NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error.* *vs.* ALONZO WILLIAMS, *Plaintiff in Error.*	In Error. Brief of Plaintiff in Error. William V. Steele, Attorney and of Counsel with Plaintiff in Error.

ABSTRACT OF CASE.

A Bill of Indictment was presented at the April Term of the Somerset County Court of Quarter Sessions against Alonzo Williams, the plaintiff in error (C. p. 8) which charged him with the murder of one Benjamin Wooley.

This Indictment by rule of the Court, was ordered sent to the Court of Oyer and Terminer of said County for trial (C. p. 11).

On the nineteenth day of June then next, the defendant pleaded not guilty (C. p. 12) to the indictment, and on that day the names of fifty-one jurors were drawn by the Sheriff of Somerset County from the general panel of jurors for the April Term, for service on the defendant, Alonzo Williams (C. p. 13). These jurors were not discharged from such service, and during the September Term of said Court, on the nineteenth day of October, 1915, the names of forty-eight jurors were drawn from the general panel of jurors, for the September Term, for like service (C. p. 18).

On the eighth day of November, a principal challenge to the array of jurors was made by the attorney for the defendant upon the ground that he had acquired the right of trial by the jurors selected for that purpose on the nineteenth day of June (C. p. 28). This challenge was not sustained by the Court, an exception was granted to such ruling, and the trial of the indictment was moved.

The evidence of the State tended to show that the plaintiff in error, and Benjamin Wooley, the deceased, on the second day of May, 1915, with others, were engaged in a game of base ball, at a convict camp in the Township of Montgomery, in the County of Somerset (C. pp. 55-56). Both the plaintiff in error and the said Benjamin Wooley were convicts; that in this game of ball, Wooley, the deceased, in running from second to third base tripped over, or was tripped by the heel of the plaintiff in error (C. p. 117, l. 20; C. p. 171, l. 30; p. 72 and p. 31; p. 120, l. 26) and an altercation between them began in which abusive and insulting language was used by each to the other, and that Williams and Wooley each said "All right; settle it after the game (Witness Smith, p. 85, l. 3 and 5; Grove, p. 108, l. 19). Soon after the game ended, Williams picked up a bat, which was outside of the camp-building, for the purpose, he testifies, of taking it to the office (C. p. 175, l. 10) and it is shown that it had been customary to keep this particular bat in the office. (Witness Laggen, p. 53, l. 20) Williams then entered the building; Wooley was in a side aisle by his own couch. Williams with the bat in his hand went over to Wooley's couch, he testifies, for the purpose of making friends (C. p. 175, l. 30). The quarrel again continued. The most degrading epithets were used by Wooley (C. p. 175, l. 33; C. p. 137, l. 18). Hot blood and anger from their encounter on the ball field was increased. Williams testifies that he said to Wooley "Lay off me" and is corroborated by Harry Newton (C. p. 65, l. 3; Williams, p. 214 and p. 176). Williams testified that the

deceased reached for, and had something in his hand that he thought was a knife (C. p. 175) and that he "lost his head" (C. p. 176, l. 4). The witness Reppe (C. p. 133, l. 32; p. 137, l. 30) says of Wooley "He was standing with his face to the wall when I first saw him—back towards Williams. He was getting a cigarette paper, or tobacco down, I don't know what he was doing. He was getting something." Newton says (C. p. 64) Wooley was facing Williams (C. p. 69, l. 8) and reached back. And Williams says that he called him again an insulting name, with a movement as if to strike, and that he saw he had something in his hand, and he then struck him with the bat. After this blow the hot blood of anger appears for a time to have had full sway, and Williams was unable to testify to his acts with certainty (C. p. 176, l. 16). Williams then walked back to his couch, and down the aisle. He refused to give the bat to a fellow convict, or to one of the keepers (C. p. 176, l. 32) and gave it to the keeper in charge, who testifies that under the rules he was the proper one for him to give it to (C. p. 178, l. 39; Clayton, C. p. 45, lines 10-20). Williams was then handcuffed, and taken to the office. He expressed sorrow for what had happened (Witness Laggen, p. 48, l. 14). After his arrest, and while in prison, he made a statement in the nature of a confession to the representative of the Prosecutor's office of Mercer County, which did not materially differ from the above narration, but in which he said that Wooley had said to him "I will get you after the game." (Witness Grove, C. p. 108, l. 19). And a like written statement secured at the instance of, and given to another keeper of the prison (C. p. 216-223 with exception thereto, l. 10). The case under the charge of the court was given to the jury, and they returned a written verdict (C. p. 256, l. 16) as follows: "The jury has agreed to convict the defendant Guilty of murder in the first degree, with recommendation of mercy by the Court, if the Court will accept." And it was stated by one or more of the jur-

ors that the jury was unable to agree upon a verdict in any other form (C. p. 256, l. 30).

The Prosecutor of the Pleas, or the attorney of the defendant was not present at the time the verdict was rendered, and the jury was not polled (C. p. 256, l. 24).

It coming to the knowledge of the attorney of the defendant that the jury had misapprehended, and erroneously stated by their verdict, the conclusion, upon the facts disclosed by the evidence, their several affidavits were taken, and upon these affidavits, and the verdict as given, a motion was made before said Court, that a new trial be granted, which motion, after the reading of the affidavits, was denied (C. p. 258, l. 21).

Application, on the thirteenth day of December, then next, for the allowance of a Writ of Error out of the Supreme Court, was made to the Chancellor, and refused. (C. p. 1) and the Writ of Error in this case, as a Writ of Right, was issued on said day.

The specifications of errors and reasons for reversal are as follows:

(1) Because on the nineteenth day of June, 1915, as yet of the April Term of the said Court of Oyer and Terminer, the said Alonzo Williams entered a plea of not guilty to said indictment, and on said day, the names of fifty-one jurors were drawn by the Sheriff out of the general panel of jurors for said April Term, for service upon him, for the trial of said indictment, and the trial of said defendant was not continued by a panel of jurors taken from said fifty-one jurors, so drawn.

(2) Because at the September Term of said Court of Oyer and Terminer, on the nineteenth day of October, then next following, forty-eight jurors were drawn by the Sheriff of the County of Somerset, from the general panel of jurors summoned for said Term, for service on said Williams for the trial of

said indictment, and the defendant tried by a panel of jurors therefrom selected. The jurors theretofore selected and drawn at the said April Term, for that purpose, not being discharged from such service. And the challenge to the array as a principal challenge, for this reason, being overruled, and an exception taken thereto (C. p. 30, l. 25).

(3) Because the trial Court permitted the defendant to be questioned on cross-examination, as to the contents of a written statement (to which exception was allowed) showed for identification, and which had not been admitted in evidence, made to an officer of the State, in authority and to answer the following questions:

> Q. You say this statement does not contain a true account of what happened? A. It don't state the truth; no, sir.
>
> Q. You don't answer the question. I suppose you are just as anxious now, and have just as much object now to conceal the truth, as you had when you wrote that letter? A. No, sir.
>
> Mr. Steele: I object to that. It does not appear that he is concealing the truth, either the one time or the other.
>
> By the Prosecutor: I said just as much object.
>
> Mr. Steele: I object to it upon that ground.
>
> The Court: Objection overruled, exception allowed.
>
> Mr. Steele: I don't want any of it in, or all of it in. If he wants to go ahead and put it all in, then I want it all in. On the contrary, if it is to go out, my motion is to wipe out everything in connection with it.

The Court: I think I will let it stand as it is. Then the statement itself has not been admitted but the witness has testified as to having written it, and the reasons why he wrote it.

The Prosecutor: That is certainly a proper inquiry to make preliminary to offering it.

The Court: I think I will leave the matter as it stands. If Mr. Steele wants to have the letter put in evidence, and then have his client explain what parts are not true, well and good. If he does not, it will stand as it is.

The Court: You have offered it, and it has been overruled. If the other side want it in, they can put it in.

Mr. Steele: That is the ruling subject to my objection and exception.

The Court: Certainly. Take your exception.

Mr. Steele: Alonzo, take the stand.

4. Because the trial Court charged the jury as follows: "They can indeed, in certain cases, recommend the prisoner to the mercy of the Court; but first and foremost, and practically, exclusively, the duty of the jury is to ascertain from the evidence whether the crime has been committed, and whether the prisoner is guilty of it."

(5) Because the attorney of the defendant was not present when the jury, at their request, was recalled for further instructions by the Court, nor at the time when the verdict was rendered, by reason whereof, the jury was not polled.

(6) Because Mr. William G. Kershaw, a juryman, spoke for the jury in giving its verdict, and not the foreman; no reason appearing therefor.

(7) Because the verdict rendered was conditional special, and irregular and in writing.

(8) Because the trial Court refused to grant a new trial, on motion of the counsel of plaintiff in error, founded upon the affidavits filed in this cause and because the verdict was conditional, special and irregular, and rendered by mistake and misapprehension, and contrary to the agreement and understanding of the jury had in the jury room, prior to its rendition. (C. p. 282-285).

FIRST AND SECOND SPECIFICATIONS.

The first and second reasons for reversal relate to the same subject matter, upon the challenge to the array of jurors, and are considered together.

The special panel of jurors drawn on June nineteenth from the general panel of jurors summoned for the April Term (C. p. 13) as soon as drawn and selected became the jurors set apart for one purpose—the trial of this cause. This selection was the first step in the trial; and having been so drawn for this purpose, the duty continued until performed, or until by challenge, sustained, or for reason, they were discharged from the service by the Court. They were not so discharged, or challenged. This service would not end with the discharge of the general panel, as such, for that term, and hence, they remained the special panel from which the trial jury should have been drawn, and until dismissed by the Court.

By analogy, the situation is similar to the drawing of a juror from the general panel for the trial of a cause. At the instant the name is drawn, a right accrues to both prosecution and defense to have the

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qualifications of the juror so drawn passed upon by the Court, and until so passed upon by the acceptance, or rejection of the juror, the trial cannot proceed.

The trial of this case was had by a jury drawn from the special panel of November nineteenth (C. p. 18); the special panel of June nineteenth, then yet not dismissed from such service. The plaintiff in error thus lost the right of a trial by the jury first drawn for that special purpose, and not discharged, or their eligibility passed upon by the Court, and hence, suffered a wrong and injury in the loss of the right, and the trial by the special panel for that purpose selected.

It does not seem that even an impartial trial by a jury will satisfy the loss of a prescribed right, in the observance of which a different result might have been obtained. The panel of June nineteenth could have been directed to serve for a designated portion of the then next ensuing September Term.

Citations:

> "No person summoned as a juror shall be discharged from attendance, except by order of the Court in which his attendance may be required." (C. S. Title "Juries," p. 2965, Section 4.)

> "The Justice of the Supreme Court may direct that the panel of petit jurors so drawn, shall serve for a designated portion of the next ensuing Term only, and in such event, they shall be so summoned." (P. L. 1913, p. 832.)

THIRD SPECIFICATION.

Under the third reason for reversal, upon the admission of an alleged confession, and an examination of the witness upon the contents of a paper shown for identification.

It is insisted that the admission of a line of testimony which, in effect, was a written confession to an officer in authority, obtained by repeated insistence, and without warning that it could be used against him (C. p. 221, l. 40), and upon the implied hope that it would benefit the prisoner, and further upon the ground that in such written statement there were statements conflicting with the truth, resulted in manifest wrong and injury to the prisoner. In that, when such written statement was offered for identification, and before it was admitted in evidence, the prisoner was asked as to its contents, and testified that some parts of such statement were untrue (C. p. 205; C. p. 206, l. 32). This was prejudicial to him, and the admission in his testimony that some statements in the written paper were untrue, practically forced him, improperly, into a position in which he was obliged to place the alleged confession before the jury, or be prejudiced by his testimony, which, it is insisted was inadmissible when given, that he had written a statement misrepresenting facts.

This admission, necessarily, would greatly discredit his testimony; and unless the jury were shown wherein the conflict of statement lay, the prisoner would be greatly prejudiced thereby. This line of testimony, therefore, forced into evidence the alleged confession the confession itself otherwise being inadmissible, because obtained by the repeated requests of an officer in authority, which aroused in the prisoner either the hope of benefit by an implied promise of the officer, or a fear of results if such confession were not made. (C. p. 211, lines 18 and 19). "Well" he said "you get busy and write a statement of your case, and I will do what I can for you."

Citations:

"An objection is not required to be interposed in any particular form, and may be specific

i. e. to a particular question, or general i. e. to a particular line of testimony."

State vs. Ruttberg, 87 N. J. Law, p. 5.

"The fact that the prisoner was in custody when he made the confession is a pertinent circumstance to be considered."

State vs. Hernia, 39 Vroom, p. 299.

"A confession to one in authority must be free from any implied promise."

"A confession obtained either by the flattery of hope, or by the impressions of fear, is not admissible in evidence. He may be induced by the pressure of hope or fear to admit facts unfavorable to him, without regard to their truth."

Russel vs. The State, 62 N. J. Law, p. 216.

State vs. Dolan, 86 N. J. Law, p. 194.

Wharton Criminal Evidence, Section 650.

The insistence of the officer, Freeman, induced fear, or carried with it an implied promise of benefit and favor. (C. p. 210, line 30 and 40, p. 211.)

FOURTH SPECIFICATION.

In the suggestion in the charge of the Court that a jury could recommend the prisoner to the mercy of the Court, in the following words—

"They can, indeed, in certain cases, recommend the prisoner to the mercy of the Court, but first and foremost, and practically, exclusively, the duty of the jury is, to ascertain from the evidence, whether the crime has been committed, and whether the prisoner is guilty of it. . . ." (C. p. 284, line 33.)

without qualification as applied to a finding in the first degree, the jury misapprehended the instruction, which resulted in the verdict as rendered.

The misapprehension and mistake is clearly disclosed, in the verdict itself and in the affidavits of the individual jurors, (C. pp. 260 to 269) wherein they severally depose that they did not find from the evidence, premeditation; that, by the verdict, as rendered, they sought to express a lack of premeditation and deliberate murder; and, in the jury room, had agreed upon a verdict of murder in the second degree, in the event that the conditional verdict (with all that it implied) were not accepted by the Court.

> "In the construction of a verdict the first object is to learn the intent of the jury, and when this can be ascertained, such effect should be allowed to the findings, if consistent with legal principles, as will most nearly conform to the intent.
>
> "The jury's intent is to be arrived at, by regarding the verdict liberally, with the sole view of ascertaining the meaning of the jury, and not under the technical rules of construction, which are implied to a pleading."
>
> Encyc. of Pl. and Pr., Vol. 22, p. 955.

It further appears that, at the time when the verdict was rendered in the court room, that verdict was the only one they could agree upon. (C. p. 256, l. 30.)

The verdict as given was not the full and entire result of a ballot and the conclusion reached in the jury room. While prepared in the jury room, it was inadvertently delivered in the stress of the court room, at the closing of the case; mistakenly then rendered, upon the assumption that when the verdict was accepted, the condition therein incorporated could be performed.

Citations:

> "Where the jury after retiring ask the Court whether or not if they brought in a verdict of

guilty, they could depend upon the clemency of the Court toward the prisoner, and the Court replied that they could, whereupon a verdict of guilty was rendered, such verdict was set aside."

Encyc. of Law, 1st Edition, Vol. 28, p. 270.
McBean vs. The State, 83 Wisconsin, p. 206.

The affidavits (C. p. 260-269), submitted are for the purpose of interpretation of the verdict rendered, demonstrating that the recommendation and condition annexed, are not surplusage, but an essential part of the verdict, and a part of the finding of the jury from the evidence.

Citation:

"There would seem to be no reason against the amendment of a verdict as a matter of form, or for the correction of mere inadvertence in its rendition, on the faith of affidavits of jurors as to their intent."

Encyc. Pl. & Pr., Vol. 22, p. 976.

FIFTH AND SIXTH SPECIFICATIONS.

The prisoner was without the presence of counsel when the jury was recalled, and further instructions given them by the Court (C. p. 256, line 4) and also, when the verdict was rendered, through William G. Kershaw, a juryman, but not the foreman (C. p. 256, line 11). The prisoner is a negro, ignorant of his rights, and was without the knowledge, or ability to assert them. The instinct of a servile race prompted him to but listen in silence in the presence of the Court.

Because of this, the jury was not polled, and, in this case, he thereby lost a vital right; for it seems apparent that if the jury had been polled, and their individual responsibility centered in the verdict, that at least some of them would have dissented to its ren-

dition. Proposition—The polling of the jury in this State, is a right, and not a privilege.

The presence of counsel at all proceedings in the trial, is a right, when counsel is within call.

Each of which rights was lost to the prisoner, to his prejudice.

Citations:

"In a jurisdiction, regarding the practice of polling, not only a privilege, but a right, the verdict received in the absence of a party's counsel, without fault on his part, whereby this right was lost, was held to be invalid."

Encyc. of Law, 1st Edition, Vol. 28, p. 354.

"It is reversible error for the Court in a criminal prosecution to recall the jury, and give them oral instructions in the absence of defendant's attorney."

Century digest, Vol. 14, Section 1497.

"In case of a recall of the jury in a criminal case, to be re-charged, the defendant does not lose his privilege to have his counsel present, unless by distinct waiver thereof.

"If the presence of the counsel, or the appointment of a substitute be impracticable, there should be a temporary postponement."

IDEM—Section 1497.

Martin vs. The State, 51 Ga., p. 567.

State vs. Meagher, 49 Mo. App., p. 571.

SEVENTH SPECIFICATION.

The verdict of the jury, rendered in the third person, and in the past tense, in the following words—

"The jury has agreed to convict the defendant guilty of murder in the first degree, with recommendation of mercy by the Court, if the Court

will accept'' (C. p. 256, lines 6-7-8 and 9) given in writing, is irregular, conditional, repugnant and void.

It is conditional. It requires the Court to agree in the finding, and to comply with the condition, whether the law so empowers it or not. If the Court does not accept the verdict, as rendered, then the condition is not met, and the verdict cannot become a general verdict.

In the case of the State vs. Overton, 85 N. J. Law, p. 293—the verdict was—guilty of murder in the first degree, with a recommendation of defendant to the leniency of the Court. The Court ruled, or stated in an opinion, in an *obiter dicta* that the recommendation was surplusage, but recalled the jury, and instructed them that they had nothing to do with the penalty. The jury retired, and after further deliberation, returned with a verdict of murder in the first degree, omitting the recommendation to mercy.

The Court will note that in the Overton case, the recommendation simply expresses the sense of the jury as to punishment, and is in the nature of a request, and is a request for leniency.

In the present case, the verdict requires of the Court a positive act and decision in the acceptance of the verdict, and is conditional. The verdict is not to be accepted, unless mercy is to be extended. And hence, the condition becomes a vital part of the verdict, and cannot be treated as surplusage.

After the verdict was rendered, the Court thereupon informed the jury in substance, that the statute fixed the penalty for murder in the first degree, and it was beyond the power of the Court to comply with any recommendation to mercy (C. p. 256, line 19). The verdict had then become a part of the Court record. It was too late for them to retire, as in the case of the State vs. Overton, and return a verdict of second degree, pursuant to their agreement; and this instruction, after the verdict, was therefore, of no avail.

Citations:

"A written general verdict is irregular, and the Court may reject it, and require it to be made orally."

Wharton's Criminal Pleading and Practice, Section 747.

"In cases of felony, at least, an oral rendering by the foreman, is essential."

IDEM.

Com. vs. Tovin, 125 Mass., p. 203.

A verdict rendered in this form makes necessary an essential departure from the prescribed practice for the acceptance and entering of a verdict by the Clerk of the Court. For the Clerk to recite this verdict after the usual formula in homicide cases "Hearken to your verdict as the Court has ordered it recorded 'You say that the jury has agreed to convict the defendant guilty of murder in the first degree with recommendation of mercy by the Court, if the Court will accept' " emphasizes the irregularity and illegality of this verdict.

"The custom in criminal cases is for the jury to render their verdict of guilty, or not guilty, orally and in open Court, and record to be made of it. The written verdict which the foreman undertook to make, was irregular, and was correctly rejected by the Court below."

Vol. 28 Encyc. of Law, p. 407.

Lord vs. The State, 41 Am. Decisions, p. 391.

In criminal prosecutions, where intent constitutes an element of the offense charged, if the jury, though finding the defendant guilty, negative the question of intent, the verdict cannot operate for the conviction."

Encyc. of Law, Vol. 28, p. 359.

EIGHTH SPECIFICATION.

There was error in refusing to grant a new trial on motion of counsel for plaintiff in error, upon the affidavits filed (C. p. 260-269) whereby it appeared that the verdict had been given by mistake and misapprehension, and contrary to an agreement made by the jury, in the jury room, just prior to the rendition of the verdict.

Citation:

In Moffatt vs. Bowman—
Encyc. of Law, Vol. 28, p. 278 note—
6 Gratt (Va.) 219—

"a motion was made for a new trial, founded on the affidavit of nine jurors, stating that the verdict, as returned and recorded, did not contain the verdict which they intended to render; and that the same was returned by them under a mistake as to its legal effect. The manner in which the mistake was made was also stated in the affidavit. The trial Court overruled the motion; but the appellate Court being of opinion from the evidence adduced, on the motion for a new trial, that the intention of the jury was not accomplished by their verdict, and not being satisfied with the verdict on the merits, reversed the judgment, and awarded a new trial."

"Ordinarily a juror is inadmissible to impeach the verdict of his fellows.

"The true view is this—jurors cannot be received to qualify by parol testimony, matters of record."

"From necessity, however, when gross injustice has been wrought, from misconduct, or misapprehension, in their deliberations, they may be

permitted to prove such misconduct, or misapprehension. Thus, it has been held that . . . they may prove that the case has been decided by lot, or that the instructions of the Court were utterly misunderstood."

Wharton's Criminal Pr. & Pleading, Section 849.

"I think that without some power of this nature residing in the breast of the Court, the trial by jury in particular cases, would be productive of injustice, and the institution itself would suffer in the opinion of the public.

IDEM—note—Section 791.

"There is considerable authority for the proposition that such affidavits (of jurors showing mistake) will be received, to show that the verdict which was entered was delivered by the foreman, or taken down by the clerk of the Court, by mistake, and that it was not the actual verdict which the jury returned."

Thompson & Merriam on Jurors—Section 443.

"The testimony of jurors is admissible to prove that by mere inadvertence, their foreman misstated in open Court, the verdict upon which they had agreed, and if the mistake be indubitably established, it will be corrected."

Syllabus-Peters vs. Fogarty, 55 N. J. Law, p. 386.

It is submitted that the verdict rendered was not the actual finding and intent of the jury, and should be reversed.

WILLIAM V. STEELE,
Attorney and of Counsel with Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY *vs.* ALONZO WILLIAMS.	On indictment and conviction in the Somerset County Court of Oyer and Terminer of the Crime of murder in the first degree.

BRIEF OF AZARIAH M. BEEKMAN, PROSECUTOR OF THE PLEAS.

STATEMENT OF FACTS.

Trial November 8th, 1915, in Somerset County Court of Oyer and Terminer before Charles W. Parker, Supreme Court Justice and Daniel H. Beekman, Esq., Judge of the Court of Common Pleas.

FACTS.

The assault out of which the indictment and conviction for murder in the first degree in this case arises was committed on Sunday, May 2, 1915, by the defendant, Alonzo Williams, a colored man then a convict, serving sentence and at the State Camp in the Township of Montgomery in the County of Somerset. The deceased was also a convict and white. The defendant and the deceased each had shortly before the assault, together with a number of fellow-convicts, engaged upon opposing sides in a game of

base-ball upon the camp grounds. There had never been any trouble between them before. (Printed case, page 184, lines 1 to 30.) During the playing of the game and from a quarter to half an hour before the game was finished an altercation took place between them in which hot words were exchanged, vile names called and according to some of the testimony threats to "get the deceased after the game" were made by the defendant. (Printed case, page 71, lines 1 to 13; page 78, lines 19 to 40; page 79, lines 1 to 40; page 117; page 123, lines 25 to 40; page 148, lines 20 to 30; page 165, lines 29 to 40.) The quarrel ended and both continued to play the game for fifteen minutes or half an hour thereafter. (Printed case, page 80, lines 9 to 14; page 118, lines 10 to 18.) Shortly after the finish of the game the deceased left the ball field and entered one of the buildings of the State Camp known and designated as the Assembly room and Dormitory. This building was immediately in the vicinity of the ball ground itself. The deceased had been in the building a short time and was at or about his bed in the dormitory for some five or ten minutes (printed case, page 56, lines 1 to 40) when the defendant entered the building through a doorway opening upon the ball field, which doorway was at the end of the room, the greatest distance removed from the bed at which the deceased was. The defendant entered the building carrying with him a base-ball bat which he had picked up either upon the ball field or from a place outside the building where it was customary to put the bats after the game (printed case, page 169, lines 22 to 40; page 170, lines 1 to 27; page 175, lines 1 to 20). The bed of the defendant was between the doorway entered by him and the place where the deceased was seen to be at the time the defendant entered the building. Upon entering the building the defendant proceeded to his bed remained there for a short interval of time keeping the bat in one of his hands and from thence proceeded to within a few feet of where the deceased was sitting

upon his bed in the act of rolling a cigarette. (Printed case, page 132-133; page 140, lines 20 to 40; page 141.) The defendant accosted the deceased renewing the quarrel without the deceased at any time after the incident upon the ball field, some half or three-quarters of an hour before, having spoken to the defendant, threatened or irritated him in any way. The evidence varies somewhat as to exactly what occurred from this time on. The defendant assaulted the deceased almost immediately after speaking to him, hitting him over the head with a base-ball bat at least two and some of the testimony indicates three violent blows which knocked the deceased down, crushed his skull and rendered him helpless and insensible. There is nothing in the evidence to show that the deceased made any threats against the defendant or that he had any weapon which he used in a threatening manner or that he attempted to strike the defendant or in any way assault him.

The testimony of one of the State's witnesses, Fred Reppe, is as follows:

> Q. Where was Williams at that time? A. When I was coming through the door, I was about half way up; Williams come from behind the stove, that bed (indicating); he had a bat behind his back, and as he walked up the aisle, I was about across over that way (indicating); I was about fifteen feet back of him; I sent for . I did not know what was going to happen. In a second or two, I heard Williams say, "you called me a cock sucker," and with that he gave him a swinging blow on the right shoulder, and he fell, and fell on one bed, going up this way (indicating); he swung around to get up this way and he hit him again on the top of the head; he fell to one side that way on his left cheek, and he hit him again on the right side of the head, when he laid there apparently dead.
>
> Q. How far were you from where Wooley was

when that happened? A. Right at the door, across the hall.

Q. How far away? A. Well, right at the corner bed here (indicating).

Q. Here (indicating)? A. Yes, sir; three or four beds from there.

Q. Where had you passed Williams? A. Williams had been ahead of me. He was just in there as I passed him. I was going to go to my bed. Just as I got to the corner I heard that remark passed, and in the meantime he hit him with the bat.

Q. And you just arrived at that place right here (indicating)— A. Yes, sir.

Q. When the blows were struck? A. Yes, sir.

Q. Where did you first see Williams? A. Coming from behind the stove.

Q. Show the jury how he carried the bat, if you will? A. (illustrating) Up this way and swung the bat on the right shoulder; he got around to hit him again in the head, and hit him over the back of the head, then when he lay there, he hit him again alongside of the head.

Q. Did you see Wooley try to hit him? A. No, sir, he tried to defend himself; tried to grab that bat, after he was hit the first blow; and staggered.

Q. Did you see his hands? A. I seen his hands like that, yes, sir (illustrating).

Q. Wooley's hands? A. Yes, sir.

Q. Did he have a knife in them? A. No, sir, he had nothing.

Q. Where was Wooley standing when you first saw him? A. Standing with his face towards the wall, back towards Williams. He was getting a cigarette paper or tobacco down; I don't know what he was doing; he was getting something.

Q. Where was he standing with reference to the bed, when he was hit? A. Stood at the foot of my bed and at the head of his bed.

Q. Had he much room to lean over? A. He was standing up straight. Well, there was somebody (Printed case, page 132, lines 21 to 40; page 133, lines 1 to 38.)

After the assault the defendant kept the bat for some little time and later delivered it to one of the officers or guards of the institution. (Page 156, lines 23 to 40; page 157, lines 1 to 15.) The defendant was prevented from escaping from the building, was hand-cuffed and taken into custody and later made a statement to the officers of the law, admitted at the trial as a confession (page 110, lines 14 to 40).

The wounds and injuries so received by the deceased were mortal and from them he died in the State Prison Hospital at that institution in Trenton on May 5, 1915. (Printed case, page 98, lines 1 to 40, page 99, lines 1 to 20; page 101, lines 30 to 40; page 153, lines 20 to 40.)

JURY.

In compliance with the Criminal Procedure Act (Sec. 54 and 82), forty-eight jurors were drawn from a list of the general panel of petit jurors for the April (1915) Term and duly served upon the defendant together with a copy of the indictment. (Printed case, page 13.) The indictment, however, was not moved during the April Term, and not tried until November 8, 1915, more than three days prior to the date of trial forty-eight of the petit jurors duly selected to serve for the then September Term were drawn (printed case, page 18) and a list thereof together with a copy of the indictment served upon the defendant at least two entire days before the trial and as required by section 82 of the Criminal Procedure Act. (Printed case, page 23.) It was from this list of jurors of the September Term that the jury was selected for the trial of the defendant.

VERDICT.

"MEMORANDA of occurrences in the trial of The State vs. Alonzo Williams, after the jury had been charged and had retired to consider their verdict.

"The jury, after having been out for several hours, returned into court and said that they wished for further instructions; and, upon being interrogated by the Court, asked a question which was read by one of the jurors from a paper; the paper, however, has not been preserved.

"The question was substantially this: How long a time must intervene between the formation of an intent to kill and the execution of that intent, in order to give the killing the quality of premeditation and deliberation?

"To which the Court replied substantially by reading to the jury certain extracts from the case of The State vs. Mangano, 77 N. J. L., p. 544.

"The Court read the quotation at the head of page 545 as an example of a charge which erroneously laid down the rule, and then proceeded to discuss the rule as laid down in recent cases, reading to the jury the quotation from the opinion of Mr. Justice Garrison, on the lower part of page 546, following that with the language of the Mangano opinion, at the foot of page 546 and on page 547 as far as the word 'not until after such premeditation and deliberation have taken place does the act become wilful in the sense intended by the statute.'

"The Court added a few words on the same line as the above quotation, but the language cannot now be reproduced.

"The jury then retired.

"At 8.45 p. m. the jury reported that they had agreed upon their verdict, and were recalled into court. The prisoner was present, but not the Prosecutor nor the prisoner's counsel, although an effort was made to secure their attendance.

"The jury upon being asked by the Clerk if they had agreed upon their verdict, reported that they had; and upon being asked who should speak for them, said Mr. William G. Kershaw.

"In response to the usual question from the Clerk, Mr. Kershaw read from a written paper the following:

" 'The jury has agreed to convict the defendant, guilty of murder in the first degree, with recommendation of mercy by the Court; if the Court will accept.'

"The Court thereupon informed the jury, in substance, that the statute fixed the penalty for murder in the first degree, and it was beyond the power of the Court to comply with any recommendation to mercy.

"The jury was not polled.

"A member of the jury said that they had determined to render their verdict in that form; and it was said by one or more of the jurors that the jury were unable to agree upon a verdict in any other form.

"The Court stated that it saw no objection to receiving the verdict with the above recommendation; and the verdict was taken accordingly and the jury were discharged."

(Printed case, page 255 and 256.)

ARGUMENT.

FIRST AND SECOND POINT.

The defendants challenge to the array of the general panel of jurors summoned to attend for the said (September) term, is not based upon a claim that

there was any defect or irregularity in the drawing, selection or summoning of this panel of jurors, or that it was in any manner not a legally constituted jury. The substance of the point sought to be made seems to be, that the defendant was entitled to be tried by a jury of twelve taken from a list of forty-eight jurors made up from the general panel of jurors summoned to attend for the April term immediately previous, and that this list from the April panel having been selected in an irregular manner, there was no list of forty-eight jurors from which a trial jury of twelve could be properly selected.

The record and the statement of facts in this brief contain an answer to this point. It is contended that while the drawing of the list of forty-eight jurors from the panel of the April Term, in anticipation of a trial within that term, was due and orderly, according to statute, it would not avail the defendant if it were otherwise. The trial of the defendant was not moved in the April term, was deferred until and took place on November 8, as yet of the September term, 1915. It was from the general panel of the petit-jurors summoned to attend at the then September term, the list of forty-eight jurors was taken and duly served upon the defendant, from which the trial jury was selected.

The statute is mandatory upon this point.

See Sec. 82 Criminal Procedure Act, as amended. Chap. 164, Laws of 1903, page 250.

THIRD POINT.

The written instrument referred to in the "third" reason is a statement in the defendant's handwriting and written by him in prison and handed to Mr. Freeman one of the State Prison officials (page 205, lines 14 to 40; pages 206, 207).

The manifest purpose of the prosecutor in confronting the defendant with the statement was to

show that previous to the trial the defendant had written a recital of facts conflicting with the testimony of the defendant at the trial, thereby testing the veracity of the witness. Counsel for the defense objected to the paper being admitted.

It was ruled out (page 211, lines 25 to 40).

Counsel for the defense also moved to have all the questions and answers relative to this writing stricken out (page 212, lines 5 to 31). After some argument the court ruled.

> "I think I will leave the record as it stands. If Mr. Steele wants to have the letter put in evidence, and then have his client explain what parts are not true, well and good; if he does not, it will stand as it is."
>
> (Printed case, page 222, lines 20 to 30).

Thereupon counsel for the defense examined at length upon the paper, the prosecutor cross-examined the defendant upon it (pages 223 to 238).

There is nothing in the examination of the prosecutor, directed to any purpose except to show that the defendant had previously made a written statement of his acts which conflicted with his testimony.

The particular question and testimony objected to, are as follows:

> Q. "I supose you are just as anxious now not to say anything that is going to mitigate against you, or hurt your case, as you were when you wrote that letter? A. I am telling the truth now.
>
> Q. You don't answer the question. I suppose you are just as anxious now, and have just as much object now to conceal the truth as you had when you wrote that letter? A. No, sir."

"The credit of a witness may also be impeached by proof that he has made statements out of court contrary to what he has testified at the trial."

Greenleaf on Evidence, Vol. 1, Sec. 462.

FOURTH POINT.

The portion of the Court's charge excepted to, in connection with what preceded and what followed it, speaks for itself. What the court charged was indeed the law and was calculated to give the jury a clear understanding of its functions.

FIFTH POINT.

A diligent search has failed to reveal any authorities requiring that counsel for a defendant must be present when a jury at its request is recalled in a criminal case for further instructions by the court.

The defendant was present as was his right to be present at all stages of the trial. His counsel had voluntarily absented himself from the court house and was beyond reach of the court which endeavored to secure his presence. There is no statute in this state requiring the presence of defendant's counsel or notice to him in case additional instructions are requested by the jury.

> "It is error to repeat the charge to the jury or to give them additional instructions in the absence of the accused. The presence of the defendant's counsel does not cure the error. If he is present the absence of his counsel is not material, unless as in some states the statute expressly provides that notice shall be given to counsel of the defendant."

12 Cyc., page 681, and cases cited.

The right to have a jury polled is contingent upon a request by either counsel. If counsel by his voluntary absence failed to make this request it is difficult to conceive any error therein.

"The verdict must be given and received in the presence of the accused (not necessarily his counsel) in open court, all the jurors being present. . . . The prescribed formulas must be substantially complied with. After the verdict has been announced and before it has been recorded, or the jury has dispersed, the court may, upon its own motion, and must, if required by either party, cause the jury to be polled each juror being required to declare his verdict."

Hockenheimer's Criminal Law, Sec. 179, page 203.

In Hommer vs. State, 85 Md. 562;

Where a motion was made to strike out a judgment on an indictment for murder, the ground of the motion being that the verdict of the jury was taken in the absence of the prisoner's counsel from the court room, whereby it was claimed that the prisoner was deprived of the right to poll the jury, the court held:

"The prevailing practice in courts in this state when a jury has agreed upon the verdict, the prisoner being present in court, is to direct the verdict to be taken, in the usual form, and if there is no request for a poll of the jury to require the verdict thus taken to be recorded. The manifest object of a poll of the jury is to call on each juror to answer for himself in his own language." In Ford vs. State 12 Md. 514, it is said: "that when a jury be asked if they have agreed upon a verdict and they respond that they have, and the foreman shall say for them, and the foreman speaking for the whole panel, find a proper verdict, and the same be recorded, the whole panel being called upon to hearken to it as the court hath recorded it, and no objection being made either by any of the jury or the coun-

sel for the state or prisoner, then such proper verdict, as given through the foreman, is the verdict of the whole panel, and it is too late after the record of it, under such circumstances, for any of them to alter or amend it.

"But it is insisted that there was error in receiving the verdict in the absence of the prisoner's counsel. This question has been distinctly ruled upon in some of the states. In Martin vs. State 79—Wis. 175, it was held there was no error in receiving the verdict in the absence of the attorney for the defendant.

"The verdict was received while the court was regularly in session, and if the counsel for the defendant desired to be present when the verdict was received there was nothing to hinder his being present and it was not the duty of the court to send for him."

Approved: Barnard vs. State, 88 Wis. 659; O'Bannon vs. State, 76 Ga. 32.

SIXTH POINT.

The verdict in this case was delivered in open court. The record shows that the clerk interrogated the jury as to who should speak for them.

"The jury being asked if they had agreed upon their verdict, reported that they had; and upon being asked who should speak for them, said, Mr. William G. Kershaw.

"In response to the usual question from the clerk Mr. Kershaw read from a written paper, the following:

" 'The jury has agreed to convict the defendant, guilty of murder in the first degree, with recommendation of mercy by the Court; if the court will accept.' "

Printed case, page 256.

"Under the common law, the result of the jury's deliberations is usually declared orally by a member of the jury; a practice originating perhaps in the general illiteracy of the jurors. The announcement is most frequently made by a designated spokesman, called the foreman, the other jurors being presumed to consent to the verdict unless they express dissatisfaction."

1st Ed. Am. and Eng. Ency. of Law, Vol. 28, page 407, and cases there cited.

"As a matter of practice and often by statute, the verdict must be delivered to the clerk by the foreman."

12 "Cyc.", page 686, Com. vs. Tobin, 25 Mass. 203. State vs. Faulk, 30 La. Am. 831.

There is no statutory requirement in this state defining how a verdict shall be communicated to the court by the jury. The instrumentality in this case was one selected by the jury themselves, they having designated one of their number for that purpose.

Having regard to the substance of things, such a proceeding if unusual or even irregular operated in no way to the prejudice of the defendant and therefore should not constitute error, or nullify the manifest intent of the jury, they having communicated to the court through a medium of their own selection their finding in the matters of fact commuted to them, assented to that finding and taking no exception thereto.

State vs. Florinda Illario.
30 N. J. Law Journal 113.
State vs. Titus, 49 N. J. Law 36.
State vs. Cucel, 31 N. J. Law 249.

Why should a jury be asked, according to fixed practice, the question "who shall speak for you?" if no one except the foreman could act in that capacity?

SEVENTH POINT.

Three grounds are here urged why the verdict in this case should be set aside and for nothing holden. For the purpose of logical arrangement they will be considered in the following order.

A. *Was the verdict in writing?* B. *Was the verdict special and irregular?* C. *Was the verdict conditional?*

A. The verdict in this case was not delivered in writing, but was actually delivered orally. The record says:

> "In response to the usual question from the Clerk Mr. Kershaw read from a written paper, the following:
>
> "The jury has agreed to convict the defendant, guilty of murder in the first degree, with recommendation of mercy by the court; if the court will accept."

It is insisted that the verdict in this case was an oral one and the mere fact that a memoranda was used stating the finding upon which the jury had evidently agreed, does not constitute a rendering of the verdict in writing. The transaction had none of the characteristics of a sealed verdict, as the finding of the jury was delivered orally and audibly in open court.

> "Under the common law, the result of the jury's deliberations is usually declared orally by a member of the jury; a practice originating perhaps in the general illiteracy of the jurors. The announcement is most frequently made by a

designated spokesman, called the foreman, the other jurors being presumed to consent to the verdict unless they express dissatisfaction when it is rendered."

(1st Ed. Am. & Eng. Ency., Vol. 28, p. 407 and cases cited and foot notes.)

Indeed this same work refers to instances in states where the verdict is required by statute to be in writing.

Raymond vs. Bell, 18 Conn. 81.
Roberts vs. State, 14 Georgia 18.
Lord vs. State, 16 N. H. 326.
Com. vs. Durfee, 100 Mass. 146.
Blumn vs. Pate, 20 Col. 69.

The practice governing the taking of a verdict in criminal cases in New Jersey is as follows:

1. "The jury having agreed, and returned into court, the clerk calls the names of the jurors and the crier counts them. The clerk then inquires:

2. "Gentlemen of the jury, have you agreed on your verdict? Who shall say for you?

(The usual answer is our foreman).

3. "The clerk then inquires: Mr. Foreman how say you—do you find the defendant guilty or not guilty?

4. "The clerk then enters the verdict in proper form, and says:

5. "Gentlemen of the jury, hearken to your verdict as the court has ordered it recorded, you find the defendant guilty in manner and form as he stands charged: (if guilty) and so say you all.

Besson's Law Precedents, page 347.

The final inquiry by the clerk is, of course, changed to suit the statutory requirement in a trial upon indictment for murder; the statute requiring that the jury shall;

"If they find such person guilty thereof designate by their verdict whether it be murder in the first degree or in the second degree."

Laws of 1898, Chap. 235, Sec. 107, page 824.

B. Was the verdict special and irregular?

"A special verdict is one by which the facts of the case are found by the jury and the law is submitted to the judges."

Vol. 2, Bouvier's Law Dict., page 635.

"A special verdict, is where the jury state the naked facts, as they find them to be proved, and pray the advice of the court thereon; concluding conditionally, that if upon the whole matter the court should be of the opinion that the plaintiff had a cause of action they then find for the plaintiff, if otherwise then for the defendant."

(3 Blackstone's Com. 377.)

There is nothing contained in the verdict in this case including the recommendation of mercy and the superfluous words "if the court will accept," which leaves any application of law submitted to the opinion of the court. When a verdict of "guilty of murder in the first degree" is the finding of fact arrived at in the trial of an indictment for murder the law of our state works automatically in the sense that everything which follows is a necessary sequence of the verdict, the judgment of the court follows, then the order of sentence and execution.

"Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death":

(Crimes act Laws, 1898, Sec. 108.)

The charge of the court, supplemented by the additional instructions requested by the jury to aid them in their deliberations, it must be presumed, fully informed them as to the law applicable in the case. The jury had taken the law from the court before the verdict was rendered by them—and after so doing found as a fact, that "the defendant was guilty of murder in the first degree."

It is difficult to conceive in what respect such a finding in anyway resembles a special verdict, if indeed in the trial of a criminal case where the charge of the court amply defines the law applicable thereto before verdict, such an irregularity as a "special verdict" could be possible.

A recommendation of mercy constitutes no irregularity. As above argued the sentence and penalty, in cases where a conviction of "murder in the first degree" is the finding of fact arrived at by the jury, is a matter of statutory law. The jury was in explicit terms so informed before the verdict was delivered and they acted with such knowledge in mind. Even in a case where the court would be at liberty to consider a suggestion of mercy—such action by the jury would go no further than a recommendation merely and constitutes no qualification of the finding of fact. On the contrary, it operates more as an affirmance of the verdict than otherwise for such a recommendation implies an intelligent appreciation of the finding of fact arrived at.

C. Was the verdict conditional?

"If the court will accept," what the jury meant by this appendage to their verdict may be open to

argument, but it seems fair to determine the probable meaning in connection with the verdict itself.

"The jury has agreed to convict the defendant guilty of murder in the first degree, with recommendation of mercy by the court; *if the court will accept.*"

This clearly meant no more than an inquiry whether the court would accept a verdict in that form—i. e. with a recommendation of mercy attached.

"The court thereupon informed the jury, in substance, that the statute fixed the penalty for murder in the first degree and it was beyond the power of the court to comply with any recommendation of mercy."

And after so doing the court did accept the verdict and it was entered accordingly.

EIGHTH POINT.

DEFINITION.

Jury.

"A petit or traverse Jury is a jury who try the question in issue and pass finally upon the truth of the facts in dispute." (Cyc. Vol. 24, page 94). It is a body of twelve men, possessing the requisite qualifications duly summoned, and sworn to well and truly try the question of fact presented to them." (Cooley Constitutional Limitations 319.)

Verdict.

"The answer of the jury given to the court concerning the matter of fact in any case committed to their trial." (Jacobs Law Dict.) "The answer of a jury given to the court concerning the matters of fact committed to their trial and

examination'' (cited from Shellon Practice, Sec. 471 in 41 Law 55 and 56.)

See: Davis vs. Township of Delaware, 41 N. J. Law 55 and 56.
Titus vs. State, 49 N. J. Law 36.
State vs. Jankowski, 82 N. J. Law 230.

''178. General Doctrines. The jury are always at liberty to find a general verdict of guilty or not guilty and can not be required to answer special questions or interrogatories. They may also in any case render a special verdict, which may be a mere finding of facts, leaving the judgment to the court, or a finding for the plaintiff (government) generally subject to the opinion of the court on a case stated by consent.

''Every verdict must be responsive to the charge and sufficiently clear in meaning to enable the court to conclude therefrom a fiinding of the issue or such part thereof as will authorize judgment. Every intendment is made in support of the finding, and any unnecessary language that might otherwise vitiate the verdict will, if possible, be rejected as surplusage. If a statute expressly requires a verdict upon a charge involving different degrees of the same offense (subject to different punishments) to ascertain the degree, a verdict not ascertaining the degree is bad. If a statute expressly requires the verdict, if the finding is guilty, to ascertain the penalty, a verdict silent as to the penalty, or assessing an authorized penalty, or assessing a penalty, but not expressly finding the defendant guilty, is a nullity.''

''179. Rendition and Receiving. The verdict must be given and received in the presence of the accused (not necessarily his counsel), in open court, all the jurors being present. It may be rendered and received and the jury discharged on a Sunday or other dies non. The prescribed formulas must be substantially complied with. After the verdict has been an-

nounced and before it has been recorded, or the jury has dispersed, the court may, upon its own motion, and must, if required by either party, cause the jury to be polled, each juror being required to declare his verdict, the question being usually put, 'is this your verdict;' and, unless and until each juror has assented, the verdict cannot be received. The assent of each juror must be free and unqualified.

"Except in capital cases and in cases in which sentence may be imprisonment for life, it has been held to be within the discretion of the trial court to authorize the jury to separate, after agreeing upon, signing and sealing up a paper in the form of a verdict, and afterwards to return a verdict in open court in accordance with the result so stated and sealed up. The verdict is given and received in the usual form, subject to the polling of the jury. Until the verdict announced has been recorded, it may be altered or withdrawn by the jurors, or by the dissent or nonconcurrence of any one of them; and the court may, at any time before the verdict has been recorded and the jury dispersed, permit them to reconsider and correct it, provided, nothing be done amounting to coercion or tending to influence conviction. Otherwise than stated, a verdict can not be altered or amended by the court or jury; but the court may amend the record of the verdict, and may put the verdict in proper form on record, and, to that end, reject immaterial or unnecessary parts of the finding."

(Hockenheimer's Criminal Law, Sec. 178, 179, 180).

The jury in this case, as in all criminal trials upon indictment for murder, had a certain issue of fact submitted to them, i. e. was the defendant guilty of any crime, embraced in the indictment, if so, what crime, and if murder in what degree?

The jury had no other function to perform. The instructions given in the judge's charge, supplement-

ed by the additional instructions upon the point requested by the jury was so comprehensive that it cannot be assumed the jury acted under any misapprehension as to the law governing the case. They reached their conclusion of fact in the customary way, free from any outside influences. It is not alleged that any irregularity marked the conduct of the jury. After deliberating they agreed upon a finding of fact and that was:"

> "The jury has agreed to convict the defendant guilty of murder in the first degree."

This finding was orally announced in open court by one of the jurors selected and in the presence of the defendant, accepted by the court and became a part of and so much of the record, and judgment according to law follows.

The recommendation to mercy and the inquiry "if the court will accept" are so much surplusage and in no way qualified the conclusion of fact arrived at by the jury, whose minds while acting as sworn officers of the court agreed upon that decision. After in solemn form according to law and precedent delivering such a finding, the jury is estopped from denying or qualifying it by the use of affidavits or statements made after they have ceased to be officers of the court, have been discharged from duty and have ceased to be bound by the oath governing their conduct and functions as officers of the court and instruments of the law.

See: State vs. Overton, 85 N. J. Law 287.

Respectfully submitted,

AZARIAH M. BEEKMAN,
Prosecutor of the Pleas.

CERTIFICATION.

FILED DECEMBER 13, 1915.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *vs.* ALONZO WILLIAMS.	On Indictment and Conviction in the Somerset County Court of Oyer and Terminer of the Crime of Murder in the First Degree.

This is to certify that application has been made to me for the allowance of a Writ of Error to be issued out of the New Jersey Supreme Court for the review of the judgment of the Somerset County Court of Oyer and Terminer, convicting the said Alonzo Williams of the crime of Murder in the first degree, and that I have refused to order a Writ of Error for the review of said judgment.

E. R. WALKER,
Chancellor.

Dated at Trenton, New Jersey,
December 13th, 1915.

WRIT OF ERROR.

FILED JANUARY 23, 1916.

NEW JERSEY, ss: The STATE OF NEW JERSEY to Charles W. Parker, Esquire, one of the Justices of the Supreme Court of the State of New Jersey, and to Daniel H. Beekman, Esquire, Judge of the Court of Common Pleas of the County of Somerset, constituting the Court of Oyer and Terminer holden at Somerville, in and for the County of Somerset, of the Term of September, in the year of our Lord, Nineteen Hundred and Fifteen.

[L. S.]

Because of the record and process and also in giving of judgment upon a certain indictment, against Alonzo Williams, late of the city of Trenton, in the County of Mercer, New Jersey, wherein it is charged that the said Alonzo Williams deliberately premeditatedly, and of his malice aforethought, with force and arms, at the Township of Montgomery, in the said County of Somerset, did make an assault upon one Benjamin Wooley with a certain club, to wit, a base ball bat, by him, the said Alonzo Williams then and there held in both of his hands, and he, the said Alonzo Williams, did then and there wilfully, feloniously, deliberately, premeditatedly, and with malice aforethought, with the said club, so then and there in his, the said Alonzo Williams' hands, strike, wound and beat the said Benjamin Wooley, in and about the head and body and by thus striking, wounding and beating the said Benjamin Wooley, inflicted on and in the body of the said Benjamin Wooley, one

mortal wound, of which said mortal wound the said Benjamin Wooley then and there from thence, continuously and continually languished, until on the fifth day of May, in the year of our Lord, Nineteen Hundred and Fifteen, at Trenton, in the County of Mercer, and State of New Jersey, he, the said Benjamin Wooley, died.

And wherein it is further charged that he, the said Alonzo Williams, late of the city of Trenton, in the County of Mercer, on the second day of May, in the year of our Lord, One Thousand Nine Hundred and Fifteen, with force and arms, at the Township of Montgomery, in the said County of Somerset, and within the jurisdiction of this Court, one Benjamin Wooley then and there being in the peace of God and this State, wilfully, feloniously, deliberately, premeditatedly, and of his malice aforethought, did kill and murder (*pro ut* the said indictment), whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said Alonzo Williams, as it is said, manifest error hath intervened to the great damage of the said Alonzo Williams, as from his complaint we have received information, we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Alonzo Williams, command you that if judgment be thereon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, in the last resort in all Causes, of the State of New Jersey, to be held at Trenton, on the 31st day of December next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, which of right and according to

the laws and customs of New Jersey, ought to be done.

WITNESS, Edwin Robert Walker, Chancellor of our said State at Trenton, this thirteenth day of December, Nineteen Hundred and Fifteen.

THOMAS F. MARTIN,
Clerk.

WILLIAM V. STEELE,
Attorney of Plaintiff in Error.

Consent is hereby given and it is stipulated that the return day named in the within writ: to wit, Dec. 31, 1915, be changed to Jan. 20, 1916, and that the time within which the return is to be made to the command of the Court be extended to said Jan. 20, 1916, to the extent that such consent is permissible.

A. M. BEEKMAN,
Pros. of the Pleas for Somerset County.
W. V. STEELE,
Atty. Deft. Williams.

ANSWER.

The answer of the Court of Oyer and Terminer of the County of Somerset within named.

The entire record of proceedings had upon the trial of the plea whereof mention is within named, with all things concerning the same to the Court of Errors and Appeals of the State of New Jersey, at the day and place within contained, I hereby certify, in a certain schedule to this Writ annexed, as within commanded.

CHARLES W. PARKER,
Justice of the Supreme Court.
DANIEL H. BEEKMAN,
Judge of the Court of Common Pleas of the County of Somerset.

Constituting the Court of Oyer and Terminer of said County within named.

ORDER TO RECALL JURY.

SOMERSET OYER AND TERMINER.

April Term, 1915.

Good and sufficient reasons appearing to the Court therefor the Grand Jury is hereby required to re-convene at ten o'clock in the forenoon at the Court House in Somerville for the purpose of hearing such matters as may be presented to them for their consideration on Friday the eleventh (11th) day of June, A. D., Nineteen Hundred Fifteen.

Charles W. Parker,
Judge.

Daniel H. Beekman,
Judge.

Filed and Entered June 4, 1915.
A. G. Anderson,
Clerk.

CHARGE OF JUDGE.

JUNE 11, 1915.

SOMERSET COUNTY COURT OF QUARTER SESSIONS.

Before DANIEL H. BEEKMAN, ESQ., JUDGE.

In accordance with order of recall the Grand Jury as of April Term, 1915, appeared in Court this Eleventh day of June, A. D., Nineteen Hundred and Fifteen, at ten o'clock in the forenoon. On being called all responded to their names after being charged by Judge Daniel H. Beekman, Esquire, Judge of the Court of Quarter Sessions, who called their attention to a recent homicide, recently committed in this County they retired for the consideration of such business as might be presented to them.

The Grand Jury attended by Constables Charles L. Vanderbeek and William N. Pangborn.

CAPTION.

FILED JUNE 11, 1915.

The State of New Jersey,
ss.
Somerset County,

BE IT REMEMBERED, That at a Court of Quarter Sessions, holden at Somerville, in and for said County of Somerset, on the second Tuesday in April in the year of our Lord one thousand nine hundred fifteen by Daniel H. Beekman, Esquire, Judge of the Inferior Court of Common Pleas in and for the said County of Somerset, according to the form of the statute in such case made and provided, by the oaths of David Baker, James R. Bonney, Clement R. Baldwin, George Codington, Abram A. Cortelyou, Cordie J. Culp, Allen Cowperthwaite, William S. Cranmer, John P. Emmons, James H. Fisher, John E. Flammer, John Gunton, George Hauser, John W. Hamilton, Joseph F. Lake, George Mobus, Henry Mingle, William H. Polhemus, George Schellinger, Jacob Shurts, William H. Tiger, Abram Van Fleet, good and lawful men of said County of Somerset, duly summoned, and then and there duly sworn, ... and charged to inquire in behalf of the State of New Jersey, in and for said County of Somerset, it is presented in manner and form following, to wit:

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

Caption of the April Term, 1915. W. S. Cranmer, Foreman. Azariah M. Beekman, Prosecutor of the Pleas. A. G. Anderson, Clerk.

INDICTMENT.

FILED JANUARY 12, 1915.

SOMERSET COUNTY COURT OF QUARTER SESSIONS.

April Term, A. D., 1915.

Somerset County, ss:

THE GRAND INQUEST of the State of New Jersey, in and for the body of the County of Somerset, upon their respective oath

PRESENT, That Alonzo Williams, late of the City of Trenton in the County of Mercer, New Jersey, on the second day of May, in the year of our Lord one thousand nine hundred and fifteen, with force and arms, at the Township of Montgomery in the said County of Somerset, and within the jurisdiction of this Court did wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought make an assault upon one Benjamin Wooley, with a certain club, to wit: a base-ball bat, by him the said Alonzo Wiliams, then and there held in both of his hands, and he the said Alonzo Williams did then and there wilfully, feloniously, deliberately, premeditatedly and with malice aforethought with the said club so then and there in his, the said Alonzo Williams hands, strike, wound, and beat the said Benjamin Wooley in and about the head and body, and by thus striking, wounding and beating the said Benjamin Wooley inflicted on and in the body of the said Benjamin Wooley, one mortal wound, of which said mortal wound the said Benjamin Wooley, then and there and from thence continuously and continually languished, until on the fifth day of May in the year

of our Lord one thousand nine hundred and fifteen, at Trenton in the County of Mercer and State of New Jersey, he, the said Benjamin Wooley died, and so the said Alonzo Williams in manner and form aforesaid, wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought, did kill and murder the said Benjamin Wooley, 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 THE GRAND INQUEST, aforesaid upon their respective oath aforesaid do further PRESENT, That the said Alonzo Williams, late of the City of Trenton, in the County of Mercer, on the second day of May, in the year of our Lord, one thousand nine hundred and fifteen, with force and arms, at the Township of Montgomery, in the said County of Somerset, and within the jurisdiction of this Court, one Benjamin Wooley, then and there being in the peace of God and this State, wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought, did kill and murder, 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.

AZARIAH M. BEEKMAN,
Prosecutor of the Pleas.

ORDER OF COURT.

SOMERSET COUNTY COURT OF QUARTER SESSIONS OF THE ELEVENTH DAY OF JUNE, 1915.

APRIL TERM, 1915.

THE GRAND INQUEST in and for the body of the County of Somerset, at the April Term of the above named Court having presented to the said Court an Indictment found by the said Grand Inquest, in which Indictment it is presented, charged and alleged, that one Alonzo Williams at the Township of Montgomery did commit murder by wilfully, maliciously and with malice aforethought killing and slaying one Benjamin Wooley; and it appearing to the Court that such Indictment should be sent and referred and delivered to the Court of Oyer and Terminer of the County of Somerset for the trial thereof. It is accordingly on this Eleventh day of June, Nineteen Hundred and Fifteen ordered that the said Indictment so found and presented be sent and delivered to the said Court of Oyer and Terminer of the County of Somerset and that the said Indictment be therefore delivered to the Clerk of the Somerset County Court of Oyer and Terminer.

DANIEL H. BEEKMAN,
Judge.

PLEA.

JUNE 19TH, 1915.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

Before Hon. James J. Bergen, Supreme Court Justice, acting in place of Hon. Charles W. Parker.

As yet of April Term, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

The Court directed the Prisoner to be placed to the Bar to plead to the Indictment, he being accordingly so placed to the Bar, he did then and there enter a Plea of Not Guilty. Prisoner remanded to custody of Sheriff Charles P. Sebring for trial on a day to be set by Justice Parker.

JURORS DRAWN JUNE 19, 1915.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

As yet of Term of April, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

I, ALEXANDER G. ANDERSON, Clerk of said Court, do hereby certify that the following named forty-eight Jurors were on this Nineteenth day of June A. D., 1915, drawn by Sheriff, Charles P. Sebring in the presence of Alexander G. Anderson, Clerk, out of the General Panel of Jurors for April Term, 1915, for service on the above named defendant, Alonzo Williams:

1. Abrams, Henry C., Montgomery, Skillman, Farmer.
2. Allette, Frank, Warren, Springdale, Farmer.
3. Amerman, Gideon, Peapack-Gladstone, Peapack, Mason.
4. Anderson, Albert, Franklin, Rocky Hill, Farmer.
5. Ayers, Lewis A., Franklin, New Brunswick, 5, Farmer.
6. Brunt, Robert S., Somerville, Somerville, Printer.
7. Ballentine, Fred., Peapack-Gladstone, Gladstone, Teaming.
8. Butler, Adolph, Franklin, Griggstown, 1, Farmer.
10. Bradley, Isaac, North Plainfield, Plainfield, Salesman.
11. Brokaw, Edgar, North Plainfield, Plainfield, Contractor.
12. Barlow, William J., North Plainfield, Plainfield, Bookkeeper.

Jurors Drawn June 19, 1915.

13. Brophy, Stephen B., Montgomery, Skillman, Farmer.
14. Bierds, George, Franklin, Princeton, 1, Farmer.
16. Bodine, J. Leslie, Peapack-Gladstone, Gladstone, Carpenter.
17. Cox, Abram Q., Hillsborough, Somerville, 2, Farmer.
18. Cortelyou, Peter V., Rocky Hill, Rocky Hill, Clerk.
20. Crater, George E., Peapack-Gladstone, Gladstone, Board of Health.
22. Dickson, John, North Plainfield, Plainfield, Merchant.
23. Dooley, Michael B., Bridgewater, Somerville, Agent.
24. Danburry, David, Branchburg, Somerville, Farmer.
25. Dockerty, John W., Hillsborough, Neshanic Station, 1, Farmer.
26. Dobbs, Joseph, Bernards, Bernardsville, 4, Contractor.
27. Drake, H. Irving, Montgomery, Skillman, Farmer.
28. Dargle, Edward, Bernards, Basking Ridge, 1, Retired.
29. Force, Charles L., North Plainfield, Plainfield, Contractor.
30. Greimlott, Julius, South Bound Brook, South Bound Brook, Painter.
31. Hageman, Peter C. S., Franklin, Griggstown, 3, Farmer.
32. Hill, Israel H., Hillsborough, Neshanic 1, Carpenter.
33. Hall, Dennis S., Bridgewater, Somerville, Carpenter.
34. Herman, Martin, South Bound Brook, South Bound Brook, Carter.
35. Hoch, Ferd, Somerville, Somerville, Painter.

Jurors Drawn June 19, 1915.

36. Hoagland, A. S., Franklin, Griggstown 1, Farmer.
37. Kline, Aaron T., Bridgewater, Somerville, Cigars.
38. Kipp, Isaac L., Branchburg, Neshanic Station 2, Farmer.
39. Miller, Raymond, Bedminster, Bedminster, Farmer.
40. Orts, George, Bedminster, North Branch, Farmer.
41. Pope, Charles E., Bernards, Bernardsville 4, Painter.
42. Pumyea, John V. D., Montgomery, Belle Mead, Retired.
44. Rule, Fred, Rocky Hill, Rocky Hill, Terra Cotta.
45. Saums, John H., Hillsborough, Somerville 1, Farmer.
47. Trenbath, William J., North Plainfield, Plainfield, Printer.
48. Tingley, Lewis R., Hillsborough, Neshanic 1, Farmer.
49. Urch, Alfred S., Bound Brook, Bound Brook, Clerk.
50. Wyckoff, James G., Hillsborough, Millstone 2, Farmer.
51. Weill, Henry, Somerville, Somerville, Merchant.
52. Weill, Nathan, Somerville, Somerville, Merchant.
54. Wyckoff, Isaac N., Bridgewater, Somerville, Salesman.
55. Yawger, Bergen B., Branchburg, Neshanic, Farmer.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 21st day of June, A. D., Nineteen Hundred and Fifteen.

[L. S.]

A. G. Anderson,
Clerk.

Jurors Drawn June 19, 1915.

William V. Steele, Esq., Acting as Counsel for Prisoner, requested to have noted on the minutes of this Court that fifty-one names were drawn from the box, that three of the Jurors so drawn, to wit: Charles H. Blume, Ellsworth Childs and John C. Cratsley according to statement of Sheriff Sebring had not been summoned having removed from the County.

ASSIGNMENT OF COUNSEL.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

October 27, 1915.

Before Hon. Charles W. Parker, Supreme Court Justice and Daniel H. Beekman, Esq., Judge of the Court of Common Pleas.

September Term.

The State *vs.* Alonzo Williams—Indictment for Murder.

The Court assigned William V. Steele, Esquire, Counsel for the accused and fixed date for trial November 10, 1915.

JURORS DRAWN OCTOBER 19, 1915.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

September Term, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

I, ALEXANDER G. ANDERSON, Clerk of the County of Somerset do hereby certify that the following named forty-eight Jurors were on the nineteenth day of October, Nineteen Hundred and Fifteen drawn by Sheriff, Charles P. Sebring in the presence of Hon. Daniel H. Beekman, Judge of the Court of Quarter Sessions, and Alexander G. Anderson, County Clerk, from the general panel of Jurors for the September Term, 1915, for service on above-named Defendant in accordance with the Statute in such case made and provided:

2. Auten, David K., Hillsborough, Somerville, Farmer.
3. Acken, William, Bernards, Bernardsville, Merchant.
4. Brokaw, Peter Q., Branchburg, Neshanic Station, Farmer.
5. Burns, John, Bridgewater, Raritan, Real Estate.
7. Baird, J. Vred, Franklin, New Brunswick, Farmer.
8. Buchanan, William H., Rocky Hill, Rocky Hill, Barber.
9. Bourke, Jeremiah, Bridgewater, Raritan, Undertaker.

Jurors Drawn October 19, 1915.

10. Clark, Daniel D., Bound Brook, Bound Brook, Editor.
12. Cleaves, Melvin H., North Plainfield, Watchung, Salesman.
13. Case, Peter V. N., Hillsborough, South Branch, Plumber.
14. Chamberlain, Augustus, Bridgewater, Raritan, Foreman.
15. Cooper, John C., Warren, Warrenville, Farmer.
16. Coon, David E., North Plainfield, Plainfield, Contractor.
17. Dow, Eli, Jr., Bridgewater, Raritan, Farmer.
18. DeMott, Henry, Peapack-Gladstone, Gladstone, Carpenter.
19. Drummond, Robert, Bernards, Bernardsville, Retired.
20. Durling, Arthur S., South Bound Brook, South Bound Brook, Well Driller.
22. Egle, George, Jr., North Plainfield, Plainfield, Butcher.
23. England, William S., North Plainfield, Plainfield, Driver.
24. Griffith, William, Bernards, Basking Ridge, Carpenter.
25. Gano, John M. S., Bound Brook, B. Brook, Agent.
26. Giddes, Elmer A., North Plainfield, North Plainfield, Dentist.
28. Giddes, Jacob E., Bridgewater, Martinsville, Farmer.
29. Gulick, Raymond J., South Bound Brook, South Bound Brook, Well Driller.
30. Hulick, Daniel L., North Plainfield, Plainfield, Mill Hand.
31. Hulsizer, Theodore, Bound Brook, Bound Brook, Theatre.
32. Higgins, John H., North Plainfield, North Plainfield, Mason.

Jurors Drawn October 19, 1915.

33. Housel, Edward C., Branchburg, South Branch, Farmer.
34. Kershaw, William G., Somerville, Somerville, Agent.
35. Lyman, Charles P., North Plainfield, Plainfield, Manager.
37. McGarry, William, Bernards, Bernardsville, Supt.
38. Moore, William J., Bedminster, Pottersville, Farmer.
40. Nuse, George W., Jr., Warren, Mt. Bethel, Farmer.
41. Robbins, Samuel E., Rocky Hill, Rocky Hill, Terra Cotta.
42. Rinehart, Philip, Bridgewater, N. Branch, Farmer.
43. Rhuple, Andrew, Hillsborough, Neshanic, Farmer.
44. Rutlidge, Thomas, North Plainfield, Plainfield, Contractor.
45. Schwed, Max, Somerville, Somerville, Clerk.
46. Savacol, A. G., Bridgewater, Somerville, Machinist.
47. Shurts, Peter S., Somerville, Somerville, Retired.
48. Snable, Harry B., Bernards, Basking Ridge, Mason.
49. Stout, Harry H., Montgomery, Skillman, Farmer.
50. Todd, Philip, Peapack-Gladstone, Peapack, Farmer.
51. Voorhees, Garret S., Bernards, Basking Ridge, Farmer.
52. Varley, James B., Somerville, Somerville, Editor.
53. Wyckoff, George A., Hillsborough, Millstone, Farmer.

Jurors Drawn October 19, 1915.

54. Woodruff, Frank E., North Plainfield, Plainfield, Insurance.
55. Walz, Chris, Bound Brook, Bound Brook, Baker.

In Witness Whereof I have hereto set my hand and affixed the seal of said Court and County this First day of November, 1915.

A. G. ANDERSON,
Clerk.

A true Copy.
A. G. ANDERSON,
Clerk.
(Seal of the County of Somerset.)

INDICTMENT.

FILED, JUNE 12, 1915.

SOMERSET COUNTY COURT OF QUARTER SESSIONS.

APRIL TERM, A. D., 1915.

Somerset County, ss:

THE GRAND INQUEST of the State of New Jersey, in and for the body of the County of Somerset, upon their respective oath

PRESENT, That Alonzo Williams, late of the City of Trenton in the County of Mercer, New Jersey, on the second day of May, in the year of our Lord one thousand nine hundred and fifteen, with force and arms, at the Township of Montgomery in the said County of Somerset, and within the jurisdiction of this Court did wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought make an assault upon one Benjamin Wooley, with a certain club, to wit: a base-ball bat, by him the said Alonzo Williams, then and there held in both of his hands, and he the said Alonzo Williams did then and there wilfully, feloniously, deliberately, premeditatedly and with malice aforethought with the said club so then and there in his, the said Alonzo Williams hands, strike, wound and beat the said Benjamin Wooley in and about the head and body, and by thus striking, wounding and beating the said Benjamin Wooley inflicted on and in the body of the said Benjamin Wooley, one mortal wound, of which said mortal wound the said Benjamin Wooley, then and there and from thence continuously and continually languished, until on the fifth day of May in the year of

our Lord one thousand nine hundred and fifteen, at Trenton in the County of Mercer and State of New Jersey, he, the said Benjamin Wooley died, and so the said Alonzo Williams in manner and form aforesaid, wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought, did kill and murder the said Benjamin Wooley, 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 THE GRAND INQUEST, aforesaid upon their respective oath aforesaid do further PRESENT, That the said Alonzo Williams, late of the City of Trenton, in the County of Mercer, on the second day of May, in the year of our Lord, one thousand nine hundred and fifteen, with force and arms, at the Township of Montgomery, in the said County of Somerset, and within the jurisdiction of this Court, one Benjamin Wooley, then and there being in the peace of God and this state, wilfully, feloniously, deliberately, premeditatedly and of his malice aforethought, did kill and murder, 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.

AZARIAH M. BEEKMAN,
Prosecutor of the Pleas.

A True Copy.

A. G. ANDERSON,
Clerk.

(Seal of the County of Somerset.)

November 1, 1915, Served the within Indictment and list of names of jurors upon Alonzo Williams personally, at the Somerset County jail.

CHARLES P. SEBRING,
Sheriff.

By ELLSWORTH BROKAW,
Under Sheriff.

WRIT OF HABEAS CORPUS.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Murder.

It appearing to the Court, by affidavit, that Harry Newton, Albert Watkins, George Till, Thomas Smith, Frank Hall, Robert Cowan, Mike Biancho, John Ranjo are material witnesses for the State in the criminal matter above-stated, now pending before the above-named Court, and it further appearing that the said Harry Newton, Albert Watkins, George Till, Thomas Smith, Frank Hall, Robert Cowan, Mike Biancho, John Ranjo have been convicted of crime and are now inmates and wards of the New Jersey State Prison at Trenton, New Jersey, and under confinement therein subject to the rules of that institution.

It is, therefore, ordered that a writ of habeas corpus ad testificandum issue out of the Supreme Court of New Jersey, directed to Thomas B. Madden, Principal Keeper of the New Jersey State Prison at Trenton, New Jersey, to have the bodies of the above-named inmates before the above-named Court, at the County Court House in Somerville on Monday the Eighth day of November, instant, at eleven o'clock in the forenoon, there to testify in the above stated matter on behalf of the State.

DANIEL H. BEEKMAN,
Judge.

On motion of
A. M. BEEKMAN,
Prosecutor of the Pleas.

Dated November 5, 1915.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

Nov. 8, 1915.

Before Hon. Charles W. Parker, Supreme Court Justice, and Daniel H. Beekman, Esq., Judge of the Court of Common Pleas.

SEPTEMBER TERM, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

HON. A. M. BEEKMAN, Prosecutor Att'y for State.

WILLIAM V. STEELE, ESQ., Att'y for Defendant.

JURY.

1. John H. Higgins; 2. William S. England; 3. David K. Auten; 4. J. Vred Baird; 5. John M. S. Gano; 6. William G. Kershaw; 7. A. G. Savacol; 8. Max Schwed; 9. David E. Coon; 10. George W. Nuse, Jr.; 11. Daniel D. Clark; 12. Melvin H. Cleaves.

Constables William N. Pangborn and Edgar B. Stryker sworn to attend them.

WITNESSES FOR STATE.

1. Walter Richardson; 2. John W. Baldwin; 3. Charles H. Clayton; 4. Alexander Ligen; 5. Harry Newton; 6. Robert Cowan; 7. Thomas Smith; 8. Dr. Frank G. Campbell; 9. Dr. Martin W. Reddin; 10. Frank Grove; 11. Frank J. O'Brien; Charles H.

Witnesses.

Clayton, recalled; 12. William O'Blennis; 13. Nathaniel Weir; 14. Albert Osterholts; 15. Fred Reppe; Joseph Navatto sworn as Interpreter; 16. Michael Brancko through interpreter; 17. John Rango; 18. George Till.

Adjourned till Nov. 9, at 10 A. M.

Nov. 9th—19. Josiah Crane; 20. Albert Watkins; 21. Frank Hall.

State rests.

WITNESSES FOR DEFENDANT.

1. Alonzo Williams.

Defendant rests.

A letter written by Defendant was offered in evidence by State on Cross-Examination, but not admitted, the Court to decide at afternoon session. At the afternoon session the Court decided to admit the letter and the case was re-opened and Alonzo Williams called who read the letter commenting on same as to what was true and what not true.

En. Rebuttal for State. Fred Rappe, Harry Newton and Charles H. Clayton.

Case closed.

After hearing the evidence the argument of counsel and the charge of the Court the Jury retired at 4.25 P. M., in charge of Constables William N. Pangborn and Edgar B. Stryker who were sworn to attend them to consider of their verdict, after being out until 8.45 P. M., they returned into Court and by Wil-

liam G. Kershaw, one of the Jurors, who spoke for them rendered a Verdict from a memorandum in writing of which the following is a true copy, "Jury has agreed to convict the defendant Guilty of Murder in the first degree with recommendation of Mercy by the Court if the Court will accept," and so say they all.

Nov. 10, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

Sentence deferred no date fixed.

SOMERSET COURT OF OYER AND TERMINER.

THE STATE, *vs.* ALONZO WILLIAMS, *Defendant.*	Indictment for murder.

Transcript of short hand notes of testimony taken in the trial of the above entitled matter, at the court house in Somerville, N. J., on November 8th and 9th, 1915.

Before HON. CHARLES W. PARKER, Justice of the Supreme Court, and DANIEL H. BEEKMAN, Judge of the Court of Common Pleas, and a jury.

For the State, A. M. BEEKMAN, Prosecutor of the Pleas.

For the Defendant, WILLIAM V. STEELE.

Mr. Steele: May it please the Court, I think it is my duty to interpose a challenge to the array. It appears that under the statute a list of the jury shall be delivered to the prisoner, by special order of the court, at the next term in which he is to be tried. The record of the court will show that on June —, 1915, a special panel was drawn in this case for the purpose of the trial of this defendant. My insistment will be that that is the beginning of the actual trial of the case; that the inception of the trial is not the

calling of the jury of twelve men to be sworn, but the beginning of the trial—the setting apart of these forty-eight names from the panel that had been drawn for the April term for the trial of this cause. If that be the beginning of the trial, then that was the jury that was called in June, 1915, which should have tried this case. It does not appear that the jury has been discharged by formal order of the court. The records, I think, will show that the jury was so drawn, at any rate. Under the statute, and in counties having a population of one hundred and fifty thousand, in case any jury is summoned on any panel, and shall be actually serving on the trial of a cause at the time when the panel of jurors would be otherwise discharged, the term of service of such jury shall be and is extended until the completion of the service. I do not find that there is any statutory law controlling counties of under one hundred and fifty thousand, but it seems to me that the same general rule would apply to this county as applies by statute to counties formerly of two hundred fifty thousand, and the court further has the power when a jury is in actual service, set apart for the trial of a case, to extend the time of the service. To illustrate what I mean, supposing this case or any case were on trial; the jurors now running from one term to another; if at the end of this September term this case were on trial and the jury sitting, the fact that the original statutory law says that the jury shall be summoned to serve for the April term, does not absolve the court from extending the time of service of these jurors who will be sitting at the end of this term over into the next term; the trial would not stop because of that.

The Court: Your theory is evidently that the trial began last term.

Mr. Steele: The trial began last term, upon the service and selection of this jury for the trial of this cause. That is my theory.

The Court: You claim that it began in the April term then?

Mr. Steele: Yes; the jury sitting for the trial of this particular case for which it is called, and consequently cannot be discharged until the trial should continue and the case tried by the jury so selected. Under the laws of 1911, page —, section 7, provision is made for the justice of the Supreme Court drawing that panel, that the jurors so drawn shall serve for a designated portion of the next ensuing term; and while that does not apply directly to this case, the spirit and principle of the law is disclosed in that statute, and I think should apply.

The Court: Well, your challenge is overruled, and you may have your exception, Mr. Steele. If there is no further motion on the part of counsel, the sheriff may return a panel.

(Jury called and sworn.)

WALTER RICHARDSON, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor.

Q. You made these maps, Mr. Richardson? A. I did.

Q. At the request of Mr. Steele and myself? A. Yes.

Q. When did you make them? A. November 2nd, Election day.

Q. Will you explain to the jury, Mr. Richardson, what this map purports to show with relation to the land and building at the State Camp at Rocky Hill? A. The map on the left is entitled, "Plan of portion of New Jersey Camp No. 2, near Rocky Hill, New Jersey." It is drawn on a scale of one inch, is equal to five feet, on the ground. The arrow points in a northerly direction, shown at the top of the map, which is the north. The diagram on the left of the map in question (indicating) represents the building on the camp, outlined in heavy black lines. This building is divided up there on the left by black lines into several departments; the upper or green colored one is entitled "Mess Hall;" that one below, that is where they ate; the one at the north-west corner of the building is a kitchen, used as a kitchen and so lettered on the map. Another small room just south of the kitchen is lettered Lavatory.

The Court: And so with all the other names on the map, they indicate what was there?

Witness: Indicate what the various rooms were used for.

The Court: And this map on the right is merely a larger scale of the building on the left?

Witness: Exactly, of two rooms—three rooms of the building on the left.

The Court: The names correspond?

Witness: Yes, the names correspond, in all respects.

The Court: These small rectangular spaces here, are what?

Witness: These represent the location and arrangement of the various cots in the dormitory at the time we were there—fifty-five cots.

Q. Show me the door that leads into the assembly room from the grounds in front of the general building? A. (Indicating.) I put my pointer on the door that leads from the assembly room to the ball grounds.

Q. What are these rectangular squares immediately in front of the building?

The Court: They are all marked.

A. Those rectangular figures are benches which are located along the easterly side of the building.

Q. And the opening between the line dividing the mess hall and the assembly room, what is that? A. Represents a door.

Q. Is there no other door from the mess hall or opening outside? A. No, there is not.

The Court: Where is this door on the big map?

Witness: That is the only door of the easterly side.

The Court: Where is it on the large diagram? Where is this door on this diagram? (Indicating.)

Witness: The same door shows on the larger map; that opening is marked "Entrance."

Q. You have not all of the mess hall on this map, only a portion of it? A. I have not.

Q. Can you with a pencil make an indication that there is a door there (indicating), the same as indicated on this diagram? A. There is every evidence that there should be a door in the east end of the mess hall; being closed, I missed observing it.

The Court: Well, you had better take a pencil and mark it on the map.

Walter Richardson—Direct.

Q. Is there not a door between the dormitory, or the small square marked dormitory, and the larger square marked dormitory? A. There may be a door between the two dormitories; I could not say as to that.

Q. I call your attention to a dark square spot at the top of the map, near the top of the map, between what you say indicates cots, what is that? A. That represents a crucifix, upon the Milburn side; and also a similar figure at the southerly end of the plant.

Q. What is this triangle indicated on the map? A. That indicates the base line running from home plate of the ball ground.

Q. That indicates a ball ground, doesn't it? A. Base ball ground.

Q. These, (indicating) are base lines? A. Those are lines connecting the bases. It is hard to represent the base lines.

Q. Can you tell me how many feet it is from third base to the door leading into the dormitory? A. Not without scaling.

Q. Well, will you do that? A. (referring). It scales about one hundred and twenty feet.

Q. You have placed some figures on your map; do they indicate the distance between the stove and the cots indicated by the arrow point? A. I measured that distance to represent the middle line of a certain cot by the stove and found it to be 16 feet 3 inches.

Q. Can you tell me how far it is from this stove (indicating) to the foot of this cot, making a direct line up the aisle and out this way (indicating)? A. By scale?

Q. By scale? A. (referring) 23 feet approximately.

Q. What is the length of the dormitory, the large mess hall? A. The length is 71 feet and a half—72 feet.

Cross-Examination by Mr. Steele:

Q. That diagram, Mr. Richardson, shows the location of the cots as they were on the day you were there, on Election day? A. It does.

Q. And not the location of the cots as they were in May, on May 2nd? A. I could not say as to that.

Q. And you do not know whether they have been changed between May 2nd and the time that you made the diagram or not? A. No.

Mr. Steele: I might say this, that the diagram shows the general location of the cots at the time that Mr. Richardson was there. I understand that at the time this occurred, the cots were arranged differently had been changed between that time and this time.

The Prosecutor: We will have more testimony on that point, perhaps.

A Juror: May I ask a question?

The Prosecutor: Yes, sir.

The Juror: Is this a one story building?

The Prosecutor: It is a one story building, is it not?

Witness: One story building.

The Court: The jury will have the photographs and everything submitted to them.

JOHN W. BALDWIN, sworn for the state, testifies as follows:

Direct Examination by the Prosecutor:

John W. Baldwin—Direct.

Q. Mr. Baldwin, you are a photographer doing business in Somerville? A. I am.

Q. And did you upon a recent date make some photographs at Rocky Hill, at the request of the Prosecutor's office? A. I did.

Q. What date were the photographs made? A. May 28th, 1915.

Q. Who was present with you at that time, if anybody? A. Yourself and some of the officials.

Q. This gentleman here (indicating)? A. Yes.

Q. I show you five various photographs and ask you if those are the photographs you took at that time? A. (referring) They are.

The Court: Mr. Beekman, they all seem to be numbered; take them up in their order.

Q. Taking photograph marked No. 1, tell us what that photograph is and from what point it was taken? A. No. 1 was taken from the north-west corner of the building in the mess hall or dormitory, possibly; there are no cots here.

The Court: Looking toward the southeast?

Witness: Yes, sir, looking toward the south-east.

Q. This corner? A. That is right; looking diagonally across the room.

Q. Shows generally the interior view of the room as it then existed? A. It does.

Q. No. 2 was taken from where? A. No. 2 was made from the west end of the building looking toward the east, across the room.

Q. Taken from where? A. From the west end of the building looking directly east.

The Court: Taken from in front of the door in the lavatory, just about?

Witness: Just about at this door, looking straight across the opposite aisle.

Q. No. 3? A. No. 3 was made from the south east corner looking diagonally across the room to the north-west.

The Court: That is just opposite No. 1?

Witness: Just opposite No. 1.

Q. From about the point marked, "Entrance?" A. Yes, sir. Nos. 4 and 5 are outside views of the building. No. 4 was made from the north-west corner and No. 5 was made from the south-east corner, I should say.

Q. Well, you have got the whole field, Mr. Baldwin; just show—here is the field (indicating) and here is your building? A. No. 4 was made at that point (indicating), in that direction.

The Court: Somewhere above that letter "N"?

Witness: North on the map. And No. 5 was taken in the opposite direction, looking this way (indicating). This one shows this one door entrance in that way (indicating).

Q. Are these photographs correct representations of the objects which they undertake to show? A. They are.

Q. As well as they can be shown by photograph? A. By photograph.

Cross-Examination by Mr. Steele:

Q. The direction in which the lens of camera is pointed gives different effects, does it not, on a negative, at different angles? Do you understand what I mean? That is, if the camera is pointed at the as-

sembly room at an angle, say of 45 degrees, the assembly room will appear differently to the eye than if the camera stood at right angles with the assembly room? A. Oh, yes.

Q. Is that a fact? A. It is, but it would be a true representation of it at that point.

Q. At that angle? A. Yes, sir.

Q. And the perspective or the height of the building might appear differently? You don't get the correct height of the building from a negative or from a photograph, do you? A. Oh, yes, you do; from that view point.

Q. From that view point? A. Yes, sir.

Q. To illustrate, if a camera stood in front of this court house building and a photograph is being taken of the court house, would not the front part of the court house appear proportionately very much larger than the rear end? A. Sure, yes, sir.

Q. Then you would not get a true representation of the court house, would you? A. From that view point.

Q. From that view point the same as you would from your eye? A. You certainly would—yes, sir, just the same.

Q. You have just said that the front part of the building would appear proportionately larger, very much larger? A. Yes.

Q. With the eye, would it appear very much larger? A. Yes, certainly. Have you ever tried it?

Q. I have. A. Looking up and down the track or any other view point, the further away you go, it gets smaller, all the time.

Q. Do you think that gives the same effect that you would have by looking at it with the eye? A. Not exactly, no, sir.

Q. Not enough to make much difference? A. That would depend upon your view point, how close you are on the subject.

Q. As a matter of fact, the difference is lesser or greater irrespective of the perspective? A. Yes, that would be too. The only thing I could say is that it is an exact reproduction of the view point, because it was a thoroughly tested lens, and I found it was properly used in this connection.

By the Prosecutor:

Q. If you were going to take a photograph of that door (indicating) and directed your lens at it, so that the line of vision from the lens to the door would be straight, there would be no distortion of the door? A. None, whatever.

Q. But there might be a distortion of some object included in the horizon of the lens? A. Well, no, because we would take that distortion and correct it.

By Mr. Steele:

Q. Taking Exhibit No. 3; that exhibit shows the interior of the assembly room; do you know whether that was the interior as it was on May 2nd? A. I do not.

Q. That shows the interior as it was on May 28th? A. It does.

Q. Will you look at the photograph and then at the map and tell me whether the cots in the rear of the hall, the location of the cots in the rear of the hall are the same in each? A. I would say they are the same, as near as you can tell from the photograph.

Q. You will note that there are four cots in the rear of the hall at right angles with the rear wall or partition, and then a passage-way, and then two other rows, and then at right angles with the side wall; does that photograph show four cots and this partition? A. (Referring).

The Court: Which picture is that?

Witness: This is picture No. 3. Well, I don't know Mayor. I could not say whether that would be a double corridor or not.

Q. While you were there did you note the interior as well? Do you remember what the line within three inches of the top of No. 2 indicates? A. A shelf; That is shelving.

Q. Can you tell by looking at that photograph how high that shelf is from the floor? A. No, I did not measure it; but I should think it would be between five and six feet.

Q. In the photograph marked Exhibit No. 1, does that same shelf appear? A. (Referring) No.

Q. That light shelf? A. Oh, yes; yes.

The Court: The corresponding shelf?

Witness: Yes, it certainly does.

Q. And that corresponding shelf would be on this partition above the cots on this side of the partition wall, would it not, and about the same height? A. Yes, about the same height; between five and six feet, I should judge.

Q. Well, while you were over there taking these photographs was the cot which was occupied by the deceased pointed out to you? A. I don't think particularly the cot, but the location, about where it was; it was by this alley-way; this entrance here. Just let me see for a minute. I think it was, but I can tell you why, because of this cross in this picture calls my attention to it; and the cross in this picture —No. 2—

Q. Now, Mr. Baldwin, there is no cot marked up here with a cross? A. No.

Q. Was it that cot or the cot next to it? A. No, I

think—I don't know positively, because it was after that—it was only where this cross on this picture is —the figure of a cross.

The Court: That little cross on the shelf?

Witness: Yes.

Q. The crucifix? A. The crucifix; I remember that picture now.

The Court: I suppose there is no objection to these pictures?

Mr. Steele: No objection.

The Court: They may be admitted in evidence.

CHARLES A. CLAYTON, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Clayton, you hold what position? A. Charge of the Identification Bureau.

Q. Of the New Jersey State Prison? A. New Jersey State Prison.

Q. Were you at Rocky Hill on May 2nd? A. No, I was at the prison at the time the telephone call came in.

Q. Did you go to Rocky Hill? A. Yes, sir.

Q. How soon after? A. We received the telephone call somewhere around five o'clock.

Q. In the afternoon? A. In the afternoon, and immediately telephoned to Doctor Reddan and he said he would take us up right away.

Q. Never mind what he said. You went up there? A. Yes.

Q. How long did you stay there? A. I believe about three-quarters of an hour, or an hour, something like that.

The Court: How far is it, about thirteen miles?

Witness: I should say so, somewhere around it.

Q. Did you notice the location of the cots in the room at that time? A. I did, sir.

Q. How did they correspond with the location on May 28th, when the photographs were taken—you were there when the photographs were taken, were you not? A. No, that was Mr. Harris.

Q. Do you remember how many cots there were at this point (indicating), you understand this map? A. Yes.

Q. At this point?

The Court: The north-east corner of the dormitory.

The Prosecutor: I call it the mess hall.

A. We arrived here; Ben Wooley was lying about here, somewhere on the cot (indicating): I sat on this cot (indicating)—no, this cot here; I will tell you just exactly which one it is—in fact, it was one of these cots (indicating).

Mr. Steele: Will you indicate by arrow which was Wooley's cot?

Witness: This one (indicating).

Q. Indicate by an arrow head; and was that an aisle in the dormitory then? A. Four or five wide; I stood there (indicating) and took Wooley's statement; sat right on his bed.

Charles A. Clayton—Direct.

Q. Do you know whether there were one or two other parties there? A. I could not tell you; this bed was in the corner, pushed all the way up against the wall; then there was just room enough for me to get in and sit down.

Q. I show you a photograph marked Photograph No. 2, and ask you whether that gives a correct representation of the conditions as they existed at that time as to the location of the bed, the width of the alley-way, and so forth? A. Yes; this (indicating) is up against the wall.

Q. Can you recognize the bed that belonged to Benjamin Wooley? A. This bed right here (indicating)

The Prosecutor: The witness is pointing to—

The Court: Which one?

Witness: The last bed.

The Court: Back of the pillar?

Witness: Back of the pillar, yes.

Q. Those two beds back of the pillar?

The Court: The one at the end of the dotted line?

Witness: Yes.

The Court: The one on the photograph, as near as possible under that little white cross on the north?

Witness: Right here (indicating)

The Court: It is under this white cross?

Witness: Yes.

Charles A. Clayton—Direct.

Q. You say you found that Wooley recognized you? You knew him as a prisoner? A. Oh, yes.

Q. As a matter of fact, you kept a record of the description of prisoners, didn't you? A. Photographs and finger records of every man that comes in the place.

Q. Where did you say that Wooley was, indicate on the map? A. Somewhere along here (indicating), below the stove; right along here (indicating) somewhere.

Q. Somewhere north of the stove? A. Right opposite the aisle.

Q. At the foot of the aisle between the beds? A. Yes.

Q. What condition was he in? A. He was wrapped up in a blanket with the exception of the head, and that was bandaged up, and bleeding considerably. I helped Dr. Reddan take off some of the bandages so that he could look at the wound.

Q. Did you see the wound? A. No.

Q. What did you do, if anything, by reason of your position—by reason of your position with Wooley; in the first place was he conscious. A. I think not.

Q. What did you do with him? A. I helped him, in the care of the doctor, to make his examination, and immediately called those that saw the happening and took a statement from three of them.

Q. Who took those statements down? A. I took a pencil statement myself.

Q. Did anybody take them stenographically? A. Yes, Mr. O'Brien of the Prosecutor's office at Trenton.

Mr. Steele: I object; I do not see that that is material.

Charles A. Clayton—Cross.

The Prosecutor: I just want to bring out the fact that a statement was taken at that time. I wasn't after that.

The Court: The contents are not in.

Q. Did the defendant make any statement at that time that you know of? A. No.

Q. Did you get a bat there? A. The bat was handed to me by the officer in charge.

Q. What bat? A. This (indicating).

Q. Show it? A. This is the bat.

Q. That was handed to you? A. That was handed to me at the time.

Q. Who was the officer in charge? A. Mr. Laggen.

Q. What did you do with it? A. Kept it in my possession from the time it was handed to me—of course, I carried it down in at the time—until after it was brought up here to the Grand Jury, and then took it back with me and have had it in my possession ever since.

Q. Where was it when it was turned over to you? A. In the office of the—well, it was in the custody of Mr. Laggen, in the custody of Camp 2.

Cross-Examination by Mr. Steele:

Q. You had seen Benjamin Wooley frequently. A. Yes, I had.

Q. He was a large man, wasn't he, heavily built? A. I should say about six feet.

Q. Strongly built? A. Very.

Q. Muscular? A. Yes.

Q. At first glance and from casual appearance, he would appear to be an athlete? A. Very healthy looking man.

Q. About how old was he? A. I should say close to forty.

Charles A. Clayton—Cross.

Q. Mr. Laggen, I understand you to say, had that bat at the time it was given over to you? A. Yes, sir.

The Court: What is the name, Laggen?

Witness: Yes, sir.

Q. He was the proper custodian of the bat? A. Yes, sir, he was in charge.

Q. You understood it to be the bat that had been used by the defendant in the assault? A. I did.

Q. If the defendant had kept that bat after the assault had been made and still had it in his possession, would it have been proper for him to have turned it over to anybody excepting Mr. Laggen? Mr. Laggen was the proper man to give it to? A. Yes, he was the proper man to give it to.

Q. It would not have been proper for him to have given it to any other person? A. None at all.

Q. It would not have been proper for him to have given it to any other keeper, would it? A. Yes, it might have been.

Q. But properly. Mr. Laggen was the man? A. He was the proper man.

Q. He was the proper custodian? A. Yes.

Q. He was the sworn— A. He was in charge of the camp at the time. He was not the general superintendent just at that time.

Q. If the bat was retained by the defendant until he had given it to Mr. Laggen, the defendant would have been observing the rules of the building, would he not? A. Yes, sir.

The Prosecutor: I would like to reserve the right to recall this witness if necessary.

ALEXANDER LAGGEN, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. Mr. Laggen, you occupy what position in connection with the New Jersey State Prison? A. Guard.

Q. Did you occupy that position on May 2nd, last? A. Yes, sir.

Q. Were you in attendance at the camp at Rocky Hill on that date? A. Yes, sir, I was in charge.

Q. You were in charge of the camp? A. That Sunday. The regular man was off.

Q. Did you ever see that bat before (showing)? A. Yes, sir.

Q. When? A. I seen it on the 2nd of May when I took that bat off Williams.

Q. That is what I am getting at. You saw it on the 2nd of May; who had it? A. Williams.

Q. Where was Williams—Williams, the defendant in this case? A. Yes, sir.

Q. Where was Williams when he had the bat? A. I was pointed out that man to Robert Cohen, who came in, and told Alex—

The Court: No, no; never mind what you told him.

Q. You came in on the call of somebody, did you? A. Yes, sir.

Q. What happened in the meantime, if you know? What did you find in there? A. I found Williams coming towards the door with a bat in his hand and I asked him what did he do; I asked him for the bat; he turned the bat over to me.

Q. You asked him what he did; did he make any reply? A. No, sir.

Q. Did you see some red marks on the bat? Were they on the bat at the time? A. Yes, sir.

Q. What else did you do in connection with this case at that time, if anything, except take the bat? A. Well, I called for Mr. Clark, the other man, and told

him to get me a pair of handcuffs, and I put the handcuffs on him; told him to sit on the bed. They telephoned to Princeton for Dr. Reddan.

Q. Why did you put the handcuffs on him? A. Well, I thought it best to have a pair of handcuffs on.

Mr. Steele: I object to that.

Q. Why did you think it was best to put the handcuffs on? A. Because he used the bat on this man's head.

The Court: That will necessarily involve something that he heard, Mr. Beekman, won't it?

The Prosecutor: Involves hearsay.

The Court: Yes. You put the handcuffs on him in view of other reports that had been made to you, is that about it?

Witness: Yes, sir.

Q. When did you first find out that Ben Wooley had been hurt? A. Robert Cohen told me.

Q. Who is Robert Cohen? A. One of the prisoners.

Q. Was that before or after you got the bat from Williams? A. That was before I got the bat from him.

Q. A report then had come to you that Wooley had been hurt before you came in? A. Yes, sir.

The Court: Williams did not make any statement to you when you asked him?

Witness: No, sir.

The Court: Did not say anything?

Witness: Well, after I had him in the office—

The Court: I mean at the time you took the bat away?

Witness: No, sir.

Q. Did he make any statement to you or you to him in the office? A. Yes, sir.

Q. What did you say to him and what did he say to you at that time? A. He said, "Mr. Laggen, I am sorry this happened, because it was my last Sunday at the camp. I am supposed to go back to prison on Monday."

Q. Is that all that occurred? A. That is all that occurred.

Cross-Examination by Mr. Steele:

Q. As a matter of fact, do you know when his term did expire—Williams' term? A. I don't know when his term expired, no, sir.

Q. Did you know about when his term was up, when he would have received a discharge from this camp? A. He was laid over for six months, that is all I know.

Q. Would not have been longer at the outside than that if he had behaved himself? A. He might have went home in July; I think he was figuring on going home in July, if I am not mistaken.

Q. That is, July following that 2nd day of May? A. Yes.

Q. Will you look at that bat, if you please, Mr. Laggen? A. (Referring.)

Q. When did you first see it? A. I first seen it—I was the man that bought the bat.

Q. You bought it specially for the boys, did you not? A. Yes, sir.

Q. And gave it to them? A. I fetched that bat so that they could use it up there.

Q. It was kept separate and apart from the general bundle of bats, as a rule, was it not? A. Well, all the bats were kept in the automobile shed.

Q. Isn't it a fact that the bat was kept in the office as a rule? A. When I first fetched the bat up there, yes, sir.

Q. How long before this happened had you made the boys a present of that bat—about?

The Court: He did not say that he did make a present of it.

Mr. Steele: Or brought it to them?

Q. Did you make it a present? A. I fetched it up; I played ball myself with them there on a Sunday.

Q. How long was that before the 2nd day of May? A. I fetched it up about April—right before.

Q. The other bats were used during the camp-game? A. Yes, sir.

Q. The gloves and muzzles were placed around the flag pole, were they not, for use in the game? A. They were put around the flag pole.

Q. And this point on the map marked "Flag Pole" would indicate the location where the different things used in the game were laid on the ground? A. Well, for playing?

Q. For playing; it was the custom for some of the players, one or more of them, to take a bat, gloves and muzzles into the office, was it not? A. only the gloves.

Q. Only the gloves? A. Until the bats got broke; I used to keep it at the office. That was the only bat that used to go in the office.

Re-direct examination by the Prosecutor:

Q. How long had it been broke? A. I think it was broke about the second time we ever used it; then we put a piece of tape on it, and then we played with it.

Q. How long before May 2nd had it been broken? A. The Sunday before May 2nd.

Q. How many bats did they have there? A. I could not just say.

Q. More than two or three? A. Oh, they had about half a dozen at least.

Q. And was this bat any different from the rest of them? A. The others were home-made bats.

Q. And after that got broke, what was the custom as to where the bat would be kept? A. They used to use it after it was broke, and it was lying around the flag pole there.

Q. When was the last you had it in your possession, to keep it there, previous to May 2nd? A. About a week or two before.

Q. And where had it been kept in the meantime? A. After it was broke, I did not pay no more attention to the bat.

Q. Wasn't it kept in your office? A. No, sir.

Q. I show you a photograph marked No. 5 and request you to indicate on this photograph, if you can, where it was customary to keep the bats? A. (referring) Where that space here—

Q. Where did you keep the bats when you were not using them? Here is your flag pole (indicating) and here is your shed? A. Right over here under the shed.

Mr. Steele: I was not through with the witness.

The Prosecutor: I supposed you had finished.

By Mr. Steele: (Cross examination continued).

Q. Mr. Williams, the deceased, you say, was in the main aisle of the dormitory at the time when you first saw him? A. When I first saw Wooley, he was lying inside in the sleeping quarters.

Q. Will you indicate the place on the map? A. (referring).

Q. Around the dormitory? A. (Indicating).

Q. These (indicating) are the cots; this (indicating) is the main hall; this is the stove? A. (indicating) about this part of the room here, it was the first bed on the last row.

The Court: Right alongside of his own bed?

Witness: Yes, sir.

Q. In the aisle? A. In the aisle.

Q. Where was Williams at that time? A. Williams was sitting on the bed, about around the stove here (indicating).

Q. The second bed from— A. The second bed or third bed from the stove.

Q. From the stove, south. The top of the map is north.

Q. You say that Williams was in your office after it happened? A. Yes, sir.

Q. You had some conversation with him? A. All he said to me was, "Mr. Laggen, I was sorry this happened, because it was my last Sunday while there. I was going back to the prison on Monday night."

The Court: He told you he was sorry it happened?

Witness: He told me he was sorry it happened.

Q. Did you talk to Williams after that? A. Then they come up from Trenton and fetched him away in an automobile.

Q. You say them; by them, whom do you mean? A. Doctor Reddan, Mr. Clayton, and Mr. Madden.

Q. Did you return to Trenton with them? A. No, sir, I did not go until Monday morning.

Q. At the time that you saw Williams in the office, at this time, did he express sorrow for what had occurred? What was his condition or emotional condition? Did he appear to be angry or did he appear to be sorry or did he appear to be morose? A. He looked kind of down-hearted.

Q. When did you next seem him after you saw him at this time on May 2nd? A. After he left there on May 2nd, I did not see him until I got in here this morning.

Q. You did not see what occurred in the hall at all? A. No, sir.

Q. Where were you at that time? A. Outside.

Q. Was there very much outcry or noise? A. Did not make any noise at all.

Q. Will you indicate on the map where you were about the time you judge it occurred? A. (referring) Right in around here; there is a bench running here (indicating).

Q. You were on the benches then or near the benches outside of the building? A. Yes, sir.

By the Prosecutor:

Q. Well, those benches that you see in photograph No. 5, were you by them? A. Right around here (indicating).

Q. You were about to tell me where the bats were kept; where were they kept as a rule? A. Here in this wagon shed (indicating).

Q. The wagon shed indicated on the right-hand side of picture No. 5? A. Right in back here (indicating).

Q. Who did you give the bat to? A. Mr. Clayton.

Q. Did anybody else take hold of it in the meantime except you and he? A. I first got it off Williams and I throwed it over towards the office.

Q. Was there any other bat of that character at the camp at that time? A. No, sir.

By Mr. Steele:

Q. Are not all bats alike, pretty much? A. No, sir.

Q. The general outline and appearance? A. Well, quite different from what the prisoners made.

Q. The other bats were home-made bats? A. Yes, sir.

Q. Were all of them home-made bats excepting this one? A. Well, there were others there, but they could not use them because they was broke.

Q. This particular bat you say was kept in your office and after the game was carried to your office up until about within two weeks before May 2nd? A. May 2nd.

Q. Is it not a fact that it was taken up until within a few days before this occurred? A. No, sir.

Q. Wasn't it kept in there? A. No, sir.

Q. What attracted your attention to the fact that it was not being returned? A. After it was broke, nobody used it.

Q. Was it out on the field for use on that afternoon? A. Well, Williams generally used it himself, because he could not swing the other bats.

Q. Williams then generally used that bat? A. Yes, sir.

Q. Even after it had been broken? A. He said he could swing it better, I think.

Q. As a matter of fact, didn't he usually take it back to the office? A. No, sir.

Q. And kept it apart from the other bats? A. No, sir. That was kept in the office up until some short time—up until a week or two before May 2nd.

The Court: Was the map put in evidence?

The Prosecutor: No, I offer the map.

The Court: The map is offered in evidence—in fact, two maps.

The Prosecutor: Two maps; one marked "Plan of portion of convict labor camp No. 2, Rocky Hill."

The Court: That will go in evidence as Exhibit S-6. And the interior plan of Assembly room and dormitory and so forth will be Exhibit S-7.

By the Prosecutor:

Q. How were the cots arranged in the assembly room and dormitory of the labor camp on May 2nd? A. Well, arranged the way they have it there on the map (indicating); one row against the partition and one row up on each side.

Q. Do you recall whether there was a row of cots along the partition between the mess hall and the dormitory? A. There was about four on each end; that is, leading into the mess hall.

Q. Was that the condition of things on May 2nd last? A. Yes, sir.

Q. The location of the stove as indicated on the map, from the assembly room, is that where the stove was on May 2nd? A. That is about where the stove stood.

Q. And do you know where Williams' cot was with reference to that stove? A. I think it was either the second or third cot.

Q. You mean the second or third cot over on the second row, on the west side? A. This end here (indicating).

Q. The second or third cot? A. I think it was the third, if I am not mistaken.

Q. The second cot being the cot immediately west of the stove? A. The second cot was right in back of the stove.

Q. Well, immediately west as indicated on the map; immediately west of the stove? A. Yes, sir.

The Prosecutor: I offer the bat in evidence.

Mr. Steele: I object to it.

The Court: I think there is sufficient evidence of its identity to justify its being admitted in evidence.

The Prosecutor: Well, there will be more evidence; mark it for identification.

The Court: If there is any question of its identity, that will have to be settled later by the jury.

Recess until 1:30 P. M.

HARRY NEWTON, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. Harry, where were you on May 2nd last? A. Camp 2.

Q. You were an inmate of the State—A. State Prison, yes, sir.

Q. Do you know Alonzo Williams? A. Yes, sir.

Q. Did you know Benjamin Wooley? A. Yes, sir.

Q. Did you see the ball game that took place there that afternoon? A. No, sir.

Q. Where were you when Wooley came in the assembly room after the ball game? A. He came in ahead of me; I followed him right in.

Q. Was Williams in there at that time? A. I don't think he was.

Q. I call your attention to a map here, Harry; this (indicating) is a map of the assembly room where the cots are? A. Yes, sir.

Q. These elongated circles represent the cots as they are located; this (indicating) is the mess hall, in which they were eating; can you tell me which of these four cots here was yours? A. None of those.

Q. Which one was? A. Right here on this end (indicating).

The Court: Go and put your finger on it Harry.

Witness: Right here (indicating).

The Court: That corner cot?

Witness: No, that was Wooley's over there (indicating).

The Prosecutor: How would it be to put a mark with Newton on it?

The Court: Yes, I think you had better.

Q. How long had you been in before Williams came in? A. Well, I should judge about five minutes.

Q. Do you know which door he came in? A. He came in the door from—leading from this end.

Henry Newton—Direct.

Q. Is it indicated by the word "entrance" on the map to the right? A. Yes, sir.

Q. Where did you first see him, coming in the door or afterward? A. No, I seen him after I passed out this aisle about eight feet away from my bed.

Q. You came this way, (indicating)? A. Yes, sir, in this aisle over here (indicating).

Q. Over here (indicating)? A. No, sir, off here (indicating).

Q. In here (indicating)? A. Well, about eight feet away.

Q. Between the two rows of beds on the side nearest the right? A. Yes, sir.

Q. You came down from your bed, about eight beds away? A. Yes, sir.

Q. Where was Williams at that time? A. Well, Williams—I turned and Williams was passing from behind the stove here (indicating) around the edge of my bed.

Q. Did he have anything with him? A. Yes, sir.

Q. What? A. A base ball bat.

Q. Where was he carrying it? A. On his left side.

Q. Just show us, as near as you can, how he was carrying the bat? A. In this manner (indicating).

Q. Have you ever seen that bat before? A. Yes, sir.

Q. Do you know whether or not that was the bat he was carrying? A. Yes, sir.

Q. You mean that is the bat that he was carrying? A. Yes, sir.

Q. Now, he had gone past the stove? A. He was just approaching from behind the stove, right around the stove.

Q. Show us on the map where Wooley's bed was? A. Right here (indicating).

Q. Where was Wooley at that time, after Williams had passed the stove going in his direction? Where

was Wooley standing? A. He was about midway there, making a cigarette or something (indicating).

Q. Was he standing up or sitting down? A. He was in a sitting position, as though making a cigarette.

Q. What happened from that time on? A. This man Williams, approached him and said to him, "You called me a cocksucker" and told him to lay off from him, and struck him in the right shoulder with a bat; with that he went and stuck him again.

Q. What did Wooley do? A. Laid there where he landed.

Q. Did he do anything in the way of an attack upon Williams? A. Not as I seen.

Q. Were you in a position to have seen it if anything like that happened? A. Yes, sir.

Q. How many times did Williams hit Wooley? A. Twice that I had seen him. I don't know whether he struck him when he was down or not; he struck at him.

Q. Why couldn't you tell me whether he hit him? A. The bed obscured my view; he was on the other side.

Q. What became of Williams after Wooley was down and the blow had been struck? A. I did not wait to see.

Q. Where did you go? A. I went outside to notify the officer.

Q. Which way did you walk to notify the officer? A. Out this door there (indicating).

Q. This lower door on the map? A. Yes, sir.

Q. To the right of the map? Who did you notify? A. Elmer Osterhout.

Q. What else did you see of Wooley that afternoon, after that? A. After I came in I cleaned up the blood from the floor and I seen him lying on the bed.

Q. Where was this blood on the floor? A. Right on the other side of that bed.

Henry Newton—Direct.

Q. How near to where you saw Wooley standing? A. Right about the exact spot.

Q. How much blood was on the floor? A. Well, it was quite a little.

Q. Well, how big a pool? A. That big (indicating).

Q. Where was Wooley when you came back? A. They had him out in this aisle here (indicating); the same aisle as the stove is in; pulled my bed out and put him on it.

Q. Did you ever know of any trouble between these men before this time? A. No, sir.

The Court: I did not get what Williams said to Wooley; he called him some horrid name; then did he say anything else beside that?

Witness: Not as I heard.

The Court: Just simply called him this name and hit him?

The Prosecutor: I think his testimony was that Williams said to Wooley—

Witness: He did not call him that, no; he accused him of calling.

The Court: "You called me" that?

Witness: Yes.

Q. Who else was any where near you up there at the time? did you see any body else there? A. Near me?

Q. Well, near Wooley? A. Why, Reppe was there.

Q. Fred Reppe? A. Yes, sir.

Harry Newton—Cross.

Cross examination by Mr. Steele:

Q. Point on the map, if you will, the location of your bed in the assembly room? A. (indicating).

Q. Your bed is the last one then in the first row? A. Yes, sir—the second row.

Q. To the right of the aisle as you go toward—
A. Yes, sir; go toward the mess hall.

Q. Had you been out in the field that afternoon playing ball? A. No, sir.

Q. Had you been out in the field at all? A. No, sir, not where they were playing ball.

Q. Had you been outside of the building that afternoon? A. No, sir.

Q. When you came in the building, indicate on the map the way in which you came in? Which entrance did you come in? A. The entrance to the mess hall.

Q. Point it out; A. Right here (indicating).

Q. Is that in from the base ball field into the mess hall and from the mess hall in the—A. The diamond in the base ball field is located a little more to the center of the building; here is the diamond here (indicating).

Q. What were you doing outside of the building while the game of ball was going on? A. I was playing cards back of the shed, about one hundred yards away.

Q. Who were you playing with? A. I could not exactly tell who they were.

Q. Did you play cards up until the end of the game of ball? A. No, sir.

Q. You quit before that? A. Yes, sir.

Q. How long before? A. Well, twenty minutes I guess.

Q. And went directly into the mess room? A. No, sir.

Q. What did you do? A. Went around to the clothes line and got my clothes off the line.

Q. And then what did you do? A. Took them inside and put them in a box that I keep them in.

Q. Where is that box? A. Under my bed.

Q. What is your camp name? How are you known to your fellows in the camp? A. I am known as Harry.

Q. Harry Lemis, are you not? A. Yes, sir, that is the man who manufactured that name. Nobody calls me that outside of him.

Q. Who called you that? A. Lemis, the man you got up there.

Q. What attracted your attention to Williams in the assembly hall? A. I seen him walking over with the bat and asking him that question.

Q. The first that you saw of him then was when he was walking over to where this bed—towards the bed of Wooley? A. Yes, sir.

Q. And at what point was he when you first saw him? Indicate that if you will? A. Here (indicating), about.

Q. That is when you first saw him? A. Yes, sir.

Q. So that he was standing still, was he not? A. He was approaching then. I was standing here with my back this way and could not see what he was doing until he got within sight.

Q. Where were you standing? A. Here, (indicating), somewhere; about here I stood (indicating).

Q. And you were fixing your hair or doing something of that sort? A. No, sir.

Q. What were you doing? A. I was getting a needle threaded by another convict.

Q. And facing towards the outside of the building? A. No, sir, facing this way (indicating).

Q. How do you remember that? A. How do I remember it?

Q. Yes? A. I could not face in any other way.

Q. How do you now remember that you were facing that way? A. I could not face any other way

and see the assault, or murder, whatever you might term it.

Q. That is the reason you think you could not see. If you were facing in any other way— A. I could not; if I was facing that way, I would be facing right up against the wall, the outside wall of the building. I could not see anything then.

Q. At the time you first saw Williams, he was standing on this side of the stove? A. I did not say he was standing; I said he was approaching from here (indicating).

Q. Approaching the stove? A. Going around the stove. He had to go around the stove.

Q. Do you know where his bed was? A. His bed now—this is the location of his bed (indicating).

Q. He was right near his bed then when you first saw him? A. Yes, sir.

Q. Had the bat in his hand? A. Yes, sir.

Q. And cup? A. I did not see any cup.

Q. Would you have noticed a cup if he had one? A. Well, now, I don't know, because I could not tell if he had one.

Q. He might have had a cup and you not have noticed it? A. He might have had his cup in his right hand and have it on the other side of his bat; I could not say what he had in that hand.

Q. And as he walked around the end of those beds, there was nothing about him then which attracted your attention particularly, was there? A. Sir?

Q. As he was walking from the stove up towards the end of the building, there was nothing about him that attracted your attention? A. No, sir.

Q. And there was nothing about him that attracted your attention when he was walking over towards Wooley, was there? A. Nothing about him that attracted my attention; the remark that he made attracted my attention more.

Q. That was the first you noticed then of anything

unusual? A. Anything unusual? Yes; any more than carrying that bat.

Q. Did that attract your attention when he was by the stove? A. No, sir.

Q. When he got over near where Wooley was, then you noticed he had a bat? A. No, I noticed him with the bat when he left here (indicating).

Q. You were about fifty or sixty feet away from him? A. About thirty feet.

Q. About thirty feet away from him? A. Not away from him, I wasn't, no.

Q. You were about thirty feet or more away from Wooley's bed? A. Yes, sir.

Q. Didn't Williams say, when he went over there, "Wooley, you did wrong calling me that name?" A. No, sir.

Q. Are you positive about that? A. Certainly am.

Q. Did you hear what he said first? A. I heard what he said, yes, sir.

Q. How do you know he did not say anything before that? A. Because I did not hear it.

Q. But he might have said it and you not have heard it? A. Well, no.

Q. Might not? A. He might have, yes, sir, but I did not hear it.

Q. It did not attract your attention until you heard him ask Wooley this other question? A. You mean it did not attract my attention?

Q. That was the first that attracted your attention to the talk that they had? A. Yes, that is the first.

Q. And there might have been something said before that? A. Not there, there wasn't; not inside. I don't know anything about what occurred on the outside.

Q. As a matter of fact, Wooley was then on his feet, wasn't he? A. Yes, he was on his feet.

Q. And didn't he reach back toward the shelf?

Didn't you see him do that, to get his cigarette or a paper to make a cigarette? He reached for the shelf to get that? A. Yes, sir.

Q. What have you to say now after the testimony shows that tobacco was on the bed and there was a knife on the shelf? A. Well, there was tobacco on the bed.

Q. Do you know whether or not there was a knife on the shelf? A. No, sir.

Q. Did you look? A. No, sir.

Q. Weren't you interested? A. No, sir.

Q. Why didn't you go there and look to see if there was a knife there on the shelf? A. I did not consider it any of my business what he had on his shelf.

Q. Well, in his occupation in the camp, he did a good deal of carving, didn't he? A. Not as I ever seen him, outside of what I seen him do with the hatchet and saw in his regular day's work.

Q. Well, didn't he do some carving with a pen knife? A. Not as I know of.

Q. When he reached back, then didn't he take a step towards Williams? Don't you recall he stepped towards Williams at that time? A. Most naturally if he stepped towards Williams when he seen the party coming at him.

Q. Most natural way? A. Well, he could not get away; he was trying to protect himself.

Q. And he was stepping toward him? A. He stepped in this manner, with his hands this way (indicating).

Q. When he stepped with his hands out towards him, he got a blow on his shoulder? A. With the bat.

Q. Yes, with the bat; and that sat him down on his knees, you say? A. No, it did not; he got the second blow that sent him to his knees.

Q. And you heard but two blows, or saw but two blows? A. Saw two blows; saw each one strike, but I don't know where they landed.

Harry Newton—Cross.

Q. You don't know whether they landed on the back or where they landed? A. No, sir.

Q. Wasn't it Williams that said, "Lay off, man?" A. That is what I said. Williams was the one that said that. "Lay off me." Yes, sir.

Q. Wasn't it Wooley that said that? A. That is what he said, yes; that is my testimony.

Q. He said that in response to something that Wooley had done or said to him? A. Yes, sir.

Q. What did you hear Wooley say to him that would make Williams say, "Lay off me?" A. What did I hear Wooley say to him?

Q. Yes? A. I did not hear him say anything.

Q. All that you did was to see what he did; you did not hear him say anything? A. I did not hear him say nothing.

Q. Did you see Williams come into the room? A. I did not see him come into the room; I seen the direction he came from, it was this door here (indicating), that is the only way he could have come in.

Q. Why do you say that is the only way he could have come in? A. Because I came in the other way.

Q. Couldn't he have come in the other way? A. Not without my seeing him.

Q. If you were busy threading the needle— A. I was not threading the needle at that time; I was putting my clothes in the box.

Q. If you had your head down, putting the clothes in the box, couldn't Williams come to the rear door and get in his bed without your seeing him? A. Go to the rear door? Not in that time, he could not, no.

Q. And because he could not have done it in that time, is the only reason you have for saying that he could not have done it? A. He could not have done it anyhow. I could notice anybody as close as I was to them (indicating).

Q. Who else was in the room beside Reppe? A. I don't know who was there.

Harry Newton—Cross.

Q. As a matter of fact, the room was pretty nearly vacant, wasn't it? A. Yes, sir.

Q. Everybody was outside? A. Not everybody, some few were in there.

Q. You don't recall anybody else that was in the room excepting those that you have named, Fred Reppe and Williams? A. And Doyle, the man that threaded the needle; and I met this Robert Cohen on his way out as I was going out to notify the officer.

Q. Did you see him come in? A. He came in this same door here (indicating).

Q. He was ready to come in? A. Well, now, that I don't know; I don't know whether he was in there ahead of me or not.

Q. Did you notice Williams any more than you did either of these two men before the time that this scrimmage took place? A. I did not notice anybody in particular.

Q. Do you know whether Cohen had a bat in his hand? A. No, sir.

By the Court:

Q. Harry, I did not quite get this conversation right. When Williams came up to Wooley, who spoke first, Williams? A. Williams, yes, sir.

Q. Williams said, "You called me a" so and so? A. Yes, sir.

Q. Now, did Wooley then say, "Lay off me?" A. No, Williams said, "You want to lay off me."

Q. Wooley did not say anything? A. Not as I heard.

Q. What was it that appeared to make Williams say, "Lay off me," because Wooley had made a pass at him? A. No, the fuss occurred on the outside between them; I don't know anything about that.

Q. You don't know about that? A. No, sir.

Harry Newton—Cross.

Q. So that Williams did really all the talking, didn't he, what little talk there was? A. Yes, sir.

By the Prosecutor:

Q. Had anything occurred inside to call for that remark from Williams?

Mr. Steele: I object to that.

The Court: Inside?

Mr. Steele: Inside. This witness testifies that Wooley turned around and reached for the shelf for tobacco.

The Prosecutor: He has not testified about that at all.

Q. Where was Williams when Wooley was getting his tobacco from the shelf? How far away from him? A. Over here (indicating).

Q. Well, show us where? A. About here (indicating).

Q. Was there any conversation taking place between them at that time? A. No, sir.

Q. Of any character whatever? A. No, sir.

Q. Now, between that time, the time that Williams stood next to the stove or was passing the stove, and the time that he got over there, did Wooley say anything to him of any character, offensively or otherwise? A. Not as I heard, no sir.

Q. How many feet away were you from where they were? A. I should judge about thirty feet from Wooley's bed; about eight beds away. The space they take up, I should judge would be about twenty-feet.

Q. Did I understand you to say, in answer to Mr. Steele's question, that what Williams said when he said, "you called me a dirty cock sucker; I want you

to lay off;" that was said in response to something that had gone before? A. Yes, sir.

Q. What did you mean by that? A. Well, the way I took it, something must have happened between them outside too, in the game.

Q. You don't mean that anything happened inside there? A. No, sir.

Q. What happened was this, was it not: You saw Williams walk over to Wooley with the bat in his hand, on his left side, that is right, isn't it? A. Not directly up to Wooley, no; about half way into my bed; in the middle of my bed.

Q. And the first that you heard him say was that he said to Wooley, "You called me a cock sucker?" A. Yes, sir.

Q. And then immediately after that Williams said, "Lay off me?" A. Yes, sir, and struck him.

Q. That blow came in during this conversation? A. Yes, sir.

Q. Did the blow get in during the conversation or afterward? A. After the conversation.

Mr. Steele: You just said it was during the conversation.

Witness: He spoke and then hit; it could not have been during the conversation.

Mr. Steele: It was between times?

Witness: Yes.

Q. What interval of time was it between the statement, "you called me a dirty cock sucker; I want you to lay off"—was that one statement or two statements—two separate statements? A. It was all in one conversation.

Harry Newton—Cross.

By a Juror:

Q. When Wooley was struck was he facing Williams or did he have his back to him? A. Facing him.

By the Prosecutor:

Q. Just show us the attitude Wooley was in when he received the first blow? A. He was about in this manner (indicating).

The Court: Facing Williams?

Witness: Yes, sir.

Q. And this bed here (indicating)? A. Yes, sir.

The Court: what did he have in his hand?

Witness: Did not have anything in his hand outside of this cigarette.

The Court: Apparently in the act of rolling a cigarette.

Witness: Yes, sir.

Q. Say this (indicating) is the bed, and this (indicating) is the side of the bed, where Wooley was; just show us how he stood with reference to the bed? A. (illustrating) He stood in the middle of the bed, in this manner, and this man approached him; when he raised up, he got hit.

By Mr. Steele:

Q. Didn't he stand in this manner (illustrating), and didn't he have something white in his hands? Didn't he stand this way? A. No, sir.

Q. How did he stand, this way (illustrating)? A. No, sir, he was rolling a cigarette. The paper was white, certainly; the paper was there.

Q. Didn't he draw his hand back in this way (illustrating)? A. I guess he did, if he was struck .

Q. Before he was struck? A. No, sir.

Q. You are positive about that? A. Certainly.

Q. And you were thirty feet away? A. Twenty-five or thirty feet.

ROBERT COWEN, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Cowen, you were a prisoner at Camp No. 2, at Rocky Hill, on the 2nd day of May? A. Yes, sir.

Q. Did you see the ball game that afternoon? A. Yes, sir.

Q. Where were you at the time of the argument between Williams and Wooley took place? A. Playing second base.

Q. Which team were you on, on the same team that Williams was on or Wooley? A. The same team as Williams was on.

The Court: You were playing second and he was playing third, is that right?

Witness: No, sir.

The Court: What did he play?

Witness: Williams played third.

Q. I call your attention to this map; this (indicating) represents the building and this (indicating) the ball ground, you were here then (indicating)? A. Yes, sir.

Q. Second base; Williams was on third base? A. Yes, sir.

Q. Now, just what happened between you at that time, at any point in the game, in the nature of a quarrel or otherwise? A. Williams and Wooley got into an argument; I don't know what the argument was about; I was on third base; Williams had thrown his glove down on the ground, preparatory to a fight, and the rest of the men got hollering, "play ball." Williams picked the glove up, put it on and told him he would get him after the game.

Q. Told who? A. Told Wooley.

Q. Did you see anything happen between them previous to this, Williams throwing his glove on the ground? A. No sir, only the argument.

Q. Tell us what the argument was? A. I don't know what the argument was about.

Q. You did not hear that? A. No, sir.

Q. Any words spoken? A. No, sir.

Q. How long did the game last after the incident you speak of, when Williams threw the glove on the ground? A. Well, fifteen, twenty minutes; twenty minutes or a half hour.

Q. Did you see what Williams did after the game? A. No sir, I saw Williams after the game was through, when he was coming in the camp; that is, in the assembly.

Q. Where were you when he came in the assembly room? A. Standing by the door.

Q. Where was he—do you understand this map? A. This entrance here (indicating).

Q. This entrance—not the main hall entrance, but the entrance to the assembly? A. Yes; my bed was the second bed.

Q. This one (indicating)? A. Yes, sir.

Q. You were there and where was Williams? A. Williams was coming in this entrance door.

Q. Right here (indicating)? A. Yes.

Q. Did he have anything with him? A. Yes, sir.

Q. What? A. Had a bat with him.

Q. I show you a bat; do you whether that is the bat or not? A. Yes.

Q. Where was he carrying the bat? A. Carrying it in his hand.

Q. You remember which hand? A. No, sir.

Q. Where did he go? A. Went up the aisle.

Q. In this direction? (indicating). A. Yes, sir.

Q. Did he stop anywhere? A. Well, I don't know as he stopped before he got to Wooley's bed.

Q. Did you hear Wooley say anything to him while he was making his passage from the entrance around to where Wooley was? A. No, sir.

Q. What happened after Williams got where Wooley was? A. Well, I heard a blow struck and I looked up there toward Wooley's bed and I saw Ben going down.

Q. You did not see anything that happened then before the blow was struck. A. No, sir.

Q. How many blows did you see struck? A. I heard one and saw one.

Q. The one that you saw, what kind of a blow was it, and who struck it? A. Williams struck it with the bat.

Q. Who did he strike? A. Struck Wooley.

Q. Where? A. I could not say where.

Q. Did he strike him anywhere on the head or body? A. Sounded like a thud, somewhere on the body.

Q. What did Williams do after all the blows had been struck? A. I went up toward him there, hollering to Williams to get away from him.

Q. What did you holler? A. Hollered, "Get away, Williams, and let him alone; you hit him enough."

Q. Do you know whether there was any effort to

strike a blow after Wooley was down? A. After he was down?—No, sir.

Q. Did you hear Williams say anything to Wooley during the ball game? A. Only that argument they had.

Q. What did he say to him? A. I don't distinctly remember; one called another one a liar, and so on. I wasn't paying attention to the argument.

Q. What was said after the glove was thrown down? A. Only that I heard Williams say he would get him after the game.

Q. What did Williams say? A. "Get him after the game."

Cross examination by Mr. Steele:

Q. Wooley had been at the bat in this game shortly before this, had he not? A. Yes, sir.

Q. And made a strike? A. I don't know as he made a strike; he made a hit, and reached first base some how.

Q. And was running, after having reached second base, to third base, was he not? A. Yes, sir.

Q. Williams was playing third base? A. Yes, sir.

Q. And in running he struck Williams's heel and stumbled? A. That I don't know.

Q. Did you see that? A. No.

Q. Did you see him come very near falling? A. No, sir.

Q. Did you hear him threaten Williams after that? A. No, sir.

Q. And as Williams was then in his way while he was making the turn? A. No, sir.

Q. Heard nothing of that kind? A. No, sir.

Q. Why didn't you hear it, because you were too far away? A. I wasn't exactly paying attention to that; wasn't watching the ball.

Q. The ball at that time was to Williams to put Wooley out, was it not, on third? And didn't Williams muff it, or drop it? A. I didn't notice where the ball was thrown, whether it was thrown to Williams or not.

Q. If it had been thrown to Williams, you would have noticed it, wouldn't you? A. Most likely.

Q. You don't know now whether it was or not? A. No, sir.

Q. You heard voices, heard an argument? A. Yes, sir.

Q. And there was considerable excitement, wasn't there? A. I don't know as there was much excitement; just an argument there.

Q. By argument, you mean a quarrel? A. Yes, sir.

Q. And you hear a voice saying "I will get you after the game? A. Yes, sir.

Q. What have you to say as to whether that was Wooley's voice or not? Wasn't that Wooley's voice that you heard? A. It was Williams' voice.

Q. What have you to say as to whether it was Wooley's voice? A. I say it was Williams'.

Q. Didn't he say that? A. It was Williams' voice that I heard say that.

Q. And you are very positive that Wooley did not say that? A. Positive, yes, sir.

Q. Well, Wooley was the man that was injured, was he not? A. I don't know if he was injured or not.

Q. In making an attack on Williams, because he had fallen down—because he, Wooley, had fallen down? A. I don't know that he was injured or not, I say.

Q. He was accusing Williams of doing something that he shouldn't have done, wasn't he? A. That I

don't know. All I heard was, "You are a liar," and "You are another."

Q. That is all you heard? A. All that I paid attention to.

Q. Didn't pay any attention to anything else? A. Not of the argument; I was not listening to their words.

Q. You are uncertain as to what was said, as you have told us? A. Yes, sir.

Q. Williams said, "You are a liar," and Wooley said, "You are a liar?" A. Yes, sir.

Q. Anything else that was said you are uncertain about; that is the fact, isn't it? A. With the exception of what Williams said.

Q. That is what Williams said, "You are a liar," isn't it? A. That is all just at that time, yes, sir.

Q. This was the beginning of the ninth inning, was it? A. I don't know just what innings it was.

Q. Do you recall how often you went to bat afterwards or how often each side went to bat? A. No, sir, I don't.

Q. And then you don't know how long it was between that time and the end of the game? A. Oh, I should say about twenty-five minutes or perhaps half an hour.

Q. Might it not have been five minutes? A. It was more than five minutes.

Q. What makes you think it was more than five minutes? A. Because half the time—

Q. You did not time it, did you? A. No, but after the argument, I had time to go in and do some washing before the game finished. I know it was more than five minutes.

Q. You did not continue in the game until it finished, did you? A. No, sir.

Q. Why did you quit? A. Because I had washing to do.

Q. Did anybody else quit? A. I got tired of the game.

Q. What position did you play? A. Second base.

Q. Did anybody cover second base after you left? A. That I don't know; I know that after the inning finished, I quit.

Q. You quit because the game was about done? A. Yes, sir.

Q. When you quit, it was about five minutes after this argument, wasn't it? A. Five minutes after I quit was the argument?

Q. No, five minutes after the argument was the time that you quit? You quit about five minutes after this quarrel? A. It might have been five minutes or ten minutes.

The Court: He said at the end of the inning. I suppose you mean the inning when the quarrel was on?

Witness: Yes, sir.

Q. That is about five minutes? A. It might have been five minutes; it might have been more, ten minutes.

Q. Then you went to take care of your clothing? A. Yes, sir.

Q. You don't know whether the game continued after that or not? A. No, sir.

Q. And after the game stopped, shortly after the game stopped, and you went, then Williams would have been free to go in the building within five minutes? A. Yes, sir.

Q. Why do you think Williams was carrying— A. Sir.

Q. What occurred to you when you saw Williams carrying in the bat? Why did you think he did that? A. Nothing strange; I did not see anything unusual about that.

Q. He had the bat in the building, in the dormitory? A. Yes, sir; I had seen the men carrying in the bats before.

Q. The men help to put them in the office, don't they? A. Yes, carry them in and put them under the beds.

Q. That did not appear to you to be anything unusual, did it? A. No, sir, did not.

By the Prosecutor:

Q. Can you estimate the time between the time you quit the game and the time you saw Williams go in the dormitory? A. I should judge it was twenty-five minutes, something like that. I had my washing done and hung out on the line.

By Mr. Steele:

Q. I understood you to say that you did not hear the first part of this fight; that is, you did not see—all you did was to hear the first blow; you did not see what occurred before that time in the building by the bed between Williams and Wooley? A. No, sir.

Q. Did not hear anything of the first part of it? A. No, sir.

THOMAS SMITH, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. You were a prisoner at Camp No. 2, Rocky Hill, on May 2nd last? A. Yes, sir.

Q. Were you playing ball that afternoon? A. No, sir, I was supposed to be manager of the team; I wasn't playing.

Q. What team did Williams play on? A. Played on the road team.

Q. You were manager of the other team? A. The other team.

Q. How many games of ball had you played that afternoon? A. One; one in the morning and one in the afternoon.

Q. Who won in the morning? A. Our team.

Q. Who played third base on the road team? A. Williams, at the time.

Q. You mean Williams over here (indicating)? A. Yes, sir.

Q. Did you notice any arguments or quarrels, difficulties, between Williams and Ben; that is, Wooley —that afternoon? A. Well, there was an argument, yes, sir.

Q. Just tell the jury what that was and what happened, what was said on both sides, and what occurred? A. Well, he ball was sruck by—I don't know who; anyway, Ben struck the ball first; he ran to first base, and then the next batter struck the ball and he ran to second base; he was standing on second base.

Q. Standing on second or third? A. Standing on second—Ben was; Williams was playing third base; and then somebody else struck the ball and he ran to third, and when he ran to third, why, Williams threw his hands down like that (illustrating); he caught the ball but threw his hands out, but did not catch the ball until after Ben had got to the base plate; he threw his hand out like that (illustrating), and Ben says, "This makes two or three times you have did this; I want you to cut it out; you pushed me off my base two or three times," something like that; then they began to argue. So, I don't know exactly what was said in the argument, because when they began to argue, we hollered, "Play ball:

Play ball:" we tried to stop it; that is the way we did it; whenever an argument comes up, pay no attention to it; holler, "Play ball," you know, just to get the fellows to stop their argument. So this argument got to the point—I don't know what was said; anyway Williams drew off his glove and he appeared to want to fight Ben; Ben wouldn't fight.

Mr. Steele: I object to this, because the defendant—

The Court: Did he say anything, the defendant? If he did, just tell us.

Witness: No, sir, he did not say anything.

The Court: Williams threw down his glove?

Witness: Yes, sir.

The Court: What else did you see him do or hear him say?

Witness: Well, he said, "We will fight this all—we will settle this thing." That is the only thing I heard.

The Court: He said something about fighting, did he?

Witness: Yes, sir; and Ben too was speaking of fighting. It was a pretty hot argument.

The Court: Did they put up a hand?

Witness: No, sir, did not put up a hand. Williams picked his glove up and put it back on again to play ball and said, "Well, we can settle this after the game."

Q. Who said that? A. Williams. So Ben said, "Yes, we will settle it after the game is over."

Q. Well, was there anything more heard of the quarrel? A. No more that I heard.

Q. How many innings did you play after that occurrence? A. I could not say.

Q. Have you any idea? A. Well, I suppose about four innings.

Q. How long did the game continue from that time on? A. I should judge about three-quarters of an hour after the argument; in fact, I forgot all about it. I could not say just exactly; I think it was about three-quarters of an hour.

Q. Did you see Williams after the game? A. Yes, sir.

Q. Where was he? A. He was standing in front of the building.

Q. Do you know where the benches are in front of the building? A. I would know if I seen the building.

The Court: Let him have a picture.

(Witness is shown a picture.)

Witness: Right here is where he was standing (indicating).

Q. That is picture No. 4?

The Court: He was standing well down toward the left of the picture?

Witness: Yes, sir, right here (indicating). He was standing here and I was standing right along there (indicating).

Q. You were standing nearly in front of the door? A. Yes, sir.

Q. He was standing somewhere near the bicycle? A. Yes, sir.

Q. How far away from the building? A. I should judge about six feet away from the building, from this (indicating).

Q. Did he have anything in his hand at that time? A. He had a base ball bat in his hand, yes, sir.

Q. Did you notice what became of him? A. Williams?

Q. Yes? A. Why, after the game was over, he went on inside the building.

Q. Well, did he have anything with him when he went in the building? A. He had a base ball bat, yes, sir.

Q. Where did they customarily keep the bats over there? A. They kept them in the building or any place; no particular place. If a man has a bat that he wants to use himself, why, then he generally takes care of that bat. If he has a club, he will take that club home under his bed, any place.

Q. Did Williams have a bat of his own? A. Well, no, he did not have a bat of his own, but at the same time he could have taken it in; it did not belong to any particular one; anybody could take it that wanted to.

Q. What next happened in this affair to your knowledge? A. Well, that is something I could not say; I did not see any more.

Q. You were not interested? A. No, sir.

Q. What did you next hear? A. I heard a noise, like somebody fell; in fact, I did not pay much attention to it at the time, simply thought that the fellow was scuffling, something like that, and had fell on the bed. Then I was sitting down along the back, where the bicycle is there, and Mr. Laggen sat there too, and Bob Cowen, he came out of this door here (indicating) and said, "Mr. Laggen, you had better go in; Williams hit Ben."

Mr. Steele: I ask to have that struck out.

The Court: Yes, "Mr. Laggen you had better go in Williams hit Ben," that will be struck out.

Q. By reason of what you heard, did you do anything? A. I jumped up and went in.

Q. What did you see when you got in there? A. I seen Ben lying on the floor.

Q. What portion of the building was he in, with reference to the stove? A. He was next to the mess hall.

Q. Do you understand this map? A. No, sir.

Q. Well, this (indicating) is the mess hall; assembly room, dormitory over there (indicating): This is the mess hall over here (indicating). It is not fully shown. Here is Ben Wooley's bed; Fred Reppe's bed (indicating): Harry Newton's bed; here is the stove. Just point to where you saw Wooley? A. Lying there (indicating).

Q. What condition was he in? A. Lying this way (illustrating).

Q. Was he wounded? A. His head was bleeding; in fact I did not see where the blood came from, because I turned my back and walked away; I did not want to see.

Q. Where was Williams? What became of him? A. Williams was there, walking up and down the floor.

Q. Did he have anything in his hand then? A. He had a base ball bat in his hand.

Q. Did you hear anything he said to anybody? A. Well, not then; I heard something he said when I first come in the room. Mr. Al was trying to get him to give up the bat; he told him to go away.

Q. Mr. Al who? A. I don't which Mr. Al.

Q. Some one of the guards? A. Yes, sir.

Q. Mr. Al Laggen? A. I think that is the name. All I know is by Mr. Al.

Q. Short, stout man? A. No, not a short, stout man; Mr. Laggen, I know who you have reference to. Mr. Al is a tall man.

Q. And the guard finally asked him for the bat? A. He asked Williams to give him the bat; Williams told him to go away. He did not give him the bat.

Q. What condition was Williams in, calm, cool or excited or what, if you know? A. He seemed to be pretty well excited.

Q. What was his manner when he told the guard to go away, when the guard asked him for his bat? A. Well, I don't understand you. What do you mean?

Q. Just show us—you said he waved his hands, said go away? A. I was coming down—Mr. Al came down this aisle (indicating), Williams came down this aisle (indicating); he turned around, comes around here (indicating): Mr. Al says, "Give me the bat." Williams stood back and said, "Go away; I will give nobody the bat."

Q. Here is the door (indicating); how close were they to the door when that happened? A. They were within six feet of the door.

Q. The entrance near the bicycle? A. Yes, sir.

Q. This door here that I referred to? A. That is the one.

Q. What direction was Williams travelling when the guard asked him for the bat? A. Toward the door.

Cross examination by Mr. Steele:

Q. When Wooley was running to third base, were you in a position where you could see both Williams and Wooley? A. Yes, sir.

Q. Did you see Wooley strike some part of Wil-

liams' body or his foot or heel? A. He ran into his arm.

Q. What? A. Williams had his arms out like that (illustrating), and Wooley ran into his arms.

Q. Williams was in the act of catching the ball that was thrown to him? A. Yes, sir.

Q. He put his arms out like that (illustrating) and tried to catch the ball? A. Yes sir; he had caught the ball at the time.

Q. Did he hold it or drop it? A. He held it.

Q. Wooley thought he was interfering with him in running because he did that? A. He said so; he said so.

Q. Then he called Williams some name, didn't he? A. That part I could not say; I don't know—I did not hear that.

Q. Well, you heard Williams make some kind of reply; wasn't that the way the argument started? A. Yes, sir.

Q. And didn't Wooley object to what Williams had done? A. Why, yes, certainly; yes sir. Wooley objected first; he was the first man that started that; he was the man that—

Q. Who held his hands out? A. Williams had his hands out and Wooley ran into his hands.

Q. Wooley done like that (illustrating)? A. Wooley done like that; he said Williams was trying to force him off his base.

Q. And then Williams said, "you are a liar" called him some name? A. I did not hear that.

Q. Did you hear anything that was said at that time? A. Only a part of the argument, I heard; there was going to be a fight; that is when I got interested in the argument. I kept hollering, "play ball, play ball."

Q. You heard Wooley say he would fix him after the game for interfering with him in running to the base, didn't you? A. No, sir.

Thomas Smith—Cross.

Q. Didn't you hear Wooley say he was going to fix him? A. Williams said they would settle it after the game; Wooley said, "All right, settle it after the game." That is the way.

Q. Are you positive that Wooley did not say that instead of Williams? A. They both said it.

Q. Wooley said it first? A. No, Williams said it first.

Q Where were you standing? A. Standing opposite third base.

Q. Opposite third base? You mean outside in the field? A. Yes, sir; I could show you pretty good on one of these pictures.

The Prosecuctor: You understand this diamond here don't you?

Witness: (referring) I was standing here (indicating).

The Prosecutor: That is first base.

Witness: Here is third base, across here (indicating). I was standing here (indicating).

The Prosecutor: Opposite?

Witness: Yes, sir.

Q. Was Williams about to return the ball to the pitcher after this occured? A. No, sir.

Q. He kept the ball and held it? A. He kept the ball and held it.

Q. Wooley still had it in his hand? A. Yes, sir. Ben slid under. He ran into him and then he slid under and put his hand on. He was safe by putting his foot on the base like that (illustrating).

Q. Williams still held the ball? A. Still held the ball.

Q. Do you know which hand he held it in? A. No, sir, I could not say as to that, because he had both hands together. I suppose he had it in that position (illustrating).

Q. If he had the glove on the right hand, he would have had the glove off, would he not, to make a good throw to the pitcher to home? A. Not necessarily, no, sir. I suppose not. I am not a ball player myself. I could not tell you exactly what a ball player would have to do.

Q. Have you ever observed them playing ball over there when a catcher is about to throw a ball to second, he takes the glove off, don't he, before he throws it? A. Never seen them do that.

Q. You never saw them do that? A. No, sir; they don't do it up where I come from.

Q. What have you to say whether Williams took his glove off for that purpose?

The Prosecutor: How can he tell what the purpose of Williams was?

Mr. Steele: I asked him if he saw that done, and Williams immediately followed that up by throwing the ball.

Q. Did Williams throw the ball or return the ball to the pitcher at home after he took the glove off? A. I could not tell you what he did with the ball; I know he had it. I don't know what he did, because I was rooting for my team. I was busy hollering.

Q. Do you know what took place on the ball field? No fighting took place on the ball field? A. No fighting took place on the ball field.

Q. No blows were struck on the field? A. No, sir.

Q. No offer of blows? A. Yes, there was an offer to fight.

Q. Further than what you told me? A. No further than what I told you, no, sir.

By the Prosecutor:

Q. Do you know in what direction the ball that Williams caught came from? A. Yes, sir, it came from second base. Standing in this position (illustrating). I think the argument was that Williams should have been standing some place—

Q. To give the runner a fair chance? A. Yes.

The Court: Which way did he say it came from?

The Prosecutor: Came from second base to third; same direction.

The Court: That is, it followed the runner.

The Prosecuctor: It followed the runner.

FRANK G. SCANNEL, sworn for the state testifies as follows:

Direct examination by the Prosecutor:

Q. Doctor, you are the county physician of the County of Mercer? A. Yes, sir.

Q. Were you called to Rocky Hill on the evening of May 2nd? A. Yes, sir.

Q. When did you first see Benjamin Wooley? A. May I have permission to refer to my notes?

The Prosecutor: Yes sir; I think that is proper.

The Court: Do you need them to refresh your memory?

Witness: Yes sir. (referring) I was called to see Benjamin Wooley on May 5th, at 10.30 A. M., at the New Jersey State Prison in Trenton. He was

in the hospital, and upon examination, determined he was dead.

Q. You are the man that performed the autopsy? A. Yes, sir.

Q. Go ahead and tell us what you saw by reason of the fact that you were called there and by reason of your duty as county physician? A. I examined the body of this male subject, whose name was said to have been Benjamin Wooley. His age was thirty-seven; his weight was 165 pounds. Well nourished body; probably 6 feet in length; his head was bandaged; both his eyes were black and blue; the whites of the eye, at least, had considerable hemorrhage in them. He had blood oozing from the right ear; he had black and blue marks over his right shoulder, with a fracture of the shoulder at the acromion process or the projecting portion of the shoulder blade and which assists in the formation of the shoulder joint. The bandages were removed from the head, which disclosed a shoe-shaped incision on the right side of the head, which was closed with ten stitches, and over this wound, this shoe-shaped wound, was a small drain of gauze. There was an enlargement of the scalp on the back of the head, about in this position (indicating), which was determined as a hematocele, or bloody tumor. Then there was considerable blood oozing in the vessels of the scalp.

Q. Was that of old or recent origin? A. Recent. The removal of the scalp showed the fracture of the skull on the right side of the head, above the right ear, in a position about as my hand indicates. The fracture continued around the skull on the right side, involving the lower part of the parietal; that is, this bone here (indicating): and the squamous portion of the temporal bone, which is this portion here (indicating), and continued on down to the base of the skull. The removal of the top of the skull—

this portion (indicating)—showed a large hemorrhage covering the right side of the brain, in position about as indicated by my right hand; and a small hemorrhage on the opposite side in a position about like I indicate here (indicating). The brain was removed and there was softened areas of the brain underlying the surface which was covered by the hemorrhages on the right and left sides.

Q. The softened areas, are they the probable consequence of hemorrhage? A. They are due to the pressure of the hemorrhage on the brain. The continued examination of the skull showed a fracture continued across the base of the skull and on the opposite side of the head; that is, on the opposite side of the skull; that is the inner table. In other words, this man's skull was practically fractured all the way around. On the left side it was fractured all the way through the skull; that is, from the outside to the brain; and on the left side it was fractured on what is known as the inner table of the skull; that is the inside of the skull was fractured all the way around and the outside of the skull was only fractured for about a little over one-half of the skull. The lungs were somewhat congested posteriorly, and he had some few fibroid adhesions on the right side.

The Court: There was nothing traumatic about that?

Witness: No, sir, that was due undoubtedly to the congestion of his lungs posteriorly, and in my estimation was due to his posture in bed.

The Court: What about the fibroid adhesion; was that old or new?

Witness: They were slight; it would be impossible to say whether they were long continued or short continued, because they were very slight.

Q. Where they of such a character and extent as to have been able to produce death? A. No, sir. The liver was slightly enlarged. The gall and spleen—the gall was extended, with bile fluid, and stones. The intestines contained fetid matter. The kidneys were normal, right and left both. The spleen was normal and the bladder was slightly distended. The cells were normal. The stomach contained a partial deposit of milk curds, and some fluid. The cause of death, in my estimation, was hemorrhage of the brain with a fracture of the skull as a result of external violence.

The Court: Apparently this man had been treated before you examined the body?

Witness: He had some treatment by the prison physician, Doctor Reddan.

The Court: You found from the appearance of things that indicated he had treatment?

Witness: Yes, sir.

The Court: I suppose somebody told you as to what had been done?

Witness: Doctor Reddan told me himself.

Q. This condition of the skull, could that have been caused, Doctor, by one or more heavy blows with an instrument of that kind (showing bat)? A. It could be, yes, sir.

Q. You have stated what, in your opinion, was the cause of death?

The Court: Yes, external violence and hemorrhage of the brain.

Frank G. Scannel—Cross.

Q. Did anybody assist you in the autopsy? A. Doctor Reddan?

Q. He is present here? A. Yes, sir.

Cross examination by Mr. Steele:

Q. You had never seen the subject before that you examined that day? A. No sir, never had to my knowledge.

Q. You don't know now who it was? A. What is it?

Q. You don't know who it was now of your own knowledge? All you know is that you examined a body and found the condition which you have described? A. Yes sir. I had access to the prison records for this man's name; that is all.

Q. The fracture that you have described you have said that could have come from external violence? A. Yes, sir.

Q. It could have come then from coming in contact with an iron bed, or a cot, could it not, if the subject had fallen and struck his head against an iron bed? That would have been possible? A. It would be possible.

Q. And if the skull was fractured in that way, would it not have been possible to have presented hemorrhages? A. No, sir.

Q. If the fracture had received immediate or short treatment after it occurred, would not the hemorrhages have been slight, and would you not have been able to control them? A. Not in this fracture, no sir.

Q. The fracture that you have spoken of was one continuous fracture—that is, towards the right of the head—the break extending around so that it also appeared upon the left side of the head? A. Yes sir, practically continuous.

Q. All apparently coming from one blow? A. It might have been, yes sir.

Q. That is right, isn't it? A. Yes, sir.

The Prosecutor: He asked you if it apparently came from one blow?

Mr. Steele: He said yes, in my opinion.

Witness: I said it might have been.

Q. Did you notice any indication of violence upon the body aside from the shoulder? A. I don't think I saw any, no sir. I made no note of any other condition.

Q. With a fracture of that kind and a man living for three days thereafter, what have you to say in your opinion as to whether he would have been in a conscious state and able to converse? A. It is hard for me to say as to his being able to converse in a state of that kind, because his hemorrhage was of a progressive nature undoubtedly and naturally he would become more and more unconscious all the time. Of course when I examined his body, his hemorrhage was about as bad as it could be.

Q. By a progressive hemorrhage you mean that it continuously increased in the flow of blood from the time he was struck up until the time he passed away? A. Yes, sir.

The Court: If a man was struck a blow like that, would he have concussion of the brain?

Witness: Yes, sir.

The Court: Would it be slight or considerable or what?

Witness: There is no degree of concussion.

Frank G. Scannel—Cross.

The Court: Would concussion ordinarily produce unconsciousness?

Witness: Yes, sir.

The Court: How long would the unconsciousness remain?

Witness: Nobody could tell you that.

The Court: Would you find that if there was progressive hemorrhage?

Witness: Might, and might not.

The Court: What do you think would be the likelihood in a case like that?

Witness: It is possible that it might. I don't believe anybody could be positive one way or the other.

The Court: He might have been unconscious and come back to consciousness for a time, is that it?

Witness: He might have been, yes, sir.

Q. What effect would it have upon a patient wounded or struck a blow in that way and putting him in a conveyance and carrying him anywhere from fifteen to twenty miles, as to increasing the amount of hemorrhage? A. I don't think it would have such a great bearing on it. Of course we all know that there is some risk run in order to give assistance to human beings.

Q. Fractures of that kind can be remedied, can they not, so that the patient will live? A. No, sir.

Q. What is trepanning as to the top of the head? A. Trepanning?

Q. Yes? A. Trepanning is taking out a button hole, button size piece of the skull so as to allow the surgeon to use some kind of or saw which is known as a Gilea saw, to saw out a portion of the bone, to get as near as he can in direct touch with the blood vessel there, so as to be able to try and treat it.

Q. That is usually done skillfully, is it not? A. Trepanning is not a hard thing to do.

Q. If a portion of the skull be removed lower down, could not the blood vessels in that locality be taken care of in some way and the hemorrhage stopped? A. They might if the blood vessel was outside of the skull.

Q. You go through the skull? A. Unfortunately considerable of the arterial circulation in the skull from which fractures in the skull occur, the blood vessels originate in the inner table of the skull, so that the blood vessel itself is practically incased in the boney tissue; so that it is impossible for the surgeon to pack up this blood vessel with his blood controlling instrument, and he must necessarily have recourse to gauze packing and try to use pressure with his gauze packing against the blood vessel, and using the skull, in the inside of the skull, as his ground to pack against or his solid body. Of course those things are very serious, and it is naturally a very hard thing to do.

The Court: It is practically putting a plug in it, isn't it?

Witness: Yes, sir.

Q. If gauze packing had been used in this case, in a fracture such as you have described, then the tendency would have been to stop the hemorrhage, would it not? A. All the gauze packing in the world

would never have stopped this hemorrhage. His skull was fractured all the way around.

The Court: Was there anything that could have saved his life?

Witness: No, sir.

Q. He lived I understand for three days; the injury had been done three days before you saw him; you so understood it, did you not? A. I think it was something like that, yes sir.

MARTIN REDDAN, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. Doctor, you are a prison physician at the State Prison at Trenton? A. Yes, sir.

Q. Were you called to the state camp at Rocky Hill on Sunday, May 2nd? A. I don't remember the date; I believe that was the time; on Sunday afternoon.

Q. At what time did you arrive at Rocky Hill, or the state camp, rather? A. I think a little after five.

Q. Who was with you? A. The principal keeper, Mr. Madden; I don't remember; I think it was Mr. Clayton then; I would not be sure; Mr. Madden, I know, was there.

Q. What did you do when you got there? A. I inspected the man whom I had been sent to see; had him placed in my automobile.

Q. You inspected a person there? A. Yes, sir.

Q. What was the matter with him? A. Bleeding from the head, ears, nose, mouth.

Q. Did you know who he was? A. Not by name. I had seen him in the prison before he had gone to the road camp.

Q. Who called your attention to him when you got there? A. The deputies in charge of the camp.

Q. What did you do for him if anything while there? A. Put a temporary bandage of towels around his head, fixed him up as comfortably as we could and had him placed in my automobile and took him down to the state hospital.

Q. Did you regard him as being seriously injured? A. Yes, sir.

Q. Did you make any more than a superficial examination of him at that time? A. No, sir.

Q. Was he conscious or unconscious? A. He was in muttering delirium. He might respond to pain, but not to any—not give intelligent answers.

Q. You took him in an automobile where? A. To the New Jersey State Prison.

Q. Hospital? A. Took him to the hospital as soon as we got up to the prison, yes, sir.

Q. What hospital did you take him to? A. The prison hospital.

Q. What was done for him there by you or anyone under your directions and supervision? A. I, with the assistance of the resident physician there, enlarged the opening, removed the fractured pieces of bone, and as far as we were able stopped the hemorrhage and relieving as much as possible also the pressure on the brain.

Q. What was he actually suffering from? A. Brain compression.

Q. Caused by what? A. By the skull being broken, pieces of skull with blood clots pressing on the brain.

Q. Was his skull broken then? A. Yes, sir.

Q. To what extent? A. At the time the operation was made, a large horse-shoe incision was made, possibly the greatest diameter would be 5 inches; turned off the flap down and exhibited a broken bone;

suppose that revealed an area of at least three by four inches, fragments of bone.

Q. Were there any scalp wounds? A. I am not sure; I don't remember.

Q. Well, did you continue to treat him? A. Yes, sir.

Q. Describe the treatment that you gave him to us? A. I think that was about the extent of it; to remove as much of that bone as appeared to be pressing on the brain, and going as far as I thought it safe in an effort to stop the hemorrhage.

Q. Did he die? A. And he died after the second or third day from the injury, yes, sir.

Q. Did you assist in the autopsy with Dr. Scannel? A. I was present at the autopsy.

Q. Did you notice the extent of the injury to his skull? A. Yes, sir.

Q. Tell the jury what it was, how extensive it was? A. It extended from the temporal bone, on the right side externally; down around the entire right side and across the base of the skull, and across up on the other side. I might say that at the time of the treatment I removed as much as I dare of the bone, and still found the fracture deeper than I dare go without doing the man more harm than good.

The Court: This flap you turned down, was that a flap of the skull, I suppose?

Witness: Yes, sir.

Q. In order to get at the bone fracture? A. The fractured bone, yes, sir.

Q. Did you notice the condition of his brain? A. Well, it had been—where the hemorrhage and bone had been pressing on it, it was somewhat flattened; the covering of the brain was lacerated, and the brain substance itself was injured and torn.

Martin Reddan—Cross.

Q. From the condition you found him in, in Rocky Hill, and all you know in connection with this case, was there any chance for his recovery from the injuries that he received, in your opinion? A. Except that most anything is possible in medicine; but there was no probability of it.

Q. You did all you knew for him? A. Yes, sir.

Q. Suppose the man that you have in mind had been hit one or more severe blows with an instrument —a base ball bat, such as the one I show to you—on the afternoon of May 2nd, by a man the size of the defendant, Williams, while standing on his feet, what have you to say as to the relation that blow would have to the injuries you found on this man's head? A. Such a blow would be the very probable cause of the injury.

Q. That being the case, the man dying, what would you say was the proximate cause of the man's death? A. The blow on the head.

Cross-Examination by Mr. Steele:

Q. The same injury could be occasioned by a fall, hitting a hard substance such as an iron bed post, could it not? A. If the fall were from sufficient height, yes, sir.

Q. Well, the accelerated motion of a man six feet high falling with the same force, it would occasion the same kind of an injury, would it not? A. I don't think it possible to have such an injury from a man falling just from his own height—assuming that from the diagnosis of the skull that we found.

Q. But if the fall from his own height was a part of a scuffle with a push or giving away of a hold that he might have had, it would throw him sideways or backward, then it might be occasioned, if that force was sufficient? A. It might be.

Q. There were pieces or slivers of bone pressing upon the brain that afternoon of May 2nd, were there not? A. Yes, sir.

Q. And those slivers occasioned hemorrhage, probably? A. They occasioned some of the hemorrhage, yes, sir.

Q. If they had been removed, it would have given relief? A. They were removed.

Q. And the pressure— A. They were removed.

Q. They were removed at that time? A. Yes, sir.

Q. Were these slivers from the outside or inside of the skull? A. The entire thickness of the skull of the right side was removed.

The Court: That is, you mean portions of the entire thickness of the skull?

Witness: On the right side.

The Court: The right part of the head?

Witness: Yes, sir.

The Court: Of course the dura mater was penetrated though?

Witness: The dura mater was penetrated, and the grey matter was oozing at various points.

The Court: The pieces of bone were pulled out, taken out?

Witness: Taken out, yes sir.

Q. You say they were taken out; were they taken out at the camp or after he arrived at the hospital in Trenton? A. At the hospital in Trenton.

Q. If they had been taken out at the camp, he would of course have been relieved that much sooner? A. If they had been taken out at the camp, he probably would have bled to death right there.

Q. What in your opinion is the difference between removing them at the camp and removing them at the hospital, providing you had the instruments or appliances with you? A. Not any if we had the instruments and appliances with us, but we did not have them.

Q. The carrying of the man then from the camp to Trenton, occasioned a great deal of hemorrhage, in your opinion, did it not, because of the jolt? A. I think not.

Q. Don't you think the jolts would occasion more blood to flow if a sliver of bone was pressing on an artery? A. Well, I drove my own car, and I don't think there was any jolt sufficient to cause any trouble.

Q. Who were with you from the camp when you took this man, Wooley, from the camp to Trenton? A. Mr. Madden, the principal keeper, and, I think, Mr. Clayton.

Q. And anyone else? A. The defendant was there.

Q. You took him over at the same time? A. Yes, sir.

Q. What position was the man in in the car? A. Lying more or less extended along the back seat.

The Court: How long did it take you to drive in?

Witness: I won't tell the road commissioner—half an hour.

The Court: About thirteen miles?

Witness: Yes.

Martin Reddan—Cross.

The Court: I suppose you went as fast as you reasonably could?

Witness: As fast as we could with the patient.

Q. What did the defendant Williams do on that ride over? A. He made some remark about being sorry for having done it, something to that effect.

Q. Did he show any grief in any way besides saying that? A. He sat back in the automobile; I was driving the car; I could not see his expression.

Q. Did he help care for Wooley, the man that was hurt, as much as he could? A. As I recollect it, he was handcuffed; I don't think he was in a position to do anything.

Q. Did you have chairs or stools in the car aside from the regular seat? A. Yes sir, we had, I think two camp chairs—that is, two chairs from the camp.

Q. Wooley was placed upon these, wasn't he? A. Was Wooley, the injured man?

Q. Yes? A. Wooley was on the back seat.

Q. Who used the camp chairs? A. The defendant used one; I don't remember who used the other one.

By the Prosecutor:

Q. You said something about the thickness of the skull having something to do with your opinion in this case; what was the thickness of the skull, ordinary or extraordinary? A. About ordinary.

Q. Suppose the man was standing on the floor like I am, and was hit over the head with a base ball bat, and falls and hits his head on an iron bed, which, in your opinion would cause a fracture of the skull, the blow with the bat or the head hitting the bed? A. The blow of the bat.

FRANK GROVE, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Grove, you are county coroner for the County of Mercer? A. Yes, sir.

Q. And you were over to Rocky Hill on Sunday afternoon or evening of May 2nd? A. At that time I was acting county detective.

Q. What did you do over there? A. On Sunday night, May 2nd, about 8 o'clock in the evening, I received a telephone call from Mr. English, Assistant Prosecutor of the Pleas of the County of Mercer, that a man had been assaulted at the road camp at Rocky Hill, and had been removed to the New Jersey State Prison at Trenton, in all probably was going to die. He wanted me to go down there with him. I went out and got Mr. English, Mr. O'Brien the stenographer from our office, and went to the prison, arriving there about a quarter to nine; went into Mr. Madden's the head keeper's office; I think Mr. Clayton and Mr. O'Brien were there at the time. After having a little talk to them, we asked to have the prisoner, Mr. Williams, brought in; he was brought in the room. He was told that anything he said would be used against him; any statements he made. I asked him if he wanted to make a statement. He voluntarily made a statement, saying that they had been playing ball at the camp; that a ball had been hit by one of the players and he had hollered "foul ball," but he spoke a little too fast; that the man that had been assaulted was running—I understood him to say he ran into Williams, and that they had a little argument; he said—Williams said, this man called him a cock sucker, and that they had a few more words, and he said to him, "I will get you after the game is over."

Q. Who said that? A. Williams said this to him.

The Prosecutor: This is the confession going in, Mr. Steele?

Mr. Steele: His confession? May I ask whether Mr. Williams knew you were official?

Witness: He was told who we were; introduced to him as Mr. Clayton, the assistant prosecutor, Mr. acting county detective; Mr. O'Brien, stenographer in the prosecutor's office.

Mr. Steele: You said to him it would be better for him to give the facts, did you not?

Witness: No, sir, we did not.

Mr. Steele: Is that not what occurred?

Witness: No, sir.

Mr. Steele: Your purpose was to get a statement from him, in calling upon him, wasn't it?

Witness: We told him—

Mr. Steele: No, I want your purpose of going there?

The Prosecutor: I object to what the purpose was.

The Court: Not what the purpose was; the question is, what he said to the prisoner.

Mr. Steele: You went there to see the prisoner?

Witness: We went there to make an investigation.

Mr. Steele: And the prisoner was brought up?

Witness: Brought from his cell.

Mr. Steele: What did you say to him as he came in?

Witness: When he came in, we told him who we were; told him we came to get a statement if he felt like making one; but that anything he said would be used against him in future if a trial was held.

Mr. Steele: What more did you tell him?

Witness: That is all we said to him; and then he started to talk.

Mr. Steele: Who said that?

Witness: I think I said that to him myself.

Mr. Steele: Did anyone else say anything?

Witness: Mr. English spoke to him.

Mr. Steele: What did he say?

Witness: After Williams started to talk, Mr. English began to question him about how the thing happened.

Mr. Steele: What else did Mr. English say?

Witness: There was no promises or threats made to this man whatever.

Mr. Steele: Don't you recall telling him when he came in that it would be better for him to tell the facts?

Witness: I did not use any words—no promises whatever were made.

By Mr. Steele:

Q. You had a stenographer there? A. Yes, sir, he took down notes as he talked.

Q. Do you know what the third degree is? A. We never use the third degree.

Q. Do you know what it is? A. Yes sir; I have had experience of twelve years.

Q. The stenographer took down the notes? A. He took down the notes, yes sir.

Q. Took down what you said? A. I don't think there was any questions put down, but the answers, what this man made to the questions, was put down.

The Court: Had the stenographer taken down the introductory statement as to how you were there and what you were there for?

Witness: I don't think so.

Mr. Steele: I am objecting to the admission of this as a confession made by the defendant in a homicide case. A confession of that kind might do in an ordinary criminal matter, but the courts, even when the defendant is willing, consents to plead guilty in a murder case—the courts are very loath, and refuse to accept a plea of not guilty. A confession of this kind is a reproach, or it might be a reproach to the people of the State; it might or might not; I don't know what they said, but the gist of the expression of the court and of the law in respect to this subject matter is to this effect, and it seems to me that a confession, or any statement made by the defendant to an officer of the law, whom he knows to be an officer of the law, in an official capacity, is such statement that should not be admitted in evidence; because in the prisoner's mind, untutored, not knowing what he is doing or calculating upon

the effect of what he is saying, and in his mind knowing that he has to curry favor to have something done for himself, if it is a man who is in authority, and by reason of that in an excited state, his mental condition not normal, in view of the offense that has been committed,—these men, three of them, and a stenographer, call him out, and he thinks he has got to say something, and he talks; he talks without consideration, and what he says is not evidence, cannot be used as evidence in a case, and what he is saying now, or what this witness says, is simply testimony of something that took place in itself; it is not evidence in itself. What Williams said at that time may or may not have been true; it is not evidence against him. He may have been posing—in this case I don't know that—he might have been posing that he done so and so, when, as a matter of fact, such a thing never happened; it may or may not reduce itself to mere hearsay; and that being so, viewing the condition of the admission—if that be an admission—or anything that was said to these men, it seems to me it should not be admitted in a homicide case. For that reason I object.

The Court: We are unable to see that the admissibility of a confession in a homicide case is any different from its admissibility in any other criminal case, and so far as the foundation has been laid for it, just now, it seems to me to have been clearly voluntary, and that is all that the law requires. The main thing about a confession is that it must not be procured by hope or inspired by fear. Neither of those seem to have been present. The confession is admissible, and your objection will be overruled.

Mr. Steele: Counsel may have an exception?

The Court: Yes.

By the Prosecutor:

Q. You may proceed and tell us what he said? A. He told us that after the game he had gone to the camp and on the way in, he had picked up the base ball bat, they had in the game and put it away.

The Prosecutor: I think it ought to be stated to the court that this statement is reduced to writing, stenographically, and if the court thinks it more proper, why—

The Court: Not at all; the written statement is not admissible as evidence.

The Prosecutor: Only to refresh his memory.

The Court: If the witness' memory doesn't need any refreshing, he does not need it. Have you the stenographer who took it?

The Prosecutor: Yes.

The Court: Then we might as well let this witness proceed.

Q. Go ahead? A. And that he went over to the bed of Benjamin Wooley, with the intention of asking him for a cigarette; and when he got to the bed, he did not ask him for a cigarette; he said to him, "I did not like the way you spoke to me while we were on the field," and at that Wooley arose from the bed, as if he was going to strike him, and as he did, he took the bat and struck Wooley in the head. He staggered and fell against the wall, and then after a few seconds he hit him again the second time and Wooley fell to the floor; and that he left and started to go to his own cot where he slept. Then we left

him. He made some other remarks that I don't exactly remember, all he said, but we left and went to to the road camp where the assault took place, and we interviewed from twelve to fifteen other prisoners.

Cross-Examination by Mr. Steele:

Q. Didn't he say at that time that Wooley had reached up on the shelf, put his arm up on the shelf and that he, Williams, thought he was going to get hit? A. No, sir.

Q. Didn't he at that time say that while on the ball field, shortly before that, the defendant said that he was going to get him and called him a Son of a Bitch? A. He did not say that he called him a Son of a Bitch, but he did say, "I will get you after the game."

The Court: Who said that?

Witness: That is what he said, Wooley said.

The Court: He said Wooley said that.

Witness: Yes.

The Court: Not Williams?

Witness: Yes; that is what Williams said, "I will get you after the game," but he did not mention the words "you son of a bitch."

FRANK J. O'BRIEN, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. O'Brien, you are the stenographer con-

nected with the prosecutor's office in the County of Mercer? A. I am.

Q. Did you take down stenographically a statement made by Alonzo Williams on May 2nd? A. I did.

Q. Where?

Mr. Steele: I object to the stenographic copy going in.

The Court: You had better wait until it is offered Mr. Steele. It has not got that far yet.

A. I took the statement in one of our offices connected with the New Jersey State Prison.

Q. Who was present? A. The Assistant Prosecutor English, acting County Detective Frank Grove, and at the time Martin W. Reddan, and Mr. Thomas D. Madden, keeper in the New Jersey State Prison.

Q. And the gentleman last on the stand? A. Yes, sir.

Q. Do you remember what, if anything, was said by Williams before he made any statement at all? A. Why, Mr. Williams was warned that he could answer the questions put to him or refuse to answer them; that anything he might say might be used against him.

Q. Was there anything else said to him before he made a statement bearing on his rights I mean at that time? A. Assistant Prosecutor English told him practically along this line; I could not just remember everything he did tell him. We always do that.

Q. Do you remember what statement he made? A. Well, I could not tell you off hand the full statement. I could tell you the principal things in it.

Q. Did you make any memorandum of the statement he made? A. Yes sir, made a stenographic memorandum, transcript.

Q. Have you got that with you? A. Yes, sir. (producing paper).

The Prosecutor: The offer is for the witness to testify, refreshing his memory from this memorandum. What have you to say about that, Mr. Steele?

Mr. Steele: I object to it.

The Court: Tell what you can without your notes, Mr. O'Brien?

Witness: Mr. Williams said that he got into an argument with Ben Wooley over a play that occurred during the game, and the ball was hit, which was a foul ball, I think; that Williams had hollered foul; that he hollered a little bit too quickly, and they got into a little argument there; but everything was smoothed over and Williams told Wooley to wait until after the game; and then after the game, Williams, going from the ball grounds to the shanty on his way in picked up the base ball bat and when he got inside, he went down to Wooley's bench and tried as he said, to explain the argument to Wooley, and that they got into a second argument, and that Wooley got up from the bed, and as Williams says attempted to strike him; but Williams admitted that Wooley did not have anything in his hand; that Wooley tried to strike him with his hands, and then Williams, while Wooley was standing up, hit him on the head with the base ball bat, and Wooley reeled and staggered and fell up against the wall, and while he was up against the wall, he hit him a second time with a base ball bat.

Cross examination by Mr. Steele:

Q. Williams at that time said that Wooley was standing on the bed, did I understand you to say that? A. No, I did not say that; Wooley had gotten up from the bed and was standing.

Q. Had gotten up from the bed, standing on his feet? A. Yes, sir.

Q. In the aisle. You heard the last witness testify that Wooley said, "I will get you after the game;" do you recall that? A. Well, he might have said that; I don't remember it.

Q. He might have said it? A. Yes, sir.

The Prosecutor: That is a little misleading. The last witness did not testify he said that. He said that was a part of Williams' story. I presume your question to this witness is, was that a part of Williams' story?

Mr. Steele: He says, "might have said it, but I don't remember."

CHARLES A. CLAYTON, recalled in behalf of the State:

Direct Examination by the Prosecutor:

Q. Mr. Clayton, were you at the prison camp with Doctor Reddan and Doctor Scannel, the county physician? A. Yes. Dr. Scannel was not along then. Dr. Reddan and I were there.

Q. Did you know Benjamin Wooley? A. Yes, sir.

Q. Did you know the man they took in the automobile from Rocky Hill to the State Prison? A. Yes, sir.

Q. Who was he? A. Benjamin Wooley—that is, the injured man?

Q. Yes? A. Took them both up.

Q. What was done with him when he was taken to

the prison? A. Immediately taken to the hospital on a stretcher. Doctor Reddan had telephoned in from the camp for two other city physicians in Trenton to meet him there, and there were three or four surgeons there and went down with him as soon as we arrived at the prison door.

Q. Were you there the day of the autopsy? A. No; I was there but not at the autopsy.

Q. Do you remember the day Wooley died? A. I do not; I could not say exactly. I saw him dead after —that is, a short time after; that is, the body.

Q. Where was the body? A. It was just being taken down to the morgue of the prison, down stairs.

Q. Where did you see it? A. In the hall way, on the bed.

Q. How soon after the autopsy? A. Before.

Q. Before the autopsy? A. Yes, just before.

Q. Whose body was it that you saw? A. Benjamin Wooley's.

Q. Where is that morgue with reference to the prison? A. The morgue is right down the stair-way which leads from, say, the gallery, right down; there is a very wide stairway.

Did anyone else die at the prison on May 5th? A. Not that I know of.

Cross-Examination by Mr. Steele:

Q. What did you see on May 5th with reference to this body? A. Beg pardon?

Q. What did you see on May 5th with reference to this body that you speak of? A. Just the body lying on the cot.

Q. Where? A. In the hall-way; coming out from the main—from the corridor or, rather, from the ward into the corridor, going down-stairs.

The Court: In the hospital?

Witness: Yes.

Q. Was it wrapped up in a blanket, anything of that sort? A. Blankets were over the body up to here (indicating); blankets or sheets on the other side, the lower part of the face; I saw the lower part of the face.

Q. All you saw was the eyes and lower part of the face? A. That is all.

Q. You did not see the rest of the body? A. No, only what was covered up, presumably it was the body.

Q. And you saw it no where else except there in the corridor? A. That is the prison there, the corridor, yes. I saw it in the corridor there. I did not see it in the hospital.

Q. You were not in the prison at the time the doctors made their autopsy? A. No.

Q. The autopsy was not made in the corridor? A. As a rule the autopsy—I won't say the rule; sometimes it is made right in the corridor itself.

Q. In this case it was not, was it? A. Made in the corridor?

Q. Yes? A. That I could not tell you where it was made; I just saw the body passing through the door.

By the Prosecutor:

Q. Was this the same man that went down in the car with you and Doctor Reddan? A. The same man. I held the man in my arms all the way down from the camp to the prison.

Mr. Steele: How do you know it was the same man?

Q. The man that you saw in the corridor on May 5th.

Mr. Steele: The man he saw in the corridor?

A. Yes.

Q. How do you know it was the same man? A. I have known him from the time he came in the prison until we put him out on the road camp.

By Mr. Steele:

Q. As a matter of fact, all you saw that day was the body which was in a blanket lying, I suppose, on a cot with just the eyes exposed; that is all you saw? A. That part is all I saw, coming up to about there (indicating).

Q. Do you know whether that body was dead or alive—whether it was alive or not? A. I was told so; I don't know.

Q. You don't know whether it was dead or alive?

The Court: Were the eyes closed?

Witness: Yes, the eyes were swollen.

The Court: You saw his eyes and nose and mouth?

Witness: Yes, and the eyes were swollen, almost up that far (indicating) all blood; as he was when I took him down.

Q. Do you mean to say that you, under those circumstances, could identify one face from another, as to who the man might have been when living? A. I would have to say it was Ben Wooley.

Q. And all you would have seen of him would have been the swollen eyes and nose? A. I would say that was he, and I was in daily contact with him.

Q. Taking it for granted, that is the only reason? A. I would say it was, because I came in daily con-

tact with the man. I helped carry him home, he came in that condition.

Q. And yet you don't know whether he was dead or alive? A. That I could not say. I saw them move the man on that bed from the ward down to the hall-way, and was told he was dead; that is hearsay.

Q. You said it was Wooley? A. I said that man I saw was Wooley. They told me he was dead.

Q. You were also told that it was Wooley, weren't you? A. I did not have to be told.

Q. But you were so told? A. No, I wasn't told, I was told Wooley was dead; then saw him later on, a few minutes after moving the cot through.

The Court: And you looked at the man and recognized him to your own satisfaction?

Witness: To my own satisfaction that it was Wooley. I had taken a picture of him.

The Court: Well, did you have to keep records of these prisoners?

Witness: Oh, no.

The Court: That was not a part of your work?

Witness: Oh, no. I came into contact with him for several minutes every day.

Q. If another cadaver or corpse had been lying in that position, six feet high, weighing about that amount, wrapped up in a blanket with swollen eyes, would you have then been able to say that was not Wooley, from anything that you noticed about the body that you did see? A. Well, I would recognize Wooley from his features.

Q. All you saw of his features was the eyes and nose? A. Well, no sir, the sheet was up to the chin; the bandage was around to here about (indicating).

The Court: Were the ears covered?

Witness: This ear (indicating)—I forget whether it was the right side or left; one side was covered, and one ear stuck out, as near as I can judge. It was only a passing glance; in fact, I did not need any extended look.

Q. You simply took it for granted, didn't you? A. Oh, no.

Q. You say it was only a passing glance that you got of him? A. And that is all I needed.

Q. And that is all you got? A. That is all I needed.

Q. And that is all you had? A. That is all I had. I had one look at him and recognized him as Ben.

Q. What was there about the swollen nose and swollen eyes that you recognized as Wooley? A. I don't consider that fact changed his features.

Q. They were very much swollen, weren't they? A. Very much swollen, but at the same time, there was enough there to recognize him.

Q. Do you know whether or not there was any other corpse on the 5th day of May in the hospital or in the corridor? A. No, I do not.

Q. Don't know whether there was or not? A. No.

WILLIAM O'BLEMIS, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. William, were you at the state camp number two, at Rocky Hill, on May 2nd of this year? A. Yes, sir.

Q. Did you see the ball game? A. Yes, sir.

Q. Did you see any trouble—you know Benjamin Wooley and you know Williams, Alonzo Williams, don't you? A. Yes, sir.

Q. Did you notice any trouble between them on that afternoon? A. Yes, sir.

Q. What was the trouble about, and what was it? A. Oh, about a run from second base to third base.

Q. Were you watching the ball game? A. Yes, sir, I was playing in the ball game.

Q. Which side were you on? A. I was on the off side; I don't know what they called themselves.

Q. Were you playing on the team with Williams or— A. No, sir, against him.

Q. This is a map (indicating) showing second and third base? A. Yes, sir.

Q. What happened between Wooley and Williams up there? A. Well, Wooley was running from second base to third and Alonzo was in between second and third, where the short stop played; or he was more in a piece, right in line of the base, running along; the ball was pitched from the pitcher's plate; strike; there was a strike.

Q. You were at the bat? A. I was at the bat; man called, "strike"; ball fired back; next ball pitched called "foul"; next ball, there was a call of another strike; I did not strike it; because they called it a strike; Benjamin started from second base than ran to third, and as he run, going along the runway, his foot caught his heel, like that (illustrating), and he ran on his hand and feet and kept running up and got to third base, then turned around, he said; he said, "what the hell you doing? you think you're smart."

Q. Who said that? A. Benjamin.

Q. Wooley? A. Yes; laughed; said "what you say? You're too damn smart," and called him "fresh."

The Court: Williams said that?

Witness: Wooley said, "you think you're smart. You son of a bitch, I will punch you in the nose." This fellow come back; that happened.

Q. Now, you went inside afterwards; how long did they play ball? A. Half an hour after, because the outsiders were over their innings.

Q. When did you go inside of the building? A. Went inside of the building after the game was over, and after that slaughter was—after he struck the man.

Q. Were you inside when this trouble occurred? A. No, sir.

Cross examination by Mr. Steele:

Q. Didn't Wooley make the remark to Williams which you have stated, all that you have stated? A. Ben Wooley made the reply to Williams, called him a son of a bitch; he said, "you are a son of a bitch and seven generations behind you." What he meant by that, I don't know.

Q. Wooley did say that? A. Wooley did say that to Alonzo after Alonzo called him a son of a bitch.

Q. Did you see Wooley take a step then or move over towards Alonzo? A. Alonzo came toward him and he went toward Alonzo.

Q. Wooley went towards Alonzo? A. Yes.

Q. What was the position of his hands when he went towards Alonzo? A. His hands were down; just started to walk back that way (illustrating) as Alonzo came this way.

Q. Did Wooley, while he was going towards Alonzo, tell him he was a son of a bitch and seven generations behind him? A. No, he said that before he left third base.

William O'Blemis—Cross.

Q. And then after that once or twice more? A. After that they both began talking; started to go back. I quieted him.

Q. You were still at the bat? A. I was standing at the bat. I told them to stop and play ball.

Q. Did you see a glove go down on the ground at any time? A. No, I did not take notice of any glove.

Q. Do you know if a glove went down? A. I don't know nothing about that; I did not see it.

Q. You were standing on the home plate? A. I was standing on the home plate.

Q. If that had happened, you would have been able to see it—you would have noticed it if it happened? A. If there was a glove on the ground I would have seen it, yes.

Q. But you did not see it? A. I was looking straight out.

Q. You struck out on strikes? A. I struck out; I struck once and struck out. That ended the inning.

Q. That was the end of the game? A. That was the end of the innings I was in, and they had the last innings.

Q. Did they play the last innings? A. Yes sir, they played the last innings.

Q. How many runs did they make in that innings? A. I don't know.

Q. Skunked, weren't they? No runs at all? A. I don't know.

Q. Do you know how long it took to make that—did you notice how long it took to play that last innings? A. Well, I should judge about half an hour.

The Court: William, where was the ball when Ben was running from second to third?

Witness: That was a base ball, down to the catcher.

The Court: Oh, I see.

Witness: That is the way he started.

The Court: There was no ball around there at all as Ben passed Williams, was there?

Witness: No sir, the ball was throwed for me to strike it. It was a base ball.

The Court: Then Ben started for third?

Witness: He started from second to third base.

The Court: Williams was playing third. but he was up inside, I suppose?

Witness: I don't know whether he was playing on third base or playing short; he was in between third base and short stop.

The Court: Do I understand your testimony rightly? He put out his foot and tripped Ben?

Witness: He did; as Ben went out, he put out his foot in that shape and touched his heel, and knocked him off, and he ran with his hands and feet and forced himself on the base, and that is the trouble of it all.

Q. Now, William, as a matter of fact, Williams had his foot out? A. He did.

Q. Wasn't the ball thrown to him from the catcher? A. Yes.

Q. Didn't the catcher pass the ball to Williams in order to put Wooley out? A. No, no.

Q. Then there was no ball thrown to Williams at all? A. No.

William O'Blemis—Cross.

Q. He did not put his hands to— A. No.

Q. —catch any ball? A. I did not see him put his hands in that position. I saw him put out his foot and touch Wooley's heel, and down he went.

Q. Didn't he put out his hands in this way, facing towards him, and didn't Wooley come along and hit his foot? A. No.

Q. Wasn't that the fact? A. No, no.

Q. Then Wooley went down? A. No, it wasn't that way, Mr. Steele. I wouldn't lie on either one side.

The Court: I suppose there was no back stop to stop the ball.

Witness: No, sir.

The Court: Had to run after it and get it?

Witness: Yes, sir, somebody else got it behind, playing behind.

Q. I understand you to say that Wooley went down on all fours? A. Went down on his hands and feet and gathered himself up and ran like a dog.

Q. And got to third base in that way? A. Sir?

Q. He got to third base? A. In a way; he picked himself up and then got there.

Q. He was safe? A. He was safe.

Q. When he got up, he was very mad? A. He was mad because this fellow struck the man's foot and throwed him down. That is the way the trouble started. I suppose they would have had it right out there if we had not told them to cut it out; "let's play ball."

Q. The reason you did that was because you saw Wooley go towards Alonzo, and you did not want a fight? A. Yes, we did not want to see them fight, because it made it bad for the game. That is where it was.

By the Prosecutor:

Q. How long have you known Wooley? A. Only seen him up to the camp.

Q. Was he a peaceful or quarrelsome fellow?

Mr. Steele: I object to that.

A. Well, he was a man like this—

The Court: Who is it you are talking about?

The Prosecutor: What kind of a fellow Wooley was.

Mr. Steele: I do not think that makes any difference.

The Court: Don't you think he would be entitled to show if he was of a very quarrelsome disposition?

Mr. Steele: If the State wants to show that, I will withdraw my objection.

The Court: No, the State wants to show the reverse.

Q. Go ahead? A. He was a fellow like this; he would come in to you or come into me—

Q. Talking about Wooley now? A. Ben Wooley, you mean?

Q. Yes? A. He would come in to me and you, might say, "Williams Tom Jones has just been telling me about you." "About me—about what?" "Why, you said so and so." "I haven't said anything about him." "Well, he says so. Look out for him." Well, I would go and ask you, Tom Jones, what you talking about me? "I ain't said nothing about you. Who

told you that?'' ''Ben Wooley.'' Well, he would get me and Tom Jones together, and would ask him—he would get us together; have no more trouble about it. That is the way he was. Never no harm in that fellow. He was a great big boy.

Mr. Steele: Just answer questions?

The Prosecutor: He is answering.

NATHANIEL WEIR, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Weir, were you at the prison camp No. 2, Rocky Hill, on May 2nd last? A. Yes, sir.
Q. Did you know Alonzo Williams? A. Yes, sir.
Q. Did you know Benjamin Wooley? A. Yes, sir.
Q. Did you see the ball game? A. Yes, sir.
Q. Did you see any trouble during the ball game between Alonzo Williams and Benjamin Wooley? A. Yes, sir.
Q. Tell us what occurred? A. I was standing up off of first base; Ben Wooley was on second base; I was standing, watching the game, and Ben Wooley ran for third base, and Williams tripped him. Ben got up, a little mad, and told him, called him a vile name, told him if he done it again, he would push him over in return. This fellow called him back and struck at Ben.

The Prosecutor: Who struck at him?

Witness: Williams struck at Ben. Ben started to run for the home plate; as he was running for home plate, the defendant here says, ''I will get you after the game.''

Q. Did you see either of them after the game was —how long did the game continue after that? A. Between a half and three-quarters of an hour.

Q. Did you see either of them after the game? A. I seen Williams when he was walking in, pick up the bat, and went in the building.

Q. When did you see Williams next? A. I saw Williams next when some one came out and hollered slaughter, murder; I don't know who hollered; I ran in the camp and I seen Williams coming up the aisle with the base ball bat in his hand; carried it at his side. I went behind the keeper; the keeper asked him for the bat.

Q. When did you see him coming up the aisle? I call your attention to this map—this (indicating) being the mess hall here; this (indicating) is the entrance to the assembly room and dormitory; which direction was Ben coming? A. You mean Williams?

Q. Williams, yes? A. Coming up towards—

Q. This way (indicating). A. Coming up from Ben's bed, up that way (indicating).

Q. Ben's bed is over here (indicating)? A. Then he was coming down this way (indicating) towards the end of the building.

Q. What did you notice, if anything, about him? A. I was behind the keeper; I walked in behind the keeper, and the keeper said, "give me that bat;" he refused to give the keeper the bat. He also told the keeper, dared him to draw his gun.

Q. Just tell us what he said? A. Why, as he was coming in, the keeper come in and said, "give me that bat." Williams said, "now draw your gun."

Q. Who said that? A. Williams said it.

Q. To whom? A. To the keeper.

Q. Then what happened? A. Some one slammed the door and Ben—I went down and helped Ben on his feet; I helped lift Ben up and done the best we could for him.

Q. Where was Ben then? A. Ben was lying on the floor between his cot and the cot in front of him.

Cross examination by Mr. Steele:

Q. Where do you live? A. Elizabeth.
Q. What is your business? A. Boatman.
Q. What were you doing at the camp on May 2nd? A. I was convicted of a crime.
Q. What was that crime? A. Disorderly house.
Q. Have been discharged since? A. Been pardoned, yes, sir. Paroled on pardon.
Q. Out on parole now? A. Yes, sir.
Q. Under any obligation to the State for being out on parole? A. No, sir.
Q. You say Williams tripped Wooley in going from second to third base; you mean by that in running passed Williams? A. He put his foot out; put his foot out that way (illustrating).
Q. He struck Williams' heel, didn't he? A. Yes, he struck Williams' heel and went down.
Q. And it was his heel that he struck? A. I could not say; some part of his leg. It might have been his heel or it might have been his leg.
Q. Did he fall then on all fours? A. Yes, down on —caught himself, on his hands and feet.
Q. Where were you standing? A. Off of first base.
Q. Were you at the bat? A. No, sir, at first base.
Q. You were playing first base? A. No, sir, I was standing by first base.
Q. Were you in the game? A. Between the catcher and near the first base.
Q. Were you playing? A. No, sir.

The Court: On the side of the line?

Witness: Yes, I was on the side.

Q. What first attracted your attention to Williams and Wooley? A. Because Ben had told him that he had tripped him a couple of times before. He said every time he runs there he gets tripped. I said to Ben, "if he trips you this time, I will ask the keeper to put him out of the game."

Q. Don't volunteer so much, because it is not proper testimony. Just answer questions. Williams continued to play at third after Ben had fallen, or did he go back to short stop? A. He was playing still at third.

Q. Did you hear somebody say to him, "I will get you after the game," or "we will fix it up?" A. No, sir, I did not.

Q. Didn't you hear Wooley say that? A. I did not hear him say nothing.

Q. You did not hear Wooley say anything at all A. I heard him laugh at him, that is all he done.

Q. It has been testified that he said considerable here, and if he did say what has been testified to, you did not hear it? A. No, sir.

Q. Were you too far away so that you could not hear? A. I could hear loud talking, yes.

Q. At the time you saw Williams coming down the aisle, he was walking, wasn't he? A. Yes, sir.

Q. Inside? A. Yes, sir.

Q. After it was over; then you saw him turn around and walk back to his bed, didn't you? A. No, sir.

Q. Where were you if you did not see that? How long did you see him? What was he doing the last time you saw him? A. Williams?

Q. Yes? A. Standing right along the stove. He was near where the entrance to stove was, right there near the entrance where we come in.

Q. That is the last you saw him? A. That is the last I saw of him at that time. I went down to Ben.

The next time I seen him, he was handcuffed beside his bed.

Q. The last time you saw him was at his bed? A. At his bed, handcuffed.

Q. You did not see him go over where the steps back of where his bed are? A. No, sir; he was coming up the aisle.

Q. You don't know how he got over there? A. No, sir.

Q. What were you doing during that time? A. During which time?

Q. During the time that Ben went from the entrance to the back of his bed; where were you then? A. I was outside.

Q. Outside? A. Yes, sir.

ELMER OSTERHOUT, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Osterhout, you were one of the guards at the State camp No. 2, on May 2nd last? A. Yes, sir.

Q. Did you see or hear any portion of the altercation between Benjamin Wooley and Alonzo Williams during the ball game? A. I did not.

Q. Did you see anything of the assault? A. No, sir.

Q. When did you first see Williams after the assault and where? A. I saw him standing near the door that goes in from out of the—

Q. Well, now, here is what is termed a map of the assembly room and the dormitory; this being an entrance furtherest removed from the mess hall; where was he? A. He was standing—

Q. Show us where he was standing? A. (referring). Down here (indicating).

Q. What was he doing? A. Stood there with a

base ball bat on his right-hand side, like this (illustrating).

Q. By reason of what you saw, did you go in from the outside? A. I was called in.

Q. By whom? A. One of the prisoners.

Q. Did you see anything of Williams? A. I did; asked him for the bat.

Q. What reply, if any, did he make to you? A. He stepped back and said, "pull your gun."

Q. Did you get the bat from him then? No, sir.

Q. What? A. No, sir.

Q. Why didn't you pull your gun? A. I thought it would be bad to have two murders. I had both doors locked and fastened the man in there. I locked the doors.

Q. Did you lock this door (indicating on the map)? A. Yes, sir.

Q. What other doors if any? A. The door to the mess hall and kitchen; and went outside and called the men in and locked the doors, three or four outside.

Q. What did you do with Williams? A. When I came back, they had him handcuffed and sitting in his chair at the bed.

Cross examination by Mr. Steele:

Q. How long have you been a guard at Trenton? I mean at the camp No. 2? A. Two years, nearly.

Q. You knew that at the time when you saw Williams coming down the hall-way with that bat, that this assault or fight had taken place, did you not? A. Had taken place, yes sir.

Q. And didn't Williams say what he said as to the pulling of the gun in a quiet way? A. No, stuck it right out, "pull your gun."

Q. Didn't you then think that he said it because he thought he deserved something at your hands and

that he said it with that intention, having in his mind that he had done something wrong, now you can punish me if you want to? A. No, I could not say what he thought.

Q. Well, he did not move his hands up, did he? A. Yes sir, stepped back and said, "pull your gun," and moved back.

Q. His hands were down at his side? A. Yes, one hand on the bat right by his side.

Q. No motion as if to strike? A. No, not to strike; just simply stepped back when I stepped up to him and said, "give me the bat."

Q. He afterwards gave the gun up, didn't he? A. The gun?

Q. I mean the bat? A. Yes, I think he did, to Mr. Laggen.

Q. No trouble about Laggen getting it, was there? A. Well, we had the doors locked then. Unfortunately, however, we didn't have the doors locked; he was making toward the doors to get out.

Q. He wasn't alone, was he? A. No.

Q. There was a four or five minute interval between the time this trouble began and the time you saw him, wasn't there? A. I think it was, yes.

Q. He had ample time to get out if he wanted to get out? A. As I came in—I don't know how long before; about that time; I was working and walked right through; went in the office and got the keys and walked right out, and as I saw him standing there I asked for the bat.

Q. You came in the front entrance, didn't you? A. The back entrance; through here (indicating).

Q. Laggen was between you and the back entrance; he could have gone out the front entrance if he wanted to, couldn't he? A. I stood near this door, the front entrance.

The Court: He was near the stove, wasn't he?

Witness: Between the bed and stove.

The Court: I understood you to point out some place close to the above?

Witness: Right there is where he stood by the bed (indicating).

Q. Where was he when you saw him? A. Here (indicating).

Q. He was here when you saw him? A. He was here when I saw him.

Q. You came in the rear entrance here (indicating? A. I came in that way from the office.

Q. You came in from the office? A. I came in from the office and walked right straight out that way (indicating).

Q. Williams was here (indicating) at that time? A. Yes.

Q. There was nothing to prevent him from going right on out when he saw you coming, was there; A. Well, yes there was.

Q. He then walked back, didn't he? A. I came out; I went out the other way, and when I was out, the fellows locked the doors and when I came in, they had him handcuffed.

Q. He did not move to get away? A. Not while I was there.

Q. I mean after you saw him, after he had said as you say, "pull your gun?" A. He walked towards his bed then, I know.

Q. In other words you did not pay any attention to him after that? He would have had you to pass in order to go outside, of course? A. Certainly, I supposed he would.

The Court: I suppose he could have gotten out one of these windows, couldn't he?

Witness: Not very well.

The Court: No?

Witness: No, sir. He could if he could get down.

The Court: The windows seem to have—

Witness: Screen openings.

The Court: What is there, screens?

Witness: Yes, sir.

FRED REPPE, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. You were at the State camp No. 2 at Rocky Hill on May 5th, were you? A. Yes, sir.

Q. Where were you during the playing of the ball game, in the afternoon? A. I was in the back of the building; I did not see the ball game at all.

Q. Did you go in before the ball game was finished? A. Yes, sir, I was in before the ball game was finished.

Q. I call your attention to a map purporting to be a map of the assembly room and dormitory; in other words, the room where the beds were kept; this is the mess hall (indicating), on this side; this is the doorway; here is a stove and here is a stove; and this is the side of the ball grounds, the right-hand side. Will you show me where your bed was? A. (referring) right there (indicating).

The Court: Way up in the corner?

Witness: In the corner.

Q. Whose bed was next to yours? A. Here (indicating)?

Q. Yes? Harry Newton? A. No, Harry Newton was over here (indicating). Ben Wooley's was there (indicating).

Q. Whose was there (indicating)? A. I don't know.

Q. Where were you when Wooley came in after the game, or did he come in before you did? A. He was in before I got in, yes, sir.

Q. He was? A. Yes.

Q. Was Williams in before you came in? A. Yes, sir.

Q. Which way did you come in? A. I came in this door here (indicating).

Q. Did you come in by the mess hall or the other way? A. No, sir, down in that corner (indicating).

Q. This one (indicating)? A. Yes, sir.

Q. Where was Williams at that time? A. When I was coming through the door, I was about half way up; Williams come from behind the stove, that bed (indicating); he had a bat behind his back, and as he walked up the aisle, I was about across over that way (indicating); I was about fifteen feet back of him; I sent for . I did not know what was going to happen. In a second or two, I heard Williams say, "you called me a cock sucker," and with that he gave him a swinging blow on the right shoulder, and he fell, and fell on one bed, going up this way (indicating); he swung aroung to get up this way and he hit him again on the top of the head; he fell to one side that way on his left cheek, and he hit him again on the right side of the head, when he laid there apparently dead.

Q. How far were you from where Wooley was when that happened? A. Right at the door, across the hall.

Q. How far away? A. Well, right at the corner bed here (indicating).

Q. Here (indicating)? A. Yes, sir; three or four beds from there.

Q. Where had you passed Williams? A. Williams had been ahead of me. He was just in there as I passed him. I was going to go to my bed. Just as I got to the corner I heard that remark passed, and in the meantime he hit him with the bat.

Q. And you just arrived at that place right here (indicating)— A. Yes, sir.

Q. When the blows were struck? A. Yes, sir.

Q. Where did you first see Williams? A. Coming from behind the stove.

Q. Show the jury how he carried the bat, if you will? A. (illustrating) up this way and swung the bat on the right shoulder; he got around to hit him again in the head, and hit him over the back of the head, then when he lay there, he hit him again alongside of the head.

Q. Did you see Wooley try to hit him? A. No, sir, he tried to defend himself; tried to grab that bat, after he was hit the first blow; and staggered.

Q. Did you see his hands? A. I seen his hands like that, yes, sir (illustrating).

Q. Wooley's hands? A. Yes, sir.

Q. Did he have a knife in them? A. No, sir, he had nothing.

Q. Where was Wooley standing when you first saw him? A. Standing with his face towards the wall, back towards Williams. He was getting a cigarette paper or tobacco down; I don't know what he was doing; he was getting something.

Q. Where was he standing with reference to the bed, when he was hit? A. Stood at the foot of my bed and at the head of his bed.

Q. Had he much room to lean over? A. He was standing up straight. Well, there was somebody

passed remarks down there; "down here; that way;" they said. He turned around and looked at me, "I will give it to you," and I went in the mess hall, and in the meantime they come in the other way, and that is all I know.

Q. Of course, you don't know what happened after you went out? A. No, sir, do not.

Q. What caused you to go out? A. Well, I was scared.

Q. I want to know just exactly where you were; point out on this map, if you can, as nearly as you can, where you stood? A. Here is where I was standing, right here (indicating).

Q. How many feet were you away from Williams when he struck the first blow? A. About ten feet.

Q. I show you a photograph No. 2, and call your attention to the corners on the side of that wall; where was Wooley's bed with reference to that? A. Wooley's bed was right here (indicating); here is mine (indicating).

Q. Right in the corner? A. Yes, sir.

Q. Stand right up here and show the jury? A. (indicating) here is where Ben Wooley stood; here is my bed, and here is his bed. There (indicating) is the foot of my bed and there is the head of his bed. Here is where he lay (indicating) right there.

Q. Where did you stand? A. Here is where I stood (indicating). Here is where Williams stood (indicating); right here is Harry's bed.

Q. Harry Newton's? A. Yes.

Cross examination by Mr. Steele:

Q. What is your name? A. Fred Reppe.

Q. Where do you live? A. Jersey City.

Q. What is your business? A. Electrician.

Q. What were you doing at Camp No. 2 on May

5th? A. I was running the gasoline and air compressor—gasoline engine and air compressor.

Q. What do you mean by that, down there repairing? A. No sir, running the engine for to drill holes; running the air drills.

Q. Where have you been since then? A. In Jersey City.

Q. Did you leave your address at Camp No. 2? A. Yes, sir.

Q. So that they were able—

The Prosecutor: He was confined there and has been paroled since that time.

The Court: Perhaps Mr. Steele wanted to know if you were one of the prisoners there?

Witness: I was.

The Court: The witness has not testified to that at all. It appears now that Mr. Reppe had one of the beds in the dormitory, and was one of the prisoners, I suppose, were you?

Witness: Yes, sir.

Q. What were you confined for? What were you sentenced for? A. Assault and battery.

Q. Did you have any trouble with Williams? A. No sir, never did.

Q. Did you have any with Wooley? A. No, sir.

Q. Before the 5th day of May? A. No sir, the men were always quiet.

Q. What time of the day was the trouble between Wooley and Williams at Rocky Hill? A. I should judge it was about between four and half-past four, something like that.

Q. Where were you at that time? A. I was in the building.

Q. What part of that building? A. At the foot of that bed there.

Q. Were you there at the time Wooley went by to go to his bed? A. No, sir.

Q. Where were you at that time, if you know? A. Outside of the building. The two of them were in there before I got in there.

Q. Then at the time you came in the building, Williams was at his bed and Wooley was at his bed, is that right? A. When I came in the building, yes, sir.

Q. You stood at the head of the aisle? A. I stood at the head of the bed.

Q. At the head of the bed? A. Yes, sir.

Q. What were you doing there? A. I come in there on account of Williams, just after hitting—was putting the bat on Ben.

Q. You came in because, it was just after Williams — A. What?

Q. What I understand you to say now is that you were standing at the head of your bed, and you came in because it was just after Williams had been hitting Ben, is that right? A. He was hitting Ben at the time I stood at the foot of the bed.

Q. Well, Wooley and Williams were both in the building when you came in? A. Yes, sir.

Q. You came in and went to the head of your bed? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Then Williams, if he left his bed had to pass your bed to go to Wooley, didn't he? A. No, sir, he did not pass my bed.

Q. Didn't he pass your bed? A. No, sir.

Q. How could he get there? Your bed was right on the aisle, wasn't it? A. He got right through back of the stoves; he got right alongside of Harry Newton's bed. My bed is in the corner. He could not pass my bed.

Fred Reppe—Cross.

Q. You were standing, however, at the head of the aisle? A. I was standing behind the aisle.

Q. Why did you stay there? A. Because I could not get in.

Q. What prevented you from getting in there? A. I was scared to see a man hitting a man there. I did not know what to say at this time; I was dumbstruck.

Q. Then you came in and stopped at the head of the aisle? A. I came in right behind Williams—Williams was ahead of the bed; I was right behind Williams. When Williams went in there, I stopped at the aisle; could not get any further; it was done so quick. He hit the man, I guess, in about four or five seconds.

Q. Didn't you hear anything said by either one or the other before the hitting? A. That was all the remarks that passed; he said you called me a cock sucker and he hit him. Just as the words come out of his mouth, he hit him.

Q. Didn't he say anything before that? A. No, I did not hear him say anything at all.

Q. Didn't you say Wooley at that time reached back? A. I seen—as soon as Williams went up to him. He reached back after he got hit; that is all; then he fell.

Q. Didn't you see him reach back before he got hit? A. No, sir, his back was turned.

Q. Was his back turned at the time he got hit? A. His face was towards the wall and his back was towards Williams, when he got hit, yes, sir; got hit on the right shoulder.

Q. You saw Williams come towards him in that kind of way with a bat in his hand? A. I had seen him come from behind the bed with a bat behind his back, yes, sir.

Q. You did not think of anything unusual? A. I did not think of anything like that, no, sir; did not know anything about the argument until I seen the blow and heard him make that remark.

Q. Did you hear Wooley say anything then after that? A. About as soon as he hit him, "oh." No more than that come out of his mouth, and he hit him on the top of his head and the man fell.

Q. Where did Williams go after that? A. That I don't know; and as Williams passed through, he made the remark, "I will do you too," and I went in the mess hall. I don't know what became of him. Then I went out through the mess room hall door.

Q. Where did you go? A. I went out. When I got back, they had Wooley on the cot.

Q. How long did you remain out? A. I was outside, I guess, about fifteen minutes.

Q. Did you see the ball game? A. No, sir, I did not see the ball game.

By the Prosecutor:

Q. Mr. Steele asked you if you stood at the head of that bed, the head of your bed while the blows were being struck; your bed is in the corner (indicating)? A. Yes, sir.

Q. Where did you stand—you mean at the head of the aisle, is that right? A. (indicating).

The Court: Look at this picture, No. 2, does that show the corner where this thing occurred?

Witness: (referring) yes, sir.

The Court: Where is your bed?

Witness: Right in here (indicating).

The Court: Where is the head of it?

Witness: (indicating).

The Court: About in that corner?

Witness: About in that corner, yes sir.

The Court: Where were you standing, about where this crow bar is on the floor or ground?

Witness: Yes.

The Court: You were standing at the foot of your bed, is that right?

Witness: Yes, sir.

The Court: That was about the arrangement of the beds at that time?

Witness: Yes, sir.

The Court: Or was there some difference?

Witness: No, sir, no difference.

The Court: Just about like that?

Witness: Yes.

MICHAEL BIANCHI, sworn for state testifies through the court interpreter, as follows:

Direct examination by the Prosecutor:

Q. Did you see the trouble between Alonzo Williams and Benjamin Wooley inside of the house on May 2nd, over at Rocky Hill? A. Yes, sir.

Q. Where were you when Williams came in? A. Sitting on my bed.

Q. How far was your bed from Wooley's bed? A. Twenty-five feet.

Q. This is Wooley's bed (indicating)— A. I don't understand it.

Q. Which side of the room was your bed on, the side furtherest from the ball ground or nearest to the ball ground? A. Further than the ball ground, by the office.

The Court: Was your bed right against the office wall?

Witness: There is ten beds there; mine was in the middle.

The Court: Was it against the office wall or was it a bed on the middle of the aisle?

Witness: Near the wall.

Q. (To interpreter). Tell him these are the beds, in regard to the wall, and this (indicating) is the office. Which is your bed? A. (referring).

The Court: That is about half way down that aisle.

Q. What did you see Alonzo Williams do? A. I saw him when he came in; he had a stick right back of him, holding it this way (illustrating).

Q. Did you see that stick before (showing)? A. Yes, sir.

Q. Is that the stick that Alonzo Williams had? A. Yes, sir.

Q. Where did he carry this stick, in front of him or behind him or on the side or where? A. (illustrating)—behind him.

Q. Where did he go? A. He went by he bed of Benny.

Q. Well, he went by the bed of Ben Wooley? A. Yes sir, stood on the bed.

Michael Bianchi—Cross.

Q. What did Wooley do to Williams? A. I do not know what he did to him.

Q. What did Williams do to Wooley? A. I saw him when he struck him.

Q. Where did he hit him? A. On top of his head.

Q. How many times? A. Two or three times; I am not sure.

Q. Did Wooley fall down? A. Yes, sir.

Q. Did he try to hit Williams? A. No.

Cross-Examination by Mr. Steele:

Q. Were you at Camp No. 2 as a convict? A. Yes, sir.

Q. For what offense? A. I was accused of hitting somebody.

Q. Did you see Williams leave the stove and walk over towards Wooley's bed? A. Yes, sir.

Q. Did you take any particular notice of him at that time? A. Yes, sir.

Q. Why? A. I was sitting on my bed and did not have anything else to do, and I look at him.

Q. At the time Williams was walking over towards Wooley, Wooley was standing by his bed was he not, rolling a cigarette? A. I could not tell you; I do not know whether he was making cigarettes or not.

Q. Then you did not see Wooley at that time? A. I saw him, that he was sitting down.

Q. What was he sitting down on? A. On top of his bed.

Q. Did you see him get up when Williams went over towards him? A. No, he was sitting down at that time.

Q. Did he continue to sit down at that time? A. He was sitting down until he was struck.

Q. (To the interpreter). Tell him that the last witness said that he was standing with his face

towards the wall when he was struck; ask him whether that is correct? A. He was sitting on his bed half way towards the wall.

Q. Then he was not standing, but sitting? A. Sitting on his bed.

Q. Was there a shelf just above his head? A. Yes, sir.

Q. Did you hear Wooley say anything to Williams as Williams was coming over—going over towards him? A. No, sir, nothing.

Q. You were too far off if Wooley had said anything to have heard, weren't you? A. No, no one said a word; he struck him that way.

Q. Then Williams did not say anything either? A. No.

Q. You are positive that neither of them said a word? A. Yes, sir.

Q. How long did it take for all this to happen, how many minutes? A. I do not know; the trouble was outside; the deceased man came in five minutes before he came in five minutes afterward; as soon as he got there, he struck him.

Q. Did you see the ball game outside? A. No.

JOHN RANGO, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. You were at the State camp, Rocky Hill, on the 5th of May? A. Yes, sir.

Q. You know Alonzo Williams? A. Only in the camp.

Q. Didn't you know him at Rahway? A. Yes, sir.

Q. Did you notice any trouble between him and Benjamin Wooley on the ball ground on Sunday afternoon May 2nd? A. Yes, sir.

Q. What occurred; tell the jury. Tell these gentlemen over here what occurred? A. I was sitting out there in front, about fifteen feet from third base; I was carving out a jewelry box, and Williams—or Ben Wooley called Williams a cock sucker, and Williams said, "do you mean it?" he said, "yes;" so they started to chewing the rag there; Williams said, "Well, I will see you after the game."

Q. Any blows struck on the ground? A. No, sir.

Q. How long did they play after that? A. Well, I could not tell how long. I was out there, I guess, pretty nearly half an hour after that argument.

Q. Did you see Williams after the game? A. No, sir.

Q. Didn't you see him when he came in from the ground? A. Why, yes, I seen him after he came in from the ground; after he came in to the camp.

Q. Did you see him go into that building? A. No, sir.

Q. Did you see him come into the building? Who was in the building first, you or Williams? A. He had been in there before I got in there.

Q. Your name is John Rango? A. Yes, sir.

Q. Did you see any of the blows struck? A. I seen one; the bat was raised for another.

Q. Where were you standing? A. Right by the door.

Q. Which door? A. The lower door.

Q. Down here (indicating)? This being the mess hall here (indicating)? A. Well, down at that bottom door.

The Court: That is the main door as we know it by?

Witness: Yes, sir.

Q. The door in order to go immediately out on the ball ground? A. Yes, sir.

Q. You were down here (indicating) and you say you saw one blow struck? A. Yes sir, and the bat raised for another one.

Q. What prevented your seeing the rest of the blows, if anything? A. Why, I ran for the office door, to get the officer, and stood there a couple of minutes. I could not get in; I ran up the aisle, off here (indicating) to hurry the officer to come from the office.

Q. Where was Williams then? A. He was coming down the end of the beds.

Q. In what direction? A. Coming down towards the bottom stairs.

Q. Coming around this way (indicating)? A. Coming around there.

Q. Did you hear anybody ask him for the bat? A. Yes, sir.

Q. Who? A. Mr. Laggen.

Q. What if anything did he say? A. Why, I don't know what he said to Mr. Laggen.

Q. Did he give him the bat? A. He gave Mr. Laggen the bat, yes sir.

Q. You did not hear the other guard ask him for the bat? A. I heard Mr. Al. ask for the bat first, down near my bed.

Q. What happened then? A. I did not pay much attention to what he said.

Q. You did not pay any attention? A. No, sir.

Q. Did he give him the bat? A. He did not give Mr. Al. the bat, no sir.

Cross examination by Mr. Steele:

Q. You were confined at Camp No. 2, were you not? A. Yes, sir.

Q. Where was your bed? A. Why, the third bed from the stove there.

John Rango—Cross.

The Prosecutor: In this direction (indicating).

Witness: Yes sir; this way (indicating); the third bed.

Q. Where was your position on the ball ground during the time this game was going on? A. I was about fifteen feet on this side, right by the mail box, sitting down, carving out a jewelry box.

Q. Fifteen feet on this side of the home plate? A. No, third base. There is a kind of a hill there, and steps to go down; right alongside of the steps I was sitting.

Q. Did you see the beginning of the trouble between Williams and Wooley, between second and third base? A. No sir; the first that drawed my attention was when one man was called a cock sucker.

Q. What did Williams say then? A. Why, chewing the rag there.

Q. Did you hear he word liar used? A. Well, I might have.

Q. Did you hear all that was said? A. Sir?

Q. Do you know whether you heard all that was said or not? A. No, I don't think I did, because there was Wooley on the base when I hear cock sucker expressed.

Q. Did you hear Wooley say, "I will fix you after the game?" A. No, sir, I heard Williams say, he will get him.

Q. You heard Williams say, "I will get you?" A. Yes, sir.

Q. I ask you whether you heard Wooley say, I will fix you after the game? A. No, I did not hear that, Williams said that.

Q. He may have said it and you not have heard it, is that right? A. Why, no.

Q. One called the other a liar and you did not hear

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that, did you? A. I might have heard it; I don't know.

The Prosecutor: I object to that.

Q. And if you did not hear it, is it not possible that Wooley might have called to Williams, "I will fix you after the game" and you not hear that, and you don't pretend to have heard everything that was said, do you? A. No, I could not have heard everything that was said, because I was paying attention to my jewelry box, carving it out, and I heard the word cocksucker expressed, and I heard talk then; what they said before that, I could not say.

Q. That was rather unusual and attracted your attention? A. Yes, sir, that word attracted my attention.

Q. Did you see any blows struck there? A. Not there, no, sir.

Q. Were you looking in any other direction at that time than the direction in which Williams and Wooley were? A. What time was that?

Q. At the time this conversation or argument, as it has been called, was going on? A. I was at the time I heard that word expressed, yes sir.

Q. Did you see Wooley go towards Williams then? A. No, sir; both of them were standing still; they were arguing.

Q. Williams was on third; or were they both on third? A. Williams was standing—I guess about a couple of feet from third and Ben Wooley was on the side.

Q. Did either one of them make any motion with their hands? A. No, sir.

Q. Did you see a glove dropped to the ground? A. No, sir, I did not.

Q. Did you see the ball thrown to Williams and see him try to catch it? A. No, I did not.

John Rango—Cross.

Q. Didn't see anything of these things? A. No, sir, I did not.

Q. Did you see Williams put his hands out in front of him? A. No, sir.

Q. Did you see Wooley stumble over Williams heel in running? A. No, sir.

Q. Did you see Wooley go down on all fours? A. Go where?

Q. Fall?

The Court: Go down on his hands and knees?

Witness: No, sir, I did not.

Q. All that you know of what occurred there then is simply the calling of the name? A. Yes, sir.

By the Prosecutor:

Q. You were between third base and the street, the roadway? A. Yes, sir.

Q. How far were you from third base? A. About fifteen feet; right on the side of the bank, right next to the steps of the mail box.

Q. The road is right at the ball field? A. No, it is north—the bank is up higher; the road that goes down by the mail box is lower.

Q. Turning down to the right? A. Yes, sir.

Q. You paid no attention to anything until after you heard this name called? A. No, sir.

Q. After that, do you think you heard everything that happened? A. From the present time?

Q. After you heard this name called, did you take notice of everything that happened from that time on? A. Out there? No, not as I know of; because when I heard that, I was kind of surprised; there was a stop for a while, and I went on with my work again.

The Court: And the game went on?

Witness: And the game went on, yes.

Q. I mean everything that occurred in that altercation between Williams and Wooley; did you hear everything that occurred after the calling of that name? Did you hear everything that occurred after that between those two men? A. I did not pay that much attention to them.

Q. I am speaking from that time on? A. From what time?

Q. From the time you did pay attention to them and did notice what was said? A. Why, you mean to say when they called cock sucker?

The Court: Did you hear anything about that?

Witness: Yes.

The Court: Go ahead and tell us what else there was, that you heard?

Witness: I heard Williams say, he will get him after the game.

Q. That is all you heard? A. Out there.

Q. That was after Wooley had reached third base, wasn't it? A. Wooley was on third base then, yes.

By Mr. Steele:

Q. Did he say with what he was going to get him? A. He said he would get him after the game.

Q. With what was he going to get him? A. That I could not say.

GEORGE TILT, sworn for the State, testifies as follows:

George Tilt—Direct.

Direct Examination by the Prosecutor:

Q. George, you were over at Rocky Hill on May 5th last? A. I were.

Q. In camp No. 2? A. Yes, sir.

Q. Do you know Alonzo Williams? A. As an inmate, yes, sir.

Q. Do you know Benjamin Wooley? A. As an inmate the same.

Q. You did what, umpire of the game weren't you? A. I believe that was the part I was playing.

Q. Did you hear an argument between Williams and Wooley? A. I did.

Q. There at the ball game? A. Yes, sir.

Q. Just tell us what that was, and what was said on both sides? A. The argument was over Williams blocking Mr. Wooley from coming into third base, and they talked there for a few minutes, and then they started with the argument, broke up the game, and I heard Williams say, "I will get you after the game."

Q. Did you see Williams throw down his glove or not? A. I believe he did.

Q. Did Wooley show any disposition to fight at that time?

Mr. Steele: I object.

The Court: This is a particularly leading question on a subject.

The Prosecutor: I guess it is.

The Court: Counsel is entitled to direct the witness' attention to the specific point that he wants to bring out. Maybe you can get it in some other way. Find out what was done.

Q. What were Wooley's actions at the time this altercation was going on with reference to any effort to fight the other man? A. I did not see Wooley make any effort to fight, any more than Wooley had been blocked twice by Williams while running bases, and at this time he came from second to third base and Williams blocked him simply by tripping him, and he told him that twice he done it; if he done it again, he would hit him a smash in the snoot or something of that kind. I did not pay any particular attention to it at that time, and did not think nothing of it.

Q. Then the glove went down as you say? A. Dropped the glove down and talked fight there; but they considered they would not fight and everything smoothed over; I heard Williams say, "all right, I will get you after the game." That is all I know about that point.

Q. How long did the game last after this altercation took place? A. Well, they played a good half hour, probably more. I could not exactly tell about that.

Q. Did it last as much as half an hour? A. Probably about, yes sir.

Q. After the altercation took place? A. After the altercation took place.

Q. Did you see Williams afterward? A. See him until the game was finished, yes sir.

Q. Did you see any of the blows struck that have been spoken of, in the building? A. No, I did not see that. I heard of them after they were struck.

Q. Did you see Wooley? Where was he? A. When I saw Wooley, he was lying on the floor.

Q. How near his own bed? A. Very close, between his own bed and the bed of Reppe.

Q. Where was Williams? A. Williams, at the time I saw him, was sitting on his own bed.

Q. Did he have anything with him? A. He had a base ball bat.

Q. Do you recognize this bat (showing)? A. (referring). This resembles the bat, yes sir.

Q. Well, there are some peculiar features about this bat? A. Yes.

Q. Did you see that bat on the day of that game? A. Right there.

Q. What have you to say as to whether or not this is the bat that Williams had in his hand? A. By this split up on one side of it, I recognize that by.

Cross-Examination by Mr. Steele:

Q. What were you confined at the camp for? A. Sir?

Q. What offense? A. What offense?

Q. Yes; you were confined—

The Court: He wants to know what you were there for.

Witness: That ain't got nothing to do with this case.

The Court: Well, it may have something to do with it.

Witness: What I was at the camp for?

The Court: Yes.

Q. What were you sent to state prison for? A. Oh, abuse of a woman child.

Q. As a matter of fact, you were standing back of the home plate, weren't you? A. Back of the pitcher's place, sir.

Q. Standing back of the pitcher? A. Yes, sir.

Q. Did you hear Wooley call Williams a cock sucker? A. I did not.

Q. Did you see Wooley go up towards Williams after the collision? A. Naturally he was running toward third base; I saw him.

Q. After he got to third base and after he had tripped over Williams' heel, then did you see him go towards Williams? A. No, nothing more than they were both standing there talking, arguing about—he was arguing with Williams being blocked from coming into base, and they talked fight; they started talking, but would not fight.

Q. Both talked fight as much as the other? A. Seemingly.

Q. Wooley was about twice as big as Williams, or looked twice as big? A. Oh, he was somewhat bigger than Williams.

Q. I understood you to say that Wooley told Williams he would give him a smash in the snoot? A. Yes, I believe he did.

Q. How long was that after he had tripped over Williams' heel, right away? A. At the same time; at the time that occurred.

Q. You said something about Williams having blocked him twice; did you ever see him block him before? A. I don't know as I did.

Q. Did you see him block him this time? A. I seen him block him this time, yes, sir, just as he came in there.

Q. Did the blocking consist of Wooley kicking one foot and tripping over Williams' heel, as he tripped over the line of the base? A. Naturally in the line of the base where he could not—in between them?

Q. Yes, so far as you could see, it was an accident on the part of Williams, wasn't it? A. Well, on his part, yes.

Q. You say you did not hear Wooley call Williams the bad name? A. No, I did not.

Q. Did you hear Wooley tell Williams that he

would fix him? A. I heard Williams tell the man that he would get him after the game.

Q. I am asking you now about Wooley telling Williams he would fix him? A. Why, no.

Q. You did not hear that? You did not hear either one or the other before—you did not hear all that took place, did you? A. I did not hear all that took place, probably, no.

Recess until to-morrow morning, Nov. 9th, 1915, at 10 A. M.

Somerville, N. J., November 9th, 1915.

JOSIAH CRANE, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. Doctor, you are one of the prison physicians in the state prison at Trenton. A. Yes, sir.

Q. Have been such for how long? A. Six years, on June 5th last.

Q. Did you know Benjamin Wooley, an inmate of the state prison, during his life time? A. Yes, sir.

Q. How well did you know him personally? A. Why, I examined him upon his admission to the prison and saw him on an average three or four times a week, during his incarceration, and saw him after he was brought to the prison with a fractured skull, and attended him daily until the time of his death; pronounced him dead and assisted in the post mortem upon him.

Q. Do you know whether or not he is dead? A. I pronounced him dead, yes sir.

Q. He is dead then? A. Yes, sir.

Q. Can you tell us when he died? A. He died on the 5th of May, at 8.30 A. M. in the morning.

Q. Where were you during the last few minutes of his death? A. Down in my private office, practically underneath the room in which he died.

Q. How long before he died had you seen him? A. Well, about two minutes before the end, the man in charge of the ward came down-stairs and told me that he was dead and I went up-stairs and pronounced him dead.

Q. Was there any doubt in your mind that the man you saw there dead was Benjamin Wooley? A. No, sir.

Cross examination by Mr. Steele:

Q. When had you last seen him before Wednesday morning at 8.30? A. Beg pardon?

Q. When did you last see him before Wednesday morning at eight o'clock? A. Why, Tuesday night about eight or nine o'clock, I should judge.

Q. What was his condition then? A. He was unconscious.

By the Prosecutor:

Q. You say you attended the postmortem? A. Yes, sir.

Q. Did you attend any other postmortem that day? A. No, sir.

The Court: Was there any other in the prison that day?

Q. Was there any other in the prison that day, I should have said? A. I don't remember of there being any.

Q. What was the condition of the skull of the subject that you saw during the postmortem examina-

tion which you say was made upon Benjamin Wooley? A. Why, he had a large hole in the side of his skull with portions of the bone removed; some loose portions of the bone still in there, and with a fracture of the skull extending clear around the skull, from one side to the other, so that after the top of the skull had been taken off, why, you could just move the head right in half.

ALBERT WATKINS, sworn for the state, testifies as follows:

Direct examination by the Prosecutor:

Q. Albert, you were one of the inmates of the prison camp No. 2 at Rocky Hill on May 2nd, 1915, this year? A. Yes, sir.

Q. You were there during this day, which was Sunday? A. Yes, sir.

Q. Did you see the ball game? A. Yes, sir; and I participated in it.

Q. Did you notice any altercation, argument or trouble between Alonzo Williams and Benjamin Wooley? A. Yes, sir.

Q. Just talk up to these gentlemen, who are interested in what you say? A. Why, I was going over to second base; Benjamin Wooley was running from second to third; it seems as though he claimed that Williams blocked him in going into base; he calls Williams a son of a bitch, and Williams called him a son of a bitch back; he says, "don't you call me names now; if you do, I will smash you in the mouth." Just at that time—which I always do—I started hollering "here, play ball: play ball." I kept on hollering, "play ball" and then the argument they had after that I did not hear.

Q. Is that all you heard at that time? A. At that time.

Q. Did you see anybody drop a glove? A. I don't remember anybody drop no glove.

Q. Are you a friend of Williams? A. I ain't a friend of nobody.

Q. Well, did you make a statement in which you said you saw Williams drop his glove? A. Well, I don't remember.

Q. Well, you might have remembered it and then forgotten it now? What did you see that occurred inside the building? A. When I walked inside the building I started to walk up the aisle.

Q. How long was this after the argument first? A. Oh, I don't remember how long it was after the argument; I only remember how long the game continued after the argument.

Q. Well, did it continue five or ten minutes? A. If I said five or ten minutes, I would not know; if I said half an hour, I would not know; I don't remember.

Q. Anyhow, you went in the building? A. I went in the building after the game was finished.

Q. What did you see between Williams and Wooley? A. I seen nothing between them.

Q. Did you hear anything? A. Well, I heard something when I got in, but I don't know what it was; I heard some noise; I could not say whether it was Ben Wooley that was hit or not.

Q. How long after that did you see Williams? A. As I came in, why, I met him coming down the aisle.

Q. Did he have anything with him? A. He had a bat in his hand.

Q. What was he doing with it? A. Walking down the aisle with the bat.

Q. Who else was there? A. Who else was where?

Q. Right there where you were and Williams was? A. I met Laggen coming down the aisle; I met him, and walked up to the defendant and asked him for the bat.

Q. What did he say, if anything? A. Told him to pull his gun.

Q. Who was that asked this? A. Mr. Al.

Q. I think they are both named Al? A. His name was Al. Osterhout.

Q. Oh, Mr. Osterhout. Did you say anything to Williams; A. I told him to give the keeper the bat.

Q. What did he say to you? A. He said, "go away, steamboat; don't bother me."

Q. Then you did not bother him? A. No, sir.

Q. Why did you tell him to give the bat to the keeper? A. Because the keeper asked him for it.

The Court: Well, had you knowledge of anything that occured before?

Witness: Why, as I walked in, I looked up and seen Ben Wooley lying beside his bed, and there was excitement all over the camp.

Q. Here is a map, supposed to show the location of the various beds, stove, and so forth in the room, the dormitory and assembly room; here (indicating) is the mess hall; which door did you come in? A. I don't understand that map.

Q. You know where the mess hall is, where you eat? A. Yes.

Q. Here is the road and base ball ground—

The Court: Why don't you show him a picture? You came by the door in the corner or the other door?

Witness: Came in this door here (indicating).

Q. That is the further door at the corner of the room? A. The further door at the corner of the room.

Q. That is the door that corresponds with this door

on the map (indicating)? A. That is the door I came in (indicating).

The Court: Here is number four; this door, right by the bicycle there (indicating)?

Witness: This is the door here (indicating) that I come in, here (indicating).

Q. This door goes in— A. That is the mess hall; I came in the other door, in the assembly room.

Q. How far had you got in there before you saw Williams? A. Before I saw him? Just as I got inside the door, I saw him.

Q. Where was he? How far down the aisle was he? A. Well, about at the stove, I guess, coming down.

Q. Here is one stove down at this end, and one stove here (indicating); which stove was it? A. The stove nearest to the mess hall.

Q. This one (indicating)? A. Yes.

Q. Where was the guard asking for the bat? Where did they meet? A. Why, the whole three of us met; this (indicating) is supposed to be the corner bed.

Q. This (indicating) is Fred Reppe's bed, way up here; here is the entrance that you came in; how far were you from that? A. I don't understand that map.

Cross-Examination by Mr. Steele:

Q. What were you convicted of? A. Manslaughter.

Q. How long a time had you to serve? A. From then?

Q. From then or from now, either one? A. From now is going on twenty-five months.

Q. You were acquainted with Williams? A. Yes.

Q. He was in the game with you and you were

managing his side of the game—you were manager upon the side on which he was playing? A. Yes, sir.

Q. On the road team? A. Yes, sir.

Q. Wooley was in the same game? A. He was in the same game, yes.

Q. And was running from second to third? A. Running from second to third base.

Q. At the time this occurred. What position did you play? Where were you playing? A. I played three positions that day; I pitched one time, caught one time and was playing short, but I am sure, almost sure that I was playing short stop at the time this argument occurred.

Q. And short stop is the nearest position to third base, is it not? A. Between third and second.

The Court: You were on the same team as Williams?

Witness: Yes, sir.

Q. When Wooley was running to third base, did you see Williams do anything while Wooley was running before he got to third? A. Not as I can remember.

Q. Did you see Wooley fall? A. No, I seen nobody fall.

Q. Did you see Wooley trip up in any way? A. No, he wasn't tripped up as I could see, but he run into the third baseman.

Q. The third baseman was Williams? A. Was Williams, yes sir.

Q. And after he ran into him, what did he say? A. Why, he said, "you son of a bitch, you do that again"—he called him a son of a bitch—then "I will mash you in the mouth."

The Court: Who said that, Wooley?

Witness: No, Williams—when he ran into Wil-

liams, he said, "you done that twice;" he said, "you son of a bitch, you done that twice, and if you do it any more"—and this defendant called him a son of a bitch back, and said, "if you call me that again, I will mash you in the mouth." I began to holler, "play ball." I kept on hollering, "play ball."

Q. So far as you remember, neither of them fell down? A. No, not as far as I remember.

Q. It has been testified that Wooley, after he tripped over Williams' heel, went down on all fours; did you see that? A. I don't remember seeing that.

Q. Was the ball thrown to Williams to put Wooley out as he was running to third? A. The ball was throwed, but I don't know what direction the ball come from; I don't remember that.

Q. You don't remember whether Williams caught it then or not? A. Yes, I remember him catching the ball, but he dropped the ball, as soon as he come to the collision.

Q. Do you remember whether Williams wore gloves or not? A. I am most sure he must have a glove.

Q. You have no recollection of seeing that glove fall to the ground or seeing Williams take it off? A. No, I don't remember.

Q. If Williams had taken it off and thrown it to the ground, you were looking at Williams and Wooley all this time, you would have noticed it wouldn't you? A. I think I would have been in a position to know that.

Q. So far as you now remember about that, if it happened, you saw nothing of that kind? A. No, I don't remember it.

Q. At this time, O'Blemis was at the bat, wasn't he? A. I don't remember that sure.

Q. Do you remember that there was anybody else at the bat? Somebody was at the bat? A. Somebody

else must have been at the bat, but I don't remember who.

Q. Do you remember that he struck out just after Wooley ran and got home? Do you remember that part of the game? A. Please explain that again, sir.

Q. Do you remember that O'Blemis, or the man at the bat, if it were O'Blemis, struck out—three strikes and out? A. No, I don't remember that.

Q. Do you remember that the game stopped just after O'Blemis, the man at the bat, was put out, at the close of the ninth inning, was it not? A. There was no ninth inning; it was the last game.

Q. But it was close to the last innings of the game? A. I don't remember it. We played ball all that afternoon.

Q. Long enough to put O'Blemis out? A. I don't know who was at the bat.

Q. Well, long enough to put the man at the bat out? A. Oh, there was maybe an inning or two played after that. I could not exactly tell what there was; that I could not tell you correctly, how many innings was played.

Q. There has been a bat spoken of here; you say that Williams would not give it to you; have you ever seen that bat before? A. Sure, I guess I have used it before.

Q. And after using it, what did you do with it? A. What did I do with it?

Q. Yes? A. Threw it down on the field.

Q. Did you ever take it from the field and put it in the office? A. No, not as I remember; not myself.

Q. Did anyone else ever take it, so far as you know? A. Take it in the office?

Q. Yes? A. Take them any place they feel like it.

Q. The greater part of the bats wer kept under the shed, and the masks or muzzles, weren't they? A. Well, no, not this summer.

Q. Where were they kept? A. Throw them any place, lay out in the rain; some took them in the shacks or any place.

Q. Did both Williams and Wooley play until the end of the game? A. I could not state that correctly.

Q. When Williams came down the hall, you asked him for the bat? A. Yes, sir.

Q. He was walking then, wasn't he? A. Walking?

Q. Not walking fast? A. No, walking slow.

Q. And at that time, or just about that time, Al, the keeper, asked him for the bat? A. I did not ask him for the bat.

Q. What did you do? A. Al, asked him for the bat.

Q. You did not ask him yourself? A. No, I told him to go ahead and give the bat to the keeper, when I heard the keeper ask him for the bat.

Q. He said, "pull your gun?" A. He did not say it to me, no.

Q. Said that to Al.? A. Yes.

Q. "Pull your gun." Did the keeper then take him into custody? A. The keeper did not bother him; the keeper walked away from him.

Q. And Williams walked on down the aisle, after that? A. I don't remember whether Williams walked down the aisle or not. I don't think he walked down the aisle, however. After I told Williams to give up the bat to the keeper, and he told me to go ahead, why, I walked on away myself.

Q. Do you know whether or not the keeper had a gun? A. No, I don't know whether he had a gun or not. I could not see in his pocket, you know.

Q. What did Williams do next after that? A. When I seen Williams next, he was sitting on his bed.

Q. How long after that was it that you saw him sitting on his bed? A. I don't know.

Q. Five minutes, three minutes? A. I don't know whether it was one, two, three, five or ten minutes.

Q. Was it quite a little time after? A. I don't remember.

FRANK HALL, sworn for the State, testifies as follows:

Direct Examination by the Prosecutor:

Q. Frank, you were at the State prison, camp No. 2, Rocky Hill on May last, were you? A. Yes, sir.

Q. Did you see the ball game? A. Playing.

Q. Did you hear any argument or trouble between —or hear or see any argument trouble btween Williams and Wooley? A. Yes, sir.

Q. Just tell us what you saw and heard? A. Well, Wooley come up to the bat—he was on the side I was playing on.

Q. A little louder? A. Well, Wooley was on the bat; he was on the side I was playing on, and he put the ball—made a single hit and somehow or another, he got to second, and the pitcher did not pitch the ball in time, and he was playing for getting to third, and the ball was throwed to Williams, and Williams had the ball in time to play him out, but he dropped the ball when Wooley run in, and that started the argument.

Q. Tell us what the argument was at that time, what happened? A. They commenced to call each other names, and Wooley was the first one that commenced to call names; he called Williams—after getting to third base, he turned around, and with one foot on the base—he continued on down from second base, down the line; Williams stood in the line; he says, "you son of a bitch, this is the second time you did that; cut it out." Then Williams called him another son of a bitch. Then the manager of my side, Thomas Smith, run out—I was sent to home base—

and says, "play ball. We come out here to play ball; not to fight;" and then the batter come to bat, and Tom Smith says, "hit that ball. Williams and Wooley is in trouble;" and the batter hit the ball; I don't know who it was, and batted Wooley from third to home; and this settled the argument.

Q. Did that end the argument? A. That ended the argument.

Q. Was there any more argument between Wooley and Williams in the game after that? A. No, sir.

Q. How long did the game last from that time on? A. Several innings.

Q. How many minutes? A. I don't know.

Q. How many innings? A. I don't know. I know we finished—played six innings, that is all.

Q. We are only anxious to know how many innings there were after this affair? A. I don't know.

Q. But several? A. Several innings.

Q. Did you see anything of the trouble inside the building? A. I did not.

Q. You don't know what happened there? A. All I know was Wooley was hurt.

Q. I mean from what you saw? A. No, no; don't know nothing.

Cross examination by Mr. Steele:

Q. Wooley, when he got to third base, was declared safe, wasn't he? A. Declared safe. He was called out first; then the umpire changed, after Williams dropped the ball; then he was declared safe.

Q. How near were you to Williams at the time this ball was thrown? A. I was coaxing Wooley from first base; I was on first base coaxing him down the line.

Q. You say he went into Williams? Did he trip on his heel? A. I did not see; he ran into him and dropped the ball. Neither one of the men left the ground.

Q. The reason Williams dropped the ball was because Wooley ran into him, wasn't it? A. Wooley ran into him, yes sir.

The Court: Was Williams on the base line?

Witness: Wooley was coming from second to third.

The Court: I mean, was he on the line?

Witness: Right in the line.

The Court: So that he was in Wooley's way?

Witness: Direct, yes sir.

Q. Who was direct in line? A. Williams was direct in line.

Q. Do you know whether Williams had a glove or not? A. He had a base ball mit on, yes sir.

Q. Did you see that glove go to the ground? A. Did not, no sir.

Q. Did you hear Williams say anything about fighting? Did he throw the glove to the ground and say anything at that time about fighting? A. No, sir.

Q. Did you hear Williams say anything about settling Wooley after the game? A. They both agreed to settle it after the game.

Q. Do you remember what words they used? A. I only know that they both called each other son of a bitch; and they agreed to settle it after the game; but they still kept on playing ball.

Q. You know the bat that has been spoken of, the splinter off on one side? Do you know it? A. I believe so, yes sir.

Q. Do you remember using it yourself? A. I did; it was a favorite bat in the game.

Q. What did you do with it after using it? A. Why, after we got through playing, most anybody took it in from the game in the camp.

Q. By taking it in the camp, you mean taking it in the building? A. In the building, yes sir.

Q. Do you remember taking it? A. I do, yes sir.

Q. Did you take it in the office? A. It was never left in the office; it was put under the beds; it had no special place to be kept.

Q. That was a made bat? I mean, it was a bat that had been bought and hand made? A. That was not a hand made bat; bought bat.

Q. As a matter of fact, the other bats were home made bats, weren't they? A. Yes, sir.

Q. Where were you at the time when Williams and Wooley came together in the camp? A. I don't know whether I was in the toilet or out in the kitchen; I know I did not know nothing about it.

Q. What was the first that you saw? A. I come up to go through the building below; I went in and got a drink of water; then went out to the kitchen again, sat there a few minutes, I don't know how long; then I went in and walked right up the aisle, but never noticed nothing; I went in the toilet and washed my hands and face; and then come back in the hall from the toilet; this man Hays was there, a fellow there by the name of William Hays, from Camden; he was a convict there. He said, "pick the man up and lay him on the bed." That is the first time I noticed a man lying here. The Italian here says, "what is the matter with this man? Got a fit?" I says, "no, Williams killed him with a bat."

Q. Do you remember who was in the hall at that time? A. Several of them were in there at that time.

Q. Were you in before that time and before it occurred and after the game—after the game was over did you go in there, the assembly room at all? A. I

was one of the first ones in there; I was ahead, my keeper next to me, and a boy named red top behind me, and red made a remark—

Q. That was after Wooley had been hit? A. Before he was hit.

Q. Tell us who all were in the assembly room at that time? A. Well, I don't know who all were in there.

Q. How many were there? A. Wasn't nobody in there—not many I don't think.

Q. Do you remember anybody being there? A. I don't remember anybody being in there, but the three that was coming in with me; we was close together, and red top said, that afternoon was the second time this road team had been beat—

Q. What is that? A. Red top made the remark, "Mr. Al. we beat them that time" and this boy said, "that means more bread." Al. said, "yes rout for it and I will see that you get it." Then when Williams was leaving the base ball diamond at the home base, coming from there, towards the door, I got out; that is the nearest door, towards Princeton. He was coming down that way, with the bat in his hand, blowing in the shack.

Q. And the door that he was entering was the door that leads to the mess room? A. No, sir.

Q. Was it the front door? A. It was facing the office; the door nearest Princeton; not the mess house door; the door facing the base ball diamond.

The Court: That is, the door leading into the dormitory from the outside?

Witness: Yes, sir, the lower door, towards Princeton.

The Court: I will show you a picture; here is pic-

ture number four; was it the door next to the bicycle, or the other one?

Witness: It was right here by the bicycle (indicating).

Q. Did you know O'Blemis, the man that was at the bat, acquainted with him? A. Acquainted with him? Yes, sir.

Q. He struck out, didn't he? A. He struck out?

Q. Yes? A. Struck out several times that day.

Q. I mean at that time, when Wooley ran in from third, do you remember what happened to him? Did he get his first base that time? A. No, sir, the batter hit the ball and batted Wooley in.

Q. He hit the ball and batted Wooley in, is that right? A. On third base, yes, sir.

Q. Do you recall whether he made a run? Did he get first? Did O'Blemis get first, the man at the bat? A. I don't know whether it was O'Blemis or not.

Q. The man at the bat, the time Wooley was at third? A. I don't remember that. I remember Wooley was batted in, no more than the time of the scrap. This fellow says to the batter, "hit the ball," and the batter hit the ball and batted Wooley off third.

Q. What do you mean by the word several? What is your idea of the word several? A. More than one.

The Court: How did he use the word?

Mr. Steele: He said, my recollection is, several innings were played.

Witness: I mean more than one.

Q. Then you mean that if this was the eighth inning, the beginning of the ninth inning? A. We did not play any ninth; we finished in the sixth inning.

Frank Hall—Cross.

Q. Did you close the game at the end of the sixth inning? A. Yes, sir.

Q. There were only six innings played? A. Yes, sir. The keeper said we only had time to play six innings, in the second game, because it would be supper time. We did not have time for a full game.

Q. You had supper at five o'clock? A. As a rule on Sundays, yes sir.

Q. Then you began the game at half-past two, ain't that right? A. No, we started the game—we played a double header and only rested about ten or fifteen minutes and then started the second game.

Q. I mean the second game; you played one game before this; this was a double header? A. Yes, sir.

Q. This was the last of the two games, the last of the two? A. Yes, sir.

Q. That is, the second game you began at about half-past two? A. I don't know what time it was.

By the Prosecutor:

Q. Frank, after the game broke up, you went where, inside of the building immediately? A. Yes, sir.

Q. And into the barber shop and washed off your face? A. No, there wasn't any barber shop over there.

Q. Where did you go? A. When I went in, I went in to the barber chair and lay down with the man I played ball with.

Q. And then what did you do? A. Then I went in the toilet and washed my hands.

Q. Then you went out doors? A. Then I went out doors again, yes sir.

Q. Where did you see Williams then? A. I went out doors and was out there a while, I seen him leaving the home base with the bat coming toward the door.

Q. You went to go out you said, and had been out there a while—how long awhile was it that you had been out and you saw him coming from the home base with the bat? A. I don't know how long it was.

Q. Have you any idea how long the game had been over then? A. No, sir.

Q. Well, had it been over ten minutes? A. I don't know whether it was ten minutes or nine; I don't know how long it was.

Q. You must have an idea whether it was ten minutes or whether it was— A. I have no idea whatever. I know the game was over and I seen him coming with the bat.

Q. Did you see him pick it up? A. I did not see him pick it up, no sir. He was partly upon first base line, making toward the door.

Q. This is the bat he had (showing)? A. This is the one, yes sir.

Q. Was anybody else out on the field when he was there? A. Most all the players.

Q. I mean when he was picking up the bat? A. Yes sir. Some of the players were out there routing and guying them because we beat them.

The State rests.

ALONZO WILLIAMS, sworn in his own behalf, testifies as follows:

Direct examination by Mr. Steele:

Q. Alonzo, where did you live before you went to Trenton? A. Westfield, New Jersey.

Q. What was your business at that time? A. Why, I had no special trade at all.

Q. Laborer? A. Most anything; handy man.

Q. You were convicted and sent to prison for larceny, were you not? A. Yes, sir.

Q. On the second day of May last, it has been testified that you had trouble with Wooley; were you at that time playing in the game of ball at camp number two? A. Yes, sir.

Q. What position did you play? A. Third base.

Q. How many games did you play that day, more than one? A. Yes, sir.

Q. Was it the second game of the double header? A. Yes, sir.

Q. Do you know at about what time it began? A. I should judge it was somewhere around about two o'clock.

Q. And the other game had been played up to the lunch hour? A. Yes, sir.

Q. Did you play both after lunch and in the one before? A. The one before.

Q. Do you now recall what innings you were in when you had this difficulty with Wooley? A. I don't I think it was the inning of the eighth.

Q. What occurred between you and Wooley when he was running from second to third base? A. Why, I was on the third base; Wooley was up at the bat; he hit a fair ball and he ran from first to second; and another man was at the bat and Wooley come running from second to third base; the ball was throwed to me to put Wooley out.

Q. Did you wear gloves? A. I had a glove on, yes, sir. The ball was throwed to me to put Wooley out; I caught the ball but the man got safe. He stumbled over my foot, which was just a little beyond the line, and he then turned to me and said, "what in hell is the matter with you? You think you are very smart." He said, "you cock sucker, I will punch you in the mouth." I then said to the man, "what for?" He said, "you are a cock sucker and ten generations behind you." We then never had no more words at that time.

Q. It has been testified that you at that time

called him a son of a bitch, is that right? A. That I called Ben a son of a bitch? I don't remember, sir, no, sir.

Q. Do you recall anything else that he said? It has been testified that he said he would knock you off the base, knock you over the bank? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Did he say that? A. Yes, sir.

Q. What further?

The Court: What bank is this, anyhow?

Mr. Steele: The bank running from the ball field to the public highway.

The Prosecutor: I think there is such a thing. There is a depression there; I suppose that is what they call the bank.

Q. When he first called you these names, what did you do? A. Never done a thing to the man.

Q. It has also been testified that he came toward you at this time, is that a fact?

The Prosecutor: I object to that.

Q. Well, what did Wooley do at the time of this talk between you and him was going on? A. Well, I should judge that the man was angry for the simple reason that he stumbled over my foot and that it blocked him in a way, that I done it with intentions—that I done it intentionally.

Q. Well, did you do it intentionally? A. No, sir.

Q. What part of your foot did he stumble over? A. I should judge my heel.

Q. Did he fall? A. No.

Q. Did you fall? A. No, sir.

Q. Neither one of you? A. No, sir.

Q. What else was said by you or by him? Tell us

all that was said? A. The man said to me, as I aforesaid that "you think you are pretty smart," or, he said, "what in hell is the trouble with you?" and he also said to me that I was a cock sucker, and said that he would punch me in the mouth.

Q. Further than that, what did he say? You have testified to that. What did he say if anything, that happened after the game?

The Prosecutor: I object to that, to the constant suggestion to the witness what he did say.

The Court: I supose the question should be, if he said anything after the game.

The Prosecutor: Yes.

The Court: I think you had better put it that way, Mr. Steele.

Q. Go on tell us anything he said.

The Court: Was anything said between you after the game, Alonzo?

Witness: No sir, not a thing out on the field.

Q. Was anything further stated at that base? A. No sir, not a word.

Q. Well, was there anything said by you further than this? A. No sir, not a word.

Q. Was that all that was said at that time? A. That was about all that was said on the base, yes, sir.

Q. Was anything said between second and third? A. Before the man came to third base?

Q. Yes, either before or after? A. No, sir.

Q. I wish you would recall all that was said between you and Wooley at third base at the time these

compliments were passing between you—whether you have told us everything that was said? A. I did not quite get that?

Q. Have you told us everything that was said between you and Wooley at third base after he called you these complimentary names, and after you had replied? A. Was that all that the man—

The Court: Have you told us everything that was said at third base?

Q. Did Wooley say anything further than that? A. No sir, that was all he said.

Q. How long did the game continue after that? A. I should judge they played about an inning, I suppose.

Q. Do you remember who was at the bat? A. I don't remember, no sir.

Q. What did Wooley do after this conversation between you and him? A. Why, he stole home; he got in on the home plate.

Q. Made his run? A. Yes, sir.

Q. How long did that inning continue after that? A. How long did that inning continue?

Q. Last, yes? A. I think that was the ending of the eighth.

Q. How many were out at the time that Wooley ran home, do you remember? A. How many fellows was out, do you mean?

Q. How long did the innings last after that? Was one out, two out or three out? A. I don't remember; I don't know, sir.

Q. How long did the game last after that? A. Why, that was—I think they played one inning after that; one inning.

Q. Do you remember how long that lasted? A. No, sir, I do not, sir.

Q. Well, can't you fix a time—five, ten, fifteen,

twenty minutes, whatever it may be? A. Well, I should judge it took about ten minutes.

Q. And after the game was over, what did you do? A. I went direct to the camp, and as I got to the camp's door, I seen a bat lying up against the building, and I turned my head when I seen another fellow picking up bats and the gloves; my intention was to bring this bat into the office.

Q. I show you the bat that has been brought here; is that the bat? A. That is the bat, yes, sir.

Q. What did you do with the bat after you got it? A. My intention was to bring the bat into the office. I went into the camp; when I went into the camp, I never recognized the man in there, in the place inside of the camp.

Q. When you say the man you mean Wooley? A. Ben Wooley, yes sir; so I started and went right straight to my bed, with the intention of getting an extra cup I had under my bed, with the intention of getting liniment to bathe my arm.

Q. Where did you expect to get the liniment from? A. Into the office.

Q. Did you get the cup? A. I got the cup, and put the cup on my bed, yes sir.

Q. What did you do then? A. Then I looked up and I seen Ben Wooley sitting there on his bed; it looked to me as if Ben Wooley was about to roll a cigarette. My intentions then was to go over to this man and try to make friends with him as well as I could, knowing I had only twelve minutes; I did not want to get myself into any trouble; I goes over to Ben Wooley in this manner: I said, "Ben, you know that you did wrong out on the field," and before I could get the word field out of my mouth, this man sprang from his bed and said to me, "you black son of a bitch, I will kill you." Then he turned and went toward the shelf; he placed his hand upon the shelf, just as I had seen him many a time get the knife

there; then he turned around; he had something in his hand, but I did not know what it was. He made a step toward me; then I said to Ben, "lay off me." Then I lost my head and swung around with the bat, not knowing how many times I hit the man or where I hit the man.

Q. Was that all that occurred at the bed side, at Wooley's bed? A. Yes, sir.

Q. You don't remember how often you hit him? A. No, sir, I do not, sir.

Q. Do you remember where the first blow was struck? A. No, sir, I do not, sir.

Q. In other words, as you say, you lost your head? A. Yes, sir.

Q. At the time that you approached Wooley's bed, did you see anything further than you have told us? A. Not a word, sir, no, sir.

Q. Did you call him any names of any kind? A. No, I did not, sir.

Q. Immediately after these blows were struck, what did you do? A. I walked then away from this man and I started for that aisle, and as I got half way up the aisle, I met a colored fellow by the name of Al. Watkins. I was pretty near in the reach of another keeper, by the name of Mr. Al.; I don't know his last name.

The Court: Osterhout?

Witness: Al. Osterhout; and Al. Watkins said to me, "give the bat to the keeper." I then told him to go away from me.

Q. Why did you tell him that? A. Because I thought that he was not the man I should give the bat to.

Q. Go on? A. Then I walked up a little further and I got to the keeper; the keeper said to me, "give me the bat." I then refused to give him the bat;

telling him to pull his gun, thinking he would pull his gun under the circumstances. I also thought I was deservable of him doing so.

The Court: What did you expect him to do with his gun, shoot you?

Witness: I thought probably the way things were in the camp and the circumstances, I thought probably he would do this, with the intention of finding himself, that I was going to use the bat on him.

Q. What was your mind as to the keeper, of making an assault upon him? What intent, if any, did you have? A. I had none at all.

Q. How did the keeper stand, and how did you stand at the time that this conversation took place? A. The keeper stood up, if I am not mistaken, stood right up straight.

Q. Do you recall how you stood and how you held the bat? A. I held the bat right alongside of my body.

Q. In which hand? A. In my right hand, I think.

Q. Show the jury how you stood? A. In this manner (illustrating).

Q. During this conversation did you change the position of your arms? A. No, sir.

Q. Did you make any attempt at any assault? A. No, sir.

The Court: That is when he saw the keeper?

Mr. Steele: Yes sir, during the time he had the conversation with the keeper and the keeper—he told the keeper he wouldn't give him the bat.

Q. After that, what did you do? A. I went right direct to my bed.

Q. Did you go down towards—can you show on the map where you went when you had this talk with the keeper? This (indicating), is the stove; this is the main aisle; this is the office. You say you walked down this aisle and met Al. Watkins and the keeper? A. Yes, sir.

Q. About what point did you meet them? A. About here (indicating).

Q. Which direction were you going in? A. I was coming right in this direction, towards this door.

Q. For what purpose? A. For the purpose I don't know myself.

Q. Were you excited? A. Yes sir, I was.

Q. Were you walking or running? A. Walking slow.

Q. After you passed the keeper, what did you do? A. I did not pass the keeper.

Q. After you met him, what did you do at this door? A. He then asked me for the bat and I told him to pull his gun.

Q. After that, what did you do? What happened to you then? A. I turned right around, as I aforesaid, and walked right down the aisle to my bed and sat upon my bed.

Q. How long did you remain there? A. I remained there from that time until I was brought into the office by Mr. Al. Laggen.

Q. Were the handcuffs put on you while you were on the bed? A. Yes, sir.

Q. By whom? A. By Mr. Alex. Laggen.

Q. What took place between you and Alex. Laggen at that time? A. Nothing at all, sir.

Q. What happened to your bat? Did you still have the bat? A. Mr. Alex. asked me for the bat and I passed it out.

Q. Gave it to him? A. Yes, sir.

Q. What position did he hold? A. At that time he was the head guard.

Q. After that you say you went into the office, if I understand you, with Mr. Laggen? A. No, sir, not with Mr. Laggen; with Mr. Clark.

Q. Who was in the office? A. Why, Mr. Alex. Laggen and Mr. Al.

Q. By Mr. Al. you mean Mr. Osterhout? A. Yes, sir, Al. Osterhout.

Q. What happened in the office? What was said by you? A. As I entered the office, Mr. Alex. Laggen—

The Prosecutor: I object to that.

The Court: You mean as to what occurred in the office?

The Prosecutor: I think anything he said is incompetent.

The Court: How is that competent?

Mr. Steele: It has already been testified to by Mr. Laggen that he came in the office and that while he was there he told what had been done and that he was sorry, and it seems to me to be competent for him either to deny or to state whether that was a narration of the facts of what took place at that time.

The Court: I don't remember Laggen's testimony about that.

The Prosecutor: We might assume that he was sorry at that time; that would not form any basis for a defense for anything that occurred before.

Mr. Steele: It becomes a part, one part of the res gestae.

The Prosecutor: If he wants to dispute the fact and contradict the state witnesses, very well.

The Court: You may go on.

Q. You may answer the question,—as to your conversation as to what was said to Mr. Laggen at the time that you went in the office? A. I was brought into the office by Mr. Clark. As I entered the office, Mr. Alex. Laggen said to me, "Williams I feel sorry for you, that the man is in a serious condition," and I was searched, finding a pen knife—

Q. Never mind that.

The Prosecutor: You asked him what happened.

Q. Well, proceed? A. I was searched, finding a pen knife in my pocket, and a few packs of cigarette papers. Then I sat down there, waiting for Mr. Madden and Mr. Clayton and the doctor from state prison. I sat there until they arrived from the prison, into the office; when they arrived from prison, they walked in and went and looked at the man, and they wrapped the man up in blankets as neatly as they could, and then the man was placed out in the automobile, and then they come right back and Mr. Reddan or Dr. Reddan, said he would like to telephone, and that he would like me to—like to have me brought out of the office; I was brought out of the office by Mr. Al.; he sat at my side on the bed; they got through with the phone, then they came right out, and we went out into the automobile.

Q. What occurred in the automobile? Did you have any talk then? A. Then we went out into the automobile, and there were two stools placed in the rear of the automobile, one for Mr. Clayton and one for myself. Mr. Clayton got in and I got on behind him, and he pulled the door shut. They was in this car to keep this man from falling from his seat while going over the road. Then we started toward prison. While going over the road, I turned to Mr. Laggen, also said

it plain enough so as Mr. Madden and Dr. Reddan could hear it, that I was very sorry for what I had done, and tears then began to roll from my eyes; and we went on over the road. Finally we reached the prison.

Q. How long a time did you have to serve in state prison after completing your sentence, after the second day of May, as nearly as you know? A. As far as I could remember, it was the fifteenth day of July, two months.

Q. It has been stated that you walked through the aisle over to the bed of Wooley, holding the bat behind your back, what have you to say to that? A. Not so, no, sir.

Q. How did you go over with the bat to Wooley's bed? What direction did you take? How did you go through the aisles or between the beds? A. I walked right from my bed, right over across from the stove.

Q. This is the location where your bed was (indicating) by the stove? A. Yes, sir.

Q. Then how did you go? Wooley's bed, I understand, was the last one on the rear, next to the wall? A. Yes, sir.

Q. How did you get there? A. I came over from my bed, right over this way (indicating), down that way.

Q. Between the beds, Wooley's bed? A. Yes, sir.

Q. Between the last bed on the first row— A. Yes, sir.

Q. And the last bed which is on the last row? A. Yes, sir.

Q. What was Wooley doing when you got there? A. At that time, it looked to me as if he was about to roll a cigarette.

Q. Show the jury how you had the bat while you were walking over there? A. Gentlemen of the jury—

The Court: No, no, don't make a speech.

A. This is the way I was walking from my bed with the bat at my side; it was not behind my back, but was at my side. I walked over there from my bed in this way; walked right over this way, with no intention of doing anything to the man.

Q. You had the bat in your hands at that time, from the time you had left the ball game, had you not? A. Yes, sir.

Q. How long did you remain at your bed after you reached it? How long were you there? A. No time at all.

Q. Sufficient to pick up the cup? A. Oh, yes sir, I was long enough to pick up the cup; I should judge five minutes, something like that.

Q. You staid simply long enough to pick up the cup and saw Wooley and walked over there? A. Yes, sir.

A Juror: Did you have that cup in your hand when you went over there?

Witness: No sir, I did not, sir.

Another Juror: Where was the bat when you spoke to Wooley first?

Witness: I did not get you.

The Court: Where was the bat?

The Juror: Where was the bat when you spoke to Wooley first?

Witness: Right at my side, sir.

The Juror: Did you make any attempt to hit him at that time?

Witness: No sir, no attempt, no sir.

Cross examination by the Prosecutor:

Q. How much do you weigh? A. How much do I weigh, sir?
Q. Yes? A. What do you mean, now?
Q. Well, yes, now? A. I could not judge that.
Q. How much did you weigh on May 2nd? A. Something I could not judge.
Q. Have no idea of your weight? A. Not at that time, no sir.
Q. Have you ever been weighed? A. Yes, sir.
Q. How much did you weigh then? A. The last time I weighed myself, I weighed one hundred and sixty-five pounds.
Q. You are in state prison having been convicted in Union County, this state? A. Yes, sir.
Q. Have you ever been convicted of a crime before?

Mr Steele: I object.

The Court: I doubt the propriety of it.

The Prosecutor: I would not have asked it if Mr. Steele had not asked him about it.

The Court: What did he ask him?

The Prosecutor: He asked him what he had been convicted of; that he was there under a conviction of larceny.

Mr. Steele: I did not want him to appear before the jury under a false guise.

The Prosecutor: I will withdraw the question.

Q. Had you ever had any trouble with Wooley before the day you played ball with him on May 2nd? A. No, sir.

Q. Had you had any trouble with him that day before this occurence on third base, that has been spoken about? A. No, sir.

Q. You had always been friendly, good friends? A. Well, I never was—

Q. Answer the question; had you been good friends or bad friends? A. Good friends.

Q. You had no reason to suppose that he had anything against you at all, had you? A. No, sir.

Q. You had no reason to suppose, up until that time, that he would do you any injury of any kind, had you? A. I don't know whether he would or not.

Q. Well, you don't know whether I will or not; but you had no reason to suppose that he would? A. I shouldn't think so, no, sir.

Q. He never said anything ugly to you before? A. He did out on the field.

Q. I mean before this day when you were playing base ball together; he never threatened you in any way before, had he? A. No, sir.

Q. You never threatened him? A. No, sir.

Q. And this is the first trouble that you had that day, when he ran into you when you were on third base, and he was coming from second? A. Yes, sir.

Q. And all he said to you was after he tripped over your foot, "What in hell is the matter with you?" That is the only thing he said? He said that to you? A. Yes, sir.

Q. And then he called you a cock sucker for ten generations, is that right? A. You haven't got it quite right.

Q. Give it to me right? A. This man said to me, "what in hell is the matter with you."

Q. That is just what I said? A. "You think you are pretty smart."

Q. You think you are pretty smart? A. Yes, sir.

Q. What else did he say? A. Then he said, "you think you are pretty smart." He said, "you are a cock sucker and I will punch you in the mouth," and I said, "what for?" He said, "you are a cock sucker and ten generations behind you."

Q. Well, he said he would knock you over the bank, didn't he? A. Yes, sir.

Q. What did you say to him? A. I never said any more as I aforesaid, "what for?"

Q. What for? A. Yes, sir.

Q. That is all that you said to him at that time or during the ball game, that could be taken as any kind of a quarrel with him was "what for?" A. That is all, yes, sir.

Q. You had a glove on? A. Yes, sir.

Q. You did not throw that glove to the ground? A. No, sir.

Q. You did not tell him you would get him after the game? A. No, sir.

Q. Never told him anything of that kind? A. No, sir.

Q. You say he was angry? A. Yes, sir.

Q. What do you judge he was angry about? A. Well, I should judge that Ben Wooley would be angry because when he was running, trying to steal base from second to third, when he tripped over my foot, thinking that I had meant to do this, when the ball was throwed to me.

Q. He was safe on the base? A. Yes, sir. I would have put him out, if he did not have run and stumbled over my foot.

Q. And you dropped the ball to the ground? A. Yes, sir, I dropped the ball.

Q. And then he got on the base? A. Yes, sir.

Q. And was declared safe? A. Yes, sir.

Q. And the only thing he had to be angry about

was because you said, "what for?" A. No, sir, stumbled over my foot, as I aforesaid.

Q. Did he stumble over your foot before that day? A. Not that I know of, no, sir.

Q. Didn't he tell you so? A. No, sir.

Q. Didn't he say this is the second time this thing had happened? A. No, sir.

Q. Or words to that effect? A. I don't remember it, sir.

Q. This, you say, was in the eighth inning in the game? A. After the eighth inning, yes sir.

Q. You played only one more inning? A. Yes, sir.

Q. Then you played nine innings in the game? A. Well, that was the—I got that wrong. The afternoon game was six innings.

Q. Yes? A. Yes, sir.

Q. When did you correct your mind on that, just now? A. Yes, sir.

Q. Then it wasn't in the eighth inning that this thing happened? A. No, sir.

Q. What inning was it? A. It was about the beginning of the—about the ending of the fifth, if I am not mistaken.

Q. So that you did not have more than another inning to play, if any? A. Yes, sir.

Q. Did you have an inning to play or half an inning? A. I could not say postively whether it was one inning or an inning and a half.

Q. In your excitement of the ball game, you have not forgotten, have you, what inning it was when this happened? A. Oh, yes sir.

Q. You are sure it was in the fifth inning that this little argument that you and Ben had occurred? A. How is that?

Q. Are you sure it was in the fifth inning that this little argument that you and Ben had occurred? A.

I am not positive of it, no sir; I judge it was in the fifth.

Q. What makes you judge that? A. Why, because it was such a short time after him and I had the argument that the game split up.

Q. You picked up the bat where? Before you came in? That is all that happened between you and he, as far as the game was concerned, wasn't it? A. Yes, sir.

Q. Who went in the building first, you or Ben? A. That I could not say; I could not say.

Q. He was in there when you went in there, wasn't he? A. I don't know; I never paid any attention to the man.

Q. Well, now, where did you get the bat from? A. Up at—

Q. Do you understand this map? A. Alongside of the building. Yes sir, I do, sir.

Q. This is a map of the entire building? A. Yes, sir.

Q. On the left-hand portion of this building; this is the assembly room (indicating) and dormitory, the large room where the beds are; this is the mess hall; this is the kitchen; this is the office; here are the benches along the front of the building? A. Yes, sir.

Q. Here is the concrete drive-way and here is your ball grounds; tell me about where you found this bat? A. Along here (indicating).

Q. You say it was in front of the building. Do you understand the photographs better than the map?

The Court: Give him a picture, Mr. Beekman.

Q. Do you understand this photograph (showing)? A. Yes sir, I do, sir.

Q. Is that the way the building looked on May 2nd? A. Yes, sir.

Q. Do you know where this door on the right-hand side goes? A. No sir, I don't remember that. I don't remember those shelves being there at all.

Q. Oh, no; but is that the way the building itself looked? A. The building itself looked just as it is now.

Q. You recognize it as the door on the right-hand side of the dormitory, the first door to the mess room? A. Yes, sir.

Q. And the door on the left-hand side of the picture is the door to the dormitory? A. Yes, sir.

The Court: And those benches were there?

Witness: Yes sir, the benches were there.

Q. How close to the building was this bat that you picked up? A. The bat was right there (indicating).

The Court: That is up by the mess room door?

Witness: Yes sir. The shovel is right there (indicating).

Q. Right where these two shovels stand? A. The bat was right where this one shovel was there.

Q. Several other bats there, weren't there? A. I did not notice whether there were several others or not. I have seen the bats scattered around.

Q. Hadn't they been thrown in the corner there together with the glove and mask? A. I only seen that one out there, and I have seen bats over this way (indicating), and there was another bat somewhere along here (indicating).

Q. They even kept the bats out along there (indi-

cating)? A. The bats was thrown around, and as soon as the men got through with them, they throwed them alongside there.

Q. Alongside of the building or put them in the shed? A. Well, some of them as soon as they got through, robbed them or stole them.

The Court: Was this bat leaning against the building or lying on the ground?

Witness: Up against the building.

Q. In the same shape as it is now? A. Yes sir, in exactly the same shape.

Q. Nothing has happened to it since that day, has it? A. Not that I can see of it, no sir. It is the same bat.

Q. And had been there during that game? A. I think it had been used in the first game, and somebody had broke it, and I used it several times myself after it was broke.

Q. You mean the first game, the first game they played? A. In the morning.

Q. It had been broke that day? A. And had been broke in the morning; the game before that game was played in the afternoon.

Q. Hadn't it been broke over a week? A. Oh, no, sir, I don't remember it being broke over a week.

Q. When you saw it that afternoon, it was in just the same shape as it is now, wasn't it? A. When I used it that afternoon?

Q. Yes? A. Yes, sir; it had been used and in that condition.

Q. And it was in that shape that you used it at that time? A. It was cracked.

Q. It always will be cracked? A. Yes, sir; I used it.

Q. You used it? A. Yes, sir.

Q. After you picked up the bat by these shelves, where did you go? A. After I picked up the bat, I looked around and seen a fellow coming over this way (indicating) here, gathering up bats and gloves and then I started to go in the camp. I went into the camp.

Q. What door did you go in? A. Right in this door, right here (indicating).

Q. You went into the door then that goes into the mess room? A. The door that goes into the mess room, yes, sir.

Q. You did not go in this room down here (indicating)? A. No, sir.

Q. Sure about that? A. Positive, sir.

Q. Where did you go? You went in the mess room, of course; here is the mess hall (indicating) and that is the door you went in. Just look at this map; you must recognize this all; see these aisles? Here is your ball ground out here (indicating); here is where you picked up the bat, right along the bench, isn't it? A. Yes, sir.

Q. Lying up against the building; and then you went around and went in this door (indicating)? A. Yes, sir.

Q. Went in from this room (indicating)? A. Yes, sir.

Q. Where did you go from there? A. To my bed.

Q. You say you went to the bed to get a cup? A. Yes, sir.

Q. To bathe your arm with? A. Yes, sir.

Q. Did you pick up the cup? A. I picked the cup up, yes, sir; had it behind my bed, yes sir.

The Court: I have lost track of Williams' bed; where was that?

The Prosecutor: This one (indicating).

Q. Was your bed directly opposite the stove, or one bed away from the stove? A. One bed away from the stove.

Q. Towards the— A. Towards the office.

Q. Towards the office? A. Yes, sir.

Q. You had this bat, didn't you? You went to this bed and picked up the cup? A. Yes, sir.

Q. First, what were you going to do with the bat when you brought it in there? A. My intention was to bring it right into the office—rather, my intention was to get the cup and pick up the bat and take it in at the same time to the office.

Q. The office was way down at the other end of the building, wasn't it? A. Yes, sir.

Q. And if your intentions were to take the cup to the office, why didn't you go down to this door (indicating) and go in? A. Because I started for this door first.

Q. I know, but why did you start for that door first if you knew and had the intention in your mind to go down to the office? A. Because it was a short way. The way I went was a shorter way to my bed.

Q. Yes, but you did not intend to go to your bed then; you intended to go to the office? A. I intended to take the bat and go to my bed and get the cup and then from there my intentions were to go into the office, taking the bat and cup at the same time.

Q. Now, you went down here to your bed with the intention in your mind— A. Yes, sir.

Q. Here is your bed right here (indicating) that is right? A. Yes, sir.

Q. Did you notice Wooley there when you came in? A. No, sir, I did not, sir.

Q. You picked up the cup? A. Yes, sir.

Q. And then looked over and saw Wooley there? A. I picked up the cup, then I looked up and seen Ben sitting on his bed.

Q. He was sitting on which side of the bed? A. Middle.

Q. Well, his feet were either one side or the other, weren't they? A. Well, he was sitting on that side (indicating).

Q. The side towards the mess hall, wasn't it? A. Yes sir, the south side.

Q. Here is the shelf where he kept his tobacco and stuff? A. Yes sir, a big bowl he had up there.

Q. Now, you say you thought he was rolling a cigarette when you saw him? A. It looked to me as if he was about to roll a cigarette, yes sir.

Q. What made you think so? A. Why, because he had a big box of mixture in one hand.

Q. Did you see that from your bed over here (indicating). A. Yes sir, I did, sir.

Q. His back was to you if he was sitting on that side of the bed, wasn't it? A. His back was—well, his back was to me, to a certain extent.

Q. The fact is that he kind of sat on the edge of the bed, with his face toward the wall, where he had this tobacco there? A. The way the map shows there, his face was right there, this way (indicating). He was sitting this way, and his face was right that way (indicating). I could see from this side (indicating), the way he was in that position.

The Court: He was facing towards the mess room door, is that right?

Witness: He was facing right straight that way (indicating).

The Court: That is, towards the lavatory? Do you know whose bed that was (indicating)—Harry Newton's wasn't it? Here is Fred Reppe's bed (indicating). A. That was the big tall fellow's; I don't know his name.

Q. Was he facing either one of those beds? A. Yes sir, facing either one of those beds.

Q. That is the way he was facing? A. Naturally if he was sitting toward the bed—

Q. Not what he naturally did; what are the actual facts? A. He was facing toward them two men's beds.

Q. In a general direction towards those two beds? A. Yes, sir.

Q. You were over here (indicating); which side of your bed were you on? Show us? A. When I looked up and seen Ben. Wooley, he was standing at the foot of my bed.

Q. Right there (indicating)? A. He was standing right here (indicating).

Q. Had you put your cup down? A. Yes, sir, right on the bed.

Q. Before you looked over and saw him? A. Yes, sir.

Q. Well, before you looked over and saw him there, you did not know he was there, did you? A. How is that?

Q. Before you looked over and had seen him there, you did not know he was there? A. Not until I looked up.

Q. Why did you put your cup down before you seen him? What did you put the cup down for? A. I put my cup down before I seen him with the intention to take out my handkerchief and blow my nose, and at the same time I looked over, and I simply glanced.

Q. What hand did you have the bat in when you came in the door? A. I think in my right hand.

Q. Blew your nose with your left hand, did you? A. Which way?

Q. You said you put the cup down for the purpose of blowing your nose, that you had the bat in your right hand; you must have had the cup in your left

hand, and therefore you must have blown your nose with your left hand; did you blow your nose with your left hand? A. I—

Q. Won't you answer the question? Did you blow your nose with your left hand or right hand? A. I had the bat in my right hand; I put my right hand in my pocket to get my handkerchief.

Q. You did have the bat in your left hand then? A. While I was blowing my nose.

Q. Why didn't you lay the bat down? You laid the cup down? A. For the reason, I don't know; I did not give account of it.

Q. When you wanted to blow your nose, did you put the cup down? A. Oh, yes, I put the cup down.

Q. And put the bat from your right hand to your left hand, is that right? A. Yes, sir.

Q. And hung fast to the bat? A. Yes, sir.

Q. Instead of laying it down? A. Yes, sir.

Q. And put your right hand in your right pocket and blew your nose? A. Yes, sir.

Q. And then you walked over to where Wooley was? A. Yes, sir.

Q. And walked up behind his back, didn't you? A. No, sir, I did not, sir.

Q. Wasn't he sitting with his back towards you? A. Well, when he was sitting upon the bed, I walked right in front of the man; walked right along the aisle.

Q. Show us which aisle you walked out? A. This one, right there (indicating), and walked over, going right around this way (indicating), and walked in that way.

Q. You went clear from the foot of your bed, around this way (indicating), and around in there? A. Yes, sir.

Q. Didn't you tell your own counsel, Mr. Steele, when you went over to him you went around and went

in here (indicating)? A. I did not say I went in there; I said I went down this way (indicating).

Mr. Steele: That is what he says now.

Q. Didn't you say you went in between the beds, and indicated on the map here that you went in this way, and in here (indicating), upon direct examination? A. Here is my bed (indicating)—

Q. I know where your bed is. The question is, didn't you say, in answer to Mr. Steele's question, that you left your bed, went up this way (indicating), and walked in there, to Wooley's bed? A. I don't remember that sir.

Q. Well, that is the way you did go? A. I went right up that aisle, as I showed you before; right up there (indicating).

Q. Was he still rolling a cigarette when you got there? A. No, sir.

Q. Did he have the cigarette in his hand? A. No, sir.

Q. You supposed he had been rolling a cigarette because you had seen Duke's Mixture? A. Yes, sir.

Q. Did you see this Duke's Mixture lying on the bed when you were over at the foot of your bed? A. I seen the Duke's Mixture in the man's hand.

Q. When? A. When I was by my bed.

Q. You got over there— A. Yes, sir.

Q. Almost instantly, didn't you? A. Well, I took my time in going over.

Q. Well, how long would it take you to go from here across to there (indicating)? That is nearly sixteen or twenty feet? A. I don't know exactly how long it would take me.

Q. Well, you did not stop on the way anywhere? A. I went right over.

Q. With the intention in your mind to make

friends with Wooley when you got there? A. Yes, sir.

Q. And that is the reason you took the bat along, to make friends with him, I suppose? A. Yes, sir.

Q. When you started away from here (indicating) to go there and make friends with him, you did not have any idea he was going to start any fight with you, did you? A. No more than I judged from what he had said out on the field; I wanted to make friends with him in that way.

Q. If you thought you were going to have trouble with him, why did you go over there? A. I went over there to make friends with him.

Q. Well, Williams, you did not expect to have any trouble with him at all when you went over there, did you? A. I did not know whether I did or not; I did not myself; I did not expect to have any trouble with the man.

Q. He never hurt you before? A. No, sir.

Q. Never fought with you before? A. No, sir.

Q. Never had a quarrel except at this place when he called you— A. That is all.

Q. And yet you had in your mind the idea that he would attack you when you got over there? A. I did not know whether he would or not; did not know anything about it.

Q. You did not think anything about it, did you? A. No, sir.

Q. And yet you took the bat along? A. Yes, sir.

Q. And yet when you got over there, you did not see any evidence of a cigarette or of tobacco or of anything? A. I did not see nothing of that.

Q. Who first spoke, he or you? A. Who first spoke between him and I?

Q. Yes? A. When I got there I spoke first.

Q. He was sitting on the bed then? A. Yes, sir.

Q. What did you say to him? A. "Ben, you know that you was in the wrong out on the field."

Q. What else? A. And then before I could get the word field out of my mouth, this man sprang from his bed and said, "you black son of a bitch, I will kill you." Then he started toward the shelf.

Q. All you had done that whole day long, out in the field, was to say, "what for" when he said he was going to knock you off of the bank? A. Yes, sir.

Q. All you had done after that was to walk over and say to him, "Ben, you were in the wrong?" A. Yes, sir.

Q. And he jumped off of the bed, all of a sudden, and said, "you black son of a bitch, I will kill you?" A. Yes, sir.

Q. And made a move for the shelf? A. Yes, sir.

Q. And you thought of course, he was going to knife you? A. I seen him make a turn to get a knife from this shelf.

Q. Did you think he was going to knife you? A. With the intention that he started this.

Q. You thought he was going to hurt you? A. Yes, sir.

Q. Although he had never done anything to you before? A. No, sir.

Q. And you had never done anything to him before? A. No, sir.

Q. And then you brought the bat down on his shoulder, didn't you? A. I struck Wooley with my bat; I don't know where I hit him at all, nor how many times.

Q. Don't you know you hit him on the shoulder the first time? A. I don't know, no sir.

Q. While he was down low, (illustrating)? A. No sir, I don't remember.

Q. Then you don't know how many times you hit him? A. No, sir, I don't know how many times I hit him.

Q. You may have hit him two or three times, so

far as you know? A. I don't know how many, no sir; I don't know; I don't remember.

Q. You may have hit him when he was down, so far as you recall? A. I did not hit him when he was down, no sir.

Q. How do you know, if you don't remember how many times you hit him while he was standing up? A. Because I seen the man facing me, just the same as I see you standing there.

Q. You know that isn't any reason, Alonzo; you know it isn't any reason, because you seen the man stand up, for you to remember that you did not hit him when he was down, when you cannot remember how many times you hit him when he was standing up? A. Mr. Beekman, allow me to explain it to you again.

Q. Can you tell us whether you hit him when he was lying down or not, after he had gone down? A. After he had gone down?

Q. After he fell. He fell, didn't he? A. He fell.

Q. Yes? A. I don't know; I don't know.

Q. You don't know whether he fell or not? A. No sir, I don't know.

The Court: Don't know what?

Witness: I don't know whether the man fell or not.

Q. You don't know whether you hit him hard enough to fall? A. I don't know whether I—well, I don't know whether he fell, or where I hit him, no sir.

Q. Have no idea? A. No, sir.

Q. Nor how many times? A. No, sir.

Q. Nor whether he tried to hit you? A. No more than when he started.

Q. If your memory is a blank and you could not

remember how many times you hit him, how can you say you remember that you had in your mind that he was going to get a knife off the shelf and was going to hurt you? A. How do I remember.

Q. Yes, how do you remember that, if your mind is a blank about everything after that? A. When I started, when I said those words to this man—that he sprang from his bed saying, "you black son of a bitch, I will kill you."

Q. Then you lost all control of yourself? A. Not then, no sir.

Q. How long afterwards? A. The man went toward the shelf and placed his hand upon the shelf, where I had seen him many times get a knife there; then he turned around and made a step toward me.

Q. Did he have a knife? A. I don't know whether he had it in his hands; I saw something in his hand.

Q. Did you see a knife in his hand? A. I did not see a knife.

Q. Did he make a move as if he was going to fight with you? A. He made a move, stepped toward me.

Q. He stepped toward you, did you step toward him? A. I did not.

Q. Did you step away or toward him? A. I dragged my foot back.

Q. You dragged your foot back? A. Yes, sir.

Q. You were standing like this, when you dragged your foot back like that (illustrating)? A. Something in that style, yes sir.

Q. And brought the bat up? A. Yes, sir.

Q. And brought it down on him? A. I don't know —yes sir, I brought it down on him, sure.

Q. And then brought it down on his skull? A. I don't know where it hit the man; I could not say.

Q. After he fell down on the floor, you hit him again? A. I don't know.

Q. You don't deny that you hit him, do you? A.

I don't remember hitting him on the floor at all, no sir.

Q. You were in that position, and you don't deny that you hit Ben Wooley after he fell on the floor? A. I know when I hit the man, the man was standing up; after that I don't know; don't remember.

Q. What? A. I don't remember.

Q. Why? Your mind blank? A. I don't remember, sir.

Q. Is your mind a blank? A. I don't remember, sir.

Q. What is the first thing you remember after you first hit him with the base ball bat? A. What is the first thing I remember after I hit him with the base ball bat?

Q. Yes? A. I don't remember anything, after I hit the man.

The Court: Oh, yes, you do; you remember going down to Trenton with him in the automoblie.

Witness: Yes, I remember that, sure.

The Court: Now come back from that time and tell us the first thing you remember.

Q. Work back; what is the first thing you remember? You remember attacking him when you walked over there, don't you? A. Yes sir.

Q. You remember the blow? A. I remember that well, yes sir.

Q. Where was he when you walked away? A. I don't know; I did not look back to see.

Q. You had gone there to make friends with him? A. Yes, sir.

Q. And you knew you hit him there with the base ball bat? A. I don't know where I hit the man.

Q. You know that you hit him with the bat? A. I

know I hit him with a bat, but where I hit him, I don't know.

Q. You walked away without looking to see where he was or what became of him? A. Yes, sir.

Q. Which way did you walk back? Did you come around this way indicating? A. I come around that way (indicating).

Q. You remember that distinctly? A. Yes sir; right on the aisle.

Q. You come around here (indicating)? A. Yes sir, about there (indicating).

Q. And then how did you go? A. I met a colored fellow by the name of Al. Watkins.

Q. Steamboat, they call him? A. Yes sir, Steamboat.

Q. Before that you met one of the keepers, didn't you? A. Not before, no sir.

Q. Didn't the keeper ask you for the bat? A. That wasn't before that, no sir; he was the first man that I met.

Q. What occurred between you and Steamboat up there, if anything? A. Steamboat told me to give the bat to the man.

Q. Give the bat to what man? A. Mr. Al.

Q. Before Steamboat told you to give the bat to Mr. Al., did Mr. Al. ask you for the bat? A. Steamboat was the first man that spoke to me.

Q. Answer the question yes or no. Before Steamboat spoke to you about giving Al. the bat, didn't Al. ask you for the bat? A. No, sir.

Q. And didn't you step back a few inches and say to him, "pull your gun?" A. No sir.

Q. And didn't Steamboat say to you, "give him the bat?" A. He said give him the bat, but I did not the rest, what you say.

Q. You said, "you go away" to Steamboat, didn't you? A. No sir, I said, "go away;" that is all I said, "go away."

Q. Who did you say go away to? A. Steamboat.

Q. Why? A. Because I thought he was not the man that I ought to give it to.

Q. You did not give him the bat? A. No, sir.

Q. And Steamboat didn't ask you to give him the bat? A. He told me to give the bat to the keeper.

Q. Is that any reason why you told Steamboat to go away? A. I told him to go away; that is all I remember.

Q. You don't remember anything, do you? Your mind was a blank from the time you hit this fellow with the bat until you got down here? A. I remember what I said to this fellow Al. Watkins; he told me to give the bat to the keeper; I told him to go away.

Q. Even before the keeper asked you for the bat? A. Before the keeper asked me for the bat, yes sir.

Q. What did you say to the keeper when the keeper asked you for it? A. I told him to pull his gun.

Q. You say you did that because you realized that you had done something which perhaps deserved his pulling the gun, is that right? A. I thought the way —I thought probably he would pull the gun, try to defend himself, thinking I was going to hit him with the bat.

Q. He thought that? A. Well, I don't know; he is a guard and I was a convict at the time, and I did not know what was in his mind; could not say.

Q. You had not done anything, in your mind, that was wrong up there, had you? A. Yes sir, I had done something that was wrong; I remember.

Q. All you had done was to hurt that man with a bat, that was coming after you, as you thought, with a knife? A. Yes, sir.

Q. And yet when you got down here (indicating) you thought that there was justification for him pulling the gun on you, is that right? A. Try to de-

fend himself. I thought he thought I was going to hit him with the bat.

Q. What made you think so? You stood there with the bat right alongside of you? A. Yes, sir.

Q. There was no trouble at that time? A. I thought there would be trouble; I thought the guard would be excited.

Q. You were not excited? A. I was excited at the time; I was, yes sir.

Q. Where was you going when you were coming down here (indicating)? A. When I was coming down that aisle, I don't know myself; I was too excited and nervous.

Q. Well, you were going to try to get out, to tell the truth, weren't you? A. No, sir.

Q. You were going right down in the direction— A. I don't know where I was going; I don't know, sir.

Q. Do you remember the door being locked? A. I remember one door being shut; I don't know whether it was locked or not.

Q. You remember this door (indicating) was locked? A. I don't know whether it was locked. I remember seeing the door shut.

Q. You remember it was this one (indicating)? A. It was that door, yes sir.

Q. You remember seeing that door shut and locked, don't you? A. I don't remember seeing anyone lock it; I remember seeing it shut.

The Court: Which one?

The Prosecutor: The entrance door, down here (indicating).

Q. Then you went back and sat on your couch? A. Yes, sir.

Q. And stuck to the bat still? You kept the bat? A. Yes, sir.

Q. You did not have your cup with you? A. No, sir.

Q. You were not holding fast to that cup at that time? A. I did not have the cup with me, no sir.

Q. Now, let us go back to your conversation on the ball field; you say that the offensive words that he said to you were, that he called you a cock sucker and ten times— A. Ten generations over, yes sir.

Q. Are you sure that is what he said? A. That is what the man said to me, positively.

Q. Did he say anything else to you? I mean in the way of bad names? A. Before that he did say, yes sir.

Q. What did he say? A. The first thing he said to me was, "what in hell is the matter with you? You think you are pretty smart. You cock sucker I will punch you in the mouth." I said, "what for?" He said, "you are a cock sucker and ten generations behind you."

Q. Have you got it all in? A. Yes, sir.

Q. Is that all he said at that time? A. That is all I remember—beside shoving me off—he said he would push me down the bank.

Q. Didn't he call you a son of a bitch? A. I am just after telling you, he said to me at the beginning, "what in hell is the matter with you—

Q. Do you remember whether he called you a son of a bitch or not?

The Court: Give him a chance to finish his answer, what he was saying. He said to you at the beginning—what?

Witness: He said to me, "what in hell is the matter with you? You think you are smart. You son of a bitch," he said to me, "what in hell is the matter

with you. You think you are pretty smart." He also said to me he would punch me in the mouth, "you black son of a bitch." I said "what for?" He said, "you cock sucker, and ten generations behind you."

Q. This is the first time—you have told us three or four times just what it was; this is the first time you said anything about son of a bitch? A. He called me a son of a bitch and cock sucker.

The Court: No, I don't think it is Mr. Beekman.

Witness: Called me a son of a bitch and cock sucker.

Q. Did you write a letter to the keeper of the state prison while you were there, after this thing happened? A. Did I write a letter to him?

Q. Yes? A. I remember writing a letter to nobody.

Q. Isn't that (showing) your handwriting? A. That is my writing; it is not a letter.

Q. You read that over and see whether you wrote it? A. I wrote it all right; I can tell my own handwriting.

Q. Is that a correct account of what happened on the second? A. No, sir.

Q. It isn't? A. No, sir.

Q. What did you write it for? A. I knowed that —rather, I figured that this man was trying to pick me, try to get something out of me, and if I gave him a statement of my case, that he was going to put it against me in court.

Q. Who was trying to pick you? A. Mr. Freeman.

Q. What did he do to try to pick you? A. Kept asking me several times; he spoke to me as if he was on my side, in my case.

Mr. Steele: I object to the introduction of this letter.

Q. Did you write this letter yourself? It is all your hand writing?

Mr. Steele: I don't know what it is.

The Prosecutor: Well, I will show it to you.

The Court: You are not entitled to cross-examine on it before you show it. If you are not going to offer it, that is one thing. Let me get down what that is—was this written out in prison?

The Prosecutor: Yes.

Q. This was written by you after May 2nd, while you were in state prison at Trenton, wasn't it? A. Yes, sir.

Q. What did you do with that after you wrote it? A. Mr. Freeman has been after me several days—

Q. What did you do with the letter after you wrote it? A. He came—I kept it.

Q. You kept it? A. Yes, sir.

Q. How long did you keep it? A. Until Mr. Freeman come after me three or four times and asked me if I already made a statement out of the case.

Q. Who was Mr. Freeman? A. He is a guard down there, keeper, in the south hall, wing four.

Q. You say this statement don't contain a true account of what happened? A. It don't state the truth, no sir.

Mr. Steele: Do you now remember what is in the letter?

Witness: Not all of it, no sir.

Mr. Steele: Or any part of it?

Witness: No sir.

Mr. Steele: How do you know it states the truth or not?

Witness: I don't remember the whole thing of it, no sir; don't remember it.

Mr. Steele: I mean, you are just testifying to the best of your recollection?

Witness: Yes, sir.

The Court: Well, you think it does not state the truth, however?

Witness: Yes, sir.

The Court: And that is because you were afraid to commit yourself to Mr. Freeman, is that the idea?

Witness: Yes, sir.

Mr. Steele: It is a pretty long letter; I haven't looked through it.

The Prosecutor: You can look it over during the noon hour.

Mr. Steele: Yes.

Q. Well, you were not going to trial then, were you? A. I was not on trial.
Q. No? A. What do you mean?
Q. You know you are being tried now? A. No sir, but I was being picked.
Q. You know you are being tried now, and what you are being tried for? A. I know I am being tried, yes sir.

Q. I suppose you are just as anxious now not to say anything that is going to mitigate against you, or hurt your case, as you were when you wrote that letter? A. I am telling the truth now.

Q. You don't answer the question. I suppose you are just as anxious now, and have got just as much object now to conceal the truth as you had when you wrote that letter? A. No, sir.

Mr. Steele: I object to that. It does not appear that he is concealing the truth, either one time or another.

The Prosecutor: I said just as much object.

Mr. Steele: I object to it upon that ground.

The Court: Objection overruled.

Exception allowed.

Q. I ask you to read this letter over and tell us what part of it is not the truth? Can you read it? A. I can read my own writing, yes, sir.

Q. I supposed you could.

The Prosecutor: Page one is not numbered. The rest of it is all numbered.

A Juror: Couldn't we hear that?

The Court: It isn't in evidence yet. If it goes in evidence, you will hear it at the proper time. It could not properly be introduced in evidence on the defense unless Mr. Steele consents to put it in.

Mr. Steele: I object to the letter.

The Court: Just reserve your objection until the offer is made.

Q. Have you read the letter? A. I don't know whether you want me to read it to the jury, or to myself, or what?

The Court: He wanted you to read the letter through and let him know what statements there were or were not the truth.

Witness: Well, I would have—after I read it—

The Court: Well, just read the letter first.

Q. Read the letter; tell us what is not true in it.

The Court: You may as well tell us as you go along.

Witness: (reads) "This crime was—

Mr. Steele: That cannot be done at this time. The letter is only offered for identification at this time, and if that course was taken, it would be practically an admission of the letter on the part of the State.

The Court: There is that difficulty about it. Of course the witness has already stated that he wrote the letter. Then I suppose that would entitle the state to put it in at the proper time. Now, if you want to wait until the letter is put in and then examine the witness on it, I suppose it can take that course.

Does the prosecution expect to offer that letter?

The Prosecutor: Yes, sir. I think I ought to offer that in justice to the defendant himself.

The Court: Any objection to the offer out of the regular time?

Mr. Steele: I don't know as I object. I will object to it when it is offered.

The Court: Is there any objection as to time?

Mr. Steele: I have no objection, no, sir.

The Prosecutor: I offer the letter, having been identified by the defendant as being a letter written by him and in his handwriting.

The Court: Mr. Steele, have you seen all that you want of this letter to found your objections on?

Mr. Steele: I object to it because the circumstances under which it was written—and written to a man in authority—would not so express the mind and feelings of the witness in a way that they should be expressed to a disinterested person, in that they may have been written for the purpose of getting some favor granted in prison; a statement made for some ulterior purpose of that kind. A man situated as a convict is in the prison might write and be so colored that it could not be said to be the exact truth, and the witness would not be under oath at the time, and for reasons of that general line, I object to the admission of the letter in evidence. My objection is made after having carefully read the letter.

The Court: Williams, tell me again why you wrote this letter at all?

Witness: Why, the man, Mr. Freeman, a guard, came to me after I was brought from the detention and he started in a good manner, speaking to me and

in a friendly way, and the next time he came to me again, he asked me how did things happen; I kept a tight lip, as long as I could; then he went away from me and then he come back again; he come back again and he asked me, he said, "well, the best thing for you to do" he said, "is to play safe." He tried to make me think he was a good fellow, and wanted to be on my side, but I figured twice while he was figuring once. I knowed that he was up to something that was out of the way, and he came—still came to me several times one day, asked me to make a statement to him of my case, saying that he would not give it to nobody, and it was against the law. The next day he came to me again. He asked me if I made a statement of my case. I told him so. "Well," he said, "you get busy and write a statement of your case and I will do what I can for you." So I figures—thought and thought and thought over it, and I wrote this thing, just as it is there; but it is not the truth.

The Court: You were afraid that he was going to play some trick then?

Witness: I was afraid, from what I understood before, time and time again, not to take no chances.

The Court: I am very seriously in doubt as to the admissibility of this.

The Prosecutor: I don't urge it at all. I had this letter. It was turned over to me by Mr. O'Brien, a prison official. I produced everything whether it was favorable or in favor of the defendant.

The Court: I think the court must exclude it for the present. I don't know that you can get its contents in any other way. You have simply a paper

which he admits to have written, but he says the statements are not true, and the paper itself being incompetent, I don't suppose it could go in.

Mr. Steele: A casual glance over the letter—

The Court: I don't think you need go into the letter. Your objection is sustained.

Mr. Steele: I want to go into the details to this extent; first I object to the letter. It seemed to be in the defendant's favor, and if there was anything untrue in it, it did not appear at a casual glance; but my motion now is to strike from the record what the witness has said as to there being untrue statements in the letter. It would have a tendency to prejudice, perhaps, the jury, or anybody that had to pass on the case, the fact of his stating that he admitted something that was untrue. Whether there is anything untrue there or not, I don't know. There may not be; it may be a misconception on his part. But I think it is proper, and in all fairness to him, if the letter is kept out, or stricken out, and all statements made by him from the evidence, and that it is not to be considered by the jury.

The Court: The court will reserve the ruling, Mr. Steele, and ask you to renew the motion before the close of the evidence, so that it may be ruled on.

Q. You said you were sorry on the way down in the automobile, with the tears running down your face? A. Yes, sir.

Q. And the reason you were sorry was because you realized that you only had a little time to serve, and this meant additional trouble for you, is that right? A. Yes, sir.

Q. Were you sorry when you saw Wooley fall? A. I did not see him fall, as I said before.

Q. Were you sorry when you walked away from him after you had hit him a number of times—you don't know how many? A. I was excited, and don't remember sir.

Q. Were you sorry when you sat in the aisle with the bat in your hand and refused to give it up to the keeper? A. I told you I was excited; I cannot say anything like that.

Q. You are sure you got this bat—you did not get it near the home plate? A. Got it right from here (indicating) alongside of the building.

Q. You said you helped to carry him—held him in his seat going down? A. Yes, sir.

Q. Where did you sit in the automobile? A. I sat just opposite to Mr. Clayton.

Q. Opposite this gentleman here (indicating)? A. Yes, sir, Mr. Clayton.

Q. Where did Wooley sit? A. Lying right across the back of the seat.

Q. Unconscious? A. I don't know whether he was unconscious or not; I don't know, sir.

Q. Could he speak? A. I don't know; I never heard him say anything at that time.

Q. Did you ever speak to him after you hit him that day? A. No, sir.

Q. Did I understand you to say on direct examination, when Watkins told you to give the bat to him, or to the keeper, did you say, "I told him to pull off?" A. No, sir, not at all; no, sir.

Q. Who did you tell to pull off? A. I did not tell nobody to pull off, nothing; not that way.

Q. Didn't you so testify on direct examination? A. Not to pull off, no, sir.

Mr. Steele: I object to that; it is misleading. He said, "lay off."

Q. Who did you tell to lay off? A. At what time is this?

Q. Well, at any time when this bat was being discussed, whether you were to give the bat up to somebody or not? A. I did not tell no keeper to—I did not say anything like that to any guard.

Q. Well, whom did you say it to? A. Ben Wooley was the only man I said, "lay off" to.

Q. Lay off me? A. Yes, sir.

Q. How long did you remain excited? A. How long?

Q. Yes? A. I remained excited until I—until the handcuffs were placed upon my wrists and then I began to realize things.

Q. You say Mr. Al. asked you for the bat and you protested? A. I gave him the bat.

Q. You said you protested it; you used the word protested? A. I meant by protested, giving him the bat.

Q. Where did you get the bat from? Where was the bat? A. Had the bat with me, right in my hand.

Q. From the time that you hit Wooley until the second keeper asked you for the bat, you kept it in your hand all the time? A. Yes, sir.

Q. Although you had been sitting on your own bed, hadn't you for some time? A. I could not have been sitting on my bed—

Q. You went back to your bed? A. I went back to my bed after the first guard had asked me for the bat, yes sir.

Q. And kept it right up until the time that the second guard asked you for it? A. When he came and asked me for the bat, I gave it to him.

Q. So you kept the bat right up in your hands in that position? A. In my hands, yes sir.

By Mr. Steele:

Q. Do you recall how many were in the room when you first entered from the ball field? A. I don't remember, sir, no sir.

Q. Did you see anyone there? Do you recall whether there was anyone? A. When I entered the room, I did not recognize this man being in there.

Q. Did you see anyone else? A. I did not recognize anybody being in there, no sir.

By the Prosecutor:

Q. Didn't you see Fred Reppe over here (indicating), when you walked over to—didn't you see Fred Reppe standing here (indicating), when the blow was struck with the bat? A. No, sir.

Q. You know where I am pointing? A. Yes sir, I know the way you are pointing.

Q. You did not see Harry Newton? A. No, sir.

Q. Did not see anybody when you came in, that you can remember, did you? A. No, sir.

Q. Didn't you say to Fred Reppe, "you get away or I will give you the same?" A. No, sir.

Q. Or words to that effect? A. No, sir.

Q. Did you hear anybody holler, "don't kill him?" A. No.

Q. Too excited for that? A. Yes, sir.

A Juror: Didn't somebody tell you to stop hitting him?

Witness: Don't remember, sir.

The Juror: Don't you?

Witness: No, sir.

The Court: Does that close the defense?

Mr. Steele: Yes, sir.

The Court: Both sides rest?

The Prosecutor: I would like to think it over during the noon hour.

Recess until 1.30 P. M.

The Court: Before you call any witness, we had better dispose of this motion to strike out, made by Mr. Steele.

The Prosecutor: I make no objection to striking it out.

The Court: Of course if you don't feel strenuously about putting in your letter, why it may be safer to avoid any question about it. There is an aspect in which I think the letter would be admissible in evidence.

The Prosecutor: I think the aspect probably has passed; that is, as far as the defense of the trial are concerned. I think probably the right to introduce it would be in regard to refuting statements made by the defendant on the stand.

The Court: Impeaching his credibility by saying he made different statements. He admits that.

The Prosecutor; I think there are statements in it which were not proper. It seems to me at least that the legitimate object has been dispensed with.

The Court: Then perhaps we had better strike out everything that was said on cross-examination on that subject.

The Prosecutor: I would say all except that portion of it in which he admits having made a statement, and that portion of the statement contained allegations which were not true.

The Court: The first part of his cross-examination on this subject was that the paper, being shown to him, he admitted he had written it; that it was in his handwriting and that it had been written because one of the keepers was trying to get him to make a statement, or that the keeper was trying to get something on him, and he therefore had written the letter in that way. That is what you want to stay in?

The Prosecutor: Yes.

Mr. Steele: Also that the keeper said it would be best for him to make this statement.

The Court: Do you want that in?

Mr. Steele: I don't want any of it in or all of it in. If he wants to go ahead and put it all in, then I want it all in. On the contrary, if it is to go out, my motion is to wipe out everything in connection with it.

The Court: I think I will let it stand as it is then. The statement itself, has not been admitted; but the witness has testified as to having written it, and the reasons why he wrote it.

The Prosecutor: That is certainly a proper inquiry to make preliminary to offering it.

The Court: It is a proper inquiry to make on cross-examination as affecting his credibility.

Mr. Steele: But if there is to go on record an admission in connection with it, that some parts of it are untrue, a juror or anybody whose attention was directed to that admission, has a very wide field to

select in his own mind, as to what was untrue, the parts of the letter that are untrue.

The Court: The contents of the letter are not in evidence, so that the juror does not know.

Mr. Steele: But the admission of some part of the letter is untrue, and that is what my motion is to have stricken from the records, any admission of that kind; because if anything is untrue, then the defendant ought to show what was untrue, and if that is to stand, why then I very much prefer to have the whole letter put in and let the defendant point out what portion of the letter which he has stated was untrue, is untrue.

The Prosecutor: That is just what counsel did object to.

Mr. Steele: That is what I object to now.

The Prosecutor: The question is as to a portion of that letter that was untrue.

The Court: Let us realize this, Mr. Steele; this witness is put on the stand on this certain subject matter. The opposing counsel then is entitled, by way of impeaching his credibility, to ask him whether he did not, on this certain circumstance, tell some other story than the one he is now telling; and in this particular case, opposing counsel says, didn't you make this statement in writing? Yes I did, but that statement is not true. Why not? Well, because the keeper said so and so, and so and so to me, and I put that down here for I was afraid of him. Now, does that render the statement in any way incompetent?

Mr. Steele: I think it does.

The Court: Of course the prosecution would not be entitled to put it in as a confession, as direct evidence, but the prosecution would be entitled to show that a prisoner, when he said one thing on a witness stand, said a different thing on some other occasion, no matter what explanation he makes of it.

Mr. Steele: If that amounts to a confession, it is getting it into the case under another guise, and it amounts to a confession under a statement by an officer, official in authority, saying that it is best for you to do it. That makes it a promise on the part of the official holding a reward for him in some way, shape or form, and under that situation of the case, under that guise, it is, to my mind, clearly incompetent as evidence, so that the state gets full benefit of the record of what the witness has said about it; it goes before the jury that he admitted that he wrote something, some parts of which were untrue. It is more prejudicial; it is worse than if the whole letter itself was produced before the jury and the untrue parts pointed out and the reason given why those things are so. And for that reason, my motion is to strike out everything in connection with the letter, and if that be overruled, then I withdraw all objections to the production of the letter and examination upon it.

The Court: The court thinks, Mr. Prosecutor, it would be better to have the whole thing in or else have it all out. You can have it either way you prefer.

The Prosecutor: I am simply looking after the interest of the state.

The Court: Then I will ask you what you think you ought to have.

The Prosecutor: All I have to say is that counsel are bound by the conduct of the court it seems to me. Mr. Steele is undoubtedly looking after the interest of his client in the best fashion possible, and I will ask him if he will allow me to show the defendant this letter and ask him if he ever wrote it.

Mr. Steele: For identification.

The Prosecutor: He says that he wrote it. I say, substantially, this is a statement that you made while you were in the state prison, of the occurrences of this crime. He says yes; but the statement is not true. Then he tells why it is not true, and counsel himself asks the privilege of cross-examination, to show why this statement should not be admitted.

The Court: Yes, that is right. You brought out facts, all of which the defendant gets the full benefit. He gets the full benefit of his version of this transaction. There is no one here to deny it, and his statement that the keeper offered inducements which affected his mind upon the subject, and that it was written by reason of these inducements already brought out. And counsel says that is a basis of objection to the introduction of the paper, and there is further cross-examination on it, and after having done that, it seems to me he could not have his own examination of the witness for the purpose of excluding the paper expunged from the records. The rights of the state cannot be properly protected if a situation of that kind would arise, because now the witness is off the stand and he says we will put in the paper. The purpose of putting in the paper was to confront the defendant with statements that he had

previously made; and after having asked a course to apply a certain rule, and then upon reflection it appearing that perhaps the judgment in making that application was not the best way, then we want to change it. The defendant, tried for a capital crime, has got to be bound by the attitude he has taken himself in the course of his trial.

Mr. Steele: If that is a correct statement, may it please your Honor—I mean the record of the situation—the letter is offered, not as evidence—he is not compelled to put it in evidence—while the defendant is on the stand, and the defendant not being his witness, he offers for identification a paper writing, and that paper writing the witness says, yes, that is mine; he goes on and asks further questions; then the examination on my part as to how that letter was written, under what condition and circumstances it was written, and it appearing then that the letter, when it came to the offering of it in evidence, as an exhibit, would be improper, I do not see that it precludes the defense, or that the defense is stopped in any way, from the course taken in examination.

The Prosecutor: If you are willing to put the defendant on the stand again—

Mr. Steele: He is here; you can call him.

The Court: No, the state cannot call him. Suppose this paper had been written by this defendant to one of his friends, and the state got hold of it, and the defendant, on being cross-examined, says, yes, I wrote that to one of my friends, but for reasons of my own I falsified the facts in it, would that make it any less admissible, to show that he made a different statement, impeaching his credibility?

Mr. Steele: I think so, because if written to a friend it is different from an official in charge.

The Court: That is, you say that because this letter happens to have been written to somebody who had the custody of this man, it is therefore rendered inadmissible as a document to impeach his veracity?

Mr. Steele: I think so.

The Court: Because it tends towards something of a confession?

Mr. Steele: I think so.

The Prosecutor: I am not anxious to urge the disposition of it other than it constitutes the most liberal notion of the court in the premises. I am simply stating what I think about it, and after having done that, if the court believes it ought to be expunged from the records—

The Court: I think I will leave the record as it stands. If Mr. Steele wants to have the letter put in evidence, and then have his client explain what parts are not true, well and good; if he does not, it will stand as it is.

The Prosecutor: Well, I hand you the letter, Mr. Steele, if you want to take it. The case is reopened for the purpose of offering the defendant the right to go on the stand and explain?

The Court: Yes. And you are willing to offer the letter if the other side calls for it?

The Prosecutor: Yes. No, I don't say that; unless the defendant is on the stand. I don't see why the State should offer the letter.

The Court: You have offered it, and it has been overruled. If the other side wants it in, they can put it in.

Mr. Steele: That is the ruling, subject to my objection and exception?

The Court: Certainly; take your exception.

Mr. Steele: Alonzo, take the stand.

ALONZO WILLIAMS, recalled.

Direct Examination by Mr. Steele:

Q. You have said, Alonzo, that you wrote that letter?

The Court: That paper, whatever it was; he said it was a letter.

A. Yes, sir.

Q. And it was given—who was it given to? A. It was given to the guard, Mr. Freeman.

Q. He had told you, if I recall your testimony of the morning that it was best for you to make a statement to him? A. Positively, yes, sir.

Q. The other statements in regard to that letter made by you this morning were correct, as to the number of times that he had seen you, asked you for the statement? A. Yes, sir.

The Prosecutor: I object to that.

Mr. Steele: You can bring it out on cross-examination if you like.

Q. You have said that some parts of that letter were untrue? A. Yes, sir.

Q. I wish you would read the letter aloud to the jury and as you proceed with the reading, state to the jury what particular parts of the letter were untrue, if any? A. Yes, sir.

Q. Bearing in mind that you are not to be controlled by your testimony as given this morning, but by your memory of facts that took place, in your mind at the time of the writing of the letter? A. (referring).

Q. Read it out aloud, Alonzo? A. (reads) "This crime was committed in Somerset County, dated May 2, 1915. We was playing a game of ball; the side I was on was out"—that part there that I changed as you had not seen—

Q. What was the change? A. About the side that I was on, and about the part where it was that I was out in the field; that is also not true.

Q. You mean by that, that you were not right nor left field, but that you were in field? A. Yes, sir, in field.

Q. On third base? A. Yes, sir.

Mr. Steele: This witness makes a distinction, outfield and infield.

The Court: All right, go on?

Witness: The side this fellow was on, of course, was in, and he was at the bat—as far as the bat, I made a confession of the bat part. "He had struck a fair ball," which I also made a statement of, "when some of his fellows said, "fair ball." That I did not make a statement of. "And some other—

Q. When you say you did not make a statement of, you mean you did not tell it this morning in your evidence? A. Yes, sir, I did not tell it this morning in my evidence.

Q. And in that you mean that it was not untrue? A. Positively, yes, sir.

Q. Go ahead? A. (reads) "And some of my fellows said foul," that I did not say anything of this morning.

The Prosecutor: Is that true or not?

Witness: It is not true, no sir.

Q. How do you mean, it is not true or did not take place? A. I did not say it.

The Court: You did not say it this morning?

Witness: No, sir.

The Prosecutor: Did it actually occur at the time of the ball game?

Witness: That man hit a fair ball.

The Court: Did somebody say it was a foul?

Witness: No, not to my knowing; I did not hear it. On third base—I was guarding—when he said to me —now we are on the third base part. I did not say that. "If you don't keep your mouth shut, I will kick you under the chin." I also did not say that. That was not true. "I looked at my—

Q. When you say that was not there, what do you mean? What did he say? A. Why, he did not say that, "I will kick you under the chin. He said, as I aforesaid this morning, "What in hell is the matter with you," and so forth. "I looked at my shirt, and then said, you cannot kick nobody under the chin." I did not say that this morning either. "He said to me, shut up, you black son of a bitch; I will see you after

the game." I never said a word more than all right. That is also not true.

Q. You mean you did not say that this morning? A. Yes, sir.

Q. You mean that it did not occur there? A. Yes, sir.

Q. When you say yes, what do you mean, that it was not said? You said this morning, if I recollect, that he said, "you black son of a bitch, I will do something?" A. That part is true, yes, sir.

The Prosecutor: Let him tell us what in this particular letter is not true. He can tell that.

Mr. Steele: The trouble about that is that the witness appears to be testifying as to its untruthfulness by comparing it with his testimony of the morning. He don't appear to have in his mind the fact that he is narrating facts that occurred upon the ball field and the untruthfulness as to what did actually occur as compared with his testimony in the morning. I am trying to get a correct statement along this line.

The Court: We can see whether it agrees with the testimony of this morning, whether, what was in this letter, was true in fact.

Witness: (referring) "I just was thinking of that word he had called me, black son of a bitch and what it really meant." That is not true. "The only thing I could make out of it was this, that I was the son of a bitch, meaning my own dear mother; I was then thinking the best way I could make friends with this man, knowing that I only had two months and a half to do," that part, where I say that I was the son of a bitch, meaning my own dear mother, I did not say that this morning.

The Court: Never mind whether you said it this morning or not.

Witness: It was not true.

The Prosecutor: What was not true?

Mr. Steele: I don't think the witness understands. He says he was thinking. It is quite evident he was thinking at the time he wrote it. He is testifying, showing the idea that he had, that upon the ball field he was thinking of something of that sort. He isn't narrating facts now.

The Prosecutor: I object to counsel's characterization of what the witness thinks, what he was thinking of then or any other time. He is asked to state what part of the statement is untrue.

The Court: Go on, Williams?

Witness: "That I was a son of a bitch, meaning my own dear mother. I was then thinking the best way I could make friends with this man." That is also true. "Knowing that I only had two months and a half to do." That is true. "So we never said a word until after the game." That is true. "So I went inside of the camp." That is true. "That broken bat in my hand—that is true. "After seeing a fellow with bats and gloves in his hands"—that is true; then a few words I changed—"about to bring them in the office. I thought I would bring—

The Prosecutor: Is that part from, "After seeing a fellow with the bats and gloves in his hands, about to bring them in the office" is that true?

Witness: I just said it was true, all but a few words.

The Prosecutor: What few words are not true?

Witness: Where I said here, "a fellow with the bats and gloves in his hands;" I did not see—what I meant to say, I did not see him with the bat in his hand. I seen him collecting some of them. "About to bring them in the office. I thought I would bring this one in when I—I thought I would bring this one in." That is true. "When I thought I would go over and make friends with this man." I thought I would make friends of this man, that is all true, but the words is turned around different. "With this man." This is what I said to him: "Ben, you know that you was in the wrong." That is true. "When you spoke to me in that manner." There is a few words in there true; not all of them. "Out in the field, then he jumped from the bed and said, you black son of a bitch, are you looking for trouble?" That is not true, but there is some words in there. The words that are true is where he said, "you black son of a bitch," and then he said, "I will kill you," but I haven't got it this way on this paper. "I could not say any more before he had sprang—

The Prosecutor: "Dropped his tobacco."

Witness: "Could not say any more before he had dropped his tobacco." That is not true.

The Prosecutor: What part of that isn't true?

Witness: "Could not say any more before—that is true where I say, "I could not say any more before—that is true. When I say, "he had dropped his tobacco," that is not true. "And started toward me. He started toward me, but not immediately when he sprang from his bed and went to his shelf

first with a knife in hand—that is not true. "Then I lost my head and struck at him." Lost my head is true, "and struck at him, and the knife went one way and he the other," that is not true. "Then the second time he—

The Prosecutor: "After he got it on the shelf."

Witness: I did not see it here. "After the second time he got—one way and he the other." That is not true. "Then the second time he got up on the shelf," that is not true. "And as I have stated, I don't know exactly where I hit the man. I do remember feeling as if somebody was trying to stop me." That is not true. "Tried to stop my last blow." That is not true. "And as I have reference to an Italian fellow." That is not true "but I do not know his name." That is not true. "Then I was put in a pair of handcuffs," that is true, the handcuffs. "And laid on my bed about five or ten minutes." Lying on my bed, where I said that, that is true; but how long, I could not say. "Then the doctor came from Princeton." That is true about the doctor coming from Princeton. "And doctored the man's head." That is true. "After he was through, he said that the man had no fracture of the head." That is not true, because I did not hear any conversation between them. "Only he had a very bad hole in the head." That is not true. "But he would come around all right if he had plenty of care." That is not true. "Then he went then." That is true, where I says, "he went then." "I was taken in the office." I was not taken in the office right immediately after the doctor left; it was after supper when I was taken into the office—taken in the office until Mr. Madden and Mr. Clayton and Mr. Charles Clayton and the doctor from the prison camp. As I say, they did not come immediately after, the way I have it here. "They took me in the car," that is true, "in the back;" that

is true. "Then went back to the prison" that is true. "When we got there, I was standing in the center;" that is true. "For a while; then put in the detention," that is true, "for about fifteen minutes." That is about as near the correct time as I can realize. "Then was brought out and was asked to give a statement of my case." That was all true. "By three men that said they were from the prosecutor's office, and I was brought back to the detention;" that is true; "for three days, on bread and water;" also true.

Q. Now, when you say in that letter that he held a knife, and that the knife went one way and the hand went the other, or something to that effect, was that an exaggeration of what you actually saw? Do you know what exaggeration means? A. I did not say it, no sir.

Q. What did you say there as you testified this morning that you—

The Prosecutor: I object to it.

The Court: Why?

The Prosecutor: I object to counsel telling the witness what he did say; and then the witness has only been placed on the stand for the purpose of explaining what portions of this letter, that paper he wrote, were not true.

Mr. Steele: I am endeavoring to find in what degree, as it is written there, is untrue.

The Court: Don't lead the witness. Ask him what the facts were, if you want to.

Mr. Steele: Well, in order to do that, I will have to ask him what he testified to this morning.

The Court: No, you don't have to do anything of the kind. You will have to ask him what the facts are.

Q. What were the facts as to what Wooley did at the time that he reached over to the shelf? A. The facts was that at the time that Wooley reached—placed his hand upon his shelf—he placed his hand upon the shelf and then turned around and made a step towards me with something in his hand, but I don't know what it was.

Q. And is that the time you refer to in your letter when you say, "knife went one way—just read what is in the letter covering that.

The Court: He has read that; knife went one way and the man the other.

Q. That is the time you refer to then?

The Prosecutor: The knife went one way and he the other.

Cross-Examination by the Prosecutor:

Q. This portion of this paper in which you say he struck "a fair ball" when some fellows hollered foul, is untrue, is it? A. Untrue, yes, sir.

Q. Didn't you make exactly the same statement upon the occasion to which you refer in that letter at the prison, when you made your statement in the prosecutor's office; didn't you say precisely the same thing, he had struck a fair ball and some fellow said foul? A. I said he struck a fair ball, yes sir.

Q. And that was twice you said that in a statement you made; in this letter and at the time you made your statement in state prison? A. Twice I said it?

Q. Yes? A. I remember saying it to the people in Trenton.

Q. Yes, outside of this particular letter? A. I remember saying it in there too.

Q. And you said you hollered foul, didn't you? A. Yes, sir.

Q. And that Wooley didn't like the idea of going back to the base? A. Yes, sir.

Q. Is that true? A. Untrue.

Q. Then you made two statements on that particular point, haven't you? A. As far as I see, yes sir.

Q. You did not holler foul? A. I did not holler foul?

Q. Yes, sir? A. No, sir.

Q. You say the portion of that statement that you just read, in which you say he said to you, "when he said to me if you don't keep your mouth shut, I will kick you under the chin," is untrue? A. Untrue, positively, yes sir.

Q. What did you hope to gain by making that untruthful statement? A. Why, this man, when he asked me for this statement several times, time and time again, I figured that he was just naturally trying to pick on me, and the statement he would get from me would get to—come to the court against me.

Q. And therefore you wrote something that could come to the court against you? A. I wrote something down, not to give him the facts of what did happen.

Q. "I looked at him and then said, you could not kick nobody under the chin;" that is untrue? You said no such thing? A. Untrue, yes sir.

Q. How would that secure you any favor with the warden or guard of the state prison to whom you handed this letter? A. Why, I should think, Mr. Beekman, accused of a crime like this and knowing that the man come almost—several times time after

time, asking him, almost begging him to give a statement of it, what happened, would naturally say that the man was trying to get something out of him and give it to somebody who would work against him.

Q. You had already made a statement before you wrote this, hadn't you? A. Before I wrote this one?

Q. Yes? A. What kind of statement?

Q. Well, you made a statement in the presence of the Prosecutor, or the assistant prosecutor, in the state prison, at Trenton, didn't you? A. Yes, I did, sir.

Q. And you told precisely the same thing that you said in your statement, "if you don't keep your trap shut, I will kick you under the chin?" A. I told him the same thing—

Q. To the prosecutor? A. To the prosecutor, yes sir.

Q. And you knew they had your statement in which you had said that he said to you, "if you don't keep your trap shut, I will kick you under the chin." What changed you to make an entirely different situation by writing that? A. I wasn't making any change, according to this paper.

Q. That had nothing to do with giving it to the prosecutor, or the man in charge over you at all, because you had already said it, hadn't you? A. Not them few words, no sir.

Q. Well, you had said that Wooley said to you out there, "if you don't keep your trap shut, I will kick you under the chin;" You told the prosecutor that, didn't you? A. Yes, sir.

Q. And all you wrote in there was exactly what you told the prosecutor on that day? A. Not all.

Q. No, no; I mean as far as that particular expression goes? A. As far as that goes, yes, sir.

Q. You told him you would drop it until after the game, didn't you? A. It is not a true statement.

Q. That is not a true statement? A. No, sir.

Q. Well, you made that statement to the assistant prosecutor, English, didn't you? A. I don't remember that, sir.

Q. You said in this letter this— A. I said in this one, yes, sir.

Q. "Then I was brought out and asked to give a statement of my case to the three men who said they were from the prosecutor's office?" A. Yes, sir.

Q. You did make a statement there? A. I made a statement, yes, sir.

Q. What did you mean then? What did you mean to convey when you said, "I was thinking of that word he had called me, a black son of a bitch, what it really meant." What did you mean by that? A. Why, what I meant by putting that in?

Q. Yes; what did you mean by putting it in that letter? What did you want the man that read the letter to think you meant? A. Well, I could not say what I really wanted him to think because he had his own thoughts, the same as any other man.

Q. Yes, I know; but you wrote this to deceive the man, didn't you? A. Yes, sir.

Q. What did you want him to think you meant then when you said this, "I was thinking of the words he had called me, a son of a bitch, what those meant?" A. I did not have no idea.

Q. You meant to have put something in that letter that was not true and had no idea of what effect it was going to have on the person who asked you for the statement? A. Had no idea? I don't quite get that, Mr. Beekman.

Q. Didn't you have some notion as to what you meant by this? A. What I meant by putting it in there, about—

Q. Yes, if you had that in your mind what he meant when he called me a black son of a bitch? A. Did I have it in my mind?

Q. "I was thinking of the words he had called me.

black son of a bitch;'' did you mean you were thinking of that when you walked up to him and hit him with a club, or were you thinking of that out on the ball field? A. I don't know exactly what I was thinking of at that time. My thoughts—so many thoughts crossed my mind, I don't know exactly what I was thinking of.

Q. The truth is that the statement is about what happened when you went in with the bat; you were thinking of the words he had called you, black son of a bitch, weren't you? A. I was thinking of it?

Q. Yes? Wasn't you thinking that over? A. No, sir.

Q. You were only thinking of making friends with him? A. Yes, sir.

Q. This portion of the statement you meant to mislead him, ''Thinking I was a son of a bitch, meaning my own dear mother.'' A. I don't know what he was going to think of; that I could not say.

Q. Wasn't that rankling in your mind? A. Rankling in my mind at the time?

Q. Yes; that he had said something which cast disgrace on your mother? A. Why, I had several things in my mind at the time I was writing this; I could not say whether that was the only thing in my mind or no.

Q. You say then that your object in going over to see him was— ''I was then thinking of the best way I could make friends with this man, knowing I only had two months and a half to do;'' When were you thinking of that? A. When was I thinking of what?

Q. Of the best way to go and make friends with Wooley? A. That was the time, as I aforesaid, when I started to go over to this man's bed.

Q. Well, then if you stated that in your paper, that is true, isn't it? A. Why, I said that part was true.

Q. Well, now, you made another statement to the prosecutor, English, in the jail, when you said, ''I

went down to ask that fellow for a cigarette, but when I got down to where he was, I did not ask him for a cigarette? A. That is not true.

Q. Didn't you say so? A. Say so to who?

Q. To the three men who came to the jail that night to ask you to make a statement? A. I said to them probably; I have said it to them, yes sir.

Q. Then you told them what was not true? A. Told them what I remembered at the time. I was too excited and nervous.

Q. The question is, didn't you tell the three men who came to take your statement at the prison, that you went down to ask this fellow for a cigarette, and when you got down to where he was, you did not ask him for a cigarette? A. I told the three men that, yes sir.

Q. And was that true? A. No, sir.

Q. Then you told them what wasn't true, as well as you made a statement that was not true? A. Some parts of it, yes sir, as I said before.

Q. Didn't you say to the assistant prosecutor, who took your statement in the jail, "I sat down and tried to explain to him about the argument and we got into an argument again and I hit him twice with the bat? A. Don't remember that, no sir.

Q. Don't remember saying it? A. No, sir.

Q. The question is not whether that happened or not, but didn't you tell the assistant prosecutor that in the jail when you were making your statement? A. Don't remember it, sir.

Q. Didn't you say then he did not have anything in his hand, but he made an attempt to hit me with his fist? A. Don't remember that sir, neither.

Q. Did you tell the prosecutor that? A. I don't remember.

Q. Well, do you deny that you said that to him? A. I don't remember; I was excited as I told you before.

Q. Do you remember what you did say— A. No more than I told you.

Q. Listen to the question. Do you remember what you did say to the three people who took your statement in jail the night you went over there? A. I remember a few words; I don't remember them all; about one or two words, something like that.

Q. Listen to this: Did you not say in your statement, "the first time I hit him on the shoulder, he fell up against the wall?"

Mr. Steele: I object to all this line of testimony. It is another way of getting in the confession to an official.

The Court: I do not see anything in the objection. He seems to be cross-examining the witness.

Mr. Steele: Showing that there is no inducement —is this some offer that was made before, in which it appears on the cross examination that no promise —that it would go better with him—

The Prosecutor: My purpose is perfectly manifest. The man says he made a statement which was untrue, and that the statement he makes now on the stand is true. It seems to me pertinent to show that he made another statement which was not true.

Mr. Steele: They are so near alike—I withdraw the objection.

Q. Did you not say in the statement that you made to the men from the prosecutor's office, at the state prison, "the first time I hit him, he staggered and fell up against the wall; it was not a second I don't believe, before I hit him again?" I don't remember that, sir, no sir.

Q. I know you don't remember whether that happened or not, because your mind, you say now, is a blank. "He was up against the wall when I hit him the second time. There was nobody else on the bed besides him when I hit him." Didn't you tell the representatives from the prosecutor's office that, when you were examined the night of the trouble? A. I don't remember, sir, no sir.

Q. Well, you don't deny that you told them, do you? A. I don't remember it; I could not say.

Q. Well, it is a fact, however, isn't it Alonzo, that you did tell things that night that were not true? A. I told them things, Mr. Beekman, as near as I possibly could.

Q. Didn't you tell them that night things that were not true? A. I don't remember.

Mr. Steele: I object to that. Call particular attention to facts about particular things you want.

Q. Then you later wrote this letter which was not true?

Mr. Steele: I object to that.

A. I wrote this letter.

Q. Portions of which were not true? A. Yes, sir.

Q. In that letter that you have here, "after seeing a fellow with bat and gloves in his hand, about to bring them in the office"—that is not true? A. I remember seeing him gathering the bats.

Q. Well, is this statement that you have in this letter, about seeing a fellow with bat and gloves in hand about to bring in, true or untrue? A. Some one or two bats I seen him have in his hand.

Q. Well, did you see this particular bat that you took in with you? A. I could not swear to that.

Q. Well, this statement was not true on that point, was it? A. No.

Mr. Steele: Well, that don't follow.

The Court: I do not understand that he said he saw the man with this bat in his hand.

The Prosecutor: With the bat and gloves in his hand.

Mr. Steele:

Q. At the time when this statement was made, you were not under oath, were you?

The Court: You were not sworn for any of this statement? You did not take an oath about any of these things?

Witness: No, sir.

Q. At the time of the giving of the statement did you think that you were telling pretty nearly what had happened? A. I thought I was, yes, sir.

By the Prosecutor:

Q. And your memory was better at that time than it is now, wasn't it? A. It could not have been Mr. Beekman.

Q. Do you mean to say that your memory is better now about what happened on May 2nd than it was on May 2nd? A. Why, of course, yes, sir.

FRED REPPE, recalled in behalf of the State, in rebuttal, testifies as follows:

Direct Examination by the Prosecutor:

Q. Fred, did you have the cot next to Ben Wooley's? A. About five months.

Mr. Steele: What is this?

The Prosecutor: This is rebuttal.

Q. Did you in that time, ever see him have a knife on the shelf back of his head? A. No, sir.

Mr. Steele: I object to this. What does that rebut?

The Prosecutor: The defendant has testified that he had seen him take a knife from there several times and use it, and therefore the belief was in his mind that when he reached back towards the shelf, that he was after a knife, although he did not see any knife in his hand.

Mr. Steele: The fact that this witness did not see a knife, don't rebut that.

The Court: I don't know about that; I think it would. It might. It is for the jury to say.

Mr. Steele: I object to it.

The Court: Mr. Steele, your objection is heard and overruled, and your exception is entered. You never saw a knife there?
Witness: No, sir.

Q. Did you ever see him take one down and use it? A. No, sir.

Cross-Examination by Mr. Steele:

Fred Reppe—Cross.

Q. Do you know whether or not Wooley had the habit of carving, cutting wood? A. I seen him carving out shoes, yes, sir.

Q. He used to do that quite frequently, didn't he? A. Well, only one pair I see him carve out.

The Court: Shoes?

Witness: Well, you know, shoes out of wood.

Q. What did he carve it with? A. A small pen knife.

Q. Then he did have a knife there? A. He had a pen knife, carving his shoes, yes, sir.

Q. When you testified you never saw him have a knife, you meant that you never saw that particular knife on the shelf? A. I never saw a knife come off the shelf.

The Court: That is what he said; he never seen any knife on the shelf.

Witness: Never seen any knife on the shelf.

Q. But you did see him have a knife in his hand carving? A. Yes, sir.

The Court: Where did he have that, in his pocket?

Witness: In his pocket.

Q. Did he always have it in his pocket? A. I never seen any lay on the shelf.

HARRY NEWTON, recalled in behalf of the state, in rebuttal, testifies as follows:

Direct Examination by the Prosecutor:

Q. Harry, your cot was right next to Ben Wooley's? A. Yes, sir.

Q. For how long? A. I should say from February 26th.

Q. Did you ever see him keep a knife on the shelf? A. No, sir.

Q. Ever see him take a knife from the shelf to use? A. No, sir.

Q. During that time? A. No, sir.

Mr. Steele: This is objected to for the same reason, and I take an exception.

The Court: Well, you had better make your objection in due season, Mr. Steele.

Cross-Examination by Mr. Steele:

Q. He did have a knife, however? A. I don't know.

Q. You never saw him have a knife? A. No, sir.

Q. Never saw him do any carving? A. No sir, not in my time.

Q. You were there at the same time that the last witness was there, were you not? A. Yes, but he was there several months before me.

Q. During the time that you were there, he may have had a knife and he might have taken a knife from the shelf and you not have seen him? A. He may have, yes sir.

Q. How much of the time did you see him in the day time? A. Did not see him hardly at all; did not work with him.

Q. Did Fred Reppe work with him? A. No, sir.

By the Prosecutor:

Q. Where were the men in the day time? A. Well, I worked on the road—

Q. No, where was he? A. Why, he ran the steam roller.

Q. He was out as long as you were, as long hours?

CHARLES CLAYTON, recalled in behalf of the State, in rebuttal, testifies as follows:

Direct Examination by the Prosecutor:

Q. Mr. Clayton, you were in the automobile which took Benjamin Wooley to Trenton and also Alonzo Williams, on the night of May 2nd, after this affair occurred in the camp? A. I was.

Q. Benjamin Wooley (Williams) says he expressed sorrow on his way down in the automobile and cried; what have you to say as to that? A. He did express sorrow, but I saw no tears.

Q. What did he say? A. He said—I asked him, "Why, what in the name of Heavens prompted you to do a thing like that?" He said, "Well, I lost my head; I am sorry, awful sorry I did it."

Q. But he did not cry? A. No.

Cross-Examination by Mr. Steele:

Q. When you say he did not cry, the machine was in motion, was it not? That is, you were going to Trenton? A. Yes, sir.

Q. Were you in a position to have seen a stray tear had it gone down his face? A. Most assuredly would; I never took my eyes off him all the time he was in the machine.

Q. Then your testimony is that you had a mental picture of him from the time you left the camp at Rocky Hill until you reached Trenton? A. Yes, sir.

Q. And you did not take your eyes off of him? A. No, sir.

Q. Do you mean that to be literally true? A. Yes, sir.

Q. You think that possible, that such a thing could be? A. Well, otherwise when I winked my eye, once in a while, something like that.

Q. Unless you did what? A. Unless I closed my eyes—my eyes were never turned from the direction of Williams, because of the fact that I had him on the left of the machine, and he was leaning on me in the back, with him and the other injured man.

Q. You were not looking in his face? A. His face was turned right to me.

Q. That is not the question. You were not looking him in the face all the time? A. Yes, sir, all the time.

By the Prosecutor:

Q. You attempted to describe how he sat in the automobile; just tell us? A. This is the way Wooley was lying, cross-wise on the back seat of the machine (illustrating); I had him turn around so that his shoulder, right shoulder was against me, so that he was facing me, and I was holding Wooley this way (indicating), watching him; in that position; that is the way we went to Trenton.

A Juror: Mr. Clayton, did Mr. Beekman ask you —is that the man that you were talking about?

Witness: No, Williams.

Another Juror: You made a mis-statement.

The Prosecutor: I was referring to Williams, anyhow.

Witness: I understood him to say that.

The Court: The question is whether there was any crying or anything of that kind, with reference to the prisoner Williams.

Witness: Yes.

The Court: And that is what you meant; the question you intended to answer.

Witness: Yes, sir.

Mr. Steele: And your answer was what Williams said with reference to Wooley?

Witness: Yes.

Testimony closed.

CHARGE TO JURY.

PARKER, J.: Gentlemen of the Jury, the closing words of the Prosecutor give me an appropriate starting point for what I have to say to you this afternoon. He has very properly said that our individual views of capital punishment are not relevant to an inquiry of this kind. It is probably just as difficult for a judge to impose a sentence of death when a verdict calling for that sentence is rendered as it is for the jury to render a verdict. Your duty and my duty is to carry out the law. It would indeed be better for you if you did not know what the punishment was that the law has fixed for murder in the first degree, or indeed of any other crime, because the law has made the jury into a sort of investigating body, a sort of intellectual machine to hear and digest the evidence given on a trial, find the facts as they exist from that evidence, and return a verdict specifying whether the accused is guilty of the grade or any of the grades of crime covered by the indictment. There the duty of the jury is ended. They have nothing to do with the imposition of the sentence. They can, indeed, in certain cases, recommend the prisoner to the mercy of the court; but first and foremost, and practically exclusively, the duty of the jury is to ascertain from the evidence whether the crime has been committed, and whether the prisoner is guilty of it, and with that finding, as the Prosecutor has very properly told you, the duty of the jury is done, their conscience is clear, and for whatever may be done thereafter, the law and not themselves is responsible. Indeed, I hardly think it is necessary to take up time in cautioning you about these matters, for, so far as I have seen, the mem-

bers of the jury have shown that they are unusually conscientious in this particular regard. So I will proceed now to take up the case itself and give you the legal rules that are applicable to it.

The indictment is for murder, as you know, and under such an indictment there could be a conviction of either one of three grades of crime. There are two degrees of murder, but an indictment in this state is never for murder in any particular degree. It is for murder generally. The law says that if the jury find that the accused is guilty of murder, they shall specify in their verdict whether the murder is murder in the first degree or of the second degree; and there is another crime that the jury may lawfully convict of under an indictment for murder. In other words, the indictment covers that grade of crime that is commonly called manslaughter, as to which you have heard some remarks from the counsel for the defense. So that this indictment would cover a conviction of murder in the first degree, of murder in the second degree or of manslaughter. The jury may, of course, acquit, if they come to the conclusion that the evidence does not satisfy them beyond a reasonable doubt that the defendant has committed any crime.

Now I think everybody will agree with me that there is no question whatever raised in this case but that this prisoner, Alonzo Williams, struck the deceased, Wooley, one or more times—very probably more, and of that you will be the judges—with this base ball bat, at the dormitory, at Rocky Hill, where these men and others were serving under sentence. And there seems to be little or no question—and I should think you might very safely waste no time on this branch of the case—that Wooley's death ensued three days thereafter, at the State Prison at Trenton, as the result of what seems to have been a terrible fracture of the skull, coming in all probability, a

it would seem to me, from the blows of this base ball bat, although there was some indication in the evidence about his falling against the iron bed, a fracture so great and so pervasive that, as I recall the testimony of one of the doctors, when the top of the skull was removed, the head practically would fall apart. If you find that this defendant inflicted those blows and that death resulted, as in fact you can hardly but find, I should think, upon the evidence—although, as I say, it is for you to say—unless something appears in the case to justify or excuse the action of this defendant so as to mitigate the grade of crime, or to do away with the criminal element altogether—the act was, of course, unlawful, and the killing of another human being in an unlawful manner is presumably murder—this would be presumably murder. Now if you reach that result, then you would take a fresh start, with the presumption established by the law that the murder is murder in the second degree, nothing more appearing. In order to justify a verdict of murder in the first degree, certain other things must also appear from the evidence. For the purpose of this case it will be sufficient to say that the murder must have been wilful, deliberate and premeditated. That is the language used in the statute. When the statute says "wilful" it means that there must have been an intent, not simply to do grievous harm but an intent to take life. Williams must have intended to kill Wooley. It must have been premeditated and it must have been deliberate. In other words, the intent must have been conceived in the mind of Williams beforehand; and it must have been conceived long enough in his mind beforehand to have enabled him to debate, if you please, in his mind whether or not to kill and to have decided to kill. To be concrete, for the mere sake of example, if Williams, with revenge in his heart, made for this house with the base ball bat for the purpose

of injury—well, let us say, to start with, either then or previously had said to himself some such thing as this, Shall I kill this man or shall I not, and then concluded, Yes, I will kill him; after turning the matter over in his mind, if you please, for an appreciable space of time, long enough to enable him to deliberate upon it, and then executed the act, it would become, you see, murder in the first degree.

Of course it is very difficult to get at the mental processes of a human being, or indeed of an animal. All those things are necessarily matters of inference, even when the human being speaks and declares what his mental processes are. In the affairs of human life we have to judge men and women by their actions. We have to infer what their mental processes are from what they do and from what they say, and from the way in which they act, and that is the way in which you will have to judge of this case.

It is in evidence that Williams said to Wooley he would get him after the game. That may be so or may not. It is for you to say. If you find that it is so, you ought to take that into consideration in dealing with this question of intent to kill or to harm, whatever it may have been—what in view of all the facts that you find in this case did Williams intend to do.

Now there may not have been a wilful, deliberate and premeditated killing; it may not have been premeditated. There may not have been even an intent to kill. It is within the possibilities of this case. It may be that Williams never conceived the idea of killing Wooley until he was in the actual act of striking the blow, and had no chance to premeditate upon it; and if it was not deliberate and premeditated at the time it was committed, then even if death resulted it would not be murder in the first degree; it would be murder only in the second degree. It would also be murder in the second degree if Williams at the time he struck this blow or these blows intended simply to

do grievous bodily harm to Wooley, and thereafter death resulted. The law so lays it down.

I have assumed so far, gentlemen, that you would not find any circumstances in the case to justify or excuse this act. No, I will go back just for a moment —to mitigate the degree of crime. Counsel for the defense has urged upon you that the crime is no greater than manslaughter, and he has urged upon you that there is no crime at all. In other words, that the killing was excusable.

Manslaughter is this: "When human life is taken without malice and in a sudden transport of passion or in heat of blood upon a reasonable provocation, the crime is reduced to the grade of manslaughter. The provocation must be such as to produce such a passion in the mind of a reasonable man, and the act must be committed in the course of such passion and while under its influence, for if the accused has sufficient time between the provocation and the killing to cool, he is guilty of murder and not manslaughter, though his passion has not entirely subsided. This defense is not available if the accused set up and induced the provocation with intent to resent it.

So in the case of an unlawful killing there must be provocation, not sought or induced by the accused, sufficient to produce in the mind of a reasonable man a sudden transport of passion or heat of blood, because of which and while under its influence he struck the fatal blow.

I want to add that provocation must be of a physical nature. Mere words are not sufficient to make a provocation, to reduce a crime to the degree of manslaughter. One man can call another names without limit, and nothing in the way of mere language or approbrium will justify the other man in killing the first one; or indeed will excuse the crime to the extent of reducing it to manslaughter. So provocation

must be something of a physical nature. I do not recall in this case anything of that character except the mere claim that when Williams went to make it up, as he expressed it, or make friends with Wooley, that Wooley reached for something on the shelf. Now I shall have to leave that with you. It would hardly seem to me, if I were sitting as a juror, that that would be sufficient; but probably you are entitled to take it. And so with regard to the question of self-defense that has been mooted in this case. A man is not entitled in self-defense to take the life of his adversary unless that course is either necessary or reasonably appears to be necessary to preserve himself from death or from grievous bodily harm. It is isn't sufficient that it merely appears to you or me that it is necessary; it must reasonably appear. In other words, we must be justified, reasonably justified in thinking that it is necessary to preserve ourselves from death or serious bodily harm.

Now you have Williams story. There is some slight evidence of corroboration of it in the testimony of one or another of the witnesses, who said, I think, that at the beginning of this affray inside, Williams said "Lay off me." One of the witnesses did say that. I do not recollect anything else but that.

The Prosecutor: Williams said that, I think, "You called me a son of a bitch outside, and I want you to lay off me."

The Court: Well, the jury will remember what it was—something about laying off. I only mention these matters so that the jury will be reminded of them and will think of them themselves and remember what was said and put such construction on it as they think is justified.

Mr. Steele: That is the testimony of—

The Court: I do not care to go into that, Mr. Steele. There was something of that kind; something about laying off. Now, Williams says— and of course you will have to take your own memory as to what he said and not my version of it—that he went to make friends with Wooley, with a base ball club either alongside of him or behind him, and that he called Wooley's attention to the things that Wooley had said to him out on the base ball field, and that Wooley then called him names again and said that he was— what did he say? going to kill him or something of that kind, and reached back for what Williams supposed was a knife. Well, there hasn't been any knife produced. There has been no description, as I recall, in evidence as to what kind of knife it was or might have been, if Wooley had it in his hand. Nobody says that Wooley did have it. Williams himself, as I understand it, says that he did not have it. Williams said he saw something in his hand that he then thought looked like a knife, and that he blindly struck at him and lost all control of himself at that time and remembers nothing more until some minutes afterwards.

Now you will have to sift these things, gentlemen, and make up your minds with respect to the result. There was unquestionably a killing, so far as I can make out from the evidence. Nobody seems to deny that. There seems to be no denial that Williams did it. In fact, he says that he struck the blows; and it is for you to say whether the killing was unlawful, and if so whether the presumption of murder in the second degree is to stand or whether, on the one hand, the State has produced evidence which satisfies you that it was wilful, deliberate and premeditated and therefore murder of the first degree, or whether, on the other hand, the evidence indicates that it was

without malice and under reasonable provocation and therefore merely manslaughter; or whether, as claimed by the defense, there was such actual or reasonable anticipation of danger of death or serious bodily harm as to justify an acquittal on the ground of self-defense. But you are the judges of the evidence.

Now there is always a presumption of innocence in a trial of this kind, and the presumption of innocence remains unrebutted until the defendant has been shown guilty beyond a reasonable doubt. Let me read you a word or so about that.

"The defendant is entitled to any benefit of a reasonable doubt which you may have. If you are satisfied that the defendant unlawfully took the life of the deceased, but have a reasonable doubt as to the particular grade of the offense, the defendant is entitled to the benefit of that doubt. That is, if you are convinced that he is guilty of murder and have a reasonable doubt about it being murder in the first degree, he is entitled to the benefit of that doubt, and there should be a verdict of murder in the second degree. So that if you have any such doubt, the defendant is entitled to the benefit of that doubt. But a reasonable doubt does not mean that every uncertainty must be dispelled; it is, rather, such a state of mind which, after a comparison and consideration of all the evidence, leaves the mind of the juror in such condition that he could not say he feels an abiding conviction of the truth of the charge.

Now something has been said here about malice. It is one of those things that are often spoken of and seldom defined, due to the difficulty of defining with exactitude. Malice, in a legal sense, as I understand it, is the intentional doing of an unlawful act without just cause or excuse. That is the best general definition I know of; and where an act inherently unlawful is committed and no just cause or excuse ap-

pears, I should suppose that malice was intended. Where one man strikes another on the head with a baseball bat so that he dies, that, as I have said, without more, would establish a presumption that there was an intent at least to do harm. I will not say that a baseball bat is a deadly weapon, so that use without more establishes a presumption of guilt. I wish this jury to understand that. If it had been a pistol or a gun, the situation might have been different in that respect; and for the intent to kill and for deliberation and premeditation you must rely on something else but the mere use of the baseball bat. You are entitled to consider the violence with which it was used.

You are entitled to consider whatever the defendant may have said before he went into the house, out on the field. You are entitled to consider the fact that he took the base ball bat and brought it in when it was not necessary for him to do it. You are entitled to consider that he kept that bat with him, as the Prosecutor has stated to you, when he went in, and that he carried it there alongside of him or, as testified to by one or two witnesses, behind him. You are entitled to consider that he approached Wooley with the bat in his hand; and all that class of circumstances, both before and immediately after the occurrence.

Now I do not think I have anything more to say to you, gentlemen. I think that you will take this case and endeavor conscientiously to apply these rules, as far as I have been able to lay them down, and report to the Court by your verdict whether this defendant is guilty of a crime, and if so, what the grade of that crime is, whether murder in the first or second degree or of manslaughter. You may therefore retire and begin your deliberations without any further delay. The officers may be sworn.

Mr. Steele: I desire to take a general exception.

The Court: Yes, a general exception will be allowed.

MEMORANDA of occurrences in the trial of The State vs. Alonzo Williams, after the jury had been charged and had retired to consider their verdict.

The jury, after having been out for several hours, returned into court and said that they wished for further instructions; and, upon being interrogated by the Court, asked a question which was read by one of the jurors from a paper; the paper, however, has not been preserved.

The question was substantially this: How long a time must intervene between the formation of an intent to kill and the execution of that intent, in order to give the killing the quality of premeditation and deliberation?

To which the Court replied substantially by reading to the jury certain extracts from the case of The State vs. Mangano, 77 N. J. L., p. 544.

The Court read the quotation at the head of page 545 as an example of a charge which erroneously laid down the rule, and then proceeded to discuss the rule as laid down in recent cases, reading to the jury the quotation from the opinion of Mr. Justice Garrison, on the lower part of page 546, following that with the language of the Mangano opinion, at the foot of page 546 and on page 547 as far as the word "not until after such premeditation and deliberation have taken place does the act become wilful in the sense intended by the statute."

The Court added a few words on the same line as the above quotation, but the language cannot now be reproduced.

The jury then retired.

At 8.45 p. m. the jury reported that they had agreed upon their verdict, and were recalled into court. The prisoner was present, but not the Prosecutor nor the prisoner's counsel, although an effort was made to secure their attendance.

The jury upon being asked by the Clerk if they had agreed upon their verdict, reported that they had; and upon being asked who should speak for them, said Mr. William G. Kershaw.

In response to the usual question from the Clerk, Mr. Kershaw read from a written paper, the following:

"The jury has agreed to convict the defendant, guilty of murder in the first degree, with recommendation of mercy by the Court; if the Court will accept."

The Court thereupon informed the jury, in substance, that the satute fixed the penalty for murder in the first degree, and it was beyond the power of the Court to comply with any recommendation to mercy.

The jury was not polled.

A member of the jury said that they had determined to render their verdict in that form; and it was said by one or more of the jurors that the jury were unable to agree upon a verdict in any other form.

The Court stated that it saw no objection to receiving the verdict with the above recommendation; and the verdict was taken accordingly and the jury were discharged.

SENTENCED DEFERRED.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

Nov. 10, 1915.

Before Hon. Charles W. Parker, Supreme Court Justice, and Daniel H. Beekman, Esq., Judge of the Court of Common Pleas.

September Term, 1915.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for murder.

Sentence deferred—no date fixed.

SENTENCE.

SOMERSET COUNTY COURT OF OYER AND TERMINER.

DECEMBER 3RD, 1915—2.30 P. M.

Before Hon. Charles W. Parker, Supreme Court Justice, and Daniel H. Beekman, Esq., Judge of the Court of Quarter Sessions.

THE STATE *vs.* ALONZO WILLIAMS—Indictment for Murder.

Prosecutor moved for sentence.

Counsel for defendant made motion for new trial for reasons submitted to the Court which was denied.

Affidavits filed by Counsel of Defendant.

The Court ordered the prisoner, Alonzo Williams to the bar for sentence. He being so accordingly set to the bar the court do order and adjudge that for the crime of murder in the first degree of which "you Alonzo Williams have been committed, you be put to death in the manner provided by law and in order to execute the judgment of the Court it is further adjudged that you be delivered by the Sheriff of the County of Somerset in whose custody you now are, within the time required by law to the Principal Keeper of the State Prison of the State of New Jersey who shall within the week beginning Monday, January tenth, Nineteen Hundred and Sixteen, execute the sentence of Judgment of the Court by inflicting the punishment of death upon you in the manner and by the means required and prescribed by the statutes in such case made and provided."

WARRANT.

TO THE PRINCIPAL KEEPER OF THE NEW JERSEY STATE PRISON:

WHEREAS, heretofore, to wit; on the ninth day of November one thousand nine hundred and fifteen, in the Court of Oyer and Terminer in and for the County of Somerset, Alonzo Williams, being brought to trial and tried upon an indictment for the murder of Benjamin Wooley duly found by the Grand Jury of said County, was duly convicted of murder in the first degree, and by said court was afterwards on the third day of December in said year sentenced to suffer the punishment of death;

NOW, THEREFORE, I, Charles W. Parker, the Judge presiding in the court at which said conviction took place, do hereby state the conviction and sentence aforesaid, and do appoint the week beginning on Monday the tenth day of January one thousand nine hundred and sixteen within which such sentence must be executed, and do hereby command you as such principal keeper aforesaid to execute said sentence upon some day within the week so appointed, and for so doing this shall be your warrant.

Witness my hand and the seal of said court at Somerville in the County of Somerset aforesaid, this third day of December one thousand nine hundred and fifteeen.

CHARLES W. PARKER,
Judge.

AFFIDAVITS.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder. Affidavits.

J. VRED BAIRD, of full age, being duly sworn, according to law, on his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty by a verdict reduced to writing, and of effect following; to wit: Jury finds a verdict against the defendant of Murder in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that his mind was at the time the verdict was given that it meant imprisonment for life or that it was in effect imprisonment for life for the defendant, and would act, and was in effect the same as verdict in "second degree" and that if the Court did not accept said verdict that the jury would thereupon retire and find a verdict against the said defendant of Murder in the second degree.

Sworn and subscribed before me this 17th day of November, A. D. 1915.

J. VRED BAIRD.

[L. S.] Sworn to before me Clerk of District Court on the 17th day of November, 1915, at Somerville.

DAVID BODINE,
Clerk.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

DAVID E. COON of full age, being duly sworn, according to law, on his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty by a verdict reduced to writing, and of effect following, to wit: Jury find a verdict against the defendant of Murder in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that he does not now believe and did not believe at the time the verdict was rendered that the defendant had time to preconceive and premeditate said killing of the deceased, that to his mind the deed was done in a "fit of temper" and that he so stated in the jury room, and at the time of the ballot, and that he thought the verdict as rendered and given would so express this conclusion of deponent, that no poll of the jury was taken, that had it been he was have stated to the court, what was in his mind and would not have agreed to a verdict without qualification of murder in the first degree.

DAVID E. COON.

Sworn and subscribed before me this seventeenth day of November.

JOHN C. COOPER,
Recorder.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

County of Somerset,
ss.
State of New Jersey

WILLIAM G. KERSHAW of full age, being duly sworn according to law on his oath saith; that he was a member of the jury upon the trial of the above-stated cause which was had before said Court on the eighth and ninth days of November, 1915, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect, following, to wit: Jury finds a verdict against the defendant of murder in the first degree, with recommendation of mercy by the court, if the Court will accept.

And deponent says that to his mind there was not sufficient evidence to prove to him conclusively that the act committed was so done with an intent formed in the mind of the defendant of sufficient length of time to premeditation, and that therefore he did not believe that it was wilful, deliberate and premeditated murder, so as to come within the instructions of the Court to the Jury, as given at the request of the jury, in answer to their request for further instructions upon this point.

And that had deponent been polled he would have so stated, being in this condition of mind he joined in said verdict, as expressing this condition.

And deponent further says that the wording of the foregoing affidavit is his own, excepting the formal parts thereof. W. G. KERSHAW.

Sworn and subscribed before me this 15th
[L. S.] day of November, A. D. 1915.

WM. R. SUTPHEN,
Notary Public of N. J.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

GEORGE W. NUSE, JR., of full age, being duly sworn, according to law, on his oath saith; that he was a member of the jury upon the trial of the above stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant of Murder in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that at the time the verdict was so rendered in the above case he thought that the effect of said verdict was murder in the second degree, that the said Williams would be imprisoned for life, that he did not then believe, and does not now believe that the defendant premeditated the killing of the deceased, or that it was done wilfully and that at the time the stroke was given it was done in the heat of passion and recklessly and that there then may have been intent to kill, but that also that Wooley had provoked said Williams to exasperation.

GEORGE W. NUSE, JR.

Sworn and subscribed before me this 17th day of November, A. D. 1915.

WM. F. VOSSELLER,
M. C. C. of N. J.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

DANIEL D. CLARK of full age, being duly sworn upon his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that as to the degree of Murder he did not at the time of the rendering of the verdict think that the defendant Williams premeditated the killing or death of Benj. Wooley, the deceased, that at the instant the blow was given there may have been in his mind an intent to kill, but if so to the mind of deponent such intent was an instantaneous intent aroused by the excitement and anger of the quarrel in which they were engaged, and deponent further says that when the verdict was offered he did not understand that it was a verdict of first degree strictly and that if the court refused to accept it as qualified that he with the rest of the jury would return to the jury room and could then agree upon a verdict of second degree that to the mind of deponent there was a reasonable doubt as to Williams intent to kill.

DANIEL D. CLARK.

Sworn and subscribed before me this 18th day of November, 1915.

WILLIAM V. STEELE,
M. C. C. of N. J.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

JOHN M. S. GANO of full age, being duly sworn upon his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says, that to his mind, and his conclusion on the evidence was, that Williams the defendant struck Wooley the deceased on "the spur of the moment, and the words between them at *the,* that time was the cause of the striking, and that the blow was given in anger, perhaps with provocation, but deponent does not think there was any premeditation.

Deponent says that he was of the impression, that the verdict as rendered, would act as a verdict of second degree, and that if not accepted as offered the jury would return and so find.

JOHN M. S. GANO.

Sworn and subscribed before me this eighteenth day of November, 1915.

WILLIAM V. STEELE,
M. C. C. of N. J.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

WILLIAM S. ENGLAND of full age, being duly sworn upon his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says, that when the jury was considering and trying to determine upon a verdict in above case he at all times contended for a verdict of murder in the second degree, until it was proposed that the verdict as given should be offered, and that his conclusion then was that if the verdict was accepted by the Court, it would be practically the same as a finding by the jury of a verdict in the second degree, and do away with the idea of premeditation or wilful and deliberate murder.

And deponent further says that in his opinion formed from the evidence in the case, that said Wooley was killed because of anger on the part of the defendant and without forethought as to what would be the result of the blows given.

WILLIAM S. ENGLAND.

Sworn and subscribed before me November 18th, 1915.

WILLIAM V. STEELE,
M. C. C. of N. J.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

ALPHEUS G. SAVACOL of full age, being duly sworn upon his oath saith; that he was a member of the jury upon the trial of the above-stated cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following —to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that in the finding of the above verdict he was in favor of convicting the defendant of murder in the first degree, but in the jury room I decided that I was for such a verdict, with a request that the Court show mercy, in that I did not think that the deed done warranted electrocution. Deponent says however that he thought the defendant should have as long a term of imprisonment that it was possible to get.

And deponent further says that it was agreed that if the verdict as offered, was not accepted with mercy to be extended in the sentence to be imposed that then the jury was to return to the jury room and agree upon and render a verdict against the defendant of murder in the second degree, to and in which deponent concurred.

ALPHEUS G. SAVACOL.

Sworn and subscribed before me this 18th day of November, 1915.

WILLIAM V. STEELE,
Master in Chancery of New Jersey.

Affidavits.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for Murder.

DAVID K. AUTEN of full age, being duly sworn, upon his oath saith; that he was a member of the jury on the trial of the above-named cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that he does not think and so said at time of the verdict, that the defendant did really intend to kill Wooley when he went to, and was at Wooley's (the deceased's) bed, but that after he struck the first blow and in his anger, deponent says that he thought he intended to kill Wooley, but that deponent did not then think that defendant premeditated on forethought the act, and what would be its result.

DAVID K. AUTEN.

Sworn and subscribed before me this 19th day of November, 1915.

CALVIN D. MCMURTRY,
Surrogate.

Deponent further saith that at the time the foregoing verdict was furnished to the court, that if it were not accepted by the court in that form, that the jury would return to the jury room, and agree upon a verdict of second degree.

That the above is added at the suggestion of deponent to this affidavit.

DAVID K. AUTEN.

The foregoing addition to the next preceding affidavit sworn and subscribed before me Nov. 19, 1915.

CALVIN D. MCMURTRY,
Surrogate.

SOMERSET OYER AND TERMINER.

THE STATE *vs.* ALONZO WILLIAMS—Sur Indictment for murder.

MAX SCHWED of full age, being duly sworn, upon his oath saith—that he was a member of the jury on the trial of the above-named cause, which was had before said Court on the eighth and ninth days of November, nineteen hundred and fifteen, wherein the said jury found the defendant guilty, by a verdict reduced to writing, and of effect following, to wit: Jury finds a verdict against the defendant in the first degree, with recommendation of mercy by the Court, if the Court will accept.

And deponent says that while the defendant intended to do the deceased greatly bodily harm, he did not think that he had the idea or plan in his mind to kill said Wooley and then carried it out and put it in effect and that in deponent's mind there was a reasonable doubt as to the intent.

MAX SCHWED.

Sworn and subscribed before me November 19, 1915.

WILLIAM V. STEELE,
M. C. C. of N. J.

CERTIFICATE OF COUNTY CLERK.

State of New Jersey,
ss.
County of Somerset.

I, A. G. ANDERSON, Clerk of the Somerset Court of Oyer and Terminer and also Clerk of the Somerset Court of Quarter Sessions do hereby certify the foregoing to be a true and correct copy of a certain Indictment for Murder in the case of The State vs. Alonzo Williams and copies from the Minutes of the said Courts so far as the same relate to the case as the same are on file and record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said
[L. S.] Courts this 12th day of January, Nineteen Hundred and Sixteen.

A. G. ANDERSON,
Clerk.

BILL OF EXCEPTIONS.

COURT OF OYER AND TERMINER FOR THE COUNTY OF SOMERSET.

THE STATE *vs.* ALONZO WILLAMS—On Indictment. Bill of Exceptions.

BE IT REMEMBERED, That on the eighth day of November, Nineteen Hundred and Fifteen, at a Court of Oyer and Terminer, holden at Somerville, in and for the County of Somerset, before the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Daniel H. Beekman, Judge of the Court of Common Pleas in and for the said County of Somerset, William V. Steele, Attorney for the defendant, interposed a principal challenge to the array to the general panel of jurors summoned to attend for the said term.

Because, under the statute, a list of the jury shall be delivered to the prisoner, by special order of the Court, at the term in which he is to be tried. The record of the Court will show that on June 19th, 1915, a special panel was drawn in this case, for the purpose of the trial of this defendant; that that is the beginning of the actual trial of the case; that the inception of the trial is not the calling of the jury of twelve men to be sworn; but the beginning of the trial is the setting apart of these forty-eight names from the panel that had been drawn for the April Term for the trial of this cause. If that be the beginning of the trial, then that was the jury that was called in 1915, which should have tried the case. It does not appear that the jury has been discharged by formal

order of the Court. The records I think, will show that the jury was so drawn, at any rate.

Under the statute, and in Counties having a population of 150,000, in case any jury is summoned on any panel, and shall be actually serving on the trial of a cause, at the time when the panel of jurors would be otherwise discharged, the term of service of such jury shall be, and is extended until the completion of the service.

I do not find that there is any statutory law controlling counties under 150,000; but it seems to me that the same general rule should apply to this County as applies by statute to Counties, formerly, of 250,000; and the Court further has the power, when a jury is in actual service, set apart for the trial of a case, to extend the time of service. To illustrate what I mean supposing this case, or any case were on trial, the jurors now running from one term to another, if, at the end of this September Term, this case were on trial, and the jury sitting, the fact that original statutory law says, that the jury shall be summoned to serve for the April Term, does not absolve the Court from extending the time of service of these jurors who will be sitting at the end of this Term, over into the next Term. The trial would not stop because of that.

The Court: Your theory evidently is that the trial began last Term.

Mr. Steele: The trial began last Term upon the service and selection of this jury for the trial of this cause.

The Court: You claim that it began in the April Term then.

Mr. Steele: Yes; the jury sitting for the trial of

this particular case for which it is called, and consequently cannot be discharged. The trial should continue, and the case tried by the jury so selected.

Under the Laws of 1911, page —, Section 7, provision is made for the Justice of the Supreme Court drawing that panel that the jurors so drawn shall serve for a designated portion of the next ensuing Term, and while that does not apply directly, the spirit and principle of the law is disclosed in that statute, and I think should apply.

The Court: Well, your challenge is overruled, and you may have your exception, Mr. Steele. If there is no further motion on the part of counsel, the Sheriff may return a panel.

Whereupon, issue being joined thereon, upon the record, the Court found for the State, and overruled the said challenge.

To this ruling, the defendant prays a bill of exceptions, and it is allowed and sealed accordingly.

CHARLES W. PARKER, *Judge.* [L. S.]
DANIEL H. BEEKMAN. [L. S.]

And thereupon the issue joined in the above-stated cause, between the said parties (pro ut the pleading) came on to be tried, by a jury for that purpose empanelled, and the testimony in the cause having been concluded, and the parties having rested the cause the Honorable Charles W. Parker charged the jury, among other things, as follows:

"It would indeed be better for you, if you did not know what the punishment was that the law has fixed for murder in the first degree, or indeed, of any other crime, because the law has made the jury into a sort of investigating body, a sort of intellectual machine,

to hear and digest the evidence given on a trial, find the facts as they exist from that evidence, and return a verdict, specifying whether the accused is guilty of the grade or any of the grades of crime covered by the indictment. There the duty of the jury is ended. They have nothing to do with the imposition of the sentence. They can, indeed, in certain cases, recommend the prisoner to the mercy of the Court, but first and foremost, and practically, exclusively, the duty of the jury is to ascertain, from the evidence, whether the crime had been committed, and whether the prisoner is guilty of it; and with that finding, as the Prosecutor has very properly told you, the duty of the jury is done. Their conscience is clear, and for whatever may be done thereafter, the law, and not themselves, is responsible."

And thereupon, at the conclusion of the charge the counsel for the defendant made a general exception to the charge aforesaid, under and by virtue of the statute, and prayed that a bill of exceptions be allowed and it is allowed and sealed accordingly.

CHARLES W. PARKER, [L. S.]
Justice of the Supreme Court.
DANIEL H. BEEKMAN, [L. S.]
Judge of the Court of Common Pleas of the County of Somerset.

Whereupon the jury in said cause having retired to consider upon a verdict, and thereafter, having returned into Court, and, by William G. Kershaw, one of the jurors who spoke for them, rendered a verdict, from a memorandum in writing, of which the following is a true copy: "Jury have agreed to convict the defendant, guilty of murder in the first degree, with recommendation of mercy by the Court, if the Court will accept."

Counsel for the defendant thereafter, on the third

day of December, 1915, moved the court for a rule to show cause why a new trial should not be granted, upon the ground that the verdict was a special and conditional verdict; that it was rendered by mistake and under misapprehension, and did not express the will and finding of the jury; that, in the absence of counsel for the defendant, the jury was not polled, and that the verdict was against the weight of evidence.

The Court then heard respective counsel upon the rule to show cause, and by its decision, declined to grant a new trial, and made order that the affidavits in support of the application for said rule be filed.

Whereupon, counsel for the defendant took an exception to the said ruling of the said Court, and prayed said Court would set their hands and seals to this bill of exceptions, and it is allowed and sealed accordingly.

CHARLES W. PARKER, [L. S.]
Justice of the Supreme Court.
DANIEL H. BEEKMAN, [L. S.]
Judge of the Court of Common Pleas.

I certify the foregoing exceptions to have been well taken.

WILLIAM V. STEELE,
Counselor-at-Law.

ASSIGNMENT OF ERRORS.

FILED FEB. 15, 1916.

COURT OF ERRORS AND APPEALS.

THE STATE, *Defendant in Error,* ALONZO WILLIAMS, *Plaintiff in Error.*	Assignment of Errors.

Afterwards, to wit, on the ninth day of February, in the year of our Lord, One Thousand Nine Hundred and Sixteen, before our Court of Errors and Appeals at Trenton, comes the said Alonzo Williams, by William V. Steele, of counsel, and says, that in the record and proceedings aforesaid, and also, in the matters recited and contained in the said bill of exceptions, and also, in rendering of verdict, and giving of judgment aforesaid, there is manifest error, in this:

1. That at the said Court of Oyer and Terminer, and prior to the trial of said indictment, upon a principal challenge to the array of general panel of jurors summoned to attend for the said September Term, upon the following grounds, with the record of the Court in this case in support thereof.

Because, on the nineteenth day of June, 1915, as yet of the April Term of said Court, fifty-one jurors were drawn from the general panel of jurors for said Term, for service in this case, upon the said defend-

ant, Alonzo Williams, and that three of the said jurors, so drawn from the box, had not been summoned; that the remaining forty-eight jurors, so drawn for service, for the trial of said defendant, were not discharged, and said defendant, Alonzo Williams, was not tried by a jury drawn from said forty-eight jurors so drawn to that end.

And because, on the nineteenth day of October, 1915, the following named forty-eight jurors were drawn from the general panel of jurors for the September Term, 1915, for like service on the said defendant, Alonzo Williams, and the trial jury drawn therefrom.

The said Court found for the State, and overruled said challenge.

2. That the said Alonzo Williams, by his attorney aforesaid, further, in fact, says that the said Court held at Somerville aforesaid, before the judges of the said Court, in the record aforesaid, above-mentioned, on the trial of the indictment aforesaid, in the record aforesaid set forth, a general exception on behalf of the said Alonzo Williams, by his counsel, was taken and made to the charge of the said Court, then and there given and delivered to the said jury empanelled and sworn to try the said indictment, that the Court charged that a jury could in certain cases recommend the prisoner to the mercy of the Court, and did not in said charge, instruct the jury that the Court could not by its sentence, upon a verdict of murder in the first degree, extend mercy, which said general exception was then and there written down, and the said judges did thereupon put their seals to the aforesaid bill, according to the form of the statute in such case made and provided, and the said Alonzo Williams, by his attorney aforesaid, brings here into Court the bill of exceptions aforesaid, with the seals of the said judges put and affixed to the said bill, therefore, the said Alonzo Williams saith, that in

the record, proceedings, trial and judgment aforesaid, there is manifest error.

3. That the said Court held at Somerville aforesaid, on the day and year aforesaid, before the judges of the said Court, in the record aforesaid, above-mentioned, accepted a special and conditional verdict, rendered by the jury on said trial empanelled in the absence of the counsel of said Alonzo Williams, and that by reason thereof, the said jury was not polled therefore, the said Alonzo Williams saith, that in the record, proceedings, trial and judgment aforesaid, there is manifest error.

4. That the verdict in writing of said jury empanelled on said trial, rendered before the said Court, held at Somerville aforesaid, before the judges of the said Court, in the record aforesaid, above-mentioned, by William B. Kershaw, one of the jurors, but not the foreman of said jury, as follows, "jury have agreed to convict the defendant guilty of murder in the first degree, with recommendation of mercy by the Court, if the Court will accept" is conditional, special repugnant, irregular and void, therefore, the said attorney of the said Alonzo Williams says, that in the record, proceedings, trial and judgment aforesaid, there is manifest error.

5. And the said Alonzo Williams, by his Attorney aforesaid, further, in fact, says, that the said Court, held at Somerville aforesaid, on the day and year aforesaid, before the judges of the said Court, in the record aforesaid set forth, and after the rendition of the verdict by the jury, on said trial empanelled, certain exceptions on behalf of the said Alonzo Williams by his counsel, were taken, and made to the decision and opinion of the said Court, by the judges then and there pronounced and declared, by which decision, the said judges then and there declared, pronounced and decided adversely to, and declined to grant a motion made by the counsel of said Alonzo Williams, for a

new trial, upon the verdict aforesaid, the ground and reason therefor being then and there stated to be, that the verdict was a special and conditional verdict and that it was rendered by mistake and misapprehension of the said jury, in that it did not express their conclusion upon the facts by them found, and was contrary to their agreement and understanding had immediately prior to the time they appeared before said Court after leaving the jury room, said motion being founded upon affidavits of the several jurors in support thereof, which said affidavits, by order of the Court, were filed in this cause, and the said judges did then so pronounce, declare and decide, although such ruling was then and there excepted to by the counsel of said Alonzo Williams, and did then and there refuse to sustain the said motion, although then and there moved so to do, by the attorney of the said Alonzo Williams, which said exception in a certain bill was written down, and the said judges did thereupon put their seals to the aforesaid bill, according to the form of the statute in such case made and provided, and the said Alonzo Williams, by his attorney aforesaid, brings here, into Court, the bill of exceptions aforesaid, with the seals of the said judges put and affixed to the said bill, therefore, the said Alonzo Williams, by his said attorney, says, that in the record, proceedings, trial and judgment aforesaid, there is manifest error.

And there is also error in this, that the judgment was thereafter given against the said Alonzo Williams, whereas, judgment should have been given in his favor, wherefore, the said Alonzo Williams, by his said counsel, prays judgment, and that the said judgment aforesaid, for the errors aforesaid, and other errors found and being in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said Alonzo Williams may be restored in all things which he has

lost, by occasion of the said judgment, and that the Court here may proceed to examine the record and proceedings aforesaid.

WILLIAM V. STEELE,
Attorney and of Counsel with Plaintiff in Error.
ALONZO WILLIAMS,
Plaintiff in Error.

Due and legal service of the within assignment of errors is hereby acknowledged this fourteenth day of February, 1916.

A. M. BEEKMAN,
Prosecutor of the Pleas for the County of Somerset, Att'y of Def't in Error.

JOINDER IN ERROR.

FILED FEB. 15, 1916.

THE STATE,
Defendant in Error,

vs.

ALONZO WILLIAMS,
Plaintiff in Error.

In Error.
Joinder in Error.

And thereupon, afterwards, to wit, on the fourteenth day of February, in the year of our Lord one thousand nine hundred and sixteen, the said State of New Jersey, by Azariah M. Beekman, prosecutor of the pleas of the County of Somerset, comes into court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

AZARIAH M. BEEKMAN,
Prosecutor of the Pleas.

REASONS FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE, *Defendant in Error.* *vs.* ALONZO WILLIAMS, *Plaintiff in Error.*	Reasons for Reversal. In Error.

And now comes Alonzo Williams, by William V. Steele his attorney, and of counsel, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error; and said Alonzo Williams says that said judgment should be reversed, and assigns the following reasons and causes:

(1) Because on the nineteenth day of June, Nineteen Hundred and Fifteen, as yet of the April Term of the said Court of Oyer and Terminer, the said Alonzo Williams entered a plea of not guilty to said indictment, and on said day, the names of fifty-ones jurors were drawn by the Sheriff out of the general panel of jurors for said April Term for service upon him, for the trial of said indictment, and the trial of said defendant was not continued by a panel of jurors taken from said fifty-one jurors so drawn.

(2) Because at the September Term of said Court of Oyer and Terminer, on the nineteenth day of October, then next following, forty-eight jurors were drawn by the Sheriff of the County of Somerset, from

the general panel of jurors summoned for said Term, for service on said Williams, for the trial of said indictment, and the defendant, tried, by a panel of jurors therefrom selected: the jurors therefore selected and drawn, at the said April Term, for that purpose, not being discharged from such service.

(3) Because the trial Court permitted the defendant to be questioned, on cross-examination, as to the contents of a written statement (to which exception was allowed) shown for identification and which had not been admitted in evidence, made to an officer of the State in authority; and to answer the following questions:

> Q. You say this statement does not contain a true account of what happened? A. It don't state the truth; no, sir.
>
> Q. You don't answer the question. I suppose you are just as anxious now, and have just as much object now to conceal the truth, as you had when you wrote that letter? A. No, sir.
>
> Mr. Steele: I object to that. It does not appear that he is concealing the truth, either the one time or the other.
>
> The Prosecutor: I said Just as much object.
>
> Mr. Steele: I object to it upon that ground.
>
> The Court: Objection overruled.
>
> Exception allowed.
>
> Mr. Steele: I don't want any of it in, or all of it in. If he wants to go ahead, and put it all in, then I want it all in; on the contrary, if it is to

go out, my motion is to wipe out everything in connection with it.

The Court: I think I will let it stand as it is. Then the statement itself has not been admitted, but the witness has testified as to having written it and the reasons why he wrote it.

The Prosecutor: That is certainly a proper inquiry to make preliminary to offering it?

The Court: I think I will leave the letter as it stands. If Mr. Steele wants to have the letter put in evidence, and then have his client explain what parts are not true, well and good. If he does not, it will stand as it is.

The Court: You have offered it, and it has been overruled. If the other side want it in, they can put it in.

Mr. Steele: That is the ruling subject to my objection and exception.

The Court: Certainly; take your exception.

Mr. Steele: Alonzo, take the stand.

(4) Because the said trial Court charged the jury as follows:—

"They can, indeed, in certain cases, recommend the prisoner to the mercy of the Court; but first and foremost, and practically, exclusively, the duty of the jury is to ascertain from the evidence whether the crime has been committed, and whether the prisoner is guilty of it. . . ."

(5) Because the attorney of the defendant was not present when the jury, at their request, was re-

called for further instructions by the Court, nor, at the time the verdict was rendered, by reason whereof, the jury was not polled.

(6) Because, Mr. William G. Kershaw, a juryman, spoke for the jury in giving its verdict, and not the foreman; no reason appearing therefor.

(7) Because the verdict rendered was conditional special and irregular, and in writing.

(8) Because the trial Court refused to grant a new trial, on motion of the counsel of plaintiff in error, founded upon the affidavits filed in this cause, and because the verdict was conditional, special and irregular, and rendered by mistake and misapprehension, and contrary to the agreement and understanding of the jury had in the jury room, prior to its rendition.

WILLIAM V. STEELE,
Attorney and of Counsel, Plaintiff in Error.

Service of the within "Reasons" is hereby acknowledged this 23d day of February, A. D. 1916.

(signed) A. M. BEEKMAN,
Att'y and of Counsel to Defendant in Error.

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