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TESTIMONY.

State's Witnesses.

WRIT OF ERROR.

Filed October 6, 1925.

New Jersey Supreme Court

THE STATE, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Error to Morris Quarter Sessions.*

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THE STATE OF NEW JERSEY, *ss.*

To C. Franklin Wilson, Judge of the Court of Quarter Sessions of the County of Morris, of the May term, in the year of our Lord nineteen hundred and twenty-five.

(SEAL)

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Because in the record and pleadings and also in the giving of judgment upon a certain indictment against said Annie Kudelka at Morristown, in the County of Morris and State of New Jersey, for manslaughter of one Veronica Teczrowski, *pro ut,* the said indictment, whereof, before you she has been indicted and thereon convicted by a certain jury of the county, taken between the State of New Jersey and the said Annie Kudelka, as is said, manifest error has intervened to the great damage to the said Annie Kudelka, as from her complaint we have received information, and we, being willing in her behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done her, the said Annie Kudelka, command you that if judgment be given thereon; then that you

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distinctly and openly send under your seal the entire record and proceedings aforesaid with all things touching and concerning the same to our Supreme Court of Judicature to be held at Trenton on the 15th day of August next, together with this writ; that the entire record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and constitution of this State ought to be done.

WITNESS, William S. Gummere, Chief Justice of our said Supreme Court at Trenton, aforesaid, the 27th day of July, in the year of our Lord nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

ELMER W. ROMINE,
Attorney.

RETURN.

Filed October 6, 1925.

To the Hon. Chief Justice and Associate Justices of the Supreme Court of Judicature at Trenton:

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The entire record and proceedings in the case of The State *v.* Annie Kudelka, with all things touching and concerning the same, as before the Court of Quarter Sessions of the County of Morris they remain, or are in the custody or control of said Court, whereof mention is within made, we do hereby certify and send under the seal of said Court, as within we are commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County at Morristown, this tenth day of August, A. D. nineteen hundred and twenty-five.

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(SEAL)

C. F. WILSON,
Judge.

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Return to Writ.

The State vs. Annie Kudelka, Defendant. Joseph Szary, Surety.	On Recognizance, $3,000 on Charges. Manslaughter.

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Be It Remembered, that on this 6th day of January, A. D. nineteen hundred and twenty-five, personally appeared before the Court of Quarter Sessions, Annie Kudelka and Joseph Szary and acknowledged themselves to be indebted unto the State of New Jersey in the sum of three thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

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The conditions of the above recognizance are such that if the above bounden Annie Kudelka shall personally be and appear before the said Court of Quarter Sessions, to be holden at Morristown, in and for the County of Morris, on the 13th day of January, nineteen hundred and twenty-five, at ten o'clock in the forenoon of said day, then and there to answer such charges as may be preferred in said Court against him for manslaughter and from day to day thereafter during the present term and from term to term thereafter, until the said charges are finally disposed of and shall not depart the said Court without leave then the above recognizance to be void, otherwise to remain in full force and virtue.

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Return to Writ.

State of New Jersey,
County of Morris, to wit.

Be It Remembered, That at a Court of Oyer and Terminer holden at Morristown, and in said County of Morris, on the second Tuesday in January, in the year of our Lord nineteen hundred and twenty-five, by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and C. Franklin Wilson, Esquire, Judge of the Court of Common Pleas, in and for the said County of Morris, by the oath of John H. Van Riper, Merrit I. Budd, Frank Blanchard, Martin C. Havens, George Poole, Edward D. Hedges, E. Frank Oliver, Edward Doland, William Stull, Farquahar Fraser, Simon C. Hume, Dewitt R. Hummer, L. May Haddow, Elva Tillotson, Charles Rinehart, Edgar C. Hopping, Margaret Evans, George B. Boyd, Melchoir W. Bassard, Inez Imwalde, George E. Hoagland, Felicia Read, and Matthew Apgar, good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

MORRIS OYER AND TERMINER.

January Term, 1925.

Morris County, to wit:

The grand inquest for the State of New Jersey, and for the body of the County of Morris, upon their oath present: That Annie Kudelka, late of the Township of Hanover, in the said County of Morris, on the ninth day of December,

in the year of our Lord one thousand nine hundred and twenty-four, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the county aforesaid, and within the jurisdiction of this Court, did wilfully, deliberately, premeditately and feloniously kill and slay Veronica Teczrowski, 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.

JAMES H. BOLITHO,
Prosecutor of the Pleas for Morris County.

Received in the Court of Oyer and Terminer and handed to and filed in the Court of Quarter Sessions January 16, 1925.

E. Bertram Mott,
Clerk.

A true bill.

John H. Van Riper,
Foreman.

Return to Writ.

The State vs. Annie Kudelka, Joseph Szary.	On Recognizance $3,000 for Appearance of Annie Kudelka to Answer Charges.

On motion of the Prosecutor of the Pleas, it is ordered by the Court that an Exoneretur of Bail be and the same is hereby entered in the above-entitled case. 10

Done in open court this 21st day of January, A. D. 1925.

The State vs. Annie Kudelka, Defendant. Joseph Szary, Surety.	On Recognizance $3,000. On Indictment Manslaughter.

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Be It Remembered, that on this 21st day of January, A. D. nineteen hundred and twenty-five, personally appeared before the Court of Quarter Sessions Annie Kudelka and Joseph Szary, and acknowledged themselves to be indebted unto the State of New Jersey in the sum of three thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions: 30

The conditions of the above recognizance are such that if the above bounden Annie Kudelka shall personally be and appear before the said Court of Quarter Sessions, to be holden at Morristown, in and for the County of Morris, on the 6th day of February, nineteen hundred and 40

twenty-five at ten o'clock in the forenoon of said day, then and there to traverse to effect a certain indictment lately found in said court against him for manslaughter and from day to day thereafter during the present term and from term to term thereafter until the said indictment is finally disposed of and shall not depart the said Court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

At a Court of Quarter Sessions holden at the Court House in Morristown, in and for the County of Morris, on Friday, the 6th day of February, A. D. nineteen hundred and twenty-five.

Present HON. C. F. WILSON,
Judge &c.

The State vs. Annie Kudelka, Defendant.	No. 6 January Term, 1925. On Indictment for Manslaughter.

The defendant Annie Kudelka being set to the bar, and charged on this indictment, pleads thereto not guilty.

Return to Writ.

The State vs. Annie Kudelka, Joseph Szary.	On Recognizance, $3,000, for Appearance of Annie Kudelka to Traverse Indictment.

On motion of the Prosecutor of the Pleas, it is ordered by the Court that an Exoneretur of Bail be and the same is hereby entered in the above entitled case. 10

Done in open Court this 6th day of February, A. D. 1925.

The State vs. Annie Kudelka, Defendant. Joseph Szary, Surety.	On Recognizance, $3,000. On Indictment. Manslaughter.

20

Be It Remembered, that on this 6th day of February, A. D. nineteen hundred and twenty-five, personally appeared before the Court of Quarter Sessions, Annie Kudelka and Joseph Szary, and acknowledged themselves to be indebted unto the State of New Jersey in the sum of three thousand dollars to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions: 30

The conditions of the above recognizance are such that if the above bounden Annie Kudelka shall personally be and appear before the said Court of Quarter Sessions, to be holden at Morristown, in and for the County of Morris on the 40

Return to Writ.

9th day of March, nineteen hundred and twenty-five at ten o'clock in the forenoon of said day, then and there to traverse to effect a certain indictment lately found in said court against him for manslaughter and from day to day thereafter during the present term and from term to term thereafter, until the said indictment is finally disposed of and shall not depart the said court without leave, then the above recognizance to be void, otherwise to remain in full force and virtue.

At a Court of Quarter Sessions holden at the Court House in Morristown, in and for the County of Morris, on Tuesday the 30th day of June, A. D. nineteen hundred and twenty-five.

Present Hon. C. F. WILSON,
Judge &c.

The State vs. Annie Kudelka, Defendant.	No. 6 January Term, 1925. On Indictment. Manslaughter Plea of Not Guilty.

Attorney for State, Albert H. Holland.
Attorney for defendant, Elmer W. Romine.

This indictment being moved, the following jury was called and sworn:

1. Ella Buttle.
2. Andrew Lusardi.
3. Wallace Husk.
4. Lulu Batten.
5. Alexander Kepler.
6. Elvira Burchel.

Return to Writ.

7. Belle Polk.
8. Ruth Cramer.
9. Robert Bartley.
10. Ethel Freeman.
11. Mary Wuench.
12. Elizabeth L. Voegeli.

WITNESSES. 10

1. Kozemieoz Teczkowski.
2. Marcellor Mockowski.
3. Mrs. Mary Resotko.
4. Andrew Mockowski.
5. Andrew Bolcar.
6. Stanley Lyon.

Court adjourned until Wednesday, July 1, 1925.

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At a Court of Quarter Sessions, holden at the Court House in Morristown, in and for the County of Morris, on Wednesday, the 1st day of July, A. D. nineteen hundred and twenty-five.

Present Hon. C. F. Wilson,
Judge, &c.

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The State vs. Annie Kudelka, Defendant.	No. 6, January Term, 1925. On Indictment. Manslaughter. Plea of Not Guilty.

Attorney for State, Albert H. Holland.
Attorney for defendant, Elmer W. Romine.
Trial continued. 40

Witnesses

Stanley Lyon (recalled)
7. John T. Williams, M. D.
8. Dr. Randin Reed.
1. Annie Kudelka.
2. Joseph Kudelka.
10 Annie Kudelka (recalled).

Rebuttal.

Anna Adamiski.
Joseph Kudelka.

The evidence in this case being closed, the jury, after argument of counsel, and a charge from the Court, retired to a private room to consider their verdict, with a constable sworn to attend them. After being out one hour and
20 forty-five minutes they returned into court, saying they have agreed upon their verdict, and by their foreman say they find the defendant guilty in manner and form as he stands charged in the indictment. And so say they all.

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Return to Writ.

At a Court of Quarter Sessions, holden at the Court House in Morristown, in and for the County of Morris, on Tuesday the 7th day of July, A. D. 1925.

Present Hon. C. F. Wilson,
Presiding Judge.

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The State vs. Annie Kudelka, Defendant.	No. 6, January Term, 1925. Sur Indictment for Manslaughter. Plea of Not Guilty—Conviction.

The prisoner, Annie Kudelka, being set to the bar, the Court, on motion of Albert H. Holland, Esq., Prosecutor of the Pleas, order judgment and sentence the defendant, Annie Kudelka to be confined in the State Prison at Trenton, at hard labor, for the space of maximum two years, minimum one year, and that he stands further committed until the costs of prosecution are paid.

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The State vs. Annie Kudelka, Joseph Szary	On recognizance, $3,000, for appearance of Annie Kudelka to traverse indictment.

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On motion of the Prosecutor of the Pleas, it is ordered by the Court that an Exoneretur of Bail be and the same is hereby entered in the above-entitled case.

Done in open court this 7th day of July, A. D. 1925.

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Return to Writ.

MORRIS COUNTY COURT OF
QUARTER SESSIONS.

The State vs Annie Kudelka, Defendant.	Recognizance.

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

BE IT REMEMBERED, that on this seventh day of July, A. D. Nineteen Hundred and Twenty-five, personally appeared before the Clerk of the Court of Quarter Sessions, holden at Morristown, in and for said County of Morris and State of New Jersey, Annie Kudelka, the above-named defendant and Joseph Szary and did severally acknowledge themselves to be indebted to the State of New Jersey in the sum of Three Thousand Dollars, to be made and levied of their respective goods and chattels, lands and tenements, if default be made in the following conditions:

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AND WHEREAS, the said defendant, Annie Kudelka, has sued out of the Supreme Court of the State of New Jersey, a writ of error, directed to Hon. C. Franklin Wilson, Judge of the Court of Quarter Sessions, in and for the County of Morris, to review the conviction of the said Annie Kudelka for the crime of manslaughter.

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AND WHEREAS, upon application, bail has this day been fixed in the said sum of Three Thousand Dollars.

The condition of this recognizance is such that if the said defendant, Annie Kudelka shall prosecute the said writ of error with the effect and

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shall stand to and abide the judgment of the Court and not depart the said Court without leave, then the above recognizance shall be void, but this recognizance shall remain in full force and virtue until this case shall be finally determined or the recognizance discharged by order of the Court. 10

her
Annie X Kudelka
mark
Joseph Szary

Taken and acknowledged in open Court the day and year first above written.

Edwin W. Orr,
Deputy Clerk. 20

State of New Jersey, }
County of Morris. } *ss.*

I, E. Bertram Mott, Clerk of the County of Morris, and also Clerk of the Court of Quarter Sessions, holden in and for said County, Do Hereby Certify, that the foregoing are full, true and correct copies of the Recognizance, Indictment and caption thereto, Exonerator, Recognizance, Plea, Exonerator, Recognizance, Trial, Sentence, Exonerator, Recognizance to prosecute Writ of Error, in the case of The State *v.* Annie Kudelka, as fully and entirely as the same remain on file in my office and of record on the minutes of said Court. 30

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Return to Writ.

In Testimony Whereof, I have hereunto set my hand and affixed the (seal) seal of said Court and County at Morristown, this 10th day of August, A. D. nineteen hundred and twenty-five.

10 E. BERTRAM MOTT,
Clerk.

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ORDER EXTENDING TIME FOR FILING.

Filed August 17, 1925.

NEW JERSEY SUPREME COURT.

THE STATE, *vs.* ANNIE KUDELKA, *Defendant.*	*On Writ of Error* *Order Extending Time for Filing.*

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It appearing to the Court that a writ of error was allowed in this cause, made returnable the 15th day of August, A. D. 1925, and it also appearing that the return to said writ cannot be completed within the time aforesaid, and application being now made to extend the time for filing the return thereto.

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It is therefore, on this 14th day of August, A. D. 1925, ORDERED, that the time for making and filing return to the writ issued in this cause be extended until Tuesday, September 15, 1925.

WILLIAM S. GUMMERE,
C. J.

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ORDER EXTENDING TIME FOR FILING.

Filed October 6, 1925.

NEW JERSEY SUPREME COURT.

THE STATE, *vs.* ANNIE KUDELKA, *Defendant.*	*On Writ of Error* *Order Extending Time for Filing.*

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It appearing to the Court, that a writ of error was allowed in this cause, made returnable the 15th day of August, A. D. 1925, and by an order of this Court dated August 15, 1925, the time for filing return to the writ was extended until Tuesday, September 15, 1925, and by a further order on September 12th, extended until October 1, 1925, and application being now made for a further extension of time in which to make return to said writ and good cause appearing,

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IT IS THEREFORE, on motion of Elmer W. Romine, on the 28th day of September, A. D. 1925, in the presence of Albert H. Holland, Prosecutor of the Pleas in and for the County of Morris, ORDERED, that the time for making and filing the return to the writ issued in this cause as aforesaid be extended until Tuesday, October 6, 1925.

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Let this rule be entered in the minutes.

C. W. PARKER,
Justice of the Supreme Court.

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ORDER EXTENDING TIME FOR FILING.

Filed September 14, 1925.

NEW JERSEY SUPREME COURT.

THE STATE, *vs.* ANNIE KUDELKA, *Defendant.*	*On Writ of Error* *Order Extending Time for Filing.*

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It appearing to the Court, that a writ of error was allowed in this cause, made returnable the 15th day of August, A. D. 1925, and by an order of this Court dated August 15th, 1925, the time for filing return to the writ was extended until Tuesday, September 15, 1925, and application being now made to further extend the time for filing the return thereto, and good cause appearing therefor;

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It is, therefore, on motion of Elmer W. Romine, on this twelfth (12th) day of September, A. D. 1925, ORDERED, that the time for making and filing the return to the writ issued in this cause as aforesaid, be extended until Thursday, October 1, 1925.

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Let this rule be entered in the minutes.

C. W. PARKER,
Justice of the Supreme Court.

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MORRIS COUNTY COURT OF QUARTER SESSIONS.

THE STATE, 10 *vs.* ANNE KUDELKA, *Defendant.*	*Manslaughter.*

Morristown, New Jersey, June 30, 1925.

Before Hon. C. Franklin Wilson, Judge, and a jury.

20 Appearances:

Albert H. Holland, Esq., prosecutor for the State.

Elmer W. Romine, Esq., attorney for the defendant.

A jury having been found satisfactory, were duly sworn.

Thereupon Mr. Holland opened to the jury in
30 behalf of the State.

During Mr. Holland's opening, Mr. Romine interposed objection as follows:

Mr. Romine: I object to the prosecutor referring to any other name than that mentioned in the indictment.

The Court: I don't see any reason why he cannot upon his opening.

Mr. Romine: He has no right to open to the jury on a false premise.

40 The Court: I do not agree with you.

Mr. Romine: I ask an exception to your Honor's ruling.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Mr. Romine: I object to the prosecutor's statement before the jury as to his offer to prove other occurrences because under the law he cannot prove any other occurrence other than the occurrence in the indictment and I ask that because of the statement that the prosecutor makes before this jury in the opening, your Honor, that a juror be withdrawn and that a mistrial be declared, because he has no right in opening to the jury to say he is going to prove other collateral circumstances, which the prosecutor, I think, should know, and I think it is highly improper.

The Court: I will direct the jury what to do when the time comes.

Mr. Romine: I ask an exception to your Honor's ruling.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Mr. Romine: Before we proceed, I would like to have the prosecutor read in the record the form of manslaughter he intends to rely on, whether voluntary or involuntary; whether he relies on mere negligence or otherwise.

Mr. Holland: I rely upon criminal negligence.

The Court: Did you demand a bill of particulars?

Mr. Romine: Yes, but I want it on record over my bill of particulars.

KOZEMIERS TECZKOUSKI, sworn on behalf of the State, testifies as follows through the official interpreter, Joseph Molnar.

Direct examination by Mr. Holland.

Q How do you pronounce your full name? A
10 Kozemiers Teczkouski.

Q Mr. Teczkouski, where do you live? A Whippany.

Q How old are you? A Thirty-three years.

Q How many children have you? A Five children.

Q When was your last baby born? A On December 10th.

Q Where was it born? A In the house.

20 Q Where was the house? A At Whippany.

Q How long have you lived there? A On the second year I live in my house.

Q How long have you lived in Whippany? A Fourteen years.

Q How old is your oldest child? A Will be nine years now.

Q Is your wife living? A No, sir.

Q When did she die? A On December 13th.

30 The Court: What year, prosecutor?

Mr. Holland: Last year.

Q 1924? A Yes.

Q Did she die in childbirth? A Three days after the child was born.

Q From the time the child was born until she died, did she ever get out of bed? A No, sir.

Q Did she stay in bed all the time from the time the baby was born until she died? A Yes,
40 sir.

Q What was the name of this baby? A Helen.

Q Who attended your wife when Helen was born? A Mrs. Kudelka.

Q Mrs. Kudelka, sitting here in court? A Yes, sir.

Q What are the names of your other children? A First one John, second Pete, third Frank, Mary and Helen. 10

Q Now, when Mary was born, who attended your wife?

Mr. Romine: Object to it as immaterial and irrelevant and makes no difference.

Mr. Holland: I will put one other question.

The Court: Question withdrawn. 20

Q At the time Helen was born, did you engage Mrs. Kudelka to act as midwife for your wife?

Mr. Romine: I object to it because it embraces the term midwife.

Q Did you engage Mrs. Kudelka to attend your wife? A Yes. 30

Q How much were you to pay her? A She don't tell me how much I would pay her.

Q Have you paid her yet? A No, sir.

Q Have you paid her on other occasions for attending your wife in childbirth?

Mr. Romine: Object to it; we are not here trying any other occasions and the State cannot bring in any other occasion. 40

The Court: You mean to say that the State cannot show that she was engaged in the business as a midwife?

Mr. Romine: I contend—

The Court: Just answer that question.

10 Mr. Romine: I cannot answer it yes or no for this reason, that it makes no difference what this woman was engaged in nor what practice she was engaged in other than she was engaged this particular time, from the circumstances of the engagement from which the jury may say that she was engaged as a midwife or as a nurse.

The Court: Show me some authority against the proposition that the State cannot show that she was engaged as a midwife.

20 Mr. Romine: I say that the State cannot show—

The Court: Can you show me any authority?

Mr. Romine: There is no case in the United States on midwife; we must proceed on the principle of law.

The Court: Objection overruled.

30 (Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Q (Question read.)

The Court: I am admitting this on the ground that the State is offering and I expect the State to prove that the defendant was engaged in the business as a midwife. If it fails to prove it, then you may move to strike this out.

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Mr. Holland: I expect to prove it, prove the birth of each of the other children besides this last child.

The Court: Just prove that.

Mr. Romine: My objection is, I don't care whether he paid this woman on other occasions. 10

The Court: I am only admitting it to show she was engaged in the business as a midwife.

Mr. Romine: I am contending that this engagement must embrace circumstances which show she came as a midwife.

The Court: You may cross examine on that if you want to.

Mr. Romine: Can I do so now?

The Court: Yes, if the prosecutor has no objections. 20

Cross examination by Mr. Romine.

Q Now, on this particular occasion when the last child was born, before that child was born, did you go to see Mrs. Kudelka? A Yes.

Q How long before the child was born, December tenth, was it you went down to see Mrs. Kudelka? A I never been to her people; only that night at nine o'clock. 30

Q Yes, that is the night the little girl was born, the last little girl, you went there that night? A Yes, that night nine o'clock.

Q You knew that your wife was going to have a baby sometime before that, didn't you? You knew she was in condition to have one? A Yes.

Q And yet you did not say anything to Mrs. Kudelka before that time? Before that night about coming on this particular case? 40

Mr. Holland: I don't see the purpose of this cross examination.

Q Now, Mrs. Kudelka, when you got there that night she told you she could not go because of her foot, didn't she? A Yes, she told me she could not come, but I told her I send an automobile for her.

Q So, finally, you told her you would take her in an automobile and then she agreed to go, is that right? A She told me she would come if I send an automobile for her.

Q She could not walk, could she? A No, she had a sore foot.

Q Did she at that time ask you if you had engaged a doctor? A No, sir.

Q Didn't you tell her that a doctor would be there by the time she got there? A No.

Q Did you say anything to her about a doctor coming? A No.

Q Did she tell you that she would not come unless a doctor was going to be there?

Mr. Holland: Just a second; it does not seem to me that is cross examination, but that it is presenting her own defense.

The Court: I don't see what Mr. Romine is driving at.

Mr. Romine: I want the cross examination here to show whether he employed her as a midwife and not a nurse. The prosecutor is saying that they did.

The Court: I do not so understand that. I would not permit him if I had known it. You better stop there.

Mr. Romine: My purpose is to put it in the record and I want a ruling on it. My

purpose for examining this witness at this stage is to ascertain the circumstances under which this woman came to his home that night and for the purpose of showing whether or not she was engaged not as nurse, but midwife, which the prosecutor contends she was.

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Mr. Holland: I have no objection to that; I do not object to this particular line of cross examination, but I do object to putting in his mouth what he contends she said.

Q The next question I will ask you is: do you know what a midwife is? A Yes, sir.

Q All right, what do you say a midwife is? A They call that bobka.

Mr. Holland: What does a bobka do?

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Mr. Romine: No; I am asking him an explanation what he contends a midwife is. He says he knows what they are.

Q Well, what do you say a midwife is? A Midwife is a lady that comes to a woman whenever a child is born.

Q That's what you say it is, and you make no distinction in your mind as to whether they come in emergency or whether they come without pay?

30

Mr. Holland: Object to that.

The Court: Objection sustained.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Q Now, on this particular occasion, she did not make any agreement with you as to what you were to pay her, did she? A No, sir.

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Q You did not ask her what she wanted to come, did you? A No.

Q Never made any agreement of pay at all, did you? A No.

Q She never asked you for any money? A No.

10 Q And you have never paid her any? A No.

Q Now, when you went down to ask this woman to come up, what did you tell her you wanted her to come up for? A My wife sent me there for that woman; she was to come and help her.

Q Well, help what; do what? A Come and help receive the child.

Q This woman did not have any sign on her house as being a midwife, did she?

20 Mr. Holland: I don't think that is cross examination on my original question.

The Court: He can answer that.

Q Did this woman have any sign on her house as a midwife? A No.

Q Did you ever see any cards of this woman where she said she was a midwife? A No.

Q And you had not said anything to her 30 about coming on this occasion until that very night, had you? A No, sir.

Mr. Romine: I still object to any question of other occasions. The question was about other occasions.

The Court: Read the question, Mr. Wheaton.

(Question repeated by the stenographer.)

Mr. Romine: I object to pressing that 40 question because he, under what I have de-

veloped on this particular occasion, he went down there just before the child was born and asked her to come up and help and the other occasions have absolutely no bearing on this situation and was an entirely independent request for her to come and for no compensation at all.

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The Court: If this man had hired this defendant on other occasions back as a midwife, you say that would not be relevant or material when she went this time?

Mr. Romine: Yes, sir, I do.

The Court: I overrule your objection and he may answer it.

Mr. Romine. One moment, may I call your Honor's attention to the statute?

The Court: No.

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Mr. Romine: I want to take an exception to your Honor's refusal—

The Court: You may sit down, now.

Mr. Romine: I take an exception to your Honor directing me to sit down.

The Court: You have made your objection and I have allowed you an exception. He may answer the question.

C. F. WILSON. (L. S.)

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Further direct examination by Mr. Holland.

Q (Question read.) A Yes, sir.

Q How many times? A She was four children and I pay her every time.

Q Paid her four times? A Four times.

Q And how much did you pay her each time? A Ten dollars for her trouble and one dollar to give her for present.

40

Q Is that each time? A Each time.

Q And why did you go to Mrs. Kudelka when Helen was about to be born?

Mr. Romine: Object to that as immaterial.

10 The Court: Any other ground?

Mr. Romine: That is all.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A My wife sent me there.

The Court: At this time we will adjourn until two o'clock.

20

AFTER RECESS.

KOSEMIERS TECZKOUSKI, recalled.

Further direct examination by Mr. Holland.

30 Q Now, what time did you get there? A Somewhere around nine o'clock.

Q And about what time was the baby born? A At one o'clock.

Q And how long after you got to Mrs. Kudelka's house did you send the cab for her? A I went right to the shop and I got the car maybe fifteen minutes.

Q And about what time did Mrs. Kudelka get to your home? A Must be about half-past

10 nine, quarter to ten when we got into the house.

Q And did you stay in the house from the time Mrs. Kudelka got there until after the baby was born? A Yes, sir.

Q Where were you? A I was in the house by the wife.

Q Were you with your wife throughout the ordeal? A Yes, sir. 10

Q Where was your wife? A In the kitchen.

Q Where in the kitchen? A In the kitchen, on the floor.

Q Who was attending her? A Mrs. Kudelka.

Q Did she stay on the floor from the time that Mrs. Kudelka got there until after the baby was born? A Yes, sir.

Q Were you in the room practically all the time? A I was there all the while. 20

Q Was there anything said by Mrs. Kudelka about getting a doctor? A She said if everything comes hard we would have to get a doctor but the child was born nice and we did not have to have one.

Q Was the child born nice? A The baby was born nice, only it had a string on her neck.

Q Had the cord twisted around its neck?

Mr. Romine: Object to that as leading. 30

The Court: Objection sustained.

Q What was around the baby's neck? A String what come from the belly button.

Q The naval cord, is that what you mean? A I don't know what you call it.

Q Is it the cord that connects the baby with the mother? A Yes.

Q What time was the baby born with the cord around its neck? A At one o'clock. 40

Q Who was attending your wife then upon the moment of birth? A Mrs. Kudelka.

Q What did she do when the baby was born? A She catched the baby and string and she broke it.

Q What did she do; what else did she do?
10 A She gets the rest of it and pulls the rest out.

Q How? A With her hand.

Q What did she do with her hand? A She gets hold the rest of the piece and pulls it out by pieces.

Q How long, how many minutes did she do that after the baby was born? A It was right away. She put the baby one side and she done that.

Q What, if anything, did she say? A She
20 told me she got to go away; got to go to work.

Q Who told you she had to go to work? A She told that.

Q Who? A Mrs. Kudelka.

Q What did she say while she was pulling on the string, if anything?

Mr. Holland: I withdraw that.

30 Q When she was pulling on the string, did she say anything? A I don't remember; I don't know what happened.

Q Was there anybody else present besides you and Mrs. Kudelka and your wife? A Nobody, only me and my wife and Mrs. Kudelka.

Q How did your wife get up off the floor? A I helped her and Mrs. Kudelka by her arms.

Q Put her back in bed? A Yes, sir.

Q Now did she ever get out of that bed you helped her into? A No, sir.

40

Q Now, did she make any remark about your wife or about the afterbirth just immediately after the baby was born? A Yes.

Q What did she say? A She told me that she had awful hard work but the baby was all right.

Q Did she display anything of the afterbirth to you in her hand? A No, sir. 10

Q When the cord or string was broken, did she tie up the baby's end of it?

Mr. Romine: I object to that because it is entirely leading. I think the Prosecutor could ask this witness if he was there what she did with reference to the cord.

Mr. Holland: That won't hurt him any because if she did it it's perfectly all right. It is leading up to what, if anything, she did with the other part of the cord. 20

Mr. Romine: I don't know whether he is going to say she tied it or not.

The Court: The baby is living; no charge about the baby.

Mr. Romine: No.

(Argument.)

30

Q Did Mrs. Kudelka tie the string? A Yes.

Q Where, and when? A Right away after the child was born.

Q Did she tie it at the child or at your wife? A Right away at the wife.

Q Did she tie it on the wife? A I don't know because I did not look.

Q What did you mean when you said the string was broken? Just explain what you mean by that? A When the child was born she tied 40

the string, then she took the other end and pulled it away from the wife.

Q How many times did she tie the string; how many places? A At one place.

Q And then she pulled the other end away from the wife, is that what you said? A Yes.

10 Q Now, after your wife got back in bed, did your wife get better or did she get worse? A She got worse.

Q For how long did she continue to get worse and what did you do? A I was in the house all alone and the wife and thought maybe she was going to get better but then she told me she was feeling worse.

Mr. Romine: Anything the wife told him
20 not in Mrs. Kudelka's presence—

The Court: Strike it out.

Q I want to know how long afterward before you got the doctor, if you did? A About quarter after five in the morning.

Q That same morning? A Same morning.

Q What doctor did you get? A Dr. Williams.

30 Q That's a doctor in Morristown? A Yes.

Q And did he come to your wife's help in Whippany? A Yes.

Q How long did your wife stay in that bed; until the last? A Until she died.

Q Was there an attempt made to move her to a hospital? A Doctor did not tell me anything about it.

Q So far as you know, you don't know anything about moving her to a hospital, do you?
40 A If the doctor will tell me, I will do so.

Q Now what time—the baby was born at one o'clock; how much longer after that did Mrs. Kudelka stay there? A I think about three o'clock or little before three when she left.

Q What did she do between one and three? A She washed the baby and took care of the child. 10

Q Did she come back at all after that up until the time your wife died? A She came up that same day when the child was born; I sent a car for her and she came over to the house the same day.

Q After the baby was born, did she come again up until the time your wife died? A She was there that night when the child was born and once more the next following day before dinner. 20

Q I see, was that in the afternoon or evening of the same morning that the baby was born she came around again?

The Court: Before dinner.

Q What time did she get there? A About ten o'clock.

Q What, if anything, did she do? A She washed the clothes and what little had to be done 30 around the house. Washed the baby, that's what she done.

Q Did she come in on the day that your wife died? A No, sir.

Q Now, when did you meet her again? A I saw her that day when my wife died.

Q Now, where did you see her? A I seen her by her house when I passed that way.

Q What were you going by her house for? A I was looking for a man to dig the grave. 40

Q For your wife? A Yes.

Q Your wife had died already, had she? A Yes, sir, she died that morning.

Q Did you have any talk with Anna Kudelka? A She spoke to me and she said if I want to sue her I could sue her; do what I like.

10 Q Did she say whose fault it was that the woman died? A She told me that was the doctor's fault.

Q What doctor did she say? A Dr. Williams.

Q She told you it was Dr. Williams' fault, did she? A Yes, sir.

Q Now, after this time she never asked you for pay, did she? After this occurrence, she never asked you for pay, did she? A No.

20

Mr. Holland: Cross examine.

Cross examination by Mr. Romine.

Q You speak about Mrs. Kudelka being at your house at other occasions when children were born and that you paid her some money. Did she ask you for any money on any other occasion or did you simply give it to her? A I 30 gave her myself. I did not pay her all time myself, but my wife paid her once.

Q Did you give her money every time she had been there? A Yes, sir.

Q You fixed the amount yourself, did you? A She did not tell me either one way or the other. I pulled out ten dollars and gave it to her.

Q She did not ask you for any money but you just pulled it out and gave it to her, is that right? 40 A That's right.

Q Now, on these other occasions—

Mr. Holland: Just a minute, what did he say?

Mr. Romine: I submit he answered the question.

The Interpreter: He said, it ain't generally people ask, we give them what we want. 10

Q Now, on these other occasions when you say Mrs. Kudelka was there, did you have a doctor on any of those occasions? A No, sir.

Q Children lived, did they? A Yes, sir.

Q Mother got along all right? A Yes, sir.

Q And on those occasions, would Mrs. Kudelka get the meals in the house and do the housework while your wife was sick? A She generally came three or four times and was washing and things around the house what had to be done. 20

Q So her work on those occasions was to do nursing and housework, that right? A Yes, sir.

Q Was there anybody present at Mrs. Kudelka's home the night you came there for her, on this December ninth? A Her son-in-law and her husband and herself. 30

Q Was her daughter there at that time? A Her daughter was home, too.

Q And at the time you had this talk with Mrs. Kudelka about going up to your house they were all there and heard the conversation, did they? A At Mrs. Kudelka's, the husband and the others were in the other room.

Q Wasn't Mrs. Kudelka's daughter there in the same room where you were talking with Mrs. Kudelka? A Well, I was talking to Mrs. Ku- 40

delka, she was in the front room then when I got there talking the daughter came into the room.

Q Now, you say that was about nine-thirty in the evening, that right? A Yes, sir.

Q Well, are you sure what time it was? A I can't exactly tell what time it was, but it was somewheres around that time.

Q Well, wasn't it nearer eleven o'clock than it was nine-thirty? A No, sir.

Q Did you look to see what time it was or are you just giving us your impression of the time? A When I got home I looked at the clock and it was a few minutes after ten o'clock.

Q Well, is your clock standard time or daylight saving time? A In winter time, that was standard time.

Q Well, Mrs. Kudelka did not want to go to your house that night, did she? A First off she didn't want to come.

Q She told you several times she didn't want to go, didn't she? A When I told her I would bring a car then she said she would come.

Q She told you she had a sore foot and could not go, didn't she? A She told me she had sore feet, but she would go with automobile and her son brought her to my house.

Q Did you cry and beg her to go to your house? A I didn't cry; I begged her to come because she was before to my house when the other children was born.

Q She was there when the others were born and you wanted her there this time, is that it? A Yes, because my wife wanted her.

Q Was anything said about a doctor being there?

Mr. Holland: When?

Q At the time you went down to Mrs. Kudelka's house trying to get her to go up to your house? A I don't remember because I was excited and I started right for home.

Q You don't remember whether anything was said about a doctor going to be there or not? A Maybe we said something about it, but I don't remember. 10

Q Well, did you go and get the car that drove her up to your house? A Yes, sir.

Q And after Mrs. Kudelka was let out at your house, did the car then go back from your house down to Whippany? A He went back to work.

Q Now, after going in the house, was anything said by Mrs. Kudelka about a doctor? A No, there was nothing said after that; not that time. 20

Q Well, before the child was born, was anything said by Mrs. Kudelka as to where the doctor was or when he was coming? A I told her if the child was born very hard why we send for doctor and so she told me the same night the child was born nice and we did not send for the doctor.

Q Well, isn't it true that Mrs. Kudelka asked you, after getting up to your house and before the child was born, what time the doctor was coming? A No, she didn't ask me. 30

Q Well, before you told her that if the child came hard you would send for a doctor, had she said anything to you about having a doctor? A She didn't tell me anything.

Q Why did you tell her that if the child came hard you would get a doctor? A I said that because I thought if the child was going to be born hard we would have to have a doctor but as 40

long as the child was born easy we did not send for one.

Q Was your wife on the floor when Mrs. Kudelka got to your house? A She was walking around then, yet.

Q When did she go on the floor in the kitchen? A After ten o'clock.

10

Q What was there on the floor that your wife laid upon? A It was fixed up just like a bed.

Q Well, did you have a mattress there or anything for her to lie on? A There were quilts and pillows there fixed for it.

Q Well, did she lie right on the floor with the pillows at her head, is that what you mean? A Yes.

Q Did Mrs. Kudelka say anything about your wife lying there? A Yes, she told me she better stay there on the floor.

20

Q Well, don't you remember Mrs. Kudelka telling you that it was no place for your wife on the floor and she better get her to bed before the child was born? A She did not tell me that.

Q Did she say anything about you having your wife go to bed before the child was born? A No, sir.

Q Before the child was born did Mrs. Kudelka say she did not want to stay; she wanted to go home? A Yes.

30

Q Why did she say that? A She got her job then and she went away.

Mr. Holland: That is not what Mr. Romine asked her.

Q You said that Mrs. Kudelka wanted to go home before the child was born. Why did she want to go home? A She did not want to go home before the child was born.

40

Q You just said a moment ago that she wanted to go home. Now, isn't it a fact that she wanted to go home before the child was born because you told her you had not sent for a doctor? A She didn't tell me anything.

Q Did you tell Mrs. Kudelka that you didn't want to put your wife on the bed before the child was born because you did not want to soil the mattress? A She did not tell me anything about taking my wife up. My wife did not want to go herself. She did not want to go, be among the children so the children see what happens. 10

Q And were you present with Mrs. Kudelka at the time that the child was born? A Yes, sir.

Q Did you have a light in the kitchen? A Yes, sir. 20

Q What kind of a light was it? A Kerosene lamp.

Q Where was the lamp? A On the stove then, after awhile we put the lamp on the floor.

Q Well, how far away was the stove from where your wife lay on the floor? A Maybe two or three feet.

Q Where did you stay while the child was being born? A I was right there on my knees right by them. 30

Q Did you help bring the child into this world? A I helped that much, I held my wife by the shoulders to hold her down while the child was born.

Q Well, then, you were at your wife's head while Mrs. Kudelka was helping the child out; isn't that so? A Yes, sir.

Q So that you had your back to Mrs. Kudelka, didn't you? A I was looking right on, right on Mrs. Kudelka. 40

Q But you were on your knees at your wife's head and your back was toward Mrs. Kudelka or the side of your body at least, wasn't it? A No, I held my wife by her shoulder and I was looking right toward her, watching.

Q Where was the lamp at that time? A The lamp was on the floor at that time.

10

Q How near to where you were? A It was on the other side as far as it was before.

Q Well, after the child was visible so you could see it, did you see the cord that led from the child to your wife? A Yes, the cord was from the child to my wife until Mrs. Kudelka tied it and cut it.

Q All right, now, where did she tie the cord first? A Close to the belly button.

Q Close to the baby? A Yes.

20

Q Then she tied it again, didn't she, a little further away from that? A I did not watch; I think she tied it, but I don't know; I did not see it.

Q You don't know about that; that is, you don't know where she tied it the second time before she cut it? A No, I didn't watch that.

Q Now, after the cord was cut, was the child left there or was it taken away? A She took the baby and put it one side.

30

Q Was there a pair of scissors there that she used? A Yes, sir.

Q And where did you get the scissors from? A We had them home.

Q Did you hand them to Mrs. Kudelka before the cord was cut? A She asked me for it and I gave it to her.

Q When you gave the scissors to her, did you see her cut the cord? A Yes, sir.

Q Now, you say that the baby was taken off to the other part of the room; where was the

40

baby put? A She didn't take the child in the other room, only on the side where the mother was laying.

Q Well, it was put in another part of the same room, in the kitchen? A Same room.

Q What did she do with the baby then? A When she put the baby one side, then she came to the wife and catched the cord and pulled it away. 10

Q She came back then and took hold of the cord that was fastened to the wife; is that right? A What she pulled off first time she layed it one side then she grabbed hold the other end and pulled it away with her hand.

Q Yes, so that after the cord came out, did something else come out from your wife too? A Some blood came out. 20

Q Well, did anything else come out? A Some pieces of clearing.

Q How many pieces came out? A I can't tell because I did not count them, we picked them up in a pile.

Q Was any of the pieces fastened to the cord? A I think there was one piece on the cord.

Q How large was that? A I can't tell, because I did not have it in my hand. She picked them up and put them in a pile. 30

Q You didn't see the piece that was fastened to the cord; you say she put them in a pile? A No, I didn't; I didn't look at it.

Q Well, was the piece, whatever size it was, that was attached to the cord, was that put in the pile? A She took everything up and put it in a pile.

Q Why was it necessary for you to hold your wife while the child was being born, do you 40

know? A Because my wife asked me hold her down so she can bear the child easy. That's what we done for every child before.

Q Had your wife been sick before the child was born? A No, sir.

Q Hadn't been sick in bed at all? A No, sir.

10 Q Had you been to the doctor with her before the child was born? A No, sir.

Q Did she work around the place up until the time the child was born? A Yes, she was healthy woman and she worked around the house.

Q Did not work out in the field just a week or two or a month or two before the child was born? A She worked in the garden around the vegetables.

Q You were doing some building around there

20 that time? A Building a house.

Q And did your wife carry any stones or lumber? A No, sir, no stones or lumber.

Q Did she help in any way in building around there before the child was born? A No, sir.

Q Well, now, after this matter that was attached to the cord, whatever it was, was put in a pile, what was done with your wife? A Mrs. Kudelka said then we better put the wife on the bed.

30 Q Well, did Mrs. Kudelka take the child after she had put this other stuff in a pile and before your wife was moved away? A We left the baby there and we took the wife and took her up on the bed.

Q Well, didn't you suggest that your wife be then put on the bed? A My wife wanted to go on the bed herself and Mrs. Kudelka said we better bring her up and put her on the bed.

Q But your wife was the one that wanted to

40 go on the bed? A Yes.

Q So it was not Mrs. Kudelka, it was your wife that asked to be taken to the bed, that right? A The wife was talking about it and Mrs. Kudelka said we better bring her up on the bed and then she fixed her up in the bed, higher up.

Q What did you say about that? A I didn't say anything, I help bring her up. 10

Q Did you help your wife from the floor to the bed? A Yes.

Q How did you do that? A I catched her under her arms and Mrs. Kudelka the other arm and we helped her in the bed.

Q You are sure Mrs. Kudelka did nothing in the way of putting her on the bed; you are sure about that? A After we put her in bed, she tied my wife up. 20

Q I know, but isn't it a fact you were the one and you alone that got your wife up off the kitchen floor and helped her across the floor to the bed; you alone did it? A Mrs. Kudelka helped me.

Q Did you ask her to help you? A I did not ask her, she was there and she helped me.

Q Did anybody ask her to help you? A I don't remember whether I told her or not. 30

Q Well, did anything come from your wife as she was taken from the kitchen floor to the bed? A No, sir, only blood.

Q Blood on the floor, wasn't there, from the kitchen floor to the bed? A No, because she was wrapped up.

Q Well, didn't Mrs. Kudelka clean up the floor after your wife was put in the bed?

Mr. Holland: Well, now—all right. 40

A I don't remember whether there was any blood on the floor, but there was a muss in the kitchen and she cleaned it up.

Q Well, after the baby was washed—I will ask this, who washed the baby? A Mrs. Kudelka.

10 Q What did she do with the baby? A She washed the baby and greased it up and took clothing and wrapped the child up.

Q That is, she bandaged the child up as well as your wife? A Yes.

Q And how did your wife seem to be then? A She was awfully weak.

Q And what time did Mrs. Kudelka leave your house? A I think somewheres around three o'clock.

20 Q How did she go away; how was she taken away? A I got the automobile to take her home.

Q And whose automobile did you get? A Some man by the name of Andrew Bossa.

Q Well, why was it that you sent Mrs. Kudelka home in an automobile? A Because she wanted to go home.

Q Well, was there anything in particular the matter with her that she could not walk? A 30 She told me that she had a sore foot.

Q Yes, and she wanted to go home that hour of the morning because of her foot, didn't she? A I don't know whether she wanted it for that or not, but she wanted to go home and she went.

Q Didn't she tell you her foot hurt her and she wanted to go home, that she could not stay there any longer? A She didn't tell me, only she had to go home on account of her sore foot, but everything was done there and she wanted 40 to go home.

Q Well, was everything all right at that time?

Mr. Holland: I submit this man can't know much about it as an expert.

Q Now, at the time that Mrs. Kudelka went home at three o'clock in the morning, the baby was all right and the mother was all right, wasn't she? A Baby was wrapped up in cloth and the woman told me she did not feel very good, she was weak. 10

Q Yes, she said she thought she would rest quietly in bed, didn't she? A Yes, sir.

Q Now, after Mrs. Kudelka went home, did your wife attempt to get up for any purpose at all? A No, sir, not at all.

Q Did your wife ask to use a chamber? A She didn't use any chamber until Mrs. Kudelka came back the second time. 20

Q Well, isn't it a fact that shortly after Mrs. Kudelka went home that your wife wanted to get up and that you brought something there by the side of the bed and she got up to use it and fell over, isn't that so? A No, sir.

Q And isn't it a fact that you ran to the neighbors to get them in to help you? A That was in the morning when I went to the neighbors and told them my wife was very bad. 30

Q Yes, and the reason of your wife being bad was because of her attempt to get up and use a chamber, isn't that true? A After Mrs. Kudelka left, my wife didn't get absolutely out of bed until she came the next time.

Q Now, the next day, as we call it, that is, that morning late, did Mrs. Kudelka come back to your house? A Yes, next morning, about half-past nine, when I called for her again. 40

Q So, the next morning you went for her, is that right? A Yes.

Q She had told you before she would not come back because of her sore foot, hadn't she? A She told me she would not come back on foot and the next morning my wife was not feeling very good and I sent an automobile for her, and she came back in the automobile.

Q So, she did tell you the morning that she left, three o'clock, she would not come back, isn't that true? A No, sir.

Q You just a moment ago said she told you that and you sent for her? A She told me she would not come back on foot, but if I sent an automobile she would come.

Q Told you she would come back if you wanted her; is that what you mean to say? A Yes.

Q But you would have to send an automobile for her? A Yes.

Q Now, when she came that morning after you had sent for her the second time, did you have a talk with her about the condition of your wife? A Yes.

Q You told her, didn't you, that you had sent for a doctor and that he come? A Yes.

Q And you told her that your wife got worse after she left, didn't you? A Yes, I told her she got worse and I had to call a doctor.

Q And didn't you tell her that your wife had gotten up to use a chamber, or whatever term you used, and that your wife had fallen over and began to bleed and then you sent for the doctor? A No, my wife didn't fall; she laid down in bed.

Q I ask you, didn't you tell her the next morning that your wife had gotten up and fallen over and that she started to bleed and that

is the reason you sent for the doctor? A I didn't tell her that.

Q Well, what time did the doctor get there? A About quarter after five.

Q Who was there at that time? A Two neighbor women.

Q That is, you had called them in before the doctor came, two of your neighbor women to help you, is that right? A I called the two ladies there because I was all alone in the house and it was kind of hard for me; that's why I called the two ladies to be around there and help me. 10

Q Now, when the doctor came did he examine your wife? A Yes.

Q Was she bleeding at that time? A Was bleeding, but very little.

Q Do you remember the doctor telling you, after having looked at your wife, that it would be necessary for her to go to a hospital? 20

Mr. Holland: Just a minute—

A Doctor did not tell me that.

Mr. Holland: I don't believe that is proper cross examination, but if it is, there is no foundation laid for that question unless Mr. Romine is ready to follow that up. If his answer is in and Mr. Romine is ready to follow that up and show the doctor did tell him that, then there is no purpose of cross examining on that. 30

Mr. Romine: He said on his direct examination in answer to the same question of the prosecutor that the doctor didn't tell him anything about hospital; so for that reason it is proper. 40

The Court: And he still says so.

Mr. Romine: I still intend to follow it up.

Mr. Holland: What I want is Mr. Romine's statement on the record that he intends to follow it up.

Mr. Romine: I do.

10 The Court: You intend to impeach him by showing the doctor did say so.

Mr. Romine: Yes, according to the information the doctor gave me.

Q That morning when the doctor was there the first time, did he say anything to you or to your wife in your presence about your wife going to a hospital? A I didn't hear him say anything about a hospital.

20 Q Didn't you tell the doctor that morning when he was there the first time that you would not send her to a hospital? A He didn't tell me anything and I didn't tell him anything.

Q How long did he stay there? A I don't remember, maybe three-quarter of an hour and maybe one hour.

Q Was your wife any better when he left? A Little bit better on the start, but after awhile she went bad again.

30 Q Do you know what the doctor did for your wife? A Yes.

Q What did he do? A When he came he examined the wife first, then he found a big lump on her left side and then he rubbed it and put it where it belonged.

Q Is that all he did? A Then he greased her up.

Q Now, the next morning when Mrs. Kudelka came there, was the doctor there at that time?

40 A No, sir.

Q Did the doctor come at all that day? A He was there in the morning, but I don't remember whether he was there after dinner or not.

Q How long did Mrs. Kudelka stay that morning? A She stayed there maybe to twelve o'clock.

Q What did she do, if anything? A She helped, she washed the baby and fixed up the bed and things. 10

Q Did Mrs. Kudelka complain of not being able to do the work because of her foot? A I don't remember, because there was women together there and I don't know what they were talking.

Q Did you see any of the women there help Mrs. Kudelka with the wash? A Yes, sir.

Q They hung up the clothes for Mrs. Kudelka because she could not go out on account of her foot, didn't they? A Yes, sir. 20

Q And one of the young men around there threw out the wash water because she could not carry it out on account of her foot, isn't that so? A There was a young man there that brought her in the automobile and he helped take the water out.

Q Now, about noontime, just before Mrs. Kudelka left, she told you, didn't she, that she could not stay any longer and do the work on account of her foot and that you would have to get somebody else? A I don't know whether she said that. When she got her work done she was through and went home. 30

Q You understood that Mrs. Kudelka could not stay there because of her foot; could not do the work? A I see she had a sore foot and cannot stay any longer, so she went home. 40

Q Yes, she told you to get somebody else, didn't she? A I don't remember whether she told me that or not.

Q At any rate, you sent her home in the automobile again, is that right? A Yes, sir.

Q And you did not see her until after your wife had died? A Yes.

10

Q Now, you said something about looking for a man to dig the grave and then you saw Mrs. Kudelka. Where did you see her? A I passed through her house and she came out and I saw her then.

Q Did you say anything to her? A She spoke to me first when I passed there and she told me I could go ahead and sue her and do what I liked.

Q Well, what did you say to her about suing before she spoke to you? A I don't know why she told me that.

20

Q Did you tell her that your wife was dead? A I didn't tell her that; she seen that my wife was dead after I told her that I had bad luck.

Q You told her you had bad luck. So, you did speak to her first, didn't you? A No, she spoke to me first.

Q Well, did she speak to you before you told her you had bad luck? A Yes, she spoke to me first.

30

Q What did she say to you first? A I was so excited I can't remember everything.

Mr. Romine: Yes, that's all.

Re-direct examination by Mr. Holland.

Q After the baby was born, how long was it when Mrs. Kudelka put the baby over on the side of the room that she came over and pulled

40

the cord? How long in between? A Right away, as soon as she put the baby on the side she came back to the wife.

Q And Mr. Romine was asking you questions about coming out in pieces and putting it in a pile. How did it come out in pieces? What made it come out in pieces? 10

Mr. Romine: I object to asking this witness this question. I don't know that he can answer it. I assume that's a medical question entirely.

Mr. Holland: It is not a medical question at all.

The Court: He can answer it.

Q (Question read.) 20

Mr. Romine: I want to further object because this witness can't give any clear conception of it.

A Before she reached for it with the hand.

The Court: The witness may tell what happened.

Q Did you see her reach for it with her hand? A Yes, sir. 30

Q Did you see her use her hand on her? A Yes, sir.

Q Now, when she put her hand in did she bring anything out in her hand? A Yes, sir.

Q Did she say anything when she had it in her hand? A She said that everything was rotten.

Q She said everything was rotten, did she? How far in did she put her hand? A I don't 40

know how far she put it in, but I saw her put her hand in.

Mr. Holland: That is all.

(Witness excused.)

10

MARCELA MAOKOWSKY, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mrs. Maokowsky, you live in Whippany? A Yes.

Q And how long have you lived there? A Five years, five or six years.

20 Q And are you married? A Yes.

Q And have some children? A Yes.

Q How many children have you? A I have four and one dead.

Q And the four children you have were born in Whippany? A Yes.

Q Did Mrs. Kudelka attend you? A Yes.

Mr. Romine: Object to that.

30 Mr. Holland: I am willing to let him have the benefit of his objection.

Mr. Romine: I object on the same ground, that any attendance of this woman on other people in that vicinity is irrelevant and the State has no right to show that.

The Court: If the purpose of receiving this testimony is for the purpose of showing the question of midwifery, I will admit. If the Prosecutor confines himself to that, it will be admitted.

40

Mr. Holland: That's all I expect to do.

Mr. Romine: May I have it noticed whether the facts and circumstances would bring it within the statute?

Mr. Holland: I haven't finished yet.

Mr. Romine: I want to have a preliminary examination. 10

The Court: No, there is nothing to examine on.

Mr. Romine: I ask an exception.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

Q When was the first time she attended you?

Mr. Romine: I object to all this. Instead of repeating my objections each time, may 20 it be understood that this whole line of examination of the Prosecutor has the same objection.

The Court: No, you better make your objection to each question.

Mr. Romine: Object on the same ground as before.

The Court: Objection overruled.

(Exception allowed and sealed.) 30

C. F. WILSON (L. S.)

Q When was the first time she attended you?
A It will be six years in October.

Q And did you have a doctor at that time?
A No.

Q And did you pay her for attending you?
A Yes.

Q When was the next time she attended you? 40

Mr. Romine: Object to that.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A One year.

10 Q And who was born that year? What was the first baby's name? A Tad.

Q And the second baby's name? A Helen.

Q And did she attend you at the time Helen was born? A Yes.

Q Did you have a doctor? A No.

Q Did you pay Mrs. Kudelka?

Mr. Romine: Object to that.

The Court: Objection overruled.

20 (Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes.

Q What was the next baby you had? A Joseph.

Q Did Mrs. Kudelka attend you when Joseph was born?

Mr. Romine: Object to that for the same

30 reason.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes, sir.

Q And did you have a doctor when Joseph was born? A No.

Q And did you pay Mrs. Kudelka for attending you?

40

Mr. Romine: Object to that.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes.

Q What was the next baby you had? A Edward. 10

Q Did Mrs. Kudelka attend you when Edward was born?

Mr. Romine: Object to that.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes. 20

Q Did you have a doctor then? A No.

Q And did you pay her?

Mr. Romine: Object to that.

The Court: Yes, same ruling.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes.

Q And when was the next baby? A (No response.) 30

Q Who was the next baby back? A Joseph.

Q We have got Joseph? A Joseph.

Q You are through with Edward and Joseph. I don't want to mix you up on which way your children came. Get them all straightened out. Who was after Edward? A Nobody.

Q Edward was the last baby? A Yes.

Q When was Edward born; how old is he now? A He will be two years the month after 40

October; I don't know what you call that month, the fifth.

Q How did you come to get Mrs. Kudelka?

Mr. Romine: Object to it, immaterial.

The Court: I will hear you, Mr. Holland.

10 Mr. Holland: Well, I don't think it's a very material point except for this reason. I don't want Mr. Romine, because of any lack of my questioning to say to the jury, well, she was a personal friend of Mrs. Moakowsky. I want Mrs. Maokowsky, if it is the truth, to tell why, by what reason or what fact she came to know that this woman practiced midwifery and why.

The Court: Objection sustained. You 20 know I am permitting the State to prove that Mrs. Kudelka was or was not a midwife. The detail of it I am not interested in and I don't think the jury are.

Cross examination by Mr. Romine.

Q When you had Mrs. Kudelka on these occasions, did you agree to pay her any sum of money or did she ask you for any particular 30 sum of money? A She did not ask pay herself.

Q You just paid whatever you thought you would like to give her? A Yes.

Q And she was a friend of yours, was she? A Yes.

Q You have known her quite some time? A Yes.

Q Did you ever compensate her for the work she did at your home by giving her anything 40 other than money, such as vegetables? A No.

Q On these occasions when Mrs. Kudelka would come to your house, would she work around your house after the child was born and while you were in bed for sometime? A She just helped work in the house.

Q She would act as sort of nurse and housekeeper while you were sick? A Yes. 10

Q She would do the washing and cooking the meals? A Not cooking, just help washing the baby and clothes.

Q Who would do the cooking? A My husband.

Q Would she do any of that at all? A No.

Q Would she do any housework while she was there? A She would help, yes.

Q So, that after she was there, as a little present, you would give her some money? A Yes. 20

Q She never asked you for any money? A No.

Mr. Romine: That's all.

MARY RESUTKO, sworn on behalf of the State, testifies as follows through the interpreter:

Direct examination by Mr. Holland. 30

Q Mrs. Resutko, where do you live? A Whippany.

Q And are you married? A Yes.

Q And you have children? A Yes, ten.

Q And did you know Mrs. Teczkouski during her lifetime? A I know her nine years.

Q Now, how many of your ten children were born in Whippany? A Eight was born in Whippany and two at Passaic. 40

Q Now, did Mrs. Kudelka attend you at the birth of any of those eight children?

Mr. Romine: Object for the same reason, it's incompetent, immaterial and irrelevant and cannot have any bearing on this issue and second, it is leading.

10

The Court: If the State offers it for the purpose I indicated with the other witnesses, she many answer. You did not say leading?

Mr. Romine: Yes, I did.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

20 A Yes, she attended six.

Q What's the name of the first one that she attended you at the birth of?

Mr. Romine: Object to it as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

30

A Annie.

Q How long ago was that? How old is Annie? A Fourteen years old the nineteenth of February.

Q Did you have a doctor? A No.

Q Did you pay Mrs. Kudelka for attending you at the birth of this baby?

Mr. Romine: Object to that, immaterial, incompetent and irrelevant.

40

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON (L. S.)

A Yes, sir.

Q What's the name of the next baby that was born? A Rosie. 10

Q And did Mrs. Kudelka attend you at her birth?

Mr. Romine: Object to that for same reason stated.

The Court: Same ruling.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A Yes. 20

Q Did you have a doctor? A No.

Q Did you pay Mrs. Kudelka?

Mr. Romine: Object to that for the same reason stated.

The Court: Same ruling.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A Yes. 30

Q What's the name of the next baby that you had born? A Katie.

Q Did Mrs. Kudelka attend you at the birth of that baby?

Mr. Romine: Object to that for the same reason.

The Court: Same ruling.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.) 40

A Yes.

Q Did you have a doctor? A No.

Q Did you pay Mrs. Kudelka?

Mr. Romine: Object for the same reason.

The Court: Same ruling.

10 (Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A Yes.

Q What's the name of the next baby? A Helen.

Q Who attended you at Helen's birth? A Mrs. Kudelka.

Q Did you have a doctor? A I had a doctor about two weeks later on because I had sore feet.

20 Q Did you have a doctor at the time Helen was born? A No, sir.

Q Did you pay Mrs. Kudelka?

Mr. Romine: Object to that for the same reason.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

30 A Yes, sir.

Q What's the next baby? A Pete.

Q Who attended you at the birth of Pete? A Mrs. Kudelka.

Mr. Romine: Object to that, it's immaterial who attended her.

The Court: Objection overruled.

(Exception allowed and sealed.)

40 C. F. WILSON. (L. S.)

Q Did you have a doctor? A No, sir.
Q Did you pay Mrs. Kudelka for her service?

Mr. Romine: Object to that.
The Court: Objection overruled.
(Exception allowed and sealed.)
C. F. WILSON. (L. S.) 10

A Yes.
Q How many babies does that make? A There is one more, Steve.
Q When was Steve born? A It will be two years old on December twenty-ninth, this coming December twenty-ninth.
Q And did Mrs. Kudelka attend you at Steve's birth?

20

Mr. Romine: Object to that for the same reason.
The Court: Objection overruled.
(Exception allowed and sealed.)
C. F. WILSON (L. S.)

A Yes.
Q Did you have a doctor? A No, sir.
Q Did you pay Mrs. Kudelka for her service?

30

Mr. Romine: Object to that for the same reason.
The Court: Objection overruled.
(Exception allowed and sealed.)
C. F. WILSON. (L. S.)

A Yes.
Q Do you remember a time last December when Mrs. Teczkouski was going to have a baby?
A Yes, sir. 40

Q Now, were you at the Teczkouski house at any time? A Yes, sir, and she came to my house once in a while.

Q Now, were you at Mrs. Teczkouski's house just before or just after the baby was being born? A I was there the same day when the baby was born about ten o'clock.

Q Were you there before the baby was born? A Before.

Q Now, how long did you stay that time? A I wasn't there very long, maybe ten or fifteen minutes.

Q Why did you leave?

Mr. Romine: Object to that as immaterial.

Mr. Holland: I withdraw that.

Q Did you leave? A I left and I went home.

Q How long did you stay home? A I stayed home and slept, I think it was two o'clock when he came for me again.

Q Now, when you left, was it because of any reason in connection with Mrs. Teczkouski?

Mr. Romine: Object to that as immaterial, why she left.

Mr. Holland: If it had something to do with this birth, it is material.

Mr. Romine: It cannot possibly bind us why she left.

The Court: No, he asked if her leaving had anything to do with this dead woman.

Mr. Romine: No, with the birth. This was before the child was born and evidently before Mrs. Kudelka came.

Mr. Holland: I withdraw the question.

Q About two o'clock, did you say the husband came for you? A I cannot tell exact time but I think it was around two o'clock.

Q What was the matter, what happened?

Mr. Romine: Object to that, because it must necessarily be based upon hearsay, what somebody told her. 10

Q What did you do? A I came there and took the wet clothes off the baby and gave the baby—fed the baby.

Q You nursed the baby? A I gave the baby milk.

Q And how long did you stay there from two o'clock on? A From two o'clock until half-past six in the morning. 20

Q Where was Mr. Teczkouski from two o'clock until half-past six in the morning? A He was right in the house sitting by his wife.

Q Who went for the doctor? A Some man by the name of Mackey.

The Court: Was it a man or woman.

The Witness: Man.

Q Was it the husband of this Mrs. Maokowsky who was on the stand? A Yes. 30

Q Now, were you there when the doctor got there? A Yes.

Q Now, after you came at two o'clock and until the doctor got there, did you leave the house? A No, I didn't leave the house.

Q Now, during that time, did Mrs. Teczkouski get out of bed? A No.

Q What was the matter with her? A She told me that she— 40

Mary Resutko, cross.

Mr. Romine: Object—

Q Not what she told you. What was the matter with her? A She was laying in bed.

Q What did the doctor do when the doctor got there? A He examined her, then he said there was something on her side.

10

Q Was Mrs. Kudelka there? A No, sir.

Q Did she come back again? Did you see her come back again? A I saw her next morning.

Q What time next morning and where? A I saw her next morning about ten o'clock in the house. I helped her washing.

Q Whose house? A At Mr. Teczkouski's house.

Q Did you have any talk with her about Mrs. Teczkouski? A No.

20

Q Not at all? Did Mrs. Kudelka say anything to you about Mrs. Teczkouski? A Yes, Mrs. Kudelka told me that she was awfully sorry that lady was suffering so.

Cross examination by Mr. Romine.

Q Now, on these different occasions when you had your children and you say Mrs. Kudelka was there; did Mrs. Kudelka ever ask you for any money or did you merely give her what you wanted to give her? A I gave her just what I wanted.

30

Q She never made any agreement with you to come for any sum at all; you just paid her what you wanted to give her? A Only what I gave her, that's all she took.

Q Did you ever pay her in any other way than money; that is, by giving her vegetables or anything of that sort? A No, sir.

40

Q Would you always give her the same amount of money? A No, once—twice, I gave her five dollars, then another time six and once or twice ten.

Q Now, when she was with you when you had these children, did she stay and do the housework and take care of the family while you were in bed? A She helped wash the clothes.

Q Did she get any meals, do any housework? A Yes, she helped me around, do housework and things around the house and she cooked my meals.

Q And are all the children living that were born to you in Whippany? A The oldest boy, Frank, is eighteen years old—

Q Well, are they all living? A Yes.

Q Now, you think it was about two o'clock in the morning when they sent for you to come over to your neighbor's house, is that right? A I can't tell just exact minute but I think it was two o'clock.

Q Then, you don't know exactly what time it was; it was sometime in the morning, is that right? A I know it was coming morning because I looked at the clock when I came home in the morning.

Q When you were called over there, do you know whether Mrs. Kudelka had gone home at that time? A Yes, she was gone.

Q And how long had she been gone, do you know? A I don't know just what time it was.

Q And how long did you stay there before they sent for the doctor? A I stayed there from two o'clock until the doctor came, I think around five o'clock, little after five.

Q Well, had you been there for a couple of hours or more before they sent for the doctor? A Yes, sure I was.

Q So you had been there sometime attending this woman and the baby before anybody went for the doctor, is that right? A Yes.

Q So that after Mrs. Kudelka went home you took her place in taking care of the woman and the child, is that right? A I didn't do anything, only take wet clothes off the baby and put dry clothes on it and fed the baby.

Q And fed the baby? A Yes.

Mr. Romine: That is all.

Re-direct examination by Mr. Holland.

Q Did Mrs. Kudelka ever refuse to take the money you paid her?

Mr. Romine: Object to that, it's immaterial.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A No, she never refused; she took it when I gave it to her.

Q Did she ever protest that she was not a midwife and didn't want you to pay her, that she was only doing this out of the goodness of her heart?

Mr. Romine: Object to that. He has not laid a foundation yet about midwifery. It's hardly fair to this defendant asking whether she ever protested.

The Court: What is the ground of your objection?

Mr. Romine: My objection is on the ground that it presupposed something about

midwifery, whereas he has not led up to any examination at all on that.

Mr. Holland: I merely asked this woman whether she ever protested about excepting this money as a midwife.

The Court: Objection overruled.

(Exception allowed and sealed.) 10

A She told me I don't want to take any money as midwife but I still come and help you here like any woman.

Q Now, do you know of anybody else—did Mrs. Kudelka tell you of anybody else for whom she delivered children?

Mr. Romine: Object to that. There are so many grounds upon which that would be objectionable; but to cover a multitude of sins, I object on the ground that it is immaterial, incompetent and irrelevant. He doesn't fix the time, if it happened before the occurrence of this case it can have no bearing whatsoever. It cannot enlighten the jury at all. 20

Mr. Holland: I have the right to find out from this witness whether Mrs. Kudelka, irrespective of whether she took money or whether she didn't take money, the statute does not make it compulsory to take money, whether she actually engaged in the practice of assisting in the delivery of children and I am asking this woman if Mrs. Kudelka ever told her about some other children she delivered. 30

(Argument.)

The Court: All I want is whatever evidence that State has to offer to show if it is true that the defendant acted as a midwife. 40

The only question in my mind is this: Will the answer to the question propounded enlighten this jury on that point.

(Argument.)

The Court: You cannot put it all in one question.

10 Mr. Romine: All right, if the answer is yes or no.

The Court: The objection is withdrawn and the answer is yes or no.

Q (Question read.) A No, she didn't tell me.

Q Have you heard and is it Mrs. Kudelka's reputation that she practiced midwifery?

20 Mr. Romine: Object to that, that would be hearsay and a conclusion and land knows what—

The Court: Objection sustained.

Mr. Holland: That is all.

The Court: You see you get this ruling. You object to showing particular cases and you also object to her general reputation. Are you right in both? You think I am wrong about that?

30 Mr. Romine: I don't think that this question was proper at all.

The Court: That is a question of reputation.

Mr. Romine: If it is a question of reputation, I say this—

The Court: Which one do you want me to hold is right for you, either particular instances or general reputation?

40 Mr. Romine: I claim both.

The Court: All right, proceed.

Mr. Holland: That is all.

(Witness excused.)

ANDREW MAOKOWSKY, sworn on behalf of the State, testifies as follows: 10

Direct examination by Mr. Holland.

Q Are you the husband of the witness, just before this last one? A Yes.

Q Mrs. Maokowsky? A Yes.

Q And you live in Whippany? A Yes.

Q Were you asked to call Dr. Williams? A Yes.

Q How did you come to call him? A He came over to my house and he woke me up. 20

Q Who came over to your house? A Mr. Teczkouski.

Q And have you any recollection or remembrance about the time? A It was about half-past four when he woke me up.

Q And did you go and get Dr. Williams? A Yes.

Q In Morristown? A No, I called up Morristown. 30

Q Have you a telephone? A Yes.

Q Have you a telephone in your home? A I go in the other house.

Q Did you get Dr. Williams? A Yes.

Q Was he asleep? A Yes.

Q Did he come? A He came about forty-five minutes after I called him.

Q Now, this may be objected to, so don't answer it until after Mr. Romine has a chance to 40

object. What did Mr. Teczkowski say to you when he asked you to call Dr. Williams?

Mr. Romine: Of course, I object.

Mr. Holland: My purpose in asking that question is not for any benefit for the State, but to open up the door for Mr. Romine so that he may ask this witness, did Teczkouski tell you that his wife ever had the doctor for some purpose or other?

Mr. Romine: But he didn't open that door for me.

The Court: Do you accept the invitation?

Mr. Romine: No, I don't.

The Court: Objection sustained.

Mr. Holland: Cross examine.

Mr. Romine: No questions.

Mr. Holland: Did you have any talk with Mrs. Kudelka?

The Witness: No.

Mr. Holland: That is all.

(Witness excused.)

ANDREW BOLSTER, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q You live in Whippany? A Yes, sir.

Q And what is your business? A Why, my business is paper manufacturer.

Q And are you the man who drove Mrs. Kudelka? A Yes, that is, I brought her there; I was sent down to get her.

Q Did you bring her back? A Well, I mean I got her.

Q That was sometime around ten o'clock? A I don't just know what time it was.

Q It was not two o'clock or one o'clock? A I don't know; I was just sleeping; I did not look at the clock. 10

Q Where did you find Mrs. Kudelka at the time you took her; did you find her in her house or in Mr. Teczkouski's house? A Found she was over to Mr. Teczkouski's house; I took her back. He came over to the house and woke my mother up to get me to take her back, because she had a sore foot, and I brought her back. She had a sore foot, and then the next day I brought her back.

Q Now, what time was that? A I don't know what time it was. 20

Q Now, where do you live in reference to Mr. Teczkouski's house? A Next house to Teczkouski's.

Q Well, Whippany is a sparsely settled place; how far is it, one city lot or one-half a block? A About a block.

Mr. Holland: Cross examine.

Mr. Romine: No questions. 30

(Witness excused.)

STANLEY LYON, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Mr. Lyon, where do you live? A I live in Morris Plains. 40

Q And what official position do you occupy? A Why, registrar of vital statistics, called the Board of Health of Hanover Township.

Q Hanover Township includes Whippany? A It does.

Q And have you in your records a record of the birth of this Teczkouski baby in December, 1924? A I have—no, I don't think I have a record of the baby being born.

Q What have you a record of? A I have a record of Mrs. Teczkouski's death. I don't think there is a record of the birth.

The Court: Can you admit or agree she died on a certain date?

Mr. Holland: I don't want anything further along that line.

The Court: It is admitted she died on—

Mr. Holland: Either the twelfth or thirteenth.

The Witness: She died on December the thirteenth.

The Court: That's admitted?

Mr. Romine: Oh, yes.

Q Now, do you know Mrs. Kudelka? A I do.

Q Perhaps before I ask that question—what do your duties consist of as registrar of vital statistics in Hanover Township; what do your duties consist of? A Recording marriages and birth and still births.

Q What was that? A Still births.

Q How long have you been such registrar? A About twelve years.

Q During that time all births in Whippany have been reported to you? A They are sup-

posed to be; I don't think they are all reported; it's a hard matter to get a complete report.

Q Now, how long did you say you have known Mrs. Kudelka? A Possibly seven or eight years.

Q Have you had occasion during that acquaintanceship with her to speak to her about attending the birth of children and the practice of midwifery? A I told her once. 10

Q What did you tell her? A To cut it out.

Q What did you tell her? A I told her she would have to discontinue. She replied saying that she did not do it except in extreme cases, people came to her and requested her to do it.

Q And you told her to cut it out? A I did.

Q How long ago was that? A Five or six years ago.

20

Mr. Holland: Cross examine.

Mr. Romine: No questions.

Mr. Holland: Just one other question.

By Mr. Holland.

Q I show you three papers purporting to be copies of certificates and records of birth and ask you if you got those from your records? A I did. 30

Q Did you make these copies? A I did.

Q Is that your handwriting? A It is.

Q Are they taken from your official records? A They are.

Q Have you here your official records? A They are up at my house.

Q You have those official records at your house? A Yes.

Q And they can be produced here tomorrow morning, if necessary? A If necessary. 40

Mr. Holland: Because they can be produced tomorrow, I offer these copies in evidence to prove the practice of midwifery.

Mr. Romine: Just at the present moment, I do not want to say whether to admit these without seeing the original. May we hold them over and I will confer with the prosecutor later this evening and let him know?

10

Mr. Holland: We will have the originals tomorrow.

The Court: Mr. Romine says he will let you know this afternoon.

Mr. Holland: I will have to leave town as near 4:30 as this court adjourns.

The Court: We will adjourn at this time until ten o'clock tomorrow morning.

20

Morristown, New Jersey,
Wednesday, July 1, 1925.

Trial resumed.

STANLEY LYON, recalled.

Further direct examination by Mr. Holland.

30

Q Is this the record of marriages and births of Hanover Township, Morris County? A It is.

Q And do you find in that the certificate and record of the birth of Helen Lopatte, September 20, 1922?

Mr. Romine: Object to referring to the book. I understood they were going to produce the original records of this man. Now he is referring to a book.

40

The Court: Is this the record of the births and deaths?

Mr. Romine: This is a record of some information he makes up from information he gets on slips.

Q Is that the official record? A It is. 10

Q And is that one of the official records which you are referring to, a copy of the official? A It is.

Q And how do you make it up? A Why, from the return used for that purpose. They go to Trenton and they are bound in book form. They are kept on permanent record.

Q In the Bureau of Vital Statistics in Trenton, and is that the official record which you make up from that at the time you receive them? 20 A It is.

Q Who forwards them to Trenton? A I do.

Q You do yourself? A Yes.

Q So that it is an exact duplication of the original slip which is filed in Trenton? A It is.

Mr. Holland: I offer the book.

Mr. Romine: I would like to further cross examine. 30

Cross examination by Mr. Romine.

Q You are referring now to the official record that you keep, Mr. Lyon? A I am.

Q And this record you make up from some slips, do you not? A No slips, it's a regular form.

Q That's the form which is sent in by the person attending at the time of birth? A Yes. 40

Q Whoever that person may be, and they are the original slips that you get? A I get the originals.

Q And copy these originals in the book you keep? A Yes.

Q And the originals are sent where? A
10 Trenton.

Q You don't have those now? A No.

Q So this is something you made up from some original slips that were forwarded into you? A Yes.

Q The originals are in Trenton? A Yes.

Mr. Romine: I object to these books and want the originals here.

The Court: His record, whatever it is
20 worth is a record. I don't know what it is going to prove. His record is admissible.

Mr. Romine: Object on the ground that the original slips can be produced. This is secondary evidence of something he makes up and he cannot testify from this.

Mr. Holland: He says these are copies of the originals.

Mr. Romine: I understood we were go-
30 ing to produce the originals of these pink slips. He said he had them here. If we are going to introduce in evidence anything, I insist we should have the original slips which they claim were forwarded by this lady.

The Court: What is it you intend to prove, the death of Mrs. Teczkowski?

Mr. Holland: No, the practice of midwifery and this record demonstrates this
40 very thing. (Argument.)

The Court: Let me see your record, Mr. Lyon.

Witness shows record to the Court.

Mr. Romine: The proof must show that they were made by this woman, filled out by this woman and signed by her.

Mr. Holland: Following Mr. Romine's outline, that will do that very thing. 10

Further direct examination by Mr. Holland.

Q What is the general practice with your receipt of these certificates and the records of birth; are they sent to you? A They are sent to me.

Q Now, in some of these instances in which Mrs. Kudelka acted, did you have to go after her for them? A They were sent to me in incomplete form. 20

Q What did you do when they got to you in an incompleted form? A Took them to her to have them corrected; have corrections made.

Q And when you were there, were the corrections made between you and her? A Well, I did; it was because she could not write.

Q Did you do it in her presence and because of the information which she gave you? A I did. 30

Q And what did you do with the certificates which were corrected and completed? A They were sent to Trenton.

Q What did you first do, enter them? A Yes.

Q And sent them to Trenton? A Yes.

Q Was there an occasion on one of these—I am speaking of the writing now, I am speaking merely of the pink slips of paper; is this the 40

form which is used by the attendants to report births? A It is.

Q And did they come in book form? A They did.

Q And did or did not Mrs. Kudelka ask you for a book of them so she could use them? A She did.

10

Further cross examination by Mr. Romine.

Q You say that on one occasion you went there and found that Mrs. Kudelka could not write and you had to complete the form? A Well, I don't positively know whether I completed that form or her daughter; I don't remember that.

Q You understand, do you not, that she could not write? A I said she could not.

20

Q On each of these slips you received, reference to which has been made by the Prosecutor, you don't know whether they were filled in and signed by Mrs. Kudelka or not? A I imagine they were not; I imagine that, I don't that.

Q You don't know whether she did or didn't, you don't know.

Mr. Romine: That's all, I still object.

30

The Court: The book is offered?

Re-direct examination by Mr. Holland.

Q Did you go to Mrs. Kudelka? A I didn't, they were sent from Mrs. Kudelka.

Re-cross examination by Mr. Romine.

Q You don't know who they were sent from; you received them? A I received them and she admitted they came from her.

40

Q Admitted which came from her? A The originals.

Q In every case did you go back and ask if she sent them? A I went there and got correct information on them.

Q In how many instances? A Two, I think.

Q And all the others you don't anything about; you received them from the mail? A I did. 10

Q You don't know the individual who mailed them or sent them? A I do not.

Re-direct examination by Mr. Holland.

Q Since Mr. Romine opened that door; when you received these from the mail and went to Mrs. Kudelka and spoke to her, she did not throw her hands up in holy horror and say she didn't have anything to do with them? 20

Mr. Romine: I object to that.

Mr. Holland: I withdraw that.

Q She never made any protest? A She didn't.

Mr. Holland: That is all.

(Witness excused.) 30

MR. EDDY, called by the State and did not answer.

40

JOHN TAYLOR WILLIAMS, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Dr. Williams, you are a practicing physician in Morristown? A I am.

10 Q And engage in a large practice in Whippany? A I do.

Q Do you remember the Teczkouski case? A I do.

Q What was your first professional connection with that case? A That same morning that the child was born.

Q What time in the morning? A Around five o'clock.

Q What happened? A I found that the

20 child had been—

Q No, what happened; what was your first professional connection; what occurred; did you get a telephone call? A I had a telephone call from Lopatte.

Q From some other person? A Yes.

Q That was five o'clock in the morning? A Between four and five.

Q What did you do? A I called a taxi man

30 to go down and see what was the matter; he told me it was a confinement case.

Q That was around five o'clock? A Between four and five.

Q You were awakened from your slumber? A Yes.

Q And did you finally get to Whippany? A Yes.

Q About what time did you get there? A Around five o'clock, I think; near daybreak.

Q Well, it was just before daybreak? A

40 Yes.

Q Still dark? A Yes.

Q It is dark pretty late around mornings in December? A Yes.

Q Who did you find when you went in the house? A I found the husband and Mrs. Resutko's husband and another woman.

Q Is that the lady dressed in brown who was on the stand who had ten children? A Yes, the same one you had an interpreter for, she speaks good English. 10

Q And did you examine Mrs. Teczkouski? A I found the baby already washed and dressed and I asked why they wanted me and then they said too much blood.

Mr. Romine: I object.

Q No, not what they said. Did you examine the patient? A Well, I wanted to know why they called me. 20

Q Did you examine the patient? A Yes.

Q What did you find? A I found too much blood, that there was a great deal of blood, she was bleeding.

Q What did that indicate to you? A Well, I supposed a hemorrhage.

Q It indicated a hemorrhage; what did you do? A I massaged the womb and gave her ergot. 30

Q Why did you give her ergot? A To check the hemorrhage.

Q Why did you massage the womb? A To get it back in place where it belonged.

Q What did you find the condition of the patient to be? A She was apparently strong and healthy.

Q What did you find her condition to be due to loss of blood; what caused the loss of blood; 40

what did you find her condition to be on account of the loss of blood? A I could not say there had been any too much loss in a couple of hours.

Q In other words, that is not what you supposed when you examined her, but what did your
10 professional examination disclose? A I inquired whether she had any medicine after childbirth and they said no and then I gave her medicine she should have had immediately after childbirth and I massaged the womb.

Q What happened to the patient; what did she continue to do; how did she continue to be, in the state of her health; continued bleeding? A She bled and bled.

Q Did you see the blood? A I did.

20 Q Was there anything particularly that you noticed? A Well, there was what was supposed to be pieces of afterbirth.

Q Well, what did you do; what was there to be done and what did you do for this woman? A I gave her ergot and had it repeated every hour, massaged the womb and put it back in place and told Mrs. Resutko to keep around and hold it in place. I told the taxi man I would be out in a few minutes, I will be back nine
30 o'clock. And I was back between nine and ten.

Q You came back again; was she still bleeding? A Yes.

Q Could not stop it? A Hadn't done any good, the medicine hadn't done any good, hadn't time in fact. I put cold towels by the stomach and applied them a number of times. Even that did not stop it; did not do any good.

Q How often did you treat her and how often did you call upon her? A When I went back
40 the second time I said hospital to her and she

said no. I said hospital to the woman and she no. I told them to continue ergot every hour until they got relief. I got back in the afternoon between four and six and it had not done much good. The next morning I went back and she was some better but she was not better enough for me to stop waiting on her and then I began to inquire what had happened or what had been done. 10

Q Then you found out what had been done at childbirth?

Mr. Romine: Object to what anybody told you.

Q I did not ask what was told you; I am asking what you learned. After you learned what had happened at childbirth, then what did you do? Did you call an ambulance? A Not, then; they still objected to an ambulance, objected to going to a hospital; they objected the next morning. 20

Q Yes, what did you do? A I told a woman in the house, some strange woman—

Q I don't care what they said— A I called an ambulance on my own hook.

Q By the time the ambulance got there, what had happened? A The patient was dead. 30

Q Did you make out the death certificate? A I did for the woman because I was waiting on her, that was my duty.

Q What did you ascribe the cause of death? A Hemorrhages as the cause of death, utera hemorrhage after childbirth and the lack of proper care, retained placenta.

Q Some of the placenta, you mean some of the afterbirth had not been removed? A Yes. 40

Q There was no way of your telling that, was there? A In the beginning?

Q No, as to the cause of death? A There was no way of telling, because I don't know how the case was handled except what the neighbors told me.

10 Q And the fact that you found the hemorrhage which you could not prevent and the particles of placenta or afterbirth were coming out that convinces you in your diagnosis that placenta had not been entirely removed? A Yes, what do you mean, I could not prevent?

Q Now, you have considerable experience, I presume in attending women at childbirth? A Yes, sir.

Q Many or few? A Probably a thousand.

20 Q And during that large experience, what have you to say as to the time which should be permitted to elapse between the birth of the baby and the removing of the afterbirth? A Oh, we generally wait about half an hour before we try to do anything and we give ergot immediately after childbirth so it will stimulate the uterus.

Q Ergot stimulates the uterus? A Yes.

Q Then do you pull it out? A No.

30 Q What do you? A We usually massage or loosen the placenta from the lining of the womb. Sometimes we give gentle traction on the cord.

Q If you break that cord, there's trouble? A Yes.

Q Did you see the baby? A I did.

Q Healthy specimen? A Healthy specimen.

Q From your examination of the baby, was it possible for such a thing to happen as to be a rotten afterbirth? That was the word used

40 to me? A I said if the woman was rotten in-

side, it would be a rotten baby, no such thing as a rotten afterbirth with that baby.

Q No such thing as a rotten afterbirth with that baby? A I did not think so from that baby.

Q Now, at the time you urged—you recommended the patient go to the hospital, that is your usual recommendation in surgical cases, isn't it? A Yes. 10

Q And you did not find that Mr. Teczkouski would take his wife to the hospital; you suggested it and he said no? A The woman did not want to go to the hospital.

Q You called it a special case, did you not? A Yes.

Q And you suggested the hospital the second time, the second visit you made? A Yes. 20

Q And as a matter of fact the woman did not want to leave her own home there? A She said no.

Q Neither one of them, when they said no, had any information that the woman was on the verge of death, did they?

Mr. Romine: Object to that, that would be a pure assumption. 30

Mr. Holland: Question withdrawn.

Q Did you advise either one that the woman was on the verge of death and you suggested the hospital? A No, I thought she might come.

Q Now, when you really made up your mind that there was a question of life and death involved, then you did not argue for the hospital at all, you called the ambulance yourself? A Yes, I called it myself. 40

John Taylor Williams, cross.

Q The fact that the husband and the wife both said no didn't interfere with you in rendering to her your best possible care, did it, doctor? A It did not.

Cross examination by Mr. Romine.

10 Q When you arrived at the house about five o'clock in the morning the first time and examined the woman and found this condition of bleeding, did you say hospital then? A Not the first call.

Q She was not bleeding very badly at that time? A She was, but as I said I thought she had not been given any medicine after delivery and the womb had not been put back in place and I thought that possibly caused the 20 hemorrhage.

Q But the first time you didn't suggest the hospital? A I didn't, no.

Q Now, when you went back the second time shortly afterwards and saw that the condition of bleeding was continuing, then you said hospital? A Yes, because I became suspicious.

Q And your idea in having this lady taken to the hospital was what? A Better facilities 30 and more help and probably she could have been saved because she could have been put to sleep and everything cleaned out.

Q So if she had gone to the hospital at that time she could have probably been saved? A I think so.

Q But they did not want to go? A They did not want to go.

Q Now you continued to treat her up until the time of her death? A I did. 40

Q And the next day or that afternoon, if I understand you, you said that the bleeding subsided somewhat? A Somewhat.

Q And then continued again after that? A Subsided somewhat and I heard she always bled easy, but they called me four o'clock the next morning. I did not go down at four but it was near nine or ten and she was much worse and I went out and called the ambulance myself.

Q It is not unusual to find conditions of bleeding, is it, doctor? A It does happen, if you don't give them proper care.

Q It happens whether you give them proper care or not? A That depends upon the patient's condition and how the womb was taken care of during delivery.

Q Isn't it a fact it will happen with the best of physicians? A It depends on the condition of the case.

Q But it does happen with the best of physicians, don't it? A It happens with the best physicians, yes, it does happen, but it depends on the case.

Q Now supposing, doctor, as they said in this case, that this woman had delivered the child while she was on the floor in the kitchen and that afterward she was taken up, lifted up and partially walked along the floor over to the bed, would that have a tendency to bring on a hemorrhage condition such as she had? A That would have some tendency, that is walking, but the delivery on the floor would make no difference.

Q In other words, if a woman delivers a child, according to medical science, she should remain quiet in bed and not get up? A That's right.

Q Would you say it was proper for a woman to get up out of bed and use a chamber after having delivered a child?

Mr. Holland: Just a minute; I want to object to that. There is absolutely nothing on which to base any such question as that; if it is a matter of defense—

10

The Court: No part of this examination, objection sustained.

Q In other words, it is not the proper thing for women to get up after having delivered a child? A They never get up until we tell them to get up out of bed.

Q Now, the whole thing may depend upon the woman's condition, may it not, previous condition? A Condition of the mother's blood may affect it, may cause considerable trouble.

20

Q A great many things may interfere that would cause hemorrhage, isn't that true? A Yes, that's the reason we give proper medicine right after childbirth to prevent these hemorrhages.

Q Well, suppose a woman had constitutional troubles, would you always be able to prevent that by giving medicine? A As a rule we would.

30

Q Sometimes not? I say, if you find a blood condition and have equipment with you, you can? A Oh, if you don't have the equipment then the proper thing is to rush them off to the hospital where they can get proper equipment.

Q And that is the only thing to do? A No, not necessarily, because sometimes you might scare them to death; some people don't want to go, you can't be rough with them.

40

Q Now you advised in this case that she go to the hospital? A On my second call.

Q You have heard of cases have you not, where women after having delivered a child had a shock and that caused bleeding? A I have heard of those cases, that's the reason I said you cannot say right away you must go to the hospital, give them shock and make them nervous.

Q But you have heard of cases where women after having delivered child suffer shock of some kind and which brings on a hemorrhage? A It's possible.

Q And sometimes they die from that? A Most assuredly.

Q Now, in making up your report of death, you alleged as one of the reasons, hemorrhage? A Main reason.

Q That's the main reason? A Yes.

Q And you added something about lack of proper care; now, of course, you don't know anything about that yourself, do you? A Why, yes, I do.

Q What do you know about that? A Because they told me they had not seen a doctor, they did not have a doctor to help take care of that woman.

Q So that's the lack of proper care. You don't assign that to any particular person? A I don't know who did it.

Q That could be due to the fact this woman was gotten up from the floor and walked across the floor to the bed? A Possibly.

Mr. Romine: That is all.

(Witness excused.)

F. GRENDON REED, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q Dr. Reed, of what college are you a graduate? A Three years Long Island College Hospital, four years New York Homeopathic.

Q Do you practice in the regular way? A Yes.

Q Now a practicing physician in Morristown? A Yes.

Q With offices on High street? A They were originally; on Elm street.

Q And you have heard the testimony, practically all the testimony in this case? A Yes.

Q Have you had any professional experience with childbirth cases? A I have quite extensively.

Q As a result of that experience, are you qualified to answer expert questions? A I believe I am.

The Court: Are the doctor's qualifications admitted?

Mr. Romine: I am willing to listen to what the doctor has to say.

The Court: Qualifications admitted.

Q Doctor, suppose you tell the Court and jury, please, the usual proper procedure in attending a childbirth? A Well, of course, there is the preliminary examination to be made at the time—

Q I am not speaking of that, doctor; I am speaking of the immediately—the actual childbirth? A When the child is delivered, when

it is born, if it is a normal birth, as soon as the child is born or soon after, we tie the cord. The cord is a blood vessel passing between the afterbirth of the mother and the naval of the child. We tie the cord a short distance from the child and then either clamp or tie the cord a little further away from the first tie and cut the place then to prevent any hemorrhage from either child or mother. Now, the principle reason for that precaution is to prevent what? So the child or mother—to keep the child or mother from bleeding because the blood flows in both directions; from the mother and child and if you allow the ends of this cord to untie or unclamp why, of course, both mother and child will bleed.

Q Now, you have got to the stage where you cut the cord? A Yes.

Q Then what is the next thing to be done? A We wait for the afterbirth to be delivered.

Q What do you mean by "wait"? How long? A At least a half an hour.

Q Is that the least that you wait? A That's the least; that is considered to be the very least time. I think this could be made very much plainer if I explained the manipulation of the afterbirth that's in the womb. This afterbirth is adherent, for example my hand represents the afterbirth, it's adherent to the inner side of the mother's womb by reason of the blood vessels passing between the womb and the placenta and it is held firm there by many blood vessels. The afterbirth is mostly blood vessels. It's on most of these that the child receives its nourishment and blood from the mother, the blood passes from the walls of the womb into this afterbirth and then the cord or blood vessel

leaving the afterbirth and going to the child. After the child is born of course there is very much more room in the womb and therefore it's natural for the womb to contract down on this afterbirth. Now, if it does that gradually and naturally, it will contract down and will squeeze
10 off these blood vessels and prevent hemorrhage, but if by any manner of means the womb is pulled away, I should say the afterbirth is pulled away quickly or so as to prevent the womb from closing down on these blood vessels, you are bound to get a hemorrhage or bleeding, therefore it's very dangerous to remove that afterbirth quickly. You want to wait and give plenty of time for the womb to contract normally and squeeze off the blood vessels and we consider half an hour the very least time that
20 should be allowed. We could not do it any quicker than a half hour.

Q Suppose sometimes a half hour does not suffice, then what? A Wait longer.

Q Very much longer? A We wait much longer than that. In some cases if the womb has not contracted down on the afterbirth we massage, that is make a pressure over the abdomen of the mother so you can squeeze it out.
30 If you can squeeze the afterbirth out and the womb contracts right down normally itself, you practically get no more blood. In normal cases we probably have no more than a couple of ounces of blood in the entire delivery.

Q Yes, after waiting a half hour or an hour and it doesn't come, is it good practice or unusual to pull it? A No, very dangerous; that would be dangerous. It may either break the cord or may pull the placenta away in part and leave
40 other parts of the placenta there which would

prevent the womb from contracting down altogether and cause further bleeding right on and on and on.

Q What is the result, doctor, of pulling the cord away first and then afterwards to take out pieces of the placenta; what is the result? A Well, I expect the woman would bleed to death; she would bleed extensively. 10

Q What have you to say, doctor, as to the practice of removing the afterbirth with your hand in pieces? A You would do that in only under very extreme conditions where the hemorrhage could not be stopped any other way and where you found you were unable to remove the placenta entirely. It is necessary to get all of the afterbirth in order to stop the bleeding. If you leave pieces in there it only provokes more hemorrhage. 20

Q What would you say as to the care or lack of care of first pulling off the cord and then taking out the afterbirth in pieces in your hand?

Mr. Romine: Object to that question. That calls for a conclusion.

Mr. Holland: He is an expert.

The Court: Is he testifying as an expert?

Mr. Holland: I withdraw that. 30

Q Would you say it was good judgment, doctor, to first pull off the cord and then go up into the woman's womb and pull out the afterbirth in pieces? A Why, it is not good judgment at all. It's the very worst judgment I could conceive of.

Q Would you say that was good care conducive to preserve either the woman's life or her after health? A No, certainly not. 40

Cross examination by Mr. Romine.

Q You had no personal attendance on this case? A No.

Q You performed no autopsy on the woman? A No.

10 Q You don't know anything of her condition as to whether any placenta was retained in the uterus or not? A I do not.

Q Now, you speak about expressing the placenta until at least half an hour after the child has been delivered or the cord cut. Have you known cases, doctor, where the placenta came within a very short period after the delivery of the child? A I have.

Q So that it does happen sometimes that the expressing of the placenta follows itself 20 normally very shortly after the delivery of the child? A Why, yes, that's normal for a placenta to be delivered by itself. The time varies; it may be within a few minutes or half an hour or even longer.

Q Now, hemorrhage, of course, can be caused from a great many things, can it not? A Hemorrhage in the womb?

Q Yes. A No, hemorrhage in the womb is 30 caused by only one thing, that is the uterus not contracting upon the blood vessels, shutting them off. As long as the womb contracts normally you cannot have hemorrhage.

Q When a person is bleeding from the uterus, can you tell without making an examination whether it comes from the womb or from some other part of the body there; some other organ? In other words, with a physical examination of the woman after childbirth and she is bleeding, can you tell from immediately seeing the blood

40

what causes that blood, whether it is from the womb or some other cause? A I certainly can in the large majority of cases.

Q From seeing the blood or from the person? A Yes, because if you find blood flows freely and steady, if the womb is contracted, we consider it is due to the lower part of the womb where the afterbirth is unattached. 10

Q That can come from a rupture of the uterus? A That's a different kind of bleeding from the one you refer to. That's due to a tear in the lower end of the womb and not from the place where the placenta was attached. If we have removed the placenta in part only, I certainly would not lay very much stress on the——.

Q If there was a retained placenta, would the bleeding begin immediately or would it come on gradually? A That would depend on the force of the contraction and whether the blood vessels were completely squeezed off. 20

Q If there was a rupture of the uterus or tearing, the bleeding naturally would begin shortly after the birth of the child, would it not? A Probably.

Q What is a postpartum hemorrhage? A It means a hemorrhage following delivery. 30

Q Well, supposing that a person was in such a condition that there was an albumin in the blood, would that cause hemorrhage? A I would not expect albumin to cause a hemorrhage of this kind.

Q What do you mean a hemorrhage of this kind; you did not see this hemorrhage? A Well, a hemorrhage that has been described.

Q You mean continual bleeding? A I mean such a hemorrhage as they have described. 40

Q Now, supposing a person after delivery of a child was caused to walk or partially walk some distance, would not that have a tendency to bring about a condition of excessive bleeding and hemorrhage? A Yes, in movement of a patient, outside of removing a patient to a hospital, we might have hemorrhage, we want them kept absolutely still, the more they move, the more they bleed.

Mr. Romine: Yes, that's all.

Re-direct examination by Mr. Holland.

Q Now, doctor, from all these various hemorrhages and kinds of hemorrhages that Mr. Romine has been asking you questions about, from your description or from the description of what you and the jury heard that occurred over there, would you say any of the special kinds of hemorrhage were present in that case? A I would not lay any stress on them with the history of the condition.

Q With the history of the condition? A Yes, ———— not.

Re-cross examination by Mr. Romine.

Q Well, you did not perform an autopsy to know whether there was any retained placenta? A No.

Q And you didn't know whether there was any rupture of the uterus? A No.

Q But you did say that any movement of the patient up around the floor immediately after the birth of the child would have a tendency to produce a severe hemorrhage? A I say if

there is hemorrhage, any movement would have a tendency to make it worse.

Q If there is no hemorrhage or very slight hemorrhage, would movement around the floor— A If the uterus is contracted down so that it squeezes off the blood vessels, that they cannot possibly bleed. 10

Q I am asking you this. If a person is moved about, walks about the floor shortly after the delivery of childbirth, would that cause a condition of hemorrhage that might bring about death? A Not necessarily.

Q But it might do so? A Could do so.

Q It would be possible? A Sure.

Q If a person who is not bleeding, if they were moved about, that would start bleeding? A If the uterus were contracted down, they 20 won't.

Re-direct examination by Mr. Holland.

Q I am coming over to Mr. Romine's field in assuming just merely for the purpose of assumption that the woman did start bleeding because of the fact that she might have possibly gotten up and moved around, and that is merely an assumption. In that case, would not the ergot 30 have taken its necessary effect and stopped the hemorrhage? A We depend upon ergot to stimulate the uterus to contract. We also lay great stress on massaging also.

Q And if the bleeding was merely caused by the walking around, the ergot would have been an ample remedy? A Undoubtedly, we would expect it to.

Q And the fact the uterus did not contract, was because there was still a part of the pla- 40

centa there with the open blood vessels fully exposed and the administration of ergot would have had little or no effect on that condition? A No matter what you do, if the uterus is not contracted, the blood vessels will stay open and bleed.

10 *Re-cross examination* by Mr. Romine.

Q Well, then, you think that there might have been some retained placenta there? A Yes.

Q And you have heard of cases where in spite of anything that human agencies could do, the person has died? A I never heard of a case where a person died where they have been properly managed in a confinement case.

20 Q Have you had a case in childbirth where something developed a hemorrhage and the person died? A I have never known of such a case.

Q How many of these cases have you had? A I can't tell you how many; I was in the hospital in New York, I still go there and in the Newark City Hospital, I was there for several months and have had many cases of birth delivery outside the hospital, quite a large experience in my

30 private practice.

Q Have you had cases sent in from doctors where hemorrhage developed and they died? A I don't think I have known of a patient being brought in, bleeding like that that has died if kept quiet. I have known of cases where if they have been brought to the hospital late where we had hemorrhage and blood.

Q In all your experience you never had a bad case? A I have had several and never

40

lost one from hemorrhage. I have delivered them from the poorest homes on the east side of New York.

Q Some of these cases that were brought in the hospital, you mean? A Absolutely, I never remember any with hemorrhage.

Q Have you heard of any competent attendant pulling off the cord? A I certainly did not; no one else. 10

Mr. Romine: That is all.

(Witness excused.)

Certificate from the State Board of Medical Examiners received in evidence and marked Exhibit S. 1.

Mr. Holland: That is the State's case.

Mr. Romine: At this time I want to make my formal motion for dismissal of the case and direction of verdict of not guilty. (Argument.) 20

The Court: The motion is denied.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Thereupon Mr. Romine opened to the jury in behalf of the defendant. 30

ANNE KUDELKA, sworn on her own behalf as defendant, testifies as follows; through the interpreter.

Direct examination by Mr. Romine.

Q You are the defendant in this case, are you? A I am not guilty. 40

Q I know you are not, but I say you are the one that is charged here with this crime? A Yes.

Q And where do you live? A Whippany.

Q What's your husband's name? A Joseph Kudelka.

10 Q Where do you live? A Whippany, Eden Mill Road.

Q How long have you lived at Whippany? A Twenty-three years.

Q How many children have you had? A Eleven, two dead and nine is living.

Q Did you ever have a doctor when you had these children?

Mr. Holland: I object, I don't think it
20 makes any difference as to that.

Mr. Romine: I am trying to show the experience she has had.

Mr. Holland: If for that purpose, I withdraw my objection.

A No, sir.

Q Who delivered the children? A Myself; I never had anyone there.

30 Q When you had these children born to you, how did you take care of them? A I issued the child, cut the cord and tied it up and then I laid it by me.

Q After the child would be delivered from you and the cord would be attached from the child to you, what part of the cord would you tie?

Mr. Holland: Is this about her own?

Mr. Romine: Yes.

40

Q Where would you tie the cord on your own children?

Mr. Holland: I submit that can bring forth a number of answers.

A The only answer I could make is, she tied the cord not far from the child and then again. 10

Q Then what did you do with it? A Then I washed the child.

Q What did you say about cutting the cord after you tied it? A Yes, cut it with the scissors.

Q Well, where would you cut it?

Mr. Holland: Can you say what she said then?

The Interpreter: She is telling me different, she won't answer the right question. 20

The Court: You tell what she said.

The Interpreter: She said she rather have a Polish interpreter if there is any.

Mr. Romine: Can you understand her?

The Interpreter: Yes.

Mr. Romine: Didn't she say tie it there nearer the child and tie it in between, cutting it in between?

30

The Court: Just wait a minute. Mr. Molnar, you give the question to the witness as asked to her and then whatever answer she gives you, just tell it. It don't make any difference whether it answers it or not.

Mr. Romine: Can you understand her dialect?

The Interpreter: I can understand it, but she says she don't understand me. 40

Mr. Romine: Don't she express herself sometimes in a dialect you don't understand and isn't that what the difficulty is in trying to get the right answer?

Mr. Holland: I submit, if she understands what Mr. Romine is asking her we may as well suspense with the Interpreter and have her speak English.

Q Didn't you say a moment ago that when you tied the string near the child and a little farther away, that you cut it in between? A No.

Q Well, where did you say you cut it? A I cut a little ways from the child.

Q Well, was it beyond where you tied the string? A When the child was born, put by me —I can't hardly remember—

Q Let me ask you this: describe it all over again. When the child was born you tied the cord? A Yes.

Q You tied it near the body? See if we can't get this in English. You tied the cord near the body? You understand me? A I no understand much.

Q You tied the cord near the body? A Yes.

Q You tied the cord a little farther away? A I got the baby near and tied here and tied here and cut here, in between (indicating).

Mr. Holland: I submit she can talk perfectly well enough.

Q Now, you know this lady that died? A Yes.

Q Try and talk English now and see if we can get along and get through this thing. A No, I don't understand English.

Q Now, on this night when man came to your house, where were you? A I don't understand.

Q Yes, you do, let's go ahead and see. On this night— A I don't understand, please. Little bit, I don't understand everything. Excuse me, please.

Q Ask her this. On this night this man came to her house for her—

The Court: Put your question more direct to her.

Q Did this man come to your house for you to go up and be with wife in December, last year? A Yes.

Q Do you remember what day it was? I don't know what day that was but it was before Christmas.

Q It was in December last year, was it? A It was before Christmas, in that month.

Q And who was at your house the night he came? A I was there, my husband, my daughter and her husband.

Q And this man that came down there, Teczkowski, what do you call him; do you call him any other name? A They call him Kaiser.

Q Where were you in the house when Kaiser came? A I was sitting in a chair because I had a sore foot.

Q What was the matter with your foot? A I had some kind of gathering on my toe and it was very sore.

Q Was your foot swollen or not? A Yes, I could not put my shoe on.

Q And what time of night did Kaiser come to your house? A I can't tell just exact time but somewhere after ten o'clock.

Q What did he say to you? A He told me, Anne, come to my house because my wife is sick.

Q Did he tell you what was the matter with his wife? A She's going to have a baby.

Q And what did you say to him about going?
10 A I told him I won't go because I had sore foot.

Q What did he say to you? A I told him call doctor and he said doctor would be there.

Q What else was said by him about your going? A He began to cry and tell me he don't want no doctor.

Q What did you say about that? A I told him I would not go because I had sore foot and he told me he would go and get a car.

Q What did he say about getting a doctor?

20 Mr. Holland: I submit that has already been answered.

A He said he don't want no doctor because I want you.

Q Yes, that's what he said first. Now you told him you want a doctor and he went to get a car, did he say anything after that about getting a doctor? A He tell me he's going to
30 bring a car and I would have to come.

Q Did he say, after he said he would get a car, anything about getting a doctor?

Mr. Holland: I submit Mr. Romine has been trying to get his answer but he should not lead the witness in saying yes.

The Court: Sustained on the ground it is leading.

(Exception allowed and sealed.)

40 C. F. WILSON. (L. S.)

Q When he told you he did not want a doctor, did you say anything more about that? A He went after the car and bring the car and I went with him.

Q And why did you go with him? A Because he was crying and didn't want a doctor and I had to go and help his wife. 10

Q Now, when you got up there, where did you find his wife? A She was lying on the bed but she told me she was going to be sick.

Q Where did his wife go after you got there and before the child was born? A She got off the bed and walking around the room. She was walking in the room.

Q Where did she go before the child was born? A Her husband sent her on the floor in the kitchen and I told him not to send her there 20 because it was cold, because she was going to have birth.

Q What did he say about that? A He told me that his mattress would be dirty if he put her on the bed.

Q When child was born, who was there? A I was there.

Q Anybody else? A And husband.

Q Any other person in there? A No, nobody else. 30

Q Was anything said about doctor when you were up at his house before the child was born? A I asked whether doctor would be there and he said no, you be here.

Q Where did he say that, up in his house? A Yes, in his house.

Q What did you say about that? A He said, I don't want no doctor.

Q Well, were you willing to stay or did you want to go home? 40

Mr. Holland: Just a moment.

Q What did you do after that?

Mr. Holland: What did she say?

Q What did you say or do after that? A
10 When, when the baby was born?

Q When you were up at the house and he said that the doctor was not coming then, what did you say or do about it? A I have to work around the lady because he don't want no doctor.

Q Now, when this baby was born this night or this morning, what did you do; just tell us what you did? A The child was born easy and I helped the lady. When the child was born I
20 was there and I put the child to one side; just a little bit to one side.

Q What did you do with the cord that led from the baby to the mother? A He brought me scissors over and I tied the cord here and there (indicating), and then I cut it in the middle.

Q And what did you do with the baby after you tied the cord and cut it? A I put it on the table and he took her by the arms and led
30 her to the bed.

Q Well, what was done— A No—

Q What was done before he led her to the bed? What did you do with the woman; what else did you do with the woman after the cord was cut? A I put the child on the table, then I went to the lady.

Q What did you do with the lady? A I took the clearance away from her.

Q Was there any part of the cord you cut
40 leading into the woman? A I don't cut any

more at all because it came out whole, only one side was retained.

Q It came out; did you have to help it out? A It came out itself.

Q And how much was there fastened to the end of the cord that came out from the woman? A About that long (indicating). 10

Q And how big around was it that came out fastened to the end of the cord? A That was not altogether, because it was retained.

Q Can you describe to us how big around the part was that came out with the end of the cord? A It was not big, it wasn't all.

Q Would you say it was as big as your fist or bigger? A About like my fist.

Q And did anything more come out afterward? A When he took her up, then it fell 20 down. When he took her and led her from about from here, I think like, then it fell off, fell down from her.

Q Now, how far was it she had to go from the kitchen floor to the bed? A About like from these steps in the room.

Q And was it on the level or did she have to go up steps? A She walked on the floor.

Q Well, was it level from one room to the other? A There was no steps there, all level. 30

Q Did you help Kaiser with his wife as she was moved from the kitchen to the bedroom; did you help in anyway? A When he led her into the room by the bed, I catched her by the legs and helped him put her up on the bed.

Q Did you help her walk into the room? A No, I was washing the blood.

Q Did you say anything to him about not taking his wife in there? A Yes, I told him not to lift his wife like that. 40

Q After the child was born and she lay there on the floor, who suggested she be taken in on the bed, you or Kaiser? A I felt sorry for her and I told him to take her in the bed.

Q Now, was anything on the floor after she was taken from the kitchen into the other room; was there anything on the floor? You say something came out of the woman; what was it? A There was some blanket there he put down there.

Q You said something came out of the woman, out on the floor as she was taken from the kitchen to the bed; what was it? A When she was going, why, bleeding.

Q Did you do anything with the blood on the floor? A I did, washed the whole floor.

Q What did you do for the woman after she got in the bed? A I took warm water and rags and then washed her legs.

Q Anything else? A Then I tied her around.

Q With what? A I tore a sheet in half and tied around double.

Q You bandaged her up? A Yes.

Q How long did you stay there? A Oh, about two hours.

Q Did you leave then? A Yes, because I had a sore foot and I went home.

Q Well, how did you come to go home; did you say anything about going home? A Yes, I wanted to go home because I had a sore foot.

Q Did you say anything to Kaiser about wanting to go home? A I told him I wanted to go home and he went after the car.

Q Whose car did he get? A Andrew Bossa's.

Q Where does he live? A At the brick yard.

Q I mean with reference to Kaiser's house, how near to Kaiser? A Just from one house to the other.

Q What time was it, do you know? A Somewhere around three o'clock.

Q And you saw the woman when you left? A She was all right. 10

Q Did you leave anybody there beside Kaiser when you went home? A Only Kaiser himself.

Q When next did you go back to the house? A Next day car came for me somewhere around nine o'clock or ten o'clock.

Q Whose car was it? A Andrew, that same man.

Q Was Kaiser with him? A No.

Q Did you know when you went home the night before that he was going to send for you the next day? A I told him if necessary, send for me. If not, you don't have to come. 20

Q Now, the next morning, how was your foot? A It was worse yet.

Q Did you go up to the house? A Yes, because the car came after me.

Q What did you do up there the next day, if anything? A When I went there, I asked her how she feels and she tells me she feels all right. 30

Q Did you have any talk with Kaiser that morning when you got there? A Yes.

Q Did you learn that a doctor had been there? A He told me that she wanted to come down and use chamber and she fell down and fainted and then he sent for doctor.

Q That's what Kaiser told you happened to his wife? A Kaiser told me that, yes, sir. 40

Q Did you see the doctor there that morning? A No.

Q Had he been there before you got there? A Yes, he was there; they told me he was there.

Q What work did you do that morning, if anything? A I got some water and put it on the stove and washed the baby and washed the mother and took her baby and went downstairs to do some other work.

Q Did anybody come in to help you do some other work? A Andrew Maokowsky's wife and Mrs. Resutko.

Q What work did they help you do? A After I washed the clothes they hang the clothes out on the line because I could not go out; I had a sore foot.

Q How long did you stay there? A About one hour.

Q Did you leave there? A Yes.

Q Did you say anything to Kaiser about going or why you were going? A I told him I go because I had a sore foot and Andrew came and took me home.

Q Did you say anything about coming back? A I told him I had sore foot and I go home.

Q Did you tell him whether you would come back or not? A I told him I won't come back no more because I had a sore foot.

Q Did you say anything to him about getting anybody else? A No.

Q Now, did you see Kaiser on the day that it is said that his wife died?

The Court: It is admitted that she died on the 13th.

Anne Kudelka, cross.

Q On the day that it is said that Mrs. Teczkowski died, did you see her husband, Kaiser? A No, sir.

Q Well, do you remember his coming down to your house after his wife died and having a talk with you? A He was not in my house, but he was another man—he stood outside in the field. 10

Q And did you say anything to him about letting him sue you if he wanted to sue you? A When the man came to my house which he had to go dig grave for him then he told me that I made him trouble.

Q Kaiser told you that, did he? A Kaiser told me that and I told him I am not responsible for that.

Q Did you tell him that it was the doctor's fault? A No. 20

Mr. Romine: That is all.

Cross examination by Mr. Holland.

Q Aren't you known as Mrs. Coolack? A That's my name.

Q Your American name? A Mrs. Coolack, that's not my name, that's my husband's name but they know all right the other name so they call me that name. This time I got different man, Joe Kudelka. 30

Q Joseph Kudelka is your second husband? A Yes.

Q And your first husband was Coolack? A Yes.

Q So that you were Mrs. Coolack, were you? A This time, they don't call me that. 40

Q Was your foot as sore as Mr. Romine makes out that it was? A It was very sore; very bad, it was very sore.

Q What doctor did you have? A I didn't have no doctor.

Q Wasn't it sore enough to go to a doctor?
10 A It was pretty sore but I took care of it myself, had medicine and things on it.

Q What medicine did you put on? A I had something dark from the doctor.

Q The doctor who looked at this foot, was—so he had treated you once before for something else? A I didn't have no doctor to my foot but I had medicine long time in my house.

Q What was the doctor's name?

20 Mr. Romine: She said she didn't have a doctor.

Q Did a doctor give you this medicine? A No, I had it for a long time, which I used.

Q And when you got it, a long time ago, who did you get it from; did you get it from a doctor? A The children brought it home.

Q Didn't you say a minute ago that it was medicine that you got from a doctor? A Yes,
30 from these peddlers which they call themselves doctors and they sell some medicines.

Q Well, if you got it from a peddler why did you tell us you got it from your children? A It's something what you grease when you get sore spot and grease and it's all over.

Q Yes, but if you got it from a peddler doctor, why did you tell us you got it from your children? A Because that was for the children too.

40

Anne Kudelka, cross.

Q How long did you know Mrs. Teczkowski? A I don't know just about how long, about eleven years.

Q How many babies did Mrs. Teczkowski have before this last little baby?

Mr. Romine: Object to that, not cross examination. 10

Mr. Holland: I have the right to go into that—

Mr. Romine: He hasn't the right to go into anything that I did not go in on that examination.

The Court: The question is admitted.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

20

Q (Question repeated.) A Four; this was the fifth.

Q And did you attend her in the other four babies' birth?

Mr. Romine: Object to that, not cross examination; I didn't go into it. It doesn't make any difference so far as this particular hearing or this particular case was concerned. 30

The Court: Objection sustained.

Q How often, during the eleven years that you knew Mrs. Teczkowski did you use to see her and talk with her and pass the time of day? A I didn't see and go there only when she asked me to go there at the birth of child.

Q So you never went to see her except when you went there for the birth of a child?

40

Mr. Romine: Object to that question. (Argument.)

The Court: The Prosecutor may proceed with this question if he wishes to.

Mr. Romine: Exception.

(Exception allowed and sealed.)

10 C. F. WILSON. (L. S.)

Q (Question read.) A I was there once and she called me there herself, but she did not have any baby then, yet.

Q How long ago was that? A That was in the summer time.

Q And did she tell you she was going to have a baby in the summer time? A Yes, she told me.

20

Mr. Romine: Object to that.

The Court: On what ground?

Mr. Romine: On the ground it is improper, immaterial and not cross examination.

Q That was before Helen was born, wasn't it? A Yes, that was before she had the baby.

Q This last baby? A Before she had this
30 baby.

Q And she made arrangements with you in the summer time and told you she was going to have a baby? A She told me she was going to have a baby but she did not make any arrangements with me.

Q Now, why did she tell you that she was going to have a baby?

Mr. Romine: Object to that, it calls for
40 a conclusion.

Q Do you know why she told you she was going to have a baby?

Mr. Romine: Object to that, that is purely a repetition of the other.

The Court: Objection overruled.

(Exception allowed and sealed.) 10

C. F. WILSON. (L. S.)

A She told me she was going to have a baby because I seen her myself; she was in the family way.

Q And do you know why she told you? A Oh, she was just laughing and she was happy.

Q Were you to take care of her when the baby was born?

Mr. Romine: Object to that. 20

The Court: Objection overruled.

Mr. Romine: She already said, no, she said she made no arrangements.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A She didn't ask me to.

Q Did she ask you on the other four babies? 30

Mr. Romine: Object to that; in the first place the question isn't complete and if it is whether she requested her to care and attend to her, it's not cross examination, we are not here to try anything about the other four babies.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.) 40

Mr. Holland: I withdraw the question. I would like to put another form of question to her.

Q The birth of how many babies have you attended during the last two years?

10

Mr. Romine: Object to that, have I asked her anything about it?

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A I was with every child what she had.

Mr. Romine: I move that be stricken out.

20

Mr. Holland: I consent, it is not what I asked her.

Q How many babies in Whippany did you deliver during the last three years?

Mr. Romine: Object to that on the ground it's not cross examination, it's immaterial, incompetent and irrelevant and has no bearing on this inquiry.

30

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A I don't remember, I didn't mark it down.

Q Well, you marked the birth certificates, didn't you?

Mr. Romine: Object to that, that's not cross examination.

40

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A I didn't mark it no, I can't write.

Q Did you have anyone mark it for you?

10

Mr. Romine: Object to that, not cross examination.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A I have last, I was over to Joe Lapatha.

Q Was that the last baby you had, Joe Lapatha? A No, I was at Joe Lapatha's, write for her the certificate.

20

Q Then you sent it over to the Board of Health? Do you know who he was going to send it to? A The Board of Health, he told me he was going to.

Q Who told him to send it to the Board of Health? A Some nurse bring me paper and tell me when I go to other children's birth I fill that out.

30

Q Now, did you go to other children's birth?

Mr. Romine: Object to that?

Mr. Holland: I withdraw it.

Q How much was Mr. Teczkowski supposed to pay you for this Helen's birth? A I didn't ask him for nothing; what they give, I take.

Q That was the way you did all your business, wasn't it?

40

Mr. Romine: Object to what she did in other cases.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

10 A I never asked anybody for money, what they give me I take.

Q Did you have a daughter who was going to be married around December 9th or 10th or 11th or 12th?

Mr. Romine: Object to that, it's immaterial.

The Court: Well, it may lead up to some material thing. The question itself makes no difference.

20

Mr. Holland: If she answers it no, I am foreclosed.

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

A Yes, and she got married and got husband and child.

Q Now, when did she get married? A She

30 was married at court.

Q And what day? A I don't know what day that was.

Q What day in reference— A It was after Christmas.

Q It was after Christmas? A Yes.

Q Wasn't she married by the time that Helen Teczkowski was born? A Yes, but she had a baby before Mrs. Teczkowski.

Q I don't care when she had the baby, but

40 on the day that Mrs. Teczkowski gave birth to

Helen was your daughter married on that day or the next day? A I think it was the same day; not quite sure because I did not write it down; but because I was excited and mad.

Q What were you excited about? A I don't know whether I was mad at children or not but I was mad. 10

Q Well, you were not so mad as all that, were you? A No.

Q You were not so mad; did she get married the next day after the baby was born? A I don't know, because I did not mark it down.

Q Well, don't you remember you wanted to go home so you could attend the marriage the next day? A I didn't go nowheres because I had a sore foot.

Q Well, on the 11th did you or did you not, 20 I don't know, we are only trying to find out; on the 11th did you or did you not come up to the court house when your daughter got married? A I don't know, I don't remember.

Q Is your daughter in court? A No, her baby is sick and she didn't come.

Q She was in the court house? A She was here last two days, baby very sick, and that's what she didn't come. 30

Q Who married her?

Mr. Romine: Object to that.

The Court: I suppose it is for the purpose of discrediting her testimony as to her sore foot, that she was able to come up to Morristown.

Mr. Romine: I don't think it is for any such purpose at all.

40

The Court: I don't know; I don't think it is very competent.

(Argument.)

Mr. Holland: I withdraw it if you object.

Q Can you remember whether or not your
10 daughter got married before this baby was born or after? A After the baby was born.

Q Yes, now how long after? A About four days.

Q Are you sure it was four days afterwards? A I can't tell exactly, but I think.

Q Did you attend the marriage? A There was nothing much marriage there.

Q But did you attend it; were you there? A Yes, was in the house.

20 Q In your house? A Yes.

Q What do you mean when you said she was married in court? A That's nothing to me if she married a man; I don't care where they go get married.

Q Now, Mr. Teczkouski told you there wasn't to be any doctor for Mrs. Teczkouski, didn't he? A He told me that there would be a doctor there.

30 Q Well, if there was going to be a doctor there, what was the need of your coming? A He called me.

Q He called you because he told you he didn't want to get a doctor, didn't he? A I don't know; he told me there was doctor there and he wanted me to help, too.

Q Didn't you say before that he told you there wasn't going to be any doctor there? A He didn't tell me that; he told me the doctor would be in the house.

40

Q Why have you changed your story from what it was on your direct examination? A I said the same thing before.

Q Didn't he tell you he didn't want to get a doctor? A Yes, he told me.

Q Didn't he tell you that he wanted you? A He told me that he didn't want a doctor and he wanted me. 10

Q And you did not want to come, did you? A No.

Q Why? A I had a sore foot.

Q But you did go? A Yes, when he sent the car I had to go.

Q Well, you said—Mr. Romine asked you a question and you said you knew there was going to be trouble; how did you know there was going to be trouble? 20

Mr. Romine: Object to that; she did say that and I did not ask that. What there was said about trouble—

The Court: Never mind what was said; you got an objection.

Mr. Romine: Yes, I am directing your Honor—

The Court: Stop right there; we will go back to the records— 30

Mr. Holland: Suppose we go to the records.

The Court: I overrule your objection and allow you an exception.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Q (Question read.) A I don't say that to Mr. Romine. 40

Q Before you took this case, did you expect any trouble? A No.

Q Did you think it was going to be a difficult case, a hard case? A No.

Q How did you know it wasn't going to be a hard case? A Because I know by myself how
10 the child was born.

Q How did you know that she was not going to have a hard case? A She didn't have a hard case; the child was born nice.

Q When you first came in the house around ten o'clock, did you tell Mrs. Teczkouski that you did not want to take her case? A I have to do because I am friend.

Q But you did not tell her that you did not want to take the case, did you? A They wanted me and I helped them.

20

Q Does your foot still bother you? A No, not now.

Q Now, did your foot still bother you then, when you got in the house? A Yes, it was sore; I took one shoe off and was walking barefoot.

Q Who helped fix the pillows and the clothes on the kitchen floor? A Her husband.

Q Her husband and who else; did you help?
30 A No, I didn't.

Q Well, did you stand around and not do anything? A Yes, I didn't do anything because she was walking around the kitchen then yet.

Q You were standing around doing nothing while the husband was doing the work and making the bed on the floor? A She was walking and he was fixing the place down on the floor.

Q Well, why didn't you help him? A I told him I didn't like the idea of putting that bed on
40

the floor because it's a bad place, and he told me he would not put it on the bed because it would make the mattress dirty.

Q Well, what did Mrs. Teczkouski say? A I never saw a woman lay on the floor.

Q What did Mrs. Teczkouski say? A She was pretty weak; she did not say anything. 10

Q Well, what difference did it make?

Mr. Romine: Object to that.

Mr. Holland: I withdraw it.

Q Did it make any difference whether she was in the bed or on the floor? A There is difference, because I know by myself when I be walking the floor I am afraid everything will fall down on the floor.

Q She was not walking the floor; she was 20 supposed to be inclining on the floor, wasn't she? A After the child was born he led her into the room on the bed.

Q Well, didn't you help him at all? A I didn't help him lead her, but when he got her in the room by the bed I catched her legs and put them up on the bed.

Q If you were anxious that the woman be in bed, why didn't you help him? A I did not 30 need help him.

Q He objected putting her in the bed, didn't he? A I told him he better take the woman away from the floor because it was cold there, and then he took her in the room.

Q He objected to taking her in the bed because it was going to soil the mattress just as much, wasn't it? A Yes.

Q Why did he take her if it was going to soil the mattress? A I don't know.

40

Q Well, after you told him to take her up off the floor, you told him to take her up off the floor, there wasn't any place for her, was there? A Yes, I told him.

Q After you told him that, why didn't you help him? A I helped; I helped him clean off things.

Q After you told him to pick her up off the floor, why didn't you help him pick her up? A He picked her up by himself and she was quite strong enough.

Q Well, if she was strong enough to walk all the way up to the bed, why did you have to pick her feet up when all she had to do was to sit down on the bed? A Because she was bleeding pretty strong.

Q Well, she could sit down on the bed after she got there, couldn't she? A No; when he led her to the bed I came right there and helped him put her up on the bed.

The Court: At this time we will take an adjournment until two o'clock.

AFTER RECESS.

ANNE KUDELKA, recalled.

Further cross examination by Mr. Holland.

Q Mrs. Kudelka, did it take long for Mrs. Teczkouski to be moved from the floor in to the bed? A Maybe two or three minutes.

Q How long did it take between the time that the baby was born and the time that she

got in bed; how long a time was that? A About ten minutes.

Q From the time the baby was born until she got in bed it took about ten minutes? A By the time I tied the cord on the baby and put it away and took the woman to the bed it took about ten minutes. 10

Q It did take longer than that, didn't it? A No.

Q Didn't it take more than ten minutes from the time the baby came out and was born until she got in bed? A It only took ten minutes. As soon as I tied the cord on the baby he took the wife away right away.

Q Well, what took so long; why ten minutes between the time the baby was born and she got in bed? A I didn't look at the clock at the 20 time.

Q Well, I know you didn't look at the clock, but why did it take so long? A Because we had to clean from under her and it took a long time.

Q So you cleaned up under her, the baby was born, you tied two knots in the string; you cut the string, you had removed the afterbirth, you had cleaned up and fixed her up and carted her 30 to the bed, you helped lift her feet up and that took you ten minutes? A Don't take me very long to tighten up the cord and baby, but it took a little more time to clean up and everything.

Q How did you know that the baby was being born? A I saw that it was born when she lay there.

Q Did you see the head emerge; did you see the head coming out? A After the place was open I seen it.

40

Q And did you help the shoulders come out? A The baby was pretty strong and it came out itself.

Q And what did you do about the cord that was around the neck?

10 Mr. Romine: Object to it; this witness has not said it was around the neck.

Q Where was the cord?

Mr. Holland: You asked the question of the State's complaining witness, when the baby was born wasn't the cord twisted around its neck?

Mr. Romine: My understanding was the cord never was around its neck; I would not
20 ask such a fool question.

Mr. Holland: I withdraw the question and ask this one.

Q Was the cord around the baby's neck? A No.

Q What did you do when the baby came out; which hand did you hold it in? A I didn't hold him in any hand; I just took him and put him
30 up on the side and tied the cord.

Q What did you lay her on? A I had to put her down, otherwise I can't tie the cord.

Q Yes, what did you put her down on? A After I tied the cord I put him on the table.

Q Did you put the baby down before you tied her cord? A First the baby came out and it lay right by the mother's leg; that's where I tied the cord.

Q What did it lay on? A Right there where
40 the mother lay.

Q And what was that on; was that the bare floor or was it a quilt or what was it on? A The baby lay on an old cloth that was there by the mother.

Q And how far away from the mother did you lay the baby before the string was tied? A About that far (indicating). Mother was here and baby was right here (indicating). 10

Q And what did you tie the string with? A I got strong cotton thread what he gave me.

Q Cotton thread, did you say? Where did you get the thread from? A I don't know where he got it from; I didn't have any.

Q Well, did you have it before the baby came out? A Yes.

Q Where did you get the scissors from? A I don't know; from the other room.

Q When did he go in the other room and get the scissors? A When the baby was born. 20

Q Just after it came out? A Yes.

Q Didn't he get the scissors and the thread at the same time? A Yes.

Q Well, why did you say a minute ago that he got the thread before the baby was born? A I didn't say that.

Q What did you say? A Went out and got the thread. He bring that to me, but I did not say that before, only what I say now. 30

Q Which hand did you hold the baby in? A In both, because baby was pretty heavy.

Q And what did you do with the scissors after you cut the string? A No, washed the scissors right after she got through with the baby.

Q Did you wash the scissors before Mrs. Teczkouski was picked up off the floor and put in bed? A Before, when she was on the floor. 40

Q Was that when you were cleaning up the room? A Yes, when I washed the baby.

Q Now, can you give the Court and jury any idea of how long that string was, the baby's cord? A I did not measure it.

Q Well, was it the short one or was it the long one? A It was not short, not long, just as usually are.

Q And after you tied the baby's end of the cord, did you come back to the mother to attend to her? A Yes.

Q Now, what did you do; which hand did you take the cord with? A I didn't catch with any hand because everything was out.

Q That was out before you got back? A Yes.

Q Well, didn't you help it come out at all? A No, everything came out all right.

Q Well, what were you supposed to do if you were not helping it come out?

Mr. Romine: Object to what she was supposed to do. What did she do when she did not help it come out may be admissible.

The Court: Objection sustained.

Q Then what else did you do? A After he took his wife in bed I cleaned up the muss what was left in the kitchen where she laid.

Q Well, what did you do after the afterbirth came out and before he put her in bed; what did you do, if anything? A I didn't do anything after he took her in bed, I cleaned up what came out of her.

Q What did you do before he put her in bed after the baby was born? A He didn't want to put her on the bed.

Q Yes, what did you do after the baby was born before he put her in bed? A I went after him while he was leading her to the bed.

Q What did you do before he started taking her to the bed? A What did I do; I cleaned up around there where she laid.

Q After the baby was born, what did you do while she was still on the floor? A I took the baby and went after him in the room and helped him put her up in the bed. 10

Q All right. Now, don't you remember on your direct examination you testified that when it came out, only part of it came out and it looked rotten? Why didn't you get the rest of it? A I didn't pull anything out of her. Everything came out right after the baby.

Q It looked rotten when it came out, didn't it? A Because I see lots of babies I never saw anything like it. 20

Q You never saw anything like this, did you? A I seen lots of blood but I never see anything like that come out at once.

Q It didn't all come out, did it? A Some come out looked rotten and blood.

Q But it didn't all come out that first time, did it? A Clearing and the blood comes out.

30

Mr. Holland: What does she mean when she says no; does that mean anything?

The Interpreter: It's in the language just like when we say "well."

Q Did it all come out the first time, that's what I mean? A When he was leading her it came out, the rest.

Q When you looked at it the first time you knew it hadn't all come out, didn't you, because 40

it looked rotten? A I didn't hunt for any more in there.

Q Who said you did hunt for any more in there? A What do I want to hunt there for.

Q Who said you did hunt? Who did you understand in English to say you did hunt? A I
10 didn't do anything.

Q Why did you use the word "hunt?"

The Interpreter: It comes that way, Prosecutor.

Q No, just ask her; why did you use the word hunt? A That means that I didn't go in the place and look for any more blood or stuff.

Q Well, why didn't you when you knew it hadn't all come out? A I didn't do that be-
20 cause that aint my business. I am only a woman and don't know anything about that.

Q Well, when did you say; when did you make the remark, "look, see, it's rotten?" A Right away as soon as I give her to her husband, I said something wrong, because I never seen anything like that before.

Q What was wrong? A That blood that come out.

30 Q Was the whole afterbirth there? A Everything came out only that stuck, what was in the middle, that clearing, that was kind of rotten, didn't look like natural.

Q Well, was it so rotten— A The cord and clearing, it looked kind of bad.

Q Was it so rotten that the cord pulled away from the rest of the afterbirth? A I didn't pull it.

Q Well, was it pulled away from the afterbirth? A No.

40

Q Well, how do you know it was rotten? A Because lots of blood come out with it. It all seemed to be all bad there.

Q Was there anything the matter—there wasn't nothing the matter with the baby, was there? A No, the baby is living.

Q Now, the reason that you didn't help Mr. Teczkouski put his wife in bed was because you had a sore foot, isn't that so? A I was going after him but I could not go fast because I had a sore foot and when I got there I helped him put her in the bed.

Q Well, you said before you were cleaning the kitchen that you did not go after him at all until he called for you? A I washed it after awhile.

Q Was your sore foot bothering you still? A When I walk a little it does bother me.

Q How much? A There's a little lump there and it hurts me.

Q After the afterbirth came out, did you examine Mrs. Teczkouski to see if everything was all right? A No, I didn't examine her.

Q Did you examine the afterbirth to see if the membrane covered all of it? A I should examine everything how it was? All I do was tie her baby because I am no doctor.

Q Did you miss any part of the afterbirth itself? A I know nothing, I was only there two times.

Mr. Holland: That's all.

(Witness excused.)

JOE KUDELKA, sworn on behalf of the defendant, testifies as follows:

Direct examination by Mr. Romine.

Q Joe, you live where? A Whippany.

10 Q And you are the husband of Anne Kudelka? A Yes.

Mr. Holland: There are two things important, that have just come to mind and which because of the fact that they slipped my mind and they are both important for the State I would like that Mr. Romine indulges and ask Mrs. Kudelka to retake the stand.

Mr. Romine: All right.

20

Q You lived down with your wife at Whippany in December last year? A Yes.

Q Do you remember the night that this man Kaiser as they call him came to your house? A Yes.

Q Do you remember what time it was? A About ten or eleven, about ten o'clock.

Q In the nighttime, was it? A Yes.

30 Q Do you remember the day of the month? A No.

Q Who was at home at the time he came; who was at your home at the time? A Me and my wife and daughter.

Q What's your daughter's name? A Mary.

Q Is she here today? A No, she no come because baby sick.

Q Was she here yesterday? A Yes.

Q And the day before? A Yes.

40

Joe Kudelka, cross.

Q Now when this man Kaiser came in, did you hear what he said to your wife? A I heard—

Q Tell us what you heard? A He asked her to go, the wife sick and she don't want to go because she had sore foot.

Q Who had sore foot? A My wife. 10

Q How bad was it? A So bad, no can walk, can't put shoe on.

Q How long had she had sore feet? A Oh, had sore foot three days before that and for a whole week, I guess.

Q Now, you say he asked her to go up to his house? A Well, he asked me, feel pretty well, he says woman is sick, come to help me.

Q What did he say was the matter with the woman? A He said going to have baby.

Q What did you wife say to him? A Wife says, why don't you call doctor and I go outside and I don't know what last they talked. 20

Q Did your wife finally go up? A Well, after they go get a car, wife go.

Q That is all you know about it? A Yes.

Mr. Romine: That's all.

Cross examination by Mr. Holland. 30

Q Mrs. Kudelka swore that the son was there, wasn't he there? A John go after the car.

Q What's that? A Son go after the car for Kaiser.

Q Your son went after the car? A Yes, John went to get car and they come together.

Mr. Holland: That's all.

(Witness excused.) 40

ANNE KUDELKA, recalled.

Further cross examination by Mr. Holland.

Q Mrs. Kudelka, have you been convicted of crime? A You mean before or just now?

10 Q Before today? A I was once for whiskey.

Q Only once? A I don't remember whether once or more.

Q Wasn't it twice? A I don't remember.

Q Do you remember saying, when you heard about Mrs. Teczkouski's death, well, we will take a drink on the death?

Mr. Romine: Object to that. I think he ought to fix the time and the place.

20 Mr. Holland: I will fix the time.

The Court: You can fix the time.

Q Do you remember saying on or about December thirteenth or December fourteenth, just about the time when you heard of Mrs. Teczkouski's death, you remember you were on your porch and you said, well, we will have a drink on the death? A No, no.

Q Didn't she die? A No, I was feeling very

30 sorry for the little lady because she was a very nice little woman.

Q Didn't say, well, we will take a drink on the death? A No.

Q Sure? A Honest to God, no.

Mr. Holland: All right, that's all.

(Witness excused.)

Mr. Romine: That is our case.

40

IN REBUTTAL.

ANNA ADELSKY, sworn on behalf of the State, testifies as follows:

Direct examination by Mr. Holland.

Q How old are you? A I will be fourteen in July. 10

Q You are going to be fourteen this month? A Yes.

Q Do you go to school? A Yes.

Q What class are you in? A Seventh grade.

Q What school do you go to? A Whippany Public School.

Q Is your father here in court? A Yes.

Q Where do you live in Whippany in reference to Mrs. Kudelka's house? A Next door. 20

Q And how far apart are those houses? How near are they? A About ten feet apart.

Q Now, do you remember that you heard about Mrs. Teczkouski's death? A Yes.

Q And do you remember hearing Mrs. Kudelka when she was on her porch say something about that? A Yes, sir.

Q What did she say? A Said let's have a drink for the death. 30

Q Said let's have a drink for the death? A Yes.

Q And who did she say that to? A To her husband.

Q And you saw them both? A Yes.

Cross examination by Mr. Romine.

Q Where did you say this happened? A By the house. 40

Q Whose house? A By Mrs. Kudelka's house.

Q Where does Mrs. Kudelka live? A Right next door to us.

Q Right next door to you? A Yes.

Q You live right next door to her? A Yes.

10 Q And who else was present at the time you say she made this remark? A John Kamstasky.

Q Who else? A That's all.

Q Who did she say it to? A To her husband.

Q Joe Kudelka? A Yes.

Q What time of the day was it? A I don't know what time it was.

Q Don't you know whether it was in the morning or the afternoon? A It was in the afternoon.

20 Q Do you go to school? A I did not go to school, it was on Saturday.

Q Well, doesn't Mr. Kudelka work? A He didn't work then.

Q And had this woman died at that time? A Yes.

Q Where was her husband when she made this remark to him? A He was going down the walk.

30 Q Going away from the house? A Yes.

Q How far away from the house was he? A About thirty feet from the house.

Q Did he continue on down? A No, he came back.

Q Came back to the house? A Yes.

Q Where did he go after he came back? A He went in the house.

Q Where did Mrs. Kudelka go? A She went in the house, too.

Q How long was he in the house? A I

40 don't know, because I went in the house.

Q How far away were you when you say this remark was made? A About ten feet from Mrs. Kudelka.

Q You didn't see Mr. Teczkouski around there at that time? A No, sir.

Q So out of a clear sky you say this woman made this remark to her husband as he was leaving the house? A Yes. 10

Q Anybody talk to you about this case? A No, sir.

Q Did you tell anybody what you knew? A No, sir, only my father.

Q Did anybody come down to see you before you were subpoenaed here? A No, sir.

Q Didn't tell anybody up here anything about it, did you? A I was called to the office yesterday.

Q Is your family friendly with Mrs. Kudelka? 20 A Yes, sir.

Q Do they visit one another? A No, sir.

Q No, don't have anything to do with Mrs. Kudelka, do they? A No, sir.

Mr. Romine: That's all.

(Witness excused.)

Mr. Holland: That is the State's case.

30

IN SUR-REBUTTAL.

JOE KUDELKA, recalled.

Direct examination by Mr. Romine.

Q The little girl that was just sworn said that on Saturday after Mrs. Teczkouski, whatever her name is, died, I cannot remember it, that 40

you were leaving the house and that your wife Anne, called you back and said, let's have a drink on the dead woman?

The Court: Let's have a drink on the death.

10 A Maybe have a drink but not death.

Q She said nothing about it? A No, I never heard; maybe have a drink but not for the dead woman.

Cross examination by Mr. Holland.

Q Maybe have a drink? A Maybe have a drink.

20 Q And maybe if you had too much you do not remember what was said, do you? A Maybe sometime, yes.

Mr. Holland: That is all.

(Witness excused.)

Mr. Romine: The defense rests.

Mr. Romine: Now, I want to renew my motion at this time for dismissal of the case and direction of verdict of not guilty on the ground there is no proof whatsoever in the case of any unlawful negligence or gross carelessness.

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Mr. Holland: It is my notion that there has been shown by the testimony gross negligence and carelessness and that it is a question for the jury to pass upon.

Mr. Romine: But there is no such evidence and that is the reason I make my motion.

40

The Court: Motion denied.

(Exception allowed and sealed.)

C. F. WILSON. (L. S.)

Thereupon Mr. Romine summed up to the jury in behalf of the defendant.

Thereupon Mr. Holland summed up to the jury in behalf of the State. 10

Thereupon the Court charged the jury as follows:

CHARGE TO JURY.

WILSON, *J.:* Ladies and gentlemen of the Jury. The defendant, Anne Kudelka, was indicted by the Grand Jury of the County of Morris at the January term, this year, and charged with manslaughter of one Dormice Teczkouski, and it is upon that indictment she has been on trial in this Court. I charge you, ladies and gentlemen, as a matter of law, that not withstanding this indictment, this defendant comes in court presumed to be innocent, and that such presumption continues and remains throughout the trial and until you retire to your room and consider the evidence introduced in the trial of this case. The burden of proof is on the State throughout this trial and does not shift, and that burden is to introduce evidence which satisfies you beyond a reasonable doubt of the guilt of this defendant before you can find a verdict of guilty; and if the State does not meet and carry that burden to the extent it must be met, and you are not so satisfied from all the evi- 20 30 40

dence in the case, both that of the State and of the defendant, then your verdict would be not guilty.

Manslaughter, ladies and gentlemen, implies criminal negligence. Criminal negligence has been defined as an act or omission done or left
10 undone in reckless disregard of the life or safety of another. Perhaps this is not an accurate description and a better one would be that where death is the result of an occurrence unanticipated by the defendant, which arises from his or her negligence, his or her criminal responsibility depends on whether or not the injury which caused the death was the regular, actual and likely consequence of the defendant's conduct. If it was, then the defendant is subject
20 to indictment, and if it was not, he or she cannot be properly charged with a penal offense. It may be laid down that where one by his negligence has contributed to the death of another he is responsible. The action which the law requires in all these cases is not the utmost degree which can possibly be used, but such reasonable care as is used in a like case and has been found by long experience to answer. There are instances in which death is the result of an
30 occurrence in itself unexpected but which arrive from negligence or inattention. How far in such instances a person is to be held responsible depends upon the inquiry whether he was guilty of gross negligence at the time. Inference of guilt should not be drawn from remote causes and the degree requisite to bring the case within the limit of criminal negligence it must be proven that the act was immediately conducive to the death. It is a question of fact for the jury to
40 settle whether the defendant was or was not

guilty of negligence. Whether the conduct evinces, under the circumstances, such care and diligence as would prevent danger to the life impending.

Now, you ladies and gentlemen, in this case are to measure the conduct of the defendant as to the commission or omission by the definition which I have just read to you. You will consider all of the testimony in the case, both that introduced by the State and that introduced on behalf of the defendant. Measured by the definition I have read, you will consider whether or not the defendant either acted or omitted to act in such a way that you can say she was grossly culpable or wilfully negligent and that such gross culpability or wilful negligence caused the death of Mrs. Teczkouski. If you are satisfied from all the evidence that such act of omission or act of commission by this defendant, under the circumstances under which she appeared at the home of Teczkouski, satifies you that she was grossly culpable or wilfully negligent and satisfies you beyond a reasonable doubt, then your verdict will be guilty, and if you are not so satisfied from all of the evidence, then your verdict will be not guilty. You, ladies and gentlemen, are the sole judges of the testimony which has been introduced in the case. My opinion, the opinion of the prosecutor, and the opinion of Mr. Romine, for the defendant, so far as this evidence is concerned, matters not. It is your responsibility, and you must assume that responsibility and weigh all of the evidence and give to it such credence and belief as you can decide it is entitled to and arrive at your conclusion and render your verdict of guilty or not guilty.

Reasonable doubt, ladies and gentlemen, has been defined as follows: It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case, which after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution. If, upon such proof, there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces the jurors' understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt, because if the law should go further than this and require absolute certainty, it would exclude circumstantial evidence altogether.

One more thing, ladies and gentlemen, I charge you that the defendant is not on trial before you for practicing midwifery without a license. The sole charge in this indictment is manslaughter, and manslaughter is the crime which I have defined from the book as laid down before you, and it is upon that indictment and that alone she is on trial today.

I have been requested to charge upon behalf of the defendant seventeen requests. These I decline to charge except or other than I have already charged. Swear an officer.

Thereupon the jury retired.

Mr. Romine: I desire to take an exception to the Court's refusal to charge the specific requests as requested on behalf of the defendant.

I also wish to take an exception to the Court's charge in its entirety, because it did not embrace all of the specific requests as requested so as to cover them. 10

The Court: The exceptions will be allowed.

REQUESTS TO CHARGE ON THE PART OF THE DEFENDANT.

(1) Every defendant is presumed to be innocent until the State proves the charge to the satisfaction of the jury beyond a reasonable doubt. 20

(2) The finding of an indictment against defendant creates no presumption of guilt.

(3) Manslaughter is divided into two branches or classes, namely (a) voluntary manslaughter, which implies the taking of human life in a sudden transport of passion or heat of blood upon a reasonable provocation and without malice; and (b) involuntary manslaughter, which is where death occurs because of wilful negligence or gross carelessness on the part of the defendant, or where there is a legal duty imposed upon defendant to do or perform some act which the defendant wilfully or carelessly neglects to do. 30

(4) Negligence to become criminal must necessarily be reckless or wanton and of such a character as shows an utter disregard for the safety of others under circumstances likely to cause injury. 40

(5) A slight failure in duty will not render a defendant criminally negligent.

(6) Although the State may claim that the defendant in this case was practicing midwifery without a license; even if that were found to be a fact, it would not make the defendant guilty of manslaughter, unless it appears beyond a reasonable doubt that she wilfully failed to do some act which she was required to do or in doing what she did do, there was evidence of gross carelessness or wilful negligence.

(7) The statute of this State defines the practice of midwifery as follows: "Any person shall be regarded as practicing midwifery within the meaning of this act, who shall attend a woman in childbirth, as a midwife, or advertises as such, by signs, printed cards or otherwise; but nothing shall be construed in this act to prohibit gratuitous service in case of emergency, nor the service of any legally qualified physician or surgeon of this State (P. L. Laws 1910, page 495)."

(8) Whether the jury find that the defendant was practicing midwifery or was merely rendering a gratuitous service in case of emergency is immaterial, so far as the care and attention to be given was required, because in either case the defendant would only be chargeable with ordinary care; that is, such care and caution as a reasonable person would be required to exercise in like circumstances and the defendant could not be found guilty of manslaughter unless the jury are satisfied beyond a reasonable doubt that the deceased met her death as a result of wilful negligence or gross carelessness on the part of the defendant.

(9) The mere unlawfulness of an act done, the same not being *malum in se,* will not make the doer criminally liable for its unforseen consequences, such act being neither dangerous in its nature nor dangerous from the mode of its execution. In order that a person can be convicted of what is known in law as involuntary manslaughter, the death must be due to an unlawful act of the defendant and not to the intervening act or negligence of a third person or to an independent intervening cause in which defendant did not participate and which could not be foreseen.

(10) While it is the duty of the person who assumes to care for another, to render proper care and treatment, a mere mistake or error of judgment or a mere want of skill, where there is not a gross negligence, will not render such person who assumes to care for another, guilty of manslaughter in case of death.

(11) If the jury find from all the facts and circumstances of the case, that the deceased met her death because of some abnormal, physical condition, over which the defendant had no control; or because of an act on the part of her husband in removing her to the bed after the birth of the child; or because of some act on the part of the deceased in getting up and moving about before she should have done so; and that the defendant was in no way connected with such acts which resulted in the death of the deceased; then this defendant cannot be held liable for manslaughter.

(12) Where the person treating the case does nothing that a skilled person might not do, and death results merely from an error of judgment

or inadvertent mistake, a defendant cannot be held criminally liable.

(13) If, after considering all the facts and circumstances of the case, the jury have a reasonable doubt in their minds, as to whether the defendant was in any way responsible for the death of the deceased; then irrespective of what the defendant did or failed to do, it is the duty of the jury to resolve that doubt in favor of the defendant and acquit her.

(14) If the jury find in this case that the death of the deceased resulted from an act of another or from acts on the part of the deceased, herself; or from her refusal to submit to proper medical or hospital treatment; and that her death resulted not from any wilful negligence or gross carelessness on the part of the defendant, but from other intervening causes, for which this defendant cannot be chargeable; then this defendant cannot be found guilty of manslaughter.

(15) Even if the jury should find that the death of the deceased was directly the result of the care and attention and treatment by this defendant, nevertheless, if her treatment of the deceased was that which ordinarily is given by a person of ordinary skill and intelligence, and that the death occurred from the natural consequences of an act, involving no gross carelessness or wilful negligence, on the part of the defendant; then she cannot be found guilty of manslaughter.

(16) In order for the jury to convict the defendant of manslaughter, they must be satisfied beyond a reasonable doubt that the defendant failed to properly care for and treat the de-

ceased; they must find, in order to convict, that this defendant was guilty of gross carelessness and wilful negligence and unless they can do so find beyond a reasonable doubt, this defendant must be acquitted.

(17) Where the jury have a reasonable doubt in their minds, after considering all the evidence, as to whether the acts of the defendant and her care and treatment of the deceased, contributed to or caused her death; and the jury find from the evidence, that there are other intervening causes which may have or could have brought about or produced the death, and for which the defendant could not be chargeable; and there is found to be no wilful negligence or gross carelessness on the part of the defendant; it is the duty of the jury to acquit.

CERTIFICATION OF STENOGRAPHER.

I, George B. Wheaton, do hereby certify that I reported the foregoing trial of The State vs. Anne Kudelka, or Anne Coolack, before Hon. C. Franklin Wilson, Judge, and a jury, at Morristown, New Jersey, on the 30th day of June, 1925, and that the foregoing transcript is correct and accurate to the extent of my ability and understanding.

GEO. B. WHEATON.

JUDGE'S CERTIFICATE.

MORRIS QUARTER SESSIONS

THE STATE, *vs.* ANNIE KUDELKA, *Defendant.*	*On Indictment.* *Certificate.*

10

I, C. FRANKLIN WILSON, Judge of the Court of Quarter Sessions in and for the County of Morris, before whom the above-stated indictment was tried, do hereby 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 case of The State vs. Annie Kudelka.

20

Dated: October 3, 1925.

C. F. WILSON. (L. S.)

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40

ASSIGNMENTS OF ERROR.

Filed.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Writ of Error.* *Assignments of Error.*

10

Afterwards, to wit, etc., in the Supreme Court of Judicature of the State of New Jersey, comes the said Annie Kudelka, by her attorney, and says that in the record and proceedings aforesaid, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

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1. Upon the trial of said cause defendant's counsel objected to the remarks of the Prosecutor in opening to the jury as follows:

Mr. Romine: I object to the Prosecutor referring to any other name than that mentioned in the indictment.

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The Court: I don't see any reason why he cannot upon his opening.

Mr. Romine: He has no right to open to the jury on a false premise.

The Court: I do not agree with you.

Mr. Romine: I ask an exception to your Honor's ruling.

2. Upon the trial of said cause defendant's counsel requested the Court because of the state-

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ment of the Prosecutor in opening to withdraw a juror and declare a mistrial to which the motion of the Court ruled as follows: "I will direct the jury what to do when the time comes," to which ruling of the Court the defendant's counsel took an exception which was allowed and sealed.

10

3. Upon the trial of said cause the Prosecutor asked the witness, Kozemiers Teczkouski, upon direct examination the following question:

> Q "At the time Helen was born, did you engage Mrs. Kudelka to act as midwife for your wife?" And the further question:
>
> Q "Have you paid her on other occasions for attending your wife in childbirth?"

20

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

4 Upon the trial of said cause, the Court made the following ruling as to the admission of evidence of Kozemiers Teczkouski as to other acts of the defendant as follows:

> "I am admitting this on the ground that the State is offering, and I expect the State to prove that the defendant was engaged in the business as a midwife. If it fails to prove it, then you may move to strike it out."

30

To which ruling defendant's counsel later took an exception which was allowed and sealed.

5. Upon the trial of said cause the Prosecutor asked of the witness, Marcella Maokowsky, on direct examination, the following question:

40

Q "Referring to attendance of child born to this woman, did Mrs. Kudelka attend you?"

To which an objection was made and the Prosecutor consented, although the question was answered simultaneously with the objection to allow defendant to have the benefit of the objection, the objection being on the ground that any attendance of the defendant on other people in that vicinity, was irrelevant and the State had no right to show that.

To which objection the Court ruled:

"If the purpose of receiving this testimony is for the purpose of showing the question of midwifery, I will admit. If the Prosecutor confines himself to that, it will be admitted."

And to which right of the Prosecutor to proceed with such examination, counsel for defendant asks leave for a preliminary examination which was refused to all of which an exception was allowed and sealed.

6. Upon the trial of said case the Prosecutor asked of the witness, Marcella Maokowsky on direct examination the following question:

Q "When was the first time she attended you?" (Referring to Mrs. Kudelka.)

To which defendant's attorney objected and the Court overruled the objection and allowed an exception.

7. Upon the trial of said cause the Prosecutor also asked of the said witness, Marcella Maokowsky on direct examination the following question:

Q "When was the last time she (referring to Mrs. Kudelka), attended you?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception.

8. Upon the trial of said cause the Prosecutor also asked of the witness, Marcella Maokowsky, upon direct examination the following question:

10 Q "Did you say Mrs. Kudelka?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

9. Upon the trial of said cause the Prosecutor also asked of the witness, Marcella Maokowsky, upon direct examination the following question:

Q "Did Mrs. Kudelka attend you when Joseph was born?"

20

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to defendant.

10. Upon the trial of said cause the Prosecutor also asked of said witness, Marcella Maokowsky, upon direct examination the following question:

Q "And did you pay Mrs. Kudelka for

30 attending you?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

11. Upon the trial of said cause the Prosecutor also asked of the witness, Marcella Maokowsky, upon direct examination the following question:

Q "Did Mrs. Kudelka attend you when

40 Edward was born?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

12. Upon the trial of said cause the Prosecutor also asked of the witness, Marcella Maokowsky, upon direct examination the following question, in connection with her attendance upon Edward.

Q "And did you pay her?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to defendant.

13. Upon the trial of said cause the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Now, did Mrs. Kudelka attend you at the birth of any of those eight children?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

14. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "What is the name of the first one that she attended you at the birth of?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

15. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka for attending you at the birth of this baby?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

16. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

10 Q "And did Mrs. Kudelka attend you at her birth?" (Referring to the child Rosie.)

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

17. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka?" (Referring to her attendance at the birth of 20 Rosie.)

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

18. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did Mrs. Kudelka attend you at the 30 birth of that baby?" (Referring to the birth of Katie.)

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

19. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka?" (Referring to her attendance at the time of 40 Katie's birth.)

20. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka?" (Referring to the birth of Helen.)

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant. 10

21. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Who attended you at the birth of Petie?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant. 20

22. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka for her service?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant. 30

23. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "And did Mrs. Kudelka attend you at Steve's birth?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

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24. Upon the trial of said cause the Prosecutor asked of the witness, Mary Resutko, upon direct examination the following question:

Q "Did you pay Mrs. Kudelka for her service?" (Referring to attendance at Steve's birth.)

10 To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

25. Upon the trial of said cause, the Prosecutor asked of the witness, Mary Resutko upon direct examination the following question:

Q "Did Mrs. Kudelka ever refuse to take the money you paid her?"

To which defendant's attorney objected and 20 the Court overruled the objection and allowed an exception to the defendant.

26. Upon the trial of said cause the attorney for the defendant made the following motion:

At this time I want to make my formal motion for dismissal of the case and a direction of verdict of not guilty (argument).

Which motion the Court denied to which an 30 exception was allowed and sealed.

26a. Upon the trial of said cause the Prosecutor asked of the defendant, Annie Kudelka, upon cross examination the following question:

Q "How many babies did Mrs. Teczkouski have before this last little baby?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

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27. Upon the trial of said cause the Prosecutor asked of the defendant, Annie Kudelka, upon cross examination, the following question:

Q "So, you never went to see her (referring to Mrs. Teczkouski), except when you went there for a birth of a child?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception. 10

28. Upon the trial of said cause the Prosecutor asked of the defendant, Annie Kudelka, upon cross examination the following question:

Q "Do you know why she (referring to Mrs. Teczkouski), told you she was going to have a baby?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant. 20

29. Upon the trial of said cause the Prosecutor asked the defendant, Annie Kudelka, upon cross examination the following question:

Q "Were you to take care of her (referring to Mrs. Teczkouski), when the baby was born?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant. 30

30. Upon the trial of said cause the Prosecutor asked of the defendant, Annie Kudelka, upon cross examination the following question:

Q "Did she ask you on the other four babies?" (Referring to Mrs. Teczkouski engaging Mrs. Kudelka.)

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To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

31. Upon the trial of said cause the Prosecutor asked the defendant, Annie Kudelka, upon cross examination the following question:

10 Q "The birth of how many babies have you attended during the last two years?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

32. Upon the trial of said cause the Prosecutor asked the defendant, Annie Kudelka, upon cross examination the following question:

Q "How many babies in Whippany did

20 you deliver during the last three years?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

33. Upon the trial of said cause the Prosecutor asked the defendant, Annie Kudelka, upon cross examination, the following question:

Q "Well, you marked the birth certifi-

30 cates, didn't you?"

To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

34. Upon the trial of said cause the Prosecutor asked the defendant, Annie Kudelka, upon cross examination the following question:

Q "Did you have anyone mark it for you?" (Referring to marking birth certificates in other cases.)

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To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

35. Upon the trial of said cause the Prosecutor asked of the defendant, Annie Kudelka, upon cross examination the following question:

> Q "That was the way you did all your business, wasn't it?" (Referring to the manner in which others filled out birth certificates for her.)

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To which defendant's attorney objected and the Court overruled the objection and allowed an exception to the defendant.

36. Upon the trial of said cause the attorney for the defendant in the conclusion of the entire case made a motion for the direction of a verdict as follows:

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> "Now, I want to renew my motion at this time for dismissal of the case and direction of verdict of not guilty on the ground there is no proof whatsoever in the case of any unlawful negligence or gross carelessness."

Which motion was denied by the Court to which an exception was allowed and sealed to the defendant.

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37. Upon the trial of said cause the Court refused to charge defendant's request number four, namely:

> (4) Negligence to become criminal, must necessarily be reckless or wanton and of such a character as shows an utter disregard for the safety of others under circumstances likely to cause injury.

To which exception was taken by defendant's attorney and allowed by the Court.

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38. Upon the trial of said cause the Court refused to charge defendant's request number five, namely:

(5) A slight failure in duty will not render a defendant criminally negligent.

To which exception was taken by defendant's attorney and allowed by the Court:

39. Upon the trial of said cause the Court refused to charge defendant's request number six, namely:

(6) Although the State may claim that the defendant in this case was practicing midwifery without a license; even if that were found to be a fact, it would not make the defendant guilty of manslaughter, unless it appears beyond a reasonable doubt that she wilfully failed to do some act which she was required to do or in doing what she did do, there was evidence of gross carelessness or wilful negligence.

To which exception was taken by defendant's attorney and allowed by the Court.

40. Upon the trial of said cause the Court refused to charge defendant's request number seven, namely:

(7) The statute of this State defines the practice of midwifery as follows: "Any person shall be regarded as practicing midwifery within the meaning of this act, who shall attend a woman in childbirth, as a midwife, or advertises as such, by signs, printed cards or otherwise; but nothing shall be construed in this act to prohibit gratuitous service in case of emergency, nor the service of any legally qualified physician or sur-

geon of this State" (P. L. Laws 1910, p. 495).

41. Upon the trial of said cause the Court refused to charge defendant's request number eight, namely:

(8) Whether the jury find that the defendant was practicing midwifery or was merely rendering a gratuitous service in case of emergency is immaterial so far as the care and attention to be given was required, because in either case, the defendant would only be chargeable with ordinary care; that is, such care and caution as a reasonable person would be required to exercise in like circumstances and the defendant could not be found guilty of manslaughter unless the jury are satisfied beyond a reasonable doubt that the deceased met her death as a result of wilful negligence or gross carelessness on the part of the defendant.

To which exception was taken by defendant's attorney and allowed by the Court.

42. Upon the trial of said cause the Court refused to charge defendant's request number nine, namely:

(9) The mere unlawfulness of an act done, the same not being *malum in se,* will not make the doer criminally liable for its unforeseen consequences, such act being neither dangerous in its nature nor dangerous from the mode of its execution. In order that a person can be convicted, of what is known in law, as involuntary manslaughter, the death must be due to an unlawful act of the defendant and not to the intervening act or negligence of a third person or to an

independent intervening cause in which defendant did not participate and which could not be foreseen.

To which exception was taken by defendant's attorney and allowed by the Court.

10 43. Upon the trial of said cause the Court refused to charge defendant's request number ten, namely:

(10) While it is the duty of the person who assumes to care for another, to render proper care and treatment, a mere mistake or error of judgment or a mere want of skill, where there is not a gross negligence, will not render such person who assumes to care for another, guilty of manslaughter in case of death.

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To which exception was taken by defendant's attorney and allowed by the Court.

44. Upon the trial of said cause the Court refused to charge defendant's request number eleven, namely:

(11) If the jury find from all the facts and circumstances of the case, that the deceased met her death because of some abnormal, physical condition, over which the defendant had no control; or because of an act on the part of her husband in removing her to the bed after the birth of the child; or because of some act on the part of the deceased in getting up and moving about before she should have done so; and that the defendant was in no way connected with such acts which resulted in the death of the deceased; then this defendant cannot be held liable for manslaughter.

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To which exception was taken by defendant's attorney and allowed by the Court.

45. Upon the trial of said cause the Court refused to charge defendant's request number twelve, namely:

(12) Where the person treating the case does nothing that a skilled person might not do, and death results merely from an error of judgment or inadvertent mistake, a defendant cannot be held criminally liable. 10

To which exception was taken by defendant's attorney and allowed by the Court.

46. Upon the trial of said cause the Court refused to charge defendant's request number thirteen, namely:

(13) If, after considering all the facts and circumstances of the case, the jury have a reasonable doubt in their minds, as to whether the defendant was in any way responsible for the death of the deceased, then, irrespective of what the defendant did or failed to do, it is the duty of the jury to resolve that doubt in favor of the defendant and acquit her. 20

To which exception was taken by defendant's attorney and allowed by the Court. 30

47. Upon the trial of said cause the Court refused to charge defendant's request number fourteen, namely:

(14) If the jury find in this case that the death of the deceased resulted from an act of another or from acts on the part of the deceased, herself; or from her refusal to submit to proper medical or hospital treatment; and that her death resulted not 40

from any wilful negligence or gross carelessness on the part of the defendant, but from other intervening causes, for which this defendant cannot be chargeable; then this defendant cannot be found guilty of manslaughter.

10 To which exception was taken by defendant's attorney and allowed by the Court.

48. Upon the trial of said cause the Court refused to charge defendant's request number fifteen, namely:

(15) Even if the jury should find that the death of the deceased was directly the result of the care and attention and treatment by this defendant, nevertheless, if her treatment of the deceased was that which
20 ordinarily is given by a person of ordinary skill and intelligence, and that the death occurred from the natural consequences of an act, involving no gross carelessness or wilful negligence, on the part of the defendant, then she cannot be found guilty of manslaughter.

To which exception was taken by defendant's attorney and allowed by the Court.

30 49. Upon the trial of said cause the Court refused to charge defendant's request number sixteen, namely:

(16) In order for the jury to convict the defendant of manslaughter, they must be satisfied beyond a reasonable doubt that the defendant failed to properly care for and treat the deceased; they must find, in order to convict, that this defendant was guilty of gross carelessness and wilful negligence,
40 and unless they can so find beyond a reasonable doubt, this defendant must be acquitted.

To which exception was taken by defendant's attorney and allowed by the Court.

50. Upon the trial of said cause the Court refused to charge defendant's request number seventeen, namely:

(17) Where the jury have a reasonable doubt in their minds, after considering all the evidence, as to whether the acts of the defendant and her care and treatment of the deceased, contributed to or caused her death; and the jury find from the evidence, that there are other intervening causes which may have or could have brought about or produced the death, and for which the defendant could not be chargeable, and there is found to be no wilful negligence or gross carelessness on the part of the defendant, it is the duty of the jury to acquit.

To which exception was taken by defendant's attorney and allowed by the Court.

The verdict of the jury was contrary to and against the weight of the evidence.

And, therefore, the plaintiff-in-error, Annie Kudelka, prays that the judgment aforesaid be reversed, and altogether held for nothing, and that she may be restored to all things she has lost by reason of the said judgment.

ELMER W. ROMINE,
Attorney for Plaintiff-in-Error.

Service of a copy of the within assignments is hereby acknowledged this 10th day of December, A. D. 1925.

ALBERT H. HOLLAND,
Prosecutor.

SPECIFICATION OF CAUSES FOR REVERSAL.

Filed.

NEW JERSEY SUPREME COURT.

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STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Writ of Error.* *Specification of Causes for Reversal.*

Annie Kudelka, the plaintiff-in-error, by Elmer W. Romine, her attorney, hereby specifies
20 the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

1. Because the Court erroneously refused to sustain the objections of defendant's counsel as to the remarks of the prosecutor in opening to the jury.

2. Because the Court erroneously refused to withdraw a juror and declare a mistrial on the motion of defendant's counsel, following re-
30 marks of the prosecutor in opening to the jury in which the prosecutor referred to the defendant by a name other than that by which she was indicted.

3. Because the Court erroneously permitted to be answered the following questions asked by the prosecutor of the witness, Kozemiers Teczkouski, upon direct examination, to wit:

> Q "At the time Helen was born, did you engage Mrs. Kudelka to act as midwife for
40 your wife?"

And the further question:

Q "Have you paid her on other occasions for attending your wife in childbirth?"

4. Because the Court erroneously made the following ruling to wit:

"I am admitting this on the ground that the State is offering, and I expect the State to prove that the defendant was engaged in The business as a midwife. If it fails to prove it, then you may move to strike it out."

5. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "Referring to attendance of child born to this woman, did Mrs. Kudelka attend you?"

6. Because the Court erroneously made the following ruling:

"If the purpose of receiving this testimony is for the purpose of showing the question of midwifery, I will admit. If the prosecutor confines himself to that it will be admitted."

7. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "When was the first time she attended you" (referring to Mrs. Kudelka)?

8. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "When was the last time she (referring to Mrs. Kudelka) attended you?"

Specification of Causes for Reversal.

9. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka?"

10. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "Did Mrs. Kudelka attend you when Joseph was born?"

11. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "And did you pay Mrs. Kudelka for attending you?"

12. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "Did Mrs. Kudelka attend you when Edward was born?"

13. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Marcella Maokowsky, upon direct examination, to wit:

Q "And did you pay her?"

14. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Now, did Mrs. Kudelka attend you at the birth of any of those eight children?"

15. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "What is the name of the first one that she attended you at the birth of?"

16. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka for attending you at the birth of this baby?"

17. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "And did Mrs. Kudelka attend you at her birth" (referring to the child Rosie)?

18. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka" (referring to her attendance at the birth of Rosie)?

19. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did Mrs. Kudelka attend you at the birth of that baby" (referring to the birth of Katie)?

20. Because the Court erroneously permitted to be answered the following question asked by

the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka" (referring to her attendance at the time of Katie's birth)?

21. Because the Court erroneously permitted
10 to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka" (referring to the birth of Helen)?

22. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Who attended you at the birth of
20 Petie?"

23. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka for her service?"

24. Because the Court erroneously permitted to be answered the following question asked by
30 the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "And did Mrs. Kudelka attend you at Steve's birth?"

25. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did you pay Mrs. Kudelka for her service" (referring to attendance at Steve's
40 birth)?

26. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the witness Mary Resutko, upon direct examination, to wit:

Q "Did Mrs. Kudelka ever refuse to take the money you paid her?"

27. Because the Court erroneously refused the motion of the defendant's attorney as follows, to wit: 10

At this time I want to make my formal motion for dismissal of the case and a direction of verdict of not guilty. (Argument.)

28. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit: 20

Q "How many babies did Mrs. Teczkouski have before this last little baby?"

29. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "So, you never went to see her (referring to Mrs. Teczkouski) except when you went there for a birth of a child?" 30

30. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "Do you know why she (referring to Mrs. Teczkouski) told you she was going to have a baby?"

31. Because the Court erroneously permitted to be answered the following question asked by 40

the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "Were you to take care of her (referring to Mrs. Teczkouski) when the baby was born?"

32. Because the Court erroneously permitted
10 to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "Did she ask you on the other four babies" (referring to Mrs. Teczkouski engaging Mrs. Kudelka)?

33. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:
20

Q "The birth of how many babies have you attended during the last two years?"

34. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "How many babies in Whippany did you deliver during the last three years?"

30 35. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "Well, you marked the birth certificates, didn't you?"

36. Because the Court erroneously permitted to be answered the following question asked by

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the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit:

Q "Did you have anyone mark it for you" (referring to marking birth certificates in other cases)?

37. Because the Court erroneously permitted to be answered the following question asked by the prosecutor of the defendant, Annie Kudelka, upon cross examination, to wit: 10

Q "That was the way you did all your business, wasn't it" (referring to the manner in which others filled out birth certificates for her)?

38. Because the Court erroneously refused to grant the motion of the defendant's counsel at the conclusion of the entire case and direction of verdict, which motion was as follows, to wit: 20

"Now, I want to renew my motion at this time for dismissal of the case and direction of verdict of not guilty on the ground there is no proof whatsoever in the case of any unlawful negligence or gross carelessness."

39. Because the Court erroneously refused to charge defendant's request number four, which was in manner following, to wit: 30

(4) Negligence to become criminal must necessarily be reckless or wanton and of such a character as shows an utter disregard for the safety of others under circumstances likely to cause injury.

40. Because the Court erroneously refused to charge defendant's request number five, which was in manner following, to wit:

(5) A slight failure in duty will not render a defendant criminally negligent. 40

41. Because the Court erroneously refused to charge defendant's request number six, which was in manner following, to wit:

(6) Although the State may claim that the defendant in this case was practicing midwifery without a license; even if that were found to be a fact, it would not make the defendant guilty of manslaughter, unless it appears beyond a reasonable doubt that she wilfully failed to do some act which she was required to do or in doing what she did do, there was evidence of gross carelessness or wilful negligence.

42. Because the Court erroneously refused to charge defendant's request number seven, which was in manner following, to wit:

(7) The statute of this State defines the practice of midwifery as follows: "Any person shall be regarded as practicing midwifery within the meaning of this act, who shall attend a woman in childbirth, as a midwife, or advertises as such, by signs, printed cards or otherwise; but nothing shall be construed in this act to prohibit gratuitous service in case of emergency, nor the service of any legally qualified physician or surgeon of this State" (P. L. Laws 1910, p. 495).

43. Because the Court erroneously refused to charge defendant's request number eight, which was in manner following, to wit:

(8) Whether the jury find that the defendant was practicing midwifery or was merely rendering a gratuitous service in case of emergency is immaterial so far as the care and attention to be given was re-

quired, because in either case the defendant would only be chargeable with ordinary care; that is, such care and caution as a reasonable person would be required to exercise in like circumstances, and the defendant could not be found guilty of manslaughter unless the jury are satisfied beyond a reasonable doubt that the deceased met her death as a result of wilful negligence or gross carelessness on the part of the defendant.

44. Because the Court erroneously refused to charge defendant's request number nine, which was in manner following, to wit:

(9) The mere unlawfulness of an act done, the same not being *malum in se,* will not make the doer criminally liable for its unforeseen consequences, such act being neither dangerous in its nature nor dangerous from the mode of its execution. In order that a person can be convicted of what is known in law as involuntary manslaughter, the death must be due to an unlawful act of the defendant and not to the intervening act or negligence of a third person or to an independent intervening cause in which defendant did not participate and which could not be foreseen.

45. Because the Court erroneously refused to charge defendant's request number 10, which was in manner following, to wit:

(10) While it is the duty of the person who assumes to care for another, to render proper care and treatment, a mere mistake or error of judgment or a mere want of skill, where there is not a gross negligence,

will not render such person who assumes to care for another, guilty of manslaugher in case of death.

46. Because the Court erroneously refused to charge defendant's request number eleven, which was in manner following, to wit:

10 (11) If the jury find from all the facts and circumstances of the case, that the deceased met her death because of some abnormal, physical condition, over which the defendant had no control; or because of an act on the part of her husband in removing her to the bed after the birth of the child; or because of some act on the part of the deceased in getting up and moving about before she should have done so; and that 20 the defendant was in no way connected with such acts which resulted in the death of the deceased; then this defendant cannot be held liable for manslaughter.

47. Because the Court erroneously refused to charge defendant's request number twelve, which was in manner following, to wit:

(12) Where the person treating the case does nothing that a skilled person might not do, and death results merely from an error 30 of judgment or inadvertent mistake, a defendant cannot be held criminally liable.

48. Because the Court erroneously refused to charge defendant's request number thirteen, which was in manner following, to wit:

(13) If, after considering all the facts and circumstances of the case, the jury have a reasonable doubt in their minds as to whether the defendant was in any way responsible for the death of the deceased; 40

then, irrespective of what the defendant did or failed to do, it is the duty of the jury to resolve that doubt in favor of the defendant and acquit her.

49. Because the Court erroneously refused to charge defendant's request number fourteen, which was in manner following, to wit:

(14) If the jury find in this case that the death of the deceased resulted from an act of another or from acts on the part of the deceased, herself; or from her refusal to submit to proper medical or hospital treatment; and that her death resulted not from any wilful negligence or gross carelessness on the part of the defendant, but from other intervening causes for which this defendant cannot be chargeable; then this defendant cannot be found guilty of manslaughter.

50. Because the Court erroneously refused to charge defendant's request number fifteen, which was in manner following, to wit:

(15) Even if the jury should find that the death of the deceased was directly the result of the care and attention and treatment by this defendant, nevertheless, if her treatment of the deceased was that which ordinarily is given by a person of ordinary skill and intelligence, and that the death occurred from the natural consequences of an act, involving no gross carelessness or wilful negligence, on the part of the defendant; then she cannot be found guilty of manslaughter.

51. Because the Court erroneously refused to charge defendant's request number sixteen, which was in manner following, to wit:

(16) In order for the jury to convict the defendant of manslaughter, they must be satisfied beyond a reasonable doubt that the defendant failed to properly care for and treat the deceased; they must find, in order to convict, that this defendant was guilty of gross carelessness and wilful negligence, and unless they can so find beyond a reasonable doubt, this defendant must be acquitted.

52. Because the Court erroneously refused to charge defendant's request number seventeen, which was in manner following, to wit:

(17) Where the jury have a reasonable doubt in their minds, after considering all the evidence, as to whether the acts of the defendant and her care and treatment of the deceased, contributed to or caused her death; and the jury find from the evidence, that there are other intervening causes which may have or could have brought about or produced the death, and for which the defendant could not be chargeable, and there is found to be no wilful negligence or gross carelessness on the part of the defendant; it is the duty of the jury to acquit.

53. Because the verdict of the jury was contrary to and against the weight of the evidence.

ELMER W. ROMINE,
Attorney for Plaintiff-in-Error.

Service of a copy of the within causes for reversal is hereby acknowledged this 10th day of December, A. D. 1925.

ALBERT H. HOLLAND,
Prosecutor.

OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

No. 15, January Term, 1926.

THE STATE, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Error to Morris County Quarter Sessions.*

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Before Gummere, Chief Justice and Justices Kalisch and Campbell.

For plaintiff-in-error, Elmer W. Romine.

For defendant-in-error, Albert H. Holland.

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PER CURIAM:

This is a writ of error bringing up a judgment of conviction under an indictment for manslaughter. The entire record and proceedings at the trial are brought up under Section 136 of the Criminal Procedure Act.

The proofs show that plaintiff-in-error delivered Veronica Teczkowski of a child on December 9, 1924; and that she had attended her at the birth of other children at prior times; that on December ninth the husband called upon the plaintiff-in-error to attend his wife; that she reluctantly did so that she was in a temper, nervous and excited over a condition of her daughter or as she herself says that she did not desire to render the service because she had a sore foot and was unable to go. That a taxicab was secured and plaintiff-in-error was conveyed to the Teczkowski home where Mrs. Teczkowski

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was by plaintiff-in-error delivered of a child but with such wanton negligence that the death of Mrs. Teczkowski resulted therefrom on December 13, 1924.

The first ground urged for reversal is that the judgment below is based upon a verdict that is not supported by the weight of the evidence. We do not find this to be so.

The next ground is that it was error to admit evidence of other offenses.

Plaintiff-in-error did not have a license as required by statute, to practice mid-wifery and the contention is that this evidence was error and harmful.

But the evidence in question was not introduced for the purpose of showing violations of the statute by the plaintiff-in-error, but simply for the purpose of showing that she had experience and skill in that profession. In that respect there was no error in admitting it.

The next ground urged is the refusal to charge defendant's requests numbers 4, 5, 6, 7, 8, 10, 12 and 17.

Our examination of the charge of the Court brings us to the conclusion that all the matters covered by these requests were correctly and sufficiently charged.

The final matter urged is that the Court erred in refusing to direct a mistrial upon the ground that the plaintiff-in-error was prejudiced by the prosecutor in his opening for the State referring to her as "otherwise as Coolack."

Aside from the question that this matter is not properly before us there is no merit in the point attempted to be raised because it cannot be said that plaintiff-in-error was harmed or prejudiced thereby because in her own examination

she admitted that her name formerly was Coolack and that she was known by that name, although her present husband's name was Kudelka.

Finding no error in the record or proceedings upon any of the assignments or specifications argued and urged before us the judgment below is affirmed.

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RULE ON AFFIRMANCE OF JUDGMENT AND REMITTITUR.

NEW JERSEY SUPREME COURT.

10 STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Error. To Morris Quarter Sessions.* *Rule on Affirmance of Judgment and Order of Remittitur.*

This cause having been duly argued before
20 this Court at the January Term, A. D. nineteen hundred and twenty-six, by Albert H. Holland, Prosecutor of the Pleas of the County of Morris, counsel for the State of New Jersey, defendant-in-error, and Elmer W. Romine, counsel for Annie Kudelka, plaintiff-in-error, and the Court having considered the same and having examined the records and proceedings of the Morris Quarter Sessions in the said cause, and finding no error therein;

30 IT IS HEREBY ORDERED AND ADJUDGED that the judgment of the Morris Quarter Sessions in the above-entitled cause be and the same is hereby affirmed.

AND IT IS FURTHER ORDERED that the record in the said cause be forthwith remitted to the said Morris Quarter Sessions, there to be proceeded with according to law.

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Rule on Affirmance of Judgment.

Entered August 13, 1926.

On motion of,

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Counsel for State of New Jersey,
Defendant-in-Error.

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A true copy.

EDWARD J. KELLEHER,
Clerk.

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WRIT OF ERROR TO SUPREME COURT.

NEW JERSEY, *ss.*

The State of New Jersey to the Chief Justice and other Justices of (SEAL) our Supreme Court of Judicature, GREETING:

10 For as much as in the record and proceedings and also in the giving of judgment in a certain case, which was in our said Supreme Court of Judicature, before you, between the State of New Jersey and Annie Kudelka, on a judgment and conviction rendered on a certain indictment, manifest error has intervened, to the great damage of the said defendant, as it is said, we being willing that the error, if any there be, should, in due manner, be corrected 20 and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed then you distinctly and openly send, under your seal, the entire record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Error and Appeals in the last resort in all causes, at Trenton, on the third day of September next, together with this writ, 30 that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law of the State of New Jersey, ought to be done.

WITNESS, our Chancellor and President Judge of our Court of Errors and Appeals at Trenton aforesaid, the 14th day of August, A. D. 1926.

JOSEPH F. S. FITZPATRICK,
Clerk.

40 ELMER W. ROMINE,
Attorney.

RETURN.

NEW JERSEY SUPREME COURT.

THE STATE, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	10

COPY OF RETURN.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded. 20

WM. S. GUMMERE,
C. J.

A true copy.

EDWARD J. KELLEHER, 30
Clerk.

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ASSIGNMENT OF ERROR AND REASON FOR REVERSAL.

Filed August 27, 1926.

New Jersey Court of Errors and Appeals

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THE STATE, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*Assignment of Error and Reasons for Reversal.*

The Supreme Court erred in confirming the conviction instead of reversing the judgment of
20 conviction under review.

ELMER W. ROMINE,
Attorney for Plaintiff-in-Error.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE, *Defendant-in-Error,* *vs.* ANNIE KUDELKA, *Plaintiff-in-Error.*	*On Writ of Error to Supreme Court.*

BRIEF OF PLAINTIFF-IN-ERROR.

The Supreme Court sustained the conviction of plaintiff-in-error for manslaughter (Opinion p. 181).

The manslaughter complained of was that plaintiff-in-error in attending deceased during childbirth did so in a grossly negligent and careless manner resulting in death.

A duly and regularly licensed physician was in attendance (p. 34 and p. 82) shortly after childbirth. Death resulted several days after child was born (while deceased was under actual care of physician). Plaintiff-in-error although experienced in childbirth cases acted in this instance purely in emergency until the physician arrived. She had not been employed (pp. 25-26) but was called late at night and rushed to the home of deceased by the husband in an automobile (p. 73), understood doctor had been called (p. 106). The usual methods of care and attention were followed, nothing unusual happened. No one present but Mr. Teczkowski, the deceased (his wife), and plaintiff-in-error (p. 31). The husband said "baby born nice" (p. 31, l. 25). *No evidence of gross carelessness or neglect. Nothing to indicate failure to properly perform duty assumed.*

State misconceives and misconstrues evidence. Suggests that plaintiff-in-error was in bad temper, grumbled about sore foot and was impatient at time child was born. This is not a fact, no one so testified. It was but a fanciful theory adopted by the State to justify a verdict and without foundation.

Plaintiff-in-error while reluctant about going on account of a sore foot entered upon her gratuitous duties calmly, patiently and carefully (pp. 31-32-107-73). The child was delivered on the floor (pp. 31-107), husband of deceased assisting. Deceased then walked to bed (p. 108) and after plaintiff left and went home deceased got up to use chamber and fainted (p. 111, l. 38). Hemorrhage followed after plaintiff-in-error had gone back to her home.

No one knows what really happened or how hemorrhage was caused.

No autopsy was performed.

The State suggests that the umbilical cord was pulled by plaintiff-in-error and placenta left in womb.

The husband of deceased explodes this theory by saying (p. 43, l. 24), "*big piece came out on end of cord* after baby delivered."

On direct he said (p. 32) "She (meaning Mrs. Kudelka) catched the baby (as it was being delivered) and string and she broke it. She gets the rest of it and pulls the rest out." *No placenta found remaining in deceased.* This witness does not say plaintiff-in-error was angry or mad. He was there helping her, and what was done was in the ordinary delivery of the child. Plaintiff denies breaking cord.

If cord was pulled from placenta the afterbirth would be expelled of its own nature in due time according to State's witness, Dr. Reed (p. 96, l. 19).

The doctors both admit hemorrhage could be caused in many ways such as getting up, walking around, weak condition of patient and from shock.

Dr. Williams arrived a few hours after child was born (pp. 83-84), took charge of case, advised that Mrs. Teczkowski be taken to the hospital (pp. 87-88). According to testimony of Dr. Williams, Mrs. Teczkowski refused to go. Deceased died four days later.

Doctor says if deceased went to hospital life could have been saved (p. 88, l. 34).

Mr. Teczkowski disputes that doctor ever advised hospital (p. 49). If the doctor is correct and there is no reason to doubt him, then doubt is thrown around testimony of Teczkowski as to what happened that night.

Aside from the verdict being contrary to the weight of the evidence there are many other reversable errors, namely:

1. Evidence was admitted over objection on the part of the State of other acts and offenses tending to show the practice of midwifery without a license.

2. The Trial Court refused to charge specific requests or cover the law as requested to be charged.

3. Motion to dismiss charge and find defendant not guilty should have prevailed.

4. Remarks of the prosecutor in opening were improper and prejudicial to the plaintiff-in-error.

ARGUMENT.

The verdict was contrary to and against the weight of the evidence.

In the situation presented by this indictment, the State would have to show that plaintiff-in-error was guilty of gross carelessness or wilful negligence, before there could be a legal conviction.

Law as applied to involuntary manslaughter.

29 C. J., p. 1148, par. 148. "Involuntary manslaughter consists in the killing of another without malice and unintentionally but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself or by the negligent omission to perform a legal duty."

And at page 1150: "But the death must be due to the unlawful act of defendant and not to the intervening act or negligence of a third person or to an independent intervening cause in which defendant did not participate and which he could not foresee."

As applying to nurses and the like, 29 C. J., page 1158: "A mere mistake of judgment or a mere want of skill where there is not gross negligence or ignorance, will not render him liable."

And at page 1154: "Negligence to become criminal must necessarily be reckless or wanton and of such a character as shows an utter disregard of the safety of others under the circumstances."

Also at page 1154: "SLIGHT FAILURE IN DUTY WILL NOT RENDER DEFENDANT CRIMINALLY NEGLIGENT." Citing *Stehn* v.

State, 92 Neb. 765, 13 A. N. W. 676, 45 L. R. A. 559.

Again at page 1158: "Where the person treating the case does nothing that a skilled person might not do, and death results merely from an error of judgment on his part or an inadvertent mistake, he is not criminally liable." *Hampton* v. *State,* 50 Fla. 55.

Coming to decisions of our own State in the case of *State* v. *Schuttle,* 87 L., page 16, the Supreme Court agreed that the following rule should apply in these cases, namely: "That both the wilful wrongdoing that constitutes malice in the law and also an intention to inflict injury, are of the essence of criminal assault. MERE NEGLIGENCE WILL NOT SUSTAIN A CONVICTION." (Caps ours.) See also *Estell* v. *State,* 51 L. 182, and *State* v. *Reitze,* 86 L., page 408.

Recourse to the evidence does not bring the case within the above definitions of law.

Without doubt plaintiff-in-error was experienced in such matters for she had delivered twelve of her own children without the aid of a doctor (p. 102), besides the many other instances referred to by State.

The State persistently suggests that plaintiff-in-error was in bad temper over her daughter and had a sore foot and because of this pulled the cord from placenta and caused a hemorrhage. In the first place no witness for the State, not even the husband of deceased or the young man who drove plaintiff-in-error to home of deceased saw any evidence of bad temper. This was purely a suggestion or imagination on the part of the State unsupported by evidence. Whether she

was in bad temper and whether she pulled the cord too soon makes no difference because the husband, Teczkowski, declares both on direct and cross, that there was a big piece attached to the end of the cord as it came out. Dr. Glendon Reed, the State's expert medical witness, admitted that the placenta would expel itself in time (p. 96). *Now what caused the hemorrhage? Certainly not the mere breaking of an umbilical cord. In this case the placenta came out. No proof that any was retained.*

Dr. Williams said (p. 89, l. 8) "I heard she (meaning Mrs. Kudelka), always bled easy." Further says (p. 89, l. 22) "It happens with the best physicians, yes, it does happen, but it depends on the case." *Also says walking after delivery of child produces hemorrhage* (p. 89, l. 34).

In this case Mr. Teczkowski insisted that his wife remain on floor after childbirth then walked her to bed. Dr. Williams also said condition of woman's blood may give considerable trouble (p. 90, l. 20).

The doctor has heard of cases where hemorrhage was produced by shock from childbirth itself (p. 91, ll. 8-10) causing death.

Dr. Glendon Reed, a witness for the State, admitted he did not attend the woman. He explained how a child was ordinarily delivered (pp. 92-93) which was practically no different than what Mrs. Kudelka did, because she said the afterbirth came easy itself.

The doctor admitted on cross examination (p. 96) *that he did not know whether placenta was retained or not, said that hemorrhages came from different causes* (p. 97) concluded by say-

ing patient should be kept absolutely still after childbirth, discouraged walking around as dangerous (p. 98).

Mrs. Kudelka explained how she tied the cord twice (p. 104), cut cord, laid child aside, then waited, then took hold of cord, afterbirth all came out.

When she left in the early morning, woman was all right (p. 111) next morning plaintiff-in-error says husband of deceased told her Mrs. Teczkowski wanted to get up and use chamber, fell down and fainted and had hemorrhage and then sent for a doctor.

Mr. Teczkowski admits his wife was all right when Mrs. Kudelka left that morning.

Where then can any blame be attributed to Mrs. Kudelka? There is no medical or expert testimony, no autopsy opinion, to show that any act of Mrs. Kudelka resulted in the tearing of placenta or of any remaining, so as to cause rupture of blood vessels.

On the other hand, the woman was a natural bleeder. Mrs. Kudelka wanted a doctor in attendance, the deceased did get up and walk, hemorrhage followed after plaintiff-in-error went home. The doctors both agree this is dangerous.

The law above quoted is that where there is an intervening cause resulting or producing death, the attendant cannot be held liable. There is too much doubt as to the real cause of death to say as a moral certainty that anything plaintiff-in-error did or failed to do hold her liable.

Her act in going was gratuitous and purely in emergency. She was not practicing midwifery because under the statute she was exempted from the prohibitive provision under the circumstances.

It must be remembered that deceased was under the care of a physician within a few hours after childbirth and according to Dr. Williams death might have resulted in this case even if delivery had been under a trained physician, and as a matter of fact did so occur. Plaintiff-in-error had no further care of deceased after child was born. For several days thereafter Dr. Williams attended her. He advised and recommended that she go to hospital where better care could be administered. Deceased refused to go.

There are so many other causes that enter into the possibility of death that it not only creates a great doubt as to guilt of plaintiff-in-error but suggests that some other agency was really the attributing case.

Not only should the motion to dismiss and direct a verdict have prevailed but the verdict itself should be set aside as against the weight of evidence.

TWO.

It was error to admit evidence of other offenses.

Should it be concluded by any stretch of the imagination that the evidence justified a finding of gross negligence and carelessness, there is further error which will preclude sustaining this conviction.

The State persisted over objection in showing by a number of witnesses as well the cross examination of plaintiff-in-error, attendance by Mrs. Kudelka during occasions of childbirth with other women, which was not a charge under the indictment.

The assignments and causes for reversal are specific setting forth each question, answer and ruling (pp. 152 to 161 and 169 to 175).

A very similar case to that at bar is found in *Meyer* v. *State,* 59 L., page 310. There the defendant had been charged with knowingly and unlawfully and without license prescribing medicine and evidence was introduced over objection by the State, showing that he had so prescribed for other persons not mentioned in the indictment. Justice Garrison speaking for the Supreme Court said in part:

> "This conviction must be set aside since it rests, in part, upon the proof by the State over the objection of the defendant, of the commission of similar but unconnected offenses."

And concluding at page 311 the Court declared:

> "In the case before us the testimony objected to proved no element of the single offense charged in the indictment, ITS ONLY EFFECT COULD BE TO LEAD THE JURY TO THE BELIEF THAT HE HABITUALLY DID THOSE THINGS FOR THE DOING OF WHICH, IN A PARTICULAR INSTANCE, HE WAS UPON TRIAL." (Caps ours.)

Other cases in our State enunciating the same principle that other offenses and acts cannot be shown are as follows:

State v. *Sprague,* 64 L. 419, at page 426;
State v. *Young,* 93 L. 396;
State v. *Bloom,* 89 L. 418;
Bullock v. *State,* 65 L. 557;
Clark v. *State,* 47 L. 556;
State v. *Hendrick,* 70 L. 41.

The State in order to overcome this very serious error suggests that such evidence was

introduced merely for the purpose of showing that plaintiff-in-error was competent and could properly deliver a child. The Supreme Court in disposing of this objection adopted and accepted this argument of the State.

It is respectfully submitted however that recourse to the record itself will show that the State was merely trying to beg out of its own error because from the *opening of the case to the end the prosecutor was repeatedly trying to show the practice of midwifery in other instances. The record bears this out.*

Question by the prosecutor of the witness Kozemiers Teczkowski (p. 23, l. 22).

> "Q At the time Helen was born, did you engage Mrs. Kudelka *to act as midwife* for your wife?
>
> Objection by Mr. Romine.
>
> Q (p. 23, l. 34.) Have you paid her in other occasions for attending your wife in childbirth?
>
> Mr. Romine: Object to it; we are not here trying any other occasions, and the State cannot bring in any other occasion (p. 24).
>
> The Court: You mean to say that the State cannot show that she was engaged in the business of a midwife?
>
> Mr. Romine: I contend.
>
> The Court: Just answer that question.
>
> Mr. Romine: I cannot answer it yes or no for the reason that it makes no difference what this woman was engaged in nor what practice she was engaged in other than she was engaged this particular time.
>
> The Court: Show me some authority against the proposition that the State cannot show that she was engaged as a midwife.

Mr. Romine: I say that the State cannot show.

The Court: Can you show me any authority.

Mr. Romine: There is no case in the United States on midwife; *we must proceed on the principle of law.*

The Court: Objection overruled.

(Exception allowed and sealed.)

C. F. Wilson (L. S.).

The Court: *I am admitting this on the ground that the State is offering and I expect to prove that the defendant was engaged in the business as a midwife. If it fails to prove it, then you may move to strike this out.*"

Each of the following witnesses namely, Marcela Maokowsky (p. 54), Mary Resutko (p. 59) were interrogated by the prosecutor as to whether Mrs. Kudelka attended them during childbirth, whether a doctor was in attendance, whether she had been engaged in advance and whether payment was made for her success.

Further in the effort to prove the offense of midwifery on other occasions, the State produced the Assessor of the Township of Hanover (p. 75) with his record of reported births and endeavored to show by him that plaintiff-in-error had either filled out the reports of birth or actually signed them, and that he had cautioned her about practice of midwifery.

Continuing further, the State offered in evidence a certificate from the Board of Medical Examiners (S. 11, p. 101) showing that plaintiff-in-error was not licensed to practice midwifery.

A most complete chain of evidence to show the commission of another offense. Certainly the State cannot commit error and violate the rules

of evidence and then in a mere passive way justify its wrongful act by alleging its introduction was to aid the defendant.

If the only purpose of the State was to show plaintiff-in-error's ability to properly deliver a child, all that would have been necessary would have been to ask the husband of deceased the simple question, "Did Mrs. Kudelka attend your wife in other cases and if so, how many times and did the children live," and then stop.

Why the necessity of referring to her attendance as a midwife; why call many other women to show an habitual practice of going out on such cases; why introduce in evidence as the record shows the certificate from the medical board; why follow it up with the testimony of the assessor unless there was the intent to develop in the mind of the jury the very thing prohibitive by the decisions that Mrs. Kudelka was illegally in attendance at other times.

Its the little things that crop out in a case that throw a jury off their balance. Imagine twelve jurors listening to the prosecutor constantly pounding out evidence that the defendant on trial was attending others illegally in childbirth without a license. Immediately the jury are impressed with the thought that if death did result to the mother that the attendant was illegally attending and therefore must be responsible for the resulting death. If this was not harmful then I cannot imagine what could be.

THREE.

The Trial Court committed error in its refusal to charge as requested.

Under this challenge the Supreme Court said (p. 182):

> "Our examination of the charge of the Court brings us to the conclusion that all the matters covered by these requests were correctly and sufficiently charged."

It is true as the State argued in its brief, before the Supreme Court, that the Trial Judge is not compelled to charge in the exact language of the request but it is equally true that if the request embodies law applicable to the case it must be charged in some form.

A reading of the Trial Court's charge as a whole will indicate that some of the specific requests embodying law applicable were not charged in any form.

For instance it will be remembered as we go along that the Trial Court (p. 24) permitted the State to show that plaintiff-in-error was engaged in the practice of midwifery and also permitted the State to show that she was not licensed as a midwife. (Ex. S. 1, p. 101.)

Request No. 7 (p. 146) was to charge the language of the statute exempting from the provisions of the act requiring a midwife to have a license, those cases of "*gratuitous service in case of emergency.*"

This request the Court not only refused but failed to charge in any particular. The provisions of this statute were never before the jury. Counsel for plaintiff-in-error at the trial tried to read this statute to the Court in line with his argument, but was ordered to sit down (p. 29).

This is only one instance of failure to charge the law and if after reading the entire Court's charge if any reference can be found to its contents the objections to failure to charge will be promptly withdrawn.

The next important request is No. 9, page 147, here plaintiff-in-error desired the Trial Court to charge the difference between mere unlawfulness of an act done as distinguished from criminal negligence and also was a request to charge. "In order that a person can be convicted of what is known in law as involuntary manslaughter the death must be due to an unlawful act of the defendant and not to the intervening act or negligence of a third person or to an independent, intervening cause in which defendant did not participate and which could not be foreseen."

The importance of this request reverts to the circumstances of whether the hemorrhage was caused by the act of deceased herself in getting up or that of her husband in compelling her to deliver child on the floor and walk to the bed or any failure of the physician to properly care for the deceased.

The jury were entitled to know and be advised that in the consideration of the case if any doubt arose as to the actual participation of plaintiff-in-error in the death that if there was a finding that death resulted from some other cause over which Mrs. Kudelka had no control in law, she was to be exonerated.

There is absolutely no mention of this phase of the law in the charge.

It is a fundamental principle of law as expressed in the case of *Roe* v. *State,* 45 L., page

49, that where a request to charge the jury embodies a correct statement of law, is applicable to the case, is fairly raised by the testimony and is material the Court should charge upon it distinctly.

In the case of *Bindernagle* v. *State,* 60 L. 307, it was held to be the duty of the Trial Court to instruct the jury as to the elements of facts necessary to constitute the crime.

This case although a charge for manslaughter embraced peculiar and unusual phases of law as a foundation upon which to apply the facts and unless carefully explained the jury were apt to conclude that mere negligence or slight omission of duty was a sufficient requirement to sustain or call for a verdict of guilt. The requests on behalf of defendant were therefore made with this in mind.

The first request not charged of which complaint is made is No. 4 (pp. 145, 161, 175) and refers to "Criminal negligence." The only reference to such negligence is found on page 142, wherein the Court refers merely to criminal negligence as being an act or omission done or left undone and does not embrace the term reckless or wanton as requested to be used.

Request No. 5 (pp. 146, 162, 175) was a declaration that slight failure in duty would not render defendant criminally liable. This request followed the law as heretofore quoted from Corpus Juris, and was not referred to in any way in the general charge.

This request was most important to defendant as the jury were entitled to know the distinguishing feature that is to what extent negligence must go to be criminal.

Request No. 6 (pp. 146, 162, 176) was made because the State had persistently injected into the case the claim that plaintiff-in-error had practiced midwifery and the plaintiff-in-error was entitled to have the jury informed that such claim could not constitute her guilty of this charge. In this particular, the Court not only refused the request but did not in any way bring the matter to the attention of the jury in the general charge.

This particular request is in the language of the Supreme Court in the case of *Estell* v. *State*, 51 L. 182, and was not touched upon in any way throughout the general charge.

Request No. 10 (pp. 147, 164, 177) not charged in any form, was also based upon the law from *Corpus Juris* heretofore cited, and is important because it directs the jury to exclude in their consideration of guilt, "mere mistake or error of judgment."

The next request No. 12 (pp. 147, 165, 178) is likewise based upon the law heretofore cited from *Corpus Juris* and is along the line of No. 10 with the difference that it excludes from the jury's consideration of guilt, cases of "mere error of judgment or inadvertent mistake" a request quite important to plaintiff-in-error.

The remaining requests Nos. 13, 14, 15, 16 and 17 (pp. 148, 149, 165, 166, 167, 179, 180) not charged and to which exception was taken, are along the same general lines as those discussed with slight variations embracing different angles approaching the various forms and degrees of negligence as distinguished from "criminal negligence" all being legal propositions which it is submitted should have been charged on behalf of defendant and for which refusal there was harm-

ful error which should call for the reversal of conviction.

Prejudicial Remarks by Prosecutor.

Concluding there is one remaining objection in the opening of the prosecutor to the jury (pp. 20-21) wherein reference was made to the defendant as "Mrs. Kudelka, otherwise known as Coolack," a name other than that in the indictment. The objection being overruled, motion was then made that a juror be withdrawn and a mistrial declared (p. 21) which was also refused.

While the right to withdraw a juror rests in the sound discretion of the Court, nevertheless the prosecutor should not be permitted, as in this case to refer to the defendant by another name in opening.

The particular harm here complained of was that a John Coolack of Whippany had only a week or so before being convicted of manslaughter resulting from an affray and statement coming as it did before the same panel of jurors had by *innuendo* the same effect as in the case of *State* v. *Young, supra,* namely to bring to the attention of the jury some collateral circumstance or element of crime which might connect with or reflect prejudically against the person on trial. Such practices should be discouraged as it only tends to lessen the right to a fair and impartial trial.

Bearing as it does a very prejudicial reflection against defendant it equals the objection to that class of evidence heretofore referred to where evidence of other crimes or offenses are sought to be introduced but which has been decidedly pronounced illegal.

This ground is also added to the reasons for reversal.

Respectfully submitted,

ELMER W. ROMINE,
Attorney for and of Counsel
with Annie Kudelka.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant-in-Error, vs. ANNIE KUDELKA, Plaintiff-in-Error.	**In Error.** **Brief for the State, Defendant-in-Error.**

The following Brief was submitted to the New Jersey Supreme Court at the January Term of Court, 1926, and is herewith submitted to the Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

THE STATE, Defendant-in-Error, vs. ANNIE KUDELKA, Plaintiff-in-Error.	**On Indictment.** **On Writ-of-Error to Morris Quarter Sessions.** **Brief of Defendant-in-Error.**

Statement.

Just prior to December 9th, 1924, Veronica Teczkouski was about to give birth to a baby; it was to be her fifth child. On each previous occasion Annie Kudelka, the Plaintiff-in-Error, otherwise known as Annie Coolack, attended her, and upon each occasion was paid and received payment for the midwifery services rendered. No doctor was ever called. On December 9th, 1924, Mr. Teczkouski called for Mrs. Kudelka to come and attend his wife according to pre-arrangement (Case, p. 23, line 29, &c.). Mrs. Kudelka sulked, complaining of a sore toe, and exhibited a bad temperament. She was mad and excited (Case, p. 121, line 5, &c.); she was having trouble with her daughter, who already had a baby and was about to be married in Court (Case, p. 120, line 12, &c.). The husband of the decedent however, arranged for a taxi-cab, and defendant upon arriving at the decedent's home took charge of the delicate performance of bringing another life into being. She continued, however, to grumble and complain of her toe, and waxed impatient. In due course a per-

fectly normal and healthy child was born, but the defendant instead of exercising due care and caution in reference to the after-birth, and without waiting for the usual half hour's or hour's time to elapse in order to deliver the placenta, in fact without waiting any appreciable time at all (State of the Case, p. 127), yanked and pulled the navel cord and tore it from the placenta (State of the Case, p. 32, line 9; p. 33, line 37; p. 43, line 9, &c.). And thereafter still in a hurry and in a wanton mood put her hands in and pulled it (the after-birth) out, piece by piece, a handful at a time, exclaiming, "everything is rotten" (Case, p. 53, line 30, etc.; pp. 86 and 87; p. 131, line 20, &c.).

Having practiced midwifery for a long period of time and knowing the serious consequence of maltreatment and abuse, the defendant after this performance assisted in putting the decedent back to bed again, and then left for home without giving the mother any further care or attention. Defendant's counsel has tried without avail to introduce as a fact that the decedent after she was put to bed got up out of bed, as a result of which a hemorrhage occurred. There is no such testimony in the case; there are only the questions and insinuations of counsel and a statement by the defendant that the husband told her so; this the husband denied; in fact the husband and a neighbor woman who afterwards helped, both testified that the decedent did not get up out of bed at all. At about five o'clock in the morning, and when decedent was in serious pain and trouble, a physician was called who afterwards advised decedent to go to a hospital, and two days later ordered an ambulance. Mrs. Teczkouski died before the ambulance arrived. The doctor diagnosed the cause of death as due to "utera hemorrhage after child birth and the lack of proper care, retained placenta" (Case, p. 85, line 35, &c.).

The State contended that as a result of the wan-

ton disregard of the decedent's welfare and safety and the violent, grossly neglectful and wilful and grouchy way in which the defendant pulled out a part of the after-birth, without waiting the usual or decent time, and leaving the remainder unremoved, that she was guilty of gross, wanton and criminal negligence. The State further established as an element of her knowledge that she had acted and been paid as a midwife on a great number of other occasions.

The defendant was indicted by the January 1925 Term of the Morris County Grand Jury, and on Wednesday, July 1st, 1925, was convicted of Manslaughter.

The Assignments and Specifications of Causes are grouped by the Plaintiff-in-Error into four classes, and I will treat them in the same order in which they are treated in the Brief of the Plaintiff-in-Error.

POINT 1.

The verdict was justified and was not contrary to the weight of evidence.

In the case of the State *v.* Reitze, 86 N. J. L. 407, Chief Justice Gummere clearly defined criminal negligence as follows:

> "Where death is the result of an occurrence unanticipated by the defendant, but which arose from his negligence or inattention, his criminal responsibility depends on whether or not the injury which caused the death was the regular, natural and likely consequence of defendant's conduct."

In this case there is much, certainly sufficient, testimony of negligence and inattention, so wilful

and wanton on the part of the defendant, that the death of the decedent is not only a regular, natural and likely consequence thereof, but was actually induced thereby.

The husband testified that Mrs. Kudelka immediately after the baby was severed from the mother and placed on the other side of the room, pulled on the navel cord to such an extent that a part of the placenta was torn off and came out with it (Case, p. 32, line 9, &c.). He also testified that she pulled the after-birth out in handfuls and said it was rotten (Case, p. 53, line 30, &c.). The defendant herself testified that it looked rotten (Case, p. 131); that she was mad and excited (Case, p. 121, line 5, &c.); that she wanted to go home; and that the whole operation from the time the baby first emerged, to the time when the decedent was bandaged and put in bed took only ten minutes (Case, p. 127). Dr. Williams testified that there could not have been such a thing as a rotten placenta (Case, pp. 86 and 87) and that the immediate cause of death was the hemorrhage after childbirth caused by the lack of proper care and the retained placenta (Case, p. 85, line 35, &c.). Dr. F. Grendon Reed, an expert, testified that at least a half hour and maybe longer should be allowed for the after-birth to be delivered (Case, p. 94, line 20, &c.), and that pulling the cord away first and then afterwards taking out pieces of the placenta would result in the patient's bleeding to death (Case, p. 95, line 4). Mrs. Kudelka also testified that after Mrs. Teczkouski was put back in bed, that is ten minutes after the child first appeared, that she never gave her any further attention.

It is respectfully submitted that acts of manhandling a woman in child birth and such gross lack of care and attention as the ones above recited are more than enough to enable and justify a Jury in finding such gross, wanton and wilful dis-

regard for Mrs. Teczkouski's safety and life, as to clearly constitute criminal negligence.

> "It may very well be that the testimony tending to establish the guilt of the plaintiff in error is of such meagre and attenuated character that tested by a strict analysis it is not clearly convincing of the guilt of the plaintiff in error; and even though it may appear to us that on a motion for a new trial, in the trial court, such a motion might properly prevail, nevertheless, such a situation affords no legal ground for disturbing the verdict in this case here, so long as there is some testimony, no matter how slight, tending to support the finding of the jury." State *v.* Young, 93 New Jersey Law, 397.
>
> State *v.* Plough, 88 N. J. L. 425.
>
> State *v.* Faunce, 91 N. J. L. 333.

POINT 2.

The Trial Court did not err in admitting evidence of defendant's practice of midwifery.

Section 45, page 3334, volume 3, Compiled Statutes provides:

> "That any person shall be regarded as practicing midwifery within the meaning of this act who shall publicly profess by advertisement, sign, card or otherwise to be a midwife, or who shall, for a fee, attend to women in childbirth, but nothing in this act shall be construed to prohibit gratuitous service in case of emergency, nor to the legally-qualified physicians or surgeons of this state."

This defendant was charged with manslaughter arising from the gross and wanton negligence of her duties as a midwife; and in order to make her

responsible for the fulfillment of her duties as a midwife or similar attendant, it was necessary to show that for many years and in many cases she had acted as such.

Whether she acted with or without a license would make no difference in the duty she owed to her patient; but in order to show that she was not acting gratuitously in an emergency, notwithstanding her defense that she was, it was shown that all five of the decedent's children, and a great many children of other women were delivered by the defendant alone, without the aid of any nurse, attendant or physician; thus, on the one hand, attacking the truthfulness of the defendant's story that she was merely acting gratuitously in an emergency, and on the other hand, in demonstrating that she had ability, if she desired to exercise it, to properly safeguard, protect and care for the safety and welfare of her patients.

It is contended on behalf of the State that while certain negligent acts in gratuitous and emergency cases by an inexperienced and untrained attendant might amount only to slight negligence, yet those same acts committed by a midwife or doctor would constitute criminal negligence.

The case at bar, in my opinion, is quite different from the case of the State *v.* Meyer, 59 N. J. L. page 310.

In that case defendant was being tried for one act of practicing medicine and other acts of practicing were also introduced; however, had the defendant been tried for manslaughter as the result of a bad dose of medicine negligently administered or prescribed, it would have been permissible, I believe, to show that he practiced medicine whether he was licensed or not, which would enable the Jury to say that in holding himself out as a doctor he at least had to bring to the practice of his profession some semblance of training, skill, knowledge,

and dexterity, and that therefore his act was one of a greater degree of negligence than if he did not practice medicine or hold himself out to be a doctor.

In this case the indictment was not for midwifery without a license, but for manslaughter and the proof introduced was to show that defendant had practice, experience and training in midwifery, a class of work which she continually held herself out to do among people of her own kind in a hamlet as small as Whippany, and that, notwithstanding her knowledge and ability, she committed such wanton and wilful acts of negligence that no careful, experienced or practiced midwife could excuse, countenance or escape the consequences of, whether licensed or not.

The defendant did not plead and could not be surprised at the trial so far as her practice of midwifery is concerned, because she demanded and was served with a Bill of Particulars (Case, p. 21, line 25). While the Bill of Particulars has not been included in the State of the Case, it may not be amiss to state that the particulars specified that "the crime was committed at the time of the birth of the decedent's baby by reason of the fact that the defendant, acting as a midwife without a license, was guilty of criminal negligence in delivering the child, and in delivering or failing to properly deliver the after-birth, and in neglecting to take proper steps to safeguard the life and health of the decedent."

POINT 3.

Plaintiff in error complains of errors by the Trial Court in his refusal to charge her requests. No errors were committed.

A reading of the charge by the Trial Court will, I believe, demonstrate that the Jury were clearly instructed in their duties. The charge is well within the rule of law laid down in a long line of cases of which one of the most recent is State *v.* Rombolo, 91 N. J. L. 560, in which the Court held:

> "A trial judge is not required to charge requests of counsel in preference to language of his own choosing correctly covering the same point."

In the case of the State *v.* Penelli, 79 Atl. 1064, the Court held:

> "The requests to charge, not embodying a legal proposition, or which relate to the weight of evidence or the value which the Jury should give to certain portions of the testimony, are discretionary with the Court."
>
> See also State *v.* Gardner, 55 N. J. L., page 17.

The Court's refusal to charge request No. 7 did not harm the defendant in any way. She was not being tried for midwifery, but for manslaughter, and the question of whether she was or was not licensed, if, in fact, she did practice midwifery, would have no effect upon the outcome of the case.

POINT 4.

The complaint of the Plaintiff-in-Error addressed to the Prosecutor's opening to the Jury is, in my opinion, trivial and of no consequence. The Prosecutor certainly had a right to establish the identity of the person on trial, and he also had a right to open upon the premises that he would establish such identity. The defendant herself testified, on cross-examination, that her first husband's name was Coolack, and that while she was now recently married to Kudelka, that people, *"know all right the other name so they call me that name"* (Case, p. 113, line 27, &c.). By no stretch of the imagination can it be said, with any great force, that any proceedings in any other case had any effect upon this case. The Court clearly charged the Jury that their decision was to be based upon the evidence in the case. Mrs. Kudelka did not appear in any stage of any other proceedings at any other time either as a witness or as a defendant before the general panel in question except in her own trial.

Certainly the language used by the Prosecutor in the case of the State *v.* Lange, 66 Atl. 942, is far more vigorous and vitriolic than the simple endeavor of the Prosecutor in this case to prove that Mrs. Kudelka was also known as Mrs. Coolack. In the Lange case the Prosecutor stated to the Jury that "the defendant was a monster in his passions, licentious in his desires, beastly in his love, brutal when thwarted and cowardly when caught," and the Court held that the language thus used was not ground for reversal.

While the cases are not exactly alike, nevertheless, the underlying principle that counsel are en-

titled to make any proper opening or proper closing to the Jury, within reasonable bounds, is firmly established.

The following is a copy of the Supreme Court opinion, rendered by the Supreme Court during the January Term, 1926.

THE STATE OF NEW JERSEY, Defendant in Error, *v.* ANNIE KUDELKA, Plaintiff in Error.

On Error to Morris County Quarter Sessions.

Before Gummere, Chief Justice and Justices Kalisch and Campbell.

For plaintiff in error, ELMER W. ROMINE,
For defendant in error, ALBERT H. HOLLAND.

PER CURIAM:

This is a writ of error bringing up a judgment of conviction under an indictment for manslaughter. The entire record and proceedings at the trial are brought up under Section 136 of the Criminal Procedure Act.

The proofs show that plaintiff-in-error delivered Veronica Teczkowski of a child on December 9, 1924; and that she had attended her at the birth of other children at prior times; that on December ninth the husband called upon the plaintiff-in-error to attend his wife; that she reluctantly did so; that she was in a temper, nervous and excited over a condition of her daughter or as she herself says that she did not desire to render the service because she had a sore foot and was unable to go. That a taxicab was secured and plaintiff-in-error was conveyed to the Teczkowski home where Mrs. Teczkowski was by plaintiff-in-error delivered of a child but with such wanton negligence that the death of

Mrs. Teczkowski resulted therefrom on December 13, 1924.

The first ground urged for reversal is that the judgment below is based upon a verdict that is not supported by the weight of the evidence. We do not find this to be so.

The next ground is that it was error to admit evidence of other offenses.

Plaintiff-in-Error did not have a license as required by statute, to practice midwifery and the contention is that this evidence was error and harmful.

But the evidence in question was not introduced for the purpose of showing violations of the Statute by the plaintiff-in-error, but simply for the purpose of showing that she had experience and skill in that profession. In that respect there was no error in admitting it.

The next ground urged is the refusal to charge defendant's requests numbers 4, 5, 6, 7, 8, 10, 12 and 17.

Our examination of the charge of the court brings us to the conclusion that all the matters covered by these requests were correctly and sufficiently charged.

The final matter urged is that the court erred in refusing to direct a mistrial upon the ground that the plaintiff-in-error was prejudiced by the Prosecutor in his opening for the State referring to her as "otherwise as Coolack".

Aside from the question that this matter is not properly before us there is no merit in the point attempted to be raised because it cannot be said that plaintiff-in-error was harmed or prejudiced thereby because in her own examination she admitted that her name formerly was Coolack and that she was known by that name although her present husband's name was Kudelka.

Finding no error in the record or proceedings upon any of the assignments or specifications argued and urged before us the judgment below is affirmed.

It is further contended that

> "If there be testimony supporting the charge laid in the indictment the question of the defendant's guilt or innocence is for the jury and not of the court, and it is proper to deny a motion to direct a verdict for the defendant."
>
> State *vs.* Morehous, 97 N. J. L. 285.

It is therefore respectfully contended in view of the foregoing that the conviction should be affirmed, and the writ dismissed.

Respectfully submitted,

ALBERT H. HOLLAND,
Prosecutor of the Pleas
for the County of Morris.