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WRIT OF ERROR.

New Jersey Supreme Court

NEW JERSEY, to wit:

The State of New Jersey to C. Franklin Wilson, Judge of the Court (SEAL) of Quarter Sessions of the County of Morris, and the Court of Quarter Sessions of the County of Morris.

GREETING:

Because in the record and proceedings and also in giving of judgment on a certain indictment against Charles Blaine, of the County of Morris, for manslaughter, whereof before you he has been indicted and is thereof convicted of manslaughter by a certain jury of the County of Morris, taken before the State of New Jersey and Charles Blaine, as it has said manifest error hath intervened to the great damage of the said Charles Blaine, as from his complaint we have received information, we being willing in his behalf, to correct the error in due manner, if any there be, and that full and speedy justice be done to the said Charles Blaine, do command you that if judgment be thereupon given then that you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching and concerning the same to our Justices of our Supreme Court of the State of New Jersey, at Trenton, on the 15th day of July next, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done therein what of right and according to law should be done.

Return to Writ.

Witness Hon. William S. Gummere, Chief Justice of our Supreme Court, this 25th day of June, 1926.

EDWARD J. KELLEHER,
Clerk.

JOHN W. McGEEHAN, JR.,
Attorney.

Presented in open court this 25th day of June, 1926.

Bail $10,000.

C. F. WILSON,
Judge &c.

RETURN.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF MORRIS. }

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Judicature at Trenton:

I, C. F. WILSON, Judge of the Court of Quarter Sessions, in and for the County of Morris, New Jersey, Do HEREBY CERTIFY, and return to the Supreme Court of Judicature of the State of New Jersey, the indictment, judgment, record and proceedings, together with all things touching and concerning the same together with the entire record as by the within writ to me directed, I am commanded.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of said Court and County at Morristown, New Jersey, this Sixth

Indictment.

day of July, A. D., Nineteen Hundred and Twenty-six.

C. F. WILSON,
(SEAL) Judge of the Court of
Quarter Sessions.

STATE OF NEW JERSEY,
COUNTY OF MORRIS, to wit:

BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Morristown, and in said County of Morris, on the second Tuesday in May, in the year of our Lord nineteen hundred and twenty-six by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and C. F. Wilson, Esquire, Judge of the Court of Common Pleas, in and for the said County of Morris, by the oath of Edward D. Conklin, Fichter Hoagan, Floyd Diehl, Winnie White, Catherine Osmun, Margaret Totty, Allen Looker, Jane Bennett, Florence Osman, John W. Smith, Clarence Lee, Pauline Birch, Louise Wortman, Harvey N. Cassidy, Frederick W. Shelley, Eustice Rudline, Joseph F. Burke, Harry Moller, Huldah Peck, George Stidworthy, Catherine Du-Bois, Charles Wandling and Harry Cyphers, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following to wit:

Indictment.

Morris Oyer and Terminer,

May Term, 1926.

Morris County, to wit:

The grand inquest for the State of New Jersey, and for the body of the County of Morris upon their oath present: That Charles Blaine, lately of the Township of Hanover, in the said County of Morris, on the twenty-third day of March, in the year of our Lord one thousand nine hundred and twenty-six, and from thence hitherto, with force and arms, at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this court, did feloniously kill and slay Charles Cramer and Charles Haggerty, contrary to the form of the statute in such case made and provided, and against the peace of this State, and government and dignity of the same.

ALBERT H. HOLLAND,
Prosecutor of the Pleas for Morris County.

On the twenty-fifth day of May, A. D., nineteen hundred and twenty-six, on which day the said indictment was presented by the Grand Jury aforesaid, to the said Court of Quarter Sessions, and delivered to the clerk of the said Court of Quarter Sessions in and for the County of Morris, and then and there the said indictment was duly delivered and duly filed by the clerk of said court and an entry made in the minutes of said court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Morristown, in and

Plea.

for the County of Morris aforesaid, on the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and twenty-six, before Honorable C. F. Wilson, Judge of said Court of Quarter Sessions, the said Charles F. Blaine, being publicly called, cometh in his own proper person and forthwith being demanded of and concerning the premises in said indictment above specified and charged upon him, and being asked in what manner he will acquit himself thereof, he says that he is not guilty thereof and of this he puts himself upon the country, and Albert B. Holland, prosecutor for the said County of Morris, who prosecutes for the State in this behalf doth the like.

And thereupon, then and there, the said Charles F. Blaine, does by himself in his pledge in that behalf enter into a recognizance in the sum of Ten Thousand Dollars cash, with Matthew M. Coss, as surety, conditioned that he, Charles F. Blaine, will be and appear before the said court on the fourth day of June, nineteen hundred and twenty-six and from day to day thereafter and traverse to effect the said indictment found against him and not depart the court without leave.

And further, that is to say, on the fourteenth day of June, A. D., nineteen hundred and twenty-six, defendant, Charles F. Blaine waived the calling of a special panel and the drawing of a jury therefrom and consented to be tried by a jury drawn in the usual way etc.

Therefore let a jury thereupon here come on the aforementioned day, before the said Court of Quarter Sessions above mentioned, of free and lawful men of the County of Morris aforesaid, by

whom the truth of the matter may be better known, and who are not of kin to the said Charles F. Blaine, to recognize upon their oath whether the said Charles F. Blaine be guilty in manner and form as he stands charged in the indictment above specified, or not guilty, because as well the said Albert H. Holland, prosecutor as aforesaid, and who prosecutes for the State of New Jersey in this behalf as the said Charles F. Blaine has put himself upon the said jury, at which said Court of Quarter Sessions, to wit:

At a Court of Quarter Sessions holden at Morristown, in and for the County of Morris, on the fourteenth day of June, in the year of our Lord one thousand nine hundred and twenty-six, before the Hon. C. F. Wilson, Judge of the said Court of Quarter Sessions, according to the form of the statute in such case made and provided, come as well the said Charles F. Blaine, as Albert H. Holland, who prosecutes as aforesaid, and the jurors of the said jury by the sheriff of the County of Morris aforesaid for this purpose duly empannelled and returned, to wit: after the following challenges, by the State 3, by the defendant 9, Henry Atno, Wilhelmina Bogart, Joseph E. Conklin, Robert M. Crosley, Jessie Simpson, Frank C. Voorhees, Floyd Heggerty, Fred Bernkopf, Marion Gallagher, Walter C. Brown, Augustus Clark, and Joseph Penn, who were elected, tried and sworn to speak the truth and concerning the premises.

And the trial of the said indictment against said Charles F. Blaine, having proceeded, the said jurors upon their oath say: that they find the said Charles F. Blaine guilty in manner and form as he stands charged in the indictment and so say they all.

Whereupon, John M. Mills, counsel for defendant, requested that the jury be polled, whereupon the clerk called the roll and each juror, for himself, answered, "Guilty in the manner and form as is set forth in the indictment."

And afterwards, at the same term of said Court of Quarter Sessions, to wit, in the seventeenth day of June, in the year of our Lord one thousand nine hundred and twenty-six, the former bail of Ten Thousand Dollars was continued, conditioned that he, the said Charles F. Blaine, will be and appear before the said Court of Quarter Sessions on the twenty-fifth day of June, in the year of our Lord one thousand nine hundred and twenty-six, and from day to day thereafter to receive sentence as may be pronounced by the said Court on the indictment found against him and not depart the said court without leave.

And afterwards at the same term of said Court of Quarter Sessions, to wit, on the twenty-fifth day of June, in the year of our Lord, one thousand nine hundred and twenty-six (to which time the said court had been regularly adjourned), came as well the said Charles F. Blaine, as the said Albert H. Holland, who prosecutes as aforesaid, whereupon it is demanded of the said Charles F. Blaine, if he hath or knoweth anything to say whereof the said court here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him, who nothing further saith unless as he before hath said. Whereupon all and singular, the premises being fully understood by the Court, it is considered and adjudged by the Court here that the said Charles F. Blaine be confined in the State Prison of this State at hard labor for

Certificate of Clerk.

a maximum term of ten (10) years and a minimum term of six (6) years and that he pay a fine of One Thousand Dollars and that he stands further committed until the costs of prosecution are paid.

Judgment signed the twenty-fifth day of June, A. D., nineteen hundred and twenty-six.

C. F. WILSON,
Judge &c.

STATE OF NEW JERSEY, }
COUNTY OF MORRIS. } *ss.*

I, E. BERTRAM MOTT, clerk of the County of Morris, and also clerk of the Court of Quarter Sessions, holden in and for said County, Do HEREBY CERTIFY, that the foregoing is a true, full and correct copy of the judgment roll in the case of The State *v.* Charles F. Blaine, as fully and entirely as the same remains of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County at Morristown, this sixth day of July, A. D. nineteen hundred and twenty-six.

E. BERTRAM MOTT,
(SEAL) Clerk.

Motion to Quash Indictment.

MORRIS COUNTY COURT OF QUARTER SESSIONS.

THE STATE, *vs.* CHARLES BLAINE, *Defendant.*	*Man-slaughter.*

Morristown, New Jersey, June 14, 1926.

Before: Hon. C. Franklin Wilson, Judge and a jury.

Appearances:

Albert H. Holland, Esq., Prosecutor of the Pleas.

John M. Mills, Esq., and John W. McGeehan, Esq., attorneys for the defendant.

Mr. McGeehan: I desire to withdraw the plea of not guilty for the purpose of making a motion.

The Court: That may be done.

Mr. McGeehan: I desire to move to quash the indictment in this case on the ground that it is duplicitous, in that it charges the defendant with two offenses in the one indictment and should be made two separate and distinct offenses.

The Court: That motion is denied.

Mr. McGeehan: Exception, if your Honor please. I now re-enter the plea of not guilty.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

The Court: Draw a jury.

Drawing of Jury.

Thereupon the jury was drawn as follows:

MABEL LOCK.

The Clerk: Juror, look upon the prisoner; prisoner, look upon the juror, to be challenged.

By Mr. Holland.

Q Do you know the prisoner? A No, sir.

Q Are you a client of either Mr. Mills or Mr. Romine in this case? A No.

Q Have you read anything about the case which would influence you in determining the evidence? A I have not read about it; I have heard about it.

Q And through anything you have heard, has there been anything that would prevent you from deciding this case on the evidence? A I don't know that it would. I don't know anything much about it.

Mr. Holland: Satisfactory.

Mr. McGeehan: Excused by the defense.

ALBERT MILLER.

By Mr. McGeehan.

Q Mr. Miller, what is your age? A Sixty-eight.

Mr. McGeehan: This juror ought to be excused by consent.

The Court: You have the right to challenge for cause.

Mr. McGeehan: I do.

The Court: Call another.

MARY HULBERT.

By Mr. Holland.

Q Mrs. Hulbert, do you know the defendant in this case? A No, sir.

Drawing of Jury.

Q And are you a client of either Mr. Mills or Mr. Romine? A I don't know them.

Q Do you own an automobile? A No.

Q Do you drive an automobile? A No.

Q Do you ride in them? A Yes.

Mr. Holland: Satisfactory.

By Mr. McGeehan.

Q You have not driven a machine at any time; you are not familiar with the operation of an automobile? A No, sir.

Mr. McGeehan: I think I will excuse you.

HENRY ATNO.

By Mr. McGeehan.

Q Mr. Atno, in this case there is to be tried an indictment against Charles Blaine, charging him with manslaughter, arising out of an automobile accident that occurred several months ago. Have you read of or received any information upon the subject of the occurrence? A No, I haven't.

Q You are not familar with the matter at all? A No, sir.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Mr. Atno, do you know the defendant? A No, I do not.

Q Are you a client of either Mr. Romine or Mr. Mills or Mr. McGeehan? A No.

Q Are you a member of the Loyal Order of Moose? A Yes.

Q Do you know Walter Coss or Matthew Coss, the defendant's brothers-in-law? A No.

Q Would your membership in the Loyal Order of Moose make any difference to you as to whether—I withdraw that. Have you ever met

Charles Blaine in the Order of Moose? A No, sir, I have not. I don't know the man at all.

Q Do you belong to the Lodge in Dover? A Yes.

Q Well, if it developed that this defendant was a member of the Dover Lodge of Moose, and stopped there on this night in question, and you too were a member of the same lodge of Moose, it would be more or less embarrassing for you to serve if you had to find him guilty, would it not?

Mr. McGeehan: I have no objection to this line of questions. I may say off the record, that the defendant is not a member of the Moose and I don't know what purpose there is for asking any juror as to that order.

Mr. Holland: Perhaps I am wrong.

Q Are you a member of the Eagles? A No, sir.

Mr. Holland: I think perhaps Mr. McGeehan is right. It is the Eagles that this defendant happened to visit that night and which the testimony will disclose he visited on the evening that this accident occurred.

Mr. Holland: Juror satisfactory.

Thereupon the juror was sworn.

FREDERICK HULBERT.

By Mr. Holland.

Q Mr. Hulbert, do you know the defendant? A No, sir.

Q Do you know either Matthew Coss or Walter Coss? A No.

Q Are you personally acquainted with either Mr. Mills or Mr. Romine? A No.

Q Are you a member of the Eagles? A No.

Q Is there any reason you know of why you should not be called as a juror in this case? A No.

Mr. Holland: Satisfactory.

By Mr. McGeehan.

Q Mr. Hulbert, you drive a car? A Yes.

Q Are familiar with the operation of automobiles? A Yes.

Q Are you a friend of Mr. Holland, the Prosecutor in this case? A No, sir.

Q Acquainted with him? A No, not personally acquainted.

Q Have you read about or discussed the occurrence out of which this indictment arises? A No.

Q Have you heard about it at all? A Just simply heard about it.

Q And from what source did you hear of it? A Just discussing, just talking, heard people speaking about it.

Q You feel, Mr. Hulbert, in the trial of this case, that your judgment would not in any way be prejudiced by reason of anything you have heard or discussed in regard to the case? A Not a word.

Q How long have you driven an automobile, Mr. Hulbert? A Four years.

Q Have you discussed this case or read of it recently? A No.

Mr. McGeehan: I think I will excuse you, Mr. Hulbert.

WILIMENA BOGART.

By Mr. McGeehan.

Q Mrs. Bogart, in this case, the defendant, Mr. Blaine, is to be tried upon an indictment charging him with manslaughter, arising out of

an automobile occurrence. Have you discussed this case with anybody? A No, I read of it when it happened.

Q Mrs. Bogart, from the reading of this case or any discussions that you might have had upon it, have you formed any opinion in your mind as to the guilt or innocence of the defendant? A Well, no, I can't say that, because it's quite a little while ago I read about it.

Q Now, do you feel that what you have read about the case would in any way prejudiced you in sitting as a juror and trying the issue upon this indictment? A Well, I can't say that it would.

Q You feel, do you, Mrs. Bogart, that in the trial of this case, you could decide it entirely upon sworn evidence that is presented here in Court, under the charge of the Court as to the law and on your finding of facts from the testimony of witnesses? A Why, I think so.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Mrs. Bogart, do you drive a car? A I do not.

Q And are you represented either by Mr. Mills or Mr. Romine? A Don't know the people at all.

Q Do you know the defendant? A I do not.

Q Do you know the defendant's brothers-in-law? A Don't know any of them.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

CARRIE COLE.

By Mr. Holland.

Q Mrs. Cole, do you know the defendant in this case? A I do not.

Q Do you know either of the two brothers-in-law, Mr. Matthew Coss or Walter Coss? A No, sir.

Q Are you a client of Mr. Mills or Mr. Romine? A No, sir.

Mr. Holland: Satisfactory.

By Mr. McGeehan.

Q Mrs. Cole, do you operate an automobile? A No, sir.

Q Not familiar at all with the running of a car? A No, sir.

Mr. McGeehan: I think I will excuse you.

CURTIS MEAD. (No answer).

JOSEPH CONKLIN.

By Mr. McGeehan.

Q Mr. Conklin, you have heard the questions I have put to the other jurors as to what this case is about? A Yes, sir.

Q Have you discussed this case or read of this case? A Never heard of it before.

Q Or have you any information of the fact—

The Court: He says he has not. Don't waste any time.

Q You drive a car? A Up to this previous year.

Q Familiar with the operation of a car? A Yes.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Mr. Conklin, are you a client of either Mr. Mills or Mr. Romine? A No, sir.

Q And are you personally associated or acquainted with either of them? A No, sir.

Q Are you a member of the Eagles? A No, sir.

Q Are you—no, I guess I better not ask that. Satisfactory. —I think I will ask—are you interested in Cock fighting and sporting chickens? A No, sir.

Mr. McGeehan: I object to this as an improper question.

The Court: Well, he has answered; I don't see any harm in it now. Swear the juror.

Thereupon the juror was sworn.

HENRY L. FREEMAN.

By Mr. Holland.

Q You are in the accident insurance business, are you not? A Yes.

Mr. Holland: Well, since this is an accident, I think I will excuse you, Mr. Freeman.

LOUISE MILLER.

By Mr. McGeehan.

Q Mrs. Miller, you have listened to the questions I have put to the other jurors as to what this case is about? A I read about it at the time in the papers.

Q Can you tell us whether reading of the case or anything you might have heard or discussed with anyone, you have formed any opinion one way or the other of the guilt or innocence of the defendant, Mr. Blaine? A No, I don't know as I have. I would rather not serve on the jury, though.

Q Do you feel in this case that if you do sit as a juror, you can render a just and impartial verdict based upon the evidence and the law as given by the Court? A I suppose so, but I rather not, though.

Mr. McGeehan: I will excuse this lady by consent.

Mr. Holland: I will consent to that. I would be glad to challenge Mrs. Miller because of her husband's association, not because of her friendship. I don't want to establish this as a precedent.

ALICE PIERSON.

By Mr. Holland.

Q Mrs. Pierson, do you drive an automobile? A I do.

Q Are you a client of either Mr. Romine or Mr. Mills? A No.

Q And are you personally or intimately acquainted with either? A No.

Q Or the defendant? A No.

Q Do you know Walter Coss or Matthew Coss? A I know them when I see them. I think it was Walter Coss that used to be our meter man.

Q Would your association with him, as this man's brother-in-law, affect your judgment at all in this case? A No, not at all.

Q Is your husband a member of the Eagles? A No, he isn't.

Mr. Holland: Satisfactory.

Mr. McGeehan: I will excuse Mrs. Pierson.

ANNIE FREEMAN.

By Mr. McGeehan.

Q Mrs. Freeman, do you drive a car? A I do not.

Q And you are not familiar at all with the operation of one? A No.

Mr. McGeehan: I will excuse you.

Drawing of Jury.

MARY ADKIND.

By Mr. Holland.

Q Mrs. Adkind, do you drive an automobile? A No, sir, I do not.

Q Is there an automobile in your family? A Yes, we have one.

Q Do you know the defendant? A No, sir.

Q Do you know either of the two brothers-in-law, Mr. Coss? A No, they are all strangers to me.

Q Are you a client of either Mr. Romine or Mr. Mills? A No, sir.

Mr. Holland: Satisfactory.

Mr. McGeehan: I will excuse Mrs. Adkind.

ROBERT M. CROSBY.

By Mr. McGeehan.

Q Mr. Crosby, you have heard the questions regarding what this case is about? A Yes sir.

Q And have you formed any opinion whatever in the case from anything you may have heard of it or read of it? A None.

Q Have you read anything of the case or spoken to anyone about it? A The first I heard of it was around here this morning.

Q You feel there is nothing to prevent your impartially trying this case upon the eyidence and the law as the Court shall give it to you? A Not at all.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Do you drive an automobile? A No, sir.

Q Have you ever driven an automobile? A No, sir.

Q Do you belong to the Eagles? A No, sir.

Drawing of Jury.

Q Are you a client of either Mr. Mills or Mr. Romine? A No, sir.

Q Or associated with either one of them in any of their work? A No, sir.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

JESSIE SIMPSON.

By Mr. Holland.

Q Mrs. Simpson, do you drive a car? A No, I don't.

Q Do you know the defendant? A No.

Q Do you know either of his two brothers-in-law? A No.

Q Are you a client of Mr. Mills or Mr. Romine? A No.

Mr. Holland: Satisfactory.

Mr. McGeehan: Satisfactory.

Thereupon the juror was sworn.

FRANK C. VOORHEES.

By Mr. McGeehan.

Q Mr. Voorhees, you know of any reason why you can't conscientiously and impartially try this case as a juror? A I do not.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q You drive a car? A Yes.

Q Are you a client either of Mr. Mills or Mr. Romine? A No.

Q Know this defendant? A No, I do not.

Q Do you know Walter Coss? A No, I had business dealings with Mat. Coss.

Q Do you have any business dealings with him now? A No.

Q And do you think your associations with Mat. Coss would have any affect whatever on your judgment? A No, I do not.

Drawing of Jury.

Q Has Mr. Headley been to see you? A No, he has not.

Q Are you a member of the Eagles? A No, sir.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

STELLA DEE.

By Mr. Holland.

Q Mrs. Dee, I don't suppose you drive a car? A I do not.

Q And do you know Mr. Romine and Mr. Mills? A I do not.

Q Do you know the defendant in this case? A No.

Q Do you know either one of his two brothers-in-law? A No.

Mr. Holland: Satisfactory.

Mr. McGeehan: I will excuse Mrs. Dee.

GLADYS WATTS.

By Mr. McGeehan.

Q Mrs. Watts, have you read of or discussed the case that is about to be tried? A I have not.

Q You have not read about it in the papers? A No.

Mr. McGeehan: I think I will excuse you, Mrs. Watts.

ALVIN DRACE. (No answer).

FLOYD HAGGERTY.

By Mr. Holland.

Q Mr. Haggerty, are you any relative of any kind to Mr. William Hegarty? A Not as I know of.

Q Do you know Mr. Mills or Mr. Romine? A I do not.

Drawing of Jury.

Q Do you know this defendant? A Not personally.

Q Well, how do you know him through what source? A Used to see him through my line of work, that was all.

Q Are you a member of the Eagles? A No, sir.

Q Do you know either one of his two brothers-in-law? A No.

Q Has Mr. Headley been to see you? A No.

Q Do you drive a car? A I do.

Q Trolley car? A Both.

Mr. Holland: Satisfactory.

Mr. McGeehan: Satisfactory.

Thereupon the juror was sworn.

FRED BERNKOPH.

By Mr. McGeehan.

Q Mr. Bernkoph, do you drive a car? A Yes.

Q Have you formed any opinion of the guilt or innocence of the defendant in this case? A No, sir.

Q From any information you may have received? A No, sir.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Do you know Mr. Mills or Mr. Romine? A I know of them.

Q Are you a client of either? A No, sir.

Q Are you associated with either of them in your work? A No, sir.

Q Are you a member of the Eagles? A No, sir.

Q Is there any reason you know of why you should not be called upon to serve in this case? A Not as I know of.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

MARION GALLAGHER.

By Mr. Holland.

Q Mrs. Gallagher, do you know this defendant? A No.

Q Do you know his wife? A No I do not.

Q Do you know either one of his two brothers-in-law, the Coss boys? A No, sir.

Q You drive a car? A Yes.

Q Have you read anything of this case? A I read it in the papers sometime ago.

Q Do you know Mr. Romine or Mr. Mills? A Not personally.

Q Is there any reason you know of why you ought not to serve on this jury? A No.

Mr. Holland: Satisfactory.

By Mr. McGeehan.

Q Mrs. Gallagher, anything you might have read sometime ago about this case, have you formed any opinion as to either the guilt or innocence of this defendant? A No, sir.

Q You feel in this case, if you sit on this jury, you can listen to the testimony of the witnesses and the charge of the Court and render a just verdict upon those? A Yes, sir.

Mr. McGeehan: Satisfactory.

Thereupon the juror was sworn.

WALTER C. BROWN.

By Mr. McGeehan.

Q Mr. Brown, have you read of or discussed this case prior to today? A I read of it.

Q Have you formed any opinion in your mind from whatever facts or report appeared in the newspaper as to the guilt or innocence of this defendant? A No.

Q You feel in this case you can sit as a juror and try it impartially and render a just verdict only upon the evidence in the case and the charge of the Court as to the law? A Yes.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Do you drive a car? A Yes.

Q Are you a member of the Eagles? A No, sir.

Q Are you personally acquainted with Mr. Romine or Mr. Mills, John M. Mills? A Only just know them by sight.

Q Have you ever been connected with either one of them, either commercially or politically in any of their enterprises? A No, sir.

Q Do you know either of the defendant's two brothers-in-law? A No, sir.

Q Is there any reason you know of why you should not act in this case? A No, sir.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

AUGUSTUS CLARK.

By Mr. Holland.

Q Mr. Clark, do you drive an automobile? A Yes, sir.

Q For how many years? A Three years, I guess.

Q Do you belong to the Eagles? A No, sir.

Q Do you know Mr. Romine? A No, sir.

Q Do you know Mr. Mills? A No, sir.

Q Do you know this defendant, Charles Blaine? A No, sir.

Q Do you know his brothers-in-law? A I know one of them, I don't know which one it is.

Q Do you know what the name of the one is you know? A Cramer.

Q You mean one of the men that was killed? A Yes.

Q Do you know either of these two brothers-in-law of this defendant? A No.

Q Would your association with Cramer, one of the men that were killed, prevent you from rendering a just opinion and just decision on the evidence presented here? A No, sir.

Q How long do you know him? A Oh, maybe, four or five years.

Mr. Holland: I would be willing to consent with the other side to excuse this juror because of his knowledge of one of the decedents.

Mr. McGeehan: I raise no objection because of that.

By Mr. McGeehan.

Q Mr. Clark, in your opinion, because you have known Mr. Cramer, would that in any wise affect your judgment as a juror in the trial against this defendant in any way? A No, sir.

Q You feel you can render a just and impartial verdict on the evidence presented and the law as given by the Court? A Yes, sir.

Mr. McGeehan: Satisfactory.

By Mr. Holland.

Q Would your knowledge of him prejudice the case of the State? A No, sir.

Mr. Holland: Satisfactory.

Thereupon the juror was sworn.

LENA KING.

Mr. McGeehan: I think I will excuse Mrs. King.

JOSEPH PENN.

By Mr. Holland.

Q Mr. Penn, you live in Morristown? A I do.

Q How long have you known Mr. Romine?

Mr. McGeehan: May it please the Court, the Supreme Court has held that it is improper to ask any question as to any counsel and I object to any questions to the juror as to counsel in this case, merely because Mr. Romine was kind enough to assist Mr. Mills in the selection of the jury, and is not an attorney of record, and I don't think it is proper to ask jurors such questions in this case.

Q Now, has Mr. Romine or Mr. Mills ever represented you? A No, sir.

Q Do you know the defendant? A I do not.

Q Do you know either one of his two brothers-in-law, the Coss boys? A I do not.

Q Do you know either of the two men that died that night? A No, sir.

Q Do you belong to the Eagles? A No, sir.

Q Drive a car? A I do.

Q How long have you been driving a car? A About five years.

Mr. Holland: Satisfactory.

Mr. McGeehan: Satisfactory.

Thereupon the juror was sworn.

Thereupon Mr. Holland opened to the jury in behalf of the State.

RICHARD MORRISBY, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Morrisby, what is your business? A Photographer.

Q And where do you practice your photography? A Dover, New Jersey.

Q Do you remember the night of the Blaine collision in front of the Sire place, Morris Plains? A I do.

Q Did you make any pictures? A I did.

Q What time of the day or night did you make them? A I would judge in the neighborhood of 2 o'clock in the morning.

Q Did you take them by flash light? A By flash light.

Q At the time you took them were the objects which you took pictures of pointed out to you? A They were.

Q By whom? A By the coroner.

Q I show you this picture and ask you what it represents? A That represents the Ford car.

Q I show you this picture and ask you what that represents? A That's Mr. Blaine's car.

Q I show you this picture and ask you what that represents? A That's a picture of Mr. Haggerty and Cramer and the Blaine car.

Mr. Holland: I offer them.

Mr. McGeehan: We are not objecting to them except with the understanding that it is not contended by this witness that

they represent the position of these cars immediately after the accident.

Mr. Holland: No, I will prove that by the other witnesses.

Photographs marked as follows: S. 1, photograph of the Ford car, S. 2, the Blaine car, and S. 3, the photograph of the two men and the Blaine car.

Q Now, do you know the points of the compass up at that particular place? A No, I don't.

Q In what position were you standing when you took these pictures with reference to the Sire place across the street? A The one photo was taken directly across right on the opposite side, the Ford car.

Q All right, now, when you took the picture of the Ford on the opposite side near the Sire house, did you have your back to the Sire place? A Yes.

Q Now, did you have your back to the Sire place when you took all of the other pictures? A Yes.

Q So that you took all of your pictures looking in the direction from the Sire place across the road? A Across the road.

Q Now, speaking of the direction from Morris Plains to Dover, on which side of the road did you find all of these objects which you photographed? A The Ford car was facing Mount Tabor.

Q I don't think you understood my question; repeat it please (Question read.) A On the right-hand side.

Q And the Ford car was facing— A Mount Tabor.

Q On which side of the road in the direction toward Mount Tabor? A Right-hand side.

Q And the Buick car is on its which hand side? A On the right-hand side—

Q Now, you did not listen to my question. I withdraw that and ask that the answer be stricken out as not responsive. On which side of the road, going in the same direction that the Buick car is pointed in, did you find the Buick? A Well, it was at the left-hand side.

Q The Buick's left? A The Buick's left.

Q And this picture S. 3, shows, does it not, the fence against which the Buick was impacted as well as the two trees between which it went? A Yes.

Q Now, do you by any chance, know which of these bodies here is that of Charles Haggerty and Charles Cramer? A Just as they were pointed out to me.

Q As they were pointed out—

Mr. McGeehan: Object; hearsay entirely.

Q You say that you took them by—how did you take these pictures? A By flash light.

Q And did you have any difficulty whatever in setting off your flashes? A Well, I waited for it, some—

Q Was it raining? A No.

Cross examination by Mr. McGeehan.

Q You got there at 2 o'clock? A Yes.

Q Of course you don't know whether these cars were changed in their position before that time? A That's the position they were when I got there.

Q And you were asked by the prosecutor whether the photographs show the fence against

which the Buick was impacted. You said yes. Do you remember if the Buick was against any fence which is there?

Mr. Holland: I did not show him that picture.

A What's that, S. 3?

Q Yes? A There's a fence there.

Q Was that Buick touching the fence, do you remember or not? A I don't remember.

Q And the fence in question is a wire fence that shows in the photograph? A It is a wire fence.

Q Now, in taking photograph S. 3 particularly, you took that from the center of the road, did you? A Will you let me see it ?

Q About the center of the road? A About the center, yes.

Q And how high was your camera from the ground? A Oh, about four and a half feet.

Q Would your camera, pointing in the direction it is in S. 3 and seated as it was seated at the height it is from the ground, show where there is a decline from the hard surface of the road, where the bodies lay to the point where the automobile shows in the picture? Would it show that? A Well, it should.

Q It should show it? A Yes.

Q You remember the scene of the accident? A I do.

Q And there is a drop from the hard surface of the road back to the point where the Buick was ? A Yes.

Q Now, with your expert eye of a photographer, will you tell us whether that appears in the picture, as it looked to the eye? A It rather looks on the level here.

Edward Howell, direct.

Q But you remember that there is a very visible slope down? A Yes.

Q And I suppose the reason why that appeared the same in the picture is because of the slope of the camera? A The camera was sloped.

Re-direct examination by Mr. Holland.

Q Now, was the wire fence supported at all? A Just posts there.

Mr. Holland: That is all.

(Witness excused.)

EDWARD HOWELL, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Howell, you are a surveyor? A Yes.

Q And as such have you surveyed the scene of this accident? A Yes.

Q That's in Morris Township? A Yes.

Q And Hanover Township is in Morris County? A Yes.

Q When did you make the maps and survey? A The 29th of March, I surveyed it.

Q Will you be good enough to unroll your maps and hang them up so we can question you about them? A (Maps are hung up.)

Q Now, Mr. Howell, at the time you were making these surveys and got your notes and information, who accompanied you to the scene? A I was accompanied by Mr. Flagg Vogt; he

Edward Howell, direct.

is with me in business and I had with me Officer Roff, Detective Roff.

Q Others there? A Mr. Lieutenant Love, Officer Hodges of Hanover Township, Lieutenant Love was a State Trooper and if I may refer to my notes—and Ernest Dibble of Wharton.

Q He is the Chief of Police of Wharton? A Yes; and Michael Murdock, also of Wharton.

Q When you got to the scene of the collision, did they point out to you the very places where cars had been?

Mr. McGeehan: I object to that as being hearsay, and calling for hearsay testimony entirely. He can tell what he did.

Mr. Holland: I withdraw the question; tell us what you did do.

A I made a survey of the road leading from Morristown toward Dover, immediately in front of the Sire place.

Q Is that map number one? A That's map number one. The Sire place is to the left or to the west of the lower part of the map.

Q Is it possible to turn that around somewhat; is it possible to shove the entire thing over this way? A Yes, it would be better. The road extends practically north and south. I surveyed the width, measured the width of the amasite roadway and found it to be eighteen feet and on either side with shoulders five feet in width.

Q You mean on both sides? A On both sides a shoulder five feet in width, made of cracked stone with a little oil on.

Q And outside of the cracked stone was there grass and leaves and so forth? A Natural vegetation.

Edward Howell, direct.

Q Now, where have you indicated on map number one the location of the Sire house? A Map number one is not wide enough to take in the Sire house. The Sire house is directly opposite the "R" in Morristown.

Q On Map number one? A On map number one. The road runs generally north and I have also located the telephone or electric light poles, which are numbered. Opposite telegraph poles 5401 and 5402 the road bends sligthly to the left and around that curve to the left or west are good size trees, perhaps with bodies one foot in diameter, perhaps a little more. I have marked in their proper position on the map.

Q Now, the map to the right, leading north, leads to Dover, does it? A Yes.

Q Leads from Morristown north? A To Dover.

Q And the south leads to Morristown? A Yes.

Q Well, what is the scale of the map? A That map is drawn to a scale of ten feet to an inch, and on it I show the scale, showing the feet.

Q Now, you have some red lines on that map, what do they denote? A The one parallel—

Q No, I am not speaking—the red parallel lines is what I refer to? A The parallel lines in the roadway represent the edge of the amasite, that is between the two, the amasite roadway, and to the right and to the left of the amasite is the five foot shoulders, marking the traveled roadway from curb to curb.

Q Now, what do the parallel green line denote? A That represents the nearest edge of the natural vegetation along the roadway.

Q That's the edge nearest the center of the road? A Yes.

Edward Howell, cross.

Q And how wide is it between the two green lines? A Twenty-eight feet.

Q Now, what did you find outside of the green lines, with particular reference to right in front of the Sire residence? A I found fourteen and a half feet on the west of the green line, a stone fence running in front of the Sire property with sufficient opening for driveway.

Q That's how many feet? A That's fourteen and a half, I think it is fourteen and a half to the fence or the wall nearest the roadway.

Q Yes, well what is there between the fence or that wall you speak of and the green line on the west side of the map indicating the beginning of the vegetation? A Well, I also remember there's a gravel way that is grown up, it's a pathway, really has been at the edge of the roadway, grown up with grass.

Q Are there any trees at that particular point between the westerly green line and the fence, the stone fence of the Sire place which is fourteen feet away? A There may be one or two large trees near the fence.

Mr. Holland: I offer map number one.

Cross examination by Mr. McGeehan.

Q Map number one contains no reference to the location of objects that were not there when you were there, does it? A Absolutely not, with the exception—

Q What is that? A That is the location of the land from which the photographs were taken (indicating.)

Q Were you there when the pictures were taken? A I was not. I have show on that

map in yellow lines the Ford, by aligning myself with the objects in the picture.

Mr. McGeehan: No objections. That refers only to map number one.

The Court: It is admitted.

(Map marked Exhibit S. 1.)

Further direct examination by Mr. Holland.

Q Now, map number two—is map number two an enlargement of the southerly portion of map number one? A Yes, it's an enlargement of it.

Q And in map number two, what have you designated? A I have designated the pole and all the features that is shown in map number one, with lettering indicating what they are. I did not have lettering in the other.

Q Now, I notice on the right hand side of map number two you have two indications marked boulder. Did you find these boulders there? A Yes, there were two boulders; I can indicate if you wish.

Q Tell us what you found? A I found by pole 5399 on the road an eighteen foot boulder and then further on about a hundred feet I found another boulder that was about eight feet and a twenty-four inch oak tree. There immediately right on the edge of the shoulder I found an imprint and Lieutenant Love asked me—

Mr. McGeehan: Object to anything that was said.

Q Not what he asked you, what you did? A I located an imprint in the roadway there, a U-shape imprint.

Q How did the size of that imprint which you located compare with the size of that? A That's the exact shape of it; that is, the "U" part of that.

Q You say you located that? A I located that and have marked it imprint on map number one and two.

Q And what else did you locate and mark upon the map? A There I located and marked the point indicated by "F" on the map, which was the beginning of the rough runway in a southeasterly direction of the edge of the shoulder, the edge of the grass, a clear depression, indentation in the direction southeasterly, that was a clear depression or rough way—

Q What was that? A That was the route the Buick plowed through the leaves.

Q You found that there? A Found that.

Q And what else? Let me ask you this. How great a distance is there between that point which you have marked and indicated "F" at the point where you have marked the imprint?

Mr. McGeehan: I object to that until the map is decided upon by the Court.

Mr. Holland: I offer the map.

The Court: Any objection.

Mr. McGeehan: Yes.

The Court: Proceed.

Cross examination by Mr. McGeehan.

Q This map called map number two contains a reference to front wheels and rear wheels— A Which were there when I took the measurements.

Edward Howell, cross.

Q One minute. It does contain references to those things? A Yes.

Q And there were no front wheels and no rear wheels on the locality when you made the measurements and survey? A Yes.

Q There was an automobile standing there? A An automobile was standing as I have indicated here, with front wheels and rear wheels.

Q That automobile was standing there on the 29th day of March, 1926? A Yes.

Mr. Holland: I want it understood that that automobile that was standing there when Mr. Howell made his measurements is not this same automobile.

Mr. McGeehan: Good, I wanted to know that.

Mr. Holland: It was a similar automobile to show the exact location.

Mr. McGeehan: I object to the map upon the ground that a map may be introduced in evidence to show the locality at the time the survey was made, at the exact time the surveyor makes his measurements and survey, but the survey should not include upon it reference to alleged conditions which did not exist at the time he made the survey and which are given to him by way of hearsay and which are to be placed upon the map only on sworn testimony of witnesses on the stand who would go to the map and there indicate where things were, and be subjected to cross examination. The first map I don't object to at all. The second map I do because this information is not part of the survey and should be subject to sworn testimony of witnesses.

Edward Howell, cross.

The Court: What information does it contain that should not be there?

Mr. McGeehan: Oh yes, with reference to the front wheels and rear wheels he is making.

Mr. Holland: What reference does it make.

Mr. McGeehan: Well, there's a vertical line on the other side of the word front wheels and the other side of the word rear wheels.

The Court: He said he found that.

Mr. McGeehan: He said it was standing there and the prosecutor has said that this was not the automobile at the time of the accident, but was placed there by someone later.

The Court: Mr. Holland, do you say he found these marks on the ground?

Mr. Holland: Yes.

By Mr. McGeehan.

Q What mark did you find on the ground? A I found the mark "F" that the prosecutor asked about and I found the boulders and the oak tree and other points here I have indicated and I also found an eight foot elm tree, on the ground was the butt of an eight inch elm tree leaning southerly across the wire fence which is on the east side of the road. Immediately between or right next to the elm tree, between it and the stump of the eight inch elm tree was a two and half inch ash tree cut off two and a half feet above the ground. The wire fence was attached to posts and trees. You will find that at the lower part of the map, the southerly part

and it was attached to posts and an elm tree and where it was attached it was sharply bent out, bent around the tree and the two lower ribs were bent up, one was bent up between the supporting elm tree and the post—

Q Just a minute, if I may interrupt you. My question was and my next question is, what you found in addition at this end of the map, what did you find up between where you have marked front wheels and rear wheels? A I made an exact record of what I found. After we had located the roadway and these points, why, the Ford roadster drove up and Officer Hodges was placed at a certain position in the road.

By Mr. Holland.

Q Now, the position at which it was placed in the roadway, did that correspond with one of these pictures which was shown to you at the time? A The Ford was placed there, I had nothing to do with the placing of it. I noticed that the rear wheels—

Mr. McGeehan: Never mind; I object to what this witness saw of the automobile placed there a number of days after the accident, and object to the map.

The Court: Proceed, Mr. Howell.

A (Continued.) I knew the hub of the right rear wheel was immediately over the U-shape imprint that was down in the edge of the roadway. When these four wheels of the Hodges' Ford roadster were accurately located, I went up the road northerly from that point to a point where I could see it. I was in an automobile driven by one of the officers and we came down.

I was sitting on the right hand side and I reached the point indicated by "X" at the upper side of the upper end or northerly end of map number one, which was seven hundred and sixty-eight feet or seven hundred and fifty feet from the Hodges Ford roadster. I then proceeded down fifty or sixty feet to get a point six hundred and seventy feet from the roadster and I was signaled by the officers at the Ford roadster that they wanted that point located.

Mr. McGeehan: I ask that be stricken out, I don't think we are bound by that.

The Court: Why, he was just about to point out what he was doing, what is there to object to?

Mr. McGeehan: I ask that the last answer of the witness be stricken out.

The Court: Your motion is denied.

Mr. McGeehan: I ask for it.

The Court: What is there you object to?

Mr. McGeehan: I don't know unless I am able to examine this witness?

The Court: We have been waiting quite some time. Go ahead.

A (Continued) I then located—

By Mr. McGeehan.

Q One minute please. A Well, I was just trying to answer the Court's question what I found.

Q The mark on the map of the front wheels and rear wheels are of another automobile that was put there on the 29th of March, 1926? A That was Officer Hodges' Ford roadster.

Edward Howell, cross.

Q And the imprint you have marked on the map, that imprint you say you saw on the 29th of March, 1926? A Yes.

Q And that is on the map as it stands now? A Yes.

Q And the place where you have marked the lower two wires sharply bent, that was there the same time, the 29th of March, 1926? A Yes.

Q And you have shown that on the map? A Yes.

Mr. McGeehan: I object to the map on the ground it contains matters that is subject to sworn evidence and that it contains matters that are not admissible in evidence as being at a time too remote from the accident, to the 29th of March or six days after the alleged occurrence. I object to the map because it shows upon it conditions that did not exist at the time of the accident and that there are things included in the map that are hearsay representation.

Mr. Holland: If you keep to that story—I am perfectly willing—

The Court: The map is admitted, of course, and ladies and gentleman of the jury, you are not at the present time to pay any attention to the three objects marked on the map to which Mr. McGeehan objected until they are proven, if they are proven. You are not to pay any attention to the three points he mentioned.

Mr. McGeehan: I take an exception to your Honor's admission of the map.

(Exception allowed and sealed).

C. F. WILSON,
(SEAL) Judge, &c.

Edward Howell, direct.

Mr. Holland: I consent to having them stricken from the map and from the consideration of the jury anything with reference to the matter of the wheels of Chief Hodges' car. I expect to get Chief Hodges to testify himself when he will then indicate that point on the map himself.

(Map marked in evidence S-3).

By Mr. Holland.

Q Then, Mr. Howell, were these photographs shown to you? A Yes.

Q Will you look at them and see if you recognize whether all of these three photographs were shown to you? A Yes, they had me write letter "A" on the back of it.

Q You put the "A" on it? A Yes, "A," "B" and "C."

Q Now, were you able then upon the scene and are you able now here in Court, to designate the point from which these pictures were, if you know where, were taken in the road? A Yes. That marked S-1 as being taken near the westerly edge of the amasite roadway and taking in from the point that I have marked boulder around down to another boulder and past the large oak tree. By aligning, as I said before, certain points you can get the precise point where the lens stood. I designated that as "A," corresponding to letter "A" which I placed on the photograph.

Q Now, in this picture, does the twenty-four inch oak show in this picture as it was? A Yes.

Q And does the boulder show in this picture? A I am not positive, I can't quite tell.

Q What did you do with the one you marked —what else, if anything, is there shown on that

picture which you have actually designated on that map? A I show the boulder, the one near the top of the map, which is directly opposite the point where the camera stood and that shows the front wheel of the Ford.

Q And that shows here on this picture? A Yes, marked S-1.

Q Now, what about your point, "B"; were you able to locate that? A Point "B" is marked in the same way, it is marked near the easterly or right hand edge of the roadway and in the photograph it is a large tree which I have marked eighteen ash tree from the northwesterly side; it shows a telephone or electric light pole which is numbered with its regular number. It shows a tree and a fence running—appearing in the picture just below the ash tree. In other words, this part of the fence is shown in the picture; also the posts to which it is attached, but the fence appears below, which is to the south and is attached to a post there. It also shows a tree, upon which I have marked eight inch elm stump.

Q Now, all of these points you have designated on the map are shown in that picture? A On S-3, yes, and marked on my map, point "B."

Q Now, point "C," if you will, please? A Point "C" shows the same ash tree. Point "C" is taken from a point at the line of the edge of the grass looking directly down or a little north of the center of the middle, or rather a little south of the large ash tree. It shows the tree which I took either to be an ash or elm and a small tree to which the wire is fastened, the wire being on the street side of the tree. The upper wire only shows in the photograph. South of the tree also are three wires showing in the photograph. North of the ash tree or just north

of this post four wires are discerned. The photograph does not quite take in the eight inch stump. Those are the only points I found and have marked here in Exhibit S-2.

Q All right, Mr. Howell, now, did you ever see this pump before? A That looks like the pump that one of the officers had.

Q Well, look at it? A Yes, that was bent like that.

Q That pump has a moveable base, standard, has it? A Yes.

Q And did you have that pump in your hand when you were surveying up there at the point you have marked imprint? A I don't recall that I did, but I saw one of the officers—

Mr. McGeehan: Object to this.

Q Were you there? A I was there.

Q All right, what did you see the officer do?

Mr. McGeehan: Object to that on the ground it's not binding upon the defendant and that any evidence was found on the 29th of March would be inadmissible as being too remote.

The Court: When was the accident?

Mr. McGeehan: On the 23rd, six days before. Furthermore, there is no evidence that is a special kind of pump. There may be any number of pumps of that same type.

Mr. Holland: Not there that night.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

A I saw one of the officers, Officer Love or Hodges place the foot standard of the pump in the depression in the amasite road and it fitted exactly. It was a pump similar to this with a "U"-shape movable foot standard.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q That was in front of Mr. Hodges? A Yes.

Q And was the weather pretty cold the day you were there? A During the week preceding that, fairly.

Q Pretty cold weather? A Fairly.

Q And the pavement is amasite there? A Yes, it is warrenite, similar to amasite, and the sides are re-oiled shoulders.

Q You don't know that they are re-oiled? A No, they usually do it twice a year.

Q They had not done it before this visit of yourself and others to make the survey?

Mr. Holland: How long before?

Q Was it done within any period of time, a month or two, before you were there? A It had either been done immediately before that or last fall; I think presumably last fall.

Q Of course you don't know that? A No.

Q There was no indication on the road surface that it had been recently oiled or tarred? A No fresh oil or tar.

Q Now, that's a pretty hard surface there? A That's a good wearing surface, it is not flinty.

Q When the weather is cold, it's pretty difficult to make an impression in that, is it not, by an object such as that pump stem? A Well, I

don't recall just the condition of that spot in the roadway.

Q Well, then, you are not so certain then of the imprint that you are speaking about, are you? A Absolutely.

Q You are certain there was an imprint? A I am certain there was, yes, made there by a pump standard similar to that.

Q Now, you don't see that imprint in any of the pictures, do you?

Mr. Holland: Sure he does.

Q Will you look at that photograph and see whether you can pick out what the Prosecutor says is such imprint?

Mr. Holland: I did not say the photograph showed an imprint.

Mr. McGeehan: No?

A I can't identify any imprint there.

Q And was this imprint a gashed out form in the road or was it a round mark, as you remember? A It looked as it was a tool something like that had been a half or a quarter imbedded in the oiled surface of the road.

Q And would you say a half or a quarter? A I mean about a quarter or an eighth of this moveable object.

Q Of the moveable object? A Yes.

Q And which quarter was it, the end section? A Yes.

Q So it was about that amount (indicating)? A Yes.

Q About an inch or an inch and a half? A Yes.

Q You don't know whether that imprint that you saw came there from the time of the accident, or between the time of the accident and the time you were there, do you? A I have no knowledge.

Q And when you were there, someone had to point that imprint out to you, didn't they? A Yes.

Q Now, Mr. Howell, in making the map, did you take grades there; measure the grades on the other side of the road? A No, I did not; I am familiar with that.

Q If you did not make any measurements, how can you tell us about that? A It's practically level for a distance there of thirty or forty feet.

Q I am referring particularly to the grade of the side of the road, the slope away from the road on the side?

Mr. Holland: Which side?

Q Both sides? A I did not, but I observed that there was a fall southeasterly from the roadway, no, it is even lower on the right.

Q Now you observed that from the easterly side of the road where the green mark appears on each of your maps to the point where you have indicated a ribbon wire fence, and there was a drop in the ground, is that right? A No, not from the edge. The wire is not far below.

Q There was some drop? A It was here where I would be.

Q Well there is a drop? A There is, but not a great deal.

Q How much of a drop? A I cannot say exactly, between two and three inch drop there for that distance, to the fence.

Q And what is the distance from the side of the road to the fence? A I should think it is about fifteen feet.

Q And what is the distance from the pole line to the fence? A That's twelve.

Q And did you notice the nature of the ground, whether smooth or level or soft or hard, whatever it might be to the edge of the pole line, as you call it? A It was made up of leaves and other material that had been carried perhaps across from the land of the Sire house.

Q It was not a proper road bed for an automobile? A It was not a solid surface.

Q And it was not even? A Yes, there was some gravel in over it.

Q Now, there were other trees and saplings that you have not marked in that area, usually found in that part of the road, is there not? A Yes.

Q A good many of them? A Not a great many.

Q Now, just one more thing, Mr. Howell. Looking at S-3, would you hold this up so that the jury can see it, and show us which is the pole, that light pole, whether that is on this map? A That pole is pole 5398.

Q And the fence that appears in the picture is what you have marked ribbon wire fence? A Yes.

Q That's on the large scale? A Yes.

Q Two feet to the inch? A Yes. I can perhaps add a little to my testimony—

Mr. Holland: Well, as soon as he gets through.

Q Just one more thing. Did you notice any objects across the road there, Mr. Howell, the

surface of the road, where the road had been patched? A No.

Q About fifteen feet, almost extending the entire width of the road? A No, I did not. Maybe there were some.

Q What's that? A I think very likely there were some there.

Q But you did not measure where they were located? A No.

Q You don't remember them either? A No.

Mr. Holland: I would be very glad to request Mr. Howell to go back with his map and mark these objects and put them on the map.

Mr. McGeehan: I appreciate that.

Mr. Holland: Will you be able to do that?

The Witness: Yes.

Mr. Holland: Can Mr. Vogt do that?

The Witness: Yes.

Mr. Holland: Just pole 5399, there is a patch about fifteen feet lengthways of the road.

Further direct examination by Mr. Holland.

Q Now, what other explanation did you say you had? A I found, Mr. Prosecutor, a stone which I have indicated "D" on the map and another small stone which I have marked "E". "E" on the right on the edge of the grass.

Q Now, are these stones shown on these photographs? A I think that "D" is.

Q Which photograph? A It's a rectangular stone, small stone.

Q Will you please find the photograph in which that is shown and give us the evidence number? A It is shown in S-3.

Q That is "D" you are speaking of? A That's "D", shown in S-3.

Q And in S-3 the stone that you have designated there is shown to be lying along side the head of one of these men? A Yes.

Q Now, Mr. Howell, how long did you say that "U"-shaped indication was? A I should say two and a half or three inches.

Q It was not the entire width of that? A No.

Q Now, I call your attention to this indication on the photograph—better get it in the light—directly in front of the jack, and ask you if that isn't the picture of the "U"-shaped imprint that you have designated here on this; a perfect "U"? A Yes, that is a perfect "U", I didn't see that before.

Q But you see it now, do you? A Yes.

Q What else—I point out this object to you, Mr. Howell, and ask if you don't recognize that to be the cover of a package of paper matches? A Yes, that looks like a package of matches.

Q And I point out that symmetrical body underneath the car and ask you if that does not appear to be the battery of an electric flash light?

Mr. McGeehan: I don't think this witness is competent to testify to that; this man who was not there until six days later.

The Court: You have not objected to the imprint, he said he saw that.

Further cross examination by Mr. McGeehan.

Q Just one thing in re-cross. This picture, referring to it and comparing it with the map, shows that the amasite is beyond where the left rear wheel of that car is.

Mr. Holland: Referring to S-1?

Q Yes, referring to S-1, that oil line, just right beyond? A It's very hard to tell where the warrenite begins and the oil—

Q That shows the amasite extending beyond the left rear wheel, doesn't it? A I can't say. The only way we can tell of the exact point where the amasite ends and the shoulder begins is by taking a line of some considerable distance.

Q Well, the mark that the Prosecutor showed you and asked you whether that was the mark that you saw of the imprint, appears on this picture to be at least a foot from the edge of the road, doesn't it, the edge of the amasite? A It appears to be a foot from the edge of the very rough part, but as stated, the amasite is united in the shoulder there to such an extent that you cannot tell where the amasite ends and the shoulder begins precisely.

Q But when you made your map and measured, say eighteen feet, and placed it on the map, you must have considered something? A Exactly, that is a clear defined line when you take a length of it or a distance of fifty or sixty feet, but at any one point it is very difficult to say this is or isn't.

Q What I am getting at is, on your map you show an imprint on the inside edge? A Yes.

Q And on this picture the Prosecutor called your attention to what would be an inch on that map from the edge, isn't it? A No, I think not, because if you take the width of the shoulder and using that, it would show that this portion of it is very rough and it gets smoother as it approaches the warrenite.

Mr. McGeehan: That is all.

The Court: Ladies and gentlemen, it is customary in cases of this kind that you will remain together in the charge of an officer, and you will be taken to some place where you will get your lunch today and be taken care of tonight. Sometime this afternoon if you have any messages that you wish to have sent home, the officers and sheriff will see that these messages are properly delivered. We will now adjourn until two o'clock and in charge of the officers you will go to your lunch.

After Recess.

EDWARD HOWELL, recalled.

Q Since lunch time, have you been or sent Mr. Vogt up to Morris Plains to get these patches in the road which Mr. McGeehan mentioned? A Yes, I went up.

Q Where did you find them to be? Suppose you refer to map number one? A I found on map number one—I found from pole 5400 a patch seven and a half feet wide along the road with an average length of eleven feet.

Q And have you since lunch time indicated it on the map as you point to it? A Yes.

Q And it is approximately like you have indicated it on the map? A Yes, it was put on there to scale.

Q Now is there another? A Right opposite pole 5399 is another patch, which is five feet from the line of the roadway, in there five feet and it is five foot wide and twenty-nine foot long. There is still another one just south of

pole 5398, that's three inches in from the edge of the warrenite and five foot two inches wide and about twenty and a half foot long.

Q And did you also indicate where these patches that you found would be on the small map, number two? A Yes, only one will go on map number two and that is the one just south of pole 5399. It's represented there in its true position.

Q Can you darken that, Mr. Howell, so that it will stand out somewhat? A (Witness uses heavy crayon.)

Q Now, this patch that stands out on that map number two is the only patch that fits on map number two? A That is so.

Mr. Holland: Cross examine.

Mr. McGeehan: No further questions.

(Witness excused.)

FOSTER FLAGG VOGT, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Vogt, you are a surveyor and associated with Mr. Howell? A Yes.

Q And did you accompany Mr. Howell and associate with him in the preparation of these maps? A I did.

Q Do you remember the impression—did you find an impression in the road like the imprint on map number two? A I did.

Q And is that the same imprint or impression which is shown in the photograph S. 1 at that

point, just in front of the jack? A Yes, that would seem to be it.

Q Those maps were accurately prepared from surveys? A Yes.

Cross examination by Mr. McGeehan.

Q This imprint that you say you saw on the 30th of March when the drawing or measurements for the map were made— A On the 29th.

Q And was it on the warrenite part of the pavement? A Just on the very edge of it, I should say.

Q And that was pointed out to you by someone else? A It was.

Q And of course, you don't know how long it was there, do you? A I have no idea.

Q How deep was that? A It was deep enough to make a rather strong impression or a "U"-Shape formation in the surface of the road.

Q Can you tell us approximately for the record how deep a formation it was? A Oh, a sixteenth of an inch, perhaps.

Q Were there any other imprints there in that part of the road that you noticed? A No, I saw none other that I can recall now.

Q You might know of this; I neglected to ask Mr. Howell. Is the tree that is shown in S. 1 behind or near the rear of the Ford car the tree that is marked twenty-four inch oak on map number two? A Yes, that's the same tree.

Mr. McGeehan: That is all.

(Witness excused.)

JOSEPH D. VOELKER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Voelker, you are Coroner? A Yes.

Q And you are the Coroner, are you, who was called into this case? A I was.

Q When did you come upon the scene of the accident? A Why, I was called— I got there about fifteen minutes after 1.:00 That was on March 24th.

Q Whom did you find in charge of the bodies at that time? A When I got there I saw Chief Dibble from Wharton.

Q Did you thereupon take charge of the bodies? A I did, yes.

Q And what did you have done? A Then I called—in the first place I called and informed Chief Bellingham of the accident and I got my instructions to have photographs taken of the scene and then have the bodies removed and have an autopsy performed.

Q Did you have an autopsy performed? A Yes.

Q Did you have photographs taken in accordance with the instructions from the Chief? A Yes.

Q And what happened to the bodies, where were they taken? A Taken to Gillen Young's place, Morgue, at Dover, New Jersey.

Q Who were they? A Charles Cramer and Charles Haggerty.

Q And when you took them and removed them from the scene of the accident, were they living or dead? A They were dead.

Q Both of them? A Yes.

Q Did you have an autopsy performed? A Yes.

Q Who were the doctors that performed the autopsy? A Dr. Reed of Morristown and Dr. Costello of Dover.

Q Now, from the time that you got on the scene until the pictures were taken, was anything moved? A Well, while I was there, the Ford car was taken away, Ford roadster.

Q Was that before the picture or after? A After the picture.

Q I did not ask you? A Pardon me.

Q (Question read.) A No, there was not.

Mr. Holland: Cross examine.

Mr. McGeehan: No questions.

(Witness excused.)

EVEREST A. DIBBLE, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q You are the Chief of Police of Wharton? A Yes.

Q Do you remember the night of March 23, 1926? A Yes.

Q Where had you been that night? A Summit basketball game.

Mr. McGeehan: May I interrupt just a moment. I think I want to have the coroner for one further question.

The Court: You may.

JOSEPH D. VOELKER, recalled.

Cross examination by Mr. McGeehan.

Q Coroner, I just have one question I wanted to ask you. You did not move the bodies of the men, you yourself? A In what way do you mean?

Q Did you move them? A I helped to move them after the pictures were taken.

Q Was a bottle found in one of the pockets of one of the men? A Yes.

Q What did that bottle contain? A It smelled like liquor.

Q How much liquor in the bottle? A Oh, I should judge that much in the bottle (indicating.)

Q Indicating about three inches? A Somewhere in that neighborhood.

Q What size bottle was it? A It appeared to me like a quart bottle.

Q And that was in the pocket of one of the men? A Yes.

Q That had been killed? A Yes.

Q And at that time, was the cork out of the bottle? A Yes.

Q Had any of the liquor been spilled? A Well, it smelled as if some of the liquor had been spilled.

Re-direct examination by Mr. Holland.

Q Was it a flat or round bottle? A Round bottle.

Q Where is the bottle? A I turned it over to Lieutenant Roff and Love, I think it was Love, two officers had it—what is the name again—the trooper up to the house.

Q Love? A Not Love, Vic—I believe was at the house.

Q Condorf? A I could not say for sure. I know there was a trooper at the house and I turned it over to him.

Q Which pocket did you find it in? A Off the chap's second coat.

Q Which pocket, outside pocket? A Outside pocket.

Q And it had no cork in it? A No, sir.

Q It was in his pocket? A Yes.

Q And it was not broken? A Not broken.

Q One other question, do you know who put it there? A No, I don't.

Mr. Holland: That is all.

(Witness excused.)

EVEREST A. DIBBLE, resumes the stand.

Further direct examination by Mr. Holland.

Q When did you go to the basket ball game; what time did you start? A Why, I started away from my house around about 7:00 o'clock, little after 7:00 o'clock.

Q And what time was the basket ball game over and you left from Summit? A Why, in the neighborhood of 11:00 o'clock or might have been a few minutes after.

Q Are you certain of the time or is that merely your best judgment? A It's my best judgment, I did not take any particular notice about that.

Q In going from Summit to Wharton, what course did you follow? A Through Morris

Plains. I followed the main highway through Madison and came to South street and then we took that back road there by the Washington Hotel, came through the short cut and went right straight through to Morris Plains.

Q You mean the short cut which brings you out at the corner of Spring street and Speedwell avenue? A Yes.

Q From that point in Morristown, Speedwell avenue, did you go on through Morris Plains and on up? A Yes.

Q Yes, and as you got opposite the Sire property on Speedwell avenue, Morris Plains, sometimes called the Tabor Road or Dover Road, what attracted your attention, if anything? A As we rounded the bend, I noticed a car on the side of the road. As I went further on up I saw several men on the side of the road waving their hands. I did not know first what to think, was a man being held up, or something, I was not going to stop. Later as I came nearer, I recognized my own bunch and I stopped and they told me there had been a man killed.

Q Never mind what he told you. Did you get out? A Yes.

Q And did you listen to the breathing of both or one of these men? A I looked at both of them and one I saw was dead and the other was just barely breathing.

Q As an officer of the law, did you take charge of the situation then? A I did then, yes, sir.

Q What did you find? Where was the Ford standing? A The Ford was standing well off on the right hand side of the road nearly off from the amasite road entirely on the shoulder, I

should say within eighteen inches of the edge of the shoulder.

Q You mean that's when you first saw it? A Yes.

Q From the time you first saw it until the picture was taken, was it moved? A Absolutely not.

Q Does that picture actually represent the position in which you first saw it? A That picture represents the actual position that car was in.

Q Now, in taking charge of this situation, just tell the Court and jury what did you do? A The first thing I done—I did not pay any attention to the cars, I tried to render aid to Haggerty, who was still breathing. I asked Mr. Hoffman if he would turn his car around and take this fellow to the hospital. During this time the fellow says, there's no use, because this man has dropped off. Then I came to the other fellow. I went down to the sedan that was up in between a tree and up against the fence and there I found another man, I think his name was Guerin.

Q Walter Guerin? A I think he was.

Q Did you ask if he was with this other car? A He said he was. I asked if he was driving and he said no. I asked who was and he said Charles Blaine. I asked where he was and he said he had gone to the hospital, so I thought—

Q Don't tell what you think, what do you know? A Well, from his actions he looked to me like he was under the influence of liquor or something, so I immediately placed him under arrest. I showed him what authority I had and placed him under arrest. I told him I had all authority there and he said he was an officer him-

self and I asked from where and he said Morristown.

Q You mentioned the words you thought he was under the influence of liquor, where did you get this from? A From his breath.

Q Whose breath? A Guerin's.

Q How long a time intervened between the time you came and the time the photographer came? A Oh, I should say perhaps in the neighborhood of an hour and an hour and a half.

Q And by what method did he take the photographs? A Flash lights.

Q And had anything, either the men or the cars been moved between the time when you first came upon the scene and the time when the photographs were actually taken? A Absolutely nothing moved except a cover placed over the dead people's face.

Q Now, why hadn't it been moved? A For the simple reason I had always been—

Mr. McGeehan: Object to that, isn't that apparent.

Q Did you do anything or say anything which prevented any moving? A I told everybody around there not to touch the corpse whatsoever because nobody had any right except the Coroner.

Q Now, how long did you stay there at the scene of the collision? A I stayed there from eight minutes of twelve when I arrived on the scene that time until about 4:30, possibly later.

Q Now, when you first came there were the men lying in the position that is shown in S. 3? A Absolutely.

Q And on what side of the road was that in reference to the direction from Morristown to Dover? A On the right hand side of the road.

Q And the Ford car in which they had been driving, on which side of this road was it? A Right hand side, well over.

Q Now, where did you find the Buick Sedan? A On the left hand side.

Q On the left hand side of the Buick? A On the left hand side of the Buick, going to Morristown.

Q Was that the same side of the street that the Ford was on? A Absolutely.

Q Where did you find this Buick, where was it? A It was tightly against the fence.

Q What part of the fence? A Well, right next to the post and the wire.

Q And was the Buick injured? A Well, it was damaged, the transmission had been ripped off and the gears lying on the ground.

Q Did you notice anything on the road? A It looked as if he had his wheels locked.

Q Why do you say it looked as if he had his wheels locked? A Because I could see the tracks where he slid.

Q Well, suppose you take the indicator and stand up to map number two and tell us where you first noticed the skidding, if you can, in reference to the twenty-four inch oak? A About as near—right about in here (indicating).

Mr. Holland: Indicating the shoulder on the right.

Q Do you know what the red lines represent? A I imagine that's the shoulder of the amasite.

Q Now, what is this part of the road between the red line and the green line? A That's a

strip the County has put on from the hard road, outside the road.

Q What is that composed of? A What is known as cold patch; gravel and tar, something like that.

Q Where did you first see the marks of the wheel? A I would say right about in here, from there right on into where the Buick stood (indicating).

Mr. McGeehan: Can you indicate that with a mark?

Q Are you pointing now to a spot practically opposite the twenty-four inch oak and indicated by a diagonal direction very much southerly and somewhat to the east down to the point "F," marked on map number two and continuing beyond that? A Yes.

Q Now, you say it was up against a post in the fence, in the wire fence? A Yes, sir, it was.

Q Were there indications that the car had been side-swiped or hit—

Mr. McGeehan: I object to that as calling for a conclusion.

Q What did you find upon the Buick? A Why, you could see right where it had hit something on the side, had hit something on both sides, it had come in contact with something.

Q Now, what is this object I have in my hand? A That was a pump that was found at the scene of the accident.

Q When? A That same night.

Q Who found it? A I am quite positive I found that myself.

Q Was it in this condition? A Absolutely.

Q With the handle bent that way? A Yes, sir.

Q Where was the rubber tube? A The rubber tube was on the left rear wheel, on the valve stem.

Q Still hanging there? A Yes.

Q Is it indicated in S. 1 as still hanging from the valve stem? A It is.

Q Did you subsequently appear back on that same scene with Mr. Howell and Mr. Vogt when they were surveying it? A Yes.

Q And were you present at the time that this foot standard of the pump was fitted into the "U"-shape impression in the road? A Yes.

Mr. McGeehan: I object to that as leading.

Mr. Holland: Another witness has testified to it.

Q Just tell us what was done? A That same night of the accident after we got through with the bodies, we were looking for more evidence.

Q What did you find, if anything? A At the rear wheel, where the Ford wheel stood, I noticed this impression in the road. Immediately I got the pump and I said it must fit it.

Q That was when? A That was the same night of the accident, and then the day we surveyed it, we also tried it again. It took quite a little while to find the imprint of the Ford car.

Q Did you find the same imprint? A Yes.

Q Did you try again to fit it in? A Yes.

Q Did it fit? A It did.

Q Is that the imprint which is shown on S. 1, just this side of the car?

Mr. McGeehan: Let the witness, please—

Mr. Holland: Well, you can see it, he may not.

Mr. McGeehan: Then I object, he may not notice what it is.

A That's the same imprint.

Q Now, in looking for signs and evidence and so forth, Chief, did you notice in the road the scrape marks of the Ford wheels as if the Ford had been pushed? A I could see it had been pushed in the neighborhood of around about two feet, where it had been side-pushed and drawn back the same time; in that neighborhood; I could not say accurately.

Q Now, at the time you got there, did the Ford have lights on it? A They did, both.

Q And what do you mean, both? A The Ford and Buick both.

Q And were the Ford lights lighted or unlighted? A They were lighted.

Q And were they burning when you got there? A They were.

Q How wide is the road at the point where you found the Ford standing on the right-hand side of the road? A I should say around about twenty feet; that is the main road, and what might be used as a road I should say around thirty to thirty-five feet, if not more.

Q And how much room was there for another car to pass from Dover toward Morristown, past this Ford car? A Oh, room for two cars, at least, if not more.

Q Besides the Ford? A Yes, sir.

Q Or including— A Without the Ford.

Q Now, will you indicate on the map where the Ford wheels—or where the Ford was standing when you got there? A I should say it was just about the way those marks are made right here, according to these boulders here and everything.

Q Now, at the time, Chief, when you were there with Mr. Howell, was there another car used to illustrate the very same place? A Yes.

Q And was that car standing in the position opposite the "U" marked in the road?

Mr. McGeehan: Now, may it please the Court, these last two questions, together with others, are extremely leading. The prosecutor—

Mr. Holland: I withdraw them.

Mr. McGeehan: The witness has already been led. He says, was the Ford car standing just the way it appears on the map? That is leading; he ought to ask where it was.

The Court: Was that after he had been doing it?

Mr. McGeehan: Yes, he has asked two leading questions.

Mr. Holland: I had no intention of leading.

Q Just tell, Chief, where the car was placed and why at the time when Mr. Howell was making his survey? A We used the imprint for the exact location of the rear wheel of the Ford and when the car was standing there that would indicate where the jack and rear end had been standing before it was knocked loose.

Mr. McGeehan: I ask that be stricken out as a conclusion of the witness, first as

to where the rear end of the Ford had been standing before it was knocked loose.

Mr. Holland: I consent to the last part being stricken out.

A (Continued) On the day of the survey, the 29th, we had to look around for the imprint to get the exact location of the Ford. We wanted to be positive that we had it pretty near accurate anyhow. After a while we found that imprint and then we placed Chief Hodges' car to represent the other Ford for the survey people.

Q Now, was there anybody left Dover before you—left Summit before you to get back toward Wharton? A I won't say positive about that.

Q You say you recognized some of your fellows? A We probably left in a group. There were three or four carloads left together. Some might have left earlier and some might have left later.

Cross examination by Mr. McGeehan.

Q Then I understand you to say that the position marked upon the map, front wheels and rear wheels, represent where the Ford car was when you saw it after the accident on the night of the accident; is that right? A Yes, sir.

Q And I understood you to say, also, that the photograph marked Exhibit S. 1 accurately shows where that Ford stood, where you first saw it after the accident on the night of the accident; is that right? A Yes, sir.

Q Isn't it a fact that the twenty-four-inch oak that appears upon this map is approximately eight inches to the south of where the rear wheels appear on the map? A I won't say exactly eight inches.

Q Seven or eight? A It's not that.

Q No, on the map here, doesn't the twenty-four-inch oak appear about eight inches to the south or opposite a point eight inches to the south of where it is marked rear wheels? A Yes.

Q And do you know this map is two feet per inch? Do you know that one inch on this map represents two feet on the ground? A I thought you said eight inches—

Q I will repeat it. Take the map which you identified the position and show the twenty-four-inch oak. Now, isn't that eight inches to the south or opposite a point eight inches to the south of the rear wheel? A Yes.

Q And you know that means about sixteen feet of ground? A According to the scale of the map, yes.

Q Now, Chief, I show you Exhibit S. 1 and ask you whether on that photograph that twenty-four-inch oak does not appear to be almost exactly opposite the rear wheels of that Ford car? A This photograph was taken a little on an angle.

The Court: Yes, it might depend entirely on what angle it was taken.

Q Please answer that question. On the photograph, does not the twenty-four-inch oak appear on that picture just behind and almost opposite the rear wheels of that Ford? A The location of the Ford now, yes.

Q Now, suggestion is made that the angle at which the picture was taken might make a difference. I ask you whether on the photograph the roadbed is not almost parallel with the bottom

of the picture so as to appear that the picture was taken almost at right angles to that side of the road? A And the right side look as if the camera was pointed a little at that angle.

Q All I asked you whether this picture doesn't show a right angle of about even with the bottom of the picture? A It does in the picture, yes.

Q And if anything, it was slightly to the rear of that Ford, wasn't it? A It was toward the rear of it.

Q Well, now, Chief, if this camera was pointed from a position slightly to the rear of the Ford it would show more of the front part of the road than the rear? A Not necessarily; not if he had it at an angle.

Q Now, one minute, Chief. This picture was taken at about right angles to this Ford? A Yes, about.

Q And it was taken about opposite the rear wheel of it, wasn't it? A Just about.

Q Yes, now, isn't it a fact that in this picture that the tree, that twenty-four-inch oak, is exactly opposite or a foot behind the rear wheel of that Ford? A Yes.

Q About a foot? A About a foot or two.

Q Now, how can you say that that accurately represents where the Ford was, about opposite the twenty-four-inch oak and also say that the map indicates its correct position, sixteen feet forward? A For the simple reason, the impression where the Ford was hit was three or four feet ahead of that. That is after the car had located, after it had been through the collision.

Q So then, you do not mean to say, do you, that the map shows where the Ford car was when you first saw it? A I do not mean it that way, no, sir.

Q Now, you said it was only moved two or three feet? A I could not say, I did not measure.

Q Was it moved fourteen to sixteen feet? A No, I don't think it was moved fourteen or sixteen feet.

Q It would have to be moved fourteen to sixteen feet to be opposite that twenty-four-inch oak, wouldn't it? A According to the scale of the map and the pictures it would. You refer to scale of the map. I didn't pay much attention to the boulders or anything like that on it.

Q Now, Chief, is that Ford car in the picture where you saw it when you first got there? A Yes, sir.

Q Was the twenty-four-inch white oak opposite the rear wheels of it? A I can't tell you.

Q Then how did you know from looking at this, if you can't tell, whether that's in the position it was? A Why, I know by the tools and jack and everything.

Q By the tools and jack? A Yes.

Q Well, then, by the tree— A I ain't going by the tree.

Q You mean you don't know where that twenty-four-inch white oak is? A I didn't make any note of it.

Q Now, Chief, you said this, did you not, on your direct examination, "I looked for more evidence and where the rear wheel stood I found the imprint?" Did you say that? A Yes, sir.

Q Do you mean where the rear wheels stood when you found that imprint? A No, not

where the rear wheels stood when I found the imprint; that's where the imprint was.

Q Well, was that imprint at the rear wheels of the Ford? A No, not there, no.

Q How far was it from the rear wheels of the Ford? A Well, I would not say exactly. I should say in the neighborhood of two and a half to three feet, maybe more, it might have been more, in that neighborhood somewhere.

Q Now, you also say that the Ford was knocked to the side some distance? A It had been slid a little to the side.

Q All right, how many feet would you say from the direction of the center of the street that Ford was slid toward the edge of the road? A It was not in the center of the road.

Q My question is, in what direction was it slid to the side? A It was slid to the right side.

Q Toward its right side? A Somewhere around there.

Q And that was toward the right from the center of the road? A It was slid toward the right.

Q Slid toward the side going in the direction to the right from the center of the road? A Slid along the shoulder of the road.

Q Was it slid over from the west to the east side, in that direction? A I told you the east.

Q Toward the east from the west? A Yes.

Q And slightly knocked backward? A Yes.

Q Did you see where the four wheels made marks there— A Well, there was little marks of the four wheels.

Q And were some of these marks inside of the warrenite pavement, that is on the had surface of the amasite or warrenite? A No, wasn't

on the roadbed itself. It was on this shoulder that had been put on by the county.

Q Now, how many feet did these side way marks extend? A I would say knocked in the neighborhood of two feet back and to the side.

Q Now, look at S. 1, that's the hard part of the road that appears at the extreme bottom of the picture, isn't it? A That's the shoulder that's put on, in the center is the hard bed, that's not the hard bed of the road.

Q Now, did you direct the taking of these pictures? A No.

Q You were there? A Yes.

Q You had charge of the situation? A No, not at that time.

Q Were not the pictures taken showing the entire width of that road looking to a point where that car was? A This Ford?

Q Yes. Was any picture taken showing the whole road? A No picture taken showing the whole length of the Ford.

Mr. Holland: He did not ask you about the length of the Ford.

A There is a picture that shows the whole width of the road.

Q That is not one of the tree pictures you have been shown? A I have not seen this one.

Q Well, the picture you said was taken is not S. 1, S. 2 or S. 3? A I was thinking of this one here, S. 2, was going to show up the whole width of the road.

Q However, you said that road was wide enough for two cars, at least two cars, to pass where that Ford was after the accident? A Yes.

Everest A. Dibble, cross.

Q That road is a good eighteen-foot road wide, the hard part of it, isn't it? A Around that neighborhood, I should say.

Q Does Exhibit S. 3 show the hard part of that road? A That's along here, you can see the hard part.

Q Well, you were there seeing the hard part of the road at the center and to the right of it would be the point where you say that Ford was? A I thought it would show the whole space.

Q Now, did you look at the part of the road at a point back of where that Ford was and along the center of the road and the right-hand side of the road in a southerly direction? A I did.

Q You found slight skid marks there? A There were some marks there.

Q They were on the hard surface of the road? A Yes.

Q In your former examination by the prosecutor you did not testify to any marks on that road except on the shoulder? A No, sir.

Q Tell us where they were here on the hard part of the road? A I should say about in here (indicating). They were very faint, you could not tell exactly.

Q Now, you heard before on the right-hand side of that map is a patch? A They were not skid marks—

Q You saw some marks on the right-hand side of that road going to Dover, didn't you? A Going this way, going to Dover.

Q Now Chief, I want to ask you this question. Did you, when I first asked you to point out there, did you or did you not in the presence of this jury, when I first asked the question, point out about there, just where the marks were? A Right there, about (indicating).

Everest A. Dibble, cross.

Q All right, that's where the swerve begins? A Little fine marks.

Q And from the center of the road, is that right? A I would say so.

Q Now that swerve was to the left, wasn't it?

Mr. Holland: To whose left?

Q To the left of the road as you go south, coming toward Morristown? A It is to the left.

Q Now, were there two slight marks or one? A I won't say positive whether there were two or one.

Q Do you know whether the point you have marked is the left wheel or the right wheel of that swerve? A I could not say positive.

Q You would not say it wasn't to the left, would you? A I would not say it wasn't or it is.

Q Now, why did you mention this surface of the road when the prosecutor asked you about the marks you saw on that road? A He asked me whether I saw the marks from the Ford.

Q And you told him you saw marks only in the shoulder of the road? A I mean the skid marks.

Q My question is, why didn't you tell us about the marks on the hard surface of the road when the prosecutor asked you whatever skid marks you saw on the road and you told him you saw skid marks only on the shoulder of the road?

Mr. Holland: You did not hear his answer.

A He previously asked me what skid marks I saw from the Ford at the rear end of the Ford and I showed him. He did not ask me if I saw any marks before that in the center of the road.

Q Now, don't you remember you testified, Chief, that you saw marks extending down along the road to a point marked "F" on the map? A Certainly.

Q Did you think he was asking you only about the Ford? A Absolutely not.

Q Well, if you thought he was asking you only about the Ford this time, why did you tell him of the marks being down there on the shoulder only? A I told him there were marks from the Ford to where the car was.

Q Did you or did you not on your direct examination, speak of marks extending somewhere down the shoulder of the road to a point marked "F" on the map? A Yes.

Q Did you think that the prosecutor was asking you about Ford marks then? A No.

Q Did you think he was asking you about the marks of the Buick? A Yes.

Mr. Holland: I object to that. I have no objection to Mr. McGeehan asking what he thought he was answering. He may ask a dozen times, but the witness has answered no.

Mr. McGeehan: He answered yes.

Q You intended to testify to marks of the Buick and not the Ford? A Yes.

Q Then why did you say to me just a minute ago you thought he only wanted to know about the Ford marks? A That's the marks I thought you were talking about.

Q You knew that is important in this case? A (No answer.)

Q Now Chief, you have testified—oh, by the way, you saw the coroner take the bottle of whiskey that was nearly full out of the pocket of one of the men that was killed? A Yes.

Q Now Chief, you have said in your direct testimony, haven't you, that in speaking to Mr. Guerin that he indicated by his actions that he was under the influence of liquor or excitement or something, that's right? A Yes, sir.

Q Those are your words? A Yes.

Q Now, there was no argument between you and him? A Yes, there was a little argument.

Q And when he told you in this instance that the defendant was driving the car, you asked him whether it was Mr. Blaine from Dover, didn't you? A I asked him who he was.

Q And he told you Mr. Blaine? A Yes.

Q You asked him whether it was Charles Blaine from Dover? A Yes.

Q He told you he was from Morristown? A Yes.

Q Did you say to him, you are a liar, he is from Dover, I know where he is from? A No, I says he is from Wharton.

Q Did you tell him then, you are a liar, he is from Wharton? A Yes—no, I did not tell him he is a liar.

Q You thought he was from Wharton, didn't you? A Yes.

Q You thought he was not telling the truth when he said he was from Morristown? A I know he used to—I thought he was living in Wharton.

Q You did not think Guerin was telling the truth when he said he lived in Morristown? A No, I didn't.

Q And therefore you told him so? A I did.

Q And all the time this discussion took place between you and him you had not made yourself known? A I didn't.

Q After he asked for your authority you told him who you were? A Yes, I showed him.

Q Now, was it that excitement that you thought he might be under the influence of? A No, his actions, I noticed his actions when I first went down to look at the Buick.

Q Chief, you said that he acted as if he was under the influence of liquor or something? A I did not say whether he was intoxicated. It is not for me to say whether anybody was intoxicated.

Q And the liquor, the bottle you speak of, was some spilled out the pocket of the man that was killed? A Maybe there had been some spilled on the coat.

Q And this odor of liquor, could that not have come from there? A That was some distance away from where I had been talking to him.

Q And you think you smelt liquor on his breath? A Yes, sir.

Q You did not know he was Guerin at that time, did you? A No, sir.

Q You did not arrest him, you told him he was under arrest until the proper authorities came? You did not take him from there at all? A I did not, no, sir.

Q Now, you noticed that the transmission of the Buick was wrecked, didn't you? A Yes, sir; that is the gears, there were gears laying on the ground.

Q Let me ask you this, Chief. At some point between the center of the road where you saw the marks of the swerve and the point where the

Buick was, was there a limb in the course of that Buick? A It seems that there was a limb down just before you get to the fence.

Q And are those limbs on the south part alongside of the road? A Yes, sort of outside the road.

Q There's a slope down toward there, isn't there? A Slight, yes.

Q And there are stumps of trees and trees alongside of it? A In between them, yes, sir.

Q Of course you don't know what part of the damage to the Buick was due to contact with these trees and what part due to contact with the Ford? A I do not exactly.

Q Chief, on the Ford car which appears on photograph S. 1 how about the mudguard, it is apparent on the picture, but I want the record to show it; the front mudguard—

The Court: If it shows, what is the use of asking?

Mr. McGeehan: I want it for the purpose of evidence.

The Court: That is not evidence.

Mr. McGeehan: The picture is in evidence, he can explain the photograph. He saw it and the photograph does not show it.

Q And that represents the Ford at the time you got there? A Yes.

Q And the conditions of the front mudguard? A Yes.

Q The rear left wheel and rear left fender of the Ford automobile was not damaged with contact with the Buick, were they? A I don't think that it was, I won't say positively.

Q You can refresh your memory from the picture, if it helps you? A No, it don't appear in looking at the picture that it was.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q When you answered my question, indicating some point from in here down almost before the twenty-four inch oak, point "F", I had asked, had I not, about skid marks? A Yes.

Q We were talking about skid marks, you say? A Yes, about skid marks from the brake.

Q That was from the rubber tire on the road? A Yes.

Q That was not in connection at all with the skid marks that started somewhere opposite the twenty-four inch oak; these marks you saw in there? A There is straight ones—

Q I did not ask you that? A That Ford in there?

Q No, that was not in connection with that? A We found other marks inside from the hard surface to that point, one plainly.

Q And will you indicate where at the point where that was? A About there (indicating). I would not say positively. I did not pay much attention to the marks there.

Q In making your examination that evening, did you find the object which is indicated by a pencil mark on here? A I don't know whether I found it or someone else.

Q Do you know what it is? A It looks like a can of patches.

Q Do you know whether that's a can of patches or do you know it's a battery from a searchlight?

Mr. McGeehan: I think that is extremely leading.

Mr. Holland: I don't think it is a can of patches and I asked whether he knows.

A I would not say positive, we was busy picking up different things and I could not keep a watch on everything.

Q Was there a flashlight picked up that night? A Yes.

Mr. Holland: At this time, I want to offer the pump.

The Court: Any objection?

Mr. McGeehan: No, sir.

(Pump received in evidence and marked Exhibit S-6).

Q Is that the flash-light that was found that night? A Yes, sir.

Q Whereabouts was it? A Just exactly like that one.

Q Same description and everything as that? A Yes.

Mr. Holland: I offer it.

(Received in evidence and marked Exhibit S-7).

Q Was that Ford hub cap found there then? A I am pretty sure it was. Numerous things were found by different ones.

Mr. Holland: I offer it in evidence.

(Hub cap received in evidence and marked as Exhibit S-8).

Everest A. Dibble, re-cross.

Q What is that? A That's a valve cap.
Q Was that found? A Yes, I believe it was.

Mr. Holland: I offer it in evidence.

(Received in evidence and marked Exhibit S-9).

Q What is that? A Tube of cement.
Q That was taken off the road that night? A Right directly by the Ford.

Mr. Holland: I offer it in evidence.

(Received in evidence and marked Exhibit S-10).

Q Now, indicate on the map, if you will, please, where you picked up this tube of cement? A Right about in there (indicating).
Q Now, what are you tryng to show us in reference to there; are you locating that point (indicating)? With reference to the pavement in the road, where did you find that cement? A Right in there (indicating).
Q Indicating just inside the red line denoting the hard surface? A Yes.
Q Will you mark that on the map, just about where you picked that up. Mark it distinctly. That's where you picked up the tube of paste? A Yes.
Q Did you find that there? A I won't say—
Q You don't remember? A No, I don't.

Re-cross examination by Mr. McGeehan.

Q You said on your re-direct examination when you were picking up different things that other people were there when you got there, how many were there? A Four or five.

Everest A. Dibble, re-direct.

Q Had they already picked things up, were they picking them up? A I told them to leave things alone.
Q You said so many were picking up different things? A That was done after awhile. Chief Hodges and the Trooper came on the scene and they had the right to pick them up. There was only one they moved, the flash-light.
Q You don't know that? A I won't say positively.
Q There had been other people there before you? A Only four or five other people.
Q Well, wasn't Mr. Blaine taken away before that? A Yes.
Q And he was taken away in another car, or don't you know that? A I suppose he was; I won't say positively sure, I can't prove it.

Re-direct examination by Mr. Holland.

Q You don't know whether it was Blaine or Guerin—I withdraw that. You don't know who it was that put this bottle of whiskey in Haggerty's coat, do you? A I do not.

Mr. McGeehan: One minute.

The Court: What is your objection?

Mr. McGeehan: My objection is the Prosecutor should not suggest who put it in Haggerty's pocket.

The Court: What is it you wish to do?

Mr. McGeehan: I wish you would instruct the jury to disregard any reference to that question, do you know whether it was Blaine or Guerin who placed the bottle of whiskey.

Mr. Holland: We will have evidence to show that. If your Honor please, I don't

know what Mr. McGeehan means by that. It seems to me it is proper—

The Court: I don't know what the objection was all about.

Mr. Holland: I will ask this further question.

Q You were asked on your direct and cross examination about smelling liquor on the breath of Guerin? A Yes.

Q Did you smell any liquor on the breath of Haggerty? How close to him were you with reference to his breath? A Quite close, but there were others around there and I could not tell whose breath it was coming from then.

Q You could not tell who it was coming from then? A No, sir.

Mr. Holland: That is all.

(Witness excused).

CARL W. RITZER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q How old are you? A Twenty-nine.

Q Where do you live? A Wharton, New Jersey.

Q What is your business? A Picatinny Arsenal, gang boss.

Q How long have you been at the Picatinny Arsenal? A Two years.

Q How long have you occupied the position of gang boss? A About fourteen months.

Q Do you remember the night of the collision? A I do.

Q Where had you been earlier that evening? A Summit.

Q A basketball game? A Attending a basketball game.

Q And what direction did you pursue going home? A You mean what course?

Q Yes. A Went through Chatham, Madison, Morristown and Morris Plains.

Q When you got to Morris Plains what attracted your attention? A Headlights of an automobile out in the woods.

Q Now, did you come along before Chief Dibble? A Well, I don't know.

Q What did you do when you reached the lights? A I said let's stop and see.

Q Who was that to? A Four other fellows. Chester Ritzer, Frank Ritzer, James Ketch and William Davis.

Q Chester Ritzer and Frank Ritzer—they are your brothers? A Yes.

Q Did you get out? A We went up and turned around and came back. Before the car was to a standstill I jumped out.

Q Where, in reference to the Sire house, did you jump out? A Directly in front of it.

Q What did you say and what did you do? A I jumped out the car and ran to keep my balance and came in contact with two bodies on the ground.

Q And at that time were you the first man on the scene? A I won't say.

Q Were there anybody else besides the two bodies? A I did not see anybody there when I came there.

Q You found these bodies— A Laying off the road.

Q Have you ever seen this picture before, referring to S. 3? Were they substantially in the same position as shown in that picture? A It appears to me these bodies had been moved; because when I saw him first—when I saw him, he was lying on his stomach.

Q Now, was he lying in the same place? A Not exactly.

Q Whereabouts was he lying? A Well, more to this way here, over this way here (indicating).

Q Nearer to the right-hand side of the picture—is that what you mean? A That's what I mean.

Q And how was he lying in reference to the right-hand side of the road there? A I don't understand what you mean.

Q Whereabouts on the road did you find them lying? A Right off the road.

Q Off to which side of the road? A The right side, going up.

Q Now, is that the same way you had come? A Same direction.

Q And the Ford car shown in S. 1, how was that in reference to the side of the road on which it was standing? A Three wheels entirely off the road.

Q Like it is shown there? A Well, I can't get a very good estimate of the car standing that way.

Q But you say there were three wheels entirely off the right-hand side of the road? A The front right and two rear wheels.

Q What did you do? A I immediately stooped down and felt of both men to see whether

they had been killed outright or living. They were very warm, but I did not find life in their bodies.

Q What did you do? A I went over to the rest of the fellows and they were talking to two fellows and I recognized one fellow was Blaine, but the other fellow I did not know.

Q That is Blaine, the defendant, sitting here? A Yes.

Q You knew him? A Yes.

Q Where was he? A He was talking with the rest of the fellows that were with me.

Q Tell us what was said and what was done, what did you say yourself? A Blaine says, take me to a doctor, take me to a hospital. I assisted him in our car and Davis and myself, instead of taking him to the hospital, took him to the police headquarters.

Q When you left the Sire place and went toward Morristown you had to pass the five corners? A Yes.

Q What occurred? A He wanted to get out.

Q How did he want to get out? A Well, he got off the seat, it appeared to me. I could see by only a side glance that he had been like this.

Q And was the car still in motion? A Yes, very fast—

Q You said what? A I said sit down or you will get hurt. I thought he was going to jump out.

Mr. McGeehan: I object to what he thought, and ask that be stricken out.

The Court: It may be stricken out; you can ask him what he found.

Q What did you observe his condition to be? A Under the influence of liquor.

Q How long have you known him? A I have known him all my life.

Q Did you continue on down to Morristown? A I did.

Q What did he say when you got down towards police headquarters? A My God, don't take me in there.

Q Did you? A I did.

Q And you are the man who first reported the accident to the Morristown police headquarters? A I was.

Q Then what was the next thing you did? A The next thing I did after that—I don't know who the fellow was at the desk, but he called a policeman and told him to go out in the car and I proceeded right behind and took him to the Memorial Hospital.

Q Now, when you got to the Memorial Hospital, what doctor did you meet, do you know? A I don't recall meeting any doctor; whether there was a doctor there or not, but there were three assistants there.

Q Now, tell us about his going up in the elevator. A I didn't see anything of that.

Q Did you go up with him? A I did not.

Q Now, at that—let me ask you this: When you jumped out of your car, on the running jump, and found these two men who laid in the gutter, did you immediately go to see whether or not they were living? A I did.

Q And at that time did you smell any liquor on either one of them? A I did not.

Q And where was Blaine and Guerin at that time? A It appeared to me they had been walking out of the woods.

Q And when you came back you found Blaine talking to whom? A To the fellows that were with me.

Q What was Guerin doing? A Guerin was there, too.

Q Now, did you observe Guerin's condition? A I did not.

Q At the time you turned around and came back to see what was the matter did you notice whether or not the Ford lights were lighted? A They were lighted.

Q Were you there when Chief Dibble came? A No, sir.

Q Did you pronounce both of these men dead? A I did.

Q Did you think that one of them was still living? A Later on, when I left with Blaine to the hospital, I found that one had been living.

Q I don't want what somebody told you— A When I left I thought both were dead.

Q Now, what, if anything, did you smell on Blaine's breath? A What do you mean?

Q Well, just repeat the question. (Question read.) I can't lead you at all.

Mr. McGeehan: Object to the question as extremely leading.

Q (Question read.) A I told you before.

Q That you thought he was under the influence of liquor? (No response.)

Cross examination by Mr. McGeehan.

Q Mr. Ritzer, were you going in the direction toward which the Ford was pointing? A I was.

Q What I want to get is, were you going north or south? A Well, if Tabor lies north, I was going north.

Q And that was the same side of the road as the other cars were? A Right.

Q Your right side was the side you were on? A Yes.

Q So you approached the Ford car from the rear? A Yes.

Q Now, you took a look at these lights after? A I noticed the lights when we came up.

Q They were very bright? A I don't know whether they were bright.

Q But you saw the lights, all right? A There were lights on the car.

Q You can't say whether they were very bright or not? A No, I can't say.

Q Now, when you got to the scene of the accident, your car was the first one there, I think you said? A I presume so.

Q And you testified, I think, that the Ford car had but one wheel, and it was on the right, had one wheel on the road, that is the amasite? A Right.

Q Where was the front left wheel? A The others were on the shoulder of the road, off the amasite.

Q Was it standing at an angle? Enough of an angle for you to remember it, wasn't it? A Yes, sir.

Q So you are sure about that, are you? A Quite.

Q So that car was pointing more to the center of the road than from the road to the right, wasn't it? A It was.

Q Now, I show you photograph marked S. 1 and ask you whether on that picture the rear left wheel is any further out of the road than the left front wheel? A I would not judge by this picture at all.

Q Well, if this picture shows the rear wheel—just take it again, please—if that picture shows the rear wheel as much or more on the road than the left front wheel, then that picture was not taken of the car in the position that you first saw it, was it?

Mr. Holland: I object; he is asking now that this witness characterize something—

Mr. McGeehan: All right; I withdraw it.

Q When you first saw the Ford it was not standing with the left rear wheel more on the road than the left front wheel, was it? A It was not.

Q And it wasn't standing—you can't say that it was standing in the position that this picture shows it to be in? A I would not say from this picture.

Q Will you say that that picture does not show it in the position as you remember it when you first saw the Ford? A I will not; I won't say anything about this picture at all.

Q Your reason for not being able to say is you don't understand the picture? A Absolutely; I don't know which way the picture was taken.

Q Nevertheless, which way the picture is taken, you can see the road?

The Court: He said he won't say anything at all about the picture; what more do you want?

Q Can you see where the road is upon the picture? A I can.

Q See where the road is, do you also see where the Ford is? A I do.

Q Is that the position you saw it in when you got there? A I can't say about that picture; I told you that before.

Q Now, Mr. Ritzer, you looked over the scene of this accident pretty well? A Not very well.

Q But did you see any marks? A I did.

Q Now, did you see marks upon the amasite of the road there beginning at a point, that would be a point north of where you saw the Buick car and somewhere in the vicinity of or possibly north of the Ford car? A Yes.

Q Now, were these marks on the amasite part of the road? A They were on the amasite.

Q Now, Mr. Ritzer, I think you have just said that these marks that you saw were on the amasite of the road and somewhat north of the Ford? A Well, yes.

Q Now, do you understand this map pretty well? A I do not.

Q I will try to explain it.

Mr. Holland: Well, I don't know about that.

The Court: You may do it if you wish to.

Q Now, this map represents the road and the brown marks indicate the edges of the amasite part or real hard part? A I understand that.

Q And upon each side of the road is what is called the shoulder of the road; that is south and that is north. This indicates the patch that appears upon the road there. Now, I ask you whether you can show us—this indicates the oak tree which appears in the picture you saw—can you show us where these marks began? A They began at the upper end of the patch.

Q Just hold that where they began so we can mark it. A At the upper end of the patch.

Q On this right-hand side of the road going south? A Going south.

Q Now, where did they go from there? A Directly across.

Q Directly across in a southeasterly direction to a point where? A To a point near the rear wheels of the Ford—the front wheels of the Ford.

Q Where these front wheels were when you saw it? A Yes, when I saw the accident.

Q And where did they go, on down the road? A Right on down, right to where the Buick had stopped.

Q Now, did you see the marks before they turned, toward where the Buick stopped? Did you see them before they turned? A No, I did not see them.

Q Did you see a curve at the beginning? A A slight curve, yes.

Q Now, from the point where you saw them at the beginning down to the point where you saw the Buick, did those marks lead straight down to that point? A No, they did not; they swiveled.

Q Which way? A To the left.

Q By that, just what do you mean?

Mr. Holland: Suppose he indicates on the map.

Q Assuming where it shows an eight-inch elm cut down, down to a point where it shows the lower two wires partly bent, remembering one inch on this map represents two feet, can you tell us what direction these marks took? In other words, that is where the Buick was? A Starting here where I saw the tracks, right to where the Buick was.

Q Mr. Ritzer, isn't it a fact that for about twenty feet before those tracks turned to the left, you saw tracks there running straight along the road on the right-hand side, for about twenty feet before they turned? A It is.

Q And that twenty feet was on the right-hand side of the road going straight in a southerly direction, wasn't it? A Right.

Q Now, you don't remember smelling the odor of any liquor at the point where the two men were? A Don't remember smelling any.

Q Of course, you were quite excited at the time? A Not so much.

Q You thought both men were dead? A I did.

Q You felt of them, did you? A I did feel of both of them.

Q And leaned over them? A I did not get on my knees.

Q Now sometime after that, you thought you smelled the odor of liquor? A That's right.

Q Do you know whether you smelt any at the bodies? A I didn't smell any at the bodies.

Q When you saw Mr. Blaine for the first time he was bleeding, wasn't he? A He was.

Q His face was covered with blood? A It was.

Q Were you there when he was taken out of the car? A I was not.

Q He appeared injured, didn't he? A He did.

Q He was holding his head? A I don't recall.

Q And naturally he was excited, wasn't he? A He was.

Q You could not tell from the movement of the man that he was intoxicated, could you? A

By his actions and talk and smell, I would say he was under the influence of liquor.

Q But his actions could have been the result of pain, couldn't they? A It might have been.

Q And his eyes, his face was covered with blood, were they? A No, not so much. It wasn't all covered with blood.

Q I mean on his face and eyes? A They were.

Q He asked you to take him to a hospital or doctor? A He did.

Q And you proceeded to take him? A I did.

Q He rode in the rear of the car? A He did.

Q And who else went with you on the ride from the point of the accident? A Davis.

Q He rode in front with you? A He did.

Q Was it an open or closed car? A It was an open car with a closed top.

Q Well, it was a closed car, sedan? A No.

Mr. Holland: Winter top on a touring car.

Q Is that right or not? A That's right.

Q A winter top that you can put on and take off? A That's right.

Q And were the windows closed or open? A They were closed.

Q He rode in the back? A He rode in the back.

Q You were driving fast? A I was.

Q And at one time you saw him raise out of his seat? A He did.

Q That's all he did? A He wanted to get out.

Q You assume that from the fact he raised up in his seat, didn't you? A Right.

Q Was he holding his head at the time? A I think that he was.

Q You were driving the car then? A I was.

Q You could not see very well what he was doing? A I could not except as he raised up.

Q You don't know whether pain caused him to do that or not, do you? A I do not.

Q But yet you base your opinion he was intoxicated practically on that, don't you? A I do not.

Q You base your opinion on the fact he raised up, you base your opinion he was intoxicated? A No, I didn't.

Q And you stopped at police headquarters? A We did.

Q And it was at that time he said, My God, don't take me there? A Before we got in police headquarters.

Q He didn't go in? A No.

Q Who went in? A Myself.

Q Just yourself? A Yes.

Q When did he say that, as you stopped or before you stopped? A As we were entering in the police headquarters.

Q Well, you stopped the car? A We had to go in.

The Court: In the driveway, it is quite a distance from the street up to the building.

Q You mean the drive, you don't mean walking in the building? A No.

Q So your car was moving in the driveway when he said that? A That's right.

Q And when you were entering the police headquarters and going in the drive, he recognized it as the police headquarters? A He did, I suppose.

Q You knew he asked you to take him to the hospital or a doctor, that he was injured? A I did.

Q And it was while he was still bleeding and holding his head and asking you to take him to a doctor that he said, My God, don't take me there? A Right.

Q Did he again ask you to take him to a doctor? A He did not have the chance.

Q You took him from there right to the hospital? A Yes.

Q Who went with you from the police headquarters to the hospital? A Davis and a police officer by the name of Geary.

Q Now, Officer Geary and your friend Mr. Davis—Davis was with him just as long as you were? A He was.

Q He was there and saw him when you got to the scene of the accident, didn't he? A He did.

Q And Officer Geary and Davis were with you from the time you left the police station until you got to the hospital, and they saw as much of him as you did? A They did.

Q Now, when was that, that you say you got the odor of alcohol or liquor? A When I put him in the car. I helped to put him in the car. I don't recall whether Davis or one of the other fellows did, I don't think it was Davis.

Q Now, were you talking to Guerin there? A I was not, no.

Q Were you talking to other men in the car; you say you saw other men when you got there, didn't you? A I did not see him until after I

came from the bodies until I went to go to the hospital; that's when I saw Mr. Blaine. Is that what you are referring to?

Q No, when you got there, there were two men that had been injured and killed? A Yes.

Q And there were two other men that were at the scene of the accident, were there not; Mr. Blaine and another man? A Yes.

Q And you didn't talk to the other man? A I didn't.

Q You saw him? A I saw him.

Q He was close to you? A I don't recall.

Q You did not observe him do anything that would indicate he was intoxicated, did you? A I did not.

Q And in your opinion he was not intoxicated? A I didn't know.

Mr. Holland: Just a moment.

The Court: He says he didn't know, he says he doesn't know whether he was or not.

Q You did not say, did you, Mr. Ritzer, that you did not notice whether he was intoxicated or not? A I didn't.

Q You said, I think, that you did not observe anything about him that indicated he was intoxicated? A I said, I didn't know.

Q You don't know whether he was or not? A I do not.

Q But you did not see anything that made it look as if he were, about Guerin? A I don't recall him at all.

Q Now, when you came back, you were talking to Guerin? A I was.

Q And you were close to him then? A I was.

Q You did not smell any alcohol about him? A I did not.

Q You did not observe anything about him that made you think he was intoxicated, did you? A He was a little nervous.

Q And Chief Dibble was there at the time? A He was.

Q How long were you gone and back, about, Mr. Ritzer? A About forty minutes.

Q Now, you might be mistaken as to whether or not he was intoxicated, might you not? A I don't think so.

The Court: You are referring to Blaine now?

Q I mean Blaine. A I don't think so.

Q You have not had much experience in seeing men who have been injured in an accident? A I have seen a few.

Q Well, you have not gone to a hospital with many, have you, immediately after sustaining an injury to the head? A A few.

Q And you know that the effect of an injury is to render them nervous and dazed, do you not?

Mr. Holland: I object to that. I have had some injury to my head that has not rendered me dazed yet. My objection is this man can't be questioned on scientific and medical matters. I have the doctor here—

The Court: Mr. McGeehan seems to want this witness to tell him.

Mr. McGeehan: I think the objection is somewhat well taken. I withdraw the question. That is all.

Carl W. Ritzer, re-direct—re-cross.

Re-direct examination by Mr. Holland.

Q Did you drive the car? A I did.

Q Mr. Ritzer, you were asked about marks in the roadway up there on the map that's indicated as a patch. Do you know what caused the marks on the roadway? A Applied brakes.

Mr. McGeehan: I object to that, he is not an expert.

The Court: You may cross examine him on that. Objection overruled. The objection came rather late anyway.

Q How long have you been driving a car? A Fourteen years.

Q And when brakes are applied to the limit on wheels, very often they are locked and then skid and then slide?

Mr. McGeehan: Object to this on the ground that it is not proper re-direct and also that he has not been qualified as an expert on this subject.

Mr. Holland: I withdraw that question.

Q Now, what did these marks that you testified to as coming in this general direction look like? A They looked like brake marks, as if he had applied his brakes to stop.

Q Were they skid marks? A Well, skid marks from the brake being locked. Of course the brake being locked would be a skid mark.

Re-cross examination by Mr. McGeehan.

Q Were they light in the beginning and heavier as they went off the road? A I don't just recall.

Seward H. Wills, direct.

Q And the brakes can be applied—that is all.

(Witness excused).

SEWARD H. WILLS, sworn on behalf of the State, testifies as follows.

Direct examination by Mr. Holland.

Q Dr. Wills, you are a practicing physician? A I am intern at the Memorial Hospital.

Q And how long have you been at the Memorial Hospital? A I came there the 4th day of January of this year, 1926.

Q What has been your medical experience? A I graduated from the Tulane University in 1925 and have been doing intern work since. I was at Tulane the month of July and started in Memorial on January 4th.

Q Now, were you the doctor who attended the defendant, Blaine, the night of this accident? A Yes.

Q Do you remember when they came in? A I can't tell the exact time, it was midnight.

Q Do you recognize this defendant to be Mr. Blaine? A Yes.

Q Where did you first see him? A He came in to the elevator with Officer Geary.

Q And where did you take him? A To the clinic downstairs.

Q Is that the same floor where they came in? A No, sir.

Q How did you reach that? A By elevator, stepped on an elevator.

Q And how did you get down that night? A In the elevator.

Q Now, what nurse, if any, did you have assist you? A Miss Davis.

Q Tell us, if you will, doctor, completely the man's entire condition, both as to his actions and as to his sobriety and anything else you noticed. A When I first saw the man he was walking with Officer Geary, I didn't look at him, I saw he was walking all right and I asked what was the trouble. He said he had been in an accident and I said, let's go to the clinic and see how much he is hurt. So I got in the elevator and the officer led him into the elevator—well, outside he had let loose of Mr. Blaine and Mr. Blaine was kind of wandering around by himself there. Then the officer brought him in the elevator and to the clinic. I stood next to Mr. Blaine in the elevator. After he was out, he wandered around by himself and I turned around and he stood next to me and I was pretty well convinced that he was drunk.

Q You say wandered around. Do you mean wandered around or do you mean staggering? A Staggering, unsteady in his mind—

Mr. McGeehan: I object to that as leading, counsel suggesting the word staggering. The witness had not used it and I ask that counsel be instructed not to lead.

The Court: Proceed with your answer, doctor.

(Exception allowed and sealed).

C. F. WILSON,
Judge, &c

(SEAL)

Q Now, you say you thought he was what when you got in the elevator? A He was intoxicated.

Q Did you use the word drunk? A Yes.

Q Now, did you get in the clinic? A Yes.

Q Now, tell us what he did when he got in the clinic? A He refused to get on the table. First of all, he refused to take off his coat so I could examine him. Secondly, he refused to get on the operating table in the emergency clinic.

Q Then how was it necessary to treat him then? A Well, I examined him with his clothes on superficially and he objected to further examination. I found a slight laceration of the scalp and I cleaned the wound and put on a dressing and he went out.

Q You cleaned the wound? A Yes.

Q What wound did you find? A He had a slight laceration of the scalp. It was on the medium part of the head.

Q Did you make a statement, doctor, in which you put in the kind of the laceration that he had? A Yes.

Q Was that a written statement? A Yes.

Q It was correct? A Yes.

Mr. Holland: Have you any objection to his refreshing his memory?

Mr. McGeehan: He has testified fully as to where the wound was.

Q Was it a serious wound? A No, sir.

Q Was the wound severe enough to mentally unbalance him? A Not to my judgment, no, sir.

Q Was he sober? A No, sir.

Q What was he? A He was intoxicated.

Cross examination by Mr. McGeehan.

Q What was the depth of the laceration, doctor? A It extended down to the bone, to the pertrosis of the bone.

Q That is the scull? A Yes.

Q That is pretty deep, then? A No, sir, that's an ordinary scalp wound.

Q Went through the entire scalp? A Yes.

Mr. Holland: What do you mean?

Mr. McGeehan: Naturally I don't mean the bone, the scalp, the scalp covers it. I will make it clear.

The Court: It is clear enough.

Mr. Holland: No objection since Mr. McGeehan told us that the scalp skin covers the entire scalp.

Q Simply the covering of the scalp? A Yes.

Q It extended down to the bone? A Yes.

Q Could you tell whether that was a laceration made by a sharp instrument or dull one? A It was a clean-cut one as usually with a piece of glass.

Q Do you know whether there was any sign of pain? A There would be sign of pain.

Q What sign would there be after twenty-five or thirty or forty minutes had elapsed? A That's hard to say.

Q You could not tell definitely whether he was suffering from a concussion? A In my opinion, he was not suffering from a concussion.

Q Doctor, whenever there is a blow of the head and jarring the bone of the scull, you have a concussion? A Well, that depends upon the force, the degree of force and where the blow is given.

Q This wound was a painful one? A No, sir.

Q Of course you don't know that? A He did not appear to be suffering from pain.

Q His face was covered with blood? A One little streak right to the nose and one down the side of his face, his cheek.

Q You don't know how much had been wiped off? A Apparently that was just a drop that run down when I saw him.

Q You don't know whether that made him dizzy or not? A Not in my opinion. There was no dazed condition to make me think there was force enough to give him any daze or concussion.

Q Well, doctor, if he struck an object with sufficient force to cut the scalp down to the bone, there might be a great shock to the head? A I cannot make myself believe that that is that type of wound.

Q Did you determine whether the scalp was bruised? A It was not injured at all that I could discern except for the cut, just one cut.

Q But you could not tell that long after the accident that he was dazed at the time of the accident from a blow on the head? A No, I would not say.

Q He was nervous naturally? A No, he was obstinate.

Q Well, you considered him obstinate? A Yes.

Q Can you tell us whether in addition to being what you considered obstinate, he was also nervous? A No, sir, he did not seem to be.

Q Did you put him through any of the tests to determine whether he was suffering from nervousness? A Did not examine him completely.

Q Take his reflexes? A No.

Q Did you take him—put him through any examination to tell whether he was intoxicated? A No, after I dressed the wound on his head he refused other examination.

Q Put him through any test to reach your conclusion? A No routine examination.

Q So your opinion is based not on any examination of the defendant but your own judgment from your talk with him? A Yes, sir, and seeing him for three years.

Q What? A And seeing him for three years.

Q Seeing him for three years? A Seeing patients for three years.

Q Seeing patients who are injured? A Yes.

Q But you usually put them through an examination? A Not when they refuse examination.

Q Well, did you ask him to permit you to examine him? A I asked him to take off his coat and get on the table.

Q You did not have to take off his coat to determine whether he was intoxicated? A When he walked, it was most evident.

Q That's not what I asked you. You did not have to take off his coat to determine whether he was intoxicated?

The Court: His answer was, it was most evident.

Mr. McGeehan: I heard it. I ask that be stricken out as not responsive.

The Court: Motion denied.

Q Doctor, will you please tell us this. Does your regular test for intoxication require the taking off of a coat or not? A To give anyone an examination you should have his coat off at least.

Q Now, doctor, you understand my question, don't you?

Mr. Holland: Well, if your Honor please, it seems to me it is immaterial, whether he has to take off his coat or not to find out whether he was drunk.

Q Doctor, will you tell us whether in your determination of drunk you take the coat off? A Yes, I do.

Q Did you examine Guerin that night? A No, sir.

Q Are you sure you didn't? A No, sir.

Q Sure you did not see Guerin? A I saw him, yes, sir.

Q Where did you see him? A In the admission room at the Memorial Hospital.

Q He was brought to you by whom? A One of the local police, I don't know his name.

Q When he was brought to you, were you asked to determine whether he was intoxicated? A Yes.

Q And you looked at him? A I said I don't want to examine him, why don't you go outside and get some physician; someone who is practicing here, I don't.

Q You refused to examine him? A I just did not examine him.

Q Did you take hold of his shoulders and look at his eye? A No, sir.

Q Did you say to the officer, no, this man has not been drinking? A No, sir.

Q Did the officer say to you—

Mr. Holland: Which officer?

Q Was Officer Love there with you? A I don't think—I don't know who was there; there was some officer there.

Q Did the officer say, doctor, is this man drunk, and did you say no and did you then say he has been drinking but I can't say now, speaking of Guerin, who was right in your presence there? A I said this, that I could smell alcohol and this man was in a condition that he could walk and was not unsteady and could hold himself and talked as if he knew what he was doing. That was the extent of that conversation.

Q Who did you say that about? A About the man that came in secondly, the second man that was in.

Q You're sure you told Trooper Love? A The police, whoever was there.

Q Then you did examine him for that purpose, didn't you? A I did not give him a complete examination, no, sir.

The Court: How is this cross examination?

Mr. Holland: I have no objection.

The Court: How is that cross examination, Mr. McGeehan?

Mr. McGeehan: I think that is cross examination on the subject of this defendant's condition and the doctor's examination of him. However, I have finished that line of examination.

Q Now, doctor, do you remember meeting Mr. Guerin in the court house here on the day you were before the grand jury or called to this building? A Yes.

Q Do you remember having a conversation with him? A Yes, we talked outside.

Q Do you remember saying to him, doctor, these words, or words to this effect?

The Court: That is still not cross examination.

Mr. McGeehan: May I state the question I am about to ask?

The Court: Proceed.

Q Did you, in your conversation with Mr. Guerin, on the date that you came to this building, did you say to Guerin these words, or words to this effect: that you were called in the night and you were sleeping and you were routed out of bed and that you did not have time to give any examination and that you were sorry that you had said that Blaine was intoxicated because you did not think he was and that you don't think you would have found him so if you had known all the facts and known he was in an automobile accident? A No, sir.

Q Did you use words to that effect? A No, sir.

Q Were you in bed when you were called to examine him? A No, sir.

Q Were you lying down? A No, sir.

Q Where were you? A I had just finished eating my midnight supper.

Q And did you know he had been in an automobile accident? A Yes, the officer told me so.

Q You deny that you had that conversation? A Yes.

Q With Mr. Guerin? A Yes, sir.

Q That's right? A Yes, sir.

Q And did you say that you were sorry you reported as you did without having made a complete examination? A I did not say that.

Q You talked to him about the subject, didn't you? A Not about Blaine's examination, no, sir.

Q You were not speaking to him at all about that? A Not about the examination of Blaine. He asked—

The Court: Anything further?
Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q What did you start to say? A He asked where he had seen me before and I said, you came to the hospital that night with an officer.

Q Guerin did not even remember whether he had seen you? A No, sir.

Q Now, doctor, even if you had made a mistake that night, would you not be man enough to tell the truth now? A Yes.

Mr. McGeehan: I object to that, I have no doubt the doctor intends to tell the truth.

Mr. Holland: As they are asking contradictory questions on a statement made by some other witness upon which to attack his integrity.

The Court: The Court will take care of that properly when he comes to it.

Q Now, doctor, did you say who the nurse was? A Miss Davis.

Re-cross examination by Mr. McGeehan.

Q You did not tell any of the police officers about his being intoxicated; you did not tell the police officers who were there with him he was intoxicated? A I only wanted to take—

Q Did you tell the officer that? A As he walked out with the officer, the officer made the

remark that we were supposed to have the eighteenth amendment and we both laughed about it.

Q But you did not tell him this man was intoxicated? A No, sir.

Re-direct examination by Mr. Holland.

Q How long after you treated Blaine was it before they brought Guerin in? A I don't know, sir, I had been in bed in the meantime.

Q That was after Blaine and before Guerin you had been in bed? A Yes.

(Witness excused.)

ELIZABETH C. DAVIS, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Miss Davis, you are a nurse? A Yes.

Q Are you still at the Memorial? A I left there Saturday. I have been there on full duty until Saturday.

Q How long have you been at the Memorial Hospital? A I have been on the staff of nurses since April, 1925.

Q Are you a graduate nurse? A Yes, sir.

Q Do you remember the night that Mr. Blaine was brought into the hospital? A I do.

Q What doctor took charge of him? A Dr. Wills.

Q And were you assisting him? A Yes.

Q Where did you see Mr. Blaine? A At the back door of the hospital. I was running the elevator.

Q With whom was he? A He was with Officer Geary and another gentleman, I think.

Q And did they go on downstairs to the clinic? A We went down in the elevator.

Q Did you go down, too? A I ran the elevator down.

Q You ran the elevator? A Yes.

Q Up to that time, what, if anything, did you observe of Mr. Blaine? A I first saw Mr. Blaine at the rear of the elevator, coming to the door of the elevator and in going to the door he walked around it, and Mr. Blaine was very unsteady in his gait. The officer had him by the arm and led him toward the elevator. He was not walking steadily at all and I noticed fumes of alcohol on his breath when I first saw him at the door.

Q Did he go down to the clinic? A He did.

Q Did you go down, too? A I went down, I ran the elevator and at the clinic Dr. Wills and the officer and Mr. Blaine went ahead of me and as Mr. Blaine went out of the elevator he staggered in the gate, did not seem to walk steadily at all and I took him by the arm and assisted him in the clinic after the officer.

Q What did you do in the clinic? A Why, the doctor went ahead and put the lights on and he asked Mr. Blaine to take his coat off and lay it on the operating table and he said he wouldn't do it and he told him to stand still so he could dress the wound.

Q Did you see the wound? A Yes.

Q Was it a serious wound? A It did not appear so.

Q How many stitches did the doctor take? A One.

Q Is that sometimes called a retaining suture? A A retaining suture.

Q About how long did it take? A Less than a minute.

Q During the clinic activities, did you come in close contact with Mr. Blaine? A If I remember right he would not stay still, he jumped around and got away and shook his head and I assisted Dr. Wills, held his head for the doctor while he sutured.

Q What, if anything, did you then smell? A Fumes of alcohol on Mr. Blaine's breath.

Q Now, for how long have you been in training as a nurse? A I entered training in 1919. I finished in 1922 and since then I have been practicing my profession steadily.

Q From what you observed of Mr. Blaine when you saw him, from the time he entered the building until Dr. Wills got through would you say he was drunk or sober? A I would say he was intoxicated or drunk.

Cross examination by Mr. McGeehan.

Q Miss Davis, did you notice at the time Mr. Blaine came in, anything wrong with his leg? A With one leg?

Q Yes. A No, sir, I noticed that he walked unsteadily.

Q You had never seen him walk before, had you? A No, sir.

Q And do you know now whether there is anything wrong with one of his legs? A I do not, I know nothing about that.

Q You don't know that he has a stiff leg, do you? A I do not.

Q And you did not know then that he cannot walk squarely with a leg that is partially ankylosis, the knee? A No, sir.

Q You did not know that? A No.

Q And do you think that his unsteady walk or gait, as you put it, could have been due in part to his leg that was stiff, if he had such a stiff leg? A Perhaps it might.

Q But you did not think it was accountable for with him in that way? A He did not walk a straight line.

Q And you really thought when you observed him that he was a man with two normal limbs? A I didn't think anything about it.

Q You did not know him to be otherwise? A No.

Q Now, was he given an anesthetic, a local anesthetic, at the time of the suture? A No, sir.

Q It's often worse when a stitch is put in without any local anesthetic, isn't it? A They do sometimes when it is necessary, but we don't throughout the whole operation.

Q Was this wound cleaned out before the stitch was taken? A It was washed out and iodine applied.

Q Washing out is painful? A It smarts, yes.

Q And the putting in of the iodine only smarts? A Yes.

Q Found it to be down to the skull? A Yes.

Q And the putting in of iodine only smarts? A Yes.

Q How long does it take—very long? A Not very long.

Q And during this time he was moving his head, that right? A At times.

Q At what time? Did he express pain? Did he give any evidence of having pain there? A No, sir, not severe pain.

Q I don't mean excruciating pain; did he hold his head? A Not that I remember.

Q He might have without your remembering it? A I think not, because as soon as he sat down we started to clean the wound and he could not put his hands to his head.

Q How many people were there looking on that time, Miss Davis? A Dr. Wills, myself, Officer Geary was in the clinic, if I remember right, and went out of the clinic so that while he was sutured Dr. Wills and myself was alone with the patient.

Q Then, after all that, you could smell the fumes of alcohol? A I did smell them then and smelt them before.

Q This was in the operating room? A This was in the emergency operating room of the clinic.

Q Are there smells of ether and other things in there? A Not necessarily. This was in the middle of the night; we had not been working in there all the evening.

Q You think you might be mistaken as to whether or not you smelled alcohol on his breath? A No, sir.

Q Do you think you might have smelled other things that smelt like alcohol, that his breath might have been bad from other causes? A Do I believe that to be so?

Q Do you think that is possible that it was? A No, I don't.

Q Did the officer go out with him? A Yes, sir.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Ankylosis of the knee would not prevent him from walking steadily or straight, would it? A Not in my opinion.

Q And if he had one leg shorter than the other, would that prevent him from walking a straight line? A No.

Q What did you find about his walk? A He walked out the elevator and circled around before I took him by the arm and led him into the clinic.

Q In what manner was he staggering? A I don't remember.

Q Do you remember afterwards when another man was brought in? A Yes, sir.

Q How long after that? A I think it was somewhere near two o'clock, I am not sure; it was some time after that.

Q Now, Dr. Wills testified that he had just finished his midnight lunch at the time that Blaine came in? A Yes.

Q Are you able to verify that? Do you remember about that? A Yes, I had just started mine; I had barely started mine. Dr. Wills came to the door of the dining room and said there is a case entered.

Q He had not been to bed when Blaine came in? A No, sir.

Mr. Holland: That is all.

(Witness excused.)

OWEN F. GEARY, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Officer, you remember the night of the accident? A Yes, sir.

Q Remember Mr. Blaine coming in? A Yes.

Q Did you take him over to the Memorial Hospital where Dr. Wills treated him? A Yes, we took him to the hospital in a car.

Q Did you hear anything said, that is, did Dr. Wills pass some remark to the defendant? A No, sir, he did not.

Q What do you mean? A Dr. Wills, he didn't say anything. The man never spoke to him at all; there wasn't any conversation between him and Dr. Wills.

Q What time did you bring him there? A I should judge about twelve-ten.

Q And how long was he there? A About twenty minutes.

Q And where were you during the time they were fixing him up in the clinic? A Up by the telephone.

Q Outside? A Up in the main hall.

Q That's on the first floor? A Yes.

Q So that you did not go downstairs, did you? A No, not when the nurse and doctor took him.

Q Now, did you know that anybody had been injured or killed at that time? A No, I did not.

Q Did Mr. Blaine tell you he had been in an accident in which two men had been hurt? A No, he told us he had been in an accident and we asked who he was with and he said Walter Guerin. I asked if he was hurt bad and he said no.

Q Did you form any opinion as to whether he was drunk or sober? A No, I did not.

Q You didn't? A No.

Cross examination by Mr. McGeehan.

Q When did you first see Mr. Blaine that night, officer? A After I was told by the sergeant to take him to the hospital.

Q You took him with the Mr. Ritzer in the car to the hospital? A Yes.

Q That was a closed car? A Yes, a winter top on it.

Q That was closed? A Yes.

Q And the defendant Blaine was alone in the rear seat? A Yes.

Q Did you smell any liquor on his breath? A No, I would not say I did.

Q Were you talking to him in the rear there? A Yes.

Q Sitting close to him? A Sitting alongside of him.

Q You smelt no alcohol? A No, I didn't.

Q And did you at any time, when taking him into the hospital, before he met Dr. Wills or at any time while in the hospital see him staggering? A No, I would not say that I did.

Q Did Dr. Wills at any time tell you that in his opinion the defendant Blaine was intoxicated or that Dr. Wills had smelt alcohol on his breath? A Dr. Wills made no statement to me.

Q You were in uniform at the time? A Yes, sir.

Q You came out of the hospital with him? A No, I left the hospital and Officer Hill took him home.

Q Did you go up the steps of the hospital? A What time?

Q Well, when you went in? A Yes, I did.

Q Did you have to help him up the steps or not? A No, I opened the door for him and he walked in.

Q He walked in himself? A Yes.

Re-direct examination by Mr. Holland.

Q He might have had alcohol on his breath without your smelling it? A Might have.

Q You don't say he didn't, but you say you didn't smell it? A I didn't smell any alcohol.

Q And did he tell you he got hurt? A Just said he had an accident.

Q Yes; did you sign a statement as to what he told you as to how the accident occurred? A He didn't tell us how the accident occurred.

Q No; did you sign a statement as to what he told you about how the accident occurred? A Did I sign a statement?

Q Yes; is that your signature?

Mr. McGeehan: Object to that.

The Court: You may ask it.

A Yes, that's my signature.

Q Yes; now, did you—didn't Mr. Blaine tell you how he got hurt? A Mr. Blaine said he had an accident.

Q How did the accident happen? A He didn't state to us how it happened; he had an accident on the Morris Plains Road.

Q You mean that wasn't stated to you? A No.

Q Well, look at your statement and see if it was.

Mr. McGeehan: I object to this on the ground—

Mr. Holland: I am surprised by this witness; calling him as a witness for the State, and he tells me something which is different from what I supposed.

The Court: On your statement of surprise, you may put it in.

Q Now, didn't he tell you how the accident happened? A No, he didn't tell me how the accident happened.

Q Didn't you ask him how he got hurt? A No.

Q Didn't you say in this statement that you asked him how he got hurt? A We found that out that the accident was caused by that.

Q And from him? A No.

Q How did you know he was in an accident? Did you ask him how he got hurt and he told you that while driving his car, and so forth—how did you know he did that? A Why, he came to headquarters and told Lieutenant Knowlton he had an accident.

Q Did he tell you what caused the accident? A No, I don't quite remember what he said, if he did say.

Q Now, one question further. Did you hear him talking to Officer Lieutenant Knowlton? A Yes, sir.

Q Was that inside the police headquarters or outside? A He wasn't inside.

Q My question is, did you hear him some time, inside or outside? A The man was not inside of headquarters at all. They brought him in the car and that's where I heard that story.

Q That's where you got that story? A Yes.

(Witness excused.)

JAMES H. HILL, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Officer, you are a member of the Police Department of Morristown? A Yes, sir.

Q And did you take Blaine home from the hospital? A I did.

Q On the way home did you question him? A I did.

Q What did you ask him? A I asked him where he had been that night and he told me he had been up to Oxford and was with Mr. Guerin for to get some game birds. And says, I have had a couple of drinks altogether, but I am all right.

Q Did he tell you that he had hit any person or that he had killed anybody that night? A No, sir, he did not. I didn't know anything about it, that he had had an accident.

Cross examination by Mr. McGeehan.

Q Officer Hill, you knew that he was driving a car and was in an accident, didn't you? A From what he said, yes, sir.

Q And in your opinion was he intoxicated or sober at the time you saw him and during the time you were with him? A I would not say he was intoxicated.

Q Would not? A No, sir.

Q So you would say he was sober? A I would say he was sober, no, sir; he was not.

Q Did you see any evidence of having had anything to drink? A Why, I smelled it on him.

Q Did you arrest him? A I did not.

James H. Hill, cross.

Q And, if he was driving an automobile and you knew he had something to drink, you would have arrested him?

The Court: Was he driving a car then?

Mr. McGeehan: The officer said he admitted to him that he had been drinking.

Mr. Holland: I object if you are placing this officer in a position where he might be criticized for not having performed his duty the way it should have been done. He says he smelt liquor on his breath and that he showed indications he was not sober—

The Court: Objection sustained.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q Officer Hill, did you make any record of this as a police officer at the time, any report, that he had something to drink? A I did.

Q Whom did you make it to? A Made a note of it on our books down there.

Q Did you make it in your regular report? A Yes.

Q And did he say when during that day or night he had anything to drink? A No, sir.

Q This was around midnight that you spoke to him, is that right? A Around about twelve-thirty.

Q Anything in his conduct at all to indicate to you he was intoxicated or not? A No, sir.

Q Didn't see him stagger at all, did you? A Nothing out of the ordinary for his walk. I knew he was crippled.

Q You knew he was crippled in his left leg? A Yes, I did.

James H. Hill, re-direct.

Q You took him home? A I did.

Q From the hospital? A Yes.

Q In what conveyance did you drive? A Ford car, belongs to the town.

Q You drive it yourself? A Yes, sir.

Q No one else was with you? A No, sir.

Mr. McGeehan: That's all.

The Court: Mr. McGeehan, if the defendant was not driving the car, then why should the officer have arrested him? I thought you were going to prove that Blaine was driving the car and this officer was riding with him.

Mr. McGeehan: I had no such thought and I made no such suggestion. The officer testifies to two things; that the defendant admitted he was driving a car that figured in an accident, and secondly that he admitted that he had had a couple of drinks.

The Court: Well, he wasn't driving a car then and he didn't tell the officer that he had hit anybody.

Mr. McGeehan: I think the testimony entered in this case is subject to proper cross examination.

The Court: You think I ruled rightly when I overruled you?

Mr. McGeehan: No, I think you ruled wrong. The admission is proof, as if he saw him driving.

Re-direct examination by Mr. Holland.

Q You say that Ford is an open car? A Yes, Ford roadster.

Q And you smelt liquor on his breath? A Yes, sir.

Q This, notwithstanding you were riding in an open car? A I was driving an open car.

Q When you say he was not intoxicated, what you really mean is, that he was not dead drunk?

Mr. McGeehan: Object to that as leading, and again in asking the officer what he means.

Mr. Holland: I think I have the perfect right to lead, just as exactly as Mr. McGeehan always leads a witness on cross examination.

The Court: Why wait until the other gets through?

Mr. Holland: I mean to say, that I believe a leading question on re-direct is perfectly proper in order to bring out something which on cross examination they touch on. Now, I believe that's the rule and that it is a matter of discretion with the Court. (Argument.)

The Court: Well, do you, Mr. McGeehan—

Mr. McGeehan: As a rule I think leading questions can be asked and the entire subject of leading questions is within the discretion of the Court—

The Court: You have not been limited at all.

Mr. McGeehan: But the prosecutor says because I led he is leading also.

Q (Question read.)

The Court: He may answer.

(Exception allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

A I would not say the man was real drunk, that's what I mean.

Q Was he under the influence of liquor? A I should say he was.

Re-cross examination by Mr. McGeehan.

Q So that you knew, in your opinion, he was under the influence of liquor and he admitted driving a car, and you did not arrest him, is that right? A I had no cause to arrest the gentleman.

Q Didn't you know it's an offense to drive a car under the influence of liquor? A Yes, sir.

Q And if he admitted he was driving a car and it was your opinion he was under the influence of liquor, you would have done your duty and arrested him? A I don't know as I would, no, under the circumstances.

Q You knew it would be your duty to arrest him? A I did not see anything of the accident.

Q The accident doesn't figure in it; isn't it an offense at all whether you have an accident or not? A He did not tell me he hurt anybody but himself.

Q But he did tell you, according to your statement here, he was driving an automobile just before that? A Yes.

Q And told you he had had an accident? A Yes.

Q And my question was now, if in your opinion he was intoxicated, why you did not arrest him? A I would not say he was real drunk.

Q He was not intoxicated at all, was he? A He was just—I would say he was.

Q You didn't say that before in your direct examination, did you? A What's that?

Q That he was intoxicated? A He didn't ask that.

Q Were you asked this question and didn't you make this answer: did you form an opinion as to whether he was intoxicated or sober; and didn't you say no, sir, I did not form any opinion whether he was sober or whether he was intoxicated? A Yes, I did.

Q Well, if you had not formed any opinion then as to whether he was intoxicated or not, how is it you were able to form it now on the prosecutor's question that was objected to as leading?

Mr. Holland: I don't think that last part—

Mr. McGeehan: I wanted to call his attention to each question.

Q If you had not formed any opinion then, you were now for the first time forming that opinion? A That the man was intoxicated?

Q Yes. A Yes, sir.

Q Well, then, that's the first you ever formed it, isn't it; this is the first time, while you are on the stand, that you ever formed an opinion that he was intoxicated? A No, I would not say that.

Q Didn't you testify here before that you didn't have any opinion whether he was sober or no opinion whether he was intoxicated? A I did not say I did not have any opinion about it. I said I would not say he was sober or not sober.

He stated to me previously that he had a couple of drinks.

Q You would say any man was under the influence of liquor who had a couple of drinks? A I would not say any man who had a couple of drinks was under the influence of liquor.

Q You would not say that? A I did not mean it that way if I said it that way; I meant this way; I meant it any man that had a couple of drinks wasn't sober, was under the influence of liquor.

Q So that's the only thing you based it on? A Yes, sir.

Q He was not staggering? A No, sir.

Q You did not see any signs of intoxication, except he admitted he had a couple of drinks, is that right?

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q How long have you known him, Officer? A Somewhere around about three years.

Q As a matter of fact, you were giving him the benefit of a doubt, weren't you? A Yes.

Mr. Holland: That is all.

(Witness excused.)

The Court: The Court has changed its opinion of the necessity of the jury being shut up all night. You may go to your homes with this caution; do not discuss this case with anyone or permit anyone to discuss it with you, because that is the perfectly reasonable and proper thing for you to do. You are going to decide this case upon the evi-

dence which is introduced here. I don't anticipate that anybody is going to try to talk to you about it, but don't permit anyone to discuss it with you, and come back tomorrow morning at 10 o'clock. Court is now adjourned.

SECOND DAY.

Morristown, N. J., Tuesday, June 15th, 1926.

TRIAL RESUMED.

SEWARD H. WILLS, recalled.

Further direct examination by Mr. Holland.

Q Doctor, I don't know whether I asked you yesterday whether or not Mr. Geary was down in the clinic with you. Have you any recollection of that? A Yes, he was there.

Q Now, just tell us, if you will, what your recollection about Mr. Geary is? A Mr. Geary went to the clinic with us, then he left the clinic. As I understand he went up and talked to the telephone operator—

Q Acquaint you with the accident? A He left the clinic and then he came back to the clinic just before we left the clinic.

Q Now, doctor, since your testimony here yesterday to questions which Mr. McGeehan put to you, have you formulated or tabulated the various symptoms which would show or demonstrate themselves in a man under the influence of liquor or a man who was suffering from concussion, distinguishing between the symptoms and what they mean? A Yes, sir.

Q Now, will you please tell us in what particular would a man suffering from alcoholism differ in his sypmtoms from a man suffering from concussion of the brain?

Mr. McGeehan: I object to this, I don't think he is qualified to give expert testimony. I don't remember that he testified he was admitted—

Mr. McGeehan: Are you admitted, doctor?

The Witness: No, not in the State of New Jersey.

Mr. Holland: I don't think it makes any difference whether he is admitted. As a matter of fact I did bring out the college he graduated from and served his internship.

The Court: Do you contend, Mr. McGeehan, that no physician, unless he is admitted to practice in New Jersey, can testify in a New Jersey court?

The Witness: I am licensed to practice in the State of Louisiana.

The Court: Then your objection is withdrawn?

Mr. McGeehan: Oh, yes.

The Court: Proceed.

A A man suffering from alcoholism, in the early stages of alcoholism—

Q Did you prepare a tabulation? A Well, no, while I was thinking about this thing I just sketched out a little note. A man suffering from alcoholism is either depressed or excited. This man, from his obstinance, which I took as a

form of depression—he was obstinant rather than passive, which you would expect in a man with concussion to a stage where he was not steady in his gait and the same in his speech also besides him being, if he was in the concussion stage, besides being passive, he would be stuporous rather than a depression obstinant type he was.

Q Did you find this defendant to be stuporous? A No, he was just obstinant and just would not do what you wanted him to do. And then a man don't object to a little suture or a little iodine.

Q Why? A Because they are stuporous, they are dazed, they don't feel it. This man, being in an alcoholic condition, as he was, did object to the suture and iodine. He strongly objected to them. Of course he might have both conditions, but he had a strong alcoholic breath which was disagreeable, I stood aside when I worked on him, you could not help it. As far as his reflexes, I did not examine him for his reflexes. But I watched the man for signs of concussion and found the man with pupils about equal, that is, some dilation that he might have in either one in the early stages. I found his Romberg—

Q What is that? A When you stand up and have your feet together, you fall to one side. He might have had that in either one. In all the Bateley reflexes, you might have an exaggerated alcoholic condition and diminished with concussion. If you had not seen the man before you would not know what his reflexes were to start with.

Q What about his mental and his ability to use his brain and use his will-power, if he were

suffering on the one hand from concussion and on the other hand from alcoholism? A If he was suffering from concussion he would be stuporous, seem less able to carry out his own ideas of things than he would with alcohol, until he got to the stage where he would reach a coma.

Q What stage was this defendant in? A This defendant was in the early part, in the stage of either excitement or depression, early stages of alcoholism that was manifest in him by his obstinance.

Q Do you say that obstinance was the result of having power? A Of having power in his mind under alcohol. His judgment of mere little things.

Q How does that manifest itself in a man under the influence of liquor like you saw this defendant that night; for instance, as to judgment and preception and control? A His judgment is not as good, his preception is dulled, sense of preception is dulled and control, by his lack of control, which he manifests in his unsteadiness.

Cross examination by Mr. McGeehan.

Q Doctor, the night you examined him, your principal thought was to determine whether or not he had a concussion, which you thought you saw signs of, is that right? A I did not think he had signs of concussion, or I would not let him leave the hospital without signing a release.

Q It's true, doctor, isn't it, that patients oftentimes have injuries to their head and are discharged from a hospital that are later on found to have fractured skulls? A That is possible. That's the reason we have them sign a release before they go out.

Q Yes, and frequently patients are let to go out and then later a fractured skull is discovered? A Yes.

Q So by looking at a person, doctor, you cannot tell for a certainty whether that person has concussion or fractured skull or any injury to the head except external, can you? A No, only from the type of your wound you judge whether you think there is a possibility of a fracture or not.

Q And sometimes without any wound whatever, a fracture of the skull exists? A It is possible.

The Court: You mean external wound?

The Witness: It is possible but very improbable.

Q Happens often? A Not often, not without any sign of external injury.

Q You usually have X-rays to determine positively whether a person has a fractured skull? A If there is any question, yes.

Q Now, doctor, when did you prepare the reasoning that you used this morning on the stand, last night, was it? A It was while I sat last night by myself.

Q Have you referred to that in your testimony? A Yes, I have.

Q May I see that? A I was asking myself the question, what is it about a man—

Q And these are the notations you made? A Yes.

Q To help you on the stand; I mean to use on the stand? Now, doctor, would you say that you are an expert in determining intoxication of a person? A I would not say that.

Q From a medical standpoint? A I would not say, no; I have seen a good many of them.

Q And you have seen a great many people who were hurt? A Yes, sir.

Q But your judgment is that he was in the early stages of alcoholism? A Yes, sir.

Q By that you mean, that he didn't have much to drink, if he had anything? A Why, yes, he was to the point where he was unsteady.

Q Now, doctor, did you know that this man, when you examined him, had a deformed leg? A No, sir, because he did not let me examine him.

Q Never mind giving your reason; my question is, did you know that? A No, sir, I did not.

Q Did not. You did not know the man before at all? A Never had seen him before.

Q And naturally you were not acquainted with his gait or how he walked? A No, sir.

Q And you looked at him, believing that his legs were all right, didn't you? A Presumably so, yes, sir.

Q Now, under such circumstances, the fact that he has an abnormal gait, you thought appeared abnormal from some reason other than the existing condition of his physical make-up, because you did not know him to be crippled, isn't that true? A Yes, sir.

Q Now, doctor, you say he was not stuporous? A No, sir, not stuporous.

Q And that persons who are suffering from alcoholism are not stuporous and those suffering from accidents are stuporous, is that right? A That's the point, yes.

Q What do you mean by stuporous? A I mean a dazed condition in which the patient—

Q What do you mean by stuporous, doctor, as you used it? A I mean he is more or less passive, a man who does not object—

Q No, I don't want to know that. I want you to tell us what you mean by the word stuporous.

Mr. Holland: It seems to me he is explaining, that that is an explanation.

The Court: I suppose that is what he is giving him.

A He is a man that does not think so much for himself; he can be persuaded to do what you want; he does not think for himself and come back at you.

Q Is that what you mean by stupor when you use the word stupor? Do you know what stupor means, doctor? Do you know what it means with reference to a patient? A A patient goes into a stuporous condition; they don't recognize. Now, this man as I treated him was not in that stuporous way that he did not recognize, that he did not think, he did not act—

Q Doctor, will you answer my question, please? Do you know what stuporous means? It is a medical term, isn't it? It is used in the medical profession? A Yes.

Q Now, will you tell us, if you know, what stuporous means. Not what it means as any other men use it, but what stuporous means as you have used it. What is the definition of the word?

Mr. Holland: I perhaps ought to object; I don't want to make an objection, but Mr. McGeehan says, what does stuporous mean as you use it, and then he says he don't want as other men use it. Do you want his definition or from the dictionary?

Q What is the medical definition? I want this witness' explanation of stuporous. A It's a mental condition or condition of the nerves; I would say a mental condition, and a patient does not react as a normal patient in approaching a stupor or coma. It is an intermediate term as I use it between a normal and a comatose patient.

Q What is comatose? A Unconscious.

Q Is a person stuporous where they are sleeping? A Approaching a sleeping condition, yes; but you can have a stuporous condition from a lot of things.

Q But you can have a stuporous condition from intoxication, too, can't you? A That's why I was careful about my wording. You can, but I try to differentiate between a person who does not respond and a stuporous person.

Q Now, you said one reason you thought this man was intoxicated was that he was not stuporous, and a person who is hurt is stuporous and a person who is intoxicated is not stuporous, didn't you? A Yes.

Q Now, isn't it true that persons other than injured persons or drunk can be stuporous, as you use the word yourself? A Not until they reach the further stage that I say; until they approach the stage, the unconscious stage we get in alcoholism, which is the late stage.

Q Well, he wasn't at all stuporous; you will agree to that? A He was obstinant.

Q You also said, I think, that a person who is injured isn't able to reason as well as a person who has been drinking? A A patient who was concussed is bound to have symptoms which he did not.

Q Did you consider anything else outside of concussion in relation to his condition? How

about pain and nervousness? A When he refused to allow me to examine him, that ruled out what I might have found on general examination.

Q He was nervous, wasn't he? A He was not, no, sir.

Q Not nervous? A No, sir.

Q Not stuporous? A I say obstinant.

Q Did he show pain? A He did not. He showed pain when I put the iodine in and when I put in the suture; that was the only time you would expect him to show pain.

Q And he showed pain under those conditions? A Yes.

Q When he showed pain—you stated to this jury before that a person who was injured would not show evidence of pain, but a person who is intoxicated would? A Not as much; I think I made that statement.

Q Were you speaking of the suture of the wound in that respect? A Yes, and stitching of it and putting iodine on.

The Court: Yes, he said when a person was concussed they did not evidence much feeling, as I understood it.

Q Now, doctor, is that correct? A That's what I meant. You take a person that's suffering from concussion, there's one I had, he would be apt to slump off unconscious. Now, he was in that stuporous condition; that man did not object to suturing it right up.

Q Now, doctor, except you say you smelled alcohol on this man's breath, was there any objective symptoms of intoxication that you found outside of that?

Mr. Holland: I want to object unless Mr. McGeehan will make clear what he means by objective symptoms. I may know and yourself and the doctor may know, but I am not sure anyone else does.

Q Doctor, the objective symptoms that you mean was the examination and the subjective sympton is what a person tells you about? A Yes; then you have the appearance; instead of having the appearance of a concussed person as compared with an intoxicated person. This man insisted that I could not examine him, and his pulse count gave me the idea what was doing; his temperal pulse was good. It was full pulse of alcohol rather than a feeble pulse of a concussed person.

Q Now, suppose he was not concussed, but showed pain and excitement of having been through an awful accident; could he have dilated pupils, for instance? A The excitement of an accident might; that is, have a slight—

Q I am not asking you that. A You said pain.

Q All right; excitement, then, would cause some dilation of the pupil, some slight dilation of the pupil? A He could have had a pupil dilated normally.

Q And you can't tell about that because you did not know him before? A That's what I said.

Q Now, outside of your statement about the smell of alcohol, there was no other indication of intoxication of this man? A Only the whole thing to me like the picture of an alcoholism than a concussion.

Q Looked like that than a concussion? A Yes.

Seward H. Wills, re-direct.

Q You allowed him to go out of the clinic as an alcoholic rather than a concussion? A Yes, and for a long time I worried to determine which it was when he was brought into me for observation.

Q And you finally figured out last night to testify this morning as to the reason that you reached that conclusion? A Yes.

Q It was a pretty close decision, then, wasn't it? A It's a thing we work on and form a judgment from what we have seen.

Q I say, it was a pretty close decision, then, wasn't it, in this case? A Yes, when you get down to work it out this way.

Q Did you look at your medicine book when you did that last night? A No, sir, I did not.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q It wasn't last night you reached your conclusion, was it? A No, I just merely put this down as I asked myself the question why I decided that as to why one man looks this way and another the other.

Q Were you making the usual mistake of assuming—

Mr. McGeehan: Oh, well, now—

Mr. Holland: I withdraw it.

Q Mr. McGeehan asked you whether or not you were an expert on drunkenness. Did it require an expert to draw the conclusion that you drew? A I don't think so.

Mr. Holland: That is all.

Peter Arkie, direct.

Re-cross examination by Mr. McGeehan.

Q You mean you have no more ability to judge than a layman? A I consider I have more ability than a layman, but I don't consider myself technically or—

(Witness continues to talk on leaving the stand.)

Mr. Holland: Did Mr. Blaine ever come back to you for treatment as to concussion?

The Witness: No, sir.

PETER ARKIE, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Arkie, where do you live? A Morristown.

Q And for whom do you work? A Mr. Charles Shelly.

Q And what is the nature of your occupation? A Chauffeur.

Q How long have you been associated with cars? A Oh, well, I have had a license since 1920, but I have been around cars since 1915.

Q And do you remember the night of March 23, 1926? A Yes, sir.

Q Where were you late that evening or early that night, somewhere around ten or eleven o'clock? A I was in bed then.

Q And what occasion did you have to get out of bed? A Well, my sister lives at Mountain Lakes and she missed the last car and my wife

was to a lodge meeting and she came home and got me up and wanted to know if I would not drive her to Mountain Lakes.

Q And you and your wife drove your sister to Mountain Lakes? A Yes.

Q Have you any recollection about what time it was you went up? A I looked at the town clock just as we left here; it was twenty minutes to twelve; it might be five minutes out of the way, either slow or fast; it's not always right.

Q As you went to Mountain Lakes, which way did you go; by way of what towns? A We came up Speedwell avenue and through Morris Plains.

Q Did you pass the Sire estate? A Yes.

Q And as you passed the Sire estate, tell us what, if anything, did you see? A Well, I saw this coupe, Ford coupe, and these two men were fixing a tire, and one man, I think it was a rather tall man, was standing alongside of the front wheel, and there was another man, as I judge, with his head down at the rear wheel, and as I passed I kind of slowed up; I thought probably it was some friends from Rockaway or up that way, and I kind of slowed up to see if I could recognize them. So I didn't, and I passed on up. I saw it wasn't anyone I could help out and when I saw the two men I thought they could help themselves.

Q At that time was your sister and wife in the car? A Yes, sir, they were in the rear seat.

Q Now, is this the same car that you see, showing you S. 1? A Yes, sir.

Q Now, you called it coupe; did you mean coupe? A I didn't quite recognize it; I did not take stock in the car; I thought it was a coupe.

Q Whereabouts on the road was this car? A On the right-hand side.

Q Are you familiar enough with that map to be able to talk about it, map No. 2? A Well, I can't just say distance, but I know it; the road is clear there and on passing the car you just pass it normal without turning out of the way. The car would be on the right-hand side of the road.

Q Now, in passing that car were you going in the same direction toward Dover as that car was pointing? A Yes.

Q And in passing it, did you or did you not draw further out toward the middle of the road to get by it? A No, sir.

Mr. McGeehan: Object to that. I think it ought to be shown where he was riding in the road.

Q Where were you riding in the road? A I generally drive on the right-hand side of the road.

Q Where were you driving this night? A To Mountain Lakes.

Q Which side of the road? A Right-hand side of the road.

Q As you passed by this car was it necessary for you to change your course? A No, sir.

Q Did or did not the car have any lights on it? A I saw lights on, yes, sir; I noticed them in the mirror as I passed.

Q Do you know what they were doing there on the car? A Yes, sir, changing a tire.

Q Did you go on to Mountain Lakes? A Yes.

Q Did you drop off your sister? A Yes.

Q Did you come on back? A Yes, sir.

Q In which direction did you come back? A The same way.

Q Did you meet anybody? A Well, as I was going up through Mount Tabor I passed two boys and I told my wife I bet—

Mr. McGeehan: Never mind that.

Q You saw two boys? A Yes.

Q Where were they? A They were on the right-hand side of the road coming down; I was going up. I was going to stop and pick them up, then I said I was coming back and I said—

Q Not what you said to your wife. Did you stop and pick them up? A No, sir.

Q Now, on your way back—oh, did anything else—did you pass anything else on the road as you were going up? A As I was going down Mount Tabor hill.

Q You were going down Mount Tabor hill in which direction? A Toward Denville; I passed one touring car and behind this car was a sedan and it was stepping along pretty lively and just at the cross-road two boys—

Mr. McGeehan: May I have it determined where this was.

The Court: On Mount Tabor hill, the north side, going down the hill toward Denville.

Mr. McGeehan: Can we agree on the distance from the scene of the accident?

Q At the point where you passed this sedan, just describe the sedan, what it was? A Well, I can't really describe it, I can't say what kind of a car it was because the lights, I got the full benefit of the lights on the car behind the sedan and of course the touring car was just on the

turn and the touring car passed me and of course I did not get the benefit of the lights of the touring car but I knew this sedan was in back—

The Court: One moment, please. Mr. Arkie, you say they passed you. You mean you met them?

The Witness: Yes, I was going to Denville, they were coming this way.

Q At the point where you passed the sedan, how far away from the Sire estate was it? A Oh, I don't know, I judge about two miles and a half.

Q Now, did the sedan pass the touring car in front of it? A I don't know—

Mr. McGeehan: I object to this on this ground, that this point in question is too remote from the scene of the accident to be admissible in evidence.

The Court: About six or seven minutes away.

Mr. McGeehan: The furthest the Court has gone, I think—

The Court: I will go far enough to take this evidence.

(Exception allowed and sealed.)

C. F. WILSON,
Judge, &c.

(SEAL)

Q At what point did you pass this sedan before you saw these boys walking or after you saw the boys walking?

Mr. McGeehan: Same objection to this question.

The Court: For the same reason?

(Exception allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

A Before.

Q Did you notice the color of the sedan? A No, sir.

Q On your way back did you see the boys again? A Yes, sir.

Q What did you do? A Picked them up.

Q Who were they, do you remember? A Collins and Sharkey.

Q And did you find that they lived in Morristown? A Yes, sir, I did not know their names but I knew them by sight.

Q And at that time, who was with you in your car? A My wife.

Q Well, you and your wife and Sharkey and Collins came on toward Morristown then, did you? A Yes, sir.

Q What happened as you got near the Sire estate? A Well, there was about three or four cars there and so I stopped. I pulled to the side of the road and got out.

Q What did you find? A Well, I walked over—some man jumped on the running board and said that two men had been killed, so I said—

Mr. McGeehan: Never mind, please, the conversation.

Q Just what you saw? A Well, I got out and looked at the two bodies and thought probably—

Mr. McGeehan: May the witness be instructed not to express what he thought.

A (Continued) I saw the two bodies and thought probably I would have recognized them because they were headed toward Rockaway and that being my home I thought probably it was someone I knew. I looked at the bodies and I did not know either one.

Q Where were the bodies when you got there with reference to the right-hand side of the road? A Well, the right-hand side of the road going toward Dover?

Q Yes. A They were on the right-hand side of the road, behind the Ford car.

Q Did you stay on the scene for some little time? A Well, I was there probably a half an hour.

Q Did you see any marks in the road? A Well, I walked to the front of the Ford and on the front left fender—

Q Now, when you got to the Ford, you got out of the car and got to the Ford, is that the same Ford that you saw? A Yes, sir.

Q Now, was that the same Ford that you thought was a coupe on the way up? A Yes—I said coupe—

Q Well, the top was up? A Yes, I did not take notice of it that night.

Q I just simply want to find out whether it was the same car. And did you—you started to say you saw some marks in the road? A Yes.

Q You walked in front of the Ford and then what? A Well, there was a Buick, I thought it belonged to the State troopers and it was pulled up, well, about ten feet from the bodies and the lights were not showing on the car, they were showing on the left of the car and I saw quite a number of marks on the road there and it seemed that one was heavier than the other and

it was for quite a distance. There's a kind of curve there and when it left that curve—

Q Well, how far in front of the Ford and in the direction to Dover did these marks extend? A Well, I could not judge very well, but I think it was round at least fifty feet.

Q And what kind of marks were they? A Well, tire marks.

Q You mean just the ordinary impression from a tire that you would see riding on this road? A Oh, no, sir, kind of burnt in from rubber.

Q Now, Collins and Sharkey, did they get out, too? A Yes, sir.

Q Did you finally take them home? A Yes, sir.

Q I am not asking you to repeat their conversation; I don't want that. A Yes, sir.

Q But did they say anything; that's either yes or no— A I don't know; they went—

Q I have not finished. Did they say anything about the Buick sedan? That's either yes or no? A You mean at the accident?

Mr. McGeehan: I object to what they said.

Mr. Holland: I am not asking what they said.

Q Did they make any remark—

Mr. McGeehan: That is objectionable, and not binding on the defendant.

Mr. Holland: I withdraw that and do it this way.

Mr. McGeehan: We are not bound by what anyone said to another.

Q Did they say whether or not they recognized the car?

Mr. McGeehan: One minute. I object to that on the ground that this defendant is not bound by any statement made by these boys. That is hearsay testimony and entirely inadmissible.

Mr. Holland: Well, I have the two men here, and won't press it. Cross examine.

Cross examination by Mr. McGeehan.

Q Mr. Arkie, do you remember approximately what time you started out? A From Morristown?

Q From your home. A About half-past eleven from my home.

Q About eleven-thirty? A Yes.

Q What time did you leave your sister off? A Well, I can't exactly say that. It takes—I think it must have been about approximately five minutes to twelve.

Q That's at Mountain Lakes? A Yes.

Q Took you about thirty-five minutes to make it then? A No, sir, about twenty-two.

Q How fast did you go? A Oh, about—I don't usually drive over twenty-five to thirty miles an hour.

Q Well, were you going on this night about twenty-five or thirty, would you say? A Yes.

Q And of course, when you passed the Ford car on your way up, you were going along about that rate of speed? A Yes, but slowed up when I saw the car there and the two men standing alongside of it; slowed up, I thought probably it was someone we knew.

Q Now, that Ford car was on the amasite, wasn't it? A Well, I would not say it was on the amasite, no, sir.

Q Would you say it wasn't on the amasite? A I didn't say, no, sir.

Q You are not sure just where it was? A No, sir.

Q You were going along and your attention was fixed mostly on the fact that you might know them and could help them? A Yes.

Q You could not make any mental measurements of just where the car was? A No, sir.

Q But you did know these men were to the left of that car you passed toward Dover? A Yes.

Q So that they were toward the middle of the road from it? A Well, I would not say—

Mr. McGeehan: I withdraw that.

Q They were to the left of it as it faced Dover? A Yes.

Q And how far over the Ford might have been in the roadway, they were further into it themselves? A Well, they were not in far enough that it would make me steer out.

Q I mean, they were toward the roadbed from the car; that right? A Yes.

Q Now, going along at twenty-five to thirty miles an hour; this road wasn't so wide, was it? A No, sir.

Q It's an eighteen-foot road? A Yes.

Q And going along at twenty-five to thirty miles an hour, were there any other cars right about at that point, at the turn, going the same direction as you or that you were meeting? A No, sir.

Q Now, isn't it a fact, Mr. Arkie, that when you go at twenty-five to thirty miles an hour on a road as that, that you drive more to the center of the road? A When I passed them I was not going twenty-five or thirty.

Q You had been just before that? A Yes, but I slowed up.

Q You didn't turn to the right or left when you slowed up? A No, sir.

Q When you were going twenty-five to thirty miles an hour then just before you slowed up, you were running practically in the center of the road? A No, I drive on the right.

Q Were your left wheels about the center of the road? A I did not get out and measure them; I could not say that; I don't exactly know.

Q Would you say approximately that your left wheels were about the center of the road? A No, I won't say how near, I was on the right-hand side of the road.

Q Now, when did you first ask yourself on what part of the road you were? When did you first direct your mind on that? A I always know that because I am a chauffeur and drive for elderly people and I guess I have to keep within that speed rate and keep within the law to hold my job.

Q Well, sometimes you drive in the center of the road, don't you? A Well, probably if I have to turn out for a car or something like that.

Q Well, then, when there is no car coming, haven't you ever ridden in the center of the road? A No, not that I know of.

Q Now, if you saw a car standing on the side of the road, as you say now, you don't know whether it was on the amasite or not, but the

two men were nearer the center of the road from it, you would swing over, wouldn't you, in passing? A Not if you were going twelve or fourteen miles an hour.

Q How close to that other car did you pass? A Well, I could—

Q Or don't you remember? A I do.

Q How close do you think you passed? A Well, I passed close enough so that I could see the coat of one of the men. I saw that it was two men and I guess I would have to come pretty close to recognize a person in the dark there.

Q You had your headlights on? A I had my lights on.

Q What I am getting at, Mr. Arkie, is this: you thought nothing unusual of passing that car, did you, until later on when you learned something had happened? A No, sir, until I came back, if that is what you mean.

Q And don't you think it possible that when you passed that car you might have steered your car to the left and not have made a mental note of it? A Not when I wanted to find out who was there and see if I could assist someone.

Q Now, after you passed the car going up, you saw that it had lights on, did you? A Yes, sir.

Q Those lights were very glaring, were they not, when they were on? A Of course, I looked in the mirror and usually a mirror will show up lights much brighter than they really are.

Q They struck you as being full and glaring, didn't they? A Well, they were very bright, yes, sir, in the mirror.

Q So much so, that you asked your sister if there was a car right up on you? A No, sir.

Q Did you speak to your sister whether there was a car— A No, sir, never said a word.

Q Well, did you say—did you ask your wife if there was a car right behind you? A No, sir, the only thing I told my wife after I got home—

Q No, never mind what you said there. What you said at that particular time? A No, sir.

Q Now, how long or later was it that you went past the Sire house coming back? A I suppose that took me twenty minutes to get back or twenty-two.

Q Or a total of three-quarters of an hour? A Yes, about half-past-twelve, I think.

Q Now, when Mr. Holland showed you this photo of the Ford and asked you if that was the same Ford, you don't remember that to be the same Ford at all? A I didn't notice whether it was a coupe or roadster, but I know it was that way, and I knew the men was right alongside of it.

Q You mean this is the Ford that was there when you came back? A Yes.

Q After the accident? A Yes.

Q Yes, now, but do you know whether that is the same Ford or not that you passed on the way up? A Yes, sir.

Q How do you know that? A Because the two men laid there dead and I passed them alive when I went past.

Q Do you recognize them as being the same men? A I recognize one was a very tall man and one was kind of stooped down, he was shorter.

Q You recognized them because of their height? A Yes.

Q The car itself you did not take particular notice of? A I was looking at the men; I was

not looking whether it was a roadster or coupe. I knew it was either a roadster or coupe.

Q Now, these marks, Mr. Arkie, on the road; one was heavier than the other, you say? A Yes.

Q Now, that mark that you saw was the mark of a tire or marks of tires, were they not? A Yes, sir.

Q Did you see the Buick car that was to the south of where the Ford stood when you got there? A Yes.

Q Those marks led toward that Buick car? A Yes, sir.

Q And they led from the right side of the road going south, didn't they? A Well, they were coming south; I don't say they led from the right-hand side of the road; no, sir.

Q Where did they begin? A Well, I judge from the curve they were well over to the left coming south.

Q That is where they left the road? A What do you mean, left the road?

Q Did you see the marks where they left the road to go where that Buick was? A I saw them the middle of the turn; they were coming south and they came like from the left-hand over on a slant in that way (indicating).

Q Now, you have described what kind of a line, a curved line? A Well, it wasn't really a curved line; it was a slant, a swing.

Q He swung to the left going south? A From the left-hand side of the road.

Q Going south? A Yes.

Q You remember placing upon this map, on this drawing, the position of the Ford car, in the presence of Mr. Boyd Headley, and the marks the Buick pursued? A I never made any marks or anything.

Q Were you talking to Mr. Boyd Headley? A Yes.

Q Did he question you about what you knew? A Yes, sir.

Q Did you tell him what you remembered about it? A Yes, just what I tell you.

Q He was at your house on March 29th? A Yes, sir.

Q Do you remember his drawing something while you were talking to him? A I do not.

Q Didn't you have a drawing of the road and place upon it the Ford car or rectangular object? A I did not; no, sir.

Q Well, take a look at it. Did you place this mark upon that map? A No, sir.

Q That rectangular map? A No, sir, I did not touch the paper. I saw he had a pad in his hand, but I did not see a mark placed on there in my presence.

Q Did he make a line running from the center to the left of the road running south near that Ford? A No, sir.

Q You deny that he did that? A Yes, sir.

Q You remember he had a pad out, though? A Yes, sir.

Q Didn't he show it to you? A Well, he showed it to me and I did not know—I asked him first what authority he was asking me this and he says, oh, he says, I am just out, he says; he didn't really tell me who he was, for and what he was doing, whether for the defendant or who. He just came there and—

Q You have answered the question.

Mr. Holland: I think, if your Honor please, he is entitled to tell. My question was, did he have a pad out?

The Court: He is explaining what he is remembering, which he has the right to do.

Mr. Holland: I don't object to any of this except to save time.

Mr. McGeehan: May I have that marked for identification?

(Marked D. 1 for identification.)

Q He had that pad on a table? A I would not say it was a pad. He had a piece of paper in his hand, I didn't know what he was doing.

Q Well, did he question you, were you looking at it and did he look at it? A No, he sat across from me and we were talking more about the weather than anything about the accident.

Q Now, you say there was a car—two cars that you passed on the Tabor hill? A Yes, sir.

Q What was the first car, what kind of a car was the first car? A A touring car with curtains.

Q A touring car with curtains? A Yes, sir.

Q Was it a large or little? A Very large; I could tell from the sound of the motor, kind of a hum.

Q You don't mean a truck, of course, do you? A No, sir.

Q And you are sure it was not a truck? A Yes, sir.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Now, in answer to Mr. McGeehan's question, you said something about you noticed a coat, what kind of a coat did you notice when you passed the two men? A Well, it was a very

heavy coat. And when we came back why this coat was there over one of the dead men.

Q Did you recognize it to be the same coat? A Yes, sir.

Q And when was it Mr. Headley came to see you? A Well, the 29th of March, I think it says there.

Q Yes, now, did you ever see this sheet which Mr. McGeehan referred to, typewritten? A No, sir.

Mr. McGeehan: It was not referred to, a typewritten sheet. That's my note.

Q Did you ever see that typewritten sheet? A No, sir.

Q Did you ever tell Mr. Headley those things which Mr. McGeehan asked you? A No, sir. I told one thing to Mr. Headley when he brought the subpoena, he brought it to the house and I says to him, well what's that for; I said I got a subpoena from the State and he says, that is nothing, we just want to hear what you have to say, so I did not think any more of it—

Q That's all right, I did not ask you that. Now, at the time that Mr. Headley came to see you on the 29th of March, did he tell you that he was the former detective in the employ of former Prosecutor Mills?

Mr. McGeehan: I object to that. I can't see the relevancy or materiality of that in this trial.

The Court: Well, did he say your client sent him?

Mr. McGeehan: Yes, he got his statement.

The Court: Well, the prosecutor has got the right to ask him that if he wants to.

A I said, are you from the prosecutor or are you on this Blaine case, I could not really say if he said yes or could not say if he said no; he didn't say one or the other. And then we got talking from one thing to the other—

Mr. McGeehan: I object to this conversation on the ground it is not binding upon the defendant and is in no way relevant to the issue. (Argument.)

Mr. Holland: I asked him to say what he actually said.

The Court: He may.

Q What did you really tell Mr. Headley? A Well, we kept on talking about the accident and one thing that I did tell him was that the lights were very bright on this car and then I told him that it was probably from the reflection of the mirror. And I says to him that when I got home after the accident, I told my wife that—

Mr. McGeehan: Object to that.

Q You mean you told that to Headley? A Yes, that's what I told Headley.

Q Was there ever a time—this is a fair question but it may be objected to and don't answer it until Mr. McGeehan has a chance to object—was there any time during this conversation with Mr. Headley when he suggested to you what the conditions were that you saw there? A I don't quite get your question.

Q (Question read.) A I don't really know how to answer that because if you mean if he

was talking about the accident and telling about it—

Q Yes? A Yes.

Q He was telling you about the accident? A Yes, well, he was asking me about it.

Mr. Holland: That is all.

The Court: Mr. Arkie, how often have you driven the road from Morris Plains to Mount Tabor?

The Witness: Well, for the last five years, I guess about once every two weeks.

The Court: Is there a turn, a curve in the road beyond the house of the Sire house, beyond the house going from Morristown toward Mount Tabor?

The Witness: Slight curve, yes.

The Court: To the right or left?

The Witness: To the right coming south.

The Court: To the left going from Morristown to Mount Tabor?

The Witness: Yes.

The Court: Was this Ford car to which you have referred south of that curve or north of it?

The Witness: South.

Re-cross examination by Mr. McGeehan.

Q How far away from that curve, approximately, would you say? A Well, I never really stopped there to take notice; I judge about just from—oh, about seventy-five feet, I could not say for sure.

Q As a matter of fact, it's three or four hundred feet, isn't it, from the Sire property? A I did not say the Sire property.

Peter Arkie, re-direct.

Q I am asking you from the Sire property?

Mr. Holland: Just a moment, I want to object, the Sire property or the Sire house?

Mr. McGeehan: What do you want it to be measured from?

Mr. Holland: I don't want it measured from anything.

Q From the Ford car that was there afterwards, how far away do you think that curve is. Does the map show it, does it— A It is intended to show, here is the car and here is your curve (indicating).

Q Now, as a matter of fact, isn't it more than three hundred feet from the Ford? A I don't know, I just judged the map from the road, I didn't measure the road.

Q And that curve is that one, that sight curve that appears on the map Number one, isn't it? A Yes, but where this Buick car was—

Q You have answered the question. On the map that is the curve you refer to? A Yes.

Q And you think that is about seventy-five feet distance? A I did not say that. As far as I could see from the light. I never measured it, I don't believe I ever got out, outside the time I stopped there at the accident.

Re-direct examination by Mr. Holland.

Q What were you going to say about the time you were there? Finish that answer. A There was a car here, it was a State trooper's car and on the car the lights shown in that direction. It would appear to be on the side of the road, it did not really shed up toward the curve.

Mildred Arkie, direct.

Q It was that light that you just mentioned on the road? A Yes.

Mr. Holland: That is all.

(Witness excused.)

MILDRED ARKIE, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mrs. Arkie, you are the wife of the last witness? A Yes.

Q Do you remember the night you were taking his sister home? A I do.

Q Do you remember going past the Sire place? A I do.

Q What, if anything, attracted your attention? A This little Ford car on the side of the road.

Q And what about the Ford car? A Why, it was apparent there were two men fixing a tire.

Q And did you see them before you came upon them? A Yes, the tail-light was lighted and we seen the men, they were standing along by the tire, looking at the tire.

Q How far over on the right-hand side of the road were they? A Well, far enough, we had no trouble passing them.

Q Did your husband swerve out in passing them or continue in a straight course? A He just continued on.

Q Now, what, if anything, did he do in reference to his speed when he came upon the car? A Slowed up a little and looked out to see if he knew them.

Q Did he know them? A No, he did not.
Q Did he continue on? A Yes, sir.
Q Did you come on back home after your sister was taken home? A Yes.
Q And did you pick anybody up and where? A Yes.
Q Whereabouts? A At the cross-roads at Mount Tabor; that is, Mount Tabor hill.
Q And brought them on back toward Morristown? A Yes.
Q Do you know who the two boys were? A Yes.
Q Who were they? A Eugene Sharkey and Collins.
Q Did you stop at the accident? A Yes.
Q Did you get out? A No, I did not.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q There was no car coming the other way, Mrs. Arkie, at the time you passed the Ford on the way up? A No, sir.
Q And all you remember is that you had no trouble in going by there? A That's all.

Mr. McGeehan: That is all.
(Witness excused.)

JOSEPH DONAVAN COLLINS, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Where do you live? A 31 De Hart street.
Q How old are you? A Eighteen.

Q Do you go to school? A I graduated.
Q Where do you work? A Charles Gallagher.
Q Where were you on the night of the twenty-third? A Coming home from Denville.
Q Was there anybody with you? A A boy, yes.
Q Who was the boy? A Eugene Sharkey.
Q And did you miss the trolley car? A Yes, missed the last car.
Q What time was it? A We missed the last car that leaves Denville at twenty-five of twelve.
Q What were you doing? A Walking.
Q While you were walking, were you attempting to get a ride? A Yes, hailing cars on the way down.
Q Do you remember anything particular about your hailing cars? A Well, only the way they didn't stop, they kept right on going, most of them, all of them in fact; and when we got about to Tabor—

Mr. McGeehan: I think I must make an objection at this point. I want to have your Honor rule on the subject of the remoteness of this testimony. I object to any testimony in regard to stopping a car two and a half miles from the point of the accident, any car, including the defendant's car.

The Court: I assume the prosecutor intends to prove that at some point north of where this accident occurred the defendant's car was seen and if that is his intention I am going to let him prove it.

Mr. Holland: That is the intention of this, that at this point, which is not two and a half miles away, but a much nearer distance, a shorter distance.

The Court: I don't think a few miles more or less makes any difference whatever as I find it. If that is the intention of the prosecutor I am going to permit him to do it. If you have any objection for the purpose of keeping the record straight, why you are entirely at liberty to make it. If he doesn't, you may strike it all out.

Q Did you afterwards come to the scene of the accident? A Yes.

Q Now, how far away from the scene of the accident was this point that you were going to tell us about some car passing you? A Well, I would not say it was any more than a mile and a half—

Q Now, at that point just tell us what happened?

Mr. McGeehan: I object to that on the ground that it is too remote and irrelevant to the happening of the time and place that is the subject of this indictment.

The Court: That is overruled for the present.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q (Question read.) A Well, I saw a car on the Tabor hill, coming toward Denville; I saw a car coming over the top of the hill and as it passed us I recognized Mr. Arkie.

Q Just a moment. Which way was he going? A Toward Mountain Lakes. Just before he passed us I saw two cars going up the hill.

Q Which was were they going? A Toward Morristown. One was a large touring car with

curtains, and about fifty feet or perhaps a little more in back of it was a sedan, and in it I saw only one man driving. As Mr. Arkie passed us I saw the sedan pass the touring car, just a little before it got to the curve. Well, we proceeded, I believe, a half a mile down the road and we were picked up by Mr. Arkie, who came to the scene of the accident.

Q Did you recognize the man who was driving the sedan? A No.

Q But you noticed that it was a man? A Yes.

Q And how near to you did the man drive? A Very close.

Mr. McGeehan: Object to that on the same ground as the previous objection.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q How was he coming, fast or slow? A Well, fast.

Q When you got to the scene of the accident did you see the Buick? A Yes, I saw the car, the sedan.

Q Was it the same? A Well, yes, I would say it was.

Q Was there any other sedan you passed or that passed you as you were walking there? A No, not that I remember.

Q Which side of the road were you walking on as you were coming toward Morris Plains? A The right.

Q And you say Arkie came along and picked you up then? A Well, after we got down the road a half a mile.

Q Now, did you hail the car, this touring car that came along, did you hail it? A We did not; we saw that it was crowded with people so we didn't.

Q In reference to where you were walking on the road, how was the sedan driving?

Mr. McGeehan: I object to that for the same reason.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON,
Judge, &c.

(SEAL)

A Well, it was driving toward—it was very far over to the right.

Q And that's the same side you were on? A Yes.

Q Did you stay in the same place as the sedan—

Mr. McGeehan: I object to that, the same objection, and may it be understod my objection goes to all these questions.

The Court: No, you better repeat your objection.

Mr. McGeehan: I object then, for the same reason.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON,
Judge, &c.

(SEAL)

Q —as you had been? A We had to jump out of the way or get over to the right in the

ditch, in fact, because the car was very close to us and there was nothing in the road which would prevent that sedan from getting further over toward the middle.

Mr. McGeehan: I object to that as being irrelevant to the point of the scene of the accident which is the subject of this indictment and is inadmissible.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON,
Judge, &c.

(SEAL)

Q Did you say you did not know Mr. Blaine? A No; never saw him until yesterday.

Q Did you say that any other sedan passed when you were on the right-hand side of the road, which way was Arkie going then? Was he going toward Mountain Lakes or toward Morristown? A When the sedan passed us he was just coming over the hill toward Mountain Lakes.

Q Did you say that any other sedan passed you going in the same direction? Toward Morris Plains? A Yes, none that I saw, several cars, but none of them were a sedan.

Cross examination by Mr. McGeehan.

Q You hailed a lot of cars there that day, Mr. Collins, did you? A Yes.

The Court: Night.

A (Continued.) That night.

Q And do you know how many you hailed? A I would say not more than five at the most.

Q And you didn't see anything about the sedan that made you recognize it as the same one in the accident afterwards, did you? A Well, no, I can't say that.

Q And your interest was to get a ride in some car that would take you along to Morristown? A Yes.

Q It was over on its right-hand side of the road as it went along? A Yes, over to the right.

The Court: When he passed him?

The Witness: Yes.

Mr. McGeehan: I move at this time that all this witness' testimony be stricken out on the ground that he states he did not recognize it.

The Court: He says that is the only sedan that passed him.

Mr. Holland: It is a well-known fact the State has no right to appeal; that the only right to appeal rests in the defendant and upon the ground that Mr. McGeehan states that he moves to strike out the testimony because he didn't recognize, did not positively recognize, the sedan, that is because this young man did not distinctly recognize the sedan to be the same as the Buick, I consent that it be stricken out.

Mr. McGeehan: Well, the Court has ruled, I understood.

Mr. Holland: Well, you just made your motion.

The Court: If the prosecutor consents there is nothing else to be done.

Mr. McGeehan: Do I understand you that his testimony be stricken out? Then there is no cross examination.

Mr. Holland: No; I consent to so much of his testimony being stricken out as relates to the recognition of the same car.

Mr. McGeehan: Then I press my motion to strike out all the testimony. My motion is to strike out all of the testimony.

The Court: That is denied.

Mr. Holland: The testimony is that Arkie was going the other way at the time the sedan passed and then Arkie picked up the boys and took them to the scene and saw this car smashed up.

Mr. McGeehan: I understand the Court has denied my motion and I ask an exception to it.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Mr. McGeehan: Do I understand none of his testimony is stricken out?

Mr. Holland: I consent to his testimony being stricken out as to what he recognized as the Buick sedan.

Mr. McGeehan: My motion was specific when I understood the prosecutor to consent to strike out—

The Court: You moved to strike out all this witness' testimony. That has been denied.

Mr. McGeehan: Referring to circumstances which were remote.

The Court: Yes, that was several minutes ago.

Q He was far over on the road when he passed you and you stepped off the road and let it go by? A Had to, yes, sir.

Q And was a truck in front of it at all when he passed you? A A truck?

Q Yes. A No.

Q No truck you saw? A No truck.

Q There was a touring car? A Yes.

Q Large one, was it? A Very large; full of people.

Q Full of people? A Yes.

Q Was it in front or behind the sedan? A In front when he passed us.

Q And then the sedan passed that? A Passed that before he got to the top of the hill.

Q Toward Morristown? A Yes.

Mr. McGeehan: That is all.

(Witness excused.)

EUGENE SHARKEY, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Where do you live? A Morristown.

Q Do you remember the night you were walking home with Collins? A Yes.

Q Do you remember what time it was? A Not exactly, no.

Q How did you come to walk home? A Missed the trolley.

Q Missed the last trolley? A Yes.

Q And as you were coming along the road were you attempting to get any rides? A Certainly.

Q About how many cars did you hail? A Approximately about five.

Q Did you finally get a ride? A Yes.

Q Who picked you up? A Peter Arkie.

Q And before Peter Arkie picked you up, did you see Arkie going on up? A Yes, I saw him going up before he came along—

Q Did you notice anything—I don't want to lead you—or have anything attract your attention before Peter Arkie got to the top of the hill?

Mr. McGeehan: I object to that on the ground it is too remote.

The Court: The same ground as referred to Collins?

Mr. McGeehan: Yes.

The Court: For the same reason it is overruled.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

The Court: Did you signal any other cars?

The Witness: Yes, we signalled them before Arkie came along.

Q Did you afterwards get to the scene of the accident? A Yes.

Q How far away from the collision was this place where these two cars passed you? A Well, about a mile and a half to two miles.

Q How did that attract your attention as that was passing?

Mr. McGeehan: Object to that on the same ground.

The Court: Objection overruled.

(Exception allowed and sealed).

C. F. WILSON,
(SEAL) Judge, &c.

A The only thing that attracted our attention was it was right on the side of the road and this car came up and we just stepped out of the way.

Q That was the only thing, this car just came up and you stepped out of the way? A That was the only thing.

Q At that time was the sedan in front of or in back of the touring car? A In back of the touring car.

Q And it was going on the right hand side of the road? A Yes.

Q And how near over to the right hand side of the road were you and Collins walking? A Walking right on the edge of the amasite.

Q And did you have to step off? A Yes.

Q Why? A Why, we would have got hit.

Mr. McGeehan: Object to that for the same reason.

The Court: And for the same reason it is overruled.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q Was there anything on the other side of the road at the time this car was passing? A Not a thing.

Q How soon after—how long after, how many minutes after—I withdraw that. How soon after did Peter Arkie pass toward Mountain Lakes? A Well, oh, a few seconds after.

Q And did he pick you up on the way back? A Yes.

Q At what point was that, how far was that? A Oh, that was right there where you go in toward Tabor Lake.

Q How far from—oh, it was further down than that? A It was down where you go past the Tabor Lake.

Q And how near the Sire estate was that? A Oh, I could not say, about three-quarters of a mile or a mile.

Q And did you come upon the accident then? A Yes.

Q Did you get out? A Yes.

Q Did you see the men lying in the road? A Yes.

Q Whereabouts in the road were they? A On the right hand side of the road.

Q And did you see the Buick sedan? A Yes.

Q Did you recognize it as being the same sedan?

Mr. McGeehan: Object to that as leading.

Mr. Holland: I withdraw it if it is leading.

Q Did you recognize the Buick sedan? A Well, yes—at least, I did not recognize it only it was four or five minutes or so he had passed us and it was the only large sedan that passed us.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q You didn't notice anything particular about the car as it went by you that would enable you to recognize it as the particular car? A Not a thing.

Q And you of course thought it was the same because you do not remember seing any sedan except the one that passed you, is that right? A Yes.

Q Now then, the position or place that you remember the sedan passing you was beyond the Dickerson store, is that right, on the road away from Morristown? A Yes.

Q Over three miles away from the Sire property? A I don't know, I just took a guess at it and said about two.

Q Might be three? A Might be three.

Mr. McGeehan: I now move that the testimony of this witness in its entirety be stricken out or at least the same referring to the manner of the driving of the sedan referred to by him in his testimony, on the ground that it is too remote to be evidential of the fact under inquiry in this indictment and secondly because there is no evidence that this sedan was owned or driven by this defendant.

The Court: I am not going to strike it out, Mr. McGeehan, because this witness and the Collins witness before, testified that a sedan coming toward Morristown went by them somewhere near Mount Tabor that subsequently they came down and found this accident was vitally near the Sire place, three miles or something like that and that they found the sedan at that place and the fact that that's the only sedan that passed them. It is for that reason I am keeping that in the case.

(Exception allowed and sealed).

C. F. WILSON,
(SEAL) Judge, &c.

Q Now, Mr. Sharkey, this sedan, whichever it was, that passed you beyond the Dickerson store, didn't stop and pick you up? A No, it didn't.

Q And it passed along on its right side of the road? A Yes.

Q And then it overtook the touring car that was ahead of it? A Just before it reached the top of the hill.

Q It passed the touring car on the left of the touring car? A Yes.

Q That is the proper side? A Yes.

Q And continued on? A Yes.

Q And up to the time that it passed the touring car, it was running straight along the right side of the road, wasn't it? A Yes.

Q And then, overtaking it, he passed the touring car and went on? A Yes.

Mr. McGeehan: That is all.

(Witness excused).

CHESTER RITZER, sworn on behalf of the State, testifies as follows.

Direct examination by Mr. Holland.

Q Mr. Ritzer, wee you riding with your brother, Carl Ritzer, when you came upon the scene of this collision? A Yes, sir, I was.

Q That was the night of the 23rd of March? A Yes.

Q And do you remember the car turned around and came back and your brother jumped off? A Yes.

Q Who was driving the car? A My brother Frank.

Q And did you get out of the car? A I did.

Q And did you see the defendant, Mr. Blaine, there? A Well, I saw him, but I did not recognize him.

Q Yes, and did you see—what, if anything, did you see of the accident besides the car? A The two men on the ground.

Q On what side of the road were they? A On the right side toward Dover.

Q And whereabouts in reference to the shoulder of the road? A They were just off when I saw them.

Q And was yours the first car there? A Yes, sir.

Q This might be leading and I won't press it if you object. Did you see a flashlight? A Yes, sir.

Q Where did you see the flashlight? A Why, it was right across from the two bodies about the center of the road.

Cross examination by Mr. McMcGeehan.

Q Mr. Ritzer, you helped put Mr. Blaine in the car, did you? A Yes, sir.

Q And in doing so, you did not detect the odor of any alcohol on him, did you? A No, sir.

Q You helped your brother put him in the car? A Yes, sir.

Q Anything about his appearance that would indicate he was intoxicated? A No, but—

Q You did not ride with him? A No.

Q You did not ride with him toward Morristown? A I did not go to Morristown.

Q But you helped him in the car? A Yes.

Q You know Mr. Guerin? A I don't know him personally.

Q I mean, did you see the other man who was there that night? A Yes.

Q After Mr. Blaine was taken away by your brother? A Yes.

Q And you were there at the time he was there? A He was there until the time the State Trooper took him away.

Q Until the State Trooper took him away? A Yes.

Q During any of that time did you see any bottle in his possession? A No, I didn't.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Did you smell any liquor on his breath? A No, I didn't.

Q Did you make any attempt to? A Well, I was right face to face with him and had conversation and did not notice anything unusual with him.

Q How old are you? A Eighteen.

Q You said in answer to a question about Blaine, you were asked, did you notice whether he was drunk and you said no, but,— Did you finish that answer? A I just said he was nervous but might have been due to the fact he was scared.

Q You did not know? A No.

Q You don't know yet, do you? A No, I don't know what caused it.

Q You are pretty nervous yourself? A Well, sometimes; in a thing like that.

Q And didn't you ask yesterday to be excused because of your nervousness? A I did.

Q And I told you if you were not feeling any better—

Mr. McGeehan: We are not bound by this conversation.

Mr. Holland: I think I have the right to neutralize his testimony; we called him, not the defense.

The Court: Proceed.

Q Mr. Ritzer, you don't say that he wasn't drunk, do you? A I could not say.

Mr. Holland: That is all.

(Witness excused).

ISADORE BLACK, sworn on behalf of the State, testifies as follows.

Direct examination by Mr. Holland.

Q Mr. Black, do you remember attending the basket ball game in Summit? A Yes, sir.

Q On the night of March 23rd? A Yes, sir.

Q And did you come home that night by way of Morris Plains? A Yes.

Q Did you go ahead of Chief Dibble or behind him? A Ahead of him.

Q And where were you riding? A In another sedan.

Q Were you driving or riding? A No, sir, I was riding in the car.

Q And as you were riding, was there any discussion—I withdraw that. As you came to the Sire estate, did you notice anything at all? A Yes, sir.

Q What? A Noticed a Ford roadster along the road and two men at the rear left wheel of the car, seemed to be engaged in fixing the tire.

Q How did you come to notice that? A Well, before we had left, my uncle's car—he told us we

had a bad tire on the car and we already passed one fellow fixing a tire.

Q Where? A Along by Madison, I believe it was, and we remarked—

Mr. McGeehan: Please keep out your conversation.

Q We don't want the conversation. But did you make some remark about tires which fixed that in your mind? A Yes.

Q Now, who was driving the car? A Edward Loughlin.

Q And in passing this Ford, upon which side of the road was the Ford standing and where? A On the right-hand side of the road, well over.

Q Now, what do you mean by well over, how do you fix that? A Well, we did not have to turn out. The men were standing both at the left rear wheel and we did not have to turn out in order to pass them.

Q Did you continue on to Dover? A Yes.

Q Did you notice whether or not the lights were on? A Yes, sir.

Q What did you notice? A I merely noticed as I looked sideways, I noticed the front lights were on, that's all.

Cross examination by Mr. McGeehan.

Q How many people were in your car, Mr. Black? A Four.

Q And two young men and two young ladies? A Yes.

Q You were not driving? A No, sir.

Q And you were not completely observing the exact position of the car on the road as you

went by there, were you? A I saw it that moment.

Q You were not driving the car? A No, sir.

Q You were not peeking out the car along the road? A No, sir.

Q Sitting in the rear seat? A Yes, sir.

Q Open or closed car? A Closed car.

Q You just noticed you passed a car where someone was fixing a tire? A Yes.

Q You don't remember your car having to swing out so it could get by? A No, sir.

Q That's all you know about it, isn't it? A Yes, sir.

Q Now, you don't know every turn and every movement on the road that that car made on that entire trip, do you? A No.

Q And you would not remember if that car twisted from a point to the right to the center of the road as you went along that smooth road, would you? A I did not notice any turn.

Q No, but you would not notice it if it were made, would you? A I would not say.

Mr. McGeehan: That's all.

(Witness excused.)

EDWARD LOUGHLIN, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Were you the one that was driving the car that night? A Yes, sir.

Q And Mr. Black was with you? A Yes.

Q Did you see the car in front of Sire's? A Yes.

Q Which side of the road was it on? A Right-hand side.

Q How far over? A I did not have to pull out the way of it.

Q Did you see that? A Yes, sir.

Q Did you see the men? A Yes.

Q What were they doing? A They were fixing the left rear tire.

Q How do you remember that you did not have to pull out of the way? A Mr. Black remarked about them changing a tire; I thought we would have to change one before we got home.

Cross examination by Mr. McGeehan.

Q I don't know whether I got what you said correctly. Did you say, I didn't have to pull out of the way? A No, sir, I didn't.

Q You don't remember pulling out there, do you? A I did not turn out.

Q Were you running on the center of the road or right? A Right-hand side.

Q The extreme right or just to the right of the center? A Well, on the right-hand side, that's all.

Q You are speaking from the way you usually drive your car? A Yes.

Q And on a several mile stretch like that road, you do not make an observation and remember every foot of the way, just whether the car was on the right, except you drive on the right? A That's right.

Q Now, was there any other traffic coming the other way when you passed there? A No, sir.

Q How fast were you going? A Oh, twenty to twenty-five.

Q And there is some slope to the road there, isn't there? A Yes.

Q And going twenty to twenty-five miles an hour you used to ride near to the center, wouldn't you? A Well, I can't say, no.

Q Have you never driven on the center of the road? A I have lots of times.

Q Well, do you know whether you drove to the center of the road that night as you went along there? A Why no; I usually drive right on the right-hand side of the road.

Q Yes, but sometimes you drive in the center? A Not unless there is something in the way.

Q Never ride in the center of the road even if there were no cars coming and no cross roads, you never ride in the center of the road, is that right?

Mr. Holland: I don't think it makes so much difference.

Mr. McGeehan: He says he bases his testimony on what he did because he always rode on the right.

The Court: I will not limit your cross examination, go ahead.

Q Now, Mr. Loughlin, you were not interested in that Ford at all as you went by? A No, sir.

Q You just know your road was not blocked? A No, sir.

Q You don't remember—no accident had happened when you were there? A No, sir.

Q And you just passed along there, you and your friends and know it was somewhere on the road, to the right of the center of the road

and that's all you know? A Well, we remarked about the car, otherwise I probably would not notice it.

Q Yes, otherwise you would not have noticed it at all? A I recollect it.

Q So it's in plain view of your memory, that's it? A Yes, because we remarked about it.

Q What time of night was this? A I imagine from twenty after eleven to half-past, somewheres around there.

Q You think it might have been earlier than that? A No, because the rate of speed I was going, I got to Dover five minutes after twelve.

Q You came from the basketball game? A Yes.

Q You left after the first half or after the entire game was over? A There were five or six games if I recall rightly.

Re-direct examination by Mr. Holland.

Q Did you mention to anybody that you had left after the first half? A Not that I know of, no, sir.

Q Did anybody suggest that to you? A No, sir.

Mr. Holland: That is all.

(Witness excused.)

James Ketch, direct.

JAMES KETCH, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Ketch, where do you live? A Morristown.

Q Where do you work? A Public Service Electric and Gas Company.

Q And you drive a car? A I do.

Q Do you remember the night of March 23rd, 1926? A I do.

Q Where had you been that evening? A Rockaway Masonic Lodge.

Q Who were you coming home with that night? A Harry Haimowitz.

Q Who was driving? A Harry Haimowitz.

Q As you came past the Sire estate at Morris Plains, did anything attract your attention at all? A Well, I noticed that Ford roadster parked on the right-hand side of the road. I would say the wheels were about even with the amasite and there were two men appeared to be taking the left rear tire off and when within forty feet of the Ford roadster, Mr. Haimowitz sounded his horn and one put a flashlight in the back of his back.

Q You saw the flashlight flash? A Yes.

Q Now, at the time you saw the flashlight flash where was the man standing? A They both seemed to be down by the tire. Neither one, I think, were standing.

Q How far over on the right-hand side of the road were they? A I would say under the wheels, about at the edge of the amasite when I seen the men, because it was dark.

Q Were the lights lighted on the car? A The head lights were lighted, I did not see the tail light.

James Ketch, cross.

Q But you saw the flash light when the horn sounded? A Yes.

Q Now, what kind of a driver is Haimowitz, careful driver or reckless driver?

Mr. McGeehan: Object to that.

Mr. Holland: I withdraw that.

Q Why, if you know—do you know why Haimowitz blew his horn?

Mr. McGeehan: Object to that.

Mr. Holland: Is Mr. Haimowitz in court?

The Witness: He was, but I think he left.

Mr. Holland: He is still here.

Q About what time was it? A I should say quarter to twelve, I don't know exactly.

Q What time did you leave your Masonic meeting? A We left the lodge in the neighborhood of 11:20, but we had to get the car out where it was parked and I could not say exactly what time we left Rockaway.

Cross examination by Mr. McGeehan.

Q You did not see any tail light on this Ford? A No, sir.

Q And then the light, the only light that you saw after the horn was blown, someone lit a flashlight? A Someone flashed a flashlight but the head lights were lighted.

Q That was not my question at all. The only light you saw when you came along at the rear of the car was the flashlight?

Mr. Holland: Just a minute.

Q Did you pass it coming toward the rear? A No, coming from Dover to Morristown.

Q When you passed the other side of the road you proceeded to get by without turning? A I was proceeding on the right side of the road.

Q Now, you saw the head lights clearly? A Absolutely.

Q Were they very bright? A I would not say whether at that time they were bright; they were lighted.

Q That is true? A Absolutely.

Q And you say both the men seemed to be down— A I don't know what they were doing.

Q Down by the tire? A Yes.

Q But not behind the car? A No.

Q They were alongside the car? A Alongside the tire.

Q Toward the center of the road from the right as you go toward Morristown? A Alongside the rear wheel.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Mr. McGeehan asked you if you saw the tail light. Did you look over to see? A No, I did not turn around after we once passed them, because they were not in trouble.

(Witness excused.)

HARRY HAIMOWITZ, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Haimowitz, where do you live? A 87 Speedwell avenue.

Q You are the proprietor of the Model Restaurant? A I am.

Q Do you remember where you were on the evening of March 23, 1926? A I do; to the Rockaway Masonic meeting.

Q Were you driving home? A I was.

Q And who rode home with you? A Mr. Ketch.

Q Were you driving? A I was.

Q Do you remember when you came by the Sire estate? A I do.

Q What, if anything, attracted your attention, and what did you do? A Why, I rounded the curve and I noticed the lights of a car and as I got up, I thought probably some of the fellows were across the road and I blew my horn.

Mr. McGeehan: I object—

The Court: He can tell why he blew his horn, I guess I would do the same thing.

Mr. McGeehan: Undoubtedly, my motion is to strike out what he said about that on the ground it is not proper evidence.

Mr. Holland: I may consent to save time.

The Court: All right, proceed.

Q Now, just tell what you saw and did? A I seen the lights of the car and blew my horn and in answer to that one of the fellows flashed a flashlight in back of him.

Q Where was he when he flashed the flashlight? A Near the car.

Q Near which car? A His car.

Q Ford car? A I couldn't tell what kind of a car it is.

Q Now, where was that car? A At the side of the road.

Q Which side? A The right side going to Dover.

Q That is, the right side going to Dover? A Yes.

Q And on which side of the road were you coming along? A The right side going to Morristown.

Q Now, did you have lots of room to pass? A Plenty.

Q How much room? A Enough room for a couple of cars to pass.

Q What time, if you remember, did you leave the Masonic meeting to come home? A I can't recollect exactly, but it was after 11:00.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q You don't know just exactly on the road where this car stood? A It was right across from the Sire property.

Q I mean, you did not notice particularly just where it stood on the road? A I know that it was on the right side of the road and pretty well off the road.

Q But there was enough room between it and the other side of the road for two cars to get through, is that right? A Yes.

Q Did you see the patch on the road that's shown on the map there? A No.

Q Do you know exactly where it stood with regard to any patch on the road? A No.

Q You just passed it in the night and saw these two lights on it after having blown your horn? A Yes.

Re-direct examination by Mr. Holland.

Q Now, Mr. McGeehan said, you saw these two lights on after blowing your horn. Did you see these lights on before you blew your horn? A Yes, I stated that.

Q You say you passed right on by and no patch in the road or anything else either attracted your attention or detracted your attention? A I did not notice it.

Re-cross examination by Mr. McGeehan.

Q How far from the car would you say the flashlight was, the flash of the light? A It was right near the car.

Q How near the car, if you can tell by inches? Was it within a foot of it? A No, right close to the car.

Q Did he flash that light toward you? A In the back, he just turned around backwards and flashed it at me.

Q In the rear of himself? A Yes.

Mr. McGeehan: That is all.

(Witness excused.)

FRANK B. JEWELL, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Jewell, where do you live? A Wharton.

Q What is your business? A Well, garage and bus business, truck.

Q On the night of March 23rd were you driving? A Yes, sir.

Q From where to where? A From Summit to Wharton.

Q Did you attend that basketball game? A I did.

Q What were you driving? A A bus.

Q How many people in it? A Oh, I don't know, maybe eighteen.

Q Did you notice anything—do you know where the Sire estate is? A Yes.

Q Did anything attract your attention? A Yes.

Q What? A A Ford car, I think it was a Ford; I could not swear to that—

Q Where was the car that you saw? A On the right of the road.

Q What about it that attracted your attention? A Stopped there, that attracted my attention. There were two cars coming, probably five hundred to a thousand feet, I remember, the opposite direction I was going. The lights of these two cars shows me this car on the side of the road. I had to slack up a little bit; not much, to let the first car go by, so I could get around this car that was stopped on the side of the road.

Q You had a bus? A Yes.

Q How much did you have to pull out in order to pass the car that was standing on the side of the road? A I don't know, but I imagine—I am not sure, but I let the first car pass so that I could get in past there.

Q And how far on the right-hand side of the road was that standing in reference to the amasite? A Oh, I should say the rear about two feet on the amasite, the left of his car.

Q The left of his car was about two feet on the amasite? A I would say so.

Q Then where was the right of his car standing; on the shoulder or off the shoulder? A I imagine that would be right on the shoulder.

Q Did you notice whether his lights were lighted? A No.

Q You did not notice? A No, there was two cars coming.

Q And you were watching them yourself? A Yes.

Q What size bus were you driving? A Twenty-one passenger.

Q How wide is it? A I don't know how wide it is, maybe seven feet, seven and a half feet, something like that.

Q Did you notice what the men were doing? A I noticed two men in the rear of the car. I did not know what they were doing there.

Cross examination by Mr. McGeehan.

Q What time were you there? A I don't know exactly, I got to Dover quarter to twelve.

Q Got there quarter to twelve. About how long did it take you from the time you passed that car and got to Dover? A Oh, maybe twenty-five minutes.

Q Maybe twenty minutes; and about how many miles is it, about eleven? A No, about seven miles, I guess.

Q So this was sometime around quarter after eleven, was it when you went up there? A Yes, maybe twenty after eleven.

Q Now, you don't remember seeing that Ford until you saw it in the light of the two other cars coming the opposite way from you? A Yes.

Q You don't recollect seeing any lights or any tail light on the Ford? A No, sir.

Q Now, you remember having to draw out to your left or having to stop and then to draw out to your left to get around that Ford which was there? A No, I did not stop.

Q Well, slowed up? A I slowed up so the car coming could go by.

Q I should have put my question that way. Now, do you remember having to slow up your bus in order to let another car go by in the opposite direction? A Yes.

Q And that other car was riding on its right-hand side of the road? A He was.

Q And wherever the Ford stood, it did not permit you to go straight ahead along the road and pass that other car? A It did not.

Q And then when you did pass it, you had to turn out to your left and go around it? A I did.

Re-direct examination by Mr. Holland.

Q Now, you don't really know whether you could have gotten through that space or not? A I did not take a chance.

Q You had eighteen people there? A Yes.

Q And you are a careful driver? A I am supposed to be.

Mr. Holland: That is all.

(Witness excused.)

ROBERT F. HAND, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Hand, where do you live? A Morristown.

Q And do you remember the night of March 23rd? A I do.

Q Where had you been that evening? A To Rockaway.

Q Where? A Masonic meeting.

Q And did you leave the Masonic meeting that evening? A I did.

Q What time? A Oh, between half-past eleven and quarter to twelve.

Q Have you got that time definitely fixed or is that your best judgment? A No, the last time I looked at my watch it was 11:30 and I know we were still in the hall yet.

Q You don't know whether your watch was absolutely accurate or not? A I do not, it very seldom is.

Q Were you driving? A I was.

Q Did you take anybody home with you? A I did.

Q Who? A Douglass Bingham, William Lawrence and William Stevens.

Q As you came on toward Morristown, did you take the road which would lead past the Sire estate? A I did.

Q Did you notice Sharkey and Collins on the road? A I did.

Q And did you stop? A I couldn't.

Q You had a full load in your car? A For a Ford, yes, sir.

Robert F. Hand, direct.

Q And from the time you passed these two boys until you got to the scene of the collision, did any other cars pass you? A Yes.

Q How many? A Two.

Q Did you see them? A Yes.

Q What were they? A A touring car and a sedan.

Q Did you see the sedan; did you recognize the sedan? A Well, as a Buick sedan.

Q It was a Buick sedan? A Yes.

Q Were there any other cars besides the Buick sedan and the touring car from the point where you passed the boys until the scene of the accident? A I don't remember any.

Q Do you think it likely—I am asking a fair question and would like a fair answer—do you think it likely that other cars passed you that you don't remember?

Mr. McGeehan: I object to that.

The Court: Objection sustained. He said those were the only two cars.

Q This sedan, did it pass you? A It did.

Q Fast or slow?

Mr. McGeehan: I object to that on the ground it is a point too remote from the accident.

The Court: Somewhere within three miles?

Q At the time the sedan passed you, how far away do you think you were from the scene of the accident? A Possibly little over a mile.

Q And at that point how fast was he going?

Robert F. Hand, direct.

Mr. McGeehan: I object, first on the ground that it is too remote to be admissible and relevant to the issues in this case and secondly because it is not identified as the sedan of this defendant and third, because this witness is not competent to testify to speed.

Mr. Holland: I withdraw the question at the present time.

Q The sedan that passed you, did you see it again afterwards? A Well, I saw the same kind of sedan.

Q Where? A In the woods.

Q The Blaine sedan? A Yes.

Q And did you recognize that to be the same kind of a sedan? A Well, it was a Buick sedan that passed me and it was a Buick sedan that I saw in the woods.

Q Was there any other Buick sedan that had passed you from that point to the place of this accident? A No, sir.

Q Did you come upon the scene of the accident? A I did.

Q And did you get out? A I did.

Q And did you see the men in the road? A I did.

Q And were they living or dead? A One was dead and one was still alive yet.

Q Did you feel of the bodies at all? A I did not, no, sir.

Q Where were these men laying? A On the shoulder of the road.

Q Which side, which shoulder? A The right going from Morris Plains to Tabor.

Q And coming back now to this car you say first passed you, was it going toward Morristown, toward Morris Plains? A Yes.

Robert F. Hand, direct.

Q You were going in the same direction? A Yes.

Q On which side did it pass you, the right or left? A Left.

Q And how fast was it going?

Mr. McGeehan: I object to that on the same ground as the previous question.

Mr. Holland: I withdraw that question.

Q Was it going fast or slow?

Mr. McGeehan: I object to that on the ground that it is too remote and on the ground that it has not been identified as the sedan of this defendant and secondly, that this witness is not competent to testify to speed or characterize it.

Q How long have you been driving cars? A Five years.

Q Your own car? A Yes.

Q You drive often? A Every day.

Q Was the car, the sedan that passed you, going fast or slow?

Mr. McGeehan: Same objection, except for qualifications.

The Court: You admit he is qualified now?

Mr. McGeehan: Yes, I say the same objection except for qualifications.

The Court: Objection overruled.

(Exception allowed and sealed).

C. F. WILSON,
(SEAL) Judge, &c.

A Going fast.

Robert F. Hand, cross.

Q How fast were you going? A Well, I had a Ford with a load, going up a hill, say about twenty miles at the most.

Q And how fast was he going? A Too much for me, except a fast rate; very fast rate.

Cross examination by Mr. McGeehan.

Q Mr. Hand, do you know the hill known as Elmer Dickerson Hill? A Is that the hill this side of the Dickerson store?

Q Yes. A Yes.

Q That's right by this store? A Well, the Tabor hill coming this way.

Q Is that the hill? A Yes.

Q Is that only a mile away from the scene of the accident? A Well, I would judge about a mile or a mile and a half; I don't know, I did not measure it.

Q Then it might be two and a half or three miles? A It could be, somewhere between a mile and three miles.

Q Your judgment is, it is somewhere between a mile and three miles? A Yes, I did not measure it.

Q I want to get your best judgment on it, that's all. Now, when you got to where the accident had happened, Mr. Blaine had already been taken away, hadn't he? A He had.

Q And was Chief Dibble there at the time? A He was.

Q And how long did it take you to traverse that distance from the Dickerson store hill to the point of the accident? A Could not tell you; didn't time it.

Q How fast were you going, about? A Between twenty and twenty-five miles an hour; can't do much better than that with a Ford and

stay on the road; it was down hill and I wasn't going to take any chances with a Ford.

Q You think twenty to twenty-five miles an hour? A Yes.

Q And you think it's about a mile, between a mile and three miles? A Whatever the distance is.

Q You did not make any stops between the time you saw that car pass you on the Dickerson hill and the point of the accident, did you? A No, sir.

The Court: Mr. McGeehan, I have not heard anywhere from this witness as to what was the point the car passed.

Mr. McGeehan: I thought he had said so.

Q And you testified before that it was on the hill by the Dickerson store where this car passed you? A No, I did not testify where it passed me.

Q Where did it pass you? A It passed me when I was going down the other hill.

Q Nearer to the point of the accident than the Dickerson hill? A Yes, the other side of that same hill.

Q Coming on toward Morristown? A Yes.

Q How far is that from the hill right at the Dickerson store? A It's quite some distance.

Q Well, approximately, over a mile, half a mile? A Yes, a good half mile.

Q Now, from that point where this other car passed you up to the time and point where the accident was when you got there, you made no stops at all? A No, sir.

Q When you got there, Blaine had already been taken away? A Yes.

Q Now, you don't know whether another Buick sedan passed you other than the defendant's, do you? A I did not see a sedan, another sedan pass me, I could say that was the only one.

Q Now, in between the point where this other sedan passed you and the point where the accident occurred, there's cross roads, prominent cross roads, isn't there, that a car could turn off? A There's cross roads.

Q Or turn in from? A There's cross roads.

Q If it took you more than five minutes from where that car passed you up to the scene of the accident— A I should not say that.

Q And of course you don't know how much before you got there Mr. Blaine was taken away, do you? A No, he wasn't there when I got there.

Q You don't know how long before you got there that accident happened, do you? A No.

Q You don't know exactly what time you got there? A Well, I know when I was there it was five minutes after twelve, and I might have been there two or three minutes before that by my time.

Q And that car that passed you, whatever car it was, passed on your left hand side? A Yes.

Mr. McGeehan: That is all.

(Witness excused).

DOUGLASS BINGHAM, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Bingham, were you one of the men who was riding in the car with Mr. Hand? A I was.

Q And do you remember seeing two boys at the foot of the Tabor hill? A I do.

Q And your car was full? A Yes, car full of passengers.

Q And did the boys hail you for a ride? A They did.

Q And of course, you did not stop and take them? A No, we didn't.

Q Now, after you passed that place on the hill, did a car pass you? A Not on that same side of the hill, no.

Q On the other side? A The other side.

Q How far away from Dickerson's store, approximately? A I should say a half a mile.

Q And what kind of a car was it that passed you? A I really did not notice. A dark blue sedan, I don't know what make it was, I was in the back seat away from the road, so I can't tell.

Q Was there any other blue sedan passed you? A I do not recall any other car passing from up in Rockaway to that point in the same direction we were going.

Q And in the other direction? A I would not say for sure about that.

Q Was your attention directed to this large blue sedan? A Well, yes, somebody made the remark how fast it was going.

Q Not about the remark, did you see? A Yes, I saw that it was going at a very high rate of speed.

Q What did you see about it? A Well, the back of the car was bobbing up and down.

Q Is that a comparatively smooth road? A Yes, I would call it a comparatively smooth road.

Q And just illustrate for us what you mean by the back of the car was bobbing up and down? A Going up and down like this (illustrating).

Q Were you people traveling at a high rate of speed or moderate rate? A Well, hardly at a high rate of speed, twenty miles an hour, twenty-two, I should say.

Q Did you continue on until you got to the scene of the accident? A Yes.

Q Did you get out? A We did.

Q Did you see where the bodies were? A I did.

Q Where were they? A I should judge about ten feet behind the Ford car; one was lying with his head toward the road and one with his head toward the woods. The one nearest Tabor was still breathing and the other fellow was dead.

Q How long did you stay? A Oh, about ten minutes, five or ten minutes.

Q And then you went on? A Yes.

Q Did you see the Buick sedan in the woods? A I did.

Q Did you recognize it? A Well, as to color and size, but not as to name.

Q Did you recognize it as to color and size? A I did.

Q How did you recognize it as to color and size? A Well, dark blue sedan and general size of car that passed us.

Q What did you recognize it by? A Well, recognized it by the back, I did not examine it thoroughly.

Q What did you recognize the blue sedan as, what did you recognize this to be? A The car

that passed us on this side of the Tabor hill, that is, the car that passed us the other side of the Tabor hill.

Q You recognized that car as the car that passed you on the Tabor hill? A It bore close resemblance, I won't say it was the one that passed us.

Q At the time you saw the car, there was no question in your mind that that was the same car?

Mr. McGeehan: I object to that as extremely leading and particularly in view of what this witness himself said.

Mr. Holland: Well, I withdraw it.

Q Did you see a flashlight? A I did.

Q Where did you see it? A Well, right in there, about the middle of the road.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q That flashlight you saw in the middle of the road, Mr. Bingham, did you observe its position with relation to a patch on the road that now appears on the map? A I really did not observe the patch on the road at all that evening.

Q But it was in the middle of the road? A About the middle, yes.

Q Mr. Bingham, do you know whether when you saw the two boys at the foot of the Tabor hill, any other cars were passing, others coming up that hill? A I don't recall any; I won't say there were none, I don't recall any.

Q Where the sedan you speak of passed you, was that the other side of that Tabor hill from—

A The other side—I think the same side coming this direction.

Q Were the boys walking past then at the point where the other car passed you? A No, absolutely not, not at the point where they passed us.

Q From the point where the boys were passed when they were walking, they could not see where the sedan passed you? A No, absolutely not.

Q Then you don't know whether or not two cars were, at that time, passing each other going up the Tabor hill? A I could not say, I don't recall that.

Q So when the other car passed you, it was going down hill? A Yes.

Q That a straight hill there? A No, there's about a little "S" turn, I call it.

Q And at the point where this car passed you, it passed you on the correct side, the left side? A On the left side.

Q Of course, you could not very well estimate its rate of speed? A I would not care to, except at a high rate of speed; he was going at a high rate of speed.

Q And were you going at a high rate of speed? A No, about twenty miles an hour, twenty-two.

Re-direct examination by Mr. Holland.

Q You say—did you say the car was standing about that way? A About, I think the front wheels were straight when I saw it; it was about in that position (indicating), about that much on the hard surface.

Q In any event, when you got there the car was on the right hand side of the road that it

had been heading? A It was on the right hand side of the road it had been headed.

Q And you say the flashlight was in the center of the road about opposite the rear end? A Well, I did not say in that position, I don't know exactly just where it lay in the road.

Re-cross examination by Mr. McGeehan.

Q Did you see any large touring car when you passed those boys; did you see any very large touring car full of persons? A No, I did not see any other car except the one that passed us, the sedan.

Re-direct examination by Mr. Holland.

Q Did you pass the boys first or did this big blue sedan pass you first? A We passed the boys first about there by Dickerson's store.

Q Yes, and you do not know whether or not any touring car turned off there at the Dickerson cross road before the blue sedan passed you, do you? A You mean before we met the boys, I don't know, the boys were right there at that corner.

Q That's where the boys were when you passed them? A Yes.

Q And you continued on? A Yes.

Q And then the blue sedan passed you? A Well, further down.

Q But you don't know whether any touring car turned off from that road behind you? A I do not.

Mr. Holland: That is all.

Mr. McGeehan: Yours was a Ford sedan?

The Witness: Yes, Ford sedan.

Mr. McGeehan: That is all.

(Witness excused.)

The Court: At this time we will adjourn until two o'clock.

(Thereupon the Court cautioned the jury not to discuss the case.)

AFTER RECESS.

FRANK RITZER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Ritzer, where do you live? A Wharton, New Jersey.

Q Are you a brother of Carl Ritzer and Chester Ritzer who were on the stand? A I am.

Q And are you the brother who was actually driving the car? A Yes.

Q And I understand you went on up and turned around and came back? A Yes, sir.

Q And about where was the car when your brother jumped off the running board? A Well, I should judge about fifteen feet from the Ford.

Q That is, before you reach the Ford? A Yes.

Q And did you continue on? A I did.

Q And get out of the car? A I did.

Q Did you stop your car before you got out? A I did.

Q Now, did you see the defendant, Blaine? A I did.

Q Did you know him; I mean, did you know Mr. Blaine? A Not personally, no.

Q Is this the defendant that you saw? A It is.

Q Where was he when you first saw him? A He was standing in the middle of the road.

Q He had gotten out of the Buick? A I don't know.

Q Where was the Buick? A Buick was over in the woods.

Q And how far to the rear of his Buick was he standing? A Well, I should say about six feet.

Q Out in the middle of the road? A Out in the middle of the road.

Q Well, what was he doing? A He was flagging me.

Q And did you get out and talk to him? A No, sir.

Q Now, you did not see him on the way up? A No, sir.

Q You only saw him when you turned around and were headed back down again, is that right? A Yes, sir.

Q Did you talk with him? A No, sir.

Q Did you observe him? A Yes, sir.

Q What did you observe about him? A He was bleeding from his face and he had an awful strong breath.

Q What do you mean, strong breath, strong with what? A Alcohol.

Q Where was your younger brother, Chester, at the time? A I think he was standing along side of me, if I am not mistaken.

Q What had your brother Chester been doing, on the way up? A He was sleeping.

Q And what awakened your brother Chester? A Why, somebody made the remark about the accident.

Q No, just what awoke him? A That's what I say.

Q Just that somebody made a remark about the accident? A Yes.

Q Now, was there any question at all in your mind about the alcoholic breath when you got out of your car and went where Blaine was? A No mistake whatsoever.

Q And were you talking with Guerin afterwards? A I was.

Q Now, you stayed there—you did not leave the scene, did you? A No, sir.

Q Now, in talking to Guerin, did you smell anything on his breath? A I did not.

Q Do you know whether or not there was any alcholic odors on his breath? A I could not say.

Mr. McGeehan: I object to that; he says he didn't smell any.

The Court: He says he didn't smell any.

Q Why could you not say? A I was smoking cigarettes continually.

Q What do you mean you were smoking cigarettes continually? A Why, one cigarette after another.

Q Now, was Boyd Headley to see you in this case? A He was.

Q How many times did he come to see you? A About three times.

Q And on the occasions that he visited you did Boyd Headley tell you anything about Blaine having been examined by a physician for being drunk? A He did.

Mr. McGeehan: Object to that as not being binding upon the defendant.

Mr. Holland: There is no question that Mr. Headley was investigating this in behalf of the defendant, and while what he said is not binding upon the defendant, I want, nevertheless, to show a basis for the possible defense or for the questions which Mr. McGeehan has propounded to witnesses, didn't you tell Boyd Headley this or that, and my next question is whether the doctor had pronounced him sober or drunk. It seems to me that Boyd Headley told him something, whatever it was, to get this man to change his story, and that would seem to me is material, and that the jury ought to know it. And, I know what his answers are necessarily going to be; I have a pretty good idea of what they are going to be.

Mr. McGeehan: I don't think that any statement made not in the presence of the defendant is admissible in evidence against him and shall note an exception to that rule.

The Court: I sustain your objection and the answer can be stricken out.

Mr. McGeehan: Thank you.

Q How long did you stay there on the scene of the accident altogether? A Oh, I should judge an hour and a half.

Q And during all of that hour and a half, what was Guerin doing? A Why, he was with my brother Chester most of the time, walking around different places.

Q Did you notice anything about Mr. Blaine's gait or walk which made any impression upon you at all? A I did not.

Cross examination by Mr. McGeehan.

Q Do you remember, Mr. Ritzer, the arrival of the next car after yours? A I do.

Q And how long was that after yours arrived there? A Probably fifteen minutes.

Q And who was in that car? A Chief Dibble.

Q Now, was there another car that drove up from the direction of Dover after Chief Dibble's car arrived there? A It was probably five minutes after Dibble got there.

Q Probably five minutes later or twenty minutes after you arrived? A Yes.

Q And whose car was that? A It was a Ford coupe, I don't know who it was.

Q But you know it was a Ford coupe? A Yes.

Q Did any other cars pass the scene of the accident? A No, sir.

Q Did any other cars pass the scene of the accident after the arrival of your car and up to the time of the arrival of the Ford car? A No, sir.

Q Now, Mr. Ritzer, Mr. Blaine was bleeding, wasn't he? A He was.

Q And holding his head? A Yes, sir.

Q Did he give any expressions of pain? A No, sir; just holding his head and said he wanted to be taken to a hospital or doctor.

Q That was before your brother had met with him? Did you help him in the car? A No, sir.

Q What were you doing during the time between your arrival there and the time that Mr. Blaine left with your brother? A Well, I heard my brother—

Q No, what were you doing; what were you devoting your attention to or your action to? A Well, I didn't have very much time to go anywheres, because I got out of the car and was walking around and when I got to Blaine, then my brother said, "My God, here is two men laying dead," and Blaine made an explanation that they were laying there when he got there, so I immediately went over to the two men.

Q How long after you reached there did Blaine leave with your brother? A Oh, I would say about three minutes.

Q And at the time you—were you close to Blaine at any time? A Oh, about two feet.

Q Were you talking to him? A No, sir.

Q Did not talk to him at all? A No, sir.

Q And he was holding his head then? A Yes, sir.

Q How near to the bodies were you at that time? A Oh, I should judge maybe eight feet.

Q Eight feet from the bodies? A Yes, sir.

Q And that's when you smelled the odor of alcohol? A Yes.

Q Did you see a bottle of alcohol that was open in the pocket of one of the men who were killed? A I did not.

Q Did you see the coroner there? A No, sir.

Q He wasn't there at the time, he wasn't there that time, was he? A No, sir.

Q He came later, didn't he? A Yes, sir.

Q Did you see him later take an open bottle of whiskey out of the pocket of one of the men who were lying there? A I did not.

Q Now, you do not know then whether there was any whiskey spilled upon the clothing of one of the men or escaping from the bottle that was open and in the pocket of one? A Well, if you are referring to smell, no.

Q Didn't know that. Now, a distance of eight feet, you could smell alcohol if it were pouring out of a bottle, can't you? A I should think so.

Q So when you smelled the alcohol, not knowing whether there was any being spilled out on clothing there, you thought that it came from Mr. Blaine? A I was positive sure of it.

Q Now, you noticed nothing at all, I think you said, regarding the walking of Mr. Blaine at that time? A I did not see him walk.

Q He was in the road? A Yes.

Q You saw him all the time, up to the time he went away with the machine? A Yes.

Q Now, the first feeling you had, someone as you were coming through hailed your car and held up his hand to stop you?

Mr. Holland: Coming which way?

Q The first time? A No, sir.

Q And when you turned around, you saw Mr. Blaine hailing you then? A Yes, sir.

Q You did not go away from there with Mr. Blaine, of course, did you? A No, sir.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Where was Mr. Guerin; where did you first see him? A He was standing along side of Mr. Blaine.

Q Yes, and were they both out in the road? A Yes, sir.

Q Did you say that Blaine told you that the bodies were laying there when he drove up? A Yes, sir.

Q Just what did he tell you? A He told me, he did not exactly tell me but I was talking there—I don't know whether he was—

Q What did you hear him say? A I heard him say, these two bodies were laying there when I got there.

Q Now, this odor that Mr. McGeehan speaks about, did you smell any odor on the dead men at the time you first got there? A No, sir.

Q Did you smell the odor on Blaine's breath? A I did.

Q It was no question in your minl as to where you were smelling that odor from? A No question whatever.

Q Where did it come from? A It came from Mr. Blaine.

Q Now, you said another car with Dibble came up fifteen minutes after. Did you time it? A Well, I did not exactly time it.

Q Well, do you know how long—do you know the length of a minute? A I do I know the length of a minute?

Q Yes. Now, suppose you just be quiet for a moment and I will hold a watch and you tell me how long is the duration of a minute. Now, when I say go, you start thinking how long a minute is, and when you think the minute is up, you say, now. Now, you get ready and—go. And when you think a minute is up, you tell me? A Pretty near, I guess.

Q All right, you said pretty near. My watch shows it exactly twenty-four seconds, instead of a minute. Now, is that the way you were gauging your time? A I was not gauging the time, no, sir.

Q You don't really mean, do you, that it was fifteen whole minutes before any other car came

along? A Well, it might have been more, it was not less.

Q Well, if your time now for a minute was only twenty-four seconds, then it may have been less? You were short on the minute? A I was short on the minute, yes.

Q Do you remember when you came in under the Culvert at Morris Plains? A I do.

Q Do you remember when you passed the five corners, five corners at Morris Plains? A Yes.

Q Now, from the five corners on up, do you remember whether or not any other big blue sedan passed you? A No, sir.

Q What do you mean by no, sir? A No blue sedan passed me.

Re-cross examination by Mr. McGeehan.

Q You did not go any distance from that scene of the accident at any time? A No, sir.

Q And you saw Guerin all the time you were up to the time the Chief arrived? A Yes, sir.

Q He didn't at any time put anything on the bodies of those men, did he? A No, sir.

Q You are sure of that? A Positive.

Re-direct examination by Mr. Holland.

Q Now, do you know whether he put anything in the pocket of one of these men before you got there? A I do not.

Q From the time that you got there, did you stay until the pictures were taken? A I did not.

Q Well, from the time that you got there until Chief Dibble came, was anything moved out of the position in which it was? A Yes, sir.

Q What? A One body.

Frank Ritzer, re-direct.

Q How was it moved? A Oh, I should judge moved about three feet.

Q How? A Why, we took it off the amasite.

Q It was on the amasite? A Yes.

Q And it was moved where? A Moved back in toward the side of the road.

Q Just indicate on this map, if you will please—do you understand this map? A Pretty well.

Q Do you know what this green line represents? A Yes.

Q What?

Mr. McGeehan: Explain it to him, Mr. Holland.

Q Do you know what this red or brown line represents—do you know it represents the edge of the amasite? A Yes.

Q Do you know that the distance on this map shown to be five feet from the edge of the amasite to the edge of the road is what is known as a cold patch shoulder? Now, with reference to this brown line or with reference to this green line, will you please tell us where one of these bodies were? A Why, I judge the body was right about there (indicating).

Mr. Holland: Will you mark that place with a pencil; where you think that body was. Assuming, I don't suppose you will object to an assumption—assuming there was a car standing about there (indicating).

Mr. McGeehan: No, that is a disputed fact in the case.

Mr. Holland: All right.

Frank Ritzer, re-cross.

Q Assume nothing, just tell us where on that road map, where you think that body was laying with reference to the red and green line and with reference to this twenty-four inch oak if you can? A I don't think I can.

Q Then without reference to the twenty-four inch oak and without reference to any car, just in reference to the edge of the amasite, where the body was lying. Just place your mark anywhere?

Mr. McGeehan: Does the witness know the scale of the map as two feet to one inch?

Q Do you know the scale of the map is two feet per inch? A I do.

Re-cross examination by Mr. McGeehan.

Q How long from the edge of the amasite was it? A I should say about three feet.

Q Well, if you were three feet from the edge of the amasite on the map, it would be only an inch and a half from the edge; understand? Three feet on the ground is an inch and a half on this map. Now, knowing that and knowing this is the edge of the amasite, do you wish to put your mark an inch and a half from the edge? A Certainly.

Mr. McGeehan: May I do that.

Mr. Holland: No, he can do it. I have no objection about putting that wherever he thinks. One inch on this map means two feet, so if you think it would be three feet, it would be an inch and a half. Now, will you cross it on there.

Q Now, the cross you marked, is not intended, Mr. Ritzer, to be the point along the road where you say he was, but the distance from the edge of the amasite? A Yes.

Q Now, when you heard Mr. Blaine state the bodies were there when he got there, do you know whether he was referring to their being on got out of the car after the accident? A I can't know what he was referring to.

Q Don't know what he was referring to? A No, sir.

Q Do you remember his exact words or not? A Well, if I am not mistaken that's his exact words.

Q What were they? A He said, those two guys were lying there when I got there.

Q You don't know whether he meant when he got out of the car after the accident? A I can't say.

Q Was Chief Dibble there at that time? A No, sir.

Q You don't know who he was talking to? A No, sir.

Q You don't know who was questioning him? A Nobody questioning him.

Mr. McGeehan: That's all.

(Witness excused.)

GREGORY W. LOVE, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Love, you were formerly a trooper in the New Jersey Troopers? A I was.

Q And are now occupying what position? A Lieutenant of Police in the Delaware River Bridge, between Camden and Philadelphia.

Q On the night of March 23rd, you were then a trooper? A I was.

Q And did you get upon the scene? A I did.

Q When, about what time? A Shortly after 12:00 o'clock, midnight.

Q In response to some information— A In response to a telephone call to headquarters, yes, sir.

Q Now, when you got there, was Blaine there? A No, sir.

Q Was Guerin there? A Yes, sir.

Q Were the two bodies there? A Yes, sir.

Q And two cars? A Yes, sir.

Q Did you talk with Guerin? A Yes, sir.

Q Just tell the Court and jury what did you do and what did you say and what you saw? A When I got there, there were several cars there at the time and I had to park some little distance from the accident on the right-hand side of the road going toward Tabor and I met Chief Dibble walking toward me, and he reported to me, and I said, well, where were the people—

Mr. McGeehan: Please don't say what the conversation was.

Q Just tell us what you did and what you saw? A Saw a crowd of people—

Q Tell the details of what you saw? A Saw a car down in the woods up against a fence; evidently a Buick sedan, which I later ascertained. I saw a Ford roadster further on up the road and that was the car—they were the two cars that figured in the accident. There were

other cars parked on the side of the road, quite a few people there.

Q Where were the men? A On the right-hand side of the road.

Q And where was the Ford car? A On the right-hand side of the road.

Q And where was Guerin? A Guerin was close by eight men there together; I walked over and picked him out. I was informed that one man had been taken to the hospital and I asked where the other one was and someone said he was around, somewhere around, and I went over where the eight men stood and picked him out myself.

Q Did you smell anything on his breath? A I did.

Q When and how? A I found he was smoking a cigarette at the time, holding it in his hand a little bit while I was talking with him, questioning him on the accident, and I noticed the odor of liquor.

Q Was the odor of liquor upon his breath or was the odor of liquor which might have come from some spilt on the road? A Why, it come off the man's breath.

Q Did you smell any odor of liquor on his breath when he was smoking? A No, sir.

Q What did you thereupon do? A I told Guerin to stay close to me, that he was under arrest. I said I will be around all over and told him to stay close to me, that I had lots to do. I wanted to see who was there to safeguard the evidence. I looked around a couple of times and he was not following me and I had to call to him. Every now and then he would stay away and I would have to get him again and most of the time he was smoking cigarettes, walking all

around. I did not want to lose him because that man was my prisoner temporarily until I found out further information.

Q After the photographer came, what happened then? A The photographer did not come right away.

Q Is there anything in between then and— A Yes, I took Mr. Guerin to the hospital.

Q When? A When Chief Hodges, a few minutes after they fixed his hurt which was reported to me.

Mr. McGeehan: Another man was hurt?

The Court: You may ask him.

Q Then what happened? A I took him to the hospital and had him examined to see if he was injured and he wasn't, to see if he was intoxicated and he was pronounced sober.

Q He was pronounced sober? A Yes.

Q How long after the accident was that? A At least an hour; hour and a half possibly.

Q Yes, then what? A I called up the State Police Headquarters at Morristown and told him—

Q Never mind what you told? A For a coroner, to have a coroner come up there.

Q Did the coroner come? A Yes, to examine the bodies.

Q Well, after the photographs, then what did you do, did you gather up any evidence? A Yes, gathered up all the evidence and ordered the removal of the cars.

Q Are all these Exhibits which have been talked of, talked of as evidence matters, things and objects which were then and there picked up; this flashlight? A Yes.

Q This hub cap, S-8? A Yes.
Q This tube of paste? A Yes.
Q This dust cap? A Yes.
Q And pump? A Yes.
Q Now, you also picked up some glass, didn't you? A Yes, sir.
Q Where did you pick that up? A I picked up some flashlight glass along between the Ford car and the marks where the Buick left the road.
Q Will you indicate that on the map, please. What do you mean by flashlight glass? A Lens from the flashlight.
Q What did you do with that; where is it; pick it out and put it with the others? A It's this, and this is windshield glass (indicating).
Q Will you indicate on the map, if you will please, where you picked up the flashlight glass? A Which is the white-washed pole?
Q Which pole are you talking about?

Mr. McGeehan: There's only one pole.

Q I presume that is the pole? A I picked up the glass between that pole and where the Ford was.
Q Do you recollect whereabouts in between those points you picked up that glass? A It is between—at the point where the Buick left the highway.
Q That's where you picked up the loose glass? A Yes.
Q Now, have you got that loose glass in here; are you able to pick it out? A No, sir, it's not in here.
Q Do you find it in here anywhere. (Showing witness another pile.) A Yes, sir, there's a piece of it; another piece of it; there's a big piece of it (indicating).

Q These are parts of the flashlight lens? A Yes, sir.
Q The lens about the size of that? A Yes, sir.
Q Have you indicated in pencil on the map where you found that? A I have not.
Q Will you, please? A I picked this up in various places.
Q Well, indicate a line along where you found them? A I picked them up along this red line between where the car stood and where the Buick left the road; most of them, right in there (indicating).
Q What is this, flashlight glass? A Headlight glass.
Q That's headlight glass? A Yes. —I retract my statement. I did not pick up any flashlight glass. I meant headlight lens.
Q Is this some of the lens glass from the headlight? A Yes.

Mr. Holland: Now, may I offer the lens glass from the flashlight lens?
Mr. McGeehan: No objection.
(Marked as Exhibit S-11.)

Q Now is this your handwriting on this envelope? A Yes.
Q And these pieces of glass picked up between where the Ford car was headed and where the bodies laid? A Yes.
Q These are pieces of glass picked up between where the Ford car was headed and where the bodies laid? A Yes.
Q These are pieces of glass from the lens of the headlight? A Yes, sir.
Q Now, is this in your handwriting? A It is.

Q Are these pieces of glass from the lots picked up on the place by you? A Yes.

Mr. Holland: I offer these too.

(Received in evidence and marked Exhibit S-12 and S-13.)

Q Now, there is some other glass here; was that picked up by you? A Yes.

Q Where did that come from? A Left side of the Buick car down by the fence.

Q What kind of glass is this? A Plate glass.

Q That's a part of the windshield or part of the window, left front window of the Buick? A Door, left front door window of the Buick.

Q Was this Buick a left hand drive car? A Yes, sir.

Mr. Holland: I offer that.

(Received in evidence and marked Exhibit S. 14.)

Q Now, after you left the scene, then what did you do? A I left the scene twice; which time do you mean?

Q The second time, the second time you left the scene of the accident. —Before you left the scene of the accident, did you look for marks on the road? A Yes.

Q What did you find? A I found there were skid marks, there were tire marks in the road.

Q On the highway? A On the amasite.

Q How far back from the Ford car did these marks begin?

Mr. McGeehan: I object to that; he has not said they were back of the Ford car.

Mr. Holland: That has been testified already, Mr. McGeehan.

A These tire marks were this side of the Ford car.

The Court: South side?

The Witness: South side.

Q Did you see any north of the Ford car? A Slightly on the west side of the highway.

Q Were they pronounced, those on the west side of the highway; just get the pointer if you will please and indicate where you saw those marks and what they looked like. Do you understand the map? A Yes, sir.

Q Let me ask you one question before you do that. Did you see an imprint in the road, a "U"-imprint? A Yes, sir.

Q Were you there when this was fitted into it? A I was.

Q Did it fit? A Yes, sir.

Q Was that the imprint of this standard? A Identical.

Q With reference to the imprint as noted on the map, did you see it? A Yes.

Q Now, tell us where these marks in the road were? A These marks came—

Q Now, do you understand, Lieutenant, that that red piece is supposed to represent a patch? A Yes, sir.

Q Cold patch in the road? A Yes, sir. They came down in a manner somewhat like that (indicating).

Q Will you mark that a little bit heavier. A Shall I continue that mark?

Q Yes, continue the marks until you come to the post in the fence where the car stopped? A (Witness marks.)

Q Well, let me ask you, do you know what the point "F" on the map indicates? A No, it is the spot where the bodies laid, I presume.

The Court: Well, what does it.

Q It has been identified as a road leaving the shoulder on the grass toward the ash tree.

The Court: On the south.

Q Does that help you any? A Yes, I was going to bring this line down here; that's just about where that road came.

Q Well, trace your line now. Did you make notes? A Yes.

Q When did you make these notes? A At the time of the accident.

Q Would referring to your notes help you any in making that location? A They might.

Q Want to refer to them. (To Mr. McGeehan, have you any objection.)

Mr. McGeehan: No, I think not, if the notes will refresh his memory.

Mr. McGeehan: When were they made?

The Witness: At the time of the accident.

Mr. McGeehan: Is that your report, Lieutenant?

The Witness: No, sir.

Mr. McGeehan: Did you draw the map at the time of the accident?

The Witness: I did.

Mr. McGeehan: Have you got that?

The Witness: Yes.

Mr. McGeehan: Is that the map you drew?

The Witness: Yes.

Mr. McGeehan: And this was in your possession since?

The Witness: Ever since, it's a copy of the original I filed at Headquarters.

Mr. McGeehan: That's a copy?

The Witness: Yes.

Mr. McGeehan: Have you the original?

The Witness: The original is filed at Trenton.

Mr. McGeehan: At State Headquarters?

The Witness: Yes.

Mr. McGeehan: Not at your local headquarters?

The Witness: No, sir, that's my copy.

Mr. Holland: I desire to offer it.

Mr. McGeehan: I thought he was using it to refresh his recollection?

The Court: Any objection?

Mr. McGeehan: Yes, it is not evidential.

The Court: On objection from counsel for the defendant, it is excluded; the witness may use it if he wishes too.

Q Here are the rest of your notes and the rest of your report? A May I use these too? I would like to have the report.

Q Here are the rest of your notes and the rest of your report? A May I use these too?

Mr. Holland: I would like to offer the report. I have never seen it, I don't know what's in it. I offer this report of what the officer found that night; I want to offer it?

The Court: Any objection?

Mr. McGeehan: Of course, your Honor—

The Court: Objection sustained.

Witness looks at map.)

Gregory W. Love, cross.

Q Now, Lieutenant, that's the marks that you found, these the marks in the road? A Yes, sir.

Q And is that an exact duplication of the direction that you had on your report? A Yes, sir.

Q That night? A Yes, sir.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q Lieutenant, I understand you to say that you took Mr. Guerin to the hospital? A Yes.

Q And had him examined? A Yes.

Q What doctor examined him? A I don't recall the doctor's name, but he is in court likely.

Q Wasn't it Doctor Wills? A Yes, Doctor Wills.

Q You said you took him there to see if he was injured and to see if he was intoxicated and he was pronounced sober? A Yes, sir.

Q That's right? A That's correct.

Q Did you ask the doctor to determine whether he was intoxicated? A Yes

Q And the doctor examined him and pronounced that he was sober? A That morning.

Q Reported that to you? A Yes.

Q Reported that he was then sober? A Yes, sir.

Q Were you there while the doctor examined him? A Yes, I was.

Q Did he have him take his coat off, did you notice? A I don't recall.

Q Chief Dibble was already there when you got there, wasn't he, at the scene of the accident? A Yes.

Q And the coroner came after your arrival? A Yes, sir.

Gregory W. Love, cross.

Q Now, from the time that you got there up to the time you left, you had told Mr. Guerin to stay close to you? A Yes.

Q You had a lot to take care of? A I did, yes.

Q You were then making observations that are the basis of your testimony here today? A Exactly.

Q And you moved about a great deal, didn't you? A No, sir; I moved slowly from one point to the other; I made about three or four moves.

Q And how long did it take you to do that? A I could not estimate the time, Mr. McGeehan.

Q Perhaps a half or an hour, an hour or an hour and a half? A Not less than an hour.

Q And during that time Guerin did not stay quite close enough to you to conform with what you wanted? A No, sir.

Q And then you would call him, he did not get out of your sight? A No, sir.

Q You did not let him get out of your sight, did you? A No, sir.

Q This glass that you picked up, the glass that you believed to be the glass of the flashlight, that was at the edge of the amasite, wasn't it? A At the shoulder.

Q Where the tracks indicated that the Buick left the road? A Between that spot and the Ford.

Q Well, wasn't it at the spot where the Buick left the road? A I don't remember the exact location, whether it was two feet or ten feet of that spot, I don't know exactly the point but near the tracks on the road, I picked up this flashlight lens.

Q Now, did you pick up the flashlight too? A Someone picked it up and gave it to me.

Q Do you know where that was picked up? A Yes, that was picked up right there. It was a little over the shoulder.

Q Now, isn't it a fact a man took the flashlight, picked it up in the center of the road, did you hear him testify this morning?

Mr. Holland: Nobody testified to that.

Q Was that in the center of the road? A It was at one time.

Q Then it was removed from some place? A Somebody had moved it from my car.

Q You picked up the objects then? A I did.

Q Before the photographer arrived? A I picked up several of the objects.

Q What did you do with them? A In my car on the other side.

Q But you think somebody picked it up and put it in, slung it in the car? A Nobody picked it up and threw it there.

Q You don't know whether that flashlight was broken before throwing it there? A It was broken before that was picked up the first time. That is in exact condition.

Q Now, you said there was some glass from the left side door of the Buick. The front left door. Isn't it a fact that it was the rear left door that was broken and not the front left door? A The front left door was broken on the Buick, it was the front left door.

Q And that was done by the fence and tree where it was after the accident? A Yes.

Q On the ground there? A Yes, on the ground in the woods.

Q Now officer, did you see the marks on the road, around the road by the point of the wheels

of the Ford car, wherever that was? A I don't just understand your question.

Q Did you see any marks of tires on the road connected with the wheels of the Ford, the front wheels or rear wheels? A Yes.

Q Of the Ford? A Yes.

Q Now, these different marks was upon the amasite of the road? A One—on the amasite?

Q Yes? A Yes, the rear mark.

Q The rear? A The rear tire mark.

Q And how long were they, that tire on the amasite of the road? A Half the length of the Ford approximately, not to exceed three quarters.

Q And in what direction did that mark go, on the road? A It varied, a little to the rear of the car, the rear of the car had been pushed slightly over six inches, it is my recollection. I mean if the car was right perfect in line with the roadway, inside of that road, that looked as if the car had been pushed backward about six inches to the rear.

Q Did you see marks going side ways to the Ford? A No, sir.

Q Were you there when Chief Dibble came on the scene? A Yes, I was with Chief Dibble for awhile.

Q You were with him? A Yes, sir.

Q Were you there when the photographs were taken? A I was.

Q Were any photographs taken showing these marks upon the road which you have marked upon the map and which you identify there showing on the hard surface of the road? Were any photographs taken of these distinctive marks? A That's all the photographs taken, there was no photograph, identical pictures taken of these marks, no, sir.

Q Was any picture taken of the road as it appeared there showing the width of the road of the amasite and the marks of the defendant's car, as shown by the marks on the road? A There is one picture which will indicate the course of the Buick.

Q You mean a picture in evidence? A I have not seen it, sir.

Q You mean this picture? A Yes, sir.

Q Yes, but that does not show the road at all? A No, sir, it shows the shoulder and several inches along side.

Q My question was, was any picture taken of the road showing the road surface and the marks on the road showing the course of that Buick car? A No, sir.

Q None was, was there? Now, these marks that you say was very distinctive, were marks of the Buick tires, weren't they? A They were.

Q Probably were? A Yes.

Q You say they started first in a southerly direction, didn't you? A Yes.

Q And you say they were on the westerly side of the road, didn't you? A Yes.

Q That was the right hand side of the road coming south, was it not? A It was.

Q Then you say they swerved to the left, that is, you saw the marks— A Yes.

Q To the left? A Yes, sir.

Q And that was not an abrupt turn across, was it? A Normal turn.

Q Well, you have marked that pretty carefully, have you, the map? A I would say my marking is correct, starting from the left-hand side; starting from there, it's correct (indicating).

Q The turn at the beginning, as you have shown it on the map, Lieutenant, is almost half

of the road half of a right angle, isn't it? A The first turn shown there from a straight course?

Q Yes? A Yes.

Q That's a forty-five degree turn, isn't it? A I should say—

Q Well, it's a pretty abrupt turn on the straight road, isn't it? A Normal driving, yes.

Q And isn't it a fact that these marks led in a practically straight line to the point where the car left the road? A Why no.

Q Or did they curve as indicated there, slightly on the road? A As is shown.

Q Did you measure the distance from where the Ford—I withdraw that. Did you see the patch on the road? A Yes, sir.

Q Now, that patch on the road showed the course of the Buick car, didn't it? A I don't recall seeing the patch on the road at the time, to take particular note of it at that time.

Q You didn't? A No, sir.

Q Well, it's very prominently and easily seen? A The patch is, yes, sir.

Q And it was situated at a point where you say the Ford car or Buick car crossed the road and went where the Ford car was? A Yes, sir.

Q You looked over that road pretty well? A I looked over the marks, just that part of it where the tire marks were.

Q But you saw the marks of the patch? A Yes, sir.

Q Now, did you measure the distance from— I withdraw that. This Ford car when you got there, was it standing parallel to the road or at an angle? A Except for that six inch shove

I mentioned a moment ago, it was standing parallel with the road.

Q You mean that the rear wheels were six inches over more than the front wheels? A To the right, yes.

Q To its right? A Yes.

Q I show you S. 1; that doesn't show the rear wheel over more than the front wheel, does it?

Mr. Holland: Is that a question or statement?

Mr. McGeehan: A question.

Q I show you S. 1, that doesn't show the rear wheel of the Ford over more than the front wheel, does it? A No, sir, the front wheel is buckled.

Q It was buckled when you first saw it, wasn't it? A Yes, and when I last saw it.

Q Was that moved from the position which you first saw it in? A No, sir.

Q Doesn't the photograph show it in the position you first saw it? A I can't tell anything about the photograph.

Q And you were there when it was taken? A Yes.

Q Well, if it does not show it six inches or more over and you say it was, that isn't correct, is it? A That picture was taken from—I would not be able to tell whether it was or not, I am looking at it from the side.

Q Now, where was the point where the automobile left the paved part of the road, that is the amasite part of it from where the Ford car was; how many feet from the Ford car did the Buick car leave the amasite part of the road? A

I can't tell you from the Ford car but I can tell you from that white washed pole 5398.

Q I will ask you that later, but I am asking you now how far from the Ford car did the Buick leave the amasite? A I did not measure it.

Mr. Holland: Isn't it a matter of computation now?

Mr. McGeehan: I just want to locate the mark accurate.

Q You did not measure that? A No, sir, I did not measure that.

Q And did you measure the distance from the Ford car to where the Buick left the shoulder of the road or any part of the paved road? A I did not, no, sir.

Q This Ford measurement, Lieutenant, or drawing that was made, is that an accurate one in point of distance, is it? That is, you drew it from your memory of the appearance of it and not from measurement at all? A Exactly.

Q That's right, is it? A From memory, yes.

The Court: Did you draw it by the use of a scale?

The Witness: Yes, sir.

Q May I see the memorandum that you used, Lieutenant, to refresh your memery?

Mr. Holland: If your Honor please, just a moment. This is the State's witness. I have no objection to him calling it, but I want it known that if he calls upon it, it will go into evidence.

The Court: Mr. McGeehan knows that.

Mr. Holland: I am perfectly willing to offer it in evidence.

Mr. McGeehan: I am familiar with the rule your Honor referred to.

The Court: It is not ruling, you can do as you please.

Mr. McGeehan: May I ask that.

The Court: If you want it and the prosecutor offers it, I will admit it.

Mr. McGeehan: I ask an exception to that ruling. I won't use it. My thought was that this witness used it for the purpose of refreshing his recollection and I thought if he used it on the stand—

The Court: With your consent.

Mr. McGeehan: I thought if he had done that to refresh his recollection, that I would be entitled to look at it, just like any cross examination, without making it thereby admissible in evidence.

The Court: You are entitled to look at it if you wish to. The Court is not overruling it at all.

Q Now, you said, Lieutenant, that you saw the imprint on the road that pump foot fitted into? A Yes, sir.

Q Was that on the amasite or on the shoulder? A On the amasite, about a hand's width.

Q About a hand's width on the amasite? A Yes, not over that.

Q That's a very hard road there, isn't it? A No, sir.

Q It is not? A No, sir.

Q And it's pretty rough at that point; I don't mean for an auto going along, but there are a lot of irregularities in the road of the size of a twenty-five cent piece or ten cent piece and such things? A Not that I noticed particularly, no, sir.

Q How deep was that impression that you saw there? A A quarter of an inch, but it was a little bit deeper down at the end.

Q Not over a quarter of an inch? A I should judge approximately a quarter of an inch.

Q You know what a quarter of an inch is? A About a third the thickness of that there (indicating.)

Q About this (indicating)? A Yes, sir.

Q Well, that isn't a quarter of an inch, is it? A No, I don't think it is. I said, about, Mr. McGeehan. It wasn't over, I say, over one third the thickness of that, but it was sufficiently deep enough to be very plain on the road.

Q You don't mean a quarter of an inch deep? A No—

Q But it was a third as thick as that foot rod? A About, yes.

Q Now, look at S. 1; did it extend the whole length of this foot rest? A No, sir, it didn't extend the entire length of the foot rest.

Q How long was it? A I should judge three or four inches long; I am pretty sure of that.

Q Do you see any mark of the jack there? A No, sir.

Q See none, do you? A No, sir.

Q Do you remember which way that pointed, which direction that pointed, the indentation, toward the center of the road, or parallel to the

road? A It pointed in toward the center of the road.

Q You are pretty sure of that? A To the best of my recollection.

Q Well, you have got a good recollection of what you saw there, haven't you? A Yes, that's been months ago.

Q Yes, but you have refreshed your recollection about it? A No, sir, only my map here.

Q You have not marked anything on your map of that, did you? A Yes.

Q Well, did you make any note of whether it pointed out toward the center of the road? A No, sir.

Q Did you try it that night to see if you could stand on that with your weight and make any indentation in that road? A No, sir, I just merely found it, and fitted it, I did not put my weight on it at all.

Q You did not attempt to see whether any mark could be made in that amasite road by standing on it? A I did not consider it necessary.

Q And isn't that exactly what would happen if a person stood on it? A Without the slightest doubt.

Q Have you been up there lately at the scene of this accident— A No, sir.

Q You haven't? A No, sir, I haven't been up there since.

Q Can you tell where that imprint was with reference to where the Ford stood? A Yes.

Q Where? A Slightly to the rear of the left rear wheel of the Ford, where the Ford stood.

Q Where it stood where you first saw it? A No, sir, I did not see it stand there first where they were pumping the tire.

Q Oh, you are concluding that it stood by the rear wheel when they were pumping the tire; you are guessing at that? A No, sir.

Q Now, Officer, will you tell us where this imprint was with reference to the Ford car as it stood when you saw it standing there? A About a half or three-quarters of a car length, forward of the Ford on the amasite.

Q And about six inches from the edge of the road, is that right? A Yes, sir.

Q Now, were there any loose pieces of amasite of the road there? A I don't recall that.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Have you ever seen this photograph, S. 1, except when Mr. McGeehan showed it to you? A Yes, sir.

Q Will you look at that S. 1 just—

Mr. McGeehan: Let him look at it without pointing. He may be able to testify.

Mr. Holland: I will put the question—

Q Will you look at that photograph—

Mr. McGeehan: I object to the prosecutor pointing out to the witness what the witness is to testify to.

The Court: The prosecutor may point out anything he wants to ask about.

Mr. McGeehan: I ask an exception.

The Court: What are you excepting to?

Mr. McGeehan: I object to the prosecutor pointing out to the witness.

The Court: You are objecting to him showing or pointing out on the photograph some object?

Mr. McGeehan: Well, I consider that a ruling on my objection.

The Court: You are objecting to my ruling that the prosecutor may point out some object on an exhibit?

Mr. McGeehan: Yes, to that part of the question asking the witness to look at the photograph and then point to some object in the photograph.

The Court: Put your question.

Q Mr. Love, in looking at that photograph, are you able to find the imprint of the standard of that foot pump? A Yes, sir.

Q Where do you find it? A A half to three quarters of the length of it from the rear of that Ford there.

Q And whereabouts in reference to the jack in that picture? A The jack is directly above and to the right.

Mr. McGeehan: Let him mark the area.

Mr. Holland: No—

Mr. McGeehan: I would like to have the witness mark that area, the same as on the map and mark the photograph, it is easily marked.

Mr. Holland: This is an exhibit and I certainly don't want that brought in because it's very difficult to decipher and easy to mutilate the mark; but I will consent that a set which I gave to Mr. McGeehan which is an exact duplicate of this be marked and that it be put in evidence.

Mr. McGeehan: I consent to that. Your Honor will mark that in evidence.

The Court: It will be marked S. 1 duplicate.

Q Now, will you please mark the area leading up to the imprint in the road but not touching the imprint in the road? A (Witness marks exhibit.)

Mr. Holland: That is all.

(Witness excused.)

WILLIAM F. COSTELLO, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Doctor, you are a practicing physicion in Dover? A Yes.

Q And were you the Doctor Costello who associated with Doctor Reed in performing the autopsy on these two men? A Yes.

Q When did you first see them? A March 24th.

Q That was the next day after the accident? A Yes.

Q And did you actively engage in the autopsy with Doctor Reed? A Yes.

Q And what did the autopsy of Charles Haggerty show you. Just tell what you did? A The whole autopsy procedure?

Q Yes.

Mr. McGeehan: The death is admitted; that the death was the result from the acci-

dent and that Charles Haggerty is the one mentioned in the indictment.

Mr. Holland: The question of this autopsy goes farther than the admission of the death. It goes to what these men actually died of.

A The examination of the body of Charles Haggerty showed a laceration of the scalp about two inches long at the top of the head, about on line with a line running from the top of one ear, crossing the scalp to the other ear. He had abrasions, these are scrape marks, on the face and on the right hip and thigh and on the left thigh and the right knee and leg. There was a laceration of the left upper eyelid. Multiple fracture, that means a bone fracture in two or three places, of the left humerus, the bone going from the shoulder on down to the elbow, the lower third and about halfway of the way up from the elbow to the shoulder. A multiple fracture of the left femur, that is the thigh bone at the lower third. And the right clavicle bone was broken down at the junction of the collar bone with the breast bone. The end of it was displaced a little bit downward. That was the findings as the result of the examination. The thorax, that is the chest, there was a hemorrage, extensive hemorrhage in the left side, in the pleural cavity, with laceration of the left lung at about the axillary line. There was a fracture of the first, second, third, fourth and fifth rib of that side with the sharp end, sharp fragment of the fractured bones extending into the thorax and obstructing the lung. In the abdomen there was an extensive hemorrhage, in the abdominal cavity in the under part of the lesser lobe of the

liver, was a laceration about two inches in length, from which this hemorrhage had come.

Q And what was the cause, the immediate cause of Haggerty's death? A Why, the hemorrhage of the left lung, due to puncture by the ends of the fractured ribs.

Q Now, the condition you found the body in, did it indicate that a blow that he received caused these injuries? A It was due to those injuries which was caused by a pretty severe blow.

Q Now, what did you find in reference to Charles Cramer? A Examination of Mr. Cramer's body showed he had some abrasions and scalp wounds on his face and forehead and right eye and left eye and fingers, right hip and both knees. There was a multiple fracture of the nose, the bones of the nose and one capped tooth was broken. The chest: there was a hemorrhage of pleural cavities of Mr. Cramer, both sides of the chest. The left pleural cavity was practically filled with blood and there were three lacerations of the lung in the upper lobe and along the same line as the other gentleman, on a line under the arm there. There was a fracture of the second, third, fourth, fifth, six and seventh ribs on that side and the ends of the fractured ribs punctured the pleura and the lung. The right side of the chest, the right pleural cavity showed a hemorrhage with puncture of the lung due to the fractures of the third, fourth and fifth ribs on that side.

Q What do you think was the immediate cause of the death of Charles Cramer? A Hemorrhage from both lungs, due to puncture of the lungs by the fractured ribs.

Q Now, what have you to say of the severity of the blow that struck him? A I would say that was a severe blow also.

Q Would there be any way you could tell, doctor, from the autopsy which of them had a more severe blow or violent blow? A Well, no; you could probably assume Mr. Haggerty had on account of the fracture to his lung and arm. It might be the position in which he was standing that done it.

Q You say his left lung and left arm? A Yes.

Q Now, was there any evidence on the bodies that they had been struck that showed in your autopsy? A Well, the bruises might have been made by striking, the scalp wounds on the body and hands.

Q About how old a man was Charles Haggerty? A Haggerty, I would say, was a man about, between thirty-five and forty years old.

Q And about how solid? A Haggerty was a pretty well-built man. I don't think—I don't remember; should think Haggerty was a man probably that weighed a hundred and seventy, a hundred and sixty-five to a hundred and seventy pounds.

Q How about Cramer? A Cramer was lighter build, probably weighing a hundred and forty-five or a hundred and forty.

Q And how old about was Cramer? A I should think thirty-seven or thirty-eight years old.

Mr. Holland: Cross examine.

Cross examination by Mr. McGeehan.

Q Doctor, was there any analysis made of the stomach contents? A No, sir.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q Was there anything about either one of these two men which indicated there ought to be an analysis made of their stomach contents? A No, sir.

Re-cross examination by Mr. McGeehan.

Q Doctor, there would not be any thought with reference to the stomach conditions unless there was indicated there should be one, would there be? A Well, I was looking for the cause of death.

Q Yes, but you say that trauma was the cause of death? A Yes.

Q Of that accident? A Yes.

Q Yes, but to determine whether or not the decedents had partaken of any drink, intoxicating liquors, it would have been necessary to analyze their stomachs—to have opened up the stomachs? A Yes.

Q To determine whether they had anything alcoholic to drink? A Yes.

Q And there was no appearance of their having taken any alcoholic drink on the bodies of the deceased? A No, sir.

Re-direct examination by Mr. Holland.

Q Was there any evidence of their having been drinking? A Well, I could not determine that.

Re-cross examination by Mr. McGeehan.

Q The only way you could determine that was by a stomach analysis; isn't that right? A Yes.

Q And there would be nothing about their appearance that would show it? A No, sir.

Mr. McGeehan: That is all.

(Witness excused.)

F. GRENDON REED, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Doctor, you are a practicing physician in Morristown? A I am.

Q And how long have you been practicing medicine? A Graduated in 1915.

The Court: Are the qualifications admitted?

Mr. McGeehan: The qualifications are admitted that he was a physician that took part in this autopsy.

The Witness: I was.

Q Did you examine or make an autopsy in this case? A The same kind of an autopsy.

Q Now, when did you perform the autopsy? A About 12:00 o'clock on March 24th.

Q And where was it performed? A At Gillen Young's morgue in Dover.

The Court: March 24th this year, 1926?

The Witness: Yes.

Q And about Haggerty; just tell us what your autopsy revealed to you?

Mr. McGeehan: I think there is no dispute in the case of the testimony given by Dr. Costello. It was not disputed and I don't think it needs corroboration.

The Court: The prosecutor can put it in if he wishes to.

Q What did you find about Haggerty? A A laceration of the scalp about two inches long at the top of the head on a line running from the top of one ear, over the head, to the top of the other ear.

Q Which side of the head was that on? A On top of the head, on a line from the top of one ear over to the top of the other ear. Abrasions of the face, the right hip and—

Q Now, just before you get to that. How much was the cut from the top of one ear to the top of the other? A About two inches long. It was not a deep cut because the tissues over the top of the head are thin. The cut extended to the bone.

Q Was the bone injured? A No evidence, no.

Q Next? A Abrasions of the face, right hip and right thigh, left thigh, and right knee and leg. Laceration of the left upper eyelid and multiple fracture—that means more than one break—of the left humerus. That's the bone extending from the shoulder to the elbow. The lower part of that bone was broken in several places.

Q What do you mean by several? A More than one.

Q Was there several, more than two? A That I could not say as to that. The same kind of fracture, that is a multiple fracture of the left femur, that is the bone extending from the hip to the knee, at the lower third. The right clavicle, that's the collar bone, that was broken

at the sternal end and was displaced. There was no injury to the brain.

Q What was the cause of death? A Due to hemorrhage, hemorrhage of the left lung, due to puncture from the fracture of the first, second, third, fourth and fifth ribs of the left side and hemorrhage in the stomach, due to laceration of the liver.

Q So that you mean to say that the left side of Haggerty had a multiple fracture of the arm and had five ribs broken? A Yes.

Q And these sharp fragments of the ribs cut right through in the lung, producing a large hemorrhage? A Yes.

Q And how soon after such a hemorrhage would death ordinarily ensue? A Immediately.

Q Then what did you find about Cramer? A There were numerous abrasions of the face and forehead and the right arm and left hand and fingers and right hip and both knees; the nasal bones, that is, the two bones of the nose, were broken in several places, and one capped tooth was broken off. On opening of the thorax, both pleural cavities, that is the chest in which the lungs and heart is seated, considerable hemorrhage was found there. The left pleural cavity was practically filled with blood, and the left lung had three lacerations along the axillary line, as Dr. Costello explained. The ribs broken, the sharp points had penetrated the lung and caused a large hemorrhage. There were fractures of the second, third, fourth, fifth, six and seventh ribs of the left side. The right pleural cavity showed hemorrhage with punctures of the lung due to fracture of the third, fourth and fifth ribs. The ribs on both sides of this man were broken.

Q Both sides? A Yes.

Q And what was the cause of his death? A He died from hemorrhage due to laceration of the lung, both lungs, a puncture of the lungs by the fracture of the ribs on both sides.

Q And how soon after such an injury would death ordinarily ensue? A Very soon, almost immediately.

Q And is it possible to determine from an autopsy which of these two men lived longer? A No.

Q From your examination would you be able to tell whether or not these men sustained a severe or violent blow or a light one? A Well, they must have received a severe blow in order to be injured to that extent.

Q And which of the two men was heavier? A Haggerty.

Q Do you recall—what was your observation as to their ages? A Why, I could say they were in middle life. I should say they were under fifty.

Q They were under fifty? A Yes. I might say that Cramer at that time was apparently in the neighborhood of forty-five years, weighed about a hundred and fifty pounds. The other man was much larger, stronger built.

Q Haggerty, you mean? A Haggerty was a better developed physical man than Cramer.

Q Now, did you examine Blaine that morning? A Yes, sir, I did.

Q At whose request? A He was brought there by Officer Love. It was at the prosecutor's request; brought there by Officer Love and Roff.

Q And at that time—what time was it you examined him? A About 9:15.

Q That is 9:15 on the morning of March 24th? A Yes.

Q Now, at that time, did you find him to be drunk or sober? A He was sober.

Q And did you see his wound? A I did.

Q Was it a severe one or a slight one? A It was not a severe wound.

Q Did you see his reflexes, reflexes of the eyes? A I did.

Q Were they working? A Pupils were normal; no reaction.

Q So that the next morning his pupils were normal? A They were.

Q Now, is it your opinion that the wound which he got and which you saw that morning was sufficiently severe to enlarge his—I have forgotten, which is it? A Laceration?

Q No, I am speaking of the pupils of his eyes? A Reaction?

Q Yes— A No, it was not. I would not say so, because a person who had received a wound that he received you would not expect him to be in as good condition as he was the following morning.

Q So the wound he received the night before had no effect on his condition the next morning, did it? A Very little, if any.

Mr. Holland: Cross examine.

Mr. McGeehan: No questions, doctor.

(Witness excused.)

Mr. Holland: That is the State's case. I have, if your Honor please, a list of a large number of other witnesses, but I feel that they will all go along the same line. I don't think that, representing the State, I want to continue on with additional corroboration. I may have to recall some of them in rebuttal, but desire at this time to close the

State's case, bearing in mind that I have not called Mrs. Cramer and Mrs. Haggerty. I have them here. I don't desire to put them on the stand for sympathy purposes or any other purpose. She is here and if Mr. McGeehan desires I will be very glad to put her on.

Mr. McGeehan: I don't question your assertion.

Mr. Holland: Perhaps I better call Mrs. Cramer.

MARY CRAMER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mrs. Cramer, you were the wife of Charles Cramer? A Yes.

Q And how old was he? A Fifty.

Q And where do you live? A Chester.

Q Where did your husband work? A Piccatinny Arsenal.

Q Did he come home on the night of March 23rd? A Yes.

Q How did he come home, who brought him home? A Mr. Haggerty.

Q What were they driving in? A Why, a Ford runabout.

Q When did they come? A Well, it was quarter or twenty minutes after nine, but my clock was about twenty minutes fast.

Q Well, they came there some time in the evening? A Yes.

Q Did your husband bring anything? A Yes, groceries and meat.

Q And did he leave that night? A Yes.

Q Who with? A Mr. Haggerty.

Q And about what time did they go, according to your clock? A Well, I did not look at the clock when they went away. I would be glad to tell you if I could. I did not look at the time when they went away.

Q Had either one of them been drinking? A Not when they were at my place.

Q How do you know? A Well, my husband kissed me good-by and I could have smelled his breath.

Cross examination by Mr. McGeehan.

Q Was that twenty after nine by your clock? A Yes, but as I have already said, it was about twenty minutes fast.

Q That was around about 9:00 o'clock? A Yes, it must have been.

Q And had they stayed very long? A I think they did. It seems to me they had stayed quite a while, but when you are talking like that the time passes faster.

Q And of course you had no reason for looking at the clock? A No.

Q So you don't know just what time they left? A No.

Mr. McGeehan: That is all.

Mr. Holland: The State rests.

Mr. McGeehan: May it please the Court, I desire at this time to move for direction of verdict for acquittal upon the ground that the evidence does not show that the defendant in causing the death of the decedents was guilty of gross negligence, which was the proximate cause of such death.

The Court: The motion is denied.

(Exception allowed and sealed.)

C .F. WILSON,

(SEAL) Judge, &c.

The Court: We will adjourn at this time until 10:00 o'clock tomorrow morning.

Mr. Holland: Under that ruling, may I reserve the right to close the State's case tomorrow morning?

The Court: You may.

Thereupon the Court adjourned until 10:00 o'clock Wednesday morning, June 16, 1926.

Morristown, N. J.,

Wednesday, June 16, 1926.

TRIAL RESUMED.

EVEREST A. DIBBLE, recalled.

Re-cross examination by Mr. McGeehan.

Q Chief Dibble, do you remember pointing out on your examination the other day what you thought was the photograph of the mark in the road called an imprint on the map and which you compared with the foot rest of the pump? A I do.

Q Do you remember what part you then pointed out? A Pretty fair.

Q Did you point to that object that lies immediately below the wheel as the jack the other day? A I don't think I did.

Q Do you deny that you did? A I won't say positive.

Q Were you in the prosecutor's office this morning? A Yes, I was in the prosecutor's office.

Q Did they show you that picture? A Yes.

Q Did they tell you that a different thing was pointed out in this Court yesterday than what you had pointed out the other day? A They asked me to point this imprint out.

Q Yes, but did they show you what was pointed out in the Court yesterday? A Not to my knowledge, they didn't.

Q Why do you say, "not to your knowledge"? A For the simple reason they asked me to point out this imprint on the picture, which I did.

Q Did you point out first the one you pointed out to the Court? A Just as I point right here now.

Q Chief, do you remember my asking you the other day whether what you pointed out was not closed at both ends and pointing to the more prominent mark in the road?

Mr. Holland: I object to that question as not being fairly based—

Mr. McGeehan: I withdraw it.

Q Chief, I put it squarely up to you. Just take a look at this picture. Are you looking at it just below the jack?

Mr. Holland: Would you be good enough to indicate, because you are using your pencil all the time and I would like very much for you not to.

Mr. McGeehan: I assure you the picture won't be marked.

Q Chief, I want you to look at what I am pointing out now? A Yes.

Q Didn't you point directly to that and were you not examined on that in Court yesterday? A Not yesterday, no, sir.

Q Didn't you point in your testimony to that object and the mark there? A No, my finger was just exactly like this (indicating).

Q You arrived here 10 o'clock this morning, didn't you? A Around about that time.

Q And I met you at the bottom of the stairs? A Yes.

Q I did not show any picture to you, did I? A No, sir.

Q Told you I wanted you back? A Yes.

Q To go on the stand and mark what you pointed out on the picture? A Yes.

Q Did not exhibit any to you? A No.

Q And you were being called in the prosecutor's office then? A I was called back up for you.

Q And then you were recalled back by them? A I was that night on the telephone.

Q Now, Chief, who spoke to you when you went in the prosecutor's office? A Lieutenant Roff.

Q Well, did you tell him that I was going to question you as to what you pointed out the other day? A He asked me to point out that imprint on the photograph to him.

Q Well, you had pointed it out days and weeks ago, before they put you on the stand, didn't you? A No, I had not seen the photograph, these photographs, until the day before yesterday.

Everest A. Dibble, re-direct.

Q Well, before you went on the stand, you told Mr. Roff what you thought was the picture of the imprint, didn't you?

The Court: Did he testify to that the first time?

Mr. McGeehan: Yes.

Q You had pointed it out several days ago to him? A Not the picture, the road.

Q He had showed you it then, hadn't he? A I seen the photographs on the stand.

The Court: I understand that's the first time you had seen the exhibits?

Q You saw the picture before you got on the stand? A No, sir.

Q Never showed him in the prosecutor's office? A No, sir.

The Court: That's what I understood him to say.

Mr. McGeehan: I forgot he said that. Pardon me for asking it the second time.

The Court: I thought I was following it pretty closely.

Q Now when you went there this morning, did he point out and tell you what Lieutenant Love had pointed out yesterday on the stand? A He did not, I pointed it out myself.

Re-direct examination by Mr. Holland.

Q This object that Mr. McGeehan speaks of as being closed at both ends, what do you recognize that to be, if anything? A Well, it resembles a stick of cement.

Fred A. Roff, direct.

Re-cross examination by Mr. McGeehan.

Q You remember me asking you in Court the other day whether what you pointed out did not look like a bit of cement?

Mr. Holland: Object to that. That is not proper, in fact I don't remember any such question. I object to it.

The Court: Objection sustained.

(Witness excused.)

FRED A. ROFF, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Now, Lieutenant, are you the one who called Chief Dibble into the office? A I was, yes.

Q And what did you ask him this morning? A I asked him to point out on picture exhibit S. 1 what he pointed as the imprint of the foot rest of the pump.

Q How did you come to call him and ask him that? A I saw him in conference with Mr. McGeehan downstairs and wondered what was going on between them and wanted to find out whether that was the thing he pointed out on the picture.

Q Was there anything in your mind that Chief Dibble might have changed his story? A No, only he had talked to Mr. McGeehan.

Cross examination by Mr. McGeehan.

Q Talked to him when? A At the corridor, you were talking to him at the foot of the stairs.

Q Now, Lieutenant Roff, you knew I was apt to recall him to the stand and put further cross examination on the subject he had been testifying about, did you not? A On the subject—I did not know what the subject might be, Mr. McGeehan. I knew you asked to have him in Court. I don't know what for.

Q Didn't you know I was going to question him about what he picked out on that picture the other day? A Absolutely not.

Q You are sure of that? A Positive.

Q You sat here during this entire trial? A Not all the time; not all day.

Q You were here when Lieutenant Love was on the stand? A Yes.

Q You were here when I had him pick out what he said was the imprint? A Yes.

Q You were here when I called for Chief Dibble, when I was examining him on that picture? A I wasn't.

Q Immediately after Mr. Love left the stand? A Yes.

Q Now, if you didn't know that I was—first, you have just testified, that I was going to examine him and question him about that picture and markings on it, why did you call him in and show him the picture and ask him to point out what he had pointed to the other day, Lieutenant? A I saw him talking to you downstairs.

Q And seeing him talking to me, I had nothing in my hand, did I? A I testified I didn't know what you were talking to him about.

Q Well then, is that an answer to my question of how you came to have this picture and point that out or ask him what he pointed out?

Mr. Holland: I object.

Mr. McGeehan: I withdraw that.

Q I am asking you, Lieutenant, if you didn't know, as you have just sworn to, anything about what he was being called back to the stand for or that he was to be questioned about what he picked out on the picture, how is it you spoke to him only about that before he was called in Court and took the stand?

The Court: How can he know what you had in your mind, you are asking him if he did know.

Mr. McGeehan: My prior questions have been, you knew, did you not, that he was to be recalled for the purpose of testifying on the picking out of a mark on the picture.

The Court: I haven't anything to say about that. I am saying, how can you ask if the witness knew what was in your mind?

Mr. McGeehan: I didn't ask what was in my mind. My question was what took place in Court. I thought everyone knew what Chief Dibble was being called back for.

The Court: Well, I didn't. I hadn't the slightest idea.

Mr. McGeehan: I thought he knew what the witness was being recalled to the stand for.

The Court: Ask him if he had any knowledge and what he knew.

Mr. McGeehan: But he has denied it.

The Court: He answered your question a couple of times he did not.

Q (Question read.) Why did you, then, when you called him into your office, talk to him only about one thing and ask him to point out what he had pointed out as the place where the imprint was?

Mr. Holland: Object to that, if your Honor please, because there is nothing now that appears either in the testimony or record that that's the only thing they talked about. That is an unfair assumption and this witness is bound by his answer and he cannot explain it. I object to that.

Mr. McGeehan: Dibble testified to that.

The Court: That probably is objectionable. You will have to reframe it.

Mr. McGeehan: Chief Dibble testified and I asked him and he said he was asked only whether he had picked out in his testimony the place of the imprint.

The Court: Well, that might be the Chief's testimony. It is not this witness' testimony.

Mr. McGeehan: I withdraw that question.

Q Did you talk to the Chief about anything else? A I did; yes, sir.

Q How long was he in there, Lieutenant? A Oh, a minute or so, or two minutes.

Q You got the picture out? A The picture was laying on the desk when he came in.

Q And you questioned him about that thing, did you question him about it? A No.

Q What did you do? A I told him to point out what the different things were.

Q What different things were? A Then I said, will you look over them, I did not say to look at this picture, I did not see the picture, I asked him then to point out what he pointed out was imprint or base of that pump.

Q All right, anything else, that was the first thing you asked him? A I did not say that first.

Q You at least asked him that in that minute he was in there? A I did.

Q Now, Lieutenant, did you ask him that just before he was to take the stand or come into the court room, did you; did you know he was being called back for that purpose? A Because I wanted to know myself. I was anxious to understand it, I worked up this case and I did not see him point it out. I knew nothing where he was pointing out on the stand.

Q You never asked him any time before he was recalled by me? A I never asked him before or since. In fact, that was the first time I ever had the picture, I showed the picture to Mr. Dibble.

Q As a matter of fact, you only asked the question of Chief Dibble where Lieutenant Love had pointed out? A No; I did not see where Lieutenant Love had pointed it out.

Q You didn't see that at all? A No, sir.

Q Didn't the prosecutor discuss that with you at all? A We have talked the whole thing over afterwards.

Q Well, did he show you what was picked out on the picture fairly and squarely? A He did.

Mr. McGeehan: That is all.

Re-direct examination by Mr. Holland.

Q You were there at the scene of the accident the next morning? A Yes.

Q Did you see the imprint on the ground? A Not the next morning, I think not.

Q Well, when was it? A The day following.

Q And the imprint in the ground, was that the same as is shown on this picture, S. 1? A Yes, sir; it is.

Q At the time you were there, who was there with you? A Lieutenant Love.

Q He pointed it out to you on the ground? A He did, yes.

Re-cross examination by Mr. McGeehan.

Q You have been there a number of times since? A I should judge five or six times.

Q You were there the other day, within the last week? A No—I went by there.

Q Well, did you stop there? A I did, yes.

Q What did you think I meant when I asked you whether you were up there; didn't I ask you if you went there? A I thought you meant making an examination, which I wasn't.

Q You stopped there and got out— A I stopped at the place across the road to see how much distance a man would have to drive over the dirt surface without running into anything.

Q You have had a lot of experience in hearing witness' on the stand? A I have had some.

Q You know it is not proper to volunteer things that are not responsive, but only answer what is asked you?

The Court: Did you stop there?

The Witness: Yes.

Q You had charge of this case and the preparation of it? A Under the Chief, yes, sir.

Q And have you stopped there since this trial began? A No, sir.

Q You were there just before it started? A It's about—I think last Wednesday; I am not sure; it was in the middle of last week sometime I was going by and stopped.

Q Did you see any imprint there now of any tire pump? A I didn't look for it. I know it would be foolish to look at it now.

Q How deep would you say it was? A It was just deep enough to notice the imprint.

Q How deep? A I could not say in inches.

Q It was deep enough to notice plainly? A Yes.

Q Deep enough to show in a picture? A It's a very, very good picture.

Q It's a good picture? A It is.

Q And it was deep enough to see in this picture? A It shows there; that's the same location of the imprint which was on the road.

Q And have you tried to push your foot on anything there like that to see if an imprint can be made in the road? A No, I have not.

Q That's a very hard road? A It's hard substance. I don't know the make of road.

Q It's mixed with stone? A I saw stone, I don't know, I am no road expert.

Q It's made of a composition of amasite or warrenite? A Why, asphalt, I would call it, I am not positive of that.

Q You did not see any imprint of the base of a jack anywhere there, did you? A Not that I noticed.

Fred A. Roff, re-cross.

Q It might have been there? A We did not look for it.

Q Well, how did you look for the pump mark if you didn't look for the jack mark? A The car, it was drawn to my attention by those who had saw the car. If I had not mistaken, Mr. Dibble had a man there that saw the car before the accident.

Mr. McGeehan: I ask that be stricken out as not responsive.

The Court: How did you come to look? I think that's entirely responsive.

Mr. McGeehan: He said something about a man there at some other time.

The Court: You asked him how he came to look and on that ground I won't strike that out.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Mr. McGeehan: That's all.

(Witness excused.)

Mr. Holland: If Trooper Love comes in later I want to reserve the right to put him on.

Mr. McGeehan: No objection.

Mr. McGeehan: May it be understood that the motion I made yesterday shall be considered as renewed.

The Court: The record will show that Mr. McGeehan renews his motion and the Court made the same ruling and exception is allowed.

C. F. WILSON,
(SEAL) Judge, &c.

Gregory W. Love, direct.

(Thereupon Mr. McGeehan opened to the jury in behalf of the defendant.)

Mr. Holland: I think Trooper Love came in.

GREGORY W. LOVE, recalled.

Further direct examination by Mr. Holland.

Q There is one question I neglected to ask you yesterday. Where did you find the gears; you mentioned something about some gears from the defendant's car. Where were they when you saw them? A Laying down by the fence.

Q Will you indicate the point? A There's no long mark there but right around there (indicating).

Q Are you pointing near the eighteen-inch ash tree? A Yes, sir.

Q And you say there was what? A There's no rock marked there but there was a rock there right underneath the car.

Q And what happened to the gears? A They were laying there on the ground; left them there for the garage men to pick up.

Q About in what position on that map were they laying? A I could not say exactly, but about there (indicating).

Q Now, are you able either on S. 2 or S. 3 to show the rock that you refer to? A I don't see it in S. 3, but I believe that's the rock directly underneath the handle of the side door there.

Q You mean S. 2? A Yes.

Q You think it's under the car in S. 2? A Yes.

Gregory W. Love, cross.

Q Well, where were the gears then in reference to this picture, S. 2? A Well, just before that rock, just a little forward.

Q And at that time were they underneath the car or from out underneath the car? A Under the car.

Cross examination by Mr. McGeehan.

Q And there are other rocks on the course that you have described on the map between the road and the point where the car stopped, are there? A No, sir.

Q Sure of that? A On the right and left, but not in the course of the car.

Q Not in the course of the car? A No, sir.

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

Q Did the car go in along the course that it is standing at in the picture S. 3? A Yes, sir.

Q Well, isn't there a rock right in the course there, right behind the hat of one of the men? A Yes, sir; but that is not in the course of the car; I believe that's to the left of the front wheel.

Q The left front wheel may have passed over that rock? A It wasn't underneath or in the course of that car.

Q And isn't there a stone where the point is marked here on the map? A Yes, sir.

Q You don't see any rock marked on the map, do you, or stone, by the car, near the tree? A No, sir.

Q Don't see any, do you? A No, sir.

Q Was the glass in the sedan broken? A Yes, sir.

Q On how many doors on the left side? A Two doors in the Buick sedan.

Q Was the glass broken in both doors? A No, sir, one door.

Walter Guerin, direct.

Q Are you absolutely sure it was the front door? A To the best of my recollection.

Q You said yesterday you were sure? A Yes.

Q Now, I show you—I ask you whether that doesn't show the glass of the rear door broken on the left side right there in that picture? A Yes, but you can see on the left front door.

Q Yes, but you have said there was only one door broken, and that shows the rear left door broken? A Yes.

Q So you are probably mistaken? A Yes.

Q So, do you think you might be probably mistaken as to the rock that was on the map or in the picture? A No, sir.

Mr. McGeehan: That is all.

(Witness excused.)

Mr. Holland: That is the State's case.

WALTER GUERIN, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Guerin, where do you live? A Morristown.

Q How long have you lived in Morristown? A All my life.

Q You are a friend of the defendant, Charles Blaine? A Yes, sir.

Q How long have you known Mr. Blaine? A Twenty years.

Q And where do you live? A 21 Hazel street.

Q Married? A Yes.

Q Children? A Two children.

Q What is your occupation? A Carpenter.

Q Do you remember, Mr. Guerin, the day that this tragedy occurred? A Yes, sir.

Q What time did you meet the defendant, Mr. Blaine, on that day? A About 1:00 o'clock.

Q Where did you meet him? A At his residence.

Q Who else was there when you met him at his residence? A Wife and family, and Mrs. Coss, Mr. Blaine's mother-in-law.

Q Where did Mr. Blaine live? A 28 Evergreen avenue.

Q What time did you get there? A About one o'clock.

Q And what time did you leave there? A About one-thirty.

Q And what was your destination when you left the house? Where were you going to? A Oxford.

Q What was your purpose of going to Oxford? A I had to go to Oxford to get some chickens for breeding purposes.

Q And it was to get the chickens you saw Mr. Blaine? A I did.

Q And you were to ride with Mr. Blaine? A Yes.

Q How far is Oxford from Morristown, approximately? A I don't know the exact distance, I imagine fifty-five or sixty miles.

Q It's in Warren County? A I believe so, yes, sir.

Q Now, did you go—I withdraw that. Did you go to Oxford? A Yes, sir.

Q What time did you arrive at Oxford? A About three-thirty.

Q That is in the afternoon? A Yes.

Q And while you were at Oxford—I withdraw that. When you got to Oxford where was the first place you went to? A To Henry Mountain's place.

Q And you were looking for these game chickens? A Yes, sir.

Q Did you do any business with him about them? A No, sir.

Q Did you make any inquiries about such chickens from Mr. Mountain? A I had to go to Mr. Mountain to find out where Mr. Collins and Mr. Lynch lived.

Q Mr. Collins and who else? A Lynch.

Q Now, while you—by the way, what kind of a place has Mountain? A He has a restaurant; restaurant, lunch room.

Q Did you eat anything there? A Yes, sir.

Q What did you eat there? A Piece of lemon pie.

Q And did you see Mr. Blaine—did Mr. Blaine eat anything there? A Not then, no, sir.

Q Did you or he have anything to drink? A I did.

Q What did you have? A Ginger ale.

Q What did you have? A Ginger ale.

Q How long did you stay at Mountain's when you went there about where to find Mr. Lynch or Mr. Collins? A About fifteen minutes.

Q And then where did you go from Mountain's? A To Mr. Collins'.

Q Where did Mr. Collins live with relation to where Mountain's place was. A Well, I can't tell you just—

Q I mean about how far was it? A About half a mile away.

Q And did you go to Collins'? A Yes.

Q What did you do at Collins'? A Looked over the chickens.

Q Buy any? A Not there, no, sir. Mr. Collins said we would have to see Mr. Lynch.

Q Who did you meet at Collins' place? A Mr. Collins.

Q And how long did you stay there about? A Half an hour.

Q Then were did you go? A We went to the garage where Mr. Lynch was.

Q To a garage? A Yes, sir.

Q What did you go to him for? A Go there to see about chickens.

Q Did he own some? A Yes, sir.

Q Did you see them? A Yes, sir.

Q Where did you find them, at the garage? A I didn't see the chickens at the garage; I seen Mr. Lynch.

Q Yes, well, did you go then with him from the garage somewhere else? A He said we would have to wait until he got finished work.

Q Did you wait? A We came back to Mr. Mountain's.

Q And then how long was it before you got back to Lynch's garage? A We didn't go to Lynch's garage.

Q Where did you meet him? A At his residence.

Q How much after you saw him at the garage did you meet him at his residence? A About an hour.

Q Did you get any chickens? A Yes, sir.

Q From him? A Yes.

Q Did you buy some? A Yes, sir.

Q How many? A One.

Q Did you buy any others while you were up at Oxford that day? A Not in Oxford; no, sir.

Q Did you buy any others elsewhere? A No, sir.

Q Did you only buy one chicken that day? A I brought others home with me, but I got those in Wharton.

Q Got the others in Wharton? A Yes.

Q You only bought one at Oxford? A Yes, sir.

Q Now, when you went back to Mountain's, did you drive anyone over to the freight house? A Yes, sir.

Q How far is the freight house from Mountain's? A Half to three-quarters of a mile.

Q Who did you drive over there and what was the purpose in going to the freight house? A Mr. Mountain had a postcard from the freight house saying he had a battery of an automobile there from Easton and he asked Mr. Blaine if he would run him over to get it.

Q Did Mr. Blaine do it? A Yes.

Q And did he afterwards bring you back? A Yes.

Q That was during the hour you were waiting for Mr. Lynch to get off his work; that right? A Yes, sir.

Q Now, where was Dan Lynch's residence with relation to Mountain's place? A He was out further up the hill. About half to three-quarters of a mile.

Q And that's where you went to buy the chickens? A Yes.

Q How long did that take to go there and while you remained there and to get back to Oxford? A Well, I was there an hour or an hour and a half.

The Court: Is this all relevant?

Mr. McGeehan: I am trying to show the time consumed and show the actions of the defendant from the afternoon that he left and up to the time this accident occurred, and we are laying the foundation with a corroborating witness.

The Court: It seems pretty remote to me.

Mr. McGeehan: Well, on account of the issue that the State has raised, that's the only purpose.

The Court: Yes, but to tell all that ever happened up at Oxford, what has this got to do with this accident here?

Mr. McGeehan: The State has indicated the defendant was intoxicated and we want to show where the defendant was all that time and call these persons—

The Court: You can call them without all this.

Mr. McGeehan: This man knew the defendant's actions and where he was. It is insinuated that he was drinking that afternoon or evening.

The Court: The Court has no objection, but it seems to me you are certainly wandering far afield.

Q Now, then, what time did you leave Oxford? A About seven-thirty.

Q And from Oxford where did you drive? A Wharton.

Q How far is it to Wharton from Oxford? A Forty miles, forty-five miles.

Q When you got to Wharton, where did you go? A To Mr. Richards'.

Q What did you do at Mr. Richards'? A Got some chickens.

Q How many did you get there? A Three.

Q And how long did you remain at Mr. Richards'? First, what time did you get there? A Nine o'clock, nine-fifteen.

Q What time did you leave Richards'? A About quarter to eleven.

Q Then in what direction did you go after leaving Richards'? A We came on toward Morristown.

Q Before you got to the point where the accident occurred did you make any other stops? A Yes.

Q Where? A Eagles' Club in Dover.

Q When you went to the Eagles' Club at Dover, how long did you remain there, approximately? A About ten minutes.

Q Then you both started on toward Morristown? A Yes.

Q During all the time that you have referred to were you with Mr. Blaine, with the exception of the few minutes at the club in Dover? A The few minutes in the club at Dover.

Q How many minutes would you say? A Three or four minutes.

Q At any of the places that you were, either in Oxford, Wharton, with Richards or in Dover, was Mr. Blaine drinking any intoxicating liquor? A No, sir.

Q Did you? A No, sir.

Q Now, do you remember, Mr. Guerin, proceeding along the road just before the accident occurred? A Yes, sir.

Q What kind of a road is there at the point of the accident?—

Mr. McGeehan: May I ask: will the State admit on the record that the road in

question is in the open country, with houses more than 100 feet apart?

Mr. Holland: And that the speed limit is thirty miles an hour, yes.

Q Now, as you came along the road, you were going in a southerly direction? A Yes.

Q What side of the car is the driver's seat on? A Left-hand side.

Q You were riding in the front or rear? A In the front.

Q Was the night in question a clear night or a rainy night? A Had been raining, but started to clear up.

Q The road was not wet, though? A No, sir.

Q You remember approaching along that road just before the accident occurred? A I do.

Q By the way, do you remember whether any cars passed you going in the same direction as you, or did you pass any cars down around the store—Dickerson's store? A We passed one car at the top of Tabor hill.

Q Top of Tabor hill? A Yes.

Q Do you remember what kind of a car that was? A Big touring car.

Q Touring car. Now, what side of the road was your car—the car you were riding in—traveling when this accident occurred? Just before the accident occurred? A On the right-hand side of the road coming south to Morristown.

Q What kind of a road is that—smooth or not? A Yes, smooth; amasite, whatever it is.

Q And at what rate of speed, in your opinion, was the car traveling at that time? A About twenty-five—twenty-eight miles an hour.

Q About twenty-five to twenty-eight miles an hour? A Yes.

Q Do you remember rounding the curve just north of where the accident occurred? A Yes, sir.

Q After rounding or while rounding that curve did you see an automobile standing upon the road? A Yes, sir.

Q Could you tell from there just what part of the road it was standing upon? A Not just at the curve, no.

Q Now, when you were at the curve—as you approached the point where the automobile was—could you then tell what part of the road it was standing on? A Yes.

Q What part of the road, as you observed it, was it standing on, as near as you can tell? A Front left wheel of the car was on the center of the road.

Q More than the rear? A Well, I can't say that. It was almost parallel with the road.

Q Was the car on the amasite? A Yes, sir.

Q Do you know whether the wheels were on the amasite or not? A Yes, sir.

Q Now, was there room for your car to go along on the right side of the road? A Yes, sir.

Q What, if anything, did you see of any persons? Withdraw that for a minute. How were your lights on your car? A How were they?

Q Yes. A Well, they were lit.

Q Yes, and what effect did they have on the road ahead of you? A We could see ahead of us.

Q As you approached this car that was standing there did you see any men? A Yes, sir.

Q Near it? A Yes.

Q Where did you see those men, Mr. Guerin? A When we first saw them they were right opposite the car.

Q On what side of the car? A On the left of their car.

Q How far away from the car were they? A Standing right near the car at that time.

Q Standing near the car at that time? A Yes, sir.

Q Can you judge how many feet from it? A Not over two feet.

Q Now, did you see either of those men leave where they were and go somewhere else before you got to the car? A Yes.

Q Where did they go? A One man stepped on the running-board and turned the lights on and the other man walked backward across the street.

Q Now, when you say he walked backward across the street, just make that a little clearer. Which side of the street did he go to? A To our right-hand side as we were going south.

Q How far did he go across the street? Where did he go to? A He walked backward off the amasite on the shoulder.

Q When the other man you saw stepped on the running-board of the Ford? A Yes.

Q Did you see him going on the running-board? A Yes.

Q Now, you said something about turning on the lights. Did that happen about the same time? A The lights came on bright at that time.

Q Came on bright? A Yes.

Q Do you know whether or not the lights were lighted before they came on bright? A They were not.

Q Do you whether or not your lights reflected in the reflectors of the Ford car? A They reflected ahead of us.

Q But the lights were flashed on bright just before you passed? A Yes.

Q How were they when they were then flashed —were they bright or not? A Very bright.

Q When that happened—withdraw that. About how far from the Ford car was your car when the men first went from the position they were in as you have just described? A Twenty feet; about twenty feet.

Q From the Ford? A Yes.

Q What, if anything, had Mr. Blaine done in regard to signaling those men before that? A Why, he blew his horn and slowed up a little.

Q He blew his horn and slowed up a little? A Yes.

Q Now, how far were you from the other car when the light flashed? A About twenty feet.

Q About twenty feet, then? A Yes.

Q Well, now, if you were twenty feet from the car when the light flashed, how far were you from it when the men stepped on the running-board and across the road? A Same distance.

Mr. Holland: He said that. Mr. McGeehan is trying to get him to change.

Mr. McGeehan: Object to counsel saying that.

Mr. Holland: He said it twice.

Mr. McGeehan: I deny that.

The Court: No argument about that. He said it twice. Proceed. I don't know that he wanted him to change or anything of the kind.

Q When he turned the lights on, was that before or after he stepped on the running-board? A After.

Q And then your car was about twenty feet away, is that right? A Yes.

Q Now, was there anything or anybody in the path of your car on the right-hand side of the road after those men made that movement? I mean, immediately after they made that movement? A Yes, sir.

Q What came into the path of your car? A The man that had walked backward away from the Ford car started toward the car again immediately in front of our car.

Q Before he started to walk backward immediately in front of your car had there been anything in the path of your car? A Only when he crossed the road.

Q But after he first crossed the road and up to the time that he started back, was there anything in your path? A No, sir.

Q How did he start back toward the Ford; in what way? A He started back toward the Ford in a hurry.

Q And how close to your car, to the front of your car, was he when he did that? A Just five feet.

Q What did Mr. Blaine do when this man stepped back just in front of the car at that time? A He just swerved a little bit to the left to miss that man.

Q To the left? A To the left.

Q And where did that bring him to? What did he collide with in doing that? A As he done that he hit this man that had started toward the car and hit the front left wheel of the Ford

car and the man that had just stepped back on the ground again.

Q Where had the man just stepped back on the ground from? A The Ford car.

Q You saw him doing that? A Yes, sir.

Q Was that before or after the car swerved? A What was that again?

Q Did he step down from the running-board of the car before or after or the same time the car swerved? A The same time.

Q Mr. Guerin, when the car that you were riding in swung or swerved to the left, as you describe; how wide is the amasite on the road there, about? A That is at the point of this accident?

Q Yes. A About eighteen feet.

Q And when your car, the car you were riding in, swerved to the left and collided with the Ford, what happened to its force then? A Well, after going to the left he wanted to stop; we went right off the left-hand side of the road.

Q Do you know how many feet you went before you went off the left-hand side of the road? That is, from the point where you came in contact with the Ford to the point where you went off that road? A I should judge about fifty feet.

Q Can you show us in this court room about what the distance was? That is, from the point where you came in contact with the Ford to the point where you went off the pavement of the road? A Well, the court room itself, in my judgment, is about forty-five to fifty feet.

Q In width or length? A In length.

Q And that's about the distance you think you went? A Yes, sir.

Q Now, did you go off the left or right side of the road? A Off the left side of the road.

Q The left as you were going? A Yes.

Q Mr. Guerin, as soon as the car went off the road, what kind of ground did it strike? A Well, it's very soft. I don't know—

Q Is there a drop or not on the left of the road? A There is.

Q Have you calculated, without measuring, but can you give us your estimate of the distance that the bottom of the fence is below the level of the road at the point where the Buick stopped? A Well, it's at least three feet.

Q And that slope is to the left of the road at the side you went off? A Yes.

Q That is, it slopes down to the left? A Yes.

Q Have you looked at that point recently? A Yes, sir.

Q Is it the same as it was at that time? A No, sir.

Q Is the drop the same or different? That is, the depth of the bottom of the fence below the road the same now as it was? A I think it is at the fence.

Q Is the intervening ground northwest to the road from there the same? A No, sir.

Q Now, what is there that wasn't there before?

Mr. Holland: Object to what there is there now that wasn't there before.

The Court: Objection sustained.

Q Were the loose leaves piled up in there when this accident occurred? A They wasn't piled up, no, sir.

Q Now, what effect did the going off the road have upon the car? I mean, what happened to the car itself as soon as it went off that road? A You mean the car we were in?

Q Yes. A Well, we went between two big trees and came down almost to another tree and stopped.

Q When you were going down that incline on the side of the road did your car ride smoothly or bumpy? A Bumpy.

Q What happened to the inside of the car; were you able to keep your seat? A Yes, not very well; the car was jumping.

Q And did you see whether or not Mr. Blaine was thrown in his seat? A Thrown in his seat?

Q Thrown in the car? A Yes.

Q Do you know—how was he thrown? A Up this way (indicating forward and upward).

Q Did you see whether his head hit anything? A I didn't see his head.

Q Did you see him immediately after the accident? Was there any glass in the windshield broken? A No, sir.

Q Was there any glass in the door alongside of Mr. Blaine broken? A No, sir.

Q Was the glass in the door behind that one broken? A Yes.

Q Was Mr. Blaine or you cut by any glass? A Not by glass, I don't think.

Q Was Mr. Blaine cut on the top of his head after the accident? A Yes.

Q Do you know when that cut was inflicted upon him? A About the time we stopped.

Q And you had seen him thrown upward and forward before that? A Yes.

Q Is there anything projecting around where, or out where he was thrown to or toward in the car? A I think the brackets that the windshield works on; opens on.

Q Those were sticking inward? A Yes.

Q After this accident occurred, did you both get out of the car? A Yes.

Q Were you injured? A No, sir.

Q What was his appearance? What indicated to you that he was injured? A The blood was running down over his face.

Q And did he give any expressions of pain? A He did.

Q Was he holding his head? A Yes.

Q After you got out of the car, did you see where the Ford car was that your car had collided with? A Yes, sir.

Q Where was it? A Pushed back, over to the side three or four feet and the two left wheels on the amasite.

Q Was it pointing any direction either way along the road or amasite or was it straight along the road? A Little bit of an angle to the center of the road.

Q Do you know whether at the time the collision occurred between your car and the Ford, the Ford car was standing straight or on an angle? A I don't know exactly; I think it was parallel with the road. It might be a little bit of an angle.

Q You remember it as being straight along the road? A Yes.

Q Now, when you got out of that car, were there any persons there except the two men that had been struck? A No, sir.

Q And how soon afterward was it that someone came along? A Two or three minutes.

Q And did anyone hail a car that came along? A Yes.

Q Who hailed a car? A Blaine.

Q Did you help hail it? A I was holding up my hand, but he was over to the two men that got hurt at that time.

Q So they came within two or three minutes after? A Yes, sir.

Q Now, at any time after the first car arrived—is that the car in which the Ritzers and friends were? A Yes.

Q Did someone else arrive after that? A Yes.

Q Who was that? A Chief of Police Dibble, I believe.

Q Do you know how long after the Ritzer car got there, Chief Dibble got there? A About four or five minutes.

Q Four or five minutes? A Yes.

Q Then, how long was it before any other car came there? A About ten or fifteen minutes.

Q About ten or fifteen minutes after that? A Yes.

Q Did you notice where, or can you tell us where the two men lay who had been hurt? A The first man I went to laid on the amasite.

Q How far out on the amasite? A About two feet.

Q Was he laying parallel to it or across it? A Not exactly parallel, no.

Q Well, you mean the nearest part of him was two feet from the edge? A Yes, sir.

Q And where did the other man lie? A Almost directly across the shoulder; right on the edge of the shoulder; a little ways further, nearer the car.

Q Nearer which car? A The Ford car.

Q How far away from the Ford car were they? A Fifteen or twenty feet.

Q Were they moved by anyone afterwards?

Mr. Holland: I don't object to the question, but he ought to show the time.

Mr. McGeehan: I will show that.

Q Were either of the bodies moved by anyone afterwards? By that I mean within the next thirty minutes or an hour before the pictures were taken? A I remember one body was moved.

Q Who moved that? A I don't know.

Q Where was that moved to? A It was moved further off the amasite road.

Q And have you seen the pictures in which the bodies are shown there? A Yes.

Q Is that where bodies lay after one of them had been moved off the road? A Yes.

Q Mr. Guerin, were you there during the time Chief Dibble was there? A Yes, sir.

Q Were you there during the time Lieutenant Love was there? A Yes, sir.

Q Did you, at any time see—withdraw that. Did Mr. Love tell you to stay close to him all the time? A Well, I understood Mr. Love to tell me to stay close to the car; that's our car.

Q And did he tell you not to go away from the scene of the accident? A Yes.

Q Did you see him or Chief Dibble at any time point out any mark in the road as indicating the pump foot?

Mr. Holland: I want to object to that if he says he stayed close to the car. I suppose he did what he was told.

Q Did you stay close to your car? Or did you move around? A I stayed down by the Buick car.

Q Could you see from there to where the Ford car was? A Yes.

Q Could you see Chief Dibble and Lieutenant Love? A At the Ford car?

Q Yes? A Yes, sir.

Q Have you examined the pavement of the road where this accident happened? A Yes.

Q Is it hard or soft? A Very hard.

Q Did you look at it on Monday? Did you look at it after Court on Monday? A Yes.

Q Was Monday a hot day or cool day? A A hot day.

Q Is the road the same now as it was when this accident occurred? A I think so.

Q And was the pavement hard or soft there at that time? A Hard.

The Court: On Monday of this week?

The Witness: Yes.

Q That right? A Yes.

Q Did you see any marks of any imprints of any objects in that road? A None whatever.

Q Or circular marks? A No, sir.

The Court: Do you mean last Monday or the night of the accident?

Mr. McGeehan: Last Monday.

Q Mr. Guerin, did you have any discussion or talk with Chief Dibble or engage in any argument with him? A I did.

Q And what did that argument consist of? A Chief Dibble asked me who was driving the car and I told him. And he said, Charles Blaine

of Dover? I says, no, of Morristown. No, he says, he lives in Dover, or Wharton, rather. I says, he does not, he lives in Morristown. So he went on and told me he lived in Dover or Wharton and I told him he lived across the street from Chief of Police Wildey of Morristown.

Q And you were talking to each other emphatically or not on that subject? A Yes, a little bit.

Q Outside of that, did you have any other words with the Chief? A No, sir.

Q Did the Chief at any time accuse of having been drinking? A No, sir.

Q When this accident occurred that night had you had anything to drink at any time during that afternoon or night? A Positively not.

Q Had Mr. Blaine? A No, sir.

Q Do you remember going to the hospital? What time did you leave the scene of the accident? A Well, it was around one o'clock. I can't say just what time.

Q Who did you leave with? A Trooper Love and Township Police Chief George Hodges.

Q Where did you go with Trooper Love first? A To my residence.

Q And by the way, did Mr. Blaine bring anything out of the Eagles' clubhouse in Dover with him? A He brought two small boxes of candy.

Q Had he gotten those there? A Yes.

Q Were they in the car after the accident happened? A Yes.

Q And were the chickens that you bought in the car after the accident happened? A Yes, sir.

Q Lieutenant Love took you to your house first? A Yes.

Q Then where? A To the hospital.

Q Were you examined there by Doctor Wills? A Not an exact examination.

Q Did he look at you? A Yes.

Q Where did he put his hands? A My shoulders.

Q Where did he look? A Right in my face.

Q Was he close to you or not at the time? A He was.

Q And did Doctor Wills say anything in your presence to the officer about your being intoxicated or about his smelling any liquor on your breath? A He told Officer Love I was not intoxicated.

Q You heard him say that? A Yes.

Q And that is the same Doctor Wills who was on the stand here? A Yes.

Q Do you remember meeting Doctor Wills when—by the way; were you called by the grand jury, subpoenaed to come here? A Yes, sir.

Q Recently? A Yes.

Q Do you remember meeting Doctor Wills on that day, on that occasion? A Yes, sir.

Q Did he say to you these words, or words to this effect, when he met you on that occasion, that he was sorry on the impulse of the moment he had said Blaine was intoxicated, and that he had been gotten out of bed suddenly and was sleepy and he did not know an accident had happened and that if he took the time and had considered those things, he would not have said what he did say?

Mr. Holland: Object. In the first place counsel is leading his own witness and Mr. McGeehan certainly can't. On the other hand, the State would not be bound by what Doctor Wills said. Certainly we were not responsible for anything he may have said.

Third, suppose if they are attempting to attack his credibility, the question to this man is, what did Doctor Wills say?

Mr. McGeehan: May is please the Court, there is no other proper way to ask the question than this. You must ask a witness if he said a certain thing. That lays the foundation. That foundation having been laid, there is no other way to do it. It would be improper to ask this witness what he said. I must use the same words or words to that effect in my direct question to him and he must answer it when put to him that way for the purpose of attacking the credibility of the witness, the witness having denied he said it. It has to be framed in his words. This is an exception to the rule against forming your question with the words that a witness is to answer. I laid the foundation for it. I asked the doctor the question and he denied he said it and under the rules of evidence that must be read in my question, just what I put in the question to Doctor Wills.

The Court: Suppose the doctor had said so, what difference would it make?

Mr. McGeehan: It goes to the weight of his testimony. In contradiction of his answer.

The Court: It has nothing whatever to do with his testimony on the stand as to what he found on the night in question.

Mr. McGeehan: May I take an exception to your Honor's statement.

The Court: No, you may not have an exception on that. You may have an exception to my ruling when I rule.

Mr. McGeehan: May I have an exception to the effect that the testimony—may the record show I object to it?

The Court: No, the record will not show that. I am overruling the prosecutor's objection and the witness may answer.

Mr. McGeehan: May I ask—

The Court: The witness may answer the question.

Mr. McGeehan: I am asking to be granted an exception on your Honor's refusal to grant me an exception.

The Court: I will not grant you an exception to my overruling the objection of the prosecutor. The witness may answer the question. (To the witness): You may answer that question.

The Witness: What is the question again?

Q (Question read) To witness; that Blaine was intoxicated?

The Court: No.

Mr. McGeehan: I want to add that to the question.

The Court: Now you are putting that to the question?

Mr. McGeehan: I am adding that to the question to make it clear. "To witness; that Blaine was intoxicated."

The Court: Now, do you understand that?

A He did say that to me, yes.

The Court: Now, what did he say to you?

A He said that he was sleepy and on the impulse of the moment, if he knew at that time that Mr. Blaine had the accident he had, he would never have pronounced him under the influence of liquor.

Mr. McGeehan: Cross examine.

Cross examination by Mr. Holland.

Q Well, did he use the word "intoxicated"? A Intoxicated? You mean in this conversation?

Q Yes? Didn't Doctor Wills use the word "intoxicated"? A You mean in this conversation?

Q Yes? A I don't remember whether it was intoxicated or what it was.

Q So that when you answered "Yes" to Mr. McGeehan's question, you were not telling the truth, because Mr. McGeehan's question had the word "intoxicated"?

Mr. McGeehan: I said "Words to that effect."

Mr. Holland: Well, now, this is cross examination.

The Court: Mr. McGeehan may object if he wishes to. Do you object to the question?

Mr. McGeehan: I do object to that.

The Court: Objection overruled? Do you want an exception?

Mr. McGeehan: No, sir, I do not.

Q (Question read.) Were you telling the truth? A Yes, sir, that's what I am here for.

Q Now, as a matter of fact, Mr. Guerin, didn't you go to Collins' first? You testified on

direct examination you went to Mountain's and with Mr. Mountain you went to Collins'. As a matter of fact, didn't you go to Collins' first? A No, sir.

Q Are you sure? A Yes, sir.

Q And so then you did go to Mountain's first? A Yes.

Q Now, Mountain runs a hotel there, doesn't he, restaurant and hotel? A Restaurant, lunchroom.

Q It's also a hotel, isn't it, or rooming-house? A Well, I don't know.

Q What's the name of the place? What do they call it? Mountain's what? It's Mountain's hotel, isn't it? A I am sure I don't know.

Q And how long did you stay in—and neither you or he had any drinks in Oxford at all? A No, sir.

Q No liquor? A No, sir.

Q And how long did you stay in Wharton? A Oh, not over an hour; around an hour.

Q Was it any more than an hour? A I think so, yes.

Q And when did you come to Dover? A When we left Wharton.

Q Did you stop anywhere on the way? A Stopped in Dover.

Q Between the Eagles' and Wharton, did you stop anywhere? A Yes.

Q Where? A Stopped to see Mr. Shanahan.

Q Where is Mr. Shanahan? A Right on the main street. We just stopped in front of his house, but there was no lights, so we came on.

Q Was Mr. Shanahan there? A No, sir.

Q You did not go in? A No, sir.

Q And Mr. Shanahan did not see you? A No, sir.

Q Then the next stop was at the Eagles'? A Yes.

Q How long were you there? A Five or ten minutes.

Q You were there five or ten minutes? A Yes, sir.

Q Inside? A I was outside in the car part of the time.

Q You were outside in the car?

Mr. McGeehan: Part of the time, he said.

Mr. Holland: Well, I did not ask him that yet.

Q How long were you out in the car? A Two or three minutes.

Q How did you come to go in the Eagles'? A Mr. Blaine came out and asked me to come in.

Q He had been in there ten or fifteen minutes, hadn't he? A No, sir.

Q Was only between two and three minutes? A I think so.

Q How do you know that? A My best judgment, that's what I can say.

Q That's your best judgment now? A Yes, sir. May have been a minute more, may have been a little less.

Q Well, would you say it was ten or fifteen minutes? A No, sir.

Q You are absolutely positive of that? A I don't think so.

Q You think ten or fifteen minutes is wrong? A We was not there over ten or fifteen minutes.

Q Well, you think if it was more than ten or fifteen minutes for him to stay inside and then come out and ask you to come in that's wrong? A That's wrong.

Q No doubt about that being wrong in your mind at all, is there? A No, sir.

Q Now, when you went in, what were they offering you to drink? A I went in the front parlor.

Q You went in the front parlor? A Yes, sir.

Q That's in the clubroom? A No, I don't think so.

Q That's not where the bar is? A I did not see any bar.

Q They put you right in the front room? A Yes.

Q You are not a member, are you? A No, sir.

Q What did they offer you to drink? A I had a glass of ginger ale and seltzer.

Q You are sure it wasn't lemon seltzer? Now, ginger ale and seltzer is right, isn't it? A I think so.

Q You are positive of that? A Well, that's what I got.

Q Did you drink it? A I drank part of it, yes.

Q Did you finish it? A No.

Q You did not like it, did you? A I didn't finish it. I did not care for it at that time.

Q Then how long did you stay? A Oh, we came out just a few minutes after that.

Q Now, which did you drink first, the ginger ale or seltzer? A It was all together.

Q Ginger ale and seltzer? A I think it was, yes.

Q You are sure it wasn't rye whiskey and seltzer? A Positively not.

Q How do you tell the difference? A Quite some difference, isn't there?

Q Well, is there? Do you know the difference? A Yes, sir.

Q Was Blaine in there when you were drinking this that you had? Or was he in the other part of the clubrooms? A He was there for a minute or two and then went to the clubroom.

Q For a minute or two he was in the front parlor with you? A Yes.

Q And the rest of the time he was in the clubroom? A Yes.

Q You don't know, while you were in the parlor, whether or not he had anything to drink in the clubroom? A No, sir.

Q Then how is it you are able to testify he hadn't anything to drink that day? A That's the only time I was not with him.

Q I am talking about the time you were not with him. What he had there in the Eagles' clubroom, you don't know? A I wasn't with him those few minutes.

Q And they offered you a drink; you had how many? A I had no other.

Q Why didn't you? A I didn't want it.

Q Because you didn't like it? A No. I didn't want it. I was anxious to get home.

Q Was it too strong? A No.

Q What difference did getting home make to whether or not you had a drink? A Didn't make any difference, but I was quite anxious to get home.

Q You wanted to get home sober? A I always go home sober.

Q Do you really? A Yes.

Q What do you do when you are not sober? You don't go home?

Mr. McGeehan: Object to that.

Q You are not always sober?

Mr. McGeehan: Objection to that as not relevant to this case.

Mr. Holland: Withdraw it.

Q What time was it you left Dover? A Few minutes after eleven.

Q Until the collision, did you have any other stops? A One.

Q Where? A We let a Mr. Thompson out, I believe.

Q Where? A Some street along by Guther's place.

Q Got Mr. Thompson here in Court? A I don't know the gentleman.

Q Did Blaine know him? A I believe so.

Q Do you know whether he is under subpoena?

Mr. McGeehan: Object to that as not cross examination.

Mr. Holland: He is accounting for all of his time. Withdraw it; I don't want to waste time.

Q Would you know Thompson again if you saw him? A I don't know that I would.

Q You don't know whether he is here in the court room or not? A No, sir.

Q Where did you meet Thompson? A He came out of the Eagles' Club with Mr. Blaine.

Q You saw him there in the parlor? A No, sir.

Q Were you introduced to him? A I had come out ahead of them in the dark.

Q So you came out first, and how much longer after you came out did Blaine stay? A He was right behind me.

Q Where was Thompson? A Talking with Blaine.

Q Were you introduced? A No, sir.

Q You remember passing a touring car, do you? A Yes, sir.

Q That was a big, heavy touring car? A Yes, sir.

Q With curtains up? A I am not sure about that.

Q How do you remember the touring car then, if you are not sure about whether it had curtains on? A I remember the touring car without curtains.

Q Well, how many passengers were in it? A I can't tell you.

Q Well, the curtains were unfolded and enclosed the car, weren't they? A I can't tell you, Mr. Prosecutor.

Q Didn't you take notice? A I noticed it as a touring car.

Q Did you see these two boys on the right-hand side of the road? A No, sir.

Q And see them jump out? A No, sir.

Q Did you see the Ford coupe that was in back of the touring car? A Going which way?

Q All of you coming towards Morris Plains? A Ford coupe?

Q Or Ford sedan? A I don't know which it was. No.

Q Why didn't you see that?

Mr. McGeehan: Object to that.

A There were several cars coming down at that time; several cars coming toward Morristown; I did not keep track of all the cars.

Q Several cars coming toward Morristown?

The Court: If you wish me to rule, I will rule on any objection you may ask.

Mr. McGeehan: The witness answered it.

Q You say there were several cars coming down toward Morristown? A Not at this one point.

Q Where did you see any other cars coming toward Morristown? A Well, there was a car down this way from Tabor hill coming toward Morristown.

Q What kind of a car was that? A It was a big car.

Q Did you overtake it? A No.

Q What do you mean, a big car? A A big closed car.

Q So that you say now there was a big closed car just this way from Tabor? A This side of Tabor.

Q Now, was that before you passed the touring car? A The big touring car; oh, afterward.

Q That was after you passed the touring car. Now, wasn't it the touring car that passed you again? A I don't think so; it may have been the same car. I am not sure.

Q You mean to say now you were not able to recognize whether it was the same car or not? A The same touring car, you mean?

Q Yes. A I might be able to recognize it if I had noticed it, but I did not take notice of it and did not recognize it. I noticed a car pass me.

Q Well, that was the same touring car, wasn't it? A I don't know.

Q Did it have curtains up or down? A I don't know.

Q Well, if you don't know whether it had curtains up or down, you don't know what kind of a car it was? A I know it was a touring car.

Q Now, did you pass it or did it pass you? A They passed us.

Q After the touring car passed you, did you lose it in sight? A No.

Q Kept right ahead of you? A For quite a ways, yes.

Q When did you pass it again? A No, sir.

Q Didn't you pass it? A No, sir.

Q Did it turn off the road? A I don't know.

Q What happened to it? A It went on down toward Morristown.

Q So that it immediately preceded you toward Morristown? A Not immediately, no. It went on toward Morristown.

Q Well, how far behind it were you? A When he passed, we was right behind it.

Q How far down in the road did it pass you at? A What part of the road?

Q No, no. Whereabouts between Tabor and Morris Plains did he pass you? A Oh, quite a ways up the Tabor hill.

Q Well, on Tabor hill? A Just coming this way.

Q Coming up the incline on Tabor hill? A Yes.

Q That's where they passed you. Well, isn't that the same car that the other men testified to as you got on the other side of the Tabor hill you passed it?

Mr. McGeehan: Object to that.

Mr. Holland: Withdraw it.

Q You say you did not pass it again? A Mr. Holland, we passed a touring car the other side of Tabor hill, coming up into Tabor.

Q I am referring now to coming away from Tabor. From that point which is across the hill to Morris Plains, did you pass any other car? A No, another car passed us.

Q Did you pass any other car? A I don't think so. We passed other cars going the other way.

Q Now, you did not see these boys at all? A No, sir.

Q Were you looking on the right-hand side of the road? A I think so, yes.

Q And you were sitting on the right-hand side of the road? A Yes.

Q And you did not see them there? A No, sir.

Q Did you hear them holler at you? A No, sir.

Q Now, you spoke of the curve in front of the Sire estate. That's not a very pronounced curve, is it? It's just like it is indicated on this map, No. 1, isn't it? A Yes.

Q It is just like this? A I presume so.

Q Now, it's sort of a gradual turn to the right as you are coming from Tabor to Morristown, isn't it? A Yes.

Q Now, how far away—just indicate on this map, if you will, this being No. 1, and this being a general outline of that road—about how far away were you when you saw this Ford—assuming that the Ford was standing somewhere in that part? A That's the curve you have reference to?

Q Yes, isn't that a curve? A Yes.

Q About where were you? Withdraw that. About how far along this road from some point in this red line area could you see up here before the curve prevented your view? A Want me to point it out?

Q Yes, about where were you? A You could see up along here somewhere; far as that.

Q That's between 5403 and 5402 on Map No. 1? A Yes.

Q Now, at about that point you noticed the Ford? A Yes, sir.

Q And whereabouts was the Ford standing in reference to the amasite road? Suppose you take your pointer, please, and come to Map No. 2 and tell us about where that Ford was standing when you first saw it. Forget these things, if you will; forget this line marked "rear wheels," which the Court has excluded, and only with reference to this object which Mr. McGeehan suggests is the side line of the road, you tell us about where that Ford was standing when you first noticed it. A The front left wheel of the Ford car was about right there. Put the front right wheel there (indicating).

Q Will you be good enough to mark this on the map? There's the shoulder? A Yes.

Q Just draw a picture of that Ford. Just draw a square where these four wheels were standing when you first saw it.

The Court: Do you know the scale of the map?

The Witness: Yes, sir.

The Court: What is the scale?

The Witness: One inch equals two feet. Want me to scale this?

The Court: No, just approximate. You show where the front wheels were standing. You draw the Ford as you first saw it.

(Witness draws diagram.)

Q Now, you have indicated. Now, you saw it there first? A Yes.

Q Now, how do you fix it there in reference to that cold patch? How far away from the amasite—will you sit down? I withdraw that. Were any of the wheels off the amasite? A I think it was right at the edge of the amasite. It wasn't off the amasite.

Q Now, which edge of the amasite are you thinking of? A Why, the edge of the amasite.

Q You mean next to the shoulder? A Next to the shoulder, yes.

Q Which wheels were next to the shoulder? A Nearest the shoulder?

Q How far away from the shoulder? A I can't say just exactly.

Q You can't say exactly? A No.

Q Well, now, Mr. Guerin, don't you know you have placed this car directly in the middle of the road, and at least six or seven feet away from the edge of the amasite, which is here (indicating)? A Is this the amasite?

Mr. McGeehan: He didn't scale it. Object to that on the ground that it does not conform with the evidence. The witness did not scale the car.

The Court: I cautioned him about it before he made it and he knows the scale. He is a carpenter and knows the scale. You want to change it now, Mr. McGeehan? (To witness.) You understand the scale of the map?

The Witness: I don't understand the map as the lines show now.

Q You have been in court throughout all this trial? A Yes.

Q You remember Mr. Howell's explanation to the jury? A Yes.

Q And heard counsel talking every day about it? A Yes. I heard Mr. McGeehan explain it to one witness on the stand.

Q And you are a carpenter and build houses from plans, are you? A Yes.

Q And you don't know that this part in here represents the eighteen feet of amasite center and that that's the edge of the amasite, and that from the red line to the green line is the cold patch shoulder? Don't you know? A Yes.

Q Didn't you know that when you put that Ford on there? How did you come to put that Ford by the cold patch? A I made a mistake in those two lines.

Q All right; will you please correct it? Get your chalk. Do you have to disregard that entirely? A No, sir.

Q All right, just put the Ford—let me put a fair question to you. Forget this entirely. Just remember that this is what Mr. Howell testified was the patch in the road. Just remember that that red or brown line is the east edge of the amasite and that green line is the edge of the shoulder. Now put your Ford where you think it was when you first saw it.

Mr. McGeehan: May I suggest he draw it to scale?

The Court: There isn't anything there to show what size the Ford was.

Mr. McGeehan: Why can't we agree on that?

The Court: Let him put it there in answer to the prosecutor's question.

The Witness: Somebody has got to tell me the length of the Ford.

Q Suppose you make your Ford five feet wide and seven or eight feet long?

Mr. McGeehan: I agree with you that a Ford is pretty short; that's the right length.

Mr. Holland: There you are. Will you make it eight feet—

Mr. McGeehan: About one hundred inches, a hundred and four inches. I think that's about right.

Mr. Mills: Five by eight feet—

Q Now, suppose you put it— A That will be five by eight feet.

Q Well, if it were five feet wide it would be two and a half inches on that map, wouldn't it? A Yes. (Witness marks map.)

Q Now, then, that, in your opinion, is the place where the Ford stood? Is that where the Ford stood when you first saw it? A Yes.

Q Well, now, you haven't put the left wheels on the edge of the amasite? A Why not?

Q Have you? Haven't you put the left wheels— A The left wheels? I thought I had them on the edge of the amasite. I said they were somewhere on the amasite. The four wheels on the amasite.

Q Do you know how near? A No, sir.

Q Do you know how near—which ones? A They were the nearest ones, the inside; I could not tell you.

Q Now, where was it that you came in contact with the Ford car? Up at this point near the head of this patch? A Yes, sir.

Q Sure about that? A Right there.

Mr. McGeehan: Indicating front left corner of it?

Mr. Holland: Yes.

The Court: Front left corner?

Mr. McGeehan: Yes.

The Court: You are referring to the patch?

Mr. Holland: I asked him about the Ford and he said he came in contact with the front left corner of the Ford.

The Court: Oh, all right.

Q Now, you told Mr. McGeehan that there was plenty of room if this fellow had not walked out in front; that there was plenty of room for Blaine's car to pass there on the right-hand side as you were coming toward Morris Plains; that right? A Yes.

Q How much room was there? Thirteen or fourteen feet? A You mean on the amasite or—

Q Well, altogether. Room for Blaine to pass there, including everything that you could pass over? A Fourteen to fifteen feet.

Q And how far away were you, referring to Map No. 1, on the road away from this car when you heard Blaine blow his horn? A How far were we away from what?

Q From the Ford standing in the road. You say you first saw him between 5403 and 5402; now, how far did you come before he blew his horn? A Down in here somewhere.

Q Indicating opposite pole 5400? A Right along there.

Q And why did he blow his horn?

Mr. McGeehan: Object to that as calling for a conclusion.

Mr. Holland: Withdraw it.

Q Well, was there anything that you saw which required him to blow his horn?

Mr. McGeehan: Object to that, also, on the same ground.

Q Was there anything that you saw in the road? A The Ford car.

Q Did you see anything else? A Saw the two men.

Q And where were they? A Standing alongside the Ford.

Q What were they doing? A Could not tell you.

Q Well, what did they seem to be doing? A Well, stood alongside the Ford at that time.

Q Just stood still? A I imagine so.

Q Well, were they fixing a tire? A I have learned since that they were.

Q Well, didn't you see? A No, I couldn't see them there.

Q If you could not see what the men were doing when they were standing there, how could you see what part of the cold patch they were on? A But Mr. Holland, you are speaking about something a good many feet away from the scene of the accident.

Q You had your lights on? A Yes.

Q Were they good lights? A Yes.

Q They illuminated the road? A I did not take any record of what the two men were doing. I seen them there.

Q If you did not take any record of what the two men were doing, how do you know what they did then or afterwards? A We were getting nearer to them all the time.

Q Well, then what happened? A One man stepped on the running-board and the lights were turned on.

Q Was that the first thing that happened? A At what time?

Q When the men did something that attracted your attention? A They were there in the road. I seen them. That attracted my attention. The Ford was stopped and we were getting nearer them all the time.

Q Now, did that car have any lights on? That Ford car when you first saw it? A No, sir.

Q Had no lights on? A No, sir.

Q Are you positive of that? A Well, I am sure I did not see any lights.

Q Well, you saw the car and it did not have any lights on? A Yes.

Q Then the next thing you knew, a man stepped on the running-board? A Yes.

Q And threw the lights on? A The lights came on at that time.

Q Yes, were the lights bright, flashing, dazzling? A Bright lights, yes, sir.

Q They were pretty bright? A Yes, sir.

Q Were they? A Partly, yes.

Q What do you mean, partly? Either you can see or you can't see? Could you see? A I could see, yes.

Q Well, then, they did not blind you? A If you are blinded, you can't see.

Q Then you were not blinded? A No.

Q They were not different than any other Ford lights? A Bright lights, I don't know that they were any different.

Q You say you saw the man cross the street and go off the amasite of the road? A Stepped on the edge of the amasite.

Q Just indicate on the map, please, to what part of the amasite he stepped to? A To where this man stepped?

Q Yes, where did he go? A Over here (indicating).

Q Now, did he go to the edge of the cold patch, the shoulder? A No, sir.

Q Did he go to there (indicating)? A He went about there, yes.

Q Well, I think you pointed up here? A Yes.

Q Did he go beyond that? A No, not there.

Q Well, you could see him? A Yes.

Q So that the lights did not interfere with your vision? A No.

Q So that they were not blinding lights, were they? A I don't know what you mean by blinding lights.

Q Just what I say. Were they blinding lights? A I can't say that they were, no.

Q Well, you did know what I meant by blinding lights, didn't you? A If you explain it to me, were they blinding lights?

Q My only explanation to you is this, just what I said, isn't that right? A (No response.)

Q Now, how far away from the car were you when the lights were snapped on? A Fifteen or twenty feet.

Q Fifteen or twenty feet? A Yes.

Q And was that the same time that the man started to walk across the road? A He was across the road first.

Q When did he start to walk across the road? A When we were up further in the street.

Q How far up the street were you when he started to walk across the road? A Twenty or fifty feet.

Q Fifty feet? Didn't you say in answer to Mr. McGeehan that they were both together at the same time you were twenty feet away? Don't you remember that? A You asked me a question a moment ago about something up the street further.

Q No, I am asking you how far away from the Ford were you when the man started to walk across the road? A About twenty feet.

Q Then you were not fifty feet? A No.

Q What did you mean when you said fifty feet? A You asked me when the man started to walk across the road.

Q Yes, and you said fifty feet, didn't you?

Mr. McGeehan: Which direction?

Q Now, which is correct? Twenty feet or fifty feet?

Mr. McGeehan: Object to that if the Court please. I think he ought to make it clear which way across the road he means. He has testified to two walkings across the road.

Mr. Holland: He answered you fifteen feet away he came back. I am cross examining this witness.

Mr. McGeehan: I ask an exception to that on the record, respectfully.

The Court: None is allowed.

Q Now, when you say the man left the car, Mr. Guerin, and walked across the road, how far up the road were you? You can take your seat, if you will, please? A Twenty or twenty-five feet.

Q And you don't mean fifty feet? A No, sir.

Q And you were not thinking of what Mr. McGeehan—withdraw that. How far away from that man were you when he started to walk back? A Five or ten feet.

Q Didn't you say fourteen or fifteen feet?

Mr. McGeehan: Object to that on the ground that the record will show he said five feet on his direct examination.

The Court: Objection overruled. The prosecutor has a perfect right to ask that question.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q Didn't you say fifteen feet on direct examination? A May I hear the question again?

Q I will reframe the question. Didn't you say on direct examination in answer to a question of Mr. McGeehan's that the car was fifteen feet away from the man when he started to walk back? A No, sir.

Q How far away was it? A Five or ten feet.

Q How fast were you going? A About twenty-five miles an hour at that point. We had slowed up.

Q Slowed up from what? A Twenty-five to twenty-eight miles an hour.

Q How do you know it was twenty-eight miles an hour? A I don't know; I am just thinking, imagining.

Q You might have been going thirty, mightn't you? A I don't think so.

Q You don't think you were even going thirty? A (No response.)

Q Which man was hit first; the man coming from the west side of the road or the man on the Ford running-board? A The man from the west side of the road.

Q He was hit first? A Yes.

Q And the man on the running-board, was he still on the running-board or had he stepped off? A He was on the ground. Really the whole thing happened at once.

Q Well, was he hit second? The man who had stepped off the running-board hit second? A I don't know. I am not sure about that. It all happened suddenly; I am not sure about that. I won't say yes.

Q Well, were you able to look in both directions at once? A Well, the whole thing was right there.

Q But you were only five feet away from him? Now, five feet away is just as far as from you to me? A Yes.

Q And were you able to see both of them at once? A That's the small end of what my answer was.

Q But you said five or ten feet? And when you were five or ten feet away, how fast was your car going? A I don't know.

Q Well, why do you say you don't know now? A Well, he wasn't going very fast.

Q Now, did these men holler? A No, sir.

Q Didn't they make a sound? A No, sir.

Q Did you run over them? A Yes, sir.

Q How do you know you ran over them? A Bouncing, sort.

Q Did you feel it? A Sure.

Q Did you feel the car bump? A Sure.

Q You did? Just bumped you? You felt that car bump? A Well, I just mean a little jar. I knew we hit them.

Q No doubt about that in your mind? A No, sir.

Q At the time that Blaine hit these two men with his car the light was not blinding then, was it? A I don't know.

Q What do you mean, you don't know? Haven't you testified on direct examination that it wasn't until after you came down here to this bumpy road that you bounced up? Didn't you tell that to Mr. McGeehan, that after you came to this bump road, that's when you bounced up and over? A Will you ask me the question again?

Q (Question read.) A No, it was not blinding then.

Q Aren't you paying much attention to these questions and answers? A Yes, I am.

Q And there was no glass broken in that car outside of the second door, was there? A No, sir.

Q And you think that Blaine's cut on the head came from the window fixture on the windshield? A I think it did.

Q What's that? A I think so.

Q Now, didn't that come at the time that the car bunked up against the fence post and he couldn't go any farther? Isn't that how that came? That cut? A I don't know. I know he got the cut.

Walter Guerin, cross.

Q Who got out of the car first, you or Blaine? A I did.

Q Who went back to the men first, you or Blaine? A I did.

Q Did he go back? A No, sir.

Q Not at all? A No, sir.

Q Didn't you have a bottle of liquor with you? A Positively did not.

Q Didn't you take that liquor and put it in the other man's coat? A Positively did not. I would not be guilty of it.

Q You would not be guilty of it? A No, sir.

Q How did you come to call attention to—I have forgotten now whether it was Love or Volge—that they had a bottle of liquor in their pocket?

Mr. McGeehan: Object. No testimony that he had called their attention to it.

The Court: Put your question the other way.

Q Didn't you draw attention to that? A To what?

Q The fact they had a bottle of liquor in their pocket? A No, sir, I did not.

Q You didn't? A No, sir.

Q Didn't you know there was any liquor there on them? A No, sir.

Q So you went over there and didn't smell any liquor that time? A I smelled liquor there, but I did not know where it was.

Q You just said, "no, sir"? You were right down close to see whether these men were living or dead? A I felt the pulse of the first man I went to.

Walter Guerin, cross.

Q Was he living or dead? A Dead. I felt to see; I am no expert on that.

Q You did not smell any liquor then? A I don't know what it was.

Q Was it alcohol? A Fumes in the air.

Q Who took the big coat off of the man? A I don't know.

Q Didn't you help? A No, sir.

Q Didn't you help with the man who was still living? A At what time? I didn't help, either; the car came just as I went to that man.

Q Well, you testified you were standing there by Blaine with your hand up in the air trying to hail a car as it went by?

Mr. McGeehan: Object to that.

The Court: Objection overruled.

Mr. McGeehan: Object on the ground that is not what he testified.

Q Didn't you answer Mr. McGeehan you were right there and had your hand up, but didn't say anything, that you were hailing a car? A I was standing by the man there.

Q Didn't you say you were standing by Mr. Blaine? A No, sir.

Q Didn't Mr. McGeehan ask you if you hailed that car?

Mr. McGeehan: Object to that. I asked if Mr. Blaine did and he said he was back by the back by the body.

The Court: Well, he is asking and has the right to ask him on cross examination. That is my ruling. You may have an exception if you wish.

Mr. McGeehan: No.

Q So that you were by the bodies before the men in the other cars got there? A I went to the men, yes, sir.

Q Did you feel the pulse of the other fellow? A No, sir.

Q Was he dead or living? A The second man, you mean?

Q Yes. A He was living.

Q How did you know that? A He laid there groaning on the ground.

Q Was he the big fellow or the little fellow? A I can't say.

Q How long did he lay there groaning on the ground? A I don't know. At that time the car was coming, and I went back to Mr. Blaine to make sure it was going to stop.

Q Make sure what? A That the car was going to stop.

Q So that you did go back to Mr. Blaine to make sure the car would stop? A Yes, certainly.

Q That's what I thought. When did he attempt to hail the car? A I was with the dead man then.

Q What was Blaine doing during all this time? A Stood there in the street.

Q Did you see the car come up and turn around and come back? Where was Blaine then? A He was on the right side of the roadway.

Q Where were you? A I was right there, just going to him.

Q Coming away from the dead man? A Yes, sir.

Q So that when he stopped the car that had turned around, you were coming away from the dead man, is that right? A Before they turned around, yes.

Q So that you were going away from the dead man then before this car turned around A Just as the car got there, before it turned around.

Q Now, I think I was interrupted before when I asked you—just describe when you hit these men and along after that, what the bumps felt like? A Well, I don't know as to bumps.

Q The car was jarred? A Just slightly, yes.

Q You felt it? A Just a slight jar, yes.

Q Well, you hit two men at the same time, you said? A It all happened the same time, yes.

Q And you also hit the Ford car, too? A Yes, hit the left wheel.

Q Well, did you come to a stop before you hit the fence down at the front end or did the fence stop you? A We was almost stopped.

Q Almost stopped? A Yes, I do not know as we hit the fence.

Q What's that? A We did not hit the fence.

Q You didn't hit the fence? A No, sir.

Q I show you a picture of the Buick and ask you whether that helps your recollection as to whether you hit the fence or not?

The Court: Showing the witness what exhibit?

Mr. Holland: That is a picture; it's not been offered.

Mr. McGeehan: Object to the examination of the witness on a photograph not in evidence.

A There's no fence in that picture.

Q Your answer is there's no fence in that picture?

Mr. Holland: I offer the picture. I don't know if I am entitled to offer it now. I offer it to be marked for identification. May I offer it in evidence?

Mr. McGeehan: No objection.

(Picture received and marked in evidence Exhibit S. 15.)

Q Now, looking at that picture to where that car is smashed up, was it because you hit the Ford that way or because you ran into the fence? A Well, we ran in between two trees.

Q Did you knock over a tree? A I don't know. I know we went between two trees.

Q Well, if you went between two trees, that ought not ruin it that way, did it? A No, I don't think it would.

Q Well, what was it that demolished the front left of the Buick that way? Was it hitting the Ford or striking the fence? A I am not sure. I don't know.

Q Well, why don't you know? You said you came to a stop almost before you hit the fence, didn't you? A Well, I did not say we came to a stop. I said the car was going slow.

The Court: We will adjourn at this time until two o'clock.

After Recess.

WALTER GUERIN resumes the stand.

Cross examination (further) by Mr. Holland.

Q How slow was the car going before you hit the fence? A That I could not say.

Q When did you first notice that Blaine was bleeding? A As soon as we got out of the car.

Q What did Blaine say to you? Did Blaine say anything to you when he struck the men? A No, sir.

Q Did he say anything to you from that point up until the time you got out of the car? A I don't think so.

Q What's the first thing you said when you got out of the car? A I noticed some blood running down his face and I asked him if he was hurt.

Q Now, did he go back to see the men who had been hit? A No, sir.

Q He didn't? A No, sir.

Q Did you tell him that a man had been hit—two men? A No, I didn't.

Q So he didn't know the two men had been hit?

Mr. McGeehan: Object to that. He didn't testify to that.

Mr. Holland: Withdraw that.

Q Did he say anything about the two men who were hit to you? A No, sir.

Q Didn't he say anything about the two men that were hit? A No, sir.

Q You are sure of that? A Yes, sir.

Q Now, when did you notice—when did you first notice that there was a patch in the road? A That night.

Q Had you noticed it before Dibble came or afterwards? A Before Dibble came.

Q Now, when Dibble came he told you you were under arrest, didn't he? A Yes, sir.

Q Didn't he tell you there was liquor on your breath? A Yes, sir.

Q You talked with him about Charles Blaine? A Yes.

Q Now, did you say that you had an argument? A Yes, sir.

Q Well, what was there to argue about because you said he lived in Morristown and he said he might live in Dover or Wharton? A He denied it and said he didn't and I said—

Q All right, you said he didn't? A Yes.

Q Is that an argument? A It might not be an argument.

Q He was trying to place the man you were talking about? A Not that I know.

Q He was trying to see if he knew him? A He said he knew him.

Q Did you use any foul language? A No, sir.

Q Did he? A Yes.

Q Well, what did he say? A Why, he called me a liar.

Q Is that foul language? A I don't know whether it was foul language.

Q You mean he used strong language? A Yes.

Q And did he tell you you were under arrest? A He knew I was with Blaine.

Q And he knew you were not driving, didn't he? A Yes, sir.

Q Now, did Love tell you you were under arrest? A Yes.

Q Didn't he tell you to follow him? A Not that I understood, no.

Q Didn't he go after you two or three different times? A No, he came for me down to the car.

Q Were you down to the car all the time? A Most of the time.

Q So you were near the car most of the time? A After the trooper came there.

The Court: By the car, do you mean the Buick sedan?

The Witness: Yes.

Q Did you see them fit this pump that night? A No, sir.

Q Did you see them find the flash light? A No, sir.

Q Did you see them find the glasses? A No, sir.

Q Did you see them find the hub cap? A No, sir.

Q Did you see them find the tube of cement? A No, sir.

Q Did you see them find the dust cap? A No, sir.

Q You were not anywhere around there, were you? A Down by the Buick car.

Q And you don't know whether they fitted that right in the depression in the road that night; whether they fitted the standard of the pump into the impression of the road that night, do you? A No, sir.

Q What happened to your chickens? A They were in the car.

Q Were they all game chickens? A Yes.

Q How long had you known Henry Mountain? A Five or six years.

Q How long did you have to spend in Oxford altogether? A Three and a half or four hours.

Q And during that time you had nothing to drink? A No, sir.

Q Wouldn't you drink? A Positively not.

Q Were you sober the next morning? A Yes.

Q Do you remember the next morning you signed a statement? A Yes.

Q Is that your signature? A Yes, sir.

Q Is that your signature? A Yes, sir.

Q Was this statement sworn to before Robert L. Murphy, a Master in Chancery of New Jersey? A I believe it was.

Q You remember you said this: We was there half hour or an hour and we had a bottle of ginger ale and Blaine had a drink of apple whiskey? A I did not say he had a drink of apple whiskey. I said he asked for a drink of apple.

Q How is it you came to sign that paper and swear to it before Mr. Murphy if that wasn't true? A I supposed it was all right.

Q Wasn't it read to you? A No, sir.

Q You mean Mr. Murphy did not read it to you? A I read it; I glanced over it.

Q And you were sober? A Positively.

Q So you knew what you were signing? A Yes.

Q You remember you said you came to Dover and stopped at the Eagles' Club. Blaine went in the club; I waited outside. He was in there ten or fifteen minutes and came out. That isn't what you said today? A I gave to best of my recollection at the time.

Q Your recollection the next morning, if you were sober, was very good. A That's three months ago.

Q Wasn't it better then than it is today? A I don't know.

Q You don't know? What has made your recollection— Is that what you said, I don't know? A Yes.

Q What made your recollection better today than the morning after the accident? A I don't know that it is any better.

Q If that is true, he was not there ten or fifteen minutes inside, but three or four? A I can't say.

Q You swore to that? A Yes, that morning.

Q You are swearing to a different story now, aren't you? A I don't know that I am.

Q Didn't you say on your direct and cross examination that Blaine was in the Eagles' Club only three or four minutes when he came out to get you? A That's what I said, yes.

Q Well, isn't that different from his being in there ten or fifteen minutes? A That's the whole period of time we were both in there.

Q Oh, that's it? A That's what I mean.

Q He was in there ten or fifteen minutes and came out and wanted me to go in a minute and I said no, I wanted to get home? A Yes.

Q Then you were there more than ten or fifteen minutes? A I meant the whole time we were there.

Q I sat there a few minutes and a fellow came in with a glass of lemon seltzer; do you remember that? A Yes.

Q Was that true? A Ginger ale and seltzer.

Q Which is the true story: the one you are telling today or the one you told the morning after you were arrested? A Why, I don't know but what they are both true.

Q So you did mean lemon seltzer? A No, sir.

Q Well, it could not be lemon seltzer and ginger ale seltzer at the same time? A I don't know what you mean by ginger ale seltzer. I said, ginger and seltzer.

Q Was that what you had? A Yes.

Q Why did you say lemon seltzer? A I don't know that I did.

Q Isn't this your statement? A Yes.

Q Who wrote that down? You wrote that down? A Bob Klinedinst started it.

Q Who told him what to write down? A Bob Klinedinst.

Q Who told him what to write down? A I did.

Q You did? A Yes.

Q Then you swore to it before Mr. Murphy? A I believe so, yes.

Q Now, how did you see— The one man turned the lights on, you claimed? A Yes.

Q What did the other man do? A Walked backward away from the car.

Q What do you mean, walked backward? He walked with his face toward the Ford and his back toward the road? A Yes.

Q And he walked backwards? A Yes.

Q You did not tell Klinedinst that he had gotten all the way over and started to come back, did you? A I don't know whether I did or not.

Q Why didn't you if that were true? A He didn't ask that.

Q That was your statement? A Yes.

Q Why didn't you tell him the whole story? A I did not remember everything at that time.

Q If you did not remember everything then how do you remember it today? A I am not so excited today as I was then.

Q You were not excited the next morning? A Yes.

Q You had been home and had a night's sleep? A That's true.

Q You were perfectly sober the next morning, were you? A Yes.

Q You also said that you passed a car coming up the hill, didn't you? Tabor Hill? A Yes, sir.

Q And that afterwards that car passed you? A I did not say that car.

Q Well, you said a car? A A car.

Q Don't you remember you said something entirely contrary to that? We passed a car on the hill back of Mount Tabor; it was a touring car. When we hit the two men Blaine stopped the first car that came along and asked them to take him to a hospital. I believe this was the car we passed on the hill at Mount Tabor. That wasn't so at all? A For the simple reason the car went up the street and turned around.

Q Why did you tell Klinedinst it was the same car you passed at Mount Tabor? A I thought at the time it was.

Q What made you change your mind since? A Why, it's three months ago and I heard different things about it.

Q So you are testifying now from the different things you heard about it? A No, I am not.

Q Now, how long was it before Chief Dibble came after the accident? A Well, I could not say just how long it was.

Q Well, on direct examination you said three or four minutes this morning? Why don't you remember now? A Chief Dibble?

Q Yes. A I beg your pardon. I thought you spoke of Trooper Love. It was three or four minutes.

Q And when Chief Dibble came you had just gotten through examining the two dead men in the road? A I was just coming back.

Q You were just coming back when Chief Dibble came? Didn't you testify this morning you were coming back away from them when Blaine hailed the car that first arrived? Isn't that so? A Yes.

Q Well, then, you had come back when Chief Dibble came? A Probably I was back.

Q Yes; and this story is all true then that when you say here that: after we looked the two men over that we hit and saw that one was dead and the other fellow was still alive, by this time a car came by with Chief of Police Hodges of Morris Township? A That was the best of my recollection that morning. With my excitement that morning I thought Chief Dibble was the first man there.

Q And which is true? A According to the testimony there was a man ahead of him.

Q I am not asking you according to the testimony. I am asking you for the truth? A Carl Ritzer, I believe.

Q So he only asked for a glass of whiskey? Apple whiskey? A No whiskey mentioned; I heard him ask for a glass of apple.

Q Just a glass of apple, and that's what you told Mr. Klinedinst and that's what you swore to? A Yes.

Q All right; now, what about this then? From the time that I met Blaine at noon at Morristown until I left him at the scene of the accident, to my knowledge, he had but one drink; that was apple whiskey which he got to Henry Mountain's at Oxford about 4:00 P. M. on the afternoon of the same day? A That was in my statement?

Q Did you sign it? A Yes, I did sign it; my signature is there.

Q Did you swear to it? A I supposed I was swearing to what was all right.

Mr. Holland: I offer the statement.

The Court: It may be marked.

Mr. McGeehan: No objection to it going in at this time.

(Marked Exhibit S. 16.)

Q What did you want to go home for? A What did I want to go home for?

Q Yes; you went home before they took you down to the hospital? A To leave the chickens. To leave the chickens at my home.

Q Well, did you take the chickens with you? A Yes.

Q Did you leave them at your home? A Yes, sir.

Q Didn't you leave the chickens behind you in the Buick? A No, sir.

Q Didn't somebody else take them home for you? A I put them in Trooper Love's car and we took them home.

Q Then he took you down to the hospital to be examined? A Yes.

Q Well, if you were perfectly and absolutely sober, why take you to the hospital to be examined?

Mr. McGeehan: Object.

Mr. Holland: Withdraw it.

The Court: Objection sustained.

Q You knew you were being taken to be examined as to your sobriety, weren't you? A No,

sir. I know we were going to the hospital because Trooper Love said we would go down to the hospital and see how Blaine is.

Q How did Trooper Love know which hospital Blaine was at? A He didn't know as I know of.

Q And you never stopped on the way to find out? A No, sir.

Q He only took you to the Memorial because that was the handiest? A I don't know; perhaps he did.

Q Did you ask about Blaine when you got in? A Yes.

Q What did you ask? Who asked? A I think Trooper Love asked.

Q What did he ask? A He asked how Blaine was and if he was there.

Q What was the answer?

Mr. McGeehan: Object to that. I don't think the defendant is bound by this. He can question this witness with anything he said that is contrary to what he said on the stand. Any other testimony would not be binding.

The Court: Objection sustained. I may be a bit hasty. I will ask the prosecutor is there anything in Guerin's statement bearing on the conversation at the hospital?

Mr. Holland: No, sir.

The Court: All right; then I sustain your objection. I assumed there was not.

Q What time did you leave Oxford? A About 7:30.

Q What time did you get there? A About 3:30.

Q So you were in Oxford about 4:00 o'clock? A Oh, yes.

Q Now, you remember you said you went to Collins' house first, who lives in Oxford, and stayed there a half an hour, and went from Collins' to Henry Mountain's place? A No; I said just the opposite.

Q Well, how did you come, if you were perfectly sober the next morning and had your full senses and wits, and read this thing over and swear to it before Mr. Murphy; how did you come to do that? A I don't think I did do it.

Q Well, you did sign it. Why did you go to Mr. Mountain's? A To find where Mr. Collins lived.

Q Now, Mountain's is a hotel, isn't it? A That is sort of a country hotel.

Q Yes, that's what it looks like from appearance. A I don't know how big it is.

Q You said that when you left Lynch's house you took Henry Mountain back to his hotel and then left for Morristown? A Yes, that practically is right.

Q When you left Mount Tabor and came towards the Sire estate, how fast were you driving? A Twenty-five miles an hour; possibly a little more—twenty-eight.

Q Well, is twenty-eight the fastest? A I think so.

Q Was there anything wrong with the brakes on the way up to Oxford or on the way back again? A No, sir, not that I know of. I don't know much about automobiles.

Q Yes; did you write to Mr. Mountain afterwards and tell him about the whiskey? A No, sir.

Q You never wrote a letter to Mr. Mountain? A I wrote letters to Mr. Mountain, yes.

Q Did you write a letter to Mr. Mountain after this accident? A Yes, sure.

Walter Guerin, re-direct.

Mr. Holland: Is Mr. Mountain in the room?

Man in Court Room: Yes.

Mr. Holland: Did you bring the letter that was subpoenaed?

Mr. McGeehan: Now, he isn't sworn.

Q Now, when did you write him? A I wrote several letters to Mr. Mountain about chickens and baseball and several things.

Q When was the last time you wrote him a letter? A I don't know; I don't remember.

Q How many letters have you written to him since this accident? A Probably two; maybe three; I don't know.

Mr. Holland: That's all.

Re-direct examination by Mr. McGeehan.

Q And had you written him a number of letters before this accident? A Yes, sir.

Q When this statement was taken from you, Mr. Guerin, where were you? Where was it taken from you? A In the prosecutor's office.

Q And who did the typewriting of it, did you say? A Mr. Klinedinst started it and Mr. Roff finished it.

Q Did Mr. Roff finish it on the typewriter or how? A I could not say about that.

Q You mean he questioned you afterwards? A Yes.

Q But he was present and Trooper Love was there? A I think so; yes.

Q And was Mr. Murphy there at the time the statement was being taken? A No, sir.

Q You didn't know of him until afterwards? A He was called in the office.

Walter Guerin, re-direct.

Q That is, after it was all written up? A Yes.

Q How did they write the statement? Ask you questions and you answer and then they would typewrite? A Part of it, yes, sir.

Q You said to the prosecutor that you don't know you read it over after it was written?

The Court: He said he did read it over. He says, not read to me, but I read it.

Q Did I understand you correctly or not? I am not sure about this. Did I understand you correctly or incorrectly? It was toward the end of the cross examination of yourself that you don't know as you did read it over but you signed it? A That's what I said.

The Court: Did you read it?

The Witness: I glanced over it; read parts of it, but not all.

Q Glanced over it? A Yes.

Q Did you read it throughout, word for word? A No, sir.

Q Did they take it down in longhand and the girl typewrite it afterwards? A I don't know.

Mr. Holland: Object to any girl. He has already told you Mr. Klinedinst wrote it on the typewriter.

Q Was it written right on the typewriter or in longhand first? A Mr. Klinedinst struck it on the typewriter, I believe.

Q He wrote the whole thing on the typewriter? A I don't know. He didn't take all the statement.

Walter Guerin, re-cross.

Q Well, after he stopped, how was the rest taken, on the typewriter or in writing? A I am not sure about that.

Q Now, when Lieutenant Roff took it, was he typewriting or writing on a paper? A I am not sure about that.

Q Did you at any time say that the defendant, Mr. Blaine, had a drink of apple while up in the country? A No, sir.

Q You did go, did you not, from Collins back to Mountain's after having been at Mountain's before you went to Collins? A Yes, sir.

Q You told them, did you, that you had heard Mr. Blaine ask Mr. Mountain for a drink of apple or have you got any apple? A I did, yes.

Q Told them that voluntarily, didn't you? A Yes.

Q And did you tell them you did not see him drink any apple? A I did not see him get it, no.

Q So you were with him all the time you were in Mountain's place? A Yes.

Mr. McGeehan: That's all.

Re-cross examination by Mr. Holland.

Q Well, even if he was dead drunk, you would not say so, would you?

Mr. McGeehan: Object.

The Court: Objection sustained.

Louis Schuyler, direct.

LOUIS SCHUYLER, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Where do you live, Mr. Schuyler? A Wharton.

Q What's your business? A Driving a truck.

Q Whom do you drive for? A DeMott Wood & Coal Supply.

Q Were you to the basketball game on March 23, 1925? A I was.

Q Where was that basketball game? A Summit.

Q And what time did you leave there, about, if you know? A Well, I should judge around 11:00 o'clock.

Q You remember passing along the road that leads from Morristown to Dover that is shown upon the maps and seeing the automobile in front of the Sire place or near the Sire place? A It wasn't right in front of it.

Q In front of the property there? A It wasn't in front of it. It was towards Dover, a little ways above it.

Q Now, what kind of a car was it you saw standing there? A A Ford runabout.

Q Did you at the time see any men on the road near that Ford runabout? A No, not on the road.

Q Well, near the car or alongside of it or anywhere? A Yes, I saw they were fixing one of the tires on the right-hand side of the car.

Q They were on the right-hand side of the car? A Yes.

Q And could you see exactly what they were working on over there? A Well, I could not see whether they were putting a tire on the rim

or putting a tube in, but I could see the two of them was bent over working on a tire.

Q Now, you don't know just what time that was? A Around 11:30 or 11:40, somewhere around there.

Q Now, Mr. Schuyler, you were going in the direction that the Ford was facing? A Yes.

Q So that you came from behind the Ford? A Yes, sir.

Q Was that Ford on or off the amasite of the road? A On the road.

Q On the amasite? A Yes.

Q And was any part of it off the amasite? A Well, one right wheel was off the road.

Q And was it standing straight along the road or at an angle? A Standing at an angle when I saw it.

Q You say the right wheel was on—where was that? A That was off the amasite a little bit.

Q Was that the front or rear? A Front wheel.

Q Now, where was the rear when you came by? What part of the road did that occupy? A That occupied over to the left of the Ford, I would call it, from the way it stood from the right.

Q Now, how near the center of the road was the rear of the car that you saw there? A Well, it was pretty well toward the center.

Q Pretty well toward the center? A Yes.

Q As you went past there where did you have to turn to pass that car? That is, did you pass along the left or right of the road? A I went to my left to pass it, but there was a car coming down from Dover to Morristown and I stopped behind the car to give him the right of way.

Q Came to a stop? A Yes.

Q Before passing? A Yes.

Q And then when you did proceed on which part of the road did you run along? A I went over to the left afterwards. I had to go on the left side of the car to pass it.

Q Now, did you— You think it was around 11:30 or 11:40? A Somewhere around there.

Q Were the lights on the car at the time you passed it? A I didn't see any.

Q And did anything occur that makes you recollect whether there were lights on there or not? A Well, I am positive there wasn't lights on for the remark I made when I passed the car. I said, Buddy, you better put on your lights.

Q You said that to the men that were working there? A Yes, sir.

Mr. McGeehan: That's all.

Cross examination by Mr. Holland.

Q Well, they were alive then? A Yes.

Q You did not hit them? A No, sir.

Q And they did not have any lights on and you did not run into them? A No, sir.

Q And you were coming in the same direction and on the same side of the road? A Yes.

Q And you were careful enough to wait until the approaching car had gotten by? A Yes, I did.

Q Now, did you say that— Do you see this map? A Yes, sir.

Q Now, suppose, if you will please, you take this pointer and show us where that car was standing when you saw it? That's the amasite (indicating). Do you understand this map? A Not very much, no.

Q Do you know what this represents? A That represents the patch.

Q Yes. Do you know what these brown and red lines represent? A That's the outside of the road. That's the end of the amasite from that point approximately to that point. And from the brown or red line to the green lines represents the shoulder, and I believe the green line represents the grass, dirt part.

Q Now, where did you see the car standing? You said— A The car was at a kind of angle this way, right over that way.

Q You mean the front was toward east? Northeast? A Yes, toward the right of the road.

Q Toward the northeast? About this way? A Yes, toward the right side of the road.

Q And the end not out in the road? A Yes, at an angle.

Q How much of an angle? A Well, the front wheels were a little ways to that way off the road as I saw it.

Q The front wheel was a little off the road? A Yes, that's the way I saw it.

Q Yes, the front wheel was over here a little ways? A Yes, and the back wheel stood back here with a jack. The left hind wheel jacked up.

Q You say that the front wheel was off the shoulder of the road and the hind wheel; right hind wheel was in the patch? A The left hind wheel was in the patch.

Q And the right front was off the shoulder? A Yes.

Q And you did not see any lights on it? A No, positively did not.

Q And you slowed up and waited for another car to go by? A Yes.

Q And you even took the trouble to say to somebody you better put your lights on? A Yes.

Re-direct examination by Mr. McGeehan.

Q Nobody stepped in front of your car though? A Nobody did, no. The men were on the right side of the car working.

Re-cross examination by Mr. Holland.

Q Do you know—did you go home before Loughlin or afterwards? A Well, I don't know if I was the first one that left Summit or not.

(Witness leaves the stand.)

Mr. Holland: Mr. Schuyler, will you take the stand again?

Q Now, this drawing that you made for us, you showed that the front right wheel was over on the shoulder, didn't you? A Well, I said off on the side of the road.

Q You did not mean it was on the dirt, you meant it was on the shoulder? A Yes.

Re-direct examination by Mr. McGeehan.

Q Were you subpoenaed to come here by the prosecutor or defendant? A By the defendant, Mr. Blaine.

Re-cross examination by Mr. Holland.

Q How long have you known Mr. Blaine? A I did not personally know him at all until that lad came to me with a subpoena.

Edward Casey, direct.

Q Who did you tell your story to? A I told it to Mr. Headley.

Q And how did Mr. Headley know to come to you? A Some of the gang must have told him. When I came in with truck one night, he got me on the truck.

Q Who did you tell that you had seen this very same car? A I didn't tell anybody but the bunch that went to the game and when I came back at night he was there and spoke to me about it. That's all I know about it.

(Witness excused.)

EDWARD CASEY, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Casey, where do you live? A Wharton.

Q And how old are you? A Twenty.

Q Were you with Mr. Schuyler coming back from the basket-ball game when you passed that Ford that was on the road there? A Yes.

Q Near the Sire property? A I was.

Q Did you see the Ford? A Yes.

Q Where was the Ford, as you remember it? A Well, it was on the right-hand side of the road going toward Dover. This is Dover, (indicating) and at a little bit of an angle there.

Q An angle to the left or right? A Right. Front wheel off the edge of the road.

Q Right front wheel? A Yes.

Q And then how far did the left front wheel extend on to the amasite? A Well, I imagine about one and a half feet.

Edward Casey, cross—re-direct.

Q And the rear left wheel, how far did that extend over on the amasite toward the center of the road? A What's that?

Q Question read.) A About five and a half feet.

Q About a foot more than the front left wheel? A Yes.

Q Did you notice whether the lights on that car—I withdraw that. About what time do you think you were passing there? A Oh, around twenty-five minutes to twelve.

Q Did you notice whether the lights were on that Ford or not? A Why, no, there wasn't any there.

Q Wasn't any lights on? A No, sir.

Mr. McGeehan: That is all.

Cross examination by Mr. Holland:

Q What kind of a car were you riding in? A Ford touring car.

Q There is no mirror in the Ford touring car up in the front, is there? A I don't know, I did not notice it.

Q You did not notice any mirror? A No.

Q You did not turn around and look back at these fellows? A No.

Re-direct examination by Mr. McGeehan.

Q Did you look at the car as you went by it? A Yes, sure.

Q And as you went past, could you see whether the lights were lighted or not? A There wasn't any there.

Q You are certain of that? Did you look as you went past? A I looked as I was passing.

Edward Casey, re-cross.

Q And did you hear anything said to the men that were there? A Yes, sir, I heard him holler, you better put your lights on, Buddy.

Re-cross examination by Mr. Holland.

Q Well, did he put his lights on? A I don't know, I did not turn around in the car to see.

Q Did you pass the car, did you pass the Ford first or did the other car pass the Ford first? A We had to park in back of it for a second for the other car to come from Dover.

Q And the other car coming from Dover, did it have good lights on or poor? A No, the lights were good.

Q Which seat were you riding in? A Front seat.

Q Who was riding in the back seat? A There was a couple of other fellows there from St. Mary's.

Q What are their names? A I don't know to talk to them, we brought them down to the game.

Q How old were they? A Only young fellows, were in High School.

Q What is your name? A Edward Casey.

Q Now, don't you think it's possible that the lights might have been on there and you didn't notice them? A No, I don't believe it is.

Q Do you think they put their lights on when your friend told them?

Mr. McGeehan: Object to that.

Mr. Holland: All right. Now, didn't you open the way and point to where he came around the bend and saw the light?

Mr. McGeehan: That is not proper.

Frank M. Kirkner, direct.

The Court: You don't need to answer.

Mr. McGeehan: Well, the witness—

Mr. Holland: I examined the witness on the question directly of Mr. McGeehan—

The Court: Well, call your next witness. Proceed.

(Witness excused.)

FRANK M. KIRKNER, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Kirkner, where do you live? A Mendham.

Q And did you live there on March 23rd? A Yes, sir.

Q Where did you live then? A I lived in Mendham.

Q Did you live in Mendham? A Yes, absolutely.

Q Were you acquainted with Mr. Charles Cramer and Mr. Charles Haggerty? A I was acquainted with Mr. Charles Cramer slightly, that is, at least in a business way. Mr. Haggerty I just met the evening of the fatal accident.

Q And was Mr. Cramer with Mr. Haggerty when you met them that evening? A Yes.

Q What is your business? A I had a gasoline filling station known as the Teapot Dome, and have been—

Q There are no senators partners of yours? A That's the oil scandal number two.

Q Now, were you at the Teapot Dome Gas Filling Station when you saw Mr. Haggerty and Mr. Cramer? A I was.

Q What time did you see them about? A That's something I can't answer very definitely. It was sometime between ten thirty and eleven fifteen or eleven thirty. I imagine about eleven o'clock but I am not absolutely certain.

Q Sometime late in the evening though? A It was late in the evening. We were sitting there in the filling station and the young man working for me, he went out to a Ford that drove in and he came in and said they would like to see me.

Q Then did you go out? A I went out, absolutely.

Q And when you got out, that's the first time you met Mr. Haggerty? A Yes, I was introduced to him.

Q You knew Mr. Cramer? A Yes.

Q Now, when you got out there did you see anything in their possession and did they ask you to participate in anything with them? May I make that a little more definite? Did you see something they had with them and did they ask you to have something with them? A Yes.

Q What did they have? A I would not say that.

Q Who? A I would say Mr. Cramer.

Q What did Mr. Cramer have? A A bottle.

Q What was in the bottle? A It was very poor moonshine.

Q Then you tried it? A Absolutely.

Q You did? A Yes.

Q Now, you did have a drink of it there? A Absolutely, I did.

Q And how much was in the bottle at that time? A To the best of my knowledge, I would say it was very nearly full. I would not want to answer that definitely because I did not pay enough attention to it. I imagine it was pretty nearly full.

Q Now, how many drinks did you have with them? A I had one drink and after being persuaded to have one and then I put the bottle to my lips two other times which would indicate two other drinks, but I did not drink at all. It was too fierce for me.

Q Was that a quart or pint bottle? A No, it looked like a fifth, not a quart, I don't recall just that, but it was approximately a quart.

Q Is a fifth similar in appearance to a quart bottle? A Yes, I should say it was.

Q Was it a round bottle? A As I remember, it was round, yes.

Cross examination by Mr. Holland.

Q Did you sell it to them? A No, absolutely not, sir.

Q Were you in the liquor business? A Never.

Q Do you recognize this to be a fifth? A No, sir, I said I thought it was a fifth from the size of the bottle.

Q Well, what was the color of the glass? A I don't know that, I don't recall. It was out—there's an overhang of the filling station and they pulled in as if they were going to Morristown and they stopped just beyond the door of the filling station back in the darkness and I went out to see what they wanted.

Q And how long had you known Cramer? A Not quite a year.

Q Were he and you chummy? A Not particularly. He used to drop in to see me, was a customer.

Q Patronized you for liquor? A Absolutely not; although I have the reputation of being a bootlegger out there—

Q You know you have the reputation of being a bootlegger? A I know there was quite a number of individuals up there.

Q Well now, I did not ask you—

Mr. McGeehan: Let him answer the question.

Mr. Holland: It is not responsive, I did not ask him about other individuals. I am asking about himself.

Q You know you have the reputation of being a bootlegger? A Yes, but particular individuals in the community up there have no reason—

Q I did not ask you that. I asked if you knew you had the reputation? A I know it came back to me that people passed the remark, absolutely.

Q Now, did you sell them any gasoline? A No, I did not sell them anything that evening.

Mr. Holland: That is all. —Oh, just one other question.

Q Are you now under Federal Indictment for passing a counterfeit ten dollar bill?

Mr. McGeehan: I object to that and I think the Prosecutor of the Pleas should know it is entirely improper.

The Court: You object?

The Witness: Pardon me, may I answer that?

The Court: It is objected to by Mr. McGeehan.

Mr. McGeehan: This man should not be subjected to such treatment.

Mr. Holland: Mr. McGeehan says that I should know better. I think if a witness is produced in court and testifies to something, I have the right to see whether or not it is so. I cannot do it in any other way except by asking this question, and the witness himself is willing to answer.

The Court: Is he willing to answer that or not?

Mr. McGeehan: I withdraw the objection.

The Court: Mr. McGeehan objects and the question will not be answered.

Mr. McGeehan: May I withdraw the objection.

Mr. Holland: And I am pressing the question, I want the whole truth.

The Court: The objection is withdrawn, you may answer.

A There was a man named Stone; he came to see me in answer to an advertisement and he asked if I could change a ten dollar bill and I took a ten dollar bill that was counterfeit, he says, have you change for ten dollars—

Q Who passed the counterfeit? A Mr. Stone.

Q My question was, are you now under Federal Indictment for passing that counterfeit bill? A No, sir.

Q You are not under arrest? A No, sir.

Re-direct examination by Mr. McGeehan.

Q Did you make a complaint of the case? A No, sir, Mr. Stone brought the bill down to the prosecutor's office himself, I think.

Q You did not intentionally pass that counterfeit bill? A No, sir.

Q Have you ever been indicted in that at all in any respect? A No, sir.

Q Did you help the prosecutor to point out the man? A No, sir.

Q Not at all? A I didn't even know the man or anything.

Mr. McGeehan: That is all.

(Witness excused.)

HENRY MOUNTAIN, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Mountain, where do you live? A Oxford Furnace, New Jersey.

Q And are you acquainted with Mr. Guerin? A Yes.

Q Do you know Mr. Blaine? A Well, I did not know him until these last three months at all, Mr. Guerin brought him up there.

Q And how long have you known Mr. Guerin? A Oh, about six years.

Q Do you remember the occasion when they came—by the way, you are in business up there? A Yes.

Q That is in Oxford? A Yes.

Q What have you; what kind of a store have you? A A lunch room.

Q Now, can you tell us what time it was when Mr. Blaine and Mr. Guerin arrived there on the 23rd of March? A Well, around half past three or four o'clock.

Q And do you know Mr. Collins? A Yes, sir.

Q Do you know Mr. Lynch? A Yes, sir.

Q Did you direct the men where Collins and Lynch could be found? A Yes; I took them there; I went with them.

Q How long were they at your place before you went up to Collins' place? A Oh, ten or fifteen minutes.

Q And did Mr. Blaine have anything to drink there in the way of intoxicating liquor? A No, sir.

Q Did you see them later that day after going up to Collins' place? A I was with them all the time; all afternoon until they left.

Q Were you with them when they drove to get the battery of the automobile for you? A Yes.

Q At the station? A Yes.

Q And were you with them when they were at Lynch's place? A Yes.

Q Were you with them when the chicken was bought at Lynch's? A Yes.

Q At any time during the time when they were at Oxford, did you see the defendant, Mr. Blaine, have anything to drink? A Yes, he had a bottle of ginger ale, or a couple.

Q That's during the whole afternoon he was there? A Yes.

Q Did you see him have anything intoxicating to drink? A No, sir, he did not have any.

Q Did you give him anything intoxicating to drink? A No, sir.

Mr. McGeehan: Cross examine.

Henry Mountain, cross.

Cross examination by Mr. Holland.

Q What did you give him when he asked for the apple? A Why, he didn't ask for any apple, as I remember.

Q So that you say he didn't even ask for apple? A Not as I remember; but he may have asked for it, but I don't remember him asking for it.

Q How long have you known Mr. Guerin? A Oh, about five or six years.

Q And how long have you known Mr. Blaine? A About three months.

Q How long have you known Judge Wilson? A Well, since he has been Judge, three years.

Q Yes, do you remember that you met Judge Wilson on August—

Mr. McGeehan: I object to that.

Q You sold liquor up there?

Mr. McGeehan: I object to that.

A No, sir.

Mr. Holland: I have the right to ask him.

The Court: State the ground of your objection.

Mr. McGeehan: I object to the general question, as to whether any gentleman sells liquor up there. He can ask what was sold, if anything, to this defendant or whether he sold him anything or not and he can ask him if he had ever been convicted of a crime. He should ask it directly.

Mr. Holland: Cross examination, if your Honor please. I have the right to ask if he ever sold any liquor there.

Henry Mountain, cross.

The Court: Isn't that so, Mr. McGeehan? I think it is a proper question of this witness. As I understood this witness in his statement made to the prosecutor, he did not say that Blaine asked this witness if he had a drink of apple.

Mr. Holland: Yes, but he doesn't say that, he said he had a drink of apple whiskey.

Mr. McGeehan: Guerin's statement says that.

The Court: You admit that?

Mr. McGeehan: It's in evidence that is the written statement containing that. Guerin denies he said it.

The Court: I think now the prosecutor may ask this witness the question.

(Exception allowed and sealed.)

C. F. WILSON,
Judge, &c.

(SEAL)

Q Did you sell any liquor there to Blaine? A I did not.

Q Have you been convicted of a crime? A I plead guilty to possession.

Q Possession of what? A Of liquor.

Q Did you also plead guilty to a disorderly house? A No, sir.

Q On August 15th, 1923? A No, sir.

Q Wasn't that the same time? A No, sir, I did not.

Q How long have you been in Oxford? A Two years and a half.

Q Is that as long as you have been out of Morris County? A Yes.

Q Did you move direct from Morris County out of the county into Oxford? A Yes.

Q And have you ever been convicted of a crime in Oxford? A I was convicted for possession of a quart of wine.

Q In Oxford? A Yes.

Q That's in addition to what you were here in Morristown? A Yes.

Q That's two convictions? A I plead guilty here.

Q And you were convicted up there? A Yes.

Q You mean you had a trial? A Yes.

Q And a jury of twelve people did not believe what you said?

Mr. McGeehan: One minute.

Mr. Holland: I withdraw it.

The Court: If you object, it is sustained.

Mr. McGeehan: Will the Court instruct the prosecutor to confine himself—

The Court: The Court does not instruct either one of you. You may object, and if you object, I will rule.

A I was found not guilty twice for selling intoxicating drinks. The jury acquitted me both times.

Q So in addition to the two times you have been convicted, there have been two other trials? A That is the same trial—yes, separate trials.

Q Did Mr. Guerin send you any letters since this accident? A I had several letters.

Q Where are they? A I don't know where they are. I don't keep his letters in my possession. I destroy them, generally.

Q Didn't Mr. Roff and Mr. Klinedinst come up to see you regarding this thing? A Yes, and they wanted me to sign a statement that they got whiskey up here and I told them they did not get it. They tried to tell me they did.

Q They told you that Guerin said they had drinks up there? A Yes.

Q And they asked you if that wasn't so? A Yes, and I told them, no.

Q And didn't you say afterwards to both—

Mr. McGeehan: One minute—

Mr. Holland: I withdraw it.

Q Have you received a letter from Guerin which said, remember, Henry, we had no liquor at your place, and didn't you also say that you had the letter in the safe deposit vault for safety and would produce it in Court? A I said something to that affect, yes, but I did not say what particular. He wrote me a letter saying that I knew he didn't get anything in our place up there.

Q He wrote you a letter saying you knew he didn't get anything at your place? A Yes.

Re-direct examination by Mr. McGeehan.

Q Were you subsequently subpoenaed as a witness in the case? A Yes.

Mr. Holland: What do you mean, later than that?

Re-cross examination by Mr. Holland.

Q So you did not get your subpoena until after Guerin wrote to you? A What subpoena?

Q Did you get a subpoena? A Roff came up with a subpoena.

Q Yes, that was from the prosecutor's office? A Yes.

Q Now, when did you get your subpoena from the defendant? A Why, it was left at my place of business some time last week.

Henry Mountain, re-cross.

Q Yes, was that before Guerin had written this letter or after? A Oh, why, Guerin wrote this letter some time ago.

Re-direct examination by Mr. McGeehan.

Q And the prosecutor insisted that they got liquor there and sent his men who said that directly to you? A Yes.

Q Yes; and they also said—

Mr. Holland: Just a minute. That is not in the answer.

Mr. McGeehan: I say that the prosecutor had no right to allow his men to come there and insist as he testified that he had liquor or sold liquor.

The Court: The prosecutor wants to know why he should write to these men.

Q Did Mr. Roff or Mr. Klinedinst try to get you to sign anything but the truth? A Yes, he told me if I didn't sign that statement that they got liquor at my place that they would take it up with the prosecutor up here in Warren County, and I told them I would not sign it.

Q Did you have liquor in your place? A No, sir.

Q And did you sign it? A No, sir.

Q But you signed a true statement? A Yes.

Q Mr. Mountain, did they write any more than one statement? A Yes, they wrote two statements, one was not correct.

Q In what way was it not correct? A Why, he said that they went to station last, instead of that, we went to Lynch's last and got the chicken.

Q Was that the only thing in which they changed the statement? A Yes.

Henry Mountain, re-cross.

Q Well, is this your statement, is this the statement you signed (showing witness a paper)? A No, I did not sign that—oh, yes, I did. Let's see.

The Court: The question is, Mr. Mountain, did you sign that?

The Witness: Yes, I signed it.

The Court: Look at it and see if it is the correct statement. Come back to the stand. Is it necessary for you to read the entire statement to know whether that is your signature?

The Witness: I want to see whether there is anything in it—

The Court: Well, just a minute, keep the stand. Well, has there been anything put in in the meantime?

The Witness: No, sir.

The Court: That is exactly like you signed it?

The Witness: Yes.

The Court: Word for word?

The Witness: Yes.

The Court: Nothing has been put in?

The Witness: No, sir.

The Court: Nothing been taken out?

The Witness: I don't think so.

Mr. Holland: I want to offer it.

The Court: You can offer it for identification now.

Mr. Holland: I want to show that there is absolutely nothing in here that was not there—

Mr. McGeehan: That would not be in the statement, would it?

Mr. Holland: Certainly. How could he sign it if it was not in the statement?

(Statement offered and received in evidence and marked as Exhibit 17.)

Mr. McGeehan: This statement was written after they had that talk with you?

The Witness: Yes.

Mr. McGeehan: That is all.

(Witness excused.)

THOMAS COLLINS, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Collins, where do you live? A Oxford Furnace, Oxford, New Jersey.

Q Are you married? A Yes.

Q Children? A Four.

Q And what is your occupation? A Well, I work as a contractor now in the building trade down there.

Q Mr. Collins, do you remember a visit was paid to your place on the 23rd of March by the defendant in this case? A I do.

Q Who was with him at the time? A Mountain, Mr. Blaine and Mr. Guerin.

Q And they were at your place. What did they come to see you about? A They wanted to get some chickens to breed.

Q Did you have some? A I did have some but I was using them myself.

Q Was any sold them? A No.

Q Did they look at your chickens? A Yes.

Q Did you know Guerin before then? A I met Guerin a few times.

Q Did Guerin know just where your place was? A No, he didn't.

Q Did Mountain? A Mountain did.

Q Mr. Mountain came with them? A Yes.

Q How far are you from Mountain's place? A About a half a mile.

Q In the country? A Out in the country, yes.

Q How long did they spend altogether at your place? A As far as I could judge, about three-quarters of an hour.

Q Now, during the time they were at your place, did any of them have any intoxicating liquor to drink? A No, sir, no signs of it whatever.

Q Was there any— Did you see any indication on either Mr. Blaine or Mr. Guerin that either of them had had anything to drink? A No signs whatever.

Q Did you smell any odor of liquor? A No, sir.

Q Did you see any indication of intoxicating liquor? A No indication at all.

Mr. McGeehan: That is all.

Cross examination by Mr. Holland.

Q When was the last time you saw him? A Who is that?

Q Mr. Blaine. A That same day?

Q Yes, and what time? A When they left, about, I should judge, around quarter to five or five.

Q You said Mr. Guerin didn't know where you lived. How do you know? A I know he was never there.

Q Is that the first time he had come to see you at this place? A The first time.

Q What kind of chickens did he want? A Game chickens.

Q Where had your place been before that? A Same place.

Q Always lived in the same place? And where had you met Mr. Guerin three or four times before that? A I could not just recall that.

Q You met him at your place? A No.

Q You were both interested in game chickens and that's where he came to see your stock? A No, sir, not at all; never been at my place before.

Q Did you get a letter from Mr. Guerin? A No, sir.

Q Not at any time? A Not at any time.

Q After they left you where did they go? A I directed them to go to Lynch to see him; probably they might get one there.

Q You say that's what time? A Around about, I judge, between quarter and five 'oclock.

Q You don't know what they did after they left you? A No, sir, nothing at all.

Mr. Holland: That is all.

(Witness excused.)

DANIEL LYNCH, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Lynch, where do you live? A Oxford.

Q Are you married? A No.

Q How long have you lived in Oxford? A Well, the last twenty-five years.

Q How old are you? A Thirty-nine.

Q Mr. Lynch, do you remember meeting on the 23rd of March, 1926, the defendant, Mr. Blaine, and Mr. Guerin? A I do.

Q Where did you see them? A They came to the garage where I was working.

Q Are you in the garage buisness? A I was working there for the last year.

Q And was working there at that time? A Yes.

Q Don't tell the subject. I don't want the conversation but what they were speaking about— A I did not have much time to talk to them, but they told me they wanted some roosters to cross with—

Q For breeding purposes? A For breeding purposes.

Q And did you have any to sell? A Why, I said go up and look over whatever I got. They said no, they would wait, and I said, go on up.

Q Where do you live? A Oxford.

Q Did you meet them at your place? A For supper, yes.

Q And about what time did you see them there? A They came there about quarter to six; they stayed about an hour or an hour and a quarter.

Q Well, about quarter to six? A As near as I can tell.

Q And what time—they stayed about an hour? A For about an hour.

Q And did they look at your chickens there? A Yes.

Q Did they take one away with them? A I told them if anyone in the bunch that satisfied him to take it.

Q Well, did they take any? A They took one.

Q Did they buy it or borrow it? A I told them to take it and it would not cost them anything.

Q Were they to return it? A I didn't care about that—whether I got it back or not.

Q Well, he took the chicken with him? A Yes.

Q And left there about what time, would you say? A Well, I would say quarter to seven, as near as I can tell.

Q Now, Mr. Lynch, during the time they were at your place, did any of you have anything to drink, anything intoxicating? A No, sir.

Q You are positive of that? A I am positive; I don't touch it.

Q Did you observe any odor of liquor or indication of intoxication on either of these men? A No, sir.

Mr. McGeehan: That is all.

Cross examination by Mr. Holland.

Q How long have you been raising game fighting birds? A As long as I can remember.

Q And you don't drink? A I don't drink.

Q And you don't know whether they had drink or not? A Well, they didn't show it if they did.

Mr. Holland: That is all.

(Witness excused.)

WILLIAM RICHARDS, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Richards, you live where? A In Wharton.

Q How long have you lived in Wharton? A All my life.

Q Who do you live there with? A My mother.

Q Your mother is Mrs. Manuels? A Yes, sir.

Q Did you on the 23rd of March, 1926, see Mr. Blaine? A Yes.

Q And Mr. Guerin at your house? A Yes.

Q How far is Wharton from Oxford, do you know? A About forty miles, I should judge.

Q Do you know about what time they arrived at your house? A About between 9:00 and 9:15.

Q And do you know until what time they stayed? A Well, about between 10:30 and 11:00 o'clock.

Q That's about an hour and a half? A Yes.

Q And during that time was your mother there? A Yes, sir.

Q During that time what did they look at? A Some chickens.

Q Have you got chickens? A Yes, sir.

Q How many? A Oh, thirty or forty.

Q Where are they situated—right at or pretty near where your house is? A Yes, sir.

Q Did you sell or loan some chickens to Mr. Guerin? A Why, in the first place, Mr. Guerin gave me some chickens and I gave him some back out of them.

Q But he got some chickens there? A Yes.

Q How many were there? A Three.

Q Now, during the time that Mr. Blaine and Mr. Guerin were there, did they at any time have anything to drink? A No, sir.

Q Nothing strong, nothing intoxicating? A Nothing at all at my place.

Q Did you observe upon either Mr. Blaine or Mr. Guerin any odor of alcohol or was there any indication upon them that either of them had been drinking? A No, sir; never noticed it.

Q You are positive of that? A Yes.

Q And were you close to them during the time they were there? A All in the same room.

Mr. McGeehan: Cross examine.

Cross examination by Mr. Holland.

Q Do you ever drink? A No, not me. I used to when I could get it.

Q Well, don't you suppose he may have had a drink without your knowing it? A I can't say; I never noticed it.

Q You just did not notice it? A No, sir, never smelt anything.

(Witness excused.)

MRS. PEGGY MANUELS, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mrs. Manuels, you are the mother of William Richards who has just testified? A Yes.

Q And he is your son by your first marriage? A Yes.

Q And you live with him? A Yes.

Q In Wharton? A Yes.

Q On Main street? A Yes.

Q And how long have you lived in Wharton, Mrs. Manuels? A Forty-three years.

Q And do you remember Mr. Blaine and Mr. Guerin coming to your house and looking at chickens? A Quite well I do.

Q How long were they at your house, about? A I should judge about an hour and a half.

Q And during the time they were there what were they doing? A Well, my son was in bed at the time they came there.

Q Yes? A Mr. Guerin wanted to see some stock and I went and called him to get dressed and come downstairs.

Q Were you up? Did you receive them? A I was up and I was getting ready to go to bed and when he came down Mr. Guerin said—my son had raised some chickens and—

Q Never mind the whole conversation. I suppose your son got up and dressed? A He went down to the chicken coop after with Mr. Guerin with the chickens.

Q Then did they come back in the room after that? A Yes.

Q And were you there? A Yes.

Q And were you there before they went out to the chickens? A Yes.

Q And did they have anything to drink while at your house? A Positively not.

Q Did they or either of them show any odor of alcohol or any indication that either had been drinking? A No, sir.

Q You are positive of that? A Yes, I am positive of that.

Mrs. Peggy Manuels, cross.

Cross examination by Mr. Holland.

Q Did you put your hands on Blaine's head? A No.

Q Did you put the stitch in his head? A No, sir.

Q Did you see any blood on his face? A No, sir.

Q Was that when he was coming or going? A That was when he was in my home.

Q Was that when he was coming or going? A When he was coming.

Mr. Holland: That is all. Oh, just a minute.

Q How long have you known Mr. Blaine? A Yes, fifteen years or more.

Q Known Charles Blaine fifteen years? A Yes.

Q Well, he lived in Wharton? A Part of the time.

Q How can you tell whether he's drunk or not? A Well, I can mostly tell a man when he's got drink in him.

Q Well, have you ever—you don't even know he didn't have any drink in him? A No, sir.

Q How do you know how he acts when he has drink in him?

Mr. McGeehan: Object. This witness has testified she saw no indication of his having been drinking and no odor of alcohol, and I don't think she can be questioned along this line.

The Court: I think she can. Objection overruled.

Peter Phein, direct.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q How do you know what are the indications of a man being drunk?

Mr. McGeehan: Object to that. The general question is not cross examination on the direct.

The Court: Did the witness answer the question?

The Stenographer: No, sir.

The Court: I thought we got an answer to this.

Q (Question read.) A I don't know how he acts when he is drinking.

Mr. Holland: That is all.

(Witness excused.)

PETER PHEIN, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Phein, where do you live? A Dover.

Q How long have you lived there? A About twenty-five years.

Q Married or single? A Married.

Q And are you a member of the Eagles? A Yes.

Q Fraternal Order of Eagles? A Yes.

Q And have you any office in the organization? A Yes.

Peter Phein, direct.

Q What is your position? A Trustee.

Q A trustee? A Yes.

Q That's trustee of the Dover Aerie? A Correct.

Q Can you tell us, Mr. Phein, whether you were at the Eagles' Club the 23rd of March? A I was.

Q Were you there about 11:00 o'clock? A Yes, sir.

Q Did you see Mr. Blaine? A I did.

Q Where did Mr. Blaine go when he came in the Eagles'? A Into the kitchen.

Q Did you see him go anywhere else there? A Yes, sir.

Q Where did he go? A In the toilet.

Q Was that the first place he went when he came in? A I believe the kitchen was the first place he went.

Q Were you there until Mr. Blaine left? A Yes, sir.

Q Were you with him during all the time he was there? A Why, I was close to him; I was not exactly with him.

Q And did he go out of your sight for any considerable length of time? I don't mean momentarily? He went in another part of the house or anything of that sort? A He went to the toilet, that's all.

Q And how long did he remain there, about? A In the building?

Q Yes. A He came in there just about 11:00 o'clock and was gone out again about quarter after.

Q During that time he was there did you see him drink any intoxicating liquor? A No, sir.

Q Did you see him drink anything? A No, sir.

Thomas H. Truscott, direct.

Q Did you see Mr. Guerin come into the place? A No, sir.

Q Or, rather, did you see him in the place? A Yes, sir.

Q You knew Blaine, did you? A Slightly.

Q Were you talking to him while he was there? A Yes, sir.

Q Did you observe any indication upon him that he had been drinking? A No, isr.

Q Was there any odor of alcohol upon his breath? A No, sir, there was not.

Q You are sure about it? A Absolutely.

Cross examination by Mr. Holland.

Q The kitchen is where the drinks are served, isn't it? A No, sir.

Q Where are they served from? A We have a little room there that we serve ginger ale and sodas and make sandwiches.

Q Is that commonly called the bar room? A Absolutely, yes.

Q And you are a brother Eagle? A Yes.

Mr. Holland: That is all.

(Witness excused.)

THOMAS H. TRUSCOTT, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Truscott, where do you live? A Dover.

Q How long have you lived there? A About fifty-four years.

Q All your life? A Yes.

Q Married? A No, sir, widower.

Q Widower now? A Yes.

Q Are you connected with or a member of the Eagles' lodge at Dover? A Yes.

Q How long have you been connected? A About a year.

Q You know Mr. Blaine? A Slightly. I have known him about a year back.

Q Were you in the club house of the Eagles' lodge at Dover on March 23, 1926? A Yes, sir.

Q In the evening? A Yes, sir.

Q Were you there around 11:00 o'clock? A Yes.

Q Now, Mr. Truscott, I think you said you were connected with the Eagles' lodge about a year? A Yes, sir.

Q And you have known Mr. Blaine during that time? A Yes.

Q You remember seeing him on the evening of the 23rd of March? A Yes, sir.

Q What time did he come there, about? A Why, I was upstairs, and came down from upstairs about 11:00 o'clock and he came in.

Q And where was he when you first saw him? A I met him in the door and came from upstairs. He went on through the hall and went back upstairs.

Q Did you talk with him when he came in? A Just said halloa, that's all.

Q Then where did you see him next? A After I came down he came through the hall with Mr. Guerin and the secretary. Just came out the office and they were going out the door.

Q Who is the secretary? A Mr. Thompson.

Q Did you see him shaking hands with any men there? A Only with Thompson. When Thompson came out he shook hands.

Q How long after they came in the Eagles' did they leave there, with the secretary, Mr. Thompson and Guerin? A Well, I should judge fifteen minutes.

Q About a quarter of an hour? A Yes.

Q Was there anything about him when you spoke to him that indicated that he was intoxicated or under the influence of liquor? A Nothing that I could notice.

Q Was there any odor of alcohol on his breath? A I wasn't close enough to find out.

Q Did you see whether he walked as he usually does? A Yes, I could see that.

Q Did he walk as he usually does? A Sure did.

Q Was there anything about his manner or the way he spoke that indicated he had anything to drink? A Nothing at all.

Cross examination by Mr. Holland.

Q Well, did you shake his hand in the bar-room or not? A I wasn't there. I only saw him around the hall.

Q Well, he could have gone to the bar-room without your seeing him? A Certainly, he had to go through the hall.

(Witness excused.)

JOHN M. THOMPSON, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Thompson, where do you live? A Dover.

Q How long have you lived there? A Since 1899.

Q Are you married? A Yes.

Q Live with your family? A Yes.

Q What position do you hold in the Dover Aerie of Eagles? A Financial secretary.

Q Are you acquainted with Mr. Blaine? A Yes, sir.

Q How long have you known him? A Since 1922.

Q Did you meet him on the evening of the 23rd of March at the Eagles'? A I met him as he was coming up.

Q Was he coming out or going in? A He was coming out to go home.

Q And did you meet him in the hall there? A Yes, I was with him.

Q Anyone with him at the time? A He said he had a friend in the parlor and he would go down and call him.

Q Now the parlor is a reception parlor of the home? A Yes, at the front door.

Q When you first talked to him, it was in the hall, is that right? A Yes, in the hall.

Q Did you have your car with you? A No, I have no car.

Q Where do you live—just where do you live in Dover? A I don't live in Dover, I live in Rockaway Township.

Q Is that on the road from Dover to Morristown? A Between Dover and Rockaway.

Q And did you ride with the defendant to your home? A Rode down to De Hart avenue.

Q That is the corner to your home? A The corner of the street.

Q Now, who else rode in the car with the defendant, you and the defendant and Mr. Guerin? A Mr. Guerin was in the car.

Q Do you know just about what time he left you off at De Hart avenue, the corner of the street you live at? A Well, I should judge it was half-past-eleven.

Q Do you know just what time you left the Eagles'? A About eleven-thirty, I should judge.

Q Did you see Mr. Guerin when he came in? A No.

Q Or Mr. Blaine when he came in? A No, I didn't.

Q During the time that you were with Mr. Blaine, talking to him and riding with him, was there anything about his actions either in talking or walking or driving the automobile that you rode in with him that indicated that he had been drinking or that he was under the influence of liquor?

Mr. Holland: Please don't put a leading question.

A I didn't notice any.

The Court: We won't bother about leading questions very much. Let us get the truth.

Q Was there any odor of alcohol on his breath? A I noticed none.

Q You shook hands with him when you said good night? A Yes.

Q Do you know how far it is from your home to the Sire place on the road to Morristown? A No, I don't.

Q Do you know approximately the distance? A Well, I should judge it was nine miles, eight miles.

Mr. McGeehan: Cross examine.

John M. Thompson, cross.

Cross examination by Mr. Holland.

Q How far is it from the Eagles' lodge in Dover to where you got off? A Well, it's considered a mile to Dickerson's bridge from the Mansion House, so I judge it's a mile and a quarter, probably a little more.

Q What time did you leave the Eagles'? A About eleven-twenty, I should judge.

Q Was it earlier than that or later than that? A Well, I intended to get the half-past-eleven car and I learned afterwards there wasn't any until twelve. So it must have been a little later than that when I learned there wasn't any half-past-eleven car. I am not accurate about the time, it was between eleven-fifteen and eleven-twenty-two when we left there.

Q And so you got to your street at eleven-thirty? A That was about eleven-thirty when I left them. I stood there talking to them.

Q And from your place to the Sire place it is about nine miles? A No, I did not say the Sire place.

Q Well, the Sire place is really nearer than the Culvert in Morris Plains, isn't it? A I suppose it is.

Q You say that you are an officer of the Eagles'? A Yes, sir.

Q And you go there every night? A No, sir.

Q How often—I withdraw that. When did you come into the Eagles' lodge on this particular night in question? A About half-past-seven.

Q Well, let's be fair and square about it. Hadn't you had a drink that night? A No, sir.

Q Not at all? A No, sir, I wasn't out of the office.

William Davis, direct.

Q Do you have to go out of the office to have a drink?

Mr. McGeehan: I object to that whether he has to go out of the office for a drink. I don't see how that is cross examination on the subject of the direct.

Mr. Holland: This man told on cross examination he never got out of that office and has testified that he didn't smell any liquor on this defendant. I want to find out why he couldn't have smelled it, that's why.

The Court: You may.

Mr. Holland: Well, the purpose has been thwarted now because the witness is just as well aware as both Mr. McGeehan and your Honor of what I asked. I have no further cross examination.

(Witness excused.)

WILLIAM DAVIS, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Davis, where do you live? A Wharton.

Q And were you riding along the road leading from Dover to Morristown on the night of the 23rd of March, 1926? A I was.

Q Whose car were you riding in? A Frank Ritzer's.

Q Mr. Ritzer is the man who testified in this case? A Yes, sir.

Q Two or three brothers. Were you in the car when it came upon the scene of the accident? A I was.

Q Which direction had you been going toward? A Toward Dover.

Q And then did you turn around? A Yes.

Q When you got out of the car, did you observe where the Ford car was standing? A I did.

Q Where was the Ford car then, after the accident? A Why, I could point out the position relative, relating to the road and the amasite, about off the amasite, the front left wheel.

Q And the rest of the car was off the amasite? A Yes.

Q Now, did you see the defendant, Mr. Blaine, there? A Well, after I got back awhile, I saw Blaine.

Q And did you see Mr. Guerin there? A I did not.

Q Did you go to the hospital with Blaine? A I did.

Q You rode in the car to the hospital with him? A Yes.

Q Did you help him in the car? A I did not.

Q Did you get in after he got in? A After he was in.

Q Who drove? A Mr. Carl Ritzer.

Q Mr. Davis, during the time that you were with Mr. Blaine, both on the road and in the car, did you observe anything about him that indicated that he had been drinking or that he was intoxicated? A Well, I did not smell any liquor.

Q Did you smell any liquor on his breath at all? A No, sir.

Q Did you see that he staggered? A I did not see him walking except when he was going in the hospital.

Q Did you, at any time, see him stagger or indicate that he had been drinking? A No, sir.

Q Was he bleeding when you saw him? A Yes, his head.

Q Was he holding his head? A When I saw that, he was holding his head when he was in the car.

Q Was he holding his head while in the automobile? A I did not turn around; I sat on the front seat.

Q Did you see Mr. Blaine holding his head before he got in the car? A I did not see him at all before he got in the car.

Q When you saw him bleeding, did you see him holding his head? A He seemed to have a handkerchief that he seemed to run up around here and wiping it off.

Q Blood? A Blood, yes, sir.

Mr. McGeehan: That is all.

Cross examination by Mr. Holland.

Q You were pretty nervous, wasn't you? A Well, I just woke up.

Q Yes, sleeping all the way back. You and the other Ritzer brother had been sleeping in the back of the car? A I don't know whether he was asleep.

Q You know you were? A Yes.

Q You were not paying any particular attention to the smell of liquor? A I did not think about it at the time, no, sir.

Q Do you know when he tried to get out of the car at Five Corners? A Knew, when I heard Mr. Ritzer tell him to sit down. That's all I know about that.

Charles Blaine, direct.

Re-direct examination by Mr. McGeehan.

Q Were you asleep while riding to the hospital? A No, sir.

Q You mean you were sleeping in the car before the accident? A Yes, sir.

Q You were awake and alert after that? A Yes.

Re-cross examination by Mr. Holland.

Q Well, did you hear at police headquarters, hear Mr. Blaine say, My God, don't take me in there? A I heard him say something like that, yes.

Mr. Holland: That is all.
(Witness excused.)

CHARLES BLAINE, sworn on his own behalf as defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Q Mr. Blaine, you are the defendant in this case? A Yes, sir.

Q And how old are you? A Forty-one next birthday.

Q How long have you lived in Morris County? A Well, practically all my life.

Q How long have you lived in Morristown? A Three years this November.

Q Are you married? A Yes, sir.

Q And have you children? A Six.

Q Where do you live in Morristown, Mr. Blaine? A 28 Evergreen avenue.

Charles Blaine, direct.

Q Do you own a Buick sedan? A Yes, sir.

Q And on the 23rd of March, 1926? A Yes.

Q Mr. Blaine, have you a condition in your left leg— A I have.

Q —different from normal? A Yes.

Q And how long have you had that? A From four to five years, I think.

Q And how did that happen? A I got a fall.

Q From where? A Off a step.

Q And what is the condition of your left leg? A It's stiff now.

Q Does that have any affect on your walking? A Yes, it does handicap me a little.

Q Can you use it like your other leg? A No.

Q Can you lift your knee at all of your left leg? A No, sir.

Q What model was this car that you were riding in? A Buick sedan 2450, I think, seven-passenger.

Q Is that a left-hand drive? A Yes.

Q You remember the 23rd of March of this year? A Yes, sir.

Q Where had you been during the daytime of that day? A That morning I was home all the morning, working around the chicken yard and about 11:00 o'clock I came over to Morristown. I was over to the bank and from there I went over to Mr. Jolley's, paid him a little bill I owed him.

Q That's Robert Jolley? A Yes. From there I went up to St. Margaret's School to get my two girls; it was raining hard at the time.

Q Where did you go with them? A I took them home; it was raining hard at the time.

Q Where did you have lunch or dinner? A Home.

Charles Blaine, direct.

Q Now, what time did you meet Mr. Guerin on that day? A I think he came to our house around 1:00 o'clock that day.

Q That's 1:00 o'clock in the afternoon? A Yes, sir.

Q And where were you going with him? A I had promised to drive him to Oxford.

Q Did you want to get any chickens for yourself? A No, sir.

Q You were driving Mr. Guerin for this purpose? A Yes, sir.

Q About what time did you leave for Oxford? A Well, I would say it was between 1:15 and 1:30.

Q Was it raining or clear at the time you started out? A It was raining.

Q About what time did you arrive at Oxford? A About 4:00 o'clock, I think.

Q When you got to Oxford, where was the first place that you went with Mr. Guerin? A Why, I think that was at the lunch room, Mr. Mountain's place.

Q Do you remember at any time going to Mr. Collins' house? A Yes, sir.

Q Did you go to Collins' first or Mountain's first? A Went to Mr. Mountain's first.

Q And how long did you remain at Mountain's before you went to Collins'? A Well, I should say maybe ten or fifteen minutes.

Q And while you were at Mountain's, did you at any time have any liquor to drink? A No, sir, I did not.

Q You remember whether you asked for any liquor, or spoke about any liquor? A No, sir, I don't think I did.

Q Do you think you might have mentioned it? A No, I don't think so.

Charles Blaine, direct.

Q Then, after being there about fifteen minutes, where did you go to? A Why, I think Mr. Mountain took us over to a fellow by the name—I don't know whether it was Lynch or Collins; I never met the man before.

Q It was one or the other; Lynch or Collins? A Yes.

Q And what did Guerin do while you were there? A Why, we were up there looking at chickens.

Q Do you remember how long you remained there? A I can't exactly tell; maybe half an hour, maybe a little more.

Q Well, where did you go from there? A From there we started down to the garage, where this other man worked. I don't know whether that is Mr. Lynch or Collins.

Q You don't know whether that is Lynch or Collins? A No, sir, I do not.

Q And this other man, did you see him then? A Mr. Guerin was there talking with him, yes.

Q Then were did you go from the garage? A From the garage—we was there quite a while. From there we came up to Mr. Mountain's place again.

Q Do you know how long you were at the garage? A Must have been there fully half an hour, maybe three-quarters of an hour.

Q When you got to Mountain's place, did you go anywhere with Mountain from there? A When we got back to Mountain's place there was a card there or postal, I don't know which, stating there was a battery at the Lackawanna station at Oxford for him, so we drove over to the station to get the battery.

Q Then came back to Mr. Mountain's? A Came back to Mr. Mountain's place.

Q Do you know how long you stayed at Mountain's place after you brought back that battery? A It wasn't very long; maybe ten minutes.

Q Do you know the exact time you left there? A At Mountain's?

Q Yes? A To go home or where?

Q To leave Oxford altogether? You left from Mountain's? A Yes, sir.

Q About what time was it you left? A We did not leave to come away from Mountain's.

Q I mean to leave Oxford? A Around 6:30.

Q And where did you leave from; from Lynch's place or Mountain's place? A Lynch's place.

Q That's the man who was at the garage? A That's the man who was at the garage, if his name is Lynch.

Q About what time was it you left at Oxford? A I should say around 6:00, 6:30, maybe later.

Q Were you at any time back to Mountain's after leaving Lynch's? A No, sir.

Q During the time you were at Oxford, at Mountain's store, at Mr. Collins' house, Mr. Lynch's house, Mr. Lynch's garage, did you have any whiskey to drink? A No, sir, I did not.

Q Now, when you left Oxford, where did you drive to next? A At Wharton.

Q Do you know how far it is from Oxford to Wharton? A Well, I should say around thirty to thirty-two miles, probably. I don't know for sure.

Q About what time did you get to Wharton? A I should say about quarter after nine, half-past-nine, maybe 9:00 o'clock. I can't say the exact time.

Q When you got to Wharton, where did you go? A To Mr. Richards' house.

Q Was there anyone else there besides Mr. Richards? A His mother.

Q How long did you stay at Richards' altogether? A I guess we were there an hour and a half, hour and three-quarters, if not more.

Q Did you go any place at all from the time you left Oxford, or Lynch's house, to the time you got to Mr. Richards' house in Wharton? A No, sir.

Q Did you at any time have any liquor or anything to drink in your car? A No, sir.

Q How long did you remain at Richards' house in Wharton? A About an hour and forty minutes.

Q And during that time what were you doing? A Why, I was there talking to Mrs. Richards; she had some rugs she made herself and I was looking them over, and finally I bought one from Mrs. Richards.

Q You bought a rug? A I bought a rug and paid her three dollars for the rug.

Q That was what kind? A Little bathroom rug like she makes for herself.

Q And were you also looking at chickens there? A No, sir, I was not looking at any chickens there; I was talking to Mrs. Richards all the time.

Q Did you at any time—and by Mrs. Richards, you mean the lady who was on the stand, Mrs. Samuels?

The Court: Manuels.

A Mrs. Manuels, that's right.

Q During the time you were at Mrs. Manuels or Mr. Richards' house, did you have any intoxicating liquors to drink? A No, sir, absolutely not.

Q What time did you leave there, about? A About quarter to eleven, I should say, ten minutes to eleven, somewhere around there.

Q Then you drove to Dover, that right? A Yes,sir.

Q Between the time that you left Richards' house and the time you got to Dover Lodge of Eagles, did you make any stops? A I think I did stop along the road there to talk to a man; Guerin went to a door and there wasn't anybody home. I was in at the wheel.

Q Outside of that stop, did you make any other stop? A No, sir.

Q Did you meet anyone or speak to anyone at the time you stopped and Guerin went to the door? A No, sir.

Q By stopping, I mean getting out of your car or meeting someone. Outside of that one time, did you meet anyone or go in any place or stop? A No, sir.

Q Then you came to the Eagles' and got there about what time? A I should say around five minutes to eleven.

Q Did you enter the Eagles'? A Yes, sir, I did.

Q When you went in, did Guerin enter with you at first? A No, sir, not at first.

Q When you went in, what part of it did you go to? Where did you want to go? A Well, I wanted to use the toilet. That's what I went in for.

Q And did you? A I did.

Q While you were there, did you buy anything? A Yes, sir.

Q What did you buy? A I bought two boxes of candy.

Q What did you buy them for, and who did you buy them for? A I bought them to fetch

home to my children. Quite often I used to bring them down whenever I stopped there.

Q How old are your children, by the way?

Mr. Holland: Well—

Mr. McGeehan: I suppose all children eat candy, no matter how old they are.

A From five months up to fifteen years.

Q Now, this candy, where was that at the time the accident happened? Where was that put in the car? A I think it was on the front seat, if I am not mistaken; I am not sure of that.

Q Well, it was in the car? A Yes.

Q And the rug you bought, was that in the car? A In the back of the car.

Q And there were some chickens in the car? A There were four chickens in the car and a pair of chains in the back and pair of rubbers.

Q Now, when you went in the Eagles' you say you went to the toilet room, but Mr. Guerin didn't go in with you? Did you call him in afterwards? A I did.

Q Do you remember approximately the total of how many minutes you went in there and called Mr. Guerin in? A Well, I just went in and went to the toilet and got the candy and went right out again; I don't know just how many minutes it was.

Q Did you in the meantime—have you ever had a guest at the Eagles' Home before, any person not an Eagle? A No, I don't think I have.

Q After going in, did you come out and take him in? A Yes.

Q And where did he sit when he came in the Eagles? A In the parlor.

Q Were you there part of the time? A I was there just a few minutes, yes, sir.

Q Did you chat with any people while you were there at the Eagles'? A Tom Truscott, I spoke to him, and Pete Phein, I think the name is.

Q And there were others there? A There were some others there.

Q Do you remember any of the others except these two? A I remember Mr. John Thompson as I came out.

Q Now, during the time you were there at the Eagles'—how long was it you were there? A I would say from ten to fifteen minutes. I don't think it was over fifteen minutes.

Q During that time did you have any liquor or alcohol or whiskey or anything like that to drink? A No, sir, I did not.

Q Who did you drive away from the Eagles' with? A Mr. John Thompson.

Q And did you drive the car when he rode in it from the Eagles' to wherever he got off? A Yes, sir.

Q Where were you when you invited him in the car? A I was in the hallway coming out of the Eagles.

Q You talked with him first? A Well, just met him there and said, we are going down now and you can ride down with us. He said, I am going to get a car, I guess he meant a trolley car. I told him we was going down and he could go down with us.

Q Did he walk out with you to the car? A I think he did.

Q Well, how far did you drive him? A I think he got out somewheres just the other side of Guenthers'.

Q Did he tell you what street to stop at? A I don't know what the street was, he just said, let me out here.

Q And then did he get out after he told you that was the street he lived on? A That was the street, yes, sir.

Q After he got out, who remained in the car with you? A Nobody but Mr. Guerin.

Q Do you know about what time it was that Mr. Thompson left you? A I should say around 11:20; I am not sure.

Q And then you took the road toward Morristown from Dover? A Yes, sir.

Q The road the accident happened on? A Yes.

Q And you came along that road; do you remember approaching the bend or rounding some curve that there is in the road there before you come to the Sire place? A Yes, sir, I do.

Q What side of the road were you riding on? A I was on my right side.

Q And before coming—before first meeting that Ford automobile that has been referred to throughout this case, at the time you first saw it, how fast were you going approximately? A I should say between twenty and twenty-five miles.

Q You could be going a little faster than twenty-five? A Well, I might be going twenty-eight or thirty, everything was open there.

Q Now, as you were going along—withdraw that. About where were you when you first saw this automobile on the road? A Well, just as I got so I would see down the road. Just about at the bend.

Q And how far in feet approximately is that? A I should say it's seven or eight hundred feet, pretty far.

Q But it was far away? A Yes, sir.

Q Now, at the time you saw it, could you tell just where it was on the road? A No, sir.

Q You could not? A Not then.

Q Do you know whether at the time you first saw it, the headlights were lit upon it? A Well, as I came around the bend, I thought the dimmers were on it.

Q It appeared to you that the lights were lit? A I thought they were dim lights.

Q Now, do you know whether the lights were actually on or whether they were reflected from your headlights from his lens and reflectors?

Mr. Holland: If that it not a leading question—

The Court: Proceed.

Q (Question read.)

Mr. McGeehan: I am asking one of two things—

The Court: No objection, proceed.

A No, sir, it did not.

Q I understood it appeared to you as if they were on dim? A Yes, sir.

Q At any rate, you saw the car? A Yes.

Q Now, when you approached this car that was on the road and got nearer to it, could you see where it then stood upon the road? A Well, yes, as I came near to it.

Q And where was it standing upon the road with regard to the sides or the center of the road? A Well, I should say when I got forty feet from it, it was right—the left wheels, wheels of the left side of the car was almost in the center of the road.

Q Almost in the center of the road? A Yes.

Q The right wheels on which part? A The other side of the road.

Q Was any part of that Ford car over on your path or right-hand side of the road? A No, sir.

Q Now, did you see any men at or near the Ford car? A Yes, I saw some were there moving around.

Q And what did you do when you saw them? A Why, I blew my horn. Blew two or three times.

Q And what did—withdraw that. Were your headlights burning? A Yes.

Q Could you see these men as you got nearer to them? A As I got closer to them I could, yes, sir.

Q After you blew your horn, what did you see these men do and where did you see them go? A Well, it looked to me as if they were standing at the rear of their car looking at the left rear wheel. And it appeared to me as if the one man just stepped backward across the road. And the other man, I thought he walked up alongside the car and stepped on the running-board.

Q When you say, it appeared to me, you mean you saw him do that? A I saw him do it, yes.

Q Do you know whether or not the man that walked toward the car got on the running-board? A I thought he stepped on the side of the car.

Q Do you know where the other man went to? A Yes, he went right back across the road in front of me, crossing right on the road.

Q Now, after this man did that and before they again moved, was there anything in your path along the right side of the road? A No, sir, not as I could see.

Q And did you continue to drive along there? A Yes, sir, I did.

Q And where did you intend to go with relation to the Ford? A I was coming right on for there was plenty of room there at that time.

Q And did you intend to pass it? A I did.

Q Now, as you got near the Ford, did either of these men change the position they had? A Yes.

Q What happened? A Why, this one man, as I got almost up to the Ford, just before that, the bright lights were thrown in my face; they were turned on real bright as I was watching this other man on the side of the road.

Q And could you see? A Well—

Q Could you see the road? A Well, I was blinded just for a second when they were turned on and then I saw him start to walk right back toward the Ford car.

Q And where did that bring him with relation to the front of your car? A That would bring him right in front of my car.

Q What did you do? A Well, to avoid hitting him I pulled my car a little to the left.

Q Did he step back in front of your car slowly or suddenly? A Well, that was suddenly.

Q And how far do you estimate he was from the front right-hand of your car when he stepped back suddenly? A I should say maybe ten feet.

Q Did you collide with the Ford car when you swung to the left? A Well, I don't know. No, I don't remember hitting it.

Q And did you watch the men? A I was trying to watch the men.

Q But do you know that you collided with the Ford?

Mr. Holland: I submit that is already answered. Mr. McGeehan can't pursue that.

The Court: He says he don't remember hitting the Ford.

Q You remember hitting the two—

Mr. Holland: Just a minute; he has not said that.

Mr. McGeehan: I withdraw that.

Q When the man stepped back in front of your car and you swung to the left, what did you come in contact with? A Well, I must have hit the two men and the Ford.

Q Now, what happened to the wheel or wheels of your car when you made that swing to the left? A When I made that swing to the left, I had my brakes on before that, when I made that swerve to the left and ran across the road on the left, I went right on down the bank; there's a little bank there, and I went right between two trees and then my car stopped just in front of another tree.

Q In making that swerve or turn could you control the wheels of your car? A No, I could not.

Q After you left the road, what happened? If you know? A Well, I know it was pretty rough going down through there.

Q What happened to you in your seat? From roughness? A Something hit me on the head, I don't know what it was; I don't know yet.

Q What was the affect upon you of that something that hit you in the head? A I don't know; everything looked bright there for a minute.

Q You mean you saw "stars"? A I think so, yes.

Q Did your head pain you? A Well, I was dazed like. Yes, sir, it did.

Q What kind of a wound did you have on your head? A Kind of a notch.

Q Is there a scar there still from it? A Yes, there is.

Q How long is the scar? A Well, it must be almost an inch.

Q What affect did that have on you, were you in pain or not? A Well, yes, I was. My head hurt fierce. I was out for a few minutes.

Q Did you leave the scene of the accident in an automobile? A I think I did.

Q Were you dazed still when you left there? A I can remember seeing an automobile there.

Q Now, Mr. Blaine, during the time, up to the time that you were treated at the hospital, what was the condition of your head from the injury that you had received to it? A Well, I hurt considerable and bleeding; I really don't remember how it did feel, to tell the truth.

Q How did your head feel inside? A Well, it was sore.

Mr. Holland: I submit, that's a question—

The Court: He may tell how it felt, if he can.

Q How did it feel inside? A My head?

Q Yes? A Well, I was all shook up and it hurt.

Q Mr. Blaine, when you got to the hospital, do you know what they did to your head? A No, he treated it. I know a doctor came in there and a nurse.

Q The following day where did you go after leaving the hospital? A Officer James Hill drove me home, I think. Yes, it was.

Q Did you at any time say to Officer Hill that you had had a couple of drinks? A No, sir, I did not.

Q Did you at any time that night have any drinks whatever? A No, sir, I didn't.

Q Did you have any alcoholic drinks of any kind during that night? A No, sir, I did not.

Q Or during that afternoon? A No, sir.

Q Or that day? That whole day? A I didn't.

The Court: At this time we will adjourn until 10 o'clock tomorrow morning.

Morristown, N. J., Thursday, June 17th, 1926.

TRIAL RESUMED.

CHARLES BLAINE resumes the stand.

Cross examination by Mr. Holland.

Mr. McGeehan: Mr. Mills says that the distance between Dickerson's store and the accident is three miles.

Mr. Holland: I think that is about right. I have no objection to having it stipulated it is correct. I think it is about three miles.

Mr. McGeehan: It is stipulated as a fact on the record that three miles is the distance from Dickerson's store to the accident.

Mr. Holland: Yes, approximately three miles.

Mr. McGeehan: All right.

Charles Blaine, cross.

Q What is your business, Mr. Blaine? A I haven't been doing anything only working around my own place, painting.

Q For how long? A For two years.

Q You have not been painting and papering for two years? A Not steady, no.

Q Who was your last employer? A Piccatinny Arsenal, Dover.

Q And that was two years ago? How long have you lived at Wharton? A Well, the last was about eight or ten years.

Q And do you know Chief Dibble in Wharton? A I know of him.

Q Well, he knew of you, too, didn't he?

Mr. McGeehan: Object to that as being irrelevant to the case.

Mr. Holland: It is a question of identification.

The Court: Let's see, Chief Dibble was at the scene of the accident at the time he was there?

Mr. McGeehan: No.

The Court: He got there after the defendant had been removed.

Mr. McGeehan: Yes.

The Court: Didn't see him that night?

Mr. McGeehan: I don't think he did.

Mr. Holland: The question of identification was the so-called argument between Guerin and Chief Dibble as to whether he knew Charles Blaine of Wharton.

The Court: Yes, it's material in that way.

Mr. McGeehan: He has testified he knew him.

Charles Blaine, cross.

The Court: Well, this last question was what?

Q (Question read.)

The Court: He can answer the question.

Q You knew that Chief Dibble knew you? A I knew him, yes.

Q And how long have you known him?

Mr. McGeehan: Object to that. The witness has already stated he knew him and the Chief knew him and that can be the only proper purpose of the question.

The Court: You don't need to argue. Tell how long.

A Probably one year.

Q And do you know Carl Ritzer? A No, sir, I don't know him personally, I know of him.

Q Well, what's his business? A I don't know.

Q Don't you know he is a taxi driver? A No, sir, I do not.

Q Don't you know he has ridden you in taxis for four or five years? A I know he has not, no, sir.

Q And how long have you known Schuyler? A Never known Schuyler.

Q Do you know of him? A No, sir.

Q How long have you known Richards? A Richards, I went to school with Richards.

Q How long have you known Mrs. Manuels, Mr. Richards' mother? A Well, since I was a boy, going to school.

Q How long have you known Henry Mountain? A I haven't known him very long.

Q You knew him before this trouble? A I have known him about three months, I should say.

Q Been up there to see him? A No, sir.

Q Where did you come to know him three months? A I met him in Dover.

Q Where? A I think it was on the street in front of the Baker Theater.

Q How did you come to meet him on the street in front of the Baker Theater if you did not know him? A I was with a fellow we knew and we got talking and the other man introduced him to me.

Q Did you know him at the Eagles'? A No, sir, never.

Q Is he an Eagle? A Not that I know of, I don't know.

Q Now, what time did you get to Oxford that day? A I should say around 4:00 o'clock.

Q You got there at 4:00? A Around 3:30, 4:00 o'clock.

Q What time did you leave Morristown, going up? A One-thirty, about.

Q What delayed you; what took you so long? A Why, is was raining all the way up and it was raining hard.

Q You were driving carefully? A Yes.

Q And how long did you stay in Oxford? A Two and a half to three hours, maybe a little more, I don't know, I can't tell you.

Q And while you were there, didn't you have anything to drink at Henry Mountain's? A No, sir.

Q Didn't you ask for anything? A No, sir.

Q Where do you suppose Guerin got the idea you asked for it?

Mr. McGeehan: Object to that.

Mr. Holland: I withdraw it.

Q You heard Guerin testify he heard you ask?

Mr. McGeehan: Object to that as not a proper question. I don't think it makes a bit of difference what a witness hears another witness testify. I think the question is improper.

Mr. Holland: I withdraw that.

Q Did Guerin hear you ask for any apple? A He couldn't, for I did not ask for any apple.

Q Then there was no discussion about apple had between you? A No, sir.

Q And how long did you stay at Mountain's? A About fifteen minutes.

Q Altogether? A That was the first time.

Q Then you came back, and how long did you stay? A Well, I would not say over fifteen minutes.

Q And as a matter of fact, you went down to Lynch's at the garage and Lynch said that he could not leave then and you would have to wait until he got through work? A Yes, but we was at the garage quite a while.

Q How long? A Oh, half an hour or more, maybe.

Q Sure of that? A Yes.

Q How long did you stay at Mountain's the second time? A Not over fifteen minutes.

Q And what were you doing? A I think that's the time we went down to get the battery at the station and came back.

Q Then how long did you stay? A Just for a few minutes and unpacked the battery and we was talking about it.

Q Did you go on right back home, then? A No, we went up to one of the fellow's house there, Mr. Lynch, I think.

Q During the fifteen minutes before you started for the battery, what were you doing? A Just talking, we had a glass of ginger and a cheese sandwich.

Q Is that all? A That's all, yes, sir.

Q Where did you get your supper that night? A Didn't have any supper.

Q Didn't need any supper, did you? A Well, that stayed me.

Q What time did you leave Oxford? A I should say around 6:30, 7:00 o'clock. I am not exactly sure of the time.

Q At the time you left Oxford, had it stopped raining? A I think it had.

Q And from then on it stayed clear? A Yes.

Q Now, were you driving properly on down toward Richards'? A Yes.

Q Was your car under proper control? A Yes.

Q Were you able to drive properly? A Yes.

Q Were your brakes in good braking order? A Yes.

Q You have four-wheel brakes on your car? A Yes.

Q What year car is that? A Model '24.

Q And that's a 1924 car? A Yes.

Q How far had it been driven? A That car has been driven around thirty thousand.

Q So it was in good condition? A Yes.

Q Its brakes all right? A As far as I know.

Q How long have you been driving a car? A About three years; I got my first license 1923.

Q What do you mean, you got your first license? A The first time I had a license.

Q When was that, 1923? A 1923.

Q Have you had your license all this time, throughout?

Mr. McGeehan: I object to that. I think he can ask if he had a license to drive an automobile, not whether he had a license all the time, but at the time this accident occurred, that would be important, but not any preceding time.

Mr. Holland: It seems to me I have a right to test his credibility. I am asking if he had had it continuously since then.

The Court: He may answer the question.

A No, sir, I did not.

Q When didn't you have your license?

Mr. McGeehan: I object to that.

The Court: He testified he has been driving three years.

Mr. McGeehan: Yes.

The Court: And he got his license in 1922 or '23.

Mr. McGeehan: '23.

The Court: Well, there seems to me two reasons why it is relevant. I don't want to state them. I will have to overrule your objection.

(Exception allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

Q (Question read.) A I think in October, 1924.

Q What happened to it?

Mr. McGeehan: I object to that, whatever happened to it in October, 1924, is not relevant to this case.

The Court: I will sustain the objection for the present.

Q For how long a period didn't you have it? A One year.

Q So you have not been driving three years? A About that.

Q Did you drive during the time you did not have a license? A No, sir, never.

Q When was it returned to you? A I can't tell you that.

Mr. McGeehan: I object to that and ask that it be stricken out.

Q When did you get it again?

The Court: Yes.

Q When did you get it again? A I can't just say, I think it was about a year.

Q Well, after you got it again, did you then continue with it continuously? A Yes, sir.

Q Are you sure? A Yes, sir.

Q How many times since 1923; how many occasions since 1923 did you not have this license you are speaking about?

Mr. McGeehan: Object to that on the ground this refers to matters not relevant or important to the subject matter of the indictment and is being calculated to introduce matters other than the charge in this indictment against the defendant.

The Court: I don't quite see that Mr. McGeehan. The witness testified he has been driving three years. It seems to me that it would be relevant and material then to show, if it is true, that part of the time he did not have the license and did not drive. I am compelled to overrule your objection.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q (Question read.)

Mr. McGeehan: I assume the driver's license.

The Court: Yes.

A Only the times that they were taken away from me.

Q How long have you been driving—at the time of the accident, how long had you been driving this last time? A From the time I got my license back.

Q I was trying to get at the period of time? A Well, I can't exactly tell you.

Q What time did you leave Richards'? A About quarter to eleven I should judge.

Q Now, didn't you go down to the chicken coop with Richards? A No, sir, I did not.

Q Well, you remember him testifying he was with you all the time? A That's all right, I didn't go down with him.

Q Well, who went down? A Him and Mr. Guerin went down.

Q So that during the time you were at Richards', he wasn't with you all the time at all, was he? A Not right through, no, sir.

Q And you might have been doing a lot of things he would not know of if he was down in the coop and you were up at the house? A I was in there with Mrs. Richards and bought a rug.

Q Paid her money for it? A Yes.

Q You left Richards' at about half-past-nine? A I said quarter to eleven.

Q Then where did you go? A Went from there to Dover.

Q And where did you first stop? A I don't know just where it was, Mr. Guerin stopped there to see somebody.

Q Was it a friend of his or a friend of yours? A Friend of his, I wasn't out of the car.

Q Where was this stop that you made? A It was over there by St. Mary's somewheres.

Q And was it a single house that you stopped at or double house or was it an apartment house? A I don't know, it was a small frame building.

Q How far back from the road did this frame dwelling sit? A Well, just about like the ordinary.

Q You mean right on the sidewalk? A It wasn't right on the sidewalk, no; say fifteen or twenty feet back from the road.

Q Did Guerin go up on the porch? A I don't know.

Q Were there any lights in the house? A I couldn't see any.

Q Why didn't you get out if he was going to make a call? A Well, I did not know the man.

Q Well, you were not calling on him? A I wasn't, no, sir.

Q Well, Guerin didn't know Richards, either, did he, but you took him in? A Oh, yes, Guerin knew Richards.

Q Oh, Guerin did know Richards? A Yes, sir.

Q Which side of the street did this Shanahan live on, right or left? A As you come from Wharton to Dover I think the left side.

Q Did you turn around and draw up to the right? A No, I stopped on the right.

Q And Guerin walked across the street? A Yes, sir.

Q And did Guerin come back? A Yes.

Q And then you continued on where to? A To Dover.

Q That is the Eagles' Club? A Eagles' Club in Dover.

Q Now, on which side of the street is the Eagles' Club as you were approaching, the right or the left? A It was on the right.

Q And you went up first? A Yes, sir.

Q Now, why didn't Guerin go up when you went? A Well, I was in a hurry to get in there and he wasn't a member.

Q By the time you came out you had bought something, hadn't you? A When I first went in I went direct to the toilet—

Q I did not ask you that? A It's not necessary to repeat that again.

Q I just asked you, when you came out again, or when you came out, you had bought something, hadn't you? A Two boxes of candy, yes.

Q So that you were there in the room where they sold stuff? A Yes, sir.

Q And then after that you came out and invited Guerin in? A Yes.

Q And you were not in the parlor with him all the time he was there, were you? A No, sir.

Q Then you finally went home with Thompson? A Yes, sir.

Q And you stood talking with Thompson for a very short appreciable time when you left him off? A Yes, sir.

Q And then you came on? A Yes.

Q Now, from the point you left Thompson out until you got to the Sire estate, how many cars did you pass? A Well, now, I can't tell you that.

Q Did you see these two boys who were walking on the right side of the road? A No, sir, I did not.

Q Why didn't you see them when they say they were out in the road?

Mr. McGeehan: I object to that.

Mr. Holland: Withdraw it.

Q Do you know why you didn't see him? A No, sir, I was watching the road ahead of me.

Q Were you driving in the middle of the road or on the right? A I was driving to the right.

Q The extreme right? A Well, I would not say the extreme right.

Q Well, were you well over to your right? A I was where I ought to be.

Q I asked you if you were well over on your right? A Well, yes.

Q And you say that—do you remember the touring car that you passed? A I remember passing a bus.

Q That is not answering the question, Mr. Blaine? A No, sir, I do not.

Q Which way was the bus that you passed going, up or down? A Going toward Dover.

Q You remember that? A Yes.

Q But you don't remember passing a touring car coming in the same direction? A I don't remember it; I might have passed it.

Q Well, you don't doubt that you passed it, do you?

Mr. McGeehan: Object to that. He says he don't remember passing it.

The Court: If he doesn't remember, why he can doubt it either way.

Mr. Holland: I am asking if he doubts it. He may say he doubts it, and then I am going to ask him why?

The Court: You may. He may answer if he can.

Q Do you doubt that you passed it? A I don't know.

Q Then you don't know whether you passed any other car? A I do not.

Q When was the first time that you noticed the Ford in front of the Sire estate; how far away were you? A Just about coming around that bend.

Q And I think you said on your direct examination that that's six or seven or eight hundred feet away? A Yes.

Q And you noticed the headlights of the Ford? A As I came around the bend, I noticed dim lights; I think they were dim lights.

Q And up to that time did you have your car under proper control? A Yes.

Q In perfect possession of your faculties? A Yes.

Q Able to drive properly? A Yes.
Q Able to steer? A Yes.
Q Able to put the brakes on? A Yes, sir.
Q Brakes in good condition? A Yes.
Q Four-wheel brakes still? A Yes.
Q You still have four-wheel brakes? A Yes, sir.
Q Nothing wrong with your car that you know of? A No, sir.
Q What speed were you making? A I should say around twenty-five miles.
Q Now, what makes you say twenty-five miles? A Well, that is the average I drive.
Q I am not asking you the average. What makes you say you were driving twenty-five miles; do you know whether it was twenty-five miles or not? A Well, about twenty-five miles.
Q Well, did you look at your speedometer? A No, I didn't.
Q Well, you may have been doing a little bit slower? A I might.
Q You might have been going a little faster? A Not much.
Q You could not be going faster but you might have been going slower? A I didn't say that, either.
Q Well, isn't that just what you did say? A I might have been going a little over or a little under the twenty-five.
Q How much over twenty-five were you going? A I don't know, not over three or four miles.
Q And how long did you continue that speed? A Well, just as soon as I saw the car, I left off the exhilarator.
Q Entirely? A Yes.
Q And from six or seven hundred feet away when you saw the car with your foot off the exhilarator, the car was coasting by its own momentum? A Yes.

Q Without power was coasting on? A Yes.
Q Did you ever put your foot back on the exhilarator? A No, sir, I don't think so.
Q Well, were you not driving and controlling that car? A Yes.
Q Well, don't you know you did put your foot back on the exhilarator? A No, sir, I didn't.
Q Absolutely certain? A Yes.
Q Are you swearing that you didn't put your foot back on the exhilarator from six or seven hundred feet away from this place? A Yes, sir.
Q And never put your foot on the exhilarator again after that? A No, sir.
Q You mean to tell this jury that from some point six or seven hundred feet—

The Court: Six or seven hundred feet?

Q —six or seven hundred feet up here, you took your foot off the exhilarator and never put it on any point from there to the place you hit this man? Is that what you mean to say? A Yes, sir.
Q You were not going very fast, then, were you? A No, sir.
Q As you approached the car, Mr. Blaine, where was the car standing; where did you see it standing? A In the road, as I thought.
Q And on the side? A No, it was pretty well in the center. The left wheels were about the center of the road.
Q Well, why did you just now inadvertently say the side of the road? A The left wheels of the Ford car—
Q Now—

Mr. McGeehan: Let him answer.

Mr. Holland: I think the witness can take care of himself.

Mr. McGeehan: The witness began to answer and was interrupted. The prosecutor asked the question and did not let the witness answer.

The Court: The witness may be permitted to answer in his own way.

A Well, almost to the center of the road.

Q Is that an answer to my question? A Will you repeat the question, please?

Q (Question read.) A The right wheels were toward the side of the road on the Ford.

Q How near the side of the road were the right wheels? A I should say three or four feet from the shoulder.

Q How far away from the car were you when you saw that? A Well, I was pretty close to it then.

Q Well, what were you doing? What do you call close? A Why, I was about forty feet.

Q You were forty feet away. Now, from the time that you first saw the car six or seven hundred feet away—from that time up to the time when you were forty feet away, were not you watching this car? A Yes, sir.

Q Didn't you observe it at all? A I seen the car there, yes.

Q Why did it take you so long from the time that you were six or seven hundred feet away until the time you were only forty feet away to observe the fact that the left wheels were almost in the center of the road? A I could not tell when I was way back.

Q How far will your lights on your Buick throw a beam of light? A Well, maybe fifty feet.

Q Don't you know that the law requires two hundred and fifty feet?

Mr. McGeehan: Object to that. It is absolutely not the law. The law is that an automobile shall carry headlights that are visible two hundred and fifty feet away.

The Court: I think he has the right to ask him the question anyhow.

Mr. McGeehan: I object. I don't think a lawyer should ask a layman that which is not correct.

Mr. Holland: Everyone must know this law—

Mr. McGeehan: That is not law. There is no law that requires—

The Court: Read the question.

Q (Question read.)

The Court: I think that he has a right to ask that question. It may not be the law; he is asking the witness what his knowledge of it is. You may answer the question.

(Exception allowed and sealed.)

C. F. WILSON,
(SEAL) Judge, &c.

Q Can you answer that? A What's the question again, please.

Q Well, don't you know your big lights illuminated the road for more than fifty feet? A Well, I don't think they did; no, sir.

Q Which lights did you have on? A I had my bright lights on.

Q How fast were you going at the time when you were forty feet away from the Ford? A I was about twenty-five miles an hour.

Q Twenty-five miles an hour? A About that; maybe not quite so fast.

Q How do you know that? A Well, I don't know exactly.

Q At what point from the six or seven hundred feet away from the Ford until you approached the Ford did you apply your brakes? Did you put your brakes on at all? A Oh, yes; yes, sir.

Q How far away were you when you first put your brakes on? A I would say about thirty feet, forty feet—

Q You were forty feet away? A Thirty feet away.

Q Thirty feet away and how fast were you going at that point? A Well, about twenty-five miles an hour.

Q And after you put your brakes on—how did you put your brakes on— A Just lightly.

Q Yes. Why? A Well, there was nothing in front of me then.

Q Well, why take off your foot if there was nothing in front of you? A I wanted to see what was ahead of me.

Q What made you want to see what was ahead of you? A I was not sure what was there.

Q Well, your lights shown there was nothing there? A Yes.

Q And your lights shown at least fifty feet, and when you were thirty feet away from the Ford your lights would carry on twenty feet beyond the Ford? A Yes.

Q And you knew if you were looking down the road there was nothing there? A There was something there.

Q What? A There was this man backing across the road. That brought my attention to it.

Q Brought your attention to what? A Brought my attention to the brakes, seeing this man walk across in front of me.

Q You said you saw him walking backwards? A Yes.

Q How far were you? A Maybe twenty feet.

Q Twenty feet when you saw him? A Yes.

Q Hadn't you seen him before you were twenty feet away? A He was over alongside of the car there.

Q Did you see him backing up before you were twenty feet away? A No, sir; he did not back up until I got about twenty feet from him.

Q Then, why did you put your brakes on when you were thirty feet away? A Well, I saw the man in the road.

Q Were they in the middle? A They were alongside their car.

Q And they were more in the middle of the road? A Yes, I thought they were.

Q Well, didn't you think it funny for them to be in the middle of the road?

Mr. McGeehan: I object to that "do you think it was funny." That calls for a conclusion and not evidence of the fact.

The Court: What he says will be evidence.

Mr. McGeehan: Yes, certainly.

Q Don't you think it was strange for them to be in the middle of the road? A No; I knew they were doing something there.

Charles Blaine, cross.

Q How did you know they were doing something there? A Well, their car was stopped. Their car was not moving, or it didn't look to be.

Q How did you know— A And the car was stopped; didn't see them doing anything there.

Q How did you know they were doing anything there? A Why, I saw them there on the side of the car doing something.

Q Where? A The left-hand side and also more in the center of the road.

Q What could you see them doing? Were they stooping over or standing up? A They were moving around there. I could not see just what they were doing.

Q So that you saw two men moving around? A Yes.

Q And when did you first come to notice that? A Well, that's when I must have been thirty or forty feet off.

Q You saw them move around? A Yes.

Q If you saw them moving, which way were they moving? A I could see them move up and down by the side of their car.

Q You mean up and down like this (indicating)? A Yes; they were bent over.

Q So they were bent over? A They were bent over when I was back there.

Q And you saw them move, didn't you, like this (indicating)? A No; he was not that way.

Q If you did not see him move like that— A I did not see him move that way; I could see him move around there.

Q Now, in your judgment their left wheels were in the center of the road? A Almost in the center of the road.

Q How did you figure that out? You did not have time enough to see? A Well, it appeared that way to me.

Charles Blaine, cross.

Q They may not have been in the middle of the road, but that's what it appeared to you? A Well, they were about in the middle of the road—their left rear wheel.

Q And when you were twenty feet away one of these men started to walk backwards, backwards to the right of the road? A Yes.

Q And he walked all the way from the car across your path to the extreme right of the road? A Yes.

Q Did you hit him before he got to the extreme right of the road? A No, sir.

Q Are you sure? A Yes, sir.

Q Were you perfectly sober the next morning after the accident? A Yes.

Q Do you remember you made a statement as to how this accident occurred? A Yes, sir.

Q Do you remember that you said the other fellow—that one of the two men started to cross the road and the same time he was walking backwards the other fellow stepped off of the car and you started to drive in between the two. Do you remember saying that? A No, sir.

Q Well, is that your signature? A Yes, sir.

Q Is that your signature over on the next page? A Yes, sir.

Q Was that witnessed by Lieutenant Roff and Trooper Love? A Mr. Love was exactly not there when I signed it; no, sir.

Q Wasn't he there when you signed it? A He was out in the office.

Q Didn't he see you sign your name? A I won't say to that for I don't remember.

Q If you don't remember, why do you say he wasn't there? A The way he was in and out of the office at the time.

Q Suppose he was in and out the office, didn't he see you sign your name? A I can't say; I don't know whether he did or not.

Q You signed it, didn't you? A I signed it.

Q You were not drunk that morning, were you? A No, sir; I was excited though.

Q Still excited? A Yes.

Q After a night's rest? A Yes.

Q And because you were excited you were not able to tell the truth? A Well, I don't know. I told the truth to the best of my knowledge.

Q Now; so you say that the fellow walked backward across the road? A Yes.

Q And you had your lights on bright? A Yes.

Q And were coming along slowly? A Yes.

Q And twenty feet away when he was walking out you had your brakes on? A Yes.

Q Now, you said you applied your brakes slowly. If you saw him walking in front of your car, why apply them only lightly? A Because he was nearly across the road at that time.

Q What time? A Twenty feet away.

Q Twenty feet away. Then you must have seen him walk across the road before you got to be twenty feet away? A Oh, no.

Q Well, you did not notice him start to walk across the road the same time? A No, sir.

Q And it took him some time? A Yes.

Q And if you saw him from twenty feet away you were nearer all the time until he got across? A Yes.

Q How much nearer? A Not much; I could not say.

Q Didn't you put your brakes on hard? A No, sir, not at that time.

Q So you saw this man twenty feet away starting to walk backward in front of your car

and you did not put your brakes on hard? A I had my brakes on, but not hard.

Q How hard did you have them on? A I can't say.

Q Hard enough to slow down your speed? A Hard enough to pull down my speed a little.

Q Didn't you pull it down considerably? A Well, some.

Q You are not telling us anything by answering that way? A I don't know any other way to answer.

Q Then what happened? A This man got to the extreme right of the road and the bright lights were thrown on the car.

Q What difference did that make; it did not frighten you? A It frightened me for a second.

Q Well, then what happened? A Well, then as I got nearer I saw him apparently leave that side of the road.

Q If you were frightened, how did you see him? A That was a second or two before, just as the lights went on.

Q And you were going twenty miles an hour? A I don't know whether I was going that fast.

Q Well, either twenty or less? A Yes.

Q How long did it take you to go from twenty feet to ten feet away, the relative time to go on that road at twenty miles an hour? A I don't know.

Q Well, it doesn't take you hardly a second, does it? A I don't know, sir. I haven't figured it out.

Q You haven't figured it out? A No, sir.

Q Don't you know how many feet you traveled a second going twenty miles an hour? A No, sir.

Q As you saw him walking backwards— A He started forward then.

Charles Blaine, cross.

Q How far away from him were you then? A I was almost—I should say about ten to fifteen feet. He stepped right in front of me.

Q You were ten to fifteen feet away and were going how fast? A Well, about twenty miles an hour.

Q So that applying the brakes as you did when you were twenty feet away didn't reduce your speed appreciably? A Well, not so much; no, sir.

Q Well, now, did you jam on your brakes? A I did then.

Q And how hard? A I can't say how hard.

Q Did you put them on hard? A I had them on hard.

Q Did you have them on as hard as you can? A Well, I don't know.

Q Were you sober? A Yes.

Q And had perfect control of your car? A Yes, sir.

Q Did you blow your horn at that time? A I blew my horn further back.

Q I did not ask you that? A No, sir, I didn't.

Q When did you first see the man coming back again, crossing the road, how far away from him were you? A About ten feet when he stepped out right in front of me.

Q You said ten or fifteen? A Well, ten or fifteen.

Q Between that? A I can't say.

Q And you could not have stopped in that ten or fifteen feet? A Did not think, I swung to the left.

Q I didn't ask you that. Couldn't you have stopped in that ten or fifteen feet? A No, I would say I could.

Q So you put your brakes on hard but could not stop? A No, not in ten feet.

Charles Blaine, cross.

Q And you swerved to the left? A Yes.

Q And in swerving to the left you got almost on top of the other Ford? A Yes.

Q You knew that because of the close distance in passing it? A Yes.

Q Did you not regard that other man who was standing alongside of the Ford? A I was watching this man because he stepped right in front of me.

Q Now, in watching this man, how are you able to testify what the other man did? A I know that the other man was there because I saw him before.

Q How do you know he stepped off the running board if you watched this man? A Well, I don't know.

Q So you have been testifying to something you don't know, is that right? A No, that isn't right.

Q Do you remember you said when you reached the car one of the two men started to cross the road and it seemed to me as if he was walking backward and the other fellow stepped off the car and he was a foot off when the other fellow started back and I tried to go between the two and as I did the car side-swiped and ran in between two trees. Do you remember saying that the other fellow stepped off his car?

Mr. McGeehan: In his statement?

Mr. Holland: Yes.

A I remember saying that.

Q You remember saying something like that? A Yes.

Q And do you remember saying that in your testimony too?

The Court: Did you ask the witness that question?

Mr. Holland: Yes.

Q Didn't you say the same thing in your direct examination?

Mr. McGeehan: What page?

Mr. Holland: Page fifteen.

Mr. McGeehan: I object; there is nothing on page fifteen to show that he said the men stepped off the running board.

The Court: The question is, did you say the same thing on your direct examination. You object to that?

Mr. McGeehan: No, except the prosecutor referred me to page fifteen and I can't find it.

A Yes, sir.

Q You did say it? A Yes, sir.

Q Remember saying, and it appeared to me as if the one man just stepped backwards across the road and the other man stepped off the car, the running board? A Yes.

Q Remember saying, I think he stepped to the side of the car? A By the side of the car, yes, sir.

Q What happened, did you hit him? A Yes.

Q How do you know you hit him? A Well, the car gave a full swerve and I felt a jar.

Q You say you felt a jar? A Yes, sir.

Q Remember that you said the next morning afterwards, and I tried to drive in between the two, as I did the car swerved and ran in between two trees? A I did not know that I had hit anyone, I felt a jar.

Q You remember you said that? A I don't remember saying that. I knew I hit a man.

Q I didn't ask you that. I asked you, do you remember saying that the next morning? A I do not.

Q You said it all right? A I don't know.

Q You signed the statement in which it is there? A I signed a statement, but I do not remember saying.

Q You mean you don't even remember the next morning? A No, sir, not there in the statement, no, sir.

Q Did you hit the fence? A I didn't see any fence that night.

Q Do you remember that you came up against a fence, that you felt a bump that lifted you up and forward out of your seat? A No, sir.

Q Don't remember that either? A No, sir, I know there was a lot of bumps.

Q Did you run over these men? A I ran over the one man, I know.

Q Which man? A The man that was in the center of the road or walking toward the car.

Q You ran over him? A Yes, I don't know which man that was.

Q Was that the littlier one of the two? A I don't know that.

Q How do you know you ran over him? A I must have; he was right in front of me and I felt a jar like.

Q Did you feel a jar or your car bump over his body? A I felt a jar.

Q But you ran over him? A Yes, sir.

Q With your right wheel or left wheel? A It was my right wheel.

Q You are sure about that? A Yes.

Q How are you sure about that? A That's where I saw him.

Q Near your right wheel? A Right in the center of the road.

Q You ran over him with your right wheel? A Yes, sir.

Q Did you get out of your car after you came to a stand still? A Yes, sir.

Q Guerin get out too? A Yes, sir.

Q Did you go back to the bodies? A No, sir, I did not.

Q Not at all? A No, sir.

Q How did you come to tell Carl Ritzer these two men were lying there when I came by?

Mr. McGeehan: Object to that, assuming he told him that. He has not testified to it at all.

Mr. Holland: That is all right, the other man testified.

Mr. McGeehan: You can ask if he did say that.

The Court: Objection sustained; reframe it.

Q Did you say that? A No, sir.

Q Didn't you know the two bodies were there? A After I got out on the road, I did.

Q Well, how do you know it if you did not go back? A I could look back and see them.

Q So you did know these two bodies were there? A I saw the forms—

Q Yes, what is that? A I seen the forms of the two men on the highway.

Q Were they living or dead at that time? A I don't know.

Q Didn't you even go back to find out? A No, sir.

Q Didn't you think they might require some of your assistance? A Well, I was dazed and hurt myself; I did not ask them.

Q Didn't you think that they might require some of your assistance? A I could not think.

Q So that the cut on your head that you received was more important to you than these two men whose forms you saw lying there in the road? A No, I don't say that. My head was all bewildered and dazed or something, I don't know.

Q Whether it was bewildered or not, you did not go back or make any attempt to go back? A Well, I didn't.

Q Why, did you say, I didn't, for? Who did? A I think Mr. Guerin went back towards the bodies.

Q How do you know if you were dazed and bewildered? A I don't know exactly.

Q If you don't know, why do you say he did? A I said, I thought he did.

Q Why do you say if you don't know? A Well, I don't know.

Q Had you seen Guerin back to the bodies? A I thought he was there, something like that, I am not sure, I don't know.

Q You had a little talk there over the accident, didn't you? A No, sir.

Q Well, did you or not have a little talk over things, you sent him back or said, go back, or something like that? A Yes, I said something like that.

Q Well, then you did have a little talk with him? A I don't remember just what it was.

Q Are you sparring against telling me what you did say?

Mr. McGeehan: I object to that. That is not a question as to that fact.

Mr. Holland: I withdraw it.

Q Did you see a car come up from Morristown and turn around and come back again? A No, sir, the first car I saw came down the road.

Q So you did not even see this car come up and then turn around and come down, the Ritzer car? A No, sir.

Q Isn't that the first car you saw? A I don't know, the first car I saw came from the way of Dover.

Q And who got out of that? A I can't say, I don't know.

Q Well, you knew Frank Ritzer? A No, sir.

Q Don't you know him? A No, sir, I know him now.

Q Do you know Carl Ritzer? A No, sir.

Q Would you say you knew of him? A Why no, I wouldn't.

Q He brought you down to Police Headquarters? A Yes, sir.

Q Remember you said, "Oh, my God, don't take me in there"? A I might have said that, for I wanted to get to a hospital or something.

Q You don't know, do you? A I don't know what?

Q Did you want to get out at Morris Plains? A No, sir.

Q How do you know you didn't? A I had no need to, not as I know of.

Q You might have wanted to get out without knowing it? A Well, I didn't know it if I did.

Q Well, do you remember as you were going out of the door, Dr. Wills and Owen Geary talking, joking about you and they passed the remark that this country was supposed to have the eighteenth amendment? Did you hear that? A No, sir, I did not.

Q You say it wasn't said? A I said I didn't hear that.

Q Well, were you where you could hear their conversation? Did you see Dr. Wills and Owen Geary talking? A No, sir, I don't remember seeing them talking.

Q Don't even remember that? A No, sir.

Q Remember you rode home with James Hill? A Yes, sir, James Hill took me home.

Q When he took you home, were you talking with him? A I don't think I was talking much to him.

Q That's not answering my question. Did you talk to him at all? A I might have said a few words.

Q Now, what did you say to Guerin at the time of the impact with the fence? A I don't remember saying anything just at that time.

Q Or afterwards? A Or afterwards.

Q Didn't you say a word to him? A Not as I know of.

Q Isn't your memory as good now as it was the morning afterward? A I don't know, I think so; it ought to be better.

Q Well, then, you say now that you didn't say anything to him? A I don't remember.

Q Don't you remember you said to him, I told Guerin, I said to Guerin, get out, Walter, I am hurt? A I might have said it, I don't remember if I did.

Q You don't remember that now; but you remembered that the morning you signed the statement? A Well, I don't know what I put in the statement.

Mr. Holland: That is all.

(Witness excused.)

MARY BLAINE, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. McGeehan.

Mr. Holland: I want to offer this statement to mark for identification.

The Court: It may be.

Mr. Holland: I offer it in evidence now if there is no objection.

Mr. McGeehan: I don't object.

Mr. Holland: May it be marked?

(Marked in evidence as Exhibit S. 18.)

Q Mrs. Blaine, you are the wife of the defendant, Charles Blaine? A Yes.

Q And were you at home on the night or early morning of the 23rd or 24th of March when he got home from the hospital? A Yes.

Q Did you talk with him there? A Yes, sir.

Q Did you see where he had been injured? A Yes, sir.

Q Mrs. Blaine, when you talked to him, were you close to him? A Yes, sir.

Q Did you smell any odor of liquor or alcohol on his breath? A No, sir.

Q Did he in any way appear to be intoxicated? A Not a bit.

Q Or in any way drunk? A No, sir, not to me he didn't.

Cross examination by Mr. Holland.

Q He told you about the accident, Mrs. Blaine? A He told me he had an accident, yes.

Q Told you that two men had been killed? A He said he hit somebody.

Q You are the mother of his six children, are you not? A Yes, sir.

Mr. Holland: That is all.

(Witness excused.)

Mr. McGeehan: We rest.

In Rebuttal.

JAMES HILL, recalled by the State in rebuttal.

Direct examination by Mr. Holland.

Q Mr. Hill, do you remember at the time that you commenced to take Blaine home from the Memorial Hospital? A Yes, sir.

Q And do you remember Dr. Wills and Owen Geary having a conversation? A Yes.

Q In that conversation, did you or did you not hear them mention words to the effect, well, this country is supposed to have the eighteenth amendment or the Volstead Act? A Yes, sir.

Q Was Blaine there when they said that? A Just going out the door. I was holding the door open for Mr. Blaine to go out.

Q You were both in the same position? A Yes.

Cross examination by Mr. McGeehan.

Q You have said that many other times or heard it said? A Yes, sir.

Q You were not participating in that conversation? A No, sir.

Q You don't know what led to it? A No, sir.

Mr. McGeehan: That is all.

Mr. Holland: But you heard it?

The Witness: Yes.

Mr. Holland: That is all.

(Witness excused.)

Mr. Holland: The State rests.

Mr. McGeehan: We rest.

The Court: Proceed.

Mr. McGeehan: I desire at this time to move for a direction of verdict and acquittal on the ground that there is no evidence in the case to show, or prove, that the defendant was guilty of gross and culpable negligence at the time of the happening of this accident, that was the proximate cause of the death of the decedents.

The Court: The motion is denied.

(Exception allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

Thereupon Mr. McGeehan summed up to the jury in behalf of the defendant.

The Court: We will take a recess at this time until two o'clock this afternoon.

AFTER RECESS.

Thereupon Mr. Holland summed up to the jury in behalf of the State.

Thereupon the Court charged the jury as follows:

CHARGE.

WILSON, *J.* Ladies and gentlemen of the jury, as matters of law, I am going to charge you the propositions of law by which you will be governed in your consideration of the testimony in the trial of this indictment and in reaching your verdict.

First: The Court is the judge of the law, and as such it is its function to pass upon all questions of law arising in the trial, and to inform the jury of the law governing the case; and it is the duty of the jury to follow the law as it may be stated by the Court.

Second: The Court has no power to decide or instruct the jury how to decide any question of fact. The jurors are the sole and final judges of the facts, the weight of the testimony and other evidence, the credibility of witnesses, inferences to be drawn from the evidence, and of inferences, issues and questions of facts whatever, including the ultimate conclusion of guilty or not guilty to be reached on all the evidence in the case. As judges of the facts it is their function, responsibility and duty to recollect what the evidence is, and all of the evidence, the occurrences during the trial, the appearance and conduct of the witnesses, whether evidence is or is not in the case, and whether it is disputed or not disputed, and

you must not be guided by the recollection of the Court or of counsel, but must be controlled by your own recollection alone as to all matters. If the Court should at any time make any statement of his recollection, or should even go further and make definite affirmations, no matter how positive, in regard to any of such matters, it is your duty to disregard such expressions of the Court except where the same coincide with your own recollection.

Third: The Court has the right to comment on the evidence, but in his reference thereto does not undertake to say what the evidence is or is not, but only his recollection of it, and the jury must consider, in deciding the case, not only the evidence which may be referred to by the Court, but all the evidence. The Court also has the right to express its opinion on the evidence, pointing out what portions of the evidence, situations or circumstances seem to it in its opinion salient, controlling or persuasive, and indicating any inferences or conclusions of fact which it would or may draw from the whole or parts of the evidence; but the jurors are not bound thereby and may disregard any and all of such expressions if you see fit.

Fourth: The defendant is presumed to be innocent and he must be proven beyond a reasonable doubt guilty of the crime charged, and on each and all of its elements. The burden of so proving the defendant guilty rests upon the State throughout the whole case and never shifts. This rule is the ultimate one surviving all others, and it is an independent and final protection of the defendant, and notwithstanding all other presumptions and burdens, if any arise in this case, it remains upon the State until and after all the

evidence is in, then the jurors must consider upon all the evidence in the case whether or not this burden has been sustained. If the jurors are then satisfied from all the evidence that the defendant is proven guilty beyond a reasonable doubt, the verdict must be guilty; if not so satisfied, the verdict must be not guilty. Reasonable doubt is not a mere possible doubt. It is that state of the case, which after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

Fifth: Where a party is surprised by the testimony of its witness it may introduce prior inconsistent statements, written or verbal, not to impeach the witness for his whole testimony, but only to neutralize that part of the testimony inconsistent with the prior statements; that is, to wipe the slate clean as to that part of the testimony. The prior statements are not evidence, but can, when proven to have been made, only neutralize the present inconsistent statements and nothing more.

Sixth: If you believe that any witness in this case wilfully or knowingly or intentionally testified falsely to any material fact in this case, you may give such weight to his or her testimony on other points as you may think it is entitled to, or you may disregard it altogether. False in one thing, false in all things, is not a mandatory rule of evidence, but is rather a permissible inference that the jurors may or may not draw when convinced that an attempt has been made to mislead them in some material respect. You are at liberty, ladies and gentlemen, to sift the evidence of such a witness, if any there be, and to take out

the false from the true in your opinion. You are at liberty to believe a part of the evidence, whatever you may believe to be true, and reject and disbelieve that part that you may believe to be false, if any.

The indictment under which the defendant is on trial, charges him with manslaughter and that is based upon what the law calls criminal negligence. Criminal negligence has been defined as an act of omission, done or left undone, in reckless disregard of the life or safety of another. Perhaps that is not an accurate definition; however that may be, it is clear that where death is the result of occurrences unanticipated by the defendant, but which arose from his negligence or inattention, his criminal responsibility depends on whether or not the injury which caused death was the regular, natural and likely consequences of the defendant's conduct. If it were, then the defendant is subject to indictment and conviction. If it was not, he cannot be properly charged with a criminal offense. Our statute provides that any person who shall drive an automobile while in an intoxicated condition, is guilty of a misdemeanor. If you find that the defendant was in an intoxicated condition while driving the automobile which struck Haggerty and Cramer, and that because of some grossly negligent act or acts of the defendant in the operation of the automobile, occasioned by the condition of intoxication of the defendant, these two men were killed, then the defendant is guilty of manslaughter. The pertinent inquiry for you is: what was the producing cause of the accident, the negligent act or acts, further, whether the defendant was drunk or sober, providing you find that the death of these two men were occasioned by some

grossly negligent act or acts of the defendant in the operation of the automobile driven by him, as unfolded by the testimony introduced on the trial of this case.

As to the Motor Vehicle Act, I will read to you the following section: "The following rates of speed may be maintained, but shall not be exceeded upon any public street, public road, or public turnpike, public park, or parkway, or public driveway, or public highway, in this State, by anyone driving a motor vehicle. A speed of one mile in four minutes at the junction or intersection of a prominent crossroad, where such a street, road or highway passes through the open country, the term 'open country' meaning where houses are on an average more than one hundred feet apart." "A speed of one mile in five minutes where such street or highway passes through the built-up portion of a city, town, township, borough or village, where the houses are on an average less than one hundred feet apart." "Nothing in this act contained shall permit any person to drive a motor vehicle recklessly at or any speed greater than is reasonable, having regard to the traffic and use of the highways, or so as to endanger life or limb, or to injure the property of another person."

The State does not claim that it is entitled, and it is not entitled to a verdict if the defendant was guilty of negligence only. In order to justify a verdict of guilty, there must be malice and an intention to inflict injury. Malice may be implied from the doing of an unlawful thing from which injury is reasonably to be apprehended, and an intention to injury need not be specifically directed to the particular individual that was injured, but may be inferred in law from the con-

sequences that are naturally to be apprehended as the result of the particular act, the doing of which was intentional. The defendant may be taken to have intended the natural consequences of that which he did. For example, if a man willfully and intentionally fires a gun into a crowd of pedestrians lawfully in the street, and unexpectedly hits a person he loved best in the world, not suspecting his or her presence in the crowd, malice could be implied and intent inferred. One who does such things cannot escape on the ground that he did not intend to injure the particular person struck.

Now, an automobile, like a gun, is a dangerous instrumentality under some circumstances. If a gun is fired in a remote forest, or an automobile run at a high rate of speed in an unsettled country, that is one thing; but if a gun is fired at random, or an automobile run at a high rate of speed in a portion of the city or town or on a main traveled highway that is being used freely by the public, that is quite another thing. All these facts and circumstances must be considered. Persons must be taken to have intended the natural consequences of that which they do.

I have been requested, ladies and gentlemen, to charge you as matters of law, sixteen requests. Do you agree I have covered the first three, Mr. McGeehan?

Mr. McGeehan: Your Honor has covered the first.

The Court: The second?

Mr. McGeehan: I would like that charged as requested.

The Court: Second, the fact that two persons died as the result of injuries sustained by them

by being struck by an automobile which was being driven by the defendant, does not of itself render the defendant guilty of the charge of manslaughter contained in the indictment. If you do not find from the evidence beyond a reasonable doubt that the deaths were caused by gross negligence on the part of the defendant, then it is your duty to acquit. I so charge, because I have already said so in what I think is a little better language.

The Court: The third and fourth, Mr. McGeehan?

Mr. McGeehan: I think your Honor has covered them.

The Court: Fifth?

Mr. McGeehan: Your Honor has covered the fifth.

The Court: I think I have covered your sixth request.

Mr. McGeehan: The sixth and seventh are taken together.

The Court: And I have read the Act to them.

McMcGeehan: I think there is some question on that if I understood your Honor correctly—there is a supplement amendment to the statute your Honor read.

The Court: Yes.

Mr. McGeehan: And thirty miles an hour—

The Court: I said that in open country. Ladies and gentlemen, if I have not charged you that in open country a motor vehicle may be driven at the speed of thirty miles an hour, I do so now; but that is qualified by what the Act says which I read to you, that anything in this Act contained shall permit no person to drive recklessly and so forth.

Number seven, that is covered, Mr. McGeehan?

Mr. McGeehan: No, sir, I don't think that is covered.

The Court: Seven. Even if you should find that the defendant was exceeding the speed limit contained in the Traffic Act of this State, at the time of the occurrence mentioned in the indictment, this fact does not of itself necessarily prove gross negligence or even ordinarily negligence on the part of the defendant, as the speed limit contained in the statute must be considered by you only as one of the circumstances entering into the case and you may find that, under all the circumstances, even if the statutory speed was exceeded, such rate of speed was not grossly negligent under the circumstances. I so charge you as I think I have.

Number eight is denied and number nine is denied. Number ten, I think I have covered that. If you don't think so you may tell me so.

Mr. McGeehan: I would like that charged.

The Court: I think I will deny to charge that other or further than I have already charged. Number eleven?

Mr. McGeehan: I would like that charged by your Honor as well.

The Court: Eleven. If any action of the decedents presented a sudden emergency which the defendant was not bound, in the exercise of reasonable care, to expect, then you may consider the circumstances of such emergency in testing the defendant's conduct and, even if he did not act as you find a reasonably proper and prudent person would and should act in such emergency, he is not guilty unless he acted or drove in a grossly negligent and improper manner. I so charge. Number twelve, have I charged that?

Mr. McGeehan: I think not, your Honor.

The Court: I will charge, but as modified this way. You make take into consideration that the only direct testimony as to the actual striking of the two men by the defendant's automobile is the testimony of the defendant Blaine and his witness Guerin, and that all other testimony is circumstantial. I charged you, as I recollect, that there were only two eyewitnesses, and as to the remainder, I decline to charge other or further than I have already charged. I don't care to charge number thirteen other or further than I have already charged.

Mr. McGeehan: And number fourteen is withdrawn. Your Honor charged that.

The Court: I have already charged fifteen, have I not?

Mr. McGeehan: Yes, sir.

The Court: And number sixteen, I decline to charge that other and further than I have already charged. I have covered it, have I not?

Mr. McGeehan: I think not, your Honor.

The Court: All the rest are covered?

That, ladies and gentlemen, disposes of the matters of law which I have charged you and the requests which have been made to me on behalf of the defendant to charge you; and you come now to the question of the testimony in the case.

I don't intend for one moment to sit here at this hour of the fourth day of this trial and burden you with my recollection of the testimony with which we have been concerned for three days and some part of this fourth day; because in the final analysis you are to take the testimony and weigh it and consider it, and from the testimony introduced into the case and admitted as

evidence, both spoken and by exhibits, you are to arrive at your verdict. As I have already indicated to you, you are not to pay any attention to what I may say the evidence was or to what counsel say the evidence was or is. It is your province and your responsibility and your duty to recollect what the evidence introduced before you is and your recollection is the only thing you have to go by, and it is from your recollection of the evidence and your weighing it that you arrive at a verdict, and you will take the case, and governed by the rules of law which I have charged you, you will consider the evidence, and if you are satisfied beyond a reasonable doubt, as I have defined it, of the guilt of the defendant, your verdict will be guilty, and if you are not so satisfied, your verdict will be not guilty. You may swear an officer.

EXCEPTIONS.

Mr. McGeehan: I respectfully ask an exception to the failure of the Court to charge specifically as requested requests number eight, nine, ten, twelve, thirteen, fourteen, fifteen and sixteen of the requests to charge, as requested.

Also to that portion of the charge which your Honor quoted from the Dugan case wherein it states that the statute provides that anyone who drives an auto while intoxicated is guilty of a misdemeanor.

The Court: I read directly.

Mr. McGeehan: I take exception to that because that is not correct. That the statute does not make a misdemeanor.

The Court: All right, you may.

Mr. McGeehan: And I take an exception to that portion of the charge which states that malice may be implied from the doing of an unlawful thing and what the Court said in relation to that subject on the ground that malice does not enter into involuntary manslaughter; and that the jury cannot imply guilty from the doing of any act, but the guilt depends entirely upon the nature of the act itself from the standpoint of its grossly negligent character, regardless of any probable consequences thereof.

The Court: Of course, you are entitled to your exceptions.

(Exceptions allowed and sealed.)

C. F. WILSON,

(SEAL) Judge, &c.

REQUESTS TO CHARGE.

MORRIS COUNTY COURT OF QUARTER SESSIONS.

THE STATE OF NEW JERSEY *vs.* CHARLES BLAINE.	*On Indictment for Manslaughter.* *Requests to Charge.*

To the Honorable C. Franklin Wilson, Judge:

The defendant respectfully requests the Court to charge the jury in part as follows:

1. The defendant in this case is presumed to be innocent and the burden of proof is upon the State to prove him guilty of the charge contained in the indictment beyond a reasonable doubt, and if the evidence fails to convince you beyond a reasonable doubt of the guilt of the defendant it is your duty to acquit.

2. The fact that two persons died as the result of injuries sustained by them by being struck by an automobile which was being driven by the defendant does not of itself render the defendant guilty of the charge of manslaughter contained in the indictment. If you do not find from the evidence beyond a reasonable doubt that the deaths were caused by gross negligence on the part of the defendant then it is your duty to acquit.

3. If you should find that the deaths of the decedents were the result of pure accident, then it is your duty to acquit.

4. Even if you should find that the defendant was guilty of some act of omission or commission, amounting to negligence, which caused or contributed to the cause of the deaths, this is not sufficient to warrant a conviction of the defendant if you do not find, beyond a reasonable doubt, that such negligence was of the character or degree which is known in the law as gross negligence, upon which criminal responsibility is founded.

5. The distinction between ordinary negligence and gross negligence is as follows: Ordinary negligence as applied to the operator of an automobile is the failure of that person to exercise such care as an ordinarily careful and prudent person would and should exercise under the existing circumstances; gross negligence, sufficient to found criminal guilt upon, means such extreme failure to exercise care as to render the conduct and actions of the defendant negligent to a degree beyond and above a mere failure to exercise reasonable care, and which would amount to a wanton and reckless disregard for human life.

6. The evidence shows that the occurrence which is the basis of the indictment took place on a road in the open country where the houses are on an average more than 100 feet apart, and the Traffic Act of this State provides that on such roads a speed of thirty miles per hour shall be lawful.

7. Even if you should find that the defendant was exceeding the speed limit contained in the Traffic Act of this State at the time of the occurrence mentioned in the indictment this fact does not of itself necessarily prove gross negli-

gence or even ordinary negligence on the part of the defendant, as the speed limit contained in the statute must be considered by you only as one of the circumstances entering into the case, and you may find that, under all the circumstances, even if the statutory speed was exceeded, such rate of speed was not grossly negligent under the circumstances.

8. To convict on the ground of negligence on the part of the defendant there must be shown more gross and culpable negligence than is sufficient to render a defendant liable in a civil suit for not exercising that care which a reasonable and prudent person would exercise.

9. If you find from the evidence that the defendant immediately before the accident occurred was proceeding along his right-hand side of the road and that he saw two persons move off that side of the road so as to leave the right side of his road clear, and that the circumstances reasonably indicated to him that such persons saw his automobile coming and had moved away to let him pass, then the defendant had a right to assume that such persons would respect his right to continue along the road and that neither of them would suddenly step back into the path of his automobile, and he had the right to continue on past such point in reliance on such assumption.

10. The defendant was not bound to anticipate that the decedents or either of them would suddenly step in front of his automobile, and if one of the decedents did so when the defendant's automobile was not running at a grossly negligent speed, but was too close to be stopped, and the defendant in endeavoring to avoid striking

such person swerved his automobile, and such action was not grossly negligent under such circumstances, then, even though his action caused the death of the decedents, he is entitled to be acquitted.

11. If any action of the decedents presented a sudden emergency which the defendant was not bound, in the exercise of reasonable care, to expect, then you may consider the circumstances of such emergency in testing the defendant's conduct, and, even if he did not act as you find a reasonably careful and prudent person would and should act in such emergency, he is not guilty unless he acted or drove in a grossly negligent and improper manner.

12. You may take into consideration that the only direct testimony as to the actual striking of the two men by the defendant's automobile is the testimony of the defendant Blaine and his witness Guerin; and that all other testimony is circumstantial (and the Court instructs you that you must exercise care before convicting the defendant upon circumstantial evidence alone).

13. The State contends that the defendant was intoxicated at the time of the occurrence. This is denied by the defendant. You cannot find as a fact that he was unless the State proves this fact beyond a reasonable doubt; but even if you should find this as a fact, this is not sufficient in itself to warrant a finding of guilty unless the State also proves that the defendant actually drove his car in a grossly negligent manner at the time of the accident.

14. The defendant denies being intoxicated, but whether he was drunk or sober is wholly immaterial, and neither condition is an essential

requisite to fix his criminal culpability upon. The real inquiry is: Was the death of the two men occasioned by some grossly negligent act or acts of the defendant in the operation of the automobile, as unfolded by the testimony?

15. If you have a reasonable doubt as to any fact essential to the finding of guilt of the defendant it is your duty to acquit.

16. In order for the jury to reach a verdict either of guilty or not guilty each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority vote of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt.

Respectfully submitted,

(Signed) JOHN M. MILLS.
(Signed) JOHN W. McGEEHAN.

CERTIFICATE OF STENOGRAPHER.

MORRIS COUNTY COURT OF QUARTER SESSIONS.

THE STATE *vs.* CHARLES BLAINE, *Defendant.*	*On Indictment No. for Manslaughter.*

I, GEORGE B. WHEATON, the stenographer who reported the above-entitled cause, do hereby certify that the foregoing typewritten pages is a true and correct transcript of the above-named cause, tried before Hon. C. Franklin Wilson, Judge of the Morris County Court of Quarter Sessions, on the 14th, 15th, 16th and 17th days of June, 1926.

GEO. B. WHEATON,
Stenographer.

Certificate of Trial Judge.

CERTIFICATE OF TRIAL JUDGE.

MORRIS COUNTY COURT OF
QUARTER SESSIONS.

THE STATE *vs.* CHARLES BLAINE, *Defendant.*	*On Indictment No. for Manslaughter.*

I, C. FRANKLIN WILSON, Presiding Judge of the Morris County Court of Quarter Sessions, and the Judge who presided over the aforesaid cause, certify that the foregoing printed book contains the entire record of the proceedings had upon the trial of the said cause and that the same is returned by the plaintiff in error therein with the writ of errors bringing up the bill of exceptions signed and sealed in this cause.

Dated: Sept. 13, 1926.

C. F. WILSON,
Presiding Judge of Morris County
Court of Quarter Sessions.

Exhibit S. 16.

S-16.

March 24, 1926.

Statement of Walter H. Guerin, 21 Hazel St., Morristown, N. J.

The following statement I make of my own free will and accord without any hope of reward, fear threats duress or compulsion on the part of anyone.

I am married and have two children and am 39 years old. About one-thirty in the afternoon on March 23, 1926 I left Morristown with Charles Blaine in his Buick Sedan.

We were alone and were going up to Oxford N. J. to get a cock bird that I wanted to breed for myself.

We made no stops between here and Oxford and arrived at Oxford at about 3:30 in the afternoon.

We went to Tom Collins house first who lives at Oxford and stayed there about half hour. We went from Collins to Henry Mountains place and had something to eat. We were there half hour or so and I had a bottle of ginger ale and Blaine had a drink of apple whiskey.

We went down to the garage to see Dan Lynch who works in a garage at Oxford and Henry Mountains went with us. We were there for half or three quarters of an hour and then went up to Lynch's home to look over the chickens? Henry Mountain, Lynch, Blaine and myself were together. We stayed looking the chickens over for about an hour or hour and a half and then selected the bird that I wanted to take and breed and put it into a bag and then left Lynch's place.

I forgot to mention that while we were at Henry Mountains he had a postal from the

Exhibit S. 16.

freight house saying that there was a battery for his radio there and Blaine said that he would drive him over and get it. We went over and got it and came back taking about ten or fifteen minutes in all to do it. When we left Lynch's house we then took Henry Mountain back to his hotel and then left for Morristown.

On the way home we stopped at the home of Will Richards at Wharton to get three chickens to bring down to my place. We stopped there for about an hour and then left for Morristown.

We came to Dover and stopped at the Eagles club. Blaine went into the club and I waited outside. He was in there for about ten or fifteen minutes and came out with a couple of boxes of candy that he had won. He asked me to go in the club for a minute and I said no that I wanted to get home. He insisted so I went in and sat in the parlor and Blaine was in some other part of the building I don't know where. I sat there a few minutes and a fellow came in with a glass of lemon seltzer. I tasted it and put it on the table as I did not want it.

We then started for Morristown and as we were right in front of the Sire place at Morris Plains I saw a Ford car standing almost in the center of the road. There were no lights on the car at all. As we were coming towards the car one of the men stepped up on the running board of the Ford and turned the lights on bright. He stepped off the running board again and as he did the other fellow walked backwards across the road. We were right up to them then and Blaine tried to pass in between the both of them but he hit one first the one that was crossing the road, and then hit the other one and the car. We passed a car on the

Exhibit S. 16.

hill back at Mount Tabor it was a touring car. When we hit the two men Blaine stopped the first car that came along and asked them to take him to the hospital. I believe this was the car that we passed on the hill at Mount Tabor.

WALTER H. GUERIN.

Witnessed by
Fred A. Roff and
Trooper G. W. Love.

Statement of Walter Guerin continued.

As soon as the accident happened we got out of the car and Blaine said to me take me to the Hospital." We stopped the first car that came along and Blaine got into it, and they took him to the Memorial Hospital at Morristown. I then looked the two men over that were hit and saw that one was dead and the other fellow was still alive. By this time a car came up with Chief of Police Hodges of Morris Township. Before Hodges arrived a big tall man whom I later found out to be Chief of Police Dibble of Wharton. He looked over the two men and said to me "They are dead." He then placed me under arrest and told me to stay there. By this time Chief Hodges had arrived. A crowd had started to gather. Then Trooper Love of the State Police arrived and after a few moments we left in company with Chief Hodges for Morristown. From the time that I met Blaine at noon time at Morristown until I left him at the scene of the accident to my knowledge he had had but one drink which was apple whiskey which he got at Henry Mountain's at Oxford at about four P. M. in the afternoon of the same day. After going to my home in Morris-

Exhibit S. 17.

town I accompanied Trooper Love and Chief Hodges to the Morristown Memorial Hospital after which Trooper Love told me that I could go on home and that when he wanted me he would either send for me or come and get me. I then went home to bed.

(Signed) WALTER H. GUERIN.

Sworn and subscribed before me this
24th day of March, A. D. 1926

ROBERT L. MURPHY
Master in Chancery of New Jersey.

Witnesses:
Fred A Roff
Trooper G. W. Love

S-17.

I, Henry Mountain do make the following statement of my own free will and accord with fear, threat or compulsion on the part of anyone.

On a Tuesday in March, I do not know the exact date but I know now that it was the same day that the two men were killed on the road by Charlie Blaine, Walter Guerin and Charles Blaine came to my restaurant at Oxford and wanted me to go with them to see a fellow by the name of Collins. They wanted chickens but Collins had none for them so we went to a garage and asked a fellow named Lynch if he had any. He told us to come back later so they drove me over to the railroad Station to get a battery that was there for me. They then drove me back and having a little time to wait they I think had a

Exhibit S. 18.

piece of pie. When they first came and before we went over to see Collins they had some soda and sandwiches but they had no whickey absolutely.

They went back to Lynch's and got the chicken to breed and then took me back to my place and then they left my place for home. They first arrived at my place at about 3:30 or 4 P. M. and they left for home about 7 or 7:30 P. M.

HENRY MOUNTAIN.

Witnessed by
Robert L. Klinedinst
Fred A. Roff
June 12, 1926.

S-18.

Statement of Charles Blaine, March 24, 1926.

My name is Charles Blaine and I am married and have six children and am 41 years old.

I am making the following statement of my own free will and accord with fear threat or duress or hope of reward having been told that whatever I may say would be used against me in the event of a trial.

I live at 28 Evergreen Ave and for the last two years I have not worked for anyone., only around my place.

On the morning of March 23, 1926 I arose at 7:30 O'Clock AM. I cleaned out my chicken coop in the morning and then went to town to pay Bob Jolley some money that I owed him. I went home and had dinner at 12:30 P. M. About one o'clock Walter Guerin came over to my

Exhibit S. 18.

house and I had aggreed to drive him over to Oxford the night before, so shortly after one we left for Oxford he and I being alone. We made no stops until we got to Oxford and arrived there I think about four o'clock P. M.

Guerin wanted to look at some chickens and that is why we went to Oxford. We stopped at one place I don't know the name but Guerin wanted to see one of the men there about some chickens. We then went to a place to have something to eat. I had a cheese sandwich and a glass of ginger ale. We then to a garage in Oxford to see another party that Guerin wanted to see about chickens. We then went up to the fellows house to look at some chickens and to get one chicken that Guerin wanted to breed.

We then started for home and stopped at Billie Richards at Wharton and got three more chickens. I bought a rug from Mrs. Richards that she made herself for the bath room at home. We stopped at Richards for about an hour. I do not know how long we stopped at Oxford but I should say about one hour and a half to two hours altogether.

We left Wharton and on the way down I had to urinate and I stopped at the Eagles club of which I am a member. I bought two boxes of candy in there and I don't think that I was in there over fifteen minutes if that long. Guerin waited outside in the car as he is not a member of the Eagles. While in the club I met Johnie Thompson and I drove him as far as his home at the Elycroft development which is between Dover and Rockaway. We then came on down towards home and as I got by the Davenport property I saw a car standing almost in the

Exhibit S. 18.

certer of the road. The lights were on dimly and as I reached about 40 or 50 feet from the car the lights were turned on bright. As I reached the car one of the two men started to cross the road and to me it seemed that he was walking backwards. The other fellow stepped off of his car and to avoid striking them I tried to drive in between the two. As I did the car swerved and ran in between two trees. I did not know that I had hit anyone or did I feel the jar. As I drove in between the trees something hit me on the head and I felt the blood and I knew I was hurt. I said the Guerin get out Walter I am hurt. We got, out and I saw the two men laying alongside of their car a little to the rear. A car that was coming in the direction of Morristown I stopped and asked him to take me to Morristown to report the accident. I told Guerin to stay there and I would send someone right back. I was dazed from the blow that I had got on the head and do not know exactly what I did. I think that he took me to the police station at Morristown but would be sure but I know that I was taken to the hospital. They dressed my wound there and I think they put a stitch or two I do not know which, in the wound on my head?

CHAS BLAINE

Witnessed by
Fred A. Roff and
Trooper G. W. Love

Exhibit S. 18.

Statement of Charles Blaine continued.

After they had fixed up my cuts I was driven home by Officer Hill. I stayed there until I was arrested by Trooper Love and Fred Roff of the Prosecutors Office.

At the time of the accident I was driving about twenty miles an hour. I was perfectly sober at the time also having nothing intoxicating to drink all day.

I was arrested for driving a car under the influence of liquor about a year and a half ago and served 30 days in jail for it.

CHAS BLAINE

Witnessed by
Fred A. Roff
G. W. Love, Trooper N. J. S. P.

Assignment of Errors.

ASSIGNMENT OF ERRORS.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Indictment for Manslaughter.* *On Writ of Error.* *Assignment of Errors.*

Afterwards, to wit, on the return day of said writ of error, before our Supreme Court of the State of New Jersey, comes the said Charles Blaine, by his attorneys, John M. Mills and John W. McGeehan, Jr., and says that in the record and proceedings aforesaid, and also in the matter recited and contained in the said bill of exceptions and also in the giving of the verdict and judgment as aforesaid, there is manifest error in this, to wit:

1. Because the Trial Court erred in denying the motion of the defendant to quash the indictment upon the ground that it charged the defendant with two separate and distinct crimes and offenses in the indictment.

2. Because the Trial Court erred in overruling the objection of the defendant to the introduction in evidence of a certain map which map contained markings and memoranda thereon showing and concerning matters and things which did not exist and which were shown before said objection was made not to have existed at the

locality in question at the time of the commission of the alleged crime.

3. Because the Trial Court erred in overruling the objection of the defendant to the following question put to the witness Edward Howell:

"Q All right, what did you see the officer do?"

and in permitting said witness in answer thereto to give evidence to make the following answer:

"A I saw one of the officers, Officer Love or Hodges place the foot standard of the pump in the depression in the amasite road and it fitted exactly. It was a pump similar to this with a 'U' shape movable foot standard."

4. Because the Trial Court erred in admitting over the objections of the defense, evidence of the manner of operating a certain automobile at a point remote from the scene of the accident, to wit: between 1-1/2 to 3 miles from the point of the accident and without first proving the identity of the car in question to have been that of the defendant.

5. Because the Trial Court erred in overruling the objection of the defendant to the following question put to the witness Collins:

"Q And how near to you did the man drive?"

and the question:

"Q In reference to where you were walking on the road, how was the sedan driving?"

and the question:

"Q Did you stay in the same place as the sedan—as you had been?"

and in permitting the witness to give answers to said questions.

6. Because the Trial Court erred in refusing the motion of the defendant to strike out the evidence theretofore given by the witness Collins.

7. Because the Trial Court erred in denying the motion of the defense to strike out the testimony of the witness Sharkey.

8. Because the Trial Court erred in overruling the objection of the defense to the following question put to the witness Hand:

"Q Was the car, the sedan that passed you, going fast or slow?"

and in permitting the witness to answer:

"A Going fast."

and to further answer:

"A Too much for me, except a fast rate; very fast rate."

9. Because the Trial Court erred in denying the motion of the defendant at the close of the State's case for a direction of verdict of acquittal.

10. Because the Trial Court erred in overruling the objections of the defendant to the following questions of the prosecutor on cross examination of the defendant Blaine:

"Q When didn't you have your license?"

and the question:

"Q How many times since 1923; how many occasions since 1923 did you not have this license you are speaking about?"

11. Because the Trial Court erred in denying the motion of the defendant for a direction of verdict of acquittal at the end of the entire case.

12. Because the Trial Court erred in refusing to charge the 8th request to charge of the defendant.

13. Because the Trial Court erred in refusing to charge the 9th request to charge of the defendant.

14. Because the Trial Court erred in refusing to charge the 10th request to charge of the defendant.

15. Because the Trial Court erred in refusing to charge the 12th request to charge of the defendant.

16. Because the Trial Court erred in refusing to charge the 13th request to charge of the defendant.

17. Because the Trial Court erred in refusing to charge the 14th request to charge of the defendant.

18. Because the Trial Court erred in refusing to charge the 15th request to charge of the defendant.

19. Because the Trial Court erred in refusing to charge the 16th request to charge of the defendant.

Wherefore, the said plaintiff-in-error, Charles Blaine, prays that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the

said Charles Blaine may be restored to all things he has lost on occasion thereof.

JOHN M. MILLS,
JOHN W. McGEEHAN, JR.,
Attorneys for and of Counsel
with Plaintiff-in-Error.

Service of the within Assignment of Errors is hereby acknowledged this 29th day of September, 1926.

ALBERT H. HOLLAND,
Prosecutor of the Pleas (Morris County),
Attorney of Defendant-in-Error.

SPECIFICATION OF CAUSES.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Indictment for Manslaughter.* *On Writ of Error.* *Specification of Causes.*

And the said plaintiff-in-error, Charles Blaine, by John M. Mills and John W. McGeehan, Jr., his attorneys, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause, as follows:

1. Because the Trial Court erred in denying the motion of the defendant to quash the indictment upon the ground that it charged the defendant with two separate and distinct crimes and offenses in the indictment.

2. Because the Trial Court erred in overruling the objection of the defendant to the introduction in evidence of a certain map which map contained markings and memoranda thereon showing and concerning matters and things which did not exist and which were shown before said objection was made not to have existed at the locality in question at the time of the commission of the alleged crime.

3. Because the Trial Court erred in overruling the objection of the defendant to the following question put to the witness Edward Howell:

> "Q All right, what did you see the officer do?"

and in permitting said witness in answer thereto to give evidence to make the following answer:

> "A I saw one of the officers, Officer Love or Hodges place the foot standard of the pump in the depression in the amasite road and it fitted exactly. It was a pump similar to this with a 'U'-shape movable foot standard."

4. Because the Trial Court erred in admitting over the objections of the defense, evidence of the manner of operating a certain automobile at a point remote from the scene of the accident, to wit: between 1-1/2 to 3 miles from the point of the accident and without first proving the identity of the car in question to have been that of the defendant.

5. Because the Trial Court erred in overruling the objection of the defendant to the following question put to the witness Collins:

> "Q And how near to you did the man drive?"

and the question:

> "Q In reference to where you were walking on the road, how was the sedan driving?"

and the question:

> "Q Did you stay in the same place as the sedan—as you had been?"

and in permitting the witness to give answers to said questions.

6. Because the Trial Court erred in refusing the motion of the defendant to strike out the evidence therefore given to the witness Collins.

7. Because the Trial Court erred in denying the motion of the defense to strike out the testimony of the witness Sharkey.

8. Because the Trial Court erred in overruling the objection of the defense to the following question put to the witness Hand:

"Q Was the car, the sedan that passed you, going fast or slow?"

and in permitting the witness to answer:

"A Going fast."

and to further answer:

"A Too much for me, except a fast rate; very fast rate."

9. Because the Trial Court erred in denying the motion of the defendant at the close of the State's case for a direction of verdict of acquittal.

10. Because the Trial Court erred in overruling the objections of the defendant to the following questions of the prosecutor on cross examination of the defendant Blaine:

"Q When didn't you have your license?"

and the question:

"Q How many times since 1923; how many occasions since 1923 did you not have this license you are speaking about?"

11. Because the Trial Court erred in denying the motion of the defendant for a direction of verdict of acquittal at the end of the entire case.

12. Because the Trial Court erred in refusing to charge the 8th request to charge of the defendant.

13. Because the Trial Court erred in refusing to charge the 9th request to charge of the defendant.

14. Because the Trial Court erred in refusing to charge the 10th request to charge of the defendant.

15. Because the Trial Court erred in refusing to charge the 12th request to charge of the defendant.

16. Because the Trial Court erred in refusing to charge the 13th request to charge of the defendant.

17. Because the Trial Court erred in refusing to charge the 14th request to charge of the defendant.

18. Because the Trial Court erred in refusing to charge the 15th request to charge of the defendant.

19. Because the Trial Court erred in refusing to charge the 16th request to charge of the defendant.

20. Because the verdict was against the weight of the evidence, this cause being assigned under and pursuant to the statute in such case made and provided, being Chapter 349 of the Laws of 1921.

JOHN M. MILLS,
JOHN W. McGEEHAN, JR.,
Attorneys for and of Counsel
with Plaintiff-in-Error.

Service of a true copy of the within Specification of Causes is hereby acknowledged this 29th day of September, 1926.

ALBERT H. HOLLAND,
Prosecutor of the Pleas (Morris County),
Attorney of Defendant-in-Error.

NOTICE OF ARGUMENT.

Filed September 30, 1926.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Indictment for Manslaughter.* *On Writ of Error.* *Notice of Argument.*

To Albert H. Holland, Esquire, Prosecutor of the Pleas of Morris County.

SIR:

PLEASE TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Supreme Court, to be held at the State House, at Trenton, State of New Jersey, on the first Tuesday of October next, at 10 o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated Sept. 29, 1926.

Yours respectfully,
JOHN M. MILLS,
JOHN W. McGEEHAN, JR.,
Attorneys for and of Counsel with Plaintiff-in-Error.

Service of the within Notice of Argument is hereby acknowledged this 29th day of September, 1926.

ALBERT H. HOLLAND,
Prosecutor of the Pleas (Morris County),
Attorney of Defendant-in-Error.

JOINDER IN ERROR.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*In Error.* *Joinder-in-Error.*

And thereupon, afterwards, the said State of New Jersey, by Albert H. Holland, Prosecutor of the Pleas of the County of Morris, comes into court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

Dated Oct. 18, 1926.

ALBERT H. HOLLAND,
Prosecutor of the Pleas
of Morris County.

OPINION OF SUPREME COURT.

Filed June 10, 1927.

NEW JERSEY SUPREME COURT.

No. 111, October Term, 1926.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

In error to Morris County Quarter Sessions Court.

Before Justices Kalisch, Katzenbach and Lloyd.

For the plaintiff-in-error, John W. McGeehan, Jr., John M. Mills, of counsel.

For the defendant-in-error, Albert H. Holland, Prosecutor of the Pleas.

Per curiam. This case comes before us on a strict writ of error and under the 136th section of the Criminal Procedure Act. The plaintiff-in-error was convicted in the Morris County Court of Quarter Sessions on an indictment charging him with manslaughter, in that he did feloniously kill and slay Charles Haggerty and Charles Cramer.

The facts of the case are, that on the 23rd day of March, 1926, between eleven o'clock and midnight, the plaintiff-in-error was driving an automobile (a Buick sedan) on the road between Mount Tabor and Morris Plains, in Morris

County, going in a southerly direction. The deceased Charles Cramer and Charles Haggerty were driving a Ford roadster going in a northerly direction on the same road, and, according to the testimony, had stopped their car along the hard amesite surface, a few inches therefrom and parallel thereto, to change the left rear tire of their car. It appears that while they were engaged in this operation they were struck by the car of the plaintiff-in-error; that the decedents had not finished their operation was evident from the fact that the pump was found still attached to the tire after they were struck. The amesite road at this point is 150 feet wide, with dirt shoulders five feet in width, on either side. As the plaintiff-in-error approached the car of the deceased, he suddenly swerved to the left across the road and collided with the car of the deceased on its left side, striking both Cramer and Haggerty and dragging them along the side of the road for a distance of about ten feet, killing Cramer instantly and Haggerty died within a few minutes afterwards, as the result of his injuries. The car after the collision was continued on its course down the left side of the road for some distance when it gradually left the road and finally smashed against a wire fence where it stopped.

It appears from the testimony of the plaintiff-in-error that he was propelling his motor car at a speed of 20 to 30 miles an hour at the time when his car was about 800 feet distant from the place where it collided with the automobile of the decedents, and where both of them were knocked down and killed, and that he saw, when his car was at the aforementioned distance away from the place of the collision, the automobile of the

decedents, but his car kept right on its course, and in one part of his testimony, he says: "Well, it looked to me as if they were standing at the rear of their car looking at the left rear wheel and it appeared to me as if the one man just stepped backwards across the road. And the other man, I thought, he walked up alongside the car and stepped on the running board."

The testimony, that after the collision and the running down of the decedents, the car proceeded on its mad career for a distance of 150 feet, smashing against a wire fence, after having scraped several trees and knocked down a sapling. There was also testimony to the effect that the plaintiff-in-error was intoxicated. There were no witnesses present at the time the collision occurred, except the plaintiff-in-error. There was, however, proof coming from several witnesses who testified that shortly before the collision they were passed by a Buick sedan of the character and description of the car of the plaintiff-in-error, and which they say, they saw going at a very fast rate of speed.

The first point made is, that the Court erred in overruling the objection of counsel of plaintiff-in-error, to the introduction in evidence of a certain map, which map contained markings and memoranda thereon showing matters and things which were claimed to be improperly on the map. It appears, that when the map was admitted, the Court told the jury: "The map is admitted, of course, and ladies and gentlemen of the jury, you are not at the present time to pay any attention to the three objects marked on the map to which Mr. McGeehan objected, until they are proven. You are not to pay any attention to the three marks he mentioned."

The prosecutor then and there consented to have them stricken off the map and from the consideration of the jury, and everything with reference to the matter of the wheels of Chief Hodge's car, the prosecutor stating, that he expected "to get Chief Hodge to testify himself when he will then indicate that point on the map." Of course, this could not be harmful error, since the Court instructed the jury to disregard it and the State consented to have the marks stricken from the map.

The second point made is, that the Court erred in over-ruling the objection of the plaintiff-in-error to the following question put to the witness, Edward Howell: "Ques. All right, what did you see the officer do? Ans. I saw one of the officers, Lover or Hodges, place the foot standard of the pump in the depression in the amesite road and it fitted exactly. It was a pump similar to this with a 'U' shape movable foot standard."

It is apparent that the latter part of the answer went beyond a response to the question put to the witness, but on examination of the record, we fail to find that any motion was made, on behalf of the plaintiff-in-error, to have that portion of the answer, volunteered by the witness, struck out. The record discloses that the objection made by counsel to the question was limited, solely, as to its competency, in that it "was not binding upon the defendant and that any evidence found on the 29th of March, would be inadmissible as being too remote." It is evident that the objection was not aimed at the question put to the witness but was directed at his answer thereto and as to that, as already said, no motion was made to strike out that portion of the answer, volunteered. Furthermore,

we do not think the objection made was a good one. Of course while remoteness of testimony relating to a subject-matter, under investigation, may affect its probative value, the remoteness of it, however, does not *per se,* render it incompetent.

The third point relied on for a reversal is, "that the trial judge erred in admitting, over the objections of counsel of defendant, testimony as to the manner of operating a certain automobile at a point remote from the scene of the accident, to wit: Between one and one-half to three miles from the point of the accident and without first proving the identity of the car in question to have been that of the plaintiff-in-error."

There was proof that the automobile in question was identified as the one which the defendant was operating. The fact that this identification was not made before the testimony was adduced as to the operation of the car before the collision took place is of no consequence, since the objection made goes only to the order of the coming in of the proof, and as there was proof introduced which tended to show that it was the car of the plaintiff-in-error, the objection is devoid of any legal force.

The further ground urged, that it was error to admit such testimony because it related to the negligent operation of the automobile by the plaintiff-in-error, at a point between one and a half and three miles from the scene of the collision, seems to us to be unsubstantial, since the conduct of the plaintiff-in-error in operating the automobile was a matter of pertinent inquiry on the question of his sobriety.

The fourth point relied on for reversal is, that the Court erred in refusing to charge the

eighth request which reads, as follows: "To convict on the ground of negligence on the part of the defendant, there must be shown more gross and culpable negligence than is sufficient to render a defendant liable in a civil suit for not exercising that care which a reasonable and prudent person would exercise."

The trial judge fully and accurately charged the law governing the nature of the negligence essential to be established, where death results from the negligent act, in order to constitute such negligence criminal in character. We have a statute which declares that the driving of an automobile by a person intoxicated shall be a misdemeanor. The Court very properly left it to the jury to say, whether what happened was brought about by the condition of intoxication of the plaintiff-in-error, and if so, and that circumstance entered into the reckless operation of the automobile, then the killing of the decedents would be manslaughter.

The driving of an automobile by a person intoxicated is an unlawful act, and if the death of a person is attributable to the unlawful act, that in law, constitutes manslaughter.

Under the fifth point, it is urged that the Court erred in refusing to charge the ninth and tenth requests. The trial judge was under no legal duty to charge the subject matter of these requests since from a reading of the charge it appears that he had already clearly stated the legal principle governing the facts developed by the testimony, and furthermore he was under no legal obligation to apply the legal principle already stated, to conditions of fact postulated by defendant's counsel, particularly where such conditions do not include all the circumstances

which would influence the conclusion of the jury, *Consolidated Traction Company* v. *Chenowith,* 61 N. J. L. 554.

Again we find it necessary to state that the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th assignments of errors as well as the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th specifications of causes for reversal do not comply with the legal rule, in that each of them fails to set forth the subject-matter of the request alleged to have been refused to be charged.

We take occasion also to point out here that the 8th, 9th and 10th requests considered by us as not set forth in either the assignments of errors or in the specifications of causes for reversal.

Judgment is affirmed.

A true copy.

EDWARD J. KELLEHER,
Clerk.

RULE OF AFFIRMANCE AND REMITTITUR.

Filed June 10, 1927.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Error.* *Rule of Affirmance and Remittitur.*

The above-entitled cause was heard before this Court at the October Term, 1926, and the Court having considered the same and finding no error in the record and proceedings in the Morris County Quarter Sessions Court—

It is thereupon ORDERED and ADJUDGED that the judgment of the said Morris County Quarter Sessions Court removed by writ of error in this cause be and the same is hereby affirmed with costs and that the record be remitted to the said Morris County Quarter Sessions Court to be proceeded with in accordance with this judgment and the practice of said Court.

Entered June 10, 1927.

On motion of

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

I, EDWARD J. KELLEHER, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above-stated cause.

IN TESTIMONY WHEREOF I have set my hand and the seal of said Court at Trenton, this fifteenth day of June, A. D. nineteen hundred and twenty-seven.

(SEAL) EDWARD J. KELLEHER,
Clerk.

A true copy.

JOSEPH B. FITZPATRICK,
Clerk.

WRIT OF ERROR.

Filed June 14, 1927.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

NEW JERSEY, to wit:

(SEAL) The State of New Jersey to William S. Gummere, Chief Justice, and other Justices of our Supreme Court of Judicature, GREETING:

Because in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, upon a certain indictment in the name of the State of New Jersey against Charles Blaine, for manslaughter found in our Court of Oyer and Terminer and General Jail Delivery, in and for the County of Morris and handed down by the last mentioned Court into our said Court of General Quarter Sessions of the Peace, to be tried, heard and determined by the said last mentioned Court, which said indictment and record thereof was removed to the said Supreme Court, manifest error hath intervened, to the great damage of the said defendant, Charles Blaine, as from his complaint we are informed. We being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to him, the said Charles Blaine, in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort

Writ of Error.

in all causes, at Trenton, on the 2nd day of July next, together with this writ, that the record and proceedings being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to law and custom of the State of New Jersey, ought to be done.

WITNESS, EDWIN ROBERT WALKER, our Chancellor, and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the 14th day of June, 1927.

JOSEPH F. S. FITZPATRICK,
Clerk.

JOHN W. McGEEHAN, JR.,
Attorney for Plaintiff-in-Error.

Presented in open court this 17th day of June, 1927. Amount of bail fixed by Court at Ten Thousand Dollars.

A. J. MACKERLEY,
Judge.

Rule on Writ of Error.

RULE ON WRIT OF ERROR.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Error.* *Rule on Writ of Error.*

A writ of error having been allowed and presented to this Court from the Court of Errors and Appeals in the above-entitled cause,

It is ordered that the Clerk of this Court do make return thereto according to law.

Entered June 14, 1927.

On motion of

JOHN W. McGEEHAN, JR.,
Att'y.

RETURN TO WRIT.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

On Indictment for Manslaughter.

On Writ of Error to Supreme Court.

Assignment of Errors.

And now on this day, to wit, the 2nd of July, 1927, before our Judges of our Court of Errors and Appeals, in the last resort, at Trenton, came the said Charles Blaine, plaintiff-in-error, by John W. McGeehan, Jr., and John M. Mills, his attorneys, and says, that in the record and proceedings aforesaid, and also in giving of the judgment as aforesaid, there is manifest error in this, to wit:

1. Because the Supreme Court affirmed the judgment of conviction of the plaintiff-in-error before the Morris County Court of Quarter Sessions, and decided that the record of the trial and conviction contained no error.

2. Because the Supreme Court should have reversed the judgment rendered below and given judgment in favor of the plaintiff-in-error, Charles Blaine, who is the defendant below, when duly moved so to do.

3. Because the Supreme Court affirmed and refused to reverse the judgment of conviction of the plaintiff-in-error for the causes specified in the specification of causes and the errors assigned in the assignment of errors filed in the Supreme Court.

4. Because the Supreme Court erred in refusing to reverse the judgment of conviction because the trial court erred in overruling the objection of the defendant to the introduction in evidence of a certain map which map contained markings and memoranda thereon showing and concerning matters and things which did not exist and which were shown before said objection was made not to have existed at the locality in question at the time of the commission of the alleged crime.

5. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in overruling the objection of the defendant to the following question put to the witness Edward Howell:

> "Q All right, what did you see the officer do?" and in permitting said witness in answer thereto to give evidence to make the following answer:
> "A I saw one of the officers, Officer Love or Hodges place the foot standard of the pump in the depression in the amesite road and it fitted exactly. It was a pump similar to this with a 'U' shape movable foot standard."

6. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in admitting over the objections of the defense, evidence of the manner of operating a certain automobile at a point remote from the scene of the accident, to wit: between 1½ to

3 miles from the point of the accident and without first proving the identity of the car in question to have been that of the defendant.

7. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in overruling the objection of the defendant to the following question put to the witness Collins:

> "Q And how near to you did the man drive?"

and the question:

> "Q In reference to where you were walking on the road, how was the sedan driving?"

and the question:

> "Q Did you stay in the same place as the sedan—as you had been?"

and in permitting the witness to give answers to said questions.

8. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing the motion of the defendant to strike out the evidence theretofore given by the witness Collins.

9. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in denying the motion of the defense to strike out the testimony of the witness Sharkey.

10. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in overruling the objection of the defense to the following question put to the witness Hand:

> "Q Was the car, the sedan that passed you, going fast or slow?"

and in permitting the witness to answer:

"A Going fast."

and to further answer:

"A Too much for me, except a fast rate; very fast rate."

11. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in denying the motion of the defendant for a direction of verdict of acquittal at the end of the entire case.

12. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 8th request to charge of the defendant.

13. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 9th request to charge of the defendant.

14. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 10th request to charge of the defendant.

15. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 12th request to charge of the defendant.

16. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 13th request to charge of the defendant.

17. Because the Supreme Court refused to reverse the judgment of conviction because the trial court erred in refusing to charge the 16th request to charge of the defendant.

18. Because the Supreme Court refused to reverse the judgment of conviction because the verdict was against the weight of the evidence, this cause being assigned under and pursuant to the statute in such case made and provided, being Chapter 349 of the Laws of 1921.

Wherefore, the said plaintiff-in-error, Charles Blaine, prays that the judgment of the Supreme Court in affirming said judgment and sentence, be reversed, and that the judgment and sentence aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, be reversed, annulled and held for nothing, and that the said Charles Blaine may be restored to all things he has lost on occasion thereof.

JOHN M. MILLS,
JOHN W. McGEEHAN, Jr.,
Attorneys for and of Counsel
with Plaintiff-in-Error.

Service of a copy of the within assignment of errors is hereby acknowledged this 8th day of September, 1927.

ALBERT H. HOLLAND,
Prosecutor of the Pleas of Morris County.
Attorney of Defendant-in-Error.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*In Error.* *Joinder-in-Error.*

And thereupon, afterwards, the said State of New Jersey, by Albert H. Holland, Prosecutor of the Pleas of the County of Morris, comes into court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays that the Court may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

ALBERT H. HOLLAND,
Prosecutor of the Pleas of Morris County.
Dated Sept. 8, 1927.

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Indictment for Manslaughter.* *On Writ of Error to Supreme Court.* *Notice of Argument.*

To Albert H. Holland, Esquire, Prosecutor of the Pleas of Morris County.

SIR:

PLEASE TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House at Trenton, State of New Jersey, on the third Tuesday of October next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated September 3, 1927.

Yours respectfully,
JOHN M. MILLS,
JOHN W. McGEEHAN, JR.,
Attorneys for and of Counsel with Plaintiff-in-Error.

Service of the within notice of argument is hereby acknowledged, this 8th day of September, 1927.

ALBERT H. HOLLAND,
Prosecutor of the Pleas of Morris County,
Attorney of Defendant-in-Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* CHARLES BLAINE, *Plaintiff-in-Error.*	*On Indictment for Manslaughter.* *On Writ of Error to Supreme Court.*

BRIEF OF PLAINTIFF-IN-ERROR.

This Writ of Error brings up for review the affirmance by the Supreme Court of the conviction of the plaintiff-in-error, defendant below, in the Morris Quarter Sessions, the matter having come before the Supreme Court on a Writ of Error with the return of the entire record under Section 136 of the Criminal Procedure Act. Plaintiff-in-error, defendant below, was tried and convicted in the Morris Quarter Sessions upon an indictment charging him with manslaughter, which indictment was based upon the deaths of two persons who were struck by an automobile driven by the defendant on March 23, 1926. The accident occurred upon the main highway leading from Dover to Morristown, in the open country, late at night, and at a point where there were no street lights and no illumination except the lights of the automobiles. The defendant was driving in an easterly direction, and was just about to pass another automobile, which was standing still upon the road, facing in the opposite direction, when the accident occurred. The persons injured were afoot upon the road, and somewhere in the vicinity of the standing automobile, the exact

actions and positions of the persons injured being in dispute in the case.

The indictment is in the statutory form and contains no details of the charge against the defendant, but the State sought to prove that the deaths of the decedents were the proximate result of the alleged gross negligence of the plaintiff-in-error at the time of the occurrence, and undertook to do so chiefly by circumstantial evidence. There were no witnesses to the occurrence except the defendant Blaine and a passenger in his car named Guerin, who testified in behalf of the defendant.

The jury returned a verdict of guilty, and the defendant was sentenced by the Court to confinement in the State Prison at hard labor for a maximum term of ten years and a minimum term of six years, in addition to a fine. The Writ of Error before the Supreme Court brought up with it the entire record, pursuant to Section 136 of the Criminal Procedure Act, and numerous errors were assigned and causes specified. The Supreme Court rendered a *per curiam* opinion and affirmed the judgment of conviction. The Assignment of Errors upon the present Writ of Error set forth that the Supreme Court erred in refusing to reverse the judgment of conviction and in affirming the same. In addition to these general Assignments of Error, additional assignments to the same effect are presented, including therein the grounds urged before the Supreme Court for reversal. It is respectfully submitted that the first three general assignments of error filed upon this Writ of Error are sufficient to raise all points and submit for consideration the questions presented to the Supreme Court, and while the additional assignments of error may be mere surplusage, the points will be presented in this

brief (under the general assignment that the Supreme Court erred), in the language of the additional specific assignments, as a means of more directly calling this Court's attention to the assignments of error and specification of causes brought before the Supreme Court.

POINT I.

Because the Supreme Court erred in refusing to reverse the judgment of conviction on the ground urged before it that the Trial Court erred in overruling the objection of the defendant to the introduction in evidence of a certain map, which map contained markings and memoranda thereon showing and concerning matters and things which did not exist and which were shown before said objection was made not to have existed in the locality in question at the time of the commission of the alleged crime.

This point was presented to the Supreme Court in Assignment of Errors No. 2 and Specification of Causes No. 2.

The foregoing question arose during the testimony of the witness Howell, a surveyor. He testified that he made the survey in question on March 29th, the accident having happened on March 23rd. There were present with him at the time his assistant and Detective Roff, of the Prosecutor's office, and other persons. He testified to the physical condition that he found there (p. 31) and then to the scale of the map. To the introduction of this particular map (Exhibit S. 1 at back of State of Case) no objection was made by the defendant. The State then offered a second map, the one in question, which was made at the same time as Map No. 1. This map was put in evidence over the objections of

the defendant, and a photostatic copy thereof is contained in the state of case, at the rear thereof.

Upon this map, when it was introduced in evidence, at a point off the indicated amesite part of the road, with the two left wheels on the shoulder and the two right wheels off of the entire road, are shown marks, marked "front wheels" and "rear wheels," together with a cross alongside of the left rear wheel, with an arrow pointing to it, and the word "imprint." These markings were at the exact point where the State later in the case contended and attempted to prove the decedents' automobile stood when the decedents, alleged to be standing right alongside of it, were struck. The defendant endeavored to prove, and introduced evidence that the decedents' car was nearer the center of the road, and at an angle, when the defendant's car attempted to pass and struck the decedents, who were over on the defendant's car's path on its right side of the road.

The position of the automobile of the decedents, therefore, was a matter of importance in dispute in the case, and when the State sought to introduce in evidence Map No. 2, containing markings showing a movable object, to wit, an automobile, and which object's position was not based upon any testimony yet in the case, and which map was to be hung in front of witnesses who were to testify, the defense objected upon this ground. The surveyor, on cross examination regarding this situation, testified as follows: (p. 35 s.c.)

"Q This map, called map No. 2, contains a reference to front wheels and rear wheels. A Which were there when I took the measurements.

Q One minute. It does contain references to those things? A Yes.

Q And there were no front wheels and no rear wheels on the locality when you made the measurements and survey? A Yes.

Q There was an automobile standing there? A An automobile was standing as I have indicated here, with front wheels and rear wheels.

Q That automobile was standing there on the 29th day of March, 1926? A Yes.

Mr. Holland: I want it understood that that automobile that was standing when Mr. Howell made his measurements is not this same automobile.

Mr. McGeehan: Good. I wanted to know that.

Mr. Holland: *It was a similar automobile to show the exact location.*"

Upon the Prosecutor stating that the marking was intended to show a similar automobile *to show the exact location,* without any testimony upon which to base such marking of the map, objection was made to its admission by the defense. The grounds of the objection are stated on page 36, bottom, and specifically refer to the markings in answer to the Court's question (p. 37, top). The Court did not rule on the objection immediately, until after Mr. Howell had also added that he placed the wheels where he did because of an imprint that was on the edge of the roadway, a "u"-shaped imprint, which he concluded was the mark of an automobile pump. The defendant again objected to the map on the ground "that it contains matters that are not admissible in evidence as being at a time too remote from the accident, to the 29th of March, or six days after the alleged occurrence. I object to the map because it shows upon it conditions that did not exist at the time of the accident and there are things included in the map that are hearsay representation." The Court over- (p. 40 s.c.)

ruled the objection and admitted the map in evidence, to which exception was taken by the defendant. The map continued to hang before the jury throughout the trial, and every State's witness that testified had the markings of the surveyor before him to guide and lead his testimony. The instruction of the Court to the jury not to pay any attention to the markings, and the remarks of the Prosecutor after the Court had ruled, did not cure the disadvantages to the defendant and the harmful error of the Court in admitting the map. It is respectfully submitted that to admit the map in question with such markings upon it was harmful error.

The Court of Errors and Appeals, in *State* v. *Smith,* 68 N. J. L. 609, dealt with almost precisely the same situation, except that in that case "the map was not received in evidence, nor was it afterwards used for illustration," whereas in the case *sub judici* it was received in evidence over defendant's objection, was exhibited to every witness during the trial and went with the jury into the jury room. In *State* v. *Smith, supra,* the Court had before it a map of a house, which map had delineated thereon certain articles of furniture in a room in question, and the delineation of the furniture indicated its position at the time the survey was made, which was some weeks after the alleged homicide. There was no suggestion made, either by evidence or a statement of the Prosecutor, that it purported to show the position of the furniture at the time of the homicide.

In the case *sub judici,* before the introduction of the map the Prosecutor stated that it was offered to show the position of "a similar automobile to show the exact location." This could mean nothing except the exact location of the

standing car on the night of the accident. Therefore, in *State* v. *Smith,* the markings were not as harmful as in this case. But even under the less harmful circumstances in *State* v. *Smith,* the Court of Errors and Appeals stated:

> "As it seems to have been claimed that the position of the movable articles in that room, in their relation to the room and each other, was a question of importance in the cause, the map illustrative of the situation should not have shown them as they were at the time of the survey, unless, upon independent evidence, showing that they occupied the same position at the time of the homicide."

At another point:

> "Maps, which are not original evidence, may be admitted and used only as illustrative of evidence otherwise offered and duly admitted. Generally, they should only delineate such physical facts as are permanent in character, or may be presumed to have existed in the same relations at the time to which the inquiry is directed. Things which are movable in their nature, and the relation of which to each other and to immovable things around them have a bearing on the question at issue, should not be delineated thereon, unless it is made to appear by the evidence of witnesses that they knew the position which they occupied at the time in question and had truthfully and correctly pointed out their position to the maker of the map."

It is respectfully submitted that there is in this case *sub judici* no "evidence of witnesses that they knew the position which they occupied at the time in question, and had truthfully and correctly pointed out their position to the maker of the map." It may be pointed out that in *State* v *Smith* it was held that no legal error was committed by the trial judge in refusing to

strike out the evidence, but in *State* v. *Smith* the map itself was not put in evidence, and, as the Court points out, it was not afterward used for illustration. Since the surveyor had testified in that case that it showed the position at the time of the survey and not at the time of the murder, there was no harm in not striking out this testimony. As to the admissibility of such map, however, the Court of Errors and Appeals observed:

> "We think that while the map, in regard to which the surveyor was first examined, was not such as, in the absence of other testimony, could have been used to illustrate the position of the furniture, there was no legal error in permitting the examination and there was no injury done to the defendant by the incident."

In the present case, however, the map, with its marks and words, was before every witness for the State, to guide and lead them from the beginning of the case in their testimony about the disputed subject of the position of the decedent's car. It remained in evidence, for all intents and purposes, to show and illustrate to the jury where the decedent's car was, an allegation of fact based entirely on hearsay of persons who had not seen the decedent's car immediately after the accident. All of these circumstances were revealed to the Trial Court before it ruled on the objection to the map, and under these circumstances it is respectfully submitted that a grievous and harmful error was committed in allowing the map to be received in evidence and to remain in evidence with such markings upon it.

The Supreme Court in its opinion below does not suggest that this was not error, and in fact, the language of the Supreme Court indicates

that it was error, but not harmful error, the Court saying:

> "Of course, this could not be harmful error, since the Court instructed the jury to disregard it, and the State consented to have the marks stricken from the map."

The ground upon which the Supreme Court bases its opinion that the error was not harmful is indicated in its language, but the map in evidence shows that the marks remained upon the map and the map was admitted in evidence without their removal and over objection, and the jury, and particularly the witnesses, had the marked map before them throughout the trial. The mere instruction to the jury to disregard the map *did not, however,* rectify the fact that the marked map was before each witness to lead the witnesses' testimony and to direct their evidence to conform with the map, so that the harmfulness of the admission of the map so marked in evidence remained unaffected by the Court's remarks.

POINT II.

Because the Supreme Court refused to reverse the conviction of the defendant on the ground urged before it that the Trial Court erred in overruling the objection of the defendant to the following question put to the witness, Edward Howell:

"All right, what did you see the officer do?"

And in permitting said witness in answer thereto to give evidence to make the following answer:

"A I saw one of the officers, Officer Love or Hodges, place the foot standard of the pump in the depression in the amesite road and it fitted exactly. It was a pump similar to this with a 'U'-shape movable foot standard."

This error was presented to the Supreme Court under Assignment of Errors No. 3 and Specification of Causes No. 3.

The foregoing question (p. 43) was put to the same surveyor who had marked the alleged front and rear wheels' position upon the map introduced by his evidence, and referred to in the preceding Point I. The circumstances about which he was testifying took place six days after the accident, upon a much traveled main road. The effect of his testimony was to indicate that an imprint alleged to have been made by the pump, later introduced in evidence as belonging to the decedents, existed upon the road at a point where the State contended the rear left wheel of the decedant's car was. The witness did not testify that he saw such a mark immediately after the accident, nor is there any evidence in the case that such mark was there immediately after the accident. In the period of six days, such mark could have been made in the road purposely or accidentally by any one of a number of means, in which case the evidence placed before the jury would show a condition existing six days after the accident that was not there at or before the time it occurred. The evidence is in its nature concerning a matter that an ordinary observer on the night of the occurrence would not notice the absence of, nor would he be able, therefore, to controvert the testimony of what was found at the place six days later. To allow evidence of this later existing condition would be to subject the defendant to evidence wholly speculative as to its existence as a fact in the case, and against which he could have no testimony.

Not only did the witness testify to seeing such depression, but he placed it upon his map at a

point immediately alongside of the point he marked "rear wheel," which was objected to in the preceding Point I. He thereby placed before the jury at the outset of the case a picture of an automobile standing almost off the road, with a pump mark alongside of it, indicating that the decedents had been hit while pumping up their automobile, a point completely denied in the defendant's evidence, and in complete dispute in the case.

While conditions and circumstances found immediately or shortly after an occurrence are admissible, the evidence of the existence of this condition six days after the accident, it is submitted, would not be admissible. In *State* v. *Weiner*, 127 Atl. Rep. 582 (3 Adv. Rep. 458), evidence of skidmarks at the scene of an accident was offered and objected to, and the Supreme Court held:

> "The contention is that there was nothing to show that these skidmarks were made by the bus which struck Thomas Kellett. The witnesses who gave this evidence were Thomas Kellett and James Kirkbride. *Kellett was at the scene of the accident immediately after the accident took place.* Kirkbride arrived *about an hour* afterwards. Two passengers in the bus testified to the sudden application of the brakes to the bus. We think the evidence admissible as descriptive of the scene of the accident, *shortly after its occurrence.*" (Italics ours.)

In the present case, however, this witness did not see the marks immediately after, or even shortly after, the accident, but six days later. It is respectfully submitted that the trial court erred in overruling the objection of the defense to the question.

The Supreme Court in its opinion holds that "while remoteness of testimony relating to a

subject matter, under investigation, may affect its probative value, the remoteness of it, however, does not *per se* render it incompetent." It is respectfully submitted that the remoteness of it, being so great as it was in this case, rendered it incompetent as a matter of law, and that the objection to the question clearly showed that counsel suspected what the purpose of the question was and made proper objection thereto, which should have been sustained.

POINT III.

Because the Supreme Court refused to reverse the conviction of the defendant upon the following grounds urged before it:

(A) Because the Trial Court erred in admitting over the objections of the defense, evidence of the manner of operating a certain automobile at a point remote from the scene of the accident, to wit: between 1½ to 3 miles from the point of the accident and without first proving the identity of the car in question to have been that of the defendant.

(B) Because the Trial Court erred in overruling the objection of the defendant to the following question put to the witness Collins:

> **"Q And how near to you did the man drive?"**

and the question:

> **"Q In reference to where you were walking on the road, how was the sedan driving?"**

and the question:

> **"Q Did you stay in the same place as the sedan—as you had been?"**

and in permitting the witness to give answers to said questions.

(C) Because the Trial Court erred in refusing the motion of the defendant to strike out the evidence theretofore given by the witness Collins.

(D) Because the Trial Court erred in denying the motion of the defense to strike out the testimony of the witness Sharkey.

(E) Because the Trial Court erred in overruling the objection of the defense to the following question put to the witness Hand:

> **"Q Was the car, the sedan that passed you, going fast or slow?"**

and in permitting the witness to answer:

> **"A Going fast."**

and to further answer:

> **"A Too much for me, except a fast rate; very fast rate."**

The foregoing point was raised before the Supreme Court under Assignments of Error Nos. 4, 5, 6, 7 and 8, and Specification of Causes Nos. 4, 5, 6, 7 and 8, which were included in one point, because they all involve substantially the same point, to wit, the allowance by the Court of evidence purporting to show the fast and negligent operation of the defendant's automobile by him at a point between one and a half and three miles from the scene of the accident and without a definite identification of the car in question to have been that of the defendant. To have the Court overrule such testimony, counsel for the defense did everything possible by way of objections to the questions, as well as motions to strike out the testimony, and to the refusals of the Trial Court to grant, all of which exceptions were duly taken.

The State undertook to prove the manner in which the defendant was operating his car at a point variously estimated from one and one-half

to three miles away from the scene of the accident, and later definitely agreed and stipulated by the State to have been approximately three miles therefrom (p. 381). The witness Collins was testifying (p. 159) and he was asked about a certain car that he hailed. Objection was taken by the defendant, and then the following colloquy ensued:

> "The Court: I assume the Prosecutor intends to prove that at some point north of where this accident occurred, the defendant's car was seen, and if that is his intention I am going to let him prove it.
>
> Mr. Holland: That is the intention of this, that at this point, which is not two and a half miles away, but a much nearer distance, a shorter distance.
>
> The Court: I don't think a few miles more or less makes any difference whatever as I find it. If that is the intention of the Prosecutor I am going to permit him to do it. If you have any objection for the purpose of keeping the record straight, why you are entirely at liberty to make it. If he doesn't, you may strike it all out."

(It will be noted that there was no dispute in the case that the defendant's car struck and caused the death of the decedents. The defendant's car was wrecked near the scene of the accident, and in the record he admitted that he was driving at the time. So the only purpose of the testimony was not to identify the defendant as having figured in the accident with his car, but to show the *manner* in which it was driven.)

The following questions and answers were then given:

> "Q Did you afterwards come to the scene of the accident? A Yes.
>
> Q Now, how far away from the scene of the accident was this point that you were going to tell us about some car passing you?

> A Well, I would not say it was any more than a mile and a half—
>
> Q Now, at that point just tell us what happened?
>
> Mr. McGeehan: I object to that on the ground that it is too remote and irrelevant to the happening of the time and place that is the subject of this indictment."

The Court thereupon overruled the objection and an exception was taken. The witness testified (p. 161) that he did not recognize the man driving the car, but it was a man. Then the question was put:

> "Q And how near to you did the man drive? A Very close."

The record shows that the answer was given before the objection was made, and it was followed by:

> "Q How was he coming, fast or slow? A Well, fast."

No exceptions exist on the record to these particular questions and answers, but the entire record is brought up with the proceedings, and it is submitted that as a cause specified for reversal, the Court should consider them, particularly as the Court had previously made known its ruling, and in view of the fact that they are coupled with many other instances of similar testimony by this and other witnesses where exceptions were taken.

Then, at page 162, the witness was asked:

> "Q In reference to where you were walking on the road, how was the sedan driving?"

This was objected to and the objection overruled, and an exception taken. The following answer was then given:

> "A Well, it was driving toward—it was very far to the right."

Then the question was asked:

"Q Did you stay in the same place as the sedan?"

This was objected to, the objection overruled, and exception taken. The answer given was:

"A We had to jump out of the way or get over to the right in the ditch, in fact, because the car was very close to us, and there was nothing in the road which would prevent that sedan from getting further over toward the middle."

Further objection was made to this, and the objection again overruled. Thereafter, on cross examination, the witness was asked:

"Q And you didn't see anything about the sedan that made you recognize it as the same one in the accident afterwards, did you? A Well, no, I can't say that."

Thereupon the defendant moved to strike out the witness' testimony regarding the sedan that passed him on the ground that he did not recognize it as the car of the defendant. This witness had testified to nothing whatever except in regard to the passing of a certain sedan. Therefore, the motion of the defendant to strike out all of the testimony of this witness was proper and should have been granted. The Court denied the motion (p. 165) and exception was taken thereto.

The Prosecutor had consented to the striking out of "so much of his testimony—as relates to the recognition of the same car." The defendant pressed his motion to have the entire testimony stricken out. As all of the testimony of this witness related only to the point of how the certain sedan passed him, it is respectfully submitted that the Court should have granted the motion of the defendant, not only upon the

ground of the remoteness from the scene of the accident, but also because it developed on cross examination that although he saw the defendant's car later, he could not recognize it as the same one that passed him and about which he testified.

The same sort of testimony was introduced by the witness Sharkey (p. 167):

"Q Did you afterwards get to the scene of the accident? A Yes.

Q How far away from the collision was this place where these two cars passed you? A Well, about a mile and a half to two miles.

Q How did that attract your attention as that was passing?"

This was objected to, the objection overruled, and exception taken. The answer given was:

"A The only thing that attracted our attention was that it was right on the side of the road and this car came up and we just stepped out of the way."

Later asked:

"Q Why?"

he said:

"A Why, we would have got hit."

This was objected to, overruled, and an exception taken, and if the objection be considered as late, it is urged as a cause for reversal, taken with all the other similar evidence admitted in the case. On cross examination the witness testified that he could not identify the car he was talking about as the car of the defendant that he saw at the accident (p. 169):

"Q You didn't notice anything particular about the car as it went by that would enable you to recognize it as the particular car? A Not a thing.

Q And you, of course, thought it was the same because you do not remember seeing

any sedan except the one that passed you; is that right? A Yes.

Q Now, then, the position or place that you remember the sedan passing you was beyond the Dickerson store, is that right, on the road away from Morristown? A Yes.

Q Over three miles away from the Sire property? A I don't know. I just took a guess at it and said about two.

Q Might be three? A Might be three."

The following motion (p. 170) was then made to strike out the testimony of this witness, as follows:

"Mr. McGeehan: I now move that the testimony of this witness in its entirety be stricken out or at least the same referring to the manner of the driving of the sedan referred to by him in his testimony, on the ground that it is too remote to be evidential of the fact under inquiry in this indictment, and, secondly, because there is no evidence that this sedan was owned or driven by this defendant."

The Court overruled this motion and an exception was duly taken to the ruling. It is respectfully submitted that the Court erred in this, and in its rulings in the other questions arising out of the evidence of the several witnesses on this point.

Additional harmful evidence of the same sort was given by the witness Hand, whose testimony begins at page 189. At page 192, referring to a Buick sedan that he saw pass him at a point that he estimated possibly a little over a mile, and later at between a mile and a mile and a half, he was asked:

"Q Was the car, the sedan that passed you, going fast or slow?"

This was objected to on the ground that the witness was not qualified, and that it was too remote, and that the automobile was not identified as that of the defendant. The witness was then asked some questions to qualify him to judge the speed of the car, and then the same question was asked of him, to which the same objection was made, except as to the qualifications to judge speed. The Court overruled the objection, and an exception was taken. The witness then answered:

"A Going fast."

On page 193 he was asked:

"Q And how fast was he going? A Too much for me, except a fast rate; very fast rate."

It is respectfully submitted that by the three witnesses, Collins, Sharkey and Hand, the State was permitted to prove that an automobile, presumably that of the defendant, passed them at a fast rate of speed, driving so far over the road that two of them said they had to jump into a ditch to avoid being hit by it, and thereby giving forceful evidence of negligence on the part of the defendant which would naturally lead a jury to infer and find that the defendant was a negligent driver, and that he was driving negligently on the night in question, even though such negligence would legally not be a proximate cause of the death of the decedent and would not be legally evidential of the manner in which the defendant was driving at or near the point of the accident. The courts have never gone to the extent of permitting evidence of negligence at another time and place to be introduced as bearing upon the question of negligence of a defendant at the point embraced in the indictment. It is true that evidence of the speed or manner of driving of a vehicle at a point near enough to the scene of an accident to be reasonably a part

of the accident itself is permitted; or evidence of speed or manner of driving may be given where the point in question is near enough to the scene of the accident to allow it to be a reasonable inference that the speed was continued to the point where the accident occurred.

Thus an automobile which at 30 miles per hour would travel more than 40 feet a second, would move several hundred feet within the space of a few seconds, and evidence that shows its speed a few hundred feet before the scene of the accident might be useful in allowing an inference that the accident happened as the result of the then observed speed. But to allow proof of speed or lack of observation at a point variously estimated at from one to three miles away, considering the possibility that the speed was changed or the manner of driving was changed in the interim, would be practically to allow evidence to be given as to the defendant's general driving character, or of his acts at an entirely remote and different place, and it would permit the jury to find his guilt upon that rather than upon the actions which caused the accident in question.

In this case the State, by stipulation upon the record, agreed (at p. 381) that three miles is the distance from Dickerson's store to the scene of the accident. The witnesses themselves placed it between 1 or 1½ miles and 3 miles. Under these circumstances it is submitted that, while the admission of testimony over objection as to its remoteness is usually discretionary with the Court, in this case there was an abuse of that discretion that resulted in material harm to the defendant. The farthest that the courts have gone in sustaining the admission of evidence as to manner of driving at a point some distance

from the accident is to be found in *State* v. *Weiner,* 127 Atl. Rep. 582 (3 Adv. Rep. 458). The following are excerpts from the opinion of the Supreme Court in that case:

> "The first point argued in behalf of the plaintiff-in-error deals with the admission by the Trial Court of the testimony of James Kellett, the father, as to the speed of the bus at the time it passed him, which he placed at between 30 and 35 miles per hour. When the bus passed Kellett he was about twelve hundred feet from the point where the accident took place. He noticed the license number when the bus passed him. He was not sure, however, whether the number was 34 or 84. When he reached the scene of the accident he noticed that the number was 34.
>
> It is contended that it was improper to admit this testimony, first, because there was no evidence to indicate that the bus which Kellett saw was the bus which caused the accident, and for the reason that the bus at the time it passed Kellett was too far distant from the place of the accident to make its speed at the time it passed Kellett relevant."

The Supreme Court continued:

> "As the bus which passed Kellett was traveling in the same direction as he was traveling, and as Kellett was able to determine that the bus was numbered either 34 or 84, and *as the period between the time the bus passed Kellett and the accident occurred was so brief, we think the testimony of Kellett admissible* (italics ours). The admission or rejection of such evidence is a matter within the discretion of the Trial Court (Noyes *v.* State, 41 N. J. L. 418). The exercise of the Court's discretion in its admission or rejection under the circumstances of the present case will not be disturbed. *The ruling of a trial court in a matter of discretion will only be reversed where the facts clearly indicate an abuse of that discretion.*"

It is respectfully submitted that a vast difference exists between the facts in the Kellett case and the circumstances under which the testimony in the case *sub judici* was admitted. In the Kellett case the bus, going 30 to 35 miles per hour, would traverse the distance of 1,200 feet in about 25 seconds. The Court calls attention to this when it says:

> "As the period between the time the bus passed Kellett and the accident occurred was so brief we think the testimony of Kellett admissible,"

and therefore the Court said it would not disturb the exercise of the Trial Court's discretion "under the circumstances of the present case." But in the case now before the Court, to permit the evidence of both the manner and speed of driving by the defendant at a point several miles from the accident, and at a time necessarily a number of minutes before it occurred, would seem to stretch the discretionary right of the Court to a point that should not be approved, but should be held to be an erroneous and harmful abuse of the discretion of the Court under the circumstances in the present case.

Furthermore, on the subject of identification raised in the Kellett case, Kellett saw the bus when it passed him, and about which he testified, and he noticed that the bus bore the number either 34 or 84, and when he came to the scene of the accident immediately after it occurred the bus standing there was number 34. This was a sufficient identification to at least make it a jury question and permit the jury to find that the bus was the same one in each instance. But in the case *sub judici* two of the witnesses testified that they could not in any way identify the car they testified about several miles from the scene

of the accident with the car of the defendant that they later saw at the scene of the accident. They could not identify it in any way except that both were sedans, and the one other witness said that he had seen a Buick sedan. The circumstances, therefore, are totally different from those considered by the Court in *State* v. *Weiner, supra.* It is respectfully urged that both as an error and as a cause for reversal specified by the defendant the admission of all of the testimony of the several witnesses under this heading should have caused a reversal of the conviction in this case.

In connection with this point, the attention of the Court is respectfully called to a decision of the New Jersey Supreme Court in the case of *State* v. *Parham,* which is not a reported case, and which was not included in the brief to the Supreme Court, but was decided long before the trial or argument in the case *sub judici.* The case of *State* v. *Parham* was submitted at the November term, 1911, decided February 26, 1912, and arose on a writ of error to the Morris Quarter Sessions, involving the conviction of the defendant therein for automobile manslaughter. The Supreme Court reversed the conviction because

> "the rate of speed was allowed to be shown to the jury at which the cars were operated in coming into Market street, Morristown, a long distance away from the garage, and in the open country. This was clearly irrelevant. The error was emphasized by the Court's refusal to charge that 'the speed the auto was going previous to the defendant's turning into Market street is immaterial, and should not be considered by the jury,' and yet more, because the Court charged that the jury had a right to know the speed with which it was driving to Morristown, if for no other reason than that they might know the character of

the machine and how rapidly it could go on that date."

The Court held the admission of such evidence to be error and reversed the judgment of conviction. While the opinion itself does not show the distance between the point where the automobile was seen by the witness who gave the evidence of its speed, the evidence in the case reveals that the distance was about 200 feet. If the conviction in *State* v. *Parham* were reversed, as it was, for the erroneous admission of this irrelevant evidence, how can it be said that evidence of the speed of the auto several miles from the scene of the accident was not error and irrelevant?

The Supreme Court in passing upon this question below in the case *sub judici* merely says (Opinion, p. 456):

"The further ground urged, that it was error to admit such testimony because it related to the negligent operation of the automobile by the plaintiff-in-error, at a point between one and a half and three miles from the scene of the collision, seems to us to be unsubstantial, since the conduct of the plaintiff-in-error in operating the automobile was a matter of pertinent inquiry on the question of his sobriety."

Can it be said that the mere fact that an automobile is going fast is evidence one way or the other of the sobriety of the defendant? No evidence of zigzagging or other unnatural movement of the automobile was given. It was going fast on the right-hand side of the road, according to the witnesses. The only thing that this testimony could prove was *speed,* and speed, several miles from the accident, would not be legally probative of speed at the point of the accident, but might easily prejudice a jury against the defendant and cause the unwarranted deduction or inference that that was the rate of speed at the time of the accident. As to the identity of the car, the Supreme Court indicates in its opinion that

"As there was proof introduced which tended to show that it was the car of the plaintiff-in-error, the objection is devoid of any legal force."

The answer is that there was no such proof except that the car the witnesses saw several miles away was a sedan, and one thought it was a Buick sedan. This seems preposterous, because the auto passed at night on a lonely country road at what the witnesses said was a high rate of speed. Allowing such evidence to pass for identification is to open the field of proof to the play of imagination and guess-work in a serious case. It is respectfully urged that the Supreme Court should have reversed upon this ground and that it erred in affirming the judgment under these circumstances.

POINT IV.

Because the Supreme Court erred in refusing to reverse the conviction of the defendant on the ground urged before it that the Trial Court erred in refusing to charge the 8th request to charge of the defendant.

This point is raised under Assignment of Errors No. 12 and Specification of Causes No. 12 in the Supreme Court. The Supreme Court considered this point but held there was no error.

The eighth request to charge submitted to the Court was as follows:

"To convict on the ground of negligence on the part of the defendant there must be shown more gross and culpable negligence

than is sufficient to render a defendant liable in a civil suit for not exercising that care which a reasonable and prudent person would exercise."

This request the Court refused. It is respectfully submitted that the request was a proper one and was necessary to a proper understanding by the jury as to what constituted gross negligence. The Court nowhere in its charge defined what negligence consisted of, and the effect of the request was to place in the minds of the jury a proper view of the rule that makes it necessary, in order to convict of involuntary manslaughter, that the State should prove more than the failure to exercise that care which a reasonable and prudent person would exercise, but that there must be shown more gross and culpable negligence than is sufficient to render a defendant liable in a civil suit for not exercising reasonable care.

The Court did charge in one portion of its charge:

"Criminal negligence has been defined as an act of commission, done or left undone, in reckless disregard of the life or safety of another. Perhaps that is not an accurate definition; however that may be, it is clear that where death is the result of an occurrence unanticipated by the defendant, *but which arose from his negligence or inattention,* his criminal responsiblity depends on whether or not the injury which caused death was the regular, natural and likely consequences of the defendant's conduct. If it were, then the defendant is subject to indictment and conviction."

Under this portion of the charge, the jury could have taken the meaning that the defendant's "negligence or inattention" would render him guilty and that he would be guilty of gross

negligence for any inattention. This instruction would have been properly modified if the Court had charged the request to charge. As it is, it is submitted that the language of the Supreme Court in *State* v. *Watson,* 77 N. J. L. 299, is applicable. In that case the Court said:

"We think that the effect of this charge was to allow the jury to infer that the defendants had been grossly and culpably negligent if they failed to furnish medical aid with the promptness of a reasonable and prudent person. This ignores the distinction between such negligence as forms the basis of civil liability and that gross and more culpable negligence which is required at common law to constitute a crime."

It was for the purpose of assisting the Court not to ignore the distinction spoken of in the case of *State* v. *Watson* that the request was submitted to the Court, and since the Court nowhere else pointed out this distinction, it is respectfully submitted that it was error to refuse to charge the same.

The Supreme Court in treating of this in their opinion stated as follows:

"The trial judge fully and accurately charged the law governing the nature of the negligence essential to be established, where death results from the negligent act, in order to constitute such negligence criminal in character. We have a statute which declares that the driving of an automobile by a person intoxicated shall be a misdemeanor. The Court very properly left it to the jury to say whether what happened was brought about by the condition of intoxication of the plaintiff-in-error, and if so, and that circumstance entered into the reckless operation of the automobile, then the killing of the decedents would be manslaughter."

The Supreme Court does not hold the request was incorrect in law or not warranted in the

case. It holds that the Court did elsewhere charge the principle involved. It does not point out where the Court did, and it is submitted that the Court nowhere charged the basic principle involved in the request.

POINT V.

Because the Supreme Court refused to reverse the conviction of the defendant upon the following grounds:

(a) Because the Trial Court erred in refusing to charge the 9th request to charge of the defendant.

(b) Because the Trial Court erred in refusing to charge the 10th request of the defendant.

These points were submitted to the Supreme Court under Assignments of Errors Nos. 13 and 14 and Specification of Causes Nos. 13 and 14. These two assignments and specifications will be argued together, as they both involve requests to charge the law as applied to the evidence in the case. They were as follows:

> "9. If you find from the evidence that the defendant, immediately before the accident occurred, was proceeding along his right-hand side of the road, and that he saw two persons move off that side of the road, so as to leave the right side of his road clear, and that the circumstances reasonably indicated to him that such persons saw his automobile coming and had moved away to let him pass, then the defendant had a right to assume that such persons would respect his right to continue along the road and that neither of them would suddenly step back into the path of his automobile, and he had a right to continue on past such point in reliance on such assumption."

> "10. The defendant was not bound to anticipate that the decedents, or either of them, would suddenly step in front of his automobile, and if one of the decedents did so when the defendant's automobile was not running at a grossly negligent speed, but was too close to be stopped, and the defendant, in endeavoring to avoid striking such person, swerved his automobile, and such action was not grossly negligent under such circumstances, then, even though his action caused the death of the decedents, he is entitled to be acquitted."

An examination of the evidence reveals that the foregoing requests to charge were based upon and warranted by the evidence given by the defendant himself as to the circumstances under which the accident happened, and this being so, the requests to charge were proper and reasonable. The jury received a general charge from the Court that in order to convict the defendant, it must find him guilty of gross negligence. The jury was entitled to be instructed as to what, as a matter of law, the rights of the defendant were if the circumstances were as he testified to. This is the very purpose of the right of a litigant to request the Court to charge the law as applied to the evidence. While a failure of the Court to give complete instructions would not be error if no request were presented, still, when the defendant, upon trial on a serious charge, desire to have an instruction, correct in law and based upon the evidence in the case, given to the jury, it should be held error for the Court to refuse to do so.

Mere general instructions in the present case were not sufficient to enable the jury properly to determine the guilt or innocence of the defendant. They should have had a full knowledge of his legal rights at the time in question, as

well as the instruction of the Court as to whether certain facts which the jury could find from the evidence constituted gross negligence or not. This was the effect of the requests, and it is respectfully submitted that it was error for the Court to refuse them.

POINT VI.

Because the Supreme Court erred in refusing to reverse the conviction of the defendant on the ground urged before it that the Trial Court erred in refusing to charge the 12th request to charge of the defendant.

This point was raised by Assignment of Errors No. 15 and Specification of Causes No. 15 before the Supreme Court.

This request to charge was presented in the following language:

> "You make take into consideration that the only direct testimony as to the actual striking of the two men by the defendant's automobile is the testimony of the defendant Blaine and his witness Guerin; and that all other testimony is circumstantial (and the Court instructs you that you must exercise care before convicting the defendant upon circumstantial evidence alone)."

That this request was warranted by the evidence and was correct in law can scarcely be disputed. There was no direct evidence except by the witnesses Blaine and Guerin to the happening of the accident. All other evidence in the case was circumstantial. It has been the policy of the courts of this State to charge juries to exercise care before convicting a defendant upon circumstantial evidence alone. The charge did not contend the erroneous proposition that there could not be a conviction upon circumstantial evidence

alone, but merely requested that the jury be cautioned to exercise care before doing so. The practice of the courts in regard to situations such as this is similar to that applied to convictions upon the testimony of accomplices (see *State* v. *Hyer,* 39 N. J. L. 598). It is respectfully submitted that the defendant was in fairness entitled to this instruction to the jury, in view of the state of the evidence.

The Supreme Court declined to consider the refusal of these requests because they were not set forth specifically in the assignments or specifications. They were set forth in the briefs filed in the case verbatim, and it is respectfully submitted, therefore, that both the Court and counsel were apprised of the contents of these requests in addition to their reference in the Assignment of Errors and Specification of Causes, and if they constituted error they should at least have been considered by the Supreme Court within the spirit and provisions of Section 136, which directs that when the entire record of the proceedings had upon the trial shall be returned, "if it appear from such record that the plaintiff-in-error on the trial below suffered manifest wrong or injury either in * * * or in the charge of the Court, or in the denial of any matter by the Court which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not, the Appellate Court shall remedy such wrong or injury and give judgment accordingly, and order a new trial"; under such a statute it is respectfully submitted that the Supreme Court is bound to remedy a wrong which appears in the record, even if no error whatever is assigned thereon, and certainly the attention of the Court and opposing counsel is specifically

called when the number of the request is given in the assignment and specification, when the request is set forth in full in the State of the Case and when the brief sets out the same fully.

POINT VII.

Because the Supreme Court erred in refusing to reverse the conviction of the defendant on the ground urged before it that the Trial Court erred in refusing to charge the 13th request to charge of the defendant.

This point was raised before the Supreme Court by Assignment of Errors No. 16 and Specification of Causes No. 16. This request was as follows:

> "13. The State contends that the defendant was intoxicated at the time of the occurrence. This is denied by the defendant. You cannot find as a fact that he was unless the State proves this fact beyond a reasonable doubt; but even if you should find this as a fact, this is not sufficient in itself to warrant a finding of guilty unless the State also proves that the defendant actually drove his car in a grossly negligent manner at the time of the accident."

The latter part of this charge was practically covered by the Court. The first part was not. Nowhere did the Court charge the jury that in order to find that the defendant was intoxicated, the State must prove that fact beyond a reasonable doubt. The Court did charge the jury:

> "If you find that the defendant was in an intoxicated condition while driving the automobile which struck Haggerty and Cramer, and that because of some grossly negligent act or acts of the defendant in the operation of the automobile occasioned by the condition of intoxication of the defendant, these two men were killed, then the defendant is guilty of manslaughter."

This put up to the jury the right to find a certain circumstance as part of their finding of guilt upon the defendant, to wit, drunkenness. The defendant, therefore, had the right to have the jury instructed that it could not find that circumstance or material fact of drunkenness except by proof by the State thereof beyond a reasonable doubt. It was, therefore, error for the Court to refuse to charge this request, as it was not covered in any portion of the Court's charge.

The Supreme Court declined to consider the refusal of these requests because they were not set forth specifically in the assignments or specifications. They were set forth in the briefs filed in the case verbatim, and it is respectfully submitted, therefore, that both the Court and counsel were apprised of the contents of these requests in addition to their reference in the Assignment of Errors and Specification of Causes, and if their refusal constituted error they should at least have been considered by the Supreme Court within the spirit and provisions of Section 136, which directs that when the entire record of the proceedings had upon the trial shall be returned, "if it appear from such record that the plaintiff-in-error on the trial below suffered manifest wrong or injury either in * * * or in the charge of the Court, or in the denial of any matter by the Court, which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not, the Appellate Court shall remedy such wrong or injury and give judgment accordingly, and order a new trial"; under such a statute it is respectfully submitted that the Supreme Court is bound to remedy a wrong which appears in the record, even if no

error whatever is assigned thereon, and certainly the attention of the Court and opposing counsel is specifically called when the number of the request is given in the assignment and specification, when the request is set forth in full in the State of the Case and when the brief sets out the same fully.

POINT VIII.

Because the Supreme Court erred in refusing to reverse the conviction of the defendant on the ground urged before it that the Trial Court erred in refusing to charge the 16th request to charge of the defendant.

This point was presented to the Supreme Court in Assignment of Errors No. 19 and Specification of Causes No. 19.

The defendant's 16th request to charge was as follows:

> "16. In order for the jury to reach a verdict either of guilty or not guilty, each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority vote of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt."

The foregoing may seem to have been a rather unusual request to charge, but as the purpose of a charge is to instruct the jury as to its duty and findings in reaching a verdict, it is submitted that it is a reasonable and proper request. In Morris County, where this case was tried, both women and men sit upon juries. Such petit jurors, many of whom have never been in a court room before, should be instructed, if the defendant so requests, that each juror is charged with the obligation of voting for a verdict under

the charge of the Court and upon the evidence, as his own reason dictates. The jury should be informed that a majority vote does not obligate the minority to accede to a verdict, but that the duty of each juror is to vote as his or her conscience, judgment and understanding of the law and the facts, and his or her conclusions thereon, require. The refusal to charge this request made it impossible at any time before the discharge of the jury, to authoritatively inform the jury during the trial, of the law on this subject.

A poll of the jury after its verdict in no way obviates the possibility that the verdict was the result of a majority vote, to which the minority acceded in a misconception of the jury's functions and the jury's obligations. It is perfectly conceivable that several persons on the jury were not convinced beyond a reasonable doubt of the guilt of the defendant, but upon being outnumbered, permitted the jury to return a verdict of guilty, and upon being polled, such persons would evince their acquiescence in the verdict, whereas if properly instructed they would adhere to the dictates of their individual conscience and judgment. The fact is that jurors are polled from all classes of society in our various counties, and therefore a litigant or defendant in a criminal case should have the right to have the Court, upon request, charge the jury on this most important feature of their duty. It is, therefore, respectfully submitted that it was error for the Court to refuse to charge this request as submitted.

The Supreme Court declined to consider the refusal of these requests because they were not set forth specifically in the assignments or specifications. They were set forth in the briefs filed in the case verbatim, and it is respectfully sub-

mitted, therefore, that both the Court and counsel were apprised of the contents of these requests in addition to their reference in the Assignment of Errors and Specification of Causes, and if their refusal constituted error they should at least have been considered by the Supreme Court within the spirit and provisions of Section 136, which directs that when the entire record of the proceedings had upon the trial shall be returned, "if it appear from such record that the plaintiff-in-error on the trial below suffered manifest wrong or injury either in * * * or in the charge of the Court, or in the denial of any matter by the Court which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not, the Appellate Court shall remedy such wrong or injury and give judgment accordingly, and order a new trial"; under such a statute it is respectfully submitted that the Supreme Court is bound to remedy a wrong which appears in the record, even if no error whatever is assigned thereon, and certainly the attention of the Court and opposing counsel is specifically called when the number of the request is given in the assignment and specification, when the request is set forth in full in the State of the Case and when the brief sets out the same fully.

POINT IX.

Because the Supreme Court erred in refusing to reverse the conviction of the defendant:

(A) Because the Trial Court erred in denying the motion of the defendant for a direction of verdict of acquittal at the end of the entire case, and

(B) Because the verdict was against the weight of the evidence, this cause having been assigned under and pursuant to the statute in such case made and provided, being Chapter 349 of the Laws of 1921.

The foregoing grounds were presented to the Supreme Court by Specification of Causes No. 11, Assignment of Errors No. 11 and Specification of Causes No. 20.

These grounds will be argued together because they both involve an examination and consideration of the evidence in the case.

It is respectfully submitted that an examination of the entire evidence in the case fails to disclose proof that the deaths of the decedents were the result of gross or criminal negligence on the part of the defendant, and that, on the contrary, the evidence shows that the defendant was not guilty of such negligence as would make him guilty of manslaughter, and that by reason thereof, he was entitled to have a verdict directed in his favor upon motion made at the close of the entire case, and if the Court considers that there was evidence sufficient to constitute a jury question upon this subject, it is further submitted that the verdict of the jury was contrary to the greater weight of the evidence and that the verdict should be set aside for this reason.

It will be observed that there was no testimony whatever of any eyewitness to the accident to state how it happened, except the testimony of the defendant Blaine and the witness Guerin called in his behalf.

Evidence on Behalf of State.

The case of the State consisted entirely of circumstantial evidence showing the position of the defendant's car after the accident, evidence tending to indicate his intoxication shortly after the accident had occurred and the alleged position of the defendant's car near which they were when they were struck. It will be argued under this point by the defendant that the circumstantial evidence produced by the State did not prove gross negligence on the part of the defendant in the actual happening of the accident and that the direct evidence of Blaine and Guerin, the only eyewitnesses to what occurred, constituted such a weight of evidence showing the lack of gross negligence on the part of the defendant as to make the verdict of guilty contrary thereto and reversible for that reason.

An effort will be made in this brief to summarize the important portions of the evidence of all of the witnesses in order to reveal the lack of proof of criminal negligence on the part of the defendant to justify a verdict of guilty.

The following witnesses testified for the State:

Richard Morrisby, photographer (p. 26), proved the taking of the photographs introduced in evidence and which are in the state of the case as exhibits. These photographs show (in Exhibit S. 1), a Ford standing at the side of the road showing evidence of having been

struck on its left side and (Exhibit S. 2), the defendant's Buick as it appeared after the accident and after running off the road; Exhibit S. 3 shows the victims of the accident as they lay alongside of the road when the photograph was taken, as well as the rear of the defendant's car where it came to a stop after the accident; and Exhibit S. 15 shows the front of the defendant's car. This witness, of course, knew nothing of the accident itself and merely testified to the taking of the photographs when he reached there an hour and a half after the accident.

Edward Howell, surveyor, then testified (p. 30), to the making of the maps of the locality and to the distances and objects thereon. He also testified to seeing a "U"-shape mark that fitted the pump introduced in evidence which mark, however, may have been made subsequently to the accident or if it were the pump mark made before the accident or if it were a pump mark and made before the accident by the decedents, might or might not have shown that the decedent was in the act of making it at the time he was struck. Even the fact that the middle part of the pump was broken off of the rubber hose would not show that it happened in the accident, for there was evidence that the decedents themselves were drinking liquor the night of the accident and before it occurred and that a bottle of liquor was found in the coat of one of the decedents after the accident was over and it is perfectly possible that this hose was pulled off the pump during their activities at the spot in question before the accident. This witness also testified that there was a grade or slope away from the side of the road in the direction that the defendant's car went after the accident.

Foster F. Vogt, an assistant to Mr. Howell, the surveyor, testified to the same imprint or impression that his employer did.

Joseph D. Voelker, coroner, testified that he got to the scene of the accident about an hour after the time that it occurred and that he removed the bodies from the scene of the accident and that from the time he got there until the bodies were taken away, they were not moved but, of course, he could not testify whether or not they were moved before he got there. This witness was later recalled and (on p. 56) he testified that he found a quart bottle that smelled like liquor, about three inches filled in the pocket of one of the men. This bottle was in the overcoat of one of the men. He testified that he found this in the second pocket of his outside coat meaning presumably his overcoat. It was not brought out as to the man in whose coat the liquor was found and the pictures show that one man had an overcoat on and the other man was lying upon his overcoat which he was not wearing.

Everest A. Dibble, testified (p. 57), that he came upon the scene of the accident after it was over and after the defendant Blaine had been taken to the hospital. He got there about eight minutes of twelve and his testimony showed the position of the Buick car, where the men were lying when he got there and where the Ford car of the decedents was. He testified (p. 72) that the road or the hard part of it was about 18 feet wide. He testified that he saw skidmarks apparently of a car going from the center of the road to the left of the road going to Morristown but did not know whether or not they were the left or right wheels. He testified (p. 73):

"Q All right, that's where the swerve begins? A Little fine marks.

Q And from the center of the road, is that right? A I would say so.

Q Now that swerve was to the left, wasn't it?

Mr. Holland: To whose left?

Q To the left of the road as you go south, coming toward Morristown? A It is to the left.

Q Now, were there two slight marks or one? A I won't say positive whether there were two or one.

Q Do you know whether the point you have marked is the left wheel or the right wheel of that swerve? A I could not say positive."

This witness also testified that in his opinion there was an odor of liquor upon Guerin who had been riding with the defendant in his automobile. The utmost that can be gotten from the testimony of this witness is that the skidmarks which he saw, if they were those of the defendant's car, were from the middle of the road swerving to his left and an examination of the defendant's testimony in the case will show that these skidmarks are entirely consistent with the defendant's story, particularly if they were of the left wheels of the Buick because that would indicate that he was riding to the right of the center and swung abruptly to avoid the men who suddenly stepped in front of him. The position of the Ford car at the side of the road when this witness reached there is not necessarily inconsistent with the defendant's story that it was further in the road than this witness testified at the time of the accident, for this witness admitted that it showed signs of having been shoved or knocked toward or off the edge of the road and the distance that it was so shoved or knocked was a matter of speculation on the part of the witness.

Carl W. Ritzer (p. 82) came upon the scene of the accident sometime after it happened. He also testified that he drove or rode in the car which removed the defendant to the hospital. He testified that, in his opinion, the defendant was under the influence of liquor. He also testified that when he reached the scene of the accident, the Ford car was pointing at an angle with only one wheel on the amesite portion of the road. He also testified that the skidmarks that showed upon the road on the right-hand side of the road going south directly across in a southeasterly direction went to a point near the rear wheels of the Ford (p. 91), and that these marks led to where the Buick stopped. He testified that there was a slight curve at the beginning of these skidmarks. He also testified (top p. 92) that the skidmarks appeared for 20 feet going straight in a southerly direction on the right-hand side of the road before they turned to the left. This testimony it will be observed regarding the skidmarks is corroborative of the defendant's testimony that he was riding along the right-hand side of the road when suddenly a man who had passed across this portion of the road suddenly darted back in front of him which made the defendant swing to the left to try to avoid striking the man, with the result that the defendant's car struck the two men who were on the road, one of whom was the person who had darted suddenly in his path. This testimony of Carl Ritzer shows that the defendant was not riding on his left side of the road and that some emergency must have caused him to put on his brakes causing the straight skidmarks for 20 feet and to swing suddenly over to the left and the testimony of both the defendant and Guerin substantiated as it is by Ritzer's testimony of where the skidmarks were, would seem to make Ritzer's

testimony in this regard, although he was a State's witness, important for the defense. As to the opinion of Ritzer that the defendant was intoxicated, it may be pointed out that Blaine was bleeding and his face was covered with blood from the accident and that he appeared injured and had just been through a terrible experience in the accident. He said he based his opinion that he was intoxicated upon his actions and talk and smell, but admitted that his actions might have been the result of pain. The utmost that can be gotten from the evidence of Ritzer detrimental to the defense, is that, in his opinion, the defendant was intoxicated; and upon this point Ritzer is contradicted by another person riding in the car with him and Blaine on the way to the hospital, as well as by the defendant Blaine and various witnesses who testified to the actions of Blaine shortly before the accident occurred and immediately afterward.

The next witness was Dr. Wills (p. 99), who treated the wound on the scalp of the defendant and who gave it as his opinion that the defendant was intoxicated but admitted that he made no medical examination to determine this, nor did he say anything to the police officer accompanying the defendant at the time to that effect.

The same testimony was given by Miss Elizabeth Davis (p. 109).

Owen F. Geary, the next witness called by the State, was the officer who took the defendant to the hospital and had him in charge. He testified that he sat alongside of him in the car and did not smell any liquor on his breath (p. 116), and that he formed no opinion that the defendant was intoxicated.

Officer James Hill, who went home with the defendant after he was treated in the hospital,

said he would testify that he would not say that he was intoxicated, although he smelled that he had something to drink (p. 119).

Peter Arkie (p. 137) was a witness who drove past the scene of the accident before it happened and he said that he saw two men around a standing automobile across from the Sire property and that the car near which the men were was on the right side of the road (this was not in dispute in the case, except that the defendant contended it was further out in the road than where this witness placed it). When the witness passed the same point in the other direction some time later, the accident had happened. This witness also testified to seeing the marks of curves on the road for a distance of about 50 feet from the Ford car in the direction of Dover from which the defendant was coming. This testimony would indicate that the defendant had to some extent applied his brakes before the accident occurred and that he did not blindly run into the car of the decedents and into them, but that their actions presented an emergency to him as he was about to pass the point and this is in accord with the defendant's own testimony hereinafter referred to.

Mildred Arkie (p. 157) testified to substantially the same thing that her husband did regarding the position of the Ford on the road when they passed it before the accident.

The witness Joseph Collins (p. 158) and Sharkey (p. 166) testified merely that a sedan passed them, a mile and a half or two miles from the accident, which looked like the sedan of the defendant, and that it was coming along fast and nearly struck them. This is the testimony that is objected to under Point II.

Chester Ritzer (p. 171), the next witness, came upon the scene of the accident after it had occurred, and this witness testified that he did not detect any odor of alcohol on the defendant when he helped him into his car in which he was taken to the hospital.

The next witness Isadore Block (p. 174), passed the point of the accident before it happened, and he testified that he did not have to steer his car around the Ford but that it was on the right-hand side of the road and at the edge of the road.

Testimony to the same effect was given by Edward Loughlin (p. 176).

Testimony to the same effect was given by James Ketch (p. 180) and by Harry Haimowitz (p. 183) and by Frank B. Jewell (p. 186), except that Jewell, going in the same direction that the Ford was standing, had to stop his bus to get past it, because other cars were coming in the opposite direction and apparently the Ford car was out far enough in the road to obstruct his passage, so that to pass it he would have to go in the path of cars coming in the opposite direction.

The next witness, Robert F. Hand (p. 189), testified to the manner in which a car passed him about a mile and a half to three miles from the point of the accident. It is the testimony of this witness that is attacked as being too remote under Point I and without identification of the car in question with that of the defendant. This witness said that whatever car passed him at that time was going fast.

The same testimony was given by the witness Douglas Bingham (p. 196), who was riding in the car with Hand.

The next witness FRANK RITZER, testified that he smelled alcohol upon the breath of the defendant, but that he did not notice anything about his walk or gait that made any impression upon him. This witness also testified that before the photographs were taken, one of the bodies had been moved off the amesite and onto the point where it laid in the photographs.

GREGORY W. LOVE (p. 212) was the next witness. He testified to the position of the cars shortly after the accident when he arrived there. He testified that he smelled the odor of liquor on Guerin's (not the defendant's) breath, but when he was taken to the hospital he was pronounced sober. This witness picked up various articles along the road, such as the hub cap, flashlight, etc., which were strewn upon the road, and he testied to seeing the skidmarks. These skidmarks he said (p. 226) *were on the right-hand side of the road coming south* and that they swerved to the left and off of the road in the course of the path that the Buick took. This evidence again corroborates the evidence of the defendant that he was riding on the right-hand side of the road and swung to the left in the sudden emergency that presented itself. He testified additionally to finding an imprint in the road that, in his opinion, was the mark of the pump and which he fitted the footrest into.

Drs. COSTELLO and REED (pp. 235 and 240) testified to the autopsies and the cause of death, which was not in dispute.

The foregoing does not attempt to review in minute detail every statement made by each witness for the State, but an attempt has been made to give the high points of each witness'

testimony, and the utmost that can be said of all the State's testimony is that from it there is evidence of intoxication upon the part of the defendant by some witnesses and a contrary statement by other witnesses. On the subject of the gross negligence of the defendant, there is absolutely no evidence, direct or circumstantial. The State endeavored to show that the standing Ford of the decedents was on its extreme right-hand side of the road, which was the left-hand side from the defendant's car coming toward Morristown, and that the defendant's car swung to its left on the road and off of the road when or after striking the decedents. All of this testimony could be true and admitted, without proving gross negligence on the part of the defendant. The amesite road in question was only eighteen feet across, and the defendant's witnesses place the Ford car more onto the amesite portion of the road than the State's witnesses, but assuming that the Ford car of the decedents was on the extreme edge of the road, and even that one of the decedents was pumping a tire at the rear wheel, nothing in this entire evidence is inconsistent with the testimony of the defendant and the witness Blaine that as they came along the right-hand side of the road, a man walked across in front of their path and got safely to the extreme right edge of the road, giving them room to pass and, as they neared the point in question, he darted suddenly in front of their car, which caused the defendant to swing to his left, but too late to avoid the accident, and in his attempt collided with the other car near which the other man was, and then his car went off the road and down the incline, traveling a total distance of 150 or 200 feet from

the time the emergency was presented to the time he stopped; this distance will probably be stressed by the State, but it will be remembered that this accident happened at night and upon the open road, where a speed of thirty miles per hour was permissible, and the defendant testified he was traveling between twenty-five and thirty miles per hour and that he lost control of his car *after* the collision had occurred.

Under these circumstances, it is respectfully submitted that every circumstance shown by the State was as consistent with the innocence of the defendant as with his guilt and that they do not of themselves show or permit of an inference of gross negligence, particularly in view of the direct evidence of the defendant's witnesses as to what actually happened at the time of the accident. Certainly, in a criminal case where the burden of proof is upon the State to prove the guilt of the defendant beyond a reasonable doubt, it could hardly be said that mere proof of circumstances (which are not necessarily inconsistent with the defendant's testimony) can outweight the direct evidence of the defendant and an eyewitness merely because the circumstances do not in every respect jibe with such evidence. Upon the important details, the circumstantial evidence of the State corroborates the defendant's witnesses. The skidmarks show conclusively that the defendant was driving on the right-hand side of the road, as he said he was; that he swung to his left suddenly, as he said he did. What would cause him to swing suddenly to his left except an emergency and what emergency appears in the evidence except the one that he and the witness Guerin have sworn to. The mere fact that several of the witnesses give it as their opinion

that the defendant was intoxicated is not sufficient to prove the guilt of the defendant, particularly in view of the fact that several other State's witnesses testified otherwise that he was not intoxicated, these latter including two police officers and one young man who had the same opportunity for observation that the condemning witnesses had. And against those witnesses who give it as their opinion that the defendant was intoxicated is to be found the testimony in the defense of numerous persons who saw the defendant very shortly before the accident as well as after the accident, and who testified that he was neither intoxicated, nor did he have, in their opinion, anything to drink. *And even the absolute proof of intoxication under the rule laid down in State* v. *Dugan,* (89 Atl. Rep. 691, 84 N. J. L. 603) *would not be sufficient to found the conviction of the defendant upon, unless there was evidence of gross negligence in the manner of driving the car by the defendant.* This nowhere appears in the State's case, and the defendant produces an overwhelming amount of evidence showing the exercise of reasonable care upon his part and, certainly, the absence of gross negligence.

Evidence on Behalf of the Defendant.

The first witness called by the defendant was Walter Guerin (p. 261). He testified that he was with the defendant all of the afternoon and night of the accident and was riding in the car with him when it occurred. He detailed where they had been and various witnesses testified to seeing the defendant at such places and that he had nothing to drink and was not intoxicated. He testified that at no place where he was with Blaine did Blaine have any intoxicating liquor

to drink. The State introduced later in evidence a previous statement of Guerin that Blaine had a drink of apple whiskey; but the utmost effect that this previous statement could have would be to neutralize his opposite testimony on the stand. He denied the previous statement on the stand (p. 314) saying "I did not say he had a drink of apple whiskey. I said he asked for a drink of apple." He further testified (p. 268) that just before the accident occurred Blaine was driving on the right-hand side of the road going south to Morristown at about twenty-five to twenty-eight miles an hour. That they approached a standing automobile, standing on the road facing toward them with its left front wheel at about the centre of the road (p. 269). That (p. 270), when he first saw the men they were standing near the car at its left side, when one man stepped on the running board and turned the lights on and the other man walked backward across the street to the right-hand side of defendant's car as it was going south and that he walked across the amesite on to the shoulder of the road. That the defendant blew his horn before that and slowed up a little and that their automobile was about twenty feet away when the man stepped across the road. That there was nothing else in the path of the car on the right-hand side of the road after the man crossed the road (p. 272, ll. 22 to 25), and that then that man when defendant's car was only five feet away "started back toward the Ford in a hurry" and that the defendant swerved to the left to miss the man and "as he done that he hit this man that had started toward the car and hit the front left wheel of the Ford car and the man that had just stepped back on the ground again." He further testified that after colliding with the Ford defendant's car went about fifty

feet before going off the road (p. 273) on the left side thereof when it struck soft ground with a drop to it which was bumpy and the car went between two big trees and stopped (p. 275). That before the car stopped (bottom p. 275), he saw defendant thrown upward and forward in the car and Blaine was cut on the top of his head. This witness' direct testimony was not shaken or changed upon cross examination and in the cross examination he stated that at no time did he see the boys who had testified for the State that a car passed them from one and a half to three miles from the accident, going fast. He definitely testified that the defendant was not intoxicated nor that he had anything to drink and his testimony, the only evidence in the case outside of the defendant's from an eyewitness to the accident, shows that Blaine was not guilty of gross negligence but that he saw and blew his horn to warn the persons on the road, that they appeared to notice the coming car and went to points out of its path, that the defendant was warranted in assuming that neither would suddenly step into his way and, when one did, he acted in the emergency by swinging his car to the left, an act that may have been the best thing to do or may have been bad judgment and may even not have been what a reasonably, careful and prudent man would do, but could not be said under the circumstance of the emergency to be a criminally and grossly negligent act.

The next witness for the defense was Louis Schuyler who testified that he had passed the scene of the accident shortly before it happened and saw the Ford runabout standing there at an angle so that the rear of the car "was pretty well toward the center" (p. 326, l. 33) and that he the witness, had to stop the car he was

driving on the same side of the road that it was in order to let a car going in the opposite direction pass and then turn to his left to pass it (bottom p. 326). He also testified (p. 327, l. 14) that he was positive there were no lights on the car then and he shouted to the men near it to put on their lights.

The next witness, Edward Casey (p. 330), was with the witness Schuyler in his car and he corroborated Schuyler's testimony that the standing Ford was about five and a half feet on the amesite and that there were no lights on it at that time. The testimony of Schuyler and Casey is important because it showed that with the car standing where it was, only about twelve feet of the paved road was open opposite it on the defendant's side of the road so that a very slight swerve of a few feet in the emergency presented by the man stepping in front of him would cause the defendant's car to strike the Ford and the man alongside it as well as the man who hurried in front of him unexpectedly.

The next witness, Frank M. Kirkner (p. 333), testified that he kept a gasoline station and knew the two men who were killed, that somewhere between ten-thirty and eleven-thirty (the accident happened before twelve) he saw the two decedents who had a bottle of whiskey which he tried at their invitation. This bottle he said was nearly full when he drank with them and it is significant that the bottle found in the pocket of the overcoat of one of the men near the accident after it was over, was only one-quarter or one-third full. This would indicate that the decedents may have been intoxicated at the time of the accident and that such condition entered into their unusual movements on the road, causing the accident.

The next witnesses, Mountain (p. 338), Collins (p. 346), Lynch (p. 348), Richards (p. 351), Mrs. Manuels (p. 352), Phein (p. 355), Truscott (p. 357) and Thompson (p. 359) were all of the people that the defendant had visited or come in contact with or seen on the afternoon and night in question before the accident and each and everyone testified that he had nothing to drink and was not intoxicated.

By their testimony it was shown that Blaine and Guerin had gone in the afternoon to Oxford Furnace, N. J., to buy some chickens, and first went to Mountain's place, a lunch room in Oxford Furnace, and that while there they had nothing whatever to drink. That from Mountain's they went to the house of Mr. Collins to buy some chickens, which he would not sell, and that neither the defendant nor Guerin had anything to drink nor were there any signs that they had been drinking.

Mr. Lynch testified they were at his house in Oxford from about 6:00 to 7:00 o'clock in the evening and they got a chicken from him, which with others were in the car at the time of the accident, and that neither had anything to drink nor appeared to have had anything to drink while there.

The witnesses William Richards and Mrs. Manuels, his mother, testified to the presence at their house in Wharton of the defendant and Guerin from about 9:00 o'clock to 10:30 or 11:00 on the night of the accident, where they got more chickens. They both testified that neither the defendant nor Guerin showed any odor of alcohol or any indication that either had been drinking and that they had nothing to drink while at their house (page 353).

From Mrs. Manuels' house the defendants, according to the testimony, went to the Eagles' home in Dover on the way to Morristown. The witnesses who saw him there were Phein and Truscott. Phein, a trustee of the Eagles', testified that the defendant came in about 11:00 o'clock, went to the toilet, stayed in the building about fifteen minutes and left and that he was close to him all the time he was there. He swore that Blaine had no intoxicating liquor to drink; there was no odor of alcohol upon his breath, and he showed no indications of having been drinking (page 357).

Mr. Prescott (page 357) testified to the same facts with reference to the defendant while at the Eagles' in Dover.

The testimony of the next witness, John M. Thompson, appears to be important, because he was the last person to be with the defendant, except Guerin, before the accident. Mr. Thompson, a resident of Dover with his family since 1899, was financial secretary of the Eagles. He met Mr. Blaine (page 360) as both were coming out of the Eagles' club house. He had no car with him and was invited by the defendant to ride with him to his home in Rockaway Township, a part of Dover. He said (page 361) that this was about 11:30, and he rode with the defendant to the corner where his house was, and he was asked this question:

> "During the time you were with Mr. Blaine, talking to him and riding with him, was there anything about his actions either in talking, or walking, or driving the automobile that you rode in with him, that indicated he had been drinking or that he was under the influence of liquor,"

and he answered:

> "I didn't notice any."

He testified (page 363) that he rode about one and one-quarter miles and with the defendant. Considering the opportunity of this witness to form an opinion of the defendant's condition, the fact that he himself rode in the car with him indicates that there was no indication that the defendant was not entirely sober. It is not reasonable to suppose that this man would ride that distance to his home with a driver who appeared to be drunk; and this ride took place only nine miles from the scene of accident and less than a half hour before it occurred.

William Davis, next sworn (page 363), testified he was in Frank Ritzer's car which came on the scene after the accident. That he rode in the car with Mr. Blaine to the hospital. He testified that during this time and while he saw Mr. Blaine he smelled no liquor and did not see him stagger or indicate that he had been drinking.

Mrs. Mary Blaine (page 412), wife of the defendant, testified that when he got home after being to the hospital that there was no odor of alcohol or signs of intoxication.

All of the foregoing witnesses called by the defense testified to his condition throughout the entire afternoon and evening and to the fact that he had nothing to drink and was not intoxicated. Considering that these witnesses were corroborated by several of the State's witnesses, including the police officers Geary and Hill, as well as Chester Ritzer and others, it is respectfully submitted that the greater weight of the evidence in the case showed that the defendant was not intoxicated rather than to the contrary. But the fact that the State did have several witnesses to testify that they detected the odor of alcohol on

his breath and that in their opinion he was intoxicated is undoubtedly the basis of the jury's verdict rather than any proof of gross negligence in the operation of the car by the defendant.

The last material witness for the defense was the defendant himself (p. 366), who testified that he was forty-one years old and the father of six children. He reviewed at length his movements on the afternoon and night in question, which were as testified to by the preceding witnesses above referred to. He testified that at no time during the afternoon and night of the accident did he drink any intoxicating liquor; that on the night in question he was driving on the road from Dover to Morristown; that he was going between 20 and 25 miles per hour and might have been going between 28 to 30 as everything was open there; that he saw the standing car several hundred feet away before coming to it (p. 325); that there appeared to be dim lights on it, but he was not sure whether the lights were actually on or whether he saw the reflection of his own headlights on its lenses, but he did see the car. That as he approached he saw that the left wheels of it were almost in the center of the road, but no part of it was in his course on his right-hand side of the road (p. 377); that he blew his horn when he saw some men near the other car and that one man stepped backward across the road and the other man stepped on the running-board and that his path was then clear (bottom p. 377); that he continued to drive on because there was plenty of room there to pass. On page 378 and page 379 he gives a detailed statement of exactly how the accident happened, showing that as he was about to pass the standing Ford the bright lights were thrown on and the man who had steeped off the road sud-

denly stepped in front of him when he was only ten feet away, and to avoid hitting him he swung to the left and must have hit the two men and the Ford; that he ran off the road because after making the swerve or turn he could not control the wheels of his car and his head hit the top of the car and dazed him. This testimony of the defendant was not in any material respect changed on cross examination and was to the same effect as that given by the only other eye-witness Guerin. There is no direct evidence contradicting it in the case and none of the circumstantial evidence is inconsistent with it.

Upon this state of the evidence it is respectfully submitted that a verdict of guilty is contrary to the greater weight of the evidence. As was said by Justice Kalisch in *State* v. *Dugan*, 84 N. J. L. 603:

> "The real inquiry was: was the death of McDermott occasioned by some grossly negligent act or acts of the defendant in the operation of the automobile, as unfolded by the testimony?"

The same test and rule was fixed and applied in *State* v. *O'Brien*, 32 N. J. L. 169, also in *State* v. *Young*, 56 Atl. Rep. 471 (N. J. Sup.), not reported in State Reports. The utmost that might be said of the State's case on the evidence is that there was some evidence, disputed as it was, of intoxication. But this is not sufficient without evidence of gross negligence. This rule was firmly established in *State* v. *Dugan, supra,* in the following language:

> "The instruction was too plain to permit any inference to be drawn from it by the jury that the finding of the mere fact that the defendant was intoxicated would fix the defendant's guilt of the crime charged. The pertinent inquiry was not what was the producing cause of the negligent acts or act, for

> whether the defendant was drunk or sober was wholly immaterial, and neither condition was an essential requisite to fix his responsibility for the death of McDermott. The real inquiry was: Was the death of McDermott occasioned by some grossly negligent acts or act of the defendant, in the operation of the automobile, as unfolded by the testimony? It was proper for the judge to tell the jury that intoxication was no legal excuse, and that is what he practically did when he said that if the condition of intoxication occasioned the grossly negligent acts or act in the operation of the automobile whereby McDermott was killed, the defendant was guilty of manslaughter."

In the case of *sub judici*, there having been no evidence of such gross negligence on the part of the defendant, it is respectfully urged that the Trial Court erred in denying the motion of the defendant for a direction of verdict of acquittal at the end of the case, and particularly that the verdict is against the weight of the evidence so as to justify and require a reversal upon this ground pursuant to the statute, and the Supreme Court erred in refusing to reverse upon these grounds.

The Supreme Court in its opinion does not discuss or decide the point properly raised before it that the verdict was against the weight of the evidence. It makes no reference whatever to this point, which was argued at length before the Supreme Court and is again argued here. As this point is properly raised under the statute and, it is respectfully submitted, is well warranted by the state of evidence or entire lack of direct evidence against the defendant, the Court should have weighed the evidence on the question of the gross negligence of the defendant and have decided that the verdict was against the weight of the evidence. The Court does at

the beginning of the opinion, give a general summary of the facts of the case and states "there were no witnesses present at the time the collision occurred, except the plaintiff-in-error." This is probably an inadvertence on the part of the Court, as the evidence clearly shows that there was one other witness (Guerin) who was present with the defendant and he testified in his behalf and added the weight of his testimony to that of the defendant, the two of them constituting the only eye-witnesses to the tragedy. As against this there was only circumstantial evidence, none of which it is submitted would prove gross negligence beyond a reasonable doubt in the case. Certainly, regardless of evidence of intoxication, one way or the other, the essential fact to be determined was whether the evidence proved beyond a reasonable doubt that the defendant's gross negligence in the operation of his car caused the death of the decedents, and defendant properly brought this question before the Supreme Court for its determination as to whether or not the verdict of guilty was contrary to the greater weight of evidence upon this point. It is respectfully urged that it was and that a reversal should have been directed upon this ground. The Supreme Court did decide that "the Court very properly left it to the jury to say, whether what happened was brought about by the condition of intoxication of the plaintiff-in-error, and if so, and that circumstance entered into the reckless operation of the automobile, then the killing of the decedents would be manslaughter."

> "The driving of an automobile by a person intoxicated is an unlawful act, and if the death of a person is attributable to the unlawful act, that in law, constitutes manslaughter."

The foregoing portion of the opinion has the effect of deciding that the motion for direction of verdict was properly refused and the case properly submitted to the jury. The language of the Supreme Court seems to concede that there was practically no evidence in the case except disputed evidence of the intoxication of the defendant. It has never been held before that mere proof of intoxication by the driver of an automobile constitutes guilt of manslaughter without proof of the grossly negligent operation of the machine. There was no evidence in this case that the deaths of the decedents were attributable to the intoxication, if it existed, of the defendant. Under all the direct evidence in the case, given by the defendant and his witness, standing undisputed, the deaths of the decedents occurred under circumstances which showed no grossly negligent acts at the time of the occurrence. The determination of the guilt or innocence of a defendant being prosecuted for automobile manslaughter should continue to be determined by how the accident occurred and not solely by whether the defendant had partaken of intoxicating liquor, regardless of how capable he might still be of carefully and skilfully driving an automobile and regardless of how carefully or skilfully he may have operated it. There was no evidence in the case that the car was not guided with precision and skill and care upon the road at the time the accident occurred, and the evidence as to the intoxication or non-intoxication was about evenly divided, and certainly standing thus, should not constitute evidence beyond a reasonable doubt of guilt of the crime charged.

It is respectfully urged for all of the foregoing reasons that the affirmance of the conviction of the defendant by the Supreme Court and

his conviction before the Morris Court of Quarter Sessions should be reversed.

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New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

On Writ of Error.

Brief of Defendant-in-Error.

The following brief was submitted to the New Jersey Supreme Court at the October Term of Court, 1926, and is herewith submitted to the Court of Errors and Appeals.

New Jersey State Library

New Jersey Supreme Court.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

On Writ of Error.
Brief of Defendant-in-Error.

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

Facts.

The Plaintiff-in-Error was indicted by the May, 1926, Grand Jury of Morris County for the felonious killing and slaying of Charles Cramer and Charles Haggerty. The defendant entered a plea of not guilty and was released on bail to await trial.

The facts are briefly as follows:—On March 23rd, 1926, between eleven o'clock and midnight, the defendant, Blaine, was driving an automobile (a Buick Sedan) on the road between Mt. Tabor and Morris Plains, in Morris County, going in a general Southerly direction. Charles Cramer and Charles Haggerty, the deceased, had been driving an automobile (a Ford Roadster) going in a general Northerly direction on the same road and had, as the testimony shows, stopped their car alongside the hard amasite surface a few inches therefrom and parallel thereto, to change the left rear tire. The testimony is that they had not, at the time when

struck, finished this operation, a portion of the pump being still attached to the tire, after they were struck (P. C., p. 63, line 8) (also Exhibit S-1). The amasite road at this point is eighteen feet wide with dirt shoulders five feet in width on either side (P. C., p. 31, line 33). There is no testimony to show that there were any other cars passing in either direction just at that time.

As Blaine approached the Cramer car, his car suddenly swerved to the left across the road and side-swiped the Cramer car on the left side, striking Cramer and Haggerty and dragging them along the side of the road for about ten feet (P. C., p. 197, line 20), killing Cramer instantly and Haggerty dying within a few minutes as the result of the blow.

The car driven by Blaine continued down his left side of the road for some distance when it gradually left the road (Exhibit S-3) and smashed against a wire fence after side-swiping against several trees and knocking down a sapling. When the defendant was seven or eight hundred feet away, he saw the Cramer car (P. C., p. 375, line 38) and took his foot off of the accelerator (P. C., p. 394, line 36); in spite of which, after hitting the other car and hitting the two men and running over one of them, he continued down the left side of the road as shown on the Map (Exhibit S-3) for somewhere in the neighborhood of one hundred and fifty feet until he crashed into the fence.

Several witnesses for the State, namely, Dibble, Carl Ritzer, Officer Hill and Miss Davis, the Nurse at Memorial Hospital, where Blaine was taken, testified that Blaine showed unmistakable signs of being intoxicated. Doctor Wills who examined Blaine after the accident testified that the defendant was intoxicated. In the statement of the defendant's witness, Guerin, which was introduced in evidence, S-16, he said that the defendant had had

one drink of apple whiskey before leaving Oxford, although he denied it at the trial.

There is evidence on the part of the witnesses, Collins, Hand and Sharkey, tending to show that Blaine's car as it approached the scene of the tragedy traveled at a high and dangerous rate of speed.

Several witnesses testified that the decedent's car was over on his right side of the road and that there was plenty of room for them to pass. There are also photographs showing the mark on the road where the tire was being repaired and the position of the cars after the accident.

At the trial in the Quarter Sessions, the defendant was found guilty and was sentenced to pay a fine of One Thousand Dollars and to be committed to States Prison at hard labor for a minimum term of six years and a maximum term of ten years, together with the costs of prosecution.

ARGUMENT.

POINT I.

The Plaintiff-in-Error's first point is that Court erred in over-ruling the objection to the introduction in evidence of a certain map, which map contained markings and memoranda thereon showing and concerning matters and things which did not exist and which were shown before said objection was made not to have existed in the locality in question at the time of the commission of the alleged crime (Assignment of Error No. 2).

This map was admitted but the court used the following language when doing so:

> "The map is admitted, of course, and ladies and gentlemen of the jury, you are not at the present time to pay any attention to the three

objects marked on the map to which Mr. McGeehan objected until they are proven, if they are proven. You are not to pay any attention to the three marks he mentioned" (P. C., p. 40, lines 28-35).

The Prosecutor at that time also made the following statement:

"I consent to having them stricken from the map and from the consideration of the jury anything with reference to the matter of the wheels of Chief Hodges' car. I expect to get Chief Hodges to testify himself when he will then indicate that point on the map himself" (P. C., p. 41, lines 1-10).

Up to this time there could be no harmful error to the defendant, the jury having been instructed to disregard these marks and the State consenting to have them stricken out.

The position of the Cramer car was shown to be substantially the same as the position indicated by the Surveyor as was shown by the testimony of several witnesses. Peter Arkie (P. C., p. 139) testified that he saw the car a few minutes before the happening on the right side of the road and that he was driving his car on the same side of the road in the same direction and that he did not have to change his course to pass it. The testimony of his wife, Mildred Arkie, was to the same effect. The witness Dibble showed the skid marks of the wheels of the Ford car and the imprint of the pump by the following testimony:

Q. Now, will you indicate on the map where the Ford wheels—or where the Ford was standing when you got there?

A. I should say it was just about where those marks are made right here, according to these boulders here and everything.

The same witness goes on to explain where the car was placed and why, when Mr. Howell was

making his survey by the following question and answer:

Q. Just tell, Chief, where the car was placed and why at the time when Mr. Howell was making his survey?

A. We used the imprint for the exact location of the rear wheel of the Ford and when the car was standing there that would indicate where the jack and rear end had been standing before it was knocked loose.

It is also respectfully submitted that it should be taken into consideration that the Officers Dibble and Lieutenant Love were the first officers to be at the scene of the accident and that they saw and noted the skid marks of the Ford car while they were still undisturbed and which show on Exhibit S-1 and could also note the imprint of the pump a portion of which was still attached to the rear tire after the car was struck.

These facts, the State contends, would bring these marks clearly within the rule laid down in the case of the *State* vs. *Smith*, 68 N. J. L. page 609, which is as follows:

Maps, which are not original evidence, may be admitted on the trial of an issue and used only as illustrative of evidence otherwise offered and admitted. When the relation, at a particular time, of things of a movable nature to things which are immovable is in question, the former should not be delineated on a map to be thus used, *unless it is made to appear by evidence of witnesses that they knew their relation and had correctly pointed out their position to the maker of the map.* The delineation thus made may be used to illustrate the evidence, and its force will depend on the credit given to the evidence of knowledge of the relative position and of its having been correctly pointed out.

In respect to this portion of the argument the State has in its possession two extremely important photographs which bear the pencil markings of the

witness Love (Exhibit S-1, duplicate) showing the impressions in the road, which it desires to submit in person to the Justices of the Supreme Court before the decision in this appeal is reached.

The State respectfully contends that there was no error committed in allowing this map to be received in evidence.

POINT II.

Plaintiff-in-Error's second point is that the Court erred in admitting evidence over the objection of the defense the following question put to the witness Edward Howell:

> Q. All right, what did you see the officer do?
> A. I saw one of the officers, Love or Hodges place the foot standard of the pump in the depression in the amasite road and it fitted exactly. It was a pump similar to this with a "U" shape movable foot standard.

This evidence was taken for the purpose of clearing up the reason for the location of the markings on the map. The witnesses Dibble and Love both saw the imprint of the pump almost immediately after the accident, while the imprint was still fresh and so testified—Dibble at page 63 and Love at page 219, line 20, and Mr. Howell's testimony was merely to the effect that this was pointed out to him when he was making the map, and for that reason the map was so made. Therefore this clearly comes within the rule of the *Smith* case hereinbefore set forth in Point I of the Argument.

This testimony could not prejudice the defendant to any extent, at the most, it would be only cumulative, the other witnesses, Dibble and Love, having testified to this at considerable length.

It is respectfully submitted that no reversible error was made in over-ruling the defense's objection to this question.

POINT III.

As to Assignments of Error 4, 5, 6, 7 and 8 which are in substance—Four is that the Trial Court erred in admitting testimony over the objection of the defense as to the manner of operating the car in question at a point some distance from the point of contact and questions the positive identification of the car. Five, six, seven and eight are similar questions along the same line.

These four assignments of error are argued together because they all involve substantially the same point, namely the fast and negligent operation of the car by the defendant, Blaine, for some distance before the accident and the identification of his car.

The State first takes up the matter of the identification of the car as the car of the defendant. It must first be remembered in connection with this point that the road in question is a country road through a portion of the country that is not very thickly populated and that the time of the occurrence was near midnight when there was comparatively little traffic.

The witness Arkie testified on page 140, lines 20-25, as follows:

> Q. You were going down Mount Tabor Hill in which direction.
> A. Toward Denville; I passed one touring car and behind this car was a Sedan and it was stepping along pretty lively and just at the cross roads two boys——

The witness Collins testified that at a mile and a half away from the scene of the accident that he saw the sedan pass the touring car about the time

that Mr. Arkie passed the boys. He further testified at page 163, lines 27-30, as follows:

> Q. Did you say that any other sedan passed you going in the same direction? Toward Morris Plains?
>
> A. Yes, none that I saw, several cars but none of them a sedan.

The witness Sharkey testified that it was a Buick sedan that passed them, and that it was the only large sedan that passed them between where they were and the point of the accident (p. 169).

The witness Hand testified that a Buick sedan passed him about one mile from the point of the accident and that there were no other sedans passed him from that time to the point of the accident (p. 191).

The witness Douglas Bingham testified to the same effect. All of the above witnesses testified that it was the same sedan that they found at the scene of the accident.

The defense witness, Guerin, testified that he remembered passing the car driven by the witness Hand at Mount Tabor but did not remember the boys, page 293, and that no car passed them after that time up to the time of the accident.

The testimony of these witnesses, the State contends, furnishes sufficient proof as to the identification of the car in question.

The State now takes up the manner of driving at these various points and it contends that the Court did not err in admitting evidence to show such driving.

The witness Collins at page 162 testified as follows:

> "We had to jump out of the way or get over to the right in the ditch, in fact, because the car was very close to us and there was nothing in the road which would prevent that sedan from getting further over toward the middle" (Printed Case, p. 162, lines 39-40; p. 63, lines 1-4).

The witness Sharkey testified that he had to step off the road (Printed Case, p. 168, line 18).

The witness Hand testified that the sedan was going at a very fast rate.

The witness Bingham testified that the sedan was going at a very high rate of speed (p. 196) and that it was bobbing up and down although the surface of the road was comparatively smooth (Printed Case, p. 197).

The rule in respect to evidence of this kind, the State contends, is that the admission or rejection of such evidence is a matter within the discretion of the Court and that the ruling of a trial court in a matter of discretion will only be reversed where the facts clearly indicate an abuse of that discretion.

State vs. *Noyes,* 41 N. J. L. 418.

> "The admission or rejection of evidence relating to the speed at which a motor vehicle was being operated at a point some 1,200 feet from the place of an accident as bearing upon the speed of the vehicle at the time the accident occurred rests within the discretion of the trial court. The ruling of the trial court will not be disturbed unless the facts clearly indicate an abuse of the Court's discretion."
>
> *State* vs. *Weiner,* 127 Atl. 582.

It would appear in the case at bar that the court did not abuse its discretion for the reason that this was a country road with no obstacle to interfere with the speed of the car from the point where seen by the witnesses to the point of contact so that it was only the matter of a very few minutes from the time that they saw it until it struck the Cramer car.

POINT IV.

Under this portion of the argument the State takes up the contention of the Plaintiff-in-Error that the Court erred in refusing to charge defendant's requests 8, 9, 10, 12, 13 and 16. These are argued together because the law involved is practically the same in each.

The Eighth request to charge was as follows:

> "To convict on the ground of negligence on the part of the defendant there must be shown more gross and culpable negligence than is sufficient to render a defendant liable in a civil suit for not exercising that care which a reasonable and prudent person would exercise."

This is in effect a request to charge the elements of negligence in a civil action in comparison with the gross negligence which would make a defendant liable in a criminal action.

What the Court in the case at bar charged in this respect is as follows:

> "Criminal negligence has been defined as an act of commission done or left undone in reckless disregard of the life or safety of another. (Perhaps this is not an accurate definition;) however that may be, it is clear that where death is the result of an occurrence unanticipated by the defendant but which arose from his negligence or inattention, his criminal responsibility depends on whether or not the injury which caused death was the regular, natural, and likely consequences of the defendant's conduct. If it were, then the defendant is subject to indictment and conviction."

This is the same language used by the trial court in the case of the *State* vs. *Reitze,* 86 N. J. L. 407.

This charge could in no way be misleading as in the *Watson* case referred to by the Plaintiff-in-

Error. In that case the Court charged the jury that they must consider whether the defendants had provided the aid with the same diligence that a reasonable and prudent person would have done and that negligence if it existed was the failure to observe for the protection of the interests of another person that degree of care, precaution and diligence which the circumstances justly demanded —failure to do what a reasonable and prudent person would have done.

Under the charge in that case, of course, there could be no conviction of manslaughter, as the Court's charge did not go far enough to charge the elements of criminal negligence.

As to Assignments of Error 13, 14, 15 and 16 it is the contention of the State that the Court in his general charge covered these requests sufficiently.

The rule is laid down in the case of the *State* vs. *Gardner,* 55 N. J. L., page 17, "A Judge is not required to adopt the form or words or the collocation of phrases in which the request to charge is framed."

"A trial judge is not required to charge requests of counsel in preference to language of his own choosing conveying the same points."

State vs. *Rombolo,* 91 N. J. L. 560.

"If a request, in so far as it embodies any pertinent legal principle, has been charged, the court is not bound to repeat it in the language requested."

State vs. *Fischer,* 97 N. J. L. 34.

In the case of the *State* vs. *Dedge,* 125 Atl. 316, where the trial judge had fully and accurately charged the jury upon the presumption of innocence and the rule requiring proof of guilt beyond a reasonable doubt the Court said "This is sufficient. The trial judge is not required to charge the jury in the identical language of the request."

The plaintiff-in-error in the case at bar raises no question that there was no full and accurate

charge as to the proof of guilt beyond a reasonable doubt and the presumption of innocence.

"A charge must be read as a whole in the light of a sensible construction and no error is thereby committed by failing to have every sentence contain necessary qualifications if on the whole the jury could not have been misled."

State vs. *Tachin,* 92 N. J. L. 269.

POINT V.

Assignment of Error No. 19.

This assignment is based upon the Court's refusal to charge the 16th request to charge which was as follows:

> "In order for the jury to reach a verdict either of guilty or not guilty, each and every juror must agree to such verdict, as the verdict must be unanimous and not by a mere majority vote of the jurors. It is the duty of each juror to vote to acquit if such juror is not convinced beyond a reasonable doubt of the defendant's guilt."

The State can find no precedent nor can it see any reason why such a request should be granted. There can always be a poll of the jurors on their arriving at their verdict and that was done in this case.

The Court in this case fully and thoroughly charged the jury as to their duties with regard to the finding of the defendant guilty or not guilty and were it his duty to charge as requested, this request would be covered sufficiently and would therefore come within the rule laid down in the case of the *State* vs. *Rombolo,* 91 N. J. L. 560; *State* vs. *Dedge,* 125 Atl. 316; *State* vs. *Fischer,* 97 N. J. L. 34, all of which cases were cited in Point IV above.

POINT VI.

Specification of Causes No. 11.
Specification of Causes No. 20.

Specification of causes No. 11 is as follows:—"Because the trial Court erred in denying the motion of the defendant for a direction of a verdict of acquittal at the end of the entire case".

Specification of causes No. 20 is as follows:—Because the verdict was against the weight of evidence, this cause being assigned under and pursuant to Chapter 349 of the Laws of 1921.

These two points are argued together because they both involve an examination and consideration of the evidence in the case.

The State's case, briefly, is as follows:—The defendant was driving the Buick Sedan in question, that is not disputed, nor is the fact that it is the same car which struck the two men, Cramer and Haggerty, and killed them. It also has the testimony of several witnesses who saw the car of the deceased before the accident and noted its location on the side of the road off the amasite with the decedents repairing the tire. There was also the physical evidences on the road itself, the skid marks over towards the Ford car from the right hand side of the road, and the mark in the surface made by the base of the pump. There is also the testimony of the witnesses Hand, Sharkey and Collins that the defendant's car was traveling at a high and dangerous rate of speed before the tragedy. There is also the fact that Blaine's car, after hitting the Ford car and the two men and running over one of them continued down his left side of the road for about 150 feet and side-swiped two trees and knocked over a sapling and crashed into a fence although Blaine testified that he saw the Cramer car when about seven hundred feet away and took

his foot off the accelerator and applied his brake when near the point of contact. There is also the testimony of the witnesses Dibble, Carl Ritzer, Officer Hill, Miss Davis and Doctor Wills that there were unmistakable signs of intoxication on the defendant after the accident, together with the fact that it appears in the sworn statement of the defendant's witness, Guerin, that Blaine had had one drink of apple whiskey before leaving Oxford, although he later denied having said so.

The defense testimony was mainly made up of persons who Blaine had associated with that day who testified that he had not been drinking and was not under the influence of liquor, together with Blaine's denial that he had not had any liquor to drink on that day. Blaine and Guerin testified that one of the dead men had crossed the road in front of his car, and that he was not traveling at an excessive rate of speed and that in trying to avoid hitting him he swerved suddenly to the left and hit both men, causing the accident. The defense also introduces some testimony to show that the car of the deceased was further out on the amasite road than the State's witness had placed it.

It is respectfully submitted that the State proved all the essential elements of the case and that the guilt or innocence of the defendant was a jury question.

In a prosecution for manslaughter where any evidence is produced by the State tending to show the guilt of the defendant, the question of such guilt is to be determined by the jury under instructions from the Court; but if the State fails to offer any evidence tending to prove any essential element of the crime, a question is presented for the Court.

State vs. *Young,* 56 Atl. 471.

Direction of a verdict in a criminal case rests in the discretion of the trial court.

State vs. *Brown,* 72 N. J. L. 354.

"Whether facts relied on by the State are more consistent with innocence than guilt is for the jury's determination."

State vs. *Faunce,* 91 N. J. L. 333.

"Where there is any evidence whatever tending to show accused's guilt the case should be submitted to the jury."

State vs. *Plough,* 88 N. J. L. 425.

This case is cited favorably in the case of the *State* vs. *Dragone,* 1 N. J. Misc. 87.

"If there be testimony supporting the charge laid in the indictment the question of the determination of the guilt or innocence is for the determination of the jury and not of the Court, and it is proper to deny a motion to direct a verdict for the defendant."

State vs. *Morehous,* 97 N. J. L. 285.

In the *Morehous* case as in the case *sub judici* the record is brought up as provided in Chapter 349 of the Laws of 1921.

The State contends that there is no reversible error and that the conviction should be affirmed.

Respectfully submitted,

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
County of Morris.

The following is a copy of the Supreme Court opinion rendered by the Supreme Court during the October Term, 1926.

Filed June 10, 1927.

NEW JERSEY SUPREME COURT.

No. 111, October Term, 1926.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

CHARLES BLAINE,
Plaintiff-in-Error.

In error to Morris County Quarter Sessions Court.

Before Justices Kalisch, Katzenbach and Lloyd.

For the plaintiff-in-error, John W. McGeehan, Jr., John M. Mills, of counsel.

For the defendant-in-error, Albert H. Holland, Prosecutor of the Pleas.

Per curiam. This case comes before us on a strict writ of error and under the 136th section of the Criminal Procedure Act. The plaintiff-in-error was convicted in the Morris County Court of Quarter Sessions on an indictment charging him with manslaughter, in that he did feloniously kill and slay Charles Haggerty and Charles Cramer.

The facts of the case are, that on the 23rd day of March, 1926, between eleven o'clock and midnight, the plaintiff-in-error was driving an automobile (a Buick sedan) on the road between Mount Tabor

and Morris Plains, in Morris County, going in a southerly direction. The deceased Charles Cramer and Charles Haggerty were driving a Ford roadster going in a northerly direction on the same road, and, according to the testimony, had stopped their car along the hard amesite surface, a few inches therefrom and parallel thereto, to change the left rear tire of their car. It appears that while they were engaged in this operation they were struck by the car of the plaintiff-in-error; that the decedents had not finished their operation was evident from the fact that the pump was found still attached to the tire after they were struck. The amesite road at this point is 150 feet wide, with dirt shoulders five feet in width, on either side. As the plaintiff-in-error approached the car of the deceased, he suddenly swerved to the left across the road and collided with the car of the deceased on its left side, striking both Cramer and Haggerty and dragging them along the side of the road for a distance of about ten feet, killing Cramer instantly and Haggerty died within a few minutes afterwards, as the result of his injuries. The car after the collision was continued on its course down the left side of the road for some distance when it gradually left the road and finally smashed against a wire fence where it stopped.

It appears from the testimony of the plaintiff-in-error that he was propelling his motor car at a speed of 20 to 30 miles an hour at the time when his car was about 800 feet distant from the place where it collided with the automobile of the decedents, and where both of them were knocked down and killed, and that he saw, when his car was at the aforementioned distance away from the place of the collision, the automobile of the decedents, but his car kept right on its course, and in one part of his testimony, he says: "Well, it looked to me as if they were standing at the rear of their car looking at

the left rear wheel and it appeared to me as if the one man just stepped backwards across the road. And the other man, I thought, he walked up alongside the car and stepped on the running board."

The testimony, that after the collision and the running down of the decedents, the car proceeded on its mad career for a distance of 150 feet, smashing against a wire fence, after having scraped several trees and knocked down a sapling. There was also testimony to the effect that the plaintiff-in-error was intoxicated. There were no witnesses present at the time the collision occurred, except the plaintiff-in-error. There was, however, proof coming from several witnesses who testified that shortly before the collision they were passed by a Buick sedan of the character and description of the car of the plaintiff-in-error, and which they say, they saw going at a very fast rate of speed.

The first point made is, that the Court erred in overruling the objection of counsel of plaintiff-in-error, to the introduction in evidence of a certain map, which map contained markings and memoranda thereon showing matters and things which were claimed to be improperly on the map. It appears, that when the map was admitted, the Court told the jury: "The map is admitted, of course, and ladies and gentlemen of the jury, you are not at the present time to pay any attention to the three objects marked on the map to which Mr. McGeehan objected, until they are proven. You are not to pay any attention to the three marks he mentioned."

The prosecutor then and there consented to have them stricken off the map and from the consideration of the jury, and everything with reference to the matter of the wheels of Chief Hodge's car, the prosecutor stating, that he expected "to get Chief Hodge to testify himself when he will then indicate that point on the map." Of course, this could not be harmful error, since the Court instructed the

jury to disregard it and the State consented to have the marks stricken from the map.

The second point made is, that the Court erred in over-ruling the objection of the plaintiff-in-error to the following question put to the witness, Edward Howell: "Ques. All right, what did you see the officer do? Ans. I saw one of the officers, Lover or Hodges, place the foot standard of the pump in the depression in the amesite road and it fitted exactly. It was a pump similar to this with a 'U' shape movable foot standard."

It is apparent that the latter part of the answer went beyond a response to the question put to the witness, but on examination of the record, we fail to find that any motion was made, on behalf of the plaintiff-in-error, to have that portion of the answer, volunteered by the witness, struck out. The record discloses that the objection made by counsel to the question was limited, solely, as to its competency, in that it "was not binding upon the defendant and that any evidence found on the 29th of March, would be inadmissible as being too remote." It is evident that the objection was not aimed at the question put to the witness but was directed at his answer thereto and as to that, as already said, no motion was made to strike out that portion of the the answer, volunteered. Furthermore, we do not think the objection made was a good one. Of course while remoteness of testimony relating to a subject-matter, under investigation, may affect its probative value, the remoteness of it, however, does not *per se,* render it incompetent.

The third point relied on for a reversal is, "that the trial judge erred in admitting, over the objections of counsel of defendant, testimony as to the manner of operating a certain automobile at a point remote from the scene of the accident, to wit:

Between one and one-half to three miles from the point of the accident and without first proving the identity of the car in question to have been that of the plaintiff-in-error."

There was proof that the automobile in question was identified as the one which the defendant was operating. The fact that this identification was not made before the tesimony was adduced as to the operation of the car before the collision took place is of no consequence, since the objection made goes only to the order of the coming in of the proof, and as there was proof introduced which tended to show that it was the car of the plaintiff-in-error, the objection is devoid of any legal force.

The further ground urged, that it was error to admit such testimony because it related to the negligent operation of the automobile by the plaintiff-in-error, at a point between one and a half and three miles from the scene of the collision, seems to us to be unsubstantial, since the conduct of the plaintiff-in-error in operating the automobile was a matter of pertinent inquiry on the question of his sobriety.

The fourth point relied on for reversal is, that the Court erred in refusing to charge the eighth request which reads, as follows: "To convict on the ground of negligence on the part of the defendant, there must be shown more gross and culpable negligence than is sufficient to render a defendant liable in a civil suit for not exercising that care which a reasonable and prudent person would exercise."

The trial judge fully and accurately charged the law governing the nature of the negligence essential to be established, where death results from the negligent act, in order to constitute such negligence criminal in character. We have a statute which declares that the driving of an

automobile by a person intoxicated shall be a misdemeanor. The Court very properly left it to the jury to say, whether what happened was brought about by the condition of intoxication of the plaintiff-in-error, and if so, and that circumstance entered into the reckless operation of the automobile, then the killing of the decedents would be manslaughter.

The driving of an automobile by a person intoxicated is an unlawful act, and if the death of a person is attributable to the unlawful act, that in law, constitutes manslaughter.

Under the fifth point, it is urged that the Court erred in refusing to charge the ninth and tenth requests. The trial judge was under no legal duty to charge the subject matter of these requests since from a reading of the charge it appears that he had already clearly stated the legal principle governing the facts developed by the testimony, and furthermore he was under no legal obligation to apply the legal principal already stated, to conditions of fact postulated by defendant's counsel, particularly where such conditions do not include all the circumstances which would influence the conclusion of the jury, *Consolidated Traction Company* v. *Chenowith*, 61 N. J. L. 554.

Again we find it necessary to state that the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th assignments of errors as well as the 12th, 13th, 14th, 15th, 16th, 17th, 18th and 19th specifications of causes for reversal do not comply with the legal rule, in that each of them fails to set forth the subject-matter of the request alleged to have been refused to be charged.

We take occasion also to point out here that the 8th, 9th and 10th requests considered by us

are not set forth in either the assignments of errors or in the specifications of causes for reversal.

Judgment is affirmed.

It is therefore respectfully contended in view of the foregoing, that the conviction should be affirmed, and the writ dismissed.

Respectfully submitted,

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
for the County of Morris.