JAMES H. TILLMAN AT BAR OF JUSTICE.

Trial of the Man Who Killed Editor Gonzales Begun.

JURY QUICKLY SECURED

Taking of Testimony for the State is Underway.

LEGAL SPARRING OVER ELIGIBILITY OF A JUROR.

The Prisoner, When Placed in the Box, Pleads "Not Guilty" to the Charge of Murder in a Firm Voice.

By W. W. Ball.

Lexington, Sept. 28.—James H. Tillman, some time lieutenant governor of South Carolina and charged with the murder of N. G. Gonzales, editor of The State, on the 15th of January last, a few days before the expiration of his term of office, was today placed on trial for his life.

At 11 a. m. Solicitor Thurmond announced the State ready.

"We may safely say that we shall be ready, though some of our witnesses are not here yet," said Congressman Croft of Aiken, Tillman's leading counsel and Edgefield law partner.

The assemblage in the court room, which, far from crowding, scarcely filled it, could scarcely realize for a moment that the trial would actually begin, so frequent have been the predictions of further delay. Two sessions courts have intervened in Richland since the homicide, the defense obtaining continuances at both and a change of venue at the first. Again the spectators were agreeably disappointed when a jury was secured by 1.15 p. m. from the original panel. It would have been secured in half an hour save for the contest over Murray Parnell.

The hearing of testimony by the State was commenced after the recess. It was mainly confined to Policeman Boland's story of the arrest of Tillman, to the identification of Tillman's pistols by Sheriff Coleman and Clerk of Court Walker, together with the bullet from the German magazine pistol which pierced Mr. Gonzales through and through, and to the identification of clothing worn by him, with its bullet holes, on the day that he was mortally struck, the latter being sworn to by Messrs. Hoyt, Wood and Wallace of The State. Nearly if not all the jurymen were placed on their voir dires, and, without exception, they swore that they had expressed no opinions and were conscious of no bias for or against the prisoner, an attitude remarked by some as singular in its unanimity, considering the wide publicity the case has received. After Parnell had answered the usual questions the solicitor inquired if he had a registration certificate. He replied affirmatively. The solicitor swore Clerk of Court George and introduced the county registration books and on them Parnell's name did not appear.

A lengthy argument ensued. The defense presented testimony that the original registration books had been lost or not returned when used in an election concerning the annexation of a part of this county to Richland county.

Messrs. Croft and Johnstone argued that the name might have been omitted from the books and the State having propounded the question on the voir dire had waved the right to appeal to the books as the highest evidence.

Judge Gary held, however, that to be a legal juror one must be a qualified elector and directed the inquiry to that point. He was about to allow Parnell to go to his home 12 miles distant and search for the certifice when Mr. Thurmond consented to accept his ruling with the evidence at hand.

His honor ruled that taking Parnell's positive statement in connection with the apparent irregularity of the books he would admit him to be sworn, whereupon the solicitor excused Parnell and so yielded one of his five challenges. Parnell was the second man drawn, and after his case was disposed of the remaining 11 jurymen were rapidly secured.

The State had exhausted its challenges when eight or nine had been sworn and the defense had utilized all of its ten before the jury box was full.

The Jurors.

Four of the 36, A. D. Fallow, Joel H. Geiger, T. W. Dreher and Simon Corley were excused by the court for one or another cause.

Of the jurymen selected Saylor, Risinger, Leitzsey, Koon, Sharpe, Shealey and Price are farmers, Wood, Lybrand, Corley and Jumper are cotton mill operatives, and Hicks is a carpenter, Wood is a boss of a weave room.

The following jurors drawn were challenged by the defense: M. M. Kleckly, Eugene C. Williams, Luther J. Hook, J. Laurence Jumper, John B. Stack, L. O. Wilson, G. M. Lewis, Thos. J. Roof, Geo. W. Derrick.

The following were challenged by the State: John B. Reed, John J. Youngner, Noah H. Taylor, Murray Parnell and J. Eugene Lorick.

The Opening.

When the court convened at 10 a. m. the counsel for the prisoner were present as follows: G. W. Croft, P. H. Nelson, O. W. Buchanan, George Johnstone, Efird & Dreher, W. H. Sharpe, G. T. Graham, G. R. Rembert and C. L. Blease. For the State, besides Solicitor Thurmond, were G. D. Bellinger, Andrew Crawford, Wm. Elliott, Jr., I. L. Asbill and L. T. Sturkie.

The prisoner's mother, Mrs. G. D. Tillman, his wife and several lady friends, were in the court room most of the day. Senator Tillman was present.

The First Move.

Attorney Graham, as soon as the judge entered, rose with a copy of The State in hand and said, "I think it my duty to call to the court's attention an article entitled 'Jugglery With the Courts.'" "I object," interpolated the solicitor. "We are here for the trial of this case and such matter is not proper nor relevant to it."

Judge Gary said, "My impression is that Mr. Graham desires to make a statement in behalf of the Lexington bar, and as such I think it proper to hear him."

Mr. Asbill of the State's counsel addressed the court and said "I consider myself a member of the Lexington bar and I have heard nothing of a statement on the part of the bar."

Judge Gary—It would not be proper to hear the statement unless it comes from the whole bar. I so rule.

Mr. Sharpe remarked that it came "from the majority of the Lexington bar."

The Prisoner Brought In.

A recess of half an hour was taken at the solicitors request during which the prisoner was brought in by Sheriff Caughman. When the solicitor announced the State ready, Mr. Croft inquired, "Is Mr. Ambrose E. Gonzales in court" and if in response to a subpoena duces tecum issued for the defense had he brought the files of the Columbia State from April 15, 1902, to September 15, 1903. Counsel for the State replied affirmatively, and Mr. Croft declared that though some of his witnesses were still absent they would be here and he could safely announce the defense ready.

The prisoner entered the small semi-octagonal dock, which is elevated about 12 inches from the floor, and stood in it for arraignment. On one side stood Mr. Croft and on the other Mr. Nelson. Clerk of Court George read the indictment in a matter of fact way and the prisoner replying to the usual question, said, "not guilty" in a voice audible throughout the room. He was then granted permission to take a seat with his counsel.

After the jury had been drawn and charged Judge Gary directed the sheriff to have two of his constables sworn, whom he instructed to take charge of the jury and keep them together in the recess and to allow none to approach them with regard to the case.

Mr. P. H. Nelson of prisoner's counsel here said: "While no literature bearing on the case should go into the jury's hands I think it proper to request that in view of utterances in the Columbia State last Saturday and today they be especially instructed not to read that newspaper during this trial."

"I think that request proper," said the judge, and he so instructed the jury. The court then adjourned until 3 p. m.

The First Witness.

Policeman Geo. Boland was the first witness to take the stand when court reconvened and his, with the testimony of other witnesses, is given in the stenographic report below.

Sheriff Coleman was next called, and the prisoner's two pistols were exhibited as was also the prisoner's overcoat.

Clerk of court Walker also testified as to the pistols. Requested to show to the jury how the magazine pistol was operated, Mr. Walker found some difficulty with it. Judge Gray inquired if the pistols were loaded. The bullet with which Mr. Gonzales was mortally wounded was introduced, the defense not admitting that it was such projectile and intimating that possibly contrary evidence would be offered. Finally, when the witnesses had handled the magazine weapon before the jury, Mr. Johnstone, who was sitting by the prisoner, arose and remarked: "We are informed that that pistol is both cocked and loaded at this moment."

This weapon appeared to be a novelty to the entire court and was eyed with close attention.

Messrs. James A. Hoyt, Jr., of the State, Lewis G. Wood, Jr., a reporter for The State and M. C. Wallace, foreman of the job office, were then sworn successively and identified the clothing worn by Mr. Gonzales on the day he was shot with its bullet holes. Mr. Wood, at the solicitor's request, put on the coat, vest and overcoat and exhibited to the jury the bullet holes, saying in reply to a question that he was not so large a man as the deceased editor. At this juncture the solicitor requested that the court indulge him until some witnesses could arrive on an incoming train, but the judge remarked that by that time it would be near the hour of adjournment and so would adjourn the court at once.

The Files.

Mr. Croft requested that the defense be allowed to have the files of the Columbia State, which had been asked for. The solicitor said that they would be tendered at the proper time. Mr. Nelson replied that unless they were given to the defense beforehand, in time to be examined, a delay would be caused when they were introduced. After some further discussion and pleasantness between the lawyers, Mr. Crawford of the prosecution declared that he had no objection to handing them to the defense for the present, so that was agreed upon.

Then the court adjourned until 9.30 a. m. tomorrow.

Mr. Ambrose E. Gonzales, eldest brother of the late editor, was present throughout the day.

Such is an outline of the first day's story. Every point was contested closely as it arose. Brief delays were not infrequent and the indications are that the trial will be long drawn out. At no time was the court room uncomfortably crowded. At no time was the least excitement manifest. A stranger would scarcely infer, except from the great array of lawyers, that a case of uncommon interest was engaging the Lexington court of sessions.

Stenographic Report.

Solicitor Thurmond—The State is ready in the case of Jas. H. Tillman. I will state that we are ready to have the arraignment and to have the jury empanelled, but will not be ready to proceed with the evidence until 3 o'clock. With that understanding we announce ready.

Mr. Croft—Is Mr. Ambrose Gonzales in court?

Mr. Crawford—He is here.

Mr. Croft—We desire to ascertain from him whether in obedience to the subpoena duces tecum he has brought the files of The State newspaper from the 15th of April, 1902, up to the 30th of September, 1902.

Solicitor Thurmond—They are here.

Mr. Croft—While all of our witnesses are not here, they are within easy reach and we can safely say we will go on with the case with reference to the statement of the solicitor as to proceeding with the evidence now. If he has any witnesses here, we submit it would be economy of time to put up such witnesses as he may have present and then wait for the others.

The Court—The necessity for waiting until 3 may not arise, but the State will not be forced to put up any witnesses until 3 o'clock.

Mr. Croft—I suppose we can empanel the jury now.

The Solicitor—Yes sir, but arraign him first.

Col. James H. Tillman, the prisoner at the bar, was then placed in the dock and arraigned and pleaded not guilty.

Empaneling the Jury.

Jacob E. Saylor, the first juror drawn, was placed on his voir dire, and questioned by the court.

Question. Are you related by blood or marriage to either the deceased or the prisoner at the bar? Answer: No sir.

Q. Have you formed or expressed any opinion as to the guilt or innocence of the accused? A. I cannot say that I have, sir.

Q. You haven't formed or expressed an opinion? A. I cannot exactly say I have.

Q. Are you sensible of any bias or prejudice for or against the prisoner? A. No sir.

Q. Have you any reason why you cannot make an impartial juror in this case? A. No, sir.

Solicitor Thurmond—The State has no objection.

The defendant accepted the juror, and Mr. Saylor was sworn.

The name of Murray Parnell was the next name drawn out of the hat and he was placed upon his voir dire, and the usual questions were propounded to him, he answering them all in the negative.

Solicitor Thurmond at this point asked Mr. Parnell, "Are you a qualified voter?" A. Yes, sir.

Q. Have you got your registration ticket? A. I have it at home.

Q. Where did you register? A. Brookland.

Q. In this county? A. Yes, sir.

Solicitor Thurmond (addressing the clerk of the court)—Please bring in court the registration books for Congaree township.

Mr. George, clerk of court, asked permission to ask Mr. Parnell what time he registered, so as to facilitate him in finding the proper book.

The court. Yes, sir, ask him the question.

Q. (By Mr. George) What time did you register?

Mr. Parnell replied: "I think last year. I have got my tax receipt here, last tax paying time." (The books were brought into court.)

Solicitor Thurmond—I would like to have the clerk of the court sworn.

Mr. Samuel B. George, clerk of court, sworn.

Q. By the solicitor: You are the clerk of the court of Lexington county, Mr. George? A. Yes, sir.

Q. Have you examined the registration books with reference to finding the name of Murray Parnell?

Mr. Croft—When the juror was presented they asked him on this point, and they are bound by his answer. We will say further, whether his name is there or not as a voter, the constitution settles it. His name may not be on the book through error, and according to the constitution, article 2, section 2, "Every male citizen of this State and of the United States, 21 years of age and upwards, not laboring under the disabilities named in this constitution and possessing the qualifications required by it, shall be an elector." First, they have seen fit to ask Mr. Parnell whether he was registered, and they are bound by the answer. Secondly, under the constitution, we think it is a right a citizen has, and it cannot be taken from him by any mistake or by any omission of duty on the part of the officers who have the custody of these papers. The juror has testified that he has a registration certificate. That is not our testimony, they have brought it out; it is competent because they made it so by asking the question.

Solicitor Thurmond—I call your honor's attention to section 192 of the civil code, volume 1:

"Section 192. Where, however, the allegations of the causes of action or defense to which the proof is directed is not proved, not in some particular or particulars only, but in its entire scope and meaning it shall not be deemed a case of variance within the last two sections, but a failure of proof."

Now, as I understand it if this juror offered to vote and could not vote then he cannot serve as a juror when offered here. I will now read your honor section 193:

"Immediately preceeding each general election or any special election, the board of registration shall furnish to the commissioners of election of their county two registration books for each polling precinct in their county containing in each the names of all electors entitled to vote at such precinct and no elector shall vote in any polling precinct unless his name appears on the registration books for that precinct."

Suppose he has a registration certificate, can he vote? Not at all.

The Court—The objection is not made that the juror is indifferent but it is objection for cause.

Solicitor—That is the point I am making to the court.

The Court—The question as to his being indifferent is passed and the question is as to the competency of the testimony.

The Solicitor—Is he competent? I will read: "That in case the name of any registered elector does not appear or incorrectly appears, on the registration books of his polling precinct, he shall, nevertheless, be entitled to vote upon the production and presentation to the managers of election of such precinct (in addition to his registration certificate) of certificate of the clerk of court of common pleas, that his name is enrolled in the registration book or record of his country on file in said clerks office, or a certificate of the secretary of state that his name is enrolled in the registration book or record of his country on file in the office of the secretary of state or prior to the filing of such books or records on or before the 1st of February 1898, in the office of the clerk and the secretary of state a certificate of a member of board of registration of his county that his name is enrolled on the county registration book or records and it shall be the duty of the clerk or the secretary of state, or a member of the board of registration, to furnish such certificate without cost or charge upon demand of any such elector whose name appears upon the registration books or records of his county on file in the office of the clerk of court or in the office of the secretary of state. The commissioners of election shall turn over said books to the managers of election of each polling precinct."

This is the test. He may have forgotten or it may be a mistake or it may be wrong but the law which is established is the test and the test is that the name must be upon the books. While he has not produced the registration certificate that certificate would not be sufficient because the book is made the test.

"Provided, That in case the name of any registered elector does not appear, or incorrectly appears, on the registration books of his polling precinct, he shall nevertheless be entitled to vote upon the production and presentation to the managers of election of such precinct (in addition to his registration certificate) of a certificate of the clerk of the court of common pleas."

He must have that. The book must show whether he is a registered elector or not. It was held in the case of Mew v. the Railroad, 55 South Carolina. That a qualified elector in the constitution of 95 means a registered elector. It is conceded, I presume, by the other side, and surely will not be contradicted, that he must be not only a qualified, but a registered elector. Qualified means a registered elector. Our friend has stated that we are bound by his statement that he had a registration certificate. Not at all. He may be in error or he may be wrong. The books are the test.

Mr. Johnstone—The State undertakes to present to this court, through its qualified officials a legal jury. They are compelled at every step to take the requisite steps necessary to see that every single member of the panel is a qualified juror. That is made the rule—in placing the names of parties from whom the jurors are drawn in the box from which they are to be drawn. It is a legal right. There are three officials to whom that duty is entrusted. The consequence is that when a juror is presented here every single presumption, every single declaration of law, is to the effect that he is qualified and is competent. He comes here with the certificate of the State at his back. The consequence is that no presumption arises or can arise against him. Everything that is sought as an objection must be by positive proof. Now in that condition this juror is presented. He has been asked the question and has given his answer. We admit at the outset that the record is the highest evidence, but it may be waived. Do not the decisions of our courts come in showing the settled judgment of the judiciary of the State to the effect that when you call for the highest evidence and proceed on cross examination to establish your desires by secondary evidence, that you are bound by it? Is that principle not decided by numerous decisions of our court? When it arises on the question put to a juror, have you not been convicted of one of the disqualifying crimes, the juror or the witness answers and by his answer the party propounding the question is bound because they have waived the right to introduce the highest evidence. Now then if that be the case isn't it patent here that the State has waived its right to introduce record evidence by propounding the question and by the answer the State is bound. Again the jurors are to have the qualifications of electors—the qualifications of electors, thus says the constitution. Counsel for the prosecution has read an act of the legislature. There might be an interesting question whether or not it is in entire conformity with the constitution. Your honor is more than ordinarily acquainted with it because you helped to frame it. The constitution requires that the qualification prescribed shall be the same as the qualification of an elector, that every elector can be a juror. Now then, what says the constitution? Every citizen of this State and this United States resident here for the requisite period can be and is an elector, is qualified to be an elector. That is the point, the word in the constitution is "qualification"—is qualified to be elector unless he be expressly excluded. Now then, which citizens are excluded? Only a prescribed limited number and those especially designated. Says the constitution in the sixth section of the second article.

The following persons are disqualified from being registered voters: Persons convicted of burglary, arson, perjury, forgery, obtaining goods or money under false pretenses, robbery, adultery, wife-beating, house-breaking, receiving stolen goods, breach of trust, with fraudulent intent, fornication, sodomy, etc., provided the governor shall not remove such disqualification."

"Now, any citizen of the State or the United States with the requisite residential qualification is qualified to be an elector. Then says the constitution, all jurors shall have the qualifications of an elector. Apart from that, may it please your honor, isn't it a recognized principle and adjudicated so often that it is unnecessary to cite authorities that the failure of the performance of duty, that misconstruction of duty, the erroneous performance of duty on the part of an official can never rob the citizen of that inherent constitutional right? That if the board of jury commissioners by omission or commission have failed to register a man who is entitled to register cannot rob him of his inherent right. Again, it is suggested that the book of registration was turned over to the managers who conducted such election, provided for the registration of all electors. (Counsel cited case of Hunter v. Senn.)

Now, may it please your honor, that is the principle for which we contend. The State, as I have said, asked the question of this juror and they are bound by the answer. Are you a qualified elector? I am. Are you registered? I am. Where is your registration book, is a matter for which he is not responsible.

The suggestion has just been made to me by one of counsel in our ranks that the act provides where an elector has lost his certificate, has not got it for any cause whatever, he can go to the clerk of court and get a substitute for it in the shape of a certificate. What provision of the act requires that when he marches to the poll with the seal of the governor of this State upon this certificate actually in his hand and flaunting it in the face of the managers and officers of registration and signed by their name and under their seal perhaps—what provision of that act entitles them to defy him and say to him because we have omitted unintentionally to place your name here, that certificate which we gave to you, that promise which we made to you, with your name on it, is a piece of waste paper and you are among those who are classed with the crimes committed under this disqualifying clause.

Further Debate.

The Solicitor—Is there anything further on that side?

Mr. Johnstone—We have the reply; we made the objection.

The Court—The question before the court now raised is to the competency of the testimony.

The Solicitor—The qualifications of a juror are made the same as those of an elector. The statute provides what the qualifications of an elector shall be and it also provides what the qualifications of a juror shall be.

The Court—It may save time to you to indicate to you what I desire to hear argument on. The question as to the competency of a juror. He must possess a registration certificate. Now in ascertaining whether or not this juror is a competent juror you are undertaking to ascertain whether or not he is a registered elector. Now you offer the clerk to prove that. Is that the highest evidence?

The Solicitor—The clerk will produce the books to the court.

The Court—I agree with you that the books are the highest evidence. I shall hold that to be a competent juror he must have the qualification of an elector and that one of the qualifications of an elector is that he must have a registration certificate. Now you undertake to show the court whether or not he has a registration certificate.

The Solicitor—I will ask the clerk another question. Are these the books of registration that you have? What books are these? A. This book was turned over to the clerk's office by the county board of registration.

Q. Have you examined the stubs for Congaree township? A. No sir, but Mr. Asbill and Mr. Sturkie examined them in my office this morning.

Q. Have you the books? A. Yes sir, here is one.

Q. Those are the books containing the names of the registration for Brookland? A. They purport to contain them.

The Solicitor—We introduce those books in evidence.

Q. (By Mr. Nelson) I will ask the clerk a question. Will you state of your own knowledge about that being the original book? How were the books made up? A. A few years ago there was an election at Brookland to cut off part of this county and join it on to Richland, and we turned this book over to the manager of election and my understanding is that the express company never returned them.

Mr. Nelson—We object to anything out of the record.

The Court—I understand the objection made upon the ground that the original books are lost and that these are not the originals.

Mr. Nelson—That is my understanding. I propose to show by this witness that these are not the original books.

Q. (By Mr. Nelson) Can you swear that these are the only books in reference to the township voting at Brookland? A. No sir. Too many people have handled them.

(After further discussion along this line Mr. Parnell was requested to communicate with his wife by 'phone to make a search for his registration certificate. After waiting for some time Solicitor Thurmond said that rather than delay the court, and for the purpose of getting along as rapidly as possible, he was willing to submit the matter to his honor for a ruling.)

The Court's Ruling.

The Court—This gentleman has stated positively that he has his registration ticket at home and he only asked for an opportunity of being allowed to go home to get it. As indicated, I would give him the privilege of doing that. It has been shown that these are not the original books and I have allowed them to be introduced to throw such light as they would on the question whether or not he has a registration ticket. With these rather questionable books on one side a[nd] the positive statement of the juror [on the] other, I am bound to conclude as a matter of fact that he has a registration ticket. If that is the only objection as to his competency he can be presented.

(The jury was then completed without any further extensive objections and arguments.)

The Jury.

Geo. H. Koon, foreman; Jacob E. Saylor, Irvin Risinger, Geo. F. Leitzsey, Martin L. Lybrand, Milton Sharpe, Jonas Corley, Marshall Shealey, J. B. Jumper, Willie L. Hicks, James E. Price, Homer Woods.

After the jury had retired and selected a foreman and returned into the court room, Mr. Nelson arose and addressed the court as follows:

"May it please your honor, since you intend to keep the jury together we have thought it proper to make a request, that they especially be instructed not to read the articles in The State paper and editorials. We do not request that all literature be kept from them, but especially the articles mentioned."

The Sheriff's Instructions.

The Court—I think that proper and I so instruct you gentlemen. Mr. Sheriff, you will allow them all the latitude you can consistent with their comfort, but I do not want the jury to have any connection with the outside world nor to read the editorials requested. They should be kept from them. You are charged with the keeping of these matters from them. The court has thought it proper to keep you together. The sheriff will make provision for you and try to make it as comfortable as possible for you. Mr. Sheriff, you will make provision for them.

Court adjourned until 3 o'clock.

Policeman Boland.

George E. Boland sworn, says: (By Solicitor Thurmond.)

Q. Give your name. A. George E. Boland.

Q. What was your occupation in January of this year? A. Policeman in the city of Columbia, S. C.

Q. Were you on duty on the 15th of January? A. No, sir.

Q. Do you know Mr. J. H. Tillman? Q. Yes, sir.

Q. Did you arrest him? A. I would like to correct myself; we are never off duty, but I was not on active duty. It was not my time to be.

Q. Did you make the arrest that day of him? A. I did.

Q. Explain to the jury why and where. A. I do not exactly remember the date; I think it was about the middle of January. I had came from down street to attend to some funeral affairs for my brother. I went down to the city auditor's office and met him on business. While standing in the door I heard a report, at the same time I seen a lady run across the street. I knew something was wrong. I went around the street car; the street car was between me and where the report sounded. Going around the north side of the car I seen Mr. Tillman then walking on the south side coming up on the west side of the street, coming north. I went around and met Mr. Tillman. I walked up to him and threw my coat open in this position. I said, "Governor, you know who I am." He said, "Certainly." I said, "I will have to place you under arrest." He said, "All right, sir." He said, "I received Gonzales' message." I said, "Did you shoot Mr. Gonzales?" He said, "I did." I said, "Do you think you hit him?" He said, "I did." I reached for his pistol he had in his hand. He pulled back a little. He said, 'I don't want to give that up now." I said I could not place a man under arrest and let him remain armed. He said, "I want to use it for protection until I get to the station." I said, "No, I will protect you." Going to the station, I and him, Mr. Buchanan came running up. At that time I did not know Mr. Buchanan. I wheeled and put Mr. Tillman behind me. He said, "That is all right; that is my brother-in-law." We then walked down to the guard house. The chief was sitting in there, and I turned him over to the chief. I told him he had shot Mr. Gonzales and that Mr. Tillman said he wanted protection. The chief ordered him sent upstairs in his room. The housekeeper who was in charge took Mr. Tillman upstairs. In a few minutes the sheriff came down and that was all I heard.

Q. How many pistols did you get from his person? A. One from out of his hand and one from off of the person.

Q. Look at that pistol (showing witness pistol). A. That looks like it, I could not swear it is.

Q. Look at this one (showing witness another pistol). Can you operate that pistol? A. Mr. Tillman fixed this so it would not go off when he handed it to me.

Q. (Showing witness pistol) A. This one is loaded.

Q. Which pistol did he have in his hand? A. This one, he had the pistol down by his side this way (illustrating), walking along, coming up from the car, eyeing Mr. Gonzales as he was going up on the opposite side of the street. He had his eye on him watching him as he was going.

Q. What did you do with these pistols? A. I carried this one in this way to the guard house and I turned it over to the chief of police.

Q. Do you know what he did with them? A. No sir, not my own knowledge.

Q. Where did you get the Colts? A. Under the coat.

Q. Which pocket? A. I did not take it out of any pocket, but I was present.

Q. Do you know what pocket it was taken from? A. The hip-pocket.

Q. Which hip pocket? A. I suppose the right one, when I seen it taken out I was as close to him as from here to there (designating.)

Q. You heard the shot fired? A. Yes sir.

Q. Where were you at the time? A. In the city auditor's office door, standing in the door talking to Mr. Allen, the city auditor.

Q. Were you on the outside or inside? A. Inside, just standing on the step.

Q. After you went out from there did you see Mr. Gonzales, N. G.? A. Not until I seen him coming up. As I walked around the car the first time I seen two gentlemen carrying him to The State office.

Q. Where were you when you first saw him, with reference to the crossing? A. You mean just after the shooting?

Q. Yes. A. I think he was near about the city transfer door.

Q. He was then going which direction? A. To his office where The State publishing office is.

Q. Let the jury understand where Mr. Tillman was when you first saw him. A. I suppose they know about the length of those cars, about 20 feet.

Q. How far had he advanced across the street when you saw him? A. He had come clean around the street car, was a little north as well as I remember of the theatre door. The theatre door is about middle of the building. I suppose the theatre door (I did not measure across to the transfer door), but I suppose it would be about from 10 to 15 feet above the city transfer office door. That is what I mean by the city transfer office is the street car company's office.

Q. Was the city auditor's door open or shut? A. It was open.

Q. Those you say in your opinion are the pistols? A. Yes, sir; they look like them.

Cross-examination by Mr. Nelson:

Q. You have been on the police force for some time? A. Yes, sir; next April will be 14 years.

Q. You are a resident of the city and have been living there how long? A. Have been there since 1882.

Q. You had no trouble in making that arrest that day? A. No, sir.

Q. Mr. Tillman submitted very quietly? A. Yes, sir.

Q. He seemed perfectly willing to go along with you? A. The only resistance I could see was in taking the pistol; he did not want me to get it right there.

Q. The reason he said he wanted to hold on to the pistol was he wanted to protect himself? A. Yes, sir.

Q. Didn't he say to you, "I do not want to be butchered up here and you had better let me have the pistol?" A. I do not remember him saying that.

Q. He left the impression on you that he wanted to keep the pistol to protect himself? A. He said he wanted to be protected. I told him he would be protected and through me; when Mr. Buchanan ran down I wheeled and put him behind me.

Q. When Mr. Buchanan came up did he say to you, "That is my brother-in-law; he is all right?" A. Yes, sir; I stated that to you.

Q. He accompanied you to the station house? A. Yes, sir; the three of us went together.

Q. When Mr. Tillman handed you the pistol, didn't he say to you, "you had better let me let down the safety cock?" A. Yes, sir; that is what I have stated.

Q. Showing he was calm and collected; he was calm and collected? A. Yes, sir.

Q. He said, "Let me let down the safety cock," and he let it down and passed it over to you? A. Yes, sir.

Q. In reference to the small pistol, you recollect exactly about that or that it happened in this way (illustrating); after Mr. Tillman went upstairs in the office of the chief of police, didn't the chief say to him, "I will have to search you now?" A. No; the search was done downstairs.

Q. Was the chief there when he was searched? A. Yes, sir.

Q. The chief did not say, "I will have to search you now?" A. He might have, it is a rule; we have to do it.

Q. But didn't the chief say to him, "I will have to search you now?" A. I turned him over to the chief the same as if he had been the housekeeper.

Q. Are you positive that the pistol was taken from him downstairs? A. Yes, sir.

Q. Or did he give it to the chief of police after they got upstairs? A. It was taken downstairs.

Q. You are positive about that? A. Yes, sir.

Q. It was downstairs when the pistol was taken off? A. Yes, sir.

Q. Taken by whom? A. By the chief of police.

Q. When was it taken from him? A. The chief went right under his coat with his hands on the back—behind him they were—and he pulled it out.

Q. I know you are trying to tell it exactly as you recollect it, but it has been some time. It happened in January. Are you positive the chief put his hand on his back and searched him? A. Yes, sir; I am positive.

Q. My recollection is that the chief got the pistol after he went upstairs; you are positive it was downstairs? A. I saw the pistol before he went upstairs. The chief did not go upstairs with Mr. Tillman.

Q. Who went upstairs with him? A. The housekeeper, Mr. Hutchinson.

Q. Did the chief go up at all? A. I do not think the chief went up before the sheriff came. I won't be positive. I think the sheriff and him went about the same time.

Q. Did you see him there that day? A. Yes, sir.

Q. What time did you see him? A. I think you came in. I believe you got there after the sheriff or near about that time.

Q. Did I go upstairs with the chief or did I find the chief upstairs. A. I won't be positive about that.

Q. Our recollection is apt to be bad? A. I know you were there soon after.

Q. Didn't I make inquiry downstairs as to what had happened, that I had received a 'phone message to come there, and didn't you or somebody else tell me of the shooting that had happened and the chief of police was in the room with Mr. Tillman, and after I had been there a short time the sheriff came up? A. I do not know that I was in the building when you went up. I was on a sad affair down there and had business to attend to and I did not stay in there long. I went and sent a telegram and came back. About the time I got back you and Mr. Buchanan and Mr. Tillman and another gentleman, I think, all got in a hack and drove off with the sheriff. I think that is about the time I came back there.

Q. We were driving off when you got there? A. Yes, sir.

Q. You do not know positively whether I got there first or the sheriff got there first? A. I won't be positive, but I think the sheriff got there first.

Q. You said Mr. Tillman had a pistol by his side? A. Yes, sir.

Q. As he was walking, did he walk straight across the street or sidling off? A. Walking like a man would, walking down and had an object in view.

Q. He had his eyes on Mr. Gonzales? A. Yes, sir.

Q. Looking that direction? A. Mr. Gonzales was crossing over here (indicating). He was walking about this way (illustrating) and watching Mr. Gonzales.

Q. As if ready to protect himself if any demonstration was made against him? A. Yes, sir.

Q. He did it as if protecting himself if any demonstration was made by Mr. Gonzales? A. He did it to use it if necessary, I suppose.

Q. He was then on which side of the street, nearer to track or to the opera house or the transfer? A. On the opera house side. That is, Mr. Tillman was.

Q. The street along there, Gervais street; which is nearer, the street or the opera house door, that is the main door, the theatre entrance or the transfer door; going down the pavement which is nearer Main street? A. One is as near as the other. You mean Gervais street?

Q. Yes. A. The city transfer.

Q. The city transfer is nearer? A. Yes, sir.

Q. About half the distance? A. To

make a line across would throw the theatre door at least 10 or 15 feet further up Main street, north.

Q. When you first saw Mr. Tillman, tell me exactly where he was as near as you can get at it. A. I had about passed the north end of the car and I looked through the car.

Q. You had come up to Mr. Joe Allen's office? A. Yes, sir.

Q. Where were you when the shot fired? A. Standing in the doorway about the sill.

Q. In the doorway of the city auditor's office, Mr. Joe Allen's office? A. Yes, sir.

Q. Which way did you turn when you started? A. Across, north of the car. As I got past the north side of the car I seen Mr. Tillman about rear end, going around. At that time he was still watching Mr. Gonzales, when I seen him.

Q. Had you heard the report of the pistol? A. Yes, sir.

Q. You had started across the street, going in the direction there. Did you hear the report? A. I did not start as soon as I heard the report. I saw a lady running across and I knew that something was wrong and that is when I started.

Q. The street car was standing in front? A. Yes, sir.

Q. And you went around the front end of the car and you saw Mr. Tillman going around the street car toward the State house? A. He went towards the State house.

Q And you walked up to him? A. Yes, sir.

Q. Where was the lady standing? A. I don't know. I seen here running, going west on Gervais.

Q. You don't know whether she crossed Main street or not? A. I do not know whether she crossed or not. It was fully half way across anyway.

Q. Then you saw Mr. Gonzales a little later on? A. Yes, sir, with those gentlemen carrying him up the street to The State publishing office.

Q. What point of the pavement was he on when you saw him with those two gentlemen? A. About the city transfer door.

Q. Or a little north of the door? A. No, sir; going this was.

Q Going north or south? A. Going north.

Q. Then he was between Gervais street and the city transfer door when you first saw him? A. No, sir; he was a little outside, near the upper edge of the door, I reckon.

Q. The upper edge of the door? A. Yes, sir.

Q. Then he was at the north edge of the door up street? A. Walking up.

Q. Who was with him; do you remember? A. I do not remember.

Q How near were you to him? A. I suppose about 50 feet. The streets are 100 feet and I was at the car.

Q. You have had a good deal of experience in the city? A. Yes, sir.

Q And you had as little trouble in making this arrest as any you ever made? A. I had no trouble at all.

Q. He submitted? A. He submitted; went on.

Q. He appeared to be watching out for an attack to be made is the reason he held on to his pistol? A. I could not say attack. I said he was watching and told me that he wanted to keep the pistol for protection and I told him I would protect him.

Q. Either at the time you went up to him or before you got in the station house or directly after you arrived at the station house do you remember Gov. Tillman saying to you that he intended to give up anyway? A. No, sir; I do not remember him saying that.

Q. You are not positive he did not say that? A. No, I could not say he did not say it. I do not remember his saying it.

Q You have no impression as to his having said it? A. I do not recollect.

Q. When Judge Buchanan came up to you do you recollect his saying to you, "I am unarmed"

The Solicitor—I object.

Mr. Nelson—How far is the station house from the corner where this occurred? A As near as I can come at it about 130 feet. I think that building is 70 feet long.

Q. About 130 feet from where you first arrested him? A. No, I thought you meant where the shooting was on the corner.

Q. From the place you arrested Mr. Tillman to the guard house is how far? A. In the neighborhood of 100 feet.

Q How near were you to the station door when Judge Buchanan ran up? A. I was about half way of the theatre building, where the side steps are. About 35 or 40 feet from the main street.

Q. It was in a minute or two after the shooting occurred that he ran up? A. Yes sir.

Q. You say Judge Buchanan ran up and you got between Mr. Tillman and himself? A. Yes sir.

Q. You did know who he was? A. No, sir.

Q. And you did not know for what purpose he ran up? A. No, sir.

Q And you were there for the purpose of protecting Tillman after he made the remark that he made? A. Yes, sir.

Q. At that time when Mr. Buchanan ran up, do you remember his saying that he was unarmed?

The Solicitor—We object.

The Court—Who made the statement?

Mr. Nelson—Judge Buchanan made the statement to him in the presence of the defendant a short time after the occurrence, 75 or 100 feet of where the killing occurred. I will ask him this question:

Q. Didn't he say he was unarmed and you had better give him the pistol to protect his person?

The Solicitor—We object; it cannot be a part of the res gestae, and if not a part of the res gestao then it is heresay and not admissible. You remember that Judge Buchanan it has not been testified took any part in this trouble at all. He was an outsider and ran up and at that time he made some remark.

Mr. Nelson—I will not press the question. I do not know that it is competent. (To the witness) You say you saw the lady, I believe? A. Yes, sir.

Q How was she going when you saw her? A. She was running across the street, seemed to be excited

Q. Running in an excited manner across the street? A. Yes, sir.

By the solicitor, re-direct examination.

Q. When did you first see the lady that you mentioned just now, before or after the shooting? A. It was after the shooting, I suppose a minute or two.

Q. Now you say you saw both of these pistols taken from Mr. Tillman's person A. Yes, sir.

Q Did you see the second pistol when you saw the large one? A. Both at the same time?

Q Yes? A. No,sir, you mean when I—

Q When you first made the arrest? A. No, sir, only one pistol in his hand.

Q When did you ascertain that he had another pistol? A. Almost immediately after I turned him over to the chief of police.

Q Did he state to you whether or not he had another pistol when you arrested him ? A. No, sir; he did not tell me

Q. Did not say that at all? A. No sir.

Sheriff Coleman.

Mr. Nelson—Chief Daly is the one you refer to as chief? A. Yes, sir

W. P. Coleman, sworn, says. (Questioned by Mr. Thurmond)

Q. Your name, please, Mr. Sheriff? A. W. H. Coleman.

Q What position do you fill in Richland county? A. I am sheriff, sir.

Q How long have you been sheriff? A. About three years

Q Did you ever see these pistols before? (Showing witness pistols.) A. Yes, sir. I have seen this pistol.

Q. Now, as to the other? A. Yes, sir, I have seen that one, too.

Q Where did you see these pistols? A. My deputy turned them over to me.

Q When were they turned over to you? A. The day of the shooting.

Q As whose pistols?

Mr. Nelson—We object.

Q (By the solicitor): Have you the bullet in your possession? A. No, sir.

Mr. Nelson—We had better make ourselves plain. We have some information in reference to that bullet and do not know that it is correct and we object to any of these articles being put in evidence unless they are traced direct as being the bullets from the pistol discharged that day and that it is the pistol used that day. They are not in evidence as yet as I understand

The Solicitor—I understand that if we offer incompetent evidence our friend will object. We will proceed in the regular way.

Q. Did you ever see a bullet like that before? (Showing witness bullet.) A. Yes, sir.

Q Where did you see it? A. A bullet similar to that was turned over to me.

Q. By whom, sir? A. I do not know the young gentleman's name. Some young gentleman brought it in my office and said it was the bullet.

Mr. Nelson (interrupting witness)—Do not tell what was said.

The Court—Do not state what was said.

A. A young gentleman brought it into my office and turned it over to me and I turned it over to the clerk of court.

Q. To Mr. Walker? A. Yes, sir.

Q. What did you do with this pistol? (Showing witness pistol) A. I turned that over to the clerk of court.

Q. When you turned over that other pistol was it loaded or not? A. Yes, sir, it was loaded

Q How was it loaded? A. I am not familiar with that kind of weapon.

Q. Did you see it unloaded? A. No, sir, I did not. The load was put in the breech. I never handled one like that and I do not know anything about the modus operandi of that kind of weapon.

Q Did you not see the chamber taken out? A. No, sir. Solicitor Thurmond, it is a magazine.

Cross examination:

(Questioned by Mr. Nelson)

Q. I believe you have seen frequently the overcoat that Col Tillman had at the time he was committed to jail; the overcoat he wore down to the jail and which we got you to carry to the supreme court room? A. I did not carry it. My deputy carried it to the supreme court.

Q You saw the coat? A. I saw the coat he had on the day of the shooting.

Q. Do you recollect that there were no side pockets to the coat?

The Solicitor—We object, unless he knows this was the coat he had on at the time of the shooting If he knows he had this coat on at the time of the shooting we have no objection

Question by Mr. Nelson—He had on a coat when he went to jail and you took him from the chief of police? A. I remember that coat Tillman had on what I call a frock-tail overcoat.

Q And there were no pockets in front? A. I do not remember anything about pockets.

Q You never looked at that? A. I did not notice.

Q It has been so long that you forget You do not recall the fact of my asking you on application for bail to bring the coat up and let the court take a look at it and let them identify it and see if there were any front pockets, do you recall anything of that? A I remember somebody sent for the coat to carry it to the supreme court room and my recollection is that my deputy went to the jail and got the overcoat and carried it to the supreme court. I did not see it

Q And you do not recollect examining it? A. No; I do not.

Q. Do you recall, Mr. Sheriff, that the coat was exhibited to Chief Justice Pope? A. Only from hearsay.

Q You were not down there? A. No, sir; I was not down there.

Mr. Nelson—The coat is over at the jail. I would like for the sheriff to identify it We can proceed and put the sheriff back when the coat comes for the purpose of identifying it. (Coat brought in court.) Sheriff Coleman recalled.

Question by Mr. Nelson (showing witness coat)—Do you recollect that this is the coat? A. It was a coat after that pattern.

Q. This is the coat he was wearing when he went to Newberry or one similar to that? A. Yes, sir.

Q You mean of a similar make. A. Yes, sir.

Q As a matter of fact, there are no front pockets except down that side and on this side except the one on top? A None in that; no, sir.

Q It was a coat similar to that? A. I do not remember anything about the pockets. I never noticed anything about the pockets

Q. A similar coat to that? A. Yes, sir

Question by the Solicitor—That was the coat he had on when you saw him or one like that? A. The same pattern, I think.

Q The same style? A. Yes, sir; the same style as that

Q. What about the color? A. I do not remember anything about it. I know it was a frock-tail overcoat, because I had noticed the colonel wearing those kind of overcoats before. I could not be positive about the matter.

Richland's Clerk of Court.

J. F. Walker, sworn, says:

Q By the Solicitor—Give the stenographer your name A. J. F. Walker.

Q What position do you fill in Richland county? A. Clerk of court.

Q How long have you been clerk? A. Since 1898.

Q. Did you ever see those two pistols before? (Showing witness pistols). A. Yes, sir.

Q. Where did you see them? A. They have been in my possession since the last of January.

Q Who turned them over to you? A. Sheriff Coleman.

Q Are they in the same condition now as when they were turned over to you? A. This one is, the other is not.

Q Explain what change has been made as to the other. A. I had the magazine taken out.

Q Where is the magazine? A. On the table over there.

Q Is this it? (Showing witness magazine) A. Yes, sir I did not know how to manage the weapon, and I sent for a gunsmith in Columbia and had it unloaded; had him to take the chamber out; had him to take the ball out of that chamber, and had him take this out.

Q You say the sheriff turned these pistols over to you? A. Yes, sir.

Q What day? A. I think the day of the killing or the day after.

Q Show to the jury how that pistol operates. A. I cannot say that I am very expert (Witness placed the magazine in the pistol and demonstrated its workings)

Q You refer to the killing of Mr. Gonzales when you say the day or day after the shooting? A. Yes, sir; the day after the shooting of Mr. Gonzales, this was the condition it was in when it came to me.

Q Is this one loaded now? A. Yes, sir, loaded now.

Q How was this (the magazine pistol)? A One loaded shell in the barrel and I think six in the magazine.

Q Are those the same shells in it? A The same shells.

Q Take those out. A. I cannot take them out.

Q What do you know, if anything, about this bullet? A. This bullet was given to me at the same time

Q. Who gave you that bullet? A. Sheriff Coleman.

Q Who has had possession of those pistols and those shells and the bullet since that time, the 15th of January this year. A. I have had them locked up in my safe.

Q Did you ever see this coat before? A. No, sir.

Q You do not know anything about that? A. No, sir.

Q With reference to Mr. Gonzales' coat, have you got that, too? A. Yes, sir.

Q Where is it? A. It is here at the desk.

Mr. Nelson—We object to the opening of the bundle of clothes unless the clerk knows they were the clothing Mr. Gonzales had on that day. If given to him and somebody told him so, it is incompetent. If he knows it himself that these are clothes he can testify, but otherwise we object.

The Solicitor—It is perfectly competent.

Mr. Nelson—If the clerk can say that these are the clothes he had on that day, we have no objection. If these clothes were given to the clerk by some one with the statement that they were Mr. Gonzales' we object as hearsay.

The Solicitor—It is competent if the clerk can identify these clothes as handed to him. And we can introduce other witnesses to show whose clothes and when worn. This point was made in the State v. Aughtry when clothes were exhibited. We must identify these clothes The clerk is one link in the identification

Mr. Nelson—We object to the introduction of the clothes now or to their being exhibited We do not think that the same rule applies here as in the case of the State against Aughtry. These clothes should not be exhibited to the jury or offered in evidence until they are identified, and that is the rule of law.

The Court—They will not be admitted in evidence until identified With reference to what you say about the Aughtry case, that was a dress which the solicitor was permitted to open in the presence of the jury, and the appeal was made to the supreme court and it said there was no error.

Mr Nelson—I am familiar with the ruling in that case and that was the ruling.

The Court—Wasn't it sustained by the supreme court?

Mr. Nelson—It was sustained by the supreme court, but that was after it was opened, there was no objection made until after it was opened. The objection came too late. We object now before it is opened; and we submit it is proper for them to identify them, they have the right to introduce them after identification. What is the use of anticipating Let them proceed in the regular way.

Mr. Crawford—As to the State v. Aughtry. I think my friend is mistaken in one regard. I recollect distinctly that while he was unfastening the bundle—it was in a bundle quite similar to that—and I not only protested but I vociferated.

Mr. Nelson—After it was opened.

Mr Crawford—No. I protested while it was being done and it was done and I made an exception The appeal was made to the supreme court and it was taken up and discussed fully and the supreme court said he was right and I was wrong. That is my recollection of it I was quite dramatic with my friend

Mr Nelson—You are always dramatic, and graceful I have sent for 48 S. C.

Mr Crawford—That was one of the features of the case that upset me very much, but the supreme court unfortunately did not agree with my view and it concurred with Mr. Nelson at that time.

The Court—I will not pass on this particular question at this time until I see that authority, but it seems to me it would save time to prove it in the regular way.

The Solicitor—This is the clerk of court who is now testifying and this is the regular way We want to introduce all these matters. Of course, if they are not identified they will not become evidence

The authority of the State v. Aughtry was sent for, and during the wait Mr. Bellinger remarked, as he afterwards explained, to the solicitor, that "he is trying to run the State's case" This remark was overheard by the court and he said, "I was not managing the State's case I was only throwing out a suggestion"

Mr. Bellinger—I was speaking of counsel on the other side and not to your honor

Mr Nelson—To save time, I am willing if the clerk can testify that this bundle contained certain articles which were given to him, I have no objection to the admission of that testimony and that it is in the same condition as when he received it as it was when the person gave it to him.

The Solicitor—We are not asking counsel to permit us to do anything The question is before your honor.

The Court—We will wait until that case comes in. While waiting for the authority the court also remarked

The Court—Have you ever opened that bundle? A Yes, sir It was brought to me in two packages and I put it up in this package.

The authority of the State v. Aughtry having been sent up to counsel, Mr. Nelson cited the syllabus of the case to his honor, and also the decision of the supreme court.

The Court—That case is even stronger than this. In that case the witness undertook to open a bundle to identify certain articles handed to him. Now, in this case, in order for the witness to identify certain articles handed to him it seems to me he is obliged to view the articles and according to his own testimony he himself made up that large bundle and the effort is made to identify the articles which he has wrapped up and which were handed to him. I do not see how this case could be prejudiced by that. I will permit him to open the bundle.

The Solicitor—Mr. Walker open that bundle (Witness opened bundle)

Q. Who made that bundle up? A. I did.

Q. What does it contain? A. It contains an overcoat, a suit of clothes and underclothing

Q Who delivered those clothing to you? A. Mr. Withers delivered part and Mr. Hoyt part.

Q What did Mr. Withers deliver? A. The underclothing and clothing and Mr. Hoyt the overcoat.

Q. When was the clothing delivered to you? A. I do not recollect exactly the day, but shortly after the shooting. It is labeled 15th Jan , 1902.

Q. 1902 or 1903? A. Got it here like I read it. Delivered after the shooting of Mr. N. G. Gonzales.

Q That was this year? A. Yes, sir.

Q. Where has that clothing been since that time? A. Locked up in the cupboard or case in the clerk's office.

Q State whether or not it is in the same condition as when delivered to you A. In the same condition.

No cross-examination.

Mr. J. A. Hoyt, Jr.

J. A. Hoyt, Jr., sworn, (Questioned by the solicitor.) We will just put up Mr. Hoyt for the purpose of identifying the clothing and later will put him up on another branch of the case

Q What position did you hold January of this year? A. On the editorial staff of The State.

Q You knew, of course, Mr. N. G. Gonzales? A. Yes, sir.

Q He was your chief? A. Yes, sir.

Q Do you remember the day he was shot? Yes, sir.

Q Look at that clothing What overcoat is that you have in your hands? A. That is the coat Mr. Gonzales had on.

Q When? A. On the 15th of January.

Q. When did you see him with that coat on? A. I saw him that day, on that morning. It was taken off of him before I got to him though.

Q Look at the other coat; what do you say as to that coat? A. That is Mr. Gonzales' coat, sir.

Q When did you see him wear it last? A. The morning of the 15th.

Q That was the day of the shooting? A. Yes, sir.

Q. Look at the trousers (Identified)

Q What as to the trousers and vest? A. The vest and the clothing he had on that morning.

Solicitor Thurmond—We introduce them in evidence.

Q. What other clothing did you see there? A. Shirt and undershirt

The Solicitor—We introduce those in evidence.

Cross-examination. (Questioned by Mr. Nelson.)

Q You saw him with this coat on the morning before the shooting? A. Yes, sir, he was wearing the coat that day.

Q When you got to him after the shooting, did he have the coat on? A. No, sir

Q. Whose possession was it in then? A. I do not know.

Q. Who did you get it from? A. It was in the office, I think, of The State; it was handed to me there.

Q By whom was it handed to you? A. I think it was Mr. Withers. I could not be positive about that.

Q When was it handed to; how long before you took it to the clerk's office? A. It must have been the next day or that night.

Q Did Mr. Withers hand it to you the day of the shooting or the following day? A. I do not remember that.

Q. State whether it was the day of the shooting or the next day that Mr. Withers gave you the coat? A. I could not say whether that afternoon or the next morning, sometime soon after that.

Q The day Mr. Withers gave it to you; did you take it to the clerk that same day? A. Yes, sir, the same day.

Q In whose possession, in whose custody, was it from the time it was taken off of Mr. Gonzales until Mr. Withers turned it over to you? A. I suppose it was lying in The State office.

Mr. Nelson—Mr. Thurmond, we understand Mr. Hoyt is to be put back on the stand?

The Solicitor—Yes, sir

Mr Nelson—No other questions.

Lewis G. Wood, Jr.

Lewis G Wood, sworn, says:

Q (By the solicitor)—What was your position in January of this year? A. I was on the city staff of The State.

Q Do you know that overcoat? (Handing witness overcoat) A. I do

Q Whose coat? A. Mr. N. G Gonzales' coat.

Q When did you see him wear it last? A. I could not say definitely when I saw him wear it last, but I have seen it a great many times.

Q Did you see him wearing it that day? A. No, sir

Q Where did you see the coat that day? A. The first time was when Mr. Gonzales was lying on the floor in the business office, the coat was underneath him.

Q. You did not help pull it off? A I did not. When he was removed and placed on the litter I took the coat up and examined it carefully and the bullet hole in it

Q Look at it now. You say you found a bullet hole in it? A Two of them. That is the coat absolutely

Q Is it in the same condition now as then? A Exactly.

Q To whom did you give it? A. After looking in the pockets to see if there was anything in them, I wrapped it up and handed it to Mr. Withers wrapped it up myself and wrote the circumstances and the name on it and handed it to Mr D. C. Withers.

Q That was the last you saw of it? A. Yes, sir.

Q What do you know about the other clothing? A I have seen Mr Gonzales wear a suit similar to this and also another made by the same man. I have been accustomed to hanging my coat on the same rack that his was hung on and I have seen that label on the back of it

Q You do not know what suit he had on the day of the shooting? A. I do not know that

Cross-examination:

By Mr. Nelson—What time of day was it you saw that overcoat? A It was after Mr Gonzales was put on the litter to be taken out of the office.

Q Do you know who took the coat off of him? A I do not know, sir.

Q Do you know in whose custody it was after it was taken off of him up to the time you saw him? A. It was on the floor underneath him.

Q You were not there when it was taken off? A I was not.

Q It appears to me to be that there are two marks of bullets going through this coat Do you recollect seeing that one there? A I did not have anything to do with that coat. This is the one I saw

Q You do not know anything about that bullet and this one down here? (Indicating on the coat.) A. No, sir.

Q Is there a hole in this (overcoat)? A. Yes, sir

Q And a hole on the other side? A. Yes, sir

Q You did not make an examination of the vest? A No, sir.

Redirect examination:

Q Put that overcoat on. (Witness put on the vest the coat and the overcoat of Mr Gonzales) How does your size compare with Mr. N. G. Gonzales? A. Mr. N G. Gonzales was a taller man than I am and a little stouter in the chest.

Q. Exhibit to the jury where those holes are in the clothing. A. The bullet hole comes right here (indicating on the coat). Another one here. Several small pieces of paper like paper that had been torn off the end of a book with red lines on it were sticking to this hole here. Here is the way Mr. Gonzales carried his hands.

Mr. Croft—We object to that.

The Court—What is the objection?

Mr. Croft—We object to his putting his hands in his pockets and showing how he had seen Mr. Gonzales usually carry his hands.

The Solicitor—I do not mean to prove that now, but we will a little later on.

Q. Show them all the holes in the clothing.

Mr. Croft—Start at the vest.

A. The bullet must have——

Mr. Nelson—We object. The hole itself is evident.

Mr. Croft—Q Turn around and show the jury again. I put my finger in the hole, see here?

Mr. Bellinger—Mr. Croft is testifying. He puts his finger and says "see here."

Mr. Nelson—Before the clothing was put on the witness pointed out the bullet holes, now we can get the witness to show the jury the same holes that he pointed out before.

Mr. Bellinger—We object to their pointing to the jury anything. Neither of the counsel is under oath.

Mr. Croft—I just put my finger in the hole.

Mr. Nelson—It is delaying time. It is tweedle-dum tweedle-dee.

The Court—State your objection.

Mr. Bellinger—We object to counsel putting his finger on the place and saying to the jury, 'See there."

Mr. Croft—(Illustrating on the coat to the court), I just put my finger in the hole. They got him to point them out before and when he has put the clothes on I want the jury to see.

The Solicitor—When we get through with the witness counsel can cross-examine him

The Court—Let the solicitor finish.

Mr. Croft—I thought he was finished.

Question by the Solicitor—Show that jury where the holes are in that clothing (Witness pointed them out)

Cross-examination by Mr. Nelson.

Just stand up there (witness still having Mr. Gonzales' clothes on). Show that jury how much of that coat can double up on you (witness did so). Show how much, that overcoat can double up on you (witness did so).

Q You say Mr. Gonzales was a little stouter man in the waist as well as in the chest and all over if that coat fit him? A. Yes, sir.

Question by Mr. Croft—How much stouter? A. Yes, sir; he was stouter.

Question by the Solicitor—You stated at first he was a much stouter man than you and taller? A Yes, sir.

Mr. M. C. Wallace.

M. C. Wallace, sworn, says.

Question by the Solicitor—What position did you occupy last January, 1903? A. I was employed by The State in the book and jobbing department.

Q Where were you the day Mr. Gonzales was shot? A. Standing on Main street a few feet north of The State company's building.

Q Did you see him after he was shot? A. Yes, sir.

The Solicitor—We will put Mr. Wallace up a little later on another branch of the case.

Q. Look at that coat. Did you ever see that coat before? A. Yes, sir.

Q. Where did you see it? A. I have seen it on Mr. N. G. Gonzales frequently.

Q Was he wearing the overcoat the day you say he was shot? A. Yes, sir

Q What overcoat was he wearing? A. This one.

Q Did you take it off? A. I did.

Q. When? A. I suppose between three and five minutes after the shooting; as soon as he went into the office.

Q What did you do with it, Mr. Wallace? A. I spread it on the floor and made a pallet for him.

Q. Do you know what became of it after that? A. I do not know.

Q. That is the coat he had on? A. Yes, sir.

Q You say this is the suit of clothes? A. I cannot say as to this coat (the small sack coat of Mr Gonzales). These pants seem to be those he had, but the coat, I did not notice the coat much, but I did the pants. And this coat here, I am positive about (the overcoat)

Q Look at it. Is it in the same condition now as then? A Well, it is more wrinkled than when I took it off

Q With reference to the bullet holes? A I do not know about the bullet holes. I did not notice about the bullet holes at all.

Q Did not notice about that at all? A No, sir; I helped him off with the overcoat and spread it on the floor.

No cross examination.

The Solicitor—We now offer the clothing in evidence, if we have not already done so

The Paper Files.

Mr. Croft—We would ask counsel for The State to furnish us with the copies of The State paper that we issued a subpoena for. We need them in the defense of this man. We ask that we be given the papers that they may be of some service to us and not placed in our possession in the midst of the examination of the witnesses.

The Court—What do you say, gentlemen?

The Solicitor—The papers I think are here and they will be delivered in proper time, if we do not use them ourselves; we may want to use them ourselves, in the first instance. In that event, we can give them the papers for examination, but still hold possession of the papers.

Mr. Croft—We will regard you in possession of the papers and will give them back as soon as we examine them. We would like to look through them when we have the time to do so

Mr. Nelson—We merely want them now to examine them.

The Solicitor—We want to examine them ourselves. When will you get through with them?

Mr. Nelson—We want to examine them tonight

Mr. Croft—That is what we want them for.

Mr Bellinger—If they ask for specific editorials we perhaps would be compelled to turn them over to them, provided they haven't got them themselves. But now they want to see the files of the paper running through months We are being called upon for evidence to allow them to make out their case.

The Court—I do not know that I have any authority to make these gentlemen deliver the papers At the proper time, if admissible, if not delivered they can introduce evidence as to the contents. I hope you all can agree about it. It is not in my power to make them deliver them to you at this time.

Mr. Croft—I think this morning some one of counsel said that they had them here and we could get them.

Mr. Nelson—Your honor's ruling is correct. We would not be asking for the delivery of them, but we understood our friends to say that they were here and that we could have them when we asked for them. It would be wasting time for us to take the time of the court to look over them to see what we wanted to use.

Mr. Crawford—I was the one who said this morning that the files of the paper were here, I think you gentlemen should have the papers if you want them You will take the proper care of them and return them. I think we are willing for this

Mr. Nelson—I thought your associates were objecting to it. We will take it as a favor.

Mr. Crawford—I do not know that it is a favor, but I am willing that they shall be delivered to you gentlemen

Mr. Croft—We are much obliged and desire no more than that.

Mr. Crawford—I do not want to be praised to the hurt of my associates.

Mr. Croft—We should all take a good word when honestly given.

Court adjourned until 9.30 a. m. Tuesday.