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WRIT OF ERROR.

NEW JERSEY, ss. The State of New Jersey to
the Honorable Frank S. Katzenbach,
Jr., and John B. Kates, Judge of the
(Seal) Court of Oyer and Terminer of the
County of Camden.

Because in the judgment of the Court of Oyer and Terminer of the County of Camden upon a certain indictment against Frank J. James, late of the City of Camden, in said County, that he did wilfully and maliciously and with malice aforethought, kill and murder one, David S. Paul. 10

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Frank J. James, as it is said, manifest error hath intervened to the great damage of the said Frank J. James, as from his 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 him, the said Frank J. James, command you that if judgment be thereon given, then that you distinctly and openly send under your seal, the record and proceedings aforesaid with all things touching and concerning the same, to our Court of Appeals in the last resort in all causes of law, to be held at Trenton, on the tenth day of March, 1921, 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 laws and customs of New Jersey, ought to be done. 20 30

Witness, Edwin Robert Walker, our Chancellor, at
Trenton this 28th day of February, 1921.

THOMAS F. MARTIN,
Clerk.

HARRIS & HARRIS,
Attys. of Plaintiff-in-Error.

10

[ENDORSED]

5211.

New Jersey Court of Error and
Appeals,
The State of New Jersey,
Defendant-in-Error,

vs.

Frank J. James,
Plaintiff-in-Error,

20

Writ of Error,
Harris & Harris,
Attys. Plaintiff-in-Error.
315 Market St.,
Camden, N. J.

The answer of Frank S. Katzenbach, Jr., Esquire,
and John B. Kates, Esquire, Judges of the Court of
Oyer and Terminer, in and for the County of Cam-
den, and State of New Jersey within named:

30 The record and proceedings of the plaint whereof
mention is within made, with all things touching and
concerning the same, including the record of the
proceedings had upon the trial of the said defen-
dant, to the Court of Errors and Appeals in the
last resort in all causes, within specified, at the day
and place within contained, we certify in a certain

schedule to this writ annexed, as we are within commanded.

FRANK S. KATZENBACH,
JOHN B. KATES,

Judges.

JUDGMENT RECORD.

Indictment.

10

CAPTION.

STATE OF NEW JERSEY, CAMDEN
COUNTY. Court of Oyer and Terminer,
holden before Frank S. Katzenbach, Jr.,
and John B. Kates, Judges.

September Term, 1920.

20

THE STATE OF NEW JERSEY, }
VS. }
FRANK J. JAMES. }

Sur. Indictment.
Murder.

CHARLES A. WOLVERTON, ESQ.

JOHN HARRIS, ESQ.

WILLIAM HARRIS, ESQ.

30

CAMDEN COUNTY, TO WIT:

Be It Remembered, That at a Court of Quarter
Sessions, holden at Camden, in and for the County

of Camden, on the second Tuesday of September in the year of our Lord one thousand nine hundred and twenty before the Honorable John B. Kates, Judge of the said Court and of the Court of Common Pleas in and for said county, no Justice of the Supreme Court of the State of New Jersey being present in the Court House, and the grand jury being desirous of making presentment of sundry bills of indictment, according to the form of the statute in such case made and provided, by the oath of Harry F. Bagge, Roscoe Bateman, H. Wilbur Bircks, William F. Bolzau, James Corea, Richard A. Connors, Elwood Elliott, John A. Flick, John A. Gorman, William J. Helbeisen, Thomas W. Jack, Henry Kobus, Robert MacIntosh, Edgar A. Miller, Jr., John McGowan, Martin J. O'Brien, George R. Pelouze, Chester Pancoast, David S. Rhone, Frank C. Sayrs, Christian Schremp, Walter F. Toms, William A. Wilkinson, good and lawful men of the said county of Camden, duly summoned, and then and there sworn and charged to inquire for the State of New Jersey, in and for the body of the said County of Camden.

It Is Presented, in manner and form following, that is to say:

The bills herewith presented are true bills.

WILLIAM A. WILKINSON,
Foreman.

Filed Nov. 16, 1920.

F. F. PATTERSON, JR.,
County Clerk.

IN THE
COURT OF OYER AND TERMINER
OF CAMDEN COUNTY.

September Term, A. D. 1920.

CAMDEN COUNTY, TO WIT:

The Grand Inquest of the State of New Jersey
and for the body of the County of Camden upon 10
their respective oath Present, That Frank J. James
and Raymond W. Schuck late of the City of Cam-
den in the said County of Camden on the fifth day
of October in the year of our Lord one thousand
nine hundred and twenty at the city aforesaid, in
the county aforesaid and within the jurisdiction of
this Court, with force and arms, in and upon one
David S. Paul, in the peace of God and this State
then and there being, wilfully, feloniously and of
their malice aforethought did make an assault, and 20
him, the said David S. Paul, then and there wilfully,
feloniously and of their malice aforethought did kill
and murder, to the evil example of all others in like
case offending, contrary to the form of the statute
in such case made and provided, and against the
peace of this state, the government and dignity of
the same.

CHAS. A. WOLVERTON,
Prosecutor of the Pleas.

Camden County Court of Oyer and Terminer. 30
September Term, 1920.
Indictment for Murder.
The State vs. Frank J. James and Raymond W.
Schuck.
Charles A. Wolverton, Prosecutor of the Pleas.
A True Bill. Wm. A. Wilkinson, Foreman.

Filed Nov. 16, 1920. F. F. Patterson, Jr., County Clerk.

Plea.

10 And afterwards, to wit, on the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and twenty, at a session of the Court of Oyer and Terminer aforesaid, being as yet the September Term aforesaid, before the Honorable Frank S. Katzenbach, Jr., Justice as aforesaid, and John B. Kates, Judge of the Court of Common Pleas in and for said County of Camden, at Camden aforesaid, here cometh the said Frank J. James and Raymond W. Schuck under custody of Isaiah S. Hatch, Sheriff of the County of Camden aforesaid, in whose
20 custody in jail of the County of Camden aforesaid, they have been committed for the cause aforesaid, being brought to the bar and having heard the indictment read and forthwith being commanded of and concerning the premises in the said indictment aforesaid specified and charged upon them how they will acquit themselves thereof, they say they are not guilty thereof and they put themselves upon the country.

30 And Charles A. Wolverton, Esquire, Prosecutor of the Pleas for the said County of Camden, who prosecutes for the State of New Jersey in this behalf doth the like.

Thereupon the said Frank J. James, by his attorneys, John Harris, and William Harris moved for a severance of the indictment and the Court stated they would hear arguments as to the severance aforesaid, on the first day of December, in the

year of our Lord one thousand nine hundred and twenty at eleven o'clock in the forenoon.

Thereupon on the aforesaid first day of December in the year of our Lord one thousand nine hundred and twenty, the Court, after hearing the arguments of all parties, granted a severance of indictment and fixed the day for the trial of Frank J. James for the fifteenth day of December in the year of our Lord one thousand nine hundred and twenty.

10

Affidavit.

CAMDEN COURT OYER AND TERMINER.

STATE,

vs.

FRANK J. JAMES.

} Affidavit.

20

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

FRANK J. JAMES, being duly sworn according to law on his oath deposes and says, that he is confined in the common jail of the County of Camden, having been jointly indicted with one, Raymond W. Schuck, for the murder of David S. Paul.

This deponent says, that he is informed and believes that Raymond W. Schuck has made certain alleged confessions to the Prosecutor of the Pleas of Camden County and to the detectives employed by

him, and also to Ellis Parker, county detective of Burlington County, which said confessions this deponent is informed and believes are in the possession of or under the control of the Prosecutor of the Pleas of Camden County.

Deponent is informed and believes that the said Raymond W. Schuck in said alleged confessions has charged this deponent with compelling the said Raymond W. Schuck to drive a certain automobile in which Schuck, Paul and this deponent were riding to various places in the County of Camden and the County of Burlington, by then and there pointing at him a loaded revolver, and the same time threatening to shoot the said Schuck unless he did as this deponent commanded, which said statements if made, are not true.

And deponent further says, that he is informed that in said confessions, the said Schuck has said and will so testify at the trial that this deponent struck all the blows which resulted in the death of the said Paul, which said statement, if made, is not true.

And deponent further says that in an interview had with Schuck in the presence of his counsel, Schuck made statements of the apparent mental condition at the time of the alleged offense, which said statements the said Schuck informed deponent were contained in the confession and this deponent is advised by his counsel and believes that particularly upon this question the said Schuck would be an important witness for deponent.

FRANK J. JAMES.

Sworn and subscribed to before me this thirtieth day of November, A. D. 1920.

C. M. POWELL QUICKSALL,
Commr. of Deeds of N. J.

Challenge to the Array.

**CAMDEN COUNTY COURT OYER AND
TERMINER.**

STATE,

vs.

FRANK J. JAMES.

On Indictment for Murder.

Challenge to the Array.

10

The defendant challenges the array of jurors summoned to be in attendance for the trial of the above named defendant for the following reasons:

1. The Commissioners of juries of the County of Camden did not, at least thirty days prior to the commencement of the present December term of the Circuit Court, make two lists alphabetically arranged, of persons liable to jury duty having regard to the just distribution of jury service among those persons qualified therefor in the various wards and municipalities of said county, with their occupations and places of abode and designating their respective municipalities and wards (if any) in municipalities. 20

2. At the time of the selection of said jury list there were five thousand or more women in the respective municipalities of Camden County who were duly qualified for jury service. 30

3. That the commissioners deliberately failed and refused to select any of said women for jury duty.

4. That the petit jury list for the present term of court was drawn from the five hundred names which were selected by the commissioners as aforesaid and contained the names of no women.

5. Said selection of the jury was and is contrary to the rights of the defendant under the Constitution of the United States, and of the State of New Jersey and the Statute of said State of New Jersey in such
10 case made and provided.

Defendant therefore asks that the challenge to the array be sustained.

HARRIS & HARRIS,
Attys. of Deft.

Affidavit.

20 CAMDEN COUNTY COURT OYER &
TERMINER.

STATE,	}	On Indictment for Murder.
VS.		Challenge to the Array.
FRANK J. JAMES.		Affidavit.

30 STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

JOHN HARRIS, being duly sworn according to law on his oath deposes and says, that he is one of the attorneys for Frank J. James, indicted on the

charge of murder, and that he has prepared for said James a challenge to the array.

And this deponent says that at the time of the selection of the jury list there were a large number of women who were registered on the various registry lists estimated to be five thousand or more within the County of Camden, and who were qualified for jury service; that he had personally examined in some instances the registry lists on which women were registered.

And deponent further says that he had a conversation with one of the jury commissioners who drew said jury list and was told by him that the names of no women were placed on the list for the reason that there were not sufficient accommodations and because he felt that their household duties and other things would prevent them from serving on the jury.

And this deponent further says that he read an authorized interview with one of the commissioners published in a Camden newspaper in which he said that he and his fellow commissioners had declined to put the names of any women on the list for the reason that there were no accommodations at the Court House for them in case of their retirement to deliberate and that in his judgment it was improper to place the names of any women on the list.

JOHN HARRIS.

Sworn and subscribed to before me this fourteenth day of December, A. D. 1920.

JOS. H. FORSYTHE,
Notary Public.

Challenge for Dismissal.

And thereupon on the said fifteenth day of December, in the year of our Lord one thousand nine hundred and twenty an application was made by Frank J. James, by his attorneys, John Harris and William Harris by way of a challenge for the dismissal of the array supported by the application in writing filed with the Court, supported by affidavit and after
10 the taking of testimony in relation thereof, the Court thereupon denied the motion.

And, thereupon let a jury come before the Justice aforesaid, at Camden aforesaid, in the County of Camden at the December term of the Court of Oyer and Terminer aforesaid on the fifteenth day of December, in the year of our Lord one thousand nine hundred and twenty, twelve good and lawful men, each of whom shall be a citizen of this State and reside within the County of Camden aforesaid, above
20 the age of twenty-one years, and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said Frank J. James, to recognize upon their oaths whether the said Frank J. James be guilty of murder in the indictment aforesaid specified, or not guilty, because as well the said Charles A. Wolverton, Prosecutor of the Pleas, for the County of Camden aforesaid, who prosecuted for the State of New Jersey aforesaid, as the said Frank J. James, have
30 put themselves upon said jury, and the same day is given to the parties aforesaid, at the same place at which time, that is to say, the fifteenth day of December, in the year of our Lord one thousand nine hundred and twenty, at the same term of Oyer and Terminer, holden at Camden aforesaid, in the County of Camden, before the said Justice aforesaid, here

cometh as well the said Charles A. Wolverton, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid, as well as the said Frank J. James, in the custody of the Sheriff of the County of Camden, being brought to the bar here in his proper person by the said Sheriff, and the trial of the indictment aforesaid being moved by the said Charles A. Wolverton, Prosecutor as aforesaid, and the jurors of the said jury by the Sheriff of the County aforesaid for the purpose empanelled and returned, to wit: 10
Richard E. Newman, John Daly, William B. Steele, John R. S. Doughty, Henry Altenbrandt, George Cummins, Thaddeus Andrews, Edward Adams, Millard F. Deitz, Henry Schwanker, William Ashton, Joseph Murray, being called, come, who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury, from day to day, until the twentieth day of December in the year of our Lord one thousand nine hundred and twenty, at Camden aforesaid, 20
the jury in the meantime having all that time been kept together and in the care of officers of the said Court, who were selected and duly sworn by the Court for that purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the said jury, and the said jury in charge of the officers of the said Court duly sworn for the purpose, were taken to a private room to consider on the verdict, and afterwards, that is to 30
say, on the day aforesaid, at Camden, the said jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Charles A. Wolverton and the said defendant, Frank J. James, do say that the said Frank J. James

is guilty of murder in the first degree in manner and form as in and by the said indictment as charged against him; and upon being further demanded of them of and concerning the premises each one for himself says he finds the defendant, Frank J. James, guilty in manner and form as he stands charged, and of murder in the first degree; and thereupon the said Frank J. James is committed to the custody of the said Sheriff of Camden County and there to remain
10 until the fourth day of January, 1921; and thereupon on the said fourth day of January, 1921, the Court postponed the sentence of the said Frank J. James until the fourteenth day of February, 1921; and thereupon on the said fourteenth day of February, 1921, the Court postponed the sentence of the said Frank J. James until the twenty-fifth day of February, 1921, at three o'clock in the afternoon; and the said Frank J. James, now, to wit, on the twenty-fifth day of February, 1921, being produced
20 before the said Court at Camden aforesaid in his proper person in the custody of the Sheriff of said county, whereupon all and singular the premises being seen and by the Court here being fully understood, it is considered and adjudged that the said Frank J. James be forthwith taken by the Sheriff of the County of Camden to the State Prison at Trenton, New Jersey, and delivered to the principal keeper of the said State Prison, and there be confined until the week beginning Sunday the tenth day
30 of April next, and during said week within the State Prison enclosure the said Frank J. James shall be put to death by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, and the application of such current shall be continued until the said Frank J. James is dead.

Judgment entered and signed this twenty-fifth day of February, in the year of our Lord one thousand nine hundred and twenty-one.

FRANK S. KATZENBACH, JR.,
*President Judge of the Court
of Oyer and Terminer.*

Order to Stay Judgment.

10

CAMDEN COUNTY COURT OF OYER AND
TERMINER.

STATE OF NEW JERSEY,
Defendant-in-Error,
VS.
FRANK J. JAMES,
Plaintiff-in-Error.

} Order to Stay
Judgment.

20

A writ of error having been issued in the above-entitled cause, it is on this 28th day of February, nineteen hundred and twenty-one, ordered that execution of the sentence imposed upon the said Frank J. James be stayed until the determination of the proceedings on said writ of error, or the further order of the court.

30

FRANK S. KATZENBACH, JR.,
Justice Supreme Court.

On motion of
HARRIS & HARRIS, ESQS.,
Attorneys of Plaintiff-in-Error.

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

I, WILLIAM D. BROWN, clerk of the Court of Oyer and Terminer in and for the State and County aforesaid, Do Hereby Certify that the foregoing is a true, full and complete copy of the record and proceedings with all things touching and concerning the same in the trial and conviction of Frank J. James,
10 of the crime of murder, as the same are now on file in my office.

(Seal) Witness my hand and the seal of said Court this fifth day of March, A. D. nineteen hundred and twenty-one.

WM. D. BROWN,
Clerk.

20 **ARGUMENT IN RE CHALLENGE TO ARRAY.**

CAMDEN COUNTY COURT OF OYER AND TERMINER.

STATE,
vs.
30 FRANK J. JAMES.

On Indictment for Murder.

The Court: Mr. Wolverton and Mr. Harris, this was the day and hour fixed for the trial of the indictment against Frank J. James. Do you move that indictment?

The Prosecutor: If your Honor please, I move the trial of the indictment for murder against Frank J. James.

The Court: Sheriff, have you the special panel—has that been called?

The Sheriff: It has, sir.

The Court: Are the forty-eight names in the jury box? (1)

The Sheriff: They are, sir.

The Court: Is there any reason why we should not now proceed to draw a jury in this case?

Mr. Harris: If your Honor please, I wish to challenge the array, and I am ready to proceed with the argument.

20

The Court: Now, Mr. Harris, have you written out the causes?

Mr. Harris: Yes, sir.

The Court: For this challenge to the array?

Mr. Harris: I have.

The Court: Will you please deliver to me the specification of causes, and if you have a copy of it, deliver the same to the Prosecutor, 30

Mr. Harris: I have the jury commissioners here ready to call them to prove it under the decision of the Court on the question of fact.

The Court: I only want —

Mr. Harris: I have my affidavit, prima facie establishing the facts.

The Court: All right; now, if you will supply the Prosecutor with copies of the affidavit and grounds, I will deliver the specifications of your challenge to the array to be embodied in the record. Now then, I
10 will hear what you have to say. I think it is upon the one ground.

Mr. Harris: If your Honor please, in the case of McCarthy, the Supreme Court said that where the facts were said to be like they are here, I must establish them by proof, and that they overruled the challenge because there was no proof of the allegations set out. In my challenge now I have subpoenaed the jury commissioners, and I would like
20 to proceed in the way in which the Court indicated in that case.

The Court: Mr. Wolverton, have you any objections to the facts set forth in this affidavit being proved?

The Prosecutor: I think, if your Honor please, what the attorney for the defendant has in mind is this—and I am of the same opinion that he is—
30 that the affidavit in itself is not sufficient, and I think counsel prefers to call witnesses to substantiate his case. I have no objection to that course being pursued.

The Court: Very well then, the witnesses that you desire to call will be sworn to prove the facts of the affidavit, Mr. Harris.

WILLIAM PENN CORSON, SWORN.

By Mr. Harris:

Q. Mr. Corson, were you formerly the sheriff of this county?

A. I was.

Q. When did you go out of office?

A. The 9th day of November, 1920.

Q. Did you draw the names of the 500 men required to be drawn by statute from which the present panel is drawn? 10

A. No, I only supplied 250 of those names on that list.

Q. Well, you together with the other commissioner did?

A. I did.

Q. Did you make a list?

A. I did.

Q. Both of you together? 20

A. Yes, we both made a list.

Q. And did you file them, submit them to the Justice of the Supreme Court first?

A. We did.

Q. And filed them with the county clerk?

A. We did.

Q. On that list I see there are no women—how did that come about?

A. No particular reason for it.

Q. How many women were eligible to jury duty in the County of Camden? 30

A. I suppose twenty to twenty-five thousand.

Q. Why didn't you put them on?

A. Well, for the simple reason I didn't put all the other 75,000 registered names on there.

Q. Well, did you put any women in?

A. No.

Q. Was that influenced by any feeling on your part that they could not properly be taken care of?

A. Well, that was my thought, that they could not properly be taken care of here at this court house.

Q. And you purposely left them off?

A. Well, I didn't give it any thought, Mr. Harris; I didn't go into the idea that I was discriminating against anything or anybody or ——

10 Q. Your best intention was to take care of them?

A. It was my intention to take care of the ladies, certainly.

Cross-examination.

By Mr. Wolverton:

Q. Was there any malice in your actions as far as this defendant was concerned?

20 A. No thought of it whatever, or no other.

Mr. Harris: If your Honor please, we don't charge any malice or any attempted ——

The Court: Well, the question has been asked and answered.

Q. Were they left off with any thought of the trial of this defendant?

30 A. No, sir, not any.

Q. Do I understand that the list was selected out of the great body of citizens of our county?

A. It was.

Q. Did you in making that selection have in mind any feeling of any kind whatsoever against this defendant?

A. Positively none.

Q. Were you biased against the services of women or any other class of citizens as a class?

A. No, sir, race, creed or sex had no thought in my mind when I made that jury list.

Q. In the selection of the names did you use your best judgment?

A. I did.

10

JAMES F. LENNON, SWORN.

By Mr. Harris:

Q. Are you a jury commissioner of the County of Camden?

A. Yes, sir.

Q. Together with Sheriff Corson?

A. Yes.

Q. Did you select and arrange the list of the 500 names from which the present panel of jurors was drawn?

20

A. I did.

Q. Were you aware of the fact that there were quite a few women in this county who had become voters and voted at that time?

A. I am aware of the fact that they were clothed with the franchise, and I presumed that carried with it the right of jury service.

Q. And you were aware of that fact, that they voted, a good many of them?

30

A. I am aware that they voted.

Q. Yes.

A. Oh, yes, sir, I am quite well aware of the fact that they voted.

Q. Why didn't you select some of those women for jury service?

A. I had no particular reason for not choosing them, any more than any other class or race. I made up the list without any regard to race, creed, color, condition or sex.

Q. Well, you didn't put any of the female sex on it?

A. I didn't put them on and I didn't keep them
10 off.

Q. Well, why didn't you put some of them on?

A. I had no special reason for putting them on, because I have never had any certain knowledge as to just what our status was in the matter, have never received any instructions from anybody as to what we should or should not do.

Q. You knew there were some 15,000 or more women who had been registered and voted as citizens of the County of Camden?

20 A. Yes, sir.

Q. What proportion was that of the entire citizenship of the county?

A. What, of the eligible list?

Q. Yes.

A. Probably nearly half, I presume.

Q. And out of the one-half who were eligible, you did not summon any of them?

A. Didn't select any, no, sir.

Q. And there were none put in the wheel—none
30 on the list?

A. None put on the list, no, sir.

Cross-examination.

By Mr. Wolverton:

Q. Mr. Lennon, in exercising your judgment in the selection of the jury list, was the fact that no women appear upon it due in any way to malice upon your part either toward the grand jurors or toward this defendant?

A. Absolutely no, quite the reverse. I would be 10
delighted to put them on.

Q. Be what?

A. I would be delighted to put them on if I received such instructions or if it is mandatory to put them on.

Q. In your judgment is it mandatory to select any particular sex, creed, or color in the selection of jurors?

Mr. Harris: I object; that is a question of law, 20
whether it is mandatory to select any color, creed
or sex.

The Court: Read the question, Mr. Stenographer.

(Question repeated.)

The Court: That question will be overruled.

The Prosecutor: If your Honor please, I had
this in mind, that the selection of a juror is so com-
pletely a question of judgment and the absence of
a particular class here is attacked, and it seems to
me that it would be just as proper for this witness,
if such is the case, to have said that in his judgment
it was not mandatory that they be selected as it is

to justify his judgment by saying that it was not the result of malice, or prejudice or bias.

The Court: I think you can bring that out in another way, Mr. Wolverton. As the question was framed perhaps it required the witness to answer a matter of law, his conclusion of that.

10 Q. In the exercise of your judgment, did you use the best judgment that you had in the matter of the selection of the jurors?

A. Yes, sir.

Q. Was that judgment biased in any way or prejudiced against the use of women in the trial of this defendant?

A. Absolutely no.

Q. Were these witnesses by design or otherwise left off—these jurors left off in order that this case of this defendant James would be affected thereby?

20 A. No, sir.

Q. Were you actuated by any motives other than the best?

A. None whatever.

By Mr. Harris:

Q. You said to Mr. Wolverton that you used your best judgment in leaving off these women?

A. I did not, sir.

30 Q. What?

A. I did not, sir; I didn't make any such reply at all.

Q. That is what I understood.

A. I made the reply that I used my best judgment in the selection of those that I put on.

Q. Now, in your best judgment was it proper to leave off the women?

A. No, sir, my judgment only applied to those whom I selected; in that I used my best judgment.

Q. Did you use your best judgment in leaving off the women?

A. I didn't leave them off; I merely didn't put them on.

Q. What is the distinction?

A. The distinction is just this, that to not put them on, or rather to keep them off would imply an objection, something I never entertained and don't entertain now. I never gave it a serious thought as to whether they should go on or should not go on; I merely selected the jury without any regard to race, creed, condition, color or sex. 10

Q. Now, when you say, "or sex," didn't you leave the women off?

A. They were left off; I didn't put them on.

Argument by Mr. John Harris for the defendant. 20

Mr. Wolverton, Prosecutor of the Pleas, for the State.

The Court: The Court is of the opinion and holds that no constitutional right of the defendant or other right of the defendant has been invaded by the omission of women from the panel of jurors. The motion of Mr. Harris and the challenge to the array on the grounds stated is overruled and an exception will be accorded to the defendant and entered on the record. An exception is allowed and signed and sealed accordingly. 30

FRANK S. KATZENBACH, JR.,
J.

Now, we will proceed to the drawing of the jury.

TESTIMONY.**CAMDEN COUNTY OYER AND TERMINER.**

10	STATE, vs. FRANK J. JAMES.	}	On Indictment for Murder.
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Second Day, December 16, 1920.

(Trial of the cause resumed at 1.30 o'clock P. M.,
20 pursuant to adjournment, in the presence of the de-
fendant and counsel for the respective parties.)

THE CASE FOR THE STATE.

The Prosecutor: If the Court please, I have
shown to counsel for the defendant six exhibits, be-
ing pictures, one of Market Street Ferry at Dela-
ware Avenue, Camden, the other being a scene back
30 of the sheds at Market Street Ferry, the third being
the locality of Baird Avenue Bridge, the fourth a
picture of the road leading down to Irick's Cause-
way, and showing the causeway; the fifth a view
looking into the underbrush where the grave was,
and the sixth a picture of the grave; and counsel,

upon my statement that they are pictures taken by Mr. Wonfor, a photographer, and are the places which I have indicated is willing to admit them into testimony without the formal proof of Mr. Wonfor being present and so testifying; and I would ask that they be numbered respectively Exhibits 1, 2, 3, 4, 5 and 6.

The Court: Under the stipulation made between counsel the photographs will be received as exhibits 10 and marked Exhibits S1, did you say?

The Prosecutor: Yes, sir.

The Court: S1, 2, 3, 4, 5 and 6. They had better be now marked, and perhaps you had better indicate as each one is marked what it is on the record.

(Photograph marked Exhibit S1.)

20

The Prosecutor: Exhibit S1 is offered and is a picture of the corner of Delaware Avenue and Market Street, Camden, showing the entrance to the ferry, which is a continuation of Market Street, a portion of Delaware Avenue showing the entrance to that locality back of the sheds running from Delaware Avenue to the ferry.

(Another photograph marked Exhibit S2.)

30

The Prosecutor: Exhibit S2 is a view of the locality in the rear of the sheds running from Delaware Avenue to Market Street Ferry.

(Another photograph marked Exhibit S3.)

The Prosecutor: Exhibit S3 is a view of the locality between Marlton Pike and Forest Hill Park, in the vicinity of Baird Avenue Bridge.

(Another photograph marked Exhibit S4.)

The Prosecutor: Exhibit S4 is a picture of a portion of the road crossing Irick's Causeway, Burlington County.

10

(Another photograph marked Exhibit S5.)

The Prosecutor: Exhibit S5 is a view of the ground taken from the road looking into that portion of the ground where the grave was dug.

(Another photograph marked Exhibit S6.)

20 The Prosecutor: Exhibit S6 is a view of the grave and a portion of the road. Those exhibits are offered in evidence.

EDWIN C. NORCROSS, SWORN.

By the Prosecutor:

- 30 Q. Mr. Norcross, where do you live?
A. 572 Benson Street, Camden.
Q. Where are you employed?
A. Broadway Trust Company.
Q. In what capacity?
A. Assistant treasurer and secretary.
Q. Were you acquainted with David S. Paul?
A. Yes, sir.

Q. How long had you known him?

A. About four years.

The Court: Will you speak a little louder, Mr. Norcross, please?

A. About four years.

Q. Where was he employed on October 5th of this present year?

A. At the Broadway Trust Company.

10

Q. In what capacity?

A. As messenger and runner.

Q. Will you describe his duties which have been spoken of by you as runner or messenger?

A. He prepared the checks on other banks that were deposited with us and presented them at those banks for payment; also delivered money and securities when given same to other banks.

Q. Did you see him on October 5th?

A. I did.

20

Q. What was the last time during that day that you saw him?

A. About 1.30.

Q. And under what circumstances did you see him at that time?

A. He was leaving the bank.

Q. For what purpose?

A. To go to the First National Bank, Camden, and the Girard National Bank, Philadelphia.

Q. And what was the cause of his errand to those two institutions?

30

A. He had checks and money to deliver to both places.

Q. Did you see him again that afternoon?

A. I did not.

Q. Did you see him the following morning, October 6th?

A. No, sir.

Q. What time should he have reported for duty the following morning?

A. 7.30.

Q. When you did not see him again on the afternoon of October 5th or the morning of October 6th what did you do?

A. On the morning of October 6th I called up the Girard National Bank, Philadelphia, and asked
10 them to give me the amount of our deposit for the previous day.

Q. And after that information came to you what was done—was anyone notified?

A. I reported the information to Mr. Draper.

Q. And what position did Mr. Draper have at the bank?

A. Vice-president and treasurer.

Q. I now show you a slip entitled "Broadway Trust Company, Girard National Bank, Philadelphia,
20 &c.," marked Exhibit S7 for identification —

Mr. Harris: If your Honor please, I think the practice is that the defendant see it.

The Court: Yes.

The Prosecutor: I will, as soon as I have had it marked.

30 Q. And the witness is asked in whose handwriting is that slip? Don't answer it. (After showing paper to defendant's counsel.) Now, you may answer the question.

A. In Mr. Paul's handwriting.

Q. Will you describe to us what Exhibit S7 for identification is?

A. It is a handwritten list of the checks that Mr. Paul had with him to deliver to Girard National Bank, Philadelphia.

Q. Can you tell us from the slip the amount?

A. It was \$30,361.57.

Q. By whom was this list made up?

A. By Mr. Paul.

Q. When did you first see this list after Paul had left the bank October 5th?

A. Monday morning the 18th of October.

10

Q. Under what circumstances?

A. It was given to me by Mr. Draper.

Q. Did you at the same time see the checks that accompanied this slip on October 5th?

A. I did.

Q. Did you compare the checks with the amounts mentioned in this slip?

A. I did.

Q. And that comparison revealed what as to the number of checks that you then had presented to you in regard to the number that he had been given on October 5th?

20

A. They corresponded exactly.

Q. And in what way did they correspond as far as rotation was concerned, compared with this slip?

A. They were in the same order in which they are listed on the list.

The Prosecutor: We offer as an exhibit this slip marked Exhibit S7. Is there any objection, Mr. Harris?

30

Mr. Harris: No.

The Court: It will be received and marked Exhibit S7.

Cross-examination.

By Mr. Harris:

Q. When he left your bank on October 5th who was with him?

A. No one.

Q. The bank sent no one with him?

10 A. No, sir.

Q. Did you see anyone else go with him that was not connected with the bank?

A. No, sir.

FREDERICK MICHENER, SWORN.

By the Prosecutor:

20 Q. Where do you live?

A. 309 Park Avenue, Collingswood, New Jersey.

Q. Where are you employed?

A. At the Broadway Trust Company.

Q. In what capacity?

A. As paying teller.

Q. Did you know David Paul?

A. I did.

Q. When was the last time that you saw him
30 alive?

A. The morning of October 5th.

Q. At about what time?

A. About twelve o'clock.

Q. And under what circumstances did you see him?

A. Why, just around the bank, working.

Q. What position did Mr. Paul have?

A. Messenger.

Q. What position do you have with the bank?

A. Paying teller.

Q. Did his duties as runner or messenger and your duties as paying teller bring you into contact on October 5th?

A. They did, yes, sir.

Q. For what purpose?

A. Why, to give him money to take to Philadelphia for deposit with the bank.

Q. Do you keep a record of the money which is delivered for that purpose?

A. Yes, sir.

Q. And in what form do you keep a record?

A. As an entry on the day book or settlement book.

Q. I show you a book entitled, "Paying Teller's Settlement No. 1. Broadway Trust Company," and ask if that is the book that you have just referred to? 20

A. Yes, sir, it is.

Q. And do you find a record of the money that you delivered to Paul on that day in that book?

A. I do, yes, sir.

Q. And in whose handwriting is the record?

A. My own handwriting.

Q. And what does it show as to the amount delivered to him?

A. \$35,000.

30

Q. Where was the money to be taken?

A. To the Girard National Bank, Philadelphia.

The Prosecutor: I ask that the book be marked Exhibit S8 for the State. I understand there is

no objection upon the part of Mr. Harris to the introduction of this as an exhibit in evidence.

The Court: The book will be received and marked Exhibit S8 and introduced in evidence under the stipulation of counsel.

(Said book is so marked.)

10 Q. Will you inform me as to how the package of money was made up with relation to the denominations and amounts?

A. There were bundles of five hundred 20's in the bundle, made up of five hundred 20's in the bundle, and 250 5's in a bundle with straps around them, and the 20's were tied up with string around them, ten thousand in a package; the 5's were five thousand. There were thirty thousand 20's and five thousand 5's.

20 The Prosecutor: If your Honor please, in view of the fact that this book, I assume, is in constant use at the bank as a part of their business, would there be any objection if the record of October 5th was put in the evidence in the form in which it appears here, the jury permitted to look at the book and the bank be permitted to take the book back for the purposes of their business?

30 The Court: I think there would be no objection to that course.

Mr. Harris: I can see no objection to that, but why couldn't the gentleman on the witness stand make a copy of it when he went back to the bank and have one made for us, just copy that sheet.

The Court: That suggestion will be adopted; you may now show the jury the book. Now, Mr. Michener, will you make an exact copy of that page and deliver it to Mr. Wolverton as soon as you reasonably can?

The Witness: Yes, sir.

No cross-examination.

10

CHARLES R. ANDERSON, SWORN.

By the Prosecutor:

Q. Where do you live?

A. 533 North Seventh Street, Passaic, New Jersey.

Q. Where are you employed?

A. Broadway Trust Company.

Q. In what capacity?

A. Time teller.

Q. Did you know David S. Paul in his lifetime?

A. I knew him only as an employee of the bank.

Q. What position did he occupy with your bank?

A. Messenger and runner.

Q. Did his duties as messenger and runner bring him in contact with you on the fifth day of October last?

A. It did.

Q. At what time and under what circumstances?

A. At one fifteen in the afternoon for a deposit of five thousand dollars to go to the Girard Bank, Philadelphia.

Q. Where was Mr. Paul when you saw him at that time?

20

30

A. In the cage at the place where he writes all of his letters.

Q. What was he doing?

A. He was wrapping up the money that he had received from the paying teller.

Q. What did he do when you came to him?

A. He says, "Is this another deposit?" I says, "Yes," and I handed it to him and he seemed kind of sore because of the fact that it came late.

10 Q. What did he do after he handed it to you?

A. Placed it right on top of the other money that he received from the paying teller.

Q. Do you keep a record of the amount delivered?

A. Yes, sir.

Q. In what form is that record kept?

A. In the form of, written in the book on the day of settlement.

20 Q. I show you a book entitled "Time teller's settlement number one, Broadway Trust Company" and ask you if that is the book which contains the record which you have just mentioned?

A. Yes, sir.

The Prosecutor: I ask that this book be marked Exhibit S9 for the State. I have shown it to Mr. Harris and I understand that there is no objection to the introduction of the book.

30 The Court: The book will be so marked Exhibit S9 and received in evidence.

(Book admitted in evidence and marked Exhibit S9.)

The Prosecutor: And I would make the same request here, or suggestion that I did in reference to

the previous exhibit, this being a book that is in constant use by the bank, necessary to their business, and I presume there will be no objection to this witness making a correct copy of the entry of October the fifth and that to be used in place of the book in order that it may be taken back to the bank.

The Court: That stipulation, made between counsel, will be entered on the record, and Mr. Anderson, will you see that a correct copy of this portion of the book is made as soon as you reasonably can make it and delivered to Mr. Wolverton? 10

A. Yes, sir.

Q. What amount does the record show as having been delivered by you to Mr. Paul on October the fifth, 1920?

A. Five thousand dollars.

The Prosecutor: With the Court's permission I will show this to the jury, this exhibit. 20

(Prosecutor shows Exhibit S9 to the jury.)

Q. Can you describe to us the character of money that was delivered to Mr. Paul in this package containing five thousand dollars?

A. Yes, it was old money, I guess, which we send our correspondent to not be in use again.

Q. I show you a package of money and ask if you can in any way identify that as being the money delivered to Mr. Paul? 30

A. Yes, that looks as though it is the correct, and the amount of money in denomination that is involved.

Q. Are there any special marks upon any of the bills that enable you to express that opinion?

A. Yes, there were some that were torn, and which I pasted paper on the back, and I am the only one in the bank that used a certain white sticking paper, no one uses it in there than I.

Q. Do I understand that notes with that upon it are in this package which you had fixed up before delivery to Mr. Paul?

A. Yes, there are some.

Q. What is the amount of money that is contained
10 in this package?

A. Forty-six hundred dollars.

The Prosecutor: I ask it be marked S10 for identification.

(Bundle of bills marked S10 for identification.)

Cross-examination.

20 By Mr. Harris:

Q. Have you examined this package?

A. Yes, sir.

Q. Gone through it?

A. Yes, sir.

Q. And you say then it contains these notes which you put paper on the back of?

A. Yes, sir.

Q. Is the full amount in that package that was
30 originally there?

A. No, sir.

Q. How much original was there?

A. Five thousand dollars.

Q. Now was that five thousand dollars in addition to what the paying teller gave him?

A. Yes, sir.

Q. You say you saw him wrapping it up?

A. Yes, sir.

Q. What do you mean by that?

A. Why he was wrapping it in brown paper, wasn't using the grip that day.

Q. It wasn't newspaper?

A. No, it was banking paper we use ourselves there in a roll.

Q. He wrapping it up to carry it away?

A. Yes, he was wrapping it up to carry.

10

Q. How far away were you when he went out?

A. I was around to the other side of the bank and I didn't see him go out.

Q. Did you see him finish wrapping it up?

A. I did not.

Q. You don't know whether he put a newspaper around it or not?

A. No, I don't. There was paper underneath the bundle, he had put on top.

Q. What kind of paper was that?

20

A. Brown paper.

The Prosecutor: Is there any objection to the introduction of this as an exhibit in the case, Mr. Harris?

Mr. Harris: No.

The Prosecutor: Counsel for the defendant says no, and I ask it be accepted as an exhibit in the case.

The Court: The package of bank notes will be received in evidence and marked S10.

(Bundle of bank notes marked Exhibit S10.)

JOHN W. ROCKAFELLOW, SWORN.

By the Prosecutor:

Q. Where do you live?

A. Palmyra, New Jersey.

Q. Where are you employed?

A. First National Bank, Camden.

10 Q. In what capacity?

A. Individual ledger bookkeeper.

Q. Did you know David Paul?

A. I did.

Q. How long had you known him?

A. About two years.

Q. Did his duties as runner for the Broadway Trust Company bring him into contact with you on October the fifth of this present year?

A. It did, yes, sir.

20 Q. What time of the day and under what circumstances?

A. It was between one-thirty and two o'clock in the afternoon.

Q. And for what purpose?

A. He left an envelope containing checks with me.

Q. Where?

A. With me in the First National Bank.

Q. Where is the First National Bank located?

30 A. Front and Market Street.

Q. Did you hold any conversation with him?

A. No, sir.

Q. How long was he in the bank?

A. Why about one minute, I guess.

Q. Do you know where he went when he left the bank?

A. I do not.

No cross-examination.

ALBERT HAWS, sworn.

By the Prosecutor:

Q. Where do you live?

A. Philadelphia, 788 North Twenty-third.

Q. Where are you employed?

A. Girard National Bank.

Q. In what capacity?

A. Receiving teller.

Q. Where is the bank located?

A. 136 South Third.

Q. In what city?

A. Philadelphia.

Q. Did you know David Paul?

A. Yes, sir.

Q. Did his duties as runner of the Broadway Trust Company bring him in contact with you?

A. Yes, sir.

Q. For what purpose?

A. We were acting as their correspondent or collecting agent, that is collecting agent, they would bring checks in to us on different cities throughout the country, and we would collect those checks.

Q. Did the duties at any time require him to bring anything other than checks?

A. Yes, sir, money, currency.

Q. Did Mr. Paul visit your bank on October the fifth and deliver checks and forty thousand dollars in cash?

A. No, sir.

Cross-examination.

By Mr. Harris:

Q. How many days a week did he come there?

A. Every day.

Q. Bring cash and checks on each occasion?

A. Always checks but not always cash, sometimes
10 both.

GEORGE W. DUNCAN, SWORN.

By the Prosecutor:

Q. Mr. Duncan, where do you live?

A. 633 Grays Ferry Avenue, Audubon, New Jer-
20 sey.

Q. Where were you on Saturday afternoon, Oc-
tober the sixteenth, 1920?

A. In the vicinity of Fisher's Dam, Burlington
County.

Q. What was the purpose of your mission in that
locality?

A. I was up there on a little duck hunting trip.

Q. Who was with you?

A. Mr. William Cutts, Mr. C. B. Tustin, and Mr.
30 John Cutts, of Tabernacle, Burlington County.

Q. Did anything happen during that trip that
afternoon out of the ordinary?

A. Well, we had occasion to go in another direc-
tion and we noticed automobile tracks that seemed
unusual.

Q. What else did you notice?

A. We came upon a spot where there were numerous footprints which looked suspicious, and Mr. John Cutts remarked ——

Mr. Harris: I object to what he remarked.

The Court: Yes, don't tell.

Q. Mr. Duncan, you are not permitted to say what was said by any of your party between yourselves. 10
As a result of the footprints you saw, what did you do?

A. We investigated.

Q. What did your investigation reveal?

A. We found a body.

Q. Where?

A. In the grove.

Q. Where was the grove with relation to Irick's Causeway, Burlington County? 20

A. Distance from the causeway?

Q. Irick's Causeway.

A. Where was the grove?

Q. Yes.

A. Close by Irick's Causeway.

Q. What did you do which gave you the information that it was a grave?

A. Mr. William Cutts got out of the wagon and investigated. We found footprints leading into the woods about fifteen yards. 30

Q. Did you go in there also?

A. Not until he thought it looked as though something had been buried.

The Court: Don't state what Mr. Cutts said.

Q. You are not permitted to say what Mr. Cutts said. As the result of what was said by Mr. Cutts, what did you do?

A. I went in and dug.

Q. What did you find?

A. A body of a man.

Q. Describe to us the digging and what revealed the fact that it was a man to you.

A. Well, I dug down the length of my arm, and didn't strike anything, in one spot, and I got over a little nearer to that, and Mr. Tustin and I together dug, and we came across something that appeared
10 to be clothing with something in it, which we thought were a deer, and we went on in further and that investigation revealed the body.

Q. How was it revealed?

A. Why, we got hold of it, to pull it out, and the clothing tore, exposing the underwear.

Q. Did you continue your digging?

A. Yes.

Q. To what extent?

A. We tried to lift the body up to the top of the
20 ground, and the odor was so bad that I couldn't go any further, I stopped.

Q. Will you describe to us the kind of grave that it was as to size?

A. I judge the grave was possibly two and a half by three feet long, possibly three feet deep to the bottom.

Q. And what position was the body in?

A. The body was on its back, the arms in this position (indicating arms extending upwards) and the
30 feet drawing up to the head.

Q. Was there anything unusual about the legs?

A. The legs was tied with a rope.

Q. Is that the rope?

A. It looks like the rope.

The Prosecutor: I ask that it be marked Exhibit S11 for the State.

The Court: Any objection, Mr. Harris?

Mr. Harris: Well, if the gentleman will say that he is going to identify it as the rope, I have no objection.

The Prosecutor: He says it looks like the rope.

Mr. Harris: I know, but that is not enough, is it?

The Prosecutor: Well, you object to it?

10

Mr. Harris: I object to it unless you identify it.

The Prosecutor: I ask that it be marked for identification.

Q. Did you take the body out of the grave?

A. No, we did not.

Q. Where was the coat of Paul?

A. The coat, when the body was taken out of the grave was in the bottom of the grave, which looked as though it had been put in before the body.

20

Q. Was anything found in the coat?

A. Yes.

Q. What?

A. An envelope containing quite a large roll of checks.

Q. Was Exhibit S7, this slip which I show you, with the checks?

A. That looks like the slip that I saw with the checks.

30

Q. What time in the afternoon did you find the body?

A. Quarter past twelve.

Q. Will you describe to me the character of the locality in which this body was found?

A. Well, it was what I call a dismal location in the swamps, a small road running through there, which is used, I understand, at times by the mail and various people living up in that locality.

Q. Were there trees there?

A. Yes, small trees.

Q. Was there underbrush?

A. Some, yes.

Q. And to what extent?

10 A. Well, most swampy ground has considerable underbrush.

Q. Well, I am asking you what was the extent of the underbrush at this particular place?

A. Well, I would say like ——

Q. Surrounding Irick's Causeway?

A. Well, considerable underbrush, very heavy.

Q. Did you have an opportunity to see the wounds of David Paul?

A. Yes.

20 Q. Will you describe what you were able to see?

A. I saw one large cut in the head, in the back of the head on the forehead here, and in the crown of the head there was a cut in the skull, exposing the brain, and the side of the face was bruised up considerably.

Q. Did the soil in that locality give any indication as to where the body had been at any other time than when it was in the grave?

30 A. Well, I saw in the roadway there was evidence as though something had been dragged along in the rut which was made by the wheel.

Q. Was there any place in the underbrush that attracted your attention?

A. Yes, there was evidence in there, looked as though someone had been in there.

Mr. Harris: Now, I object, if the Court please; just the condition, not what it looked like. I haven't objected —

The Court: The witness can state what he observed.

The Prosecutor: But not what it looked like?

The Court: He can state what he observed. Of course, it is a common expression what it looked like, but I will see that the witness only states — 10

Mr. Harris: The Court will recall that I have not objected to a large number of leading questions, but I think now we have come to a point where I should object.

The Court: I will direct the witness simply in his answers to confine himself to what he observed and not to express any opinion upon what he observed. 20

Q. Will you answer the question, please, with the admonition that the Court has given you—confine it to what you observed?

A. I observed a spot in the swamp showing evidence of someone being in there and possibly starting to dig, but due to the roots, and so forth, they could not make very good progress. 30

Cross-examination.

By Mr. Harris:

Q. What were you doing there?

A. What was I doing there? I was going from one location of gunning to another.

HARRY PAUL, SWORN.

By the Prosecutor:

Q. Where do you live, Mr. Paul?

A. Mount Holly, New Jersey.

Q. Are you a son of David Paul?

A. Yes, sir.

Q. Did you see his body on October 16th?

10 A. The night of the 16th, yes, sir.

Q. Where?

A. In the morgue at Vincentown.

Q. Was the body that you there saw the body of your father, David Paul?

A. Yes, sir.

Q. I show you a wallet and ask if you can identify that as the property of your father?

A. That is father's; I bought it for him myself.

Q. Do you have knowledge as to what the wallet
20 contained?

A. No, sir.

Q. In the way of identification cards or papers?

A. The only identification cards that I know that he had was a fishing and gunning license with him.

The Prosecutor: I ask that this wallet be marked as Exhibit S12 and I offer the same in evidence at this time.

30 The Court: It will be received in evidence and marked Exhibit S12.

(Said wallet so marked.)

Q. Do you know whether your father had an identification card which he was in the habit of carrying?

A. I don't know of any other identification cards outside of this fishing license.

Q. I show you pieces of torn paper marked Exhibit S13 for identification and ask that you go through these papers and ascertain whether or not there is anything there that you can identify as the property of your father. I would just add to that question, or anything that appears in the handwriting of your father?

A. There is a part of a receipt from the Junior Mechanics, where he has paid dues into the Junior Mechanics; that one there is part of a receipt of the Junior Mechanics, paid to William Venable. 10

Q. Only answer the question, Mr. Paul. Now, just tell us generally what you find there that indicates property of your father to your knowledge.

A. There is a receipt made out by William Venable where he has paid dues into the Junior Mechanics, Thomas Jefferson Council, 138.

The Court: Just speak a little louder, Mr. Paul. 20

Q. You need not wait for the stenographer; he is getting it down.

A. Also a part of his fishing and gunning license, which he had made out—to go fishing with me up in Mount Holly while he was on his vacation.

Q. Do you find any papers there showing anything in his handwriting or figures that are in his handwriting? 30

A. There are some figures in his handwriting.

The Prosecutor: I offer the contents of this package containing torn pieces of paper, some of which have been designated by the witness, in evidence. I understand there is no objection to their introduction.

The Court: They will be marked, there being no objection to their introduction on the part of the defendant, as Exhibit S13.

The Prosecutor: There is no objection to my getting another envelope to put those in, is there?

Mr. Harris: Not at all.

10 The Prosecutor: I will substitute an envelope for that or one to contain it.

Q. I now show you the contents of another envelope which is marked Exhibit S14 for identification.

Q. Looking over these pieces of torn paper, can you find anything in the handwriting of your father, and being his property?

20 (Article shown witness being the contents of envelope marked S4 for identification.)

Q. I would suggest, Mr. Paul, as you examine these articles if you do find anything that you can identify from your own knowledge that you may mention it so it may go into the record as we proceed.

30 A. There is a piece of paper in his handwriting, also this one. There is his signature. That is all I recognize outside I knew he carried a time table to Mount Holly, and that one is a Mount Holly time table.

The Prosecutor: I likewise offer this exhibit in evidence. I have shown it to counsel and I understand there is no objection.

The Court: Being no objection the papers will be offered in evidence and marked Exhibit S14.

(Paper received in evidence and marked Exhibit S14.)

Cross-examination.

By Mr. Harris: 10

Q. When did you last see your father alive?

A. On the last day of September.

DR. FRANK O. STEM, SWORN.

By the Prosecutor:

Q. Doctor, where do you live? 20

A. Berlin, New Jersey.

Q. Do you hold any official position in the County of Camden?

A. County physician.

Q. How long have you held that office?

A. Eight years.

Q. How long have you been a practicing physician?

A. Since 1891.

Q. Did you make an examination of the body of David Paul? 30

A. I did.

Q. When?

A. October the seventeenth, Sunday afternoon.

Q. Where?

A. At Vincentown, New Jersey.

Q. At what place in Vincentown?

A. The morgue, undertaker's morgue in Vincentown.

Q. Who was present with you?

A. Dr. Longsdorf, county physician of Burlington County and the undertaker.

Q. Will you describe to us what, if any, wounds you found on the body of this David Paul?

10 A. Yes. The wound that caused death was a compound fracture of the skull. There was an opening in the skull about five inches long on the left side, about two inches above the ear, just about five inches long, extended down into the brain tissue. That was the direct cause of death. There was an incised wound on the inner side of his right arm, forearm, about four inches above the wrist, about an inch and a half long, quite deep.

20 Q. Will you show by reference to your arm where that was?

A. Yes, it is about here. (Indicating above the wrist.) Right arm. There were five incised wounds on top of the head, on the left side, following over and into, two inches long, and went down to the bone; there was a contusion of the right side of the face, high up in the temple region down from the lower jaw, quite a large swelling there, a large contusion, and the crevis of the lower jaw was broken at that point.

30 Q. You saw the jaw was broken at that point?

A. Yes, sir.

Q. Are you able to say from the wounds the character of the instrument with which they could have been inflicted?

A. The injury to the side of the face seemed like a blunt instrument, the smaller wounds on top of the

head apparently by some sharp instrument, looked like incised wounds, as though made with a knife.

Q. Was it such wounds as could have been made with a piece of iron spring ten or twelve inches long, and two or two and a half inches wide, and half an inch thick?

Mr. Harris: I object.

The Court: I suppose your objection is that it is a leading question. The question is somewhat leading, Mr. Wolverton, so if you will just reframe it. 10

Q. Can you say the character of instrument with which the wounds over the head might have been inflicted?

A. The large wound that caused death?

Q. Yes.

A. Yes, the opening in the skull is about three-quarters of an inch wide, and might have been inflicted with an instrument that wide. 20

Q. By an instrument what?

A. That wide, three-quarters of an inch wide.

No cross-examination.

ELLIS PARKER, SWORN.

30

By the Prosecutor:

Q. Where do you live?

A. Mt. Holly.

Q. Do you hold any official position in the county of Burlington?

A. County detective.

Q. How long have you held that position, Mr. Parker?

A. Twenty-seven years next spring.

Q. Did you know David Paul?

A. Yes, sir.

Q. Did you see his body on Saturday afternoon, October the sixteenth?

A. I did.

10 Q. Where and under what circumstances?

A. Well, I was notified by telephone that a body was found near Tabernacle, and I went there, and near Irick's Causway found a portion of a body above the dirt.

Q. Will you describe just the condition of the body when you saw it as to wounds?

A. Well, the body was in a doubled up position, and I got a rope that was attached to the feet and two or three other fellows helped me to pull it out
20 of the ground.

Q. I show you rope which has been marked Exhibit S11 for identification in this case and ask if that is the rope that was around the legs of Paul?

A. A rope exactly like that.

Q. Is that the rope?

A. That looks like it to me.

Q. Is there any doubt in your mind?

A. There is no doubt, no.

Q. What did you do after you found the body?

30 A. Well, when I pulled the body out of the ground and looked at it I at first could not recognize the man. I started to make an examination and I found a ring on his right hand with an initial P on it. I removed it, and then I found cuff buttons with the initial P. I removed those, and then I sent a fellow after a shovel, and we dug out the grave and below

the body, a little to one side, was a coat, and in this coat was an envelope containing a lot of checks. At the sight of the checks of course I recalled who the man was, and on a closer observation I saw it was Paul.

Q. What else did you find in the grave beside the body?

A. The body, well, I found—that is, on the man's person?

Q. No.

10

A. There was a coat and an envelope containing a lot of checks.

Q. I show you a slip marked Exhibit S7, and ask if that was found by you at that time?

A. This was wrapped around the checks.

Q. You mean Exhibit S7?

A. Yes, sir, and they were all in this envelope marked, "Broadway Trust Company."

Q. Now, I show you Exhibit S4, and ask you to describe what that picture is?

20

A. This is a road leading from Tabernacle to Sooy's Corner by way of Irick's Causeway.

Q. Does that picture correctly picture the surroundings at Irick's Causeway?

A. It does.

Q. I show you Exhibit S5 and ask you if you will inform us what that is.

A. Why, yes, this photograph here is a photograph taken from this same road that I have described, showing a hole in the ground where the body was taken from.

Q. And does that view correctly picture the locality at that point?

A. Yes, it does; it is all right.

Q. I now show you photograph marked Exhibit S6, and ask what that describes?

A. That shows a photograph of the hole where the body was taken from.

Q. Does that photograph correctly show the conditions at the time this body was found at that locality?

A. With the exceptions that the underbrush is mashed down here more than it was at that time.

Q. Will you describe what, if any, wounds were found on the body of David Paul?

10 A. Well, the first thing I noticed was a long cut in the wrist, I think the right wrist; then I noticed where a blow had been on this side of the head, the left side in front, another one here, and on the rear of the head, extending from the top, a long deep cut. Outside of that I made no examination.

Q. Did you observe any unusual marks in the soil in this vicinity where the body was found?

Mr. Harris: I object; I think "unusual marks"
20 probably Mr. Parker —

The Court: Well, that is perhaps a characterization; if you will just omit the word "unusual" and ask what marks, if any, the witness observed.

Mr. Harris: I have no objection to that question.

The Prosecutor: I will endeavor to use the same language.

30 Q. What, if any, marks did you see in the soil at that vicinity that attracted your attention?

A. Well, leading from the bridge toward where the body was buried, that is, going in the direction toward Tabernacle from the Sooy Place on the right-hand side, right-hand rut, rather, there had

been something dragged up that road, up to within about twenty-five feet of where the body was.

Q. Were there any other marks that attracted your attention?

A. As to the soil?

Q. Or ground, whatever you would wish to call it?

A. Well, leading from the road south the brush had been broken, leading into the creek above the bridge in one place, and then it had been broken a few feet further from it in another place, indicating to my mind — 10

Mr. Harris: I object to indicating.

The Court: No, you must not state what that indicated to your mind. Just state what you observed, Mr. Parker.

Q. How far in was the brush broken at the point which you first referred to as along this creek? 20

A. Well, anywhere from twenty to twenty-five feet.

Q. And the creek that you speak of was how much of a creek?

A. Well, it was a stream of water, at the end of that particular place where the brush was broken it was nearly two feet deep in water, but considerable broken limbs around there.

Q. Were there any marks on the ground at the finish of where the brush seemed to be broken that you have spoken of as being twenty or twenty-five feet in from the road? 30

A. Yes, the ground showed there had been something dragged there. It also showed where someone had attempted to dig a hole with a shovel in the roots.

Q. How near —

Mr. Harris: If your Honor please, I very much prefer he would not say, "as if someone had been digging with a shovel." I think I am entitled to have it stricken out.

The Court: No, I think that question has been answered; I think that is proper.

10

Mr. Harris: May I have an exception?

The Court: Yes, you may have an exception.

Q. How far was the grave from the place which you have described alongside of the creek where the underbrush was broken down and giving evidence of something having been dragged?

20 A. I couldn't tell with any certainty, because I didn't measure it, but in my judgment it was a hundred yards.

Q. Did you make an effort or an investigation of that locality as to any articles that might be found?

A. I did.

Q. What did you find?

A. Well, there was—that day I found some pieces of paper that had been torn up and thrown away.

Q. I show you Exhibit S13 and also Exhibit S14, and ask if they are the pieces of paper that you refer to?

30

A. No, the first pieces of paper that I referred to I gave to you, Mr. Wolverton—that was wrapped up in the handkerchief along with the cuff buttons and ring. Those were found later.

Q. The witness is shown the contents of a handkerchief marked Exhibit S15 and asked if they are the papers he refers to?

A. Yes, sir.

Q. And will you tell us what the other articles are which seem to be a ring with the letter "P," cuff buttons with the letter "P," a watch, a penknife, a watch chain, a stickpin?

A. The penknife, the pencils, the watch and chain, the cuff buttons and ring I took from the body of David Paul or from his clothes. Those papers I found, and there was some of them found by others in my presence, given to me immediately, on the south side of the road near where the body was found. 10

The Prosecutor: I offer these in evidence.

Mr. Harris: I have no objection.

By Mr. Harris:

Q. Was that on the day the body was found?

A. Yes. 20

The Court: Articles in the handkerchief marked Exhibit S15 received in evidence.

(Articles referred to admitted in evidence and marked Exhibit S15.)

By the Prosecutor:

Q. What about the contents of the two envelopes marked Exhibits S13 and 14? 30

A. The contents of this envelope were found by myself and some other fellows on the eighteenth, two days later. (Referring to Exhibit S13), S14 on the nineteenth.

Q. Will you describe where these pieces were picked up?

A. They were picked up to the right of the road, leading from Irick's Causeway to 'Sooy's place, Sooy's corner, covering a distance of nearly a mile.

No cross-examination.

10) FRANK BRADDOCK, SWORN.

By the Prosecutor:

Q. Mr. Braddock, where do you live?

A. Medford, New Jersey.

Q. How long have you lived there?

A. Practically all my life.

20 Q. I show you a piece of automobile tape marked S16 for identification and ask if you can identify that tape and inform us the circumstances under which it came to your attention?

A. Yes, sir.

Q. Will you inform us, give us the information I have requested, where was it found by you?

A. About fifty or sixty feet from Irick's Causeway, toward Tabernacle.

Q. On which side of the road?

A. On the right-hand side going towards Tabernacle.

30 Q. That would be on this side of the causeway?

A. Yes.

Q. And where was it as to the location of the road?

A. It possibly laid eighteen inches or two feet in from the rut on the side.

No cross-examination.

SAMUEL GOODMAN, SWORN.

By the Prosecutor:

Q. Mr. Goodman, where do you live?

A. Westville, New Jersey.

Q. Westville, New Jersey?

A. That is right.

Q. On about October the fifth did you see the defendant, James, at your place of business?

10

A. Yes, sir, he was there.

Q. For what purpose did he come there?

A. He bought a collar and shirt.

Cross-examination.

By Mr. Harris:

Q. Did you see him on that night?

A. Well, I seen him many times before that too.

20

Q. Did you see him on that night?

A. I can't tell exactly about seeing him that night, of course you know if I —

Q. He didn't buy the collar and shirt off of you?

A. If I would see the shirt I could tell.

Q. Did he on that occasion buy the collar and shirt off of you?

A. I guess he did, he bought a shirt, if I would see the shirt I could tell more.

The Court: The question is just whether he bought a shirt, not what shirt he bought, but whether he bought a shirt on that night?

30

A. Well, he was many times in my place before that, that is the reason I couldn't tell exactly what

he bought, because I have seen him many times, but if I would see the shirt I could tell exactly if he bought that night.

Q. On the night of the fifth of October did you sell him a shirt or not?

A. I cannot remember.

Q. You cannot remember?

A. No.

Q. You don't know whether he bought one that night then?

A. No, I don't.

Re-direct examination.

By the Prosecutor:

Q. Are you able to determine it in any way by when your daughter started to school at the Camden Commercial College?

20 A. That was —

Mr. Harris: If the Court please, if he did not sell the shirt to him, I don't care how he fixes the date by anything else.

The Court: The question will be allowed. The Prosecutor has a right to refresh his recollection as to the date.

30 Mr. Harris: But he says he didn't sell him any shirt himself.

The Court: I don't think that his testimony would perhaps bear that interpretation. It is I think a permissible question to endeavor to refresh his recollection, if it can be refreshed, Mr. Harris, as to the time.

Mr. Harris: That being a matter of discretion, of course I can't take any exception.

Q. With the matter which I have called to your attention, for the purpose of refreshing your memory, can you now say whether this defendant purchased a shirt that night in your place?

A. Well —

Mr. Harris: I object because it is leading. It is 10 too leading a question.

The Court: I think the question is perhaps a little leading. It can be brought out by a question, Mr. Wolverton, just as to whether he is able by calling his attention to this fact to recall the night.

Q. Can you recall the night to which we are referring by the fact of your daughter going to the Camden Commercial College?

20

Mr. Harris: I again interpose an objection.

The Court: The question will be allowed.

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal) 30

A. Well, my daughter was started in the next day, she started to go in Commercial College in Camden, and she told me she remembered, she was there at that time, she was in the next room, when he was

in the store, and he bought a shirt, but I cannot remember exactly, but she stated she seen him in the store. That is all there is to it.

Q. Did you on October the fifth sell this shirt to the defendant?

Mr. Harris: I object to that as being leading.

The Court: The objection will be sustained.

10

Q. Did the defendant make any purchase of you on the evening of October the fifth?

A. Of course I cannot remember when people comes around and buys something, a shirt or something like that, but my daughter, she said he was there at that time and I sold the shirt to him.

Mr. Harris: I object to that.

20

The Court: This isn't what the daughter told him, I think. Is this what your daughter told you? Don't state what your daughter told you. I thought it was what the defendant had told you.

A. Then I cannot say exactly if I would see the shirt, then I could say exactly, if I did or not.

Q. Is your daughter here?

A. Yes, sir.

30

No cross-examination.

Mr. Harris: Now, if the Court please, I would like to have all that testimony stricken out for the reason that it is based upon what his daughter told him.

The Court: No, I think not. I will examine the testimony when it is written up and rule on your motion at that time. I will examine all of the testimony. The witness did not speak distinctly, and there may be portions of it that I didn't get. He was cautioned not to say anything that his daughter told him and if there is anything of that kind in it, after I have it written out, I will allow the motion, but I want to see the testimony first.

The Prosecutor: If your Honor please, I think I have overlooked a question to Mr. Braddock. I thought he had answered it, and my attention has been called to the fact ———

The Court: You may recall Mr. Braddock.

20

FRANK BRADDOCK, recalled.

By the Prosecutor:

Q. On what date did you find the tape marked Exhibit S11 which you have referred to?

A. On the 17th of October.

No cross-examination.

30

REBECCA GOODMAN, SWORN.

By Mr. Straw:

Q. Miss Goodman, where do you live?

A. Westville, New Jersey, 118 Broadway.

Q. Are you the daughter of Samuel Goodman who has just testified?

A. Yes, sir.

10 Q. Do you know the defendant, Frank James?

A. I do.

Q. Have you seen him before?

A. No, but the night he was in the store.

Q. When was that?

A. October 5th.

Q. How do you fix that date?

A. It was the second day that I had started to go to business school in Camden.

20 Q. Will you speak just a little louder, please, Miss Goodman? (To Mr. Harris.) Did you get that answer—did you hear that?

Mr. Harris: No, I did not.

The Court: Now, will you repeat the answer, Mr. Stenographer?

The Witness: It was the second day that I had entered to go to the business school in Camden.

30

Q. Who was present there beside yourself and Mr. James at that time?

A. Just my father.

Q. What was Mr. James doing there?

A. He was purchasing something, I did not know what it was until after my father had told me.

Mr. Harris: I did not hear that.

(Answer of the witness repeated.)

Q. About what time of the day was this?

A. Between five and half-past six.

Mr. Harris: Do I understand that she has said that he had purchased an article or a shirt?

Mr. Straw: Purchased something, she did not know what. 10

The Court: 'She didn't say what it was.

Mr. Harris: Until after her father had told her; now, I move, sir, that whatever her father told her be stricken out.

The Court: There is nothing in the answer that states what her father told her, as I understand the answer; will you read the answer, Mr. Stenographer? 20

(Former answer of the witness on this subject was then repeated by the stenographer.)

No cross-examination.

HERMAN GOLDBERG, SWORN.

By Mr. Straw:

- Q. Mr. Goldberg, where do you live?
A. 499 Newton Avenue.
Q. In what business are you engaged?
A. Tailor.
Q. Do you know Frank J. James?
10 A. Yes.
Q. The defendant in this case?
A. Yes.
Q. Do you know Mr. James?
A. I know Mr. James.
Q. How long have you known Mr. James?
A. About seven or eight years.
Q. On October 5, 1920, did you see Mr. James?
A. Yes, sir.
Q. At what time of the day?
20 A. About four o'clock in the afternoon.
Q. And where did you see him?
A. He come around to my place to have his suit
out.
Q. What do you mean, to have his suit out?
A. To have his suit of clothes cleaned and pressed,
but that date he was come in to have his suit. I
fold him up the suit and he paid the price for the
cleaning, and he took it out.
Q. Did you have any conversation with James at
30 that time?
A. I always took care of his clothes and pressed
them.
Q. Mr. Goldberg, can you identify that? (Show-
ing witness clothing.)
A. That is James'.
Q. How do you know it is James' suit?
A. I know his suit; I pressed them several times.

Mr. Straw: I offer this for identification, Mr. Harris; may I have it marked.

Mr. Harris: For that purpose I have no objection.

(Said clothing is marked Exhibit S17 for identification.)

10

Cross-examination.

By Mr. Harris:

Q. When was the last time that you pressed that suit?

A. Why, I pressed it a month before he came in.

Q. That was not the suit that he took away?

A. No, this isn't the suit; the suit was a dark blue with a stripe.

20

JOHN H. COLLINS, SWORN.

By Mr. Straw:

Q. Mr. Collins, where do you live?

A. Mount Holly.

Q. On November 14th, were you in the vicinity of Irick's Causeway? 30

A. Yes, sir.

Q. Who were you with, if any person?

A. Game Warden Morton.

Q. What were you doing there?

A. We were looking for Mr. Paul's wallet and what other evidence we might find.

Q. Did you find anything there that time?

A. Mr. Morton found parts of a door covering.

Q. Where were you when Mr. Morton found parts of the door covering?

A. I was on the opposite side of the road from him.

Q. How far from him?

A. I would judge ten or fifteen feet.

Q. Did you examine it at that time?

10 A. Yes, sir.

Q. I show you the parts of a covering and ask you if you can identify that?

A. I believe they are the pieces.

Q. Well, are they the pieces?

A. There is no doubt in my mind.

(Said pieces of covering are offered for identification.)

20 Mr. Harris: I want to see them.

Mr. Straw: I will ask that they be marked for identification, Exhibit S18.

(Said articles so marked.)

No cross-examination.

30 ROBERT L. KNOX, SWORN.

By Mr. Straw:

Q. Where do you live, Mr. Knox?

A. 607 Pine Street.

Q. Camden?

A. Yes, sir.

Q. In what business are you engaged?

A. The taxicab business.

Q. Where?

A. Camden, Market Street Ferry.

Q. Do you know Frank James?

A. Slightly.

Q. Do you know him when you see him?

A. Yes, sir.

10

Q. Did you see him on October 5th, this year?

A. Well, I can't say as I did. I hauled a couple of gentlemen —

Mr. Harris: I object; the question has been answered.

The Court: Well, yes; there will have to be another question, Mr. Straw; frame another question.

20

Q. Did you at any time have Mr. James as a passenger in your taxicab?

A. Well now, I had a job—I was just trying to tell you, on October 5th, or somewhere near there, the early part of the week, the first part of the month.

Mr. Harris: I object; somewhere near there is not —

The Court: No, I think the witness is giving his best recollection and it is proper for him to answer the question. I may ultimately strike out the evidence, but it is proper that the question should be answered in that way.

Mr. Harris: "Or somewhere near there" is what I object to, because if this testimony was —

The Court: Well, you have an opportunity of cross-examining later on.

Mr. Harris: Will the Court listen to me just a moment?

10 The Court: I will listen to you, certainly, Mr. Harris.

Mr. Harris: Testimony like this once heard by the jury will always have its effect if it is afterward stricken out; the Court may order the testimony stricken out and they may tell the jury to disregard it, but my experience has been that that order from the Court does not remove the impression of the testimony, and I would like him to fix the time
20 exactly before he goes on further with the testimony.

Mr. Straw: Well now, if your Honor please —

The Court: I have allowed the question.

Mr. Straw: Will you permit the question?

The Court: I have allowed the question. The
30 stenographer will repeat the question.

Mr. Harris: And note an exception, may I have an exception?

The Court: Yes.

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

(Former question and answer repeated by the stenographer.)

Mr. Harris: I object particularly to the answer.

10

The Court: I understand that.

Mr. Straw: You may answer the question.

A. Well, I just don't know the date; I don't recall the date exactly.

Q. I asked you whether you had had Mr. James as a passenger?

A. Yes.

Q. Tell me about it?

20

A. I had him at the Federal Street Ferry, and from the Federal Street Ferry I took him to Kaighns Point Ferry, and when he got there he said that he did not see the party he wished to see, so to take him right across the river, which I done, took him to 16th and Market Street, Philadelphia, midway of the square, and that is where he discharged me.

Q. Was anyone with him?

A. Yes, sir.

30

Cross-examination.

By Mr. Harris:

Q. And that was the nearest you can fix the date?

A. Yes, sir.

Q. And how near do you fix it?

A. Why, the early part of the week in the month of October, in the earliest part of the week, the first week in October.

Q. How do you know it was James?

A. Why, I know him slightly but I did not recognize him at that time.

Q. Now, when did you first recognize him?

A. When did I first recognize him?

Q. Yes.

10 A. I did not recognize him at all.

Q. You haven't yet, have you?

A. Not as a passenger, no.

Q. Well, how did you know it was James that you had in the machine that night?

A. I didn't say I knew it was him.

Q. You don't know whether it was him or not, do you?

A. No.

20

Mr. Harris: Now, I move that the testimony be stricken out; he don't know whether it was James with him or not and he don't fix the date.

The Court: The testimony will stand; it is of practically no value, but according to your statement when testimony is once offered there is no use striking it out; now you make a motion to strike it out.

30

Mr. Harris: If your Honor please, I always have a right to make a motion to strike out, but that is my experience.

The Court: All right; you are better off with it in.

THOMAS F. HELLINGS, SWORN.

By Mr. Straw:

Q. Mr. Hellings, where do you live?

A. 2340 Montrose Street, Philadelphia.

Q. In what business are you engaged?

A. I was in the taxicab business.

Q. On October the fifth of this year did you see Frank James?

10

A. I did.

Q. Where?

A. Broad Street Station.

Q. When?

A. On or around ten thirty.

Q. I didn't hear what time.

A. On or about ten thirty in the evening.

Q. How did you happen to see him there?

A. Him and another man engaged the cab.

Q. Where?

20

A. They engaged the cab in Broad Street Station.

Q. To go where?

A. Well, they said they wanted to go to the Arlington, I didn't know where the Arlington was, but I thought it was up around Diamond Street.

Q. Did you go with them?

A. I went up around the circle, and up Broad Street up to Diamond. I couldn't find it.

Q. Then where did you go?

30

A. Then I went down Sixteenth.

Q. To where?

A. To Fairmount Avenue and Broad, to Eighteenth.

Q. To where?

A. To Riley's saloon, that is Eighteenth and Shamokin.

Q. What happened there, if anything?

A. They went inside, he wanted to get a telephone to see if he could find this Arlington, and went inside.

Q. How long did they stay?

A. They stayed there about pretty nearly two hours, I guess.

Q. Then what happened?

A. Well, I took them from there over to Green
10 Street.

Q. Did they meet anyone there?

A. Met a couple of ladies.

Q. I am speaking of Riley's saloon to which you refer.

A. Yes, sir, they met a couple of ladies there.

Q. What did they do while they were in the saloon?

Mr. Harris: I object to that unless he was inside
20 there with them.

The Court: Of course it is what the witness saw, don't say anything you didn't see.

A. I am not.

Q. What did the defendant James and his companion do in the saloon, Mr. Hellings?

A. Well, they were drinking.

Q. And you say they stayed there two hours?

30 A. Around pretty nearly two hours, around an hour and a half or two hours, I don't exactly remember which, but I consumed some time in going up to North Philadelphia and then down to there.

Q. How did they meet their companions?

A. Well, there was one of them standing in the doorway.

Q. Where did they go from there?

A. They went to Green Street.

Q. I beg pardon?

A. Green Street.

Q. Now while they were in the saloon did they exhibit any money?

Mr. Harris: I object on the ground as being leading.

The Court: That is perhaps a leading question, but the question is allowed—suppose you reframe it and ask what they did exhibit, if anything.

10

Q. What, if anything, did they exhibit in the saloon, Mr. Hellings?

A. Well, they passed money between them, paying for drinks.

Q. What else did they do in there, if anything?

A. That is all, talking.

Q. Did you see the denomination of the money that was passed?

20

A. I didn't pay much attention to what denomination it was.

Q. Was much or little money passed?

A. Much what?

Q. Much or little of money exhibited?

A. Well, the other man Schuck, he exhibited a roll, but I didn't see very much that James held out, he had three or four loose bills, but he didn't have a roll in his hand.

30

Q. What were they doing with the money?

A. Paying for the drinks.

Q. Anything else?

A. Give me twenty dollars.

Q. Who gave you twenty dollars?

A. James.

Q. What kind of a bill was it, what kind of money was it?

A. A twenty dollar bill.

Q. After you left the saloon where did you go?

A. To Green Street.

Q. I beg pardon?

A. To Green Street.

Q. Did the companions accompany them?

10 A. They did.

Q. Where did you go then?

A. I went in to the garage.

Q. You speak of the twenty dollars being given you by Mr. James, was that in payment of the taxicab fare?

A. That was the taxicab fare, that wasn't the amount of the fare, but that was given me for to include the bill.

Q. How much was the amount of the bill?

20 A. Well, I don't know exactly, around somewhere around seven dollars, seven or eight dollars, I don't know which.

Q. I didn't hear the answer.

A. Somewhere around seven dollars, seven or eight dollars, I can't exactly say.

Q. Who went into the house on Green Street?

A. Two men and two girls.

Q. Was the defendant one of the two men?

A. He was.

30 Q. Did you see them any more that evening?

A. I did not.

Q. Did you see them after that?

A. No, I did not.

Q. Did you have any instructions further?

Mr. Harris: From whom?

Q. From James?

A. Well, I was to meet him with the car.

Q. When?

A. I was to meet him in the morning.

Q. Where?

A. At this house on Green Street.

Q. For what purpose?

A. Well, they wanted to go to New York.

Q. Did you meet them?

A. I did not.

Q. Why?

A. Couldn't get the car.

Q. I beg pardon?

A. I couldn't get the car.

Q. Did you report that fact to them or to him,
Mr. James?

A. No.

Q. Did you see them again after that night?

A. After that night, no.

Q. What time was it, Mr. Hellings, when you left
them at that house? 20

A. Why, that was around half-past twelve, I
judge, about half-past twelve, maybe a little later,
because I only had about maybe between fifteen or
twenty minutes to make the garage. My time was
up at one o'clock.

Q. Were you told by the defendant how they got
acquainted with the girls?

Mr. Harris: I object to that unless they propose
to connect the girl up in some way with this crime. 30

The Court: I will allow that question, anything
that the defendant told you, anything that the de-
fendant told you.

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

Q. You may answer the question, Mr. Hellings.

10 A. Why, I don't believe they knew the girls before, met them there in the saloon.

The Court: That answer is not responsive to the question.

Mr. Straw: I am perfectly satisfied to strike that out, your Honor.

The Court: Yes, it will be struck out.

20 (Question repeated.)

A. I was not.

Q. Did you see how they got acquainted?

A. I did.

Q. Will you tell me how?

A. They simply made their acquaintance.

Q. Where?

A. In Riley's saloon.

30 Cross-examination.

By Mr. Harris:

Q. Is that the first time you had seen James?

A. The first time?

Q. Yes.

A. The first time I saw them when he got in the cab at Broad Street Station.

Q. When did you next see them?

A. Well, I was with them then until I left them, I didn't see them after that.

Q. After you left them on that morning half-past twelve when did you next see them?

A. I didn't see them again.

Q. Never have seen them since?

A. No, sir, until now.

Q. You are sure this is the man?

A. I am absolutely sure.

Mr. Straw: If your Honor please, the next witness will be a rather lengthy examination, so near the adjourning time I was wondering if your Honor preferred to go ahead.

The Court: Have you a short witness that you could fill up the time with?

20

Mr. Straw: The next two witnesses are of considerable length.

The Court: Then we will adjourn at this time until ten o'clock.

(Adjournment taken until Friday morning, December 17th, 1920, at ten o'clock A. M.)

30

Camden, N. J., December 17, 1920.

Trial of the cause resumed at 10 o'clock A. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

10

WILLIAM E. ALBERTSON, SWORN.

By the Prosecutor:

Q. Mr. Albertson, where do you live?

A. Mount Ephraim, New Jersey.

Q. Could you raise your voice just a little please?

A. Mount Ephraim, New Jersey.

Q. What is your business?

20 A. Garage business.

Q. Do you know the defendant Frank James?

A. I do.

Q. How long have you known him?

A. About six or seven months.

Q. How did you become acquainted with him?

A. I met him in the automobile business when I was employed by the Mack people of Haddonfield, New Jersey.

30 Q. On Wednesday evening, October 6th, did you see the defendant, Frank James?

A. Yes, sir, about 9.30 in the evening.

Q. And under what circumstances?

A. He wanted me to make repairs to his car.

Q. Will you relate to the jury what took place between you and the defendant from the time he came into your garage until he went out?

A. He came in about 9.30 in the evening and wanted me to look his car over.

The Court: Mr. Albertson, could you speak just a little louder, please.

The Witness: Yes, sir; he came in about 9.30 in the evening and wanted me to look his car over and make necessary repairs. He had a broken windshield, and he wanted a new top on, the rear light fixed, new glass put in, a new socket and a general overhauling, valves ground, carbon cleaned, and so on and a new radius rod; and I drove him home—I didn't drive him to his home—I started for his home and we got as far as Brooklawn, or the Browning Road Social Club, I guess it is called. 10

Q. Well, before you speak of that matter, Mr. Albertson, you say he came in to have the car fixed?

A. To have the car repaired, yes, sir.

Q. What kind of a car was it? 20

A. A Ford car.

Q. Were there any other repairs other than what you have intimated?

A. The cardboard was out on the left-hand door.

Q. Describe to us the condition of the left-hand rear door of the car?

A. The upholstering tape was gone and the cardboard was gone from the left-hand door, rear.

Q. When you refer to the upholstering tape, do you refer to an article similar to Exhibit S11, which I hold in my hand? 30

A. Yes, sir.

Q. Is that what you mean by upholstering tape?

A. Yes.

Q. Now, will you explain to the jury just where that upholstering tape is used on the car?

A. Why, it is used around the cardboard, around the edges of the door.

Q. Now, describe fully the condition of the left-hand door?

A. It had the cardboard gone, the tape was gone, and there was one upholstering tack in the left-hand corner, bottom.

10 Q. I show you what purports to be the door of an automobile which is marked Exhibit S19, and ask you if you know what that door is and where it was taken from?

A. The door came from Mr. James' car.

Q. Now, will you with that door illustrate to the jury just the condition it was in when it was brought to you on October 6th?

A. It was practically in the same condition as now with the exception of one upholstering tack in the left-hand corner here.

20 Q. Were there any other tacks in it other than the one which you have referred to as being in the left-hand corner?

A. That is the only one.

Q. And that was the lower left-hand corner?

A. Yes, right here. (Indicating.)

Q. Now, what door of a Ford car is that for?

A. The left-hand rear.

Q. How would it be placed on the car, that is the hinges, would they be toward the front or the rear of the car?

30 A. Toward the rear.

Q. Did you have any conversation with him as to how the door happened to be in that condition?

A. I did.

Q. What conversation did you have?

A. He told me he had been out on some party, and they had kicked the cardboard from the door and

kicked the curtains off of the car and broke the windshield.

Q. Was there any other damage done to any other part of the car that was referred to in the conversation?

A. There was a hole in the top, lengthwise about two inches long, and crossways about an inch and a half.

Q. What if any conversation was had with him in reference to that?

10

A. Just in regard to some party.

Q. Now, what further conversation did you have with him at that time?

A. Why, he was telling me he was afraid to go home, about being away so long, and afraid he could not make himself good with his wife, as he had a new suit on, new underwear, socks, shoes, hat, and everything complete and he did not know how to explain himself.

Q. How did you know that he had—did he say it 20
or was that your observation?

A. He told me so.

Q. Well then, just put it in his words, what he said about the suit.

A. He said he had a whole new suit on even to underwear, and he didn't know where he got them from.

Q. Give the whole conversation, whether it relates to the suit, or wife, or what?

A. Well, when he was speaking in regard to his 30
clothes, he said he had a whole new suit of clothes on, he didn't know where he got them from and that was the funniest part of it; and on the way over to the club, when I was driving him over, he said he did not know how he would make good with his wife, and he expected she would raise the dickens and if she did he would know where to go back.

Q. He would know or would not know?

A. He would know, he said he knew where to go.

Q. Did you have any conversation with him relative to paying for the repairs to the car, or did he have any with you?

A. Why, he wanted to pay in advance, asked me if I was needing any money.

Q. Did you make any reply?

A. Yes, sir, I told him no, that I didn't need any.

10 Q. How long was the car at your place?

A. From October 6th until the 13th.

Q. When did you see the defendant again after he had brought the car to you on October 6th?

A. October 13th.

Q. And under what circumstances did you see him then?

A. I was supposed to call him at the Lippincott Motor Company, 60 North Second Street, at twelve o'clock.

20 Q. You say you were supposed to do it—will you explain what you mean by that?

A. I was supposed to call him on the phone at twelve o'clock and he was to tell me where to deliver the car that day.

Q. Go ahead.

30 A. But instead of that I was at the barber shop at 11.30 at Mount Ephraim getting shaved and about quarter of twelve Mr. James came along and he recognized the car; and he came in and he said, "While the barber is finishing up with you I will try it out." He was gone above five minutes and came back and said the car ran fine, and then he waited for me until I got through shaving, and I went out and got in the car with him, and we both drove to the garage.

Q. Did you have any conversation with him then?

A. Only in regard to a business deal.

Q. What was that?

A. About selling a truck to Smith Brothers' Express, Williamstown, New Jersey.

Q. When did he pay for the work that had been done?

A. October 13th.

Q. And how much was the bill and how did he pay for it?

A. The bill at that time—there was some things we didn't have that wasn't added on—the bill 10 amounted to \$92.64.

Q. And how did he pay?

A. He paid \$90.00.

Q. In what way?

A. \$75.00, a check drawn on his father, or \$70.00, and \$20.00 cash.

Q. What character of money was the \$20.00 paid in?

A. A twenty dollar bill.

Q. Did you see from where he got the money? 20

A. From his left-hand pocket.

Q. Did he have any money other than the twenty dollars that you know of?

A. A small roll.

Q. Will you indicate with your hand so that the jury may understand what you mean by the size of the roll?

A. Oh, just about an inch in diameter, I guess.

Q. Were you able to tell the denominations of the other bills?

A. Well, I didn't take particular notice, but I just noticed the \$20.00 that he took from the roll.

Q. Then he paid you with a check of \$70.00 and a twenty dollar bill—what about the balance of two dollars and some cents that you refer to?

A. He said he would fix that up later.

Q. Did he give any explanation of why he paid with a check and the balance with money?

A. He said when he got up against it he always had one or two that he could call on, that was his father and Mr. Anderson's son of Mount Ephraim.

Q. Whose check was this \$70.00?

A. His father's check.

Q. Did you see the defendant as he left your place on October 13th?

10 A. Yes, sir.

Q. About what time?

A. About twelve o'clock.

Q. And in what direction did he go?

A. He turned to the left toward Bellmawr or Haddonfield; I don't know whether he went over the new Prospect Boulevard or down the Blackwood Pike.

Q. Was that in the direction of his home at Brooklawn or toward the City of Camden?

20 A. No, sir, it was toward Blackwood or Haddonfield.

Q. In other words, the opposite direction from Brooklawn?

A. The opposite direction.

Q. Now, I show you Exhibit S11; from your experience as a garage keeper and knowledge of cars, can you say whether that is tape similar to that used for upholstering purposes on Ford cars?

A. Yes, sir.

30 Q. Have you compared that tape with the upholstering tape on other portions of James' car?

A. I have.

Q. How does it compare?

A. Practically the same.

Q. Have you at any time taken that piece of tape and compared it with the left-hand door?

A. October twenty ——

Q. Of James' car which is now before you as Exhibit S19?

A. I have.

Q. For what purpose did you compare the two?

A. Detectives Doran and Painter came to see me at my place of business and asked me ——

Mr. Harris: I object.

The Court: No, you can't say what they said. You cannot say what they said to you; just what you did.

Q. What did you do with respect to the left-hand rear door and the piece of tape which you now hold in your hand?

A. I matched the tape to the door.

Q. And what did you find?

A. Each and every upholstering tack dropped right into the old original place. 20

Q. With any exception?

A. With the exception of the one down here; this place was torn, where the one upholstering tack was left in the door when it first came to my place.

Q. Then as I understand in this tape the tack holes match perfectly the original tack holes with the exception of the one tack in the lower left-hand corner which was in the door at the time it was brought to you by James for repairs on October 6th? 30

A. Yes, sir.

Cross-examination.

By Mr. Harris:

Q. What night was it he came to your place?

A. October the sixth.

Q. Do you recall did I call on you after the arrest of James in reference to your repairs of this car?

A. Yes, sir.

10 Q. At that time didn't you tell me in the presence of those with me that it was the night of the murder he called there?

A. No, sir.

Q. Quite sure about that?

A. Positively.

Q. He took it away you are quite sure on the thirteenth?

A. Yes, sir.

Q. How do you fix that?

20 A. Because I have a record of it in our books.

Q. Now you say you didn't see him from the time he brought it there until the thirteenth?

A. I don't think I saw him, no, sir.

Q. Did he call there and the car wasn't finished?

A. I don't think so.

Q. Who took that door off the car?

A. I took the door off.

Q. When?

A. October the twenty-second.

30 Q. That was after the body had been found?

A. Yes, sir.

Q. Did you put another door back on the car?

A. I did.

Q. And you have had this door ever since?

A. No, sir.

Q. How do you know that is the door?

A. I marked it when I took it off.

Q. What kind of a mark?

A. I put my name, the day and date.

Q. Is that still on there?

A. Yes, sir.

Q. What has become of the cardboard, and the lining, tape lining that you put on?

A. I don't know.

Q. But you put a new cardboard and tape, didn't you?

10

A. I did.

Q. Who took it off, you or your workmen?

A. Who took the cardboard off?

Q. Yes.

A. I removed that at the garage.

Q. But you are quite sure that he took the money out of the left-hand pocket?

A. Yes, sir.

Q. And notwithstanding he had this little roll of money he didn't pay the balance due?

20

A. No, sir.

Q. He still owes it?

A. He still owes it.

The Prosecutor: If the Court please, in looking over the record of yesterday's case I see by an oversight I neglected to ask Mr. Paul the age of his father. Counsel has no objection to my recalling him to answer that question.

30

The Court: Mr. Paul may be recalled as a witness.

HARRY PAUL, recalled.

By the Prosecutor:

Q. Mr. Paul, how old was your father?

A. Fifty-seven years old.

10

KENNETH A. WARD, SWORN.

By the Prosecutor:

Q. Mr. Ward, where do you live?

A. Brooklawn.

Q. Whereabouts?

A. 206 North Honeybrook Avenue.

Q. What is your occupation?

20 A. I sell tires.

Q. For what company?

A. Brunswick-Balke-Collender Company.

Q. Are you acquainted with the defendant, Frank James?

A. I am.

Q. How long have you known him?

A. About a year.

Q. To what extent have you come into contact with him during the past year?

30 A. I would say frequently.

Q. Have you visited his home?

A. Yes, sir.

Q. Has he visited your home?

A. Yes, sir.

Q. These two families are, your family and his family then are friendly?

A. I would say yes, sir.

Q. Did you have any conversation with him on the evening of October the seventh, Thursday evening, October the seventh?

A. Over the telephone.

Q. What time did you have that conversation?

A. I would say about ten-thirty, possibly earlier.

Q. Will you tell what was said between yourself and James on that occasion?

Mr. Harris: I object now unless in some way he identifies the man on the other end as Frank James, the defendant. 10

The Court: I understand that he says that he was acquainted with Mr. James, had seen him frequently. Perhaps now, Mr. Wolverton, you may ask him if he knew the voice and whose voice it was.

Q. When the telephone rang who first answered the phone? Don't say anything that was said, but who first answered the phone? 20

A. Mrs. Ward.

Q. After she had answered the phone what did you do?

A. I didn't do anything.

Q. Well, did you go to the phone?

A. Yes, sir.

Q. Who was on the other end, if you are able to say from their voice? 30

A. It was Mr. James.

Q. You recognized it as Frank James' voice?

A. Yes, sir.

Q. What did he say to you and what did you say to him? Give us the conversation, will you, please?

A. As well as I can remember the words he said, "Is this you, Pop?" and I said, "Yes." He says, "Will you tell Mrs. James that I have got to go to Schenectady to see about a car that has been invented lately by Mr. Steinmetz," and I said, "Yes, I will go and tell Mrs. James that." And I said, "Where are you, Frank?" and he said "You don't want to know, do you, Pop?" and I said, "I guess I don't."

10 Q. Go right on with the conversation, Mr. Ward, all that was said by either of you.

A. The next thing that I remember is that he said to me, "Pop, I have struck it right this time. I have placed my money and I have won out this time." I said, "You did?" and he said, "Yes." When he told me that I thought that he wasn't —

Q. Not 'what you thought. Just go right ahead with the conversation.

A. He said, "I have a lot of money." And I said, 20 "You have?" and I said, "How much have you got?" and he said, "I think around seventeen or eighteen thousand dollars." I said, "You haven't got that with you, have you?" and he said, "No, I have got it buried." I said, "Well, how much have you got with you?" and he said, "About a thousand dollars." I said, "If I thought you had that money I would come and get it and take it away from you and take it home," and he said, "No, I haven't got it with me."

30 Q. What else was said?

A. He said that, yes, he had struck his money right this time, and that he had taken Harold to town and fitted him out.

Q. Who did he mean by Harold?

A. His son.

Q. What further did he say?

A. I had been talking to him casually some few days previous to the phone conversation in regard to an opportunity that might be open in South Jersey to get a car agency, and I had expressed my wish to get it if possible, if I had the money, and during the conversation on the phone, he said, "If you have got any sort of a business proposition now," he said, "in mind," he said, "Why, let me know and I will let you have any money that you need."

10

Q. Did he fix any limit as to the amount?

A. Yes he said, "You can have up to ten thousand dollars."

Q. After that conversation when did you next see or hear from him?

A. Why the following day he said over the phone that he would see me the following day.

Q. You mean on Thursday night he said that?

A. Yes. And the following day around noon time he was to call up, and I happened to be out at the time, and when I came back —

20

Q. I don't think they will permit you to say what message you got when you came back at lunch. When did you next hear from him?

A. After that day, you mean?

Q. Yes.

A. I think it was on Columbus Day in the morning.

Q. When was Columbus Day?

A. On the twelfth.

30

Q. What day of the week?

A. Tuesday.

Q. Did you see him or hear from him on that day?

A. I saw him.

Q. Where?

A. At my home.

Q. Did you have any conversation with him?

A. Yes.

Q. What did you say to him and what did he say to you?

A. He came in that morning and I asked him where he had been and he said that he had been on a spree, but that he was all finished now. He would never do it again, or words to that effect. He said that he had been through the very devil, or some
10 expression of that sort.

The Court: Speak a little louder, Mr. Ward. I am satisfied that the defendant's counsel can't hear.

A. He said that he had been to the Prosecutor's office.

Q. When.

A. I think that he said the night previous to that that he had been to the Prosecutor's office and the
20 Prosecutor had questioned him, and had tried to trip him up, but he said that he could not be tripped up, because he was telling the truth, he said that the Prosecutor said that he had turned his car away from the bank and gone in the opposite direction of the ferry, and he said, "I didn't do that at all, I went toward the ferry." He said that they couldn't get anybody to say that he had gone in the opposite direction. He said that when the Prosecutor starts to investigate, he does investigate. He said, "I even
30 told him that I talked to you the other night."

Q. Did he make any further comment on his conversation with the Prosecutor?

A. I don't recall it now, sir.

Q. Did he have any conversation with you as to where he had been or what he had been doing?

A. Only that he had been on a spree.

Q. Did he say where else he had been?

A. He said that he had been to his father's house.

Q. Did he say for what purpose?

A. I presume that he said that he was there to have a rest.

Q. Did he say when he had been to his father's house?

A. I think he said that he had been there for two nights.

Q. Did he say what nights they were?

A. The two nights prior to his going to your office.

Q. Did he say what nights they were?

A. The two nights prior to his going to your office.

Q. When did you see him again after that occasion of Tuesday, October the twelfth?

A. The next morning.

Q. Before noon, what time was it that you saw him on Tuesday, October the twelfth?

A. In the morning.

20

Q. About what time?

A. I should say around nine o'clock, probably eight to nine.

Q. When did you next see him?

A. The next morning.

Q. At what time and where?

A. I drove him from the Village to Camden.

Q. In whose car?

A. In my car.

Q. What kind of a car do you have?

30

A. A Dodge.

Q. Touring car or roadster?

A. Just a roadster.

Q. What was the occasion of your driving him from Brooklawn to Camden on that Wednesday morning?

A. I wanted to catch a train for Scranton, and I

drove him up with me and asked him to drive my car back.

Q. Did you have any conversation with him during the drive to Camden as to where he had been the previous week?

A. Yes, I said, "Were you in Philadelphia?" and he said, "No, I was in Clementon."

Q. Have you seen him from that time until the present?

10 A. No, sir.

Cross-examination.

By Mr. Harris:

Q. You say you have known him how long?

A. I would say about a year.

Q. A year from the present time?

A. Why, I would, approximately, yes, sir.

20 Q. When you were called on this evening on the phone, you went immediately to the phone?

A. When I was called, yes, sir.

Q. How well did you know Mr. James' voice?

A. Well, that is hard for me to tell just how well.

Q. Well, had you talked to him frequently?

A. Yes, sir.

Q. Over the phone?

A. No, sir.

Q. This was the first occasion over the phone?

30 A. No, sir.

Q. It was not?

A. No, sir.

Q. How many times before this had you talked to him over the phone?

A. I couldn't say how many times, sir, but not very many.

Q. More than one?

A. Yes.

Q. As many as five?

A. Possibly.

Q. Did you notice anything peculiar in his voice on that night?

A. Yes, sir.

Q. Did you make any comment about it? At the time did you make a comment about James' voice?

A. I am not sure, sir.

Q. Didn't you make any comment to your wife?

A. Yes, sir.

Q. Concerning his voice?

A. Not concerning his voice, no, sir.

Q. What was the answer?

A. Not concerning his voice.

Q. Did you tell your wife what he had said to you over the telephone?

A. Yes, yes.

Q. How soon afterward?

A. I would say immediately afterward.

Q. You thought it strange that he should call you up and tell you that he had so much money, didn't you?

A. Yes, sir.

Q. And you had heard of the disappearance of David Paul?

A. No, sir.

Q. You had not?

A. I don't think so, sir.

Q. Hadn't heard anything about the bank runner being robbed or running away?

A. No, sir, I did not.

Q. At the time he called you over the phone then, you knew nothing about the alleged disappearance or the alleged robbery, whichever it might have been.

A. I don't think so, sir.

Q. Now, when did you first tell the Prosecutor?

A. I beg pardon?

(Question repeated.)

A. Tell him what, sir.

Q. The story that you have told here upon the stand, or any part of it?

10 A. I told it to him —

The Prosecutor: If your Honor please, may I interpose this thought, that in my judgment I cannot conceive how it is cross-examination for this witness to be asked when he first told the Prosecutor. He has given a statement here to this jury of what he has heard, he has been examined upon that question, and if Mr. Harris would prefer to call him as his witness for whatever object he has in mind, of course
20 I have no objection, but I cannot see how it is proper cross-examination.

The Court: No, I will allow the question.

(Question repeated.)

A. I will say it was the night that the body was found or the night after.

Q. Who did you tell it to?

A. I told it to Mr. Wolverton.

30 Q. At his office in this Court House?

A. At my home.

Q. At your home?

A. Yes.

Q. Didn't you say a while ago, or I so understood you, that when James said to you that he had been up to see the Prosecutor the night before and that

when he gets started he investigates everything, that he then said, "He asked me about talking to you"? Didn't you say that James at that time asked you about your talk with the Prosecutor of the Pleas?

A. No, I said that Mr. James said that, "I told Mr. Wolverton that I talked to you."

Q. Well, that was before the body was found, wasn't it?

A. The conversation between James and I?

Q. Yes.

10

A. Yes, I think so, sir.

Q. Then if it was before the body was found, how do you reconcile that with your statement now that you did not speak to the Prosecutor until the night the body was found or the night afterward?

A. I said that I was talking with Mr. James and Mr. James said that he had been talking with the Prosecutor.

Q. The Prosecutor had told him what about you?

A. And that Mr. James had told the Prosecutor that he had talked to me on the telephone.

20

Q. Oh, that is the way it was; you had not talked to the Prosecutor?

A. Yes, sir.

Q. Then the Prosecutor appeared at your house?

A. Yes.

Q. The night after the body was found?

A. Either the night or the night after.

Q. What night of the week was it?

A. I should say it was the latter part of the week.

30

Q. Well, having in view the fact, not disputed, that the body was found on Saturday, then what would you say was the night?

A. It was a week night; it wasn't Sunday.

Q. It wasn't Sunday?

A. No.

Q. And you are sure it was after the body was found?

A. I think so, sir.

Q. You delivered the message to Mrs. James, did you?

A. I did, sir.

Q. Did you tell her on that occasion that Frank's voice was so bemuddled that you couldn't hardly understand him?

10 A. I don't recall; I may have said to her that I thought that Frank was not himself, that he was intoxicated.

Q. You might have said that?

A. Yes, sir.

Q. And from his talk over the telephone that night it impressed you that he was not himself, did it?

A. I would say that he was intoxicated.

Q. When did you take Frank to the ferry, what morning?

20 A. On the day after Columbus Day, the 13th.

Q. That would be the 13th of October?

A. Yes, sir.

Q. And Frank brought your car back from Lippincott's garage, to your home?

A. Well, I presume that he did, yes, sir.

Q. Well, you found it home when you got there, did you?

A. My wife found it, yes, sir, at his home.

Q. Now, whose car did you use on the morning of
30 the 12th?

A. What was that, sir?

(Question repeated.)

The Court: Well, for what purpose, Mr. Harris? The question is not very intelligent, in that it does not state for any purpose.

Mr. Harris: Well, he said he came in on two mornings with him.

The Witness: No.

The Court: I didn't understand the witness to say so; I may be mistaken, but if you will just specify, make the question so that the witness can understand it —

10

Mr. Harris: Well, I understood on the morning of the 12th they went in together to the ferry.

The Witness: No, sir.

Mr. Harris: I withdraw the question then; I understood that is what he said.

The Court: I did not understand the witness that way, and I thought the witness would not understand the question. 20

Q. You were friendly with Frank?

A. Yes, sir.

Q. And you are quite sure that he offered you \$15,000 to go into business?

A. He did not offer me that sum.

Q. Or \$10,000?

A. Yes, sir.

Q. Where was that offer made and in what way was it made?

A. Over the telephone.

Q. Over the telephone on this same night?

A. Yes, sir.

Q. And he called you up and told you he had seventeen or eighteen thousand dollars?

A. I think that was the amount, sir, yes, sir.

Q. You are not influenced in fixing that amount by the fact that you know now how much he did have?

A. No, sir, the fact is I don't know now how much he did have.

Q. You know how much he is reported to have taken or helped take, I understand?

A. Yes, sir.

10 Q. How much was it?

A. Something like \$30,000, \$33,000, something like that, as near as I know.

GEORGE L. JOHNSON, SR., SWORN.

By the Prosecutor:

20 Q. Mr. Johnson, where do you live?

A. Brooklawn, New Jersey, 313 South Hannevig Street.

Q. What business are you in?

A. The garage business.

Q. Do you know the defendant, Frank James?

A. Yes, sir.

Q. How long have you known him?

A. About seven months.

Q. Have you had business relations with him?

30 A. Yes, sir.

Q. What is it?

A. Yes, sir.

Q. What has been the character of those relations?

A. He stored his five-passenger touring car with me for about seven months.

Q. What kind of car was it, what make?

A. Ford.

Q. Do you know with relation to October 5th when the car was taken out and when it was returned?

A. It left my garage on October 4th.

Q. When did you next see the car?

A. The 9th.

Q. October 9th? Where did you see it then?

A. I think it was in the garage Saturday night, October 9th.

Q. In what garage?

10

A. Mine; I think so.

Q. Are you sure of that?

A. Well, I am not positive of it, no.

Q. What makes you think it might have been?

A. I think it was in Saturday night and Sunday; I think it left the garage on Sunday; that would be October 9th and 10th.

Mr. Harris: If the Court please, I object to this; this is his witness and I object to this manner of refreshing his memory. 20

The Court: No, I think the Prosecutor has a right to ask that question if in any way the witness has caused him surprise, for the purpose of refreshing his recollection.

The Prosecutor: I would say, if your Honor please, that it has caused me unusual surprise for the witness to answer this question as he has. 30

The Court: All right; I will allow the question.

A. I am not positive of that, Prosecutor, because there is often cars go in and out; there might be a car come in tonight and out tomorrow morning and

I wouldn't know it was in, because I am not in the garage all the time. I say it was; I am not positive of that.

Q. Well, this case is too important to guess at anything. Did you have any conversation with Frank James on October 14th?

A. Yes.

Q. What was that?

A. He asked me to do some repair work to his
10 car.

Q. Where did you have that conversation?

A. In front of my garage.

Q. And under what circumstances?

A. Well, Mr. James was standing outside of the car, and I came up to him and said to him, "Hello, what is the matter with you? You must have been out on a drunk."

Q. What caused you to say that to him?

A. I noticed his condition, he seemed nervous and
20 worked up.

Q. What did he say?

A. He said yes, he had drank a barrel of whisky, or something of that kind.

Q. Now, did you have any conversation with him about his car at that time?

A. Yes, he asked me to put on floor boards in the back of his car, and put a latch on the engine hood.

Q. Were there any floor boards in his car at the time?

30 A. No, sir.

Q. Did he say where they had gone?

A. No, sir.

Q. Did he make any explanation of their absence?

A. No, sir.

Q. Did you have any conversation with him after the floor boards were put in?

A. No, not any more than he came there and took the car away; I didn't hold any conversation with him.

Q. Did he look at the floor boards before he took them away or test them?

A. Well, I didn't see him do that, but the boy that finished the job—I didn't do this ——

(Objected to.)

10

The Court: No, state nothing Mr. Johnson, that you did not yourself see.

Q. Did you see him again after that?

A. No, sir.

Q. Did you see him—did you have any conversation with him at any time about a seat?

A. Yes, sir.

Q. When was that?

A. It was either on the evening of the 14th or the evening of the 15th. 20

Q. What conversation did you have with him?

A. Why, he had a new seat in the back of his car, and he asked me to change the seat and put it into somebody else's and give him a pretty good seat in place of it, that he had had trouble enough on account of his rumpus with his wife and he did not want to get another jacking up, but I never changed the seat.

30

Cross-examination.

By Mr. Harris:

Q. Are you sure that he gave you the order to put the floor boards in in front of your garage?

A. Yes, his car was inside the garage.

Q. Hadn't he already called you on the telephone and asked you about it?

A. He had called me on the telephone.

Q. Didn't you say you couldn't do it, that you would let one of the boys do it?

A. No, sir, I did not. Well, I didn't usually do the work down there.

Q. You told him you would let one of the boys do it over the telephone?

A. Yes, sir.

Q. When he pulled his machine up to your garage you knew what he wanted?

A. Yes, sir.

Q. And the machine was in your garage when he talked to you about it, wasn't it?

A. Sir?

Q. Was the machine in your garage when he talked to you about it over the telephone?

20 A. Yes, I think it stood the third or fourth car from the door.

Q. Did you go look at it to see whether it needed floor boards?

A. Sir.

Q. Did you go look at the car to see whether or not it needed new floor boards after he telephoned you?

A. Yes, I looked at the car myself.

Q. Then when he came there you knew that he had wanted floor boards and knew that the car needed them?

30 Q. How long did it take you to put them in?

A. Oh, I don't know exactly how long they were working on it.

Q. You don't know?

A. No.

Q. Do you have any records?

A. Sir?

Q. Do you have any records?

A. Of the length of time it took?

Q. The time it took, did you keep some sort of a record of your time and material?

A. The amount of hours?

Q. Yes.

A. No, when the boy did the job, he asked me what I should charge Mr. James, and I said to him this way, "only charge Frank a half a dollar, that will be all right," that is all he ever was charged for it. 10

Q. Did you paint them?

A. No, sir.

Q. You are sure that was on what date?

A. On the fourteenth.

Q. Not the thirteenth?

A. Well, according to the record that is kept at the garage by my son it would show the fourteenth.

Q. You have examined that, have you?

A. Sir? 20

Q. You have examined your records?

A. Yes, sir.

Q. Do you recall some gentleman calling at your garage with me after Frank was arrested?

A. Yes, sir.

Q. Do you recall my asking you to let us see your book or record?

A. Yes, sir.

Q. Did you refuse?

A. Well, I didn't refuse to let you see them, but I said that I had given all the information I was going to give to anybody. 30

Q. And didn't you tell us that you refused because the Prosecutor of the Pleas of this county told you not to talk to anybody?

A. Yes, sir.

Q. You did do that?

A. Yes, sir.

Q. Well, did he tell you that?

A. What?

Q. Not to talk to anybody concerning this case?

A. Sure, I don't think that I had a right to tell anybody either, or anybody had a right to question me on it.

Q. Now then, did I request you to come to the
10 Prosecutor's office that afternoon?

A. Yes, sir.

Q. Did you meet me there?

A. I didn't see you. I was down here.

Q. You knew I was out in one room and you in the other?

A. Sir?

Q. You knew I was out in one room and you in another in the Prosecutor's office?

A. I don't know as I did. I was in the Prosecu-
20 tor's office.

Q. Well, there are several rooms in the Prosecu-
tor's office, aren't there?

A. I believe there are, yes.

Q. You were there at the time I called, two o'clock?

A. Well, I don't know. I didn't see you.

Q. Were you there at two o'clock?

The Prosecutor: If the Court please, I realize to
30 a large extent the cross-examination of a witness may be in the discretion of the Court. We feel there are some bounds to it, so far as the direct examination is concerned. Mr. Harris has in evidence the fact that this witness refused to let him see the book, and the reason for it. It seems to me that is as far as it is necessary to go in the matter.

The Court: Well, I will allow the question because it might lay the foundation for a contradiction of the witness and the defendant is entitled to lay such a foundation.

The Prosecutor: Knowing all the facts, I did not anticipate it would, and that is the reason.

The Court: Of course, you know more than I do, Mr. Wolverton, and I can't say.

10

Mr. Harris: And more than the defendant.

Q. Would you have shown me the record on that day had it not been for the orders given you by the Prosecutor of the Pleas?

The Prosecutor: If the Court please, I can't see—

The Court: Now, that question, I think I will not allow it if it is objected to.

20

Mr. Harris: I don't understand there has been a formal objection to it.

The Court: All right, then if there is no formal objection, repeat the question.

(Question repeated.)

A. No, sir.

30

Q. Why not?

A. Because I would have not shown them to anybody under the circumstances?

Q. You thought that the attorney for the—I had told you I was one of the attorneys for the defendant?

A. Yes, you told me that.

Q. And you thought that in fairness to him you ought not to tell the attorney of the defendant what you had told the Prosecutor of the Pleas or let me see your books?

A. No, I don't think I had a right to show them to anybody, if I didn't want to.

Q. Now didn't your books show that this work was done on the thirteenth and not on the four-
10 teenth?

A. Well, I haven't got the book here, I am telling you to the best of my knowledge, I have—it is a leafless ledger, and I have the leaves in my pocket, and if I am not making a mistake, and I don't think I am, it credits the work being done on the fourteenth day of October last.

Q. You say you do or do not have the leaf with you?

A. I have.

20 Q. Let's see the leaf.

(Paper produced.)

Q. Just show me the one entry, I don't want to see the other.

30 The Prosecutor: Of course, if the Court please, I want it understood I am permitting this not because I do not think it is objectionable, but because I want Mr. Harris to have all the information he can for the benefit of his client. I do think it is objectionable but I do not want to make the objection.

The Court: You show Mr. Harris your record.

The Witness: Show it to Mr. Harris? All right.

Q. Whose handwriting is that?

A. My son George.

LAWRENCE JOHNSON, SWORN.

By the Prosecutor:

Q. Mr. Johnson, where do you live?

A. 213 South Honeybrook Avenue, Brooklawn. 10

Q. What is your business?

A. Automobile repairman.

Q. By whom are you employed?

A. My father.

Q. Is your father the witness that was just on the stand?

A. Yes, sir.

Q. Are you acquainted with the defendant?

A. I am.

Q. How long have you known him? 20

A. About seven months.

Q. Are you acquainted with his car?

A. I am.

Q. How long an opportunity have you had to have seen his car?

A. Seven months.

Q. During that time have you done any work on his car?

A. No, sir.

Q. I show you Exhibit S11, which is a piece of rope, have you ever seen a rope similar to that in the car of James? 30

A. I have.

Q. Will you explain under what circumstances you saw it?

A. I went under his back seat of his car to get a piece of rag to wipe my greasy hands on, and underneath a baseball suit was lying a piece of rope similar to that one.

Q. Will you say when that was with relation to October the fifth, how long before?

A. On the tenth day of October, Sunday morning.

Q. On the tenth of October?

A. Yes, sir.

10 Q. How do you fix that?

A. Well, when I was finishing up the job on the tenth, and I wanted to try the car out, and I know when the other car went out.

Q. What?

A. And I went to try the car out, this other car I had just got done fixing, and I know that it was on the tenth, according to this other fellow's bill.

Q. Do you know whether James' car was there on October the tenth with that rope in it?

20

Mr. Harris: If the Court please, he has said so.

The Court: The Prosecutor has a right to ask that question if he is surprised by the testimony.

Mr. Harris: He hasn't said he was surprised.

The Court: Well, the question implies that, Mr. Harris, and the question is allowed, Mr. Wolverton.

30

The Prosecutor: I am surprised.

The Court: It is perhaps a leading question, but under the circumstances permissible.

Q. How do you fix the tenth of October?

Mr. Harris: He has told him that, if the Court please.

The Court: He has a right. You are asked how you fix the tenth of October.

A. Well, it was October the ninth when this young man's car went out I was working on, wanted it for Sunday, and I know I finished the car up Sunday dinner time, and wanted a rag to clean my hand.

Q. How do you know that was the tenth of October or what date it was? 10

A. Well, I don't know exactly.

Q. Well, can you say whether it was before the fifth of October or afterwards?

A. I can't say that exactly.

Q. As a matter of fact didn't you say to the Assistant Prosecutor that it was about a month before the fifth?

Mr. Harris: I object to that, if he is laying a foundation to contradict him, he can't contradict his own witness in this respect. 20

The Court: Yes, I think that he can lay it, that is not the principal objection that I see to the question. I think you want to be more specific as to the time and place and the circumstances, embody this in the question, if you desire to ask question to contradict him.

30

Q. Didn't you have a conversation with Mr. Straw in the Prosecutor's office, just a few nights ago, in which you told him that it was just prior to the fifth of October some time, but that you are not sure of the exact date, that it might have been a month?

Mr. Harris: I object now because that question is leading.

The Court: No, the objection will not be sustained, it will be overruled because you can only ask a question of that kind by a leading question.

Mr. Harris: If he will say he is laying a foundation to contradict him I will withdraw my objection.

10

The Court: I understand that is your purpose, Mr. Wolverton, and that you made the statement you were asking the question for that purpose?

The Prosecutor: I thought it would not be necessary to contradict, it will be merely necessary to refresh the witness' memory.

20

The Court: I will not allow that question to refresh the witness' memory. I will allow it for the purpose of contradiction.

Mr. Harris: I will not object if it is only for the purpose of contradiction, but I will object if it is for the purpose of refreshing his memory.

The Prosecutor: If the Court will grant me the indulgence, I have sent for the Assistant Prosecutor, he is not in the room.

30

The Court: Certainly, we will wait until he arrives.

(Recess taken for five minutes.)

By the Prosecutor:

Q. Mr. Johnson, you know Mr. Straw, the Assistant Prosecutor, don't you?

A. I do.

Q. Did you have a conversation with him last evening?

A. I did.

Q. Did you not at that time tell him that it was about a month before the murder that you had seen a rope similar to that in Frank James' car under the seat where you had gone to get a rag to wipe your hands? 10

Mr. Harris: I object, unless he says that is for the purpose of contradiction and not for the purpose of refreshing his memory.

The Court: Yes, the Prosecutor, as I understand it, makes that statement on the record, that it is for the purpose of the contradiction of this witness. Now, did you understand the question, Mr. Johnson? 20

The Witness: I did. I think it was.

Q. You think what?

A. I think it was before.

Q. When you said October 10th, did you mean that or did you mean September 10th?

Mr. Harris: Oh, now, if the Court please, that is suggestive. 30

The Court: That question is overruled.

Q. How did you happen to be mistaken?

(Objected to.)

The Court: No, I think that you can ask the witness whether or not upon his previous statement in stating October 10th he was mistaken.

Q. Was your previous statement that it was October 10th that you had seen this rope in James' car a mistake?

10 A. Yes, sir.

Q. And when to the best of your recollection now was it that you saw a rope similar to that in his car?

A. I think it was the latter part of September.

Cross-examination.

By Mr. Harris:

20 Q. Now, you said at the beginning of your testimony you knew it because of the date of the bill to some one who had gotten work done and you finished up on Sunday so that he might use his car; what was the name of the man who had that work done?

A. Scheinig.

Q. Was that charged on the books?

A. Yes, sir.

Q. Have you seen it charged on the book?

A. I have.

30 Q. Is that on the same leaf on which the James' charge is made?

A. No, sir.

Q. Where is it?

A. At home in the book.

Q. When did you see it last?

A. Well, I don't remember that, when it was entered.

Mr. Harris: Now, if the Court please, I would like to give the Prosecutor notice to produce that book.

The Court: You can subpoena the witness to produce the book yourself; it is in the custody and control of the father of this witness, and therefore if you desire it for any purpose in your defense it is within your power to issue the process of the Court and serve it upon the custodian of the book, the father, to bring it here. 10

Q. Who has the book in custody?

A. My brother.

Q. Your brother?

A. Yes.

The Court: Oh, I thought it was the father; I beg pardon.

20

Q. What is your brother's name?

A. George.

Q. You are sure it is not on this part of the book that your father has here today?

A. Positively.

Q. Did you have more than one ledger?

A. No, sir.

Q. That is a loose-leaf ledger?

A. Yes, sir.

Q. Now, you remember me calling down to see you, don't you?

A. I do not.

Q. What say?

A. I do not.

Q. Were you not there when I called and had with me two or three gentlemen?

A. I was not; if I did I don't recognize you.

Q. Do you recall us coming there and wanting to look at your book about these entries?

A. No, sir.

Q. You were not there?

A. Well, if I was there, as I just said before, I did not recognize you.

Q. Well, do you remember?

A. I don't recognize everybody that comes in.

10 Q. You remember Eastlack, don't you?

A. Eastlack?

Q. The man who sold cars with Frank?

A. I do.

Q. You remember him being with me?

A. I do not.

Q. Did you ever see him there?

A. I did..

Q. When?

A. About a week ago.

20 Q. Well, before that?

A. No, sir.

Q. Never saw him there before?

A. No, sir.

Q. Now, did you not on that occasion—did you ever refuse to talk to me about this case?

A. No, sir.

Q. You did not?

A. No, sir.

Q. How many boys are there there, your brothers?

30 A. At that time there was three of us.

Q. Aren't you the tallest one?

A. No, sir.

Q. You are not?

A. No, sir.

Q. Where is the tallest brother?

A. Working.

Q. Where?

A. Working.

Q. At the garage?

A. No, sir.

Q. Where?

A. The New York Shipyard.

Q. What is his full name?

A. John.

Q. John Johnson? And you are quite sure that you did not refuse to let us see the books or talk to us? 10

A. Positively.

Q. Well, the tallest one that you speak of, he don't work around the garage, does he?

A. Not at the present time.

Q. Well, did he at that time?

A. He did.

Q. Did he about the 19th of October?

A. I can't answer you that.

20

HARRY REEVES, SWORN.

By the Prosecutor:

Q. Where do you live?

A. Medford, New Jersey.

Q. By whom are you employed?

A. E. P. Warner.

Q. What business?

A. Hardware business.

Q. Have you seen the defendant James before?

A. Yes, sir.

Q. Did you see him on October 14th?

A. Yes, sir.

30

Q. Where and under what circumstances?

A. He came in the hardware store.

Q. Was there any one with him?

A. Yes, sir.

Q. Do you know who that was?

A. I would know if I would see him, yes, sir.

Q. For what purpose did they come into your store?

A. They came in after a rake in the first place.

10 Q. You say they came in for a rake; do you mean to make a purchase?

A. Yes, sir.

Q. Did they buy a rake?

A. Yes, sir.

Q. Is that the rake? (Showing witness rake.)

A. Yes, sir.

The Prosecutor: This is offered as Exhibit S20.

20 Mr. Harris: That is offered for identification only?

The Prosecutor: Yes, sir.

Q. Was the defendant, James, in this case one of those who came in and purchased this rake?

A. Yes, sir.

The Prosecutor: It is offered in evidence.

30 By Mr. Harris:

Q. Why are you sure that that is the rake?

A. Because I have got a mark on it.

Q. When did you put the mark on it?

A. It is on it all the time in the store.

Q. What say?

A. It was marked on in the store, when it was in there.

Q. Show me what mark is that on there?

A. It has \$1.35 marked on it.

Q. You have seen other rakes that may have been marked \$1.35 exactly like this?

A. Yes, sure, we only had two rakes in the store.

Q. Where is it marked "\$1.35"?

10

(Witness indicates.)

Q. Who put that on there?

A. I couldn't tell you that.

Q. And you are sure that was the rake that came out of your store?

A. Yes, sir.

Q. Did you ever see any other rake like that?

A. I have seen them in my time, yes, sir.

Q. Lots of them?

20

A. Yes.

Q. It is a standard rake?

A. I suppose it is, yes, sir.

Q. Did you ever see one marked \$1.35 before?

A. Yes, sir.

Q. In your store or away from your store?

A. I haven't been in that store a great while.

Q. How long have you been there?

A. Seven months.

30

By the Prosecutor:

Q. Were there any other purchases made at that time?

A. Yes, sir.

Q. What?

A. Two spades.

Q. I show you a spade marked Exhibit S21 for identification and ask if that is one of the spades that was purchased at that time by the defendant?

A. Yes, sir.

Q. How much was paid for it?

A. \$1.75 for the spade and \$1.25 for another one, and \$1.25 for the rake; my figures are right on the spade.

10 Q. What figures do you refer to as being on the spade?

A. \$1.75, \$1.25 and \$1.25.

Q. Can you point them out, the figures that you refer to?

A. Yes, sir. (Indicating.)

Q. Show them to me.

(Witness indicates on back of spade handle.)

20 Q. What are those figures?

A. \$1.25, \$1.75 and \$1.25 makes \$4.25.

Q. Who put those figures on the back of the shovel?

A. I did.

Q. And what was the reason for putting them there?

A. Because I had reckoned up the account.

Q. Who paid for them?

A. James.

30 The Prosecutor: We offer them in evidence.

Cross-examination.

By Mr. Harris:

Q. You are sure it was James?

A. Yes, sir.

Q. What kind of note did he give you?

A. A five dollar bill.

Q. How do you know it was on the 14th of October?

10

A. It was on Thursday afternoon.

Q. Well, when was your attention called to the fact it was on Thursday afternoon?

A. Well, because there wasn't much business going on that day; there never is.

Q. What say?

A. There wasn't very much business going on that day, and I thought we were going to do some business; it was about four o'clock in the afternoon when they came in.

20

Q. And they bought those things?

A. Yes.

Q. And that was so much business that it fixed that in your mind?

A. Yes, take them country towns you have got to do a little business once in a while.

Q. I know, but this was an unusually large amount of business at that time?

A. Yes.

30

FRANK GIBERSON, called.

(No answer.)

The Prosecutor: If the Court please, the witness whom I have just called has been in attendance the last two days. He is not here this morning. I do not understand the reason for it. I am having the
10 matter investigated now as to where he is or the reason for his absence, and I may go a little bit out of the order in calling of the witnesses due to that fact, and I would like to withhold any motion in the case until I have had an opportunity to see whether he will be here this afternoon or whether he is purposely absent, or the reason for his absence, but he is an important witness to the State and I would feel the State is entitled to his presence even to the necessity of issuing the necessary papers to bring
20 him here.

The Court: You don't make that motion?

The Prosecutor: Not at this time.

AUGUSTUS BARTLETT, sworn.

30 By the Prosecutor:

Q. Where do you live?

A. Vincentown.

Q. Do you know where Irick's Causeway is?

A. Yes, sir.

Q. Were you there on Sunday, October the seventeenth?

A. Yes, sir.

Q. For what purpose?

A. Just looking around. I had heard that they found the grave up there of a man, and I went up there to look around.

Q. I show you a key marked Exhibit S22 and ask whether you found that key?

A. Yes, sir, I did.

Q. Where?

A. Well, it was about twenty feet in from the roadway, I imagine, about ten or twelve feet from the creek. 10

Q. I show you this photograph which is marked Exhibit Four and ask you to indicate as near as you can about where that key was found.

A. About in there (indicating).

Q. It was on the side of the—this is a view looking away from Tabernacle towards Sooy's Corner?

A. Yes, sir.

Q. Which side of the bridge or causeway did you find the key, toward Tabernacle or toward Sooy's Corner? 20

A. Sooy's Corner.

Q. How far from the road?

A. I would imagine about twenty feet.

Q. Do you mean in from the road?

A. Yes, sir.

Q. In the underbrush?

A. Yes, sir.

Q. How near to the creek? 30

A. About ten or twelve feet.

Q. Then looking at this photograph which is Exhibit S4, and this being the direction of Sooy's Corner, and this being Tabernacle back here, will you point where the key was found?

A. Right in about here (indicating) on the right.

Q. In to the right—he says pointing to the right of the causeway. You say it was about twenty feet in from the road?

A. Yes, sir.

Cross-examination.

By Mr. Harris:

10

Q. In what county?

A. Burlington.

Q. Burlington County?

A. Yes, sir.

Q. What county is Irick's Causeway in?

A. Burlington County.

Q. In what county is the grave?

A. Burlington County.

Q. You saw the grave?

20

A. Yes, sir.

GEORGE JAUSS, SWORN.

By the Prosecutor:

Q. Mr. Jauss, what is your business?

A. Chauffeur.

30

Q. Where were you employed October seventh?

A. Quaker City Cab Company.

Q. Did you meet the defendant, James, on that day?

A. Yes, sir.

Q. Where?

A. 1509 Poplar.

Q. How did you come to meet him?

A. I was sent from the garage for him.

Q. To that address, you mean?

A. To that address, yes, sir, for a job.

Q. What did you find when you got to 1509 Poplar?

A. Why, three young ladies and Frank.

Q. Who do you mean by Frank?

A. Frank James.

Q. What did you do after you arrived there?

A. Why, first here was two girls which they had called their friend out, which got into the car, they decided to go to Fifteenth and Montgomery Avenue.

Q. Who was in the car?

A. Two young ladies and Frank James.

Q. Did you go to Fifteenth and Montgomery Avenue?

A. Yes, sir.

Q. Just describe the trip.

A. From 1509 Montgomery Avenue, one of the girls had repassed the remark of getting a ticket for a coat of some kind, which she did. From there we carried on to a pawn-shop at Tenth and Thompson, where they had got the coat out ———

20

Mr. Harris: If the Court please, unless he was present and saw them get the coat.

Q. Were you present?

30

The Court: I understand that is what the witness saw, Mr. Jauss, this is what you saw?

A. Yes, sir, what I saw.

Q. You will just describe what took place at the pawn-shop.

A. Took place at the pawn-shop, coat was gotten out of the pawn-shop.

Q. By whom?

A. By Frank James. There was also two bags that was purchased there, one for each one of the girls, two hand-bags, also there was an overcoat purchased there, and a fur collar for the chauffeur.

Q. That was yourself?

A. That was myself, yes, sir.

10 Q. Who paid for these different articles?

A. Frank James.

Q. Do you remember how much the bill came to?

A. No, I couldn't exactly say, no, sir.

Q. Do you know how much it cost to get the coat out?

A. I couldn't just say what it cost to get the coat out.

Q. Do you remember the price of the bags?

A. The bags were purchased at fifteen dollars
20 apiece.

Q. Remember what the coat cost or the collar?

A. My coat cost thirty-seven and a half, and twenty-five dollars for the fur collar.

Q. And then where did the party go?

A. From there they suggested that they needed shoes.

Mr. Harris: Who do you mean by they?

30 A. The ladies.

Mr. Harris: I object unless he shows that Frank was with them.

Q. Was Frank James present?

A. Yes, sir.

Q. Go ahead, you say the ladies made a suggestion that they needed shoes?

A. That they needed shoes, which they had done to a place at Seventh and Poplar, or where they had purchased a pair of shoes for each one of themselves.

Mr. Harris: I object, whether this witness was in the shoe store where this was all done.

A. Yes, sir. Purchased two pair of shoes, one for each one of the ladies and one for a girl that was not along in the car, which made three pair of shoes. They decided the shoes were not comfortable unless there was stockings with them, which they had purchased across the street from the shoe store. From there I had returned back ——— 10

Q. How much did the shoes and stockings cost?

A. I couldn't just exactly tell you that, I imagine somewhere close on to sixty-six dollars. 20

Mr. Harris: I object.

The Court: If you don't know, just say so, not what you imagine.

The Prosecutor: If your Honor please, don't you think the witness is entitled to say about what it cost?

The Court: Not unless he knows, Mr. Wolverton. 30

Q. Where you present when the bill was paid?

A. Yes, sir.

Q. Were you present when the shoes were paid for?

A. Yes, sir.

Q. Do you remember what the price was?

A. If I am not mistaken, it was thirteen and a half.

Q. You mean apiece?

A. Per pair, yes, sir.

Q. You remember what the stockings came to?

A. Three and a half a pair.

Q. How many pair were purchased?

10 A. Three pair.

Q. Where did they go from there?

A. From there we went back to 1509 Poplar Street.

Q. About what time was that, do you remember about what time approximately?

A. About six or six-thirty, I suppose.

Q. What was done after you reached the Poplar Street address?

A. I was sent out.

20 Q. For what purpose?

A. To fetch in for some food to eat.

Q. Who gave you the money to buy it?

A. Frank James.

Q. How much did you buy?

A. Close on to ten dollars worth of eats.

Q. Where did you take the eats?

A. Back to the house at 1509 Poplar.

Q. How long did you remain there?

A. Quite some time.

30 Q. Did you leave there that evening?

A. Yes, sir.

Q. What time?

A. I couldn't just exactly say what time.

Q. Well, was it early or late?

A. First after I had left with two young ladies.

Q. At whose direction?

A. At the directions of Frank.

Q. What did he tell you to do with relation to the young ladies which you took away?

A. To take them where they wanted to go.

Q. Did you do that?

A. Yes, sir.

Q. And did you again return to the Poplar Street house?

A. Yes, sir.

Q. Who was with you when you returned? 10

A. One girl.

Q. Is that the same one, one of the two that you had taken away?

A. That left, yes, sir.

Q. Who was at the Poplar Street house when you got back?

A. Just Frank James.

Q. No girls?

A. And a girl, yes, sir.

Q. Then the one you brought made two girls? 20

A. The one I brought was two.

Q. What took place there during the evening?

A. I don't understand you.

Q. What took place during the evening while you remained?

A. Nothing outside of singing, dancing, as long as I was there.

Q. What time did you leave?

A. I couldn't exactly say what time, but it was rather late, late in the morning when I left. 30

Q. Were you paid for the taxi hire?

A. Yes, sir.

Q. Do you know what the bill was, how much you received?

A. Forty-eight dollars for the bill, and received fifty-five dollars.

Q. Was anything said by James during the evening to indicate the reason of his presence there?

A. Nothing outside of they were celebrating a birthday party.

Q. Who said that?

A. Frank James.

Q. Did he say whose birthday party it was?

A. No.

10 Q. Did you, when you left that evening, have any direction as to what to do the following day?

A. Yes, sir, to return.

Q. Did he say at what time?

A. Somewhere between eleven and twelve.

Q. Did you do so?

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. What took place and who else was there?

A. Schuck, or Ray Schuck and two ladies.

20 Q. What was done after you got there on Friday, between eleven and twelve?

A. They had left there dismissing one girl in the fourteen hundred block on Fifteenth Street.

Q. What do you mean when you say that they dismissed a girl, did they go away in your car together?

A. Yes, sir, the four.

Q. Who?

A. Frank James, Ray Schuck and two girls.

30 Q. Where did they go?

A. Went to, one girl left on the fourteen hundred block on Fifteenth Street, the other girl left on the same street, only at Fifteenth and Montgomery Avenue.

Q. Then where did you go with the defendant?

A. For a ride.

Q. And where?

A. There wasn't any special place permitted where to ride, but for a ride.

Q. And where did you go to give them the ride?

A. Up Broad Street as far as the Boulevard, until there was a suggestion that they would like to go to some suburb place to eat.

Q. Then where did you take them?

A. To Fortside Inn.

Q. Where is that located?

10

A. About nine and a quarter mile this side of Doylestown.

Q. Did they eat there?

A. Yes, sir.

Q. Did you eat with them?

A. Yes, sir.

Q. Then where did you go?

A. Started on back to the city.

Q. Then what happened?

A. Coming south on Broad Street got as far as 20 Montgomery Avenue, which they had decided they had seen a young lady.

Q. Then what was done?

A. Turned around and met this young lady on the street called Euclid Avenue, or I should say the first street above Montgomery Avenue.

Q. What was done after the young lady was met?

A. They had spoke to the young lady, which Frank James got out of the car to talk to her.

Q. Then what took place?

A. Quite a few words were spoken, which Schuck passed the remark sitting alongside of me——

Q. You needn't say what Mr. Schuck said.

A. Frank then also made an engagement with the young lady.

Q. Did she get into the car?

A. No.

Q. Where did she go?

A. She went on up Euclid Avenue as far as Fifteenth Street, as far as I could see.

Q. And where did James and Schuck stay?

A. Stayed in the car.

Q. Where did the car stay?

A. The car went on in town a short ways and back to meet the young lady in a short time.

10 Q. Did you meet the young lady?

A. Yes, sir.

Q. Were they with you?

A. Yes, sir.

Q. The same young lady that they had already spoken to on the street?

A. Yes, sir.

Q. Then where did they go?

A. Went on in town, down Broad Street, on in town, which they decided they were going to get something to eat.

20 Q. Was the young lady with them at that time?

A. Yes, sir.

Q. Then where did they go?

A. Went on down, changed their mind about eating, finally there was a remark passed if there couldn't be another lady in with the party.

Q. Do you remember who passed that remark?

A. I couldn't just exactly say.

Q. Then what was done afterward? What was
30 done after that remark was passed about couldn't they get another lady?

A. They had decided to stop at a drug store and use the telephone, which I had done, and stopped at the corner of 15th and Spruce.

Q. Who used the telephone?

A. The young lady.

Q. When she came back to the car, what took place?

A. She had passed the remark that she had got her lady friend——

Mr. Harris: Well, in the presence of the defendant?

The Witness: Yes.

Q. Then where did they go?

10

A. They went on from there, they decided that the young lady that they were supposed to meet could not be ready for perhaps a half an hour or an hour.

Q. Then where did they go?

A. They went on, turned around, started up Broad Street with the car, which I got to I might say, about Master Street off of Broad, was directed to turn around and go back into town again which I did, carried on down Broad Street to Wolf, east on Wolf to Twelfth, stopped at the corner of Twelfth and Wolf. 20

Q. Then what took place?

A. The young lady says that the car should remain here that she would get her lady friend, which she left the car.

Q. Did she return?

A. She returned with the young lady and another man.

Q. Did they get in the car?

30

A. They all got in the car.

Q. Where did you drive them?

A. North on Broad Street to Chestnut, east on Chestnut to the Adelphia Hotel where I had dismissed this man.

Q. You mean by dismissed the man that he got out of your car there?

A. He got out of the car at the Adelphia Hotel.

Q. And you refer to the man who had accompanied the two women when they got in on Wolf Street.

A. Yes.

Q. Then where did the party go?

A. The party decided they were going to have something to eat somewhere in the neighborhood we were the same afternoon. I had suggested to them about a place called Three Tuns; it was practically
10 nine or ten miles difference from Fortside.

Q. That is a popular suburban eating place, isn't it?

A. Yes, sir.

Q. Then what took place?

A. We had carried on through, driving at a mere rate, with no speed, through the park.

Q. What park do you mean?

A. Fairmount Park, over through the Lincoln Drive to what they call the Ridgeway Pike. When
20 I hit on the Ridgeway Pike I had what we call a blow-out or a flat shoe. I stopped and changed the shoe, which all hands were off the machine, started to change the shoe, and they insisted upon helping me.

Q. What do you mean by "they"?

A. Frank and Schuck, but as it is a matter that we can change twice as fast without any help ourselves—the shoe was changed and Frank had passed the remark that they should look out for the driver
30 for changing the shoe, which he did, and I received ten dollars for changing the shoe.

Q. After the shoe was on and the car started, where did you go?

A. Started on through again into Three Tuns. When we passed Fortside, Fortside was dark, I didn't say nothing but went on, straight on through

to Three Tuns, got there and it was dark, all closed. Frank had made a suggestion that they would try to get out and perhaps if they couldn't get nothing to eat, get a room, which he did, got out of the car, knocked at the door and rang the bell, but no answer.

Q. Then what took place?

A. From there, carrying on, turned back into the city again.

Q. And where did you go?

A. Back into the city; finally hitting the Lincoln Drive; off Fairmount Park View I have another flat shoe, which I had to stop and change. Changing the shoe, Frank had got out and says, "Another flat shoe?" I says, "Yes." He said, "Another ten dollars," which I received. And there was also a remark passed then that the next flat shoe that Ray ~~would~~ have to pay for it, which I passed the remark in a kiddish way, "You might as well pay it now, it is half way down," which he did, paid the ten dollars. We carried through, carried on into the Fairmount Inn, where I received enough air to carry me back into the city. I got into a place on 13th Street where there are several little hotels, and I suggested to stop and inquire in one of the places, asking them if there was any rooms. 10 20

Q. Who requested you to do so?

A. Frank and Schuck. I also went into this hotel, where I was told——

Q. Were you able to get rooms where you first inquired? 30

A. No, sir.

Q. Did you so report to them when you came back to the car?

A. Yes.

Q. Then what did you do?

A. Then went to another place on Walnut Street above 13th.

Q. What took place there?

A. What took place there? We all went in finally—they had rooms, and found they had no suit-cases, and finally had no rooms.

Q. Just explain what you mean; you mean they had rooms, is that what you mean?

A. First he had told us he had rooms.

Q. Then the whole party went in?

A. Then the whole party went in, and then he
10 didn't have any rooms.

Q. And why didn't he have rooms after he had said——

Mr. Harris: He hasn't said so; he hasn't said why he didn't have rooms.

Q. Did he say why he didn't have rooms afterward?

A. Yes, sir, because there was no suit-cases.

20 Q. Then what did you do?

A. I was told then to go to a hotel at 15th and Chestnut, which is called the Colonnade Hotel.

Q. Did you go there?

A. Yes, sir.

Q. What took place?

A. We were sent in to inquire if there was any rooms there, which I did, came out and told them yes and all the party went into the hotel.

30 Q. What took place after the whole party went in?

A. They registered there, I suppose, and I was dismissed.

Mr. Harris: Well, not what you suppose.

The Court : No.

Q. You say you suppose they did; did you see them register?

A. Yes, sir.

Q. Then what took place?

A. I was dismissed and was told to return for them the following morning at eleven o'clock.

Q. And who did you leave at the hotel?

A. Frank James, Ray Schuck and the two ladies.

Q. Were you paid that night for your taxi bill?

A. Yes.

10

Q. Do you remember how much it was?

A. \$58.00 was the receipts that was collected that night for the taxicab bill.

Q. Do you remember how much you were paid?

A. \$65.00.

Q. Did you return the next morning to the hotel?

A. Yes, sir.

Q. Who did you see there?

A. Frank James, Ray Schuck and only one of the girls.

20

Q. What took place after you got there at the hotel?

A. There was a remark passed that the young lady was going to go shopping; she had left the hotel.

Q. You mean the one that had gone, that they referred to as having left to do some shopping?

A. Yes, sir.

Q. What did the two men and the woman who remained do?

30

A. There wasn't but one woman when I got there, in there, when I got there that morning, and that woman left before we did. That was the woman that went shopping.

Q. Then where did you go, if any place, with James and Schuck?

A. For a ride.

Q. Where did you take them?

A. Up Broad Street.

Q. Oh, pardon me, a minute; where did you see them when you came to the hotel?

A. In their room.

Q. Did they have any conversation with you in their presence or away from you?

A. They had, but not in my presence.

10 Q. Where was that conversation held?

A. In what they called a bedroom.

Q. And who had the conversation?

A. Frank and Schuck.

Q. Did they talk loud enough for you to hear them?

A. No, sir.

Q. When you came out where did you go with them?

A. Went up Broad Street with them in the car.

20 Q. And describe the trip that day.

A. Up Broad Street, I just can't recollect how far I went up Broad Street, but quite some distance. Finally I wound out through and right over toward Overbrook. Going south on 63rd Street I was stopped at a drug store at 63rd and Race, which I was told they were going to use the telephone.

By Mr. Harris:

30 Q. Who told you that, now?

A. Frank and James.

By the Prosecutor:

Q. You mean Frank and Schuck?

A. Or Frank and Schuck, rather.

Q. Go ahead.

A. They used the telephone, I suppose, I didn't see them.

Q. No, not what you supposed; they went in?

A. They went in and a few minutes later Frank James came out and says that he was going across the street to a doctor. He had again returned to the drug store.

Q. Did he say for what purpose he was going to the doctor's?

10

A. Well, if it is just the same I wouldn't like to express it, your Honor.

The Prosecutor: Well, I won't press it unless counsel for the defendant insists I shall.

Mr. Harris: I am not going to insist.

Q. Very well, they went to the doctor's?

A. Went to the doctor and returned to the drug store, in the drug store; he had came out with a bottle of medicine. From there on down 63rd Street to Market where I had then dismissed Ray Schuck. After leaving Ray we went on down 63rd Street for some distance, running into 58th and Baltimore Avenue, where he had purchased a newspaper.

20

Q. You say Ray?

A. Frank Schuck or Frank James purchased a newspaper, looking for an apartment; sitting in the car reading the newspaper over he had seen a place on 59th Street near Christian, where he decided to go; going there he seen the proprietor of the house, I suppose, that was a lady—she had then taken us up to show us the room, which he didn't like. From there on carried on up 60th Street on a ways to a place at 61st and Pine, but didn't like that neigh-

30

borhood—I had passed Pine Street when he passed that remark. We had stopped at a restaurant at 60th and Spruce and had dinner.

Q. About what time was that, do you remember?

A. In the neighborhood of one o'clock.

Q. Then where did you go?

A. From there we went for a ride; on a ways into a place they call Media.

Q. Then where did you go?

10 A. Going on this road to Media he had stopped me and says that he wanted to take some medicine, which he had did.

Q. Did he get out of the car to do it?

A. Yes, sir.

Q. Did you see him get out?

A. Yes, sir.

Q. Do you know when he got out whether it required personal attention to take the medicine that he did?

20 A. Yes, sir.

Q. Then what was done after he had given himself this personal attention?

A. Back into the car and decided that we could go back to the city, which I did.

Q. Where did you go from there?

A. Back into the city to find another apartment.

Q. Did you find one?

A. We had stopped at a place at 1727 Girard Avenue.

30 Q. What place is it?

A. Where there was an answer that there was no apartments there.

Q. Then where did you go?

A. From there we went to a place, 1530 Green, where an apartment was taken.

Q. Was there any conversation at the time the

apartment was rented by the defendant, James, with either you or the person from whom he was engaging the apartment, or the room, whatever it was?

A. Outside of whether I liked it.

Q. Was the room engaged?

A. Yes, sir.

Q. Was there any statement made to the proprietor as to who would occupy the room?

A. Yes, sir.

Q. What?

10

A. Frank James and his wife.

Q. Did he say when he would be there to take the room?

A. Sometime during the evening.

Q. Where did you go from there?

A. Back to Fifteenth and Berks.

Q. Who did you meet there, if anyone?

A. The lady that they had met the day before.

Q. Was that one of the girls or ladies that had been at the Colonnade Hotel Friday night?

20

A. Yes, sir.

Q. Was she the one that was still there on the morning when you returned or the one that had left?

A. The one that was still there in the morning.

Q. Was she taken into the car?

A. Yes, sir.

Q. Where did you go?

A. From there there was a remark passed by Frank James that they had to meet Ray at seven o'clock at 63rd and Market.

30

Q. Then where did you go after you got the car at 15th and Berks?

A. Started on the way out Walnut Street to 63rd and Market, but by her directions, was to go out Walnut Street until she told me when. I got as far

as 58th and Market when she says, "Turn north on 58th to Market," which I did. From Market to 60th, across 60th Street, half way in the block, I was stopped by the girl, which she had said at first that she wanted to see a friend of hers in a store where they sell ladies' clothing. She was gone for a length of time, for we will say fifteen minutes, when she returned to the car. She had passed the remark to Frank James of a dress. We carried on then to 63rd
10 and Market to where we were supposed to meet Ray Schuck, stopping at the northwest corner of 63rd and Market, I had got off the seat of the car, because I had shut the motor off, and thought that it was not my place to be sitting on there listening to any conversations. Getting off the car I had walked around for a few minutes close by the car when there was a taxicab drove up alongside of mine, which had stopped, and Frank James got out of mine and into this car for a few minutes, but returned into
20 my car, when they had dismissed the other car. The other taxicab contained Ray Schuck. They had got back into my car.

Q. What do you mean by they?

A. Mr. James and Ray Schuck had got back into my car, directed me to take them to 52nd and Walnut.

Q. Was the lady with them?

A. Yes, sir, the lady sat in my car.

Q. Did they have any packages or grips of any
30 kind?

A. One paper package.

Q. Who had that?

A. Ray Schuck had it when he got there at the car.

Q. Then what was done after the three got in your car with you?

A. After the three got into the car they had a suit case which was bought on Friday, that this paper package was placed in it.

Q. Describe the kind of a bag it was.

A. A black hand bag.

Q. Where did you go after the three of them got in?

A. Fifty-second and Walnut, below Fifty-second Street, I should say, between Fifty-first and Fifty-second on Walnut.

Q. What took place there?

A. Why Ray Schuck left us there.

Q. And where did you and James and the girl go?

A. We started on into town.

Q. Then what took place?

A. I got in as far as Forty-eighth Street when Frank James and the girl had been carrying on different questions in amongst themselves, I didn't hear, but anyhow wanted to go back to Sixtieth and Market, which was done.

Q. What took place when you got to Sixtieth and Market?

A. Sixtieth and Market they had got out of the car, Frank James and this lady.

Q. Where did they go?

A. Went into this establishment where they sold ladies' clothes.

Q. Where did you remain?

A. I remained on the opposite side of Market Street on a small street.

Q. How long did you stay there?

A. Quite some time.

Q. Did you stay until they returned or did you move?

A. No, sir, I didn't stay until they returned. I stayed there for a length of time, until I became

weary that they had lost me in some way, shape or form.

Q. You mean you were suspicious that they may have left you standing?

A. Yes, sir.

Q. Then what did you do?

A. I rewalked on the side of Market where they had got out, looking in one store after another until I had seen them.

10 Q. Then what?

A. At the time I had seen them there was a car pulling up close to the store, which I had gone across to get my car and put it back in its place.

Q. In the place?

A. Of the car that pulled out.

Q. Was that in front of the store that they were in?

A. Not just exactly in front, we will say a few feet away from the store.

20 Q. How long did they remain in the store?

A. Quite some time.

Q. When they come out did they have anything with them or had they made any purchases, if you know?

A. They didn't have anything with them.

Q. Was any conversation by either of them from which you would know whether they had purchased anything?

A. Yes, outside a remark was passed that she
(1) thought it was a fine dress.

Q. Then where did they go?

A. Started on into the city, which I had got into, I might say, below 52nd Street, when again a remark was passed that they did not even have a receipt for the dress.

Q. Then what did they do?

A. They returned again back to the store to get a receipt for the dress, which they had bought.

Q. Did they go in the store again?

A. Yes, sir.

Q. Both of them or one of them?

A. Both.

Q. Did they have any conversation about it when they came out?

A. No, sir.

Q. Do you know the price of the dress from anything that you heard either of them say? 10

A. No, sir.

Q. Did they have the dress with them when they came out?

A. No, sir.

Q. How far did you go?

A. Back then into the city again where I was directed to go to the Fairmount Inn.

Q. Did you go there?

A. Yes, sir. 20

Q. What took place there?

A. After I got to the Fairmount Inn, cars are not allowed to park in front of the place, always on the side, which I had to remove the car, I was told to put on the side, and come in and bring the bag with me.

Q. Did you do that?

A. Yes, sir.

Q. What took place when you got inside the Fairmount Inn? 30

A. I had checked the coat, my coat and the bag also and had supper there.

Q. Then what took place?

A. They were dancing.

Q. Who do you mean by they?

A. Mr. James and the young lady.

- Q. Then what took place?
A. After a while, I will say an hour, perhaps an hour and a half, they decided to go home.
Q. Where do you mean?
A. To take them to their apartment.
Q. Where was that?
A. 1530 Green.
Q. Did you take them there?
A. Yes, sir.
- 10 Q. At what time of the night?
A. I should say in the neighborhood of midnight.
Q. Did you leave them there?
A. Yes, sir.
Q. Did you see them go in the house?
A. Yes, sir.
Q. Did you go in?
A. Yes, sir.
Q. Did you stay any length of time?
A. A few minutes.
- 20 Q. Was there any conversation in the house between them or yourself with them?
A. Not outside of direction to be back the next day.
Q. Which would be Sunday?
A. Yes, sir.
Q. And what time were you to report during the next day?
A. Any time that I merely could get there.
Q. Were you paid for the taxi hire that day?
- 30 A. Yes, sir.
Q. Do you remember the amount of the bill and how much you received?
A. Taxi bill that day was fifty dollars, but received sixty.
Q. Did you return the next day?
A. Yes, sir.

Q. At what time?

A. About one o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. Who did you find there?

A. Frank James and the young lady.

Q. Did you go in the house?

A. Yes, sir.

Q. How long did you stay?

A. About ten minutes, fifteen minutes.

10

Q. And what did you do?

A. They came out and they got into the car for another ride.

Q. And where did you—who do you mean by they?

A. Frank James and the young lady.

Q. Was it the same young lady that you had left there the night before with him?

A. Yes, sir.

Q. What time did you leave the house that Sunday?

20

A. About one fifteen.

Q. Where did you go?

A. From there we went to Fifteenth and Berks.

Q. What did you do when you got to Fifteenth and Berks?

A. The young lady decided that she was going to take some morning papers home.

Q. Did she return to the car?

A. Yes, sir.

Q. Did James go with her when she left the car or remain with you?

A. He remained with me.

Q. Then where did you go?

A. For a ride.

Q. Where did you go after the ride?

A. North on Broad Street to the Boulevard, over

the Boulevard to Lincoln Highway, into Trenton, where I was directed by Frank James in a few streets through Trenton, to get on a road that I found out was New Brunswick, which I had went quite some distance on this road, but while driving the girl insisted that she didn't want to go.

Q. Then what took place?

A. Kept on arguing for some time and I kept on driving, then I was directed to turn around and go
10) back again.

Q. When you turned and came back where did you go?

A. Came back into Trenton.

Q. Then where did you go?

A. I was told instead of going on the Philadelphia side we would return on the Jersey side.

Q. And what route did you take?

A. I couldn't exactly tell you what route, I didn't know where I was until I hit Mt. Holly.

20) Q. Did you stop any place before you reached Mt. Holly?

A. Yes, sir.

Q. Where?

A. On a place that is called the Columbia Cabin.

Q. Is that at Columbus, New Jersey, that Log Cabin, you mean?

A. Yes, sir.

Q. Made out of logs, sort of on the corner?

A. Yes, sir.

30) Q. Why did you stop there?

A. For something to eat.

Q. Did all three of you eat at that place?

A. Yes, sir.

Q. Then where did you go?

A. From there we continued on down this road back all the way into Camden, or I should say 18th

er 16th and Federal, somewhere in that neighborhood.

Q. Then where did you go?

A. Down to a place alongside of a car barn, which is close to Haddon Avenue.

Q. Do you know whether it was Newton Avenue?

A. I believe it was Newton Avenue. I drove down, yes, sir.

Q. Just describe it, was there a car barn there?

A. There was a car barn.

Q. And were there elevator tracks?

A. There were elevator tracks.

Q. It is near Haddon Avenue?

A. And it was near Haddon Avenue.

Q. What took place when you reached that spot?

A. Reached there to the car barn, there is a street alongside of the car barn, which I was directed to turn up, which I did for a short distance, above, there was a box car standing, which I stopped, Frank James dismissed me there.

Q. Did he pay you the bill?

A. Yes, sir.

Q. Remember the amount it was and how much you received?

A. Forty dollars was his bill, fifty I received at that time.

Q. And where did he go after he dismissed you?

A. Over this bank of the railroad.

Q. Did he say where he was going?

A. Didn't say where.

Q. Did the girl remain in your car?

A. Yes, sir.

Q. And where did she go?

A. Back to the city, Philadelphia.

Q. Have you seen Frank James or had any business with him since that time or was that the last that you had him as a fare in your taxi?

A. That was the last time, yes, sir.

The Court: The court will recess until 1.30, but before those in the court room leave I will ask that the jury be taken out first and the defendant.

The Prosecutor: There are only a few questions I overlooked, which would make it complete.

10 The Court: The witness will have to return anyway for cross-examination and you can ask him then.

(Recess taken until one-thirty o'clock P. M.)

(Trial of the cause resumed at 1.30 o'clock P. M., pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.)

GEORGE JAUSS, recalled.

By the Prosecutor:

Q. Mr. Jauss, on any of these trips that you have spoken of in your testimony, did you go with the defendant to make a purchase of a ring at any place?

40 A. Yes, sir.

Q. Where?

A. 1020 Girard Avenue.

Q. When was that?

A. On Friday afternoon.

Q. What kind of a ring was it?

A. A white gold with a diamond.

Q. How much did it cost?

A. \$135.00.

Q. After you left him on Sunday evening on Newton Avenue near Haddon, the place where you have described, did you see James again after that at any time?

A. Yes, sir.

Q. When?

A. A few days later.

10

Q. What were the circumstances of that?

A. I was phoned to at the Quaker City Garage late in the afternoon; I was told to meet—

Mr. Harris: I object to that.

Th Court: No, don't say what you were told.

Q. Did you talk to the defendant over the phone?

A. Yes, sir.

20

Q. What did he say to you?

A. Asked me if I had found a memorandum book and a pencil in the car.

Q. What did you say?

A. Yes, sir.

Q. Then what was done?

A. He asked if I could meet him that afternoon at the United Cigar Store at 4th and Market.

Q. Did you meet him?

A. Yes, sir.

Q. And did you give him the book and pencil?

30

A. I gave him his book and his pencil.

Q. Did you see him again after that?

A. No, sir, that was the last until here in court.

Cross-examination.

By Mr. Harris:

Q. Who first called on you after the arrest of James?

A. Sir?

(Question repeated.)

10

A. County Detective Doran.

Q. Where?

A. 1134 Vine Street.

Q. Is that the Quaker City Garage place?

A. No, sir.

Q. Did you tell him all this story then that you have now told here?

A. Partly all.

Q. Why didn't you tell it all to him?

20 A. I couldn't think of all of the story just at that time.

Q. Now, how did you refresh your memory?

A. By thinking the trip over.

Q. When did you next see him or anyone else connected with the State in this case?

A. Perhaps a few days later.

Q. And who was that?

A. County Detective Doran.

30 Q. Did you go over the case, the story with him then again?

A. Yes, sir.

Q. And did you add to what you had already told him?

A. Yes.

Q. And when did you next see him?

A. Sometime later, but I couldn't just exactly say when.

Q. Now, then, give us the date of the first time you saw him?

A. That is something I don't think I can do.

Q. You can't give me the date of your first meeting with him?

A. No, sir.

Q. Did you know him before you met him that day?

A. No, sir.

Q. Did he make himself known to you?

10

A. Yes.

Q. Did he tell you what he was after?

A. Sir?

Q. Did he tell you what he was after?

A. What he was after, yes, sir.

Q. Did he tell you how he found you out?

A. Sir?

Q. Did he tell you how he found out who you were?

A. Yes.

Q. How did he say?

20

A. Through the Quaker City Cab Company.

Q. Then how many days afterward was the second meeting?

A. A week or more.

Q. How many days after that was the third meeting?

A. I should say another week.

Q. Is Mr. Doran the only one that you have seen to talk to about this?

A. No, sir.

30

Q. Who else has talked to you about it?

A. The Prosecutor.

Q. The Prosecutor himself?

A. Yes.

Q. Where?

A. In his office.

Q. How long ago?

A. About two weeks or more.

Q. From now?

A. Yes, sir.

Q. Two weeks back you saw him?

A. Yes.

Q. Was that the first time you had seen Mr. Wolverton?

A. Yes, sir.

10 Q. Do you know whether your statement was reduced to writing from time to time?

A. Sir?

(Question repeated.)

A. No, sir.

Q. Was it taken down by a shorthand reporter?

A. Yes, sir.

Q. Where?

20 A. In Mr. Wolverton's office.

Q. Then Mr. Doran's statement was just given to him verbally?

A. Yes, sir.

Q. Now, how many times have you been to the Prosecutor's office?

A. Once.

Q. Did you tell him this story that you have related here today?

A. Yes.

30 Q. In all the details?

A. Closely, yes.

Q. And you had remembered, after having your memory touched up a little by Doran——

The Prosecutor: I object; counsel is absolutely unwarranted——

The Court: That question will be stricken out because it contains something that has not been proven. Just reframe, will you, Mr. Harris the question?

Q. After the several interviews by Mr. Doran, your memory has been refreshed somewhat, hasn't it?

A. Somewhat.

Q. Now, to what extent has it been refreshed? 10

A. None.

Q. Well, you didn't tell it all to him at the first time?

A. Yes, sir.

Q. Didn't you say a while ago that you did not tell it all the first time?

A. To Mr. Doran.

Q. Did you tell it all to him on that first occasion?

A. Not to Mr. Doran.

Q. Who did you tell it to before? 20

A. To the Prosecutor or Mr. Wolverton.

Q. Now, how many times had Doran been to see you from the first time until you saw the Prosecutor?

A. About five or six times.

Q. Now, how many times have you been at the Prosecutor's office and did not see Mr. Wolverton?

A. And did not see Mr. Wolverton?

Q. Did not see him?

A. None. 30

Q. After you had visited Mr. Wolverton and given him this story, you say it was taken down by a stenographer?

A. Yes.

Q. Do you see the stenographer in the court room?

A. Yes, sir.

Q. From any source whatever did you get a copy of the stenographer's notes?

A. Did I?

Q. Yes.

A. No, sir.

Q. You have never seen the stenographer's notes since he took them down?

A. No, sir.

Q. Have you seen a transcript of them, a type-
10 written copy of them?

A. What?

By the Court:

Q. Do you understand what a transcript is?

A. A memorized statement?

Q. No, a transcript means whether you saw them
typewritten, written down after they were taken
down by the stenographer—did you see a typewritten
20 statement of what you had said to Mr. Wolverton
that presumably was taken down by the stenogra-
pher?

A. Oh, yes, sir.

By Mr. Harris:

Q. You have seen a copy of that?

A. Yes.

Q. And gone over it?

30 A. Yes, sir.

Q. When?

A. This morning.

Q. Before you went on the witness stand?

A. Yes, sir.

Q. When was it you told me you saw Doran
first, the first time? Taking as a point when you

discharged him at Newton Avenue and the railroad, Camden, how many days after that was it that you first saw Doran?

A. How many days after that?

Q. Yes.

A. I couldn't just exactly say, perhaps two weeks or more.

EDWIN C. NORCROSS, recalled.

The Prosecutor: I would like to recall this witness on a matter that I was not in a position to examine him on yesterday when he was here.

By the Prosecutor:

Q. Mr. Norcross, I show you a key which is marked Exhibit S22 and ask if you can tell me whose key that was?

A. It is the key to Mr. Paul's locker in the bank.

The Prosecutor: I offer that in evidence. I think I did before but I will do it again.

The Court: It was marked for identification is my recollection. It will now be received in evidence.

(Key admitted in evidence and marked Exhibit S22.)

FRANK G. GIBERSON, SWORN.

Direct examination.

By the Prosecutor:

Q. Mr. Giberson where do you live?

A. Red Lion.

10 Q. Will you tell me whether this Exhibit S12, which is a wallet, was found by you, and if so, where?

A. Yes, sir, Irick's Causeway.

Q. When?

A. On the seventh of November.

Q. Of what?

A. Seventh of November.

Q. At Iricks' Causeway?

A. Yes, sir.

20 Q. Can you describe just how many feet from the little bridge it was and what side of the road?

A. It was on the left-hand side of the road, as I was going out toward the Sooy place.

Q. And was it on the Tabernacle side of the causeway or on the Sooy side?

A. No, on the other side.

Q. Now, which?

A. North side.

30 Q. I am unable to distinguish it by the points of the compass, was it towards Sooy's Corner or towards Tabernacle?

A. No, it was towards Burr's Mill, out towards the Sooy place, out that way.

Q. It was on the left-hand side of the road?

A. Left-hand side.

Q. Going away from Tabernacle?

A. Yes.

Q. After you pass over the causeway?

A. Yes.

Q. How far away from the causeway?

A. About a hundred yards, I should judge.

Q. How far from the road?

A. I should judge about a rod and a half.

Q. How close to where the grave was?

A. That would be about a hundred yards then; there are some papers identified, picked up too.

Q. Those papers that are inside, are they the ones 10 that you have just referred to?

A. They look very much like them. They got blood stains on them.

Mr. Harris: I ask that that last be stricken out.

The Witness: Yes, sir.

The Court: It will be stricken out because it is not responsive to the question. That is the only reason. 20

Q. Do the papers that you have in mind, which you have referred to here have blood on in your opinion?

A. Yes, sir.

The Prosecutor: I understand that he can express an opinion on that.

Mr. Harris: May I examine him first on that to see whether or not he is qualified to testify as to whether they are blood stains or not? 30

The Court: No, I think not. He is not brought as an expert witness on that subject. It is a matter that a layman can testify to.

Mr. Harris: A layman may testify even, but he has to qualify first.

The Court: Well, you can ask him, perhaps that ground is well taken, whether he knows what a blood stain is, whether he has seen any.

- Q. Do you know a blood stain when you see it?
A. Well it really resembles blood stains.
- 10 Q. Have you ever seen blood in all your life?
A. Oh, yes.
Q. How long have you lived?
A. Forty years.
Q. And you have seen blood stains?
A. Yes.
Q. And in your opinion that is a blood stain on this piece of paper?
A. Out of furs I have skinned furs and my furs, dropped on paper where I have skinned furs.
- 20 Q. It is blood in your opinion?
A. I couldn't say that, no.
Q. You don't want to say whether it is or not?
A. No.
Q. What did you say?
A. It looks like blood stains.
Q. Looks like blood?
A. Yes, sir.

The Prosecutor: I think this has already been offered in evidence as Exhibit S12.

Q. I now show you a revolver which is marked S23 for identification and I ask if you found that revolver?

A. Yes, sir.

Q. Where did you find it?

A. Near Irick's Causeway.

Q. Will you just describe the spot, as nearly as you can, as to feet and distance from the causeway, and which side of the road and so forth?

A. About a rod, as near as I can, rod and a half as near as I can tell you at the top of a pine tree, an old pine that was felled over the creek, and dropped down.

Q. Was it in the causeway?

A. No, it was on the left-hand side of the causeway. 10

Q. Left-hand side of the causeway?

A. Irick's Causeway, yes.

Q. Going in what direction?

A. Going from Tabernacle out towards the grave.

Q. Was it on the Tabernacle side of the causeway or on the Sooy side?

A. No, on the grave side.

Q. About how far away from the water?

A. About a foot. 20

The Prosecutor: I offer it in evidence.

Mr. Harris: Have it marked for identification first.

The Prosecutor: Yes, S23.

Mr. Harris: I don't think I understand the Prosecutor, the mere finding of a revolver doesn't mean anything unless he traces it to someone. 30

The Court: Do you object to the offering at this time?

Mr. Harris: I object.

The Court: What is the basis you are objecting to it?

Mr. Harris: I am objecting to it——

The Court: I will not receive it, Mr. Wolverton, in evidence at this time until it is connected in some way with the decedent or with the defendant.

10 The Prosecutor: I am perfectly willing.

Q. I now show you a spade which has been marked Exhibit S21.

A. \$4.25 on the handle.

Q. Your answer is \$4.25 on the handle?

A. Yes, sir.

Q. Why do you make that remark?

A. Because that is the way I seen it when I found it.

20 Q. Where did you find this spade?

A. Near Frank Antrim's spring, near by Red Lion, on the road that goes from Red Lion to Medford, near by the edge of the road.

Q. Is that a road that leads to Tabernacle and the pine woods that you have described as Irick's Causeway?

A. Yes, sir.

Q. And would be a road taken from that point to Camden?

30 A. Yes, sir, it would.

No cross-examination.

HERBERT GROVER, SWORN.

By the Prosecutor:

Q. Where do you live?

A. Medford, New Jersey.

Q. I show you a rake that is marked Exhibit S20 and ask if that is the rake that you found?

A. Yes, sir.

10

Q. Where did you find it?

A. On the road from Cross Keys to Tabernacle.

Q. When?

A. On the 20th day of October.

No cross-examination.

JOHN PAINTER, SWORN.

20

By the Prosecutor:

Q. Mr. Painter, what position do you hold of an official character in the City of Camden?

A. City detective.

Q. How long have you been on the police force of the City of Camden?

A. Nearly thirty-eight years.

Q. On Sunday, November the seventh, did you, in company with the Prosecutor and other officers, make a search for articles in connection with this case?

A. Yes, sir.

Q. Where did you go and what did you search for?

A. Went in the lower end around Clement's Bridge.

Q. In what county?

A. Must be the other county, Woodbury.

Q. In Gloucester County?

A. Gloucester County.

Q. It is close to the line, is it not, of Camden County?

A. Close to the line, sir.

Q. It is right close to the Camden County line?

A. I wasn't certain whether it was in or not.

10 Q. What is the locality known as?

A. Clement's Bridge.

Q. Did you and that party find these boards——

Mr. Harris: I suppose, if the Court please, I had better make an objection to the form of that question. I prefer the form of the question to be what they found. It is a leading question. This is a detective and a willing witness.

20 The Court: Mr. Wolverton will reframe the question Mr. Harris.

Q. On this trip I have spoken to you about did you find anything?

A. Yes, sir.

Q. What?

A. These two boards was found along the road to Clement's Bridge.

30 Q. The two boards which you refer to are the boards which I now hold in my hand?

A. Yes, sir.

(Boards referred to marked S24 for identification.)

Q. Where did you find them?

A. One was found by Mr. Parker, and the other by Mr. Joseph Fleetwood in my presence.

Q. You were there in the party that was looking for them?

A. Yes, sir.

Q. And saw them picked up?

A. Yes, sir.

Q. And this piece here, which is a smaller piece, comes within the description of what was found, same thing as the two boards?

A. Yes, sir, they all come together.

Q. What else was found?

A. The covering of a back seat of a Ford car.

Q. I show you a covering and ask if this is the covering that was found on that day to which you refer?

A. Yes, sir.

(Article referred to marked S25 for identification.)

Q. Will you describe where the boards were found and then where the seat was found as to the character of the place? 20

A. It was found along the road, boards was found on the right-hand side of the road and the covering was found down the hill near a stream of water.

Q. Did you on November the 9th search the waters of Cooper River for anything?

A. Yes, sir.

Q. What?

A. A bundle that was clothing thrown in the river, and these are the clothes. 30

Q. Did you find the bundle?

A. They were found in my presence. There were four men.

Q. Who was there making a search with you?

A. David Hunt, Zeke Johnson, Edward Smith, and myself.

Q. You were in charge of the party?

A. Yes, sir, I got the hooks all ready, and the boats, and went there and fished them out right in my presence.

Q. What did you do with this party after you had gotten boats and gotten hooks?

A. We went up to Kaighn Avenue Bridge, Cooper River, on the south side, sixty yards below the bridge, they were brought out in the middle of the water.

Q. And what shape were they in when they were brought out?

A. They were tied up with a brick in the middle of them, with tire tape.

Q. When you speak of the clothes and "they" and use your finger in pointing, do you mean this bundle of clothes here at the clerk's desk which have been marked as Exhibit S17?

A. Yes, sir they are the clothes.

Q. And what shape were they in when you got them?

A. They were tied in a bundle, wrapped with tire tape.

Q. And what was in the bundle?

A. Pair of pants, vest, coat, pair of drawers.

Q. Anything else?

A. An old brick.

Q. Is this the brick that was part of the bundle?

A. I should say so, have had it my possession and in my care all the time.

Q. And that was on November the ninth?

A. November the ninth, yes, sir.

Q. These articles that I hold in my hand, the underwear of the type that was in that bundle?

A. I would say they were, but I didn't know they were separated. They were all together.

Q. That is you thought they were all there together while you were testifying?

A. Yes, sir.

Q. Now, Mr. Painter, how long have you lived in the City of Camden?

A. Sir?

(Question repeated.)

A. Sixty odd years.

Q. I show you a photograph which is marked Exhibit S1, and ask if that picture correctly portrays the locality of Market Street and Delaware Avenue, showing the entrance to the ferry and the entrance back of the sheds?

10

A. Yes, sir.

The Court: On what date—you had better put in the question on what date.

Q. How long to your knowledge has it had that appearance?

20

A. Oh, four or five years, or more.

Q. And you were present when the photograph was taken?

A. Yes, sir.

Q. Exhibit S2, which is a photograph, does that correctly portray the appearance of the ground back of the sheds at the time of October 5th?

A. Yes, this is a picture away in behind, going into the ferry behind that building there.

30

Q. Exhibit S3 purports to portray the locality between Marlton Pike and Baird Avenue Bridge, at the point where the road runs over. Is that a correct portrayal of that ground for some time past?

A. Yes, sir.

Q. Covering the time when this crime was committed?

A. Yes, sir.

No cross-examination.

LAWRENCE T. DORAN, SWORN.

10

By the Prosecutor:

Q. Mr. Doran, where do you live?

A. 1115 Mechanic Street, Camden.

Q. How long have you lived in Camden?

A. Forty-one years.

Q. Do you occupy any official position in Camden County?

A. County detective.

20

Q. How long have you been a county detective?

A. In my eleventh year.

Q. And under what prosecutors have you served?

A. Prosecutor Seovel, Prosecutor Boyle, Prosecutor Kraft and the present Prosecutor.

Q. When did the disappearance of David Paul first come to your attention?

A. October 6th.

Q. And by whom were you so informed?

A. By the treasurer of the Broadway Trust.

30

Q. What did you do after your conversation with him?

A. Immediately started an investigation; and I learned through that investigation that the defendant was a friend of this man's.

Q. After you learned that what did you do?

A. I visited the home of the defendant on several occasions.

Q. Where?

A. Brooklawn, on the 8th.

Q. On what date?

A. On the 8th of October. It was reported to me on the 6th, which was Wednesday and on the 7th I was at his home, on Thursday the 7th.

Q. And whom did you see there?

A. The wife.

Q. Did you see the defendant?

A. No.

10

Q. Did you gain any information concerning him?

A. No, sir.

(Objected to.)

The Prosecutor: All right; don't answer, it is not of enough importance; I won't press it.

Q. You did not see the defendant?

A. No, sir.

20

Q. Where else did you inquire for him?

A. I inquired for him at his office at 60 North Second, and also the Lippincott Motor Company at 20th and Market, Philadelphia.

Q. On what days?

A. On different days; I visited Philadelphia on Friday and on Saturday; I visited the Brooklawn home several times on Thursday and on Friday.

Q. Were you at his office at 60 North Second Street on Thursday, October 7th?

30

A. I was.

Q. Did you leave word there as to who you were?

A. I did.

Q. When did you first come in contact with James, the defendant, by reason of the investigation that you were making?

A. On Monday night, October 11th.

Q. Where?

A. At the Prosecutor's office.

Q. Under what circumstances?

A. He came there with his father and father-in-law, Mr. Spiegel.

Q. Had you been to the homes of either of those gentlemen previously?

A. No, I had been to James' home at Brooklawn
(1) and met Mr. Spiegel, his father-in-law, there on one of the nights that I called.

Q. When they came to the Prosecutor's office what took place?

A. James came in.

Q. What night was this?

A. Monday evening, October 11th.

Q. What took place?

A. James was taken into the front office in the presence of the Prosecutor and myself, and was told
20 that he was brought there for the purpose of questioning him about the disappearance of Paul, and that if he had anything to do with it, he was compelled to make no statement, but if he had anything to do with it any statement that he made would be used against him, and he made a statement.

Q. Where did he say he had been?

A. He said that on Tuesday, October 5th, he met Paul on Arch Street near Second, and that Paul wanted to take him to Philadelphia in the car, and
30 Paul got in the car and he drove him to the First National Bank, and he stopped on the northeast corner, just east of the dummy policeman and Paul got out and went into the First National Bank to transact some business. He said Paul came out and got in the car again and he drove him direct to the passenger entrance of the Pennsylvania Ferry on this

side. Paul got out of the car and the last he saw of Paul was Paul going through the entrance to the ferry. I asked him why he did not take Paul to Philadelphia and he said the reason he did not was the fact that he had made a date with a girl for Van Sciver's corner about that time and as he passed down Market he saw the girl standing on Van-Sciver's corner, and when he let Paul out he drove back to Van Sciver's corner and got this girl in.

Q. Did he say where they went?

10)

A. He said they went from there to a boat house at Clementon and said he stayed there all night Tuesday, all day Wednesday, until sometime in the evening of Wednesday evening, and then he said he drove the girl—they came from the boat house in the car and he left the girl out in the neighborhood of Third and Cooper.

Q. Did he say who the girl was?

A. He said he didn't know her name or did not know where she lived at. He said then that he went on home. He got up on Thursday morning and went to Philadelphia. He said while in Philadelphia he read the account of Paul's disappearance, and he said that he had taken sick on Wednesday evening, that a disease had shown, and that reading the disappearance of Paul, and then he said he telephoned to the office at 60 North Second and learned that I was looking for him, and he said between the disease coming on and me looking for him and he reading of the disappearance of Paul, and he knew that he was the last man with Paul, he said, "I got so nervous and frightened I went back to the boat house at Clementon and I stayed there until Sunday morning, October 10th."

20

30

Q. Did he say whether anyone was there with him?

A. He said not; I asked him if he had anything

to eat while he was in the boat house, and he said, "Nothing, but a few sandwiches."

Q. Did he say when he had gotten them or where?

A. He didn't say; he talked about buying something or telephoning from the restaurant at the end of the trolley line at Clementon; talked about telephoning from there or something, made a statement that he had telephoned from there.

Q. Did he say to whom he had telephoned?

10 A. He did; he said he had telephoned to his wife something about going to Schenectady on a trip with trucks, or something of that kind.

Q. After that did you meet him for any purpose?

A. I did.

Q. What?

A. After he was confined in the City Hall I talked to him.

Q. No I mean before that?

A. On the following day, yes.

20 Q. After he had been to the Prosecutor's office, did you meet him that day?

A. I did.

Q. For what purpose?

A. He was going to show me some of the women that him and Paul had been in company with.

Q. Did he make any effort to find the girl that he had been with?

A. He didn't.

30 Q. Did you after that have any conversation with him at the City Hall?

A. I did.

Q. What was the subject of that conversation?

A. After the body of Paul was found and he was arrested, I talked to him about the finding of this tape, about the door, the way it fitted the door, the blood stains on it; I told him about the conversation with Ward.

Mr. Harris: Now, I object to this, if your Honor please, unless after the body was found he had sufficiently warned him that anything he might say would be used against him.

The Court: It is merely what he told James.

Mr. Harris: Yes, but I anticipate what is to follow.

The Court: Well, we will consider what follows when we reach it.

Mr. Harris: I am considering the character of the witness on the stand, that he is a very willing witness and I don't want to get testimony in which I don't think is proper.

The Prosecutor: He is not only willing, but he will abide by any orders that the Court makes.

The Court: The witness may proceed to state what he told the defendant.

The Witness: I showed him everything we had in the case. I warned Mr. James before I started in this conversation at the City Hall, I said, "James, you know who I am?" He said, "Yes, I know you, Mr. Doran." "Well," I says, "anything that you say to me is going to be used against you." I said, "we have found this tape and blood stains on it, and the door, and it fits your left-hand door of your car." I did that with the purpose of showing him the facts that I had gathered. He still denied his guilt.

Q. Did you speak to him about the conversation that he is supposed to have had with Ward or with Albertson?

A. I did; he denied all of them, said he never remembered making such a statement to Mr. Ward.

Q. Did you talk to him again at any time?

A. I did.

Q. When?

A. On November 17th.

10 Q. Under what circumstances?

A. I was sent to the Mount Holly jail to convey him to the Camden County jail.

Q. Did you have any conversation with him before you left the jail?

20 A. I did; I went to his cell and told him I was going to take him to Camden County, and he said he was glad that I came. I said, "James, we are anxious to find this iron that was used in assaulting Paul; when I take you to Camden I am going to take you by the route that you brought Paul up here; I am going to try to retrace that and go back the same way." I said, "You remember I am a county detective; you are not compelled to make any statement unless you so desire, but any statement you make to me on this trip will be used against you." He said, "All right, I will go."

Q. Then where did you go?

A. We drove from there to Red Lion.

30 Mr. Harris: Now, if your Honor please, this is one, I assume, of a series of statements that this defendant made either to this man or to some other detective, or to the Prosecutor. My contention is that these confessions, none of them, are legal or admissible in evidence. I anticipated I would raise the objection when Mr. Berry was called to prove

what he took down before the Prosecutor. Now, if the Court is willing, I would like to make my objection to all of the questions, all of these confessions and we can have one ruling that would cover them all.

The Court: Well, I could not make one ruling that would cover them all, of course; I must rule on each question as it is presented to me. Now, of course, this witness has gone so far in his testimony that I realize that he perhaps is to repeat a statement made to him by James which is tantamount to a confession in whole or in part. Now, of course, that may or may not be admissible in evidence. I will give you now an opportunity, Mr. Harris, to cross-examine this witness, in order that before I rule upon whether the testimony that he is about to give is admissible or not in evidence, you may have an opportunity to establish whether the statement that he proposes to give as being made by James was a statement made by James voluntarily. 10 20

Mr. Harris: I thought it would save time, if the Court please—I think the argument will take some time—it will save time if I were permitted either at this time or later on in the testimony of some other witness to make the argument which I think applies to this case, and I do not want to take up the time of the Court, but I must confess that it is an argument which it will take some time to make. 30

The Court: Well, of course, I cannot—I have no right to control you, Mr. Harris, as to what time you think most opportune to make your argument. Of course, I am here ready to listen to you when you desire to make the argument, and you can make

the argument either now or after you have cross-examined this witness, and I will give you the further privilege of calling any witnesses that you may desire to call to show that the statements that this witness now proposes, as I understand, to give in evidence, are statements that were made, as you know, either through some inducement or threat, and therefore not voluntary.

- 10 Mr. Harris: If your Honor please, then I would like to call Ellis Parker.

The Prosecutor: Then you have no questions you wish to put to this witness?

The Court: Of course, you must cross-examine this witness first, as to that point.

- 20 Mr. Harris: Suppose I do not want to cross-examine him at this time?

The Court: Then you waive that right of cross-examination.

Mr. Harris: I don't want to waive it finally.

The Court: I am offering it to you at the present time.

- 30 Mr. Harris: My thought is that I prefer, if I can get the Court's indulgence, to put my case in right now on the question of all these confessions, and I prefer to call Mr. Parker, who, I understand, was the first one to whom he made a statement, because under the law, if that statement is illegal, made illegally, extorted, that the following statement falls

within the same line. All the cases hold away back in 10th law, the Guild case, that if that statement is induced or extorted by means which prevents it from being legal, subsequent statements fall in the same line and fall with it, unless the state assumes the burden of showing that there has been a time intervening when the effect of that illegal extortion has fallen off, drifted away from him, and therefore I think the legal way, or orderly way would have to be for me to examine Ellis Parker. If the Court insists that I waive my cross-examination of this man by not making it now, I will make it now. 10

The Court: The Court rules that you should, and I think it is the proper course of procedure. It is a statement that this witness is to make, and, as I understand it, it is a statement that was made to him when no one else was present.

Mr. Harris: Well, I didn't understand that. 20

The Court: Am I correct, Mr. Doran?

The Witness: Captain Schregler and myself conveyed the prisoner from Mount Holly to Camden County.

Q. So that Captain Schregler was present with you?

A. Yes. 30

Cross-examination.

By Mr. Harris:

Q. Mr. Doran, when did you give him this warning?

A. November 17th.

Q. Before you started from the Mount Holly jail?

A. Yes.

Q. And where did you go?

A. We came to Red Lion.

Q. Where did you go from there?

A. From Red Lion we went to Tabernacle.

Q. And from there where?

A. At Tabernacle we took the road into the pines.

10 Q. After you got into the Pines where did you go?

A. We stopped at this crossing and the defendant explained —

Q. No, not what he said.

The Court: No, don't say anything he said to you, Mr. Doran.

Q. Was his counsel with him?

20 A. No.

Q. You knew he had counsel?

A. I did, knew counsel had been visiting him at the Mount Holly jail.

Q. You did?

A. I knew it there, the jailor told me you had seen him there.

Q. Once?

A. I don't know once or how many times; he said you had interviewed him.

30 Q. How long had counsel been kept out of the Mount Holly jail?

A. I don't know that; I had no charge over the Mount Holly jail.

Q. You were there on the day the Grand Jury met?

A. I was.

Q. And knew I was kept out, didn't you?

A. I didn't know exactly that you were kept out.

Q. Didn't you hear Ellis Parker and I have quite a talk in the sheriff's office in your presence?

A. No, I heard you and Ellis Parker having an argument in Ellis Parker's office.

Q. I guess that is right, Mr. Doran, in Ellis Parker's office?

A. Yes.

Q. In which he refused to let me see my client? 10

A. You were going to show him the law that would compel him, and you and him had an argument about some point of law which I am not familiar with.

The Court: Now, Mr. Harris, pardon me, but you must confine your cross-examination as to what occurred at this time.

Mr. Harris: May I quote some citations on that point to you? 20

The Court: Yes.

Mr. Harris: We have a case in New Jersey, if the Court please, whatever occurred, the manner in which he was confined, the whole subject-matter may be inquired into, so we can see whether the confinement, the fear, the breaking down of the man by confining him in a place not suitable for his condition, and if this man has notice of it, if his testimony about to be given follows this imprisonment, that he had then, that regulates his testimony just as well. 20

The Court: I guess it will take less time to permit the witness to answer the questions.

Q. You say you were present when Mr. Parker refused me admission?

A. I don't know he refused you admission or not.

Q. He told you—Mr. Painter, who else was there with us?

A. Mr. Painter, myself, Captain Schregler was there, I think.

Q. I think so.

A. I think the stenographer, Mr. Parker's sten-
10 ographer was present, yourself, and I think there was one or two strangers from Mt. Holly that I didn't know.

Q. Now on that occasion I told him, did I not, tell him I had been sent there by the sheriff because he, Parker, had issued an order that I could not see the defendant James?

The Prosecutor: If the Court please, this ques-
tion is surrounding an individual by the name of
20 "Ellis Parker." I don't know that Ellis Parker had this defendant in custody and had the right to either grant or refuse, so I can't understand what relevancy a conversation that counsel for the defendant would have with Ellis Parker has anything to do with the situation or not, if he does want to prove the fact that he was refused permission to see his client, if he wasn't in his custody.

The Court: I will allow the question. I don't my-
30 self just at this time see the materiality or the relevancy of it, but I will allow that question.

Mr. Harris: If the Court please —

The Court: I have allowed the question so the witness will answer it.

(Question repeated.)

A. I can't recall exactly the statement that you made, but I remember something that Parker said something about as a point of law was raised between you, something about a law that was held, the Supreme Court had decided something about, and you were arguing about it, but to cover the exact facts, that I couldn't tell you.

Q. Didn't he say that the Chancellor in the Murphy case had decided that an attorney could not see his client in jail? 10

A. He mentioned the Murphy case, but I wouldn't go any further than that, I wouldn't want to quote him in saying anything, it is something that I never thought I would have to recall.

Q. You know as a matter of fact I didn't get in, don't you?

A. I knew you got in before I brought him down from there. 20

Q. Yes, once.

A. I don't know, I know you visited him at the City Hall before he left here.

Q. Oh yes, I got permission there, I will admit that, when Mr. Wolverton sent for me and told me I could go to Mt. Holly, but that was after the alleged confession, wasn't it?

A. What do you mean by the alleged confession?

Q. After I went to Mt. Holly, do you know the date of it? 30

A. I think it was the fifth of November, a month from the date of the crime.

Q. When did you bring him down here?

A. Seventeenth of November, Grand Jury was in session in Mt. Holly.

Q. I mean the day I went and saw the defendant James.

A. I don't know that date. I wasn't down there, I don't believe.

Mr. Harris: If the Court please, I would like to call some witnesses in this case.

ELLIS PARKER, recalled.

10

By Mr. Harris:

Q. Mr. Parker, you are county detective?

A. Yes, sir.

Q. Do you recall my calling on you on the day the Grand Jury met to consider the case of State against James?

A. I do.

Q. Do you remember the date?

20 A. November the fifth.

Q. November the fifth?

A. Yes, sir.

Q. Did you refuse to let me in to see the defendant?

A. Refused to give you an order to go to see the defendant.

Q. Did I come to you and tell you that the sheriff had refused to let me in until I got your consent?

A. Yes, sir.

30 Q. And you refused to let me go in?

A. I refused to give you an order to go up there.

Q. Without that order I couldn't get in jail, could I?

A. You could have gone to the Prosecutor so far as I know.

The Court: There are plenty of ways of getting in jail.

Mr. Harris: On this occasion I wanted to get in for a lawful purpose to see my client.

Q. You cited the Murphy case to me, didn't you?

A. I did.

Q. Now, Mr. Parker, I told you I was an attorney.

A. I knew it.

10

Q. You knew it before?

A. Yes.

Q. You knew I was an attorney for a number of years?

A. Yes, sir.

Q. That wasn't our first acquaintance, was it?

A. No, sir.

Q. Now, Mr. Parker, where was James confined in that jail?

A. He was confined on the second floor in the center of the front corridor

20

Q. What is called murderers row?

A. Yes, sir.

Q. Describe that cell to me.

A. Well, it is an ordinary stone cell, it has two doors, iron doors in front.

Q. What is in the middle of the floor?

A. There is a ring in the middle of the floor.

Q. What is it put there for?

A. For people when they are bad.

30

Q. Chain them to it?

A. Yes, sir.

Q. It has two iron doors?

A. Yes.

Q. The first one is a grate door?

A. Both of them.

Q. Both grate doors?

A. Yes, sir.

Q. Has it a wood door?

A. No, sir.

Q. When those two doors are closed how much light is left into that cell?

A. Well, there is a window in the front of the cell, and then there is a window, a small window in the rear, along the upper part of the cell.

10 Q. Higher than his head?

A. Yes, sir.

Q. Now the windows in the front, how large are they?

A. Well, it has twelve window panes, six by eight.

Q. How high up is that?

A. About four foot from the floor.

Q. Take the one in the rear, what size is that?

A. I don't think that is large enough for a man to get out unless he is pretty small.

20 Q. Unless the man is pretty small?

A. Yes.

Q. What did you give him to sleep on?

A. I hadn't anything to do with the findings of Mr. James in the jail.

Q. But you were in there to see him?

A. I was.

Q. What did you see in there?

A. There was a cot there.

Q. No, I mean in the first instance, when you first
30 took him up there?

A. I think there was a mattress there.

Q. Thrown on this stone floor?

A. Yes, sir.

Q. Was there any chairs in there?

A. They never put chairs in a cell.

Q. What did he have to sit down on when he wanted to sit down?

A. He could sit on the toilet, otherwise he could double the bed up and sit on it.

Q. That is he could sit on the mattress on the floor or he could sit on the toilet?

A. Yes, sir.

Q. What about the vermin in that cell?

A. There was none there so far as I knew. I didn't get any on me.

Q. You weren't in there?

A. Yes, sir, I was in there.

Q. Did you have occasion to sit on that toilet?

A. On the toilet? I don't think I did.

Q. You didn't anyhow, did you?

A. I don't recall it.

Q. You don't know whether that toilet was covered with vermin, do you?

A. I do not.

Q. Did he complain to you about it?

A. Not to me.

Q. You had some talk to James in reference to making a statement, didn't you?

A. When, Mr. Harris?

Q. Well, I mean the first one.

A. I did not. I told him the first two or three times I talked to him I didn't care to talk to him about the crime.

Q. Then if he had offered to make a confession to you then you would not have taken it?

The Court: That is not a proper question. It is the mental process of his mind. It is overruled.

Mr. Harris: Then I will withdraw it.

Q. When did you first attempt to get a statement from him?

The Prosecutor: If the Court please, I am not making any objection whatsoever, no matter how broad the examination goes, even if it might seem to be an investigation of the proper quarters given to a prisoner. I realize that whatever is being asked is almost entirely for your Honor's benefit, because in the first instance it is your Honor that passes on the question of whether a confession or an alleged confession goes into evidence or not, and for that reason I am making no objection, assuming that your Honor wants all the information possible, even though I do feel that a large part of the information that is sought to be elicited by the questions by counsel for the defendant are not legal.

Mr. Harris: The cases all hold —

The Court: Now, Mr. Harris, I am always very glad to be acquainted as to the law. Of course I must control this examination within limits, and I propose to do it, but yet, even remotely, it is very remote, the conditions surrounding the prisoner might be relevant, of course I am leaving it to your good judgment, Mr. Harris, not to go so far afield in this examination that I would feel it necessary to limit you.

Mr. Harris: Not going any further, when I come to argue this case to your Honor I think I can show you just how far we have gone.

The Court: You go right on.

Q. You had some conversations with him in reference to a confession, didn't you?

A. I think I had one conversation with him prior to his confessing.

Q. Didn't you go and tell him Schuck had confessed?

A. I did.

Q. Show him the money?

A. I did.

Q. Didn't you tell him that he had better confess?

A. I didn't use the word "better", Mr. Harris, because I knew what it meant.

Q. What is that?

10

A. I know what the word better means.

Q. What did you tell him to induce him to confess?

A. I said, "James," —

The Court: No, that is not a proper question. It implies that he was induced to confess and that is just exactly the point at issue.

Mr. Harris: I was trying to start it whether he didn't say he better tell.

20

The Court: You can ask him what he did say.

Q. What did you say to him?

A. I said, "Mr. James, you know who I am?" He said, "Yes." I said, "You know you are charged with murder." He said, "Yes," and I says, "You don't have to make a statement unless you want to, any statement you make might be used against you. I have recovered the money, Raymond Schuck 30 showed me where it was, and he has told me this story from one end to the other, I will recite it to you so that you will know that I am not deceiving you," and then I recited and told him as Raymond Schuck had told me from one end of the story to the other, and asked him if that was so and he said yes.

Q. Now didn't you tell him that it would be better for him to make a clean breast of it, that if he was tried in Mt. Holly he wouldn't have a chance to save himself from the charge?

A. Mr. Harris, I never used the word better, because I knew the word better carried with it a force, I guarded myself against it.

Q. Well, did you tell him that the Burlington County jurors would ——

10

The Court: Just ask him what he did tell him, Mr. Harris. This, of course, is your witness.

Mr. Harris: Yes, an unwilling witness.

The Court: You must ask him—not unwilling. He hasn't evidenced any unwillingness to my mind, therefore you must not lead him.

20

Mr. Harris: He has been a witness against us today, in the employ of the State.

The Court: That makes no difference. He is called here as your witness and you must not lead him.

Mr. Harris: The Court must realize when I am questioning this witness, when I am trying to discredit his testimony, Mr. Parker has been a detective a good many years ——

30

The Court: You ask him questions that aren't leading and I will determine whether he is an unwilling witness and whether you will be permitted to ask leading questions afterwards, but I think we would arrive at this solution quicker if you would just ask him what he did say.

Mr. Harris: I have asked him what he did say, and I will ask him again.

The Prosecutor: Is there any necessity for him repeating it again?

The Court: I haven't understood, if Mr. Harris wants him to repeat it again I have no objection.

The Prosecutor: Because he didn't hear it or didn't understand I have no objection. 10

Mr. Harris: But I am surprised by the answers of this man, knowing what I do about the situation, and he has not answered what we had every reason to believe.

The Court: Do you desire to contradict his statements upon the witness stand? If you do you will put the question to him as to when and where and what circumstances he said something different from what he is now testifying to on the stand, and I will give you that permission. 20

Mr. Harris: My present intention is to contradict him.

The Court: Very well, put the questions when and where.

Q. Didn't you tell Mr. James that he had better make a clean breast of it and that if he was tried in Mt. Holly he would be sent to the chair, at once, while if he was tried in Camden County he would have a chance for his life? 30

A. I didn't in the way you are talking at all, one thing at that time that conversation didn't occur.

Q. Didn't you have a conversation with him in which you told him that the Grand Jury was going to meet tomorrow, and tonight was the last night for him to make a statement?

A. How is that ——

The Court: Now that is a leading question.

10 The Prosecutor: If the Court please, the witness just got out one word, and when that one word will appear on the record, and without him finishing the sentence that he was about to say, or without that word being struck out it will give an entirely different meaning from what the witness wanted to convey, because he used the word "positively" so it would give a direct answer to the question, and yet he was continuing to say something entirely different.

20 The Court: This is an important matter and I will have the record read and the witness will have an opportunity to finish his question.

(Former question and answer repeated.)

A. No, sir. You want me to tell you what I did say to him?

30 The Court: No, you have answered the question.

Q. Was anything said to him at that time in reference to the use of the revolver by him or Paul?

A. What do you mean at that time, before the stenographer came in and took his statement?

Q. Now, during the time before you sent for your stenographer?

A. No. I told him what Schuck had said.

Q. Did you tell him to say that the shooting of the revolver took place below Ellisberg?

A. No, I did not, Mr. Harris. I asked him where it did take place and he told me it took place between Forrest Hill and Ellisberg.

Q. So you didn't tell him to make that statement so as to give the County of Camden jurisdiction?

A. The County of Camden already had jurisdiction.

10

Q. That is a matter of law which I will have to argue out with the Court.

A. I am acquainted with that too.

Q. I don't want to argue with you. I prefer to have an open mind like the Court's on that. Now after you had this talk to him you sent for your stenographer?

A. No, I sent for Mr. Berry.

Q. Oh, Mr. Berry?

A. Mr. Berry's father-in-law lives in Mt. Holly and he was there. 20

Q. Mr. Berry came?

A. Mr. Berry was there when I was there. I had already had him there.

Q. Well, did he take down what you had said?

A. After he came in he did.

Q. Well, at what stage did he come in?

A. He came in after I was done talking to him the first time.

Q. And after that Mr. Berry took it down?

30

A. Yes, sir.

By the Prosecutor:

Q. You are not the sheriff of Burlington County, are you?

A. No, sir.

Q. Nor you are not the law judge to pass upon the law, are you?

A. No, sir.

The Court: The Court will take judicial notice of both of those facts.

10

CHARLES A. WOLVERTON, SWORN.

By Mr. Harris:

Q. Mr. Wolverton, did you visit the Mt. Holly jail after the alleged confession of Schuck?

A. Several times.

Q. Did you visit James, the defendant?

A. I was never at his cell, no, sir.

20 Q. Did you send for him to come down to the sheriff's office?

A. I have.

Q. On the first occasion after the Schuck confession you spoke about?

A. I did.

Q. Who was with you on that occasion?

40 A. Mr. Dorin, Captain Shragler, John Painter,—I am attempting to give the names of all who were in the jail. Do you mean those that were in the jail at the time or those that were present?

Q. Those that went up there with you first I want.

A. Mr. Dorin, Captain Shragler, John Painter and myself were inseparable for about a month, and they were with me on that occasion.

Q. Now when you sent for the prisoner he was brought down to you, wasn't he?

A. Every time I asked for him.

Q. You knew that I had been refused admission, didn't you?

A. No, sir, I did not.

Q. Hadn't you and I talked about it at Mt. Holly?

A. I don't remember that you did, Mr. Harris.

Q. Weren't you in the Prosecutor's office when he told me in your presence that I couldn't see him?

A. I was conversing with the Prosecutor just preliminary to the meeting of the Grand Jury on November fifth, and you came to the office and said you wanted to see the Prosecutor. I immediately went out and you had a conversation with Mr. Kelsey, I assume, because I left the two of you in the office, but I didn't know, from anything that you said at that time, that is my recollection of it now. 10

Q. Didn't you know either from me or from someone else that I was refused admittance to the Burlington County jail?

A. No, sir, but I did hear the men joking about the legal argument that had been commenced in Mr. Parker's office between you and Mr. Parker because of the fact that you were a lawyer, and he was a county detective, and the joke was being passed as to who knew the most law. 20

Q. I think of course he did. On that occasion the subject-matter of discussion was their refusal to admit me to the jail, wasn't it?

A. From what I have heard here today.

Q. If you didn't know that I couldn't be admitted to the Burlington County jail why did you send for me and tell me that you had arranged for me to be admitted to see Mr. James? 30

A. I think afterwards you told me, Mr. Harris, and the way that, if I remember correctly, the way that came about, if I am not correct I would like to

be stopped and corrected, it came about through the fact that after I had talked to Frank James and he had made a statement to me in which the details of this crime were gone over, I said to him, "James, have you ever told your counsel this story as you have told it to me?" "No, sir, I never have." I said, "Don't you think you should?" He said, "Do you think, Mr. Wolverton, that I should? I don't like to tell him" and I think—I won't be positive—he said
10 something about having known you so long. I said, "James, above all people to be honest with be honest with your attorney and tell him everything." I said, "If I will speak to Mr. Harris and ask him to come here tomorrow with me would you be willing to tell this same story to him that you have just now related to me?" and he said, "Yes, Mr. Wolverton, I will." And it is my recollection that that night or the next morning, that I came down with you and told you of the circumstances, and I think you said
20 that, I am not sure, but I said that I would go there with you, or make sure that you saw him, or whatever you wanted in the matter. Now, I don't think you went at that time, but I arranged it for you with the sheriff, and I think it was on one of the occasions you went was Sunday, you know, because it was inconvenient for the sheriff.

Q. I was only there once. Let me refresh your recollection, didn't you interview my son and tell him that and he told you I was out of town and
30 then I called you up?

A. That may have been. We have had so many conversations, Mr. Harris, that I don't recollect, I don't know of any occasion when you have ever spoken to me, either when the defendant was at the City Hall, Camden, or at Mt. Holly, when I had anything to do with him, that I have ever refused you any permission to see him.

Q. Now you knew I was his attorney?

A. I assumed that you were his attorney, whether it was an attorney of his or for the family or friendship or not, I didn't say. I assumed that you were advising him.

Q. Hadn't I told you in your office at the time?

A. I had received a notice from you to that effect.

Q. And didn't we have a conversation about habeas corpus in which you agreed that it would not have to be taken out? 10

A. Yes, sir.

Q. Now why did you go to see this man in the absence of his attorney?

A. To see who?

Q. James.

A. Well, Mr. Harris, you mean that I should have permitted you to have been present at the time?

Q. Now, I am here, I am not on the witness stand.

A. I did not know that I was obligated in any way in caring for the interests of the State of New Jersey to have respect for the feelings of the counsel of the defendant. I did, however, have no conversation with him at any time, under any circumstances, but what every word that was said by myself or by him was taken down stenographically. 20

Q. And you have refused to let me see those notes?

A. I have.

Q. Notes which were taken from my client?

A. I have for two reasons.

Q. I don't want your reasons, sir.

A. In view of the fact —

Q. If you want to make a statement, make a statement; I have no objection.

The Court: If the witness desires to state his reasons the Court will hear them. If you desire that, Mr. Wolverton, it is your privilege.

The Witness: I have for two reasons, that if it is true, as you have said, and I have so stated to you, that if you represent the defendant you are supposed to have his confidence, and you had every opportunity to talk to him; he could tell you the same things that he has told me and from our conversations I have assumed that he has told you the same things that he has told me.

10 Q. And they are the reasons?

A. They are the reasons, yes, sir; I am satisfied that you know just exactly what he has told me.

Q. Don't be too sure about that. Now, Mr. Wolverton, you thought that it would not interfere with his confession being offered in evidence, the fact that he had been denied access—his counsel had been denied access to him, and to take a statement from him in the absence of his counsel.

20 A. Mr. Harris, if you ask me for an opinion on that subject I will say that I unqualifiedly believe that the confession is legal in every way, from every standpoint and would be admissible. In the first place, from the day that I received the notice that you represented him, you were given every opportunity to consult with him at the City Hall in Camden; you availed yourself of that opportunity, had numerous conversations with him in Camden before he was taken to Mount Holly. I understood that you had seen him at Mount Holly; whether or
30 not that is true, I don't know.

Q. No, I deny that.

A. I do know that you had seen him prior to this 17th day of November, which is referred to by Mr. Doran. That is from the standpoint that he had already had the benefit of your counsel and your advice. You had told him, so you told me, that you

wanted the truth, and I did not assume that you would be any more particular about him telling me the truth than you would that he would tell you the truth; and for the further fact that under the law of the state, if I had taken advantage of the law as it was laid down in the Murphy case, I could have said that no confession was illegal merely because he had not had the benefit of counsel, but in this case he had it, the benefit of counsel, before a confession was taken. 10

The Court: Is there any other witness, Mr. Harris?

Mr. Harris: No, sir.

The Court: Then, Mr. Doran, will you take the stand?

Mr. Harris: I would like to be heard now on the 20 question whether any confession under any circumstances is admissible in this case.

The Court: Oh, very well then, I will hear you now. Now, this argument, as I understand it, you wish to be directed not only to the statement that Mr. Doran was about to testify to, but also to the other statements that have been referred to in the testimony just presented in Court?

30

Mr. Harris: Yes.

The Court: Very well.

Mr. Harris: Not only that, why not the confession, the statement which Mr. Wolverton has—why not cover the whole question?

The Court: Very well.

The Prosecutor: I think from a legal standpoint that the facts that Mr. Harris would seek to have passed on when the more formal statement is offered in Court, as it will be, can be passed on with the facts that your Honor has heard, that is, if your Honor wants to do it in that way, and if Mr. Harris does.

10

The Court: I think Mr. Harris wants to do it in that way, and of course, if it is agreeable to Mr. Harris it is perfectly agreeable to the Court, and I of course take it that it would be to the State.

The Prosecutor: I am willing to argue the question at this time.

The Court: Very well, Mr. Harris; I will hear
20 you now.

Mr. Harris: Now, if your Honor please, a statement or confession to be legal must be voluntary, and by that we mean one that is not induced or extorted from him or received from him by any promise of benefit, either expressed or implied. I understand that to be the rule. We object not only to this testimony here, but we object to all the statements which are considered confessions, so that this
30 argument therefore is addressed to all the statements or confessions this young man is said to have made.

The Prosecutor: Mr. Harris, may I interrupt? I just found that from the disadvantage of not being examined or cross-examined on the stand, I over-

looked a statement that I would like to incorporate into the record.

The Court: Very well then, you may return to the stand and you may ask yourself the question or have one of your assistants ask you and answer it.

CHARLES A. WOLVERTON, recalled.

10

The Witness: I wish to add to the statement that I have already made, which I seem to have overlooked, that at no time that I talked to Mr. James, from the evening of October 11th when he first came to the office of the Prosecutor, including the night that he was arrested, October 16th, and on each succeeding occasion, whether at the City Hall in Camden or at the Mount Holly jail, on every occasion of which we spoke, he was told, as will appear by the stenographer's notes that were taken, who I was, the position that I occupied, what my duties in that position were, the charge or possible charges, as it happened to be according to the time when the statement was taken, that might or could be lodged against the defendant as to any incriminating evidence that we had. He was informed that under no circumstances did he have to make any statement whatever, in answer to any questions of mine, whether they incriminated him or not; that if he did make any such statements, they could and they would be used against him, and that if he did wish to answer my questions or make any statement in the matter, it would be entirely voluntary upon his part, and with a full understanding that it would be used against him if he made the statements.

20

30

There was no occasion at any time when that warning was not given to him by me, either before he had counsel or after he had counsel.

Cross-examination.

By Mr. Harris:

Q. Were those statements put in writing, Mr.
10 Wolverton?

A. Every one of them.

Mr. Harris: Then I ask the Court that he allow me to see them. He has testified from a statement which is in writing, and the written statement is the best evidence.

20 The Witness: If your Honor please, I have not testified to the statement; I have merely testified to the warning that was given. I need no notes whatever to refresh my memory as to what I said; it is what I did say on the stand.

Mr. Harris: But the warning is in writing and taken by a stenographer.

30 The Court: That makes no difference, Mr. Harris. You see, a statement of that character can be testified to by recollection; in fact, assuming that the statement was taken down by the stenographer, the best evidence of what transpired and the only evidence really is a statement of those that were present, refreshing their recollection from that which was taken down. Therefore, you have Mr. Wolverton's evidence as to what was said at these interviews, which is the evidence of what was said.

Mr. Harris: Then he declines to give me the statements and the Court declines to compel him to?

The Court: I decline to compel Mr.—Well, of course, the only part that you would be entitled to have would be the statement that has just been made by Mr. Wolverton.

Mr. Harris: That is the one; that is all I want.

10

The Court: And he says that that was a statement, as I understand, that he personally, by his word of mouth gave to Mr. James on each of these occasions; therefore Mr. Wolverton's word of mouth is the evidence of what transpired on that occasion.

Mr. Harris: And that statement was taken down stenographically.

The Court: That makes no difference in my judgment.

20

Mr. Harris: Well, I hate to differ with the Court.

The Court: That is all right; that is what Courts, I think, generally are for, to have lawyers differ with them, so it is all right; I am not feeling hurt.

Mr. Harris: Oh, no, I know your Honor wouldn't.

30

The Prosecutor: May the witness be excused?

The Court: Yes, the witness is excused.

Mr. Harris: Well, he went there voluntarily, he wasn't my witness; he went back himself.

The Court: Oh, no, you called him.

Mr. Harris: As far as I am concerned he may be excused altogether.

The Court: Very well, we will hear the argument now.

Mr. Harris: I am reading now from the case of
10 State vs. Young in 67 Law, at page 223, in which this syllabus is acknowledged to be the law of the land.

The Court: This is a case that occurred up in Burlington County, I think a robbery in Burlington City and a murder?

Mr. Harris: Yes, in which the Court said, "A
statement of an accused person, offered by the State
on the trial of an indictment as tending to prove
20 guilt, must be preliminarily proved to have been made voluntarily. Whether it has been so made is to be determined by the trial Court upon evidence adduced by the state and by the accused, if he offers any. Upon such preliminary examination that court is to find what facts are satisfactorily established and to apply the law thereto. If the finding of facts has evidence to support it, and the law applied is unobjectionable, the admission of such a statement is not reviewable on an ordinary writ of error." Now,
30 beginning with the first leading case, that was the case of the State vs. Guild No. 10 Law, in which they lay down the same doctrine. In addition to that, they say in that case that if the preliminary statement —

The Court: Yes, that was a case, I think, up in Hunterdon County where a boy of very young years

afterward suffered capital punishment, and the conviction was virtually upon his confession.

Mr. Harris: Yes, notwithstanding he was a small, black boy. Now, they also say in that case, "When once a confession under influence is obtained, a presumption arises that a subsequent confession of the same nature flows from the like influence, and such presumption ought to be overcome before the confession can be given in evidence." Now, the principal question that I want to raise before this Court is this: There has been no evidence yet to prove the *corpus delicti*, and what I mean by that is, a crime within the body of the County of Camden. They have found a dead body of a Camden County man in the County of Burlington; they have not attempted to show that a single blow was struck in Camden County. If this jury was sent out at this minute and the Court were to tell them that they must first find beyond a reasonable doubt that there had been some blow or that the cause of death was in Camden County—I know what the statute is in which it says that where a blow is struck in one county and he dies in another, either county has jurisdiction to try the defendant—bearing that in mind, I insist that the law is over the entire land, including New Jersey, that a confession of a defendant cannot be admitted until after you prove that a crime has been committed within the jurisdiction of the Court, the *corpus delicti*. Now, there has not been even an attempt to prove it, but I anticipate that the confessions that they have wrung from these people is the evidence upon which they propose to prove the crime in Camden County. Now, I say that cannot be done. If the Court will bear with me I will read —

The Court: Certainly; don't think the Court is hurrying you, Mr. Harris, I want you to take all the time that you feel that you are justified in taking; I don't want you for a minute to think that I am restless at any argument that you may make.

Mr. Harris: Oh, I know you are quite patient, but I am in a hurry to get away myself, and end this case, but yet when a life is at stake I think both
10 sides —

The Court: Take all the time you think is necessary.

Mr. Harris: Now, I call your Honor's attention to the State against an unpronounceable name, Kwiatkowski, 85 Atlantic, page 209, 83 Law, at page 650. "The provision of Section 107 of the Crimes Act (Comp. Stat., p. 1780), that in no case shall the
20 plea of guilty to murder be received upon any indictment, and if upon arraignment such plea should be offered, it shall be disregarded and the plea of not guilty entered, and the jury, if they find the accused guilty, shall designate by their verdict the degree of guilt, concerns alone the practice upon a prisoner's arraignment and trial on an indictment for murder, and does not operate to prevent the conviction of the prisoner upon a voluntary confession made by him even if there be no corroborating
30 evidence, provided the corpus delicti be proved. The only limitation upon the use as evidence against him of a prisoner's confession of murder, voluntarily made, is the want of proof of the corpus delicti. If death, through criminal agency, be proved, and a man confesses to having caused that death, he may be convicted of murder on his confession." But

until you corroborate his testimony, until you prove the corpus delicti, you cannot offer and the Court ought not to receive his confession. Now, that is a New Jersey case, and it refers also to earlier cases in New Jersey. Now, in the case of the United States vs. Mayfield, 59 Federal 119 —

The Court: I am not familiar with that. United States vs. Mayfield?

Mr. Harris: Mayfield.

The Court: All right, what was it?

Mr. Harris: "Before a conviction is justified the government should be required to establish the corpus delicti by some degree of circumstantial evidence or other evidence, independent of the defendant's extra judicial confessions. No such evidence was offered by the government. The Court at the moment of the trial was not willing to direct an acquittal of the accused, but is now of the opinion that a new trial should be granted." In that case they had a confession, but there was no proof that the crime had been committed, and when I say, "a crime committed" of course, I refer within the jurisdiction of this Court. If this crime was committed in Burlington County, this Court would have no jurisdiction. It would have jurisdiction if they established that there was a blow struck in Camden, whether the blow resulted in death or not, and subsequent blows were given in Burlington County; I would concede that the Court had jurisdiction. Take, for instance, how far the Courts have gone. A man comes in from the ferry, goes to the police court and says, "At the ferry house I robbed a colored

man of money, my conscience bothers me and I want to be punished." Suppose after an indictment he comes into court and pleads not guilty; the State cannot convict him on his own confession until they prove there has been a crime within the County of Camden. There is no question about that; that is a very old case in New Jersey; the uncorroborated testimony or the confession of the defendant does not establish his guilt of a crime until you first

10 prove there has been a crime committed. Has there been any proof that there has been a crime committed in Camden County? I say, no, at this time. They found the body in this case in Burlington County, and I assert the law without fear of contradiction that where you find the body, in the absence of any testimony as to where that body was killed, the law presumes that it was killed in the county and at the spot where it was found. Now, if that be true—and it is all there is before the Court at this

20 time, this murder was committed at this crossing in Burlington County, up in the pines, and until you establish it was committed here there can be no possible admission of a confession. In *Priest vs. State of Nebraska*, a confession of A—this is on another point, pardon me. In the case of *State vs. Slingfellow*, 26 Miss., it was held that a confession of murder was not sufficient to warrant a conviction, unless the death of the person confessed to have been murdered was proved by other testimony. Has

30 there been any other testimony here? Not a word, and yet they are about to bring in statement after statement, I assume, which they claim are confessions, before they attempt to prove that there was a blow struck in Camden County. In the case of *People vs. Simonsen*, 40 Pacific 440, this was a California case—"Under a charge of homicide, produc-

ing the dead body does not establish the corpus delicti; it would simply establish the corpus; and proof of the dead body alone joined with a confession by the defendant of his guilt would not be sufficient to convict; for there must be some evidence tending to show the commission of a homicide before the defendant's confession would be admissible for any purpose." Now, you will find in the case of the State against Guild, which we have been talking about, the same rule is applied there, because that is where they pushed the child down a well, a black boy. 10

The Court: No, they did not; it is where an elderly woman was killed by a colored boy.

Mr. Harris: Yes, I beg the Court's pardon; I recall that happened.

Mr. Harris: The Court is right, the black boy was on another point, the question of confession. Now let's briefly refer to what they have said in this case, what the testimony shows at this time, uncontradicted, and therefore you must accept it for the purpose of this argument as true, that this man, the bank runner, got into the car of the defendant, was driven to the First National Bank—I don't think they have even proven, all they have proven in this case is this, that he started from the bank with forty thousand dollars plus a certain amount of checks, and that he never delivered them to the Girard National Bank in Philadelphia, to which point he was directed, that the next they saw or heard of him, they find his dead body in the County of Burlington. Now that is all they have shown as to when or where he was killed. There have been some circum- 20 30

stances of finding some things around the body, but they were all found in Burlington County. They haven't found an incriminating piece or article in Camden County except perhaps the clothes of the defendant which were found in Cooper River. Now that is the only place or only circumstances which in any way attached to Camden County the right to try this defendant at this time, and until you establish that beyond a reasonable doubt these confessions cannot be admitted. Now I ask at this time that these confessions be not received until after they have established something that would satisfy the Court that this crime was committed in Camden County. I would ask your Honor to tell me now, sitting as a jury, suppose you were a jury, could you say that Paul was killed in Camden County? Now I reassert, until you prove that, the confessions under all the cases, the United States Court, and any state courts and even in our own, that the confessions are inadmissible.

Mr. Wolverton: It seems to me that the very statement of the conditions on which confessions can be introduced, which has been made by counsel for the defendant in this argument, without trespassing upon the knowledge of my friend, for I know he is learned in the law, to my mind the proposition, if I may be permitted to use the word, which to my mind describes it most vitally, that it is ridiculous to suppose that in the administration of justice that no defendant can come into court by confession and say that he has done certain things until the state has first proved that he did do them. In other words, that is what a confession is. The *corpus delicti*, I don't assume to have the wide broad meaning that is ascribed to it by counsel for the de-

fendant. There is abundant proof in this case that the deceased, David Paul, came to his death by criminal means. He left the bank in all the vigor of good health in the afternoon of half-past one October fifth. He is bound on a mission that he was unable to complete, having had in his possession a vast sum of money. He is found with his head crushed in, with his legs tied together, doubled up in a small grave. It is preposterous for anybody to assume, even for the purpose of argument, that David Paul did not come to his death by criminal means or agency. To assume otherwise would be to make the administration of justice ridiculous, and it has been technical questions of that kind in the years that have passed that had such a tendency to bring the administration of justice into disrepute.

If death through criminal agency be proved, and a man confesses to having caused that death, he may be convicted of murder on his own confession. I think that no further statement of the law than that, a statement that absolutely has as its basic principle the administration of justice, when it has been shown that a man has been killed by criminal agency, the facts assume such, he can be convicted of murder on his confession. I understand that the argument is based entirely upon that one contention. Do I understand that counsel desires no argument either from himself or myself on the other points involved as to whether a confession is voluntary or otherwise?

Mr. Harris: The argument has ceased so far as I am concerned.

The Prosecutor: I prefer then to put the whole case before your Honor. Statements of a defendant

are always admissible. They are declarations against interest. It is assumed that when a defendant makes a statement against interest that it is admissible. The only possible exception that there might be to that, and I have qualified it by the use of possible exception that it might be to that for this reason, there is a very prevalent thought in the minds of the attorneys for the defendant that there is the necessity upon the part of the State or a police officer to warn a defendant before a statement from him is taken. I know of no principle in the law of New Jersey that requires any officer to warn a defendant prior to the taking of his statement, and that by failure to so warn him that the statement would not be admissible, but because of the fact that a statement must be voluntary, that it must have been given without fear, that it must not have been given as the result of a promise or an inducement because of the fact that when a man is in custody it might seem that he was either coerced or that because of that custody by people who were in authority they would be enabled to make promises to him that he would assume might be carried out, so that there might be no question on that, the State of New Jersey and its representatives in Camden County sees to it that a defendant is warned, not because there is a legal necessity to do so, because a statement without warning is admissible unless it is shown to have been the result of force, implied or otherwise, coercion, or the result of a promise, in the absence of such proof it is admissible, even if there be no warning given, but so as to preclude any possibility of even directly being assumed that he was coerced, or that an unfair advantage was taken of him, having in mind that the state's officer represents the people of the state, and that includes

the defendant as well as the great body of the people, and he must never be unfair, the warning is given to him which was given in this case. According to the testimony as it has been presented to your Honor there was no occasion on which the Prosecutor of this county or the officer who is about to testify but what told this defendant who they were, and his rights, if you wish to term them rights, which is a misnomer so far as the law of the state is concerned, concerning the necessity or lack of necessity for the warning. He was told that any statement that he might make would be used against him, that if he did make a statement it must be voluntary upon his part, and so I might go on and reiterate the testimony which already appears in the record showing that the defendant was not only advised of the charge that was against him, not only advised as to the person and the office with whom he was conversing, that the defendant in addition to that was told that no statement had to be made by him, or any questions answered unless he wished to, and that it must be voluntary upon his part. Bearing in mind this fact, that the defendant and no one else has been called to the stand to deny in the slightest particular the fact that this defendant was properly warned, I therefore submit to your Honor, that, though the warning was not given, yet it need not have been given, yet it was given, full and complete. So far as the corpus delicti is concerned, the man is dead. The evidence in the case shows that he came to his death by a criminal agency, and the confession under the laws of the State of New Jersey is just as admissible as a plea of guilty would be when the preliminaries have been satisfactorily proved to the satisfaction of the Court.

Mr. Harris: If the Court please, I am going to agree with Mr. Wolverton that if you prove the corpus delicti, then there is sufficient, the confession of the defendant in criminal cases that he killed that man is enough. But the point that I am making is this, that his confession is absolutely illegal insofar as that there was an attempt to prove the corpus delicti by it. Of course he says the corpus delicti does not mean, is not as broad as I contend it is, but

10 my contention is that the corpus delicti not only means what he says it does, but it means that it must show that the crime was committed within the county. That is my thought of it, and that is what the most of the cases hold, comes within the jurisdiction, What is the presumption that arises, that this man was found in Burlington County, dead, and in the absence of any proof as to where he was struck, the law places the presumption upon the fact that he was struck right there. Now how are we going to

20 get away from it? He and I agree on it exactly as to what it takes to get the confession in, as to what the effect is as to the confession, but he don't answer the question as to the effect of the question of proving the corpus delicti within this county. And there is where we differ, and I say all the cases hold, and I have been unable to find one that holds to the contrary, or I would have brought it here in fairness to the Court, I have found none the other way, and I have found lots of them my way, and I

30 insist it does not and the mere say so ought not to be taken by this Court unless he submits some authority with it. It is an important question, the most important question that has been or will be raised in this case here, and we are entitled to the fullest consideration before this question, the decision upon this question may result unfavorably to

the defendant, and I ask a careful consideration of the Court on the question that the confessions are not admissible until they prove that a blow happened to Paul in this county which may have aided and assisted in his death.

The Court: This matter may as well be disposed of at this time, and because the Court announces its opinion now with reference to these alleged confessions of the defendant does not mean that the Court has not given some thought to this matter prior to the argument, although, of course, receiving enlightenment from the argument of the defendant's counsel, as well as the argument of Mr. Wolverton for the State. It is a question as to whether these confessions are voluntary, whether they are brought about by anything that was improper in the way of inducement or threat against the defendant. The evidence which has been produced, and possibly all the evidence that can be produced on the subject is very clear to the minds of the Court that there has been no improper method obtained in securing these confessions and statements from the defendant, that they are voluntary in the eye of the law. Upon the other question that perhaps has grown out of the argument of Mr. Harris, I might just as well dispose of that now as at any other time. Of course it is always necessary for the State to prove the corpus delicti, and I could very well imagine, and I know there are authorities that would not warrant, in the absence of the proof of the corpus delicti, a conviction against the defendant upon his confession, because it is a necessary part of the State's case that it should be proven that the person who has been killed has actually been killed, but in this case we have the evidence that Mr. Paul, the deceased, on

October the fifth, was in apparently good health, and he disappears, and upon October sixteenth his body is found in Burlington County, bearing such marks that the only thing that could be said of the physician who has testified, and the evidence of the others who testified, as to the wounds upon the body of Mr. Paul, that criminal homicide had been committed, therefore the corpus delicti has been proved. Now it may be that there has not as yet been proven

10) by the State where the blow was struck, but that is a matter that the State can prove hereafter. The admission of the statement of the defendant are not in any sense dependent at this time upon the fact that before they are introduced there must be evidence that the blow or blows which caused the death of Mr. Paul were inflicted in Camden County, and therefore the statements of the alleged confessions of the defendant will be received in evidence and Mr. Doran can retake the stand at this time.

20)

Mr. Harris: I would like to have an exception, and there is one thing I didn't understand —

The Court: Certainly.

Mr. Harris: Perhaps through my own fault, whether or not the Court held that the corpus delicti, death within the county, the corpus delicti strictly is the death of the man, crime having been

30) committed, whether your Honor holds that the fact that they found the man in Burlington County, he had been criminally murdered, that by a confession of a man that he murdered him, that that can be admitted to prove that he was killed within the jurisdiction of this Court?

The Court: I say that is the evidence submitted, whether it be that of the alleged statement of the defendant, and I want to be perfectly fair in my statement, if the statements that have not been yet introduced in evidence show the blows were given in Camden County, that that is sufficient.

Mr. Harris: Statements of the defendant?

The Court: Statements of the defendant, I say if there is no other evidence of it, that in the Court's opinion is sufficient. 10

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

20

LAWRENCE T. DORAN, recalled.

By the Prosecutor:

Q. After you left the Mt. Holly jail on November the seventeenth, after having made the statement to the defendant which you testified to, where did you go?

A. We went to Red Lion, from Red Lion to Tabernacle, then into the pines. 30

Q. Who was with you?

A. Frank James, Captain Schragler, captain of the detectives of the City of Camden, and George Miller, chauffeur.

Q. What conversation did you have with the defendant as you went along the road?

A. After we reached this Irick's Causeway we stopped, James showed me the place that they had placed Paul's body alongside of the stream.

Q. Where was that place?

A. That place was just immediately opposite direction from Tabernacle, the other side of the stream.

10 Q. On the Sooy's Corner side?

A. Yes.

Q. How far in from this road?

A. He didn't leave the car, he just pointed in to it, as we passed it, he never left the car.

Q. Pointing in to where the body had been?

A. Yes, I asked him in there and he says, "Yes," it was to the side of the road, the brush was knocked down to some extent because had been a lot of traveling in and out of there.

20 Q. Then what?

A. Then we went along to the—trying to explain to us the place where the iron spring was thrown away, and he said he didn't believe it was back very far in the woods, because when he threw it it hit the wind shield and dropped alongside of the road and he was of the opinion somebody had picked it up.

Q. Did he say what effect it had on the wind shield?

30 A. He said it broke the wind shield, then, of course, we looked in the weeds along the road.

Q. Did he show you in the road where he thought he had thrown it?

A. He did.

Q. Then what did you do?

A. We looked around I guess for fifteen or twenty minutes, maybe a half an hour, trying to locate the steel. We drove up by the sections of the grave, and we turned to come back, all the time looking around for the evidence of this spring.

Q. Where did he say the spring, in his judgment, had been thrown?

A. Back a piece from this side of the causeway towards Tabernacle. When we came back he showed us I think on the right-hand side of the road was the place that he picked. 10

Q. What else did he say?

A. We came along then and I told him that, when we left the jail, that I wanted to go just the reverse way, he came up with the body of Paul, and then we tried to do that, we came from the Causeway to the grave, into Tabernacle, then from Tabernacle to Red Lion, then we reached Red Lion —

Q. Who selected the road, you or the defendant?

A. He did. He showed me the road as we went along, and when we reached Red Lion, I wanted him to take the same road from Red Lion to Medford that he had taken, he told me that the road that he had come on that Tuesday was through the woods, and through marsh, and the bridge was down, and he says, when we came through, we had to go and reconstruct a part of the bridge so as to get through, and he says, "This car is too heavy, you can't get through there," so then we returned another route. 20

Q. Was the road that he pointed out to you which he had taken but which he advised you not to take, the regular road to Medford, or was it a by-road? 30

A. He said it was a back road, and he said it led through brush, and grass, and swamp, and he said, "You will never get through with this car." I said, "Well, we will take the nearest road that will lead

us back to a point again where we can touch where you came up."

Q. Then did you pick up your course?

A. We did, we came across another road to the Marlton Pike until we struck the Marlton Pike, and came on up. When we got into Camden County he showed us a place there—I don't know the name of the person that owns this section; I could not describe it to you, but it is in Camden County—where
10 he claims he fired two shots.

Q. Where is that with relation to Ellisburg Hotel, this side of it?

A. This side of the Ellisburg Hotel.

Q. And is Ellisburg Hotel in Camden County?

A. Yes, the line is three or four miles the other side of Ellisburg.

Q. Did he make any comment about the shooting or about why he had done it?

A. He did not; he just said—I think Mr. Schreg-
20 ler and myself were talking about it—and I asked him where the shooting had occurred, and he said, "Somewhere along here." That was between Ellisburg and here, Ellisburg and the jail here.

Q. Then where did you go?

A. I brought him in then to Browning Road, across Browning Road to Kaighns Avenue, and as we struck Kaighns Avenue Bridge I questioned him about where he had thrown his clothes over into Cooper's Creek. The bridge is built with fine wire
30 with a heavy section, forming sections across the bridge, and he pointed out about the third section on the south side of the bridge as where he threw his clothes. We came from there into Kaighns Avenue and rounded the driveway that leads around Cooper's Creek and over Baird Avenue Bridge, and after we crossed the bridge there is a road leads

from the bridge to Marlton Pike. About half way between the bridge and Marlton Pike we stopped the car and I asked him if that was the place that he had—the last place that he had assaulted Paul, or the last place that he had hit Paul, and he replied, “We both hit him here.” I asked him was that the last place and he said, “Yes.” At that point there are two roads leading from the bridge, and they form a point, like; one goes to the right and the other goes to the left; we were on the left-hand road coming toward the Marlton Pike, and I asked him which road it was—the roads were about thirty-five feet apart, and he couldn’t tell me; he said, “I can’t tell you which road, but somewhere about here.” So then we continued on into the Court House. 10

Q. And he was taken to the county jail?

A. He was.

Q. Now, the spot which he referred to near Baird Avenue Bridge as the last place that either of them had struck him, but where both struck him, is that 20 in the City of Camden?

A. Yes, sir.

Q. Did you prior to this trip on November 17th make any effort to locate money that the defendant James is alleged to have had?

A. I did.

Q. Where did you search for it?

A. I searched the culvert at Haddon Avenue and Newton Avenue.

Q. Why? 30

A. Because we were under the impression that it had been put in the culvert through statements made.

Mr. Harris: I object to that, if the statements were not made to him. I think the first answer was all right, “We were under the impression.”

The Court: Just read me that; I was making a note myself.

(Question repeated.)

The Court: I think you had perhaps better just reframe that question.

The Prosecutor: I will withdraw the question.

10 The Court: The question is withdrawn and the answer will be stricken out.

Q. Were those statements, statements of the defendant to you personally?

A. There was no statement made to me about money previous to finding it, until after the finding of it.

20 Q. Where did you find this package of money which has been marked Exhibit S10 for identification?

A. Found that in the home of James' father, 488 Newton Avenue.

Q. What part of the house?

A. Front room, second floor, in one of the drawers of a wardrobe built in the wall.

Q. How much was there in the package when you found it?

A. I took the money to the Broadway Trust and it was counted in my presence, there was \$4600.00.

30 Q. Did you after that have any conversation with the defendant about the finding of the money there?

A. I did.

Q. What did you say to him?

A. I told him that we had found the money in his father's home. He said, "They didn't know nothing about it being there."

The Court: No, don't say anything about what

The Prosecutor: What the defendant said?

The Court: Oh, what the defendant said? Yes, the answer will stand.

Q. Did he say when he had put it there?

A. He didn't say.

Q. That was all the reference he made?

A. That was all he made.

Q. Did he say whether that was part of the money taken from Paul?

Mr. Harris: I object to the form of the question.

The Court: The question is leading; just ask the witness what he said.

Q. What did he say as to whose money it was?

A. He admitted that was part of the money.

Q. Of what money?

A. Of Paul's money, the money taken from Paul.

Mr. Harris: May I have the first part of that answer read?

(The former answer of the witness read as follows: "He admitted that was part of the money.") 20 30

Mr. Harris: I object to what he admitted; I want to know what he said about it.

The Court: If you will just say, Mr. Doran, the exact words, as far as you can recall, that Mr. James told you in reference to this \$4600.00.

The Witness: The conversation was very short; I said something about finding the money, and he said his father did not know it was there, and whether, I can't exactly explain the exact words in that statement, because I did ask him too if that is all the money he had gotten out of it, and he said yes; as far as any other statement I am not sure and I don't want to make it.

10 No cross-examination.

The Court: Now, I see it is three minutes before the hour of adjournment. Of course, it is quite apparent that in the short day of tomorrow between ten and twelve that we cannot finish this case, and it will therefore be necessary to use a portion of next week perhaps in order to finish it. I will, however, if it is the pleasure of counsel sit tomorrow morning from ten to twelve and continue with the
20 case, but if either the counsel of the defendant or the Prosecutor feels that he would like the case to be continued until Monday morning at ten o'clock, it will be continued until that time.

(After a discussion between Court and counsel.)

Very well then, the Court will convene at 9.30 tomorrow morning and then we will consider whether we should have an afternoon session or not. That
30 is a thing that is perhaps an unwise thing to do in view of the law, but we will convene tomorrow morning at 9.30 or 9.35, perhaps we will say.

(At this point an adjournment was had until Saturday morning, December 18, 1920, at 9.30 A. M.)

FOURTH DAY.

Camden, N. J., December 18, 1920.

Trial of the cause resumed at 9.30 A. M., on the above date, pursuant to adjournment, in the presence of the defendant and counsel for the respective parties.

10

The Prosecutor: If your Honor please during the session of yesterday, your Honor will probably remember the calling of a witness by the name of Lawrence Johnson by the State, whose testimony related to the dates on which he had possibly seen this rope, Exhibit S11, in the car of James, and I was taken by surprise in his testimony, and the Court permitted me to have some latitude because of that fact, and upon my statement that I was surprised and that I would call a witness to refute the statement that he had then made, after doing that and speaking to the witness he then made a statement that he did say to Mr. Straw, the Assistant Prosecutor, who was the person I was to call to refute his testimony, the night before, that it had been about a month before the crime that he had seen the rope in James' car. I am ready to carry out my promise and my intention; I am ready to call Mr. Straw if it is necessary to do so, or if counsel for the defendant insists. It seems to me that in view of the testimony that was afterward given by the witness when he was confronted with this fact, it will eliminate the necessity, but, however, I wish to

20

30

keep faith, and I am perfectly willing to call Mr. Straw if it is insisted upon.

The Court: My recollection of it is that when the witness had the question put to him as to whether he did not have that conversation with Mr. Straw he modified his testimony. Mr. Harris, isn't that your recollection of it?

10 Mr. Harris: My recollection of it was that after taking a short recess of a few minutes in some way the man admitted afterward that what he had said just a few minutes before might be wrong, and he now said it was the last part of September. Now, this was the State's witness, and I do not think he has a right to call anybody to contradict what that State's witness says.

The Court: It will not be necessary to call Mr. Straw in contradiction.

20 The Prosecutor: If your Honor please, I would like to recall Mr. Albertson. In the multitude of details yesterday I overlooked showing to this witness one of the exhibits in this case and asking him questions relating thereto.

The Court: Very well; Mr. Albertson will be recalled.

30 WILLIAM E. ALBERTSON, recalled.

By the Prosecutor:

Q. Mr. Albertson, as you have already testified, you are a garage keeper at Mount Ephraim, Fairfield Estates?

A. Yes, sir.

Q. I show you Exhibit S18 and ask you what that is.

A. It is a cover for the inside of the door of a Ford car.

Q. And is that the kind of covering that was on the doors of James' car brought to you?

A. Yes, similar to that.

10

Cross-examination.

By Mr. Harris:

Q. Similar to that—is that the answer?

A. Yes.

Q. You do not identify it as the the one that was brought to you by James?

A. I do not, not now.

20

DR. GEORGE M. BERINGER, SWORN.

By the Prosecutor:

Q. What is your name?

A. George M. Beringer.

Q. Where do you live?

A. 414 North 5th Street, Camden.

Q. How long have you lived in Camden County? 30

A. Since 1882.

Q. What is your business?

A. Pharmacist, chemist and microscopist.

Q. How long have you been a practicing chemist?

A. Since 1880.

Q. Where did you study?

A. I commenced to study chemistry in 1874 under Dr. Isaac Norris and Professor Elihu Thompson at the Central High School in Philadelphia; subsequently I was under the tuition of Dr. Samuel P. Sattler, at Philadelphia College of Pharmacy, and later private instructions in analytical chemistry under Dr. Henry Leffman, of Philadelphia, and for some years was associated in laboratory work with Charles Bullock, of Philadelphia, since which time I have been continuing personal studies.

Q. Have you made any study of microscopy?

A. Yes, sir, I taught that branch for two years in the college.

Q. Explain to us just what that study is.

A. A study of the structure of the different cell structures of plants and animal tissues, the methods of developing that study, the technique as they call it, and determining the results by chemical and microscopic methods.

Q. Under whom did you study that?

A. I studied vegetable histology under Professor John M. Maisch of the Philadelphia College of Pharmacy and Dr. William P. Wilson at the University of Pennsylvania.

Q. Have you continued your studies since that time on a personal basis?

A. I have, sir.

Q. What scientific associations are you a member of?

A. I am a member of the American Chemical Society and of its section on chemistry and medicinal compounds; I am a member of the American Pharmaceutical Association, and ex-president of that organization, served on some of its important committees, such as the committee on pharmacopeia, the com-

mittee on standards, which prepares the standards for the national formulary, which is one of the legal standards of the country, was chairman of that committee. I have been a member of the committee of revision of the United States pharmacopeia and national formulary, served on the executive committee for the last revision, and I am now a member elected for this year to serve on the revision committee of both of those national authorities.

Q. Do you hold any position in the Philadelphia College of Pharmacy? 10

A. I am chairman of the its board of trustees, and chairman of the committee on instructions; which outlines the curriculum of instructions.

Q. Do you contribute to works of literature on the subject?

A. I have been a frequent contributor to pharmaceutical and chemical literature, and am now an editor of the American Journal of Pharmacy.

Q. Have you been a teacher on any of these subjects? 20

A. I taught the microscopic classes for two years at the Philadelphia College.

Q. Have you qualified on previous occasions as an expert?

A. On a number of cases in the courts I have served as an expert.

Q. In what courts?

A. In the criminal courts in Burlington and Camden County, likewise in the United States Federal Courts, Trenton, and the Eastern District of Pennsylvania and in various civil cases.

The Prosecutor: I think the State has laid the foundation to have the testimony of this witness as an expert.

The Court: Is there any cross-examination on this subject which you desire to conduct at the present time, Mr. Harris?

Mr. Harris: Not any.

The Court: Then you may continue the examination of the witness.

10 Q. I show you Exhibit S11 which has the appearance of being a piece of tape or upholstering tape and ask if you have made any examination of that for the presence of blood, human blood?

A. Yes, sir.

Q. Did you find human blood?

Mr. Harris: I object; I don't know what he found —

20 The Court: Well, I think the question is leading; then it also embodies another word in it which is objectionable, so the question will be overruled. Just ask the witness what he did discover.

Q. Did you make an examination of that piece of tape? The answer can be yes or no.

A. Yes.

Q. For what purpose did you examine it?

A. To determine whether certain spots on this piece of upholstering tape was blood.

30 Q. What did your investigation reveal?

A. I examined on this piece of tape two typical spots out of the number that were on it, and both those spots gave unmistakable evidence of blood.

Q. By what means did you arrive at that opinion?

A. By chemical tests and microscopic measurements and examinations.

Q. Have you the result of those tests with you?

A. I have, sir, some of them with me, those that could be preserved permanently. This is what is known as the guaiac test for a spot which I named No. 1 in the examination.

The Court: Now, we had better have those marked, I think, Mr. Wolverton, hadn't we, just for identification?

Q. Will you please hand me whatever exhibits you have relating to this tape, keeping them each distinct?

A. Yes, I have them so I can do that. This is from the spot which I named A-2 on the examination. Now, in order to prove the value of the test, a blank test was made of the reagents used which showed no blue coloration whatever. The distinctive test is that the blood produces with these reagents the blue that I have here. From each of these spots the haemin crystals or the Tychman's crystals, as they are sometimes called were prepared and examined microscopically. I have the slides permanently mounted and from those permanent mounts photomicrographs have been produced. This one shows the crystals as seen under the microscope, a photograph from spot A-2. This one is another portion of that A-2 slide photograph showing even more distinctly the characteristic crystals which are characteristic of the blood reaction.

Q. From the tests which you made and which you have now detailed to us, what is your opinion as to the presence of human blood on that piece of tape?

A. There is no question as to its being blood, and in my opinion from the measurements and shape it is human blood.

Q. I show you Exhibit S19, which is a door of an automobile.

A. Yes, sir.

The Prosecutor: I offer these different papers and photographs which have been referred to by Dr. Beringer in his testimony relating to the tests made of this piece of tape as exhibits.

10 The Court: They will be received in evidence and had better be marked, but they had better be marked exactly in the order in which the witness produced them.

The Prosecutor: Is there any objection to marking them all as one exhibit instead of giving each of them an individual number, marking those that relate to the tape as one exhibit and those that relate to other articles as a separate exhibit?

20 Mr. Harris: Yes, certainly.

Q. Did you have this door delivered to you?

A. Yes, sir, on October twenty-third.

Q. For what purpose?

A. For examination of certain spots which were suspected to be blood spots.

Q. Did you make an investigation and make any tests to determine that question?

30 A. I examined this door carefully with a hand glass, and noted several spots, one of which had the indication of being finger imprints of blood. That spot I have not touched. I left that intact, but this spot that I marked with a blue pencil, which I have named as A-4 in my examinations, there was a small red blood clot which I removed and used for the

examinations of that particular spot. Associated with the blood in that case there were some small fine gray hairs, and the tests were made on that and gave very distinctive blood reactions. The haemin crystals are pronounced, distinct and clear, and bear the organisms as is shown by this photo-micrograph. This is another photo-micrograph of the same slide. I have preserved in this vial a portion of the tissue and one or two of the small hairs that were present in that cloth, and in this small vial remains still a portion of the blood preserved in normal salt solution from which examinations and measurements have been made. 10

Q. As a result of your investigation can you say that the door did or did not have upon it spots of human blood?

A. It had spots which were blood spots.

Q. Were they human blood?

A. I, from the shape and measurements, I concluded that it was human blood. 20

The Prosecutor: I ask that the pictures and vials and the other tests that the witness just referred to be marked as Exhibit S27 and offered in evidence.

The Court: They will be received in evidence and marked Exhibit S27.

Q. I now will show you boards marked S24 for identification, and ask if those boards were delivered to you for any purpose, and if so what. 30

A. These boards were delivered to me on December the third for examination to determine the presence of blood in the stains that are showing on these boards.

Q. What tests did you make or what did you do to ascertain whether blood was present?

A. I have examined six different spots on these two pieces of board, and you will find, I think, my pencil identification marks, that pencil drawing around them, and marking, showing each spot examined. In each of these six spots I was able to obtain the chemical reactions of guaiac tests, and likewise made the mounds to determine the presence of the haemin crystals in each of these six spots.

Q. Make any further tests?

10 A. I haven't made photo-micrographs of these. I have the permanent mounts prepared and have examined them microscopically.

Q. In your opinion did the boards which have been referred to contain spots of human blood?

A. Yes, sir.

The Prosecutor: I ask that the wafers that have been referred to by the witness in his examination in reference to this exhibit be marked Exhibit S28,
20 and I offer the same in evidence.

The Court: Same will be received in evidence and marked Exhibit S28.

Mr. Harris: Were they the ones in connection with the boards, Mr. Prosecutor?

The Prosecutor: Yes.

30 Mr. Harris: This is the only board which the gentleman has said were human blood. I desire to cross-examine him on that question. The others he said that they were blood, and in his opinion human blood, and I want to test his ability on that to see whether they are human blood or not.

The Court: The witness is an expert witness, Mr. Harris, and the only thing he has said in his opinion it is human blood.

Mr. Harris: Not the last one. I beg the Court's pardon, not the last one.

The Court: That is all it could mean.

Mr. Harris: Mr. Wolverton's question and answer, I would like to have it read, I think Mr. Wolverton led him into that. 10

The Court: Of course you made no objection, so that the answer will have to stand.

Mr. Harris: I object to being admitted at this time until I have a chance to cross-examine on that answer.

The Prosecutor: You mean the wafers used as a test, that is what I am offering in evidence. 20

Mr. Harris: That is the same thing. I object.

The Court: Then we will simply offer them after the cross-examination.

The Prosecutor: I simply offer them for identification then. 30

Q. I now show you Exhibit S18 for identification, which has been testified to as being automobile lining, and ask if they were delivered to you for any purpose and if so what?

A. These were delivered to me on the evening of

December fourteenth to be examined and determine the character of certain spots.

Q. What test did you make?

10 A. I selected two of these spots as typical, and have made the chemical and microscopic tests of these and the presence of blood was confirmed in each of these two examinations by the tests that have been applied. This is the guaiac test, and I have likewise the slides from which the microscopic examinations were made, showing the presence of the
haemin crystals.

Q. As a result of that investigation and the tests that you made, can you testify whether these pieces, some of them there that you have had before you, contain blood?

A. Those that I examined, the one that I examined are typical of the lot contained blood.

Q. Human blood?

A. In my opinion it was human blood.

20

The Prosecutor: I offer these wafers which have been used by the witness in this test as exhibits in the case and ask they be marked Exhibit S29.

The Court: They will be received in evidence and marked Exhibit S29.

30

Mr. Harris: In reference to that I will have to object until they connect up the last exhibit with the defendant. If the Court will remember, so far as this exhibit is concerned, there is no attempt to connect that exhibit up with the defendant. They were simply pieces of automobile lining which were found and no attempt was made to connect them up with the defendant.

The Court: I think, Mr. Harris, that the automobile lining which has been offered in evidence and received in evidence, and if my memory serves me correctly, the automobile lining was found in the vicinity of the place where the body of Mr. Paul was found, moreover on the evening of October sixth, there was testimony that the automobile of Mr. James was taken to the garage of Mr. Albertson and at that time there was a lining that had been torn out of the left-hand rear door of the automobile, therefore the automobile lining is properly in evidence, and it was properly submitted, I think to this expert, and I rule that the exhibits are properly in evidence relating to his examination. 10

Mr. Harris: I think this particular exhibit, so far, has only been offered for the purpose of identification.

The Court: I will have to go back over the record on that. My impression is that the automobile lining was offered in evidence and marked Exhibit S11. 20

Mr. Harris: The Court will recall that was the particular one I asked —

The Court: No, that was the revolver, and I excluded that.

Mr. Harris: No, my recollection is different from the Court. My recollection is that when the gentleman who found this, who was a farmer, I forget his name, some question about whether he thought they were blood or not, and I challenged his right. 30

The Court: Those were the pieces of paper that were found in the wallet that you have reference to,

if my memory serves me correctly, Mr. Harris. Now does that refresh your recollection?

Mr. Harris: As to that, yes, but these particular pieces of lining —

The Court: Wasn't the testimony as to —

10 Mr. Harris: I think probably that was the one, but these particular ones I have up to the present time not understood that they were offered as exhibits, simply for identification.

The Court: Now, Mr. Harris, my recollection is exactly the opposite from yours, Mr. Harris.

Mr. Wolverton: If there is any dispute about it, I offer them as exhibits in the case.

20 The Court: The Court will rule that they are proper exhibits in the case. They have been marked Exhibit S11, have they not,—that is the tape marked S11.

The Prosecutor: S18.

The Court: They will be received in evidence at this time.

30 Mr. Harris: My objection to them is that they have not been connected up with the defendant.

The Court: I rule that they have been sufficiently connected up. There is no need, perhaps, of my repeating the evidence upon which I so rule, because I have just stated it, therefore they will be received in evidence.

Mr. Harris: Subject to my right to ask for an exception?

The Court: Certainly, you may have an exception.

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

Cross-examination.

By Mr. Harris:

Q. Mr. Beringer, it is not possible to testify to the certainty of human blood, is it, in these particular cases, I mean?

A. It is possible to express an opinion, which is not inconsistent with the evidence and the examination from which that evidence is produced. 20

Q. That is to say that everything indicates that they are consistent with the human blood?

A. Yes, sir, shape, the size and appearance is not at all inconsistent in my judgment that it is human blood.

Q. There is other blood not human blood that has the same consistency, is there not, or so near it it is impossible almost to distinguish it? 30

A. Most of the bloods of different animals have either a different shape or different size and measure.

Q. What would you say about the blood of the guinea pig?

A. The blood of a guinea pig, does in some respects resemble that of the human blood, of the mammal containing a corpuscle which is round and disc shape in outline.

Q. Would you in your examinations be able to determine the difference, whether it was human blood, if you had two clogs or two spots given to you, one of the guinea pig and one of a human being?

A. That is problematical.

10 Q. Would the examination develop such consistency as you could express a positive ——

A. Such which?

Q. Such consistency, such corpuscles and so on?

A. I don't think I used that word, Mr. Harris, consistency, expresses itself different to my mind, from what I used.

Q. Would it be possible with two spots, one of human blood and one of the guinea pig, blood handed you on a board to make an examination such as you did in this case, would it be possible for you to say
20 which was which?

A. I believe it would be.

Q. Yet the guinea pig blood as in the result would be so close that it would be almost impossible for you to say so?

A. The shape.

Q. The shape and only the shape?

A. Some difference in size.

Q. The human blood being larger?

30 A. Yes, sir.

Q. Mr. Beringer, in this case, and all of these exhibits, are you willing to say positively that they are human blood?

A. I have simply expressed my opinion. I have not said positively, because ——

Q. No further questions.

By the Prosecutor:

Q. Is there any doubt in your opinion that it is human blood?

A. I have expressed my opinion without any evidence of doubt in the matter at all. My own judgment in the matter.

The Court: Now you may offer the tests with reference to the door lining, I think.

10

The Prosecutor: If the Court please, I offer all of these tests. There was only one that was excepted to by the defendant.

The Court: That was the floor board tests. You may now offer them, and they will be received in evidence and marked S28, because I think that was the number we had marked them for identification.

(Tests referred to admitted in evidence and marked Exhibit S28.)

20

CHARLES E. MIRICK, sworn.

By the Prosecutor:

Q. Mr. Mirick, what is your name?

A. Charles Mirick.

30

Q. Where do you live?

A. Brooklawn, New Jersey.

Q. Do you know the defendant, Frank James?

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. You have known him intimately?

A. Very intimately, down in Brooklawn, yes, sir.

Q. On the morning of October the fifth did you see the defendant?

A. Yes, sir.

Q. When and under what circumstances?

A. I came up to Camden in his machine with him.

Q. Whose machine was it?

10 A. Mr. James.

Q. Who drove the car?

A. Mr. James, I think.

Q. Where did you sit?

A. I sat in the rear seat.

Q. Were the rear side curtains on the car?

Mr. Harris: If the Court please, wouldn't it be better, and I object, to ask him the condition of the car?

20 The Court: The question is perhaps a little leading, Mr. Wolverton, just ask him to describe the car with reference to the curtains.

Q. What condition was the car in with respect to curtains being up or down?

A. My recollection is that there were no curtains up.

30 Cross-examination.

By Mr. Harris:

Q. How did you come to ride up with Mr. James on that occasion?

A. I being a neighbor of his, I live right across the street, and he has asked me on numerous occasions,

because I was going up the same time and in the same direction, to ride with him.

Q. How far did you ride?

A. I usually rode up to the garage with him, and then I went on over in town, or frequently he drove me all the way to the ferry.

Q. You were friendly with him?

A. Yes, sir.

Q. You had ridden with him often?

A. Quite frequently.

Q. How do you fix certain in your mind that this was November fifth? 10

A. It was the last day I had a ride with him.

Q. That was the last day you had a ride with him?

A. Yes.

The Court: I think you said November fifth in your question.

Q. October? 20

A. October fifth.

Q. Why do you say that is the last day you had a ride with him?

A. Because I distinctly remember that day.

Q. You saw him after that with his car, didn't you?

A. I don't think I have, sir. Don't recall it.

EDWARD I. BERRY, SWORN. 30

By the Prosecutor:

Q. Mr. Berry, what is your full name?

A. Edward I. Berry.

Q. Where do you live?

A. Merchantville, New Jersey.

Q. How long have you lived in Camden County?

A. All of my life.

Q. Do you occupy any official position with the courts of this or any other county?

A. I am the official stenographer of the Second Judicial District of New Jersey, which comprises the Counties of Camden and Gloucester.

Q. How long have you been a court stenographer?

10 A. I started reporting in the courts on the first of January, 1896. I was made official reporter in June, 1904.

Q. Since that time you have occupied that position without any interruption?

A. I have, sir.

Q. And do you hold that position at the present time?

A. I do.

Q. Are you connected with any societies?

20 A. Shorthand societies?

Q. Yes.

A. I am a member of the National Shorthand Reporters' Association. I am an honorary member of the Pennsylvania State Stenographers' Association. I am a member and officer of the New Jersey Court Reporters' Association.

Q. Are you president of any of these organizations?

30 A. I am president of the New Jersey Court Reporters' Association.

Q. Were you at the Mt. Holly jail on the evening of November the eighth, in company with myself?

A. I was, sir.

Q. For what purpose?

A. I was there to take stenographic notes of whatever statements might be produced.

Q. Did you take a statement that night of Frank James, the defendant in this case?

A. I did, sir.

Q. How was that statement taken?

A. By questions asked by yourself and answers by the defendant. It was taken stenographically by me, of course.

Q. Did you take down everything that was said by the Prosecutor and by the defendant?

A. In my presence, yes, sir.

10

Q. Have you a record of what was said by the Prosecutor and the defendant?

A. I have, sir.

Q. In what form is that record?

A. I have the original record of my stenographic notes. I have also a record of the transcript of those notes, the notes having been reduced by me to typewriting, and afterward compared with the original stenographic notes.

Q. And are the typewritten notes which you have before you an exact and correct transcription of your stenographic notes?

20

A. They are.

Q. What was said by the Prosecutor and what was said by the defendant on that occasion?

Mr. Harris: Now, if the Court please, I desire to renew an objection that I made yesterday, generally, I want to renew it specifically to this particular transaction. I am not going to make an argument upon it because that has been decided against me, but I want the record straight. I object to this confession or statement being offered in evidence first because it has not yet been proven the corpus delicti within the County of Camden, second that there is up to this time no proof that this was a voluntary statement of the defendant.

The Prosecutor: If the Court please, not to interrupt Mr. Harris' argument —

The Court: Let Mr. Harris state his grounds, and then I will be pleased to hear from you.

Mr. Harris: Third, that it was taken in the absence of counsel and the Prosecutor knowing that the defendant had counsel.

10

The Prosecutor: On the question Mr. Harris has just raised that it has not been shown to be voluntary, if the Court please, I would like to examine the witness on what was said by the Prosecutor and the defendant before.

The Court: I think that will be in a part of the statement?

20

The Prosecutor: Yes, it was preliminary to the taking of the statement, and I thought your Honor would want that before you.

30

The Court: No, I think Mr. Harris just desires to re-state the grounds that were more elaborately argued yesterday in order to base an exception to any ruling of the Court, and the Court rules that the statement taken at that interview by Mr. Berry is competent to be introduced in evidence and I will grant you an exception.

Mr. Harris: I would like to add one other, that the statement cannot be offered until submitted to counsel for the defendant.

The Court: No, I think that you are not permitted, Mr. Harris, because this is a different case, and

perhaps I did not make myself clear yesterday on that subject. You see where parties come together, to take a very simple illustration, and make a contract orally, that is then reduced to writing and signed by the parties, why, of course, that contract, that writing is the evidence of the contract, and if there was a writing of that kind to be offered in evidence I would, of course, give you the opportunity of seeing it, but this is a statement that is to be testified to by Mr. Berry, as having been present, and, of course, the evidence of that statement is what he heard, what he has taken in his notes, and written out, is only for the purpose of refreshing his memory in the giving of that statement, and, therefore, I rule that under those circumstances it is not such a document that you are entitled to have inspection of because Mr. Berry is merely to use something to refresh his recollection and the evidence is what he heard the defendant say on that occasion, as I understand it, in answer to questions that were asked by Mr. Wolverton. 20

Mr. Harris: My thought is that, and it is possible I am wrong, that this statement contains illegal testimony, illegal statements, statements that should not be offered before Court, as against the defendant, and I think before they read it that I should be informed fully of its contents, in order that I might object to the illegal parts of it, if there are any.

The Court: You see, Mr. Harris, you have an opportunity to object. It is exactly on the same basis, that is I think that it is, as if any other witness, just like any of the preceding witnesses, you don't know what they are going to testify to, you do, therefore, have an opportunity at any time to object to any matter, and I will rule upon it. 30

Mr. Harris: Then you overrule me?

The Court: I overrule the motion.

Mr. Harris: My insistent is that I am entitled to a copy of it before it is read. I ask that they furnish me a copy before they read it, before he deliver it.

10 The Court: I think that is entirely optional with the Prosecutor, Mr. Harris. There have been instances in cases of this kind where the Prosecutor has given a statement of the confession to the defendant, but it is a thing that I cannot control.

Mr. Harris: The Court declines to order such a copy at this time?

The Court: What is that?

20 Mr. Harris: Does the Court decline at this time to order a copy for me?

The Court: If you want to move that I order it I will decline to do it.

Mr. Harris: I move you, sir, it be ordered.

30 The Court: The Court overrules the motion. I suppose you want an exception to it?

Mr. Harris: I want to use it for the reason I may examine it to see whether it contains therein illegal matter.

The Court: Very well, the Court overrules the motion, and you must follow the statement as given,

and I will give you an opportunity to object, and will rule on any portion of it to which you may object.

Mr. Harris: May I ask for an exception to your Honor's ruling?

The Court: Certainly, you may have an exception.

(Exception noted for defendant.)

10

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

The Prosecutor: I make an offer, to facilitate the reading of this statement, that has never been objected to in the past —

20

The Court: I think on that feature that there is nothing at all in the way of an objection offered.

The Prosecutor: I was going to suggest that Mr. Berry read from the typewritten notes rather than from the direct stenographic notes. He has testified that it is a true copy. It will be easier for Mr. Berry. He can do either, whatever counsel for the defendant prefers.

30

The Court: Of course I want it to be understood that in the opinion of the Court Mr. Berry is only using this for the purpose of refreshing his recollection as to what transpired. Of course I understand if there has been no objection made that by

reason of the comparison of this typewritten copy, with his notes taken on that occasion that he can read from the typewritten copy.

Mr. Harris: I didn't know that I had been asked to consent to that. If I am asked ——

The Court: I didn't suppose that you would object, of course.

10

Mr. Harris: I prefer the stenographer's original notes.

Q. Mr. Berry, refreshing your memory in giving your testimony from your original notes then ——

The Court: That will take perhaps very much longer, Mr. Harris. I just want to call your attention to it, and it is rather an unusual thing.

20

Mr. Harris: It is unusual, and I don't want the Court to think I am going to be insistent, but I know that these typewritten papers have gone out to others, and they have not gone out to the defendant, now if I am to be treated in that way then I must insist if it takes a month.

30

The Court: Mr. Berry, then you will refresh your recollection of what transpired from the memorandum that you made at the time that you were present.

A. This is a statement of Frank J. James, which was taken at the Mt. Holly jail on November eighth, 1920, at 7.30 P. M. There were present at the time Mr. James, Prosecutor Wolverton and myself. The first question by Prosecutor Wolverton:

"Q. Now, Mr. James, as I have told you on other occasions when I have talked to you, that I am the Prosecutor of the county whose duty is to prosecute for crimes that have been committed in Camden County, and as such it will be my duty to prosecute those that are responsible for the murder of David Paul. You are one of those persons who are charged with having committed that crime, and I desire to inform you that under those circumstances you do not have to make any statement if you do not wish to; whatever you say, if you say anything at all, can be used against you in court and will be used against you in court; the thought being that if you have any statement to make in answer to any questions that I might ask, with the knowledge that you do not have to do so, and it must be voluntary on your part, and it can be used against you in court. Now, under those circumstances do you wish to make any additional statement to what you have previously said when I have asked you questions at other times when Mr. Berry has been here concerning the facts surrounding the death of Mr. Paul?"

A. Yes, sir."

The Court: Mr. Berry, I would suggest that you read a little slower, read quite slowly and very distinctly.

A. Pardon me, I will endeavor to. The last part of the preliminary question of the Prosecutor was: "Do you wish to make any additional statement to what you have previously said when I have asked you questions at other times when Mr. Berry has been here concerning the facts surrounding the death of Mr. Paul?"

A. Yes, sir.

Q. What is it that you desire to say?

A. Why, I guess you had better ask me questions, Mr. Wolverton, question me, I hardly know what to say.

Q. On the day that you went to the ferry with Mr. Paul in the car was Raymond Schuck with you?

A. He was.

Q. For what purpose did you go to the ferry with Mr. Paul that day?

10 A. To try to get the money.

Q. What money do you mean?

A. The money that Paul was carrying.

Q. How did you know he carried money?

A. He had told me.

Q. When?

A. At previous times.

Q. Had he ever told you the amount that he carried?

20 A. He told me one day that he carried, had with him at that time \$35,000.

Q. How long was that before this crime?

A. Two or three weeks.

Q. On the day in question you say you went with the intention of getting the money?

A. Yes, sir.

Q. Did you have any understanding with Raymond Schuck in the matter?

A. I did.

Q. When had the arrangements been made?

30 A. On Monday.

Q. The day before?

A. Yes.

Q. What had you said to him and what did he say to you about it?

A. Well, I had talked to him several times previous about getting the money, and I think on Monday we were to take him to the ferry.

Q. On the day before this?

A. Yes, I think it was.

Q. Did you have in mind the taking of the money on the day before when you took him to the ferry?

A. Yes.

Q. Why didn't you do it?

A. I don't know why, any more than I don't know why we did it on the day that we did.

Q. What arrangement had you made the day before with Schuck as to what you would do the following day? 10

A. To meet him at his office and try to get the money in some way.

Q. What time were you to meet him at the office?

A. I think 1.30.

Q. Where is his office?

A. On Third near Federal; I was to meet him on Third below Federal; that is where I was that day.

Q. Did you meet him there?

A. Yes, sir.

20

Q. You say that was as a result of a previous arrangement with him?

A. Yes, sir.

Q. To get the money from Paul on that particular day?

A. Yes, sir.

Q. When you met him were you driving your car?

A. No, sir, Schuck.

Q. I mean, when you met Schuck were you driving your car? 30

A. I was standing.

Q. And who took the wheel?

A. Schuck.

Q. Where did you sit?

A. Alongside of him.

Q. Where did you meet Paul?

A. On Second near Arch.

Q. Did you have an arrangement to meet Paul that day at that time?

A. At 60 North Second Street.

Q. For what purpose?

A. He made arrangements with me to take him to Philadelphia.

Q. Did you tell Schuck of having these arrangements?

10 A. I think that I did, yes, sir.

Q. Where did you sit when Paul got into the car?

A. In the back seat.

Q. And who took the front seat?

A. Paul, alongside of Schuck.

Q. And where did he have the money?

A. With him.

Q. And in what form was the money?

A. In a package.

20 Q. Did you stop any place on your way to the ferry?

A. Front and Market.

Q. For what purpose?

A. Paul went to the bank there.

Q. Was he in very long?

A. In there just a minute or so.

Q. Did he take a package of money with him?

A. He did.

Q. And when he came out where did he sit, in what part of the car?

30 A. Alongside of Schuck.

Q. Did you drive to the ferry from that point?

A. Yes.

Q. What course did you take?

A. Market Street, to the parking place at Market Street Ferry.

Q. Where is the parking place?

A. Back of the sheds.

Q. You were not told to go that way, were you, on that day?

A. It was a custom of mine of always going there.

Q. How did the custom originate?

A. By parking the car there and going out the little gate to go across the ferry.

Q. On the day in question did you go there for the purpose of parking the car or because it would be a good place to get money?

A. With the intentions of getting the money. 10

Q. What did you do after the car got down back of the sheds?

A. We stopped.

Q. And then what took place?

A. I hit Paul.

Q. And then what took place?

A. Then Schuck got hold of him and threw him in the back with me.

Q. Then what did you do?

A. Then Paul reached for his gun and I hit him with the iron. 20

Q. Where did you get the iron from?

A. From under the seat.

Q. Then where did you go or what did you do?

A. I then told Schuck to drive him to the Cooper Hospital and he never answered me.

Q. That is, Schuck didn't?

A. No, made no answer, no, sir. I said to Paul, "I am sorry for what I have done," and I said to Schuck, "Drive him to the hospital, hurry up, he is bleeding;" I said, "Hurry up," two or three times, and Paul says to me, "How are we going to fix this up?" He says "Tell them at the bank that some one held me up at Market Street Ferry and you picked me up." 30

Q. Did Schuck enter into that conversation in any way?

A. No.

Q. Then what took place?

A. Then he made another effort to get his gun and I hit him again.

Q. Where were you at that time?

A. I don't know where we were, along Cooper Street I think we were, some place.

10 Q. And where was the money at that time?

A. I don't know whether Schuck had throwed it in the back or whether it was alongside of him.

Q. Did Schuck have any implements or instruments of any kind?

A. I think he had a small revolver in his vest pocket.

Q. And what course did you take as you went away from the sheds?

20 A. We went out Delaware Avenue to Cooper, I think it was, and out Cooper, I think; I don't know; in the excitement I didn't notice.

Q. After you went out Cooper where did you go?

A. To Marlton Pike, to Federal Street and then to the Marlton Pike.

Q. What course did you take then?

A. A short distance on the Marlton Pike and then turned into Forest Hill Park.

Q. Did you stop at any point?

A. As we left Forest Hill Park we stopped.

30 Q. For what purpose?

A. I was all exhausted from fright and nervousness and told Schuck, and he took the iron and hit Paul himself twice.

Q. Had Paul made any comment at that time?

A. I think he did say, "All right, take the money and let me out," in a faint way.

Q. Was it before he said that or after he said that did Schuck hit him?

A. Before Schuck hit him.

Q. Did you hit him at any time after he had said to let him out?

A. No, sir.

Q. Why did Schuck hit him?

A. I don't know; he stopped the car and I said something to him—I don't know what it was now—that I was all exhausted and he had better help me, or something or he would shoot me, something like that. 10

Q. Who did you mean by "he," who would shoot you?

A. Paul would shoot me.

Q. I understood you to say that he had just spoken in a very faint voice?

A. I know, but that is what I says to Schuck.

Q. Was it then that Schuck took the iron?

A. It was. 20

Q. How many times did Schuck hit him?

A. Twice.

Q. Where?

A. In the head.

Q. Where was Schuck standing or what was he doing?

A. Leaning over the front seat.

Q. Where were you?

A. In the back seat. I immediately got in the front seat with Schuck. 30

Q. And where did you go?

A. Out Kaighn Avenue to the Marlton Pike.

Q. And from there what course?

A. To Medford.

Q. Then where did you go?

A. To the pines.

Q. What did you do when you reached the pines?

A. When we got to this destination, we put Paul off in the woods there.

Q. Was the car marked in any way from what had taken place on it?

A. Yes.

Q. What markings were there on it?

A. Blood stains.

Q. Where?

10 A. On the door and on the floor.

Q. Did you take any steps to remove the stains?

A. Yes, sir.

Q. What?

A. I tried to clean them and tore off the cardboard off of the door, the left-hand door.

Q. Where did you throw it or what did you do with it?

A. Threw it away.

Q. Where?

20 A. Near where we laid Paul.

Q. Was the tape that was around the left door also thrown away there?

A. I think so, yes.

Q. Did you take the curtains down or leave them up, the back side curtains?

A. I forget where we took the curtains off.

Q. They were on at the time this took place?

A. Yes.

30 Q. I mean, at the time the blows were struck at the ferry the back and side curtains were up, weren't they?

A. Yes.

Q. Where did you put the body?

A. In the woods, as I say, above Medford, I don't know or didn't know where it was.

Q. And how far in the woods did you go from the road where you left the car?

A. Possibly ten feet.

Q. And how did you get the body in there?

A. Carried it in there, dragged it in.

Q. Did you do it?

A. Schuck and I.

Q. When you came back where did you go?

A. We came back to the club house at Clementon.

Q. For what purpose?

A. To hide the money.

Q. On the way back did you throw anything away? 10

A. No, not on our way back, no, sir.

Q. What became of the instrument that you had used?

A. Oh, I threw the iron away, yes.

Q. What kind of an iron was it that you struck him with?

A. Half of a—sort of a half spring.

Q. And where was it usually kept?

A. Under the back seat.

Q. Did you do anything else to Paul other than hit him with your fist and then with this iron bar? 20

A. As I say, going out the pike I had a revolver and it wouldn't work. I just leaned back there, and I didn't see where I was shooting; I don't know whether I shot him or what.

Q. How many times did you shoot?

A. Twice.

Q. What was your purpose in shooting?

A. Going to shoot myself.

Q. Did you point the gun at yourself? 30

A. It wouldn't work, no, I tried that.

Q. Well, you say you shot twice; who were you pointing at?

A. I shot in the back of the car.

Q. Did it go into the car or out of the car or where?

A. I couldn't say where it went.

Q. Was it in an effort to shoot Paul?

A. No, because he was dead.

Q. And on your way back, in throwing the iron bar out, did it do any damage to the car?

A. I broke my windshield.

Q. And you say you went to the bungalow at Clementon?

A. Yes, sir.

Q. Who suggested going there?

10 A. Schuck.

Q. For what purpose?

A. To hide the money.

Q. About what time did you reach there?

A. It was, I think, somewhere around four o'clock.

Q. What time had you met Paul?

A. About 1.20 or 1.15, I think it was.

Q. Did you leave the money at the bungalow?

A. No, sir.

Q. Why not?

20 A. We didn't think it was a very good place to leave it.

Q. Did you go into the bungalow?

A. Yes.

Q. Did you leave any stains there in any way, of blood?

A. I don't know that I did, no, sir; if I did I didn't know it.

Q. What part of the bungalow were you in?

A. Upstairs.

30 Q. For what?

A. To undo the package.

Q. And where did you sit when you undid the package?

A. On the bed.

Q. What part of the bed?

A. Part of the foot of the bed.

Q. Were you facing the window that looks out at the front of the cottage?

A. I think so.

Q. And where did Schuck sit?

A. Alongside of me. I don't know whether he sat down or I did or not myself; we had the package on the bed.

Q. Did you open it at that point?

A. Yes.

Q. Did either of you take any of the money?

10

A. I don't think we did then.

Q. Did you count how much there was there?

A. No, sir.

Q. Was there anything to indicate how much?

A. There was two slips, I think, and one said \$30,000, and the other one \$5,000.

Q. What were the denominations of the bills?

A. Twenty dollars, tens and fives.

Q. Were the wrappings on the bills changed in any way?

20

A. Schuck must have done it.

Q. Did he do it at the bungalow?

A. No, sir.

Q. Where did he do it?

A. I don't know, unless he done it at home.

Q. Did you wrap it up again in the same paper?

A. Yes.

Q. And where did you go then?

A. From there to Westville, where I bought a new shirt.

Q. From whom did you buy it?

A. I don't know who it was; it was on the main street.

Q. What kind of a shirt?

A. A white shirt with black stripes.

Q. How much?

- A. It was \$1.25, something like that.
- Q. Did you make any other purchases there?
- A. A collar.
- Q. What kind?
- A. A stiff collar, 14 $\frac{3}{4}$.
- Q. Do you remember the name?
- A. I do not, no, sir.
- Q. Did you make any other purchases there?
- A. I don't remember making any.
- 10 Q. Did you make any other purchases at any other place?
- A. No, from there we went to Schuck's house.
- Q. Did you make any purchases afterward at any place?
- A. Oh, I don't remember where I bought the underwear; I bought new underwear, but I don't remember where.
- O. You don't remember whether it was Westville or Camden?
- 20 A. No, I don't, Mr. Wolverton; I don't remember that.
- Q. Had you been drinking?
- A. No, sir.
- Q. Had you been taking any drugs?
- A. No, sir, never did.
- Q. Well, why can't you remember?
- A. The excitement.
- Q. For what purpose did you buy the shirt and collar and underwear?
- 30 A. They were stained with blood.
- Q. Were there any stains on your clothing?
- A. Yes, sir.
- Q. Where?
- A. On my trousers, and the left coat arm.
- Q. Was there any on your shoes that you know of?
- A. No, sir, not as I know of.
- Q. Where did you go after leaving Westville?

A. To Schuck's house.

Q. Was anyone home?

A. No, sir.

Q. Did you stop at your own house on the way there?

A. No, sir.

Q. What did you do after you got to Schuck's house?

A. Put the money down back of the cellar steps.

Q. Who put it there?

10

A. Schuck.

Q. And then what did you do?

A. From there we went to get my suit at Goldberg's, Newton Avenue and Trenton Avenue.

Q. Was there any money taken out of the package at Schuck's house?

A. Yes, sir.

Q. Who took it out?

A. He gave me \$500.00, I think it was.

Q. What denominations?

20

A. \$20.00 bills.

Q. What makes you think it was \$500.00?

A. It had a wrapper on it at that time.

Q. And was the wrapper still on it when you saw it put away in the cellar?

A. Yes.

Q. Did he take any money at that time?

A. Yes, I don't know how much; I think he told me he took \$500.00 too.

Q. Where did you go from Schuck's?

30

A. To the tailor's, I think it was.

Q. Where is the tailor located?

A. Newton Avenue and Trenton Avenue.

Q. And for what purpose did you go there?

A. I had a suit there being pressed and cleaned, to get it to change.

Q. How did you go into the place and not show what blood was on your clothing?

A. I had a light coat and I put it on.

Q. Where is that light coat now?

A. I don't know, it was in the Ford the last time I saw it; I think that is where it was.

Q. What kind of suit was it that had the blood stains on?

A. It was a dark suit with a green stripe.

10 Q. And what kind of a shirt?

A. A white shirt.

Q. Plain?

A. Yes, sir.

Q. What kind of a collar?

A. A Dudley collar, 14¾.

Q. What did you do after you had obtained this suit from the tailor?

A. I think we went back to Schuck's house again; I think that is where I changed.

20 Q. You are sure it was at Schuck's house that you changed?

A. Yes, the first time I went to the tailor's he didn't have it pressed and I went to his office and changed my shirt there, and I went back to the tailor's again and he had it pressed, and I went down to Schuck's house and changed my suit there.

Q. Was anyone home at that time?

A. No, sir, not either time.

Q. After changing the suit, what did you do?

30 A. I wrapped the suit up and wrapped the curtains up at the same time and drove out Kaighn Avenue to Cooper's Creek and threw them in the creek.

Q. Did you take any means to make it sink?

A. Schuck put a brick in my suit, or got me a brick, we both tied it up.

Q. Did you throw anything else overboard?

A. The side curtains.

Q. Why did you throw them away?

A. They were stained, I think.

Q. Did you throw anything else overboard?

A. No, sir.

Q. And then where did you go?

A. We went to 60 North Second Street and left the car.

Q. Who was there when you left it?

10

A. One of the young men, brothers that runs it, his name is Frank Brandolini, or some such name.

Q. Then where did you go?

A. Went to Federal Street Ferry and got in a Ford and he drove us down to Second and Kaighn Avenue and over Kaighn Avenue Ferry, and at 15th or 16th and Market we got out and went to a restaurant.

Q. Do you know whose Ford it was?

A. No, sir, I do not.

20

Q. After you left the restaurant where did you go?

A. We went and got in a taxicab at Broad Street Station.

Q. Both of you together?

A. Yes.

Q. Then where did you go?

A. We drove up around Broad and Girard Avenue, then we tried to find a place that I thought was 18th and Brown; we couldn't find it. Then we afterward went down to—I think it was on 17th or 18th Street near Buttonwood, and he took us in a saloon there. We got a drink there, met one woman and the man's wife. Then sometime after that there was another woman came in, when Schuck and myself and the two women went somewhere on Green 30

Street, I think it was around 18th and Green, and stayed all night.

Q. And when did you leave the house on Green Street that you have just mentioned?

A. I think it was Wednesday morning, sometime.

Q. Did Schuck stay all night also?

A. Yes.

Q. Did you go away together?

A. Yes.

10) Q. And where did you go?

A. I don't know what time we came out of that house; I know we came down to the ferry Wednesday night.

Q. Where did you go then?

A. I went home; I went to the garage and got the car.

Q. Where did you take the car?

A. I took it to the Mount Ephraim Garage.

Q. By whom is that conducted?

20) A. By—I forget his name.

Q. Is it Mr. Albertson?

A. Albertson, Mr. Albertson.

Q. Did you know him previous to taking the car there?

A. Yes.

Q. What reason did you have for taking the car to him instead of to Johnson at the Brooklawn Garage where you were in the habit of keeping the car?

A. Thinking he was a better mechanic.

30) Q. What repairs did you have him make?

A. I had a new top, new windshield, new cardboard in the door, new rear axle, radius rod—I think some new parts in the front wheels he told me were worn.

Q. Did you order a new lining on the left-hand rear door in the place of the one you had thrown away?

A. Yes.

Q. Did you tell him how it had—or the reason that it wasn't there?

A. I don't think I did, no, sir.

Q. Did you make any explanation to him as to how the windshield had gotten broken?

A. I don't remember what I told Mr. Albertson.

Q. Did you tell him that you had been on a party?

A. I think I told him that, yes.

Q. Did you tell him that you didn't have the same 10
clothes on that you went away with?

A. I think I said something like that to him; I don't remember what I said.

Q. Did he take you from the garage home that evening?

A. Yes.

Q. And by what means?

A. He took me in my Ford to the club.

Q. What club?

A. The Browning Road Community Club. 20

Q. Did you see anybody there you knew?

A. Mr. Dettra.

Q. Did you have any conversation with Albertson on the road going over as to you might have trouble with your wife?

A. I might have said she would be angry or some such remark.

Q. Did you say where you could go if she wouldn't have you?

A. I did not, no, sir. 30

Q. When you went home that evening where did you tell your wife you had been the previous evening?

A. I think I told her I was to the ball game in Brooklyn; I think that is what I told her.

Q. You mean at the World Series' game?

A. Yes.

Q. Where did you go on Thursday?

A. Thursday morning I went to Philadelphia with my son, bought an overcoat, pair of shoes and stockings.

Q. Did you see Schuck?

A. I met Schuck at 17th and Walnut, I think it was.

Q. Was your son with you at the time?

10 A. No, I left him at nine o'clock.

Q. Did you have any engagement to meet Schuck at that time?

A. I did, yes, sir.

Q. And for what purpose?

A. I don't know whether it was to bring more money or to let me know what was what.

Q. Did he bring any money that morning?

A. I don't remember whether he did or not.

Q. Where did you two go?

20 A. We walked around quite a while, I don't know whether we got in another taxicab that day or not.

Q. Do you remember where you spent Thursday evening?

A. In a house, I think, that was on Green Street or Mount Vernon Street, one of those streets.

Q. Was Schuck with you?

A. Yes, sir.

Q. Where did you meet those girls?

A. I think a taxicab took us there, too.

30 Q. Did you stay there all night?

A. Thursday night I think we did, yes.

Q. Do you remember whether Schuck did?

A. Yes, I think he did, Thursday night.

Q. Was he with you on Friday night—where were you on Friday?

A. I don't remember where we were Friday.

Q. Were you together?

A. The same place, I think, yes, sir.

Q. Do you remember where you were Friday night?

A. I think we stayed at the same place Friday night we did Thursday night.

Q. Did Schuck at any of these times visit his girl whose name is Mary who lives in West Philadelphia?

A. On Thursday—on Friday he did; yes, he came in late Friday night. He went out sometime in the afternoon.

Q. Are you sure it was Friday night or Thursday night he met his girl?

A. I am sure it was either Thursday or Friday.

Q. What night was it you were at the Colonnade Hotel?

A. Saturday night—or Friday night, I guess that is right and Thursday night is the night he met his girl.

Q. Well, what were you doing? Did he stay with her all night, do you remember?

A. No, sir, he came back to this house around twelve o'clock.

Q. And did he stay there until the next day, Friday?

A. Yes.

Q. Then on Friday what did you do?

A. I don't remember, any more than staying at this house. Friday afternoon, sometime Friday afternoon then we hired a taxicab and met one girl at Broad and Oxford, I think it was around there, and we drove downtown and got a friend of her's, then we went to the Colonnade later in the evening.

Q. Did you both register at the Colonnade?

A. Yes.

Q. Did you register with this woman as man and wife?

A. Yes.

Q. Do you know who they were?

A. No, sir.

Q. Do you remember under what name you registered?

A. I registered as Frank Johnston; that is my middle name.

Q. Did Schuck register under his own name or some other name?

10 A. I think some other name.

Q. From what place did you register?

A. At the office.

Q. No, but I mean from what city or town?

A. I think I put Clayton, New Jersey.

Q. Do you know what he put?

A. No, I don't; I am not sure about that, either, whether I put Clayton, or what it was.

Q. You say you stayed there all night?

A. Yes, sir.

20 Q. What time did you leave on Saturday?

A. I think it was quite late, around ten o'clock.

Q. Did Schuck leave with you?

A. Yes, sir.

Q. Were the girls there?

A. No, sir, they had gone.

Q. Both of them?

A. Yes, sir; one went out about, I think, eight; and the other went out about half-past nine.

Q. After you had breakfast, where did you go?

30 A. We didn't have breakfast.

Q. Where did you go?

A. Yes, we had a small lunch brought up to the room; I think it was coffee and crullers, something like that.

Q. Did you both have the same room or adjoining rooms?

A. No, they weren't adjoining. I don't know where he was another part of the hotel.

Q. In whose room did you have the lunch?

A. My room; his girl had gone and he came into our——

Q. Where did you go when you left there on Saturday?

A. We got a taxicab again, and I think I rode out as far as 62nd and Market where Schuck got out and went home.

Q. Did you make any arrangements to meet him again?

A. The same place Saturday night at half past seven, I think it was, or something like that.

Q. And did you meet him there?

A. I did, yes.

Q. Was there anyone with you?

A. Yes, sir, this girl that I had Saturday, or Friday night.

Q. Did she see you meet him?

A. Yes.

Q. Did he have anyone with him?

A. No, sir.

Q. Did he bring any money to you?

A. Yes.

Q. How much?

A. I don't know.

Q. Did you tell him to bring it?

A. I think I did.

Q. What kind of money was it, in what form?

A. I think twenty's, ten's and five dollar bills.

Q. How much—haven't you counted it?

A. No, sir, I haven't never counted it; it must have been \$5,000.

Q. Did the girl see you get the money?

A. No, sir.

(1)

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30

Q. Did you stay together, this girl and you and Schuck, or did you separate?

A. No, he took a ride, I think, for a while, then he came back to 62nd and got on a trolley car and went to Camden; I think he went to Camden—to see his girl—that is where he went to.

Q. And where did you go?

A. Fairmount Inn.

Q. With the girl?

10 A. Yes.

Q. Did you stay there?

A. Until twelve o'clock, I think it was.

Q. Then where did you go?

A. Back to this Green Street, I think it was Green Street.

Q. Was it the same house that you had been to before?

A. No, sir, I rented a room there.

Q. And how long did you stay with the girl?

20 A. Until Sunday morning.

Q. Then what did you do?

A. I met her again Sunday afternoon. No, she stayed with me Sunday; that is right, she stayed with me Sunday.

Q. Then where did you go, home?

A. I went home Sunday evening.

Q. Do you know who the girl is?

A. No, sir, I don't.

Q. Did you give her any money?

30

A. Around \$20.00, I think it was.

Q. For all the time that you were with her?

A. I don't know how much I gave her, Mr. Wol-
verton, \$20.00 or more.

Q. Did you give any of the other girl's money?

A. Yes, sir.

Q. How much?

A. Oh, I couldn't say.

Q. Now, on the Thursday night that you were with the girls that you speak of around 18th Street, there I think you said, did you telephone to anyone as to where you were?

A. Yes, sir, I telephoned to Ward.

Q. What did you say to him?

A. Told him to tell my wife I was in Schenectady, New York.

Q. Who is Ward?

10

A. He is a neighbor of ours in the village.

Q. Is he friendly with you and your family?

A. Yes, sir.

Q. And did you have any other conversation with him at that time?

A. I don't remember, only you told me that I had told him that I had money buried.

Q. Do you remember whether you did tell him that or not?

A. I do not, no, sir, I do not.

20

Q. Do you remember having a conversation with him about you had money enought now to back him in a business that he wanted to go into?

A. I don't know; I remember talking something about business with him; whether I told him or not I had money buried I couldn't say, because I had been drinking.

Q. Do you remember telling him that you had had your boy to Philadelphia that morning and bought him clothes?

30

A. I don't know, Mr. Wolverton.

Q. Do you remember him asking you whether you had the money with you or not and you said no, you had it buried?

A. I couldn't answer you truthfully about that.

Q. Did you have any conversation with anyone else on Thursday?

A. Thursday evening I called the garage, yes, sir.

Q. And whom did you talk to?

A. I talked to Jim Brandolini, or whatever his name is.

Q. What did you talk about?

A. I asked him if anybody had called, and he told me Mr. Doran.

Q. Did he say who Mr. Doran was?

A. I knew.

10 Q. Who was it?

A. A detective, a Camden detective.

Q. Did you ask the young man who answered the phone what Doran wanted?

A. Then this John Plummer came to the telephone.

Q. Did he tell you about Doran also?

A. He told me Mr. Doran was there, yes, sir.

Q. Did he say what he wanted to see you about?

A. No, he did not.

20 Q. Did you know at that time that there had been any publicity given to Paul's disappearance?

A. Yes.

Q. How did you learn of that?

A. By the newspapers.

Q. Did you talk of it to anyone that you were with on any of these evenings?

A. Only to Schuck.

Q. Did he also see it in the paper?

A. Yes, sir.

Q. Did either of you make any comments to each other when you saw it?

A. Yes, we did, but what it was I couldn't tell you.

Q. Well, coming back to the Sunday that you left this girl, did you say you went home?

A. To my father's, yes, sir.

Q. Did you stay there for any length of time?

A. Until Monday evening.

Q. In the meantime did you see any other folks of yours?

A. My wife came there Monday at sometime and my father-in-law.

Q. Had you talked to your wife or your father-in-law at any time before that Sunday?

A. No, sir, I talked to my father-in-law on Thursday night. He told me to come on home, my wife was waiting for me. 10

Q. Was that after you had talked to the office and they told you that Doran was looking for you?

A. Yes.

Q. Can you tell me where you telephoned from that Thursday to both Ward and your father-in-law and to the office—do you remember where the phone was?

A. No, I don't, Mr. Wolverton.

Q. Well, was it in the house where you were?

A. No. 20

Q. Or did you have to go out?

A. I telephoned to Ward later in the evening from the house where I was, but when I telephoned to my father-in-law and the garage was at a pay station.

Q. I say, do you remember where?

A. The pay station?

Q. Yes.

A. It was down around Front and Girard Avenue.

Q. And can you tell me where the phone was that you telephoned Ward? 30

A. No, that was on Green Street or Mount Vernon, some of those streets, I couldn't tell you.

Q. When did you go home to your wife, on Sunday or Monday?

A. After I left your office Monday night.

Q. And for what reason did you come to my office on Monday evening?

A. You were looking for me.

Q. When you mean my office, you mean the Prosecutor's office of Camden?

A. Yes.

Q. Who did you see there?

A. I first saw Mr. Doran, and he took me in to see you.

Q. What did we question you about?

A. About Mr. Paul.

10 Q. Did you give us truthful answers at that time?

A. No, sir, I did not.

Q. Where did you go after you left our office?

A. Went to my father-in-law's house at Seventh and Line. My wife was there and he drove us home to my house in his car.

Q. Did you stay there Monday night?

A. I did, yes.

Q. What did you do on Tuesday, which would be October 12th?

20 A. I just came up to Camden.

Q. Did you see anyone on that day at the garage to whom you talked about having been at the Prosecutor's office the night before?

A. I don't remember whether I did or not. East-lack—I probably might have talked to him about it.

Q. Did you confide in him and of these facts about the Paul matter?

A. No, sir.

Q. Where did you go on Tuesday?

30 A. Wednesday—I just told you Tuesday.

Q. Yes, but were you at the office all day?

A. Off and on I think I was.

Q. Do you remember where you were Tuesday night?

A. I was home.

Q. And where did you go on Wednesday?

A. I came up in Ward's car on Wednesday morning.

Q. Did you see Schuck on Tuesday?

A. I don't think I did on Tuesday; I did on Wednesday I think.

Q. And how did you come to see him and where?

A. I went out to his house in Ward's car and he and I went down to the Mount Ephraim Garage.

Q. How did you happen to have Ward's car?

A. He was going away and he asked me to bring 10
the car back when I came back.

Q. Did you go to Schuck's office or to his house to see him?

A. Went to his house.

Q. Why did you go to the house instead of the office?

A. I knew he was home, sick.

Q. How did you know that?

A. I think I did phone the office first and they 20
told me he was sick.

Q. Did you see anyone when you went to his home beside Schuck?

A. I didn't at first, no, sir. . . As I knocked at the door he got out of the bed and looked down and saw me and motioned for me to come in. I went in and went upstairs and his little boy was in bed with him.

Q. Did you have any conversation with him about having been to the Prosecutor's office?

A. Yes, I did.

Q. What did you say to him?

A. I couldn't say exactly, any more than that you had questioned me about different things, about this woman seeing me, being the last one.

Q. You mean the last one with Paul?

A. Yes.

Q. Was the boy present when this conversation took place?

A. Yes, but I talked so he couldn't understand. He is only a youngster, four or five years old.

Q. Was Mrs. Schuck in the room?

A. No, sir, she was not.

Q. Did you have any conversation as to the money or whether it was safe to stay around Camden or not under the circumstances?

A. I think that I did.

Q. What was said by either of you in reference to that?

A. I don't know, any more than I says to him that I thought it would be all right if we stayed, and I think at that time he told me he had buried the money in the New Camden Cemetery over his mother's grave.

Q. Did you receive any of the money before he had buried it other than what you have mentioned?

A. Only on that Saturday night.

Q. Was that the time you received the \$5,000?

20 A. Approximately that, I imagine it was that amount, yes; I didn't count it.

Q. What did you do with that money?

A. What did I do with it?

Q. Yes.

A. I put it in my father's house.

Q. Where?

A. In the wardrobe in the front room.

Q. What part of the wardrobe?

A. In the drawer.

30 Q. And when did you put it there?

A. I think I snucked it in there Monday sometime when my mother was downstairs.

Q. Did your father or anyone know that you had put it there?

A. No, sir.

Q. Did you tell Schuck that you had put it there?

A. I did.

Q. When you left Schuck's house that day you say you had Ward's car; did Schuck go with you?

A. I met him two or three hours afterward, I think it was; he got dressed and I met him on Mount Ephraim Avenue.

Q. Did you make any arrangement with him the first time you saw him that day to meet him again?

A. Yes, in the afternoon. That was in the morning when I first saw him.

Q. In the morning was anyone else there beside Schuck and his boy?

A. His wife was downstairs.

Q. Was she upstairs at any time?

A. No, sir, she came up one time and made an excuse for the room being dirty.

Q. Did you have any conversation at that time?

A. Not while she was there, no, sir.

Q. Did you have any conversation with her at any time that day?

A. I did when I came downstairs.

Q. What was that?

A. She told me that Ray was sick and the doctor said he had six months to live; and also said that he was going to leave; she had packed his clothes and he wanted to get a divorce, and I says, "I am going to meet him this afternoon; I will have a talk with him about it."

Q. What arrangement had you made with him in the afternoon—for what purpose, I mean, did you make the arrangement to meet him?

A. Merely to go out and to get my car and take it to the garage.

Q. Did you have it in mind to go any place else that afternoon?

A. No, sir.

Q. Did you go any place?

A. Yes.

Q. Where?

A. Went down the road below Mount Ephraim, and I stopped, and he went on down to the Kirkwood Garage and bought a new seat.

Q. Why did he go and buy a new seat?

A. The other seat was stained.

Q. And when did you first notice that?

10 A. That day, I think.

Q. After you got it from the garage owner?

A. Yes.

Q. Did you pay the garage man?

A. I did.

Q. For the work that he had done?

A. Yes, sir.

Q. I mean, Mr. Albertson?

A. Yes.

Q. How much did you pay him?

20 A. \$90.00.

Q. How did you pay him?

A. A \$70.00 check and a \$20.00 bill.

Q. Did you have a roll of bills from which you took the twenty?

A. No, sir.

Q. Was that part of the money that you had gotten from Paul?

A. The \$20.00 bill, yes, sir.

Q. And where did you get the \$70.00 check?

30 A. From my father.

Q. Why did you use a check of your father's when you had enough money to pay for it yourself?

A. I didn't want them to think I had any money.

Q. Didn't want who to think?

A. Anyone, and father, I let on to him that I didn't have any money.

Q. When did you get the check from him?

A. That morning, I think it was, or the day before; I am not sure.

Q. How did you happen to notice that there was stains on the seat?

A. Looking for it.

Q. What kind of stains were they?

A. Blood stains.

Q. Did you find stains in any place else on the car?

10

A. On the floor boards.

Q. Were the stains on the seat very noticeable?

A. No, sir, they were not.

Q. Were they very noticeable on the floor boards?

A. Yes.

Q. Are the floor boards that are there in the corner the ones that were on your car?

A. Yes, sir, I think they are.

Q. Did you tell Schuck as soon as you saw him of those stains?

20

A. Yes, I did.

Q. How was the arrangement made for Schuck to go and get a new seat?

A. I told him I would go up this road and clean the car off while he was going after the seat.

Q. When you say, "Clean the car off," what do you mean?

A. Clean the blood off.

Q. Where was there blood on it?

A. On the door, on the right-hand door.

30

Q. What means did you take to clean the blood off of that?

A. With a rag and gasoline.

Q. Was it very noticeable?

A. Not so noticeable, no.

Q. What did you do with the rag that you used?

A. Threw it away.

Q. Where?

A. Where I was standing with the car.

Q. Where was that?

A. It was on a road, I don't know the name of the road, below Mount Ephraim there; it goes over into the White Horse Pike.

Q. At Belmawr?

A. At Clement's Bridge. I think he told me, it
10 was near there somewhere.

Q. Did you tell Schuck why you wanted a new seat?

A. Yes.

Q. Who suggested where to go to get it?

A. I think I did, I told him I would wait there until he came back, which I did.

Q. Did you have any reason for him going to get it instead of yourself?

A. We had the two cars that was all.

20 Q. Why didn't you drive the other car and get it instead of him?

A. As I say, I told him I would stay there and clean the car while he went after it.

Q. Who paid for the seat?

A. Schuck.

Q. And where did he purchase it?

A. At Nicholson's Garage, Kirkwood.

Q. Where did he bring it after he had purchased it?

30 A. Where he had left me.

Q. How much was paid for the seat, do you know?

A. I think he told me he spent around \$10.00.

Q. Where did you go or what did you do after he came back with the seat?

A. Went on down the road a little further to the lake and tore the seat up and threw it there.

Q. Is it a lake or a creek?

A. I think it is a creek, yes.

Q. Is it near Clement's Bridge?

A. It was over the bridge, and I think that is what they call Clement's Bridge.

Q. And what did you do with the floor boards?

A. I threw them away when I first stopped to clean the car.

Q. Where did you go after you had changed the seat in the car?

A. Went to the Noreg Village Garage, Johnsons.

Q. Did you have any conversation with him about the seat?

A. I asked him if he could change the seat for one very near new, so my wife wouldn't know that I was spending money on the car.

Q. Did he do it?

A. No, sir, he made me a new floor board.

Q. And did you afterward paint the new floor boards?

A. I did, yes.

Q. Where did you do that?

A. At 60 North Second, I think it was.

Q. Did you paint any part of your car to cover any spots of blood?

A. I painted the fenders and running-board, merely for rust more than spots.

Q. Were there any spots of blood on either the fender or running-boards?

A. I don't think there was, no, there might have been.

Q. After you took the car to the Noreg Village Garage and had new floor boards put in it, where did you go?

A. I then took Schuck home, I think it was.

Q. In your car?

10

20

30

A. In Ward's car.

Q. Then what did you do?

A. Took Schuck home, then I went to my— While we were there at the Noreg Village Garage, my wife came over and wanted to know what I was doing with Schuck, and I said, "That is all right, you get in and I will take you up." She said, "No, I won't go with you and him; I will go up in the bus," which she did.

10 Q. Did you afterward meet her in Camden?

A. After I took Schuck home I went to my father's and met her then to my mother's, took my mother and wife over to the Harleigh Cemetery, to my daughter's grave.

Q. Where did you go when you came back?

A. I went out Kaighn Avenue to Browning Road, Browning Road to Kaighn Avenue, and Kaighn Avenue into Forrest Hill, to the Boulevard, to Haddon Avenue, and took my mother home on New-
20 ton Avenue.

Q. Then did you go home with your wife?

A. Then I went home with my wife.

Q. Now, what did you do on Thursday? Pardon me a minute, before I say that. Whose car did you use to go to the cemetery?

A. Ward's car.

Q. Did you spend Wednesday evening at home?

A. Yes.

Q. Where did you go on Thursday?

30 A. Thursday morning I came to the garage and there was a young fellow there by the name of Wishart to see me, he is working in the South and his father had died, and Eastlack and Wishart and I went down to C. B. Cole's Lumber yards garage on Chestnut Street to see a man there by the name of Room, and he was out. Then we came back to 60

North Second Street and Eastlack got out of the car, and then I went to the parking place at the ferry to leave my car with Wishart, and called on a prospect on Third Street, the other side of Arch, Smith Machine Company, I think it is, and from there we came back to Second Street, between Arch and Market, and Wishart introduced me to a stove man by the name of Allen, I think, to see if he was in the market for a truck, and he said no, and he and I came on over to the ferry. I took him home on Warren Avenue and went home for lunch to my mother's, then out to Schuck's house about two o'clock and waited until near three for him.

Q. Did you make any arrangement on Wednesday to meet him the following afternoon?

A. Yes.

Q. At three o'clock?

A. At his house at 2.30, I think it was.

Q. And what was the reason for meeting him on Thursday?

20

A. To bury Mr. Paul's body.

Q. Who made the suggestion?

A. Mr. Schuck.

Q. The day before?

A. Yes, sir.

Q. Why did he make that suggestion?

A. Well, from the fact that we had left him out in the open, and he thought it would be better to bury him.

Q. Did you meet as by arrangement the following afternoon?

A. He was a little late; he got there about ten minutes of three.

Q. Where did you meet him?

A. At his house on Liberty Street.

Q. Were you in the house?

A. No, sir.

Q. Did anyone see you meet him?

A. Not as I know; he must have come in the back way and came out the front way. I didn't see anyone only the man next door.

Q. What is his name?

A. I don't know; he keeps a bottling establishment there.

Q. Did you go direct to where the body was?

10 A. We went to Crew Levick and got gasoline at City Line, then we did.

Q. By what route?

A. White Horse Pike to Kings Highway, Kings Highway to Haddonfield, and the back way from Haddonfield to Medford, then in to the pines.

Q. Did you take the same course as you had taken the previous trip?

A. No, sir.

20 Q. Did you see anybody that you knew on either one of those trips to the pines?

A. Not to my knowledge.

Q. Do you know Ed King, the city detective?

A. Oh, I met him on the White Horse Pike, near Collingswood Hall while we were going down.

Q. On which trip?

A. On Thursday.

Q. Did you meet anybody on the previous trip that you know?

A. No, not as I know.

30 Q. Do you know a man by the name of Hillman?

A. Oh, yes, that was on October 5th, we met Hillman.

Q. Where did you meet him?

A. On the Marlton Pike.

Q. Did you speak to him?

A. Schuck did; I didn't see him; Schuck spoke, he said, "There is Hillman."

Q. Where does he live?

A. I think he lives in Audubon.

Q. Now, on your way to the spot where you had left the body, on Thursday, October 14th when you started out with the intention of burying the body, did you stop any place on that trip?

A. We stopped at the general store in Medford.

Q. For what purpose?

A. Bought two shovels and a rake.

Q. Who bought them?

10

A. Schuck paid for them.

Q. Who selected them?

A. Both of us.

Q. What store was it?

A. I don't know, it was a general store there; I don't know the name.

Q. For what reason did you buy a rake?

A. I don't know why we bought a rake.

Q. Did you buy it just as a bluff?

A. To camouflage the man, I imagine, yes, sir, that is probably it. 20

Q. What did you do with the rake?

A. We throwed that out just as we were entering the pines.

Q. Then you never used that at all?

A. No, sir.

Q. After you reached the body, where did you stop your car?

A. Right at the bridge.

Q. And then what took place?

30

A. We pulled Mr. Paul out.

Q. Who had driven the car there?

A. I did.

Q. And how did you pull him out?

A. By his feet.

Q. Was his body in a good condition?

A. I didn't look; I didn't notice.

Q. Didn't you see it, as to how it appeared?

A. No, sir, I didn't look.

Q. What did you do after you got the body to the road?

A. We first dug a hole on the opposite side of the road.

Q. You mean on the side where the body is?

A. On the opposite side.

10 Q. On the side where the body was originally?

A. Yes.

Q. How near to where the body was?

A. About twenty-five feet.

Q. You say, "We tried to dig"; did both of you try?

A. I think we did, yes, sir.

Q. For what reason did you not dig the grave close by where you had put the body?

A. It is swampy there and we couldn't dig.

20 Q. Who found the place where you did finally dig the grave?

A. I said we were wrong and Schuck says, "We are right," and he was right.

Q. You mean in locating the spot?

A. In locating—there is two roads—and I said I thought it was the right, and he said, "No, it is the left-hand road."

Q. No, but I mean who located the ground where you did dig the hole where Paul's body was located?

30 You have just said that you couldn't dig where you first started because of the roots; then you found another place, who found the place?

A. I guess we just both walked up and selected that place.

Q. Who dug the grave?

A. Schuck and I.

Q. And then what—where was the body at the time you were digging the grave?

A. In its original place where we put it.

Q. Then you dug the grave before you moved the body?

A. Yes.

Q. And after you got the body to the road in the way that you have described, what did you do?

A. Tied a rope around his feet and towed him with the Ford car.

Q. By towing, you mean that you tied one end of the rope to the car?

10

A. Yes.

Q. And it was attached around his legs?

A. Yes.

Q. Had you tied the rope to his legs before you got to the road for the purpose of pulling him through the bushes?

A. No, sir, Schuck and I had hold of each foot.

Q. Who ran the car up the road?

20

A. I did.

Q. And he was dragged behind?

A. Schuck was on the side of the car, yes.

Q. Was he riding or walking?

A. Riding.

Q. After you got to the portion of the road that was opposite the grave that you had dug what did you do?

A. Schuck and I both pulled him over into the grave.

30

Q. Who put him in?

A. Schuck and I.

Q. Who covered him?

A. Schuck and I.

Q. Did you do any of the covering of his—

A. Yes, sir; I don't know what he was doing, gathering up something at the time.

Q. Did you call to him to come and help?

A. Yes.

Q. Did you give any excuse for calling for him to help?

A. I told him I was all nervous and excited, I couldn't do no more.

Q. Did he come and help?

A. Yes.

Q. Was he nervous also?

10 A. Yes, sir.

Q. Did he say he was sick and didn't want to look at the body?

A. I don't remember him saying that.

Q. Now, I overlooked asking you before, when we spoke of the original trip, did you take anything out of Paul's coat?

A. Took his wallet, yes, sir.

Q. Who took it?

A. I did.

20 Q. What was in it?

A. Some papers and three five dollar bills.

Q. What did you do with the money?

A. I think I gave one of them to Schuck and put the other two in my pocket, and destroyed the other cards.

Q. How did you destroy them?

A. By tearing them up.

Q. And where did you throw the pieces?

A. I think it was near the body somewhere.

30 Q. Did you throw them out of the car as the car went along the road?

A. I think that is what I did, yes, sir.

Q. Which side of the car were you sitting on at the time and in what direction was the car going?

A. Toward Camden.

Q. Was it going toward Camden or in the same direction that you had gone?

A. We were going toward Camden then.

Q. Well, you mean you were on your way back, but the road that you were in—had you turned the car around?

A. I turned the car around, yes.

Q. Before you threw the papers out?

A. I think so, yes.

Q. Or had you thrown them out as you went up the road to the point where you turned and came down?

A. I don't remember, Mr. Wolverton.

Q. Well, you did go up the road a piece?

A. Yes.

Q. Turned around?

A. Yes.

Q. And came back the same way you had gone?

A. Yes.

Q. Who was driving the car?

A. On Thursday?

Q. On the first trip, I am speaking of?

A. Schuck.

Q. And did he also drive it back?

A. I think he did.

Q. Now, who drove the car on the second trip?

A. I did.

Q. Both ways?

A. Yes, sir.

Q. Now then, after you put the body in the grave, was it large enough to hold him?

A. No, sir.

Q. What was it necessary to do?

A. Just turn his feet around, his legs.

Q. Did you have to do anything to hold his legs down?

A. No, sir.

Q. Where was his coat at that time?

A. I didn't notice, Mr. Wolverton.

Q. Well, did his coat come off at any time when you were dragging him or putting him in the grave?

A. I think when we were putting him in the grave it came off.

Q. What was done with the coat?

A. The coat was in the grave is all I know.

Q. Did you see the envelope that had the checks in it?

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

10 Q. After covering him over with dirt did you take any other means to hide the identity of the place?

A. Schuck and I covered it over with these here leaves.

Q. Then where did you go?

A. Came out to the car and came on home.

Q. Did you turn the car in the road or continue on out of that road and come back a different way?

A. No, came back the same way we went in.

Q. Then you turned the car in that road?

20 A. Yes.

Q. After you came back where did you go?

A. I brought Schuck as far as Collingswood; he got off there and I went on over to Collingswood Avenue, through Yorkship Village and home.

Q. Did you see him the next day, Friday?

A. I don't think I did, no, sir.

Q. Did you spend that evening at home, Thursday?

A. Yes.

30 Q. What did you do on Friday?

A. Oh, I went to the garage in the morning, went home for lunch, I think I did, and then my father called in the afternoon and I went to the Towers with Oscar Eastlack—my father took the car—and from there I went to 60 North Second Street, from there to the ferry and home.

Q. Did you spend that evening at home?

A. I did, yes.

Q. And what did you do on Saturday?

A. Came to the garage, stayed around there a short while and went home again after my wife.

Q. What time did you leave home with your wife?

A. Around twelve o'clock.

Q. Where did you go?

A. Turner's Oyster Saloon on Federal Street.

Q. Then where did you spend the afternoon Saturday?

A. At a ball game and my home.

Q. And then where did you spend the evening?

A. At my home.

Q. Until what time?

A. Until 11 o'clock, around 11 o'clock.

Q. Then what did you do?

A. When detectives came after me.

Q. Who came?

A. Detective King, Detective Whaland and Fitzsimmons.

Q. Where did they take you?

A. To the City Hall.

Q. And you have been in custody since that time?

A. Yes.

Q. Now, Mr. James, are the statements that you have now made in answer to my questions true statements?

A. They are absolutely correct."

The Court: It is now twelve o'clock and it is the universal custom that court should close at that hour and I therefore think that it perhaps would be better to adjourn now until Monday morning at ten o'clock. I think this is perhaps a very good time to adjourn and Mr. Wolverton, if it meets with your approval,

will you give to Mr. Harris, as soon as possible, a typewritten copy of the statement just made by Mr. Berry so he can have that immediately.

The Prosecutor: Yes, sir, I will. Of course the Court knew that a daily copy of all this testimony is being taken.

10 The Court: Yes, but of course it will be some time before that, and then the copy that you give to Mr. Harris can be returned to you and it can appear in the daily transcript which is furnished to Mr. Harris.

(At this point an adjournment was had until Monday morning, December 20, 1920, at ten o'clock A. M.)

20

30

FIFTH DAY, December 20, 1920.

Camden, N. J. December 20th, 1920.

Trial of the cause resumed at ten o'clock A. M. in the presence of the defendant, counsel for the respective parties, pursuant to adjournment.

The Prosecutor: If the Court please, the state closes with the offer of these exhibits.

10

The Court: Pardon me, Mr. Wolverton, but Mr. Berry has not yet been cross-examined by Mr. Harris.

The Prosecutor: I was under the impression there was no cross-examination.

The Court: Mr. Berry will take the stand.

20

EDWARD I. BERRY, recalled.

Cross-examination.

By Mr. Harris:

Q. Mr. Berry, you heard Mr. Wolverton say he asked James whether he had told his counsel this story, and the reply was that he had not? 30

A. I don't recall any such statement.

Q. On the witness stand here a few days ago?

A. I don't recall, Mr. Harris.

Q. At the time of this statement was made to Mr. Wolverton and taken down by you did Mr. Wolver-

ton ask him whether he had told this story to his counsel?

A. You mean the statement which was read by me on Saturday?

Q. Yes, sir.

A. There was nothing said between Mr. Wolverton and the defendant in my presence which is not embodied in the statement which I read.

10 The Prosecutor: If the Court please, if Mr. Harris is going to lay any foundation to dispute what I said, with this witness, I call the Court's attention and his attention to page 170 in which my testimony is that after I had talked to Frank James and he had made a statement to me in which the details of this crime was gone over, I said to him and so on and so forth.

20 Q. Mr. Wolverton testified, "I said to him, James, have you ever told your counsel this story as you have told it to me? No, sir, I never have." Did Mr. Wolverton make any such statement as that——

The Prosecutor: If the Court please, if counsel wants that testimony, it seems to me it is only fair to the witness and fair to myself that he should state the time and occasion. He has only read a part of the testimony and not the full testimony.

30 The Court: Just the purpose of this testimony, Mr. Harris, what is the purpose of it?

Mr. Harris: The purpose is this, Mr. Wolverton has said on the witness stand that he did not deny me access to this defendant, and he also said, which might have some influence with the jury, that he asked him whether he had told me this story or not,

and that he said no he had not. Now I propose to show that the testimony does not show any such questions and answers by Mr. Wolverton on that occasion.

The Court: Very well, just put the question to the witness as to whether——

Mr. Harris: That is what I did. I was reading the question.

10

The Court: If you will just reframe the question now because I will rule that you have the right to ask this witness whether such a statement was made in his presence at this time.

Q. I am reading from the top of page 170, "After I had talked to Frank James and he had made a statement to me in which the details of this crime were gone over, I said to him, James, have you ever told your counsel this story as you have told it to me? No, sir, I never have." I said, "Don't you think you should?" He said, "Do you think, Mr. Wolverton, that I should? I don't like to tell him," and I says, I won't be positive, he said something about having known you so long. I said, "James, above all people to be honest with, be honest with your attorney and tell him everything." Did he say that?

20

A. I don't recall any such statement being made in my presence at the time this statement which I read on Saturday was taken. If that statement does not appear in the statement, it was not made, because the statement embodies everything which was said by the Prosecutor and the defendant in my presence at that time.

30

By the Prosecutor:

Q. Mr. Berry, after you had finished taking the statement which you testified to here the other day, you went on out, did you not, with your book and paper?

A. Yes, sir.

Q. And did I not call for the sheriff and remain with the defendant until the sheriff arrived?

10 A. That is my recollection that you did.

Q. And you had passed out of the room then at the completion of the statement, and didn't know what was said by the defendant and myself?

A. No, sir.

The Prosecutor: If the Court please, I would like to recall one witness, if your Honor please, for one question.

20

HARRY PAUL, recalled.

By the Prosecutor:

Q. Mr. Paul you have already been sworn?

A. Yes, sir.

Q. What color hair did your father have?

A. Dark brown, mixed with gray.

30

Mr. Harris: If the Court please, there are two witnesses——

The Court: Is there any cross-examination, Mr. Harris?

Mr. Harris: Not of this witness. There are two of the State's witnesses I would like to have here to cross-examine, if they are not here I would like to have them called before we get through so I may further cross-examine them.

The Court: You want now to further cross-examine two of the State's witnesses?

Mr. Harris: Dr. Stem and Ellis Parker.

10

The Court: Very well. Now this is to be cross-examination, as I understand it? Very well, you will have the privilege of recalling for cross-examination Dr. Stem and Mr. Parker, if Dr. Stem is present.

Mr. Harris: I don't think the doctor gets here until later in the day. He lives down in the country, you not being familiar with our physicians here, Dr. Stem lives about fourteen miles down in the country here and comes here to the court house every day.

20

The Court: Very well, we will find out. Do you know whether Dr. Stem is in court?

The Prosecutor: No, sir, I do not. I told Dr. Stem the other day we didn't need him any further.

The Court: Will the constable call the name of Dr. Stem and see if he is here in court? He doesn't seem to be here, Mr. Harris. I see Mr. Parker here. You wish to cross-examine Mr. Parker on some matter you omitted in your cross-examination?

30

Mr. Harris: Yes, sir.

ELLIS PARKER, recalled.

Cross-examination.

By Mr. Harris:

Q. Mr. Parker, you have had how many conversations with James, the defendant?

10 A. Five or six or more.

The Prosecutor: If the Court please, may I have some idea of the purpose of the cross-examination of this witness? This witness was called, as I recollect it, by the State to prove the finding of certain articles and also the body and the conditions surrounding the body. That was the extent of his direct examination, if I remember correctly, and if my memory serves me right, when Mr. Doran was placed on the stand to
20 testify to certain statements made by the defendant, counsel for the defendant requested that he be permitted to go into the question of whether those statements were voluntary or not, and in carrying out that purpose he called on Mr. Parker to give some testimony and Mr. Parker gave some testimony in that respect. Now the question which is asked of him does not seem to me to be cross-examination in any sense of this witness who was called in the first instance as a State's witness.

30 The Court: My recollection is when Mr. Parker was called by the State he was not asked regarding any statements made by Mr. James.

The Prosecutor: No, sir.

The Court: And it was only, Mr. Harris, when you called him on the question as to whether the confession was voluntary or not that there were any questions put to him with reference to his conversations with Mr. James.

The Prosecutor: If the Court will hear me further——

The Court: That is my recollection.

10

Mr. Harris: That is right.

The Prosecutor: If the Court will hear me further, those questions that were asked of Mr. Parker and the other witnesses at that time were for the purpose of having your Honor determine in the first instance as a legal proposition whether these statements were voluntary. After all of the evidence was in your Honor passed upon the fact that they were voluntary, and they were introduced in evidence, so that, to recall this witness at this time on this question, which he was called for before, certainly cannot have any effect on the admissibility of these statements because they have already been passed upon by your Honor. 20

The Court: This witness was called for the purpose of cross-examination. Now, Mr. Harris, will you point out in the testimony where this question has any bearing upon what he said in his direct testimony when called as a witness by the State? 30

Mr. Harris: I know the rules of evidence, or at least I think I ought to.

The Court: I am just asking you what point.

Mr. Harris: I want to say—it may not be strictly cross-examination.

The Prosecutor: If the Court please——

Mr. Harris: I have the floor, I think.

The Court: I will listen to Mr. Harris, Mr. Wolverton.

10 Mr. Harris: But I do think the questions I will ask I ought to be indulged and allowed to do it. Here is a man's life at stake. The witness on the witness stand is the man who secured from him and the other man the statements with which this case has been so far tried. I think I ought, with the indulgence of the Court, be permitted to ask him whether he did not tell him on certain occasions certain things in answer to his attempt to get the confession from him at the time it was obtained.

20 The Court: Well, Mr. Harris, I must, of course, notwithstanding the gravity of the case, rule on these questions as I feel that I should rule even though the case was one of less gravity. What I want you to point out to me is where the question that you have just asked Mr. Parker is touched upon in his direct examination by the State.

30 Mr. Harris: It is not touched upon.

The Court: Then the Court will have to overrule the question as not being cross-examination.

Mr. Harris: Of course that is a matter in the discretion of the Court whether you should overrule it or not.

The Court: Yes.

Mr. Harris: I understand the State objects to my asking him any question concerning any confession that he made to him?

The Court: That is what I understood Mr. Wolverton's objection is, and I think his objection is well founded.

The Prosecutor: The thought, if there is anything this witness knows that counsel wants him to testify to, he has a perfect right to call him as his own witness.

The Court: Certainly.

Mr. Harris: Then I would be put in the position of attempting to contradict my own witness and the Court will rule against me.

20

The Court: I don't know how the Court will rule until the Court rules.

Mr. Harris: If the Court sticks to its present rule that you cannot allow us to cross-examine on anything but what is testified to on direct examination.

The Court: Did I understand you to say, Mr. Wolverton, that the State rests?

30

The Prosecutor: The State rests with the offer of these exhibits in evidence, some have been offered as exhibits and some have been marked for identification.

The Court: You better call attention to those that you have marked for identification and which have not been offered in evidence, and then call the attention of Mr. Harris to each one that you desire to now offer.

The Prosecutor: Exhibits one to six were the pictures. They were admitted.

10 The Court: They have been received, I think, in evidence, if not they will be received now in evidence.

The Prosecutor: Exhibit No. 7, check slip to Girard National Bank, admitted in evidence.

20 Eight paying teller's book with the privilege of introducing a copy for the use, which I have here, and which I will suggest being marked as exhibits same as the others.

The Court: Have those been shown to Mr. Harris?

Mr. Harris: I object to those until we are furnished with a copy under the agreement.

The Prosecutor: This is a copy.

30 Mr. Harris: We have not been furnished——

The Court: You just examine it, Mr. Harris, and see if that is not all right.

The Prosecutor: I am very sorry I overlooked that fact. I did not know I was requested—it would have been just as easily done.

Mr. Harris: It was directed by the Court and I consented to it that the copy should be given to me.

The Court: Your recollection is my recollection, and that is that there was a copy to be furnished to you.

The Prosecutor: I apologize, and I just got this myself this morning.

10

Mr. Harris: There is just one copy here, and I shall still object until the ruling of the Court be complied with.

The Prosecutor: Mr. Harris, you may have this as your copy and then I will ask if you have any objection to their being admitted in evidence.

Mr. Harris: I have no objection to their being in evidence provided later they furnish me with a copy.

20

The Prosecutor: This was the copy.

The Court: Mr. Wolverton, they will be noted. Go on, Mr. Wolverton, with the next exhibit.

The Prosecutor: The same is true of Exhibit No. 9, which is the time teller's book. Exhibit No. 10, the money, package, \$4600 was admitted, Exhibit No. 11, the rope, I think was marked for identification and we now offer it as an exhibit.

30

Mr. Harris: I object because it has not been identified.

The Court: I think the rope has been sufficiently identified and will be received in evidence.

Mr. Harris: Does your Honor recall the testimony on that?

The Court: I recall the testimony because I endeavor to fasten the testimony upon my own mind by writing it down as it is delivered.

10 Mr. Harris: To that exhibit I object.

The Court: It will be received.

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

20 The Prosecutor: Exhibit No. 12, the wallet was admitted. Before we pass on from the rope, I think, outside of any question of identification, it has been directly identified as the rope that was found tied around Paul's legs, and I think that of itself would entitle it to introduction.

30 (Exhibit No. 12, wallet, admitted. Exhibit No. 13, torn paper admitted. Exhibit No. 14 other torn paper admitted. Exhibit No. 15 handkerchief containing watch and other articles admitted. Number 16. Tape was marked for identification and we now offer it as an exhibit.)

The Court: This is S16 that tape?

The Prosecutor: S16, yes, sir.

The Court: That is the tape around the inner door of the automobile. That will be received in evidence.

The Prosecutor: Exhibit No. 17, James' clothing is now offered as an exhibit.

Mr. Harris: I object to it. The underclothing, 10 there is not attempt to even connect them at all.

The Prosecutor: Evidence on the underwear was that they were in the same package, the same bundle with the clothes, and the evidence of the statement of the defendant was that they were all thrown into Cooper River. The evidence of the State is that they were found in the waters of the Cooper River tied in a bundle together.

The Court: The underwear will be included and will be received in evidence along with the other exhibits. 20

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal) 30

The Prosecutor: Exhibit No. 18, pieces of a covering of the lining of an automobile, a Ford.

The Court: That has been received, I think, has it not?

The Prosecutor: I thought it had, but to make sure I offer it in evidence.

The Court: Very well then, it will be received in evidence.

The Prosecutor: Exhibit No. 19, was the door, the automobile door.

10 The Court: That will be received in evidence.

The Prosecutor: Exhibit No. 20 is the rake that has been admitted in evidence. Exhibit No. 21, the spade, has been admitted in evidence. Exhibit No. 22, Paul's key, has been admitted in evidence. Exhibit No. 23, is the revolver, for identification.

20 Mr. Harris: Well, that has not been even submitted to me and is simply marked for identification, no other proof.

The Prosecutor: I will not press it.

The Court: No, I think I would not admit that, Mr. Wolverton.

The Prosecutor: No, sir, I am not going to press it.

30 The Court: Very well.

The Prosecutor: Exhibit No. 24, is the floor boards marked for identification.

The Court: Those will be received in evidence.

The Prosecutor: Exhibit No. 25, is the seat covering.

The Court: That will be received in evidence.

The Prosecutor: Exhibit No. 26, are the tests of Dr. Beringer on the tape to ascertain the presence of blood spots.

The Court: Those have already been received in evidence. 10

The Prosecutor: Exhibit No. 27, the same.

The Court: Have they been put in separate envelopes?

The Prosecutor: Yes, sir. Exhibit No. 28, tests on the floor boards.

The Court: They have been received in evidence. 20

The Prosecutor: Just to have the record clear Exhibit No. 27, are the tests on the door; Exhibit No. 28, Dr. Beringer's tests on the floor boards; they have been admitted. Exhibit No. 29, Dr. Beringer's tests for blood on the lining of the door; they have been admitted in evidence. I think that covers all; I have endeavored to keep a correct list of them and I think that covers all. If there is any that have not been mentioned I ask that they be marked.

The Court: The State rests, as I understand it, Mr. Wolverton?

The Prosecutor: The State rests, yes.

THE STATE RESTS.

THE CASE FOR THE DEFENDANT.

(Mr Harris opens the case to the jury as follows):

Mr. Harris: If your Honor please, gentlemen, the defence in this case will be very short, and if you are not out of your present confinement in a very short time, it will certainly not be my fault. Two people
 10 have been indicted, charged with murder, and under the law, murder, unless otherwise proven, is presumed to be murder in the second degree, and the burden is upon the State to show whether it is first degree or second degree. You perhaps noticed when you were examined for your qualifications as jurors that you were asked about murder in the first degree with the penalty of death. Some of you perhaps said that you were opposed to that; some of you said you were not opposed to it. Murder in the first de-
 20 gree does not necessarily carry with it the penalty of death; under the laws of New Jersey as they stand today, it is up to you gentlemen to say, if you find him guilty of murder in the first degree, whether he shall suffer the death penalty or whether he shall suffer life imprisonment. It is life imprisonment which we ask for; if you cannot see your way clear to find a verdict of less than first degree, we ask you that you find such a verdict with a recommendation for life imprisonment. We will base that upon
 30 the facts as they are now in and upon the few facts that we will attempt to prove.

We will show you that James' father in about 1882, developed insanity; James' grandfather, the father of Mr. James, developed insanity, some thought because of drink, intemperance, but whatever the cause was he served nineteen months or he

was confined nineteen months in the New Jersey Hospital which was at that time called the New Jersey Hospital for the Insane, the New Jersey Insane Asylum; it is now called the New Jersey Hospital; and he was a man that felt that he had committed a terrible crime and should suffer the extreme penalties. We will show you that he died in March, 1886, in the insane asylum, a lunatic. We will show you that a boy who was closely related to James on his father's side committed suicide at Vineland, a boy only twelve years old, feeling that his mother and his father had not treated him just right, went to his father's stable or barn with his father's gun, put the gun against his breast and with a string pulled the trigger and killed himself instantly. We will produce the record of the coroner's inquest showing that. We will produce the record showing the death of this young boy's grandfather. Now, on his mother's side we will show you that she has had two nephews, one of whom attempted to commit suicide in her house by cutting off his arm, went to the bathroom to bleed to death, and we will show you by the physician in attendance that the young man in her judgment was insane; that only a few weeks afterward he died of apoplexy in Philadelphia. The record of his death we have had properly exemplified and we will offer it in evidence. His brother, another nephew of the mother of this young man, committed suicide in Philadelphia by inhaling gas, and the coroner's inquest showed that he did that while temporarily insane. It is this young man's ancestry for which he is not responsible; it is the sins of the parents coming down to the third and fourth generation. If we show you that this young man is of a temperament,—excitable, and such a person as would be likely to get excited

under conditions similar to that which happened, must have happened when this crime was committed, we will ask, taking those circumstances into consideration, with the life that this young man has led and the family from which he comes, that you extend to him the recommendation of life imprisonment.

10

JOHN W. JAMES, SWORN.

Mr. Harris: If your Honor please, at this time I would like to call upon the Prosecutor to produce his record which is identical with mine I think, of the history of this man's father in the New Jersey State Hospital at Trenton. I prefer to use his rather than mine.

20

The Court: Well, I do not quite understand that. Have you a record, a certified record of a commitment to the hospital for the insane of a certain relative of the defendant's?

Mr. Harris: The commitment seems impossible to get.

The Court: I did not hear what was impossible to get.

30

Mr. Harris: The commitment, but the record of his commitment, both of us have applied for, and I have been credibly informed that they received exactly what I received.

The Court: Well, if you have received what you want, Mr. Harris, that is sufficient.

Mr. Harris: I offer it— he has one— there is the record I have, a certified copy of his death, his death record, properly certified. The Court will bear in mind that there is no law which permits a certified copy of the record of the State Hospital for the Insane to be admitted in evidence. I am not sure, but probably the record itself might not.

The Court: Well, of course, I cannot admit this statement in evidence. Those facts this witness may (1) be able to prove, I don't know, of course. Perhaps you had better just proceed in the orderly way to examine the witness, because I cannot anticipate what you have in mind.

By Mr. Harris:

Q. What is your full name, Mr. James?

A. John W. James.

Q. Where do you reside?

20

A. 488 Newton Avenue.

Q. What relation are you to Frank James, the defendant?

A. Father.

Q. What was your father's name?

A. John W. James.

Q. Where did he live?

A. Clayton.

Q. How long did he live at Clayton?

A. Until he was sent to the asylum.

30

Q. How old are you?

A. How old am I?

Q. Yes.

A. Sixty.

Q. Do you recall when he was sent to the insane asylum?

A. Yes.

Q. When?

A. 1884.

Q. 1884—do you recall when he died?

A. 1886.

Q. How old was Frank when he died?

A. About five days old, I think.

Q. How old was your father when he died?

A. Fifty-six.

10 Q. Do you know of what he died?

A. Sir?

(Question repeated.)

A. No, only he died in the asylum.

Q. In the asylum at Trenton?

A. Yes, sir.

20 Mr. Harris: I would like to offer a certified copy of the certificate of his death, properly certified under the act.

The Prosecutor: If your Honor please, I do not see any necessity of that. The fact of his grandfather's death is made apparent by the testimony of this witness; I do not know why a certificate has to be introduced to corroborate what this witness has said. We do not dispute the fact that the grandfather is dead.

30 The Court: I see no harm to the State in accepting this certificate of death.

(Said paper is marked Exhibit D1.)

Q. Before your father was sent to the insane asylum, what were his habits?

The Prosecutor: If your Honor please, I would like to make a general objection at this time. It is apparent that counsel for the defendant is endeavoring to lay some basis for a claim as to the mental condition of this defendant. Evidence of the character that counsel is now endeavoring to elicit from this witness in my view of the law is not admissible except upon the basis of introducing expert testimony on the ground of his insanity. I would like to know at this time if that is the purpose or the basis of this testimony which is being read. If it is, I consider it admissible, possibly; if it is not, it is not admissible. In other words, will any expert testimony be called to base an opinion upon these facts which are now being presented? 10

The Court: Well, of course, Mr. Wolverton, it need not be expert testimony; whether there is any testimony to be introduced to show that the defendant at the time of this alleged crime was insane. 20

The Prosecutor: That may be true in one sense, but there is no proof before the Court or the jury of any insanity in the defendant.

The Court. Well, of course, that must be supplied; Mr. Harris understands that, that of course, the testimony of insanity in the family can be not availed of unless there is evidence introduced of the defendant's insanity, and I presume that, of course, Mr. Harris intends to introduce. I cannot control the order of his proofs. 30

The Prosecutor: I have in mind, if the Court will permit, the case of *Bradley vs. The State*, an Indiana case which deals with that situation: Terse-

ly stated it holds that where there is no evidence of his own insanity, the evidence of the insanity of his relatives is irrelevant. Then a United States case, "In connection with his own insanity, evidence showing the insanity of his parents or immediate relatives is relevant," on the basis that the insanity of the defendant is shown. "Where hereditary insanity is offered as an excuse for crime it must appear that the insanity actually exists in the
10) prisoner, that it is not temporary but notorious and of the same species as other members of the family have been inflicted with." Then another case, Pennsylvania. "Until there is some evidence of the prisoner's insanity the Court is not obliged to hear evidence of the insanity of his relatives."

Mr. Harris: If the gentlemen will wait, he will probably find out that I come within the cases: If I had opened my case and said that I proposed to
20) offer insanity as an absolute defense, excuse for this crime, it would be a different situation from what I said. I told them I would offer the insanity of his relatives for the purpose of either reducing the degree of the crime or for the clemency under the act which he claims. Now, it is a circumstance which I have a right to prove, and in which there are a large number of cases—you will find them in Cyc—that I may prove these very things from which the jury may draw a conclusion as to whether or not at
30) the time the crime was committed he himself was of such mental capacity as to be held to the full responsibility of his acts, or whether it cannot be introduced for the purpose of showing the degree of crime. Now, if the gentleman wants to find that he can find it in Cyc, a large number of cases.

You see we are not asking in this case that the insanity in this family shall act as an acquittal, simply that the circumstances of his life may be so brought before this jury that they would be warranted in recommending a life imprisonment, not an excuse of this crime for an acquittal. As I say under these cases we have a right to show, so far as he knows, I may be going to offer testimony showing that based upon these facts this man is an insane person. Of course he has said to me a few (10) days ago, asked me whether I would produce any experts in insanity, and I told him the name of the person that I would produce. He had no business to ask it. Perhaps I violated a duty that I owed to my client, but I want to be fair to the State, and I told him the name of the person that I was going to call.

The Prosecutor: If the Court please, all I want is a statement from the counsel for the defense that (20) it is his intention to call expert testimony to base an opinion on the further question which he has raised as to the admissibility to lessen the degree, I think our cases in this state are very plain, on what insanity is to constitute a defense. It is the ability to determine the nature and the quality of the act and know the difference between right and wrong. On the question of entering into a difference of degrees, I think our courts have held that there is only one insanity. He is either insane or he is (30) sane. If the question of degrees were involved in this case it might be admissible to show that he was not of the mental caliber to properly deliberate, premeditate and so forth, but that is not the case which has been presented by the State, it is a case of robbery which of itself makes it first degree,

without any reference to these elements that are ordinarily spoken of as elements of first degree murder, and there has been no statement made by counsel for the defense to the jury to indicate that any other plea would have been made than that to have the jury recommend in first degree verdict a recommendation for life.

10 Now on that question the case of *State vs. Palmieri*, is this statement: "The Court is not required to take evidence for the purpose of aiding the jury in deciding whether to make a recommendation." In other words, this evidence, if that is the only purpose that it is offered, to my mind is inadmissible, and I feel that it should be based solely and entirely upon the legal rules governing the question of insanity in this state, and that the purpose should be no further than to supply the basis for an expert's opinion on that subject.

20 The Court: The law as I view it is this, that if the defense of insanity is interposed, then, of course, it is permissible to show whether there was insanity in some members of the family known as hereditary insanity, but that of itself can be no evidence of the defendant's insanity. It must be connected. There must be evidence of the defendant's insanity. If it is sought to introduce this testimony, Mr. Harris, solely under the act by which a jury may recommend a life imprisonment at hard labor together with a
30 verdict of murder in the first degree, that, then, of course, in my view, it is not admissible, because that would permit, in any case of this kind, any testimony that counsel might urge, which would have no bearing upon any real defense, but yet there might be something that would tend to create or arouse sympathy. I want to be absolutely fair to this de-

fendant, but of course, I cannot receive this testimony if that is the sole purpose of it. It must be connected in some way with the insanity of the defendant.

Mr. Harris: If the Court please, I disagree with the Court, and that is not unusual.

The Court: No, as I have said before, it is your perfect right. The Court always has to be right. 10

Mr. Harris. I want to put upon this record my full proposition and then if the Court is willing to rule, as they now intimate they are going to rule, I want, of course, the benefit of an exception.

The Court: Certainly, you will have the benefit of an exception.

Mr. Harris: My theory is this, that since the Wolverton Act was passed, all the circumstances 20 which go to surround this defendant and the crime may be offered in evidence so that the jury may say whether or not he is such a normal man as would, under the facts that have already been adduced, commit the crime alleged or charged against him. Now the crime which is charged against him of which the facts are now before this jury, are such that it is hardly possible to believe that a sane man could have committed those acts, and yet it is no 30 secret that we have had this man examined, and the report of the experts is such that they do not come within the law as established in New Jersey. I speak particularly of the Gennis case, and others, to what extent they must go, but the other cases outside of the state say that they may be offered to

show what manner of man he is, whether he is such a person as under excitement would do things which otherwise might not be done by a man who is not under those circumstances. To this defendant this question is highly important. I want to prove what his grandfather did, his kind of insanity, and the cause of his insanity as testified to by the record. In the other cases I also want to prove insanity in them, and I think the Court——

10 The Court: You mean in other members of the family beside the grandfather of the defendant?

Mr. Harris: Yes, sir. And I am ready here to prove it by proper evidence. Now, if the Court is going to rule that under the Wolverton Act—and this is one of the few states that has it, I don't recall it in any other state—you can't offer those circumstances, then I am at a loss to know why such an act was passed. What was the motive of such
20 an act? The act as it was first passed, the Court held that the jury need not even consider the circumstances. You remember the case quite well, no doubt, that it was not a part of the verdict, then two years later it was amended by someone else than Mr. Wolverton, so that the jury could consider all the circumstances in the case in order to arrive at whether or not they would be warranted in making a recommendation for life imprisonment. Now
30 I say under that act we are entitled, in my judgment, to prove the history of this boy, the history of his family, in order, if we can, to have this jury make a recommendation. There will be only one witness called on this very question, this woman, will say that by reason of her education—she is a practicing physician of a number of years who at-

tended this man, attended this family, and knows the family history of the defendant's family—and based upon her knowledge, is what I want to prove, so as to establish the facts properly before the Court, and have her knowledge. The Court will have to admit that before I could ask an insane person, an expert in insanity, whether or not the defendant was an insane person I would have to prove the facts, and then raise a hypothetical question, plus the examination of the defendant, and I am proceeding in a direct and proper legal course, and I do not think that the Court at this time should decline to let me go on. 10

The Prosecutor: If the Court please——

Mr. Harris: If the Court please, I have the opening and the reply.

The Court: I think I will give you an opportunity to reply, Mr. Wolverton. 20

The Prosecutor: I think on the basis of legal rules of debate I would be entitled to it anyway because I made the objection, I was the moving party, and the Court heard my objection, and an answer was then made by counsel, and I sort of think I have the closing right.

The Court: I have ruled that you have, so we will be pleased to hear you. 30

The Prosecutor: The closing statement which was just made by counsel for the defendant is entirely different, to my mind, than the statement on which he predicated his argument when it was first

presented to your Honor. In other words he said that it was not his intention to interpose any evidence of insanity of this defendant, that would come within the legal rules defining insanity in this state, so that my objection in the first instance would seem to be well founded in view of the statement that counsel just made that this question of hereditary influence might be admissible as forming the basis of an expert opinion, but counsel has said it is not his intention to do that, in fact he has said 10 frankly that the experts that have examined him could not render such an opinion. I think it was frankly stated and truthfully, but notwithstanding that, counsel says that it is admissible on the question of having the jury determine whether there should be a recommendation. The act of 1919, without any reference whatsoever as to who might have produced it—it is not the person that is speaking—is an act of the legislature. We are presumed 20 to judge the meaning of the legislature in passing an act by the words that they have used. In the act of 1919 it is expressly set forth, “Unless the jury shall by their verdict and as a part thereof upon and after a consideration of all the evidence recommend imprisonment”—in other words under the previous act there was a question raised whether the evidence of whatsoever kind or character, whether it had any bearing upon the facts in the case, or not, if it had a bearing upon the question of recommendation of 30 life imprisonment, it would have to be received. That was under the act of 1906. In their words the recommendation was so broad, and so open, when the point was made, that with that recommendation present, a defendant had the right to introduce any evidence whatsoever, whether it was legal or otherwise, as to the issue in the case, so long as it

had any bearing whatsoever as to whether a jury should recommend life imprisonment or not. Now the Court very properly in passing on that question stated in this case that *State vs. Palmeiri*, which was a case before the act of 1919, in which the Court held, "The Court is not required to take evidence for the purpose of aiding the jury in determining whether to make a recommendation." To be perfectly frank, that was not just exactly on the question of insanity, but it was the same point that was argued. Now subsequent to that the act of 1919 was passed in which it was stated that the recommendation must be confined to the evidence in the case, so that if evidence on which to base the recommendation is not admissible under the 1916 act, it certainly is not under the 1919 act. In fact it would seem that the door was closed, and that a jury must confine its recommendations solely and entirely to the facts and circumstances in each particular case, and I think that is the intent of the legislature in passing that act, that it should be open only to those cases where the facts and circumstances in that particular case seem to warrant, and that the defendant cannot go outside of the issue, or the facts in the case, which are rightfully there, and postpone that issue to bring to the minds of the jury the question of sympathy with a recommendation of life imprisonment.

The Court: Now, Mr. Harris, I think I have indicated my view on this subject. If you do not propose—I will put it this way, is the defense insanity? Is the defense insanity in this case?

Mr. Harris: No, sir.

The Court: Then, of course, the testimony that you now propose to offer by this witness is to my mind only testimony which is relevant to the defense of insanity. If it is offered for the purpose of security from the jury the recommendation of life imprisonment at hard labor under the act of 1919, my opinion is that it is inadmissible.

10 Mr. Harris: When you asked me if insanity was my defense I spoke as the law of insanity had existed at the time of the crime. We offer a defense, we offer the insanity, or circumstances which we may produce to this jury to show whether or not this is such a normal man that he is entitled to a recommendation for the mercy of this jury.

20 The Court: You must state whether your defense is insanity or not. If it is insanity then this testimony is relevant if connected with the mental condition of the defendant. If it is not, and that is, of course, insanity according to the law of New Jersey—I cannot introduce in this case the law of any other state, no matter what I might think of it, my duty and my oath is to administer the law of the State of New Jersey—now as I have said if your defense is not insanity, and by that I mean insanity as recognized by the laws of New Jersey, then this testimony is inadmissible.

30 Mr. Harris: Then you want me to say whether or not the defense of insanity as I see it would result in a verdict of an acquittal?

The Court: I am not asking you to pass on any question of that kind. I say if you say that the defense is insanity then I must receive the testimony

that you have to offer on the subject of insanity, and then I must submit my view of the law and apply it to the testimony that is offered in my charge to the jury.

Mr. Harris: My thought was under the 1919 act we had a right to inject into this case any testimony which would likely influence this jury in making a recommendation, and it is for that purpose that I offer it. 10

The Court: Then if it is solely for that purpose that you offer it I feel constrained to overrule it.

Mr. Harris: I opened to the jury and said I would not ask for an acquittal. That was my opening.

The Court: I realize it. That is the reason I am putting these questions to you so directly, so that there will be no misunderstanding. Of course neither 20 the State or the Court want in any way to prejudice the rights of the defendant, but we must have a clear understanding and if that is your purpose merely in order to secure a recommendation for this jury, I feel it is my duty to overrule the testimony.

Mr. Harris: I thought we understood each other exactly, that was my sole purpose.

The Court: Then I must overrule this testimony because it is not to be connected in any way with the insanity of the defendant, and of course you are entitled to an exception and if I am wrong you have your remedy.

Mr. Harris: Then I will withdraw this witness and ask for an exception.

(Exception noted for defendant.)

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

10 MRS. ADA JAMES, SWORN.

Mr. Harris: I am offering this testimony on behalf of the mother's side. I want to offer an exemplified copy from the State of Pennsylvania showing the death of her two nephews who were declared insane in Philadelphia. In making that offer I expect I shall get the same ruling as I got before, but I want it on the record.

20 The Court: Very well, of course, you make that offer. Mr. Wolverton, what is your attitude so that the Court can express——

The Prosecutor: I feel that if that is all the purpose of the offer of this witness, that her testimony would be inadmissible, and I object to it. The fact of these deaths in Pennsylvania I do not consider as admissible in any way in this case.

30 The Court: I understand it is for the same purpose that the testimony of Mr. John W. James was offered and the ruling of the Court is the same.

Mr. Harris: Well, I would like to offer an exemplified copy of the record of the death of Frank B. Johnston and Walter S. Johnston, which records

are duly exemplified under the laws of the State of Pennsylvania.

The Prosecutor: May I see those certificates?

Mr. Harris: Yes, sir.

The Prosecutor: If your Honor please, the offer which is made by counsel for the defendant consists not only of a certificate of death, but it also consists of other facts and circumstances, including the testimony which was taken before a coroner's inquest. I certainly could not consent to such secondary hearsay evidence as that being admitted. I have no objection to it appearing upon the record that Frank B. Johnston died on the 21st day of September, 1919, but anything further than that I do object to, and I do not see that that is admissible, but I do not see that any harm is done to anybody by the introduction of that fact; but if these papers which are offered as exhibits at this time were introduced in evidence it would be receiving hearsay and secondary evidence that is so entirely remote and illegal that I could not conscientiously consent to them. 10 20

Mr. Harris: I haven't asked him to consent, if your Honor please.

The Court: No, but the purpose of the documents being the same and counsel disclaiming his intention of connecting the evidence offered in any way with the insanity of the defendant— 30

Mr. Harris: I would like the Court to examine it and see whether there is any testimony before the coroner.

The Court: Well, that is immaterial.

Mr. Harris: That is the ground he objects to it now.

The Prosecutor: I base my objection, if your Honor please, upon the fact that counsel handed me two papers together, which I presumed were the exhibits which were offered.

10

Mr. Harris: No, I was not offering that.

The Court: Well, the offer, of course, being for the same purpose, will be overruled and an exception allowed you, Mr. Harris.

Mr. Harris: If your Honor please, in order to get the record straight, I want to prove who these two young men were.

20

Q. Mrs. James, what relation was Frank Johnston to you?

A. My nephew.

The Prosecutor: May it please the Court, may I ask the question whether this is the mother of the defendant?

Mr. Harris: Yes, the mother of the defendant.

30

The Prosecutor: Has she so testified?

The Court: Mrs. James has so testified.

Q. Who was Walter Scott Johnston?

A. He was my nephew.

Q. Do not answer this question until after the Court rules upon it; bear in mind my request not to answer it until the Court rules. Did Walter Scott Johnston attempt to commit suicide in your house?

A. He did.

Mr. Harris: Oh, I said not to answer it.

The Witness: Pardon me.

10

The Court: Now, of course, Mr. Harris, I overrule that question and allow you an exception.

Mr. Harris: You overrule it—the same ruling?

The Court: Yes.

(Exception allowed, it is signed and sealed accordingly.)

20

FRANK S. KATZENBACH, JR.,
J. (Seal)

Mr. Harris: I offer this record of the other boy's death, exemplified under the law of Congress.

The Court: The record is offered and is overruled.

The Prosecutor: If your Honor please, I object to the introduction of this. I am perfectly willing, as I have stated, for the witness to testify that her brother died on a certain date, if that would seem to be admissible, which I do not say it is admissible, but to introduce a certificate of death which is made up of questions and answers, many of which could

30

not possibly have been of the personal knowledge of the person who made out the certificate, but only on the basis of hearsay testimony, that I must object to.

The Court: The objection is sustained; the document is overruled and an exception allowed to the defendant.

11) (Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

Q. Mrs. James, who was Orin Newkirk—what relation is he to Frank?

A. He is a cousin.

Q. A fifth cousin?

A. No, a second cousin.

20 Q. How old was he at the time he died?

A. Twelve years old.

Mr. Harris: If your Honor please, I have a certified copy of the coroner's inquest, duly certified to by the clerk of the County of Cumberland, which I now offer in evidence as to Orin Newkirk.

30 The Prosecutor: If your Honor please, I object to that upon the basis that whatever was said or done before a coroner's inquest, or the action of a coroner's inquest in the form of a certificate of this character is not the way to prove those facts if they are admissible. I deny the admissibility of the facts, and I object to the manner in which it is even attempted to prove those facts.

Mr. Harris: Which facts do you object to?

The Prosecutor: Which appear in the coroner's inquest.

Q. Were you at his funeral?

A. No, sir.

Mr. Harris: Is that the part you object to?

The Prosecutor: I object to your exhibits.

Mr. Harris: I only offer this to show, not the facts contained in this, but the fact that he committed suicide and a coroner's inquest was held. Any other facts in there I do not offer. 10

The Court: Well, the objection of the Prosecutor is sustained and the Court declines to receive in evidence the certificate and grants to the defendant an exception.

(Exception allowed, it is signed and sealed accordingly.) 20

FRANK S. KATZENBACH, JR.,
J. (Seal)

(Witness withdrawn.)

DR. JENNIE SHARP, SWORN.

30

By Mr. Harris:

Q. Doctor, what is your profession?

A. I am a physician.

Q. How long have you been practicing medicine?

A. Since 1896.

Q. What college are you a graduate of?

A. The Women's Medical College of Pennsylvania.

Q. Were you called upon to attend Frank Johnston?

A. Not Frank Johnston, Walter Johnston.

Q. Where?

A. 488 Newton Avenue, the home of Mrs. James.

10

Mr. Harris: This is in the line, but I expect to go a little bit further.

The Prosecutor: Doctor, please do not answer any question until I have had an opportunity to object.

Q. What was the trouble with Johnston?

20 The Prosecutor: If your Honor please, I cannot see how it is admissible in this case what the trouble with Walter Johnston may have been. This lady has stated that she is a physician. I have no doubt in her long and busy career she has attended a great many people; one of those is selected by the name of Walter Johnston and she is asked what was the trouble with him when she treated him. I do not see any admissibility in that question.

30 Mr. Harris: Well, her attention has recently been called—she knows who I mean by Walter Johnston; there is no question on that ground.

The Court: Well, as I understand it, it is the second cousin of the defendant, isn't it?

Mr. Harris: No, own cousin first cousin.

The Court: The first cousin of the defendant and the purpose of the question is the same as the purpose of the questions asked the preceding witness?

Mr. Harris: Yes, I propose to show that at the time she attended him——

The Court: Then the Court will sustain the objection and overrule the question. 10

Mr. Harris: An exception, please?

The Court: An exception will be allowed the defendant.

(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR., 20
J. (Seal)

Q. Don't answer this one until the Court rules upon it, Doctor. At the time you attended him what was his mental condition?

The Prosecutor: I object for the reasons that have been already stated.

The Court: The objection is sustained. 30

Mr. Harris: Now, one more I want to get in the record.

The Court: Very well.

Q. At the time you attended him was he suffering from an attempt to cut his hand off?

The Prosecutor: I object, the question is very leading in its character.

The Court: Well, we will waive the leading character of the question, and the objection is sustained and the question overruled.

10 (Witness withdrawn.)

MAUD JAMES, sworn.

By Mr. Harris:

Q. You are the wife of Frank James?

A. Yes.

20 Q. Do you remember the occasion—you know Mr. Ward?

A. Yes

Q. Do you remember the occasion when Mr. Ward came to your house to deliver a telephone message to you from your husband?

A. Yes.

Q. Did he tell you that your husband apparently was intoxicated?

30 A. He said he could not understand what he had said on the phone, something about electric trucks. He said, "Really, Mrs. James, I could not understand what he did say."

Q. He did not say anything about his being intoxicated?

A. Not directly to me, he did to a friend of mine.

Q. No, not what he said to a friend of yours.

A. Yes.

Q. And you are sure of that?

A. Yes.

No cross-examination.

Mr. Harris: If your Honor please, the ruling of the Court on my efforts to establish the insanity in the family has practically put our case out. We rest.

DEFENDANT RESTS

The Court: The defendant rests. Is there any rebuttal?

The Prosecutor: There is no rebuttal; would the Court have any objection to a recess of five minutes before the arguments are started? 20

The Court: Not at all.

Mr. Harris: If Dr. Stem comes I would like to ask him a few questions.

The Court: Well, have you Dr. Stem under a subpoena? I mean to say, if he comes during this recess, of course, I will open the case for you to call Dr. Stem, but of course, after the arguments of counsel have commenced I could not open the case. 30

Mr. Harris: He is hardly due here yet.

The Court: The Court will take a recess of five minutes.

The Prosecutor: I was about to say, if your Honor please, if the counsel for the defendant feels that the testimony of Dr. Stem is vitally important to him, I am perfectly willing that a long enough adjournment be taken to give him an opportunity to get Dr. Stem here. I think if Dr. Stem had known
10 counsel wanted him, he certainly would have been here.

The Court: Very well then, during the recess, Mr. Harris, I suggest that you see if you can locate Dr. Stem and if a longer recess is necessary the Court will take a longer recess in order to enable you to procure the witness. Now, the jury may retire and if the defendant desires to retire for the five minutes during the recess he may.
20

Mr. Harris: If the Court please I desire to file a formal motion to direct embodying the following reasons:

1. Because the Court overruled the challenge to the array.
- 30 2. Because the corpus delicti was not proven except by the confession of the defendant.
3. Because the corpus delicti was not proven.
4. Because no crime was proven to have been committed in Camden County.

5. Because the Court overruled the offer to prove the insanity of members of the family of the defendant.

The Court: The formal motion to direct a verdict in favor of the defendant has been offered and it is overruled and an exception will be allowed to the defendant.

(Exception noted for defendant.)

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(Exception allowed, it is signed and sealed accordingly.)

FRANK S. KATZENBACH, JR.,
J. (Seal)

The Court: Mr. Wolverton, do you desire, or someone of your staff to open?

The Prosecutor: What we have agreed upon, if your Honor please, is that Mr. Burling, Assistant Prosecutor, will make the opening argument and I will make the closing argument. I do not wish to limit counsel for the defendant in any way as to what time he desires, and I do not suppose he will with me, so it is a matter of your Honor's discretion, and I would suggest that he be given all the time that he desires, and the State likewise. 20

The Court: The Court will give to the counsel both for the State and the defense such time as they feel that they are reasonably justified in presenting their respective cases. 30

(Mr. Burling then proceeds with the opening argument for the State.)

CHARGE OF THE COURT.

KATZENBACH, *J.*

10 Gentlemen of the jury: In the indictment in this case the State charges Frank J. James and Raymond L. Schuck with the murder of David S. Paul in Camden County on October 5th, 1920. For reasons which the Court deemed sufficient under the law it entered an order that separate trials be accorded to each of the defendants. The State has elected to first try the defendant Frank J. James. The only question you have to consider is whether the defendant, Frank J. James, is guilty of the murder of David S. Paul. Whether Raymond L. Schuck is guilty of the same crime is a question to be determined at another trial before another jury. You cannot either acquit or convict Raymond L. Schuck on this trial. Your verdict must relate alone to Frank J. James.

20 Frank J. James stands charged with the murder of David S. Paul. It now becomes your duty to render a verdict upon the question of his innocence or guilt. In arriving at your verdict you must be governed by the principles of law bearing upon the case that I will now give you. In the determination of all questions of fact the sole responsibility is with you, the jury. You are the sole judges of the evidence, of the weight of the evidence, and of the credibility of the witnesses. Any comments I may make upon the evidence will not be made for the purpose of controlling you in your views, but only to aid you in applying the principles of law to the facts as you may find them. You must not rely upon my quotations from the evidence as being accurate,

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but you must rely upon your own recollection. You must not consider only the evidence to which I shall refer but you must consider all of the evidence in the case.

The defendant comes into court with the presumption of innocence. The burden rests upon the State. The defendant is presumed to be innocent of the charge until he is proved to be guilty. To convict the defendant the State must prove facts sufficient for that purpose by evidence which satisfies you of the guilt of the defendant beyond a reasonable doubt. If there be in your minds a reasonable doubt whether the defendant is guilty or innocent you must acquit the defendant. Reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt; it is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

If, after carefully reviewing the evidence, giving the defendant the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should by your verdict declare the defendant guilty.

Under this indictment it will be lawful for you to render a verdict that the defendant is not guilty, or that the defendant is guilty of murder in the first degree, without or with the recommendation I shall

hereafter mention. To support the indictment, the evidence on the part of the State tends to show that on the sixteenth day of October, last, David S. Paul was found by gunners dead and buried in a shallow trench in the vicinity of Tabernacle in Burlington County; that on Tuesday, October 5th, last, Paul was in his usual state of health; that on this date he disappeared and was not seen thereafter alive; that after the body of Paul was discovered on October 10 16th, it was identified by his son; that the body of Paul showed, besides minor wounds and punctures, a large wound four or five inches long on the left side of the skull, one and a half inches above the ear, which the physician called as a witness upon the part of the State testified was a compound wound which fractured the skull and ruptured the covering of the brain and had caused the death of Paul. This testimony is uncontradicted and unimpeached. You will, therefore, be justified in finding that a criminal homicide was committed. The State charges that 20 James and Schuck are the perpetrators of the crime. I have already stated that James alone is now on trial, and you are concerned with his guilt or innocence alone.

Paul was employed by the Broadway Trust Company of Camden as a messenger, and as a part of his work, he would carry checks and bank notes in large amounts from the Broadway Trust Company to banks in Camden and Philadelphia. The State 30 alleges that James knew Paul; that James and Schuck were friends; that James and Schuck conspired together to entice Paul in the automobile of James, as Paul was on October 5th, last on his way to take the ferry to Philadelphia to deliver to banks checks and bank notes, and to rob Paul of the bank notes which they believed he had in his possession,

and that they did take Paul in the automobile, and while in the execution of their criminal purpose Paul was struck by James and Schuck the blow or blows upon the head which caused his death.

The statute of the State of New Jersey provides that if the death of anyone shall ensue from the committing or attempting to commit a robbery, the person or persons so killing shall be adjudged guilty of murder, and that all murder which shall be committed in perpetrating or attempting to perpetrate any robbery shall be murder in the first degree. 10

Robbery is stealing property with violence from the person or personal custody of another person. It is necessary in order to constitute that crime that the goods shall be on the person of the owner or possessor or shall be in his presence and in his custody. To support the charge that James and Schuck agreed to invite Paul into James' automobile for the purpose of robbing him, and that while James and Schuck were together in the execution of that purpose, one of them struck a blow or blows, or both struck blows which killed Paul, the State has produced evidence to the following effect: That Paul was, as I have said, a messenger for the Broadway Trust Company and was accustomed almost daily to go to Philadelphia to carry large sums of money in the form of bank notes and checks to banking institutions in the City of Philadelphia; that James knew Paul; that James and Schuck were friends and knew that Paul went to Philadelphia almost daily for the purpose mentioned; that James was an automobile salesman and was the owner or in possession of a Ford automobile with a touring body; that on Tuesday, October 5th, last, Paul left the Broadway Trust Company about 1.15 P. M. with checks to be delivered to the First National Bank of Camden and 20

- checks to be delivered to the Girard National Bank of Philadelphia to the amount of \$30,000 and bank notes to be delivered to the Girard Bank to the amount of \$40,000; that James had arranged to meet Paul at 1.30 P. M. at his office, 60 N. 2nd Street, Camden, and go to Philadelphia with James; that James met Paul; that Schuck was with James by pre-arrangement; both being in or standing by James' car when Paul was met; that James gave
- 10 Paul the right-hand front seat and got into the rear seat; that Schuck was driving the car; that a stop was made at the First National Bank in Camden where Paul got out and delivered the checks for that bank; that the car was then driven down Market Street to Delaware Avenue and back of the long shed extending from Delaware Avenue to the ferry; that back of the shed the car was stopped and James then struck Paul on the head and, assisted by Schuck, dragged him from the front seat to the rear of the
- 20 car, and James hit him with an iron; that the car was turned and driven north on Delaware Avenue to Cooper or Penn Streets; thence on Fourth to Market, to Federal to Marlton Pike, to a road leading to Forest Hill Park; that Paul was conscious when near the ferry and asked to be taken to Cooper Hospital; that again near Forest Hill Park Paul asked them to let him go and take the money; that at this time the car was stopped and Paul was beaten over the head with an iron spring by James and
- 30 Schuck; that Schuck drove the car through Forest Hill Park to Marlton Pike and thence circling Marlton and Medford to Tabernacle and thence into the Pine Woods to Irick's Causeway where James and Schuck took the body of Paul from the car and laid it in a marsh by an unfrequented spot near the edge of a brook about twenty or thirty feet from the road;

that the covering on the left-hand rear door was stained with Paul's blood; that this covering and the tape holding it in place were torn off and thrown in the underbrush; that the money was taken from Paul's wallet and the other contents of the wallet torn into pieces and thrown along the road as the car proceeded on its return journey; that the spring with which Paul had been beaten was thrown from the car breaking the windshield; that James and Schuck then went to Clementon to hide the \$40,000 10 taken from Paul in a bungalow; that they then decided to hide it in Schuck's house in Camden; that on the way to Camden they stopped at Westville where James bought a collar and shirt, the ones he was wearing being stained with blood; that after hiding the money in the cellar of Schuck's house, James and Schuck went to a tailor's and got a suit belonging to James and upon returning to Schuck's house the blood-stained clothes of James were wrapped up and thrown into Cooper River; that 20 James and Schuck then went to Philadelphia, and caroused with women, spending money freely; that they returned Wednesday night to Camden; that James on his return from Philadelphia took his car to a garage at Mt. Ephraim for repairs; that the car remained there until October 13th and when obtained by James blood was discovered on rear seat and floor boards, and these were thrown away and a new rear seat purchased and new floor boards put in; that James requested at a garage that an old 30 seat be substituted for the new seat; that on October 14th, James and Schuck went in James' car to the woods where Paul's body had been placed and buried it; that on the way they stopped at a store in Medford and bought two shovels and a rake; they encountered in digging a grave at the first place de-

cided on roots and then dug a grave in a sandy spot and dragged with the automobile Paul's body to it; that Paul's coat containing the checks was buried with him; that they threw the shovels away; that on October 16th, as I have stated, the body of Paul was found by gunners and on the same day identified; that near the place where Paul's body was found there was picked up the lining and tape which fits the places in James' automobile where new material was placed, Paul's wallet and contents there-
10 of were also picked up; that James' clothes were found in Cooper's River; that the covering of the seat and floor boards of James' car were found; that the left-hand side door of James' car, the covering and tape for same, and floor boards have blood spots on them; that the shovel was found; that some of the money, \$4600, was found in the house of James' father; that on Thursday, October 7th, James told a friend, Mr. Ward, that he had some
20 \$17,000 or \$18,000; that James maintained he knew nothing of the crime until November 8th.

Some of the evidence to which I have referred comes from sources other than James. Some of the evidence comes from the alleged confession of James, made to Mr. Wolverton and Mr. Berry, and taken down stenographically at the time by Mr. Berry and testified to in this court by Mr. Berry. Confessions are always to be received with caution; but when they are freely and voluntarily made and
30 clearly proven, they are entitled to weight, and juries have a right to convict upon such confessions when the fact that the crime has actually been committed is otherwise proved and when they are corroborated by circumstances which serve to impress the jury with the belief that they are true, because it is presumed that a rational man will not make ad-

missions which will put his safety in peril unless they are true.

Is the alleged confession of James supported by the probabilities of the case? The confession is a detailed and accurate account by James in answer to questions asked by Mr. Wolverton, of the conspiracy between James and Schuck to rob Paul; the meeting of James, Schuck and Paul on October 5th; the ride to the ferry; the attack on Paul; the murder of Paul; the ride to the Pines with the body of Paul; the throwing away of the spring used on Paul, breaking the windshield of the automobile; the purchase of a shirt and collar at Westville by James; the securing by James from the tailor of a fresh suit of clothes; and throwing of the blood-stained clothes in Cooper River; the trip to Philadelphia on that evening; the taking of James' car to the Mt. Ephraim garage; the placing of money in his father's house, the throwing away of the old seat and floor boards of automobile; the procuring of a new seat and floor boards; the trip to the Pines on October 14th, to bury Paul's body and the purchase of shovels and rake at Medford; the inability to dig a grave at the first place selected; the dragging of the body of Paul to the grave; the throwing away of the shovels on the return trip. 10 20

Is this confession supported by the probabilities of the case? Could one man have operated a car and robbed and killed Paul? Could two men willing to perpetrate such a crime have met accidentally and accidentally met Paul at a time when he was carrying so large a sum of money? Has not the State proved by evidence other than the confession that on October 6th, the left-hand rear door of James' car had had the inner covering removed and that the covering and tape found at Irick's Cause- 30

way fits exactly the new covering and tape in the car? Has not the State proved otherwise than by the confession that on October 6th the windshield of James' car was broken? Has not the State shown otherwise the securing by James of another suit on October 5th, in the early evening from the tailor, Mr. Goldberg? Has not the State proven otherwise that the clothes of James were obtained from Cooper's River? Has not the State shown otherwise that James and Schuck went to Philadelphia on the evening of October 5th? Has not the State proven otherwise the throwing away of the old seat and floor boards of James' car? Does it not appear by evidence other than the confession that some of the money taken from Paul was found in the house of James' father? Does it not appear otherwise than by the confession that the contents of Paul's wallet was found near Irick's Causeway? Does it not appear otherwise than by the confession that roots interfered with the digging of Paul's grave at the point first decided on? Has not the State otherwise shown that one of the shovels purchased at Medford by James and Schuck was thrown away? Do these circumstances proven by the State support the probable truth of the confession of James?

If you find from the evidence that James and Schuck agreed to invite Paul in James' automobile for the purpose of robbing him and that on October 5th, last, they did get Paul in the automobile for that purpose, and while James and Schuck were there together, if you find that Paul received from James or Schuck or both blows which caused his death, both are equally guilty of murder in the first degree, no matter which struck the blows; both are responsible for what either did while executing that criminal purpose. The law makes no distinction be-

tween them. If Schuck delivered the fatal blow, James is just as guilty and responsible for that blow, in the eye of the law, as though he (James) delivered it himself. If James delivered the fatal blow, Schuck is just as guilty and responsible for that blow, in the eye of the law, as though he (Schuck) delivered it himself. It makes no difference whether the one who delivered the fatal blow intended to kill Paul or not. It makes no difference what his intention was in delivering the blow. If 10 either killed Paul, the other is just as guilty as though he delivered the fatal blow, whether he intended that the one who delivered the blow should deliver it or not. It makes no difference if they were there in the pursuit of the purpose of robbing Paul in the way I have stated. The law says that death resulting from the conduct of either under such circumstances is murder in the first degree.

Under the law and evidence in this case you cannot find James guilty of murder in the second degree or manslaughter. If you find him guilty, your verdict should be murder in the first degree, with or without the recommendation I shall mention, and the law and the evidence, if you find the verdict of guilty, will warrant no other verdict. 20

In connection with the guilt of murder in the first degree, the Court charges you that there was a statute passed in 1916 and amended in 1919, chapter 134, page 303, which as amended reads in part as follows:

“Every person convicted of murder in the first degree * * * * shall suffer death unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed * * * * ” 30

Before this act was on the statute book the duty of the jury was merely to determine from the evidence whether or not the defendant was guilty, and, if so, whether he was guilty of murder in the first degree, second degree or manslaughter, or whatever the evidence warranted, and the statute provided that if a verdict of murder in the first degree was rendered by the jury the Court had no option whatever but to impose the penalty of death in the electric chair. The statute now provides that the jury may render a verdict of murder in the first degree, if they find a person guilty of murder in the first degree, and in that case the defendant shall suffer the death penalty, but that if they shall recommend imprisonment at hard labor for life then the Court must impose that sentence. The very important duty is therefore placed upon the jury of deciding, after consideration of all the evidence, whether to render a verdict of murder in the first degree, carrying the death penalty, or to render a verdict of murder in the first degree with a recommendation of imprisonment at hard labor for life. Your verdict can, therefore, in this case be either, first, not guilty, second, guilty of murder in the first degree, or, third, guilty of murder in the first degree with a recommendation of imprisonment at hard labor for life.

Now, gentlemen, I have told you that the credibility of the witnesses and the conclusions of fact which you will draw from the evidence are questions which you must settle. The law of the case you must take from the Court. If the Court states the law incorrectly, the defendant has his remedy. If jurors disregard the law as stated by the Court, the administration of justice would soon become a mockery and the person and property of no man would be safe.

I leave the case in your hands. Your duties are responsible. You are to take care on the one hand that the defendant shall not be convicted contrary to law; and on the other hand you are to see that the law is executed.

The Court: Now, Mr. Harris, I have your request to charge, which I will decline to charge and grant you an exception. 10

REQUEST TO CHARGE.

If the jury are satisfied that at the time of the commission of the offense, the defendant was not of full mental capacity to realize the effect of his conduct, he should not be acquitted, but such mental condition may be considered in determining the degree of the crime or the verdict to be rendered. 20

The exception is allowed and signed and sealed accordingly.

FRANK S. KATZENBACH, JR.,
J.

Are there any other exceptions that you desire to note?

Mr. Harris: Yes, I want the usual, general exception.

The Court: A general exception to the entire charge will be noted and allowed. The exception is allowed and signed and sealed accordingly. 30

FRANK S. KATZENBACH, JR.,

Now then, we will ask that the constables who are to take care of the jury during their deliberations be

sworn. (After the constables were sworn.) The Court will recess until 5.30.

I hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the indictment of the State vs. Frank J. James for murder.

10

FRANK S. KATZENBACH, JR.,
Judge.

CERTIFICATE.

NEW JERSEY COURT OF ERRORS AND APPEALS.

20

THE STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

FRANK J. JAMES,
Plaintiff-in-Error.

30

On Indictment and
Conviction in Cam-
den County Court
of Oyer and Ter-
miner of the Crime
of Murder in the
First Degree.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for re-

view of the judgment of the Camden County Court of Oyer and Terminer of Camden County in this state, convicting the said Frank J. James of the crime of murder in the first degree, and that I have refused to order a writ of error for the review of said judgment.

EDWIN ROBERT WALKER,
Chancellor.

Dated Trenton, N. J., February 28th, 1921.

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ORDER TO STAY JUDGMENT.

CAMDEN COUNTY COURT OF OYER AND
TERMINER.

THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> vs. FRANK J. JAMES, <i>Plaintiff-in-Error.</i>	}	Order to Stay Judgment. ment.	20
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A writ of error having been issued in the above-entitled cause, it is on this first day of March, nineteen hundred and twenty-one, ordered that execution of the sentence imposed upon the said Frank J. James be stayed until the determination of the proceedings on said writ of error, or the further order of the Court. 30

FRANK S. KATZENBACH, JR.,
Justice Supreme Court.

On motion of
HARRIS & HARRIS, ESQS.,
Attorneys of Plaintiff-in-Error.

ASSIGNMENT OF ERRORS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	THE STATE, <i>Defendant-in-Error,</i> vs. FRANK J. JAMES, <i>Plaintiff-in-Error.</i>	}	On Indictment and Conviction for Murder. Assignment of Errors.
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20 Afterwards, to wit, etc., in the New Jersey Court of Errors and Appeals comes the said Frank J. James, the plaintiff-in-error, by his attorneys, Harris & Harris, and say that the judgment herein should be reversed because in the records and proceedings herein and in the matters contained and noted in the several bills of exception herein and also in the finding of the verdict and the giving of the judgment herein, there is manifest error to the great injury of the plaintiff-in-error whereby he was prejudiced in maintaining his defence upon the merits in the case, as well as in other respects, to wit:

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1.

The said Frank J. James, the defendant, on being called to the bar interposed a challenge to the array upon the ground that the commissioners of juries of the County of Camden did not, at least thirty

days prior to the commencement of the then December term of the Circuit Court, make two lists alphabetically arranged of persons liable to jury duty having regard to the just distribution of jury service among those persons qualified therefor in the various wards and municipalities of said county, with their occupation and place of abode and designating their respective municipalities and wards (if any) in municipalities; and

At the time of the selection of the said jury list, there were five thousand or more women in the respective municipalities of Camden County who were duly qualified for jury service; and 10

That the commissioners deliberately failed and refused to select any of said women for jury duty; and

That the petit jury list for the then present term of Court was drawn from five hundred names which were selected by the commissioners aforesaid and contained the names of no women; and

Said selection of the jury was and is contrary to the rights of the defendant under the Constitution of the United States and the State of New Jersey and of the statute of said State of New Jersey in such case made and provided, whereby the constitutional rights of the defendant were invaded and the challenge to the array should have been sustained. 20

2.

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The court below erroneously and illegally admitted the alleged confession of the defendant before the *corpus delicti* had been proven. The state was permitted to offer the alleged confession for the purposes of proving the *corpus delicti*. At the time

of the offering of the confession, there was no proof of the *corpus delicti*, and the *corpus delicti* was not proven by other than the confession of the defendant. There was not sufficient corroboration of the *corpus delicti* to permit the confession of the defendant to be admitted; by reason of which said premises it became and was irrelative, immaterial and incompetent for the State to prove by the confession of the defendant the *corpus delicti*.

10)

3.

The court below erroneously and illegally refused to order the Prosecutors of the pleas to furnish counsel for the defendant copy of the alleged confession or statement before the same was offered in evidence in order to allow counsel to inspect the same to ascertain in advance whether it contained incompetent or illegal matter.

20

4.

The court below erroneously and illegally refused to allow plaintiff-in-error to prove the family history of the plaintiff-in-error that there had been in the immediate family a number of persons who were insane. This offer was not made as an absolute defense or to show that the defendant himself was irresponsible by reason of insanity, but that the jury were entitled to know the family history in order that they might consider this in arriving at a recommendation under the law of New Jersey of 1919, which provided that the jury may recommend imprisonment for life.

30)

5.

The court below erroneously and illegally overruled the motion on behalf of the defendant to direct the verdict for the reasons as therein stated.

1. Because the Court overruled the challenge to the array.

2. Because the *corpus delicti* was not proven except by the confession of the defendant.

3. Because the *corpus delicti* was not proven. 10

4. Because no crime was proven to have been committed in Camden County.

5. Because the Court overruled the offer to prove the insanity of the members of the defendant's family in order that the jury might consider the same in order to arrive at a conclusion as to whether a recommendation to imprisonment for life should be made.

6.

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The Court below erroneously and illegally refused to charge the request on behalf of the defendant as follows:

If his mental condition was such as to render him incapable of forming the specific intent to kill, which is the essential ingredient of murder of the first degree, the prisoner will not be entitled to acquittal, but his offense will be murder in the second degree.

30

**SPECIFICATION OF CAUSES FOR
REVERSAL.**

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10 THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> vs. FRANK J. JAMES, <i>Plaintiff-in-Error.</i>	}	On Indictment and Conviction for Murder. Specification of Causes for Rever- sal.
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20 The plaintiff-in-error specifies the following causes in the record relied upon for a reversal of this judgment:

1. Because the Court overruled the challenge to the array.
2. The *corpus delicti* cannot be proven by the confession alone. It must be corroborated at least by circumstantial evidence. The defendant having ob-
- 30 jected to the offer of the confession, the Court overruled the objection and admitted the confession.
3. After the Court had ruled that the confession of the defendant should be admitted, counsel for the defendant asked that he be furnished a copy of the alleged confession before it was read, in order that

he might examine it to ascertain if there was anything in the confession which would be illegal and incompetent as evidence against the defendant. The **Prosecutor** objected and the Court sustained the objection.

4. Under the law of this state, the jury have a legal right in murder cases to find a verdict of murder in the first degree with a recommendation to life imprisonment and if such a verdict is returned, 10
the Court has no discretion except to pronounce judgment of life imprisonment. The jury have a right to consider all the evidence and circumstances surrounding the case in arriving at their verdict. They also have the right to consider the defendant himself, whether or not he was of nervous temperament or whether or not there was a taint of insanity running through his family which would likely have an effect upon the defendant as to his mental condition, and whether such mental condition rendered 20
him incapable of forming a specific intent to wilfully and premeditatedly take the life of the deceased, and whether he was such a man as would be entitled to receive a recommendation from the jury of imprisonment for life. The testimony of the family history showing a number of persons in defendant's immediate family had been insane in order to secure recommendation of imprisonment for life was offered by the defendant and objected to by the State and the objection was sustained. 30

5. At the close of all the testimony, the defendant moved for a direction of the verdict on the following grounds:

1. Because the Court overruled the challenge to the array.

2. Because the *corpus delicti* was not proven except by the confession of the defendant.

3. Because the *corpus delicti* was not proven.

4. Because no crime was proven to have been committed in Camden County.

10 5. Because the Court overruled the offer to prove the insanity of members of the family of the defendant.

6. The defendant requested the Court to charge as follows, which the Court refused, which was prejudicial to the defendant:

20 If his mental condition was such as to render him incapable of forming the specific intent to kill, which is the essential ingredient of murder of the first degree, the prisoner will not be entitled to acquittal, but his offense will be murder in the second degree.

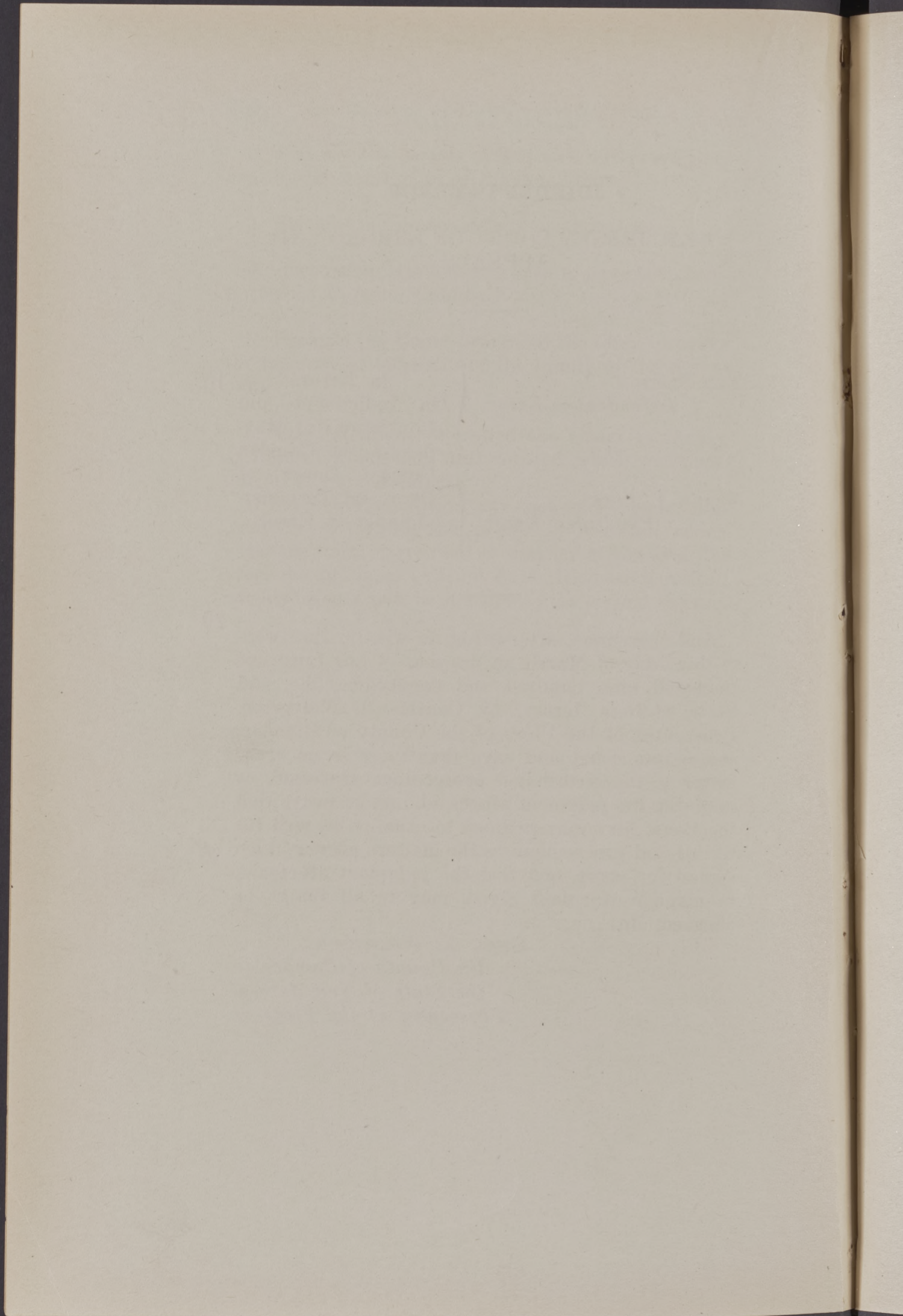
JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE, <i>Defendant-in-Error,</i> vs. FRANK J. JAMES, <i>Plaintiff-in-Error.</i>	{	In Error. 10 On Indictment and Conviction for Mur- der in the Camden County Court of Oyer and Terminer. Joinder in Error.
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And thereupon, afterwards, to wit, on the twenty-third day of March, in the year of our Lord one thousand nine hundred and twenty-one, the said State of New Jersey, by Charles A. Wolverton, Prosecutor of the Pleas of the County of Camden, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc. 20 30

CHAS. A. WOLVERTON,
the County of Camden in
the State of New Jersey.
Prosecutor of the Pleas of



NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

and

FRANK J. JAMES,
Plaintiff-in-Error.

On Error in the Cam-
den County Court
of Oyer and Ter-
miner.

On Indictment and
Conviction for Mur-
der.

BRIEF FOR DEFENDANT-IN-ERROR.

STATEMENT OF THE CASE.

The plaintiff-in-error was indicted jointly with one Raymond W. Schuck, charging them with the commission of the crime of murder of one David S. Paul, on the fifth day of October, nineteen hundred and twenty. For reasons which the Court deemed sufficient, it entered an order that separate trials be accorded to each of the defendants. The plaintiff-in-error was thereafter tried and convicted of murder in the first degree, without recommendation. He thereupon brings said conviction before this Court for review on assignment of errors and specifications of causes for reversal and the entire record.

THE FACTS.

The facts show that David S. Paul was employed by the Broadway Trust Company, in the City of Camden, as a messenger; that as part of his work, he was accustomed almost daily to carry large sums of money and checks, and deliver said sums of money and checks of the Broadway Trust Company to the Girard National Bank in Philadelphia; that James knew Paul; that James and Schuck were friends; that James and Schuck conspired together to entice Paul into the automobile of James, while Paul, on October 5th, 1920, last, was on his way to Philadelphia to deliver checks and bank notes, and that they planned to rob Paul of the money which they believed he had in his possession. That they took Paul into the automobile and back of the ferry sheds at Delaware Avenue and Market Street, Camden City. While in the execution of their criminal purpose, Paul was struck by James and Schuck blows upon the head, which caused his death. That Paul had left Broadway Trust Company on the day in question with checks amounting to \$30,000.00 and cash in the form of bank notes in the amount of \$40,000.00; that they, by pre-arrangement, had met together in the early afternoon of that day. That Schuck was driving the car. Paul was invited to take the front seat. After Paul was struck on the head, the car was driven to a desolate place, known as Forest Hill Park, in the City of Camden, where the final blows were struck by the defendant and Schuck, despite the cries and pleadings of Paul for his life. The car was then driven into a desolate portion of the pine belt in Burlington County, where the body was taken out and crudely and cold-blood-

edly thrown into the pines alongside of a stream of water. Evidences of the crime were then attempted to be destroyed and defendants came to return to Camden County. They then went to Philadelphia and spent their time in riotous living returned later to Camden, made further attempts to destroy the evidence of further crime. The defendant hid some \$5000.00 of the money in a closet in the home of his father.

Several days after the commission of the crime, the defendants, Schuck and James, returned to the pines, to the place where the body had been left by them. Here they attempted to dig a hole to hide the body from view, but were unable to do so, due to the condition of the ground. Thereupon the body was dragged out to the sandy road, and a rope was attached to the feet of Paul, and his body was dragged back of the automobile to a spot further down in the road, and then taken into a secluded portion of the woods again, and placed in a hole which they had dug and made for that purpose, after first tying his feet with this rope into a crouched position and then they covered up the body with dirt.

The defendant was immediately arrested upon the finding of the body of Paul by gunners in the woods, and he denied knowledge of or participation in the crime.

After the arrest of Schuck, and the making of partial admissions by him, the defendant made a full and complete confession setting forth the details of the crime with all its awfulness and atrocities.

BRIEF OF THE ARGUMENT.

The plaintiff-in-error has filed six assignments of error and six causes for reversal, which will be dealt with as follows:

POINT ONE.**WOMEN ON JURY.****ASSIGNMENT OF ERROR AND CAUSE OF REVERSAL No. 1.**

“Because the Court erred in overruling the motion of counsel for defendant to quash the array of jurors which was summoned to hear said cause”—because the lists prepared by the commissioners of juries, for the December term of Camden County Courts contained no names of women.

At the time of the calling of the jury for trial, the plaintiff-in-error moved to challenge the array and based his motion upon the following reasons:

“1. The commissioners of juries of the County of Camden did not, at least thirty days prior to the commencement of the present December term of the Circuit Court, make two lists alphabetically arranged, of persons liable to jury duty having regard to the just distribution of jury service among those persons qualified therefor in the various wards and municipalities of said county, with their occupations and places of abode and designating their respective municipalities and wards (if any) in municipalities.

2. At the time of the selection of said jury list there were five thousand or more women in the respective municipalities of Camden County who were duly qualified for jury service.

3. That the commissioners deliberately failed and refused to select any of said women for jury duty.

4. That the petit jury list for the present term of court was drawn from the five hundred names which were selected by the commissioners as aforesaid and contained the names of no women.

5. Said selection of the jury was and is contrary to the rights of the defendant under the constitution of the United States, and of the State of New Jersey and the statute of said State of New Jersey in such case made and provided.

Defendant therefore asks that the challenge to the array be sustained."

FIRST: The State contends that the testimony of the commissioners does not establish as a matter of fact that women were "left off" the lists by them, but as said by Mr. Lennon at page 25: "I merely didn't put them on."

SECOND: Granting for purpose of argument that the commissioners did omit the names of women from the jury lists, still they were justified in that women were not qualified for jury service, because the New Jersey Statutes and Law relating to qualifications of jurors do not contemplate women (who were and have been citizens prior to their enactment and prior to passage of the Federal Suffrage Amendment) within their scope.

The statute relating to the qualifications of petit jurors is found in Vol. 3, Compiled Statutes, page 2965 (P. L. 1906, page 218), and is as follows:

“6a. Qualifications of grand and petit line of the jurors; cause of and time for challenge. Sec. 1. Every *person* summoned as a grand juror in any county in this state, and every petit juror returned for the trial of any action or suit of a civil or criminal nature, shall be *a citizen* of this state, and reside within the county from which *he* shall be taken, and above the age of twenty-one years and under the age of sixty-five years, and shall not, at any time of *his* selection by an official having, directly or indirectly, any official interest in or connection with the administration of justice. And if any person who is not so qualified shall be summoned as a grand juror or as a juror on the trial of any such action in any of the courts of this state, or if any person shall be summoned as a petit juror at any stated term of any court of this state, who has served as such at any of the three stated terms next preceding the day to which *he* may be summoned, it shall be good cause of challenge to any juror, who shall be discharged upon such challenge being verified according to law or on *his* own oath or affirmation in support thereof; provided, that no exception to any such juror on account of his citizenship, age or any other legal disability shall be allowed, if *he* has been sworn or affirmed.”

The pertinent portion of the statute (Sheriff-Chancellor Act), supplement to Compiled Statutes 837 (P. L. 1913, page 830), relating to the manner of preparation of jury lists, is as follows:

“Sec. 5. The commissioners of juries shall, at least thirty days prior to the commencement of each term of the Circuit Court in their county, make two lists,

alphabetically arranged, of persons liable to jury duty, having regard to the just distribution of jury service among those persons qualified therefor in the various wards and municipalities of such county, with their occupation and places of abode and designating their respective municipalities and wards (if any) in municipalities which lists shall be designated respectively "grand jury list" and "petit jury list." The number of persons named in the grand jury list shall at no time be less than three hundred, and the number of persons names on the petit jury list shall at no time be less than five hundred * * * "

Art. 1. Sec. 7 and 8 of the New Jersey Constitutions relate to jury trials and are as follows:

Art. 1. Sec. 7, New Jersey Constitutions.

"The right of a trial by jury shall remain inviolate; but the legislature may authorize the trial of civil suits when the matter in dispute does not exceed fifty dollars by a jury of six men."

Art. 1. Sec. 8, New Jersey Constitutions.

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury. * * * "

It has been often held that wherever the right to a trial by jury is guaranteed by the constitution, without qualification or restriction, it must be understood as retained in all those cases which were triable by jury at common law and with all the common law incidents.

Cooley on Constitution Limitations, 5 Edition, page 390;

State vs. McCarthy, 76 N. J. L. 295 (S. C. 1908) at p. 297;

Ex parte Mana, 172 Pac. Rep. 986 (Cal. 1918).

It has been held by this Court in the well written opinion of Justice De Pue in his historical review relating to juries in the case of *State vs. Brown*, 62 N. J. L. 666 (1898), at page 676, that

“The qualifications of jurors and the means by which they were to be selected and empaneled constituted no part of the essential features of trial by jury at common law”,
and at page 678:

“The provisions in our constitution (par. 8), that the accused should have a right to a speedy and public trial by an impartial jury, secured to the accused a right to a trial by an impartial jury by an express constitutional provision. The means by which an impartial jury should be obtained are not defined. In neither of the constitutional provisions on this subject is there any requirement with respect to challenges, or to the qualifications of jurors, or the mode in which the jury shall be selected. These subjects were left in the discretion of the legislature, with no restriction or limitation, except that the accused should have the right to be tried by an impartial jury.”

It is also said therein, at page 678:

“In this country, where the constitutions provide that the right of trial by jury shall remain confirmed as part of the law of the land, or the right of trial by jury shall remain inviolate, the words ‘trial by jury’ import a *trial by jury* of

twelve men, impartially selected, who must unanimously concur in the verdict."

There are innumerable cases and authorities which refer and establish that at the common law juries were composed of a "body of men" and that at common law women could not serve.

Bouvier's Law Dictionary (Rawle's Revision), at page 62.

"JURY (Lat. jurata, sworn). A body of men who are sworn to declare the facts of a case as they are proven from the evidence placed before them.

The term 'jury', as used in the constitution, means twelve competent men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party; duly impaneled, and sworn to render a true verdict, according to the law and the evidence; 11 Nev. 39."

At page 65:

"Women could not serve as jurors at common law, except upon a jury to try an issue under a writ *de ventre inspiciendo* (q. v.); 3 Bla. Com. 362."

3 *Blackstone Com.* 362;

State vs. Peterson, 41 Ver. 504.

And in *Harland vs. Territory*, 13 Pac. Rep. 453 Wash. Territory 1887, it was held:

"From the earliest period in the history of the common law, jurors, grand and petit; have

been composed of men. The language of the *venire facias* was that they be *liber et legalis homo*; and according to Blackstone, 'under the word *homo*, though a name common to both sexes, the female, however, is excluded, *propter defectum sexus*.'

Vol. 4, Words and Phrases, at page 3889 (1st Series);

Vol. 2, Words and Phrases, at page 1285 (2nd Series);

24 *Cyc.*, 98;

Ex parte Mana, 172 Pac. Rep. 986 (Cal. 1918).

Cooley on Constitutional Limitations (5th Edition), page 390.

"A petit, petty, or traverse jury is a body of twelve men, who are sworn to try the facts of a case, as they are presented in the evidence placed before them."

By construction of the state constitutions trial by an impartial jury means such as existed at the common law with the reservation in the legislature to change within reasonable limitations qualifications for service which judicial constructions were declared before the present jury law was enacted (1906).

In the sections of the Act of 1906, relating to qualifications of jurors hereinbefore set forth, the masculine pronouns are referred to throughout, no suggestion or reference being made therein to the feminine gender.

If it was legislative intent to qualify women, the

Act of 1906, would positively and clearly have so expressed.

That women were not qualified to serve as jurors under the statutes and jury systems of this state in existence at the time of the trial of this case, is vividly shown by the fact that the legislature of 1921 has since passed specific legislation, on this subject changing our entire jury system, the very purpose of which is to qualify them for that purpose.

Assembly Bill #223, Legislature 1921, was passed by the Assembly March first last, and by the Senate March 7th, and approved by the Governor March 10th, and is known as Chapter 41 of the Laws of 1921. It amends the act relating to trial of small causes, which formerly provided for a trial by a jury of six and twelve men and now provides for a trial by "six and twelve persons without regard to sex." In the explanation attached to said bill under the rules of the House of Assembly, is contained the following: "The purpose of this act is to provide for women serving on juries in small cause courts."

Assembly Bill #224, Legislature 1921, was passed by the Assembly March first last, and by the Senate March 7th, and approved by the Governor March 10th, and is known as Chapter 42 of the Laws of 1921. This act amends the act relating to District Courts which formerly provided for a trial by jury of six and twelve men and now provides for a trial by six and "twelve persons who shall be summoned without regard to sex." In the explanation attached to this bill may be found the following: "The purpose of this act is to permit women to serve on juries in the District Court."

Assembly Bill #222, Legislature 1921, was passed by the Assembly March first last, and by the Senate

March 7th, and approved by the Governor March 9th, and is known as Chapter 28 of the Laws of 1921. It amends the very section of the act concerning juries, now under consideration in this case and reads as follows:

“1. Every person summoned as a grand juror in any county in this state, and every petit juror returned for the trial of any action or suit of a civil or criminal nature, shall be a citizen of this state, and reside within the county from which he *or she* shall be taken, and above the age of twenty-one years and under the age of sixty-five years, and shall not, at the time of his *or her* selection be an official having, directly or indirectly, any official interest in or connection with the administration of justice. And if any person who is not so qualified shall be summoned as a grand juror or as a juror on the trial of any such action in any of the courts of this state, or if any person shall be summoned as a petit juror at any stated term of any court of this state, who has served as such at any of the three stated terms next preceding the day to which he *or she* may be summoned, it shall be good cause of challenge to any juror, who shall be discharged upon such challenge being verified according to law or on his *or her* own oath or affirmation in support thereof; provided, that no exception to any such juror on account of his *or her* citizenship, age or any other legal disability shall be allowed, if he *or she* has been sworn or affirmed.”

The explanation attached to the bill as required by the rules of the house, reads as follows:

“The purpose of this act is to *permit* women to serve on grand and petit juries.”

The jury acts in effect at the time of this trial, undoubtedly did not contemplate within their scope, women and when the time arrived for a change of public opinion in that regard, the will of the people was expressed through the legislative channels as contemplated by our constitutions and we respectfully submit that such a result should not be attained by a forced and strained construction of a statute which upon its face and in view of long continued and undisputed practical construction has been limited to males.

In *State vs. Grilli*, 179 N. Y. S. 795 (Jan. 6, 1920), where an application by mandamus to place women on jury lists was made, it was held:

“For over 50 years, the people generally throughout the country, the courts and legislatures have proceeded upon the idea that women were not entitled as citizens to act as jurors. This long-continued and undisputed practical construction of a constitutional provision is, in effect, a direct judicial construction.

While the doctrine stated may be subject to abuse and a ready refuge against the assumption of responsibility, in this case the course of conduct of the federal and state governments in limiting jury service to males has been so unvaried, thousands upon thousands of cases both civil and criminal have been tried with only male jurors with but little objection for some many years, to adopt any other course than to follow this rule of construction would be disregarding that which is practically if not entirely conclusive.”

And in *Harland vs. Territory*, 13 Pac. Rep. 453 (Wash. 1887).

“Ought this limitation to be destroyed by implication derived from a legislative act which confessedly deals with another subject? I think not. The change is so marked, and the labor and responsibility which it imposes so onerous and burdensome, and so utterly unsuited to the physical constitution of females, and that we ought not to depart from the old order without the most indubitable evidence that the legislature so intended. We are not without high authority on this precise question. The Supreme Court of Massachusetts, in a case where the statute under which a female claimed the right to assume the office of an attorney at-law was broad enough to sustain her claim, denied her the right on the precise ground here put. Robinson’s case, 131 Mass. 377. In discussing that case the Court says: ‘The intention of the legislature in enacting a particular statute is not to be ascertained by interpreting the statute itself alone, and according to the mere literal meaning of its words. Every statute must be construed in connection with the whole system of which it forms a part, and in the light of the common law, and of the previous statutes upon the same subject; and the legislature is not to be lightly presumed to have intended to reverse the policy of its predecessors, or to introduce a fundamental change in long-established principles of law.’ ”

(b) The adoption of the nineteenth amendment (proclamation by secretary of state, Aug. 26, 1920), giving to women by Federal mandate the right to

vote, does not *ipso facto* enlarge jury statute because the right to vote does not carry of itself the right to jury service.

State vs. Grilli, 179 N. Y. 795;

Ex Parte Mana, 192 Pac. Rep. 986 (Cal. 1918).

And in *Harland vs. Territory*, 13 Pac. Rep. 453:

“The legislature which passed the suffrage act, coming from the people and representing their sentiments, cannot be supposed to have intended the accomplishment of that which the people so universally disapprove, and it is fair to suppose that they would have expressly limited the effect of their act if they had foreseen the lengths to which it would be attempted to carry it. However this may be, the later act dealt entirely with the elective franchise, and, as I have heretofore shown, it could not lawfully have had in contemplation any other object.”

THIRD: Even if commissioners should have placed women upon jury lists, only those whose constitutional rights are affected can complain of the violation of a constitutional right.

We take the liberty to quote extensively from the opinion of the much quoted case of *State vs. McKinney*, 30 Pac. Rep. Sup. Ct. 293 Wyo. 1892, because of its definite bearing upon this subject, wherein it was held:

“If the plaintiff-in-error can complain, it is because the constitution of this state, and not the constitution of the United States, was violated in the exclusion of the female citizens from

the jury that tried him. It was said in the case of *Strauder vs. West Virginia*, supra, that the very idea of a jury is that the body of men of whom it is composed are the peers or equals of the person whose rights it is selected or summoned to determine, and that they must be of the same legal status in society as that which he holds. The plaintiff-in-error asserts a right or privilege of having members of the opposite sex, as well as those of his own sex, to determine his rights, because they are unconstitutionally excluded from enjoying a right granted to them, and not because any one of his own sex, is denied the right. If women have the right, if it is a right to serve as jurors, and to 'assist in the administration of justice' thereby, it seems that no one but a woman—one of the class or sex whose rights have been invaded—can assert that right. It must be demanded by one who has been denied the equal protection of the law, and a civil or political right or privilege of which she, in common with her sex, has been deprived. The Courts will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who therefore has no interest in defeating it. *Cooley*, Const. Lim. 164. The Supreme Court of Kentucky has passed upon the question as to whether or not a white man could complain of a statutory exclusion of colored men from a grand jury that indicted him; and as the opinion is so pertinent on this point, we quote the same *in extenso*. 'In *Johnson vs. Com.*, we held, in pursuance of authoritative decisions of the Supreme Court of the United States, that a state law which excluded negroes

from service on grand and traverse juries would, if enforced, deprive colored persons of the equal protection of the law, and that such statute was therefore unconstitutional. We are now called upon to decide whether the statute deprives white persons of the equal protection of the law. In other words, whether a white person, indicted by a grand jury composed wholly of persons of the white race, can complain because negroes were excluded from the grand jury by which he was indicted. Only those who are prejudiced by an unconstitutional law can complain of it. *Cooley, Const. Lim. 164.* In *Marshall vs. Donovan*, 10 Bush 681, Marshall, a white person, undertook to raise the question whether the exclusion of negroes from participation in the benefits of the common school system of the state was not a violation of the state constitution. But the Court refused to consider the question because Marshall, being one of the favored race or class, could not raise it. The act of the general assembly which provided that only white persons should serve upon juries has been held to be unconstitutional because in the opinion of the Supreme Court the exclusion of negroes from juries on account of their race and color denied them the equal protection of the law, in contravention of the Fourteenth Article of Amendment to the Constitution of the United States. That conclusion was based on the ground that a race whose members are excluded from serving on juries is discriminated against as a race, and is not as well protected by the law as the race not so excluded. Surely, if this be true, it cannot be true that one belonging to the race not excluded, but from

which the whole jury was required to be selected can have been prejudiced by the fact that another race was excluded.' Com. vs. Wright, 79 Ky. 22. See also, Norman vs. Boaz, 85 Ky. 557, 4 S. W. Rep. 316. The principle announced in these decisions governs the case before us. As a white man cannot urge as an infraction of his rights that the rights of another race have been assailed, so *a member of one sex cannot complain because the members of another sex are denied the same rights as persons of his sex.* The deprivation of the rights, privileges, or immunities, of a class, race, or sex, which are guaranteed by the organic law, can only be determined in a proceeding instituted by one of the proscribed class, race, or sex, where relief may be given directly to the oppressed one in his suit and upon his demand. *A woman must be on trial to demand the rights of her sex, or to assert that they have been unjustly or unconstitutionally discriminated against. A man cannot assert her right for her in his cause. He is not the party whose rights are affected, and he has no interest in defeating an unconstitutional or invalid law, affecting those of the opposite sex.*

That the plaintiff-in-error, a man, cannot claim that any civil, political, or other right or privilege of his, or of his sex, is infringed, invaded, or annulled by a statute excluding members of the other sex from the jury which tried him, or which by its terms confines the selection of jurors trying him to those of his own sex. He has been tried by his peers. He has not been denied the equal protection of the law. He has not been discriminated against because of his sex."

In the line of cases in New Jersey and Federal cases construing the rights of colored men as a class under the 14th Amendment of the United States Constitution, a colored man was in every case on trial.

State vs. Bullock, 65 N. J. L. 557, C. of E. 1900;

State vs. Johnson, 59 N. J. L. 535, C. of E. 1896;

State vs. McCarthy, 76 N. J. L. 295;

Carter vs. Texas, 177 U. S. 442;

Rogers vs. Ala., 192 S. C. 226;

Strauder vs. West Vir., 100 U. S. 303;

Vir. vs. Rives, 100 U. S. 313;

Neal vs. Del., 103 U. S. 370.

In the case of *Strauder vs. West Virginia*, 100 U. S. 303, at page 308, it was held in construing the 14th Amendment of the United States Constitution:

“We do not say that within the limits from which it is not excluded by the amendment a state may not prescribe the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to *males*, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the Fourteenth Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color.”

And in *Commonwealth vs. Wright*, 79 Kentucky, page 22, it was held:

"A white person indicted by a grand jury composed wholly of persons of the white race, cannot complain because negroes were excluded by statute from the jury.

Only those who are prejudiced by an unconstitutional law can complain.

Citing: Cooley Const., Lim. 164."

Again in *Cooley on Constitutional Limitations*, (5th Ed.) 197, it was held:

"III. Nor will a Court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it.

The statute is assumed to be valid, until some one complains whose rights it invades. '*Prima facie*, and upon the face of the act itself, nothing will generally appear to show that the act is not valid; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the legislature, therefore, concurs with well-established principles of law in the conclusion that such an act is not void, but voidable only; and it follows, as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers. To this extent only is it necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this

extent only, therefore, are courts of justice called on to interpose."

In *Cram vs. Chicago*, 123 N. W. 1045 (Neb. 1909), it was held (a common carrier case):

"Until defendant is shown affirmatively to have been injured he cannot be heard to complain that the act under which the suit is brought is unconstitutional.

"The rule is thus stated in Cooley's Constitutional Limitations (7th Ed.) 232: 'Nor will a Court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it.' In *Clark vs. Kansas City*, 176 U. S. 114, 20 Sup. Ct. 284, 44 L. Ed. 392, Mr. Justice McKenna cites with approval the foregoing language of Judge Cooley, and adds: 'We concur in this view, and it would be difficult to add anything to its expression.' *Kellogg vs. Currens*, 111 Wis. 431, 87 N. W. 561, 56 L. R. A. 252. 'Statutes are not to be declared unconstitutional at the suit of one who is not a sufferer from their unconstitutional provisions. * * * * * We cannot set aside the acts of the legislature at the suit of one who, suffering no wrong himself, merely assumes the champion of the wrongs of others.' In *Wellington, et al., petitioners*, 16 Pick. (Mass.) 87, 26 Am. Dec. 631, the Court speaking by Shaw, C. J., says, 'Where an act of the Legislature is alleged to be void, on the ground that it exceeds the limits of legislative power, and thus injuriously affects private rights, it is to be deemed void only in respect to those particulars

and as against those persons whose rights are thus affected.' "

And reference also is made to case of *Estabrook vs. Commission*, 177 Pac. Rep. 848 (Cal. 1918).

And finally upon the same point, two adjudications in our own state, in *State vs. Delounzo*, 80 N. J. L. 500 (S. C. 1910), and in *Lang vs. Bayonne*, 74 N. J. L. 455 (C. of E. 1906), at page 459, it was held:

"And it is to be observed that the judicial function of determining the validity of statutes is confined within a very narrow scope. Courts are not vested with the general supervision of legislation. They have received no authority from the people to inspect each statute, as it comes from the hands of the legislature, and declare whether or not it infringes constitutional limitations. The function of the judicial department with respect to legislation deemed unconstitutional is not exercised *in rem*, but always *in personam*. *Allison vs. Corker*, 38 Vroom 596. Only such statutes as affect the rights of parties to judicial proceedings are ever subjected to the scrutiny of the courts. And these are comparatively few."

FOURTH: Even if women could have been placed upon jury lists, still no constitutional or other right of plaintiff-in-error has been violated, because there is no allegation or contention in the challenge that the commissioners acted with bias, partiality or to prejudice the plaintiff-in-error. The brief of the plaintiff-in-error stating this fact in the following language, "We do not contend that there was any *fraud, malice or ill-will* on the part of the jury commissioners;" and

(a) Considered as jurors the law makes no distinction between men and women.

In *People vs. Manuel*, 182 Pac. Rep. 306 (Cal. 1919), it was held:

“Considered as jurors, the law makes no distinction between men and women; subject to qualifications applicable alike to each, they are equally competent to act as jurors. Section 190 Code Civ. Prac. Hence it cannot be said the sheriff, in summoning all women, confined himself to a certain class as distinguished from another class, any more than had he summoned all men or a mixed jury composed of a greater number of either sex than the other.”

(b) Accused has no right to service of particular juror.

In 16 *Ruling Case Law*, 240; Art. 57, it was held:

“A person accused of crime has no right to the service of any particular juror on his panel. A legal and impartial jury is all that he is entitled to, it being a well-established principle that the right of challenge confers no right to select, but only a right to reject.”

Also reference is respectfully made to

State vs. Langan, N. J. C. of E. Nov., 1920,
112 Atl. Rep. 191;

People vs. Jewett, 3 Wend. (N. Y.) (1829),
314.

(c) Under the jury act, the lists are made by the commissioners of juries (sheriff and layman) “of persons liable to jury duty, having regard to the just distribution of jury service among those per-

sons qualified therefor in the various wards and municipalities of such county" * * *

There is no reference in this act to the manner of distribution with respect to classes, types, races, or sex, but only to be territorily just and the constitution, by Art. 1, Sec. 8, only provides that accused shall have trial by impartial jury, and that he had——

In *People vs. Manuel*, 182 Pac. Rep. 306 (Cal. 1919), it was held:

“Nor is there any claim made that her (defendant's) substantial rights were in the slightest degree prejudiced by reason of the acts of the sheriff. In the absence of such showing, mere irregularities in the action of the office in summoning persons to fill the *venire* would constitute no ground for the granting of a challenge to the entire panel.

Citing

Wadsworth vs. State, (Okla.) 130 Pac. 808;
People vs. Richards, (Cal.) 82 Pac. 691.

“* * * There is nothing in the record which tends to show the slightest bias on the part of the officer in summoning the jurors; on the contrary, it appears that he acted with entire impartiality and without prejudice to the substantial rights of the defendant.”

In CONCLUSION upon this subject, even if error was committed by the jury commissioners, the defendant suffered no manifest injury or the loss of any substantial right because he was guaranteed and did have a trial by a fair and impartial jury.

State vs. Rosenthal, 85 N. J. L. 564 (S. C. 1914) affd. 86 N. J. L. 705.

POINT TWO.

THE CORPUS DELICTI.

ASSIGNMENT OF ERROR TWO AND CAUSE OF REVERSAL TWO.

Assignment of Error two is as follows:

“The Court below erroneously and illegally admitted the alleged confession of the defendant before the *corpus delicti* had been proven. The State was permitted to offer the alleged confession for the purposes of proving the *corpus delicti*. At the time of the offering of the confession, there was no proof of the *corpus delicti*, and the *corpus delicti* was not proven by other than the confession of the defendant. There was not sufficient corroboration of the *corpus delicti* to permit the confession of the defendant to be admitted; by reason of which said premises it became and was irrelative, immaterial and incompetent for the State to prove by the confession of the defendant the *corpus delicti*.”

Cause of reversal two is as follows:

“The *corpus delicti* cannot be proven by the confession alone. It must be corroborated at least by circumstantial evidence. The defendant having objected to the offer of the confession, the Court overruled the objection and admitted the confession.”

These alleged errors are based upon the meaning and judicial construction of the composition of the *corpus delicti* and will be dealt with collectively. The defendant made a complete and detailed verbal statement of this crime to the Prosecutor and the court stenographer and after the Court had satisfied itself by proofs presented as to its voluntary character, an offer of the same was made. Objection was thereupon made to its admissions upon the ground that the "*corpus delicti*" had not been otherwise proven (argument of plaintiff-in-error James' record and State's reply, page 206).

The foundation of the plaintiff-in-error's argument is that rule set forth in *State vs. Guild*, 10 N. J. L. 163, wherein it was held that "prisoner may be convicted on his own confession when proven by legal testimony, although it is uncorroborated by any other evidence, provided the *corpus delicti* be proved."

And in *State vs. Kwiatkowski*, 83 N. J. L. 650 (C. of E. 1912) where it was held:

"The only limitations upon the use as evidence against him of a prisoner's confession of murder, voluntarily made, is the want of proof of the *corpus delicti*."

The argument advanced was that independent of the confession of James, there was no proof that a crime had been committed in Camden County and therefore the *corpus delicti* was not proven. There was ample, abundant, independent, positive and conclusive proof that the body found was that of David S. Paul and that he met his death through criminal agency. (James, p. 213 and 217). Paul left the bank on October 5th, about half-past one in the afternoon, in all the vigor of good health. He was

bound on a mission, having in his possession a vast sum of money. He was last seen in the City of Camden on the above-mentioned afternoon. His body was found with his head crushed in; his legs tied together, doubled-up and buried in a small grave in a secluded and unfrequented woodland.

FIRST: No reference in any of the very many cases read by the State, relate or indicate that jurisdiction of trial Court has any relation to the *corpus delicti*.

The several states may by legislative enactment define manner in which trial Court may obtain jurisdiction and which before close of State's case must be established, but not necessarily independently of or before the introduction of statements in the nature of confessions by the defendant in State's case.

SECOND: By overwhelming weight of decisions throughout the country and legal definitions of *corpus delicti*, the term applies to the "body of the crime," which involves only two elements:

(1) Death and identity of individual.

(2) Through criminal agency.

New Jersey cases upon this subject may be found as follows:

State vs. Guild, 10 N. J. L. 163 at 185;
State vs. Banuik, 84 N. J. L. 640, at p. 646,
 C. of E. 1906;
State vs. Kwiatkowski, 83 N. J. L. 650 (C.
 of E. 1912).

In the last quoted case, it was held by the Court:

"The only limitation upon the use as evidence

against him of a prisoner's confession of murder, voluntarily made, is the want of proof of the *corpus delicti*. If death, through criminal agency, be proved, and a man confesses to having caused that death, he may be *convicted* of murder in his confession."

Note: Briefs used in the Banuik case may be found in Vol. 383, Court of Errors decisions, N. J. State Library.

Other legal authorities substantiating the State's conclusion may be found in:

13 *R. C. L.* 736;

16 *Corpus Juris*, 771 Art. 1578;

21 *Cyc.* 996.

Note to 68 *L. R. A.* 3, at page 79.

And in *State vs. Knapp*, 71 N. E. Rep. 705 (S. C. Ohio 1904), it was held:

"*Corpus delicti* means the substance of the crime, and the substance of the crime charged in this indictment is that Hannah G. Knapp was murdered. The proof of her death is direct and positive, so that, if the circumstances shown are of such force, when taken together, as to leave no room for reasonable doubt that she was murdered, then any extra judicial confession by the prisoner, if otherwise competent, may be considered for the purpose of establishing his connection with the crime."

Also reference is respectfully made to

People vs. Moran, 77 Pac. Rep. 777 (Cal. 1904);

State vs. Gebbia, 47 So. 32 (Louisiana 1903);
State vs. Carter, 49 S. W. 74 (Texas 1899);
People vs. Hoch, 76 N. E. 356 (Ill. 1905);
Com. vs. Gray, 101 Pa. 380;
State vs. Henderson, 85 S. W. 576 (Missouri 1905);
State vs. Barrington, 95 S. W. 235 (Missouri 1906), at page 264;
People vs. Campbell, 42 N. E. 123 (Ill. 1895);
Ryan vs. State, 14 So. 868 (Ala. 1894);
State vs. Gillis, 58 S. E. 487 (So. Car. 1906);
Com. vs. Farr, 4 Allen 315 (Mass. 1862);
Cryderman vs. State, 161 N. W. 1045 (Neb. 1917);
Choate vs. State, 160 Pac. Rep. 34 (Okla. 1916);
Clark vs. State, 210 S. W. 544 (Texas 1919);
People vs. Besold, 97 Pac. 871 (Cal. 1908), at page 873.

POINT THREE.

CONFESSION.

ASSIGNMENT NUMBER 3 AND CAUSE FOR REVERSAL.
NUMBER 3, ARE AS FOLLOWS:

“The Court below erroneously and illegally refused to order the Prosecutor of the Pleas to furnish counsel for the defendant copy of the alleged confession or statement before the same

was offered in evidence in order to allow counsel to inspect the same to ascertain in advance whether it contained incompetent or illegal matter."

"After the Court had ruled that the confession of the defendant should be admitted, counsel for the defendant asked that he be furnished a copy of the alleged confession before it was read, in order that he might examine it to ascertain if there was anything in the confession which would be illegal and incompetent as evidence against the defendant. The prosecutor objected and the Court sustained the objection."

These matters are not briefed by plaintiff-in-error. However, the confession in question was not made in writing or signed. It was a verbal recital of the facts made to the Prosecutor of the Pleas and the court stenographer. Mr. Berry took stenographic notes of the same and upon the trial, the Court permitted him to refresh and fortify his memory by reading from his original notes (page 252). Under the circumstances and in fact the State knows of no rule of law, which requires the State to furnish to the counsel for the accused the facts of any statement made by the accused before its admission. As the Court said at page 249, counsel for the accused had the opportunity to object to any irrelevant or incompetent matter testified to the same as he had with any other witness. Further upon the giving of the testimony no incompetent matter appeared and no objection whatsoever was offered by the counsel for the accused, therefore surely no harm came in any manner to the defendant by the action of the Court.

POINT FOUR.**REJECTION OF EVIDENCE OF FAMILY HISTORY.**

Assignment four and cause for reversal four, relate to the refusal of the Court to receive in evidence the family history, as to mental condition of ancestors and relatives of defendant, which offer was not made as an absolute defense to show that the defendant was not responsible by reason of insanity, but on the ground that the jury was entitled to know the family history in order that they might consider this in arriving at a recommendation of life imprisonment under the laws of the State of New Jersey of 1919.

The wording of the Amendment of 1919 (Chapter 134, page 303), now provides "upon and after consideration of all the evidence."

This surely means legal evidence properly and logically admitted in the trial of the cause, for if not the door would be opened unto the accused to carry the character thereof and progress of the trial indefinitely and into all possible mitigating avenues.

As admitted in the brief of the accused, insanity in New Jersey cannot be urged as a ground of reducing the degree of the crime because the defendant is either irresponsible, and should be acquitted, or else is responsible and should be convicted.

State vs. Maiomi, 78 N. J. L. 339 (C. of E. 1909).

Insanity is an absolute defense.

Counsel for defendant upon the trial admitted that this defense (insanity) was not "set up" and that in offering the testimony, it was for the sole purpose of endeavoring to reduce the punishment to life imprisonment (page 327).

Even in cases where the defense is insanity such evidence has frequently been held inadmissible at that time.

In *Bradley vs. State*, 31 Ind. 492, it was held:

"Where there is no evidence of his own insanity, evidence of the insanity of his relatives is irrelevant."

Laros vs. Com., 84 Pa. 200.

The very point raised by this exception was decided by this Court.

In *State vs. Palmeiri*, 93 N. J. L. 195 (C. of E. 1919), where evidence of duress was attempted to be admitted, it was held:

"It is suggested that this evidence would have been of value to the jury in dealing with the question of recommendation for life imprisonment. The answer is, that the court was not required to take evidence for the purpose of aiding the jury in deciding whether to make a recommendation."

POINT FIVE.

REFUSAL TO DIRECT.

ASSIGNMENT FIVE AND CAUSE FOR REVERSAL NUMBER FIVE:

These assignments are not briefed. However, they relate to the refusal of the trial Court to direct a verdict at close of defendant's case (p. 338), for following reasons:

"The Court below erroneously and illegally overruled the motion on behalf of the defendant to direct the verdict for the reasons as therein stated.

1. Because the Court overruled the challenge to the array.

2. Because the *corpus delicti* was not proven except by the confession of the defendant.

3. Because the *corpus delicti* was not proven.

4. Because no crime was proven to have been committed in Camden County.

5. Because the Court overruled the offer to prove the insanity of the members of the defendant's family in order that the jury might consider the same in order to arrive at a conclusion as to whether a recommendation to imprisonment for life should be made."

They will be considered as follows:

(1) The motion to direct a verdict was not a proper method of procedure based on a failure of court to allow challenge to the array. This in no way related to the guilt or innocence of the accused.

The merits of the motions to quash have been heretofore discussed at length.

(2 & 3) The *corpus delicti* as defined by the State's contention and hereinbefore referred to at length was conclusively proven (charge of Court, p. 342). There was also abundant, reliable and ample evidence thereof independent of the confession of the defendant.

(4) Section 59 of Criminal Procedure Act, Vol. 2, C. S. 1839, defines jurisdiction where blows stricken in one county and death occurs in another; there is no doubt that the blows which caused death were inflicted in Camden County and it matters not whether death occurred in Camden or Burlington Counties, though there was evidence which justified the jury in finding that death also occurred in Camden County.

Without regard to the other independent, corroborating proofs, under the case of *State vs. Kwiatkowski*, 83 N. J. L. 650 (C. of E. 1912), after proof of the *corpus delicti*, a man may be convicted of murder on his own confession.

(5) This relates to refusal of admission of evidence relating to insanity in family of accused hereinbefore discussed. This action cannot be the subject of the basis of a motion to direct.

POINT SIX.

REFUSAL TO CHARGE.

ASSIGNMENT NUMBER 6 AND CAUSE NUMBER 6:

This deals with a refusal to charge as follows:

“The Court below erroneously and illegally refused to charge the request on behalf of the defendant as follows:

‘If his mental condition was such as to render him incapable of forming the specific intent to kill, which is the essential ingredient of murder of the first degree, the prisoner will not be entitled to acquittal, but his offense will be murder in the second degree.’ ”

The law presumes a man to be conscious and sane, and if the contrary exists, thereby defeating the natural presumption, it must be shown by the party who alleges it.

State vs. Hill, 65 N. J. L. 626 (C. of E. 1900).

There was no evidence before the Court to the contrary.

Homicide by one engaged in perpetrating a robbery being made by statute murder in the first degree, the jury were properly charged that on such a state of facts, the verdict should be murder in the first degree, or defendant was entitled to an acquittal.

State vs. Palmeiri, 93 N. J. L. 195;

State vs. Roesel, 62 N. J. L. 216 at 233;

State vs. Young, 67 N. J. L. 223 at 233.

CONCLUSION.

In the consideration of this case, the Court will no doubt be impressed with the fact that the crime charged herein was a shocking and revolting one. The perpetrators were diligently pursued, and they have had fair and impartial trials and a just verdict was rendered fully warranted by the evidence. The accused admitted his guilt and the full details of the crime by his confession, which was evidenced by the fact that the defendant did not take the stand to deny the truthfulness of the confession nor any of the facts proven by the State.

It is respectfully submitted that from an examination of the entire record, no errors have been committed which were prejudicial to the interest of the accused and that he has suffered no manifest wrong or injury and that the judgment of conviction should be affirmed.

Respectfully submitted,

CHARLES A. WOLVERTON,

*Prosecutor of the Pleas of Cam-
den County.*

ALBERT E. BURLING,

Assistant Prosecutor.

*Attorneys for and of Counsel with
the Defendant-in-Error, The
State of New Jersey.*

**NEW JERSEY COURT OF ERRORS AND
APPEALS**

STATE OF NEW JERSEY,
Plaintiff-in-Error,
vs.
FRANK J. JAMES,
Defendant-in-Error.

In Error.

ON INDICTMENT AND CONVICTION FOR MURDER IN THE
CAMDEN COUNTY COURT OF OYER AND TERMINER.

**BRIEF OF HARRIS & HARRIS, ESQS., ON THE
PART OF THE PLAINTIFF-IN-ERROR.**

STATEMENT.

On October 5, 1920, David Paul, the deceased, was a bank runner or messenger for the Broadway Trust Company, Camden. As had been his custom he left the Trust Company to go to the Girard Trust Company in Philadelphia to make a deposit, and carried with him \$40,000 in cash and \$30,361.57 in checks and other vouchers; all of this was wrapped in a package covered by newspaper. He was unaccompanied by any other person. He left the Trust Company shortly after one o'clock P. M., he boarded a street car, having to stop at the First National Bank, Cam-

den, which is located at Front and Market Streets, about two blocks from the ferry. It was his duty to go to the Girard Bank, make his deposit and he was then through for the day, and was not required to report to his Trust Company until eight o'clock A. M. the next day. On the following morning Paul failed to report for duty; the bank officials became anxious and called up the Girard Bank and learned that Paul had not been to the bank and had not made his deposit; the police and detective departments were notified and there began a search for Paul. The Trust Company being insured the insurance company placed its trained men on the matter. Nothing was heard of Paul until October 16th, eleven days after his disappearance, when his body was found by two gunners buried in a shallow hole near Irick's Causeway in the pines of Burlington County, about thirty miles from Camden. The body showed that he had been killed by blows on his head, and that his death was from violence not self-inflicted.

In the meantime James had been detained as a material witness by order of the Prosecutor of the Pleas; days passed and James was removed from the Camden County jail to the jail of Burlington County. The grand jury of Burlington County was called together to investigate the matter; on the day the grand jury met, Schuck, who had been subpoenaed as a witness, was arrested and placed in the Burlington County jail, that night, and the next day Schuck made a statement in which he said James had killed Paul, and claiming that he, Schuck, had been forced by James to go in the automobile with James and that he had been an unwilling witness to the murder. Later James made a statement of his part in the matter and also the part Schuck took. The defendants were separately tried and both were found guilty of murder in the first degree.

This writ now brings up the record of the trial of Frank James to this court.

CHALLENGE TO THE ARRAY.

Upon the defendant being placed at bar for trial, the array was challenged. This is found on page 9 of the State of the Case. The ground of the challenge was that in selecting the jury list of five hundred names no women were selected, and in the selecting of the number of names from the list to be placed in the wheel the names of no women were selected, and secondly, no women were upon the panel.

We submit the Court must determine first, whether women are qualified to serve as jurors. Again, was the conduct of the jury commissioners in leaving them off under circumstances as proven in this case a violation of the constitutional or statutory rights of the defendant?

If the Court determines that women are qualified in this State to serve as jurors, the defendant being a man, is he a proper person to interpose a challenge to the array for the rejection of women by the jury commissioners?

ARE THEY LEGALLY QUALIFIED?

Nowhere in the Constitution of the United States is it provided that the jurors should be men; all that is guaranteed is that the defendant shall be tried by an impartial jury. Amendments 6 and 7, Section 1 of 14th Amendment, and Section 1 of 15th Amendment.

The Constitution of New Jersey does not provide more than an impartial jury (Article 1, Section 7

and 8), except where the amount in dispute is less than \$50.00, when it may be tried by a jury of six men.

At Common Law Parliament had sole power to determine the qualifications of jurors.

Justice Depue in *Brown vs. State*, 62 L. 666, 42 Atl. 814, said:

“In neither of the constitutional provisions on this subject is there any requirement with respect to challenges or the qualifications of jurors, or the mode in which the jurors shall be selected. These subjects were left in the discretion of the Legislature with no restrictions or limits, except the accused shall have the right to be tried by an impartial jury.”

The Legislature of the State of New Jersey has by proper legislation fixed and determined the qualifications of jurors, and it is this:

“He shall be a citizen of this State and a resident within the county from which he shall be drawn, above the age of twenty-one years and under the age of sixty-five years.”

Comp Stat., 2965, Section 6-A.

CONSTITUTIONAL AMENDMENTS.

ARTICLE 6.

Trial in criminal cases; rights of defendant.—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE 7.

Trial by jury.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 14.

Section 1. Citizenship; privileges and immunities; due process of law and equal protection of laws.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 15.

Section 1. Elective franchise.—The right of citizens of the United States to vote shall not be denied

or abridged by the United States or by any State on account of race, color or previous condition of servitude.

AMENDMENT 19.

The right of citizens to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

A woman has always been a citizen. It is so provided in Article 14, Section 1 of the Constitution of the United States. The Constitution says "all persons" are citizens, the sex of the person is no disqualification. The Legislature of New Jersey having in mind who were citizens said that, "The qualification of a juror shall be a citizen of this State and a resident within the county above the age of twenty-one years and under the age of sixty-five years." Not the male citizens, not the female citizens, but all citizens, and it is further provided that the commissioners are to select, "All persons liable to jury duty, having a regard to the just distribution of jury service among those qualified therefor."

We insist therefore that since the passage of the Jury Commissioners' Act the women of New Jersey have been qualified as jurors.

If it were not for the qualification as defined by the Legislature of this State it might well be argued that the 19th Amendment was not sufficient to qualify women as jurors.

NINETEENTH AMENDMENT.

“The right of citizens to vote shall not be denied or abridged by the United States or by any State on account of sex.”

“Congress shall have power to enforce this article by appropriate legislation.”

There are a great number of cases which hold that the right to vote does not carry with it a right to jury duty. It has also been repeatedly held that the statute providing for the qualification of jurors rests with the legislative body. There have been several decisions since the agitation about women voting has been prevalent that it would take additional legislation in a number of the States for the reason that the Legislature has said that the qualifications of a juror shall be that he be a man above the age of twenty-one years and under a fixed age, and States have added a number of additional necessary qualifications, for instance, that he must be able to read and write the English language; that he must own a freehold estate valued at \$150.00, or personal property valued at \$250.00, and a number of other qualifications which have been upheld by the courts. *In re Grilli*, 179 New York Supplement, at 795, the Court said, this was an application for an order for a peremptory writ of mandamus to officers charged with the duty of completing the jury list to include women of the county for jury duty. The application was denied because the qualifications fixed by statute in New York called for male citizens between twenty-one and seventy years of age, with other qualifications. The Court said:

“It is also argued that the word peers meant those of equal political rights—that is, the right to vote—and that since a jury is to be selected from the peers of the litigants or a person on trial, that meant a jury of voters. ‘Peers’ might mean voters, yet the claim would be met by having none but voters as peers. But this would not require the inclusion of women even if they be voters. But the word ‘peers’ in this country really means a citizen and nothing more. I can see absolutely no connection then between the right to vote and jury service to justify relator’s claim.”

In *Carter vs. Texas*, 177 U. S. 442—The Supreme Court of the United States held, the failure to put the names of colored persons on the list was illegal.

In *Rogers vs. Alabama*, 192 U. S. 226,—the jury commissioners excluded colored persons and the U. S. Supreme Court held this to be error and quashed an indictment.

State vs. Gibbs & Stanton, 45 L. 379-380: That the prisoner, before he has pleaded has the legal right to appeal to the discretion of the Court to quash the indictment on account of the illegal composition of the grand jury or of the misbehavior of the sheriff in selecting it is everywhere admitted.

Justice Depue in *Brown vs. State*, 62 L. 666, 42 Atl. 814, speaking for the Court of Errors and Appeals has gone into the history of the trial by jury and shows conclusively that the qualification of the jurors rests entirely in legislative enactment.

In *Bullock vs. State*, 65 L. 557, 47 Atl. 62. The defendant was a colored man and on trial for murder. He challenged the array on the ground that there were no colored men returned on the panel, and the Court in citing the statute said:

“The qualification of jurors, grand and petit, prescribed in the statute, is that every juror shall be a citizen of this state and resident within the county from which he shall be taken and above the age of twenty-one years and under the age of sixty-five years; and the sheriff is required to select as the panel of jurors for the trial of cases, civil and criminal, from the persons qualified to serve as jurors, the names of at least twice as many persons as he shall deem necessary to be summoned as jurors.”

The jury commissioners' act has changed this somewhat, but not in any material part.

“If the subordinate officer whose duty it is to select jurors fails to discharge that duty in the true spirit of the law, if he excludes all colored men simply because they are colored; if the sheriff to whom a venire is given composed of both white and colored citizens neglects to summon the colored jurors only because they are colored, or if a clerk whose duty it is to take the twelve names from the box rejects the colored jurors for the same reason”—as was said by Mr. Justice Strong in *Virginia vs. Rives*—“it can with no propriety be said that the defendant's right is denied by the State and cannot be enforced in the judicial tribunals. The Court will correct the wrong, quash the indictment or the panel, or if not, the error will be corrected in a superior court.”

Our contention is that if the women were left off as a class, no matter what the motive was, the jury commissioners failed to properly do their duty. Therefore, the conduct of the jury commissioners in

not selecting the names of women from among the citizens of the United States resident within the county was such a violation of the defendant's rights that the challenge should have been sustained. The sheriff and the jury commissioners both testified, beginning on page 17, to practically the same state of facts; that they both knew there were about 20,000 or more women in the county who had registered for the purpose of voting, that they considered the selection of the names of women to be placed upon the list and rejected them, or failed to put their names upon the list, because they were women, and the only reason given for their action was because there had been, in their judgment, no proper quarters to properly care for them. The fact is they rejected the women as a class. We insist no matter what the motive was for the rejection of the women as a class, whether by negligence, by carelessness, by design, or by active wrongdoing it was a violation of the rights of the defendant and he has been harmed and injured thereby.

We do not contend that there was any fraud, malice or ill-will on the part of the jury commissioners in the selecting of the name, but we do, however, insist and charge that the conduct of the jury commissioners was in total disregard of their duties as imposed upon them by the act that created them, to make their selection from persons liable to jury duty, having a regard to the just distribution of jury service among those qualified therefor.

Was it a due regard to just distribution of jury service among those qualified therefor when they rejected as a class over 20,000 women? The rights of this defendant were not taken under consideration, and not to consider him or his rights is just as harmful as if they had acted under improper motives.

The plaintiff-in-error being a male citizen, was he such a person as to interpose a challenge to the array for the reason that the women had been rejected as a class and that there were none on the panel?

In *McKinney vs. State*, 3 Wyo. 719; 30 Pacific, 293, the Court said in that case that a male citizen could not challenge the array on the grounds that females had been rejected from the jury panel and this could only be done by a woman who was on trial.

In this case McKinney, a man, was on trial and was convicted of grand larceny; he challenged the array because it was exclusively composed of male citizens. It was argued that the constitution of the state required that women equally with men shall be subject and eligible to jury duties when they possess the same qualifications as men.

Section 1 of Article 6 of the Constitution of Wyoming, provides that:

“The rights of citizens of the State of Wyoming shall not be abridged or denied on account of sex. Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.”

Section 9 of Article 1 (bill of right) provided that the right of trial by jury shall remain inviolate in criminal cases, also provides that a jury in civil cases in all courts may consist of less than twelve men (not persons) as may be prescribed by law. The Court said in that case:

“It has been the settled law of this jurisdiction ever since its organization that male electors only were qualified to serve as jurors, although for that period women have been en-

titled to vote and hold office as well as men * * *” The question was never past upon by the Supreme Court either of the State or Territorial. “We have not much doubt that women were not eligible as jurors * * * as the right to vote and hold office does not include that right, if a right it may be termed to serve as a juror.”

The Court also said:

“The difficulty arises in the consideration and force of the last clause of Section 1, Article 6, that ‘both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.’ Is jury service a right or a privilege?”

The qualifications of jurors is stated to be by statute, “male citizens,” etc. The Court later in the opinion declines to decide whether women are qualified to serve on juries or not.

McKinney, the defendant, had complained that by the laws of the State of Wyoming, women had been excluded from jury duty; but the Court said that no one could complain but one of the excluded class. Therefore the defendant being a male citizen he could not complain as he was one of the favored class.

The same principle has been repeatedly held by the Courts—that when the statute excludes the colored race no one but a colored person could complain. We insist that this case is not the case under consideration, for the reason that we are not contending that there is any constitutional provision or statute excluding women, on the contrary they are qualified by our statute. What we complain of is that 20,000 persons duly qualified as jurors were

unlawfully rejected as a class by the jury commissioners.

We are not concerned as to whether jury service is a right or privilege, but we are concerned in the fact that the jury commissioners rejected over 20,000 women duly qualified for jury service as a class, notwithstanding the Jury Commissioners' Act says they are to select, "Persons liable to jury duty, having regard to the just distribution of the jury service among those qualified therefor."

In the McKinney case the ground for refusing to quash the panel was that the state by its constitution and legislative enactments had provided that women were not qualified as jurors. If that were the case here we would be forced to admit that the McKinney case might be influential, but we insist that there is no preferred class in New Jersey; women and men are both qualified to serve as jurors. There is no division into classes, they all stand upon equal footing, but by the misconduct of the jury commissioners there were no women on this panel.

It might be said that if these women were left off of this jury panel even to favor the defendant, then the challenge to the array should be sustained, because it would not be impartial jury.

That none but women can complain is not sound. The Legislature has said to this, and all other defendants, "We have made it possible for you to have women on your jury. We have made it possible for the jury to say that you shall not suffer the death penalty for your crime, but you may be imprisoned for life."

Would the placing of women on the jury have been more favorable to the defendant? Wouldn't a mixed jury of men and women been more likely to have recommended the defendant to imprisonment

for life? And the policy of this state as expressed by the legislature is that capital punishment shall not be the penalty of murder in the first degree, but that the jury may by their verdict and as a part of it say that they recommend the defendant to imprisonment for life.

We insist that the action of the jury commissioners cannot be said to have been a harmless error.

THE CORPUS DELICTI.

CORPUS DELICTI. The body of the offense; the essence of the crime.

It is a general rule not to convict unless the **CORPUS DELICTI** can be established, that is, until the fact that the crime has been actually perpetrated has been first proved. Hence, on a charge of homicide, the accused should not be convicted unless the death be first distinctly proved, either by direct evidence of the fact or by inspection of the body; Best, Pres. Sec. 201; 1 Stark. Ev. 575. See 6 C. & P. 176; 2 Hale, P. C. 290; Whart. Cr. Ev. Sec. 324.

A confession alone ought not to be considered sufficient proof of the *corpus delicti*; *Springfellow vs. State*, 26 Miss. 157, 59 Am. Dec. 247; *People vs. Hennessey*, 15 Wend. (N. Y.) 147; *Bines vs. State*, 118 Ga. 320, 45 S. E. 376, 68 L. R. A. 33. It may be proved by circumstantial evidence; *Dimmick vs U. S.*, 135 Fed. 257, 70 C. C. A. 141; *State vs. Gillis*, 73 S. C. 318, 53 S. E. 487, 5 L. R. A. (N. S.) 571, 114 Am. St. Rep. 95, 6 Ann. Cas. 993; *Bouvier's Law Dictionary*.

It is well settled that the *corpus delicti* cannot be proven by the confession of the defendant alone. Neither can a confession be admitted until after the *corpus delicti* is proven.

In cases of felonious homicide, the *corpus delicti* consists of two fundamental and necessary facts: First, the death; and secondly, the existence of criminal agency as its cause. We contend that the *corpus delicti* in a broader sense means a death by criminal agency within the jurisdiction of the court, and until it is shown by independent testimony that the crime has been committed within the jurisdiction of the court, the confession of the defendant is inadmissible to prove the *corpus delicti*.

"The prisoner may be convicted on his own confession when proved by legal testimony, although it is uncorroborated by any other evidence, provided the *corpus delicti* be proved."

State vs. Guild, 10 N. J. L. 163.

In *State vs. Kwiatkowski*, in the Court of Errors and Appeals in this state, 83 L. 650, 85 Atl. 209, 4th Syl. the revision of Section 107 of the Crimes Act, (2 Comp. Stat. 1910, page 1780) "That in no case shall a plea of guilty of murder be received on any indictment, and if upon arraignment, such plea should be offered shall be disregarded and the plea of not guilty entered, and the jury, if they find the accused of guilt, shall designate by their verdict the degree of guilt concerns alone the practice upon a prisoner's arraignment and trial on indictment for murder, and does not operate and prevent the conviction of the prisoner on a voluntary confession made by him even if there be no corroborating evidence, provided the *corpus delicti* be proved." Again on page 213 of 85 Atl. the learned Chancellor who wrote this opinion said:

"The only limitations upon the use as evidence against him of a prisoner's confession of murder, voluntarily made, is the want of proof

of the *corpus delicti*. If death through a criminal agency be proved and a man confesses to having caused that death, he may be convicted of murder on his confession." Citing *State vs. Guild*, 103 L. 163; 18 Am. Dec. 404. See also *State vs. Strong*, 83 Atl. 509 at 510.

However, in the case then under consideration there was a corroboration of the fact that the prisoner killed the deceased, in this: There was evidence from the fact that the killing could be inferred, at least when considered in connection with the other facts of the case, namely: He was seen in the hall outside of his apartment about eight o'clock in the morning of the day when his wife was found dead, murdered with a blunt instrument. He said he threw the axe under the rear stoop of the house which was in front of his home, and the axe was found where he said he had thrown it, having previously said he struck his wife with it.

State vs. Strong, 83 N. J. L. 177; 83 Atl. 506, Judge Voorhees in speaking for this Court, said, on page 510:

"So it appeared that not only the neck but the face, as well as the private parts of the body were each relevant to the issue being tried. That strangulation caused death and it was necessary to sustain the alleged confession and without such proof of the *corpus delicti* the confession was bereft of evidential value." Citing *State vs. Guild*, 10 N. J. L. 163.

United States vs. Mayfield, Circuit Court, Eastern District of Louisiana, December 11, 1893, 59 Fed. 118, Syl:

"A conviction for taking a letter from a letter box and extracting money therefrom cannot be

sustained when denied by a plea of not guilty upon the mere confession of the defendant to a police officer, unsupported by any evidence that such a letter was deposited in the box or through corroborative evidence, direct or circumstantial of the *corpus delicti*."

The defendant made his confession out of Court. His plea of not guilty operates in the law as a denial of all the charges in the indictment and puts the Government on proof to make out its case on fact and law. The jurisprudence on the matter of extra judicial confessions, when denied by a plea of not guilty as in this case, is shown by a large number of cases cited in 3 Amer. & Eng. Enc. Law, at page 447, and seem to be substantially uniform to the fact that while such confessions of guilt should be received with great caution and will not alone justify a conviction, yet if they should be corroborated by circumstances would be sufficient for that purpose.

Among a large number of cases cited there does not seem to be any decisions cited from the Louisiana Courts. It may be that the jurisprudence of Louisiana is not in line with the many decisions of the state courts cited therein. Yet the Court is persuaded by the view uniformly announced in this case that before a conviction is justified the Government should be required to establish the *corpus delicti* by some degree of circumstantial or other evidence independent of the defendant's extra-judicial confessions. No such evidence was offered by the Government. At the moment of trial the Court was not willing to direct an acquittal of the accused, but is now of the opinion that a new trial should be granted.

People vs. Simonsen, Supreme Court of California, May 28, 1895, 40 Pacific at 440, the defendant was convicted of the crime of obtaining property under false pretenses and prosecutes an appeal from the judgment and order denying his motion for a new trial. * * * The facts of the case may be stated as follows: Defendant secured several hundred dollars from the prosecuting witness, Walter, by reason of the following representations and pretenses: Defendant stated to Walter that he, the defendant, was the owner of a certain tract of land in the State of Minnesota and proposed to secure a loan from said Walter, giving as the security therefore a deed to this tract of land. The money was loaned and the deed given as contemplated and agreed. It is charged in the opinion that the representation made by the defendant to Walters as to his ownership of land in Minnesota is false, and that in fact he owned no land as represented. At the trial the only evidence offered by the prosecution to prove that defendant did not own any land as represented were the extra-judicial statements and admissions of the defendant himself to that effect, and we hold them insufficient to prove the fact. It is elementary that the *corpus delicti* must be established before extra-judicial statements and admissions of a defendant are admissible in evidence and can be considered as tending to establish the fact to which they relate. The falsity of the representations made by defendant as to his ownership of the land is a material and essential element and portion of the *corpus delicti* and defendant's admission alone can never be relied upon to establish as sufficient any fact which is a necessary ingredient to form the body of the crime. The term "*corpus delicti*" means exactly what it says.

In *State vs. Slingfellow*, 26 Miss. it was held that a confession of murder was not sufficient to warrant a conviction unless the death of the person confessed to have been murdered was proved by the testimony.

In *State vs. Cardellii*, 10 Pacific, 433, appellant was convicted of the crime of grand larceny for feloniously taking three steers and two young cows, all of which cattle were branded with the letters "J. C." * * * He claims that the evidence by which he was convicted is insufficient in law to sustain the verdict, in this: That there is no direct testimony or other competent proof of the *corpus delicti*. The confession relates exclusively to the testimony submitted on the part of the Prosecutor as to the ownership of the cattle (page 436). After said facts claimed to corroborate the confession, the Court says:

"1. Is this testimony sufficient to establish the *corpus delicti*? Every criminal charge necessarily involves two distinct proceedings: One, that a criminal act has been committed; second that the guilt of such act attaches to the particular person charged with the commission of the offense. In case of larceny it is, of course, essential for the prosecution to prove that the property was feloniously taken from the person named in the indictment as the owner. It must appear that the goods were stolen from the prosecutor, and if he being a witness cannot swear to the loss of the articles alleged to have been stolen from him the prisoner must be acquitted. Citing 3 Greenleaf's Evidence, 161.

"In what manner may this proof be made? Must it always be direct and positive? Is it

absolutely essential in all cases that proof of the *corpus delicti* should be established independent of the other elements of the offense? While it is true that a person charged with the commission of a criminal offense is not called upon to answer the charge without satisfactory proof upon the part of the prosecution of the *corpus delicti*, yet it is not essential in all cases that there should be any direct evidence upon this point."

And the Court citing Bishop, says:

"If we look at the matter as one of legal principle we can hardly fail to be convinced that while the *corpus delicti* is a part of the case it should always receive careful attention, and no man should be convicted until it is in some way made clear that a crime has been committed, yet there can be no kind of evidence to be always demanded in proof of this fact no more than any other. If the defendant should not be convicted when there has been no crime, so equally should he not be when he has not committed a crime though somebody has; the one proposition is as important to be maintained as the other, yet neither should be put forward to exclude evidence which in reason ought to be convincing to the understanding of the jury. "Again citing State vs. Keeler, 28 Iowa, 553: "Now, the rule should be absolute, that the utmost and strictest tenacity should, with the facts forming the basis of the offense or *corpus delicti* must be proved by either direct testimony or by presumptive evidence of the most cogent and irresistible kind. In one of these matters the essential fact or facts must be established beyond a reasonable doubt."

Coleman, J. "Defendant was convicted of larceny of a hog, which, under the statute, is a felony. The only question deserving consideration arises upon the confessions of the defendant, which were admitted against his objections. That the confessions were free and voluntary is not controverted. It is contended that there was not sufficient evidence of the *corpus delicti* to authorize the introduction of the confessions. The rule which prevails in this state is that a conviction should not be had on the extra-judicial confession of the defendant, unsupported by any corroborating facts and circumstances; proof *aliunde* of the *corpus delicti* is required. Positive, direct evidence of the *corpus delicti* is not indispensable to the admissions of the confessions. Whenever facts and circumstances are proven from which a jury might legally infer that the offense has been committed, the confessions are admissible. The proven facts and circumstances, and the confessions of the defendant, may then be weighed and considered together; if, upon the whole evidence, the jury are satisfied, beyond a reasonable doubt, both as to the *corpus delicti* and the identity of the defendant as the guilty perpetrator, it becomes their duty to convict."

Ryan vs. State of Alabama, 14 Southern Rep. 868.

Mabry, J. "It is also a fundamental rule, of ancient origin, that no person shall be convicted or involved in the consequences of guilt or extra-judicial confessions without proof *aliunde* of the *corpus delicti*; and, before such confessions should be allowed to go to the jury, there should

be proof before the Court tending to show that the offense to which the confession relates has been committed."

Lambricht vs. State of Florida, 16 Southern Rep. 582-585.

"It is true, no witnesses testified that Jenson was murdered in Frontier County, the conviction being based largely upon circumstantial evidence. It is uncontradicted that Jenson's body, with the head severed, was found in an old well in Frontier County, several miles from the county line, and the well filled up, conclusively showing that the body was thrown in the well by someone. This evidence, unexplained, was sufficient to justify the jury in concluding that the homicide was committed in Frontier County."

Hawkins vs. State of Nebraska, 83 Northwestern Rep., 198; Citing *Com. vs. Costley*, 118 Mass. 1.

PLACE OF OFFENSE. Where the place of the offense is a material issue upon which there is conflicting evidence, the Court should submit the issue to the jury, by an instruction limiting it to an offense committed within the county; and a charge pretermittting all inquiry as to venue is erroneous. But such an instruction need not be given where there is no issue on the question of venue, or where there is uncontradicted evidence that the place of the offense was as alleged in the indictment. An instruction which authorizes a conviction, on the jury finding that defendant committed the acts as charged in the indictment, and which lays the venue in the county, need not, in the absence of a request

therefor, specify the place where the acts must have been committed. If the Court submits the question as to the place of the crime fully and fairly, it is not error to instruct that the jury have nothing to do with the law question involved in determining the proper venue.

16 *Corpus Juris*, p. 970, Sec. 2365.

CORPUS DELICTI. The phrase "*corpus delicti*" should be defined by the Court, and should not be referred to the jury. The Court should charge the jury that the burden of proving the *corpus delicti* is on the prosecution, and that they should acquit accused if it is not proved; it also should instruct them against treating evidence offered and tending to prove intent or guilty knowledge only as proof of the *corpus delicti*; and against considering, as tending to prove the *corpus delicti*, evidence having no such tendency, but merely tending to connect defendant with the crime. But it need not distinguish between circumstantial and other evidence tending to establish the *corpus delicti*. Where the *corpus delicti* is proved by other evidence it is not necessary to instruct as to a statutory provision that an extra-judicial confession will not warrant a conviction unless accompanied by another proof of the *corpus delicti*.

16 *Corpus Juris*, p. 970, Sec. 2366.

PUNISHMENT FOR MURDER.

The Legislature of this state in 1916, Chapter 270, page 576, amended Section 108 of the Crimes Act so that the same should thereafter be read as follows:

Section 108. "Every person convicted of murder in the first degree, his aiders, abettors, counselors and procurers, shall suffer death, unless the jury, at the time of rendering the verdict in such case shall recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed; and every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years."

In 1919, the Legislature of the State of New Jersey again amended Section 108 so that the same thereafter should read as follows:

"Every person convicted of murder in the first degree, his aiders, abettors, counselors, and procurers, shall suffer death, unless the jury shall by their verdict and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no other punishment shall be imposed; and every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty-years."

The amendment of 1919, consists of these words, "shall by their verdict and as a part thereof, upon and after consideration of all the evidence."

The defendant at the trial attempted to show his family history as to insanity, and counsel for the defendant stated to the Court in reply to questions from the Court, that insanity was not offered as a defense, realizing that insanity is either a defense to the crime or is not. Counsel appreciate that the law is well settled that insanity can be only offered as an absolute defense to the alleged crime committed.

New Jersey stands alone, insofar as counsel has been able to ascertain in having a statute by which the jury may recommend imprisonment for life, and it was the contention of counsel at the trial that the Court should permit the admission of testimony showing that a large number of the members of the family of the defendant had been insane, some of them had died insane and some of them had committed suicide.

This testimony was offered in order that the jury might consider whether a man of the hereditary taint of insanity that this man must have had was not a person to whom a recommendation of imprisonment for life might readily be made. It was admitted that there was no proof before the Court of the insanity of the defendant, but that owing to the circumstances of this crime whether the jury had a right to hear the testimony concerning his family history in order to determine whether a man of sound mind would have committed a crime in the manner in which this crime was committed.

The following cases have been before this Court, under this statute:

State vs. Rombolo, 99 Atl., 434.

State vs. Martin, 106 Atl., 385.

State vs. Palmieri, 107 Atl., 406.

State vs. Carrigan, 108 Atl., 315.

REQUESTS TO CHARGE.

Counsel for defendant requested the Court to charge:

“If his mental condition was such as to render him incapable of performing a specific intent to kill, which is the essential ingredient of mur-

der of the first degree, the prisoner shall not be entitled to acquittal, but his offense will be murder in the second degree. Which the Court refused."

We insist that every defendant on trial must be of such mental condition that he is able to know to the fullest extent the result of his acts, and that the defendant was entitled to have the Court to charge as requested.

We anticipate that the Court will say to us that there was no evidence before the Court to base this request. This question we consider to be answered by saying that this request is due the defendant just as much as a direction concerning the reasonable doubt.

HARRIS & HARRIS,
Attys. of Plaintiff-in-Error.

