

## INDEX

	PAGE
Writ of Error.....	1
Certificate of Chancellor.....	3
Judgment .....	4
Indictment .....	11
Return .....	14
Motion for Direction of Verdict.....	61, 106
The Court's Charge .....	107
Verdict .....	122
Certificate .....	123
Assignments of Errors.....	125
Specification of Causes of Reversal.....	128
Joinder in Error.....	131

### WITNESSES FOR STATE:

William R. Harrison:	
Direct .....	15
Frank J. O'Leary:	
Direct .....	16
Cross .....	18
Austin Albaricci:	
Direct .....	19

	PAGE
Michael Kutka:	
Direct .....	20
Cross .....	25
William P. Braunstein:	
Direct .....	32
Cross .....	35
Redirect .....	35
Recross .....	36
Mensuet Solderini:	
Direct .....	37
Cross .....	41
Edward Hermann:	
Direct .....	44
Cross .....	49
Carl Friessinger:	
Direct .....	53
Cross .....	54
Jarda Albaricci:	
Direct .....	55
Cross .....	57
Samuel Thompson:	
Direct .....	57
Cross .....	60

WITNESSES FOR DEFENDANT:

Emil Von der Linden:	
Direct .....	63
Cross .....	66
Redirect .....	78, 79, 80
Recross .....	79

	PAGE
Charles Schedel:	
Direct .....	80
Sarah E. Duffy:	
Direct .....	82
Abraham W. Hopper:	
Direct .....	83
Cross .....	84
Redirect .....	87, 89
Recross .....	88, 89
Charles Hangley:	
Direct .....	91
Cross .....	91
Redirect .....	95, 96
Recross .....	95, 97
Louis E. Serf:	
Direct .....	97
Cross .....	98
John Sarubbi:	
Direct .....	99
Cross .....	100
Adolph J. Dittmar:	
Direct .....	101
Cross .....	101
Virginia Von der Linden:	
Direct .....	102
Cross .....	105

Writ of Error

**New Jersey Court of  
Errors and Appeals**

THE STATE OF NEW JERSEY:

10

(Seal)

To the Hudson County Court of  
Oyer and Terminer.

GREETING:

20

Because in the record and proceeding and also in giving of judgment in a certain indictment pending before you, in which said indictment Emil Von der Linden was a defendant and which said indictment was for murder, and upon which said indictment he is convicted of manslaughter as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Emil Von der Linden, as by his complaint that we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of the proceedings had upon the trial of said indictment to our New Jersey Court of Errors and Appeals, on the Seventeenth Day of November, 1928, together with this writ, that

30

40

*Writ of Error*

the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

10 WITNESS, EDWIN ROBERT WALKER, Chancellor  
at Trenton, aforesaid on the twenty-ninth day  
of October, 1928.

JOSEPH F. S. FITZPATRICK,  
*Clerk.*

EDWARD M. SALLEY,  
*Attorney for Plaintiff-in-Error.*

20

30

40

**Certificate of Chancellor**

IN CHANCERY OF NEW JERSEY

<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">EMIL VON DER LINDEN, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;">Sur Indictment for Murder</p>	<p>10</p>
--	---	--	-----------

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for review of the judgment of the Hudson County Court of Oyer and Terminer in this state, convicting the said Emil Von der Linden who was convicted and tried for murder of the crime of manslaughter, without exhibiting to me the record of the proceedings in the cause or any part thereof, and without alleging any error in those proceedings, and that I have refused to order a writ of error for the review of said judgment, solely because no cause arguable or otherwise is shown for the granting of such writ of error to the Supreme Court.

Dated, October 29th, 1928.

E. R. WALKER,  
*Chancellor.*

### Judgment

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT:

Be it remembered, that at a Court of Oyer and Terminer holden at Jersey City, in and for the said County of Hudson, on the 2nd Tuesday of December in the year of our Lord one thousand  
 10 nine hundred and twenty-seven before Honorable James F. Minturn one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Charles M. Egan and Honorable Robert V. Kinkead and Honorable Daniel T. O'Regan Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of

- 20 1 John A. Byram, Foreman and  
 2 Michael J. Corrigan 13 Harry Jewusiak  
 3 Thomas J. Corydon 14 George F. Keresy  
 4 Oscar Covello 15 Patrick Maloney  
 5 William Dahm 16 Ross Matthews  
 6 Frank M. Davis 17 Otto Mehr  
 7 Howard R. Dukes 18 John Murname  
 8 Saul Garfunkel 19 Thomas C. Mulligan  
 9 John J. Grady 20 Adam Schmitt  
 10 Harry Goldowsky 21 Dr. Frank J. Short  
 30 11 Peter J. Harford 22 Henry Specker  
 12 Dennis Harrigan 23 Samuel N. Whitehead

good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true Bills.

JOHN A. BYRAM,  
*Foreman.*

*Judgment*

And the foregoing being presented to the said Court on the Thirteenth day of March, in the year of our Lord One Thousand Nine Hundred and twenty-eight with bills of Indictment Nos. 243 to 294 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 245 for Murder, as charged upon Emil Von der Linden remain in said Court for trial and disposal according to law, and said Bill is in words as follows:

10

## HUDSON OYER AND TERMINER

DECEMBER TERM, A. D. 1927

HUDSON COUNTY, TO WIT: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, That Emil Von der Linden late of the Town of Guttenberg in the said County of Hudson on the ninth day of January in the year of our Lord one thousand nine hundred and twenty-eight, with force and arms at the Town of Guttenberg aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Robert Albericci in the peace of God and of this State, then and there being, did wilfully feloniously and of his malice aforethought, kill and murder, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

20

30

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Emil Von der Linden on the ninth day of January in the year of our Lord one thousand nine

40

*Judgment*

hundred and twenty-eight, at the Town of Gut-  
 tenberg aforesaid, in the County of Hudson  
 aforesaid, and within the jurisdiction of this  
 Court, did feloniously kill and slay one Robert  
 Albericci, contrary to the form of the Statute  
 in such case made and provided, and against the  
 10 peace of this State, the government and dignity  
 of the same.

And the Grand Inquest aforesaid, upon their  
 oath aforesaid, do further PRESENT, That the said  
 Emil Von der Linden on the ninth day of Janu-  
 ary in the year of our Lord one thousand nine  
 hundred and twenty-eight, at the Town of Gut-  
 tenberg aforesaid, in the County of Hudson afore-  
 said, and within the jurisdiction of this Court, in  
 20 and upon one Robert Albericci in the peace of  
 God and of this State, then and there being, an  
 assault did make, and him, the said Robert Al-  
 bericci then and their did beat, wound and ill-  
 treat and other wrongs, to the said Robert Al-  
 bericci then and there did, to the great damage  
 of the said Robert Albericci, contrary to the form  
 of the Statute in such case made and provided,  
 and against the peace of this State the govern-  
 ment and dignity of the same.

30

JOHN MILTON,  
*Prosecutor of the Pleas.*

Endorsed Bill No. 245 Hudson Oyer and Ter-  
 miner, Term of December, 1927, The State vs.  
 Emil Von der Linden for Murder.

40

JOHN MILTON,  
*Prosecutor of the Pleas.*

*Judgment*

A True Bill.

J. A. BYRAM,  
*Foreman.*

PRESENTED

10

MAR. 13th, 1928 and it is thereupon ordered that this bill of Indictment remain in this Court of Oyer and Terminer for trial and disposal according to law.

JOHN J. MCGOVERN,  
*Clerk.*

And afterwards to wit: to wit on the twenty-second day of March in the year of our Lord One thousand nine hundred and twenty-eight at a Session of the Court of Oyer and Terminer of the County of Hudson, aforesaid, being now of the Term of December One thousand nine hundred and twenty-seven in the said year before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Oyer and Terminer, in and for the County of Hudson here cometh the said Emil Von der Linden under the custody of his bondsman in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the bail aforesaid, to whom he had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him, how he

20

30

40

*Judgment*

will acquit himself thereof, he says he is not guilty thereof, and therefore for good and evil he puts himself upon the country, and John Milton, Esq., Prosecutor of the Pleas of said County who prosecutes for the State of New Jersey, in this behalf, doth the like.

10

Therefore, let said indictment be continued until June 5, 1928 and let a jury come before the Honorable Charles M. Egan, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Oyer and Terminer for said County, being now of the Term of April, (1928) One thousand nine hundred and twenty-eight of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said defendant to recognize on their oath whether the said Emil Von der Linden be guilty of Murder as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said John Milton, Prosecutor of the Pleas of the County of Hudson, aforesaid who prosecutes for the State of New Jersey in this behalf, as in the said indictment have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.

20

30

At which time that is to say on the 5th day of June in the year of our Lord One Thousand nine hundred and twenty-eight, at Jersey City, aforesaid in the County of Hudson aforesaid, before the Honorable Charles M. Egan, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the

40

*Judgment*

said John Milton Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said defendant under the custody of his bail aforesaid, to whose custody he had hitherto been committed and who being brought to the bar in his proper person by their bail and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose, chosen, empanelled and returned to wit: Charles Salvenson, Stephen Writhenon, Charles Ulrich, Edward Shugrue, Charles A. Mussey, Thomas S. Bull, Elias Tack, William W. Dougherty, John Atkinson, Lawrence Fullem, Austin Howell, Jr., James O'Keefe, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue after a Charge from the Court was submitted to the said jury in charge of the said officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit on June 5th, 1928, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton Prosecutor of the Pleas as aforesaid and for the said defendant do say that the said defendant is guilty of Manslaughter.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and it is by the Court here considered and adjudged, that the said Defendant

*Judgment*

ant Emil Von der Linden be and is hereby sentenced to be confined in State Prison at hard labor for a period of Ten (10) years and thence until the costs of prosecution is paid.

10 Judgment entered and signed this Twenty-first day of June, A. D. 1928.

CHARLES M. EGAN,  
*Judge of the Court of Oyer and Terminer, in and for the County of Hudson.*

Attest:

20 JOHN J. MCGOVERN,  
*Clerk.*

## Indictment

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

COURT OF OYER AND TERMINER

HOLDEN IN AND FOR THE SAID COUNTY

10

THE STATE

vs.

EMIL VON DER LINDEN

Sur Indictment  
 No. 245  
 Term of December  
 A. D., 1927  
 for  
 MURDER

20

March 22, 1928. The defendant being charged plead Not Guilty and he and his bail Paul Fuchs enter into a recognizance in the sum of Ten Thousand (10,000) dollars each conditioned that the defendant appear from day to day for trial.

JUDGE KINKEAD.

June 5, 1928. The defendant being tried is found Guilty of Manslaughter and is remanded for sentence.

30

JUDGE EGAN.

June 21, 1928. The defendant being placed to Bar is sentenced to be confined in State Prison at hard labor for a period of Ten (10) years and thence until the costs of Prosecution is paid.

JUDGE EGAN.

40

*Judgment*HUDSON COUNTY COURT OF OYER AND  
TERMINER

10

STATE OF NEW JERSEY,  
*Defendant-in-Error,*

.vs.

EMIL VON DER LINDEN,  
*Plaintiff-in-Error.*Sur  
Indictment  
CERTIFICATE

20

I, ROBERT V. KINKEAD, one of the Judges of the Hudson County Court of Oyer and Terminer, hereby certify that there is a reasonable doubt as to the validity of the said conviction of Emil Von der Linden, who was found guilty of manslaughter.

30

Application being duly made to me for admission of the said Emil Von der Linden to bail, pending the prosecution of the writ of error, I hereby order that the said Emil Von der Linden, defendant in the Hudson County Court of Oyer and Terminer and plaintiff-in-error, be admitted to bail in the sum of twenty thousand (\$20,000) Dollars.

ROBERT V. KINKEAD.

Dated: November 2, 1928.

Filed Clerk's Office

November 2, 1928.

Hudson County, N. J.

40

*Indictment*NEW JERSEY COURT OF ERRORS AND  
APPEALS

THE STATE OF NEW JERSEY :

(Seal)

10

To the Hudson County Court of  
Oyer and Terminer.

GREETING :

Because in the record and proceeding and also in giving of judgment in a certain indictment pending before you, in which said indictment Emil Von der Linden was a defendant and which said indictment was for murder, and upon which said indictment he is convicted of manslaughter as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Emil Von der Linden, as by his complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of the proceedings had upon the trial of said indictment to our New Jersey Court of Errors and Appeals, on Seventeenth day of November, 1928, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

20

30

40

*Indictment*

WITNESS, EDWIN ROBERT WALKER, Chancellor  
at Trenton, aforesaid on the twenty-ninth day of  
October, 1928.

JOSEPH F. S. FITZPATRICK,  
*Clerk.*

10

EDWARD M. SALLEY,  
*Attorney for Plaintiff-in-Error.*

Filed Clerk's Office  
November 2, 1928  
Hudson County, N. J.

20

**Return**

The answer of Chas. M. Egan, Judge of the  
Court of Oyer and Terminer, holden in and for  
the County of Hudson and within named the rec-  
ord and proceedings of the plaint whereof men-  
tion is within made with all things touching the  
same I send to the Justices of our Court of Er-  
rors and Appeals in the last resort of all causes  
at Trenton, N. J. at the day and year within con-  
tained in a certain schedule to this appeal an-  
nexed as within I am commanded.

30

CHAS. M. EGAN,  
*Judge.*

Attest:

JOHN J. MCGOVERN,  
(Seal) *Clerk.*

40

**Testimony**

HUDSON COUNTY COURT OF OYER AND  
TERMINER

<p style="text-align: center;">STATE</p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">EMIL VON DER LINDEN</p>	}	<p style="text-align: center;">Indictment No. 245, December Term, 1927</p> <p style="text-align: center;">MURDER</p>	10
--	---	--	----

Before:

Hon. CHAS. M. EGAN, *Judge*, and a Jury.

Jersey City, N. J., June 5, 1928.

20

Appearances:

ALOYSIUS McMAHON, Esq., *Counsel for the State.*

EDWARD M. SALLEY, Esq., *Counsel for the Defendant.*

30

WILLIAM R. HARRISON, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. What is your profession?

Mr. Salley: I am willing to admit all those photographs—the photographs of

40

*William R. Harrison—For the State—Direct*  
*Frank J. O'Leiri—For the State—Direct*

the dead man and the photographs of the interior.

(Photographs admitted and marked S-1 to S-5 inclusive.)

10

Q. I show you S-5. Will you tell me what that represents? A. That is a view of 21 Park Avenue, West New York, northwest corner.

Q. I show you Exhibit S-4 and ask you what that is. That is the interior of the saloon 21 Park Avenue, West New York, looking from the front to the rear.

Q. The same saloon shown in the other photograph? A. Yes.

20 Q. I show you Exhibit S-1 and ask you what that is. A. That is the interior of saloon 21 Park Avenue, West New York from rear to front.

Q. The opposite direction? A. Yes.

Q. What are these two pictures S-3 and S-2? A. That is the body of the man I took at Bosworth's morgue, January 13, 1928.

30

FRANK J. O'LERI, sworn for the State.

Mr. Salley: I will admit the map.

(Admitted and marked S-6.)

*Direct Examination by Mr. McMahon:*

40 Q. This diagram which has been marked in evidence S-6, what is it a diagram of? A. It is a

*Frank J. O'Leary—For the State—Direct*

map of a survey of the northwest corner of 21 Park Avenue, Guttenberg.

Q. Is it drawn to scale? A. Yes. It is marked on the map. I cannot see it from here.

Q. There are different scales are there? A. Yes. 10

Q. What is this diagram in the right hand corner, marked Section AA? A. That represents a view looking from the interior of the saloon right out to the street. It would be a section if the line was cut directly through this point here showing everything to the other side of that line in front.

Q. That is the street side? A. Looking out into the street.

Q. In other words, that is what they call the street elevation of the building? A. That would be the front inside elevation of the building. 20

Q. What are these dotted lines here? A. Those are steps leading to the outside, represented by this (indicating).

Q. And these two squares, the centre of this section AA, are doors, are they? A. Yes.

Q. And the two semicircular things are lights? A. Electrical lights.

Q. And the squares right under that light? A. Plate glass windows. 30

Q. Is this a screen? A. That is a wooden partition, the same on both sides.

Q. This diagram is drawn to  $\frac{3}{4}$  inch equals a foot? A. Yes.

Q. What is this plan view? A. A plan view of the interior of the saloon.

Q. And do the names which have been put upon the circles and squares which you have here indicate the objects in the saloon? A. Yes.

Q. This I see has no name. Is that a chair? A. Yes. 40

*Frank J. O'Leri—For the State—Cross*

Q. Right next to a desk? A. Yes. All those shown with a heavy black line are chairs.

Q. What are these? A. Stools, without backs.

Q. How high are those stools? A. About three to four feet high.

10 Q. What are these—radiators? A. Yes.

Q. Is this the street opposite the steps? A. That is the sidewalk and that is the curblin.

Q. What is the distance from the front of the building to the curblin? A. 10 feet 6 inches.

Q. Do you know the width from the bottom of the last step to the curblin? A. I will scale it off. 9½ feet.

20 Q. What is that? A. That represents a catch-basin in the street, and that is an electric light pole.

Q. And what is this? A. That is the pole on the sidewalk, and the light hangs over the street.

Q. What is the length of this saloon, do you know? A. It is all marked down there. About 35 feet.

Q. What is the width of it, do you know? A. About 18 feet.

30 Q. Does this represent the curblin? A. That line represents the curblin at 24th and the curblin at Park Avenue.

*CROSS EXAMINATION by Mr. Salley:*

Q. Where are the screens indicated on this diagram? A. This is an inside view here.

Q. Show me the screens here? A. Right there.

Q. How high are those screens? A. 4 feet 7½ inches above the level of the inside of the store, the floor.

40 Q. These coverings over the front doors, how

*Austin Albaricci—For the State—Direct*

high are they? A. 5 feet 8½ inches above the floor.

Q. How high is it from this point here on the step to this point here, approximately?

Mr. McMahon: That is the point of the telegraph pole. 10

Q. This side of the telegraph pole. A. About 16 feet.

Q. As I understand it 24th Street runs from River to River. This is going in a westerly direction, this is going in an easterly direction. This is Park Avenue in a northerly direction, and West New York is southerly here? A. Yes.

Q. Right across the street from this saloon, right over here, is the Guttenberg Police Headquarters, is that right? A. Not exactly. 20

Q. About how far is it? A. About half a block.

Q. About how many feet? A. I would only be guessing at it.

Q. Approximately? A. About 150 to 200 feet.

---

AUSTIN ALBARICCI, sworn for the State. 30

*Direct Examination by Mr. McMahon:*

Q. Where do you live? A. 653 Bergenline Avenue, West New York.

Q. How long have you lived there? A. Since about a year and a half.

Q. Have you lived in West New York all your life? A. No; I lived in North Bergen before.

Q. All your life? A. No; I was born in New York City. I lived in Jersey about 14 years. 40

*Michael Kutka—For the State—Direct*

Q. I show you Exhibit S-3. Whose picture is that? A. My brother Robert.

Q. I show you S-2. A. That is it too, taken in a different position.

Q. When did you see your brother alive last?  
 10 A. I was at his bedside when he died. He was unconscious, at the North Hudson Hospital. I saw him breathe his last breath.

Q. How old was he? A. He would be 32 February 9th.

Q. Was he married? A. Yes; two and a half months.

Q. What was his business? A. Stevedore and truckman.

(No cross examination.)

20

MICHAEL KUTKA, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. Where do you live? A. 21 Park Avenue, Guttenberg.

Q. Are you the owner of the saloon there? A.  
 30 Yes; I am the proprietor.

Q. Do you live upstairs? A. Yes.

Q. January 9, 1928 were you behind the bar?  
 A. Yes, around 10:30 at night.

Q. Do you know this defendant Emil Von der Linden? A. Yes; I know him about seven years.

Q. Do you know what his business is? A. Yes, he was a cop in West New York.

Q. About half past ten at night who was in  
 40 your place? A. There was Robbie Albaricci, Eddie Hermann, Samuel Sampson; and Von der

*Michael Kutka—For the State—Direct*

Linden came in—was in—and Babe Salderini.

Q. Were these men that you mentioned before Von der Linden's name in your saloon before Von der Linden came in? A. Yes.

Q. What were they doing in your saloon? A. They were staying on one end of the bar talking and drinking. 10

Q. Which end of the bar? A. Albaricci and Samuel Sampson and Hermann, they was staying on the front by the window there.

Q. The front of the bar? A. Yes.

Q. That is, you mean the part of the bar that faces toward the street? A. Yes.

Q. Albaricci and who else? A. Edward Hermann and Samuel Sampson.

Q. The three of them? A. The three of them. 20

Q. And there was nobody else in the saloon at that time? A. No.

Q. Where were you? A. I was behind the bar.

Q. When did Salderini come in? A. Salderini came in about 10:30.

Q. Did he come in with Von der Linden? A. With Von der Linden, yes.

Q. Where did Salderini and Von der Linden go when they came in the saloon? A. They stopped on the other end of the bar. 30

Q. Then what happened? A. Then the two was talking together and the other three was talking on the other end of the bar, and this Bobbie Albaricci started talking to Salderini, and he said some word to him, and Emil Von der Linden asked to who he was talking. He said "To Babe Salderini." And Von der Linden got insulted. He said "What am I—a Chinese or bullshitter?" They started to argue a little bit and then Salderini and myself said "Don't argue here; cut 40

*Michael Kutka—For the State—Direct*

it out and stop it." So they did stop it. And everything went all right, till the time was up when Salderini was looking to go out, and he was calling Von der Linden he should go with him, he should go out too, they should go home. So  
 10 Salderini went out ahead of time and Von der Linden was left behind, and when he was going out he started saying to everybody good night, and when he comes to Albaricci he stop on the end of the bar there and they were talking about a fight, and they would not be afraid one from the other. They was still soreheads. When he stopped on the other end of the bar he say to Albaricci any time he feels like going out he could go out with him. So Albaricci went out  
 20 after Von der Linden, and what happened after that I do not know. I was behind the bar.

Q. Did you see Albaricci again? A. I see Albaricci after that when we brought him in.

Q. Where did you first see him? A. I saw him in my place.

Q. No; after he went out with Von der Linden where did you first see him again? A. Outside when they started carrying him in my place.

30 Q. Who carried him in? A. Mr. Hermann and Samuel Sampson and I gave them a hand after because he was unconscious.

Q. What did you do with him? A. We put him on a chair by the window and gave him water to try to cure him. I thought we would bring him alive. He was like a dead man. And he got all right. He got up a little bit, and then he walked a little bit and went to the bar and sit on a high chair, put his head on his arm and rested for a good while.

40 Q. Did you see Von der Linden again that

*Michael Kutka—For the State—Direct*

night? A. Yes.

Q. Where did you see him? A. He came back about fifteen or twenty minutes later.

Q. Where was Albaricci then? A. He was laying on the bar; he had his head on his arms.

Q. Did Von der Linden say anything when he came in? A. Yes; he was saying something. He started to find out what was going on. Nobody wanted to talk to him much. 10

Q. Well, what did he say? A. He started asking what is going on and what is it. When Von der Linden came in Samuel Sampson tried to call up the taxi and he couldn't get it right away, and Von der Linden came to Sampson and asked him who he was calling. He said "I am calling for a taxi." So he couldn't get it, and then Von der Linden tried to talk to Samuel Sampson, but Sampson didn't want to talk to him and Sampson went in another room. After that I got the wire and called the taxi and Von der Linden say to me, "Let me get it." I said "That's all right, I'll get it." So I got the taxi, and the taxi came and we got Albaricci out in the taxi with his brother in law, with Edward Hermann, and they took him home. 20

Q. Did Von der Linden stay in your place? A. Von der Linden went out after that. 30

Q. Did he help to take him out to the taxi? A. He didn't need much help because he was a little bit better that time, he walked a little bit. Hermann assisted him, that is all.

Q. How long were Von der Linden and Albaricci out of your saloon? A. They were only out a little while. It lasted only about a minute or half a minute when they brought Albaricci back again. 40

*Michael Kutka—For the State—Direct*

Q. Who went out with Albaricci and Von der Linden? A. First Mr. Hermann went out.

Q. You do not understand my question. I understood you to say the first man to go home was Salderini? A. Salderini went out first, yes.

10 Q. How long before Von der Linden and Albaricci went out was it that Salderini went home?

A. About one minute.

Q. Then Von der Linden and Albaricci went out? A. Yes.

Q. Did anybody go out with those two? A. No.

Q. Just the two alone? A. Just the two alone.

Q. And in about a minute you were taking Albaricci back unconscious? A. Yes.

20 Q. When did Von der Linden come in the saloon—right away with Albaricci? A. No; he went away. He didn't show up until about fifteen or twenty minutes later he came back.

Q. Did Albaricci speak to Von der Linden when they were in the saloon the second time?

A. He started to talk to him, but he didn't speak much.

Q. What did he say to Von der Linden or Von der Linden to him; what did you hear them say?

30 A. I do not remember what they said at that time. Albaricci was sick yet, and they didn't care much about Von der Linden; they didn't want to talk much to him.

Q. Was anything said by Von der Linden? A. Von der Linden was trying to find out what was going on.

40 Q. What did he say? A. Well, he wanted to say something and I didn't know what he wanted to say. When I started saying a word he went right up in the air, so I didn't want to say anything.

*Michael Kutka—For the State—Cross*

Q. Didn't he talk about anything? A. Then he had a few words with Mr. Hermann. I didn't talk with him.

Q. Was Von der Linden drunk? A. No; he was not drunk.

Q. Had he had any drinks in your place? A. Yes; he had beer. 10

Q. How many beers did he have? A. About three or four.

Q. Was he in his uniform? A. No.

Q. Did you see any gun or blackjack with him? A. No.

Q. Had Albaricci been drinking? A. Yes; he had beer.

Q. How many? A. What I seen, he had about two or three beers. 20

Q. How long was he in your place before this happened? A. He was in my place before about an hour or an hour and a half, because I wasn't home at that same time, I was in a meeting, and when I came from the meeting they were there.

Q. What time did you come from your meeting? A. About ten o'clock.

Q. And you found Albaricci in there? A. Yes.

Q. Did anybody get a doctor for this man? A. Not that time. 30

Q. Did Von der Linden ask for a doctor for him? A. Not that I know.

*CROSS EXAMINATION by Mr. Salley:*

Q. Your saloon is at the corner of 24th and Park Avenue in Guttenberg, is that right? A. Yes.

Q. And that is the northwest corner of Park Avenue and 24th? A. Yes. 40

Q. And the next block below there West New

*Michael Kutka—For the State—Cross*

York begins, is that right? A. Well, half a block.

Q. The bar in your saloon runs in this direction, the same as the Judge's bench, doesn't it? It runs from east to west? A. Yes.

10 Q. Will you kindly indicate with a lead pencil on here exactly where Von der Linden was standing? Put a checkmark there. A. Right here, in the middle of those two doors. This is the lunch bar. That is where they were standing. Salderini was standing right next to him. Von der Linden was staying in the middle by the bar.

20 Mr. Salley: I will mark this. He says Von der Linden was standing between the lunch bar and the other bar and Salderini was standing around the corner.

Mr. McMahon: Was Salderini standing in at the head of the bar?

The Witness: Yes, at the end of the bar, outside the bar.

Q. Where was Sampson standing? A. Sampson was standing here and Albaricci was staying here, and Hermann was staying here.

30 Mr. McMahon: Mark them with their initials.

Q. What time did Mr. Von der Linden come in there, about? A. About ten thirty.

Q. And he came in with Salderini? A. Yes.

Q. And they went down and stood between the lunch bar and the main bar? A. Yes, sir.

40 Q. And they were in there altogether about ten or fifteen minutes? A. They were longer than that.

*Michael Kutka—For the State—Cross*

Q. While Salderini and Von der Linden were talking it was then that Albaricci came down and started talking to Salderini down by the lunch counter?

Mr. McMahon: I object as an unwarranted assumption of fact. 10

The Court: Objection sustained.

Mr. Salley: I will withdraw it.

Q. While Von der Linden was in that saloon did Albaricci come and talk to Von der Linden or Salderini? A. Albaricci started talking to Salderini.

Mr. McMahon: I object to that question. It has an implication; the witness doesn't understand it—"Did he come and talk to him?" Did he go right to where he was standing, and talk? 20

Mr. Salley: I will reframe the question.

Q. While they were in that saloon did Albaricci have any conversation with Saldarini? A. They passed a few words there.

Q. At the time of the conversation did Albaricci stand where he was standing, where you indicated up near the front door, or did he leave up near the front door and come down near where Von der Linden and Salderini were talking? A. I did not notice that. 30

Q. Did he stand perfectly still where he was or did he leave there and come down where Von der Linden and Salderini were talking—if you know? If you do not know, say so. 40

*Michael Kutka—For the State—Cross*

Mr. McMahon: Do you understand that question?

The Witness: I understand.

10 A. I did not notice that. I did not notice if he did walk or not. When they had the argument they was staying a little bit apart.

Q. And the conversation was between Albaricci and Salderini? A. Yes.

Q. And there were some few words passed between this officer Von der Linden and Mr. Albaricci, is that so? A. Yes.

20 Q. After that everything was harmonious—Von der Linden bought a drink, didn't he? A. He bought a drink for Salderini. They were drinking together.

Q. And the other people had their drinks and everything was quiet and everything was peaceful, isn't that right? A. Yes; everything was all right.

Q. And then Salderini started out? A. Yes, sir.

Q. And right after he started out, Von der Linden? A. Yes; he finished up his beer and he started out.

30 Q. At the time that Von der Linden left the saloon and at the time that Salderini left the saloon was Albaricci still standing up here in the same position? A. Yes.

Q. Was he standing, or sitting on one of these chairs, do you know? A. Maybe he was sitting; maybe he was standing; I am not sure.

Q. And he was up by this window? A. Yes; in that corner.

Q. And Salderini went out first? A. Yes, sir.

40 Q. And then Von der Linden started to go out?

*Michael Kutka—For the State—Cross*

A. Yes.

Q. And as Von der Linden started to go out there were some words passed between Von der Linden and Albaricci, is that right? A. I didn't hear anything. Von der Linden started to say good night and he said to Albaricci any time he feels like going out he can go out, if he wants to go out now he can go out now. 10

Q. Did you hear Albaricci say to Von der Linden "You ain't bullshitting me, Von der Linden, I'll go out any time I want to go out?" A. That is what they passed remarks before.

Q. Did you hear that as Von der Linden was going out the door? A. I didn't hear it at that time.

Q. But you are sure of this: Salderini went out first? A. Yes. 20

Q. Von der Linden went out next, didn't he? A. Yes.

Q. Albaricci went out after Von der Linden, didn't he? A. Yes; when he challenged him to go out.

Q. How long after Von der Linden went out did Albaricci go out? A. They went right out one after the other.

Q. But Von der Linden was the first man out of your door? A. Yes. 30

Q. Von der Linden didn't grab him by the coat and pull him out or anything? A. No; he didn't pull him out.

Q. You say you helped to pick this man Albaricci up, didn't you? A. No; they had him picked up. I only gave them a hand to bring him up the stairs.

Q. Did you see where he fell? A. I didn't see where he fell because I was behind the bar. I 40

*Michael Kutka—For the State—Cross*

didn't go right out.

Q. You helped pull him up the steps? A. Yes; when Hermann was out and Sam was out, then I went out myself.

10 Q. After Von der Linden went out and after Albaricci went out what did Hermann do? A. Hermann was the third man went out.

Q. How long did Hermann go out after Albaricci? A. Right after that.

Q. What about Sampson, what did he do? A. Sampson happened to look through the window, I guess.

Q. He didn't go out? A. He didn't go out until it was everything over.

20 Q. Then later on, afterwards, Von der Linden came back to your place, didn't he? A. Yes, sir.

Q. And Albaricci was there? A. Yes, sir, he was.

Q. And Von der Linden told you he wanted to help you get a taxicab for this man, didn't he? A. Yes. I was on the phone that time and he wanted to grab the receiver from my hand, and I say "I'll call it." And I got the taxi.

30 Q. How long after Von der Linden returned to your place the second time did he stay in your saloon? A. About five or ten minutes.

Q. You didn't see any blackjack on him, did you? A. No.

Q. You did not hear anybody at that time accuse him of having a blackjack? A. No.

Q. You did not hear Hermann or Sampson or Albaricci or anybody in that entire crowd say he had a blackjack or anything else? A. No; I didn't hear them.

40 Q. And your saloon is only about one hundred and fifty or two hundred feet across the street

*Michael Kutka—For the State—Cross*

from the Guttenberg Police Headquarters? A. About 150 feet.

Q. If this man had a blackjack and hit this man with it you would have gone over there and had him arrested, wouldn't you?

Mr. McMahon: I object to that.

The Court: Objection sustained.

10

Q. You saw this man on a Monday night, January 9 between half past ten and eleven o'clock in your place—on Monday, January 9, is that right? A. Yes.

Q. And wasn't he back in there again on the following Wednesday? A. Albaricci?

Q. Yes. A. He came back Wednesday, yes.

20

Q. What time was he back Wednesday, was it in the afternoon? A. He was there about eleven o'clock I think in the morning.

Q. In the morning or night? A. In the morning.

Q. That was Wednesday, January 11th at eleven o'clock he was in your saloon? A. Yes.

Q. And he had a couple of drinks that day, didn't he? A. No, sir.

Q. Did he have any beer? A. No; he did not feel good. He was complaining, he say he don't know what happened, what he was hit with.

30

Q. But he was in your place that day? A. Yes; he went right out.

Q. How long was he in there? A. About five or ten minutes.

40

*William P. Braunstein—For the State—Direct*

WILLIAM P. BRAUNSTEIN, sworn for the State.

*Direct Examination by Mr. McMahon:*

10 Q. You are a physician and surgeon? A. Yes, sir.

Q. Graduated from what college? A. College of Physicians and Surgeons.

Mr. Salley: I will admit his qualifications.

Q. Are you also assistant county physician? A. Yes.

20 Q. I show you S-2 and S-3 and ask you if you performed an autopsy on the body of the man shown on those photographs? A. Yes; January 13, 1928, at Bosworth's morgue.

30 Q. Will you tell us the result of your examination? A. The body was that of a well nourished, well developed white male, about 31 years old, measuring 66½ inches in height and judged to weigh about 175 pounds. The pupils were oval, equal and in mid dilation. There was no discharge from the ears, nose, mouth or anal sphincter. There was a superficial abrasion of the skin over the left shin in the mid portion. There were no other signs of recent violence or injury upon external examination of the body. There was no superficial adenopathy.

40 Upon incising the scalp the subcutaneous tissue was found to be congested. There was an excess of blood, more than normal. Upon removing the calvareum the cerebral cortex was found to be intact, but the gyri were somewhat

*William P. Braunstein—For the State—Direct*

flattened. Upon removing the cerebrum lacerations were noted on the inferior-anterior aspect of both the right temporal and frontal lobes. Upon incising the cerebrum the lateral ventricles were found to be free and clear. The basal nuclei and internal capsule were free and clear. The pons and medulla were found to be free and clear.

10

Upon removing the cerebellum a superficial laceration was noted over the posterior and inferior aspect of the right lobe. After the brain had been removed a line of fracture was noted on the left that began at the occipital region at a point about four inches behind the left ear which on the outer table extended anteriorly to the ear, entering the external meatus and terminating just beyond the membrana tympani. That is the ear drum. On the inner table this fracture was found to extend anteriorly over the sphenoid and to terminate in the middle fossa on the left, one half inch beyond the petromastoid bone. There was very little hemorrhage aside from a clot along the line of fracture.

20

Upon opening the thorax the organs were found to be in normal apposition. The abdomen contained no free fluid. The spleen was moderately enlarged and congested; the kidneys were congested, but the other organs of the body were normal and in such condition as to be consistent with the continuance of life and health. Therefore from all the facts observed I infer that death resulted from a fracture of the skull with laceration of the brain and edema of the brain.

30

Q. What is anol sphincter? A. That is the external sphincter of the rectum.

Q. You said there was no discharge from that?

40

*William P. Braunstein—For the State—Direct*

A. Yes. On examining all the external orifices there was no discharge from any of them.

The Court: You say that death resulted in your opinion from what?

A. Fracture of the skull with laceration of the brain and edema of the brain.

10

The Court: What is edema?

A. A brain that has an excess of fluid, swelling which results from a laceration or fracture, and inflammatory process.

Q. Would you indicate on your own head the line you described to us in technical terms indicating the fracture you found? A. The fracture happened in the occipital region at a point about  
20 four inches behind the ear. This (indicating) being the occiput, we take on the left side a point about four inches, beginning here and running anteriorly, which means forward, to the external auditory meatus.

The Court: Stand over here, Doctor.

A. The fracture happened here and running forward and terminating in the external auditory  
30 meatus, just beyond the ear drum, and then into the ear. Internally there was a fracture corresponding on the inner surface of the skull, which terminated in the mastoid bone, which is a continuation of this bone which comes to the surface here.

Q. Did you find any abrasions of the skin outside? A. There were no abrasions of the skin on the surface.

Q. So that whatever caused that was something  
40 that was not hard, wasn't it? A. All I can state

*William P. Braunstein—For the State—Cross  
—Redirect*

is that external force sufficient to cause a fracture must have been applied in that region.

*CROSS EXAMINATION by Mr. Salley:*

Q. Doctor, to sum it all up, death was caused by a fracture of the skull? A. A fracture of the skull without hemorrhage and laceration would not cause death. 10

Q. First there was a fracture of the skull and then this hemorrhage of the brain came along and that caused the death, isn't that right? A. Yes.

Q. If this Albaricci was struck in the jaw by a man's fist and he fell down and the back of his head hit a stone sidewalk that could cause the condition you found there, couldn't it? A. Yes; it could cause it. 20

*REDIRECT EXAMINATION by Mr. McMahon:*

Q. Would you find any laceration on a man's skull if he hit a stone sidewalk with sufficient force to crack his skull? A. We may and may not.

Q. Would you find any black and blue marks? A. If the force is sufficient enough to cause a fracture you would expect to find either an abrasion, a laceration or black and blue marks. On the other hand we see cases where there is fracture of the skull— 30

Q. I am confining it now to men who hit the sidewalk.

Mr. Salley: He is answering the question.

Mr. McMahon: I am confining it to one thing, to one whose head hits the sidewalk. 40

*William F. Brauntein—For the State—Recross*

Mr. Salley: He is answering it.

Mr. McMahon: We cannot both talk at once. I want to confine the doctor to men whose heads hit the sidewalk, not to the general fracture condition.

10 A. They do not generally show any external signs.

Q. If a man were hit with something that were covered with leather or rubber would it show any external signs? A. Not necessarily either.

Q. Would there be any difference in the external conditions between a man whose head fell and hit the sidewalk with sufficient force to fracture the skull and a man who was hit on the head with something that was covered with leather or rubber? A. From my experience in seeing men hit  
20 with a club or a blackjack I think there would be more likely to be a laceration, but not necessarily so. I think it depends upon the force applied, and in either case we do not necessarily find any external signs.

Q. How many cases have you had where fractured skulls were done by a blackjack? A. Not more than half a dozen.

Q. Can you name some of them? A. I will not  
30 limit it to a blackjack. I will say a club.

Q. That is different. Do you know what a blackjack is? A. Yes. Well, I will——

Q. A blackjack is a covered implement, isn't it? A. Yes. I will state that I have seen not only at autopsies but have seen people that were hit by blackjacks that did not show any signs.

*RE CROSS EXAMINATION by Mr. Salley:*

40 Q. And you say some people hit with blackjacks did show signs of laceration? A. Yes.

*Mensuet Solderini—For the State—Direct*

MENSUET SOLDERINI, sworn for the Sttae.

*Direct Examination by Mr. McMahon:*

Q. Where do you live? A. 1108 23rd Street,  
West New York.

Q. Are you a friend of Von der Linden? A.  
Yes, I know him about ten years.

Q. Did you come in the saloon of Kutka on  
January 9, 1928, with Von der Linden? A. Yes.

Q. Who was in the saloon when you got in  
there? A. Mike Kutka, Sam Sampson and two  
other men I didn't know by name. I know them  
now by name. One was Hermann and the other  
fellow, what is it—Albaricci.

Q. Where did you go with Von der Linden in  
the saloon? A. The other end of the bar by the  
lunch counter. He stood at the end of the counter  
and I was right next to him.

Q. Where were Albaricci and Sampson and  
Hermann? A. The other end of the bar.

Q. What did you and Von der Linden do? A.  
We had a couple of glasses of beer and I was  
turned around talking to Sampson, and as I was  
talking to Sampson Albaricci came down to talk  
to me, and he stood right next to me, and began  
talking. Von der Linden said "Well, what am  
I?" I said "He is not talking to you, he is talk-  
ing to me"; and I told this other fellow to go  
back the other end of the bar, that we were hav-  
ing a couple of drinks by ourselves. As he came  
back Albericci said, "Well, you ain't bullshitt-  
ing me."

The Court: To whom did he say that?

The Witness: Von der Linden.

*Mensuet Solderini—For the State—Direct*

Q. What did Von der Linden say? A. He said "Any time, any place," I think; but I am not sure he said that.

Q. Did he say "Any time you want to have it out you can have it out?" A. I do not think he said that.

10 Q. Are you sure now that he did not? A. He said "Any time, any place." He might have said that.

The Court: It is not a question of what he might have said; what did he say?

The Witness: I wasn't sure at all. He said something to him anyway to that effect.

20 Q. Was your memory better when you made a statement to the police? A. What I made to the police, I could make the same statement now.

Q. Would your memory be refreshed by reading your statement you made to the police? A. It might.

Q. I show you a paper. Is that your signature? A. Yes.

30 Q. Will you read that and see if it refreshes your memory? A. Yes. He said that. I swore to it.

Q. He did say that? A. Yes.

The Court: He did say what?

The Witness: "Any time, any place."

Q. "Any time you want to have it out we will have it out;" that is what he said, isn't it? A. Yes.

40 Q. And you went out of the saloon? A. We both were going out together.

*Mensuet Solderini—For the State—Direct*

Q. You and who? A. Von der Linden and I. I went out first—no, we went both to the door together and I went first. I opened the door and I went out about my business. I went down to the middle of the block to a stable there in the alley there.

10

Q. And you urinated? A. Yes.

Q. And you did not see Von der Linden come out of the saloon up to the time you had urinated? A. When I came back I saw Kutka.

Q. Up to the time you had urinated had you seen Von der Linden come out of the saloon? A. He was already out. When I looked up the street he was already—

The Court: You can answer the question.

20

Q. Up to the time you went out to urinate did you see him come out? A. My back was to him.

The Court: Did you see him come out?

The Witness: I did not see him come out, no.

Q. While you were urinating he came out? A. I came out; there is a little alley there, you have to walk in; and I came back to the sidewalk and I looked up the block and saw this man laying on the sidewalk and Von der Linden and I think Sampson picked him up.

30

Q. Was that after you were through urinating? A. Yes.

Q. How far did you walk to urinate? A. About 75 to 100 feet.

Q. And the first time you saw Von der Linden after you went to urinate was when you saw this

40

*Mensuet Solderini—For the State—Direct*

man being picked up from the sidewalk? A. Yes.

Q. Where was Von der Linden then? A. He was helping pick him up.

Q. What did they do with him? A. I turned then. I went down to the corner. We own some property on the corner of 23rd and Park Avenue. As a rule I put the light out in the hall. As I came out Von der Linden said "Come on down with me, I am going back," I said "I won't go back."

Q. Did he tell you what he was going back for? A. To see how the fellow was.

Q. And you didn't go back; you went home? A. Yes.

Q. You didn't hit this man, did you? A. No, sir.

Q. You were the only man who came out of the saloon with Von der Linden? A. Yes.

Q. There was nobody on the sidewalk at that time? A. No, nobody there.

Q. Did you see a blackjack with Von der Linden? A. I never saw him carry a blackjack.

Q. You know he is a policeman? A. I know he is a policeman, yes. I have been in his company with his coat off and everything else. I have been to beefsteak parties with him, and I never saw him carry a blackjack.

Q. You never saw him with a gun either? A. I don't know—when he has his uniform on—

Q. Answer the question.

Mr. Salley: I object as immaterial, irrelevant and incompetent.

The Court: I think it should be held down to the night itself.

40 Mr. Salley: We admit when he was act-

*Mensuet Solderini—For the State—Cross*

ing as a police officer he carried a blackjack and a gun also.

The Court: Of course this witness is your witness and the questions are leading.

Q. You urged Albaricci to go back and not have a mess with this man Von der Linden, didn't you? A. Well, I have been in the saloon business practically all my life, and I know what those saloon brawls are. I have never been in trouble in my life, so I thought the best thing to do was tell this fellow to go back to his own company. He did go back. When he went back he said that word "bullshitter."

10

Q. What did you do after that remark was made? A. We had two more drinks.

20

Q. You do not know what Von der Linden said to this man when he was leaving the saloon? A. I was already out.

*CROSS EXAMINATION by Mr. Salley:*

Q. You got to the saloon what time that night? A. We were listening to a fight. One man was knocked out in one round. We got to the saloon about half past ten or eleven o'clock.

30

Q. When you got to the saloon you stood up by the lunch counter? A. By the end of the bar.

Q. And Albaricci came down and started talking to you? A. I was talking to Sampson first and Albaricci came and talked to me.

Q. Did Albaricci leave the place where he was and come down in your direction? A. He went back and talked to the other three men.

Q. Did he leave first to come down where you

40

*Mensuet Solderini—For the State—Cross*

were standing? A. Yes; he left the other end of the bar and he stood right close to me.

Q. And he started talking? A. Yes.

Q. Then what did Von der Linden do, if anything? A. Von der Linden didn't say much any-  
10 way.

Q. And then after that you gave the fellow a wink to go back to his company, and he went back there, didn't he? A. Yes.

Q. While he was going back didn't Albaricci say to Von der Linden "You ain't bullshitting me?"? A. Those are the words he said.

Q. And then you went out, isn't that right?

Mr. McMahon: No; it is not right.

20 A. No; we had another drink and I said "Let's go home."

Q. And after that Von der Linden followed you out? A. Yes.

Q. Mr. McMahon has asked you whether or not you saw a blackjack in Von der Linden's pocket. Did you see a blackjack in his pocket that night? A. No; I didn't.

30 Q. Earlier in the evening you were around to Schadler's place? Schadler is a truckman on 23rd Street? A. Yes.

Q. And Schadler is a man who is suffering from rheumatism, isn't that right—and Von der Linden gave this man Schadler a rubdown there that night?

Mr. McMahon: I object to that.

The Court: I cannot see that that is material whether he gave him a rub-down or  
40 a rub up.

*Mensuet Solderini—For the State—Cross*

Mr. Salley: If I do not connect it up I am perfectly willing to throw it out.

Mr. McMahon: But the jury gets it.

Mr. Salley: I want to show that if this man had a blackjack on the way he was clothed everybody in that room would be in a position to see that blackjack on him. 10

The Court: I do not think I will allow it.

Q. At the time Von der Linden was at Schadler's house did he have his coat and his vest off at that time?

Mr. McMahon: I object as immaterial.

The Court: Objection sustained. The point is that he has already stated he did not see a blackjack. 20

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

CHAS. M. EGAN,  
*Judge.*

Q. If Von der Linden had when he was in Schadler's house a blackjack in either of his back pockets would you be in a position to see it? 30

Mr. McMahon: I object to that.

The Court: Objection sustained.

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.* 40

*Edward Hermann—For the State—Direct*

EDWARD HERMANN, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. Where do you live? A. 52 22nd Street,  
West New York.

10 Q. On January 9, 1928, at half past ten o'clock  
were you in Kutka's saloon? A. Yes.

Q. How long had you been in the saloon before  
Soldnerini and Von der Linden came in? A. I  
was in about an hour and a half, I am not sure.

Q. Who was in there with you at that time?  
A. There was Sam Sampson and Albaricci and  
Mr. Kutka, the saloon keeper.

Q. Did you know Von der Linden that night?  
A. No, I did not.

20 Q. When Von der Linden and Soldnerini came  
in the saloon where did they go in the saloon?  
A. They passed us and went over to the back  
end of the bar.

Q. Where were you standing? A. In front on  
the avenue side of the bar.

Q. The three of you, you, Albaricci and Samp-  
son? A. Yes.

30 Q. Was there anything said between Albaricci  
and Soldnerini when they got down to their part  
of the bar? A. No, from the start they did not  
say anything.

Q. How long were they in there before they  
started talking? A. They might have been in  
there nearly an hour before Albaricci started to  
speak to Soldnerini.

Q. What did Albaricci say to Soldnerini? A.  
That I really could not say. I didn't take much  
notice to anything.

40 Q. Did Albaricci go down to where Soldnerini

*Edward Hermann—For the State—Direct*

was standing or did he talk across the bar? A. He went down to that end once. I don't know whether to speak; he went down that end once about a minute.

Q. Did you hear what Albaricci said to Von der Linden or Von der Linden said to Albaricci? 10  
A. I heard that; Albaricci said "I am not speaking to you, I am speaking to Solderini.

Q. Then what did Von der Linden say? A. He said "What am I—a Chinee?"

Q. After that happened was anything else said?  
A. Not that I know.

Q. How long after those remarks were passed did Solderini and Von der Linden stay in the bar room? A. They had another beer or two and Solderini asked to go home. 20

Q. Can you give us any idea in time; was it an hour or two hours? A. No; it was short after that; maybe fifteen minutes.

Q. Is Solderini known as Babe; do they call him Babe? A. Yes; that is the way I know him that night; I didn't know his name.

Q. When Solderini went home did he go home alone? A. Yes; he went in front and opened the door alone. He was first out. Von der Linden followed him shortly. 30

Q. When Von der Linden went out did he do or say anything? A. He said to Albaricci something like "Young man, if you want to come out with me I show you something," or something like that. I ain't sure of the words.

Q. But there was something said by Von der Linden? A. Yes.

Q. Did Albaricci say anything? A. He went right out after him, behind him.

Q. What did you do? A. I stayed in the saloon. 40

*Edward Hermann—For the State—Direct*

Q. How long did you stay in after these two went out? A. Maybe a minute or two, and I opened the door.

10 Q. What did you see? A. I seen when he had him down on the sidewalk and holding him up with one hand and with the other he was hitting him.

Q. What was he hitting him with? A. I can't say. It was night. I couldn't see.

Q. How was he holding him up with one hand? A. By the back. He had him stretched out and he was sitting on the sidewalk with one hand in back and hit him on the side of the head.

20 Q. While this man was lying on the sidewalk resting on Von der Linden's hand you saw Von der Linden strike this man on the head? A. Yes.

Q. Was Albaricci drunk? A. No; there was nobody drunk.

Q. How many times did you see Von der Linden strike Albaricci? A. Oh, may be twice or three times, because I hollered at him right away.

Q. What did you holler? A. I hollered at him and then he dropped him and walked toward 23rd Street.

30 Q. What did you say to him? A. I hollered "Get out of there; what are you trying to do to that man?" and I called him a bad name.

Q. You called him a bastard? A. Yes.

Q. What did Von der Linden say to you when you called to him that? A. When I called him that he dropped him right away and he said to me, "Oh, you don't want me to hit him?" and he dropped him and he walked away.

40 Q. What did you do then? A. I went out, and I didn't think it was so bad. I wanted to get him up, but I could not get him up, he was

*Edward Hermann—For the State—Direct*

stretched out. And then Sampson came out and then Kutka came out and they helped me carry him inside.

Q. Was there anybody else on the sidewalk when you looked out but Von der Linden the cop, and Albaricci? A. That's all I see.

10

Q. Do you see Von der Linden here in the courtroom? A. Yes; I seen him here.

Q. Where is he? A. Sitting there.

Q. Indicating the defendant? A. That is the man, yes.

Q. Who helped you to bring Albaricci in the saloon? A. Sampson helped me the most, and then Mr. Kutka came out too.

Q. What did you do with Albaricci? A. We sat him on a chair and Sampson held him in the back against the chair and Mike Kutka got a glass of soda or water, I can't say what it was, it was white, and poured it into him.

20

Q. Then what did they do? A. He sit a little while and we shook him a little and tried to talk to him, and he came to himself, he came all right.

Q. How did he get home? A. He did ask to call a taxi, and Mike Kutka did so.

Q. Did Albaricci go to the bar? A. Yes, when he came to he got off that chair and walked to the bar and sit down on one of those high chairs and put his arm on the bar with his head on it.

30

Q. Did the cop come back? A. Yes, he came back some time—before the taxi come.

Q. Did he say anything? A. He started some kind of argument with Mike Kutka. I could not say the words, what they were talking about. He was asking him about the thing there.

Q. Did he ask you to have a drink? A. Yes; he did ask me to shake hands with him and have

40

*Edward Hermann—For the State—Direct*

a drink with him.

Q. You refused him? A. I refused him.

Q. Did he ask you if you saw him do anything to this man?

10 Mr. Salley: I object as leading.

A. Yes.

Mr. Salley: Just a minute. I object.

The Court: You might ask him whether or not there was any conversation. The question is leading.

20 Q. Did he ask you anything with reference to Albaricci? A. He said to me, "Do you know anything what happened to that man?"

Q. What did you say? A. I said "I not only know, I seen it."

Q. Then what did he say to you—Von der Linden—was that when he asked you to have a drink? A. Yes; he asked me again to have a drink and shake hands with him.

30 Q. And you refused? A. When he came again I said "As long as you are teasing so much, all right"; and I had one drink and I shook hands with him.

Q. When he said to you, "Do you know anything about what happened to that man?" and you said "I seen it," what did he then do? A. He pointed his finger at me and he said "If you know anything about this case this finger will always point at you."

Q. "This finger will always point at you," pointing his own index finger? A. Yes.

40

*Edward Hermann—For the State—Cross*

Mr. Salley: I object. That is highly prejudicial to this case, and it is leading as well.

Mr. McMahon: He testified to it.

Mr. Salley: I object to it.

The Court: He has testified to it.

Mr. Salley: I ask an exception.

10

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.*

*CROSS EXAMINATION by Mr. Salley:*

Q. You saw Von der Linden go out of this saloon first? A. Yes.

20

Q. After he went out your friend Albaricci went out next, is that right? A. That is right.

Q. And while all these men were in the saloon did you hear Albaricci say to officer Von der Linden "You ain't bullshitting me, Von der Linden"; did you hear him say that? A. I didn't hear that.

Q. Here is a picture showing the outside of this place. You are familiar with this saloon, aren't you? You have been there lots of times and you know the neighborhood up there? A. I didn't know it so well. I ain't long in West New York.

30

Q. Take a look at that picture S-5. I ask you if you recognize that as the outside of the place? A. Yes; that is the place.

Q. Indicate on there with a lead pencil where your friend Albaricci was lying at the time of the fight. A. Around here some place.

Q. Mark it with an X-mark. Don't be nervous. Take plenty of time. A. Around here somewhere.

40

Q. Right around there?

*Edward Hermann—For the State—Cross*

Mr. McMahon: Where he marks a circle.

A. Right on the corner.

Q. I call your attention to an electric light up here? A. Yes.

10 Q. That light was lit that night, wasn't it? A. It was.

Q. And there were lights in the saloon that night? A. Yes.

Q. And it was light out here, wasn't it? A. Yes, the light in the saloon and that light there.

Q. Both lit? A. Yes.

Q. And across the street is the Guttenberg police station with the lights on that? A. Yes.

20 Mr. McMahon: I object to that. It has already been testified it is 150 feet up the street and not across the street.

Mr. Salley: I will not press it.

Q. You know the police station is on the same street? A. Yes.

Q. And in spite of the fact that this electric light was lit, in spite of the fact there were lights in the store, you did not see anything in this man's hand at all? A. No.

30 Q. You did not see a thing. Now, you say you saw Von der Linden have this man down on the ground and he was hitting him two or three times, is that right? A. Yes.

Q. Albaricci was your friend, was he? A. Yes, I know him for two years.

Q. You did not know Von der Linden at all? You never saw him before in his life? A. No.

40 Q. After you saw Von der Linden have this man down on the ground and hitting him two or

*Edward Hermann—For the State—Cross*

three times why didn't you go across the street to the Guttenberg police station and make a complaint and have the man arrested?

Mr. McMahon: I object. It doesn't make any difference at all.

10

The Court: Objection sustained.

Mr. Salley: Exception.

Q. Did you make any complaint to any police officer—did you make any complaint to anybody?

Mr. McMahon: I object as immaterial.

The Court: Objection sustained.

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

20

CHARLES M. EGAN,

*Judge.*

Q. After all this trouble took place Von der Linden came back in the saloon again, didn't he?

A. Yes.

Q. And you had a drink with him, didn't you? (No answer.)

Q. You had a drink with the man who was supposed to have beaten up your friend, is that right?

30

A. Yes. Well—

Q. Is that right? A. Right.

Q. And while they were in the saloon that night—I am speaking of the night in question—while they were in the saloon that night and Von der Linden was there, and Albaricci, did Albaricci afterward regain consciousness, come to so that he was knowing what he was doing, or not? Do you understand what I mean? A. I didn't get

40

*Edward Hermann—For the State—Cross*

that all.

Q. After Albaricci was brought back and Von der Linden came back did Albaricci come to his senses so that he would know what he was doing; was he conscious and able to talk and explain things? A. He spoke to us, but the other things I don't know how he was.

Q. He did speak; he did do some talking? A. He did ask for a taxi.

Q. And you did not hear him accuse this man Von der Linden of hitting him with a blackjack that night, did you? A. There he didn't say much.

Q. Did you see any blackjack protruding out of Von der Linden's clothing or any part of his clothing that night?

20

Mr. McMahon: I object to that as immaterial.

The Court: Objection sustained.

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.*

30

Q. Did you see any blackjack that night at all in Von der Linden's hands? A. I did not.

40

*Carl Friessinger—For the State—Direct*

CARL FRIESSINGER, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. You are a physician and surgeon? A. Yes.

Q. Graduated from what college? A. University of Ehler, Germany, 1919. 10

Q. Are you admitted to the practice of medicine in this State? A. Yes.

Q. How long are you practicing here? A. Four years.

Q. Were you called in to administer to Albaricci? A. Yes, I was.

Q. Is that the man shown by Exhibit S-3? A. I can't recognize that.

Q. Where were you called to attend him? A. I was called to his home 19th Street, West New York. 20

Q. When? A. On Thursday morning; I was there about nine o'clock.

Q. What did you find the trouble? A. He was in a state of coma. He was unconscious, laying in bed, and I gave a diagnosis of cerebral hemorrhage.

Q. He died of hemorrhage? A. Yes.

Q. Hemorrhage of what? A. Cerebral. 30

Q. When did he die? A. In the afternoon between two and three in North Hudson Hospital.

Q. You ordered him removed to the hospital, did you? A. Yes. I tried to inquire first about the history and his wife told me that he had an accident, he slipped on the floor, she told me, while working, and—

Mr. McMahon: I object to what his wife told him as hearsay. 40

*Carl Friessinger—For the State—Cross*

The Court: Objection sustained.

Q. Do not tell us what anybody told you, only what you yourself know. A. I have it through the history.

10 The Court: Just answer the questions he puts to you. Do not volunteer information.

Q. Did you go to the hospital? A. Yes.

Q. Were you there when he died? A. No.

*CROSS EXAMINATION by Mr. Salley:*

20 Q. As I understand it, you are the ambulance doctor, are you? A. No.

Q. Who called you; did you go to the house to get this man? A. No; I called the ambulance. I notified the North Hudson Hospital to send the ambulance.

Q. As I understand it you went in to attend this man on Wednesday or Thursday, about three days after— A. Three or four days after—

Q. Three or four days after the man got hurt? A. Yes.

30 Q. That was on a Wednesday or Thursday you saw him, is that so? A. Yes.

*Jarda Albaricci—Sworn for the State—Direct*

JARDA ALBARICCI, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. Are you the widow of Albaricci who died?

A. Yes.

Q. How long were you married to him? A. Three months.

Q. Where did he live? A. 218 West 19th Street.

Q. With you? A. Yes.

Q. Do you remember when he came home January 9, 1928? A. 12:30 Monday morning he came home to me.

Q. What was his condition at that time? A. He just came home and went to bed and I woke up Tuesday morning and I found blood on the pillow from his left ear. I woke him up and asked him what is the trouble, and he did not answer, he did not say anything—he said he did not know. He was home all day Tuesday. Wednesday morning he got up, he felt very ill. He dressed and went out and in a little while came back. He went to a show in the afternoon, came home and had supper in the evening and I asked him what seemed to have been the cause of his ear bleeding, and he said—

Mr. Salley: I object as immaterial, irrelevant and incompetent. They are trying to introduce here a dying declaration with no foundation laid.

The Court: Objection sustained.

Q. Did your husband fall while he was at work?

Mr. Salley: I object as immaterial, ir-

*Jarda Albaricci—For the State—Direct*

relevant and incompetent and not within her personal knowledge. She does not work with him.

10 Mr. McMahon: It may be within her personal knowledge. She may have worked with him; I do not know.

The Court: The question would be based on an unwarranted assumption of fact. You might ask if anything happened to her husband.

Q. Did you tell the doctor your husband slipped and fell while he was at work? A. No.

Q. You never did? A. No.

20 Q. Do you remember this doctor treating your husband? A. I just called him up and he came to the house, and he said it was best that he go to the hospital and see what we could do for him.

Q. Was there anything said about your husband falling while he was at work, by anybody? A. No.

Q. When did your husband die? A. On Thursday afternoon at twenty minutes to four.

30 Q. From Monday night when he came home the only time he was out was when he went out to the show on Wednesday? A. Wednesday afternoon.

Q. He did not work that day at all? A. No.

Q. Was he home all day Tuesday? A. All day Tuesday he was home, and all Tuesday night.

Q. What time did he leave the house Wednesday? A. About half past ten Wednesday morning.

Q. What time did he get home? A. Around half past eleven, going on twelve.

40 Q. Did he stay in the house the rest of the day?

*Jarda Albaricci—For the State—Cross*  
*Samuel Sampson—For the State—Direct*

A. He stayed in the house.

Q. Was the show in the morning? A. The show in the afternoon.

Q. What time did he go to the show in the afternoon? A. About two or quarter after two. 10

Q. And when did he get home? A. It was around 5:30.

Q. You say he was bleeding from the ear Monday night? A. Tuesday morning when I woke up.

Q. Were there any cuts or marks on his body? A. No.

Q. You did not see any? A. No.

Q. Did you look for any? A. I did look, but I did not see anything. 20

*CROSS EXAMINATION by Mr. Salley:*

Q. You saw the German doctor on the stand just before you? A. Yes.

Q. And he was the doctor who came to your house? A. Yes.

Q. And he was the doctor who told you to take your husband to the hospital? A. Yes. 30

---

SAMUEL SAMPSON, sworn for the State.

*Direct Examination by Mr. McMahon:*

Q. Where do you live? A. 776 Edgewood Lane, Grantwood.

Q. Did you know Albaricci in his lifetime? A. Yes; I knew Albaricci for at least six years. 40

*Samuel Sampson—For the State—Direct*

Q. On the night of January 9, 1928, at 10:30 o'clock were you in the saloon of Kutka? A. Yes.

Q. Do you live in Guttenberg? A. I did at one time. I lived in 26th Street; I got my butcher shop there in Guttenberg.

10 Q. Who was in the saloon with you? A. There was Edward Hermann, Mr. Kutka, myself and Robert Albaricci.

Q. When you three were there where were you standing? A. I, Albaricci and Edward Hermann was at the easterly end of the bar and when Von der Linden and Solderini came in they went to the westerly end of the bar.

20 Q. Was there any conversation that you heard between Solderini and Albaricci? A. Von der Linden and Solderini came in; they were talking at the end of the bar there, and finally some little talk got in between Solderini and Albaricci, so Von der Linden says, "What am I—a Chinese?" So Albaricci says "I ain't talking to you, I am talking to Babe"—meaning Solderini. So Babe said, "Now listen. I didn't come in here to argue; we came in to have just a little sociable drink." They drank up their beer. Babe got up off the chair and said, "Well, we are going."

30 Babe Solderini walks out. Von der Linden follows him, but stands at the door and says "Any time you are looking for trouble, any time, any place, right now if you want"; and out, and Albaricci followed him.

40 Q. What did you do then? A. So I went back, I didn't watch them outside. I went back to the bar and took my glass of beer and drank it, and I looked over the transom, and when I looked over the transom I seen Albaricci laying on the sidewalk. I ran out and Edward Hermann was

*Samuel Sampson—For the State—Direct*

standing over him. I went out to help pick him up, and I brought him inside to Mr. Kutka's place. We gave him a drink and he was all in; he was "out" about fifteen minutes at least. So he says to me—he came to, and he says "Call up a taxi." I went to the phone, and while I was at the phone Von der Linden came back. He says "Who are you ringing up?" I said "Just a taxi." I walked back into the toilet, and that settled it. That is all I seen, but when I came back into the saloon there was nobody in the place. 10

Q. Von der Linden wanted to know who you were ringing up? A. That is it.

Q. How long was it between the time Solderini and Albaricci had this conversation before Babe left? A. I figured about an hour. 20

Q. The conversation was all over for about an hour? A. Oh, no; it was over for about half an hour. There was nothing said in between.

Q. And this remark was made by Von der Linden as he was going out? A. As he was going out the door.

Q. Did you see Von der Linden when you looked over the transom? A. No, I did not.

Q. When you say you looked over the transom what do you mean? A. Over the transom in the window. 30

Q. Will you indicate on S-5 what you looked over? A. Over this point (indicating on photograph).

Q. Over the screen in the window? A. That is it, that one right there.

Q. You say you did not see Von der Linden? A. No, sir.

Q. Was there anybody there at all but Albar- 40

*Samuel Sampson—For the State—Cross*

icci and Hermann? A. Nobody else, no, sir.

Q. How long had Solderini gone out ahead of Von der Linden? A. I figure about a minute.

*CROSS EXAMINATION by Mr. Salley:*

10 Q. You were standing in the middle of the bar, weren't you? A. No, sir.

Q. Where were you standing? A. At the extreme easterly end of the bar right next to Albaricci.

Q. You were standing, as I understand it—just indicate on that photograph where you were standing? A. Right there.

20 Q. A little from the end of the bar? The other two men as I understand it were around over there? A. They were right here.

Q. Von der Linden and Solderini were here and Albaricci and his brother in law were up here? A. Albaricci was next to me and Hermann was here.

Q. After Solderini and Von der Linden got in the saloon as I understand it Albaricci came down and had some words with Solderini, is that right? A. That I did not pay any attention to.

30 Q. First Solderini went out of the saloon? A. Yes.

Q. Then Von der Linden started out after him? A. And held the door open and passed out.

Q. And he made the remark you said? A. "Any time, any place—right now."

Q. At that time did you hear Albaricci say "You are not bullshitting me, Von der Linden?" A. That I did not hear.

40 Q. Now, there is a light on this corner? A. Yes, sir.

*Motion for Direction of Verdict*

Q. And there is a light in the saloon? A. Yes.

Q. The place is all lit up? A. Yes.

Q. The Guttenberg police station is about 150 feet away on the opposite side of the street? A. Yes, sir.

Q. You did not see any blackjack in this officer's hand, did you? A. That I did not see. 10

Q. During the time he was there that night did you see any blackjack in his hand? A. No.

Q. Did you hear Albaricci say that night this man hit him with a blackjack? A. No; that I did not hear.

## THE STATE RESTS.

20

Mr. Salley: I ask for a direction of a verdict on the charge of murder especially. In Mr. McMahon's opening he said he was going to prove that this man was struck with a deadly instrument, a blackjack. There is no proof in this case whatsoever. The most I can see, if anything, on the evidence is possibly assault and battery or manslaughter. It does not come within the purview of the statute defining murder in the first degree or murder in the second degree. I therefore ask your Honor to take from the jury the consideration of the count for murder in this case because I feel under the evidence produced by the State I am entitled to that at this time. 30

Mr. McMahon: I think the State has made out evidence of first degree murder. While we did not prove that a blackjack 40

*Motion for Direction of Verdict*

10 was used we have proved this man went out for a fight, and while the man was unconscious this man was seen still holding his head up and hitting him. Certainly there was no reason for this man to hit him any longer when he had him unconscious and had to hold up his head to lick him.

Mr. Salley: At the time he was on the sidewalk no one has said he was unconscious. They said he was unconscious after he came in the saloon.

Mr. McMahon: The testimony was he was held up with his arm in back of him and he still clouted him.

20 Mr. Salley: They do not say he was unconscious.

Mr. McMahon: He was unconscious when they got to him.

The Court: I think there is sufficient evidence there.

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

30

CHARLES M. EGAN,  
*Judge.*

40

*Emil Von der Linden—For Defendant—Direct*

EMIL VON DER LINDEN, the defendant,  
sworn.

*Direct Examination by Mr. Salley:*

Q. How old are you? A. 35.

Q. Where do you live? A. 589 22nd Street,  
West New York. 10

Q. Who do you live there with? A. My wife  
and four children.

Q. How long have you lived there? A. Three  
years.

Q. How long have you been a member of the  
West New York police department? A. Three  
years.

Q. On Monday evening, January 9, 1928, did  
you meet Mr. Solderini? A. Yes. 20

Q. Did you go with him anywhere? A. Yes.

Q. Where did you go first? A. At first I was  
at Mr. Schadler's, 114 23rd Street. That is a  
moving business.

Q. How far is that from Kutka's saloon? A.  
About a block and a half away.

Q. What were you doing there? A. I came to  
listen to the radio, to the fights.

Q. Did you do anything else while you were  
there? A. Yes; Mr. Schadler asked me to rub  
his leg. He was laying on the couch, laid up  
with rheumatism, and I said I would. 30

Q. Did you do it? A. Yes.

Q. Did you take off any of your clothes? A.  
Yes; I had my overcoat off and I took off my  
other coat and vest and rubbed him down.

Q. Did you have your blackjack with you that  
night? A. No, sir.

Q. Is it your custom when you are off duty to 40

*Emil Von der Linden—For Defendant—Direct*

carry a blackjack with you? A. No, sir.

Q. What did you do after you left Schadler's place? A. Mr. Solderini said "Let's have a drink," and Mr. Solderini and I started around for a drink. We went to Kutka's saloon and down the end of the lunch counter.

10 Q. Did you see Albaricci there? A. I did not know him at the time. I found out after he was Albaricci.

Q. Where was he standing? A. Up the east end of the bar.

Q. Was he standing at the straight end of the bar or at the curve? A. Right at the curve.

Q. Did you see Hermann, his brother in law, there? A. Yes.

20 Q. And did you see Sampson? A. Yes.

Q. Then what happened? A. We got in the saloon and had a drink, and Babe and I were talking, and Babe was talking to Sam Sampson, and as he was talking to Sam Sampson this Albaricci came down and butted into the conversation. So one word brought another and I said to Babe, "What am I, a nigger here, Babe?" and he said "No."

30 The Court: Who said that?

The Witness: Babe Solderini. I said to

Babe, "What am I, a nigger here?"

Q. What did Babe say? A. "No." Then Albaricci started at me and he said, "Why, you prick you, who the hell do you think you are?"

Q. Then what happened? A. He went up the other end of the bar again.

40 Q. Did you have a drink after that? A. Yes, we had two drinks again after that. Then Sol-

*Emil Von der Linden—For Defendant—Direct*

derini said "Come on, we will go home"; and on the way going home Solderini went—

Q. Talk up so I can hear you. A. Then we started for home. Solderini went out and I followed him, and at the door as I was going out this Albaricci said, "Why, you big prick," he said to me; and I said "I don't want to have anything to do with you," and I went on out. He followed me out, and as I stepped off the curb he was after me, and he said, "You prick, what are you trying, to get me over the boundary line?" he said to me; and as he did he pulls off and hits me, and I catch it with my shoulder. 10

Q. Which shoulder? A. The left shoulder.

Q. And what did you do? A. I threw a right hand punch on him and hit him on the chin, and he staggered back and went down. 20

Q. After he was down did you get hold of him and punch him when he was on the ground? A. No, sir.

Q. How many times did you hit him? A. Only once.

Q. Did you take him down on the ground and punch him three or four times? A. No, sir.

Q. Are you sure about that? A. No, sir.

Q. Will you indicate on here where you were standing and where Albaricci was standing at the time you hit him? A. I had already stepped off this curb. 30

Q. Make a mark. A. And he was right behind me. He said "You prick you, what are you trying to do, get me over the boundary line?" and as I turned around he hit me.

Q. At the time that you hit him were you down in the gutter or up on the sidewalk? A. I was in the gutter. 40

*Emil Von der Linden—For Defendant—Cross*

Q. And where was Albaricci? A. On the sidewalk.

Q. Did you hit him with any blackjack or any blunt instrument or anything of that sort? A. No, sir.

10 Q. Is this your blackjack? A. Yes.

Q. Is that the blackjack you carry on duty? A. Yes.

Mr. Salley: I offer this blackjack in evidence.

Mr. McMahon: I object to that. He said he did not have it and it was not there, and we haven't proved any blackjack.

20 Mr. Salley: All right; I will withdraw it. It is not so very important.

Q. When you were leaving the saloon as I understand it there was some conversation between Albaricci and you. Who opened up the conversation? A. Albaricci.

Q. What did he say to you? A. He said, "Why, you prick you, where the hell do you get that shit, bullshitting me?"

30 Q. What did you do then? A. All I said to him was, "I don't want to have anything to do with you," and I walked out and he followed me out.

*CROSS EXAMINATION by Mr. McMahon:*

Q. You are an ex-prizefighter? A. I was.

Q. Known as "Young Vondy?" A. Von der Linden.

40 Q. You have also been convicted of crime? A. Yes.

*Emil Von der Linden—For Defendant—Cross*

Q. Assault and battery? A. Yes.

Q. All of this conversation where this man said to you "You prick" and all those nasty words was after your friend Solderini left? A. Solderini went out and I just went right out the door. I was right behind him.

10

Q. He did not hear them? A. Not that I know of.

Q. Nobody heard them but you? Did anybody hear them but you?

Mr. Salley: I object. How does he know that?

Mr. McMahon: He may know.

Q. Can you answer that?

20

Mr. Salley: I object on the ground it is incompetent and irrelevant and calls for a conclusion on his part.

Mr. McMahon: I will withdraw the question.

Q. You say you were off duty? A. Yes.

Q. And you did not carry your blackjack or your revolver? A. No, sir.

30

Q. Isn't a policeman always on duty? A. Yes.

Q. And aren't you supposed to be equipped when you are on duty? A. As a rule I don't carry it; none of us do.

Q. Do your rules of your department require you to be equipped when you are on duty with your blackjack and revolver?

Mr. Salley: I object as immaterial, irrelevant and incompetent. Everybody knows that the ordinary cop when he comes

40

*Emil Von der Linden—For Defendant—Cross*

home leaves his gun and blackjack—

Mr. McMahon: I object to that speech before the jury.

The Court: I will allow the question.

Mr. Salley: Exception.

10

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.*

A. Not on my day off.

Q. That is not the question.

Mr. Salley: I submit it is an answer.

20 The Court: He said he was always on duty. Answer the question.

A. I answered it. Not on my day off.

Q. You do not have any days off; you are just relieved from active duty, aren't you? A. I get one day off a week.

Q. Aren't you relieved from active duty? Do you know the rules of the police department? A. Yes.

Q. Did you study them? A. Yes.

30 Q. And don't you know that your so-called day off is merely relief from active duty? Do you or do you not? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. You are technically on duty at all times, aren't you? A. Yes.

Mr. Salley: I submit this line of examination could go very far afield. I do not see what it has to do with this case.

40

The Court: I will allow the question.

*Emil Von der Linden—For Defendant—Cross*

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.*

10

Q. Don't your rules of your department require that you must carry your blackjack even when you are not on active duty? A. Well, I didn't have it with me.

The Court: That is not the question you were asked. You were asked, do your rules provide that?

A. The rules call that we are on duty at all times. 20

The Court: You have not yet answered the question. The question is pretty plain.

A. No, sir.

Q. So that when you are relieved from active duty you go home and put your defense weapons away? A. Yes.

Q. This gun and blackjack are given you for your defense, aren't they? A. To defend the people. 30

Q. No; to protect yourself from attack, isn't it?

Mr. Salley: I submit he has answered it.

A. To defend the public.

(The question was repeated.)

40

*Emil Von der Linden—For Defendant—Cross*

A. To defend—to protect the public.

Q. And to defend yourself? A. To protect the public.

10                   The Court: You may as well answer yes or no. Don't be captious about it.

A. I don't know how I can answer it.

                  The Court: You can answer it yes or no.

Q. Didn't you receive any instructions when you were given your gun and blackjack? A. Yes.

Q. Were you told when to use them? A. Yes.

20                   Q. When? A. I was told to use them when in need.

Q. What was "in need?" A. While I am on duty.

Q. At no other time? A. No, sir.

Q. Did they tell you to shoot a man if he ran away from you? A. No, sir.

                  Mr. Salley: I think this is going very far afield, and it is highly prejudicial to the defendant.

30                   The Court: The question is in and the answer is in, and there is nothing pending.

Q. You say you never saw Albaricci in your life before? A. No, sir.

Q. There was no feeling between you and him? A. No, sir; I didn't know him.

Q. You did not have a fight with him in back of Sneider's saloon a year before that?

40                   Mr. Salley: I object, unless Mr. Me-

*Emil Von der Linden—For Defendant—Cross*

Mahon is going to connect it up. He did not show that as part of his main case to show motive, and he has no right to ask that question at this time on cross examination.

The Court: I think he has. He asks if there was any feeling between them and the witness says there was no feeling. I will allow the question. 10

Mr. Salley: Exception.

(Exception allowed, signed and sealed.)

CHARLES M. EGAN,  
*Judge.*

A. No, sir. 20

Q. You never had a fight with him at all? A. No, sir.

Q. You did not know where he lived? A. No, sir.

Q. You did not know his name? A. No, sir.

Q. So there was no reason why there should be any feeling between you and him? A. No, sir.

Q. There was no reason why he should call you a prick, was there? A. Not that I know of; not in my knowledge. 30

Mr. Salley: I object as calling for a conclusion.

The Court: He says he doesn't know.

Q. Was there any reason why you should call yourself a nigger or a Chinee when Albaricci was talking to another man? A. Well, the only reason, Babe and I came in there together, that was 40

*Emil Von der Linden—For Defendant—Cross*

all.

Q. And you called yourself a nigger because Babe talked to another man? A. (No answer.)

Q. Will you answer that question?

10 Mr. Sally: I object as containing an unwarranted assumption of fact.

The Court: He did not say he called him a nigger. He said he said "What am I—a nigger?" I sustain the objection.

Q. Did you ask anybody were you a nigger because Babe talked to another man? A. No, sir.

Q. You did not say that? A. No, sir; I was talking to Babe Solderini.

20 Q. And you did not say "Am I a nigger?" A. I said to Babe Solderini—we came in together, and I said "What am I, Babe? You and I are together."

Q. Then you did not say you were a nigger? A. I did not say I was a nigger at all. I said to Babe "What am I, a nigger here?"

Q. Did you say that or didn't you say it? A. Yes.

30 Q. And you called yourself a nigger because Babe talked to somebody else? A. No, sir.

Mr. Salley: I object to that. He did not say he was a nigger; he asked him.

Mr. McMahon: If I say "What am I—a nigger?" I am calling myself a nigger.

The Court: You might ask him in the language which he said was used. I made a notation. He said "Am I a nigger?"

40 Mr. McMahon: Now he is changing it—"What am I—a nigger?" It is a self-accusation.

*Emil Von der Linden—For Defendant—Cross*

Mr. Salley: All right, I won't object to it; let it go.

Q. You resented Babe talking to this man, didn't you? A. No, sir.

Mr. McMahon: Am I entitled to an answer? 10

(The question and the answer were repeated.)

Mr. McMahon: Did the jury hear him?

Two Jurors: Yes.

Mr. Salley: I object to asking the jury

questions. 20

Q. You did not object to him coming down to talk to him at all? A. No, sir.

(The Court thereupon declared a recess until two o'clock p. m.)

---

(After Recess)

30

*By Mr. McMahon:*

Q. You say you never saw this man Albaricci in your life before? A. No, sir.

Q. You did not know who he was? A. No, sir.

Q. Never had any business with him? A. No, sir.

Q. Did you try to talk with him that night? A. No, sir.

Q. Never opened your mouth to him? A. No, 40

*Emil Von der Linden—For Defendant—Cross*

sir.

Q. Never said a thing to him? A. No, sir.

Q. But you did object to him talking to Solderini? A. Well, I did not object to him talking to Solderini, just in a kidding way I said to Solderini—only in a kidding way—Solderini and I  
10 were kidding among one another.

Q. You did not hear him say that you could not bullshit him, did you? A. Yes, sir.

Q. You heard him say that? A. Yes, sir.

Q. As you were kidding him? A. Yes, sir.

Q. Was he kidding you? A. I was not kidding hmi at all.

Q. You were not kidding him at all? A. No, sir.

Q. Didn't you say you said that in a kidding way? A. To Solderini I was talking.  
20

Q. You were kidding Solderini? A. Yes, sir.

Q. Not Albaricci? A. No, sir.

Q. Then he said to you, "You cannot bullshit me?" A. Yes, sir.

Q. Then he went back to where he came from? A. Yes, sir.

Q. You stayed there about a half an hour? A. Well say about fifteen or twenty minutes at the  
30 most.

Q. Didn't talk to each other at all? A. No, sir.

Q. Never said anything to each other? A. No, sir, not outside of him calling me when he said, "You ain't bullshitting me, you prick you," that is all.

Q. He said that to you as you were going out? A. He said that to me both times.

Q. Well now, after he said that to you at first there was nothing at all said for fifteen or twenty  
40 minutes? A. No, sir.

*Emil Von der Linden—For Defendant—Cross*

Q. Paid no attention to each other? A. No, sir.

Q. You were going home? A. Yes, sir.

Q. And you went out the door? A. Yes, sir.

Q. And he followed you? A. Yes, sir.

Q. And punched you? A. Yes, sir.

10

Q. You did not lock him up? A. No, sir.

Q. Didn't make any complaint to any police authorities? A. No, sir.

Q. You didn't have a warrant issued for him? A. No, sir.

Q. You didn't do anything to apprehend the man who assaulted and battered you? A. No, sir.

Q. You punched him on the jaw? A. He punched me.

20

Q. You punched him on the jaw? A. He punched me.

Q. You did not punch him? A. Yes, I hit him after he hit me.

Q. You punched him on the jaw? A. Yes, sir.

Q. Knocked him down? A. He fell back, fell down on his head.

Q. And you walked about your business? A. I went over and picked him up.

Q. Did you bring him into the saloon? A. Hermann came out and they took him in and I went to see where Solderini was. I seen Solderini down the corner.

30

Q. Didn't you ask Solderini to go up to see how badly hurt he was? A. I said to him—I didn't say to see how bad he was hurt—I said come on up to see what is the matter.

Q. You knew what was the matter, didn't you? A. I didn't know what was the matter with the man. All I knew he hit me—

40

*Emil Von der Linden—For Defendant—Cross*

Q. You knew you picked him up unconscious, didn't you? A. Yes.

Q. And notwithstanding that, you a policeman, picked this man up unconscious, you did not send for an ambulance, you did not make any complaint to police authority, you did nothing but  
10 walk away, is that right? A. Yes, sir.

Q. Aren't you instructed by your department that if anybody is hurt to get an ambulance? A. Yes, sir.

Q. You did not do it in this case? A. No, sir.

Q. You did not know whether he was dead or not, did you? A. I knew he was not dead.

Q. How did you know that? A. Because he came to no more than I picked him up.

Q. He came to when you picked him up? A.  
20 Yes, sir.

Q. Did he speak to you? A. No, sir.

Q. Did you speak to him? A. No, sir.

Q. You did not take him in the saloon? A. Hermann and Sampson came out and took him to the saloon.

Q. You came back to the saloon? A. Yes, sir.

Q. Did you get an ambulance then? A. No,  
sir.

Q. You saw him leaning on the bar, didn't you?  
30 A. He was all right when I seen him.

Q. What was he doing when you saw him? A. Sitting on a chair.

Q. You did not try to talk to him? A. No, sir.

Q. He didn't try to hit you back again? A. No, sir.

Q. Did he see you? A. Yes, sir.

Q. How do you know? A. I know he did because he passed the remark to me.

Q. What did he say? A. He said, "That is  
40

*Emil Von der Linden—For Defendant—Cross*

all right."

Q. He said, "That is all right?" A. Yes, sir.

Q. That is after you had struck him and you were in the saloon? A. Yes, sir.

Q. He said, "That is all right?" A. Yes, sir.

Q. Did you report to your own headquarters that you had had this trouble? A. No, sir. 10

Q. You were out on the street when he hit you, weren't you? A. Yes, sir.

Q. You had stepped off the curb? A. Yes, sir.

Q. Then you turned around and you hit him?  
A. I was already turned around when he hit me. After he hit me on the shoulder I hit him back.

Q. You were out on the street? A. Just stepped off the curb.

Q. But both feet were on the street when you struck him, weren't they? A. Yes, sir, I believe so. 20

Q. And he was on the sidewalk? A. Yes, sir.

Q. You hit him only once? A. That is all.

Q. Sure about that? A. Yes, sir.

Q. You did not hit him while he was down?  
A. No, sir.

Q. You would not hit a man while he was down?

A. No, sir.

Q. You did not pound him two or three times while he was down? A. No, sir. 30

Q. You had no reason to hit him except that he hit you, that is the only reason you hit him?

A. That is the only reason I hit him, yes, sir.

Q. And after you hit him and saw that he was knocked unconscious you had no ill feeling against this man, had you? A. No, sir.

Q. He did not hit you at any place that showed any mark or anything? A. He hit me right on the top of the shoulder, partly on the jaw and 40

*Emil Von der Linden—For Defendant—Redirect*

partly on the shoulder. I just stuck up my arm to catch the blow.

Q. You had no marks on you? A. No, sir.

Q. You were not cut? A. No, sir.

Q. Bruised? A. No, sir.

10 Q. You did not keep on beating him while he was prone on the sidewalk? A. No, sir.

Q. That is not true? A. That is not true.

Q. It is not true that you invited him out to fight with you on the outside? A. No, sir.

Q. Were you drunk? A. No, sir.

Q. Was he drunk? A. Not that I know of, sir.

Q. Did you know this man by reputation? A. No.

Q. Do you know where he lived? A. No, sir.

20 Q. Had you said, knowing all these things—you said to Hermann "If you know anything about this, this finger will always point at you" pointing your index finger? A. No, sir.

Q. You never said that? A. No, sir.

Q. Did you speak there with Hermann? A. Yes, sir.

Q. Did he refuse to shake hands with you? A. No, sir.

Q. He did not? A. No, sir.

30 Q. Did you buy him a beer? A. I bought him a drink.

Q. He did not at any time refuse to take your hand? A. No, sir.

Mr. McMahon: That is all.

*REDIRECT EXAMINATION by Mr. Salley:*

40 Q. How many drinks did you have with this man there when you came back in the saloon, Mr.

*Emil Von der Linden—For Defendant—Recross  
—Redirect*

Von der Linden? A. I believe two drinks.

Mr. Salley: That is all.

*REXCROSS EXAMINATION by Mr. McMahon:* 10

Q. Are you sure? A. Yes, sir.

Q. You said you believe? A. Maybe three drinks. I know two drinks anyhow.

Mr. McMahon: That is all.

*REDIRECT EXAMINATION by Mr. Salley:*

Q. Mr. McMahon has asked you whether or not you telephoned for an ambulance. You did not telephone for any ambulance, did you? A. No, sir. 20

Q. Did you telephone for a taxicab or try to telephone for a taxicab? A. I tried to, yes, sir.

Q. When this man came to, he finally came to in the saloon as I understand it, he became conscious? A. Yes, sir.

Q. At the time when he was in the saloon did he accuse you of hitting him with a blackjack or say anything about being struck by a blackjack? 30

Mr. McMahon: I object, leading.

The Witness: No, sir.

The Court: Sustain the objection.

Mr. Salley: That is all.

*REXCROSS EXAMINATION by Mr. McMahon:*

Q. You said he came to on the sidewalk and not in the saloon, didn't you, in answer to my 40

*Emil Von der Linden—For Defendant—Redirect*  
*Charles Schedel—For Defendant—Direct*

questions? A. I don't know whether he came to on the sidewalk or in the saloon.

Q. You said he came to and you left him? A. I said I picked him up and he was all right.

10 Q. Didn't you say he came to? A. He didn't speak, but I thought he was all right.

Q. He spoke to you on the sidewalk? A. No, sir.

Q. He did not speak to you? A. No, sir.

Q. You said you had two or maybe three drinks with Hermann? A. Yes, sir.

Q. With whom else? A. Mike Kutka was in the place and Sampson was in the place.

Q. How far is West New York from the saloon?

20 A. One block.

Mr. McMahon: That is all.

*REDIRECT EXAMINATION by Mr. Salley:*

Q. This fight took place—did it take place in West New York or Guttenberg? A. Guttenberg.

Q. And how far was it from West New York, about half a block? A. About half a block.

30

Mr. Salley: That is all.

CHARLES SCHEDEL, sworn.

*Direct Examination by Mr. Salley:*

Q. You are in the trucking business? A. Yes, sir.

40 Q. With offices on 23rd Street, West New York?

*Charles Schedel—For Defendant—Direct*

A. Yes, sir.

Q. On the evening of January 29th, 1928, was the defendant Von der Linden in your place? A. Yes, sir.

Q. On that night did Von der Linden give you a rubdown?

10

Mr. McMahon: I object, leading and immaterial.

The Court: Sustain the objection.

Q. All right. What did Von der Linden do to you that night, if anything?

Mr. McMahon: I object, immaterial.

The Court: Sustain the objection.

Mr. Salley: Exception.

20

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,  
*Judge.*

Q. When Von der Linden was in your place did he have his coat on or off?

30

Mr. McMahon: I object, immaterial.

The Court: Sustain the objection.

Mr. Salley: Exception.

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,  
*Judge.*

40

*Sarah E. Duffy—For Defendant—Direct*

Q. Did you see Von der Linden have any black-jack?

Mr. McMahon: I object.

The Court: Sustain the objection.

Mr. Salley: Exception.

10

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,  
*Judge.*

Mr. Salley: That is all.

Mr. McMahon: No questions.

20

SARAH E. DUFFY, sworn.

*Direct Examination by Mr. Salley:*

Q. Were you in Mr. Schedel's house on the evening of January 9th?

Mr. McMahon: What time?

30

Mr. Salley: Around about between eight and half past ten that night.

Mr. McMahon: I object, immaterial.

The Court: How is it material?

Q. Did you see Von der Linden there that night?

Mr. McMahon: I object, immaterial.

The Court: How is it material, Mr. Salley?

40

Mr. Salley: Along the same lines as the

*Abraham W. Hopper—For Defendant—Direct*

previous witness.

The Court: To show that she did not see any blackjack in his pocket while in Schedel's house?

Mr. Salley: Yes.

The Court: Sustain the objection. 10

(Exception allowed, signed and sealed accordingly.)

CHARLES M. EGAN,  
*Judge.*

Mr. Salley: That is all.

20

ABRAHAM W. HOPPER, sworn.

*Direct Examination by Mr. Salley:*

Q. You are a minister of the gospel, are you?

A. Yes, sir.

Q. In connection with what church? A. The Dutch Reform Church, West New York.

Q. How long have you been pastor of that church? A. Twenty-five years. 30

Q. Do you know Emil Von der Linden, the defendant? A. Yes, sir.

Q. Is he an attendant at your church? A. Yes.

Q. And how long have you known him? A. About ten years.

Q. Do you know people in West New York?

A. Yes, sir.

Q. Do you know a great many people there?

A. Yes, sir.

Q. Do you know what Mr. Von der Linden's 40

*Abraham W. Hopper—For Defendant—Cross*

reputation is for peacefulness—I withdraw that. Do you know people in the neighborhood in which he lives? A. Yes.

Q. Do you know what Mr. Von der Linden's reputation is for peacefulness and quiet, prior to January 9th, 1928? A. I do.

Q. What is it, good or bad? A. Very good.

Mr. Salley: That is all.

*CROSS EXAMINATION by Mr. McMahon:*

Q. How long have you known him? A. Ten years.

Q. Did you ever know he was arrested? A. No.

Q. Did you ever know he was convicted of crime? A. No.

Q. Would that alter his reputation with you? A. No.

Q. It would not? A. No.

Q. If he were arrested five or six times would that make any difference?

Mr. Salley: I object to that. Arrest means nothing.

Mr. McMahon: This is reputation.

Mr. Salley: A man might be arrested a dozen times.

The Witness: I have been arrested myself.

Q. But you have never been convicted? A. No, sir.

Q. If it were a fact that you had been convicted, would it make any difference in your own estimation of your own reputation? A. Not nec-

*Abraham W. Hopper—For Defendant—Cross*

essarily.

Q. Even though you were guilty? A. I didn't say that.

Q. Now, do not fence with me. I said, if you were convicted? A. That does not follow.

Q. You mean to say that if a jury finds a man guilty, that he is not guilty? A. Not always. 10

Q. You believe the jury—

Mr. Salley: I submit that this is not proper, your Honor.

The Court: I think it is proper cross examination.

Mr. McMahon: This man is criticizing our jury system.

Mr. Salley: No, he is criticizing some of the juries, not all of them. 20

Q. You do not believe that when a jury finds a man guilty that that affects his reputation in any respect? A. Not always, I said.

Q. Well, where do you draw the line? A. Well sometimes even a jury may be mistaken.

Q. Even though they have all the facts before them? A. You know and I know that has been proven, many times. 30

Q. I don't know anything about it Doctor. It has never been proven to me in my five years experience in the Prosecutor's office.

Mr. Salley: I object to this, your Honor.

The Court: I think it is perfectly proper.

Q. Would the fact that a man had been convicted of crime and arrested a number of times affect his reputation with you? A. It might. 40

*Abraham W. Hopper—For Defendant—Cross*

Mr. Salley: I object.

Q. If a man pleaded guilty would that affect his reputation? A. Yes.

10 Q. Do you know he pleaded guilty himself? A. Pardon me? Are you speaking about this particular person?

Q. This particular person, yes. A. I never heard of his pleading guilty.

Q. If it was brought to your attention that he pleaded guilty to a crime, not found guilty by a jury, but he voluntarily pleaded guilty— A. Well, do you mean non vult?

20 Q. I don't mean non vult. I am not quibbling with you, I mean pleaded guilty. I am talking English. A. Why yes, it would affect his reputation.

Q. And if Von der Linden came in and pleaded guilty to a crime, would that affect Von der Linden's reputation with you? A. For the time being.

Q. Only for the time being? A. Yes.

The Court: How long would that last, Doctor?

30 The Witness: Well, he might reform. There is such a possibility.

Q. Are you this man's pastor? A. He comes to my church.

Q. How long has he been going to your church? A. Quite some time.

Q. How long? A. I could not tell you, on and off for the last ten years.

40 Q. And you did not know in 1921 that he pleaded guilty? A. No.

Q. Was he then attending your church? A.

*Abraham W. Hopper—For Defendant—Redirect*

Yes—I could not say now.

Q. You said for the last nine or ten years? A. I could not tell you how often a person attended church in that time.

Q. How many friends of his do you know Doctor? A. Pardon me? 10

Q. How many friends of his do you know? A. The entire police force of West New York.

Q. What friends or acquaintances in his neighborhood in which he lives do you know that are friends of his? A. I could not tell you exactly.

Q. Don't you know anybody in the neighborhood in which he lives who is a friend of his and yours? A. Not necessarily, no, sir.

Mr. McMahon: Then I move that the whole testimony be stricken out. 20

The Witness: The reason I said that is because people move constantly. He has only lived in this section for a short time comparatively. I have known his chaplain in the police force and I got in touch with him there.

Mr. McMahon: I move that the testimony be stricken out on the ground that he does not know the friends and acquaintances upon whom reputation is built. 30

Mr. Salley: May I question him along that line?

The Court: Yes.

*REDIRECT EXAMINATION by Mr. Salley:*

Q. Do you know whether he lived in other places in West New York besides his present address? A. No. 40

*Abraham W. Hopper—For Defendant—Recross*

Q. How long has he been living in his present address? A. About three years.

Q. Do you know any people in that neighborhood that go to church from his neighborhood?

A. Some of them do.

10 Q. Do you know those people? A. Yes, sir.

Q. Can you tell us offhand the names of any of those people? A. Mr. and Mrs. Hasserman.

Mr. McMahon: I object to this as immaterial unless he can show that they are friends of both of them.

The Court: Yes, it has to be shown.

Q. Do you say these people go to your church?

20 A. Yes, sir.

Q. And you say these people are neighbors of his? A. Yes, they are neighbors.

Q. Do they know him? A. I guess they do.

Mr. Salley: That is all.

*RECROSS EXAMINATION by Mr. McMahon:*

30 Q. Did you ever discuss Von der Linden with them? A. I could not tell you. I have a large parish and I don't associate people with the neighborhood in which they live.

Q. Doctor let me tell you this: We are trying to find out something about this man's reputation in his community. Reputation is built upon what his neighbors say about him. Now, have you talked with any of the people who lived in his particular neighborhood? A. I know more particularly from his connections with the police department—

40 Q. That is what you are testifying from? A.

*Abraham W. Hopper—For Defendant—Redirect  
—Recross*

Yes, sir.

Mr. McMahon: Then I move that his testimony be stricken out if the court please.

10

Mr. Salley: I submit that sufficient foundation has been laid. When a man's reputation is good he is not discussed but when a man's reputation is bad people are constantly talking about him.

The Court: Well it has to be confined of course to the acquaintances in the neighborhood in which he lives. That is the law and we have to hold it down to that testimony.

20

Mr. McMahon: The Doctor says that his reputation is built upon his acquaintanceship in the police department of West New York.

Mr. Salley: He said partly.

Mr. McMahon: Is that what you said?

The Witness: That is so. But I came in touch with him quite often, and the people he associates with, naturally.

30

*REDIRECT EXAMINATION by Mr. Salley:*

Q. Some of the policemen come from the same neighborhood that he lives in, do they not? A. Oh yes.

*RECROSS EXAMINATION by Mr. McMahon:*

Q. What policemen come from his neighborhood? A. I could not tell you where, I know they are around that section.

40

*Abraham W. Hopper—For Defendant—Recross*

Q. Do you know any policeman that lives in the neighborhood in which he lives? A. Not particularly, no.

Q. Can you name one, particularly or otherwise? A. I have not got the addresses with me. I know in a general way that the police live in  
10 all that section, all the section of West New York.

Q. They live all over West New York? A. Yes, sir.

Q. All sections of it? A. Yes, sir.

Q. Do you know any policeman that lives in the neighborhood in which Von der Linden lives? Can you recall one by name? A. I could not tell you.

20 The Court: Doctor, what we want to know is whether you know the man's general reputation in the community in which he lives. Can you state what his general reputation is for peacefulness and quiet in the neighborhood in which he lives? Do you know that, Doctor?

The Witness: I should say that if a man lived in a town people pretty nearly know what he was and who he was.

30 The Court: Now, you have not answered the question.

The Witness: I am simply stating my opinion.

The Court: Either you can or you cannot answer the question. Do you know what the man's reputation is for peacefulness and quiet in the community in which he lives?

40 The Witness: I know him to have a good reputation. I have sttaed that several

*Charles Hangley—For Defendant—Direct—  
Cross*

times.

The Court: You mean in the community in which he lives?

The Witness: In the community in which he lives.

10

The Court: I will allow it to stand.

CHARLES HANGLEY, sworn.

*Direct Examination by Mr. Salley:*

Q. You are Chief of the West New York Police Department, are you? A. Yes, sir.

20

Q. How long have you been Chief of the West New York Police Department? A. About ten years.

Q. And do you know Emil Von der Linden, the defendant in this case? A. I know him for the last twenty years.

Q. Do you know people in the neighborhood in which he lives? A. Yes, I know lots of people in the neighborhood.

Q. And what is Mr. Von der Linden's reputation for being a quiet and peaceful man previous to January 9th, 1928? What was his reputation for being a peaceful and quiet man in West New York previous to January 9th, 1928, good or bad? A. It had been good.

30

Mr. Salley: That is all.

*CROSS EXAMINATION by Mr. McMahon:*

Q. Do you know he was convicted of crime, con-

40

*Charles Hangley—For Defendant—Cross*

victed of assault and battery? A. Convicted of  
**assault and battery?**

Q. Do you know it, Chief? A. I do not.

Q. Do you know he was charged with assault-  
 ing a man named Baum? A. I do not know.

10 Q. Do you know he was arrested in Cliffside  
 charged with assaulting another man up there?

Mr. Salley: I object to that.

Mr. McMahon: I am asking him what he  
 knows about it. They have put in the is-  
 sue that he was peaceable and quiet.

Mr. Salley: I submit that the question  
 of previous conviction is proper but on the  
 question of whether he was arrested in  
 Cliffside, that has no bearing on the man's  
 20 reputation, none whatever.

The Court: I think it is the conviction,  
 Mr. McMahon.

Mr. McMahon: All right, I will put it  
 this way:

Q. Do you know he assaulted and battered a  
 man up in Cliffside?

30 Mr. Salley: I object.

The Witness: I do not. I know nothing  
 about it. Are you going to offer proof  
 that he did?

Mr. McMahon: I can prove it. I have  
 witnesses here who will testify—

Mr. Salley: I submit that this is not  
 proper. About the previous conviction  
 here in Hudson County, we admit that. We  
 do not deny it.

*Charles Hangley—For Defendant—Cross*

Q. You say you know nothing about his arrest and conviction for assault and battery in this Court room? A. I do not.

Q. And you are his Chief of Police? A. I am.

Q. Did you make an investigation of him when he was put on the force? A. I did not.

10

Q. When was he put on the force? A. I suppose pretty nearly four years ago. I could not just tell you the date.

Q. Would you have a man on the force who was convicted of crime?

Mr. Salley: I object. The Chief does not hire the policemen.

The Witness: It is the Council Board makes the investigation.

20

Q. Were the Prosecutor's detectives up to see you yesterday or the day before about this man's criminal record? A. No, sir.

Q. Were they to see anybody in your office?

Mr. Salley: I object unless he knows.

A. Not that I know of.

Q. Where does he live? A. He lived on 22nd Street.

30

Q. Does he live there now? A. I guess he does, yes, with his family.

Q. Don't you know? A. Yes, I know he lives in 22nd Street. I just don't know the number.

Q. How long has he lived there? A. He must be living there two or three years to my knowledge.

Q. And as Chief of Police you do not know that the men on your force are free from con-

40

*Charles Hangley—For Defendant—Cross*

viction of crime? A. I do not.

Q. And you do not make it your business to find out? A. I know the man has not committed any crime since he went on the force. That I know of.

10 Q. Don't you get records for your office of the crimes in your municipality? A. Yes, sometimes we get them.

Q. Don't you get them all the time? A. I don't think we get them all the time.

Q. Isn't it your business to know who is convicted of crime? A. I don't know who is—

Q. You do not know whether that is your business or not? A. I look into it if I get any letters, if anyone commits a crime or anything, to investigate.

20 Q. Isn't it your business as police head of West New York to know the criminals in your town? A. Yes, it is.

Q. And you say you do not know anything about a conviction against Von der Linden? A. No, I do not.

Q. Have you got the records of your Police Department in West New York? A. Yes.

Q. Can you bring them down this afternoon? A. Yes, he can bring them down.

30 Q. And see if there is a conviction against Von der Linden reported in your book? A. Yes, sir.

Q. Do you know a man named Seaman? A. No, sir, I do not.

Q. Do you know Paul Fuchs, West 23rd Street, West New York? A. I heard the name. I am not acquainted with him.

Q. I show you what purports to be a record of your Police Department. Is that a record of your Police Department, on Von der Linden? A.

40

*Charles Hangley—For Defendant—Redirect  
—Recross*

Yes, that is it, but I was not Chief at the time.

Mr. McMahon: I ask that it be marked for identification.

Mr. Salley: I object. I do not see that 10

the record could have any bearing.

Q. Wasn't this record made up since this crime was committed that we are trying today? A. Yes, sir.

Q. Wasn't this record made up when this complaint was made against Von der Linden?

Mr. Salley: May I examine the witness?

The Court: Yes. 20

*REDIRECT EXAMINATION by Mr. Salley:*

Q. Did you make up this record or cause it to be made up, Chief? A. No, sir.

Q. You did not have anything to do with it? A. No, sir.

Mr. Salley: I submit it is improper.

Mr. McMahon: I would like to ask him if he knows it is a record of his office? 30

The Court: You may ask him if he knows.

The Witness: I do not know.

*RECROSS EXAMINATION by Mr. McMahon  
(Continued):*

Q. You do not know? A. No, sir.

Q. Do you recognize this as your Police Department stationery? A. Yes. 40

*Charles Hangley—For Defendant—Redirect*

Mr. McMahon: I ask that it be marked for identification.

(Marked Exhibit P-7 for identification.)

10 Q. This record of his was never called to your attention to look up? A. No, sir.

Q. You knew that Mr. Von der Linden was charged with the crime of murder? A. Yes, sir.

Q. And you did not look up your records before you came here to testify? A. No, sir, I did not.

Mr. McMahon: That is all.

*REDIRECT EXAMINATION by Mr. Salley:*

20

Q. Mr. McMahon has opened the question by asking about your records—

Mr. McMahon: I object.

Mr. Salley: I will withdraw the question.

30 Q. Chief, do you know whether this man Von der Linden was ever arrested up in West New York, as far as you know? A. No, sir, I do not.

Q. Do you know whether or not those arrests Mr. McMahon spoke about happened up in Guttenberg or West New York? A. No.

Q. So that so far as you know, you have no knowledge of his ever having been arrested in West New York? A. No, sir.

Mr. Salley: That is all.

40

*Charles Hangley—For Defendant—Recross*  
*Louis E. Serf—For Defendant—Direct*

*RECROSS EXAMINATION by Mr. McMahon:*

Q. Did you ever take the trouble to ask the Guttenberg Police Department about his record?

A. I did not.

Q. I show you a paper and ask you if you know what that is? A. I see his record there.

Q. Well, is that the same record as the record which has been marked for identification? A. Yes.

Q. That is your own record? A. I do not know anything about it.

Q. Well, you know this is your record isn't it, issued by your department?

Mr. Salley: He says he knows nothing about that record.

A. I know nothing about it.

Mr. McMahon: That is all.

---

LOUIS E. SERF, sworn.

*Direct Examination by Mr. Salley:*

Q. Where do you live? A. West New York, New Jersey.

Q. How long have you lived in West New York? A. Twenty-two years.

Q. Do you hold any official position in the Town of West New York? A. Vice-president of the Board of Education.

Q. And do you know the defendant, Mr. Von

*Louis E. Serf—For Defendant—Cross*

der Linden, Emil Von der Linden? A. I do.

Q. How long have you known Mr. Von der Linden? A. Oh, about five years.

Q. Do you know people in the neighborhood in which he lives? A. I do.

10 Q. And what is his reputation for being a quiet and a peaceful man prior to January 9, 1928? Was it good or was it bad? A. I would say it was good.

Mr. Salley: Cross examine.

*CROSS EXAMINATION by Mr. McMahon:*

Q. You never knew of any fights he was in? A. Never heard of it.

20 Q. Never heard anything about him, did you? A. Nothing that was wrong.

Q. Did you hear anything that was good? A. Yes, sir.

Q. What did you hear that was good? A. Well I heard that he was a very good officer, a very good citizen of the town. I have known him personally, have been around the schools where he took care of the children at the crossing. I met him at the curb.

30 Q. Did you ever know he was convicted of crime? A. No, sir, I did not. Not prior to this.

Q. Well, he is not convicted of this one yet. A. Well, I mean I have not heard of any crime prior to this one.

Q. You never knew him to engage in anything in the nature of assaults? A. No, sir.

Q. How long do you say you have lived in West New York? A. About twenty-two years.

40 Q. And how long do you know Von der Linden? A. Around five years.

*John Sarubbi—For Defendant—Direct*

Q. Do you know he was convicted of resisting an officer? A. No, I did not.

Q. In the Town of North Bergen? A. No, sir.

Mr. McMahon: That is all.

10

JOHN SARUBBI, sworn.

*Direct Examination by Mr. Salley:*

Q. Mr. Sarubbi, you live in West New York?  
A. Yes, sir.

Q. How long have you lived there? A. About 20  
twenty years.

Q. You are engaged in general contracting? A.  
The building line.

Q. How long have you been engaged in that  
business? A. The number of years I have been  
over there. About twenty years.

Q. Do you know Emil Von der Linden, the de-  
fendant? A. Well, I know him for the last four  
or five years.

Q. Do you know people in the neighborhood in 30  
which he lives? A. Several families.

Q. And what was his reputation for being a  
quiet and a peaceful man previous to January 9,  
1928? Was it good or was it bad? A. It was  
very good according to my opinion.

Mr. Salley: Cross examine.

40

*John Sarubbi—For Defendant—Cross*

*CROSS EXAMINATION by Mr. McMahon:*

Q. Where does he live? A. West New York, around 22nd Street. I do not know the number.

10 Q. You do not know where he lives although you are a friend of his? A. Well, there are several people I know by sight around there.

Q. Did you ever talk to them about Von der Linden? A. No, sir.

Q. Do you know anybody in the street in which he lives, in the neighborhood in which he lives?

A. Well, I know some of the families, but not friendly enough to talk about him.

Q. Are they Italians? A. No, different nationalities.

20 Q. You have never talked of Von der Linden with anybody? A. No.

Q. You never heard him discussed among the people of the neighborhood in which he lives? A. Not where he lives, but on Park Avenue where I have been building for the last four years.

Mr. McMahon: I move that his testimony be stricken out.

Mr. Salley: Just a moment.

30

(Argued.)

The Court: I will let the jury pass upon the weight of it. I will allow it to remain in.

40

*Adolph J. Dittman—For Defendant—Direct  
—Cross*

ADOLPH J. DITTMAR, sworn.

*Direct Examination by Mr. Salley:*

Q. Doctor, you have a drugstore up in West New York? A. Yes, sir, on 22nd Street. 10

Q. How long have you been engaged in that business? A. About thirty years, but seven years in that neighborhood.

Q. How long have you lived in West New York? A. Seven years.

Q. How long have you known Emil Von der Linden? A. Seven years.

Q. Do you know the people in the neighborhood in which he lives? A. Yes, being in that business, quite a number of customers of mine. 20

Q. That live in the same neighborhood with him? A. Yes, sir.

Q. And do you know what Mr. Von der Linden's reputation was for being a quiet and a peaceful man previous to January 9, 1928? Was it good or was it bad? A. I can only give you my personal opinion. Very good. I never discussed it. 30

Mr. Salley: That is all.

*CROSS EXAMINATION by Mr. McMahon:*

Q. You never knew he was guilty of crime? A. No, sir.

Q. You never knew he engaged in assault and batteries? A. No, sir.

Q. You never heard of him beating any man? A. No, sir. I really didn't know of anything of the kind. 40

*Virginia Von der Linden—For Defendant—  
Direct*

Q. You have been in the neighborhood seven years? A. Seven years.

Q. And in 1924 did you know he was convicted of resisting an officer? A. No.

10

Mr. Salley: I object. There is no proof in the case that he was convicted of resisting an officer. I understand he was arrested in Guttenberg and convicted as a disorderly person, which is not a crime under our laws.

Mr. McMahon: I am speaking of resisting an officer, which is a crime.

20

Mr. Salley: There has been no foundation laid for it.

(Argued.)

The Court: If it is not connected up I will strike it out.

Mr. McMahon: That is all.

30

VIRGINIA VON DER LINDEN, sworn.

*Direct Examination by Mr. Salley:*

Q. You are the wife of the defendant in this case? A. Yes, sir.

Q. And you live where? A. 589 22nd Street.

Q. Who do you live there with? A. With my husband and four children.

Q. Do you remember Monday, January 9, 1928? A. Yes, sir.

40

Q. Do you know Mrs. Von der Linden whether

*Virginia Von der Linden—For Defendant—  
Direct*

your husband was working that day or whether it was his day off?

Mr. McMahon: I object, immaterial.

The Court: How is it material, Mr. Salley whether he was working that day? 10

Mr. Salley: Mr. McMahon in opening the case stated that he was going to prove that Mr. Von der Linden killed the deceased with a blackjack.

Mr. McMahon: I didn't prove it and the jury knows it.

Mr. Salley: Then do I understand you to say, Mr. McMahon, that no blackjack was used? 20

Mr. McMahon: I have not proved that a blackjack was used.

Mr. Salley: Then you admit there was no blackjack?

Mr. McMahon: I cannot do that.

Mr. Salley: Then if you won't admit it I have a right to prove where this man's blackjack was on the day in question.

Mr. McMahon: This man may have had some other blackjack. He may have had a number of blackjacks. 30

Mr. Salley: I have called the wife of the defendant to show where his blackjack was on this day.

The Court: Fix the time.

Q. Mrs. Von der Linden, on Monday, January 9th, were you home all day? A. Yes, sir.

Q. Was Mr. Von der Linden at home that day? A. He was off that day and he went out. 40

*Virginia Von der Linden—For Defendant—  
Direct*

Q. What time did he go out? A. Well, he went out in the afternoon.

Q. About what time if you know? A. I should judge about half past one.

10 Q. Half past one in the afternoon? A. Yes, sir.

Q. And what time did he come back that night or the following morning, if you know? A. Well, he didn't come for supper but he told me—

Q. What time did he come back? A. He came home I should judge about half past twelve.

Q. Now between the time that he went out at half past one and the time he came back at half past twelve did you see his blackjack that day?

20

Mr. McMahon: I object as immaterial. What difference does it make? He may have left his blackjack home or he may not. I don't know.

The Court: It can do no particular harm.

Q. Did you see his blackjack? A. Yes, sir.

Q. Where did you see his blackjack? A. In the top dresser drawer.

30 Q. How did you happen to see it in the top dresser drawer? A. Well, he asked me to go with him to a show and I said I was going to finish up the ironing in the afternoon, so I did the ironing and I always put his handkerchiefs in the drawer—

The Court: Get down to the facts. How did you happen to see the blackjack.

40 The Witness: I was putting his handkerchiefs in the drawer where he always kept them.

*Virginia Von der Linden—For Defendant—Cross*

Q. And was that the time you saw the blackjack? A. Yes, sir.

Mr. Salley: That is all. Cross examine.

*CROSS EXAMINATION by Mr. McMahon:* 10

Q. What day of the week was this? A. The day?

Q. The day you saw the blackjack? A. Well, that was on Monday, Monday afternoon.

Q. And what days does he have off? A. Well, he has off once a week I think it is.

Q. Do you know? A. Well, it is just according to how it falls, the day he has off.

Q. Do you know how many days he works and how many days he is off? A. Well he had every seventh day I think off. 20

Q. Where does he keep his gun when he is off? A. In the top dresser drawer.

Q. Where does he keep his blackjack? A. In the same drawer.

Q. Isn't it because you know he always kept it there that you testify it was there that day? A. No, sir, it was there that day.

Q. You know he kept it there all the time? A. Always from the time he has been on the force. 30

Q. And you know he has never worn it any time when he was off duty? A. No, sir.

Mr. McMahon: That is all.

Mr. Salley: The defendant rests.

Mr. McMahon: The State rests.

*Motion for Direction of Verdict  
Exception Allowed by Judge*

10

Mr. Salley: I would like to renew my motion for a direction of a verdict as far as the count of murder in the indictment is concerned on the ground that there has been no proof of murder as set forth in our statute which defines murder of the first degree and murder of the second degree, therefore I ask on the count of murder a direction of a verdict.

The Court: I think there is sufficient in the case to go to the jury Mr. Salley.

Mr. Salley: Exception.

20

(Exception signed, sealed and allowed accordingly.)

CHARLES M. EGAN,  
*Judge.*

(Mr. Salley sums up to the jury.)

(Mr. McMahon sums up to the jury.)

30

The Court: Mr. McMahon, are you standing on all of the accounts of the indictment?

Mr. McMahon: No; murder in the second degree, manslaughter and assault and battery.

(The Court thereupon charged the jury as follows:)

40

*The Court's Charge***The Court's Charge**

THE COURT: Gentlemen of the jury, the defendant, Emil Von der Linden, was indicted by the grand jury of this county at the December term, 1927, for the crime of murder. The indictment contains three counts; the first count is a count for murder, the second count is a count for manslaughter, and the third count is a count for assault and battery. 10

Murder under our law is divided into murder of the first degree and murder of the second degree. It is defined by statute and is as follows: "Any person who, in committing or attempting to commit any unlawful act against the peace of the State of which the probable consequence may be bloodshed, shall kill another shall be guilty of murder." 20

Now, as I stated to you a moment ago, in this State murder is divided into two separate degrees, murder of the first degree, and murder of the second degree. Murder of the first degree is the more grievous form of murder. It is that form which is perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing; and all other kinds of murder are declared to be murder in the second degree. 30

Murder in the second degree is the lesser form of murder. The Prosecutor has announced that he will waive the first degree murder demand, so that the only thing for you to consider is whether or not under the evidence the defendant is guilty of murder of the second degree, manslaughter or assault and battery.

As to murder of the second degree, the law is 40

*The Court's Charge*

that any person who, in committing or attempting to commit any unlawful act against the peace of the State of which the probable consequence may be bloodshed, shall kill another shall be guilty of murder; so that I charge you now, gentlemen, that if the defendant struck, punched or assaulted the body of the dead man it was an unlawful act against the peace of this State likely to be attended by the consequence of bloodshed, so that the killing here is presumed to be malicious and is therefore murder unless and until the defendant produces facts and circumstances from which justification, excuse or extenuation may arise. If all that you find in this case is that the defendant is guilty of murder only because the killing was the unlawful act of this defendant as I have just indicated to you and because you find no evidence to justify, excuse or extenuate the killing, you can only find the degree of that murder as murder in the second degree.

Now, as to the count in the indictment which charges this defendant with the crime of manslaughter: Manslaughter is where a person kills another upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice.

Assault and battery may be defined as the unlawful application of force exerted by one person upon the person or the body of another.

I would suggest, gentlemen, that you first consider the charge of murder, and should you fail to find that the defendant is guilty of murder under the rules which I have laid down to you, that you then proceed to consider the count for manslaughter. If you find that the defendant is guilty of murder of the second degree it will not

*The Court's Charge*

then be necessary for you to direct your attention to the second or third count of the indictment, namely to the count for manslaughter or the count for assault and battery. But if you decide that the defendant is not guilty of the crime of murder, then direct your attention to the second count, for the crime of manslaughter, and if you find after consideration of all the evidence that the defendant is not guilty under that count then you may proceed to direct your attention to the third count, or the lesser count, for the crime of assault and battery, and determine whether or not under the evidence the defendant is guilty of that. Of course you only look there after you find that he is not guilty under the murder count or the manslaughter count, and if you find that the defendant is not guilty under that count, having considered that he is not guilty under the other counts, then your verdict will be "not guilty." But if you find, gentlemen, that he is guilty, having considered murder and having found him not guilty, if you so find, you then consider manslaughter, and if you find that he is guilty of manslaughter it will not then be necessary for you to direct your attention to the count for assault and battery.

You will note in the definition of the crime of manslaughter, gentlemen, that the killing must have been done upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice, for you see, gentlemen, if the elements of malice are present the crime cannot be manslaughter but it is murder.

Now, bear in mind, gentlemen, the mere fact that the defendant in killing the decedent, if he did, may have had his blood up, as the saying

10

20

30

40

*The Court's Charge*

10 goes, or may have been in a passion would not place his act within the definition of manslaughter, unless there were acting upon him the influence of reasonable provocation, something adequate to provoke hot blood or transport of passion. I say this to you because unless you find that there was such reasonable provocation, and that upon that provocation the defendant was seized with a sudden transport of passion with hot blood the crime here is not manslaughter but murder, unless of course you find from the evidence that the defendant had excuse or justification for the killing.

20 In viewing the count for manslaughter in this case you should weigh and consider carefully all the circumstances attendant upon the striking or assaulting, and the chain of events that led up to the striking, the punching or the assaulting, if you find that there was any. Examine the conduct of the decedent toward the defendant and the conduct and attitude of the defendant toward the decedent as expressed in the actions and words or either or both of these people in so far as it may have had to do with the striking or assaulting, or whatever you may find the evidence  
30 is, and ascertain whether or not from all of the attending circumstances there was anything present which might be calculated to your minds to provide a provocation by which the defendant was reasonably thrown into a passion or heat of blood and in which passion or heat of blood he struck or assaulted the dead man.

40 Now, gentlemen of the jury, the defendant in this case, as in every other case where a defendant goes upon trial, is presumed by law to be innocent, and the burden is placed upon the State

*The Court's Charge*

to prove the defendant guilty of each and all of the essential elements of the crime with which he stands charged, beyond a reasonable doubt. The defendant is not required to come into court and prove that he is innocent, but the State is charged with the obligation of proving him guilty beyond a reasonable doubt. Our law aims to be just, it aims to be humane, and whenever a person charged with crime is placed upon trial the law casts a shield about him, a presumption of innocence, and that shield is not removed, it is not destroyed, it is not penetrated until each and all of the essential elements of the crime charged against him has been established beyond a reasonable doubt. 10

Now, gentlemen, your natural inquiry will be, what does the Court mean by the term reasonable doubt? Reasonable doubt is not a mere possible doubt, it is not a fanciful doubt, it is not a doubt that is taken out of the air and cast into the case, but it is rather that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully compared and considered all of the evidence in this case your minds are in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge you have what the law says is a reasonable doubt and it is your duty to give to the defendant the benefit of that doubt; but you are not required to give him the benefit of anything except such reasonable doubt. 20 30

Now, the State charges that on the night or 40

*The Court's Charge.*

early morning of January the 9th last this decedent was in a saloon at 21 Park Avenue with several other men, Hermann, Sampson and the proprietor of the place, that after being in there for some time the defendant, with one Salderini, entered the place, that the decedent and two other men were at one end of the bar while the defendant and Salderini occupied the other end; that a conversation arose between Salderini and Sampson, I believe it was, and the decedent joined in the conversation and evidently was directing his remarks—of course your recollection of what was said and done there must prevail, and you are not bound by what my statement may be as to the facts—but the decedent had some conversation with Salderini and Von der Linden, attempted to take part in the conversation, as I recall the testimony, and the result was a controversy or an argument arose between Von der Linden and the decedent; that the decedent left Salderini and the defendant and went back to the other end of the bar near the front entrance of the saloon; that after a short time elapsed Salderini started to depart from the saloon and the defendant started to leave the saloon, the defendant said good night, as I understand the testimony of some of the witnesses here, he said good night to some of the people who were in the saloon, until he came down to the decedent, and words passed between them in which this defendant invited or told the dead man that he would meet him at any time, and that then Von der Linden stepped out of the saloon and he was followed by the decedent, they went out to the sidewalk, and one of the witnesses, Hermann, who was in the saloon and who had been with the dead man, said that

*The Court's Charge*

he looked over the transom and that he saw the defendant holding the dead man, the decedent, with one hand and striking him several times with the other, that he shouted to this man and asked him what he was trying to do and called him a vile name, that then the defendant released his hold and left the decedent on the sidewalk; that Hermann and Sampson went out, and there is some testimony that the defendant helped to lift the decedent from the sidewalk, that these others also helped, and then Sampson and Hermann took the man inside and placed him on a chair. There was some evidence or a statement on the part of some of the witnesses that the decedent was then unconscious and that after a while he came to and was taken home in a taxicab, and there is some testimony that his wife found blood on the pillow on which he slept, in the morning, and that he remained in the house all Tuesday, and the next day, Wednesday, dressed himself and went out, went to this saloon, the next day was ill and the doctor was called in that morning and he ordered the decedent's removal to the hospital and the decedent died that afternoon. The State contends, gentlemen of the jury, the decedent's death was caused by a blow from this defendant.

Now, the defendant says that he was in the saloon and that there was some conversation between him and the decedent, that as he was going out there were some words, that the decedent followed him and struck him in the left shoulder and he turned around and struck the decedent with his right hand and that the decedent fell, and he says that he assisted in lifting him up when the others came there and they took him to the saloon.

*The Court's Charge*

Those substantially seem to be the facts in the case, but of course, as I stated to you before, you are not to be bound by my version of what the facts may be one way or the other, because before you entered that jury box you took an oath that you would decide this case according to the evidence, and you can only observe your oath by looking into and determining what the evidence here is; you cannot decide the case from what I say or what counsel say, either for the State or the defense; the facts are in this case, but you can only determine from your own recollection and be true to the oath that you have taken.

So, gentlemen of the jury, that seems to be the situation here.

The defendant sets up what is known in the law as the plea of self defense. Now, on the question of self defense our courts have said, "The statute says that any person who shall kill another in his own defense shall be guiltless and totally acquitted and discharged. The right of self defense arises from the law of nature and has been sanctioned by the common law as well as by our own statute. The killing of an assailant is justified when that act is or reasonably appears to be necessary to preserve one's own life or to save one's self from serious bodily injury." It must be borne in mind, gentlemen that the justification is based upon the situation at the time that the wound or the assault is given by him who pleads justification, and that it is further based on the ground of whether there was actual peril or whether there was reasonable apprehension of such peril. In view of the fact that this extraordinary remedy is founded upon necessity, or reasonably apprehended necessity, it can

*The Court's Charge*

in no sense extend beyond the actual conditions of necessity, real or apparent, by which it is warranted, and before he gives or inflicts the fatal wound or injury the accused must have done everything exacted by the law to avoid taking life; that is, he should retreat, if he could safely do so, if there was a safe way of retreat open to him, before inflicting the fatal wound or injury, and if he could have retreated with reasonable safety and did not do so, but instead struck or assaulted the deceased with the intention of inflicting serious bodily harm or killing him, the act was neither justifiable nor excusable. 10

Now, gentlemen, whether this defendant did this and whether there was real or apparent necessity for the striking are questions for you to consider and decide. Nobody else can determine that question but yourselves. The plea of self defense is not tenable if the accused himself prepared for and provoked the affray. In that event he would not be heard in a plea of self defense. 20

The defendant has offered evidence as to his general reputation in the community where he lives for peacefulness and quietness. Several witnesses have testified that his reputation for those virtues and qualities is good. It was proper and competent for the defendant to offer that evidence because evidence of previous good character or reputation tends to render it improbable that one possessing such virtues and qualities would be likely to commit such a crime as is charged against him; but evidence of previous good character and reputation manifestly ought not to prevail against a convincing belief that the defendant committed the crime as charged if such 30 40

*The Court's Charge*

belief is established by all the evidence in the case beyond a reasonable doubt, because it is quite possible that even a person of the highest character and reputation in the community may fall from his lofty position and estate and commit the most heinous crime at a time when he possesses  
10 in the opinion and estimation of the community a good reputation for those virtues and qualities which ordinarily would repel such a belief.

If you should be convinced by this evidence that the defendant's general reputation for peacefulness and quietness in the community in which he lived prior to the time of the alleged commission of the crime was good, but in spite of that fact you are also convinced beyond a reasonable  
20 doubt from all the evidence in the case that he committed the crime as charged, under the rules that I have already submitted to you and explained to you, it is your clear duty to convict him. You are therefore to take this evidence of the previous good character and reputation of the defendant and carefully consider it in connection with all the other evidence in the case, giving to all the evidence such weight and credit as you believe it is entitled to, and if upon such  
30 consideration there exists in your minds a reasonable doubt of his guilt, even though that doubt be engendered merely by his previous good character or reputation, you should give him the benefit of that reasonable doubt and acquit him.

The State in its examination of the defendant had the defendant admit that he had been convicted of crime prior to the commission of the act now alleged against him. That evidence is only allowed for the purpose of affecting the credibility of the witness. It is for you to determine  
40

*The Court's Charge*

whether that conviction has affected his credibility. You are the sole and the exclusive judges of the credibility of the witnesses. In your consideration of this case, gentlemen of the jury, let the evidence be your guiding star—that, and that only. Go back to this saloon, 21 Park Avenue, on the night of January the 9th, 1928, and gather from what has been said here what took place there that night. Determine from your observation of the witnesses whether they are telling the truth or whether they have related the facts as they occurred that night. Examine each witness and determine what if anything prompted him to testify as he did. Was he persuaded by motives of truth or was his, or her, testimony in any way colored? Was he swayed by bias or by prejudice? Determine what if any interest he has had in testifying as he has, or she has, in this case. You may determine that there is no person in the entire world more interested in the outcome of this case than the defendant. Has that interest caused him to depart from the paths of truth and to color his testimony? That is a matter for your consideration, and you only can determine whether it has.

Your verdict is not to be decided either through bias, through passion, through prejudice or through sympathy, but it is to be determined wholly and solely from the evidence that has been submitted here.

Your first and natural inquiry will be, has the State shown this defendant to be guilty beyond a reasonable doubt of any of the counts alleged in this indictment? If it has your verdict will be on that particular count, and unless it has shown this defendant to be guilty beyond a rea-

10

20

30

40

*The Court's Charge*

sonable doubt under any of the counts alleged in the indictment then your verdict must be not guilty. If it has not shown this defendant to be guilty beyond a reasonable doubt your verdict must be in accordance with your finding.

10 I do not know that there is anything further, gentlemen of the jury, that I can say in this case, other than to remind you that this case is a highly important one, important not only to the defendant at the bar but of equal importance to the people of the State of New Jersey. I am satisfied, gentlemen of the jury, from looking at you that you are all men of intelligence and that you are going to give this case the full and entire consideration that it merits.

20

Mr. Salley: I ask a general exception.

(The jury returned to court for further instructions.)

The Court: I understand, gentlemen, you have some request to make?

The Foreman: Yes; we would like to hear you charge on manslaughter degree.

30 The Court: That is, what manslaughter is?

The Foreman: Yes, the definition.

The Court: Manslaughter is where a person kills another upon a sudden transport of passion or heat of blood upon a reasonable provocation and without malice. The killing must have been done upon a sudden transport of passion or heat of blood, that is upon a reasonable provocation and without malice. Of course if the elements of malice are present the crime cannot be manslaughter but it is something else, it is murder.

40 Does that cover what you desire to know?

*The Court's Charge*

A Juror: Is that all there is to it?

The Court: That is what manslaughter is.

The Foreman: That is satisfactory, I believe.

The Court: If you want any further, I can give it to you in the words I gave it to you originally. That the defendant in killing the deceased may have had his blood up, as the saying goes, or may have been in a passion would not place his act within the definition of manslaughter, unless there were acting upon him the influence of reasonable provocation, something adequate to provoke hot blood or transport of passion, because unless you find that there was such reasonable provocation and that upon that provocation the defendant was seized with a sudden transport of passion or heat of blood the crime is not manslaughter, but murder. If there is reasonable provocation, if his blood is up, and he is in a state of passion. So I trust, gentlemen of the jury, that covers the information that you desire.

A Juror: There is something connected with having an argument in connection with manslaughter, something in your charge.

The Court: That is on the question of self defense, that if he could have avoided this argument?

The Juror: Yes, to take it out of the jurisdiction of manslaughter and bring it within something else.

The Court: You are not limited to manslaughter. As I have stated to you, the only counts in the indictment which you should pay attention to are the first count for murder, which has at the instance of the State been reduced to murder in the second degree; the second count

*The Court's Charge*

is for manslaughter, and the third count is for assault and battery. An assault and battery is the unlawful application of force exerted by one person upon the person or the body of another. In that case, assault and battery, the state says, "This man has been assaulted." Of course an assault and battery is less than manslaughter. Assault and battery indicates or implies force used, such as if you touch a person in anger, if you touch them unlawfully or interfere with the person of another through force, that would be assault and battery; but manslaughter is where death ensues as a result of passion or heat of blood, where a person uses force on another. And of course the question of self defense enters into it. As I stated to you before—I will repeat it—

A Juror: I think that is the question, as to whether he could have avoided it. You said something in your charge about that.

The Court: On the question of self defense I can repeat what I said. The statute says that any person who shall kill another in his own defense shall be guiltless and totally acquitted and discharged. The right of self defense arises from the law of nature and has been sanctioned by the common law as well as by our own statute. The killing of an assailant is justified—an assailant is a person who assails another—the killing of an assailant is justified when that act is or reasonably appears to be necessary to preserve one's own life or to save one's self from serious bodily harm. And as I stated to you in my original charge, it must be borne in mind that the justification is based upon the situation at the time the wound or the assault is given by him who pleads justification, and it is further based on the ground

*The Court's Charge*  
*Exceptions Allowed and Signed by the Judge*

of whether there was actual peril or whether there was reasonable apprehension of such peril. In view of the fact that this extraordinary remedy is founded upon necessity or reasonably apprehended necessity it can in no sense extend beyond the actual continuance of the necessity, real or apparent, by which it is warranted, and before he gives or inflicts the fatal wound or injury or assault the accused must have done everything exacted by the law to avoid taking life. That is, he should retreat, if he could safely, if there was a safe way of retreat open to him, before inflicting the fatal wound or injury, and if he could have retreated with reasonable safety and yet did not do so, but instead struck or assaulted the deceased with the intention of killing him, the act was neither justifiable nor excusable. Now, if a person is assaulted he can use such force as is necessary to repel an assault, but if he exceeds the bounds of self protection then he in turn becomes the aggressor. In other words, if you are attacked you can use such force as is necessary to protect your person, but if you go beyond the bounds of self protection you in turn become the aggressor, and if you occasion injury then you are responsible in the eyes of the law. I trust that that is clear.

The Foreman: I think that was the point.

Mr. Salley: I ask a general exception.

(Exception allowed, signed and sealed.)

CHARLES M. EAGAN,  
*Judge.*

*Verdict*

(The jury again retired and later returned to court and announced their verdict, the foreman announcing that the jury find the defendant guilty of manslaughter.) Upon request of Mr. Salley the jury was polled and each juror in turn answered that he found the defendant guilty of manslaughter.

10

20

30

40

## Certificate

HUDSON COUNTY COURT OF QUARTER  
SESSIONS

STATE OF NEW JERSEY,	}	10
vs.		On Indictment
EMIL VON DER LINDEN, <i>Defendant.</i>		CERTIFICATE

I, Charles M. Egan, Judge of the Court of  
Quarter Sessions in and for the County of Hud- 20  
son, before whom the above indictment was tried,  
do certify that the foregoing is the entire record  
of the proceedings including the testimony of the  
witnesses had and taken upon the trial of the in-  
dictment in the above stated cause, in the State  
of New Jersey vs. Emil Von der Linden.

CHARLES M. EGAN,  
*Judge.* 30

Dated: January 16, 1929.

*Certificate*

*To the Honorable Judges of the New Jersey  
Court of Errors and Appeals, at Trenton,  
N. J.:*

10 I return herewith as I am commanded the en-  
tire record in the case of The State vs. Emil Von  
der Linden, for murder, June 5, 1928, with all  
things touching the same.

In Testimony Whereof, I have hereunto set my  
hand and affixed the seal of said County this 16th  
day of January, 1929.

CHARLES M. EGAN,  
*Judge.*

20

30

40

### Assignments of Errors

#### NEW JERSEY COURT OF ERRORS AND APPEALS

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>  vs.  EMIL VON DER LINDEN, <i>Plaintiff-in-Error.</i>	}	On Appeal      10  ASSIGNMENTS OF ERRORS
---	---	---

Afterwards, to wit, before our Judges of our said Court of Errors and Appeals at Trenton, comes the said Emil Von der Linden by his attorney, Edward M. Salley and says that the record and proceedings aforesaid and also in giving the judgment upon the indictment there is manifest error in this: 20

1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case. 30

3. Because the trial court refused to sustain defendant's objection to the following question:

“You did not have a fight with him in back of Sneider's saloon a year before that?”

40

*Assignments of Errors*

4. Because the trial court sustained the prosecutor's objection and refused to allow defendant's witness to answer the following question:

10 "Did you see Von der Linden have any  
blackjack?"

5. Because the trial court refused to allow defendant's witness to answer the following question:

"Did you see Von der Linden there that night?"

20 6. Because the trial court would not sustain the defendant's objection to the following question:

"Do you know rules of your department require you to be equipped when you are on duty with your blackjack and revolver?"

30 7. Because counsel for the state on cross examination of character witnesses introduced evidence of other crimes not connected with this crime.

8. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

"Do you know he was convicted of assault and battery?"

40 9. Because counsel for the State on cross examination of a character witness introduced evi-

*Assignments of Errors*

dence of specific acts not connected with this by asking the following question:

“Do you know he was charged with assaulting a man named Baum?”

10. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

10

“Do you know he was arrested in Cliffside charged with assaulting another man up there?”

11. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

20

“You never knew he engaged in assault and batteries?”

12. Because the trial court did not sustain defendant's objection to the following question asked of a character witness:

30

“And in 1924 did you know he was convicted of resisting an officer?”

13. Because the trial court did not strike out the question regarding arrest in 1924 for resisting an officer.

14. Because the verdict was contrary to and against the weight of the evidence.

40

EDWARD M. SALLEY,  
*Attorney for Plaintiff-in-Error.*

**Specification of Causes of Reversal**

NEW JERSEY COURT OF ERRORS AND  
APPEALS

10	<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">EMIL VON DER LINDEN, <i>Plaintiff-in-Error.</i></p>	<p style="font-size: 3em; line-height: 1;">}</p> <p style="text-align: center;">On Appeal</p> <p style="text-align: center;">SPECIFICATION OF CAUSES OF REVERSAL</p>
----	--	--

20 The plaintiff-in-error sets forth the following specification of causes for reversal of the judgment heretofore entered against the plaintiff-in-error herein in the Hudson County Court of Quarter Sessions wherein the plaintiff-in-error claims that he has suffered manifest wrong and injury in the admission and rejections of testimony in the charge of the Court and the denials of matters of discretion by the Court, to wit:

30 1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the trial court refused to sustain defendant's objection to the following question:

40 "You did not have a fight with him in back of Sneider's saloon a year before that?"

*Specification of Causes of Reversal*

4. Because the trial court sustained the prosecutor's objection and refused to allow defendant's witness to answer the following question:

"Did you see Von der Linden have any blackjack?"

10

5. Because the trial court refused to allow defendant's witness to answer the following question:

"Did you see Von der Linden there that night?"

6. Because the trial court would not sustain the defendant's objection to the following question:

20

"Do you know rules of your department require you to be equipped when you are on duty with your blackjack and revolver?"

7. Because counsel for the State on cross examination of character witnesses introduced evidence of other crimes not connected with this crime.

30

8. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

"Do you know he was convicted of assault and battery?"

9. Because counsel for the State on cross examination of a character witness introduced evi-

40

*Specification of Causes of Reversal*

dence of specific acts not connected with this by asking the following question:

“Do you know he was charged with assaulting a man named Baum?”

- 10 10. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question.

“Do you know he was arrested in Cliffside charged with assaulting another man up there?”

- 20 11. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“You never knew he engaged in assault and batteries?”

12. Because the trial court did not sustain defendant's objection to the following question asked of a character witness:

“And in 1924 did you know he was convicted of resisting an officer?”

- 30 13. Because the trial court did not strike out the question regarding arrest in 1924 for resisting an officer.

14. Because the verdict was contrary to and against the weight of the evidence.

15. The verdict, judgment and sentence were in many respects illegal and contrary to law and should be set aside.

40

EDWARD M. SALLEY,  
*Attorney for Plaintiff-in-Error.*

## Joinder in Error

NEW JERSEY COURT OF ERRORS AND  
APPEALS

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>  vs.  EMIL VON DER LINDEN, <i>Plaintiff-in-Error.</i>	}	On Appeal  JOINDER IN ERROR	10
---	---	--------------------------------------	----

And thereupon the State of New Jersey, de-  
 fendant-in-error, by Aloysius McMahon, its at-  
 torney, comes into Court and says that there is  
 no error either in the record and proceedings  
 aforesaid or in the giving of judgment aforesaid,  
 and it prays here that the Court here may pro-  
 ceed to examine as well the record and proceed-  
 ings aforesaid, as the matters aforesaid assigned  
 for error and the judgment aforesaid, in the man-  
 ner aforesaid given, may in all things be affirmed,  
 etc.

20  
30

ALOYSIUS McMAHON,  
*Attorney for Defendant-in-Error.*

40



# New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,  
*Defendant-in-Error,*

vs.

EMIL VON DER LINDEN,  
*Plaintiff-in-Error,*

On Writ  
of Error.

## BRIEF OF PLAINTIFF-IN-ERROR

Emil Von der Linden, the plaintiff-in-error was tried for the crime of murder and convicted of manslaughter on June 5, 1928 in the Hudson County Court of Oyer and Terminer. A writ of error was sued out to review the legality of this conviction and the plaintiff-in-error has taken advantage of Section 136 of the Act concerning criminal procedure and has filed specification of causes of reversal in addition to alleging error on the record.

The assignments of errors and specification of causes for reversal found at pages 125 and 128 of the printed case are fourteen and fifteen respectively in number and are as follows:

### Assignments of Errors

1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the trial court refused to sustain defendant's objection to the following question:

“You did not have a fight with him in back of Sneider's saloon a year before that?”

4. Because the trial court sustained the prosecutor's objection and refused to allow defendant's witness to answer the following question:

“Did you see Von der Linden have any blackjack?”

5. Because the trial court refused to allow defendant's witness to answer the following question:

“Did you see Von der Linden there that night?”

6. Because the trial court would not sustain the defendant's objection to the following question:

“Do you know rules of your department require you to be equipped when you are on duty with your blackjack and revolver?”

7. Because counsel for the state on cross examination of character witnesses introduced evidence of other crimes not connected with this crime.

8. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was convicted of assault and battery?”

9. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was charged with assaulting a man named Baum?”

10. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was arrested in Cliffside charged with assaulting another man up there.”

11. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“You never knew he engaged in assault and batteries?”

12. Because the trial court did not sustain defendant's objection to the following question asked of a character witness:

“And in 1924 did you know he was convicted of resisting an officer?”

13. Because the trial court did not strike out the question regarding arrest in 1924 for resisting an officer.

14. Because the verdict was contrary to and against the weight of the evidence.

### Specification of Causes of Reversal

1. Because the trial court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the trial court refused to sustain defendant's objection to the following question:

“You did not have a fight with him in back of Sneider's saloon a year before that?”

4. Because the trial court sustained the prosecutor's objection and refused to allow defendant's witness to answer the following question:

“Did you see Von der Linden have any blackjack?”

5. Because the trial court refused to allow defendant's witness to answer the following question:

“Did you see Von der Linden there that night?”

6. Because the trial court would not sustain the defendant's objection to the following question:

“Do you know rules of your department require you to be equipped when you are on duty with your blackjack and revolver?”

7. Because counsel for the State on cross ex-

amination of character witnesses introduced evidence of other crimes not connected with this crime.

8. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was convicted of assault and battery?”

9. Because counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was charged with assaulting a man named Baum?”

10. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“Do you know he was arrested in Cliffside charged with assaulting another man up there?”

11. Because the counsel for the State on cross examination of a character witness introduced evidence of specific acts not connected with this by asking the following question:

“You never knew he engaged in assault and batteries?”

12. Because the trial court did not sustain defendant's objection to the following question asked of a character witness:

“And in 1924 did you know he was convicted of resisting an officer?”

13. Because the trial court did not strike out the question regarding arrest in 1924 for resisting an officer.

14. Because the verdict was contrary to and against the weight of the evidence.

15. The verdict, judgment and sentence were in many respects illegal and contrary to law and should be set aside.

### ***Facts***

The State alleged that on January 9, 1928, the plaintiff-in-error went into a saloon at 21 Park Avenue, Guttenberg, New Jersey; that while there he engaged in some controversy with the deceased; that after some words they ceased (case p. 22, l. 1); the plaintiff-in-error and Albaricci, the deceased, went out together (case p. 22, ll. 10-20); that the plaintiff-in-error struck the deceased holding him with one hand and striking with the other (case p. 46, ll. 7-20); that Albaricci was carried inside and that deceased afterwards went home and three or four days later became sick and unconscious and died of a cerebral hemorrhage.

That plaintiff-in-error admitted he went into this place that night and that as he was going out the deceased cursed at him and followed him out and that the deceased struck him and that he struck back at him and struck him only once and he staggered and went down (case p. 65, ll. 10-20). The plaintiff-in-error also produced several character witnesses.

## ARGUMENT

### POINT I.

**The Court permitted testimony which was incompetent, immaterial and irrelevant to the manifest injury of the plaintiff-in-error.**

The trial court permitted illegal evidence in allowing the State to ask the defendant the following question:

“You did not have a fight with him in back of Sneider’s saloon a year before that?”

page 70, lines 38-39. This question was asked by the prosecutor while Von der Linden was on the stand and objection being made the Court permitted this reference to a fight in Sneider’s saloon to go before the jury, when as a matter of fact there was no proof in the entire case that any such situation ever had arisen. As the State would have been precluded from showing any such fight and as the defendant’s answer under cross examination emphatically bound the State of New Jersey, it is obvious that a question of this character was manifestly injurious. The Court allowed the question (p. 71) on the ground that the State was entitled to show whether there was any feeling between Von der Linden and the deceased. The matter stated in that question had been denied by the defendant (p. 70, ll. 37-38);

exception was duly taken (p. 71). This evidence was entirely inadmissible.

*Clark v. State*, 18 Vr. 556;  
*Meyer v. State*, 30 Vr. 310;  
*State v. Sprague*, 64 N. J. L. 419.

In the *Sprague* case at page 425 the Supreme Court said:

“It is doubtful if it was legal upon cross examination, but conceding it to be so, he answered the questions, and the rule of evidence is that such facts being irrelevant and immaterial his answers must be conclusively accepted. He, like any other witness, is entitled to have his cross examination limited to the subjects originally opened by his examination-in-chief. He subjects himself to the same liabilities, and he is entitled to the same privileges of any other witnesses. Whart. Cr. Evid. (9th ed.) par. 430.”

As it was said in the *Sprague* case it was in the present instance the desire of the State to infer the commission or the attempt at commission of an assault in Sneider's saloon a year prior to the homicide.

## POINT II.

**The court below refused to allow the defendant's witness to answer the following question:**

“Did you see Von der Linden have any blackjack?”

Testimony of Charles Schedel, pp. 80, 81, 82:

“Q. You are in the trucking business?

A. Yes, sir.

Q. With offices on 23rd Street, West New York? A. Yes, sir.

Q. On the evening of January 29th, 1928, was the defendant Von der Linden in your place? A. Yes, sir.

Q. On that night did Von der Linden give you a rubdown?

Mr. McMahon: I object, leading and immaterial.

The Court: Sustain the objection.

Q. All right. What did Von der Linden do to you that night, if anything?

Mr. McMahon: I object, immaterial.

The Court: Sustain the objection.

Mr. Salley: Exception.

(Exception allowed, signed and sealed accordingly.)

Q. When Von der Linden was in your place did he have his coat on or off?

Mr. McMahon: I object, immaterial.

The Court: Sustain the objection.

Mr. Salley: Exception.

(Exception allowed, signed and sealed accordingly.)

Q. Did you see Von der Linden have any blackjack?

Mr. McMahon: I object.

The Court: Sustain the objection.

Mr. Salley: Exception.

(Exception allowed, signed and sealed accordingly).”

See testimony of Sarah E. Duffy at p. 82, ll. 26-32 and p. 83, ll. 1-10:

“Q. Were you in Mr. Schedel’s house on the evening of January 9th?

Mr. McMahon: What time?

Mr. Salley: Around about between eight and half past ten that night?

Mr. McMahon: I object, immaterial.  
The Court: How is it material?

Q. Did you see Von der Linden there that night?

Mr. McMahon: I object, immaterial.

The Court: How is it material, Mr. Salley?

Mr. Salley: Along the same lines as the previous witness.

The Court: To show that she did not see any blackjack in his pocket while in Schedel’s house?

Mr. Salley: Yes.

The Court: Sustain the objection.

(Exception allowed, signed and sealed accordingly.)”

The question of whether or not a blackjack was present became pertinent in this case because of the fact that in the opening to the jury the prosecutor stated that he would prove that the defendant had a blackjack and while the opening of counsel is not contained in the record a colloquy which took place between the court and counsel (p. 103) will throw light on the present situation.

Virginia Von der Linden (pp. 102-103) was asked:

“Q. Do you know Mrs. Von der Linden

whether your husband was working that day or whether it was his day off?"

and the following colloquy took place:

"Mr. Salley: Mr. McMahan in opening the case stated that he was going to prove that Mr. Von der Linden killed the deceased with a blackjack.

Mr. McMahan: I didn't prove it and the jury knows it.

Mr. Salley: Then do I understand you to say, Mr. McMahan, that no blackjack was used?

Mr. McMahan: I have not proved that a blackjack was used.

Mr. Salley: Then you admit there was no blackjack?

Mr. McMahan: I cannot do that."

See, however, Von der Linden's testimony, p. 67, l. 27; pp. 68, 69, 70 and 71. See particularly lines 11, 12, 31 and 32 at page 69 in cross examination of the State. The obvious purport of this testimony sought to be elicited by the prosecutor on his cross examination was that Von der Linden, a policeman, when not doing active duty was only relieved from the performance thereof but was still under the rules of his department required to have his weapons with him. It seems, therefore, both competent and material for the defendant by himself and his witnesses to have negatived this fact and the inferences ensuing therefrom by showing through witnesses who had seen Von der Linden a hour before the alleged homicide, with his coat off, engaged in the rubbing down of one Charles Schedel (p. 80, p. 81, ll. 9-15-28-29, p. 82, l. 1; Sarah E. Duffy's testimony, pp. 82-83). Schedel's office is on Twenty-third Street, West New York, right near the place of the homicide. Plaintiff-in-error insists that

this denial in view of the attitude of the State, together with the cross examination of Von der Linden and the denial of permission to ascertain from Charles Schedel and Sarah E. Duffy the fact as to whether or not they had seen any blackjack on Von der Linden when Von der Linden was in Schedel's place, worked an injury to the plaintiff-in-error and failed to acquaint the jury with the true situation as it existed on the night of the alleged homicide.

### POINT III.

**Under assignments of errors numbered 7 to 12 and specification of causes of reversal embracing the same numbers it is evident that the defendant was injured through the admission of evidence of other crimes not connected with the homicide and further that the cross examination of character witnesses wherein specific acts relative to reputation were suggested by the prosecutor, violated the limits of cross examination and of reputation witnesses, and the decisions in the line of cases which can be found in case of *State v. Bullock*, 65 N. J. L. 560.**

See examination of Abraham W. Hopper, p. 84, ll. 19-20:

“Q. Did you ever know he was convicted of crime? A. No.”  
p. 86, ll. 1-24:

“Q. If a man pleaded guilty would that affect his reputation? A. Yes.

Q. Do you know he pleaded guilty himself? A. Pardon me? Are you speaking about this particular person?

Q. This particular person, yes? A. I never heard of his pleading guilty.

Q. If it was brought to your attention that he pleaded guilty to a crime, not found guilty by a jury, but he voluntarily pleaded guilty— A. Well, do you mean non vult?

Q. I don't mean non vult. I am not quibbling with you, I mean pleaded guilty. I am talking English? A. Why, yes, it would affect his reputation.

Q. And if Von der Linden came in and pleaded guilty to a crime, would that affect Von der Linden's reputation with you? A. For the time being."

p. 86, l. 38:

"Q. And you did not know in 1921 that he pleaded guilty? A. No."

At page 89 the Court said:

"Well it has to be confined of course to the acquaintances in the neighborhood in which he lives. That is the law and we have to hold it down to that testimony."

See 8 R. C. L. par. 205:

"When, therefore, a witness is called to prove the good character of the defendant, his testimony should not go beyond the reputation which the defendant sustains in the community as to the particular traits of character, the existence or nonexistence of which bears upon the probability or improbability that he would commit or refrain from committing the offense with which he is charged. While it seems that proof of specific acts of conduct has been

admitted in some instances, such practice is not in accordance with the general rule. Conduct doubtless is, in all cases, to a greater or less degree the basis of reputation—the efficient cause of whatever impression has been made on the community touching the qualities of the man; but it is this resultant of conduct, and not conduct itself—whether regard be had to a general course of life or to particular acts—which may go to the jury in a given case to aid them in arriving at a just conclusion as to the fact, and in some instances the degree of guilt. In other words the witnesses to character may not testify as to particular acts or even the course of conduct of the accused, but must confine themselves to a statement of his general reputation in the neighborhood wherein he has lived; and this rule applies as well to evidence in rebuttal as to original testimony.”

*Moulton v. State*, 88 Ala. 16; 6 L. R. A. 301.

See 8 R. C. L. par. 205:

“On cross examination, however, it seems that the witness may be interrogated as a test of his information, accuracy and credibility, but not for the purpose of proving particular acts or facts as to the opinions he has heard expressed by members of the community, touching the character of the defendant and whether he has not heard one or more persons of the neighborhood impute particular acts, or the commission of particular crimes, to the party under investigation, or reports and rumors to that effect.”

See paragraphs 206 and 207, 8 R. C. L.:

“A witness is qualified to testify to the

reputation of a defendant, where he has been in such a position with reference to the defendant's residence or circle of acquaintances that the fact of his hearing nothing against him would have a tendency to show that nothing had been said against him, and therefore, that his reputation was good."

*People v. Van Gaasbeck*, 189 N. Y. 408.

At page 91 of the State of the Case, in the examination of Charles Hangle, he was asked on cross examination:

"Q. Do you know he was convicted of crime, convicted of assault and battery? A. Convicted of assault and battery?"

Q. Do you know it, Chief? A. I do not.

Q. Do you know he was charged with assaulting a man named Baum? A. I do not know.

Q. Do you know he was arrested in Cliffside charged with assaulting another man up there?"

Page 93:

"Q. You say you know nothing about his arrest and conviction for assault and battery in this court room? A. I do not."

The Court's attention is called to the fact that the answer of Von der Linden precluded the prosecutor from inquiring into the details and was entirely different from any alleged assault on a man named Baum or anybody in Cliffside.

See page 95 where what is alleged to be a record of some kind which the prosecutor asked to be marked for identification (line 2). Page 95, l. 12:

“Q. Wasn't this record made up since this crime was committed that we are trying today? A. Yes, sir.”

Then on page 95, l. 38:

“Q. You do not know? A. No, sir.

Q. Do you recognize this as your police department stationery? A. Yes.

Mr. McMahon: I ask that it be marked for identification.

(Marked Exhibit P-7 for identification.)

Q. This record of his was never called to your attention to look up? A. No, sir.

Q. You knew that Mr. Von der Linden was charged with the crime of murder? A. Yes, sir.

Q. And you did not look up your records before you came here to testify? A. No, sir, I did not.”

Page 97, l. 11 on recross examination by the prosecutor:

“Q. I show you a paper and ask you if you know what that is? A. I see his record there.

Q. Well is that the same record as the record which has been marked for identification? A. Yes.

Q. That is your own record? A. I do not know anything about it.”

Page 98, cross examination by prosecutor of witness Louis E. Serf:

“Q. Did you ever know he was convicted of crime? A. No, sir, I did not. Not prior to this.

Q. Well, he is not convicted of this one yet. A. Well, I mean I have never heard of any crime prior to this one.

Q. You never knew him to engage in anything in the nature of assaults? A. No, sir.

Q. How long do you say you have lived in West New York? A. About twenty-two years.

Q. And how long do you know Von der Linden? A. Around five years.

Q. Do you know he was convicted of resisting an officer? A. No, I did not.

Q. In the Town of North Bergen? A. No, sir."

Page 101, testimony of Adolph J. Dittmar, cross examination by the prosecutor, l. 33:

"Q. You never knew he was guilty of crime? A. No, sir.

Q. You never knew he engaged in assault and batteries? A. No, sir.

Q. You never heard of him beating any man? A. No, sir. I really didn't know of anything of the kind.

Q. You have been in the neighborhood seven years? A. Seven years.

Q. And in 1924 did you know he was convicted of resisting an officer? A. No."

l. 17:

"Mr. McMahon: I am speaking of resisting an officer, which is a crime."

The plaintiff-in-error having a preliminary objection calls attention to the testimony of Von der Linden, at page 66, where the following question was asked him:

"Q. You have also been convicted of crime?"

and it is respectfully urged that this answer upon cross examination was binding on the State and precluded them from going into details as to that particular conviction because of its admission and into any other crimes or incidents bearing upon his good reputation under the law as laid down in *State v. Bullock*, 65 N. J. L. 559.

The vice of all this evidence consists in the fact that it violates two fundamental laws of evidence, namely, (1) that it is entirely objectionable for the State to bring in before the jury any question of any other crime such as the resisting of an officer or the fight in North Bergen, for the purpose of showing that the accused would be likely to commit the crime charged in the indictment.

See *State v. Bullock*, 65 N. J. L. 574, wherein the court said:

“There is a class of cases in which the knowledge, good faith, motive or intent of a party is material, on which evidence collateral to the main subject is sometimes admitted; but the competency of such evidence is limited to facts which are so connected with the subject in controversy as to make it apparent that the party had a common purpose in both transactions. \*\*\* But on the trial of a criminal charge it is not relevant to show that the defendant has committed other similar crimes which are not connected in any way with the one in question.”

The testimony in this case like Campbell in the *Bullock* case, presented a transaction or series of transactions which were wholly extraneous and had no connection whatever with the charge for which the prisoner was on trial. See *Bullock v. State*, 65 N. J. L. 575.

On the question that even if the evidence was at all competent on cross examination, being irrelevant and immaterial, the State was bound by the answers of the witnesses and it laid no foundation for the right of the State to question the defendant on his conviction which we have heretofore set out was violating the rule relative to the testimony in that class of cases. It is also clear that this testimony which is incompetent and illegal was admitted into the case and so permeated the case that even if the court had stricken the same out, its original admission could not have been so eradicated from the case so as not to have injuriously effected the accused.

*Throckmorton v. Holt*, 180 U. S. 552.

As in the *Bullock* case the manner in which this evidence was put in and the suggestion as to the previous convictions and fights of Von der Linden was calculated to impress upon the minds of the jurors a conviction of the natural propensity of the prisoner to resort to extreme violence on slight provocation. To have removed the effect of this evidence it would have taken more than a judicial order striking the same from the record. Its effects were apparent and obvious. It was dangerous and inevitable and any remedy was futile.

The plaintiff-in-error further insists that on the question of the character of the accused the cross examination of the prosecutor of the character witnesses mentioned in this brief and referred to in the State of the Case was incompetent and irrelevant.

As stated in the *Bullock* case, the law as followed in this State is as follows:

“If a prisoner, on his trial, gives evidence that his character is good, it is open for the prosecutor by way of reply to prove that the prisoner’s character is bad; but evidence of this character must be confined to general reputation, and particular acts or specific facts are not admissible, either as original evidence or as evidence by way of rebuttal. 5 Am. & Eng. Encycl. L. (2d ed.) 875 and cases cited in notes. Where a person accused of a criminal offense produced evidence to show that his general reputation is good, it is not competent for the government in reply to put in evidence particular facts.”

See case of *State v. Sprague*, 64 N. J. L. 419, where at page 420 paragraph 4 of the syllabus of the Court is as follows:

“4. Where a witness is called upon to prove the good reputation of a defendant on trial upon an indictment for an assault with intent to ravish, he cannot be permitted, against objection and exception, on cross examination, to testify to acts of the defendant within his own knowledge, tending to show the commission of a like offense at some other time. Neither is evidence admissible and competent from such a witness, or any other witness, tending to show the commission of another offense of like character, where the offense with which he is charged is distinct from and unconnected with the other.”

See also case of *McQuiggan v. Ladd*, 79 Vermont 90, with notes, 14 Annotated Law, new series, 1908.

See also declaration of court in the case of *Moulton v. State*, 88 Ala., 116, 6 L. R. A. 301, where Judge McClennan said:

“The doctrine is too familiar to require support from a citation of texts or adjudged cases, that character, good or bad, can only be established by evidence of general reputation. The issue involved, when it is sought to influence the verdict of jurors by inviting their consideration of the good character of the defendant, embraces no element of conduct, but is met and filled solely by the repute in which the person inquired about is held in the community in which he lives. Conduct, doubtless, is in all cases to a greater or less degree the basis of reputation. The efficient cause of whatever impression has been made on the community touching the qualities of the man but it is this resultant of conduct and not conduct itself—whether regard be had to a general course of life or to particular acts which may go to the jury in a given case to aid them in arriving at a just conclusion as to the facts and in some instances the degree of guilt.”

In regard to assignment of error numbered 12, page 127 and specification of causes of reversal numbered 12, page 130, the Court's attention is called to the testimony of Alfred J. Ditmar, p. 101, who had been in the neighborhood seven years and did not know the defendant was convicted of resisting an officer.

Upon motion of the attorney for the defendant, the Court said:

“If it (meaning the question just above mentioned) is not connected up I will strike it out.”

Mr. McMahon: That is all.”

What the Court meant by the words “If it is not connected up I will strike it out,” may have been that the Court assumed that under our law

of evidence it was appropriate and legal for the prosecutor to prove that in 1924 Von der Linden had been convicted of resisting an officer. It is perfectly obvious that in either event the State, through Mr. McMahon did not connect up with testimony the instant homicide and if he did or attempted to do it, as a matter of law it would be illegal and incompetent evidence and of such a highly prejudicial nature as that which is characterized as inadmissible in the case of *Bullock v. State*, 65 N. J. L. 559.

#### POINT IV

**Assignments of Errors 1, 2 and 14 and specification of causes of reversal 1, 2 and 14, since they relate to the direction of the verdict and contrary to the weight of the evidence, are herewith argued together.**

At the close of the State's case and at the close of the case made out by the defendant appropriate motions were made for a direction of a verdict which were denied. The only evidence in the case on the part of the State as to the assault is contained in the testimony of Edward Hermann (case p. 46, ll. 15 to 20) where he said he saw the defendant hold the deceased with one hand and strike him with the other. This the defendant denied and testified that he struck in self-defense.

While it is the law that to justify a Court in setting aside a verdict in a criminal case under

P. L. 1921, p. 951, on the ground that it is against the weight of the evidence the verdict must so clearly appear that it is against the weight of evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.

*State v. Karpowitz*, 98 N. J. L. 546;  
*State v. Mosley*, 3 Adv. Rep. 1972.

Plaintiff-in-error contends that this case comes within the category above indicated especially in view of the evidence argued under Point III of this brief.

For the reasons above set forth it is respectfully urged that the conviction should be set aside and a new trial ordered.

EDWARD M. SALLEY,  
*Attorney for and of counsel with  
Plaintiff-in-Error.*



52 FEB. I. 1929

## New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,  
Defendant-in-Error,

*vs.*

EMIL VON DER LINDEN,  
Plaintiff-in-Error.

ON WRIT OF  
ERROR.

### BRIEF OF DEFENDANT-IN-ERROR.

#### Facts.

The defendant below, Emil Von Der Linden, was a police officer attached to the police force of the Town of West New York, N. J. On January 9th, 1928, Emil Von Der Linden went into a saloon at 21 Park Avenue, Guttenberg, about 10:30 o'clock in the evening accompanied by one "Babe" Saldarini. At that time there were three other men in the saloon, among whom was Robert Albaricci. An argument arose between Albaricci and Von Der Linden, because Albaricci addressed his remarks to Von Der Linden's companion and not to Von Der Linden (S. C., p. 21). Von Der Linden became "sore" at Albaricci, and while the argument stopped it was revived again by Von Der Linden when he was leaving the saloon and he invited Albaricci outside. Albaricci accepted the invitation and followed Von Der Linden to the street. Edward Hermann, one of the men in the saloon, opened the door and saw Albaricci prone on the sidewalk with Von Der Linden holding him

up with one hand while he punched him with the other. Hermann hollered and Von Der Linden dropped Albaricci and walked away. Before Von Der Linden dropped Albaricci and after Hermann hollered Von Der Linden exclaimed to Hermann "Oh, you don't want me to hit him" (S. C., p. 46). Albaricci was carried into the saloon, where he appeared to revive. Von Der Linden came back to the saloon asked Hermann what he knew about the case and Hermann replied "I seen it". Von Der Linden then said, pointing his finger at Hermann "If you know anything about this case this finger will always point at you" (S. C., p. 48). Albaricci died on the 12th of January, 1928, from a fracture of the skull with lacerations of the brain and oedema of the brain (S. C., p. 33).

## POINT I.

### **Point I of plaintiff-in-error's brief is ambiguous and not understandable.**

Under this point defendant-in-error says he wishes to discuss certain several specifications of causes of reversal and assignments of error. These matters deal with the refusal of the Trial Court to direct a verdict at the close of the State's case and again at the close of the whole case. The plaintiff-in-error then proceeds to argue about the admission of evidence and pretends to quote a question from the State of the Case. The question is not correctly quoted. It should read:

*"You did not have a fight with him in back of Sneider's saloon a year before that"*  
(S. C., p. 70, lines 38-39).

This question is entirely different from that quoted in the brief and was propounded on cross-examination in an attempt to show that there

was bad feeling between the deceased and Von Der Linden. The answer was "No", and even assuming that the question was objectionable, no manifest wrong or injury was done the defendant by the asking of the question, because the question elicited nothing. The cases cited in the brief of plaintiff-in-error have no application to the question discussed under this point.

## POINT II.

**The Court properly sustained the State's objections to the questions set forth in Point II of plaintiff-in-error's brief.**

Von Der Linden came into the saloon about 10:30 P. M. (S. C., p. 21, lines 25-26) or eleven o'clock (S. C., p. 41, line 30). All of the questions propounded and listed under this point related to a different time and place than the place of the killing. And surely how Von Der Linden was dressed, what he did or what people did or did not see him ~~leave~~<sup>have</sup> two hours before the murder was not material and could not help the jury. There was perhaps no occasion for Von Der Linden to display a blackjack at Schedel's house, and unless someone made a search of his clothing no one could tell whether he had one or not, and the fact that no one there saw one in his possession would be no proof that he didn't have one. Exceptions were not taken to all of the Judge's rulings on these questions. There was no proof in the State's case that a blackjack was used by Von Der Linden. The defendant was trying to negative something which was never affirmatively proved. Undoubtedly any murderer could bring to court in any homicide case a galaxy of witnesses who never saw a gun in the hands or possession of the murderer before the killing or even after

the killing. These questions were properly ruled out. The defendant himself denied that he had a blackjack and his wife testified it was at home.

### POINT III.

**Character witnesses may be cross-examined to impeach their credibility the same as other witnesses.**

Under Point III of the plaintiff-in-error's brief the cross-examination of character witnesses is discussed. A character witness may be searched as to his knowledge of the character of a defendant, and to how much he knows about the defendant. Surely, it cannot be error to ask a character witness if he ever heard that a defendant was convicted of crime, which was all that was done with respect to the witness Hopper. No exceptions were taken to the cross-examination of this witness.

With respect to the cross-examination of Chief Hangley. The appellant misses the point of the examination. The chief was tendered as a character witness and testified that Von Der Linden's reputation for being a peaceable and quiet man was good (S. C., p. 91, line 30). It is a monstrous thing if a Chief of Police who testifies that it is his business as police head of West New York to know the criminals in his town (S. C. p. 94, line 20) can come into court and not have his credibility attacked by attempting to show that he has knowledge or as head of the police department should have knowledge of the character of his own policemen, particularly where the person has a criminal record and that record reposes in the police department of which the witness is head.

“Q. I show you what purports to be a record of your police department. Is that a record of your police department on Von Der Linden? A. Yes, that is it, but I was not chief at the time.

Q. Wasn't this record made up since this crime was committed that we are trying today? A. Yes, sir” (S. C., p. 94, ll. 38 *et seq.*)

The purpose of this examination was solely to discredit this witness and was competent for that purpose. It was not tendered to show the criminal record of the defendant. The defendant admitted that he was convicted of crime. The cases cited in appellant's brief have no relation at all to this question. No exceptions were taken at the trial to these questions.

#### POINT IV.

**The verdict was not contrary to the weight of the evidence.**

There was abundant testimony upon which the jury could found the verdict of manslaughter and the Court properly refused the motions made at the close of the State's case and again at the close of the whole case.

#### POINT V.

**The judgment should be affirmed.**

Respectfully submitted,

JOHN DREWEN,  
Prosecutor.