

# I N D E X

	PAGE
Writ of Error .....	1
Return .....	2
STATE'S TESTIMONY:	
Dr. Franklin H. Church—Direct.....	12
Cross .....	14
Roy J. Allen—Direct.....	15
Cross .....	18
Thomas Edward Garvey—Direct.....	19
Oscar Lawrence—Direct.....	21
Cross .....	27
Harley Rader—Direct.....	28
John Lodato—Direct .....	31
Wilfred Dube—Direct .....	34
Cross .....	38
Robert W. Kidd—Direct.....	42
Cross .....	43
Recalled—Direct .....	51
Recalled—Cross .....	56
Arnold Hewitt—Direct .....	59
George Abbott—Direct .....	62
Statement of Peter Giordano.....	51
DEFENDANT'S TESTIMONY:	
Peter Giordano—Direct .....	45, 64
Cross .....	46, 71

	PAGE
Frank Hyson—Direct . . . . .	94
Cross . . . . .	94
Loretta Giordano—Direct . . . . .	95
Cross . . . . .	98
Alberta M. Powell—Direct . . . . .	100
Rocco Giordano—Direct . . . . .	101
 STATE'S REBUTTAL TESTIMONY:	
Wilfred Dube—Direct . . . . .	103
Cross . . . . .	104
Charles Edward Brown—Direct . . . . .	104
Cross . . . . .	105
Robert Callahan—Direct . . . . .	106
Cross . . . . .	107
Robert W. Kidd—Direct . . . . .	109
 DEFENDANT'S SUR REBUTTAL TESTIMONY:	
Peter Giordano—Direct . . . . .	110
Charge of the Court . . . . .	111
Verdict . . . . .	124
Certification . . . . .	125
Assignments of Error . . . . .	126
Specifications of Causes of Reversal . . . . .	128
Joinder in Error . . . . .	130

WRIT OF ERROR.

NEW JERSEY, ss.

The State of New Jersey, to Hon. Henry  
Burt Ware, Judge of the Court of Com-  
(Seal) mon Pleas, holding the Court of Oyer and  
Terminer, County of Salem, Greeting: 10

Because in the record and proceedings, and also  
in judgment upon a certain indictment against Peter  
Giordano, late of the City of Salem, in the County  
of Salem, charged with murder:

*Pro ut* the said indictment and the several counts  
therein, whereof before you he has been indicted  
and is thereof convicted by a certain jury of the  
county, taken between the State of New Jersey and  
the said Peter Giordano, as it is said, manifest error 20  
has intervned to the great damage of the said Peter  
Giordano, as from his complaint, we have received  
information, we being willing, in his behalf, to cor-  
rect the error in due manner, if any there shall be,  
and that speedy justice be done to him, the said  
Peter Giordano, do command you, that if judgment  
be thereupon given and that you distinctly and  
openly send under your seal, the record and pro-  
ceedings aforesaid, with all things touching the  
same, to our Court of Errors and Appeals in the 30  
last resort in all causes, at Trenton, on the twenty-  
first day of February, nineteen hundred and thirty-  
one, together with this writ, that the record and  
proceedings aforesaid 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, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the second day of February, A. D. one thousand nine hundred and thirty-one.

JOSEPH FITZPATRICK,

*Clerk.*

10

H. BYRON LORE,  
*Attorney.*

---

[ENDORSED]

20

I hereby consent on this 13th day of February, 1931, to the return of the Writ of Error in the above entitled cause out of time, or within thirty days thereafter.

W. A. W. Grier,  
Prosecutor of the Pleas of  
the County of Salem.

30

---

RETURN.

The entire record of the proceedings whereof mention is within made, with all things touching the same, I certify to the Court of Errors and Appeals in the last resort in all causes, at the day and year

within contained, in a certain schedule to this writ annexed, as I am commanded.

HENRY BURT WARE,  
*Judge of the Court of Common Pleas of the County of Salem, sitting alone, and constituting the Court of Oyer and Terminer of the County of Salem.* 10

---

STATE OF NEW JERSEY, SALEM COUNTY, ss.

Be it remembered that at the Court of Oyer and Terminer, held at Salem, in and for the County of Salem on the third Tuesday of September in the year of our Lord one thousand nine hundred and thirty, before Honorable Ralph W. E. Donges, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Henry Burt Ware, Judge of the Court of Common Pleas of the County of Salem, according to the form of the statute in such case made and provided, by the oaths of D. Stewart Craven, Lloyd W. Williams, Mrs. Lucius E. Hires, Joseph Finlaw, Mrs. Elsie Pfeffer, Henry Mickle, John Dixon, Joseph Pancoast, Earl M. Boody, David P. Featherer, Mrs. Mary Hilliard, Harry Robbins, Paul Harris, Morris Smith, Samuel K. Shimp, Samuel Goldfein, Edward Kutz, Raymond Shreiber, Harry J. Strimple, Mrs. Anna F. Hires, and by the affirmation of Fred Bassett, those who affirmed having first alleged them-

selves to be conscientiously scrupulous of taking an oath, and were severally affirmed according to law, good and lawful men and women of said County of Salem, duly summoned then and there sworn or affirmed and charged to inquire in behalf of the State of New Jersey and for the body of the County of Salem.

10 It is presented in manner and form following, to wit:

In the Court of Oyer and Terminer of Salem County, September Term, in the year of our Lord one thousand nine hundred and thirty.

SALEM COUNTY, to wit:

20 The Grand Inquest of the State of New Jersey, and for the body of the County of Salem, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath,

Present that Charles Fithian, Henry Green and Peter Giordano, late of the City of Salem in the said County of Salem, on the 24th day of October, in the year of our Lord one thousand nine hundred and thirty, at the city aforesaid, in the County of Salem aforesaid, and within the jurisdiction of this Court, 30 did wilfully and feloniously and with malice aforethought, kill and slay one, J. William MacCausland. To the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

And which said indictment was, by the Grand Jury aforesaid, returned into court on November 7, 1930; and the Honorable Ralph W. E. Donges, Justice of the Supreme Court (nor any other Justice of the Supreme Court) not being present at the Court House in and for the County of Salem, on said day, the Court of Quarter Sessions of said county received said indictment so presented, and delivered 10  
said indictment to the Court of Oyer and Terminer of the County of Salem.

And afterwards, that is to say, on November 19, 1930, it still being of the September Term, at Salem aforesaid, in the county aforesaid, before the Honorable Ralph W. E. Donges, Judge of the Court of Oyer and Terminer of the County of Salem, cometh the said Peter Giordano in his proper person, and being asked in what manner he will acquit himself touching the premises in the said indictment above 20  
specified and charged upon him, says that he is not guilty thereof, and of this he puts himself upon the country; and W. A. W. Grier, Esq., who prosecutes for the State in this behalf, does likewise the same.

Whereupon, on November 19, 1930, it was requested, in writing, by the Honorable Ralph W. E. Donges, Justice of the Supreme Court, within whose district the Salem County Oyer and Terminer Court is, that the Honorable Henry Burt Ware, Judge of the Inferior Court of Common Pleas of said county, 30  
sitting alone, constitute and hold the Court of Oyer and Terminer of said county, for the purpose of arraignment of said defendant, Peter Giordano, and the trial of or other and further proceedings on said indictment as authorized by law.

A copy of which request was personally served upon the said defendant, Peter Giordano, by the sheriff of the County of Salem, on November 19, 1930, and no objection was filed thereto within five days from date of such service.

And an application being made to the Court that the said defendant, Peter Giordano, be allowed a  
 10 trial separate and apart from the other defendants, and the Court having considered the same and finding cause for granting the application, it was, on December 8, 1930, ordered that the defendant, Peter Giordano, have a trial on said indictment separate and apart from the trial of the other defendants.

Thereupon, to wit, on December 8, 1930, it still being of the September Term, 1930, before the Honorable Henry Burt Ware, Judge of the Inferior Court of Common Pleas of the County of Salem,  
 20 sitting alone, and constituting and holding the Court of Oyer and Terminer of the County of Salem, come the jurors of the said jury, good and lawful men and women of the County of Salem, for this purpose empanelled and returned by the sheriff of the said County of Salem agreeably to the statute in such case made and provided, to wit:

- |                        |                           |
|------------------------|---------------------------|
| 1. Harold Garton       | 7. Raymond Walton         |
| 2. Mrs. Warren Dilmore | 8. Howard Crispin         |
| 3. Mrs. Ella Mangan    | 9. Harry Wright           |
| 30 4. Howard Randall   | 10. Mrs. Hannah Harris    |
| 5. Alfred Parmalee     | 11. Mrs. Elizabeth Gordon |
| 6. Mrs. Evelyn Johnson | 12. Edward Bassett        |

who were elected, tried and sworn to speak the truth of and concerning the premises; and Walter

B. Crispin, Joseph B. Harbeson and Mrs. Pauline Rain, three officers of the County of Salem, were sworn to attend them.

And the following named persons were severally sworn to give testimony as witnesses, to wit:

For the State: Dr. Franklin H. Church, Roy J. Allen, Wallace E. Garvey, Oscar Lawrence, Harley Rader, John Lodato, Wilfred Dube, Robert W. Kidd, 10  
Arnold Hewitt, George Abbott, Charles E. Brown, Robert Callahan.

For the defendant: Peter Giordano, Frank Hyson, Loretta Giordano, Alberta M. Powell, Rocky Giordano.

The following exhibits were offered and admitted: Coat, vest, shirt, under-shirt, bullet, confession, and signature of Peter Giordano.

And all the testimony having been heard and summed up by the respective counsel, and the Court 20  
having addressed the jury, the jury retires with the aforesaid officers sworn to attend them; and after having considered of their verdict the jury returns into court, in charge of the aforesaid officers, and being called all appear, and being asked if they have agreed upon a verdict reply that they have, and by their foreman, Harold Garton, say that they find the defendant, Peter Giordano, guilty of murder in the first degree, without recommendation. And each juror being polled, at request of counsel, 30  
each juror says that he finds the defendant, Peter Giordano, guilty of murder in the first degree, without recommendation.

Whereupon, on December 22, 1930, it was ordered, on motion of the Prosecutor of the Pleas, that the

defendant be placed at the bar for sentence, and he being accordingly set to the bar, it is considered by the Court, and it doth order and adjudge that Peter Giordano be taken to the county jail, a prison of this county from whence he came, and there kept in strict custody, and from thence taken by the sheriff within ten days after the issuing of a warrant to him for that purpose, and deliver him, the  
10 said Peter Giordano, to the principal keeper of the State Prison to be kept by him in solitary confinement until the week beginning February the eighth, nineteen hundred thirty-one, and upon some day within said week, at his discretion as to time, within the walls of the building provided by the Board of Prison Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State  
20 Prison shall execute the punishment of death upon the said Peter Giordano by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the said Peter Giordano is dead.

TESTIMONY.

IN THE  
COURT OF OYER AND TERMINER.

OF SALEM COUNTY, NEW JERSEY.

10

---

THE STATE,

v.

PETER GIORDANO.

}

September Term,  
1930.  
Salem Oyer & Ter-  
miner.

---

Salem, New Jersey, Monday, December 8, 1930. 20

---

Before HON. HENRY BURT WARE, J., and a jury.

---

APPEARANCES:

W. A. W. GRIER, Esq., Prosecutor of the Pleas, 30  
for the State.

F. NEWLIN ACTON, Esq., for the defendant.

Mr. Grier: I move for a severance as between Giordano and Green at this time.

The Court: The motion will be granted. In the case of Fithian a separate trial has been asked for, and the Court has made an order to that effect.

10

Mr. Acton: Before the case is opened, I ask for the prisoner leave to withdraw his plea to address a short amendment to the indictment.

The Court: You may do so.

Mr. Acton: The indictment found in this case should be quashed, I believe, on the authority of the case of State against Harris, 7 New Jersey Law, 361, for the following reasons: That the copy of the indictment served upon the prisoner recites as follows:

20

“The grand inquest of the State of New Jersey, in and for the County of Salem, upon their respective oaths and affirmations,” and this case lays down the proposition that it must be set out explicitly in the indictment those who are excused from the solemnity of an oath, to be allowed to present an indictment upon a mere affirmation. For that reason, I move that the indictment be quashed.

30

The second reason is that the language of this indictment contains no averment to the effect that the deceased was then and there in the business of the said company. For those two reasons I move your Honor that the indictment be quashed.

The Court: Does not this set out that those who affirmed first alleged themselves as having conscientious scruples on taking an oath?

Mr. Acton: Yes, sir.

The Court: I will deny your motions. You may have an exception. 10

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE, (Seal)  
*Judge.*)

The Court: You had better have your client enter a plea to this indictment. He withdrew his plea to make the motion. 20

Mr. Acton: Will your Honor pass upon the other point in the motion?

The Court: I have denied your motion.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE, (Seal) 30  
*Judge.*)

(At this point in the proceedings the jurors are sworn and examined on their voir dire.)

(Jury sworn.)

(Three constables sworn to take charge of the jury.)

(Mr. Grier opens to the jury in behalf of the State.)

10

---

EVIDENCE IN BEHALF OF THE STATE.

DR. FRANKLIN H. CHURCH, SWORN.

Direct examination.

By Mr. Grier:

20 Q. Dr. Church, you are a practicing physician in the City of Salem?

A. I am.

Q. How many years have you been practicing?

A. About 24.

Q. On the morning of the 24th of October of this year, were you called upon to do anything in connection with the body of William McCausland?

A. I was called to see him at the Salem County Memorial Hospital in the receiving ward at 10:30 A. M., where he had been admitted, and he was dead.

30 Q. He was dead when you got there?

A. He was dead on admission.

Q. Did you make an examination of his body to see what the cause of death was?

A. An X-ray of his chest was taken; a partial post mortem was held at Mr. Allen's morgue at 7:30.

The cause of death was a bullet wound in the back, heart and lung.

Q. The shot was fired through the back?

A. Yes, sir.

Q. Did it pierce the heart and lung?

A. Heart and lung—the bullet pierced the seventh dorsal vertebra of the spinal cord, lodged in the chest wall a little above the fourth rib.

10

Q. From your experience, would you say that death was instantaneous or not?

A. A man shot as this man was falls to the ground unconscious and expires within a space of time measured by a few moments.

Q. Practically instantaneous?

A. Instantaneous.

Q. Did you examine the clothes that Mr. McCausland had on?

A. Yes, sir.

20

Q. What did you observe, if anything, with reference to any hole?

A. There was a small spot of powder burn somewhat less than an inch in diameter exactly in the seam of the coat, just about in the middle of the back; it was filled with powder. The shirt, underclothes had a much larger area. The wound and the skin about it for some distance from its edge was blown full of powder.

Q. From that would you say that the revolver was fired at close aim?

A. At least within a half an inch, perhaps actually pressing against his back.

Q. Either a half an inch or against his back when the shot was fired?

A. Absolutely.

Q. Did you know Mr. McCausland during his life time?

A. Yes, sir.

Cross-examination.

By Mr. Acton:

10

Q. Did you see the bullet that caused the death?

A. I did.

Q. What caliber was the bullet?

A. In all probability, I am no firearm expert, in all probability I should say .38.

Q. .38 caliber bullet?

A. So far as I could tell. I am no expert, I made no expert examination of it or comparison.

Q. What was done with the bullet, do you know?

20

A. In the custody of the coroner.

By Mr. Grier:

Q. Did you remove the bullet from his body?

A. Yes, sir.

Q. To whom did you give it?

A. The coroner.

30

ROY J. ALLEN, SWORN.

Direct examination.

By Mr. Grier :

Q. Mr. Allen, you are one of the coroners of Salem 10  
County, are you not?

A. Yes, sir.

Q. Were you called on the morning of October  
24th of this year in connection with the death of Mr.  
McCausland?

A. Yes, sir.

Q. Where did you first see the body?

A. In the emergency ward in the Salem County  
Hospital.

Q. What time did you arrive there? 20

A. I won't say positively,—somewheres around  
seven o'clock.

Q. Was Mr. McCausland living or dead at that  
time?

A. Dead.

Q. Were you present when Dr. Church performed  
an autopsy upon him?

A. Yes, sir.

Q. You saw what was done?

A. Yes, sir.

Q. Do you have the clothing that Mr. McCausland 30  
had on at the time of his murder?

A. Yes, sir.

Q. Will you produce that clothing? That clothing  
was removed from his body by you?

A. Yes, sir.

Q. It has been in your possession ever since?

A. Yes, sir.

Q. It is in exactly the same condition now as it was when you took it off his body?

A. Yes, sir.

Mr. Grier: I would like to offer the coat in evidence.  
10

The Court: It may be admitted.

By Mr. Grier:

Q. Point out to the jury where the bullet went through that coat.

A. A perfect hit in the seam.

20 Q. Do you have the shirt and undershirt there?

A. Yes, sir; here is the vest; this was torn taking it off Mr. McCausland.

Mr. Grier: I would like to offer that in evidence.

The Court: It may be admitted.

By Mr. Grier:

30 Q. Do you have the shirt?

A. Yes, sir.

Q. That is the shirt that you took off his body?

A. Yes, sir.

Mr. Grier: I offer that in evidence.

By Mr. Grier:

Q. The undershirt?

A. Yes, sir.

Mr. Grier: I also offer that in evidence.

The Court: It may be admitted in evidence. 10

By Mr. Grier:

Q. Do you have the bullet that was removed from the body of Mr. McCausland?

A. I do.

Q. Will you produce that, please?

(Witness complies with request.) 20

Mr. Grier: I would like to offer that bullet in evidence.

Mr. Acton: May I see it, please?

(Witness hands bullet to Mr. Acton.)

By the Court: 30

Q. Where did you get that?

A. Dr. Church handed it to me after the autopsy.

Q. Where were you when it was handed to you?

A. In my morgue, 328 East Broadway.

By Mr. Grier:

Q. Did you know Mr. McCausland during his life time?

A. I did.

Q. Where did he live?

A. Craven Avenue.

10 Q. Do you know the number?

A. I couldn't tell you now,—almost across from where you live,—a little below.

Q. Right across the street from my home?

A. Yes, sir.

Q. Do you know of whom his family consisted?

A. A wife and three daughters, I believe.

Q. Do you know the ages of those daughters?

A. I do not; I think from 16; the oldest may be 16; the others are younger.

20 Q. You were the undertaker who buried Mr. McCausland?

A. Yes, sir.

Cross-examination.

By Mr. Acton:

Q. Was there any other wound beside the one pistol shot in the body of Mr. McCausland?

30 A. There was not.

Q. This was the only wound that he had?

A. Yes, sir.

Q. Were there any other bullets in the body?

A. No, sir.

Q. This was the only bullet?

A. Yes, sir; we only found one bullet hole where a bullet had entered.

Q. You only found one bullet?

A. Yes, sir.

Q. Was an X-ray made of his body?

A. The body was sent to the X-ray room from the emergency ward; I didn't go with it; I think Dr. Church——

10

Q. Have you seen the X-ray?

A. I have not.

Q. As far as you know, this was the only shot that entered Mr. McCausland's body?

A. Yes, sir.

Q. Just one bullet?

A. Yes, sir.

Q. What is the caliber of that bullet?

A. .38.

20

---

THOMAS EDWARD GARVEY, SWORN.

Direct examination.

By Mr. Grier:

Q. Mr. Garvey, do you have any position with the Salem Glass Works?

30

A. Assistant secretary.

Q. Mr. McCausland—William McCausland was employed down there at the plant?

A. Yes, sir.

Q. You have known him for a number of years?

A. Yes, sir.

Q. Do you know where he lived?

A. On Craven Avenue.

Q. Were you acquainted with his family?

A. Yes, sir.

Q. Of whom does his family consist?

A. Wife and three daughters.

Q. What was his position with the Salem Glass  
10 Works?

A. Clerical position, paymaster.

Q. Was it or was it not his duty each Friday morn-  
ing around the hour of six-thirty to carry the pay-  
roll from the main office on 4th Street to the time  
office on Griffith Street to pay off the seven o'clock  
shift?

A. Yes, sir.

Q. How long had he been doing that?

A. Several years.

20 Q. Do you know what time he was in the habit of  
leaving the office with that money?

A. Between six-fifteen and six-thirty.

Q. How was that money carried?

A. In a box; the money was in envelopes; the en-  
velopes in a box.

Q. The envelopes had the name of the employe  
and the amount he was to receive?

A. Yes, sir.

Q. Were you down there when the shooting oc-  
30 curred that morning?

A. I was not.

Q. Do you know how much money was lost as a  
result of this hold-up?

A. (Referring to paper) \$386.97.

Q. How far, if you know, was it from the office to  
where Mr. McCausland was shot?

A. I only know what I was told, that it was probably half-way between the office and Griffith Street, on 4th.

Q. What kind of a building is there on 4th Street between your office and Griffith?

A. Our mould shop.

Q. That extends practically the entire distance?

A. Yes, sir.

10

Q. It was along by the mould shop where he was shot?

A. Yes, sir.

(No cross-examination.)

---

OSCAR LAWRENCE, SWORN.

20

Direct examination.

By Mr. Grier:

Q. Where do you live, Mr. Lawrence?

A. Salem.

Q. Are you employed by the Salem Glass Works?

A. Yes, sir.

Q. Were you on 4th Street on the morning of October 24th of this year?

30

A. Yes, sir.

Q. Where had you been?

A. Unlocking the gate on Griffith Street.

Q. After you unlocked that gate, where did you go?

A. I walked back and looked my work over, came

up off Griffith Street, crossed Griffith Street. As I crossed there, I looked to 4th Street. There was a car right about where the barber shop is, above the office.

Q. The barber shop that you refer to is between the office and Broadway?

A. Yes, sir. Then while I was crossing the street  
 10 I looked the opposite way. Mr. Sharp was coming out of his gate; the gate had not been opened, he had not opened the gate. I hollered "Good morning, good morning, Neighbor Sharp." Our paymaster, he was coming down off the steps, coming towards me—

By the Court:

Q. Who do you mean by the paymaster?

20 A. Mr. McCausland.

By Mr. Grier:

Q. After saying good morning to your neighbor, did you start across 4th Street to the office?

A. Yes, sir; he was coming out of his alley on the opposite side.

Q. When you started across 4th Street to go to the office, did you meet Mr. McCausland coming in the opposite direction?  
 30

A. He was coming towards me.

Q. Was he carrying anything?

A. Yes, sir.

Q. What was he carrying?

A. He had some money box underneath his left arm, next to me; I was next to the curb.

Q. Carrying the money box under his left arm?

A. Yes, sir.

Q. He was walking towards Griffith Street?

A. Yes, sir.

Q. Did you say anything to him?

A. Yes, sir; he said, "Good morning" to me, and I said, "Good morning" to him.

Q. About that time did you see this car that you had previously seen up near the barber shop, moving towards you? 10

A. I don't say it was that car, or a similar car; it come right down head into me. I looked up and seen two in front and one in back. The front wheel went along the curb, and the fellow on the back seat got up and took hold of the bar, reached to the door, put his foot on the running-board. While it was going, the car running off slow, I kept on going. I thought at first he worked in the mould shop. 20

Q. You thought he was going to work in the mould shop?

A. Yes, sir.

Q. How far had you gotten past Mr. McCausland before you heard the shot fired?

A. Just about 50 feet.

Q. Are you able to identify the man that you saw coming out of the back seat of that car?

A. I don't think so; I didn't take that much notice. 30

Q. Look at this prisoner and say whether or not you can identify him as being one of the men in that car?

A. I don't like to say that; I don't know.

Q. You simply thought the man was going in the mould shop?

A. Yes, sir.

Q. After you heard the shot fired—you heard the shot fired?

A. Yes, sir; I immediately turned around, thought it was an automobile backfiring. Mr. McCausland laid flat on his back, all the envelopes over the ground. I said, "My God, he is shot." I hollered  
10 and hollered and run.

By the Court:

Q. Which way did you run?

A. I run towards them.

Q. Where he was lying?

A. Yes, sir.

By Mr. Grier:

20

Q. What did you see when you got there?

A. When I turned around there was nothing but the paymaster and the envelopes laying there, and the car had not left there until I got about 20 feet of him. When I got there, that near them, they went around that corner. I went to the corner, hollered "They killed their man." Mr. Sharp was unlocking the gate; he had not unlocked his gates down Griffith Street. He hollered and asked me what had hap-  
30 pened.

Q. After you came back was Mr. McCausland lying on the ground?

A. Yes, sir; in fact, I turned my head; he was laying flat with his arms like that (indicating). I hollered and swore and everything else.

Q. Did he move at all?

A. No, sir. When I told Mr. Sharp that they shot him, I went back and I picked him up. A woman came out of the side gate and wanted to know—

Q. Don't tell us what she said.

A. I asked her for a pillow; I put the pillow under his head.

Q. Was he dead at that time?

A. Yes, sir; his eyes was set; he never moved. I 10 helped put him in the automobile, scraped up the money. Mr. Sharp helped to scrape up the money.

Q. This car had not left when you got within 20 feet of the body of Mr. McCausland, and then it started and pulled around the corner?

A. Yes, sir.

Q. What corner did it turn around?

A. At Griffith Street, that is pretty nearly to the sash factory, the last I saw the car.

Q. Did you see any rear license plate on this car? 20

A. I didn't see any I was ascaered so bad, I hol-lered, "Get their number, get their number."

Q. You were the first one to get to Mr. McCaus-land after he was shot?

A. Yes, sir.

By the Court:

Q. When you heard this shot fired, from what direction did it proceed—what direction did it come 30 from?

A. Below me.

Q. Back of you?

A. Yes, sir.

Q. What did you do then?

A. I turned around and looked.

Q. What did you see at that time?

A. I seen the gentleman laying on the ground, with the envelopes all over the ground.

Q. Did you see any other people there?

A. No, sir.

Q. No persons there whatever?

A. No, sir.

10 Q. Did you see an automobile?

A. No, I won't say I seen that, on account of them three trees, big trees, that stood between me and that automobile.

By Mr. Grier:

Q. You saw the automobile pull up to the curb?

A. Yes, sir, right head into me.

Q. You went right on towards the office?

20 A. Yes, sir.

By the Court:

Q. You have reference to the time before you heard the shot?

A. Yes, sir.

Q. When you heard the shot and turned around, all you saw was McCausland lying on his back—you saw no people, you saw no automobile?

30 A. No, I didn't see no automobile; I was looking at him and running and hollering as fast as I could.

Q. If you didn't see any automobile, why did you holler to take the number?

A. As soon as the automobile started to make around the corner.

Q. Later you saw the automobile go around the corner?

A. Yes, sir; left and went around the corner.

By Mr. Grier:

Q. After you first saw the automobile and then when you heard the shot fired, you turned around and looked and you could not see the automobile because of those three big trees? 10

A. Yes, sir; I was noticing him more than anything else, but before I got to him, the car went around the corner. I was about 20 feet of them when they swung around the corner.

Q. Is that the same car you saw pulling up to the curb before the shooting?

A. They came right head into me; I seen the two sitting in front and the man in the back. 20

Q. That is the same car that you saw?

A. It is the same car.

Cross-examination.

By Mr. Acton:

Q. Did you get a good look at any of the people in this car?

A. No, sir; I did not stare them right in the eyes. I seen two on the seat in front and one in back. 30

Q. You didn't see who did the shooting?

A. No, sir.

Q. Did you see any guns in the hands—

A. No, sir.

Q. Did you hear any but the one shot fired?

A. That is the only one.

HARLEY RADER, SWORN.

Direct examination.

By Mr. Grier:

- 10 Q. Mr. Rader, you live on 5th Street in this city?  
A. Yes, sir.  
Q. Do you know where Charles Fithian lives?  
A. I know where his parents live.  
Q. How far from their home do you live?  
A. About four doors, I guess, north—south, rather.  
Q. You have seen Charles Fithian on several occasions driving a car around here, have you not?  
A. Why, I have,—other members of the family, yes, sir.
- 20 Q. What kind of a car was it?  
A. Blue car.  
Q. Do you know the make of it?  
A. No, it looked to be a Buick.  
Q. On the morning of October 24th were you going to work sometime before seven o'clock?  
A. Yes, sir.  
Q. You were working down at the Salem Glass Works?  
A. Yes, sir.
- 30 Q. What route did you take from your home to the glass works that morning?  
A. Went down Griffith.  
Q. When you got near 4th Street on Griffith, did you hear any noise of any kind that attracted your attention?  
A. I heard a report, yes, sir.

By the Court:

Q. What kind of a report?

A. Like the backfiring of a car or a shot.

By Mr. Grier:

Q. How far from 4th Street were you when you 10  
heard that report?

A. I would say 25 or 30 feet; probably a little fur-  
ther.

Q. Were you on the lower side of Griffith Street  
or the upper side?

A. Right-hand side coming down.

Q. When you got to 4th Street, did you look across  
4th Street?

A. I did.

Q. What did you see when you looked around 20  
there?

A. I saw William McCausland lying on the ground,  
with the envelopes around him. An automobile  
started away.

Q. Did you recognize that automobile?

A. I thought I had saw it before, yes, sir.

Q. Did you know who it belonged to?

A. I thought it belonged to Fithian.

Q. You knew that was the car that was owned by  
Charles Fithian? 30

A. I thought it did, yes, sir.

Q. What did that car do, or what did the driver  
of that car do, after you first saw him or saw it?  
Was the car driven somewhere?

A. It came around the corner, came up Griffith.

Q. How many men did you see in it?

A. I saw the forms of two men.

Q. Were they both in the front seat?

A. I saw a form of one in the front and one in the back.

Q. Was the car going at a high rate of speed or slowly around the corner?

A. Right fast around the corner.

10 Q. Did it go up on the sidewalk, on to the curb?

A. It made a pretty sharp turn; I don't think it went up on the sidewalk.

Q. Did you get the number on this car?

A. I got Y-12 on the front; there was nothing on the back.

Q. There wasn't any rear license tag on the back?

A. I didn't see any.

20 By the Court:

Q. There were other figures?

A. There was other figures on the front.

By Mr. Grier:

Q. Which direction did the car go?

A. Up towards Market.

Q. Did you watch it go up the street?

A. Not very far up.

30 Q. After they got on to Griffith Street, was the car being driven rapidly or slowly?

A. As far as I watched them they looked to be speeding up a little faster.

Q. Who was driving the car?

A. I couldn't say.

Q. Did the person driving that car resemble anyone that you knew?

Mr. Acton: That is objected to as repetition and leading.

The Court: I don't think the question is in good form. I will sustain the objection. 10

By Mr. Grier:

Q. After the car started up Griffith Street, did you go over to where Mr. McCausland was lying?

A. Not right away.

Q. You did go over there eventually?

A. I started over; Mr. Lawrence hollered, the man who just left the stand, he hollered, "Get the number on the car, get the sheriff." I went and called 20 up the sheriff; that is after I located a 'phone. I had a little trouble locating a 'phone.

(No cross-examination.)

---

JOHN LODATO, SWORN.

Direct examination. 30

By Mr. Grier:

Q. Where do you live, Mr. Lodato?

A. Bridgeton, New Jersey.

Q. Do you know the prisoner at the bar, Giordano?

A. Yes, sir.

Q. How long have you known him?

A. About a couple of years.

Q. He has been living in Bridgeton during most of that period?

10 A. A little while he did.

Q. What is your occupation—what do you do for a living?

A. Laborer.

Q. Do you work for a trucking concern?

A. Yes, sir, for a little while.

Q. On the 28th of October or right around that time, were you working for somebody, driving a truck?

20 A. I wasn't driving; I was helping to drive.

Q. Who was the owner of that truck?

A. Tom Raymond.

Q. Did you help move the defendant's household goods from Bridgeton to Philadelphia?

A. Yes, sir.

Q. Do you remember what date that was done?

A. No, I do not, but I know it was on a Monday.

Q. What time of the day or night?

A. It was in the night, about a quarter of eight when I left Bridgeton.

30 Q. Where did you take his goods?

A. We took them to Philadelphia; I don't know the street.

Q. Do you remember being questioned in the City Hall in Bridgeton about this matter?

A. Yes, sir.

Q. Was that the night following the night that you moved his goods to Philadelphia?

A. Yes, sir.

Q. Mr. Kidd was there, was he not?

A. Yes, sir.

Q. And Mr. Dube of the State Police?

A. Yes, sir.

Q. I was there?

10

A. Yes, sir.

Q. Later that same night, or early in the morning, you went to Philadelphia with Mr. Kidd and Mr. Dube?

A. Yes, sir.

Q. Did Giordano tell you why he was moving to Philadelphia in the night time?

A. No, sir.

Mr. Acton: I object to that on the ground that it is immaterial. 20

The Court: He may answer. Objection overruled.

By Mr. Grier:

Q. After you got to Philadelphia did you stay with the officers until Giordano was arrested?

A. They left us in the City Hall.

30

Q. This is the man that you moved to Philadelphia, isn't it (referring to defendant)?

A. Yes, sir; Giordano, yes, sir.

(No cross-examination.)

WILFRED DUBE, SWORN.

Direct examination.

By Mr. Grier:

10 Q. You are a plain clothes detective in the employ of the New Jersey State Police?

A. Yes, sir.

Q. Did you make any investigation in this case?

A. I did.

Q. Were you in Bridgeton on the night of October 28th of this year?

A. Yes, sir.

Q. Who else was present there?

A. I went to the Bridgeton City Hall, County Detective Kidd and yourself. This boy was there—this  
20 boy on the stand, and Thomas Raymond.

Q. As a result of what Mr. Raymond and Mr. Lodato told you, did you and Mr. Kidd go to Philadelphia in the morning?

A. We left that night, around midnight, taking Mr. Raymond and Lodato to Philadelphia with us.

Q. When you got to Philadelphia where did you go?

A. We proceeded to the 7th and Carpenter District House, police station. There I met Detectives  
30 Brown and Callahan, stationed at that district.

Q. After that what did you and Mr. Kidd and Detective Callahan do?

A. We took Thomas Raymond out to the vicinity of 9th and Christian Street, Philadelphia, and he pointed out to the house.

By the Court:

Q. Was the defendant present?

A. No, sir.

The Court: You cannot give what Raymond said.

By Mr. Grier:

10

Q. Was the defendant arrested that morning?

A. Yes, sir, he was.

Q. Where was he found?

A. He was found at 636 Fernon Street, the house of his mother-in-law.

Q. After he was arrested, where was he taken?

A. He was brought to the 7th and Carpenter Street station house and questioned.

Q. Were you present when he was questioned? 20

A. Yes, sir.

Q. Did you assist in questioning him?

A. Yes, sir.

Q. Were there any threats of any kind made towards him?

The Court: Is there any objection?

Mr. Acton: Not at the present.

By Mr. Grier:

30

Q. Were there any threats made by you or any of the other officers present against him?

A. No, sir.

Q. Any promises made?

A. No, sir.

Q. Any hope of reward given by any of you?

A. No, sir.

Q. Did he make a voluntary statement there in your presence?

A. He did.

Q. Was that statement submitted to him in writing?

A. He confessed.

Q. Was his statement reduced to writing?

A. Yes, sir.

Q. Did he read it over after it had been put in writing?

A. Yes, sir.

Q. Did he sign it in your presence?

A. Yes, sir.

Q. Did you sign it as a witness?

20 A. Yes, sir.

Q. Did Mr. Kidd sign that also as a witness?

A. Yes, sir.

Q. You would recognize that statement if you saw it again, would you?

A. I would.

Q. Do you know how many copies were made of it?

A. I believe there were three copies made of it.

30 Q. I show you a paper and ask you if that is the statement that the defendant made that morning in Philadelphia?

A. Yes, sir.

Q. Is that his signature? Did you see him sign it?

A. Yes, sir.

Q. Your name is there as a witness?

A. Yes, sir.

Q. At the second page, see if that is also signed?

A. Yes, sir.

Mr. Grier: I offer this in evidence.

Mr. Acton: This is objected to.

The Court: The persons having the jury in 10  
charge will take them from out of the court room to  
some other room in the court house during the argu-  
ment on the admission of this paper writing.

(Jury withdrawn from the presence of the Court  
and counsel during the argument.)

The Court: Objection being made to the admis-  
sibility of any statement by the defendant at this  
police station, the State will proceed to produce 20  
evidence, showing the manner and form under which  
this statement was made, so that the Court may rule  
upon it, and the defendant has a right, following  
the presentation of that part of their proof, to offer  
anything in rebuttal, if they see fit, by way of con-  
tradiction. Proceed.

By Mr. Grier:

Q. Mr. Dube, this statement was made at the 7th 30  
and Carpenter police station in Philadelphia?

A. No, sir, I didn't say that.

Q. Where was it made?

A. It was made at the first detective division, writ-  
ten statement, before Lieutenant Clarke of the Phila-  
delphia Police Department.

Q. Who was present when he signed this statement?

A. Detective Kidd, myself, Lieutenant Clarke and Detectives Brown and Callahan.

Q. Before he signed this statement, did you or any of the others present make any threat of any violence towards this man?

10 A. Absolutely none.

Q. Did you make any direct or indirect promise of any kind?

A. No, sir.

Q. He made this and signed it voluntarily, did he not?

A. Yes, sir.

Q. Did any of those present at that time other than yourself make any threat of any violence?

A. I heard no one make any threat of violence.

20 Q. Did any of the others present make any direct or indirect promise of any kind to induce him to sign this?

A. I heard no promise made.

Mr. Grier: We again offer this in evidence.

The Court: You may cross-examine.

Cross-examination.

30

By Mr. Acton:

Q. What authority had you to take the defendant into custody in Philadelphia?

Mr. Grier: That is objected to.

The Court: Objection overruled.

A. I had been told by Charles Artis in Bridgeton —

Q. I don't care about that. Answer my question.

A. Picked him up on suspicion.

Q. You haven't answered my question as yet. By what authority did you take this man in custody in Philadelphia? 10

A. Picked him up for questioning for the Salem murder.

Q. Did you have any authority?

A. As a member of the New Jersey State Police I had authority.

Q. Do the New Jersey State Police operate in Pennsylvania?

A. No, sir; that is the reason I went and got two Philadelphia detectives at the 7th and Carpenter 20 station.

Q. Where did you go?

A. 636 Fernon Street.

Q. What time of the day?

A. About five o'clock in the morning.

Q. Did you handcuff the defendant?

A. No, sir.

Q. How many of you were there?

A. Myself and the Philadelphia policeman in uniform. 30

Q. Did any of you have any warrant or other process calling for his arrest?

A. No, sir.

Q. None of you had any other authority outside of your suspicion to pick him up?

A. That is right; we asked him to come up to 7th and Carpenter Street; he said he would go with us.

Q. Where did you take him then?

A. 7th and Carpenter.

Q. How long did you stay there?

A. Until about six-thirty in the morning.

Q. Was there any warrant or formal complaint  
10 made there?

A. Not at that time.

Q. After that time then you took him on to City Hall?

A. No, I took him over to the first detective division. I think it is up on 14th Street.

Q. From there you took him to some other department of the Philadelphia police?

A. That is where I took him from 7th and Carpenter station—took him up to the first detective  
20 division.

Q. Was any complaint sworn to there against him?

A. While we were in the 7th and Carpenter —

Q. Answer yes or no, was there?

A. No, sir.

Q. Has anybody sworn to a complaint against him up to the present time?

A. He was brought up to the 7th and Carpenter and County Detective Kidd made a complaint  
30 against him.

Q. You had him in your control, carrying him around the City of Philadelphia from one police station to another for about how long before a complaint was sworn out?

A. About two hours, I should say; I don't know the exact time.

Q. From about five o'clock until seven o'clock you carried him around Philadelphia before any complaint was made at all?

A. Yes, sir.

Q. This statement, was that made before the complaint was sworn to?

A. Yes, sir.

Q. You heard, you say, no threats? 10

A. No, sir.

Q. You heard no promises?

A. No, sir.

Q. Did you pay strict attention to this matter?

A. I was there.

Q. Did you strain yourself to hear any threats?

A. I didn't hear any; my hearing is good.

Q. Where did you say this statement was made?

A. At the first detective division—the written statement. 20

Q. Who wrote it down?

A. It was taken down by a stenographer in shorthand and typewritten, and the defendant signed it.

Q. Was the stenographer sworn in any way to correctly transcribe?

A. I don't think he was.

Q. How many times was this thing corrected and rewritten?

A. It was not —

Q. Were there no corrections made to it? 30

A. No, sir; he made a statement in his own words, and the stenographer, he took them down as he spoke them. He signed it later when it was typewritten.

The Court: Is there any further evidence?

Mr. Grier: I will put Mr. Kidd on the stand.

ROBERT W. KIDD, SWORN.

Direct examination.

By Mr. Grier:

- 10 Q. Mr. Kidd, did you go to Philadelphia with Mr. Dube, and Raymond, and Lodato on the morning of October 28th?  
A. I did.  
Q. Did you at that time have in your possession a warrant for the arrest of the defendant?  
A. I did.  
Q. Were you present when the defendant made a statement?  
A. I was.
- 20 Q. Who else was present?  
A. Dube, Detectives Brown and Callahan.  
Q. Where was that statement made?  
A. The verbal statement was made at 7th and Carpenter Street police station; the written statement at the first district detectives.  
Q. After he made the verbal statement, you went up to police headquarters?  
A. First district detectives.  
Q. There the statement was written out?
- 30 A. Yes, sir.  
Q. Was it read—did Giordano read it?  
A. He read it.  
Q. Did you see him sign it?  
A. Yes, sir.  
Q. Did you sign it as a witness?  
A. Yes, sir.

Q. During the time that he was making the verbal statement and before he signed the written statement, did you or any of the others present make any threat of violence towards him, that caused him to do it?

A. No, sir.

Q. Was there any promise, direct or indirect, made to him in any way? 10

A. No, sir.

Q. The statement was made purely voluntarily?

A. Yes, sir.

Cross-examination.

By Mr. Acton:

Q. Did you have any warrant or any other process for the arrest of this man? 20

A. I did.

Q. What was it?

A. A warrant.

Q. By whom was it issued?

A. I think it was issued by Elizabeth Smith.

Q. Does her jurisdiction extend into South Philadelphia?

A. Probably not.

Q. You had custody of this man for a long time before the statement was made? 30

A. Probably an hour before his first statement was made—his oral statement.

Q. Was any threat made to kick him?

A. There was not.

Q. Could there have been a threat made of that kind that you might not have heard?

A. No, sir.

Q. You were with him all the time?

A. Yes, sir.

Q. Didn't one of the Philadelphia officers threaten to kick him in the mouth?

A. No, sir.

Q. How many times was this statement corrected?

10 A. It was not corrected at all.

Q. Weren't there any erasures made on it at all—corrections?

A. I think not.

Q. Was the stenographer sworn that took this down?

A. He was not.

Q. No threats or promises were made?

A. None whatever.

20 Mr. Grier: I again offer the paper in evidence.

The Court: Does the defendant wish to give any evidence against the admissibility of this statement? If so, they have a right to do so, as I construe the law, at this time.

Mr. Acton: Let the defendant be sworn.

PETER GIORDANO, SWORN.

Direct examination.

By Mr. Acton:

Q. Mr. Giordano, what happened when you made this statement that has been referred to here? 10

A. They locked me up about six o'clock that morning; took me to the 7th and Carpenter police station; they asked me where I was.

Q. Who asked you?

A. Two or three of them in there; Kidd; this fellow that was just on the stand; Detectives Brown and Callahan, and a couple of uniform policemen. I told them where I was; they asked me, "How did you get home?" I told them, and they told me they didn't believe me. They said, "If you don't say the truth, I will kick you in the mouth" — 20

By the Court:

Q. Who said that?

A. Detective Brown. Then he traced it up; he traced how I got home; called the uniform cop on that beat. He said, "Isn't that right?" He said, "It is." 30

By Mr. Acton:

Q. He threatened to kick you?

A. He didn't believe me how I got home. I told him. He didn't believe me.

Q. You were under fear of physical violence ——

Mr. Grier: That is objected to as a conclusion.

The Court: That is leading.

By Mr. Acton:

10

Q. Did you sign some statement there?

A. I signed it at 15th and Snyder headquarters, detective headquarters.

Q. Were you under any fear of violence at the time you signed this statement?

Mr. Grier: That is objected to.

The Witness: I was.

20

The Court: You may ask him whether or not he was.

By Mr. Acton:

Q. Were you under any fear of violence at the time you signed the statement?

A. I was.

30 Cross-examination.

By Mr. Grier:

Q. When you were down at the police station at 7th and Carpenter Street, your wife was there?

A. After a little while she came there.

Q. Didn't she advise you to tell the truth about this matter?

A. Yes, sir.

Mr. Acton: Objected to as not cross-examination.

The Court: This is cross-examination on whether or not the admission was made voluntarily. 10

By Mr. Grier:

Q. While she was present some of the detectives sent out and got breakfast for you and your wife?

A. No, not there—at the other place. They asked me if I had anything to eat. They sent out and got a cup of coffee and a couple of sandwiches.

Q. You say that the only threat of any kind that was made there was made by Detective Brown, who told you if you didn't tell the truth he would kick you? 20

A. Yes, sir.

Q. Was that sufficient to put you in fear?

A. They were all around me; I thought they were going to hit me.

Q. You made the verbal statement at the 7th and Carpenter police station?

A. That was where they asked me where I was. I told him how I got home. 30

Q. You were later taken up to detective headquarters on 14th Street?

A. Yes, sir.

Q. Were you still under fear at that time?

A. Yes, sir.

Q. Nobody made any threats up there?

A. No, sir; they wanted me to say the same thing that I said at 7th and Carpenter.

Q. Is that your signature on this paper?

A. That is my name.

Q. Didn't you sign that?

A. I don't know whether that is my signature or not.

10 Q. You signed your name there, didn't you?

A. I ain't sure that that is the paper or not.

Q. Can you tell me whether or not that is your signature?

A. That is something like it.

Q. Isn't it your signature? Didn't you sign this page also? Isn't that your signature there?

A. It looks something like it.

Q. Isn't that your signature?

A. I ain't sure; I don't know that that is mine.

20 Q. You signed several papers up there?

A. I did.

By the Court:

Q. When you say that Detective Brown said that he would kick you in the mouth unless you told the truth, who was present on that occasion?

A. Bob Kidd set in back of me.

30 Q. Do you know Bob Kidd—you knew who he was?

A. Not until this case.

Q. Who else was there? Was this man there? (Indicating.)

A. Yes, sir; he asked me if I wanted to make a confession.

Q. Anyone else?

A. Uniform policemen, two of them; another man laying down on the cot.

Q. Do you know their names?

A. No, sir.

Q. When this alleged threat was made to kick you in the mouth, Detective Kidd and Mr. Dube and the uniform policemen and some other man laying down, were all present?

10

A. Yes, sir.

The Court: Is there any other evidence, Mr. Acton?

Mr. Acton: No, sir.

The Court: Is there any rebuttal?

Mr. Grier: I hardly think it is necessary to offer 20 any additional rebuttal.

The Court: The inquiry as to the admissibility of a confession is not how the man is apprehended, or the legality of the process under which he is restrained of his liberty. The whole question is whether or not his statement is voluntary. The Court in this particular case will hold that the admission made by Peter Giordano in the presence of Detective Dube, Detective Kidd and some other 30 officers was a voluntary one, and it will be admitted. The jury may be brought back.

(At this point in the proceedings the jury returns to the court room.)

The Court: The Court has ruled that any statement made by the defendant at the police station—at the 7th and Carpenter police station—was a voluntary one, and may be admitted. The witness who was on the stand last will now resume the stand for further examination.

10 Mr. Acton: Will you note me an exception as to the admissibility of the confession?

The Court: An exception may be noted.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE (Seal),  
*Judge.*)

20

The Court: The jury will leave the court room in the custody and in the charge of the three officers who are specially chosen for that purpose, and they will be taken to some convenient place selected by the sheriff, where they may receive luncheon, and while they are passing from the court room, they will under no circumstances talk or communicate with or permit anyone to talk or communicate with them. Furthermore, they will not, during the recess,  
30 discuss this case among themselves. You are not to take up the discussion of the case until the testimony is in and the Court has charged you and sent you out to render your verdict.

(Recess was here taken until 1:30 o'clock, P. M.)

AFTER RECESS AT 1:30 O'CLOCK, P. M.

(At this point in the proceedings, the testimony taken out of the presence and hearing of the jury, in regard to the admissibility or non-admissibility of the alleged confession, is read to the jury by the stenographer.) 10

---

ROBERT W. KIDD, recalled.

Direct examination.

By Mr. Grier:

Q. You are the county detective of this county? 20

A. I am.

Q. The paper that you are now looking at, that has been marked Exhibit D, is that the paper that you obtained in Philadelphia that morning?

A. It is.

Q. Will you read that statement?

(Exhibit D read to the Court and jury by the witness as follows):

“1st Det. Div. District                      October 29th, 1930.

STATEMENT OF ONE PETER GIORDANO, age 20, address 756 South 9th St. (?), at the 1st Det. Div. Hdqts., 10-29-30; 9.00 A. M. (Prado).

I, Peter Giordano, make the following statement of my own free will, without any threat or promise,

after being warned that anything I say will be used against me at the time of my trial in court.

Q. What is your name?

A. Peter Giordano.

Q. How old are you?

A. 20.

Q. Where do you live?

10 A. 756 South 9th St.—I'm not sure, the only thing I can remember is by the flower shop.

Q. Go along in your own way and tell us the story about the shooting.

A. Well, Charlie seen I was picking apples. I was loading them he was driving the tractor. When I say 'he' I mean Charlie Fithian.

Q. When was this?

A. I can't tell you the exact date.

Q. Where was it?

20 A. Linden's Orchards, this side of Shilo, N. J.—  
Well, Charlie and I were working together there, then we got laid off. Then I met Charlie downtown in Bridgeton, but he didn't say anything then. He just told me to go around and see him sometime as a friend. So on Friday, the 17th day of October, he came around to see me and he told me he knew everything about the robbery of the paymaster of the Salem Glass House. He said he carried money and he knew everything about it. That was Friday  
30 morning, between a quarter after six and half past six. Then he went his own way.— On Friday, October 24, he and another fellow, who, he said, had just come around from New York, they stayed all night at my house. He told me to call this fellow 'Dick.' So in the morning Charlie brought a machine and we went to Salem. We waited on the

street there. We had guns when we first got on the car. Well, for that matter I always had a gun, for the house. Anyway, Charlie brought a gun. So we got in the machine and went to Salem, and in the car we switched guns. So they gave me the gun; Charlie gave me the one he had brought, and they took mine. I told him I didn't think I would have the guts to do it, and that he would have to do everything, that is, Charlie would. But Charlie said it was all right and to follow him and to do everything he did. So then I saw Dick grab the paymaster's hand and when he did this I pressed the gun against his side (here showing Detective Dubin how it was done). THE GUN ACCIDENTALLY WENT OFF. I don't know how it happened. I DIDN'T MEAN TO SHOOT HIM. I NEVER MEANT TO PULL THE TRIGGER. After I had put the gun to him and it had gone off accidentally then I jumped right on the car. The gun was a revolver. I think it was a Colt. It was a real small revolver. After we done this then I went home. I got some money, about \$110.00. I don't know how much was taken off the paymaster.

Peter Giordano

Charles E. Brown Det. Div. #1

Det. W. L. Dube #288

Robert Callahan

30

2

Peter Giordano.

10-29-30: 9AM—Prado.

1st Det. Div. Hdqts. District

I don't know how much was taken off the pay-

master. 'Dick' or 'Greeney' took the money, and threw it in the car. I didn't touch it. So he took some money out of the envelopes and I took some too. And 'Dick' got off and I don't know just how much he took. The money was all in the pay envelopes. There were three trays with pay-envelopes in them. The paymaster had the trays under his  
10 arm when I put the gun to his side.

Q. Where was the paymaster then?

A. He was on the sidewalk. He was walking from the main office of the glass house over to the time-office. I don't remember where I threw the gun away, as I threw it away. I think you will find a rubber band on the gun holding the trigger up. I couldn't tell you where I threw it away but if you took me around there I might be able to point out the spot to you.

20 Q. How much money was in the envelopes?

A. I never found out.

Q. Who got the balance of the money?

A. Well, I gave up every cent I had and we divided it up. We took the money and put it down and divided it, in my house. We then threw the envelopes away, somewhere along the road with the guns. I got out of Charlie's car in Bridgeton at the glass house, and 'Dick' got out a short distance before I did, and 'Charlie' went on with the car, and  
30 later we all met at my house, and that's where we divided the money. I haven't seen 'Charlie' or 'Dick' since.

Q. Is that all, and is everything you say absolutely the truth?

A. Yes, sir.

Q. Did the paymaster fall when you shot?

A. I didn't mean to shoot, it went off accidentally, but he fell, and I was in the car before he hit the ground.

(SIGNED) Peter Giordano  
756 So 9th

Charles E. Brown Det. Div. #1

Robert Callahan Det Div #1

witnesses.

10

Det. W. L. Dube #288

R. W. Kidd, County Detective.”

By Mr. Grier:

Q. What witnesses, if any, signed their names to that?

A. Charles E. Brown, Robert Callahan, W. L. Dube and Robert W. Kidd.

Q. Mr. Kidd, one day last week, did you accompany the sheriff and the defendant and his counsel and one or more other officers out into Mannington, Quaker Neck? 20

A. Yes, sir.

Q. Where did you take the prisoner on that occasion?

A. Took him out to endeavor to show us where he had thrown the gun away.

Q. On that occasion did he tell you anything about how the guns were thrown away? 30

A. He said the gun that he had used was thrown away in two parts, a short distance beyond where they threw the envelopes out.

Q. Did he say what envelopes they were that were thrown out?

A. Pay envelopes.

Q. How far out of Salem did you take him last week?

A. Quite a distance, all the way, very near Shiloh.

Q. Did he go out and endeavor to find the location of the gun?

A. He did.

Q. He told you on that occasion he had thrown  
10 it out on the road somewhere?

A. Yes, sir.

Q. You were unable to find the gun?

A. Yes, sir.

Cross-examination.

By Mr. Acton:

Q. Do you know whether this defendant was fa-  
20 miliar with the glass works in Salem?

A. Indeed I do not.

Q. You don't know whether he has any familiarity with Salem or not?

A. Mostly by his own story.

Q. How would he know that the paymaster was on the way from the main office to the time-office?

A. I couldn't say.

Q. Did you suggest those words to him in the confession?

30 A. No, sir.

Q. Did you hear anybody else suggest those words to him?

A. No, sir.

Q. The guns were thrown away, weren't they, as they left the scene of the crime?

A. Giordano says so.

Q. In the confession it states that the guns were not thrown away until after they had been to Bridgeton, does it not?

A. I don't recall that. (Referring to paper.) He makes mention of that after he spoke of dividing the money.

Q. Which do you believe to be true, that the guns were thrown away immediately after the tragedy or 10 after they had been on a visit to Bridgeton?

Mr. Grier: That is objected to.

The Court: Objection sustained.

By Mr. Acton:

Q. Who dictated this statement?

A. The defendant. 20

Q. Are those his own words?

A. Yes, sir; some questions were asked him, but the rest of it were his own words.

Q. In conversations with the defendant, have you discussed with him the matter of the gun he had on that occasion?

A. Have I discussed with him?

Q. Yes.

A. He told me with regard to the gun that it was a gun that had a rubber band, holding the trigger 30 back, or the hammer back. I don't know which he said.

Q. Did he tell you the make of the gun?

A. He said in his statement he thought it was a Colt.

Q. Did he tell you the caliber of the gun?

A. Since he has been in jail one day he told me he thought it was a .32 that he had.

Q. Did he tell you that his gun was the one that Green had?

A. He said that his gun, the gun that was his property, was the one that Green had on this particular day.

10 Q. Did he admit to you the caliber of that gun?

A. I didn't ask him, and I don't think he told me.

Q. You say no threats were made at all to secure this statement?

A. None whatever.

By Mr. Grier:

20 Q. Did he tell you which gun he used when he did the shooting?

A. The gun that was handed to him.

Q. By whom?

A. By Fithian.

Q. When you and the other officers took him out last week, did he tell you the route that they had taken that morning?

A. Yes, sir.

Q. What route was it?

30 A. Out through Quaker Neck to Guineatown, through Alloway, on down to Cohansey, from there to Bridgeton.

Q. During the various conversations you had with him since his arrest, he has never denied the shooting of McCausland, has he?

A. Never.

By Mr. Acton:

Q. How long since he admitted to you he shot Mr. McCausland?

A. In his statement in Philadelphia.

Q. Has he ever admitted it to you since that time?

A. I have never asked him since that time.

10

By Mr. Grier:

Q. Did he ever tell you what the reason for them going down there was that morning, when the shooting occurred?

A. In his statement he said they were going after the payroll.

Q. At any time subsequent to that, has he told you the same thing?

A. I don't think I have asked him since that time. 20

---

ARNOLD HEWITT, SWORN.

Direct examination.

By Mr. Grier:

Q. Mr. Hewitt, where do you live? 30

A. Outside of Salem.

Q. On what road?

A. On Quaker Neck Road.

Q. Do you board out there with someone?

A. Yes, sir.

Q. With whom?

- A. George Magsan.
- Q. How far out of the city limits is that house?
- A. About a block or a block and a half.
- Q. Is there a curve in the road just before it reaches the house, where you board?
- A. Almost in front of the house.
- Q. Do you remember the morning of October 24th?
- 10 A. Yes, sir.
- Q. Where were you employed at that time?
- A. H. J. Heinz Company.
- Q. Here in the City of Salem?
- A. Yes, sir.
- Q. Do you remember what day of the week it was?
- A. Friday.
- Q. Did you leave your place out there in Quaker Neck for your place of employment that morning?
- A. I did.
- 20 Q. What time did you leave the house?
- A. About a quarter or 20 minutes after six, maybe 25.
- Q. When you got to the house, did you see anything approaching?
- A. No, as I came out of the yard, a car came down.
- Q. Was there anything about the driving of the car that attracted your attention particularly?
- A. A car I seen around considerably shot down.
- 30 It was riding at a pretty good rate of speed.
- Q. Do you operate a car yourself?
- A. Yes, sir.
- Q. Was it going at an excessive rate of speed?
- A. Well, he was making, I should say, close to 50, anyway.
- Q. Had he slowed down for the bend at that time?

A. He slowed a trifle for the bend.

Q. Can you give us a description of that car?

A. It was a blue sedan coach. I should say either 1926 or 1927 Buick coach.

Q. Did you see the license plates on it?

A. No, sir; if I remember right, I think it was an "X," I took it to be. I didn't pay no attention to the license.

10

Q. How many people in the car?

A. Three people was there.

Q. Where were they seated?

A. One in front and two in the back.

Q. Did you observe what the two men in the back seat were doing, when they went by you?

A. They looked as if they had something in between them, working on it.

Q. On the back seat?

A. Yes, sir.

20

Q. After the car got by you, did you observe it, did you turn around and observe it?

A. No, sir.

Q. Did you look to see where it went?

A. I seen it went down.

Q. Did you see either of the men looking out the back window?

A. I think I looked around and seen one man look back.

Q. Can you identify that man?

30

A. I didn't pay enough attention; I don't think I could.

Q. Did you ever see this defendant here?

A. I don't think so.

Q. You didn't know any of the men in this car?

A. No, sir.

Q. Apparently the two men on the back seat were doing something in between them?

A. Yes, sir.

Q. After the car got past this bend, did it increase speed any?

A. He didn't stop any; I couldn't say how much faster he went.

10 Q. Was the engine roaring, making a noise?

A. Yes, sir.

Q. You can not identify this man as being one of the three men in the car?

A. No, I couldn't identify him as that fellow.

(No cross-examination.)

---

20 GEORGE ABBOTT, SWORN.

Direct examination.

By Mr. Grier:

Q. You are under-sheriff of the County of Salem?

A. Yes, sir.

Q. After this occurrence on the 24th of October did you make any examination or investigation out  
30 the Quaker Neck Road?

A. Yes, sir.

Q. Did you find anything out there?

A. Yes, sir.

Q. What did you find?

A. I found about a dozen or 15 envelopes.

Q. What kind of envelopes?

A. Manila envelopes, with the Craven name on it, and on each envelope was the amount of money written, and apparently the name of some employe.

Q. Where were these found?

A. We found them along the hedge on Charles Driscoll's farm, just this side of Penton.

Q. His farm is located on the road from Salem to Alloway?

10

A. Yes, sir, Salem to Penton.

(No cross-examination.)

Mr. Grier: The State rests.

---

Mr. Acton: I again move the exclusion of the alleged confession of the prisoner, on the authority of the case of State against Guild, 10 New Jersey Law, 163. 20

The Court: The motion is denied.

Mr. Acton: We ask for an exception.

The Court: Yes, sir; an exception for the defendant.

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE, (Seal)  
*Judge.*)

EVIDENCE ON BEHALF OF THE  
DEFENDANT.

PETER GIORDANO, SWORN.

10 Direct examination.

By Mr. Acton:

Q. How old are you?

A. 20 years of age on the 4th day of this month.

Q. You were 20 on the 4th day of this month?

A. Yes, sir.

Q. Were you born in this country?

A. Yes, sir.

20 Q. Where were you born?

A. Philadelphia.

Q. Are you married?

A. Yes, sir.

Q. What is your wife's name?

A. Loretta.

Q. Have you any children?

A. Yes, sir; one.

Q. How old is it?

30 A. It will be a year old on the 20th day of January.

Q. When were you married?

A. Married December 26th, 1928.

Q. Where were you working last summer?

A. I worked with the truck for a while; I baked a while; I worked on the farm a while.

Q. What were you making?

A. While I was working at the farm I was making \$3 a day, that is when I worked. When I worked at the bakery I was making \$12 a week.

Q. Did you have a gun last October?

A. Yes, sir.

Q. What kind of a gun was it?

A. .38 revolver.

10

Q. How did you come to get into this trouble?

A. They came up there and asked me if I wanted to come into it. They knowed I needed money badly. I was working for \$12 a week, and I needed some.

Q. They came for you—who do you mean by “they?”

A. Fithian came up first; he came up there, he came and asked me—he came up there the week before that; I told him I wouldn’t go that week; I told him I didn’t want to do it; he came up the following week, and he brought the other man, brought this other fellow Green. That is when we talked it over; we went.

20

Q. Tell the jury just exactly what happened.

A. When we started to go, Fithian had a gun; I had my gun, a .38, which was left there by a woman. As we went in the car, Fithian told me, “We don’t want no shooting;” he said, “You use this gun here,” let the other fellow use mine. He took my gun and I took his gun. We went on to where it happened. This other fellow sit in the front; I was sitting in the back—a two-door car. The man in the front, he got off first; Green got off first. He jumped on to the car, jumped on the running board and got

30

his sweater caught in the door. He was fooling around with that for about a minute. He got it unloose finally. He went over; he started wrestling with this man. I jumped off the car; I went there to give him a hand. He looked at me; he looked at me. I started to go around to the back of the car. I told him, "Leave everything go, I don't want to  
10 get into it." Then I heard a shot. Just as I started to turn I heard a shot. Then we went and got in the car. This other fellow started for the car. He went back and got a few envelopes, threw them in the car. We went on home. I didn't know it until they locked me up, until I came in jail. The other fellow swore the gun he gave me wouldn't shoot, and he swore it was a .32 calibre —

20 Mr. Grier: I object to what somebody told him.

By Mr. Acton:

Q. What kind of a gun was it that Fithian gave you?

A. .32 caliber.

By the Court:

30 Q. You said you heard a shot?

A. Yes, sir.

Q. From where?

A. Right around there somewhere.

Q. Where do you mean, somewhere?

A. It was close; I don't know where it came from; I heard a shot. At first I thought mine.

Q. In front of you?

A. I couldn't say.

Q. Alongside of you?

A. I couldn't say where I heard it from.

Q. Did you see the shot?

A. No, sir.

Q. Did you see the explosion?

A. I didn't see nothing. I thought it was mine 10  
on account of having the rubber band holding the  
trigger. He told me it was a .32 revolver.

Q. Where were your associates at the time you  
heard the shot?

A. This other fellow was in back of the paymaster.

Q. Where were they standing, as far as you were  
concerned?

A. They were right up close to him; he was wrest-  
ling with him. I was in front of them. I was in  
front of the paymaster. 20

Q. Back of you were who?

A. Nobody in back of me. Fithian was in the  
car.

Q. Where was Green?

A. In the back of the paymaster. He was wrest-  
ling with him. Just as soon as he got off the car  
he started wrestling with him.

By Mr. Acton:

Q. You say at first you thought it was the gun 30  
you had?

A. Yes, sir, on account of the rubber band holding  
it.

Q. Now, in regard to this statement, did anybody  
threaten you when you made that statement?

A. I asked him, when they brought me up to 15th and Snyder, I asked what they wanted me to do. They told me, "I want you to tell this other man the same thing you told us at 7th and Carpenter."

Q. Did any of the other officers curse you or threaten you?

10 A. When they locked me up, brought me to 7th and Carpenter, they asked me where I was. I told them around in the house. They asked me how I got home. I told them which trolley cars I took. He said, "There were no cars running that way." He said, "Tell me the truth, or I will kick you in the mouth." He finally called up the cop. The cop said, "Yes." He told me to say it over again. I told them how I got home. The other cop said it was all right, that is the way the cars run.

Q. Have you ever been to school?

20 A. Yes, sir.

Q. How old were you when you stopped school?

A. 13 years of age. I had to stop.

Q. Did your mother die when you were 13?

A. My mother died when I was 13, yes, sir.

Q. You have not been to school since?

A. No, sir.

By the Court:

30 Q. You saw this man fall to the ground?

A. Just as I started to get on the car he was on the ground.

Q. You saw him on the ground, falling?

A. Falling as I approached in the car.

Q. What did you think caused him to do that?

A. I heard a shot; I didn't know where it came from.

Q. Did he fall during the time you heard the shot?

A. Just as I started to turn I heard that shot. I stepped on the car. Then I seen him.

Q. You saw the man lying there?

A. After the other people got on the car.

Q. You knew what was the matter with him? 10

A. I knew that there was a shot, something was wrong.

Q. You didn't know who fired the shot?

A. I didn't know at the time; I thought it was mine at that time.

Q. You didn't know?

A. No, sir, I wasn't sure.

Q. You thought you had shot the man, but you didn't know you had?

A. Yes, sir; when I came to find out, it wasn't me 20 that done it.

Q. Why do you say that?

A. There is this Fithian. He said he didn't know how that gun could go off.

Mr. Grier: I object to this testimony as being hearsay.

The Witness: I told them when I made the statement that the gun I had, I wasn't sure whether it 30 was a .38 or a .32. I told them it was a small one.

By the Court:

Q. Is this true, or rather, did you make this state-

ment: "I saw Dick grab the paymaster's hand, and when he did, then I pressed the gun against his side." Is that true?

A. I showed the fellow how it went off.

Q. You had the gun pressed against his side?

A. No, I put it near his side. That is when I changed my mind.

10 Q. "The gun accidentally went off;" is that true?

A. I thought it did; I heard the shot.

Q. Don't you know whether it went off or not?

A. I know I didn't pull the trigger.

Q. Don't you know whether or not there was an explosion?

A. I know there was an explosion, but it didn't feel like it came from my hands. It didn't move or anything. I didn't see no smoke from my way.

Q. This was a loaded revolver?

20 A. Yes, sir.

Q. Did you examine it afterwards?

A. No, sir, because every bullet was marked, because the other fellow tried to shoot it.

By Mr. Acton:

Q. You are sure that this gun that you had wouldn't go off?

30 A. That is what the owner told me.

Mr. Grier: I object to that and move to strike it out.

The Court: Motion allowed.

By Mr. Acton:

Q. Have you ever been in any trouble before?

A. Never.

Q. You say when you got into this affair and you heard this shot, you had a change of heart and ran back to the car?

A. Just about a second before I heard the shot 10  
is when I changed my mind. I said, "Leave him go,  
let's go out of here." Just as I made the half-turn  
I heard the shot.

Cross-examination.

By Mr. Grier:

Q. When did anybody first mention to you about  
the paymaster and the day of the week that they 20  
paid off at the Glass Works?

A. It was the week before it happened.

Q. Who mentioned that?

A. Charles Fithian.

Q. Where did that conversation take place?

A. Bridgeton, New Jersey.

Q. Did he tell you how much money the paymaster  
ordinarily carried?

A. He said two or three thousand dollars.

Q. Do you remember what day of the week you 30  
had that conversation with him?

A. I think it was on Thursday.

Q. Did he stay at your house that night?

A. No, sir.

Q. At that time didn't the two of you discuss

about the coming over and holding up the paymaster and getting this money?

A. No, sir, not at that time; we were talking about it; I told him I didn't want to do it.

Q. You discussed it more than a week before you actually did it?

A. Yes, sir.

10 Q. As a matter of fact, didn't you, the Friday morning preceding the morning that Mr. McCausland was shot, didn't you and Fithian come from Bridgeton to Salem?

A. Yes, sir.

Q. You went down on 4th Street in the car?

A. I think it was; I don't know the street.

Q. You sat there and watched to see what time the paymaster came out?

A. Yes, sir.

20 Q. You sat there and saw where he went with this money on the preceding Friday?

A. I didn't see where he went; I just seen him walk down the street.

Q. Which side of the sidewalk did he walk on?

A. On the other side going ——

Q. Towards Griffith Street?

A. I don't know the street there; it was on the right-hand side.

Q. Was Green with you that morning?

30 A. No, sir.

Q. This was the Friday morning preceding the robbery?

A. Yes, sir; that is when I told him I didn't want to do it.

Q. You had planned on doing it that morning?

A. No, sir.

Q. Hadn't you and Fithian planned on doing it that particular morning?

A. Yes, sir.

Q. What was your purpose in coming over that morning?

A. He wanted me to come down to see how easy—to show me it would be easy. 10

Q. He wanted to show you how easy it would be to hold up this man?

A. Yes, sir.

Q. You came over to see how easy it would be?

A. I came over with him.

Q. After you saw that you went to Bridgeton?

A. Yes, sir.

Q. When did you first see Green?

A. That Friday morning.

Q. You had never seen him before that? 20

A. No, sir.

Q. What was your purpose, the purpose of Green, Fithian and yourself coming over to Salem the morning that this shooting occurred?

A. That is what we came over for that morning.

Q. For what?

A. To rob him.

Q. To rob the paymaster?

A. Yes, sir.

Q. That was your errand over? 30

A. Yes, sir.

Q. The morning when you came over, where did you first stop the car?

A. I don't know the street.

Q. You know the main street in Salem?

A. No, sir.

Q. You know the street you came in from from Bridgeton?

A. Off the highway.

Q. You know the main street that the trolley track is on?

A. Right off the highway.

10 Q. You know this street right outside the court house?

A. I don't know the street. This was the second time I have been in this town.

Q. When you got over here this morning where did you first stop the car?

A. The other side of where the office was supposed to be.

20 Q. Don't you know that the car stopped on another street, different from the street where the paymaster was supposed to come out?

A. Yes, sir.

Q. Did you remove the rear license tag from the car?

A. No, sir.

Q. Who did?

A. Green.

Q. You saw him do it?

A. I heard him talking about it. He got out of the car. I didn't see him take it off.

30 Q. Where were you riding in the car?

A. In the rear seat.

Q. After he took the tag off he put it under the rear seat?

A. No, sir.

Q. Where did he put it?

A. On the floor in the front.

Q. You saw him do it?

A. I saw him put it, put the tag in there.

Q. What was that done for?

A. To hide it.

Q. You knew you might be apprehended if anybody would take the license number?

A. Yes, sir.

10

Q. That is the reason you took the tag off?

A. Yes, sir.

Q. After Green had taken the tag off, what did you next do?

A. That is when Fithian saw the man. He said, "There he goes."

Q. You were on another street when this tag was taken off?

A. At the corner of the street, the street coming this way.

20

Q. After he got the tag off, then you drove down towards the office?

A. No, sir; that was right at the corner, at the office—only started running this way.

Q. After the tag was taken off and put on the front seat, you were sitting in the back seat?

A. Yes, sir.

Q. Green and Fithian in the front seat?

A. Yes, sir.

Q. How long did you stay there before the pay-master came out?

A. Not long; I couldn't say now.

Q. Do you know who saw him first?

A. Fithian saw him first. I didn't know the man. I don't think Greenie knew him.

Q. You are married and have a child?

A. Yes, sir.

Q. Did you make any inquiry as to whether or not the paymaster was married and had any children?

A. No, sir.

Q. You didn't care?

10 A. I didn't know.

Q. You didn't inquire whether you were going to deprive a wife of her husband and the children of their father or not?

A. I didn't know anything about it.

Q. Fithian was the first one who saw him come out?

A. Yes, sir.

Q. What happened then?

A. Greenie got off the car. We pulled up to him.

20 Q. You had to overtake him?

A. Yes, sir; Greenie stepped out first; he grabbed the man around the back; he was on the front seat, and I jumped out. As Greenie grabbed him he swung him a little bit on the side. He faced me; he gave me a funny look. I then told them, "Leave everything go. Let's get out of here." Then as I started for the car I heard the shot.

Q. You had changed your mind after you had gotten out and Green had grabbed the paymaster?

30 A. Yes, sir.

Q. Why did you change your mind?

A. I didn't want to go through.

Q. In spite of the fact you had come over the week before to make plans?

A. No, the week before I told him I didn't want to do it.

Q. Didn't you tell Fithian you wanted to get some easy money?

A. I told him I needed money.

Q. That was before your first trip to Salem?

A. Yes, sir.

Q. When you told him you wanted some easy money —

A. I didn't tell him I wanted to get easy money. I told him I needed money. I would like to get a job outdoors.

Q. After you told him that he told you about this paymaster and how easy it would be to rob him?

A. Yes, sir.

Q. He brought you here that preceding Friday morning to show you how easy it would be?

A. Yes, sir.

Q. The following Friday morning you came over to get that payroll with the two men? 20

A. Yes, sir.

Q. You want the jury to understand that after you did all that you wanted to back out?

A. Yes, sir.

Q. You were there with the gun in your hand?

A. Yes, sir.

Q. Why did you take a gun with you?

A. That was the one he gave me.

Q. You had your own gun?

A. I gave my gun to Greenie. 30

Q. Why did you bring any gun from Bridgeton?

A. They told me to.

Q. You thought you had to do it because they told you?

A. I did then. When I knew what I was doing, that is when I changed my mind.

Q. You realized you might shoot somebody if you brought that gun?

A. No, sir.

Q. What was the reason for the switching of the guns, you giving your gun to Green and you getting one from Fithian?

A. Fithian told me, "We don't want no shooting, 10 you take my gun, give your gun to Green."

Q. Why did he say he didn't want any shooting?

A. I don't know.

Q. He knew you had a gun?

A. Yes, sir.

Q. He knew he had one, also?

A. I don't know; there was only two guns.

Q. You gave yours to Green and Fithian gave you his?

A. Yes, sir.

20 Q. You had that gun when you got out of the car?

A. Yes, sir.

Q. As a matter of fact, you ran right up to this paymaster and stuck the gun up to his back and fired?

A. No, sir.

Q. Who did fire it?

A. I can't say for sure who fired; I don't know; I didn't fire it. I used a .32 that wouldn't shoot.

30 Q. That is an afterthought on your part since you got in jail?

A. I didn't make up no story.

Q. You know, of course, that Green is not under arrest?

A. Yes, sir.

Q. For that reason you want to put this on him?

A. No, sir.

Q. How long had you lived in Bridgeton prior to this time?

A. I don't know exactly; for some time, about ——

Q. Were you keeping house there?

A. Yes, sir.

Q. What time did you get back to Bridgeton that 10 morning with this money?

A. About half-past seven.

Q. Do you know what time it was you got to Salem that morning?

A. No, sir.

Q. You think it was some little time before the paymaster came out?

A. I didn't wait long.

Q. After you got back on the car and you started back towards Bridgeton, did you ride on the back 20 seat?

A. Yes, sir.

Q. And Green also did?

A. Yes, sir.

Q. Going out this road, what did the two of you do?

A. Taking money out of the envelopes.

Q. They were in between you and Green on the back seat?

A. Yes, sir.

30

Q. The two of you were busy opening the envelopes, taking out the money?

A. Yes, sir.

Q. After you got some miles out there, did you throw the envelopes out the window?

A. Yes, sir.

Q. How far did you go before either one of the guns were thrown away?

A. Not far after we threw the envelopes.

Q. Do you know the road you took from Salem to Bridgeton that morning?

A. I don't know it; that was the first time I ever  
10 was on that road.

Q. When you got to Bridgeton which one of you got out of the car first?

A. Green.

Q. Where did he get out?

A. This side of the glass house.

Q. Where did you get out?

A. At the other side.

Q. Before the two of you got out you had all agreed to meet at your house?

20 A. Yes, sir.

Q. Did you all three meet at your house?

A. Yes, sir.

Q. You divided up the money that had been stolen?

A. Yes, sir.

Q. Do you know how much money was stolen from the paymaster?

A. No, sir.

Q. How much did you get?

30 A. \$110.

Q. After you divided up this money, what did you next do?

A. Greenie and Fithian left right away.

Q. Have you seen Green since that?

A. No, sir.

- Q. What did you do next?  
A. I went to work that night.  
Q. Where?  
A. At the bakery.  
Q. You were working at that time in the bakery?  
A. Yes, sir.  
Q. You worked the Thursday night before you came over to hold up this man? 10  
A. Yes, sir.  
Q. How long did you continue to work at that bakery after the shooting?  
A. I intended to keep the job.  
Q. How long did you keep it?  
A. I worked that night.  
Q. Friday night?  
A. I wasn't working Saturday night.  
Q. Did you work Sunday night?  
A. No, sir. 20  
Q. How about Monday night?  
A. I left Monday night; I wasn't there.  
Q. You were not discharged from the bakery?  
A. No, sir.  
Q. Why did you leave?  
A. I left; we were in some trouble, I figured.  
Q. You figured?  
A. I knew I was in some trouble.  
Q. You moved out in the night?  
A. I called up the fellow to move me; I called up 30  
his wife. I told her if Tom comes home, her husband, if he would move me, I told her, if he will move me it was all right; if he didn't move me, to let me know.  
Q. Your purpose in moving was to get away from here?

- A. Yes, sir.
- Q. You knew that this man was dead then?
- A. No, sir.
- Q. Had you read about it in the newspapers?
- A. No, sir.
- Q. Nobody had told you about it?
- A. No, sir.
- 10 Q. You knew you had helped rob the man?
- A. Yes, sir.
- Q. You didn't read about it in the papers?
- A. I looked at the papers.
- Q. You didn't talk to anybody about it?
- A. No, sir.
- Q. Weren't you at all concerned whether or not that man was dead?
- A. I didn't want to think of it.
- Q. You knew he had been shot?
- 20 A. Yes, sir, I figured that.
- Q. You figured he had been shot?
- A. Yes, sir.
- Q. You had \$110 of the money that was taken off him?
- A. Yes, sir.
- Q. You didn't make any inquiry to find out whether he was dead?
- A. No, sir.
- Q. You didn't look at any papers —
- 30 A. No, sir.
- Q. Or talk to anybody?
- A. No, sir.
- Q. Did you get scared the following Monday night?
- A. I wanted to change my mind right away.

Q. About what?

A. On Friday, I started to change my mind, before it happened, on Friday morning.

Q. What caused you to leave Bridgeton the following Monday night?

A. I didn't want to stay there any more. They had something on me.

Q. You were leaving there your family was there; 10 you had a job and were working regularly?

A. I couldn't live on what I was making there.

Q. That is the reason you decided to hold up this paymaster?

A. One of the reasons.

Q. That was the reason you brought that revolver along, to be sure to get the money that the paymaster had?

A. Yes, sir.

Q. You thought you might have need for this re- 20  
volver in getting this pay roll?

A. Yes, sir, I didn't intend to do any shooting.

Q. You thought you might need to shoot it?

A. Yes, sir.

Q. You did use it?

A. I did not.

Q. Where did you tell him to move the goods to?

A. To my mother-in-law's house, 636 Fernon  
Street.

Q. Did you go back on the truck? 30

A. No, sir.

Q. How did you get up there?

A. Took a bus.

Q. Didn't your wife go along with you?

A. She went on the truck.

- Q. Why didn't you go on the truck?  
A. I wasn't there to help them to move.
- Q. You had already gone to Philadelphia?  
A. Yes, sir.
- Q. When was it you went to Philadelphia?  
A. Sunday afternoon sometime.
- Q. You were getting scared of getting arrested?  
10 A. No, I went down there to help this baker buy some grapes.
- Q. You went up there Sunday afternoon and you didn't come back to Bridgeton any more?  
A. Yes, sir.
- Q. You telephoned from Philadelphia to this man's wife to arrange about removing the goods?  
A. Yes, sir.
- Q. Why didn't you come back yourself and arrange for that?  
20 A. I didn't want to get in any more trouble.
- Q. You thought you had gotten into enough trouble by that time?  
A. Yes, sir.
- Q. When you were taken to 7th and Carpenter Street police station that morning around six o'clock, your wife came in there in a short time?  
A. Yes, sir.
- Q. Your wife told you to tell the truth?  
A. She said, "Do you know anything about it?"  
30 She said, "Tell them the truth."
- Q. Had you told her anything about this holdup and murder before that?  
A. No, sir.
- Q. Didn't she want to know why you were moving to Philadelphia all of a sudden?

A. Yes, sir.

Q. What reason did you give her?

A. I told her I was selling alcohol and I didn't want to be caught by the police. I said the cops were looking for me.

Q. You were not selling alcohol?

A. No, sir.

Q. You lied to your wife about the reason for 10  
your moving?

A. Yes, sir.

Q. Before you made this statement did you ask any of the officers to take you to your religious advisor?

A. I didn't get you.

Mr. Acton: I object to that.

Mr. Grier: The testimony that was taken in the 20  
absence of the jury as to the manner in which the confession was obtained has been read to the jury. This witness has testified that one of the detectives threatened to kick him in the face. I want to bring out from this witness as to what other things were done there. The jury have a right to consider what he says about the matter.

The Court: There is no pending objection that I know of. 30

By Mr. Grier:

Q. What religious faith are you?

A. Catholic.

Q. Did you ask the officers to send for a priest?

A. One came up to the City Hall.

Q. Before you made the confession, you asked the officers if they wouldn't send for a priest?

A. No, sir; that was up at the City Hall.

Q. When you made the statement at 7th and Carpenter Street police station and later up at detective  
10 headquarters, you read this over before you signed it, didn't you?

A. Right away.

Q. You at that time said everything in here was the truth?

A. I made them cross off a few words.

Q. When you finally signed it, the statement that you signed was absolutely true, was it not?

A. Not all of it. I was excited then. I thought I had done it. That is the reason I put it down that  
20 I did.

Q. You only thought that you had done it?

A. Yes, sir.

Q. Because you thought you had committed this murder, you were willing to sign your name to a statement, saying that you did?

A. I figured if I wouldn't do it, everybody talks about the third degree, they would kill you.

Q. You were afraid of getting hurt if you didn't say this?

30 A. Yes, sir.

Q. You were not afraid of hurting this paymaster?

A. We didn't go there with that intention.

Q. In spite of that, you had a gun along, and a while ago you said you took the gun because you thought you might need it?

A. Yes, sir; I didn't intend to use it.

Q. You intended to use it if it was necessary?

A. No, sir; I didn't intend to use it.

Q. Is there anything else in this statement that is not true, other than what you have said about you didn't know you had shot him?

A. I don't recall.

Q. It is true that you worked in the Linden Orchard, you and Fithian together? 10

A. (No answer.)

Q. He came around to your house and told you about the paymaster, how easy it would be to hold him up and get the money?

A. Yes, sir.

Q. That is also true about this fellow Dick?

A. Yes, sir.

Q. Fithian came to your house the morning of the murder? 20

A. Yes, sir.

Q. It is true that the three of you came over to get this payroll?

A. Yes, sir.

Q. It is true you brought your gun along?

A. Yes, sir.

Q. It is true you exchanged your guns, you gave yours to Green, and Fithian gave you his?

A. Yes, sir.

Q. You say in here, "Dick grabbed the paymaster, when he did this, I pressed the gun against his side," is that true? 30

A. Not too close together.

Q. How close to his side?

A. Not hard.

Q. You put it up against his clothing?

A. Yes, sir; just as I done that he looked at me. I told them, "Leave him go, let's go."

Q. You had the gun up against his clothing?

A. Yes, sir.

Q. That was the gun you had in your own hand?

A. Yes, sir; in his stomach. He was facing me, on  
10 his side.

Q. When you made this statement, didn't you indicate to Mr. Dube just how you touched him with this gun?

A. Yes, sir.

Q. Mr. Dube, will you walk over there? Will you point out to the Court and the jury,—illustrate on me or Mr. Dube, where you had the gun?

Mr. Acton: I object to that.

20

The Court: He may do so.

A. I put it over here to him. I told him he looked at me.

By Mr. Grier:

Q. Didn't you put it to Mr. Dube's back?

A. No, sir.

30 Q. You did have the gun up against his body?

A. Yes, sir.

Q. Now, then, in the statement you say the gun went off accidentally?

A. I thought it did.

Q. Don't you know whether your gun went off or not?

A. I couldn't say for sure.

Q. When you made this statement, you knew at that time the gun had gone off?

A. No, sir.

Q. Why did you say it went off accidentally?

A. I figured it went off on account of the rubber band. I knowed I had not pulled the trigger. I thought it went off.

10

Q. What was your purpose in sticking your gun up against McCausland?

A. Just to make him drop his money.

Q. If he didn't drop the money you were going to shoot?

A. No, sir.

Q. You did shoot?

A. I didn't shoot.

Q. Why did you say then in the statement, "I didn't mean to shoot him"?

20

A. I said if I did, I didn't mean it.

Q. There is nothing of that kind. You say the gun accidentally went off; I don't know how it went off; I didn't mean to shoot him. That is what you said in this statement. What did you mean in your statement, "I didn't mean to shoot him"?

A. I didn't know half of what I was doing.

Q. You didn't know what you were saying?

A. I didn't know half of what I was saying.

Q. The next sentence, "I never meant to pull the trigger."

30

A. In fact, I didn't.

Q. You knew what you were saying when you made that statement and signed it?

A. I ought to.

Q. You made that statement, didn't you?

A. Yes, sir.

Q. Next you say, "After I had put the gun to him and it had gone off accidentally, then I jumped right on the car," is that right?

A. No, sir.

Q. You were mistaken when you made that state-  
10 ment?

A. I didn't say after I put the gun to him it went off and I jumped in the car.

Q. Is it true that the gun was a revolver?

A. It was a revolver.

Q. Did you say, "I think it was a Colt"?

A. I think it was.

Q. You are familiar with the various makes of  
firearms?

A. No, sir.

Q. What made you think that that particular gun  
20 was a Colt?

A. Fithian told me.

Q. It is true that you got some money, about \$110?

A. Yes, sir.

Q. It is true you don't know how much was taken  
off the paymaster?

A. Yes, sir.

Q. Didn't you and Green dump all the money on  
the table and divide it after you got to your home?

30 A. I don't know if he put it all or not.

Q. You put all yours out?

A. Yes, sir.

Q. The very last part of your statement this ques-  
tion was asked you, "Did the paymaster fall when  
you shot?" Do you remember that question being  
asked you?

A. I don't recall it.

Q. Do you remember your answer to that question, "I didn't mean to shoot, it went off accidentally, but he fell and I was in the car before he hit the ground"? Do you remember making that answer?

A. I made the answer I was in the car before he hit the ground—

Q. Did you make all of that answer? 10

A. No, sir.

Q. You read this statement over before you signed it?

A. I read the statement I made one time.

Q. Can you now say whether or not that is your signature?

A. I can't say for sure whether it is or not.

Q. Is there any question in your mind but what you signed that paper—about that signature?

A. No, sir. 20

Q. That is your signature?

A. That is my name.

Q. That also is your signature there (indicating)?

A. That is my name.

Q. I asked you if that is your signature.

A. It looks like it. I can't say. That one there looks like mine.

Q. The one at the end of the statement looks like it?

A. That one does (indicating). 30

Q. You signed that?

A. I can't say for sure whether it is that one or not. I don't recall anything like this.

Q. Those witnesses' names were put on afterwards?

A. I don't recall anything like that. The writing came down about this far to the end of the paper.

Q. That does come down. Read that over and see if that is the same thing you read over before you signed it.

(At this point in the proceedings the witness reads  
10 over Exhibit D in full.)

By Mr. Grier:

Q. Have you finished reading that?

A. Yes, sir.

Q. After reading that over, is or is not that a statement that you made in Philadelphia?

A. When they told me to sign it, I read it; I told them not everything on here is right. He said,  
20 "Cross out what is not right." I remember crossing out a number of words. There don't look to be anything crossed out on this paper.

Q. Isn't that your signature, after reading it over?

A. I can't say for sure whether that is my signature or not.

Q. Isn't that one?

A. I can not say for sure.

Q. Why can't you say for sure? Write your  
30 name on there.

Mr. Acton: That is objected to.

The Court: Objection overruled.

(Witness complies with request.)

By Mr. Grier:

Q. Isn't that the same signature that is on these two pieces of paper?

A. The same name, but I don't know whether it is the same thing or not.

Q. At the request of your counsel, the sheriff took you out of the jail one day last week, didn't he? 10

A. Yes, sir.

Q. What was the purpose of your visit out in the country?

A. I thought I would take them there and try to find where the guns were.

Q. You told them where you threw the gun away?

A. Yes, sir.

Q. You told them about throwing the gun away in two parts?

A. Yes, sir. 20

Q. Why did you take the gun apart there, throw it away in two parts?

A. The rubber band being on there, I thought it would go off accidentally. I took it off and threw it away.

Q. You didn't want that gun to go off accidentally and shoot you?

A. Yes, sir.

Q. You were not particular whether it hit anybody else—this paymaster? 30

A. Yes, sir.

FRANK HYSON, SWORN.

Direct examination.

By Mr. Acton:

- 10 Q. Where do you live, Mr. Hyson?  
A. 31 5th Street.  
Q. How old are you?  
A. 18.  
Q. Did you give a gun to Fithian some time back?  
A. About three weeks before it happened.  
Q. About three weeks before this happened you gave a gun to Fithian?  
A. Yes, sir.  
Q. What kind of a gun was it, can you tell?  
20 A. It had a ring around it, like the policemen around here carry; only it was a .32.

Cross-examination.

By Mr. Grier:

- Q. What were you doing with the gun?  
A. My brother found it in the creek when he was swimming—my smallest brother.  
30 Q. How did you come to give it to Fithian?  
A. He was sitting on his step—came home from work after the day shift. He asked me if I had a gun. I told him yes, I said, “I got an old gun that won’t shoot.” Neither it would. It wouldn’t work no way at all, couldn’t move the trigger on it. He

said, "What do you want for it?" I said, "I will give it to you"——

The Court: This is all hearsay.

By Mr. Grier:

Q. This was about three weeks before the shooting?

A. Yes, sir.

Q. That gun couldn't be used?

A. No, sir, could not be shot.

---

LORETTA GIORDANO, SWORN.

Direct examination.

20

By Mr. Acton:

Q. You are Loretta Giordano?

A. Yes, sir.

Q. Is this your husband (referring to defendant)?

A. Yes, sir.

Q. How old are you?

A. 23.

Q. How long have you been married to Giordano? 30

A. It ain't quite two years; it will be two years this month.

Q. Do you have a little baby?

A. Yes, sir.

Q. How old is the baby?

A. 10 months old.

Q. When will it be 11?

A. On the 20th of this month.

Q. Did you live in Bridgeton with your husband last fall?

A. I lived this summer—I went to Bridgeton to live.

10 Q. Did he work selling bananas off a truck?

A. Yes, sir.

Q. Did he work in the bakery?

A. Yes, sir.

Q. Did he work out at the Linden Orchards?

A. Yes, sir.

Q. Have you always been together since you were married?

A. Yes, sir.

Q. Has he always supported you?

20 A. Yes, sir.

Q. Did he make \$12 a week at the bakery?

A. \$12 a week.

Q. You had trouble to get along on that?

A. Of course it was a little difficult; I couldn't get along with \$12, to buy furniture and pay rent; I couldn't get along with that, buy the baby milk and everything else. I had to go back to Philadelphia.

Q. Did your husband have a gun at home?

30 A. I don't know; I never saw any like that around the house. We never had one in Philadelphia, and I don't know if we had any here. I don't think we did because we never had anything like that around the house.

Q. Your husband doesn't tell you much of his business?

A. At times he does; at times he don't tell me anything. He ain't got nothing to tell me. What has he got to tell me about his business?

Q. Were you with him in Philadelphia when the police were there?

A. I was at my mother's house.

Q. Did you hear any of the police threaten him?

A. When we went to 7th and Carpenter, they 10 questioned me there. They told me if I wanted to see my husband——

The Court: That will be stricken out.

By Mr. Acton:

Q. Did they threaten your husband?

A. I don't know what you mean by that.

Q. Did they curse at him or swear at him? 20

A. Yes, sir, they did.

Q. You heard them?

A. Yes, sir, that is why I told him to say that, because he was so afraid of getting beat up. I said, "Go ahead and tell them." I don't think he done anything like that, because it ain't in him to do a thing like that.

Mr. Grier: I move to strike that out.

30

The Court: Motion allowed.

Cross-examination.

By Mr. Grier:

Q. Your husband went to Philadelphia on Sunday, didn't he?

A. I don't recall any day; I don't remember any-  
10 thing—

Q. Do you remember what day of the week it was that you were moved by Mr. Raymond from your home in Bridgeton to Philadelphia?

A. I don't remember.

Q. How did you come to move from Bridgeton to Philadelphia?

A. Raymond moved me out.

Q. How did you come to move—somebody told you?

20 A. Nobody told me. I couldn't make a living out here. I had to go back.

Q. Didn't your husband telephone you from Philadelphia and tell you to get Mr. Raymond to move you up there?

A. No, I was at Philadelphia; I went there a week before. My mother told me ain't you coming back no more—

Q. Hold on what your mother told you. Didn't you ride from Bridgeton to Philadelphia on the  
30 truck that took your goods?

A. Yes, sir.

Q. Where was your husband at that time?

A. I don't know.

Q. He didn't go on the truck with you?

A. No, sir.

Q. Did he tell you why he was moving from Bridgeton to Philadelphia?

A. No, sir.

Q. Didn't give you any excuse or reason?

A. No, sir; I wanted to move.

Q. How long had he been away from his home in Bridgeton before you moved up to Philadelphia?

A. He wasn't missing at all from his home, from 10 Bridgeton.

Q. You heard him testify a few minutes ago?

A. I wasn't in here.

Q. Weren't you in the court room when your husband was on the stand?

A. I was looking after my baby.

Q. Weren't you paying any attention to what he said?

A. I wasn't in here.

Q. Your husband made the statement that he left 20 Bridgeton on a Sunday and didn't come back to Bridgeton any more, you came up with the goods on Monday. Were you mistaken?

The Court: That is not proper, Mr. Grier.

By Mr. Grier:

Q. You said you never saw a revolver around your house?

30

A. No, sir.

ALBERTA M. POWELL, SWORN.

Direct examination.

By Mr. Acton:

- 10 Q. Mrs. Powell, where do you live?  
A. At Bridgeton, New Jersey.  
Q. What is your business?  
A. Investigator, Bureau of Women and Children,  
Department of Labor.  
Q. Of the State of New Jersey?  
A. Yes, sir.  
Q. How long have you known the Giordano boy?  
A. About seven years.  
Q. Have you been in a position to know whether  
20 he has been in any trouble or not in that time?  
A. Yes, sir.  
Q. Has he been in any trouble in that time to your  
knowledge?  
A. To the best of my knowledge, no, sir.  
Q. Do you know his wife that was here on the  
stand?  
A. No, I never met her until today.  
Q. So far as you know, up until the present time,  
his character has been good?  
30 A. As far as I know.

Mr. Grier: Objected to as not the proper way to prove character.

The Court: If she is offered as a reputation witness, that is not the method of proving it.

By Mr. Acton:

Q. Do you know when he stopped going to school?

A. Yes, sir.

Q. How long ago was that?

A. He was probably between 12 and 13.

Q. At the time that his mother died, he stopped going to school? 10

A. I was doing social welfare work. I found his family. The mother was dying, practically dying——

Mr. Grier: I object to that.

The Court: I fail to see any relevancy in this testimony.

Mr. Acton: I think it has a decided bearing on the question to form a capacity to form a criminal intent. 20

The Court: No.

(No cross-examination.)

---

ROCCO GIORDANO, SWORN.

30

Direct examination.

By Mr. Acton:

Q. You are a brother of Peter?

A. Yes, sir.

Q. Have you ever known him to be in any trouble before?

A. No, sir.

Mr. Grier: I object to that.

The Court: Strike it out.

10

(No cross-examination.)

---

Mr. Acton: I would like to move that the alleged confession be stricken from the record.

20      The Court: The motion is denied. You may have an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE, (SEAL)  
*Judge.*)

DEFENDANT RESTS.

30

STATE'S REBUTTAL EVIDENCE.

Mr. Grier: I would like to offer in evidence this signature that the accused made a few moments ago, marked Commonwealth's Exhibit "E."

Mr. Acton: I have no objection to that.

10

---

WILFRED DUBE, recalled.

By Mr. Grier:

Q. The defendant has testified that when he indicated how he pressed the gun against McCausland, that he indicated on you, is that correct? 20

A. Yes, sir.

Q. He has indicated that he pointed the gun to his stomach, is that correct?

A. No, sir.

Q. Where did he point the gun when he was indicating on you?

A. When he indicated on me he pointed the gun somewhere in this section (indicating the small of the back). 30

Q. Were there any other persons present at that time when he made that indication?

A. Detectives Callahan and Brown, and Detective Kidd.

Cross-examination.

By Mr. Acton :

Q. You are quite sure about it, Mr. Dube?

A. Yes, sir.

10

---

CHARLES EDWARD BROWN, SWORN.

Direct examination.

By Mr. Grier :

20 Q. You are connected with the Detective Bureau  
in the City of Philadelphia?

A. Yes, sir.

Q. You were at the 7th and Carpenter Street sta-  
tion on the morning of the 28th of October?

A. Yes, sir.

Q. You saw this defendant there?

A. Yes, sir.

Q. He has testified that on that occasion before he  
made any statement that you threatened to kick him  
in the face if he did not.

30 A. At no time was a hand laid on him or any  
threats made.

Q. He has also testified when he indicated the  
manner in which he pointed the revolver at Mr. Mc-  
Causland, that he pointed it at his stomach, is that  
correct?

A. It was somewhere in the direction of the back or the side; I wouldn't say for sure; I didn't pay particular attention to it.

Q. You know it was not in the front part of the body?

A. No, sir, because Dube was sitting to the left when he made the confession; I was sitting to the right; Callahan was standing in the center; Lieutenant Clarke was sitting right at the desk. Dube stood up. He was pointing at that direction, at the side or the back. 10

Cross-examination.

By Mr. Acton:

Q. Were there any threats made to this defendant? 20

A. No, sir, at no time were any threats made at all. As soon as he said he would tell the truth in regard to this affair, we immediately brought him to the first detective division to the Lieutenant, where a stenographer was waiting to take notes.

Q. You didn't give him any third degree at all?

A. No, sir; after he had told us we sent out and had breakfast for him. We brought him from the 33rd District in company with his wife in a machine to see his child, to the mother-in-law's home. 30

Q. You didn't threaten to kick him?

A. No, sir; at no time were there any threats made by me or anyone else.

Q. You do administer the third degree?

A. No, sir.

Mr. Grier: That is objected to.

The Court: He has testified that no third degree was used in this particular case. It doesn't matter about any other case.

By the Court:

10

Q. I don't suppose you know what a third degree is, do you?

A. I don't, your Honor.

---

ROBERT CALLAHAN, SWORN.

20

Direct examination.

By Mr. Grier:

Q. Mr. Callahan, you are connected with the Detective Bureau of the City of Philadelphia?

A. I am, yes, sir.

Q. Were you at the station house, 7th and Carpenter Street, on the morning of October 28th last?

A. Yes, sir.

30

Q. You saw the defendant there?

A. I did.

Q. Were you present when he made a statement and indicated by pointing on Mr. Dube the place where he pointed the gun?

A. Yes, sir.

Q. You heard him testify that he pointed it to his stomach?

A. Yes, sir.

Q. Is that true?

A. It is not.

Q. Where did he point this gun?

A. He pointed it right in the center of the back. I was leaning over the desk at the detective headquarters. He pointed it right in the center of the back. 10

Q. Did you hear Detective Brown threaten to kick him in the face?

A. There was no threats.

Cross-examination.

By Mr. Acton:

20

Q. Were you in a position to see this demonstration?

A. I was, sir.

Q. You claim that the demonstration was right to the man's back?

A. Yes, sir; I was right close to him.

Q. Did you have ahold of the defendant?

A. No; I didn't have ahold of him.

Q. Had you had ahold of him?

A. No, sir. 30

Q. Weren't you using any pressure on him of any kind?

A. I wasn't using any pressure on him.

Q. Had you used any pressure on him?

A. No, sir, no pressure used.

Q. You didn't threaten him, did you?

A. No, sir.

Q. Did you see any pressure used on him?

A. No pressure used; he gave that statement of his own free will, after being warned that anything he might say would be used against him.

Q. No third degree method?

10 A. No third degree method.

Q. How many of you were in there with him?

Mr. Grier: I don't think that is cross-examination in rebuttal.

The Court: I will allow him to go ahead with it.

The Witness: Lieutenant Matthew H. Clark, Detective Dube, Detective Brown, Detective Kidd, and  
20 myself, and the prisoner.

By Mr. Acton:

Q. That was all?

A. Yes, sir.

Q. Weren't there two bluecoats there?

A. Are you talking about the headquarters or the  
33rd District?

Q. I am talking about where it was that you got  
30 this statement.

A. Where we got this statement was at the detective headquarters, 15th and Vine, in Philadelphia.

Q. Those were all the people that were there?

A. Yes, sir.

ROBERT W. KIDD, recalled.

Direct examination.

By Mr. Grier:

Q. Were you present when the prisoner indicated 10  
on the body of Detective Dube the manner in which  
he pointed the gun at Mr. McCausland?

A. I was.

Q. You heard him a while ago testify that he  
pointed it towards his stomach?

A. No, sir; I wasn't in when he testified.

Q. Where did he indicate on the body of Mr.  
Dube?

A. In his back, near the center of his back, about  
here (indicating). 20

Q. You were not here when the defendant gave  
that testimony a while ago?

A. No, sir.

(No cross-examination.)

STATE RESTS.

DEFENDANT'S EVIDENCE IN SUR  
REBUTTAL.

PETER GIORDANO, recalled.

10 Direct examination.

By Mr. Acton:

Q. You heard these witnesses testify how you pointed in that demonstration?

A. Yes, sir.

Q. Is that correct?

A. No, sir.

Q. How did you point?

20

Mr. Grier: Objected to as not proper.

The Court: He has testified already that the gun was pointed not in the back. He can not pass upon the truth or the falsity of what another witness has said. That is the function of the jury. Objection sustained.

DEFENDANT RESTS.

30

TESTIMONY CLOSED.

---

(Adjourned until Tuesday, December 9, 1930, at 10:00 o'clock A. M.)

Salem, New Jersey, Tuesday, December 9, 1930.

---

SECOND DAY.

10

---

CHARGE OF THE COURT.

WARE, J.:

Ladies and gentlemen of the jury, the duty which you, as citizens of this Commonwealth, have been selected and sworn to perform is the highest and most solemn that you as men and women can be called upon to discharge within the sphere of your civic obligations. It is to sit in judgment upon a fellow-being, charged with the most serious infraction of our criminal laws that a man can be called upon to answer. The voice of all laws, the most ancient, as well as the most modern, the codes that governed and guided peoples at the dawn of history, and following in uninterrupted succession to the present time, alike speak in common accord to denounce the taking of human life as the highest grade of crime for which a man can be called upon to answer before a human tribunal. Such being the case, I can not point out to you too strongly that in dealing with the guilt or innocence of a person so charged, you and each of you, as a jury of his peers, sworn to deal justly between him and the State of

New Jersey, should, in the event you have not done so, eliminate from your minds any feeling of prejudice or favor that may have been engendered by what has been said to you before you were called upon this jury, by what you may have read, from the nature of the killing, the circumstances of it, the personality of the deceased and of the defendant, and approach the consideration of your duty in the spirit typified by the figure of justice, a sitting female figure, with bandaged eyes, that she may not see the persons who are being tried, and thereby be prejudiced by the personality of anyone, but with uplifted sword in the one hand and the scales of justice in the other, indicative of impartiality. And in the performance of this duty, having before you this figure of justice as the spirit you desire to emulate, you bring to bear upon your labors as your sole guide the oath you took as members of this jury, when in the presence of almighty God you pledged yourselves to render a true verdict according to the evidence. When you have done this—when you have rendered a true and intelligent verdict, based wholly upon the evidence that has been testified to before you, without fear, prejudice or favor, then it must be that you have performed the serious duty as good and honest men and women in the upholding of our form of government and in the enforcement of law.

This defendant, Peter Giordano, with one Fithian and one Green, have been indicted for murder, which means ordinarily and in the conception of the law, murder in the second degree, unless by your verdict you find it to be murder in the first degree.

The defendant Fithian applied to the Court for a separate trial, and which the Court for reasons advanced granted. The defendant Green has not at this time been apprehended and is in the custody of the law, for which reason he can not at this time be proceeded against, and the result of which has been, on motion of the prosecutor, a severance was granted between this defendant Giordano and the defendant Green. So that the present trial is against Giordano only on the indictment referred to. 10

The fact that this defendant has been indicted for murder does not as a legal proposition carry any presumption of guilt. We are a law-abiding people, and as a just principle of law, regulating human rights in society, one of the first great principles of law, for the protection of the citizens of that society, is that which presumes the innocence of a person charged with a crime. There is no presumption, as is to be found in some of the countries of continental Europe, that merely because one is charged with crime, it carries with it the presumption of guilt, to the extent that the accused party must maintain his innocence. Among English-speaking peoples, no such rule ever obtained, but on the contrary it lies entirely with the prosecution, having accused this man of crime, to prove his guilt, and such proof as shall make his guilt appear beyond a reasonable doubt, and upon you is cast the burden of determining whether the making of such proof has been met by the prosecution. By reasonable doubt is meant that it is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some pos- 20 30

sible or imaginary doubt. It is that state of the case which, after a comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. As I say, the burden of proof is upon the prosecution. If upon such proof, there  
10 be a reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal.

This defendant with the other persons named in the indictment, has been indicted under Section 106, and Section 107 of our Crimes Act, which I shall read to you:

The 106th Section provides that:

“Any person who in committing or attempting to commit arson, burglary, rape, robbery, or sodomy, or any unlawful act against the peace of this State,  
20 of which the probable consequence may be bloodshed, shall kill another, or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid, or if any person or persons shall kill any Judge, magistrate, sheriff, coroner, constable or other officer of justice, either civil or criminal, of this State, any marshal or other officer of justice, either civil or criminal, of the United States, in the execution of his office or duty, or shall kill any of his assistants, whether  
30 specially called to his aid or not, endeavoring to preserve the peace, or apprehend the criminal, knowing the authority of such assistant, or shall kill a private person, endeavoring to suppress an affray, or to apprehend a criminal, knowing the intention with which such private person interposes, then such per-

son or persons so killing as aforesaid shall be guilty of murder.”

The 107th Section amplifies the section I have just read in these words:

“Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilfull, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to 10  
perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree.”

Those are the pertinent words of Section 107, as applying to the present case, which such portion of the evidence as I shall point out renders pertinent. The effect of that statute is that in an attempt to commit a robbery, if one man, or any number of men, kill another, even though they did not start out with the purpose in mind, but started out with the single purpose of robbery, their act under such cir- 20  
cumstances under the law as I have just read to you, is denominated murder, not murder in the second degree, under the ordinary indictment for murder, but murder in the first degree, if you so see fit to designate it in your verdict.

The law of the case comes within the province of the Court, but the responsibility of determining what are the facts in the case is wholly with you, members of the jury. You are the sole judges of this evidence and of the weight of the evidence; 30  
what witnesses you shall believe and what witnesses you shall not believe; what witnesses you may credit, and what witnesses you may decide not to give credit to. You will bear in mind that any comment I may make upon the evidence will not be made for the

purpose of controlling your view, but only to aid you in applying the principles of law to the facts as you may find them. You must not rely upon my recollection of the evidence, but you are to be governed solely by your recollection of the testimony.

10 The unfortunate man, whose killing is the subject of this trial, was William McCausland. He was employed by the Salem Glass Works, a glass manufacturing plant in the City of Salem, in the capacity of a paymaster, and the indictment charges that this defendant, with the other two persons, killed and slew him.

20 Now, there is in the outset of every criminal case a situation to which law writers have given the name of *corpus delicti*, a Latin phrase meaning "body of the crime." It is practically a situation which must be shown that a crime has been committed before you can prosecute anybody for committing the crime. All text book writers call particular attention to it and base it strongly upon an occurrence that happened in the early history of Vermont, where some persons confessed to a murder, but which subsequently was shown as being untrue, from the mere fact that the person whose death they alleged themselves to have caused was not as an actual fact dead.

30 Now, *corpus delicti*, in a homicide case, means that it must be proven—the prosecution must prove the fact that the deceased is dead and that his death was criminally caused. By that is meant that the death of the deceased was not brought about by an accident or a misadventure or was self-inflicted, but that it was criminally done.

In this particular case, in making proof, I might say, in regular and orderly manner, we start out with the fact that on the early morning of this terrible day in the lives of these people, William McCausland was a living, breathing man. This has been shown, if you believe it, by the testimony of the man Oscar Lawrence, who has testified to having seen him that morning and to having spoken to him while he was in the discharge of some duties as a fellow employe of the Salem Glass Works. Shortly after that, hearing the sound of a report, which it was subsequently shown to have been that of a firearm, he turns around and he sees William McCausland lying on the ground, and he runs up to him and looks at him, and while he says he cannot say that he was dead, his eyes had a glazed look, which would be an ordinary indication of the passing off of a man from this mortal sphere. But, we have the testimony of the highest kind to make proof of the death, and that testimony is of the doctor, Dr. Church, who performed the autopsy, and the testimony of the undertaker, Mr. Allen, who buried Mr. McCausland. Dr. Church has testified that a bullet entered the middle of McCausland's back, and either parted or touched the spinal cord; it penetrated the heart and one lung, and that he was dead when he saw him this morning, and that the bullet which he extracted from the body was a .38 caliber, and which, as stated, punctured those vital organs, and that that was the cause of his death. Further by Mr. Allen's testimony, it would appear that Mr. Allen found Mr. McCausland dead; that he prepared him for burial, and that he did so

bury him, and he produced before you, which has been offered and admitted in evidence, the clothing of Mr. McCausland, showing the stains upon it and the holes through the clothing, which were directly in the line of the entrance in the body made by the bullet hole, as well as the powder burns and marks of powder upon the clothing.

10 So, therefore, ladies and gentlemen, if you believe that evidence that I have indicated to you, or the substance of it, you can readily see that the State has made proof of the corpus delicti and has showed that William McCausland was dead, and that his death was criminally caused.

The next step of proceeding in orderly progress, it being shown that this man's life was unlawfully taken, that he is dead, the inquiry is directed as to who did take the life or what criminal agency  
20 brought the death about.

And in considering that phase of the case, we have the testimony of some witnesses about an automobile containing three men, who were in the vicinity of the locus of the crime immediately before this, the same automobile being driven away from the locus of the crime at a high or fast rate of speed. We have the evidence of envelopes of the Salem Glass Works being found, I think, at Alloway by some resident living there. And lastly we have a  
30 confession or admission made by the deceased, as well as his evidence given upon the witness stand in his own behalf, which if believed, shows how the cause of McCausland's death was brought out.

Now, a confession or admission—while the Court is not really required to call your attention to its

right to be in the evidence, from the fact that the Court has already ruled on it, that it may be given in as evidence and has allowed it to go in as evidence, and as such it cannot be criticized—a confession or admission is to be evidence against a person who makes it, that is, an admission that is not extorted by threats, intimidations or promises from anyone, whereby the person making the confession or admission is induced to talk. The Court found that the confession of the defendant made at the police station in Philadelphia while this man was under arrest was what is termed in the law a voluntary confession, and as such has a right to be received and taken by the jury, if they believe it. 10

Further, as I mentioned a moment before, the defendant has seen fit to go upon the stand and has admitted the greater part of that statement, as well as testifying to details of the matter, which it would seem to the Court as well, if believed, to harmonize with the same situation, and that statement and the gist of that statement is to the effect that this defendant and the two other men entered into what in the eyes of the law would be a criminal conspiracy to rob the paymaster of the Salem Glass Works of his money, which it was reputed he was carrying at that time. And in furtherance of that robbery, they came to Salem with that purpose and design, and in the perpetration of that purpose a shot was fired, which the defendant says in the written confession which will come before you, was accidentally fired, but on the witness stand he denies that and says he did not fire the shot, but that the shot must have been fired or must have proceeded from some other 20 30

person or some other agency, for the reason that he was not aware that his own weapon which he had was discharged.

10 It is further in evidence that following the shooting of McCausland, one of these men grabbed a number of the envelopes containing the pay of the workmen of the Salem Glass Factory, and threw them in the car, and that this band of men was then driven to the home of this defendant in Bridgeton, where a division of the ill-gotten spoils was made.

20 Now, that, ladies and gentlemen, is the testimony or evidence which the State contends shows how the death of William McCausland came about, and which, if you believe it, must be treated as a fact. Now, ladies and gentlemen, in the light of that testimony that I have indicated to you, what was the nature of the criminal act in which this defendant and his associates engaged at the time McCausland was shot and killed? If you believe this evidence, it would appear that this defendant and Fithian and Green were engaged in an attempt to perpetrate the crime of robbery on the person of McCausland, in furtherance of a common, mutual plan and design, planned by them in advance, and that the killing of McCausland resulted in the consummation or in the perpetration of the robbery.

30 By robbery is meant the stealing of property from the person of another or from the personal custody of another by force and violence. To make that plain, ladies and gentlemen, the Court wishes to distinguish between the offenses of larceny and robbery, the object of both of which is the same, to take the property of another. By larceny is meant

the taking of the property of another that is not accompanied by any force, such as going on your premises and stealing something, or picking your pocket without your knowing it. That would be larceny without any force, and would, therefore, in the eyes of the law, be just plain larceny or plain stealing. By robbery is meant a much higher crime, a crime of greater gravity. It means the taking 10  
from another the property which that person has in his custody at that time, by using force or violence. Force or violence is doing just what the words imply. I might put a gun in a man's head; I might beat him with my fists; I might club him or shoot him or kill him. The purpose is to better control his physical condition, so that I may get the best of him and secure what he is in charge of. When I do that, it becomes one of the most grievous crimes known in the law, a crime which has been denounced 20  
from the early ages.

Therefore, the question for you to determine is whether or not the State has met the burden cast upon it of overcoming the presumption of innocence. Has it met this burden by proving beyond a reasonable doubt that this defendant is guilty of murder in the first degree, or the second degree, or in any degree? If it has, then under your oaths and conforming to your duties as jurors, there is no option left to you but to find the defendant guilty of murder 30  
in the first degree, or if the State has not made such proof, then it becomes your duty to acquit him.

I charge you that the degree of the killing, if you believe the facts, is murder in the first degree, for the reason that while the indictment is for murder,

and ordinarily such an indictment is meant murder of the second degree, and the jury might find the defendant guilty of murder in the first degree or murder in the second degree, still I charge you on the law under the facts in this case, as they have been developed, that you must find the defendant guilty of murder in the first degree or you must  
10 acquit him. There is no middle course. It cannot be murder in the second degree, nor can it be manslaughter. If you believe the theory of the State and you believe the testimony of the State's witnesses, there is no other alternative. The statute wholly and absolutely controls the situation, and deleting it of all words, phrases and conditions, not germane to the present situation, as disclosed by the facts of this inquiry, it would ordinarily read murder which shall be committed in perpetrating  
20 or attempting to perpetrate any robbery shall be murder in the first degree. The enactment of this statute as part of our statute law did not operate as an inhibition. It added no new crime to the law, nor did it add to the penalty of this kind of unlawful killing. It was part of our common law, as is well elucidated in such admirable treatises as those of Sir Michael Foster and Francis Wharton. It is not necessary that the commission of the crime should be part of the original design. It is enough  
30 if it be one of the incidental and probable consequences of that design, appearing at the moment to one of the participants to be expedient for the common purpose. If this defendant was engaged with this band of bandits on this day and committed this crime in attempting to rob Mr. McCausland of the

payroll which he was carrying, there is no alternative to a verdict of murder in the first degree, except a verdict of acquittal. Was he with Fithian or Green on that day and did he come to the locus of the crime under a conspiracy to rob the paymaster of the payroll which he was carrying? Was he one of those conspirators? Was he aiding and abetting in the enterprise? If he was, he was a principal, and he and they are all alike guilty, from the highest to the lowest—every one connected with the enterprise is guilty of murder in the first degree. That is the policy of the law indicated by the decisions of our highest Courts. 10

Lastly, should you, as members of the jury, reach the conclusion that the burden of making proof of the defendant's guilt beyond a reasonable doubt has been maintained by the State, with the result that it becomes your duty, under your oaths, to find the defendant guilty of murder in the first degree, the final act attending such a finding is for you by your verdict to say what penalty shall be meted out to this defendant under such a verdict as that. 20

At the present time, under our law, which is Section 108 of our Crimes Act, it is thereby provided as follows:

“Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers shall suffer death, unless the jury shall by their verdict and as a part thereof, upon an after-consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed.” 30

This recommendation that would accompany your

verdict is one that the Court must carry out, if the jury sees fit to attach it to its verdict. You, therefore, see that all this responsibility vests in and centers in you, as members of the jury, and not in the Court. This is the most serious responsibility, as I have before averted to, that can be cast upon a jury of men and women, sitting in judgment, in the trial  
10 of a fellow human being, charged with the taking of a human life. The Court is disinclined to give any disquisition on this subject as to the propriety of such legislation, as to what facts warrant the imposition of the extreme penalty or the substitution of the recommendation of life imprisonment. It is sufficient that the Court direct the jury's attention to this statute, that the jury in its serious consideration of the same advise the Court of its decision and of its finding in this regard. You may now  
20 retire.

(The jury returns with their verdict.)

The Court: The clerk will take the verdict.

(The clerk calls the roll of jurors, who all answer "Present.")

30 The Clerk: Jurors, have you agreed upon your verdict?

The Foreman: Yes, sir.

The Clerk: How do you find?

The Jurors: We find the defendant guilty of murder in the first degree, without mercy.

The Clerk: You find the defendant guilty of murder in the first degree, and so say you all?

The Jurors: We do.

10

The Court: No recommendation?

The Jurors: No recommendation.

The Court: Do you wish to have the jury polled?

Mr. Acton: Yes, sir.

The Court: The clerk will call each juror's name, who will return the form of verdict that the jury has found as a whole.

(At this point in the proceedings the clerk called each juror by name, who answers "Guilty.")

---

I hereby certify that the foregoing is a full and accurate transcript of the testimony taken in the case of State v. Peter Giordano, tried at Salem, New Jersey, on December 8-9, 1930.

J. R. SHAUGHNESSY,  
*Official Stenographer.*

## ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> v. PETER GIORDANO, <i>Plaintiff-in-Error.</i>	}	In Error. Assignments of Error.
---	---	---------------------------------------

20 NEW JERSEY, ss.

Afterwards, that is to say, on the fourth day of March, A. D., one thousand nine hundred and thirty-one, before the New Jersey Court of Errors and Appeals, at Trenton, comes the plaintiff-in-error, Peter Giordano, by H. Byron Lore, his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error:

30

1. In that the Court below on the trial, &c., refused to quash the indictment on motion of defendant's counsel.

2. In that the Court below on the trial, &c., ad-

mitted illegal evidence over the objection of defendant's counsel, in allowing the alleged statement or confession of defendant to be admitted.

3. In that the verdict of the trial Court was against the weight of evidence.

And the said plaintiff-in-error prays that the said judgment of the Court of Oyer and Terminer in and for the County of Salem, for the error aforesaid, and for the other errors in said record and proceedings being, may be reversed, annulled, and altogether held for nothing, and that he may be restored in all things which he hath lost by said judgment. 10

H. BYRON LORE,  
*Attorney for and of Counsel*  
*with Plaintiff-in-Error.* 20

---

[ENDORSED]

Service of the within Assignments of Error is hereby acknowledged March 2nd, 1931.

30

W. A. W. Grier,  
Prosecutor of the Pleas and  
Attorney of Defendant-in-  
Error.

SPECIFICATIONS OF CAUSES OF  
REVERSAL.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

---

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}     In Error. Specifications of Causes of Reversal.
v.	
PETER GIORDANO, <i>Plaintiff-in-Error.</i>	

20

---

Afterwards, that is to say, on the fourth day of March, A. D., one thousand nine hundred and thirty-one, before the New Jersey Court of Errors and Appeals, at Trenton, comes the defendant, now plaintiff-in-error, Peter Giordano, by H. Byron Lore, his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of  
30 judgment aforesaid, the said plaintiff-in-error suffered manifest wrong and injury:

1. In that the Court below on the trial, &c., erred in refusing to quash the indictment on motion of defendant's counsel.

2. In that the Court below on the trial, &c., admitted illegal evidence over the objection of defendant's counsel, in allowing the alleged statement or confession of defendant to be admitted.

3. In that the verdict of the trial Court was against the weight of the evidence.

4. In that the Court below on the trial, &c., misdirected the jury upon both law and facts. 10

5. In that the sentence of the Court below is illegal and void.

6. In that it appears from the record that the plaintiff-in-error suffered manifest wrong and injury in the admission of testimony whether objection was made thereto or not, and in the charge of the Court. 20

7. In that there are divers other errors in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside, wherefore, the said Peter Giordano prays that the said judgment and sentence may be reversed, annulled and for nothing holden, and that he may be restored to all things which he lost by occasion thereof. 30

H. BYRON LORE,  
*Attorney for and of Counsel  
with Plaintiff-in-Error.*

[ENDORSED]

Service of the within Specifications  
of Causes of Reversal is hereby ac-  
knowledged March 2nd, 1931.

10                   W. A. W. Grier,  
                      Prosecutor of the Pleas and  
                      Attorney of Defendant-in-  
                      Error.

---

JOINDER IN ERROR.

20       NEW JERSEY COURT OF ERRORS AND  
          APPEALS.

---

<p>THE STATE OF NEW JERSEY,     <i>Defendant-in-Error,</i>     v. PETER GIORDANO,     <i>Plaintiff-in-Error.</i></p>	}	<p>Sur Indictment for Murder. Joinder in Error.</p>
--	---	---

30

---

And now comes the defendant-in-error, and says  
that there is no error in the record and proceedings  
aforesaid, or in giving judgment aforesaid; and,

therefore, it prays that the said judgment may be affirmed, &c.

W. A. W. GRIER,  
*Prosecutor of the Pleas, of  
Salem County, New Jersey,  
and Attorney of Defendant-in-Error.*

10

---

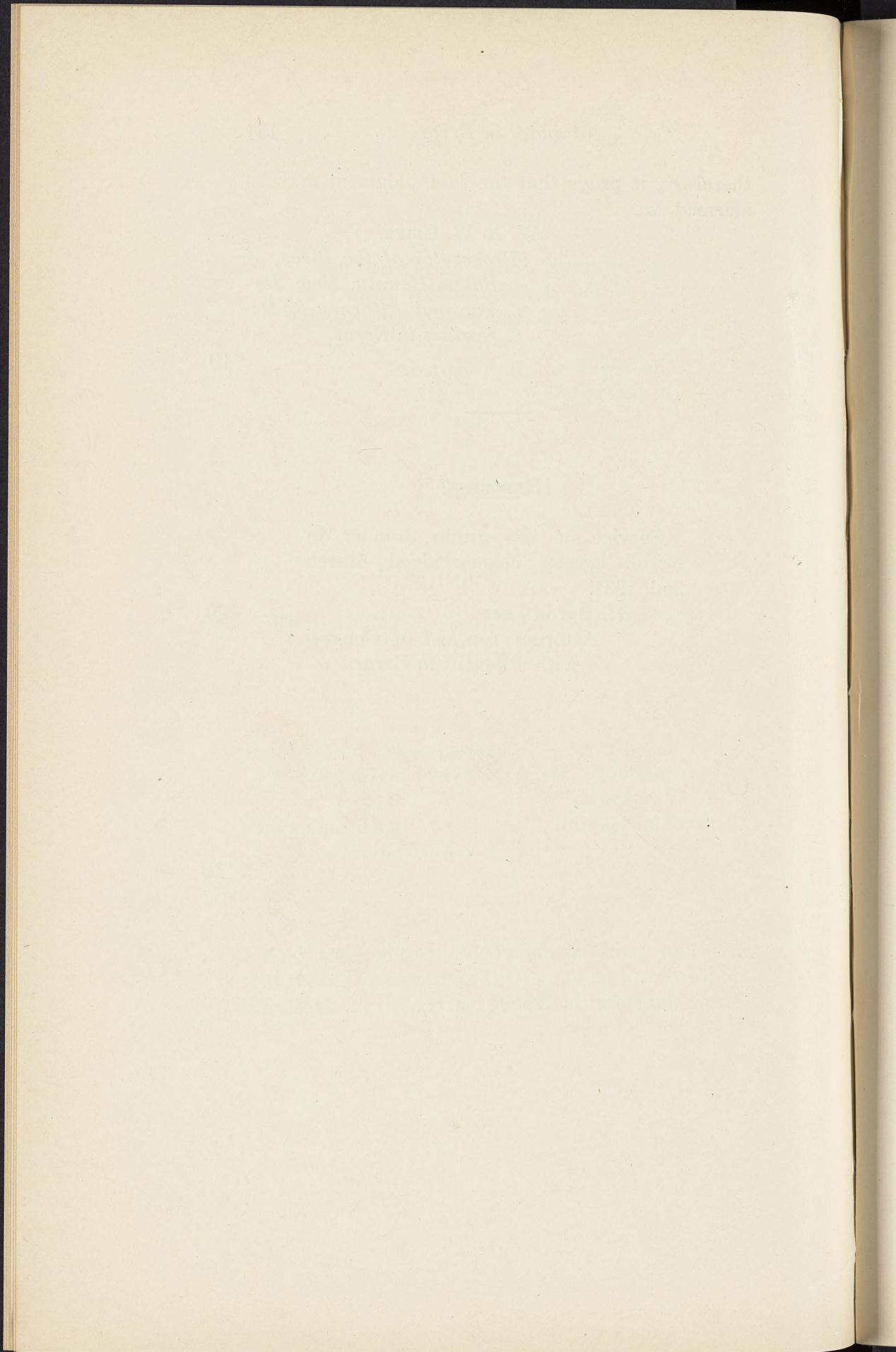
[ENDORSED]

Service of the within Joinder in Error hereby acknowledged March 2nd, 1931.

H. Byron Lore,  
Attorney for and of Counsel  
with Plaintiff-in-Error.

20

30



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

v.

PETER GIORDANO,  
*Plaintiff-in-Error.*

---

IN ERROR.

---

BRIEF OF DEFENDANT-IN-ERROR.

---

This writ brings up for review a conviction in the Salem County Court of Oyer and Terminer upon an indictment (p. 56), alleging that defendant, Henry Green and Charles Fithian, on October 24, 1930, in the County of Salem, did wilfully and feloniously and with malice aforethought kill one, J. William MacCausland. Defendant at bar was tried on December 8, 1930, and the jury returned a verdict of "guilty of murder in the first degree without recommendation."

The only point urged by the plaintiff-in-error for

reversal is based on alleged error by the trial Court of the admission in evidence of a confession of the plaintiff-in-error on the ground that it was not a voluntary statement, but made in fear. The confession was admitted by the trial Court after an exhaustive preliminary examination as to its admissibility, and as to whether or not it was a voluntary one.

The record shows (p. 42) that the defendant made a verbal statement at the 7th and Carpenter Street Police Station, Philadelphia, and that the statement was made purely voluntarily (p. 43). Later he repeated this statement at the First District Detective Bureau at 15th and Snyder Avenue, in the City of Philadelphia, and the statement was then reduced to writing, read by the defendant, who then signed it and his signature was witnessed by some of the officers present. The only testimony presented by the defendant as to him being put in fear appears in the record (p. 45), wherein he claims that one of the detectives, while he was at the 7th and Carpenter Street Police Station, threatened to kick him in the mouth if he did not tell the truth. At that particular time he was being questioned as to how he got from one part of Philadelphia to another and had no reference in any way to the crime committed in Salem County.

The defendant admitted that (pp. 46-47) shortly after he was taken to the 7th and Carpenter Street Police Station, his wife came there and that she advised him to tell the truth; that while there, some of the detectives sent out and got breakfast for the defendant and his wife, and later he was taken to the First District Detective Bureau at 15th and

Snyder Avenue where the written statement was made. The defendant admitted that no threats of any kind were made up there at the time he made the written statement (pp. 47-48).

It further appears from the testimony of the defendant (p. 68) that when the alleged threat was made at the 7th and Carpenter Street Police Station that he was simply then being questioned as to what trolley-car he took to get to his Philadelphia address.

The witness, Charles Edward Brown, whom the defendant accused of threatening to kick him, testified (p. 104) that at no time was a hand laid upon the defendant or any threats made, and this testimony was also corroborated by the testimony of Robert Callahan (pp. 107-108).

It has been repeatedly held in this State that a confession is properly admitted in evidence so long as it was not obtained by two of the prohibited methods, in other words, that it was voluntary and not obtained by any threats or promises, direct or implied. *State v. Roesel*, 62 N. J. L. 216; *State v. Young*, 67 N. J. L. 223; *State v. Dolan*, 86 N. J. L. 192; *State v. Murphy*, 87 N. J. L. 515.

In addition to the confession, the defendant, on the witness stand, admitted that he and one, Fithian, went from Bridgeton to Salem the Friday preceding the murder to look over the ground and get a line on the movements of the paymaster; that Fithian had told him that the paymaster usually had between two and three thousand dollars (p. 71), and that after talking the matter over he and Fithian planned the holdup and Fithian brought the defendant to Salem to show him how easy it would be (p. 73);

that on the morning of the shooting the rear license tag was removed from the car after arriving at Salem (p. 75), and then they waited until the paymaster came out of the office. The defendant admitted (p. 77) coming to Salem on the morning in question for the purpose of getting this payroll and that he had a gun in his possession. Also in the direct examination of defendant (p. 65) the following testimony was given:

“Q. They came for you—who do you mean by ‘they?’

A. Fithian came up first; he came up there, he came and asked me—he came up there the week before that. I told him I wouldn’t go that week; I told him I didn’t want to do it; he came up the following week and he brought the other man, brought this other fellow, Green. That is when we talked it over; we went.

Q. Tell the jury just exactly what happened.

A. When we started to go Fithian had a gun; I had my gun, a .38 which was left there by a woman. As we went in the car Fithian told me, ‘We don’t want any shooting;’ he said, ‘You use this gun here,’ let the other fellow use mine. He took my gun and I took his gun. We went on to where it happened. This other fellow sit in the front; I was sitting in the back—a two door car. The man in the front he got off first; Green got off first. He jumped on to the car, jumped on the running-board and got his sweater caught in the door. He was fooling around with that for about a minute. He got it unloose finally. He went over; he started

wrestling with this man. I jumped off the car; I went there to give him a hand. He looked at me; he looked at me. I started to go around to the back of the car. I told him 'leave everything go.' I didn't want to get into it. Then I heard a shot. Just as I started to turn I heard a shot. Then we went and got in the car. This other fellow started for the car. We went back and got a few envelopes, threw them in the car. We went on home. I didn't know it until they locked me up until I came in jail. The other fellow swore the gun he gave me wouldn't shoot and he swore it was a .32 calibre ——"

The defendant testified (p. 79) that after the crime was committed and they were on their way back to Bridgeton, that he and Green rode on the back seat and took the money out of the pay envelopes and after they arrived at his home in Bridgeton the money which was taken from the deceased paymaster was divided up and that he received \$110.00 as his share (p. 80).

It also appears that before the written confession was made in Philadelphia that the defendant had the benefit of advice from a Spiritual Adviser of his faith (p. 86).

The defendant admitted (p. 88) that he put his gun up against the paymaster and that he thought it was his gun that went off and killed the man, but he couldn't say so for sure (p. 89).

Regardless of the confession the defendant, on the witness stand, in testifying as to the details of the matter admitted the greater part of the confession, and that confession and his statement on the stand

is to the effect that he and two other men entered into a conspiracy to rob the paymaster of the Salem Glass Works of his money, and in furtherance of that robbery came to Salem for that purpose and design and in the perpetration of that purpose a shot was fired which resulted in the death of the paymaster; that after that a number of the pay envelopes were taken; that the contents were removed and later at the home of the defendant in Bridgeton, New Jersey, a division was made of the proceeds of the robbery and the defendant received one hundred and ten dollars as his share.

For the reasons aforesaid it is respectfully submitted that the judgment below was a proper one and should be affirmed.

W. A. W. GRIER,  
*Prosecutor of the Pleas of  
Salem County, New Jersey,  
and Attorney for and  
of Counsel with Defen-  
dant-in-Error.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

---

THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

v.

PETER GIORDANO,  
*Plaintiff-in-Error.*

---

IN ERROR.

---

BRIEF OF PLAINTIFF-IN-ERROR.

---

FACTS.

The writ brings up for review a conviction in the Salem County Court of Oyer and Terminer, upon an indictment (p. 4) alleging defendant, Peter Giordano, committed murder.

The indictment charges (p. 4):

“That Charles Fithian, Henry Green and Peter Giordano, late of the City of Salem, on October 24, 1930, at the city aforesaid, and within jurisdiction of this Court, did wilfully and

feloniously and with malice aforethought, kill and slay one, J. William MacCausland.”

Application was made and granted (p. 6) that Peter Giordano, be allowed a trial separate and apart from the other defendants.

Defendant at bar was tried on December 8, 1930, and the jury returned a verdict of “guilty of murder in the first degree, without recommendation” (p. 7).

The entire record is brought up (pp. 126-127) on assignments of error, and specifications of causes of reversal (pp. 128-129).

#### POINT I.

Plaintiff-in-error suffered manifest wrong and injury on the admission of an alleged confession, over the objections of defendant’s counsel (pp. 49-50, 62 and 102).

This point covers the second assignment of error and specification of causes for reversal (pp. 126-127 and 129):

Plaintiff-in-error contends that the alleged confession or statement admitted in evidence (pp. 51-55) was not a voluntary statement, but made in fear, as shown by his testimony (p. 45):

“Q. Who asked you?

A. Two or three of them in there; Kidd; this fellow who was just on the stand; Detectives Brown and Callahan, and a couple of uniform policemen. I told them where I was; they asked me, ‘How did you get home,’ I told them, and

they told me they didn't believe me. They said, 'If you don't say the truth, I will kick you in the mouth.' "

Also as shown by his testimony (pp. 46-47):

"Q. Were you under any fear of violence at the time you signed the statement?

A. I was.

Q. You say that the only threat of any kind that was made there was made by Detective Brown, who told you if you didn't tell the truth he would kick you?

A. Yes, sir.

Q. Was that sufficient to put you in fear?

A. They were all around me; I thought they were going to hit me."

Also as shown by his testimony (p. 86):

"Q. Because you thought you had committed this murder, you were willing to sign your name to a statement, saying you did?

A. I figured if I wouldn't do it, everybody talks about the third degree, they would kill you.

Q. You were afraid of getting hurt if you didn't say this?

A. Yes, sir."

In *Hawkins* the rule is stated to be that:

"A confession whether made upon an official examination or in discourse with private persons, which is obtained from a defendant either by the flattery of hope or by the impressions of fear, however, slightly the emotions may be implanted, is not admissible evidence, for the

law will not suffer a prisoner to be made the deluded instrument of his own conviction.”

4 *Hawk. P. C.* 425;

*Rossel v. State*, 62 N. J. L. 226.

“The ground on which confessions made by a party accused under promise of favor or threats of injury are excluded as incompetent, is not because any wrong is done to the accused in using them, but because he may be induced by the pressure of hope or fear to admit facts unfavorable to him, without regard to their truth, in order to obtain the promised relief or avoid the threatened danger, and therefore admissions so obtained have no just and legitimate tendency to prove the facts admitted.”

*Commonwealth v. Morey*, 1 Gray 462, 463;

*Commonwealth v. Tuckerman*, 10 Gray 173, 191.

The trial Court should have submitted to the consideration of the jury the circumstances under which the alleged statement or confession was obtained, with instructions that it was their business to consider the confessions with respect to the manner in which it was obtained, and if they were not satisfied that the confession was made freely and understandingly and wholly free from any expectation of benefit raised by hope and promises, it was their duty to reject it from their minds and not to make it the foundation of their verdict.

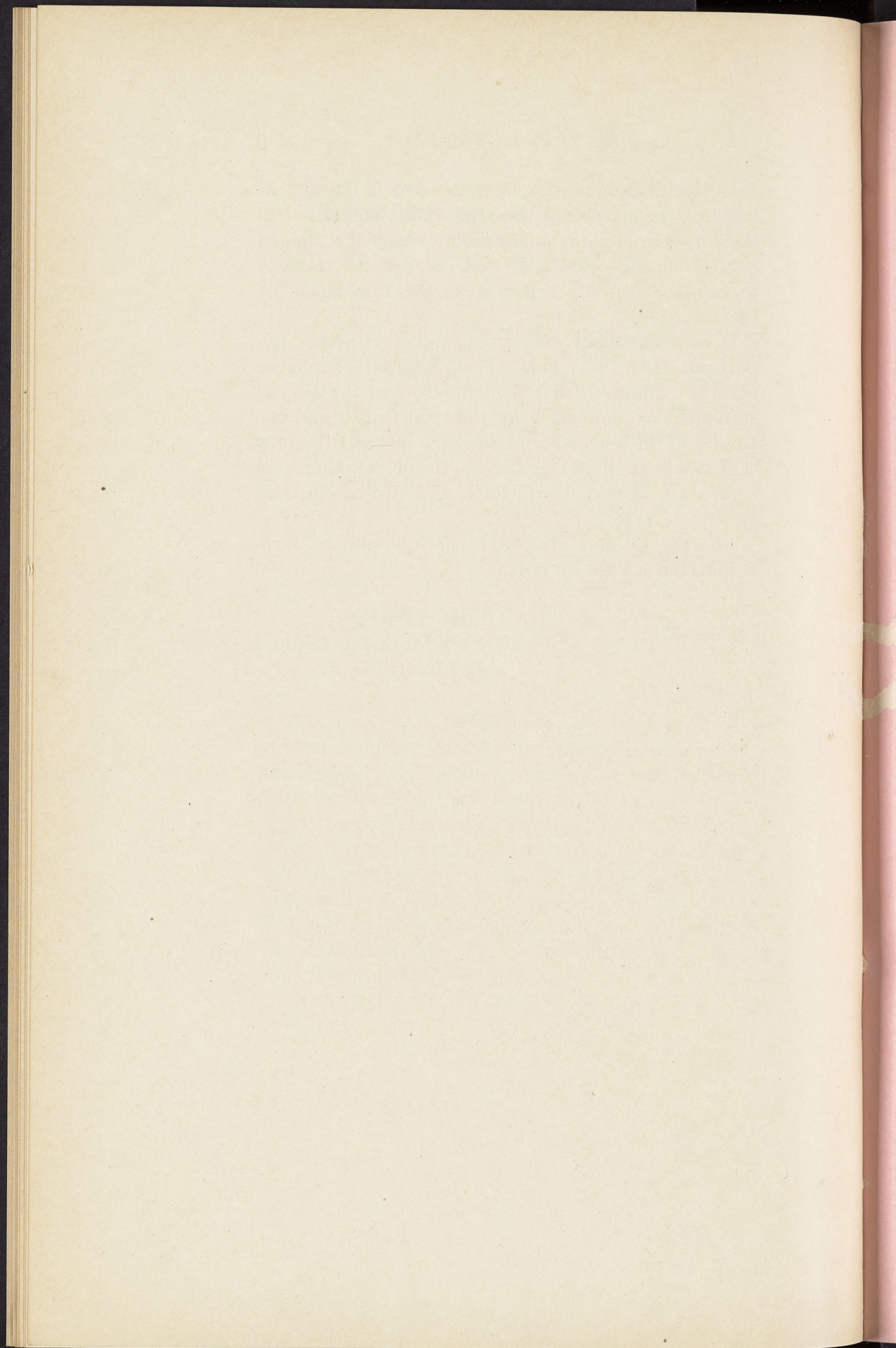
*State v. Guild*, 10 N. J. L. 163.

A careful examination of the record of the case at bar fails to show that the trial Court submitted to the jury the circumstances under which the alleged confession was obtained, with proper instructions to either accept or reject it as the foundation of their verdict.

It is respectfully submitted, and it is highly important, that the rights of an accused should be carefully guarded; that the admission of the alleged statement or confession by the trial Court, and the failure of the learned trial Judge to instruct the jury that it was their prerogative to decide whether said confession should be rejected, was prejudicial and reversible error.

For the reasons aforesaid, there should be a reversal and a trial *de novo*.

H. BYRON LORE,  
*Attorney for and of Counsel  
with Plaintiff-in-Error.*



Journal of the Court of Errors

1850

The Court met  
at the Court

at the Court

at the Court

at the Court

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

The Court met

