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THE HISTORY OF THE
CITY OF BOSTON

FROM THE FOUNDATION OF THE COLONY
TO THE PRESENT TIME

BY NATHANIEL BENTLEY

IN TWO VOLUMES

Writ of Error

New Jersey Court of
Errors and Appeals

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	WRIT OF ERROR	10
vs.		New Jersey	
DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i>		ss.	

The State of New Jersey to the Court of General Quarter Sessions in and for the County of Hudson: 20

GREETING:

Because in the record and proceeding and also in giving of judgment in a certain indictment pending before you, in which said indictment Dominick Scarzini was a defendant and which said indictment was for murder, and upon which indictment he is convicted of assault and battery as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Dominick Scarzini, as by his complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and con- 30 40

Writ of Error

cerning the same, and also the entire record of proceedings had upon the trial of said indictment to our New Jersey Court of Errors and Appeals, on the 9th day of July, 1928, together with this writ, that the record and proceedings aforesaid
 10 being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness, EDWIN ROBERT WALKER, Chancellor at Trenton, aforesaid on the 19th day of June, 1928.

JOSEPH F. S. FITZPATRICK,
Clerk.

20 GEORGE E. CUTLEY,
Attorney for Plaintiff-in-Error.

30

40

Certificate of Chancellor

IN CHANCERY OF NEW JERSEY

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> vs. DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i>	}	Sur Indictment for Murder	10
		CERTIFICATE OF CHANCELLOR	

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

Dated, June 18, 1928.

E. R. WALKER,
Chancellor.

Judgment

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT:
 Be it remembered that at a Court of Oyer and
 Terminer holden at Jersey City, in and for the
 said County of Hudson, on the second Tuesday
 of December in the year of our Lord one thou-
 10 sand nine hundred and Twenty-seven before Hon-
 orable Justice James F. Minturn, one of the Jus-
 tices of the Supreme Court of Judicature of the
 State of New Jersey, and Honorable Charles M.
 Egan and Honorable Robert V. Kinkead and Hon-
 orable Daniel O'Regan, Judges of the Court of
 Common Pleas in and for the said County of
 Hudson, according to the form of the Statute in
 such cases made and provided, by the oaths of

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

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

40

JOHN A. BYRAM,
Foreman.

Judgment

And the foregoing being presented to the said Court on the Seventh day of February, in the year of our Lord One Thousand Nine Hundred and Twenty-eight with Bills of Indictment Nos. 122 to 163 inclusive, it is ordered by said Court that the said Bill of Indictment so as aforesaid included as Bill Number 122 for Murder as charged upon Domenick Scarzini remain in said Court of Oyer and Terminer for trial and disposal according to law, and said Bill is in words as follows:

HUDSON OYER AND TERMINER

DECEMBER TERM, A. D., 1927

HUDSON COUNTY, TO WIT: The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, That Domenick Scarzini, late of the City of Hoboken in the said County of Hudson, on the Nineteenth day of July in the year of our Lord one thousand nine hundred and twenty-seven, with force and arms, at the City of Hoboken aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one James Delle Fave in the peace of God and of this State, then and there being, did wilfully, feloniously and of his malice aforethought, kill and murder James Delle Fave 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.

And the Grand Inquest aforesaid, upon their oath aforesaid do further PRESENT, That the said Domenick Scarzini, on the nineteenth day of July

Judgment

in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Hoboken, aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, did feloniously kill and slay one James Delle Fave, 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.

10 And the Grand Inquest aforesaid, upon their oath aforesaid, do further PRESENT, That the said Domenick Scarzini, on the nineteenth day of July in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Hoboken aforesaid, and within the jurisdiction of this Court, in and upon one James Delle Fave in the
20 peace of God and of this State, then and there being, an assault did make, and him the said James Delle Fave then and there did beat, wound and ill-treat and other wrongs, to the said James Delle Fave then and there did, to the great damage of the said James Delle Fave, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

30

JOHN MILTON,
Prosecutor of the Pleas.

Endorsed Bill No. 122 Hudson Oyer and Terminer, Term of December, 1927, The State vs. Domenick Scarzini for Murder,

JOHN MILTON,
Prosecutor of the Pleas.

40

Judgment

A True Bill.

JOHN A. BYRAM,
Foreman.

PRESENTED

10

FEB. 7, 1928 AND HANDED DOWN
TO THE COURT OF QUARTER SESSIONS.

JOHN J. MCGOVERN,
Clerk.

And afterwards to wit: to wit on the sixteenth day of February in the year of our Lord One Thousand nine hundred and twenty-eight at a Session of the Court of Oyer and Terminer of the County of Hudson, aforesaid being now of the Term of December One thousand nine hundred and twenty-seven in the said year before the Honorable Robert V. Kinkead, Judge of the Court of Common Pleas in and for the said County of Hudson, who doth constitute and hold the Court of Oyer and Terminer, in and for the County of Hudson here cometh the said Domenick Scarzini, under the custody of his bond Liberty Surety Bond Insurance Company in whose custody he had before been committed for the cause aforesaid, who being brought herein in his proper person by the bail aforesaid, to whom he had been committed and having heard the indictment read and forthwith being demanded of and concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he says he is Not Guilty thereof, and therefore for good and evil he puts himself upon

20

30

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Judgment

the country, and John Milton, Prosecutor of the Pleas who prosecutes for the State of New Jersey, in this behalf, doth the like.

10 Therefore, let said indictment be continued until May 21, 1928 and let a jury come before the Honorable Charles M. Egan, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Oyer and Terminer for said County, being now of the Term of April (1928) One thousand nine hundred and twenty-eight of twelve good and lawful men of this State and residents in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not
20 of kin to the said Domenick Scarzini, defendant, to recognize on their oath whether the said Domenick Scarzini be guilty of Murder as in the indictment aforesaid is charged against him, or not guilty thereof, because as well the said John Milton, Prosecutor of the Pleas of the County of Hudson, aforesaid, who prosecutes for the State of New Jersey in this behalf, as in the said indictment have put themselves upon the same jury, and the same day is given to the parties aforesaid at the same time and place.
30

At which time that is to say on the Twenty-first day of May in the year of our Lord One thousand nine hundred and twenty-eight, at Jersey City aforesaid in the County of Hudson aforesaid, before the Honorable Charles M. Egan, Judge as aforesaid constituting and holding the Court of Oyer and Terminer as aforesaid, here come as well the said John Milton, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid as well the
40 said defendant under the custody of his bail

Judgment

aforesaid, and who being brought to the bar in his proper person by said bail and the jurors of the jury by the Sheriff of the County of Hudson, aforesaid, for the purpose, chosen, empanelled and returned to wit: Michael Lysagt, Fred R. Schultz, Edward VanZile, Samuel Klaman, Herman Schroeder, Percy L. Hernie, Joseph Long, Walter J. Kudlich, Joseph A. Schlith, Walter D. Wilson, Clifford M. Purdy, William Burke, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises, and thereupon the trial of the said issue commenced before the said Court and Jury at which days the evidence of the parties is submitted and the Attorneys were heard thereupon and the said issue after a Charge from the Court was submitted to the said Jury in charge of the said Officers of the Court, being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit on May 21st, 1928, the last aforesaid at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton, Esquire, Prosecutor of the Pleas as aforesaid and for the said defendant do say that the said defendant is guilty of Assault and Battery.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the Law is and is by the Court here considered and adjudged, that the said defendant Domenick Scarzini be and is hereby sentenced to be confined in State Prison at Hard Labor, for a period of Three (3) years and thence until costs of prosecution are paid.

Indictment

Judgment entered and signed this Fourteenth day of June, 1928.

10

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

Attest:

JOHN J. MCGOVERN,
Clerk.

20

Indictment

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

COURT OF OYER AND TERMINER

HOLDEN IN AND FOR SAID COUNTY

30

THE STATE

vs.

DOMINICK SCARINZI,

Sur Indictment
No. 122, Term of
December, A. D.
1927, for Murder.

40

Feb. 16, 1928. The defendant being charged pleads Not Guilty and he is remanded for trial.

JUDGE KINKEAD.

Indictment

Feb. 25, 1928. The defendant and his bail Liberty Surety Bond Insurance Company enter into a recognizance in the sum of Five thousand (5000) Dollars each, condition that the defendant appear from day to day for trial.

JUDGE KINKEAD.

10

May 21, 1928. The defendant being tried is found Guilty of Assault and Battery and is continued on bail for sentence.

JUDGE EGAN.

June 14, 1928. The defendant being placed to Bar is sentenced to be confined in State Prison at Hard Labor for a period of three (3) years and thence until costs of prosecution are paid.

JUDGE EGAN.

20

June 20, 1928. The defendant and his bail Sun Indemnity Co., enter into a recognizance in the sum of Five thousand (5000) Dollars each conditioned that the defendant sue with effect a certain Writ of Error issued out of the Court of Errors and Appeals.

JUDGE EGAN.

30

40

*Indictment*HUDSON COUNTY COURT OF OYER AND
TERMINER

10	STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	Sur Indictment
	vs.		
	DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i>		CERTIFICATE

20 I, Charles M. Egan, one of the Judges of the
 Hudson County Court of Common Pleas, being
 the Judge who presided in the Hudson County
 Court of Oyer and Terminer at the Trial of Dom-
 inick Scarzini, hereby certify that there is a rea-
 sonable doubt as to the validity of the said con-
 viction of Dominick Scarzini, who was found
 guilty of assault and battery, and, application be-
 ing duly made to me for admission of the said
 Dominick Scarzini to bail, pending the prosecu-
 30 tion of the writ of error this day presented to
 me, I hereby order that the said Dominick Scar-
 inzi, defendant in the Hudson County Court of
 Oyer and Terminer and plaintiff-in- error, be ad-
 mitted to bail in the sum of Five Thousand Dol-
 lars.

CHARLES M. EGAN,
Judge.

Dated June 19, 1928.
 Filed Clerk's Office
 40 June 20, 1928
 Hudson County, N. J.

*Indictment*NEW JERSEY COURT OF ERRORS AND
APPEALS

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	WRIT OF ERROR	10
vs.		New Jersey	
DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i>		ss.	

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

(Seal) GREETING:

Because in the record and proceeding and also in giving of judgment in a certain indictment pending before you, in which said indictment Dominick Scarzini was a defendant and which said indictment was for murder, and upon which indictment he is convicted of assault and battery as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Dominick Scarinzi, as by his complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of proceedings had upon the trial of said indictment

Indictment

to our New Jersey Court of Errors and Appeals,
 on the ninth day of July, 1928, together with this
 writ, that the record and proceedings aforesaid
 being inspected, we may further cause to be done
 thereupon what of right and according to law
 ought to be done.

10 Witness, EDWIN ROBERT WALKER, Chancellor at
 Trenton, aforesaid on the nineteenth day of June,
 1928.

JOSEPH F. S. FITZPATRICK,
Clerk.

GEORGE E. CUTLEY,
Attorney for Plaintiff-in-Error.

20

Return

The answer of Charles M. Egan, Judge of the
 Court of Oyer and Terminer, holden in and for
 said County of Hudson and within named the rec-
 ord and proceedings of the plaint whereof men-
 tion is made with all things touching the same, I
 send to the Justices of our Court of Errors and
 Appeals in the last resort of all causes at Tren-
 ton, N. J. at the day and year within contained
 in a certain schedule to this appeal annexed as
 within I am commanded.

30

CHARLES M. EGAN,
Judge.

Attest:

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

40

Filed Clerk's Office June 20, 1928,
 Hudson County, N. J.

Testimony

HUDSON COUNTY COURT OF OYER AND TERMINER

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">DOMINICK SCARINZI, <i>Defendant.</i></p>	}	<p>Indictment No. 122</p> <p>December Term, 1927</p> <p>MURDER</p>	<p>10</p>
---	---	--	-----------

Before:

Hon. CHARLES M. EGAN, *Judge*, and a jury. 20

Jersey City, N. J., May 21, 1928.

Appearances:

ALOYSIUS McMAHON, Esq., and EUGENE
SHARKEY, Esq., *For the State.*

GEORGE E. CUTLEY, Esq., *For the defendant.* 30

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

Direct Examination by Mr. Sharkey:

Q. What is your business? A. Civil Engineer
and Surveyor.

Q. How long have you been a civil engineer and
surveyor? A. About fourteen years. 40

Frank J. O'Leri—For the State—Direct—Cross

Mr. Cutley: The qualifications of the witness are admitted.

Q. I show you a drawing and ask you if you can identify that? A. Yes.

10 Q. Did you make this drawing? A. Yes.

Q. What does this drawing show? A. This is a map of a surcey of 329 Grand Street, Hoboken, showing various views, sections and elevations.

20 Q. Does it show anything else? A. The arrangement of the streets in the vicinity, the detail of the ground floor hall, detail of the fourth floor, arrangement of the rooms, the front elevation. It shows a section through the staircase, showing front and rear fire escapes, and the arrangement of the stairs throughout the building and the rear elevation showing the fire escapes, windows and doors. The scale is three eighths of an inch to the foot for the buildings, and three quarters of an inch to the foot for the ground floor, and one inch equals one hundred feet for the street plans.

Mr. Sharkey: I offer it in evidence.

30 (Admitted and marked Exhibit S-1 of this date.)

CROSS EXAMINATION by Mr. Cutley:

Q. Are there fire escapes on that house, 329 Grand Street? A. Yes.

40 Q. Do they go down to the yard? A. The fire escapes are constructed in a general way—on the first floor there is a ladder, it is counterbalanced by a counterweight and drops down if you step on it.

Frank J. O'Leary—For the State—Cross

Q. By that ladder you can get to the yard? A. Yes.

Q. Where does it lead to? A. It leads to the yard itself, and there is a doorway that leads into the building. There are a few steps that lead into the building from the rear, and there is a doorway which leads from the hall to the front and into the building. 10

Q. Could a man coming down that fire escape have gone into any other house along there? A. I do not know.

Q. You did not observe that? A. No.

Q. In other words, was it necessary for a man having jumped on the fire escape to get out to have come in the hallway through which this deceased did come on the first floor? A. I do not know. 20

Mr. Sharkey: I object to that as calling for a conclusion, which I do not think this man is competent to draw.

The Court: Objection sustained.

Q. Where is that fire escape? A. There is the front elevation there, and there is the rear elevation there. 30

Q. This is the rear elevation? A. Yes, and this is the fire escape that leads down through the building. Here is your counterbalance here, and as you step on to that ladder it drops down into the yard.

Q. Do you know of your own knowledge, from your observation and your drawing of this diagram, whether or not that is the exit shown by the door at the rear—whether or not that is the only exit? A. The only exit from the building. 40

William R. Harrison—For the State—Direct

Q. There is no cellar? A. Not that I know of.

Q. Are there any fences? A. I did not observe.

10 WILLIAM R. HARRISON, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. What is your business? A. Photographer.

Mr. Cutley: The qualifications of the witness are admitted.

20 Q. I show you these photographs, and ask you if you can identify them? A. Those photographs were made by me, yes, July the 19th, 1927, at Bosworth's Morgue, Hoboken.

Q. What time of the day or night were they made? A. Between one and two o'clock in the daytime.

Q. And you operated the camera and developed these pictures? A. Yes.

30 Mr. Sharkey: I offer them for identification.

Mr. Cutley: I have no objection to their being offered in evidence.

The Court: In evidence as pictures of the deceased, alleged to have been killed by the defendant?

Mr. Cutley: Yes.

(Admitted and marked Exhibits S-2, S-3, S-4 and S-5 of this date.)

40

Lorenzo Scarini—For the State—Direct

LORENZO SCARINI, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. Where do you live? A. 329 Grand Street, Hoboken.

10

Q. On July the 19th last year where did you live? A. In the same number.

Q. What kind of a house is that, how many floors? A. Three floors.

Q. On what floor did you live on July 19, 1927? A. On the top floor.

Q. Do you know the defendant in this case, Dominick Scarinzi? A. Yes.

Q. Is he in court? A. Yes.

Q. How long have you known Dominick? A. From December, 1926.

20

Q. Will you go down and put your hand on the man you say is Dominick? A. There he is.

Mr. Sharkey: Pointing to the defendant.

A. He is right here.

Q. On the morning of July 19th, 1927, were you at your home there on 329 Grand Street? A. Yes.

Q. In the morning were you there? A. Yes.

30

Q. Did you see Dominick Scarinzi there that morning? A. I see Dominick Scarinzi that morning, yes.

Q. What time? A. I don't know time, I was had no clock at the time. I go to get my coffee. I know downstairs the clock was half past seven when I was downstairs at the landlady to get my coffee.

Q. Where was Dominick that morning when you first saw him? A. He was about two steps

40

Lorenzo Scarini—For the State—Direct

before reaching the top floor.

Q. Then he was coming up the stairs? A. Yes, he was coming up the stairs.

Q. Did Dominick say or do anything? A. He goes this way to me. I was just go out of my door.

10 Q. What did he do? A. He goes this way.

Q. As you came out of your door? A. Yes. When I see him do this way I stop there between the hall and the door.

Q. Did you see anything else? A. I saw Dominick, he went to his door and knock two or three times on his door, and his wife answers, "Who is that?" but he don't answer.

Q. Did you hear his wife? A. Yes, but he don't answer back. Then the door opened.

20 Q. And then what did you see? A. Then I see Dominick, he comes in the house. About a couple of seconds after Jimmie coming out.

Q. You saw Dominick go in the house? A. Yes.

Q. And a couple of seconds after you saw Jimmie coming out? A. Yes; and Dominick going after him.

Q. Jimmie who? A. Jimmie Delle Fave.

Q. Do you know Jimmie? A. Yes.

30 Q. How do you say his name? A. Jimmie Delle Fave.

Q. What did you know his name to be? A. Jimmie.

Q. Jimmie what? A. I just find out when I come around after the trouble, I find out his second name, but I know his name is Jimmie.

Q. You saw Jimmie coming out? A. Yes.

Q. Did you see any one else coming out? A. No; I see Dominick's wife after a while coming out after Jimmie coming out.

40

Lorenzo Scarini—For the State—Direct

Q. What did Dominick or Jimmie or his wife do there? A. Dominick or Jimmie, one had a razor and one had a knife.

Q. Who had the razor? A. I don't know, I was scared, but one had a razor and one had a knife, they were going that way, but both so far away from one another. 10

Q. Dominick and Jimmie? A. Yes. When I saw that I got so scared I ran to my room.

Q. When you say Dominick and Jimmie were so far apart, going this way— A. This way.

Q. —where was Mrs. Scarinzi? A. She was in the door this way and she was crying.

Q. What else did you see? A. Then I ran inside in my room, because I was so scared, and after a while, about one second after, I saw Jimmie coming through my room and running through a bedroom and to the fire escape and go away. 20

Q. You saw Jimmie come through your room through the window to a fire escape? A. Yes.

Q. Did you see Jimmie again? A. No. I see after he died.

Q. Did you see Dominick again? A. Yes, I saw Dominick.

Q. Where? A. I saw Dominick after Jimmie run away. I figured to go down to the landlady and tell her what is the trouble upstairs. 30

Q. Tell us when you saw Dominick and what he was doing. A. Dominick, his wife was on the floor when I came out again, she was down on the floor and had the gun this way.

Q. The wife had the gun? A. Yes. She was on the floor this way, and Dominick had him this way the gun. So I go up to Dominick and I say, "Dominick, why do you want to get in trouble?" 40

Lorenzo Scarini—For the State—Direct

So he left the revolver go. He leave the revolver to his wife's hand. I don't remember whether I went inside to my room again.

Q. What did Dominick do after you got the revolver from him? A. I don't know what he did after.

10 Q. Who took the revolver after Dominick let go of it? A. His wife got it after.

Q. Did she do anything with the revolver? A. No.

Q. Did you see Dominick again after that? A. No.

Q. Did you see Jimmie again? A. I saw Jimmie again after he died.

Q. Where did you see Jimmie the next time?
20 A. In the hallway on the stairs.

Q. What floor? A. The first floor.

Q. On the first floor downstairs in the hallway?
A. Yes.

Q. In what part of the hallway was he? A. He was near to the—between the door—he was this way in the hall.

Q. Will you step down here a moment? Can you read? A. No, not much.

Q. This represents the rooms on the top floor
30 of 329 Grand Street, Hoboken? A. Yes.

Q. I point out the diagram in the lower left hand corner of Exhibit S-1. Do you know what that is? A. No.

Q. Can you read? A. A little bit.

Q. Look at that. Does that represent anything with which you are familiar? A. That is the bedroom, living room; that is inside, I think.

Q. Inside of what? A. Inside of the house, the rooms, I think.

40 Q. What house? A. I don't know. It don't

Lorenzo Scarini—For the State—Direct

look like my house. This looks like it inside.

Q. Keep your attention on this drawing. Do you know what that is? A. The bathroom.

Q. Does that help you identify this as a drawing of anything with which you are familiar? A. I do not understand that.

10

Q. Do you understand—pointing to that drawing on Exhibit S-1, and entitled “Detail of first floor hall?” A. No.

Q. Can you read English? A. No.

Q. Kindly look at this again. Do you know what it says here? A. Living room.

Q. Here? A. Bedroom. Living room; fire escape; hall; bathroom; bedroom; fire escape.

Q. You are still occupying the same bedroom you occupied on July the 19th, 1927? A. Yes.

20

Q. Where is that with reference to the bathroom—where is the toilet from your bedroom? A. The toilet is right outside in the hall.

Q. How do you get from your bedroom to the toilet; can you go through the bedroom? A. I go through the hall.

Q. Now I direct your attention to the bedroom in the upper right-hand corner of the drawing, entitled, “Detail of fourth floor,” on Exhibit S-1, and ask you if that represents your bedroom?

30

Mr. Cutley: Do you understand what he is saying?

Mr. Sharkey: I object to that.

Q. You know what “represent” means, don’t you? A. Surely.

Q. Does this bedroom here represent your bedroom? A. It don’t look right.

Q. Is the bathroom where you live beside your

40

Lorenzo Scarini—For the State—Direct

bedroom as this bathroom is beside the bedroom?

A. There is two bedrooms; I can't understand that drawing.

10 Q. You said when you saw Jimmie after the fight he was downstairs in the first floor? A. After, when he died.

Q. Where was he downstairs when you saw him? A. He was lying down.

Q. Was he near the front or the back of the building? A. I think pretty near in the middle. No, pretty near outside, you know, because there is two doors, and pretty near to the inside door.

Q. The front door or the rear door, do you mean? A. The front door. There are two doors in the front.

20 Q. He was nearer to the front door? A. Not very near—about from here to there.

Q. Was he nearer to the front door than he was to the back door? A. To the front door—the inside one.

Q. The inside front door? A. Yes.

Q. Did you look at Jimmie? A. I did.

Q. What did you see?

Mr. Cutley: I object to that.

30 Q. What did you observe?

The Court: He can describe what he saw. I will allow that question.

Q. What did you see? A. I see Jimmie lay down on the floor.

40 Q. Did you look at his hands or his face? A. I look at his face, but I don't remember now how he was, how he looked.

Lorenzo Scarini—For the State—Cross

Q. But he was lying down? A. He was lying down.

Q. You said he was dead? A. He was dead.

Q. How did you know that? A. Well, everybody was there and say he was dead.

Q. Was he bleeding? A. I don't remember that. 10

Q. I show you this photograph marked S-3 and ask you if you know whose photograph that is? A. It isn't look like him at all.

Q. I show you Exhibit S-4, can you identify that? A. It don't look like that man, I can't tell.

Q. I show you S-2. A. It don't look like him.

Q. How long did you know Jimmie? A. About three or four months before that time.

Q. But you are sure the man you saw in the fight was Dominick and the man you saw lying down in the hall was Jimmie Delle Fave? A. I saw Jimmie lying downstairs. 20

Q. You saw Jimmie upstairs with Dominick in the fight? A. Yes.

Q. You saw Jimmie downstairs lying down? A. Yes.

Q. You are sure that was Jimmie Delle Fave? A. Yes.

CROSS EXAMINATION by Mr. Cutley: 30

Q. What time was this? A. I know I went down to the landlady to get my coffee and I saw the watch. That watch was pointing to half past seven, and I say to the landlady, "I have to hurry up. If I don't I get late looking for a job."

Q. It was about half past seven? A. Yes.

Q. Was the watch right? A. I don't know if it was right or fast or slow, I don't know that.

Q. As I understand you you were going up- 40

Lorenzo Scarini—For the State—Cross

stairs with your clothes? A. No.

Q. You lived on the same floor with Scarinzi?

A. Yes.

10 Q. When you saw Scarinzi come up he was on the second step—tell me if I am wrong—you saw Scarinzi knock at his door? A. Please get me somebody to talk for me.

Q. You can talk all right. You saw Scarinzi at the door, didn't you? A. I saw Scarinzi about three steps before he reached the top floor, and he goes this way to me, so I did wait; I didn't know what was going on. So he went to his door and knocked two or three times, and his wife answered. She say, "Who is that?" He don't answer. So somebody open the door from the in-
20 side and he get in. About a couple of seconds after I saw Jimmie coming out and Dominick after Jimmie.

Q. Who was Jimmie? A. The one you call Delle Farbe.

Q. Did he live with the Scarinzis? A. No.

Q. And this was around seven o'clock in the morning or around half past seven? A. Around half past seven.

30 Q. Did you look in Scarinzi's house—did you look in the door? A. Yes.

Q. What did you see when you looked in? A. I don't look inside. I was between my door and the hallway. I could not see the inside.

Q. Could you see anything that happened inside the house after Scarinzi went in? A. Do you mean in the hallway?

Q. Yes. A. Yes; I saw, I don't know what you call it, a shooter.

40 Q. A revolver, do you mean? A. I saw Mrs. Scarinzi, she was down on the floor and grabbed

Lorenzo Scarini—For the State—Cross

the revolver this way, and Dominick had it this way. That was the second time I came out my door, and I say, "Dominick, why do you want to get in trouble?" So he leave go the revolver.

Q. Did you see Jimmie at that time? A. No.

Q. When was the first time you saw Jimmie?

A. The first time when he coming out of the door.

Q. When he came out did he have anything in his hand? A. He had something in his hand.

Q. What was it? A. I don't know if it was a razor or a knife.

Q. It was something steel? A. Yes.

Q. And that was the time he ran through your apartment? A. He went this way, and I was scared. I went in my room. So he go after me and ran through the bedroom and got away.

Q. The last time you saw him he still had the knife or razor, or whatever it was, in his hand?

A. The last time?

Q. The last time you saw Jimmie. A. I saw him in my room. When he came out through my room I don't see nothing in his hand. I don't remember sure, because I was so scared, and I can't remember if he had it or not.

Q. Do you know whether there is any way of getting out of the back yard of 329, in other words without going through the hall could Jimmie get away any other way? A. (No answer.)

Q. Are there any fences there? A. There is no fence.

Q. There are no fences? A. There is a thing that goes down the stairs.

Q. Aren't there any fences between the houses?

A. I don't know. I don't know that word.

Q. You did not see the fight downstairs, did you? A. No.

Lorenzo Scarini—For the State—Redirect

Q. The last thing you saw was Jimmie going down the fire escapes? A. That is right.

Q. And you did see him fighting upstairs with this man with something in his hand. Where was Mrs. Scarinzi then? A. When they were fighting?

10

Q. Yes. A. She was near to this door—between the door and the hallway.

Q. Did you see her running downstairs? A. No.

Q. Did you see Dominick running downstairs? A. No.

REDIRECT EXAMINATION by Mr. Sharkey:

Q. You know the backyard down there? A. Yes.

20

Q. Is there a fence there? A. There is a fence alongside, and some shanty on the other side.

Q. And what is in the back of the yard? A. There is a house here and there is some other house in the back, you know, and some other house.

Q. Is there any fence there anywhere? A. There is a fence this side of the house.

Q. You have been in the backyard? A. Yes.

30

Q. As you come out of the door into the yard and look straight ahead is there a back fence? A. No, a shed.

Q. What is on the right side as you look out? A. On my right side I think there is a fence and a shed there.

Q. And what is on your left side? A. On my left side there is a fence and house around.

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John S. Jackson—For the State—Direct

JOHN S. JACKSON, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. You are a police officer of the City of Hoboken? A. Yes.

10

Q. On July 19, 1927, in the morning of that day were you in the vicinity of 329 Grand Street, Hoboken? A. Yes.

Q. What hour of the morning was it? A. I should judge I was there in the morning about 7.25.

Q. Did you go to 329 Grand Street that morning? A. Yes.

Q. What did you find there? A. I found a man lying down in the hallway covered with blood on the bottom floor as you walk in right off the street.

20

Q. Found a man there covered with blood? A. Yes.

Q. I show you S-4 and ask you if you can identify that? A. Yes, that is the man.

Q. That is the photograph of the man you saw lying in the hallway on the ground floor of the premises 329 Grand Street, Hoboken? A. Yes.

Q. What did you do then, Officer? A. I sent in a call for the ambulance and the police patrol, and notified headquarters to send somebody down, some assistance.

30

Q. Did you get assistance? A. Yes.

Q. At any time that morning did you make any observations of this man's body or physical condition? A. At the morgue I noticed to one side of his face he had a deep gash, across his skin, and some of his fingers, just like the skin was cut off.

Q. Did you notice anything else? A. That was all I noticed.

40

John S. Jackson—For the State—Cross

Q. Did you make an examination of the hallway there? A. Well, I noticed the body in the hall.

10 Q. What did you do there? A. After I found the man there I started looking around, after the doctor came and pronounced him dead, and right at the man's feet there was a wastepipe running down the hallway, and up against that waste pipe I found the piece of a knife blade probably about four inches long or so, broken off at the handle.

Q. I show you this piece of steel, and ask you if you can identify this? A. Yes, that is it.

Q. What is it? A. It is the piece of a broken blade of a knife that I found up against this waste pipe.

20 Q. How far away from the body of the man? A. I judge it may have been one foot away from his feet.

Q. Were there persons at the premises when you arrived? A. Yes, the hall and stairway were crowded with people living in the house.

Q. Did you take any part in the arrest of this defendant? A. No, sir.

Q. Did you see him at all on the day of the offense? A. No, sir.

30

CROSS EXAMINATION by Mr. Cutley:

Q. How near the front door did you find this man's body? A. His head was underneath the stairway laying more in an oblique position; in reference to the position the hall ran in I imagine he was back more to the center of the hall, probably more to the rear yard than to the front of the house.

40 Q. Where do the steps from the first to the sec-

Edward Hogan—For the State—Direct

ond story start? A. The bottom steps I judge start about ten feet from the entrance of the vestibule door to go up.

Q. How far was he from the steps? A. I should judge about seven or eight feet back from the bottom steps, toward the rear.

10

Q. You got there about what time? A. I should judge about 7.25, because I rang the box at Third and Madison at 7.20 and came right up Third Street.

EDWARD HOGAN, sworn for the State.

Direct Examination by Mr. Sharkey:

20

Q. Where do you live? A. 319 Grand Street.

Q. Where did you live on July 19, last? A. 319 Grand Street.

Q. On the morning of July the 19th last did you observe anything unusual?

Mr. Cutley: I object to that.

Mr. Sharkey: I will withdraw it.

Q. Did you see any disturbance in your neighborhood on the morning of July 19th last? A. On the morning of July 19th I was sweeping the sidewalk and I just happened to turn my head like that and I saw a man coming running down the street full of blood, passing me.

30

Q. He passed you? A. Yes. He ran down as far as the corner and turned First Street west toward Adams. With that I looked up the street and I saw a few people outside of this delicatessen in front of 329, hollering "Get him." With that

40

Edward Hogan—For the State—Direct

I chased the man. He had already turned Adams Street corner, up to Adams Street to Fourth, and I went after him, and from Fourth to Jefferson. At Jefferson he turned in from Fourth. So right a few doors from the corner he went in a house there. I walked as far as Sixth and Jefferson and stood on the corner a few seconds. I could not see any police officer, so I came back Sixth Street to Grand Street.

10 Q. You say you saw him go in a house on Jefferson near Sixth? A. Yes.

Q. You say there was blood on this man. On what part of the body? A. His face and his shirt was full of blood.

Q. Was he walking or running? A. Running.

20 Q. Did you observe anything else about this man that you have not already related; did he have anything with him? A. It looked as if he had something in his hand of some kind, a weapon or something, as he was running past me. It looked to be a knife, to me.

Mr. Cutley: I object to that.

The Court: Strike it out.

Mr. Sharkey: Withdraw the question.

30

Q. Did you see anything in his hand? A. He had his right hand closed.

Q. Tell us what the position of his right hand was. A. It looked as if he had a knife.

Mr. Cutley: I object to that.

The Court: Strike it out.

40 Q. How did he hold his right hand and right arm as he ran along the street? A. Like that.

Edward Hogan—For the State—Direct

He had his two hands up like that when he was running.

Q. When you were pursuing him did he do anything with reference to you? A. No, sir, the man just kept on running.

Q. And you followed him as far as the place at which he turned in at Jefferson Street? A. Yes. 10

Q. Do you know who that man was who ran? A. I had never seen him before.

Q. Have you seen him since? A. No, sir.

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

Q. Can you give us a description of him? A. Well, nice built.

Q. Would you know the man now if you saw him? A. Yes. 20

Q. Will you look around the court room and after looking around tell us whether or not you see in the court room the man whom you say ran into the house at Jefferson Street? A. There he is.

Mr. Cutley: We will admit it is the defendant he is indicating.

Q. He is the man you saw running along the sidewalk? A. Yes. 30

Q. Will you come down to this map? That is Grand Street? A. Yes.

Q. Will you trace along Grand Street and along this map the course the defendant followed as you pursued him? A. This is Grand Street?

Q. Yes. A. This is Third Street and this is Adams?

Q. Yes. A. Here is the way he went, down Third to Adams. 40

Edward Hogan—For the State—Cross

Q. Along Adams to where? A. To Fourth; Fourth to Jefferson; Jefferson a few doors from Sixth Street. He stopped at the house there.

10 Q. Will you mark on this drawing where in Jefferson Street he stopped? A. I just can't measure how far from Sixth Street.

Q. How far from the corner was it? A. I should judge sixty or seventy feet from the corner of Sixth and Jefferson.

Q. Mark on there the point you think represents sixty feet from the corner of Sixth Street. A. About here.

Q. Look at this map. That is Fifth Street there and this is Sixth. A. It would be up this way.

20 Q. Make a little mark there. You say about sixty feet from Sixth Street? A. Yes, sir.

CROSS EXAMINATION by Mr. Cutley:

Q. When you first saw the man who was running was he running toward you? A. Yes.

Q. At that time his face and breast were full of blood? A. Yes.

30 Q. Did you notice any blood on his arms? A. He was full of blood. I did not notice exactly what was going on. I thought he was trying to get away from a street fight or something. It looked as if he got a kicking around the way the poor fellow was full of blood.

Q. You could not see his features at that time, could you? A. His body was full of blood and his sleeves.

Q. His face you said before was full of blood? A. His face and down here.

40 Q. Have you ever seen this fellow before to-

Edward Hogan—For the State—Redirect
Walter F. Fallon—For the State—Direct

day? A. No, I don't think so.

Q. Have you been at the preliminary hearings at the police court? A. No, sir.

Q. You know, because he is sitting there that he is the defendant? A. I did not know it, only from passing me. 10

Q. You know from his sitting there that he is the defendant? A. I would not know who was sitting there.

Q. You have been in this court and seen him stand up a couple of times? A. I did not see his face; I saw his back.

REDIRECT EXAMINATION by Mr. Sharkey:

Q. Did you see the man's face this morning before you got on the stand? A. No, sir. 20

WALTER F. FALLON, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. You are a police officer of the City of Hoboken? A. Yes. 30

Q. On July 21, 1927 last did you arrest Dominick Scarinzi? A. Yes, in the morning of July 21, about 11.15 in the morning in front of 40 Hudson Place, on his own admission that the crime had been committed—

Mr. Cutley: I cannot hear you.

A. On his own admission to me on the morning of July 21, in front of 40 Hudson Place that he 40

Walter F. Fallon—For the State—Direct

had committed the crime I arrested that man.

Q. Admissions made before or after you had taken him into custody? A. Before I had taken him in.

10 Q. Will you tell us what you observed first on that day concerning this defendant's conduct? A. I noticed him there about half an hour before I had approached him; he was walking up and down the street. He appeared to be nervous.

Q. What part of the street? A. That is between Hudson and River Street on Hudson Place.

Q. What is built on that particular part of the street? A. On the right side of the street is the United Cigar store on the corner. There is all stores on the street he was walking on.

20 Q. You observed him for about a half hour, you say? A. Yes.

Q. Then what did you do? A. So I was about to approach him to find out what he was doing there, if he had any business there, and when I headed toward him he walked over toward me.

Q. When you headed toward him he walked over toward you? A. Yes.

30 Q. Did you say anything to him then? A. I asked him what he was doing there and where he had come from.

Q. You said, "What are you doing, and where do you come from?" Did he answer you? A. He did not answer at first.

Q. Then did you say anything further? A. No, I did not say nothing more to him, but he spoke to me then.

40 Q. What did he say? A. He said, "I am Dominick," he said, "I am the man that is wanted for that murder down there, 329 Grand Street." So, I immediately placed him under arrest.

Walter F. Fallon—For the State—Cross
Daniel F. Kieley—For the State—Direct

Q. Did you have any further conversation with him? A. No, no other conversation.

CROSS EXAMINATION by Mr. Cutley:

Q. It was kind of a friendly arrangement, wasn't it? A. Yes. 10

Q. Did you know he was going to be there? A. No, I had no idea he was going to be there. I just noticed the man was on the street there, he had been there for a half hour, and I kind of thought he was a stranger; I had never seen him before.

Q. And he told you he wanted to be arrested? A. He told me he had done the crime. 20

Q. Did he tell you he wanted to be brought to the station house? A. No, he did not say he wanted to be brought to the station house, he just said he had done the murder at 329 Grand Street, so I said, "All right, I'll place you under arrest."

Q. Did he say, "Murder" or "Killing"? Did he say "I have killed a man"? A. He said, "I killed a man down there."

Q. That is what he said? A. Yes. 30

DANIEL F. KIELEY, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. You are Inspector of Police of the City of Hoboken? A. I am.

Q. On July 21, 1927, did you have occasion to confer with this defendant, Dominick Scarinzi? A. I did. 40

Daniel F. Kieley—For the State—Direct

Q. What time of day was it? A. It was around half past ten.

Q. Where? A. At police headquarters, Hoboken, New Jersey.

10 Q. And what was the purpose of your conferring with this defendant then? A. He was arrested on a charge of murder.

Q. Did you have a conversation with him? A. I did.

Q. Did you take a statement from him on that day? A. I did take a statement from him on that day.

Q. I show you three sheets of paper and ask you—

20 Mr. Cutley: We admit the statement was taken properly and everything, and we will admit its introduction into evidence.

(Admitted and marked Exhibit S-7 of this date.)

Mr. Sharkey: I ask permission to read this statement into the record and to the jury.

30 (Mr. Sharkey reads Exhibit S-7.)

DANIEL F. KIELEY, recalled by the State.

By Mr. Sharkey:

40 Q. Inspector, can you identify this revolver as one that you have seen before? A. Yes.

Q. Where did you first see that revolver? A.

Daniel F. Kieley—For the State—Direct

At police headquarters on the morning of the 19th of July, 1927.

Q. At the time you spoke to the defendant in this case, in other words, at the time this statement was made, did you make any reference to the defendant concerning this revolver? A. I did. 10

Q. Did you have the revolver with you? A. I did.

Q. Did you show it to him? A. I did.

Q. Did he make any statement concerning that revolver at that time? A. He made the statement that that revolver was the one he was talking about in the statement that was taken from him.

Mr. Sharkey: I offer this in evidence.

(Admitted and marked Exhibit S-8 of this date.) 20

Q. Do you identify this as something you have seen before? A. Yes.

Q. What is that? A. The blade of a knife that he identified.

Q. Did you have any conversation with the defendant concerning the blade of this knife? A. I did, on the morning of July 21, 1927, when he was under arrest charged with murder. I asked him if that was the blade of the knife he was talking to me about in his statement and he identified it as the blade of the knife. 30

Q. Can you identify these cartridges as cartridges you have seen before? A. Yes, those are the cartridges that were with the revolver.

Q. Did you have any conversation with this defendant concerning these cartridges? A. He said at the time he had the revolver in his hand with 40

Arthur G. Hasking—For the State—Direct

Jimmie the revolver was loaded with five cartridges.

Mr. Sharkey: I offer these cartridges in evidence.

10 Mr. Cutley: No objection.

(Admitted and marked Exhibit S-9 of this date.)

ARTHUR G. HASKING, sworn for the State.

Direct examination by Mr. Sharkey:

20 Q. You are Assistant County Physician of this county, Doctor? A. I am.

Q. On the 19th day of July last did you perform an autopsy? A. I did.

Q. I show you photographs S-2, 3, 4 and 5, and ask you if you can identify them? A. I can.

Q. What photographs are those? A. The body of James Delle Fave.

Q. Upon whom you performed an autopsy on the 19th day of July last? A. Yes.

30 Q. Where did you perform the autopsy? A. Bosworth's morgue, Hoboken.

Q. What did that autopsy disclose? A. The body was that of a man measuring about five feet seven and one half inches, estimated to weigh about 170 pounds, well built and muscular. His estimated age was about thirty. His age was later given as twenty-nine. I found situated over the left cheek a deep incised wound of the skin measuring two and one half inches in length by

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Arthur G. Hasking—For the State—Direct

one quarter inch, having a diagonal downward direction, a portion of which was made by another smaller one which reached the angle of the mouth. He had another superficial incised wound of the skin over the right eyebrow, and another superficial incised wound of the skin over the right cheek. He had a deep incised wound of the skin, measuring about an inch and a half in length, over the point of the chin and below that in the neck two smaller horizontal incised wounds of the skin involving the skin only. I found over the right shoulder a deep incised punctured wound of the deltoid muscle, which is the prominent muscle on the upper part of the arm. There were numerous smaller scratch marks about the face and neck. I found situated in the back about on a level with the middle of the shoulder blade in the median line an incised puncture of the skin. I found no other marks of recent violence on external examination of the body.

On opening the chest we found a large quantity of blood in the left pleural cavity or left chest. The left lung was collapsed and punctured. There was an estimated quantity of about two quarts of blood in the cavity. The abdominal cavity was empty, and full of blood. The wound in the middle line of the back on about the level of the shoulder blade extended through the skin to the left and went in the fourth interspace, that is the space of the muscle between the fourth and fifth ribs where they join the backbone. Passing through this muscle the aorta comes down on that left side of the backbone; that had been cut, nicked, producing a cut in the aorta of about three eighths of an inch. The lung, having been punctured, was collapsed.

Arthur G. Hasking—For the State—Direct

The other organs of the body were normal and in such condition as to be consistent with the continuance of life and health. Therefore, from all the facts observed I determined that death resulted from hemorrhage following a stab wound in the back involving the aorta and left lung.

10 Q. Does S-3 show any of the wounds you have described? A. Yes, it shows the wound on the cheek, and another smaller one to the right of it of it—this gouging one—and another one on the lower portion of the chin. It shows one on the bridge of the nose—which I omitted to mention. That is all superficial.

20 Q. Does S-4 show any additional wounds? A. It shows on the right side of the cheek, on the point of the chin, and there are two cuts on the neck below that which do not show very prominently in the picture. The first cuts were all superficial, involving the skin only, excepting the punctured wounds which involved the muscle.

Q. Does S-5 show any additional wounds? A. That shows the wound I mentioned at the level of the shoulder blade.

30 Q. Was that the one which you say caused the death? A. Yes; the other wounds were all superficial, involving the superficial fascia only. That was the wound which penetrated the aorta and left lung, and in my opinion was the fatal wound. The others were not serious.

(No cross examination.)

Henry Sthudekopf—For the State—Direct

HENRY STHUDEKOPF, sworn for the State.

Direct Examination by Mr. Sharkey:

Q. Where do you live? A. 329 Grand Street. I have a store at 329 Grand Street, Hoboken.

10

Q. On July 19, last was your store at 329 Grand Street? A. Yes.

Q. On the morning of July 19th last was there any disturbance at 329 Grand Street—any trouble of any kind? A. When I opened?

Q. Yes. A. In the morning?

Q. Yes. What happened then? A. I was in the store and I heard a funny noise; I went into the kitchen and opened the kitchen door and I saw a man laying there struggling.

20

Q. Where was the man lying? A. Right behind my kitchen.

Q. Is your kitchen in back of the building or the front of the building? A. Right in back of the building between the toilet and about ten feet from the back door.

Q. Where is the kitchen with reference to the hall that runs through the building there? A. When you come in the hall, right on the side.

Q. You can go from the hall into your kitchen? A. Yes.

30

Q. Was this the kitchen door leading from the hall to your kitchen that you looked through? A. Yes, sir.

Q. What did you see? A. I opened the door and a man was laying there on the floor, and when I opened the door the feet was falling a little bit in the door, the feet was a little bit against my door.

Q. Was there anybody else there? A. No; I 40

Henry Sthudekopf—For the State—Cross

looked on the man. The man was laying there, and when I looked up I seen somebody between the first and the second door.

Q. Where are those doors, in the front or the back of the building? A. In front, on the stoop.

10 Q. You saw some one between the first and the second door in the front of the building? A. Yes.

Q. Who was that person? A. I do not know.

Q. What was he doing at the time you saw him? A. He went out of the front door.

Q. Was he walking or running? A. No, he was just passing out.

Q. Did you see that person again? A. No.

Q. Was the man still lying in the hall when you saw this other man go out the front door? A. Yes.

20 Q. Did you look at the man who was on the floor? A. Yes, I tried to pick him up and speak to him. I asked him if he was drunk. He tried to speak but he could not speak.

Q. Was there any blood there? A. No. After I went out on the street and looked for a policeman and could not find a policeman. I went back and I looked at him again, and I saw the blood. Then I called up the hospital and called up the police.

CROSS EXAMINATION by Mr. Cutley:

Q. You ran a delicatessen store there? A. Yes.

Q. This morning you were in the kitchen? A. No, I was in the store. When I heard the noise I went into the kitchen and then to the hall.

Q. And you saw a man lying there? A. Yes.

Q. You did not know what he was doing? A. No.

40

Guito Settepenelle—For the State—Direct

Q. And you do not know who this man was who went out the front door? A. No.

Q. You could not identify him? A. No.

 GUITO SETTEPENELLE, sworn, testified through an interpreter.

10

Direct Examination by Mr. Sharkey:

Q. How long have you lived in this country?
 A. Five years.

Q. You speak English pretty well, don't you?
 A. (No answer.)

Q. Where did you live on July 19, last? A. 329 Grand Street, Hoboken.

20

Q. There was some trouble at 329 Grand Street, Hoboken, last year on July 19? A. Yes.

Q. Did you see any of that disturbance? A. No.

Q. I show you this revolver marked S-8, have you ever seen that before? A. Yes.

Q. When did you see it for the first time? A. When the woman gave it to me.

Q. What woman gave it to you? A. That woman down there.

30

Q. Mrs. Scarinzi? A. Yes.

Q. On what day was that? A. July 19.

Q. Last year? A. Yes.

Q. What time in the day was that? A. Ten minutes to seven o'clock in the morning.

Q. When you were given this revolver by Mrs. Scarinzi were you given anything else?

Mr. Cutley: I object. Whatever Mrs. Scarinzi did is not binding on the defend-

40

Guito Settepenelle—For the State—Direct

ant, and if she did anything it would be testifying against her husband.

The Court: I will allow it.

Mr. Cutley: Exception.

10 A. No. She gave this to me and said "Put it away; I am afraid; my husband is crazy."

The Court: What she said will be stricken out.

Q. What time in the morning was it you received this revolver? A. Ten minutes to seven.

Q. When you received the revolver did you examine it? A. It was open; there was nothing in
20 it.

Q. Did you see any bullets at all that day? A. No.

(No cross examination.)

(The Court after admonishing the jury thereupon declared a recess until 2 o'clock P. M.)

30 AFTERNOON SESSION, 2 P. M.

Mr. Sharkey: The State moves to amend the indictment by having inserted therein as the surname of the deceased "Delle Fave," instead of "Del Fazio," as it is stated.

The Court: All right.

THE STATE RESTS.

40

Motion for Dismissal
Dominick Scarinzi—For Defendant—Direct

Mr. Cutley: I move for a dismissal of the indictment and a direction of verdict at this time, upon the ground that there is no proof in this case, outside of the confession, of the corpus delicti. The confession made by this man says that he was in this house and there was an argument, and one of the State's witnesses says the other man had a razor in his hand, and if the State is to get any benefit from the confession it has also to take its disadvantages. "He got downstairs and the man was hiding behind the stairway;" he says that he came out with the razor, and to defend himself he did the best he could, and as a result of the attack and conflict the death occurred.

The Court: I will deny the motion. I think it is entirely a question for the jury to pass upon.

Mr. Cutley: Exception.

DOMINICK SCARINZI, sworn.

30

Direct examination by Mr. Cutley:

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

Q. How long have you lived in Hoboken? A. Seventeen years.

Q. How long have you been married? A. Twelve years.

Q. How many children have you? A. Four, age ten, twelve and nine, and the other one was about a month. She kept it.

40

Dominick Scarinzi—For Defendant—Direct

Q. What do you work at? A. Laborer.

Q. On July 19, 1927, who were you working for? A. Michael Farbo.

Q. Where were you working? A. 11th Street and Palisade Avenue, Union City.

10 Q. On July 19, 1927 what time did you get up? A. Quarter after five in the morning.

Q. Where did you have to go to work? A. 11th and Palisade Avenue, Union City. I left the house at quarter to six to go to work.

Q. What street did you go on? A. I walked up First to Adams and Jefferson, to Sixth, and I turned at Madison and Sixth and went up Madison and Eighth and walked up the Jersey City steps.

20 Q. Why didn't you go to work that morning when you started out to work? A. I had a note the night before about my wife, what did she do, my wife, and I tried to get the idea to fix her up and bring her to court or get a cop to look her over.

Q. Talk slow. A. I had the note in the letter box.

30 Q. As a result of having that note you went in your house, did you, and talked to your wife? A. I talked to my wife.

Q. What did you say to her? A. The first thing I asked her for my revolver I had in my coat pocket in my bedroom, and I asked her, and the first time she lie to me and said she loaned it to somebody, and she got talking to me and I asked her again——

Q. She finally told you the revolver was downstairs? A. Yes, in the end I found out it was in the baby carriage downstairs.

40 Q. When you went to work the next day you took the revolver with you? A. Yes.

Dominick Scarinzi—For Defendant—Direct

Q. After you had gotten to Paterson Avenue you came back? A. Yes.

Q. Whom did you see going in the house? A. James Delle Fave.

Q. Did you know him? A. Yes, for a year.

Q. Did you see him going into your rooms, or just in your house? A. He got up in my hallway, but I did not know where he did go. It is a four family house. 10

Q. Well, you went home? A. I went home and I knocked at the door; three or four times I knocked and she do not answer. The lock inside is opened, my wife opened, and as soon as she saw me she was surprised.

Q. What did she say? A. She asked me what is the matter. I said nothing is the matter. Then I started walking in my kitchen. Then I saw James Delle Fave come out of my kids' room inside with a razor in his hand and he struck at me to hit me, but I had the gun in my pocket; I took it away from my house. He don't give me a chance to get away before I take my gun from my pocket and point to him, and say "Don't move," and then my wife she grabbed my gun with her two hands to give him a chance to swing me with the razor. He swing me and run away. 20 30

Q. Struck at you and ran away? A. He ran away. My wife still hold me and grab hold of the gun. At the same time the gun snap and she take off of me, and I walk in the kitchen and I grab a knife somewhere and I run after her and she run away too.

Q. You ran after your wife? A. I ran after her with the knife.

Q. Jimmie ran first? A. Yes.

Q. Then your wife? A. Yes. 40

Dominick Scarinzi—For Defendant—Direct

Q. And you ran after her? A. Yes.

Q. How far did you run? A. I ran as far as the ground floor.

10 Q. What happened on the ground floor? A. On the ground floor I started walking outside in the street, out of the door, and I saw Jimmie coming behind me with the razor in his hand and turn around and I struck him with the knife. We grappled again and we run around. We fall on the floor together, and I don't know how it happened, I had it in my right hand and I grabbed his hand with the razor. We fall on the floor. I don't know if he fall on my knife, and he broke the knife in his back. I was below and he was on top of me, and I was laying under him.

20 Q. You rolled on the floor? A. We rolled on the floor together.

Q. And you did cut him, you tried to protect yourself? A. I tried to protect myself. He dropped the razor and I got away from him and I picked up the knife and threw it away.

Q. After you left him did you have any blood on your face? A. I was all full of blood myself.

Q. Where did this blood come from? A. From him.

30 Q. Did you have any cuts? A. No, sir, only I had a couple of scratches on the floor. He had the razor in his right hand and we struggled around the floor.

Q. How long did your fight downstairs take place? A. We took about ten or fifteen minutes, we rolled.

Q. After he was on the floor what did you do? A. I ran away.

Q. What did you take from him? A. The razor.

40 Q. Was that the same razor he had upstairs?

Dominick Scarinzi—For Defendant—Cross

A. Yes, the same razor with the black handle.

Q. What did you do with it? A. I threw it away in an ash barrel at Fourth and Adams Street.

Q. Did any man chase you? A. Yes, that man that testified ran after me.

10

Q. Up through Jefferson Street? A. Yes.

Q. When you first went in the house did you see Lorenzo? A. Yes, I meet him on the upper floor.

Q. Was Lorenzo in your apartment at the time you had the revolver out? A. Yes.

Q. At the time you had the revolver out what did you say to Jimmie? A. I said, "Where do you come from?" He did not answer me, he just struck me with the razor.

20

Q. Why didn't you shoot him then? A. I did not want to kill him.

Q. Why not? A. Because I endanger the support of my family and my two or three kids—the kids.

Q. How big a man was Jimmie? A. He was bigger than me.

CROSS EXAMINATION by Mr. Sharkey:

30

Q. Why did you take the revolver with you in the morning? A. To take it away from my house.

Q. You did not intend to kill anybody with the revolver? A. No, sir, it would not take me long to kill him if I wanted to kill him.

Q. You did not intend to shoot anybody? A. No, sir.

Q. Why did you grab the knife after your wife took the revolver from you? A. I take the knife to run after her.

40

Dominick Scarinzi—For Defendant—Cross

Q. What made you think you needed a knife to go after your wife; did you need a knife to go after your wife? Tell us why you took the knife.

A. I took the knife and run after my wife.

10 Q. Why? What were you going to do to your wife? A. I don't know; I was crazy at the time.

Q. You ran into Fiorini's bedroom before you went downstairs? A. I did not.

Q. Didn't you tell the police officers that after you grabbed the knife you ran into Fiorini's bedroom and could not find Jimmie there and then you ran downstairs? A. I did not run after Jimmie.

20 Q. So that when you grabbed the knife you had no idea of running after Jimmie? A. No, sir, I was running after my wife.

Q. Did you have any idea of doing anything to your wife? A. I don't know.

Q. Do you remember grabbing the knife? A. Yes, I remember everything.

Q. Don't you know what you had in mind at the time you grabbed the knife? A. I do not remember.

Q. What kind of a knife was that, how long was the blade? A. I don't know; about six inches.

30 Q. About sixteen inches? A. Six inches.

Q. Where was that knife when you got it? A. In my kitchen.

Q. When you went to work that morning you had received a letter? A. Yes, before.

Q. When you went to work you thought there was something wrong between your wife and Delle Fave? A. Yes.

Q. And you were going to come back home and see for yourself? A. Yes.

40 Q. When you came back to the house you knew

Dominick Scarinzi—For Defendant—Cross

there was going to be a little bit of trouble, didn't you? A. I did not know there was going to be any trouble, because I think the letter was fooling. I looked to see if the letter was true.

Q. Did you have any idea what you were going to do if you caught Jimmie in your house? A. Only walk away, tell him to stay out of my home. 10

Q. Tell him to stay out, that is all you were going to do. Now you knew when you saw Jimmie go into 329 Grand Street where you lived, you had an idea he was going upstairs to your wife, didn't you? A. I had an idea, but I was not sure.

Q. Why didn't you get a policeman to go with you? A. I was watching then but I did not see any cop around.

Q. You knew Jimmie Delle Fave? A. Yes. 20

Q. Had you talked to him? A. No.

Q. Had you ever seen him before the day of the trouble? A. Yes, I saw him. I am wise a couple of times.

Q. How many times did you see him before that? A. Every morning when I went to work he watched me every morning when I went to work.

Q. Did you talk to him every morning? A. No, sir. 30

Q. You knew what his name was? A. Yes.

Q. You knew his name was Jimmie Delle Fave? A. Yes, I knew the name.

Q. When did you learn first that there was something the matter between Jimmie and your wife? A. Two years ago, because that only happened last year.

Q. Two years before you learned that something was wrong? A. I caught him one time with my wife. 40

Dominick Scarinzi—For Defendant—Cross

Q. You caught him once with your wife, where?

A. 514 Jefferson.

Q. Were you living there then? A. Yes.

Q. And you caught Jimmie in your house? A. Yes.

10 Q. Did you say Jimmie then when you caught him at 514 Jefferson? A. Yes.

Q. What did you say to him? A. I said he should keep away from my house and don't spoil my family.

Q. That was a year before the trouble? A. Yes. I moved from there on account of him.

Q. You told him to keep away? A. Sure.

Q. Did you ever find him at your house again? A. I don't find him again, only last year in the morning.

20 Q. What time in the day was it when you found Jimmie at your house at 514 Jefferson Street? A. In the night about half past ten.

Q. You were living with your wife then? A. Yes.

Q. Were you working nights or days? A. Day. That was on Sunday.

Q. You were working days? A. It was on Sunday. I had no work that day.

30 Q. Was anybody else in the house with Jimmie and your wife the first time you caught him? A. No, only him and her.

Q. Did you know there was anything going on between Jimmie and your wife between the time you caught them at 514 Jefferson Street up to the time Jimmie was killed? A. No.

Q. You did not think anything was the matter? A. No.

40 Q. When you received that letter the night before Jimmie's name was in the letter, is that right? A. No, no name.

Dominick Scarinzi—For Defendant—Cross

Q. No name in the letter? A. No.

Q. But you knew the letter meant Jimmie? A. Yes.

Q. So that when you went back to the house that day you were pretty sure that you were going to find Jimmie there, weren't you—on July the 19th? A. Yes. 10

Q. When you saw Jimmie go into the front of the house and when you followed you were pretty sure that Jimmie was going to be in your house? A. Yes.

Q. As a matter of fact when you left the house that day you intended to come back, didn't you; in the morning on July 19 when you left the house in the morning and went toward Jersey City you intended to come back again? A. Yes. 20

Q. And you had a revolver in your pocket? A. Yes.

Q. And you still insist you did not intend to use that revolver on Jimmie? A. No.

Q. Even though you knew that Jimmie and your wife one year before were intimate? Do you understand that question? A. (No answer.)

Q. I will withdraw it. When you left the house that morning you intended to come back, isn't that so? A. Yes. 30

Q. You intended to come back for the purpose of catching Jimmie with your wife again? A. Yes.

Q. And you still insist you did not intend to use the revolver? A. Yes, I did not intend to use the revolver.

Q. And you still say when you grabbed the knife you did not intend to use it on anybody, is that right? A. Yes.

Q. You did not intend to use it on Jimmie, your wife, or anybody? A. No. 40

Dominick Scarinzi—For Defendant—Cross

Q. Now, Jimmie was trying to get away from you, wasn't he? A. Yes, he ran away.

Q. And you ran downstairs? A. I ran after my wife.

10 Q. And when you saw Jimmie you went after him? A. No, Jimmie came after me.

Q. Jimmie came after you? A. Yes.

Q. With a knife? A. With the razor.

Q. And you had the knife? A. I had the knife.

Q. You did not think you would see Jimmie downstairs? A. I did not think I would see him. He ran away before my wife.

Q. You did not see your wife after you came downstairs? A. No.

20 Q. How old is your wife? A. I think she is twenty-seven now.

Q. She is only twenty-four, isn't she? A. I don't know. She knows when she was born; I do not know.

Q. She was fourteen years old when you married her, wasn't she? A. Yes. It is twelve years and a half.

Q. You lived with her a while before you got married? A. Yes.

Q. How long? A. Before I got married?

30 Q. Before you got married you lived with her? A. No.

Q. Are you sure of that? A. What do you mean?

Q. When were you married? A. When she was sixteen years old.

Q. Fourteen years old, wasn't she? A. Fourteen—I don't know how old she was—fourteen years.

40 Q. What year were you married? A. I don't remember.

Dominick Scarinzi—For Defendant—Cross

Q. 1917, wasn't it? A. I do not remember.

Q. Do you remember what month? A. In December, I guess, ain't it?

Q. December 6th. Now in December, 1917, you got married? A. Yes.

Q. But before that you were living with your wife? A. She was too small. She could not get the law to marry before she was sixteen. 10

Q. But you were living with her? A. Yes.

Q. And you had a child by her? A. Yes.

Q. That was before you were married you had the child? A. Yes, because she was too small to marry.

Q. You had a child five months before you got married? A. Yes.

Q. And she could not get married because she was fourteen years old? A. Yes. 20

Q. You have had lots of trouble with your wife and other men? A. Yes, lots of trouble, and I forgave her all the time.

Q. You did not forgive her the last time? A. I tried to forgive her the last time at that, but it happened.

Q. But you do not speak to your wife now? A. No.

Q. You have not spoken to your wife since this happened? A. No. 30

Q. You sent her a letter though, didn't you? A. I did not send her a letter.

Q. Didn't you have your little boy send her a letter? A. I had my little boy write her a letter because she wrote the little boy.

Q. The boy wrote her a letter? A. Yes.

Q. You were there when he wrote the letter? A. No. He wrote it in English.

Q. Didn't the little boy tell you he wrote her 40

Dominick Scarinzi—For Defendant—Cross

a letter? A. Yes.

Q. And didn't he show you the letter? A. Yes.

Q. Didn't you read the letter? A. I can't read English.

10 Q. Did you see the boy write the letter? A. Yes.

Q. Didn't you tell him what to put into it? A. A few words.

Q. You told him certain things to put in the letter, didn't you? I show you this paper and ask you if that is the letter the boy wrote. Look it over. A. Yes.

Q. That is it? A. Yes.

Q. What did you tell the boy to put in the letter?

20 Mr. Cutley: If he is going to prove the boy his agent I will object to it, and it is a confidential communication between husband and wife.

Mr. Sharkey: It is not privileged, if your Honor please, any more than a command made in her presence.

The Court: I cannot see that it would be? How is it material?

30 Mr. Sharkey: First of all it tends to throw some light on his veracity, in other words it helps the jury to determine just what weight is to be given to this man's testimony, and it shows a course of conduct on this man's part in connection with matters involved here now, and in the preparation for trial.

Mr. Cutley: It is something that happened after the thing was done.

40 Mr. Sharkey: For the purpose of affect-

Dominick Scarinzi—For Defendant—Cross

ing his credibility alone I think it is admissible.

The Court: How does it affect his credibility? Is it in contradiction of something that he has said?

Mr. Sharkey: Something that he has said here on the stand. 10

The Court: I will allow it for that purpose only.

Mr. Cutley: Exception.

Q. You say you are still friendly with your wife now? A. No.

Q. You are not friendly with her, not since July, is that right? A. Yes.

Q. You write English a little bit? A. Not much. 20

Q. You wrote something for the police, didn't you? A. For the police. If somebody explain letter by letter then I can write.

Q. You did write something for the police? A. I had some one explain it.

Q. But you made the letters—you used the pencil? A. Yes.

Q. Do you write Italian? A. Yes.

Q. You can write Hoboken, N. J., can you? A. Yes. 30

Q. Will you write it on this? Now here write the Italian words Carissimo Amico: How many times have you had trouble with your wife?

Mr. Cutley: I object.

The Court: Objection sustained.

Q. Will you take this paper again and when I tell you what to write write it on this second line. Write *ristacando le nostra amicia*. Now on the 40

Dominick Scarinzi—For Defendant—Cross

bottom line below that write A la presente. This is the letter you received, is it not, the night before the fight? A. Yes.

Q. And where was that letter when you got it?

A. In my letter box.

10 Q. Was the letter box open or was there a door on the letter box? A. Yes, it was half way.

Q. Sticking out of the box? A. Yes.

Q. What time of the day or night was it that you got the letter? A. I got the letter when I came from the work.

Q. When you came from work it was in the letter box? A. Yes.

Q. You do not know who put it there? A. No.

20 Q. You do not know who wrote it? A. No, I do not know.

Q. Did anybody ever speak to you about this letter? A. No.

Q. So you do not know who wrote it? A. No.

Mr. Sharkey: I will ask that that be marked. I will offer it in evidence. I do not suppose there is any objection to it, is there, Mr. Cutley?

30 Q. You told the police that Jimmie was the father of your youngest child? A. Yes, the letter told me and I told the police.

Q. You told the police? A. I told the police what the letter said.

Q. You informed the police as follows: "I have information that I will use in court to prove that I am not the father of baby Josephine." A. Yes, that is true.

40 Q. "When I go to court I will prove that Jimmie Delle Fave is the father of the last baby born

Dominick Scarinzi—For Defendant—Cross

to my wife—that is if the people will go to court.”

A. With the letter.

Q. Did you say anything about “people”? A. The people, yes.

Q. Yes. A. What people am I going to find out? The letter says it.

10

Q. Did you tell the court that if certain people came to court you would prove that the youngest child was Jimmie’s not yours? A. The letter told me.

Q. Do you remember saying anything about “people”? A. “People,” yes.

Q. If the people would come to court? A. If they would come to court they would say.

Q. Did you say that? A. Yes.

Q. What did you mean? A. He is going around and say that to everybody, that it belonged to him.

20

Q. What people did you have in mind when you made this statement? A. The people all around what he say it to you.

Q. At the time you told the police this did you know any people that did have information? A. No.

Q. I show you S-10, was this letter in an envelope? A. Yes.

30

Q. Whose name was on the envelope? A. My name.

Q. Where is the envelope? A. I throw it away that morning.

Q. After you had the fight with Jimmie? A. Yes.

Q. Where were you when you threw the envelope away, in Hoboken, or Jersey City or Perth Amboy? A. Up on the hill in Union City, after I run away.

40

Dominick Scarinzi—For Defendant—Cross

Q. Did you tear the envelope up? A. Yes.

Q. Why? A. Because there was a couple of spots of blood on it.

Q. And you wanted to get rid of the envelope, destroy it? A. Destroy it.

10 Q. After you left Hoboken where did you go?
A. Up to Union City, up to my job.

Q. Up to your boss? A. Yes.

Q. Did you tell him what happened? A. No

Q. You did not tell your boss what happened with Jimmie? A. No, only I told him I had trouble with my wife.

Q. You told him you were in trouble with your wife, and wanted your pay? A. Yes.

Q. And you got your pay? A. Yes.

20 Q. Where did you go then? A. To Palisade Park.

Q. Where did you go from Palisade Park? A. I crossed the 125th Street ferry to New York.

Q. Then where did you go then? A. Down to Battery Place.

Q. From Battery Place where did you go? A. I was all around New York.

Q. Where did you sleep that night? A. In Battery Place in the park.

30 Q. Where did you go the next day? A. The next night I was going to Perth Amboy.

Q. Were you in New York all that day of the 20th? A. Yes.

Q. And the night of the 20th you went to Perth Amboy? A. Yes.

Q. Did you sleep there? A. Yes, I slept on the way on the ferryboat. I caught the St. George Ferry at Staten Island; at Staten Island I caught a train and took another boat.

40 Q. Did you sleep in Perth Amboy that night?

Dominick Scarinzi—For Defendant—Cross

A. No, I walking around all night.

Q. What time did you come back to Hoboken?

A. In the morning around nine o'clock.

Q. What time were you arrested? A. The same time I surrendered myself.

Q. Have you spoken to your wife since you had the trouble? A. No. 10

Q. You have not written a word to her? A. No.

Q. And the reason why you killed Jimmie was because Jimmie came at you with the razor? A. Yes.

Q. You did not kill him because he did anything to your wife? A. No.

Mr. Sharkey: I offer in evidence those specimens of the defendant's handwriting and ask that these sheets of paper be marked. 20

Mr. Cutley: No objection.

(Admitted and marked Exhibits S-11 of this date.)

Q. You remember talking to Inspector Kieley?

A. Yes.

Q. You told him everything that happened? A. Yes. 30

Q. Just as you remembered it—isn't that so? A. Yes.

Q. Do you remember telling him, telling him, saying these words to him: "After I got away from my wife I got into my rooms and got a butcher's knife"— A. Not in my rooms.

Q. Your apartment, your house? A. My house, yes. 40

*Dominick Scarinzi—For Defendant—Redirect
—Recross*

Q. "That is the blade of the knife I am speaking about—the blade you show me." The policeman had a piece of the blade? A. Yes.

Q. Exhibit S-6? A. Yes.

10 Q. Do you remember telling him that? A. Yes.

Q. "After I got my knife I ran into Joe Farini's rooms, and I could not see Jimmie Delle Fave, and then I ran downstairs to the back hallway of my house." Did you tell the policeman that? A. No.

Q. You did not tell him that you ran into Fiorani's rooms? A. No.

Q. You signed this? A. Yes.

Q. There and there and up there? A. Yes.

20

REDIRECT EXAMINATION by Mr. Cutley:

Q. When you found your wife at 514 Jefferson Street you did not try to kill Jimmie or your wife? A. No, sir.

Q. Why haven't you spoken to your wife; where is your wife? A. I don't know.

Q. She has been put in the Parental home, hasn't she—in jail? A. Yes; I know she is in
30 jail.

RECROSS EXAMINATION by Mr. Sharkey:

Q. You did not try to get in touch with her? A. No.

Q. What jail is she in? A. I do not know.

Q. You do not care? A. I do not know.

Q. You do not know and you do not care? A. I do not care.

40

Catherine Scarinzi—For Defendant—Direct

Mr. Cutley: I object as immaterial whether he does care or not.

Q. You are through with her?

Mr. Cutley: I object.

10

Q. Who told you she was in jail? A. Everybody told me. She don't come out and nobody has seen her.

Q. Name one person who told you she is in jail. A. Everybody says it.

Q. When your little boy sent a letter to your wife you told him what to put on the envelope?

A. The name.

Q. The address? A. Yes.

20

Q. What address did you give him? A. She sent the address.

Q. She wrote to your boy? A. Yes.

Q. Don't you know where she is, where she has been? A. No.

Q. You do not know—only what you have been told? A. That is all.

30

CATHERINE SCARINZI, called to the witness stand.

By the Court:

Q. Do you go to school every day, little girl?
A. Yes.

Q. What school do you go to? A. St. Francis.

Q. Where is St. Francis school located? A. St. Francis School.

40

Catherine Scarinzi—For Defendant—Direct

- Q. Is that in Hoboken? A. Yes.
- Q. Do you go to Sunday School? A. Yes, Ma'am.
- Q. Do you know who God is? A. Yes.
- Q. Where is God? A. God is everywhere.
- Q. What will happen to you if you do not tell
10 the truth? A. It is a mortal sin.
- Q. Where will you go when you die? A. Down.
- Q. Down to Hell? A. Yes.
- Q. Do you study your religion in St. Francis
School? A. Yes.
- Q. Do you study Catechism? A. Yes.
- Q. Do you know what an oath is? A. No, sir.
- Q. Do you know what it is to be sworn in court?
A. We ain't got that in catechism.
- Q. You do not know what it is then to take
20 an oath? A. No.
- Q. Do you know what the Bible is? A. Yes, it
is the Bible.
- Q. So that if you put your hand on the Bible
and say that you will tell the truth you know that
you call on God to witness the truth of what you
say? A. Yes.
- Q. So that if you put your hand on the Bible
and say you tell the truth before God you will tell
the truth here today, will you? A. Yes.
- 30 The Court: I think she may be sworn.

CATHERINE SCARINZI, sworn for the de-
fendant.

Direct Examination by Mr. Cutley.

- Q. How old are you? A. Ten.
- 40 Q. Do you remember the morning there was a
fight in your house? A. Yes.

Catherine Scarinzi—For Defendant—Cross

Q. Did you see Jimmie there? A. He was in my bedroom.

Q. What time did he come to your bedroom?

A. I did not see what time Jimmie came to my bedroom.

Q. When your father came back did you see Jimmie and your father? A. No. 10

Q. Didn't you see Jimmie in your bedroom? A. No.

Q. Didn't you just say you saw him in the bedroom? A. No.

Q. Did you see Jimmie in your bedroom that morning? A. No.

Q. The morning your father and Jimmie had the fight? A. Yes, I heard the noise and I got up; I did not see where they were fighting. 20

Q. At any time did you see Jimmie or your father with something in their hands? A. I saw the man with something in his hand but I did not know what it was.

Q. You saw him with something? You saw who with something? A. Jimmie.

Q. What was the something? A. I saw something in his hand, I did not know what it was. Something like a knife or a razor. 30

CROSS EXAMINATION by Mr. Sharkey:

Q. Where was Jimmie then? A. In my bedroom, he was coming out.

Q. What day was that? A. It was a razor I think.

Q. What day was it—Monday, Tuesday? A. I do not remember the date.

Q. Was your father there too that day? A. No. 40

Catherine Scarinzi—For Defendant—Cross

Q. No? A. When he was fighting.

Q. But I mean the day you saw Jimmie with something in his hand, was your father there that day? A. Just when they were fighting.

10 Q. Was that the day they were fighting? A. Yes.

Q. Did you see the two of them fighting? A. No.

Q. Did you hear the noise? A. Yes.

Q. You were in your bed? A. Yes.

Q. Now, that day did you see Jimmie Delle Fave? A. Yes.

Q. Where was he when you saw him? A. In the kitchen—he ran——

20 Q. Where was Jimmie when you first saw him? A. In the hall.

Q. Did he have a knife in his hand then? A. Yes.

Q. Did you see Jimmie in your house that day—inside? A. Yes.

Q. In what part of the house? A. Right near the table.

Q. In what room? A. The kitchen.

Q. Was that before you saw him in the hall or after you saw him in the hall? A. After.

30 Q. After you saw him in the hall he came into the kitchen? A. Yes.

Q. What was he doing there? A. They were fighting.

Q. In the kitchen? A. Then they came out in the hall.

Q. When Jimmie was in the kitchen was somebody there with him or was he alone? A. He was alone. My father knocked at the door and my mother did not answer it.

40 Q. Did you hear your father knock at the door?

Catherine Scarinzi—For Defendant—Cross

A. Well, I heard once.

Q. You heard somebody knock at the door. Did you hear your father say anything? A. No.

Q. Did you see the door opened? A. No.

Q. Who opened the door? A. I do not know.

Q. When did you see your father? A. When he came in. 10

Q. Into the house? A. Yes.

Q. In what room was your father then? A. In the kitchen.

Q. Where was Jimmie then? A. In back.

Q. In the room back of the kitchen? A. Yes.

Q. Did you see Jimmie then? A. Yes, I was with my eyes open in the bed.

Q. Did you see Jimmie? A. I seen Jimmie with the razor in his hand like this. 20

Q. When your father came in? A. Yes, then he came out.

Q. What room was Jimmie in when he had the razor like this? A. In my bedroom.

Q. Standing beside you—in the room in which you were lying in bed? A. Yes.

Q. You saw him in your room that morning? A. Yes.

Q. What did he have in his hand? A. A razor.

Q. Where was the baby then? A. In the kitchen. 30

Q. Was there any talking going on or any noise? A. No.

Q. No noise? A. He came out.

Q. Who came out? A. Jimmie.

Q. Jimmie came out of what? A. With the razor.

Q. Out of your bedroom? A. Yes.

Q. He went from your bedroom where? A. He came out of the bedroom into the kitchen.

Q. You saw him go from your bedroom— A. 40

Catherine Scarinzi—For Defendant—Cross

Out into the kitchen. Then they ran out—

Q. You saw him go into the kitchen. A. Yes.

Q. When you saw him go into the kitchen where was your father? A. My father was grabbing his hand.

10 Q. Where was your father then? A. Near the door in the kitchen.

Q. Where was your mother? A. In the kitchen.

Q. Was she near to your father? A. Yes.

Q. Did you see anybody with the revolver? A. I saw the bullet.

Q. That was outside you saw the bullet, not inside? A. No.

Q. Did you see your father have anything? A. No.

20 Q. Nothing at all? A. I did not see him with nothing in his hand.

Q. Did you see a gun in anybody's hand? A. In my mother's.

Q. I want you to tell me again how many times you heard the knocking? A. I know my father knocked three or four times, but I heard it once.

Q. Who told you he knocked three or four times? A. I heard it.

30 Q. You said you heard it only once, didn't you? Did your father tell you he knocked four times? A. No.

Q. Did anybody tell you your father knocked four times? A. No.

Q. Then you heard him knock four times? A. Yes.

Q. Did you speak to your father about the noise? (No answer.)

Q. You knew you were going to court? A. Yes.

40 Q. And you knew you were going to have to say something here? A. Yes.

Catherine Scarinzi—For Defendant—Cross

Q. And you spoke to your father about it? A. No.

Q. You spoke to his lawyer? A. No, nobody.

Q. Nobody spoke to you about what you were to say here? A. No.

Q. What is your first name? A. Catherine. 10

Q. Will you tell us again where Jimmie was the first time you saw him that morning? A. In the bedroom.

Q. That is the room in which you sleep? A. Yes.

Q. Where was your father when you first saw him? A. Near the door.

Q. You did not see your father go to work that day? A. No.

Q. Did you see Jimmie after he left your place? A. I saw him when he came out of the bedroom. 20

Q. Where did he go? A. He came by my father.

Q. He went past your father and then where did he go? A. The two of them came out in the hall.

Q. Did you see Jimmie after he got out in the hall? A. I saw the two of them.

Q. Were they fighting? A. Yes.

Q. Were they hitting each other? A. I don't know, I saw them knock, though. My mother was holding my father and my father ran for the other fire escape. 30

Q. Your father ran for the other fire escape? A. No—the man ran for the other fire escape.

Q. What did your father do? A. He was running downstairs to the steps.

Q. Did your father have anything in his hand? A. I saw him when he came back and took something. 40

Q. He came back to the kitchen and took something? A. Yes.

Catherine Scarinzi—For Defendant—Cross

Q. When the fighting was going on where were you, in the bedroom or in the kitchen? A. I got up at that time and went to the kitchen.

10 Q. When you were standing in the kitchen you could see that fighting out in the hall, is that so, and you saw Jimmie go back to the fire escape? A. Yes.

Q. And you saw your father run down? A. Yes.

Q. Where was your mother when your father ran downstairs? A. My mother ran down in a lady's house.

Q. When—before or after your father went down? A. After.

20 Q. After your father went downstairs then your mother went down? A. No, first my mother went down.

Q. When your mother was going down where was your father? A. First my mother ran in the lady's house.

Q. What lady's house? A. Downstairs.

Q. The first floor? A. Yes.

Q. You did not go with your mother? A. No.

Q. How do you know she went in the lady's house? A. She went down one step and opened the door.

30 Q. You mean the floor right underneath? A. Further down underneath.

Q. Right on the ground as you come in? A. Yes.

Q. Your mother went into someone's rooms on the first floor? A. Yes.

Q. That is where you come in from the sidewalk? A. No, you go up one step.

Q. One flight up? A. Yes.

40 Q. Did you see your mother go downstairs from the floor where you live? A. Yes.

Catherine Scarinzi—For Defendant—Cross

Q. Did she have anything in her hand? A. She gave the gun to the woman under us.

Q. Did you see your mother with the gun? A. Yes.

Q. When your mother was going downstairs did she walk or run? A. She was going fast down the steps. 10

Q. Did she have the revolver then? A. Yes.

Q. While your mother was running down the stairs where was your father? A. That is when he went upstairs again, and then he ran down again.

Q. This fight happened on the top floor, didn't it? A. Under.

Q. No; the fight between your father and Jimmie was up where you lived on the top floor? A. Yes. 20

Q. You say your mother went down with the gun? A. Yes.

Q. While your mother was going down the stairs where was your father? A. That is when he went upstairs to get the knife and then he went back.

Q. Did you see your father go back into the bedroom? A. No.

Q. Did you see him when he came out of the kitchen with the knife? A. With the razor in his hand? 30

Q. Your father, did you see him when he came out of the kitchen with the knife in his hand? A. I saw something, but I don't know what it was.

Q. Was he walking or running? A. He was, you know, running in the kitchen, then going downstairs.

Q. Did he run down or walk down? A. He was walking down fast. 40

Catherine Scarinzi—For Defendant—Cross

Q. Did he say anything to anybody as he was going down the stairs? A. No, they met each other.

Q. Who met each other? A. Jimmie and my father.

10 Q. Where did they meet? A. On the first floor.

Q. And then what happened? A. They fell on the floor, the two of them.

Q. Then what happened? A. Then they were fighting.

Q. Then what happened? A. When he was killed I went down and I saw him killed.

Q. Did you see your father and Jimmie fighting downstairs? A. No.

20 Q. You only heard about that, didn't you? A. Yes.

Q. Who told you about that? A. Nobody.

Q. Who was the person who told you about your father and Jimmie fighting on the first floor? A. I heard somebody in 520—

Q. Who was that person that told you all about the fight? A. Nobody told me about the fight.

Q. Your daddy told you about the fight? A. No.

Q. Did your brother? A. No.

30 Q. Did your aunt? A. No, nobody.

Q. How do you know they were fighting down below? A. I saw them go down.

Q. But you did not see them rolling around, you did not see them cutting each other? A. No.

Q. You did not see any part of the fight? A. No.

Q. But you told us about it? A. Upstairs.

Q. But who told you about the fight downstairs? A. I only saw it upstairs.

40 Q. So you do not know what happened down-

Catherine Scarinzi—For Defendant—Cross

stairs? A. No, but when I went down I saw him killed.

Q. But you do not know what happened between your father and Jimmie down on the first floor? A. (No answer.)

Q. Do you remember that two men came to your house one day and asked you about this case— and do you know what that is, Catherine? (Indicating.) A. Yes. 10

Q. Did you write that? A. No, sir.

Q. Who wrote it? A. When I went to court.

Q. Who wrote it? A. Me—my name.

Q. Who wrote that? A. My name.

Q. And you wrote this, too? A. No.

Q. Did you tell those men you did not know anything about the case, that you were in bed and did not see anything—you told them that, didn't you, that you were in bed and asleep, and did not see anything, is that so? A. Well, I heard the noise and then I got up. 20

Q. Did you see something? A. Yes, I saw the fight.

Q. But you told the men that you did not see it—is that right? Do not shake your head. Say yes or no. Is that right, did you tell the men the truth? A. No. 30

Q. You didn't? And why didn't you? Why didn't you tell them the truth then? A. (No answer.)

Q. When you told the men you did not see anything you were at the Parental home, weren't you? A. Yes.

Q. And you told them there you did not know anything about the fight at all, that you were asleep at the time in your bed, didn't you? A. Yes. 40

Catherine Scarinzi—For Defendant—Cross

Q. Now you say you did not see the fight? A. Well, I seen it when I got up.

Q. You are sure you saw them when you got up? A. (No answer.)

10 Q. Where have you been living since you left the Parental Home? A. 329.

Q. Back with your father? A. Yes.

Q. And your grandmother is living there? A. Yes.

Q. Have you an aunt living there? A. No, only my grandmother and my father.

Q. And the children? A. We live on Jefferson Street with my grandmother now.

Q. You have been living with your grandmother since you left the Parental Home, haven't you?

20 A. Yes.

Q. Are you sure nobody spoke to you about this case? A. No.

Q. You did not speak to anybody? A. No.

Q. You did not speak to your grandmother or your father or the lawyers? A. No.

Q. But you did speak to the men who asked you the questions at the Parental Home, didn't you? A. Yes.

30 Q. And you did tell them there you did not know anything about it, is that so? A. No.

Q. You told them you did not know anything about it, didn't you? A. Yes.

Q. Now what is the truth, did you see it or didn't you see it? A. I did see it.

Q. You did see it, you saw your father and Jimmie on the top floor fighting? A. Yes.

Q. You saw Jimmie run back to the fire escape? A. Yes.

40 Q. You saw your mother go downstairs, didn't you? A. Yes.

Catherine Scarinzi—For Defendant—Redirect
Mary Scarinzi—For Defendant—Direct

Q. You saw your father come back to the kitchen? A. Yes.

Q. And you saw your father go downstairs with something in his hand, didn't you? A. Yes.

Q. And you saw Jimmie later down on the first floor? A. Yes. 10

REDIRECT EXAMINATION by Mr. Cutley:

Q. When you were in the Parental Home was your mother there? A. When I went to see my mother?

Q. No, when the men came to see you at the Parental Home was your mother there? A. No.

20

MARY SCARINZI, called to the witness stand.

By the Court:

Q. How old are you? A. Eight.

Q. Do you go to school? A. Yes, to St. Francis.

Q. How long have you been going to school?
 A. I used to go to No. 3 school. 30

Q. Do you know how many years you have been going to school? A. No, sir.

Q. Can you read? A. Yes.

Q. Can you write? A. Yes.

Q. Do you study Catechism? A. Yes.

Q. Do you know anything about God? A. I know he made the world.

Q. Who made the world? A. God.

Q. Who is God? A. He is everywhere.

Q. Do you know what will happen if you do not tell the truth? A. Yes, I will go down to Hell. 40

Mary Scarinzi—For Defendant—Direct—Cross

Q. If you are a good girl what will happen then? A. Up to God.

Q. So that if you are asked to tell the truth here today will you tell the truth and nothing but the truth? A. Yes.

10 Q. Did you ever hear of an oath? A. No.

Q. Did you ever hear of a person being sworn, placing their hand on the Bible and swearing that they will tell the truth? A. No.

Q. If you do not tell the truth what will happen to you? A. I do not know.

The Court: I do not think we will swear her. She can just make the statement.

20 *Direct Examination by Mr. Cutley:*

Q. On the day you saw this fight between your father and Jimmie where were you? A. In bed, sleeping.

Q. Did you wake up? A. Yes, I woke up.

Q. Did you see any part of this fight at all? A. I seen the fight when my mother was crying at the window and my father and Jimmie were fighting together.

30 Q. What were they fighting with? A. He was fighting with the razor.

Q. Who was? A. Jimmie.

CROSS EXAMINATION by Mr. Sharkey:

Q. What was your father fighting with? A. My father went to Jimmie first and then my mother took the gun.

40 Q. You were not asleep then, were you? A. I was waked up

Mary Scarinzi—For Defendant—Cross

Q. Were you in the bed at the time? A. No.

Q. Where were you standing when your father had the gun? A. I was downstairs where the boys lived.

Q. Downstairs—on what floor? A. On the first floor.

Q. When your father had the gun? A. Yes. 10

Q. That was the day before, wasn't it? A. Yes.

Q. Was Jimmie down there that day? A. Yes.

Q. Where did they have the fight, on the first floor? A. Yes.

Q. Did they have it on the top floor? A. They had it before upstairs and then downstairs.

Q. What did Jimmie do to your father downstairs? A. He wanted to kill my father and then my father went like this and put his hand back. 20

Q. That was downstairs? A. Yes.

Q. And what did your father do? A. Then they fell on the floor, the both of them.

Q. You saw them fall on the floor? A. Yes ma'am.

Q. And anything else; did you see your father do anything to Jimmie when he was down? A. I saw him when he was dead.

Q. Then did your father do anything to Jimmie when your father and Jimmie were on the floor? A. No. 30

Q. When you saw the fight downstairs did you see your father and Jimmie rolling around? A. Yes.

Q. Did Jimmie have a knife? A. Jimmie had the razor.

Q. And what did your father have? A. My father had the knife.

Q. And your father before that had a revolver? A. Yes. 40

Mary Scarinzi—For Defendant—Cross

Q. Where was your father when he had the revolver? A. I don't know; he run.

Q. Was your father downstairs when he had the revolver? A. He was downstairs after he killed Jimmie and then he ran away.

10 Q. Did you see your father run away? A. No.

Q. Did you speak to anybody about this case, did you speak to your father? A. Yes.

Q. Did your father tell you what to say? A. No.

Q. Who told you what to say, who told you to say what you have said here? A. I seen it, that is why.

Q. You saw it like you saw the fight upstairs and the fight downstairs? A. Yes.

20 Q. Was your mother downstairs when you saw the fight downstairs? A. First she was upstairs, then she went downstairs.

Q. Did your father say anything to Jimmie when he was fighting with him? A. No ma'am.

Q. Did Jimmie say anything to your father? A. No ma'am.

Q. Was there anybody else in the hall while your father and Jimmie were fighting downstairs?

A. Only the man that had the store downstairs.

30 Q. He was there too while the fighting was going on? A. Yes.

Q. Do you say your father did not tell you what to say when you came to court? A. No ma'am.

Q. Did your grandmother tell you what to say? A. No ma'am.

Q. Did you speak to your lawyer about this case? A. Yes.

Q. You told your lawyer what you knew about this case? A. Yes.

40 Q. You have told us all that you know about

Mary Scarinzi—For Defendant—Redirect
Michael Volpe—For Defendant—Direct

the case, you saw the fight upstairs and the fight downstairs? A. Yes.

Q. You saw your father and Jimmie on the floor downstairs? A. Yes ma'am.

Q. Did you see your father stab Jimmie downstairs? A. I did not see him when he killed him, but I saw him when he was dead. 10

Q. What part of the hall was the fight downstairs? A. In the front part.

Q. Was that where Jimmie was lying when he was dead? A. Yes ma'am.

Q. In the front part of the hall? A. Yes.

Q. Are you sure? A. Yes ma'am.

REDIRECT EXAMINATION by Mr. Cutley: 20

Q. When you say your lawyer, do you mean your father's lawyer? When did you speak to your father's lawyer? Who is your father's lawyer? Did you ever see me before today? A. No ma'am.

MICHAEL VOLPE, sworn for the defendant. 30

Direct Examination by Mr. Cutley:

Q. What is your business? A. Contractor.

Q. You have been engaged in that for some time? A. Yes.

Q. Where do you reside? A. West New York.

Q. You do business all over the county? A. Yes.

Q. Do you know the defendant here? A. Yes. 40

*Michael Volpe—For Defendant—Cross
Motion for Direction of Verdict*

He started working for me about a year ago.

Q. Do you know where he lives in Hoboken, or around where he lives? A. No, sir.

10 Q. Do you know his reputation in the locality in which he lives? A. No, sir.

Q. You only know it as far as he worked for you? A. Yes.

CROSS EXAMINATION by Mr. Sharkey:

Q. Did he work for you on July 19, 1927? A. I do not remember exactly the date.

Q. Do you recollect having paid him off one day in July? A. Yes.

20 Q. Did he tell you why he was quitting? A. No, he came up and said, "Boss, I have a day's wage coming, I would like to have it." I said, "What do you want to be paid for, are you going to quit me?" He said, "Well, I have a little trouble with my wife, I want this right away."

Q. You did not know anything about the trouble? A. No.

(TESTIMONY CLOSED.)

30

Mr. Cutley: I desire to move for a direction of a verdict on the same grounds urged at the close of the State's case, and on the further ground that the testimony of the whole case justifies an acquittal.

The Court: I will deny the motion and give you an exception.

Mr. Cutley: Exception.

40

(The Court thereupon charged the jury as follows:)

The Court's Charge

The Court: Gentlemen of the Jury: The defendant at the bar, Dominick Scarinzi, was indicted by the Grand Jury of this county in the December, 1927, Term, for the crime of murder. There are three counts in the indictment, one count for murder, another count for manslaughter, and another count for assault and battery. The first count charges that the defendant Scarinzi on the 19th day of July, 1927, did murder James Delle Fave. The second count charges manslaughter in that the defendant did kill and slay James Delle Fave in the City of Hoboken on the 19th day of July, 1927; and the third count of the indictment charges that the defendant Scarinzi did on the 19th day of July, 1927, in the City of Hoboken commit an assault and battery upon the said James Delle Fave.

The crime of murder in this State is defined by statute and is as follows: Any person who, in committing or attempting to commit any unlawful act against the peace of the State of which the probable consequence may be bloodshed shall kill another shall be guilty of murder.

In this State murder is divided into two separate degrees, murder of the first degree and murder of the second degree. Murder of the first degree is the more grievous form of murder, and it is that form which is perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate and premeditated killing. All other kinds of murder are declared to be murder of the second degree.

Murder of the second degree is the lesser form of murder. So that it is for you gentlemen of the jury at all times to bear in mind the elements which constitute the two degrees of murder as I

The Court's Charge

have defined them to you, and then to bear in mind and distinguish between these two degrees. It will be your duty in this case if you find the defendant guilty of murder to indicate by your verdict whether you find him guilty of murder of the first degree or murder of the second degree. As to the two degrees of murder you will bear in mind that in the definition of murder of the first degree the law prescribes as necessary elements to that degree of murder the wilfulness, the deliberateness, and the premeditation of the killing. In other words the law says that murder of the first degree shall be perpetrated by means of poison or by lying in wait or by any other kind of wilful, deliberate or premeditated killing, and that murder committed without the elements which I have already indicated to you, that is to say without deliberation, without wilfulness and without premeditation, falls into the lessor degree of murder, or into the class of murder of the second degree.

An unlawful killing does not amount to murder of the first degree unless it is found by the jury that the accused contemplated the killing, that is premeditated it; then determined upon this killing, that is intended it; and then weighed such intent before carrying it into execution, that is deliberated upon it.

Now, while I have dealt with these terms, wilful, deliberate and premeditated, in such a way as to indicate to you that they signify three separate and distinct functions or operations of the human mind engaged in the perpetration of the killing, I also charge you that the taking place of these functions of the human mind does not require necessarily any prescribed period of time,

The Court's Charge

that the mental acts to which I have referred are capable of being performed with that degree of speed with which the human mind is proverbially capable of acting.

In other words premeditation and intent to kill need not be for a day or an hour or even a minute, for if you gentlemen of the jury believe that there was a design and a determination to kill distinctly formed in the mind of this defendant at any moment before the time of the cutting or stabbing, which design was deliberately and with premeditation carried out, it was a wilful, deliberate and premeditated killing and therefore murder of the first degree. 10

Now, as to murder of the second degree: The law is that any person who in committing any unlawful act against the peace of the state of which the probable consequence may be bloodshed shall kill another shall be guilty of murder; and I charge you now, gentlemen, that the cutting or stabbing by this defendant of the body of the dead man was an unlawful act against the peace of this state likely to be attended by the consequence of bloodshed, so that the killing here is presumed to be malicious and is therefore murder, unless and until the defendant produces facts and circumstances from which justification, excuse or extenuation may arise. 20 30

If all that you find in this case is that the defendant is guilty of murder only, because the killing was the unlawful act of this defendant which I have just indicated to you and because you find no evidence in the case to justify, excuse or extenuate the killing, you can only find the degree of murder in the second degree. The burden is upon the State to raise the degree from the sec- 40

The Court's Charge

ond to the first degree by proving to you that the killing was not only the result of the intentional doing of that unlawful act of cutting or stabbing the dead man Delle Fave, but in addition that the killing of the decedent was wilful, deliberate and premeditated; and these terms I have already explained to you.

Now we come to the count in the indictment which charges this defendant with the crime of manslaughter. For the purpose of this case it is sufficient to say to you that manslaughter is where a persons kills another upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice.

I would suggest to you gentlemen that you first consider the charge of murder, and should you fail to find that the defendant is guilty of either the first or the second degree of murder under the rules which I have already laid down to you that you then proceed to consider the count for manslaughter. You will note in the definition of the crime of manslaughter which I have given to you that the killing must have been done upon a sudden transport of passion or heat of blood, upon a reasonable provocation and without malice, for you see, gentlemen, if the elements of malice are present the killing cannot be manslaughter but is murder of one or the other degree. Of course, if you find in your deliberations that the State has proven to you that the defendant is guilty of murder there will be no need on your part to give consideration to the count of manslaughter, and in this State before you can find that the crime of which the defendant is guilty is manslaughter you must satisfy yourselves that there was present the reasonable pro-

The Court's Charge

vocation for any transport of passion or heat of blood on the part of the defendant. Bear in mind that the mere fact that the defendant in killing the deceased may have had his blood up, as the saying goes, or may have been in a passion, would not place his act within the definition of manslaughter unless there were acting upon him the influence of reasonable provocation, something adequate to provoke hot blood or transport of passion. I say this to you, gentlemen, because unless you find that there was such reasonable provocation and that upon that provocation the defendant was seized with a sudden transport of passion or heat of blood the crime is not manslaughter but murder of either the first or second degree, unless of course you find from the evidence that the defendant had excuse or justification for the killing.

In viewing the count for manslaughter in this case weigh and consider carefully the circumstances attending upon the cutting or stabbing, the chain of events that led up to the cutting or stabbing. Examine the conduct of Delle Fave, the deceased, toward the defendant and the conduct or attitude of the defendant toward the decedent Delle Fave as expressed in the actions and words of either or both or all of these people insofar as it may have had to do with the cutting or the stabbing, and ascertain whether or not from all the attendant circumstances there was anything present which might be calculated to your minds to provide a provocation by which the defendant was reasonably thrown into a passion or heat of blood, and in which passion or heat of blood he cut or stabbed the dead man.

Now, gentlemen of the jury, as to the third

The Court's Charge

count, the count for assault and battery: Assault and battery is the unlawful application of force exerted by one person upon the person or body of another. So that, gentlemen of the jury, if you find the defendant guilty of murder or manslaughter it will not be necessary for you to consider the count of assault and battery; but if you do not find the defendant guilty of murder, under the degrees as I have defined them to you, or if you do not find him guilty of manslaughter, then direct your attention to the third count in the indictment, the count for assault and battery. And of course if you find under the evidence that has been submitted here, gentlemen of the jury, that the defendant is guilty under that count, your verdict will be "guilty of assault and battery"; that is, of course, provided you find that the State has shown this defendant to be guilty beyond a reasonable doubt under that count.

So far, gentlemen, I have attempted to define and explain to you the nature of the accusation against the defendant. I have laid down and explained the various and separate elements which are required to constitute murder of the first degree, then the elements which constitute murder of the second degree, then the elements which merely constitute the crime of manslaughter and the elements which constitute the crime of assault and battery, and in dealing with each of these separate counts the elements which I have indicated to you must be proved to you before you can find the defendant guilty of that one degree of crime charged.

The defendant in this case, as every defendant who appears in a court of law upon trial, has certain rights with which the law of our land in-

The Court's Charge

vests him. He is at all times presumed by the law to be innocent, and the burden of proving his innocence is not upon him. He is not required to come into court and prove that he is innocent, but the burden rests upon the State to prove each and all of the essential elements of the crime charged against this defendant by evidence which clearly establishes his guilt beyond a reasonable doubt; and that burden does not shift throughout the trial; it remains with the State. In other words, if the State fails to satisfy your minds beyond a reasonable doubt that the defendant is guilty of the crime charged against him then you are bound under your oath to acquit him; but on the other hand if you find that the State has discharged its burden of proof, that is to say, that it has satisfied your mind beyond a reasonable doubt that the defendant did commit one of the degrees of murder charged in the indictment against him, then it will be equally your duty to return a verdict of guilty against him as to the degree of crime which he has thus been proved to be guilty of.

I have said that the State's burden is to prove the defendant guilty beyond a reasonable doubt. Reasonable doubt does not mean an imaginary doubt, a mere capricious doubt, a mere fanciful doubt. You are not to give the defendant the benefit of such a doubt as that. Reasonable doubt means very much what the words themselves import. It is not something that is drawn out of the air and injected into this case, but it is rather that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they feel an abiding

The Court's Charge

conviction to a moral certainty of the truth of the charge. If, therefore, after you have carefully compared and considered all the evidence your minds are in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge you have what the law says is a reasonable doubt and it is your duty to give the defendant the benefit of that doubt; but of course you are not to give him the benefit of anything except such a reasonable doubt.

If at any time throughout your deliberations in this case you feel that you have a reasonable doubt as to any essential or material element of the case produced before you by the State you will in every such case give to the defendant the benefit of that doubt, and you shall, as I have said, follow that rule throughout all your deliberations and in your entire consideration of the case, having in mind that the burden of proof here is upon the State and that that burden is to prove the defendant guilty beyond a reasonable doubt.

I say to you that if the State has failed to prove beyond a reasonable doubt that the defendant is guilty either of murder of the first degree or murder of the second degree or manslaughter or assault and battery then it is your duty to return a general verdict of not guilty and acquit the defendant. If on the other hand the State has proved to you beyond a reasonable doubt that the defendant did commit this crime of either first degree murder or second degree murder or manslaughter or assault and battery then equally it is your duty to find by your verdict that the defendant is guilty of this crime, be it either murder of the first degree or murder of the second

The Court's Charge

degree or manslaughter or assault and battery.

Let me add, gentlemen, that when I say to you that the State's burden is to prove the defendant guilty beyond a reasonable doubt I mean that the State must prove to you beyond a reasonable doubt each and every material element of the crime. 10

If the State has proved to your satisfaction beyond a reasonable doubt, as I have explained to you, that the defendant did wilfully, deliberately and with premeditation kill James Delle Fave, and has beyond a reasonable doubt proved that every material element of murder of the first degree was present in the killing of Delle Fave, then you must find the defendant guilty of murder of the first degree. Otherwise you cannot find him guilty of murder of the first degree. 20

Proceeding then to the lesser degree of murder, if the State has failed to prove the defendant guilty of murder in the first degree but you find that the State has proved beyond a reasonable doubt that he is guilty of murder in the second degree and has proved beyond a reasonable doubt every material element of the crime in this case as I have explained it to you, then you must find the defendant guilty of murder in the second degree. Otherwise you cannot find him guilty of murder in the second degree and you will have to proceed with your deliberations on the crime of manslaughter. 30

In your deliberations on the count for manslaughter, should you find it necessary to deal with that phase of the case, if you find that the State has proved beyond a reasonable doubt the presence of each element of the crime, that is to say that the defendant cut or stabbed Delle Fave 40

The Court's Charge

10 upon a sudden transport of passion or heat of blood, upon reasonable provocation and without malice, then you must find the defendant guilty of manslaughter. If on the other hand the State has failed to prove the defendant guilty beyond a reasonable doubt of any degree of murder and also failed to prove beyond a reasonable doubt that the defendant is guilty of manslaughter, your duty then would be to return a verdict of "not guilty," after having of course first considered the third count, the one for assault and battery; and if you find that there are none of the elements of assault and battery present then your verdict will be "not guilty," and should be to acquit the defendant.

20 Now, gentlemen, you are the sole and the exclusive judges of the facts in this case. I cannot determine the facts for you; counsel for the State cannot determine the facts for you, nor can counsel for the defendant determine the facts for you. You must ascertain where the truth lies in this case, and you can only determine that upon the testimony or the evidence which has been sworn to under oath and submitted in this proceeding here today. You have heard the facts in the case. I do not intend to allude to them, because they have been fully covered, not only by 30 the evidence, but by the summation of counsel; but the evidence in this case, gentlemen of the jury, must be your guide.

The defendant claims that in this dispute with the dead man he acted in self defense. Now on the question of self defense our courts have said, "The statute says that any person who shall kill another in his own defense shall be guiltless and 40 totally acquitted and discharged." The right of

The Court's Charge

self defense arises from the law of nature and has been sanctioned by the common law as well as by our own statute. The killing of an assailant is justified when that act is, or reasonably appears to be, necessary to preserve one's own life or save one's self from serious bodily injury. It must be borne in mind, however, gentlemen, that the justification is based upon the situation at the time the wound is given by him who pleads justification, and that it is further based not upon whether there was actual peril but whether there was reasonable apprehension of such peril. In view of the fact that this extraordinary remedy is founded upon necessity or reasonably apprehended necessity it can in no sense extend beyond the actual continuance of the necessity, real or apparent, by which it is warranted, and before he gives or inflicts the fatal wound the accused must have done everything exacted by the law to avoid taking life, that is, he should retreat if he could safely, if there was a safe way of retreat open to him, before inflicting the fatal wound, and if he could have retreated with reasonable safety and yet did not do it, but instead attacked the deceased with the intention of killing him, the act was neither justifiable nor excusable.

I have cited to you the law as it is laid down by the higher courts of this State.

Now, gentlemen, whether this defendant did this and whether there was real or apparent necessity for the cutting or the stabbing are questions for you to consider and decide. Nobody else can determine that question but yourselves. I cannot determine it for you. You have heard the testimony, and from the testimony that has been

The Court's Charge

submitted here you must draw your conclusions, and determine whether there was real or apparent necessity in this case for this man inflicting the wound which it is claimed he did inflict upon the dead man.

10 Now, the plea of self defense of course is not tenable if the accused himself prepared for and provoked the affray. In that event he could not be heard in a plea of self defense.

Now, gentlemen, there seems to be no doubt in this case that there was a cutting and a stabbing, but there is some doubt as to the circumstances under which it was done. If you believe that the defendant cut or stabbed the dead man it was an unlawful act, and if you are satisfied beyond a
20 reasonable doubt that he did it he should be guilty of murder or manslaughter or assault and battery under the rules which I have submitted to you, and you will of course have to determine the degree of murder under the rules already laid down by me, if it were not done under the necessity of self defense. Of course if he did this under the necessity of self defense and you believe from the evidence that he did, then your verdict will be "not guilty."

30 In the event that your verdict shall be that the defendant is guilty of murder in the first degree it will be necessary for you to have in mind a statute of this case which I shall now read to you. This statute gives to you as the jury in this case if you find the defendant guilty of murder in the first degree the power to make a recommendation to the court relative to the punishment which shall be inflicted upon the defendant. The statute I refer to reads as follows: "Every person convicted of murder of the first degree, his aiders,
40

The Court's Charge

abettors, counsellors and procurers, shall suffer death, unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment for life at hard labor, in which case this and no greater punishment shall be imposed."

10

Now, gentlemen, that is the statute. So that if upon returning a verdict of murder of the first degree you make no recommendation the penalty meted out to this defendant shall be death, and if in the event of your returning a verdict of murder of the first degree you shall determine that the penalty to be imposed upon this defendant shall be imprisonment at hard labor for life it will be necessary by your verdict, and as a part thereof, for you to recommend imprisonment at hard labor for life, in which case that will and must be the punishment imposed. In this case, however, gentlemen, I feel it is incumbent upon me to inform you that the Court of Pardons in this State now have the power to change or reduce or quash or set aside whatever result you may have arrived at in this manner; whether you fix the penalty at life imprisonment or not, they can reduce or change it; but they cannot make the punishment any greater than you fix it.

20

30

In the course of the summing up by the respective counsel and also in my instructions to you references have been made to the testimony. In your deliberations you shall deal with the testimony as you recall it, not as I, as I have already stated, or the respective counsel have stated it to you. You need not consider those statements from us, that is myself and the counsel, if they are in conflict with your recollection of the testimony. If your recollection differs from what I

40

The Court's Charge

have said the evidence is or counsel has alleged the evidence has been, disregard what we may have said and allow your own recollection to prevail.

10 Now, gentlemen, you have all the testimony and all the evidence of the witnesses, and this evidence is submitted to you by the respective sides as evidence of what the truth really is in this case. As I said before, out of all this testimony it is your duty to find upon your solemn oaths as jurors where the truth does lie in this issue. You are the judges of the credibility of the witnesses who have appeared in this case. Your guiding star, as I have already stated, is the evidence sworn to in this witness box today. That, and that alone,
20 should be your guide.

There is nothing further that I can say. I may have repeated the rules in this case, but it was my desire to impress upon you gentlemen in repeating the rules that you should remember them and apply them to the evidence in the case. This is a highly important case—important not only to the defendant at the bar but important to the people of this State. As I have stated to you before, let your guide be the evidence—that and
30 nothing more.

Mr. Cutley: I ask a general exception to the Court's charge to the jury.

Certificate

HUDSON COUNTY COURT OF QUARTER
SESSIONS

STATE OF NEW JERSEY, vs. DOMINICK SCARINZI, <i>Defendant.</i>	}	On Indictment CERTIFICATE	10
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I, Charles M. Egan, Judge of the Court of Quarter Sessions in and for the County of Hudson, before whom the above indictment was tried, do certify that the foregoing is the entire record of the proceedings including the testimony of the witnesses had and taken upon the trial of the indictment in the above stated cause, in the State of New Jersey vs. Dominick Scarinzi. 20

CHARLES M. EGAN,
Judge.

Dated: October 1, 1928. 30

To the Honorable Judges of the New Jersey Court of Errors and Appeals at Trenton, N. J.:

I return herewith as I am commanded the entire record in the case of The State vs. Dominick Scarinzi, for atrocious assault and battery, July, 1927, with all things touching the same.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County this 1st day of October, 1928. 40

CHARLES M. EGAN,
Judge.

Assignment of Errors

NEW JERSEY COURT OF ERRORS AND APPEALS

10	<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i></p>	<p style="font-size: 4em;">}</p> <p>In Error.</p> <p>ASSIGNMENT OF ERRORS</p>
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20 Afterwards, to wit, before our Justices of our said Supreme Court at Trenton, comes the said Dominick Scarinzi by his attorney, George E. Cutley, and says that the record and proceedings aforesaid, and also in the giving of the judgment upon the indictment there is manifest error, in this:

1. Because the Trial Court refused to direct a verdict of not guilty at the close of the case made by the State.
2. Because the Trial Court refused to direct a verdict of not guilty at the close of the whole case.
3. Because the verdict of the jury was contrary and against the weight of the evidence.

30 Wherefore, said plaintiff-in-error, Dominick Scarinzi, prays that the judgment and sentence aforesaid by reason of the aforesaid errors in the record and proceedings aforesaid and the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing and that the said Dominick Scarinzi may be restored
40 in all things by him lost on occasion thereof.

GEORGE E. CUTLEY,
Attorney for Plaintiff-in-Error.

Specification of Causes of Reversal

NEW JERSEY COURT OF ERRORS AND APPEALS

<p style="text-align: center;">STATE OF NEW JERSEY, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">DOMINICK SCARINZI, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;">In Error. 10</p> <p style="text-align: center;">SPECIFICATION OF CAUSES OF REVERSAL</p>
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The plaintiff-in-error sets forth the following specification of causes for reversal of the judgment heretofore entered against the plaintiff-in-error herein in the Hudson County Court of Quarter Sessions wherein the plaintiff-in-error claims that he has suffered manifest wrong and injury in the admission and rejections of testimony in the charge of the Court and the denials of matters of discretion by the Court, to wit: 20

1. Because the Trial Court refused to direct a verdict of not guilty at the close of the case made by the State. 30

2. Because the Trial Court refused to direct a verdict of not guilty at the close of the whole case.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

4. The verdict, judgment and sentence was in many respects illegal and contrary to law and should be set aside.

GEORGE E. CUTLEY,
Attorney of Plaintiff-in-Error. 40

Joinder in Error

HUDSON COUNTY COURT OF QUARTER
SESSIONS

10	STATE OF NEW JERSEY, vs. DOMINICK SCARINZI, <i>Defendant.</i>	}	In Error. JOINDER IN ERROR
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20 And thereupon the State of New Jersey, de-
 fendant-in-error, by Aloysius McMahon, its at-
 torney, comes into Court and says that there is
 no error either in the record and proceedings
 aforesaid or in the giving of judgment aforesaid,
 and it prays here that the Court here may pro-
 ceed to examine as well the record and proceed-
 ings aforesaid, as the matters aforesaid assigned
 for error and the judgment aforesaid, in the man-
 ner aforesaid given, may in all things be affirmed,
 etc.

30 ALOYSIUS McMAHON,
Attorney for Defendant-in-Error.

40

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

DOMINICK SCARINZI,
Plaintiff-in-Error.

ON WRIT OF
ERROR.

BRIEF OF DEFENDANT-IN-ERROR.

Dominick Scarinzi was tried in the Hudson County Court of Oyer and Terminer upon an indictment containing three counts, to wit: One count charging the crime of murder, another count charging the crime of manslaughter, and a third count charging assault and battery (S. C., p. 5). The jury rendered a verdict of guilty of assault and battery.

Statement of Facts.

The State proved that, about six o'clock on the morning of July 19th, 1927, the defendant left his home in Hoboken ostensibly to go to his place of employment at Union City, but actually intending to return to his home within a short time. He walked about the City of Hoboken until about 7:30 o'clock, when he returned to his home and found there with his wife James Delle Fave. The defendant's purpose in returning to his home was to catch James Delle Fave, who the defendant had reason to believe was calling on the defendant's wife during the defendant's absence.

The defendant, upon encountering Delle Fave in the defendant's apartment, drew a revolver and pointed it at Delle Fave, but before the defendant had time to fire Mrs. Scarinzi grabbed the revolver and finally wrested it from him.

While the defendant and his wife were struggling for the revolver Delle Fave ran from the Scarinzi home on the third floor of the premises, through the hall to the room of Lorenzo Scarini, and thence to a fire escape leading to the backyard of the premises.

The defendant, upon having the gun taken from him, grabbed a knife from his kitchen table and ran down the stairs from the third floor to the first floor and there cornered Delle Fave under the stairway. The defendant and Delle Fave engaged in combat, during which the defendant stabbed Delle Fave to death.

Argument.

These facts were proved by Lorenzo Scarini, a witness for the State (S. C., p. 19 to bottom p. 28), and a written confession signed by the defendant which was admitted in evidence. The State of the Case does not include this confession. The defendant's testimony (S. C., p. 47 to p. 64) supports the State's contention that the defendant pursued his victim from the third floor to the first floor and there killed him.

It is obvious that the trial court properly refused to direct a verdict of not guilty at the close of the State's case, and again properly refused to direct a verdict of not guilty at the close of the entire case. And it is equally obvious that the verdict was not against the weight of the evidence.

The defendant seriously contends that this verdict should not stand because the jury, in find-

ing a verdict of guilty of assault and battery, in effect, acquitted the defendant of the charges of murder and manslaughter and in so doing had to find that no assault and battery was committed by the defendant.

It seems to be settled law in this country and in England that upon a trial for murder or manslaughter a defendant may be convicted of assault and battery.

State vs. Thomas, 48 Atl. Rep. 1007;

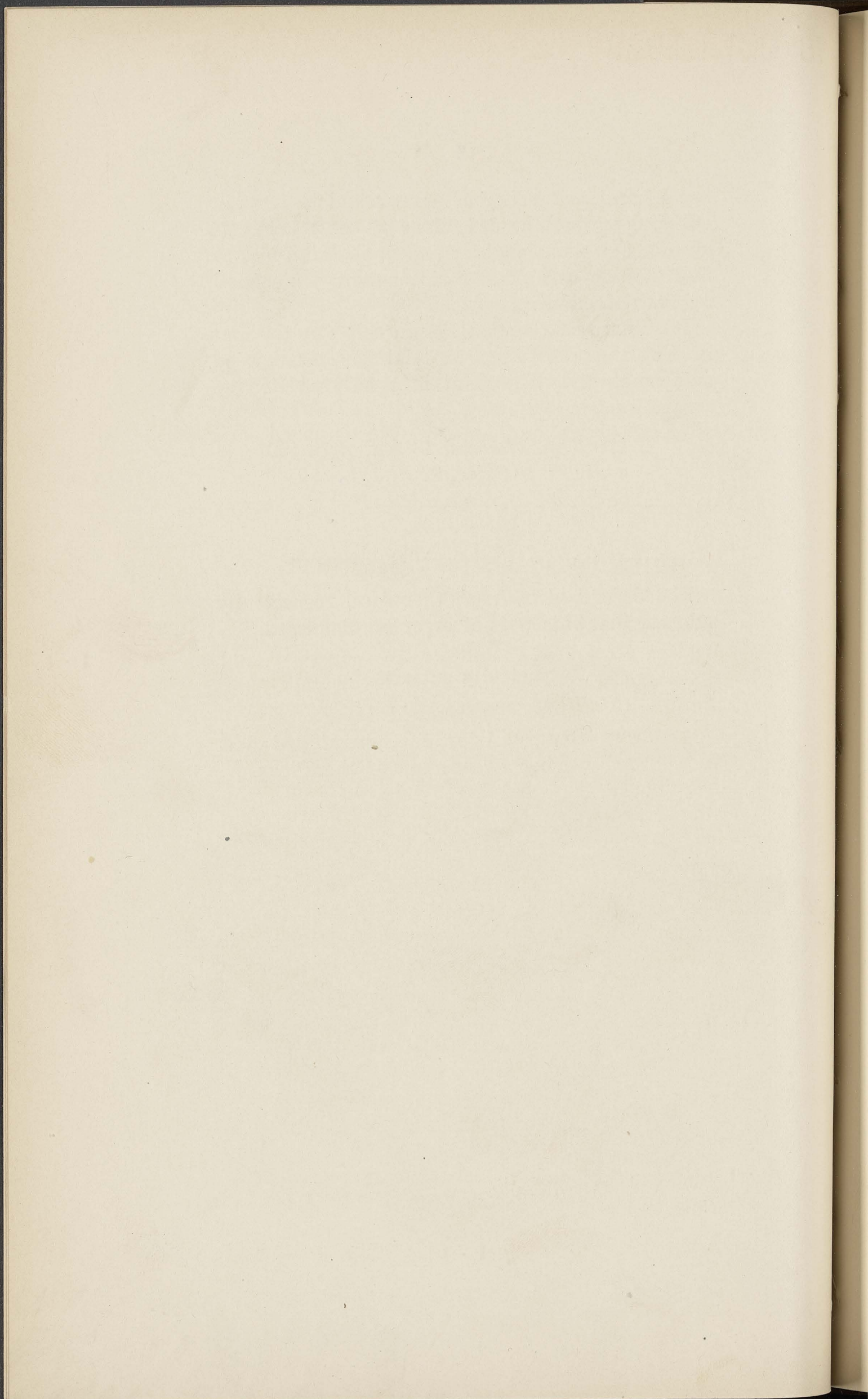
State vs. O'Brien, 32 N. J. L. 169;

Wharton's Criminal Pleading & Practice
(9th Ed.), Sec. 249.

The defendant-in-error, therefore, respectfully submits that this writ of error be dismissed.

Respectfully submitted,

ALOYSIUS McMAHON,
Deputy Attorney General and Act-
ing Prosecutor of the Pleas.



New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

DOMINICK SCARINZI,
Plaintiff-in-Error,

ON WRIT
OF ERROR

BRIEF OF PLAINTIFF-IN-ERROR

Dominick Scarinzi, the plaintiff-in-error was tried for the crime of murder, and convicted of assault and battery on May 21, 1928, in the Hudson County Court of Oyer and Terminer. A writ of error was sued out to review the legality of this conviction and the plaintiff-in-error has taken advantage of Section 136 of the Act concerning criminal procedure and has filed specification of causes of reversal in addition to alleging error on the record.

The assignments of error found at page 98 of the printed case are three in number and are as follows:

1. Because the trial Court refused to direct a verdict of not guilty at the close of the case made by the State.

2. Because the trial Court refused to direct a

verdict of not guilty at the close of the whole case.

3. Because the verdict of the jury was contrary and against the weight of the evidence.

Facts

The State alleged that on the morning of July 19, 1927, the plaintiff-in-error at about seven o'clock in the morning came back to his own home and finding the deceased James Delle Fave in his house started a fight and stabbed and killed Delle Fave. There was no eye-witness to the killing which happened on the bottom floor of a four-story house. The State produced a witness, Lorenzo Scarini, who testified that on this morning he saw the defendant come to his house, (case 20, l. 21) and a couple of seconds after Jimmie, the deceased came out and that he had something in his hand and that he didn't know if it was a razor or a knife (case 27, ll. 12-14) and that he saw Jimmie come through his room and down the fire escape and that he didn't see him again until after he died. The other witnesses produced by the State testified to the finding of the body in the hallway after the deceased was dead; that the deceased died almost immediately after the scuffle.

The defendant testified that on the morning in question he came back to his house and found Delle Fave coming out of his child's room with a razor in his hand and struck at him (case 49, ll. 20-30) and he swung and ran away and that his wife took the gun away from him and that she

ran away and that he grabbed a knife and ran after her (case 49, ll. 30-40). That when he got on the ground floor he started walking outside in the street, and out of the door, "and I saw Jimmie coming behind me with a razor in his hand and turn around. We grappled again and we ran around. We fall on the floor together and I don't know how it happened. I had it in my right hand and I grabbed his hand with the razor. We fall on the floor. I don't know if he fall on my knife and he broke the knife in his back. I was below and he was on top of me and I was laying under him" (case 50, ll. 10-20).

Catharine Scarinzi testified that this morning she saw the deceased with something in his hand, something like a razor or knife (case 67, l. 28) (case 69, l. 29).

Mary Scarinzi testified that she saw the deceased with the razor (case 79, l. 35).

ARGUMENT

Points I and II since they pertain to the refusal of the Court to direct a verdict of not guilty will be argued together.

At the close of the case made out by the State a motion for a dismissal of the indictment and a direction of a verdict for the defendant upon the ground that there was no proof in the case outside of the confession of the corpus delicti. This was refused by the trial Court and exception was taken to this refusal by the trial Court (case 47, ll. 10-30) (case 82, ll. 30-40).

There was no eye-witness to the killing which took place in the lower floor. The only evidence that the defendant was responsible for the death of the deceased taken from the statement given by the defendant to the police when he surrendered himself. The statement made by the defendant was that he was in the house and that there was an argument and he got downstairs and the man was hiding behind the stairway. He said that he came out with the razor and to defend himself he did the best he could, and as a result of the attack and conflict the death occurred.

This case differs from the ordinary case where there is merely the admission of the crime. In this the defendant justifies himself from the assault which was made upon him by the deceased and if the State is to get any benefit from the confession it also has to take its disadvantages.

In *State v. Kwiatkowski*, 83 N. J. L. 660: "The only limitation upon the use as evidence against him of a prisoner's confession of murder, voluntarily made is the want of proof of the corpus delicti."

The defendant in his statement to the police justified himself and his defense was self defense, relying upon the statute, Sec. 110, C. S. p. 1781, which says that any person who shall kill another in his or her own defense shall be guiltless and totally acquitted and discharged.

At the close of the entire case there was no evidence to justify the trial Court to submit the case to the jury. The only evidence for the State as to the actual killing was the statement of the defendant and this statement was overthrown by the plea of self-defense contained in that statement

and also the sworn testimony of the defendant on the stand that the deceased came from behind the stairway with a razor in his hand and that he came at him and he had to defend himself. The defendant was corroborated by Scarini, a witness for the State, that the deceased had a knife or razor in his hand when he was going downstairs and also by defendant's two daughters who testified that the deceased had a razor or something in his hand when he was going downstairs. The State had not made out a case to entitle it to be sent to the jury.

The verdict of the jury was contrary to and against the weight of the evidence.

To justify a court in setting aside a verdict in a criminal case under P. L. 1921, p. 951, on the ground that it is against the weight of the evidence the verdict must so clearly appear that it is against the weight of evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.

State v. Karpowitz, 98 N. J. L. 546;
State v. Mosley, 3 Adv. Rep. 1972.

Plaintiff-in-error contends that this case comes within the category above indicated.

The verdict of assault and battery is under the circumstances of the instant case justified neither in law nor fact.

Illogical as it may seem, it is uniformly held that on trial for murder or manslaughter a verdict of assault and battery may be rendered against a defendant. New Jersey citations are not abundant to illustrate the actual number of times this admitted rule has been followed. *State*

v. *Thomas*, 48 Atl. Rep. 1007 and *State v. O'Brien*, 32 N. J. L. 169, both by implication seem by negation, to uphold the vigor of the principle. One of these cases, *O'Brien* was a case of involuntary manslaughter.

The logic of an acquittal of this charge seems to negative the general rule that a defendant may be convicted of any indictable ingredient of a common law or statutory delinquency.

In murder of the first degree the wilfulness, deliberation, premeditation, killing in commission of felony or obstruction of arrest are generally the differentiating characteristics of culpability. In second degree the absence of these or an opposite or integral combination generally constitutes the criterion of definition. In manslaughter the presence of hot blood or passion whose excitation is engendered upon reasonable provocation *without malice* fairly presents the lure of mental and judicial responsibility. With all the evidence before it, it is tantamount to absurdity to declare that where the plea is self defense, for a jury that Scarinzi was neither guilty of murder nor manslaughter because he was justified in killing Delle Fave in self defense, and in a simultaneous judicial ejaculation to castigate the defendant is guilty for the slightest delinquencies comprehended, the crimes of which they expressly and inferentially exonerated.

Neither the antiquity of a general observation as to the propriety of a conviction of a minor offense necessarily included in a greater nor its alleged sacrosanct character ought to be merited to do legal and intellectual violence to the inevitable processes of sanity of thought and sound ad-

ministration of the practical administration of the criminal law.

The oppositeness of the facts to the truth of the above argument is set forth under the points first argued in this brief.

For the reasons above set forth, it is respectfully urged that the conviction should be set aside and a new trial ordered.

GEORGE E. CUTLEY,
Attorney for and of Counsel with
Plaintiff-in-Error.

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