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

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

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

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

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

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

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

Mr. Bailey: As long as his age is not presented to the court, we want to proceed.

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

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

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

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

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

Mr. Roddy: All right, call your witnesses.

(Witnesses called by the Clerk for the defendants.)

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

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

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. [fol. 86] Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

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

The Court: Have these witnesses been served?

Clerk: Yes, sir.

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

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

The Court: Have they been served?

Clerk: Yes, sir.

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

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

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

(Court adjourned for noon recess.)

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

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

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

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

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

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

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

Mr. Moody: Yes, sir.

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

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

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

[fol. 87] Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

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

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

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

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

AFFIDAVIT OF ROBERTA FEARN

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2042 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

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

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

[fol. 88] Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute, and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fearn.

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

[File endorsement omitted.]

AFFIDAVIT OF BERTHA LOWE

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price, the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that

Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White, who, as affiant is told, formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at time affiant would see them often and again she would not see them for a month or longer.

She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as [fol. 89] that is where she saw them, in negro section of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

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

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF WILLIE CRUTCHER

The undersigned affiant makes oath in due form of law that she resides in the Town of Huntsville, Alabama and that she is personally acquainted with Victoria Price, alleged victim in the case of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price

often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

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

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

[fol. 90] (Signed) Willie Crutcher.

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

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ALLEN CRUTCHER

The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this

Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

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

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

(Signed) Allen Crutcher.

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

[File endorsement omitted.]

[fol. 91] IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON and EUGENE WILLIAMS et al., Defendants

AFFIDAVIT OF HENRY COKLEY, SUSIE COKLEY, AND GEORGIA HALEY

STATE OF GEORGIA,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that

they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9, 1916, and that Eugene Williams, her son, was born on December 6, 1917.

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

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

(Signed) Henry Cokely. (Signed) Susie Cokely.
(Signed) Georgia (her X mark) Cokley.

[fol. 92] Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk Superior Court, Haralson County, Ga. (Seal.)

[File endorsement omitted.]

Chambers of Judge, Superior Court, Tallapoosa Circuit

J. R. Hutcheson, Judge, Douglasville, Georgia

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

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

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

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402-2404 and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

AFFIDAVIT OF PERCY HICKS

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

That, when the train got to Stevenson, that he saw the [fol. 93] two girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Alabama, going toward Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the other one had on a dress, and that he saw them get on the train and they went into a freight box car.

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

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

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

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

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour.

Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Hicks.

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

[File endorsement omitted.]

[fol. 94] On the 5th day of June, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

SECOND AMENDED MOTION FOR NEW TRIAL

Comes the defendants, Charley Weems and Clarence Norris, in the above styled cause of the State of Alabama vs. Charles Weems and Clarence Norris, and move the court to set aside the verdict and judgment rendered in this case No. 2402 against them on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant them a new trial and they assign the following reason and causes, separately and severally, to-wit:

I. The indictment on which the defendants were tried was void and illegal—

(a) In that it was vague, indefinite and uncertain.

(b) In that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendants;

(c) In that it failed properly to apprise and inform the defendants of the exact nature, basis and grounds of the charge against them and which they were called upon to meet;

(d) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment, the defendants could not properly and adequately prepare to meet and defend themselves at the trial;

(e) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment, the defendants have become and are subject for the same offence to be twice put in jeopardy of life or limb in violation of said defendants' rights under the constitution of the United States, Amendment 5, which provides: "* * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb," and the rights under the Constitution of the State of Alabama, Article 1, Section 6;

(f) In that the said indictment by reason of its vagueness, indefiniteness and uncertainty was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, which provides: "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, [fol. 95] liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws," and under the Constitution of the State of Alabama, Article 1, Section 6, which provides: "that in all criminal prosecutions, the accused * * * shall not be deprived of life, liberty or property, except by due process of law." For these reasons the judgment ought to be arrested and a new trial granted.

II. The defendants on trial for their lives were entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influences and communications which might tend to disturb or distract their minds from a free, impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in

advance of the trial that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's would be or become influenced against the defendant by the prevailing sentiment and feeling of hostility in the said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendants of their right under the Constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was an abuse of judicial discretion, and constituted reversible error. A new trial should therefore be granted.

III. A new trial should be granted in that the rights of the defendants under the Constitution of the United States, Amendment 14, Section 6, were violated for the following reasons:

(a) Defendants, while under arrest, were not afforded nor did they have an opportunity to employ counsel to aid and advise them;

(b) They had no opportunity to employ an attorney to represent them;

(c) They had no opportunity or sufficient time in the 11 day period between their arrest and trial to prepare properly for the trial on the outcome of which their lives and liberty depended;

(d) They were in prison in a jail situated in a city far away from their home, where their parents and kinsfolk resided and they had no opportunity to communicate with such parents and kinsfolk, who, when they finally learned [fol. 96] of the defendants' plight, dared not visit them for fear of personal violence from a hostile and excited populace;

(e) Due to race feeling and prejudice which prevailed in the county where the trial was held, they could not have and were denied a fair and impartial trial before an unbiased and unprejudiced jury;

(f) Immature in years and lacking the advantages of an education, they were too ignorant and did not know how

to prepare for trial or how to obtain the attendance of their witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and they were entirely unacquainted and ignorant of the rules and principles of law;

(g) repeatedly threatened, intimidated and put in fear of death, they neither knew how nor could communicate with their parents to employ an attorney in their case and to advise them about their rights until the very day when the case was called for trial;

(h) continuously and throughout the trial, a crowd of people dominated by prejudice and hostility towards the defendants filled up the court room and by bearing and demeanor influenced the jury adversely to the defendants;

(i) that while the defendants were on trial, a crowd of people to the number of about ten thousand, gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court court and enacted demonstrations hostile to the defendants, all of which the jury could not but have known;

(j) that the defendants were tried in a county where mob hostility towards them raged with such violence that the Sheriff of said county and the Governor of the State of Alabama deemed it necessary to call out a military force to protect these defendants against a threatened lynching by the mob which assembled round the jail where they were held, and to guard them on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendants and to guard them after trial back to jail, all to prevent the threat made to lynch the defendants from being carried out;

(k) that the trial of the defendants, who with seven other negro boys, were charged with the crime of rape, alleged to have been committed against the two white women, was conducted under stress of great excitement, mob [fol. 97] hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and

adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which published in advance of and during the trial of the defendants the supposed details of the defendants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to vicious and degrading lynch sentiment which they roused in and fed to the people of this county and adjacent counties, thereby making it impossible for these defendants, as well as the other defendants, to have the benefit of a fair and impartial trial, and rendering the verdict of the jury and the judgment rendered thereon illegal and void; and for these reasons a new trial should be granted.

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

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

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

VII. A new trial should be granted in that public senti-
[fol. 98] ment and feeling against the defendants and the crime charged and the language of the newspaper which published the same throughout the northern part of the State of Alabama and the States of Tennessee and Georgia were of such a character that the defendants could not get a fair, impartial and unbiased jury.

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

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

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

XI. The court committed error in refusing to permit defendants' counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a vener-al disease. A new trial should therefore be granted.

XII. A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendants, although they knew of the severity with which the crime of rape is punished and the swiftness with which punishment is visited in the South, remained on the train

and made no effort to flee, a circumstance which, together with their conduct on the day of their arrest and after, supports the inference of defendants' innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XIII. A new trial should be granted in that the state, although it had in its control a number of white boys who [fol. 99] were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witness to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witnesses, and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the state offer any reason for not producing these witnesses. The state's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that these boys, and especially Gilley, in the control of the state were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefitted the prosecution but would have benefited the defendants, and moreover, would have exonerated the defendants.

XIV. A new trial should be granted in that the proof in the record of the trial establishes the following: that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however, conceding, that all this trouble occurred

while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

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

XVI. The court erred in refusing to permit defendants' counsel to interrogate the prosecuting witness, Victoria Price, as to whether or not she was ever in jail prior to her appearance as complainant in this case; for which a new trial should be granted.

[fol. 100] XVII. A new trial should be granted in that the court's charge to the jury was unfair and prejudicial.

G. W. Chamlee, Atty. for Defendants.

[File endorsement omitted.]

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

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

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't know where I was,

only I guess I was at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoopee," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that. I heard a band some time but I didn't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

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

When I was examined as a juror, I was asked questions as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't [fol. 101] say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them on parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got here. I was put on Jury No. 3. That was the jury that tried the five defendants. I was in Davis' store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house. The hosiery mill is three or four blocks from the court house. I couldn't say what time of the day the Norris and Weems jury reported. I didn't pay any atten-

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

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for. However, I saw no intention of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off of the court house grounds. They also had them inside the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

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

[fol. 102] W. G. SARTIN, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris case, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made

that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there were several thousand people around here. I don't know how many there was. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing. I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were soldiers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be after court had adjourned and the soldiers ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the square. The playing of the band or the hollering did not in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began, me and Mr. H. H. Hennegan were standing [fol. 103] there talking. I don'- know what the hollering was about. When I heard the band playing, I didn't know what that was about.

Redirect examination:

Later I heard first one and another state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I sat on the jury and tried the five, I knew what this demonstration was about in the other case. Somebody had already told me but I don't know everything people tell me. When I went on the jury that tried the five negroes, Case No. 3, I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house. I didn't measure it. It is a short ways down to the corner. I cannot tell you how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollering. I do not know what that band was playing.

Recross-examination:

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

L. R. JONES, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is L. R. Jones. I live about three miles from Bridgeport. I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury returned its verdict in the first case tried. I was at home, or on my way home. I had left the

court room, and left Scottsboro. I didn'- hear any demonstration of any sort.

J. M. BARNES, a witness for movants, having been duly sworn, testified as follows:

[fol. 104] Direct examination:

I live at Bridgeport. I am one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere between Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

WILLIE J. WELLS, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't remember whether it was in the afternoon. I didn't have any time-piece, and don't remember what time it was.

I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I remember the questions that were asked me before they put me on the jury.

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

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

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

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

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

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

[fol. 105] RICHARD HILL, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported, I was in town somewhere. I was outside the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the evening some time. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all around the court house and inside as well; I was not up here. I don't know as I later saw National Guardsmen in the court house. I was not back up here that evening. Later, when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury report. Nobody told me what the hollering was about. I never did learn what it was about. I have heard them talking since what it was

about. I heard that some time the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

Roy Wilbourne, a witness for movants, having been duly sworn, testified as follows:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported.

I don't know as I heard about the demonstration the next morning. I heard about the vereict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel of movant thereupon propounded to the witness the following question:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you had racial prejudice?

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

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

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the

one that tried five of them. When the jury reported in the first one of these cases, I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't think there was a brass band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets, and playing. It could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house.

When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

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

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movants duly and legally reserved an exception.

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

When you were qualified as a juror were you asked as to whether or not you held racial prejudice?

[fol. 107] The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

B. M. Holloway, a witness for movants, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of these negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for the demonstration. I just heard them yelling. It was generally understood by everybody that that was the reason for it. I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

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

When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

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

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial, I heard the organ and learned the fact that it was the Ford [fol. 108] agency playing the organ. I heard they had different kinds of Ford cars going around.

Redirect examination:

I didn't see that. I was in the court room.

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

Q. Before you went on the jury did anybody tell you what these negroes were going to be tried for?

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

C. C. ALLEN, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was

out of town. I heard a little about the demonstration, but not much said about it.

I did not hear anyone of the other trials. When they tried the first case, I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

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

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

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

Cross-examination:

I am not a minister of the Gospel.

[fol. 109] LEE HICKS, a witness for movants, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

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

Q. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

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

LUTHER BALLARD, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those cases reported, I was between here and Stevenson, or at Stevenson. I was outside of the City of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear anybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't [fol. 110] know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

JOHN VENSON, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. While the trial of these negroes was in progress here the Ford people made a demon-

stration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a parade here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at six o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That was about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I remember while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't think there were ten thousand. I wouldn't guess there was five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just remember while we were down there that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

[fol. 111] The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The

band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them before. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizens from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them come in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

Redirect examination:

Guard Mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollarde, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superin-

tendent, Secretary and Treasurer, and Pay master, respectively, and in the order in which our names are signed of The Margaret Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mill during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year.

We have this day examined the payroll records in our [fol. 112] office and find that Victoria Price was in our constant employ during the months of October, November, December, 1920, and January, February, March and April, 1930. The records show that she worked each week during the above months. We further certify that she was a good worker and her character around and in the mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time, she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. N. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollarde, Affiants.

STATE OF ALABAMA,
Madison County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public. (Seal.)

[File endorsement omitted.]

On June 6, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits filed by defendants, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF L. L. MAYNOR

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

VS.

HAYWOOD PATTERSON et als.

Affidavit

STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, [fol. 113] Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts, I have lived in Madison County, Alabama, and for about the last eight years, I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Alabama, to board and have been boarding in her home since that time. She is the mother of Ruby Bates, who, together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago.

During all this time that I was at Mrs. Bates, I was either hauling logs off of Monte Sano Mountain or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee, any time during 1929 or 1930.

Ruby Bates was a quiet, modest girl and much of the time while I was there, she would go to church and Sunday school and I never heard any question of her character up until a little while before this trouble, and that was after she had begun to associate with Victoria Price.

There are dozens if not hundreds of people in Huntsville who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

Sworn and subscribed to before me this the 6th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 13, 1931, the defendant Clarence Norris filed in said cause, in support of said motion for new trial, the following affidavit:

AFFIDAVIT OF CLARENCE NORRIS

STATE OF ALABAMA,
Montgomery County:

Before me, Lee L. Cawthon, a Notary Public, in and for said County and State, personally appeared Clarence Norris, made known to me as such, and having been duly sworn to speak the truth, the whole truth, and nothing but the truth, the said Clarence Norris deposes and says as follows:

[fol. 114] My name is Clarence Norris, and I am at present confined in Kilby Prison, having been tried at Scottsboro, Jackson County, Alabama, on the 6th day of April, 1931, before Judge A. E. Hawkins, and having been found guilty of rape and sentenced to death by electrocution; and I state the truth and facts to be as follows:

I was put on trial for the offense of rape in Scottsboro on April 6, 1931, before the aforesaid Judge and a jury, and testified on that trial on my own behalf.

I was represented in that court by Mr. Roddy and Mr. Milo Moody, an attorney of Scottsboro, who was appointed by the court to defend me. A short while before, I was put on the witness stand, I talked to my lawyers, who were present in a room of the court house with the other negro prisoners who were charged with the same offense, namely, Haywood Patterson, Ozie Powell, Willie Roberson, Andy

Wright, Olen Montgomery, Eugene Williams and Charlie Weems, and at that time was questioned by Mr. Moody and Mr. Roddy, and I told those lawyers at that time that I did not rape or have anything to do with either of the two white girls who were on the train, and that none of the other defendants who were charged with that offense did. On the 25th day of March, 1931, I had been on a freight train coming from Chattanooga, Tennessee, and was bound for Sheffield, Alabama, to visit my aunt, who lives there, in order to get a job. I had a job in Atlanta, Georgia, working for the Capitol Stone Company, and was left off. The only man that I knew on the freight train when I boarded it at Chattanooga was Charlie Weems, colored. I didn't know until I got off the train at Paint Rock that Charlie Weems had boarded the same train. I did not see any other negro boys on the train, and did not see any white boys on the train. Neither did I see white girls in overalls, or otherwise dressed, on the freight train, until I arrived at Paint Rock. I rode on an oil car, with my feet hanging over the side. The oil car was back toward the cab-car. I am nineteen years old, and my mother, Ida Norris, lives at Molena, Georgia. My home was in Atlanta, and I had been living there about five years, and had never been in any trouble, except that I was arrested for late hours one time and served a term of ten days hard labor at Atlanta, Georgia. I was arrested after arriving at Paint Rock by some officers, and I was taken across the country and put in jail at Scottsboro on the night that I was arrested about six o'clock. There were eight other negro boys arrested besides myself, and taken to the Scottsboro jail. About an hour after we arrived in the Scottsboro jail, there were four men who came and took [fol. 115] me away from where the other prisoners were to a cell in the jail and beat me there with sticks. I was slapped and kicked and told that if I did not tell that the other negro boys who were arrested on the train had something to do with those white girls, that they would kill me; that they would shoot me down in the court house. I was afraid of them, and told them that I would do what they said. I was asked by one of these men if the negro boys on the train did not throw the white men off, and I told them I didn't see that, and then they slapped and beat

me; and then they asked me if I saw any of those negro boys on the train have anything to do with those girls, and I told them no, and they went to beating on me again. They told me I had better get up in the court house and say that, and I told them yes, I would do it. I was moved with the other prisoners from the Scottsboro jail to Gadsden jail the next day after we were put in the Scottsboro jail. We stayed in the Gadsden jail two weeks, and about two days before the trial in Scottsboro, several men came in the jail where the negro prisoners were, and beat all nine of the colored boys that had been arrested and taken off the train. They tried to make us tell that we had had something to do with the white women on the train. All of the prisoners, even after they were beaten, said they did not have anything to do with the white girls. One of the men that beat us turned to me and said, "You told me down yonder at Scottsboro jail that you would tell it," and then I told him that I would do what I told him and say in court that I saw these other prisoners have something to do with the white girls on the train; and this man told me that if I didn't do it, he was going to shoot me down in the court. When I testified in my trial at Scottsboro, I was afraid for my life, and did not there testify to the true facts. When I was on the stand testifying for myself, I stated that I was not engaged in a fight, but saw a fight in the gondola car. This was not true. I did not see any fight on the train, and did not see any fight in the gondola car; but made this statement that the negro boys and white boys were fighting in that car in order to save my life, thinking that I would be shot down if I did not make this statement. I stated in my testimony that Haywood Patterson started the fight, and that he came across the flat car where I was, him and the rest of the colored boys, and that he, Haywood Patterson, said he was going over there to run the white boys off and going to have something to do with the white girls. All of this statement was untrue; nothing of that kind happened in my presence. I did not see Haywood Patterson and other negro men come across the flat car, or any other car, and say they were going to run the white boys off and were going to have something to do with the [fol. 116] white girls. I made this statement because I was fearful of losing my life in the court room while I was testifying. I made the statement in my testimony that these

negro men knew the girls were on the train and that the white boys were with the white girls on the gondola car. This statement was not true, as I did not see anything of the kind. I did not see any white girls at all, and any statement I made to the contrary on the trial was untrue and was made because I was afraid of losing my life by those who had beaten me and threatened me before hand. I did not see any white boys fall off or get off the train, and I did not ask two white boys what they were getting off the train for, and I did not get on the train to see if they were being put off. I did not get up on the box car and did not see the negroes putting the white boys off. All this statement was made up by me in the hope of saving myself from the threats which had been made. I did not see any negro boy having a knife around a white boy's neck, trying to push him off the train, and I did not see any other boy take hold of him and pull him back up in the car. I did not see any fight or trouble or difficulty on the train at all. When I testified that I saw Charlie Weems in the gondola, I was testifying to something that was untrue, as I made that up. I did not see Charlie Weems or any other negro in the gondola. I do not know what a gondola car is. I did not see any white girls in overalls in any car on that train, and I did not see any negro boys or men in any car on that train with white girls in overalls. When I answered in my testimony that I saw every one of the negro boys have something to do with the white girls after they put the white boys off the train, I was telling an untruth. I did nothing of the kind, but was testifying in order to save myself from what I thought was certain death if I did not swear this way. I was not sitting on the box car and did not see any one of these negro boys have anything to do with the white girls or rape them or do anything to them. I did not see them together at any time on that train, but testified to this on my trial because I was afraid that I would be shot down in the court room, as the men told me they would. I was never on a box car but was on an oil tank car, all the way from Chattanooga to Paint Rock. In my testimony, I stated that I saw Charlie Weems rape one of these girls, but that was not true. I saw nothing of the kind, but testified to this because I was afraid for my life under the threats which had been made and the punishment which has been inflicted on me. I

testified truthfully on my trial that I didn't have a pearl-handled knife on me when I was arrested. If any of [fol. 117] the officers found such a knife on any of the boys, it was not on me, as I did not have such a knife on the train or in my pockets when I was arrested. So far as I know, of my own knowledge, no one of the negro boys raped either of the white girls. I was not with them and did not see anything of the kind. When I testified on my trial that a certain one of the negro prisoners in the court room had a knife around one of the white girl's throat, point him out in the court room, I was telling something that is not true, under the influence of the threats and fear and bodily violence that had been inflicted on me twice before the trial. I did not see any negro men or boy have a knife around the throat of any white girl on that train. I did not see any white girls lying down when I got up on the box car, and did not see any negro boy have a knife on the throat of either of them. My testimony on the trial to that effect was forced out of me by fear that I would be shot down in the court room. I did not see any negro boy or man on that train force any white girl or woman to lie down while other negro boys or men raped her, and my testimony to that effect is untrue and was forced out of me by fear for my life under the facts I have stated above. I did not see any white girls lying down when I got up on the box car, and did not see any overalls lying in the car anywhere, and my testimony to that effect on the trial is untrue; such testimony was forced out of me by fear and the threats that had been made to take my life in the court room if I did not testify to such facts. I was on the ground, off the train, when I was arrested. I got off the oil tank car and was on the ground when arrested at Paint Rock. I was on the train, but not in the gondola. My testimony to the effect that I could see the faces of the women, but could not see their bodies or clothing, was untrue, and was made under fear and on account of the threats and bodily harm I have mentioned before. So far as I know, or of my own knowledge, there was no fight between white men and negroes on the train, and no raping of white girls by any negroes; and any statement I have made to the contrary on my trial was under a sense of fear, because I was afraid they would shoot me down in the court room, as they told me. I told my lawyers that I did not see any of the negro men have anything to do with the white girls,

and that was the truth; but I was afraid to tell it that way in court. I never saw any negro men or white men attack any white girls on that train, or do them any harm, and I did not see Charlie Weems ravish any white girl on that train, and did not see him about her.

[fol. 118] I am now in Kilby Prison and am not afraid of bodily harm at the hands of anybody; and the above statements I have made are true, and are made in the prison, in the presence of officer J. F. Partin, of Montgomery, Alabama, who is Deputy Warden of Kilby Prison. No inducements have been offered me to make this statement by anybody, and I have been cautioned to speak the whole truth.

Clarence (his X mark) Norris.

Sworn to and subscribed before me this 10th day of June, 1931. Lee L. Cawthon, Notary Public, Montgomery County, Alabama.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendants, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to wit:

AFFIDAVIT OF P. W. CAMPBELL

STATE OF ALABAMA,
Jackson County:

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizen of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County Sentinel, a newspaper published at Scottsboro.

Some four weeks ago, I went to Chattanooga, Tennessee, in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chat-

tanooga concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hacket and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After considerable effort, we located some of them with the following results: We found Asberry Clay and his wife, Savannah Clay, and Solicitor Thompson read to them the affidavits which they were said to have made. They both [fol. 119] said that there was certain statements in the affidavits which they did not make and which they did not know were in there. Especially with reference to these women living with negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which he made.

We then found Tom Landers whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping.

We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters where we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with

any offense and that if they had, she would have had some recollection of it.

On the other hand, the Police Records in Chattanooga do show that two of the Chattanooga negroes, to wit, Haywood Patterson and Roy and Andy Wright have had Police Records and the Police authorities stated that they were very bad negroes and had given them quite a great deal of trouble.

(Signed) P. W. Campbell, Affiant.

Sworn and subscribed to before me this 13th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 17, 1931, the State filed in said cause separately and severally the following separate and several rebutting affidavits, to-wit: Affidavit of M. L. Wann; affidavit of M. C. Thomas, affidavit of Charles F. Simmons; joint affi- [fol. 120] davits of Houston Dicus, W. H. Thomason and H. L. Parsons, which said affidavits are in words and figures as follows, to-wit:

AFFIDAVIT OF M. L. WANN

THE STATE OF ALABAMA,
Jackson County:

Before me, Louis Stewart, a Notary Public in and for said County and State, personally appeared M. L. Wann, who, being duly sworn, deposes and says.

That he is now and was on the 26th day of March, 1931, the Sheriff of Jackson County, Alabama; that I was not in Scottsboro at the time the nine negro boys were placed in jail, but arrived about one hour after they were placed in jail at Scottsboro. I found present at the jail my deputy, Charlie Simmons and Charlie Latham, together with the City Marshal, Houston Dicus, with other deputies specially deputized to guard the jail until the arrival of the soldiers.

Immediately on arrival at the jail, I had a conference with my deputies and it was decided to remove the prisoners to

Huntsville, Alabama, or Gadsden, Alabama, and I had the prisoners all handcuffed and they were marching in a body out in the hall of the jail to the top of the stairway, but on seeing that quite a little crowd had gathered below, it was decided, after a conference with my deputies, that we replace the prisoners in their cell and phone the Governor for troops, which I did. I had not heard any talk whatever from the crowd about mob violence of any kind, but out of extreme caution and for the due protection of the prisoners, I did phone the Governor to send troops at once. The prisoners were then replaced in their cell and at no time were they ever separated from each other and at no time was Clarence Norris taken out of his cell by an officer or by anyone else, but he remained with the other prisoners until they were taken charge of by the militia about twelve o'clock that night.

I have read the affidavit of the said Clarence Norris in this case and it is absolutely false from one end to the other. He was treated nicely and humanely at all times while under my charge and no complaint whatever was ever made to me about any mistreatment of any of the nine boys. I was constantly at the jail from the time of my arrival about 5:30 o'clock in the afternoon until the soldiers arrived and of my own personal knowledge the witness, Clarence Norris, was never taken from his cell, other than as above stated, during the entire time he was in my charge up to the time [fol. 121] they were turned over to the soldiers. To my certain knowledge, there was no threats made to him or any of the others during the time they were in my charge and no attempt was ever made to interview them about the alleged crime for which they were charged. My deputy, Mr. Charlie Simmons, and another deputy, C. F. Latham, and the City Marshal, Houston Dicus, and Ex-Sheriff Mack Thomas, was present during the entire time the prisoners were in jail until they were turned over to the soldiers. After the soldiers took charge of the prisoners, they kept a detachment of guards around the cell both night and day during the entire time they were in jail at Scottsboro and there was absolutely no chance for any one to interview the prisoners without their knowledge and consent, and I am quite sure the negro Clarence Norris was never taken out of his cell and treated as he alleges in his affidavit during the time he was in the jail at Scottsboro. I know this as a pure fabrication on his part and superinduced for the sole purpose of

seeking notoriety without any semblance of truth or fact in his statement.

I am quite sure that all of the officers above mentioned will verify this statement and corroborate it. I never as much as discussed the charges with any of the prisoners, nor let anyone else do so other than the attorneys in the case. I never tried to exact any statement from any of them nor did I suffer anyone else to do so during the entire time I had them in charge. The first that I ever heard of any mistreatment of Clarence Norris was when I was shown his affidavit this morning. All the nine boys during the entire time they were in my charge were treated exactly as other prisoners and were given every protection that the law allows, and it was as much of a surprise to me as anyone when he admitted the guilt of his comrades on the witness stand. There was during the time the prisoners were in my charge from twelve to fifteen deputies guarding the jail and the cell in which the boys were incarcerated, and I believe that each and every one will join me in this affidavit in so far as he knows the fact.

M. L. Wann, Sheriff of Jackson County, Alabama.

Sworn and subscribed to before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 122] AFFIDAVIT OF M. O. THOMAS

STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared M. C. Thomas, who being by me first duly sworn, deposes and says:

I have served as Sheriff of Jackson County for two terms, the last term expiring on January 19, 1931; I was succeeded as Sheriff by M. L. Wann, the present sheriff of Jackson County. I was present at the jail when the nine negro boys were brought there by Charlie Latham, Deputy Sheriff, and citizens of Pain Rock, Alabama. I helped

search the prisoners and locked them in their cells. At the time they were brought to the jail, the Sheriff was out of town and did not return until late that afternoon. I remained at the jail until after the Sheriff returned and was there helping to guard the prisoners until the troops arrived and relieved me.

I have read the affidavit of the Sheriff, M. L. Wann, and can positively state that it is true and correct so far as I have any knowledge or belief. During the time I was at the jail, prior to the arrival of the troops, I can personally state that no one interviewed the prisoners or interfered or intimidated them in any way whatever.

The statement in the affidavit of Clarence Norris that he was beaten by the officers is positively untrue as no one molested them in any way prior to the arrival of the troops. After the arrival of the Sheriff, we decided to remove them to Huntsville for safe keeping and for that purpose only removed them from their cells, handcuffed them together and placed them in the hallway of the jail, seeking an opportunity to remove them.

During that time no one interfered with them or molested them or threatened or intimidated them in any possible way, and as soon as we determined that it was not safe to remove the prisoners, they were immediately placed in their cells and the doors locked. During the time I was at the jail and while attending the trials, I saw nothing out of any person or officer which could have possibly been taken as a threat or effort at intimidation.

M. C. Thomas.

Sworn to and subscribed before me this 13th day of June, 1931. Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 123] AFFIDAVIT OF CHARLES F. SIMMONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public, in and for said County and State, personally appeared Charles F. Simmons, who, first being duly sworn, deposes and says:

That he is now and was at the time of the arrest and incarceration of the nine negro boys, including Clarence Norris, in the County jail at Scottsboro, Alabama, Chief Deputy Sheriff under Sheriff M. L. Wann, and was present at the jail when the negroes were brought there for incarceration and was present at the jail during the entire time the negroes were kept there until they were turned over to the Alabama National Guard.

I have carefully read the affidavit of Sheriff M. L. Wann and also the affidavit of Ex-Sheriff M. C. Thomas, and the same are absolutely correct and state the facts of the case and especially with reference to Clarence Norris. There was absolutely no disorder on the part of any one at the jail from the time the prisoners arrived until they were carried away by the National Guard and no officer, nor set of officers, nor any other men had charge of said prisoners or any one of them, to the exclusion of the others, except the officers and the special deputies appointed to assist in keeping order at the jail and guarding the prisoners. I was one of the officers and acted in that capacity and was in the jail guarding the prisoners during the entire time, and absolutely know that there was nothing done as charged in the affidavit of said Clarence Norris, which I have this day read. Clarence Norris wqs not mistreated by any person during his entire stay at the jail and no threats were made against him in any way, nor against any of the other eight negro prisoners. During the other stay of the prisoners at the jail after they were brought back from Gadsden, they were under the constant care of the National Guard and soldiers were stationed around the cell both night and day during their entire stay. I assisted the National Guard in opening the cell doors and also in putting the meals of the prisoners in their cells at meal time and at no time were they ever mistreated in any way or asked to testify about the matter by anyone in my presence.

I was the custodian of the keys to the cell in which the prisoners were placed and they were locked up in said cell under three different locks. I had the only keys to said locks and they were in my possession at the time of the arrival of the prisoners and I kept said keys until next [fol. 124] morning after they were locked up in the cells,

when I turned the same over to M. L. Wann, the Sheriff of said County, and I know, personally that Clarence Norris was never taken out of said cell away from the other prisoners nor was he threatened in any way while in said cell by anyone.

Charles F. Simmons.

Sworn to and subscribed before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

AFFIDAVIT OF HOUSTON DICUS, W. H. THOMASON, AND H. L. PARSONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared Huston Dicus, W. H. Thomason and H. L. Parsons, each being duly sworn, deposes and says:

That he was specially deputized as deputy sheriff at the time the nine negro prisoners charged with rape, were placed in the County jail at Scottsboro, Alabama, to preserve order and protect the prisoners from annoyonce and harm of any kind; that they were present from the time the prisoners were placed in jail in Scottsboro until the arrival of the National Guard that night about eleven or twelve o'clock; that they have each read the affidavits of M. L. Wann, Sheriff of said county, M. C. Thomas, ex-sheriff of said county and a deputy on the occasion, and also Charles F. Simmons, Chief Deputy to the Sheriff, and that each of said affidavits speak the truth to their personal knowledge; that they were present during the time mentioned in said affidavits and know the facts as stated in said affidavits to be true; that the said Huston Dicus further avers and testifies that he is and was at the time City Marshal for the town of Scottsboro and assisted Parsons and Thomason in preserving quiet during the time from the incarceration of the prisoners in the jail until the

arrival of the National Guard and that everything was orderly and quiet and was no demonstration of violence on the part of any one, and said prisoners were never separated from the time they were incarcerated until they were [fol. 125] turned over to the National Guard of Alabama, neither were said prisoners mistreated in any way, but upon the other hand, they received the same treatment as other prisoners and also the same consideration; that each of us know it to be utterly untrue and without any foundation of fact the affidavit filed in this cause by one of the defendants, to-wit, Clarence Norris.

W. H. Thomason, Houston Dicus, H. L. Parsons.

Sworn to and subscribed before me this the 16 day of June, 1931. Lois Stewart, Notary Puplic.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendants separately and severally offered in evidence, in addition to the foregoing oral evidence, in support of their said motion, the following separate and several affidavits:

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, and affidavit of Percy Ricks and Clarence Norris. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of Huston Dicus, W. H. Thomason and H. C. Parsons. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of

said motion to set aside the verdict and judgment founded thereon and to grant defendants a new trial.
[fol. 126] On said June 22, 1931, after hearing and considering said motion, the court overruled the same, and refused to set aside the verdict of the jury and the judgment founded thereon and to grant the defendants a new trial, and to this action of the court defendants then and there, separately and severally reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendant in this cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions on the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of November, 1931.

A. E. Hawkins, Judge.

Filed November 30, 1931.
C. A. Wann, Clerk Circuit Court.

IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 124, inclusive, contain a full, true, correct and

complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff, and Charlie Weems and Clarence Norris were defendants.

I further certify that the said defendants did obtain an appeal to the Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and seal of office this the 19th day of December, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[fols. 127 & 128] IN SUPREME COURT OF ALABAMA

Present: Chief Justice Anderson and Associate Justices Garner, Bouldin and Foster.

8th Div., 321

CHARLIE WEEMS & CLARENCE NORRIS

vs.

STATE OF ALABAMA

Jackson Circuit Court

ORDER FOR WRIT OF CERTIORARI—Jan. 14, 1932

It is ordered that a Writ of Certiorari issue to the Clerk of the Circuit Court of Jackson County, Alabama, commanding him to make and certify to this Court by Thursday of the next call of the 8th Division, January 21st, 1932, a true and correct copy of (1) the arraignment of the defendants (2) the drawing of the venire both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants in the cause of Charlie Weems and Clarence Norris vs. State of Alabama, pending in said Court.

[fol. 129] IN SUPREME COURT OF ALABAMA

WRIT OF CERTIORARI—Filed Jan. 16, 1931

THE STATE OF ALABAMA,
Judicial Department:

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-1932

To the Clerk of the Circuit Court of Jackson County, Greeting:

Whereas in a case now pending in our Supreme Court, by appeal from a judgment of said Circuit Court, between Charlie Weems and Clarence Norris, Appellants, and State of Alabama, Appellee, the said appellee has to the Supreme Court suggested, that the transcript of the record of said Circuit Court, filed in said Supreme Court on December 29th, 1931, is incomplete in this:—the same fails to set forth a full and complete copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants.

We therefore command you to make dil*l*igent search of the records and proceedings in your office in the above cause, and certify, together with this writ, a full and complete transcript of said above named records and proceedings to our Said Supreme Court, by Thursday, January 21, 1932, at Montgomery.

Witness Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of January, 1932.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

[File endorsement omitted.]

[fol. 130] IN SUPREME COURT OF ALABAMA

RETURN TO WRIT OF CERTIORARI

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greeting:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to re-call and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Courthouse at Scottsboro, Alabama,

on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

[fol. 131] The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call:

Chas. Morgan, Jas H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen this March 30th, 1931.

M. L. Wann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

STATE OF ALABAMA,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County is hereby ordered to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in [fol. 132] criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Judicial Circuit.

SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consist of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regularly drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of all jurors so drawn, both regular and special, the said list showing which are regular

and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 133] Certificate to Certiorari & Appeal of Charlie Weems and Clarence Norris

STATE OF ALABAMA,
Jackson County:

I, C. A. Wann, Clerk Circuit Court in and for said County and State hereby certify that foregoing pages from 1 to 5 inclusive, contain a full, true and complete record and proceedings in the case of The State of Alabama vs. Charlie Weems and Clarence Norris demanded by Certiorari by the Clerk of the Supreme Court on the 14th day of January, 1932, and the same belongs to the transcript in the above cause filed with the Clerk of the Supreme Court on December 29th, 1931; to all of which I hereby certify to the said Court of Appeals as being inadvertently left out of said transcript in the case wherein the State of Alabama was plaintiff and Clarence Norris and Charlie Weems were defendant and the same being appealed to the Supreme Court of Alabama.

Witness my hand and seal of office this the 18th day of January, 1932, at the Courthouse in Scottsboro, Alabama.

(Signed) C. A. Wann, Clerk Circuit Court. (Seal.)

[fol. 134] IN SUPREME COURT OF ALABAMA

The court met pursuant to adjournment.

Present: All the Justices.

8th Div., 321

CHARLIE WEEMS & CLARENCE NORRIS

vs.

STATE OF ALABAMA

Jackson Circuit Court

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Jan. 21, 1932

Come the parties by attorneys, and argue and submit this cause for decision.

[fol. 135] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT—March 24, 1932

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoners, Charlie

Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendants, Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 13th day of May 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the bodies of said Charlie Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, until they are dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the Appellants Charlie Weems alias Charles Weems and Clarence Norris, alias Clarence Morrie, pay the costs of appeal of this Court and of the Circuit Court.

[fol. 136] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, ALIAS, &c., CLARENCE NORRIS, ALIAS, &c.,

v.

STATE OF ALABAMA

Appeal from Jackson Circuit Court

OPINION

THOMAS, J.:

The record in this case, number 2402 in the circuit court, shows that on the 31st day of March, 1931, the defendants, appellants here, appeared in person and by their counsel, and were duly arraigned, and entered a plea of not guilty; that the case was thereupon set for trial along with case No. 2404, State of Alabama v. Haywood Patterson, who was also jointly indicted with the appellants in this case; was set to be tried on Monday, April 6th; that the court [fol. 137] ordered that the venire for the trial should con-

sist of one hundred jurors, including the regular jurors drawn for the week in which this case was set for trial, and twenty-five jurors specially drawn from the jury box in open court in the presence of the defendants and their counsel; that all of said jurors be summoned by the sheriff, and a list thereof be made and, together with a copy of the indictment, be served on each of the defendants. The record further shows that this order was complied with, and that such list, together with a copy of the indictment, was served on each of the defendants. This was in strict compliance with the statutes.—Code 1923, §§ 8644, 8649. See Patterson v. State and Powell, et als. v. State, MS, as to venire and setting of the causes for trial.—Whitehead v. State, 206 Ala. 288.

The motion for change of venue made in this case, and the evidence in support thereof, are identical with the motion and evidence made in the case of State v. Haywood Patterson, No. 2404, which has been fully considered in Patterson's appeal, argued and submitted along with this appeal, and what was said in that case will not be repeated here, as we are in accord with Justice Brown's and Knight's opinions of the facts on this motion and under the authorities cited and adverted to in the opinions in Patterson v. State and Powell et als. v. State, supra. The motion was denied without error.—Patterson v. State, MS; Malloy v. State, 209 Ala. 219, 96 So. 57; Riley v. State, Ib. 505, 96 So. 599; Godau v. State, 179 Ala. 27, 60 So. 908.

The indictment was in the form prescribed by the statute, and under the repeated decisions of this court was sufficient to advise the appellants of the nature and cause of the accusation, and appellants had a copy thereof. This met the requirements of the Constitution.—Malloy v. State, supra; Schwartz v. The State, 37 Ala. 460; Doss v. State, 220 Ala. 30, 32; Jinright v. State, Ib. 268; Myers et al. v. The State, 84 Ala. 11; McQuirk v. State, Ib. 435, 5 Am. St. Rep. 381. The many authorities on this point are col-
[fol. 138] lected in 62 A. L. R. 1392, note.

The evidence of the State's witness, Victoria Price, to state its substance, goes to show, that on the 25th day of March, 1931, while she was riding on a freight train through Jackson County, with her girl companion, Ruby Bates, that they were riding in a "gondola car" loaded

with chert or gravel; that just after the train passed Stevenson in Jackson County, Alabama, the appellants, Charlie Weems and Clarence Morris, with the aid of other negroes, forcibly stripped off her outer garment, a pair of overalls, tore off her undergarments, and forcibly ravished her; that there were twelve in the party of negroes who came upon the car and forced six of seven white boys to leave the train while it was in fast motion, by assaulting said white boys; that after said white boys were forced to leave the train, some of the negroes raped her companion, Ruby Bates, and the other raped her—six in number—and that some of them held the girls while the others accomplished their purpose; that Weems held a knife against the throat of witness, while some of the others, including Norris, forcibly had sexual intercourse with her.

On cross-examination, after this witness testified that she was married, and had not been divorced, she was asked by defendants' counsel: "Did you leave him (her husband) at Huntsville?" The court sustained the solicitor's objection to the question, and defendants excepted. This question called for immaterial testimony, and the objection was properly sustained. She was also asked by defendants' counsel: "How long had you known your husband before you married him?", and due objection was sustained. This likewise called for immaterial testimony, and the objection was properly sustained. The same is true as to the question, "Were you ever in jail before?"

[fol. 139] Dr. Bridges, whose qualification as a medical witness was conceded by the defendants' counsel, testified that he, with Dr. Lynch, the county health officer, made a physical examination of the witnesses Victoria Price and Ruby Bates on the afternoon of the alleged rape, and found bruises and scratches on their persons, but no lacerations or tears of the sexual organs, and testified to the presence in the vaginas of the two witnesses of the male germ, going to show penetration; and expressed his judgment as a physician, that "six men, one right after the other, could have had intercourse with her (Victoria Price) without lacerations. That is possible." This opinion evidence was competent.

On cross-examination of this witness, the defendants' counsel asked him: "Both of these girls admitted to you they had had sexual intercourse previous to this, didn't

they?'' Due objection was made to this question which was sustained. There was no evidence showing or tending to show that the defendants had sexual intercourse by and with the consent of the State's witnesses. The evidence sought was not material. Patterson v. State; Powell, et als. v. State, MS.; Griffin v. The State, 155 Ala. 88, 46 So. 481; Rice v. State of Florida, 35 Fla. 236, 17 So. 286; Story v. State, 178 Ala. 98. See, also, Bailey v. Com., 3 A. S. R. 87; 22 R. C. L. p. 1208, § 42; 52 C. J. 1079, § 109.

The same is true as to the following questions to this witness: ''Both of them told you they had had sexual intercourse, one told you she had been married and the other told you she had been—.'' * * * ''From your examination could you tell whether or not they were subject to intercourse? Were they virgins?'' * * * ''That you find anything in the vagina that indicated to you these girls had had or might have had gonorrhea or syphilis?'' And other questions of like import. The latter question was not pertinent as to identity or the corpus delicti of the immediate offense, as was the case in Williams v. State, 139 So. 291. These inquires were beyond the controverted issues of fact being tried.

[fol. 140] Tom Taylor Rousseau testified as a witness for the State, identified the appellants as being among those taken from the train at Paint Rock—from the gondola car—also testified that he did not see the girls when they got off the train, and further testified: ''I saw Victoria Price a little later. When I saw her at that time they were coming around the depot with her in a chair. She had her eyes closed and was lying over this way and they were bringing her from the depot up to town to the doctor's office. That was Victoria Price. I saw her later one time from where I was. She was still in the chair.'' This witness testified on cross-examination, among other things, that ''One of the girls was not in condition to walk. I did not help carry her off. There was an officer toted (carried) the girl up there. They toted (carried) her off the train, a fellow named M. A. Mize. He had to carry her away from the train, unconscious. I don't know about what the doctor said about her being unconscious at that time. I was not there. I was there at the time the girl was taken off.''

At this junction, defendants' counsel asked the witness: ''And if he (the doctor) testified immediately after their

arrival here or at Paint Rock she was not unconscious, he is mistaken about it?'' The objection to this question was properly sustained. It was the province of the jury, not the witness, to say which of the two versions was true. Moreover, the question related, not only to the condition of Mrs. Price at Paint Rock, but also at Scottsboro, and this witness had not testified to her condition at Scottsboro.

[fol. 141] Jim Broadway testified as a witness for the State, that he was present at Paint Rock when Victoria Price and her companion left the train, and further, ''I saw Victoria Price there. We got her off the freight train. She was on one of these gravel cars. That is known as a gondola car. There was another woman with her, the Bates girl. The Bates girl, seemed to be in fairly good shape, but the other could (not) hardly talk and couldn't walk.''

The State's solicitor here asked the witness: ''Did you hear them make any complaint there, either one of these girls, of the treatment they had received at the hands of these negroes?'' The defendants severally objected to this question on the ground that it called for incompetent, irrelevant, immaterial and illegal testimony, and for hearsay testimony. The court ruled that the answer be limited to Victoria Price, the person named in the indictment as the victim, and the defendants again objected on the same ground. The objection being overruled, the witness answered: ''I did not hear Victoria Price make any complaint, either to me or anybody else there, about the treatment she had received at the hands of these defendants over there. We sent and got a chair for Victoria Price and carried her to the doctor's office at Paint Rock.''

The courts are unanimous in holding on a trial for rape and assault with intent to ravish, that it is permissible to show that the alleged victim made complaint of the outrage soon after its commission, as a circumstance to corroborate her testimony.—Barnes v. State, 88 Ala. 204, 7 So. 38; 16 A. S. R. 48, and note; 22 R. C. L. 1212, § 47. The defendants' objection was, therefore, overruled without error.

[fol. 142] Ruby Bates, the companion of Victoria Price, over defendants' objection, was allowed by the court to testify that the defendants were among those on the train; that they, with the others, came over the box car in a body and into the gondola car where the witness and her woman companion were riding, armed with pistols and knives, and as-

saulted the white boys and forced them to leave the train, and then seized the witness and her companion and threw them down in the car.

On cross-examination this witness testified: "I have never been married. I had a conversation with the doctor about having sexual intercourse. I am talking about the doctor after I arrived at Scottsboro, I do not remember his name. * * * I just told him to examine me and see if he could find anything wrong with me. I told him about those negroes." Counsel for the defendants thereupon asked the witness: "No, not about the negroes, but did you tell him you had intercourse before?" The court sustained the solicitor's objecton to this question, and for reasons heretofore stated, this ruling was not error.

This witness further testified on cross-examination:

"I had not said a word to these white boys when I saw the negroes coming over. Nothing had been said between either me or my companion to the white boys. They were in one end of the car and we were in the other, sitting perfectly quiet, no sort of conversation, just sat there looking at each other. When I saw the negroes coming one of these white boys looked up over the car and said: 'Look coming yonder,' and we all looked up then, and they told the white boys to [fol. 143] unload and the white boys still hadn't said nothing to us. There was one white boy out of seven left on the train. I do not (know) the names of any of the white boys. I could not tell you why they left this one. He stayed on in that gondola car. The negroes hit him but they did not put him off." Defendants' counsel then asked the witness: "They could have put him off just like they did the rest of them; there wasn't any reason for not putting him off, was there?"

This question called for a conclusion, and if it was at all material, the jury, under the facts developed, could draw the conclusion or inference.

The further testimony of this witness fully corroborated the witness Victoria Price, going to show that these girls were forcibly ravished.

Luther Morris, who was, at the time the train passed, between Scottsboro and Stevenson, at his home, testified in behalf of the State, that he observed the freight train passing. "I saw a bunch of negroes put off five white men

and take charge of two girls. I saw between eight and ten negroes, and they put five white men off the train, made them get off the train. They did not throw them off; they just overpowered them and made them get off. * * * I did not hear any pistol shots. The train was making so much racket I could not hear. I figure that the train was making between thirty-five and forty miles an hour. I saw those white men get off or fall off the train. I guess I observed that and could see that train there for about four hundred yards. I was there in thirty yards of the [fol. 144] track. The kind of car on the train they were getting off was a coal car, or gravel car, you might call it."

On cross-examination this witness testified:

"I saw two women in the gondola, two white girls. The two white girls were doing their best to jump, and the negroes caught these two white girls and they were pulled back down in the car. I was standing above this train so I could get a good view. I saw all of this going on. * * * I went out to where these boys were, the two that got knocked in the head, but they were hurting so bad they could not talk. They just said: 'I am dying.' I certainly did notice wounds or bruises about them."

The State offered two more witnesses, who observed the train as it passed and saw some of the crowd on the train, and afterwards saw the white boys after they were forced off the train.

The defendant Weems testified, inter alia:

"My name is Charley Weems. I was on this freight train running between Stevenson and Paint Rock on March 25th. There were twelve of us negro boys on that train. There were seven white boys on there. I first seen the white boys when we left Chattanooga. I did not see the girls on the train till we got to Paint Rock. I got on the side of a box car at Chattanooga and crawled over to an oil tank. When the train slowed up at Main Street I came across the box car to the oil tank. When we got up to that next little town above Chattanooga, I left the oil tank and went to the gon- [fol. 145] dola I don't know what town it was. I had been out of Chattanooga about an hour or a little over. The fight between the white boys and the negroes started down

here at Stevenson, after we left Stevenson. The white boys were in the gondola. The negroes got in the gondola directly after we left Stevenson. Haywood Patterson and that long yellow boy back there first went in the gondola. Three of us went over in the gondola. What prompted me to go in the gondola, Haywood Patterson had a pistol and he said 'Come on and help me get the white boys off; if you don't I am going to shoot you off.' I don't know whether any of the negroes had been quarreling. They were not on the train where I was. I was one of the three boys that went in the gondola first. I was behind Haywood Patterson. Haywood Patterson just walked up and hit this white fellow over the head with a pistol. I was not doing anything at all. I didn't have a pocket knife or nothing. I just told the white boys to get off. A fight did not start. These white boys did not fight at all; they just run and tried to get off the train. About five got off the train. I could not tell how many stayed on the train. Some of them went off toward the engine. I don't know where the girls were. I did not see the girls. I never did see the girls. I got off the train when we got to Paint Rock. I got off the train. Five boys got off the train in all. The five were me and Clarence Norris, Ozie Powell, Willie Roberson and that boy back there, Olen Montgomery, that blind boy. I had known these negroes that were with me since we left Atlanta; we left Atlanta together. I did not know the rest until we got on the road. The first time I saw these girls was when we got to Paint Rock. They [fol. 146] were getting off the train. They got off the gondola. I wasn't in the gondola they were on. I wasn't in that gondola at all. I had not been in that particular car, not where they were. I did not see the girls until they were getting off the gondola. I don't know how many gondolas were on that train; five or six on that train along in line together; some were, and some on the other side of box cars; a box car was between them. I had nothing to do with the girls at all. If anybody had anything to do with the girls I don't know nothing about it. * * * I wasn't on a gondola. I was on an oil tank. I got over in the gondola down at Stevenson. I walked over the top of the gondola. Some white fellows were in the gondola. There was gravel in that gondola. These white boys were in the car when I got in it

at Stevenson. I did not jump off the box car into the gondola. I climbed down and stepped in. The car had steps on the end of it. Haywood Patterson told me to go in there and help throw them white fellows off; if I didn't he was going to shoot me off. That is Patterson (indicating). He told me why he wanted me to go along. He wanted to go in there and help throw the white fellows off. He said he was throwing them off because they had been trying to run over him down in the oil tank. Haywood Patterson had a pistol. I did not have a pistol. I saw his pistol. He went back along the train to call me to help throw the boys off. There were seven white boys on the train. We had come to Stevenson from Chattanooga before we got in there. I could not see all over the gondola and there could not have been anybody hid in there where I could not have seen them. I did not see those two girls in there. The boys were lying right [fol. 147] in the center of the gondola car. I did not see the girls at no time until I got to Paint Rock. Five boys were put off. Haywood Patterson hit one; I don't know his name, but he had on a big wide belt, and he hit him across the head with a pistol. When he hit him he did not catch hold of him. He didn't grab him. This white fellow just jumped off and said 'Yes, we will get off.' He did not fight, because the white fellow got scared of the pistol and climbed down on the side of the car and jumped off. The other fellow jumped off. They all jumped off but one. One little white boy stayed in the car and Patterson said to put him off and he done put his foot down on the side and another boy had a big knife around his throat. He did not jump off. He begged for mercy and I reached down and pulled him back on the box car. I never saw these girls at all and never had anything to do with them; never had my hands on them. I could tell the girls from the boys. Just because they had on overalls it wouldn't change their looks with me. There wasn't a soul in that car with me and Patterson except these negroes and one white boy. * * * We were all in the gondola when we got to Paint Rock. I never saw no girls in this gondola we were in at all. I first saw the girls when they came toting them through Paint Rock. They had the oldest girl in a chair coming through Paint Rock. She did not get out of the gondola I got out of. I don't know whether she got out of a gondola or not. The first I saw of

either one of the girls they were bringing the oldest girl up in a chair."

[fol. 148] The defendant Norris testified, among other things:

"I was not in the gondola when this fight ocurred. I seen two boys on the flat where I was on the cross-ties. I did not have any trouble with them. I did not have a pistol or a knife. I did not leave that car I was riding on. I did not leave it at Paint Rock. I don't know who took me off the train at Paint Rock, there were so many there. I remember getting off. I got off at Paint Rock, I reckon. I did not just leave the train. They threw guns on me, the officers did. I had not been engaged in the fight at all but I seen the fight. The fight took place in the gondola car. Every one of them colored boys was fighting. They were all fighting. That one yonder, Haywood Patterson started the fight. He came across the flat car where I was on the cross-ties; him and the rest of them colored boys come across that car and said he was going over there to run the white boys off and going to have something to do with them white girls. I saw this boy that just testified before me on the stand. They came across where I was sitting down at that time. They knew the girls were on the train and the white boys with the girls on the gondola car. I had not seen the girls. I hadn't seen them till I got off this flat car I was sitting in, and seen these boys fall off the train; after he said he was going to run them off I seen them fall off the train and I asked two white boys what they were getting off the train for and he told me he did not know, and I got up on the train to see if he was putting them off, and sure enough I got up on the box car and looked where they were and the whole crowd was putting the white boys off. One had a knife around the other's neck and trying to push him off, and he wouldn't get off and the other boy took him and pulled him back up in the car. I did not have anything to do with the girls. I did [fol. 149] not have my hand on any of them. I did not hold them or anything of that sort. When I first saw the girls the train was away up the road. When I saw the girls was when I got up on the box car and looked over

where he was putting the white boys off. * * * I did not get into that gondola at all. I just looked in. This Weems I was speaking about here is not my friend. I knew him. I saw him over in the gondola and I saw the girls in there, but I did not go in there. I saw that negro in there with those girls. I seen everyone of them have something to do with those girls after they put the white boys off the train. After they put the white boys off I was sitting up on the box car and I saw every one have something to do with those girls. I was sitting on top of the box car. I saw that negro just on the stand, Weems, rape one of those girls. I saw that myself. When the officers searched me they did not find anything on me. They did not find a pearl-handled knife. They did not find a pearl-handled knife on me. I did not have a knife or pistol. I did not go down in the car and I did not have my hands on the girls at all, but I saw that one rape her. They all raped her, every one of them. There wasn't any one holding the girls legs when Weems raped her, as far as I saw. The other boy sitting yonder had a knife around her throat, that one sitting on the end behind the little boy. I don't know what his name is, but he is the one that had the knife. I did not see the little one hold of her legs while this one was raping her. I did not see anybody holding her legs. I don't know who pulled off her overalls. The girls were lying down when I got up on the box car. This big one did not have a knife on her throat. That little boy sitting behind yonder—I don't know his name—is the one [fol. 150] that had a knife around her neck, making her lie down while the others raped her. I didn't see any of the negroes take her overalls off. The girls were lying down when I got up on the box car. I saw the overalls lying in the car. I did not see any step-ins. I did not get down in the gondola, never did get down in there."

The State offered evidence in rebuttal going to show that the officers, when they arrested Norris, took off his person a knife, which was identified by the witness Victoria Price as her knife, and testified that Norris took the knife from her as well as all the money she had—one dollar and fifty cents.

Appellants' insistence that the evidence does not support the verdict of guilty as charged in the indictment, cannot

be sustained. The evidence, much of which has been set out above, proves the body of the crime, without dispute, and strongly tends to establish a conspiracy between those who forced the white boys to leave the train, to do the unlawful acts which immediately followed, and that they all aided and abetted therein.—22 R. C. L. 1176, § 6; State v. Burns, 82 Conn. 213, 72 Atl. 1083, 16 Ann. Cas. 465; State ex rel. Attorney-General v. Tally, Judge, &c., 102 Ala. 25.

There is no contention on the part of the defendants, that they had sexual intercourse with the alleged victim by and with her consent, express or implied, and no evidence was adduced to support such contention; therefore, evidence alleged to have been newly discovered, was not such as would authorize the granting of a new trial.—Patterson v. State, MS.; Fries v. Acme White Lead & Color Works, 201 Ala. 613. There was no error in overruling the motion for a new trial.—Patterson v. State, supra.

[fol. 151] The record shows that the defendants were represented by counsel who thoroughly cross-examined the State's witnesses, and presented such evidence as was available in their behalf, and no reason appears why the judgment should not be affirmed.

Other questions presented on motion for a new trial were fully considered in the Patterson and Powell Cases, which are here approved, and need not be repeated. There is no reversible error. The judgment of the lower court is, therefore, affirmed as to each of the defendants, Charlie Weems, alias, &c., and Clarence Norris, alias, &c.

Affirmed.

Gardner, Bouldin, Brown, Foster and Knight, JJ., concur.

Anderson, C. J., dissents.

[fol. 152] Clerk's certificate to foregoing paper omitted in printing.

[fol. 153] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

No. 321

CLARENCE NORRIS and CHARLIE WEEMS, Appellants,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING—Filed March 25, 1932

[fol. 154] [Title omitted]

Comes the appellants, Clarence Norris and Charlie Weems, and hereby makes application for a rehearing of said cause and moves the Court to set aside the judgment of affirmance rendered in said cause and to grant them a new trial, and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

G. W. Chamlee, (Signed) J. R. Brodsky, (Signed) Irving Schwab, (Signed) G. W. Chamlee, Jr., Attorneys for Appellants, Clarence Norris and Charlie Weems.

[fol. 155] [Title omitted]

Now comes the appellants, Clarence Norris and Charlie Weems, in the above cause and presents this their application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellants or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument thereof.

I

The Court erred and misconstrued appellants' assignment of errors, as set out in their brief and in this cause,

and that their motion and petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled them to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative if their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have — previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 156]

II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legis-

lature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 157] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting wit-

ness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due process of law, and the judgment against them was void.

[fol. 158]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in controvention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of

their legal and constitutional rights to be informed legally of the charge against them.

(Signed) G. W. Chamlee, J. R. Brodsky, Irving Schwab, Joseph Tauber, Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 159] Brief and Citations of the Law in Support of the Above and Foregoing Assignments on the Petition to Rehear in This Cause

Point I

The venue should have been changed, as set out in assignmen*r* No. I of this petition to rehear, because the opi*b*ion of conditional affirmance of this Court is in direct conflict with the opinion and decision handed down in the case of Downer v. Dunnaway, United States Circuit Court of Appeals, 5th Circuit, in cause No. 6286 at New Orleans, Louisiana. Also it is in conflict with the decision of the case of Moore vs. Dempsey, 261 U. S. 86, and also because it is in conflict with the case of Thompson vs. State, 117 Ala. 67, and other cases cited in our original brief in the case of Ozie Powell, et al, vs. State of Alabama filed on the original hearing of this cause.

Point II

The Court erred in its conditional judgment of affirmance, because throughout this record there is disclosed a total disregard of the legal rights of these appellants to a fair and an impartial trial, and to *f*ue process of law, as provided for in the Constitution of the United States.

Downer vs. Dunnaway, U. S. Circuit Court of Appeals, 5th Circuit, in case No. 6289.

Moore v. Dempsey, 261 I. S. 86.

Point III

The Court erred in its conditional judgment of affirmance, because all negroes of Jackson County had been excluded from the jury box and no negroes were summoned for the grand jury that indicted the appellants, or on the trial jury which tried them.

Neal v. Delaware, 105 U. S. 370, 397;
Rogers v. Alabama, 192 U. S. 226;
Carter v. Texas, 177 U. S. 442;
Strander v. W. Va., 100 U. S. 303;
Gibson v. Miss., 162 U. S. 565;
Bush v. Kentucky, 106 U. S. —;
Ex. P. Virginia, 100 U. S. 313;
Green v. State, 73 Ala. 26;
Roberson v. State, 65 Fla. 97;
State v. Peoples, 131 N. C. 784;
Boneparte v. State, 65 Fla. 97;
Montgomery v. State, 55 *a*Fla. 97.

[fol. 160] prosecution for the same offense, and so clearly that the Court may be able to determine whether or not the facts there stated are sufficient to support a conviction."

Armour Packing Co. v. United States, 153 Fed. 116, citing Ledbetter v. U. S. 616, and other cases cited on page 545 of "Joyce on Indictments."

Point V

The Court erred in its conditional judgment of affirmance in this cause, because a new trial should be granted for the reason that members of the trial jury were not interrogated as to whether or not they bore racial prejudice against the appellants, and because of the presence of a mob at and about the Court House, and because of public demonstration prior to and during the trial, the appellants' rights were violated and the Constitution of the United States was violated, because under the Constitution it was provided that appellants should have a fair trial and be represented by counsel, and they did not have a fair trial because of the presence of a mob threatening and intimidating, and because of a parade and demonstration put on in and around

the Court house at and before their trial rendered the judgment illegal and void and here refers to cases cited on pages 38 to 61 of the main briefs filed with this Honorable Court in this cause, the brief being styled Ozie Powell, et al, vs. State of Alabama, but they call to the attention of the Court the following cases:

Moore v. Dempsey, 261 U. S. 86;
Frank v. Mangrum, 237 U. S. 309;
Downer v. Dunnaway, U. S. Circuit Court of Appeals, Fifth Circuit, No. 6206 (not yet reported);
Seay v. State, 207 Ala. 453, 93 So. 403;
Holladay v. State, 100 So. (Ala.) 86;
Clayton v. State, 123 So. (Ala.) 250;
Collum v. State, 107 So. (Ala.) 35;
Bradley v. State, 21 Ala. App. 539;
110 So. 157 (affd. 215 Ala. 140);
Collier v. State, 115 Ga. 803;
State v. Wilson, 42 S. E. (N. C.) 556;
Hamilton v. State, 57 S. W. (tex.) 431;
Voughan v. State, 57 Ark. 1;
Douglas v. State, 152 So. 379;
Liggon v. State, 200 S. W. (tex.) 550;
State v. Weldon, 91 S. C. 29.

[fol. 161] We are confident that this Honorable Court misconstrued our assignments of error on the hearing of this cause and that the judgment of the Circuit Court of Jackson County should be reversed and a new trial granted and the venue changed to some other county and remanded for another trial.

Respectfully submitted.

George W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Scrieber, Attorneys for Appellants.

[fol. 162] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

APPEAL FROM JACKSON CIRCUIT COURT

ORDER OVERRULING PETITION FOR REHEARING—April 9, 1932

Application for rehearing having been filed in this case on March 25th, 1932, and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and the said application for rehearing be and the same is hereby overruled.

[fol. 163] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The petitioners, Charlie Weems and Clarence Norris, Appellants, in the above styled cause most respectfully represent that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon these petitioners and fixing May 13, 1932, as the date of their execution, and that

they filed their petition for a rehearing in this Honorable Court, which was overruled and disallowed on April 9, 1932, and they desire to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon them to give them and their counsel time to comply with the legal requirements in the preparation and filing of their petition for certiorari in the Supreme Court of the United States at Washington, D. C. for the purpose of having their case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioners make this application under the provisions of Section 8(d) of the Act of Congress of February 13, 1925, (U. S. Code, title 28, section 350), and in support thereof present the following:

Your petitioners feeling themselves aggrieved by the judgment of this Court and as they are advised by their attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 164] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioners of their lives and liberty without due process of law and has denied to your petitioners the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioners although duly applied for compelling your petitioners to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioners of the charge against them with the certainty required.

(c) Your petitioners were denied an opportunity to employ counsel or to be properly represented by counsel and to prepare their case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioners their right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioners are advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 Subd. 1). Your petitioners are advised by their counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 165] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioners may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the

petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioners are advised by their attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioners respectfully ask this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 166] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioners, and your petitioners have been advised that it will take your petitioners and their counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioners respectfully ask this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioners respectfully submit that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Ozie Powell et al. vs. State of Alabama, and Haywood Patterson vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the writ of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioners respectfully submit to this Honorable Court that a stay of execution is necessary in order to give your petitioners an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. They respectfully pray that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing

of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Charles Weems, Petitioner, (Signed) Clarence Norris, Petitioner, by (Signed) G. W. Chamblee, Atty.

[fol. 167] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Jr., Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, (Signed) Irving Schwob, Attorneys.

[fol. 168] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause it is made to appear by the petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Charlie

Weems alias Charles Weems and Clarence Norrow alias Clarence Morris having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932 to June 24th, 1932. It is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the bodies of said Charlie Weems alias Charles Weems and Clarence Norris alias [fol. 169] Clarence Morris until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 170] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court:

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith.

2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith.

3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.

4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

5. The petition for a rehearing, copy of which we submit herewith.

6. The final judgment and decision of the Supreme Court of the State of Alabama.

7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 171] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.