NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JOSEPH LABRIOLA,
Plaintiff in Error.

Sur Indictment for Murder.

ON ERROR TO ATLANTIC OYER AND TERMINER.

Brief of J. E. P. Abbott, Prosecutor of the Pleas, and J. Hampton Fithian, for the State.

At the January Term, nineteen hundred and seven, of the Atlantic Oyer and Terminer, the defendant was jointly indicted with Michael Raymond and Raphael Buglio for the murder of John Buglio, the husband of Raphael Buglio, on December 22, 1906. On April 2, 1907, at the same term, the trial came on, and on motion of counsel for plaintiff in error, the Court ordered a severance of the indictment as to Michael Raymond,

who had made confession of his part in the crime, and the trial proceeded as to the plaintiff in error and Raphael Buglio.

The jury returned a verdict of murder in the first degree against plaintiff in error, and of manslaughter against Raphael Buglio.

The evidence produced by the State tended to establish the following facts: That John Buglio lived with his wife Raphael Buglio and five children, among whom were Victoria, aged eleven years, and Maggie, aged eight years, at the Village of Minotola, Atlantic County. With them also lived Michael Raymond, a brother of Mrs. Buglio. For some time prior to the homicide, there had been undue intimacy between the plaintiff in error and the other defendant Raphael Buglio. On Saturday night, December 22, 1906, plaintiff in error came to the home of the Buglios and insisted that the deceased permit his wife Raphael to go to a dance, which was to take place at the dance hall of Labriola. Upon the refusal of the deceased to permit his wife to go, a quarrel arose and the plaintiff in error threatened to kill the deceased if he persisted in his refusal. The deceased did so persist, and while endeavoring to escape from his house he was attacked by the plaintiff in error with a large club which as the State contended Labriola had brought to the home of the Buglios, for that purpose. In this attack plaintiff in error was joined by Mrs. Buglio, and later by Michael Raymond. The deceased was struck over the head several times with

the club, fracturing his skull, and was finally reduced to unconsciousness by blows struck him while lying on the ground in the yard. Mrs. Buglio then went into the house and procured a knife, and the body of Buglio was carried by the defendants in a wheelbarrow some considerable distance away and placed across a path leading to Central Avenue and Wheat Road ; the throat was then cut, as the State contended, with the knife procured by Mrs. Buglio, and the body was left by the defendants, lying in the pathway, either dying or dead. Some time afterward, the body, then cold in death, was discovered by Henry Irick who was returning to his home from Minotola. At about the time of the discovery of the body and before the plaintiff in error knew of its discovery, plaintiff in error, in an effort to divert suspicion from himself, shot himself through the wrist and the fleshy part of his leg with a revolver, afterwards claiming that he had been shot at four times by a masked stranger at whom he had shot two times in defence. The evidence of the State clearly showed that but two shots had been fired. The nature of the wounds and the powder marks on the clothing of the plaintiff in error demonstrated that these wounds must have been self inflicted.

The defense was a general denial of the charge, together with an attempt by plaintiff in error to prove an alibi, which attempt, as a result of the cross examination of the witnesses for the defense, was a disastrous failure.

The plaintiff in error has brought up only the bill of exceptions, and not the entire record as provided for by P. L. 1898, p. 915, Sec. 136.

These exceptions must therefore be considered and disposed of according to the ordinary rules.

The liberal practice allowed by Section 136 of the Criminal Procedure act, *supra*, which permits the appellate court to consider whether the plaintiff in error on the trial below suffered manifest wrong or injury either in the admission or rejection of testimony, whether objection was made below or not, or in the charge of the Court, or in the denial of any matter by the Court which was a matter of discretion, cannot be invoked by plaintiff in error, because they have not brought up the entire record.

State vs. MacQueen, 69 N. J. L. 522, 523.

Counsel for plaintiff in error has also had printed in the Case portions of the testimony not embraced in the bill of exceptions or in the return to the writ. An instance is a selected portion of the cross examination of Dr. Dubler printed in the case on pages 9–19.

Such testimony is not a part of the return, and is not properly before the Court.

Counsel for the State would have no objection to its consideration by the Court were it not for the fact that so much of the testimony of Dr. Dubler, in particular, as is printed in the case, is greatly modified and explained by his re-direct examination.

ASSIGNMENTS OF ERROR.

I.

The first assignment of error is based upon the refusal of the Court to charge the following requests :

> (a) "If the jury shall believe that Raymond was not present at the time related by the children, Labriola must be acquitted."

As to this request, it was substantially charged by the Court as follows :

> "If the evidence touching the whereabouts of Raymond and Labriola at the time the State claims the killing took place, raises a reasonable doubt as to the presence of either of them at the Buglio house at the time of the killing, there must be an acquittal." (Case p. 196.)

The Court was not bound to charge this request as drafted or as an independent proposition for two reasons.

1. The conviction of Labriola did not rest entirely upon the testimony of the children. There is sufficient evidence in this case to have sustained a conviction of Labriola apart from their testimony. Mary Di'Ottavio, who lived only a few feet away from the house of the deceased, testified (p. 125) that she heard the fight between the deceased and the defendants, in the yard ad-

joining her bed room window; heard the exclamations of the deceased (p. 125) and of the defendants (p. 126) and recognized the voice of plaintiff in error as present and participating in the quarrel (p. 125). Her evidence taken in connection with the self-inflicted wounds of Labriola, the evidence of illegal relations between Labriola and Mrs. Buglio; the fact that Labriola, on the day following the homicide, denied his presence at the Buglio house on the previous night (p. 164), and a number of other circumstances established by such of the evidence as has not been printed in the case by plaintiff in error, would have justified a conviction of Labriola.

How then, was the Court required to say that if the children were mistaken or were untruthful in a part of their testimony, that Labriola must be acquitted in the face of the other evidence establishing his guilt.

2. Even if the children had given the only testimony connecting Labriola with the crime, it does not follow as a proposition of law that their testimony must be wholly disregarded because they were mistaken about the presence of Raymond. The credibility to be given their evidence or any part of it was one for the jury.

> (b) "If the jury have a reasonable doubt of the truthfulness of the story of the children touching the alleged assault made by Labriola, there must be an acquittal."

What has been said as to request (a) will apply with equal force to request (b). As has already been shown, there was sufficient evidence in the case to justify the conviction of plaintiff in error apart from the testimony of the children.

> (c) "The testimony of children of tender years, such as Victoria and Maggie, is of an unsatisfactory nature. Children of such tender years have an imagination out of all proportion to the power of their faculties, and they constantly say what is not true. Not from deceitfulness, but simply because they have come to think so by talking or dreaming of what has passed."
>
> (d) Counsel for Labriola states that as the eighth request to charge, which request deals with the question of the credibility of the testimony of the children, may not, in its entirety, be a correct proposition of law, that the Court is now requested to caution the jury as to the character and nature of the testimony of children of tender years, such as the witnesses, Victoria and Maggie."

Counsel for the State are unable to find any authority acceptable in this State laying it down as a proposition of law, that the testimony of children of tender years is of an unsatisfactory nature or that the Court should caution the jury as to its character. It was the

duty of the Court to determine the competency of these witnesses. Having in their discretion, determined the witnesses to be competent, the weight and credit to be given their evidence was then a question for the jury. There may be, and probably is, a wide divergence of opinion as to the value of the testimony of children, just as there is of the testimony of old people, of women, or of expert witnesses. But it is not a legal rule that the testimony of these witnesses should be given more or less weight than that of any other witness.

The question of the degree of credit to be given to the testimony of a witness is for the jury and it is error for the Court to invade their province in this respect in the giving of instructions to them. This rule applies to the testimony of prosecuting witnesses, detectives and informers, children, etc.

12 Cyc. p. 605 and cases cited under Note 81.

Contra to this general rule, under the authority of *State vs. Engle*, *50 N. J. L. 272*, *274*, it would have been permissible for the Court, in its discretion, to have expressed its own view of the credibility of these witnesses, whether or not such view agreed with that embodied in the requests to charge now being discussed. Yet the matter was purely discretionary with the Court, and is certainly not assignable for error.

A somewhat analagous principle is found in the decisions relating to the testimony of accomplices, bearing in mind, however, that there can be no divergence

of opinion as to the unsatisfactory nature of the testimony of accomplices and of the danger of convicting upon their evidence alone.

In speaking of the testimony of accomplices, in *State vs. Hyer, 39 N. J. L. 598, 602*, the Court said

> "There has grown up in our courts a settled practice quite universal and entitled in its observance almost to the reverence of law, to advise jurors not to convict defendants on such testimony, unless they can find corroboration in the testimony of other and unsuspected witnesses."

Yet the Court held on page 605, that if the judge should refuse to give such caution to the jury, it being a matter of discretion with him, errors could not be assigned on the refusal.

State vs. Hyer, 39 N. J. L. 598, 605.
State vs. Rachman, 68 N. J. L. 120, 123.

There was therefore no error in refusing to make these charges as requested even if request (d) had been in season.

In answer to this request the Court said

> "the request of Mr. Cole coming as it does after the Court has concluded its charge, and

having dealt with the requests, after the jury had practically retired, the Court regards it as too late, and declines to intervene." (p. 199)

The regulation of practice in this respect is within the discretion of the trial Court and parties and their counsel must conform to it. No error can therefore be assigned upon the refusal to charge this request.

State vs. Engman, 54 N. J. L. 257.

II.

The Second Assignment of error is as follows:

"Because the Court charged the jury as follows: In endeavoring to gather the truth from this conflicting testimony, it is a dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. Have the children Victoria and Maggie any motive to testify falsely against their mother and uncle?"

There was no error in this part of the Court's charge. The duty of the jury to determine disputed questions of fact for themselves, and that they were the sole judges of the weight of the evidence and the credibility of the witnesses was squarely pointed out in the charge of the Court. (p. 185)

So long as the duty of the jury to decide disputed questions of fact for themselves is pointed out in the charge, the judge's comments and expressions of opinion upon the testimony are not assignable for error.

State vs. Engle 50 N. J. L. 272, 274.
State vs. Goldman 65 N. J. L. 395, 396.
State vs. Valentina 71 N. J. L. 552, 557.

III.

The Third Assignment of error is as follows:

"Because the Court permitted witnesses Maggie Buglio and Victoria Buglio to testify, notwithstanding it was shown that their tender years rendered them incompetent witnesses."

No fixed rule can be laid down as to the age a child under the age of fourteen years must have attained to enable him to testify. The question of his competency must be left to the legal discretion of the trial Judge, leaving it to the jury to determine the weight and credibility of his evidence, In the absence of clear abuse, the judicial discretion is not reviewable.

Underhill on Crim. Ev. Sec. 205.
Van Pelt vs. Van Pelt, Pen. 657.

IV.

The Fourth Assignment of error is as follows :

> " Because the Court permitted the witness William Beck to testify, in answer to the following question, ' What did she say to you about it? ' of a conversation between the said William Beck and Raphael Buglio."

As evidence of an undue intimacy between the two defendants on trial, the State produced William Beck, a jeweller, who testified (p. 19 and 20) that some time previous to the homicide Labriola purchased of him a signet ring, which was afterward brought to his place of business by Raphael Buglio (p. 20). It was certainly proper as against the plaintiff in error to show the possession of this ring in his alleged paramour the other defendant, Mrs. Buglio.

What Mrs. Buglio may have said to the jeweller about the ring while not competent against Labriola was certainly admissible against Mrs. Buglio.

Where two defendants are tried together, evidence admissible only against one of them may be received, but the defendant against whom it is not admissible should ask the Court to instruct the jury that its effect should be confined to the other defendant against whom it is admissible.

Cyc. Vol. 12 p. 554 (d) and cases cited.
Bishops New Crim. Proc. Vol. 1 Sec. 1034.

The Court in its charge clearly pointed out to the jury (p. 191) that this evidence was not to be considered at all as bearing on the guilt of Labriola.

In any event, the answer of the witness to the question could not have harmed the plaintiff in error.

The answer of the witness was that Mrs. Buglio inquired of witness the quality of the ring. How such answer could have prejudiced the plaintiff in error it is impossible for counsel to see.

An error committed in the trial of an indictment which does not prejudice a defendant in maintaining his defence upon the merits will not justify the reversal of his conviction.

State vs. Bodee, 57 *N. J. L.* 140, 142.
State vs. Hunter, 40 *N. J. L.* 543.
State vs. Genz, 59 *N. J. L.* 488.

V.

The Fifth Assignment of error is as follows:

> "Because the Court permitted witness Simpkins to testify, in answer to the following question, 'Did you have any conversation with her (meaning the defendant Raphael Buglio) with regard as to how John came by his death?' of a conversation between the witness and said Raphael Buglio."

The question to which this assignment is directed is found on page 24 of the Case.

It was competent for the State to prove as against Mrs. Buglio any statement by her showing her knowledge of the circumstances of the homicide.

The answer elicited from the witness (p. 25) was not a confession, but if anything in the nature of an admission.

A confession is an admission of guilt meant to be inculpatory, while admission denotes the acknowledgment of any fact not so meant.

Bishops New Crim. Proc. Vol. 1, Sec. 1217.

This evidence being admissible as against Mrs. Buglio, and the jury having been instructed, both when the evidence was received (p. 24) and in the charge (p. 191) that it was not to be considered as against Labriola, there was no error in its admission.

(See authorities cited above in answer to the Fourth Assignment.)

In addition, this evidence did not in any sense connect Labriola with the crime, and its admission therefore, cannot be said to have been prejudicial to him, and does not justify, as has already been shown, a reversal of his conviction.

VI.

The Sixth Assignment of Error is as follows :

> "Because the Court permitted the defendant Labriola to be cross-examined by the following question : 'Were you down at Martinelli's about a week before John Buglio was killed, and did you have a talk with Mike Raymond down there about some trouble between John and his wife?' I will add a little to that question,—don't answer it until Mr. Cole puts in his objection,—'And did you say to Mike, All right, I will attend to that'?"

This exception is found on page 160 of the Case. Just what basis there can be for it, is hard to understand. It was certainly relevant to show the relations of the accused with and his disposition toward the deceased.

The question being relevant, it mattered not that it may have been directed to a matter about which the plaintiff was not asked in his direct examination.

The extent of the cross examination of a witness into pertinent facts not touched by the direct examination is a matter resting entirely in the discretion of the Court. Since the passage of the statutes capacitating parties as witnesses, it has been the general practice both with respect to civil and criminal procedure, to permit such testifying party to be cross examined to the

whole case, and such judicial action being founded in discretion, is not a matter on which error can be assigned.

State vs. Disque, 49 N. J. L. 249, 250.
Underhill on Crim. Ev. Sec. 60.

It may further be urged that the answer (p. 161) being a denial of the facts assumed in the question, no harm resulted to plaintiff in error in its admission.

VII.

The Seventh Assignment of Error is as follows:

"Because the Court required the defendant Buglio on cross examination, to answer the following question: 'Didn't he complain that night that you had spent the money on Joseph Labriola?'"

The exception is found on page 184 of the Case.

This question is admissible as against Mrs. Buglio, it being relevent to show the particulars of a quarrel between her and the deceased just prior to the homicide.

It being admissible against her, and the Court having properly instructed the jury that such evidence should not be received as against Labriola, there was no error in its admission, as has already been shown. Not

only that, but counsel for plaintiff in error examined this witness in chief, (p. 180) and therefore ought not to complain of her cross examination by the State, upon matters relevant to the issue.

VIII.

The Eighth Assignment of Error is as follows:

> " Because the Trial Justice refused to sever the trial of the defendant, Labriola, and Raphael Buglio."

The record does not show any exception to the refusal of the Court to grant a severance, and such refusal is not, therefore, properly assignable for error.

State vs. MacQueen, 69 N. J. L. 522, 523.

It may not be amiss, however, to discuss the case as if such exception was shown.

The record does not show a motion for a severance as to the two defendants, Labriola and Buglio, but it may be assumed here that there was such motion. The record does show a motion for a severance as to Michael Raymond, which was properly granted by the Court for the reason that the State was in possession of an alleged confession by him.

Severance and separate trials are not a common law right, but for cause shown are permitted in the discretion of the Court.

Bishop's New Crim. Proc. Vol. 1, Sec. 1018, 2.
State vs. Baum, 64 N. J. L. 41.

In the absence of a statute conferring on one jointly indicted the right to a separate trial it is in the discretion of the Court to grant separate trials to defendants jointly indicted. They are not entitled to this of right and separate trials will ordinarily be granted only when the Court in its opinion sees good cause therefor.

12 Cyc. p. 505, Sec. 6.

The application for a severance must be supported by affidavits showing good cause therefor.

Ibid p. 508, Sec. F.

The record does not disclose any reasons urged by plaintiff in error for a severance or any affidavits in support thereof.

This being a matter of discretion with the Court, error cannot be assigned upon the refusal of the Court to grant a severance.

Even if it could, the case fails to show any respect in which the defendant suffered manifest wrong or injury by the exercise of this discretion of the trial Court.

We respectfully submit that the conviction was in all things just and legal and that it should be affirmed.

June Term 1907.

J. E. P. ABBOTT,
J. HAMPTON FITHIAN.

MacCrellish & Quigley, Printers, Trenton, N. J.

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STATE OF NEW JERSEY,
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Plaintiff in Error.
} On Error.

Brief for Plaintiff in Error.

Joseph Labriola, Michael Raymond and Raphael Buglio were jointly indicted by the Grand Jury of the County of Atlantic for the murder of John Buglio in the Township of Buena, on the twenty-second day of December, nineteen hundred and six. A motion was made to sever, which motion was granted as to Michael Raymond but refused as to the other defendants. Plaintiff in Error was convicted of first degree murder. Labriola married the sister of the deceased and Michael Raymond was a brother of Raphael Buglio, the wife of the deceased. Mrs. Buglio had four or five children, and Labriola is the father of two living children. The motive for the crime so far as Labriola and the wife of the deceased are concerned, was claimed by the State to be an undue intimacy between Labriola and Mrs. Buglio..

Our contention is that the State was obliged to, and did rely wholly upon the testimony of Victoria Buglio and Maggie Buglio, two of the children of the deceased, to convict the plaintiff in error. The age of Victoria was under eleven and that of Maggie under nine. They testified to being eye witnesses to blows inflicted by Labriola upon the head of John Buglio, which caused his death. It is in evidence and uncontradicted that prior to the killing, the deceased and Labriola were intimate and friendly and that both were in the habit of visiting and eating at the home of the other. On the evening just preceding the killing, the deceased visited the home of Labriola, had supper there and spent the evening with Labriola and his wife. There is no evidence that there was ever any unfriendliness between the parties or that the deceased ever had any words with Labriola. In substance, the State's case, as made by the two children, is that the father came home at about half past four o'clock in the afternoon, and that he did not leave the house until he was driven out by Labriola; that after supper Mrs. Buglio started to go to the home of the father of the deceased to bring Tillie, the youngest child of the deceased, home, and that when she returned with Tillie, Labriola was with her and came in the kitchen where the deceased was. One of the children says that when Labriola entered the house he was carrying the club which was identified as the club which was used by Labriola on the deceased. After having eaten, Labriola asked the deceased if Mrs. Buglio could go to the dance, and upon refusal Labriola said that if he (the deceased) did not permit the wife to go to the dance, that he (Labriola) would kill him (deceased). That words ensued, whereupon Labriola assaulted the deceased with his fist, the deceased retreated from the kitchen into the summer kitchen and from thence into the yard. The testimony of the two children does not agree as to where the blows were struck. One says there was a blow in the kitchen, another in the summer kitchen, and one in the

yard, while the other says that the only blow with the club was struck while the deceased was in the yard.

The body of the deceased was found about half a mile from his home at half-past ten o'clock at night, lying across a by-path across an open common, which by-path connected two main highways. When found, his head was crushed and his throat cut. The children fixed the time of the infliction of the blows at seven o'clock in the evening. At the time of the infliction of the blows, as testified to by the children, Michael Raymond was upstairs dressing, four children were in the kitchen, and three members of the Gross family, all adults, were in the same house in a kitchen immediately adjacent to the kitchen of Buglio, separated by a board partition. No member of the Gross family was called as a witness. Mrs. Buglio and Labriola denied any undue intimacy and Labriola insisted that he was not in the Buglio house after six o'clock on the evening in question, and that from that time until about eleven o'clock he was, first, at his own home, where he took supper with his wife from thence to his mother's home, about fifty feet away, where he spent a little time, and from thence to the dancing hall, about three hundred feet away, where he staid until about half-past ten o'clock, when he returned to his mother's home, and that he did not know of the killing until late that evening.

Objection was made to the competency of the testimony of the two children because of their tender years, and their having failed, as we claim, to show that they properly appreciated the solemnity of the oath. The objection was overruled and an exception allowed. There was a request touching the unsatisfactory nature of the testimony of children of tender years, such as Victoria and Maggie, which request was denied and an exception allowed. It is to the Court's refusal to charge touching the nature and character of the testimony of Victoria and Maggie that we first address ourselves.

We may concede that if the jury did not entertain a reasonable doubt concerning the substance of the testimony of the children, that they were justified in finding Labriola guilty of murder in the first degree, notwithstanding we think an intent on the part of Labriola to take the life of Buglio to be inherently improbable. One of the children said that Labriola said in substance: if you do not permit Raphael to go to the dance, I will kill you, and that after words the club was used which caused death. It is, therefore, exceedingly important to determine whether or no Labriola has suffered injury by reason of the refusal of the learned Trial Judge to charge touching the credit to be given the testimony of the children.

Our proposition is first, that it was the legal duty of the Court to charge as requested, but if not, that his refusal to charge was a denial of a matter of discretion abused or which wrought wrong and injury within the meaning of section 136 of the Criminal Procedure Act of 1898, at page 915, and the decisions thereunder. It is the eighth request which, it is claimed, presented to the Court's attention, the proposition about to be discussed. In dealing with that request, the Court said, at page 196, "The eighth request I refuse to charge." The request as it appears on page 198 is: "The testimony of children of tender years, such as Victoria and Maggie, is of an unsatisfactory nature. Children of such tender years have an imagination out of all proportion to the power of other faculties, and they constantly say what is not true; not from deceitfulness, but simply because they have come to think so by talking or dreaming of what has passed." The request as printed does not seem to be in the precise language of the request submitted, but the recollection of the maker of this brief may be at fault. However, it may be conceded that the request is crude and unintelligible. The purpose of the request was to bring to the Court's attention, the language of Stephen as used in his work on the general

view of the criminal law of England, quoted in *Jones on Evidence, third volume, paragraph 740.*

After the Court had refused to charge the request and for fear the language did not properly bring to the Court's attention what was in the mind of counsel, or that the request was not accurate, counsel stated to the Court, at page 198:

> "Counsel for Labriola states that as the eighth request to charge, which request deals with the question of credibility of the testimony of the children, may not, in its entirety, be a correct proposition of law, that the Court is now requested to caution the jury as to thecharacter and nature of the testimony of children of tender years, such as the witnesses Victoria and Maggie."
>
> The Court—"I don't understand you, Mr. Cole."
>
> Counsel—"I understand it to be not only the proper thing for counsel to request the Court to charge, but that it is the duty of the Court to caution the jury more strongly than they generally do on the unsatisfactory nature of the evidence of children and on the danger of being led by sympathy to trust in it. The latter part of the language used is the general view of the law of criminal evidence of Judge Stephens, which is quoted in Jones on the Law of Evidence, paragraph 740, on the degree of credit to be given such testimony, and it is in line with the argument addressed to the jury that such evidence is of a dangerous character, and the jury must be cautioned by the Court of that dangerous character."

After some further colloquy following, the Court persisted in its refusal to charge and sealed an exception. In dealing with the subject, Mr. Jones, in his work on *Evidence,* paragraph 740, says:

"Although, in order to prevent a failure of justice, it is often necessary to receive the evidence of children of tender age, every practitioner of experience is sensible of the embarrassments and danger which attend the admission of such evidence. It is true, it may be urged, that the natural language of the child is that of innocence and truth, and that its testimony is apt to be free from the prejudice or sinister motives which too often affect the testimony of adults. On the other hand, it may be urged with equal force that this class of testimony is open to several serious objections. There is the uncertainty whether the witness has a proper conception of the obligation of an oath. Then there is the still greater danger that such testimony may have been prompted and inspired by unscrupulous and interested persons. Says Mr. Stephen: 'A child will have been taught to say that, if it tells a lie, it will go to the bad place when it dies (which is usually taken to show that it knows the meaning of an oath), long before it has any real notion of the practical importance of its evidence in a temporal point of view; and also long before it has learned to distinguish between its memory and its imagination, or to understand, in the least degree, what is meant by accuracy of expression. It is hardly possible to cross-examine a child, for the test is too rough for an immature mind. However gently the questions may be put, the witness grows confused and frightened, partly by the tax on its memory, partly by the strangeness of the scene; and the result is that its evidence goes to the jury practically unchecked, and has usually greater weight than it deserves, for the sympathies of the jury are always with it. This is a considerable evil, for in infancy the strength of the imagination is out of all proportion to

> the power of the other faculties; and children constantly say what is not true, not from deceitfulness, but simply because they have come to think so, by talking or dreaming of what has passed.
>
> The evil, however, is one which the law cannot remedy. It would be a far greater evil to make children incompetent witnesses up to a certain age. The only remedy is that judges should insist to juries more strongly than they generally do on the unsatisfactory nature of the evidence of children, and on the danger of being led by sympathy to trust in it.' "

In the case of *Hughes* vs. *The Railroad Company, 65 Michigan, page 10, 31 Northwestern, page 605,* Campbell, Chief Justice, in dealing with the subject under discussion, says:

> "In children of tender age, no reasonable person would expect a complete power of discriminating between his means and sources of knowledge; and more or less undesigned coloring and misrecollection is almost inevitable. There can be no criminal responsibility in an infant child, and the care used must, therefore, be rather in ascertaining his capacity and disposition rather than in impressing the terrors of the law. We are compelled to apply the law as find it until changed by legislation. But we are greatly impressed with the practical imperfection of the present rules. In France and probably elsewhere, the Courts refuse to administer an oath to children of tender years, and allow them to be examined without anything more than suitable cautions, leaving their statements on direct and cross-examination to be taken for what they are worth."

Mr. Wigmore, in his valuable work on the *Law of Evidence,* deals with the question in paragraphs 505

to 509 inclusive, and under paragraph 509 he quotes from Robert Louis Stevenson's Child Play (In Virginibus Puerisque):

> "It is when we make castles in the air and personate the leading character in our romances, that we return to the spirit of our first years. In all the child's world of dim sensations, play is all in all. 'Making believe' is the gist of his whole life and he cannot so much as take a walk except in character. One thing at least comes very clearly out of all these considerations, that whatever we are to expect at the hands of children, it should not be peddling exactitude about matters of fact. They walk in a vain show and among mists and rainbows; they are passionate after dreams and unconcerned about realities; speech is a difficult art not wholly learned and there is nothing in their own tastes and purposes to teach them what we mean by abstract truthfulness."

In our careful and exhaustive research, we have not found a case where the precise question here involved has been discussed, but if Mr. Stephens has correctly stated the legal duty of the Trial Court, then there was legal error in the Court's refusal to charge the jury and caution them about giving undue weight to the testimony of the children. But if it was not a legal right of the defendant to have such request, we urge that the Court's discretion should have been exercised in favor of rather than against the request, and that the refusal so to do was injurious to the defendant, entitling him to a new trial. If the Court shall say that the request was addressed to the Court's discretion, then we must urge this Court to carefully read and properly weigh the evidence appearing in the bill of exceptions to determine if there was not a reasonable doubt concerning the truthfulness of the testimony of the children.

We shall point out briefly some of the things which to our mind are sufficient to create a reasonable doubt in an unprejudiced mind. The defendant's Buglio, Labriola and Raymond all deny the statements made by the children concerning the alleged assault. The State did not produce any member of the Gross family, all of whom were adults and all of whom were in the kitchen adjoining at the time that the children say the assault occurred. They were detained by the State as witnesses and no explanation was offered for not producing them. Dr. Dubler, the coroner, who was produced by the State, said on cross-examination, beginning at page nine, that death resulted from a fractured skull produced by a blow inflicted on deceased's head, and that death was instantaneous. He also testified that Buglio had been dead possibly an hour when his body was found at half past ten o'clock. If Dubler was correct, then the deceased was killed not sooner than nine o'clock. The testimony of the two children as to how they knew the time is altogether unbelievable. Victoria, at page 51, says that it was seven o'clock when the quarrel began and that she knows that fact because the clock struck and "papa said, too, it was seven o'clock, and then seven o'clock just striked." At page 100, Maggie first says she didn't know the time that Uncle Joe (meaning Labriola) came; she then says that she can't tell time; then finally, without any explanation, says it was seven o'clock when Uncle Joe came.

Mrs. Simpkins, at page, 28, says that she saw the deceased in a store at ten minutes of six, and that she had particular occasion to notice him because he was dressed unusually well, and the evidence shows that when the deceased was found he was clothed in his Sunday dress. Victoria, at page 50, says that her father did not change his clothes after he came from work. She says, at page 41, that Labriola struck her father with his fist in the kitchen, that all of them (naming the three defendants) knocked him over and

made him fall down in the big kitchen, and that in the big kitchen Labriola struck the deceased with the club, and then the three dragged the deceased to the yard where Labriola again struck him with the club. At page 96, Maggie says that her papa did not change his clothes. At page 97, she says that Raymond did not come downstairs until after her father was in the yard and had been struck the last time by Labriola. At pages 86 and 87, she also says that when Labriola was striking her father, Raymond had not finished dressing himself, and that he came downstairs after the striking was over.

In describing how the trouble arose between the deceased and Labriola, Victoria, at page 40, says:

> "Uncle Joe said will you go to the hall, and he said no three times.
>
> *Q.* Who said no?
>
> *A.* Pop.
>
> *Q.* What did Uncle Joe do?
>
> *A.* Then Uncle Joe said, 'Why don't you let her come?' He said, 'No, I don't want her to come,' and Uncle Joe said then, pop said, 'Is this your house or is it mine or yours,' and then he didn't say nothing, and then they started to quarrel, that they wanted to go to the hall, and then Uncle Joe hit papa."

Maggie had testified that her papa said "no" three times, and on page 90 she tells how she knew that, in this wise:

> *Q.* Have you and Victoria spoken about this case?
>
> *A.* No.
>
> *Q.* When did Victoria tell you that she counted three times that papa said no; when was that, dear, do you remember?
>
> *A.* When Uncle Joe said mamma had to go to the ball.
>
> *Q.* What Uncle Joe?

A. Labriola.

Q. And what else did Victoria tell you then?

A. Nothing else.

Q. Well, how did she come to tell you that papa said no three times?

A. She counted them.

Q. Did you ask her or did she tell you?

A. She told me.

Q. What did she say?

A. She said, 'Maggie, do you know how many times Uncle Joe told papa mamma had to go to the ball?' And I said, 'How many?' And she said three times.

Q. That is all you know about the number of times that papa said no?

A. Yes."

At page 51, Victoria, in explaining how she fixed the time when the quarrel began, said that the clock struck seven and besides "papa said, too, it was seven o'clock, and then seven o'clock just striked." She admitted not being able to tell the time except by the strike of the clock. At page 98, Maggie first says that they had supper at six o'clock, then she says that they had it at five o'clock. At page 97, she fixes the time when mamma went to get Tillie at six o'clock. At page 100, Maggie is not able to tell what time the quarrel began, for the reason that she is not able to tell the time, and then, on the same page, says it was seven o'clock when Uncle Joe came. At page 63, Victoria says that she saw her mamma and Uncle Joe come in the front door that night, but didn't see Labriola with the club. At page 50, she says that she and Noonsie and Maggie and Tillie were behind the stove asleep when her mother and Uncle Joe came in and that she was awakened by the quarrel, and, at page 80, Maggie says that she saw the club in Uncle Joe's hand when he came in; and, at page 67, Victoria says that they had been asleep ten or fifteen minutes when the quarrel awoke her and Victoria.

It appears that after the killing, the detectives had the defendants at the hall in Minotola, interrogating them as to their knowledge of the affair, and while this was going on, two of the detectives, Lore and Parks went to the Buglio home for the purpose of interviewing the children. There are two versions as to how the detectives effected an entrance. At page 73, Victoria says:

"*Q.* Victoria, how did the officers get in the house that day?

A. They got into the window.

Q. Why couldn't they get in the door?

A. The doors were all locked.

Q. Who locked them?

A. I don't know.

Q. How long had they been locked?

A. Ever since mamma went away.

Q. Do you know whether your mamma locked them or not?

A. I don't know who locked them.

Q. Had they been locked ever since your mother went away that day?

A. Yes."

There was a window in the out or summer kitchen and a window in the inner kitchen, and if it be true that the detectives effected an entrance in the inner kitchen where the children were by going through the window, it was necessary to go through two windows. At page 145, detective Lore repudiates the statement of the child by saying that they entered through the door, and that they were let in by the children, and he says they are mistaken in their statement as to how the entrance was effected. Up to the time the detectives entered the house, no statement had been made by either of the children so far as the evidence discloses. The children were afterwards removed, one taken to her grandfather's and the other to their uncle.

On page 68, Victoria gives this testimony:

"*Q.* Can't you look around towards me a little bit? When did you talk with Uncle Joe about the time since you talked with me?

A. He used to tell me, 'Don't forget what you know; don't forget.'

Q. When did he tell you that?

A. Used to tell me all the time.

Q. Not to forget what you know?

A. Yes."

At page 69, she says:

"*Q.* Why did Uncle Joe keep telling you that you must not forget what you knew about this case?

A. I don't know. He never told me.

Q. Who did he tell?

A. I don't know.

Q. Didn't you say a little while ago, that Uncle Joe Buglio kept telling you that you musn't forget what you knew about this case?

A. Yes.

Q. Why did he tell you that?

A. Because he didn't want me to forget it."

It was sought to elicit from the child Maggie, to whom she first told the story that she told on the witness stand, and at page 113, we have this:

"*Q.* Well, now, who did you first tell this story to, about what you have told the jury; what you have told the jury here? Who did you first tell that to? Can't you remember?

A. No.

Q. Well, Maggie, was it Mr. Lore that you first told this story to, the detective?

A. Yes.

Q. He was the first one you told it to, wasn't he?

A. Yes.

Q. Where was he when you told him this story?

A. At Grandpa's."

At page 114 she is not able to tell how it came about that she told the story, and on the same page, she admits not knowing the consequences of not telling the truth. At page 61, it appears that Victoria first told her story after the threat of the detective that she would be put in jail, and at page 106, it appears that the detective Frank Lore, in the presence of Maggie, in the County Jail, told Mary Gross, who was then confined as a witness for the State, that if she didn't tell what she knew, he would send her to State's Prison for twenty years. At page 137, it appears by the testimony of one D'Atavio, that Victoria and Mary Gross came to her house after the body of John Buglio had been brought to his home and they told her that somebody had killed John, whereupon she says, "And I say, 'who killed John,' and they say, 'I don't know.'" It was a theory of the defense that the father and brother of the deceased, who had the custody of the children, by the aid of the detectives, had conceived the idea that Labriola had killed the deceased, and they proceeded to secure evidence on that thory, and that having convinced themselves that he was guilty, they talked the matter over along that line in the presence of the children, and probably induced the children to tell the story, and suggested that if they did, their mother, who was then confined in jail, would be released.

On page 62, we have this testimony of Victoria:

> "*Q.* Did you ever hear Frank Lore tell Maggie, or did he tell you that if you told this story to the jury in Court, that your mamma would come home to you? Did he ever tell you what effect this story would have on your mother if you told it?
>
> *A.* No, she said she would be left in.
>
> *Q.* He told you that, did he?
>
> *A.* Who? Grandpop said it.
>
> *Q.* Grandpop said what?
>
> *A.* Said 'tell it or else your mother will be left in.'

Q. What did you understand your grandpop meant by that, that if you didn't tell this story, mamma would be left in?

A. She would be left in jail.

Q. If you didn't tell the story?

A. Yes.

Q. Well, did he tell you what would happen to her if you did tell the story?

A. No.

Q. Did you know what would happen to your mother if you told this story?

A. No.

Q. Anybody tell you that?

A. (No answer.)

Q. Have they?

A. No."

There are other evidences of discrepancies in the testimony of the children, and also evidences of the inherent improbability of things to which they testified. It is not difficult to understand how the children could have been taught to believe that they say the defendant strike their father, especially if they had been encouraged to believe that if they so testified, their mother would be released from custody, and our urgent contention is that the testimony of Victoria makes it plain that her idea of the situation was that if she failed to tell the story, her mother would be kept in jail, while, if she told it, her mother would be released. Of course, it is plain that the contrary would be the effect, for the evidence that they gave against their own mother would necessarily involve her in the crime and it did, in fact, result in her conviction and the sentence of ten years in State's Prison. We have alluded to these discrepancies and inherent improbabilities for the purpose of urging that if it shall be considered that this is a matter of discretion in the trial court to pass comment upon the dangerous character of the testimony of children of tender years, that that discretion was abused in this case, or that it must be manifest to this Court

that under the Statute, injury has resulted to the defendant in the improper exercise of a discretion. As the life of a citizen is at stake, the Court will, of course, read the evidence, and when it does, it will discover time and again that the children failed to answer quite simple questions. The stenographer's notes do not accurately disclose what occurred. As, for instance, it will be seen that four or five questions appear as one question, when, as a matter of fact, the questions were single, and there being no response another question was asked.

The very conditions that are so well considered by Stephens in his Work on Evidence, and alluded to by Wigmore, appear in the case under consideration, and we urge that in addition to the discrepancies, etc., in the testimony of the children, their examination discloses that there is at least a debatable question as to their competency to testify. This fact afforded an additional reason why the Court ought to have cautioned the jury. Instead, however, of the Court cautioning the jury in his learned charge, he seems to have emphasized the importance of the testimony of the children, and, we feel, left the jury with the impression that their testimony was entitled to unusual weight and consideration. At page 190, the learned trial Judge says: "In endeavoring to gather the truth from this conflicting testimony, it is but the dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. Have the children, Victoria and Maggie, any motive to testify falsely against their mother and uncle?" This charge placed a premium upon their testimony, and, we think, irresistibly required the jury to infer that their testimony should be believed. As a matter of fact, we think it is disclosed by the testimony of Victoria concerning what was said to her by her grandfather touching her mother's release, disclosed a motive why they should tell the story, for, doubtless, it will be conceded that the children had no appreciation of the consequences to any of the defendants by the

story they were telling. It seems to us, therefore, barring the question whether or not it was legal error for the Court to have asked the jury whether they could find a motive for their statements, that the effect was not only to lead the jury to believe that there was no reason why they should proceed cautiously in considering their testimony, but that they should give it undue consideration because of a lack of motive in telling what they did. It seems to us to be highly significant that the child Victoria within a short time after she knew who had killed her father, upon being asked by the witness D'Atavio if she knew who did it, that she should say she did not. At that time she was not in the presence of her mother, nor does there appear any reason why she should not have told the truth. This, along with other facts, are highly significant and lend countenance to the view entertained by counsel that the children's story was a repetition by them of a tale too often told in their presence.

II.

It was error or at least an abuse of discretion to permit the children to testify.

We think they did not show themselves competent. The case of *West Virginia* vs. *Michael*, 37 *West Virginia Reports*, page 565 is in point, and that case decided that the testimony was incompetent. We shall not set out their examination here, but will ask the Court to examine it and we think it will be disclosed that neither of them had any proper conception of rewards and punishments, either as to this or the future life, and that the answers they gave to the questions were the result of what had been told them after the killing without any proper conception of its meaning.

Victoria says, at page 33:

> "*Q.* Do you know what it means when you hold up your hand and swear the truth?
>
> *A.* If you don't tell the truth, you go to the bad man.

Q. What else would happen to you?

A. You would die."

Then, later, she says that she got information that if she didn't tell the truth, she would go to prison, by what had been read to her out of the newspaper; an altogether improbable circumstance. At page 74, Maggie says:

"*Q.* What happens to you if you don't tell the truth?

A. Go up to hell.

Q. What would happen to you if you don't tell the truth, Maggie?

A. Go up to hell.

Q. Anything else happen to you?

A. I don't know."

Later it appears that she has not been to Sunday School for some time, and that when she did go she wasn't taught anything. The case is altogether unlike *Dunne* vs. *Jersey City, etc., 65 New Jersey Law, page 410,* where the Court held that there had been no abuse of discretion on the part of the Court in permitting the child to testify. In that case, the child was twelve years of age, and showed, as we hink, a clear idea of rewards and punishments, both as to this and the future life.

III.

It was error to refuse the fifth and seventh request.

The requests were: "If the jury shall believe that Raymond was not present at the time related by the children, Labriola must be acquitted," and "if the jury have a reasonable doubt of the truthfulness of the story of the children touching the alleged assault made by Labriola, there must be an acquittal."

We shall not elaborate this point. Sufficient to say, that if you strip the case of the testimony of the children a reasonable doubt is created, of legal necessity. The only testimony that warrants a conviction of first

degree murder is that of Victoria, who says that the defendant said to the deceased, "if you do not let Raphael go to the dance, I will kill you." Create a reasonable doubt as to this alleged threat and the conviction will not stand.

IV.

There should have been a severance.

It appears in the case and in the charge of the Court that the State's claim a motive was illegal intimacy between the wife of the deceased and Labriola. It also appears, both in the evidence and charge, that evidence was admitted of acts and statements of Raphael Buglio out of the presence of Labriola for the purpose of showing such intimacy. While the learned Justice cautioned the jury touching such evidence, it seems reasonably certain that it was injurious to Labriola.

We maintain that a new trial should be granted.

Respectfully submitted,

THOMPSON & COLE,

Attys. of Labriola.

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NEW JERSEY

Court of Errors and Appeals.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOSEPH LABRIOLA,
Plaintiff in Error.

WRIT OF ERROR.

(*Returnable May 18, 1907.*)

NEW JERSEY, *ss.*—The State of New Jersey to Thomas W. Trenchard, Esq., one of the Justices of
[SEAL] the Supreme Court of the State of New Jersey, and Enoch A. Higbee, Esq., Judge of the Court Common Pleas of the County of Atlantic, constituting the Court of Oyer and Terminer, holden at Mays Landing, in and for the County of Atlantic, of the term of January, 1907, GREETING:

Because in the record and process and also in the giving of judgment upon a certain indictment against Joseph Labriola, late of the Township of Buena Vista, in the County of Atlantic, for wilfully, feloniously and

with malice aforethought killing and murdering one, John Buglio (*pro ut* the said indictment and the said 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 Joseph Labriola, as it is said, manifest error hath intervened to the great damage of the said Joseph Labriola, as from his complaint we have received information, we being willing in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Joseph Labriola, command you that if judgment be thereon given, then, that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes of law, to be held at Trenton, on the eighteenth day of May next, and this writ, that the record and proceedings aforesaid, being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and custom of New Jersey ought to be done.

Witness, William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this seventh day of May, nineteen hundred and seven.

S. D. Dickinson,
Clerk.

Thompson & Cole,
Attorneys.

The answer of Thomas W. Trenchard, Justice of the Supreme Court, within named.

The record and proceedings whereof mention is within named, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all cases, within specified, at the day and place within contained,

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

THOMAS W. TRENCHARD, [L. S.]
Justice Supreme Court and Judge of Atlantic County Court of Oyer and Terminer.

THE STATE OF NEW JERSEY.

Atlantic County Court of Oyer and Terminer, holden before Thomas W. Trenchard, one of the Justices of the Supreme Court, and Enoch A. Higbee, Judge of the Court of Common Pleas.

January Term, 1907.

THE STATE OF NEW JERSEY
vs.
JOSEPH LABRIOLA AND RAPHAEL BUGLIO.
} Sur Indictment for Murder.

J. E. P. Abbott, Prosecutor of the Pleas and J. Hampton Fithian for the State,

Clarence L. Cole, Attorney for defendant Joseph Labriola.

Repetto and Repetto, Attorneys for defendent Raphael Buglio.

STATE OF NEW JERSEY, ATLANTIC COUNTY, to wit.

Be it remembered that at a Court of Oyer and Terminer holden at Mays Landing, in and for the county of Atlantic, on the second Tuesday of January, in the year of our Lord, one thousand nine hundred and seven, befor the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the said State, and Enoch A. Higbee, Judge of the Court of Com-

mon Pleas in and for the said county, according to the form of the statute in such case made and provided by the oaths of

Samuel H. Kelley,	Harry Bacharach,
Elisha C. Chew,	Alfred B. Smith,
Lewis H. Barrett,	Samuel S. Phoebus,
John C. W. Parsons,	Harry M. Evans,
Samuel Winterbottom,	Thomas Endicott,
Harry D. McLittle,	Somers L. Doughty,
A. H. Higbee,	W. Solon Stafford,
Joseph Sahl,	Harry G. Mulock,
Theodore D. Hoover,	Hosea F. Madden,
J. B. Worthington,	Lewis H. Smith,
Thomas Roberts,	James K. Carmack,
Samuel Headley,	

good and lawful men of the said county, duly summond 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 Atlantic. It is presented in manner and form following, that is to say:

ATLANTIC COUNTY, to wit:

The Grand Jurors of the State of New Jersey, and for the body of the county of Atlantic, upon their oaths, present that Joseph Labriola, Michael Raymond and Raphael Buglio, late of the township of Buena Vista, in the county of Atlantic, on the twenty-second day of December, in the year of our Lord one thousand nine hundred and six, with force and arms, at the township aforesaid, in the county aforesaid, and within the Jurisdiction of this Court in and upon one John Buglio, in the peace of God and this State then and there being an assault did make and they, the said Joseph Labriola, Michael Raymond and Raphael Buglio then and there did willfully, feloniously and of their malice aforethought, kill and murder, and other wrongs to the said John Buglio then and there did, to the great damage of

the said John Buglio, 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.

JOSEPH E. P. ABBOTT,
Prosecutor of the Pleas.

Which said indictment was, to wit, on the twenty-second day of January, of the term of January, in the year of our Lord, one thousand nine hundred and seven, at the Court of Oyer and Terminer in and for the county of Atlantic aforesaid, before Thomas W. Trenchard and Enoch A. Higbee, Judges of the said Court of Oyer and Terminer of said county, holden at Mays Landing, in and for the county of Atlantic, duly delivered here in Court by the Grand Jurors aforesaid, in due form of law to be tried.

Whereupon the Sheriff of the county of Atlantic aforesaid is commanded to take the said Joseph Labriola, Michael Raymond and Raphael Buglio, if they may be found in the county and them safely keep to answer to the said indictment.

Afterwards, to wit, at the Court of Oyer and Terminer, holden at Mays Landing aforesaid, in the county of Atlantic aforesaid, on the twenty-second day of January, in the year of our Lord one thousand, nine hundred and seven, before Thomas W. Trenchard, one of the Justices of the Supreme Court of the State of New Jersey, in and for the county of Atlantic, and Enoch A. Higbee, Judge of the Court of Common Pleas of said county, here cometh the said Joseph Labriola, Michael Raymond and Raphael Buglio under the custody of Smith E. Johnson, High Sheriff of the said county of Atlantic, in whose custody in the jail of the county aforesaid, for the cause aforesaid, they have been committed and being brought to the bar here in the proper persons by the said Sheriff to whom they are here also committed, and the said Joseph Labriola, Michael Raymond and Raphael Buglio having heard the indictment

read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon them how they will acquit themselves thereof, they saith that they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and J. E. P. Abbott, Prosecutor of the State for the county aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

Therefore let a jury thereupon here come before the said Court of Oyer and Terminer and as yet of the term of January in the year one thousand nine hundred and seven, at Mays Landing, in the county of Atlantic aforesaid, on the second day of April, in the year of our Lord one thousand nine hundred and seven, of good and lawful men each of whom shall be a citizen of this State and resident within the county of Atlantic aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be known, and who are not of kin to the said Joseph Labriola, Michael Raymond and Raphael Buglio, recognize upon their oaths whether the said Joseph Labriola, Michael Raymond, Raphael Buglio be guilty of murder in the indictment aforesaid above specified or not guilty, because as well the said J. E. P. Abbott, who prosecutes for the State of New Jersey, in this behalf, as the said Joseph Labriola, Michael Raymond and Raphael Buglio have put themselves upon the said jury, at which day, to wit, on Tuesday, the second day of April, one thousand nine hundred and seven, as yet of the term of January in the year of our Lord one thousand nine hundred and seven, before the Court of Oyer and Terminer at Mays Landing aforesaid, in the County aforesaid, held by the Judges aforesaid, here cometh as well the said J. E. P. Abbott, who prosecutes for the State of New Jersey in this behalf, as the said Joseph Labriola, Michael Raymond and Raphael Buglio in their own proper persons under the custody of Smith E. Johnson, sheriff as aforesaid, accompanied by Clar-

ence L. Cole, counsel for Joseph Labriola, and Repetto and Repetto, counsel for Michael Raymond and Raphael Buglio, and upon motion of the said Clarence L. Cole, Esquire, Counsel for the said Joseph Labriola, and Repetto and Repetto, counsel for the said Michael Raymond and Raphael Buglio, it is ordered by the Court that a severance of the said indictment be made and be entered by the clerk as to Michael Raymond and that the said Michael Raymond shall have a separate trial thereon, and that the trial proceed as to the defendants Joseph Labriola and Raphael Buglio, and the trial of the said indictment being moved against the said Joseph Labriola and Raphael Buglio, and

Gilbert Jackson,	Daniel N. Ingersoll,
Edwin Robinson,	Thomas York,
Franklin Tyler,	Robert M. Hart,
Samuel Reeves,	Edward S. Johnson,
J. Harry Baitinger,	John Dutch,
William Howenstein,	Charles D. Makepeace,

being called, come, who being chosen, tried and sworn in accordance with law, to speak the truth of and concerning the premises, and the trial of said issue having been regularly continued from day to day until Saturday, the sixth day of April, in the year of our Lord one thousand nine hundred and seven before the judges aforesaid, the said Joseph Labriola and Raphael Buglio being present in their proper persons, thereupon on said last mentioned day the jurors aforesaid upon their oaths as aforesaid say that the said Joseph Labriola is guilty in manner and form as he stands charged under the indictment and is guilty of murder in the first degree; and that the said Raphael Buglio is guilty of manslaughter; and upon this it is afterwards, on the tenth day of April, in the year one thousand nine hundred and seven, as yet of the term of January, before the said Court of Oyer and Terminer, and the judges aforesaid demanded of the said Raphael Buglio to stand up,

whereupon the Court doth order and adjudge that the said Raphael Buglio be confined in the State's prison at Trenton, New Jersey, at hard labor for the term of ten years and to pay a fine of one thousand dollars, the said Ralph Buglio to stand committed until the fine is paid; and the judges aforesaid demanded of the said Joseph Labriola if he hath or knoweth anything to say wherefore sentence of death should not now be pronounced against him, who nothing further saith unless as he before had said.

Whereupon all and singular the premises being seen and by the said Court here fully understood, it is considered by the Court here that the said Joseph Labriola be taken to the prison in the county of Atlantic, whence he came, there to be kept until Monday, the thirteenth day of May next, which will be May 13th, in the year of our Lord one thousand nine hundred and seven, and on that day between the hours of eight o'clock in the forenoon and twelve o'clock noon, either within the said prison or within an enclosed yard of the said prison, if there be one, or within an enclosure erected for that purpose adjoining such prison, at the discretion of the sheriff, he be hanged by the neck until he be dead.

THOMAS W. TRENCHARD,
E. A. HIGBEE,
Judges of the Atlantic County Oyer and Terminer Court.

Filed and entered April 24, 1907, at 8.50 A. M.
LEWIS P. SCOTT,
Clerk.

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

I, Lewis P. Scott, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of Record, do hereby certify that the foregoing is a true, full and correct copy of a judgment record, as the same was filed and entered in my said office, April

24th, 1907, at 8.50 A. M., entered in Oyer and Terminer Minutes No. 4, page 123, etc.

In witness whereof, I have hereunto set my hand and affixed the seal of Atlantic county, at Mays Landing, N. J., this seventeenth day of May, A. D. one thousand nine hundred and seven (1907).

LEWIS P. SCOTT,
Clerk.

[Clerk's Seal of Atlantic Co.]

By ALBERT C. ABBOTT,
Deputy Clerk.

ATLANTIC COUNTY OYER AND TERMINER COURT.

STATE OF NEW JERSEY
v.
JOSEPH LABRIOLA ET AL. } On Indictment for Murder.

BILL OF EXCEPTIONS.

This cause came on to be tried on the second day of April, 1907, before the Hon. Thos. W. Trenchard, Justice of the Supreme Court, and E. A. Higbee, Judge of the Court of Common Pleas of said county, on the issue joined, when the following evidence was introduced:

Cross examination of *Dr. Dubler.*

By Mr. Cole:

Q. Doctor, how long have you lived in Minotola?

A. Three years the eighth or ninth of this month.

Q. Where had you lived before you lived at Minotola?

A. Philadelphia.

Q. What did you do in Philadelphia?

A. Practiced medicine.

Q. Where?

A. 202 North Sixteenth street.

Q. How long did you practice there?

A. From '89.

Q. Until what time?

A. I mean '98.

Q. Until what time?

A. Until I came down here.

Q. Continuously at that place?

A. Yes, sir.

Q. Practice medicine before you practiced there?

A. No, sir.

Q. That is where you began to practice, was it?

A. Yes, sir.

Q. Who admitted you to the Buglio house that night?

A. When I went to the house?

Q. Yes.

A. Mrs. Buglio.

Q. When you went to the house, was she upstairs?

A. Yes, sir.

Q. When you first went, did you go alone or was someone with you?

A. I went alone.

Q. Was that before you had seen the dead body of John Buglio?

A. No, sir; it was afterwards.

Q. Afterwards?

A. Yes, sir.

Q. Where was the body then?

A. The body was down at the place where it was found.

Q. Then you had gone and seen the body and returned to the Buglio house?

A. Yes, sir.

Q. Was it after that still that the body was brought to the Buglio house that night?

A. The body was brought there while I was there.

Q. Now these movements of Mrs. Buglio, that you have testified about in the house, were after you had entered?

A. Which movements?

Q. You spoke of her going in the kitchen first, and

then going to the parlor door. Through which door were you admitted to the house?

A. Through the parlor door, front door.

Q. What was your object in calling on Mrs. Buglio?

A. Well, I thought possibly I might get some clue there as to who had committed the deed.

Q. You say that she told you that her husband had gone to the dance?

A. Gone to the dance hall; yes, sir.

Q. Quite sure about that?

A. Yes, sir; I am sure about it.

Q. With these two strange men?

A. Yes, sir.

Q. She told you that?

A. Yes, sir.

Q. Whom she didn't know?

A. She didn't know them; no, sir.

Q. Do you say that she told you that her husband had gone out about half-past eight?

A. Yes, sir.

Q. Did she come to the front window, upstairs?

A. No, sir; it was the side window of the front room upstairs, no doubt.

Q. How long was it from the time that she came to the window before she admitted you?

A. Why, it wasn't very long, just a short time.

Q. Those books that she showed you, where were they?

A. They were on the kitchen table.

Q. Anything else on the table?

A. Pen and ink.

Q. Any dishes?

A. I didn't notice.

Q. Notice any evidence of a struggle in that room, the kitchen?

A. No, sir, not particularly; no, sir.

Q. What sort of a post mortem did you make?

A. Doctor Souder and I performed it.

Q. I say what was the character of it? What did you do?

A. We removed the—turned back the scalp first and then we made an incision through the skull and removed a portion of the skull and brain.

Q. That was all?

A. No, sir; we continued through the body to see whether the other organs were in a normal condition or no.

Q. Make any examination of the contents of the stomach?

A. No, sir.

Q. Did you make any examination to determine the time of death? Did your post mortem include an examination to determine the time of death?

A. No, sir.

Q. The temperature of the body of a dead person is reduced more rapidly, of course, in the open where it is cold than in a room where it is warm?

A. The temperature of the body?

Q. Yes.

A. No doubt about it.

Q. Do you know what the temperature of the body was at the time that you first saw him?

A. The body was cold.

Q. All over?

A. Well, now, you mean all over the body?

Q. Yes.

A. I only felt in this part of the body and his arms. That is all I felt.

Q. Was the blood from the cut warm?

A. Well, it didn't seem real warm; no. That point I couldn't determine distinctly at this time.

Q. It was your opinion, was it, after making the examination, that the fracture had been caused by a blow across the bridge of the nose?

A. This fracture?

Q. Yes.

A. No, sir.

Q. I thought you said so.

A. No, sir.

Q. Didn't you say that the indications were that there had only been one blow?

A. Across the face?

Q. Yes. Is that right?

A. No; I said I couldn't tell whether there was one or more blows across the face.

Q. The only blows that were on the head were those across the front of the face? Is that right?

A. No; there was a blow struck on the side, but it showed no external indication.

Q. In other words, the only external evidences of blows were those that appeared on the front of the face?

A. Yes, sir; except that little mark along the face here, an impression.

Q. This fracture that you found might have been caused by a fall?

A. Not likely.

Q. Why not?

A. Why, I don't think a fall would have force enough to do it.

Q. Might not that depend upon what the man fell on?

A. It might depend upon what he fell.

Q. Don't you know, as a matter of fact, that there are numberless cases of fractures of the skull as great as that from falls?

A. Yes, sir; but they very seldom occur in that position.

Q. If he had fallen on a hard substance and fallen hard, might not death have resulted or such a fracture occurred?

A. Yes, sir.

Q. Was it that fracture that you say caused death?

A. In my estimation, yes, sir.

Q. How soon in your opinion, did death follow after that fracture?

A. In my opinion, the death would almost follow immediately.

Q. In your opinion, how long had John Buglio been dead when you saw him first?

A. Well, I couldn't think he had been dead so very long; possibly an hour.

Q. Possibly an hour?

A. Yes, sir.

Q. Did you find any blood on the undergarments of Buglio?

A. No, sir.

Q. Any on the outer garments?

A. No, sir; only on the band of the shirt a little bit.

Q. What kind of a shirt had he on?

A. I think he had on a light negligee shirt.

Q. What kind of clothes had he on?

A. He had a black suit on.

Q. New suit or old suit?

A. The coat and vest seemed to be rather worn and the trousers seemed to be new.

Q. Were his undergarments clean?

A. Yes, sir.

Q. How about his face; was his face freshly shaven?

A. Yes, sir.

Q. Was a search made of the clothes?

A. Yes, sir; I searched the clothes.

Q. What did you find in the clothes?

A. I found a memorandum book, a key and knife, and a small finger stall of canvas.

Q. Any watch?

A. Yes, sir; there was a watch, too.

Q. Do you know what door the key fit in that house?

A. I found out afterwards.

Q. Well, I want to know.

A. It fit the kitchen door.

Q. By the kitchen door you mean what? There are two kitchens there aren't there?

A. There is an outer kitchen and a regular kitchen. It fit the regular kitchen, the front kitchen.

Q. That is, the kitchen where the stove was?

A. Yes, sir.

Q. Now, which door? There are two doors in that kitchen, aren't there, one that faces Central avenue, and one that is in the rear?

A. The one that faces Central avenue.

Q. That is the one you mean?

A. Yes, sir.

Q. You go out of the kitchen towards Central avenue on the porch, do you not?

A. Yes, sir.

Q. And it was a key of that door that leads on the porch front?

A. Yes, sir.

Q. What time was it that you saw Joseph Labriola that night?

A. Why, it must have been about quarter after eleven, between quarter after and half-past eleven.

Q. Where was he?

A. At his father's house.

Q. What part of the house?

A. In the kitchen.

Q. A number of people there?

A. Yes, sir.

Q. When was it you saw this coat that you have identified?

A. Why, I couldn't just tell you when. I saw it there that night or the day following.

Q. Where was it when you saw it?

A. He had it where he was. I think it was hanging up.

Q. In the room where he was?

A. Yes, sir.

Q. How did you know it was his coat?

A. I only know because he told me.

Q. He told you, did he?

A. Yes, sir.

Q. Now, did you see any of Mrs. Buglio's children when you went there that night?

A. Not when I went in at first.

Q. You finally saw them?

A. I saw one.

Q. Which?

A. I couldn't tell you which one I did see.

Q. Girl or boy?

A. I only saw their head sticking out when they were coming down the stairway.

Q. And you saw the head of a child at the head of the steps?

A. No; at the foot. When you are in the parlor the stairway comes down this way and the door leads into the room, and the child was just sticking its head out.

Q. That was after the body had been brought home?

A. No, sir; that was shortly after I told her that her husband had been killed.

Q. That was the only time that night that you saw any of the children?

A. That is all that I remember of.

Q. And you had been out in the kitchen had you?

A. At that time?

Q. Yes.

A. I wasn't in the kitchen. I went as far as the kitchen door.

Q. You could see in the kitchen?

A. Yes.

Q. And there were no children in the kitchen when you were there?

A. No, sir.

Q. You say the body of Buglio was lying on its back?

A. Yes, sir.

Q. Flat on its back?

A. Yes, sir.

Q. Was the moon out when you arrived?

A. No, sir.

Q. Had it cleared, then?

A. It wasn't raining, it was clear in one sense of the word, but there were clouds and every once in a while there would be an open spot.

Q. The clouds were breaking, were they?

A. They were breaking; yes, sir.

Q. Were you present when this club, which has been identified, was picked up?

A. Yes, sir.

Q. Who else besides yourself was there?

A. Mr. Sims and Harry Hoffman, Harry Gifford, Mr. Lintner, Harry Wilson, Twill Reed. That is about as many as I can remember.

Q. When did you first see Mike Raymond that night and where did you see him?

A. The first I saw him was—I waited at the Buglio house until the body arrived. After the body arrived, I went home to get my horse and buggy and I met Mike Raymond at the corner of Summer avenue and Central avenue.

Q. Coming which way?

A. Going south on Central avenue and I was going north.

Q. Was he going towards the Buglio home?

A. Yes, sir.

Q. And who was with him?

A. Richard Labriola.

Q. He is a brother of Joseph?

A. Yes, sir.

Q. Did you see him after that, that night?

A. Yes, sir.

Q. Where?

A. At the Buglio home.

Q. After you had come back and seen the body of John Buglio there, you then saw Mike Raymond?

A. Yes, sir.

Q. Where was he, what part of the house?

A. In the kitchen.

Q. Was Mrs. Buglio there at the same time that Mike was there?

A. Yes, sir.

Q. Anybody else?

A. Quite a number of people there.

Q. Any other members of the household other than Mike Raymond and Mrs. Buglio?

A. The children may have been there, but I don't remember seeing them.

Q. How careful examination did you make, Doctor, on the ground to determine whether there was any evidence of a struggle?

A. I looked around to see if I could see any marks.

Q. You were hunting, were you not, for evidence of a struggle?

A. Yes, sir.

Q. And saw none?

A. I didn't see any.

Q. Did you also make a careful examination for blood about there?

A. Yes, sir.

Q. Where did this pool of blood that was on the ground lay with respect to the body?

A. It was directly under the head.

Q. How much blood was there there?

A. Well, that would be rather hard to estimate. I should say possibly half a pint, between half a pint—

Q. How long would it have taken that quantity of blood to have run from the wound in the throat?

A. Well, now, that would be determined by what vessels would be cut.

Q. By what?

A. By what blood vessels would be cut.

Q. You saw what blood vessels were cut, in fact, didn't you?

A. Yes, sir.

Q. Now, knowing the fact as to the blood vessels that were cut, how long would you say it took the blood that you found on the ground to have run from the throat?

A. I don't know. That would be a very hard question to answer.

Q. Do you say you can't answer it?

A. I don't think I could precisely.

Q. Well, do you think it would have taken more than an hour for that blood to have run from the throat?

A. No.

Q. At the outside it wouldn't have taken more than an hour, would it?

A. No, sir.

Q. Had you any means of determining how long the throat had been cut before you saw it?

A. Well, only by its being still liquid.

Q. That indicated a fresh cut, didn't it?

A. To a certain extent, yes, sir.

Q. Do you think the throat had been cut more than an hour?

A. No, I don't think so.

William Beck, sworn.

Direct examination, by Mr. Fithian:

Q. Mr. Beck, where do you live?

A. Vineland.

Q. What is your business?

A. Jeweller.

Q. Do you know Joseph Labriola?

A. Yes, sir.

Q. Did you ever sell him a ring?

A. Yes, sir.

Q. What kind of a ring was it?

A. Signet.

Q. A signet ring?

A. Yes.

Q. What is a signet ring?

A. It is a plain ring, or a ring with a plain top, made with monograming, different initials, whatever you choose to put on it.

Q. What material was it made of, this ring?

A. Gold.

Q. Did Labriola have any initials put on it?

A. Yes, I think he did.

Q. Whose were they?

A. I couldn't tell just what they were at that time.

Mr. Cole—If he doesn't know—

Q. When was it he bought this ring?

A. That I couldn't positively state, what date or anything.

Q. About how long ago?

A. It was last fall sometime.

Q. Ever see the ring again?

A. No, sir; not since.

Q. Do you know Mrs. Buglio?

A. Yes, sir.

Q. Did you ever see her?

A. Yes.

Q. Ever see her have that ring?

A. I couldn't say that; no, I wouldn't want to say it; I don't know whether I ever saw it on her or not.

Q. Did you ever see her have it? Did she ever show it to you?

A. Yes, I think she did.

Q. Where was it?

A. Where was the ring?

Q. Where was the ring when she showed it to you? Where were you, and where was she?

A. I was at my place of business.

Q. Who brought the ring there?

A. She did.

Q. What did she say to you about it?

Mr. Cole—I object to any statement made by this woman concerning this ring, undertaking to bind our client.

Mr. Fithian—It may not be admissible as against your client, but it is admissible as against her.

The Court—We are inclined to think that this testimony is admissible.

Mr. Cole—Your Honor will have in mind the fact that counsel for Mr. Labriola—there was a

motion for a severance here in anticipation of possibly just such evidence as this, and I take it that in the light of that motion this evidence ought not to be admitted. I submit that no matter what the Court may say to the jury, or how honestly they may endeavor to disassociate the evidence, that it is bound to have its effect upon them: I therefore urge that it ought not be allowed in view of the motion that was made before this case was brought on for trial. The State was warned in advance.

The Court—What is the pending question?

(Question repeated.)

Mr. Cole—The manifest purpose of the question is to elicit an answer that would involve the defendant Labriola.

(Court and attorneys hold conference at side bar.)

The Court—The objection is overruled.

Mr. Cole—I will ask to have your Honor have the stenographer note that my objection to the question is that it is incompetent, irrelevant and immaterial in the light of the fact that a motion was made for severance.

Mr. Repetto—I had better note an objection on the ground that it is irrelevant, incompetent and immaterial.

Mr. Cole—I want an exception for my client, Labriola.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD, *P. J.* [L. S.]

(Question repeated.)

A. I don't know just how to answer that question, because—

Q. Well state your recollection of what she said?

A. I think it was in regards to the quality of the article.

Q. What do you mean by "in regards to the quality"?

Mr. Cole—No, not what he means.

Q. What did she say as to the quality of the article?

A. Why, whether it was a good article or not; whether it was good gold.

Q. Do you recall anything else that she said?

A. No, I don't know as I could hardly say anything else that was said.

Q. Can you recall what initials were on the ring?

Mr. Cole—He hasn't said there were any.

A. I put initials on the ring, but just to say what the initials were, I couldn't swear to that now, just what the exact initials were at the time.

Q. Did she ever bring any other ring to you and ask you about it besides that?

A. No, sir; not that I know of.

Mrs. William Simpkins, sworn.

Direct examination, by Mr. Fithian:

Q. Mrs. Simpkins, where do you live?

A. Vineland.

Q. At Vineland?

A. Yes, sir.

Q. How long you been living in Vineland?

A. I should judge about four weeks.

Q. And where did you live before that?

A. Minatola.

Q. And do you know Mrs. Buglio?

A. I do.

Q. Do you know her well?

A. Well, I think I do.

Q. Were you and she intimate?

A. We were.

Q. Do you recall a signet ring that she had?

A. I do.

Q. Did she ever show it to you?

A. She has.

Q. What, if anything, did she say to you about it?

Mr. Cole—I object on behalf of my client for the reasons already stated.

The Court—It will be received in evidence as against Mrs. Buglio, but is not to be regarded as evidence against the other defendant.

Q. What did she say to you about it?

A. She just simply said that she thought a good bit of the ring. She thought as much of that as she did her diamond ring.

Q. Do you know where it came from?

A. She said it came from Beck's.

Q. Do you know whether she had ever taken it back to Beck's?

A. I don't know about that.

Q. Did she tell you how much it cost?

Mr. Cole—Let the witness tell what was said, won't you please?

A. I think she told me that she found out afterwards that it cost three dollars.

Q. Do you know Elwood Dutton? Just a moment, were there any initials on this ring?

A. Yes.

Q. Whose were they?

A. I think they were her three initials.

Q. Do you know Elwood Dutton?

A. I do; Everett.

Q. Do you recall any conversation at your house between Elwood Dutton and Mrs. Buglio about a comb?

A. Yes, I do.

Q. What did Mrs. Buglio say about it?

A. She just simply said it was her comb; that she lost it when she was out driving.

Q. Do you recall anything else she said about that trip?

A. She simply said she lost the belt off her coat.

Q. And what else did she say?

A. And she said she sent Mr. Joe Labriola after it, and he got the belt, but he didn't get the comb.

Q. Did you ever have any conversation with her over the murder?

A. I did.

Q. Do you recall what it was?

A. Well, I don't know as I could recall all of it.

Q. Did you have any conversation with her with regard as to how John came by his death?

A. I did.

The Court—One moment. What is the nature of this? Is the answer a confession?

Mr. Fithian—Not at all your Honor.

The Court—I think that matter should be carefully guarded.

Mr. Fithian—It does not take the nature of a confession at all; perhaps of an admission, but not a confession.

Mr. Cole—I want to record my objection to this evidence on behalf of my client on the ground that it is incompetent, immaterial, irrelevant and highly improper. An admission or confession, if you please, cannot in any way affect my client, after prayer for a severance.

The Court—Of course, if it is proposed to prove confession, the evidence will not be received until the character of the confession appears, but the Court understands from the prosecution that this testimony is not in the nature of a confession.

Mr. Fithian—It is an admission, perhaps, but it is not a confession of guilt.

The Court—And we think that the testimony as we understand its purport, is admissible, as against Mrs. Buglio, but not as against the other defendant. Proceed.

Whereupon the defendants, by their counsel,

pray a bill of exceptions, which is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD,
P. J. [Seal.]

(Question repeated.)

A. I did.

Q. What did she say?

A. Well, she said first—

Q. Tell what the conversation was.

A. She said she didn't know, and I said, "Well, it is funny that they should mangle him up that way," and she said, "Well, he had got licked before he got murdered."

Q. What was the first of the conversation?

A. That I could not tell.

Q. Tell you who licked him?

A. No, sir; I didn't ask her.

Cross-examination, by Mr. Cole:

Q. How long have you been a friend of Mrs. Buglio's?

A. Well, for three or four years, I should judge.

Q. You have been a friend of her's, have you?

A. Yes, we have been neighbors, lived neighbors right across from one another.

Q. To whom did you first tell this story and give these statements that you are giving me now?

A. Frank Lore and Mr. Wilson, and the other one; I don't know his name.

Q. All detectives?

A. All detectives.

Q. They were the first people you told it to?

A. They were the first.

Q. When did you tell it?

A. Well, when they was hunting the case up.

Q. When was it?

A. I couldn't tell day or date.

Q. Where did you live then?

A. On West avenue, in minotola.

Q. Do you know how they come to your house?

A. No; I don't know as I do.

Q. What did they say to you when they came in?

A. Well, I won't be positive, but I think they asked me if I lost a pair of glasses. I am not positive what was the first.

Q. Had you lost a pair of glasses?

A. I had.

Q. Then what took place?

A. I couldn't tell.

Q. How did you come to tell this story?

A. Well, I couldn't tell that.

Q. How.

A. I couldn't tell.

Q. What do you mean by that?

A. I suppose simply they got to talking over matters, and they said that he had brought the glasses, and I said yes, I had lost a pair of glasses.

Q. How did the conversation turn upon this killing?

A. Well, I don't know how it come.

Q. How did you come to tell Mr. Lore, the dectective, what you were telling us?

A. I couldn't tell how I come to tell him?

Q. You mean to say that you don't recollect it?

A. That is what I mean. I mean I don't remember. I don't remember how I come to tell it, what we was talking on.

Q. Were they all three together, detectives, at the time you told it?

A. All three together.

Q. Where was she when she had this talk with you?

A. I was over to her house on her front porch.

Q. Went over to visit her, did you?

A. No; she had sent for me to come over, and I went down to see her.

Q. And when do you say that was?

A. I couldn't tell you what date it was or what day it was.

Q. Shortly after the killing?

A. Shortly after he was buried?

Q. Who first begun the discussion of his death?

A. Mrs. Buglio, of course. She was grieving over her loss and about her child.

Q. What did she say about that?

A. Well, she said she didn't know who could have done it, who could have been so cruel, with the children and her alone.

Q. What else did she say?

A. I don't know as she said anything else. She said she thought she would lose her mind.

Q. What else?

A. I guess that is all.

Q. Why didn't you tell that in answer to Mr. Fithian's question?

A. I suppose I didn't think of it.

Q. Didn't remember it? Was she crying about it?

A. Yes, sir; she was.

Q. How long were you there that day?

A. I should judge about an hour. I don't know, I didn't time myself.

Q. Talk about anything else?

A. That I couldn't say; I don't remember.

Q. Did you go in the house at all?

A. I did not.

Q. Stood on the porch the whole hour?

A. We stood on the porch.

Q. Talking most of the time?

A. Well, there was a gentleman came up and she was talking to him quite a while?

Q. Who was that?

A. I don't know who he was.

Q. Did you overhear that conversation?

A. I couldn't understand it. It was in Italian.

Q. You don't know who he was?

A. I do not.

Recess to 1:30.

Afternoon Session, 1:30 P. M.

Mrs. William Simkins, recalled.

Direct examination, by Mr. Fithian:

Q. Where did you live in Minatola?

A. On West avenue.

Q. How close to Central avenue?

A. Well, it isn't far off. I don't know just how close it is.

Q. Is that between John Buglio's house and the station?

A. I think it is; I don't know; I couldn't tell you; I think they lived on Central.

Q. Did you see John Buglio that afternoon?

A. I seen him that night.

Q. About what time?

A. Ten minutes of six, I think. I know the whistle blew when I was starting to the store.

Q. Which way was he going then?

A. He came in the store after a piece of tobacco.

Q. How was he dressed?

A. He had on a black overcoat and I think a black pair of pants and a light shirt and I don't know whether he had on a collar and necktie or not; I couldn't say.

Q. Notice his shoes at that time?

A. No; I didn't.

Q. Did you have any particular occasion to notice how he was dressed?

A. No; I did not.

Q. What made you take notice of him?

A. Well, I thought he looked a little nicer than what I had generally seen him look.

Re-cross examination, by Mr. Cole:

Q. Did you say you thought he looked nicer?

A. Yes, sir; for usually when I seen him he had his working clothes on.

Q. This night he did not have?
A. No, sir.
Q. You are sure about that?
A. I am sure.
Q. Well, you lived on West avenue?
A. Yes.
Q. Between what avenues?
A. Well, I don't think we lived between any. We lived right on the corner of West avenue.
Q. West avenue and what?
A. Why, next to Wheat road.
Q. You mean you lived on the corner of West avenue and Wheat road?
A. We lived the second house to the corner of West avenue and Wheat road.
Q. How far did you live from John Buglio's house?
A. Well, I couldn't tell how far it was.
Q. About?
A. I should judge about three squares.
Q. How far?
A. About two or three squares.
Q. Where do you understand John Buglio lived?
A. John Buglio lived up on the other avenue across from us.
Q. What avenue?
A. I don't know; I guess it is Central.
Q. How long have you lived in Minatola?
A. Three or four years; I don't know which; I think three years; I am positive three years.
Q. Have you any idea how many feet it was from the corner of Wheat road that you lived on West avenue?
A. I should judge about a hundred feet.
Q. And your idea is that John Buglio's house was three hundred feet from where you lived?
A. They lived up above. They didn't live to Wheat road.
Q. They lived toward the railroad station?
A. Yes.

Q. Now, what were you doing at the store that night?

A. I went up to get my groceries that night.

Q. Had you had your supper?

A. Yes, sir.

Q. What time did you leave the house?

A. I judge about two or three minutes of six, because I didn't get very far when the whistle blew.

Q. Where was that?

A. At the factory.

Q. What factory?

A. The glass factory.

Q. Do they blow a six o'clock whistle there?

A. Yes, sir.

Q. On Saturday nights?

A. Yes, sir.

Q. Sure about that?

A. Yes, sir.

Q. What time do they quit work there on Saturdays?

A. I guess the blowers and packers quit at four o'clock.

Q. Was Buglio in the store when you came in?

A. He came in after I did.

Q. How long had you been there?

A. I just went in and shut the door.

Q. How long was he there?

A. He just got his piece of tobacco and went right out.

Q. Where is this store?

A. Well, it is right down there by the Central railroad.

Q. On what avenue?

A. Well, I don't know the names of the avenues.

Q. Was it at the glass factory store?

A. Yes.

Q. That is across the tracks of the Pennsylvania Railroad, then, towards Landsville, isn't it?

A. Yes.

Q. Where were you when you heard the whistle blow?

A. Down on West avenue.

Q. Going towards the store?

A. Going towards the store.

Q. Have you any idea how far you were from the store when the whistle blew?

A. I was pretty near to the Catholic church.

Q. How far is that from the store?

A. Well, I couldn't tell.

Q. Is that on West avenue?

A. It is.

Q. What avenue did you come out off of West avenue?

A. We crossed the fields and went right across by Applegate's.

Q. Were you alone?

A. I were.

Q. What kind of tobacco did he get?

A. Chewing tobacco.

Q. Did you notice whether his face had been shaven?

A. I don't know; couldn't tell that.

Q. Don't remember that? 30

A. Couldn't tell.

Q. What did he have on, a hat or a cap?

A. I think he had on a stiff hat; I am not positive.

Q. And you didn't notice his shoes?

A. No, sir.

Q. Notice whether he had a collar on or not?

A. That I can't swear to.

Q. Did you notice whether he had a necktie on or any kind of neckwear? 30

A. No.

Q. What kind of a shirt had he on?

A. A light shirt.

Q. Do you mean a white shirt?

A. No.

Q. What kind of material?

A. I don't know; I didn't examine it.

Q. Were the outer garments, the coat, vest and pants of the same material?

A. I couldn't say that, because he had an overcoat on.

Q. An overcoat beside the ordinary coat?

A. I mean he had an overcat on over his other coat.

Q. And all the outer garments were dark in color?

A. I think they were; I am not sure of that.

Q. You are not sure of that?

A. I am sure his pants and overcoat was. His other clothes I am not sure.

Q. Do you mean that you are not sure that the vest and the coat that was under the overcoat were not his working clothes?

A. Yes, I am sure they were not.

Q. Why are you sure?

A. It looked to reason that he would put on his overcoat and dress that he worked in when he had on different other clothes.

Q. That is the way you reasoned it out?

A. Yes.

Q. Then your testimony in that respect is your conclusion?

A. My conclusion; it isn't the fact.

Q. Do you know which way he went?

A. I do not.

Q. Do you know from which way he came when he came in the store?

A. I do not.

Q. How do you know it was on December 22d?

A. Because I know I went to the store and I came home and went to bed with a toothache, and the next morning they said he was killed, and I said, "I'll never go to the store again alone at night."

Q. In other words, you relate the fact that you heard the next morning that he was dead to the fact that you had seen him in the store?

A. Yes, sir.

Q. Had you never seen Buglio dressed up before?

A. Sundays, I think.

Q. This suit of his, pants and this overcoat that you saw, had you seen him with them on before?

A. I don't know; I don't remember that.

Q. Did you know, Mrs. Simpkins, when the three gentlemen called at your house to talk with you about your glasses or spectacles that they were detectives?

A. I did.

Q. How did you know that?

A. Because I had heard people say they were.

Q. Did you know when they came there they were coming to get evidence from you concerning this killing?

A. I didn't know what they was coming for.

Victoria Buglio, called.

Mr. Cole—If your Honor please, the appearance of this witness indicates to my mind that there may be a grave question as to the admissibility of her evidence, and I think she ought to be examined as to her competency at side bar.

The Court—Why at side bar?

Mr. Cole—Well, if your Honor doesn't feel you can see the reason for that, I don't want to press it beyond the statement. Of course, I want the stenographer to take down the examination.

The Court—She may be examined, of course. Counsel will proceed with the examination.

By Mr. Fithian:

Q. Victoria, how old are you?

A. I will be eleven year old the 29th of December.

Q. Did you ever go to school?

A. Yes.

Q. Ever go to Sunday-school?

A. Yes, but I don't go any more.

Q. Do you know what it is when you come into the court-room here to testify, to be a witness?

A. Yes.

Q. Do you know what it means when you hold up your hand and swear the truth?

A. If you don't tell the truth you go to the bad man.

Q. What else would happen to you?

You would die.

By Mr. Cole:

Q. Victoria, do you know when you were born, what month and day of the month?

A. No.

Q. Do you know where you were born?

(No answer.)

Q. Have you been asked before to-day before right now, about your testifying in this case?

A. Yes.

Q. Who asked you? Who talked to you?

A. Mr. Fithian and you; Mr. Prosecutor.

Q. What I want to know is, Victoria, were you asked by anybody before to-day if you realized the nature or knew the nature of the testimony that you were going to give in this case and what effect it would have on you if you didn't tell the truth. Anybody ever ask you about that before to-day?

A. No; I wouldn't tell them.

Q. Weren't you asked before to-day as to what would become of you if you didn't tell the truth in this case?

A. Yes.

Q. Who asked you that?

A. Grandpop.

Q. When did he ask you that?

A. When we got the newspaper and we read that it said if I didn't tell the truth I would go in the prison.

Q. Who said that?

A. Grandpop.

Q. You say he read that out of the newspaper?

A. No; Jelotsky's boy read that.

Q. What did he read?

A. He read, when they wrote the case in the paper.

Q. What did he read?

A. If I wouldn't tell the truth I would go to prison.

Q. And you believed that, did you?

A. Yes.

Q. That if you didn't tell the truth you would go to prison. Is that the reason you say now that you will go to prison if you don't tell the truth? Is that the only reason you say it?

A. That is the only one I said.

Q. What paper was this that this boy read that out of?

A. I don't know which paper it was; they got it at Vineland.

Q. And this was at your Grandmother's house?

A. Yes.

Q. Did Mr. Fithian or Mr. Abbott or Mr. Lore or anybody else say to you before you came in here this morning that you were to say that if you didn't tell the truth in this case, you would go to the bad man? Who told you to say that?

A. Grandpop.

Q. When did Grandpop tell you to say that if you didn't tell the truth you would go to the bad place?

A. When did he say it?

Q. Yes.

A. I don't remember. It was at night. I don't remember when it was, but he said it.

Q. How did your Grandpop come to tell you that?

A. A boy read it to us, and then he said, he told Grandpop if you don't tell the truth, you will go to the prison.

Q. Who else was there besides Grandpop and this boy?

A. Grandma and Grandpop, and Mike Groochin, and Gross, George, and cousin Juliananci, and Grandpop and Maggie and me and Lucy.

Q. Was it night or day, Victoria?

A. Night.

Q. That was the first you knew was it, that you would go to the bad place if you didn't tell the truth?

A. Yes.

Q. You didn't know that before?

(No answer.)

Q. You don't remember how it was they came to tell you that?

A. No.

Q. Was your papa dead then?

A. Yes.

Q. Papa was dead then?

A. Yes.

Q. And had they told you that you were going to be a witness against your mamma?

A. No they didn't say that.

Q. Weren't they talking about your being a witness against your mamma?

A. No.

Q. And your Uncle Joe?

A. No.

Q. Had you told them about the case then?

A. No; Frank Lore came there and Uncle Joe came there and they said, "You better tell the truth."

Q. And then this man read the paper, that if you didn't tell the truth, you would go to the bad place?

A. Yes.

Q. How long has it been Victoria, since you have been to Sunday-school?

A. It is quite a while since I have been going.

Q. Where was your Sunday-school?

A. To Minatola Church.

Q. What do you learn in Sunday-school?

A. Learn everything.

Q. Can you tell us some of the things that you learn there?

A. Prayers.

Q. What else?

A. Everything the priest used to tell us; I don't remember what he used to say.

Q. Can't you tell us how long it has been since you have been to Sunday-school?

A. No.

Mr. Cole—That is all, if your Honor please. I don't think she has shown herself competent.

By Mr. Fithian:

Q. Did you testify before the Grand Jury in this case?

Mr. Cole—How is that competent?

Mr. Fithian—I won't press it unless the Court wants to hear more evidence.

The Court—The witness may be sworn.

Victoria Buglio, sworn.

Mr. Cole—May it please your Honor, I would like to ask for an exception, if this is a matter to which there may be an exception.

Mr. Repetto—And your Honor will grant me the same.

The Court—Yes.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD,
P. J. [Seal]

Direct examination, by Mr. Fithian:

Q. Look at these gentlemen here. What is your name?

A. Victoria.

Q. And what is your papa's name?

A. John Buglio.

Q. What is your mamma's name?

A. Raphael Buglio.

Q. Where do you live?

A. Minatolo, New Jersey.

Q. Have you any brother and sisters?

A. I got three sisters, me and a brother.

Q. And what are your sisters' names?

A. Rosie, Maggie and Noonsie, Tillie.

Q. How old is Noonsie?

A. He is six years old the 25th of last month.

Q. And how old is Tillie?

A. She will be four years old the 19th of April.

Q. And how old is Maggie?

A. I don't know how old she is.

Q. Is she older than Noonsie or younger?

A. She is older than Noonsie.

Q. Is she older or younger than you?

A. I am older than her.

Q. And how old is Rosie?

A. She is the oldest one of all.

Q. Can she hear or talk?

A. No, she can't hear very well.

Q. Can she talk?

A. Not very well either.

Q. Now, do you remember the night that your papa was killed?

A. Yes.

Q. Who lived with you besides your brothers and sisters?

A. Uncle Mike.

Q. Uncle Mike Labriola?

A. Yes.

Q. He is your mamma's brother?

A. Yes.

Q. Who lived in the other part of the house with you?

A. Old man Gross and old lady Gross and Mary Gross and Tony Gross.

Q. And who lived in the little house just back of your house?

A. Salvatore Diativo, Mary Diativo. She has a little boy named Willie and a little girl named Angelina.

Q. You know Joseph Labriola?

A. Yes.

Q. Ever come to your house?

A. Yes.

Q. Now, on this night that your papa was killed, where was Tillie?

A. To Grandmom's.

Q. And where did your grandma live?

A. At the Wheat road.

Q. Where was Rosie?

A. At Grandma's too.

Q. Did you have supper that night?

A. Yes.

Q. What time did you have supper?

A. Somewhere's about six o'clock.

Q. Who was there at supper when you had your supper?

A. Uncle Mike, Pop and Mom and me and Maggie and Noonsie.

Q. And what did you have for supper?

A. Macaroni.

Q. And after supper, what did you do?

A. We washed the dishes, me and Maggie.

Q. What did you do with the macaroni?

A. Kept them.

Q. Why did you keep the macaroni?

A. We washed the dishes, and I asked mamma, "What shall I do with the macaroni?" And she says, "Leave them there; when Joe comes he will eat them." She put them on the shelf.

Q. Why did she tell you to put the macaroni on the shelf?

A. No; I laid them on the table. She put them on the shelf.

Q. What did she tell you to do, then?

A. She told me to wash the dishes.

Q. What did you say she said about Joe?

A. She said, "Leave them here; when Joe comes, he will eat them."

Q. What Joe?

A. Joe Labriola.

Q. What did mamma do then, after you had your supper and you and Maggie were washing the dishes?

A. Mamma said, "John, I am going to go and get Tillie," and he said, "Go ahead."

Q. Did your mamma go from the house?

A. Yes.

Q. Where did your papa go?

A. He was left home with us?

Q. Now, did your mamma come home again?

A. Yes.

Q. About how long before she came home again?

A. I don't know.

Q. Was it a long while or short while?

A. It wasn't very long.

Q. Who came home with her?

A. Uncle Joe and Tillie.

Q. Who do you mean by Uncle Joe?

A. Uncle Joe Labriola.

Q. And when Uncle Joe came home with your mamma and Tillie, what did Uncle Joe do first?

A. Mamma said, "Do you want to eat?" He said, "All right." He said, What?" "Macaroni."

Q. What did he do first when he came in?

A. Mamma said, "Joe, do you want to eat?" He says, "Yes, what have you got?" And mamma said, "Macaroni," and he said, "All right."

Q. Where was your papa then?

A. He was laying down on the settee.

Q. What happened after Uncle Joe ate the macaroni?

A. They wanted to go to the hall.

Q. Who wanted to go to the hall?

A. Uncle Joe said, "Will you go to the hall?" And he said, "No, three times."

Q. Who said no?

A. Pop.

Q. What did Uncle Joe do?

A. Then Uncle Joe said, "Why don't you let her come?" He said, "No, I don't want her to come." And Uncle Joe said then, Pop said, "Is this your house, or is it mine or yours?" And then he didn't say nothing and then they started to quarrel, that they wanted to go to the hall, and then Uncle Joe hit papa.

Q. Where was your papa when Uncle Joe hit him?

A. On the settee.

Q. What did Uncle Joe hit him with at that time?

A. With his fist.

Q. Whereabouts on your papa did he hit him?

Q. I don't know; I didn't see where he hit him.

Q. And what happened after he had hit your papa with his fist?

A. Papa turned around and called for help, and they jumped and knocked him over.

Q. Who knocked him over?

A. All of them did, and knocked him over and made him fall down in the big kitchen.

Q. You mean in the summer kitchen?

A. Yes.

Q. And what did they strike him with there?

A. With a stick, a big club.

Q. Do you know who had the club?

A. Uncle Joe had the club.

Q. Where did it come from?

A. I don't know.

Q. Had you ever seen it about the house before?

A. No; we used to buy our woods ready sawed.

Q. Does this look anything like the club that he hit him with there at the house?

A. Yes.

Q. Was that the kind of wood that you had at the house, or wasn't it?

A. We never used to have that kind at home.

Q. What kind did you have?

A. Sawed and short and already made.

Q. Where was your papa when Uncle Joe hit him with the club?

A. It was in the kitchen.

Q. What kitchen?

A. In the summer kitchen.

Q. And was your papa standing up or lying down when he hit him?

A. Standing up.

Q. What did he do when Uncle Joe hit him with the club?

A. He didn't say nothing. He tried to run out and he hit him with the stick on his head, and he tried to run out and couldn't run and they took him and dragged him outside in the yard.

Q. Who did that?

A. The whole three of them.

Q. Who do you mean by them?

A. Uncle Mike, Mamma and Joe Labriola.

Q. And when they took him out in the yard, where did they take him?

A. They took him near the fence.

Q. What fence do you mean?

A. Martinelli's fence.

Q. Have you been over there since you went away from home, since your mamma was arrested?

A. Yes.

Q. Did you see where the boards were taken from the fence, had been sawed off?

A. No. Me and Uncle Joe and Aunt, mamma and Rosie and Josepine and his two little daughters, we went there one time with his two daughters.

Q. Did you see where the boards were sawed off the wire fence?

A. Yes.

Q. How near to that place did they take your papa?

A. I don't know that. They hit him with that stick again.

Q. Where was he when they hit him with that stick the second time?

A. In the summer kitchen.

Q. The last time?

A. In the yard.

Q. Whereabouts in the yard?

A. Near the fence.

Q. Was he standing up or lying down the last time?

A. Lying down and then he hollered.

Q. Who hit him then?

A. Uncle Joe.

Q. Had your papa made any noise?

A. Yes, he hollered.

Q. What did he say?

A. He hollored out not very loud, and then we heard him, and then Uncle Joe said, "Mike you go and get the wheelbarrow, you go and get the wheelbarrow," and Mike don't want to go, and Uncle said, "You had better get the wheelbarrow or else I will put you on top of your brother-in-law." So they put him on the wheelbarrow and took him away.

Q. Who put him on the wheelbarrow?

A. I don't know who put him on the wheelbarrow.

Q. Who had hold of it?

A. Uncle Joe and mamma and Mike had another handle.

Q. And what way did they take him, towards Central avenue, or the other way?

A. The back part.

Q. The back part of the house?

A. Yes.

Q. What did your papa say when he was trying to get out of the room where you were eating? Did you hear what he said?

A. No; I didn't hear what he said.

Q. Where did he fall down the first time?

A. The first time, in the little kitchen.

Q. How did he get from the little kitchen out?

A. They grabbed him out, the whole three of them.

Q. What did they do to him after they got him outside?

A. They hit him again and Uncle Joe said, "Mike go and get the wheelbarrow," and he didn't want to go, and he said, "I will put you on top of your brother-in-law;" and so he got the wheel-barrow and they put him on, and Uncle Mike took hold of one hand, and mamma one hand, and they took him away.

Q. Did you hear your mamma say anything out in the yard?

A. Said, "Ain't you dead yet?"

Q. Who did she say that to?

A. Papa.

Q. Where was he then?

A. Laying out in the yard.

Q. What else did she say?

A. A bad word.

Q. Just tell us all she said.

A. That is all I heard her say.

Q. What was this bad word she said? You must say it.

A. She said, "Son of a bitch."

Q. Where were you when they dragged your father from the summer kitchen into the yard?

A. Why we were out in the other room.

Q. In the kitchen where you eat?

A. Yes.

Q. And after he was out in the yard, where did you go?

A. I went out in the little summer kitchen near the door.

Q. Could you see from there?

A. Yes.

Q. Did you stay there all the time?

A. No.

Q. Why not?

A. They chased me in.

Q. Who chased you in?

A. Mamma.

Q. What did she say to you?

A. She said, "Go in, you get your cold." I was barefooted.

Q. Now when they put your papa on the wheelbarrow and started toward the back part of the house with him, did they come back again?

A. Yes; but not Uncle Joe and Mike, just mamma.

Q. How long before your mamma came back?

A. Not very long. I don't know what time it was, but not very long.

Q. Was she gone any time at all?

A. How do you mean?

Q. Did she go away from the house when she had your papa on the wheelbarrow there? Did they leave?

A. Yes; they put him on the wheelbarrow and took him away.

Q. And she came back after a while?

A. Yes.

Q. Where were you when she came back?

A. In the house.

Q. Whereabouts in the house?

A. Laying down.

Q. Do you know whether or not you were asleep when she came back?

A. I was asleep, but I heard the noise when she come down.

Q. Do you know whether she had the wheelbarrow with her?

A. I don't know if she had the wheelbarrow with her.

Q. Where were you asleep?

A. Back of the stove.

Q. Downstairs or upstairs?

A. Downstairs.

Q. Where was Maggie?

A. She was downstairs with me.

Q. And Noonsie?

A. He was downstairs with me, too.

Q. And Tillie?

A. She was down, too. None of us was upstairs.

Q. Had you papa been out of the house that night after he came home?

A. No.

Q. Do you know whether he went anywhere at all?

A. I don't remember.

Q. Did you see the Lodge books on the table?

A. Yes.

Q. Who put them there?

A. Mamma.

Q. When did she put them there?

A. When she came in.

Q. After she came back from the wheelbarrow?

A. When she came back.

Q. She put the books on the table?

A. She took his fountain pen and his ink, and put them on the table with the Society book.

Q. After your mamma came back, where did you go then, Victoria?

A. She sent us to bed.

Q. And where were you when they came back?

A. We was sleeping then.

Q. Did your mamma say anything about this to you when she came back?

A. No.

Q. Why didn't you tell about it right away, Victoria?

Mr. Cole—There is no evidence she didn't.

Mr. Fithian—Well, I won't press the question.

Q. What, if anything, did your mamma say to you about telling anyone about this?

A. She said she would kill me.

Cross-examination, by Mr. Cole.

Q. Victoria, how old do you say you are?

A. I will be eleven years old.

Q. Wait a moment. How old do you say Maggie is?

A. I don't know how old she is. She is in her ninth year old.

Q. Do you know when she was born?

A. No. I think grandpop knows when she was born. She was born to grandpop's house.

Q. Where have you been living since your mamma has been in jail?

A. I was living with grandpop, and I don't know who told Uncle Joe, and I had to go and live with Uncle Joe.

Q. Uncle Joe is your father's brother?

A. Yes.

Q. What time did your father come home that night?

A. He used to come home early—about four o'clock on that night.

Q. About four o'clock?

A. Yes.

Q. What did he do after he came in, before he had his supper?

A. He went to old man Gross' house to get some tobacco.

Q. In Gross' house?

A. Yes.

Q. Right next door?

A. Yes.

Q. In the same building you lived in?

A. Yes.

Q. What time did you eat supper?

A. Somewhere round about six o'clock.

Q. Well, now, all the time that your father was in the house, in what part of the house was he?

A. In our house, where we used to live.

Q. I know, but what part—in the kitchen?

A. Yes, near the summer kitchen.

Q. Was he in the kitchen—where?

A. He was in the kitchen, where the stove was, all the time that mamma was getting supper.

A. Yes.

Q. Mamma got the supper, did she?

A. Yes.

Q. Where were you all the time after papa came home until you ate your supper?

A. We was was playing.

Q. Well, were you in the kitchen?

A. No, outdoors.

Q. Who else was outdoors?

A. Was me, Maggie and Noonsie, and Tony Gross.

Q. Do you know what time it was when you ate supper?

A. Somewhere around six o'clock, I said.

Q. Why do you think it was six o'clock?

A. I looked around the watch, and it was about six o'clock.

Q. Looked at the watch?

A. Yes.

Q. Whose watch?

A. Our watch.

Q. Do you mean the clock?

A. Yes.

Q. Where was the clock?

A. Up on the shelf.

Q. And what time was it when you ate supper?

A. Somewhere around six o'clock.

Q. Well, about how near to six was it?

A. I don't know; it was somewhere around six o'clock I know. I remember—I can only tell the watch when it strikes.

Q. How is that?

A. I can only tell the watch when it strikes.

Q. You can't tell the time?

A. No, only when it strikes.

Q. You remember the other day, don't you, when I asked you something about telling the time?

A. Yes; I only can tell when it strikes.

Q. You told me the other day you couldn't tell the time, didn't you?

A. I don't remember.

Q. Don't remember that? Remember me showing you my watch, and asking you to tell me what time it was, and you said you couldn't do it?

A. Yes, when I was at Minatola.

Q. What time was it when mamma came back from grandpop's with Tillie?

A. I don't know what time it was.

Q. Didn't you say it was seven o'clock?

A. No; that was the time they began to quarrel.

Q. How is that?

A. They came home at seven o'clock, I mean.

Q. You say they came home seven o'clock?

A. Yes.

Q. That is, mamma came home with Tillie and Uncle Joe at seven o'clock?

A. Yes.

Q. Well, you said the quarrel began at seven o'clock; which is correct?

A. It wasn't right seven o'clock when mamma came in—not right.

Q. What do you mean by "right?"

A. It wasn't right seven o'clock.

Q. You mean it wasn't seven yet. Was Uncle Joe with mamma?

A. Yes.

Q. How long was it after Uncle Joe came in before the quarrel began?

A. Ever since that night, he never came in any more.

Q. No, I mean, dear, how long had Uncle Joe been in the house that night before the quarrel began between your father and Uncle Joe?

A. I don't know. I don't remember how many days before.

Q. No, you don't understand my question. The question is, Uncle Joe came, you say, with mamma and Tillie?

A. Yes.

Q. And after which there was a quarrel. How much time was there between the time that Uncle Joe came in with your mamma and Tillie and when the quarrel began?

A. Not very; right after, when he ate.

Q. Had the table been cleared then?

A. Yes.

Q. Do you know where Uncle Joe got that stick?

A. No.

Q. You were behind the stove, weren't you, when the quarrel began?

A. Yes, me and Noonsie and Maggie and Tillie, too, was there.

Q. How many of you were behind the stove?

A. Four of us.

Q. Had you been asleep?

A. Yes.

Q. What was it that woke you up?

A. That was the quarreling.

Q. You heard the quarreling; that was what woke you up, wasn't it?

A. Yes.

Q. How long had you been asleep when the quarrel awakened you?

A. Not very long.

Q. Where was papa after mamma went to grandpop's for Tillie?

A. He was on the settee yet.

Q. Papa changed his clothes when he came home from work?

A. No, he had his working clothes on.

Q. Had his working clothes on when Uncle Joe struck him?

A. Yes.

Q. Had he changed his shoes?

A. I don't remember.

Q. Remember whether he had shaved or not?

A. He does shave every Saturday night.

Q. But had he shaved this night, when Uncle Joe came in?

A. I don't remember.

Q. Now, dear, can't you tell us how long it was from the time your mamma went out in the yard following your papa until she came back?

A. No. We went in and then they bring him away and then we went to sleep again.

Q. What time was it when you woke up and your mamma came back?

A. I don't know; I didn't look.

Q. What time did you go to bed?

A. That night I don't remember. I didn't look at the watch and we went right straight upstairs.

Q. You said it was seven o'clock when Uncle Joe struck papa?

A. Yes.

Q. How do you fix that? How do you know it was seven o'clock?

A. Seven o'clock striked.

Q. You heard the clock strike, did you?

A. Yes.

Q. Well, dear, when I asked you the other day how you knew, you said you couldn't tell.

A. What? The clock.

Q. I asked you the other day how you knew it was seven o'clock when the quarrel began between your Uncle Joe and papa, and didn't you tell me you didn't know it was seven o'clock?

A. Yes, seven o'clock striked that night.

Q. My question is whether you didn't tell me the other day that you didn't know why you thought it was seven o'clock?

A. Papa said too it was seven o'clock, and then seven o'clock just striked.

Q. What?

A. Papa said it was seven o'clock and seven o'clock just striked.

Q. How did papa come to talk about the time?

A. I don't know.

Q. You didn't tell me the other day that papa said anything about the time.

A. You didn't ask me.

Q. Now, dear, haven't you heard Maggie say that since I talked with you?

A. No.

Q. Didn't you hear Maggie say that the reason she knew it was seven o'clock was because papa said it was seven?

A. No, she didn't told me.

Q. Who did tell you then?

A. Nobody, pop said it.

Q. You don't know how pop come to say it was seven o'clock?

A. No.

Q. Was that before the quarrel began or while they were quarreling?

A. They wasn't quarreling yet.

Q. How did papa come to say it was seven o'clock?

A. I don't know.

Q. Where was he when he said that?

A. He was sitting on the settee yet.

Q. Do you know where your Uncle Joe Labriola lived?

A. Yes.

Q. Ever go to his house?

A. Yes, I went to his mother's house too.

Q. Went to his mother's house?

A. Yes.

Q. What would you go there for?

A. I used to go with pop sometimes.

Q. Did your father go to Uncle Joe's house?

A. Yes.

Q. And he went to Uncle Joe's mother's house, did he, too?

A. Yes.

Q. Did you go there often?

A. No.

Q. How often did you go, dear?

A. We usen't to go there very often, every time; we only used to go there sometimes.

Q. But when you went there, you went to see Uncle Joe's father and Uuncle Joe's mother?

A. Yes, mamma too and all of us went.

Q. Do you know whether your father was over to see Uncle Joe Labriola just the night before this trouble happened?

A. No, he didn't, he said he was going to go and see them.

Q. He didn't say he was?

A. No.

Q. What time did Uncle Mike come home that night?

A. When they bring him in too.

Q. Uncle Mike had been home before that, hadn't he?

A. No, when they bring pop home, that was the time he came home too.

Q. And Uncle Mike had been home to supper before that?

A. Yes.

Q. What time was it Uncle Mike came the first time?

A. When he came from work?

Q. Yes.

A. He came home with pop.

Q. He came home with pop?

A. Yes.

Q. Where did he go when he came home?

A. He shaved his face and after supper he went and dressed.

Q. After supper he went to dress?

A. Yes.

Q. He slept upstairs, did he?

A. Yes, all of us slept downstairs; some of us slept downstairs. We only had the parlor room and our kitchen and our summer kitchen, and the other three rooms old Gross had.

Q. Which way did your mamma and Tillie come in when they came from your grandpop's?

A. Not through the front door; through the other door where we used to live in.

Q. You mean the kitchen door?

A. Where was the stove?

Q. They came in the kitchen door?

A. Yes.

Q. The front way or the back way?

A. The front way.

Q. Do you know how it happened that Uncle Mike came downstairs when this quarrel was going on?

A. He heard them holler that they wanted to go the hall; they began to quarrel and he run downstairs.

Q. Uncle Mike run downstairs?

A. Yes.

Q. When Uncle Mike got downstairs in the kitchen, where was papa then?

A. He was in the kitchen where you mean then.

By Mr. Fithian:

Q. The out kitchen, you mean?

By Mr. Cole:

Q. You mean the kitchen where the stove was?

A. Yes.

Q. Uncle Mike came down and when he came down your papa was yet in the kitchen?

A. Yes.

Q. And mamma was still there?

A. Yes.

Q. And Uncle Joe was still there?

A. And Uncle Mike was still there too.

Q. What?

A. Uncle Mike was still there too.

Q. Then the quarrel you say woke you up?

A. Yes.

Q. Then what did you do?

A. Me? Nothing.

Q. Didn't you come from behind the stove?

A. Yes, I come from behind the stove and then went and laid down again, and that was when papa was going to run out.

Q. How is that?

A. Papa was going to run out and I got up off again.

Q. What was it that Uncle Joe struck papa with?

A. With the club and fist.

Q. Both at the same time?

A. No, not the same time.

Q. Which fist did he strike papa with?

A. I don't know; he struck him with his fist; I don't know which one.

Q. What hand did he have the club in?

A. He didn't have the club when he struck him. I don't know where he got the club. I saw the club in his hands, when papa tried to run out Uncle Joe gave him a punch in the back and made him fall outside in the brick—

Q. Wait a moment. You say now that Uncle Joe struck your father with his fist while your father was in the kitchen; is that right?

A. Yes.

Q. And Uncle Joe also struck your father with the club when your father was in the kitchen; is that right?

A. Yes.

Q. What part of the body did he strike your father?

A. On the head.

Q. What part of the head, do you remember?

A. I don't remember which side it was.

Q. Then your papa went out in the out kitchen?

A. Yes, wanted to try and run out and then—

Mr. Fithian—Let her finish, Mr. Cole.

A. And then he wanted to try and run out, and he gave him a punch in the back and made him fall in the brick kitchen, and then he couldn't get up any more, and they took and hit him with a stick again.

Q. Wait a minute. You are answering more than my question. You say they gave him a punch in the back. Who did that?

A. Uncle Joe.

Q. What did he punch him with?

A. With his fist.

Q. Did you follow them to the kitchen door?

A. No.

Q. And when they got in this out kitchen, what happened?

A. Then Uncle Joe hit him with that stick again.

Q. Was your father standing up or down when he struck him again?

A. He had fallen down.

Q. Uncle Joe hit him again?

A. Yes.

Q. Where was Uncle Mike and mamma when Uncle Joe hit him again?

A. Over there with him too.

Q. You mean in the out kitchen?

A. Yes.

Q. What were they doing?

A. Nothing; they was helping.

Q. Helping what?

A. They was helping Uncle Joe.

Q. Did they have any club?

A. Who?

Q. Your mamma or Uncle Mike.

A. No, only then they had.

Q. Who had that club?

A. Uncle Joe.

Q. Now your father you say got out in the yard.

A. They dragged him out. He didn't walk out.

Q. Did you see somebody strike your father out in the yard?

A. I seen Uncle Joe strike him.

Q. With the club again?

A. Yes.

Q. Still on the head?

A. Yes.

Q. Father standing up or lying down when that happened?

A. Then they dragged him out, and he fell down, and they hit him with the club on his head, too; and then Uncle Joe said, "Mike, go and get the wheel-

barrow"; and Mike go and gets the wheelbarrow, and Mike stood still and didn't want to go, and Joe says, "If you don't go and get the wheelbarrow, I will put you on top of your brother-in-law," and so he did, and they got hold of the handle, and mamma the other handle, and Uncle Mike the other handle, and then they took him away and chased me in the house, and then I went asleep again, and then I slammed the door and shut it. I just found the door and shut it, and then I went to lay down again when they had bring him away, and then mamma came back and woke me up. I got woked when she come back, and then she said, "Go to bed." And so we did. We went to bed, and that was all I see, and didn't hear no more.

Q. Do you remember the day that your mamma went away from the house when the detective came to your house?

A. No.

Q. Do you mean that you don't remember the day that the detective came to your house?

A. No, I don't remember which day it was.

Q. How?

A. I don't remember which day it was.

Q. You remember the detective came to the house?

A. Yes, I remember; it was Sam Park and Frank Lore and Mr. Lintner and a colored man and another man with eyeglasses on; I don't know him.

Q. Where was your mamma when these people came to the house?

A. I don't know where she had went. I didn't see where she went.

Q. How did these people get in the house?

A. The doors was all locked. She locked us in, and they took the window out and come in.

Q. These people took the window out and came in, did they?

Q. Had you ever met the detective before? Did you know him?

A. No, I didn't know they was detectives. I seen they was mens. I didn't know what they was.

Q. Did you know why they were coming in the house?

A. No.

Q. Did they tell you why they were coming in?

A. No, they didn't tell me nothing.

Q. Did they tell you?

A. No.

Q. What part of the house did they come in?

A. They come in the kitchen where the stove is, you mean.

Q. Go through the window of the kitchen where the stove was?

A. No, they go through the summer kitchen.

Q. Then it was the out kitchen door that was locked?

A. Yes, all of them was locked.

Q. How did they get in the kitchen where the stove was?

A. They took the window out the summer kitchen, and they took the window out. They took the window out and come in and opened the door and come right in the kitchen, and in the kitchen was a stove.

Q. Who was in the house then, dear?

A. Me and Noonsie and Tillie. Maggie was to Philadelphia, and Rosie to Grandma's.

Q. Where were the people who lived in the other part of the house?

A. They were in their house.

Q. They were in your house?

A. No, not in our house. I don't remember whether they were in their house. They went to Louie's brother, the old man, I think.

Q. Weren't you alone in that house when they came in?

A. And Noonsie.

Q. What did these men say to you when they came in the house?

A. They said, "Why don't you tell us?"

Q. What did they say to you?

A. They said, "Why don't you tell us?" and then they asked Tillie, and didn't ask me no more.

Q. Did they tell you what they wanted you to tell?

A. No.

Q. What did they say to Tillie?

Mr. Fithian—Is that proper cross-examination of this witness, your Honor? It seems to me it is not, what someone else may have said to this little girl's sister. If it is not going to be too long, I shan't object to it.

Mr. Cole—It is very important.

Mr. Fithian—I will withdraw the objection.

(Question repeated.)

A. They bring me in the parlor room, and then brought Sam Parks here, was there, too, with me.

Q. What did they say to you?

A. They didn't tell me nothing. They asked Noonsie and Tillie. I don't know what they asked them. He brought me in the parlor alone. Frank Lore did.

Q. What did he say to you?

A. Who? Frank Lore?

Q. Yes.

A. He didn't tell me nothing; then Sam Parks was there, too, looking at all the pictures.

Q. Well, did you tell them anything that day?

A. Who, Sam Parks?

Q. Anybody.

A. No. And then Mr.—

Q. You said you didn't tell them anything that day?

A. No.

Q. When they told you to tell that, tell us just what they said?

A. I told Frank Lore I was at Grandma's then, and I told Frank Lore what I knowed.

Q. What did Frank Lore say?

A. He said he was going to bring me to Mays Landing to Mr. Abbott.

Q. Where was he going to bring you?

A. He was going to examine me.

Q. Did he tell you why?

A. Tell me why?

Q. Did he tell you why he was going to examine you?

A. I told him everything, and Uncle Joe come too.

Q. You mean—

A. Uncle Joe Buglio.

Q. Uncle Joe come down to the house too?

A. He asked me who was that man, and I told him who he was.

Q. Did they give you any money? Give you any candy?

A. Gave me a subpœna.

Q. Has he given you any money?

A. No.

Q. Has he given you any candy?

A. Didn't give me nothing.

Q. You mean to say that Mr. Lore hasn't been giving you money?

A. No.

Q. Didn't he give you some money the other day at the station at Minatola, about two weeks ago, ten cents?

A. No; he gave me a nickel.

Mr. Fithian—I think Mr. Abbot bought her an orange, too.

Mr. Repetto—It is very unfair to inject any remarks on the part of the prosecution.

Q. Had Mr. Lore ever given you any money before this day, when I saw him give you money?

A. No.

Q. Sure about that?

A. Yes.

Q. Was it on that day, that is, the day that they came in the house that you told Frank Lore what you knew?

A. No; it was—he hadn't come up to the house, and I didn't tell anything.

Q. How is that?

A. He didn't come up to the house and I didn't tell anything.

Q. Who did you first tell this to, that you tell now?

A. Frank Lore.

Q. Where were you when you told him?

A. Grandma's.

Q. How long had you been to Grandma's?

A. I don't know; I don't remember how long it was.

Q. Hadn't you told the story to anyone before you told it to Mr. Lore?

A. Didn't tell it to nobody.

Q. Who told you to tell Mr. Lore?

A. Grandpop and Aunt Lena and everybody.

Q. Did they say why?

A. Yes; they said, "If you don't tell it, they will bring you to Mays Landing."

Q. What kind of a story did they tell you to tell?

A. Told me to tell what I knew.

Q. Did you understand they meant by that they were going to lock you up at Mays Landing?

A. Yes.

Q. If you didn't tell.

A. I knew it. As soon as I heard "Mays Landing." I told them.

Q. Did you ever tell anybody that if you told this story you are telling now, that that would get your mamma home to you?

A. No.

Q. Didn't you tell Mrs. Da Grossa, the lady who has been in the jail here the other day that if you told the story about seeing these things like you are telling here, that your mamma would come home to you?

A. No; I didn't went to her. It was Maggie went. Frank Lore brang her.

Q. Frank Lore brought her?

A. Brang her, yes. Frank Lore bring Maggie, didn't brang me.

Q. Did you ever hear Frank Lore tell Maggie, or did he tell you that if you told this story to the jury in court, that your mamma would come home to you? Did he ever tell you what effect this story would have on your mother, if you told it?

A. No; she said she would be left in.

Q. He told you that, did he?

A. Who? Grandpop said it.

Q. Grandpop said what?

A. Said, "Tell it, or else your mother will be left in."

Q. What did you understand your Grandpop meant by that, that if you didn't tell this story, mamma would be left in?

A. She would be left in jail.

Q. If you didn't tell the story.

A. Yes.

Q. Well, did he tell you what would happen to her if you did tell the story?

A. No.

Q. Did you know what would happen to your mother if you told this story?

A. No.

Q. Nobody told you that?

(No answer.)

Q. Have they?

A. No.

Q. Was your papa in the kitchen from the time he came home from work until Uncle Joe quarreled with him, except the time he went to get the tobacco from Gross?

A. Yes.

Q. All the time in the kitchen was he?

A. Not all the time.

Q. Where was he when he wasn't in the kitchen?

A. He used to go outside, too.

Q. Outside where?

A. Outside, and used to go and tend to his potatoes.

Q. No; I am talking about this night when the

quarrel was. Was your papa in the kitchen all the time?

A. No; he used to go in the summer kitchen to wash his face.

Q. Where else?

A. Didn't go nowhere else. He used to go outside, that is all.

Q. You mean in the back yard?

A. Yes; used to go in the front porch.

Q. Did you see Uncle Joe come in the front door that night?

A. Yes.

Q. Did he have this club in his hand?

A. I didn't see it.

Q. You didn't see it?

A. No.

Q. Did he have anything in his hand?

A. I didn't see it.

Q. Who was carrying Tillie?

A. She come in all alone.

Q. Was she walking or someone carrying her?

A. Walking.

Q. Where were you when Uncle Joe came in?

A. In the house.

Q. What part of the house?

A. It was a stove there.

Q. Were you asleep?

A. No.

Q. Do you remember your mamma calling you when you were upstairs, when she came in that night with Tillie, to come down and get Tillie?

A. I don't remember.

Q. Well, will you say that Mamma didn't call you to come downstairs and take Tillie?

A. I don't remember.

Q. And you don't know how much time there was after mamma came in with Tillie before Uncle Joe struck your father?

A. No; I don't remember.

Q. How long was your mamma gone after supper to get Tillie?

A. Not very long; about five minutes after she went after Tillie.

Q. About five minutes?

A. Yes.

Q. Do you mean she was only gone five minutes?

A. No right after her supper.

Q. But you don't know how long she was gone?

A. No.

Q. How did your mamma come to go for Tillie?

A. Papa wanted her.

Q. Papa wanted your mamma to go get Tillie?

A. Yes; couldn't stay without her, he said.

Q. Couldn't stay without Tillie?

A. Yes.

Q. What else did he say?

A. That is all, and then she went after her.

By Mr. Fithian:

Q. Victoria, are you tired?

A. Yes.

Q. Do you want to take a rest?

A. No; I want to go out.

The Court—We will take recess for three minutes.

Q. Victoria, you said that you heard your mamma say something to papa when he was out in the yard; is that so?

A. Yes.

Q. Now, was that before or after papa was put in the wheelbarrow?

A. They hadn't put him in the wheelbarrow yet.

Q. Was your mamma standing by when she said that?

A. Yes.

Q. Now, what do you say she said?

A. I said it once.

Q. You said it once. Look at me, Victoria, and tell me again, please, what your mamma said?

A. She said "son of a bitch."

Q. What else?

A. "Ain't you dead yet?"

Q. What did your mamma do when she said that?

A. I don't know what she done; I don't remember.

Q. You saw her, didn't you?

A. No.

Q. After your mamma said that did she come back into the house right away?

A. I don't remember; I don't remember whether she did come in the house or not.

Q. Had all the things been cleared off the table when this happened?

A. Yes.

Q. Everything?

A. Yes.

Q. Sure about that?

A. Yes.

Q. Wasn't any bowl on the table?

A. We used to hold them on the table all the time.

Q. I say there wasn't any bowl on the table when your mamma went out? Was the bowl on the table at this time?

A. Yes.

Q. Then the table wasn't cleared altogether, was it?

A. No; we used to keep all those things on the table.

Q. What things were on the table after supper?

A. We had put the napkins on there and the bowl, forks, spoons and knives and the bottle of the pepper and salt, and the glasses and a bowl to put the sugar into, and used to hold all those things on the table; that is all we used to hold on the table.

Q. That is the bowl you are talking about?

A. Yes.

Q. Did you set the table after you had had supper?

A. I don't remember if I set it or not.

Q. Who did set it if you did not?

A. Maggie used to set it, I know.

Q. Did she set it this night?

A. I don't remember.

Q. Where did your mamma go right away after you heard her ask papa if he was dead, or wasn't dead?

A. I don't know what you mean?

Q. Where did your mamma go?

A. She was in the summer kitchen.

Q. When?

A. When she said, "Ain't you dead yet?"

Q. Oh, she wasn't out in the yard?

A. Yes, he was, but she wasn't.

Q. Where do you say mamma was when she said, "Ain't you dead yet?" Was she in the summer kitchen?

A. Yes.

Q. Where was papa?

A. He was outside in the yard.

Q. Had your mamma been out in the yard yet when she said that?

A. No; not yet.

Q. How far was papa away from mamma when you heard her say that?

A. She was in the kitchen and he was near the fence.

Q. And your mamma wanted to know and asked while she was in the summer kitchen, and while your father was out in the yard, asked whether he was dead yet?

A. Yes.

Q. Did she talk in Italian or in English?

A. She talked American.

Q. Does she talk American all the time; that is, that night?

A. Not every time.

Q. Did your papa talk American?

A. They talked in both languages.

Q. That night, I mean?

A. Yes.

Q. How did Uncle Joe talk?

A. He used to talk the both language, too.

Q. When they quarreled in what language were they talking?

A. They were using half Italian and half American.

Q. Do you understand Italian?

A. Yes.

Q. Talked sometimes in Italian and sometimes in American?

A. Yes.

Q. You said you were barefooted when your mother told you to go in the house? What time had you taken off your shoes that night?

A. Used to take them off right away and not go outside.

Q. You mean right after supper?

A. Yes.

Q. Now, Victoria, you think a moment and see if you can't think that when your mother came home with Tillie that you were upstairs and mamma told you to come down and get Tille?

A. I can't think of it; I don't remember it.

Q. Can you remember how long you had been asleep behind the stove when the quarrel woke you?

A. No; not very long.

Q. How long would you say?

A. About ten or fifteen minutes.

Q. Were your other little sisters asleep, too?

A. All of us were but Rosie; she was to grandma's.

Q. Was there room enough behind the stove for you all to go to sleep there?

A. Yes.

Q. Had you been in the habit of going to sleep behind the stove?

A. No.

Q. How did you happen to go to sleep behind the stove that night?

A. Maggie and Rosie and Tillie laid down and I didn't want to go up stairs alone and I laid down there too.

Q. Victoria, has anybody talked to you about the time that these things happened since I talked to you up at Minatola? Have you talked with anybody about this since I talked with you at Minatola?

A. No.

Q. Nobody at all? Didn't you talk with Uncle Joe?

A. I talked with him. That is all. He wouldn't let me talk with the rest.

Q. Can't you look around toward me a little bit? When did you talk with Uncle Joe about the time since you talked with me?

A. He used to tell me, "Don't forget what you know; don't forget."

Q. When did he tell you that?

A. Used to tell me all the time.

Q. Not to forget what you know?

A. Yes.

Q. Has he told you what you know?

A. No.

Q. Did he ever talk to you about this matter before? Hasn't this case been talked of in the house by Uncle Joe right along? Hasn't he gone over this case?

A. He used to talk with grandpop all the time.

Q. What did you hear Uncle Joe and grandpapa say about this case?

A. I don't remember. It wasn't last Sunday, I don't believe, they talked about it.

Q. When they did talk there what did you hear them say?

A. I don't remember what they said. I remember they used to talk all the time about the case.

Q. What about it? Don't you remember?

A. No.

Q. Did they talk about it just like you are telling it?

A. No, they used to talk it different altogether.

Q. What different did they talk.

Mr. Fithian—Objected to as not cross-examination. It seems to me what this little girl heard somebody else say would not be evidence.

The Court—We think, Mr. Cole, that while strictly speaking it may not be cross-examination, we are not inclined at this time to limit you.

(Question repeated.)

A. I don't know. I don't know what different they used to talk.

Q. Victoria, would you mind telling me why you don't like to look at me while I ask you questions; have you any reason for it? Why don't you look at me? Why don't you look me in the face while I am asking you questions? I'm not going to hurt you. Has anybody been giving you money since your mamma left the house?

A. No.

Q. Anybody been giving you candy?

The Court—Look at Mr. Cole, Victoria. He won't hurt you.

Q. Now, Victoria, I ask you since your mamma left the house and you have been living with Uncle Joe has he or anyone else been giving you money or candy?

A. No, I buy it myself. I used to buy it myself.

Q. Where did you get the money?

A. I got—Frank give me five cents and grandpop gave me another one and I got twenty cents at the station.

Q. Frank, who gave you money?

A. Grandpop's boy, Frank Raymond, mamma's brother.

Q. Why did Uncle Joe keep telling you that you must not forget what you knew about this case?

A. I don't know. He never told me.

Q. Who did he tell?

A. I don't know.

Q. Didn't you say a little while ago that Uncle Joe

Buglio kept telling you that you mustn't forget what you knew about this case?

A. Yes.

Q. Why did he tell you that?

A. Because he didn't want me to forget it.

Q. Did you say you had been living with Uncle Joe all the time?

A. Not all the time. I lived about a month with grandpop. I wasn't living there when Aunt Lena was there.

Q. Can't you tell the jury some of the things that Uncle Joe Buglio and grandpapa talked about when they were talking about this case?

A. No. We used to go out and play.

Q. You said you heard them talking about this case. What did they say?

A. Grandpop says, "What is the case doing?" Uncle Joe used to say, "Nothing."

Q. Victoria, do you remember telling me the other day at Minatola that the reason you knew it was seven o'clock when papa and Uncle Joe quarrelled was because you looked at the clock and saw it was seven o'clock?

A. My papa said it was seven o'clock too.

Q. Do you remember telling me at Minatola the other day that the reason you knew it was seven o'clock when the quarrel was was because you looked up at the clock and saw it was seven o'clock?

A. Yes.

Q. Well, was that the truth, that the reason you knew it was seven o'clock was because you looked at the clock and saw it was seven?

A. Yes, and papa said it was seven o'clock too.

Q. I want to know whether that is the reason you knew it was seven o'clock, because you saw it by the clock?

A. And then it strikes, too. I can't tell by minutes, but only tell by when it strikes.

Q. Was Uncle Joe in the room at Minatola when I

was talking to you the other day? Do you remember seeing Uncle Joe there?

A. I don't remember it.

Q. Uncle Joe Buglio?

A. I don't remember if I seen him yet.

Q. After you left the hall where I talked with you, did you and Uncle Joe talk about this case again?

A. No.

Q. Did Uncle Joe talk to you about it?

A. No.

Q. Did Uncle Joe say anything to you about the time it happened?

A. No.

Q. You haven't talked with anybody about the case since the day you talked to me about it?

A. No, Uncle Joe won't let me talk with them.

Q. You say Uncle Joe won't let you talk with him. I thought you said he was telling you all the time that you must not forget?

A. He used to.

Q. Now when was it, Victoria, that your mamma told you she would kill you?

A. It was home.

Q. Well, when was it, after your father had been killed?

A. I don't know what you mean.

Q. You said, you told Mr. Fithian that your mamma told you she would kill you. When was that?

A. I don't remember which day it was.

Q. How long after papa was dead?

A. Not very long.

Q. Well, how many days?

A. About a week.

Q. How did she come to tell you that?

A. I don't know.

Q. Is that all she said to you? Just said she would kill you?

A. Yes.

Q. Was that before your mamma was arrested?

A. She wasn't arrested yet.

Q. And mamma simply said to you that she would kill you? Did she tell you why?

A. No.

Q. Didn't give any reason?

A. No.

Q. At that time, that is, at the time your mamma told you she would kill you, had you told anybody about what you saw that night?

A. No.

Q. Hadn't told anybody then?

A. No.

Q. Victoria, did you say that the bowl that was on the table was a sugar bowl?

A. Yes.

Q. Did it have any sugar in it?

A. Yes.

Q. Anything else in it besides sugar?

A. That is all it was, only sugar.

Q. Nothing else in the bowl besides sugar?

A. That is all; only but the sugar.

Q. Victoria, did you see Uncle Mike doing anything down stairs that night after he had his supper?

A. No.

Q. Did you see him fixing his skates?

A. That was another Saturday night.

Q. I mean this night. Did you see him fixing his skates this night?

A. I don't remember.

Q. Did he have his skates with him when he came down stairs?

A. Used to have his skates down stairs in the parlor room.

Q. I ask you whether he had his skates with him in his hands or on his back when he came down in the kitchen that night?

A. No. Me and Noonsie would take the skates.

Re-direct examination, by Mr. Fithian:

Q. Victoria, when Mr. Cole was up there at Minatola talking to you, did he take out his watch?

A. Yes.

Q. Did you tell him what time it was? Did you tell Mr. Cole up there that day that you could tell when it was almost the even hour, but you couldn't tell just the minutes?

A. Yes.

Q. Mr. Cole was showing you his watch at the time, was he not?

A. Yes.

Q. After your papa was killed, where did you stay?

A. I stayed home.

Q. Did you go away from home?

A. No.

Q. Why not?

A. When mamma comes from somewheres, I don't know where she went, that is the time they broke the window and came in.

Q. I know, but why did you stay home after your papa was killed?

A. They said I had to stay.

Objected to as not re-direct examination.

A. It is where we used to stay.

Q. Did your papa strike Uncle Joe?

A. No.

Q. Did he try to strike him? Did he strike your mamma?

A. Didn't strike none of them.

Q. What did your papa do?

A. Nothing.

Q. Where was your papa going when he was hit?

A. He was going out doors, holloaing for help.

Q. Victoria, how did the officers get in the house that day?

A. They got into the window.

Q. Why couldn't they get in the door?

A. The doors were all locked.

Q. Who locked them?

A. I don't know.

Q. How long had they been locked?

A. Ever since mamma went away.

Q. Do you know whether your mamma locked them or not?

A. I don't know who locked them.

Q. Had they been locked ever since your mother went away that day?

A. Yes.

Maggie Buglio, called.

By Mr. Fithian:

Q. Maggie, how old are you?

A. Going on nine years old.

Q. Where do you live?

A. Wheat road.

Q. Ever go to school?

A. Yes.

Q. Ever go to Sunday-school?

A. No.

Q. Do you know what it is when you are sworn as a witness in a case?

A. Yes.

Q. What is it?

A. To tell the truth.

Q. What happens to you if you don't tell the truth?

A. Go up to hell.

Q. What would happen to you if you didn't tell the truth, Maggie?

A. Go up to hell.

Q. Anything else happen to you?

A. I don't know.

Q. If you were sworn as a witness here would you tell the truth?

A. Yes.

By Mr. Repetto:

Q. Maggie, have you had any talks with anybody as to what would become of you if you didn't tell the truth?

A. No.

Q. Who told you that you would go up to hell if you didn't tell the truth?

A. Nobody.

Q. How do you know that you would go up to hell?

A. I always knew it.

Q. Did grandfather or Uncle Joe Buglio have any talks with you about being a witness here?

A. Yes.

Q. What did they say to you?

A. They told me to say the truth, too.

Q. What else did they say to you?

A. They said, "If you don't tell the truth you will be left in jail."

Q. Was that the first time that you knew that if you didn't tell the truth that you would be left in jail?

A. No.

Q. Did you know it before?

A. Yes.

Q. When did you first know that you would be left in jail if you didn't tell the truth?

A. I know when grandpop told me.

Q. That is the first time? When was the first time that you did know that you would go up to hell if you didn't tell the truth? Who is in hell, do you know?

A. The bad mans.

Q. What would they do with you if they got you there?

A. I don't know.

Q. You have never been to Sunday-school at all, Maggie?

A. Sometimes.

Q. What did you learn in Sunday-school?

A. I say nothing.

Q. Who else is there beside the bad man in this world?

A. I don't know.

By Mr. Cole:

Q. Maggie, has anybody taught you about telling the truth, and what will happen to you if you didn't?

A. Grandpop did.

Q. When did he do that?

A. He told me when I come from Philadelphia.

Q. Since your papa has been dead?

A. Yes.

Q. Talking with you about this case, was he? Was grandpop talking to you about this case?

A. Yes.

Q. Did he tell you you were going to be a witness in this case?

A. Yes.

Q. Did you know that you were going to be asked to-day what would happen to you if you didn't tell the truth?

A. Yes.

Q. Who told you you were going to be asked that?

A. Nobody told me.

Q. How did you know it?

A. I know—grandpop told me.

Q. When did grandpop tell you that they were going to ask you to-day in this case what would happen to you if you didn't tell the truth?

A. Grandpop told me.

Q. When was it grandpop told you that?

A. When I came from Philadelphia.

Q. Anybody else tell you besides grandpapa?

A. No.

Q. Who were by, present, when grandpapa told you that?

A. Nobody.

Q. Did he tell it to you in Italian or American?

A. Italian.

Q. Just tell us what grandpapa said to you then?

A. He told me to say the truth, or else I would be left in jail.

Q. He told you to tell the truth or you would be left in jail?

A. Yes.

Q. Have you ever been in jail?

A. Never.

Q. Did you know what a jail was? Where did you ever see a jail?

A. Back there.

Q. Before you saw this jail, had you ever seen a jail before?

A. No.

Q. Your grandpapa told you that before you saw this jail, didn't he, and you didn't know what a jail was when grandpapa told you, did you, dear?

Mr. Cole—I submit that this witness is not competent.

The Court—We think the witness has shown herself to be qualified. She may be sworn. If an exception is allowable you may have one.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

[L.S.] THOMAS W. TRENCHARD, *P. J.*

(Witness sworn.)

Direct examination, by Mr. Fithian:

Q. What is your name?

A. Maggie Buglio.

Q. How old are you, Maggie?

A. Going on nine years old.

Q. What was your father's name?

A. John Buglio.

Q. What was your mamma's name?

A. Raphael Buglio.

Q. Have you any brothers and sisters?

A. Yes.

Q. What are their names?

A. Rosie, Tillie and Noonsie.

Q. How old is Rosie?

A. I don't know.

Q. Who is the youngest?

A. Tillie.

Q. Did Rosie live home with you?

A. She was up to grandpop's.

Q. Who else lived with you besides your brothers and sisters, and your mamma and papa?

A. Uncle Mike.

Q. Mike what?

A. Raymond.

Q. Who is he? Is he your mamma's brother or your papa's brother?

A. Mamma's.

Q. Do you recall the night that your papa was killed?

A. Yes.

Q. Well, Maggie, what time did you have your supper that night, do you know?

A. No.

Q. Who was there at supper, when you had your first supper?

A. Papa and mamma, and Uncle Joe, and me, and Noonsie, and Victoria.

Q. When you had your first supper was Uncle Joe there?

Objected to as leading.

Q. What did you have for supper that night?

A. The macaroni.

Q. What did you do after supper?

A. Washed the dishes.

Q. Anybody help you?

A. Victor did.

Q. What did your mamma do?

A. Sitting on a chair.

Q. Did she stay in the house or go out?

A. Went out to get Tillie.

Q. Where was your papa when your mamma went out to get Tillie?

A. On the settee.

Q. Did your mamma come back?

A. Yes.

Q. How long was she gone?

A. It was six o'clock when she went.

Q. Do you know when she came back?

A. No.

Q. Do you know who came back with her?

A. Uncle Joe and Tillie did.

Q. Who do you mean by Uncle Joe?

A. Joe Labriola.

Q. Where were you when Uncle Joe and Tillie and mamma came back?

A. Me and Victor was playing school.

Q. What did Uncle Joe do—what happened when Uncle Joe came in the house? What did he do the first thing?

A. Ate the macaroni.

Q. Where was papa then?

A. On the settee.

Q. Then what happened?

A. They got in a quarrel about a dance.

Q. What was said by Uncle Joe about that?

Mr. Cole—I think this witness ought to be allowed first to tell her story. Seems to me that these questions are suggestive, and it is of tremendous importance, it seems to me, to first get the witness' mind on the subject.

Question allowed. Question repeated.

The Court—The Court will suggest that the last question may possibly be leading; we suggest that it be reframed.

Q. Just tell us what happened when they got into a quarrel about the dance; just tell me about it.

A. Uncle Joe hit him with a club. Gave him a punch first, and he went over the steps of the summer kitchen, and he got up and run and they jumped on him and hit him with a club.

Q. Who hit him with a club?

A. Uncle Joe.

Q. Where was your papa when Uncle Joe hit him the first time?

A. In the kitchen.

Q. What was your papa doing?

A. Nothing.

Q. Did your papa hit Uncle Joe?

A. No.

Q. Did he try to hit him?

A. No.

Q. What was said about going to the dance?

A. Uncle Joe said that mamma had to go to dance to-night. Papa said no, three times, and he said no, three times, and then Uncle Joe said, "If you don't let her come to the ball to-night, I'll kill you." Then papa got up and said, "Are you bossing my house?" and Uncle Joe took him and gave him a punch, and he went over the steps in the summer kitchen, and papa got up, and they jumped on him.

Q. Who jumped on him?

A. Mamma and Uncle Joe?

Q. Then what happened?

A. Then papa got up and then Uncle Joe hit him with a club.

Q. Where did Uncle Joe get this club from?

A. Up at his house.

Q. How do you know that he got it up to his house?

A. I seen it when he had it, and he put it back of the wood box.

Q. When he came in with your mother, you mean?

A. Yes.

Q. What, if anything, did your papa say when he was going out of the house? Did you hear your papa say anything after you went out?

A. No.

Q. Hear mamma say anything?

A. Yes.

Q. What did you hear her say?

A. She said a bad word.

Q. What was it?

A. Something like son of a b.

Q. What else did she say?

A. Nothing.

Q. What was the bad word?

A. Something like son of a b.

Q. Son of a b.?

A. Yes.

Q. What happened after your papa got out in the yard?

A. Uncle Joe hit him with a club, and Uncle Joe told Uncle Mike two times to go and get the wheelbarrow, and then Uncle Mike said "No," and Uncle Joe said, "If you don't, I have done one; I will do two."

Q. What did Uncle Mike do then?

A. Uncle Mike went and took the wheelbarrow.

Q. What happened then? Just tell us what you saw.

A. They put him on the wheelbarrow and took him away.

Q. Which way did they take him?

A. I don't know.

Q. Do you know whether they took him the front way or the back way?

A. Back way.

Mr. Cole—She has said she don't know.

The Court—I think that by inadvertence, doubtless, the question was suggested. But you may proceed, as there is nothing pending.

Q. Who took him away?

A. Mamma and Uncle Joe and Uncle Mike.

Q. Who came back afterwards? Did anybody come back?

A. Nobody but only mamma.

Q. Where were you when mamma came back?

A. In the kitchen.

Q. Mamma have anything in her hands?

A. Wheelbarrow.

Q. What did she do with the wheelbarrow?

A. She took a bucket and threw some water on it.

Q. Then what did she do with it?

A. She washed it, and wouldn't keep it.

Q. Where did she put it?

A. In the barn.

Q. Have anything with her when she came into the house?

A. A knife.

Q. What did she do with the knife?

A. Put it under the carpet.

Q. What sort of a knife was it?

A. A knife about that big (indicating).

Q. Where was Victoria when she came home?

A. She was sleeping.

Q. Victoria was sleeping?

A. Yes.

Q. And where was Noonsie?

A. He was sleeping, too.

Q. Were you asleep?

A. No.

Q. Did mamma do anything with the knife when she brought it in the house?

A. She put it under the carpet, oil cloth.

Q. Whereabouts? What part of the house?

A. Near the door.

Q. Which room?

A. In the kitchen.

Q. Which kitchen?

A. With the settee.

Q. Where you ate?

A. Yes.

Q. Where the stove is?

A. Yes.

Q. Were you out in the summer kitchen at all yourself?

A. No. When they took him away, mamma sent us in the house.

Q. Where were you when mamma sent you in the house?

A. In the summer kitchen door.

Q. Is that the door that goes out doors or the door that goes into the other kitchen, the door that goes into the back yard?

A. Yes.

Q. Did you see any blood there that night?

A. I see some in the summer kitchen.

Q. What became of it, do you know?

A. Mamma wiped it up with a blue dress.

Q. Do you know whether that is the kind of a dress she used to wipe it up with? (Showing dress to witness.)

A. That is the kind.

Q. What did your mamma do with the dress?

A. She went and buried it in the garden.

(Dress marked *Exhibit 8* for identification.)

Q. Where was this dress?

A. Hanging back of the door.

Q. What did you do after mamma came home, after she had put away the wheelbarrow?

A. I was in the hall peeping what she was doing.

Q. Why were you peeping?

A. I wanted to see what it was she was doing.

Q. Did you see any books that night?

A. Yes, she took out two society books, and papa's fountain pen and his ink.

Q. When did she do that?

A. She done it when she cleaned in the summer kitchen.

Q. From where?

A. In the summer kitchen.

Q. When did she do it? Was it before or after she had gone away with the wheelbarrow?

A. When she came.

Q. When she came back?

A. Yes.

Cross-examination, by Mr. Repetto:

Q. Maggie, what time did mamma go for Tillie?

A. Six o'clock.

Q. How do you know it was six o'clock?

A. Papa said it.

Q. Papa said it was six o'clock.

A. Yes.

Q. When did mamma come back?

A. I don't know.

Q. Was it very long?

A. As soon as she put on Tillie's shoes and coat.

Q. What is that?

A. As soon as she put on Tillie's shoes and coat.

Q. Where did she have to go for Tillie?

A. Down to Grandpop's house.

Q. Do you know what time it was that mamma came back, dear?

A. No.

Q. Now, when mamma came back, what did Tillie do?

A. Nothing. Mamma sent her upstairs.

Q. Did mamma call for Victoria and tell her to come down and take the baby upstairs?

A. No.

Q. Did papa kiss Tillie when she came in?

A. Yes.

Q. Then where did Tillie go after that?

A. She went and got warm back of the stove.

Q. Where was Uncle Mike when mamma came in?

A. He was upstairs, dressing himself, getting ready to go to the ball.

Q. And you say papa and Uncle Joe quarreled about a ball or dance, didn't they?

A. Yes.

Q. How did that quarrel start?

A. As soon as Uncle Joe got done eating the macaroni.

Q. Who started the talk first?

A. Uncle Joe.

Q. What did he say?

A. He said that mamma had to go to the ball, three times. Papa said no three times. Uncle Joe said, "If you don't let her go to the ball I'll kill you." Papa said, "Are you boss in my house?" And Uncle Joe gave him a punch and made him fall over the steps.

Q. How do you know that ~~Uncle~~ Joe said it three times? Papa

A. He said three times.

Q. How do you know? Did you count the times?

A. No.

Q. How do you know it was three times?

A. Victor counted.

Q. So Victoria told you that, papa said it three times?

A. Yes.

Q. When did Victoria tell you that papa said it three times?

A. When Uncle Joe gave papa the punch, and made him go over the steps in the summer kitchen.

Q. Then when Papa said no three times, what did Uncle Joe do?

A. He took the club.

Q. Where was the club?

A. Back of the wood box.

Q. What did he do with the club then?

A. Hit papa with it

Q. Did he hit papa with the club first?

A. No.

Q. What did he hit him with first?

A. Punch.

Q. Where did he hit him?

A. I don't know.

Q. Where was papa when Uncle Joe hit him with his fist?

A. In the summer kitchen.

Q. In the summer kitchen, where the stove is?

A. No, where we wash our dishes.

Q. Is that where the stove is?

A. No.

Q. Or is that where the bricks are?

A. Bricks.

Q. And then Uncle Joe struck papa the first time in that little place?

A. Yes.

Q. He struck him with his fist then, did he?

A. Yes.

Q. And then what did papa do?

A. Got up and run and falled down again.

Q. Where did papa run to?

A. To the fence.

Q. And then papa fell down there?

A. Yes.

Q. And then what did Uncle Joe do?

A. Hit him with the club.

Q. Is that the first time that Uncle Joe struck papa when papa was near the fence, with the club?

A. No; the second time.

Q. Where did papa hit Uncle Joe the first time with the club?

Objected to.

Q. Where did Uncle Joe hit papa the first time with the club?

A. Near the fence.

Q. Is that the first time?

A. Yes.

Q. Sure about that, dear?

A. Yes.

Q. Where was Uncle Mike when papa was near the fence?

A. Upstairs dressing himself.

Q. When did Uncle Mike come down stairs?

A. Uncle Joe told him to go and get the wheelbarrow two times, and Uncle Mike said no two times.

Q. Was Uncle Mike upstairs when Uncle Joe told him?

A. No.

Q. When did Uncle Mike come downstairs?

A. When he got done dressing himself.

Q. Was that after Uncle Joe had struck papa in the head by the fence?

A. Yes.

Q. Then Uncle Mike came down stairs, didn't he?

A. Yes.

Q. Then Uncle Joe said what to him?

A. "Go get the wheelbarrow," two times, and Uncle Mike said no two times.

Q. Did he say, "Go get the wheelbarrow two times," or did he say, "Go get the wheelbarrow; go get the wheelbarrow?"

A. He said, "Go get the wheelbarrow; go get the wheelbarrow."

Q. What did Uncle Joe say to Uncle Mike?

A. He said, "If you don't go, I have done one; I will do two."

Q. Then what did Uncle Joe do?

A. Uncle Joe and mamma and Uncle Mike put papa on the wheelbarrow.

Q. Did you see them do it?

A. Yes.

Q. How did they put papa on the wheelbarrow?

A. Two had hold of his feet and another from here, the back.

Q. Who had hold of his feet?

A. I don't know; I didn't see them.

Q. Why couldn't you see them?

A. I turned around. I told Tillie to shut up.

Q. You told Tillie to shut up?

A. Yes.

Q. And you didn't see them put papa on the wheelbarrow, did you?

A. No.

Q. After they had papa on the wheelbarrow, what did Uncle Joe and Uncle Mike and mamma do?

A. Took him away.

Q. Where did they take him, do you know?

A. No.

Q. Then what did you do when they took papa away?

A. Mamma sent us in the house.

Q. Did you go in the house?

A. Yes.

Q. Where did you go—what part?

A. Near the stove.

Q. Did you go to sleep then?

A. No.

Q. Did mamma come back that night?

A. Yes.

Q. How long after did mamma come back?

A. I don't know.

Q. Was it very long?

A. I don't know.

Q. Then when mamma came back, what did you do?

A. I was in the hall peeping to see what she was doing.

Q. How did you get in the hall?

A. She sent us up to bed then.

Q. When she came back she sent you to bed?

A. Yes.

Q. Didn't your mamma send you to bed right after supper?

A. No.

Q. Did you have your shoes on or off?

A. On.

Q. You had your shoes on after supper?

A. Yes.

Q. You are sure about that, are you?

A. Yes.

Q. Now, have you spoken to anybody about this case?

A. Yes.

Q. Who have you spoken to about it?

A. I have spoken to Uncle Mike and Grandpop.

Q. And who else?

A. Nobody.

Q. Didn't Mr. Lore have you over here at the jail last Saturday to Mrs. Gross'?

A. Yes.

Q. And didn't you talk to Mrs. Gross about this in Italian?

A. Yes.

Q. Where did you get the money that fell on the cell floor there?

A. Uncle Joe gave it to me.

Q. What Uncle Joe?

A. Uncle Joe Buglio.

Q. Why did he give it to you?

A. Down at the station.

Q. Why?

A. To pay my fare.

Q. Was Uncle Joe with you?

A. Yes.

Q. He came from Minatola to May's Landing?

A. Yes.

Q. And you say that he gave you this money to pay your fare?

A. Yes.

Q. Did he say anything else at the time he gave you this money?

A. No.

Q. Has Uncle Joe given you any other money?

A. No.

Q. Did anybody else give you any money?

A. Yes.

Q. Didn't somebody give you some money at Minatola station?

A. No.

Q. Didn't Mr. Lore and Uncle Joe give you five cents each?

A. No, Uncle Joe just give me ten cents.

Q. Now, what kind of a dress was it that mamma took to wipe up the blood?

A. Blue.

Q. Was it a large or a small dress?

A. Large dress.

Q. A ladies' dress or a little child's dress?

A. A ladies' dress.

Q. And are you quite sure that she wiped up the blood?

A. Yes.

Q. Where did this blood come from?

A. That is the blood when Uncle Joe gave papa a punch.

Q. Did you see the blood coming out?

A. Yes.

Q. Where did the blood come from?

A. The blood when Uncle Joe gave him the punch.

Q. Where did Uncle Joe hit him?

A. I don't know; I didn't see.

Q. Have you and Victoria spoken about this case?

A. No.

Q. When did Victoria tell you that she counted three times that papa said no? When was that, dear, do you remember?

A. When Uncle Joe said mamma had to go to the ball.

Q. What Uncle Joe?

A. Labriola.

Q. And what else did Victoria tell you then?

A. Nothing else.

Q. Well, how did she come to tell you that papa said no three times?

A. She counted them.

Q. Did you ask her or did she tell you?

A. She told me.

Q. What did she say?

A. She said, "Maggie, do you know how many times Uncle Joe told papa mamma had to go to the ball?" And I said, "How many?" And she said three times.

Q. That is all you know about the number of times that papa said no?

A. Yes.

Q. What else did Victoria tell you then?

A. Nothing.

Q. Did she tell you the number of times that Uncle Mike said no when Uncle Joe asked him about the wheelbarrow?

A. No, I heard Uncle Joe.

Q. Dear, where have you been living since mamma has been away from home?

A. Up at Grandpop's.

Q. Did you hear anybody up there talk about this case?

A. Yes.

Q. Who did you hear talk there?

A. I always heard Grandpop or Grandmom.

Q. Who?

A. Grandpop or Grandmom.

Q. Did they tell the story the same that you are telling it now?

A. Yes.

Q. Just like that?

A. Yes.

Q. Did you tell them first?

A. Yes,

Q. And then they afterwards spoke about it?

A. Yes.

Q. Now, who else did you speak to about this case? Did you tell this story to anybody else?

A. No.

Q. Did you tell Mr. Lore the story?

A. Yes.

Q. What did he say?

A. I don't remember.

Q. Did he say anything about not forgetting the story? Do you understand the question, dear? Who else did you talk to about this case?

Q. Now, when you came over to the jail here, you spoke to Mrs. Gross, didn't you—that is the old lady Gross?

A. Yes.

Q. What did you say to her, do you remember? Why did you go to Mrs. Gross?

A. Frank Lore brought me.

Q. Why did he bring you there? Why did Mr. Lore bring you there?

A. I don't know.

Q. Did you speak to Mrs. Gross in English or Italian?

A. Italian.

Q. How do you know that the two books which mamma took were society books?

A. I seen them. She took them first before she sent us to bed.

Q. And when was that, dear? When did mamma take the books?

A. Before she sent us to bed.

Q. When did she send you to bed?

A. After she took the society books.

Q. How soon after super did she take the society books—right away?

A. As soon as she came home.

Q. Come home with Tillie, or the other time?

Q. When she come with the wheelbarrow.

Q. Did you see mamma come with the wheelbarrow?

A. Yes.

Q. Which way did mamma come?

A. Back way.

Q. When did you first see mamma with the wheelbarrow?

A. When she was in the summer kitchen.

Q. How near was she to the summer kitchen when she came back when you first saw her?

A. Right near the door.

Q. And where was Victoria then?

A. She was sleeping.

Q. Now, dear, where were you when mamma came back with the wheelbarrow? What room were you in?

A. We were in the kitchen with the stove.

Q. Was that door closed?

A. No.

Q. Didn't Victoria close the door when mamma left?

A. Yes.

Q. And didn't that door stay closed untill mamma came in?

A. Yes.

Q. So the door was closed when mamma came back with the wheelbarrow?

A. When Victoria heard the noise she opened the door.

Q. What noise? Did you hear any noise?

A. No, Victoria heard.

Q. Do you know what noise it was Victoria heard?

A. It was a wheelbarrow.

Q. How do you know?

A. A wheelbarrow always makes noise.

Q. Did Victoria tell you that she had a wheelbarrow?

A. No.

Q. Now, after Victoria opened the door, where were you?

A. I was on the settee.

Q. You had your back toward the summer kitchen?

A. Yes.

Q. So you couldn't have seen without getting up to look around, could you, dear?

A. No.

Q. That is, you couldn't have seen around into the yard, could you? Do you understand my question? The settee was like this (illustrating), and in back of you was the summer kitchen?

A. Yes.

Q. And you were sitting on the settee facing the front of the house?

A. Yes.

Q. Where was Victoria?

A. She was by the stove.

Q. When she heard the noise, what did you do?

A. Nothing; I got up from the settee.

Q. And where did you go?

A. I was near the door, standing.

Mr. Fithian—If the jury can't hear this witness, I wish they would speak up.

Q. Do you say near the stove or near the door?

A. Near the door.

Q. And that is the door that leads out in the summer kitchen, where the bricks are?

A. Yes.

Q. The place where the bricks are is down low, isn't it?

A. Yes.

Q. And where you were, you were standing up high?

A. Yes.

Q. And where did mamma have the wheelbarrow when you saw her?

A. Near the door of the summer kitchen.

Q. Outside summer kitchen?

A. Yes.

Q. Where did mamma get the water from to wash the wheelbarrow?

A. Got it in the summer kitchen.

Q. Where did mamma get the ashes?

A. Took it out of the stove in the morning.

Q. She washed the wheelbarrow first, and then she didn't throw the ashes on then, did she, dear?

A. We took the ashes out of the stove in the morning.

Q. What morning do you mean?

A. The Saturday morning.

A. You took the ashes out of the stove on Saturday morning?

A. Yes.

Q. Where did you put the ashes?

A. Outdoors.

Q. Where outdoors?

A. Outdoors, out of the summer kitchen.

Q. Way out beyond the summer kitchen?

A. Yes.

Q. How far down—near the barn?

A. No, right near the door.

Q. Right near the door of the summer kitchen?

A. Yes.

Q. And what did mamma do after she threw the water and the ashes on the wheelbarrow?

A. She took and threw the ashes out of the wheelbarrow.

Q. Then what did she do?

A. She went and took her blue dress, and went in the summer kitchen.

Q. How is that?

A. She washed the wheelbarrow, and then she put the wheelbarrow in the barn, and then she took her blue dress and went in the summer kitchen with it.

Q. Was there very much blood on the floor of the summer kitchen that mamma wiped up?

A. No.

Q. Not very much?

A. No.

Q. Do you remember what time you had supper this night?

A. It was five o'clock.

Q. Who was there for supper?

A. Was mamma and Uncle Mike, and pop and me, and Victoria and Rosie.

Q. Was Uncle Joe there?

A. No.

Q. What time did papa come in that day, do you remember?

A. No.

Q. When papa came in, where did papa go—what room?

A. He went upstairs to his room, and put on his new suit and clean shirt.

Q. Do you remember when Mr. Cole had you at

Minatola, that you told Mr. Cole that papa hadn't changed his clothes that day. Do you remember that?

A. He wanted to put on his clean undershirt.

Q. Don't you remember that you told Mr. Cole that papa didn't change his clothes that day?

A. He did—his black clothes.

Q. Did he have his working clothes on? Is that what you mean?

A. Yes.

Q. What did papa do? Did he eat supper when he come downstairs?

A. Yes.

Q. Now, did papa go out after he came in?

A. No.

Q. He stayed in the house all the time?

A. Yes.

Q. Until Uncle Joe came in and had the quarrel about the dance?

A. Yes.

Q. Is that right, dear?

A. Yes.

Q. Are you quite sure that papa didn't change his clothes when he came home that day?

A. Yes.

Q. You are sure about that?

Q. Do you remember papa going into Mr. Gross' place?

A. He went just once for his tobacco.

Q. When was that—before or after supper?

A. He was, after supper.

Q. Was it very long after supper?

A. No.

Q. Did papa stay there very long?

A. No, took his tobacco and came home.

Q. What did he do when he got his tobacco and came home?

A. He took out his pipe and was going to smoke.

Q. Did papa smoke then?

A. Yes.

Q. And then how long before was it that Uncle Joe and mamma came in. Was it long or a short time?

A. It wasn't very much.

Q. It wasn't very long?

A. No.

Q. Did you see what time it was that mamma went for Tillie?

A. Six o'clock.

Q. Did you see Uncle Mike strike papa at any time?

A. No.

Q. And when Uncle Mike came downstairs, I understand you to say that papa was outside?

A. Yes.

Q. And did Uncle Joe strike papa after Uncle Mike came down?

A. No.

By Mr. Cole:

Q. Your papa was standing up out in the yard when Uncle Joe struck him with the club, wasn't he?

A. Yes.

Q. Standing up near the grape arbor?

A. Yes.

Q. That was the first time that Uncle Joe struck him with the club, wasn't it?

A. Yes.

Q. Now, where were you standing when you saw him strike—

A. Near the summer kitchen door.

Q. Where was Victoria?

A. She was with me.

Q. Where was Victoria when Uncle Joe and papa began to talk about going to the ball?

A. Was in the house.

Q. In the kitchen?

A. Yes.

Q. Where were you?

A. I was in the kitchen, too.

Q. Were you behind the stove, asleep?

A. No.

Q. Was Victoria behind the stove, asleep?

A. No.

Q. Neither of you?

A. No.

Q. Where were you?

A. We were all awake yet.

Q. Now if you had been asleep when they began to quarrel—

A. No.

Q. Then you saw papa and Uncle Joe all the time from the time they began to quarrel till they went out in the yard?

A. Yes.

Q. And Victoria was with you all the time?

A. Yes.

Q. You and Victoria were together?

A. Yes.

Q. When papa and mamma went out and Uncle Joe, you followed them?

A. No.

Q. Didn't you follow them out to the summer kitchen door?

A. Yes.

Q. You and Victoria?

A. Yes.

Q. Now, Maggie, didn't you say a little while ago that you had supper at six o'clock?

A. Yes.

Q. Then you said you had supper at five o'clock; which is it?

A. At five o'clock.

Q. You are sure about that?

A. Yes.

Q. And then the table was all set, wasn't it, after that? Did you set the table after supper?

A. No, we put the dishes in one pile and put them in the closet again.

Q. Where did you put the dishes?

A. In the closet.

Q. So when Uncle Joe and mamma and papa were having this trouble, and then went out in the yard, there wasn't anything on the table, was there?

A. No.

Q. Nothing at all?

A. No.

Q. Sure?

A. No.

Q. Table was all clear, was it?

A. Yes.

Q. Who put the dishes in the closet?

A. Victoria did.

Q. Did you help her?

A. No.

Q. Now you are sure about that, Maggie, sure that Victoria put the dishes in the closet?

A. Yes.

Q. Now, where was Victoria, Maggie, when Uncle Joe and mamma and Tillie came in?

A. We were playing school then.

Q. You and she were playing school?

A. Yes.

Q. Did you have books when you played school?

A. Yes.

Q. On the floor or on the table?

A. On the table.

Q. Did Victoria see Uncle Joe when he came in?

A. Yes.

Q. Sure about that, are you?

A. Yes.

Q. Then you saw him?

A. Yes.

Q. And which door did Uncle Joe come in?

A. Front door.

Q. With mamma and Tillie?

A. Yes.

Q. Had Uncle Joe been there before that night?

A. No.

Q. That was the first time he came, was it?

A. Yes.

Q. Now, how long had mamma been out when Uncle Joe and Tillie came back?

A. I don't know what time it was.

Q. What time was it the quarrel began?

A. When Uncle Joe got done eating his macaroni.

Q. What time was that?

A. I don't know; I can't tell time.

Q. You don't know what time it was?

A. No.

Q. Well, now, Maggie, you don't know what time it was because you can't tell time; is that right?

A. Yes.

Q. Do you remember my talking to you at Minatola the other day up in the Hall?

A. Yes.

Q. Remember my asking you some questions?

A. Yes.

Q. You remember my asking you what time it was the quarrel began and you told me seven o'clock? Do you remember telling me at Minatola the other day that the quarrel began at seven o'clock?

A. It was seven o'clock when Uncle Joe come.

Q. Do you remember telling me that it was seven o'clock when the quarrel began?

A. No.

Q. Didn't you tell me at Minatola the other day that it was seven o'clock when the quarrel began, and you knew it was seven o'clock because papa said it was; do you remember telling me that?

A. No.

Q. Do you remember telling me it was seven o'clock when Uncle Joe came because papa said it was seven? Do you remember telling me that?

A. No.

Q. Do you remember telling me the other day, at Minatola, that you saw mamma take a knife out of a bowl?

A. Yes.

Q. On the kitchen table?

A. Yes.

Q. You told me that, didn't you?

A. Yes.

Q. Is that so?

A. Yes.

Q. If there wasn't anything on the kitchen table and all the dishes had been put away, how could mamma take this knife out of the bowl on the kitchen table?

A. That is where we keep the bowl.

Q. What kind of a bowl is it?

A. It was one of a set of a sideboard,

Q. Was the knife that you saw mamma take out of the bowl on the kitchen table, the same knife you saw put under the oilcloth?

A. Yes.

Q. Where was Victoria when mamma took the knife out of the bowl?

A. Sleeping.

Q. When did she go to sleep?

A. When mamma put the knife under the carpet.

Q. But when mamma took the knife out of the bowl on the kitchen table, and started after papa, where was Victoria then?

A. She was near the summer kitchen door.

Q. Where were you?

A. I was with her, too.

Q. And the bowl was in the kitchen wasn't it?

A. Yes.

Q. When you say the summer kitchen door, do you mean the door that leads from the kitchen into the summer kitchen, or the door that leads from the summer kitchen into the yard?

A. The one that goes from the summer kitchen into the yard.

Q. And didn't you tell me the other day, Maggie, that just after your mamma went out with this knife, that she came back and put the knife under the oilcloth?

A. No; when she came back with the wheelbarrow.

Adjourned to April 4th, 9:30 A. M.

MAYS LANDING, N. J., April 4th, 1907.

Trial of cause resumed at 9:30 A. M.

Maggie Buglio, resumed.

Further cross-examination, by Mr. Cole:

Q. Maggie, did you say yesterday that Uncle Joe Buglio gave you money at the Minatola station to buy your ticket?

A. Yes.

Q. How much money did he give you?

A. Ten cents.

Q. Did you buy the ticket with it?

A. No.

Q. Who did buy the ticket?

A. Uncle Joe did.

Q. Then what did you do with the ten cents?

A. I keeped it.

Q. Why do you say that Uncle Joe gave you the ten cents to buy the ticket with? What makes you think that he gave you the ten cents to buy the ticket with? Do you know how much a ticket is from Minatola to May's Landing and back? Why do you say, dear, that he gave you that ten cents to buy the ticket with? Who told you to say that, anybody?

A. No.

Q. Why did you say that, dear? Did you see me that day when the man gave you the ten cents?

A. No.

Q. Didn't you see me in the station?

A. No.

Q. Don't you remember me standing out on the platform, Maggie, when you and Victoria were talking?

A. No.

Q. You remember seeing me up at Minatola in the hall, don't you?

A. Yes.

Q. Can you tell the jury here, tell the jury here why it was that you say Uncle Joe gave you ten cents to buy a ticket with? You don't know why you said that, do you?

A. No.

Q. Now you came down to Mays Landing that day that Uncle Joe gave you the ten cents, didn't you?

A. Yes.

Q. What did you come down here for?

A. To examine Mary Gross.

Q. Who told you that you were coming down to examine Mary Gross?

A. Frank Lore.

Q. Who is Frank Lore? Who is he? Do you know him?

A. Yes, sir.

Q. Who is he, dear? Is he a detective?

A. Yes.

Q. Who told you he was a detective?

A. Grandpop.

Q. When did Mr. Lore tell you that you were coming down to Mays Landing to examine Mary Gross?

A. The day after he examined me.

Q. When did he examine you?

A. Before he came here.

Q. Where did he examine you?

A. Up at grandpop's house.

Q. Maggie, do you remember the day that Frank Lore came in the house, broke the window lights out?

A. No.

Q. Weren't you home that day?

A. I was in Philadelphia.

Q. You came down here. What did you say to Mary Gross? Did Mr. Lore, the detective, tell you to talk to Mary Gross?

A. No.

Q. Did you talk to Mary Gross?

A. Yes.

Q. What did you say to Mary Gross?

A. I said she was a liar when she said she wasn't looking out of the window.

Q. You told Mary Gross that?

A. Yes.

Q. What did you first say to Mary Gross when you began to talk to her?

A. I didn't tell her anything else but only that.

Q. Where was Mr. Lore when you were talking to Mary Gross?

A. He was in the room with us.

Q. In the room with you?

A. Yes.

Q. Who else were there?

A. Aunt Lena, Uncle Joe and Victoria.

Q. What room was that, dear? The room in the sheriff's office over here, or was it in a cell? Was Mary Gross in a cell where there were grates, bars, in the jail? Was Mary Gross in the jail?

A. Yes.

Q. What did Mr. Lore, the detective, tell you to say to Mary Gross? Tell the jury, dear, what the detective told you to say to Mary Gross?

A. I don't remember.

Q. You talked to Mary Gross in Italian, didn't you?

A. No.

Q. Did you talk to her in American?

A. Yes.

Q. Sure about that?

A. Yes.

Q. Did you talk to the old lady, the mother of Mary Gross?

A. Yes.

Q. How did you talk to her?

A. I talked to her in Italian.

Q. The day that you were talking to Mary Gross in American, did you see your mamma?

A. No.

Q. Did you know where she was?

A. No.

Q. Didn't you know she was locked up in the jail over there?

A. Yes.

Q. Well, now, how did you come to talk to Mary Gross? What were you doing in the jail? How did you come to talk to her? Can't you tell the jury how you came to talk to her? Mr. Lore told you that you were coming down to examine Mary Gross. After you got down here what did Mr. Lore say to you? What did he ask you? What did he tell you to do?

A. Nothing.

Q. What did you say to Mary Gross, dear? Can't you tell the jury?

A. No.

Q. What did Mary Gross say to you?

A. She didn't talk to me at all.

Q. Didn't talk to you at all?

A. No.

Q. If she didn't talk to you at all, dear, how could you say that she lied when she said she wasn't looking out of the window?

A. She told Frank Lore that.

Q. What had Frank Lore said to her that made her say that? What did you hear Frank Lore say to her?

A. I don't remember.

Q. Did he say anything to her?

A. Yes.

Q. What did you hear him say?

A. I don't remember what he said to her.

Q. Did you hear Frank Lore say anything to Mary Gross about sending her to jail?

A. Yes.

Q. What did he say about that?

A. He said they were going to send her to State's Prison.

Q. Did he tell her why he was going to send her to State's Prison.

A. Yes.

Q. Why was he going to do that?

A. Said because she was lying.

Q. Did Frank Lore say to Mary Gross that if she didn't tell what you said that he would send her to State's Prison for twenty years?

A. Yes.

Q. Sure about that, aren't you, Maggie?

A. Yes.

Q. What did Mary Gross say when Mr. Lore told her that he would send her to State's Prison for twenty years? What did Mary Gross say then?

A. She didn't say nothing.

Q. Now, did Uncle Joe Buglio say anything that day in the jail?

A. He talked to her in Italian.

Q. Talked to who?

A. Mary Gross.

Q. What did he say to her?

A. I was to Mary Gross's mother.

Q. And you didn't hear what Uncle Joe said?

A. No.

Q. Didn't hear it at all, dear?

A. No.

Q. Maggie, did you say to Mary Gross or to her mother that if you told the story about seeing Uncle Joe and mamma strike papa that mamma would come home?

A. No.

Q. You didn't tell Mary Gross that?

A. No.

Q. Didn't tell Mary Gross's mother that?

A. No, I don't remember it.

Q. Don't remember?

A. No.

Q. Did Mr. Lore or anybody tell you that your mamma would come home?

A. No.

Q. What did they tell you would happen to your mamma?

A. Nobody told me anything.

Q. Nobody told you what would happen to your mamma?

A. No.

Q. Didn't they tell you your mamma would come home?

A. No.

Q. What did Mr. Lore or anybody else promise you, dear, if you told this story? Did they tell you they would do anything for you or for your mamma?

A. No, I don't remember it.

Q. Where did you say that mamma got the knife?

A. In the bowl.

Q. Where was the bowl?

A. On the table.

Q. On the kitchen table?

A. Yes.

Q. Maggie, did you say that that stick which was here yesterday was the stick that Uncle Joe brought in?

A. Yes.

Q. How do you know that is the stick?

A. I seen it when he brought it in.

Q. Was there a light in the kitchen, lamp lighted?

A. Yes.

Q. Where was the lamp?

A. It was up high.

Q. On a shelf?

A. No.

Q. What was it on? What was the lamp on? What was it setting on? Hung up on the wall or where? Had you talked with Mary Gross before this day when you came down with Mr. Lore?

A. No.

Q. That was the first time you talked with her, was it?

A. Yes.

Q. Can't you remember what Uncle Joe and Mr. Lore said to you about coming down to see Mary Gross? Tell the jury what they said to you. Don't be afraid, dear. Tell the jury. They want to know. Tell the gentlemen what Uncle Joe Buglio and Mr. Lore said to you about coming down to May's Landing to see Mary Gross.

A. Don't remember.

Q. Are you frightened now, dear, afraid? Do you feel afraid now about anything? Do you feel afraid about anything? Are you telling us all you know, Maggie?

A. Yes.

Q. Maggie, how many books were there of the society that your papa had?

A. He had a lot of them.

Q. How many?

A. I don't know.

Q. Did you see your papa writing in the books that night?

A. No.

Q. Didn't he write in them?

A. No.

Q. Sure about that?

A. Yes.

Q. Are you sure papa didn't write in the books that night?

A. Yes.

Q. Do you know your papa's handwriting? Can you tell his handwriting when you see it?

A. No.

Q. You couldn't tell, if I showed you papa's writing in the books whether it was his or not, could you?

A. No.

Q. But you are sure he didn't write in the book that night?

A. Yes.

Q. When papa did write in the book what did he write with, pen or pencil?

A. Pen.

Q. Pen and ink, didn't he?

A. Yes.

Q. And you didn't see the pen and ink on the table and the book and see papa write in them that night?

A. No.

Q. Well, if papa had written in the book that night with pen and ink you would have seen him, wouldn't you?

A. Yes.

Q. Now, Maggie, where was papa when Uncle Mike came downstairs?

A. Was on the ground.

Q. Out in the yard?

A. Yes.

Q. Had Uncle Joe struck him then?

A. Yes.

Q. Did you see Uncle Mike with his skates that night?

A. No.

Q. Where did Uncle Mike keep his skates?

A. Upstairs.

Q. How do you know Uncle Mike kept his skates upstairs?

A. He sent us to take them.

Q. Did he send you that night with the skates?

A. No.

Q. Send Victoria?

A. No.

Q. But you knew he kept them upstairs?

A. Yes.

Q. In what room upstairs?

A. Where he used to sleep.

Q. Where he slept?

A. Yes.

Q. And when he came downstairs that night you didn't see the skates, did you?

A. No.

Q. Didn't see them cross his shoulder?

A. No.

Q. Now, Maggie, are you sure he kept his skates upstairs?

A. Yes.

Q. Did you see them up there?

A. Yes, he used to send us upstairs with them.

Q. Put them in his bed room?

A. Yes.

Q. And that is where they were on this night?

A. Yes.

Q. Now, Maggie, after Uncle Joe went out in the yard, when papa was lying on the ground, where did you next see Uncle Mike?

A. I didn't see him no more.

Q. Didn't see him any more?

A. No.

Q. Now, how long was it after Mamma went out in the yard before she came back; was it ten minutes, fifteen minutes, or how long?

A. I don't know.

Q. Did mamma have anything on her head?

A. No.

Q. Have any coat or any cape or anything over her?

A. No.

Q. Uncle Mike have anything on his head?

A. Cap and jacket.

Q. Did Uncle Mike have a coat on?

A. No, he had a jacket.

Q. What do you mean when you say coat? You mean overcoat, don't you?

A. No.

Q. What kind of a jacket had he on?

A. He had on a black one.

Q. Black jacket?

A. Yes.

Q. How long has Uncle Mike been living with you?

A. I don't know.

Q. Did you ever go to Uncle Joe Labriola's house?

A. I used to go a couple of times, but not every time.

Q. What?

A. I used to go a couple times.

Q. Papa ever go to Uncle Joe Labriola's house?

A. No.

Q. Mamma ever go to Uncle Joe Labriola's house?

A. Yes.

Q. How do you know?

A. When we used to go to school she used to close the house and go to Uncle Joe's.

Q. Did you see her up there?

A. No, she used to tell us.

Q. She used to tell you that?

A. She used to say, "Don't come home this afternoon, I am going up to Uncle Joe's."

Q. When you went to Uncle Joe Labriola's house, did you see Uncle Joe's wife? Was she there?

A. Yes.

Q. When your mamma went up to Uncle Joe Labriola's house, was Uncle Joe Labriola's wife there, too?

A. I don't know.

Q. Now, Maggie, to whom did you first tell this story about what you saw Uncle Joe and mamma do? Who did you first tell it to? Do you understand that question, Maggie? Who was the first person that you told this story to, that you told these gentlemen? Do you remember?

A. No.

Q. How long did you stay in the house after papa was killed? Do you remember that, dear?

A. No.

Q. Where did you go after you left mamma's house? Do you remember where you went?

A. No.

Q. Was mamma home when you left?

A. Yes.

Q. Who took you away, dear?

A. Nobody.

Q. How?

A. Nobody.

Q. Did you go away alone?

A. Yes.

Q. Where did you go?

A. Used to go to school.

Q. No, but after papa was killed you left the home, didn't you?

A. No.

Q. Well, you left home sometime, didn't you?

Mr. Fithian—I don't think she understands you.

Mr. Cole—Probably not, and I am trying to get myself on a level with her.

Q. You remember when papa was brought home—when he was dead?

A. Yes.

Q. After awhile you left home, didn't you? Left where your mamma and papa used to live; went away, didn't you? Don't you remember that, Maggie?

A. No.

Q. Don't you understand that? Well, now, where did you go to live after you left mamma?

A. Philadelphia.

Q. Who took you to Philadelphia?

A. Aunt Millie.

Q. Now, was mamma home when Aunt Millie took you away?

A. Yes.

Q. Now, from Aunt Millie's where tid you go?

A. Grandpop's.

Q. Went to grandpop's, at Minatola?

A. Yes.

Q. That is your father's father, isn't it?

A. Yes.

Q. Grandpop Buglio—is that right?

A. Yes.

Q. Well, now, who did you first tell this story to about what you have told the jury, what you have told the jury here; who did you first tell that to? Can't you remember?

A. No.

Q. Well, Maggie, was it Mr. Lore that you first told this story to, the detective?

A. Yes.

Q. He was the first one you told it to, wasn't he?

A. Yes.

Q. Where was he when you told him this story.

A. At grandpop's.

Q. How did you come to tell him this story at grandpop's? How did you come to tell him? Can't you remember how you come to tell him this story?

A. No.

Q. Who told you to tell Mr. Lore this story?

A. Nobody.

Q. How?

A. Nobody.

Q. How did it happen that you told him? What did he say to you, dear? What did Mr. Lore say to you before you told him this story? Did he say anything about mamma? Did Mr. Lore say anything about mamma before you told this story? Can't you remember?

A. No.

Q. Well, did Mr. Lore say anything about the wheelbarrow before you told him this story? Did you see Mr. Lore in the back yard, Maggie, after your father was

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killed, or anybody else, with the wheelbarrow, rolling it up and down?

A. No.

Q. You didn't?

A. No.

Q. Did Mr. Lore tell you anything about your mamma having a knife? Did he? Did anybody tell you anything about your mamma having a knife? Did Uncle Joe tell you anything about your mamma having a knife?

A. No.

Q. What did they say to you, Uncle Joe or Mr. Lore, before you told Mr. Lore this story? Can't you tell?

A. No.

Q. Don't know what they said to you?

A. No.

Q. And you can't tell these gentlemen here how you come to tell this story to Mr. Lore?

A. No.

Q. Don't know? Now, Maggie, you told the Court yesterday, and these gentlemen, the jury, that you knew what it was not to tell the truth, didn't you? Do you remember telling them that yesterday? Are you afraid, Maggie? Maggie, do you know now what it means not to tell the truth? Do you? Do you understand my question, dear?

A. No.

Q. Do you understand, Maggie, what will happen to you if you don't tell the truth? Do you? Don't you understand that question?

A. Yes.

Q. What do you understand will happen to you if you don't tell the truth in this case? Let me ask you this question, Maggie: Didn't you first tell this story about Uncle Joe and mamma to your aunt up in Philadelphia? Didn't you first tell her the story?

A. No.

Q. Are you sure about that? Did you ever tell your aunt in Philadelphia this story?

A. No.

Q. Sure about that?

A. Yes.

Q. Did you ever tell anybody that you had told your aunt this story when you were in Philadelphia?

A. No.

Q. Maggie, can you tell how long it was after papa was killed that you told this story to Mr. Lore, the detective? How long was it?

A. I don't know.

Q. Did you know where mamma was after you came back to grandpop's from Philadelphia? Did you know where she was?

A. Yes.

Q. Where did you understand she was? In jail?

A. Yes.

Q. Who told you she was in jail? Who told you your mamma was in jail? Anybody tell you?

A. Yes.

Q. Who was it told you? Well, was it Mr. Lore? Did he tell you your mother was in jail?

A. No.

Q. Who told you? Was it Uncle Joe?

A. No.

Q. Was it grandpop?

A. No.

Q. Who was it told you your mamma was in jail? Can't you remember?

A. No.

Q. Well, now, Maggie, did any of these people, did anybody tell you what was going to happen to mamma, anybody tell you what was going to become of your mamma? Did they? Did anybody tell you when your mamma was going to get out of jail?

A. No.

Q. What did they tell you about your mamma?

(No answer.)

Q. Now, Maggie, did you say yesterday that you saw your mamma bury a skirt?

A. Yes.

Q. What time was it?

A. I don't know.

Q. Was it in the night or the day?

A. In the night.

Q. Don't know what time in the night it was?

A. No.

Q. Was it before or after your mamma came back with the wheelbarrow?

A. When she came back with the wheelbarrow.

Q. Where did she bury it?

A. In the garden.

Q. In the garden?

A. Yes.

Q. What did she use to bury it with, a shovel or what?

A. A grubhoe.

Q. You saw mamma dig up the earth with the grubhoe?

A. Yes.

Q. And put the skirt in the hole that she dug up, did you?

A. Yes.

Q. How far away was the garden where she dug the hole from where you were standing? How far? Can you tell?

A. No.

Q. Was it farther than the end of this room from where you were standing?

A. No.

Q. Wasn't that far?

A. No.

Q. What was there, dear, between where you were standing—where were you standing by the way, where were you standing when you saw mamma do this?

A. In the summer kitchen door.

Q. Now, what was there between where you were standing and the garden where mamma used the grub-

hoe? Was there a grape arbor? Did you have a grape arbor there? Do you remember the grape arbor, dear, in the yard?

A. Yes.

Q. Do you remember the barn?

A. Yes.

Q. Remember the water toilet, the closet where you went out in the yard?

A. Yes.

Q. Was it back, Maggie, was it back of the toilet?

A. No.

Q. That you saw your mamma dig up this ground?

A. No, it was in the garden, in the middle, where we have the peas.

Q. What was there around the garden?

A. Fence.

Q. What kind of a fence?

A. Iron.

Q. Was there a gate went in, into this garden?

A. Yes.

Q. Was the gate in front of the barn or behind the barn? You remember the barn, don't you?

A. In front.

Q. And you don't know how many feet away, do you?

A. I don't know.

Q. Well, now, you say mamma went in the house and got the skirt off the kitchen door, is that right?

A. Yes.

Q. Where were you then?

A. In the summer kitchen door.

Q. In the summer kitchen door when mamma got the skirt off the kitchen door?

A. Yes.

Q. And mamma came out of the kitchen into the summer kitchen and you were standing in the summer kitchen door?

A. Yes.

Q. And you saw mamma wipe up the blood with the skirt while you stood in the summer kitchen door, did you?

A. Yes.

Q. And while you were standing there, mamma still went out into the garden and dug up this hole and put the skirt in it; is that right?

A. Yes.

Q. Is that true?

A. Yes.

Q. Where did mamma get the grubhoe?

A. In the garden?

Q. That was in the garden too, was it?

A. Yes.

Q. Well, what did mamma say to you when she went in and got the skirt and came out past you and you were standing in the summer kitchen door? What did she say to you?

A. Nothing.

Q. Did your mamma make a dress for you or Victoria out of one of her skirts?

A. Victoria.

Q. Was it out of this blue skirt?

A. Yes.

Q. That is the skirt she wiped the blood up with?

A. Yes.

Q. Then what became of the balance of the skirt? Didn't you make doll dresses out of it?

A. No.

Q. Didn't Victoria?

A. No.

Q. When did mamma make a dress for Victoria out of the blue skirt? Do you know when it was? When did mamma make a skirt for Victoria out of the blue skirt? Well, dear, is Victoria wearing a blue skirt now that mamma made for her out of the blue dress of hers?

A. No.

Q. Where is it? Where is Victoria's blue skirt that

mamma made out of the skirt that she wiped the blood up with?

A. I don't know.

Q. But you saw Victoria wearing the blue skirt once, didn't you?

A. Yes.

Q. How deep did mamma dig this hole?

A. I didn't see it.

Q. How?

A. I didn't see it.

Q. But you knew she dug a hole?

A. Yes.

Q. After she dug the hole did she cover it up?

A. Yes.

Q. Then what did mamma do with the grubhoe after she covered the hole up?

A. She put it back where she got it.

Q. And then, when mamma came back after she had buried the skirt, did she pass you as she went to—were you still standing in the summer kitchen door?

A. I moved.

Q. What?

A. I moved.

Q. Where did you go, in the kitchen?

A. No, I was standing in the summer kitchen.

Q. Then when mamma came back after she buried the dress, and you were standing in the summer kitchen, what did you do then?

A. Nothing.

Q. Didn't you go to bed?

A. No.

Q. What time did you go to bed that night?

A. I don't know.

Re-direct examination, by Mr. Fithian:

Q. What do you call this that I have on?

A. A black vest.

Q. What?

A. A black jacket.

Q. This is what you call a jacket, is it?

A. Yes.

Q. Now, Maggie, after your papa was killed and buried, who did you go away with to Philadelphia?

A. Aunt Millie.

Q. She was your mamma's sister, wasn't she?

A. Yes.

Q. And do you know Mr. Lintner?

Mr. Fithian—Just stand up, Mr. Lintner.

Q. Do you know this gentleman?

A. No, I don't remember him.

Q. You have seen him?

Mr. Cole—This is not re-examination.

Q. Do you remember ever having seen him before?

A. Yes.

Q. Where did you first see him, do you remember?

A. In Philadelphia.

Q. And where were you when you saw him?

A. In school.

Q. And where else did you see him?

A. Nowhere.

Q. Did you tell him about this story—about what you saw?

A. No.

Q. You don't remember telling him?

Mr. Cole—She said she didn't tell him, Mr. Fithian, and you have no right to suggest that to this little witness, and I will object to it.

Mr. Fithian—I will endeavor to refrain from suggesting anything.

Q. Where does Aunt Millie live there in Philadelphia?

A. Eight thirty-one Greenwood street.

Q. Did you have any talk with anybody when Aunt Millie was around, about this thing, about what you saw?

A. No.

Q. Did you go anywhere with Aunt Millie?

A. Yes.

Q. Where did you go?

A. I used to go to school.

Q. Where else did you go.

A. School.

Q. Did you go anywhere with Aunt Millie and Mr. Lintner here?

A. No.

Q. Don't remember him?

Mr. Cole—She didn't say that, Mr. Fithian. I object, may it please your Honor. He asks the witness a question, and she says no, and then he says, "don't remember him."

The Court—What was the question?

(Question repeated.)

Mr. Fithian—I will ask this question.

Q. Can you remember now going anywhere with Aunt Millie and Mr. Lintner, the officer?

A. No.

Q. Where was it you first saw Mr. Lintner, Maggie?

A. In school.

Q. And who was with him, if anybody?

A. Aunt Millie.

Q. Your Aunt Millie?

A. Yes.

Q. And where did you go after that?

A. Home.

Q. Where?

A. Home.

Q. Where did you say you went?

A. Went up to Aunt Millie's house.

Q. Aunt Millie's house?

A. Yes.

Q. Who went with you up to Aunt Millie's house Can you tell? Do you remember who was with you? Do you remember who was with you, Maggie, when you went up to Aunt Millie's house? Who went up there

with you? Who went up to Aunt Millie's house with you when Mr. Lintner came to the school?

A. Nobody.

Q. Where was Aunt Millie?

A. She was with us.

Q. She was with you?

A. Yes.

Q. Where was Mr. Lintner?

A. He was with us, too.

Q. And when you got back there what did you tell them?

Objected to.

Q. Did you tell them anything?

Objected to as not re-examination, and not competent.

The Court—Let me hear the last three questions.

(Last three questions repeated.)

Question withdrawn.

Q. When you got back to the house at Aunt Millie's, with Aunt Millie and Mr. Lintner, did you tell them about how your papa got killed?

Mr. Cole—Objected to as leading.

Question allowed.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

Q. Can you answer that question now, Maggie?

(Former question repeated.)

A. No.

Q. You did not? What did you do there at the house? Do you remember, Maggie? Anybody else come there?

A. No.

Q. Can you recall, Maggie, what happened up there at the house of Aunt Millie's when Mr. Lintner was there? You don't remember?

Mr. Cole—She didn't say that.

(Question withdrawn.)

A Juror—I would like to ask her whereabouts the lamp was in the room.

Q. Maggie, do you know where the lamp was?

A Juror—At the time her father was killed?

Q. At the time papa was killed there? At the time Uncle Joe struck papa with his fist, where was the lamp, can you tell?

A. No. Papa put it on the shelf where the looking glass was to shave himself.

Q. Papa put it on the shelf with the looking-glass to shave himself?

A. Yes.

A Juror—Could you place that in the room.

Q. Where was the shelf where papa shaved himself?

A. In the kitchen.

Q. Which kitchen?

A. With the stove.

Q. Where the stove was?

A. Yes.

Mary Di Atavio, sworn.

Direct examination, by Mr. Fithian.

Q. Mary, where do you live?

A. Minatola.

Q. What is your husband's name?

A. Salvatora Di Atavio.

Q. How many children have you?

A. Two.

Q. How old are they?

A. One is nearly three years, and the other is seventeen months.

Q. Mary, won't you come here a minute? I want to show you this map. This is Mr. Buglio's house, and this is your house, there. Now, then, just go back a minute. Did you know John Buglio?

A. Yes, sir.

Q. Did you know his wife?

A. Yes, sir.

Q. Did you know Joe Labriola?

A. Yes, sir.

Q. Did you know Michael Raymond?

A. Yes, sir.

Q. And the children?

A. Yes, sir.

Q. How often have you seen Joe Labriola go to Mrs Buglio's house before John was killed?

A. Pretty often—most every day.

Q. Where was John at that time?

A. Working.

Q. Do you recall a short time before John was killed seeing Joe Labriola at Mrs. Buglio's house?

A. In the night?

Q. Night or day time?

A. Yes, sir.

Q. Ever see them together?

A. Yes, sir.

Q. What have you seen them do there?

A. Why, one day I was going in. Before I got in the door I looked at the window, and they were sitting on a lounge right near the stove.

Q. What else were they doing?

A. They was kissing. Right in the arms of each other.

Q. Do you recall the night that John was killed, the Saturday night?

A. Yes, sir.

Q. Have you a clock in your house?

A. Yes, sir.

Q. Does it keep very good time?

A. No.

Q. How much did you pay for it?

A. Dollar seventy-five.

Q. How long have you had it?

A. About three years or four, something like that.

Q. What time did Salvatore go to bed that night?

A. It was about five minutes to seven or about five minutes after seven.

Q. By your clock?

A. By our clock.

Q. Did you go to bed?

A. No, not that time.

Q. Go to bed afterwards?

A. Yes, sir.

Q. About how long afterwards?

A. Why, it was about half an hour after he went to bed.

Q. How many rooms had you upstairs?

A. One room.

Q. Are there any windows on the side towards John Buglio's yard?

A. One.

Q. Did you hear anything that night after you went to bed?

A. Yes, sir.

Q. What was it?

A. I just had got upstairs and I heard opening the door like kitchen.

Q. What door?

A. Kitchen door.

Q. Whose house?

A. Buglio's house.

Q. Yes.

A. And I heard John Buglio talking. I heard him say, "Oh, my God, what did I do to you? Leave me alone; don't hurt me."

Q. What else did you hear?

A. All at once I heard a big noise going on, upsetting chairs and everything, and I didn't know what was going on, and all at once I heard them out in the yard talking and I recognized Joe Labriola's voice, Mike Raymond and Mrs. Buglio.

Q. Could you hear what Joe Labriola said?

A. No, I couldn't understand.

Q. Did you hear what Mike said?

A. No.

Q. Could you hear John say anything after they got out in the yard?

A. No.

Q. Did you hear Mrs. Buglio say anything?

A. Yes, she said, "Ain't you dead yet, you son of a bitch."

Q. Did you get up?

A. I was up.

Q. Did you look out the window?

A. No, I didn't look out the window; I was afraid.

Q. Where was your husband?

A. In bed sleeping. I didn't want to wake my husband.

Q. Did you tell him about it?

A. I told him afterwards.

Q. Did you tell him that you saw anything or heard anything?

A. I told him only, "Did you hear any noise?" after everything was gone.

Q. Was your husband awake when you heard this?

A. No.

Q. Why didn't you look, Mary?

A. I was afraid, I am telling you. I didn't want to look.

Q. How often did you go to the house, Mary, during the day time?

A. Pretty often; most every day.

Q. Did John work days or nights?

A. Every days.

Q. How long was it before John was killed that you saw them on a lounge together?

A. About two or three weeks before that.

Cross-examination, by Mr. Cole:

Q. Were you in the habit of visiting Mrs. Buglio?

A. When?

Q. Were you in the habit of going to Mrs. Buglio's house?

A. Don't understand what you mean.

Q. Did you go to see Mrs. Buglio in her house?

A. After he was killed?

Q. No, before.

A. Yes, sir.

Q. How many times?

A. Oh, I used to go pretty often.

Q. You were a friend of hers?

A. Yes.

Q. Paid her friendly calls, didn't you?

A. Yes, sir.

Q. What were you going in there this morning for that you saw her and Labriola kissing?

A. Why, I had owed her three dollars. I didn't have no money that day and I went after it. Before I got in the door I looked at the window to see if anybody was in.

Q. What time of day was it?

A. I can't tell you.

Q. How long had you been living in this house next to Buglio's?

A. I been living there five months.

Q. You have moved away now?

A. Yes, sir; I bought my place.

Q. When did you move away?

A. Two weeks I moved away.

Q. Two weeks ago?

A. Yes.

Q. Where were your children that night?

A. Sleeping.

Q. Anybody else in the house beside you and your husband and the children?

A. No, sir.

Q. Wasn't your father there?

A. No, sir.

Q. Nor your mother?

A. No, sir.

Q. And you say there is only one room upstairs?

A. One room.

Q. Where was your clock?

A. Why, when I went to bed it was downstairs.

Q. Where do you usually keep it?

A. Downstairs.

Q. Did you look to see what time it was by the clock?

A. The time was half-past seven on my clock.

Q. My question is whether you looked at the clock to see what time it was that night when you went upstairs?

A. It was half-past seven.

Q. Did you look at the clock?

A. Yes, sir.

Q. Why did you look at the clock that night?

A. I always look.

Q. Always look when you go to bed? What time was it when your husband went to bed?

A. It was about five minutes to seven or five minutes after.

Q. By the clock?

A. Yes, sir.

Q. Do you know if your clock was right that night?

A. I don't think so.

Q. Was it fast or slow?

A. I think he was a little too slow.

Q. What makes you think it was slow that night?

A. I can't tell you.

Q. If you think it was slow you must have a reason thinking so; what was it? When did you tell your husband what you heard?

A. After everything was done.

Q. You mean that same night?

A. Yes, sir.

Q. When did you first hear that John Buglio was dead?

A. Eh?

Q. When did you first hear that John Buglio was dead?

A. Upstairs.

Q. What?

A. Upstairs.

Q. Did you know he was dead that night?

A. I didn't know if he was dead.

Q. I am asking you when did you first know that John Buglio was dead?

A. Why, after they come to our house the same night. They come for us.

Q. Who came for you?

A. Mary Gross and Victor Buglio.

Q. Then you knew that night that John Buglio had been killed?

A. Yes.

Q. When did you first tell what you have told here, and to whom did you tell it?

A. Nobody.

Q. Never told it to anybody before?

A. Told the detective.

Q. Mr. Lore?

A. Mr. Lore.

Q. When did you tell him?

A. I don't remember the date.

Q. How long was it after he had been killed?

A. I can't tell you.

Q. Was it a week, two weeks or a month?

A. Can't tell you.

Q. Don't know?

A. No.

Q. Do you mean to say that you can't remember whether it was a week or a month?

A. Can't remember, no, sir.

Q. How did you come to tell it to the detective?

A. Why, they asked me.

Q. Asked you what?

A. Asked me about the trouble.

Q. Why didn't you tell it to somebody before you were asked about it?

A. I was afraid.

Q. Of what?

A. Of Buglio's.

Q. Of the Buglio's?

A. And Labriolas.

Q. What made you afraid of them?

A. If they found out, they do something to me.

Q. How do you know? What made you think that?

A. What made me think it? If I had said anything, I was afraid.

Q. In other words, you were afraid to tell anybody you knew a man had been murdered?

A. Sure, I was afraid.

Q. Did you ever know before of anybody being murdered, and keep it to yourself?

A. No; I never heard of any more murders?

Q. And yet you were afraid to tell anybody about it?

A. Sure.

Q. And didn't tell anybody until the detective came to you?

A. Yes, sir.

Q. Did the detective tell you what he knew about it?

A. No.

Q. Tell the jury, won't you, what the detective said to you?

A. I don't remember.

Q. How far from the window—do you know the size of the bed-room where you and your husband slept?

A. I didn't have no measure to measure it; I don't know.

Q. Children sleep in the same room?

A. Yes, sir.

Q. How many beds in the room?

A. I got my bed, and the little boy's bed.

Q. This window that is in the bed-room overlooks the Buglio yard, doesn't it?

A. Looks right down in the yard.

Q. Was the window up or down that night?

A. Down.

Q. What does your husband do?

A. Sleeping.

Q. What does he do?

A. Works.

Q. Where?

A. In the glass factory.

Q. And you say that when you looked at your clock when you went upstairs it was half-past seven?

A. On my time.

Q. And you think your clock was a little slow. How much do you think the clock was slow?

A. I can't tell you the right time; ten or fifteen minutes.

Q. Ten or fifteen minutes slow? So that you think it was about a quarter of eight when you heard this noise?

A. Yes.

Q. About quarter of eight?

A. Yes.

Q. But you are absolutely certain that your clock said half-past seven when you went upstairs?

A. Yes, sir.

Q. Now, how long had you known Mike Raymond?

A. It was about a month and a half he was there. That is all I know.

Q. Had you ever talked with him?

A. Never did.

Q. Ever have any talk with him at all?

A. No.

Q. What did you hear him say out in the yard?

A. I couldn't understand him.

Q. Did you hear him say anything?

A. No, sir. I heard him talking but couldn't understand.

Q. Was he talking loud?

A. No, not very loud.

Q. How high is your window from the ground?

A. I can't tell you; I didn't have the measure.

Q. This is a second story room?

A. Yes, sir.

Q. Could you recognize Mike Raymond's voice out in the yard that night?

A. Yes, sir.

Q. Who was he talking to?

A. I don't know.

Q. And you don't know what he said?

A. No, sir.

Q. Did you recognize Joe Labriola's voice?

A. Yes, sir.

Q. What did you hear him say?

A. Couldn't understand what he said.

Q. Was he talking loud or in a low tone?

A. In a low tone.

Q. Did you recognize Mrs. Buglio's voice?

A. Yes, sir.

Q. Was she talking in a loud tone or low tone?

A. Well, low tone.

Q. Where was she standing when you heard her talking?

A. I didn't see.

Q. But you heard her say something?

A. Yes, sir.

Q. What did you hear her say?

A. She said, "Ain't you dead yet, you son of a bitch?"

Q. In Italian or American?

A. In American.

Q. How did you happen to hear what she said and didn't hear what Mike Raymond or Joseph Labriola said?

A. I couldn't understand. I understand her more than I can them.

Q. Why did you understand what she said and didn't understand what the others said?

A. I did tell you I can't understand.

Q. Were the others talking in American or Italian?

A. I can't tell you.

Q. Don't you remember?

A. No.

Q. Do you talk Italian?

A. Sure.

Q. Do you understand Italian?

A. Sure.

Q. And you can't tell this jury now whether Mike Raymond and Joseph Labriola were talking in Italian or American?

A. Can't tell.

Q. But you do know that Mrs. Buglio was talking in American?

A. Yes.

Q. And you say that when you heard her talk you didn't know where she was?

A. She was in the yard.

Q. You are sure she wasn't in the summer kitchen?

A. Heard her talking out in the yard.

Q. You didn't see her? Do you mean to tell the jury here that you could tell with the window down in your room, not looking, that you could tell whether she was or was not in the Summer kitchen?

A. Sure; it is right under the window.

Q. And you didn't go to the window to see what was going on?

A. No, sir.

Q. Did you recognize John Buglio's voice that night?

A. Yes, sir.

Q. What did you hear him say? Was he talking in a loud voice or low voice?

A. Loud.

Q. What did he say?

A. He said, "Oh, my God, what did I do to you? Leave me alone; don't hurt me," he said.

Q. What did they say?

A. I didn't hear what they said.

Q. Didn't hear what they said back?

A. No.

Q. How long did you live in the house after this happened?

A. After this happened? Why, I lived there two months after that was happened.

Q. Did you see any wheelbarrow that night?

A. No.

Q. Hear any wheelbarrow?

A. No, sir.

Q. See them lift John Buglio's body up?

A. No, sir.

Q. To take it away?

A. No, sir.

Q. What time did you get to sleep that night?

A. I can't tell you. The clock is down stairs.

Q. How long was it after you heard this noise before you got to sleep?

A. I can't tell you. Didn't have the time up stairs.

Q. Did you hear Mrs. Buglio when she came back?

A. No, sir.

Q. With the wheelbarrow?

A. No, sir.

Q. If there had been a wheelbarrow there that night rolled with John Buglio's body on it, you could have heard it, couldn't you?

A. I couldn't hear it.

Q. Why not?

A. I couldn't hear it.

Q. Weren't you close enough, being right under the window, if this wheelbarrow was there, that you could have heard it?

A. I didn't think they put it there. I don't know where they put it on the wheelbarrow.

Q. Have you heard these children tell this story before to-day?

A. No, sir.

Q. Haven't you been with these children quite a little while?

A. Yes, but I have never talked about it.

Q. And they didn't talk to nobody?

A. No, sir.

Q. How often have you been with these children? How many times since this happened?

A. I been lots of times.

Q. Never heard them talk about this?

A. No, sir; never did.

Q. And you never talked about it?

A. No, sir.

Q. The only time you told the story was to the detective?

A. Yes.

Q. Where was he?

A. In my house, and then we went to Squire Sims.

Q. Did he take down a statement of what you said?

A. No, sir.

Q. Put it down in writing?

A. Yes, sir.

Q. Where?

A. Sims.

Q. Is your husband here?

A. Yes, sir.

By Mr. Repetto:

Q. Mrs. Di Atavio, did you ever talk with Mrs. Buglio after the occurrence which you have just described?

A. Yes, sir.

Q. What did you talk about?

A. What do you mean?

Q. What was the subject of your conversation with Mrs. Buglio? Didn't you talk about Mr. Buglio's death?

A. No, sir.

Q. Didn't you tell this story to the detective after Mrs. Buglio was sent to prison?

A. Yes, sir.

Q. Now, you never talked to Michael Raymond, did you?

A. No, sir.

Q. Did Mr. Labriola and Mr. Raymond talk at the same time on this night?

A. Yes, sir.

Q. What was there about the voices that you could distinguish the voice of Mr. Raymond or the voice of Mr. Labriola?

(Question repeated.)

A. I can't give you no answer.

Q. What made you think that Mr. Raymond was talking?

A. I am telling you I couldn't understand what they was talking.

Q. I didn't ask you that.

(Question repeated.)

A. Can't give no answer to that.

Q. Then why do you say that you recognized Mr. Raymond's voice.

A. Because I heard it.

Q. Now, what did you hear about the voice that made you think it was Mr. Raymond's voice?

A. Heard them lots of times talking.

Q. And you say that Mr. Labriola and Mr. Raymond were talking at the same time?

A. Yes, sir.

Q. How often have you heard Mr. Raymond talk?

A. Why, most every night.

Q. Did you talk with him?

A. No.

Q. Where were you when you heard Mr. Raymond talk?

A. I lived right near the house.

Q. Where was Mr. Raymond?

A. Out in the yard.

Q. How long had Mr. Raymond been at the house prior to the time when Mr. Buglio was killed?

A. Four days after he was killed.

Q. No, I mean before Mr. Buglio was killed?

A. Oh, it was about a month and a half

Q. And how often during that month and a half had you heard Mr. Raymond talk?

A. Can't answer.

Q. What did you hear him talk in—Italian or American?

A. Always in American, mostly.

Q. And on this night you say you can't remember whether they were talking American or Italian?

A. I can't remember.

Q. This night when you say that Mary Gross and little Victoria came to your house, what did they say to you, or what did you say to them?

A. They knocked at the door, and I went downstairs and see what they want, and I say, "who is it?" Mary Gross and Victoria answer, and she says, "It is I." They said, "They killed John." I make out I don't know nothing, and I say, "Who killed John?" and they say, "I don't know."

Q. Why did you make out that you didn't know who killed John?

A. I didn't like to tell them.

Q. Why didn't you like to tell them?

A. Old friends of peoples.

Q. Mary Gross and little Victoria hadn't killed John?

A. No.

Q. And they were the ones who asked you the question, weren't they?

A. Yes, sir.

Q. After you told them that you didn't want to tell, or rather, after you told them that you didn't know, did they come in your house?

A. No, sir.

Q. Did you go in Mrs. Buglio's house?

A. Yes.

Q. Who was present when you went in Mrs. Buglio's house?

A. Mrs. Buglio and Mary Gross's mother, and Mike Raymond was at the door, outside.

Q. Where were the children?

A. Victor was there.

Q. Where were the other children?

A. Upstairs, sleeping.

Q. Upstairs where?

A. Sleeping.

Q. Did you go upstairs?

A. No, sir.

Q. You don't know that they were sleeping, do you?

A. No; they was upstairs.

Q. When you went in there did they talk about the murder?

A. No, sir.

Q. What was the subject of your conversation? What did you talk about?

A. They wasn't talking nothing.

Q. What were you doing—sitting down and saying nothing?

A. I was near Raphael.

Q. Did anybody talk about John's death?

A. No.

Q. What did you talk about?

A. Why, I know Mary Gross was talking something. I don't remember what she was talking about.

Q. Was it about John's death?

A. Why, they used to say that John was dead—was about half-past seven or quarter to eight. Mary Gross said it was about half-past or quarter to eight when Mr. Buglio left there—Mr. John Buglio. Mrs. Buglio say "no, that wasn't the right time; it was five minutes to nine or ten minutes to nine. I don't want no mistake," she said; "I want the right time."

Q. What else was said at that time?

A. Nothing else.

Q. Did little Victoria hear this conversation that Mary Gross was saying?

A. No.

Q. Wasn't Victoria downstairs?

A. Well, I can't tell you if she was. I don't even remember.

Q. What did you say about it then, anything?

A. No, sir.

Q. You said nothing at all?

A. No.

Q. Did you, after this, ever tell anybody anything about this occurrence?

A. No.

Q. Did anybody talk to you?

A. No.

Q. Did you hear anybody talk about the killing?

A. No, sir.

Q. Well, you and Mr. Di Atavio had a talk about it?

A. My husband and me?

Q. Yes.

A. No, sir; I never talked to my husband.

Q. Didn't you say that you told your husband the next morning about it?

A. No, I didn't say I told him about it.

Mr. Fithian—She said she asked him if he heard any noise.

Q. Now, didn't you go to the store—the grocery stores?

A. When?

Q. Didn't you go to the Jonas grocery store?

A. Yes.

Q. Didn't you hear the people there talk about it?

A. Never, when I was there.

Q. So that you didn't hear anybody talk about John's murder, and you didn't talk to anybody about John's murder at all before you saw the detectives?

A. Yes, sir.

Q. And that was after Mrs. Buglio had been in jail?

A. Yes, sir.

Q. Had the detective been to your place before Mrs. Buglio had been in jail?

A. I don't remember.

Q. Had anybody been to your house before Mrs. Buglio had been in jail?

A. No, sir.

Q. Nobody down there?

A. Nobody.

Q. Where was the bed?

A. Which bed?

Q. Your bed in this room?

A. Right in the centre of the room.

Q. On which side of the bed were you?

A. On the right side; the left side. The bed stands like that and I was on the left side.

Q. And your house is like this, isn't it?

A. Yes.

Q. And you were on that side of the bed?

A. Right on the bottom of the bed.

Q. And the bed is in the centre of the room?

A. Yes, sir.

Q. Is your room very large?

A. No, it is a little room.

Q. Did you have a light in your room?

A. Yes, sir.

Q. Did you have a shade on your window?

A. Yes, sir.

Q. Was that shade up or down?

A. Down.

Q. Now, after you heard the noise and heard these voices what else did you hear, if anything?

A. Nothing.

Q. You heard nothing?

A. No.

Q. When did you hear Raymond's voice? Was it before or after you heard Mrs. Buglio talk?

A. After.

Q. Was it before or after you heard Mr. Buglio say what you said he said?

A. John?

Q. Yes.

A. It was before.

Q. That you heard Mr. Raymond's voice?

A. Yes, sir.

Q. When was it you heard Mrs. Buglio?

A. It was very last.

Q. That was the last?

A. Last one.

Q. Didn't you just say that you heard Mr. Raymond's voice after you heard Mrs. Buglio talk?

A. No, I did not.

Q. Didn't you say that?

A. No.

Q. Mrs. Di Atavio, notwithstanding the fact that both men were talking at the same time and in a low tone of voice do you mean to say that you could distinguish the voice of Mr. Raymond?

A. I can't give you no answer.

Q. Don't you understand the question?

A. No.

Q. Now these men were talking in a low tone of voice?

A. Yes, sir.

Q. And they were both talking at the same time?

A. Yes, sir.

Q. Now what makes you say that Mike Raymond's voice was there?

A. Because I heard it.

Q. What was it so different from the other voices that you heard that made you think it was Mike Raymond's voice? Now, isn't it a fact that you may have heard a voice and thought it was Mike Raymond's voice?

A. I thought it was Mike Raymond's voice.

Q. You don't swear positively that it was Mike Raymond's voice, do you?

A. No, sir.

By Mr. Cole:

Q. Mrs. Di Atavio, did you ever tell anybody that you didn't know anything about this matter?

A. No.

Q. How?

A. Never told nobody.

Q. What did Mary Gross and Victoria say they wanted with you when they came to your house that night?

A. They wanted me to go up there.

Q. Up where?

A. Up to Mrs. Buglio's house.

Q. The house next door?

A. Yes, sir.

Q. Did they tell you why they wanted you to come in their house?

A. They told me that John was killed.

Q. And you wanted to know who did it?

A. Yes.

Q. And you asked them if they knew?

A. Yes, sir.

Q. And they told you they didn't know?

A. Yes, sir.

Q. You are sure about that?

A. Yes.

Q. That Mary Gross and Victoria told you they didn't know who killed him?

A. Yes.

A Juror—I would like to know how far it was from his window to where these people were standing.

By Mr. Fithian:

Q. Mary, can you come up here a minute? This is

John Buglio's house and this is your house. Where is your window?

A. Right here. I can't tell you.

Q. This your house and this is the side of your house right along there? This is central avenue. Can you point about where the window was?

A. Right over there.

Q. Is the window on the side towards the Buglio house?

A. Sideways on John Buglio's house.

Q. Here is the fence right here, the wire fence. Now is there a window in front or not?

A. No, no windows in front.

Q. Where is the window then?

A. Right on the side upstairs.

Q. This is the wire fence, this line along here, that goes between your house and John's property. This is John's summer kitchen there. Can you point out where they were, as near as you can?

A. Right here.

Mr. Cole—Let her point out where she says they were and you mark it.

Q. Where do you say they were?

A. Right there.

Mr. Cole—Mr. Fithian marks a cross where the witness indicates the people were standing.

Mr. Fithian—The map is on a scale of four feet to the inch and you can figure it out for yourselves.

By Mr. Cole:

Q. Do you know how high your window was from the ground?

A. I can't tell you.

By Mr. Repetto:

Q. How was the wind blowing that night?

A. No wind blowing.

Q. Are you sure of that?

A. Sure of that.

Q. And was this a stormy night?

A. No, sir.

Q. Perfectly clear?

A. Yes.

By Mr. Fithian:

Q. Do you know where the boards have been taken off the bottom of the wire fence? Two or three boards have been sawed off.

A. Yes, sir.

Q. Have you seen that place?

A. Yes, sir.

Q. How close is that to where you heard these voices?

A. Right there.

Frank Lore, sworn.

Direct examination, by Mr. Fithian:

Q. Mr. Lore, did you ever see this blue skirt marked exhibit H before?

A. I did.

Q. Did you receive it from George Toler?

A. A colored man, George Toler; yes, sir.

Q. To whom did you give it?

A. Mr. Sims.

Q. John Sims?

A. Yes, sir.

Q. Did you ever see these three boards marked exhibits E, F and G for identification?

A. I did.

Q. To whom did you give them?

A. To Sims, if my recollection is right.

Q. While they were in your possession were they in the same condition when you gave them to Mr. Sims as when you received them?

A. Yes, sir.

Q. I show this wheelbarrow here, which is marked I for identification, and ask you where you got that wheelbarrow?

A. John H. Sims, Minatola.

Q. And where did you then take it?

A. Delivered it to Dr. Ellsmore Stites, Bridgeton.

Q. Was it in the same condition when you delivered it to Dr. Stiles as it was when you received it?

A. Yes, sir.

Cross-examination, by Mr. Cole:

Q. Are you the Mr. Lore that the little girls have spoken about?

A. Yes, sir.

Q. How long have you been a detective?

A. Since '87, I think.

Q. Where are you a detective?

A. All over the State of New Jersey.

Q. Where do you live?

A. In Bridgeton, New Jersey.

Q. What were you before you were a detective?

A. Constable.

Q. Bridgeton?

A. Yes, sir.

Q. Are you the detective who broke into the house, Buglio's house, while the children were locked up there?

A. No, sir.

Q. How did you get in?

A. Through the door.

Q. Did you have a key?

A. They let me in. There has been a mistake, I think.

Q. How.

A. There has been a mistake with regard to this. I didn't go into the house first.

Q. Who did go in first?

A. Mr. Parks.

Q. Who?

A. Mr. Parks.

Q. Then do you say the children are mistaken when they say you went in through the window?

A. Yes, sir.

Q. Did you see Parks when he went in?

A. Yes, sir.

Q. You stood by, did you?

A. Yes, sir.

Q. Did you tell him to go in?

A. Yes, sir.

Q. The way he went?

A. He went in the door.

Q. How?

A. Mr. Parks knocked on the window. That is where the mistake was.

Mr. Cole—Answer my question. What was the question?

(Question and answer repeated.)

Q. He went in the door?

A. Yes.

Q. Then there wasn't anybody went in the window?

A. No, sir.

Mr. Cole—May it please your Honor while we are waiting for some witnesses, I would like to call Mary Di Atavio, and ask her a question which I omitted to ask her on her previous examination.

Mary Di Atavio, recalled.

Further cross-examination, by Mr. Cole:

Q. Mrs. Di Atavio, do you know Morris Florentine?

A. Yes, sir.

Q. How long have you known him?

A. Oh, it is a long while.

Q. Do you remember coming down on the train with him to May's Landing some little while ago; some weeks or a month ago?

A. Mays Landing?

Q. From Minatola to Mays Landing. Do you remember that he was on the train that you were on when you came down to Mays Landing?

A. No.

Q. You do not?

A. Two weeks ago?

Q. Any time since this trouble. Did you come down from Minatola to Mays Landing on the same train with Florentine?

A. Don't remember it.

Mr. Cole—Mr. Florentine, just come this way a moment.

Q. Is that the gentleman you say is Mr. Florentine?

A. Yes, sir.

Q. Do you remember the day that you came here and entered into a bond as a witness before the Court?

A. Yes.

Q. When was that?

A. Seventeenth of January.

Q. At that time was Joseph Labriola locked up in jail here in Mays Landing?

A. Yes.

Q. Was Mrs. Buglio locked up?

A. Yes.

Q. Now did you see Mr. Florentine on that day?

A. I don't remember.

Q. Did you say to him at any time on the day that you came to Mays Landing to enter into a bond, or any other time, that you didn't know anything about this case?

A. Yes, I told him.

Q. You told him then?

A. Yes.

Q. When was that?

A. I don't remember.

Q. He asked you, didn't he, what you knew about this case?

A. Wasn't him asked me.

Q. Who was it?
A. Was Stephen Labriola.
Q. He asked you?
A. Yes.
Q. And what did you tell him?
A. That I didn't know anything about it.
Q. When was that?
A. It was in a shirt factory when I told him.
Q. Was Joseph Labriola locked up then?
A. Yes.
Q. And you told Stephen Labriola you didn't know anything about it?
A. Yes.
Q. Who else did you tell that?
A. Nobody else.
Q. How did you come to tell Stephen Labriola that?
A. He asked me.
Q. Asked you what?
A. Asked me if I knew anything about it.
Q. And you told him no?
A. Yes.
Q. Now did you tell Morris Florentine?
A. No.
Q. Wait a moment. Did you tell Morris Florentine on the train from Minatola to May's Landing on the day that you came here to enter in the bond, in answer to his question as to what you knew about this case, did you tell him you didn't know anything about it, that you and your husband were asleep?
A. No, I didn't tell him that.
Q. You didn't talk to him at all?
A. No, I didn't talk to him at all.

Joseph Labriola, sworn.
Direct examination, by Mr. Cole:
Q. How old are you?
A. Twenty-five year old.
Q. Where have you been living?

A. Why, I have been living in one of my father's houses.

Q. Where is that?

A. Right near my father's house.

Q. Near Minatola?

A. Yes, sir.

Q. How long have you been living in this county?

A. In this county? Why, ever since my father bought property here.

Q. How long has that been?

A. I expect that has been about nineteen years; I don't know exact.

Q. Where did you live before you came to this county?

A. We lived in Philadelphia, as I recollect.

Q. What did you do at Minatola? What was your business?

A. At the present time I have been shipping agent there. I work always at that trade.

Q. What do you mean by shipping agent?

A. Ship fruit and produce.

Q. For whom?

A. For myself at the present time.

Q. Where were you on the 22d of December last during the day?

A. During the day? Why, in the morning about eleven o'clock I went to Vineland.

A. Where were you in the afternoon?

A. At the station at Wheat road.

Q. Did you come from Wheat road that afternoon to Minatola?

A. Yes, sir.

Q. By what way did you come?

A. Via the Central Railroad.

Q. Can you remember about what time you got to Minatola?

A. The exact time I don't remember, but it must have been about twenty minutes of five at least, no later and no sooner.

Q. Where did you go from the Minatola station of the Central Railroad?

A. Why, I went for a few minutes to the store and then to the Pennsylvania Railroad depot.

Q. Did you see your mother that afternoon?

A. When she got off the train, yes, sir.

Q. Who else was at the station when your mother got off the train that you knew?

A. Well, there was—

Q. Anybody else of your family there?

A. No, sir; except Raymond.

Q. That is, you mean Mike?

A. Yes, sir.

Q. Was there a carriage there for your mother?

A. The carriage was ont on the road waiting.

Q. Who had driven the carriage down to the station, do you know?

A. I don't know; it was one of my little brothers.

Q. Then one of your little brothers was there?

A. Yes, sir.

Q. Who got in the carriage to go back home?

A. My mother and my father, little boy.

Q. Where did your father come from?

A. Father was coming home from work.

Q. Where does he work?

A. He works on the railroad. I expect he took the train from Forest Grove.

Q. This store, where was that?

A. Between the Central Railroad and the Pennsylvania Railroad.

Q. On what avenue?

A. On Boulevard avenue, what they call there, I think is the name of it.

Q. Is that the same as Central avenue?

A. No, sir.

Q. Who kept that store?

A. George Jonas Glass Company?

Q. Is that the store where the hall is, right near the railroad track, the Pennsylvania track?

A. Yes, sir.

Q. That is what you call the boulevard?

A. Yes, sir; I don't know if it is right or not.

Q. Well, we will call it that. After your mother and father and little brother got in the carriage to drive home, where did you go?

A. Me and Raymond walked toward the post office.

Q. Did you go in the post office?

A. Yes, sir.

Q. After you came out of the post office where did you go?

A. We went right straight from the post office down to Buglio's house, me and Raymond and Mrs. Buglio.

Q. Mrs. Buglio was with you?

A. Going back.

Q. Where did you meet Mrs. Buglio?

A. I don't recollect right, but I think it was near the post office somewheres, or something like that. I can't make a just memory of it.

Q. When you got to the Buglio house who did you find there?

A. Mr. Buglio himself, and the little children.

Q. What children did you see?

A. Victor, I expect, and Maggie, and the little boy, as much as I can remember.

Q. What is the little boy's name?

A. Noonsie, I guess his name is.

Q. When you went in the house that night, at that time that you are now speaking, did you carry a club or a stick in your hand?

A. No, sir.

Q. Did you have anything in your hand?

A. No, sir.

Q. What part of the house did you go to?

A. Kitchen.

Q. Tell the jury what you did while you were in the Buglio house, what happened while you were there?

A. I walked into Mr. Buglio's house. Mr. Buglio

was lying on a settee, and the table was ready for supper, and as we got in he says to his wife to have supper. I said to him that I was going away on account of the dance at night, and he said, "Wait a few minutes, Joe, and we'll have something to eat." I said, "No, I must hurry home; I got a dance, and I must get the hall ready and dress myself; and my wife, I guess she is waiting for supper to me." "Well," he says, "it won't take long. Have something to eat anyhow, and go off." He says, "We have got some home-made macaronis to-night, so eat a few." So I did eat a few, not much, just to make him satisfied, and I got up, put my hat on and walked out.

Q. Now, which way did you go out of the house that night?

A. Same way as I came in.

Q. Which way was that?

A. The front door of the kitchen, opposite the road.

Q. Who did you leave in the kitchen when you left the house that night?

A. Why, I left Mike Raymond, John Buglio, his two little children, and Mrs. Buglio. Just about as me walking out of the door, Mrs. Buglio and John had talked about the little girl, but I didn't know what they meant; so as I was walking out Mrs. Buglio says, "Wait, I am going to get the baby."

Q. Who was the baby?

A. Tillie, her name is.

Q. Where did you go from the Buglio house?

A. Why, when Mrs. Buglio told me to wait—

Q. Where did you go?

A. Walked right on.

Q. Which way did you walk?

A. Went right home.

Q. Which way did you go home?

A. Down Central road. There is a little road leads from Central road, opposite the Catholic church, from West avenue down to that little path that crosses the

field on Wheat road; before I come to the road there is a sidewalk we have made to go from the hall down to the house, and I generally walk on that sidewalk home.

Q. Where did you go, your own home or your mother's.

A. My own home, first.

Q. Who was there?

A. My wife and two little children, but I don't recollect if my sister-in-law was there or not.

Q. Where did you leave Mrs. Buglio that night?

A. She came right along and left her in front of my house.

Q. Which way did she go?

A. She went to her father-in-law. That is the last I know of her.

Q. Did you see Mrs. Buglio any more that night?

A. No, sir; I did not.

Q. Did you see John Buglio any more that night after you left him in the kitchen?

A. No, I never seen him since.

Q. Where did you go from your own home, if you went anywhere, that night?

A. First, I went to my father's house a little while.

Q. Where from there?

A. From there I went to the hall.

Q. The dance hall?

A. Yes, sir.

Q. Where did you go from the dance?

A. Back to the house.

Q. Whose house?

A. My father's house.

Q. Where did you stay that night?

A. I stayed over to my father's house.

Q. Did you go back to John Buglio's house with Mrs. Buglio and Tillie?

A. No, sir; I did not.

Q. Did you on that night carry into the Buglio house this club?

A. No, sir; I did not.

Q. What time was it, as near as you can tell, that you left the Buglio house?

A. Well, the exact minute I can't give, but it was, I should judge, about twenty minutes of six; something like that.

Q. What time was it as near as you can tell that you got into your mother's house, or father's house, after you had been home?

A. Well, about half past six; around there; twenty-five minutes after.

Q. As near as you can tell, what time was it when you left your mother's house to go into the dance hall?

A. Well, I can't give it; a little after seven.

Q. Anybody go with you?

A. Yes, sir.

Q. Who?

A. Nick Palde.

Q. Did you see Mike Raymond that night after you left him in the Buglio house?

A. Yes, sir.

Q. When did you first see him after that?

A. The first time I seen him right before our hall; before we got into the hall he was coming.

Q. Where were you from the time you went in the dance hall until you went back finally the last time to your mother's house?

A. I was in the hall; that is—but we wound up down to the house, once with Raymond, and I think I went down with Tony Tasso once more.

Q. How long were you gone?

A. It couldn't have been any longer than five or ten minutes; something like that.

Q. Did you that night, after you got to the dance hall, go anywhere except to your mother's home?

A. No, sir; I did not; never moved.

Q. How long have you known John Buglio?

A. I guess I know him for the last fifteen years anyhow.

Q. He ever visit your home?

A. Yes, sir.

Q. Ever eat at your house?

A. Yes, sir.

Q. How often do you suppose he came to your house?

A. Well, we will say he was coming there once a month; maybe two times a month; three times.

Q. Ever come there with Mrs. Buglio?

A. Yes, sir.

Q. How long had it been before this Saturday night, December twenty-second, he had been to your house?

A. The night previous.

Q. Did he eat there that night?

A. Yes, sir; I think he had just a little to eat; I don't remember what it was.

Q. Were you in the habit of associating with John Buglio, going with him?

A. Occasionally.

Q. Did you ever go anywhere with him?

A. I did.

Q. Where?

A. Went to the saloons a few times with him. Had our wives, too.

Q. Did you know who lived in a portion of this house of Buglio?

A. I do.

Q. Who?

A. Grosses.

Q. How many people comprise that family?

A. Well, I should say three or four, or something like that, but I don't know.

Q. Do you remember what else, if anything, the Buglios had to eat that night besides macaroni?

A. I don't exactly remember. I think there was some meat there and some salad. At the same time I don't remember whether that is right or not.

Q. Did you go to the Buglio house from time to time; visit there?

A. Occasionally.

Q. Did your wife ever go to the Buglio house?

A. Yes.

Q. Do you know how John Buglio met his death on December 22d?

A. I do not.

Q. Did you have anything to do with taking his life?

A. No, sir; I did not.

Q. Did you strike him with that club or any other club on that night?

A. I did not. Never seen the club until it was in court.

Q. Did you have anything to do with putting his body on the wheelbarrow and taking it away that night?

A. No, sir.

Q. Did you tell John Buglio that night in the kitchen of the house where he lived that if he didn't allow his wife to go to the ball you would kill him?

A. No, sir; never no such a conversation was made between me and him.

Q. Did you have a fight with him that night?

A. No, sir; never did, in fact.

Q. Did you tell Mike Raymond that night that if he didn't help you to put John Buglio's body on the wheelbarrow that you would do him, or kill him, as you had killed Buglio?

A. Did not.

Q. Did you hear Mrs. Buglio that night say at any time, at any place, "You son of a b—," referring to John Buglio, "aren't you dead yet?"

A. No, sir.

Q. Did you have a quarrel with John Buglio that night?

A. No, sir.

Q. Were you and John Buglio friends on the night of December 22d when you entered his house?

A. Yes, sir.

Q. What did you do at the hall that night?

A. Well, I went to the hall to—

Q. What did you do after you got to the hall?

A. Had roller skates on.

Q. What did you play?

A. A cornet and the piano. Once in a while I would play the cornet, and sometimes I would change and play the piano, and help the other fellows out.

Q. Were you in the Buglio house that night at half-past seven o'clock, on the night of December 22d?

A. No, sir.

Q. Were you there at seven o'clock that night?

A. No, sir.

Q. Were you there at any time between seven and eight o'clock that night?

A. No, sir.

Q. Between eight and nine o'clock?

A. No, sir.

Cross-examination, by Mr. Fithian:

Q. How long have you known John Buglio?

A. About fifteen years at least. I don't know exactly how long, but I judge about fifteen years.

Q. Did you marry his sister?

A. I did.

Q. Go to his house frequently?

A. Yes.

Q. Whom did you go to see?

A. Well, I didn't go to see anyone. I would go there same as a good friend. I would find John home, and occasionally would find Mrs. Buglio home.

Q. Did you go in the daytime?

A. Sometimes.

Q. Frequently?

A. No, sir.

Q. John work day or nights?

A. Work days, and work nights, too.

Q. Did you go when John wasn't at home?

A. Well, I did—yes.

Q. Often?

A. No.

Q. Do you know Louis Cuitz?

A. Yes, sir.

Q. Did you go there when Louis Cuitz boarded there?

A. I did, a few times.

Q. Did you go in a bed-room with Mrs. Buglio?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Do you know Mr. Beck, the jeweler, over at Vineland?

A. Yes, sir.

Q. Did you buy a signet ring from him?

A. No, sir.

Q. You never did?

A. No, sir.

Q. Did you buy a ring from him and give it to Mrs. Buglio?

A. No, sir.

Q. You never bought a signet ring from him?

A. No, sir.

Q. You know him well?

A. No, not well. I know of him.

Q. Been in his store?

A. Yes, sir; I have.

Q. You never bought a signet ring from him?

A. Not as I can remember of—no.

Q. Ever buy one of him that you gave to Mrs. Buglio?

A. No, sir; not as I can remember.

Q. Do you know Samuel Parks, the liveryman?

A. Yes, sir.

Q. Know whether Mrs. Buglio would engage teams there that you would come and get?

Objected to as not cross-examination.

The Court—The Court sees some difficulty with the question as framed.

Q. Did you ever get teams of Samuel Parks?

A. Yes, sir.

Q. Horse and buggy?

A. Yes, sir.

Q. Take Mrs. Buglio out driving?

A. Not herself alone—I did.

Q. Ever take her out in a buggy?

A. Her and her husband—yes, sir.

Q. Ever take her without her her husband?

A. No, sir.

Q. Ever meet her on Central avenue, and get her in the buggy?

A. No, sir.

Q. Did you ever take her out in the buggy—

A. No, sir.

Q. —and when you came back, she sent you after a comb and belt that had been lost in the buggy?

A. No, sir. I can explain that matter.

Q. Let's hear you?

A. The night she had the comb in the buggy, it was the evening that me and her and her husband went to East Vineland to a dance.

Q. How did she come to send you after it?

A. I brought the buggy and the horse back, and she asked me if I wouldn't see for the belt, and her husband was in the house, and he was tired.

Q. Where were you when she asked you?

A. Just coming back.

Q. How long ago has that been?

A. I don't remember.

Q. Ever been in Martinelli's saloon with her?

A. Not with her alone.

Q. Ever have her in your lap down there?

A. No, sir.

Q. Know whether anybody ever saw you have her in your lap?

A. No, sir.

Mr. Cole—I object. If they did, let the State produce the witnesses.

The Court—The witness has already answered the question.

Mr. Cole—Then I ask that the answer be stricken out. I objected as promptly as I could. It may not have any particular significance, but I don't think it is a proper question.

The Court—We will allow it to stand.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

[L.S.] THOMAS W. TRENCHARD, *P. J.*

Q. Did you ever sit on a lounge there with her at her house?

A. With her? No, sir.

Q. Hugging and kissing her?

A. No, sir.

Q. Then you and she were not friendly at all, were you—particularly?

A. No more friends than relations.

Q. Did you go to her house frequently?

A. I have.

Q. Anybody ever complain about your going there so much to you?

A. Well, I don't know; not as I know of.

Q. Do you know John H. Sims?

A. Yes, sir.

Q. Did he tell you not to go there so often?

A. No, sir.

Mr. Cole—That is objected to as not cross-examination, it is irrelevant, and it is a part of the State's case.

The Court—The objection is sustained.

Q. Were you down at Martinelli's about a week before John Buglio was killed, and did you have a talk with Mike Raymond down there about some trouble between John and his wife?

Mr. Cole—That is objected to as not proper cross-examination. It is irrelevant, immaterial and incompetent.

Mr. Fithian—I will add a little to that question. Don't answer it until Mr. Cole puts in his objection.

Q. And did you say to Mike, "All right; I will attend to that."

Mr. Cole—I renew the obejctions for the reasons stated.

(Question repeated as completed.)

Mr. Cole—If the purpose of this question is to have the jury infer that this witness had some feeling against the dead man, they should have put that testimony in as a part of their case. They cannot do it on the cross-examination of this witness.

Mr. Fithian—I think I have a right to cross-examine these witnesses as to declarations or admissions.

Question allowed.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

[L.S.] THOMAS W. TRENCHARD, *P. J.*

(Question repeated.)

A. No, sir.

Q. What did you say to him about it?

A. Didn't you say anthing at all.

Q. Did you talk with him about it?

A. No, sir; not about that.

Q. Was it about John you were talking?

A. No, sir.

Q. Was it about Raphael?

A. No, sir.

Q. Had no conversation with him?

A. Yes, sir.

Q. About that?

A. Well, exactly, it wasn't about that, but some

words fell in between. He was telling me, but I had no conversation with him.

Q. Didn't you say anything to him about it at all?

A. No, sir.

Q. Do you recall the Sunday night before John Buglio was killed?

A. How is that?

Q. Do you recall the Sunday night before John Buglio was killed?

A. Sunday night?

Q. Yes.

A. Well, exactly, I do not.

Q. Were you over to Vineland with Mike Raymond that night?

A. No, sir.

Q. Were you out with Mike Raymond that night?

A. No, sir.

Q. Did you have a team from Samuel Park's livery stable?

A. You mean the Sunday before he got killed?

Q. Yes.

A. Yes; the Sunday before, I did.

Q. Was Samuel Parks at the livery stable when you came home?

A. Yes, sir, I think he was; I am not positive.

Q. Did you talk with him about Mrs. Buglio at that time?

A. I did not, but he talked to me about something. I don't know what he meant. I think he was saying something to me about it.

Q. Tell you that Mrs. Buglio had been over there to see you?

A. I don't remember. He said something about that. Not to see me, but he wanted to know when we was coming home.

Q. Did he tell you that she was over there to see you?

A. No, sir.

Q. Wanted to know what time you came home and when you did she wanted to see you?

Objected to as incompetent, irrelevant, immaterial and not proper cross-examination. Objection overruled.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD,
P. J. [SEAL.]

(Question repeated.)

A. No, sir, not as I remember.

Q. When you went up from the station that night, or that afternoon, what time did you get to John Buglio's house?

A. From what station, please?

Q. From the last station at which you were?

A. From the last station at which I were? Pennsylvania. What time did I leave that station?

Q. What time did you get to John Buglio's house?

A. I expect about quarter after five, something like that, or twenty minutes after.

Q. Was it light or was it dark?

A. Well, it wasn't dark; it wasn't light; just about daybreak, I expect.

Q. What time was it?

A. About twenty minutes after five.

Q. And it wasn't dark at that time?

A. No, sir.

Q. Getting pretty dark, wasn't it?

A. Well, gradually.

Q. How long did you stay there?

A. About ten or fifteen minutes; might have been twenty minutes.

Q. No longer than that?

A. No, sir.

Q. Then you left there at half past five, did you?

A. No, sir.

Q. What time did you leave there?

A. About twenty minutes to six.

Q. Look to see what time it was?

A. I didn't look to see what time it was, but I could pretty near judge.

Q. Eat your supper there?

A. A little.

Q. Know Mr. Abbott?

A. Yes, sir, I do.

Q. Know Mr. Johnson, the Deputy Sheriff?

A. Yes, sir.

Q. Know Dr. Dubler?

A. I do.

Q. Harry Wilson, the officer?

A. Know of him.

Q. And Mr. Lintner, the detective?

A. Know of him.

Q. Did you in the presence of Mr. Abbott, Mr. Johnson, Dr. Dubler and these other gentlemen, with the exception of Mr. Lintner, say that you were not at Buglio's house for supper that night?

A. Yes, sir.

Q. That you were not there at all that night?

A. Yes, sir, I did.

Q. Why did you tell them that?

A. I can explain it.

Q. Let us hear your explanation.

A. I got confused between Friday night and Saturday night.

Q. So when they asked you on Sunday morning, the next day, whether you had been at Buglio's house the night before at all, you told them you had not, because you were confused between that night and the Friday night before?

A. Yes, sir.

Q. Well, didn't you tell them that you had been down to the train and that you left there to go home?

A. Yes, sir.

Q. And walked up the street with Roxie Spinelli and Mike Raymond and Mrs. Buglio and left them on the street and went over to the hall?

A. Yes, sir.

Q. Had you forgotten so soon that you went in there to supper?

A. Well, when I come away from the station at Wheat road, that was my general way to come home, to see for mail at Minatola, so I occasionally go down the same way I did that night, and I thought to myself all the time that I was there Friday night.

Q. You knew on Sunday morning when you had this talk that John Buglio had been killed?

A. Yes, sir.

Q. And you forgot that you were there the night before for supper?

A. Yes, sir; not that I forgot; I got confused.

Q. Did you make the same statement to Mr. Lintner the next day?

A. Yes, sir.

Q. And you still forgot?

A. Yes, sir.

Q. And when did you first remember?

A. When I come to remember it was that Mrs. Buglio went after her child, about a day after I made the statement, and I even so told Mr. Lintner that I thought I had a mistake in that statement written so that I would sign it, but if there was a mistake I didn't know.

Q. Wasn't that after Mr. Lintner had proved to you that you were at Buglio's house, that you made the statement that you made a mistake about it?

A. Explain that please.

Q. Was it not after Mr. Lintner had proven to you that you were at the house that you changed your statement about it?

A. No, not hardly.

Q. What time did you get home that night?

A. Around six o'clock.

Q. What did you do home?

A. Well, occasionally.

Q. What?

A. Same thing I done any other time.

Q. What?

A. Washed myself.

Q. What else?

A. After, my wife asked me if I wanted anything to eat. We had a little supper and I told her I had a little more to John's house.

Q. Then where did you go?

A. To my mother's house.

Q. Why?

A. To see for a dance, and one thing and another. Occasionally go there from my house to my mother's house.

Q. How long did you stay there?

A. The exact time I can't tell you.

Q. About how long?

A. About between twenty minutes and a half hour.

Q. What time did you get over there to your mother's house?

A. To my mother's house?

Q. Yes.

A. About half past six; something like that; twenty-five minutes after; might have been twenty-five minutes of seven.

Q. Stayed there a half an hour?

A. Yes, sir.

Q. Then where did you go?

A. To the hall.

Q. Who went with you?

A. Nathan Palde.

Q. Had he been over to the hall before you went over with Nick Palde?

A. I think not.

Q. Did you not leave your mother's house and go to the hall, and while you were at the hall, going there alone, meet Mrs. Buglio and walk home with her and Tillie?

A. No, sir.

Q. Had you not asked Mrs. Buglio to come to the dance that night?

A. No, sir.

Q. And did you not afterwards, during the couse of the evening, leave the hall?

A. I did.

Q. And stay out a long time?

A. No, sir.

Q. What time did you leave the dance that night?

A. What time did I leave the dance?

Q. Yes.

A. When the dance was over.

Q. What time was that?

A. About half past ten.

Q. Was that an early closing hour?

A. Well, yes; it was that evening.

Q. Why?

A. For the simple reason it was a cold evening and the crowd wasn't very big, and they decided to go down to the house.

Q. Were you uneasy about anything yourself?

A. Well, occasionally.

Q. What was that?

A. Explain that once more.

Q. Well, I won't ask you that question. What did you do after you left the hall?

A. Went home.

Q. To your house or to your mother's?

A. Mother's house.

Q. Then what did you do?

A. Stayed in there a few minutes.

Q. Then where did you go?

A. Toilet.

Q. What happened there at the toilet?

A. Nothing.

Q. Did you get shot?

A. Not that time I didn't.

Q. Did you go back again to the toilet?

A. Yes, sir.

Q. What happened the second visit?

A. Got shot.

Q. How.

A. Well, I pardon you, I don't know.

Q. You can't remember?

A. No, sir.

Q. Can't you tell us about it?

A. What do you want me to tell you?

Q. How you got shot?

A. How did I get shot? I know I got shot, and that is all I can tell you.

Q. Didn't you tell Dr. Dubler how you got shot?

A. Yes. Coming out of the toilet somebody approached on the corner of the toilet from the side, the west-south corner of the toilet, as I was walking out of the toilet slowly a man approached from that corner and shot.

Q. What position were you in when you were shot? Stand up, if you will, and show us?

A. I expect I was about something like that, buttoning this suspender, and as I let go of this suspender—I didn't button it—and was just about ready to throw my coat up.

Q. Where was the man standing when he fired the shot?

A. This side of me. I mean the right side.

Q. Where else did you get shot?

A. In the arm and leg.

Q. Which arm were you shot in?

A. Left.

Q. Which leg were you shot in?

A. Left.

Q. Where did he shoot you first?

A. I pardon you, I don't know. I expect it was my arm.

Q. Were you standing up when he shot you?

A. First, yes. That is, I was standing up, yes. I was standing up.

Q. How close was the man to you?

A. Pretty close.

Q. What did you do?

A. After I were shot why I pulled out my gun and fired.

Q. Did you have a revolver?

A. Yes, sir.

Q. What calibre?

A. Thirty-two.

Q. How many times did the man shoot at you?

A. I reckon it was four times; might have been more and might have been less.

Q. How close was he to you?

A. Pretty close.

Q. How close?

A. Right along side of me. Same as I was coming from this corner the man approached from this side; just about a foot.

Q. And he shot at you four times?

A. As much as I can remember.

Q. And how many times did he hit you?

A. Two times.

Q. How many times did you shoot?

A. Twice.

Q. Who was this man?

A. I don't know.

Q. How was he dressed?

A. That is something I couldn't tell you. I didn't see nothing but black, black clouds and everything else.

Q. Whereabouts on the left leg were you shot?

A. Right below my pockets, just a little.

Q. Will you indicate on your arm where you were shot?

A. Can I?

Q. Yes.

A. Yes, I can.

(Witness shows mark on arm.)

Q. Will you point out on your legs where you were shot?

A. About here (indicating.)

Q. Where did you leave Mrs. Buglio when you went up with her when she went after Tillie?

A. Right in front of my place.

Q. How far from there does John's father live?

A. Well, I should say about two hundred yards.

Mrs. John Buglio, sworn.

Direct examination, by Mr. Repetto:

Q. Mrs. Buglio, what is your full name?

A. My full name?

Q. Yes.

A. Raphael Buglio.

Q. Where do you live?

A. Minatola.

Q. Was John Buglio your husband?

A. Yes, sir.

Q. How many children have you?

A. Five.

Q. Will you name them and give their ages?

A. Rosie Buglio, eleven years old, twenty-seventh day of October. This is my oldest. Victoria Buglio, ten years old, twenty-ninth day of December; Maggie Buglio, eight years old, ninth day of January; Noonsie Buglio, six years old, twenty-fifth day of March; Tillie Buglio four years old, nineteenth day of April.

Q. Mrs. Buglio, how long had you been married to John Buglio?

A. Twelve years nineteenth day of November.

Q. Do you remember the day that John Buglio was killed?

A. Yes, sir.

Q. Where were you on that day?

A. The day or the evening?

Q. Well, up to about five o'clock. Where were you in the day?

A. I went to Vineland.

Q. What were you doing in Vineland?

A. Purchasing some things.

Q. What time did you get back to Minatola?

A. At eleven o'clock in the day.

Q. Then where did you go?

A. I stood home and strained lard.

Q. How long did you stay home?

A. I stood home from that time I got home until the time I happened to go to the store to buy some raisins.

Q. What time did you go to the store?

A. This was between five or a few minutes after five, I don't know exactly which.

Q. Before you had gone to the store had you or had you not prepared your supper?

A. Yes, sir; supper was all prepared.

Q. And where was Mr. Buglio?

A. Mr. Buglio was shaving.

Q. What store did you go to?

A. George Jonas store.

Q. And is that the other side of the railroad?

A. Yes, sir, on the boulevard.

Q. Now, about what time did you leave the store?

A. I left the store some after five, because I don't know what it took me from the house to the store.

Q. On your way did you meet anybody?

A. From the store I went straight to the drug store.

Q. Whose drug store?

A. Dubler's; to buy a cake of soap for shaving, and he didn't have the Williams soap what my brother told me to get. Mrs. Dubler was then in the store, and I goes to the store back again. I thought I could get it at the grocery store. They didn't have any, so I comes back, and after I got as far as the post office the train happened to get in.

Q. Which train was that?

A. On the Pennsylvania, the electric train. So all at once I seen Mrs. Labriola get off the train.

Q. Which Mrs. Labriola?

A. Old Mrs. Labriola.

Q. Mrs. Peter?

A. Yes. So I expected an answer from her from Philadelphia about a ring. So all at once I saw Mrs. Labriola disappear out of my sight. I don't know whether she got in a wagon or not.

Q. What ring was this?

A. It was a ring one of my friends had there.

Q. Who was your friend?

A. Pauline Natillo.

Q. What ring?

A. A little ring what she borrowed off of me and didn't return it. So I told Mrs. Labriola, "you get that ring and bring it to me," and Mrs. Labriola said, yes, she would.

Q. Did you see Mrs. Labriola?

A. No.

Q. Then where did you go?

A. Then I walked to the post office. I was going to the station to speak to Mrs. Labriola. I meet my brother Mike, Joseph Labriola and Roxie Spinelli. I said, "where is your mother?

Q. Don't say what you said to them.

A. I asked where was Mrs. Labriola.

Q. Kindly don't do that. Just say where you went.

A. I meet these three, and we started for home.

Q. Who?

A. Joseph, Mike Raymond, Roxie and I.

Q. Now tell us how far did you four go together?

A. As far as my home.

Q. Who went in the home?

A. Joseph Labriola, Mike Raymond and I.

Q. Where did Roxie Spinelli go?

A. When he got as far as his father, there he turned to his home, which he had a bag full of something.

Q. What did you do when you went in the house?

A. We went home, and John was in the house, and he

holloaed, "Hello there, fatty," to Joseph Labriola; he says, "Are you here?" He said "Yes." He says, "You are just in time for supper." Joe said, "I would rather leave to-night." John said, "You come over here, fatty; you have got to stay to supper."

Q. What was done after that?

A. We sets down and had just a dear little lunch. He only ate a few.

Q. Who sat down to the table?

A. All of us.

Q. Name them.

A. John Buglio, me, Michael Raymond, Joseph Labriola, and my three children.

Q. Who were your three children?

A. Victoria, Noonsie—no, it was two children, Victoria and Noonsie. My baby was to my father-in-law's.

Q. After supper what did you do?

A. I saw Joe starting for home. I say, "Joe will you wait? I am going up." He say, "Where you going?" "I go up to mom," I say, "and get my baby." My husband told me to go and get the child.

Q. Did you start?

A. Yes; we started for my mother-in-law's place.

Q. Which way did go?

A. We went through an avenue there; I don't know what is the name of it. We crossed a field, any how.

Q. Was that near or far away from your house? Can you see here (indicating map)?

A. No, I can't tell on the map. It's no use to show me.

Q. What avenue did you go after that? Did you stay on Central avenue?

A. We crossed it until we got on West avenue, and then straight down West avenue until we got to the path from West avenue to Wheat road, right in front of Mr. Costa.

Q. Then where did you go?

A. Walked right straight. When we got as far as

his house he went in, and I started for my mother-in-law's house.

Q. When you got into your mother-in-law's house who were there?

A. Mother-in-law and father-in-law.

Q. Where was little Tillie?

A. They were to bed, my largest daughter and Tillie.

Q. What is your oldest daughter's name?

A. Rosie.

Q. What occurred after you got in your father-in-law's house?

A. I got in there and mom and pop were surprised and said, "Well, where are you going?" I said, "John wants the baby because he misses her, and he sends me after her."

Q. Then what was done?

A. All at once I said, "Where is the children?" Mom says, "They just went to bed." All at once they come out, and the baby didn't have no clothes on and no shoes, and my father-in-law says, "My wife is so tired, coming from Philadelphia"—

Mr. Fithian—Just tell what you did.

Q. What did you do after that?

A. Put the baby's shoes on and dressed the baby and got ready for home.

Q. What time did you leave?

A. Half-past six.

Q. Now how did you go home?

A. The Wheat road. I got to the path again and the baby walked from father-in-law's place on Wheat road and when I got from the path, it was a small path, I carried the baby. When I got to West avenue, the baby walked another mile, when I got to Cross Fields again I carried the baby again.

Q. Now what time did you get home about?

A. Just as soon I got home was just ten minutes of seven.

Q. And then who was home when you got there?

A. My brother Mike and my husband.

Q. And where was your husband at this time?

A. He was standing right up by the stove.

Q. Where was Mike?

A. Mike had his shoes on, and I heard Mike say, "Come on John—"

Q. Wait, they object to that. What did you see Mike do?

A. Coaxed John to go to the ball.

Q. What did he do, did he wait there?

A. No, he left; left for the hall.

Q. What did John do?

A. John didn't do nothing, just sat there a few minutes and right after that he goes in the front room takes his writing books of this lodge—

Q. Are these the society books?

A. Yes, they are the society books.

Q. And these were the books he read?

A. Yes.

Q. And did he write in these books that night?

A. He did write in them books.

Q. Now after that, what did you do?

A. He started to write and I laid down on the settee, took off my shoes and sat on the settee and read the paper awhile.

Q. What paper did you read?

A. I don't remember; it was the North American or the Inquirer, we had both.

Q. What occurred after that?

A. After I read the paper, I gets up and have a little lunch; that was only by myself.

Q. Can you recall about what time it was?

A. It was somewhere around eight o'clock.

Q. Then what did you do?

A. After I had this lunch, I slips on my shoes and goes next door to Mrs. Gross'.

Q. What do you mean by next door?

A. I mean in my same house, right there.

Q. Mrs. Gross, the old man Louis Gross' house?

A. Yes.

Q. What occurred in there?

A. I go in there and she was batching some bread or yeast. I went in there and we had a little talk only a short time. My husband followed me. He came in there and started to play with Mary. He says, "Mary, where's Uncle Louis?" The old woman and young lady said she was asleep. He said, "You go search in his pockets and see if you find any tobacco?" And I said, "John it isn't nice to disturb the old man." And he said, "Oh, go look in his pockets, he will give me a chew," what he always did, and the young lady goes in there and gets the tobacco and gives it to John. He puts some in his mouth and puts the rest in the bag and he was looking in the glass and fixing his mustache and his hat or cap, whatever he had, and Mary was right back of him to make a remark of my husband, and we laughed that Mary was making a remark, that Mary was making a remark of fixing his mustache. And he said, "Look here, Mary, don't you make fun of me. I am better looking than your husband." And she said, "Oh, I am only joking," and then I heard a knock.

Q. What did you do?

A. I said, "John, I heard a knock." I wanted to go to the door because I feared—

Q. Never mind, what did you do?

A. I opened Mrs. Gross' door, and he said, "Come back here," and he said, "Come back, I lock the door," he said.

Q. Right after that what happened?

A. I went back again.

Q. Where?

A. Into the same place, Mrs. Gross'.

Q. How long did you remain there?

A. Only a short time. John said, "Come on, let's go home."

Q. What did John do after that?

A. Didn't do nothing; told me to go home and Mrs. Gross repeated, "What are you in a hurry for?" And he said, "I made a promise to go out to-night for some business."

Q. After that, what was done?

A. So we left the house.

Q. Who's we?

A. John and I, we left Mrs. Gross' and got right back in my part.

Q. What part did you go into?

A. In the kitchen.

Q. What kitchen is that?

A. My kitchen, of course. I have to go from the summer kitchen. Then I went in my cooking kitchen.

Q. When you got in this room who was there?

A. Nobody at all.

Q. Where were the children at this time?

A. All upstairs to bed.

Q. When you came home with Tillie, where were the children?

A. Upstairs asleep, laying in bed; not asleep.

Q. And where did Tillie go when you came in the house?

A. As soon as I got in the house, father called her, and I called Victoria, "Come down," and she comes down to the steps and I handed her the child—she didn't come to the kitchen—I handed her the child on the steps.

Q. What did Mr. Buglio do when you come back from Mrs. Gross'?

A. He goes and sits at the books of them lodge books, and I said, "Are you going to write yet?" And he said, "I might as well, a few more minutes;" and when he go in the house, he pulls his watch and says, "It is ten minutes of nine," and I says, "How about the people ain't coming?" And he says, "We will wait awhile." Then I said, "As long as you are going to write, I will

go to bed." And I pulls my shoes off at the front of the stove, and goes to bed.

Q. What did he do after that?

A. Why, I lay there a few minutes—not very long. I heard someone at the front porch, and I went to the kitchen door and I heard this tap, and I said, "My Lord"—

Q. Don't say what you said.

A. I heard this knocking. I heard somebody knock two or three times, and John gets up from the table and goes to the door, and I couldn't hear neither him reply, any talking. It was only about a second or a minute. John comes back inside and calls me to the end of the steps and says, "Raph, I am going out." I says, "Who are you going out with?" He said, "These men."

Q. Did he tell you who they were?

A. No, sir, he didn't say.

Q. Did he say where he was going?

A. Didn't make no answer, and I said, "John, if you are going, lock the door and don't disturb me." And I said, "If you find Mike, come home together."

Q. When did you next see Mr. Buglio?

A. I never see Mr. Buglio, two or three days, when they had him in a casket.

Q. When did you hear about Mr. Buglio?

A. Till Dr. Dubler told me.

Q. What time was that?

A. It was about half-past ten. I don't remember the right time, because I was all excited and exhausted. I don't know what I was doing.

Q. What was done?

A. He comes and call at my side kitchen, at my side house window. I heard him call, "Mrs. Buglio, Mrs. Buglio."

Q. Now, when he called, what did you do?

A. I get up.

Q. What did you do then?

A. I take the lamp and went down downstairs. I opened the window first. I said, "Who is there?" And Mr. Dubler said, "Dr Dubler; come downstairs, I want to see you."

Q. What did Dr. Dubler say to you then?

A. After I go downstairs, I go and open my parlor door, and I meet Mr. Dubler over there, and he said, "Where is John?" I said, "John went out." "Where did he go?" I said, "He went out with some man, but I don't know where." He said, "How many men?" I said, "I don't know; he said he was going out with some men." "Do you know the name?" "No, sir." He said, "Are you sure?" I said, "Yes, sir." And he replied, "Do you know that John is dead; no, they have killed John." And as soon as I heard that I got excited and cried, and he got hold of the lamp out of my hand, and he sets in the rocking chair in the parlor, and I was in my nightdress.

Q. Where was the children?

A. All upstairs when Dr. Dubler called me; all fast sleeping.

Q. Where were they when Dr. Dubler told you?

A. After he puts me back in the chair, he locks the door, and I started to holler and cry. He shut the door—not locked the door—and I started to carry on fierce, and he said, "Mrs. Buglio, that won't do any good;" and he said, "Lay still, bear up," and I said, "Where is John?" He said, "They will bring him home." I wanted to see where he was, and he puts me back, and in all this excitement the old man Gross knocks at the door.

Q. You needn't say what Mr. Gross said.

A. All this excitement; Mr. Gross got up the whole family; and my children come downstairs.

Q. What occurred after that?

A. As soon as my children were all there, Mr. Sims was at present, and the children were all crying and carrying on. I said, "Dear children, go out and see

where your pop is, and they are bringing your pop home dead." So the children started to cry with me.

Q. After that, what did you do?

A. Didn't do nothing. They took me into the kitchen.

Q. Mrs. Buglio, did you use these words on this night, or words to this effect, "Ain't you dead yet, you son of a bitch?"

A. No, siree.

Q. Did Mr. Buglio have a quarrel with Mr. Labriola in that house that night?

A. Never since I am married.

Q. Did Mr. Labriola strike John Buglio with that club?

A. No, siree.

Q. Did you and Mr. Labriola and Mike Raymond drag the body of John Buglio from the summer kitchen?

A. No, siree.

Q. To the yard?

A. No, sir.

Q. Did you take the body of John Buglio, I mean you, Mr. Labriola and Mike Raymond, take the body of John Buglio and put it on the wheelbarrow?

A. No, sir.

Q. And carry it away?

A. No, sir.

By Mr. Cole:

Q. Mrs. Buglio, did you see anybody on the night of December 22d take your husband's body and put it in a wheelbarrow?

A. No, sir.

Q. Did you see anybody take a wheelbarrow, the wheelbarrow that you had, with your husband's body and take it away?

A. No, sir.

Q. Did you hear Joseph Labriola say to Mike Raymond on that night, "You get the wheelbarrow; if you don't I will do what I did to this man?"

A. No, sir; no siree.

Q. Did you hear Joseph Labriola say that night in the kitchen to your husband that if he didn't let you go to the ball, he would kill him?

A. No, sir.

Q. Did you tell your daughter, Victoria, that you would kill her, your daughter, little Victoria. Did you ever tell her that you would kill her?

A. No, siree.

Q. Did you see Joseph Labriola come in your home that night with that club in his hand?

A. No, sir.

Q. Or any other club or stick?

A. No, sir.

Q. Did you and Joseph Labriola and Mike Raymond stand under—out in your yard—under the window where the Di Atavio, and have a talk, and did you say, "Aren't you dead yet, you —?"

A. No, sir.

Q. Did you on that night take a knife from the bowl in the kitchen and take it out?

A. No, sir.

Q. And bring it back and put the knife under the oil-cloth?

A. No, sir.

Q. Did you strike your husband that night?

A. No, siree.

Q. Did you cut his throat?

A. No, indeed.

Q. Did you ever tell Mrs. William Simpkins that they first licked your husband, and then murdered him?

A. According to the talking they have done in my house, certainly, they did.

Q. What talk do you mean?

A. Everybody was telling this trouble in my house.

Q. After your husband had been killed?

A. Yes, sir; my husband was killed.

Q. Was your husband dressed that night when he went out?

A. Yes. Not his best clothes.

Q. Do you know what clothes he had on?

A. Yes, sir.

Q. What clothes?

A. Had on a black coat and worsted pants, something like gray worsted, and a shirt, cream-colored, tucks in front, silkalene tucks, and a cap.

Q. What kind of shoes had he on?

A. His best shoes; four-dollar patent leather.

Q. Are they the same clothes he had on when they brought him back?

A. Yes, sir, I think so; because I never saw his clothes after he was dressed.

Q. You didn't see his clothes after that?

A. No, I didn't see the body at all.

Q. Did he have a pair of gloves?

A. No, sir. He had a pair of cheap gloves that he used to slip on when he went to work, a pair of ten-cent gloves, that he used to slip on when he went to work, made out of canton-flannel, and he used to wear them often. That is the only gloves he had.

Cross-examination, by Mr. Fithian:

Q. Ever see these gloves before?

A. Certainly I did. I know what they are.

Q. How do you know what gloves he had on?

A. I didn't say he had the gloves on. I know he had a pair of cotton gloves, and they told me he had a pair of gloves on.

Q. You don't know whether they were the same ones he had or not?

A. No; but I know he didn't have any other gloves.

Q. Carry them in his pocket, did he?

A. I don't know where he had them.

Q. Where did he keep them?

A. In his coat pocket.

Q. In his coat pocket? Did you and your husband live happily together?

A. Yes, we did.

Q. Didn't you have a quarrel with him a week or two before this trouble?

Objected to as incompetent, irrelevant, and not cross-examination.

The Court—The objection is overruled.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

[L.S.] THOMAS W. TRENCHARD, *P. J.*

Q. Didn't you have a quarrel with him?

A. When was this I had the quarrel with him?

Q. I am asking you.

A. It was some two weeks before. We generally have family quarrels, which everybody knows, and husband and wife always have something to say.

Q. Didn't you fight with him?

A. I never did fight with him.

Q. Why did his face get scratched?

A. I will tell you that. We had an argument about some money, and he kind of sassed me about this money that I had spent; but he didn't know I had eight dollars yet of that money. I said, "John, what is the use going to work and telling that man"—what he was telling to another man in my garden, that man said he had spent so much money, and my husband answered, "My old woman spent twenty-nine dollars to-day." I said, "John, I didn't spend no twenty-nine dollars." Why, he didn't know I had some yet, and when we got in the house, I took it kind of hard that he told the man about the money, and I said, "John, I think it is awful mean." I spent that money. I had the rest, you know, was upstairs, and—

Q. How did his face get scratched?

A. So he got excited, and he tried to run after me, that he wanted to get hold of me, and I got up off the rocking chair and began to run, and I happened to touch him with my fingers; but I don't know if I did it or not.

Q. You might have scratched his face as you were trying to run away from him?

A. I might have, because I never did anything before.

Q. What did he start after you for?

A. The excitement of the money.

Q. He was mad at you?

A. Yes, he was mad.

Q. Who did he tell you he had spent the money on—Joseph Labriola?

A. No, siree; he never say no such a thing.

Q. Didn't he complain that night that you had spent the money on Joseph Labriola?

Mr. Cole—I object on behalf of my client.

The Court—The objection is overruled.

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed, and sealed accordingly.

[L.S.] THOMAS W. TRENCHARD, *P. J.*

Q. (Question repeated.)

A. He didn't say that.

Q. What did he say?

A. He told, simply told me, "Didn't I tell you to get that money from Joseph Labriola when you see him?"

CHARGE OF COURT.

Gentlemen of the Jury: In the indictment in this case the State charges Joseph Labriola, Raphael Buglio and Michael Raymond with the murder of John Buglio at the township of Buena Vista in this county, on December twenty-second, 1906.

By an order of this court made in your presence it was directed that Michael Raymond should be tried separately for reasons which appeared to the court to be sufficient under the law to warrant such an order.

Therefore, the only question you will have to deal with in this trial is whether the defendants, Joseph Labriola and Raphael Buglio, are guilty. Whether Raymond is also guilty of the same crime is a question which will be settled when he is put on his trial before another jury. You cannot either acquit or convict Raymond on this trial. Your verdict relates alone to Joseph Labriola and Raphael Buglio.

As stated, Joseph Labriola and Raphael Buglio, the prisoners at the bar, stand charged by this indictment with the murder of John Buglio at the township of Buena Vista, in this county, on December twenty-second, 1906. It now becomes your duty to render a verdict upon the question of their guilt or innocence and upon the grade or degree of their guilt, if guilty. In doing this you must be guided by the principles of law bearing upon the case that I will now proceed to lay before you. In the determination of all questions of fact the sole responsibility is with 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 be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. You must not only consider the evidence which I will refer to, but you must consider all the evidence in the case. You must not rely upon my quotations of the evidence as being accurate, but must depend upon your own recollection.

In this, as in every criminal case, each defendant is presumed to be innocent until he or she is proved to be guilty. To support the indictment the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt. If there be a reasonable doubt whether a defendant be guilty or innocent, he or she is to be declared not guilty. Reasonable doubt is a term often used, probably pretty well understood,

but not easily defined. It 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 of 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. But if, after canvassing carefully the evidence and giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendants are guilty, though it be of the highest grade of crime embraced in this indictment, you should so declare by your verdict.

Under this indictment it will be lawful for you to render a verdict that both of the defendants are not guilty; or that one of the defendants is not guilty and that one of them is guilty; or that both of the defendants are guilty. And, if you find either or both of them guilty, it will be lawful for you to find either or both of them guilty either of murder in the first degree or of murder in the second degree or of manslaughter. I shall hereafter define each of these crimes of which I have spoken. I refer further to the subject now only to say that if, upon all of the evidence in the case there is a reasonable doubt in your minds whether the prisoners are guilty of any crime, it is your duty to acquit. If you are satisfied that they are guilty of a crime, but have a reasonable doubt of the degree of the crime, you must convict of the lesser offence.

To make out a case the State must establish by evidence beyond a reasonable doubt, first, the death of John Buglio on or about December twenty-second last in the township of Buena Vista, in this county. There

is evidence here, if you believe it, and, as I understand it, it is uncontradicted, that he met a violent death at or near his home in Buena Vista township, in this county, on December twenty-second last. The testimony of Henry Irick and Henry Irick, Jr., of Dr. Dubler, John H. Sims and others is to the effect that they found the dead body of John Buglio lying in a path near Minatola, in the township of Buena Vista, on the twenty-second day of December last. Dr. Dubler testified, as I recollect, that the cause of the death was an injury inflicted upon the side of the head which crushed the skull, causing depression and shock to the system; that there were several wounds on the body, one directly across the bridge of the nose as if made by a blunt instrument, and the throat had been cut, evidently with a knife.

In order to make out a case, the State must further prove by evidence beyond a reasonable doubt that the death was caused by the acts of the defendants. There is evidence in this case which tends to show that John Buglio's death was caused by the acts of the defendants. In this connection you will recall the testimony of Victoria Buglio and of Maggie, her sister. It appears to be undisputed that the deceased, John Buglio, resided on December twenty-second last at his house on Central avenue, near Minatola, and with him lived his wife, Raphael, and among others his daughters Victoria and Maggie, and with them lived as a boarder, Michael Raymond, a brother of Mrs. Buglio. Victoria Buglio testifies in effect, as I recall her testimony, that on that night, shortly after supper, her mother, Raphael Buglio, one of the defendants, departed from the house for the purpose of going to bring one of the children home; that when she returned her mother brought with her the defendant, Joseph Labriola; that shortly after the coming to the house of Joseph Labriola and Raphael Bugio there arose a quarrel between Joseph Labriola on the one hnad and the deceased on the other. She

further testifies in effect that Labriola wanted Raphael, the wife of the deceased, to accompany him to the dance hall, and that the deceased objected. Victoria testified in effect that during this quarrel Labriola struck the deceased a blow with his fist; that the deceased called for help and tried to escape; that he was pursued by Labriola and was struck with a club repeatedly both in the house and out in the yard, to which the deceased was driven or had fled, and in the yard deceased was reduced to insensibility by the clubbing; that during the clubbing Raphael said, "You son of a b—, ain't you dead yet;" that meanwhile Michael Raymond, the boarder and brother of Raphael, had come downstairs and was present and perhaps helping during the latter part of the clubbing; that Raphael Buglio was not only present but was helping Labriola in his assault on the deceased; that after deceased had been clubbed, his body was loaded into a wheelbarrow and it was wheeled away by Labriola, Raymond and Mrs. Buglio. Maggie Buglio, the sister of Victoria, testifies in effect that she, too, was present during the quarrel; that she saw Labriola strike her father; that she heard Labriola say he would kill him if he didn't allow her mother to go to the ball; that she saw him strike her father repeatedly with a club, which, as I understand her, Labriola had brought to the house and put back of the wood-box, and that she saw Labriola and her mother jump on the deceased; that after the deceased had been clubbed in the yard, she saw her mother come into the house and get the knife; that afterwards she saw Labriola, Raymond and her mother load the body of the deceased into the wheelbarrow and wheel it away; that afterwards she saw her mother return to the house, hide the knife under the carpet, wash the wheelbarrow which she had brought back, wipe up the blood in the summer kitchen with a blue skirt or dress and arrange the books of the society on the table; that afterwards she saw her mother bury the blue dress or skirt in the garden.

In connection with this testimony you should consider all the testimony in the case, among other testimony as to the physical condition of the deceased when found, his wounds, the finding of the club with blood and human hair on it and of the blue dress, well covered with blood, and as to the wheelbarrow with blood on it.

You will also recall and consider the testimony of Mary DeAtavio, the next door neighbor, who testified in effect that she was sitting at her second story window and heard the quarrel next door and heard the voices of Labriola and Raymond and Mrs. Buglio in the yard; that she heard John Buglio cry, "Oh, my God, what did I do to you? Leave me alone; don't hurt me;" that she heard Mrs. Buglio say, "Ain't you dead yet, you son of a b—?"

Does the evidence show beyond a reasonable doubt that the deceased came to his death by the acts of the defendants? The defendants deny that they did the clubbing. They deny the transactions testified to by Maggie and Victoria and by Mrs. Mary DeAtavio. The defendant Labriola denies that he was on the premises of the deceased after leaving there immediately after supper in company with Mrs. Buglio. He denies that he was present at the scene of the killing. You will recall his testimony. It was to the effect that after leaving Mrs. Buglio in front of his house he was not at the Buglio premises again that night; that he spent the evening at his own house, the house of his father and at the dance hall. Witnesses called by him give evidence tending to corroborate this claim by showing his presence at the dance hall at the time when the killing is alleged to have occurred. This evidence has been recently given. It is fresh in your memory. This mode of meeting a charge of crime is commonly called setting up an alibi. It is not looked upon with any disfavor in the law, for whatever evidence tends to prove that the defendant was elsewhere at the time a crime was com-

mitted at the same time tends to contradict the fact that the crime was committed by the defendant where, as here, the presence of the defendant is essential to guilt, and if a reasonable doubt of guilt is raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt.

Mrs. Buglio testifies in effect that she was at home that night with her husband after having returned with her child early in the evening; that there was no quarrel, no clubbing, and that Labriola did not return; that Raymond had gone to the dance hall early in the evening; that after having spent the evening with her husband, a part of the time in Gross's part of the house, she retired to bed; that after a knock came to the door her husband said he was going out with some men and that she never saw him again.

It is your duty to consider any and all other testimony which tends to corroborate the story of the defendants.

In the course of the examination of some of the witnesses during the progress of the case testimony was offered and admitted tending to show prior inconsistent statements. Such testimony as to prior inconsistent statements when admitted, was not taken and is not to be considered by you as affirmative evidence of the facts stated, not as a testimonial assertion, but merely and only as inconsistent with the present statement of the witness for consideration of the jury on the question of the credibility of the witness.

In endeavoring to gather the truth from this conflicting testimony, it is but the dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. Have the children, Victoria and Maggie, any motive to testify falsely against their mother and uncle? Has the neighbor, Mary DeAtavio, any motive to tell what is not true, and to testify that she heard these things if she did not in fact hear them? Have the defendants any motive to deny such accusa-

tions, if the accusations be true. It seems to be necessary at this stage of the case to make some reference to the question of motive. Motive is always a pertinent subject of injuiry in a criminal case, for experience teaches us that men and women rarely commit crime without some motive. But motive must not be confused with that intent that is necessary in a wilful, deliberate and premeditated killing. The motive here referred to may give rise to the intent. A defendant may, because of jealousy or anger, or kindred feelings, get into his mind an intent to kill. In this case the State contends that the motive for the killing of the deceased was the alleged love which the defendants had for one another, and the consequent desire to be rid of the deceased, who stood in the way of their alleged illicit intercourse. In support of its contention, the State has produced some evidence tending to show such affection between the defendants, and secret meetings between them, and some evidence which tends to show illicit relations. Such testimony you will consider, and give such weight as you deem it entitled to. In this connection I wish to say that there has been come testimony in the case as to statements or admissions made by Mrs. Buglio, which, it is alleged, tend to show her guilt. I desire to charge you especially that all statements or admissions proven to have been made by her are to be considered only as bearing on the question of her own individual guilt, and are not to be considered at all as bearing on the guilt of Labriola. They are not evidence against him.

If it be not satisfactorily proved that one or the other of the two defendants struck the blows or inflicted the wounds that caused the death of John Buglio, then the defendants are not guilty, and must both be acquitted. But if it be satisfactorily proved that both or either of these defendants unlawfully and with a criminal intent, struck the blows or inflicted the wounds that caused his death, then the defendant or defendants who actually inflicted such wounds is guilty of an unlawful killing or

a criminal homicide. If you find that one of these defendants unlawfully and with criminal intent struck the blows or inflicted the wounds that caused the death, and also find that the other defendant was there present sharing the criminal intent of the one who committed the crime, and aiding and abetting in the accomplishment of the criminal purpose, then both defendants are guilty. The rule of law in this regard is that where a person is actually present when a criminal homicide is committed by another, sharing the criminal intent of him who commits the crime, and in any manner aids and abets him in accomplishing his purpose, such participant is a principal in the crime, and is equally guilty with the actual perpetrator thereof.

If you find that John Buglio's death was due to the acts of the defendants, and that the act was unlawful and a criminal homicide, you must then determine what the degree of crime was. Criminal homicides in New Jersey are divided into two classes, murder and manslaughter. The presumption in the case of criminal homicide is that it is murder. To reduce the crime to manslaughter, the evidence must show a lack of what the law calls malice. Malice, as the law uses the term in defining these crimes, consists in the intent to do serious bodily harm. Intent to do serious bodily harm is malice. Murder is criminal homicide, with malice—that is, with an intent to do serious bodily harm. Intent is an act of the mind which cannot be seen, but is generally to be inferred from the conduct and acts of the party. No one can look into a defendant's mind and ascertain from such inspection what his intent was. That intent we generally infer from his acts; and so, in this case, you may consider, among other things, the proven acts of the defendants, as well as the character of the weapon or weapons used in the killing, in the determining the question of intent. If, then, John Buglio's death resulted from the acts of the defendants, and if the defendants intended to do serious bodily harm to the de-

ceased, they are guilty of murder, unless other facts appear, of which I shall hereafter speak.

If you should find the defendants guilty of murder, you must go a step further and determine and designate in your verdict whether it is murder in the first degree or murder in the second degree. The presumption is that if murder, it is murder in the second degree. To constitute murder in the first degree, and to justify a verdict of murder in the first degree, the State must make out by proof beyond a reasonable doubt those ingredients which distinguish a murder in the first degree from murder in the second degree. As far as we are now concerned with the definition of this crime, murder in the first degree consists of the killing of a human being wilfully, deliberately and with premeditation. To make it murder in the first degree there must be an intent to take life, not a mere intent to do serious bodily harm, and that intent to take life must be carried out wilfully, with deliberation and with premeditation.

No particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premeditation should continue for an hour or a minute. It is enough that the design to kill be fully conceived and purposely executed. Ask yourselves, then, these questions with respect to each one of these defendants: Did the defendant intend to take the life of the deceased—that is to say, did the defendant wilfully take the life? Did the defendant act with premeditation, short though the time for deliberation may have been? If you answer all these questions in the affirmative, the defendant is guilty of murder in the first degree. If you answer any one of them in the negative, the defendant is not guilty of murder in the first degree.

In determining whether the defendant intended to take life you may judge the intent from the acts of the defendants. If you find as a fact that the wounds which caused death were inflicted by the club which has been

admitted in evidence, you may consider that as bearing upon the question of intent. You may consider the undisputed fact of the character of the wounds which were inflicted on the deceased; the fact that his skull was fractured and his throat was cut, as also bearing upon the question of intent. You will not fail, also, to consider all other testimony bearing on the question of intent.

If the evidence satisfies you beyond a reasonable doubt that the intent was not merely to do serious bodily harm, but to take life, and that it was carried out wilfully, deliberately and with premeditation, it is murder in the first degree. On the question of deliberation and premeditation you will consider the testimony as to the manner of the killing. The testimony is, as I recall it, that there were several blows struck, one blow with a heavy club inside of the house, and one outside of the house. This took time. Does this show deliberation and premeditation? This important question is for your determination after a consideration of all of the evidence in the case. If you are satisfied that the intention was to take life, but that it was not carried out wilfully deliberately and with premeditation; or if you are satisfied that the intention was to do serious bodily harm, not to take life, it is murder in the second degree, unless it is reduced to manslaughter in the manner I shall hereafter state.

I have said that under this indictment the defendants may be convicted of manslaughter. While the law presumes that the unlawful killing of a human being with intent to take life or to do serious bodily harm is murder, the crime may in some cases be reduced to manslaughter. Those are cases where the defendant acts under the influence of passion, suddenly arising from adequate cause. But the object of the law is to have passion controlled and subdued, and not to permit it to become the excuse or palliation of crime. To mitigate the offense to manslaughter the facts must show that the act was done in the excitement of passion. It must

appear that the killing resulted from passion or heat of blood, produced by reasonable provocation. It is not any mere provocation that reduces an unlawful killing from murder to manslaughter. The provocation must be of such a character and so close upon the act of killing that for the moment the person is to be considered as not the master of his own reason. If such an interval of time elapses between the provocation and the killing as is reasonably sufficient for reason to resume its sway, the crime is not mitigated to manslaughter. The provocation must be reasonable. It must be recent, and the act of killing must be done in a sudden transport of passion. Whether the provocation is reasonable, whether sufficient time elapsed between the provocation and the act of killing for the prisoner to subdue and control his passion, are questions of fact to be determined by you on a consideration of all of the circumstances of the case as disclosed by the evidence. Can you recall any testimony in this case which is sufficient to reduce the crime to manslaughter? Can you recall any evidence of reasonable provocation? That question I submit to you without further comment.

Let me repeat: The taking of life wilfully, deliberately and with premeditation is essential to make it murder in the first degree. Intent to do serious bodily harm is essential to make it murder in the second degree. A sudden transport of passion, arising upon adequate cause, is essential to reduce the crime to manslaughter.

I will now deal with the requests to charge presented by the defendant, Joseph Labriola.

First. The statements in the writing admitted to have been signed by Raymond cannot be used as evidence against Labriola; their sole purpose is to contradict his statements made under oath. That I charge you to be the law.

Second. Notwithstanding the jury may believe that Labriola did not speak the truth concerning his relation to the killing, and that he did have to do with the killing,

still there cannot be a verdict of murder in the first degree unless the jury shall on the whole case be satisfied beyond a reasonable doubt that he intended to take life. That I charge.

Third. If the evidence touching the whereabouts of Raymond and Labriola at the time the State claims the killing took place raises a reasonable doubt as to the presence of either of them at the Buglio house at the time of the killing, there must be acquittal. That I charge.

The fourth request I refuse to charge.

The fifth request I refuse to charge as drafted and as an independent proposition.

Sixth. In determining the value to be given to the statements in the writing signed by Raymond in so far as they differ from his statements made under oath, the jury have a right to and should consider his evidence as to how he was persuaded to sign. That I charge.

The seventh request I refuse to charge as drafted and as an independent proposition.

The eighth request I refuse to charge.

I now deal with the requests submitted for the defendant, Raphael Buglio.

One. What Raymond may have said on other occasions cannot be used against the defendant, Mrs. Buglio, their only purpose being to affect the credit to be given to Raymond's testimony. That I charge, and in connection with that I charge this proposition: The statements in writing admitted to have been signed by Raymond, cannot be used as evidence against Mrs. Buglio; their sole purpose is to contradict his statement made under oath.

Two. To convict Mrs. Buglio it is necessary that the jury should be convinced beyond a reasonable doubt as to the existence of every material fact in the case. That I charge you.

Three. Should the jury have a reasonable doubt as to the truth of the testimony of the children, then it is

the jury's duty to acquit the defendant, unless the other evidence in the case convinces the jury beyond a reasonable doubt as to the guilt of the defendant, Mrs. Buglio. That I charge.

Four. If the jury find from the evidence that the killing of John Buglio occurred during an assault upon him, and if the jury find that there was no common design between the defendants to take life, then the jury can only convict of murder the person who struck the blow which caused death. That I charge.

The fifth request I refuse to charge.

REQUESTS TO CHARGE FOR DEFENDANT, JOSEPH LABRIOLA.

1. The statements in the writing admitted to have been signed by Raymond cannot be used as evidence against Labriola; their sole purpose is to contradict his statements made under oath.

2. Nothwithstanding the jury may believe that Labriola did not speak the truth concerning his relation to the killing and that he did have to do with the killing still there cannot be a verdict of murder in the first degree unless the jury shall, on the whole case, be satisfied beyond a reasonable doubt, that he intended to take life.

3. If the evidence touching the whereabouts of Raymond and Labriola at the time the State claims the killing took place raised a reasonable doubt as to the presence of either of them at the Buglio house at the time of the killing, there must be acquittal.

4. The evidence will not justify a finding of unlawful relation between the defendants to supply a motive for the killing.

5. If the jury shall believe that Raymond was not present at the time related by the children Labriola must be acquitted.

6. In determining the value to be given to the statements in the writing signed by Raymond in so far as they differ from his statements made under oath, the jury have a right to and should consider his evidence as to how he was persuaded to sign.

7. If the jury have a reasonable doubt of the truthfulness of the story of the children touching the alleged assault made by Labriola there must be an acquittal.

8. The testimony of children of tender years, such as Victoria and Maggie, is of an unsatisfactory nature. Children of such tender years have an imagination out of all proportion to the power of other faculties and they constantly say what is not true; not from deceitfulness but simply because they have come to think so by talking or dreaming of what has passed.

DEFENDANT'S EXCEPTIONS.

Mr. Cole—Counsel for Labriola states that as the eighth request to charge, which request deals with the question of credibility of the testimony of the children may not in its entirety be a correct proposition of law, that the Court is now requested to caution the jury as to the character and nature of the testimony of children of tender years such as the witnesses, Victoria and Maggie.

The Court—I don't understand you, Mr. Cole.

Mr. Cole—I understand it to be not only a proper thing for counsel to request the Court to charge, but that it is the duty of the Court to caution the jury more strongly than they generally do on the unsatisfactory nature of the evidence of children and on the danger of being led by sympathy to trust in it. The latter part of the language used is the general view of the law of criminal evidence of Judge Stevens, which is quoted in Jones on the Law of Evidence, paragraph 740, on the

degree of credit to be given such testimony, and it is in line with the argument addressed to the jury that such evidence is of a dangerous character and the jury must be cautioned by the Court of that dangerous character.

The Court—Mr. Cole, your present request to charge, made after the jury has retired, does not relate, as I understand it, to any matters which arise out of what I said to the jury. In other words you do not complain of anything that I said to the jury in my charge. Your complaint relates alone to my failure to charge your request?

Mr. Cole—My complain arises because your Honor ignored in its entirety my eighth request and my offer is that if I should find it necessary to take an appeal and the upper courts should say that the request as made might well have been refused, that had I asked the Court to charge upon the subject of the weight to be given to the testimony of children of tender years, such a request ought to be made, that I now, in order to anticipate that possible criticism by the Court on appeal, I know call the Court's attention to what I understand to be the law, that the testimony of children of tender years is not entitled to the same weight as would the testimony of adults, or at all events, the Court is required to charge specifically on that phase and to call the jury's attention to the dangerous character of the testimony, and I base that upon the citation and quotation that I have heretofore alluded to.

The Court—The request of Mr. Cole for a charge, coming as it does after the Court has concluded its charge and having dealt with the requests, after the jury has practically retired, the Court regards it as too late and declines to intervene.

Mr. Cole—I do not care to have a controversy with the Court as to the time when the request was made concerning the testimony of the children, but want the record to state my understanding to be that at the conclusion of the Court's charge and before the constable had

been sworn or the jury had retired for consideration, that the Court's attention was called to the failure to charge the jury upon the question. I ask an exception to the refusal.

Which exception is hereby allowed and sealed accordingly.

[L. S.] THOMAS W. TRENCHARD, *P. J.*

Mr. Cole—I also except to that part of the Court's charge wherein the Court said: "In endeavoring to gather the truth from this conflicting testimony it is a dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. Have the children, Victoria and Maggie, any motive to testify falsely against their mother and uncle?"

Which exception is hereby allowed and sealed accordingly.

[L. S.] THOMAS W. TRENCHARD, *P. J.*

I also except to the refusal of the Court to charge the fourth, fifth, seventh and eighth requests of the defendant, Labriola.

Which exception is hereby allowed and sealed accordingly.

[L. S.] THOMAS W. TRENCHARD, *P. J.*

I also except to that part of the Court's charge wherein the Court said: "The taking of life wilfully, deliberately and with premeditation is essential to make it murder in the first degree. Intent to do serious bodily harm is essential to make it murder in the second degree. A sudden transport of passion arising upon adequate cause is essential to reduce the crime to manslaughter."

Which exception is hereby allowed and sealed accordingly.

[L. S.] THOMAS W. TRENCHARD, *P. J.*

I also except generally to the charge of the Court.

Which exception is hereby allowed and sealed accordingly.

[L. S.] THOMAS W. TRENCHARD, *P. J.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOSEPH LABRIOLA,
Plaintiff in Error.
} On Error.

ASSIGNMENTS OF ERROR.

The plaintiff in error assigns the following as reasons for the reversal of the judgment under review:

1. Because the Court refused to charge the following defendant's requests:

(*a*) "If the jury shall believe that Raymond was not present at the time related by the children, Labriola must be acquitted."

(*b*) "If the jury have a reasonable doubt of the truthfulness of the story of the children touching the alleged assault made by Labriola, there must be an acquittal."

(*c*) "The testimony of children of tender years, such as Victoria and Maggie, is of an unsatisfactory nature. Children of such tender years have an imagination out of all proportion to the power of their faculties, and they constantly say what is not true. Not from deceitfulness, but simply because they have come to think so by talking or dreaming of what has passed."

(*d*) "Counsel for Labriola states that as the eighth request to charge, which request deals with the question

of the credibility of the testimony of the children, may not, in its entirety, be a correct proposition of law, that the Court is now requested to caution the jury as to the character and nature of the testimony of children of tender years, such as the witnesses, Victoria and Maggie."

2. Because the Court charged the jury as follows: "In endeavoring to gather the truth from this conflicting testimony, it is a dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. Have the children, Victoria and Maggie, any motive to testify falsely against their mother and uncle?"

3. Because the Court permitted Witness Maggie Buglio and Witness Victoria Buglio to testify, notwithstanding it was shown that their tender years rendered them incompetent witnesses.

4. Because the Court permitted the witness William Beck to testify, in answer to the following question, "What did she say to you about it," of a conversation between the said William Beck and Raphael Buglio.

5. Because the Court permitted Witness Simpkins to testify, in answer to the following question, "Did you have any conversation with her (meaning the defendant, Raphael Buglio) with regard as to how John came by his death?" of a conversation between the witness and the said Raphael Buglio.

6. Because the Court permitted the defendant, Labriola, to be cross-examined by the following question:

"Were you down at Martinelli's about a week before John Buglio was killed, and did you have a talk with Mike Raymond down there about some trouble between John and his wife?" I will add a little to that question; don't answer it until Mr. Cole puts in his objection—"And did you say to Mike, 'All right; I will attend to that?' "

7. Because the Court required the defendant Buglio, on cross-examination, to answer the following question:

"Didn't he complain that night that you had spent the money on Joseph Labriola?"

8. Because the Trial Justice refused to sever the trial of the defendant Labriola and Raphael Buglio.

THOMPSON & COLE,
Attorneys for Plaintiff in Error.