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New Jersey Supreme Court

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN KING,
Plaintiff-in-Error.

WRIT OF
ERROR.
NEW JERSEY.
SS.

10

The State of New Jersey to the Court of General Quarter Sessions in and for the County of Hudson:

20

GREETING:

Because in the record and proceeding and also in the giving of judgment in a certain indictment pending before you, in which said indictment John King was a defendant and which said indictment was for murder, and upon which indictment he is convicted, 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 John King, 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 proceedings had upon the trial of the said indictment to our Supreme Court on the 23rd day of June, 1927, together with this writ, that the record and proceedings aforesaid be inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

30

40

(Writ of Error.)

Witness, William S. Gummere, Esq., our Chief Justice at Trenton, aforesaid, the 3rd day of June, 1927.

EDWARD J. KELLEHER,
Clerk.

10 GEORGE E. CUTLEY,
Attorney.

Judgment.

20 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 Third Tuesday of September, in the year of our Lord one thousand nine hundred and twenty-six before Honorable James F. Minturn, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Robert V. Kinkead, and Honorable Charles M. Egan 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

- | | | |
|----|-----------------------|---------------------------|
| 30 | 1. David Pindar | Foreman and |
| | 2. Thomas Carey | 13. Jacob I. Hass |
| | 3. Louis Waterman | 14. Michael Donnellan |
| | 4. Charles Weinacht | 15. David I. Cohen |
| | 5. Paul A. Trost | 16. Mrs. Agnes M. Kloster |
| | 6. Joseph B. McCourt | 17. Heinrich Cohen |
| | 7. Timothy F. Sheehan | 18. Harry Schreiber |
| | 8. Theodore Voss | 19. John J. Bannon |
| | 9. James N. Cunneen | 20. John DeMartini |
| 40 | 10. George H. Renker | 21. Mrs. Theresa Kaiser |
| | 11. Frank Hohmeyer | 22. Edward I. Hirschfield |
| | 12. Simon Connolly | 23. Stephen J. McGough |

(Judgment.)

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.

10

D. B. PINDAR,
Foreman.

And the foregoing being presented to the said Court on the Twenty-third day of November, in the year of our Lord One Thousand Nine Hundred and Twenty-six with bills of Indictment Nos. 209 to 246 inclusive, and said bill is in words as follows:

20

HUDSON OYER AND TERMINER.

September Term, A. D. 1926.

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 John F. King, late of the Town of West New York in the said County of Hudson on the first day of November in the year of our Lord one thousand nine hundred and twenty-six, with force and arms at the Town of West New York aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Michael Spiegel 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.

30

And the Grand Inquest aforesaid, upon their oath aforesaid do further PRESENT, That the said

40

(Judgment.)

10 John F. King, on the first day of November in the year of our Lord one thousand nine hundred and twenty-six, at the Town of West New York aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one Michael Spiegel, 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 And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said John F. King, on the first day of November in the year of our Lord one thousand nine hundred and twenty-six, at the Town of West New York aforesaid in the County of Hudson aforesaid, and within the jurisdiction of this court, in and upon one Michael Spiegel in the peace of God and of this State, then and there being, an assault did make, and him the said Michael Spiegel then and there did beat, wound and ill-treat and other wrongs, to the said Michael Spiegel then and there did, to the great damage of the said Michael Spiegel, 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.

30

JOHN MILTON
Prosecutor of the Pleas.

Endorsed Bill No. 209, Hudson Oyer and Terminer, Term of September, 1926, The State *vs.* John F. King, for Murder.

JOHN MILTON
Prosecutor of the Pleas.

A TRUE BILL

40 D. B. PINDAR
Foreman

(*Judgment.*)

PRESENTED

Nov 23 1926

And it is thereupon ordered that this Bill of Indictment remain in this Court of Oyer & Terminer for Trial and disposal according to law.

10

JOHN J. MCGOVERN
Clerk.

And afterwards to wit: to wit on the twenty-fourth day of March in the year of our Lord One thousand nine hundred and twenty-seven 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-six in the said year Before the Honorable Daniel T. O'Regan, 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 John F. King under the custody of the Sheriff of the County of Hudson in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the Sheriff 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 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 Prosecutor of the Pleas of said County who prosecutes for the State of New Jersey, in this behalf, doth the like.

20

30

40

(Judgment.)

Therefore, let said indictment be continued until April 19th, 1927, and let a jury come before the Honorable Robert V. Kinkead, 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
10 Term of April, (1927), One thousand nine hundred and twenty-seven 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 John F. King be
20 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.

At which time that is to say on the 19th day of April in the year of our Lord one thousand nine hundred and twenty-seven, at Jersey City, aforesaid in the County of Hudson aforesaid, before
30 the Honorable Robert V. Kinkead, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said John Milton Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said defendant under the custody of the Sheriff aforesaid, to whose custody he had hitherto been committed and who being brought to the bar in his proper person by the Sheriff and the jurors of the jury by the Sheriff of the County of Hudson,
40 aforesaid, for the purpose, chosen, empanelled and

(Judgment.)

returned to wit: Andrew Bertelson, William Spencer, John Furze, Richard H. Stalling, John Shedlock, Charles A. Brophey, Albert Mistler, John J. Pritchard, Joseph Picuri, Samuel L. Mattson, John J. De Mott, Stanley H. Webster, 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 April 21st, 1927, 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 Murder in the 1st degree and recommend Life Imprisonment at hard labor.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said Defendant be and is hereby sentenced to be confined in State Prison at hard labor for the rest of his Natural Life.

Judgment entered and signed this Twenty-fifth day of April, A. D. 1927.

ROBERT V. KINKEAD,
Judge of the Court of Oyer and
Terminer, in and for the County of
Hudson.

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

COURT OF OYER AND TERMINER,
Holden in and for said County.

10

THE STATE,
vs.
JOHN F. KING.

Sur. Indictment
No. 209, Term
of September,
A. D. 1926,
for Murder.

March 24/27.

Defendant being charged plead not guilty
and is remanded for trial.

Judge O'REGAN.

20

April 19/27.

Trial commenced and is continued to

April 20/27.

Trial continued and is continued to

April 21/27.

Trial continued and is continued to

April 21/27.

The defendant being tried the jury comes
into Court at 12.45 P. M. and say they find
the defendant Guilty of Murder in the 1st
degree and recommend Life Imprisonment
at hard labor, and he is remanded for sen-
tence.

30

Judge KINKEAD.

April 25/27.

The defendant being placed to the Bar is
sentenced to be confined in State Prison at
hard labor for the rest of his Natural Life.

40

Judge KINKEAD.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error,	WRIT OF ERROR.	10
<i>vs.</i>		
JOHN KING, Plaintiff-in-Error.	NEW JERSEY. SS.:	

The State of New Jersey to the Court of General Quarter Sessions in and for the County of Hudson:

(SEAL) GREETING:

Because in the record and proceeding and also 20
in the giving of judgment in a certain indictment
pending before you, in which said indictment John
King was a defendant and which said indictment
was for murder, and upon which indictment he is
convicted, as we are informed, and as we are fur-
ther informed, manifest error hath intervened in
the said proceedings and trial to the great damage
of the said John King, as by his complaint, we are
informed, we being willing that speedy justice
should be done in this behalf, do command you dis- 30
tinctly and openly to send under your seal, the
said indictment and the records and proceedings
aforesaid, with all things touching and concern-
ing the same, and also the entire record of pro-
ceedings had upon the trial of the said indictment
to our Supreme Court on the 23rd day of June,
1927, 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. 40

(Judgment.)

Witness, William S. Gummere, Esq., our Chief Justice at Trenton, aforesaid, the 3rd day of June, 1927.

EDWARD J. KELLEHER,
Clerk.

10 GEORGE E. CUTLEY,
Attorney.

Indictment.

HUDSON OYER AND TERMINER.

September Term, A. D., 1926.

20 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 John F. King, late of the Town of West New York in the said County of Hudson, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-six with force and arms, at the Town of West New York aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one
30 Michael Spiegel 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.

(Indictment.)

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said John F. King, on the first day of November, in the year of our Lord one thousand nine hundred and twenty-six, at the Town of West New York aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one Michael Spiegel, contrary to the form of the State in such case made and provided, and against the peace of this State, the government and dignity of the same. 10

And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said John F. King on the first day of November, in the year of our Lord one thousand nine hundred and twenty-six, at the Town of West New York aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Michael Spiegel in the peace of God and of this State, then and there being, an assault did make, and him, the said Michael Spiegel then and there did beat, wound and ill-treat and other wrongs, to the said Michael Spiegel then and there did, to the great damage of the said Michael Spiegel, 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

JOHN MILTON,
Prosecutor of the Pleas.

Testimony.

HUDSON COUNTY COURT OF OYER AND TERMINER.

10	STATE <i>vs.</i> JOHN F. KING.	}	Indictment 209, September Term, 1926. Murder.
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Before:

Hon. ROBERT V. KINKEAD, J. and a Jury.
 Jersey City, N. J., April 19, 1927.

Appearances:

20 ALOYSIUS McMAHON, Esq., and LEWIS B.
 HANSEN, Esq., for the State.
 GEORGE CUTLEY, Esq., for the Defendant.

Mr. McMahon: In the absence of a Supreme Court Justice will your Honor convene and hold a Court of Oyer and Terminer?

The Court: The Court will convene and hold a court of Oyer and Terminer.

30 Mr. McMahon: The State moves indictment 209, September Term, 1926, the State against John F. King, for murder, and asks that a jury be empanelled.

Mr. Cutley: I am going to make an objection to the list as served upon the defendant. 15 or 16 of the names on that list have not been served or are excused or are not available for jury duty. I am so informed officially by the Clerk of the Court. I am going to stand on my statutory right and
 40 insist on a list of 48 names.

(Testimony.)

The Court: I suppose all that the Sheriff could do would be to serve the list of 28 names on you, and of course if it develops that those 48 are not available for jury duty you might subsequently make some further objection, but I think the requirements of the statute are satisfied if the Sheriff served you in good faith with 48 names. 10
I will deny your motion.

Mr. Cutley: Exception.

Exception, signed, sealed and allowed.

ROBERT V. KINKEAD,
J.

The Clerk: I have a special panel of 48 names numbered according to the venire in the case of the State versus John F. King, prisoner at the bar. 20
(The Clerk thereupon proceeded to draw the jury.)

John Byers, called as a talesman, was challenged by the Defendant.

Herbert R. Husen, called as a talesman, being satisfactory to the State, was challenged by the Defendant.

Gustav Postman, called as a talesman, was challenged by the Defendant.

Andrew Bertelson, called as a talesman, being 30
satisfactory to the State and satisfactory to the Defendant was sworn as juror number one.

John McGonigle, called as a talesman, being satisfactory to the Defendant, was challenged by the State.

Frederick D. Goss, called as a talesman, the Clerk announced that he had been excused.

Joseph P. Mattera, called as a talesman, the Clerk announced that a Doctor's certificate had 40
been presented.

(Testimony.)

Harold Watson, called as a talesman, was challenged by the State.

William Spencer, called as a talesman, being satisfactory to the defendant and satisfactory to the State, was sworn as juror number two.

10 The Talesman: I am opposed to capital punishment, your Honor.

 The Court: What have you to say?

 Mr. McMahon: The juror is already sworn when he makes the announcement.

Sol Leibowitz, called as a talesman, was challenged by the State.

Charles H. Spreen, called as a talesman, was challenged by the defendant.

20 Henry Rader, called as a talesman.

 Mr. Hansen calls my attention to the fact that this gentleman is a director in the bank of which he is counsel.

 The Court: I think that having made that fact known the State has done all that is necessary, and that counsel for the defense has to challenge him for cause or peremptorily——

30 Mr. Cutley: How old are you?

 The Talesman: 59.

 Mr. Cutley: I will challenge.

E. A. Haines, called as a talesman, the Clerk announced that he had been returned as "not found".

John Furze, called as a talesman, being satisfactory to the defendant and satisfactory to the State, was sworn as juror number three.

40 Anton C. Flad, called as a talesman, was challenged by the State.

(Testimony.)

Richard H. Stalling, called as a talesman, being satisfactory to the defendant and satisfactory to the State, was sworn as juror number four.

James J. West, called as a talesman, the Clerk announced a return of "not found".

J. B. Wortendyke, called as a talesman, the Clerk announced he had been excused.

10

Sidney Sichel, called as a talesman, being satisfactory to the State was challenged by the defendant.

Edgar S. Henry, called as a talesman, the Clerk announced that he had been excused.

Adolph Markstein, called as a talesman, being satisfactory to the defendant was challenged by the State.

Edwin O. Belden, called as a talesman, being satisfactory to the State was challenged by the defendant.

20

John Shedlock, called as a talesman, being satisfactory to the defendant and satisfactory to the State, was sworn as juror number five.

Peter Eltringham, called as a talesman, the Clerk announced the production of a doctor's certificate.

George Buell, called as a talesman, being satisfactory to the State was challenged by the defendant.

30

Charles Walter, called as a talesman, the Clerk announced the production of a doctor's certificate.

D. A. Cella, called as a talesman, being satisfactory to the Defendant was challenged by the State.

Harry Winne, called as a talesman, the Clerk announced the production of a Doctor's certificate.

Milton B. Ogden, called as a talesman, being satisfactory to the State was challenged by the Defendant.

40

(Testimony.)

John C. Muller, called as a talesman, was challenged by the Defendant.

E. Schechter, called as a talesman, was challenged by the State.

C. Ford Adams, called as a talesman, the Clerk announced that he had been excused.

10 F. W. Schmale, called as a talesman, the Clerk announced the production of a Doctor's certificate.

Conrad Brandt, called as a talesman, was challenged by the Defendant.

Ervant Gabriel, called as a talesman, the Clerk announced the production of a Doctor's certificate.

Robert B. Cooke, called as a talesman, the Clerk announced that he had been served at the house and does not respond.

20 Leo A. Brennan, called as a talesman, the Clerk announced that he had been served at the house and does not respond.

Frank Laub, called as a talesman, was challenged by the State.

Charles A. Brophy, called as a talesman, being satisfactory to the Defendant and satisfactory to the State was sworn as juror number six.

Frank H. Freykeet, called as a talesman, was satisfactory to the State and challenged by the Defendant.

30 Elroy Ackerman, called as a talesman, was challenged by the Defendant.

Max J. Jacobs, called as a talesman, was challenged by the State.

James Chesebro, called as a talesman, was challenged by the Defendant.

John P. Sieboldt, called as a talesman, was satisfactory to the State and challenged by the Defendant.

40 William Reuter, called as a talesman, the Clerk announced that he had been excused.

(Testimony.)

John Dolt, called as a talesman,

By Mr. Cutley:

Q. How old are you? A. 69—past 68.

The Court: When were you born?

The Talesman: In 1858.

10

The Court: Do you want him sworn?

Mr. Cutley: We challenge for cause.

L. W. Walter, called as a talesman, the Clerk announced that he had been served at the house and does not respond.

Albert Mistler, called as a talesman, being satisfactory to the Defendant and satisfactory to the State was sworn as juror number seven.

The Clerk: That exhausts the special panel, 20
your Honor.

Mr. McMahon: How about C. Ford Adams?

The Clerk: He was called and was excused.

The Court: Now, gentlemen, my notion of the law is that this special panel being exhausted, even though the defendant would waive and would consent that the jury be completed from the general panel, that that is forbidden by the statute. 30

The Clerk: Your Honor, I have the balance of the general panel here.

(The Clerk proceeded to draw the jury, using the general panel.)

E. Schechter, called as a talesman, the Clerk announced that he had been drawn and challenged by the State.

George Buell, called as a talesman, the Clerk 40
announced that he had been drawn.

(Testimony.)

Martin Leberle, called as a talesman, being satisfactory to the State was challenged by the defendant.

John P. Sieboldt, called as a talesman, the Clerk announced that he had been drawn.

10 Elroy Ackerman, called as a talesman, the Clerk announced that he had been drawn.

D. A. Cella, called as a talesman, the Clerk announced that he had been drawn.

Walter H. Browning, called as a talesman, being satisfactory to the defendant was challenged by the State.

Frank Laub, called as a talesman, the Clerk announced that he had been drawn.

Stewart Jackson, called as a talesman, was challenged by the State.

20 John J. Prichard, called as a talesman.

By Mr. Cutley:

Q. How old are you?

The Talesman: 53.

The talesman being satisfactory to the defendant and satisfactory to the State was sworn as juror number eight.

30 Joseph Picuri, called as a talesman, being satisfactory to the State and satisfactory to the defendant, was sworn as juror number nine.

A. J. Whitehall, called as a talesman, was challenged by the defendant.

Max J. Jacobs, called as a talesman, the Clerk announced that he had already been drawn.

Sol Leibowitz, called as a talesman, the Clerk announced that he had already been drawn.

Edwin O. Beldon, called as a talesman, the Clerk announced that he had already been drawn.

40 Felix Eberhardt, called as a talesman, being

(Testimony.)

satisfactory to the State, was challenged by the defendant.

John McGonigle, called as a talesman, the Clerk announced that he had been drawn.

John C. Muller, called as a talesman, the Clerk announced that he had been drawn.

Albert Mistler, called as a talesman, the Clerk announced that he had been drawn. 10

Harold Watson, called as a talesman, the Clerk announced that he had been drawn.

Charles F. Briggs, called as a talesman, was challenged by the defendant.

William Spencer, called as a talesman, the Clerk announced that he had already been drawn.

Elias Chesboro, called as a talesman, being satisfactory to the State was challenged by the defendant. 20

The Clerk: That exhausts the defendant's peremptory challenges.

Charles H. Sreen, called as a talesman, the Clerk announced that he had been drawn.

Samuel R. Mattson, called as a talesman, being satisfactory to the State, was sworn as juror number ten.

Milton B. Ogden, called as a talesman, the Clerk announced that he had already been drawn. 30

John J. DeMott, called as a talesman, being satisfactory to the State was sworn as juror number eleven.

H. Breitreutz, called as a talesman, was challenged by the State.

John Newton, called as a talesman, the Clerk announced that the State had had twelve peremptory challenges.

Mr. McMahon: I would like to say that 40
I went to school with this young man many

(*Harry G. Otis, for State—Direct.*)

years ago. I will consent to him standing aside, if the defendant will.

The Court: All right.

Stanley H. Webster, called as a talesman, was sworn as juror number twelve.

10

Mr. McMahon: It is admitted by Mr. Cutley that these photographs—Mr. Harrison, who was here and had to go to Bayonne, would testify that these photographs were taken by him at the request of the Prosecutor's Office and they fairly represent the scenes that are depicted on the photographs, and I offer in evidence all those except the body of the man which I offer for identification.

20

(Admitted and marked S-1 to S-9) in evidence; and S-10 and S-11 for identification respectively.)

HARRY G. OTIS, sworn for the State.

Direct examination by Mr. McMahon:

30 Q. You are a member of the West New York Police Department? A. Yes.

Q. What is your position in that department? A. Detective.

Q. Were you Lieutenant of Detectives on the first of November, 1926? A. Yes.

Q. Did you receive either instructions or call to go to 23rd Street and Polk Avenue in your town? A. Yes.

Q. At what hour of the day or night was that?

40 A. It was around 2:30 in the morning.

(*Harry G. Otis, for State—Direct.*)

Q. Where were you at the time? A. Home in bed.

Q. What did you do? A. I got up and dressed and jumped in my car which was in front of the door and I was told by the Lieutenant at the desk to go to——

Q. Never mind what he told you, but did you go to this place? A. I went to this place. 10

Q. What did you find when you got there? A. The window was broke, a piece of glass in the top of the door and a piece of glass in the bottom, and a small hole that I noticed when I went in.

Q. I show you Exhibit S-8. Do you know what that shows? A. Yes. The tables were laying over when I got there.

Q. What does that picture show? A. The front room, the bar room. 20

Q. You were telling us about some glass being broken. Where was the glass broken? A. Right here. This hole towards the center here was broke out.

Q. Indicating the door on the left hand side? A. Yes.

Q. Mark the door which was broken. A. This glass was broken about like this. That was all open here and there was a hole here.

Q. On this photograph S-8 you have made an irregular line near the top of the door and a straight line—— A. There was a jag and it was broke. 30

Q. Did that indicate that between those two lines the glass was completely out of the door? A. Yes, sir.

Q. There was no glass in this place? A. No.

Q. In the other parts of the door there was still glass, top and bottom? A. Yes.

Q. You have also put a dot near the line to- 40

(Harry G. Otis, for State—Direct.)

ward the bottom of the glass of the door. What does that indicate? A. A bullet hole.

Q. A hole? A. Yes.

Q. I show you S-7. Can you tell us what that is? A. This is the sitting room here, it is the back room.

10 Q. Of the same saloon? A. Yes.

Q. I show you S-6. Can you tell us what that is? A. This is just opposite, this is on the southwest corner of Polk and 23rd Street.

Q. Is that the corner where the building is? A. The building is in this corner here.

Q. That is diagonally opposite? A. Right opposite.

Q. The building would be on what corner? A. Northwest corner.

20 Q. And a small store is shown on what corner? A. On the southwest corner.

Q. I show you Exhibit S-5. What does that depict? A. That is the back entrance to Spiegel's entrance.

Q. And that is the building in which the saloon was located? A. Yes.

Q. And do the saloon and back room take up the whole bottom floor? A. This is the stores here. There is an entrance to the back hall.

30 Q. There is an entrance from the store into the hall and out into the street? A. Yes.

Q. I show you S-1, what is that? A. That is the bar as you come in the entrance.

Q. I show you S-3. A. That is the front door, the entrance.

Q. Will you indicate on S-3 where you saw the broken glass and the hole? A. It was going in the right hand door going in, right in here.

40 Q. Will you mark it just as you did on S-8? These markings mean that between the two lines

(*Harry G. Otis, for State—Direct.*)

you have drawn on the door there was no glass at all? A. That is right.

Q. That the glass remained in the upper and lower portions? A. Yes.

Q. And the dot means the little hole in the door? A. Yes.

Q. I show you S-2; what is that a view of? A. 10
This is a view of Polk Street looking south. On the right hand side in Spiegel's restaurant.

Q. That tall building on the right hand side? A. Yes.

Q. I show you S-1. A. That is the entrance to Spiegel's.

Q. Will you mark that also as you found the glass? I show you S-9. Will you tell us what that is a view of? A. That is Polk Street, looking 20
north—no, that is Polk Street, looking south. This is Spiegel's place here.

Q. The tall building on the extreme right of the picture is Spiegel's saloon? A. Yes.

Q. Did you know Spiegel in his lifetime? A. Yes.

Q. I show you S-11 for identification. Can you tell me whose photograph that is? A. Mr. Spiegel's.

Q. I also show you S-10 for identification. A. 30
That is Mr. Spiegel.

Mr. McMahon: I offer them in evidence.
(Admitted and marked Exhibits S-10 and S-11 of this date.)

Q. I understood you to say when you got there the tables and chairs were overturned? A. Yes.

Q. They were not in the orderly fashion shown in these photographs? A. No, sir.

Q. Who was in the place when you got there? 40
A. Patrolman Arthur Gerald, Patrolman William

(Harry G. Otis, for State—Direct.)

Schuppe, Sergeant Kenny and Patrolman Prosser from Guttenberg.

Q. What did you do when you got in there?

10 A. I asked Gerald what happened, and I noticed the blood on the floor. There was a stream of blood running from the entrance back to the back room about 20 feet in length.

Q. Do you mean from that door where the glass was broken? A. About two or three feet. You walk in about two or three feet and the blood started from there to the back room.

Q. What else did you find? A. Patrolman Gerald handed me two hats he found on the floor.

Q. Are these the hats he showed you? A. That is one—yes, those are the hats.

20 Mr. McMahon: I offer them in evidence.
(Admitted and marked Exhibits S-12 and S-13 of this date.)

Q. What else did you see? A. He also handed me a handful of black hair. This hair was pulled off by the roots, and there was blood on the roots of the hair.

Q. Is this the hair that was handed to you? A. Yes.

30 Mr. McMahon: I offer that in evidence.
Mr. Cutley: I object to it.
The Court: How is that binding on the defendant?

Mr. McMahon: Under the State against Sage the Court held that everything that is found at the scene of a murder is relevant. However, I do not press it.

The Court: Are you going to contend that this was the hair of the defendant?

40 Mr. McMahon: No.

The Court: I will not admit it.

(*Harry G. Otis, for State—Direct.*)

Q. Did you see Spiegel? A. No, I did not.

Q. Was he there at that time? A. No he was taken to the hospital.

Q. Did you see John Schmidt? A. Yes.

Q. Where was he when you got there? A. He was in there when I got there. He came from upstairs, I believe. 10

Q. I just want to confine it to what you found in the saloon. Did you that night go to the home of the defendant, John King? A. I went that same morning.

Q. About what time? A. Around six o'clock.

Q. Whom did you see at the house? A. I saw Mr. King, Mrs. King, the daughter, and one of the boys.

Q. Did you find John King there? A. No, sir. 20

Q. What did his parents tell you, did they tell you he was home? A. He was not in.

Mr. Cutley: I object.

The Court: Objection sustained.

Q. You did not find him there? A. No.

Q. Did you inquire for him? A. Yes.

Q. Whom did you ask?

Mr. Cutley: I object.

A. Mr. King. 30

The Court: He may show the inquiry but not the result of the inquiry.

Q. Whom did you ask for him? A. I asked Mr. King.

Q. The father? A. The father.

Q. Who else did you see that night? A. Do you mean in the King home?

Q. No. A. Patrolman McDonald, that morning. 40

(*Harry G. Otis, for State—Direct.*)

Q. Where did you see him? A. Down at police headquarters in Guttenberg.

Q. And whom else? A. Sergeant Lawles was there I believe and I saw John McGrath in his place of business.

10 Q. Did you look for King in your city? A. We did.

Q. Did you find him there? A. No, sir.

Q. Where did you eventually find him? A. In Brooklyn.

Q. When was he arrested in Brooklyn, do you remember? A. March 5.

Q. This year? A. Yes.

Q. Had you been watching his house where he lived all the time since November? A. Yes.

20 Q. Did you ever find that he went to any house?
A. Never that we knew of.

Q. Had you a constant surveillance on his house? A. We had a man over there on and off, watching.

Q. Do you know where Palmieri is?

Mr. Cutley: I object.

A. No, sir.

The Court: Objection sustained.

30 Q. Did you know the haunts or places frequented by Mr. King when he lived in West New York? A. Well, I knew he hung out in McGrath's place, we all knew that.

Q. Did you visit all those places looking for him? A. Yes, we did.

Q. Did your police Department send out any circulars for this man King?

Mr. Cutley: I object as immaterial.

A. Yes.

40

The Court: I sustain the objection.

(*Dr. Frank Spano, for State—Direct.*)

Mr. McMahon: I want to show flight, that he ran away, and the efforts of the police to find him.

The Court: I hardly think that would be binding on the defendant, what the police did. I will sustain the objection.

(No cross-examination.)

10

Mr. McMahon: If your Honor please, I would like to get rid of these doctors. They tell me they have pressing engagements.

The Court: All right.

DR. FRANK SPANO, sworn for the State.

Direct examination by Mr. McMahon:

20

Q. You are a physician and surgeon, Doctor?

A. Yes.

Q. Graduated from what college? A. University of Maryland.

Q. When? A. 1925.

Q. Are you duly licensed to practice medicine in this State? A. Not in New Jersey yet.

Q. In November, 1926, were you connected with any institution in Hudson County? A. North Hudson Hospital.

30

Q. In what capacity were you connected there, what was your connection with the hospital? A. Internship.

Q. Did you go on the ambulance to Spiegel's place? A. No, sir.

Q. Where did you see Spiegel? A. They brought him in the hospital, the West New York Police, at 2:30 in the morning on that day.

Q. What was the matter with him? A. Well, I did not examine him.

40

(*Dr. Frank Bortone, for State—Direct.*)

Q. Was he alive or dead when you saw him? A. He was dead on arrival.

Q. How soon after he came in did you see him?

A. I imagine there was a lapse of about five minutes until I got dressed and got downstairs.

10 Q. Do you know what was the cause of his death? A. I do not. I did not examine him.

(No cross-examination.)

DR. FRANK BORTONE, SWORN for the State.

Direct examination by Mr. McMahon:

Q. You are a physician and surgeon? A. I am.

20 Q. Graduated from what institution? A. P. & S., Columbia University, 1912.

Q. Have you been practicing medicine in the State of New Jersey since that time? A. Yes.

Q. Are you connected with any institutions now?

A. Visiting surgeon at the City Hospital, visiting surgeon at Christ Hospital, surgeon at Tuberculosis Hospital.

Mr. Cutley: We admit his qualifications.

30 Q. Doctor Delahunt is dead? A. Yes.

Q. Did you know him to be the Assistant County Physician? A. I did.

Q. Were you present when he performed an autopsy on the body shown by Exhibit S-10 and 11? A. I was. I assisted him.

Q. Will you tell us what you found at that autopsy? A. He had a bullet wound in the left forearm and another bullet wound through the chest.

40 Q. Where did the bullet wound through the chest penetrate? A. About four inches below the mid-

(*Thomas McDonald, for State—Direct.*)

line—went through the heart, the pericardium, through the heart muscle itself, the left ventricle and also through the posterior part of the pericardium and lacerated the base of the left lung and came out in the area of the tenth rib, which is fractured.

Q. Did you see Dr. Delahunt remove a bullet from the body? A. I did. 10

Q. You cannot tell us whether that is the bullet (Indicating). A. I cannot.

Q. Did you see him mark it? A. I do not remember.

Q. That bullet that Dr. Delahunt took out, where was it taken from? A. In the back, in the area of the 10th rib.

Q. Were there any other bullets found in the body except this one? A. That is all I know of. 20

Q. How was the chest cavity? A. The chest was filled with blood.

Q. How were the other organs of the body? A. The other organs were well outside of the heart; the other organs were in good condition aside from the heart which was punctured and the lining of the heart and the base of the left lung.

Q. Would you in your opinion say that death resulted from hemorrhage following the bullet wound? A. Death resulted from hemorrhage. 30

(No cross-examination.)

THOMAS McDONALD, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are connected with the Police Department of what city? A. Guttenberg. 40

Q. As a patrolman? A. Yes.

(*Thomas McDonald, for State—Cross.*)

Q. Were you connected with this department on the 1st of November, 1926? A. Yes.

Q. Where were you about half past twelve on November 1, 1926? A. I was in John McGrath's place of business.

10 Q. Where is that? A. At Polk and 24th Street, Guttenberg.

Q. Whom did you see in there? A. A bartender by the name of Mr. Wright, a young lady by the name of Mrs. Carroll.

Q. Anybody else? A. While we were in there there was several people came in, a party by the name—I just can't think of the name—a man and wife, and these two gentlemen.

20 Q. Which two? A. Mr. King and Matty the Ox.

Q. Do you see Mr. King in the room here? A. Yes.

Q. Where is he? A. Right there.

Q. With his finger to his mouth? A. Yes.

Q. How long did you stay in the place? A. Oh, possibly 20 minutes.

Q. And you left about what time? A. Somewhere around 10 after one.

30 Q. When you left were King and this other man, Matty the Ox, still there? A. Still were there.

Cross-examination by Mr. Cutley:

Q. Were you on duty that night, Officer? A. Yes.

Q. What time did you leave McGrath's place? A. Around the neighborhood of one or ten after one.

40 Q. And these two, Matty and King, were in McGrath's place when you left? A. At the time, yes.

(*T. McDonald, for State—Re-direct—Re-cross.*)

Q. You did not see them again at all that night?

A. I did not see them again at all that night.

Q. How many other fellows were in that place?

A. Five or six, I guess.

Q. Did you know them? A. I knew one of them—three of them.

Q. Who were they? A. Wright, Fireman 10
Fantry and Mr. Carroll.

Q. Do you see Fantry here? A. No, sir.

Q. What was Fantry's condition that night?

A. I could not say.

Re-direct examination by Mr. McMahon:

Q. I show you these two hats, S-12 and S-13.
Are those the hats you saw on King and Pal-
mieri that night? A. I could not say they were 20
the hats, but they wore hats that looked identically
the same as those.

Q. They looked identically the same? A. Yes.

Re-cross examination by Mr. Cutley:

Q. Did anybody else have any gray hats on in
McGrath's place? A. Not that I know of.

Q. What kind of hats did anybody else have on?
A. Caps.

Q. They all had caps on? A. I think they had 30
caps on.

Q. You do not seriously mean that, that they
all had caps on? A. I can't say exactly that they
all had caps on.

Q. Weren't there two other young fellows with
white fedora hats on? A. I did not take notice
to that.

Q. Will you say there were not two other fel-
lows outside of Matty and King who had white
fedoras on? A. I can't say any different. 40

(*Frank Oleri, for State—Direct.*)

Q. What kind of a hat did Fantry have on? A. Fire hat.

Q. And he was in uniform, was he? A. I don't know. He was not in uniform; he had a pair of old overalls on and a hat on.

10 Q. Everybody was drinking booze in that place, were they not? A. I do not think so. I think they were drinking beer.

FRANK OLERI, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are a Civil Engineer? A. Yes, sir.

20 Q. Where do you live? A. 14 Monitor Place, West New York, New Jersey.

Q. Are you the Engineer for West New York and Guttenberg? A. Town engineer of West New York.

Q. I show you a blueprint. Was this blueprint prepared by you? A. Yes.

30 Q. What does that show? A. That represents a part of Guttenberg and a part of West New York, a part of West New York north of 22nd Street between Bergenline Avenue and Boulevard west, and a part of Guttenberg south of 26th Street between Bergenline Avenue and Adams Street.

Mr. McMahon: I offer it in evidence.
(Admitted and marked Exhibit S-14.)

Q. Can you point out on this blueprint the location of Spiegel's place? A. Yes.

40 Q. Will you point it out and mark it on the map—will you put an S on it? A. That is the north-west corner of Polk and 23rd Street.

(William R. Wright, for State—Direct.)

Q. Can you also show us on that drawing where McGrath's place would be located? A. I do not believe I know where McGrath's place is.

Q. Do you know where number Six Engine is? A. Yes.

Q. Will you mark that on the map?

(Witness does so.)

10

Q. You do not know where McGrath's place is? A. I do not.

(No cross-examination.)

WILLIAM R. WRIGHT, sworn for the State.

20

Direct examination by Mr. McMahon:

Q. Where do you live? A. Now, at 3741 Broadway, New York.

Q. Where did you live in November, 1926? A. 553 21st Street, West New York.

Q. By whom were you employed? A. Johnnie McGrath.

Q. Where is his place of business? A. 24th Street and Polk.

Q. Will you indicate on this map S-14 where Mr. McGrath's place of business is? This is Polk Street. This is 23rd Street. This is 24th Street. This is Bergenline Avenue. A. This is looking north?

30

Q. Yes. A. I should judge it would be on the northwest corner of Polk Street. You say this is 24th Street here. This is Polk Street here?

Q. Yes, and this is Bergenline Avenue on this side. Here is the Boulevard. A. Polk Street is between Bergenline and the Boulevard. Polk

40

(William R. Wright, for State—Direct.)

Street runs north. 24th Street is running east and west. That would be on the northwest corner.

Q. Mark that and put "McG" on there. That is on the side of the street nearest to Bergenline Avenue, is it? A. Yes, that would be on the right hand corner going north.

10 Q. I show you Exhibit S-3. Can you identify the last place on that picture? A. I cannot see it without my glasses. If I am not mistaken that is the house here.

Q. The house at which I will point an arrow downwards right behind the tree in the picture? A. Yes, sir.

Q. Do you know whose saloon this is on this corner? A. That is Mr. Spiegel's saloon.

20 The Court: In which saloon did this alleged shooting occur?

Mr. McMahon: Spiegel's. I just want to show their proximity.

Q. Were you employed there as a bartender or a waiter? A. A waiter.

Q. Did you see John King in your place that night? A. John King, yes.

30 Q. What time? A. Around half past twelve or twenty-five minutes after or twenty-seven minutes after—twenty minutes after twelve anyway—between twelve and half past.

Q. Did you see him come in? A. Did I see him come in? Yes.

Q. Who was he with? A. He walked in by himself.

Q. Do you know Matty Palmieri? A. I did not, but I do now.

40 Q. Was he there? A. I could not swear to it, because there was a man asleep at a table.

(*William R. Wright, for State—Direct.*)

Q. Was Patrolman McDonald in your place that night? A. Yes.

Q. Was William Fantry? A. Yes.

Q. Did you see a Mr. and Mrs. Joshua Shurtell there? A. Yes.

Q. Was King in your place before twelve o'clock? A. Yes, I believe King was in my place—not my place, in McGrath's place—before twelve o'clock. 10

Q. What did he say to you about half past eleven o'clock that night? A. What did he say to me?

Q. Yes. A. I had four or five customers at the bar, I just forget who they were, they were drinking beer and I was walking up and down behind the bar and I was kind of nervous, I had been working pretty long hours that day. He asked me, "What's the matter, Bill?" I says, "I wonder where my boss is." He says, "What time is he coming back?" I says, "I don't know." So I just forget now whether I asked him to go and look for him or he volunteered to go. 20

Q. Did he do it? A. He did.

Q. Did he come back again? A. He came back again.

Q. Did he find your boss? A. No.

Q. When he came back he was without your boss, was he? A. Yes. 30

Q. What time did you leave your store that night? A. Between twenty-five and twenty-seven minutes after twelve.

Q. Was King in the place when you left? A. Yes.

Q. And this man whom you afterwards recognized as Palmieri, who was asleep, was he there when you left? A. I did not recognize the man.

Q. This man that you say was asleep, he was 40

(William R. Wright, for State—Cross.)

(Joshua Schertel, for State—Direct.)

in there too? A. He was asleep this way (indicating).

Q. You left him there? A. Yes.

Q. Were this Mr. and Mrs. Joshua Shurtell
10 there when you left? A. Yes.

Q. And the fireman, Fantry and McDonald? A.
Yes.

Cross-examination by Mr. Cutley:

Q. Was McGrath there when you left? A. Yes,
he took my place behind the bar.

20 JOSHUA SCHERTEL, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 205 Hackensack
Plank Road, Weehawken.

Q. Were you in McGrath's Restaurant in Gut-
tenberg the night of the 31st of October? A. Yes.

Q. What time were you in there? A. I came
up around 8:30.

Q. Did you stay there all night? A. I stayed
30 there until about around half past eleven I guess.

Q. Did you see King in there that night? A.
Yes.

Q. What time did he come in, do you remember?
A. He was in there when I came in at 8:30.

Q. Was anybody with him? A. Yes.

Q. Who was with him? A. A dark complected
fellow.

Q. Did you know his name? A. I know it now.

Q. What name do you know him by now? A.
40 Matty the Ox.

(*Joshua Schertel, for State—Direct.*)

Q. Who waited on you? A. Mr. Wright.

Q. The man who was just on the stand? A. Yes.

Q. Your wife came in there during the night, didn't she? A. Later on.

Q. About what time? A. Around about half past eleven or twelve o'clock some time. 10

Q. Did King ask you to do anything that night? A. Well, he did not ask me, but I was going to leave and go home because the wife came after me, see, and I was going to go home, and I had the car with me, and so we were looking for—Mr. Wright was looking for Johnny McGrath, and so he was supposed to be down at the Washington Cafe, so Kingy said, "As long as you are going down that way, Joshua, will you drive me down?" I said, "Sure." So I drove him down to the Washington Cafe. 20

Q. Who got in the car with you? A. The dark complexioned fellow and Mr. King.

Q. Where was this cafe? A. 17th Street and Jefferson Street.

Q. In West New York? A. Yes.

Q. Did you find McGrath there? A. No.

Q. What did you do then after you did not find him—go back to McGrath's? A. Yes. We stopped first. He said, "You might as well come in and have a beer," so we went in and had a beer. 30

Q. Where did you stop? A. At the Washington Cafe; and as long as Johnny wasn't there I said, "I will beat it." He said, "You might as well drive me up. Will you, Joshua?" I said, "Sure." So I drove him up to McGrath's and we done vice versa there—we went in.

Q. So you took him back to the same place you took him away from? A. Yes.

Q. How long were you away, about? A. I guess 40

(Joshua Schertel, for State—Direct.)

by the time we drove from 24th Street down and had a beer and back, I don't know how long that took—about a half an hour I guess.

Q. Did you see a fireman in McGrath's place while you were there? A. Yes.

10 Q. Do you know him—Fantry? A. No, I do not know the fellow.

Q. Did you see a policeman there? A. Yes.

Q. Do you know the policeman? A. No, I do not know the policeman there.

Q. What time did you leave there when you came back the second time? A. I should say it must have been after 12—around 1. We stood there and had quite a few beers there that night.

20 Q. Did you leave King and this man you afterwards found out to be Matty the Ox in this place? A. I did not know it was Matty the Ox at that time.

Q. When you went home they were still there? A. They were still there with the fireman and the cop and the whole bunch.

Cross-examination by Mr. Cutley:

30 Q. How many other people were there besides the fireman and the cop? A. Johnny McGrath. Willie Wright was just leaving.

Q. What time was that? A. Between 12:30 and one to the best of my recollection.

Q. Willie Wright left between twelve-thirty and one? A. Yes.

Q. You are positive of that? A. Quite positive. I did not take no track of the time, but I know it was half past one when we got home anyhow.

Q. Wright is the bartender who was just on the stand? A. Yes, he was leaving.

40 Q. He left between twelve-thirty and one? A. Yes, to the best of my knowledge about that time.

(Joshua Schertel, for State—Cross.)

Q. Is there anything to obscure your mind on it? Are you telling us what is the truth or what you are guessing at? A. I am trying to tell you the truth to the best of my recollection. I did not look at the clock or anything like that.

Q. Then how do you say it was half past twelve if you do not know the time? A. I did not say it was half past twelve. I said between the hours of half past twelve and one o'clock. 10

Q. You heard Mr. Wright on the stand a little while ago, didn't you? A. Yes.

Q. Do you recall what time he said he went home? A. I did not pay no attention to what he was saying.

Q. If he said on the stand that he went home between 11:25 and 11:27 would that clear up your mind? A. No. 20

Mr. McMahon: I object as a wrong assumption of fact. I object to the question. He did not say any such thing.

Q. How many went down in your car? A. Including myself, four.

Q. Who told you this other fellow was Matty the Ox? A. I found out from Lieutenant Otis.

Q. How did you come to find that out? A. He showed me a photograph. 30

Q. He said, "That is Matty the Ox?" A. Yes, that is what he said.

Q. Are you sure King did not go down alone in your car? A. No.

Q. You are positive of that? A. Positive.

Q. You were there from half past eight on, drinking, weren't you? A. From half past eight on.

Q. How many beers did you have? A. I guess about five or six beers. 40

(*Sarah Augusta Schertel, for State—Direct.*)

Q. In four hours? A. Yes.

Q. Were you there when King went out of the place finally—did you go out before King or did he go out first? A. Yes, I went out before King.

10 SARAH AUGUSTA SCHERTEL, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are the wife of the man who just left the stand? A. I am.

Q. Did you go to the restaurant of John McGrath on the night of October 31? A. Yes.

20 Q. Did you see King in the place when you went in? A. I did not know it was Mr. King at the time, he was standing at the bar and I did not know it until after I was introduced. My husband introduced me. He said, "My wife."

Q. Is this the man he introduced you to? A. He is.

Q. Did you see another man in the place at that time? A. There was another man at the table asleep. I did not know him until the picture was shown to me and Mr. Otis asked me if I recognized the picture. I said, "I did; that is the man who was asleep at the table."

30 Q. What did Otis say was his name? A. He said Matty the Ox, and, I think, Palmieri or something like that.

Q. Do you remember your husband leaving the saloon to look for McGrath? A. Yes, I was in his company.

Q. What time of the night was that? A. That was about half past twelve.

40 Q. Who went down in the car? A. Myself, my husband, our dog and Mr. King and this other gentleman.

(*Sarah Augusta Schertel, for State—Cross.*)

(*Edward Krowe, for State—Direct.*)

Q. The four of you? A. Yes.

Q. Did they go down to this place conducted by Eddie? A. I did not know who it was conducted by. We went to a place on 17th and Jefferson Streets.

Q. Did you go in the place? A. I did. 10

Q. How long did you stay there? A. We just stayed there long enough for the men folks to have beer and I had a ginger ale, and we went right back.

Q. Who came back with you? A. The same that went down.

Q. What time did you and your husband finally reach McGrath's place? A. It was close onto one o'clock.

Q. When you left were King and Palmieri there? A. They were still there. 20

Q. And the fireman and the policeman? A. The fireman and the policeman were still there.

Cross-examination by Mr. Cutley:

Q. Did you see a man asleep at the table? A. I saw a man asleep at the table, yes.

Q. Did you see his features? A. Not then, no, until he went in the car with us. 30

EDWARD KROWE, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 5 Jackson Street, Guttenberg.

Q. You lived there in November, 1926? A. Yes.

Q. Did you have a place of business at 17th and 40

(*Edward Krowe, for State—Cross.*)

Washington Streets, West New York? A. I was tending bar there.

Q. Did you see King and Palmieri and Mrs. Carroll come in your place? A. I saw King and Mr. and Mrs. Schertel and another fellow come in.

10 Q. You do not know who the other man is? A. No, sir.

Q. What were they doing there? A. Just came down and asked for John McGrath.

Q. Did they stay there very long? A. About five minutes.

Q. You closed up your place of business? A. Yes, I closed up early on account of making a mission that night.

Q. Where did you go then? A. To McGrath's.

20 Q. Who did you see at McGrath's? A. McDonald, Fireman Fantry, William Wright, John McGrath, Joshua Schertel and his wife.

Q. Was King there? A. Yes.

Q. Was Palmieri? A. I did not know him.

Q. Were you shown his photograph? A. I was shown it.

Q. Is that the man you saw (showing witness a paper)? A. I am not positive of it because that was the first time I met him.

30 Q. Did you come back in the car with Schertel? A. No, sir.

Q. How long did you stay in McGrath's place? A. About 15 minutes.

Q. When you left there were King and this other man there? A. Yes, sir.

Cross-examination by Mr. Cutley:

40 Q. Anybody else? A. Yes; there was Schertel and his wife, Officer McDonald and Fantry, they were still there when I left. I left with Mr. Wright.

(*John McGrath, for State—Direct.*)

Q. Was there anybody else outside of those you have mentioned? A. No, not that I know of.

Q. What time did you get into McGrath's? A. It was around twelve o'clock.

Q. What time did you go? A. I left around twenty after. 10

Q. Who was tending bar at that time? A. John McGrath.

JOHN MCGRATH, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 5 Jackson Street. 20

Q. Where did you live in November? A. 20 Polk Street.

Q. Is that the place where you had a restaurant? A. Yes.

Q. On October 31, the evening of October 31, what time did you relieve the waiter, William Wright? A. Around twelve o'clock or a minute to twelve.

Q. Was John King in your place at that time? A. No, not at that time.

Q. Was Matty? A. No. 30

Q. You knew Matty? A. I knew him by sight.

Q. Was Joshua Schertel? A. No.

Q. Mrs. Schertel? A. No.

Q. They came in afterwards, did they? A. Yes.

Q. What time did they come in with reference to the time that you started to work? A. I should judge about 10 or 15 minutes after I came back.

Q. Then did the four of them come in together? A. Yes. 40

(*John McGrath, for State—Direct.*)

By the Court:

Q. How far is your saloon from Spiegel's? A. Just one block.

By Mr. McMahon:

10 Q. Will you show us where your saloon is on this diagram here, S-14? This is Polk Street; this is 24th Street; this is going north. Bergenline Avenue on the right of you and the Boulevard on the left.

(The witness indicates.)

Mr. McMahon: Pointing to the place previously marked "McG" on the northwest corner of Polk and 24th Street.

20 The Witness: Yes.

Q. And the distance from your place to Spiegel's place is one block, you say? A. Yes.

Q. Where is Spiegel's place? A. This has got me puzzled here.

Q. This is Polk Street, this is 24th Street, this is 25th Street, this is 26th Street, this is the Boulevard and this is Bergenline Avenue. A. I can't seem to get it straight.

30 Q. What street is Spiegel's on? A. 23rd and Polk.

Q. On the northwest or southwest corner? A. I do not know.

Q. Is it on the same side of the street as yours? A. No; it is on the opposite side.

Q. Is it on the same side of 23rd Street as yours is on 24th? A. It is on the uptown side.

Q. So that it is on the opposite corner to yours, that is on the uptown side? A. Yes, on the uptown side.

40

(John McGrath, for State—Direct.)

The Court: That would be what—north-east corner?

Mr. McMahon: That would be the north-west corner, wouldn't it?

The Court: He says his place is on the northwest corner.

10

Q. When you came into your place of business who was in the place at that time? A. Just the bartender.

Q. Was McDonald in there at that time? A. I don't recollect whether he was in right at that time or came in shortly after that.

Q. Was Fantry in there then? A. No, Fantry was not.

Q. Was Krowe in there? A. No.

20

Q. When did he come in? A. Later on.

Q. What time did you close up? A. I should judge it would be around twenty after one, around that time.

Q. Who was in the place when you closed up? A. There was Fantry and John King and Matty, this other party.

Q. Were they ready to go out of the place the minute you closed up? A. Yes.

Q. Did you say anything to them when you went out? A. Yes, that I was closing up, I wanted to go to bed—I said goodnight.

30

Q. Then you closed up and they left? A. Yes.

Q. That was around half past one or one-twenty? A. Around that time. I was not exactly sure, but it was about that time.

The Court: What day of the week was that?

The Witness: Sunday night.

40

(John McGrath, for State—Cross.)

Cross-examination by Mr. Cutley:

Q. What time did Fantry come in that night?

A. I should judge about ten minutes to one or one o'clock.

Q. Didn't he come in there with you? A. No.

10 Q. Was he there before you got in? A. No, he came in after.

Q. Did he come in with anybody? A. No, he came in by himself.

Q. What is your best recollection as to the time you closed up? A. I was looking at the time. I had to go to early Mass the next morning, or the Mission, so I looked at the time, and I figured it was twenty after one—from twenty to half past one.

20 Q. How did you figure that, by looking at the clock or in some other way? A. No, I was looking at the clock. I was figuring how many hours of sleep I would have, I might as well stay up all night if I was going to keep on. I would have to get up at five again. That is how I came to look at the clock.

Q. What time was it? A. As I recall at that time—I am not sure whether the clock was right or not—but I know I was allowing a little bit.

30 Q. What time was it? A. It was between twenty after one and half past one.

Q. Well, couldn't you tell what time the clock said? A. You know how you look at a clock. You look at it and at the present time when you look at it you have it in your mind, but somehow you do not retain it.

Q. What fastened it in your mind it was between twenty after one and half past one? A. I was figuring the short time I would have before
40 I would have to get up again.

(*William Fantry, for State—Direct.*)

Q. You could figure that in a minute, couldn't you? A. Sure.

Q. If you looked at the clock was it twenty after one or half past one? Or if you have no recollection about it, say it. A. Well, at the present time I could not say for sure whether it was twenty or half past.

10

Q. Would you say it was ten after one? A. Oh, no, it was later than that.

Q. Whom did Fantry go out with, if he went out with anyone? A. They all went out together, because I closed up then and they all had to go out naturally.

Q. You mean King and the man with him and Fantry went out? A. Yes, sir.

Q. Did the cop go out with him?

20

The Court: Who do you mean—McDonald?

Mr. Cutley: Yes.

Q. How long was McDonald in there while you were in there? A. About three-quarters of an hour I would say.

WILLIAM FANTRY, sworn for the State.

30

Direct examination by Mr. McMahon:

Q. Where do you live? A. 768 Polk Street, West New York.

Q. Are you connected with the Fire Department of West New York? A. Yes.

Q. What are your duties in the fire department? A. I am first hoseman.

Q. Do you remember the night of the 31st of October, 1926? A. Yes.

40

(*William Fantry, for State—Direct.*)

Q. Were you in McGrath's place at 24th Street and Polk Street that night or early morning? A. Yes.

Q. What time? A. I left my firehouse about quarter after twelve.

10 Q. Were you sick? A. Yes; I asked permission of the Captain.

Q. What time did you get to McGrath's place? A. I think about ten minutes it took me to walk over there.

Q. That would bring you there about what time? A. About twenty-five or half past. I did not take notice of the time I got there.

Q. Somewhere around half past twelve. A. Yes.

20 Q. Who were in there when you got there? A. Only a few people.

Q. Was King in there? A. I did not recognize him until I went to the end of the bar.

Q. You saw him at the end of the bar? A. I was at the end of the bar. He might have had his back turned at me, I do not know.

Q. You saw him there that evening? A. Yes.

Q. Do you know Matty the Ox? A. No, sir.

Q. Did you see a man asleep at the table? A. I did not notice.

30 Q. How long did you stay there? A. Until McGrath closed.

Q. Do you know what time that was? A. I do not know, I did not take notice of the time.

Q. Did you go back to your firehouse? A. Yes.

Q. Who went back with you? A. McGrath and King and another fellow.

Q. King and this other man? A. The other fellow, yes.

Q. Do you know whether that is Matty the Ox?

40 A. No, I do not know him.

(*William Fantry, for State—Cross.*)

Q. Have you ever seen his picture? A. I have seen his picture.

Q. Did you recognize him? A. I don't know him, no, sir.

Q. Where is your firehouse? A. 22nd Street and Jackson.

Q. How far is your firehouse from Spiegel's? 10
A. Spiegel's is at 23rd and Polk and I am at 22nd and Jackson.

Q. So it is one block up Jackson and one block over? A. You walk through and over one block and the firehouse is right on the corner.

Q. Do you know what hour you came from this saloon of McGrath's to your firehouse that night? 20
A. I walked through Polk Street from 24th to 23rd Street, down 23rd Street to Jackson, then over to 22nd Street.

Q. So you turned right around the corner of Spiegel's saloon? (No answer.)

Q. Did they go in the firehouse with you—King and—— A. Yes, they came upstairs. I went to bed.

Q. Did they put you to bed? A. No, sir.

Q. What time did they leave you? A. As soon as I went to bed.

Q. Do you know what time it was? A. No, sir. 30

Cross-examination by Mr. Cutley:

Q. You were not feeling well that night? A. I was kind of sick.

Q. Was that the reason they assisted you to the firehouse? A. I could not say what the reason was. You see I know Johnnie King. Maybe because I knew him he just took a walk over, I can't say.

Q. He took a walk right up to the bed and put you to bed? A. No, sir. 40

(*William Fantry, for State—Re-direct.*)

Q. Did you go to bed yourself? A. Yes.

Q. Were they there when you went to bed? A. I said I was going to bed and they went down the stairs.

Q. Did McGrath go to the firehouse too? A. No, sir, McGrath was not with us.

10 Q. Did he start walking toward the firehouse with you at any time? A. No, sir. There was only King and I and another fellow.

Q. How far did you say the firehouse was from McGrath's saloon? A. McGrath's saloon is on 24th and Polk and the firehouse is on 22nd and Jackson.

Q. Jackson is how far away from Polk? A. Two blocks over and one block west.

20 Q. Did you pass Spiegel's saloon on the way down? A. Yes.

Q. So that the last you saw of these two people they were at least a block and a half south and a block east away from you. A. The last I saw them was when they left the firehouse. They said good night. I don't know where they went to after that.

Q. What time did you get in the saloon? A. I would say around five or ten minutes it took me to walk.

30 Q. That was after twelve? A. Yes.

Q. How long did you stay there, about half an hour did you say? A. I did not time myself.

Re-direct examination by Mr. McMahon:

Q. Is this King sitting here, the King you saw that night that went to the firehouse with you? A. Yes.

(William Fantry, for State—Re-cross.)

Re-cross-examination by Mr. Cutley:

Q. Are you sure whether one or two men brought you down to the firehouse? A. Two.

Q. You are sure about that? A. Yes.

Q. Did they assist you? A. I walked.

Q. What did you need any help at all for? A. 10
I did not need any help.

Q. Wasn't that an unusual thing, to bring a fireman into the house, and upstairs, before he goes to sleep? A. No. Johnny King knew me. I wouldn't take bad out of that, that he came to the firehouse. He could take that walk because he knew me, couldn't he?

Q. He could take you to the front of the firehouse? A. He was never in there before. I did not know if he wanted to look it over or not. We 20
have people come in there just for curiosity.

Q. At half past twelve in the morning? A. No, sir, not that time.

The Court: When you say you were sick were you drunk that night?

The Witness: No, sir, my stomach was out.

The Court: How long had you been in McGrath's place?

The Witness: I could not tell you the 30
time.

The Court: Were you drinking booze in McGrath's place?

The Witness: No, sir.

The Court: How long were you there—
an hour?

The Witness: I don't know; I got in about twenty-five after twelve or half past twelve.

(William Fantry, for State—Re-cross.)

The Court: What time did you leave there?

The Witness: When McGrath closed up.

The Court: What time was that?

The Witness: I don't know. I don't take notice of the clock.

10

The Court: Were you there an hour?

The Witness: I could not figure the time. To me I guess it might have been an hour.

The Court: Had you been drinking before you went to McGrath's that night?

The Witness: No, sir.

The Court: How many drinks did you have in McGrath's?

The Witness: About two.

20

The Court: What were you drinking?

The Witness: I asked John McGrath to make me up something for my stomach. He said, "I will give you something that will fix you up." Whatever it was I don't know.

By Mr. Cutley:

Q. Isn't it the truth you were drunk and King did take off your clothes and that is the reason you brought him upstairs? A. No, sir. Why should I have him come upstairs to take my clothes off?

30

Q. Because you were not able to take them off yourself. A. Certainly I was.

Q. Are you sure you remember what happened that night? A. What I am saying to you I am positive.

(The Court thereupon declared a recess until two ten o'clock P. M.)

40

(Peter Ulrich, for State—Direct.)

AFTERNOON SESSION.

PETER ULRICH, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are a fireman in West New York? A. Yes. 10

Q. What companies were you attached to on the 1st of November, 1926? A. Engine Six.

Q. Is that the same company that Fantry was a member of? A. Yes.

Q. Do you remember the first of November, 1926, about midnight or half-past twelve o'clock? A. Yes.

Q. Where were you at that time? A. About half-past twelve we went to bed. 20

Q. You were in bed? A. Yes.

Q. Were you awakened by anything? A. Yes, by the lights in the front room being lit up.

Q. What else did you see? A. I saw Fireman Fantry and two men there.

Q. Do you know who the men were? A. No, sir.

Q. Were they members of the fire company? A. One man, Fireman Fantry.

Q. The other two were not? A. Yes, sir. 30

Q. You mean they were not? A. They were not members of the company.

Q. They were civilians? A. Yes.

Q. How long did those men stay in there? A. Oh, just a few minutes.

Q. Where did they go? A. I could not say. I heard them go downstairs.

The Court: Did you talk to Fantry that night?

The Witness: Just as he was passing, 40 going in to bed.

(Peter Ulrich, for State—Cross.)

The Court: Was he drunk?

The Witness: No, sir.

The Court: Are you sure?

The Witness: Yes.

Cross-examination by Mr. Cutley:

10 Q. What were these men doing there? A. I did not see. I was in bed. I was woked up. I could not see what they were doing there.

Q. Did you have a light in your room? A. No, sir.

Q. Did you see anybody at all? A. I just saw Fireman Fantry and two men, and I turned over so the lights would not hit me in the eye.

20 The Court: Was Fantry undressed by the men?

The Witness: No, sir; he was not.

The Court: Are you sure of that?

The Witness: Yes.

The Court: Did you see it?

The Witness: I saw it because I slept in the first bed, and he slept in the last bed.

The Court: Did you see Fantry undress himself?

30 The Witness: All he had to do was to take his clothes off, and boots.

The Court: Did you see him do that?

The Witness: Yes.

The Court: Did the men who were in there help him?

The Witness: No, sir; no one got up. Everybody was in bed.

By Mr. McMahon:

40 Q. The Judge is asking if you saw these two men who came in with him, who were not members

(Peter Ulrich, for State—Cross.)

of your company, help Fantry to undress? A. No, sir, they were not in that room.

Q. They left him in the front room? A. In the front room, yes.

Q. Did they say goodnight to him or anything like that? A. I could not say that.

Q. As a matter of fact when you saw Fantry you turned around, turned your back to him? A. I turned over so the lights would not strike me in my eye. 10

Q. Which room were you in? A. There was the front room, and the recreation room, and the room where the beds are. I was lying on my right side, and those lights woke me up and I turned over on the other side.

Q. Could you see everything in the front room from the bed where you were? A. The rolling doors are only about three or four feet. We have rolling doors separating the two rooms. 20

Q. Did you see King there that night? A. I could not identify King. I could not say who it was. There was two men there outside of Fantry.

Q. You are the Captain of that house, are you? A. No, sir.

Q. Did you see Fantry go into bed? A. I saw him passing my bed, yes.

Q. Did you see him go into bed? A. Yes. 30

Q. Did you see him pull his boots and overalls off? A. His boots and overalls.

Q. Were you looking at him all the time? A. No.

Q. How do you know he got into bed? A. He had to pass my bed.

Q. And the two men passed your bed? A. No, sir.

Q. Where did they stop? A. They were out in the front room; they did not go in to where the bed was. 40

(August Luisch, for State—Direct.)

Q. But you will not say you saw Fantry get into bed himself? A. No, I didn't see Fantry getting into bed.

Q. Wasn't it funny for two strange men to come in at that hour of the night into your hose house?

A. I can't say—

10 Q. Is that your regular course of procedure in West New York? A. No, sir.

Q. Was that the first time that it ever happened to your knowledge? A. Yes.

Q. Didn't you ask what they were doing there? A. No. I was not Captain of the house. I had no authority to ask the man, "Why did you bring anybody in?" Because we have nothing to do with that.

20 Q. Did Fantry speak to you at all? A. No, he did not say a word.

Q. What was his condition as to sobriety? A. Fantry was sober.

Q. How do you know that? A. If a man is drunk—I could not say the man was drunk—the men would be falling or doing something, but Fantry passed my bed sober, to my knowledge.

Q. And he walked straight? A. He walked straight.

30 Q. And the only thing unusual was that you saw two strange men with him? A. Yes.

Q. And because you were not Captain of the house you did not ask him what they were doing? A. That is it.

AUGUST LUISCH, sworn for the State.

Direct examination by Mr. McMahon:

40 Q. Where do you live? A. 560 23rd Street, corner of Polk Street.

(August Luisch, for State—Direct.)

Q. At about quarter of two November 1 in the morning—1926—where were you? A. I was in the house, in Spiegel's place.

Q. You lived in the same house that Spiegel has his saloon? A. Yes.

Q. I show you S-5. Where do you live in that apartment? A. Up here (indicating). 10

Q. Where I will put your name with an arrow. You live on the top floor? A. Yes.

Q. I show you Exhibit S-9. Do you see the house you live in there? A. That is this house here.

Q. That is the house in the extreme right of the picture, a three story building? A. Yes.

Q. What did you do about that time? A. I was behind the bar with Mr. Spiegel and about quarter of two there was only four men in there and I told Mr. Spiegel, "I go upstairs because I have to get up in the morning." 20

Q. You worked for Spiegel? A. Yes.

Q. Who was in the saloon when you left? A. Four men.

Q. What did you do? A. I went upstairs in the first floor and went in the kitchen there and made some tea for me because I have a cold at that time, and before I went to the top floor where I have got my room I was taking tea. The girl of Mr. Spiegel's, she was in her bedroom right off the kitchen, and she had some tea too; and after I went upstairs, and I usually every night do the same, I open my window, I have my bed right on the window, and I sit on the bed and smoke a cigarette, and then I saw two men standing in a corner across the street. 30

Q. Can you point out on that photograph S-9 what corner you saw the two men? A. Here. There is a shoe store there. 40

(August Luisch, for State—Direct.)

Q. In front of that shoe store? A. Yes.

Q. That is directly opposite Spiegel's saloon?

A. Yes.

The Court: Suppose you show that to the jury.

10

Q. Did you recognize the men? A. No.

Q. You do not know them? A. No.

Q. Were they both of about the same height?

A. Yes.

Q. One was as tall as the other? A. One was a little smaller than the other. One had an overcoat and the other without an overcoat.

Q. Hats on? A. Yes.

Q. What kind of hats? A. Cloth hats.

20 Q. Did you notice the color of the hats? A. Yes, sir.

Q. Were they light hats or dark hats? A. I do not know, because I do not watching the clothes. It was after two in the morning.

30 Q. After you saw these two men what did you do? A. I smoked my cigarette to the finish and went to bed, and at the same time I just went to bed and I heard some noise downstairs, and I don't know what it was, I was sitting on the bed and listening for a while and the noise was more and more and more and more. Then I heard someone call my name, "Come down, come down, there is a fight or something." And then I run down in my pajamas. I went downstairs and there was nobody in the room.

Q. You did not go downstairs? A. Sure I went down in the saloon.

Q. Did you put on your clothes? A. No.

Q. You went down in your pajamas? A. Yes.

40 Q. What did you see in the saloon? A. I saw Mr. Spiegel standing by the door holding himself at the door.

(August Luisch, for State—Direct.)

Q. Did you hear some noise? A. I heard something, surely.

Q. Shooting? A. I heard a noise but I did not know what was what.

Q. Was that before you saw Spiegel holding himself on the door? A. When I came down Mr. Spiegel was on the door and there was nobody in the room. Exactly one girl or two girls, I don't know. There was only the back room and the front room in the saloon and the door. 10

Q. I show you S-8. Can you tell me on that picture where you saw Spiegel when you first came in? A. Right on that door right here.

Q. Standing at this door? A. Yes, holding himself.

Q. Write his name on the door. A. Right there (indicating). 20

Q. Which way did you come in? A. This way.

Q. Do you know Schmidt? A. Certainly I know him.

Q. Did you see him there then? A. No, I did not see him there, then I saw him after.

The Court: What does that door lead to?

The Witness: The street.

The Court: What street?

The Witness: 33rd and Polk. That is the corner. 30

Mr. McMahon: It is right on the corner.

Q. Was anything the matter with Spiegel when you saw him? A. He was full of blood.

Q. Where was he bleeding? A. I did not see where. He was all full of blood.

Q. Did you speak to him? A. Yes. I tried to speak to him but he cannot speak.

Q. He did not answer you? A. No. He opened his mouth and closed it again and opened and 40

(August Lwisch, for State—Direct.)

closed it, but he don't speak at all. Only after I laid him on the floor in the inside room he tried to talk and wants to talk, and then he said in German to everybody standing there, "I can no more. Goodbye." Then he turned himself around. He was laying on his chest, and then he turned around
10 to his back and was dead.

Q. Who was in there when he said that? A. Augusta Spiegel and Mr. Schmidt and Mr. Arnold Wieder.

Q. Did you go outside of the saloon then? A. Yes, sir.

Q. Did you see anybody in the houses? A. No, sir.

Q. What did you do next? A. I went inside then, and at the same time the police came and
20 they were standing there. I helped take Mr. Spiegel out and then I was looking all around, and all the chairs and tables and everything was upside down, and after I went upstairs and put my clothes on, and then I went behind the bar and I was behind the bar until about half past three in the morning, because all the police officers came up there and asked and asked and I always was behind the bar, and after I was in the saloon until quarter to six with another policeman.

30 Q. Did you see Schmidt there at any time after you came down? A. I saw him after the thing was done.

Q. Where was he when you saw him? A. He just came in the front door in the 21st Street corner—that door where Spiegel was standing there.

Q. I show you Exhibit S-5. Not this door; this door. Schmidt came in a door? A. Yes.

Q. As shown in Exhibit S-1? A. Yes.

40

The Court: Who came in the front door?

The Witness: Mr. Schmidt.

The Court: Who is he?

(August Luisch, for State—Cross.)

Mr. McMahon: He was one of the men who was in there when this stickup took place. We will come to him in a few minutes.

Q. How soon before you got downstairs did you hear the shooting? A. I was from the top floor to the second floor, you know—half of the way. 10

Cross-examination by Mr. Cutley:

Q. I show you Exhibit S-5. You were at that window? A. Yes, right on the window.

Q. Where did you see these two men—on some corner? A. Up this way. You don't see the corner from here.

Q. In other words it would be the corner diagonally opposite? A. Yes, opposite the street. It is not exactly opposite. You can see it on here. 20

Q. Where is your place? A. You see that window is further down.

Q. You were at the last window? A. Yes.

Q. And you looked over here? A. Yes.

Q. On which corner were those men? A. Right here on that post.

The Court: On the near corner or the far corner? 30

The Witness: Opposite the street.

Q. Were you down before Augusta Spiegel? A. I don't think so. She was down before me, I think. I was going down first.

Q. Were you down before her or not? A. I don't know.

Q. Don't you know you were there before she was? A. No, I don't know. Maybe she was downstairs before me and she went upstairs again and went downstairs. 40

(August Luisch, for State—Cross.)

Q. But she was not in the saloon when you got there? A. No, she was in the back.

Q. Was she in the back when you got there? A. I don't know if she was in the back when I came down the first time. You see I was running straight from the back room to the front room.

10 Q. You understand what I mean. Was she on the ground floor when you got down there? A. I don't know.

Q. Don't you know she was not? A. I am not sure. Maybe she was standing on the side or so. I don't look around then.

Q. But you are the one who opened the door and looked around on the street to see who was around, didn't you? A. No, I did not open the door.

20 Q. Didn't you go outside the door from the time you went down? A. Yes, after Spiegel was laying on the floor then the girls were there.

Q. You saw nobody when you went out and looked on the sidewalk? A. No, I didn't see anybody outside.

Q. And she did not go outside at all until after you did? A. I don't know.

Q. Did you see her going out at any time? A. No.

30 Q. Did she leave the saloon at all? A. I don't know.

Q. You were there all the time, weren't you? A. I don't watch Augusta Spiegel.

Q. She was the only one in the place outside of Mr. Spiegel, was she? A. No.

Q. Who else is there? A. Bertha, another girl, was on the door, and Mrs. Spiegel came down the steps, but went right back. Augusta was there after Mr. Wieder. Mr. John Schmidt was there,

40 myself was there.

(August Lwisch, for State—Re-direct.)

(John Schmidt, for State—Direct.)

Q. Who was the first one down, you or Mrs. Spiegel or Bertha? A. I don't know. Not me.

Q. Were they there when you got down; did you see them there? A. No; I don't see them.

10

Re-direct examination by Mr. McMahon:

Q. I show you S-6. Can you point out on that corner where you saw the two men standing? A. Right on that post, right in front of the shoe store at the corner.

20

JOHN SCHMIDT, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 567 23rd Street, West New York.

Q. You lived there in November, 1926? A. Yes, sir.

Q. On November 1, 1926, about two in the morning, were you at Spiegel's place at 560 23rd Street, West New York? A. Yes.

30

Q. What happened at that time? A. At that time I want to go home with another friend of mine because the proprietor wants to close up the place, and we were in the dark to leave the place, and two men came in. The proprietor refused to sell any drinks or refused to let them in, but they kept on walking into the place toward the bar, saying: "Just a glass of beer; we will be but a minute." And the proprietor said to me—I wanted to go to leave the place—the pro- 40

(John Schmidt, for State—Direct.)

prietor also—but they were on the bar then. The proprietor said to me: “You better stay with me for a minute yet,” and he walked behind the bar, giving them a couple of glasses of beer—that means a glass for each man—and I walked back toward the bar then, thinking maybe them fellows wants to harm this man, but not thinking particularly of anything like that. I only thought they might want to hit him already; they might have something wrong against him. And at the same moment was I thinking: “I wonder what they want,” the young fellow hauled out a revolver and said: “Give us the money you have got.”

Q. “Give us the money you have got”? A. Yes. And as I saw the revolver going up, Spiegel went for him to make a grab off him, and as I saw Spiegel make a grab for him I run for the other fellow. There were two men. The other fellow ran at the same time toward me, and we took one the other and wrestled the other as good as we could. He tried to get the best of me and I tried to get the best of him, and till I got through with the man—the end of it was he has got me, and I took the bar chair and I want to hit him with the bar chair. He ran out of the place, but he was several yards ahead of me, and I hit the bar chair, and with hitting the bar chair I knocked out the door window, and I picked up the bar chair again, but he did not go out at all, he just went out when I picked up the bar chair and missed him by about a foot. I picked up the bar chair again, and he slammed the door going out, and I picked up the bar chair again and opened the door and run out on the sidewalk, but as I came out the sidewalk I did not see anything no more, and at the same time when I ran after this man

(*John Schmidt, for State—Direct.*)

out of the place I saw Spiegel passing me up with streaming blood oozing, and as I got on the sidewalk with that chair in my hand it was my idea I could hit him out there yet, and as I came out the sidewalk I thought I would have to go inside to see what is the matter with Spiegel, because he was losing so much blood, and as I got in the room he was laying on his face on the floor. I run into the telephone booth and called up West New York Police Force, and as I got out of the telephone booth then Spiegel had turned himself over. He was on his face first, as I got into the room, and as I got out he turned himself over and was laying on his back, saying a little bit, some odds of words—"goodbye" I understood the best of all. That was about the end of it; and about in the same minute the door opened and we got help from the West New York Police Force. There was quite several men coming. They put him on the stretcher and took him out. They had the patrol wagon or ambulance doctor with them, and Spiegel was gone. 10 20

Q. What did the man do with the revolver when he said: "Give me the money you have got"? A. Held up his hand.

Q. Did he point it at Spiegel's face? A. Yes, he held it over Spiegel's face. 30

Q. Was that the man who wrestled with you? A. No, sir.

Q. Do you know the man who held the gun; would you be able to identify him? A. I do not think so.

Q. Could you identify the man who attacked you? A. I guess so.

Q. I show you a picture. Can you identify that man?

Mr. Cutley: I object to that. 40

A. I can identify him.

(John Schmidt, for State—Direct.)

Mr. Cutley: I object to that.

The Court: I will allow it.

Q. You can identify it? A. Yes.

Q. Was that the man you were wrestling with?

A. Yes.

10

Mr. McMahon: I offer this for identification.

(Admitted and marked Exhibit S-15 for identification of this date.)

Q. When you were wrestling with this man, did you find anything in your hand? A. As I lifted him up I knew he had some kind of a tool in his pocket, whatever it was.

20

Q. I do not mean that. Did you have anything in your hand belonging to this man? A. I didn't have nothing less in my hand no more but a bunch of hair.

Q. Which came off this man's head? A. Yes.

Q. I show you some hair. Is that the hair you had in your hand? A. Yes, I think it must be that.

Mr. McMahon: I offer that in evidence.

30

(Admitted and marked Exhibit S-16 of this date.)

Q. How long were you struggling with these men before you got rid of them? A. Altogether about four and one-half minutes.

Q. You do not know what happened to Spiegel while you were wrestling with your man? A. Not a thing.

Q. Did you hear a shot fired? A. No, sir.

40

Q. Were the tables and chairs overturned? A. Yes.

(John Schmidt, for State—Cross.)

Cross-examination by Mr. Cutley:

Q. The man that Spiegel was fighting with on the outside of the saloon, what was the last you saw of him? A. They grappled inside the saloon. What they were doing later I do not know.

Q. Did you see the other man who was fighting Spiegel? A. Yes, I saw him coming in. 10

Q. How long were these two men in this place? A. About half a second, half a minute.

Q. How long were they in there altogether? A. How long the other fellow was in there I don't know. The man I was wrestling with was in there altogether about five minutes.

Q. The place was lighted up? A. Yes.

Q. You had a good chance to look at the faces of the two of them? A. They did not give us much chance for that; it went too quick. 20

Q. Weren't they standing at the bar for about five minutes? A. No, they were not standing there half a minute.

Q. Did you go out in the street at all? A. Yes.

Q. Nobody was there when you went out? A. No, sir.

Q. Were you in the saloon when Miss Spiegel came downstairs? A. I must have been there, but not as I noticed the ladies. 30

Q. As a matter of fact you did not see her at all there, did you? A. Yes. As I come back in from the street I saw Mrs. Spiegel.

Q. That was the time you went out and could not see anybody on the street? A. They were gone, yes.

Q. Then the man who was wrestling with Spiegel was not there at any time that Bertha Spiegel was there? A. That I do not know.

Q. You were there all the time? A. Yes, sir. 40

(John Schmidt, for State—Cross.)

Q. Was he there while she was there? A. I do not know.

Q. Did you see him there while she was there?

A. No, I had enough to do with my man.

Q. What became of the man you had on the floor; did he run away? A. Yes.

10 Q. And he ran away when Bertha Spiegel came down, didn't he? A. That I do not know.

Q. Well, he was out of the saloon? A. Yes, after he left he was out.

Q. And he had left before she got there too? A. That I do not know.

Q. Why do you say you do not know; did you see him? A. I did not see him. I was running after him. Then I didn't see him no more.

20 Q. You chased him out of the saloon? A. No, I did not want to chase him out, but he ran out and I run after him.

Q. How far did you go? A. Just outside the door.

Q. What direction did he keep going? A. That I do not know.

Q. Did he go north or south? A. I do not know.

Q. Just explain what direction he went? A. How can I?

30 Q. Here is the saloon? A. Yes.

Q. He came out of that door, didn't he? A. Yes—out of here he came.

Mr. McMahon: What are you referring to?

Mr. Cutley: S-1.

Q. You know the locality up there? A. Yes.

Q. Did he go up north or south or what way?

40 A. That I do not know. Until I got my bar chair

(John Schmidt, for State—Re-direct.)

fixed up inside again and the door open he was out of my eyes, I couldn't see him any more.

Q. Did you see him when he was outside? A. No.

Q. As I understand you, you chased him out, you followed him out? A. Yes.

Q. Where did he go, did he stop in front of the saloon? A. No, sir; otherwise I would have seen him if he had stopped. 10

Q. You lost track of him the minute he got out? A. Yes.

Q. You did not see the other man around there either? A. No, sir.

Q. They were both gone? A. Yes.

Q. That was before the Spiegel girl came down? A. That I do not know.

Q. When you came back she was not down? A. They were all there standing around the man. 20

Q. But they were not there when the fighting was going on? A. Not first-off, no.

Q. They were not there at any time while the fighting was going on? A. That I do not know.

Q. Well, you were there. A. I had to wrestle with my man on the floor, and whoever came that time I do not know, I did not have any time to look for anybody; I had enough to do with that man. 30

Re-direct examination by Mr. McMahon:

Q. I show you S-1. Could you indicate on that photograph where these two men stood when they asked for the beer and got it? A. Those two men stood right here.

Q. In front of two glasses at the front of the bar? A. Yes, further down than the glasses are. As soon as they got the beer on the bar they moved down and Spiegel wanted to leave the bar, wanted to get in front of the bar, and this man moved 40

(John Schmidt, for State—Re-direct.)

down here in front of the corner, and held up the gun. He held up the gun and said: "Where is the money you have got?" and Spiegel made a grab for him. That was enough for me to see that is a raid, and then I jumped from here and jumped for the other fellow, and we grabbed hold of one the other.

10 Q. You were standing where? A. Right here in this corner, and this bar chair lay here too at the same time.

Q. I will write your name. That is where you were standing, at the extreme left of the bar? A. Yes, exactly here.

Q. And these two men were standing about where these two glasses are? A. About a little further down.

20 Q. I show you S-7. Where were you wrestling with that man? A. First off, here.

Q. That is on the extreme left hand part of the picture? A. Yes. I know the place very well. Here we took hold of one another first off and I took him on my shoulder and threw him on the floor right over here.

30 Q. In a doorway? A. No, not quite by the doorway, a little further this way between those two tables here. He got up again, I could not hold him on the floor, and he got up again and he came in this room here.

Q. Rolling on the ground? A. Most anywhere. He knocked me down and I knocked him down, and of course he was quite a good man, and we were up and down several times, so we knocked down tables and dishes and everything. Whatever became of the other two fellows in the meantime I do not know.

40 Q. How far in that room in the second picture did you get? A. All over the room.

(John Schmidt, for State—Re-direct.)

Q. And you chased him out front again? A. No, we finished him here. Here is the toilet in here, and here is a hallway going back to the kitchen, and we came—however, we got in here through this door from the inside—we did not go in here. There is another door there. See the handle here. In here we fell in this little hallway and we finished up in this little hallway. He has got me. 10

Q. And you went all over the floor of the two rooms? A. Yes.

Q. Were you hit with anything while you were in there? A. I was hit several times.

Q. With what? A. Mostly with chairs—picking up chairs.

Q. When this man who was attacking you got away, did he hit you just before he got away? A. No, sir. 20

Q. I show you Exhibit S-9. Do you recognize that picture? A. Yes.

Q. When you came out of that building after this man, which way did you go? A. Came out here on the corner. I had my bar chair in behind and I looked this way and this way and this way, but I could not see anybody any more. It took about a minute's time. I missed him with the bar chair and—— 30

The Court: You missed him with what?

A. I threw the bar chair at him and I missed him, and of course I picked up this bar chair again, and until I had this bar chair in my hand again the door was open and they were gone and I could not see anybody any more.

Q. And you looked in every direction? A. I did. 40

(John Schmidt, for State—Re-cross.)

Re-cross examination by Mr. Cutley:

Q. What time did you call for the police? A. I guess it must be about 2:15, something around that time.

10 Q. How soon did they come to you? A. They came quite quick, as I thought.

Q. How soon after you saw Mr. Spiegel with the blood on him did you send for the police—right away? A. Right away.

Q. And you think it was around 2:15? A. Around that time.

By the Court:

20 Q. You say that about half a minute after these two men came into the saloon one of the men pointed a gun at Spiegel and said, "I want all the money you have got," or words to that effect? A. "Give us the money you have got."

Q. How far was that man standing from you? A. From me—well, to him about 12 or 14 feet. I was on this end of the bar. I don't know exactly how long the bar is. The other fellows were standing down.

30 The Court: Have you a picture of the bar there, Mr. McMahon?

A. Maybe 15 or 16 feet. It is quite a long bar.

Q. Indicate on S-1 where the two men were standing? A. Right here.

Q. Near those two glasses that are on the bar at the right hand side of S-1? A. Yes.

Q. Where were you standing? A. Down here alongside of this chair.

Q. At the right hand end of the bar? A. Yes.

40 Q. Alongside of that chair? A. Yes.

Q. What is this door, does that door lead to the

(John Schmidt, for State—Re-cross.)

street there? A. That door leads into the toilet room.

Q. Is this the rear of the bar room here, by the front? A. This is the back of the bar, this is the front of the bar.

Q. Where would the bar be that leads to the corner of 23rd and Polk Street? A. Right here. 10
If you put this picture here, this is the bar here. This is the way you come from the corner to the bar.

Q. Where the two men were standing was that the end of the bar? A. Yes.

Q. And you were standing nearer the door then they were? A. Yes.

Q. Were the two men standing together when this man pointed the revolver? A. Yes, close. 20

Q. What did you do then? A. As soon as I saw 20
Mr. Spiegel try to get hold of the other fellow I saw that he did not want to give the money and I ran right away from this fellow down to this fellow here.

Q. And you grappled with him? A. Yes.

Q. What do you say Spiegel did? A. He took a grab off the other fellow.

Q. Where was Spiegel standing, behind the bar? A. No, as soon as he put those two glasses of beer behind the bar he run—I don't know if he wanted 30
to come over to me or if his intention would be to go out in the kitchen.

Q. Where was Spiegel standing when the revolver was pointed at him? A. Right here.

Q. In front of the bar or behind the bar? A. At the side of the bar. Here is a gangway here.

Q. Do you mean he was standing on the side of the bar where the men were? A. Yes, he put the glass of beer down and run to get to the front of the bar, he wants to get away from them, and as 40

(Suzanna Brauert, for State—Direct.)

he wants to get away I move down, and here this fellow say, "Give us the money you have got," and Spiegel went for one fellow and I jumped for the other fellow.

Q. No shooting occurred then, is that the idea?

A. No, no shooting done.

10 Q. When did the shooting occur? A. In the time I was wrestling with this fellow.

Q. While you were wrestling with this fellow you do not know what went on between Spiegel and the other man? A. No, sir.

Q. The first thing you know you heard several shots? A. No, sir, I did not hear one shot.

20 Q. You did not hear a shot at all? A. No, sir, because I think we had enough racket together and I was hit a good many times over my head and I had more noise in my head, I guess, than a good many shots would be, because I did not hear anything. I hardly couldn't believe that the man was shot. We turned over almost all the chairs and tables and everything around.

SUZANNA BRAUERT, sworn for the State. Testified through an Interpreter.

30

Direct examination by Mr. McMahon:

The Interpreter: She says, when I mentioned the defendant's name in swearing her, "I do not know the gentleman."

Q. Where do you live? A. We did live at 23rd Street, West New York. Now we live at Bergenline Avenue.

40 Q. Do you remember the street number you lived at in November? A. 561 at Mrs. Sebach.

(Suzanna Brauert, for State—Direct.)

Q. Where was that with relation to Spiegel's saloon? A. This is the way the bedstead stands and at this end (indicating the rear) is the saloon of Spiegel, and when I looked out that way, the way I indicate, I could see everything without standing or getting up.

Q. I show you S-9. Can you point out on that picture your house and the window? A. I know the house. This is Mr. Spiegel's house, not this window, but this window is mine, (indicating the third window in the room.) 10

Q. I will put an arrow here; under this arrow is your window? A. That is my window.

Q. I will put your name on it. A. I can look directly into it.

Q. Can you look into the saloon of Spiegel's from your window? A. Yes, indeed. The blind was not down, so I could see. 20

Q. When you say "blind" do you mean these windows I am pointing to on Exhibit S-8? A. These are my windows. These are our windows. These four windows are our windows.

Q. And you can see your window on a photograph taken in the saloon? A. Yes, you can look directly into it.

Q. About ten in the morning of November 1st where were you? A. Ten o'clock in the morning? 30

Q. Ten at night—two o'clock. A. At home.

Q. At two o'clock in the morning—is that your answer?

The Interpreter: Ten o'clock I understood you.

Q. No, at two o'clock. A. I was lying in bed, that was at two o'clock.

Q. Ten minutes after two? A. Somewhat after two. 40

(*Suzanna Brauert, for State—Direct.*)

Q. Was your attention attracted to anything at that time? A. To the noise.

Q. Where was the noise? A. Spiegel's saloon, they had a struggle.

10 Q. What did you see? A. First I see that they were very loud, extremely loud—and all of a sudden the door opened and then Mr. Spiegel appeared with a small gentleman, and had him as I indicate and threw him out.

Q. Then what happened? A. And at the same moment, it was one moment after he was out, he had thrown him out,—at the same moment he went back.

20 Q. Who went back—Spiegel? A. Mr. Spiegel went back, and the young man—there is a little stone—he caught over the little stone right at the door without sinking and the man as I indicate here, at his pockets, and as soon as he jumped for the door he shot as I indicate this way, pointing the hand against the partition here, the place where he shot him. Right away he turned around the corner and went off.

30 Q. Which direction did he go? A. If you enter the saloon it is on the right hand side, and if you leave the saloon it is the left hand side. As I indicate, this way. I don't know the name of the street, I am only a few weeks at that place.

Q. I show you Exhibit S-2. When you saw this man thrown out of the saloon and after the shot, which way did he go? A. Up this way.

Q. Down the street past this door? A. Yes, passing that door. He turned around, yes, sir.

Mr. McMahon: That is the rear entrance to the saloon.

40 Q. After you heard the shot did you hear Mr. Spiegel say anything? A. No, not Mrs. Spiegel,

(*Suzanna Brauert, for State—Direct.*)

but Mr. Spiegel, he was hollering. He made an outcry.

Q. What did he say? A. I think he said, "I have been shot." Then he turned around and fell, and that is all—after this I didn't see any more.

Q. Did this man whom you saw Mr. Spiegel throw out of the saloon have a hat on? A. No, he 10
had no hat on.

Q. Did he have an overcoat? A. No.

Q. What kind of a suit did he have on? A. To my estimation it was a dark one, either blue or dark gray, I don't know, I can't say exactly.

Q. After this man ran away did you look in the saloon through your window again? A. Yes, indeed.

Q. What did you see? A. They were fighting 20
each other with chairs.

Q. You saw two men in there throwing chairs? A. Several; I can't say exactly whether there were two or three.

Q. You saw somebody in there? A. I saw the people there throwing chairs.

Q. And did you see anybody else come out of the saloon? A. Yes. Three young men came out.

Q. Three young men? A. Two smaller ones, or little ones, and a tall one—somewhat more taller 30
than the others.

Q. After you saw this wrestling did you see anybody come out of the saloon? A. Yes, yes, yes. That is the time they came out; the door went open and the three young men came out. That I don't lie, two with this way and one with this way. I didn't see anything any more.

Q. Did any of the men have hats on? A. I must tell you that I cannot say, that I think one had a cap and one was without one.

Q. You first saw coming out of the saloon one 40
man who did some shooting? A. Correct.

(Suzanna Brauert, for State—Direct.)

Q. Then you saw two other men come out of the saloon? A. Three.

The Interpreter: She raises three fingers and says, "three."

10 Q. Did you see four men come out together? A. First he went out and the three followed afterwards. That makes four.

Q. Did you see any policeman arrest any of the men who came out of there? A. Correct. They were inside the wagon.

Q. Now the other two men that you saw, did you see any policeman arrest them? A. No.

20 Q. After the man who did the shooting got away how many men came out next? A. These three.

Q. Did they all come out at once? A. One after another as they were thrown out. They were in a hurry.

Q. They came out in a hurry? A. Yes, one after the other as they were thrown out.

30 Q. Which way did the men run? I am showing you now S-9. A. This is my house and that is the way they came out, and two came over this way as I indicate. The other one went this way but of course I did not see it as the window would not reach to see it.

Q. But he ran over toward the schoolhouse on that side of the picture? A. The two ran down the street where we live on.

Q. Those were the two that were arrested? A. That I do not know. That I cannot say.

Q. You saw two men arrested? A. Yes, I did see.

40 Q. Were they the men who ran down your street? A. Yes—one was without a hat.

Q. And the others ran the other way? A. One

(*Suzanna Brauert, for State—Cross.*)

went this way, the other went this way, but I did not see it which way on account of my window. My window does not reach up to this to enable me to see it.

Q. You do not know how far they went? A. No, no, I do not know.

10

Cross-examination by Mr. Cutley:

Q. How many people could you make out as being in the saloon when you first looked over and heard the noise? A. According to my estimation there were six in there.

Q. Was the man who was just on the stand before you there? A. Yes, I don't know him, I don't know the people; but I think Mr. Schmidt must have been in it: he rode away afterwards and he had some wounds as I indicate.

20

Q. Was Mr. Schmidt one of the three men that you saw come out? A. No.

Q. They were three strange men to you? A. Three strange men, yes.

Q. They were young men too, weren't they? A. According to their movements, yes.

Q. The man that you say did the shooting had gone away a couple of minutes before that, he had run away, hadn't he? A. Yes—correct.

30

Q. Did you see Mr. Schmidt, the witness, come out of the saloon and look up and down the street? A. Yes, in his shirtsleeves.

Q. And he went in front of the saloon, didn't he? A. That I cannot say exactly.

Q. He went on the street too, didn't he? A. That I cannot say.

Q. Did you see any women in the saloon at the time of the fighting? A. That is excluded.

Q. You did not see them, did you? A. I did not.

40

(*Frank Weibel, for State—Direct.*)

Q. At any time did you see any women there that night? A. No.

Q. Did you see any women on the street that came out of Spiegel's saloon that night? A. No.

10 Q. And you were there all the time? A. Until they were arrested.

Q. You are sure the man who did the shooting took the gun out of his pocket, aren't you? A. He may have had it in his hand already, but he had his hand in that position in his pocket.

Q. At his back pocket or his side pocket? A. Pants pocket, the front pocket.

Q. Before you saw him come out of the saloon with Spiegel did he have a gun or did you see a gun? A. That I did not see.

20 Q. And you were directly looking at him? A. I did look at it. I only noticed when Mr. Spiegel threw him out, that took a second, and the man turned around at once and took the gun and shot. He did not even know that he was shooting. Of course it went so quick—terrible quick.

FRANK WEIBEL, sworn for the State, testified through an interpreter.

30

Direct examination by Mr. Hamill:

Q. Where do you live? A. Polk Street, 786.

Q. On November 1, 1926, about two o'clock in the morning where were you? A. In bed.

Q. Did you hear any noise at that time? A. Yes.

Q. What did the noise cause you to do? A. I was in bed.

40 Q. When you heard the noise what did you do? A. Then I got up and went to the window.

(*Frank Weibel, for State—Direct.*)

Q. Was your window open or closed? A. Open.

Q. What did you see? A. That the door opened of Mr. Spiegel's saloon and Mr. Spiegel came out with a man.

Q. Did you know Mr. Spiegel in his lifetime? A. Yes.

Q. What was he doing to the man? A. He put him in the center of Polk Street. 10

Q. Put him in the center of Polk Street? A. In the middle of Polk Street.

Q. Then what happened? A. Then Mr. Spiegel ran or jumped back—ran back.

Q. Did he close the door of his saloon? A. Yes.

Q. Then what did you see? A. The man went towards the door—the man outside the man whom Mr. Spiegel got outside, he went for the door. Then he always went that way (indicating). Then he went to the door and made that motion, as I show. 20

Q. Did you hear any noise? A. Yes.

Q. What did you hear? A. Some shot.

Q. Did you see Mr. Spiegel through the glass door? A. Yes.

Q. That is you saw his shadow? A. Yes.

Q. What did you see his shadow doing? A. He pressed the door closed.

Q. After the shot did you see any broken glass or anything? A. Only the round whole was there. 30

Q. Did this man whom Spiegel put out have a hat on? A. No.

Q. Did he have an overcoat? A. No.

Q. What did this man do after the shooting? A. He went away over the sidewalk and back again on the sidewalk.

Q. I show you Exhibit S-2. Is your house shown on that picture? A. Yes. This window on this side—(pointing at the front of the house.) 40

(*Frank Weibel, for State—Cross.*)

Q. Is that your window there that I have marked? A. This also.

Q. These two windows? A. Yes.

Q. When you saw this man come out of the saloon, that Spiegel put out, what did you do then?

10 A. He made this movement (indicating).

Q. After the shooting which way did he run?

A. He went away over the sidewalk and then back onto the sidewalk.

Q. Opposite the rear entrance to the saloon? A. That I could not say exactly, if he stood away a little further or not.

Q. But he went down in the direction of the rear entrance to the saloon? A. Yes.

20 Q. Did you see anything more? A. Yes; when the other one ran away.

Q. Which way did you see him go? A. Right after the other, towards the schoolhouse.

Q. Did you see any more men come out of the saloon? A. Yes, the three; that was Mr. Nulch and Mr. John Schmidt and Mr. Wieder or Wiener—I don't know—that is the three men who came out after. They ran after him.

Q. They ran after this man? A. Yes.

30 Q. Did they go in the direction he went or the opposite direction? A. They remained standing on the street.

Cross-examination by Mr. Cutley:

Q. How soon did those three men go back to Spiegel's saloon? A. I don't know; it may have been five minutes.

Q. When this man who did the shooting ran away where did he go? A. Down Polk Street.

Q. Did you watch him? A. Yes.

40 Q. Was he running? A. Yes.

(*Anna Weibel, for State—Direct.*)

Q. Did you see him pass the door on Polk Street? A. Yes, he has to pass that.

Q. Did you see him running—he was running at this time, wasn't he? A. He stood there, as I said before, at the door.

Q. At the side door or at the other door? A. 10
At the side door of Polk Street.

Q. How long did he stand there? A. He stood there for a while and then the other one came. A few seconds until the other one ran away.

Q. How many shots did you hear fired? A. One.

Q. Did you see any of the Spiegel women around there? A. Yes, after that.

Q. That was afterwards? A. Yes.

Q. How long afterwards? A. Four or five 20
minutes.

Q. They were not there while the man was shooting, or they were not there while the man was on Polk Street, were they? A. I didn't see inside what was there.

Q. You did not see the door open on Polk Street? A. No.

Q. And you watched that until the man went away, when the second man came out of the saloon? A. Yes.

30

ANNA WEIBEL, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are the wife of the man who was just on the stand? A. Yes.

Q. And you lived with him at 786 Polk Street? A. Yes.

Q. Do you remember November 1, 1926, about 40
two o'clock in the morning? A. Yes.

(Anna Weibel, for State—Direct.)

Q. Were you in your apartment with your husband at that time? A. Yes.

Q. Where were you? A. In bed.

Q. Did anything wake you up or attract your attention? A. I woke up when my man jumped out of bed and said, "What's the matter?"

10 Q. Did you look out of the window then? A. Yes.

Q. What did you see? A. Mr. Spiegel came out with the man whom he had grabbed that way (indicating) in the middle of the street, and he besides gave him a push with his foot. Then Mr. Spiegel returned and closed the door quickly.

20 Q. Then what did you see? A. The man slowly followed him and went to the door, right to the door, and Mr. Spiegel I saw when he locked the door, and the man pressed—he start off the revolver.

Q. Did you see him shoot the revolver? A. I heard the report and the outcry.

Q. What outcry did you hear? A. I could not understand what was said.

Q. Who made the outcry? A. That I do not know. In the saloon.

30 Q. What did the man do after the shot? A. Then he went back and I said to my husband, "Do you see the hole in the door?" And the man went back at the side door and remained there.

Q. Remained how long? A. Not long; until the other came out.

Q. What did he do then? A. Then I didn't see anything more because I was too excited.

Q. Did the man whom Mr. Spiegel came out of the saloon with have a hat on? A. No, sir, he had no hat on.

40 Q. Did the other man that came out afterward have a hat on? A. Neither had a hat on.

(*Anna Weibel, for State—Cross.*)

Cross-examination by Mr. Cutley:

Q. Did three men come out after this first man came out? A. That I did not see any more.

Q. Well, you were looking all the time, weren't you, with your husband? A. I heard the shot; then I went back because I was too excited.

Q. This is your window I am pointing to, Exhibit S-2? A. That is where we looked out.

Q. Is there an electric light there? A. No, here; this little arc light.

Q. Is that light in front of your house? A. No, that is in the center of the street, just exactly in the center of the street.

Q. Is it in the center of the block, between the two corners, in the center of the street, between this corner and the other corner? A. Yes.

Q. Then the light in below your windows? A. It is even with the window.

Q. How far is it from the side door of Spiegel's saloon to your building, if you know? A. That I cannot say.

Q. 200 feet? A. I could not measure it by feet.

Q. This is Polk Street, isn't it? A. Yes.

Q. When the man who did the shooting ran up Polk Street did he keep running up there? A. I saw him up to here, about.

Q. Up to where—the garage? A. Here it was dark. Then I did not see him any more—pointing at the garage.

Q. Well, he kept going all the time, didn't he? A. He went as far as this and remained standing—

Q. What do you mean by "this"? A. —and watch and looked until the other one came out.

Q. Did he stop in front of the garages? A. That I cannot say.

Q. Do you know where he did stop? A. No, I can't say that exactly.

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(Arnold Wieder, for State—Direct.)

ARNOLD WIEDER, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you reside? A. 548 15th Street, West New York.

10 Q. About two o'clock in the morning of November 1, 1926, where were you? A. In Spiegel's place.

Q. Who was there with you? A. John Schmidt and Mr. Spiegel and two other fellows, but they left before two o'clock.

Q. Leaving only you and Schmidt and Spiegel there? A. Yes.

Q. What happened at two o'clock? A. We went go out the door, two fellows stepped in.

20 Q. Could you recognize the two men? A. No.

Q. What did these two men do or say? A. As soon as I opened the door Spiegel says, "no more drinks going to be sold," and then I walked out; I didn't know anything further; I wasn't in the place then.

Q. Did these two men go in notwithstanding what Mr. Spiegel said? A. Yes, they did go in.

Q. You remained outside? A. Yes.

30 Q. What were you waiting outside for? A. I was waiting for John Schmidt.

Q. While you were waiting for him did you hear anything? A. No, I didn't hear nothing.

Q. Did you see anything? A. No.

Q. What did you do? A. I waited awhile and after I went in.

40 Q. What did you see when you went in? A. I seen nobody was in the bar, so I looked around and I see two fellows laying on the front in the front room and I see John Schmidt and another fellow in back.

(Arnold Wieder, for State—Cross.)

Q. Who were the two men you saw in the front room, did you know one of them ? A. Mr. Spiegel and another man.

Q. You do not know who the other man was? A. No.

Q. And Mr. Schmidt and another man were in the back room? A. Yes. 10

Q. What did you do? A. I run in the back room and grabbed a chair and wanted to hit him.

Q. You wanted to hit the man who was tackling your friend Schmidt? A. Yes. I heard a voice that said, "Don't hit," and I put the chair back and ran out to call the police.

Q. Did you hear any shots fired? A. No.

Q. When you ran out for the police did you come back again? A. Yes.

Q. What did you see then? A. Then I saw Spiegel laying on the floor. 20

Q. Where was he? A. Between the two doors—in the inside room.

Q. Was he bleeding? A. Yes, I just see blood on the floor.

Q. Did you see him bleeding? A. Well, I saw blood on him.

Q. Did you call the police? A. Yes.

Q. That is all you know? A. Yes. 30

Cross-examination by Mr. Cutley:

Q. There was lots of light there, wasn't there? A. Light—I don't know.

Q. Well, weren't the lights lit? A. I don't remember.

Q. There was lots of light there? A. It was light there.

Q. You saw these two men come in? A. Yes.

Q. You saw the man who was fighting with 40

(Arnold Wieder, for State—Cross.)

Spiegel? A. I saw somebody, I don't know who it was.

Q. You were looking at him? A. No.

Q. You saw him when you came into the bar first? A. No. I went out as they came in. I was outside the door already.

10 Q. You passed them at the door? A. On the door.

Q. So the only time you saw the man fighting with Spiegel was when you came back? A. Yes.

Q. And you did not have a chance to get a good look at him? A. No.

Q. How long did you wait outside? A. About two or three minutes.

20 Q. How long was it before you heard any loud talking or fighting? A. I don't know. As soon as I heard it I went in.

Q. Where were Spiegel and the other man then? A. Between the two stairs in the bar room.

Q. How many people were in that place? A. Only Spiegel, John Schmidt and me and those two.

Q. That is five altogether? A. Yes.

Q. Did you see any of the Spiegel women there? A. No—when I came back.

30 Q. The men had run away then, they had been gone about five minutes? A. I don't know; I didn't see the men going out.

Q. They were out anyway? A. Yes.

Q. Then the women came from upstairs? A. As soon as I came in I saw Augusta Spiegel with her arm around her father's neck.

Q. Did you go out again—you say as soon as you came in. A. I went to call the police.

Q. Where did you have to go? A. Maybe two or three minutes.

(*Augusta Spiegel, for State—Direct.*)

Q. Where did you call them? A. From the street.

Q. You just yelled "police"? A. Yes.

Q. Somebody telephoned too? A. That was after I came back. He must have been shot while I was out.

Q. How far did you walk away? A. Only as far 10
as the house, 25 feet—just above the saloon.

Q. When you went back there were no men standing outside? A. No.

Q. That was when you saw Augusta Spiegel? A. Yes.

Q. And she was holding her father right at the door? A. Yes.

Q. That is the front door? A. No, that was in the saloon and the back room.

Q. She never left him? A. Kept her father 20
all the time until the police got there.

Q. She was between those two doors? A. Yes.

Q. Were there any other women there? A. Not that I saw.

Q. She was the only one? A. Yes.

Q. And you did not see her when you ran out for the police? A. No.

Q. But you did see her when you came back? A. Yes.

Q. When you came back the two men who did 30
the shooting were gone? A. Yes.

AUGUSTA SPIEGEL, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 560 23rd Street.

Q. Your father was killed on the first of No- 40
vember last? A. Yes, sir.

(Augusta Spiegel, for State—Direct.)

Q. He owned that saloon on the corner of Polk and 23rd Street, West New York? A. Yes.

Q. At two o'clock or ten minutes after two in the morning— A. Ten after two—

Q. —where were you that morning? A. I was upstairs in the bed already.

10 Q. Did you wake up? A. Yes, I waked up for the shot and for the noise.

Q. You were waked up by some noise? A. Yes, by some noise and something like a shot.

Q. What did you do when you waked up? A. (No answer.)

Q. When you were waked, what did you do, did you come downstairs? A. Yes, I came downstairs and I seen papa lying on the floor, just bent over.

20 Q. What stairs did you come down? A. On the back stairs, like in the hall.

Q. I show you S-5. Is the stairway opposite the door— A. Right here.

Q. You came down the stairs looking out that door? A. Yes.

Q. When you did you see a man? A. Yes, I see a man out with no hat on.

Q. Did you speak to him? A. Yes, I spoke to him. I says, "What is the matter with you; why don't you stay off the corner here?"

30 Q. Do you see that man in the court room here? A. Yes.

Q. Where is he? A. Right there.

Q. Pointing to the defendant John King? A. Yes, right there.

Q. Go down and put your hand on him.

(The witness does so.)

Q. Did he say anything to you? A. No.

Q. What did you do after you spoke to him?

40 A. He went back right on the other side of the street.

(Augusta Spiegel, for State—Direct.)

Q. He crossed the street? A. Yes, he crossed the street right to the sidewalk. Then went back,

Q. Then he came back? A. Then he came back, but I don't know where he went; I went inside.

Q. When you went inside, where did you go, in the restaurant part of the saloon where the tables are? A. Yes. 10

Q. What did you see there? A. Then I saw two men fighting there.

Q. Did this man whom you have identified have a hat on when you saw him on the street? A. No, his hair was all mussed.

Q. Did he have an overcoat on? A. No, not that I saw.

Q. What kind of suit did he have—light or dark? A. A dark suit.

Q. Where did you find your father? A. Right in the saloon, in the middle of the saloon. 20

Q. Was he standing up or lying down? A. Standing up.

Q. Did you speak to him? A. Yes.

Q. What did you say to him? A. I says, "What is the matter, papa?"

Q. Did he say anything to you? A. He said—I can't—I am too excited.

Q. Can you speak German better? A. Yes. 30

(The interpreter was thereupon called and the following examination was conducted through the interpreter.)

Q. What did your father say to you in reply to your question? A. (In English.) He said, "I can't do any more. Goodbye."

Q. What did you do to him? A. He walked in and then he fell down—he walked into the rear room and then fell down.

Q. Did you pick him up? A. No; I just knelt down near him and held his head. 40

(Augusta Spiegel, for State—Cross.)

Q. Did you hold his head in your lap? A. Yes. Then he died.

Q. Did you talk to him any more? A. No.

Q. Did you see John Schmidt in your father's place? A. No, I didn't see him because the men were down there on the floor.

10 Q. How many men did you see on the floor? A. Two men were on the floor.

Q. Do you know what became of them? A. No, sir. They were rolling around.

Q. Did you see them go out of the saloon? A. No.

Q. Were you paying attention to your father? A. Yes.

Cross-examination by Mr. Cutley:

20 Q. Do those stairs lead to that door (indicating on photograph)? A. Yes.

Q. What street is this? A. Polk Street.

Q. Is there a stairs down to 23rd Street too from your place? A. No, only to Polk.

Q. How long after the shot did you come down, Augusta? A. I do not know. Just as quick as I could get down.

30 Q. How long were you talking to this man King? A. Not long.

Q. You are sure he had no hat on? A. No.

Q. And he had no overcoat? A. No, not that I know.

Q. You were right close; you were as close as you are to me? A. No, about from there to there (indicating). About here. He was standing here.

Q. He was not right in front of the door, then? A. No.

Q. He was nearer the garage? A. Yes.

40 Q. Was he walking away from you? A. Yes, he was walking a little here and after he went this way.

(Augusta Spiegel, for State—Cross.)

Q. And his face was away from you all the time? A. He had just one look at me.

Q. He just looked how long—just a second, was it? A. No, it was about two or three seconds he looked at me.

Q. Was that the only look you had at him—just the two or three seconds? A. Yes. 10

Q. Then did he turn towards you again? A. Yes.

Q. And you saw him again? A. Yes, I saw him again.

Q. There is no light here, is there? A. Yes, here he was standing, and he went here, and went there, and he just look at me.

Mr. McMahon: That is across the street and back again. 20

Q. You mean he walked from right near the garage over across the street? A. No, right near the door and right across to here—about here.

Q. Did he walk straight or walk across? A. No, he walked straight.

Q. Then he came back again? A. He came back again but I did not wait, I went inside.

Q. You did not see him come back? A. Sure he came back, but I don't know where he went. 30

Q. You did not look at him when he came back, you only saw his face the couple of seconds? A. Yes.

Q. That was the only chance you had to look at him? A. Yes. I went inside again.

Q. You say you were as near to him that night as you are now to the rail? A. What is the question?

Q. I say you say you were as near to him that night as you are now to the rail? A. Yes. 40

(Augusta Spiegel, for State—Cross.)

Mr. McMahon: About four feet.

Mr. Cutley: Yes.

Q. Did he have a gray suit on? A. No, a dark suit.

Q. Blue or black? A. I don't know, dark.

10 Q. When did you next see him? A. I did not see him again.

Q. You never saw him before in your life? A. Sure I saw him before. I don't know where, but I seen him.

Q. Where? A. I can't tell you. I can't remember that, but I seen him before. I have seen that face before.

Q. When did you next see him after that night? A. I did not see him again.

20 Q. Didn't you see him in the West New York police station? A. Yes.

Q. You do not mean to tell me that to-day is the second time you have seen him—first the night of your father's killing and to-day in court—you do not want me to believe that, do you? A. I saw him in the police station.

Q. Augusta, didn't you see him in West New York police station? A. Yes.

30 Q. Didn't you look through a little hole in the door—they said he is in that little room in there. A. Yes.

Q. And you said, "Where?" and you said, "He is too nice a young man to frame up"; didn't you say that? A. Yes, I said that, yes.

Q. Why did you say that? A. I would not think that man was able to do it.

Q. Who told you that King was in the room in the West New York Police station? A. I asked where he is. They said in room number 7.

40 Q. And they let you look through a peep-hole, didn't they? A. Yes.

(*A. Spiegel, for State—Re-direct—Re-cross.*)

Q. And didn't you say right away, "That is too nice-looking a man for the man who was there that night"? A. Yes.

Re-direct examination by Mr. McMahon:

Q. But it was the man whom you saw that night? A. Sure. He looked exactly the way as the other man. He looked the same, but that night he had his hair fixed nicely again. 10

Q. How many men were in the room when you saw King in there? A. There was police there and the detective and Mr. Hangle. I don't know how many were there.

Q. Are you sure you looked through a peep-hole or did you go to a door? A. Through a peep-hole. 20

Q. But you are certain that the man you now see in the court room is the man you spoke to at the rear door of your father's saloon? A. Yes.

Q. No doubt about it? A. No.

Q. You are not mistaken? A. No, I don't think so.

Re-cross examination by Mr. Cutley:

Q. How many men were in that room number seven up in the police headquarters that night? A. I cannot tell you. 30

Q. When you looked in wasn't he the only one there? A. No.

Q. You know they were policemen; you know Captain Kurth and Harry Otis? A. Yes, but I don't know if he was there.

Q. Why did they tell you to look through the peep-hole at him; didn't you tell them that that was not the man? A. Yes.

Q. You said that? A. Yes, I said he looks like him. 40

(Augusta Spiegel, for State—Re-direct.)

Q. You said he looks something like the man?

A. Yes.

Q. But you said he is not the man because he is too good-looking? A. Because he was arrested.

10 Q. You said, "I don't want to have him framed up because he is too nice-looking a man"; didn't you use that language? A. Not that I know.

Q. Didn't you say you would not identify him because he was not the man; didn't you tell the policeman there that night? A. That I did not say.

Q. Didn't some of those officers have to tell you, "That is King, that is the man that killed your father"? A. No.

20 Q. What put the doubts in your head as to whether he was the man or not? A. He looked like this man here.

Q. He looked like him? A. Yes.

Q. Will you say now and swear that he was the man you saw in front of your place? A. Yes.

Q. You are positive of that? A. He is just like him, he is just like the way I seen him, just like him.

Q. Just like him? A. Sure.

30 Q. He looks like him, you mean? A. Sure he is just like that man I saw there.

Re-direct examination by Mr. McMahon:

Q. Will you go down and arrange that door where those two gentlemen are, just to show the way you looked in the room where this man was? A. Like this (illustrating).

Q. That is what you call a peep-hole? A. That is at home; the way I saw it.

40 Q. Up at the West New York police station? A. Like this (illustrating).

(*Augusta Spiegel, for State—Re-cross.*)

Q. You looked through a crack in the door? A. The door was open about three fingers.

Q. There was no little round hole you looked through—you did not look through a hole like that? A. Only this way. (The Interpreter: She has the door open now about four fingers.) There was no peep-hole; I looked through the opening of the door. 10

Q. Did anybody point out King to you at all in that room? A. No, sir.

Q. You pointed him out yourself? A. Yes.

The Interpreter: The witness uses the left hand and says, "That is him."

Re-cross-examination by Mr. Cutley:

Q. You say you only had the door open two fingers or four fingers wide. Where was King sitting, right directly in front of where you were looking? A. No, he was standing. 20

Q. Right near the door? A. No, further away.

Q. Why didn't you open the door right away?

A. I did not want to open because I jumped back like this.

Q. You were nervous? A. Yes.

Q. Where was the door—in that direction (indicating)? A. Yes. 30

Q. So that when you just opened the door King was just within the line where you could see him? A. Yes.

Q. You did not have to put your head in to see King? A. No.

Q. The cop opened the door for you? A. Yes—I don't know if it was the cop.

Q. Well, the officers? A. Yes.

Q. The minute you looked in King was just right where you could see him? A. Yes. 40

(Joseph Fullom, for State—Direct.)

Q. Was he looking toward you? A. No, the other way.

Q. Could you see his face at all? A. No.

Q. Oh, then you identified him up there not by looking at his face—the side face? A. At that time I saw him from profile, from the side.

10 Q. When did you see his full face? A. On that night I saw his full face.

Q. Up in the police station you did not see his face at all, so to-day is the second time you have ever seen the front of his face? A. No, I have seen him once before, I did not know his name.

Q. You tended the bar? A. Yes—but I did not know him.

20 The Court: Gentlemen of the jury, the court is going to take a recess at this time. We will continue this case tomorrow morning. The court has provided quarters for you over in the Hotel Plaza, Jersey City, and Mr. Hanley, the Sergeant-at-Arms of the Court, will have sent for you any messages that you desire to send to your families. The Court regrets the fact; he knows you would like to go home this evening but this is a capital case and the Court con-

30 sideres it advisable to take this action.
(The Court thereupon adjourned until April 20, 1927, at ten o'clock A. M.)

April 20, 1927.

JOSEPH FULLOM, sworn for the State.

Direct examination by Mr. McMahon:

40 Q. Mr. Fullom, you are connected with the Police Department of the City of Hoboken? A. Yes.

(William Chrispy, for State—Direct.)

Q. How long? A. 17 years.

Q. What is your position there? A. Detective Sergeant.

Q. I show you a picture that has been marked S-5 for identification. Can you tell me whose picture that is? A. That is Matty Palmieri, alias Matty the Ox. 10

Q. How long have you known Matty Palmieri alias Matty the Ox? A. I have known him for the past eight or nine years.

Q. Have you known him well? A. Yes.

(No cross-examination.)

WILLIAM CHRISPY, sworn for the State. 20

Direct examination by Mr. McMahon:

Q. You are connected with the Hoboken Police Department? A. I am.

Q. In what capacity? A. Lieutenant of Police.

Q. How long have you been connected with the Police Department of Hoboken? A. 9 years.

Q. I show you a picture marked S-15 for identification. Can you tell me whose picture that it? A. That is Matteo Palmieri, alias Matty the Ox. 30

Q. How long do you know Matteo Palmieri? A. Six years.

Q. Do you know him very well? A. I know him very well.

Mr. McMahon: I offer the picture in evidence.

Mr. Cutley: I object as immaterial, irrelevant and incompetent. 40

(*Bonano Menatti, for State—Direct.*)

The Court: I will allow it.

Mr. Cutley: Exception.

Exception signed, sealed and allowed.

ROBERT C. KINKEAD,
J.

10

BONANO MENATTI, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are connected with the Police Department of the City of New York? A. Yes.

Q. What precinct are you attached to? A. 41st.

Q. What is your official position with the Police
20 Department? A. Detective.

Q. Do you know this defendant, John F. King?
A. I do.

Q. Where did you see him first? A. 247 Wyck-
off Street, Brooklyn.

Q. Did you arrest him over there? A. I did.

Q. You arrested him as a fugitive from justice
from the State of New Jersey on the charge of
murder? A. Yes.

Q. At the time you arrested him what name did
30 he give you? A. He told me his name was Galla-
gher.

Q. Did he tell you who he was living with at
that place? A. He told me he had a furnished
room there in St. Marks Place, somewhere.

Q. Did he say anything about who lived with
him there? A. No, sir.

Q. Did you take him to police headquarters?
A. I took him to the precinct.

Q. And then eventually turned him over to the
40 New York authorities? A. Yes.

(*Bonano Menatti, for State—Cross—Re-direct.*)

Q. Did he subsequently admit his identity? A. Yes.

Q. In the police station? A. In the 41st.

Cross-examination by Mr. Cutley:

Q. You say you arrested him as a fugitive from justice? A. Yes. 10

Q. Don't you know it is not true? A. It is true.

Q. Didn't you arrest him and a fellow named Barrett and someone else on a charge originating in Brooklyn? A. No, sir; I do not know anything about Barry.

Q. Some charge originating in Brooklyn? A. No, sir.

Q. Did you have any warrant with you when you arrested him? A. No, sir, I had his picture. 20

Q. He waived extradition, didn't he? A. Well—he did.

Re-direct examination by Mr. McMahon:

Q. Do you know whether this is a copy of the complaint you made charging him with being a fugitive from justice in the State of New Jersey? A. Yes.

Q. Was that complaint made in the City Magistrate's Court of the First District of Brooklyn? A. Yes. 30

Q. And this is your signature on this complaint? A. Yes.

Q. And that is a copy of the complaint that you made? A. Yes.

Mr. McMahon: I offer it in evidence.

Mr. Cutley: I object as immaterial.

The Court: Objection sustained.

(*William Baker, for State—Direct.*)

(*Joseph Anderson, for State—Direct.*)

(*John Horney, for State—Direct.*)

WILLIAM BAKER, called as a witness by the State, does not respond.

10

JOSEPH ANDERSON, called as a witness by the State, does not respond.

20

Mr. McMahon: If your Honor please, there is an important witness for the State. He was here yesterday. He said he would be here at half-past ten this morning. He is a hatter, a man who sells hats up in Guttenberg, and I would like to have an opportunity to present him if I can.

The Court: Have you any further witness to put on?

Mr. McMahon: I have a few policemen that I can put on the stand.

The Court: Do you want the court to issue a capias for Anderson?

Mr. McMahon: Yes.

30

JOHN HORNEY, sworn for the State.

Direct examination by Mr. McMahon:

Q. You are connected with the Police Department of the City of West New York? A. Yes.

Q. And you are a patrolman? A. Reserve man.

Q. On November 1, 1926, somewhere around two o'clock in the morning where were you? A. In the station house.

40

Q. Did you receive instructions to go to any particular place? A. 33rd Street and Polk.

(*John Horney, for State—Direct.*)

Q. Is that where Spiegel's saloon is? A. Yes.

Q. Did you go there? A. Yes.

Q. When you got there what did you find? A. I found a man laying on the floor in that room, all full of blood, in a pool of blood.

Q. Did you see anything else in the place besides this man lying on the floor? A. Two men and a woman. I took no notice of them. 10

Q. Did you see a taxi driver around there? A. He was standing at the entrance to the door.

Q. Was he Joseph P. Anderson? A. I did not know the man at the time, no.

Q. What did you do with the man you found on the floor? A. Put him on a stretcher and took him to the North Hudson Hospital.

Q. When you took him to the hospital what did the hospital authorities say about him? A. They said he was dead. 20

Q. What did you then do? A. Took him to the morgue in West New York, Palisade Avenue and 17th Street—Horgan & Horgan's Morgue.

(No cross-examination.)

Mr. McMahon: With the exception of the witness Baker, if I can get him, that is the State's case. Anderson is not so very important except that he was there soon after the murder. 30

The Court: Do you reserve the right to call those witnesses?

Mr. McMahon: Yes.

(STATE RESTS.)

Mr. Cutley: May it please your Honor, while there have been numerous witnesses who have testified in this case, I think sub- 40

(Argument of Plaintiff's Counsel.)

stantially the case narrows down to the testimony of the young lady, Miss Spiegel, and I think that if I would be permitted to refer to the stenographer's minutes as to her testimony as to the identification of this defendant—and if there were nothing else in the case and I were to rest now—I think it would be incumbent upon your Honor to direct a verdict in favor of this defendant. Your Honor will recall what she said. She came down the stairs, having heard this commotion, and she looked out and she saw a man, saw his profile just for a second, and she says that she never saw that man again until yesterday where she could have a full view of him, except in the police headquarters, and immediately upon seeing him up there through what I described as a peephole and what she described as a four finger opening through the door, she saw this man again, and her immediate reaction to her sight of him was that this could not have been the man, or words to that effect, because he was too clean-looking or too well dressed; and there was some conversation in which she said the words quoted. Standing alone, if there were nothing else, I think I would be within the bounds of law and of logic in saying that in a case of this character and identification resting upon such meagre details, such meagre substance, and coupled also with the salient but eloquent fact that of all the people who were that night, while they have a wonderful notion of what Matty the Ox looks like, not one who was in the store, neither Schmidt nor Weigel nor the bartender or this fellow by

(Argument of Plaintiff's Counsel.)

the other name has any notion of what the defendant, if he were present, did look like. It comes down now to the question of whether there is anything to go to this jury, and there is nothing, I say with assurance, to go to the jury, unless it is based upon the testimony of this girl. Now, if that stand- 10
 ing alone is sufficient—and I maintain it is—to raise a reasonable doubt in your Honor's mind, fitting in a legal position there—something which raises a grave doubt in the girl's mind—then I say as a matter of law and of logic that that doubt resolvable and engendered at this time as to the identification robs the State of the support which a complete or comparatively complete identification would invest it with and justifies 20
 your Honor in granting my motion at this time for a dismissal of the indictment.

The Court: The argument which you are addressing to the court is properly a jury argument, because it is for the jury to say what weight and what credence is to be given to Miss Spiegel's identification of the defendant. All that the Court is confronted with at the present time is the fact that Miss Spiegel has taken the stand and now 30
 says positively that the defendant is the man that she spoke to near the door of her father's saloon on the night of the shooting. Of course coupled with that there is also her admission as to what her instantaneous reaction was at the first glimpse she had of the defendant in police headquarters in West New York. It is for the jury to pass upon all those facts. It is for the Court to rule at this time that so far as her present 40

(Augustus Baker, for State—Direct.)

testimony in this case is concerned the State has made out a prima facie case which must go to the jury for their decision. I will allow you an exception.

Mr. Cutley: Exception.

Exception, allowed and sealed.

10

ROBERT V. KINKEAD,

J.

The Court: Maybe your witness is here now, Mr. McMahon.

Mr. McMahon: Baker is here now.

The Court: I think we ought to put him on the stand and let him finish the testimony now.

20

(The State's case was thereupon reopened.)

AUGUSTUS BAKER, sworn for the State.

Direct examination by Mr. McMahon:

Q. Where do you live? A. 336 31st Street, Woodcliff.

30

Q. What is your business? A. Haberdasher.

Q. Where is your place of business? A. 55 Bergenline Avenue, Guttenberg.

Q. I show you a hat marked Exhibit S-12. Do you know whether you sold that hat? A. I sold the hat, yes.

Q. Do you know to whom? A. No, sir, I do not.

Q. I show you a hat marked Exhibit S-13. Did you sell that hat? A. No, sir, I did not.

40

Q. But you keep hats of that make, don't you? A. No, sir.

(*Augustus Baker, for State—Cross.*)

Q. You do not sell Danbury hats? A. Hats that are made in Danbury, but not that make, that is a different make.

Q. But you did sell this hat, S-12? A. Yes.

Q. Do you know where King lives? A. No, sir.

Q. Where is the nearest Haberdasher or hat store to your place of business? A. On Park Avenue and 25th Street, between 24th and 25th. 10

Q. What town is that in? A. Guttenberg.

Q. Do you know of any hat store around 23rd Street and Polk in West New York? A. No, there is none up that way.

Q. Is your store the nearest to that section? A. Yes.

Q. How far is 34th Street, Woodcliff, from your place of business? A. About eight or nine blocks. 20

Q. Are you the nearest hat store to 34th Street, Woodcliff? A. Yes.

Q. Is there any other hat store in that vicinity? A. None that I know of.

Cross-examination by Mr. Cutley:

Q. Which hat do you say you sold? A. This one here.

Q. Where is your place of business? A. 55 Bergenline Avenue, Guttenberg. 30

Q. Have you had any conversation with relation to either of these two men recently with any detectives? A. Why, yes.

Q. With whom? A. Hanley, and this gentleman here, and one or two other detectives.

Q. Did any of those detectives tell you to identify King no matter whether he was the man or not who bought this hat? A. No, they did not tell me that, but they were under the impression that I knew King. 40

(Augustus Baker, for State—Re-direct.)

Q. What were their words to you? A. They asked me if I knew King. I told them I knew one King, Jimmy King, but I did not know Johnny King, but the way I took it they got the impression that I know this fellow well.

10 Q. What did they say to you about identifying him? A. One party said, "Do you know King?" I said, "I don't know him."

Q. Didn't he tell you to say that you knew him? A. No, he did not say that.

Q. They tried to impress on your mind that you had sold that hat to John King? A. The way they spoke——

20 Q. What did they say? A. They asked me if I knew John King. I said: "No." They said: "He was in this store, wasn't he?" I said: "I don't know if he was or not." They said: "He lives around here, doesn't he?" I said: "He lives around here, but I sell a lot of people hats and don't know who they are."

Re-direct examination by Mr. McMahon:

Q. Do you remember having a talk with me? A. Yes.

30 Q. Do you remember telling me you do not know John King, this defendant, and did I suggest your saying you did know him? A. No, sir.

Q. Do you remember your telling me you knew his brother, a member of the West New York Police Department? A. I know him, but not very well, I told you.

Q. You told me you sold him hats. A. I don't know that I told you that.

Q. Did you tell me you sold Jimmie King hats? A. Yes, but Jimmie King is not a policeman.

40 Q. Didn't you sell the policeman hats? A. Not as I know of.

(John F. King, for Defendant—Direct.)

Q. Didn't you tell me you had a man working for you Saturday nights in the busy time? A. I said I had a brother there.

Q. Didn't you tell me it was barely possible your brother sold the hat? A. I did not say he sold the hat; I said he may have.

10

JOHN F. KING, the defendant, sworn.

Direct examination by Mr. Cutley:

Q. How old are you? A. 25 years old, sir.

Q. Where have you resided? A. 753 34th Street.

Q. On the night of October 31 were you in McGrath's saloon? A. Yes. 20

Q. How long were you there? A. I was there until about 1:15.

Q. And you met Schertel and his wife there that night, did you? A. Yes.

Q. You also saw Policeman McDonald—is that his name? A. Yes; I remember seeing him.

Q. Were you in company with a man known as Matty the Ox that night? A. No, sir.

Q. Do you know Matty the Ox? A. No, sir. 30

Q. What time did you leave McGrath's saloon? A. At about 1:15.

Q. Where did you go? A. I took Fantry home to the firehouse at 22nd Street and Polk.

Q. Did you go home alone with Fantry? A. I did.

Q. Where did you bring him? A. To the firehouse and put him to bed; took off his pants, shoes and hat.

Q. You have seen another fireman on the witness stand. Do you recall seeing that fireman at 40

(John F. King, for Defendant—Direct.)

the firehouse? A. To my knowledge everybody was sound asleep in the firehouse, because there was no movement when we went in.

Q. Where did you go after you left the firehouse? A. Home.

10 Q. What time did you get there? A. Between a quarter to two and two o'clock.

Q. Who was up when you got there? A. My brother Jimmy.

Q. Is that the boy with the glasses? A. Yes.

20 Q. And what did you do then? A. I went upstairs to the bathroom first, then I went into my room which is just off the hall, took off my clothes and my hat, hung the coat in the closet on the hanger, put the hat on the clothes horse where I usually put it, took off my collar and tie and hung them on the clothes horse, then I went downstairs.

Q. What did you do downstairs? A. Well, I have been in the habit of reading and writing short stories.

30 Q. Reading them? A. Reading them over when I got them back. When they are not accepted for publication I go over them usually at night because I cannot concentrate on it so well in the daytime, and try to find out why they are not accepted. If I find out I try to revamp them, that is rewrite them so that they may on a second trip to the publishers be accepted for publication.

Q. Is that what you were doing that night?

A. That is what I was doing that night, sir.

Q. You do write for the magazines, do you? A. Yes.

Q. Have you had any works of yours accepted? A. Yes.

40 Q. In what books? A. There were two ac-

(John F. King, for Defendant—Direct.)

cepted in *Mystery Magazine*, published June 15 and July 1 issue.

Q. What name do you write under? A. J. Francis King.

Q. Are you the J. Francis King who wrote "The Best of Intentions"? A. Yes.

Q. Did you write "On the Fifth Night" in the *Mystery Magazine* of June 15? A. Yes. 10

Q. How long did you work on the revamping of this story? A. I don't know, Mr. Cutley. When I started we have a clock in the parlor which strikes on the quarter hour and also on the hour a number of strokes according to the hour—and when I started it struck two o'clock and I became interested in one short story which had been sent back to me not accepted for publication, and I do not know how long I might have been interested in that story trying to find out what was wrong with it, but I fell asleep in the chair there, just the reading lamp alongside of me. 20

Q. About what time was that? A. That I cannot say. I know it was after five o'clock; it was between five and half past, or about half past, I am not sure.

Q. What was the nature of that telephonic communication? A. A man was on the other end of the wire; he asked for John King. I said, "This is Johnny speaking." He said, "A very good friend of mine asked me to call you up and tell you"—these were his words as near as I can recall them—"and tell you that Johnny McGrath has just been taken down to West New York headquarters by a couple of detectives and that they will be up after you as soon as they get through with him." I asked why—what it was all about. He said to his best knowledge, he was told by a party to call me up, and to his best knowledge 40 30

(John F. King, for Defendant—Direct.)

somebody in the neighborhood of McGrath's had been murdered early that morning and that the West New York authorities would try to hang it on to me and they would be up to my house after me. I asked him his name. He said he could not give it.

10 Q. What did you do then? A. When he hung up I did not know what to do. I recalled about five or six years ago—a little more than five years ago—I was arrested.

Mr. McMahon: I object to that.

Q. As a result of what went through your mind with regard to your past life what did you decide to do? A. I decided to go out of town until I knew
20 more about this case and knew what charge they were trying to hang onto me.

Q. What did you do in pursuance of that resolution? A. I left my home, walked up 34th Street over to Bergenline Avenue, turned north on Bergenline Avenue; at Robinson Street which is between 36th and 37th, I believe, I passed one man who knew me, by the name of Chris Heltrick.

Q. Is he here to-day? A. Yes.

Q. Did you tell him what you were doing or have any conversation with him? A. I had no conversation with him. Then I continued on. I was
30 trying to intercept a bus or a car going to 14th Street ferry or D. L. & W. Ferry, either one. When I got to 37th Street there was no bus or car in sight, and a friend of mine lives right off Bergenline Avenue there, on the first house, an apartment house, 510-37th Street, so I thought I would go over and stop in at his house. Just as I was about to go in his house a young lady came out whom I know. His name is Oliver Chasmer.

40 Q. Is he here? A. Yes, he is here.

(*John F. King, for Defendant—Direct.*)

Q. Go ahead. A. Then I went up to the apartment of James Crawley, a friend of mine, knocked on the door, his wife answered the door, and she got Jimmy out of bed. I spoke to Jim and told him that the cops were after me and were trying to hang a murder charge on me and that I thought it best to leave town for a few days. Jim advised me not to leave, but as I did not know what time in the morning this crime had been committed I was afraid to take a chance, because I had no one to account for my whereabouts, after two o'clock that morning, so he told me I should stay, and I decided not to stay, so we had coffee and buns and then we left. He was working in New York at the time. 10

Q. You went with him? A. Yes, I went with him. 20

Q. What is his name? A. Crawley.

Q. Is he connected with the police department in West New York? A. No, sir.

Q. Well, you went out of the State anyhow? A. Yes.

Q. You went to Brooklyn or New York? A. Yes.

Q. You were arrested in Brooklyn—Mr. Bonano was one of the arresting officers? A. Yes.

Q. Were you with Frank Barrow? A. He was not with me at the time. 30

Q. Were you arrested as a fugitive from justice or what? A. That was the charge so far as I know—as a fugitive from justice.

Q. You waived extradition, didn't you? A. Yes.

Q. Did you ever shoot Spiegel? A. No, sir.

Q. Were you in Spiegel's saloon that night? A. I was never in Spiegel's saloon.

Q. Did you ever see that girl before in your life that was on the stand here yesterday? A. Never in my life. 40

(John F. King, for Defendant—Cross.)

Q. Did you ever pal around with this man known as Matty the Ox? A. No, sir.

Q. Do you know him? A. No, sir.

Q. Some testimony has been given in this case about some man asleep at a table up in McGrath's. Did you know who that man was? A. No, sir.

10 Q. How many people were in McGrath's that evening to the best of your recollection? A. About 40 or 50 I guess came in and went out while I was there.

Q. Did you wear an overcoat that night? A. No, sir.

Q. You say you were never in Spiegel's before in your life—or at any other time? A. No, sir.

Cross-examination by Mr. McMahon:

20 Q. Have you been convicted of crime? A. Yes.

Q. These stories that you wrote for these magazines which your counsel referred to, they all deal with crime, don't they? A. They do.

Q. Do you remember writing this—"Henry was on fairly good terms with the Chief. He soon learned that the only evidence against him was the initialed cap he lost the previous night, and he knew that the cap could not be based as belonging to him." Do you remember writing that? A.
30 Yes.

Q. That is pretty nearly your case, isn't it? A. Not at all.

Q. Do you deny this hat is yours? A. Yes.

Q. Would you mind putting it on? A. Not at all.

(The witness puts on the hat.)

Mr. McMahon: May I show it to the jury?

40 Q. Yes. Put this one on. Would you mind letting me see the hat that you wore over from the

(*John F. King, for Defendant—Cross.*)

jail to-day? A. No, sir. It is on the first bench there (witness puts on the hat).

Q. You wear a seven and three eighths? A. Yes.

Q. This hat is a seven and three eighths.

(The witness puts on the hat.)

10

Q. Pull the other one down like you are pulling this one down.

Mr. McMahon: Are the jury satisfied with that? That is all with that.

Q. In these stories that you wrote you were showing the defenses of these criminals you wrote about? A. Not exactly the defenses.

Q. Do you remember writing about the Drayden murder? A. I may have mentioned it. 20

Q. That is what your story was about, wasn't it? A. I wrote that story some time ago.

Q. It was accepted last June; you revamped it some time in June, didn't you? A. I did not revamp it at all.

Q. Well, you wrote about the Drayden murder case, didn't you, and fingerprinting? Do you remember writing about the Drayden murder case?

A. If you would tell me more about it I would no doubt remember it. 30

Q. Did you write these articles (indicating)? A. I wrote those stories.

Q. Do you know what you wrote? A. I could recall it if I read them.

Q. Do you have to read them to know? A. When you say the Drayden murder case I don't recall ever having mentioned the Drayden murder case.

Q. Did you write "On the Fifth Night," which was accepted by the Mystery Magazine June 15, 40

(John F. King, for Defendant—Cross.)

1926, under the name of J. Francis King? A. I did.

Q. Do you remember writing about the Drayden murder case? A. I do not remember writing about the Drayden murder case.

10 Q. You do not remember writing this: “ ‘Lads’ said he, glancing at his lieutenants; ‘I just read a d—— fine account of the Drayden murder case out in New York.’ ” Then you go on to tell about it. A. I recall it now.

Q. Your memory has to be refreshed as to something that happened six months ago that is part of your being, a feature of your brain, and you do not recall it? A. No, sir.

20 Q. You wrote, “He is a wicked and a born killer, also is one of the handsomest devils I ever laid eyes on.” Do you remember writing that? A. Yes.

Q. Were you thinking of yourself then? A. No, sir.

Q. “I was down at State Prison the day they brought him in, having taken down a horse thief on a little sojourn at the State’s expense.” A. Yes.

Q. Did you write this in the prison? A. Yes.

30 Q. Did you write the other story in the State’s Prison? A. Yes.

Q. The story, “The Best of Intentions”? A. Yes.

Q. Do you remember telling how this man used to change his clothes and wash up when he pulled a job? A. Which man?

Q. In this story of “The Fifth Night.” Did you write these stories? A. Yes.

Q. Well, don’t you know something about them? A. I know all about them.

40 Q. Do you know what I am talking about? A. I do.

(John F. King, for Defendant—Cross.)

Q. Do you remember showing an alibi for this Joe in your story, "On the Fifth Night"? A. In what story?

Q. "On the Fifth Night." A. What is Joe's last name?

Q. Big Joe McShane. A. Joe's alibi on the commission of a crime? No, sir. He committed no crime that I know of. 10

Q. Oh! The Turk was the criminal? A. Yes.

Q. All of these stories that you have ever written have been criminal stories? A. No, sir.

Q. Well, these two stories that we have found were criminal stories? A. Yes.

Q. Have you had any other stories published besides these? A. Those are the only two that have been published.

Q. And these both are criminal stories? A. Yes. 20

Q. Do you recall the Drayden murder case now, up in New York? A. Yes.

Q. Do you remember writing this: "After getting off with the committing of a series of robberies and killings which were strung over a period of about eight years, he was finally caught dead bang to rights and sent up to State's Prison for life for having killed one of the finest cops that ever pounded the pavement. How he escaped being hung I do not know." A. Yes. 30

Q. You say, "He was worth a young fortune in blood money when he was arrested, so maybe the life bit is not so very strange for him for that reason. He was a wicked, born killer." You do not know Matty the Ox? A. No, sir.

Q. You never met him? A. No, sir.

Q. What time did you go into this saloon of McGrath's that night? A. My mind is too hazy.

Q. Why is it hazy? A. I don't know. When I 40

(John F. King, for Defendant—Cross.)

left New Jersey and read where I was accused of this crime, I read that the crime had happened in the neighborhood of two o'clock, so it concentrated my mind on what had happened from the time I left McGrath's until the time I left the State of New Jersey. I did not think back on what had
10 happened earlier in the evening, any earlier than one o'clock.

Q. This is not the first time that you have faced a judge and a jury, is it? A. It is the second time.

Q. And you have had some court experience? A. One.

Q. And you have had some experience in writing some detective stories and criminal stories? A. Yes.

20 Q. And you were in the habit of concentrating your mind in the late hours of the morning so that you could write stories? A. Yes.

Q. You did that very frequently? A. Yes.

Q. Yet you could not concentrate your mind to find out what you were doing on the night that you yourself were charged with murder? A. Because I did not want to concentrate.

Q. I did not ask you "because". You could not? A. I could have if I had wanted to, but I
30 did not think it necessary.

Q. You have a brother on the West New York Police Force? A. No, sir.

Q. Have you any relative on that force? A. No, sir.

Q. You had not committed this murder. Will you answer that question? A. Is it a question?

Q. Yes. A. No, of course not.

Q. You did not shoot that man (showing witness a photograph)? A. No, sir.

40 Q. Then there was no reason in the world why

(John F. King, for Defendant—Cross.)

you should have left Hudson County? A. Yes, there was.

Q. Not because you had shot Spiegel, was it?

A. No, sir.

Q. You knew you were innocent of that? A. Yes.

Q. You could have proved where you were at two o'clock? A. I do not know that I could. 10

Q. And you never came back until you were brought back by the arm of the law? A. No, sir.

Q. And you went to Saranac Lake? A. I did not, sir.

Q. You went out of the State of New York? A. I did not, sir.

Q. And you cannot tell us what time you went into Bill McGrath's saloon? A. No, I cannot.

Q. And you cannot tell us who went in with you? A. I cannot say. 20

Q. You cannot tell us how long you were in there? A. That I cannot say.

Q. You cannot tell us what time you left? A. Yes, I can tell you what time I left.

Q. What time was that? A. About 1:15.

Q. Did you leave when he was closing up? A. I left when John McGrath asked me to escort Fantry home to the firehouse.

Q. You knew Fantry? A. I did. 30

Q. You and Matty the Ox went with Fantry to the firehouse? A. I took Fantry home.

Q. And Matty went with you? A. I don't know Matty.

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

Q. Didn't you tell Lieutenant Hangley that you had not seen Matty in two or three weeks—only the other day? A. No, sir.

Q. You did not tell him that? A. No, sir.

Q. Weren't you living with Matty the Ox in 40

(*John F. King, for Defendant—Cross.*)

New York while you were a fugitive from justice? A. No, sir.

Q. Do you remember raiding a crap game with Matty the Ox in Hoboken right after this murder? A. No, sir.

10 Q. Did you meet Matty the Ox in State's Prison? A. No, sir.

Q. You do not know who the man was that went in the automobile with the Schertels with you to Eddie's place? A. No, sir.

Q. You went down with him, you had a drink in Eddie's place with him? A. That all happened too long ago for me to remember it now. That was only recalled to my mind yesterday.

Q. You now recall that? A. No, sir.

20 Q. I show you Exhibit S-15 and ask you if you know that man? A. I might have seen a man who looked like him.

Q. You might have seen a man who looked like him? A. Yes.

Q. I did not ask you that. Do you know him? A. No, sir.

Q. Did you see that man on the night of October 31 or the first of November last? A. No, sir.

Q. You say your mind is hazy about that night? A. Until one o'clock that next morning.

30 Q. It brightened up at one o'clock? A. I concentrated back on it a few days later.

Q. And the farthest your concentration would bring you would be to one o'clock? A. Because I thought that was all that was necessary.

Q. Oh, that is where you stopped your concentration? A. Yes.

Q. McGrath says he closed up his place at half past one o'clock. Do you say that that is not so? A. That is not so.

40 Q. You are concentrated now so that you know

(John F. King, for Defendant—Cross.)

that is not correct? A. I concentrated five and a half months ago so that I would remember what happened after one o'clock.

Q. Did you have a watch on you that night?
A. No.

Q. November 1st? A. I was in New York on the night of November 1. 10

Q. You were not in Hudson County at all? A. Not the night of November 1st.

Q. The morning of November 1? A. The morning of November 1, yes, I was.

Q. Did you have a watch on you? A. No, sir.

Q. Did you see a watch in McGrath's place?
A. There is a clock in McGrath's place.

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

Q. Was there a clock in Eddie's place—was there a clock in that place you went to looking for McGrath? A. I do not recall. 20

Q. You do not recall going to McGrath's? A. No, sir.

Q. You do not recall being in Schertel's automobile at all, do you? A. I could not speak truthfully on it because I do not remember.

Q. You do remember bringing Fantry to his bed? A. Yes.

Q. Did you undress him? A. Yes.

Q. Were you alone when you undressed him? 30
A. Yes.

Q. Nobody else was with you? A. Nobody was with me.

Q. And the fireman who said he saw two civilians come in the firehouse must have been mistaken? A. He certainly was.

Q. Nobody was with you? A. No, sir.

Q. Where does Fantry sleep in this firehouse?
A. I believe it is the second cot on the side towards the Boulevard. 40

(John F. King, for Defendant—Re-direct.)

Q. You believe it is? A. Yes.

Q. Was there a light in this room where you undressed him? A. No, sir.

Q. Did you know his bed when you brought him in, where it was? A. I put him in the first empty bed; I supposed that was his.

10 Q. Did you make any noise? A. I did make some noise.

Q. Did you turn on a light? A. Going out I turned it out.

Q. Did you turn on a light coming in? A. I turned it on coming in.

Q. How did you get into the bedroom? A. There are folding doors separating the two rooms, I believe, they were open.

20 Q. How long were you out of States Prison on the night of October 31? A. Five months and a half.

Q. Where did you work in that time? A. Spencer Heater Service.

Q. Where is that? A. 40 Street and Park Avenue, New York City.

Q. How long did you work there? A. From July 10 to October 5.

30 Q. Were you working on November 1? A. I was expecting to be admitted to the Iron Workers Union in Jersey City.

Q. What is your business—outside of writing short stories? A. Stenotype operator, boiler maker's helper, pipe fitter's helper.

Q. Did you ever saw your way out of jail?

Mr. Cutley: I object.

The Court: Objection sustained.

Re-direct examination by Mr. Cutley:

40 Q. Mr. McMahon asked you whether you had a brother on the West New York cops. You have

(John F. King, for Defendant—Re-cross.)

a brother on the North Bergen, haven't you? A. Yes.

Q. Do you recall when you were up in the West New York Police station after you came back from Brooklyn? A. Yes.

Q. Do you recall seeing this girl Spiegel up there? A. No, sir. 10

Q. At any time you were in this room seven were you alone or were other people with you? A. There were other people sitting down there; I was standing up.

Q. Who were the other people? A. Detective Hangley, Detective Otis, this gentleman here—I don't know his name.

Q. Mr. Charlock, the good looking stout man? A. Yes. 20

Q. You were the only man arrested, the only prisoner there, weren't you? A. Yes.

Q. Did you see the door open or anything? A. Yes.

Q. Did you see any face in the door? A. No, I could not see the face.

Re-cross-examination by Mr. McMahon:

Q. Don't you recall that the minute you saw this girl's face in the open door you first got as white as that paper? A. The first time I saw the girl was on the stand here yesterday. 30

Q. I am not asking you about that. I am asking you, didn't you blanch, get pale, when the door opened and this girl's face entered the door? A. The door opened about that far.

Q. When you got a glimpse of this girl, Augusta Spiegel, didn't you turn white? A. If I did know the girl I could not have been able to recognize her with the door open that far (indicating). 40

(*James L. King, for Defendant—Direct.*)

Q. Do you remember seeing three plain clothesmen in the room at that time? A. No, sir.

Q. Were there men with clothes on them just the same as yours? A. Detective Hangle.

Q. How was he dressed? A. He had on a hat.

10 Q. Did he have a uniform on? A. Civilian clothes. I was the only man in the room without a hat on.

JAMES L. KING, sworn for the Defendant.

Direct examination by Mr. Cutley:

Q. What is your name? A. James King.

20 Q. You are a brother of the defendant John King? A. Yes.

Q. Do you remember on or about November the first last year at the time of this alleged Spiegel murder, were you home? A. Yes.

Q. What time did you get home? A. Well, I left the girl's house about 1:20 and that is about a fifteen minute walk and I must have got home about 1:30 or 1:35, I will not say for sure, but it was around that time.

30 Q. What time did your brother come in? A. It must have been around fifteen or twenty minutes later.

Q. What did he do when he came in? A. I was upstairs and he came upstairs and he went in the bathroom, I believe. I was in the other room, but I think that is where he went, and took his things off and put them on the clothes horse in the hallway I believe.

Q. Did you talk to him? A. No, I did not speak to him at all.

40 Q. Did he take off his outer shirt? A. Yes, he took that off, I could see through.

(*James L. King, for Defendant—Cross.*)

(*August Helfert, for Defendant—Direct.*)

Q. Did he pass you again? A. No, he passed the door; he went in the bathroom. My door faces the bathroom, and he came out through there and walked downstairs.

Q. Do you fix the time you got home about 1:35? 10

A. Around that time.

Q. And he came in around quarter to two? A. I would not say it was quarter to two.

Q. It was before two o'clock anyhow. A. Yes, it was before two, because I heard the two o'clock chime of the clock.

Q. When you got up the next morning was he gone or was he in the house? A. He was gone the next morning.

20

Cross-examination by Mr. McMahon:

Q. You have been convicted of crime?

Mr. Cutley: Yes or no.

A. Yes, I have.

AUGUST HELFERT, sworn for the defendant.

30

Direct examination by Mr. Cutley:

Q. What is your position? A. Patrolman, North Bergen Police Department.

Q. How long have you been such? A. Since February 15, 1927.

Q. Do you know the defendant, John King? A. Yes.

Q. On or about six o'clock in the morning of November 1, 1926, did you meet him? A. I do not recollect if it was the date, but I did meet him 40 on a Monday morning at that hour, between six and six thirty.

(August Helfert, for Defendant—Cross.)

(Oliver Chasmer, for Defendant—Direct.)

Q. With reference to this Spiegel murder, was that on the morning of the Spiegel murder? A. To the best of my knowledge and belief it was, because that evening I read the paper.

10 Q. Where did you meet him? A. On the corner of Robinson Street and Bergenline Avenue.

Q. Did you have any conversation with him?

A. No, sir; none at all.

Q. But you saw him there? A. Yes.

Q. How near Robinson Street and Bergenline Avenue is Crawley's place? A. One block.

Cross-examination by Mr. McMahon:

20 Q. This was six o'clock in the morning? A. Yes, six or six thirty.

OLIVER CHASMER, sworn for the defendant.

Direct examination by Mr. Cutley:

Q. What is your business? A. Chauffeur.

Q. What was your business November 1, 1926?

30 A. I was coming out of the house and I met John coming in.

Q. John King? A. Yes.

Q. Where was he? A. In the hallway of 510 37th Street.

Q. Is that Crawley's house? A. Yes.

Q. Did you have any conversation with him?

A. No, I just said hello John. He said hello to me, and that was all.

Q. He was going into Crawley's house at that time? A. Yes.

40

(*Oliver Chasmer, for Defendant—Cross.*)
 (*J. R. Crawley, for Defendant—Direct—Cross.*)

Cross-examination by Mr. McMahon:

Q. What time was it? A. About 6:15 in the morning.

Q. What day in the week was it? A. Monday morning.

10

Q. Was it raining? A. No, sir, not that I remember.

Q. Don't you remember whether it was raining or not? A. No, I do not.

JAMES R. CRAWLEY, sworn for the defendant.

Direct examination by Mr. Cutley:

20

Q. What is your business? A. Bricklayer.

Q. On or about six o'clock in the morning of November 1 did you reside up in West New York?

A. No, sir; North Bergen.

Q. Do you know the defendant, John King?
 A. Yes.

Q. Was he at your house that morning? A. Yes.

Q. Did he have some conversation with you?
 A. Yes.

Q. Did he have breakfast with you? A. Well, a cup of coffee.

30

Q. Did you have any conversation with relation to this Spiegel or some murder?

Mr. McMahon: I object to any conversation.

Cross-examination by Mr. McMahon:

Q. At six in the morning he was at your house?
 A. He was at my house at 6:25 or 6:27.

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(*Michael Hangley, for State—Direct—Cross.*)

Mr. Cutley: Is Mr. Walker here?

(No response.)

(DEFENDANT RESTS.)

10

MICHAEL HANGLEY, sworn for the State in rebuttal.

Direct examination by Mr. McMahon:

Q. Do you know this defendant John F. King?

A. Yes, I know him by name now.

Q. Did you ever talk with him soon after his arrest in this case when he was brought from New York? A. I did in Brooklyn headquarters.

20

Q. Did you ask him anything at that time about Matty the Ox? A. I asked him where was Matty the Ox.

Q. What did he say? A. He said he had not seen him in two or three months.

Cross-examination by Mr. Cutley:

Q. When you went over to Brooklyn didn't you think he had Matty the Ox over in Brooklyn? A. Not at that time, no.

30

Q. Wasn't the word sent to you that Matty the Ox and King were arrested in Brooklyn? A. No.

Q. And the man arrested was Frank Barrow, who has a big head of hair like Matty the Ox according to the pictures? A. No, you are mistaken about that.

Q. I am not mistaken about Frank Barrow, am I? A. Yes, he was arrested the next day after Johnnie King.

40

Q. Isn't that the story you got in the head-

(*M. Hangley, for State—Re-direct—Re-cross.*)

quarters in West New York, that Matty the Ox and King are over here in Brooklyn? A. No.

Q. And this Frank Barrow who was arrested there is an Italian apparently about the same height as Matty the Ox with a big head of wooly hair just like Matty the Ox's picture shows? A. No, the first message I got was Saturday night about eight o'clock. They told me to come over, that they had Johnnie King. The next night, Sunday night, I was told to go over, that they thought they had Matty the Ox. 10

Q. And the man they thought they had as Matty the Ox was Frank Barrow? A. Yes.

Q. And you know Matty the Ox? A. I do not.

Q. From the pictures what would you say was the resemblance between Matty the Ox and Barrow? A. I would say it was pretty good. 20

Q. Almost identical, isn't it? A. I would not say that.

Q. In other words you would be justified in picking up Barrow as Matty the Ox? A. No, because Barrow had a scar on the side of his face.

Q. Outside of the scar; the hair is the same, big wooly hair, both Italians. A. I would say they were justified in picking him up.

Re-direct examination by Mr. McMahon: 30

Q. Did you have a Governor's warrant from the State of New York on the request of the Governor of the State of New Jersey to apprehend and bring over to the State of New Jersey John F. King, this defendant? A. I did.

Re-cross-examination by Mr. Cutley:

Q. He waived extradition, didn't he? A. Yes, he did waive. 40

(Michael Hangle, for State—Re-cross.)

(John F. King, for Defendant—Direct—Cross.)

Q. So your warrant was not necessary as long as he was willing to come? A. They would not let me take him without.

10 Q. Under the laws of the State of New York they won't allow a prisoner to come without a warrant, but he did not demand extradition, did he? A. He signed a waiver.

Re-direct examination by Mr. McMahon:

Q. How did you find out where he was?

Mr. Cutley: I object as immaterial.

The Court: Objection sustained.

(The State rests on rebuttal.)

20

JOHN F. KING, called.

Direct examination by Mr. Cutley:

Q. You have heard Detective Hangle say he had some conversation with you in Brooklyn relative to the time you had last seen Matty the Ox. Did you ever have any such conversation with him? A. No, sir.

30

Cross-examination by Mr. McMahon:

Q. Did you have any conversation with him at all? A. Yes.

Q. But not about Matty the Ox? A. No, sir, not in Brooklyn.

Q. Did you have it in Jersey? A. He asked me about Matty the Ox in Brooklyn—in Jersey—I told him I did not know him.

40 Q. You told him you did not know him? A. Yes.

(Court's Charge.)

Q. You did not tell him you had not seen him in two or three months? A. No, sir.

TESTIMONY CLOSED.

(Counsel summed up to the jury.)

The Court thereupon adjourned to April 21, 1927.

10

Court's Charge.

The Court thereupon charged the jury as follows:

The Court: Gentlemen of the jury: The defendant, John F. King, is on trial before you charged by the State of New Jersey with the crime of murder.

20

There are three counts in the indictment, the first of which charges the defendant with murder, the second of which charges the defendant with manslaughter, and the third of which charges the defendant with assault and battery.

The Prosecutor at the commencement of the case announced that the State was going to abandon the second and third counts of the indictment and proceed against the defendant only on the first count. Therefore at the outset let me impress upon you that you are only to consider the first count of this indictment in determining the innocence or guilt of the defendant.

30

The first count of the indictment substantially alleges therein that the defendant in the Town of West New York, Hudson County, on the first day of November, 1926, wilfully, feloniously and with malice aforethought did kill and murder one Michael Spiegel contrary to the form of the stat-

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(Court's Charge.)

ute in such case made and provided, and against the peace of this State, the government and dignity of the same.

10 So much of our statute which defines murder as is applicable to this case is as follows: Any person who, in committing or attempting to commit arson, burglary, rape, robbery, sodomy, or any unlawful act against the peace of this State, of which the probable consequence may be bloodshed, shall kill another; or, if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid, shall be guilty of murder.

20 There is another section of our statutes which defines the degrees of murder, and so much of that statute as is applicable to this case is as follows: Murder which shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree.

30 The State alleges in the present case that the defendant, John F. King, in company with another, known as Matteo Palmieri, alias Matty the Ox, went to the saloon owned by the deceased, Michael Spiegel, at the corner of 23rd Street and Polk Street, West New York, in the early morning hours of Nov. 1, 1926, and entering the saloon attempted to rob Spiegel. The State contends that Spiegel resisted the attempt to rob him, and that a scuffle thereafter ensued which resulted in the defendant shooting Spiegel, and inflicting wounds which subsequently resulted in Spiegel's death. If the contention of the State has been
40 proved to your satisfaction beyond a reasonable

(Court's Charge.)

doubt under the rules of law which the court will lay down for you, then the defendant is guilty of murder in the first degree. There being no dispute between the State and the defense as to the fact that Spiegel was killed as the result of an attempt made to rob him, your only duty will be to decide whether the defendant is guilty of murder in the first degree or whether he should be acquitted, because the defendant under the facts in this case is either guilty of murder in the first degree or he is not guilty of any offense at all. 10

The State contends that the defendant is actually the one who fired the shots which resulted in Spiegel's death, but the court charges you that regardless of whether or not the defendant was the actual person who fired the shots, he would nevertheless be guilty of murder in the first degree if you decided from the evidence that he was one of the persons who attempted to rob Spiegel at the time Spiegel was killed. 20

The defendant in this case is presumed by our law to be innocent. The burden of proving his innocence is not upon him. The burden of proving the guilt of the defendant rests upon the State, and that burden is to prove the defendant guilty beyond a reasonable doubt. 30

Reasonable doubt is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that state that they cannot say that they have an abiding conviction to a moral certainty of the truth of the charge. If after considering all of the evidence adduced before you in this case you have such a reasonable doubt as to the guilt of the defendant you are bound under the law to resolve that doubt in favor of the defendant and 40

(Court's Charge.)

find him not guilty; but you are not bound to, nor should you, give the defendant the benefit of any other kind of a doubt except such a reasonable doubt as the court has defined for you.

10 The State has produced a number of witnesses to testify, one of whom was present at the time the attempted robbery was perpetrated, and others of whom saw various incidents connected with the case at various times after the shooting occurred. For instance, the witness Schmidt has taken the stand and testified that on the morning in question as Spiegel was about to close his saloon two men came in and asked Spiegel for a drink. Schmidt says that Spiegel apparently became alarmed through some actions on the part of the men and requested Schmidt to stay in the saloon with him until he had served them their drink. Schmidt says that shortly after the men came in the saloon one of them pulled out a gun and said to Spiegel, "Hand over your money," or words to that effect. Schmidt said that Spiegel resisted the attempt to rob him and grappled with the man with the gun, and that he, Schmidt, grappled with the other man. Apparently, from Schmidt's description of the scene, a fight that was fast and furious and noisy thereafter ensued, because Schmidt says that his own fight practically terminated when he threw a bar-chair after the man he was fighting with as this man ran from the saloon. Schmidt testified that he did not hear any shots and that he did not know that Spiegel had been shot until later. Schmidt was handed a picture which two police officers subsequently identified to be a picture of Palmieri, and was asked if he recognized the man whose picture that was. Schmidt said that he did, and identified 40 Palmieri as being the man with whom he had the

(Court's Charge.)

fight, but could not say who the other man was who was with Palmieri and could not identify King as being the man who pointed the revolver at Spiegel. Schmidt as the court recalls the testimony, is the only eye witness who was present when this trouble started. The State produced several other witnesses who testified as to various incidents, such as men leaving the saloon, and hearing noises, and hearing a fight or a quarrel being started in Spiegel's saloon, but none of whom can identify the defendant as being one of the men who was present near the saloon at the time the shooting occurred, with the exception of Augusta Spiegel, a daughter of the deceased. Miss Spiegel testified that on the night of the shooting she was upstairs in her room when she heard a lot of noise downstairs and going down she says that when she reached the doorway she saw a man and asked him what he was doing there, or words to that effect. She says that this man did not have any hat on and had no overcoat on, and that she knew she had seen the man prior to that night. She identifies the defendant as being the man whom she saw that night near her father's saloon.

The State further produced Mr. and Mrs. Schertel, who testified that King, who in the evening of October 31 was in the restaurant of John McGrath, about a block from Spiegel's saloon, left McGrath's saloon accompanied by another man whom the Schertels say they did not know at the time, but whom they subsequently identified from a picture to be Palmieri, and the Schertels say they took King and Palmieri to a place known as the Washington Restaurant, or cafe, to look for McGrath at the request of the bartender of McGrath's saloon. This testimony may be considered by you to be important, because the defendant denies knowing Palmieri at all.

(Court's Charge.)

10 The State further offered Fireman Fantry of the West New York Fire Department to prove that he and Palmieri and the defendant left McGrath's saloon together at or around 1:30 in the morning of November 1, and that the three of them went to Fantry's firehouse, and King and Palmieri, according to Fantry, went upstairs with him to the room where he was to sleep. The witness Ulrich, who was also a member of the West New York Fire Department on the morning in question, testified that he was in bed when Fantry arrived at the firehouse and that he saw Fantry walk through the room where Ulrich was sleeping, and that there were two other men there standing near the doorway.

20 Wright, the bartender of McGrath's saloon, testified that Palmieri was in McGrath's saloon on the evening of October 31 and the early morning of November 1 at the time that King was there, and Officer McDonald of the Guttenberg Police Force also testified that Palmieri was in McGrath's saloon at the time that King was there.

30 Lieutenant Hangle of the West New York Police Department testified that when the defendant was arrested in Brooklyn he, Hangle, spoke to him and asked him where Palmieri was, and that the defendant told him that he had not seen Palmieri in two or three months.

The State offered further evidence to prove that an effort was made to apprehend the defendant on the morning of November 1 but that he could not be located at his home in North Bergen and that he was not apprehended until March of this year in Brooklyn.

40 McGrath testified that on the morning of November 1 between 1:20 and 1:30 A. M. he closed his saloon and that Fantry, Palmieri and King

(Court's Charge.)

were the last persons to leave the saloon, and that they left together.

That substantially covers the important features of the State's case against the defendant, as the court sees the evidence. Of course, it may well be that the court has misquoted some of the testimony or has inaccurately stated some of the testimony, in which case you will be guided by your own recollection of the testimony and disregard what the court says the facts were, because you are bound by your own recollection of the testimony and not by what the court or anybody else says the evidence was, and you will consider and determine not only the testimony mentioned and commented upon by the court in the course of its charge, but you will consider and determine this case upon all the testimony adduced in the case.

Coming to the defendant's defense, the defendant contends that he is not guilty and he states that on the night of October 31 he was in McGrath's saloon, as various witnesses have testified, and that he is rather hazy as to what happened before 1:15 on the morning of November 1. The defendant gives as his reason for this haziness the fact that when some months ago he concentrated on an effort to remember his movements around the time the shooting of Spiegel occurred he considered it would be only important for him to remember what he had done after 1:15 A. M. on the morning of November 1. The defendant states positively that he does not know Palmieri. The defendant does remember going with the Schertels to the Washington Cafe to look for McGrath but his recollection of that automobile ride is that neither Palmieri nor anybody else accompanied him on that ride outside of Mr. and Mrs. Schertel.

(Court's Charge.)

The defendant also contradicts Fantry and says that he and Fantry left McGrath's saloon and that he and Fantry alone went to the firehouse and that there was no third party with them. In this connection the defendant also contradicts the testimony given by McGrath, the saloonkeeper. The
10 defendant says that Fantry was under the influence of liquor and that he alone went with Fantry to the firehouse and there undressed him and put him to bed. He testifies that he left the firehouse and that he arrived at his home about quarter of two, or in any event before two o'clock. He states that he then stayed up reading or correcting a story of his which had been rejected by a magazine, and that he fell asleep in an armchair.
20 He further states that some time before six o'clock the phone in his home rang and that somebody whom he does not know told him that McGrath, the saloonkeeper, had been arrested and that there was a murder committed near McGrath's saloon and that the West New York police were going to take him into custody. He stated that he was paroled from State Prison about five and one-half months previously and that he was afraid that he would again be thrown into jail charged with murder, and that in fear of the consequences
30 he fled to Brooklyn, where he subsequently was arrested in March. He denies having any conversation with Lieutenant Hangle in Brooklyn about Palmieri, but states that he had a conversation with Hangle in Hudson County about Palmieri and that he told Hangle he did not know Palmieri. He denies shooting Spiegel and denies being in Spiegel's saloon on the night the shooting occurred. His brother James testified that he himself arrived home on the morning of
40 November 1 about 1:35 A. M. and that some time

(Court's Charge.)

thereafter, and before two o'clock, his brother John, the defendant, arrived home. He states that he saw his brother take off his outside shirt but apparently does not know what the defendant did subsequent to that.

You as the members of the jury must decide the various issues of veracity that have arisen during the course of the trial. One of the things you will have to decide, and one of the things which it will perhaps be very important for you to decide, will be whether or not the defendant does know Palmieri. Are Mr. and Mrs. Schertel telling the truth when they say that the defendant and Palmieri were taken in their car to the Washington Cafe and subsequently brought back by them to McGrath's saloon? Are the Schertels telling the truth, are they lying or are they mistaken? Is King telling the truth when he says that to the best of his recollection there was no other man taken by the Schertels besides the defendant? Is Hanglely telling the truth when he says he spoke to the defendant in Brooklyn and asked the defendant where Palmieri was and the defendant told him that he had not seen Palmieri for two or three months? Is Hanglely telling the truth, is he lying, or is he mistaken, or is the defendant telling the truth, is he lying or is he mistaken when he says that he never told Hanglely any such thing, but that he told Hanglely in Hudson County that he did not know Palmieri? Is McGrath telling the truth, is he lying or is he mistaken when he says that Fantry, Palmieri and the defendant left his saloon together on the morning of November 1? Is Fantry telling the truth, is he lying or is he mistaken when he says that Palmieri and the defendant accompanied him to his firehouse after leaving McGrath's

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(Court's Charge.)

10 saloon on the morning of November 1? Or is the defendant telling the truth, is he lying or is he mistaken when he says that he does not know Palmieri and that he alone accompanied Fantry to the firehouse? Is Augusta Spiegel, who testifies positively that the defendant is the man she saw near her father's saloon around the time the shooting occurred, telling the truth, is she lying, or is he mistaken when he says that he did not speak to Augusta Spiegel on the morning in question and that the first time he ever saw Augusta Spiegel was when he saw her in the court room?

20 It is proper that you should take into consideration in deciding and determining this case the fact that the defendant fled from his home on the morning of November 1 and that he was not apprehended until several months later. You may consider whether or not the defendant is telling the truth when he says that he fled because he was afraid of being arrested. Is his flight an evidence of his guilt? That is for you and for you alone to decide. Examine carefully his testimony with regard to his flight to Brooklyn and determine for yourselves what conclusions you are to draw from it and whether you believe that he fled because he was merely afraid of being arrested, or whether he fled in an effort to evade arrest and prosecution for a crime which he may have committed.

30 The defendant has admitted that he has been previously convicted of crime. You may take into consideration in determining the truth or veracity of the defendant's testimony this prior conviction of crime and determine for yourselves whether or not this previous conviction affects the defendant's credibility as a witness, and if so to what extent. You have seen and have heard all of the

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(Court's Charge.)

witnesses in this case who have testified. How did these various witnesses impress you? You have the right to ask yourselves that question. You have the right to determine the amount of weight and credibility to be given to the testimony offered by each witness. You have the right to consider and determine whether or not any witness has any interest or motive in offering his testimony, and in that connection it is proper for you to consider that the defendant himself is the most interested person in all the world in your verdict. Has his interest in the outcome of this case affected his credibility as a witness, and if so to what extent? That is for you and for you alone to decide. 10

You will decide this case upon the facts and the facts alone. In deciding this case you must not be swayed by any passion or prejudice of any kind, nor must you be swayed by any sympathy of any kind. If the State has not satisfied you beyond a reasonable doubt as to the guilt of the defendant then it is your duty to bring in a verdict of acquittal. On the other hand if the State has convinced you beyond a reasonable doubt as to the guilt of the defendant it will be your duty to bring in a verdict of guilty of murder in the first degree, and no other consideration but the evidence in this case, and the evidence alone, should move you or influence you in determining the issue that you will have to decide when you retire to the jury room. 20 30

It is hardly necessary for the court to caution you that this is an important and serious case—not only important to the State of New Jersey but important to the defendant. Your verdict is limited, under the instructions of the court, either to guilty or not guilty of murder in the first de- 40

(Court's Charge.)

gree. You will therefore see how important it is that you should give the best and the most careful and conscientious consideration to the testimony in this case in order that your verdict may be an honest one and a just one. You have taken
10 an oath to God at the outset of this case that you will determine and decide this case in accordance with the light that the Almighty gives you. If you search through this case and honestly endeavor to find the truth in this case and which side is telling the truth, and base your verdict only upon what you conceive to be the truth, then when you return to this court room with your verdict you can feel that you have done your full duty as honest, conscientious jurors and citizens
20 of the State of New Jersey. Under those circumstances whether your verdict be right or wrong you have done your full duty as it is expected of you, and nobody can criticize you or find fault with you.

Counsel for the defendant have handed me several requests to charge.

Request number one the Court refuses to charge except as otherwise charged by the Court.

Request number two is as follows: "Evidence
30 of prior conviction of crime was not allowed in order that you thereby determine that because of prior conviction the defendant might be more likely to commit the crime charged now, but such conviction of crime are in evidence solely to affect his credibility as a witness in this case and must not be determined by you for any other purpose."

The Court so charges you.

Request number three is as follows: "The presence of the defendant in this case at the place of
40 the alleged crime is an essential link in the chain

(Court's Charge.)

of proof; such presence like any other essential fact must be established beyond a reasonable doubt." The Court so charges you.

Request number four is as follows: "If the testimony in this case in regard to the defendant's presence on the morning of November 1, 1926, at Spiegel's saloon creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt, you must acquit the defendant." The Court so charges you.

10

Requests numbers five and six are refused except as otherwise charged by the Court.

Request number seven is as follows: "The defendant does not have to exculpate himself but the burden is on the state and never shifts." The Court so charges you.

20

Request number eight the Court refuses to charge except as otherwise charged by the Court.

Request number nine the Court refuses to charge except as otherwise charged by the Court.

Request number ten is as follows:

"On the whole case if you are not satisfied beyond a reasonable doubt the defendant is entitled to an acquittal."

The Court so charges you.

30

If after the consideration of all the evidence in this case it should be your finding that the defendant is not guilty, it will be your duty in such event to acquit the defendant and you should find him not guilty by your verdict. If after the conclusion of your determination you should find the defendant guilty it will be necessary for you under those circumstances to specify that you find the defendant guilty of murder in the first degree.

In the event that you find the defendant guilty, since you can only find him guilty of murder in

40

(Court's Charge.)

the first degree, if you find him guilty at all, it will be necessary for you to have in mind a statute of this State which I shall read to you. This statute gives you as the jury in this case, should you find the defendant guilty of murder in the first degree, the power to make a recommendation as to the court relative to the punishment which shall be inflicted upon the defendant. The statute reads as follows:

“Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death, unless the jury shall by their verdict, as a part thereof, upon a full consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this, and no greater punishment shall be imposed.”

So that if you find the defendant guilty and you make no recommendation, the punishment meted out to this defendant shall be death; and if in the event of your returning a verdict of guilty you shall determine that the penalty to be imposed shall be imprisonment at hard labor for life, it will be necessary for you in your verdict, and as a part thereof, to recommend imprisonment at hard labor for life in which case that will be the punishment imposed. In other words your verdict in such event shall be:

“We find the defendant guilty of murder in the first degree, and recommend imprisonment at hard labor for life.”

Now, members of the jury, the case passes into your hands. You have all the facts. You and each of you I trust understand your duty and the solemn oath which binds you to it—your duty to this defendant and also your duty to the State of New

(Court's Charge.)

Jersey—and your duty to the one is no less solemn and exacting than to the other.

Mr. Cutley: I would like a general exception to the charge, and particularly to that part where the court said that there was no dispute about the fact that a robbery was perpetrated or an attempt was made to perpetrate a robbery. 10

Secondly, where the court in quoting Augusta Spiegel used the words that Augusta Spiegel asked the defendant what he was doing there—on the ground those are not the words used by said Augusta Spiegel.

Third, where the court asked the jury, was Augusta Spiegel telling the truth when she positively identified the defendant—on the ground that the question of the characterization as “positively identified the defendant” was a question for the jury under all the circumstances to ascertain for themselves. 20

And I further ask an exception on the ground that the court has not as requested charged on the question of the defendant's defense of alibi.

The Court: I could not use your language in that.

Mr. Cutley: I ask an exception to the refusal of the court to charge the requests as presented to the court. 30

Exception allowed and sealed.

ROBERT V. KINKEAD.

(The jury was called back to court.)

The Court: Gentlemen of the jury, the court intended to charge you on the question of alibi, and it has come to the court's attention that in the course of the court's charge the court said nothing 40

(Court's Charge.)

on that subject. This defendant is on trial for his life, and that is a topic which the court should have touched upon, and therefore the court has recalled you for the purpose of charging you as follows: That the law in this State is well settled that where the presence of the defendant at the scene of the alleged crime is an essential link in the chain of proof, such presence, like any other essential facts, must be proved beyond a reasonable doubt. On the interposition of an alibi any one of three conclusions may be reached by the jury. The first one is that the defendant was present, notwithstanding such evidence. The second is that he was absent, in which case he is said to have proved his alibi; and the third is that the testimony may have created such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt of the crime in question, and that by putting the burden on him to prove his absence by preponderance of the evidence he is deprived of the benefit of that reasonable doubt.

Now gentlemen of the jury, if the evidence in this case on the question of alibi has created a reasonable doubt in your minds as to the guilt of the defendant, even though the defendant may not have conclusively proved his alibi, then under those circumstances it will be your duty to acquit him, because if his alibi causes a reasonable doubt in your minds as to his guilt, under those circumstances you would not be convinced beyond a reasonable doubt as to his guilt and you should acquit him.

The court also wishes to make a comment upon a characterization that the court applied to the testimony of Augusta Spiegel. If the court recalls correctly what the court said on that subject,

(Defendant's Requests to Charge.)

the court said that Augusta Spiegel positively identifies the defendant as being the man whom she spoke to near her father's saloon on the night in question. The court, if it said that, corrects the word "positively," and leaves the question of Augusta Spiegel's identification of the defendant entirely and solely to you. You are to say whether or not she positively identified him, whether she failed to identify him, whether she knows that he is the man or whether she is mistaken when she says that he is the man. 10

The court recalled you just for those facts. You may retire now and consider of your verdict.

(The jury again retired and later returned to court, to wit at one o'clock P. M., and, through their Foreman, announced that they found the defendant guilty of murder in the first degree with the recommendation of imprisonment for life at hard labor.) 20

Mr. Cutley: I ask that the jury be polled.

(The jury was thereupon polled and each juror in turn announced his finding of "Guilty of murder in the first degree with recommendation of imprisonment for life at hard labor.") 30

DEFENDANT'S REQUESTS TO CHARGE.

1. The defendant at the bar is presumed by the law to be innocent.

The burden of proof is cast upon the State by the law to prove each and all of the essential elements of the offence charged beyond a reasonable doubt.

This burden rests upon the State throughout the entire trial and never shifts. 40

Reasonable doubt is not a mere feasible doubt.

(Defendant's Requests to Charge.)

It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

10 If therefore after you have carefully compared and considered all the evidence in the case your mind is left in that condition that you cannot say that you have an abiding conviction to a moral certainty of the truth of the charge, then you have what the law calls a reasonable doubt and it is your duty to give the benefit of such reasonable doubt to the defendant and acquit him.

20 2. Evidence of prior conviction of crime was not allowed in order that you thereby determine that because of prior conviction the defendant might be more likely to commit the crime charged now, but such convictions of crime are in evidence solely to affect his credibility as a witness in this case and must not be considered by you for any other purpose.

30 3. The presence of the defendant in this case at the place of the alleged crime is an essential link in the chain of proof, such presence like any other essential fact must be established beyond a reasonable doubt.

4. If the testimony in this case in regard to the defendant's presence on the morning of November 1, 1926, at Spiegel's saloon, creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt you must acquit the defendant.

(Defendant's Requests to Charge.)

5. In considering the testimony of the witness Augusta Spiegel you are entitled to weigh her testimony as to the opportunity she had to observe the man she says was the defendant and as to whether in the short space of time she observed part of his features whether she is telling the truth. You may also consider her relationship and that she is an interested party. 10

6. You have also the right to take into consideration in relation to her testimony regarding her actions in West New York Police Court, if the evidence warrants you in believing it, what she said if anything in relation to the frame-up or what you recall her testimony was on that point.

7. The defendant does not have to exculpate himself but the burden is on the State and never shifts. 20

8. If the evidence in the case is even on the question of alibi inconclusive that you cannot say that the defendant was present at the scene of the killing your verdict must be not guilty.

9. The State must prove beyond a reasonable doubt that a robbery was to be perpetrated and you must take all the evidence into consideration and if you are not satisfied that there was an attempt to rob then your verdict cannot be murder in the first degree. 30

10. On the whole case if you are not satisfied beyond a reasonable doubt the defendant is entitled to an acquittal.

Certificate.HUDSON COUNTY COURT OF OYER
AND TERMINER.

10	THE STATE OF NEW JERSEY <i>vs.</i> JOHN F. KING, Defendant.	} On Indictment. } CERTIFICATE.
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20 I, ROBERT V. KINKEAD, Judge of the Court of Oyer and Terminer in and for the County of Hudson, 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 indictment in the above stated cause, in the State of New Jersey *vs.* John F. King.

ROBERT V. KINKEAD,
Judge.

Dated, September 13th, 1927.

30 *To the Honorable Justices of the Supreme Court of Judicature at Trenton, N. J.:*

I return herewith, as I am commanded, the entire record in the case of The State *vs.* John F. King, for murder, December Term, 1926, with all things touching the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County this 13th day of September, 1927.

40 ROBERT V. KINKEAD,
Judge.

Assignment of Errors.

NEW JERSEY SUPREME COURT.

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

vs.

JOHN F. KING,
Plaintiff-in-Error.

In Error.
ASSIGNMENT
OF ERRORS.

10

Afterwards, to wit, before our Justices of our said Supreme Court at Trenton, comes the said John King by his attorney, George E. Cutley, and says that the record and proceedings aforesaid and also in the giving judgment upon the indictment there is manifest error in this:

20

1. Because the Court refused to charge, "The State must prove beyond a reasonable doubt that a robbery was to be perpetrated and you must take all the evidence into consideration and if you are not satisfied that there was an attempt to rob then your verdict cannot be murder in the first degree."

30

2. Because the Court charged "There being no dispute between the State and the defense as to the fact that Spiegel was killed as the result of an attempt made to rob him, your only duty will be to decide whether the defendant is guilty of murder in the first degree or whether he should be acquitted because the defendant under the facts in the case is either guilty of murder in the

40

(Assignments of Errors.)

first degree or he is not guilty of any offense at all."

10 3. Because the Court charged, "Your verdict is limited, under the instructions of the Court either to guilty or not guilty of murder in the first degree."

4. Because the verdict of the jury was contrary to and against the weight of the evidence.

20 Wherefore, said plaintiff-in-error, John F. King, prays that the judgment and sentence aforesaid by reason of the aforesaid errors in the record and proceedings aforesaid and the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing and that the said John F. King may be restored in all things by him lost on occasion thereof.

Geo E Cutler
Attorney for Plaintiff-in-Error.

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Specification of Causes for Reversal.

NEW JERSEY SUPREME COURT.

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

vs.

JOHN F. KING,
Plaintiff-in-Error.

In Error. 10
SPECIFICATION
OF CAUSES FOR
REVERSAL.

The plaintiff-in-error sets forth the following specification of causes for reversal of the judgment heretofore entered against the plaintiff-in-error in the Hudson County Court of Oyer and Terminer, wherein the plaintiff-in-error claims that he suffered manifest wrong and injury in the admission and rejection of testimony, in the charge of the Court, and the denials of matters of discretion by the Court, to wit: 20

1. Because the Court refused to charge, "The State must prove beyond a reasonable doubt that a robbery was to be perpetrated and you must take all the evidence into consideration and if you are not satisfied that there was an attempt to rob then your verdict cannot be murder in the first degree." 30

2. Because the Court charged, "There being no dispute between the State and the defense as to the fact that Spiegel was killed as the result of an attempt made to rob him, your only duty will be to decide whether the defendant is guilty of murder in the first degree or whether he should 40

(Specifications of Causes for Reversal.)

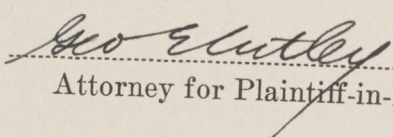
be acquitted because the defendant under the facts in the case is either guilty of murder in the first degree or he is not guilty of any offense at all."

10 3. Because the Court charged, "Your verdict is limited, under the instruction of the Court either to guilty or not guilty of murder in the first degree."

4. Because the verdict of the jury was contrary to and against the weight of the evidence.

The verdict, judgment and sentence was in many respects illegal and contrary to law and should be set aside.

20


Attorney for Plaintiff-in-Error.

30

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Joinder in Error.

HUDSON COURT OF QUARTER SESSIONS.

 THE STATE OF NEW JERSEY,

vs.

 JOHN F. KING,
 Defendant.

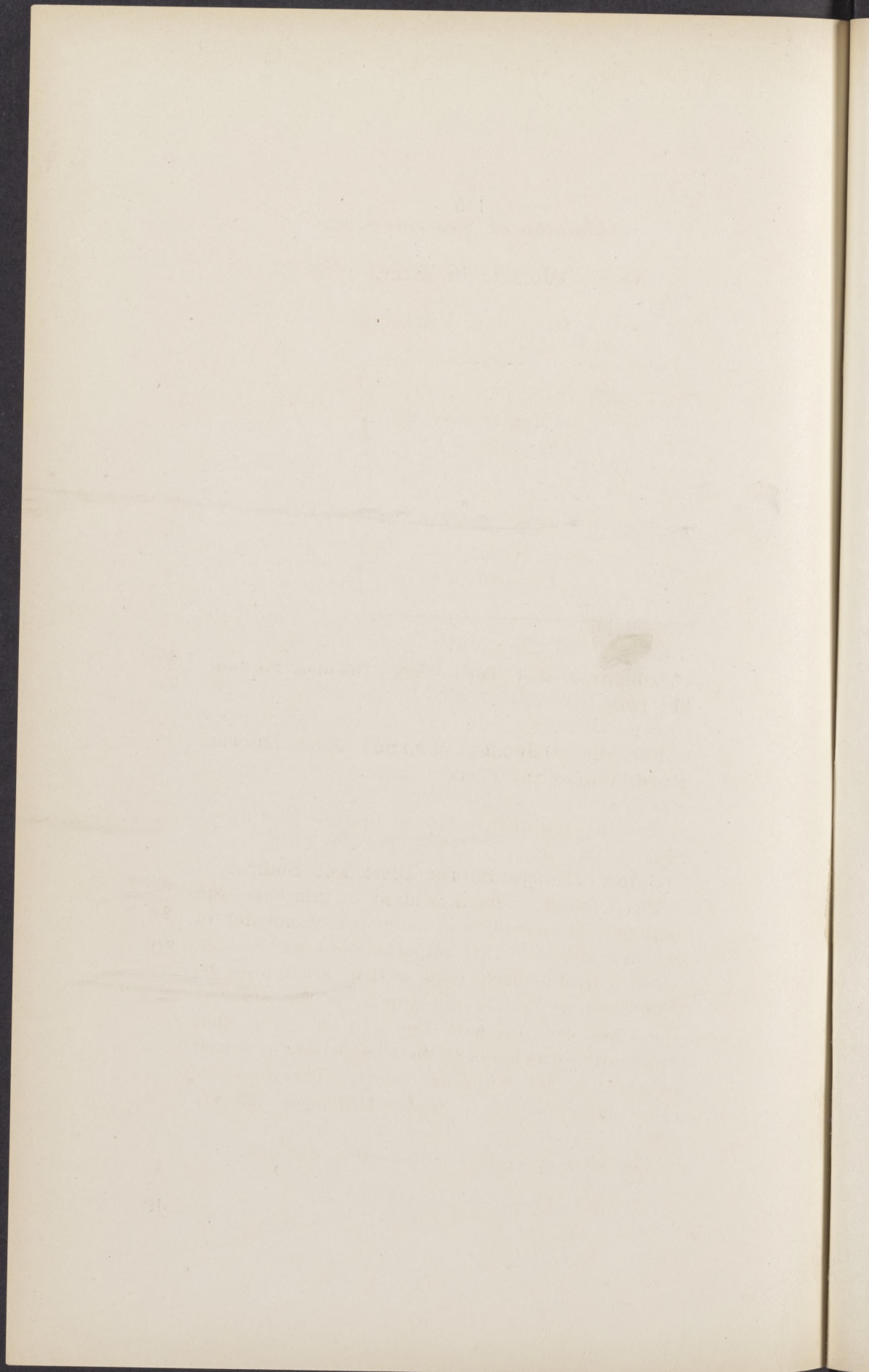
On Error.

 JOINDER IN 10
 ERROR.

And thereupon the State of New Jersey, defendant-in-error, by John Milton, its attorney, 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 proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error and the judgment aforesaid, in the manner aforesaid given, may in all things be affirmed, etc. 20

JOHN MILTON,
 Attorney for Defendant-in-Error.

30



Opinion of Supreme Court

NEW JERSEY SUPREME COURT

No. 5, MAY TERM, 1929.

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JOHN KING,
Plaintiff-in-Error.

10

On Writ
 of Error.

Submitted May Term 1929; Decided September 1929.

20

For the Defendant-in-Error, John Drewen,
 Prosecutor of the Pleas.

For the Plaintiff-in-Error, George E. Cutley,
 Esq.

Before Justices Parker, Black and Bodine.

PER CURIAM: The defendant in this case was indicted for murder and convicted of murder in the first degree. Life imprisonment was recommended by the jury. The writ of error must be dismissed, as it does not appear in the State of the Case sent up with the writ of error, that application was made to the Chancellor for a writ of error to the Supreme Court. This must be done under the case of *State v. Giberson*, 119 Atl. 284.

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The writ of error, is, therefore, dismissed.

40

Reason for Reversal

NEW JERSEY COURT OF ERRORS AND
APPEALS

10

JOHN KING,
Plaintiff-in-Error,

vs.

STATE OF NEW JERSEY,
*Defendant-in-Error.*On Writ
of Error.

20

And now comes JOHN KING by George E. Cutley, his attorney and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and the said John King says that the said judgment should be reversed and assigns the following reason or cause:

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1. Because the Supreme Court affirmed the judgment of the Hudson County Court of Oyer and Terminer though that judgment should have been reversed.

Respectfully submitted,

GEORGE E. CUTLEY,
Counsel for Plaintiff-in-Error.

40

Joinder in Error

NEW JERSEY COURT OF ERRORS AND
APPEALS

JOHN KING,
Plaintiff-in-Error,

vs.

STATE OF NEW JERSEY,
Defendant-in-Error.

10

On Writ
of Error.

And, thereupon, the said State of New Jersey,
by John Drewen, its attorney, comes into Court
and says that there is no error either in the
record and proceedings aforesaid, or in giving
the judgment aforesaid and he prays that the
Court here may proceed to examine as well the
record and proceedings as the matters aforesaid,
in manner aforesaid given, may in all things be
affirmed, etc.

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Attorney of Defendant-in-Error.

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D

Writ of Error

NEW JERSEY, ss:
(L.S.)

*To the Honorable, the Justices of the Supreme
Court of the State of New Jersey:*

10 Because in the entire record and proceedings
and entire record of the proceedings and also in
giving a judgment against JOHN KING upon a
certain indictment in the County of Hudson, State
of New Jersey, aforesaid, for murder, and the
said John King, as it is said, manifest error hath
intervened to the great damage of the said John
King, as from his complaint we have received
information, and we being willing in this behalf
20 to correct the error in due manner, if any there
shall be, and that speedy justice be done to him,
the said John King, command you that if the
judgment be thereon given that you distinctly
and openly send under your seal the records and
proceedings aforesaid with all things touching the
same to the New Jersey Court of Errors and
Appeals, on the twenty-first day of October next,
and this writ, that the record and proceedings
aforesaid being inspected we may further cause
30 to be done thereupon for correcting that error
what of right and according to law ought to be
done.

Witness, EDWIN ROBERT WALKER, Chancellor at
Trenton, aforesaid, the first day of October, A.D.,
Nineteen hundred twenty-nine.

JOSEPH F. S. FITZPATRICK,
Clerk.

GEORGE E. CUTLEY,

40 Attorney for Plaintiff-in-Error.

155 OCT. 1. 1929

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant-in-error,

vs.

JOHN F. KING,
Plaintiff-in-error.

On Error.

BRIEF OF DEFENDANT-IN-ERROR.

Facts.

John F. King was convicted of murder in the first degree and a punishment of life imprisonment was recommended by the jury. On November 1st, 1926, John F. King in company with one Matteo Palmeri, known as "Matty the Ox", went to the saloon of one Spiegel at 560 Twenty-third Street, West New York, N. J., at about 2 o'clock in the morning. The proprietor was closing up. King and Palmeri asked for a drink and were refused, but prevailed upon Spiegel to give them one. The proprietor (Spiegel) asked one of his customers to stay with him while he served the men. While Spiegel was serving the beer King "hailed out a revolver and said 'Give us the money you have got.' " A tussle ensued and King was put out of the place, and while Spiegel was in the act of locking the door King shot through the door from the street, killing Spiegel. Palmeri was wrestling with Schmidt (the man who remained with Spiegel). Palmeri got away, leaving a part of his scalp in Schmidt's hand. King

New Jersey State Library

became a fugitive and was captured in Brooklyn, N. Y., some time after the murder. He has been in jail since his conviction and is there now.

POINT I.

The ruling of the Supreme Court dismissing, as improvident, the writ of error issued out of that Court was correct and should be affirmed.

The writ of error in this cause is directed to the New Jersey Supreme Court, which dismissed the writ issued out of that Court, because it was improvidently issued. If this ruling was correct there is nothing before this Court to be reviewed as the record is in the Hudson Oyer and Terminer. It is contended therefore that the other questions raised in the brief cannot properly be discussed.

King was convicted of murder in the first degree and the jury recommended life imprisonment. There does not appear anywhere in the state of the case any evidence that application was made to the Chancellor for a writ to the Supreme Court, but on the contrary, the writ issued as a writ of right to this Court. In *State v. Giberson*, 119 Atl., p. 284, the Chancellor holds that a capital case retains its character of capital although a milder punishment may be inflicted, and that in such cases application for writs to the Supreme Court should be made to the Chancellor for a writ of grace.

Kohl v. State, 59 Law. 195;

State v. Merra, 134 Atl. 558.

In this case, the Supreme Court in its *per curiam* opinion adopted the reasoning set forth above and dismissed the writ. This ruling, it is respectfully submitted, was correct and should be affirmed.

POINT II.

No error was committed by the Court in its statement of facts argued under Point III of appellant's brief.

The defendant did not contest the fact that Spiegel was killed in an attempt to rob him. He alleged he wasn't there at the time of the killing. He was elsewhere. The argument of counsel under this point that because Spiegel rushed King out of his store negated the testimony of Schmidt is merely argument and has no probative force. It negatives nothing. The testimony of the Brauert woman, who was looking from her room across the street, confirms the fact that King had a gun, but she cannot say whether he had it in his hand or not when he was thrown out of the saloon. All she knew was that the shooting "went so quick, terrible quick" after the expulsion of King (S. C., p. 80, l. 24). All of this does not destroy Schmidt's testimony, raises no dispute, and the Court did not misstate the situation.

POINT III.

The Court properly refused to charge as alleged in Point II of appellant's brief.

There was no duty cast on the State to show that a robbery *was to be* perpetrated. The State met its obligation if it showed that in attempting a robbery Spiegel was killed. The thought behind the request complained of was fully covered by the Court in this language:

"The State contends that Spiegel resisted the attempt to rob him, and that a scuffle

thereafter ensued which resulted in the defendant shooting Spiegel, and inflicting wounds which subsequently resulted in Spiegel's death. If the contention of the State has been proved to your satisfaction beyond a reasonable doubt under the rules of law which the Court will lay down for you, then the defendant is guilty of murder in the first degree" (S. C., p. 132, l. 35, *et seq.*).

POINT IV.

There was no error in limiting the conviction to murder in the first degree.

By limiting the crime to murder in the first degree, the Court acquitted the defendant of all the other counts and no manifest wrong or injury resulted to the defendant. The State has a right to abandon that count (manslaughter). It was not error for the Court to charge on the crime of manslaughter.

State v. Sage, 99 L. 229;

State v. Fiore, 93 L. 362.

POINT V.

The verdict was not contrary to the weight of the evidence.

There was abundant testimony upon which the jury could base their verdict in this case. The defendant was shown to be in the saloon of McGrath at Twenty-fourth Street and Polk Street in company with "Matty the Ox," by the witness McDonald, at 12:30 P. M. (S. C., p. 30, l. 19). The witness Schertel (S. C., p. 36, l. 30) says Matty the Ox and King were together in McGrath's sa-

loon, and that King and Matty got in the car with Schertel and his wife and drove to another saloon and back again to McGrath's place. Mrs. Schertel corroborates her husband. Matty the Ox was positively identified by Schmidt, who struggled with him in the perpetration of the robbery. The man who was thrown out of the saloon and who shot Spiegel ran to the side door of the saloon; this man was seen and identified by Miss Spiegel. She spoke to him. King became a fugitive from justice. Two hats were found in the place, one of the hats fitting King and being the same head size that he was wearing at the trial—an unusual size—7 $\frac{3}{8}$.

Defendant denied knowing Matty the Ox. Yet the officer who arrested him in Brooklyn testifies that King said that he (King) had not seen Matty the Ox in three months (S. C., p. 128, l. 10, *et seq.*). The defendant himself says as to his disappearance when he heard he was wanted by the police:

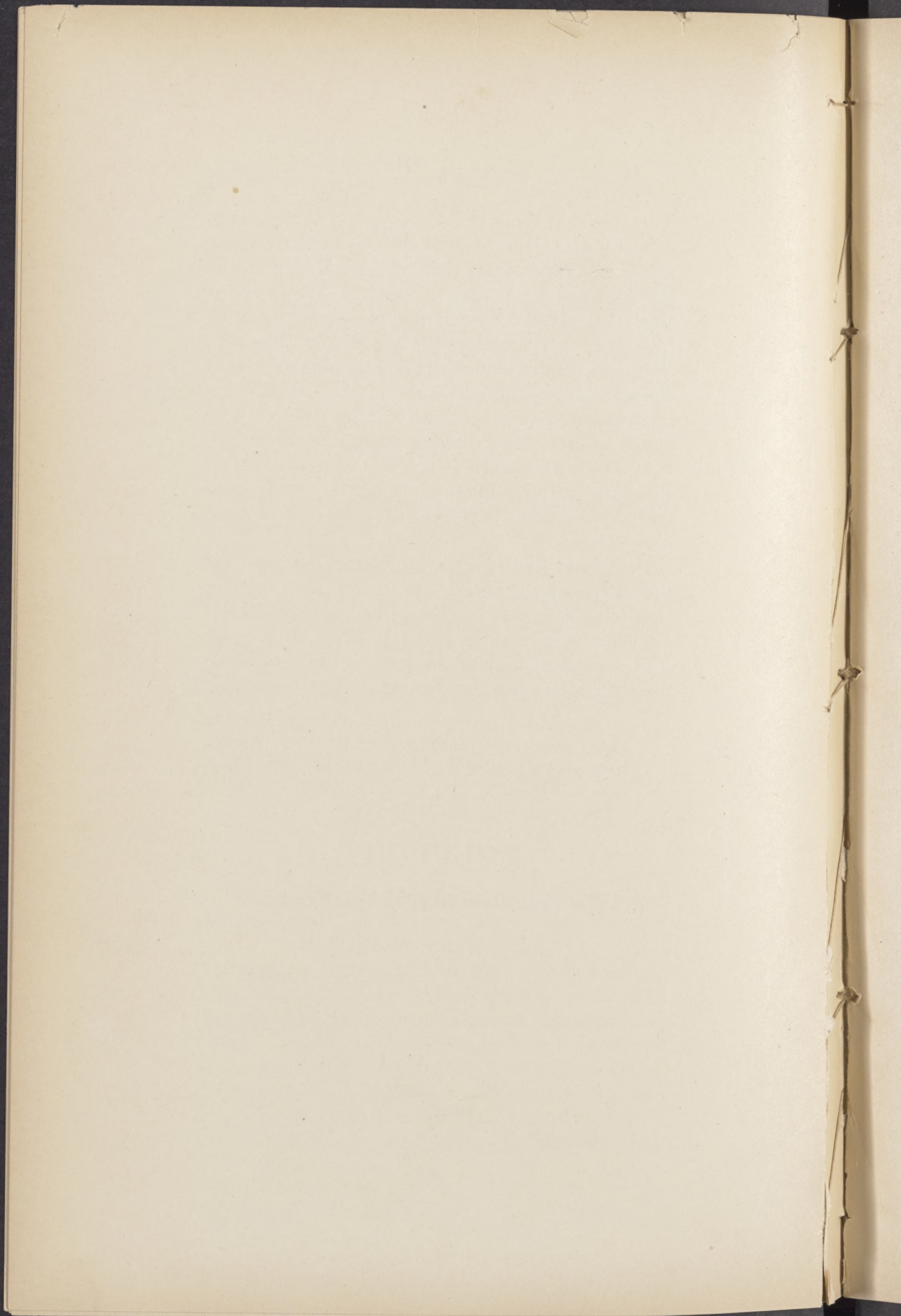
“I decided to go out of town until I knew more about this case and knew what charge they were trying to hang on me” (S. C., p. 112, l. 19).

POINT VI.

The conviction should be affirmed.

Respectfully submitted,

JOHN DREWEN,
Prosecutor Pleas,
Hudson County.



New Jersey Court of Errors and Appeals

JOHN KING,
Plaintiff-in-Error,

vs.

STATE OF NEW JERSEY,
Defendant-in-Error.

On Writ
of Error

BRIEF OF PLAINTIFF-IN-ERROR

John King, the plaintiff-in-error was convicted of murder in the first degree with recommendation of imprisonment for life at hard labor in the Hudson County Court of Oyer and Terminer. A writ of error was issued out of the New Jersey Supreme Court to review the legality of King's conviction and the New Jersey Supreme Court in an opinion filed, deciding that the writ of error issued out of the New Jersey Supreme Court was improvidently issued. To review the judgment of the New Jersey Supreme Court the present writ of error has been sued out and error has been assigned upon the judgment of the New Jersey Supreme Court and a specification of cause for reversal founded upon the New Jersey Supreme Court's determination is presented to this Court, for review.

There is but one reason for reversal to be argued in this Court and it is the following: "1. Because the Supreme Court affirmed the judgment of the Hudson County Court of Oyer and Terminer though that judgment should have been reversed."

The plaintiff-in-error presents his argument for reversal under four points, first, that the Supreme Court erred in dismissing the writ of error issued out of the Supreme Court as improvident, and if that point be decided for plaintiff in error, second, that there was error in the refusal of the trial Court in its refusal to charge request made by defendant, third, that there was error in the charge of the Court and fourth, that the verdict was contrary to and against the weight of the evidence.

At page 151 of the printed state of the case complaint was made:

1. Because the Court refused to charge:

"The State must prove beyond a reasonable doubt that a robbery was to be perpetrated and you must take all the evidence into consideration and if you are not satisfied that there was an attempt to rob then your verdict cannot be murder in the first degree."

2. Because the Court charged:

"There being no dispute between the State and the defense as to the fact that Spiegel was killed as a result of an attempt made to rob him, your only duty will be to decide whether the defendant is guilty of murder in the first degree or whether he

should be acquitted because the defendant under the facts in the case is either guilty of murder in the first degree or he is not guilty of any offense at all."

3. Because the Court charged:

"Your verdict is limited under the instruction of the Court either to guilty or not guilty of murder in the first degree."

4. Because the verdict of the jury was contrary to and against the weight of the evidence.

Facts.

The State alleges that on the morning of November 1, 1926, the plaintiff-in-error in the company of another man entered the saloon of Michael Spiegel and after buying a drink demanded all the money that Spiegel had, made an attempt to rob Spiegel. Spiegel refused and came from behind the bar and grabbed a man whom he threw into the street. A few minutes later a shot came through the door, struck Spiegel and he died a short while afterwards. Neither John Schmidt or the man who was in the saloon with Spiegel at the time could identify the plaintiff-in-error. At page ----:

"Q. Do you know the man who held the gun, would you be able to identify him? A. I do not think so."

Nor could Arnold Weeder who was standing outside the saloon identify the defendant. Page 87, lines 6 to 8:

“Q. You do not know who the other man was? A. No.”

At page 88, lines 1 to 2:

“Q. You saw the man who was fighting with Spiegel? A. I saw somebody, I don't know who it was.”

The State produced several witnesses who testified that the defendant was in company of one Matty Palmieri that night. The only witness who made any identification of the defendant was Augusta Spiegel who testified that on that night she heard loud talking and fighting. She came from upstairs and as she was coming down she saw a man to whom she spoke and that the defendant looked like the man.

The defendant took the stand and testified that at the time the murder was committed he was home writing stories or reading them, that he was not in Spiegel's saloon that morning, that he never knew Matty Palmieri who was supposed to be in the saloon that morning, that he was home in his house at 1:45 that morning, that he never knew of the murder until he was informed by telephone. That immediately thereafter he arose, dressed and went to New York. James King, brother of the defendant, testified that the defendant came home about 1:45 or 1:50 that morning. Several other witnesses were called by the defendant and they testified that they met him between 6 o'clock and 6:30 on that morning as he was going to New York.

POINT I.

The Supreme Court erred in dismissing the writ of error issued out of the Supreme Court as improvident. In its per curiam opinion dismissing the writ in the instant case the Supreme Court referred to the case of *State v. Iva Giberson*, which proceeding was an application for a writ of error from the Supreme Court on a conviction of murder in the first degree, with a judgment of life imprisonment and in that decision reference was made to various cases in this state, including the cases of:

State vs. Kohl, 59 N. J. L. 195;

State vs. Mauser, 91 N. J. L. 395; 92 N. J. L. 474;

State vs. Barrone, 96 N. J. L. 374.

In the Kohl case Kohl had been sentenced to be hanged. In the Mauser and Barrone cases both defendants had been sentenced to life imprisonment. The Giberson case which was a declaratory decision on the question of procedure approved of the reasoning in the decision of Mr. Justice Bergen in the Supreme Court upon the question of bail was adopted and the Chancellor said:

“In other words, if a capital case, which, as we have seen, means one in which the death penalty may be denounced, retains its character of capital, although a milder punishment may be inflicted, so, a case punishable with death, which is capital, retains its characteristic of punishable with death, notwithstanding a milder punishment may be inflicted.”

At the out set it may be called to the Court's attention that at the time of the adoption of the statute relating to writs of error, the only two cases punishable with death, were murder and treason. By reason of the enactment of the statute of 1919 wherey the jury is permitted to recommend life imprisonment in cases of conviction of murder in the first degree, the only case punishable with death, strictly speaking, is that of treason. It is the contention of the plaintiff-in-error, with all due deference to the decision in the Kohl case and the application for bail in the matter of Barone, that the punishability of the plaintiff-in-error's offense, while it may have been potentially punishable with death, up to the time of his conviction, from the instant that the jury makes its recommendation it comes within the words of the statute that writs of error in all criminal cases shall be considered as writs of right and issue of course.

The right of the Supreme Court to issue writs of error has been stated with conspicuous clarity by Chief Justice Beasley, in the case of *State v. Entries*, 47 N. J. L. 140:

"It is one of the inherent prerogative rights of the Supreme Court, originally possessed by it and established in it by the constitution of the state, to supervise all the errors and irregularities of the inferior tribunals, and when such errors have occurred, the remedy, in the first instance, must be sought in that tribunal. By the constitution the jurisdiction of this court, as a court of the last resort, was not enlarged, except that in the third clause of section 5 of article VI it is declared that "final judgments in any Circuit Court may be brought by writ of error into the Su-

preme Court or directly into the Court of Errors and Appeals." This appears to be the only instance in which the makers of the constitution manifest an intention to diminish, in any degree, in favor of this court, the superintendency of the Supreme Court, and in view of this, during the existence of a statute authorizing a procedure similar to the present one, more than one of such writs of error, going from this court to the Oyer, were declared here to be mere nullities."

Speaking in the Kohl case, where Kohl was to be hanged, Chief Justice Dixon uses the following language:

"The language of the opinion in the Entries case, which was not a capital case, must be restricted to the principle on which the decision rested. That principle is, that the jurisdiction of the Supreme Court existing at the adoption of our present constitution, was established by that instrument, and cannot be taken away by statute. What jurisdiction the Supreme Court had at that time by writ of error in criminal cases was defined by the thirteenth section of the Criminal Procedure act passed March 6th, 1795 (Pat. L., p. 162), which, prior to 1878, stood as the eighty-third section of the present act (Rev. p. 209), and is above recited. Under this law, the Supreme Court had absolute jurisdiction to revise on writ of error all judgments in criminal cases not punishable with death, and in such cases the legislature could not confer on this court the primary right of review."

The Plaintiff-in-error insists that the judgment of the Supreme Court should be reversed because the plaintiff-in-error having been sentenced to life

imprisonment had the right to pursue his writ of error in the Supreme Court and that under Section 134 of the Criminal Procedure Act, so much of that Act as requires the writ of error to issue out of the Court of Appeals in the instant case is unconstitutional, that the plaintiff-in-error had the right to go to the Supreme Court as a matter of right and that in a case of this character the dependent authority of the Chancellor's action was not a jurisdiction guaranteed and inherent in the Supreme Court as a constitutional incident.

Section 1, of article 7, of the constitution provides that "the judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachment; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require."

In the case of *Flanigan v. Guggenheim Smelting Co.*, 63 N. J. L. 647, Judge Adams, in delivering the opinion of the Court of Errors said: "* * * that the legislature cannot constitutionally deprive the Supreme Court of its exclusive right to issue, as heretofore, a prerogative writ, either by denying the use of such writ or by creating in another tribunal co-ordinate authority to employ it."

The integrity of constitutional courts has been judicially determined to be the content of whatever powers the particular court had at the time of the adoption of the constitution, together with whatever jurisdiction was exercised by a constitutional court, which powers and jurisdiction were

by the fact of the adoption of the organic instrument incorporated into the fundamental law and ensured against destruction or abridgement except through a change in the fundamental law itself, and were subject to no modification except in the mode defined in the constitution, for the amending of that fundamental. Many deciding cases have demonstrated that the legislature is impotent to abolish a constitutional *courts*, to change its organic character, to impair its jurisdiction, to lessen or diminish its authority, or authorize any other tribunal to share its original function, because of the inexorable sanction guaranteed by its being adopted as part of our constitutional foundation.

In *Traphagen v. Township of West Hoboken*, 10 Vroom 232, 234, Mr. Justice Van Sykel, in delivering the opinion by this court, used this language: "By force of section 1, of article 6, of the new constitution, the nature of the Supreme Court can be altered only by a modification of the constitution itself. Under this constitutional guarantee the powers which inhered in the court at the formation of the constitution must be unassailable by legislation. Asserting its power by means of its prerogative writs, that power would be impaired to the extent that it is restrained in the use of its appropriate process."

In *Flanagan v. Plainfield*, 15 Vroom 118, the question was whether the legislature could confer upon the Circuit Court the exclusive power in certain cases to allow a writ of certiorari. Mr. Justice Van Sykel, in writing the opinion of the Supreme Court, says: "The power to send these writs cannot be distributed and lodged in other courts at the legislative will. No tribunal of co-ordinate

jurisdiction can be erected. The right to invest the Circuit Courts with the certiorari power necessarily implies the right to confer it upon other inferior jurisdictions. The announcement of the proposition that to the District Courts of the state may be committed the right to issue writs of mandamus and quo warranto would create no little surprise. That, it is manifest, would destroy the due subordination of the several courts and disturb the harmony of the judicial system which it is the purpose of the constitution to guard and perpetuate. The dignity of the Supreme Court will fall far below that of the King's bench if exclusive power in this respect is withheld from it. There can be no contraction of the sphere within which the Supreme Court may dispense its prerogative writs except by extinguishing the tribunals to which they may be sent. A law is equally without authority whether it, in express terms or by its operation and affect, takes away or diminishes the inherent power of the court. A legislative scheme giving to the Circuit Court the use of any of these writs cannot be effectuated without violating fundamental principles."

The citation of these authorities amply illustrates the truth of the general proposition that the legislature lacks capacity to change the nature of the Supreme Court, either by direct abridgement of its original power, as existing at the time of the adoption of the constitution, or by weakening its authority by lodging functions inherent in the Supreme Court, in some other tribunal. Hence, we are confronted by the concrete question in this court as to whether in cases like the present, that is, where a man has been sentenced to life imprisonment, he is the plaintiff-in-error in a case

such as the statute describes as "cases punishable with death."

As Judge Adams said in the case of *Flanigan vs. Guggenheim Smelting Co.*, 63 N. J. L. 647, in approaching the solution of the question presented at that time, "This subject may be regarded from three points of view: That of mere reasoning; that of historical fact, and that of New Jersey authority."

The reasoning in the Barone case seems to be based upon the notion and probability that a person situated like the plaintiff-in-error, is deemed to be subject to all the disadvantages of a first degree murderer sentenced to the electric chair, because of the fact that if he is successful on writ of error, he may again be tried for a case which, at the second trial would come under the designation of a capital crime. If the logic of the court's opinion in the Barone case is unassailable, then, in a case like *State vs. Scarinzi*, reported in 144 Atl. Rep. 801, when the conviction was for assault and battery, Scarinzi would not have been entitled to bail, because in the event of his success in reviewing his conviction for assault and battery, *on a second trial, he potentially* might have been convicted of murder.

It is further suggested to the court that in the framers of the statute defining the procedure in cases of writs of error, must have been familiar with the etymology of the word "capital," and with that meaning set in their minds, must have used the term "punishable with death" to indicate a class of cases entirely distinct from those comprehended under the definition of cases that are

ordinarily known as capital cases, in the strict legal definition of the word "capital." If it had intended to ascribe to the words "punishable with death" the same meaning as is attributed to the word "capital," it is at least a decent presumption that the words "capital cases" would have been used instead of the words "punishable with death," and as has been said in this brief, without doing any violence to the intent of the legislature or its use of apt and felicitous language, the words "punishable with death" mean just what their words connote.

Looking at the subject raised by the issue on this writ of error as one born of historical fact fortified by the authorities of New Jersey, the attention of this court is directed to a series of cases decided in our Supreme Court, commencing with the case of *State vs. Schlemmer*, 51 N. J. L. 23, and including outstanding cases of importance up to the time of the decision in the case of *State vs. Carlino*, 98 N. J. L. 48, which case was decided in 1922.

In the *Barone* and *Mowser* cases both the Supreme Court and the Court of Errors and Appeals evidently treated the method of review as unobjectionable. See also:

State v. Schlemmer, 51 N. J. L. 23, 1888;
State v. Barone, 96 N. J. L. 417, 1921;
State v. Leo, 80 N. J. L. 21, 1910;
State v. Brunet, 88 N. J. L. 414, 1916;
State v. Kysilka, 84 N. J. L. 6, 1913;
State v. Genz, 57 N. J. L. 459, 1895;
State v. Fiore, 93 N. J. L. 362, 1919;
State v. Carlino, 98 N. J. L. 48, 1922;

State v. Biango, 75 N. J. L. 284, 1907;
State v. Agnesi, 92 N. J. L. 53, 1918;
State v. DiMaria, 88 N. J. L. 416, 1916;
State v. Carrigan, 93 N. J. L. 268, 1919;
State v. Lang, 66 Atl. 942, 1907;
State v. Sommers, 73 Atl. 49, 1909;
State v. Lionetti, 93 N. J. L. 24, 1919;
State v. Orrays, 84 N. J. L. 556, 1913.

In all of these cases the plaintiffs-in-error were charged with murder, the Supreme Court delivered opinions written by some of the most sagacious and eminent jurists who have ever adorned our bench. And, while in some of the cases, as the Mowser case, where Justice Swayze indicated that no question of the appropriateness of the review had been urged, it is hardly possible that irrespective of the objection by the prosecutor in the respective cases, that our Supreme Court would, for a period of over thirty years, have decided cases of such great moment, if in their minds there had been even the slightest notion of lack of regularity in the mode of procedure undertaken in the particular cases to which reference has been made as above.

It is further contended by the plaintiff-in-error that if the superintendency of the inferior tribunal is one of the inherent prerogative rights of the Supreme Court, originally possessed by it, and established in it by the constitution of the state, to supervise all the errors and irregularities of the inferior tribunals, (of which the Oyer and Terminer is admittedly one), the remedy in the first instance, as was said in the Entries case, must be sought in that tribunal, that is, the Supreme Court, and no condition of any kind or nature, whether it be the allocatur or certificate

of denial by a Chancellor, can be annexed to the exercise of a constitutionally inherent prerogative of the Supreme Court.

POINT II.

The Court refused to charges as follows:

“The State must prove beyond a reasonable doubt a robbery was to be perpetrated and you must take all the evidence into consideration and if you are not satisfied that there was an attempt to rob then your verdict cannot be murder in the first degree.”

The defendant requested the Court to charge the above request which the Court refused except as charges. The plaintiff-in-error contends that the robbery was an important element in the crime and should have been proven beyond a reasonable doubt before the verdict could be raised from the second degree to the first degree.

In the case of the *State v. Degeralmo*, 83 N. J. L. 135, the Court said:

“Where a request to charge calls for the application of a correct legal principle is applied to the testimony, and clearly material to defendant’s case, he is entitled to have it charged in such a way as not to leave room for misapprehension or mistake by the jury.”

The request in the present case contained a correct statement of the law, was applicable to the testimony and clearly material to the defendant’s case which he was entitled to have distinctly

charged, and in its refusal suffered manifest wrong and injury.

One of the most important duties of the Court is to declare the law applicable to a case to the jury when requested to do so. This should be done in such a way as not to leave room for misapprehension or mistake. -Citing *Roe v. State*, 16 Vroom 49:

“We are of the opinion that the defendant was entitled to have the legal proposition requested distinctly charged and that this was not complied with by the Court, unless the legal effect was sufficiently covered by its charge to the jury. (*Aldrich v. Beckman*, 45 Vroom 711; *Mellon v. Victor Talking Machine Co.*, 48 Vroom, 670.).”

16 Corpus Juris 1069 in respect to proper requests refused:

“Where proper request is made for an instruction which correctly propounds the law and is warranted by the evidence and pleadings in the case and which has not already been covered in other instructions, it is the duty of the Court to give it, and the refusal thereof will constitute error. The refusal of a concrete instruction is error although an abstract instruction on the same point has been given.”

12 Cyc. 666 in respect to proper requests refused:

“It is reversible error to refuse to give a proper instruction which is requested and which has not already been given.”

State v. Tanzarello, 1 Misc. Reports 375.

POINT III.

Because the Court charged as follows:

“There being no dispute between the State and the defense as to the fact that Spiegel was killed as the result of an attempt made to rob him, your only duty will be to decide whether the defendant is guilty of murder in the first degree or whether he should be acquitted because the defendant under the facts in this case is either guilty of murder in the first degree or he is not guilty of any offense at all.”

Exception was duly taken to this charge of the Court and particularly to this portion of the charge on the ground that robbery or an attempt to rob was an essential element in the matter of raising the murder to murder in the first degree.

The only testimony that was given in reference to element of the crime was given by John Schmidt who testified that they demanded all the money that Spiegel had. The element that a robbery or an attempt to rob seems to be negative by the fact that if Spiegel was being held up he would not throw the man out the door as he did but would think of the serious offense that was being perpetrated and make an attempt to hold the person until the police arrived. Also by the fact that Suzanna Brauert testified that when Spiegel threw the man out the door she saw no pistol in his hand but seemed as if he took it from his pocket. At page 80, lines 10 to 19 she said:

“Q. You are sure the man who did the shooting took the gun out of his pocket,

aren't you? A. He may have had it in his hand already but he had his hand in that position in his pocket.

Q. At his back pocket or his side pocket?

A. Pants pocket, the front pocket.

Q. Before you saw him come out of the saloon with Spiegel did he have a gun or did you see a gun? A. That I did not see."

The plaintiff-in-error contends that there was error in this portion of the charges because there was a dispute whether a robbery or an attempt was made to rob Spiegel and which resulted in Spiegel being killed. The fact the plaintiff-in-error's defense was an alibi did not eliminate any element of the crime from being proven beyond a reasonable doubt.

Plaintiff-in-error contends that there is some analogy to the situation presented in the case of the *State v. Noel*, 4 N. J. Advance Reports 854 in which the Court said:

"In his charge to the jury the trial judge said that Dr. Markens, a witness called in the State's main case, testified that the defendant knew the distinction between right and wrong. This witness did not so testify. It was a fact of importance which was directly contrary to the evidence. At the conclusion of the charge counsel for the defendant took an exception to this portion of the charge specifically calling the Court's attention to the fact that the Court had stated Dr. Markens has testified that the defendant knew the distinction between right and wrong and that he had not so testified. The trial judge did nothing to correct this statement in the charge after his attention had been directed to it."

It was a misstatement concerning the evidence on the most important question the jury had to decide. In the case of *Smith v. Bennett v. State*, 41 Id. 370, a misstatement with relation to a fact of moment, that it was proved, when there was no testimony to support it, was held to constitute reversible error. In the present case we are of the opinion that upon this ground the judgment should be reversed. *State v. Noel*, 4 N. J. Advance Rep. 854.

POINT IV.

Because the Court charged as follows:

“Your verdict is limited under instruction of the Court either to guilty or not guilty of murder in the first degree.”

Exception is taken to this part of the charge and error alleged in it, because it expressly limited the jury to finding murder in the first degree and did not leave the jury the right to find murder in the second degree when they might have found that there was no robbery or an attempt to rob the deceased.

POINT V.

The verdict of the jury was contrary to and against the weight of the evidence.

To justify a Court in setting aside a verdict in a criminal case under P. L. 1921, page 951, on the ground that it is against the weight of the evi-

dence, 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.

The case against the defendant was almost entirely circumstantial. There was no direct identification of the defendant with the exception of Augusta Spiegel, the daughter of the deceased, and she testified that he looked like him, at page 95, line 40. Neither Schmidt who was in the saloon nor Weeder who was outside when the men came in identified the defendant. The testimony of Augusta Spiegel was that she saw him for about two or three seconds on that night, page 93, line 10. This testimony was or should have been negative by her testimony of seeing the defendant in the West New York Police Station, page 94, lines 20 to 40.

“Q. Augusta, didn’t you see him in the West New York Police Station? A. Yes.

Q. Didn’t you look through the little hole in the door, they said he is in that little room in there? A. Yes.

Q. And you said ‘Where?’ and you said, ‘He is too nice a young man to frame up’ didn’t you say that? A. Yes, I said that, yes.

Q. Why did you say that? A. I would not think that man was able to do it.

Q. Who told you that King was in the room in the West New York Police Station? A. I asked where he is. They said in room number 7.

Q. And they let you look through a peep hole, didn’t they? A. Yes.

Q. And didn't you say right away 'That is too nice looking a man for the man who was there that night?' A. Yes."

The plaintiff-in-error respectfully prays that this Honorable Court will enter a reversal of the New Jersey Supreme Court, for the reasons set forth in this brief.

Respectfully submitted,

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Plaintiff-in-Error.

