COURT OF ERRORS AND APPEALS

THE STATE, Defendant in Error vs. THOMAS FUER, et als, Plaintiffs in Error.	IN ERROR. INDICTMENT FOR RAPE.

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BRIEF OF PLAINTIFFS IN ERROR

HISTORY OF CASE

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Plaintiffs in error are charged with rape upon Mary Bodvenski on March 5, 1923, at Bound Brook, in the County of Somerset.

The complaining witness, Mary Bodvenski together with her husband and three of her friends, Anthony Potosney, Sam Sarbouke and Paul Buggi had returned from New Brunswick in the neighborhood of 2.45 A. M. They stopped in the lunch wagon opposite the trolley terminal in Bound Brook, to get some lunch. They went into a separate compartment called the "ladies' parlor." A number of men were in the other compartment. Some words ensued between one of the friends of the complaining witness and those in the other compartment, which started a fight. The men were all put out of the lunch wagon and continued their fight across the street on Main Street. From that point, some of them continued to fight a little way up East Street, near a sign board and about a half a block away from the

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corner of East Street and East Second Street, where the complaining witness says she was first attacked.

She says that she was looking for her husband and she met some men on the corner of East Second Street and East Street; that they grabbed her, carried her across East Street, up the steep embankment and over a high stone wall into the old Presbyterian Cemetery, to the rear thereof, and in the rear of the old First National Bank Building, now an apartment house, and there five or six of these men, one after another, committed a rape upon her. That while this was taking place, one of the men took a $10 bill out of her stocking. That she had her pocketbook with a big roll with her and she lost that; that after the assault, she told the men she was from Bound Brook. That one of the men nick-named "Dutch Fuer" (Thomas Fuer) then said to Mannon, "Hey Marty, we got to get rid of this lady, she's from Bound Brook." That afterwards they took her as far as the embankment, "and there was one man or two who was going to take me home and I never asked him to " (p53). That she ran out of the cemetery through a break in the wall and down East Street to Main Street to the lunch wagon. She saw an automobile which she took hold of. There were two men standing in front of the lunch wagon by the automobile. That across from the lunch wagon, she saw a lady. She went across the street, walked up to the lady and asked her "please help me." She walked down the street with this lady about two blocks and right close by the station, she found a cop (Charles Bohler) to whom, she claims, she "told everything they did to her in the cemetery." She went back to the lunch wagon with Officer Bohler, she pointed out to him "Dutch" Fuer and another fellow who was drinking coffee. At that time Marty Mannon came into the lunch

wagon and she pointed him out to Officer Bohler. That others of the party were in the lunch wagon but she was all excited. That afterwards with Officer Bohler (whom the witness speaks of as Charlie the Cop), she walked up Main Street two and a half blocks to the Police Station, where she met Sam Sarbouke, one of her friends, she got into his automobile, and went with him to Doctor Robinson; that he was going for Doctor Robinson for Potosney, another of her friends, who had been hurt in the fight; that Dr. Robinson would not get up. They then went back to Potosney's house on East Second Street, about a block and a half from the lunch wagon, where she found her husband waiting. That while they were in Potosney's house, Officer Bohler and Traffic Officer James Gobel, came to the house to make an investigation. That she did not tell her husband what happened (P63, line 30) until the next morning when they arrived at their home. That the following morning she made a complaint before Justice Flammer (Flemming) charging the defendants with rape.

Although the complaining witness testifies that immediately upon meeting them, she told Sarbouke and Officer Bohler, and that Officer Bohler told Traffic Officer Gobel in Potosney's house about the assault. All of the complainant's friends and companions and the two Officers, flatly contradict her and say that **the only complaint she made was that these men had "beat up" her husband.** Both of the officers testify that they heard **nothing about a charge of rape until the following morning, when she went to Justice Flammer's office and made the complaint.** That the reason they did not place any of these men under arrest at the time they were identified was that they understood there had been a fight and that was all.

There is some confusion about the time. The

complaining witness herself says it was about quarter of two when they arrived at the lunch wagon. Her friend Sarbouke says it was about two o'clock, the rest of the witnesses say it was about three o'clock.

FIRST POINT

At the conclusion of the State's case, a motion was made to direct a verdict of not guilty as to DeGhetto, Farrano and Nattoli. At the conclusion of the whole case the Court directed a verdict as to DeGhetto and Nattoli but not as to Farrano.

It is well settled that if at the time of the motion, at the end of the State's case, there is no evidence to warrant a conviction, the fact that evidence is adduced on the defendants' case which might have changed the result had such evidence been produced on the State's case, will not alter the situation.

Again, at the conclusion of the whole case, the motion was renewed, and included DeMatto. At that time, there was not only a lack of sufficient evidence to warrant a conviction, but the denial of Farrano and DeMatto, and other evidence tending to prove that they could not have been present and did not participate in the alleged crime.

The evidence of the complaining witness as to her recognition of the defendants is to be found on pages 46, 47, 60 and 61 and on page 91, where at line 28, she says she pointed Farrano out to the Policeman. This is the only page upon which Farrano is mentioned in her testimony. By turning to the testimony of Officer Bohler on pages 102 and 103, it will be noted that the ones she picked out at the lunch wagon were Fuer, DeMatto and Nattoli. Then Mannon and DeGhetto came in the door and she says, "them too." This

made five men. At page 104, l. 33, Officer Bohler was asked, "Q. Was Farrano there?" A. I do not know, I did not see him that night." This was all the evidence that there was connecting Ducci DeMatto and Farrano with the crime, and they should have been discharged.

SECOND POINT

The Trial Judge should have granted the motion made on behalf of the defendants for a new trial because the verdict of the jury was against the weight of evidence. This will be argued in connection with our fifth point.

THIRD POINT

The Court erred in charging the jury.

The learned trial judge after correctly defining the meaning of the term "reasonable doubt," qualified the force and effect of his definition (p 263 l 30-) ; "The burden of proof is upon the prosecution and if upon **such proof** there be a reasonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty."

By this addition or attempted explanation of the meaning of that term, the learned judge confused and misled the jury, by limiting the application of reasonable doubt to the proofs adduced on behalf of the State. A reasonable doubt may be engendered by evidence produced by the defendants, or it may result from a lack of proof.

> "If a charge in one part states the law correctly and in another part incorrectly, the error of the incorrect part is not cured by the part stating the law correctly, as a jury is not required to determine what part of a contradictory charge is correct." S. v. Zavian, 1

N. J. Adv. Rep., p. 27, Citing S. vs Sandt, 95 N. J. L. 49.

We fear that the use of the words "such proof" led the jury to understand that a reasonable doubt must be engendered by a lack of proof on the part of the State, and in a case so serious it ought not be left to speculation.

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FOURTH POINT

The learned Trial Judge erred in refusing to charge the defendants' second request, which was as follows:

> "2. You are further instructed that the charge of rape, is in its very nature, a most henous one, and where the circumstances are as claimed in this case most revolting, and likely to create very strong prejudice against the accused. You should beware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case should be resolved in their favor."

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This was a very serious case, and one which would naturally give rise to a lot of newspaper notoriety and public comment in a rural county. The natural effect of which would be to inflame the public and prejudice the minds of jurors before they heard any of the evidence. The whole

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charge was very brief and is contained in a little over three pages, (p 261 to p. 264). The learned Judge did not attempt to discuss the evidence and we submit, that under the circumstances, in this extraordinary case, we were entitled to have our second request charged in substance, at least. The only answer of the Trial Judge to this request will be found on page 262 at l. 20. We submit that this did not cover our request.

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FIFTH POINT

Said judgment against all of the defendants should be reversed and for nothing holden and a new trial granted in accordance with the provisions of Chapter 349 of the Laws of 1921, because it appears from a consideration of the entire evidence that such verdict of guilty was against the weight of evidence.

Of course it may not appear in the evidence, 20
but it is a matter of common knowledge, that the mere filing of a charge of such a character as this one, will supply the newspapers with sensational material for many issues, and have a considerable effect upon the minds of jurors in rural counties who are bound to read these exaggerated stories, (and they are always exaggerated,) and create in advance, a tremendous prejudice against the defendants. The trial of such a case, in a rural county is a great sensation, and the mere 30
making of such a charge by a woman, tends to create in the minds of jurors a passion and prejudice against the defendants. Their mental attitude is such that they give enormous weight to evidence, which in a case of simple assault, would be considered as unimportant.

We think a reading of the whole case will disclose that the verdict of the jury was so palpably against the clear weight of evidence that it could be nothing else but the result of passion and 40

prejudice, engendered by consideration of extraneous matters. They were obsessed with the enormity of the charge. They paid little or no attention to the inconsistencies of the State witnesses, or to denials and plausable explanations of the defendants and their witnesses, and convicted these defendants, all men of good repute, and none of whom had had ever been convicted of any crime.

10 The conviction rests entirely upon the uncorroborated testimony of the complaining witness. Her story when weighed in the scales of common reasoning is impossible.

1. It is inconceivable that she could have been carried by these men up the steep embankment, some six feet high above the sidewalk, and lifted over a stone fence about four feet high, quite clearly shown (but in perspective) upon photographs No. S-2 and S-4. A study of these
20 photographs, this embankment, and the high stone fence, together with her description of the manner in which she was taken to the cemetery (p. 48, 49 and 51), will demonstrate how utterly impossible and unbelievable it is.

2. In order to believe the story of this woman, we must believe that two of the sworn officers of the law of Bound Brook, not only committed rank perjury, but were inconceivably derelict in the performance of their duty. And sworn
30 officers of the law ought not to be thus condemned and disbelieved, unless there is at least, some shadow of reason appearing in the case for such disbelief. Yet the jury must have discarded their testimony as unworthy of belief. We submit that a study of the testimony of Officer Bohler, and Traffic Officer Gobel, impresses one with the fairness and truthfulness of their testimony. They had no interest in any of the defendants. They were not biased. They told the plain simple
40 truth as they understood the facts. There is

nothing whatever in the case to even suggest that they were otherwise than impartial.

3. Although the complaining witness testifies that she told Officer Bohler (and Bohler told Officer Gobel in her presence) about the assault, both officers, who saw the complaining witness within a very short time after the alleged assault upon her, swear that she **made no complaint to them,** either to the effect that she had been assaulted or robbed of her money; that her **only** complaint was that these men "beat up" her husband. See pages 102-104. If this is true, and there is no reason to believe otherwise, this woman did not re-act as an honest and virtuous woman who had just been raped and robbed would re-act. Her first exclamation to the police would be "I've been raped and robbed, help me." But she did nothing of the kind. She complained of the assault upon her husband. Does not this lead the rational and contemplative mind to doubt her story?

At least two of the defendants were strangers in Bound Brook, and there is no evidence in the case indicative of friendship for the other defendants; and yet we are asked to believe; that these officers knew of this revolting crime, that at least, three of the defendants were pointed out to them and the officers did not place them under arrest on the spot. Such a suggestion taxes one's credulity to the limit. Officers are, rather, anxious to make a record for themselves and apprehend offenders, especially so when the crime is of a major or sensational nature. Nor is it conceivable that if this woman had been assaulted and robbed as she claims she was, she would have rested in peace until the officers had placed these defendants under arrest after she had identified them. One feels certain that she would have remained on the spot until these men were placed under arrest.

While the officers say that she was excited, (the natural result of the fight in which her husband was engaged) they noticed nothing about her appearance or clothing that would arouse suspicion or indicate that an assault had been committed upon her. Could she have been so roughly handled and grossly assaulted by several men and show no signs of it?

4. Made no complaint to her own friends
10 and companions, who had spent the evening with her and founght for her, and in reviewing and considering the evidence of these witnesses, it should be borne in mind that they are **her friends**; strangers to the defendants, and the ones upon whom the State relied in the presentation of its case. Here is what they say:

ANTHONY POTOSNEY.

20 Mr. and Mrs. Bodvenski, Paul Buggie, Sarbouke and I were at New Brunswick together (p. 19). This is the man who was "beat up" (p. 23). About three quarters of an hour after the fight started, she (Mrs. Bodvenski) came down to the (his) house, (p. 25). Since he does not say she told him about the alleged rape, we must assume she did not, else the State would have asked him about it.

30 SAM SARBOUKE.

Says he saw her down on Main Street, crying (p. 30, l. 34). She did not tell him what she was crying about. She got in the car and went with him to Dr. Robinson (p. 30 and 31) and back to Potosney's home, where her husband was. They stayed about an hour or so, p. 33). While she was in his company all this time, he was one of her friends, and one of the first men she saw im-
40 mediately after the alleged assault, the first he

heard about the alleged rape, was in the morning between six and seven o'clock (p. 32, l. 10).

PAUL BUGGI.

Lives with Potosney, (p. 127, l. 28), and met her after she came to the house. He too, was one of her friends, yet, he does not testify that he heard anything about the rape, although he was at the house. Another thing that stands out is, she did not even tell her husband about it until they got home the next morning (p. 63. l. 30), and he was **not called** to corroborate her. Isn't it strange that a woman could have been the victim of such a henous crime and not embrace the first opportunity to tell her friends and protectors, and the officers of the law about it? And all these were witnesses for the State.

Three disinterested witnesses, whose integrity is in no way impeached or even attacked, called for the defense, whom she saw immediately after the alleged assault, swear she did not mention the assault to them or in their presence.

STANLEY NOVECK.

Was in the lunch wagon when the fight started and remained there all the time until this woman came back, (see p. 229). He went outside and saw her standing near his car, and said she wanted to go home. That is all she said to him.

JOHN L. BERGEN.

Another disinterested spectator was there when she tried to get in Novak's (also called Walsh) car and she asked him to walk home with her (p. 216, l. 10). She made no complaint to him (p. 216, l. 24). He didn't see anything the matter with her dress (p. 216, l. 35.)

WILLIAM HUFF.

Another disinterested spectator was there with Bergen when she tried to get in the car (p. 219). In answer to the Court's question (p. 221, l. 20), he swears "She did not appear to me to be very excited."

Yet the jury disregarded all of this testimony. Is it likely that all of these witnesses lied? What possible motive could they have had to perjure themselves?

The Prosecutor may try to argue that Mrs. Bodvenski complained to the witness Bertha Lampe. She did make some complaint to this witness but whether she complained about the fight in which her husband and her friend Potosney had been beaten up or wanted her to take her home, does not appear from her testimony. The nature of the complaint could have been brought out by proper questioning. Of course, one of the Counsel for the defendant very properly objected to a repetition of what the woman said to her. No inference against the defendants can be drawn from her testimony. If the nature of her complaint was in doubt, such doubt should be resolved in favor of the defendants. But there is no doubt about it, because the testimony of Mary Bodvenski, (p. 81, l. 40), when left to herself without suggestion, discloses what her complaint was:

"Q. Then you went over to a lady,
A. Yes.

Q. Did you talk with the lady?
A. Yes.

Q. And asked her where a policeman was?

A. No, I asked please she could take me home.

Q. And did she take you home?

A. No, then that time I met the cop, Charlie Bohler."

5. The torn drawers were not preserved or produced. She says she had drawers on and that Marty Mannon ripped them, (p. 76, l. 31). The drawers were home, (p. 89, l. 21), she didn't think it was necessary to bring them or give them to the police or County Detective. Yet she carefully preserved a receipted bill and comb which she afterwards picked up and gave to the authorities (see p. 64) to be used as evidence. It's a safe bet there were no torn drawers or the County Detective would have had them. He doesn't miss a bit of evidence as important as that

6. SHE MADE NO OUTCRY. Although she was first attacked within five feet of a double house, less than block from the trolley terminal at Main and East Streets, (Photo No. S-3) and says she was carried from there across the street, up in the cemetery, and within a few yards of the rear of the apartment house on Hamilton Street and less than a block away from the very center of Bound Brook, she made no attempt to call for help. A reading of her testimony will disclose that she had many opportunities to do so.

It is inconceivable that a woman of her vigor would permit herself to be raped by five or six men, one after another, and not cry for help?

Her concealment of the rape for a considerable time, after she had opportunity to complain; the fact that the supposed crime was committed in a thickly populated center, and she made no outcry, when it was probable she might have been heard by others, "such circumstances carry a

strong presumption that her testimony is false." State vs. Lanto. 121 Atl. 139 at p. 140, a rape case.

Is it at all likely that these men, if they are as bad as they are painted, would have selected such a prominent spot for such a purpose, knowing as they did, an outcry would most surely bring assistance?

10 7. TIME is a most important factor in this case.

Did sufficient time elapse from the moment when the fight began and when she returned to the lunch wagon?

In this elapsed time, she claims a fight occurred, and after that she went up the street looking for her husband; that she was carried across the street, up into the cemetery, and there, five or six men, one after another, had connec-
20 tion with her; then they had some discussion about getting her home, and she ran away, went down to Main Street, talked with Huff, Bergen, and Novak, re-crossed the street and talked to the lady, walked two blocks with the lady and met Officer Bohler, talked to him, and with him went back to the lunch wagon. Allowing only five minutes for each man, the acts of intercourse alone, must have consumed twenty or thirty minutes. Her travelling back and forth and
30 several conversations must have consumed another fifteen or twenty minutes, so at the very least calculation, it is reasonable to assume an elapsed time of from forty to fifty minutes.

The three disinterested witnesses, Bergen, Huff and Novak, swear that not more than fifteen minutes elapsed between the time of the fight and the time she returned with Officer Bohler.

BERGEN. In the lunch wagon, not more
40 than fifteen minutes, (p. 217, l. 28). Again on p.

223 and 224. He doesn't think it was over fifteen minutes.

HUFF. Says he should judge about fifteen or twenty minutes, (p. 221 and 222).

NOVAK. Who was in the lunch wagon when the fight started and remained there all the time, says (p. 230, l. 30) arround ten or fifteen minutes, also on p. 233. 10

While these witnesses were called by the defense, we emphasize the fact that their estimate of time is corroborated by the State's own witness.

POTOSNEY.

This witness, on p. 25, says that it was about three-quarters of an hour between the time 20 when the fight started and when Mrs. Bodvenski returned to his house on East Second Street. He therefore, fixed the elapsed time between the beginning of the fight and her return to his house at about forty-five minutes. As we show in the next paragraph, fifteen or twenty minutes of those forty-five minutes were spent with her friend Sarbouke on the trip to Dr. Robinson and from his house back to Potosney's. This leaves from twenty-five to thirty minutes of time to be 30 accounted for, and in which period this crime must have been committed if it were committed at all. In this twenty-five or thirty minutes, the fight started in the lunch wagon. The men were put out and continued the fight across the street, then some of them continued the fight up East Street by the sign board, after the fight was over, Mary Bodvenski went up to the corner of East Street and East Second Street looking for her husband. How much time this consumed does 40

not appear, but it would not be exaggerating to say that it must have taken at least five minutes. Skipping for the present, the cemetery episode, after her escape she says she walked a half block down East Street to the lunch wagon, there she conversed with Novak and Bergen about taking her home, she crossed the street, talked with the witness, Mrs. Lampe, and with her walked two blocks down Main street to the railroad Station where she met Officer Bohler. She says she told him what had happened and he walked back two blocks with her to the lunch wagon. There she pointed out some of the men and after this, walked down Main street two and one-half blocks to Flammer's (Flemming in the record), the police headquarters, and was talking with Officer Bohler there when her friend Sarbouke came along and took her up to the Doctor's and thence to Potosney's house. It does not require much of a mathematition to figure out that her story is impossible, that there was not sufficient time unaccounted for, in which this crime could have been committed.

Twenty-five minutes would be very small estimate to allow for the time consumed in her travels about Bound Brook, her trips to the doctors, and conversations. This would leave about ten minutes of her time that is unaccounted for.

These estimates fit in precisely with the estimates of time of all the witnesses and coincide with the estimates of Potosney and Buggi, her friends.

SAM SARBOUKE.

On p. 33, this witness says that it took them about fifteen or twenty minutes to go from the Police Station on Main Street up to Dr. Robinson's house where they tried to induce Dr. Robinson to come to Potosney, and then to go from

there to Potosney's house. We deduct but fifteen minutes from Potosney's estimate of three-quarters of an hour as above stated.

PAUL BUGGI.

He bears out the other witnesses that the fight began about five minutes to three; (p. 128, l. 32). He also says that the woman came to his house at about twenty minutes to four and this substantiates Potosney's estimate of three-quarters of an hour of elapsed time between the beginning of the fight and when she returned to his house.

When it is considered that there is not a scintilla of corroboration of this woman's story, this question of elapsed time is of the utmost importance, and we believe it to be worthy of careful study, for if our calculations be true it shatters the State's case against these boys.

INCONSISTENCIES IN MARY BODVENSKI'S TESTIMONY

8. We point to the following:

On p. 63, l. 30 she says she told her husband that morning when they reached home. On p. 84 in telling about what took place at Potosney's house when her husband was present, she says at (l. 25) that Policemen James Gobel and Charles Bohler came to the house and at (l. 35) she says: that she did not tell Gobel what occurred in the grave yard but that Charlie (Bohler) told Gobel right away.

"Q. Charlie told Gobel in Potosney's house
A. Yes.

Q. And you heard him tell him?
A. Yes.

Q. That these men had had you up in the cemetery and had connection?
A. Yes and Sam Sarbouke said what kind of Policeman are you."

Officer Gobel says at p. 240 that he was in Potosney's house when Mrs. Bodvenski came in, making an investigation of the fight. That he did not talk with Mrs. Bodvenski directly; that she kept talking to her husband; that she did not make any complaint about having been dragged up into the cemetery, and that he and Officer Bohler were both in uniform; and at l. 35, that during all the time he was there in the house he heard no complaint of her having been raped. And on p. 247, l. 12, he says that she and her husband had quite a conversation. They were talking to each other in English, and he was asked (l. 32), "Q. Bohler told you so? A. Not at that time." and on p. 248, (relating to another question,) he says, that he would have heard it if it were spoken, because it was a small room and Bodvenski was standing up and the woman was sitting.

This testimony shows that the husband was right in the small room with the two officers at the time when Mrs. Bodvenski claims Officer Bohler told Officer Gobel about it. If that were true, then why should she tell her husband about it again the next morning when he must have heard Bohler tell Gobel? Certainly both of her statements cannot be true. Either Bohler did not tell Gobel or else her husband learned of the assault when he was in the room with Policemen.

9. MOTIVE.

Motive is always hard to prove. But the unchallenged testimony of James Mannon at p. 237 is illuminating. Although not brought home directly to the complaining witness, it was her husband who was trying to extort money from Mannon. Bodvenski was in court but not called, why?

It will be noticed that all through her testimony she lays special stress upon the names of Marty Mannon and Dutch Fuer, the two sources from which money might have been obtained. It is not hard to ascribe a motive to this woman, who with unblushing effrontery admits having pleaded guilty to bootlegging (p. 87, l. 25) and to having been in trouble (p. 256, l. 4) over fights. It is unnecessary to comment upon the class of people who engage in bootlegging.

10. "FRAME UPS," are hard to detect. But we believe the evidence regarding the comb is ample and sufficient to arouse suspicion. The comb was not "found" in the cemetery the next morning, but was "planted" there by complaining witness. The next morning, she says; (p. 63, l. 35) "my husband went (to the cemetery) first with Sam Sarbouke and policeman, but they did not find anything and then came after me." She went back with them, (p. 64) around half-past nine, and SHE "found" the comb.

Sam Sarbouke says (p. 93 and 94). He went to the cemetery with the Officer and Bodvenski and searched all over, and found nothing. He went back again the second time with her, and (p. 93, l. 40) "she says to me, I just found the comb." On p. 94, l. 15, he says, he and Gobel looked over the same ground, went all over the ground, made a thorough search, but they found nothing. Officer Gobel says (p. 241) he went to cemetery the next morning with Sarbouke and

Mr. Bodvenski to look for the pocket book. He made a thorough search but they found nothing. Surely, if the comb had been there, they would have found it.

LAST.

We have made no mention of the testimony of the defendants, of their emphatic denial and their plausible explanations of their movements during the evning. We believe that the testimony of the State's witnesses and the other disinterested witnesses referred to, sufficient to demonstrate that the Jury drifted far far away from the evidence in this case. It might be well however, to direct the Court's attention to the testimony of Russell Ball, the night watchman at Bolmer's garage. He seems to be not only disinterested but perfectly honest. If his story can be believed, and there seems to be no reason why it should not be, he satisfactorily accounts for Mannon's time while he was away from the lunch wagon. In other words, Ball places Mannon in Bolmer's garage with him, at the very time when the complaining witness says he was in the cemetery with her. This, taken in connection with the other highlights of the testimony that have been discussed, strengthens the conviction that Mannon could not have been guilty of the crime charged.

We feel sure that a calm and delibrate consideration of these points which we have pointed out will lead to the conclusion that there is a very grave doubt as to their guilt, and that the jury was unduly swayed by the atmosphere of the Court room, passion and prejudice.

We respectfully submit, that although the facts are somewhat different, the reasoning of

the Court in the case of State vs. Lanto above referred to, and which has since been affirmed by the Court of Errors, applies with equal force to this case, and that, this Court should exercise its powers under the Statute above referred to, and grant a new trial.

Respectfully submitted,
FREDERICK A. POPE,
Counsel of Defendants.

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COURT OF ERRORS AND APPEALS

THE STATE, Defendant in Error, vs. THOMAS FUER, Et als., Plaintiffs in Error.	INDICTMENT FOR RAPE IN ERROR.

BRIEF OF W. S. ANGLEMAN FOR PLAINTIFFS IN ERROR

An indictment for rape was found in Somerset County against six young men. At the trial an acquittal was directed as to two for failure of the complaining witness to identify them. There was a conviction as to the others, one practically but a boy, being only seventeen years of age, and a sentence of from seven to thirty years was imposed. On Error the Supreme Court affirmed (2 N. J. Adv. Rep. Mo. 46, Miscl. Rep. 1035).

I did not take part in the trial nor in the argument in the Supreme Court, but a most careful reading and consideration of the testimony convinces me that there is an outstanding feature of the case which is entitled to the thoughtful attention of this Court, not only on account of its effect upon this case, which is vital, but also for

its effect on other cases which may be similarly circumstanced.

The trial lasted three days and the testimony takes up 239 pages of the Case (pages 18-257), the greater portion of which, probably three-fourths, is taken up with an account of a free-for-all fight starting in a lunch car and carried on outside. This fight preceded the rape charged and had no connection whatever with it. It was
10 not in any sense a part of the res gestae of the crime being tried. The Prosecutor in his brief unconsciously admits this when he says (p. 2, lines 22, etc.), "The real history of the case **perhaps** starts in the lunch room." **The testimony of three witnesses to this fight (Potosney, Sarbouke and Warner, Case, pp. 18-40)** preceeded the testimony of the complaining witness, and the testimony of the complaining witness as to the alleged crime itself does not begin until she has also
20 testified about the fight, thus endeavoring to connect with the fight testimony her story of the alleged crime. The res guestae really starts at p. 46, line 35 of her testimony. Taking out her entire testimony (57 pages), she was recalled twice, and the few lines devoted to denials by the defendants of participation in the alleged crime, and we have a record of 239 pages of testimony about only one-fourth of which is devoted to the crime under consideration and the balance to another
30 crime (mutual fighting), of which the defendants did not stand charged. The resultant effect, if not the evident purpose of this fight testimony was to impress on the jury the general rowdyism and lawlessness of the defendants. As the defendants admitted being present at the fight, and some as being actual participants therein, and as there was nothing in the Court's charge about disregarding the testimony of the fight itself on the question of the defendants guilt of the charge on
40 which they were being tried, the manifest in-

justice to the defendants in this situation is apparent. It is most strongly urged that this of itself is sufficient under the statute to set aside the conviction and grant a new trial under instructions which would prevent a repetition of the error. If this were a civil trial resulting in a substantial verdict for the complaining witness and her husband, would there not be a new trial granted?

If it is said that this fight was bound to come out in the testimony in any event, the answer then is that it has no place in the forefront of the picture and its placing there by the deliberate act of the prosecution was prejudicial to that fair trial to which all defendants are entitled. If it came out later, its outcroppings would be curtailed and would be merely incidental to the real subject of investigation, namely the rape charge.

This case presents a different situation from that presented in the Deliso and Lamble cases.

State vs. Deliso, 75 N. J. L. 808, 816, 817.
((Errors and Appeals, 1907, Garrison, J.).
Lamble vs. State, 96 N. J. L. 231, 237.
(Errors and Appeals, 1921, Black, J.)

That this fight testimony must have had considerable effect on the jury we have but to consider the condition of the State's case without it. The indictment was for rape, but the testimony lacked all the usual indicia to which we are accustomed to look for the truth of such an accusation:

1. There was no outcry and confessedly no attempt at one, although the crime was claimed to have been committed in the heart of a good-sized town.

2. There was no struggle, nor resistance of any kind.

3. There was no disarrangement of clothing or muddy or wet clothing, although the time was in March and the ground was wet.

4. There was no complaint of rape made until next morning, although complaining witness saw two policemen immediately after and told them about the fight.

5. There was no line-up for complainant to identify her assailants, although she was not acquainted with them. Instead she was told to go to the Court House where defendants were arraigned, so as to know them at the trial. She went veiled. One defendant who sat in the audience she could not identify at the trial.

QUERY—If there had been a line-up could she have identified them?

6. There were a number of people in and about the streets at the time.

7. No corroboration of complaining witness of any kind. Torn drawers not preserved or produced at trial.

8. The probabilities not in line with the accusation.

9. The night was not dark; it was a light, moonlight night.

Other striking features are:

1. Husband of complaining witness was not called, although it was testified that he tried to extort money to settle the case and had been re-

pulsed (Case pp. 237-235).

2. Complaining witness had been indicted and had pleaded guilty to bootlegging (Case p. 87, lines 25-26).

3. Complaining witness carried a "big roll" with her that night. (Case, p. 85, lines 31-36).

4. Complaining witness had been in fights before. (Case, p. 256, lines 2-4). 10

5. Complaining witness could take care of herself. (Case, p. 255, lines 30-40).

That portion of the charge treating of reasonable doubt could easily be thought by a juryman to relate exclusively to the proof produced by the State. At the best, it is somewhat contradictory and thus subject to objection. (Case p. 263, lines 19-23, 30-33). 20

State vs. Sandt, 95 N. J. L. 49, 50, 51.
(Supreme Court, 1920, Bergen, J.)
State vs. Sahazian, 98, N. J. L. 430, 431.
(Supreme Court, 1922, Katzenback, J.)

It is very respectfully submitted that the conviction should be set aside and a new trial granted.

W. S. ANGLEMAN, 30
Counsel for Plaintiffs in Error.

January Tern, 1925.


CAPITOL
MEAT
MARKET
LAUNDRY
SHOE REPAIRING
DELICIO
Coca-Cola
SPEESH

EXHIBIT S. 1.

EXHIBIT S. 2.


SUPREME AUTO OIL
Leaves Less Carbon
BREADS
NEW
STEAM SHOP'S
CAPITOL MEAT MARKET
SHOE REPAIRING
SHOE SHINING PARLOR

EXHIBIT S. 3.

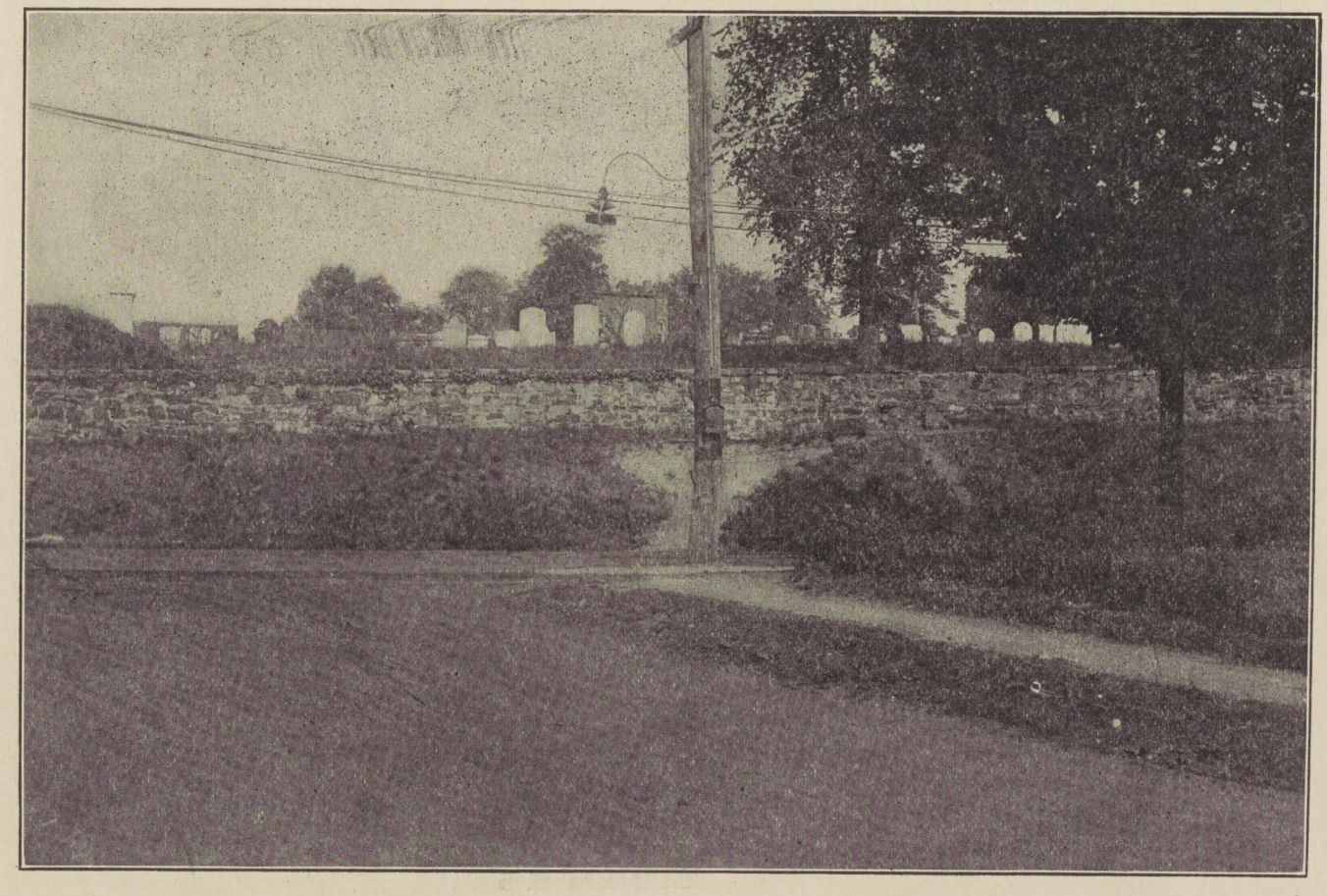

EXHIBIT S. 4.

EXHIBIT S. 5

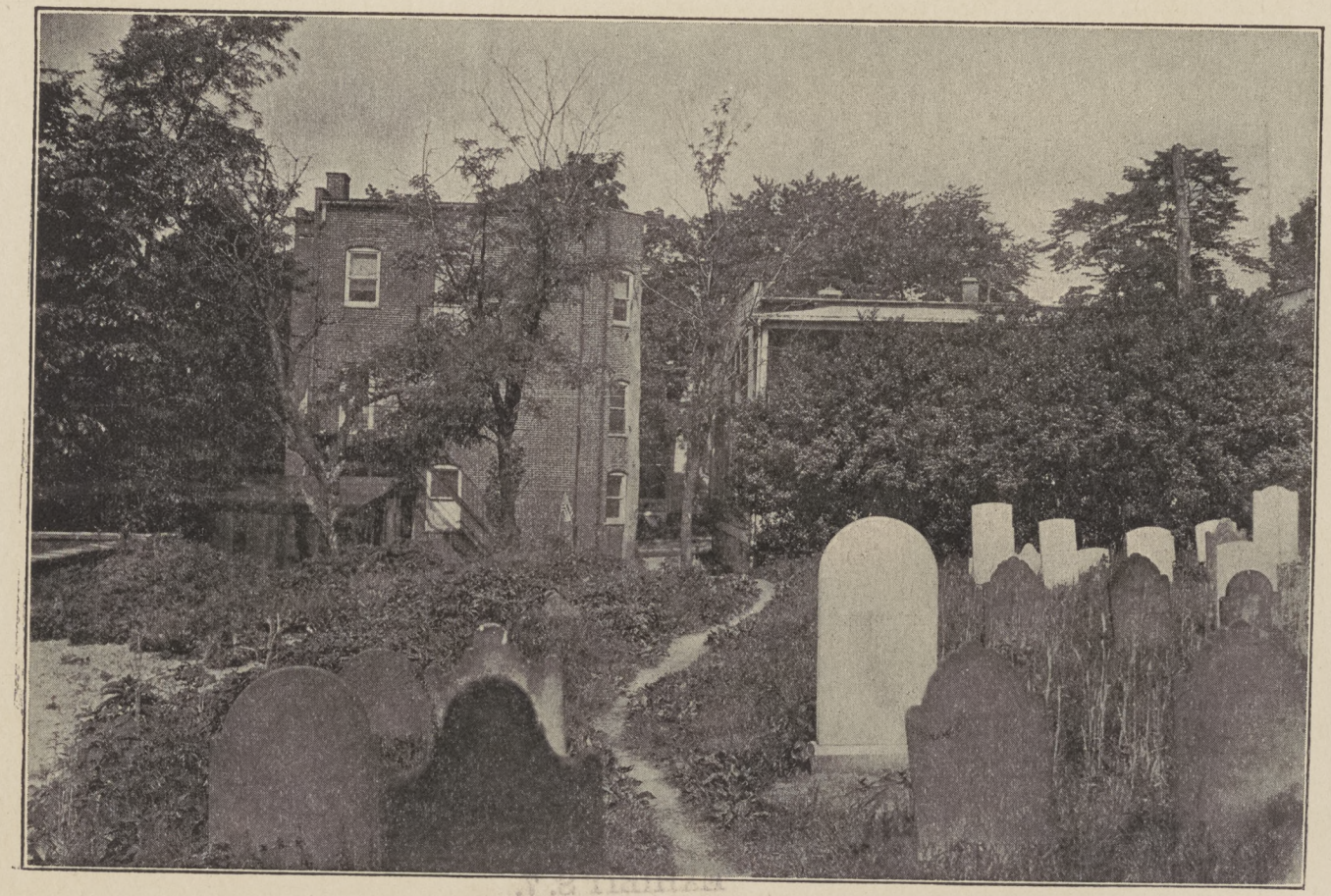

EXHIBIT S. 6

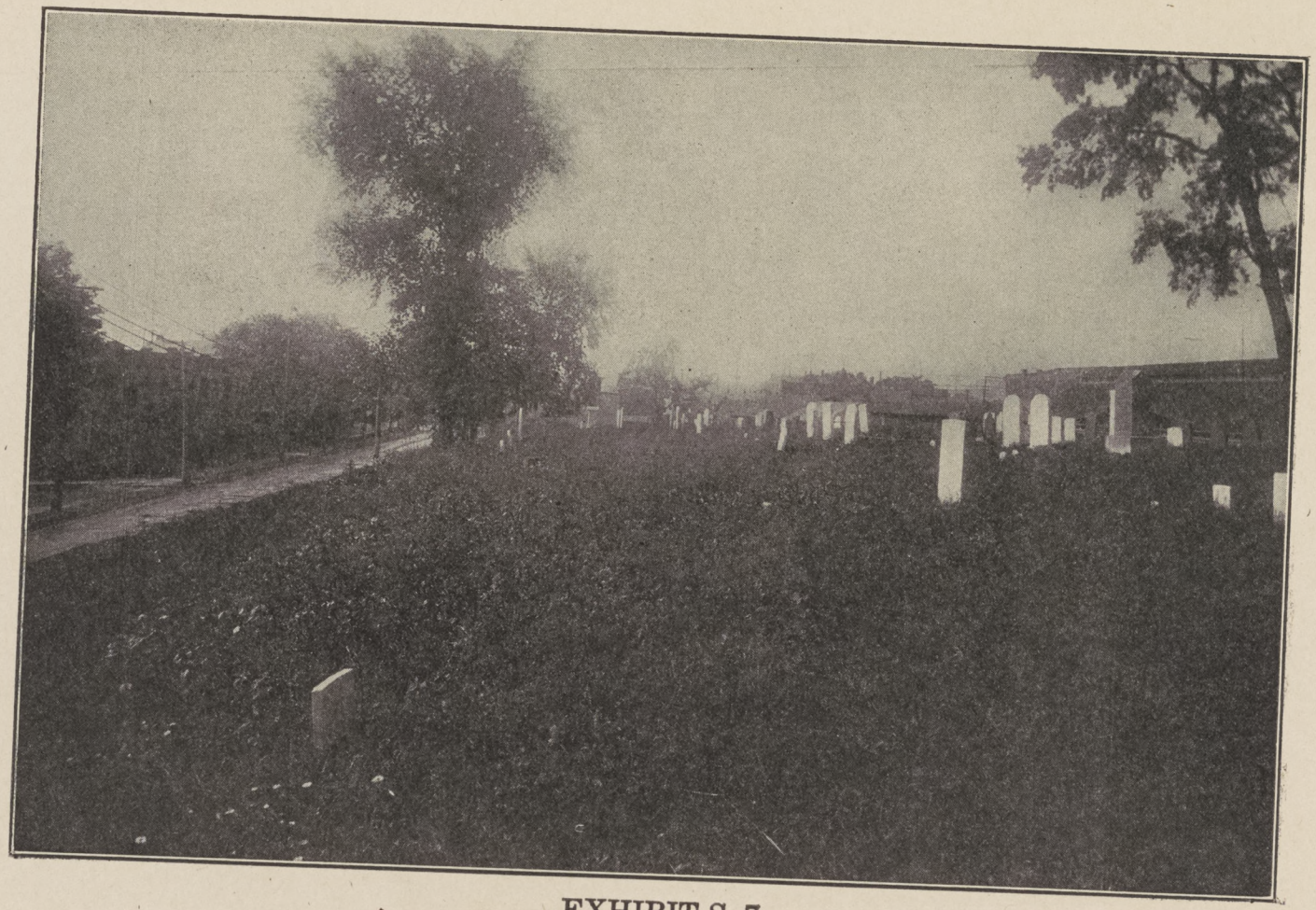

EXHIBIT S. 7.

INDEX

THE STATE OF NEW JERSEY TO THE JUSTICES OF OUR SUPREME COURT OF JUDICATURE:

(L. S.)

10

Because in the record and proceedings, and also in giving of judgment and affirming of judgment, upon a certain indictment against Thomas Fuer, alias "Dutch Fuer, alias Thomas Pondolph and Martin Mannion, and Duci DeMatto and Victor de Ghetto and Louis Farrano, late of the Borough of Bound Brook in the County of Somerset, on the 5th day of March, 1923, in and upon one Mari Bodvenski, a woman an assault did make, 20 and her, the said Mari Bodvenski, then and there forcibly and against her will feloniously did ravish and carnally know.

Pro ut the said indictment whereof, they have been convicted, and are thereof convicted by a certain jury of the county, taken between the State of New Jersey and said Thomas Fuer, alias "Dutch Fuer, alias Thomas Pondolph, Martin Mannion, Duci DeMatto and Louis Farrano, as it is said, manifest error hath intervened to the 30 great damage of the said Thomas Fuer, alias "Dutch Fuer, alias Thomas Pondolph, Martin Mannion, Duci De Matto and Louis Farrano, as from their complaint we have received information, we be willing that the error, if any thereby, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be thereupon given, then you distinctly and openly send under your seal the record and proceedings 40 aforesaid, and all things concerning the same to

our judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton on the 18th day of November instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what or right, and according to the laws and customs of the State of New Jersey ought to be done.

Witness Hon. Edwin R. Walker, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid the thirty-first day of October in the year of our Lord One Thousand Nine Hundred and Twenty-four.

H. J. MANN,
Clerk.

FRED'K A. POPE,
Attorney.

10

RETURN

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

20

WM. G. GUMMERE,
C. J.

30

40

THE STATE OF NEW JERSEY
Defendant in Error,

vs.

THOMAS FUER, Et Al.,
Plaintiffs in Error.

On Error
Order of
Affirmance and
Remittitur.

10

This cause having been duly argued before this Court at the May Term, A. D. 1924, by A. M. Beekman, Prosecutor of the Pleas of the County of Somerset, Counsel for the State of New Jersey, and F. A. Pope, Counsel for the Plaintiffs in Error, and the Court having considered the same and having examined the records and proceedings of the Somerset Quarter Sessions in the said cause, and finding no error therein.

20

It is hereby Ordered and Adjudged that the judgment of the Somerset Quarter Sessions Court in the above entitled cause be and the same is hereby affirmed with costs;

And it is further Ordered that the record in said cause be forthwith remitted to the said Somerset Quarter Sessions Court there to be proceeded with according to law and the practice of said Court.

Entered October 30, 1924.

30

On motion of

A. M. BEEKMAN,
Prosecutor of the Pleas,
Attorney for Defendant in Error.

40

NEW JERSEY COURT OF ERRORS AND APPEALS

---

10 THE STATE,

Defendant in Error,

vs.

THOMAS FUER, et als

Plaintiff in Error.

In Error
Assignment of
Errors.

20 And now comes the said Thomas Fuer, Martin Mannon, Duci De Matto and Louis Farrano, by Fred'k A. Pope, their Attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of judgment aforesaid, there is manifest error in this to wit:

1. There is error in this, that the said Court at the said trial, refused to direct a verdict of not
30 guilty as to the defendants Farrano and Nittoli at the close of the State's case, because there was not sufficient evidence to warrant the trial court in sending the same to the Jury.

2. There is error in this, that the said Court at the said trial, at the conclusion of the whole case, refused to direct a verdict of not guilty as to the defendants DeMatto and Farrano, because there was not sufficient evidence to warrant the
40 trial court in sending the same to the Jury.

3. There is error in this, that the said Court at the said trial, after the trial and before sentence refused to arrest the judgment.

4. There is error in this, that the said Court at the said trial, after sentence refused to grant a new trial upon the ground that the verdict was contrary to the clear weight of evidence.

5. There is error in this, that the said Court at the said trial, charged the jury as follows: 10

"The burden of proof is upon the prosecution, and if upon such proof there be a reasonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty."

6. There is error in this, that the said Court at the said trial, refused to charge the jury as requested as follows:

"2. You are further instructed that the charge of rape, is in its very nature, a most heinous one, and where the circumstances are as claimed in this case most revolting, likely to create very strong prejudice against the accused. You should beware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor." 20 30

7. The said judgment should be reversed and a new trial granted in accordance with the provisions of Chapter 349 of the laws of 1921, 40

because it appears from a consideration of the entire evidence that such verdict of guilty was against the weight of the evidence.

8. There is also error in this, that the said New Jersey Supreme Court affirmed the judgment of the trial Court whereas it should have reversed the same.

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FRED'K A. POPE,
Att'y of Plaintiff's in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS

10

THE STATE,
Defendant in Error,

vs.

THOMAS FUER, et als.,
Plaintiffs in Error.

Specification of Causes.

An now comes the defendants, Thomas Fuer, Martin Mannon, Duci DeMatto and Louis Farrano, by Fred'k A. Pope, their Attorney, and say that in the record and proceedings aforesaid there is manifest error, and that said judgment should be reversed, and specifies the following cause in said record relied upon for relief and reversal of the judgment aforesaid.

20

1. Because the said Court before whom the said cause was tried, at and upon the trial of the issue joined therein, refused to direct a verdict of not guilty as to the defendants Farrano and Nittoli at the close of the State's case, because there was not sufficient evidence to warrant the trial court in sending the same to the Jury.

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2. Because the said Court before whom the said cause was tried, at and upon the trial of issue of the issue jointed therein, at the conclusion of the whole case, refused to direct a verdict of not guilty as to the defendants DeMatto and Far-

40

rano. becaus there was not sufficient evidence to warrant the trial court in sending the same to the Jury.

3. Becaus the said Court before whom the said cause was tried, after the trial and before sentence refused to arrest the judgment, although duly moved so to do.

10 4. Because the said Court before whom the said cause was tried, after sentence refused to grant a new trial upon the ground that the verdict was contrary to the clear weight of evidence, although duly moved so to do.

5. Because the said Court before whom the cause was tried charged the jury as follows:

"The burden of proof is upon the prosecution, and if upon such proof there be a reasonable
20 doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty."

which said charge was prejudicial to the defendants.

6. Because the said Court before whom the said cause was tried refused to charge the jury as requested as follows:

"2. You are further instructed that the
30 charge of rape, is in its very nature, a most henous one, and where the circumstances are as claimed in this case most revolting, likely to create very strong prejudice against the accused. You should beware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disaprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most care-
40 fully all of the evidence and instructions of the

court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor."

7. Said judgment should be reversed and a trial granted in accordance with the provisions of Chapter 349 of the laws of 1921 because it appears from a consideration of the entire evidence that such verdict of guilty was against the weight of the evidence.

8. Because the New Jersey Supreme Court in the giving of judgment affirmed the judgment of the trial Court whereas it should have reversed the same.

FRED'K A. POPE,
Attorney of Plaintiff in Error.

NEW JERSEY SUPREME COURT

MAY TERM, 1924

---

10 THE STATE,
Defendant in Error,

vs.

THOMAS FUER, et als.,
Plaintiffs in Error.

OPINION

Argued May 6, 1924.

20

Decided October 7, 1924.

ERROR TO SOMERSET QUARTER SESSION

Before Gummere, C. J., and Justices Parker and Katzenbach.

For the Plaintiffs in Error, Frederick A. Pope.

30 For the Defendant in Error, A. M. Beekman.

PER CURIAM

This was an indictment for rape against six defendants two of whom were acquitted by direction of the Court, and the other four were convicted by the jury. The story of the alleged crime, in brief, is that after a quarrel and fight
40 between the defendants and some other people in

a lunch wagon at Bound Brook sometime after midnight, the complaining witness, a Mrs. Bodvenski, a married woman living with her husband, went to find her husband who she said was at a private house some two blocks away, and at the corner leading to this house was seized by the several defendants, dragged across the street into an old cemetery over a retaining wall some three or four feet high and, at a somewhat secluded place in the cemetery, was ravished by the entire party. The principal oral argument and the bulk of the briefs of plaintiff in error are devoted to the proposition that the verdict was against the weight of evidence. The other points made seem to be as follows: First, that the Court erred in refusing to direct an acquittal as to the defendant Farrano. There was in our judgment a plain case for the jury as to his participation in the affair, and it would have been error to direct an acquittal.

The next point, is that in charging on reasonable doubt, the Court erred in saying to the jury. "The burden of proof is upon the prosecution and if upon such proof there be a reasonable doubt remaining, the accused are entitled to the benefit of the doubt. That is your duty." The argument made is that this amounts to "limiting the application of reasonable doubt to the proofs adduced on behalf of the State. A reasonable doubt may be engendered by evidence produced by the defendants, or it may result from a lack of proof."

We think the fallacy of this proposition lies in its omission of other language used by the judge directly in connection with it and which makes the whole matter perfectly clear. The following is the complete instruction of the Court on this subject.

"The burden of proof in this case, as in every other case, is upon the state to prove to your sat-

isfaction beyond a reasonable doubt of the defendant's guilt.

> Reasonable doubt is one of the best definitions I have been able to find, is defined as follows: 'It is that state of the the case which after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.' The burden of proof is upon the prosecution, and if upon such proof there be a reasonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty.
>
> If, in this case, you are satisfied beyond such a reasonable doubt as I have defined, that these men, or any one of these men are guilty of the crime as charged by the State, it would be your duty, under the law, to find them guilty as charged. If, on the other hand, after a consideration of all the evidence you do not believe any of these men or any one did commit the crime as charged or if there is a reasonable doubt in your minds of any one or all of the defendants having committed the crime, you are bound, under the law, to give the defendants the benefit of that doubt and to acquit."

We think these instructions should have made it perfectly clear to the jury that in passing on the question of reasonable doubt they were to take into consideration all the evidence in the case, and that the context indicates that the words "burden of proof" and "such proof" related to the entire proof and not merely to that adduced on the part of the State. There is, therefore, as we think, nothing in this point.

The next point is that the Court erred in refusing to charge the second request of the defendant, about half a page in length, and embracing a considerable amount of comment plainly intended to influence the jury on an acquittal. Requests of this kind, as our courts have frequently said, are often entirely proper to be charged if the Court in its discretion thinks it wise to do so, but it is certainly not erroneous to refuse to charge or fail to charge in language commenting upon the character of the crime and the position of the defendant, calculated to impress the jury with the idea that the Court is working for an acquittal.

Finally, that the verdict was against the weight of evidence. We have read the evidence with care and, applying the rule laid down in State v. Karpowitz, 120 Atlantic, Page 40, we are unable to see that the evidence for the defense predominated in any such sense as to require us to set aside the verdict of the jury in this case. A good deal of the argument is devoted to a sort of computation of the time required for six men (or four men, as indicated by the conviction)) to leave the lunch wagon, waylay, seize and ravish a woman and return to the lunch wagon. All this was fully laid before the jury and they were as well able to deal with it as we are. They had the testimony of the woman herself, who was pregnant at the time and was made very ill and underwent an involuntary abortion, and suffered great loss of blood from a persistent discharge from the womb, the complaint of the matter at once, at least, to one of the police officers, and in the morning to the magistrate, and who definitely identified in Court the men who she says committed the crime. There seems to be no question of the general respectability of the complaining witness, and it seems inconveitable that she should have made so serious a charge against

these men unless there was a good basis for it. This was evidently the view taken by the jury, and we do not feel disposed to set aside their finding in the premises.

The judgment is, therefore, affirmed.

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INDEX

Writ of Error

NEW JERSEY | ss:

TO FRANK L. CLEARY, Judge of the Court of Quarter Sessions of the County of Somerset: 10

Because in the record and proceedings, and also in giving of judgement upon a certain indictment against Thomas Fuer, alias "Dutch" Fuer, alias Thomas Pondolph and Martin Mannon, and Duci DeMatto and Victor de Ghetto and Louis Farrano, late of the Borough of Bound Brook in the County of Somerset, on the 5th day of March, 1923, in and upon one Mari Bodvenski, a woman an assault did make, and her, the said Mari Bodvenski, then and there forcibly and 20 against her will feloniously did ravish and carnally know.

Pro ut the said indictment whereof, before you, they have been indicted, and are thereof convicted by a certain jury of the county, taken between the State of New Jersey and said Thomas Fuer, alias "Dutch" Fuer, alias Thomas Pondolph, Martin Mannon, Duci DeMatto and Louis Farrano, as it is said, manifest error hath intervened to the great damage of the said Thomas Fuer alias "Dutch" Fuer, alias Thomas Pondolph, Martin Mannon, Duci DeMatto and Louis Farrano, as from their complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to them, the said Thomas Fuer, alias "Dutch" Fuer, alias Thomas Pondolph, Martin Mannon, Duci DeMatto and Louis Farrano command you that if judgement be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the 40

same to our Justice of our Supreme Court of the State of New Jersey, on the eighth day of August, next and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, William S. Gummere, Esquire, our Chief Justice, at Trenton aforesaid, the Nineteenth day of July, Nineteen Hundred and Twenty-three.

10 EDWARD J. KELLEHER,
Clerk.

F. A. POPE,
Attorney.

RETURN TO WRIT OF ERROR

20

The answer of Frank L. Cleary, Esquire, Judge of the Court of Quarter Sessions holden in and for the County of Somerset, and within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, New Jersey, the day and year within contained, in a certain schedule to this writ annexed, as within I am commanded.

30 FRANK L. CLEARY,
Judge.

40

SOMERSET OYER AND TERMINER

April Term, A. D., 1923.

Somerset County, ss.:

The Grand Inquest for the State of New Jersey in and for the body of the County of Somerset, upon their respective oath, present, that Thomas Fuer, alias "Dutch" Fuer, alias Thomas Pondolph and Martin Mannon, and Duci DeMatto, and Anthony Nattoli, alias "Tony" Nattoli, alias Charles Spuches and Victor DeGhetto and Louis Farrano, late of the Borough of Bound Brook in the said County of Somerset, on the Fifth day of March in the year of our Lord, one thousand nine hundred and twenty-three, with force and arms, at the Borough of Bound Brook, aforesaid, in the County of Somerset aforesaid and within the jurisdiction of this Court, in and upon one Mari Bodvenski, a woman, violently and feloniously did make an assault, and her the said Mari Bodvenski, then and there violently, forcibly and against her will, feloniously did ravish and carnally abuse and carnally know.

May 18, 1923

SOMERSET COUNTY QUARTER SESSIONS

BEFORE FRANK L. CLEARY, ESQ. JUDGE.

THE STATE vs. THOMAS FUER, alias "Dutch" Fuer, alias Thomas Pondolph, MARTIN MANNON DUCCI DE MATTO, ANTHONY NATTOLI, alias "Tony" Nattoli, alias Charlie Spuches, VICTOR DE GHETTO and LOUIS FARRANO.	INDICTMENT FOR RAPE

10

All prisoners enter a plea of not guilty.

20

Bail fixed at $5,000 each. Trial set down for June 4th next.

30

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June 27, 1923.

SOMERSET COUNTY QUARTER SESSIONS

BEFORE FRANK L. CLEARY, ESQ. JUDGE.

THE STATE
vs.
THOMAS FUER, alias "Dutch" Fuer, alias Thomas Pondolph,
MARTIN MANNON
DUCCI DE MATTO,
ANTHONY NATTOLI, alias "Tony" Nattoli, alias Charlie Spuches,
VICTOR DE GHETTO and LOUIS FARRANO.

INDICTMENT FOR RAPE

10

HON. A. M. BEEKMAN,
Atty. for State

20

FRED'K A. POPE, ESQ.,
HON. F. A. McCULLOUGH AND
WM. F. VOSSELLER, ESQ.,
Attys. for Def'ts.

JURY

1	Martin Way	7	Wm. J. Hardgrove
2	William Jackson	8	Thomas Lamerson
3	Charles Dorenger	9	Frank R. Hageman
4	Edward J. Gaub	10	Alvah N. Amerman
5	Chester Dunn	11	Joseph P. Melick
6	John Ebel	12	J. Floyd Luce

30

On motion of the Prosecutor the Indictment amended by striking out the words "And her the said Mari Bodvenski, did then and there beat, wound and ill-treat."

40

WITNESSES FOR STATE

1 Anthony L. Petochney
2 Sam Sarbouk
3 George Warner
4 Mari Bodvenski
Sam Sarbouk
5 Dr. Emerson Hird
6 Joseph Wendell
10 7 Charles Bohler
8 Bertha Lampe
9 Mary Jensen
10 Paul Bogie

Adjourned to June 28 at 10 A. M.

---

20 June 28:

11 George D. Totten
Mari Bodvenski
George D. Totten

State rests.

Motion made by Counsel for defendants for a direction of a verdict of not guilty as to Victor DeGhetto,
30 Louis Farrano, and Anthony Nattoli. Refused.

WITNESSES FOR DEFENDANTS

Paul Bogie
1 Thomas Fuer
2 Ducci DeMatto
3 Louis Farrano
4 Martin Mannon
5 Frank Janusce
40 6 Russell Ball

7 Anthony Nattoli
8 Victor DeGhetto
10 William Huff
John L. Bergen
11 Antonio Aletta
12 Stanley Novak

Adjourned to June 29th, at 10 A. M.

June 29:

13 May Mannon
14 James Mannon
15 James Goble

Defendants rest.

EN-REBUTTAL:

16 Oscar Hutchinson
Mari Bodvenski
Sam Sarbouk

Case Closed.

Motion made for a direction of a verdict as to Anthony Nattoli, Ducci DeMatto, Victor DeGhetto and Louis Farrano.

After some discussion the Court ordered a verdict of not guilty entered as to Anthony Nattoli and Victor DeGhetto.

After hearing the evidence, the argument of counsel and the charge of the Court, the jury retired at 3:30 P. M. in charge of Constable Oscar P. Dow, who was sworn to attend them to consider of their verdict. After being out a short time, they returned into Court, and by their Foreman, rendered a verdict of guilty as charged against Thomas Fuer, Martin Mannon, Ducci DeMatto and Louis Farrano, and so say they all.

July 20, 1923.

SOMERSET COUNTY QUARTER SESSIONS

BEFORE FRANK L. CLEARY, ESQ. JUDGE.

THE STATE vs. THOMAS FUER, alias "Dutch" Fuer, alias Thomas Pondolph, MARTIN MANNON DUCCI DE MATTO, ANTHONY NATTOLI, alias "Tony" Nattoli, alias Charlie Spuches, VICTOR DE GHETTO and LOUIS FARRANO.	INDICTMENT FOR RAPE

10

PROSECUTOR moved for sentence.

20

Motion made by Frederick A. Pope, Esq., for arrest of judgment on the ground that the verdict of the Jury was manifestly contrary to the weight of evidence. Refused.

The Court ordered the prisoners to the bar that sentence be imposed, they being accordingly set to the bar, the Court do order and adjudge, that the prisoners Thomas Fuer, Martin Mannon, and Louis Farrano be each confined in the State Prison of this State at hard labor for a term of not less than seven nor more than thirty years, and from and after the expiration of this time until the costs of prosecution shall be paid.

30

Sentence, Ducci DeMatto, Rahway Reformatory.

Motion made for a new trial. Refused.

A Writ of Error then handed to the Court.

40

Accepted by the Court but referred back to defendant's Counsel for correction as to the name of one of the defendants.

SOMERSET COUNTY COURT OF QUARTER SESSIONS

Somerville, N. J., June 27th, 1923.

APPEARANCES:

WILLIAM F. VOSSELLER, ESQ.
10 appearing for Thomas Fuer.

FREDERICK A. POPE, ESQ.,
appearing for Martin Mannon and
Victor De Ghetto .

F. A. MC CULLOUGH, ESQ.,
appearing for Ducci De Matto,
Tony Nattoli, and
Louis Farrano.

20

AZARIAH M. BEEKMAN, ESQ.,
Prosecutor for the State.

A jury having been found satisfactory were duly sworn.

Mr. Beekman: I move to strike out of the indict-
30 ment the words, "there did beat, wound and ill-treat."

The Court: That particular wording in the indictment, as read, may be stricken out. The indictment now stands as an ordinary rape case.

It was also agreed and stipulated by counsel that all women be eliminated from the jury, and therefore the jury above sworn were composed of men only.

Thereupon Mr. Beekman, the Prosecutor opened the case to the jury on behalf of the State.

40

Mr. Beekman: I offer here, subject of course to such objections as counsel for the various defendants desire to make, seven various photographs, the main purpose of which is to familiarize the jury with the various locations involved in this case.

The Court: Are there any objections?

Mr. Vosseller: The only objection is that this crime occurred in March; now if the jury are instructed to take cognizance of the fact that conditions were different at the time the photographs were taken than at the time of this alleged crime was committed. 10

The Court: When were these photographs taken?

Mr. Beekman: Recently.

The Court: Well, the jury will understand. 20

Mr. Beekman: The only purpose is to show the location of fixed points. They have no bearing except that.

The Court: They may be marked, exhibits one to seven inclusive for the State.

Mr. Beekman: S-1 is a view of East Street in the direction of Bound Brook, looking north from a point south of the trolley track on Main Street. 30

S-2 is another view of East Street, looking north, taken from 190 feet north of the trolley track.

S-3 is taken from the same point as S-2 with the camera reversed the opposite direction, looking south instead of north. Looking toward Main Street.

S-4 is taken at a point about 25 feet east of East Street on East 2nd Street and looking westward.

S-5 is taken from a point in the graveyard looking south toward Main Street. Generally southeast 40

and includes within its prospective buildings located on East Street and the point where East 2nd Street joins East Street. Also buildings in the distance on Main Street.

S-6 is taken from a point a short distance east of what is known as the old First National Bank Building, looking westward from the graveyard and showing the rear of the First National Bank Building.

S-7 is taken from a northerly point in the graveyard, looking in a southerly direction, showing the juncture of East 2nd Street with East Street on the left, and on the right the lumber buildings of the L. D. Cook Company.

ANTHONY LOUIS POTOSNEY, sworn.

Direct Examination by Mr. Beekman.

Q. Potosney, where do you live? A. 526 East 2nd Street.

Q. And how far is your house east of East Street in the direction of Bound Brook? A. About three hundred feet.

Q. Do you know Marie Bodvenski? A. Yes sir, I do.

Q. Her husband? A. Yes sir.

Q. And how long had you lived in Bound Brook on March 4th, last? A. I lived there all my life.

Q. Yes, you were born there, were you? A. Yes.

Q. But had you been away? A. Yes.

Q. When did you come back? A. Discharged from the navy February 12th, and came out of the navy and I stayed home.

Q. Are you a married man? A. No sir.

Q. Where were you on March 4th? A. March 4th, I was over to Mrs. Bodvenski's house.

Q. And who else was there? A. Why a man there, Paul Buggie.

Q. Anybody else? A. Mr. Knapp from New Brunswick, and Mr. and Mrs. Bodvenski and Sam Sarbouke.

Q. What time did you leave there? A. I left there about, to my recollection, about nine-thirty.

Q. Where did you go? A. Went to New Brunswick.

Q. Who went with you? A. Mr. Knapp,, Mr. and Mrs. Bodvenski and Paul Buggie, Mr. Sarbouke and I.

Q. And what time did you come back from New Brunswick? A. Why. we arrived in Bodvenski's house out there about, pretty close to two o'clock, on Monday morning. 10

Q. How many composed the party then? A. The only one that was missing was Mr. Knapp.

Q. What had become of him? A. They brought him home. We stayed at his house a while.

Q. Did you actually go back to Bodvenski's house? A. Yes.

Q. And how long were you there? A. We didn't stay there long; just stayed outside the door in the street and Mr. Bodvenski wanted us to step in and have coffee and refreshment and I said not to bother, 20 we could stop in the lunch room and get coffee. We did not even go in the house.

Q. Whose car did you have? A. Mr. Sam Sarbouke's.

Q. What kind of a car was it? A. I don't know the name.

Q. Ford, or— A. No, I think it is a Chalmers; that's what it is.

Q. You got over to Bound Brook? A. Came right to Bound Brook. 30

Q. Where did you go? A. We stopped outside the lunch wagon and wanted to go in and Mrs. Bodvenski did not want to go in because she said it was only for men and I said, no, there's a ladies' parlor there.

Q. Well, you can't tell us what conversation took place. Did she finally go in with you? A. Yes.

Q. And who went in the lunch wagon? A. Mrs. Bodvenski, Mr. Bodvenski, Paul Buggi, Sam Sarbouke and I. 40

Q. What part of it did you go in? A. Ladies' Parlor.

Q. And did you see anyone else in there besides the members of your party? A. Not in the ladies' parlor.

Q. No, anywhere? A. I saw after someone passed a remark—

Q. You did not know who was in there until after this remark occurred? A. No sir.

10 Q. Tell what happened from that time on? A. We went in the ladies' parlor and had coffee and some fellow came in and asked Sam Sarbouke if he could borrow the car, and he said he wanted to go pick up a couple of pigs, he meant a couple of ladies. He wanted to borrow the car and said—

The Court: What was the reference to pigs?

The Witness: That's the way he passed it.
20 —He said, nothing doing and then he goes out in the men's parlor—

Q. Do you know who that was that came to the door? A. No sir. After he passed some remarks, foul language—

Q. Tell us what that was? A. Son-of-a-bitch and all that kind of bad words, and Paul Buggi said, watch yourself fellows, there's a lady in here, and some one in the party there says, she's no lady, she's nothing
30 but a street bum.

The Court: Who said that?

The Witness: I don't know; one of the men in the men's parlor.

Mr. Vosseller: Unless it is shown some one of these men said that—

40 The Court: I think it is highly objection-

able.

Mr. Vosseller: I move it be stricken out.

The Court: Yes, unless he can couple it up with the defendants.

Mr. Beekman: I thought he was going to say he recognized the man.

10

Q. Did you see these parties afterwards when you went in there? A. No sir.

Mr. Vosseller: I move that be all stricken out.

The Court: It may be stricken out.

Mr. Beekman: Wait a minute.

20

Q. Do you know any of the men brought in this? A. Yes.

Q. And who were there when you went in? A. I don't remember who the man was there, they was so turned around.

Q. When did you last say anything about that? A. I went in there, he was talking to no one in particular.

Q. You could see? A. I just went in there and he was talking to the bunch.

30

Q. What bunch? A. The men who was in there in the men's parlor.

Mr. Vosseller: I think this is all objectionable, it doesn't seem to be connected up in any way. I ask that this testimony all be stricken out regarding this mere incident of a conversation had between a man in the one side of the lunch room and a party on the other side.

40

The Court: Strike it out.

Q. How long have you lived in Bound Brook? A. All my life.

Q. Do you know Thomas Fuer? A. No sir.

Q. Do you know Martin Mannon? A. I heard talk about him.

Q. Do you know him when you see him? A. Yes.

Q. How long had you known him? A. I could not tell you that, just how long.

Q. Well, a week? A. Was before—about ten years.

Q. Do you know Ducci DeMatto? A. No sir.

Q. Tony Nattoli? A. No.

Q. And know Victor DeGhetto? A. No sir.

Q. Do you know Louis Farrano? A. I know him.

Q. Well, somebody out there made some remark; what did you do? A. I went inside the men's parlor and told them she was no street bum and no whore.

Mr. Vossellor: Object to that because it is not certain who this party was at all.

The Court: It may be stricken out, there has been no connection between the remarks and these defendants.

Mr. Vosseller: And the conversation he had with somebody that he doesn't know.

Q. Well, what happened in the other room when you got in there? A. I got talking there and told them not to swear like that, she's not what they called her, she's just a respectable married lady, and somebody hollered out and about four jumped on me.

Mr. Vosseller: Object to it unless he knows.

The Court: That's a question.

Q. Do you know who jumped on you? A. No sir.

Q. Did you see him afterwards? A. No sir.

Q. What became of you? A. Why, after they beat me up I did not see them.

Q. Well, where did you see them afterwards? A. They beat me up on Main Street and on the street right outside the lunch wagon and then they ran and I ran up East Street about a hundred and fifty feet against a sign there and fence and they started beating me again. 10

The Court: Who did?

The Witness: The party.

Mr. McCullough: Object and ask it be stricken out unless this witness can say who it was and connect these defendants with the party who beat him up.

20

Mr. Beekman: I ask the privilege of cross examining this witness. I don't want to say why.

Mr. Pope: Of course I object to that; the witness shows absolutely no hostility; in fact he shows a very great willingness to tell all he knows, a great deal that is not evidence in the case.

30

The Court: I don't see any evidence yet of the witness refusing to tell what he seems to know about it.

Mr. Beekman: I am in position to have knowledge where the Court isn't.

Q. Do you recognize the objects in picture S-3? I do.

Q. Well, what is S-3 a picture of? A. It's a pic- 40

ture of half the lunch wagon right to the end where I was beat up.

Q. Looking the way you were beat up,—

Mr. Vosseller: I object. I don't see what that has got to do with this case. He was beat up; now he has not connected it up, there's no knowledge of who did it or anything about it. These defendants are not connected in any way, shape or manner.

10

The Court: There isn't anything yet, but the State contends they are going to connect it up; I will entertain your motion to strike out if he does not connect it up.

Q. Put a mark on S-3 where you were beaten up along the fence? A. Here, about as far as this telegraph pole. I know I was against the fence by the telegraph pole.

20

Q. If you saw the men now who beat you up that night, would you recognize them? A. I think I can recognize one man.

Mr. McCullough: I object; that is what he thinks.

The Court: I will allow it to stand.

30

Q. Well, who was it? A. Louis Farrano, he came to the—

The Court: Point out your man.

(Witness indicates).

The Court: The end man?

The Witness: Yes.

40

Q. What did you say about the door? A. He was the one that came to the door and asked Sam Sarbouke for the car.

Q. Well, then, did you see this Louis Farrano in that lunch wagon that night? A. The only time I saw him was when he stuck his head in the ladies parlor and at that time I did not take notice of any other man.

Q. Why can't you say yes or no? Did you see him there that night? A. No sir.

Q. You didn't? Well, if you saw him when he stuck his head in the door, you saw him? A. I saw him then, yes. 10

Q. Have you any idea whether he was there when you were up against or alongside of the fence or not? A. No sir.

Q. Then you don't know who beat you up? A. No sir.

Q. Haven't any idea? A. No sir.

Q. Well, where did you go from there? A. I ran from Main Street to East Street. 20

Q. You told us that; where did you go from East Street? A. Went home.

Q. And how far is that from where you got beat up? A. Five hundred feet.

Q. Where was Mrs. Bodvenski when you saw her last? A. Before the fight the last time I saw her was in the lunch wagon.

Q. How soon did you see her again? A. When she came over to my house.

Q. And what time was that; how long after the fight? A. I could not tell you that, how long. 30

Q. Haven't you any idea whether it was five minutes, or half an hour or an hour and a half of two hours? A. Well, about three quarters of an hour after the fight started and she came down to the house.

Q. You remember you are under oath here?

Mr. McCullough: Object to that statement and ask that it be stricken out of the record.

40

The Court: Yes, I don't see the relevency of it. I think it should be stricken out. The jury will disregard it.

Mr. Beekman: Cross examine.

Cross Examination by Mr. Vosseller:

Q. What time did you arrive at the lunch wagon?
10 A Pretty close to two o'clock.

Q. Are you sure it was—it wasn't after two o'clock? A. I am not sure, no sir.

Q.And when these remarks were passed, do you know what time it was then? A. Shortly after we arrived in the ladies parlor.

Q. Well, had you had your coffee and sandwiches? A. Had my coffee and sandwiches.

Q. That took some time probably? A. Took about fifteen minutes, would not take much longer.

20 Q. And do you remember how soon after half past two it was at the time the row started? A. I could not till you the exact time, no sir.

Q. You are pretty sure it was after two o'clock? A. After two o'clock, yes sir.

Mr. Vosseller: That's all.

SAM SARBOUKE, sworn:

30 Direct Examination by Mr. Beekman:

Q. Sam, where do you live? A. South Bound Brook.

Q. Have you got an automobile? A. Yes.

Q. Did you go with Mrs. Bodvenski and her husband and Anthony Potosney to New Brunswick? A. Yes.

Q. What time did you get back? A. I presume—

40 Q. Do you know? A. Somewhere around two

o'clock.

Q. Did you come over to Bound Brook? A. Yes sir.

Q. What time did you get over there? A. Well, I guess it was a little bit after two.

Q. What did you do when you got over there? A. Stopped in to have some coffee and sandwiches and pie.

Q. Did you see any of the defendants in this case there? A. No sir. 10

Q. I mean when you came over there, while you were at the lunch room? A. No sir.

Q. And nobody spoke to you? A. Well, there was somebody spoke to me behind my back, but I did not look around.

Q. What did he say to you? A. Asked me—

Mr. Pope: Object to that until he identifies the person as one of the defendants in this case.

20

Q. Do you remember testifying before the Grand Jury? A. Yes.

Mr. Pope: Object to that question.

The Court: I will allow that part of it.

Q. Do you remember telling who he was that spoke to you and asked if he could have your automobile? 30

Mr. Pope: Object to.

The Court: Objection sustained.

Q. I want to know now, Sam, whether you testify now; I want to get you down right; that you saw none of these defendants to know them the night they were at the lunch wagon; on the morning of March 5th? Now, what do you say about that? A. Well, 40

I didn't turn around to see who they were.

Q. I did not ask you whether you turned around; you need not answer that way. Did you see them or didn't you? A. No sir.

Q. You had no idea then who it was that spoke to you? A. No sir.

Q. You didn't see Thomas Fuer there? A. No sir.

Q. You didn't see Martin Mannon there? A. No sir.

Q. You didn't see Ducci DeMatto there? A. No. sir.

Q. You didn't see Victor DeGhetto there? A. No. sir.

Q.And you didn't see Louis Farrano there? A. No. sir.

Q. Did you see them at all that night? A. Didn't see them, no sir.

Q. I mean that night or the morning of March 5th? A. No sir.

Q. Where was your car? A. Where?

Q. Where did you leave your car? A. Outside the lunch wagon.

Q. And did you see this fight? A. Well, I seen it when it was going on East Street; that's as far as I seen it.

Q. And did you see Potosney? A. I took him from East Street around to his home.

Q. Where did you take him from? A. About half way up East Street, one short block.

Q. How did you get up there? A. I walked up to see where the rest of the bunch was and I seen them going up that way and I seen them beating him up.

Q. Seen who beating him? A. The boys, I don't know which ones.

Q. Which boys? A. The ones that must have come out the lunch wagon.

Mr. Pope: Object to that.

Q. Do you know any of these defendants? A. No sir.

Q. Never did know them? A. No sir.

Q. How long have you lived in Bound Brook? A. Two years.

Q. And you don't know Thomas Fuer? A. No sir.

Q. You don't know Martin Mannon? A. No sir. 10

Q. You don't know Ducci DeMatto? A. No sir.

Q. You don't know Tony Nattoli? A. No. sir.

Q. And Victor DeGhetto? A. No. sir.

Q. And don't know Louis Farrano? A. No sir.

Q. Well, where was this bunch when you took Potosney home? A. Well,—

Mr. Vosseller: Object to that. "This bunch" don't mean anything.

20

Mr. Beekman: That's what he describes them.

The Court: I sustain it at this time.

Q. What were you going to say? A. I saw whatever fellows came down in the park but I could not recognize them. Then I took Potosney home from there.

Q. Was the electric lights out in Bound Brook that night? A. I think they got very few lights 30 on that street.

Q. I did not ask you that. I asked if they were out? A. I could not very well say, I don't think there were any lights at all.

Q. Then the lights were out? A. Yes.

Q. Well, how did you recognize Potosney? He was farther away yet, wasn't he? A. Well, I heard him cry.

Q. Heard him cry? You recognized him by his cry? A. Yes sir. 40

Q. How far away from him were you when he cried? A. About two or three hundred feet.

Q. Well, where was this bunch then?

Mr. Vosseller: Object to this designation, "this bunch."

Mr. Beekman: That's what he describes it as.

10

The Court: This man has postively stated that he doesn't identify any of the defendants in this case, and whether he describes it as a bunch or what doesn't make any difference because he has positively testified he doesn't know whether any of the defendants were there, did not recognize any of them. I sustain the objection.

20 Q. Well, where did you go after you took Potosney home? A. Well, I seen him beaten up so bad—

Q. Never mind what you said; I asked you where you went after you took him home? A. That's just what I was saying. He was beaten up so bad I went to get a doctor for him.

Q. Where did you go? A. Doctor Mack. Doctor Mack says it's nothing serious.

Q. Never mind what he said; did you get Doctor Mack? A. No, that's just what he told me.

30

Q. Where did you go then? A. Finally I came around from Potosney's and I saw the Misses down on Main Street crying.

Q. Where did you see the Misses crying? A. On Main Street and East Street.

Q. Did she tell you what she was crying about? A. Didn't she?

Q. Eh? A. No sir.

Q. What did you do with her? A. Finally she wanted to take a ride with me and go up and see

40

Doctor Robinson; I said I was going to the doctor's and she said she would take a ride along.

Q. Did you go to Doctor Robinson's? A. Yes sir.

Q. Did she go along with you? A. Yes sir.

Q. What did you go to Doctor Robinson's for?

Mr. Pope: Object to that.

The Court: Objection sustained.

10

Q. Who did you go to Doctor Robinson's for?

A. Tony Potosney.

Q. Did you get him? A. No sir.

Q. How long were you going to Doctor Mack's? A. About fifteen to twenty minutes.

Q. Well, did you go back to Potosney? A. Yes.

Q. Did she go back with you? A. Yes.

Q. Do you know where her husband was? A. He was right home then.

Q. At Potosney's home? A. Yes, at Potosney's home. 20

Q. Do you know when he came there? A. No sir.

Mr. Beekman: Cross examine.

Cross Examination by Mr. Vosseller:

Q. Sam, can you locate—can you fix the time when you arrived at South Bound Brook on your return from New Brunswick? A. Well, not exactly right time . 30

Q. I mean how close was it to two o'clock? A. Somewheres around between one and two; I guess about half past one.

Q. How long were you over there? A. I didn't shut off the meter and could not have been there any more than a few minutes.

Q. And how long would it take you, about, to come from Bodvenski's house over to the lunch wagon? 40

A. Oh, about a minute or two.

Q. Well, that's a pretty short time? A. It don't amount to a very big distance.

Q. It's down around Canal Street? A. It's only two short blocks, and a little turn and then you are right over the bridge.

Q. You went in the lunch room? A. Yes.

Q. Did you have something to eat? A. Yes.

Q. What did have, do you remember? A. I had a piece of pie and a cup of coffee.

Q. When did you first hear that the defendants in this case had committed rape—that this woman claimed that somebody had committed rape upon her? A. About the same morning, between the hour of six and seven.

Q. In the morning? A. Somewheres around that.

Q. Now, how long—did you say that when you came back to Potosney's—well, she had been with you, hadn't she, all this time? A. No, not all the time, the last trip.

Q. She had been with you from the time you picked her up on Main Street? A. Yes.

Q. Until the time you got back to Potosney's? A. Yes.

Q. And that was about fifteen minutes as I recall? A. No, I missed her for some time.

Q. No, I mean from the time you picked her up on Main street and went to Doctor Robinson's and got back to Potosney's house; that was fifteen minutes? A. I did not see her for some time and when I went for the doctor. I was away for fifteen or twenty minutes.

Q. Did you first go for Doctor Mack? A. I took Mr. Taylor home.

Q. After you went for Doctor Mack? A. Yes.

Q. You were alone then? A. Yes.

Q. Then you come back to Main Street? A. Yes.

Q. And then you found Mrs. Bodvenski? A. Yes.

Q. Then she got in the car? A. Yes.

Q. And you went to Doctor Robinson's? A. Yes.

Q. You did not get Doctor Robinson? A. No sir.

Q. Was he home? A. No sir.

Q. And how long did it take for you to go from Main Street to Doctor Robinson's—and then you came back to Potosney's? A. Yes.

Q. How long did that take? A. I guess about fifteen or twenty minutes.

Q. Now then, you got back to Potosney's, how long did you stay? Did you and Mrs. Bodvenski and Mr. Bodvenski stay at Potosney's house? A. Well, about an hour or so. 10

Q. Who was there during that time? A. Well, Officer Charles Bohler and Jim Goble was there a short time afterwards.

Q. You wasn't drunk that night? A. No sir.

Q. Hadn't had a drink? A. No sir.

Q. Anybody else had a drink? A. Well, not that I know of. 20

Mr. Vosseller: That's all.

(Witness excused).

GEORGE WARNER, sworn:

Direct Examination by Mr. Beekman:

Q. Where do you live? A. Plainfield. 30

Q. And you work at the lunch room in question in this case? A. Yes.

Q. On March 4th and 5th? A. Yes.

Q. Do you remember this party that is referred to coming in the lunch room on the morning of March 5th? A. Yes sir.

Q. Have you any idea what time it was? A. Between one-thirty and two o'clock.

Q. And how do you fix the time? Is there any particular way you have of fixing the time? A. No. 40

Q. Who were in the men's part of the lunch room? A. Why, I don't know the names of any, I know them when I see them.

Q. Can you pick any of them out here? A. Why, yes.

Q. Pick them out?

Mr. Pope: Object to that; that is not proper.

10 Mr. Beekman: I know.

Q. Can you identify—can you see any of the men that were in your lunch room at this time on the night in question, fixing the day and time?

Mr. Pope: Between one-thirty and two.

Mr. Beekman: What ever the time was. I understand this trouble took place after two
20 o'clock and these men would have been in there between one and one-thirty and at the time this fight took place.

The Court: This man can testify if he is able as to who was in there. The question is, who was in your place during this time.

Mr. Beekman: I withdraw the question to save the discussion. Mrs. Bodvenski, stand up.

30

(A woman in the court room stands up).

Q. Did you see that woman in there? A. Yes.

Q. And where was she? A. In the ladies' parlor.

Q. And who was with her? A. Why, there was three young men, I believe.

Q. Did you know any of them previous to Sunday night, March 5th? I mean had you known them
40 before? A. No.

Q. There were strangers to you? A. Yes. strangers to me.

Q. When they came in there that night, who was in the men's part? A. Who was in?

Q. How many young men, if any men? A. Well, I guess there might have been seven or eight, I don't know their names.

Q. I didn't ask you whether you knew their names or not. But you say you didn't know their names. Had you ever seen them before? A. No sir. 10

Q. Any of them? A. No sir.

Q. And would you know them—could you pick them out now if you saw them? A. Well, I could not say yes or I could not say no.

Q. Well, you said yes awhile ago; now what made you change your mind about that? A. Inside the wagon, there's lots of fellows come in there.

Q. I am talking about inside the wagon; I am asking do you remember any young men in there that night? Could you pick them out? A. Well, I could yes 20

Q. Could you pick them out in the court room? A. I pick the lady out and the gentleman alongside of her.

Q. I am not talking about them. I am talking the fellows that were in the other room; I want you to tell us about them? A. In the other room or wagon?

Q. In the big room, in the lunch wagon?

The Court: Was this a lunch wagon?

30

Mr. Beekman: It had two rooms, one for ladies and one for gentlemen.

A. Yes, Victor DeGhetto, that gentleman, I know.

Q. You do know him? A. Yes.

Q. Where was he? A. That's the only gentleman I know that was in the crowd.

Q. I didn't ask you who you knew in the crowd, I asked if you could pick any out? A. Pick DeGhetto.

Q. Anybody else? A. No sir. 40

Q. Don't you remember anybody else that was in there? A. I have been away from there a good long time.

Q. Been away from where? A. Townsend, I am not there now.

Q. No, you are sitting in the court room in the witness chair, testifying. You were there in March, were you? A. Yes, I was only there a short while. I was not working there long, a stranger in town

10 Q. Now, you told me a little while ago that if you saw these men that were in there you could pick them out? A. No, I think some of them.

Q. How many? A. Only one that I can see.

Q. That's Victor DeGhetto? A. Yes.

Q. How did you know his name was Victor DeGhetto? A. I know. he is a personal friend of mine

Q. Well, then, you do know him? A. Yes.

Q. And he was in there? A. Yes.

Q. Well now, where is he in this room? A. He

20 is outside there.

Q. Outside? A. Yes.

Mr. Beekman: Well, stand up, DeGhetto.

Mr. Pope: No you don't, you sit right still.

Q. How long have you known DeGhetto? A. Since I worked in Bound Brook.

Q. And were these persons in there with DeGhetto, talking to him, friends of his? A. Apparently acquaintances. They were not talking—

30

Mr. Vosseller: He has not said anybody was there.

Mr. Beekman: Yes, he said six or seven.

Mr. Vosseller: Yes, but he has not identified them.

40

Mr. Beekman: Now the question is, whether these people who were in there besides DeGhetto were apparently friends of his.

The Court: Objection sustained, it would be a conclusion on his part. Let the jury decide.

Q. All right, what were they doing in there? A. They were eating at the time.

Q. Who waited on them? A. I did. 10

Q. And do you remember anything about anybody saying anything— A. Yes.

Q. Who said it? A. Well, there was remarks passed inside and in the other room—

Mr. Vosseller: Object to this.

The Court: Go ahead.

Q. Do you know who passed the remark? A. Yes. 20

Q. Who? A. One in the crowd, I don't know his name.

Q. Well, do you remember him by looks? A. No sir.

Q. You could not pick him out? A. No sir.

Q. What happened after that? Did you see Potosney in there? A. Potosney came from the other room into the wagon.

Q. How long have you known Potosney? A. Never seen him before. 30

Q. How did you know it was Potosney that came in from the other room? A. Well, I mean the man that came there.

Q. Well, you remember him very easy, can you remember any of the rest of them.

Mr. Pope: I object to this examination, this is a State's witness.

40

The Court: Yes, I know—

The Witness: He's the man that practically started the whole rumpus.

Q. Who, Potosney? A. Yes.

Q. What became of this woman after the rumpus started? A. She followed the crowd after they left the wagon.

10 Q. And where did the crowd go? A. That I could not tell you, they went outside, I don't know what became of them after that.

Q. Did you see anyone have a beer bottle there that night? A. No sir.

Mr. Beekman: Cross examine.

Cross Examination by Mr. Pope:

20 Q. About what time was it when Potosney—

Mr. Beekman: Just a minute, I forgot something.

By Mr. Beekman:

Q. Did this woman come back again? A. Yes sir.

Q. Who was in the lunch wagon then? A. Two
30 Italian fellows and she came in with Officer Bohler.

Q. What happened there? A. After she came in with Officer Bohler?

Q. What happened, I don't know? A. I had to go outside and get something and what happened, I don't know. When I came back they was all gone.

Q. You don't know what happened after Officer Bohler came in? A. There was two men all that night, I know there was two men—

Q. Never mind about that. Where did you go?
40 A. I went out to get something and when I came in

they was all gone and what happened after that I don't know.

Q. Do you know these fellows that were in there when she came back? A. No, I did not get a good suspicion of them, I don't really think I could pick them out. I did not get a look at them.

Cross Examination by Mr. Pope:

Q. You were a stranger in Bound Brook? A. Yes. 10

Q. Had only been there a short time? A. Yes.

Q. And you only stayed a short time after—this was March 5th—didn't you? A. Yes sir.

Q. You had no special interest in this affair that night? A. No sir.

Q. About what time was it? Do you know what time it was when Potosney and this woman came in the ladies' parlor of the lunch wagon? A. First time or last time? 20

Q. The first time? A. Well, I figure around one-thirty or two o'clock, somewhere in there.

Q. You did not bother to look at the clock? A. No sir.

Q. Was there a clock in the lunch wagon? A. Yes sir.

Q. A big clock, wasn't there? A. Not big clock.

Q. Well, a good sized clock? A. A clock you can tell time with.

Q. And the clock was situated so that a patron sitting in front of the lunch counter can't help but see it? A. Yes sir. 30

Q. You say that Potosney—was it Potosney that passed the remark that started the fight? A. Yes.

Q. What did he say? A. Well, he was making remarks—

Q. Well, you will have to tell us? A. When the remarks was passed on both sides he opened the door and came out and wanted to know who the cocksucker was in there, and of course that started a real battle 40

right there and so I had to get them out of the place and so he got outside and carried the battle outside and he went up East Street, I guess it is.

Q. Do you know about what time that was? A. That was not much after two, because they were not in there long.

Q. Do you think it was after two? A. Yes, I think it was after two.

Q. Now, you say the only one in the crowd you
10 knew was DeGhetto? A. Yes, because him and I was talking together that evening.

Q. Did DeGhetto go out with the crowd? A. No sir.

Q. Was DeGhetto away from the lunch room? A. Well he was—until he went home—he went outside, well, for five minutes, and came back again and him and I was talking together in the wagon.

Q. Now, while you and he was talking in the wagon was the fight still going on apparently up East
20 Street. A. Well, I could not say yes or no, I don't know anything about it.

Q. Could you hear the noise? A. No sir, the crowd was gone, that's all I know.

Q. And you say he was out about four or five minutes? A. Not over five minutes.

Mr. Pope: That is all.

(Witness excused).

30

MARIE BODVENSKI, sworn:

Direct Examination by Mr. Beekman:

Q. Marie, where do you live? A South Bound Brook.

Q. Are you a married woman? A. Yes.

Q. How many children? A. Two.

Q. How old are they? A. One is nine years old
40 and another one is seven.

Q. Where were you on March 4th, Sunday, March 4th? A. We was home, and then we went to New Brunswick.

Q. Well, were you home all day Sunday? A. Not all day, we went about twelve o'clock to New Brunswick.

Q. I mean before that, were you home all day? A. Yes, we had been home all day.

Q. Did you have company? A. Yes, Sam Sarbouke and Tony Potosney and Paul Buggi. 10

Q. Anybody else? A. Nobody else.

Q. Frank Knapp— A. That's my child's godfather.

Q. Where did he live? A. He lived down in New Brunswick.

Q. Did you go to New Brunswick with the party? A. Yes.

Q. Did you all go? A. Yes, we all went.

Q. What time did you get back? You left Mr. Knapp down there? A. We stayed about one hour 20 in New Brunswick, and then it was around between two o'clock we was at the lunch wagon.

Q. When did you go in the lunch wagon? A. Well, we came first home then we went to the lunch wagon.

Q. How long were you home? A. We was not very long home, just when we came we went right to the lunch wagon.

Q. Who went with you to the lunch wagon. A. Sam Sarbouke, Tony Potosney and Paul Buggi and 30 my husband.

Q. What did you go there for? A. Well, they asked me for coffee home and they said—

Q. Never mind what they asked you; you went there for coffee? A. Yes.

Q. You got there, you say, and near as you remember about two o'clock? A. Yes, between two o'clock.

Q. And do you remember who waited on you? A. Yes, I don't know the name, if I seen him I would 40

know him.

Q. Were there two clerks there? A. Yes.

Q. Was he the one that was on the stand? A. Only one came in and brought in coffee and pie we had.

Q. Did you see who was in the other room yourself? A. No, I would not see who was in the other room.

Q. Do you know who was in there; I mean of your own knowledge? A. Just what I see when they opened the sliding door. After, I saw Danny Fuer and Martin and the other one, smallest one; I don't know the name—

Q. Pick him out here? A. Danny Fuer, he was there and Martin Mannon and this here one—

Q. This fellow here? (indicating). A. No, that one there. (Pointing to a man in the court room).

The Court: Which one did you point to, the one on the end or the second fellow?

The Witness: That's the second from the end.

Q. You said something about the door opening? A. Yes.

Q. What kind of a door was it? A. Sliding door.

Q. How wide was it open? A. Not wide, half and the rest was closed.

Q. Do you know who opened the door? Did you see who opened the door? A. No, I did not see who opened the door.

Q. All these other persons you saw when the door was opened? A. Yes.

Q. Well, what happened after that? A. They insulted me, they was talking about a night-walker.

Mr. Vosseller: That is a conclusion, insulted her; what did they say?

Mr. Beekman: Well, she endeavored to tell you, they talked about her being a nightwalker.

A.—looks to us that she would be good to use.

Q. Do you know which particular one said that?

A. No, I don't know, because the door was not open—

Q. Well, you don't know? A. I don't know which one was saying, I can't tell.

10

Mr. Vosseller: I think that ought to be stricken out.

The Court: Well, I think she has identified three defendants as being there and she can tell what she heard coming from that room.

Mr. Vosseller: Well, that don't make any particular difference, I would like to have an exception.

20

The Court: You may have your exception.

Q. Well, where did you go after you left the lunch room that night? A. Well, there was a fight started, a big fight, and then I was looking for my husband.

Q. Well, in what direction—could you see the fight going on? A. Well, I could see right where I was waiting for my husband to come out.

30

Q. Well, did you stop and wait? A. Right by the lunch wagon.

Q. What had become of Potosney in the meantime, do you know? A. Well, it's night, I looked around for my husband and can't find him, no one there and I went to Potosney's.

Q. And did you find them there at Potosney's? A. I did not find my husband any place on the streets.

Q. Wait a minute. Where did you last see your husband before you were standing outside of the

40

lunch room? A. I saw him run across the street with Paul Buggi.

Q. Run across the street? A. Yes.

Q. About what time was that? How long was that after you had gone to the lunch room? A. We was not there long, I just started to drink—

Q. How long, had you eaten your coffee and pie? A. Yes, that would be—and it just happened.

Q. How long had you been in the lunch wagon
10 altogether? A. Not even ten minutes.

Q. Now I asked you what became of Potosney, if you know what became of him? I mean, if you knew at that time; did you know there when you were standing outside the lunch wagon what became of Potosney? What had become of him, could you see him? A. Yes.

Q. Where? A. They started to lick him inside the lunch wagon and they went outside and I saw him run right by the boards—

20 Q. Where were you when you saw him licked by the boards? I show you a photograph, S-3, here's the lunch car? A. Yes, and over here they licked that fellow, Tony Potosney.

Q. Where were you? A. I was right here. (indicating).

Mr. Vosseller: On the south side of the street.

30 The Witness: Yes, I was waiting for my husband and here is that wagon where I was standing.

Mr. Pope: Where you were standing; let us get it marked.

The Witness: Right here, waiting for my husband.

40 Q. You saw your husband when you were stand-

ing there? A. No, I don't know which way he came.

Q. How long were you there? A. I wasn't there any long time, only just a few minutes I stayed and then I started to look for my husband.

Q. Just answer the question, don't go way ahead of me. After you were outside there a few minutes, what did you do? A. Look for my husband.

Q. Well, all right, where did you go to look for him? A. To Potosney's.

Q. How long were they fighting along the fence there? A. Well, I didn't time—about one minute or two. 10

Q. When you went towards Potosney's, what street did you travel on? A. East Second Street.

Q. Well, that's where they live, on what street did you go to get to East Second Street. A. I went to go to my husband and found him—

Q. What street did you go up? A. That's right on this street.

Q. Do you know the name of it? A. No. 20

Q. Did you come up the street by the trolley? A. Yes. This one right here.

Mr. Pope: Is she pointing to East Street?

Mr. Beekman: She is pointing to East Street.

Q. Now, when you got up there, what happened to you? Did you get up to Potosney? A. No, just— 30

Q. How far did you get? A. On the corner.

Q. Corner of what? A. As soon as I turned, Potosney—

Q. Corner of East Second Street? A. Yes.

Q. All right; now what happened when you got there? A. Well, I only got to the corner and Mr. Dutch Fuer and Marty Mannon, they both catch me by the arm and asked me what I was looking for; if I look for my husband and I says, yes, and he says, well, come on with us, we will show you where your 40

husband is, and so I think no, you don't know, and I says, I find him myself. And then the other gang jumped on me.

Q. What other gang; what do you mean by that? A. Well, the other fellows.

Mr. Vosseller: Object to that.

Q. Do you know any of them? A. Yes, there he is.

10

Q. Which one? A. Dutch Fuer, Marty Mannon and this one, I don't know his name.

Q. Point him out; show us which one he is. (Witness points). We can't tell which one you are pointing to. A. This one and this one—

Q. This one on the end? A. Yes. Not this one, I can't tell; I remember the face right.

Mr. Vosseller: Which one do you mean, not this end.

20

The Witness: I remember this one and this one there and not in the middle. (Indicating).

The Court: You don't remember the man now in the middle?

The Witness: No, I don't remember. Just what I know, I remember the face.

30

The Court: You remember how many of the men that are here? Can you name them that you do remember?

The Witness: I can't remember what they says—

The Court: Not what they said—what do you remember; how many men do you remember being there? Two or three or four or what?

40

The Witness: I know there be a gang only I can't tell because they bring up by themselves.

Q. There are five men sitting here; can you remember if he was the other one you can't remember? A. All four.

Q. Well, there's five there now. Which one don't you remember? If you pick out four, which one can't you pick out; as not being there? A. This one with black necktie. 10

Mr. Pope: This one here you don't remember?

The Witness: He may be, but I don't remember exact.

Mr. Pope: She says she don't recognize Nattoli, that he may have been there.

Q. Which one do you mean may have been there and you don't recognize him? Which one do you mean? A. The black necktie. 20

Q. Which one; there's two black neckties? A. The third from the left with the sweater. All the other four.

Mr. Pope: Nattoli.

Q. Now, about the other four? A. I know the other four. 30

Q. Do you remember their being there that night? A. Well, there was a good many at the time and I saw their face when they was laying on me.

Q. Had you ever seen them before? A. I never saw them before.

Q. Well, I understood you to say you seen them in the room, some of them, when the door was open? A. Yes, but never before. I saw them in the lunch wagon with Dutch Fuer and Marty Mannon.

Q. How many were there altogether? A. I 40

can't tell you exact, how much there been altogether.

Q. All right; who was it that spoke to you first, which one of them? A. Dutch Fuer and Marty Mannon.

Q. What did they say to you? A. What you looking for, for your husband? I said yes, and they said, come, we will show you where he is. And I said no, you don't have to show me, I will find him myself.

Q. Well, were they so close to you you could
10 recognize them at that time? A. I say that word and the other gang jumped on me and grabbed me right away.

Q. How many were there besides Dutch Fuer and Marty Mannon? A. I don't know.

Q. Was there more than one, though? A. Yes.

Q. More than two more? A. Well, there was around five or six; like that.

Q. Altogether? All right. Well, what happened after they grabbed you?

20

Mr. Pope: Who grabbed you?

A. They took me to the cemetery.

Mr. Pope: She said this other gang grabbed here.

Q. Who grabbed you? A. This fellow there, he was in front by my face.

30 Q. Which one? A. From the right, second.

Q. The one second to this end? A. Yes. He shut my mouth right up by the fence on the corner. He told me if I say one word they will smash me like they smashed my friend.

Q. Where was Fuer and Mannon? A. They, right there and one was pulling a gun on me; I don't know which one. And they grabbed me all over and hold me all over.

Q. What do you mean by that? A. These two
40 that hold me, Dutch and Marty and the other one,

this fellow came and grabbed me by the mouth right away.

Q. Then Marty and Fuer were holding you and this fellow put his hand over your mouth? A. Yes.

Q. Then what happened after that? A. Then they take me right to the cemetery when they say they was going to smash me like my friend and they take me right across the trolley track and take me to the cemetery.

10

The Court: Recess until one o'clock.

AFTER RECESS:

MARIE BODVENSKI resumes the stand:

Further Direct Examination by Mr. Beekman:

Q. You were telling us about your going up to Potosney's house and that on your way there you met Mannon and Fuer and this one fellow with the brown necktie who grabbed you by the mouth. Can you identify on photograph S-4 and S-7 the point where you met these men that you have spoken of? A. Right here. (Indicating).

20

Q. All right, put a mark there. A. On that corner there.

Q. Do you recognize the objects that are portrayed in photograph, S-4? A. Yes, right at the corner of that house and here's that post and they took me up here across the track; here's where they took me on that wall, right here and there's a light there—

30

Q. Big light? A. Yes, right by the tree, they took me up here.

Mr. Pope: Now where did they take you? Mark it.

Mr. Beekman: No, she don't have to.

40

The Witness: That's the same post right over here, going to the cemetery, same one.

Mr. Pope: Where did they take you to in the cemetery?

The Witness: Right through, way to the back.

10 Mr. Pope: That mark is not plain there. That the place right there?

The Witness: Yes, they took me by the tree, way back.

Mr. Pope: This is the same tree, is it?

Mr. Beekman: I presume it is.

20 Q. Now, I show you photograph S-5 and ask you if you can indicate on that the point about where you were taken? A. That's the one tree and right here by that stone; between those two stones, right here.

Q. Put a mark there. A. (Witness marks photograph). Right over here between that.

Q. Now, do you know how many men there were altogether when you got up in the graveyard? A. Well, I can't tell, I was all excited.

Q. Can you tell whether there was more than 30 two or three or four? A. Yes, there was more than that.

Q. How many more than four? A. I don't know—just I only know, when I was crying—

Q. Well, you said there was more than four? A. Yes.

Q. Do you know how many more than four there were? A. Can't tell you one more or two more besides that because—

Q. Well, was there one more or two more than 40 four? A. Yes, besides that I don't know.

Q. You don't know whether there was five or six. Now tell us from the time that they took hold of you down by the corner of East Second Street and East Street; tell the jury everything that happened? A. When they catch me on East Street, two fellows, Marty Mannon and Dutch Fuer catch me by the arms, two arms, and when they asked me I was looking for—

Mr. Vosseller: That has all be gone over if the Court please. 10

Q. After they grabbed you, you say they carried you over the wall, that's what we want to know. A. Then they carted me over the wall and then they put me on the ground—

Q. Was there anything said by any of them on the way up there? A. They didn't say, just where they put me on the ground—

Q. Well, what did you do? A. They carried me, I don't know if they dragged me or carried me 20 there because I was crying and after they took me back by the stone there he put me on the ground, right there, and right away the first thing was Marty Mannon had connection with me.

Q. Now, tell us what happened then? A. The next one, I was crying please leave me alone and the next one and three more and then they came again; one hold my hands and another shut my mouth and then after they had connection with me and after a while they changed again and then they asked where 30 I come from and I said from Bound Brook, and they said, Hay, Marty, we got to get rid of this lady, she's from Bound Brook and then they talked to the other men there.

Q. What did you say to that? A. They asked me where I came from—

Q. I am asking what these men said? A. Hay, Marty, we got to get rid of this lady, she's from Bound Brook. And then another fellow came again and take money; first he went with me first; and he went to my 40

left leg and didn't find any there and then to the right foot and took my money; I had ten dollar bill.

Q. Did Marty Mannon take that? A. No, when Dutch had connection with me and the other fellow took the money.

Q. Do you know who it was that took the money? A. I can't tell exactly.

Q. Now, have you told everything that happened from the time they took you in the grave yard until someone said, Marty, this woman came from Bound Brook—have you told everything that was said to you by these men from the time they took you up over the wall until the time you got there? Have you told us everything. A. Yes.

Q. You did not tell anything that happened from the time they took you over the wall until they laid you on the ground. Now, did anything happen to you or did they say anything to you? A. Yes, I said please leave me alone, I am a married woman and they told me they were going to smash me like my husband and I was all—

Q. Never mind what you were, I am asking you what they said and what you said and what they did. You said that you were married woman and to leave you alone? A. Yes.

Q. Then what happened? A. They took me by the arm and put me on the ground.

Q. Was anything said while that was going on? A. No, nothing, only that there would be five of us and three more.

Q. Did you tell them to leave you alone? A. Yes.

Q. What did you say to him, that's what I want you to tell the jury about, what did you say to them? A. Well, then, they was saying there would be five of us and keep doing that to the last one and then they took the money—Dutch was the last one and when he had connection they took my money.

Q. Yes, you told us about that, I am asking you what he said? A. He said, Hay Marty, where did she come from and I said from Bound Brook and he said

hay Marty, she's from Bound Brook, and we have got to get rid of her.

Q. Did you notice how they were dressed? A. Dutch Fuer had a yellow scarf.

Q. How do you know it was Dutch Fuer? A. Well, I heard the men say, it's your turn next.

Q. Well, what did he say, you heard the men say that; would that let you know it was Dutch Fuer? A. He said two or three things.

Q. What words did he say to this man you call Dutch Fuer? What words did he say? A. Well, that's all he say; he says, your turn next, Dutch. That was the other fellow that I saw there.

Q. How did you know from that that he was Dutch Fuer? A. Because he was laying all over me and I know his scarf and know his face and I know he was saying it.

Q. What was he saying? A. He says, Dutch, your turn next.

Q. Who said that? A. I don't know who said it, somebody; Dutch, it's your turn next.

Q. Somebody said, Dutch, it's your turn next? A. Yes, this fellow when he was through his connection.

Q. Was there any automobile up there anywhere? A. Yes, an automobile was—after they left me on the ground and then I pleased them and drop on my knees and kissed them both on my knees, it was Dutch Fuer and Marty Mannon, spare my life and save me to my two children and I was crying and Dutch said well, I am a married man, I take pity on her.

Q. Who said that? A. Dutch Fuer. Then they bring me to the bank there and there was one man or two who was going to take me home and I never asked him to.

Q. Who was the two? A. Dutch Fuer and Marty Mannon at the time and the other one was there—

Q. What other? A. The other man what had connections with me.

Q. Another man? A. Yes.

Q. Well, was there one? A. I did not see how much was standing there.

Q. You mean there was another man after that? A. Yes, just by that bank and they was ready to handle me down to the car, they wanted to take me away—and they were holding me and I was crying and then I told them, please let my hands a little bit loose, and I don't tell my husband because he will kill me and then they make my hands loose and then I just take my hat right in my hand and run right through the cemetery, as I thought I would jump down and that the fellows would catch me.

Q. Where was the car, outside of the cemetery? A. It was right on the left hand.

Q. Well, show us on the picture where the car was, on picture, exhibit S-2? A. That was right up here.

Q. Was that there when you were there or did it come there afterwards? A. I make it right there—

Q. No, when you went up the street, was the car there then? A. If they had the car? They bring the car and here I came out. (Indicating).

Q. Mark where you came out. A. (Witness marks photograph).

Q. Well now, when you got here, when you broke loose from them and they said they were going to take you home, what part of the cemetery were you then? I mean how far from the place where you were down on the ground? A. How far—where they had me.

Q. Well, here is where they had you? A. Yes.

Q. Where was this talk about you being a married woman and you living in South Bound Brook? A. Right here about, I told them I was a married woman.

Q. Now, when they asked you where you lived and you told them in South Bound Brook? A. Over here after they had me on the ground at the time and they was talking.

Q. Now, where was it you say they had your hand and you asked them to let you go? A. Right over here. (Indicating).

Q. How close to the gate where you ran out? A. That is way in back and I got—

Q. Well, can you tell how close—. A. It's way up here, it was way back here. (Indicating).

Q. You were quite a ways from the road when you told them that? A. Yes.

Q. All right, now, when this conversation occurred, this talk, in which you said, let loose of your hand, let me a little loose, how far were you in the cemetery at that time? I mean how far from the place where you ran out? A. Just I went over the lunch wagon.

Q. No, you don't understand the question. How far were you from—. A. Where they had me?

Q. And you said you wanted to get loose? A. I can't tell you how many feet.

Q. I don't want you to, I mean can you tell us the distance that was away from there. Were you right by the place where you ran out or was the place a distance in the cemetery? A. No, was not right there, that was way up where they had me on the ground.

Q. I know it was way up from the place where they had you on the ground, I am talking about when you said, let me go a little bit? A. The time when I ran away from them.

Q. Yes, that's the time? A. Right up from the bank.

Q. Right by the bank? A. Yes.

Q. That's when you said that? A. Yes.

Q. Now, who had hold of you then, when you were at the bank. A. Dutch Fuer and Marty Mannon.

Q. And who else was there at that time? A. Those two.

Q. Two others there? A. There was two with me and there was another down by the bank and where the car was there.

Q. Do you know who that was? A. Yes.

Q. Who was it? A. I can't tell who was it but one of these fellows that had me.

Q. Did you get down to the stone fence or down by the bank before you ran or were you still in the

graveyard when you started to run? A. I started to run—.

Q. Now listen to the question, Mrs. Bodvenski,—A. Please, I would like it better if you have somebody that could understand Slavish.

Q. You understand the question. I am asking you if you got down to the bank before you started to run or whether you were still in the graveyard? Can't you understand that? A. Started to go right down the cemetery.

Q. I know, but had they put you down the stone wall? A. No, they had not put me.

Q. Then you say you were in the cemetery when you started to run? A. Yes, I was right in the cemetery when I started to run.

Q. Well, how far did you run before you got out? A. I ran to the lunch wagon.

Q. No, before you got out of the cemetery you ran a distance; did you run in the cemetery before you got out? A. Before they took me up.

Q. No before you got out of the cemetery you ran a distance; did you run in the cemetery before you got out? A. Before they took me up.

Q. No, before you got out of the cemetery; you started to run out? A. Yes.

Q. Now how far did you run before you got out through this little hole in the fence? A. Well, that's one block, I know that.

Q. Now, then you got to the lunch wagon? A.—

Q. Well, if you don't understand me—. A. No.

Q. Did you run right down the path or across the grass? A. No, longside the bank, on grass I run.

Q. Right longside of the stone wall? A. Yes, right there.

Q. Where did you go when you got out to the street? A. There was one automobile—I grabbed that automobile and—

Q. Where did you go when you got out on the street from the graveyard? A. Right to the lunch wagon.

Q. Did you meet anybody on the way? A. I met two men by the post that was standing.

Q. Do you know who they were? A. No, I don't know.

Q. Did you stop and speak to them? A. Yes.

Q. Do you know now who they were? A. No, I don't know now.

Q. What did you say to these two men, if you said anything?

10

Mr. Vosseller: Object to the question. How can that be relevant?

Mr. Beekman: Anymore than she made a complaint.

The Court: I don't think even if she did know who they were, she could say what she said to them.

20

Q. Well, did you meet anyone else before you got to the lunch wagon? A. Nobody, just those two men by the post.

Q. Now, who did you see then when you got to the lunch wagon first? A. Well, I suppose these two men—

Mr. Vosseller: I object.

A.—I saw a cop after.

30

Q. Well, was the cop the first person you saw after you got to the lunch wagon? A. No, I saw first a lady before I saw the cop.

Q. Where did you see this lady? A. Right across the lunch wagon; was that hotel.

Q. Bound Brook Hotel? A. Yes.

Q. Do you know who the lady was? A. Yes.

Q. Did you complain to her that you had been mistreated?

40

Mr. Vosseller: Object to that; that is leading.

A. Yes, I tell the lady I got—
Q. What did you do when you met this woman?

Mr. Vosseller: Object.

A. Please help me.

10

Mr. Vosseller: Object. Don't answer the question.

The Court: Don't tell what you told. What did you do. You told her about something; don't tell just the words. You cannot tell what she complained of.

Mr. Beekman: I think she can tell what she complained about.

20

The Court: All she can testify to is that she made a complaint, if she did.

Mr. Beekman: Oh, well, let it go, I got the witness here.

Q. How long were you with this woman? A. Just when I saw the woman across the street, from the lunch wagon; I walked right to this lady and I asked her, please help me so—

30

Mr. Vosseller: Object to what she said.

The Court: Objection sustained.

Q. How long were you with her? A. Just when I walked after the cop.

Q. How long did it take you to find the cop? A. Just we walked two blocks up; that's up to the station.

40

Q. She went with you then to find the cop? A. Yes.

Q. And which direction did you walk to find the cop? A. Right in close to the station.

Q. You went toward the station? A. Yes.

Q. What cop did you find? A. Charlie.

Q. Charles Bohler? A. Yes.

Q. And did he go anywhere with you? A. Yes; I told him everything they did to me in the cemetery.

Q. Did he go anywhere with you? A. Yes, he asked me if I know the fellows and then he went to the lunch wagon. 10

Q. Well, you went to the lunch wagon with him? A. Yes.

Q. Did you go in the lunch wagon? A. Yes.

Q. Did you see any of the men who had been up in the graveyard with you in the lunch wagon. A. Yes.

Q. Who did you see there? A. Dutch Fuer, he was sitting right by the door; first thing I spot him, and then I saw another fellow; he was drinking coffee; I don't know his name, and that was two; and just Charlie cop walk up and I was right by the door, and I pointed to them two. 20

Q. What two did you point out? A. Dutch and another one.

Mr. Vosseller: Well, who?

The Witness: That's this one here; last one. 30

Q. The one on the end? A. Yes.

Q. Then you saw in there Dutch Fuer and this man on the end? A. Dutch Fuer, yes. Marty Mannon that time, he just walk out when I pointed to them; he just —

Q. Now, never mind; one thing at a time. You saw in there Dutch Fuer and that fellow on the end. A. Yes.

Q. What did you say to Bohler about them? A. Well I tell him they have me there— 40

Q. No, did you point these two men out to Bohler? A. Yes, point him out.

Q. Now, did you see Marty Mannon there when you came in the lunch wagon, or after you got in there, or before you went out? A. Because I point, just going out I spot him; he was just going out.

Q. When was he going out, how soon after you got there? A. Right away, as soon as I walk in.

Q. Did you see anybody else there? A. Yes, there
10 was another man, but he was eating.

Q. Do you know who he was? A. No, I don't know that other man.

Q. Did anyone else of the party you had met up in the graveyard come into the lunch wagon while you were there with Bohler? A. Yes.

How many of them altogether? A. They been five of them.

Q. Tell us which ones; tell us which ones you identified there as having been with you in the graveyard?
20 A. Dutch Fuer and Marty Mannon—

Q. You have told us that. Now, tell us the other three. Who else? A. All five in there, but I was all excited.

Q. Tell us the names or pick them out, if you can? A. I can't tell you the names.

Q. Pick them out, the other fellows that you saw in the lunch room, that was in the graveyard with you?

30 The Court: Do you understand the question? It is to pick out if you see them in the Court Room all the men you saw in the lunch wagon after you came back, who had been in the graveyard with you?

The Witness: Yes. This one, Dutch Fuer, Marty Mannon—

Mr. Vosseller: "This one" does not mean
40 anything on the record.

The Witness:—and this here one; there's another one.

The Court: That is four.

Q. How about the one in the middle; did you see him? A. I saw him too.

Q. In the lunch wagon? A. Before.

Q. I am talking about in the lunch wagon. You are trying to tell who you saw in the lunch wagon who you saw in the graveyard. Now, did you see this fellow in the center with his hand up to his face; did you see him in the lunch wagon that night? A. No, I did not see him in the lunch wagon.

Q. Any time? A. He may have been but I was all excited.

Q. No time did you see him? A. No, I don't remember.

Q. After you were in the lunch wagon, where did you go? A. Then to Potosney.

Q. Anybody go with you? A. Charlie cop, and Sam Sarbouke, he take me in the car and went for a doctor.

Q. Do you know what time you got to Potosney's? A. I can't tell.

Q. You don't know now, tell us how long it took? A. I can't tell.

Q. How many men had sexual intercourse with you that night in the graveyard altogether? A. Well, I can't tell.

Q. Well, did anybody? A. Anyway it was about five or six.

Q. Who had sexual intercourse with you first? A. Marty Mannon.

Q. Who second? A. I can't tell exactly, which is the second.

Q. Who third? A. Can't tell about that, who was third.

Q. Well, do you know the names of any of the rest of them who had sexual intercourse? A. Because

they were changing; I know their voice, which—

Q. Listen to the question; do you remember the names of any of the rest of them that had sexual intercourse with you that night? A. No, I don't know their last names.

Q. Their last names? I did not ask you their last names.

Mr. Vosseller: She said the last names.

10

Q. Did anyone have sexual intercourse with you more than once? A. Yes.

Q. More than twice? A. Yes.

Q. More than three times? A. There was about five that I know.

Q. Now you said sometime ago about somebody saying, Dutch, you are next. When did that occur? When did that happen? A. Your turn next; that's—

Q. How many times had men had sexual intercourse with you when that was said? A. They was about four or five already.

20

Q. Then they said, Dutch you are next? A. Yes.

Q. Do you know who held your hands while this was going on? A. Well, there was always two by two by me. One was connection, another one held my hands and then when he was through he went and another came and held my hands and shut my mouth.

Q. Do you know whether or not Dutch Fuer held your hands? A. Yes, he was too.

30

Q. Did Marty Mannon hold your hands at any time while someone else has having intercourse?

Mr. Pope: That is very leading.

Mr. Beekman: I admit it is.

Q. Did anyone else hold your hands besides Marty Mannon? A. Yes.

Q. Well, who? A. Well, there was changing so —

40

Q. I know, but you don't tell us who they were. It may have been somebody we never heard of that held your hands if you don't tell us. A. See, it was all of them; I know Marty Mannon because he was first and other one came—

Q. Well, he could not hold your hands the first time—. A. Because another one held my hands.

Q. Do you know who held your hands the first time when Marty Mannon had sexual intercourse with you? A. I don't know. 10

Q. Do you know who held your hands when Fuer had sexual intercourse with you? A. It was this here, but I don't know, they was always changing.

Q. Did you go to the doctor's that night for any purpose? A. Yes, Sam went for Potosney, then I have to get for myself too.

Q. Where did you go? A. Doctor Robinson.

Q. Was he home, did you find him? A. No, he was home but he did not get up.

Q. Was that before you went to Potosney's at all? 20 A. Yes, before I went to Potosney's.

Q. And how soon did you go home after you got to Potosney's? A. Well, about two cops came there and was talking there and I don't know how soon; just about half an hour or an hour; I stayed there something like that.

Q. How did you get home? A. Mr. Sam Sarbouke.

Q. What happened to you afterwards? A. When I got home?

Q. Yes? Did you tell your husband about it? A. 30 Yes, I told him that morning, when I came home he asked me all the time, what did he do to you and I told him.

Q. When was that, the next morning? A. Same morning.

Q. Did you go back to the cemetery the next morning? A. Yes, my husband went first with Sam Sarbouke and policeman, but they did not find anything and then came after me.

Q. Did you go back with them? A. Yes. 40

Q. What time of day was this on Monday? A. Around half past nine.

Q. Why didn't you go with them the first time? A. Well, I was all excited, I was can't hardly go.

Q. When you went back there, did you find anything? A. Yes, I found the comb.

Q. I show you a comb; is this the comb you found there? A. No, not this one.

Q. What kind of a comb did you find? A. Not
10 this one. That was very short a tooth.

Q. What else did you find there? A. A bill.

Q. What did you do with that? A. Mr. Dick's bill.

Q. What did you do with it after you got it? What's become of it now? A. Well, we found it right up—

Q. Who was with you when you found it? A. Sam Sarbouke and my husband and me.

Q. Where did you find the comb? A. Where they
20 had me on the ground.

Q. Who was with you when you found the comb? A. Sam Sarbouke.

Q. Now, will you please listen? What did you do with this bill and this comb? A. Well, we took it and we picked it up, and what we found we took to Andrew Fleming.

Q. And did you see it in the Grand Jury room? A. Yes.

Q. You speak about a bill—. A. Before we went
30 —

Q. Listen now; you speak about a bill from Mr. Dick. What do you mean, a bill— A. What I had for furniture; one dollar.

Q. Now, I want you to look at this comb again? A. You must have changed that comb; it aint this one. That don't look to me that comb.

Q. Well, that's the only one we have ever had. Well, who was there when you found the comb? A. Sam Sarbouke.

40 Q. Well, whose comb was it you found there any-

way? A. Mine.

Q. Although you don't think this is yours, eh? A. Well, it is mine, but it looks like longer teeth its got.

Q. After you found the comb, where did you go then? A. To Andrew Fleming.

Q. To make a complaint? A. Yes, what we found.

Q. That was on Monday morning? A. Yes.

Q. Then what happened after that? A. Then I tell him what we found and then we went home.

Q. I know, you told him what you found and turned the comb and bill over to him, and then went home. Then what did you do? A. Stayed home. 10

Q. Why? Why did you stay home? A. Well, what I going to do?

Q. I don't know. Was there any reason you stayed home? A. From Andrew Fleming we came home.

Q. Was there any reason you stayed home from that time? A. Well, I was all nervous and everything, I can't go any place. 20

Q. You don't need to apologize for staying home, I am asking you if there was any reason why you stayed home and did not go anywhere? A. No.

Q. No reason at all, eh? A. No.

Q. Who stayed home with you? A. Well, my husband, but he went out.

Q. Was a girl one that stayed home with you? A. Yes, and my children and my brother.

Q. When was Miss Jensen there? A. Oh, Miss Jensen, the third day afterwards; she came when I was sick. I was in the family way and I lose my little baby. The third day I got sick. 30

Q. How long were you sick? A. Was in bed nine days.

Q. And Miss Jensen was nurse for you? A. Yes.

Q. You say you were in the family way; how do you know that? A. Well, I know when I was sick, from which month.

Q. How long since you had been sick? A. From 28th of November. 40

Q. You had not been sick from the 28th of November? A. Yes.

Q. Then were you in the family way the night that you went in the cemetery? A. Yes sir.

Q. Did you have a doctor? A. Yes, Doctor Hird.

Q. How soon did he come over after you were taken sick? A. About ten o'clock at night.

Q. Well, ten o'clock at night; what night? A. Wednesday.

10 Q. When were you taken to the bed? So you had to go to bed? A. Wednesday afternoon.

Q. Were you alone there then? A. Yes, was alone that time.

When did the nurse come? A. As soon as the doctor, my husband went after the nurse.

Q. Well, your husband was not home when you went to bed, was he? A. No, he went after the nurse, he was not at home.

20 Mr. Beekman: Cross examine.

Cross examination by Mr. Pope:

Q. What time was it when you got in the lunch wagon with your husband and the two men that were with you? A. Between two o'clock.

Q. Between two and three o'clock? A. Well, the time it was between two o'clock when we went inside the lunch wagon.

30 Q. Yes, it was after two o'clock; it was not two? A. I said between two o'clock; about quarter to two.

Q. Oh, about quarter to two when you went in the lunch wagon? A. Yes.

Q. What did you have to eat in there? A. Coffee and piece of pie.

Q. Now when you—where were you until you went out of the lunch wagon and went up East Street to find your husband? A. I was just looking out for him.

40 Q. Well, where were you looking around? A.

Right on Main Street on these corners.

Q. Well, where did you go; how far down Main Street? A. I didn't went very far, just up and down a little bit and then I did not find him.

Q. You saw this crowd of men fighting up near where the sign was? A. Yes, I think my husband was in there.

Q. You went up to that crowd? A. Yes.

Q. Was your husband there? A. No.

Q. You did not see him there? A. No. 10

Q. Then did you come back toward the lunch wagon? A. Then after I came back again and then I said, maybe my husband go to Potosney's.

Q. And then you started to go to Potosney's house? A. Yes.

Q. Now, how long was that after you reached the lunch wagon? How much time had elapsed? How much time had taken place after you drank your coffee and eat your pie and after this fight had started and you to go out and look for your husband and 20 then start up the street to go to Potosney's house? A. Everything was taken about fifteen minutes.

Q. The whole thing took about fifteen minutes? A. Yes.

Q. How far did you get toward Potosney's house before anybody stopped you? A. Just one block right to the corner.

Q. Corner of what? Corner of what is called East Second Street? A. Yes.

Q. Was there any men by the sign when you 30 went past that spot? A. No, there was no men.

Mr. Pope: Got a picture showing the sign?

Mr. Beekman: Yes, here's one.

Q. I am directing the witness' attention to photograph marked S-3. Now, when you started to come up the street toward Potosney's house, where were the men fighting? A. The men were fighting over 40

here. (Indicating).

Q. Right by that sign? A. Yes.

Q. And how did you get past the men? Did you walk out in the road and up the center—

Mr. Beekman: Object to that question, her testimony so far has been that she went up there and saw them fighting and then she came back again to the lunch wagon, as I understand her.

10

Mr. Pope: Maybe you are right; I will ask her.

Q. Now, when you came from the lunch wagon out to this point where the signboard is and saw the men fighting there, what did you do or where did you go? A. After I turned back again for my husband.

Q. You turned back toward Main Street? A. Yes.

20 Q. And looked for your husband on Main Street? A. Yes, when they tell me they were going to beat me.

Q. Who told you that? A. The gang there.

Q. Told you they were going to beat you? A. Yes.

Q. How long did you search around Main Street for your husband? A. Maybe took about five minutes.

Q. And then you started back up East Street? A. Yes.

Q. Now, when you got up there by the signboard, were the men still fighting there? A. No, they was not there anymore, just the men was on the street.

30

Q. Where did you see men on the street? A. Right over here; right longside of the lunch wagon and here on the corner.

Q. On the corner and alongside of the lunch wagon you saw men? A. No.

Q. Wasn't there any men on East Street? A. I started to walk—

Q. Did you walk on the sidewalk? A. Yes.

Q. Right past the signboard? A. Yes.

40 Q. Up to the corner of East Second Street? A.

Yes.

Q. And then when you got to the corner of East Second Street, right there where you put that mark on S-7, you started to turn into East Second Street? A. Yes, tried to go down.

Q. Now, where did you see anybody? A. I didn't see any men at all; just them walked to me.

Q. Who walked to you? A. I don't know who was, but they would have me and grabbed me by the hands. 10

Q. Yes, but before they grabbed you, where did you see them? A. I did not see at all when I walked; I see them in the fight.

Q. No, but you said you turned around the corner to East Second Street and started to go to Potosney's house? A. Yes, then he catch me.

Q. Now, where did you first see these men that caught you? A. In the lunch wagon.

Q. I mean when they grabbed, when you were at the corner and walked up the street? A. I did not 20 walk up the street; they came in back of me and grabbed me.

Q. They came up behind you? A. Yes.

Q. You did not see them until they grabbed hold of you? A. Yes.

Q. And then they grabbed you by the arm? A. Yes.

Q. How many men grabbed you by the arm? A. Two.

Q. Did they take hold of one arm or each take one 30 arm? A. Each man took one arm.

Q. What was the first thing they asked you? A. What am I looking for; are you looking for your husband, and I said, yes, and they said; we will show you, and I said; you don't have to show me, I will find him myself.

Q. And where did you go? A. Right away the other gang came on me.

Q. How many more; you say the other gang? A. Couple more. 40

Q. Right away they shut your mouth? A. Yes.

Q. Now, where were you when the other gang came up? A. Right by the fence.

Q. Well, you did not move any? A. No, I could not move because they held me.

Q. You did not move after the two men grabbed your arm? A. Yes, I said, what do you want; and I said, leave me alone. I wanted to get away and the others came and grabbed me.

10 Q. You had no idea what they wanted? A. No, I did not know what they wanted.

Q. Well, you did not know these men when they grabbed you by the arm? A. No.

Q. Had never seen them before? A. No.

Q. You did not know Dutch Fuer? A. No.

Q. And how did you know his name was Dutch Fuer? A. Well, I heard in the cemetery; they said, your turn next.

Q. But it was dark in the cemetery? A. It was
20 moon out that night.

Q. What time did the moon come up? A. Come up, it was good light.

Q. Did it come up early that night or late that night? A. Well, it was toward morning.

Q. Well, was the moon light all night, or don't you remember? A. Yes, it was, all night.

Q. Moon light all night, eh? A. Yes.

Q. Then the first time you knew that this young fellow whom you call Dutch was called by the name
30 Dutch Fuer was when you heard somebody say something about, Dutch, it's your turn next? A. Yes.

Q. Now, did you know any of the other boys before that night? A. No.

Q. Well, did you know Marty Mannon? A. No, I did not know him either.

Q. How did you find out Marty Mannon's name? A. I heard him say, Marty, this lady is from Bound Brook.

Q. But then there was half a dozen men around
40 there when that remark was made? A. Yes.

Q. And you did not know which one they were talking to, did you? A. No.

Q. Now, who told you that that boy, the second boy from the end, that is name was Marty Mannon? A. Nobody had to tell me.

Q. Well, how could you connect the name Marty Mannon with that boy over there if nobody told you his name was Marty Mannon, and you had not heard it before this night? A. Because he said, we got to get rid of her. The other men was calling, hay, Marty. 10

Q. The other men was calling, hay, Marty, this woman is from Bound Brook? A. Yes.

Q. You did not see Marty Mannon? A. No.

Q. How did you know his name was Marty Mannon? A. I know him as soon as I heard it was spoken.

Q. Somebody has pointed him out to you and told you his name as Mannon? A. Because I saw him already.

Q. You saw him already, where? A. The night about the fence and he was in the lunch wagon here when I looked in the window. 20

Q. But you had not heard anybody say "Mannon" that night? When did you first learn the name Mannon and connect it with Marty Mannon? A. Because I heard it.

Q. Who told you his name was Marty Mannon? A. Nobody.

Q. How do you know? A. I heard people talking to him, Marty Mannon.

Q. What people? A. Well, anybody. 30

Q. Who were they? A. I read it in the newspapers.

Q. That's the way you learned the name was Marty Mannon; you read it in the newspapers? A. I know it is the name, Mannon and I know the face.

Q. Yes, I know you know his face, but you can't tell a man's name by his face, can you? A. Sure.

Q. Now, nobody said anything that night about Mannon? A. Nobody.

Q. Wasn't the first name, Marty, wasn't it the name Marty, you heard that night? A. Marty. 40

Q. Now, the first thing you did, on the stand when you were asked who was there that night, was to call off the name Marty Mannon; that's the first thing you told the jury about Marty Mannon? A. Yes.

Q. And you never knew Marty Mannon before that night? A. No, never knew him.

Q. And the only way you knew Marty Mannon that night or associated the name Mannon with this man was because somebody in the cemetery—you heard
10 somebody say in the cemetery, hay, Marty, this woman is from Bound Brook; we got to get rid of her. That's the way you connect Mannon up with the things that happened that night? A. Yes.

Q. Where did you get the name Mannon from? A. Because my husband, he see him when he was going for the cops and he see him on the street and people speak about him.

Q. After this thing occurred somebody pointed out this man on the street to you and told you that was
20 Marty Mannon, didn't they? A. But I know him; he was there.

Q. Yes, of course you know him and he was there; but somebody pointed him out to you and told you his name was Marty Mannon? A. I heard lots of people mention the name afterwards.

Q. Now, did somebody point Dutch Fuer out to you and tell you his name was Dutch Fuer too? A. No.

Q. How did you know his name was Dutch Fuer? A. Well, because I read it in the newspapers.

30 Q. You read in the newspaper what their names were? A. Yes.

Q. Now, when you were taken from the corner of East Second Street up into the cemetery, did you walk? A. Up to the cemetery?

Q. Yes? A. No, I can't tell you if they dragged me or I walked, I can't tell because I don't know it myself.

Q. You don't know whether they carried you? A. No.

40 Q. Nobody struck you? A. I could not say if I

walked—

Q. Why didn't you hollar? A. They said if I said one thing they would smash my face like my friend; I was all crying, I could not do anything.

Q. You live in South Bound Brook. A. Yes.

Q. You have lived there quite a while? A. Seven years.

Q. You know all about this corner down there; Main Street and East Street, and the street that bound on the cemetery? You know this corner where the lunch wagon is? That's one of the most thickly populated corners in the borough? A. Yes.

Q. Always as many people around that corner as any place else? A. I don't go so often; when I go to town.

Q. And when you go to town you see a lot of people around that corner? A. Yes.

Q. And it was only a little ways up East Second Street? A. Yes.

Q. Well, now, if you had hollared for help, people on Main Street could have heard you? A. How could I holler when they shut my mouth?

Q. But they did not close your mouth? A. I was afraid they were going to kill me.

Q. Did they pull a gun on you? A. Yes.

Q. Which one? A. I don't know.

Q .Did you see a gun? A. They had it right in my face.

Q. Pointed it at you? A. Yes.

Q. Was it a gun or revolver? A. Like revolver, small.

Q. And was it shiny or black? A. Shiny.

Q. And that's what scared you. Well, they did not pull the gun on you until after they asked you what you wanted and what you was hunting for? A. Yes, after.

Q. Well, now you talked with them for quite a few minutes before they had their hands over your mouth? A. Just as I tell them, please leave me alone, they won't let me talk.

Q. Why didn't you hollar out that time? A. I tell them so nice and right away they grab my mouth shut. One man had hold of one arm and one man had hold of the other. They had me already in the cemetery.

Q. Why didn't you hollar for a policeman? A. I was afraid they were going to kill me and I was all nervous, I could hardly hollar, and when I ran away from them I could hardly hollar.

10 Q. When they had you up in the cemetery; how did you get up over the wall, do you know? A. I was there quite a while; I don't know how they put me there.

Q. You don't know how you got up over the wall? A. I don't know how they put me there.

Q. Well, you got up there anyway. Now, while they were taking you up over that wall, which one man still continued to hold his hand over your mouth? A. They was right by me there and they had hold of
20 me and they had me on the ground.

Q. Why didn't you hollar for help then? A. I was all nervous and I was afraid they would kill me.

Q. But you knew these men were all going to have connection with you? A. I didn't know what they were going to do.

Q. You did not think that? A. I did not think because they said they were going to beat me and I thought they were just going to lick me or kill me.

Q. Now, after they carried you up over the wall,
30 then they carried you across the cemetery—now I am going to show you picture number 5; after they took you up into the cemetery, they carried you across the cemetery up this little path here? A. Yes, towards the tree.

Q. There's a tree right there? A. Yes

Q. So the tree is right by the path? A. Yes.

Q. Carried you past that tree, didn't they? A. Yes.

Q. Now, you see that tree, you see the tree they
40 carried you past; you saw the tree when they carried

you past it? A. Yes.

Q. You saw the tree when they carried you past? A. Yes.

Q. And of course you knew which tree it was after they carried you past? A. I only remember about the —

Q. You remember which tree it was when they carried you past? A. Yes.

Q. And you showed Mr. Totten and the Photographer which tree it was when they took you past? A. Yes. 10

Q. Wasn't you standing up and walking when you went by that tree? A. Yes, they had hold of me by the arm.

Q. Nobody had their hand over your mouth? A. No.

Q. You thought they were going to take you up in the cemetery and kill you? A. Yes.

Q. Why didn't you hollar for help? A. They said if I said one word they would kill me. I don't care if they would kill me after they did that thing with me. 20

Q. But you did not hollar for help by the tree, did you? A. No.

Q. Now, then, you walked up this path across the cemetery, all in between these two old stones where you put that mark? A. Yes.

Q. And you saw the stones? A. Yes, I know which place, I was there.

Q. You saw the stones? A. Where I have the mark. 30

Q. You saw the stones that night? A. Yes.

Q. They were old brown stones, were they? A. Yes.

Q. And it was right in between these two stones that these men stopped? A. Yes.

Q. Now, which one asked you to get down on the ground? A. Well, they put me right on the ground.

Q. They put you on the ground? A. Yes.

Q. How did they put you down on the ground? A. They took me both by the arms and threw me right 40

down.

Q. Did they throw you down? A. Yes.

Q. And why didn't you hollar for help then? A. Well, I was please them, leave me alone and they won't do it.

Q. Now, of course, when you were up here by these two stones, you saw the house here on Hamilton Street right near by these stones, didn't you. A. Yes.

Q. Now, then, look at this photograph—perhaps
10 the other picture will show it better—just look across that picture there; there is the old bank building on Hamilton Street—

Mr. Vosseller: How about this one?

Mr. Pope: Yes, that is better.

Q. There's an apartment house on Hamilton Street? A. Yes.

20 Q. And here's a house here? A. Yes.

Q. Now this house is right close by? A. Yes.

Q. Now, why didn't you hollar for help? A. I was afraid they were going to kill me and was all excited and everything. Even when I ran away I couldn't hollar because I was all excited.

Q. But you did not want to be killed, did you? A. If I hollared they would kill me.

Q. Now, when they threw you down on the ground, what else did they do? A. They put my skirts up
30 and right away started connection.

Q. Did you have underclothes or drawers on? A. Yes.

Q. Did they take them off? A. They ripped them.

Q. Who ripped them? A. Marty Mannon was first.

Q. Marty Mannon was the fellow that did everything, wasn't he? A. I know his face.

Q. And he is the one that tore your drawers off? A. Yes.

40 Q. Well, when did he leave go of your arm? A.

The other one held my arm.

Q. Which other? A. Those fellows there.

Q. Which one? A. Which one held?

Q. Which one held your arm when Marty Mannon ripped your drawers? A. This fellow there on the corner.

Q. Now—. A. And this one held my knees and keep my mouth shut.

Q. Now, when Marty Mannon lifted up your clothes and drawers, then you knew what he was going to do? 10
A. They closed my mouth right away and they had me on the ground.

Q. What did you do then? A. Well, I was—couldn't say anything much because they held their hands on my mouth. I can't say anything in their hand.

Q. Well, what did you do? A. Well, I threw myself and everything so they leave me alone.

Q. Well, did you twist your head? A. Yes.

Q. Well, when you twisted your head, were the 20
fellows hands over your mouth? A. No, they kept it right tight.

Q. Did you hollar? A. No, I cannot hollar.

Q. Did you try to hollar? A. How am I going to hollar if they got your hands?

Q. Did you try? A. Yes, but I was afraid they was going to get my throat.

Q. Well, isn't that the reason you did not hollar because you thought they was going to get your throat? A. I was kind of scared. 30

Q. Oh, well, while you were there in the cemetery you talked with these boys; you said, please let me go, I am a married woman? A. That was by the fence.

Q. That was before you got in the cemetery? A. Yes.

Q. Why didn't you hollar for help then instead of telling them you were a married woman? A. Right when they shut my mouth.

Q. Now, right at this corner when these boys grabbed you, right there by this post, what you call a tele- 40

graph pole, there's a house right there, and you were not five feet away from that house at the time these boys grabbed you, were you? You were right on the corner by that house? A. Yes.

Q .And you were not five feet away from it? Why didn't you hollar for help there? A. I can't do it because I was all scared through; all nervous.

Q. But yet you were talking with these boys? A. I was, can't talk; I did not say another word.

10 Q. You told us you did? A. Well, they ask me what I look for and if I would mind to take me right across the track.

Q. They said they would help you find your husband? And you said, never mind, you would find him yourself? A. Yes.

Q. Then you was right by the corner by this house? A. Yes. I did not know they were going to do like that with me.

Didn't you think it was strange that four or five 20 men would come right up and grab you in the street at night? A. I never thought for that.

Q. You didn't know why they grabbed you? Didn't you think they were going to kill you? A. Yes, because they told me they were going to beat me like the other fellow.

Q. Then if you were right alongside of this house, why didn't hollar for help?

Mr. Beekman: Object to that. She was asked if she wanted to find her husband and when 30 she said she would find him herself, then they came up and put their hands over her mouth and rushed her over the trolley tracks.

Q. The first thing the boys did when they came up to you was to take hold of your arm? A. Yes.

Q. And then they wanted to know where you were going or what you were looking for? A. Yes.

Q. And while they had hold of your arms, you said 40 to them, I am looking for my husband? You said

you were looking for your husband? A. Yes.

Q. Then they had hold of your arms? A. Yes.

Q. And they said, come on, we will show you where he is? A. Yes.

Q. And they gave a little pull on your arms when they said that? A. Yes.

Q. And then you said to them, now never mind, I don't want you to help me, I will find him myself? A. I says, I don't want you to show me, I can find him myself. 10

Q. And then you were standing right by the corner of this house, wasn't you? A. Yes, right on the corner.

Q. So you stood there with them instead of crying for help? A. I was starting to hollar when they grabbed me by the hands and took their hands and shut my mouth.

Q. How long were you in the cemetery altogether? A. I can't tell.

Q. Well, now, after the first man got through having connection with you, did this man that had his 20 hand over your mouth take his hand away from your mouth and somebody else put his hand there? A. Yes.

Q. Somebody came and held his hand over your mouth? A. Yes.

Q. Why didn't you hollar for help when this man took his hand off? A. First fellow have connection and another fellow just when he go, then this fellow was right there.

Q. I know, but they changed hands on your mouth there, didn't they, a couple of times? A. Yes, but 30 I was scared; I was all excited; I was nervous, I can't hollar.

Q. Scared and excited and could not hollar, eh? A. No.

Q. Now, had four men had connection with you before they took the money out of your stocking? A. Yes.

Q. Well, you were not so nervous and so excited that you did not notice that? A. I did not think of it so. 40

Q. Do you remember that? A. Yes, I remember, there was couple of them there.

Q. Four men had connection and then one man came and took the money? Dutch Fuer was talking and then the other fellow was taking the money.

Q. Why didn't you kick? A. What could I do with so many.

Q. How many men had connection with you altogether, five or four or how many? A. I can't tell.

10 Q. Six or eight or ten? A. No, only there was about five or six, like that.

Q. Now when you got up after they all got through after the five or six got through and got up, who did you walk toward the stone wall with? A. Dutch Fuer and Marty Mannon.

Q. They took you in there and they brought you out and the others just followed on? A. These two, they all been together.

Q. When you got down to the wall, who helped

20 you down from the wall down to the sidewalk? A. They didn't help me, nobody, they bring me to the wall.

Q. There's a wall down there that's quite high? A. Yes.

Q. How did you get down from the wall to the sidewalk? A. I had to jump down but I could not jump because I thought the other would catch me and I run down the cemetery.

Q. You did not go down over the wall? A. No.

30 Q. How did you get out of the cemetery? A. Well, there was a break in the fence.

Q. Where the fence was broken? A. Yes.

Q. Now, I am showing you picture 2; is that where you came out, where that cross mark is there? A. Yes.

Q. Where there is an opening in the fence? A. Yes.

Q. Who came out of there with you? A. Nobody, just myself.

40 Q. Now, will you look on picture number 2; you

see the fire hydrant there? A. Yes.

Q. And you see the telegraph pole there? A. Yes.

Q. Now, it was right there by that telegraph pole where these men first came up to you, wasn't it? A. Yes, that's the corner there.

Q. You were right in the middle of the sidewalk about? A. Yes.

Q. As near as you can place it, and that's where this big house is that you have been talking about? Right on the corner by that big house? A. Yes. 10

Q. Now, when you came down out of the cemetery and came down through this opening in the fence, who was with you? A. Nobody was with me at the time.

Q. Where was Dutch Fuer and Marty Mannon? A. They was left there; I left them there because I swing my both arms and run away from them and run down.

Q. Then you went down to the lunch room? A. Yes.

Q. When you got to the lunch room, who was the 20 first person you met? A. When I went down I grabbed a car and two fellows there and they said, hay, lady, that is not your car.

Q. That was an automobile? A. Yes.

Q. And you started to get in the car? A. No, I was not start; I just grabbed the car like that and they say, hay, lady, that aint your car.

Q. Didn't you start to get in that car before the men said, to you, hay, lady, that aint your car? A. Yes, I grabbed the car that time. 30

Q. You went with those two men; and do you remember what their names were? A. No.

Q. Well, one of them was Novack? Don't know the name? A. No.

Q. Well, what did you say to the men that said, hay, lady, that is not your car, anything? A. that's all he told me, and then I want to go and please somebody for me, I was so afraid, and then I saw that lady across the street.

Q. Then you went over to a lady? A. Yes. 40

Q. Did you talk with the lady? A. Yes.

Q. And asked her where a policeman was? A. No, I asked please she could take me home.

Q. And did she take you home? A. No, then that timeI met the cop, Charlie Bohler.

Q. The first person you saw when you came in the lunch room was a man who said, hay, lady, that is not your car and some other man with him you did not know, and then you spied this lady across the street
10 and you went to her and said, please madame, can you take me home; that right? A. Yes.

Q. Did not tell the fellows done something in the cemetery? A. (No reply).

Q. You did tell her that? A. Yes.

Q. And then she took you up the street? A. Yes.

Q. walked up the street and met Charlie, the cop? A. Yes.

Q. You knew Charlie, didn't you? A. Yes.

Q. Well, what did you say to Charlie? A. Well,
20 I tell Charlie the men have down in the cemetery and have connection with me.

Q. You told him these five men took up up in the cemetery? A. I did not tell him how many men; just I told him men had me over in cemetery.

Q. You told him they had connection with you in the cemetery? A. Yes.

Q. Are you quite sure you told Charlie Bohler that? A. Yes, I told him.

Q. Then where did you go? A. Then he says, you
30 know these fellows; I says, yes. I says they was just standing by the lunch wagon when I was walking up with that lady and we went back.

Q. When Charlie cop and when you went in the lunch wagon, who did you pick out? A. Dutch Fuer; that's one; and then another one.

Q. Who was the other one? A. This one there.

Q. The one on this end? A. Yes.

Q. Now you are sure the one sitting on this end was sitting in the lunch wagon when you came back?
40 A. Yes.

Q. Louis Farrano? A. Yes.

Q. Are you quite sure you made a complaint against that man that night? A. Yes.

Q. As being one of the men that were there? A. Yes.

Q. They were the only two you picked out that night? A. The other two just went, when I saw them, they went out. I says here's another two and they sneaked out the door.

Q. What two were they? Who were they? A. Well, there was Marty Mannon. 10

Q. Marty Mannon was one of them; you know him? A. I don't know who is the other one.

Q. Did you say to Charlie Bohler, did you say, there's Marty Mannon, there's one of them? A. No, I did not say that; I said, there's two going out now; I did not say the name.

Q. Who else was with Mannon at the time when he was going out of the lunch wagon? A. I don't know the name because they went out quick. 20

Now, after you picked these others out at the lunch wagon, where did you go then? A. Then we went to Potosney's; Sam Sarbouke took the car and Charlie says there's that car which you were in before and took me.

Q. He took you up to the doctor's this time? A. They was going to find a doctor.

Q. They were going to find a doctor and you wanted to go with him? A. Yes.

Q. You asked him to take you home, didn't you? A. Who? Sam Sarbouke? 30

Q. Yes? A. No, I did not ask him to go home. I says where is my husband; he says my husband up to Potosney's, and he went up for the doctor for Potosney because he like him and I would go in myself for my nerves.

Q. Well, this man then took you up to the doctor's in the car; that's the man that was on the stand here that's called Sarbouke? A. Yes.

Q. You call him Sam; you mean Sarbouke? A 40

Yes.

Q. You got in the car and went up to the doctor's with him, didn't you? A. Yes.

Q. And had he been out with you that night to New Brunswick? A. Yes.

Q. He was one of your party? A. Yes.

Q. And he was one of the men in the fight, wasn't he? A. Yes, he didn't fight but he was there too.

Q. I mean in your party? A. Yes.

10 Q. But Sam Sarbouke was there and yourself, wasn't he? A. Yes, he was there.

Q. Good friend of yours? A. Yes.

Q. Now, while you were going to the doctor's with him in the car, why didn't you tell him these men had taken you up in the cemetery and committed a rape on you? A. I told him.

Q. He says he did not hear of it until the next morning? A. Yes, I told him.

Q. You told him that night? A. No, I told him as
20 soon as he came with the car; I told Sam Sarbouke may be next about.

Q. Sam says he did not hear about it until the next morning? A. I told him, then he forget maybe.

Q. After you went to the doctor's, why, you came back to Potosney's house? A. Yes.

Q. And while you were in Potosney's house, there was another policeman by the name of James Gobel, he came there, didn't he? A. Yes.

Q. And he came there with the first policeman,
30 Charlie Bohler? A. Yes.

Q. And they were asking you all about this fight, were they? A. No, they did not ask me; I told them about the fight, they did not ask me much at all.

Q. But you did not say anything to Gobel about these men having you in the graveyard, did you? A. No, I did not tell Gobel but Charlie told Gobel right away.

Q. Charlie told Gobel in Potosney's house that night? A. Yes.

40 Q. And you heard him tell him? A. Yes.

Q. That these men had had you up in the cemetery and had connection? A. Yes. And Sam Sarbouke said, what kind of policemen are you,—

Q. Did you tell him about it that night? A. Yes.

Q. That's what I want to know? A. Yes.

Q. The next morning you say you went to the cemetery? A. Yes.

Q. Who did you go to the cemetery with? A. Sam Sarbouke and my husband.

Q. Well, who went there first? A. First my husband and Sam Sarbouke. 10

Q. After, you and your husband went? A. Yes.

Q. Now, after you and your husband had been to the cemetery, then you went down and got a policeman, didn't you? A. No. First we went to Andrew Fleming's.

Q. Well, first you went to Andrew Fleming's and then you and your husband went to the cemetery and afterwards you went to the cemetery with a policeman, didn't you? A. No, we went to Andrew Fleming's. 20

Q. What I mean is, you went to the cemetery with your husband. A. Yes.

Q. After you had been to the cemetery with your husband, did you go back to the cemetery again with a policeman? A. No, only with Sam Sarbouke; I didn't go back.

Q. You did not go back with a policeman? A. No, we went to get a policeman and Mr. Fleming says, Sam Sarbouke you get a cop.

Q. Didn't a policeman go there? A. No. 30

Q. What did you want to go to the cemetery for? A. I wante to find my pocketbook.

Q. But you knew one of these men had taken your pocketbook out of your stocking? A. No, that was extra bill and it was ten dollars, and my pocketbook was big roll.

Q. Then you had money in your pocketbook and money in your stocking? A. Yes.

Q. And they took money out of your stocking but didn't take any out of your pocketbook? A. I did not 40

find my pocketbook.

Q. That's what you went to look for? A. Yes.

Q. Now, did you find your comb there? A. Yes.

Q. Did you see your comb there? A. Yes.

Q. Did you bring it away? A. Yes.

Q. Did not leave it there? A. No, I bring it to Andrew Fleming.

Q. What time did you go to New Brunswick that night? A. Well, I can't tell exactly but it was pretty
10 late, about eleven o'clock.

Q. And what did you have to drink down in New Brunswick? A. Didn't have anything.

Q. What did you have to drink before you went to New Brunswick? A. Water.

Q. Well, didn't you have anything else stronger than water to drink that night? A. No.

Q. Were you not intoxicated? A. No.

Q. You were not? A. What you mean, intoxicated?

20 Q. Were you drunk? A. No.

Q. You had not been drinking anything at any time that night? A. No.

Q. Quite sure about that? A. No, I am sure.

Q. Which one of these gentlemen that were with you is it that they call the sailor? A. It's Tony Potosney.

Q. He's the one they call the sailor. Wasn't he drunk? A. No, he was not drunk.

Q. And wasn't the other fellow just a little bit
30 drunk too and your husband? A. They was not drunk.

Q. But they had been drinking! A. Well, I seen they did not drink.

Q. But you knew they had been drinking, maybe you did not see them? A. But they was not drunk.

Q. Just having a good time, isn't that right?

Mr. Beekman: Object, it doesn't matter whether they were drunk or not.

40 Mr. Pope: Yes, it does.

Q. You had been having a good time that night? A. No, not good time, just take him—

Q. You did not have anything to drink that night?

Mr. Beekman: Object to that; she has already said.

Q. Did you have anything to drink before you left home that night? A. No.

Q. Quite sure about that, are you? A. Yes. 10

Q. And you were not under the influence of liquor or partly under the influence of liquor that night? A. No.

Q. Where had you had a drink before that night? A. No kind of drink.

Q. No, but before you went to New Brunswick; how soon before you went to New Brunswick? How soon before you went to New Brunswick did you have anything to drink, liquor, booze—A. We did not have any kind of liquor. 20

Q. You had gone out of that business? A. What kind of business?

Q. Liquor business? A. I don't want that business.

Q. You had been indicted and plead guilty to bootlegging? A. Yes, but no more.

Q. Did you quit? A. No more.

Q. What time did you get to New Brunswick that night? A. I know we left about eleven o'clock; I don't know how long it take to go over there and everything. 30

Q. What did you go to New Brunswick for? A. Take my child's god-father to see his family.

Q. Did you take him there? A. Yes.

Q. And left him there and came back home? A. Yes.

The Court: What time did you say you started to take your child's god-father down to see his family? 40

The Witness: It was about eleven o'clock.

Q. Well, did you go down what they call the Canal Roard or down the River Road. A. It's Canal Road.

Q. So it's about seven miles to New Brunswick? A. Yes.

Q. What kind of an automobile did you have? A. Well, it's Sam Sarbouke, I don't know. I don't know that they call it.

Q. Don't know what name it is? A. No.

Q. Well, it took you about half an hour to run down? A. I don't know exact.

Q. When you got to New Brunswick, did you go in a house down there? A. Yes.

Q. And stayed a little while? A. Yes.

Q. How long did you stay? A. Stayed about a hour.

Q. What were you doing in the house? A. Well, we was conversation—we was talking there and every thing, one hour passed like anything.

Q. And drinking? A. No, we did not have anything. She gave me plain soda, that's all. No kind of drink.

Q. Sam Sarbouke had a drink of plain soda, did he, and your husband? A. No, they did not have anything there.

Q. They had a little liquor? A. No, they did not have any kind of liquor there. What I seen it, they did not drink.

Q. You stayed there about an hour; then did you go right straight home? A. Yes, we came right straight home.

Q. You left home about eleven o'clock and drove seven miles to New Brunswick and that certainly did not take you over an hour to drive seven miles, did it? A. Well, I don't know exactly how long it take.

Q. Well, you did not have any accident,—you did not stop along the road? A. No.

Q. Did not drive fast, or very slow; just drove right along? A. Yes.

Q. Then you stayed there about an hour and came back to Bound Brook. Did you come right straight back to Bound Brook? A. Yes.

Q. Did not stop along the road at all, did not drive fast or slow, did you? You drove right along? A. Yes.

Q. Must have stayed in New Brunswick more than an hour if you did not get back to Bound Brook until two o'clock? 10

Mr. Beekman: She said she was in the lunch wagon quarter to two.

A. Yes, we did not stay long time.

Q. Now, do you remember whether it was Dutch Fuer or Marty Mannon that tore your drawers? A. It's Marty Mannon.

Q. You are sure it was Marty Mannon that tore your drawers? Where are your drawers? A. Home. 20

Q. Why didn't you bring them? A. What for?

Q. To show where they were tore? A. Well, I didn't know. I didn't know, now they thrown away.

Q. You threw them away? What did you throw them away for? A. What I know to keep them?

Q. Why didn't you give them to the police? A. Well, I didn't know anything like that.

Q. You did not think about that; you did not think it would be a good idea to show the police the drawers these men had torn, did you? A. (No answer). 30

Mr. Pope: That is all.

Re-direct Examination by Mr. Beekman:

Q. You say you lost a pocketbook there that night? What kind of a pocketbook was it? A. Yellow.

Q. I mean, was it a pocketbook something like I carry in my pocket or one that the women carry on her 40

hand? A. On her hand.

Q. How big? A. Like four square.

Q. How Big? A. Just big, about like that. (Indicating).

Q. That a woman carries outside on her hand? A. Yes.

Q. Did you find that? A. No.

Q. When did you first learn your ten dollars was gone? A. Well, because I know the fellow—

10 Q. When did you first miss the ten dollars itself? When did you find out the ten dollars was gone? A. Gone? When I come home and I know it was taken because he went in my legs.

Q. Then you did not know until the next morning that you had actually lost it? A. I know he take it because when I went and look I am sure, because he take it.

Re-cross Examination by Mr. Pope:

20

Q. Do you remember either the Friday after this occurred or within a week or two, you came up to the Court Room one Friday? A. Yes.

Q. And you had a black veil on your face? A. Yes.

Q. Why did you come with a black veil in the Court Room that day? A. Well, my mother is dead, I lost my mother week before Christmas.

Q. Why did you have this veil down over your face? A. Well, because just keep like that; it's my mother

30 died.

Q. You came here to look at these boys, didn't you? A. No, I did not come to look at the boys.

Q. Isn't that what you came with a veil over your face for, so you could sit up there and watch those boys and study their faces and learn their names; isn't that the reason you had a black veil over your face? A. No.

Q. You were not a witness that day, were you. A. What witness?

40 Q. There was no trial that day that you were

here in the Court Room? A. No.

Q. Well, why did you come here that day? A. I just come, that's all.

Q. You just come, that all? All right.

Re-direct Examination by Mr. Beekman:

Q. Is that the day the defendants were brought up to plead to the indictment, that you were here? A. Yes.

Q. Mr. Totten sent for you and told you to come here? A. Yes.

Cross Examination by Mr. McCullough:

Q. When you and Mr. Bohler, the policeman, went into the lunch wagon after this all had happened, did you point out to him the men that were in their? A. Yes.

Q. Which men did you point out, do you know? A. Duch Fuer, right away first.

Q. Who else? A. And then another one was there drinking coffee and I pointed to him.

Q. Was he one of the men that was up in the graveyard with you? A. Yes.

Q. Is he here today? A. Yes.

Q. Where is he? A. Right there. (Indicating).

Q. That's Farrano here? A. Yes.

Q. This man on the end? A. Yes.

Q. Did you point him out to the policeman? A. Yes.

Mr. McCullough: That is all.

The Court: How far is it from where the men first stopped you out to the cemetery?

Mr. Beekman: Right across the street.

(Witness excused).

SAM SARBOUKE, Recalled.

Further Direct Examination by Mr. Beekman:

Q. Sam, did you go anywhere with this Mrs. Bodvenski, the following day after the night of March 5th? A. Yes; that morning, I think it was, around eight o'clock.

Q. Where did you go? A. Up to the graveyard.

10 Q. For what purpose? A. Well, for the purpose of looking for her purse or whatever she might have lost, she says, hair comb.

Q. For what she told you she lost? A. Yes.

Q. Did she go with you the first time? A. I don't remember, I think she did.

Q. Who went besides you and her, anyone? A. I think Officer Gobel was with me.

Q. Did you find anything? A. Not at that time.

Q. How soon did you go again? A. Well, on our 20 way going down to Judge Fleming's, why she picked up a bill right opposite the bank.

She picked up a bill? A. Yes; seemed like a bill.

Q. And what was this bill that she picked up? A. I can't tell what it was; I seen the bill; it was from some store down in Bound Brook.

Q. Were you there when the comb was found? A. I seen her have the comb, but I did not see her pick it up.

Q. Where were you when she found the comb? 30 A. About four or five feet ahead of her.

Q. And what part of the cemetery? A. A little ways along toward the back of the place.

Q. Do you recognize what that is in the picture? A. It looks like the corner of the place.

Q. Well, where did she pick up the comb, with reference to that spot? A. Somewheres around near the wall; lower part of the hill.

Q. Do you know whether or not this is the comb she picked up, or not? A. I could not tell you, I did 40 not see the comb.

Q. Well, how do you know she picked up one? A. I say she picked one comb up.

Q. Well, you saw that one comb? A. I did not examine it.

Q. Then you don't know whether this is the same comb or not? A. I could not tell you.

Q. Well, would you want to tell if you could? A. No, I never seen the comb before.

Q. You don't know whether that is the comb or not? A. I could not say. 10

Q. Was Gobel with you at all? A. He was with me for about fifteen or twenty minutes.

Q. I mean in the cemetery when you went up there? A. Not the second time; the first time.

Q. Anybody else? A. Only the Misses and myself.

Q. She was with you the first time; you are sure of that? A. I ain't quite sure, but I think she was.

Q. Was Gobel with you when the comb was found? A. No, sir, he wasn't. 20

Q. Now, when this bill was picked up; can you tell us where this bill was picked up? A. Picked up right outside the bank.

Q. How near the tree there? A. Well, I could not very well say; I did not measure it.

Q. Why can't you tell us, if you know where it was? A. I ain't measuring places.

Q. The bank building is only thirty feet—A. It was near the bank building.

Q. Right outside the bank? A. Yes. 30

Q. On the sidewalk? A. Yes.

Mr. Beekman. That is all.

Re-cross Examination by Mr. Vosseller.

Q. Sam, you did not see her have this comb, pick it up? A. No, not exactly.

Q. You don't know whether she picked up the comb or not? A. She says to me, I just found the comb. 40

Q. But you did not see her pick it up? A. No .

Q. There is a path goes right there, near the place where she said she found the comb? A. I don't remember a path there, that's the first time I had been up there.

Q. When you and Gobel were up there, did you go over this same ground that she claims to have found the comb on? A. Yes.

Q. You did not find any comb? A. No. sir, not I.

10 Q. Gobel did not find the comb? A. No.

Q. You did not find anything at all? A. No.

Q. What I am asking you is, did you and Gobel look at the same ground where she claims to have found the comb? A. She claims she lost a comb—

Q. No, she claims to have found this comb. Do you and Gobel look over that same ground? A. We went around there, went all over the ground.

Q. You made a thorough search? A. Yes.

Q. Now, did you see her find this bill? A. On the

20 sidewalk; yes.

Q. I say, did you see her pick it up? A. I saw her pick it up.

Q. And this was over on Hamilton street? A. Yes.

Q. And that was at least—that must have been 300 feet from East street? A. Three hundred feet west or four hundred feet; down on Main street.

Q. The bill was not picked up on Main street, was it? A. Yes; on Main street.

30 Q. On Main street? A. On Main street.

Q. Opposite what bank? A. Bound Brook bank.

Sure of that—it is not the First National, is it, the First National Bank, you mean? A. Turning the corner from the station.

Q. Then that was found on Main street? A. Yes.

Q. Not Hamilton street? A. No.

Q. Anything found on Hamilton street? A. No, sir.

Q. Nothing found on Hamilton street? A. Not

40 that I know off.

The Court: What kind of a bill was it?

Witness: Some small bill from Dick & Company.

The Court: You are sure she did not pick it up around the cemetery?

Witness: No, right outside the bank, down on Main street. 10

Q. (By Mr. Beekman) What did you mean when you told me it was near some tree? A. I told you—I do not know anything about a tree, I don't know whether there was any trees on Main street near the bank.

Q. You don't know whether there are any trees on Main street in Bound Brook? A. No. Sir.

Mr. Beekman: That is all. 20

(Witness excused).

DR. EMERSON HIRD, Sworn on Behalf of the State, testified as follows:

Direct Examination by Mr. Beekman:

Q. Doctor, you are practicing physician in the Borough of Bound Brook? A. Yes. 30

The Court: The doctor's qualifications, I presume, are admitted?

Mr. Vosseller: Yes.

Q. Do you know Marie Bodvenski? A. I do.

Q. Were you called to administer to her in a professional capacity during the week of March 5th? A. I was called in on March 7th, Wednesday afternoon. 40

Q. That was on Wednesday? A. Yes.

Q. And where did you see her? A. At her house.

Q. And where was she when you called? A. She was in bed.

Q. What examination did you make of her? A. I made practically no examination; except I found she was suffering from a hundred degree temperature; her pulse was over a hundred. She was passing a certain amount of blood.

10 Q. You say she was having a discharge? A. Yes.

Q. And she had a temperature of what? A. 102.

Q. Is that normal? A. No, sir.

Q. How much above normal? A. 98 4-10 is normal.

Q. In a condition of health, would such a temperature accompany an ordinary menstruation? A. No. sir.

Q. Would any abnormal temperature accompany healthy menstruation? A. No. sir.

20 Q. How long did this condition continue? A. About a week.

Q. Did you notice her discharge? A. I examined the cloths taken from the patient, and they contained some blood clots.

Q. Could you determine from what you saw of these blood clots, whether or not she had had a miscarriage, or whether it was an ordinary menstruation? A. No. sir; not from the clots.

Q. Then, as a matter of fact, you don't know 30 whether she was having a menstruation accompanied by fever and certain disorders? A. She had all the symptoms of a miscarriage, but I did not find any product.

Q. Product—you refer to— . A. I found no fetus; I found no membrane.

Q. Was there someone there nursing her? A. Mrs. Jensen came the next day; that night she was alone with her husband.

Q. Do you know how long she had been having a 40 menstruational discharge before you were called in?

A. I do not remember.

Q. I mean, as part of the history of the case; you don't remember? A. No, don't remember.

Q. How long was she ill? A. A little over a week.

Q. That in itself, would that indicate a menstruation or a miscarriage? The length of sickness? A. It would be more than an ordinary menstruation.

Q. It would be a longer period than you would expect from a menstruation? A. Yes, sir.

Q. How long did you treat her all together? A. I saw her, I think, regularly for a week, and then saw her at intervals for another couple of weeks. 10

Q. What other symptoms did she have, aside from her—. A. The first evening she was quite nervous; as I came in the room she jumped up in bed and did not appear to be absolutely oriented.

Q. By that, you mean what? A. Oriented; in the first place, she did not recognize where she was, or people that were there.

Q. She did not know exactly where she was, in other words? A. Yes. 20

The Court. What did you treat her for, doctor; did you treat her for a week without knowing—

Witness: I treated her for a miscarriage. I asked her if she would permit me to take her to the hospital, but she refused, and under the circumstances I did not feel warranted in making a vaginal examination. 30

Q. Well, you treated her on the theory that she had a miscarriage, but you took no chances?

Mr. Vosseller: Object to that.

The Court: That is what the doctor testified to.

40

Mr. Vosseller: That is all right, but Mr. Beekman is not testifying.

Mr. Beekman. Cross examine.

Cross Examination by Mr. Vosseller.

Q. Doctor, if she had a miscarriage, it would not be anything unusual; isn't it, as a matter of fact, true that most women sometimes during their child-bearing career, have miscarriages? A. Not in my experience.

Q. Don't the book say so? A. I don't think so; I can show it to you.

Mr. Vosseller: That is all.

(Witness excused.)

JOSEPH WENDAL, Sworn on Behalf of the State, testified as follows:

Direct Examination by Mr. Beekman.

Q. Joe, where do you work? A. I work down in the lunch wagon.

Q. How long have you worked there? A. Why, I help a couple of nights in Somerville and a couple of nights in Bound Brook.

Q. Were you there the night of March 4th and 5th? A. Yes.

Q. And do you know all of the defendants in this case? A. Yes; I know the fellows.

Q. Well, they are the defendants. Who do you know of the defendants? A. I don't exactly know.

Q. Huh? Is there any reason why you don't want to tell? A. Not that I don't want to tell.

Q. Well, then, tell us.

The Court. Come on; do you know them,

or don't you know them?

Witness. Yes; I know them all.

The Court. All right; say so.

Q. Were any of them in there on the morning of March 5th? A. Yes.

Q. In the lunch wagon? A. They were in there eating; that's all. 10

Q. Who were in there? A. All of them.

Q. All of them? A. And a bunch more.

Q. And other fellows too; you mean by a bunch more? Was Dutch Fuer in there? A. Yes, he was eating.

Q. Was Marty Mannon in there? A. Yes.

Q. Was Ducci DeMatto in there? A. In there? I don't know him by name.

Q. Was this fellow here—do you know Nattoli? A. No. 20

Q. Was this fellow here—this fellow on the end here? A. I don't know; you've got me. I know there was so many in there.

Q. Well, how about the second one? A. You got me.

Q. No; I haven't got you. I want to get you to tell us what you know; that's all I want to get you to do. Do you remember when Marie Bodvenski and Potosney and Paul Buggi and this party came in there to be served? A. Yes. 30

Q. What time of night was that? A. I know it was early in the morning, but I don't know about what time.

Q. Where were these chaps you see, the defendants at that time? A. They were eating.

Q. All of them? A. Yes.

Q. And what occurred after Mrs. Bodvenski came in there? A. Well, they came in, they had something to eat and I was doing some other kind of work, and then a fight started. 40

Q. A fight started; did anybody have a bottle in their hand? A. Not what I can remember.

Q. What's got the matter with your memory? A. Nothing.

Mr. Pope: Object to that question.

Mr. Beekman: Can't see anything wrong with that.

10

Q. Who got in the fight? A. Well, when I put up my head everybody was fighting.

Q. Who started the fight? You were in there? A. Sure; but I was cleaning up the dishes.

Q. Now, don't you know who started the fight in there? A. I am doing the dishes; the dish tank is right in—

Q. Were you in there when Mr. Bohler came back and Mrs. Bodvenski? A. Yes.

20 Q. Who were in there then? A. A couple of fellows.

Q. Well, now, who? A. I don't know the fellows that was in.

Q. Did anybody in there after she and Bohler came in there? A. Not that I know of.

Q. Don't you know what happened when she and Bohler were in there? A. Yes; she was in there crying; that's all I know about.

Q. Crying, what about? A. Oh, about the fel-
30 lows doing something, I don't know.

Q. Doing something you don't know, what do you mean by that; doing something you don't know? A. She was in there crying and talked to Bohler.

Q. Don't you know who came in there while she was in there? A. No; I was in the back room cleaning up the dishes.

Q. How long did you stay in the back room? A. Must have been six minutes or seven, or something like that.

40 Q. Well, if you can tell us anything she did or tell

us anything, say it so we can hear it. Then where did you go? A. Came out.

Q. Came out of where? A. Outside room.

Q. Outside room where? A. In the front.

Q. Who was in the other place then? A. Nobody, then.

Q. All gone? A. All gone, yes.

Q. Who was in there taking care of the business while you were out? A. I did—

Q. No. You was gone and everybody was gone— A. I was in the ladies' room. 10

Q. All right, and who was taking care of the business in the men's room while you were gone in the ladies' room? A. There was no business there.

Q. There were several people in there? A. They were eating, that's all.

Q. Eating? A. Yes.

Q. Who was eating? A. I don't know the fellows.

Q. What? A. I don't know who they were. 20

Mr. Beekman: That's all; cross examine.

Cross Examination by Mr. Pope.

Q. Now, after this woman—you seen this woman —she was crying—after she left, did Marty Mannon come in the lunch wagon? A. No. I did not see them; that's when I was in the room cleaning up.

Q. And after—. A. I must have been wiping off the table then. 30

Q. Was Marty Mannon in the lunch wagon when she was in there with Officer Bohler? A. No; not what I saw.

Q. You did not see him in there when she was there? A. No, I don't see them after.

Mr. Pope: That's all.

Mr. Beekman: Did you see Bohler there? 40

Witness: Yes.

CHARLES BOHLER, Sworn on Behalf of the State, Testified as follows:

Direct Examination by Mr. Beekman.

Q. Charles, you are a police officer in the Borough of Bound Brook? A. Yes.

10 Q. Where did you first see Marie Bodvenski on the night of March 5th, what time? A. About five minutes after three. On Main street between East and Hamilton street, about where Effinger's pool room was, where it used to be.

Q. Who was with her, if anybody? A. Some woman and a girl.

Q. Did she make any complaint to you? A. She complained that fellows—there was a fight down on Main street at the lunch wagon and that her husband

20 —she did not know where her husband was and that she went out on East street and that a bunch of fellows grabbed her and took her into the grave yard, and I says, do you know who the fellows were and she says they are over across the street by Stomer's bakery.

Q. Did you see who was there? A. I took the woman over there and she pointed out three of them that were standing there.

Q. What three did she point out? A. Dutch Fuer

30 and DeMatto—

Q. Tony DeMatto? A. No, not Tony, Ducci—

Q. Ducci DeMatto? A. And what's the other fellow's name, Nattoli.

Q. Pointed him out? A. Pointed him out.

Q. Then where else did you go? A. Just at that time Sam Sarbouke came from South Bound Brook and I asked him about the fight and he says that there was a fight between Potosney and a bunch of fellows. I asked him where Potosney was and he says he was

40 down at his house. Well, then, in the meantime these

three fellows that this woman pointed out went in the lunch wagon. Well, in about ten or fifteen minutes elapsed and I took her in there and had her point out the fellows again and she pointed out Dutch Fuer, DeMatto and this here Natolli; the same three she pointed out before. Just then Marty Mannon and Vic DeGhetto came in the door and went out again, walked right out again and she says, them too.

Q. Indicating who. Marty Mannon and Victor DeGhetto. 10

Q. Did you make any arrests? A. Not that night, no.

Q. Well, why not? A. I wanted to find out more about it. We went down to Potosney and found out down there what the trouble was. At that time she did not tell me they had the intercourse with her; I didn't know anything about it until the next morning.

Q. Did you make the arrests after the complaint was made. A. I made one.

Q. Who did you arrest? A. This Nattoli. 20

Q. What time of night was it that you saw these three, who I understand you say was Farrano, DeMatto; is that right? A. Yes.

Q. And Fuer? A. Between three and a quarter after three.

Q. And what time was it then that you saw these three again in the lunch room? A. I should judge about half past three.

Q. Now, what time did Marty Mannon and Victor DeGhetto come in the lunch room? A. It was about 30 half past three when they came in.

Q. How long were they in there, Mannon and DeGhetto? A. Walked in and went out again.

Q. Did they get far enough in so they could have seen the defendant? (Complaining witness.)

Mr. Pope. Objected to as a conclusion.

Q. How far did they get in before they turned

40

around and walked out again? A. Mannon was all the way in but Vic just about had his foot on the step when Mannon turned around and walked out again.

Q. Say anything, did they? A. Did not say a word.

The Court. Who were the three she first pointed out?

10 The Witness. Fuer, DeMatto and Nattoli.

The Court. Then when you went in the lunch room the second time, she pointed out the same three?

The Witness. Yes, and then Mannon and DeGhetto came in and went out again.

The Court. Did you know anything about
20 anybody going to the grave yard until the next day? A. I did not.

The Court. Did you know of her or anybody going to the grave yard? A. I did not.

The Court. Do you know whether the other officer there in Bound Brook did?

The Witness. I don't know.

30

Mr. Beekman. Cross examine.

Cross Examination by Mr. Vosseller.

Q. Was Farrano there? A. I don't know; I did not see him that night.

Q. You saw DeMatto there? A. I saw DeMatto.

Q. Now after; what time was that that you went to Potosney's house, about? A. Must have been after
40 half past three.

Q. Who was with you? A. Officer Gobel; I went down in his motorcycle.

Q. How long were you there? A. Well, I should judge until about a quarter after four.

Q. And during this time did you talk about—did this woman talk her case over with you? A. She did not.

Q. You were investigating the cause of the fight? A. Yes or whatever happened that night.

Q. Was anything said of a rape being committed? 10
A. Nothing was said about a rape.

Q. What was the appearance of Mrs. Bodvenski? A. She was all hysterical.

Q. Was her clothing disarranged? A. Not that I could see, no.

Q. Hair down? A. That I could not say.

Q. Was there anything about her appearance that would lead you to believe or suspect that she had been assaulted? A. No, sir, she was all upset or hysterical.

Q. Had the party—could you tell whether the 20
different people that were at Potosney's house, including Potosney, had been drinking that night? A. They seemed to me to be under the influence of liquor.

Q. Did the woman appear to, be so? A. That I could not say.

Cross Examination by Mr. McCullough.

Q. Officer Bohler, you say that Nattoli was there. This man with the black tie? A. Yes, he was there. 30

Q. Mrs. Bodvenski says he was not there when she came back? A. She pointed him out to me; she pointed him out twice.

> Mr. Beekman. I ask to have that statement stricken out; she did not say that. She said she could not identify him; she has not said he was not there.

Cross Examination by Mr. Pope. 40

Q. She did not point out this man either? A. I did not see him that night.

Further Cross Examination by Mr. Vosseller.

Q. Mr. Bohler, do you know when Farrano was arrested, how long after the crime, the supposed crime? A. That I could not say how long after.

10

Mr. Beekman. Object to that; it don't make any difference if he does know.

Q. Do you know whether or not it was a long time or a short time? A. I think the record shows.

Q. It may show; I am asking you if you know? A. I don't know.

Q. All right. Was it after Fuer was arrested? A. It was after Fuer was arrested.

20 Q. How long was he arrested after the crime?

The Court. Do you know?

The Witness. No, I do not.

Q. Why wasn't he arrested sooner? A. Because he was out of town.

Q. He ran away the next day? A. Yes, he ran away.

30

Mr. Pope. I object to that.

Mr. Beekman. You wanted to inquire into his reason.

Mr. Pope. Will we cross examine the Prosecutor?

Mr. Beekman. Yes, go ahead.

40

Mr. Pope. If you want to testify, take the stand.

Q. Did Farrano run away too? A. That I could not say.

Further Cross Examination by Mr. Pope.

Q. Fuer was working for the Central Railroad? A. So I heard.

Q. He didn't run away at all, did he? A. I could not say he ran away. As I understand he was working for the Central Railroad.

Mr. Pope. That's all.

BERTHA LAMPE, sworn in behalf of the State, testified as follows:

Direct Examination by Mr. Beekman.

Q. Mrs. Lampe, where is your home? A. Paterson.

Q. Did you happen to be in Bound Brook on March 5th? A. Yes.

Q. How long had you been there? A. I brought my grandchildren over to the depot between two and three o'clock, and left home two o'clock, and came home three o'clock.

Q. Yes, I mean, how did you come to be in Bound Brook on March 5th, if your home is in Patterson? A. My children live here.

Q. You were visiting your children? A. Yes.

Q. Did you see this woman, Marie Bodvenski, that has been on the stand, that night? A. Yes.

Q. And where were you when you first saw her? A. We passed the lunch wagon and they came over and started and hollared, lady, lady, please help me—

Mr. Vosseller. Object to what she said.

A.—she asked me—

Mr. Vosseller. Object to that answer; the defendants were not there.

Q. What condition was she in? A. Bad condition.

Q. In what way? A. Was shaking; her whole body shook and cries and hollers—

10 Q. Well, by reason of what she said to you and what you thought was right to do, what did you do about the woman? A. I gave her my arm, and I said I take you to the depot, and then we walked a couple of paces and then a policeman came and then she talked to the policeman and took the policeman over to the lunch car, and we went as quick away as we could to the depot.

Q. Did she tell you what had happened to her; yes or now, now. A. Yes, she say—

20

Mr. Vosseller. Not what she said.

A. I tell you what she said—

Mr. Vosseller. I don't want to know.

The Court. Her answer is yes; did she make a complaint?

30 Witness. Yes, she did make a complaint.

The Court. Don't tell what it was.

Mr. Beekman. Cross examine.

Mr. Vosseller. No questions.

MARY JENSEN, sworn on behalf of the State, testified as follows:

40

Direct Examination by Mr. Beekman.

Q. Mary where do you live? A. I live in East Bound Brook.

Q. You a married lady? A. Yes.

Q. Do you know Mrs. Bodvenski? A. Yes, I do.

Q. Did you have an occasion to be at her house in the week of March 5th of this year? A. Yes.

Q. And what for? A. To take care of her while she was ill. 10

Q. And when did you first go there? A. About—it was either Tuesday or Wednesday of that week, I can't remember.

Q. Where did you find Mrs. Bodvenski when you got there? A. In bed.

Q. And what was the matter with her? A. She was pretty ill.

Mr. Vosseller. Does she know; can she answer that? 20

Mr. Beekman. Well, I don't know if you don't give her a chance to answer.

Mr. Vosseller. Object to that question.

Mr. Beekman. I repeat the question and insist it is correct:

Q. What was the matter with her, if anything? 30 A. She was suffering with a high fever at the time I came.

The Court. I don't believe you qualified her.

Q. Was she well or sick? A. No, she was not well, she was ill. I can tell a sick person from a well person.

Q. You are a woman? A. I am.

Q. Do you know the functions that are peculiar 40

to women? A. Well, I do, a little.

Q. And did Mrs. Bodvenski's illness have anything in relation to the fact that she was a woman and not a man? A. Why, certainly.

Q. And did you come there before Dr. Hird came or after? A. No, the doctor had been there and then I was called for, she needed a woman to take care of her.

Q. Now, what did you do for her? A. Why, I
10 waited on her and would bring her water, bathe her.

Q. And what else? A. Well, I really took care of her in every way.

Q. Was she bleeding? A. Very much. She bled all the while, nearly, after I was there.

Q. Did you notice the character of the discharge she had? A. Yes, I did, I noticed—

Q. Well, what was the character of it? A. Well, in the first place it smelled very bad.

Q. Well, I mean—you looked at it? A. Yes.

20 Q. What was the character of this blood? A. In fine little pieces, and there were some bad clots in the cloths.

Q. Was there any on the bed clothes? A. No, she had these things there to—

Q. I mean, can you tell us how extensive her bleeding was in some way that won't shock your modesty and yet give us some idea whether it was ordinary or extraordinary? A. It came out in pieces.

Q. No, in what quantity? A. Oh, well, it was
30 all in the bed—I did not examine it—

Q. I did not ask you whether you examined it. I want to know whether it was a big quantity? A. Yes, it was a big quantity.

Q. And how long did it last? A. Well, it lasted about, that is continual bleeding lasted about a week, and then just a little at a time.

Q. What was the condition of Mrs. Bodvenski otherwise than her bleeding? A. What was the condition?

40 Q. Yes. A. Always suffering, with high fever

and she was very weak.

Q. Did she complain of any pain in her abdomen? A. Yes.

Q. What did you do for that? A. Well, I didn't do anything more than what the doctor told me.

Q. Well, what did he tell you to do? A. He gave her pills, he had three or four different kinds for me to give her.

Q. How long did you treat her—how long did you give her medicine under the direction of the physician? A. Around a week.

Mr. Beekman. Cross examine.

Cross Examination by Mr. Pope.

Q. Are you a professional nurse, Mrs. Jensen? A. I am not.

Q. Are you what they call a practical nurse? A. Well, I can take care of a sick person.

Q. Did you take this women s temperature? A. No, the doctor took it.

Q. How soon after you arrived at the house did the doctor come? A. He arrived there before I got there and he was gone when I came.

Q. And he was there first? A. Yes.

Q. How often did the doctor come after you got there? A. Well, he came the first day, he came the next day and I think the day after that he was supposed to come but he didn't come until in the evening and then he came the next day again. It was every day for that week.

Q. Well, he came once a day every day for the week? A. Yes.

Q. Now, did you examine the napkins? A. I showed—

Q. Did the doctor examine them? A. I showed it to him.

Q. And he examined it? A. Yes.

Q. Examined the clothes on the bed? A. Yes,

and—

Q. And the discharge? A. What do you mean, discharge?

Q. Well, he examined the napkins that you took from this woman? A. Yes.

Q. And you said there were little pieces? A. Yes.

Q. Muccus in the blood? A. Yes.

Q. Do you know what fetus is? A. Well, no, I don't; explain it a little different and I will tell you
10 if I know it.

Q. Don't you know what fetus is—well, fetus is a very small baby that has not yet been developed, you did not recognize anything like that? A. No.

(Witness excused.)

PAUL BUGGI, sworn on behalf of the State, testified as follows:

20 Direct Examination by Mr. Beekman.

Q. Paul, where do you live? A. 526 East Second street, Bound Brook.

Q. Were you in the lunch wagon on the morning of March 5th? A. Yes.

Q. What time did you go in there? A. In there about a quarter to three, went in there about a quarter to three.

Q. You did? A. Yes.

30 Q. Who was in there when you went in? A. Nobody else at the time when I went in.

Q. Who came in afterwards? A. I went in and Anthony Potosney went in there first and then myself, I am not positively sure about that.

Q. You say that that was a quarter to three? A. I say a quarter to three, and I stay there for a little while until we had a little lunch and about five minutes to three, when the fight started.

Q. How do you figure up that it was a quarter to
40 three you got there? A. Well, it was a quarter to

three because I looked at the time.

Q. You looked at a watch? A. Yes.

Q. What were you running, the old time or new time? A. I think that was the old time.

Q. That would be a quarter to four, old time, not three? A. Yes.

Q. Well, were you with the Bodvenski party? A. Yes, I was driving the car.

Q. Well, you were merely driving the car for the owner, were you? A. I was driving for the owner. 10

Q. Well, did you see anybody in the front place, in the men's part? A. I only saw one lad, because I had my back toward the door. Only one fellow.

Q. Who did you see? A. Louis Farrano, he looked in the door.

Q. Did he say anything? A. No, he didn't say anything that I know of.

Q. But Louis Farrano looked in the door? A. He looked in the door, I just happened to turn around.

Q. Did you take any part in the fight? A. No, 20 sir.

Q. When were you in there again, if you were in there? A. Well, I didn't go back after the fight had started.

Q. You didn't? A. No.

Q. What became of you? A. I went around and looked for a cop.

Q. After the fight had taken place up around the board fence or before that? A. No, as soon as they came out of the lunch room. 30

Q. Did you run away? A. No, I did not run away I walked up there and looked for a cop.

Q. Did you see any of the parties afterwards? A. No, only as far as they ran across the street, I did not see them any more.

Q. Who was that? A. The ones that was running after Tony Potosney—

Q. What ones? A. I don't know.

Q. How long have you lived in Bound Brook? A. Six years. 40

Q. You are the fellow that goes away and stays away? A. Yes.

Q. You don't know the names of one of these people who were chasing Potosney across the street? A. I know the fellows, because I was working with them.

Q. I am not asking that, I am asking whether you know their names; have you ever seen any of them; have you ever seen any of this bunch in Bound Brook? A. I have seen them, where they live; I don't know
10 their names—

Q. You may know my name or you may not, but I am asking do you remember seeing any of these fellows that crossed the street? A. No.

Q. What did you mean when you said a little while ago that you did not remember them by name? A. I don't remember them by name, only the fellow, the first fellow, when he ran in the lunch room out of the ladies' parlor.

Q. The rest of them you did not see at all? A.
20 No.

Cross Examination by Mr. Vosseller.

Q. You say that you got to the lunch room at a quarter to three in the morning? A. Yes.

Q. How soon did you look at your watch after you arrived? A. When I got back. We got back to Potosney and he says, come on over to the lunch wagon; that is, Potosney asked if we would have coffee and
30 he says, come on over to the lunch wagon; and so we come over and she and her husband, and it must have been a quarter to three, because it only took a couple of minutes to cross the bridge.

Q. Where had you been? A. New Brunswick.

Q. Did you have something to drink that night? A. I don't drink.

Q. Did the others have anything? A. Yes, they did.

Q. Did the women? A. No.

40 Q. Had you been with these people before eleven

o'clock? A. I went up to Potosney's about ten-thirty and then we went to Brunswick.

Q. Now, what time did the fight start? A. The fight started about—only sat in there ten minutes when the fight started.

Q. How long did the fight last? A. Why, almost no time.

Q. Five minutes? A. Less than a couple of minutes and I went outside.

Q. Could you hear them make any noise, the crowd outside? A. I did not see no crowd outside. 10

Q. But you say you were running across the street? A. Well, I was running after a cop.

Q. And did you find a cop? A. No, I did not find a cop.

Q. Did you come back to the lunch wagon? A. I was going across to the graveyard.

Q. You came across to the graveyard? A. Yes, I was going across to the graveyard.

Q. What time was that? A. Three o'clock. 20

Q. Did you see Bodvenski that night? A. I saw him when I came down to the house after.

Q. Isn't there a path across the graveyard? A. Yes, right between the National Bank and a house right next to it.

Q. You came to that path? A. Yes. I came up half way and I saw the fellows come up and I told Bodvenski meybe they are coming after us, so we turned around and went back.

Q. You were with Bodvenski? A. Yes. 30

Re-direct Examination by Mr. Beekman.

Q. What time was it you were with Bodvenski, that you are referring to now? A. About five minutes —about three o'clock.

Q. And who did you say came up around the graveyard? A. Saw fellows in the graveyard.

Q. What fellows? A. Some fellows, I don't know who they were, but they came up in the graveyard on 40

the stone wall.

Q. About three o'clock? A. About three o'clock.

Q. And where were you? A. Maybe a little after three, because we had walked a block.

Q. How many of them were there? A. When we came down from High street I saw three standing on the stone wall, just four or five steps from the stone wall, right alongside of it.

Q. You live on East Second street? A. Yes.

10 Q. How close to East Second street, where East Second street joins East street was it you saw these three fellows standing on the stone wall? A. From East street.

Q. How close to where East street joins East Second street— A. I was right by the corner of East Second street, and the fellows was on top of the fence on the graveyard.

Q. Look at these photographs and see if you can point out approximately where they were? A. About
20 there (indicating).

Mr. Beekman. The mark nearest the pole.

Q. You could not recognize any of them? A. No but I know there was three fellows there at the time.

Q. What time? A. I said I saw three fellows up in the graveyard.

Q. I though you fixed the time. A. The time was a little after three.

30 Q. Three-ten? A. Well, I don't know if it was, around that, all that I did was walk around the block.

Q. Was it before or after the fight? A. After the fight.

Q. That you had walked around the block? A. No, I walked across the street and then went along the high school.

Q. Did you see any more strange men around there? A. Did not see any.

Q. Then you came back from the high school? A.
40 (No response.)

Re-cross Examination by Mr. Vosseller.

Q. From the time you went into the lunch wagon until you got back to East street, about twenty minutes had elapsed, is that correct? A. About twenty minutes after.

Q. You say it was a quarter to three when you got there? A. Yes.

Q. And about five minutes of three when the fight started? A. Only took a few minutes, and then the fellows they all came out of the lunch wagon. 10

Q. What time were you out,—that is, how many minutes after three? A. Oh, I was just going to get across the graveyard, the time it took me to walk up High street.

Q. About three minutes? A. About five minutes.

Q. About five minutes past three? A. Yes.

Mr. Vosseller. That is all.

20

The court. Recess until ten o'clock, Thursday morning, June 28, 1923.

Thursday, June 28, 1923.

Trial continued.

Counsel present as before noted.

GEORGE TOTTEN, sworn on behalf of the State. 30

Direct Examination by Mr. Beekman.

Q. Mr. Totten, I call your attention to photograph marked S-6 and also photograph marked S-7 and on the left of photograph marked S-6, is apparently a retaining wall. Is that or is it not, the same retaining wall that appears on the right hand of S-5? A. It is not; it's the west end of the retaining wall that runs along the rear of the Cook Lumber Company or Runyon 40

Field Lumber Company, the wall that is built there—

Q. I mean, is this a continuation of the one shown on S-5— A. Continuation of the one shown on S-6.

Q. How long is that wall? A. Approximately 100 feet.

Q. I mean from the extreme point shown on S-6 and the extreme point shown on S-5? A. Approximately 100 feet.

10 (Witness excused.)

MARIE BODVENSKI, recalled.

Further Direct Examination by Mr. Beekman.

Q. Marie, when did you first tell your husband about the full facts—

Mr. Pope. Object to the question as leading; 20 improper anyway.

The Court. I will sustain the objection as being leading.

Mr. Vosseller. I think I ought to object to this re-direct examination.

Mr. Beekman. One counsel consents to the question and the other objects.

30

The Court. One objects and I have sustained it.

Mr. Beekman. Which objects?

The Court. I have sustained the first objection on the ground that it is leading.

Mr. Beekman. The reason I am asking that 40 may be clear. Read the question, will you

please?

Mr. Vosseller. Object to it as leading. I thought the question was ruled out?

The Court. That question has been ruled out.

Mr. Beekman. I would like to be heard on it as to whether it is leading.

10

Q. First, did you ever tell your husband? A. Yes.

Mr. Pope: Object to that; that is just as bad, telling the witness what to testify to. I move that be stricken out and the jury be instructed to disregard the evidence.

Mr. Beekman: Absolutely nothing leading about that. Did you ever go down Main street, Bound Brook, on that night? Did you ever tell your husband? The only question is did she ever make a report to her husband; tha't the question.

20

Mr. Vosseller: I think it is a leading question.

The Court: I think this witness can be asked whether she made any complaint. Did she ever tell her husband. I think that is proper; however I think the question should be confined to whether she ever made any complaint to her husband about this matter.

30

Mr. Beekman: That's exactly what the question is.

Mr. Pope: Just a minute; I ask that the witness be instructed not to answer the question until we have an opportunity to object.

40

The Court: That s right; just wait until counsel has a chance to object to the question. Now, the question again.

Q. Did you ever report this matter or make a complaint of this matter to your husband?

Mr. Pope: Object to that; it is manifestly leading because the only answer can be yes or no, and of course if yes or no be the answer, then it is leading and I submit to Your Honor that the proper question to this witness, if it is proper at all at this time, is, did you make any complaint to anybody; if so, to whom and when?

Mr. Beekman: All right, I will ask that question.

Q. Did you make any complaint to anybody, and if so, to whom and when? A. Yes, to Charlie cop, to him and my husband.

Q. When? A. When I came home.

Q. Well, when was that? A. That morning.

Q. At what time? A. It was five o'clock.

Mr. Beekman: Cross examine.

Cross Examination by Mr. Pope.

Q. Where was your husband when you made your complaint to him? A. Home.

Q. When did you first think about making a complaint to your husband?

Mr. Beekman: Object to that; it don't make any difference when she first thought about it.

Q. I mean, when did you first hear about that?

Mr. Beekman: Objected to. Heard about what?

Q. What first put it in your head that you made a complaint to your husband? A. I wanted to tell him what is true.

Q. Why didn't you tell about that yesterday? A. Well, you did not ask me about that.

Q. Oh, yes; I asked you who you complained to and you told me Charlie the cop— 10

Mr. Beekman: Object to that question because it is not so.

Q. I ask the witness, didn't I ask you yesterday who you complained to and you told me the woman and Charlie the cop? A. Yes.

Q. Why didn't you tell me you complained to your husband? A. I thought you were going to ask me. 20

Q. Now, you were talking to Mr. Totten this morning? A. That is, talking about something else.

Q. And he asked if you did not tell your husband this morning? A. I told my husband—

Q. You were talking with Mr. Totten this morning, and he asked you if you had not told your husband about it, didn't he, this morning? A. No, I didn't.

Q. I know you didn't tell your husband this morning; but you told Mr. Totten this morning that you told your husband, didn't you? A. Yes, I say, sure I tell to my husband that morning. 30

Mr. Pope: That is all.

Re-direct Examination by Mr. Beekman.

Q. This talk with Mr. Totten about this particular thing whether you told your husband— A. We didn't speak of things; we were talking about something else, about witnesses. 40

Q. Who did you speak to, did you speak to anybody about what you have been testifying to this morning? A. That's what was talking.

Q. Who do you mean? A. Some other people stop my husband and was talking to him.

Q. Now, about this talk or complaint to your husband? A. I did not say anything about that this morning.

Q. Did you talk to anybody about it? A. No.

10

Re-cross Examination by Mr. Pope.

Q. Did you ever tell anybody that you made a complaint to your husband? A. Yes, I told everybody.

Q. Did you tell Mr. Totten about that? A. Yes.

Q. When? A. I told Mr. Totten when I was sick right in the bed.

Q. Now listen to my question. Did you tell Mr. Totten this morning that when you were talking to
20 him this morning, that when you got home that morning you made a complaint to your husband about being in the cemetery with these men? A. Yes; I told him that when I came home that morning.

Mr. Beekman: Not this morning; whether you told Mr. Totten this morning.

Witness: No, I did not tell anybody.

30 Q. You were talking to Mr. Totten when I came in the court room? A. Well, I did not tell him anything like that.

Q. You did not tell Mr. Totten that this morning? A. No.

Q. Did you ever tell him anything at all? A. I told Mr. Totten when I was sick in bed.

Q. I am not talking about that, you understand my question. Don't talk so much—

40 Mr. Beekman: I insist that she has answer-

ed the question.

Mr. Pope: It is not worth taking up the time for.

Mr. Beekman: Yes, we are going to take up some more with it now.

(Witness excused).

10

GEORGE TOTTEN Recalled.

Further Direct Examination by Mr. Beekman.

Q. Did you take a statement from this woman March 10th? A. I did.

Q. At her home, place of residence? A. Yes, sir.

Q. Is this a copy of the statement you took? A. It is.

Q. Is there anything in that statement which says anything about— 20

Mr. Vosseller. Object.

Q. Is there anything in that statement which refers to the time or refers to the fact whether or not she reported this matter to her husband?

Mr. Pope: Object; that's immaterial.

30

The Court: Objection sustained.

Mr. Beekman: That is the State's case.

Mr. Pope: If the Court please, I desire to ask for a direction of verdict of not guilty, as far as DeGhetto is concerned, as there is absolutely no evidence connecting him with this case. Also, Farrano and Nattoli; there is no evidence at all against Nattoli, and the only evidence in 40

the case connecting Farrano with the case is the testimony of the complaining witness on the stand who picked out in the court room yesterday, meaning Farrano, this man here on the end, as being one of the men whom she identified in the lunch room, and pointed out to the policeman that night. (Argument.)

The Court: I will refuse your motion and allow you an exception. I think it is a question at this time for the jury.

F. L. C. (L. S.)

Thereupon Mr. Vosseller opens to the jury on behalf of the defendants.

PAUL BUGGI, Re-called in behalf of the defense, testified as follows:

Direct Examination by Mr. Pope.

Q. I neglected on cross examination, to ask you yesterday, when you left the lunch wagon, where did you go? A. Right after the fight?

Q. No, but where did you go when you left the lunch wagon? A. Went for a cop on Main street, looked for a cop on Main street.

Q. Now, at the time you went up Main street you went up towards Somerville, towards the depot? A. I went toward Hamilton street.

Q. And at the time you went up Main street looking for an officer, was the fight then taking place on the corner, or down by the sign? A. It was taking place by the sign.

Q. And when you walked up Main street, did you go as far as Hamilton street? A. I went as far as Hamilton and turned down the corner.

Q. Did you stop anywhere on Main street? A. No, sir.

Q. Well, I suppose you just walked slow—

Mr. Beekman: Now, this is your witness.

Mr. Pope: It is your witness.

Mr. Beekman: It don't make any difference. You are not going to lead him and tell him how he walked.

Q. Just tell us about how long it took you to walk to the corner of East street? A. Only a few minutes; about two minutes. 10

Q. Two or three minutes? A. Two or three minutes.

Q. Then when you got to the corner of Hamilton street, you turned and went north on Hamilton street, did you?

Mr. Beekman. Objected to.

The Court: Yes. 20

Mr. Pope. Why?

Mr. Beekman: It is a leading question.

The Court: It is leading; it is telling him he walked north on a street.

Mr. Pope: You see, Mr. Beekman, you have got me in bad habits; I am sorry. 30

Q. You told us you turned and went up Hamilton street; now, is that north or south? A. It's north.

Q. How long about, did it take you to go up to the bank? A. Only about half a minute from there up to the bank.

Q. Now, did you stop along Hamilton street looking for an officer? A. No, I was going to take a short cut through the graveyard. 40

Q. I mean, while you were going up Main street to Hamilton street; did you loiter along, looking for an officer? A. I was looking around for an officer.

Q. Then, when you got up—perhaps some of these jurors don't know—can you give us an idea how far it is from the corner of Main street and Hamilton street in Bound Brook, to the old First National Bank Building? A. It's about eight or nine hundred feet.

10 The Court: Hamilton street is the street right opposite the station?

Mr. Vosseller: Yes, goes directly north from the station.

Mr. Pope: And this building that has been spoken of as the old bank building—

Mr. Beekman: Where DeMunn & Nash have
20 their place, their offices?

The Court: I see.

Q. When you got to the bank building where did you go? A. Cut across the graveyard; there's a little path over there.

Q. I show you a photograph marked S-6, and it has a building which is marked bank building, do you recognize it? A. It's taken from the back.

30 Q. Now, you are pointing to a path on the right-hand side of the bank, of this bank building, is that the path you took? A. Yes.

Q. Now, what kind of a night was it, I mean how was it, light or dark? A. Oh, it was moon light.

Q. It was moon light? A. Yes.

Q. Do you see this top of the stone wall or building or something here on the lefthand side of the picture? A. Building?

Q. Extreme left-hand side of the picture, do you
40 know what that is? A. That's lumber.

Q. That's part of the lumber here. When you went through the graveyard how near did you go to that? A. About that distance. (Indicating).

Q. Do you know how far that is? A. About 150 feet—no, it isn't that far; it is not far at all from the path.

Q. Now, did you see any crowd of people in the graveyard? A. I saw a crowd of people coming up on the fence.

Q. And that crowd was what you spoke about yesterday as being three people standing on the fence? A. No other people after I came around from High street. 10

Q. Now, you passed on through the graveyard—A. Passed half way and saw fellows coming up over the fence and turned around and went back.

Q. Then where did you go? A. Went up High street and came down to East street.

Q. And then where did you go? A. From East street came down Second street, went east up to the house, went back through the graveyard, up Hamilton street to High street, and then down to East street. 20

Q. That's the street that runs along the stone wall shown in the picture? A. Yes.

Q. Then you went down East street to the lunch wagon? A. No, went direct to my house.

Q. That's on East Second street? A. Yes.

Q. You live with Potosney? A. In Potosney's house.

Q. Now, how long did this take you? A. It took me, the whole thing took me about six or seven minutes. 30

Q. And then you met the complaining witness in this case where? A. I did not make any complaint about the fellows I saw in the graveyard,—I saw her where?

Q. Saw the woman that I am speaking about. A. I did not see Mrs. Bodvenski up in the graveyard.

The Court: He did not ask you that. Where 40

did you see her after you left the graveyard?

Witness: I met Mrs. Bodvenski after she came to the house.

Q. How long was that? A. She came back about twenty minutes to four, that's as near as I can tell you.

Q. Was Mr. Bodvenski with you? A. He was with me.

10 Q. Now will you tell the jury if you can, please, just about how long it took you to walk from the corner of Main street where this fight was taking place, or from the lunch wagon, wherever you left from, up Main street, up Hamilton street, through by the bank building, partly through the graveyard and then turn around and come back and go up Hamilton street to High street, down High street to East Second street and then to Bodvenski's house or Potosney's house? A. About eight to ten minutes.

20 Q. So that after the fight took place, at four o'clock, after the fight started in the lunch room at four o'clock, it was about ten minutes, about five or ten minutes after the fight started—

Mr. Beekman: Wait a minute; don't answer. I object to that question.

Mr. Pope: There is no question to object to. I will reframe a question.

30

The Court: Go ahead.

Q. What time did the fight commence in the lunch wagon? A. About five minutes to three.

Q. Then, they were fighting for a little while on the corner opposite the lunch wagon, were they? A. Only the fight started and they went outside, only a few minutes and they went outside, they were a few minutes in the lunch wagon.

40 Q. And they were put out of the lunch wagon?

A. They were put out of the lunch wagon.

Q. And they went over on the corner by the hotel and fought there for a while? A. There's no hotel there.

Q. Well, there used to be.

Mr. Vosseller: No; the hotel is further down.

Q. Where Kipsey's lunch wagon used to be, they fought on that corner a little while and then they got up and started up by the sign? A. Yes. 10

Q. Now, you say they were fighting up by the sign when you left? A. I only saw them as far as the corner, when they ran across the street. Used to be a lunch wagon there, butcher shop now.

Q. I understood you to say a little while ago that when you went for the policeman they were fighting up by the sign? A. Yes, right down to the corner.

Q. Well, they had not gotten up by the sign, had they? A. They were there by the sign. 20

Q. Now, when you—you ran out and was going for an officer; you started for an officer and you say that was about five minutes to three? A. About a few minutes, two or three minutes.

Q. Going on two or three minutes? A. Yes.

Q. And it took you about ten minutes to go around that circuit? A. A few minutes, yes.

Mr. Pope: That's all.

30

Cross Examination by Mr. Beekman.

Q. They was fighting two or three minutes inside the lunch wagon? A. I don't know what they was fighting inside the lunch wagon; it looked like they was fighting.

Q. What did you go for a policeman for if you did not know it was a fight? A. No; there was a bunch in there and I went to look for a cop.

Q. Well, why did you go and look for a cop, if 40

you didn't know anybody was fighting? A. I heard the noise.

Q. You were inside yourself? A. I was in the ladies' parlor.

Q. And you started out for a cop from where? A. From the ladies' parlor.

Q. And had Bodvenski, this woman's husband, gone out? A. He got up before me.

Q. You both ran away, you and Bodvenski both
10 ran away? A. I did not run at all, we went down for a cop.

Q. Who do you mean by "we?" A. Mr. Bodvenski.

Q. He was with you all the time? A. Yes.

Q. And you really started away from there before the fight got as far as the board fence, didn't you? A. No; they were all coming out of the lunch wagon already.

Q. Yes, but I say, you started away for a policeman before the fight got over by the board fence? A.
20 No.

Q. Well, didn't you just say they were about on the corner? A. Corner of the lunch wagon, I mean there is a butcher shop there now.

Q. This building, you mean right there (indicating), that's where the fight was when you started? A. Yes.

Q. The building on the corner? A. Yes.

Q. And had not got up to the—by the boards? A. No.

30 Q. And you did not see them up there at all, and you and Bodvenski started for a policeman? A. Yes.

Q. And you went up Main street as you have described and then up Hamilton street; I suppose you went up there because the chief of police lives up there? A. No; we were not looking for the chief of police; I was just looking for an officer; and I did not see anybody around there, for we took the shortcut through across here.

Q. Why did you go up Hamilton street to look for
40 a policeman if you were not looking for any particular

person? A. Well, we were just going to take a short cut if we did not find a policeman, to go up and see how Tony was

Q. If you did not find any policeman you were going up Hamilton street and take the short cut across the graveyard, to see how Tony was? A. Yes.

Q. Why did you want to see how Tony was? A. If they beat him up.

Q. You know Tony was fighting? A. Yes.

Q. You knew all the fellows were fighting? A. I only saw the fellows from the door; I don't know he had been fighting in there. 10

Q. Who did you see there at the door, through the door? A. This fellow there (indicating).

Q. Did you see through to the other room in there? A. No.

Q. Do you recognize this picture (showing witness picture S-6. You were going to take this path indicated on the picture and go across the graveyard? A. Yes. 20

Q. What made you turn back? A. Saw the fellows come up to the graveyard.

Q. What fellows? A. I only saw the bunch going over the fence.

Q. You saw the fellows coming up to the graveyard, why did you think it was necessary to turn around and go back? A. The same bunch came up there.

Q. The same bunch as what? A. The same bunch in the lunch room that was fighting. 30

Q. Yes, the same bunch you met in the graveyard was the same bunch in the lunch room, and in your mind they were the same bunch that had been fighting with Potosney and you knew that you and Bodvenski was afraid of them and that's the reason you went back to Hamilton street?

Mr. Pope: That is not fair. He has not told you anything of the kind.

40

Q. How many fellows did you see in the graveyard there? A. After we came around from High street and came over East street?

Q. No; how many? A. I saw three fellows up in the graveyard.

Q. You say you saw a bunch; well, how many was in that bunch? A. We just quick turned around and went back; I can't tell how many we saw.

Q. Did you see more than three? A. I saw more
10 than two, I am positively sure.

Q. Well, you and Potosney was not afraid of two fellows, were you? A. No.

Q. How many did you see in the graveyard that made you and Bodvenski turn around and go back? A. Well, we seen three or four up there by the fence.

Q. Yes, three or four? A. Three or four.

Q. And if you did not know who they were and didn't know they had been fighting with Potosney, what made you turn around and go back, they might
20 have been friends of yours? A. If I didn't have in my head it was not the same gang. I would have gone on.

Q. Yes; you thought it was the same gang? A. Yes.

Q. Well now, this fight started, you say, about five minutes to three? A. Yes; five minutes to three; right.

Q. And how long after this fight started was it that you got to the graveyard? Of course you can't
30 tell to the exact second; what is the best you can give? A. Maybe about five minutes, between four and five minutes.

Q. Then, do you mean to tell the jury that about three o'clock you saw four men in the graveyard? A. In the graveyard; yes.

Q. About three o'clock? A. Three o'clock.

Q. And you designated the four men or whatever number there happened to be as the bunch? A. Yes; same bunch that was in the lunch room.

40 Q. Then, as I understand you to testify, the fight

having started at five minutes to three, about three o'clock, you saw four of the same bunch that was in the lunch wagon in the graveyard? A. Yes.

Q. Now, then, I understand, you did not go back on Main street? A. No.

Q. You had to walk over a block and a half? A. Just about a block.

Q. And you went down High street? A. Yes.

Q. And High street is the next street? A. The next street. 10

How near the graveyard? A. Right there (indicating).

Q. So, as I understand, you came to the graveyard and started to go down the graveyard and turned around and coming out you walked around a block— A. Walked around the block?

Q. Yes; walked around the block until you got back to the— A. To the house.

Q. To the house? A. Yes.

Q. And you didn't see Mrs. Bodvenski until a long 20 while after that? A. Twenty minutes to four, when she came back to the house.

Mr. Beekman: That is all.

Re-direct Examination by Mr. Pope.

Q. Who were the men that you saw in the graveyard? A. I can't tell the face, because they were up in the graveyard. 30

Q. Do you know that they were part of the men that were fighting— A. That's what I had on my mind; the same gang was up there from the lunch room.

Q. What made you think so?

Mr. Beekman: Object to this question; cross examining his own witness. He asked the witness what bunch do you mean, and he said the same gang that was in the lunch room, and then he says, what makes you think so? 40

Mr. Pope: That is not the true situation. This is re-direct examination on examination had before, which was not cross examination, by the way.

The Court: What was the question?

Mr. Pope: He said it was the same bunch. He told the Prosecutor, in the graveyard, that were fighting; the same men that were down in the lunch wagon; and I asked him what made him think so.

10

The Court: Is that the question that is now before us?

Mr. Pope: Yes.

The Court: I will allow it.

20

Mr. Pope: The Prosecutor asked him if it was the same bunch that were fighting in the lunch room and asked him if it was, indicating the defendants, and he said it was.

The Court: I have allowed the question.

Q. Who was the fellow wearing a white scarf at the graveyard?

30

The Court: Are you asking somebody a question now?

Q. Do you know or do you not know or do you merely think it was the same gang because they had been fighting close by a few minutes before? A. That is my mind, that I see the same gang, and one fellow had a white scarf on.

40 Re-cross Examination by Mr. Beekman.

Q. Had you seen anybody with a white scarf previously to that? A. Previous in the evening?

Q. Had you seen anybody with a white scarf before? A. Before that fellow came in the lunch room —that's the fellow that came in the lunch room (indicating).

Q. When he came in the lunch room he had a white scarf on? A. Yes.

Q. And when you saw one of the men up in the graveyard he had a white scarf on? A. Yes. 10

The Court: And that's the reason you think all the others were the ones that were in the lunch room?

Witness. Yes.

(Witness excused.)

THOMAS FUER, Sworn on His Own Behalf, testified as follows: 20

Direct Examination by Mr. Vosseller.

Q. Fuer, where do you live? A. Bound Brook.

Q. Lived there all your life? A. Yes.

Q. Do you remember the night of March, or the day and night of March 4th and 5th? A. Yes, sir.

Q. What day of the week was it? A. Sunday morning. 30

Q. The 5th was Sunday morning? A. No; Monday morning.

Where had you been that evening? A. Well, I had been to Plainfield.

Q. What time did you arrive—what time did you go to Plainfield. About eight o'clock.

Q. Who was with you? A. Marty Mannon and Victor DeGhetto and Shuer.

40

Q. What's his first name? A. Raymond.

Q. What time did you leave Bound Brook for Plainfield? A. Eight o'clock.

Q. In the evening? A. Yes.

Q. How long were you in Plainfield? About three hours, three hours and a half.

Q. What time did you arrive in Bound Brook? A. About two-thirty.

Q. Where did you go when you arrived in Bound Brook? A. We ran the machine to the station and talked there about five minutes in front of the lunch wagon and went in the lunch wagon about a quarter to three.

Q. Who did you talk to? A. Mannon and I and Victor DeGhetto.

Q. What time? A. About what time it was we entered the lunch room? About a quarter to three.

Q. Who was there? A. There was about seven or eight fellows in there.

Q. Did you know them. A. No, sir.

Q. Do you know some of them? A. I didn't look just when I went in there to have a cup of coffee, and a bite to eat.

Q. What did you order in there? A. I had a Hamburger sandwich and a cup of coffee.

Q. Was the party of Potosney and Bodvenski there when you arrived, or did they come later; or don't you know? A. They came later; I think.

Q. How much later? A. About five minutes later.

Q. Now, what happened? A. Why, I was sitting down eating and some party passed a remark and then Potosney came out and he said you are a bunch of wise cock suckers in there and he made a pass at this fellow and I got it and we rushed out of the lunch room and this woman was standing in front of the telephone pole right in front of the lunch wagon, and we wrestled out in the street and we crossed the street and made a pass for Potosney, and I slipped over the curb stone and as I slipped one of the fellows hit me.

Q. Where did that happen? A. Right in front of

the butcher shop across the street.

Q. Pointing to this picture, S-3, will you point out where the fight took place and where you slipped? A. Well, I slipped, right here (indicating); right near this telephone pole.

A. After you slipped up, what happened? A. As I slipped I lost my balance, and as I was losing my balance this fellow here came along and he kicked me and when he had kicked me I went over and hit my head against the curbstone, and that's the last I remember. 10

Q. Now, after that happened, after you came to, where did you go? A. I went direct for the lunch room.

Q. Do you know what time it was when you arrived the second time after the fight at the lunch room? A. About ten minutes after.

Q. Did you see the police officer that evening. A. Saw two of them.

Q. Well, how soon after you arrived at the lunch wagon did you see one of them and which one was it? A. About three or four minutes. 20

Q. Who came there? A. Bohler, Officer Bohler.

Q. Who went with you to the lunch wagon after the fight? A. There was two fellows; I can't remember who they were. They had a car outside; I don't know who they were.

Q. Where was DeGhetto and Mannon at this time? A. They were right behind me, coming out of the lunch room. 30

Q. I mean after you were knocked out and started back to the lunch room? A. They were not in when Bohler arrived.

Q. How soon after you arrived at the lunch room did Mannon and DeGhetto come in? A. I should judge about eight or nine minutes.

Q. Did you see Farrano? A. I saw DeMatto and Nottoli, but I did not see that Farrano there.

Q. Where they in your party? A. No, sir.

Q. Did you see them trying to fight. A. No sir, 40

I did not pay any attention to anybody after I went outside.

Q. When you came back, did you see any of them in the lunch wagon? A. I saw them two in the lunch wagon.

Q. You did not see Farrano? A. No. sir.

Q. Now, do you fix the time at which this fight started? A. Well, I said the fight started about three o'clock.

10 Q. And you arrived back at the lunch room at about what time? A. About ten minutes after three.

Q. And Mr. Bohler came there about what time? A. About a quarter after three.

Q. And Mr. Bohler came there about what time? A. About a quarter after three.

Q. About a quarter past? A. Yes, sir.

Q. What took place in the lunch room then after you got back? A. I just sat down there and got a drink of water.

20 Q. And then what happened? A. Why, before I got into the lunch wagon I seen her, this lady, and I said to her, I am sorry this fight had to occur, Missus, but I will get a taxi and take you over the river; I will hire a taxi and bring you over; and I asked Nattoli if he was driving a car, a taxi, and if he would drive the taxi over, and he said, no, you better not get in that car; that bunch is going after you and that bunch means to kill.

Q. Now, where had these men been during that 30 evening? A. I was down near the telephone pole.

Q. Where was she when you came back,—this woman? A. Right in the same place, right by this telegraph pole, where I was.

Q. Now, what happened after the policemen came? A. Why, we sat in the lunch room and Bohler came in from outside, and Bohler says, do you know these fellows? And she says, there is one; and she was pointing to me at the time; I don't know what she was pointing for; and I went out of the lunch room 40 and went up the street; after Officer Bohler and she

came in and pointed out me and two fellows in the lunch room.

Q. Who were the two other fellows? A. Nattoli and DeMatto.

Q. Was DeMatto and Nattoli in the lunch wagon after you came back after the fight? A. Yes; in the same place in the lunch wagon.

Q. What did she accuse you of? A. Why, says having beat up her husband.

Q. Did she say at that time, did she accuse you or anybody else of having taken her up in the graveyard at this time? A. No, sir. 10

Q. Did you have a talk with Bohler that night? A. Yes, sir; Bohler and Gobel, both.

Q. Was Mrs. Bodvenski present at the same time? A. Mrs. Bodvenski was present when she was with Bohler, pointing us out, she was there.

Q. Did you have any talk with Bohler at that particular time? A. No, sir.

Q. Were you arrested? A. No, sir. 20

Q. Placed under arrest? A. No. sir.

Q. Well, what time did you leave the lunch wagon that night to go home? A. Well, I judge about three-thirty.

Q. Three-thirty? A. Yes.

Q. Who did you go home with? A. Marty Mannon came in and called me; he came over to the lunch wagon and he had a driver with him, and he called me and he said, come on and we will go home.

Q. Anybody prevent you from going home? A. No. 30

Q. Or anybody else? A. No, sir.

Q. What did you do the next day? A. I packed my grip and went to work where I was supposed to go to work for the Central Railroad Company.

Q. Did you do anything prior to going to your job the next morning? Did you do anything at all? A. Before I left Bound Brook?

Q. Yes. A. I saw Officer Gobel.

Q. And what did you see him about? A. I told him I was going to work. He says, where are you 40

going? And I says, on the railroad.

Q. What time did you leave town that morning? A. Seven twenty-seven.

Q. Did your family know where you were? A. Yes, sir.

Q. Knew where you were going to work? A. Yes, sir.

Q. When were you arrested? A. That I can't remember now; it was on a payday; I remember that.

10 Q. Did you run away? A. No. sir.

Q. Now, this woman says—this Bodvenski woman —says that you and Marty Mannon and four other men, all of whom she doesn't identify very clearly, were in the graveyard and each one of you had sexual intercourse with her; is that true or is it not true? A. No, sir; it's not true.

Q. Where you in the graveyard? A. No, sir.

Q. Anywhere near the graveyard? A. No, sir; nowhere near the graveyard.

20 Q. She says that you said, Marty, this woman lives in Bound Brook, and we got to get rid of her. Did you make any such remarks? A. No, sir; I never said such a thing.

Q. Have you ever seen this woman before today? A. Never before until I saw her up her.

Q. You were in court to plead, were you not? A. Yes, sir.

Q. Did you see her that day? A. She was pointed out to me that day when we were up here for the

30 indictment.

Q. How was she dressed; can you tell what she looked like? A. She had a black suit with a big black thick veil over her face.

Q. You have never seen her to know her until today? A. Until yesterday, prior to the time I saw her in front of the lunch wagon.

Mr. Vosseller: I would like the privilege to ask one or two questions that I don't think of

40 just now. I will turn the witness over to be-

cross examined.

Cross Examination by Mr. Beekman.

Q. Thomas, you've got a nickname? A. Yes.

Q. What do they call you down in Bound Brook? A. They call me Dutch ever since schooldays.

Q. Anybody call you Dutch Fuer that night, or Dutch? A. Why, yes, at the lunch wagon.

Q. Somebody called you that down in the graveyard and told you you were next. A. No, sir, 10

Q. Did you have a scarf on that night? A. I had a grey scarf, yes.

Q. Have that on when you were fighting? A. Yes, sir.

Q. When this fellow kicked you in the head and put you out of business? A. Yes.

Q. What kind of a scarf was it, light grey or dark grey? A. Light grey.

Q. Very light. And who was this fellow that kicked you in the head? A. It looked like her husband to me. 20

Q.You had never seen her husband? A. I know him; I have worked with him.

Q. How long did you work with him? A. A year or so, about; up at the Calco Chemical.

Q. Yet that was the first time you had ever seen his wife? A. Yes.

Q. Then you knew who he was when he came in that night in the lunch room? A. No, sir; did not. 30

Q. Well, who was the fellow that poked his head through the door? A. That I don't know.

Q. Anybody do that as far as you know? A. I don't know; I did not pay any attention to that.

Q. And do you know Sam Sarbouke? A. I know of him; I don't know him.

Q. How long have you known of him? A. Since we were riding around in the car; that's how I knew of him.

Q. I don't mean whether you knew him as 40

Sam; whether Sam is his correct name; I don't know whether that is his correct name; I mean, how long have you know him to recognize him, if he happened to go by in a car? A. Since I saw him was about two or three months.

Q. Well, that's since this thing happened? A. Before that.

Q. Yes; two or three months before that. You knew he had a car, did you? A. Yes, sir, I seen his car riding up and down the streets.

Q. And who said, Sam, that will be a good car to take the folks out in. Somebody say that to him? A. I did not hear that remark.

Q. Did you hear any remark at all while you were in the lunch room, which would in any way offend a decent woman? A. Yes; by the party she was with.

Q. Only? A. Only.

Q. And he was the fellow that came out and called you a lying cock sucker? A. Yes.

Q. Had you ever seen him before? A. No; he just came to the door and came right out declared himself, and nobody had said a word to him or about him, or about the party when he came out there. After that there was a bunch went to the door! I was not near the door.

Q. How did you get in the fight? A. When I walked out to pass these fellows, he made a pass and hit me.

Q. When you passed him and hit him, you had never seen this fellow before? A. No.

Q. And until he had said this and you had got in a fight with him that took you across Main street and up to the corner where this building is, you had never seen him before and didn't know him? A. That can all be. He came out and called us a bunch of cock suckers and made a pass at a different fellow and missed him and hit me.

Q. Where did he hit? A. In the jaw.

Q. Did you go down? A. No.

Q. What did you do? A. Just as soon as I saw

what was taking place I went outside, I went out the other door after him.

Q. Then you waited until he got outside and then you went out the other door and got him? A. Did not have time to wait.

Q. He hit you inside? A. Yes.

Q. He was hitting at another man. You did not have to join the hitting, did you? A. He was making a pass and he missed the fellow he was aiming at and hit me. 10

Q. Yes, but you did not have to hit back, did you? A. I was not going to have him hit me; let him hit me and get away with it; and then he came back for another one.

Q. Another what? A. Give me another one.

Q. Well, then what makes you think he hit or aimed at another fellow and hit you? A. He thought he could clean up the whole wagon, the way he came in.

Q. He was the fellow that started the whole rumpus? A. Yes. 20

Q. Without any reason whatever? A. Yes.

Q. Now, I want you to answer a question I asked you a while ago. Before you really went at him and got him, you waited until he got outside and then you went out another door? A. He was going outside after he hit me; he was being pushed out.

Q. Being pushed? A. Yes.

Q. And were you pushed out? A. I went out myself and got him. 30

Q. Out of the other door? A. Yes.

Q. You went out to get him? A. Yes.

Q. You went out to get him and who went out with you to get him? A. Mannon and DeGhetto.

Q. And you got him? A. Yes, sir.

Q. Got him away up along this board fence up there? A. No, sir, right in here. That's where it was; right here where this cross on this street is, across from the lunch wagon; and I slipped on the curb and another fellow came and kicked me. 40

Q. Then you were past the corner? A. No; in front of that restaurant.

Q. Yes, I know, but that is not the corner of the restaurant; that's the bank? A. That's right here (indicating).

Q. Well, just run your finger along where it was? A. Right here (indicating).

Q. In the rear of the building? A. Yes, and along there (indicating).

10 Q. In the rear of that cross where you put the pencil mark is where somebody kicked you in the head? A. Kicked me in the jaw.

Q. Where was Marty Mannon and DeGhetto at that time? A. I was too busy; I did not pay any attention; they were behind me—

Q. They were behind you when you started to go to get this fellow? A. Yes.

Q. And you did get him, you say? A. I went after him; yes, sir.

20 Q. Well, what became of him? A. Who is that?

Q. Why Potosney? A. I don't know; I don't remember. I don't remember. I was after him when I stumbled over the curbstone and this fellow gave me this kick, and that's all I remember.

Q. And it seemed to you that it was her husband? A. Yes; it looked like him; he was big.

Q. Well, her husband is no bigger than you, is he? A. I guess he is.

Q. As a matter of fact, he is the fellow that went 30 up the street with this fellow looking for a policeman? A. Not from what I recall; I remember seeing him coming right in back of Potosney.

Q. Where do you remember seeing that? A. When they came across the street to the lunch room.

Q. When they came from the lunch wagon? A. Yes; from the lunch wagon.

Q. How long had you known Potosney? A. I don't know.

Q. You didn't know he was hurt so bad that he 40 was taken to his home? A. No, sir.

Q. Well, how long did you lay there insensible until somebody came to you? A. That I don't know.

Q. Were you kicked anywhere else? A. No, sir.

Q. Who was there when you woke up? A. Why, I don't know; there were some fellows there; I don't know who they were.

Q. Now, where did you see Mrs. Bodvenski last? A. Near the telegraph pole in front of the lunch wagon.

Q. Near this one (idicating)? A. No, right here (indicating.) 10

Q. Right here? A. Yes.

Q. And you didn't see her again, did you— A. Not until Officer Bohler came in.

Q. Where were you when Officer Bohler came in or came down the street with her? A. I was outside. I was talking to the lady, offering my services to take her over the river.

Q. You did not talk to her until she got up to where you were? A. I went to her. 20

Q. Where was she when you went to her? A. Right near that telephone pole.

Q. When you came to after you were kicked, she was still there? A. Yes.

Q. And then you went over and offered your assistance to take her home? A. Yes.

Q. Where did you think she lived? A. She told me over the river.

Q. Well, she told you that in the graveyard? A. No, not in the graveyard. 30

Q. She said she was a married woman and has got children and lived in South Bound and you told Marty Mannon that this woman lived in Bound Brook, and we will have to get rid of her; isn't that it? A. No.

Q. Now, you did not have any talk with this woman down in front of this pole after this fight was over? A. Yes, sir.

Q. Bohler came down with her to the lunch wagon and she said here were two other fellows and she pointed you out as being a fellow that was after her? 40

A. Yes.

Q. And who else? A. Two other fellows in the lunch wagon.

Q. And there were two other people down there talking to you, were there? A. I was not talking to any one.

Q. Who were the two fellows standing there in front of the lunch wagon talking with Bohler when this woman came down there? A. Only John Ward, when I offered my services; after that John walked away.

Q. Then you say that Nattoli and DeMatto were in there when she came down the street with Officer Bohler? A. I think they were in the lunch wagon.

Q. Answer the question. Did you say that Nattoli and DeMatto were in there, were in the lunch wagon when Bohler came along with this woman? A. No, sir.

Q. They were not? How many people then did she identify outside of the lunch wagon? A. I don't know.

Q. Well, you know she identified you? A. Yes.

Q. And that you had your scarf on yet? A. Yes.

Q. How did you come to go in the lunch wagon? A. I went in there to sit down there and wait for Mannon.

Q. Well, you told this woman you would take her home? A. Yes.

Q. Whose car was it she tried to get in? A. The taxi.

Q. Whose taxi was it? A. John Ward.

Q. Did you go to take her home? A. I offered my services to take her home.

Q. Who? A. Well, the lady standing by the pole; and she was watching; waiting around there for her husband, and he did not come, and she said she wanted to go home, and I said I would take her home.

Q. You did not offer or have any concern hunting up her husband, but just that you would take her home in a taxicab? A. Yes.

Q. What did she say? A. She said all right.

Q. Why didn't you take her? A. The taxicab driver refused to go over.

Q. Now, you said you went home at a certain time. What time did you leave the lunch room to go home? A. Why, I should judge twenty-five-half-past-three, something like that.

Q. Now, how do you know what time it was? A. I am positive it was between twenty-five and half-past.

Q. What makes you positive it was between twenty-five and half-past three; what makes you so positive? A. I was looking at the watch in there.

Q. Watch where? A. In the lunch wagon. I was figuring getting that early train the next morning.

Q. Well, the fight had not started until when? A. I should judge the fight started around three o'clock.

Q. And got up way across the street by this other tree and you stood around outside and then this woman came back and you offered to take her home, figuring on catching the early train, when you offered to take her home? A. No, figuring on catching the early train inside.

Q. I mean, when you were gallantly offering to take this poor woman home, you did have in mind to get the early train. A. When I go inside I figure to get the train.

Q. You had done her a pretty good turn in the evening before this time? A. No.

Q. No, but since her husband had got in this mix up, you had done her a pretty good turn? You had taken her down in the cemetery? A. No, sir; I had not.

Q. When you found out this woman did not live in Bound Brook, and she was living up by the creek, you got frightened? A. No, I was not guilty of anything.

Q. If you were so anxious to get home and you had been guilty of nothing but a fight, why didn't you go on home, if you was so anxious, without waiting

and offering to take her home? A. I was waiting for a party to come over and take me home.

Q. Who? A. Mannon and Victor, they were over in Bohlman's garage.

Q. How do you know they were there? A. I told Mannon to go over to Bohlman's garage and I would be back shortly.

Q. You don't know, where he was, have no idea? A. I know, because I had a man there washing a car
10 and I told him to go there and I would be back in a few minutes. I was going to use that car.

Q. Now, all these things happened between three o'clock and three twenty-five, and you got home about three-thirty? A. No, sir.

Q. About what time? A. Quarter to four.

Q. And when you say home, where do you mean? A. Twenty Talmadge avenue.

Q. Who lives there? A. My mother.

Q. You married? A. Yes.

20 Q. Your wife live there? A. No, sir.

Q. Where does she live? A. In Newark.

Q. Well, that's all right, I want to find out where you call your home. Do you call your home the place where you live with your mother or with your wife, where your wife is? A. No, sir; I have been sick and in my mother's home.

Q. How long has that been? A. Two years.

Q. Now, then, you went to work on the 7.27 train on Monday morning, how soon did you come home
30 again to your mother's. A. I was back that following Saturday night and went off on Sunday morning.

Q. What time did you get back Saturday night? A. Oh, about half-past nine.

Q. What time did you go out Sunday morning? A. After seven o'clock.

Q. Where were you in the meantime? A. Home all the time.

Q. Didn't go out down the street at all? A. No, sir.

40 Q. You were afraid you were going to be arrested

for this scrap, wasn't you? A. I was not afraid at all.

Q. Well, why did you hang so close; the previous Saturday night you had been out around with Marty Mannon and all the boys after you got home, and was up until twenty-five minutes after three and had a fight and been to Plainfield—what did you go to Plainfield for, anyhow? A. Went over for the trip.

Q. You went down to see a girl? A. No, sir.

Q. Now, where you had had a good time the preious Saturday night, this Saturday night you were disposed to get home and not go out of the house; why were you so anxious about staying in the house? A. Because I was trying to make this job I had there, it was a trial and I was anxious to start this job well. 10

Q. When did you start on this job? A. Monday morning. I had the job, but I was to go down the following Monday morning; I had the job two weeks—

Q. You had the job two weeks and you did not think about it until this affair occurred in Bound Brook? A. The job was not open; it was a different job that I heard about, that I was hired for, and I was to go down that Monday morning and begin work, and I told Victor and Marty that I was going Sunday morning. 20

Q. Victor who? A. Victor DeGhetto and Marty Mannon.

Q. Where did you see them Sunday morning? A. Sunday night, at the Central railroad station. 30

Mr. Beekman. I think that is all.

Re-direct Examination by Mr. Vosseller.

Q. You told the Prosecutor that you knew Bodvenski the man himself, where did you know him? A. In the Calco Chemical; he was fireman there.

Q. Was with you? A. I was foreman.

Q. How well did you know him? A. Just going 40

in the boiler-room there, and getting a drink of water, and then going back in my shop.

Q. How long? A. Oh, about two years, I gue s, I used to see him when he was working us there.

Q. Did you know him by name at that time? A. By the name of Mike.

Q. Did you know his last name at that time? A. No, sir.

Q. Were you friends? A. We were good friends.

10 Q. Did you know where he lived? A. No, sir.

Q. Well, you knew he lived in Bound Brook?

Q. Did you know he lived in South Bound Brook? A. That I did not know, whether he lived in South Bound Brook or not.

Q. Did he go to work the same time you did and quit the same time you did? A. No, sir.

Re-cross Examination by Mr. Beekman.

20 Q. Where did you first see Mike that night? A. Why, I pictured him by the building coming down the street, when he kicked me, and I fell; and on the following morning after the thing was all over I knew it was him that gave me the kick.

Q. You had always been good friends? A. Yes.

Q. And you— A. I did not know it was Mike coming up the street until I recognized him by his build.

30 Q. Now, let's see about taking his wife home; if you didn't know where she lived, whether she lived in Bound Brook or South Bound Brook, how did you learn where she lived? A. By her.

Q. How did she come to tell you? A. Why, she was standing near the pole and I went over to her and asked her if she wanted to go over the river, I meant if she wanted to go home, and she says, I live over the river; and I wanted to bring her over.

Q. Now, how was it you asked her if she wanted

40 to go over the river? A. I asked her if she wanted

to go home, and where she lived, and she told me where she lived.

Q. And that was here in the graveyard she told you where she lived? A. No, sir; that was in front of the lunch wagon, near the pole.

Q. Well, anyhow, you did not know whether she lived in Bound Brook or South Bound Brook? A. I didn't know the lady; didn't know her at all.

Mr. Beekman. That's all. 10

The Court. Did you see Mike in the lunch-room before the fight started?

Witness. No, sir.

The Court. Did not see the woman there?

Witness. No, sir; not until she was outside.

20

The Court. That is all.

(Witness excused.)

DUCCI DE MATTO, sworn on his own behalf, testified as follows:

Direct Examination by Mr. McCullough.

Q. Where were you on Sunday night, March 4th? 30
A. Tony DeNattoli's pool room, until twelve o'clock.

Q. Where is that? A. Talmadge avenue.

Q. In the west end? A. Yes.

Q. And who were you up there with? A. A bunch of young fellows.

Q. What time did you leave there? A. Twelve o'clock.

Q. And where did you go? A. Going down town and met Anthony Nattoli and went down to the lunch wagon.

40

Q. Where did you meet him? A. Coming down from the station.

Q. Central railroad station? A. Yes.

Q. Did you and he go somewhere together? A. Went down to the lunch wagon.

Q. This lunch wagon opposite East street? A. Yes, sir.

Q. What time did you get in there? A. Between 12.15 and 12.30.

10 Q. Had you ever been in that lunch wagon before? A. Yes, sir.

Q. How often? A. Four or five times.

Q. Where do you sleep at night? A. Home.

Q. Did you ever sleep at this lunch wagon? A. Once in a while.

Q. All night, I mean. A. All night, yes, sir.

Q. Where is your home? A. 45 Talmadge avenue, Bound Brook, New Jersey.

Q. Who was in the lunch wagon when you and
20 Nattoli went in there? A. A couple of fellows on the other side, I don't know them.

Q. What side? A. On the left side; we was on the right side.

Q. In what part of the wagon were you? A. On the right side as you come in.

Q. In the men's part or the women's part? A. On the men's part.

Q. How long were you in there? A. I was there until after the fight started, and then I woke up; it
30 woke me up; I was sleeping at the time.

Q. What part of the lunch wagon were you in then? A. Right hand side.

Q. Was Farrano there when you were there? A. No, sir.

Q. Did you hear the fight start or see it? A. I heard a noise and woke up; I was sleeping at the time, when the bunch was all there.

Q. What was the first thing you saw? A. Saw the bunch rush at the door.

40 Q. What did you do? A. I got in the corner

there.

Q. Did you go out of the lunch wagon? A. No, sir, never went.

Q. What did you see outside; did you see anything at all? A. Nothing, I never looked out the window.

Q. Was Nattoli in there with you? A. Yes, sir.

Q. Did he go out? A. No, sir; never went out.

Q. Did you see anything that was going on at all? A. No, sir. 10

Q. Did you see any of these other boys there that night? A. No, sir; I was sleeping at the time.

Q. Did you go out of the lunch wagon and mix in that fight? A. No, sir; never went out.

Q. Mrs. Bodvenski says that you were one of the men that put your hand over her mouth, up on East street and that you followed the rest of them over to the graveyard, and that you had sexual intercourse with her; did you or did you not? A. No, sir; never did. 20

Q. Were you in the graveyard that night at all? A. No, sir.

Q. Were you out of the lunch wagon from the time the fight started? A. No, sir.

Q. How long did you stay in the lunch wagon that night. A. Well, I was in there until 12.15—

Q. After the fight started? A. About a half an hour.

Q. Did you see anybody come back in the lunch wagon? A. Dutch Fuer came back in there. 30

Q. Anybody with him? A. No, sir.

Q. Did you see the policeman, Bohler, that night? A. Yes, he came in there with a woman about ten minutes after Dutch Fuer came in.

Q. What time was that? A. Ten minutes after three.

Q. What did the woman say, if anything? A. She pointed down at Dutch Fuer and Anthony Nattoli and I was there.

Q. What did she say about it, did you hear what 40

she said? A. No, I don't know, she said, there is the fellows, right there.

Q. And she pointed out you and Nattoli? A. And Dutch Fuer.

Q. Did the policeman say anything to you? A. No, sir.

Q. What did you do after that? A. Went right straight home.

Q. What did you do the next day? A. Well, I
10 was in the poolroom.

Q. When were you arrested? A. Five o'clock the next night.

The Court. Did you see any of the fight outside at all?

Witness. No, sir; I never went out.

The Court. How old are you?

20

Witness. Seventeen.

Cross Examination by Mr. Beekman.

Q. What time did you go to sleep in the lunch room? A. It was one o'clock when I fell asleep.

Q. And slept right along until the time the fight started? A. Yes, sir.

30 Q. Did not hear a thing? A. When I heard them rush out the door.

Q. The first thing you heard? A. Yes.

Q. You did not hear this fellow rush in the room and call them the bad name? A. No.

Q. And you did not see him strike at one man and then hit Thomas Fuer in the jaw? A. No, sir.

Q. The first thing you knew, you woke out of a sound sleep, after being there from one o'clock until what time, and found them going out the door? A.
40 Yes.

Q. They all go out? A. Yes, only me and Anthony Nattoli were there.

Q. You stayed right in? A. Yes.

Q. Anthony did not go out and you did not go out? A. No, sir.

Q. Did you really know what was going on? A. No, I did not know what was going on.

Q. And you didn't know whether there was a fight or a fire across the street, or whether there had been an explosion down in Bound Brook? A. No, sir; I was told a fight was going on. 10

Q. Hear who were fighting? A. No, sir; I don't know.

Q. Well, it took everybody out of this lunch room except you and Nattoli, everybody went out to see what was going on, that were in there? A. Yes.

Q. And you did not even look out the window to see who was fighting? A. No, sir.

Q. So you don't know who were there? A. No, sir. 20

Q. Haven't any idea who were in this lunch room in the men's side of the lunch room, before you saw them all going out of the door? A. No, sir.

Q. You din't know whether Fuer was in there? A. No, sir.

Q. Whether Marty Mannon was in there? A. No sir.

Q. Whether this fellow was there, on the end? A. No, sir.

Q. And how soon did you go to sleep again? A. I went right straight home after the fight. 30

Q. You went right home after the fight? A. Yes.

Q. You sure about that? A. Yes.

Q. Well, then, how did you happen to be there when Fuer came back ten minutes after three? A. Ten minutes after three?

Q. Yes; that's what you said; you said ten minutes after three Fuer came in there? A. Yes, I was there..

Q. When the policeman came in you were there? 40

A. Yes.

Q. Well, he brought this woman with him? A. Yes.

Q. And then you did not go home until after she stood in there and pointed you out as being one of the men that was up in the graveyard with her? A. Yes, I went right home after she pointed me out.

Q. And she pointed out Nattoli? A. Yes.

Q. You don't know whether it was ten minutes
10 after three or ten minutes after four? A. When Dutch Fuer came in there it was three o'clock. When he came in there he got a glass of water and a sandwich; that's when he first came in.

Q. When they first came in you were asleep? A. No—I was asleep.

Q. How did you know they were there? A. I did not say they were there.

Q. You said when you first came in—you must have had an idea in your mind he was in there twice?
20 A. Only once when he came in after the fight, I seen him.

Q. You are sure it was ten minutes after three? A. No; three o'clock when he came in.

Q. I am mistaken about that ten minutes. A. Bohler and the woman came in ten minutes, ten minutes after three.

Q. Ten minutes after three? A. Ten minutes after Fuer came in. I looked at the clock; there was a clock right over our heads.

30 Q. I know, but when you are asleep you can't see the clock. A. I was awake when Dutch came in; that was three o'clock when Dutch came in.

Q. And ten minutes after three when Bohler and the woman came in? A. Yes.

Q. Where did you stay all night? A. I went home half-past three.

Q. I may be mistaken, but I thought you said you stayed all night at the lunch wagon? A. I did not say I stayed—I said one night, once in a while I stay
40 there.

Q. Well, you did not stay down there that night? A. I went home, got home to sleep.

Q. You stayed there until after three, after this fight was over, and then you went home? A. I went direct home.

Q. How often, had you slept in the lunch room all night? A. I slept there a couple of times.

Q. Then you don't sleep there very often? A. No, sir.

Q. You know Dutch Fuer, don't you? A. Yes. 10

Q. How long have you known him? A. All my life since I lived around there.

Q. You know Marty Mannon? A. Yes.

Q. And Ducci DeMatto—that's you—and Tony Nattoli, you know him? A. Yes.

Q. He was the fellow along with you? A. Yes.

Q. You know Victor DeGhetto and Louis Farrano? A. Yes.

Q. Who is Thomas Pondolph? A. Thomas Pondolph? 20

Q. You don't know him? A. No.

Q. Who is Charles Spuches? A. That's Nattoli, his nicknames.

Q. He's got two names, has he? A. (No response.)

Mr. Beekman. That is all.

Re-direct Examination by Mr. McCullough.

30

Q. Did you see DeGhetto that night? A. No, sir.

Q. You had not been out in a party with these other boys that night to Plainfield? A. No, sir.

Mr. Beekman. Don't tell him; ask him.

Q. How did you go home? A. Me and Nattoli went home.

Q. How? A. Walked home.

Q. Which way did you go? A. Down through 40

Main street.

Q. You say they all went out—everybody went out of the lunch room; did John Fudd and the other man go out? A. No, they were in there.

Q. Then you and Nattoli and the men that worked in the lunch wagon were there? A. Yes.

Q. Why didn't you go out? A. Didn't want to go out; had nothing to do with it.

10 The Court. Who went to the lunch wagon with you that night?

Witness. Nattoli.

The Court. Where you with any of the others in this crowd that night, at all?

Witness. No, sir.

20 The Court. At no time during the night were you in the company of the others?

Witness. No, sir.

The Court. Where had you and Nattoli been?

Witness. I met him coming east to the station; I was down to the poolroom.

30 The Court. Had you been with Nattoli that night, other than meeting him on your way to the lunch room?

Witness. Just met him that night.

The Court. Who had you left the poolroom with?

40 Witness. Alone.

The Court. What time?

Witness. Twelve o'clock I left the poolroom.

The Court. We will adjourn at this time until one o'clock.

AFTER RECESS

LOUIS FARRANO, sworn on his own behalf, testified as follows: 10

Direct Examination by Mr. McCullough.

Q. What is you full name? A. Louis James Farrano.

Q. You live in Bound Brook? A. Yes, born and raised there.

Q. Where were you Sunday night, March 4th? A. At what time? 20

Q. Where were you at ten o'clock? A. In Gohert's pool room.

Q. Where do you live? A. 37 Talmadge avenue.

Q. Is that your home or is that Genette's? A. That's my private home.

Q. Where do you sleep nights? A. I sleep in the pool room.

Q. Whereabouts? A. Downstairs in the cellar.

Q. In the basement? A. Yes.

Q. You work at the moving picture place? A. Yes. 30

Q. Were you at the lunch wagon on Sunday night? A. No, sir.

Q. No time? A. Been there many a time.

Q. Were you there that night at any time? A. No, sir.

Q. What time did you go to bed? A. About eleven o'clock.

Q. Where did you sleep that night? A. On two benches near the boiler, downstairs in the pool room. 40

Q. Whose pool room? A. Anthony Gohert's.

Q. What part of Bound Brook is that in? A. West end, across the street from the Washington House.

Q. How far from the lunch wagon? A. The other end of town.

Q. Mrs. Bodvenski says that you were in the graveyard and took her—helped to take her over in the graveyard and that you had sexual intercourse with her that night, is that true or not? A. No, sir.

Q. Were you anywhere near the graveyard that night? A. No, sir.

Q. Have you a white scarf? A. No, sir. I only had one scarf since I ever owned any scarf, and that's a brown one.

Q. Did you have any on that night? A. No, sir.

Q. What kind of clothes did you have on? A. These what I have on now.

Q. When were you arrested? A. I was arrested May 16th.

Q. May 16th? A. Yes.

Q. The crime was March 5th, wasn't it? A. Yes.

Q. Have you been in Bound Brook during that time? A. Yes.

Q. Were you in Bound Brook when Nattoli was arrested? A. Yes.

Q. Where were you when he was arrested? A. Working in the picture theatre.

Q. I mean, were you with him when he went over and gave himself up? A. Yes; I walked down town with him.

Q. And you were arrested May— A. May 16th, at night.

Where were you during that time, from March 4th or 5th, until May 16th? A. I had not been working until the 9th of April.

Q. Then where did you go? A. I went out of town.

Q. Whereabouts? A. Ohio, Youngstown.

Q. When did you come back? A. May 16th.

Q. Why did you come back? A. Because I did not like the place and I did not want to work there; I got a cousin there.

Q. Did you know there was a warrant out for you? A. No, sir.

Q. When were you arrested when you came back? A. The same night, 16th.

Q. Where? A. In front of the pool room, siting down on a bench.

Q. You went to Youngstown on April 9th? A. April 9th I left Bound Brook, Monday, about eleven o'clock, just before dinner. 10

Cross Examination by Mr. Beekman.

Q. You went to bed at eleven o'clock? A. Yes, about eleven o'clock.

Q. What do you do at the pool room? A. Why, I generally clean up around there, and sweep there, do such work as that.

Q. Attend to the pool tables? A. No, sir. 20

Q. Have you got another home in Bound Brook? A. Yes, sir.

Q. Where is that? A. 37 Talmadge avenue.

Q. How far is that from this pool room? A. Just on the same street, a little over a half a block.

Q. Who lives there besides you? A. Where is that?

Q. At 37. A. That is a half a block from Genette's place; it's on the same block—

Q. You told us that before; now I will ask you how far. A. Well, about four or five hundred feet. 30

Q. Who lives there? A. My people.

Q. Who are they? A. My mother, father, two sisters and three brothers.

Q. Did you see any of them that night when you went to the pool room? A. No, sir.

Q. Have you a bed home? A. Yes, sir.

Q. And yet in preference to going three or four hundred feet on Sunday night, you slept in the cellar

40

of the pool room, did you? A. Yes, sir.

Q. You do that quite frequently? A. I have been doing it right along.

Q. And you had a bed at home? A. Yes, sir.

Q. You did not poke your head out of the door now, when this woman and her husband and the other two people were down at the lunch wagon that night? A. No, sir.

Q. You were not down there and you were not identified as being one of the people that had been out in the graveyard, were you? A. No. sir.

Q. Was nowhere near the lunch room that night? A. No, sir.

The Court. Did you see this woman that night at all?

Witness. No, sir.

The Court. Saw nothing of the fight?

Witness. No, sir.

Q. You know DeMatto? A. Yes, he lives just three or four doors away from where I used to live with my parents.

Q. He sleeps out in the lunch room, and you sleep in the pool room? A. I don't know.

Q. Was he in the pool room that night? A. Not what I seen, unless—

Q. You went to sleep at eleven o'clock? A. Yes; unless he was there before.

Q. He had been there from ten to eleven; what makes you think so? A. That place is most filled Saturdays and Sunday nights.

Q. Do you keep this pool room open to twelve o'clock Sunday nights? A. Yes.

Q. What goes on there between sundown and twelve o'clock Sunday nights?

Mr. McCullough. I object to that.

The Court. Objection sustained.

Q. Well, you keep it open, what for?

Mr. McCullough. Object to the question. This man is not the proprietor of the place; he only works there.

10

Witness. I don't work there.

Q. Do you work anywhere? A. No, sir.

Q. How long since you worked? A. Since I left the woolen mill, a year ago last April.

Q. What did you work at there then? A. Wash room, worked in the washroom in the woolen mill.

Q. What do you do to make a living? A. Odd jobs, sweeping up the pool room flloor and fixing things like that.

20

Q. Now, you just told your counsel you were working in the moving pictures there? A. Yes.

Q. What were you doing over there for them? A. I was usher upstairs.

Q. How many days a week did you work at that? A. I worked every night.

Q. Well, for how long? A. I don't know how long, quite a while.

Q. Haven't any idea how long? A. No, I haven't.

Q. Where did you say you went? Ohio, was it? A. Yes, Youngstown.

30

Q. How did you some to go out there? A. Out on the highway.

Q. Well, that's the way you would have to go unless you took a train? A. Yes.

Q. What do you mean by on the highway? A. Getting lifts, I expected to go out that way.

Q. By lifts, you mean rides from one town to another along the road? A. Yes.

40

Q. How long did it take you to go out? A. Oh, about nine days.

Q. When did you get out there? A. I don't remember the date when I got there.

Q. You remember the date when you left? A. Yes.

Q. There is no mistake about that; you left what date? A. I left there on Wednesday—

Q. Left Bound Brook? A. Bound Brook; when I
10 left Bound Brook, it was April 9th.

Q. Now, you don't know what date you got there? A. No.

Q. You don't remember it, do you? A. No, I don't quite remember the date I got there.

Q. Well, who did you go to see out there? A. A cousin.

Q. What's his name? A. Albie Farrel.

Q. What does he do? A. He works for the Beef Company.

20 Q. And you did not like it out there and then you came back? A. Yes, and then I came back, the same way I got there.

Q. Getting a ride when you could on trucks or passing automobiles and riding from town to town? A. I got a ride whenever I could; I asked for them and they gave me a ride from town to town.

Q. That's what I said, you rode from town to town and stayed in that town until you could get a lift to another town? A. Yes.

30 Q. What various towns were you in? A. Right through Pennsylvania.

Q. Well, that don't answer the question; what various towns were you in? A. Philadelphia.

Q. How long did you stay in Philadelphia? A. I just went right through, didn't stay.

Q. Where did you go from Philadelphia? A. Coatesville, Pennsylvania.

Q. How long did you stay there? A. Right through.

40

Q. Where did you go from Coatesville, Pennsylvania? A. Yorkville.

Q. How long did you stay there? A. Right through.

Q. Where else did you go? A. From there to McConnellsville.

Q. How long did you stay there? A. Right through.

Q. Where did you go next? A. Everetts and Bedford.

Q. How long did you stay there? A. Over night, made these trips each one day.

Q. You made these trips, these towns in a day, did you? A. Yes, right on through.

Q. Made the trip from one town to another in the day time and stayed in that town the night? A. Yes, sir.

Q. You had no money when you started off, you had not been working? A. I had money, yes.

Q. Where did you get it? A. Worked for it.

Q. Well, you had not been working? A. Well, doing odd jobs.

Q. Odd jobs? A. Yes.

Q. Now, when did you leave Youngstown, Ohio? A. Well, I got here the 16th.

Q. Well, when did you leave—you remember that because you were arrested when you got home; when did you leave? A. I left there the 8th.

Q. Eight days coming back? A. Yes.

Q. How long did you stay there? A. A just a day or two.

Q. Oh, well now, you know how many days you stayed there; don't say just a day or two. Were you there one day, two days, or three days or what? A. One day.

Q. Then why do you say one or two days? A. A. day.

Q. Why do you say a day or two, when you were only there a day? A. Now, I stopped, I thought you were talking about my time, about the time it took—

Q. I am asking you how long you were in Youngstown? A. I started to tell you before how long I was there, one day.

Mr. Vosseller: I object, he has answered the question four times.

Q. All right. Then you were nine days going out, one day there, that's ten; you were gone eighteen days?
10 A. More than eighteen days.

Q. And you got back April 16th and you left April 9th? A. Yes, I came back the 16th of May, not April.

Q. That's right, May 16th. What was in Gennette's pool room when you went to bed? A. I can't remember; there was everybody in there.

Q. There was a lot of fellows in there that go in there, who were they? A. Most of the fellows that hang around there; I don't know who they are, lots of fellows that hangs around there all the time.
20 Q. Now, you have not answered the question yet.

Mr. Vosseller: Aren't we taking a lot of time for nothing? I object to the question as immaterial and irrelevant.

Mr. Beekman: He claims he was in this pool room at eleven o'clock at night; I have got the right to ask him who was in there.

30 Q. Who was in there?

Mr. Pope: Five hours before the alleged offense.

A. Why, a lot of young fellows.

Q. Can't you give any better answer than that? A. Well, I can't mention all the names; I don't remember who all was there.

Q. You say a lot of fellows that was always there?
40 A. Yes.

Q. Now, do you remember the exact time you went to bed; you went to bed eleven o'clock? A. Yes.

Q. What had you been doing just before you went to bed? A. Having a conversation.

Q. With who? A. With fellows there together.

Q. Now, who were they? A. Why, me and—

Q. Yes, you? A. Talmens and three other fellows.

Q. The only one you remember was Talmens there that night when you went to bed? A. Yes.

Q. And yet there were a lot of fellows there that had been there a good many times and that you had known for a long while? A. Yes. 10

Q. What time did this young man come in there, sitting over here, with a brown tie on? A. I don't know—

Q. You saw him there that night? A. I don't remember seeing him.

Q. Don't know when he left? A. No, sir, you know I went to bed, I was so sleepy.

Q. Well, you went to sleep of course, as soon as you struck the bed? A. Oh, yes. 20

Q. And slept sound? A. Yes, sir.

Q. Until morning? A. Yes.

Q. And don't know what happened after eleven o'clock Sunday night, until morning? A. No, sir.

Q. Why didn't you go down to your home? A. I had not been going there for quite a while.

Q. Didn't you go there before you went to Ohio? A. No, sir.

Q. Didn't go to get your things? A. No, sir; I had enough of them there. 30

Q. Well, you had a bed there, you say? A. Yes, but not for me.

Q. You said so a little while ago; I ask you if you had a bed? A. Yes, there was a bed I used when I stayed at home, possibly a crib or something.

Q. I asked you if you had a bed there and you said yes; now did you or didn't you? A. Yes; I had a bed there while I was at home; not while I was away.

Q. You did not have any idea there was any war- 40

rant out for you, when you went away? A. No, sir.

Q. Did not hear anything about it? A. No, sir.

Q. Did not read any paper, because a paper was published before you went away, that you were one of the persons having outraged this woman? A. No, sir.

Q. Had not read it in the paper?

Mr. Pope: Object to that. I ask to have that question read, if your Honor please.

10

(Question read).

Mr. Pope: Object to that question, it practically says it was published in a paper, and he asks him now if he read it in the paper. If he asks what he read in the paper that would be a different thing.

The Court: I think that is right.

20

Q. Do you know there are two papers published in Bound Brook? A. I know one.

Q. Well, what's that? A. Chronicle.

Q. You don't know anything about City Record? A. No.

Q. Don't know that? A. No.

Q. How many days elapsed between March 5th and the time you went away?

30

Mr. Pope: Object to the question. That has already been answered.

Witness: One month and four days.

Q. Now, I am asking you if, in the meantime, you had not read in the Chronicle, about the alleged assault made upon this woman, in which you were one of the persons supposed to be implicated in the assault? A. No, sir; I did not read it.

40

Q. Did not hear it at all? A. No, sir.

Q. Did not hear it from DeGhetto? A. No, sir.

Q. Did not hear it from any of these fellows that are indicted here and accused with you, as being guilty of this crime? A. No, sir.

Q. You went away from Bound Brook in entire ignorance that you were associated with anything in connection with it? A. I do not get it.

Q. I say, you went away from Bound Brook in entire ignorance that you were associated with anything in connection with it? A. Yes, I went away. 10

Q. Yes, you went away, we know that. Now, will you answer the question? Do you understand the question? A. I don't get what you mean.

Q. Maybe I can make it plainer? A. I don't quite get the meaning of it.

Q. If you look at me instead of looking at your counsel maybe you will understand it. I ask you if you went away in entire ignorance of the fact that you were associated or had any part in this crime for which you are indicted, and went away to Ohio? 20 A. I went away, sure. Does that answer that question? I went away, I was ignorant—

The Court: Were you around Bound Brook every day for that one month and four days after this thing occurred until you went away?

Witness: Yes, every day.

The Court: Saw the police? 30

Witness: Yes.

The Court: Saw the police?

Witness: Yes.

The Court: And didn't see in the papers that you were in the case?

40

Witness: No.

The Court: Were not told by anyone in authority that you were wanted, during that time?

Witness: No, sir.

Re-direct Examination by Mr. Vosseller.

10

Q. When you went away from Bound Brook, Mr. Beekman asked you if you had any suspicion or if you were associated or implicated in this crime. Did you know anything about this crime in connection with yourself? A. No, sir.

Q. You were not associated with it as far as you knew? A. No, I was not associated with it at all.

Q. Anybody ever tell you that you were associated or that you were described as being one of the parties?

20 A. No, sir.

Re-cross Examination by Me. Beekman.

Q. Now, I ask you again if you did not read it in the paper that you were associated with it?

Mr. Vosseller: Object; it has been asked and answered enough times.

30 The Court: I think that is correct, if he was connected with it or implicated, an officer should have arrested him.

Mr. Beekman: It affects his testimony.

The Court: I don't think it affects his testimony when he says he went away without suspect.

40 Mr. Pope: There is no proof that it was

published in any newspaper.

The Court: Not a bit.

(Witness excused).

MARTIN MANNON, Sworn on His Own Behalf, Testified as follows:

Direct examination by Mr. Pope. 10

Mr. Mannon, you are one of the defendants in this suit? A. Yes.

Q. On the evening, the night of March 5th, Sunday night, March 4th, where were you? A. Sunday night, March 4th, I went to Plainfield.

Q. Who went with you? A. Thomas Fuer, Victor DeGhetto, Raymond Shuer.

Q. Victor DeGhetto and Raymond Shuer; and how long did you stay in Plaineld? A. Oh, about four hours. 20

Q. What time did you leave Plainfield to come back, about? A. A little after two in the morning, Monday morning.

Q. And did you come direct to Bound Brook? A. Came direct, very slowly, talking.

Q. Where did you go when you reached Bound Brook; where did you first go? A. Central station.

Q. And were you in an automobile? A. Yes, sir.

Q. Whose automobile? A. My own automobile. 30

Q. And how long did you remain around the Central station? A. Oh, probably five or ten minutes.

Q. What were you doing there? A. Talking amongst ourselves.

Q. You have a taxicab business in Bound Brook? A. I had at that time.

Q. From the Central station where did you go? A. Took my car to the garage.

Q. And when you say you took it to the garage, what garage? A. Bohman's garage. 40

Q. And is that the garage right down on Main street near the battle monument? A. Yes.

Q. The big brick garage? A. Yes.

Q. Well, did you keep your car there? A. All the time.

Q. Well, after taking your car to the garage—first, where did Fuer and the rest of your companions leave you? A. We all went to the garage together.

Q. Now, after leaving your car in the garage, where did you go? A. Lunch wagon.

Q. Did Ray Shuer and DeGhetto and Thomas Fuer all go with you to the lunch wagon? A. Yes, sir.

Q. Was Ray Shuer in the lunch wagon too? A. Yes.

Q. About what time was it when you got in the lunch wagon, do you know? A. The first time we got there about twenty-five minutes to three, somewheres around that.

Q. And how long did you—well, you got to the lunch wagon; what did you do? A. Made my driver—

Q. Go on, now, tell the story. A. Told my driver to take Mr. Shuer home, take Ray Shuer home and my driver went and brought the car down that we had to Bohman's garage, and we went to the garage—

Q. Where did you go? A. We went to the lunch wagon, Mr. Shuer had to go home.

Q. And you went to the lunch wagon, about what time was it when you got in the lunch wagon after taking Raymond Shuer home? A. About coming on to three o'clock.

Q. Now, tell us just what you did and what you saw, if anything; you see I can't lead you? A. Went in the lunch wagon and sat down and ordered a cup of coffee and a sandwich; and I noticed the clock that was there, was five or six minutes to three—did not take any particular notice—

Q. Go on; what happened. A. Well, we was in there eating and the first thing there was a fellow came in from the ladie's apartment and passed the remark that we were all a bunch of wise cock suckers

and the fight started.

Q. Now, how soon was that after you had ordered your lunch? A. About four or five minutes after.

Q. Then what happened when he came in and made that remark? A. There was a fight started and we was all put out.

Q. Well, what happened then? A. I got a crack in the jaw and we was all out by that time and had a little fight outside.

Q. You were mixed up in the fight? A. Everybody. 10

Q. All right; when you were put out, where did you go? A. Went outside the lunch room and crossed on East street and Main street, and there was a little fight there.

Q. What were you doing over there? A. I took a crack at one fellow and came away.

Q. Who did you come away with? A. Victor DeGhetto.

Q. And where did you go? A. Went over to the lunch wagon and back to the garage. 20

Q. No; first off, before going to the lunch wagon, about how long did this fight take place? A. Four or five minutes, until the time it started in the wagon until I was out of it.

Q. Then you went back to the lunch wagon? A. Back to the lunch wagon.

Q. Did you go in the lunch wagon? A. No, sir.

Q. Whom did you leave at the lunch wagon? A. Victor DeGhetto. 30

Q. Victor did not go in? A. Left him at the lunch wagon.

Q. Where did you go? A. Bohman's garage.

Q. When you went to the garage whom did you see? A. Frank Gregory and Russell Ball.

Q. What was Frank Gregory doing? A. Washing my car.

Q. Who was Russell Ball? A. He was night manager of the garage.

Q. What was he doing? A. Working around some 40

cars and attending to the furnace, doing his night duty.

Q. How long did you stay in Bohman's garage? A. Oh, about fifteen or twenty minutes.

Q. And then what did you do? A. I took my car out to take the boys home.

Q. Now, you say you took your car out; did you take the car out that Gregory was washing, or another car? A. My other car.

10 Q. Took your car out to take the boys home? A. Yes.

Q. And what boys do you mean? A. Thomas Fuer and Victor DeGhetto.

Q. And where did you go with your car? A. I went up Main street and seen the cop standing on the corner there with Thomas Fuer and some fellows, and I went as far as the Central station and turned around and put my car in Bohman's garage again.

Q. Why didn't you stop when you saw the cop?
20 A. We was fighting.

Q. Afraid you would get pulled for fighting? A. Yes.

Q. You went to the Central station and took your car back to the garage? A. Yes.

Q. Then what did you do? A. Walked out of the garage and met Victor DeGhetto coming across the street to meet me and went in the lunch wagon and called John Ward and Thomas Fuer out and went home with Mr. Ward.

30 Q. Well, when you went out to the lunch wagon and called to Ward as you say, about what time was that? A. When I went to call Ward?

Q. Yes. A. Oh, about half-past three.

Q. And who else did you see at the lunch wagon besides Ward and Thomas Fuer? A. At the lunch wagon I seen the cop there.

Q. What officer was it? A. Officer Bohler.

Q. And who was with Officer Bohler? A. There was some fellows around in there and this here wo-
40 man.

Q. Did you hear what the woman said? A. Not a thing.

Q. About you? A. Not a thing.

Q. Now, who went into the lunch wagon with you at that time? A. Victor DeGhetto.

Q. Then you turned and—that was about half-past three? A. Half-past three.

Q. Were you in the graveyard that night? A. No sir.

Q. Did you go up East street away from the corner? A. No, sir. 10

Q. Were you connected with that portion of the fight which took place up by the signboard? A. No. sir; just at the corner.

Q. Did you commit a rape on this woman that night? A. No, sir.

Q. Have anything to do with committing a rape on her? A. No, sir.

Q. Had no part in it? A. No, sir.

Q. Did you know anything about a rape having been committed on her? A. No, sir. 20

Q. When did you first hear she claimed a rape had been committed on her? A. That afternoon, Monday afternoon, about four-thirty.

Q. How did you learn it them? A. Officer Williams called me up and told me I was wanted.

Q. You went down? A. I went down to Mr. Fleming's office.

Q. Martin, did you ever know this woman before? A. Never knew her. 30

Q. Are you a married man? A. Yes.

Q. Live with your wife? A. Yes.

Q. Any children? A. One.

Mr. Pope: That's all.

Cross Examination by Mr. Beekman.

Q. Who went to Plainfield with you? A. Victor DeGhetto, Thomas Fuer, Ray Shuer and myself. 40

Q. What time in the evening did you go down there? A. Oh, about eight o'clock.

Q. Where did you go? A. Went to a roadhouse down there.

Q. Road house; have some women with you? A. No, sir.

Q. Meet some down there? A. No, sir.

Q. Stayed until two o'clock, did you? A. About two o'clock.

10 Q. You are a married man, you say? A. Yes.

Q. Got a wife and child? A. Yes.

Q. What did you do down in this roadhouse? A. Sat around and talked and had a few drinks.

Q. Drinks of what? A. Beer.

Q. Near bear, I suppose? A. I would not say that.

Q. Didn't have any whisky? A. No, sir.

Q. You all came home drunk though, didn't you? A. No, not exactly.

Q. In the car? A. No sir.

20 Q. Was it muddy? A. Muddy?

Q. Was it a muddy night? A. Well, it was March, a little damp, I guess.

Q. Well, you took your car and had it washed as soon as you got back to Bound Brook? A. No, not the one I was riding in.

Q. Oh, you did not take the car you were riding in and have it washed. A. No, sir.

Q. When did you take your car down to Bohman's garage to have it washed? A. After I put my other
30 car up and took Mr. Shuer home I sent my driver down with it to have it washed for Monday morning.

Q. The one you went to Plainfield in? A. My own car, the one I was driving.

Q. Was this man driving a taxicab for you at that time? A. Yes.

Q. What time did you leave Plainfield? A. A little after two.

Q. And what time did you get to Bound Brook? A. About half-past two.

40 Q. You probably mis-spoke yourself; you said on

your direct examination you got there three twenty-five; do you mean two twenty-five? A. What's that again?

Q. Do you mean two twenty-five, and it that it? What you said was, you got to Bound Brook three twenty-five; do you mean two twenty-five? A. No, half-past three—

Q. Yes. Well, now, you said on your direct examination and you came pretty near saying it again, you got there about three twenty-five; did you not make a mistake? 10

Mr. Pope: He did not say that, he said two twenty-five.

Q. Did you make a mistake if you said that before or didn't you?

Mr. Pope: He didn't say that.

20

Q. Was it two twenty-five or three twenty-five you got to Bound Brook. A. About two twenty-five.

Q. And what did you do after that? A. Took Mr. Shuer home.

Q. How long did it take you to take him home? A. Probably five or six or seven minutes.

Q. How close does he live to the lunch room? A. On Main street, about three blocks away.

Q. What did you do after that? A. Came back to Bohman's garage. 30

Q. How long did you stay there? A. Fifteen or twenty minutes.

Q. Why did you stay there fifteen or twenty minutes? A. Why? Why I put my car in the garage and got over at this lunch wagon and the fight started —

Q. Who was in there besides you? A. Victor DeGhetto and Thomas Fuer and the lunch wagon man.

Q. Anybody else? A. Not that I know of.

Q. You didn't know anybody else was in the lunch 40

wagon? A. No, nobody that I knew.

Q. Well, you don't know Ducci DeMatto? A. No, sir.

Q. You don't know Tony Nattoli? A. No, sir.

Q. Don't know him now? A. Know him now.

Q. Well, you did not know him when you went in the lunch wagon that night? A. I did not take any notice who was in there, was not interested in who was in there.

10 Q. You were not interested in who was there? A. No, sir.

Q. May have been in there and not have seen him? A. Probably was.

Q. Did you see a fellow laying around there asleep? A. Did not take any notice.

Q. Did not see any fellow there sound asleep? A. Not that I remember.

Q. What did you get when you got in there? A. Cup of coffee and a sandwich.

20 Q. Who else ordered any stuff to eat? A. There was with us Victor DeGhetto and Thomas Fuer.

Q. And without anything out the usual happening this fellow Potosney came from the other side and called you fellows a lot of cock suckers and there were remarks passed? A. There was remarks passed.

Q. Yes, and he called you a wise bunch of cock suckers without anything preceding it out of the ordinary. Did you know him? A. I knew him as a sailor.

Q. But he was a stranger to you? A. No, he was

30 not a stranger.

Q. I mean in a social way? A. No; I never had any dealings with him.

Q. And without any provocation on your part or anybody else's part he came in that door and started to call you a bunch of cock suckers? A. Not on my part.

Q. You don't think anybody else had any argument with him? A. The fight started right in there.

Q. And one fellow was going to use a bottle? A.

40 Not that I know of, I did not see it.

Q. What did you see when the fight went on? A. A. I just saw them all rush—this Potosney rush out in the lunch wagon and swing his hand over his head and everybody ran out, and he hit everybody that was around.

Q. Hit you? A. Somebody hit me, I could not say who.

Q. But you did not suspect any of your friends? A. More than likely, the way he jumped us in there.

Q. Where did you get hit? A. Right in the jaw; I was sitting as I am now right here. 10

Q. You think perhaps Potosney might have done that than somebody else? A. Somebody hit me, I could not say who.

Q. He was all alone when he came in there? A. In the men's quarters?

Q. Yes. A. Yes.

Q. And there were at least three men with you there, including yourself? A. Yes, sir.

Q. And he came in all alone in the men's quarters and hit who was in there and called you cock suckers and somebody hit you in the jaw, and somebody threw you out the door? A. The manager pushed the crowd out the door. 20

Q. And you said you took a crack at somebody; who was it you took a crack at? A. I don't know; the first one I met coming out of the door.

Q. Well, all the men that were coming out the door were friends of yours, weren't they? A. No, not exactly. 30

Q. Except Potosney? A. There was several fellows in there besides me that I did not know, I said.

Q. Associates in there. Well, they did not hit you? A. I don't know who hit me.

Q. You know a fellow by the name Oscar Huntsner? A. I know a fellow by the name of Oscar.

Q. What time of night did you see him, prior to thetime you were in the lunch wagon? A. When I first came back from Plainfield.

Q. Where did you meet him? A. Up by the lunch 40

wagon.

Q. You punched him in the jaw? A. I had a little argument.

Q. Well, I am not talking about arguments; I asked you a direct question, whether you punch him in the jaw?

Mr. Pope: I object to the question; it's immaterial.

10

The Court: It is not material only so far as to what time it would indicate he was there.

Q. Who was with you at the time you took Shuer home? A. We stopped at the lunch wagon and got something to eat and engaged in this fight and that took about fifteen minutes and I was down by the car that was getting washed—

Q. I am asking you where you saw Oscar Huntsner that night? A. Well,—

20

Mr. Beekman: He said he saw him and had an argument with him. Now I want to know what time that was.

A. Right after we came back from Plainfield.

Q. Where was DeGhetto then? A. standing right alongside of me, I guess.

Q. Right by the lunch wagon? A. Yes.

30

Q. What time of night do you think it was you hit him? A. Oh, about two-thirty.

Q. Then you hit him shortly after you got back? A. Yes.

Q. Beside you did not get back until two twenty-five and you took Shuer right home, didn't you? A. Yes; right after this little argument we had with Oscar.

Q. How long did this little argument that you speak of last? A. Oh, about two minutes.

40

Q. Now, you know as a matter of fact, don't you

Mannon, that you hit this man and knocked his tooth out? A. No, sir.

Mr. Pope: Object to the question; he has not testified to that and it is immaterial; he says he had an argument with him.

Mr. Beekman: Yes, that's just the point. The men states on the witness stand that he had had an argument in which two teeth were knocked out, and he characterizes that as an argument. 10

The Court: What difference does it make; confine yourself to this case. Suppose you can show by the man that he knocked somebody's tooth out?

Mr. Beekman: Exactly so, and the time it consumed. 20

Q. Whatever time it consumed, you did not tell us before? A. What's that?

Q. About the little argument you had with Oscar? A. It did not amount to very much.

Q. Not to you, perhaps, no. Now, you took Shuer home then? A. Yes.

Q. Was Shuer there when you had this little argument with this fellow Oscar? A. Yes.

Q. And Shuer wanted to go home, you said? A. Who? 30

Q. Shuer, he wanted to go home. A. He wanted to go home and the car came along at that minute.

Q. You said on your direct examination that Shuer wanted to go home? A. Yes.

Q. Why didn't you take him right home? Why did you get out and have an argument with Oscar? A. We were walking from Bohman's garage to the lunch wagon and met Oscar.

Q. Now, you say you struck the first fellow you 40

could see coming out of the lunch wagon? A. Yes.

Q. You don't know who he was? A. No.

Q. Don't know today who he was? A. No.

Q. Did you see Potosney outside the lunch wagon? A. No, sir; seen him in the wagon, put out; we was all put out.

Q. Did you see him afterwards? A. Outside?

Q. Yes. A. Corner of East street.

Q. What was going on up there? A. Corner of
10 East street and Main there was a fight.

Q. You were in that fight? A. Standing there.

Q. I thought you said you took part in the fight? A. I punched one fellow coming out of the wagon.

Q. What did you cross the street for? A. To watch it.

Q. Who was fighting? A. Fuer and Potosney.

Q. Anybody else? A. No.

Q. Did you see anybody else there? A. No.

Q. Did you see anybody knock Fuer in the jaw?
20 A. No, sir; I was not there.

Q. You were there watching Fuer and Potosney fight? A. Yes, but I left right away.

Q. What did you say you were not there for? A. I went back to the lunch wagon.

Q. How long did you stay in the lunch wagon? A. Did not go in.

Q. Stood out in front of it? A. Yes.

Q. How long were you there? A. Oh, a minute or two.

30 Q. Then what did you do? A. Went to Bohman's garage; then came back.

Q. And had been there five minutes— A. Fifteen or twenty minutes.

Q. All right; and then you came back and Fuer was there, was he? A. In the lunch wagon.

Q. In the lunch wagon or outside? A. In the lunch wagon.

Q. Weren't you and Nattoli standing outside and didn't Bohler come along with this woman and didn't
40 this woman pick you out? A. No, sir.

Q. Now, you are sure? A. Sure of that.

Q. Sure that this woman came back in the lunch wagon and Fuer was there? A. Fuer was there when I came back.

Q. In the lunch wagon? A. Yes.

Q. Fuer says he was outside at the time asking this woman to take her home?

Mr. Vosseller: He didn't say anything of the kind.

10

The Court: Don't argue. If you want the record the stenographer will read it.

Mr. Beekman: Oh, I withdraw the question, instead of taking up the time.

Mr. Pope: Then don't make statements that you know—

20

Mr. Beekman: I said I withdraw the question.

Q. Well, anyway you were gone fifteen minutes or twenty minutes at least, down to the garage? A. Yes.

Q. And then you came back and did not find Fuer outside? A. No, sir.

Q. And you were not standing anywhere near him outside after you came back from the garage? A. No, sir.

30

Q. And you were not standing anywhere near Nattoli or any of the other boys outside, after you came back from the garage? A. No, sir.

Q. But you went in there and found Fuer, and where was he, what part of the place? A. There in the men's quarters.

Q. Doing what? A. Sitting down on a stool.

Q. Was the woman in there when you went in there? A. Yes, sir.

Q. What made you turn right around and go out

40

again? A. I was going home.

Q. What did you go in the lunch wagon first for, anyway? A. Called Mr. Ward.

Q. Where was he? A. In the lunch wagon.

Q. Is he the one that went out with you? A. He took me home.

Q. Who came in with you? A. Mr. DeGhetto.

Q. And he turned right around and went out and you turned right around and went out? A. Yes, after
10 I called Ward.

Q. As soon as you came in this woman pointed you out and said, that's one of them? A. Not to me.

Q. Oh, not to you, but she said to Bohler, she pointed out you and said, there is one of them? A. Never pointed to me that I saw.

Q. And then you got in the car and went away? A. Went home.

Q. When was it you saw the officer and tried to pass him, afraid you would be arrested? A. Oh, about
20 twenty minutes after three, twenty-five minutes after three.

Q. About twenty-five minutes after what? A. Twenty or twenty-five minutes after three.

Q. Well, you got to Bound Brook at twenty-five minutes after three? A. After two.

Q. And the fight only took four or five minutes and it only took you four or five minutes to take Shuer home, and you were at the garage twenty minutes; how do you make it that it was three twenty-five when you
30 drove over there and was afraid you would meet an officer? A. It was three twenty because I saw him three-thirty.

Q. You had already seen Officer Bohler in the lunch wagon, hadn't you? A. In the lunch wagon, yes.

Q. Were you in there? A. I was in there when he came in.

Q. And he came in the lunch wagon the last time what time? A. About twenty-five after three.

Q. Yes; well, now, when was it you saw the officer
40 on the street and turned around? A. Between twenty-

five minutes after three and the fight.

Q. Between twenty-five minutes after three and the fight? A. Yes, between the time they had the fight and the time I came in the lunch wagon.

Q. That was twenty-five minutes after three, according to your story; it was twenty-five minutes after two and between twenty-five minutes after two and twenty-five minutes after three?

Mr. Pope: Now, the Prosecutor certainly must know that is not so, and he ought to be fair in this matter. 10

Mr. Beekman: I am trying to be absolutely fair with this witness. I am not trying to misquote him at all and I am trying to correct him.

Q. Now, it must have been after two twenty-five? A. No; it was about five minutes after the fight; I left the fight and went to the garage and was there fifteen or twenty minutes, and I got my car and took the boys home and saw the officer alone. 20

Q. Was that after you had been in and had something to eat? A. Yes, after we had been in there, after the fight.

Q. Now, after you had been in there and found Victor DeGhetto in the lunch room and this woman came in there, was that the first time you saw the officer? A. No, it was before.

Q. How long before? A. Maybe two or three minutes before. 30

Q. Why did you try to avoid the officers? A. Because I was in the fight.

Q. How did you know you were accused of a fight; who told you? A. Nobody told me, but I knew I was fighting.

Q. Well, you took care that you did not fight? A. Yes.

Q. And you had nothing to do with the fight? A. No, sir. 40

Q. Nothing to do with the fight near the corner? A. No, sir.

Q. You just stood and looked on, that's all you did, and yet the first officer you saw, you skipped around the park in front of the depot? A. No, I did not skip through any park; I came back to find out what the trouble was.

Q. You came back to find out what the trouble was? A. Yes.

10 Q. Why didn't you tell your counsel that? A. If we was going to get arrested; I was not going to get away, run away from the rest of the fellows.

Q. Why didn't you tell your counsel that; you told him you were afraid you were going to be arrested because you were in a fight? A. I was not afraid; I wanted to be with them.

Q. Why didn't you say that? A. I did not want to get in any trouble.

Q. And that's the reason you were afraid of the 20 officer? A. No; I was putting the car away and came back to find out—

Q. No, you were not putting your car away at all; you said you went up there and turned around? A. Yes.

Q. Well, you were not anywhere up in the graveyard that night? A. No, sir.

Q. They call you Marty, don't they? A. Yes, sir.

Q. You are known by your friends and associates as Marty? A. Marty.

30 Q. They call you Marty? A. Yes, sir.

Mr. Beekman: That is all.

(Witness excused).

FRANK JANNUZZI, Sworn on Behalf of the Defense, testifies as follows:

Direct Examination by Mr. Pope.

40

Q. Are you the young man who was driving the taxicab for Marty Mannon at the time this fight occurred? A. Yes.

Q. You are not working for him now? A. No, sir.

Q. Were you washing a car in Bohman's garage? A. Yes.

Q. About what time was this? A. I started about fifteen to three and stayed there all night washing, and talking to Russell Ball, in the garage.

Q. Now, while you were washing the car did you see Marty Mannon? A. Yes, sir. 10

Q. Did he come in the garage? A. Yes, sir.

Q. Speak to you? A. Yes, sir.

Q. Talk to you? A. Yes.

Q. And how long did he stay down at the garage? A. I should judge ten to twenty minutes.

Q. How long was it that you commenced to wash the car before Marty came in?

A. About twenty to twenty-five minutes.

Q. And Mr. Ball in the garage there all along? A. Yes, sir. 20

Q. Now when Marty went out what did he take with him? A. He took the Cadillac.

Q. And by the Cadillac, you mean the other car? A. His other car, his own car.

Q. Did he come back again with the Cadillac? A. He came back.

Q. About how long after he went out? A. Oh, about five minutes.

Q. You said it was about twenty minutes to three when you went into the garage and started to wash the car? A. Yes, twenty minutes or fifteen; something like that. 30

Q. And how long were you there before Marty came down to the garage? A. About twenty to twenty-five minutes.

Q. And he stayed around there talking to you and Mr. Ball about how long? A. From ten to twenty minutes.

Q. And then he went out with the Cadillac car? 40

A. Yes, and came right back.

Q. Came right back and did he leave the Cadilac car? A. Yes.

Q. And then did he stay there or go on out? A. Went out then.

Q. When he brought the Cadillac car back did he remain any length of time or go right on out? A. He went right on out.

10 Mr. Pope: That is all.

Cross Examination by Mr. Beekman.

Q. Now, Frank, did you go to Plainfield with your boss? A. No, sir.

Q. Where had you been during the evenings. A. Hacking.

Driving back and forth? A. Yes, sir.

Q. Where did you first see him after he came
20 back? A. At the lunch wagon.

Q. Well, were you in there? A. Went in there, yes, sir, a few minutes.

Q. I mean before you started to wash the car? A. I was in there.

Q. Where did he give you orders to take the car down and have it washed? A. About twenty minutes to three.

Q. I know; you told us that, that's all right; but where were you? A. Oh, where—

30 Q. You did not know enough to wash the car unless he told you? A. No—

Q. Where were you and where was he? A. I went out my own self; he don't need to tell me.

Q. He did not say a thing to you? A. No; he told me to run the car in; he was going home with John Ward.

Q. He did not tell you about washing the car? A. No, sir.

Q. Did not know you were washing it? A. No, sir.

40 Q. Now, you are sure he did not tell you that

you were to come down and wash the car? A. Told me to pull in.

Q. I am asking you, that you are sure he did not tell you to come down and wash the car? A. No, sir.

Q. Didn't—you just did that without being told? A. Yes.

Q. Just started to wash the car; went in there and washed the car yourself? A. Yes, sir.

Q. Now, where had you been a half hour before that, before you went in to wash the car? A. Up to the stand, hacking around, running back and forth. 10

Q. Running all around? A Sure.

Q. Where did you go to look at a clock to find out it was fifteen or twenty minutes to three when you were in the garage? A. In the lunch room is a clock.

Q. Yes, but you were not in there, you were in the garage? A. I was at the lunch room.

Q. When? A. Generally pulled there.

Q. Yes, I know you generally pulled there, but how do you fix the time that you have been telling us about; anybody tell you what time Marty came in there when you were washing the car; anybody ever said anything to you about it? A. No, sir. 20

Q. Nobody ever questioned you about it? A. No, sir.

Q. Mr. McCullough? A. No. Sir.

Q. Mr. Pope? A. No, sir.

Q. Mr. Vosseller? A. No.

Q. Or Mr. Mannon? A. Nobody.

Q. Nobody ever mentioned the matter to you? A. No, sir. 30

Q. Well, have you ever thought about it since that night until you were put on the witness stand today? Have you ever thought about the time when you took this car in there and started to wash it? A. Sure.

Q. What makes you think about it? A. I looked at the clock.

Q. What did you look at the clock—when did you look, once in awhile? A. Yes; I look at the clock once in awhile.

40

Q. How did you fix the time as twenty minutes to three; when did you make your mind up that it was twenty minutes to three that you took this car in to wash it? A. I was at the station for the one-thirty train.

Q. You were at the station for the one-thirty? A. Yes.

Q. That's the last train that comes in? A. Outside of the two-forty-three or two forty-five.

10 Q. Well, did you meet the two forty-five? A. No, sir; rode around and Marty Mannon pulled in and I met him down at the lunch wagon there.

Q. Now, the last time you actually knew what time it was with any certainty, was when the one forty-five pulled in, and you knew it was about one forty-five? A. Yes; the train pulled in and then I went to the lunch wagon.

Q. How did you know what time it was after that? A. Looked at the clock.

20 Q. Looked at the clock, where? A. In the lunch wagon.

Q. What part of the lunch wagon? A. Up against the ladies' room.

Q. What time was it when you got to the lunch wagon? A. About—

Q. Not about—if you looked at the clock you know what time it was, without any "about" about it. A. About two-thirty to two thirty-five.

Q. Well, now, you say you looked at the clock? A.

30 Yes.

Q. When you went in the lunch wagon? A. Yes.

Q. Now, if you looked at the clock can't you tell us whether it was two forty-five or two-forty, or are you just guessing about the time. A. That's right now.

Q. Eh? A. That's all right now, not guessing. It must have been two-forty or two forty-five.

Q. Why two forty or two forty-five, because you are guessing between the two? A. No.

40 Mr. Pope: He did not say that. He said

two-thirty to two thirty-five.

Q. If you looked at the clock at that time as you say you did, why don't you know whether it was two-thirty or two thirty-five? A. I don't remember.

Q. No one else could remember that length of time? A. No.

Q. And you don't either? A. No.

Q. And that's the way you fix the time as being fifteen or twenty minutes to three when you started to wash the car? A. Yes, about that time. 10

Q. And you don't remember that, do you now, today; whether it was two-thirty or two thirty-five? A. Yes, I do.

Q. When did you get sure of it? A. I am sure of it.

Q. I know you are sure of it. A. (No answer).

Mr. Beekman. That is all.

20

RUSSELL BALL, sworn on behalf of the defense, testified as follows:

Direct Examination by Mr. Pope.

Q. Mr. Ball, you are the foreman, night foreman of George Bohman's garage in Bound Brook? A. I was at the time.

Q. And were you on the date, that Sunday night, March 5th, or Monday morning? A. Yes, sir. 30

Q. And did you see this last witness, Jannuzzi, come in with one of Marty Mannon's taxicabs? A. Yes.

Q. What did he do when he got in there? A. Why, he pulled the car over to the stand so he could wash the car.

Q. About what time did he come in? A. Somewhere about twenty minutes to three, something like that, around there.

Q. And while he was washing the car did you see Mannon,—did Marty Mannon come in the garage? 40

A. Mannon came in a little later.

Q. And do you know how much later? A. It wasn't much later, shortly after he came in; I could not just say what.

Q. Shortly after this boy started to wash Mr. Mannon's car, Mannon came in? A. Yes.

Q. How long did he stay around there? A. About a few minutes.

Q. And who was he tailking to? A. To his driver.

10

Q. Talking to you? A. Spoke to me.

Q. How many minutes did he remain, do you know? A. About ten minutes.

Q. And then when he went out, did you see him go out? A. Yes.

Q. Went out with his car? A. The Cadillac.

Q. The Cadillac? A. Yes.

Q. Did he come back with the Cadillac again? A. Yes, he came back in a few minutes.

20

Q. And that's the last you saw him that night? A. That's the last time.

Mr. Pope. I guess that's all.

Cross Examination by Mr. Beekman.

Q. Well, did he take the car away again? A.The Cadillac car came back. He went out with the car and then came back with the car.

30

Q. I mean when he didn't come back with it, at the time he went out with the car? A. Yes, he went away and took the car.

Q. Have you any positive way of telling what time he left the garage for the last time? A. As near as I should judge—

Q. No, I am not asking about that—

Mr. Pope. He has got the right to judge.

40

Mr. Beekman. He has got the right to judge

and he has got the right to answer the question.

Mr. Pope. You are very unfair about this thing all the way through.

Q. (Question read.)

Mr. Beekman. I am going to ask the question and I should not be interrupted and I am certainly entitled to an answer as to whether he he is not positive as to what time it was. 10

A. He went out about three o'clock; I went to the front door and went past my time clock which hangs there.

Q. Well, what time was it by the time clock? A. Three o'clock.

Q. Then he went out at three o'clock? A. Yes.

Q. Well, if that car was brought into the garage at a quarter to three and it took twenty minutes to wash it—it could not have taken twenty minutes to wash it, he could not have been there twenty minutes? A. He did not take that car; the other car was getting washed. 20

Q. Now listen; we are getting along. I say, if the car was not brought in there until a quarter to three and Marty came in there after the car was brought in to be washed, he could not have been in there twenty minutes all together, could he? A. I don't think he could. 30

Q. And when you said in answer to the direct question, he was there a few minutes, that was your best recollection of it? A. Yes.

Mr. Beekman. That is all.

Re-direct Examination by Mr. Pope.

Q. When did you look at the time clock, when Marty first came in or when he went out with the Cad- 40

illac car? A. When he went out with the Cadillac car.

Mr. Beekman. For the last time?

Witness. For the last time.

Q. And that was around three o'clock? A. (No answer.)

10 Mr. Pope. That is all.

Mr. Beekman. Well, was it around three o'clock or three o'clock?

Witness. Three o'clock.

Mr. Beekman. That is all.

(Witness excused.)

20 ANTHONY NATTOLI, sworn on his own behalf, testified as follows:

Direct Examination by Mr. Pope.

Q. What is your first name? A. Anthony Nattoli.

Q. And where has been your home? A. New York.

30 Q. And how long have you been around Bound Brook? A. Three and a half months.

Q. Were you around Bound Brook on this March 4th? A. About three and a half months.

Q. Where were you the night or the evening of March 4th? A. New York.

Q. What time did you arrive in Bound Brook? A. Twelve-seven.

Q. Did you meet anybody when you got off the train? A. Yes, DeMatto.

40 Q. This young fellow (indicating)? A. Yes.

Q. Where did you go? A. In the lunch wagon.

Q. What time was it? A. To my knowledge about a quarter after, half-past twelve, around that time; I can't tell the right time.

Q. Did you go down to the lunch wagon? A. Yes.

Q. What did you do in there? A. Sat down and had a cup of coffee and Hamburger sandwich.

Q. What did DeMatto eat? A. He had the same thing.

Q. How long did you stay in the lunch wagon? A. Until half-past three. 10

Q. What did you do between half-past twelve and half-past three? A. We were passing the time talking and eating.

Q. Talking to whom? A. DeMatto and the other fellow that was there.

Q. Did you see a fellow sleeping there? A. Just laying his head down on the counter.

Q. What did you do when he was asleep? A. I sat there. 20

Q. Talking to anybody? A. No, sir.

Q. Was anybody there to talk to? A. Just the chef, John Whinny, or whatever his name is.

Q. Did you see Fuer and Mannon and DeGhetto come in? A. Yes, sir.

Q. What time was it? A. About five or ten minutes to three.

Q. When they came in? Yes, sir.

Q. How do you know it was about ten minutes to three. A. I sat right under the clock. 30

Q. Did you see Potosney and this Mrs. Bodvenski and the rest of them come in? A. No, sir.

Q. Who else was in the lunch room besides you and DeMatto and Fuer and Mannon and DeGhetto? A. I don't know sir; there was a couple in there, but I don't know who they were.

Q. Was this fellow in? A. No, sir.

Q. Did you see him that evening? A. No, sir.

Q. Did not see him at all? A. No, sir.

Q. Know him? A. No, sir. 40

Q. Who started the fight in there, if there was one? A. One of the State's witnesses.

Q. Do you know him? A. No, sir.

Q. Potosney? A. I don't know his name; I know him; he was up there.

Q. The big fellow that was on the stand? A. He was sitting over there.

Q. And what started the fight? A. He came in and called the bunch cock suckers.

10 Q. Now, what time was that when the fight started? A. About five minutes to three.

Q. Did you go out of the lunch wagon? A. No, sir.

Q. At no time? A. No, sir.

Q. You did not? A. At half-past three I went out to go home; I mean outside to fight.

Q. Could you see the fight from where you were? A. No, sir.

Q. Did you see any part of the fight? A. No,
20 sir; I seen inside there, but when they went out they rushed out the door and I did not see anything else.

Q. Did you see Fuer on the opposite side of the street get knocked out? A. Yes, he was struck out; they say he was lying out in the gutter.

Q. Did you see him fall? A. No, sir.

Q. Did you see him get knocked down? A. No, sir.

Q. Did you see him after he was knocked down? A. All I saw, I saw him out of the window.

30 Q. Saw him through the window? A. Yes, through the window I saw him.

Q. And where did he go after he got up? A. I don't know.

Q. About how long a time was it until he came in the lunch wagon? A. About five minutes.

Q. Did he go out of the lunch wagon again? A. No, sir.

Q. Did you see Mannon? A. No, sir.

Q. Again that evening? A. I don't know Man-
40 non, I know him now.

Q. Did you see him that evening? A. Yes, Dutch Fuer and Marty Mannon, and Victor DeGhetto.

Q. Yes, I understand—now, after the fight did you see Mannon again? A. No, sir.

Q. He did not come back in the lunch wagon? A. I did not notice him.

Q. Was DeMatto out of the lunch wagon that evening? A. He was with me inside.

Q. Did he say anything to you that prevented you from going out? A. No, sir. 10

Q. Did you say anything to him that prevented him from going out? A. I told him to keep out of the trouble.

Q. When you say trouble, what do you mean? A. The fight there.

Q. Now Mrs. Bodvenski says that you and all these other men, had sexual intercourse with her up in the cemetery and that you and the rest of them held her while this act was performed, is that true? A. Never seen the woman that night. 20

Q. You did not see her that night? A. No, sir.

Q. Were you there when Bohler—when she came in with Officer Bohler, you saw her then? A. Yes.

Q. Was that the first time you had seen her? A. Yes.

Q. Were you on East street? A. No, sir.

Q. You were not outside of the lunch wagon and in the graveyard? A. No, sir.

Q. Was DeMatto? A. No, sir.

Q. Was any of the others to your knowledge? A. I don't know about any of the others. 30

Q. Are you married? A. Yes, sir.

Q. Your family is not in Bound Brook? A. New York.

Cross Examination by Mr. Beekman.

Q. Have you ever been convicted of crime? A. No, sir.

Q. Isn't it a fact that you were convicted in New 40

York of crime—

Mr. Vosseller. Object to the question; if he wants to produce the records all right.

The Court. He has answered the question. Now if the Prosecutor wants to call his attention I will allow the question at this time. Answer that last question.

10

A. The Army organization.

Q. What do you mean by that? A. Federal charge.

Q. What charge, charge of what?

Mr. Vosseller. Object to that; he can't prove the conviction this way; he knows he can't.

Mr. Beekman. I certainly can ask him if he has been convicted. I can ask him what the charge is.

20

The Court. I don't think it makes any difference what the charge it if he has transgressed or violated an army ordinance.

Mr. Beekman. Let him say so.

The Court. He had to tell first if he was and the state he was convicted of some army ordinance.

30

Q. Are you sure Mannon was in the lunch wagon but once that night? A. I only seen him once.

Q. And that was before the fight started? A. When he came in with the other three fellows.

Q. Was it before the fight started or not? A. Before the fight.

Q. You are sure he was not in there afterwards? A. Yes, I am sure.

40

Q. Whom did you tell to keep out of the trouble?

A. Dominick DeMatto.

Q. Was he the fellow that was asleep? Did you think he would get in trouble being asleep with his head on the counter? A. He didn't know anything of the trouble until it started.

Q. Then why did you tell him to keep out? A. Told him to get in the corner and keep out.

Q. Did you wake him up? A. He woke up himself.

Q. You are sure you woke him up and told him to keep out of the trouble? A. I did not wake him up, he got up himself. 10

Q. What was going on when he woke up and got us? A. They were rushing out the door.

Q. And you stayed right in there with him? A. Yes.

Q. And told him to keep out of the trouble? A. Yes.

Q. He was awake, then, wasn't he? A. Yes.

Q. And did he go to sleep again? A. No, sir. 20

Q. Then after the fight started there and the commotion awakened him, he did not sleep again that night? A. No, sir.

Q. Now, you looked out of the window, eh? A. Yes.

Q. You did not get out the door? A. No.

Q. Stayed right there until you went home? A. Yes.

Q. And yet you saw across the street, you saw Fuer laying on the ground? A. Dutch Fuer. 30

Q. Dutch Fuer, you saw him? A. Yes.

Q. Knew him by his coat, what kind of a coat did he have on? A. A brownish dotted coat, I don't remember.

Q. Brownish dotted coat, you know that. A. Dotted coat; I know that.

Q. Do you mean a brownish dotted coat or just a dotted coat? A. I don't say what kind of a coat it was I know there was dots on it.

Q. What kind of a scarf did he have on? A. A 40

brown scarf.

Q. You saw this brown scarf? A. I just seen the coat. I don't know anything about the streets—

Q. Oh, no; you can say that, can't you; you are a New York boy and this is Jersey. (The Prosecutor having held up a photograph to the witness). How does that look, does it look like the lunch wagons that you have in New York City? A. Haven't got any of them in New York city.

10 Q. Have you ever seen this lunch room down here? A. If that's the one that's on Main street, but I don't know, I can't tell you that.

Q. Why can't you? A. I don't recognize it.

Q. Well, you have seen it many times since this evening? A. I was only in that lunch wagon this night I was in Bound Brook.

Q. When were you in there last? A. About two months before I got arrested.

Q. And that was the last time you were in it? A.
20 Yes.

Q. How did you find it that night in the dark after twelve or one o'clock, when you came down with Dominick DeMatto? I suppose he led you to it? A. What?

Q. The lunch wagon. A. He was going down that way.

Q. Yes, how did you come to find the lunch wagon and get in it? A. I knew where it was; I had been there before.

30 Q. I am asking you to look at that and I ask you if that don't look pretty near like the lunch room you were in that night? A. Well, I could not tell; I can't know by that; there is two steps to that lunch wagon.

Q. Now, which of these windows was you looking out of? A. Right by the men's parlor.

Q. And what color is that glass? A. Been all white with just little bits of holes.

Q. How big a hole? A. Enough to see out of; enought to see outside; you can see through the holes
40 if you get up near enough; you can see through if you

want to see.

Q. You don't know who was fighting, as a matter of fact, do you; you don't know who knocked Dutch Fuer out? A. I remember it was Dutch Fuer who was knocked out.

Q. What makes you positive? A. When they came in with Mannon and Victor DeGhetto he was cut up.

Q. And you know he had a grey scarf on that night? A. Grey? No, not a grey scarf, I didn't see any scarf. 10

Q. Well, then, how did you know it was brown? A. I did not see a brown scarf when he was lying down.

Q. Well, how do you know that he had a brown scarf on at all, if you did not see any? A. When he came in he had a brown scarf on, brown or tan.

Q. Brown or tan, you can't remember? A. He was right close up when he came in; he was sitting with Marty Mannon.

Q. And you could not tell, being so close to you, whether he had a brown or tan scarf on? A. He was on the other side of the restaurant. 20

Q. Where did he lie down? A. By the butcher shop, right on the other side.

Q. Right between it and what? A. Between it and the corner, right near the corner.

Q. Are you sure you saw him there? A. Yes.

Q. Is that the point (indicating on photograph)? A. That's the mark, about there.

Q. And while he was lying there you saw he had a spotted coat on and a brown scarf? A. Yes, right off in the gutter there. 30

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

Q. Never did know him before? A. I know he is a taxi driver, that's all; I know him to be a taxi driver with a stand by the Central there.

Q. How long did you live in Bound Brook? A. Three and a half months.

Q. You meant at the time this thing occurred or— A. Before this occurred. 40

Q. Yes, three and a half months before this occurred? A. Yes.

Mr. Beekman. That's all.

Re-direct Examination by Mr. Vosseller.

Q. When were you arrested? A. The next evening.

10 Q. Were you arrested or did you give yourself up? A. Well, the officer came up for DeMatto and I was playing with him in the pool room and they took him along and about ten minutes after I said, if they want him they must want me, and the officer called me over and I told him that if they wanted him they must want me because I was with him that night.

Mr. Vosseller. That is all.

20 Re-cross Examination by Mr. Beekman.

Q. You knew that is was from last night that they wanted you? A. Yes.

Re-direct Examination by Mr. Vosseller.

Q. You knew why it was from last night? Why was it from last night? A. Officer Bohler came in and wanted us arrested, wanted to arrest DeMatto, and I

30 told him I would report the next evening.

Q. Why were you sure he wanted you if he wanted DeMatto? A. Because I was with him at the time, the evening before.

Q. Why did you think he wanted you? A. Because I thought if DeMatto was arrested he would want me, because I was with him that night.

Re-cross Examination by Mr. Beekman.

40 Q. When this woman pointed you out, she did not

point you out that night, though? A. I don't know.

Q. She pointed you out there?

Mr. Pope: She did not do anything of the kind.

Q. You were not arrested that night? A. Sunday night?

Q. Yes. A. It was Monday night.

Q. And on the complaint of this woman? A. I don't know what the complaint was. 10

Q. You knew the woman? A. Yes; she pointed me out in the restaurant.

Q. And that's the reason you knew that they wanted you? A. I didn't know what's the reason they wanted me.

Re-direct Examination by Mr. Vosseller.

Q. What did she say when she pointed you out? 20 A. She didn't say anything other than there they are.

Q. She did not say for anything, for what she was pointing you out? A. No, sir.

Q. Or why? A. Why, I don't know.

(Witness excused).

VICTOR DE GHETTO, Sworn on His Behalf, Testified as follows:

30

Direct Examination by Mr. Pope.

Q. Victor, you are one of the defendants in this case? A. Yes.

Q. Now, had you been down to Plainfield with Marty Mannon and Tony Farrano? A. Yes, sir.

Q. And Raymond Shuer that night? A. Yes.

Q. About what time did you get back from Plainfield to Bound Brook, do you know? A. In the neighborhood of two-thirty.

40

Q. In the neighborhood of what? A. Two-thirty.

Q. Talk out loud. Your evidence won't be a bit of good unless you talk out loud so the people can hear you. Where did you go when you got back to Bound Brook. A. To the station.

Q. What did you do at the station? A. Stayed up there a few minutes.

Q. Well, who did you see at the station that you knew, anybody? A. Nobody; didn't get out of the car.

10 Q. And from there where did you go? A. Down to the lunch wagon.

Q. When you arrived at the lunch wagon what was done with the automobile that you were riding in? A. We put that away.

Q. When you say "we" put it away, what do you mean by "we?" A. Mr. Mannon and Ray Shuer and Dutch Fuer.

Q. Where did you put it away? A. In Bohman's garage.

20 Q. And then from Bohman's garage you went to the lunch wagon? A. Yes.

Q. What time was it when you got to the lunch wagon if you know? A. Around quarter to three, I think.

Q. Now, what did you do in the lunch wagon? A. Had something to eat.

Q. Well, what did you —well, you went in there, you were in there eating, and while you were eating did anything unusual occur in there? A. Nothing out

30 of the ordinary; somebody kidding one another in there.

Q. Well, who was doing the kidding, the people on your side of the parlor or the other? A. Well, it was all,—both sides of the parlor.

Q. Did you pay any particular attention to that? A. Did not pay any attention to it at all.

Q. Or did any of your crowd, any of you companions have anything to do with it? A. None of mine.

Q. How many people were there there in the lunch

40 wagon all together? A. That I could not say, might

have been six or seven.

Q. Now, what did this kidding you speak of, develop into, what happened? A. A fellow came there through the door and he declared himself and says "You bunch of wise cock suckers."

Q. Who was that fellow, do you know? A. I do not know him at the time.

Q. Well, do you know him now? A. Know him, that is, to see him.

Q. Who was it? A. Potosney. 10

Q. When he came in and made that remark to the boy's on your side of the parlor what happened? A. I don't know what happened; there was remarks made —

Q. They started to fight? A. Yes.

Q. Well, now, go on and tell us about the fight? A. The fellow in the lunch wagon put them out and I went outside for awhile and the fight went across the street and I came on back.

Q. Now, how long were you gone out of the lunch wagon? A. Not any more than three or four minutes. 20

Q. Then where did you go? A. I came over with Marty Mannon and left him; went in there, in the lunch wagon.

Q. You left Marty and went in the lunch wagon? A. Yes.

Q. Where did Marty go? A. I can't say for sure, but I think he went to the garage.

Q. How long did you remain in the lunch wagon before Mannon came back from the garage? A. I went out for Mannon; I don't know sure, about twenty minutes. 30

Q. Then you went out? A. Went out for Mannon.

Q. To look for Mannon. Well, now, go on. When you went out of the lunch wagon— A. I did not get to the garage; he was coming up from the garage.

Q. I mean that when you went out of the lunch wagon did you find Mannon? A. He was coming from the garage. 40

Q. Was the fight over at that time? A. Fight was over at that time.

Q. Did you follow the fight up by the sign board? A. I went up a little ways.

Q. Well, when Mannon came back, after he got back to the lunch wagon tell us what happened? A. Mannon called in and went in—I did not get in the wagon; I was just at the door and he called John Walsh to take us home.

10 Q. Now, was John Walsh in the lunch wagon at the time? A. Yes.

Q. He spoke to John Walsh and asked him to take you home? A. He spoke to him.

Q. Now, while he was talking to John and asking him to take you home, what happened? A. After he came there, I just got my hat and walked right out.

Q. Did you see the officer and the woman? A. I did not take any notice of them in there.

Q. Did you see the officer and the woman out-
20 side the lunch room? A. Yes.

Q. And that was when? A. Five or ten minutes before that; five minutes before Mannon came back.

Q. Were you talking to them? A. I was not talking to them.

Q. And when you got your hat in the garage, the lunch wagon, I mean, and Mannon asked John Walsh to take you home, did Mannon come out? A. Yes.

Q. Mannon came out? A. Mannon came out.

Q. Now, did this woman point you out or indicate
30 you as one of the fellows; did you see that? A. I did not.

Q. When did you first learn that you were implicated in this alleged trouble? A. Monday about four o'clock.

Q. When you came out of the lunch wagon with John Walsh and Mannon, where did you go? A. Home.

Q. Well, how did you go? A. In John Walsh's car.

Q. Where was John Walsh's car? A. In front of the lunch wagon.

40 Q. In front of the lunch wagon? A. Yes.

Q. What time was it when you left the lunch wagon in John Walsh's car to go home, if you know? A. Between twenty and half-past three.

Q. Now, did you go right home? A. Went right home.

Q. And did you live up in the west end? A. Up in the west end.

Q. And that's about eight or ten blocks from the lunch wagon? A. About that.

Q. Now, when you went outside and while you were outside, did you see this woman try to get in Walsh's car? A. Yes. 10

Q. Well, will you tell us about that? A. She came across the street and wanted to get in Walsh's car, and Walsh said, I won't take you, look for your own car; she wanted Walsh to take her home.

Q. Now, where was Tony Farrano when you was outside waiting for Mannon to come out, and Walsh, to take you home, if you know? A. I don't know.

Q. You don't know whether he was in the lunch wagon or not? A. No. 20

Q. Were you in the graveyard that night? A. No, sir.

Q. Did you commit any assault on this woman? A. No, sir.

Q. Or attempt to commit any assault on her? A. No, sir.

Q. Have anything to do with her or know anything about it? A. No.

30

Cross Examination by Mr. Beekman.

Q. What did you have to drink that night, DeGhetto? A. Two or three whiskeys.

Q. Where was this roadhouse you went to, what part of Plainfield? A. This side of Plainfield.

Q. Well, the Oak Tree? A. In Rock avenue.

Q. Now you really don't know what time you left there except as you usually do? A. Usually do, that's all.

40

Q. You usually leave there about two o'clock? Is that right? A. About that.

Q. And you got home about 2.30, I mean, back to Bound Brook? A. That's about it; could not swear to it.

Q. And you are assuming also, when you fix the time that you got in the lunch wagon? A. Assuming all the time, I couldn't swear to any of the time.

Q. Now, as a matter of fact, when you say that
10 you went home between three-twenty and three-thirty, you are assuming that? A. It was almost in that neighborhood.

Q. I say you are assuming it? A. Yes.

Q. And you did not look at the clock in the lunch room, you just went in there and asked Mannon to take you home? A. Well, I was with Mannon before that, talking to him in there.

Q. When you went in there what did he say about going home? A. He said, sure, wait for me.

20 Q. And did you say you were not in there long enough to see this woman? A. I did not get in the lunch wagon.

Q. So you could not have seen the clock and had no opportunity to look at it? A. I could have looked at the clock.

Q. And so, when you say you went home between three-twenty and three-thirty, that's estimated too? A. Yes.

Q. Might have been quite a bit later? A. That I
30 could not say.

Q. Well, you say you saw this woman trying to get in Walsh's car, when was that? A. What time you mean?

Q. Yes. A. Well—

Q. Where were you then? A. I was at the lunch wagon then.

Q. Outside? A. Outside.

Q. Waiting for Mannon to come back? A. No, that was before Mannon came back.

40 Q. I say, you were waiting for Mannon to come

back? A. Yes.

Q. And she tried to get in Walsh's car, and asked Walsh to take her home? A. Yes.

Q. Well, Dutch Fuer was right there, wasn't he? A. Dutch Fuer? I did not take notice of Dutch Fuer being there.

Q. You did not see him there at all? A. Only before the fight.

Q. You did not see Dutch Fuer around there when she was trying to get into Walsh's car? A. I did not take notice that he was there. 10

Q. How close were you to Walsh's car? A. I was talking to two or three fellows—

Q. How close were you to Walsh's car? A. About five or ten feet from Walsh's car.

Q. And you were close enough to hear her ask him to take her home, wasn't you? A. She did not ask to take her home; she was getting in the car.

Q. But you said a little while ago he made some remark or reply for her to get in her own car. A. That her car will be there. 20

Q. Then she must have said something to him to get him to make that reply? A. That I don't know.

Q. Where was Dutch Fuer when this was going on, this talk with Walsh? A. That I don't know.

Q. Well, was he anywhere around there that you could see? A. Not that I could see.

Q. You did not see him come up to this woman and say, let me take you home, poor lady, to South Bound Brook, or anything like that? A. I might have been in the lunch wagon at that time. 30

Q. I am talking about the time that she was getting in Walsh's car by mistake and he told her to get out? A. She was alone then.

Q. You might have gone home a little before three-twenty for all you know? A. All I know, yes.

Q. You might have started at about three o'clock Who went home with you? A. Walsh and Marty Mannon and Dutch Fuer.

Q. What way did you go? A. Up Main street. 40

Q. You didn't run the car up East avenue a little way and stop out in front of the cemetery? A. No, sir.

Q. Well, the car was up there that you went in, wasn't it? A. No, not the car I was in.

Q. That wasn't what car was up there? A. don't know.

Q. How long was Mannon gone? You say you got in the restaurant about—what time did you get in the restaurant the first time? A. The first time, got in the restaurant about two forty-five I think it was, down here.

Q. All right; and then there was some kidding there; who was kidding, what was the kidding about? A. That I don't know, what the kidding was about.

Q. You could not hear it? A. I heard it.

Q. What was it? A. They were kidding about the car outside.

Q. Now, wasn't this car; didn't somebody say something about Sam Sarbouke, about using his car? A. Somebody did say something about using a car; that is, they were kidding.

Q. Let's see if your recollection goes a little further than that; somebody said something to Sam that it would be a good chance or a good time to take some women out? A. I don't know whether he said that.

Q. You can't remember that? A. He said something about using the car.

Q. Using the car; all right; then you heard something about, some remark about the woman that was on the other side? A. Yes.

Q. Who made that? A. Potosney said something there.

Q. You did not come to see the woman who was there? A. No, I did not see who it was; they were kidding there, one another.

Q. What had been said prior to the time that Potosney said boys, there's a woman back in there; he said that, didn't he? A. Yes, he said that.

Q. What had been said prior to that? A. I don't

remember.

Q. Hadn't somebody referred to this woman as a street walker? A. I didn't hear that; I was sitting there in the lunch wagon and I don't know about that thing.

Q. All right; you were sitting there at the lunch wagon and you were not so far away but what you could hear what Potosney said; now why couldn't you hear what a man said who was closer to you than Potosney was? A. I was not taking any notice; they were talking there for about five minutes. 10

Q. Now, isn't it true, DeGhetto, that you were intoxicated and didn't know what was said? A. I was not intoxicated; I didn't have more than three or four whiskeys.

Q. Never drink more than that? A. If I ever drink I never drink more than three or four.

Q. Who started this mixup you speak about?—Potosney? A. I don't know, I did not get in the fight; I was eating. 20

Q. How long had you been in there when the fight started? A. Five or ten minutes.

Q. All right; we will say ten minutes. Then the fight started about two fifty-five; is that right? A. Well, about two fifty.

Q. If you got there two forty-five, and the fight started in ten minutes, that would be two fifty-five? A. They went across the street.

Q. How long did the fight last across the street? A. A few minutes. 30

Q. How many minutes? A. Three or four minutes.

Q. All right; that would make it three o'clock. And after the fight was over, when did you say the woman and Officer Bohler came back? A. They came back about five minutes, five minutes after three—it was later than that when they came back.

Q. That's what I have it down here.

Mr. Pope: Twenty-five. 40

Mr. Beekman: Oh no; he went home between three-twenty and three twenty-five, in Walsh's car, at that time.

A. It was only a few minutes between the time Mannon came the first time and the second time.

Q. You did not have to wait very long for him out in the street? A. He was coming across from the
10 garage.

Q. And you and he stayed there for a few minutes didn't you? A. Just went in and called Walsh and we went home.

Q. I mean, was there anyone else with you out in front of the lunch wagon except Mannon? A. When?

Q. When he came back from Bohman's garage. A. Just me and him.

Q. Wasn't there another fellow there? A. No one that I know of, because I walked down with him.

20 Q. And then you saw this woman and Bohler come along? A. They were in the lunch wagon.

Q. Well, but you stood there with Mannon before you went down to the garage? A. I went on in the lunch wagon.

Q. Then she did not point you out outside at all? A. She did not point me out. I was standing there when she pointed out the other three.

Q. Standing where? A. Outside.

Q. Who did she point out then? A. DeMatto and
30 Fuer and that other fellow right in there.

Q. She pointed out outside DeMatto and Mannon and Fuer? A. Not Mannon.

Q. Farrano? A. Not Farrano, but the other fellow there.

Q. You did not know why she was pointing them out there? A. No, sir.

Q. How close to them were you? A. Not more than two or three feet away from Bohler.

Q. When he came with this woman? A. Yes,
40 when he came with this woman.

Q. But you don't think she pointed you out then? A. She did not point me out.

Q. Well, if she did not point you out, I mean did she indicate in any way, whether she pointed with her finger or not? A. No, she did not indicate or anything.

Q. I would like to know about how long Mannon was down at Bohman's garage? A. That I don't know. know.

Q. Well, let's see if you can figure it out. You went home about three-thirty or three-twenty, as near as I can figure? A. Yes, as near as I can judge. 10

Q. Yes, and you started at two-fifty, as near as you can judge?

Mr. Vosseller: Two fifty-five, he said before.

Mr. Beekman: Two fifty-five, all right.

Q. Now, if you started at two fifty-five and it took five minutes, the fight, that is three o'clock; now what occurred between three o'clock and three-twenty when you went home? A. I stood there talking with John Bergen. 20

Q. And where was John Bergen? A. In the lunch wagon.

Q. What time was he in the lunch wagon? A. Between three and the time I went home.

Q. Well, between the time the fight was all over and the time you went home, John Bergen was in the lunch wagon? A. John Bergen and William Huff and John Walsh. 30

Q. Now, you say you were talking to John Bergen and William Huff; where? A. In the lunch wagon.

Q. In the lunch wagon, and the fight was now over? A. Yes.

Q. Well, how did you get in there? A. I came across the street.

Q. Well, you said you went over there and did not really get in?

40

Mr. Pope: No, he didn't say that at all.

Mr. Beekman: I expected that.

Q. You said you didn't get in; you went over to the lunch wagon before—

Mr. Pope: He didn't say anything of the kind.

10

Mr. Beekman: I don't think the Court ought to allow this kind of thing. If they want to object to the question let them object.

Mr. Pope: You know you are wrong.

Mr. Beekman: I know you are very, very wrong, Mr. Pope.

20

The Court: Well, is there an objection?

Mr. Pope: Yes. I object to that question as improper.

Q. Well, how many times were you in there, how many times were you in the lunch wagon all together? A. Twice.

Q. When the first time? A. When I went in to eat.

30

Q. And was John Bergen in there then? A. Not at that time.

Q. Was William Huff in there then? A. Not then.

Q. Now, when were they in there? A. After I came back from the fight and went in, the second time.

Q. All right, now; were they in there after you came back from the fight and went in? A. That's the time I did not get in; I just stuck my head in the door.

Q. How long were you in there talking to Bergen and after the fight? A. Fifteen or twenty minutes.

40

Q. And that fight was all over at three o'clock, was it? A. Yes.

Q. And you were in there fifteen or twenty minutes after the fight and got home at three-twenty, and in the meantime you were standing on the sidewalk waiting for Mannon to come back, and you saw Fuer out there and you saw this woman trying to get in Walsh's car, and you were in the lunch room twenty minutes also during that period?

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Mr. Pope: Object to the question because it is not based upon the testimony at all.

Mr. Beekman: Well, I will leave it to the jury whether it is or not. That's all, sir.

(Witness excused).

JOHN L. BERGEN, Sworn in Behalf of the Defense, Testifies as follows:

20

Direct Examination by Mr. Pope.

Q. Mr. Bergen, do you live in Bound Brook? A. Yes. I don't now.

Q. Well, you did at the time this all occurred? A. Yes.

Q. Now, on the early morning of Monday morning, March 5th, when did you first notice anything about this fight? A. I did not see the fight at all.

30

Q. But you heard something about it? A. I heard it.

Q. Now, just tell us what you heard. In the first place, were you in the lunch wagon or on the street? A. No, sir.

Mr. Beekman: Tell him where he was.

A. I was putting the car in the Bound Brook shed. I came down and it was about three o'clock, I guess,

40

and instead of going home I stopped in the wagon for a cup of coffee. I put the car in the shed and thought I would go home—

Q. Just a minute; I want to see if you can idicate on this exhibit, if you can indicate on the picture where the shed is? A. Yes; that is the brick hotel shed. You have to go in on the other side.

Q. Well, what time was it when you went up around East street? A. It was around three o'clock I imagine.

Q. Well, go on from there. Who did you see from there on? A. I did not see anybody. I went across to the wagon and saw Vic and Marty there and we went in and had a cup of coffee and was there talking fifteen minutes or so. We came outside and we still talked a minute or so when we saw this woman come across the street. She started to get in Walsh's car and Walsh told her that it was not her car, and she asked him to walk home with her, and she asked me to walk home with her and I did not see why I should walk home with her.

Q. Did you know the woman, Mr. Bergen? A. I knew her, but I did not recognize her that night.

Q. Did she make any complaint to you or tell you anything that happened? A. She did not say a thing to me, only wanted me to take her over home, and she stood there and asked me a couple of times, stood there in front of the lunch wagon and I saw Fuer there, I think he passed, but I am not sure about it.

Q. Did the officer come while you were there? A. Yes; he came along just as she asked me to walk home with her; he came across the street and she was going across the street talking to him.

Q. Now, did you notice anything about her dress? A. I didn't see anything the matter with her dress.

Q. Was not disarranged or anything? A. Not that I saw.

Q. Now, when she came back there with the officer, did you see her pick anybody out or point to anybody? A. The only one I saw was Fuer; I think she pointed

to him.

Q. Now, where did you go then? A. I went home.

Q. Well, did you go back to the lunch wagon again, I mean? A. I don't think so.

Q. Did you see Marty Mannon? A. No, sir.

Q. About what time was it when you got in the lunch wagon? A. About three o'clock I imagine; I don't know; I did not see the clock.

Q. Did you see Mr. DeGhetto in there at that time? A. Yes. 10

Q. And the fight was all over? A. Yes.

Q. Did you see Fuer? A. Yes.

Q. When did Fuer come in the lunch wagon; how soon after the fight was over? A. I don't know how soon he did; I saw him a little while afterwards outside; that's after I had coffee, we was talking over there, he may have been there; I don't know; I did not notice him right away.

Q. How long were you in the lunch wagon that night? A. Not there over fifteen minutes. 20

Q. And who was with you? A. William Huff.

Mr. Pope: Cross examine.

Mr. Beekman: On questions. Oh, just one minute.

Q. (By Mr. Beekman.) When you came along where the fight had been, which way did you come, Bergen? A. I came right down Main street. 30

Q. And you only came down there when you heard the noise? A. No.

Q. Did you find anybody lying unconscious on the corner? A. I did not look on the corner.

Q. Well, did you see Fuer afterwards? A. I saw him afterwards.

Q. How soon? A. Oh, I don't know; after I had my coffee and came outside.

Q. Find any marks on him? A. I did not notice them. 40

Q. You did not notice anything? A. Oh, he told somebody knock him out; I was not talking to him, though; just saw him in the bunch.

(Witness excused).

WILLIAM HUFF, Sworn on Behalf of the Defense, Testifies as follows:

10 Direct Examination by Mr. Pope.

Q. Mr. Huff, were you with Mr .Bergen on the night of the fight? A. I was.

Q. And did you drive down to the hotel shed with him? A. Yes, sir; I did.

Q. I show you State's Exhibit No. 1, and call your attention to the sign along East there; is that the sign back of the shed? A. The shed is not back of that sign.

Q. No, behind the sign. A. Yes.

20 Q. Now, where did you put your car, with reference to that sign? A. We put the car in the shed in back of the sign. ....

Q. While you were putting your car way, did you hear any noise? A. I heard some noise at the sign.

Q. What kind of a noise was it? A. Well, I don't know; sounded like a lot of squabbling and fight.

Q. Now, after you put the car away, where did you go? A. Walked out to the street and walked across to the lunch wagon, in front of the lunch wagon.

30 Q. Did you go in? A. We went in, yes.

Q. About what time was it when you got in the lunch wagon? A. About three o'clock; in the neighborhood of three o'clock.

Q. And who did you see in the lunch wagon when you got in there? A. Vic DeGhetto and John Walsh; they were apparently together.

Q. They were apparently together at that time? A. They were.

Q. Did you talk to Victor DeGhetto and John

40 Walsh? A. I was talking to Victor DeGhetto and

John Walsh, yes, sir.

Q. Now from that point, just go right on and tell us what things happened; what you saw occur. Tell us in your own way? A. Well, we had something to eat, Mr. Bergen and I had something to eat, and we was there talking to DeGhetto a while, and we walked outside and stood outside there, and a lady was outside, and she wanted to get in Mr. Walsh's car and he would not let her; and she walked across the street and a lady with a child walked over the street with her and met Mr. Bohler, the officer, and she came down the street with him and they walked across the street and and the officer says, now pick them out. She picked out three men that stood there, and she pointed to three men.

Q. Do you know who it was she pointed to, or don't you? A. Yes. I knew two of them.

Q. Well, did she point to Victor DeGhetto? A. No. sir.

Q. She did not? A. No, sir.

Q. Then did you go on home? A. I went home, yes, sir.

Q. Did you know the man she picked out or pointed to? A. Know them?

Q. Yes. A. I know Thomas Fuer and DeMatto, but I don't know the other gentlemen.

Q. Now, then, were these the three she picked out? A. Yes.

Q. Thomas Fuer and DeMatto was there? A. Yes; and the other one I did not know; he was a stranger to me.

Cross Examination by Mr. Beekman.

Q. Where was DeGhetto? A. DeGhetto stood there up against the baker's shop.

Q. Yes, and he was in company with Nattoli, wasn't he? Didn't you say in answer to Mr. Pope's question that apparently they were together? A. They were in the lunch wagon together.

Q. All right, they were apparently travelling together, I suppose you mean? A. I don't know where they were travelling.

Q. Like you and Bergen had been that evening? A. I didn't know whether they were or not; apparently they were.

Q. They were both together; did they both go out together? A. They both walked out of the lunch wagon together.

10 Q. Now, where did they both go? A. Walked out by the baker's shop, right next to the lunch wagon.

Q. Where was Walsh's car? A. Right at the end of the lunch wagon.

Q. Well, that's what they went over there for, to get by the car? A. I don't know whether they did or not.

Q. That's what they did when they went to get in the car; they went over near the car to get in the car? A. Otherwise they would not have come across this 20 woman, the car was on the same side of the street as the lunch wagon, and this woman came across the street and asked him to take her home, and he told her she could not get in his car; he said, that's not your car.

Q. And where was DeGhetto then? A. DeGhetto stood there on the sidewalk.

Q. The same side of the street or the opposite side? A. The same side of the street.

Q. How near to Walsh's car. A. I don't know 30 just how near; he stood up against the bakeshop, approximately the distance of the width of the sidewalk.

Q. What time did you go home? A. I don't know exactly what time it was.

Q. Haven't you any idea? A. No. I wouldn't want to say.

Q. Did you see Marty Mannon before you went home? A. No, sir; I did not.

Q. You didn't see him standing on the south side 40 of the street, in front of the lunch room? A. No, sir.

Q. You did see him come up there and meet somebody? A. No, sir.

Q. How long after you went out of the lunch wagon with Bergen, I presume, did you go home? A. I don't know how long it was, but right after that lady pointed out these three men Mr. Bergen and I went home.

Q. And Mannon was not there at the time? A. I did not see him.

10

The Court: How close were you to this woman when she pointed these men out?

Witness: I stood up against the baker's shop.

The Court: Did you see her face there distinctly?

The Witness: Not very good.

20

The Court: Could you tell what condition she appeared to be in, as to whether she was excited or nervous or calm or what; how did she appear to you?

Witness: She did not appear to me to be very excited.

Re-direct Examination by Mr. Pope.

30

Q. About how much time elapsed between the time you heard the scuffling out on the sidewalk by the signboard and the time you saw this woman outside the first time? A. Well, I would judge about fifteen or twenty minutes. We walked over to the lunch wagon and had a sandwich and a cup of coffee and we sat there and took our time. We were in no hurry. I should judge about fifteen or twenty-minutes.

Mr. Pope: That is all.

40

The Court: That was between the time you heard the scuffling on the street and this woman came back with the officer, about fifteen or twenty minutes had elapsed between the two periods.

Witness: About that, yes, sir.

Re-cross Examinaion by Mr. Beekman.

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Q. Well, you said you were in the lunch room fifteen or twenty minutes, is that right? A. Don't remember saying that.

Q. Well, that is what I recall you saying; I don't want to misquote you; that you were in there about fifteen or twenty minutes? A. Maybe it's another witness said that. We was in there about fifteen or twenty minutes.

Q. About, you said? A. I said about.

20 Q. You can't be exact? A. No, sir; I don't think so.

Q. It might have been fifteen minutes and it might have been half an hour that you were in there talking? A. It might have been less.

Q. I say, it might have been half an hour. Might have been been? A. Might have been. I was just guessing at it.

Q. Well, who were you talking to in there? A. Talking to DeGhetto.

30 Q. DeGhetto and who else was there? A. The only ones that I noticed there was Bergen and Walsh.

Q. And DeGhetto? A. And DeGhetto, yes.

Q. And the two men that work there? A. Yes.

Q. Didn't see anybody lying around asleep, did you?

Mr. Pope: That is not recross examination on the redirect examination of this witness. He has already been asked that question. My only

40 question in re-direct was how long a time elaps-

ed between the time he heard the scuffling by the signboard and the time he saw this woman come across the street, and he said fifteen or twenty minutes.

Mr. Beekman: All right; that is all.

Mr. Pope. Were you there when Walsh took DeGhetto and the others home?

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Witness: No, sir.

Mr. Pope: They were there when you went away.

Witness: They were, yes, sir.

(Witness excused).

JOHN L. BERGEN, Recalled. 20

Further Direct Examination by Mr. Pope.

Q. Mr. Bergen, will you tell the jury please, how much time elapsed between the time you heard the scuffling on East street, back of the sign board, while you were putting your car in the shed, and the time you went out of the lunch wagon and saw this woman out there talking to Walsh? A. It seemed about fifteen minutes to me.

30

Q. About fifteen minutes? A. Yes, sir.

Further Cross Examination by Mr. Beekman.

Q. Seemed about fifteen minutes, eh? A. Yes.

Q. Well, you were having a good time, Bergen? A. Not particularly, no; we were just talking, if you call that a good time.

Q. You were enjoying yourself, though? A. Sure did.

40

Q. And you were talking there? A. That's right.

Q. And time passed pretty fast that night when you were eating, passed faster than you thought for—it might have been half an hour? A. Might have been half a hour, but I don't think so; what it might have been; it might have been a week; but I think it was fifteen minutes.

Q. No, it could not have been a week, and don't be funny about it. I am trying to be decent to you and I want you to be decent to me and give me a decent answer. A. I don't think it was over fifteen or twenty minutes.

Q. Then any one that says you were in a longer time than fifteen or twenty minutes, was mistaken?

Mr. Pope: Object to that.

Mr. Beekman: All right, that's all.

(Witness excused).

TONY YNETTA, Sworn on Behalf of the Defense, Testifies as follows:

Direct Examination by Mr. McCullough.

Q. Mr. Ynetta, you have a poolroom on Talmadge avenue, in the west end of Bound Brook? A. Yes.

Q. Is there a basement to that poolroom? A. Yes.

Q. Does anybody sleep there at night? A. Before, yes.

Q. Anbody sleep there in the winter time? A. Yes.

Q. Who was it? A. Louis Farrano.

Q. This one here (indicating)? A. Yes, first boy.

Q. Do you remember Sunday, March 4th? A. Yes, sir.

Q. Do you know whether he slept in that room that night? A. Well, a little—

Mr. Beekman: Never mind.

Q. Did you go down the next morning to fix the furnace? A. Yes.

Q. Did you see him there then? A. I did.

Q. Do you know what time he went to bed that night, of your own knowledge? A. Well, I seen the bed myself, every night in the winter time he go down in the basement.

Mr. Beekman: Never mind that. 10

Q. Do you know what time he went to bed that night? A. He went downstairs; he go down every night.

Q. Did you go down to look at the furnace? A. Yes.

Q. Did you go down that night? A. Yes.

Q. Did you see him down there? A. I see him asleep. 20

Q. What time was that? A. A little after one.

Cross Examination by Mr. Beekman.

Q. What night was this you saw him in bed a little after one? A. A Saturday night and Sunday morning.

Q. Wasn't it a little after twelve? A. No, after one.

Q. That's Sunday morning? A. A little after one Sunday morning. 30

Q. Well, now, you went down there every night to fix the furnace? A. Yes.

Q. What time was he in bed there Saturday night? A. He went about half-past eleven.

Q. Saturday night? A. Yes.

Q. The night before what time did he go to bed? A. I don't know.

Q. Why not? You remember half-past eleven or eleven o'clock or twelve o'clock? A. I don't remember. 40

Q. Well, why do you remember it this Sunday night so well? A. I remember, because I close the place at twelve o'clock.

Q. And he went to sleep at half-past eleven? A. He says—I says—What's the matter Lou? And he says; I am going to take a rest by the steam.

Q. You said at twelve o'clock? A. Yes.

Q. I mean you stop at twelve o'clock? A. Yes.

Q. That's late in Bound Brook? A. Yes.

10 Q. And you told him to go to bed? A. No; he went to bed half-past eleven.

Q. And he went to bed half an hour before you told him to go? Now, what time did you see him go to bed Monday night. A. I don't know.

Q. Do you know what time he went to bed any other night except Sunday night, March 5th? A. Oh, yes; because I see him asleep at half-past eleven.

Q. Yes, but with the exception of that night any other night you don't know at all? A. Half-past eleven

20 quarter after eleven; I am there every night.

Q. Well, how can you remember this particular night, March 5th, that he went to bed? A. Because I asked him.

Q. Now, you don't know what time he went to bed that night? A. Saturday night, half-past eleven.

Q. Saturday night? A. Yes.

Q. That's what I thought. Now, is it Saturday night or Sunday night that he went to bed at half-past eleven? A. Saturday night.

30 Q. That's what I thought. That's all.

Re-direct Examination by Mr. McCullough.

Q. Do you know the night this fight occurred, what night was that? A. I don't know; he knows that.

Q. Was he there Sunday night at your place? A. Yes.

Q. Was the poolroom open Sunday night? A. Yes.

Q. What time did you close it? A About twelve

40 o'clock; half-past eleven or twelve; something like

that; Sometimes they sit around ther and talk.

Q. Did you see DeMatto there that Sunday night?

Mr. Beekman: Object to the question. The question has been answered.

Mr. McCullough: I am asking him about another man entirely.

The Court: Go ahead. 10

Q. Did you see DeMatto there that Sunday night? A. Yes.

Q Do you know what time he left? A. Well, all I know, I send him home twelve o'clock; send all the boys home at twelve o'clock.

Re-cross Examination by Mr. Beekman.

Q. You send all the boys home at twelve o'clock? 20
A. Yes.

(Witness excused).

STANLEY NOVAK, Sworn on Behalf of the Defense, Testifies as Follows:

Direct Examination by Mr. Pope.

Q. Mr. Novak, you live in Bound Brook? A. Yes.

Q. Were you in the Bound Brook lunch wagon 30
early Sunday morning, March 5th, at time this fight occurred? A. I came in after the last train, 1.32; I got a trip off that train first and took some passengers out; that took about fifteen or twenty minutes.

Q. Now, what is your business? A. Taxi.

Q. Who do you drive for? A. Myself.

Q. In business for yourself? A. Yes.

Q. When you came back from taking your passengers home you went to the lunch wagon? A. Yes.

Q. Do you know what time it was when you got to 40

the lunch wagon? A. I don't know, but it was after the last train came in, the train may have been late.

Q. Well, when you got to the lunch wagon who did you see there? A. I seen Marty Mannon, Thomas Fuer and Raymond Shuer sitting in there eating. They was just all getting ready to go out.

Q. Well, now, go on; tell us what happened while you were there? A. They went out; they said they were going home; I stayed in there; I don't know for sure; maybe ten minutes; and they came back and Raymond Shuer did not come back with them. While they was gone this lady and her husband and Potosney and two other fellows came in there; not the wagon; in the other room; they came through a different entrance from the street in the ladies' department.

Q. Now, go on; what happened? A. Then Marty Mannon and Thomas Fuer and Victor DeGhetto came back; they came back to the wagon—

Q. Came in the wagon? A. Yes.

Q. That was the second time—

Mr. Beekman: Don't lead him.

A. They came back the second time; and there was some other fellows in there, I don't know who they was; there was quite a few I don't know who they were and I sat there eating and they began to kid; one fellow that came in, that came in with this lady; they asked him for a car; they would like to have a car and go to Lincoln. All he says was, if you think you can get a car, go on and get it. So one of the fellows that was in the wagon said something and one of the fellows hollered out; Hey, there's a lady in there, be careful how you talk and then this Potosney came out and he said, you are a bunch of wise cock suckers, and then the fight began.

Q. And they started to fight? A. Yes, and they went outside.

Q. Who do you mean by "they?" A. The ones that started the fight went outside.

Q. Were you in the fight? A. No; stayed in the lunch wagon all the time.

Q. Did you see Victor DeGhetto? A. Victor DeGhetto came over where they was fighting by me and stayed by me near my car.

Q. Where were they fighting after they went out of the car; where did they fight? A. They were on East street, right across from the wagon.

Q. They was over by the butcher shop? A. Over by the butcher shop, yes. 1010

Q. Against the side? A. Yes.

Q. I show you State's Exhibit No. 3, and call your attending to the sign upon which is marked Super-Auto Oil Means Less Carbon, and so on. Was it near that sign? A. Right in here, right about here (indicating.)

Q. You are now pointing to a telegraph pole? A. Right near that pole, against the sign; right around there somewhere (indicating).

Q. That's where they were fighting? A. Yes. 1020

Q. Where were you? A. I was standing over near the lunch room, between the pole and my car.

Q. Now, where was Victor DeGhetto? A. Standing by me there.

Q. Well, now go on; how long did he continue to stay by you? A. Well, he was there; we stood there a few minutes, then we went back to the wagon. Victor DeGhetto went in with me.

Q. And then what did Victor DeGhetto do after he went back to the wagon? A. We stood there talking. 1030

Q. How long did you continue to stay there talking? A. Well, I don't know; I could not say; maybe fifteen or twenty minutes; ten minutes, something like that.

Q. Then what happened? A. Then we heard a noise outside.

Q. What did you do? A. I walked out and saw a lady standing near my car; she said she wanted to go home.

Q. What lady was it? A. Mrs. Bodvenski. 1040

Q. The woman who was on the stand the other day? A. Yes, And I told her it was not my car; and at that time Thomas Fuer came over and I says, she wants to go home, and I says, you ask her? And he said, No, I won't ask her; she has got a car, her own car here. And he went to her and he says, I will go home with you if you want me to, and she says no.

Q. Did you know the woman? A. No, I never knew her before; I know her now.

10 Q. Well, now, did you see Marty Mannon that night? A. I have seen Marty Mannon, yes.

Q. Did you see him in the lunch wagon, when the fight started? A. When the fight started they all went out except me and the fellow that was in the wagon, working in there two fellows working there.

Q. Well, when did you next see Mannon after he went out? A. Why, I seen Mannon—they came in and they asked me to take him home.

Q. And how long were they fighting after the fight
20 started and they all went out; how much time elapsed? A. From the time the fight started until Mannon wanted to go home?

Q. Until he came back and asked you to take him home. A. I should judge; I don't know exactly; between fifteen and thirty minutes.

Q. Did you see Officer Bohler there that night? A. I did after, yes, after I refused to take the lady home she walked out on the street.

Q. Now, how much time elapsed between the time
30 after the fight started in the lunch wagon and the time that lady came back and asked you to take her home, or came to you and asked you to take her home? A. Well, around ten minutes; something like that; fifteen minutes.

Q. Did you see anybody knocked down in the gutter on the other side of the street? A. No; I did not notice; I didn't see anybody.

Cross Examination by Mr. Beekman.

40

Q. Now, where did you stand watching this fight? A. Why, my car stood right there alongside of the wagon and I stood right there. My car was standing right there and I stood over by the pole on the gutter.

Q. Didn't you get any nearer than that? A. No: I did not.

Q. You did not go over across the street? A. No, not while they were fighting.

Q. Well, now, who was fighting? A. I don't know; I could not tell you. 10

Q. You can't tell? You live in Bound Brook, you are a taxi driver and Marty Mannon is a taxi driver, and you know all of these boys, and you can't tell who was fighting up there? A. I don't know who was fighting; I know they all went out .

Q. What did you go out for? You went out to see the fight? A. No; I did not go out exactiy to see the fight; I stayed in the wagon a while, and afterwards I went out.

Q. You played safety first and then went out to see the fight? A. No, I sat there a while before I went out. 20

Q. I know; and the fellows were fighting? A. I did not know they was; I don't know who they were hitting.

Q. I did not ask you that, who the fellows were striking at? A. Marty Mannon I suppose, and the rest of them that went out.

Q. Did you see right across the street on this corner? A. I heard the noise. 30

Q. Did you see across there? A. No, I heard the noise.

Q. Well, there are lights down there? A. Yes.

Q. There's an arc light? A. Yes.

Q. That's right across the corner from the butchershop? A. Yes.

Q. Was no trouble seeing what was going on? A. I could see they was all fighting; they was all moving around there.

Q. Now, who did you see moving around there? 40

A. I could not tell from there.

Q. You don't know who was there, no idea? A. Well, I have an idea the fellows that went out, I suppose, but I could not say who was hitting or anything like that.

Q. Now, you saw across the street? A. I had an idea the bunch was there, yes.

Q. I am not asking you about the bunch; could you see across the street that night? A. Yes.

10 Q. Was it light enough to see across the street? A. There was no light right there.

Q. Yes, there is an arc light there you told me; you said in the lunch wagon you could see across the street? A. Well, I could see that, yes.

Q. I am asking you if you could see across the street? A. Yes.

Q. Did you see anybody lying on the sidewalk there? A. No; oh, no.

Q. Nobody knocked out? A. No.

20 Q. With a spotted coat? A. No.

Q. How long did you stand there? A. Two or three minutes; four minutes, maybe.

Q. Where did you see the fight start? A. Well, they were fighting down at the corner.

Q. Well, then, where did the fight end? A. They started the fight down at the corner, going down East street, and these fellows that was fighting walked up East street, and the rest of them came on over.

Q. How do you know they was walking up the oth-
30 er way? A. Well, I did not see them there.

Q. Well, you could not see anybody there? A. I saw them walk over there.

Q. You told Mr. Pope the fight was somewhere out by this sign? A. Yes, right by this pole.

Q. And you saw this fight going on regardless of what was in the way on the opposite side of the street? A. Yes.

Q. Up by the sign? A. Yes.

Q. And I am asking you whether you saw any-
40 body down on the ground, lying on the ground there?

A. I did not.

Q. Was there anybody there at the time you were there? A. I saw nobody.

Q. Did you see anybody walk down or around East street to Bohman's garage; I mean while the fight was going on? A. No, I didn't.

Q. You must have been looking right up East street because you saw this fellow start away, this fellow that you say was Potosney, didn't you? A. Yes.

Q. Did you go in the lunch room again or stay outside? A. I came out and went in again with Mr. DeGhetto; he came over from the fight where they was and he came right over by me and came in.

Q. He was in the fight then? A. Victor came out with me and went over and came back; he went over and came back and waited there for somebody.

Q. Did he go inside the wagon? A. Yes.

Q. Well, was he waiting for Marty Mannon? A. I was waiting for Mannon and Fuer; I was to take them home.

Q. Now, how long were you in the lunch wagon before the fight? A. I could not tell you; I could not say how long I was in there; I should judge maybe fifteen minutes.

Q. You were in there before the fight fifteen minutes and the fight took how many minutes altogether? A. About ten minutes; three or four minutes.

Q. And the fight going on all the way up here only took three or four minutes? A. I don't know exactly how long.

Q. I don't expect you to. I want you to give your honest opinion about it? A. I should judge maybe four minutes; maybe ten minutes; something like that.

Q. Then you went back in the lunch room and stayed in there and then came out again? A. I went in the lunch room I said, and as I was going to come out then Victor DeGhetto came in to me as he went in the lunch room and the fight was all over then.

Q. I know you got Victor DeGhetto in the lunch room with you. Now, will you answer my question?

You went back in the lunch wagon after the fight was over? A. Yes, sir.

Q. How long did you stay in there? A. Fifteen minutes, maybe twenty minutes, possibly twenty-five; I could not say for sure.

Q. Well, you was waiting for Mannon to come back? A. Yes.

Q. For you to take him home? A. Yes.

Q. You may have stayed there twenty-five min-
10 utes? A. I don't know exactly.

Q. I say, you might have been there twenty-five? A. Yes, may have; I don't know.

Q. And when he came back what did you do? A. Went home.

Q. And yet you say from the time the fight started until this woman came back there wasn't over fifteen or twenty minutes; is that right? A. I don't know.

Q. Well, it could not have been right, if you had
20 been in there all that time? A. What woman came back from where.

Q. Mrs. Bodvenski came back there and tried to get in your car? A. Yes, after the fight.

Q. Now, how do you make it fifteen or twenty minutes when you were in the lunch room for fifteen minutes, possibly twenty-five? A. The lady came back after I heard the noise.

Q. The lady came back after you went in the lunch wagon and you heard a noise outside? A. Yes.
30 Q. And she was in the car? A. She was not in the car; she was going to get in the car; she wanted to go home.

Q. Well, you heard that in the lunch wagon? A. No, I went out.

Q. No, but you heard the noise, you said, when you was in the lunch wagon? A. I heard the noise, but I did not know what kind of a noise it was, I didn't know it was a lady's noise.

Q. You know noises, and you went outside; and
40 you know ladies' noises; you know what kind of a

noise that was you heard? A. No.

Q. Well, what kind of a noise was it? A. I don't know; I could not tell you; the fight had been on there possibly twenty-five minutes and I heard the noise outside and I walked out and she wanted to go home.

Q. She asked you to take her home? A. She did not exactly ask me to take her home; she wanted to go home.

Q. She wanted a taxi to go home? A. Yes.

Q. And you had been out to meet the 1.45 train? A. 1:32. 10

Q. And you did not think it strange for a woman to come up to a taxi and ask to ride home? A. I did not know she was a customer.

Q. But you told her not to get in your car? A. I did not know her; I told her that was not her car.

Q. You told her she could not get in your car? A. I did not; I told her that was not her car, after she tried to get in my car.

Q. And then you had been in the lunch wagon at least twenty minutes after the fight occurred? A. Who? 20

Q. You? A. I said fifteen or—ten or fifteen.

Q. In answer to Mr. Pope's question you said it was fully half an hour after the fight started, that she came back there? A. I don't know exactly the time.

Re-direct Examination by Mr. Pope.

Q. When I asked you how much time elapsed between the time when the fight started and you first saw this woman outside, coming back, before she got in your car or tried to get in your car, you said fifteen or twenty minutes; is that your best judgement? A. Yes, I don't know the exact time. 30

Mr. Pope. That is all.

The Court. We will adjourn at this point until ten o'clock tomorrow morning. 40

June 29th, 1923.

THIRD DAY

Continued pursuant to adjournment.

Counsel present as before stated.

MAY MANNON sworn in behalf of the defendants, Mannon and DeGhetto.

10

Direct Examination by Mr. Pope.

Q. You are the wife of Marty Mannon, one of the defendants in this case? A. I am.

Q. Do you remember the early morning of Monday, March 5th, at the time this fight was supposed to have occurred in the lunch wagon? A. I do.

Q. What time did Marty get in the house that morning? A. Half-past three.

20

Q. How did you happen to know it? A. I woke up to take care of the baby and came downstairs and I noticed when this car pulled up in front of the house and looked out of the window and I noticed my husband coming in and he came in about five minutes after, about twenty-five minutes to four.

Cross Examination by Mr. Beekman.

30

Q. You say about twenty-five minutes to four? A. Yes, sir.

Q. You looked at the clock, of course? A. I did.

Q. Where did you keep your clock? A. Up on the mantle piece in the kitchen.

Q. Is the kitchen upstairs or downstairs? A. Downstairs.

Q. Where did you sleep? A. Upstairs.

Q. You went downstairs to look at the clock? A. I had to go down to attend the baby.

40

Q. Where was the baby? A. Upstairs.

Q. You had to go down yourself and bring the baby down to attend to the baby? A. I didn't bring the baby down, I came down to fix his bottle; I had to come down to get the milk.

By the Court. How old was the baby at that time?

A. At that time he was eight months old. 10

Q. You don't need a clock to tell what time it is with a baby? A. You don't sleep very sound with a baby that old.

JAMES MANNON sworn in behalf of defendants, Mannon and DeGhetto.

Direct Examination by Mr. Pope.

Q. Are you the father of Marty Mannon? A. 20 Yes, sir.

Q. Do you remember the occurrence of a fight in the lunch wagon; you were not there, but do your remember it? A. I heard of it.

A. A few days after this fight in the lunch wagon did Mike Bodvenski, the husband of this woman come to see you?

Mr. Beekman: I object, I don't care if he did, what difference did it make. 30

The Court: I will allow it.

Q. (Question read.) A. Yes, sir.

Q. About this case? A. Yes, sir.

Q. What did he say to you? A. It wasn't a few days, it was more like a couple of weeks, a little more or a little less. He came there and said that somebody had offered him $700—I just couldn't catch who it was, he mumbled it someway or other, some name, I could- 40

n't understand. He said somebdy had offered him $700 to settle this case. I said, "I ain't going to offer you a damn cent."

Q. Go on. Was that all the conversation? A. Talking on he asked me if I had a lawyer and I told him no, I didn't think it was necessary to get a lawyer, the boy wasn't indicted, and I didn't need a lawyer yet. He said, "You ought to get a lawyer." I said, "What for?" He says "If you had a lawyer we might be able to do some business." I said, "Any business you have to do it with this little fellow here."

Q. Who was that? A. Patrick Sandeman.

Q. Did he come there with him? A. Yes, sir.

Q. Was there any sum mentioned? A. No sum at all.

Cross Examination by Mr. Beekman.

Q. How long have you know Patsy Sandeman? A. I think it must be ten or twelve years.

Q. You are old friends, aren't you? A. We aren't enemies.

Q. Is that the answer you want to stand on the record? A. I have never had any trouble with him.

Q. Patrick Sandeman brought this fellow to your place. A. I don't know who come there.

Q. When he talked to you you told him if he wanted to do any business, you said, "Do it with that little fellow?" A. Yes, sir.

Re-direct Examination by Mr. Pope.

Q. Why did you tell him that?

Mr. Beekman: I object.

Mr. Pope: Never mind.

JAMES GOBEL, Sworn in Behalf of Defendants, Fuer and Nattoli.

Direct Examination by Mr. Vosseller.

Q. Where do you live? A. 21 John street, Bound Brook.

Q. How long have you lived in Bound Brook? All your life? A. Since I came out of the army in 1919.

Q. What is your occupation? A. Motorcycle policeman. 10

Q. How long have you been a motorcycle policeman? A. Since December 1st, 1922.

Q. Were you on duty the night or evening of March 4th or the morning of March 5th? A. Yes, sir.

Q. What time did you go on duty that night? A. 10.30.

Q. What time did you go off duty? A. 8.30 the following morning.

Q. Do you know about this fight on that night, or did you hear about it? A. Yes, sir. 20

Q. What time was it? A. About fifteen minutes after three.

Q. What did you do? A. I immediately went down to the lunch wagon.

Q. Whom did you see there? A. Two employees of the lunch wagon.

Q. Who told you about the fight? A. Sarbouke.

Q. What did you do after you interviewed these men on the lunch wagon? A. I went immediately to Potosney's house on East Second street. 30

Q. About what time did you arrive there? A. Between 3:15 and 3:30.

Q. How do you fix the time? A. My lunch hour is from two to three. At ten after three I came out of the office, it was—there was a clock right across the way.

Q. The bank clock? A. It is the town clock in front of the Bound Brook Trust Company, and I saw it was ten after three, so I stood on the front porch a few minutes. 40

Q. Then you went to the East Second street house? A. Yes, sir.

Q. Who was there? A. Paul Bruggi; I think his name is Mike Bodvenski and Tony Potosney and Charlie Bohler.

Q. The other officer? A. Yes, sir; he went down with me.

Q. While you were there did anybody else come to the house? A. Later, Sarbouke and Mrs. Bodvenski came in.

10

Q. Why did you go to this house? A. Because I ascertained from the employees at the lunch wagon that there was a fight there and Potosney was the man that was beaten up.

Q. How long had you been at Potosney's house before Mrs. Bodvenski came in? A. I just couldn't say.

Q. Five minutes or so? A. I should judge about ten minutes.

20

Q. While you were there did you make any investigation at all? A. Yes, sir.

Q. With what thought in mind? A. The cause of the fight.

Q. Did you talk with Mrs. Bodvenski? A. Not directly, no, sir.

Q. Did she talk? A. She kept talking to her husband.

Q. Did she make any complaint of having been dragged up in the cemetery? A. Not to me.

30

Q. Anybody? A. Not in my presence.

Q. You were in uniform? A. Yes, sir.

Q. Was Bohler in uniform? A. Yes, sir.

Q. How long were you at Potosney's house? A. Altogether I should judge about fifteen or twenty minutes.

Q. During all that time you heard no complaint of her having been raped? A. No, sir.

Q. When did you first hear about her having been raped? A. The following morning, in the cemetery.

40

Q. About what time? A. That was between 8 and

8.30.

Q. I want to ask you a question over again, there seems to be a doubt in my mind, what time did you arrive at Potosney's house about. A. The best I can say is between 3.15 and 3:30.

Q. What did you do the next morning; what did you do the next morning about 8.30? A. Why, as I said, I came off duty at 8:30 and on the way down I put my motorcycle in the garage and I saw Sarbouke and Mrs. Bodvenski's husband on the front porch of the recorder's office and naturally I pulled up to the side and went in and the court recorder told me to go up to the cemetery with him to find the pocketbook.

Q. Did you go? A. Yes, sir.

Q. Who went with you? A. Sarbouke and the lady's husband, Mike Bodvenski.

Q. What did you find up there, Mr. Gobel, if anything? A. Nothing.

Q. Did you make a thorough search? You are familiar with this old graveyard, are you not? A. Yes, sir.

Q. There is a mark, can you see it; an X between the two gravestones I am referring to exhibit S-5. Did you search at that point, can you remember whether you searched at that point for the pocketbook? A. I couldn't say that.

Q. You recognize this path? A. Yes, sir.

Q. Did you go up there? A. I walked up that path.

Q. Did you look on either side of that path? A. Yes, sir.

Q. I understand you found nothing, the result of the search was negative? A. I didn't find anything, no, sir.

Q. What was the appearance of Mrs. Bodvenski when she came down to the Potosney house? A. Why I saw nothing out of the way, except her hair was mussed up.

Q. Were her clothes disarranged in anyway? A. Not that I noticed.

Q. Any mud or dirt on them? A. I didn't look for it, no, sir.

Q. Do you remember what kind of an evening it was, whether it was rainy or muddy or clear or had rained a little? A. I remember that the following morning in searching the cemetery I got my feet soaking wet in the grass; the night before was March night, and that particular night it wasn't so cold.

Q. The night of March 4th and 5th? A. Yes, sir; that one night.

10

Q. What was her appearance as to being excited or not? A. Well, she was apparently a little excited.

Q. From your observation what was she excited about.

Mr. Beekman: I object.

Q. If you know.

20

The Court: Sustain the objection as to the observation.

Q. From anything she said could you tell what she was excited about? A. They were talking about the fight.

Q. She said nothing of anything happening to her? A. No, sir.

Q. Are you under subpoena here? A. Yes, sir.

30

Examination by Mr. Pope.

Q. You have been on the police force sometime? A. Yes, sir.

Q. I want to call your attention to Exhibit S-4, which is a view of the west part of the graveyard. Do you see that brick building; that is the First National Bank building there. A. Yes.

Q. Right close up is another apartment house? A. Yes, sir.

40

Q. Is that inhabited by people? A. Yes, sir.

Q. All inhabited? A. Yes, sir.

Q. This graveyard butts up against the rear of those houses? A. Right up close, yes, sir.

Q. In this Photograph Exhibit S-5, you see what looks like an apartment house over on the corner there (indicating)? A. Yes, sir.

Q. Are those houses all occupied? A. Yes, sir.

Q. And likewise these houses (indicating)? A. Yes, sir.

10

Re-direct Examination by Mr. Vosseller.

Q. When you arrived at Potosney's house were Bodvenski, Potosney and Sarbouke drunk or sober? A. They had been drinking, all except one man who had not been drinking.

Q. Did you observe whether Mrs. Bodvenski appeared to have been drinking or not? A. I couldn't tell that.

20

Cross Examination by Mr. Beekman.

Q. Which man had not been drinking? A. A man by the name of Paul Bruggi, I think his last name is Bruggi.

Q. Do you include Potosney with whom he had been drinking? A. Yes, sir.

Q. You rung your clock sometime that night? A. Yes, sir,

Q. What time? A. The last clock was around 1:30. 30

Q. I thought maybe you fixed your time as to when you saw Sarbouke and Potosney in front of the recorder's office? A. The following morning.

Q. No. A. I mean that same morning.

Q. What was the first clue you got that night; I thought you meant that night you saw them in front of the recorder's office. A. I did, and also later in the morning. One time I saw them was as I said about fifteen minutes after three.

Q. Where did you see them? A. Where did I see 40

who?

Q. Mrs. Bodvenski and Sarbouke at fifteen minutes of three? A. Coming up Main street in front of the recorder's office.

Q. That is 2:45. A. Not at 2:45.

Q. 3:15? A. 3:15.

Q. What did they say to you? A. The first thing Sarbouke said was, "There was a man killed down in the restaurant, where have you been?"

10 Q. Then the fight was all over at 3:15; wasn't it? A. Apparently it must have been.

Q. Just what part of town was it he said that to you, what part of town? A. What part of town where Sarbouke said—

Q. Said to you, "There's a man been killed down there." A. Right in front of the recorder's office, that is about two blocks off from the lunch wagon.

Q. Then, you saw them in the recorder's office twice, you saw them Sunday night and also Monday

20 morning? A. No, sir.

Q. I mean while it was dark? A. Yes, sir.

Q. At a quarter after three. A. Yes, sir.

Q. Where did they go? A. I don't know where they went, they said they were going to the doctor's.

Q. Where they in an automobile? A. Yes, sir.

Q. Who was driving? A. Sarbouke.

Q. Sarbouke was drunk to your notion at that time? A. He had been drinking.

Q. How did you know that? A. I could smell it.

30 Q. Was he fit to drive an automobile? A. At that particular time I regarded he was, yes, sir.

Q. Was he a little mouthy and a little demonstrative? A. Yes, sir.

Q. Then, what did you do after that? A. I went to the lunch wagon. I was on my motorcycle and I rode to the lunch wagon.

Q. You told us this morning that you had gotten down to the lunch wagon about 3:22? A. About that time, I judge.

40 Q. How long did you stay there? A. Just long

enough to try to ascertain what had taken place.

Q. You say you were informed of what had taken place, the man in the lunch wagon informed you. A. Two employees of the lunch wagon.

Q. Was there anybody else there? A. Not at that time.

Q. You didn't see anyone around there asleep? A. No, sir.

Q. What did they tell you had happened, these employees? A. They told me there had been a fight. 10

Q. Is that the word they used? A. They said, "scuffle," or a "scrimmage" or something like that, I took it for granted it was a fight.

Q. Didn't they tell you that a fellow by the name of Potosney was knocked out? A. No, sir; one man said it was a sailor who was discharged from the navy. I said, "Tony Potosney?" And they said, "Yes."

Q. What did they say about the sailor? A. They said he was in a fight.

Q. Did they tell you who else was in the fight? 20 A. No, sir.

Q. Why did you pick him out to go and see him, you wanted to arrest him? A. No, they told me he was the man who was beat up.

Q. Why didn't you tell me that? A. I think I said that before.

Q. I want you to say what you have to say to me once. They told you a sailor recently discharged from the navy had been beat up? A. Yes, sir.

Q. Then you got on your motorcycle? A. Yes, sir; 30 and took Bohler in the side car.

Q. Then you went up to the East Second street house, to Potosney's house? A. Yes, sir.

Q. You couldn't have been there at 3:20 then, could you? A. At the house?

Q. At the house? A. I didn't say that.

Mr. Pope: He didn't say that.

Mr. Beekman: Mr. Pope, you should not do 40

that.

The Court: That is right, let the witness be examined.

Q. I understood you to say on your direct examination, if I am correct, that you got to the Potosney house between 3:15 and 3:30? A. Yes, sir.

Q. I say, if you didn't get to the lunch wagon before 3:22, you couldn't have gotten to Potosney's house as early as 3:15, could you? A. I don't believe I testified here that I got to the lunch wagon at 3.22, I said about. It may have been 3:18.

Q. It may have been 3:22? A. It might have been.

Q. Didn't you tell Mr. Vosseller 3:22? A. He used his own head and figured the minutes.

Q. Are you using your head now while you are testifying, or somebody else's? A. I am trying to tell the truth.

Q. That is what I want you to do. If you have testified or told anybody that you got to the lunch wagon at 3:22 is there any reason why you should not admit it now? A. Yes, sir; because I didn't fix that time exactly.

Q. You said about 3:22? A. I said about that time.

Q. I understand you cannot fix the time. A. All right, sir.

Q. You cannot fix the time except about when you got to Potosney's house. A. I can't answer.

Q. If you didn't get to the lunch wagon until 3:22, then you didn't get to Potosney's house as early as 3:15? A. No, sir.

Q. And you possibly didn't get there until 3:30? A. Possibly.

Q. And possibly later? A. Hardly later.

Q. You didn't run in and out of the lunch wagon? A. I done it as quickly as possible.

Q. You found out who got beat up and you talked to all the boys up there? A. There were only two boys

there.

Q. You got the information about the sailor boy being beat up and then you went to see him? A. Yes, sir.

Q. And you didn't find Mrs. Bodvenski there? A. Not at the house.

Q. She didn't come in until ten minutes after? A. Ten minutes after I was in there.

Q. She and her husband had quite a conversation there? A. They were talking to each other. 10

Q. Were they talking in a foreign language or in English? A. In English.

Q. He asked you where she had been? A. No, sir.

Q. And he complained to you where he had been, and she said, "If you had been where I was, you might have been killed." A. I can't recall those words.

Q. Do you recall anything like it? A. The only words I can recall he was trying to fondle his wife with his arms on her neck saying, "There, there, my dear. 20 I am not hurt," and all that kind of stuff.

Q. When you left she was sitting in a corner and he was crying? Weren't they sitting in a corner alone and he trying to pacify her and she was crying? A. I don't know.

Q. You were there. A. I didn't observe what they were doing. I was there to see Potosney for fighting.

Q. Then, you don't know whether she complained to her husband or anybody else there about being up in the graveyard with a bunch of men, or not? A. 30 While she was talking to her husband, no.

Q. Bohler told you so? A. Not at that time.

Q. Do you mean to tell me you went all the way up from the lunch wagon to Potosney's house with Bohler and he didn't tell you that this woman hadn't complained to him that she had been attacked by several men in the graveyard? A. No, sir.

Q. You didn't ask him what happened? A. About the fight.

Q. All you were interested in was the fight? A. 40

I didn't know of anything else.

Q. Didn't Bohler tell you anything about what this woman complained to him about? A. No, sir; not at that time.

Q. You weren't interested in anything else but the fight? A. That is all I knew of.

Q. Were you interested in anything else? A. I would have been if I knew it.

Q. I am asking you if your mind was at all directed so that you would notice what this woman said to her husband about the occurrence with the defendants, or whether you went in there with the fight on your mind and looked for Potosney who was beat up? A. Yes, sir.

Q. Or whether you went in there with your mind not on the question of what happened to this woman and didn't observe it or not. A. No, sir.

Q. And then you went on out? A. Yes, sir.

Q. The fact that your mind wasn't on anything concerning the woman might easily account for the fact that you didn't pay any attention to what she said to her husband about where she had been and what had happened to her; couldn't it? A. Any violation of the law, I was out to try and find out what it was.

Q. What I want to get at is whether when you went in there you would have been likely, by reason of the fact that your mind was purely on the man who was heat up, to hear what this woman said to her husband and what he said to her. Would you have been likely to have heard, "It don't make any difference what happened to you, if you had been where I was you might have been killed." A. I would have heard it if it was spoken.

Q. Why? A. Because it was a small room and Bodvenski was standing up and the woman was sitting over abut there (indicating). It was only a small room.

Q. She and her husband were talking together, what did they say, if you could hear everything they said? A. I couldn't repeat every word.

Q. Why not, if you could hear it? A. My memory doesn't extend back that far.

Q. You say if she said anything you could have heard it? A. If she had said that I would have recognized it.

Q. Why? A. Because, that is a violation, that is a crime. I would have surely heard it.

Q. You have a keen eye for crime? A. I try to have.

Q. When did you first see Sarbouke that night? 10

Mr. Vosseller: I object, this has all been gone over.

A. When I came out of the office.

Q. I thought you saw him in an automobile when he came into town?

Mr. Vosseller: I object.

20

The Court: It has been testified that the first time he saw him was after he left his office.

Q. Who took you up there to find this pocketbook, whom did you go with? A. Sarbouke and Mike Bodvenski.

Q. Mrs. Bodvenski wasn't with you? A. No, sir.

Q. You found no pocketbook? A. I didn't find a pocketbook, no, sir.

Q. How did you come to go up by this building 30 and go on this path to look for it, if that is where you went, how did you come to go this way (indicating)? A. I didn't go that way.

Q. What way did you go? A. "E" street way.

Q. Where did you look for it? A. As near as possible with the assistance of those two men I searched thoroughly all over.

Q. You searched the graveyard? A. Yes, as near as possible.

Q. How long did it take you to do that? A. I just 40

couldn't say, about fifteen minutes or so.

Q. You made a search in the graveyard about fifteen minutes for the pocketbook? A. With three men.

Q. Did you search around this spot (indicating)? A. I couldn't pick out any one place.

Q. I don't believe you could search the graveyard in fifteen minutes? A. As near as possible. They were satisfied it wasn't there.

Q. You don't know what they were satisfied with, and you have no business to say so. A. They were willing to go back.

Q. You were willing to go, too. A. My time was up.

Q. You searched until your time was up? A. No, way beyond my time; they were satisfied.

Q. It only took fifteen minutes to satisfy them? A. About that.

Q. You didn't search in any particular spot? A. No, sir.

Q. Do you know whose pocketbook they were searching for? A. Mrs. Bodvenski's, it was supposed to be.

Q. Were you there when she came over and searched? A. No, sir.

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

Q. You haven't been talked to about this case? A. I have never been talked to by anybody except up there with Mr. Nash.

Q. You mean nobody ever spoke to you about what you saw that night? A. Absolutely, not outside of John.

Q. John Nash? A. John Nash, yes, sir. I just reported to John Nash that was all.

Q. It was a moonlight night, the morning of March 25th, wasn't it, or don't you remember? A. I don't remember that exactly, it wasn't a dark night.

Q. What do you mean by that? A. I mean that some nights are very dark and some nights ain't.

Q. It was clear in the first place? A. It was clear.

Q. The next morning around there you got your feet wet with the dew on the grass? A. Absolutely.

DEFENDANTS REST.

OSCAR HUDGENES, Sworn in Behalf of the State in Rebuttal.

Direct Examination by Mr. Beekman.

10

Q. Where do you live? A. Bound Brook.

Q. You know Marty Mannon, don't you? A. Yes, sir.

Q. In fact, you were on friendly terms with him? A. Yes, sir.

Q. You had some trouble with him on the morning of March 5th, Sunday morning?

Mr. Pope: I object to the question as improper and not rebuttal.

20

(Argument).

The Court: If the object is to fix the time, ask him that question.

Q. Do you remember what time it was? A. No, I don't.

Q. Have you any idea?

30

Mr. Pope: I object.

The Court: I will allow it.

A. I haven't myself, but I know from what I have heard.

The Court: Sustain the objection.

Q. How did you get home? A. Russell Ball took

40

me home.

Q. At whose suggestion?

Mr. Vosseller: I object.

Q. Do you know what time you got home? A. No, I don't.

Q.Where did this trouble occur?

10 Mr. Pope: I object to the question as immaterial.

(Argument).

Q. Where did it occur? A. Near the lunch room, there in the back of the lunch wagon, in the rear.

Q. How far from the lunch wagon? A. Just out of the back door.

Q. What? A. Right near the back door, there is
20 a vacant lot there.

Q. How many teeth did you get knocked out?

Mr. Vosseller. I object.

The Court: Sustain the objection.

MARIE BODVENSKI, Re-called in Behalf of the State, in Rebuttal.

30 Direct Examination by Mr. Beekman.

Q. Thomas Fuer says that sometime after this fight occurred he saw you in the vicinity of Main street and East street, near the lunch wagon, and that you asked him to take you home; is that so or isn't it? A. I didn't ask, only grabbed the car.

Q. This car that was there? A. I just grabbed the car, and he said, "Lady, that ain't your car."

Q. Who said that? A. I couldn't tell you.

40 Q. Did Fuer say, "That ain't your car?" A. No;

Fuer wasn't there.

Q. He wasn't there? A. I couldn't tell who was saying that, only they said, "Lady, it ain't your car."

Q. Did anybody offer to take you home except this old lady you met? A. No, I didn't ask anybody to take me home, and nobody wanted to take me home.

Q. Did anybody offer to take you home up in the graveyard? A. Nobody didn't say anything in the graveyard.

Q. About your going home? A. I was speaking to those two men I see by the pole and I went by those men when I grabbed the car and they said, "Lady, that ain't your car," and I said, "Please watch for somebody after me." 10

Q. I am asking you if anybody offered to take you home after you were in the graveyard? A. Yes; Dutch Fuer and Martie Mannon, they wanted to take me from the graveyard in the car.

Q. Did they have a car there? A. Yes, sir; the tracks showed up the next morning where the car was standing. 20

Q. Did you see them? A. Yes, sir.

Q. Did you see the tracks of the car up there the next morning? A. Yes, sir; and my husband, too.

Q. How near the place where they took you over the fence were they? A. Right there by the tree.

Cross Examination by Mr. Pope.

Q. It was while you were still in the graveyard that Martie Mannon and Dutch Fuer wanted to take you home? A. Yes, sir; they were holding my hands. 30

Q. Did they tell you they had an automobile out in the street? A. Yes sir; they have an automobile, and they going to take me.

Q. Take you South Bound Brook? A. They didn't say that, they said take me home.

Q. Did you tell him you lived in South Bound Brook? A. I didn't say anything. They asked, "Where you live, lady?" I said, "South Bound Brook." 40

Q. Then it was that they said, "We have a car, and we will take you home?" A. Yes, sir.

Q. Was this before or after all this? A. I didn't say nothing.

Q. Was this before or after all these men had connection with you? A. After, when they had connection.

Q. After all the men got through. Martie Mannon and Dutch Fuer told you they had a car out in the
10 street and would take you over home? A. Yes, sir.

Q. Did you see Mr. Berger, a rather stout man, light complected, on the stand yesterday? A. A big stout man, I know there was a stout man by the pole there.

Q. Didn't you ask him to take you home? A. No, I said, "Please watch, there is somebody after me."

Q. You didn't ask him to take you home? A. No, I didn't ask him at all any such thing.

Q. Where did you live before you came to South
20 Bound Brook? A. Sterling.

Q. Sterling, New Jersey? A. Yes.

Q. Where did you live before you went to Sterling? A. Down in Pennsylvania.

Mr. Beekman: I object to this.

A. Where I had my mother and father and everybody.

Q. Were you arrested at any time for bootlegging
30 in Pennsylvania? A. I was not, I was single at the time, I didn't know about the bootlegging.

Re-direct Examination by Mr. Beekman.

Q. Were you ever arrested in Pennsylvania at all? A. No.

Q. Where did your folks live up there? A. I married in Pennsylvania and then came to New Jersey.

Q. You said your folks lived there, what town?
40 A. North Hampton.

Q. Your father and mother had what business? A. My father was working.

Q. What at? A. No kind of business.

Q. A day laborer? A. Yes, sir.

Q. How many sisters and brothers do you have? A. Four brothers and one sister.

Q. What did you do when you were a young girl, did you work, too? A. Yes, sir, in a silk mill.

Q. How long did you work in the silk mill? A. Since I was fourteen. 10

Q. When did you get married? A. Seventeen years old I was married.

Q. Did you live at Sterling all the time? A. I was working in a silk mill.

Q. How long did you work in the silk mill in Sterling? A. I was working for four years.

Q. Was that while you were married or before? A. After, when I was married.

Q. How old is your oldest baby? A. Nine years.

Q. You have been married how many years? A. 20 Going to eleven on the 18th.

Q. Have you worked any place else? A. No, just keeping washing home for somebody and doing it and always helping my mother and when I was all right I went to work in the silk mill when they got bigger.

Q. Have you ever been arrested for anything? A. No.

Re-cross Examination by Mr. Pope.

30

Q. How long have you been married? A. Eleven years the 8th of May.

Q. Have you lived with your husband all the time? A. Yes, sir.

Q. He left you three or four times? A. He left me?

Q. Yes. A. He have an awful hard job to leave me.

Q. But he did leave you three times, didn't he? A. Well, I left him once.

Q. And he left you twice? A. No then we were 40

all right, it is around six years already that.

Q. Did you say you hadn't been arrested? A. No.

Q. Never? A. Yes, I been in that trouble over fights.

SAM SARBOUKE, Re-called in Behalf of the State in Rebuttal.

Direct Examination by Mr. Beekman.

10

Q. Before you went to the doctor did you see anybody laying along by the fence back on East street unconscious? A. Yes, sir.

Q. Who was it? A. Tony Potosney.

Q. How close were you to him? A. Well, I was on Main street when I seen him stretched out, and I couldn't tell exactly who it was until I got close to him.

Q. How close did you get to him? A. So close I took him home.

20 Q. How did you go across the street and go to where Potosney was unconscious? A. Walked across.

Q. On which side of the street did you walk, show us on this picture? A. On this same side of the street (indicating).

Q. The same side the fight was on? A. Yes, sir.

Q. How far up was he from the corner? A. I presume it was about there (indicating).

Q. A little beyond the telegraph pole? A. Somewheres around that big sign.

30 Q. Did you see Dutch Fuer laying up there unconscious, too?

Mr. Pope: I object to the question unless you fix the time at about the time Fuer said he was there unconscious.

(Argument).

Q. How soon did you go up there after the fight

40 started? A. Five or ten minutes.

Q. Did you see Fuer there? A. No, sir.

Q. Did you see anybody else around there? A. No, sir.

Q. I don't mean laying unconscious, but doing anything else? A. No, sir.

Cross Examination Waived.

STATE RESTS.

10

DEFENDANTS REST.

Mr. Vosseller: At the close of the State's case a motion was made to discharge four men, Nattoli, Farrano, DeMatto, and Victor DeGhetto. As to two of the men, Nattoli and DeGhetto, it seems to me there has been nothing brought out in the State's case that has strengthened the case in anyway shape or manner, as against those two men and certainly the case is weak 20 against them, in fact, there is no evidence to connect them up with this case. In addition to that it seems to me that the State's witnesses themselves have exonerated these men, and I would, therefore, ask that the court direct the acquittal of these two men particularly.

The same argument is practically true of Farrano and DeMatto. There is very little evidence to connect these men up with this affair and there is not really enough evidence, in my 30 opinion, to go to the jury. The indentification is weak and it seems to me in fairness to those men a verdict should be directed.

The Court: I am satisfied, as to DeMatto and Farrano, that the complaining witness identified them, and not only that night, but in court, for whatever it is worth prima facie.

As I recall the testimony in the Nattoli case, the complaining witness was unable to identify 40

him, and the only testimony in the case which would bring Nattoli in was the testimony of the police officer who said that on the night in question this woman did identify him.

Mr. Beekman: I will help the court out. He said that as he came down the street she indicated him among three other men as being three of the men who had been up there with her, and then her testimony in court was, referring to Nattoli, that she could not positively identify him here, and I concede that I do not think it is safe to take a chance on convicting him.

The Court: I feel that the case was of sufficient importance to get all the evidence in that we could. I was partially satisfied at the time the other motion was made, as far as Nattoli was concerned, that the motion should be granted, but I refused it at that time reserving the right of his counsel to renew the motion at the end of the case, and since the defense is in I see nothing to go to the jury in respect to Nattoli and I therefore direct a verdict of acquittal as to the defendant Nattoli.

The DeGhetto matter was in a different status when the State rested. There had been an identification by the police officer on the night in question in which he testified that the woman pointed DeGhetto out as being one of the men there. The complaining witness did not substantiate that and I reserved decision at that time because the complaining witness had no opportunity to see DeGhetto except here in the crowded court room. Since the defense has gone on DeGhetto has been on the stand and the complaining witness has had ample opportunity to see him and know who he was and there is still no testimony by the complaining witness identifying DeGhetto and in a case as

serious as this I do not think there is enough evidence to send the case of DeGhetto to the jury.

I will direct a verdict of acquittal in the DeGhetto matter and send the case to the jury on the other four defendants.

Recess from 1 to 2 P. M.

Mr. McCullough sums up for the defendants Farrano and DeMatto. 10

Mr. Vosseller sums up for the defendant Fuer.

Mr. Pope sums up for the defendant Mannon.

Mr. Beekman sums up for the State.

Mr. Vosseller. (During the summing up of Mr. Beekman). I object to the Prosecutor reading the testimony over, which has been taken in this case. 20

The Court. I think your objection is well taken if there is an attempt to read all of the testimony.

Mr. Vosseller. Or to any part of it.

The Court. I think the Prosecutor is answering one of counsel for the defense as to what the testimony was he referred to. 30

Mr. Beekman. I intend to read a fair portion of the complaining witness's testimony. The contention in this case both of Mr. McCullough and Mr. Vosseller and Mr. Pope is that her story is unreasonable, because she did say or did not say certain things and I say this reading will show that she said things they say 40

she did not say and she did not say things they attribute to her.

Mr. Vosseller. I never heard of such a thing and I insist upon objecting to the reading of the testimony. The jurors have heard the testimony and are not entitled to have it reread to them.

10 The Court. I will allow the Prosecutor to proceed and you may have an exception.

Mr. Vosseller prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

F. L. C. (L. S.)
Judge.

20

(The Prosecutor continues his summing up for the State.)

Mr. Vosseller. Will your Honor allow me an exception to the rereading of the testimony?

The Court. Yes, you may have an exception.

30 Mr. Vosseller prays an exception to this ruling of the court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

F. L. C. (L. S.)
Judge.

40

THE COURT CHARGES THE JURY AS FOLLOWS:

CLEARY, Judge.

This is an indictment found by the April term of the Grand Jury charging these four men together with two others, who subsequently have been discharged, with the crime of rape. Rape is defined as being the carnal knowledge of a woman and being forcibly and against her will, and to convict of rape two things must be shown, first, that the accused had carnal knowledge of the woman, and, second, that the same was forcibly and against her will. To complete this crime there must be penetration. That is the situation which you find facing yourself and which will govern your determination as applied when you retire to the jury room.

Under this statute it goes further and says, that all persons who shall aid, abet, counsel, hire, or procure any persons shall also be guilty of rape, but in this case, from the testimony as I see it, you do not have that question to decide, because if there is anything in this case whatever, it seems to me it is the direct charge that all these defendants did commit rape by having intercourse with the complaining witness, so you will not have to worry, it seems to me as I recall the testimony, about the question of whether they aided or abetted in this crime. The complaining witness, as I recall, charged that all the defendants had actual intercourse and connection with her in the cemetery. If you believe that to be true and you think it was forcible and against her will and penetration actually committed, then it will be your duty to find the defendants guilty, all or anyone whom you believe actually had intercourse with her, actually raped her forcibly and against her will and penetrated.

I am not going to attempt to discuss with you the mass of testimony offered here during the past three days, because were I to do that I might misquote the testimony and after all is said and done you are the

sole judges of that. What the court may say to you as to what the evidence is, or what counsel for the defendants may say, or counsel for the state may say is after all merely tending towards attempting to help you to recollect, but your own recollection must be taken of the testimony as the witnesses testified to it on the stand before you under oath. You are the ones to judge the testimony that has been offered here and give it its proper consideration.

10 This is a very important case, every rape case is important, any case of any serious crime is important and important both from the standpoint of the state and important also from the standpoint of the defendant.

The State has said that all crimes of a serious nature shall be punished in the manner in which the law requires they should be punished. A defendant in a serious case of this kind is greatly interested, of course, because a conviction of a serious crime brands a man 20 for the rest of his life and carries with it a severe penalty and it is very important for the jury to weigh well the testimony and wipe their minds of any prejudice placed there from any source; conversation or from reading of misquotations that may appear in the press, according to your oath as jurors, and you must find your information under the evidence and not from any conversation or from a reading of the newspapers you may have had, or from statements of counsel for the state or counsel for the defendant, but you 30 must decide and give your verdict squarely upon the evidence introduced, under your oath and under the oath of the witnesses who have been present here. There is not much law involved in this case that is any different from any criminal case. It is a question of facts for you to decide based upon the testimony.

It is easy for the court to say to you that if a man has carnal knowledge of a woman and has intercourse with that woman forcibly and against her will and that intercourse is accompanied by penetration, then, if 40 that is so, he is guilty of rape, and it is easy for the

court to say to you that if that is not so, that did not happen, or those elements did not occur, then he is not guilty, and I could very easily say that and quit, but the burden is upon you after having that told to you, to decide whether or not from the evidence in the case that did or did not happen. Yours is a great responsibility and that is the reason for the jury system; a responsibility, too great, perhaps, for any one man to decide, and hence a jury system of twelve men.

There is nothing I need to detail, it seems to me, 10 any further than that; I do not think it is even necessary to take up much time to call your attention to your responsibilty in this case, but I feel, because of the length of time it has taken, that prejudice might enter into a case of this kind in any community and it is only just to state and to the defense that the court should call your attention to that responsibility placed upon you.

The only other question of law I think of at this time is the question of the burden of proof. The bur- 20 den of proof in this case, as in every other case, is upon the state to prove to your satisfaction beyond a reasonable doubt of the defendant's guilt. Reasonable doubt, in one of the best definitions I have been able to find, is defined as follows: "It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge." The burden of proof is upon the prosecu- 30 tion, and if upon such proof there be a reasonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty.

If, in this case, you are satisfied beyond such a reasonable doubt as I have defined, that these men, or any one of these men were guilty of the crime as charged by the state, it would be your duty, under the law, to find them guilty as charged. If, on the other hand, after a consideration of all the evidence you do not believe any of these men or any one did commit 40

the crime as charged, or if there is a reasonable doubt in your minds of any one or all of the defendants having committed the crime, you are bound, under the law, to give the defendants the benefit of that doubt and to acquit.

I have been requested by the defendants to charge a number of requests, as follows:

10 1. "The jury is instructed that in order to constitute rape and before the defendant can be convicted of the charge of rape, the jury must be satisfied beyond a reasonable doubt that there was actual penetration and unless they are so satisfied that there was actual penetration, the charge of rape is not made out and the defendants must be acquitted." I so charge you.

The second request relates to the question of
20 prejudice and I think I will refuse to charge except as I have already charged.

3. "You are instructed that it was the duty of the prosecuting witness at the time of the alleged assault, to make an outcry, and as soon as opportunity offered, to complain of the alleged offense to others; and unless you believe from the evidence that she was actually prevented from making such outcry at the time, and did make a complaint as soon as an opportunity offered, then you should take such circum-
30 stances of omission to make an outcry or complaint or both into consideration, with all the other evidence and determining whether or not a rape was committed." I so charge you.

4. "You are instructed that if you find the prosecuting witness made no complaint of rape soon after the alleged crime to her friends or to the officers, then this circumstance becomes a very important one and
40 should be given due weight in determining the truth

of the charge." I so charge you.

That is practically all there is to be said. I am satisfied that this jury will give to the evidence, when they retire to the jury room, the exact weight, that they know it is their duty under their oath to give, and I am satisfied that whatever your verdict will be it will be based purely on your own determination of the evidence which this case shows.

10

When you return your verdict you may be excused for the rest of the term.

(The jury retires).

Mr. Pope. I respectfully pray a general exception to the charge.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

20

F. L. C. (L. S.)
Judge.

I respectfully pray an exception to the court's refusal to charge the second request of the defendants.

Mr. Pope prays an exception to this ruling of court.

30

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

F. L. C. (L. S.)
Judge.

40

DEFENDANTS REQUEST TO CHARGE

1. The jury is instructed that in order to constitute rape and before the defendant can be convicted of the charge of rape, the jury must be satisfied beyond a reasonable doubt that there was actual penetration and unless they are so satisfied that there was actual penetration, the charge of rape is not made out and the defendants must be acquitted.

10 CHARGED.

2. You are further instructed that the charge of rape, is in its very nature, a most henous one, and where the circumstances are as claimed in this case most revolting, likely to create a very strong prejudice against the accused. You should be aware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should
20 have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor.

DENIED.

3. You are instructed that is was the duty of the
30 prosecuting witness at the time of the alleged assault, to make an outcry, as soon as opportunity offered, to complain of the alleged offense to others; and unless you believe from the evidence that she was actually prevented from making such outcry at the time, and did make a complaint as soon as an opportunity offered, then you should take such circumstances of omission to make an outcry or complaint or both into consideration, with all the other evidence and determining whether or not a rape was committed.

40 CHARGED.

4. You are instructed that if you find that the prosecuting witness made no complaint of rape soon after the alleged crime to her friends or to the officers, then this circumstance becomes a very important one and should be given due weight in determining the truth of the charge.

CHARGED.

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CERTIFICATE

I, Frank L. Cleary, Judge of the Court of Quarter Sessions of the County of Somerset, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of this cause.

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FRANK L. CLEARY,
Judge.

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ASSIGNMENT OF ERROR

Afterwards, that is to say, on the Eighth day of August, Nineteen Hundred and Twenty-three, before the Supreme Court of the State of New Jersey, comes the said Thomas Fuer, Martin Mannon, Duci DeMatto and Louis Farrano, by Fred'k A. Pope, their Attorneys, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

1. There is error in this, that the said Court at the said trial, refused to direct a verdict of not guilty as to the defendants Farrano and Nittoli at the close of the State's case, because there was not sufficient evidence to warrant the trial court in sending the same to the Jury.

2. There is error in this, that the said Court at the said trial, at the conclusion of the whole case, refused to direct a verdict of not guilty as to the defendants DeMatto and Farrano, because there was not sufficient evidence to warrant the trial court in sending the same to the jury.

3. There is error in this, that the said Court at the said trial, after the trial and before sentence refused to arrest the judgment.

4. There is error in this, that the said Court at the said trial, after sentence refused to grant a new trial upon the ground that the verdict was contrary to the clear weight of evidence.

5. There is error in this, that the said Court at the said trial, charged the jury as follows:

"The burden of proof is upon the prosecution, and if upon such proof there be a rea-

sonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty."

6. There is error in this, that the said Court at the said trial, refused to charge the jury as requested as follows:

"2. You are further instructed that the charge of rape, is in its very nature, a most henous one, and where the circumstances are as claimed in this case most revolting, likely to create very strong prejudice against the accused. You should beware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor."

7. That said judgment should be reversed and a new trial granted in accordance with the provisions of Chapter 349 of the laws of 1921 because it appears from a consideration of the entire evidence that such verdict of guilty was against the weight of the evidence.

F. A. POPE,
Attorney of Plaintiffs in Error.

SPECIFICATION OF CAUSES

And now comes the defendants Thomas Fuer, Martin Mannon, Duci DeMatto and Louis Farrano, by Fred'k A. Pope, their Attorney, and say that in the record and proceedings aforesaid there is manifest error, and that said judgment should be reversed, and specifies the following causes in said record relied upon for relief and reversal of the judgment aforesaid.

1. Because the said Court before whom the said cause was tried, at and upon the trial of the issue joined therein, refused to direct a verdict of not guilty as to the defendants Farrano and Nittoli at the close of the State's case, because there was not sufficient evidance to warrant the trial court in sending the same to the Jury.

2. Because the said Court before whom the said cause was tried, at and upon the trial of issue of the issue joined therein, at the conclusion of the whole case, refused to direct a verdict of not guilty as to the defendants DeMatto and Farrano, because there was not sufficient evidence to warrant the trial court in sending the same to the jury.

3. Because the said Court before whom the said cause was tried, after the trial and before sentence refused to arrest the judgment, although duly moved so to do.

4. Because the said Court before whom the said cause was tried, after sentence refused to grant a new trial upon the ground that the verdict was contrary to the clear weight of evidence, although duly moved so to do.

5. Because the said Court before whom the cause was tried charged the jury as follows:

"The burden of proof is upon the prosecution, and if upon such proof there be a rea-

sonable doubt remaining, the accused are entitled to the benefit of that doubt. That is your duty."

which said charge was prejudicial to the defendants.

6. Because the said Court before whom the said cause was tried refused to charge the jury as requested as follows:

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"2. You are further instructed that the charge of rape, is in its very nature, a most henous one, and where the circumstances are as claimed in this case most revolting, likely to create very strong prejudice against the accused. You should beware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor."

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7. Said judgment should be reversed and a new trial granted in accordance with the provisions of Chapter 349 of the laws of 1921 because it appears from a consideration of the entire evidence that such verdict of guilty was against the weight of the evidence.

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F. A. POPE,
Attorney of Plaintiffs in Error.

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Court of Errors and Appeals

STATE OF NEW JERSEY, *vs.* THOMAS FUER, *alias* "DUTCH" FUER, *alias* THOMAS PONDOL, MARTIN MANNON, DUCCI DE MATTO *and* LOUIS FARRANO.	On Indictment and Conviction of Rape. On Writ of Error to Somerset Oyer. On Appeal.

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Brief of Azariah M. Beekman, Prosecutor of the Pleas.

STATEMENT OF FACTS.

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Trial June 27, 1923, (April term 1923) before Frank L. Cleary, Judge of the Court of Common Pleas, and jury. Verdict of guilty as to above named defendants.

FACTS.

The crime involved in this case occurred about 2 o'clock A. M. on Monday the fifth day of March, 1923, 30 at the Borough of Bound Brook. The complaining witness was a married woman with a husband and two children living. The testimony indicates, if not fully establishes that she was then pregnant with child. (Page 65, lines 25 to 40; page 66, lines 1 to 10). She was a foreigner, highly excitable upon the witness stand and dull in her comprehension of questions, particularly those necessarily not leading and a difficult witness to interrogate. She lived with her husband and family in South Bound Brook, which is 40

a borough divided only by the Raritan river at that point from the Borough of Bound Brook proper.

In the earlier hours of Sunday evening, March 4th, there were visitors at her home, who included a Mr. Knapp from New Brunswick, one Sam Sarbouke, one Paul Buggi, and one Anthony Louis Potosney, all of whom except Knapp figured more or less in later events connected with the crime alleged, and who appear as witnesses and are, therefore, mentioned.

10 All of these persons, including the complaining witness and her husband, went by automobile from South Bound Brook to New Brunswick about 9.30 P. M., left Knapp, who was the god-father of her child there, and returned after 1 o'clock Monday morning, shortly after which time they went from the home of the complaining witness over the river to Bound Brook, to get coffee and pie and for that purpose went to a lunch wagon on Main street in the 20 Borough of Bound Brook, located within two blocks from where the alleged crime was committed. (Page 41). The real history of the case perhaps starts in this lunch wagon and from the point of time that the complaining witness and those accompanying her arrived there, which was probably between the hours of 1 o'clock and 2 o'clock A. M.

All of the defendants involved in this appeal, except Farrano, were at or in the immediate vicinity of this lunch wagon upon the arrival of the com- 30 plaining witness and her party. (Page 171 and 172 and 173; page 136, lines 10 to 40; page 134, page 152).

Shortly after the arrival of the complaining witness at the lunch wagon, which seemed to be divided into two rooms, one for ladies and one for gentlemen, a fight started between Potosney, one of the complaining witnesses' guests and one or more of the defendants, a description of which varies, but is substantially depicted by the witness Potosney, and 40 by the complaining witness. (Page 22, lines 30 to

40; page 23, 24 and pages 42 and 43). The complaining witness says that during this fight her husband disappeared (pages 44 and 45) and she, not being able to find him started to go to Potosney's house with the idea that he might be there. Potosney lived on East Second street, a small distance from East street, which made her natural route to Potosney's house first over East street for about a distance of two blocks. Eventually she arrived at the corner of East street and East Second street, and the occurrences from this point embrace the crime charged and its more intimate surrounding circumstances.

The complaining witness says that when she reached a point at or near the southeast corner of East street and East Second street, she was accosted by several men. (Page 45, lines 28 to 40; page 46). Her recollection of whether five or six men were present is indefinite. They, however, included four men who she shortly afterwards identified as Mannon, Fuer, De Matto and Farrano. Mannon and Fuer caught her by either arm and one or the other asked her what she was looking for. She said she was looking for her husband and they said, "Well, come on with us, we will show you where your husband is," and she replied, "I will find him myself." She was then forcibly taken across the road in a westerly direction, over East street into an old graveyard described in the photographs (page 49) and to a point considerably distant from the street itself, thrown to the ground and brutally assaulted by all men in the party. Each member of the party stood by and aided and abetted the other in perpetuating a sexual outrage upon the complaining witness. The disgusting details of this transaction can be adequately appreciated only upon practically a full reading of her testimony. (Pages 40 to 122). Complaining witness did not know by previous acquaintance any of the parties and had never seen them within her recollection at any time

prior to that evening. After the crime committed upon her had been consummated some one suggested that she came from Bound Brook or vicinity, (page 51, lines 25 to 35; pages 52, 53 and 54), which remark evidently aroused them to some sense of the gravity of the crime that they had committed and she managed to escape from their control and run away from the graveyard back into the street alone and unprotected. (Page 55 and 56). She ran back to the lunch wagon, on the way trying to get into an automobile which was standing along the street.

On the way to the lunch wagon she met the witness, Bertha Lampe, who happened to be in Bound Brook on that occasion, having just brought her grandchildren over to the depot to take a train. This woman took charge of her until she met a policeman, the witness, Charles Bohler, referred to in the complaining witnesses' testimony as "Charley the cop." (Page 57, lines 30 to 40; page 58; page 102, page 107). Complaining witness in company with Mrs. Lampe found Officer Bohler near the New Jersey Central Railroad station, which is only a short distance from the lunch wagon in question, and not over three blocks from the scene of the alleged crime. Officer Bohler took the complaining witness to the lunch wagon where the complaining witness saw and identified five of the men whom she said had attacked her, including *Mannon, Fuer, De Matto, Nittoli* and *De Ghetto.* (Pages 102 to 106).

The complaining witness made an effort to see a doctor, but was unsuccessful. (Page 61, lines 20 to 40; page 63, lines 12 to 26). She went to Potosney's, joined her husband there and was finally taken home at a late hour in the morning. (Page 63, lines 27 to 40). Shortly thereafter she was taken seriously sick. (Pages 65, 95, lines 20 to 40; pages 97, 98 and 109 to 111). She says she was in bed nine days and required the attendance of a nurse for some time and the attention of a physician

for about three weeks, (page 97, lines 1 to 40), during which time she was to an extent out of her head. The doctor says he treated her for miscarriage.

IDENTIFICATION.

At the close of the case a verdict of acquittal was directed as to the defendants Nittoli and De Ghetto. (*See page* 257, *lines* 10 *to* 40; *page* 258 *and page* 259, *lines* 1 *to* 5, *wherein is stated the reason which led the Court to take the question of the guilt of these defendants from the jury*). As to the identification of Mannon and Fuer; Mannon was known generally by his acquaintances as "Marty" Mannon. (*Page* 228, *lines* 3 *to* 7, *and* 16 *to* 18; *page* 236, *lines* 12 *to* 14, *and* 18 *to* 20; *page* 237, *lines* 20 *to* 21).

Fuer likewise was known as "Dutch" Fuer. (*Page* 99, *lines* 13 *to* 15; *page* 102, *lines* 28 *to* 30; *page* 15, *lines* 28 *to* 34).

These nick-names add to the significance of the testimony of the complaining witness concerning the occurrences in the graveyard, where the names "Marty" and "Dutch" were frequently used. The complaining witness upon being taken to the lunch wagon after the occurrences, identified both Mannon and Fuer as two of the persons who had attacked her, and at the same time identified De Matto, Nittoli and De Ghetto. (*Page* 102, *lines* 26 *to* 40; *page* 103, *page* 104, *page* 59 *and* 60; *pages* 52 *and* 53).

(Nittoli she failed to recognize in the court room at the trial and hence the direction of a verdict as to him). It will be observed at this point that one of the reasons why the Court directed a verdict as to De Ghetto was also due to lack of identification by the defendant at the trial. (*Page* 258, *lines* 15 *to* 40; *page* 259, *lines* 1 *to* 6).

During the time while the State was putting in its case, De Ghetto while in the court room remained in a body thereof reserved for the audience. This was remarked upon by the Court, in stating

the reason why he had not directed a verdict at the close of the State's case as to De Ghetto. The point sought to be made is that during the examination of the complaining witness and when she was called upon to point out the persons in the court room whom she remembered as being among her assailants, De Ghetto was not included in the persons among the defendants she had an opportunity to observe. This is important in connection with her elimination of Nittoli from those she openly faced in the court room and accused of being present. That is to say, during her examination outlined on pages 46 and 47, when called upon to identify the persons who had attacked her, the complaining witness when confronted with five of the defendants, Mannon, Fuer, De Matto, Farrano and Nittoli, said she could not remember one of the five, which were then present in court and under her observation. (See pages 46 and 47). The person she failed to identify was Nittoli. Farrano was included in this testimony as one of the persons identified by the complaining witness. (*Page* 123, *lines* 35 *to* 40; *page* 124, *lines* 1 *to* 7).

> "The evidence on the question of the identity of the prisoner is permitted to take a broad range. Testimony of a witness that he saw accused after his arrest and then recognized him, or identified him as the person whom he saw commit the crime, or that he identified the person now on trial on his previous trial is relevant. The witness may detail all the facts within his personal knowledge bearing on the question of the identification of accused; any fact which shows the acquaintance and familiarity of the witness testifying to the identity of defendant is admissible. The identification by the witness need not be positive and certain, it is enough for him to testify that his belief, opinion, impression, or judgment is that accused is the per-

son whom he saw commit the crime. The indefiniteness and uncertainty affect the weight rather than the admissibility of the testimony. Testimony that accused was not previously identified by certain persons is not admissible."

16 Corpus Juris, page 547, and cases cited.

"The question of identity of a prisoner as well as of property may arise. In a case of larceny of a hog the question of identity both of prisoner and hog was submitted to the jury; Kelly v. State, 1 Tex. App. 628; and evidence of a confession given by a fellow-prisoner of the accused (who had conversed with him through soil pipes in the gaol that he recognized him by his voice was allowed to go to the jury on the question of identity; Brown v. Com., 76 pa. 319."

"Generally a witness may be permitted to identify an accused solely from having heard his voice; Com. v. Kelly, 186 Mass. 403, 71 N. E. 807; Deal v. State, 140 Ind. 354, 39 N. E. 930; State v. Herbert, 63 Kan. 516, 66 Pac. 235; Mack v. State, 54 Fla. 55, 44 South. 706, 13 L. R. A. (N. S.) 373, 14 Ann. Cas. 78."

Bouvier's Law Dictionary, Rawles Third Revision, volume 2, page 1485.

CORROBORATION.

The Corpus-delecti is well estbalished. Complaining witness says she was attacked by a number of men, each of whom had sexual intercourse with her. She fixes the place definitely and the time as well as could be expected under the circumstances. A number of men were in that vicinity at about the unseemly hour when she alleges she was outraged.

The convicted defendants were in the close vicinity of the locus-in-quo shortly before and shortly after the occurrences. That she had reason to be in that vicinity and was there convincingly appears. Her actions subsequent to the alleged occurrences are consistent with the story she tells. She ran away from the place and met a woman, who by a strange coincidence was in that vicinity. This woman observed her and heard her complaint and together with the complaining witness helped her hunt up a police officer to whom she must have told something in the nature of what had occurred, because he went with her to the lunch wagon and witnessed her identification of several persons she said had attacked her. She did the normal thing in seeking her husband afterwards and perhaps the wise thing from a feminine standpoint in not telling him too much about what had occurred that night. She went and made a complaint before a justice of the peace the following morning. She was taken ill and her affliction, there is reason to believe, was attributable to what she said occurred to her. She was ill for a long time and according to the testimony of the doctor, her illness did not arise from any usual cause. It was accompanied by a long and protracted hemorrhage, and numerous features which came under the observation of the doctor and nurse who took care of her, perfectly consistent with her story of rough treatment and sexual abuse on the night in question.

State v. Gould, 122 Atlantic Rep., page 596.

CHARGE OF THE COURT.

(Reason 5).

"The burden of the proof is upon the prosecution, and if upon such proof there be a rea-

sonable doubt remaining, the accused are entitled to the benefit of that doubt."

Judge's charge, page 263, lines 30 to 34.

(Excepted to).

The most that can be said against this expression is that it is incomplete, standing by itself, and somewhat vague. What the court in effect says is: That "the burden of proof is on the prosecution," a perfectly correct statement—"and if upon such proof" which can only mean that in case the state properly meets the burden placed upon it—even then, if there is any reasonable doubt remaining, the accused are entitled to the benefit of that doubt. 10

The state if any party has a right to complain, it could by no stretch of the imagination be harmful to the defendants.

Moreover, the entire part of the charge covering the points, "burden of proof," and "reasonable doubt" is comprehensive and evidential of the purpose of the court to fully impress the jury with the law applicable in criminal cases: 20

"The only other question of law I think of at this time is the question of the burden of proof. The burden of proof in this case, as in every other case is upon the state to prove to your satisfaction beyond a reasonable doubt of the defendant's guilt. Reasonable doubt, in one of the best definitions I have been able to find, is defined as follows: 'It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.' The burden of proof is upon the prosecution, and if upon such proof there be a reasonable doubt remain- 30 40

ing the accused are entitled to the benefit of that doubt. That is your duty.

"If, in this case, you are satisfied beyond such a reasonable doubt as I have defined, that these men, or any one of these men were guilty of the crime as charged by the state, it would be your duty, under the law, to find them guilty as charged. If, on the other hand, after a consideration of all the evidence you do not believe any of these men or any one did commit the crime as charged, or if there is reasonable doubt in your minds of any one or all of the defendants having committed the crime, you are bound, under the law, to give the defendants the benefit of that doubt and to acquit."

REFUSAL TO CHARGE AS REQUESTED.

(Reason 6).

"2." A mere quotation of the "instruction" requested would seem to furnish a justifiable reason for the Court in its refusal to charge as requested.

Request 2—

"You are further instructed that the charge of rape, is in its very nature, a most heinous one, and where the circumstances are as claimed in this case most revolting, likely to create a very strong prejudice against the accused. You should be aware of this prejudice and guard yourselves against it. You should bear in mind that the charge of rape is easily made but very hard to disprove. For this reason you should have constantly in mind the difficulty of defending against such a charge, and consider most carefully all of the evidence and instructions of the court in making up your verdict. While in every criminal case defendant is entitled to the

benefit of a reasonable doubt it is of the utmost importance that every reasonable doubt in this case shall be resolved in their favor."

Particularly is such refusal warranted when the following excerpt from the charge given is considered:

"The State has said that all crimes of a serious nature shall be punished in the manner in which the law requires they should be punished. A defendant in a serious case of this kind is greatly interested, of course, because a conviction of a serious crime brands a man for the rest of his life and carries with it a severe penalty, and it is very important for the jury to weigh well the testimony and wipe their minds of any prejudice placed there from any source; conversation or from reading of misquotations that may appear in the press, according to your oath as jurors, and you must find your information under the evidence and not from any conversation or from reading of the newspapers you may have had, or from statements of counsel for the state or counsel for the defendant, but you must decide and give your verdict squarely upon the evidence introduced, under your oath and under the oath of the witnesses who have been present here. There is not much law involved in this case that is any different from any criminal case. It is a question of facts for you to decide based upon the testimony."

Judge's charge, page 262.

Respectfully,

Azariah M. Beekman,

Prosecutor of the Pleas.