know who you arrested?

A Well, I can't identify them.

Q Do you know whether or not you arrested the defendant over there?

A No sir. It has been a long time since it happened.

Q (By the court) Look at him and see whether or not you recognize him as one of the men you arrested?

A No.

Q Did you see him there after the train was gone?

A Yes sir.

Q (Still by the court) Who had charge of him, - you remember some white men were there making the arrest?

A Yes sir. We didn't know them. They were all there.

Q Who was all there?

A All the men and a bunch of colored boys.

Q (Still by the court) Was he one of them?

A He looks to be.

Q (Court) You are not sure about it?

A No, I can't identify him.

Q With reference to this car that you saw this woman opposite of, I will ask you whether or not, in your knowledge, that was the same car that the negroes got off of, or some other car?

MR. LEIBOWITZ: That is manifestly unfair to ask the man that question. He is putting the answer in his mouth.

COURT: Overruled.

MR. LEIBOWITZ: Exception. I want to object on another ground, the witness hasn't said that any woman got out of any car.

COURT: Sustained.

MR. BAILLY: I said the car she was opposite of, Judge.

COURT: All right. He wants to know if there were any negroes arrested in that car by which she was standing as the train slowed down, or when it stopped?

WITNESS: I don't exactly understand the question.

COURT: You said that you saw a woman on the opposite side, when you were on the opposite side and got to where you could see between the cars, you saw a woman sink to the ground?

WITNESS: Yes sir.

COURT: Now, they want to know ~~whether~~ whether or or not, at any time there, while you saw that train come to a stop, or while it was slowing down, or after it stopped, whether you saw any negroes get off that car by which she was standing, then or after?

WITNESS: No, they had left the car.

COURT: Did you see them leave the car?

WITNESS: Yes sir.

Q Did you on that occasion see anybody taken off a tank car down here (indicating) or off of any box car immediately near it?

A No.

MR. LEIBOWITZ: I object to that. I submit that he should be asked if he looked.

(No ruling)

CROSS EXAMINATION. - By Mr. Leibowitz;

Q Do you know where that water tank is there, or was then, that water tank near the station, - let me show you a picture of it in order to refresh your recollection, get your glasses out please, - was that the water tank?

A Yes sir.

Q Let me mark that coal chute, I am going to mark an arrow pointing towards the coal chute, right in here - do you see that there?

A Yes sir.

Q Were you in some place between the coal chute and the water tank, in somewhere here where you see these initials?

A No, I wasn't between the coal chute and the water tank.

Q Where were you?

A I was somewhere about this maintenance house; somewhere about half way between this water tank and this maintenance house, but I was over on the other side of the train.

Q I am going to make a mark right here on this maintenance house, - that is what you call it?

A Yes sir.

Q (This is Exhibit No. 4) Will you make a little cross on this other side as showing about where you were standing in between the maintenance house and the water tank?

A I don't know whether I could get that exactly.

Q Maybe we can get at this way? how many feet is it between the maintenance house and the water tank?

A Well, I would suppose that is about 25 maybe 35 feet; I can't say positive, I didn't measure it.

Q When you were standing at that point, you looked through these cars, two cars, and saw this woman sink down to the ground, between these two cars?

A About where I showed you there?

Q Yes?

A Yes sir.

Q When you stood there between the maintenance house and the water tank, am I correct in saying that you were about 250 to 300 feet this side of the station?

A You mean where I was standing back to the station?

Q Let me put it this way, it has been testified that the station is about 400 feet from the coal chute, is that right?

A That is somewhere in the neighborhood of it.

Q It has also been testified that the water tank at that time was about 200 feet from the station, in other words the water tank is about half way between the station and the coal chute?

A Yes sir, that's about right.

Q Now, what I am trying to get at is this, - at the time you saw this woman, looking in between the two cars, you were standing at a place between the coal chute and the water tank, somewhere's along in there? (Indicating)

A No, I wasn't between the coal chute and the water

tank, I was on the same side that the coal chute is on, but the water tank is on the other side.

Q But the water tank would be nearer the station than you were?

A No.

Q This is the station here (Indicating)?

A Yes sir.

Q The train came along here like that, that would be the coal chute?

A Yes sir.

Q At the end of the platform there is the maintenance house, you call this here the maintenance house? (Indicating)

A Yes sir.

Q That is the water tank in here?

A Yes sir.

Q That is about 50 feet from the maintenance house?

A Yes sir.

Q The coal chute was on the other side of the road wasn't it?

A Yes sir.

Q What I want to know is this, were you standing on the track where the ~~the~~ coal chute is located?

A I said the coal chute was on the right.

Q What I want to know is this, when you saw this woman as you looked between the cars, were you opposite the water tank?

A I was on the right hand side of the water tank

and the railroad.

Q As you face it, were you looking to the right of the water tank or to the left of the water tank?

A I was right of it.

Q How many feet was the water tank from you as you were standing there on the side of the railroad, how far were you nearer to the coal chute when you saw this woman?

A I can't say, I never measured it.

Q Was it 100 feet?

A No sir.

Q Was it 50 feet?

A I can't say how many feet.

Q You were some distance there to the right of the water tank, nearer the coal chute wasn't you?

A No sir, I wasn't nearer the coal chute.

Q Were you the same distance from the right of the water tank that you were from the coal chute?

A No.

Q Were you on the right of the water tank as you faced it?

A Yes sir.

Q I want to ask you this, while you were waiting for that train to go by, how close were you standing to that track, - show us with your hands?

A Close to what?

Q As the train came along, how close were you to the track, the track the train passed you on?

A There was a track between me and the main line.

Q (Court) That don't tell us anything, unless that train was on the main line?

A Yes sir, that train was on the main line.

Q You were standing on the other side of that track?

A Yes sir.

Q By the way, do you wear glasses?

A Yes sir, for close seeing.

Q You mean when you read?

A Yes sir.

Q Do you see that man standing up in the back of the room back there (indicating), you see that man back there?

A Yes sir, I can see the man back there.

Q Can you tell us the color of the man's clothes?

A I can.

Q What is the color of his clothes?

A You might say he is dressed in blue, he has got on blue overalls.

Q That man is how far from you, do you judge?

A I can't say. It is in the back of the court room and I haven't measured the court room, and don't know.

Q Would you say about 40 feet, or 35 feet?

A Something like 35 feet, I guess.

Q Can you see at a distance of 80 feet, Mr. Brannum, to distinguish a colored man from a white man?

A I don't know whether I could or not. I never tried it.

Q There was a lot of excitement around there, wasn't there?

A Well, nor more than usual, when anything would turn up like that was.

Q Men were there with revolvers and guns?

A Yes sir.

COURT: I want to ask some questions.

Q He has given you some objects there, he said that hat represented the depot there?

A Yes sir.

Q And that book represents the maintenance house?

A Yes sir.

Q And the pitcher represents the water tank?

A Yes sir.

Q And that furtherest book represents the ~~next~~ coal chute?

A Yes sir.

Q Now, then what I want to know is, the track was running then beyond that hat, that book and that pitcher?

A Yes sir.

Q You were across the track from there (indicating)?

A Yes sir.

Q Now, then this is going toward Huntsville (indicating), were you on this side of the water tank, closer this way (indicating) or below it?

A Well, if your Honor please I will show you, - I was somewhere about half way between this maintenance house

and the water tank.

Q That is when you saw the woman sink to the ground,
on the other side of the train from you, between the two
cars?

A Yes sir, from where I was standing.

J. ARTHUR WOODALL, sworn for the state, testified:

DIRECT EXAMINATION.

Q Your name is Mr. J. A. Woodall?

A Yes sir.

Q Where do you live?

A At Stevenson.

Q What business are you engaged in?

A The general mercantile business.

Q You operate a store?

A Yes sir.

Q On March 25, 1931, did some two or three or
four white boys come to your store?

A Yes sir.

Q State briefly the condition of the boys that
came in your store?

A There was one of them that had his head cut
open, another was bleeding around the body, and the others
were scratched up a little.

Q Did you lend them water and towels to clean up?

A Yes sir, and gave one of them a shirt.

Q How many came?

A Five.

Q Did you take these boys to Scottsboro?

A Yes sir, I carried four and Mr. _____ carried the other.

Q Upon your arrival at Scottsboro did you see some one else bring to this jail house some colored men, that evening?

A Yes sir.

Q How many, do you remember?

A Nine.

Q Where they brought from, do you know?

A They were supposed to have been brought from Paint Rock.

Q Do you know Mr. Simmons?

A Yes sir.

Q The chief deputy?

A Yes sir.

Q Was he chief deputy at that time?

A Yes sir.

Q Did you search, or help search any of these nine negro boys that were brought there?

A Mr. Simmons -

MR. LEIBOWITZ: I must object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A (continued) and me searched them.

Q Look at the defendant over there, did you search him?

A Yes sir.

Q Did you find anything on him?

A Yes sir.

Q What, please?

A A pocket knife and a fifty cent piece.

Q Look at this knife (handing knife to witness) and say whether or not that is the knife you found on the defendant?

A Yes sir.

Q Is there any particular thing by which you know that knife?

A I know it by that little place right there (indicating.)

Q When you took this knife from this defendant, who was present?

A Mr. Lon Talkington and Mr. Simmons.

Q This defendant and the other boys there?

A Yes sir, all the negroes were there.

Q Did you, or any one else in your presence, make him any threats, or offer him any inducements to make a statement?

A No sir.

Q Did you or any one else, in your presence threaten him?

A No sir.

Q Did you, or any one else in your presence, offer him any reward, or hold out any inducement to him to make

a statement?

A No sir.

Q Did he make a statement to you at that time?

A I asked him where he got the knife and the half dollar.

Q Did he answer you?

A Yes sir.

Q What did he answer?

A He said he took it off of one of the White girls.

CROSS EXAMINATION.

MR. LEIBOWITZ:

Q I am going to read to you your testimony before Judge Horton, and will ask you if the testimony isn't just as you gave it, from page 289 of the official record, were you not asked these questions, and made the following answers:

"Q Examine the knife (Indicating)?

A I got the knife off of one of those negroes.

Q Can you tell which one?

A No sir, I can't tell you now."

and didn't you answer this question on the same point, on the following page, the question: "I don't know which one of the negroes I took it off of. I did know when they had the trial in Jackson County, but I couldn't say now." Do you remember saying that on the last trial here?

A Yes sir.

REDIRECT EXAMINATION.

Q At that time, this defendant was not in court,
was he?

A No sir.

Q You see that defendant now?

A Yes sir.

Q And you recognize him as the one you took the
knife off of?

A Yes sir.

RECROSS EXAMINATION

MR. LEBOWITZ:

Q Can you remember this negro three years after
you saw him?

A Yes sir.

REDIRECT EXAMINATION.

Q You testified on the trial in Scottsboro, didn't
you?

A Yes sir.

Q That defendant was in court when you testified
in Scottsboro?

A Yes sir.

Q You testified there that you took the knife off
of him?

A Yes sir.

RECROSS EXAMINATION

MR. LEIBOWITZ: NAME

Q Have you been in the Scottsboro jail, yourself, since the defendant was there, charged with murder?

A Yes sir -

MR. KNIGHT: We object to that.

COURT: I sustain that objection. The question was illegal and I sustain the objection to it, and the answer was an illegal answer, and that is excluded from you, gentlemen, - that statement is not testimony in the case, and you must not give it any consideration whatever in arriving at your verdict.

MR. LEIBOWITZ: We except.

C. F. SIMMONS, sworn for the State, testified:

DIRECT EXAMINATION.

Q Mr. Simmons, you are Chief Deputy Sheriff in Jackson County, are you?

A Yes sir.

Q Were you chief deputy in 1931?

A Yes sir.

Q Can you identify the defendant as having been put in the Jackson County Jail on March 25, 1931?

A I do.

Q Was he brought there in company with some other colored boys?

A Yes sir.

Q After he was brought there, was he searched in your presence?

A Yes sir.

Q By whom?

A Mr. Arthur Woodall and myself.

Q I will ask you if anything was found on him when you and Mr. Woodall searched him?

A We found a small white handled pocket knife and fifty cents in money.

Q I will ask you if this is the knife (Hand knife to witness)?

A Yes sir, that is the knife that was taken from him.

Q I will ask you, if at the time he was searched, and this knife was found on him, did you, or any one else in your presence hold out any hope or regard to get him to make a statement?

A No sir.

Q Did you, or any one in your presence threaten him in any way?

A No sir, we did not.

Q Did he make a statement then and there when the knife was taken?

A Yes sir.

Q I will ask you to state, as near as you can, substantially what he said?

A He accused the rest of them -

MR. LEIBOWITZ: We move to strike the answer.

COURT: That is not evidence, gentlemen.

Q I will ask you then, if there were other persons there under arrest, along with him?

A Yes sir.

Q How many?

A Eight more.

Q Was he charged with any offense at that time?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Did anybody ask him whether or not he had committed any offense?

MR. LEIBOWITZ: We object to that.

COURT: I over rule the objection.

MR. LEIBOWITZ: Why your Honor -

COURT: That will do, Mr. Leibowitz, I have overruled the objection.

MR. LEIBOWITZ: We except.

A I think Mr. Woodall asked him what he had done.

Q What did he state in reply to that?

A He said they was accused of rape.

Q What else did he say?

A I believe that's all he said at the present

Q He didn't say that he had raped any one?

A No sir.

Q Did he say that the others had committed rape?

MR. LEIBOWITZ: I must object to that.

MR. KNIGHT: I propose to show -

COURT: Wait a minute, was that in the same conversation you were inquiring about?

MR. KNIGHT: Yes sir.

MR. LEIBOWITZ: May I be heard on a proposition of law.

COURT: Wait a minute. At any time did you, or any one hold out any hope of reward, or make any threats, or him any inducement, or did anybody do anything threatening towards him or make any gestures towards him, to get him to talk?

WITNESS: They did not.

MR. LEIBOWITZ: My I question him: Were there men with guns on them around there?

WITNESS: I had on a gun myself. I don't know whether Mr. Woodall had one or not.

MR. LEIBOWITZ: Were there any men there with guns, around him?

WITNESS: No sir, we were in the run round of the jail.

MR. LEIBOWITZ: You has a gun didn't you?

WITNESS: Yes sir.

MR. LEIBOWITZ: Right after they were arrested,

wasn't it?

WITNESS: I judge about an hour and a half after they were arrested.

MR. LEIBOWITZ: There was a big crowd around the jail, wasn't there?

WITNESS: No.

MR. LEIBOWITZ: Any crowd around the jail?

WITNESS: Well, I guess maybe there was half a dozen people around the jail.

MR. LEIBOWITZ: You called troops there that night, didn't you?

WITNESS: Yes sir.

MR. LEIBOWITZ: For the protection of the defendants?

WITNESS: I suppose that is what they were called for.

MR. LEIBOWITZ: So that they wouldn't be lunched?

WITNESS: For protection.

MR. LEIBOWITZ: For protection against lurching?

WITNESS: Nothing was said about lynching.

MR. LEIBOWITZ: For protection against mob violence?

WITNESS: Yes sir.

MR. LEIBOWITZ: You found it necessary to do that didn't you?

WITNESS: Yes sir.

COURT: Now, your question.

Q You said he was accused of rape?

A Yes sir.

Q You say that he didn't say that he had committed any offense?

A Yes sir.

Q What did he say?

MR. LEIBOWITZ: May I object to that on the ground that any admission is only admissible when it is against interest. He may not have had anything to do with any part of it, and it is incompetent and immaterial at this point. Admissions of any one must be against interest, and any statement, I submit to the court, most respectfully, at this particular time is incompetent, irrelevant and immaterial, unless there was an admission of guilt on the part of the defendant; any other statement about any other people in their presence is not competent.

COURT: I'll overrule the objection.

MR. LEIBOWITZ: We reserve an exception.

A He said the rest of the boys did, but he didn't.

Q Did he have anything to say about that knife at that time?

A He said it was his knife.

Q Did he tell Mr. Woodall anything about it?

A Nothing more than to say that it was his knife.

Q Did he say anything about taking it from any woman?

A I don't remember.

Q Was anything else said in that conversation, Mr. Simmons?

A That's all I remember of now.

Q That knife was taken off of him?

A Yes sir.

CROSS EXAMINATION.

MR. LEIBOWITZ:

Q I didn't mean to ask any questions, but a question has been suggested to me, - you were not a witness in Seottsboro?

A No sir, this is the first time I have been on the stand.

Q The first time in three years that you have been on the stand?

COURT: The first time at all, he said.

TOM DOBBINS, sworn for the State, testified:

DIRECT EXAMINATION.

Q Your name is Tom Dobbins?

A Yes sir.

Q Where do you live, Mr. Dobbins?

A I live out this side of Stevenson.

Q How far from Stevenson?

A Two miles.

Q On which side, this side or the other?

A On this side.

Q Were you at home on or about March 25, 1931?

A Yes sir.

Q Some time during the noon hour did you notice a freight train pass?

A Going west, yes sir.

Q Did you see a freight train pass between twelve and one o'clock?

A Yes sir.

Q At that time, how far were you from the Railroad track?

A Between 50 and 75 feet.

Q Was there anybody with you at the time?

A There was two boys standing at the woodpile about 25 feet away.

Q Do you recall whether or not there were any gondola cars in the freight train, as it passed?

A I seen some people in a gondola.

Q About how many people did you see in the gondola?

A I don't know.

Q Were they white or colored?

A They were mixed up, some were colored and some were white.

Q Could you tell whether or not there were any women in that car?

A No sir, I couldn't tell.

Q State to the jury, what, if anything, you saw these people doing?

A They were scuffling and fighting in this gon as it passed my house.

Q Could you tell anything about any of the particulars of the fight?

A No sir, I just seen them scuffling and fighting as they passed by.

Q Approximately how many would you say were engaged in the fight?

A Four or five up in the corner of the car.

Q Do you know whether or not they were colored or white?

A I couldn't tell, they just looked like they were fighting.

Q How much of their bodies could you see extending above the car, above the top of the car?

A Well, something like this. (Indicating head and chest.)

MR. LEIBOWITZ: The chest and shoulders up?

A I would say about along up there (indicating same as before).

Q Do you know Sam Mitchell, this old negro in the witness room?

A Yes sir, he was right there at my wood pile.

Q How far is the wood pile from the train?

A It was right in my front yard.

Q About how far from the train?

A I will say 50 or 60 feet, it was closer. I was in the yard and he was at the wood pile.

Q The wood pile was in front of your house?

A Yes sir.

CROSS EXAMINATION.

MR. LEIBOWITZ:

Q You testified in Scottsboro before Judge Hawkins and a jury?

A Yes sir.

Q You told your story there?

A Yes sir.

Q. I am going to ask you this, - now listen, please, do you remember the lawyer on that case asking you this question? "Who did you see of it?" and did you answer that this way: "As well as I recollect there was three darkies in a box car standing in the door in front of this gondola where these people were scuffling; a boy of mine called attention and hollered at me and as I came to the door I seen them scuffling and it run in behind the barn from the door from me" - do you remember saying that? (That is from page 108 of the Weems-Norris record)

A No sir.

Q Can you read, I would like for you to read this over carefully, as to what you told the jury in Scottsboro, I am reading now from the official report, would you mind reading it over? (Offers book to witness)

A I don't recollect nothing like that.

Q Did you see three darkies in a box car?

A They was in a box car back next to the caboose.

Q (By the court) You mean three darkies?

A There was darkes in a box next to the caboose.

Q (By the court) They were in a box car?

A Yes sir, I believe they was in a box car.

Q Can you point out on this little minature train where you saw these parties?

A They was scuffling around in the gon, and these others was back here (indicating both cars).

Q Well, the scuffling was going on in the gondola?

A Yes sir, that was up towards the front of the train.

Q And when the front of the train passed by you saw three darkies standing in a box car near the caboose?

A Yes sir, they was back there near the caboose.

Q Were these darkies standing up or sitting down?

A They were standing up, - standing up agin' the door.

SAM MITCHELL, sworn for the State, testified:

DIRECT EXAMINATION.

Q Your name is Sam Mitchell?

A Yes sir.

Q Where were you on or about March 25, 1931?

A Sir?

Q You work for Mr. Debbins?

A Yes sir.

Q Were you at his house or about his house, near the wood pile, about the 25th of March, 1931?

A Yes sir.

Q Did you see a freight train pass there that day?

A Yes sir.

Q About what time do you judge that it was?

A About one o'clock; we was going back to work.

Q Where were you working?

A Over in the field plowing.

Q Did you see anybody that looked like they were fighting on the train that day?

A We seen them; looked like the was rastlin' on it.

Q Where were they, on what sort of a car?

A On a gondoland car.

Q How many of them were there?

A I can't tell you, I didn't count them.

Q Were they white or black?

A It was a mixed crowd.

CROSS EXAMINATION.

MR. LEIBOWITZ:

Q Did you see any negroes in some box cars all the way from the engine towards the caboose as the train passed by?

A Yes sir, there was a whole lot of them in the cars.

Q After that gondola in which you saw the wrestling going on passed, did you from where you were standing

at the wood pile, did you see any other colored men or
boys on different cars along the train towards the caboose?

A Yes sir.

Q Where you saw that wrestling going on in that
gondola car, the car passed on by you, didn't it?

A Yes sir.

Q You saw men in that wrestling around, white and
colored?

A Yes sir.

Q Did you see any women in that car?

A I couldn't tell you, they all looked like men
to me.

Q You didn't see any men with bobbed hair, did you?

A No sir.

Q You didn't see any men with women's hats on did
you?

A They all looked like men to me.

R. S. TURNER, sworn (out of order) on behalf of the defen-
dant, testified as follows:

DIRECT EXAMINATION

MR. LEIBOWITZ:

Q Where do you reside?

A Sheffield, Alabama.

Q Were you the conductor on this freight train on
March 25, 1931, when there was some trouble and some negroes
taken off?

A Yes sir.

Q That train went from Chattanooga through Faint Rock, didn't it?

A Yes sir.

Q Will you please tell us how long you have been conductor on a freight train?

A I have been with the railroad 32 years.

Q You know how long a box car is?

A Yes sir, when I started with the railroad 30 years ago some of them was 40 feet, and some 50 feet.

Q Is a box car about 40 feet long?

A Yes sir.

Q Is there a space between these cars of two or three feet?

A About three feet.

Q Then for every car there would be an additional three feet in length?

A Yes sir.

Q Do you know how long that engine was, the engine that was on that freight train?

A No sir, but it was one of the big engines.

Q I want to know if the engine isn't approximately twice the length of a box car?

A Well, I don't know, I suppose it is.

Q That would make it about 75 feet long?

A Seventy-five or eighty.

Q That engine that day stopped at the coal chute, didn't it?

A Yes sir, to take on coal and water, both.

Q Did you stop at the water tank first?

A No sir, we get coal and water both at the coal chute.

Q I want to be absolutely definite, and you can tell is more than anybody, when that engine stopped there at the coal chute, - the train stopped where?

A The ~~locomotive~~ tender stops at the water tank, and the coal is put in the front end of the tender, and the water at the back end of the tender.

Q I have my finger right on top of this miniature engine, on the tender, no where I have my finger, is that about where they would put the coal? (Indicating on miniature engine)

A Yes sir, that would be about where the coal is put on at the coal chute.

Q You have got an 80 ft. engine, is there some space between the engine and tender?

A There ~~isn't~~ ain't the distance as it is between the box car, not as much; there ~~is~~ about an 18 inch platform across there.

Q How long is the tender, do you know?

A About 30 to 40 feet.

Q Say then about 35 feet?

A Yes sir.

Q From the tip of the engine to the end of the tender would be about 115 feet wouldn't it; 80 feet for the engine and 35 for the tender?

A No, the engine and tender together is about 80

feet.

Q From the front part of the engine to the end of the tender?

A 80 or 90 feet. I haven't ever measured it.

Q 85 feet then, would that be about fair?

A Yes sir.

Q That would be about three feet between the tender and the box car?

A Yes sir.

Q That would be 88 feet?

A Yes sir.

Q 40 feet for the first box car?

A Yes sir.

Q That would be 128 feet?

A Yes sir.

Q Three feet space in between that would be 131 feet?

COURT: You don't have to go down and figure it out all the way.

Q No sir, I want to know if I am right in saying that adding 85 feet for the engine and tender, and 43 feet for each of these cars, going down to the 15th car, including the 15th car, if that would give the distance to that car, the 15th car away from the coal chute at the time the train stopped?

MR. KNIGHT: We will admit that.

Q I want to ask Mr. Turner - You kept a record of that train exactly as it was made up?

A Yes sir.

Q What I want to get for the record is the make up of the train, the engine and tender came first, then a box box car, and then a coal car, then four more box cars; then eight gondolas, then three more box cars, then an oil tank car, and a flat car, that is the way the train went out of Stevenson?

A Yes sir.

Q And that is the way it arrived at Paint Rock?

A Yes sir.

Q (Court) Let me ask you a question now, what about the height of the top of the box cars, as they are, what is the difference between the height of that coal car there that you pointed out, and the box car?

A These cars are lower than a box car. That there car will come up to about a foot of the top of the box car.

Q So that that instead of this car, you ought to have eight of these?

A Yes sir, they are higher than the sides of these. We call them the low sides.

Q Then these cars ought to be higher than these, and like this car here (indicating)?

A Yes sir.

Q There were eight of these (indicating)

A They would be of that same height as that there;

but what wouldn't be loaded in cars like that.

Q Now, when you went up this train after some negroes were taken off, did you find anything in the fourth or fifth gondola, one, two, three, four, either the 4th gondola from this end, or the 4th gondola from this end, about the middle of that string of gondolas?

A After I left, I did.

Q Tell the jury what you found in one of the middle cars?

A I found a snuff box in either the fourth or fifth car from the head end, as I come over the train after we left there.

CROSS EXAMINATION

Q You did have this oil tank car right here (indicating)?

A Yes sir.

Q Then you had twenty-one or two cars back of that flat car, didn't you?

A 21 cars, yes sir.

Q They were all loaded, wasn't they?

A No, some of them was empty, and there was some tanks. I had two empty box cars, one the fifth, I believe, and the other the third car from the caboose.

Q On what part of the train were you when the train stopped at Paint Rock?

A In the caboose.

Q You got off when it stopped?

A Yes sir.

Q On which side of the train did you get off?

A The North side.

Q That the side the depot is on?

A No sir, on the south side; on the same side the side track was on. I looked out and saw all these men and I told my flagman there must be something the matter, and asked him if he knew what it was and he said not. I went on up the train up about these coal cars.

Q Was there anybody around the caboose when you stopped?

A No sir, they didn't come back that way. They was all over on the other side when I got up there.

Q Did you see them take anybody off this tank car here? (Indicating).

A No sir.

Q Did you see a couple of girls under a shade tree?

A Yes sir, I saw two under a tree.

Q What position were they in?

A One was sitting down and the other had her head in her lap. Of course, at that time, I didn't know what was happening.

Q I believe you testified about some men being along the sections of the gondolas -

MR. LEIBOWITZ: He didn't say that.

COURT: Mr. Leibowitz, you have no right to tell what the witness said or didn't say; the jury is the judge of that.

A What was it you asked?

Q I asked you whether or not the crowd of men you saw, if they were about along the gondolas here (indicating)?

A I didn't see any men at all on the gondolas.

Q I am not talking about men on them, but men down on the ground about there?

A They were all up and down the train, as far as I could see.

Q Did you get up to the gondolas?

A I walked up after I got off the caboose. I reckon I must have been along there. The sheriff told me not to move the train until they had made a search of the train.

Q Did they take any one off of this oil tank car?

A No sir.

Q As you walked up the train on the right hand side, did you see any negroes on the oil tank car?

A No sir.

Q Or on any other car?

A No sir.

REDIRECT EXAMINATION.

MR. LEIBOWITZ:

Q These box cars have doors on each side?

A Yes sir.

Q If the doors on one side are closed, it is perfectly possible for an empty car to have the doors open on

the other side?

A Yes sir.

Q Do you know whether or not these three box cars along there this side of the oil tank car were loaded or unloaded?

A They were loaded with merchandise.

Q Those were sealed up?

A Yes sir.

Q The box cars you say were empty, were the doors open?

A I don't know whether the doors were open or not. My record shows that they were empty.

Q Were they the only empties?

A Yes sir, the third and fifty box cars from the caboose.

DR. R. R. BRIDGES, sworn for defendant (out of order) testified:

DIRECT EXAMINATION

MR. LEIBOWITZ:

Q. You are a duly licensed physician, licensed to practice under the laws of the state of Alabama?

A Yes sir.

Q You are a resident of Scottsboro and have been for a number of years?

A Yes sir.

Q You are a general medical practitioner?

A Yes sir.

Q You treat all kinds of medical cases that come to a medical doctor?

A Yes sir.

Q Did you have occasion on the 25th of March, 1931, on the day some trouble is said to have happened on a freight train, to examine Mrs. Victoria Price?

A Yessir.

Q Was it at the jail house that you first saw her?

A Yes sir, in Scottsboro.

Q About what time in the afternoon would you say it was?

A Something around four o'clock, probably a little after.

Q Did you see her in company with some other girl, Ruby Bates?

A Yes sir.

Q Did you examine her at all when you first saw them?

A No, not there.

Q You just saw two women?

A Yes sir.

Q You told them to take them over to your office?

A Yes sir.

Q Where you could make a more private examination?

A Yes sir.

Q When Victoria Price came to your office, did you

tell her to address herself?

A Yes sir.

Q Did you remove her clothes?

A From her waist down, yes sir.

Q From her waist up she did have on her clothes?

A Yes sir.

Q That was in your presence, where you were?

A Yes sir.

Q After she removed her clothes, you gave her a physical examination?

A Yes sir.

Q Did you find any cut on the top of her hand from which any blood came?

A I don't remember seeing any.

Q Did you find any bruises on the face?

A No.

Q Did you find any puffed up lips, or swollen lips?

A No, I don't remember that.

Q You mean that if you had seen that you would have noticed it?

A Yes, we were looking for those things.

Q Because you wanted to find out if the woman had been choked or mistreated?

COURT: I don't think that you ought to ask that question.

MR. LEIBOWITZ: There was no objection from the State.

COURT: I am the Judge, and its my business to see that improper questions are not asked.

Q Were you instructed by the authorities of Jackson county to make the examination?

MR. KNIGHT: That is objected to.

COURT: Sustain the objection.

Q Just what part of the face did you examine?

A I made an examination of the face. I didn't see anything. I didn't see any blood.

Q Were you examining her for the purpose of finding marks, if possible?

A Yes sir, and make note of everything I saw.

Q You didn't find any scratch on her face?

A I don't remember it.

Q Did you examine the chest of this woman?

A Not that day; I did the next day.

Q You examined her the next day?

A Yes sir.

Q Did you examine her abdomen?

A Yes sir.

Q Any cuts on the ~~manik~~ chest?

A No

Q Any cuts on the abdomen?

A No .

Q Did you examine her back?

A Yes.

Q Were there any cuts on the back from which blood would come?

A No.

Q Any cuts on her legs?

A No.

Q Any abrasions or skin rubbed off on the legs?

A No.

Q Any tears of the skin near the privates at all?

A None near the privates at all.

Q Was the vagina torn in any way?

A No.

Q You did find a couple of scratches on the wrist?

A On the wrist of one arm, and on the fore-~~arm~~ of the other.

Q These were scratches?

A Yes.

Q Did you know that this woman had been riding freight trains?

A I knew they were taken off a freight train. I heard that, I didn't know it.

Q Outside the scratches on the wrist and fore-arm, did you find any lacerations of any kind?

A No.

Q When you examined this woman, did you examine her her pulse?

A Her pulse was not fast; it was in the bounds of normal.

Q Was the respiration about normal too?

A Yes sir.

Q That is the breathing, isn't it?

A Yes sir.

Q A person under excitement, especially a woman, would show a rapid pulse, wouldn't she?

A As a rule, yes.

Q Would she show rapid breathing?

A Yes.

Q Suppose a woman came into court and made believe she was fainting, threw herself over in this fashion, if she was just faking or shamming a faint, a doctor could find that out by feeling her pulse, couldn't he?

A As a rule, but not always. They can fake it sometimes mighty well.

Q Tell us doctor, supposing a woman had been hit in the head with the butt end of a gun, - let me put it this way, suppose that a woman came into court and testified, that is assuming a state of facts for the purpose of a hypothetical question, - assuming that a woman came into court and testified that she had been hit on the head with butt end of a gun, the wound from which bled -

MR. KNIGHT: I object to the question.

COURT: I will wait until he gets through.

Q (Continued) and supposing further that she states that she was seized very violently, and states further that she was struck several blows in and about different parts of the body, including the face, and supposing that she was

picked up and held over the sides of a gondola car by her legs, and then pulled back around, and thrown down on some rough material known as chert, and suppose then and there one of the assailants pushed her head, that is the head, in a violent fashion, put his hand on her face roughly, and supposing further that this man that threw her down had intercourse with her, and supposing that while the intercourse was going on, he tore at her breasts, taking hold of her in and about the breasts, and suppose that six men in succession had intercourse with this woman, against her will, while she was struggling and squirming, and resisting, on this rock, or chert, and suppose, doctor, that she lay on this rock or chert on her back and on her side for over an hour, screaming and struggling with these heavy men on top of her, and suppose after that, she was taken off, and suppose that she claimed that she was in a faint, for a few moments, and was taken to a nearby point to a doctor's office, - what would you expect to find on her body, - can you state with reasonable certainty what would be found on her body, would you not find more evidence of violence and assault than a mere couple of scratches on the wrist and fore-arm, or the throat?

MR. KNIGHT: We object to that.

COURT: The objection is well taken. The question is not based on the evidence.

MR. LEIBOWITZ: We except.

CROSS EXAMINATION

Q You testified at Scottsboro, didn't you doctor?

A Yes sir.

Q That has been three years ago, hasn't it?

A Yes sir.

Q Didn't you testify at Scottsboro that you saw bruises on her throat, sir?

MR. LEIBOWITZ: I object to that unless he shows the doctor his testimony.

COURT: I don't think the objection is well taken. Is it a fact - do you have a distinct recollection of saying that?

WITNESS: Without the testimony, no. That is my answer.

Q In the afternoon when you examined her, you examined her from the waist down?

A Yes sir.

Q She had on her dress from the waist up?

A Yes.

Q Did you examine her back at any time?

A The next morning, I did.

Q Did you find any bruises?

A A small blue spot about like a pecan in the small of the back?

Q You said she had some scratches on one wrist and fore-arm?

A Yes sir.

Q Do you remember how many?

A Several small scratches.

Q Would you tell the jury that you now, at this time remember all of the scratches?

A I can't be expected to remember every detail. There might be a few little ones that I overlooked, something like that.

Q How many cases did you testify in in Scottsboro?

A I don't remember that. I think ^{in two} ~~some~~ of them.

Q Did they bring the colored boys over to your office that day?

A No sir.

Q Well, while you were in the hospital room in the jail, were they brought in there?

A I don't remember. I saw one of them in the court house.

Q You didn't see the defendant in there, or did you?

A I don't know one of them by name.

REDIRECT EXAMINATION.

MR. LEIBOWITZ:

Q You have been a witness in every case for the state, haven't you?

MR. KNIGHT: We object to that.

COURT: Sustain the objection. That he has appeared as a witness is enough.

MR. LEIBOWITZ: We are except.

RE-CROSS EXAMINATION.

Q I will ask you, doctor, if you were not asked this question at the Scottsboro trial, page 34 in the Haywood Patterson case -

COURT: That is the record of this same trial up there?

The trial in the Patterson case.

Q Continued) "Doctor just tell the jury their condition and appearance and the location of my wounds or bruises you observed on that occasion?" - and didn't you answer, Doctor -

MR. LEIBOWITZ: Your Honor, I want to object to the question because no predicate has been laid for this question, and I object to the question being read so that it will go before the jury.

COURT: The objection is overruled.

MR. LEIBOWITZ: Exception.

Q Doctor did you make this answer to that question -

MR. LEIBOWITZ: I want to object specifically, and object further because that is not in reference to ~~MISS~~ Victoria Price; it is with reference to somebody else, and I submit in all fairness -

COURT: Let me see the record just a minute. Is there any dispute that this is the stenographic

in the record transcribed by the official stenographer?

MR. KNIGHT: No sir, we have agreed on that.

MR. LEIBOWITZ: There is no dispute about that. The point I am raising is that it has no application to any individual we are talking about here. Dr. Bridges in a rebuttal witness, rebutting Victoria Price's testimony.

MR. KNIGHT: This is on cross-examination.

COURT: A number of answers don't appear in the record; the answer is incomplete; its sequence is broken at the bottom of page 34, - the rest of it doesn't appear in the record. I'll sustain the objection.

Q You stated to Mr. Leibowitz that her pulse was about normal when you examined her in your office?

A Yes sir.

Q Is it possible that a person who has gone through quite a strain could regain a normal pulse in a couple of hours after the strain?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A In how long?

COURT: The question he has asked is it possible in a couple of hours?

A Yes sir.

Q When you examined Victoria Price on the following day, was she not in a hysterical condition on that day?

MR. LEIBOWITZ: We object to her condition on the following day as immaterial.

COURT: Overrule the objection.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q I will ask you if it is not sometimes the case that where a woman is normal after going through great excitement, the following day she will be in a highly nervous condition?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Do you remember whether or not Victoria Price had bruises on her throat at this time?

A I don't remember seeing them. I might have sworn that she did before. We forget in two and a half or three years. I don't remember.

REDIRECT EXAMINATION.

MR. LEIBOWITZ:

Q Did you make some notes at the time you examined her?

A I made them in my office, yes sir.

Q Do you have them with you?

A No sir.

Q You had them here the other day?

A Yes sir.

Q The things you put down were things you found on the body?

A Yes sir, a history of it.

Q Did you put down any cuts on the head?

A No sir.

Q Swollen nose?

A No sir.

Q Any battered or puffed up lips?

A No sir.

Q Any skin torn on her?

A No sir.

Q Did you put down any injuries or wounds?

A I don't remember anything but some scratches, on the wrist and fore arm and a blue place on the small of the back.

Q The prosecutor asked you what was possible, whether certain things were possible, I will ask you if it is possible for a woman to have her face battered up in the fashion I talked about, with blood running from it, and bruises on her body, to have all these injuries disappear in an hour or so, is that possible?

A She might have had a cut on her lip that we overlooked, and a little blood, and she might have had her nose mashed that we overlooked, but if their were lesions

tions of the skin, we ought to have seen them.

Q Cuts on the skin would not disappear in an hour and a half?

A No sir.

RECROSS EXAMINATION.

Q Dr. Lynch was present?

A Dr. Lynch probably saw them more frequently than I did. He was county physician and health officer.

ORVILLE GILLEY, sworn for the State, testified:

DIRECT EXAMINATION.

Q Your name is Orville Gilley?

A Yes sir.

Q You were born in Marshall County?

A No sir, Jackson.

Q You live in Marshall County now?

A Yes sir.

Q How long have you lived there?

A Since 1929.

Q On March 25, 1931, were you on a freight train between Stevenson and Paint Rock, Alabama?

A Yes sir.

Q Were you riding on an oil tank, did you ride that oil tank to Stevenson, and then get off that oil tank and go and get on a gondola car that day?

A Yes sir.

Q How many people were in that gondola car you were on, that day?

A There were seven white boys and two white girls.

Q You all just meandered up there and got in the gondola?

A No sir.

Q Are you able to tell which gondola it was?

A I can't say positively which one.

Q Point out the one you think it was, according to your best recollection? (Indicating miniature train).

A I am not positive which one it was; it is between these two; it was or the other.

MR. LEIBOWITZ: We move to strike that out.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q When the seven white boys and the two girls got in that gondola, did anybody else get into it?

A The negroes?

Q Yes?

MR. LEIBOWITZ: I object to the language of the prosecutor, when he answers yes after the witness, on the ground that it is wholly improper and not legal and should not be permitted.

COURT: I didn't hear him say that, but that is a very common thing with lawyers on both sides. I'll sustain your objection, if you think you are hurt, and will exclude it.

Q From which was did the colored boys come, when

they came into the gondola car?

A From back towards the caboose.

Q Did you hear any one make a statement there at that time?

A One of them said "All you white sons-of-bitches unload".

Q Did anything happen then?

A Yes sir, they started battling and made some of the boys get off, and attacked the girls.

Q Was any one in that gondola car besides the white boys?

A Two white girls.

Q How long did the fight last, do you remember?

A Not exactly, no sir.

Q Were any of the white boys put off the train?

A Yes sir.

Q Were you put off the train?

A No sir.

Q What happened to you, Gilley?

A They held me in the car; I stayed in the car; they tried to push me off, and when I got back, Patterson held a pistol on me.

Q I will ask you did you see anything else happen, I believe you testified they made some of the white boys get off, did you see anything else happen?

A Yes sir, they attacked the girls.

MR. LEIBOWITZ: We move to strike that out.

COURT: That statement is out.

Q What did they do?

A They threw the girls down on the chat in the car and raped them.

MR. LEIBOWITZ: We move to strike that out.

COURT: That part of the answer that they raped them is out.

Q Just tell exactly what you saw the colored boys do?

MR. LEIBOWITZ: We object to that unless he identifies this defendant with it.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A They throw the girls on the chat, and some of them held them, and other went on them; they taken it time about.

Q They were lying on top?

COURT: Did they have sexual intercourse?

A Yes sir.

Q Did you see that defendant there, that day?

A Yes sir, I did.

Q Did he have sexual intercourse with Victoria Price there that day, in that gondola car?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A I can't say which one, or whether he went to both.

I can't say he did go to but one of them.

Q Can you tell us from there on what happened in the gondola car; ~~that~~ where did that happen, Orville?

A Between Stevenson and Paint Rock.

Q How far out of Stevenson?

A I don't know.

Q How long to the best of your recollection?

A I think it started, - you mean after we started from Stevenson?

Q Yes, after you started from Stevenson, have you any idea how long it was?

A Just a few minutes out.

Q After you saw these boys have intercourse with the girls, tell the jury what else happened, go on from there and tell what happened?

A You mean after they let them up?

Q No, I mean from the time they had intercourse, after they started to have intercourse, go on and tell what then happened?

A I was sitting in the car; they told me to stay in this end of the gondola up there from where they were, and they were running up and down with their tools out, and some were holding the girls, - they were taking it ~~xxxxx~~ turn about, and when I went up, this largest negro there was on Victoria; by that time her eyes was bulging

out of her head, and I said "Don't you see ~~she~~^{they} are killing that woman" - I said that to Patterson -

MR. LEIBOWITZ: We object to that unless he identifies the defendant as doing that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A (Continued) I said to Patterson, he is the one that had the pistol, "Don't you see they are killing that woman" and he seen it too, and he says, "You have all done fucked; you are going to kill that woman, get up" and he said "If anybody else tries to cut these women again, there's going to be some negrees jum off'n here".

Q Tell what happened after that?

A They let her alone, but they didn't let Ruby up, and I sit down and held Victoria Price's head in my lap, and when we got down to Paint Rock they taken them off.

Q Were her overalls on then?

A Yes sir, I pulled them up for her.

Q Were the overalls off when they were having the intercourse?

A They were pulled down.

Q When you got down to Paint Rock, did you get off the gondola car?

MR. LEIBOWITZ: What's the use of putting his answer in his mouth each time; it's leading and I object to it.

COURT: Mr. Leibowitz, I know that is absolutely necessary at times. I know that it is improper to lead a witness, but there are somethings you can't get from a witness without leading him. I overrule the objection.

MR. LEIBOWITZ: I note my exception.

Q Where did you go when you got off the train?

A I went from Paint Rock to Scottsboro.

Q Did you see these girls there, Victoria Price and Ruby Bates, in Scottsboro?

A They went to Scottsboro too in the same car with me.

Q When the train stopped at Paint Rock, were there any men there?

A Yes sir, several.

Q Did you see any of the colored boys there at Paint Rock?

MR. LEIBOWITZ: We object to that.

COURT: I'll overrule that.

MR. LEIBOWITZ: Exception.

A Yes sir, those that did the raping.

MR. LEIBOWITZ: We move to strike that out.

COURT: Motion is overruled.

MR. LEIBOWITZ: Exception.

Q Did you see the defendant at Paint Rock?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir, I did.

Q After the colored boys, one of whom was the defendant, had intercourse with the two girls, when they started to get out of the gondola, in which they had the intercourse, when the train stopped -

A When the train stopped at Paint Rock?

Q Yes, - which way did they go?

A Towards the engine.

Q Did any go towards the caboose?

MR. LEIBOWITZ: We object to that.

COURT: Overrule the objection.

MR. LEIBOWITZ: Exception.

(No answer was made)

Q They went towards the engine?

A Yes sir.

Q Do you remember how many there were, colored boys in the gondola?

A At the time I counted them.

Q How many were there?

A Nine.

Q Did you see any of them leave it?

A When the train stopped at Paint Rock they started towards the engine.

Q Were those the only ones you saw leave the gondola?

MR. LEIBOWITZ: We object to his telling the witness what to say.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Tell me whether or not the defendant was in that gondola car from the time the attack began until the train began to stop at Paint Rock?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Do you know in which direction he went when the train got to Paint Rock?

A He went towards the engine.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q How many times have you rehearsed this story you have told today, you and Victoria Price together?

A Not any.

Q How many times have you visited the house of Victoria Price in Huntsville since you came back south?

A Three times.

Q What for?

A To see how her and her mother was getting along.

Q Were you a friend of her mother's - withdraw the question - Before this trouble happened on the train, you didn't know Victoria Price?

A No sir.

Q Before this trouble happened, you didn't go to Mrs. Price's home?

A No sir.

Q Never visited them before, had you?

A No sir.

Q Three years passed, didn't it?

A Just about three years, next March.

Q You suddenly developed a yearning to see Victoria, and her home, didn't you?

MR. KNIGHT: We object to that. Sustained.

Q Did you suddenly become interested in seeing her mother?

A I met Victoria Price in Huntsville in Mr. Douglass Taylor's office, -

Q I didn't ask you that -

A I am telling you.

Q I am asking you, after these years, if you suddenly became interested in seeing her mother?

A I was fixing to tell you why I went to see her mother.

Q Did you go to visit to see how she was?

A I went to see Victoria Price to see her and her mother, how they were getting along.

Q That was the first time you went to see Victoria Price and her mother, to see how they were getting along?

A Yes sir.

Q That was about two and a half years after this trouble happened?

A Yes sir.

Q You didn't go to see Victoria Price and sit down and cook up this story?

A No sir.

Q To compare notes, use the same language and use the same expressions, after three years, didn't you go there for that purpose?

A No sir, I did not.

Q Have you got any business or profession?

A I am an entertainer. I recite poetry and take up collections.

Q Hobo poetry?

A I recite poetry.

Q You mean poetry from the classics?

A I just recite the general kind.

Q You recite poetry that you make up?

A I have made up pieces of poetry, I recite pieces, I don't make them up.

Q How long have you been making up things in poetry form?

A I have made two pieces of poetry.

Q Are you capable of making up things in poetry form?

A (No answer made).

Q You went down to Montgomery after three years looking for Mr. Knight?

A I went to Montgomery -

Q Looking for Mr. Knight?

A I saw Mr. Knight. I went there to see Mr. Knight.

Q You are not trying to be smart with me are you?

MR. KNIGHT: we object to that. Sustained.

COURT: Wait a minute. Mr. Sheriff take the jury into that room. (Jury retires). Gentlemen, I am doing all in my power to see that the State of Alabama, and that this defendant gets a fair and impartial trial under our law, and under the evidence in this case, and I am going to do it if I can get the proper assistance from the parties engaged in this trial. I have tried to be respectful to everybody connected with this case, but, ~~notwithstanding~~ ^{notwithstanding} that fact, at times it has appeared to me that the very purpose of counsel was to see if I could not be nagged into saying something or doing something that was improper. So far, I haven't done it and I am not going to do so, but I think that counsel is not treating the court with due respect. When I make a ruling, to slam a pencil down on the table showing dissatisfaction with the ruling is not my idea of the ethics of the profession in their treatment of the court. I want you to de-

sist from that. You will be properly treated as an attorney and as a gentleman, but I don't think you ought to persist in the attitude you are assuming in this case towards the court. Now, I hope you will bear that in mind. I make some allowance, and will make some for attorneys when a ruling is disappointing to them, but they should restrain themselves from making a public exhibition of displeasure. I am going to try this case like I try all, and my other case. I am not trying this case for newspaper notoriety, that give big head lines to anybody connected with it. I am opposed to that and have taken that course all the way through. I hope that you will bear some of these things in mind, and will conduct yourself accordingly. Mr. Sheriff, let the jury come back. (Jury return to box)

MR. LEIBOWITZ: May I proceed?

COURT: Yes sir.

Q I want to know if you went looking for Mr. Knight?

A I went down there to see Mr. Knight. I went to find when the trial -

MR. LEIBOWITZ: I move to strike that out. I asked him if he went looking for Mr. Knight.

COURT: The objection is overruled.

MR. LEIBOWITZ: Exception.

A (Continued) - I went down there to see when this

trial was to come up.

Q Give us the month when you went there looking for Mr. Knight?

A It was in October.

Q Of this year?

A Yes sir.

Q Was that the first time you had seen Mr. Knight?

A No sir.

Q When did you see Mr. Knight before that?

A I saw Mr. Knight before that about the 7th or 8th of August of this year.

Q Where?

A At Huntsville, Alabama.

Q By appointment?

A Yes sir.

Q Did you see Mr. Knight on that occasion?

A Yes sir, I went to see him. I went from Decatur over to Huntsville.

Q You went to Huntsville to see Mr. Knight?

A Yes sir.

Q Huntsville is the place where Victoria Price lives?

A Yes sir.

Q You didn't go to Huntsville to see Victoria Price?

A I went there to see when the trial would come up.

Q You went to Victoria Price's house to find out when the trial come up?

A No sir.

Q What I want to know is this, why, of all the cities in the State of Alabama, out of all the towns and villages in the State of Alabama, you went back to Huntsville, the very place where Victoria Price lived, - why you went to see Mr. Knight over in Huntsville?

A I went to Huntsville to see if he knew anything about when the trial would come up; the sheriff and Mr. Knight was away, and I went to the police department and one of the ~~purpk~~ policemen called up Mr. Knight and asked if he wanted to see me, and made an appointment to meet me at Mr. Douglass Taylor's office in the Tennessee Valley Bank building.

Q You have been traveling around on freight trains, getting around on freight trains?

A I get around on freight trains, yes sir.

Q What I want to know is why, of all the towns in the State of Alabama, why it was that you picked out the very town that Victoria Price lived in, when you wanted to see Mr. Knight?

A Because, I figured that the sheriff there would know when the trial was set.

Q Why the sheriff over in Huntsville, - why not the sheriff of Morgan County, where the case was to be tried, why did you go to the very point where the girl lived?

A I figured that he would know, I didn't know where

the trial was going to be.

Q You know where it was before?

A No sir.

Q Did you know Mr. Knight was at Decatur?

A No sir.

Q You knew that he was in Montgomery?

A I didn't know where he was.

Q Why didn't you go to Jackson County?

A Huntsville was closer and I thought I could find out there.

Q Why didn't you go to Scottsboro?

COURT: I think you have proceeded far enough with that line of questions.

MR. LEIBOWITZ: Exception.

Q The first time you went there, did you see Victoria Price?

A Yes sir.

Q Before you saw Mr. Knight?

A At the same time.

Q By appointment?

A She came in when Mr. Knight was in the Tennessee Valley Bank Building.

Q Did she come in with Mr. Knight?

A At the same time.

Q You sat down and had a talk?

A You mean with her?

Q No, all together?

A I sat down and had a talk after she left.

Q She told her story, did she?

A No sir.

Q Do you know what she was brought there for, - was it to tell her story?

A No sir, not that I know of. I didn't hear her tell her story.

Q You don't know what reason she came there for?

A I don't know what the reason was that she came there for. I know she come in some time before I did and I was there after she left.

Q After she went away from there, then you went to visit her, didn't you?

A Yes sir.

Q From the lawyer's office where you said you saw her?

A Sir?

Q Did you go from where you and Mr. Knight were to see her?

A Yes sir, I catch my train there close to her house.

Q Why did you go to her house after you had seen her there in the lawyer's office?

A I went there to catch a freight.

Q What did you go to her house for?

A I went to see her mother.

Q You had never met her mother before?

A No sir, I never saw her before.

Q You were just interested in seeing her mother?

A Yes sir.

Q Did you sit down when you went in?

A Yes sir, I sit down a little while.

Q Have a talk?

A Yes sir, we talked.

Q When you got off this train at Paint Rock, did you get off the car you were in where this trouble happened?

A Yes sir.

Q You are sure about that?

A Yes sir.

Q Do you remember seeing Mr. Hill, the station agent, there?

A No sir.

Q A short man with glasses?

A There were several men there.

Q Did you get off with the girls?

A I got off before the girls.

Q When you got off the train did you wait for this girl whose head you held in your lap, to help her off?

A I got off and told the people there not to let the colored boys get away -

MR. LEIBOWITZ: We move to strike that out.

COURT: Gentlemen, that statement is ruled out.

Q Did you wait there at the train for the girl to get off?

A I went up the train. I didn't wait there then.

Q Why didn't you -

A I didn't go-

MR. LEIBOWITZ: May I have instructions from your Honor to this witness that he answer the questions?

COURT: I can't assume that he won't answer them.

Q Did you stay there at the gondola and wait for the girls to get off?

A I didn't stop there, I went up the train.

Q How far up the train did you go?

A I don't remember exactly, no so very far.

Q Was any person there near by you?

A There was people all around there.

Q Was anybody near this gondola when you got off the train?

A Yes sir, all up and down the train.

MR. LEIBOWITZ: We move to strike that out.

COURT: His answer "all up and down the train" is not evidence, but his answer that "they were there" is.

Q How many people of Paint Rock were near that gondola when you got off?

A I don't know.

Q More than five?

A I don't know that.

Q Did the people start running towards the engine?

A The people came up the train.

Q Did the people come straight to your gondola?

A I didn't see them; I went up that way.

Q You ran up, didn't you?

A I kin'ly trotted.

Q Did you trot?

A Yes sir.

Q How far did you trot until you saw the first person?

A They were all up and down the train.

Q How far did you trot before you stopped?

A A few cars.

Q How many?

A I don't know, I didn't count them.

Q How many feet did you trot?

A I don't know that.

Q You have been in the room there for several days?

A Yes sir.

Q In there with Victoria Price and the other witnesses?

A Yes sir.

Q Have you seen any person in there that you spoke to on that day?

A I can't say whether I have spoke to them or not.

Q Did you speak to anybody there, yes or no?

A I did speak to somebody.

Q Did you see anybody that you spoke to, in that

witness room?

A I don't remember if I spoke to them or not.

Q Did you speak to one or more persons?

A They were bunched there.

Q Did you speak to more than one, can't you answer that?

A To a bunch of men.

Q You haven't seen any of them here?

A I don't know if they are in court or not.

Q After you got up there in that crowd, did you go back to where the girls were?

A No sir, not that I remember.

Q You didn't go back to find out how they were, there at Paint Rock?

A No sir.

Q Was that the last time you saw the girls until they got to Scottsboro?

A There at Scottsboro.

Q You didn't see them again there?

A I didn't see them until they got to Scottsboro. I didn't go in the same car.

Q Did you see the girls get off the gondola?

A No sir.

Q Now, listen please, you went up to a crowd of men -

A At Paint Rock?

Q Yes, at Paint Rock, - after you talked to these men, or crowd of men, did you go back to the gondola that the

girls were in, so that you could say to them "See the girls there in that gondola"?

A No sir.

Q Nobody stopped you from doing that, did they?

A No.

Q You wasn't under arrest?

A No sir, I wasn't under arrest.

Q When you got to Scottsboro, did you see Victoria Price in an automobile?

A Yes sir, I saw her get out.

Q Did you see one of the white boys go over to her, and talk to her?

A No sir, I didn't notice that.

Q When was it that you first met Victoria Price?

A The evening before this happened.

Q Where?

A At Chattanooga.

Q Chattanooga, Tennessee?

A Was she with Lester Carter and Ruby Bates at that time?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Where was it that you met her in Chattanooga?

A Down at the railroad tracks.

Q I am going to ask who she was with at that time?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Did you buy her some food at that time?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Did you and Victoria Price and Ruby Bates, and Lester Carter spend the night together, and have intercourse in the hobo jungle opposite the freight yards in Chattanooga?

MR. KNIGHT: We object to that.

COURT: Sustained. Gentlemen of the jury when a question is asked and it is objected to and the court sustains the objection, that put the question out of the case, and out of your minds, and any answer made to it goes out with it and is not to be considered by you at all in arriving at your conclusions in this case.

MR. LEIBOWITZ: Exception.

Q Did you, and these girls, Ruby Bates and Victoria Price, and Lester Carter, get on the train together at Chattanooga?

A Yes sir, we got on at the same time.

Q You all were in one body?

A We got on the oil tank at the same time.

Q You were all in one body wasn't you?

A Yes sir, we were all in one body; we went out and got on the train at the same time.

Q You had been together for some time before that hadn't you?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Being in one body, isn't it a fact that the four of you got into one gondola car, you two boys and the two girls that were with you?

A We got in the gondola car, and some other boys got in too.

Q Isn't it a fact that because you had the two girls with you that you wanted to keep them apart from the others, and that you and Lester Carter and the girls went off by yourselves, and got into a different gondola car from the one in which the other white hobos were riding?

A No sir, that is not true.

Q Isn't it a fact that after the train pulled out from Chattanooga, that some of the white boys started throwing rocks at the rear of the train where the blacks were riding?

A If it is a fact, I don't know it.

Q Were you with the other white boys at the time?

A We were on the same oil tank at the same time.

Q If there had been any rock throwing you would have seen it?

A I didn't see any.

Q You were in a position to see it if there had been.

A No sir, I wasn't.

Q Did you hear any noise, or any bantering between the whites and blacks, or the calling of names between the two sets?

A No sir.

Q You didn't hear a single thing or any confusion whatever?

A No sir, not until after that, not until after we got out of Paint Rock (?).

Q I am not speaking of Paint Rock, I am speaking of Chattanooga?

A Between Stevenson and Chattanooga?

Q Yes, there was no trouble?

A I meant after we left Stevenson, instead of after leaving Paint Rock.

Q After you left Chattanooga, did you hear any commotion at all between the whites and blacks?

A You mean over the whole territory from Chattanooga to Paint Rock - Yes sir, they came over the top there and said "All you white sons-of-bitches unload".

Q Did you hear any commotion between Chattanooga and Stevenson?

A No sir, I did not.

Q Do you know what started the trouble between the whites and blacks, before the trouble started?

A No sir, not that I know of.

Q After you left Stevenson the train went slow, didn't it?

A No sir.

Q Did it slow down at any point after leaving Stevenson, slow down so that you could almost walk beside it?

A No sir, I don't know of any place it did that.

Q Did any of the white boys throw rocks at the colored boys after the train left Stevenson?

A No sir.

Q Was there any commotion between the whites and blacks, before the blacks came over into the car, after the train left Stevenson?

A I don't know of any.

COURT: Do you understand that question?

A Yes sir, there wasn't any.

Q Do you remember seeing the black boys jump over the heads of the girls into the car which you were in?

A No sir.

Q Were the girls standing or sitting when the black boys came into the car?

A They were sitting.

Q Where?

A In the gondola.

Q Same part of the gondola?

A Yes sir.

Q Were you sitting there too?

A I was sitting down there (indicating); they were sitting on that side (indicating) and I was sitting down this way.

Q All by yourselves?

A There was some other boys around there.

Q Is there any reason, any particular reason, Mr. Gilley, why you and Carter should get on this train with two girls, and the party of four of you get into a gondola car, and then you should leave the girls and go and sit with the other white hobos, any reason for that?

A I just got in the gondola with the boys, and the girls was in there too.

Q You and the girls got into the gondola together?

A We all got in there about the same time.

Q You had been with these girls?

A No, just on the oil tank with them.

Q You had been with them before that?

A I met them up there at Chattanooga.

Q Was Carter with these girls when they got on the train?

A He got on the train.

Q Was he with them before they got on the train?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Isn't it a fact that when you got in the gondola, you four sat together, the two girls and you two fellows that were with them?

A No sir, that isn't a fact.

Q Were you facing them from where you were sitting?

A Kin'ly.

Q Talking to them?

A I wasn't talking to them.

Q Did the girls talk to the boys?

A I didn't see that; we boys were singing.

Q You were lying on your stomach at the time?

A Kin'ly on my side.

Q Facing the girls?

A Kin'ly.

Q The other boys sitting down or standing up?

A They were sitting around there.

Q The train makes a lot of noise, does it, clanking
along with all these freight cars?

A Yes sir.

Q Makes more noise than a passenger train?

A I can't say about that.

Q You have ridden freight trains for how many
years?

A About seven.

Q Since you were how old?

A Fourteen.

Q You have been a hobo since you were fourteen?

A I have been riding freight trains.

Q Do you know what is meant by hobo?

A Yes sir.

Q Are you a hobo?

A No sir.

Q You have never been a hobo?

A I have rode freights.

Q I am asking you if you are a hobo?

COURT: He said that he wasn't.

A I have rode freight for seven years, but I am not a hobo.

Q Where is it that you recite your poetry?

A On the streets mostly.

Q What streets?

A Any street.

Q Have you recited poetry since you have been in Decatur?

A Not on the streets.

Q Have you recited poetry on the streets of Huntsville?

A No sir.

Q Have you recited poetry on the streets of New York City?

A New York City?

Q Yes, on the streets?

A No sir.

Q Have you recited poetry in hotels?

A I have recited in hotel lobbies.

Q Can you give us the name of any hotel where you recited poetry in the lobby?

A No sir, I would recite on the street, and some one would maybe ask me to come in the lobby.

Q Can you mention the name of any hotel anywhere, where you have recited poetry?

A No sir.

Q Have you recited poetry in the winter time when

snow is on the ground, up north?

A I don't go up north in the winter time.

Q You specialize in the south?

A I was in San Francisco last winter.

Q Have you recited poetry in any of the cities here in the south, on the streets?

A Yes sir.

Q Did you recite poetry in Mr. Knight's town?

A I have.

Q Made collections on the street?

A Yes sir.

Q One more question and I will pass this up - you just went on the street corner or on the street and recited your poetry?

A Yes sir, get a bunch of people around me.

Q Day time or night time?

A Both.

Q After you recite poetry then you collect from the people there around you?

A Yes sir.

Q That is how you make money to live?

A Yes sir.

Q You have never done a day's work with your hands since you were fourteen years old, working have you?

A Yes sir.

Q Where?

A In a factory.

Q In a factory in these towns where you lived?

A I have worked in a factory.

Q On a farm, have you?

A No sir.

Q This girl Victoria Price washed your clothes in the Scottsboro jail, didn't she?

A She washed my shirt.

Q You and she were very friendly?

A Well, we wasn't mad at each other.

Q Were you a witness in Scottsboro in the first case?

A No sir.

Q Do you understand the question?

COURT: I reckon he did, he said "No".

Q They didn't call you to testify at any time in this case right after the trouble?

A No sir.

Q They didn't call you in the second case?

A No sir. I don't remember which case they called me in.

Q You lay in jail while these cases were being tried, didn't you?

A No sir, I was in the witness room.

Q After the cases were all over they let you go?

A Yes sir.

Q Then you went away on these freights all over the country?

A Yes sir, I rode freights.

Q How many times have you seen Victoria Price in Huntsville?

A Three times.

Q How many other times, how many times have you seen Victoria Price?

A Twice at Huntsville and once here.

Q When after August 7th, did you see Victoria Price in Huntsville?

A That was in September, I don't know what date it was.

Q Had you been on a tour in the mean time?

A Yes sir.

Q On a tour of entertaining?

A Yes sir.

Q That carried you over different parts of the country?

COURT: I think you have gone far enough on that.

MR. LEIBOWITZ: Exception.

Q Why did you go back to Huntsville?

A To find out when the trial was going to be.

Q Didn't Mr. Knight tell you when it was?

A He said for me to be back in September.

Q Did he tell you when in September?

A He didn't say.

Q Why did you go to Huntsville?

COURT: You have been over all that, I wouldn't

make up time with that.

MR. LEIBOWITZ: Exception.

Q Did you go to see Victoria Price again?

A Yes sir, I saw her.

Q Did you go there the third time?

A That was the third time.

Q It was about the first day of June that I first saw her, then again on the 7th or 8th of August, and then the next time was in September.

Q You went to Montgomery too?

A Yes sir, I went to Montgomery in October.

Q What for?

A I went to see Mr. Knight to see when the trial was coming up.

Q You were making a determined effort to find out when this trial was going to be?

A Yes sir.

Q So that you could give your testimony?

A Yes sir.

Q Was that out of a spirit of public service?

MR. KNIGHT: We object to that. Sustained.

MR. LEIBOWITZ: Exception.

Q Who has been supporting you while you have been here?

A The State.

Q Didn't the state send money to your mother too?

A Since I have been here it has. The state has sent my mother \$9.00.

Q Since when, June?

A No, since in October.

Q I want to know in conclusion if you claim - question withdrawn - were all the other white boys knocked off the train but you?

A They were all knocked off the train but one; one stayed on the train.

Q What one was that that stayed on the train?

A John Gleason. He didn't stay in the car, he stayed on the train.

Q Was John Gleason one of the white boys in that gondola?

A Yes sir.

Q Was John Gleason in the fight?

A He left when it started.

Q Where did he go, towards the engine or caboose, when he left?

A I didn't see him leave the car.

Q Did you know that he was on the train until the train got to Paint Rock?

A When the train got to Paint Rock it was there.

Q He was taken from Paint Rock to Scottsboro with you?

A Yes sir.

Q What I want to know is, were all the other boys knocked off of the freight train?

A Yes sir, they got off the train.

Q They got off?

A When they started to battle, they began to get off, and a couple of them were knocked in the head.

Q That left you the only white boy on the car?

A Yes sir.

Q You tried to get off too?

A No sir.

Q You didn't want off, did you?

A No sir.

Q You remained on the train?

A Yes sir.

Q You climbed down in between two of the gondola cars in here (indicating) somewhere's didn't you?

A No sir, they pushed me kin'ly over the end, and I got back in.

Q How many pushed you?

A There was several around there.

Q They were trying to put you off?

A One tried to choke me and one had a pistol.

Q They were putting you off then?

A They tried for a little while, and then decided to let me alone.

Q Your story is that you, a white boy, with ten or twelve negroes on that train, in that car, after they put off all the other boys, knocked them off, is it your story, or do you claim the fact to be that twelve negroes let you stay on that car while the twelve negroes were rap-

ing two white women, that is what you want these men to believe, that they let you stay on this car while this raping occurred -

COURT: That is argument. Gentlemen, that is ruled out.

MR. LEIBWOITZ: Exception.

REDIRECT EXAMINATION

Q You testified that you were in the witness room at Scottsboro when these cases were first tried?

A Yes sir.

Q Did you testify before the grandjury at Scotts-
boro?

A Yes sir, I did.

Q Did you testify in some one of the cases that were tried at Scottsboro at that time?

A Yes sir, I did.

Q Mr. Leibowitz has asked ~~you~~ you considerable about where you were when you saw me, and you told him about having seen me in Mr. Douglass Taylor's office in Huntsville?

A Yes sir.

Q Isn't that the first time you ever saw me in your life?

A Yes sir.

Q I will ask you if you didn't promise to report back here from time to time, if I didn't put you in jail?

MR. LEIBOWITZ: We object to that. Sustained.

Q You have reported to me as I instructed you to?

MR. LEIBOWITZ: We object to that. Sustained.

Q You say that Ruby Bates was in the gondola?

A Yes sir.

Q Did some of these negroes have intercourse with Ruby Bates at the same time?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Did you see some of them have intercourse with Ruby?

A Yes sir.

Q And the defendant was in that car?

A Yes sir.

RECROSS EXAMINATION.

MR. LEIBOWITZ:

Q Do you mean to say that three or four years after you saw this negro with nine or ten other negroes, you want us to believe you remember this defendant?

COURT: That is an improper question, and the attitude of asking it was improper.

Q Could you pick out any of the others if I lined them up here with a bunch of other negroes?

A Yes sir.

Q After three years?

A Yes sir.

Q Pick them all out one by one from a bunch of 50 negroes?

A Yes sir, and you could too if you had been in my shoes.

Q Did you count them after you saw their faces?

A Yes sir.

Q There were twelve at first?

A There was nine at the time I counted them.

Q Were there any more?

A At the time I counted them, there were nine.

Q You just counted them off, one, two, three, four and so on?

A Yes sir, I counted them twice more after that and there was nine.

Q Did you see any of the negroes jump off these gondolas?

A No sir, not until we got to Paint Rock.

Q I mean before you got to Paint Rock?

A No sir.

Q Tell us how many stations you passed, this train passed, while these negroes were running up and down those gondola cars, with their privates hanging out?

A I can't say.

Q Five or six?

A I can't say.

Q You did pass several stations, didn't you?

A I can't say how many.

Q Did you see any people along the road at the different stations that you did see?

A No sir, I didn't see any stations.

Q Between Stevenson and Paint Rock?

A No sir.

MR. KNIGHT: There has been no return on the attachment for Luther Morris, and of course I can't use the testimony of Mr. Morris on the Haywood Patterson trial without the consent of the defendant -

COURT: I thought it was agreed that if you didn't get him here that you could use it?

MR. KNIGHT: That was the agreement on Saturday, but I don't know whether they will agree to it now.

COURT: I can't stop the trial to wait to get a witness in here, but I will let you examine him out of order provided he is here before the case is over.

MR. KNIGHT: All right, sir.

MR. LEIBOWITZ: Is that the State's case, except Mr. Morris?

MR. KNIGHT: Yes sir, the State will rest, except we want to put Mr. Morris on should he get here.

STATE RESTED.

MR. LEIBOWITZ: We now offer the deposition of Ruby Bates.

MR. KNIGHT: I have interposed several objections to the questions propounded to Ruby Bates, and which I think will

be sustained by your Honor, in view of your holdings heretofore, and I suggest that before he reads the questions, that the jury be excluded while we determine which are proper to read and which are not.

COURT: Is there any objection to that?

MR. LEIBOWITZ: Yes sir.

COURT: Well, we will proceed in open court. Gentlemen of the jury, that same rule of law that I told you about a while ago, that when a question is objected to, when propounded to a witness here on the stand, and I sustain the objection, puts that question out of the case, and also puts out any answer that may be made thereto, so you don't let it have any lodgment in your mind; that rule of law also applies to a deposition. Whenever a question is asked and objection is made and sustained, it is just the same as if the question was never answered.

MR. LEIBOWITZ: There has been a severance in this case, but before the severance the deposition was taken on behalf of all the defendants, and now only one is ~~mixing~~ trial, and I'm wondering if there is going to be any objection to the deposition on that ground?

MR. KNIGHT: I am willing that he should introduce the deposition in this case; the state has no objection to it.

MR. LEIBOWITZ: I want to offer in evidence this commission to take the deposition, signed by Mr. J. H. Green, Clerk of the court, and all of the captions thereon. I am offering in evidence the interrogatories propounded by the de-

pendent, by his attorneys, and certified by Mr. Green, under the seal of the court, numbering 33 interrogatories. I want to offer to read the interrogatories on behalf of the defendant; I want to read the interrogatories referring to them by number, and read the answers, also referring to them by number.

MR. KNIGHT: Now, the state objects to each and every question propounded to the witness Ruby Bates, and will say, at this time, I will have specific objections to each question as it is asked, and the state objects to any rebuttal interrogatories propounded, separately and severally, on the ground that the state had no opportunity to cross the witness on the rebutting interrogatories. Mr. Lawson now states that he was served with a copy of the rebutting interrogatories.

INTERROGATORIES. of Ruby Bates.

1. What is your name?

A Ruby Bates.

2. How old are you?

A Nineteen now. I will be twenty on my birthday, March 4, 1934.

3. Do you know Victoria Price?

A Yes.

4. When and where did you first meet her?

A In a textile mill in Huntsville, Alabama, in the year 1929.

5. Do you know Lester Carter?

A Yes.

6. When and where and under what circumstances did you first meet him?

(This question was objected to by the state. The Court sustained the objection, and the defendant excepted.) The excluded answer was as follows:

A Well, I met him on a City chain gang in January of 1931 in Huntsville, Ala.

7. Do you know Jack Tiller?

A Yes.

8. When and where and under what circumstances did you first meet him?

(This question was objected to by the state. The court sustained the objection, and the defendant excepted) The excluded answer was as follows:

A I don't remember the date when I met him. I met him with Victoria Price in a cotton mill in Huntsville, Alabama.

9. Where did you reside in 1931?

A At home in Huntsville, Alabama.

10. With whom?

A With my mother and brother and sister.

11. Prior to March 24, 1931, were you in company of Victoria Price, Lester Carter and Jack Tiller or either of them, especially in said month of March?

(This question was objected to by the state. The court sustained the objection, and the defendant excepted). The excluded answer was as follows:

A Yes, I was in their company on March 23 and 24th, 1931.

12. State specifically what occurred between you and them or either of them?

(This question was objected to by the state. The court sustained the objection, and the defendant excepted). The excluded answer was as follows:

A On March 23rd in the afternoon about 5:50, it was nearer 6 o'clock Victoria Price, Lester Carter and Jack Tiller and myself walked up the Pulaski Pike and then we turned off at the Pulaski Pike after we had gone something like a mile or two miles. I don't know exactly how far it was that we walked up the Pike. We went off into a side road. We walked along this road until we came to a big ditch and then we saw these vines on each side of the ditch where we couldn't be seen. We got over in the vines. There were sexual intercourse between both couples, Lester Carter with myself and Jack Tiller with Victoria Price. Later in the night it began raining, so we moved from there and walked to the N. C. & St. L. Railroad and at first we couldn't find any empty box car and then we went to the Southern Railroad, where it crosses the N. C. & St. L. Railroad and we couldn't find any empty box car there. We went up the N. C. & St. L Railroad and we found a box car there on the side track. We got into this box car and later in the night there was sexual intercourse again. We also built a fire in the box car to keep warm, with paper that was in the box car.

12. What conversations, if any, did you have, if prior to March 24, 1931, and in the said month of March, with Victoria Price, Jack Tiller and Lester Carter, with reference to a proposed trip out of the City of Huntsville, Alabama?

(This question was objected to by the state. The Court sustained the objection. The defendant excepted.) The excluded answer read as follows:

A On the morning of March 24th, early in the morning about five o'clock, Victoria Price, Lester Carter, Jack Tiller and myself were together and it was discussed between us about leaving that day, which was on Thursday, March 24th, and we planned to meet at 11 o'clock that day on the Southern Railroad at the Athens Crossing.

14. Did Victoria Price have intercourse with Jack Tiller a day or two before March 25, 1931, in your presence and in the presence of Lester Carter?

(The question was objected to by the state. The court sustained the objection. Defendant excepted) The excluded answer was as follows:

A On the night of March 23rd, yes.

15. What occurred on March 24, 1931, in your presence between Lester Carter, Jack Tiller and Victoria Price?

(The question was objected to by the state. The court sustained the objection. Defendant excepted). The excluded answer was as follows:

A I don't know what they mean. Unless this is the answer. Jack Tiller did not go with us on account of his wife. Of course, we was all talking. There was nothing done except talking and Jack Tiller said for us to go ahead and that he would join us in a few days and that he did not go on account of his wife.

16. Did you, Lester Carter and Victoria Price board a freight train in the City of Huntsville, Alabama, and proceed on said freight train to Chattanooga, Tenn?

A Yes.

17. State the details and circumstances concerning the said ride mentioned in the preceding paragraph?

(The state objected to the question. The court sustained the objection. The defendant excepted)
The excluded answer was as follows:

A When we first got on this freight train going to Chattanooga, we got in a box car. The box car had a lot of white men and also there was some colored men in the car - but did not speak to us for a long time. There was one boy in the car who knew myself and he came to where we was. We was in the other end of the car and he was at the other end of the car with the rest of the hobos. When he got off the train he said "Good Luck" to us. The train pulled into Chattanooga that night about ~~SEE~~ 8:30.

18. Upon arrival at Chattanooga, did you meet one Orville Gilley? State the circumstances of such meeting, who was present, and what was said by Victoria Price, Lester Carter and you and Orville Gilley?

(The state objected to the question. The court sustained the objection. Defendant excepted.) The excluded answer was as follows:

A Yes. We was looking for a box car to stay in that, because we knew no one in Chattanooga, Tennessee, where we could stay. While we was looking for this box car, Orville Gilley was coming meeting us, coming in a direction to us and we coming meeting him. Lester ~~XXXXX~~ Carter and Victoria Price and myself were present and Orville Gilley was by himself. Lester Carter asked him for a match. Then he wanted to know what we were doing and where we was going, - so we told

him we was looking for a place to stay for the night and he joined our group to try and find a box car that was fit to stay in. Most of them was dirty on the inside and some were almost rotten down. When we couldn't ~~fit~~ find a box car, Orville Gilley said that he knows a place, he knew was the hobo jungle, a place where we could rest. Wo, we all got arms full of shingles from the box cars and took them over and built a fire.

19. State in detail what occurred during your stay in Chattanooga between you, Orville Gilley, Lester Carter, Victoria Price and others, until the morning of March 25, 1931?

(The state objected to the question. The court sustained the objection. Defendant excepted). The answer excluded was as follows:

A On the night of March 24 after we had built a fire, Orville Gilley and Lester Carter went to get something to eat. Of course, we couldn't see where they went, because I don't know. When they came back they had something to eat and also some coffee and a small lard bucket to make the coffee in. After we had eaten what they got, we were sitting by the fire and Lester Carter and myself spread out on Lester Carter's overcoat on the ground and laid down and we dozed off to sleep. That's all that happened that night that I remember.

20. What transpired ~~on~~^{on} March 25, 1931, between the hours of 6 A. M. and 3 P. M.?

MR. KNIGHT: The state objects to that - some parts

may be admissible, but some parts are not. I am objecting to that part of the question that calls for anything prior to boarding the train at Chattanooga on March 25th.

COURT: I can't pass on it until I see the answer. (Court takes answer and reads it) -

MR. LEIBOWITZ: This testimony, whatever it is, is offered for the purpose of impugning the chastity of Victoria Price, not for the purpose of attacking her credibility, but to explain away the condition the girl was found in by the doctor, - the question is for that purpose, and not for attacking her credibility.

COURT: I'll exclude all of her answer, beginning on page five, down to and including the word ~~EEEE~~ "West" on page 6.

MR. LEIBOWITZ: Exception.

(The excluded part of the answer is included in brackets from beginning of answer. After the ~~bracketing~~ brackets close, answer is admitted.)

A (On the morning of March 25th, Lester Carter and Orville Gilley went again for something to eat and while they was gone, Victoria Price and myself got some water from a branch stream that was running near the place where we stayed that night to wash our face and hands. Before Lester Carter and Orville Gilley left for food, we moved over into another place from where we stayed that night. After we finished washing, we was sitting there and talking and two men spoke to

us and said "Good morning" and asked us if there was anything they could do for us. We told them there was nothing they could do. Then they went on. Later, there were two negro men went by and they spoke to us and said "Good morning". They asked if they could bring wood to put on the fire for us. We told them we was letting the fire go out. Then they wanted to know if we were alone there. We told them we was not alone. That's all that was said between us and they left. Then Victoria Price looked over into another place where there was a bunch of hobos and she said "If I knew that Lester and the other bot - who introduced himself to us as "Carolina Slim" and later told us his name was Orville Gilley would not come back soon we would go over there and make some money from these boys". Then we went up on the railroad and we were sitting on the railroad and we saw Lester coming down the railroad, and when Lester joined us, Victoria Price told Lester that we had been insulted by a negro and it made Lester Carter mad. Lester Carter said he would kill Jim if he could find him. So, Lester Carter hunted all over the swamp and he couldn't find anybody that had said anything to us but "Good Morning". Then he went over to a bunch of negro hobos and asked them had they saw us or said anything to us. They said "No". So he cussed one of the negroes out and called him dirty names. That was what he told us when he came back to where we was. After this I got a chance to tell Lester Carter netter, that there was no negroes insulted us or any one else. Then Orville Gilley joined us. Only a few minutes after Orville Gilley joined us, we went down to the freight

yards. We sat at the freight yards until the freight train pulled in going west.) When the train pulled in we caught the train. We got on this train. We got between a box car and an oil tank. We sat down on the end of this oil tank and there were two other men and I neither saw them since nor have I ever saw them before they got on the train at the same time we did and sat down with us. Then we had been going for some time when there was a bunch of hobos coming on the train and they were just walking on the train., When they passed us, they said "Hello" or something like that. They spoke to us and walked on. Then when the train pulled into Stevenson, Alabama, we got off the train. We tried to find an empty box car and failed because there was no empty box car that we could find on the train. When the train started to pull out, we got into a gondola and besides this gondola there was several other gondolas. We was all sitting on this gondola, Victoria Price, Orville Gilley and Lester Carter and myself. Shortly after the train pulled out from Stevenson, Alabama, there was some white boys come to the next car from where we was, a gondola, and they said something and Lester Carter was talking to them. I don't know what was said between them, but I noticed that there was some negroes come into this car from the top of the box car from the direction of the caboose. Then when these negro boys got to where these white boys was, there was a fight. I don't know what the fight was about, but most of these white boys got off the train. Lester Carter also got off the train. Orville Gilley started to get off. I don't know why Orville Gilley or Lester Carter

wanted to get off, but Lester Carter got off. Gilley started to get off, but was pulled back in the car by one of the negro boys. After then the negro boys disappeared. I did not see them any more until there was some boys taken off the train at Paint Rock.

21. Did you arrive on a freight train at Paint Rock, Alabama, at or about 3 P. M.? State in detail what transpired at Paint Rock?

A Yes, there was some negroes taken off the train and placed under arrest and Victoria Price and myself was also placed under arrest and Orville Gilley was also put under guard by the Sheriff. Victoria Price made out like she fainted. She was taken into a store where I was also taken a few minutes later. When I was taken into the store there was a doctor with Victoria. The doctor said there was nothing wrong; only that she had just gotten scared and that she had high blood pressure. I knew she was bothered with high blood pressure. When she began to talk, she was asked about what happened. So she told them that we were attacked by some negro boys. There was one man who told her to tell the story and there was another man who told her to shut up until she got to Scottsboro under protection of sheriffs. We was arrested by the sheriff at Paint Rock, Alabama, but those others were higher sheriffs. When we first arrive at Paint Rock, there was a big crowd there.

22. State in detail what transpired on March 25, 1931 on a trip from Paint Rock to Scottsboro, Alabama?

A There was nothing happened, only that we was taken from Paint Rock to Scottsboro in an automobile with a few men in the car. I think it was about five or six men. I don't know exactly how many. The negro boys was also carried to Scottsboro. I saw them when the left for Scottsboro, and then I saw them again in Scottsboro.

23. State in detail what transpired during a physical examination of yourself and Victoria Price by Doctors Bridges and Lynch?

(The state objected to that part of the answer to this question enclosed in brackets. The court sustained the objection. Defendant excepted).

A Victoria Price was examined first by these two doctors in Scottsboro, Dr. Lynch and Dr. Bridges, and then I was examined by these two doctors. The doctor only asked me if I had ever had any children and I told him: "no". (He asked me when was the last time I had sexual intercourse and I said "The evening before") That's all that was said between the doctors and myself. There again was an examination.

I don't know what they did to Victoria Price. I suppose they gave her the same examination. They just gave us an examination and painted us with mercurchrome. That was all that happened. They didn't examine my whole body that day. They just examined the lower part of my body - my vagina.

24. State what transpired in the Scottsboro jail and conversations had by and between you and Victoria Price and certain white boys confined in Scottsboro jail after March 25, 1931, up until the trial of Haywood Patterson and others?

MR. KNIGHT: Parts of that answer may be admissible and parts might not be.

COURT: Make your objection when they come to it, and I will rule.

(The parts of the answer enclosed in brackets are the parts objected to by the state and sustained by the court. The defendant excepted to the exclusion of each part of the answer so enclosed in brackets.)

A After we returned from the doctor's office to the jail, there had been seven white boys arrested at Stevenson, Alabama, and had been transferred to Scottsboro. Lester Carter was also there at Scottsboro jail. (Victoria Price told the high sheriff, who was also the jailer, that one of these boys, who had been arrested and brought to this jail, was her half-brother). Then she told again that we was attacked and raped by these negro boys. She told that to the sheriff. She said that there was twelve of these boys. There was not very much said about it that afternoon, because it was late and that night Victoria would not rest. I didn't know what was wrong. She was scared and we was both frightened. The next day we was examined again by the doctors and there was a few scratches on our bodies and there was a few bruised places. They were caused by the freight train riding, (because anybody will get sore from riding in a freight train and staying in a hobo jungle..This boy, who Victoria claimed is her half-brother, also told ^{that} Victoria was his half-sister and kept making noise and kept trying to break out of the jail, until they put him in the same cell with Victoria Price and myself.) Then my mother appeared at the jail. First she asked the jailer why

that man was in there with us two girls and Victoria Price was standing there and she answered: (He is my half brother. The jailer said he wouldn't be quiet until he was moved into the cell with Victoria.) My mother tells the jailer that unless he removes that man from the cell she would see what she can do to him for having the man locked up in jail with the two girls, when it was against the law. After the boy was removed, Victoria said to me that I must remember to tell the same story as she was telling me. She was at that time telling me what all she had told the sheriff. She had told the Sheriff that we had been raped and she made up the story of how we had been raped and she was telling me the story. I told her that I do not know whether I will or not, because it is not true. She was telling me that I must tell these things, as she was pointing them out to me. She said we had been raped each of us by six negro boys and that one of the negro boys was holding her feet, another held a gun and a knife at her throat and another had intercourse. She also stated that she had some money on her and that it had been taken off; also a pocket knife, that she had on her when she left home, had been taken off her from her pocket. We had men's clothes on. We had clothes underneath. We had slips and a couple of dresses. As I remember, Victoria Price had a sweater - and we had overalls over the dresses. We also had lots of visitors who came to the jail to see us. They would always ask Victoria Price what had happened and she would tell them that we had been raped by these negro boys. We were then removed on Sunday from the small cell to the large cell.

There was also a cage in the middle of both cells where the men prisoners was, but there was more men prisoners in the larger cell. The seven white boys that were arrested was in this large cell. Victoria Price would have conversations with different one of the boys that was arrested and placed in jail for witnesses against the negro boys. I do not know what the conversations was about, only in one conversation she had with one of the boys, the boy with whom she claimed was her half-brother and with whom she had been making love affairs since she had been in jail, told her that he was going to tell the truth about it at the trial and that he was not going to lie for, anybody, her or any one else. I don't remember what he gave his name, but I remember that Texas was his nickname. I know his name now. Odell Gladwell. I also heard her tell Lester Carter that he must tell that we had been raped by these negro boys. During this whole time that we had been in jail, there had been many negro men brought in by the sheriffs for identification for the other three negroes who had not been arrested, which Victoria Price said there had been twelve. There was only nine arrested at Paint Rock. Lester Carter told her that he knew nothing about it, whether or not we had been raped and that he would not and could not say that we had been raped by these negro boys. Victoria Price reminded me during all this time that I must tell what she did. She said that unless I did tell what she did, I would get her in trouble. She would have to serve a jail sentence. (She was then expecting to be prosecuted by my mother for carrying me across the state line when I was under

twenty-one years of age and because my mother knew nothing about my going away from home). We was also taken out into the hospital apartment of the jail, hospital ward, to identify negro boys. Victoria Price identified a knife which she said was hers; that it had been taken off her body by one of the negro boys. Victoria Price did not have any knife when we left Huntsville, neither did she have any money. There was a lawyer by the name of Stephen Roddy, or Stevenson Roddy. He had the nine negro boys brought into the hospital where he also had us brought into the hospital where to identify the negro boys. He asked Victoria Price to take out the six boys that raped her. Victoria Price pointed out six of the boys. Then he asked me if the other three was the ones that had raped me. I was at this time frightened very badly, because there had been threats made against my life and I said "Yes". (The lawyer then asked the boys if they was guilty and the boys said "No". The lawyer told the boys that from the evidence that he had they was guilty and the best thing they could do was to plead guilty and beg for a life sentence.) Victoria Price had also told that there was two guns that the negro boys had, I remember as being thirty-two calibre, that's what Victoria Price said. I remember as her saying there was a thirty-eight or forty-five calibre. Victoria Price and Lester Carter had a conversation. Lester Carter asked Victoria Price why she wanted to tell what she did on these boys for. Victoria Price said that she didn't give a darn for all of these niggers, let them hang them all and Lester Carter told her that she should be ashamed of herself. I don't remember whether

there was anything else.

MR. LEIBOWITZ: I want to strike out also, about what the lawyer said to the boys.

COURT: All right, that is out of the evidence.

(This section is also enclosed in brackets).

25. Did you testify on the said trials as a witness for the prosecution?

A Yes sir.

25. Was that testimony true?

This should follow question 26.

A No sir.

26. Did you testify on the said trials that six negroes raped you and six negroes raped Victoria Price and one of the negroes held a knife at your throat?

A Yes sir.

28. What prompted you to offer such testimony, if false?

(The state objected to this interrogatory. The court sustained the objection. Defendant excepted.)
The excluded answer was as follows:

A Because Victoria Price told me there things and because I was threatened and I was scared for my life.

29. Did Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and MAX Clarence Norris, or any of them, have intercourse with either of you or Victoria Price on March 25, 1931?

A No, not any of them, with either of us, Victoria Price or myself.

30-Q Did Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and Clarence Norris, or any of them, ~~assist~~ assault either you or Victoria Price on March 25, 1931?

A No.

31. Up to the time you reached Paint Rock did you see Haywood Patterson, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery, Eugene Williams, Roy Wright, Charley Weems and Clarence Norris, or either of them?

A ~~Yes~~ Of course I saw some negroes in a fight with the white boys in the next car on the train, but I could not say whether any of these nine was in this fight or not.

ALL OF DIRECT INTERROGATORIES.

Before crossing the interrogatories, the State filed the following objections to the above direct interrogatories:

(CAPTION)

Comes the State of Alabama and objects to the interrogatories propounded by the defendants to the witness Ruby Bates, and particularly to interrogatories 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24, 28, and each one separately and severally, and to each sub-division of each of said interrogatories separately and severally, because:

1. It calls for immaterial evidence.

- 0 6
2. It calls for illegal evidence.
 3. It calls for incompetent evidence.
 4. It calls for irrelevant evidence.
 5. It calls for the conclusion of the witness.
 6. It calls for matters res inter alios acta.
 7. It calls for matters not part of the res gestae.

Thomas E. Knight, Jr.
Attorney General.

Thomas Seay Lawson,
Assistant Attorney General.

The cross-interrogatories, with answers thereto were as follows:

1. Did you not testify in the trials of the above named defendants held in Scottsboro, Alabama, in 1931?

A Yes.

2. Did you not then and there testify that you were forcibly ravished by six colored boys and that Victoria Price was also forcibly ravished by six colored boys?

A Yes.

3. Did you not testify that the above named defendants were among those who ravished you and Victoria Price?

A Yes.

4. Did you not make the following statements during the trial of Heywood Patterson, held in Scottsboro, Alabama, on or about April 7th, 1931?

"My name is Ruby Bates, I am seventeen years old. I

was with Victoria Price on a freight train in this county running from Chattanooga to Huntsville, I was riding on that freight train between Stevenson and Paint Rock. On that train I saw the defendant over there; I saw him there on the train. When I first saw him, the train was just this side of Stevenson, and at that time he was coming over a box car with the rest of the colored boys. I could not tell you just how many colored boys I saw there; I saw more than the defendant; I saw more than one. When I first saw them I was sitting down in the gondola. There was gravel in that car; it was not plumb full. I was in the end of the car next to where the negroes jumped into it. Mrs. Price and I were together. At the time the negroes jumped over into it, there were seven white boys in there with us. After the negroes jumped in there, they told the white boys to "unload" and hit two of them in the head with pistols, and then all of them got off but one; he stayed on there. All seven of the white boys got off but one. They had a fight with those negroes; they fought back with them. I saw two negroes with pistols, this defendant was one of them. I saw him with a pistol; he was one that had a pistol, and another one had a pistol and the rest had knives, and these knives were open. I know what happened after those white boys got off the train. They threw us down in the gondola and they all ravished me. I saw some of them ravish Victoria Price. I saw the defendant. I saw him when he was having intercourse with her. When he had his hands on her, I saw other colored men around her. One of them had a knife holding it on her throat and the other was holding her legs, and that is when I saw this defendant over there (indicating), the one sitting next to Mr. Roddy (of counsel for defendant) on Victoria Price.

I got off the train at Paint Rock. These colored men were on the train when we reached Paint Rock or stopped there. When the train stopped there, the colored men ran toward the engine and the people down there surrounded the train and got them off. ~~EE~~ I got off the gondola without anybody helping me off. When I got off the car, Victoria Price was unconscious at that time; she got nearly off the car and fell off and I picked her up and laid her on some grass and stayed there with her about ten minutes before the people brought a chair down there and put her in it and carried her to a store. Mrs. Price and I did not go anywhere until they brought us up here. Some doctors made an examination of Mrs. Price after she got to Scottsboro. Going into Chattanooga the day before, I saw some white boys on the train. These were white boys on the train. I did not talk with them; never said a word to them."

A I did not make the statement, but I was asked these questions. One of the attorneys for the prosecution asked this kind of questions and the answer that I gave them was yes, but I did not make this statement myself.

5. Did you not make the following statements during the trial of Clarence Norris and Charley Weems held in Scottsboro, Alabama, on or about April 6, 1931:

"My name is Ruby Bates. I live at Huntsville. Along about March 25th of this year, I was in company with Victoria Price on a freight train traveling from towards Chattanooga to Paint Rock, Alabama. After the train left Stevenson, I saw those negroes, those defendants sitting over there by the side of defendant's counsel, on the train" That you saw Weems and Norris on the train.

"I say I saw them. When I first saw them they come over the top of the box car. When I saw them coming over the top of the box car they had guns and they told the white boys to unload. Then one of them hit one of the white boys in the head with a pistol. That one on the left hand side was the one that hit the white boy in the head with the gun pistol. Then some of the white boys began to get off the gondola, and all of the white boys got off but one. After the white boys got off, the colored boys throwed us down in the car. The one on the left side had a gun. I first saw the white boys after we got on the oil tank. They were not the same white boys that rode from Huntsville over to Chattanooga. I had never seen these white boys before. The colored boys had a knife during the fight between the white boys and the negroes. I could not tell how many knives the colored boys had. There were three negroes to each girl, one for intercourse and one for holding the knife and one for holding the pistol. While six men had intercourse with me they stood there with a knife and pistol on me." That you had never known or seen Lester Carter or any of the other white boys before?

A I did not make such statements, but this was also asked by the attorneys and I said "Yes". I was asked at the first trial that I saw Weems and Norris, and I remember saying "Yes" to the attorney, but I did not see them, that I remember anything about. I cannot say whether these were the

the ones that were in the fight - the only colored boys I saw were in the fight/ I don't think I answered such a question as to whether I had ever known or seen Lester Carter or any of the other white boys before, because I had saw Lester Carter before the Scottsboro case happened - before March 25th. The statement above was told by Victoria Price many times in jail and she reminded me just before going to trial that I must remember everything that she had told me to tell.

MR. KNIGHT: I move to exelude the last statement as not responsive. Sustained. Exception by defendant.

6. Did you not make the following statements during the trial of Ozie Powell, Willife Roberson, Andry Wright and Olin Montgomery, held in Scottsboro, Alabama, on or about April 8th, 1931?

"My name is Ruby Bates. I live at Huntsville. I am seventeen years old. On or about March 25th of this year I was on a freight train running between Stevenson and Paint Rock in Jacobn County, Alabama. Victoria Price was with me. There was no one else with me. I saw those five negroes on the front row, these five defendants, in that car after the train left Stevenson, Alabama. 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. The colored boys ravished me. Every one of the colored boys I saw that day had intercourse with me or with Victoria Price."

A No, I did not make this statement, but I was asked the questions and I said "Yes".

7. When did you leave Huntsville for Montgomery?

A On February 28, 1933.

8 Whom did you leave with?

A A girl friend of mine and two boys. The girl's name was Rosetta Brown and my boy friend's name was Jackson and the other boy, I didn't know his name.

(9) Q. How long had you known each of them, if more than one accompanied you?

A I can't say exactly how long I knew them, but I knew them for some time. My boy friend I knew him for a couple of years. I wasn't really friends with him, but I had known him for a couple of years. The girl friend I had known for some time. I don't remember how long I had known the girl. The other boy I had only met him that day.

10. How long did you stay in Montgomery?

A Just long enough to have something to eat.

11. When did you leave Montgomery and who accompanied you, and where did you go?

A It was probably an hour after I arrived there on the night of February 28, 1933. Only my girl friend accompanied me. We went to Gadsden.

12. If one of the parties with whom you left Huntsville was a Mr. Jackson, state the conversation you had with him?

MR. LEIBOWITZ: We object to that, Judge.

COURT: It appears that interrogatory No. 12 is a preliminary question to the 13th interrogatory. I'll let him ^{read the} answer.

MR. LEIBOWITZ: Exception.

A I don't know what conversation you mean, because I had many conversations with him. The conversations I remember was about work. I was unemployed at that time. That's all that I can remember now.

13. Did you know then or do you know now that Mr. Jackson was or is an employee or associate of defendant's counsel?

(Defendant objected to the question because it assumed that the party was an employee or associate of defendant's counsel. The court overruled the objection, and the defendant excepted)

COURT: Of course the question does not purport to prove that he was or not in the employment of defendant's counsel, and I'm letting that in.

A I did not then and I do not know now, because I haven't seen him since I left Montgomery.

14. Did Mr. Jackson give you \$20.00 while you were in Montgomery?

A He did.

15. Who paid for your board and upkeep during the time you were in New York prior to your appearance in Decatur in April, 1933?

(Defendant objected to question. Court overruled objection. Defendant excepted,

A I worked for my board. I paid for it myself.

16. Who paid for your transportation from New York to Decatur, Alabama, in April 1933?

(Defendant objected to the question. Court overruled the objection and defendant excepted.)

A I borrowed money from the woman I was working for.

17. Where did you get the coat and hat which you wore

when you testified in the trial of Haywood Patterson in April, 1933, in Decatur, Alabama?

A I bought it at Klein's for \$3.98.

18. Did Dr. Harry Fosdick of New York give you a coat and a hat, or either of them, or did he give you the money with which you bought them or either of them?

COURT: I don't think that's got anything to do with this case; that's ruled out.

19. Did you know Miss May Jones?

A I met her in Birmingham at Rev. Clingan's studies in Birmingham the day that I arrived in Decatur.

20. Where did you meet her?

A In the studies of Dr. Clingan in Birmingham.

21. Did you make a statement to her to the effect that you came back ~~HERE~~ here to testify in April because you were as much to blame as the colored boys?

(Defendant objected to question. Sustained)

22. Have you corresponded with your mother since you have been in New York?

(Defendant objected to question. Sustained.)

23. Have you corresponded with your father since you have been in New York?

(Defendant objected to question. Sustained.)

24. Do you know Danny Dundy?

A I don't know whether I can personally identify him or not.

25. While you were in Huntsville did a man come to see you on January 5, 1932, and get you drunk and have you write a letter to a friend of yours by the name of Earl stating that the Scottsboro defendants were not guilty?

A I had company that day, but I was not drunk. I also wrote a letter that day, but there was no one dictated that letter to me. This man did not have me write the letter. I wrote it myself.

26. Did you not sign an affidavit before a notary public of the county of Madison wherein you stated that when you wrote that letter mentioned in question 25 that you were drunk and did not know what you were writing and that your testimony given in Scottsboro was the truth, which affidavit was made on January 6, 1932?

A I signed that affidavit but I didn't read this affidavit before I signed it. I signed the affidavit because I was terrorized by the Chief of Police of Madison County.

(This was all of the cross-interrogatories read to the jury).

REPUTING INTERROGATORIES.

1. What did you say to Miss Mary Jones, if anything?

A If it is May Jones, I only told her that the boys were innocent.

2. State the circumstances under which you signed

the affidavit referred to in cross-interrogatories at question 28, in which you made certain statements concerning a letter you had written to one Earl?

A I was terrorized by the Chief of Police of Madison County. That is why I signed this affidavit and I did not read the affidavit before I signed it.

MR. LEIBOWITZ: Your honor sustained an objection to one of the interrogatories, No. 28, which asks: "What prompted you to offer such testimony, if false?" I submit that that becomes material in view of the fact that she said in the Scottsboro case that she had been raped, and this explains why her testimony was given that way.

THE COURT: Here's the trouble with your question: in Alabama the law is quite different from what it is in a number of the other states. At one time it was the only state in the Union that you couldn't ask your own witness why, or the purpose for which he did anything, and I am but following the law on the subject.

MR. LEIBOWITZ: We reserve an exception.

COURT: I can see why you feel that it should be allowed, because most of the states permit such questions. This state doesn't, and I am bound by the decisions of the Supreme Court of Alabama, unless it involves the fourteenth amendment.

MR. LEIBOWITZ: In other words, the girl can't show why she made that statement?

COURT: No sir.

MR. LEIBOWITZ: May these interrogatories be marked as part of the record.

COURT: The way I suggest you do that is that they show that they are filed in court, because that gives them an official standing in the court.

MR. LEIBOWITZ: We offer in evidence the interrogatories, questions and answers as shown in this binder, this brick colored binder, containing several different covers.

LESTER CARTER, sworn for the defendant, testified:

DIRECT EXAMINATION.

MR. LEIBOWITZ:

Q Do you know a woman named Victoria Price?

A Yes sir.

Q Do you know a woman named Ruby Bates?

A Yes sir.

Q When, for the first time, and where, did you meet Victoria Price?

A In the jail in Huntsville.

Q You met her in the jail when?

A In 1931.

Q How long before you got on this hobo trip with her?

A Some sixty days before.

Q How long before you got on this train on the 24th of March, 1931, did you know Victoria Price?

A Some forty to fifty days.

Q Do you know a man named Jack Tiller?

A Yes sir.

Q Where did you first meet him?

A In the jail at Huntsville, Alabama.

Q That when you met Victoria Price?

A Yes sir.

Q After the three of you got out of jail, where did you meet Victoria Price, what city?

A Huntsville, Alabama.

Q When did you first meet Ruby Bates?

A I met her during the time I was serving some forty or fifty days out on the chain gang in Huntsville, Alabama.

Q Who introduced you to Ruby Bates?

A Victoria Price and Jack Tiller.

Q Was that while you were still in jail?

A Yes sir.

Q After you got out of jail, did you see Ruby Bates in Huntsville?

A Yes sir.

Q Did you not, on the night before you left Huntsville, together with Ruby Bates and Victoria Price and Jack Tiller, go to a lumber yard in train yards there, and did you not have intercourse with Ruby Bates there that night, and did not Victoria Price have intercourse, in your presence with Jack Tiller?

MR. KNIGHT: We object to that.

COURT: I sustain the objection. That question is not legal and highly improper, and you will pay no attention to it.

MR. LEIBOWITZ: Exception.

Q Did you, on the following day leave Huntsville with Ruby Bates and Victoria Price?

A Yes sir.

Q Where did you leave from, what place?

A In the railroad yards, near the negro cemetery in Huntsville.

Q On what railroad?

A The Southern Railroad.

Q Who was there when you and Victoria Price and Ruby Bates got on the train?

MR. KNIGHT: We object to that.

COURT: Sustain the objection.

MR. LEIBOWITZ: Exception.

Q Did you ride with Victoria Price and Ruby Bates in a car from Huntsville to Chattanooga?

A Yes sir.

Q When you got to Chattanooga, Tennessee, did you leave the train?

A Yes sir.

Q Together with Ruby Bates and Victoria Price?

A Yes sir.

Q Did you then meet Grville Gilley there in the

railroad yards?

A Yes sir.

Q Had you known Orville Gilley before that time?

A No sir.

Q Did you and Orville Gilley and Ruby Bates spend the night together?

A Yes sir.

MR. KNIGHT: We object to that.

COURT: I sustain the objection. (To witness) You were on the stand the other day and I explained to you that when an objection was made that you were not to answer until the court first had a chance to pass on it. Now keep that in mind. Gentlemen of the jury that question is illegal and highly improper, and the answer that was made to it was illegal and improper. I exclude that from you, and you must not pay any attention to that in the case, and when evidence is ruled out, why it is out, and you have no right to consider either the question or the answer.

MR. LEIBOWITZ: We reserve an exception.

Q Were you in Victoria Price's company continuously from the time you got off the train in Chattanooga until the next day when you boarded the train?

MR. KNIGHT: We object to that.

COURT: I sustain the objection.

MR. LEIBOWITZ: Exception.

Q Did you get on the train the following day to come from Chattanooga to Huntsville?

A Yes sir.

Q Who got on that train with you?

A Victoria Price, Orville Gilley and myself.

Q Were you four in some company, or was there any one else in your company?

A Just us four.

Q Were you traveling together, you four?

A Yes sir.

Q After you got on that train did some trouble come up between the white boys and the negro boys about stepping on a negro boy's hands?

A Yes sir.

Q Get down to the point where you got to Stevenson, Alabama, did you leave the train, wherever it was you were riding, together with Ruby Bates, Victoria Price and Orville Gilley, and get in another car?

A Yes sir.

Q Tell the jury in your own way what you did after that, and step down if the judge will permit, and point out the car you got in? (Indicating miniature train).

A Us four left the train somewhere back here (indicating), while the train stopped and come up the train and got into this gondola car (indicating), if these are supposed to be gondola cars.

Q Which gondola car did you get into, point it out?

A I judge it would be this one. (Indicating).

Q That would be the fifth from the caboose and the fourth car from towards the engine, in the string of gondolas?

A Yes sir.

Q Are you sure that it was either one of these middle cars?

A Yes sir, I would say that it was one of the middle cars.

Q You couldn't say that it was the fourth car from the end, but it was one of the two middle cars?

A Yes sir.

Q When you got into that gondola who got in there with you?

A Ruby Bates, Victoria Price and Orville Gilley.

Q Did you stay in that gondola car?

A Yes sir, for some miles out of Stevenson.

Q Did you, at any time, on the train, invite other company to join the two girls and you and Gilley?

A No sir.

Q What was the reason for getting into the gondola car alone with the girls, and not with the other hobos on the train?

MR. KNIGHT: We object to that.

COURT: Sustain the objection.

MR. LEIBOWITZ: We except.

Q Tell the men in this jury box, how you were sit-

ting in this gondola?

A We were lying down on our elbows, us three, Orville Gilley, Ruby Bates and myself.

Q Do you recall whether there was any other white boy in that gondola car where the women rode except you and Gilley?

A Not while I was on the train.

Q Did the girls leave that car for one minute from the time you got in that car at Stevenson up until the time you left the train?

A No sir.

Q They were in your company all that time, as well as Gilley's?

A Yes sir.

Q That is Ruby Bates and Victoria Price?

A Yes sir.

Q Did some men start towards the caboose?

A Yes sir.

Q Down toward the colored boys?

A Yes sir.

Q Did any of these colored boys ever get into that car, while you were in there with Victoria Price and Ruby Bates?

A Yes sir.

Q Where did that commotion take place?

A Further back on the train; they were fighting.

Q After they were fighting did they ever come into your car?

A No sir, not the one we was riding on.

Q Where was the fighting going on eventually between the white boys and colored boys?

A Well, they come up to the joining car.

Q Was that where the fighting took place between the whites and the blacks?

A They were fighting along -

Q Was that where the fighting took place, in the car next to yours?

A Yes sir.

Q Did you get up?

A Yes sir.

Q Did Gilley get up?

A Yes sir.

Q Did you go toward the car where the fighting was taking place?

A Yes sir.

Q Did you see Gilley go over into the fight?

A No sir.

Q Did you get into the fight?

A No sir.

Q Tell the jury where you went - assuming this is the car you was in (indicating) with the girls, show us where you went?

A When I got up, these girls were sitting where I got up on the front part of the car. I got off on this stirrup and climbed over in between these two cars (indicating) intending to get in the fight, but decided I would leave and I got

off the train.

Q Did somebody make a strike at you while you were on this end of the gondola, at this place (indicating), did some negro make a strike at you?

A Yes sir.

Q Anybody make a strike at Gilley?

A Yes sir.

Q You left these women sitting in this car when you got off? (Indicating car)

A Yes sir.

Q It has been testified here by Victoria Price that she was sitting in this gondola car (indicating) -

MR. KNIGHT: We object to that.

COURT: Yes, I think that is improper.

Q Was there ever a time, when you got into these gondola cars, that Victoria Price ever sat in this end of this car (indicating) nearest the caboose, right next to the box car?

MR. KNIGHT: We object to that, because he is informing the witness what other witnesses have said.

COURT: I'll let that question stand.

A No sir.

Q Did any negroes jump over the heads of the two girls in the gondola car, while you were there?

A No sir.

Q Did anybody, any negroes engage in any fight in this gondola nearest the caboose while any women were in that car?

A There wasn't any women in that car.

Q Did Victoria Price have a snuff box?

A Yes sir.

Q When she got on the train at Chattanooga?

A Yes sir.

Q Did you see her use snuff the night before and the day before, out of this snuff box?

A Yes sir.

Q Did she have a knife with her at all on that train, if you know?

A No sir, I don't remember it.

Q Did you ever see her in possession of any knife?

A No sir, I don't know anything about any knife. She asked me if I had a knife to open a milk can in the jungle, and I gave her my knife -

COURT: That last part is not in.

Q Let me ask you this: at any time from the time you got to Chattanooga up until you got back on the train, did Victoria Price ask you for the use of a knife, so that she could open up a milk can - did that take place?

A Yes sir.

Q You went back to Stevenson, and then from Stevenson you were carried over to Scottsboro, you and several other boys?

A Yes sir.

Q When you got to Scottsboro, did you see Victoria Price there in an automobile?

A Yes sir.

Q Did you hear any conversation that she had with one of the white boys, there at the Scottsboro jail?

A Yes sir.

Q Tell the jury what you heard her say?

A She motioned for me to come over, but I didn't go. Odell Gladwell, one of the boys taken from Stevenson to Scottsboro with me, he went over and I heard Mrs. Price ask him would he be her brother, if he didn't, they would be arrested for hobbing or vagrancy, and he said he would be her brother.

Q Pass as her brother, you mean?

A Yes sir.

Q Gladwell wasn't her brother, was he?

A No sir, not that I know of.

Q Did you have any conversations with Victoria Price while in jail in Scottsboro with reference to the guilt or innocence of this defendant?

A Well, Victoria Price and I, we had many talks.

Q About the guilt or innocence of these defendants, about whether the charge was true or untrue, did you talk about that?

A No sir. She asked me if I would swear as she swore, and I told her I would swear what I knew about the facts -

Q Speak out, I want the jury to hear what you say?

A She asked me would I swear what she was going to swear, and I told her I would swear what I knew about it, that I would tell the truth.

Q What about Ruby Bates, in your presence?

A She asked Ruby Bates -

COURT: I don't think and predicate was laid for that.

Q You were in jail all during these four Scottsboro trials?

A Yes sir.

Q Were you ever called as a witness by the State?

A No sir.

Q They let you go after they had you in jail for how long?

A Between sixteen and 20 days.

Q Do you know what Gilley's occupation was, of your own knowledge?

A No sir.

Q Did you later meet him in the State of California?

A Yes sir.

Q When you saw him in California, did you talk to him about the guilt or innocence of this defendant, or these defendants?

A Yes sir.

Q Tell the jury what Gilley said about the guilt

or innocence of these defendants.

MR. KNIGHT: We object to that.

Q Tell the jury what Gilley said with reference to what happened on the train?

MR. KNIGHT: We object to that.

COURT: Sustain the objection. You will have to put in the form of what he said.

Q Did Gilley tell you in the state of California in talking about this case, that there was no raping on that train, but that Victoria Made up the story to keep herself from being prosecuted for violating the Mann Act in crossing the state line?

COURT: I don't remember any such question as that being asked Gilley in this case.

MR. LEIBOWITZ: May Gilley be recalled so that I may ask him this question.

(Carter retired and Gilley came back to the stand).

ORVILLE GILLEY, recalled for further cross-examination.

RE-CROSS EXAMINATION.

Q Did you meet Carter in California?

A I did.

Q While on your travels for the purpose of reciting poetry?

A I met him in California.

Q Did you have a talk with him?

A Yes sir.

Q Did you tell Carter in California, after the Scottsboro trials were over, that there was no raping, that you saw no raping, that Victoria Price was trying to get you to say there was raping so that you and Carter and she would not be prosecuted for taking women across the state line for immoral purposes?

A No sir.

(Gilley retired. Carter brought back).

HESTER CARTER, returned for further examination.

DIRECT EXAMINATION-Continued.

Q When you had a talk with this fellow Gilley in California, did Hilley say to you in California that there was no raping on that train; that he saw no raping on that train; that Victoria Price wanted him to say there was raping to save herself, Gilley, Ruby Bates and you from being prosecuted for violating the Mann Act for transporting women across the state line for immoral purposes, either that in substance or in so many words, - is that what he told you?

A He told me he didn't see any raping on the train.

Q What else did he tell you with reference to Victoria Price?

A He told me he didn't want to have anything else to do with it.

COURT: That statement is not evidence, gentlemen.

Q He told you he saw no raping on the train?

A Yes sir.

Q Did he tell you what Victoria Price told him with reference to saying there was no raping, and why he should say there was no raping?

A No sir.

Q He did tell you that he saw no raping?

A Yes sir.

CROSS EXAMINATION.

Q Your name is Lester Carter?

A Yes sir.

Q You came and testified in the case of the State against Haywood Patterson, in April was it, of this year?

A Yes sir.

Q You came from New York, did you not?

A Yes sir.

Q You didn't remember the day you got here from New York, did you, the last time, in April?

A The last time I came from New York -

COURT: In April, he says.

Q When you arrived here from New York in April?

A No sir.

Q Isn't it a fact that you and Ruby Bates arrived here from New York on the same day in this court room, to testify in this case?

A Not me and Ruby Bates together.

Q Isn't it a fact that you got here in clothes bought for you by Mr. Brodsky?

A I bought them myself.

Q Mr. Brodsky furnished the money, didn't he?

A He gave me four dollars during the six weeks I was in New York.

Q Who paid for your food while you were in New York?

MR. LEIBOWITZ: We object to that. Sustained.

Q With whom did you come from New York to Birmingham on your way to Decatur last April?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

Q Can you answer?

A I came with two New York boys.

Q Did you come in an automobile?

A Yes sir.

Q Were the New York boys that you came with associated with the defense in this case?

A Yes sir, they were from New York.

Q Did you and Ruby Bates come into this court room the same day last April?

A Did I come in the court room the same day she did?

Q Yes?

A I don't remember.

Q You remember the day you testified?

A Yes sir. I know she testified the same day. I don't know whether she came in the court room the day before or not.

Q You testified that you were in the Scottsboro jail all the time during these former trials, I will ask you if you told Mr. H. G. Bailey, the Circuit Court Solicitor of Jackson County, at that time, that these girls were not in the gondola car where the fight occurred?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Repeat over that question.

Q You testified on direct examination that you were, throughout the trial of these cases at Scottsboro, in jail there?

MR. LEIBOWITZ: That is objected to.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q And that you were not called as a witness?

A Yes sir.

Q Did you tell any one that these girls, Ruby Bates and Victoria Price were not in the gondola car in which the fight took place?

A I don't remember whether I told them that or not. If I had been asked if there was a fight in the gondola car, I would have said yes.

Q You would have said there was a fight in the gondola car?

MR. LEIBOWITZ: That is objected to. Sustained.

Q Did you see Gilley in the car in which the fight was going on?

A No sir.

Q Did he go into the car in which the fight was going on, while you were on the train?

A I don't know. I know that he got out of the car, down in between the two cars.

Q You tell this jury here and now that while you were on that train and before you jumped off, that Gilley was between these two cars?

A He was climbing over the side of the train there.

Q Did he climb over the side of the train before you, or not?

A Along about the same time.

Q. Which got over the side of the train first?

A About the same time, when I was on the side next to the stirrup.

Q Did you see any of them hit Gilley at that time, or hit at him?

A Yes sir.

Q I will ask you if you didn't get off this car you were in for the purpose of getting into the fight?

A Yes, I was getting off that car to get into the fight.

Q Didn't you testify here last week in the trial of the case of the State against Haywood Patterson that you got off this car for the purpose of getting on the ground?

A I said that I climbed over on that car, on the other car for the purpose of getting into the fight, until I thought later I would get off and get out of the fight, when this negro struck at me.

Q A negro boy struck at you?

A Yes sir.

Q Prior to the fight, I believe you said that you and Victoria Price, Orville Billey and Ruby Bates were in one end of the car, did you say that?

A I said we were in a car.

Q All of you got in one car together?

A All at one time, yes sir. We were together.

Q In which end of the car were you in at one time?

A In the rear end of the car.

Q Which end?

Q The opposite end to the way we was going.

Q You now tell the jury you were in this end of the car (indicating)?

A Not exactly, - not exactly in the end, but closer to that end than the other.

Q Did you move from this end to that end (indicating)?

A No, we first got in the front end, and then we moved back.

Q How long were you in the car before you moved from the front end to the back end?

A A short time.

Q Tell me about how long?

A Three or four minutes.

Q You got in the front end immediately upon leaving Stevenson?

A Before it left Stevenson.

Q Then you moved to the back end of the car?

A Later, yes sir.

Q Isn't it a fact that Victoria Price and Ruby Bates were in one end of the car, and you in the other?

A No, we all moved to the other end of the car.

Q You were all together?

A Yes sir.

Q I will ask you if you didn't testify here on the former trial in Decatur, that you and Orville Gilley were in one end of the car and Victoria Price and Ruby Bates were in the other end?

A I said we walked about in the car.

Q I will ask you, when you testified here in Decatur the last time, you were not asked this question: "They got in the back end of the gondola car and had a seat?" and if you didn't answer: "They got in the front end of the gondola car and Gilley and I remained in the back end" - were you asked that question, and did you make that answer:

A I don't remember whether I was asked that question or not.

Q Do you remember that you answered that they got in the front end and that you and Gilley remained in the back end?

A I don't remember.

REPORTER: Where is that?
MR. KNIGHT: Page 609.

Q I will ask you if you were asked this question:
"You and Gilley got in the other end and the girls got in the
other?" -

A I don't remember.

Q I will ask you if you remember answering that: "Yes
sir".

A I believe I do.

Q You did say "Yes sir"?

A Yes sir.

Q Is that a fact that you got in the car all together?

A We was in the same car and in a sense we was together, - we was in talking distance.

Q You were playing a mouth organ, or harmonica?

A Yes sir.

Q What was Gilley doing?

A He was singing.

Q When the girls got in the car, were you not all laying down, lying on your elbows, so as to be as comfortable as possible?

A Yes sir.

Q I believe you got up and moved down the car towards the rear end of the train?

A I think that Gilley and I were lying somewhere near the middle of the car, and the girls down at the rear end of the car. I wouldn't say. I can't recollect now, but

somewhere near that end of the car.

Q The car was loaded with what?

A I don't know what it was loaded with; some kind of small stone, ground up.

Q How close to the top was the car filled?

A I would judge around two or three feet of the top.

Q Could you stand where you were in the car and see the negroes in the next gondola car?

A Not at the time; this car joining our car was loaded.

Q What with?

A Coal, I believe.

Q How close to the top of the car was it loaded?

A I wouldn't say. I wouldn't try to estimate how high up it was loaded, but it was a loaded car.

Q No one came into the coal car?

A Later there was some white boys and negro boys in there fighting.

Q Was that car loaded right up to the top?

A I wouldn't estimate how close to the top it was loaded.

Q How do you know that it was loaded?

A I remember seeing stuff in there, coal.

Q Was it coal or was it chat?

A I think it was coal.

MR. KNIGHT: We move to strike out what he thought.

COURT: What he "thought" is not evidence.

Q According to your best judgment, it was coal?

A Yes sir.

Q How many white boys were there in the car?

A I don't know; I noticed some white boys and some negro boys.

Q Were they in that car when you left Stevenson?

A No sir.

Q You saw them come into that car fighting?

A Yes sir, when the first come up I looked that way.

Q Did the white boys come in first, or the negroes?

A I think the white boys came in first. We heard them hollering and got up and seen there was a fight.

Q Any of the colored boys have anything to say to you?

A No sir.

Q Nothing at all?

A No sir.

Q The one that struck at you, did he have anything to say to you?

A No sir.

Q Did you see them come into the gondola where the girls were?

A No sir.

Q You don't know whether they did or didn't?

MR. LEIBOWITZ: We object to that because he can only testify as to what he saw.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q At the time that you got up to go into the car or on to the car where the fight was taking place, come here and show the jury the position the girls were in?

A Where the girls were?

Q Yes?

A In my judgment they was somewhere along there (indicating), the end there; I climbed up this side so that I could get off this car and get into the fight.

Q You say that the girls, in your best judgment, were right along here (indicating)?

A Yes sir.

Q That is what we have been speaking of as a gondola car?

A Yes sir.

Q Was it this type (indicating) or of this type? (indicating)

A This (indicating) was more of the type of gondola, more higher as I recall. I don't remember a partition being in there.

Q You do remember that it was practically full, up to two or three feet of the top?

A Yes sir.

Q You do know that the girls were in one end and moved over to the other end - didn't that occur about the time you crawled over to get into the fight?

A No, that was before.

Q How long before?

A Maybe five or ten minutes. We were down there playing our harps.

Q Any people in the joining car there then?

A No sir. When we heard that hollering, the called to us and said "You boys said you was going to help" and we started to climb out.

Q You and Gilley got up and started to climb out?

A Yes ~~MAN~~ sir.

Q Do you know whether or not the girls saw the negroes?

MR. LEIBOWITZ: We object to that. Sustained.

Q When you get on this car for the purpose of joining the fight, did you look back into this car?

A No sir.

Q Do you know where Gilley was?

A Gilley was here when I got up. I don't know where he went after that.

Q Gilley started into the car where the fight was?

A He started out of the same car that I was leaving.

Q Did you see any of these negroes put their hands on Gilley?

A No sir.

Q You saw Gilley in California?

A Yes sir.

Q You started off with having supper with him in a

restaurant?

A Yes sir, he asked me to eat with him. I refused to do that. I took a cup of coffee, and then we got a room.

Q You all took a room together?

A Yes sir.

Q You got in jail that night, didn't you?

MR LEIBOWITZ: We object to that. Sustained.

Q Did you see Gilley any more after you had a cup of coffee?

A Yes sir, we went up to where we got a room at the Nix Hotel on Market Street, on a side street. I said I would go out and see if I could make a pick up, and would come back later. I didn't go back, and next morning I left out.

Q What do you mean by "pick-up"?

A Pan-handling for money.

Q You do know this about this case, that there were white boys thrown off this train?

A I don't know that any white boys were thrown off. I know that some of them got off.

Q You got off?

A Yes sir.

Q When you got off the car in which the girls were, you got off for the purpose of getting into the fight, but you did not get into the fight?

A No, I got off the train without getting into the fight. A negro struck at me and I got off.

Q What did he strike at you with?

A With his fist.

Q Was it that defendant?

A I don't know what negro it was.

Q Did you ever see that defendant before today?

A Not that I remember of.

Q Did you see him at Scottsboro?

A Not that I remember of.

Q Did you see all the boys that were taken off the train?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A No sir, I didn't see all the others.

Q Were they on different floors or on the same floor of the jail?

A I don't know that they were. I know how many was where I was.

COURT: You mean negroes or whites?

Q Whites. - Were there any of the colored boys on your floor?

A No sir, not that I know of.

Q Did you testify before the grand jury at Scottsboro?

A No sir, I didn't testify before anybody.

Q You did see Gilley get off the car in which the

girls were?

A I saw him get up on the side of the car like he was going in the other car; I thought he was going to do what I would do.

Q Did you go back to Stevenson with some of the boys?

A I went back to Stevenson and talked to a deputy.

Q How did you get to Scottsboro?

A I was taken by automobile.

Q Did anybody get any water to wash up when they got to Stevenson?

A Not that I know of.

Q Did you see any blood on any of the boys?

A Yes sir.

Q Did they wash it off?

A Not that I know of.

Q Did you see Mr. Woodall at Stevenson?

A Not that I recall.

REDIRECT EXAMINATION

MR. LEIBOWITZ:

Q Did anybody ever ask you to testify, any solicitor take you before the grand jury and ask you to testify?

A No sir.

Q Anybody ask you to testify in the Scottsboro trials?

A Not no solicitor.

Q Were you taken out of the Scottsboro jail by some-

body over to a drug store?

A No, I was taken from the witness room to a drug store.

Q Tell us what happened at this drug store?

MR. KNIGHT: We object to that.

COURT: I sustain the objection.

Q Did you tell anybody what you knew of the case in Seottsboro, anybody?

A Yes sir, I talked to some fellows there, several different fellows.

Q Did you tell them what you are telling here today, what you knew about this case?

MR. KNIGHT: We object to that.

COURT: I sustain the objection.

MR. LEIBOWITZ: We recpt.

Q You were asked about the stone, you said that it was crushed rock, will you show on your fingers, if you remember, how large was the largest piece, and how small was the smallest one, - show us on your fingers?

A It was very small is the way I would estimate it. I don't know how large they were.

Q Did you see stone between the railroad ties on the railroad?

A Cinders.

Q I am not asking you about cinders, I am asking about stone, you have been tramping the railroad a good many years, haven't you?

A No sir.

Q You have been riding freights a good many years, haven't you?

A No sir.

Q Did you ever see stone put between railroad ties?

A Not that I remember of.

Q If you rested your fore-arm on that stone, just your fore-arm without any cover, was the stone large enough and sharp enough to cut the skin?

MR. KNIGHT: We object to that.

COURT: Sustain the objection.

Q Was it rough stone, or rounded stone, or what kind of stone was it?

A It was rough stone. It was mostly shells broken up; shells from the river, or something like that; just small chips of stones.

DEFENDANT RESTED.

LUTHER MORRIS, sworn on behalf of the State, testified:

DIRECT EXAMINATION.

Q This is Mr. Luther Morris?

A Yes sir.

Q Do you reside between Stevenson and Paint Rock?

A Yes sir.

Q How far from Stevenson?

A Mile and a half.

Q On March 25, 1931, did a freight train pass by

your house?

A Yes sir.

Q Were you in your barn that day?

A Yes sir, I was up in the barn loft.

Q Looking from Stevenson towards Paint Rock, which end of your loft were you in?

A The west end, towards Paint Rock.

Q When the train passed by did you look at it?

A Yes sir.

Q Were there any gondola cars on that train, cars sorter like the cars look on this train? (Indicating miniature train)

A Yes sir.

Q Did you see anything on any of those cars?

A Yes sir.

Q Tell the jury what you saw?

A Well, I saw what looked to me like about seven or eight negroes, and there was six white boys, for sure, and I seen three of them that was thrown off, and two white ladies. They would have jumped but the negroes held them back.

MR. LEIBOWITZ: We move to strike that out.

COURT: That part where he said they would have jumped but the negroes held them back is not evidence.

Q What did you see the white women do?

A I seen them scuffling; trying to get out of the

cars.

MR. LEIBOWITZ: We move to strike that out. Sustained.

Q Just exactly, as near as you can, tell us what was the position of the girls?

A They were in the car, all fightin' and scuffling.

Q That was the girls?

A It looked to me like they was trying to get out of the car -

COURT: Don't say what they were trying to do. Just tell what they were doing and the jury will determine what they were trying to do.

A (Continued) I heard a noise as they come on and I saw them in the car fightin' and scufflin'.

Q I will ask you if you saw one, or either of the girls in a position right at the top of one of these cars?

A Yes sir.

Q What did you then see happen?

A Well, I saw them put three of the white boys off.

COURT: He is talking about when you saw the white girl on the top of the car there?

A (Continued) I seen something going on very serious.

Q Did you see anybody touch these girls?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A Yes sir.

Q Did you see anybody put their hands on either of the girls?

MR. LEIBOWITZ: We object to that.

COURT: Overrule the objection.

MR. LEIBOWITZ: Exception.

Q That was about what time of day?

A Between twelve and one o'clock.

Q Did anybody pull these girls back in the car?

COURT: That is too leading, Mr. Attorney General.

Q What did you do when you saw somebody put hands on these girls?

A I quit watching.

Q What happened when you quit?

A I seen them throw off two or three white boys from the time the train got even with my barn down to the lower end of the switch, maybe two or three hundred yards from me.

Q Did you see anything done to the girls at that time?

A Nothing only they had hold of the girls.

Q (By court) Who had hold of them?

A The negroes.

Q How long did you see that train, how far could you see it from where you were?

A Something like half a mile.

Q Do you remember what time of day that was?

A Not exactly; between twelve and one o'clock tho'.

CROSS EXAMINATION

MR. LEIBOWITZ:

Q You wear glasses?

A Yes sir.

Q Because your eyes are bad?

A Yes sir.

Q You started wearing glasses right after this thing happened?

A No sir.

Q How long after this happened?

A I have been wearing glasses about two years.

Q It hasn't been even three years since this happened, you know that?

A No sir.

Q You started wearing glasses how many months after this happened?

A I don't remember.

Q Two or three ~~six~~ months?

A I don't remember when I bought my glasses.

Q Would six months be a fair estimate?

A I don't remember.

Q Your eyes had been getting bad on you for how long?

A For some time.

Q Had your eyes been getting bad for two years?

A No sir.

Q Your eyes hadn't been getting bad, but you bought glasses?

A No sir.

Q You got the glasses because your eyes were bad?

A Yes sir.

Q That was about two years after this?

A I have had my glasses something like two years.

Q Some time prior to that time you had been feeling that you needed glasses?

A Yes sir.

Q How long before you got the glasses, did you feel the need of glasses?

A I didn't pay that any attention. I was filing saws.

Q Because of your duties, your eyes had been gradually getting bad a few years before you got the glasses?

A No sir.

Q You put it off until you had to get glasses in order to see?

A My eyes got so I couldn't read fine print and I got them on that account.

Q There is something the matter with your hearing too, isn't there?

A No sir.

Q This train, when it passed your place, makes a lot of noise, clanking along the tracks?

A Yes sir.

Q The wheels clanking against the rails?

A Yes sir.

Q The couplings between the cars, and the cars themselves make quite a noise?

A Yes sir.

Q The engine makes a noise as it puffs along there?

A Yes sir.

Q Any whistle blow along there?

A No sir.

Q You say you were how many feet from that train?

A It is 50 feet from the right of way fence.

Q They were crying when you heard them?

A Yes sir.

Q Or did you imagine it?

A I heard them crying out.

Q You saw a bunch of negroes on that car all scuffling around?

A Yes sir.

Q The car was pretty well crowded, wasn't it?

A Yes sir.

Q They were all crowded around in the gondola?

A All over it.

Q All crowded in the gondola scuffling and wrestling around, - you say that train was going 35 to 40 miles an hour at that time?

A I think so.

Q That's pretty fast moving for a freight train?

A Yes sir.

Q You got a glimpse of the car as it came by your
barn?

A Yes sir.

Q Of course as the train proceeded further, the

further that car went down the line, with the condition your eyes were in, the more indistinct these figures got?

A Yes sir.

Q You watched them put another white boy off?

A Yes sir.

Q As the train passed you, they put two of the white boys off?

A No sir, they put off three even with my house.

Q Did you see the white boys get off at all?

A Yes sir, three.

Q Did you see the white boys before the train came in view?

A No sir.

Q You saw the boys being put off?

A Yes sir, I seen three.

Q How many were put off on one side and how many on the other?

A Three were put off on the right hand side coming this way.

Q When they were put off, the negroes were ^guffling around in the car?

A Yes sir.

Q It took some time to put these men off?

A A very few minutes.

Q The train was going about 30 miles an hour?

A I don't guess it was two minutes.

Q The train was going about thirty miles an hour, you reckon the train covers a mile in about two minutes?

A Well, they put two off, you see -

Q Would you say that a train going 30 to 40 miles an hour, would cover a mile in about two minutes?

A I don't know that.

Q If, as you say, that it took two or three minutes to put the white boys off, isn't it a fact that the train would cover about a mile and a half before the last boy was put off?

A I don't know.

Q Wasn't it a mile and a half up the road before the law boy was put off - let me ask you this, do you know where Lee Adams was working that day?

A No sir.

Q Suppose I tell you that Lee ~~KEMER~~ Adams was working a mile and a half down the road, and he saw one of these put off, would you be inclined to change your testimony as to what you saw?

A No sir.

Q All of these whites and blacks were dressed in dirty clothes?

A Yes sir.

Q All dirty looking?

A Yes sir.

Q Looked like hobos riding a freight train?

A Yes sir.

Q The girls have on over-alls?

A Yes sir.

Q You sure of that - that they had on overalls?

A Yes sir, looked like overalls.

Q You saw the overalls?

A Yes sir.

Q Had nothing on top of the overalls?

A No sir.

Q Do you know whether or not either one of the girls had on a cloak, a woman's cloak?

COURT: He means by that, do you remember whether either one had on a woman's coat?

A I don't remember seeing that. It has been so long ago.

REDIRECT EXAMINATION.

Q You didn't see any coat on these women?

A I don't think I did.

Q What you mean to tell us positively is that the women did have on over-alls?

A Looked to me like they had on overalls.

Q You know the difference between a pair of overalls and a woman's coat?

A Yes sir.

Q You couldn't make a mistake about that, could you?

A No sir.

RECROSS EXAMINATION

MR. LEIBOWITZ:

Q Mr. Morris after you saw what you claimed you saw, did you leave your left and go down stairs?

A Yes sir.

Q Then did you go to any telephone and communicate with the law that two women were being attacked?

A No sir.

Q Just stayed at home and said nothing?

A Yes sir.

COURT: The witness that just left the stand was examined out of order, and if the defendant desires, I will let them re-open their case, so far as this witness is concerned, if they desire to offer any rebuttal.

W. A. SULLIVAN, sworn for the defendant, testified:

DIRECT EXAMINATION.

MR. LEIBOWITZ:

Q You live in Decatur, Alabama, do you Mr. Sullivan?

A Yes sir, on Seventh Avenue, East.

Q How long have you been a resident of Decatur?

A About seventeen years.

Q Your business is that of a photographer?

A Yes sir, general photographer.

Q Did you, at my request, go with Mr. Schwartzbart to a place near Stevenson, Alabama, belonging to the witness who just preceded you on the stand, Mr. Luther Morris?

A Yes sir.

Q Did Mrs. Morris give you permission to go up and make some pictures ~~in~~ in the barn there?

A Yes sir.

Q I show you a picture, and ask you if that is a correct view that you got out of Mr. Morris' left looking towards Paint Rock?

A It's looking more to the north, than toward Paint Rock.

Q How far from that window was your camera lens?

A About eighteen inches.

Q Got it up as close as you could in order to show that cross-piece?

A Yes sir.

Q There is a 2 X 4 across that opening there?

A Yes sir.

Q That is shown on the picture by the black strip?

A Yes sir.

Q How high was the lens from the floor?

A This 2 X 4 was about this high (indicating) and the lens was set to catch that.

Q Was the lens ~~positioned~~ practically on a level with your eyes?

A Hardly in this case, about my chin, I would say.

Q What kind of car is that shown on the picture?

A Gondola.

Q Is that gondola car you see on that lower than the one you see there in green, this third car from the engine on this little miniature train?

A I can't answer that.

Q In other words, this type of gondola (referring to car in miniature train), is higher than the type of gondola

you see on that picture, isn't that so?

A I can't answer that.

Q Was it a type of car like these little red ones here?

A Yes sir.

Q When you looked out of that window, was the level of the window higher or lower than the top of that car?

A Lower.

Q Could you see any part of the inside of that car as you looked out of that window?

A No sir, not any part.

Q Was the view that you got out of that window the nearest view you could get along that railroad?

A Yes sir.

Q That was the nearest point of vision?

A Yes sir, that was the nearest point of vision when inside of the barn.

Q Of course, as a train goes towards paint rock, it gets out of sight the further away it gets from the point of vision?

A Yes sir.

(This was picture No. 6)

Q While the jury is looking at that picture, I show you another picture, and ask you if that is a picture that you took and what you could see through your camera, looking down the railroad at the same point?

A Yes sir.

Q To see all you could see?

A Yes sir. In this picture the lens was five or six inches higher than it was on the other picture.

Q In other words this eliminates the cross piece and takes in more territory?

A Yes sir.

Q Now this picture shows a view of that track further down the line?

A Yes sir, with the camera sitting on the floor.

Q Now this picture, defendant's Exhibit No. 7, that is looking towards Paint Rock?

A Yes sir.

Q This picture ~~was~~ shows what, Mr. Sullivan?

A This picture was looking west, showing the barn and the car standing on the track.

Q That shows the relative height of the two?

A Yes sir.

Q Which is the higher and which is the lower?

A Yes sir.

Q That is a true picture?

A Yes sir, as nearly as it can be made.

(This was picture No. 8.)

Q This picture, does it show the difference in height between the top of the barn and the railroad, - which is the higher?

A Yes sir.

Q I show you a closer view of the gondola and barn, is that a correct picture?

A Yes sir.

Q Showing the form of one of the gondolas?

A Yes sir.

Q Tell the jury whether or not the top of the barn is lower than the gondola on that side track?

A It is.

Q That hay left, how high is that over your head when you are standing along in here (Indicating)

A I don't remember about that.

Q Was there some distance between your head and the left?

A Yes sir, some distance.

Q It was certainly much lower than the gondola?

A Yes sir, it was lower than the gondola.

Q Do you know how high the gondolas are on the track?

A No sir.

Q Do you know how high the embankment is that is shown on the picture?

A No sir.

CROSS EXAMINATION.

Q Mr. Sullivan you don't know what tupe of gondola was on the railroad track in March, March 25, 1933?

A No.

Q You wouldn't attempt to say that the cars there are the same kind of cars?

MR. LEIBOWITZ: We object to that.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

A No sir.

Q Here is a picture that I am showing you, that shows only a portion of the track; shows one gondola complete, and the part of another gondola, I will ask you what part of the barn that was taken from?

A That was taken from the west end of the bar. The barn sets east and west, and the railroad runs west.

Q Taken across the track, rather than down the track?

A Yes sir, looking a little northwest.

Q This is one taken down the track?

A Yes sir, taken down the track.

Q If you were watching the train down the track, that is the view you would get?

A Yes sir.

REDIRECT EXAMINATION.

MR. LEIBOWITZ:

Q You said the other position, this view here, was the nearest one you could get, taken through that window?

A That first picture we had, yes sir.

Q That is the nearest and closest view?

A Yes sir.

Q After you took that picture, then you turned your camera to see what you could see down the track?

A Yes sir.

EMIL M. SCHWARTZBART, sworn for the defendant, testified:

DIRECT EXAMINATION.

MR. LEIBOWITZ:

Q You are an attorney, are you?

A Yes sir.

Q Are you assisting the defense in this case?

A Yes.

Q Did you, at my request, go with Mr. Sullivan, the photographer of Decatur, to Mr. Luther Morris' place and make some pictures out there?

A Yes sir.

Q That was about the time of the trial before Judge Horton?

A Yes sir, about the time.

Q Did you get up in that hay loft?

A Yes sir.

Q Did you get up in there to see what you could see looking towards Paint Rock?

A Yes sir.

Q Did it so happen on that day that these cars were standing on the siding?

A Yes sir.

Q You didn't ask that these cars be put there?

A No, I didn't ask; they were there already.

Q Were they cars similar to ~~these~~ these? (Indicating)

A Yes sir, more or less; had straight sides.

Q As a matter of fact were these cars, wasn't they more of the type of this car here (indicating) with higher sides?

A Definitely higher than those on that section of the miniature.

Q How much lower than the roof of a box car, would you say the side of the gondola would be?

A About two feet; I don't think any more.

Q But they were higher than these?

A Yes.

Q I want to ask you this, when you look out the opening, is the level of your eyes higher or lower than the gondola you saw on that track?

A Quite definitely lower.

Q Isn't it a fact that the top of the roof of the barn is definitely lower?

A The peak of the barn is definitely lower than the top of the gondola car.

DEFENDANT RESTS.

W. E. BRANNUM, recalled by the state, in rebuttal, testified:

REDIRECT EXAMINATION

Q Your name is W. E. Brannum?

A Yes sir.

Q You live at Paint Rock, do you?

A Yes sir.

Q Did you, today, in company with Mr. W. H. Hill,

at the request of Mr. Knight, make certain measurements in regard to distances, between the station and the coal chute, and between the station and the water tank, at Paint Rock?

A Yes sir.

Q You testified here the other day, did you not?

A Yes sir.

Q At that time you had made no measurements?

A No sir.

Q The statements you made to the jury, were just your best recollection?

A Yes sir.

MR. LEIBOWITZ: We object to this testimony because it is not in rebuttal, but new matter.

COURT: Overruled.

MR. LEIBOWITZ: Exception.

Q Did you and Mr. Hill measure the distances between these places?

A Yes sir.

Q Did you, with the use of a steel tape, place it along the rails of the track?

A Yes sir.

Q Then, in your presence did Mr. Hill write down on a piece of paper the distances shown between these points?

A He did.

Q There has been a new station or depot built at Paint Rock since this happened in March, 1931?

A Yes sir.

Q Give us the measurements that you made and have on that paper from both the old and the new?

COURT: Suppose we deal with the old.

Q All right sir, what is the distance between the coal chute and the old depot?

A 804 feet.

Q The distance between the old depot and water tank?

A 301 feet.

Q What is the distance between the maintenance house and the coal chute?

A 680 feet.

Q I believe you testified, did you not, that when you saw Mrs. Price step off the train and fall to the ground, you were standing between the water tank and the maintenance house?

A Well, somewhere right along in there, not far from the water tank. I can't say exactly how far it was.

COURT: I don't see any use in your taking up time on that.

RE-CROSS EXAMINATION

MR. LEIBOWITZ:

Q You know that the telephone poles along that road are about 100 feet apart, you know that is the invariable rule, don't you?

A How is that?

COURT: He wants to know if you know whether

you know they put telephone poles along on the road 100 feet apart - do you know whether that is so or not?

A I wouldn't think it was.

Q More or less?

A I would think it was something less.

Q How many feet is it between the water tank and the coal chute?

A Do how - between the water tank and the coal chute?

Q Yes?

A Well, between the water tank and the coal chute, - you mean the old depot?

Q Have they ever moved that coal chute?

A No sir.

Q Have they moved the water tank?

A No sir.

Q How what is the distance between the water tank and the coal chute?

A The distance between the water tank and the coal chute - it is 301 feet from the depot to the water tank.

Q Look this way, please, I want to know, the place where the engine stopped on that track at the coal chute, would the water tank be on the other side of the track 301 feet from the coal chute?

A No.

Q Is the coal chute 301 feet from the water tank?

A From the coal chute to the depot -

COURT: Wait a minute, just listen to me. He wants to know the distance between the coal chute and the water tank?

A The coal chute and the water tank?

COURT: Yes the coal chute and the water tank?

A 301 feet.

COURT: Did you make those figures?

A No sir, Mr. Hill made them in my presence.

COURT: All right, if you can, tell the jury the distance between the coal chute and the water tank?

A I said it was 301 feet.

REDIRECT EXAMINATION.

Q Have you anywhere on there the figures showing the distance between the coal chute and the water tank, and do you have figures showing the distance between the station or depot to the water tank?

MR. LEIBOWITZ: We object to that. The witness has already on direct examination given the figures.

COURT: How far is it, when you measured it, from the old depot to the coal chute?

A 504 feet.

Q How far was it from the old depot to the water tank?

A 301 feet.

RECROSS EXAMINATION.

Q This maintenance house, that has not been changed?

A No, no change in the maintenance house.

Q The water tank has not been changed?

A No.

Q I want to know when you came around in between these cars you speak of, whether or not you saw these girls in calico dresses?

A Well, that is what I took it to be.

THIS WAS ALL OF THE EVIDENCE.

WHEREUPON, after argument, the court charged the jury as follows:

Gentlemen of the Jury:

In March 1931, the grand jury of Jackson County returned into the circuit court of that county, an indictment, the substantial parts of which read as follows: "The grand jury of said county charge that before the finding of this indictment, Haywood Patterson, Eugene Williams, Charley Weems, alias Charles 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." By due process of law that charge has been transferred to the circuit court of this county, and it is to be dealt with here just as if it had been found in this county. You will notice that it charges this defendant, along with

other parties therein named, with this offense. Now, that was legal and proper, but only one is on trial here, and that is Clarence Norris, so what has happened, or what may happen to the others is no concern of yours, and you give that no consideration in examining the testimony and in arriving at a verdict in this case. This is not a suit by Victoria Price against Clarence Norris. On the contrary, it is the case of the State of Alabama against Clarence Norris. The State of Alabama, through its grand jury in Jackson County, charges that this defendant, before the finding of this indictment, did rape Victoria Price, - so Victoria Price is a witness in this case, and not a party thereto. You notice it just says, "did ravish Victoria Price". The crime here charged is what is known in law as rape. Rape is defined as being the carnal knowledge of a woman forcibly and against her will. The offense is complete when the woman is made to yield through fear, and does not voluntarily or consciously consent. If the man, - the defendant here, - intentionally and for the purpose of accomplishing his unlawful purpose, put her in fear of injury or violence to her person, and she yields on account of these things, he is guilty of rape. When a female is not an imbecile or is not rendered unconscious or bodily weak by the administration of drugs or other substances, force is an essential element of the offense of rape. Now, force is either actual force or constructive force. Actual force may be the direct application of force upon the person of the party assaulted. That is actual force. It may be constructive force. That has to do with the mind of the party assaulted. If her acquiescence is obtained

through duress of mind, or by putting her in fear, that would be constructive force. If the act was committed by force, actual or implied, - that is constructive force, - and against the consent of the woman it is rape without regard to whether the defendant put the prosecutrix in fear of her life or fear of great bodily harm in his accomplishment of his unlawful purpose. The question is, did he, by his unlawful acts put the party in fear, and did she submit by reason of such fear? Consent or acquiescence obtained by duress or fear of personal violence, will constitute no defense; the law regards such submission as no consent at all. If the woman is over-powered by the display of physical force, through force expressly made or implies, and because of her surroundings, and she ceased resistance through fear of great bodily harm, the consummation of the act, the unlawful intercourse by the man, constitutes rape. The offense is complete when the woman is made, or caused to yield through fear, and does not consent voluntarily, whether the apprehension of bodily harm is reasonable or unreasonable. While the law arms a woman who is assaulted by a man with intent to ravish her with the legal right to stand her ground, and if necessary, kill her assailant to protect her person from the gratification of his lust, the law does not compel her to do so. The question is, did she submit voluntarily, or was it through fear, as I have tried to explain that to you? All the circumstances surrounding the commission of the alleged crime are to be considered by you, and whether the prosecutrix does or does not repel force by force, or resist her assailant to the utmost. If

the act of penetration is accomplished by force, either actual

or constructive, as I have defined it to you, that is with force and against the will of the prosecutrix in this case, Victoria Price, the defendant is guilty of rape. In considering the question of force, whether it was sufficient to put the woman in fear of personal violence, of course it is proper for you to consider where it was, her surroundings, her ability to extricate herself from the impending danger, the size of the woman, the size of the man, and if he is aided and abetted by others as I will undertake to define to you later. The number confronting her on the occasion is also to be taken into consideration as to whether or not she resisted. Now, gentlemen, the act, of course, must be done without her consent. Of course, there can be no rape if the female charged to have been raped, consented to it. That is one of the elements of the offense. In this case, though, gentlemen of the jury, there is no claim, as I understand it, on the part of the defense that the intercourse was consummated by the consent of the prosecuting witness, Victoria Price, but on the contrary, his defense is that he had nothing to do with the whole matter with reference to the rape, or alleged rape, and had no intercourse with her whatever. The rule is that in prosecutions for rape, evidence of prior unchastity, as a substantive defense, is inadmissible for any purpose, denying the rape. Where, however, the defense rests on the fact of consent, the character of the prosecutrix for prior unchastity is competent evidence as bearing on the probability of her consent to the act with which the defendant is charged and the likelihood of her not resisting the advances of any man, on the ground that it is more probable that an unchaste woman would con-

sent to such intercourse than one of strict virtue. As I said, there is no claim of consent here, and where there is no claim of consent, then, gentlemen of the jury, the question of her chastity or unchastity is a wholly immaterial issue in the case, -or whether or not she has been engaged in similar conduct, or one from which it can be inferred, is wholly out of place and wholly inadmissible. Gentlemen of the jury, that is the law in Alabama, and it seems to be the law in Connecticut, in Massachusetts, in Michigan, in New Hampshire, in Ohio, in Vermont, and in New York, with a number of other states scattered over the Union, as well as the stated law of the text writers on criminal law. According to the law of this state, and a large number of other states in this Union, the impeachment of the character of the prosecutrix with respect to chastity must be confined to evidence of general reputation, and she cannot be examined as to particular acts of intercourse with other men, or that fact be otherwise so proven. So, gentlemen, the character of this woman for chastity is not in issue on the question of consent, and it has not been put in issue, because there has been no attempt to show that she is a woman of unchastity according to the rules prescribed for making such proof under the law of this state, and the other states I have just mentioned. So all argument, or suspicion set forth, or attempted to be set forth here, should not be considered, and must not be, on the question of her character as shedding light on the question of consent, because consent is not in the case. The law forbids rape, and that law is made for all, and intended to protect all, and will protect all women, regardless,

less of their standing in society, or their past acts, or their station in life, or race or color, and I am not raising the color line there. I am trying to tell you what the law is. It is intended for all, and if it does not reach out and protect all, it would not be a law that would appeal, or entitled to appeal to the sense of justice of mankind. Now, gentlemen, there are some other principles of law on which it is necessary for me to instruct you, in order for you to apply it in the consideration of the contentions of the parties. One is what is called the law of aiding and abetting. It is not necessary for me to undertake to give you the legal, technical definition of these words, but I can tell you in general terms what it means. It means this: that all parties who intentionally assist, encourage, or participate in the commission of a crime are just as guilty as if they had committed the crime themselves. To illustrate: If some party comes to you and tells you that he wants to break into a store in this town and wants to borrow your tools with which to break in, and you lend them to him for that purpose, and he breaks into that store with the tools, you are a burglar, and you are just as guilty of breaking into that store as if you had been there by yourself and had done it by yourself. That is true of any other crime. And further, and more on that subject. If you stand by while a crime is being committed by another or others, and you stand by for the purpose of giving aid, or encouragement by your presence, and that purpose is known to the party or parties committing the offense, and your mere presence does encourage him, and the act is done, then, gentlemen, you are an aider and abettor,

and you are just as guilty as the party that committed the act. There is another principle of law involved in this case, and that is what is known as the law of conspiracy, and that is this, where two persons, or more, either by pre-arrangement, that is by prior agreement, or done in an emergency entered into for the common purpose of committing a crime, each is a conspirator, and if the purpose is carried out, each is guilty whether he did the overt act or not. Now, this conspiracy does not have to be proven by positive evidence, but its extent and its intent are to be determined by you from the conduct and attitude of the parties at the time. A very wide latitude is allowed in proving a conspiracy. It extends to every thing that is said; everything that is done by any one of the conspirators in the execution or furtherance of the common purpose, and where there is a prima facie conspiracy established, any act or declaration on the part of the co-conspirators in connection with and in furtherance of the common purpose is admissible. That is the law, gentlemen by which this case is to be tried, and the state must produce evidence of a type that is sufficient to satisfy you beyond all reasonable doubt of the defendant's guilt. Now, when the state read this indictment to you in this case, the defendant pleaded not guilty. Gentlemen, when he did that, that was a denial of every material element and ingredient of the offense. When he puts in that plea of not guilty, the law tells him that he can sit down and that he needn't offer any evidence at all, and when he puts that plea in, the duty shifts to the state to prove the offense charged, and every essential element embodied in it, by the evidence in the case,

beyond all reasonable doubt, in your minds. The law protects a defendant that is haled into court under a charge, and it guarantees to him a fair and impartial trial, and says to him, that he cannot be convicted until the evidence in the case satisfies you beyond a reasonable doubt of his guilt, and when it says that, it says it to all men. It does not make any exceptions, as to who he is, where he lives, and it doesn't make any difference whether he is a citizen of Alabama or any other part of the world. The law guarantees that to him and he is entitled to it, and that is true, regardless of his station in life, or of his ignorance, or of his intelligence, or of his race, or of his color. That is the law, not only in Alabama, but that is the law wherever the English speaking race rules. So solicitous is the law for an accused, that it declares that he is presumed to be innocent until his guilt is shown by the evidence beyond all reasonable doubt. That presumption is furnished him by the law, in the entire case, and that presumption enters the trial with him, and it protects him and abides with him throughout the entire trial, and all the way through it, to a point where the evidence, if it ever does, satisfies the jury beyond all reasonable doubt of his guilt. It is a presumption, however, and like all presumptions, and all evidence for that matter, it is open to contradiction. As a presumption it is open to being answered, overcome or explained, and as a presumption it is answered and it is overcome whenever from the evidence, all the evidence in the case, you are satisfied beyond a reasonable doubt of his guilt. In all cases, gentlemen, and in this case, there are two questions

under consideration. The first one is, was there any offense committed as charged in the indictment. That is the first thing you have to consider, because if there wasn't any offense committed, - if there wasn't any rape committed, - and you are not satisfied of that beyond a reasonable doubt, from the evidence in the case, then your duties would end there, and you would go no further, because if the law has not been violated, there is nothing else for you to do but bring in a verdict of acquittal. But, gentlemen, if after an examination of all the evidence in the case, you are satisfied beyond all reasonable doubt that Victoria Price was raped in this case, as I have defined that to you, then you take up the evidence and determine whether or not, - did this defendant commit it, or did he abet, - aid and abet another in its commission, as I have defined it to you, or did he enter into a conspiracy with others to commit the crime. That is what is called connecting the defendant with the offense. Now, in dealing with that phase of the case, the law requires that you must believe that from all the evidence beyond a reasonable doubt. Now, in considering the case, gentlemen, the law says that you must do it on the evidence. No verdict can be ~~made~~ arrived at, either for conviction or acquittal, based on suspicion. The state cannot make out its case that way, nor can suspicion be thrown into the case, or considered for the purpose of creating a reasonable doubt in your minds. It is just not to be considered for making out a case against the defendant, or for acquittal, because that is not evidence. In this case the evidence consists of witnesses appearing in court and taking the oath and testifying, - and

testimony we call that. There is also evidence here that is documentary in its nature. Some of it has been offered in evidence, as I recall it, by what certain of the witnesses swore at some former trial of this case; that is, part of it has been offered; that has been admitted or shown to be the official transcript of the evidence in these former cases. That is to be examined and weighed just as if the witnesses appeared on the stand and testified as to the evidence set out. Then, there is a deposition in the case. That is, where a witness is absent the law allows the parties to file what we call interrogatories, propounding certain questions to the witness. That has been done here, and the opposite side has the right to propound what the law calls cross-interrogatories, that is, written questions by the other side addressed to the same witness, for the purpose of taking the deposition. When that deposition comes into court and is read to you, it has the same legal effect as if the witness had appeared here and testified from this stand to the facts stated in the deposition and must be considered by you in that way. It is as much entitled to your consideration and credence as if the witness had been in court and said the things therein set out. Now, gentlemen, there is what the law knows as direct evidence and indirect evidence, or more often called circumstantial evidence. Direct evidence is where a witness is brought into court and testifies what they saw and what they heard, - either orally or by deposition, - or what was said on the other trial. That is direct evidence. Indirect evidence is a very different kind of evidence. It is not so easily defined, how-

ever, as it is to illustrate it. Of course, what you are to try and do with circumstantial evidence is apply your common sense, your past experience in life, your observation of men and affairs, and you are to give consideration to the positive evidence so as to draw a reasonable conclusion from what has been said from the witness stand, in order to ascertain whether or not the thing that is sought to be proven could reasonably follow, or failed to follow from the facts proven. There have been some illustrations of circumstantial evidence before you that have been very good. I will content myself by making just one illustration, - and by the way, most cases have to be made out, at least in part, or most offenses have to be made out in part, - by circumstantial evidence. If ~~you~~ you saw a man standing here inside of the door with a gun in his hand levelled at a man standing out there by the door; if you saw him pull the trigger and saw the flash of the pistol, and heard the explosion, and saw the man out there fall and die, - the question is, what killed him? You would say that shot, but you never saw the bullet. You just applied your common sense. You saw the man standing there; the man had a loaded pistol and fired when he had it levelled at that man outside, and when he fired the man fell dead. That is circumstantial evidence, strongly put, but nevertheless circumstantial evidence. Now, under the law of rape, the law doesn't require that the testimony of the prosecutrix, that is of the party injured and raped, - it doesn't require as a necessary something that she be corroborated. Corroboration means to strengthen her testimony in some material way. If you are satisfied beyond all

reasonable doubt from her testimony taken in connection with all the other evidence in the case, that she was raped, why that has made out the offense, whether anybody else says she was raped or not. That is necessarily true, and necessarily sound, because if that wasn't true, then a woman raped, when no one was present but herself, never could receive the protection of the law. Now, I don't mean to say by that, that corroboration is not to be desired. She may swear to it herself, and the state has a right to corroborate such testimony if it sees fit to do so. The state, in this case, says that it has corroborated her. The state claims that it has corroborated her by the testimony of Gilley. Well, that would ^{not} be a corroboration unless you believe Gilley. It is for you to determine whether or not you believe Gilley. The state further contends that she is corroborated in another way, for ~~xxx~~ instance, it claims that she is corroborated by the claim that there was a fight on this train before it reached Paint Rock, and they claim that Victoria Price said there was a fight, and that what Victoria Price said happened, happened after the fight. If that evidence is true about having a fight on the train, that may be corroborating evidence, and it may not. The defense is entitled to be heard on that evidence, just like he is on all the other evidence in the case, and the defense contends, as I understand it, in effect, that there was a fight on the train, but that it didn't have anything to do with this rape. These negro boys and white boys got into a racket about something else, got into trouble, got to throwing rocks, which finally developed into

a fight, - that is the contention of the defendant. Well, if that is true, and nothing happened after that on the train, that answers the theory of the state. Of course, there are matters that are contended for here by both sides, one claiming that it corroborates the testimony on their side, and the other contending that it does not; also there is a contention that the evidence offered for the purpose of corroboration is not true. That is a matter that I do not deal with. That is for you to look at and determine what it shows, or tends to show. Something has been said about not calling witnesses in the case at this trial and the other trial. That is not to be considered by you either against the defendant or in his favor. The law is, that it is open to both sides to use a witness when he is in court. It doesn't make any difference who brought him here. If he is here, he is accessible to either side. What the law is after is the truth, and it does not discriminate for or against a party that brought the witness in court, or who put him on the stand. The question is, did he take the stand and testify, and if he did, then is he worthy of belief, as shown by all the facts in the case. Of course, it is a rule of law that when a party puts a witness on the stand, he becomes his witness, and by putting him on the stand, the law says that he vouches for his truthfulness. That is the rule. Now, there could be exceptions. Of course the law wouldn't allow anybody in a suit in court to be deceived or misled as to what a witness is going to say. If he tells you certain things off the stand, and if he then gets on the stand and tells the reverse, the law would not charge the party with the evidence of that certain

witness, but there must be some evidence in the case that the witness had misled the party, or did deceive them, before that exception would apply. Now, gentlemen, I have all the way through referred to proving things to you beyond a reasonable doubt. I feel justified in having done that because that is one of the outstanding principles of the criminal law; that no man can be convicted of any crime, regardless of who he is, or the gravity of the crime, or what not, until the jury is convinced, - not from some arbitrary idea that they may have in their minds, or wish or desire, but from the evidence, and the evidence alone in the case, and the legal, reasonable conclusions to be drawn therefrom. I reckon I might say that there has been a great deal of criticism on that part of the law, but, gentlemen, that is the law, and so far as I am concerned, I think it is right, and I think it is sound, and whether it is or not, I state to you that it is the law, and it becomes your duty to follow it. Now, gentlemen, I can't help you much with the witnesses. They have taken the stand and you have seen them and heard them. As you have probably heard me say, when a witness is sworn and takes the stand, not only what he says is evidence, but his very act, gesture, and his every move is evidence for you to look at and consider. As I have said before, the Supreme Being has stamped on his brow an index to his character, what kind of a man he is. That is not always easily read, but the handwriting is there, if you can discern it, and sometimes you can, and it is your duty to read it, if you may. It is open to both sides, both to the state and the defendant to assail the character of a witness for truthfulness,

but the way to do that is to bring in court and put on the stand witnesses who say that they know the reputation of the witness assailed, in the community where he lives, and that it is bad, or that he would not believe him on oath, or something like that. Neither party is authorized to assail the character of a witness by innuendo or gibes at him about some particularly heinous conduct, or mistake, or crime, to say that his character is bad. I don't mean to say though, gentlemen of the jury, that if these things are developed in the evidence that you are to ignore them. Well, his character cannot be assailed in any other way than I have mentioned, that is, bring in evidence to prove what sort of man he is in the community; what he is reputed to be. Of course, you can't prove his character, technically speaking, because that involves something that is impossible for any witness to testify directly about. That inquires into the man's mind, his heart, his desires, his aspirations, etc., but the law says that you can prove that character by proving his reputation, that is what he is reputed to be in the community, and that takes the place of the other method, and can be pursued, and it is just as good. You look to the evidence, gentlemen, to weigh and determine whether or not there is in the evidence anything indicating that any witness who has testified has any bias in the case, either for one side or the other. Does the evidence show that he has an interest in the case one way or the other? Of course, under the law, when the defendant takes the stand and testifies in his own behalf, the law declares that he is an interested witness. He is interested, of course, in the result of the suit. But, gentlemen, a witness

may be partisan, and the evidence may show that, or he may be biased, and the evidence show that, or he may be interested, as a defendant. The law does not say that you must disbelieve him or discard his evidence; it simply says that you are to bear ^{that} in mind when you are examining his testimony. The fact is, the testimony of all the witnesses is examined with that kind of a light shining on it, as to what they have said. It is only a recognition of human nature, and although you find that the party is biased, if you should find it, or that they are interested, yet, gentlemen, notwithstanding, if you still believe what they have said about it, the law says that it is your sworn duty to accept the testimony and weigh it, and give it proper credence. Now, that same rule or principle applies in weighing the testimony of a witness that has been contradicted, or has falsified himself in some part of the evidence. Of course, you are not authorized to find that he has done that, unless the evidence convinces you on that point, but if the evidence should convince you that any witness on either side of the case is mistaken about any thing, or has purposely falsified himself on it, yet, gentlemen of the jury, that in and of itself does not, as matter of law, require you to disregard his whole testimony. The law is a reasonable thing, and it applies its reason, and it is this, that notwithstanding you ~~may~~ may have made an honest mistake, or may have made a dishonest mistake in the testimony, yet there are other parts of his testimony you believe aside from that, you believe them to be true, the law says it is your duty to receive those other parts of his testimony and give it proper weight and credence. In short, the law says, weed out and discredit the

unworthy part of his testimony and retain the good. As I said, the two main things you are trying to find out here is, whether or not Victoria Price was raped, as alleged, and whether or not this defendant was connected with the rape. Did the defendant do it, or did he aid and abet, or conspire with the others to do it, as I have defined these terms to you? What you are after is the truth of the matter, - not absolute truth; that cannot be acquired or ascertained in the court of the evidence of man, because all men may err, and we know that frequently they do. The law doesn't say that you must find one way or the other in this case to a mathematical certainty, but where there cannot be any doubt in your minds, and by the way, a doubt is not sufficient. It must be a reasonable doubt, and a doubt for which a reason therefor must be found in the evidence in the case. So it must be beyond a reasonable doubt from all the evidence in the case. Gentlemen, if after considering the evidence under the rules I have tried to explain to you, and applying it to the law, as I have undertaken to give it to you, you are satisfied of this defendant's guilt beyond a reasonable doubt, then another question arises that you must deal with. Your verdict in that event may assume two forms. First it could be: "We, the jury find the defendant guilty as charged in the indictment and fix his punishment at death." That is one form. If, after weighing the evidence like I told you, you do not reach the conclusion that death should be the punishment, then the form of your verdict would be: "We, the jury find the defendant guilty as charged in the indictment, and fix his punishment at confinement in the state penitentiary for (so many years, not less than ten,

any number of years above ten that you in your sound judgment, under the evidence, think right and proper)". Now, there is a good deal of chimney corner law about that. It is not a question of life imprisonment. The law doesn't say anything about that. It says not less than ten years, and any number of years above that. Gentlemen, that is all the law, I think, that it is necessary to give you. I want you to take this case just like a jury would take any other case, remove from your minds everything but an honest, faithful and painstaking consideration of the evidence in the case, and bring in a verdict that answers that conclusion. Now, that is the state's side of it. If the evidence in this case, as I have been telling you all the way through, does not convince your minds beyond all reasonable doubt of the guilt of this defendant, then the law and justice says that he ought to be acquitted, and if that is your conclusion, then the form of your verdict would be: "We, the jury find the defendant not guilty."

MR. LEIBOWITZ: We have some exceptions to the court's charge. I except to that part of your Honor's charge to the jury in the following words and figures: "Evidence of similar conduct is wholly out of place and improper."

THE COURT: I don't believe I said it that way. I said it in connection with something else, but that there may be no misunderstanding about that, I will state to you gentlemen, I said that it was wholly out of place towards establishing or tending to establish the question of consent, because consent did not enter into the ~~summary~~ defense. Of course, her conduct

and what she said, as shown by the evidence in the case, is evidence in the case, in shedding light on what credence you will give to her testimony.

MR. LEIBOWITZ: I except to the charge as reiterated. Then, I except to that part of your charge wherein you charged the jury that the character of this woman is not in issue in this case, because consent is not alleged, and that the character of the woman is only an issue in the case where the defense is consent.

COURT: Very well.

MR. LEIBOWITZ: Further, I except to the statement of the court that all argument on, or any references by counsel in argument, must not be considered on the question of consent, and I ask that you instruct the jury that they may consider the question of character, if that character is disclosed by the evidence, by her deportment, and demeanor on the stand.

COURT: I have already told them that.

MR. LEIBOWITZ: I am going to ask that you charge the jury as requested.

COURT: I can't do that. My impression is that that is not the law.

MR. LEIBOWITZ: I am now asking that your Honor charge specifically that this jury may, and must consider on the question of how much belief they are going to give this witness, or any other witness, whatever evidence this jury has found before it which would shed any light on the type of person it is, her conduct on the stand, as to her behavior, and all the circumstances arising out of the evidence; that they

may and must consider all this evidence in determining how much belief they will give to a person of that type, on all questions.

COURT: I decline to give it the way you have presented it.

MR. LEIBOWITZ: I except to that portion wherein you charged the jury that the mere presence renders one guilty as well as he who committed the crime.

COURT: I don't think that is the way I stated it. I said that if his presence was known to the party committing the act, and his presence encouraged the commission of the act, he would be guilty. If I didn't say it that way, I say it that way now.

MR. LEIBOWITZ: Exception. We ask the court to charge the jury that Victoria Price is an interested witness, as matter of law.

COURT: Well, that is not the way to make that sort of request; it is not a legal request, but I will state to the jury that regardless of the manner in which you have attempted to request it, that the jury may look to all the evidence in the case in weighing the testimony, and that she is the prosecutrix and that does make her interested in the result of the suit.

MR. LEIBOWITZ: I except to that portion of your charge, wherein you charged the jury that if a witness has wilfully falsified to any material fact in this case, that the jury must believe that portion of her testimony that is credible, and disregard the false testimony.

COURT: I don't think I said that. I said they "may".

I didn't tell them they "must" do anything. If I did, I say that is wrong. I have no right to sit here and tell the jury what they must do. I told them that they "may".

MR. LEIBOWITZ: In that connection, may I request on that point, that you charge the jury that if any witness willfully testifies falsely as to a material fact in this case, the jury is at liberty to disregard his or her entire testimony, if they see fit.

COURT: I decline that in the manner put.

MR. LEIBOWITZ: I except to that portion of the court's oral charge, that the only way to assail the character of a witness for truthfulness is to produce witnesses from the community where she lives to testify that her character is such that they would not believe her, - I except to that, and ask that you charge as follows: The jury may, from her testimony and behaviour on the stand, and from the evidence developed from her on direct and cross-examination, weigh such evidence to either rebut her testimony, or come to the conclusion that she is unworthy of belief, and that no witnesses are necessary to appear here from her community, if the jury believe from the evidence she is unworthy of belief.

COURT: I decline that in the way in which it is put.

MR. LEIBOWITZ: I will ask that your Honor charge the jury as to what is a reasonable doubt.

COURT: I will do that, I think. It is a pretty simple term; sort of like the word "it"; it's hard to explain. The best way I know of is to say this to you, - and I think I said

that, - it means of course, more than a doubt, - that would just be a doubt. It must be reasonable. A doubt for which a reason can be given. If after you go into this evidence and decide it. Very well, while you are doing that, or at the conclusion of it, there arises in your mind a doubt of the guilt of the defendant, then the next thing for you to do would be to examine the evidence and see whether or not that doubt that came into your mind is one for which you can find a reason in the evidence. That's about all I want to say on that.

MR. LEIBOWITZ: May I ask you to charge the jury that if these men, or any one of them, or any man in the jury box, has a reasonable doubt, founded on the evidence in this case, that it is the duty of that jurymen to maintain his ground, stand his ground, no matter how long he is in the jury room, unless and until his doubt can be eliminated by fair argument from the evidence; it doesn't make any difference whether they are eleven to one, or how they stand, if a jurymen has a reasonable doubt from the evidence, it is his duty to stand his ground, stick to his opinion.

COURT: You are drifting into an argument.

MR. LEIBOWITZ: That's what I have in mind, Judge.

COURT: I could decline all that; the law doesn't require me to do this, but I will do it. Gentlemen of the jury, there can be no conviction in this case unless all twelve of you agree to it. I imagine you know that. There are twelve of you, and all twelve of you have to agree on a verdict before you bring it into court. Each man that goes into that jury room has a right to his own honest convictions on the evidence,

after he has heard the position of the other jurors. You don't go in there with a view of just setting your mind and keeping it there, and not listen to anybody else's views. It is just as much your duty to listen to the other juror's statement of his beliefs, or lack of beliefs about it, as it is for you to have your own views. You do not go into the jury box with any pride of opinion of your own. You go in there for the purpose of reasoning together on the case; it is your duty to do so. If, after considering the evidence, you have an opinion of your own as to what the verdict ought to be, and some other member of the jury, or some other jurors, perhaps, have their views, it is your duty to listen to them, and if after listening to them, you find that they are right and that your first impression was wrong, it is your duty to join with them. Provided, of course, at all times, you are satisfied beyond a reasonable doubt of the result of that verdict.

MR. LEIBOWITZ: I except to the court's refusal to charge as requested.

COURT: I just voluntarily did that. I was under no duty to do that at all. I am trying to give them everything I can that will be of help to this jury.

MR. LEIBOWITZ: There is one other thing, I don't know whether it is proper that I ask this charge, - that you charge the jury that they are under no legal duty to agree, if there is any difference of opinion among them.

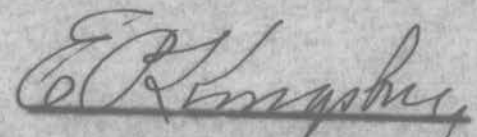
COURT: I think I have told them that.

MR. LEIBOWITZ: That's all.

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I certify that the foregoing is a correct transcript of the testimony, and of the court's oral charge, in the case of the STATE OF ALABAMA v. CLARENCE NORRIS, tried at the time and place stated in the caption, as taken by me in shorthand and by me reduced to typewriting in person. This January 25, 1934.


Official Reporter.