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New Jersey Court of Errors and Appeals

State of New Jersey, *Defendant in Error.*	*Sur Indictment for Murder.*
vs.	
Vincenzo Bovino, *Plaintiff in Error.*	*On Writ of Error.*

Brief of Plaintiff in Error.

The plaintiff in error was indicted, the true bill charging that he on the 21st day of April, 1914, did kill and murder one Frank Miserentino.

Having been found guilty, the defendant thereupon sued out a writ of error from this Court, directed to the said Court of Oyer and Terminer, in and for the County of Essex; and the present writ brings up for review the entire record of the proceedings had in the trial Court; and comes within the purview of Section 136 of the Criminal Procedure Act of 1898 (P. L. 1898, page 915).

Facts.

On the night of April 21, 1914, at a dance hall at No. 238 Oliver street in the city of Newark, at about 11:30 P. M., one Frank Miserentino, who was commonly known as Frank Baker, was murdered.

The testimony shows that at 7 P. M. on the night in question the defendant was at the said dance hall, together with other persons, playing an Italian finger game until about eleven o'clock when the defendant together with two

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other persons left the dance hall, going out into the street where they met the deceased, that after talking with him for a few minutes the deceased went into the dance hall, and the defendant with his companions went toward the corner of Oliver and Adams streets, being about two hundred feet away from the dance hall; that while the defendant and his companions were at this corner the sound of a shot was heard; defendant and his companions ran towards the dance hall and saw that the deceased had been shot; that at no time did the deceased make any accusations against defendant, while there in his presence either in the barroom or out in the street. The State claimed that the defendant did the fatal shooting because of what the State's witness, Mary Webber, testified to, in that she saw the defendant in the dance hall at the time, and fire the fatal shot, and upon what the deceased said at the hospital under the alleged sense of impending death, when it is alleged the deceased told the officers that the defendant had shot him.

The defense was that of an absolute denial and an alibi. The proof shows that at the time of the occurrence of the shooting the defendant was about 200 feet away from the dance hall; that he and two other persons had been standing at the corner of Oliver and Adams streets for about five minutes when they heard the sound of a shot coming from the direction of the dance hall. It was proven conclusively by four witnesses that the defendant was standing on the corner of Oliver and Adams streets when the shooting occurred; and through the State's witnesses and the defendant's witnesses it was shown that the defendant was not in the dance hall when the fatal shot was fired, but outside

in the street at the corner of Oliver and Adams streets, about 200 feet away from the locality where the murder happened. No motive was proven. The deceased was commonly known as Frank Baker and the defendant as Jimmy Bennett.

Points.

I.

"Because the Trial Court erred in curtailing the proper cross examination of counsel for the defendant when said counsel was cross examining the State's witness, Mary Webber."

(Assignment 2, cause 3.)

This assignment of error is based to that portion of the case on bottom of page 57 and top of page 58. After defendant's counsel had cross examined at great length this State's witness, the Court then questioned the witness in this wise, in order to set her right on the matters she had contradicted herself in;

By the Court.

Q When Vincenzo Bovino, this man that you identified as Bennett shot the man that you know as Frank Baker, did Baker speak at that time? A He only said "Bennett shot me." That is what I heard him say.

Q How did he say it? A He fell and he said "Bennett shot me."

Q Did he fall? A Yes.

Q Did he say it before or after he fell? A After he fell, when he was falling down he said it.

Then the defendant's counsel again resumed his cross examination which is as follows:

Q Did you see more than one pistol there? A No, I only saw one.

Q You saw Bennett there? A Yes; I did.

Q Did Bennett say anything to Baker before he shot him? A No I didn't hear.

Q Did he say anything to him? A No.

Q Did Baker say anything to Bennett? A No, I only heard him say "Bennett shot me."

Q Did you hear any words between Bennett and Baker before the shot was fired? A Nothing, no.

The Court.

It is not necessary to examine the witness in this fashion.

(Argument followed.)

The trial Court limited defendant's counsel to pursue his proper cross examination and refused to counsel the right to further cross examine. All of these questions were pertinent and proper.

There is nothing apparent that counsel was going over the same matters all over again, but that the examination was being based upon what the Court brought out by his examination of the witness.

It is not evident that counsel was attempting to push the witness for the sake of annoyance, or for any illegitimate purpose, but counsel was asking direct and pointed questions on material facts in issue in which the witness had contradicted herself as shown by the testimony cited above.

It will not do to refuse a party the right of cross examination upon doubtful evidence; all of the questions were such that were put to the witness to test her accuracy, veracity and credibility.

By the Court refusing to allow counsel to pursue his further proper cross examination, prejudicial error has intervened to the defendant.

II.

Assignment 3-11 and 15 will be considered under this point.

(A) "Because the trial Court erred in refusing to allow the State's witness, Anna Gurtler, to answer the following questions on cross examination:

> Q You deny you swore under oath first that you didn't know anything about the shooting at all?
>
> (Assignment 3, cause 4.)

(B) Because the trial Court erred in not permitting the State's witness, Dr. Edward Staehlin, to answer the following questions on cross examination:

> Q The amount of liability on a statement made by a person who is within three minutes of his demise and was vomitting, would you consider that an absolute correct statement?
>
> (Assignment 11, cause 11.)

(C) Because the trial Court erred in sustaining the objection of the prosecutor to the following question asked by defendant's counsel to the State's witness, Timothy F. Scales on cross examination.

> Q Was she subsequently subpoenaed before any other Grand Jury in this county and gave testimony in this case?
>
> (Assignment 15, cause 15.)

The question as put to the State's witness, Anna Gurtler (assignment 3, cause 4), was proper in every respect in that it was for the purpose of not only laying a foundation for contradiction but to test the credibility and accuracy of the witness.

The question referred to in assignment 11 and cause 11 was put to the State's witness, Dr. Edward Staehlin. He had performed an operation on the deceased at the City Hospital on the same night of the shooting. The State sought to show through this witness that the deceased had possession of all of his mental faculties and was therefore able to talk and make a perfectly intelligent statement.

The question as put to the witness on cross examination was based on what he testified to on direct examination and not on any new or collateral matter.

Assignment 15 and cause 15 is with reference to a question that was put to the State's witness, Timothy F. Scales, Clerk of the Essex County Grand Jury. The State, through this witness, was seeking to impeach certain witnesses as to what they testified to before the Grand Jury, which I claim was illegal and improper.

The question as put to this witness referred to what the witness testified to in regards to the witness, Susan Brown Clark, and the question was asked for the purpose of discovery, so that if the witness whose testimony was being impeached had been subpoened at some other time before the Grand Jury to testify in the same case, the defense was entitled to have that testimony as it might explain, qualify or add to her alleged impeached testimony.

In the leading case of *Attorney General* v. *Hitchcock,* 1 Exch. 91, the rule was stated as follows by Anderson, *B*:

> "A witness may be asked any question which, if answered would qualify or contradict some previous part of that witness's testimony, given on the trial of the issue; and if that question is so put to him and answered, the opposite party may then contradict him, and for this simple reason, that the contradiction qualifies or contradicts the previous part of the witness's testimony and so removes it."

The questions on cross examination referred to in the above assignment were confined to the facts relevant to the issues, and denial by the trial Court to allow these questions to be answered, an injustice was caused to the prejudice of the defendant.

See

Plato v. *Kelly,* 16 Abb. Pr. 188.
Third Great Western R. R. v. *Loomis,* 32 N. Y. 127.
People v. *Blakly,* 4 Parker 176.
Hardy v. *Norton,* 66 Barb. 527.
Stephen Digest of Evidence, Art. 129.

As I understand it to be the law, that every witness under cross examination in any proceeding, civil or criminal, may be asked whether he has made any former statement relative to the subject matter of the action and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not distinctly admit that he has made such a statement, proof may be given that he did in fact make it. In the case at bar the questions above stated were well within the above rule of law.

III.

Assignment 4, 5, 6, 7 and 12.

(A) Because the trial Court erred in permitting the State's witness, James D. Bell, to testify to hearsay evidence, that is, to statements, declarations and conversation had between this witness and Frank Baker, the deceased. (Assignment 4, cause 5).

(B) Because the trial Court erred in permitting the State's witness, John Miller, to testify to hearsay evidence, that is, to statements, declarations and conversations heard by this witness, between the State's witness, James D. Bell and Frank Baker, the deceased. (Assignment 5, causes 6 and 7).

(C) Because the trial Court erred in permitting the State's witness, Peter Remondalli, to testify to hearsay evidence; that is, to statements, declarations and conversations heard by this witness between the State's witness, James D. Bell, and Frank Baker, the deceased. (Assignment 6, causes 6 and 7).

(D) Because the trial Court erred in permitting the State's witness, Walter Byrne, to testify to hearsay evidence, that is, to statements, declarations and conversations heard by this witness between the State's witness, James D. Bell, and Frank Baker, the deceased. (Assignment 7, causes 6 and 7).

(E) Because the trial Court erred in permitting the State's witness, Lulu M. Field, to testify to hearsay evidence as to what the deceased, Frank Baker, said to her and as to what she heard the deceased say when the defendant was not present. (Assignment 12, cause 12).

The testimony of these witnesses was introduced in order to prove a certain conversation and declarations had between the State's witness, Bell, and the deceased, which was heard by the other witnesses. The defendant was not present when this alleged conversation was had at the City Hospital. I contend that this testimony is clearly hearsay and inadmissable.

The State contended that this testimony was to be allowed because it was a dying declaration.

All the officers testified, with the exception of one of them, that the deceased said to State's witness, Bell, "I am going to die."

The State's witness, Remondalli, testified that this was not so, or rather, he did not remember any words to that effect. Dr. Staehlen testified that the deceased had been in a semi-conscious condition and that deceased was nearer death toward 11 and 12 o'clock in the evening and that deceased was in no condition to talk. See case, page 141.

The State's witness, Lulu M. Field, testified that she was at the head of the bed of the deceased, but that she did not hear anything as deceased spoke in low tones, his voice was low. State's witness Byrne testified that deceased was coughing and spitting blood and that at the time the deceased was in a stupor.

This testimony should not have been allowed because it was not proven that the statement was made under the sense of impending death. The dying man should not be allowed to make his statements until those about him think that he is near the end, and he sees or thinks he sees the shadows of death settle about him. Under such circumstances and at such a moment, if he is a believer in personal responsi-

bility and a future state, the mind will be centered upon and more concerned about the near future than about the things that are receding from view. And hence the statements made under such circumstances, as to how the injury was received and so forth come with that infirmity that always attends inattention. Especially will this be so if these statements embody what must have been the result of a process of reasoning as an inference, conclusion or opinion. It often happens, too, that in such an extremity the mind is not in its full vigor. The memory may have been confused and the reason blunted by physical suffering or mental anxiety. In such a condition the mind yields ready assent to what may have been suggested, and the person states as a fact what is in truth a conclusion or an opinion, which would clearly appear to be erroneous, were the facts stated upon which they are based. And if facts are stated, it may be that but a part are stated, the most important being omitted. It has happened that a dying declaration made one day is contradicted by a different statement upon a subsequent day.

Moore v. *State,* 12 Ala. 764, 46 Am. Dec. 276.

The plausibility of the reasoning which upholds the admissability of evidence of this kind is admitted, but it is a well authenticated fact in criminal annals that countless men have calmly met the awful solemnities of death in an attitude of utter moral indifference. Through a combined medium of resentment and mendacity they are induced to distort and falsify their statements until even in cases where firm belief in the doctrine of future retribution has been clearly shown, the most flagrant and

atrocious falsehoods have been deliberately uttered for the purpose of revenge.

Which in the present case is clearly shown, by the testimony of the State's witness, Bell, in the case, bottom of page 97, top of page 98:

> "A Why, I went into his bedside and asked him was he going to tell me who shot him. He said to me, 'Am I going to live?' I said, 'Yes.' 'Then I won't tell you who shot me. I will get my own revenge.'"

So that when the State's witness Bell called to see the deceased later, the deceased spoke to him from motives of malice and revenge, with the single thought of reaking vengeance through a damaging statement that he would make to the officer, and not with the thought of stating the truth.

This latter testimony of this witness was inadmissible, it being hearsay and not a dying declaration nor any part of one, but merely a statement made by the deceased when he had hopes of recovery and should not have been received in evidence.

R. v. *Jenkins,* L. R. 1 C. C. R. 187.

It was held in *Peak* v. *State,* 50 N. J. Law 179, where a woman had been shot in the head and the surgeon who was attending her had told her that she was liable to die at any moment, that an operation which he would perform would be the only chance of her recovery, he asked her if she expected to get well and she said, "No I do not expect to get well, but I would like to get well," she then said that A was the person who shot her. On the trial of A for murder this statement was held inadmissible.

And where the declarant says, "with no hope at present of my recovery" does not render the statement admissible.

R. v. *Jenkins,* L. R. 1. C. C. R. 187.

In a case where the deceased made statements, that he had to die of the whipping he had received from the defendant that at any hour or any day he might die, it was held, did not sufficiently show his sense of impending death to render his statements competent as dying declarations.

State v. *Knoll,* 77 Pac. 580.
State v. *Gianfala,* 37 So. 30.
Rex v. *Abbott,* (1903) 67 J. P. 151.

The testimony of State's witness, Lulu M. Field, was incompetent. She testified to what the deceased told her and gave evidence of statements between her and the deceased when the defendant was not present.

This was not any part of the alleged dying declaration but matters antecedent and prior to the making of the alleged dying declaration. Such evidence is inadmissible.

State v. *Bateson,* 80 S. W. 88.
State v. *Harris,* 36 So. 810.
See *People* v. *Schievi,* 89 N. Y. S. 564.
State v. *Wood,* 53 Vt. 560.
State v. *Moody,* 51 Pac. 356.
State v. *Eddon,* 36 Pac. 139.
Sullivan v. *State,* 15 So. 264.
Brown v. *Commonwealth,* 83 S. W. 645.

IV.

Assignments 8, 9, 10, 13, 14, 16, 17 and 18.

(A) Because the trial Court erred in permitting the prosecutor to ask the State's witness, Mae Gilling, as to what she testified to before the Grand Jury (assignment 8, cause 8).

(B) Because the trial Court erred in permitting the prosecutor to put in evidence, testimony as to what the State's witness, Mae Gilling, testified to before the Grand Jury (assignment 9, cause 9).

(C) Because the trial Court permitted the prosecutor to impeach his own witness, to wit, State's witness, Mae Gilling (assignment 10, cause 10).

(D) Because the trial Court erred in permitting the State's witness, Timothy F. Scales, to testify as to testimony given before the Grand Jury by State's witness, Mae Gilling (assignment 13, cause 13).

(E) Because the trial Court erred in refusing to strike out the testimony of the State's witness, Timothy F. Scales (assignment 14, cause 14).

(F) Because the trial Court erred in permitting the prosecutor to question the witness, Susan Brown Clark, as to what she testified to before the Grand Jury (assignment 16, cause 16).

(G) Because the trial Court erred in permitting the prosecutor to put in evidence, testimony as to what the witness, Susan Brown Clark, testified to before the Grand Jury (assignment 17, cause 17).

(M) Because trial Court erred in permitting the State's witness, Timothy F. Scales, to testify and read from his stenographic notes as to what the witnesses, Mae Gilling and Susan Brown Clark testified to before the Grand Jury (assignment 18, cause 18).

Mae Gilling was a witness for the State. She was one of the persons who was in the dance hall and present at the time of the

commission of the murder, and she testified clear and positively to the facts as she remembered them, as to what occurred there on the night of the murder. In the course of her examination in chief, the prosecutor asked her if whether or not she did not testify to certain matters and facts before the Grand Jury when the Grand Jury was investigating the case against the defendant, and to every question that the prosecutor put to this witness she answered in the affirmative, thereby leaving nothing to be contradicted by the State. The action taken by the prosecutor towards this witness was that of impeaching his own witness who was not a hostile one, and when the State was not surprised, and the use of the Grand Jury minutes for the purpose of impeaching her was illegal and improper. The testimony complained of with reference to this witness is found in case, pages 119 and 120, and the Grand Jury minutes, page 449, marked Ex. S. 3.

The prosecutor then called the Grand Jury Clerk, Timothy F. Scales, whose testimony is found on pages 162, 163, 164 and 165, to read from the Grand Jury minutes what this witness testified to before the Grand Jury, which I also claim was improper and illegal.

It is not competent for a party to prove the declaration of his own witness in contradiction of his testimony under oath at the trial.

Brewer, et al., vs. *Porch, et al.,* 17 N. J. L. 377 and 379.

Thompson vs. *Blanchard,* 4 N. Y., 303 and 311.

People vs. *Safford,* 5 Den. 112 and 116.

People vs. *Burgess,* 153 N. Y., 561.

State vs. *Taylor,* 88 N. Y., 696.

Hurley vs. *State,* 46 Ohio, 320.
State vs. *Stevens,* 29 Ore., 85.
State vs. *Bartness,* 54 Pac. 167.
Heckon vs. *United States,* 151 U. S., 303 and 309.
St. Clair vs. *United States,* 154 U. S., 134 and 150.

The State was not in this instance seeking to impeach its own witness but it was in truth to approach an independent evidence, because the fact over which there had been a sharp issue throughout the whole case was whether or not the defendant had been in the dance hall at the time the shot was fired. This Court will see from the evidence introduced by way of the Grand Jury minutes that the whole point which was in issue before the Grand Jury was if whether or not the defendant was in the dance hall on the night of the shooting and the same question was presented at the time of the trial. It has been held that a party cannot after examining a witnesses give in evidence his former testimony and declarations ostensibly to discredit him, but in truth to approach an independent evidence.

Smith vs. *Price,* 8 Watts, 447.

The prosecutor took the same action with reference to the witness, Susan Brown Clark, all of which was done against the objection of the defendant's counsel, and then the Court permitted the prosecutor to allow Timothy F. Scales, the Grand Jury clerk, to read from the Grand Jury minutes the evidence that was given by these two witnesses before the Grand Jury, not ostensibly to discredit the witnesses, but in truth to approach independent evidence.

For the State to prove that the witness whom it has called and whose testimony is unfavorable to its cause, had previously stated facts in a different manner, is to my mind, error. To admit such proof would enable a party to get the naked declarations of the witness before the jury, approaching in fact independent evidence; and this, too, even where the declarations were made out of Court by collusion for the purpose of being thus introduced. *Smith* vs. *Price, supra; Wright* vs. *Beckett,* 1 M. and Rob., 414, 428; 2 Philips Evidence, 447.

THE USE OF GRAND JURY EVIDENCE WAS ILLEGAL.

The Court in allowing the State to put in evidence testimony that a witness gave before the Grand Jury was illegal and in permitting the Grand Jury clerk to read from the minutes of the testimony was also illegal. The law in furtherance of justice requires that the proceedings of Grand Juries should be conducted in secret and that the secrets of the jury room should not be revealed. It was early decided that a grand juror should not be allowed to swear what was given in evidence before them, because he is sworn not to reveal the secrets of his companions.

12 *Vin Abr. B. a.* 520, *Evid. H.* 4.
State vs. *Fassett,* 16 Conn., 465.

It has also been decided that the Clerk of the Grand Jury could not testify what took place before that body.

12 *Vin Abr.* 38 *Evid. B.*

The Court cannot allow evidence to be given as to the proceedings had in the Grand Jury room.

The State v. *Hamlin,* 47 Conn. 95, 114 and 115.

In an action for malicious prosecution it was held that a member of the Grand Jury could not be called to show what testimony was given before that body.

Foringham v. *Adams Express Co.*, 34 Fed. 646.

At common law and in most states the oath administered to the Grand Jury binds them to preserve inviolate the secrets of the Grand Jury room together with all persons of authority who have the right to be present before such body, and on this ground as well as on other grounds of public policy, it was the common law rule quite strictly enforced that the proceedings of grand jurors could not be made public.

State v. *Fassett,* 16 Conn., 457.

The question if whether or not grand jurors or the Grand Jury clerk or any person in authority has any right to divulge or testify as to what occurred before the Grand Jury for the purpose of impeachment, is not *res nuova* in our state. It has been held that a grand juror cannot be permitted to prove that a witness who has been examined swore differently before the Grand Jury.

Imlay v. *Rogers,* 7 N. J. L., 347.

This was an action of trespass for the burning of a vessel. The cause was tried at the Monmouth Circuit Court in April, 1799, before his Honor, Mr. Justice Kirkpatrick. This was a motion for a new trial, on the ground that the court had refused to admit one of the members of the Grand Jury to prove that a witness, who had been examined at the trial, had sworn differently on his examination before the Grand Jury in relation to the same transaction. Held that the evidence of the grand juror could not be admitted. Imlay *v.* Rogers, *supra.*

In an anonymous case before Foster, *J.*, reported in Clay, 84 York Assizes, the judge would not suffer a grand juryman to be produced as a witness to swear what was given in evidence before them, because he is sworn not to reveal the secrets of his companions or of any proceedings before the Grand Jury.

12 *Vin. Abr. Tit. Evi.* H. 1, and in *Trials Per Pais,* 266.

It is said that the clerk attending upon a Grand Jury should not be compelled to be a witness to reveal that which was given them in evidence.

12 *Vin. Ab.* 38 *Evi B.* a. 5.

In *People* v. *Norton* it was held that the minutes of the Grand Jury could not be used to disclose how any juror voted or what was said by any juror during their deliberations, for the purpose of impeachment.

7 *Abb. Pr. N. S.* 421.

28 *L. R. A.* 33.

Minutes of the evidence of the witness before the Grand Jury cannot be used directly or indirectly to impeach a witness.

State v. *Woodward,* 132 Iowa 675, 108 N. W. 753.

The Supreme Court of Missouri held it prejudicial error to permit the State on the trial of a man jointly indicted with his wife for the murder, by cruelty, exposure and neglect of his natural child, born of another woman, to read in evidence in rebuttal the minutes of the testimony before the Grand Jury of certain witnesses who had testified in chief for the State to the same effect and had been proved by the defendant to

have made on other occasions contradictory declarations.

State v. *Whelehen,* 102 Mo. 17. 14 S. W., 730.

In *Commonwealth* v. *Welsh,* 4 Gray, 535, in the course of the opinion, Shaw, *Ch. J.,* said:

> "The evidence of what the witness testified before the Grand Jury ought not to have been received. It could only be to disparage the witness, and show him unworthy of credit with the jury, which was inadmissible."

It has long been the policy of the law in furtherance of justice that the investigations and deliberations of the Grand Jury should be conducted in secret and that for the most intents and purposes all of its proceedings are legally sealed against divulgence.

Atwell v. *United States,* 162 Fed. 97.
State v. *Hamlin,* 47 Conn. 95.
Jenkins v. *State,* 18 So. 182.
United States v. *Talmadge,* 91 Pac. 729.
State v. *Broughton,* 29 N. C. 96.

The above language would obviously have reference to all things which transpire in the Grand Jury room, and the first one underlying this injunction of secrecy extends to all persons required by law to be present before the Grand Jury; equally it would apply to the Grand Jury clerk.

State v. *Hamlin,* 47 Conn. 95.

It is the general rule in this country that even a grand juror cannot give testimony as to deliberation, proceedings, etc.

State v. *Hamlin,* 47 Conn. 95.
State v. *Davis,* 41 Iowa, 311.
Loveland v. *Cooley,* 59 Minn., 259.

And it has been held that persons who were present in the Grand Jury room by lawful authority, as the prosecuting attorney, the clerk, etc., cannot give any evidence of what took place before the Grand Jury.

Getcheli v. *People,* 140 Ill. 175.
State v. *Johnson,* 115 Mo. 480.

I respectfully submit to the Court that the question of the introduction of the evidence in this case as was permitted by the trial Court against objection of the defendant's counsel to the use of the Grand Jury minutes and for the Clerk to give evidence of what the witness therein testified to before that body was illegal and erroneous and that such testimony was not competent to prove that the witness testified otherwise before the Grand Jury.

Imlay vs. *Rogers,* 2 Hal., 347.
Wilson vs. *Hill,* 13 N. J. Eq., 143.
State vs. *Dayton,* 23 N. J. L., 58.

If this were allowed, then the doors of the Grand Jury room should be open equally to the defendant as to the State. It is only where it is for the furtherance of justice that the minutes of the Grand Jury can be read or that a juror or the clerk of the Grand Jury is competent to testify as to the difference in the testimony, and that can only be, when it is in a direct proceeding such as in a trial for perjury that has been committed before the Grand Jury, but not to come in collaterally and bring in the minutes, or that the clerk of the Grand Jury, can come into a case and give evidence that a witness testified otherwise before the Grand Jury. The oath administered to the Grand Jury and to the clerk of the Grand Jury has come down to us, as I understand it, from ancient times, and that the oath prescribes that

they are to "keep their own secrets" and the "secrets of their fellows" and "the State," that the clerk is sworn to keep the secrets of the proceedings of the Grand Jury. The policy of the law is to impose upon jurors with a confidence of security in the discharge of their respective duties so that they may deliberate and decide without apprehension of detriment from any person or persons and when perjury is committed before their body, they are in effect sustaining their oath of office when they testify for perjury committed before them, because a crime has been committed before that body, but surely it is going outside of the range of the policy or secrecy when it is permitted to allow the proceedings had before the Grand Jury to be used for the purpose of impeaching a witness in the trial of another case.

V.

Assignment 19.

Because the trial Court erroneously charged and instructed the jury, among other things, as follows:

"Of course, this is not the testimony of the officers that defendant shot deceased, but if the jury believes that Baker in the presence of impending death said the defendant shot him the jury in its discretion may consider the statement of Baker against the defendant."

This is in effect charging the jury that only upon this the jury should convict the defendant, without even considering the element of reasonable doubt on all of the evidence in the whole case.

VI.

Assignments 20 and 21.

(A) Because the trial Court erroneously charged and instructed the jury a misstatement of the facts and the evidence, as follows: "Defendant thought that he would try to make a false accusation against this New York Frank to divert suspicion from himself." (Assignment 20, cause 20).

(B) Because the trial Court erroneously charge and instructed the jury, among other things, as follows: "That this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself in his own favor may be considered by the jury as showing a consciousness of guilt on the part of the defendant." (Assignment 21, cause 21).

This is a pointed direction to find the defendant guilty, because of his alleged attempt to fabricate evidence. It is in effect a charge that the defendant is to be presumed guilty.

The charge does not admit any qualifications such as explanations, which would be explanatory, and for the jury to decide within their discretion as to the truth of same.

A mere fabrication of evidence does not furnish of itself a presumption against the innocence of the defendant. By the Court in so charging the jury produced in the minds of the jury a prejudice against the defendant in that it presumes the defendant guilty of the crime charged; contrary to the presumption that he is innocent until proven guilty. As a matter of fact, there was no attempt in the nature of fabrication or in the nature of false evidence by the defendant in his favor.

VII.

Assignment 22.

Because the trial Court erroneously charged and instructed the jury, among other things, as follows: "If the jury arrives at the conclusion that the defendant fired the fatal shot it seems to be murder in the first degree or in the second degree."

The Court made it pointed to the jury that if they found as a matter of fact that the fatal shot was fired by the defendant, that there was no other recourse or any other verdict to be given by them except murder in the first or murder in the second degree; the question of whether it was manslaughter was not to enter into the verdict itself.

VIII.

Assignment 23.

Because the trial Court erroneously charged and instructed the jury, among other things, as follows: "The statements, admissions and accusations of a party, defendant, may however be used not only in relation to credibility and to contradict his testimony upon the stand, but as evidence of the facts therein set forth and may be used against him as any other admission by a party."

A defendant who testifies on his own behalf on the trial of a criminal case may be impeached in the same manner as any other witness; but the jury should be instructed to consider impeaching testimony as affecting only his credibility as a witness, and not as impairing the presumption of his innocence.

Peck vs. *State,* 86 Tenn., 259.

The trial Court at this instance charged the jury in a way as to impair the presumption of the defendant's innocence.

IX.

Assignment 24.

Because the trial Court erroneously charged and instructed the jury, among other things as follows: "The jury has a right to consider the very grave interest which this defendant has in any verdict which it may render and whether or not that interest has affected the truthfulness or credibility of the testimony of the defendant." (Assignment 24, cause 24).

I have always understood it to be an elementary proposition of law that the defendant is presumed to be innocent until he is proven guilty. The Court's charge in the present instance casts upon the defendant a burden which he is not legally bound to assume, because the charge conveyed to the jury the impression that the defendant would be likely to commit perjury because of his interest in this matter; it prejudiced the jurors towards the defendant and where they had a reasonable doubt as to the truth of the defendant's statement they didn't give the benefit of the doubt to the defendant, but discarded his testimony to his great injury, by reason of the impression they must have received from the charge, thereby depriving the defendant of the right to have had the benefit of the reasonable doubt throughout the entire case.

X.

Assignments 25, 26, 27 and 28.

Because the trial Court erred in refusing to charge the jury as requested by the defendant's counsel, as follows:

(A) "Before the jury can convict they must find that the cause of the death of the deceased has been beyond a reasonable doubt proved to be murder committed by the defendant."

(B) "That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a belief of guilt of the party charged to the exclusion of all reasonable doubt."

(C) "That if the jury have a reasonable doubt derived from all the evidence they are bound to give the defendant the benefit of such doubt."

(D) "That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some person for which he is lawfully responsible and if the death of the deceased was caused by the act or omission of some other person, who was not acting in concert with the defendant, then the defendant is not guilty."

All of these requests were proper and were within the rules of the law and should have been charged by the Court. The defense was that of an absolute denial and an alibi as to who did this murder. We denied any knowledge of it and there was only one witness on the part of the State who gave direct evidence, which was unreliable in every respect. There was evidence in the case that there were other

persons in the dance hall at the time of the commission of the murder and that the defendant was not there when the shot was fired. Some independent person has crept into the case, showing that a New York Frank was there, and considerable questioning, both on the part of the prosecutor and defendant's counsel as to this New York Frank appears in the case. Could it not have been, in view of the evidence, that some other person was guilty of the commission of this crime, who was not acting for the defendant and for whose acts the defendant was not responsible?

The latter request should have been charged by the Court to the jury.

I respectfully submit that a *venire de nouvo* should issue.

FRANK M. McDERMIT,
Of Counsel with Plaintiff in Error.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* VINCENZO BOVINO, *Plaintiff in Error.*	*On Writ of Error.*

BRIEF FOR THE STATE.

The plaintiff in error was convicted of murder in the first degree at the Essex Oyer and Terminer on January 28th, 1916.

FACTS.

On the night of the twenty-first day of April, 1914, Francesco Miserentino, also known as Frank Baker, was shot and subsequently, on the twenty-third day of April, 1914, died in the Newark City Hospital. Vincenzo Bovino, also known as James Bennett, was alleged to have shot him.

The murder took place at No. 238 Oliver street, in the City of Newark. The first floor of these premises consists of a saloon in the front and a dance hall in the rear, there being two entrances to the dance hall, one through the saloon and the other through a hallway leading from the street directly to the dance hall. The proprietor was Donato Colucci, also known as "Chick" Collins.

The main witness produced by the State was a woman named Mary Weber, twenty years of age (p. 18). This witness testified (p. 20) that she was in the saloon the night of the shooting, and the following is quoted from her testimony:

Q. What did you see happen there that night?

A. Well, I seen this girl named Lucy, I seen her talking to Baker in the hallway, and then I seen Big Sue, I seen Big Sue walk over to a table, the first time when I got in the dance hall Lucy was talking to Baker in the hallway and then Big Sue, she went over to Baker and she said, she was fighting with him and she said she was married to him. That is all I heard, and then Big Sue slapped Baker in the face and Baker slapped her back and then Big Sue walked over to a table to Jim Bennett and sat right alongside of Bennett, and then she said something to Bennett. About two minutes later Bennett jumped, got up from the table and was going to hit Baker and all the rest of them jumped after him and Big Sue grabbed Bennett's left hand and pulled him back again, and Jim Bennett pulled a gun out of his right hand pants pocket and shot right at Baker and then he dropped the gun and the gun was nickel-plated and black handle; then I ran out and Baker hollered "Bennett shot me." I ran out and went home.

Q. Did you say that Bennett tried to hit him? What did he do?

A. When Baker tried to hit him—

Q. Did you say that Bennett walked over towards Baker and tried to hit him or something like that?

A. No; I said Bennett walked over to Baker and tried to hit him and the rest of the bunch gets after him and Sue pulled his hand back again, and then the crowd got around him and Bovino took the gun out of his right hand pocket and shot right at Baker.

Q. How did he try to hit him?

A. He was trying to hit him with his hand.

Q. What did Baker do?

A. He didn't do nothing. Only standing there.

Q. How did he pull the revolver when he fired it?

A. Like this (indicating).

Q. How far apart were they?

A. About ten feet away.

Q. Which door did you go out of?

A. The street door, hall door.

Q. Out of the door? Out through the hall door?

A. Yes, sir.

Q. Did anybody else go out at the same time?

A. I don't know; I didn't see nobody. I just ran out and ran away. I don't know who ran out. I didn't turn around.

Q. How many shots were fired?

A. One.

Q. Do you remember where Baker was standing when Big Sue took him by the arm?

Mr. McDermit: She didn't say that.

A. I said Big Sue took hold of Baker's hand and pulled him back. I mean Jim Bennett's hand, I made a mistake.

By the Court:

Q. Who is Jim Bennett?

A. There he is, right there.

The Court: Indicating defendant.

This witness had no interest whatsoever in the outcome of the trial, and the authorities came into possession of her story under the following circumstances:

About a year and a half after the shooting, Mary Weber, on a Sunday night, was within a block of the dance hall where the murder took place (p. 50-51) and met two men. While talking with them Bovino passed and she remarked, "How is it that Bovino is out? I thought he was dead long ago." and she then told these two men that Bovino did the shooting. The following night this witness (p. 48) was followed by three men, of whom Bovino was one, and was finally accosted by two of the men and the following conversation ensued:

Q. You saw these two men there?

A. Yes, they was right there.

Q. Did you see anything of Bovino?

A. Yes; Bovino was right, staying back in the lot not far away from the corner.

Q. What did these men say to you?

A. He said to me, "Come on down to Chick's and have a drink." I said, No." He said, "Don't you want to come down?" They coaxed me and I said "No," and then he said, "Did you say anything about Bennett?" and I says, "Yes, I did, because it was true." That is the way I said it. Then he said to me, "If you don't look out for yourself he will shoot you, and if he don't shoot you I will do it," and then he jumped up and I ran away from him and ran all the way to Green street and saw the cop.

Q. You met an officer on Green street and you told him?

A. Yes, sir.

Q. And then you were placed under arrest as a witness?

A. Yes, sir.

Q. You say they asked you if you said anything about Bovino and you said yes. Had you said anything?

A. Yes, I did.

Q. How many people have you said anything to?

A. I only said it to two fellows. They heard me. It wasn't far away from the place I said that, it was only about a block away

from Chick Collins' place and he must have been over to Bennett's, and the next night they followed me up.

Q. How long before this night that these two men spoke to you had you spoken to these two fellows about Bennett?

A. I said it on Sunday night and Monday night they followed me.

Q. And these two men you spoke to about Bennett, that was about a block away from Collins' place?

A. Yes, about a block away. I was afraid he was going to shoot me and so I might as well come out with it.

Between the time of the shooting and the time that Mary Weber made her statement to the police about a year and a half later, she has assumed that Bovino had been electrocuted (p. 25, l. 1).

Anna Gurtler (p. 73) was another witness produced by the State who was present at the time of the shooting. She testified (p. 74, l. 25) that the defendant fired the shot.

In connection with the testimony of Anna Gurtler at a previous trial of this case, which was early in January, 1916, this witness first testified (her entire testimony being read into the record of the second and present trial p. 346, l. 33) that she did not know who did the shooting (p. 348, l. 26). Finally, after further examination by the prosecutor, the witness testified (p. 352, l. 20) that the defendant dropped the revolver, and further (p. 352, l. 28) that the defendant fired the shot.

At the time of the shooting a police officer, Joseph Arthur Miller, was in the saloon in front of the dance hall and upon hearing the shot ran from the saloon into the dance hall (p. 86) and asked Baker who shot him and Baker would not tell him. The revolver, which Baker had in his hand and which is referred to by the witness, was Baker's revolver and was taken from his pocket after he was shot. See testimony of Susan Brown Clark, p. 212. Miller stated (p. 93, l. 30) that he asked Baker several times who shot him and pleaded with him to tell him, but Baker would not tell, saying he would get his own revenge.

Baker was taken to the City Hospital immediately after the shooting, and about midnight James D. Bell, a police officer, accompanied by John L. Miller, another officer, but not the one who was in the saloon at the time of the shooting, went to the City Hospital and questioned Baker. The following is quoted, beginning p. 97, l. 38:

> Q. What was the conversation you had with him?
>
> The Court. Do you desire to cross-examine?
>
> Mr. McDermit. No, sir.
>
> A. Why, I went in to his bedside and I asked him was he going to tell me who shot him. He said to me, "Am I going to live?" I said, "Yes." "Then I won't tell you who shot me. I will get my own revenge."
>
> Q. How long were you there?
>
> A. I should judge about five or ten minutes.

Q. Then you left, of course?

A. Yes, sir.

This witness made a second trip to the City Hospital between four and five o'clock on the same day, having made his first visit very early in the morning. He again questioned Baker and Baker asked if he was going to live, and Bell said "Yes," and asked Baker if he would tell him who shot him, and Baker said, "No; I will get my own revenge."

About midnight of the same day Bell, accompanied by other police officers (p. 98, l. 25), went to the City Hospital. The following is quoted, p. 99:

> Q. Leave out what the nurse said and tell us what Baker said.
>
> A. I met a nurse; I went over to the bedside of Frank Miserentino. I said "Hello." He said, "I am going to die." I said, "Did you have the priest?" He said "Yes." I said, "Yes; you are going to die." I said, "Do you know me?" He said, "Yes; you are my friend, Jimmie Bell." I pointed to Officer Miller. I said, "Do you know this man?" He said, "Yes; that is my friend, Jack Miller." I said, "Are you going to tell me who shot you?" He said, "Yes." I said, "Who?" He said, "Jim Bennett." I said, "Are you sure?" He said, "Yes." With that he turned on his left side and died.
>
> Q. Do you know how long he lived after you got there?
>
> A. About a couple of minutes. Two or three minutes.
>
> Q. Were you there when he died?

A. Yes, sir.

The priest referred to in the conversation between Bell and Baker was the witness Vincent Sansone, who testified at p. 83 that he was a priest connected with the Catholic Church; that he visited the City Hospital between eleven and twelve o'clock and talked with Baker; that he administered the last rites to him at that time (p. 84, l. 40).

The dying declaration of Baker bears all the earmarks of the truth. This man at the time he was shot refused to tell the police officer in the saloon who shot him, stating that he would get his own revenge. On two occasions on inquiring from Officer Bell if he would live, he refused to tell him, and finally after being informed that he would die, and having had the last rites of his church administered to him, he sent for Officer Bell and stated in his presence and in the presence of the other witnesses, that "Jimmie Bennett" (Bovino's nickname) shot him.

The testimony of Officer Bell was corroborated by Peter Remondalli, a court interpreter, p. 102, Officer John L. Miller, p. 99, and Officer Walter Byrnes, p. 157. The presence of the police officers was testified to by Lulu M. Field, the nurse, p. 147, although she did not know what was said between Baker and the officers (p. 152, l. 30).

The defense was an alibi. The defendant while admitting that he was in the dance hall just previous to the shooting, testified that at the time the shot was fired he was at the corner of Oliver and Adams sreets (p. 186, l. 35) with two friends, Donato Colucci, known as "Chick Collins," who was the proprietor of the saloon (p. 233), and Donato Colachio, otherwise known as "Joe, the Kid" (p.

184, l. 15). This corner is about two hundred feet from the entrance to the saloon. The defendant's story was that he and Collins heard that some gun men were coming from New York to take a girl out of the saloon (p. 185, l. 10), and that Collins, the proprietor of the dance hall, and Donato Colachio and he were going to the corner to interview them. While standing at the corner they claimed to have heard the shot and run back to the saloon.

Before going to the corner the defendant and Collins stood outside of the dance hall (p. 168, l. 30) and saw Frank Baker, the man who was killed, and had a talk with him. There was also a woman named Lucy Ens, one of the State's witnesses, outside of the saloon. The defendant testified (p. 169) that he was outside with Chick Collins and Donato Colachio, known as "Joe, the Kid," and that these three men were talking with Frank Baker and Lucy Ens. Upon examining the testimony of Donato Colachio ("Joe, the Kid") (p. 271) he testified that he overheard a conversation between the defendant and Chick Collins and they went out of the saloon ahead of him, and he followed them out and walked down to the corner after them and saw no one outside of the saloon except Chick Collins and the defendant. He further testified on cross-examination (p. 274-275) that he saw the defendant and Chick Collins walk out of the door and followed them right out; that he walked down to the corner with the defendant and Chick Collins and that all left the saloon together, the defendant and Chick Collins in front of him, and that they had not proceeded twenty feet from the saloon when he came out of the door. This witness was a relative of Chick Collins and a friend of the defendant (p. 275, l. 38).

The defendant attempted to establish his alibi by his own testimony, that of Chick Collins, the proprietor of the dance hall, Donato Colachio, known as "Joe, the Kid," Vito Colucci, brother of Chick Collins, Artula Scola, Pasquale Lafragola and a woman named Angelina Scria. The testimony of Donato Colachio has already been considered. Angelina Scria testified (p. 335) that she saw the three men at the corner. This woman testified on cross-examination (p. 338, l. 35) that she saw the three men go right in the saloon, and they didn't stop outside at all. This was in direct contradiction with all three of the witnesses on the corner, who swore that when they came up to the front of the saloon Baker, the man who was shot, was already outside and there was a crowd of people there.

Artula Scola testified (p. 278) that he saw the three witnesses at the corner and he was with Pasquale Lafragola. This witness testified on cross-examination (p. 282, beginning l. 20) that he arrived in front of the saloon at about the same time as the other three men on the corner, and they practically went in the saloon together; that he first saw Baker sitting on a chair in the saloon.

Pasquale Lafragola testified (p. 283) to seeing the three witnesses on the corner. He was a habitue of the saloon and knew both the defendant and Collins (p. 288).

The testimony having been closed on January 27th, the following morning the defense produced a witness named William H. Buengener (p. 407). This witness testified that he was in the Newark City Hospital at the time Baker died. That one of

the police officers asked Baker who shot him and he (Baker) said he was quarreling with a woman when the shot was fired and he could not see who shot him (p. 410).

This witness was committing perjury because he testified that Baker died during the daytime and that Miss Higgins, a day nurse (p. 419, l. 19) was standing at the bed at the time Baker died. He admitted that he spent some time in Collins' saloon the night before he testified.

This testimony was rebutted by the police officers and other witnesses and Lulu M. Field, the night nurse, who was present when Baker died, and by Regina Furst, who testified that Miss Higgins was the day nurse.

Susan Brown Clark was a witness produced by the defendant. She testified (p. 210) that she was present at the time of the shooting, standing within a few steps of Baker, with whom she had been quarreling immediately prior to the firing of the shot. She testified (p. 214, l. 26) that the defendant was not present at the time of the shooting. She testified before the Grand Jury (pp. 455-456) that she did not see the defendant at the time of the shooting, but she saw him in the hall. The hall referred to was the dance hall. The defendant himself testified that he was not in the dance hall, but when he came from the corner he went into the saloon, and did not go back in the hall until after Baker was taken to the hospital.

Susan Brown Clark made a statement to the police, Ex. S 9 (p. 464) a day or so after the shooting took place, in which she said:

"I was standing right by him (Baker) when he yelled out, 'Sue, Sue, I am shot.' Everybody there scattered like a lot of Indians, Bennett, Collins, Joe the Kid, Lame Joe, and Joe from New York. Chick Collins no more than the shot was fired, came towards Baker."

The testimony of this witness was thoroughly discredited by her testimony before the Grand Jury and by her statement to the police.

The main witnesses for the defendant's alibi, namely, the defendant himself, Chick Collins, Donato Colachio and Vito Collins, or Colucci, were together in the saloon from the time of the shooting until about four o'clock in the morning, giving them plenty of time to prepare the alibi which was presented at the trial.

The defendant, in his own behalf, testified that he did not do the shooting, and that he was at the corner when the shot was fired. He made two statements to the police, one when he was first arrested in April, 1914, and the other when he was re-arrested in October, 1915. In the first statement, Exhibit S 6 (p. 457), the defendant said he was at the corner of Oliver and Adams streets when the shot was fired, with Chick Collins and Donato Colachio. He further said, in the first statement, that after Baker had been taken to the hospital he left and went to Jefferson street, where his father lives, where he went in the yard and sat on the back stoop for about half an hour. While the defendant admitted stating this to the police, he denies that he sat on the back stoop of the house on Jefferson street.

In the second statement, Ex. S 8 (p. 461), the defendant stated at p. 463 that a man known as N. Y. Frank had a revolver, which the defendant and another man took away from him, and later in his statement (p. 464) stated that this man known as New York Frank practically admitted that he had done the shooting.

The defendant admitted on cross-examination that his accusation against New York Frank was false, and while he admitted that the statement contained what he told the police (p. 197), he testified that he tried to put the blame on another man because he heard a voice in the Newark Police Headquarters say, "Bennett shot him."

The case comes before the Court on a strict bill of exceptions and under the 136th Section of the Criminal Procedure Act.

There are twenty-eight assignments of error and twenty-seven causes for reversal. The assignments and causes are substantially the same.

POINT I.

The plaintiff in error first raises assignment 2 and cause 3. These arose upon the cross-examination of Mary Weber (pp. 57-58). The record discloses that there was no ruling of the trial judge upon which an exception was allowed.

The witness was asked this question: Q. Did you hear any words between Bennett and Baker before the shot was fired? and answered, "Nothing, no." The Court then said, "It is not necessary to cross-examine the witness in this fashion."

Whether counsel was addressing the witness in

loud tones or shaking his fist at her, or in some other manner which the Court thought was objectionable, the record does not disclose.

The cross-examination of this witness had been very extended, as will be apparent from an examination of the record.

This witness had described the shooting under direct and cross-examination (p. 41-42-43). There was no question pending at the time the Court interrupted counsel, and no further question was asked.

The only ground upon which there could be a reversal under this point is that the defendant suffered manifest wrong and injury by the action of the trial judge.

It is impossible to see in what respect the plaintiff in error was prejudiced.

Counsel for the plaintiff in error states in his brief that the examination was based upon an examination made previously by the Court. The questions asked by counsel are practically a repetition of those asked by the Court, and it follows that the interruption by the Court could not have been called forth by reason of the questions themselves, but must have been induced by the method of examination.

Counsel made no attempt to ask any further questions and obtain a ruling of the Court as to their admissibility. Apparently he was winding up his cross-examination at the time he was interrupted.

POINT 2.

Under this point in the brief of the counsel for the plaintiff in error, assignments 3, 11 and 15, and causes 4, 11 and 15 are argued.

(A)

Assignment 3 and cause 4 arose out of the testimony of the witness Anna Gurtler (p. 79).

Assignment 3 (p. 471) is as follows:

Because the trial court erred in refusing to allow the State's witness, Anna Gurtler, to answer the following questions: Q. You deny you swore under oath first that you didn't know anything about the shooting at all? Q. Didn't you swear to a half a dozen different lies on the witness stand the last time and admit it?

To the first part of assignment 3 no exception was asked or allowed. To the second question contained in assignment 3, there was an objection which was sustained and exception allowed, signed and sealed.

The witness was asked this question: Q. You deny you swore under oath first that you didn't know anything about the shooting at all? The Court remarked, "What is the use of wasting time on questions about that?"

The witness just previously had answered practically the identical question.

As to the second question, to which an exception was allowed, the question called for a conclusion, and did not bring to the attention of the witness any contradictory statement.

Immediately following the allowance of the exception the witness was again asked the question, which called forth the remark from the Judge above quoted, and she answered.

The plaintiff in error could have suffered no injury by reason of the ruling of the Court, even though erroneous, because all the testimony of this witness at the previous trial was read into the record when this witness was recalled for further cross-examination at page 346. This was done without objection.

Admitting, for the sake of argument, that the questions were proper, the entire testimony of this witness at the previous trial was read to the jury. Consequently, they could readily see whether she swore to a half a dozen different lies at the previous trial.

(B)

Assignment 11 and cause 11 arose from the testimony of Dr. Staehlin (p. 147). The question asked was: "Q. The amount of liability on the statement made by a person who was within three minutes of his demise and was vomiting, would you consider that an absolutely correct statement?"

The question was objected to and the Court ruled that there was no evidence to sustain it, and that the same question had already been answered.

As a matter of fact, the same question was asked and answered twice (p. 146, l. 30), (p. 146, l. 40)

Dr. Staehlin had fully explained to the jury the physical condition of Baker and counsel in his question was asking the doctor to state whether or

not a statement made by the witness under the circumstances was an absolutely correct one. This certainly was for the jury.

No exception was asked or allowed, and therefore this ruling of the Court comes under the cause for reversal only. It is respectfully submitted that the plaintiff in error suffered no manifest wrong or injury in the exclusion of the question.

(C)

Assignment 15 and cause 15 are found at page 165. They arose out of the testimony of Timothy E. Scales, Clerk of the Grand Jury.

The question was as follows: "Q. Was she subsequently subpoenaed before any other Grand Jury in this county and gave testimony again in this case?"

Counsel in his brief seems to have in mind that the testimony of Mr. Scales at this point referred to the testimony of the witness Susan Brown Clark before the Grand Jury. An examination of the case at page 162 discloses that the testimony referred to was that of Mae Gilling.

Anna Mae Gilling was a witness offered by the State (p. 108). She had testified (p. 109, l. 20) that she didn't see the defendant in the hall at the time of the shooting. Following this statement, in view of its favorable aspect to the plaintiff in error, the Clerk of the Grand Jury was called to prove what she had said before the Grand Jury and thus wipe the slate clean in accordance with the doctrine laid down in the case of State vs. D'Adame, 55 Vroom, 386.

Whether this witness was subsequently subpoenaed before any other Grand Jury was immaterial.

Bearing in mind that Anna Mae Gilling was a witness produced by the State, no foundation had been laid for any examination concerning statements made by this witness other than the foundation laid upon the witness' direct examination (p. 118). In her direct examination she had been asked concerning her testimony before the Grand Jury in 1914, and answered the questions asked Mr. Scales in his examination.

If this witness had made other statements before any other Grand Jury she could have been recalled for cross-examination and a proper foundation laid to contradict her.

The only purpose of calling Mr. Scales was to counteract the effect of her testimony on direct examination and to show that on a previous occasion she had made a contradictory statement, and in this way eliminate her testimony on this particular point from the case.

POINT 3.

Under this point counsel for the plaintiff in error argues 4th, 5th, 6th, 7th and 12th assignments of error and 5th, 6th, 7th and 12th causes for reversal.

The dying declaration of Baker is brought before the Court under this point.

The fourth assignment of error is found at page 96; the fifth at page 99; the sixth at page 102; the seventh at page 157, and the twelfth at pages 148-149.

It is sufficient to answer the arguments of counsel for the plaintiff in error with respect to nearly all the assignments of error and causes for reversal by calling to the Court's attention that no objection whatever was made to the testimony of the witnesses except that of Lulu M. Field (148-149).

Upon examining the testimony of Miss Field, who was the night nurse in the hospital, the record discloses that she was asked if she knew how the police officers happened to come, and answered that they were sent for. After the question was asked and answered, counsel moved to strike the answer out, and the Court asked the witness this question, "By whom were they sent for?" and she answered, "By myself," and the Court then asked counsel, "Now, you withdraw your motion?" and counsel said "Yes." Counsel for the State continued his examination and asked the witness if she sent for the officers at anybody's request, and she said "Yes." This question was objected to after it was answered. The Court then asked the witness this question, "By whom was the request made?" and she answered, "By Mr. Baker." After this question was asked and answered, counsel objected.

Counsel for the plaintiff in error in his cross-examination of Dr. Staehlin had tried to make it appear to the jury that Baker's mind was not clear, and the request by Baker of the nurse, and her conversation with him was certainly competent to show the condition of his mind, but in addition to that, to follow the significance of the police officers coming to the hospital shortly before Baker died, the jury was entitled to have the testimony as it was some evidence of Baker's state of mind, tending to

show that he had an impending sense of death. As Baker sent for Bell at midnight he probably thought he would not live until morning.

Professor Wigmore in his Treatise on Evidence devotes sections 1430 to 1450, Volume 2, to dying declarations.

Counsel will not copy the sections in full, as they may readily be examined by the Court.

The requirements mentioned by Professor Wigmore are briefly as follows:

Section 1434—The declaration must concern the facts leading up to or causing or attending the injurious act which has resulted in the declarant's death.

Section 1439—It is essential that the declarant should appear to have a consciousness of the approach of death at the time of making the declaration.

Baker stated to Bell that he was going to die and Bell confirmed him in the statement.

Section 1440—The belief must be not merely of the possibility of death, nor even of its probability, but of its certainty. The essential idea is that the belief should be a positive and absolute one, not limited by doubts or reserves.

The fact that Baker already had a priest, who administered the last rites, and the fact that there was no qualification in his statement to Bell, "I am going to die," fulfills the requirement above mentioned.

Section 1441—The expectation must be a speedy death. Nevertheless, no definition of time can be

fixed; the determination must vary with each case. after all the circumstances are considered.

The fact that Baker sent for Bell at midnight, not waiting until the next day, is evidence that he expected to die within a short time.

Section 1442—In ascertaining this consciousness of approaching death, recourse should naturally be had to all the attending circumstances. It has been contended that only the statements of the declarant could be considered for this purpose; or less broadly, that the nature of the injury alone could not be sufficient, that is in effect, that the declarant must have shown in some way by conduct or language that he knew he was going to die. This, however, is without good reason. We may avail ourselves of any means of inferring the existence of such knowledge; and, if in a given case the nature of the wound is such that the declarant must have realized his situation, our object is sufficiently attained. Such is the settled judicial attitude.

In view of Baker's declaration that he was going to die, in view of his wound, which was in the stomach, and in view of the fact that he vomited blood, the trial judge, even though he had been asked to rule upon the testimony, would have been justified in finding that Baker was under a sense of impending death.

> "The question whether declarant was under an impending sense of death is for the determination of the Court, and its finding, if supported by any legal evidence, is not reviewable by ordinary writ of error."
>
> State vs. Monich, 64 Atl., 1016.

The case of Peak vs. State, 50 N. J. L., 179, cited by counsel for plaintiff in error does not show a similar situation to the testimony in this case.

Chief Justice Beasley, at p. 223, says: "The words used by her (the deceased) convey, in their usual and natural meaning, that there was a possibility, but not a probability that she would survive."

In the Peak case in the absence of the dying declaration, a verdict against the defendant could not have rested upon any reasonable basis. (Opinion of the Court, p. 225.)

Among the New Jersey cases in which dying declarations have been considered are Donnelly vs. State, 26 N. J. L., 464-601; State vs. Peak, 50 N. J. L., 179; State vs. Monich, 64 Atl., 1016; State vs. Biango, 75 L., 284; State vs. Barnes, 75 L., 428; State vs. Leo, 80 L., 21.

POINT 4.

Under point 4, counsel for the plaintiff in error has argued assignments 8, 9, 10, 13, 14, 16, 17 and 18 and causes 8, 9, 10, 13, 14, 16, 17, 18.

These assignments of error and causes for reversal may be argued under three branches:

1. The contradiction of the testimony of Anna Mae Gilling by her testimony before the Grand Jury.

2. The contradiction of the testimony of Susan Brown Clark, defendant's witness, by her testimony before the Grand Jury, and

3. The admissibility of the testimony before the

Grand Jury as a means of contradicting the testimony at the trial.

(A)

Assignments of error and causes numbers 8, 9, 10, 13 and 14 relate to the witness Anna Mae Gilling.

Assignments and causes 8, 9 and 10 are found on the record at pages 119-120, and assignments of error and causes 13 and 14 are found at pages 164-165 on the record. Anna Mae Gilling was a witness called by the State. This witness testified on her direct examination at page 109, concerning what took place at the time of the shooting. The part of her testimony which was adverse and which surprised the State is quoted from page 109, l. 15:

> "Then they started up a dance to avoid trouble, so I didn't pay any more attention until I heard the shot. Then all the crowd gathered around, but I didn't see Jim Bennett in the hall at the time of the shooting."

This witness had testified before the Grand Jury, Ex. S 3 (p. 451), as follows:

> Q. Do you know Bennett?
>
> A. I know him to see him.
>
> Q. Did you see him in the hall?
>
> A. He was standing in the saloon door.
>
> Q. How far away from Baker when you heard the shot?
>
> A. There is a piano on one side of the entrance to the hall. He stood by the saloon

door. That is not very far away, because the hall is not very big.

In view of the witness' testimony that she did not see Baker in the hall at the time of the shooting, the State, at pages 118-119, endeavored to refresh her memory by recalling to her her testimony before the Grand Jury.

It would have been impossible for the prosecutor to have immediately jumped to the exact question in point, and, therefore, the preliminary questions were asked and answered, which are found at p. 119. These questions and answers would have in no way injured the plaintiff in error, because they recited facts which were not denied by the witnesses either for the State or the plaintiff in error.

The witness was then asked (p. 120) if she testified before the Grand Jury that the plaintiff in error was standing in the saloon door, three or four feet away. She stated that she did not remember whether she so testified before the Grand Jury.

These questions were legal, both upon the theory of refreshing the witness' recollection and to show that she had made a contradictory statement upon a previous occasion. If she had admitted making a contradictory statement, the matter might have been dropped at that point, because the effect of her statement that she did not see Bennett in the hall at the time of the shooting would have been neutralized. But the witness having testified that she did not remember what she said before the Grand Jury, it then become competent for the State to prove her contradictory statement, by proving what she said before the Grand Jury.

Mr. Scales, the clerk of the Grand Jury, was called to prove what the witness testified to before the Grand Jury.

Mr. Scales was asked preliminary questions, leading up to the question in dispute, and his testimony (p. 164) shows that this witness testified before the Grand Jury that the plaintiff in error was standing at the saloon door three or four feet away.

The State, being in possession of this witness' testimony before the Grand Jury, was justified in believing that the witness would testify before the trial jury to the same effect as she testified before the Grand Jury. Therefore, her statement at page 109 that she did not see the plaintiff in error at the time the shot was fired came as a complete surprise.

Under these circumstances the State was entitled to call her attention to her testimony before the Grand Jury and when she stated that she could not remember whether or not she testified before the Grand Jury as called to her attention, the State was entitled to prove what her testimony was before the Grand Jury for the purpose of wiping the slate clean.

The case of State vs. D'Adame, 55 Vroom, 386, is the authority relied upon by the State for the procedure taken.

The jury was fully instructed as to the effect of the testimony of this witness before the Grand Jury (p. 439, l. 30, to p. 440, l. 25).

(B)

Assignments of error 16 and 17 and causes 16 and

17 refer to the contradiction of the testimony of Susan Brown Clark by her testimony before the Grand Jury. See record, p. 228, p. 398

Susan Brown Clark was a witness produced by the defense, and upon cross-examination was confronted with her testimony before the Grand Jury. At page 227 an objection was made that this method of examination was illegal because the testimony given before the Grand Jury was secret. The same objection was raised upon the examination of Mr. Scales, clerk of the Grand Jury, called in rebuttal (p. 398).

The contradiction of the testimony of Susan Brown Clark by her testimony before the Grand Jury stands in an entirely different class from that of the Gilling woman, because the Clark woman was called by the plaintiff in error.

It is contended by the State that a prior contradictory statement may be shown wherever made, and it must be conceded that if the Grand Jury minutes were competent to prove a contradictory statement, that the method used was legal. Whether or not the Grand Jury minutes were competent, will be considered under the next heading.

(C)

Admissibility of testimony as to what witness said before the Grand Jury.

This subject is treated by Professor Wigmore in his work on evidence, Vol. 4, sections 2363, etc.

The following is quoted from Section 2363:

"a. Using the testimony as a self-contradiction in impeachment of the witness. It is now

universally conceded that a witness may be impeached, in any subsequent trial, civil or criminal, by self-contradictory testimony given by him before the Grand Jury. In the same way a party to the cause not taking the witness stand may be impeached by his admissions made in testifying before the Grand Jury. The occasional statutory sanction cannot be construed to prohibit the latter, which goes upon the same reasoning.'

Professor Wigmore says of the early New Jersey case of Imlay vs. Rogers, 2 N. J. L. 347:

"The following early doubt in New Jersey would today be repudiated: 1800."

Imlay vs. Rogers, 2 N. J. L. 347 (two judges pro and two judges con).

Counsel in his brief, at page 20, refers to the cases of Wilson vs. Hill, 13 N. J. E. 133, and State vs. Dayton, 23 N. J. L. 158.

In the Wilson case the following is quoted from the opinion of the Chancellor:

"The wife was most unlawfully and improperly brought before the Grand Jury, and compelled to testify on a criminal charge against her husband. There is no clearer principle of law than that a wife will not be permitted to testify against her husband on a charge of bigamy, even by the husband's consent."

And at page 146:

"Waiving all discussion of the long-agitated question whether a grand juror should ever be

permitted, upon a mere question of property, to violate privileged communications by disclosing the secrets of the Grand Jury room; assuming for the present, what I do not admit, that such evidence may be lawful, I think it clear that the evidence here offered is not admissible, and if admissible it is entitled to no weight whatever."

Wilson vs. Hill, 13 N. J. E. 146.

The evidence was excluded because the wife testified against her husband.

An examination of the Dayton case discloses that it does not touch upon the point in question.

This question is one of supreme importance in the administration, not only of the criminal law, but of the civil law. The testimony of a witness before the Grand Jury is as solemn as his testimony before a trial jury or a judge sitting without a jury. It would be a lamentable state of affairs if it could not be shown to the trial court that a witness had previously made a contradictory statement under oath before a Grand Jury. What credence would be given to a witness who testified to one state of facts before a trial court and to another before a Grand Jury? If a witness' testimony before the Grand Jury was excluded and his testimony accepted before a trial court, an important question of fact might be decided upon the testimony of a perjured witness.

The question would seem to resolve itself into one of public policy, on the one hand, excluding the testimony to protect the secrets of the Grand Jury room; and on the other hand admitting the testi-

mony and disclosing the secrets of the Grand Jury room for the purpose of discrediting a perjuring witness.

How can there be any choice between these two situations? What after all are the secrets of the Grand Jury room when on many occasions their deliberations are known on the street before their chairs are cold in the jury room?

The State feels that nothing can be added to the opinion of so great an authority on evidence as Professor Wigmore and is content to rest upon his statement of the law.

POINT 5.

Under this point the nineteenth assignment of error is argued. It is found at page 20 and is as follows:

> "Of course, this is not the testimony of the officers that the defendant shot deceased, but if the jury believes that Baker, in the presence of impending death, said the defendant shot him, the jury in its discretion may consider the statement of Baker as evidence against the defendant."

It must be conceded that a dying declaration is evidence against the defendant.

Counsel for the State is unable to follow the argument of counsel for the plaintiff in error in reference to this assignment of error.

It is argued by counsel for the plaintiff in error at page 21 of his brief that this (referring to the excerpt from the Judge's charge) is in effect charging the jury that only upon this the jury should

convict the defendant without even considering the reasonable doubt upon all the evidence in the whole case.

The jury, in reference to reasonable doubt, was fully charged by the trial judge, beginning p. 428, l. 20.

It is respectfully submitted that there was no error in this assignment.

POINT 6.

Under the sixth point of the brief of the counsel for plaintiff in error, assignments 20 and 21 and causes 20 and 21 are argued.

Assignment 20 (p. 474) is found in the record at p. 435 and is as follows:

> "Because the trial court erroneously charged and instructed the jury a misstatement of facts in evidence as follows:
>
> " 'Defendant thought he would try to make a false accusation against this New York Frank to divert suspicion from himself.' "

Assignment 21 (p. 474) is found in the judge's charge (p. 438) and is as follows:

> "Because the trial court erroneously charged and instructed the jury among other things as follows:
>
> " 'That this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself, in his own favor, may be considered by the jury as showing a consciousness of guilt on the part of the defendant.' "

In reference to both of these assignments of error, the trial court, beginning p. 431, l. 30, and continuing to p. 438, l. 35, laid before the jury the contentions of the State and the defendant.

The trial court started to charge in reference to the contentions of the parties as follows (p. 431, l. 30):

> "The State contends that many witnesses produced by the State and the defense have testified to certain facts to support the charge made in the indictment,"

and after reciting the testimony of the witnesses and commenting thereon, the Court continues (p. 435, l. 23):

> "The State contends, therefore, by reason of this and other evidence that is said to be before the jury, that the jury should arrive at a conclusion beyond a reasonable doubt, that this defendant fired the fatal shot."

The trial judge then continued (p. 435, l. 27):

> "The defendant contends that the witnesses produced by the defense and some of those by the State have testified to the facts which show that defendant did not fire the shot, or that in all events raises a reasonable doubt of the guilt of the defendant."

After reciting the testimony offered by the witnesses for the defendant, the Court continues (p. 437, l. 1):

> "The defense therefore contends that the evidence shows that the defendant did not fire the shot, and that in all events the facts proved show that the State has failed to sustain the

burden of proof that the defendant beyond a reasonable doubt fired the fatal shot."

The trial judge then continued (p. 437, l. 10):

"The State contends in reply to these matters presented for your consideration * * *."

The trial judge then continued to outline the testimony offered in rebuttal by the State, and finally at page 438, l. 29, said:

"The State contends that this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself, in his own favor, may be considered by the jury as showing a consciousness of guilt on the part of the defendant."

In the case of State vs. Venzio, 55 Vroom 418, the Court of Errors considered a situation somewhat similar to this.

In that case the trial court charged the jury as follows:

"The State insists that the defendant, by his admissions, voluntarily made, has acknowledged that he wrote the letter. If he did make such admissions, if you believe that such admissions were made by him, that is the strongest kind of evidence against him."

The Court of Errors said in reference to the charge:

"It is simply a statement of what the State claims, and manifestly if the defendant made such admissions, they were the strongest kind of evidence against him."

The following is quoted from the opinion of C. J. Gummere in the case of State vs. Loomis, 97 Atl. Rep., p. 897:

> "The next ground for reversal is that the court erroneously charged the jury that 'The State contends that she (Marie Crogan) was treated with a medicine that Dr. Young gave her,' and the argument is that this was not proved by the evidence in the case. But in the excerpt complained of the court has not undertaken to show any facts in proof, but merely what the contention of the State was. It is not suggested the court was in error in this statement, and of course there was nothing objectionable in referring to what the State's claim was."

But there is substantial authority sustaining the correctness of the charge.

The court is referred to Wigmore on Evidence, Vol. 1, Sec. 278.

Professor Wigmore, in the note to this section, at page 357 refers to the case of Commonwealth vs. Webster, 5 Cushing, 296-316, and quotes from the opinion of Chief Justice Shaw in that case as follows:

> "To the same head may be referred all attempts on the part of the accused to suppress evidence, to suggest false and deceptive explanations, and to cast suspicion without just cause on other persons —all or any of which tend somewhat to prove consciousness of guilt, and, when proved, to exert an influence against the accused. But this consideration is not to be pressed too urgently; because an innocent man, when placed by circumstances in a

condition of suspicion and danger, may resort to deception in the hope of avoiding the force of such proofs."

It is suggested in the brief of counsel for the plaintiff in error that there was no attempt by the plaintiff in error to fabricate false evidence in his favor. The court is referred to the cross-examination of the plaintiff in error, p. 197 to p. 201, and also to the statement of the plaintiff in error, Exhibit S 8, p. 461.

It is respectfully submitted that there is no error in the assignments of error above mentioned.

POINT 7.

Under this point the 22nd assignment of error will be considered.

This assignment of error is found at p. 474 and is as follows:

"22. Because the trial court erroneously charged and instructed the jury among other things as follows: 'If the jury arrive at the conclusion that the defendant fired the fatal shot it seems to be murder in the first degree or in the second degree.' "

This excerpt from the judge's charge is found at page 438.

The trial judge defined murder in the first and second degree, and manslaughter, at pp. 429-431.

The trial judge, at p. 442, instructed the jury that they might find the defendant guilty of murder in the first degree, murder in the second degree, or manslaughter.

There was no evidence in the case which would justify a verdict of manslaughter. This is made clear by an examination of the testimony of Mary Weber, pp. 20-21, which has been heretofore quoted.

It is apparent that the trial judge had in mind that the evidence justified a verdict of murder in the first or second degree or not guilty.

The following is quoted from State vs. Biango, 46 Vr., 284, Supreme Court, Affirmed 50 Vr., 523:

> "The act of stabbing being unlawful, was a breach of the peace, and being without justifiable provocation was malicious, and where an act possessing these attributes resulted in death, the homicide was murder at the common law, and is murder in the second degree under our statute."

The following is quoted from the opinion of the court in State vs. Pulley, 53 Vr., 580, Court of Errors and Appeals, at p. 585:

> "And so where in a case like this there are but two versions of the homicide, the one showing that the defendant is guilty of the crime of murder, and the other showing him to be innocent of the charge made against him, the trial judge is entirely justified in telling the jury that the defendant, if guilty at all, is guilty of murder, and not of manslaughter."

It is argued by counsel for the plaintiff in error that under the excerpt from the charge complained of, the question of manslaughter could not enter into the case, but this is refuted by the subsequent instructions to the jury, p. 443, l. 1.

POINT 8.

Under this point the twenty-third assignment of error is argued by counsel for the plaintiff in error.

This assignment, p. 475, is as follows:

"23. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

" 'The statements, admissions and accusations of a party defendant, may, however, be used not only in relation to credibility and to contradict his testimony upon the stand, but as evidence of the facts therein set forth, and may be used against him as any other admission by a party.' "

This excerpt from the judge's charge is found at p. 441.

Counsel does not cite any authority showing that there was error in this part of the charge.

The admissions and declarations of the accused have always been received in evidence in this State. See State vs. Rosa, 43 Vr. 462.

POINT 9.

Assignment twenty-four is argued under this point. It is as follows, p. 475:

"24. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

" 'The jury has a right to consider the very grave interest which this defendant has in any verdict which it may render and whether or not that interest has affected the truthfulness or credibility of the testimony of defendant.' "

This excerpt from the judge's charge is found at p. 442.

It has always been a well recognized rule that the jury may consider the interest of a party in the outcome of a suit.

The following is quoted from Wigmore on Evidence, Vol. 2, Sec. 968:

> "The fact of being a party in the cause, and in particular a defendant in a criminal cause, may be considered as affecting the witness' credibility. The only question that arises in this connection is whether the judge under the unfortunate modern rule forbidding a charge to the jury upon the facts or upon the credibility of specific witnesses is violating that rule in mentioning this proposition to the jury in a criminal case—a question which has to do with the law of trials, not of evidence."

That the trial judge may comment upon the facts is too well established in this State to make it necessary to cite authorities.

Professor Wigmore, in the note to section 968, referring to the defendant's credibility by reason of his being a defendant, says:

> "It is regrettable that courts are willing to waste time in discussing in their opinions such a self-evident proposition."

POINT 10.

Under this point counsel for the plaintiff in error argues the 25th, 26th, 27th and 28th assignments of error. They are found at pages 444-445.

The 25th and 27th assignments of error will be considered together. They are as follows:

"25. Because the trial court erred in refusing to charge the jury as requested by defendant's counsel, as follows:

" 'Before the jury can convict they must find that the cause of the death of the deceased has been beyond a reasonable doubt proved to be murder committed by the defendant.'

"27. Because the trial court erred in refusing to charge the jury as requested by defendant's counsel, as follows:

" 'That if the jury have a reasonable doubt derived from all the evidence, they are bound to give the defendant the benefit of such a doubt.' "

The following is quoted from the charge of the trial judge, p. 428, l. 20:

"The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of the defendant, and the defendant is entitled to the benefit of a reasonable doubt not only as to the commission of the crime and the nature of the offence, but also as to the degree of the offence. The State must likewise show all of the essential elements of crime, beyond a reasonable doubt, and the grade or degree of the offence which is charged. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and does not shift from the State throughout the case."

The trial court then continued, p. 428, l. 35, to define reasonable doubt.

Since the trial court substantially charged the requests to charge, the refusal to charge as specifically requested was not error.

The following is quoted from the opinion of the Court in State vs. DeGeralmo, 54 Vr. at p. 138:

> "We are of opinion that the defendant is entitled to have the legal proposition requested distinctly charged, and that this was not complied with by the court unless the legal effect was substantially covered by its charge to the jury."

See Warner vs. State, 27 Vr. 686.

Assignment of error No. 26 is as follows:

> "Because the trial court erred in refusing to charge the jury as requested by defendant's counsel as follows:
>
> " 'That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case unless it generates a belief of guilt of the party charged, to the exclusion of all reasonable doubt.' "

This request embodies an unsound principle of law.

In a criminal prosecution the burden is upon the State to prove the defendant's guilt not by a preponderance of the evidence, but beyond a reasonable doubt. This proposition is well established. The court is referred to the case of State vs. Lax, 42 Vr. at p. 387, where the following is quoted from the opinion of Justice Garretson:

> "In all cases the State must establish the guilt of the accused beyond a reasonable doubt.

The burden of proof is always upon the State, and that burden never shifts."

The trial judge having charged the presumption of innocence, burden of proof and reasonable doubt, had instructed the jury upon all points in this connection upon which the plaintiff in error was entitled to have them instructed.

The request to charge substantially embodies the legal proposition that mere preponderance of evidence is sufficient to prove the guilt of defendant beyond a reasonable doubt.

In the case of Blackwell vs. Ellis, 41 Vr. at p. 265, Justice Garretson distinguishes between the amount of proof required in a criminal and civil case, declaring that in a civil case mere preponderance of evidence is sufficient, while in a criminal case the proof must be beyond a reasonable doubt.

In the charge to a jury in a criminal case, preponderance of evidence has no application.

Assignment No. 28.

"28. Because the trial court erred in refusing to charge the jury as requested by the defendant's counsel as follows:

" 'That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some person for which he is lawfully responsible, and if the death of the deceased was caused by the act or omission of some other person other than the defendant, who was not acting in concert with the defendant, then the defendant is not guilty.' "

This request to charge embodies a situation of which there was no proof. The case was barren of evidence which would tend to show that another person acting in concert with the defendant fired the shot.

The evidence of the State was that the plaintiff in error fired the shot, and his evidence was that he did not. The name of no other person was mentioned as having had anything to do with the shooting, except the man wrongfully accused by the plaintiff in error. Under these circumstances there was nothing in the case which would require any instruction by the trial judge of the plaintiff in error's responsibility for the act or omission of some other person.

The following is quoted from the opinion of Justice Minturn in State vs. Skillman, 47 Vr. at 470:

> "The court refused to charge that the verdict would not establish or set aside the will and that no legacy mentioned in the will would be paid upon a verdict of not guilty, nor would payment thereof be refused if the verdict were guilty. This request was properly refused. There was no evidence in the case which required such instruction and the matters set forth were not within the issue tried."

This case was affirmed 48 Vr. 804.

If that part of the request to charge referring to the act or omission of another party could be legally withdrawn from the request, still the request to charge would be faulty because there was no evi

dence in the case which tended to show that the deceased met his death by reason of the omission of any duty by the plaintiff in error.

It is respectfully submitted that the judgment should be affirmed.

Submitted June Term, 1916.

ANDREW VAN BLARCOM,
Assistant Prosecutor of the Pleas of Essex County.

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Writ of Error.

Filed.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY:

To our Judges of our Court of Oyer and
[L. S.] Terminer of the County of Essex, constituting the Court of General Quarter Sessions, in and for said County, GREETING:

Because in the records and proceedings and also in the giving of judgment upon a certain indictment in the name of the State of New Jersey against one Vincenzo Bovino for murder, in the City of Newark, in said County of Essex, found in our Court of Oyer and Terminer and in and for said county heard and determined, manifest error hath intervened to the great damage of him, the said Vincenzo Bovino, as from his complaint we have received information, we being willing in that behalf to correct the error in due manner if any there shall be, and that speedy justice be done to him, the said Vincenzo Bovino, do command you, that if judgment be thereupon given, that then you do send the record and proceedings aforesaid, together with all things touching and concerning the same, to us under your seal, distinctly and openly, and this writ, so that we may have them before our Court of Errors and Appeals, at Trenton, the 24th day of May, next, that inspecting the records and proceeding aforesaid we may further do thereupon for correcting the error that which of right and according to law shall be fit to be done.

WITNESS, Edwin Robert Walker, Esq., Presiding Judge of our Court of Errors and Appeals, at Tren-

ton, the 5th day of May, in the year of our Lord one thousand nine hundred and sixteen.

THOMAS F. MARTIN,
Clerk.

McDermit & McDermit,
Attorneys.

Endorsed:

NEW JERSEY COURT OF ERRORS AND APPEALS.

The State of New Jersey,
Defendant in Error,
vs.
Vincenzo Bovino,
Plaintiff in Error.
} *On Writ of Error.*

Presented in open court this 8th day of May, 1916.

WM. P. MARTIN,
President Judge, Court of Oyer and Terminer.

Return.

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

I, WILLIAM P. MARTIN, Judge of the Court of Oyer and Terminer, Essex County, New Jersey, do hereby certify and return to the Court of Errors and Appeals, the court of last resort in this State, the indictment and judgment record, together with all things touching and concerning the same and the entire record and proceedings as by the within write to me directed, I am commanded.

IN WITNESS WHEREOF, I have hereunto [L. S.] set my hand and the official seal of said Court at Newark, N, J, this 16th day of June, A. D. 1916.

WM. P. MARTIN,
P. J.

Indictment.

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

Be it remembered, that a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the third Tuesday in September, in the year of our Lord, one thousand nine hundred and fifteen, by the Hon. William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Wilson C. Ely, John B. Rink, William N. Bayles, Edwin A. Kirch, Edward A. Zusi, Thomas F. Daly, Joseph R. Murphy, John M. Lederer, Oscar Scholz, Rudolph J. Goerke, Henry Wittkopf, Frederick Engelberger, Henry Van der Roest, Robert Y. Geyer, Henry D.

Bowman, Theodore Gaddis, Joseph Harburger, Bruce P. Kitchell, Edward Fuhrmann, Louis Farrell, Charles F. Kraemer, Edgar J. Smith, John H. B. Conger, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to-wit:

ESSEX OYER AND TERMINER.

September Term, A. D. 1915.

Essex County, to-wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath PRESENT that James (amended Vincenzo) Bovino, late of the City of Newark, in the County of Essex aforesaid on the twenty-third (amended twenty-first) day of April in the year of Our Lord, one thousand nine hundred and fourteen, with force and arms at the City aforesaid in the county aforesaid, and within the jurisdiction of this court, one Frank Miserendino (amended Francesco Miserentino) in the peace of God and of the State then and there being, wilfully, feloniously and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

FREDERICK F. GUILD,
Prosecutor of the Pleas.

And on the thirteenth day of October, A. D. 1915, on which day the said indictment was presented by the Grand Jury aforesaid to the said Court of Oyer and Terminer, and the said Justice did then and

there order the said Indictment to be delivered to the said Clerk of the Court of Oyer and Terminer in and for said county and then and there the said indictment was delivered and duly filed by said clerk and an entry of such delivery and filing was then and there made in the minutes of said Court at the same time pursuant to statute in such case made and provided.

Plea.

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer holden at Newark on the fourth day of November, in the year of Our Lord one thousand nine hundred and fifteen, before Hon. William P. Martin, Judge of the Court aforesaid, comes the said James (amended Vincenzo) Bovino in the custody of Ralph B. Schmidt, sheriff of the County of Essex aforesaid, in the above custody in the jail of the county aforesaid, he had been before committed for the cause aforesaid, being brought to the Bar of this Court in his own proper person by the said Sheriff to whom he is also committed and having heard the indictment and being forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, he says that he, James (amended Vincenzo) is not guilty thereof and thereof for good and evil he puts himself upon the county and Frederick F. Guild, Prosecutor of the Pleas, for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf, doth the like.

Postea.

Therefore, let a Jury thereupon come before the Judge aforesaid, at Newark aforesid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the 10th day of January, one thousand nine hundred and sixteen, twelve free and lawful men each of whom shall be a citizen of this State and a resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years by whom the truth of the matter may be better known and who are not of kin to the said James (amended Vincenzo) Bovino, to recognize upon their oath, whether the said James (amended Vincenzo) Bovino is Guilty of the premises in and Indictment aforesaid specified or not guilty, because as well the said Frederick F. Guild, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said James (amended Vincenzo) Bovino puts himself upon the jury and the same day is given to the parties aforesaid, at the same place, at which day, to-wit: the 10th day of January, in the year of Our Lord, one thousand nine hundred and sixteen, at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Hon. William P. Martin, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes the said Frederick F. Guild, Prosecutor of the Pleas, who prosecutes aforesaid, and the said James (amended Vincenzo) Bovino, in the custody of Ralph B. Schmidt, sheriff of the County aforesaid, being brought to the bar in his own proper person, by the said sheriff, and the jurors of the jury by the said sheriff for this purpose empaneled

Postea.

and returned, to-wit: William McCully, George F. Kerr, Herbert A. Hinchcliffe, Charles Scott, James J. Coen, John Reid, Alexander Haynes, William S. Porter, James J. McCarron, Fred Stillges, George M. Denman, George T. Hartley being called come and were sworn on that jury who to speak the truth, of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury, from day to day until the 14th day of January, one thousand nine hundred and sixteen, at Newark, aforesaid, the jury in the meantime being all that time kept together and in the care of officers of the said court, who were selected and duly sworn by said court for that purpose at which last mentioned day the said issue after a charge from said court and submitted to the said jury, and the said jury in charge of said officers of said court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said jury returned into and before the said court in charge of the said officers sworn to keep them in charge, and then and therein in the presence of the said Prosecutor Frederick F. Guild, and the said James (amended Vincenzo) Bovino say that the said James (amended Vincenzo) Bovino is guilty of murder in the first degree, and so they say all.

Judgment signed January 28, 1916.

WM. P. MARTIN,
Judge.

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, it is, on this 28th day of January, nineteen hundred and sixteen, ordered and adjudged that James

Judgment.

(amended Vincenzo) Bovino be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the sheriff within ten days after the issuing of the warrant to him for that purpose, and delivered to the principal keeper of the State Prison, to be kept by him in solitary confinement until the week beginning May 7th, 1916, and upon some day within the said week, at his discretion, as to the time within the walls of the buildings provided, by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto, the principal keeper of the State Prison shall execute the punishment of death upon the said James (amended Vincenzo) Bovino by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said James (amended Vincenzo) be dead.

And may the Lord have mercy upon his soul.

Opening.

ESSEX COUNTY COURT OF OYER AND TERMINER.

December Term, 1915.

January 24, 1916.

STATE, *vs.* VINCENZO BOVINO,	*Murder.*

Transcript of shorthand notes of testimony taken before his Honor, William P. Martin, Judge, and a jury, at the Court House in the City of Newark, New Jersey, on Monday, January 24, 1916.

APPEARANCES.

ANDREW VAN BLARCOM, Assistant Prosecutor of the Pleas, for the State.

FRANK MCDERMIT, Esq., for the Defendant.

Mr. McDermit. I make the same request as made heretofore without going into any details before this jury now. I request to have the witnesses excluded except Mr. Godfrey and the architect or engineer.

Mr. Van Blarcom. That is satisfactory to the State.

The Court. Then it is agreed by counsel that all the witnesses in this case be excluded from the court room until after they have been called, and after they have been once called to remain in the room.

Mr. McDermit. Yes, sir.

Mr. Van Blarcom. Suppose we want to use them for rebuttal.

Mr. McDermit. I have no objection if they want to remain.

The Court. If there are witnesses who have been subpoenaed who are not put upon the stand in the original case they may then come in the room and testify in rebuttal.

Mr. McDermit. Yes, sir.

The Court. And if the defendant has witnesses who are not called in his main case and may be called subsequently for sur-rebuttal, those witnesses may come in the room at the close of the defendant's case.

Mr. McDermit. Yes, sir.

The Court. And this is not to apply to Mr. Godfrey, the county detective, who is assisting the Prosecutor.

Mr. McDermit. Nor to the defendant.

Prosecutor opens.

EDWARD G. KEMPF, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Mr. Kempf, you are a civil engineer and surveyor? A Yes, sir.

Q And have been for how many years? A For fifteen years.

Q At the request of the Prosecutor's office did you make a map? A Yes, sir.

Q That was made when? A January 10, no—May 7, 1914.

Q That map was made from notes? A From an actual survey of the ground and from notes.

Q By you? A By myself.

Edward G. Kempf, direct.

Q Will you kindly explain to the jury the details of the map, what the letters represent and the colors and so forth? A The diagram before you represents No. 238 Oliver street and is a three-story frame building and the first floor is known as Chick's Cafe. I have shown the rooms as they are on the floor, which is the first floor, in letters. The room marked "A" or the part marked "A" is the hall leading from Oliver street through a space shown in yellow marked "C" into room "G." "B" was used as a saloon, in which I have shown the electric light, the gas lights, the bar, the back bar also, and oyster counter. The part marked "C" has an open space leading from hall A to room G. The part marked "E" is an open space with a passage through it from room B to room G. The part marked "E," colored gray, is a men's toilet. The part marked "F" is a women's toilet. The part marked "G" is used as a dance hall and also a lodge room, in which I have shown cases which contained banners, shown in red with red lines across it. I have shown two pianos which are covered green. I have shown the skylight, I have shown the part marked "H," used as a dressing room. The part marked "J" was used as a stage and the part marked "K" was used also as a dressing room. I have shown the windows with an open space around the building which is in heavy black lines. I have shown the doors in the direction in which they swing. The map is drawn on a scale of two feet to one inch.

By the Court.

Q Where are the pianos? A One is in the southeasterly corner of room G and the other in the northwesterly corner of room G.

Edward G. Kempf, cross.

Cross examination by Mr. McDermit.

Q This property is known as what number on Oliver street? A No. 238 Oliver street.

Q How does the building run? A It runs in a northerly and southerly direction.

Q No. 238, is that the southerly side of the building? A It is the northerly side of the street.

Q Northerly side of Oliver street, but southerly side of the building, the southerly part of the building itself; that is the southerly part of the building. The building runs north and south? A Yes.

Q The rear part is the northerly part and the southerly part is where B is? A Yes, sir.

Q How close is that to the corner of Adams street and Oliver street, how far is that from the corner? A I don't know.

Q Are these doors that are leading out here from the dance hall, is that a door and is that a door? A Yes, sir.

Q And the doors swing that way? A Yes, sir.

Q You don't know of your own knowledge whether there is a alleyway there? A No, sir.

Q There are two entrances in the front, one into what is called room A, that you have marked "Hall?" A Yes, sir.

Q And the other to room B which you have marked the saloon? A Yes, sir.

Q Do you recall whether there are any steps leading up to the hallway A, or the saloon B from the street? A I have a faint knowledge there is one step.

Q You don't know? A I am not positive. I am quite certain there is.

Q In room E, which is marked the gentlemen's toilet there are two entrances to that toilet, one from the saloon? A Yes, sir.

Q And one from room D? A Yes, sir.

Q And then there is a door opening that way into the dance hall? A Yes, sir.

Q Do you know about what other general furniture, if any, was contained in there, at the time you saw it, in the dance hall? A A great many chairs.

Q And tables? A And tables.

Q Approximately how many chairs were there there? A I have an idea that the westerly part of room G contained all the chairs it could hold from the space marked C to the piano and H.

Q Approximately how long is this dance hall from where you showed on the map C to the end of the room H; I mean by end, the exterior wall, the furthest northerly wall? I point here at the entrance of the room C that you designate as an opening. A 56 feet and 10 inches.

Q Across the hall what is the width? A 21 feet and 8 inches.

Q What is the width of this saloon from the easterly to the westerly side, to the wall dividing B from A? A 16 feet two inches.

Q Now, into the room B, how do you get in there from A to B? A Through a door leading from hall A to the saloon, room B.

Q What other entrances are there shown there? A There is one leading in from Oliver street, one leading in from the hall marked A, one leading in from the room marked G, through the space called D, through two doors, swinging doors.

Q So that the marks you have there in this style, separating D from B, are swinging doors? A Yes, sir.

Q Will you describe to the jury what kind of doors they are? A Broad doors. I don't believe there is glass in them.

Q As to height, do they go right to the bottom? A They go right to the floor.

Q How high are they? A Eight or nine feet.

Edward G. Kempf, cross.

Q Are you sure about that? A No, sir; I didn't measure.

Q You don't know definitely about the situation; that doesn't show? A No, sir.

Q You don't know just exactly what doors they are except they are swinging doors? A They are solid doors, I know that—I beg your pardon, they are dull glass.

Q There are two doors there? A Yes, sir.

Q See what your measurement, if anything, shows as to the kind of doors they are outside of the description you have given. Have you any measurement outside of saying they are glass doors? A No, sir.

Q What do they swing on, hinges or anything peculiar to their way of swinging? A I don't know.

Q Do they swing both ways? A I know what you mean; I don't know whether they do or not.

Q You don't know whether a person coming from room G to room B whether they swing in this way? A No, I know they swing in the direction I show.

By the Court.

Q What do you mean by two doors being there? A The space is so large; there is a six-foot space between the entrance. There is only one doorway, it is like the doorway in the court room. A door swings on each side.

Q You don't mean a person coming through would have to go through two sets of doors? A Not particularly.

By Mr. McDermit.

Q My point is your map doesn't show that they swing both ways, if they do that they swing south as well as north? A I don't know.

Q You could ascertain that for us? A Yes.

By Mr. Van Blarcom.

Q How large is the room G? A 56 feet 10 inches by 21 feet 8 inches.

By Mr. McDermit.

Q Going in the dressing room H to K, are there doors there or just openings? A There is just an opening with an American flag.

Q Hanging down as a drapery? A Yes, sir.

Q The stage proper J, I suppose there were steps up to J from the dressing room? A This is a raised platform; yes, sir.

Q In getting to that plaform you either enter by K or H? A Yes, sir.

Q Do you go up steps to the stage? I take it these rooms are fair sized rooms H and K? A Yes, sir.

Q They measure what approximately? A About five feet by eight.

Q Eight in length and five in width? A Yes, sir.

Q Both the same size about? A Yes, sir.

RECESS.

Q Mr. Kempf, I suggested that you go down during the noon hour to premises 238 Oliver street; did you go there? A Yes, sir.

Q I now then point out to you that there appears on the map doors between room B to D. A Yes.

The Court. I suppose you are making this witness your own, because he made an examination on May 7, 1914. He has testified as to that examination when called by the prosecutor. You are asking him to state what he found today

and it may be that you are bound unless you want to except to the ruling.

Mr. McDermit. Anyway it would not make any difference.

The Court. The trouble is that there is not any proof that condition today is the same as it was then. The probabilities are that it was the same.

Q Do you remember when you made the examination on May 7, 1914, of the premises, from which you drew this map? A Yes, sir.

Q What do you say as to the condition of the premises now as to what it was then at the time you made the drawing and map? A It looks to me to be the same.

Q Now, as to the doors that lead in from the room B to the room D. Are they the same doors that were in existence when you made the map? A It looks so.

Q How do they swing, do they swing into B or into D or do they swing only one way? A They swing one way, into room D.

Q What kind of doors are they, single doors or double doors? A It is a double door.

Q What is the width of the combined two doors? A Six feet.

Q What is the height? A Seven feet.

Q So each door's side would be about three feet wide? A Three feet wide.

Q Do they swing on hinges? A Yes, sir.

Q Made out of what; what is the material of which these two doors or double door is constructed? A The door is constructed of wood with the exception of the upper part, which has a piece of glass in it, which is about four feet six inches above the floor.

Edward G. Kempf, cross.

Q As I understand the glass in these doors are over a wood panel in the bottom? A Yes, sir.

Q They extend to what height? A About three feet.

Q What is the nature of the glass? A Ground glass.

Q Are you able to observe—can you see through that glass or can't you? A It is dull glass and I doubt whether you can see through it.

Q Did you make any effort to see through it? A Not particular, just casual.

Q You say to the court and jury a dull glass; do you mean a glass that is stained? A It is sort of ground.

Q Ground dull glass? A Yes, sir.

Q Do those doors close complete? Are they a complete set of doors? A Yes, sir.

Q Did you try them? A Yes, sir.

Q How high do you say the panel of wood is from the ground? A Four feet, six.

Q How high is the glass? A Two feet.

Q Are there panels of glass in each of the doors? A Yes, sir.

Q What is the width of the glass and the heighth of the glass? A The glass is about two feet high; I didn't measure the width, but I should judge it is about two feet.

Q Do you remember what the condition of those doors were, the time you made the first examination; were they open or closed? A They were open.

Q What was the condition of the doors today? A One of them was closed and the other one was open.

Q They are not new doors, the doors you observed today? A No, sir.

Q (*By Mr. Van Blarcom.*) Do I understand that these doors are flush with the surrounding woodwork? A Yes, sir.

Q There is no open space either above or below? A No, sir.

Q And the door from D into G, does that swing both ways? A I didn't try that, but I am pretty sure it don't.

Q Is there any open space either above or below that door, is that flush in the woodwork? A I don't think there is. I think it goes up to the ceiling.

Q (*By Mr. McDermit*). Isn't there a glass in the door between D and G? A No, there is not.

Q That is a solid panel door? A Yes, sir.

Q What is the width of it? A Two feet, six and a half—

Mr. Van Blarcom. I offer the map in evidence.

The Court. Received and marked Exhibit S. 1.

MARY WEBER, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You live in Newark? A Yes, sir.

Q How old are you? A Twenty.

Q How long have you lived in Newark? A About nine years.

Q Where did you live in April, 1914? A 267 Ferry street.

Q With whom did you live? A With my aunt.

Q Do you know where Collins' dance hall was at 238 Oliver street? A Yes, sir.

Q You were there on the night of this shooting? A Yes, sir.

Mary Weber, direct.

Q How often did you go in that place before? A Quite often.

Q What do you mean by that? How many times a week? A Before that I was there a couple of times.

Q Couple of times a week? A No, not a week, about once a month or something like that.

Q You knew the defendant here? A Yes, sir.

Q What name did you know him under? A Bennett, Jim Bennett.

Q How long have you known him? A I knew him about two years, two or three.

Q Did you know a man named Baker, who was shot? A Yes, sir.

Q How long had you known Baker? A About three.

Q Did you know his other name? A No, I know him by Frank Baker.

Q What time did you get to the dance hall the night of this shooting? A About 10 o'clock.

Q Did you go there with somebody, or go there alone? A I went alone.

Q There are chairs and tables in this hall, I understand? A Yes, sir.

Q After you went in what did you do? A I sat right alongside by the table.

Q Where was this table located? A It was right where you go in from the dance hall, from the hall right in the dance, right when you go across the street hall door.

Q This space marked A is the hallway leading from the street into the dance hall, this is the saloon, room B. And here is the entrance through this little space D into the dance hall, here is the piano and there is the women's toilet, there is the stage. Now, indicate with the pointer, if you will, where the table was? A I went from the street

hall door into the doorway and my table was right where, was right near the street hall door.

Q Can you point out with your pointer about where it was? A No; I can't understand that.

Q Was anybody at your table or were you sitting alone? A With a girl named Anna Gurtler and two other fellows; I don't know their names.

Q Did you see Mr. Bennett there that night? A Yes, sir; he was right in the dance hall.

Q Was he there when you got in there? A Yes, he was there when I got in there.

Q Did you see Baker come in? A I seen Baker in there when I got there.

Q What did you see happen there that night? A Well, I seen this girl named Lucy, I seen her talking to Baker in the hallway, and then I seen Big Sue, I seen Big Sue walk over to a table, the first time when I got in the dance hall Lucy was talking to Baker in the hallway and then Big Sue, she went over to Baker and she said, she was fighting with him and she said she was married to him. That is all I heard, and then Big Sue slapped Baker in the face and Baker slapped her back and then Big Sue walked over to a table to Jim Bennett and sat right alongside of Bennett, and then she said something to Bennett. About two minutes later Bennett jumped, got up from the table and was going to hit Baker and all the rest of them jumped after him and Big Sue grabbed Bennett's left hand and pulled him back again, and Jim Bennett pulled a gun out of his right hand pants pocket and shot right at Baker and then he dropped the gun and the gun was nickel-plated and black handle; then I ran out and Baker hollered, "Bennett shot me." I ran out and went home.

Q Did you say that Bennett tried to hit him? What did he do? A When Baker tried to hit him—

Mary Weber, direct.

Q Did you say that Bennett walked over towards Baker and tried to hit him or something like that? A No; I said Bennett walked over to Baker and tried to hit him and the rest of the bunch gets after him and Sue pulled his hand back again, and then the crowd got around him and Bovino took the gun out of his righthand side pocket and shot right at Baker.

Q How did he try to hit him? A He was trying to hit him with his hand.

Q What did Baker do? A He didn't do nothing. Only standing there.

Q How did he pull the revolver when he fired it? A Like this (indicating).

Q How far apart were they? A About ten feet away.

Q Which door did you go out of? A The street door, hall door.

Q Out of the door out through the hall door? A Yes, sir.

Q Did anybody else go out at the same time? A I don't know; I didn't see nobody. I just ran out and ran away. I don't know who ran out. I didn't turn around.

Q How many shots were fired? A One.

Q Do you remember where Baker was standing when Big Sue took him by the arm?

Mr. McDermit. She didn't say that.

A I said Big Sue took hold of Baker's hand and pulled him back, I mean Jim Bennett's hand, I made a mistake.

By the Court.

Q Who is Jim Bennett? A There he is, right there.

The Court. Indicating defendant.

Mary Weber, cross.

By Mr. Van Blarcom.

Q Where was Bennett standing when Big Sue took hold of him? A He just stood up from the table.

Q Where was this table, what part of the hall was that in? A The table was around this side and I was sitting around this side (indicating).

Q Was it on the same side he sat you were sitting or on the other side? A On the other side.

Q You knew where the ladies' toilet was? A Yes, sir.

Q Was it anywheres near that? A Yes, sir; it was near that, the ladies' toilet.

Q How many people were sitting around this table with Bennett, if any? A About twelve.

Q Before this shooting occurred had twelve people been sitting there? A They was all sitting there.

Q Any women? A About three or four.

Q The rest of them were men? A The rest of them was men; yes, sir.

Q How long had you been in there before the shooting took place? A About an hour.

Q Had you danced any? A I had two dances.

Cross examination by Mr. McDermit.

Q Where had you been the afternoon before you had gone in this bar room? A The afternoon of the same day?

Q Yes. A I don't remember where I was.

Q You weren't working that afternoon, were you? A Yes, sir; I was.

Q Where were you working? A Edison's.

Q What time did you get home from Edison's? A Six o'clock.

Q What did you do after you got home? A I got home and I got dressed and I went out.

Mary Weber, cross.

Q Did you have your supper? A Yes, sir.

Q What time did you leave the house? A I left the house around 7 o'clock.

Q Where did you go for the three hours between 7 and 10 o'clock when you went to the dance hall? A I don't know where I was, I was somewheres.

Q I mean the evening of this shooting? A Well, I don't know. I left the house around 10 o'clock that night.

Q You didn't go out from your house until 10 o'clock? Had you gone to bed after supper? A As soon as I came home from work I went right down to the dance, I didn't go nowheres.

Q You told us a few minutes ago when you went to the dance hall it was 10 o'clock. A Yes.

Q What did you do from 7 o'clock until 10 o'clock? A Seven o'clock I was sitting on our stoop until half-past nine and then I went down to Chick's.

Q You knew where Chick's was? A Yes, sir.

Q You had been in there many a time before? A Yes.

Q You went down to have a dance? A Yes, sir.

Q Who did you see in the place down there? Did you see Chick? A No; I didn't see Chick.

Q Chick is the proprietor of the place? A I see him before that, but not after that.

Q You knew this man Baker that was shot? A Yes, sir.

Q How long had you known him? A About seven years.

Q You knew Big Sue? A Yes, sir.

Q The girl that was there that night. How long have you known her? A I don't know her.

Q How long? A I don't even know her, only by Big Sue.

Q You knew her before that night? A Yes, sir.

Q You sat down and had a drink with her? A No, sir; I didn't drink with her.

Q How many times have you met her? A I just met her about three times, but I just heard her name.

Q You met her about three times in this dance hall? A Yes, sir.

Q You were in the habit of going in the dance halls? A No, I was not.

Q You were at that time? A No, sir.

Q You spend your evenings attending dance halls? A I was once.

Q You were in there about an hour, you say that night? A Yes, sir.

Q When this shooting took place you ran out? A Yes, sir.

Q Ran up the street? A Yes, sir.

Q Where did you go? A Went home.

Q When did you go back to the dance hall after that? A When after that?

Q Right after the shooting? A No, sir; I didn't go back right after.

Q When did you go back after that? A Just before I got in, I got arrested.

Q You were arrested about three months ago? A Yes, sir.

Q This shooting took place over a year and a half ago? A Yes, sir.

Q You were back to the dance hall a couple of times? A Yes, sir; I went back but I did not see Bovino there.

Q You didn't see Bennett there? A No, sir.

Q You told me once before you thought Bennett was dead? A I did, yes.

Q Didn't you? A Yes, sir.

Mary Weber, cross.

Q You thought he was electrocuted? A Yes, I did.

Q You have been living in Newark? A Yes, sir; all the time.

Q And have been down to the dance hall? A Yes, sir.

Q Been down to the dance hall all the time? A After the shooting I didn't go out for about a year and a half.

Q What made you think that Bennett was dead? A Because I thought there was lot of more witnesses that were against me, because Sue was right there, she seen the shooting just as much as I did.

By the Court.

Q You just said "I thought there were more witnesses against me." Then you went on and said something else. What do you mean by that? A I thought there was more witnesses.

By Mr. McDermit.

Q You told us before in Court here that the reason why you didn't tell anybody for a year and a half about this shooting was because you thought this man was dead? A Yes.

Q That he had been electrocuted? A Yes, sir.

Q You thought there must have been more witnesses that seen him shoot and that you were surprised? A Yes, sir; and then when I told this he stopped me, he sent two fellows after me and he was waiting for me on Mechanic street in a lot. He sent them two fellows to me and he said to me, did I say anything about Bovino?

Q I didn't ask that question at all.

Mr. McDermit. I ask to strike that out. It is not responsive to my question. It is the same old story—

Mr. Van Blarcom. I object to the remark of counsel that "It is the same old story."

Mr. McDermit. My motion refers to any matters that she said that are not responsive to my question.

The Court. Motion granted.

Q You never told anything about the shooting? A No, sir.

Q You never told anything about the shooting for a year and a half? A Yes, sir.

Q You told the story on Mulberry street at midnight? A Yes, sir; I told that story.

Q Yes or no. A Yes, sir; to the policeman.

Q You told us in this court room a short while ago that you saw Bovino, this defendant, hiding down on Mechanic street in a vacant lot? A Yes, he did.

Q And two men came up to you? A Yes, he sent two men to me.

Mr. McDermit. I ask to strike that out, that he sent the two men to her.

By the Court.

Q Did you see him talking to these two men? A Yes, sir; he was following me up with these two men.

Q Did you see him talking to the two men? A Yes, sir.

The Court. Motion granted.

By Mr. McDermit.

Q Two men said to you what? A They said to me, "Come on down to Chick's and have a drink." I said, "No, sir." He said, "Did you say anything about Bovino?" I said, "Yes, I did," and then he said, "Why, you better look out for yourself. If he don't shoot you why I will do it," and then he

was going to hit me, he done this way (indicating) but I jumped away and I stopped an officer and told him.

Q That was 12 o'clock at night? A Yes, sir.

Q Midnight? A Yes, sir.

Q What were you doing up on Mulberry street at 12 o'clock at night? A I was going home.

Q Where had you been? A To a dance.

Q Been to another dance? A This dance was on Ferry street.

Q And you were going home that way? A Yes, sir.

Q You made a statement in writing to the police that you signed? A Yes, sir.

Q In that statement in writing you told the police that you were held up on the corner of Green street and Mulberry street, didn't you? A I stopped a cop.

Q Did you make that statement? A No, sir.

Q Then if it is contained in any statement that you told the police that you were held up at Green street and Mulberry, it is a lie? A No, sir; I wasn't held up on Green street.

Q Then if you made a statement that these people stopped you at the corner of Mulberry and Green street it is a lie?

The Court. You cannot ask her if it is a lie. You can ask her if it is a fact.

Q Did you or did you not? A I did not.

Q You didn't sign such a statement? A No.

By the Court.

Q Is it correct if it says in the statement that was just referred to by Mr. McDermit, is that right or is that statement correct you made on the stand? A No, I made the statement I was held up on Mul-

berry street by the policeman. I stopped a policeman at Mulberry and Green.

By Mr. McDermit.

Q You made the statement at police headquarters on the night that you went there with the officers on Mulberry street? A Yes, sir.

Q You made it in the presence of three or four officers? A No; I only met one that night.

Q In the presence of four or five officers? A They was detectives.

Q Well, call them detectives, four or five of them, didn't you? A Yes.

Q Didn't you tell them and didn't they write a statement in which you said that you were held up on the corner of Green and Mulberry street? A Yes, sir.

Q Now, you say you were held up at Mechanic and Mulberry? A The fellows stopped me and I ran all the way from Mechanic and Mulberry down to Green street.

Q You told us in Court here that you saw Bovino hiding down on Mechanic street in a vacant lot? A Yes, sir.

Q And that you met these two fellows on the corner of Mechanic and Mulberry street? A Yes, sir.

Q And they held you up at the corner of Mechanic and Mulberry street? A Yes, sir.

Q And that you called a policeman? A I didn't see no police officer. I ran down to Green street.

Q Didn't you testify here in this court room that you called an officer at Mechanic and Mulberry street? A No, sir.

Q Now, you say you ran from Mechanic and Mulberry to Green street? A Yes, sir; I always said that before.

Mary Weber, cross.

Q Where had you been that night before you came up to Mulberry street? A I went to a dance.

Q You had been in drinking with two men in Klein's saloon? A Yes, sir.

Q What did you drink? A Soda.

Q You knew where you was that evening when you started out? A I don't know all the time I started out.

Q Who were the two men you were with? A Two American fellows. I know them to see.

Q Know them on the street? A I know them just to see.

By the Court.

Q You mean you knew their faces and not their names? A I know by their first name, Eddie and the other fellow, I don't know what his name is.

Q You don't know the last name? A I don't know the last name.

By Mr. McDermit.

Q You went in this side room in Klein's to have a couple of drinks between 7 and 8 o'clock? A Yes, sir.

Q What did you drink? A Two sodas.

Q What did you drink between 8 and 9 o'clock? A Nothing.

Q Where were you before 8 and 9 o'clock? A When we left Klein's I went down to a dance.

Q Where was this dance? A Down Ferry street.

Q Whereabouts on Ferry street? A Right near Hamburg Place and the park.

Q How many people were down there? A Lot of people.

Q Did you know anybody down there? A No, sir.

Q What did you go down there for? A I just went in there. I know somebody down there.

Q Did you have anything to drink in there? A No, sir.

Q Have any dances in there? A Yes, sir.

Q Did you come out with any men? A No, sir.

Q Drink with any men in there? A No, sir.

Q Did you drink with anybody, treat yourself? A Yes, sir.

Q You stayed there until 12 o'clock? A Yes, sir.

Q Whereabouts do you live in Newark? A I used to live on Ferry street, then I lived on Walnut street.

Q Whereabouts on Ferry street did you live the night you took this drink with the men? A I lived on Walnut street.

Q What number on Walnut street? A 98.

Q Where is 98 Walnut? A Between Railroad avenue and Mulberry.

Q Who did you live with there? A A lady that I know.

Q What is her name? A I don't know her name.

Q You don't know her name? Are you living there yet? A I lived there three months. I don't know her name.

Q You have been living there altogether three months? A Three months.

Q Where did you live before that? A Ferry street.

Q Who did you live with there? A My aunt.

Q Why don't you live there now. A Because I don't feel like it.

Q You are still working for Edison? A Yes, sir.

Q Working there now? A I don't work there now. I am in jail now.

Q How long have you been in jail? A About three months.

Q Where did you go after you were taken to police headquarters that night? A What night?

Q The night you met these people on Green street, on Mechanic street? A I went to police headquarters.

Q You were locked up? A Yes, sir.

Q And then Bovino was arrested the next day? A I don't know the next day, but he was arrested right after that.

Q You and he were always good friends? A Certainly I was.

Q You knew him pretty well? A Yes, sir.

Q Ever go out with him? A No, sir.

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

Q Ever dance with him? A Yes, sir.

Q How many times did you go back to this dance hall from the time of the shooting up to the time you were arrested? A Only two times.

Q When were they? A One was Tuesday night and the next was Tuesday night, too.

Q How long after the shooting? A Just before I got arrested, about a month before.

Q Did you inquire from anybody what had become of Bennett or Bovino? A No, I never took notice.

Q Did you ask anybody down to the dance hall what had become of the man that shot the other man? A No, sir; because I wasn't there long. I just got in, and then I went out.

Q You just went in for a short while? A Yes, sir.

Q Why didn't you stay longer? A Because I didn't want to stay.

Q Why? A Because I didn't.

Q Why? A Because I just went in there and had two dances and walked out.

Q You walked over from the East Park zone over to this place a couple of times? A Yes, sir.

Q You never inquired what had become of Baker? You knew that Baker had died? A I knew he died.

Q How did you find that out? A I seen him when he shot him.

Q You seen him when he died? A I didn't see him when he died. I seen when Bovino shot him.

Q When did he die? A I don't know.

Q When did you hear about it? A I know that he died, that is all.

Q When did you hear he died? A I read it in the paper.

Q Had you read in the newspaper the account that Baker had died? A Yes, and I heard that Bovino was arrested right after.

Q You read in the paper that Bovino was arrested. You didn't call anybody's attention to the fact that you saw Bovino do the shooting, did you? A No.

Q Never said a word about it? A Never said a word about it.

Q I understand you to say that you thought he was dead, that he was electrocuted by the law.

Mr. Van Blarcom. You are referring to Bovino now?

A Yes, I thought he was dead.

Q During all this time you were reading the newspapers and running around to all these dance halls? A No, sir; I wasn't running around to dance halls no more after that. I was only there twice in that dance hall before I was arrested.

Q You knew Lucy? A Yes, sir.

Mary Weber, cross.

Q How long do you know Lucy? A Know her about two years, but I don't know her last name, only her first name.

Q What was the name of the girl that was sitting at the table with you? A Anna Gurtler.

Q How long do you know her? A About two years.

Q You know all the girls that used to go down to this place? A Yes, I do.

Q There were about fifteen or twenty girls that used to come down every Saturday night? A Not so many.

Q How many times had you been to this dance hall altogether before the shooting took place? A Before I was in there about once a month.

Q Once a month for two or three years? A Once a month.

Q How old do you say you are now? A Twenty.

Q How old were you first when you started to go into these dance halls? A About fifteen.

Q You have got a mother? A No, not here.

Q Father? A No, sir; not here; on the other side.

Q How long have you been in this country? A Nine years.

Q Didn't you testify in this court room that you had gone to this dance hall twice shortly after the shooting and then you didn't go there for a year and a half again?

The Court. Don't answer.

A No, sir.

The Court. You have got to proceed in order and call the attention of the witness to the time when it is alleged she testified.

Q Didn't you in this court room, before his Honor, the present Judge, and in the presence of

Mr. Van Blarcom and myself at a trial two or three weeks ago, testify that you had visited that place two or three times? A No, sir.

Q Didn't you say you had gone there twice after the shooting? A Yes, after the shooting.

Q And that the last time you went there after that was a short time before the arrest? A Yes, sir; about a month before.

Q Three times? A Two times.

Q When you went in this place at 10 o'clock in the evening on this night where had you been, any place at all that evening? A No, sir.

Q You came in here which way, through the saloon? A No, sir; through the street hall door.

Q Are there any steps in front of this place? A Yes, sir.

Q How many steps? A I don't know how many, about four or three.

Q You went down through this room A into the room G? A Yes, sir.

Q When you got in there who was in there? A Everybody was in there.

Q How many people? A About thirty-five or forty-five.

Q Who did you talk to when you went in there? A I sat at a table with a girl named Anna Gurtler and two fellows.

Q What did you say; what were you talking about? A I don't know what I was talking about. I know I was talking.

Q Were you dancing there? A Yes.

Q How often did you dance? A I only had two dances.

Q Who did you dance with? A I don't remember the fellows.

Q Were they strangers to you? A No, I don't know the fellows, I don't know their names.

Q They were there to meet you? A They were just there to sit around.

Q You danced with these fellows before? A Yes, I did.

Q A number of times? A Yes, sir; I did.

Q What is their names? A I don't know the names of them.

Q Oh, yes, you do. What is the names? A How did I know the names?

The Court. Just answer the question.

A I don't know the names.

Q What is the first name? A I don't know.

Q Didn't you tell us the names once before in this court room? A No, sir; I said about the fellow, Kid Joe, and two fellows from New York, that is all.

Q Two fellows from New York were there? A Yes, sir.

Q And Kid Joe. Who is Kid Joe? A A little short fellow.

Q What is the name of the fellow from New York? A I don't know from New York.

Q Is one named Frank? A I don't know.

Q How often did you dance with the fellow from New York? A One dance.

Q Had you ever seen them before? A Yes, I seen them.

Q How often had he been there before? A I met him there about two or three times.

Q How many times did you dance with him before this dance? A I never danced with him before.

Q This is the first time you danced with him? A Yes, sir.

Q Did he treat you? A No, he didn't.

Q Did he give you any money? A No, sir.

Mary Weber, cross.

Q Did you go in the dressing room with him? A No, sir.

Q Did you go out with him that night? A No, sir.

Q What time was it you saw Baker? A When I got in the dance hall at ten o'clock I seen him. He was there before.

Q How do you fix the time that it was ten o'clock you got there? A Because I know it was ten o'clock.

Q How do you know that? A How do I know? I looked at the clock.

Q What clock? A When I was outside before I got in there.

Q What clock did you look at outside before you got in there? A There are lots of clocks.

Q What clock did you look at? A I can't say what clock. I know it was ten o'clock.

Q Where is there any clock down in that neighborhood? A There is a lot of clocks in the stores and every place.

Q Tell us one store that you looked at that night? A A store right up on the corner.

Q Did you look in there? A Yes, sir.

Q Ever been in there? A Yes, and I looked at the clock in Chick's place and it was ten o'clock.

Q You went out in the bar room? A I didn't go in the bar room. I can see from the street when I went in there.

Q How can you see in Chick's bar room the clock? A When you go in the clock is right there (indicating).

Q The clock is where, in the back of the door or rear of the room? A Back of the door. There is the clock and there is the door (indicating).

Q So you went in the dance hall? A Yes, I did.

Mary Weber, cross.

Q Where did you see this clock, from the street or from the hallway? A From the street.

Q How did you come to look in the bar room? A Because I just happened to go in and I looked at the clock.

Q Did you enter this dance hall from the bar room? A No, I went through the hall.

Q How was it you looked in the bar room? A I just happened to look in.

Q You looked in to see from the street before you went in the ball room? A Yes, sir.

Q What was the idea of looking at the clock? A Just happened to look at the clock, that is all.

Q You had plenty of time? A No, I didn't.

Q Did you have any engagement that made you leave there later? A No.

Q You remained there about an hour? A Yes, sir.

Q Then you saw Big Sue there? A Yes.

Q You saw Baker there? A Yes.

Q When did you first see Baker? A As soon as I went in there.

Q Talk to him? A No, I didn't. I said hello to him.

Q What did he say? A He said hello, too.

Q Where was he when he said hello to you? A He was right standing at the door in the hallway inside the door when you go in the dance hall.

Q In the room C? A Yes, sir.

Q You passed in. Who did you speak to after you spoke to Baker? A I went right in. As soon as I went in I sat at the table.

Q Do you know Mike, the private officer there, the fellow with the large mustache? A I know him, but I never seen him that night.

Q Did you talk to anybody else when you went in? A No, sir; I didn't talk to anybody.

Mary Weber, cross.

Q Did you talk to Lucy? A No, not to Lucy.

Q Did you see any talk between Lucy and Bennett? A I seen Baker talk to Lucy right near the hallway and the dance hall, right at the side there. He was talking to her and then Big Sue went over and she said she was married to him. She said that to him.

Q Who did she say that to? A To Baker.

Q Give us the words? A Those are the words.

Q Tell us the words? A She said, "I am married to you." Big Sue said that to Baker, "I don't want you to bother with any girls because I am married to you."

Q Where were you when you heard that conversation? A I was right alongside of him, about ten feet away from him.

Q Where was Lucy? A Lucy went in the dressing room.

Q Back in the dressing room? A Yes, sir.

Q She was in the dressing room on the side where the piano is? A Yes, sir.

Q How do you know she was in there? A Because, I saw her go in.

Q You saw her leave and go in there? A Yes, sir.

Q Did she go in there alone? A She went in there alone.

Q While she was inside this trouble took place between Sue and Baker, did it? A Yes, sir.

Q What next took place after she said that? A Well, this Big Sue walked over to Bovino, right at the table. Bennett was sitting around the table with a couple of fellows and Big Sue slapped Baker and went over to Bennett and sat right alongside of him and she said something to him. About two

minutes later Bennett jumped up and walked right into Baker and he was going to hit Baker.

Q When you were sitting there, you were sitting on this side of the room, indicating the wall on the side of the room C is on? A On this side.

Q You were sitting on the wall near Broad street? A Yes.

Q And they were sitting over at a table near this piano? A Yes, sir.

Q Where was Baker standing? A Baker was standing right at the door; when you go in the dance hall there is a bar room and hall door and Baker was standing right at the hall door.

Q Right near the bar room?

The Court. She said in the dance hall.

Q Have you seen this map before? A I can't understand it.

Q I will explain it. This room here G is a dance hall. This room marked A is a hallway coming from the street. This room C is a space between the hallway and the dance hall. This is the bar room. This is the room that leads in from D to the dance hall (indicating). Show us in the map where Baker was standing at the time you saw Bennett shoot him? A Baker ran into that hall. He was standing right into that hallway where you go from the street. He was standing right by that a little while, away from it a couple of steps.

Q He was standing in the hallway from the door that leads into the saloon, was he? A Yes, little bit further.

Q He was in the hallway between this door and the room that leads into the dance hall, was he? A Yes, sir.

Q Just point out about where he was? A I can't understand.

Q This is the bar in B. B represents the saloon. All these things are in B, the saloon. This is the hallway and here is the hallway that comes from the hall into the saloon. A This is the hall that leads into the dance hall.

Q This is the front bar. This is the hallway. Where was he? A He was right like this (indicating).

Q That is, he was in what you call the hallway? A No, dance hall, he was.

Q He was in the dance hall? A Right from the hallway.

Q The dance hall doesn't commence until you get to this line. There is a door that leads from the street into the hallway. You come in the hallway from the street. As you go up the hallway from the dance hall there is another door that leads into the saloon turning to your right. As you go on further towards room C there is another door that leads into that room C and from room C there is another door that leads into the dance hall.

Q Will you point out on the map. The dance hall starts here. Point out on the map where it was that Baker was standing when you saw the shot fired? A He was standing right from the hall door in the dance hall.

Q Then he was in point of fact in the dance hall? A In the dance hall right near, between the hall room and between the bar room.

Q Do you know where the small room is? A Yes, sir.

Q Between the main entrance and the ball room? A Yes.

Q There is a small room that stands in between the hall, between the dance hall? A Yes.

Q Was he in that space, in C? A Yes.

Mary Weber, cross.

Q Was he near the door that leads from A to C or was he in the door that leads into the ball room? A He was between them.

Q So he was in room C? A He was between them two doors in the dance hall.

Q You understand me correctly. I will go over this again, because it is important. A is the hallway. This is the first door that you come in from the street. You walk into the hallway and then there is a door that turns to the right to go in the saloon. You go on down the hallway until you strike another door that enters another little room. Then there is another door that goes into the back room. Where was he when this trouble took place? A He was between the two doors. There is a door and there is a door (indicating).

Q And you were seated? A I was sitting right on the side.

Q Do you remember where the oyster counter is there? A No.

Q Do you remember where the case is that has the flags in it? A Yes.

Q Point out to where the flags are marked in red? A Near the piano.

Q No, a case down towards the room C, a glass case. A The time I was in there wasn't no case.

Q Wasn't there? A No, no case there that I saw.

Q Now, you saw Sue slap Baker and then Baker slap Sue back? A Yes.

Q Then what took place? A Baker slapped Sue back; then what is her name, Big Sue walked over to Bovino and sat right alongside of Bovino.

Q Sat down at a table with him? A Yes, sat right alongside of him and Bovino got up.

Q How long did she sit there with him? A About two minutes, and then he jumped up from the table and he was going to hit Baker.

Mary Weber, cross.

Q Just show us how he was going to hit Baker? A He jumped up. He was going right up to Baker and there was a bunch of fellows around him.

Q What were the fellows doing? A They was all going at Baker and then Big Sue grabbed his left hand and pulled him back again and Bovino took the gun out from his right-hand pocket and shot right at Baker and he fell.

Q Then, Big Sue grabbed his right hand and pulled him around so he wouldn't hit Baker and while he was pulling him around he put his hands down in his right-hand pants pocket and pulled the gun and fired? A Yes, and it was a nickel-plated gun.

Q We heard the nickle-plated gun before? A Yes, I seen it. He took the nickle-plated gun and shot right at Baker and Baker fell.

By the Court.

Q How did he hold it? A Like this (indicating).

Q Was it any higher than that? A No, I didn't see.

The Court. Witness indicates about her waist line.

By Mr. McDermit.

Q Then this whole crowd came from this table back of Bovino? A Yes.

Q They all jumped up from the table together? A Yes.

Q And ran towards Baker? A Yes.

Q And as Bovino was getting close to Baker Big Sue grabbed him by the left arm? A Yes.

Q Left hand and held him? A Yes.

Mary Weber, cross.

Q While she was holding him he put his hands down in his pants pocket and pulled the gun and shot? A Yes.

Q And then threw the gun away? A Threw the gun away, yes.

Q When you seen that what did you do? A I ran out.

Q Where did you have to run from? A I ran right to the street, out in the hall door.

Q Where did you have to run from, the dance hall? A Yes.

Q Were you in room C at all? A Yes.

Q Did you run from there? A Yes, sir.

Q That is where the trouble took place? A Yes.

Q You ran out through the street and ran away? A Yes.

Q As you passed, you heard Baker say, "Bennett shot me?" A Yes, he said it right there.

Q Did you make that statement to the police when they took your statement? A Yes.

Q Did you make that statement when you swore here on the witness stand two weeks ago? A I did.

Q Do you stand by that? A Yes, I did say that.

Q Did you tell the jury in the other trial that Baker said to you as you passed that Bennett shot him? A Yes, I did.

Q How sure are you about it? A Because I know I did say it because it was true because I heard it.

Q Who have you talked to since this case was tried before? A I don't know who I was talking to.

Q Who told you to tell the story now that Bennett made the remark, that Baker made the re-

mark that Bennett had shot him, who told you to say that today? A What do you mean? I don't know what you mean.

Q You say you did not make that statement in court before? A I did say.

Q I ask you the question again whether you told us in court before that you heard Baker make the statement that Bovino had shot him? A Yes, he did.

Q Did you make that statement in court before? A Yes, I did.

Q Did you talk to Lucy since this case was on? A No, sir.

Q Have you talked to anybody since this case was tried a couple of weeks ago? A No.

Q No one at all? A No, sir.

Q Anyone give you a new subpoena? A No, sir.

Q A new paper to come here? A No, sir.

Q You never sat during the evening in any part of the hall except alongside of where this room C is? A Yes.

Q You never sat up in the dressing room? A No.

Q Never went in the toilet? A No.

Q At no time? A No.

Q Never left the dance hall? A No.

Q You left the hall at eleven o'clock? A Eleven o'clock, yes.

Q That is right, is it? You never talked to your aunt or to anybody about what took place A No.

Q You never discussed at any time the episode of the shooting until the night you say you were attacked on Mulberry street a year and a half after? A No.

Q Never talked to anybody? A Never talked to anybody.

Q You knew he was dead, had read the newspapers? A Yes.

Q And thought the other man was executed? You never talked to anybody at all? A No, sir.

Q That is so? A Yes.

Q You are sure about that? A Yes, I am sure about that.

Q You told us at the last trial in this court that the two men that attacked you, you did not know, is that right, yes or no? A Yes.

The Court. She does not have to answer yes or no to that question.

Q You testified, did you not, at a trial had in this court room a couple of weeks ago that you did not know who the men were that attacked you? A One of the fellows was on the stand here.

Q You testified in this room in that trial that you did not know who the men were that attacked you? A Yes, I did.

Q You had sat at a table with a witness who was called in this court room at the last trial? A No, sir.

Q In the hall? A That was the witness, that wasn't the fellow that was sitting.

Q Didn't Anna Gurtler and you sit with a man called Cooper? A No, it was only Anna Gurtler and two other fellows. I don't know who they are.

Q You have mentioned them before? A I know them to see, but I don't know them by name.

Q But you had met them a number of times at this place? A Yes, sir.

Q How many times had you met them? A I don't know how many times that I met them.

Q Do you know a girl named Cooper? A No, sir.

Q Josephine Cooper? A No, sir.

Q Never heard that name before? A No, I never heard any.

Q Give us the names of the girls that were down there?

The Court. When?

Mr. McDermit. At the time of the shooting.

A There was a girl, one name, that is all I know, Lucy, and Big Sue.

Q May Gilling? A No, Anna Gurtler.

Q Do you know a girl named Mae Gilling? A No, sir.

Q Do you know Josephine Cooper? A No.

Q What other girl did you know? A There was a lot of girls, I don't know the name of them.

Q You associated with these girls? A Yes, but I don't know them, I wasn't out with any of them girls. I only seen them in the dance hall.

Q Who was the other girl sitting at a table with you?

The Court. She has already told a half a dozen times.

Q Who were the other girls sitting at the table with Big Sue? A I don't know who they are. There was a bunch of girls.

Q Do you know any of the men that were sitting at the table with Big Sue? A I only know Kid Joe and two fellows from New York.

Q Who else was there besides these people? A There was a lot of people, I don't know them.

Q Didn't you see Chick Collins? A No.

Q Was he in the dance hall at that time? A No, sir.

Q Was he in there at the time of the shooting? A No, sir.

Q How do you know that? A Because I didn't see him.

Mary Weber, cross.

Q Was Joe the Kid in there at the time of the shooting? A Yes, he was in there.

Q Are you sure about that? A I am sure about that.

Q Where was he located? A He was sitting right alongside of Bennett at the table.

Q You are certain she sat down at this table? A I don't understand you.

Q That Big Sue sat down at this table where Bovino was? A Yes, sir.

Q Didn't you testify in this court room before at the last trial that Big Sue came over to where Bovino was sitting and leaning over whispered something to him? A No, I said she walked over and sat alongside of Bennett.

Q And they were in there two minutes, is that so? A Yes.

By Mr. Van Blarcom.

Q You have been held under arrest as a witness in this case? A Yes, sir.

Q You haven't been charged with any offense? A No, sir.

Q It was on Mulberry street that these two men came up and spoke to you? A Yes, it was Mulberry and Mechanic.

Q How far from Green street? A Three blocks up, three blocks this way to Market street.

Q Towards the city hall? A Yes, sir.

Q When did you first see these men that spoke to you that night? A I seen them about a day before.

Q I mean that night? A What do you mean?

Q That night they spoke to you on Mulberry street; how long before they spoke to you had you seen them? A I seen them follow me up.

Mary Weber, cross.

Q How far did they follow you? A They followed me from Van Buren street away up to Runyon street and I left them there, Bennett and two other fellows and when I got as far as Mulberry street, I went into Mulberry and I didn't see nobody. After that them two fellows that was with Bennett, they come out of Mechanic street, they came out facing me when I was walking down Mulberry street.

Q Did you walk up Market street? A Yes.

Q Then turned into Mulberry? A Yes.

Q And then the next street you came to after you turned into Mulberry street is what? A Is Mechanic.

Q You saw these two men there? A Yes, they was right there.

Q Did you see anything of Bovino? A Yes, Bovino was right, staying back in the lot not far away from the corner.

Q What did these men say to you? A He said to me, "Come on down to Chick's and have a drink." I said, "No." He said, "Don't you want to come down." They coaxed me and I said "No"; and then he said, "Did you say anything about Bennett," and I says, "Yes, I did, because it was true." That is the way I said it. Then he said to me, "If you don't look out for yourself he will shoot you, and if he don't shoot you I will do it," and then he jumped up and I ran away from him and ran all the way to Green street and saw the cop.

Q You met an officer on Green street and you told him? A Yes, sir.

Q And then you were placed under arrest as a witness? A Yes, sir.

Q You say they asked you if you said anything about Bovino and you said yes. Had you said anything? A Yes, I did.

Mary Weber, cross.

Q How many people have you said anything to? A I only said it to two fellows. They heard me. I wasn't far away from the place I said that, it was only about a block away from Chick Collins' place and he must have been over to Bennett's and the next night they followed me up.

Q How long before this night that these two men spoke to you had you spoken to these two fellows about Bennett? A I said it on Sunday night and Monday night they followed me.

Q And these two men you spoke to about Bennett, that was about a block away from Collins' place? A Yes, about a block away. I was afraid he was going to shoot me and so I might as well come out with it.

Q At the time you say you didn't know either of these men? A I know them to see but I don't know their name.

Q You said at the last trial of this case one of these men was a witness? A Yes, a witness here.

Q Witness for the defendant or for the state? A For the defendant.

Q How many doors are there that you go from the dance hall out into the hall that leads to the street? A The first door going from the street, the second door goes into the hall, the dance hall, two doors.

Q On this map here there is a door from the street. You walked along the hall and there is another door? A Yes.

Q That leads into another room? A Yes, sir; the dance hall.

Q No, that is not supposed to be the dance hall? A I thought that was the dance hall.

Q The dance hall begins here (indicating) this is supposed to be a little ante-room or space be-

tween the hallway that goes through the street and the dance hall? A Yes, sir.

Q Are these two doors open or shut? A They are always open.

Q Do I understand you to have said that Bennett or Baker rather, when he was shot was in the dance hall itself? A Yes.

Q He was in the dance hall, in the dancing room? A Yes.

Q You pointed out to the jury and gave us to understand he was in this little room, indicating C. Was he in the dance hall or in this little room? A He was in this dance hall the time I seen him, in the dance hall, from the hall where you go into the dance hall, right in the hall but at the door.

Q He was standing in the doorway? A In the doorway with Lucy the time I seen him.

Q When you ran out which door did you go out of? A I went out of the street door, the hall door.

Q You didn't go out through the saloon? A No.

By Mr. McDermit.

Q What were the names of the two men that you told the Sunday night before this trouble on Mulberry street that you were going to squeal on Bovino, that Bovino did the shooting? A What were the names of them? I don't know the names of them.

Mr. Van Blarcom. I object. She didn't say she was going to squeal.

The Court. Sustained.

Q You testified a few seconds ago that you went within a block of Chick's saloon the Sunday night before the episode on Mulberry street and that you met two men and that you told these two men that Bovino did the shooting? A Yes.

Mary Weber, cross.

Q Give us the names of the two men? A I don't know the names.

Q Did you pick up these two men? A No, I didn't pick them up. I know them to see but I don't know the names of them.

Q You went within a block of Chick's hall and picked up two fellows whom you only knew by sight and told them about the shooting? A I said when I met Bovino one night just before the time I ever told it, I was looking at him, I said "How is it that Bovino is out? I thought he was dead long ago."

Q So that your story now is that you saw Bovino in the street a year and a half after this alleged murder? A Yes, sir.

Q And that you met these two fellows in the street within a block of Chick's hall? A Yes.

Q And that you said to him "How is it Bovino is out? I thought he was dead?" A Yes, I did. I thought he was dead. Then them two fellows went over and told him—

Q Never mind. That is what you thought. That is not testimony.

By the Court.

Q When you said that to these two fellows did you see Bovino? A I seen Bovino one night coming up.

Q No, I am asking you if you said this or this is what you thought? A I thought it.

By Mr. McDermit.

Q You thought he was dead? A Yes, sir.

Q And because you saw him in the street? A Yes, sir.

Q You stopped these two fellows within a block of Chick's hall? A Yes, sir.

Q And wanted to know why he was alive? A Yes, sir.

Mary Weber, cross.

Q Tell the jury what you said to these two fellows? A When I met them I said to them I seen Bovino inside. "How is it Bennett is living now. I thought he was dead long ago. I thought he got the chair." They said, "What for?" I said, "He is the fellow who shot Baker," and then Monday night those two fellows were following me.

Q So on Sunday night you went within a block of this place on a Sunday night, did you? A Yes, sir.

Q While you were so scared? A I wasn't.

Q One minute, you were so scared when you walked up from the dance hall Down Neck that you came up Ferry street to Market and over Market to Mulberry and from Mulberry to Walnut, that is right? A Yes.

Q Why were you over within a block of Chick's dance hall on Sunday night, did you have a date over there? A No, I didn't.

Q You know what a date is? A No.

Q What were you doing over in the vicinity of Chick's place on a Sunday night? A Sunday night I was talking to somebody on the corner.

Q Who were you talking to? A Somebody.

Q Who was it? A I don't know.

Q Been down to the park with him? A No, I wasn't down to the park.

Q What was his name? A I don't know who he is.

Q Where did you pick him up? A I know him to see.

Q Have anything to drink with him that night? A No, sir.

Q Talking with him long? A I talked to him.

Q You had a kind of liking to go back towards Chick's neighborhood. A No.

Mary Weber, cross.

Q From where you lived on Ferry street at that time, that is quite a distance from Chick's hall? Is it a mile? A Yes.

Q What were you doing down there? Did you go back to the East Park that night? A What night?

Q This Sunday night? You know what night I mean.

Mr. Van Blarcom. I object to that comment.

The Court. Yes, the remark will be stricken out, and the jury will disregard it.

Q Who was the fellow you were with on this Sunday night? A I don't know who he is.

Q Where did you pick him up? A I just met him and I know him to see and I don't know his name.

Q Where did you pick him up, where did you meet him? A At the corner of Oliver.

Q And Adams? A Yes, sir.

Q You got down within a couple of doors of Chick's place? A East Kinney street.

Q That is a block from Chick's? A Yes.

Q How did you come to go down there? A I just happened to pass.

Q What time of the night was that? A That was early, only about nine o'clock.

Q What were you doing over a mile from your home down towards Chick's place?

By the Court.

Q Where did you live then? A Before the time I met that fellow, Sunday?

Q Yes? A I lived on Walnut street.

By Mr. McDermit.

Q How far is that from there? That is further yet, further than Ferry street? A No, it is not.

Mary Weber, cross.

By the Court.

Q How far away is it from there, Walnut street, from where you live, to Oliver and Adams streets? A I don't know how far it is.

Q Did you walk there? A Yes, I walked.

Q About how many blocks? A Walked all the way there, all the way down Adams street.

By Mr. McDermit.

Q Why was it you went to Walnut street? A Because I had a date with a girl.

Q What is the girl's name? A She lives up town.

Q What is her name? A I don't know her name.

Q Had a date with a girl at nine o'clock at Chick's place? A Yes, she worked with me.

Q What is her name? A I don't know her name.

Q Where does she work, Edison's? A Yes.

Q Where did you say she lived? A She lived Down Neck.

Q Whereabouts Down Neck? A Niagara street.

Q What number? A I don't know the number.

Q Working in the shop? A Yes.

Q What is her name? A I don't know.

Q What were you going to do with a date with her at nine o'clock at night? A I had a date with her, that is all.

Q For what purpose? A Because I had a date with her.

Q A mile from your home, a mile and a half from your home? A Yes.

Q Why didn't you go to her house? A Because I didn't want to.

Mary Weber, cross.

Q Give us her name? A I don't know her name.

Q First name? A Annie.

Q What is her last name? A I don't know her name.

Q You met her? A Yes.

Q What did you have after you met her? A Just went for a walk.

Q Pick up two fellows? A No.

Q Was she with you when the other two fellows met you? A No.

Q Why not? A She didn't show up.

Q You didn't tell us that was so when you said she came over there.

The Court. She did not say that.

Q Did you go to find out why she didn't show up? A No. I didn't go to find out.

Q Where were you going to meet her? A On East Kinney street.

Q What number on East Kinney street? A There is no number on the corner, Kinney and Adams streets.

Q What did you make the appointment down there for? A Because I just made it down there.

Q What for? A Because I made it.

Q Why did you make an appointment at nine o'clock on a Sunday night, one block from Chick's? A I don't know why.

Q You could see her the next morning at work? A No, how could I see her.

Q When you didn't find her you found these two fellows, you told these two fellows the story? A Yes, I found these two fellows.

Q What is their names? A I don't know the names.

Mary Weber, cross.

Q Have you seen them in the court room since this trial went on or the other trial? A No, I didn't see any strangers.

Q They were strangers to you? A They wasn't strangers, but I don't know their names.

Q How often had you met them? A Down to the dance.

Q What dances? A Down to Chick's.

Q How long before that had you met them to-day? A Before I ever went in there, before the shooting was done.

Q Met them after? A No, I didn't.

Q You hadn't seen these fellows at all for a long time after the shooting, but suddenly upon this Sunday night you met these two fellows and seen Bovino and supposed he was dead, is that true? A Yes, sir.

Q That is so? A Yes, sir.

Q You can't give us the names? A No, sir.

Q Were they the two people that came up with you that night on Market street? A Yes, sir.

Q Why didn't you call some officer's attention to it, from Ferry street to Market street, past the Market street depot? A Because there was no officers around. They was all down to the depot.

Q Why didn't you know that? A I didn't know that.

Q You just told us you had seen them as early as Van Buren street? A Yes.

Q Then they must have been following you when you passed the Market street depot.

Mr. Van Blarcom. No; the witness said she lost them and they came through Mechanic street.

Q Lost them at the Market street depot? A No; I lost them on Union street.

Mary Weber, cross.

Q Why didn't you complain to some officer on Market street? A I didn't know. They tried to kill me, do away with me and they didn't get the chance.

Q Did they pull a gun on you? A No; I didn't see the gun, but I believe so because I seen him pull the gun on somebody else.

Q You supposed they had a gun with them on Mulberry street? A Yes; I know they are that kind of people. They kill you if they can't get nothing on you.

By the Court.

Q When Vincenzo Bovino, this man that you identified as Bennett, shot the man that you know as Frank Baker, did Baker speak at that time? A He only said, "Bennett shot me." That is what I heard him say.

Q How did he say it? A He fell and he said, "Bennett shot me."

Q Did he fall? A Yes.

Q Did he say it before or after he fell? A After he fell, when he was falling down he said it.

By Mr. McDermit.

Q Did you see more than one pistol there? A No; I only saw one.

Q You saw Bennett there? A Yes; I did.

Q You saw Baker fall down, did you? A Yes; I did.

Q Did Bennett say anything to Baker before he shot him? A No; I didn't hear.

Q Did he say anything to him? A No.

Q Did Baker say anything to Bennett? A No; I only heard him say, "Bennett shot me."

Q Did you hear any words between Bennett and Baker before the shot was fired? A Nothing; no.

The Court. It is not necessary to examine the witness in this fashion.

(Argument followed.)

Mr. McDermit. It is evident that she is hostile to the defense.

The Court. That remark may go out and the jury will disregard it.

LUCY ENS, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Where do you live? A 224 Elm street.

Q Newark? A Yes, sir.

Q How long have you lived in Newark? A All my life.

Q You are how old? A Nineteen.

Q You knew Frank Baker in his lifetime? A Yes, sir.

Q You know where Chick Collins' saloon is? A Yes, sir.

Q Were you in there the night Baker was shot? A Yes, sir.

Q What time did you see Baker first that night? A About five minutes to eight.

Q Whereabouts? A At Madison and Lafayette.

Q Where had you been with him that evening, if anywhere, before you came to the dance hall? A Fox's Theatre on Washington street.

Q After you had been to the theatre, where did you and he go? A We went down to Chick Collins'.

Q Did you go in? A I left him on the outside, but I went in.

Q You went in first? A Yes, sir.

Q Did you see him go in or not? A No; he didn't go in. He waited until I came out. I went

in there to get a girl friend of mine home and she didn't go home and I went out.

Q Did you see him again? A Then we walked as far as Jefferson and Kinney streets and then I told him that Big Sue told me, "I was married to him."

Mr. McDermit. I object to that; conversation between Baker and this witness cannot be binding.

The Court. Motion granted.

Q When you were in there the first time had you had a talk with Big Sue? A Yes, sir.

Q Whereabouts? A In the dressing room.

Q Had you seen Mr. Bovino at that time? A Well, I can't say I seen him. I am not sure I seen him the first time I was in the hall.

Q You are not sure whether you did or not? A No, sir.

Q How long had you known Bovino? A I guess about a year; ever since I started going down to the dance hall.

Q Was he employed in the dance hall? A No, sir; not as I know of.

Q Did he go there? A I often seen him there.

Q When you went there the first time how long did you stay? A Oh, I guess about five or ten minutes.

Q Then you went out and met Baker? A Yes, sir.

Q Whereabouts did you meet him? A He was right across the street.

Q You and he walked away? A Up to Jefferson and Kinney street.

Q Where did you go then? A Then I told him.

Q Leave out what you told him. A We went back again.

Q Back where? A Just to Collins'.

Q Then what did you do? A He walked in and left me outside.

Q Did you go in?

By the Court.

Q How far is Jefferson street, where you walked away from Chick Collins' place? A It is almost two blocks.

By Mr. Van Blarcom.

Q Did you stay outside? A He went in first. A I didn't want to go in because he left me without a word. Then Chick Collins and Vito Collins and Jim Bennett they said, "Go on in." I knew what was going to happen.

Mr. McDermit. I object to that and ask to strike it out.

The Court. You object to "I knew what was going to happen." Motion granted.

Q Where were Vito and Chick Collins and Jim Bennett standing? A Right outside the hall.

Q What part of the hall? A Right in front of the place there.

Q What part of the place? A There is a saloon there, then there is a door where they go in the hallway. They were standing by that door.

Q Standing by the door that went into the hallway? A Yes, sir.

Q There are two ways to get into this dance hall; one through the saloon and one through the hallway? A Yes, sir.

Q And they were standing by the door that leads into the hall? A Yes, sir.

Q You say Baker went in first? A Yes, sir.

Q How long after Baker went in did you go in? A About five minutes later I went in.

Lucy Ens, direct.

Q What was said between you and Bennett and Chick in the meantime? A Well, they told me, I told them that Frank Baker said he was going to hit Big Sue of account of bothering him because he couldn't go with no girl on account of her. He said he was going to hit her, so I didn't want to go in. He walked in and left me without a word. I didn't want to go in.

Q What was said, if anything, by these men? A They said, "you need not be afraid. He won't do nothing to her." I didn't want to see that so I walked in. Then—

Q When you walked in had anything happened that you could see? A No, sir.

Q Did you see Baker? A He was sitting right by the doorway.

Q By what door? A Right by the door that leads into the dance hall.

Q Was he inside the dance hall or not? A Yes, sir.

Q Was anybody sitting with him? A No, sir; he was alone.

Q What did you do? A I walked right across the hall by a table where my girl friend was sitting.

Q What is your girl friend's name? A Mae Gilling.

Q Where was she sitting? A Right across the street, hall, right near the saloon door.

Q You know where the ladies' toilet is there? A Yes, sir.

Q Do you remember a piano being there that night? A That was there; that was way on the other side of the hall.

Q Were not there two pianos in there? A I imagine there is one piano.

Q Was this table you went to sit at near the ladies' toilet? A Yes, sir.

Q What happened next that you saw? A Then, the dance, the music started. I went on dancing. A little fellow came up and asked for a dance and I went out dancing with him. I seen Big Sue walking towards Frank and I said to this fellow, "Frank said he was going to hit her." She was going towards him. Just then there was a shot fired—and then there was a shot fired.

Q Which direction were you looking towards him? A My back was turned towards him.

Q So you don't know who fired the shot? A No, sir.

Q What did you do next? A I went towards the crowd; there was a crowd. They all started rushing out. I went towards the crowd.

Q Did you run out, too? A No, sir.

Q What happened? A I heard Frank Baker say, "I am shot." And he pulled his own gun, but it fell out of his hand.

Q He took his own gun from where? A Out of his own pocket or where he had it. I knew he took it from here (indicating). I know it fell out of his hand.

Q Did he take his black-jack out of his pocket? A I don't remember that.

Q What happened next? A He walked towards the saloon door and he asked for a drink and they gave him a drink. He said, "I am twenty-three years old and I am going to die."

Q He said? A Yes, sir.

Q Was he out in the bar room then or in the dance hall? A In the bar room.

Q Where did you go? A I went right in with the crowd, right in the bar room.

Q How many people went in the bar room? A I guess there was more than twenty; there was

more than fifty in the hall that night and they all ran out.

Q You say twenty went out in the bar roon? A I guess about twenty.

Q With Baker? A Yes.

Q What women were there besides yourself, if any? A Me, Mae Gilling and Sue were about the only three left.

Q How long was Baker there in the bar room? A I can't just tell you how long; just long enough for the patrol to come down or ambulance.

Q Did you stay there until the ambulance came? A Yes, sir.

Q During that time did he remain in the bar room? A Yes, sir.

Q Finally did you see him go out? A No; I didn't see him go out. I seen him go; I even went up with him to the patrol wagon.

Q You went out as far as the patrol wagon? A Yes, sir.

Q Then they took you away? A Yes, sir.

Q You went out with Baker—who else went out, anybody? A And a policeman.

Q The policemen helped him into the patrol wagon? A Yes, sir.

Q Had he been outside before he went out to the patrol wagon? A No; I don't remember seeing him go out.

Q How did he get from the dance hall into the bar room? A Big Sue was alongside of him and he walked, himself, as far as I know.

Q He didn't go out in the hall from the dance hall. How did he get into the bar room? A He walked from where he got shot; he walked into the bar room.

Q How did he go? A They was all in the crowd. He walked in himself.

Lucy Ens, cross.

Q Where did he go? There are two ways to get into the bar room? A He went through the dance hall way.

Q How far do you suppose you were away from Baker when this shot was fired? A It is about half the hall, I guess; it is about twelve or thirteen feet.

Q Was there any trouble between you and Sue out in the bar room? A Yes; she jumped at me. She said, "You are the cause of all this," and she talked nice to me after that.

Q First she jumped at you and said, "You are the cause of all this?" A Yes; she said that.

Q When you came back in the hall the second time and sat down with your friend, Mae Gilling, how long was it before you saw Big Sue walk over to Baker? A Just about two or three minutes; then the dance started.

Q How long were you seated before the dance started? A Just sat down and the dance started.

Q Then you got up and danced? A Yes, sir.

Q Both you and Mae Gilling? A No; a little fellow came up and asked me for a dance and I danced with him.

Q How long had you been dancing when the shot was fired? A About five minutes.

Q It wasn't very long? A No; it wasn't very long.

Cross examination by Mr. McDermit.

Q You had telephoned from Chick's bar room over to a restaurant along about ten o'clock to try and get Baker, isn't that so? A No; that happened, I believe. I heard Sue; she telephoned.

Q You didn't telephone? A No; I wasn't there.

Q You didn't telephone? A No, sir.

Q Where did you meet Baker that night? A Madison and Lafayette streets.

Q Met him by appointment, didn't you? A Yes, sir.

Q And the appointment was made over the telephone, wasn't it? A No, sir.

Q Sure about that? A I am sure about it.

Q How was the appointment made? A He wrote me a note; I think it was a note he wrote me that time.

Q Have you got the note still? A No, sir; he asked me in the letter that I should tear it up.

Q Asked you to tear it up? A Yes; he said he didn't want anybody to see it.

Q You knew he had been keeping company with Sue? A He told me he was on the outs with her for over a year.

Q You knew that Sue was regarded as his common law wife? A No, sir; I didn't know nothing until the night she told me; only that night.

Q You had written him a letter about a week ahead of that? A Yes.

Q You telephoned to him several times? A No; I didn't telephone.

Q You had at some time telephoned? A No; I never telephoned to him.

Q Where was he working? A I don't know. I can't say. I think he was working for the city.

Q Where was this restaurant that he used to go to? A Never went in a restaurant with him.

Q How were you to meet him this night? A He wrote me a letter I should meet him.

Q Where is that letter now?

The Court. She had already said it was torn up.

Q Do you know whether Sue got possession of that letter? A She told me that she had it.

Lucy Ens, cross.

Q Did she tell you down at the dance hall she found that letter in Baker's clothes? A No; I don't remember.

Q Did she tell you she found the letter? A I don't remember.

Q Did she put her arm around your waist and talk with you in the hall there, in the dance hall? A Not in the hall.

Q Didn't you and she go up through the dance hall and go over to the room that I point to as H, the dressing room, together and didn't you and she have some words in regard to Baker? A Yes, sir.

Q And didn't she tell you she was married to Baker? A Yes, sir.

Q And that you must leave Baker alone? A Yes, sir.

Q Isn't it also true that you told Chick Collins, James Bovino and another party standing out right in the street, right on the sidewalk, in front of the hallway that leads to the dance hall on Oliver street, that you were afraid to go in there, didn't you? A Yes.

Q Wasn't Baker there at the time? A He was across the street.

Q Didn't you call Baker from the southerly side of Oliver street to come over? A Yes, sir.

Q And didn't Chick say to you people in the presence of Bennett there would be no trouble and to go on in the hall? A Not then.

Q You went in the hall, did you, with Baker? A He went in first.

Q You remained out in the street with these people for a few minutes? A About five minutes.

Q Then you went in through the doorway that leads into the hallway through into the hall? A Yes, sir.

Q Leads out in the street; that is so? A Yes, sir.

Lucy Ens, cross.

Q Now, five minutes after you were in there and after you were dancing a shot was fired? A Yes, sir.

Q Did you see Chick, Bovino and Joe the Kid in the hall when the shot was fired? A After the shot was fired.

Q At the time the shot was fired did you see Bovino or the Kid or Chick in the hallway—at the time the shot was fired? A After the shot was fired.

Q After the shot you saw them? A I saw Jim Bennett, but I am not sure about the others.

Q Now, at any time before the shot was fired—

By the Court.

Q Where did you see him; where did you see Jim Bennett? You say you saw him after the shot was fired; where? A Coming in from the saloon door in the hall.

Q What is that? A Coming from the saloon door in the hall.

Q In the hallway? A No; from the saloon door; from the bar room into the hall.

Q Into the dance hall? A Yes, sir.

By Mr. McDermit.

Q You had no fight with Sue? A No.

Q No fight in the dance hall? A No.

Q Did you see any of this slapping between these people? A No, sir; I didn't look.

Q You didn't see any of it, did you? A No, sir.

Q So that it was about five minutes after you left these people out in the front of the street that the shot was fired? A I guess it was about ten minutes.

Q At no time from the time that you left Bennett in the street did you see him in the dance

hall until after the shot was fired? A No, sir; I seen him after the shot.

Q But at no time after you left him in the street did you see him until after the shot was fired? A I don't understand you. I left him out in the street and I didn't see him until after the shot—

Q Was fired? A Yes, sir.

Q When you left him you left him with Chick and who was the other party? A Vito Collins.

Q Do you remember during the course of a conversation in the bar room between you and Sue when Sue said to you, "You bum, you are responsible for all this trouble?" A I don't remember her saying that. She said, "You are the cause of all this."

Q That was after Baker had been in the bar room for some time, wasn't it? A Yes, sir.

Q Were you there when the officer called up on the telephone from the saloon for to bring the patrol? A Yes, sir.

Q Do you remember who that was? A If I am not mistaken it is Miller.

Q Officer Miller? A Yes, sir.

Q Had you seen him around there during the evening before that? A Yes, sir.

Q You know him, do you? A Yes, sir.

Q How long have you known him? A I only seen him about three or four times in all the time I knew him.

By the Court.

Q Do you know his first name? A No, sir; I only know him by the name of Miller and then I knew his name after the thing happened.

Lucy Ens, cross.

By Mr. McDermit.

Q Of course, you all ran towards the place where Baker was shot? A Yes, sir.

Q Was he standing up, sitting down or what? A Standing up.

Q Did he fall over on the floor in the ball room at any time? A No, I didn't see.

Q Did you see any revolver on the floor? A No, sir.

Q Did you see him have a revolver in his hand? A Yes, sir.

Q You saw that revolver and where it dropped, you don't know? A I think it dropped on the floor.

Q Did Baker make any remark that you heard after he was shot? A He said in the bar room, he said, "Sue, don't tell my mother I got shot; don't tell my mother I got shot for a big bum," but I don't know whether he said that to Sue.

Q He made the remark, don't tell his mother he got shot for a big bum. Look at that girl. Did you see her down at the bar room?

The Court. Indicating Mary Weber?

A Yes, sir.

Q How long had you known her? A I know her for a couple of years.

Q Did she frequent the dance hall? A She used to come down there.

Q Was she there that night? A Yes, sir.

Q Did you see where she was when the shot was fired? A No, sir.

Q Do you know what became of her when the shot was fired? A She ran out with the rest of them.

Q How close were you to Baker when she ran out? A I was just going towards them.

Q Did you hear Baker make any remark that Bennett shot him? A No, sir.

Q Did he make such a remark in your presence? A No, sir.

Q Did he make a charge that Bennett shot him at any time during that evening after the shooting? A No, sir.

Q Did you see Baker out in the street after he was shot? A The only time I seen him when he was going to the patrol wagon.

Q You were near the patrol wagon at that time? A Yes, sir.

Q Sue was there? A She was in the hall.

Q Was Chick Collins outside? A I didn't see him.

Q There was quite a number of people when this man was put in a patrol wagon? A They came out in back of us.

Q Baker was able to walk down the steps? A Yes, sir.

Q Walk out into the street? A Yes, sir.

Q Do you know whether or not there was anything said there about him going to a patrol box? A No.

Q Do you know whether there was anything said to Officer Reilly, or whatever his name is, Officer Miller, do you know him, about a patrol box around the corner on Kinney and Oliver streets? A No, I didn't hear nothing about that.

Q Did you hear any conversation that Chick Collins said, "You need not take him to the patrol box. Take him to the telephone and get the ambulance." A I heard that.

Q Did you hear anybody say in your presence, "Chick, I will hold you responsible for this man?" A No, I didn't hear that.

Lucy Ens, cross.

Q There was quite a talk between the man that was shot and Chick and the rest of the people befor the ambulance finally got there? A Yes, sir.

Q In other words it took fully a half an hour before the ambulance got there? A Yes, sir.

Q Where was Baker when he got the drink of water? Was he standing at the bar or sitting down or what? A He was standing at the bar.

Q Do you remember what he did with the glass of water, if he got it? A He broke it on the bar.

Q At no time was Baker down on the floor of either the bar room or the dance hall? A No, sir.

Q You saw him after the shot was fired until he finally went away in the ambulance? A Yes, sir.

Q You saw Bovino in the bar room after Baker was shot? A Yes, sir.

Q You saw Bovino talking to Baker? A No, I didn't see him talking.

Q Did Baker make any accusation against Bovino in the bar room? A No, sir.

Q At no time? A No, sir.

By Mr. Van Blarcom.

Q Where was it that Collins made the remark to telephone for the ambulance? A In the bar room.

Q Baker wasn't down outside then? A No, sir.

Q Was Baker still in the dance hall when you saw Pennett walk in? A Yes, sir.

Q That was after the shooting? A Yes, sir.

Q Had you taken any particular notice of who was in the room when you were dancing just before this shot was fired? A I can't really tell.

Q Is it possible that Bennett might have been there and you would not have seen him? A Yes, sir.

Lucy Ens, cross.

The Court. I think it is objectionable. I will strike out that answer and tell the jury to disregard it.

Q At the time this shot came you were dancing? A Yes, sir.

Q You had your back to Baker? A Yes, sir.

Q You were in the middle of the floor? A Yes, sir.

Q Were there other couples dancing at the same time? A Yes, sir.

Q About how many? A About ten couples.

Q Was there anybody else in the dance hall that was standing up around the tables or around the chairs? A No, I don't remember that.

Q Did you have any conversation with Colling at all that night before you met him outside with Bennett and Vito? A Yes, sir.

Q Whereabouts? A In the hall.

Q In the hall itself? A Yes, sir.

Q The dance hall? A Yes, sir.

Q When was that? A That was the first time I was in.

Q Was that before Baker came in? A Yes, sir.

By the Court.

Q How old are you? A Nineteen.

By Mr. Van Blarcom.

Q You are married now? A Yes, sir.

Q Have been recently? A Yes, sir.

ESSEX COUNTY COURT OF OYER AND TERMINER.

Tuesday, January 25, 1916.

STATE
vs.
VINCENZO BOVINO. } *Second Day.*

Appearances as before stated.

ANNA GURTLER, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Where do you live? A 73 Lister avenue.

Q How old are you? A Twenty-five.

Q How long have you lived in Newark? A All my life.

Q You knew where Chick Collins' dance hall was? A Yes.

Q In April, 1914, were you accustomed to going there? A Yes, sir; once a week.

Q Do you know the defendant, James Bovino? A Yes, sir.

Q How long have you known him? A Not very long.

Q What do you mean by that? A About a year or two, that is all.

Q You mean from this time or from the time of the shooting? A From before the shooting.

Q Did you know Frank Baker? A Yes, sir.

Q How long had you known him at the time of the shooting? A I didn't know him very long.

Q Were you in this dance hall the night Baker was shot? A Yes, sir.

Q What time did you go there? A I went there between 8:15 and 8:30, I don't know which.

Q Did you go alone or with someone? A I went alone.

Q Did you meet somebody when you went there? A No, sir; I met some girls.

Q Did you sit down or stand up? A Sat down.

Q Did you have any dances? A Yes, sir.

Q Did you see Mary Weber that night? A Yes, sir.

Q Did you and Mary sit at the same table? A Yes, sir.

Q Tell us about the shooting, what you saw of this shooting? A I seen a shot fired and I seen the gun on the floor.

Q Where were you at that time? A Down a little ways from the door.

Q From what door? A From the hall door.

Q Down in which direction? A The hall door is here (indicating), down that way, like.

Q You mean towards the rear of the hall? A Down, like the ladies' dressing room.

Q Did you see who fired the shot? A Yes, sir.

Q Who fired it? A Mr. Bennett.

Q What happened before the shot was fired? A There was an argument there.

Q Who had the argument there? A Big Sue and Mr. Bennett.

Q Tell us what took place? A The shooting took place and the gun was fired on the floor and there was an argument there and I went and I sat down, and they asked me to have a drink; then when the shot was fired I went out with the crowd and went home.

Q How long had Big Sue been in there? A I don't know how long she was in there. I seen her in there.

Q Do you remember whether she was in there when you came or whether she came afterwards? A She came afterwards.

Q Did you see Baker come in? A Yes, sir; I seen him come in; yes, sir.

Q Did you see Lucy there? A Yes, sir.

Q How long had Baker been there before this shooting took place? A Not long.

Q Where was Bennett? A Near the door.

Q Near what door? A The hall door there, the dancing hall door.

Q Near the hall door? A Yes, sir; where the dance hall is.

Q You see there are two doors going out of this dance hall; one goes into the saloon and one into the hallway. Which door do you refer to? A The one as you go into the dance hall there.

Q Both of them go in to the dance hall? A Why, the one that leads in from the street, the other door.

Q The saloon door? A Yes, sir.

Q The one that goes into the saloon? A No; there is another door; one as you come in from the street, and then another—they got like a big glass like where they have flags in it.

Q Was he in the dance hall? A Yes, sir.

Q You see this map. Now, there is a doorway that leads from the dance hall out through this little yellow space out into the hallway into the street.

Mr. McDermit. There are two doorways; there are three doorways in the hallway.

Q Then, there are two doorways. Now, there are also two doorways from the dance hall into the bar room. Where was Baker standing — I don't mean Baker; I mean Bennett? A Inside there, inside of the dancing hall door.

Q You understand this map? A Yes, sir.

Q See if you can take this pointer and point out where Bennett was standing at the time he fired the shot? A See, there is one door as you come in, and one in the saloon, and one as you go into the dancing hall.

Q See if you can take the pointer and point out where Bennett was when he fired the shot. A Not far away from the door.

Q Which door? A The door into the dance hall.

Q There are two doors into the dance hall. Which door do you mean? A The one from the hall.

Q Were there many people in the hall at the time the shot was fired or not? A Not so very many.

Q What was going on at the time? A There was dancing and drinking.

Q Were you sitting alone or with a man? A I was sitting with the girls.

Q Did you notice where Big Sue was? A She was at a large table.

Q Where was her table? A Over towards the other place.

Q Towards what? A Towards the saloon door.

Q You know where the ladies' toilet is? A Yes, sir.

Q Was it anywheres near that that Big Sue was sitting? A Yes, sir; right near there, a little ways from there.

Q How soon did you go out after the shooting? A About twenty minutes.

Q What happened right after the shooting? A Mr. Baker says, "I was shot."

Q Did all the crowd stay in? A No; they gathered out; some stayed in, some gathered out. When they gathered out I went out with them.

Anna Gurtler, cross.

Q Where did Baker go? A I don't know where he went, but he says "I was shot."

Cross examination by Mr. McDermit.

Q He didn't fall down, did he? A I didn't see that.

Q You testified in this Court in this same case a couple of weeks ago, didn't you? A Yes, sir.

Q And you testified then that you didn't see the shooting, did you not? Isn't that so? A I said I saw the shot fired.

Q Didn't you say that you didn't see who fired the shot? Please answer that question? A I don't know; I seen the shot fired.

Q Did you not say that you didn't know who fired the shot? That is the question. A No, sir; I says—

The Court. She has already answered it twice.

Q Didn't you say that you were down at the end of the dressing room and that there was a dance, and that you didn't know who had fired the shot, where the shot came from? Didn't you say that? A No, sir; I says I seen the shot fired.

Q Didn't you say at the first trial that the police threatened to put you in jail unless you made the admission that Bennett fired the shot, didn't you say that? A They said if I wouldn't come up with the truth.

By the Court.

Q What did you say at the last trial? Did you say that at the last trial? A If I wouldn't say the truth I would be put in jail.

Q No; the question, did you say at the last trial that the police told you if you didn't say that Ben-

nett shot Baker that you would be put in jail? A Yes, sir.

By Mr. McDermit.

Q They told you that?

Mr. Van Blarcom. I object. I don't know whether the statement of counsel is in a form of a question or not or what.

Q Did you not say at the last trial, "Sue Brown was sitting with us at the table?" A No, sir; she was sitting with us at the table.

Q Did you not say at the last trial in this case these words, on the witness stand, "Sue Brown was sitting with us at the table?" A No, sir.

Q Never said that? A No, sir.

Q Did you say at the last trial, "When the shooting took place Big Sue was sitting at our table?" A No, sir.

Q Didn't you say that? A No, sir.

Q Positive about that? A Positive, yes, sir.

Q Are you just as positive about this statement as you are about the shooting? A I know I didn't say it.

Q You know you didn't say it? A No, sir.

Q Didn't you say it a number of times that Sue was sitting at the table? A Not that Sue—

Q Didn't you attempt first to testify that you knew nothing about the shooting when you first started to testify in this case at the last trial; is that not so?

The Court. Answer the question.

A I know I said I didn't know nothing about it until they brought me to headquarters.

Q Did you not swear in this Court under oath before Judge Martin and this jury and Mr. Van Blarcom and myself that you knew nothing about

the shooting? A I said I knew nothing about it, that was all.

Q So, now, you say that you testified under oath that you knew nothing about it; is that right? A All I said is that is all I know.

Q You deny you swore under oath first that you didn't know anything about the shooting at all, do you?

The Court. What is the use of wasting time on questions about that?

Q Didn't you swear to a half dozen different lies on the witness stand the last time and admit it?

Mr. Van Blarcom. I object.

The Court. Sustained.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q Now, I ask you the question, I want you to listen. Did you not testify in court here first when you were called upon the witness stand here that you knew nothing about this shooting? I want an answer to that. A I says I knew something about it. I didn't say I didn't know anything about it.

Q Didn't you say that they told me that Mary had told them that Jim Bennett did the shooting? Did you use that language? A That Mary told me?

Q Yes.

The Court. How would that contradict anything that was said on the stand?

Q I will read it once more, so we will get it on the record right.

The Court. You will answer the question of the Court first. The question is, how does that contradict anything that this witness has said?

Mr. McDermit. To attack her credibility. I want to know whether she knows what she was talking about.

Q Didn't you make a statement on the witness stand at the last trial and used these words, "They told me that Mary had told them Jim Bennett did the shooting?" A No, sir.

Q You never stated that? A No, sir.

Q Didn't you say, using this language, "And that I," meaning yourself, "was to tell the same thing or they would lock me up and that is why I am testifying today?" Didn't you say that? A No, sir.

Q (*By Mr. Van Blarcom.*) What did the police tell you? A They told me if I won't say the truth I will get locked up.

Q If I won't— A If I wouldn't.

Q (*By Mr. McDermit.*) Did you use in the last trial the word "truth" to qualify the question of putting in jail? A Yes, sir; I said I would tell the truth.

Q Didn't you say before the court that Mr. Godfrey threatened to put you in jail unless you said that Bennett did the shooting? Didn't you say that?

The Court. Answer the question.

A They said if I wouldn't tell the truth I would get locked up.

Q Didn't he tell you—

The Court. She has answered the question.

Mr. McDermit. May I ask that question again?

Anna Gurtler, cross.

Q Did you not say that Mr. Godfrey threatened to put you in jail unless you testified that Bennett did the shooting? Now, certainly that question can be answered yes or no. A I didn't say he threatened me. I said if I wouldn't come up with the truth he would put me in jail.

Q Didn't you testify under oath that he told you that he would put you in jail if you didn't say that Bennett did the shooting? A No.

Q You didn't testify to that? A He didn't say he would put me in jail.

Q Did you testify to that, did you say that on the witness stand under oath? A No, I said if I wouldn't come up with the truth I would get locked up.

By the Court.

Q How old are you? A Twenty-five.

Q Do you know Vincenzo Bovino? A Yes.

Q Under what name was he known to you? A Mr. Bennett.

Q What was his first name? A I don't know, Jimmie.

Q Did you know Frank Baker? A Yes, sir.

Q Do you know his real name? A No, sir; just by Frank Baker.

Q You never heard the name Francisco Miserentino? A No.

By Mr. McDermit.

Q Where are you living at present? A Down Neck.

Q Whereabouts? A 73 Lister avenue.

Q Who are you living there with? A With my father.

HARVEY VAN STEENBERG sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Mr. Van Steenbergh, you are a police officer? A Yes, sir.

Q Connected with the Third Precinct? A Yes, sir.

Q Did you go to Collins' dance hall on the night of this shooting? A Yes, sir.

Q What time did you get there? A I left the station house about 11:40.

Q Left the station house? A Yes, sir.

Q Did you know Baker? A Yes, sir.

Q He was a special officer, wasn't he? A Yes, sir.

Q Where was he when you came there? A He was sitting in a chair right by the wall there, just back of B.

Q Right near the hallway, the partition? A The partition there between the hall and the bar room.

Q What was his right name, do you know? A I don't know just what his first name was. We called him Baker. His last name was Meserentino.

Q What did you do with him? A We went there on an auto patrol. I took him to the hospital.

Q City Hospital? A Yes, sir.

Q Who took him out to the ambulance? A He went out himself.

Q Were you with him, or anybody? A No, right behind him.

Q Anybody walking with him? A No, sir.

Q Then, you went to the hospital with him? A Yes, sir.

Q Who was there when you got there to the dance hall? A Officer Miller and standing right near Baker was three girls.

Q Do you know who they were? A Sue Brown and Lucy Ens—she gave her name at the station house. The other one I don't know her name.

Q Did you hear any talk between the women? A No, sir.

Q That was Police Officer Joseph Miller, wasn't it? A Yes, sir.

Cross examination by Mr. McDermit.

Q Did you see Chick Collins there when you took the man away? A Yes, sir.

Q Did you see anybody around there? A There was quite a few people around there. I didn't recognize them.

Q How large a crowd was there, about? A I should judge about twenty-five or thirty people.

Q Did Baker walk into the ambulance? A He got up and practically ran from the saloon to the patrol wagon.

Q He ran from the saloon to the truck? A Practically so, good fast walk.

Q He walked fast from the saloon to the ambulance? A Yes, sir.

Q Without attendance? A Without attendance, yes.

VINCENT SANSONE sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a priest? A Yes, sir.

Q Connected with the Catholic Church? A Catholic Church.

Q Did you know a man by the name of Meserintino? A Meserintino?

Q Frank Baker he was known as? A Oh, yes, I know him.

Q How long had you known him? A I knew him at the hospital.

Q When did you see him in the hospital? A 22d or 23d of April, I don't remember very well.

Q What year? A 1914.

Q That is at the City Hospital? A City Hospital.

Q Was he a member of your parish or some other parish? A I don't know. I was called in by the hospital and I went there. I didn't inquire.

Q You were called by the City Hospital? A City Hospital.

Q Do you remember about what time it was when you saw him? A Eleven or twelve, I don't remember very well, but it was in the night.

Q Sometime between eleven and twelve o'clock? A Yes, between eleven and twelve.

Q At night or daytime? A No, night.

Q Did you have a talk with him at the time? A Yes, I had a talk.

Q How long did you talk with him? A For five or six minutes. We can't have a long talk with such patients.

Q Was he able to reply to your conversation? A Well, a little. I asked him what was the matter. He said he was shot; then I asked something in confession which I cannot say. That is all I know, the last rite of the church.

Q He responded to your questions? A Yes.

Q Did you administer the last rites to him at that time? A I did.

Q Do you know whether or not he knew he was going to die? A I didn't know.

Q Do you know whether he knew he was going to die? A I asked some questions about confession, if he was pardoning his enemies. He said yes. That is not for us.

JOSEPH ARTHUR MILLER sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q Connected with what precinct? A Third Precinct.

Q Were you in Chick Collins' dance hall the night of this shooting? A Yes, sir.

Q And you were off duty that night? A Yes, sir.

Q What time did you go in there? A 9:45, 9:50.

Q Had you been in the dance hall? A Yes, sir.

Q Where were you when this shot was fired? A Bar room, at the end of the bar.

Q Which end, towards the dance hall or towards the street? A Towards the dance hall.

Q Who else was out in the bar room? A The saloon-keeper's brother-in-law is the bartender and the saloon-keeper.

Q What is the saloon-keeper's brother-in-law's name? A Don't know his name, what they call him, I can't think of his name. He was bartender. I know he is bartender there yet, Joe.

Q What was the brother's name? A Why, Vito.

Q What was Vito doing there that night? A He had a tray, came in with glasses.

Q Where did he come from? A The hall, the dance hall.

Q What did you do when you heard this noise that sounded like a shot? A When the shot was fired, it didn't sound like a shot; it was not very loud and wasn't very distinct. I really didn't know it was a shot until I heard the crowd running out. I heard the rumpus and the noise and as they ran from the dance hall I went from the saloon into the dance hall and Vito followed me.

Q You were first? A Yes, sir.

Q What did you see when you went in there? A As soon as the door opened I seen this one girl, Big Sue, standing about fifteen feet from the door directly ahead of me, and on the left I seen the special policeman in uniform and the fellow they call Skinny and this man Baker that had been shot, the three of them were together there almost at the door leading out into the hall into Oliver street.

Q What did you do? A I went up to him, I thought it was Baker that done the shooting. He had his gun out. I made an effort to get the gun and the gun slipped. I grabbed him and I asked him what did he do. He pulled away from me. Then the gun dropped, and he went down to pick it up. Skinny said he was shot and Baker picked up his gun and said, "My, God, I am shot." I said, "Who done it?" He wouldn't tell me. I accused him. In the meantime there was something said about the special officer doing the shooting. Then I got the special officer's gun and Baker's gun and took him into the bar room, and then I telephoned for the ambulance and for the reserves.

Q Where did you lead him to? A Lead him right off the front stoop. There is one- two, three

steps from the saloon to the sidewalk on Oliver street. I got him down to about the bottom step.

Q Then, what did you do? A Why, I was leading him to the box at Kinney and Adams street forgetting about the telephone in the saloon, when Chick was standing there, he says, "Why don't you use the telephone in the saloon?" I handed him over to Chick and told Chick to bring him back into the saloon. Then, I went in and telephoned and by that time Chick had him sitting down in a chair in the saloon.

Q You say when you went in there he had his revolver out? A When I went in there, yes, Baker had his revolver out.

Q Where did he have it? A He had it in this fashion, this way (indicating).

Q Turn around so the jury can see. A He had the gun in this fashion, the barrel in this hand and the handle in this hand (indicating). I thought he done the shooting.

By the Court.

Q That is to say, he grasped the handle of the revolver with his right hand and he had the barrel covered completely with his right hand? A I wouldn't say whether it was the barrel in his left or the handle in the right hand. I didn't notice. My object was to get the gun.

By Mr. Van Blarcom.

Q Here is a revolver. See whether or not you can identify that as Baker's revolver? A Yes, that looks like it.

Q Did you make an identification mark on it?

A No, but another officer did in my presence.

Q Which officer is that? A Why, there was three of them there. I think Tom Smith was the one that made the identification mark.

Q You said as Baker held the revolver it slipped out of his hand. How did that happen? A Of course, it was lost as I grabbed for it. I didn't know whether he done the shooting or whether somebody else did the shooting.

Q Was Baker's revolver loaded or empty? A Loaded, fully loaded.

Q Had it been recently discharged, could you tell? A No.

Q No signs of that? A No signs of it, whatever.

Q Were there cartridges in like this? A Why, I broke the gun but didn't take the cartridges out. You can see whether the bullet was in it, in the cartridge or not.

Q What did you do with the revolver? A I took the special officer's revolver, too. I took both of them into the station house.

Q Did you turn them over to Lieutenant Forsyth? A Yes, he was in back of the desk.

Q How about this blank shot of Baker's? A That was picked up later. I don't know who sent that in.

Q When did you take the special officer's revolver? A Shortly after I took the special officer Baker's revolver.

Q Did you take that in the bar room? A I took it in the hall as soon as I got in there.

Q Under what circumstances did you take it? A I heard somebody say that the special officer shot Baker. As soon as Baker showed me he was shot somebody said the special officer shot him. Then, I got the special officer's revolver.

Q Where did you get it from? A He took it out of his pocket and handed it to me.

Q You hadn't seen that out before that time? A No, sir.

Joseph Arthur Miller, cross.

Q Is that the special officer's revolver? A It looks like it.

Q Did you make any mark on it? A Yes, but you can't see it here. There ain't a mark on the handle. I can't see it, didn't scratch it deep enough.

Q What did you do with it? A I turn the two revolvers at the same time over to the desk when I brought the prisoners in.

Q Did you examine the special officer's revolver to see if that had been shot? A Yes, sir.

Q How about that? A That was fully loaded.

Q How about this leather holder for Baker's revolver, how about his leather holder? A I didn't see that.

Q Had you seen Bennett around there that night? A Yes, sir.

Q Where had he been? A He was in the hall when I was in the hall ten minutes before the shooting.

Q When you came out of the dance hall where did you go? A I said good-night to them and went in the bar room.

Q Home? A I was going home.

Q Left Bennett inside? A Left them all inside.

Q Did you see Bennett come out? A No, sir.

Q What time did this shooting take place. as near as you can remember? A I think I telephoned 11:40. I lost maybe five minutes; between 11:30 and 11:35.

Cross examination by Mr. McDermit.

Q When you went into the hall after you heard the shot where did you find Baker? A Baker was standing at the door.

Q Wasn't lying down on the ground? A Standing on his feet.

Q How long did it take you to get from the bar room after you heard the shot to the place where Baker was? A The shot wasn't distinct; maybe I lost a minute or two before I went into the hall. It didn't sound like a shot. I didn't know it was a shot until I heard the crowd run.

Q Have you seen this map before? A Yes, sir.

Q Then you are acquainted with the premises down there? A Yes.

Q You know where the bar is right in from Oliver street, or do you know where the door leads from the hallway into the saloon? A Yes.

Q You know where the other two doors are there, room C? A Yes, sir.

Q Just show the jury where Baker was standing when you came in from the bar room? A Baker was standing about there (indicating).

Q How about—how many feet away from the doorway? A Maybe three feet away from the doorway leading out to Oliver street.

The Court. Witness indicates a place in front of the doorway between C and G.

By the Court.

Q Was it in this dance hall or in this little room that they call C? A In the dance hall, I said about three feet away from the door in the dance hall.

Q *(By Mr. McDermitt).* What was the first thing you observed when you went in? Who did you see there? A As soon as I opened the door I saw this Big Sue standing in front of me.

Q Which door did you go in? You were out in room B? A I went from B to G.

Joseph Arthur Miller, cross.

Q When through the double doors that goes into D through the single door that goes in G? A Yes, I paused for a second to see where the excitement was and then I turned to the left.

Q You found Sue there? A Found her in the middle of the floor.

Q Who else did you find there? A As soon as I got in there and I seen the excitement over to my left I didn't look who else was in there.

Q You immediately went over there? A I immediately went over there.

Q Did you have any talk with Baker, the deceased? A Yes.

Q Did you ask him who had shot him? A Yes, sir.

Q What did he say? A He wouldn't tell me. He said he would take the law himself, he said he could get square himself.

Q Did he make any remark there in your presence that Bennett had shot him? A No.

Q Did Baker say Bennett had shot him? A No, he wouldn't say nobody shot him.

Q Did you see this young lady, the Weber girl? A No, sir.

Q Was she there at the time you went in the dance hall? A The first time I went in the dance hall?

Q No, at the time of the shooting. After you heard the shot you went into that room? Did you see the Weber girl there? A No.

Q What way did you get Baker to the street, through the room C to hallway A? A G to D and D to B, brought him out the same as I went in.

Q And then into Oliver street? A And then into Oliver street.

Q Did he walk with you all the way in? A Yes, sir.

Q Had to place him under arrest? A Yes, certainly.

Q When you were out in the street and before he returned back to the saloon, that is after you changed your mind about taking him to the patrol box as you have testified, and brought him back into the saloon, was there anybody came in from the street with you? A I got him off the stoop in front of the saloon, when Chick Collins, the proprietor of the saloon, said to me, "Where are you taking him?" I said, "Over to the box." He said, "Use the telephone in the saloon." I said, "All right, I will hold you responsible for this man," and I went back in the saloon and telephoned for the ambulance.

Q When you were out on the sidewalk with this man Chick Collins was on the sidewalk? A Chick Collins was on the sidewalk, Baker was on the sidewalk and I had one foot on the stoop.

Q When you came into the saloon with Baker did you see where Chick Collins was, was he in there or was anybody in there when you came in with Baker after the shot was fired? A Nobody in the saloon itself.

Q Where did you first find Chick Collins after the shot was fired? A Right in the door of the saloon, leading into Oliver street.

Q Did you see Bennett there? A No.

Q Did you see Joe there or anybody else there? A No, not at that present moment, but they all entered shortly after.

Q You went back to the telephone and you left Baker in the custody of Chick, did you? A Right at the door, yes, sir.

Q Did Baker come back into the saloon again after that? A Yes, sure, the proprietor, Chick, had led him back into the saloon. He stood up

with Chick right over there when I telephoned, then the crowd all started to come in.

Q Did you see Big Sue there? A They all came out in the saloon.

Q Did you see Bennett there? A No, sir; I did not.

Q Did you see Bennett there in the saloon there? A No, I did not.

Q Did Sue and some girl, named Lucy, have some words in the saloon, do you remember? A Why, that was after.

Q When was it? A I didn't hear the argument—yes, I understand they did.

Q Did you hear it? A No.

Q When he was in the saloon was anything administered to Baker, did he get anything to drink of any kind? A Yes, I am positive that somebody handed him something to drink. I don't know what it was and he takes the glass and slammed it against the wall.

Q It was water, wasn't it? A I don't know.

Q What was it—so he threw it up against the wall? A Yes, broke the glass.

Q During that time did he make any outcry against Bennett or claim Bennett had shot him? A No.

Q Did you ask him the second time? A I asked him several times, plead with him so I could get somebody who done the act while I was there, but he wouldn't tell, but he said he would get his own revenge, had his finger in his mouth all the time.

Q His finger in his mouth, biting his finger, saying that he would get his own revenge? A Yes, sir.

Q Didn't you testify at the last trial that Bennett was in that saloon as well as Baker after the shot? A After the shot, yes.

Joseph Arthur Miller, cross.

Q That is what I mean, that Baker was up against the door, as I understand it, standing against the bar with Chick Collins? A I didn't see Bennett.

Q At the time that Chick Collins and Bennett were standing up against the bar after the shooting? A After the shooting, no. They were standing between the door and the table, then they sat him down.

Q Where was Bennett then? A I didn't see Bennett.

Q Didn't you testify you saw Bennett a few minutes afterwards? A That they had taken this Bennett, after the officers had taken Baker from the saloon to the wagon, the ambulance, I came back with the other police officers, looking for witnesses. Then, I seen Bennett in the saloon.

By the Court.

Q How long was that after the shooting? A I don't suppose it didn't take over—well, I really can't say.

Q About how long? A The time which it took me to telephone and our ambulance came down there maybe ten or fifteen minutes.

Q (*By Mr. McDermit.*) You can't be mistaken under any circumstances that the fact that you had this man out in the street first, this man Baker? A I don't understand what you mean.

Q There can't be any doubt about your statement you first took this man after he was shot through the saloon out into the street? A After he was shot I took him right out.

Q And when he came back from the street with Chick Collins? A Yes, sir.

Q Did you see Lucy in the street at any time? A No, sir.

Joseph Arthur Miller, cross.

Q Did you see Lucy on this stoop of the hallway A at any time? A No, sir.

Q *(By Mr. Van Blarcom).* Did you see Mary Weber there that night at all, that is the girl sitting over there (indicating)? A No, sir.

Q I mean before the shot? A She could have been there but I didn't notice. There were about 40. I didn't pay any attention who was in there.

Q Where were you sitting when you were inside? A Just the other side of that green, I guess that is the piano.

Q Yes? A I was standing about in there (indicating).

Q But, I understand you to say you delayed a little about going in after you heard this noise? A It didn't sound like a shot. Maybe there was a half minute more, then they all ran out.

Q Where did they run out? A From G to C and A into Oliver street.

Q About what proportion of the people had left the hall when you went in? A I should judge about seven or eight.

Q All but about seven or eight had left? A Yes.

By the Court.

Q What time did you get there that night? A Around 9:45. quarter to ten, ten minutes to ten.

Q Did you see anybody sitting at what has been called the large table? There was one table where some ten, twelve, fourteen people sat? A Yes, sir.

Q Did you know any of the persons who sat there before the shooting? A I know them by sight.

Q That you saw there? A Yes, sir; I know them by sight. I didn't know any of their names.

James D. Bell, direct.

Q Without giving us the names of all of them, who were the women? A This Big Sue was one. I don't know the girls, the other ones; no, sir.

Q Do you know the names of any of the men? A Yes; the fellow they call Tony the Kid and this Chick Collins, himself, and Jim Bennett; this Joe Broad, the little Italian they call Lame Joe.

Q Who do you mean by Jim Bennett? A Jimmie Bovino, James Bovino, the defendant.

Q The defendant, Vincenzo Bovino? A Yes. They were all around this big table.

By Mr. Van Blarcom.

Q What men sat at the table just before you went out? A When I left the hall, why there was Bennett and this Lame Joe and Tony Gratch or whatever his name is, and Joe Broad, this Big Sue —there is quite a number of them; I can't mention them all. I don't know their names.

Q But at least those were there? A They were there; yes, sir.

JAMES D. BELL, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q Connected with the Third Precinct? A No; Second.

Q You were with the Third in April, 1914? A Yes, sir.

Q How long have you been on the police force? A Four years to-day.

Q Did you know Frank Baker in his lifetime? A Yes, sir.

Q What was his right name? A Frank Miserintino.

James D. Bell, direct.

By the Court.

Q Frank or Francisco? A Frank I knew him by.

By Mr. Van Blarcom.

Q Do you know the defendant here, Bovino? A Yes, sir.

Q How long have you known him? A Two years, I guess.

Q How long did you know Baker? A About the same time.

Q Where were you the night of this shooting? A I was at a meeting in Schlesinger's shoe store on Ferry street for Captain Christie's banquet committee.

Q When did you first hear of the shooting? A About quarter past twelve the next morning.

Q That is the same night the shooting took place? A The following morning. The shooting took place about 11:25 that night.

Q Did you go to the City Hospital? A Yes, sir.

Q Who was with you? A Officer Miller of the Third Precinct, John L. Miller.

Q What time did you get there? A About half-past twelve.

Q That is, a little after midnight? A Yes, sir.

Q You saw Baker? A Yes, sir.

Q Where was he? A Eighth ward, in the top floor City Hospital.

Q Have any talk with him? A Yes sir.

Q What was the conversation you had with him?

The Court. Do you desire to cross examine.

Mr. McDermit. No sir.

A Why, I went into his bedside and I asked him was he going to tell me who shot him. He said to

me, "Am I going to live?" I said, "Yes." "Then I won't tell you who shot me. I will get my own revenge."

Q How long were you there? A I should judge about five or ten minutes.

Q Then you left, of course? A Yes, sir.

Q When did you go to the City Hospital next? A Same afternoon about four, half-past four or five o'clock.

Q Anybody with you then? A No, sir.

Q What happened on that occasion? A Why, I asked him how he felt. He said, "Pretty good. Am I going to live?" I said, "Yes." I said, "Are you going to tell me who shot you?" He said, "No; I will get my own revenge."

Q Had he been operated on, do you know, between the first and second time you saw him? A I don't know.

Q Then you saw him the third time? A Yes, sir.

Q When? A Same night, about midnight.

Q Who was with you at that occasion, the last time? A Officer John L. Miller, Officer Feldman of the Fourth Precinct, Officer Walter Byrne of the Third Precinct and Officer Dick Green of the Third Precinct, and Court Interpreter Remondalli.

Q The Court interpreter, he is connected with what precinct? A At that time he worked at First and Third; now he is—just works in the Third.

Q Was anybody else there besides the police officers when you saw Baker the last time? A There was a nurse met me as I entered the ward. She was working around the bed. She went over as far as the bed.

Q State what took place on this last occasion. A As I entered the ward I met a nurse and she said to me—

John Miller, direct.

Mr. McDermit. I object to that.

Q Leave out what the nurse said and tell us what Baker said. A I met a nurse; I went over to the bedside of Frank Miserintino. I said, "Hello." He said, "I am going to die." I said, "Did you have the priest?" He said, "Yes." I said, "Yes; you are going to die." I said, "Do you know me?" He said, "Yes; you are my friend, Jimmie Bell." I pointed to Officer Miller. I said, "Do you know this man?" He said, "Yes; that is my friend, Jack Miller." "I said, "Are you going to tell me who shot you?" He said, "Yes." I said, "Who?" He said, "Jim Bennett." I said, "Are you sure?" He said, "Yes." With that he turned over on his left side and died.

Q Do you know how long he lived after you got there? A About a couple of minutes. Two or three minutes?

Q Were you there when he died? A Yes, sir.

Cross examination by Mr. McDermit.

Q He was vomiting blood into a pan, wasn't he, when you got there? A No, sir.

Q Didn't he vomit blood when you got there? A I didn't take notice.

Q Wasn't the nurse holding a pan and wasn't he vomiting blood frequently while you were there? A I didn't take notice.

Q You would know if you were right alongside of him? A He wasn't vomiting blood while he was talking to me.

JOHN MILLER, sworn or the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q Connected with what precinct? A Third.

Q How long have you been on the police force? A Since 1902.

Q Did you know Frank Baker in his lifetime? A Yes, sir.

Q What was his right name? A Meserintino.

Q Do you know Bovino, the defendant? A Yes, sir.

Q How long have you known the defendant? A About three years.

Q You knew Baker how long? A About the same time.

Q Was Baker a special officer? A Yes, sir.

Q You remember the night of this shooting? A Yes, sir.

Q Did you go to the dance hall? A I did.

Q What time did you go there? A In the neighborhood of three o'clock.

Q Have you been to the City Hospital? A Yes, sir.

Q Did you go to the City Hospital before you went to the dance hall or afterwards? A Before.

Q Did you see anybody at the City Hospital? A No, sir.

Q And why did you go to the dance hall? A From information Officer Bell had received on our first trip. That is, our first trip.

Q Did you see Baker at the hospital that night? A I did.

Q The night of the shooting? A The night of the shooting?

Q Yes. A I saw him on the night of April 22nd.

Q That is, the next night. Did you go to the hospital with Bell? A Yes, sir.

Q Right after the shooting? A We arrived at the hospital about 12:30.

Q Did you see Baker? A No, sir.

John Miller, cross.

Q You didn't see him that time? A Not on that occasion.

Q When did you first see Baker at the hospital? A The night that he died.

Q What time was it that night when you went there? A We arrived there, I should judge, about seven—six or seven minutes to twelve.

Q Who was in the party? A Myself, Officer Bell, Officer Richard Green, Officer Feldman, Chauffeur Burns and Interpreter Remondalli, I call him; I don't know whether that is his rght name or not.

Q What took place at the hospital? A Why, as we walked in we walked right up to Baker's bedside, and Baker said to Officer Bell, "I am going to die." Bell said, "Yes; did you have the priest?" Baker said, "Yes." Officer Bell said, "Do you know me?" He said, "Yes, you are my friend, Jimmie Bell." He said, "Do you know him, meaning me?" He said, "Yes; that is my friend, Jack Miller." Officer Bell asked him who shot him. He said, "Jimmie Bennett." He said, "Are you sure?" He said, "Yes," and he expired shortly afterwards.

Cross examination by Mr. McDermit.

Q See him spit blood while you were there? A No, sir.

Q See any pan in front of him? A No, sir.

Q See any nurse around the bed there? A There was a nurse.

Q Standing there while you were talking to him? A I paid no attention to the nurse after we got listening to Baker.

Q You would have noticed whether he coughed any, coughed up blood while you were there; you would have seen that; you were in a position to know that? A Yes, sir.

PETER REMONDALLI, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q You are a court interpreter? A Yes, sir.

Q Connected with what precinct? A First Criminal Court, First Precinct.

Q How long have you been connected with the First Precinct? A Eight years in June.

Q You are an Italian? A Yes, sir.

Q Did you know Frank Baker? A I saw him.

Q Did you know him before you saw him that night? A Yes.

Q What is his right name; do you know? A I don't know.

Q He was an Italian? A Yes.

Q Did you go to the City Hospital with these officers the night Baker died? A Yes, sir.

Q What took place there? A Got up there, Officer Bell asked if he knew him. He said, "Yes." Then, he asked if he knew Jack Miller. He said, "Yes." Then, he asked him, "Who shot you, Frank?" "Jim Bennett shot me." Are you sure? "I am sure."

Q There were about how many people there? A To the best of my knowledge, six or seven.

Q Do you know the nurse? A I saw her there.

Cross examination by Mr. McDermit.

Q Did you see him vomiting blood? A I don't remember.

Q Did you see a pan there? A I don't remember that.

Q Was he sitting up in bed with anybody's arm around him? A I don't remember.

Q Or was he lying down flat? A I don't remember.

Q What you just told us was all that took place there? A Yes.

Q That is all the conversation at the bedside? A That is all I know.

Q That is all you heard? A That is all I heard.

Q You are sure about that? A I am sure.

Q No other statements, made by Miller or Bell outside of the statements you testified to? A Not as I remember.

Q Or Baker or anybody else. How long were you at the bedside altogether, about? A To the best of my knowledge, about ten minutes.

Q Did the man die while you were there? A Yes.

Q You have testified in the last case before his Honor? A Yes, sir.

Q I put a question to you at that time, whether the word "dying" was used and you said no. Is that right? A Yes.

Q You didn't hear the word "dying" used before? A Yes.

DONATO COLACHIO, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Where do you live? A 160 Malvern street.

Q How old are you? A Twenty-nine.

Q Do you know where Collins' dance hall is? A Yes, sir.

Q Do you know Frank Baker? A Yes, sir.

Q Were you in the dance hall the night he was shot? A Yes, sir.

Q Did you find anything on the floor afterwards? A Yes, sir; bullets.

Q How long afterwards? A About an hour after, hour, hour and a quarter.

Q Where did you find it? A In the dance hall.

Donato Colachio, cross.

Q You understand this map, don't you? A Yes, sir.

Q Take the pointer and point out approximately where you found this. Along the wall near the hall leading out into the street? A Yes, sir.

Q What did you find? A Steel bullet.

Q Like that (indicating)? A Yes, sir.

Bullet marked S. 2 for identification.

Cross examination by Mr. McDermit.

Q You say you picked up a bullet that you made a search for in the hall? A Yes, sir.

Q You had been to the hall that evening? A Yes, sir.

Q Did you hear any shooting? A Yes, sir; but I did not take it for a shot.

Q Where were you at the time you heard this shot? A On the corner of Adams and Oliver street.

Q Corner of Adams and Oliver street? A Yes, sir.

Q Were you alone? A No, sir.

Q Who was with you? A Why, James Bovino and Chick Collins.

Q You mean the defendant here? A Yes, sir.

Q James Bovino? A Yes, sir.

Q How far away from Chick Collins' dance hall is the corner of Adams street?

Mr. Van Blarcom. I object.

The Court. Sustained.

Q How did you come to get into the hall? A Why, after Baker was taken away in the ambulance, why he had showed us where he was shot and I seen where it came out the back so I went in to see if we could find the bullet in the wall, so

we didn't see no hole in the wall so we looked on the floor and found it on the floor.

Q Who was present the time the search was being made for the bullet? A Chick Collins and myself.

Q Anybody else? A Not as I can remember.

Q Were you taken into custody that night? Were you arrested? A No, sir.

MICHAEL DANIELS, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q Connected with what precinct? A Third Precinct.

Q Do you know the man that was just on the witness stand known as Tony Gratch? A Yes, sir.

Q Did he give you anything the night of this shooting? A He gave me a bullet.

Q What kind of a bullet? A Steel bullet.

Q One like that (indicating)? A Yes, sir; that is the bullet he gave me.

Q What did you do with it? A I turned it in to Sergeant Huebner and Sergeant Huebner turned it in to Lieutenant Forsyth.

JOHN J. KELLETT sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q And what precinct were you connected with in April, 1914? A Third Precinct.

Q Do you remember the night of this shooting? A Yes, sir.

Q Where were you this night? A In the station house on reserve.

Q Did you receive any revolvers that night? A Yes, sir.

Q Who from? A Officer Miller handed me a revolver.

Q How many? A One.

Q Here are two revolvers. See if you can tell which one you got. A This isn't the revolver he handed.

Q Look at this one? A That is the revolver.

Q Was that loaded or empty at the time you got it? A Fully loaded.

The Court. The officer is referring to the revolver that was first shown Officer Joseph Arthur Miller.

Q Do you remember what kind of cartridges were in there? A 32 center fire shot.

Q Were they steel jacketed or lead? A Lead.

Q Like this (indicating)? A Yes, sir; same as this.

Q What did you do with the revolver and bullets? A Gave it back to Officer Miller.

Q Did you get anything else beside the revolver at that time? A Yes, sir; a black-jack.

Q Anything else? A That is all I got.

Q Black-jack like this (indicating)? A Yes, sir.

Q Did you make any identification marks on the revolver or on the cartridges? A Identification marks, no, sir, I didn't.

MICHAEL TANZOLA sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You were a special officer in this dance hall? A Yes, sir.

Q Did you have a revolver that night? A Yes, sir.

Michael Tanzola, cross.

Q Is this it? A Yes, sir.

Q Was it fully loaded? A Yes, sir.

Q Did you shoot your revolver off—did you fire your revolver that night? A No, sir.

Cross examination by Mr. McDermit.

Q You made a statement in writing to the police about what you did there with your revolver, didn't you? You made a statement in writing to the police about what you did with your revolver that night, yes or no? A I no understand what you say.

Q (Through interpreter.) You made a written statement to the police about what took place there that night, didn't you? A My revolver I give to the police officer.

Q (Question repeated.) A Yes.

Q Mr. Van Blarcom, the prosecutor, at the last trial showed you that statement and you identified your handwriting in connection with this revolver incident? A Yes, the paper. This man write.

Q Mr. Godfrey? A Yes.

Q The paper that Mr. Godfrey had written was a paper that was shown to you at the last trial? A Yes, they did.

By Mr. Van Blarcom.

Q You worked there at the hall? A Yes, sir.

Mr. Van Blarcom. I offer in evidence these revolvers, first the black and the cartridges.

The Court. The black revolver is the one that has been described as taken by Miller from Baker.

Mr. Van Blarcom. Yes, sir.

The Court. Marked Exhibit S. 3, and S. 4 is the revolver which Tanzola says is his.

Mr. Van Blarcom. And the cartridges go with them.

The Court. They have not been identified.

ANNA MAY GILLING sworn for the State.

Direct examination by Mr. Van Blarcom.

Q Where do you live? A 21 Alyea.

Q How old are you? A Nineteen.

Q Do you know where Chick Collins' dance hall is? A Yes, sir.

Q Did you know Frank Baker in his lifetime? A I knew him. I didn't know him well. I had only met him a few times.

Q Do you know the defendant, Mr. Bovino? A I didn't know him at the time.

Q You know him now? A Yes, sir.

Q You were in the dance hall the night of this shooting? A Yes, sir.

Q What did you see? A I came in the dance hall kind of late. It was after nine o'clock and I hadn't time to take my hat and coat off. I was just seated at the table, I was sitting at the table with some fellows. They were playing some game for drinks and one of the fellows would not buy the round of drinks so the other party got sore and the fellows got up and walked out, several fellows and just then Baker came in, and previous to that Miss Lucy, friend of mine, she said to me, she said, there was going to be trouble.

Mr. McDermit. I object to that and ask that it be stricken out.

The Court. Strike it out.

Q Leave out what was said and tell us about this shooting.

Anna May Gilling, direct.

By the Court.

Q Go ahead, you talked to Lucy and then what happened? A Baker didn't come in with Lucy at the time. He came in a little while after Lucy. He was sitting on a chair right opposite me, right opposite from the other side of the hall from me when Sue came up to him. She said something to Baker. Then I don't pay no attention to him because I just seen him slap Sue, that is all I seen and then the crowd seemed to disappear. They seemed to go out in the saloon or something. Then they started up the dance to avoid trouble, so I didn't pay any more attention until I heard the shot, and then all the crowd gathered around but I didn't see Jim Bennett in the hall at the time of the shooting.

Q Nobody asked you whether you saw him or not. Why did you volunteer that statement? A Because I didn't see him.

Q Why did you make that statement without being asked? A You told me to tell what I saw about the shooting.

Q Did I ask you to tell me you didn't see Jim Bennett in the hall? Why did you volunteer that statement?

Mr. McDermit. You have asked her that statement three times. She has answered it.

Q Why did you volunteer that statement? A Because it is the truth. You asked me to tell the truth.

Q Did you sign this statement dated April 23, 1914? A Yes, sir.

Q Do you remember what you said in this? A I can't remember word for word.

Q Supposing you read it over and see if it refreshes your memory a little bit as to where Bovino was that night.

Mr. McDermit. I have a right to look at that statement first.

The Court. You want to look at it first?

Mr. McDermit. Yes, sir.

Q What about Bennett being there now? A I never made such a statement. I don't remember making such a statement.

Q Don't remember making such a statement? A No, sir; I never did, because I don't remember seeing him. They didn't say there I don't remember seeing him.

Q Still you said in the statement that Baker was—standing—said in the statement, "I saw Bennett in the crowd when the shot was fired." A I didn't see him in that crowd. He was sitting at a table and a couple of fellows—

Q Wait a minute. We are asking you about the statement. Just confine your remarks to that. You say you remember seeing him? A No, I don't remember seeing him.

Q Do you remember making this statement? A I remember making this statement.

Q Is your memory better now than it was in April, 1914? A I remember making it.

Q Why did you volunteer the statement you didn't see Bennett? A Because it is the truth.

Q I ask you what took place there? You jumped from the time of this shooting, then came out with the bald statement that you didn't see Bennett. How did you know we cared whether or not you saw him or not? Why did you mention Bennett's name without being asked? A You asked me to tell you what happened in the hall.

Q Why did you not tell us about that, the people that were there? A I didn't know any other people only my girl friend.

Q You knew nobody except Bennett? A I didn't know Bennett until this case came up.

Q Who did you go in there to see that night? A I went in with my girl friend. I saw him, Baker once before.

Q You went in there with him? A I went in with my girl friend. I saw him, Baker once before.

Q You went in there with her? A I went in there to meet her. I went in alone.

Q Did you meet her? A Yes, sir; I met her.

Q Was Bennett drunk that night? A I don't remember, I never seen him in any other condition. I don't know whether he was drunk or not.

Q You say in this statement Bennett was drunk as he nearly always is. Is that right or not? A I don't know if he was drunk or not. I hadn't seen him that night.

Q Did you tell the police he was? A I don't remember.

Q You don't remember what you told them? A I was so excited I guess I told them anything.

Q When did you make this statement? A Right after the murder was committed.

Q What? A Right after the fellow was shot.

Q How long after? A I don't know. I can't remember just the exact date.

Q It was a whole day later, wasn't it? A Two days.

Q You were so excited you didn't know whether you were telling the truth or not, is that the idea, is that the idea? Is that what you want us to understand? A I can't remember what I seen and what I didn't see.

Q How do you know Bennett wasn't in the hall when that shot was fired? A Because I didn't see him.

Q Could you see everybody that was in there? A I couldn't see everybody. There was a crowd around me.

Q You don't know whether he was around there or not, do you? A I said if he was there I don't remember seeing him.

Q Who else was there at the time the shot was fired? A I am just after telling you I don't know the people. I have no acquaintance with them at all.

Q What were their nicknames, if you knew any of them? A I don't know what their nicknames was, I don't know none of them.

Q How many times had you been in there before the shooting? A I had been in there once before the shooting. I don't know none of the people that was down there.

Q Haven't you been in there since then? A No, sir.

Q Never? A Never.

Q How many people were in this dance hall, at the time this shot was fired? A I should judge about fifty.

Q How many people were dancing? A Nearly all of them was dancing.

Q What part of the dance hall were you in when the shot came? A Right near the entrance door on the other side from the entrance door.

Q Over by the ladies' toilet, were you? A Yes, sir.

Q Sitting? A Yes, sir.

Q Were you at this big table where Big Sue had been? A She was sitting at the table. She had been out telephoning and came in.

Q She had been sitting at this table? A I don't remember whether she was sitting at this table or not.

Anna May Gilling, direct.

Q Was this table where there was a big crowd sitting, a lot of women and men? A Yes, sir.

Q The Italian boys had been playing this finger game? A Yes, sir.

Q Was Big Sue sitting at that table or not? A No, sir; she wasn't sitting at the table.

Q Were you the only woman sitting there? A I was, because I wasn't dancing at the time.

Q When the dance was stopped, when there wasn't dancing, what women were sitting at the table besides yourself? A That was when?

Q Before the shot occurred what women had been sitting at that table? A Jessie Cooper was sitting there.

Q Who is she now? Is she married? A No, sir.

Q She is not married? A No, sir.

Q Had Big Sue been sitting at that table at any time while you were there? A Not that I know of.

Q What time did you get there? A Between nine and ten o'clock, it was after nine, I know.

Q Were you there all evening up to the time the shot was fired? A Yes, sir.

Q How long was that? A It was between ten and eleven.

Q Where had Big Sue been sitting when she was in the dance hall? A I can't remember where she was sitting. She was all around the hall. She was walking around.

Q Had she been sitting at the big table? A No, sir; I didn't see her sitting there.

Q Who were you sitting with there? A I told you Bennett was one of them and there was a fellow they call Bob who invited us over to the table.

Q Who did? A This Bob. I don't know what his last name is.

Q Bob invited you over? A Yes, all the girls. He said, "Come on over and have a drink." Then they started to dance so they didn't have a drink.

Q Was Bennett there all the time? A Yes, sir.

Q So he was there when this dance started? A Yes, sir.

Q When did you see him go out? A I told you they didn't care to buy a drink and they walked out.

Q When did you see him walk out? A A couple of the fellows walked out.

Q Do you know whether he went out? A Yes, sir; his place was vacant. He was out of the hall. I don't know where he went to.

Q You were dancing? A No, sir; I wasn't dancing with Bovino.

Q I am talking about this particular time, you were dancing? A No, sir.

Q I thought you said you got up and danced? A I didn't say no such thing. I don't know how to dance.

Q Were you sitting all the time? A Yes, sir.

Q Then you saw when Bennett got up? A Yes, I seen him.

Q Where did be go when he got up? A I know he went out of the hall. He went towards the saloon. I don't know where he went to.

Q Who shot Baker? A I don't know.

Q Why not? A Because, I don't know, because I didn't see him fire the shot. I just heard it.

Q You were sitting at this big table? A Yes, sir.

Q You saw this trouble between Baker and Big Sue? A Yes, sir.

Q You saw this slap? A Yes, sir.

Anna May Gilling, direct.

Q Then what happened next? A I told you the crowd gathered around.

Q Where did the crowd come from? A The dancers, there was more fellows than there was girls in the hall.

Q What did you do? A I sat still, it was none of my business.

Q Did the dancing start up again before the shot came? A Yes, sir.

Q How long had they been dancing before the shot came? A Just for a few seconds.

Q Then did you watch Baker? A No, sir; I didn't watch Baker.

Q Did you watch Big Sue? A I didn't watch none of them, because they were having an argument and it was none of my business.

Q It was something to look at in the dance hall? A Sure it was something.

Q Do you want us to understand you didn't watch them? A No, I didn't watch it.

Q Did you turn your head away? A I started talking to the party that was at the table.

Q Who was there? A I don't know the fellows. I told you there was Bob and some other fellows was there. The table was all full of fellows.

Q They didn't get up? A Not all of them. I said a few got up.

Q I thought you said they all ran towards Baker? A There was other fellows the other side of the table.

Q Where were you facing when you heard the shot? A I was facing the table when the shot was fired.

Q Your back was towards him? A No, sir.

Q Facing him? A My profile was to him.

Q On your left or right? A On my left.

Q What did you do when you heard the shot? A I thought somebody had fired a glass or something.

Q You got up? A Yes, sir.

Q What did you see? A I saw Baker was shot.

Q What did you see beside that? A I can't remember. Everybody was so excited I can't remember what I saw.

Q What men were standing near Baker? A They all ran towards him when they seen he was hurt.

Q Who ran out? A Nobody that I know of.

Q Didn't see anybody run out? A We all went towards the saloon because they took Baker out there.

Q I mean before Baker went out who ran out of the saloon? A I didn't see anybody run out.

Q You were sitting. Did you say Baker was towards your left hand or your right? A My left.

Q Where was Bovino, what part of the table? A When he was sitting there he was opposite me, but at the time he wasn't there.

Q He wasn't at the table at the time? A At the time of the quarrel he wasn't there.

Q He wasn't at the table you mean? A No, sir.

Q Were you sitting in the same position at the time of the shooting as you sat when he sat at the table? A Yes, sir, when I seen Sue come in I turned around to see who came in. He came in from the saloon.

Q Just turned your head around? A No, I turned myself around when I seen they had an argument, I turned around because it was none of my business. I didn't pay no attention to them.

Anna May Gilling, direct.

Q You turned around to see who started the trouble and when you found out there was trouble you turned your head away? A Yes.

Q When was it Bennett went out? A Just previous to that.

Q Previous to what? A When Baker came in.

Q How long before Baker came in? A I didn't count the minutes.

Q How long was it? A Just a little while.

Q If you were sitting with your back direct to the door leading into the saloon how could you see whether Bennett went out or not? A He left the hall. I didn't say he went out. He left the hall.

Q How do you know he left the hall? A He wasn't in it. I don't know where he went.

Q Did you see everybody that was in there? A No, I couldn't see everybody that was in there.

Q How do you know he wasn't in there? You didn't see him, that is what you mean? A I didn't see him.

Q Did you see him go out? A He wasn't in the hall.

Q Did you see him go out? A He must have gone out if he wasn't in the hall.

Q But you say you didn't see everybody in the hall? A I could see everybody that was near the door.

Q Did you see him go out? A No, I didn't see him go out.

Q Have you seen Bovino since this shooting? A No, I haven't met him since then.

Q Never saw him since then? A Only on a case like this where I saw him, never met him on the street or anything.

Q Never talked to him? A No, sir, never had a conversation in my life with him.

Q Where do you work? A I started in the Westinghouse yesterday.

Q Do you know Mary Weber? A I know her by sight but I don't know her personally.

Q Is that she over there (indicating Mary Weber)? A Yes, sir.

Q Did you see her on the night of this shooting? A No, sir; she wasn't in the hall.

Q What? A I didn't see her in the hall at all.

Q Did you see her on April 23rd, at the time you made this statement? A No, sir.

Q What is the name of the street you live on? A Alyea street.

Q Did you meet Mary Weber on that street on the 23rd of April? A I met her; no, sir.

Q Did you see her at all after this shooting? A No, sir; she wasn't there. I never seen her. I just know her by having people point her out to me.

Q Didn't you tell Mary Weber you saw Jim Bennett do the shooting in Alyea street in April, 1914? A I never spoke to Mary Weber in my life. I never was in conversation with her. I don't know her to speak to.

MAE GILLING, recalled for

Further direct examination by Mr. Van Blarcom.

Q Do you remember testifying before the Grand Jury? A Yes, sir.

Q That was in 1914?

Mr. McDermit. I object to any statements made here before the Grand Jury as being incompetent in the trial of this cause.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Mr. McDermit. And I object further that he cannot use what purports to be the minutes unless they are verified as the minutes of the Grand Jury.

The Court. Further objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q Were you asked this question and did you give these answers? You had been sworn in the Grand Jury room, had you first? A Yes, sir.

Q "When you heard the noise of the shot, didn't you look in the direction of the noise? A Yes, sir." A But there was a crowd there and you couldn't see; they were all around Baker at the time.

Q Is that right? A Yes, sir.

Q Were you asked this question and did you give this answer?

By the Court.

Q Is that what you said then? A Yes, sir.

Q "Didn't you look in that direction when you heard the shot? A Yes, sir." A Yes, sir.

Q "Who did you see there? A I saw Sue alongside of Baker. She is the woman supposed to be his wife."

Mr. McDermit. I make the further objection to these minutes, that these declarations, even if protected by an oath, were not made in the presence of this defendant and they were, therefore, improper declarations.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q (Question repeated.) A Yes, sir.

Q Were you asked this question and did you give this answer: "Q. What men were standing there? A I can't tell." A Yes, sir.

Q Then were you asked this question and did you give this answer: "Q Where was Bennett? A He was standing at the saloon door. Q How far away? A Three or four feet." A I don't remember that.

Q Will you say you didn't say that before the Grand Jury? A I say I don't remember whether I said it or not.

Mr. McDermit. I am going to renew my motion to strike out the entire testimony of this witness from the time the prosecutor started to question on the Grand Jury record upon the further ground that he has not examined completely on the Grand Jury record.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

LUKE FORSYTH, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are lieutenant of police? A Yes, sir.

Q Connected with what precinct? A Third.

Q Did you receive a bullet from Sergeant Huebner and Officer Daniels? A Yes, sir.

Q Is that it? A To the best of my knowledge, yes.

Q After you got it did you put it in the envelope? A Yes, sir, and sealed the envelope.

Q Who did you hand the envelope to? A I left it there for the captain in the morning. I got through at six o'clock.

PETER J. CHRISTIE, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police captain? A Yes, sir.

Q Did you handle this revolver which has been identified by Lieutenant Forsyth? A Yes, sir.

Q What did you do with it; do you remember? A I kept it in a drawer in the cabinet as I keep all things of that kind.

Q Who did you turn it over to, officer; do you remember? A To Chenowith.

Cross examination by Mr. McDermit.

Q When was it turned over, the envelope, Captain, to Mr. Chenowith? A At the first trial.

Q Had it been constantly in your possession in the desk in the police court? A Yes; constantly, up to that time.

GEORGE W. CHENOWITH, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q Did Captain Christie hand you this envelope, which he just looked at? A Yes, sir.

Q You brought it here and handed it to whom? A Sergeant Godfrey of the prosecutor's office.

Q Did it have something in at that time? A Yes, sir.

Cross examination by Mr. McDermit.

Q What did it have in it? A I don't know; something small in the corner. Small envelope.

Q Was it sealed or unsealed? A Sealed.

WALTER GODFREY, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q Mr. Godfrey, this envelope which has been mentioned by Officer Chenowith and Captain Christie; was that handed to you? A It was, sir.

Q Opened or unopened? A Sealed.

Q Have anything in it? A Yes, sir; had a bullet in it.

Q Is this the bullet? A Yes, sir; I opened the envelope and took the bullet out. Marked the envelope in the corner when I opened it.

Mr. Van Blarcom. I offer the bullet in evidence.

Bullet marked in evidence.

S. 3 by striking out the words "for identification."

WILLIAM H. McKENZIE, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q You are a practicing physician, Doctor? A Yes, sir.

Q And also county physician? A I am.

Q How long have you been county physician? A About twelve years.

Q Did you perform an autopsy on the body of one Frank Baker who was also known as Meserintino? A I did.

Q When and where did you do that? A At the City Hospital, on the 24th of April, 1914, about 11:30 in the morning.

Q Who was there, Doctor? A Dr. Martland and Mr. Godfrey.

Q Will you describe the conditions of this man's body, externally. A This man was a man about five feet eleven, weight about 180 pounds, seemed to be in good health and he had a punctured wound in his abdomen about two inches and a half above the navel and about an inch to the right, and another one in the back just about an inch behind the line that runs from the top of the arm pit just down below the free quarters of the rib. That was the external evidence.

Q Can you tell the entering point of this wound; I mean what was it, what kind of a wound was it? A It was a wound that could have been made by a bullet.

Q Can you tell the point of entry? A I would think that it entered in the front because it was a little larger in the back.

Q You say that this wound in front was to the right of the middle line? A Yes, sir.

Q How far? A One inch.

Q How far above the navel? A Two and a half inches.

Q It came out where, Doctor, again? A In the back, just one inch below the line that would be drawn from the back of the arm pit down below the ribs.

Q Came out back of the side and medium line? A Back of a line that would run from the back of the arm pit.

Q What was the direction, straight through or up or down, if you can tell? A Why, there wasn't much difference there. It went a little from the right side of his body to the left.

Q Was this wound in the stomach, in the front of the stomach higher or lower than the one in the back? A I think that went very near on the level.

Q Mr. Godfrey calls my attention to the fact you said this autopsy was 1915. Was it 1915 or '14?

Mr. McDermit. It will be admitted by the defense it was 1914.

A I made a mistake—I presume.

Q What did you find on your examination of the inside? A There were two wounds of the small intestines, one of which had been sutured.

Q What do you mean by that? A Surgeons had—before I come to that, there was an incision seven and a half inches long on the front of the body that had been made by the surgeons when they operated on him. There were two injuries in the intestines, one of which had been sewn up by the surgeon when they operated on him. There were two in the mesentery, one of which had been sewed up. There was one in the—

Q What is the mesentery? A That is the fine like apron that holds the intestines down to the back bone. There was one in the large intes-

tine and there was one in the omentum, which is the veil that covers the intestines.

Q Could you ascertain the cause of death? A He had gotten acute peritonitis from these injuries which caused his death.

Cross examination by Mr. McDermit.

Q The autopsy showed that there had been performed a certain operation on the deceased? A There did.

Q How long did it take the physicians to perform that operation? A I don't know.

Q What would be your judgment as to the time it would take to have that operation performed? A Oh, about forty minutes.

Q The operation was unsuccessful.

The Court. Do you want him to characterize the other doctors?

Q He died, notwithstanding the operation? A He died, notwithstanding the operation, yes.

Q Would a man in that condition having that kind of an operation performed, would he be apt to cough or vomit blood at any time? A Yes.

Q It would be nothing unusual about that? A No.

Q It would be the usual thing? A In peritonitis they are very apt to cough up or vomit a blood or very dark stained substance.

Q When these operations are performed, taking forty minutes, what is administered, if anything, to the patient? A Usually an anaesthetic of some kind.

Q What is the object of that anaesthetic, what does it do to the patient? A Makes them unconscious.

Q Is that anaesthetic—is that usually administered in the shape of ether? A Usually ether.

Q That makes the patient unconscious? A It does.

Q There is not set rule when consciousness returns, is there? A No.

Q A person keeps unconscious from ether, four, five or six hours? A Yes.

Q Keeps unconscious from ether twenty-four hours? A Not totally, no, I don't think so.

Q How long in your experience has a patient, under the influence of ether, remained unconscious? A The longest?

Q Yes. A I can say about twelve hours.

Q I suppose then, it would depend upon the amount of ether that was administered? A It would.

Q As to the length, and if there was a large amount administered, which there would be in a case of this kind, to perform a delicate operation of that kind? A They would be very careful to give a small amount.

Q What would be the idea of that, so he could talk while they were performing the operation? A No, so they wouldn't put him under too deeply. He was in too bad a condition, evidently.

Q That is your answer? A Yes.

Q So that in performing an operation of that kind the question of the result of the operation would depend somewhat upon the ether, would it? A Ether always has to be taken into consideration.

Q You wouldn't undertake to perform an operation of that character or a series of operations, which you have testified you found in this autopsy, without administering to the patient sufficient ether or other medicine to get him in a state of unconsciousness while the operation was being performed. A I would not.

Q That is given so that the patient cannot interfere with the operation? A Yes.

Q So that there must be sufficient ether given to him so that it would keep him three-quarters of an hour or 50 minutes under the ether? A It should.

Q What amount of ether in your opinion does it take to put a person in normal condition under so that the ether is effective for a period of over an hour?

The Court. Are you not assuming that you get one dose of ether at once and the size of it is based upon the time it is intended to have the patient under it? Why don't you ask him first about that?

Q How much ether would you give to keep a patient in an unconscious condition for an hour? A I should think it would take maybe from half a pint to a pint bottle.

Q Half a pint to a pint? A Yes.

Q What would be the effect upon a normal patient or a normal person, rather, how much ether could he stand and still come out from under its influence at some time?

Mr. Van Blarcom. It is quite an interesting inquiry but there is no evidence this man didn't come out some time.

The Court. Do you object to it on the ground it is not cross examination?

Mr. Van Blarcom. I don't think it has any bearing on this case how long a normal person, if ever, would come out from ether.

By the Court.

Q You don't give ether by the pint or half pint. You give it continuously as a patient requires it and as he gradually comes out? A We are giv-

ing it to him continually during the operation, a few drops at a time is put into the gun and they pour it in.

Q You didn't give him a half a pint or pint at the beginning? A No, from the time they started to put him under to get ready for the operation they simply pour into the gun a few drops, at a time.

Q (*By Mr. McDermit.*) How many minutes before you started to perform the operation that you want to operate on a person that you commence to administer ether? A About ten.

The Court. You are making the doctor your expert, you are making him your witness.

Mr. McDermit. He is as good as I know of.

Q Then, it would continue for the additional period of 40 minutes during the operation, continuously administered? A Continuously administered.

Q Then, you mean to say in that particular operation there would be administered a half a pint to a pint, depending upon the activity, mental and physical, of the patient you are operating upon? A All the patients.

By the Court.

Q What do you call this line on the left-hand side? A The posterior auxiliary line.

Q Will you just point in front of your body about the place where you think the bullet went in and the back where it went out and show that to the jury. A About there and about there (indicating).

Walter Godfrey, direct.

By Mr. McDermit.

Q Can you positively state, Doctor, where that bullet or other substance that has gone through that body, which side it entered and which side it went out, positively? A It is my opinion it went in front and came out back.

Q Can you state definitely? A I am not positive.

Q Will not positively say that bullet couldn't have been fired from one side or the other, isn't that true? A That is true.

WALTER GODFREY recalled.

Direct examination by Mr. Van Blarcom.

Q You were present at this autopsy? A I was, sir.

Q Did you bring the man's clothes to the prosecutor's office? A Yes, sir.

Q Are these the clothes? A These are the clothes.

Q Did you examine—start first with the inside shirt. Did you examine these clothes for bullet holes? A I did.

Q Did you find any in his inside shirt? A I did, yes, sir.

Q Just show the jury where they are. There is one, is that in the front or back? A That is in the front just to the right of the middle line.

Q Is there a hole in the back? A Yes, sir.

Q Where is that? A On the left side in the back, just back of the line from the arm down.

Q Take his outside shirt. A Right in the front, yes, sir, to the right of the middle line.

Q How about any other holes? A There is one in the back, sir.

Q How about his vest? A His vest shows a bullet hole in the front on the right.

Q Any point of exit for that? A No, sir.

Mr. McDermit. Don't say "point of exit." I object to that.

The Court. Sustained.

Q Any place where it came out? A No, sir.

The Court. That is equally objectionable.

Mr. McDermit. I move to strike it out.

The Court. Motion to strike out granted.

By the Court.

Q Did you see any other hole in that garment? A I did not.

By Mr. Van Blarcom.

Q How about the trousers, any hole in that? A No, sir.

Q No hole in the front part? Any hole anywheres else? A No, sir; just a stain of red, front and back.

Q And his coat? A The coat has no bullet holes in it.

Q Neither in the front or back? A No.

Q I show you a paper, dated April 23, 1914, purporting to be signed by the defendant. I ask you if you were present when that was taken? A I was, sir.

Q Whereabouts was it taken? A Taken down at police headquarters.

Q Newark? A Newark, city hall.

Q Whose handwriting is it in? A That is Captain Tuite's.

Q Will you please state, what was said, if anything, to the defendant before he made the statement? A Before he made it?

Q Yes? A The top questions on this which are in printing were read off to him and he was then told he was going to be asked questions and he could answer them or not, as he chose.

Q What did he do? A He said he was willing to tell about the trouble.

Q What happened? A He then started in and made a statement as to what happened on the night of the shooting and it was taken down as he dictated it.

Q What occurred then? A It was then read to him and handed to him to read, then he signed it in the presence of Frank Donnelly and myself and Frederick Kuhn.

Q There appears to be some letters stricken out on the second page. Do you remember under what circumstances that occurred? A Yes, sir; as Captain Tuite wrote that down and it was read to him he objected to those sentences and Captain Tuite scratched them out in his presence.

Q And then he signed it? A Yes, sir.

Cross examination by Mr. McDermit.

Q Did you have in your possession at the time that you read him this statement the statements he had made immediately after the shooting? A This is the only statement I witnessed.

Q Was his attention called to the fact that he had made a statement to the police two or three days after the time of the shooting? A This statement was made at that time, a few days after the shooting.

Q You have another statement, haven't you, from this defendant? A Yes, sir.

Q Taken recently by you? A No, sir; not taken by me.

Q Taken in your presence? A No, sir.

Walter Godfrey, direct.

Q Well, you have in your possession another statement made by this defendant? A We have, sir.

Q So there are two statements? A There are.

Q One taken that you produce, now, in May or April, 1914? A One taken in—

Q October, 1915? A That is correct.

Q The prosecutor has not shown you the other statement? A Not to me.

By the Court.

Q Were you present at the taking of what has been described as the taking of another statement? A I was not.

The Court. What right have you to ask about something that is hearsay. You have no right to ask him what evidence the prosecutor has got.

By Mr. McDermit.

Q Have you examined this clothing here? A I have.

Q Are you able to say what those marks on the clothing are from? A My opinion is that they are bullet holes.

Q You don't know exactly? A No, sir.

Q Did you examine for any powder marks there upon this clothing? A I did.

Q You are an expert on powder marks? A I can't say that.

Q You found no powder marks? A I found no powder marks, no, sir.

Q How close must a pistol be fired at clothing so that you would be able to say they were powder marks, taking into consideration the kind of clothing? A It would depend entirely upon the kind of clothing, the color.

Q I am speaking of the kind of clothing we have here? A I do not believe it would show unless it was near enough to burn the cloth.

Q How close would the revolver have to be fired to show the powder marks? A Within a foot.

Q If this shot was fired, say a shot that was fired under the conditions that were found in this clothing the pistol must have been aimed over a foot away from the deceased? A The muzzle of the revolver was more than a foot away from the clothing at the time it was fired.

Q You have no way of knowing what distance that revolver shot was fired? A No, sir.

Q That is mere conjecture? A Certainly.

Q How far will a revolver made up of the calibre of either one of these revolvers, that have been offered in evidence, how far will a shot carry? A Well, I have never fired either one of the revolvers, but I should say they would carry in the neighborhood of 200 yards.

Q Just turn to this map. They certainly would carry to any section of this room? A No question about it.

The Court. Referring to the dance hall G.

Q In fact it would carry unobstructed the entire length of that building out into the street? A It would, sure.

Q What calibre are those?

The Court. What are you showing the witness.

Mr. McDermit. I am showing him a bullet.

The Court. Showing a cartridge?

Mr. McDermit. Yes.

The Court. Loaded cartridge.

Mr. McDermit. Yes, sir.

Q Is that a lead bullet? A Leaden bullet, yes, sir.

Q *(By Mr. Van Blarcom).* What calibre is the other revolver? A 32.

Q And the other one? A The nickel is 38.

Q What calibre is this steel jacketed bullet, which is Exhibit S. 2? A That is a 32.

Q *(By Mr. McDermit).* So this bullet that you have just examined would be a cartridge from a 32 calibre revolver? A It would, sir.

Q Which is the 32 calibre revolver? A This black revolver.

Q (*By Mr. Van Blarcom.*) That bullet which I have shown you, Exhibit S. 2, is the same as the bullets in these cartridges? A Steel jacketed ones, no, sir. That is a bullet ordinarily known as a steel jacketed bullet and used in automatic guns.

Q This is not what is known as a lead bullet? A No, sir; it is not.

Q (*By Mr. McDermit*). How can you tell the difference in the shape of that bullet, Mr. Godfrey, after it is smashed out of shape? A The bullet is not smashed at all, sir.

Q Can you tell whether, in point of fact, that is an exploded bullet or not? A Not necessarily. It might have been taken out of the shell. There is nothing to show that because it is not marked in any way.

The Court. Showing witness Exhibit S. 2.

Q What can you say about this? A That is the size of an ordinary 32-calibre bullet.

Q Could be less or more in size, depending upon what way it was set by the manufacturer? A That was manufactured for a 32. That would be the size of it if it was manufactured for a 38. It would be a larger bullet.

Q There doesn't seem to be any mark at all upon this bullet. A I see none.

Q Nothing to indicate that it met with any obstruction after it had been fired? A No, sir.

Q Nothing to show it had struck anything at all that was sufficient to have destroyed the calibre of the bullet, is that right? A That is correct.

Q (*By Mr. Van Blarcom*). You have had experience with fire arms? A I have, sir.

Q For how long a period? A Off and on for two or three years.

Q And with revolvers? A With revolvers and rifles, both.

Q And with steel jacketed bullets? A Yes, sir.

Q You have heard the testimony in this case that this bullet had passed through Baker's body to the intestines. Would there be anything that would cause this bullet to be marked in any way? A Nothing whatever.

Q Do you know what force it takes to make a mark on any of these steel jacketed bullets? A I do not know the force, but if it came in contact with any hard substance it would probably be marked more or less.

Q What do you mean by hard substance? A In the shape of wood, metal or bone.

Q (*By Mr. McDermit*). You never fired any bullets through any human being? A I never have.

Q You are not qualified as an expert as to bullets passing through people's bodies? A No, sir.

Q The indications are that if that bullet passed through a person's body it would contain something like blood on it? A No, sir; not necessarily.

Q Would you be able to establish whether or not that bullet contained human blood? A No, sir; there is no human blood on that bullet.

James D. Bell, cross.

Q Have you submitted it to any tests to show that? A I have not.

Q You know what to do in connection with that? A Yes, sir; there is no foreign substance. That came off on the clothes. It passed through the clothing after passing through the body.

Q You made no examination of the bullet. You didn't have it in your possession?

The Court. You understand the situation of this witness.

Mr. McDermit. I agree that we are making him our own witness.

Mr. Van Blarcom. I offer the clothing in evidence and ask to have it marked as one exhibit.

Mr. McDermit. No objection.

Mr. Van Blarcom. I offer the statement.

Statement marked S. 6.

Clothing not marked, but admitted as Exhibit S. 7.

JAMES D. BELL recalled.

Cross examination (continued) by Mr. McDermit.

Q You remember a conversation at police headquarters at the time of the defendant's first arrest, with his present wife, Mrs. Bovino. A Yes, sir.

Q Did you at police headquarters have this conversation in the presence of the defendant and his wife, the defendant, Bovino, saying to him, "How does Baker say I shot him," and you replied, saying, "Baker didn't say you shot him, but that you know who shot him." Any such conversation as that ever take place? A No, sir.

Q In the presence of Mrs. Bovino and Bovino—you know who I mean by Mrs. Bovino? A Yes, sir.

Q Did this conversation take place down in the Third Precinct police station at the time of the arrest with Chick Collins? Did Chick Collins ask you to take him and Jim Bennett up to see Frank Baker, and did you reply and say, "There is no use, Chick, of taking you and Jim up to see Baker. He doesn't accuse any of you?" A No, sir.

Q Did you say that or didn't you? A No, sir.

RECESS.

EDWARD STAEHLIN, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q You are a practicing physician in this city? A I am.

Q And have been for many years? A For about twenty-one or twenty-two years.

Q In April, 1914, were you connected with the Newark City Hospital? A I was.

Q You were one of the visiting surgeons? A Yes, sir.

Q Did you perform an operation upon a man named Frank Baker. A I did.

Q Do you remember the date? A He was brought into the operation room at 1:10, the 22d of April, 1914.

Q What operation did you perform? A It is known as laparotomy. It is an opening of the abdomen.

Q That was shortly after midnight? A Yes, sir.

Q What condition did you find when you opened the man? A His abdomen was full of blood, which meant that blood was in the abdominal cav-

ity, and I found an opening in the gut, the small intestine, it is called, and another blood point in what is called the mesentery, that is a sort of apron that gathers up the intestines, whereby it hangs in the abdomen; all these were sutered.

Q That is, sewed up? A Sewed up.

Q How long did the operation take? A Approximately about an hour.

Q He was given an anaesthetic at the time? A He was.

Q Ether? A Ether.

Q Do you remember when you next saw him? A Between 12 and 1 at noon.

Q The same day? A And then later, between 6 and 7, the same day, the 22d of April.

Q He died, I understand? A He died 12:30 A. M. on the 23d.

Q That is shortly after midnight? A That is shortly after midnight.

Q Where was this incision made. A In the medium line, an incision between six and eight inches on the abdomen.

Q Were there visible wounds on the outside of his body? A Yes, there was a hole on the outside two inches to the right of the navel, a little above the navel, two inches to the right, and another one over on the left side just above the terminus of the bone, here (indicating).

Q Is there anything where those wounds were, anything hard, any hard substance inside of the body? A You mean, did it strike any bone?

Q Yes. A No, I believe not.

Cross examination by Mr. McDermit.

Q You didn't examine the course of any bullet? A The course of a bullet, no.

Q You didn't know it was a bullet from that examination you made? A Yes, I thought it was a bullet. We could tell that from the opening, the holes in the abdomen, and the history of the case. I relied upon the history of the case. I would not operate on him if I hadn't.

Q You would not be able to say positively of that case that those were bullet holes or that the wounds that you found were inflicted by a bullet, you wouldn't say that if you hadn't heard the history of the case? A Perhaps not.

Q You testified here before? A I did.

Q You testified that this man was in a dying condition? A Yes, sir.

Q And that when you visited him between 11 and 12 o'clock the next day that you were satisfied that the operation would not be successful? A Yes, sir.

Q The man was then dying. A Yes, sir.

Q And he was in a semi-conscious condition? A Yes.

Q As I recall your testimony that you were unable to say whether he had come out of the ether at that time or not? A Yes.

Q It is very difficult to say when a person does entirely come out of the ether? A Yes.

Q That a condition of that kind requires the administration of quite some ether? A Yes.

Q And, of course, you put your patient under ether before you commenced your operation? A Yes.

Q How long was he under ether before you commenced this particular kind of operation? A As soon as he was under the ether we started to operate. It may have taken ten to fifteen minutes to put him under the ether.

Q Then, was ether continually administered during the operation? A During the operation.

Q How much ether would you say was administered to him, about? A Anywhere from six to eight ounces. I don't know. That may be a matter of record.

Q He was in no condition to talk with you when you visited him in the ward between 11 and 12 that morning on your second round in the morning? At first the operation and then your second visit? A I spoke from memory that time. We have a standing order. I was mislead by the standing order of morphine.

Q I don't care anything about that. Will you please answer my question? At the visit between 11 and 12 was he in a condition—did you talk with him between 11 and 12 in that hospital that day? A I convinced myself about his condition. I had looked at the record.

Q I don't want you to look at the record. A I refresh my memory from the record.

Mr. McDermit. I ask to strike that out.

The Court. If he said he looked at the record and reminded himself of it, it is all right.

Q Did you make the record yourself? A No.

Q How can you testify about a record you don't know anything about? A Because those records are made from my order.

Q Do you know what your orders were? A Yes, if a man suffers he is to have morphine.

Q I haven't asked you anything about morphine.

The Court. You asked him what his orders were.

A I wish to correct my statement.

Q You testified that this man was in a dying condition between 11 and 12 o'clock. A Yes.

Q You say he was in a dying condition between 11 and 12 o'clock that morning? A Yes.

Q You testified when you were here before that he was in a semi-conscious condition? A I did.

Q Is that true still. A Yes.

Q You saw him later in the evening? A Between 6 and 7 o'clock. A Yes.

Q He was nearer to death then than he was between 11 and 12 o'clock? A Yes.

Q And he was in no condition to talk to you? A That is what I testified to. I didn't know. I had seen him at that time, but I was—

Q He was further along towards death when you say him the last time? A He was.

Q You had charge of him—you were the physician in charge, you performed the operation? A Yes.

Q You knew that man was in a dying condition when you made your rounds the second time that morning? A Yes.

Q This operation was an operation that was necessary to be performed if there was a chance to save his life? A Yes.

Q And it was the only operation that could be performed to save his life? A Yes.

Q It was unsuccessful? A Yes.

Q He died from peritonitis? A Yes.

Q You also testified when you were up here before that he was in a stupor? A Yes.

Q That is still true? A I don't know.

Q You testified to it? A I did.

Q What is your recollection now? Was he in a stupor or wasn't he? A I didn't consider his mind at that time either in making my rounds. I simply convinced myself of his physical condition to see whether he rallied enough to get through the operation, but personally I cannot say what his

mind was, and I didn't care to have him disturbed to find out. I would rely upon the record and the promptness of the nurses and the house physicians, but I know I did—yes—as I told you from the standing orders that are given, and I was prompted by those standing orders as to my recollection, and what I did I can't tell you now. I know I went up to the bedside and undoubtedly examined his pulse and looked at his eyes, but I didn't want any extended conversation, nor would I wanted anyone to have had an extended conversation with him.

Q When an operation of that kind is performed one of the requisites is tranquility to the patient? A Yes.

Q You made your visits between 11 and 12 in the morning and then between 6 and 7 o'clock in the evening and you satisfied yourself that his life was fast ebbing away? A Yes.

Q It was only a question of a little while when he would die? A Yes.

Q You said at the last examination that perhaps some opiate had been administered. You didn't know? A Yes.

Q Or a man in the condition in which you left this man there would you have opiates prescribed for him or not? A I would.

Q If opiates were not given to him, then it must have been because they hadn't done their duty? A No, because they were indicated.

Q Why wasn't it you didn't indicate opiates to be administered to him in that condition? A It wasn't necessary. As I told you, there was a standing order always in any laparotomy in my care if a patient has a great amount of pain to give them opiates, and that is left to the discretion of the house staff.

Q Then the standard orders that you left to be carried out in cases that you prescribed were not carried in this case, is that right? A The orders were carried out.

Q No orders were given? A No orders were given.

Q You only know that because you don't find upon the record the giving of opiates? A Yes.

Q But your standing order is in these cases to give opiates? A No, the standing order is, if there is pain, if the patient after an operation of that kind suffers a great deal of pain, it is a great shock to the nervous system if they suffer pain, it is harmful, so we quiet them by a little morphine.

Q So, in this case no morphine was given, as far as the record shows? A No.

Q The fact was, nevertheless, that you didn't want to have him disturbed at all in the dying condition he was in, as the opiate would have been of no good to him? A They would have been if he had had pain.

Q Who would know whether he had pain, you or somebody else? A The house staff would know.

Q How would you ascertain if you made your visit at 11 and 12 and 6 and 7 if he had pain? A Ask him.

Q How would you know what order to give to the surgeon? A I would know by asking the nurse inside how the patient was resting. If I didn't wish to take it on faith I would do it myself.

Q You satisfied yourself that the man was dying? A He was sinking.

Q You testified in this case in answer to a question upon cross examination by me that the deceased, if aroused, would not be able to carry on an intelligent conversation, is that true? A Yes.

Q You have also testified that a patient in that condition and under the same circumstances, that the statements made by him could not be relied upon? A I may have made that remark.

Q It is true, isn't it? A man suffering the intense pain— A As I was—

Q Will you please listen to my question? A man indicating the intense pain that this man must have underwent through that operation, if he was in a state of intelligent condition he would make his wants known to the nurse or somebody. A Yes, if he had pain he would make them known.

Q And there is no record to show that he made any complaint to the nurses or anybody in the City Hospital during the time he was there by the way of pain? A That I don't know, not from the record.

Q You found nothing on the record? A No.

Q And he made no complaint to you about pain? A No.

Q And if he didn't make any complaint to anybody in the City Hospital he would not be given an opiate for pain? A No.

Q That is true. The fact is that your diagnosis showed on both your visits of 11 and 12 in the daytime and 6 and 7 in the evening that the man was past recovery, isn't that so? A I inferred that he was dying.

By Mr. Van Blarcom.

Q When you said he would not be able to talk intelligently at the last trial did you assume that he had had an opiate? A Yes.

Q And it would make a difference whether or not he had had one? A Yes.

Q Is there any reason why a man who hadn't received an opiate could not have been conscious and able to talk? A No.

Edward Staehlin, cross.

By Mr. McDermit.

Q He had received something stronger than an opiate when he received the ether?

The Court. At what time?

Q When the operation was performed? A Yes, he was unconscious during the operation.

Q Do you know when he came out—came back from unconsciousness? A The operation was done at 1 in the morning, and previously I thought it was perhaps two, three or four, but I looked it up. I was at the hospital, I was summoned at once, and I got there at 1 o'clock, and at ten minutes after 1 he was in the operating room getting his ether, so the chances are he got out of that ether fully four, five or six hours after.

Q That wouldn't be an absolute fact? A Those things are only—

Q Conjectural? A They are conjections, and they vary with different people.

Q Some people might remain under ether twenty-four hours and not come out with a clear mind, couldn't talk intelligently? A They might have headaches. They could talk intelligently.

Q How long a time would it take a person to come out of the ether after an operation of that kind? A I should say on the average of twelve hours.

Q So that if the operation was performed between 3 and 4 o'clock in the morning, if that is now your best recollection—

Mr. Van Blarcom. He said one.

The Court. He said the patient was on the table ten minutes after he got there.

Q Then he continues twelve hours under ether. He would still be under ether at the time you vis-

ited him at 11 or 12 o'clock in the morning? A Not necessarily.

Q If the ether had effect for a twelve-hour state that would be true, wouldn't it? A Yes.

Q You made no attempt to rouse him at that time because he was semi-conscious? A I don't recollect. When I said he was semi-conscious I was under the impression he had had his morphine, and I didn't care to disturb him. I wasn't concerned about the state of his mind. I was concerned about the state of his body.

Q Did you know he had vomited blood? A Yes.

Q Did you know that the record shows he vomited blood? A No.

Q In cases of that character the vomiting of blood will occur? A Yes.

Q And continue coughing spells? A They might.

Q Wouldn't they? A Not necessarily.

Q You know of such cases as that? A Oh, yes.

Q What condition would a man be in to make an intelligent statement if he was vomiting blood at the time he made the statement? A What is that?

Q Take the case here, the man you operated on, taking within three minutes of the time he actually died and he was vomiting blood, what condition would he be in at the same time he was vomiting blood in order to make a statement? A His mind might be all right. That is a physical condition.

Q Three minutes before he died? A He may or may not be in a conditon to talk intelligently. That I can't state. His mind may be clear.

Q What would be your opinion if the man was vomiting blood and he was dying at the time, within

three minutes of his death, and he was then talking to the officers and was vomiting blood? A Vomiting blood isn't necessarily a very bad symptom. Vomiting blood indicates there was a hemorrhage and it was pretty high up to the stomach, and as the stomach filled up with this blood it might or might not have been ejected.

Q It might have an effect upon his condition? A It might have.

Q You can't gainsay that? A I can't gainsay it or prove it.

Q The amount of liability on a statement made by a person who was within three minutes of his demise and was vomiting would you consider that an absolutely correct statement?

Mr. Van Blarcom. I object. I don't see how the doctor can answer a question of that kind. It is a question for the jury to consider.

The Court. There is not any evidence to support it. It is the same question that has already been answered.

LULU M. FIELD, sworn.

Direct examination by Mr. Van Blarcom.

Q Miss Field you are a nurse at the City Hospital? A I am.

Q How long have you been there? A Two years and a half.

Q Were you a nurse when Frank Baker or Frank Meserintino died there in April 1914? A I was.

Q Had charge of the ward in which he was? A During the night.

Q Do you remember his being operated on? A I do.

Q Dr. Staehlin performed the operation? A I believe so.

Q Do you know Dr. Staehlin? A I do.

Q Do you remember the night he died. A Yes, sir; I do.

Q What time did he die, if you remember? A Between 11 and 12 o'clock.

Q Were there some police officers there that night? A Yes, there were.

Q Before he died? A Yes.

Q Had anybody else been there before the police officers came in, other persons outside of the hospital? A The priest was there.

Q How long before the police officers came was the priest there? A Perhaps fifteen or twenty minutes.

Q During the evening had you spoken to the defendant? A Yes, sir; I had.

Q How many times did you talk with him? A I can't remember that, how many times.

Q More than once? A I can't say.

Q What was his condition as to consciousness? A Why, he was conscious.

Q Do you know how the police officers happen to come? A They were sent for, I believe.

Mr. McDermit. I ask to strike that out.

By the Court.

Q By whom were they sent for? A By myself.

The Court. Now, you withdraw your motion?

Mr. McDermit. Yes.

Q Did you send for them at anybody's request? A Yes.

Mr. McDermit. That is objected to, any request that was made to her.

Lulu M. Field, direct.

Q (*By the Court.*) By whom was the request made? A By Mr. Baker.

Mr. McDermit. I still object. I think it is incompetent on the ground it does not seem to me it is competent.

The Court. If you have not any better reason than that I do not think I agree with you.

Mr. McDermit. I desire to take an exception.

The Court. I think it is competent upon the condition of this man; first, as to whether or not he was conscious, and, second, upon the question of whether or not he then had an apprehension of immediate death. Motion denied.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

By Mr. Van Blarcom.

Q About how many police officers came, how many men? A Why, there were about six or eight, I believe.

Q Did he die when they were there or after they left? A He died while they were there.

Q How long did Baker talk to you concerning this message?

Mr. McDermit. That is all objected to.

The Court. I suppose the best evidence is what was said.

Mr. Van Blarcom. I withdraw the question.

Q What was said between you and Baker after the priest left?

Mr. McDermit. That is objected to. Any conversation between Baker and her cannot bind this defendant.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

A Baker asked me to send for Plainclothesman Bell.

Q Did you have any other conversation, or is that all he said. A That is all he said.

Q Do I understand he made that statement to you or asked you that before or after the priest was there? A I can't remember exactly.

Q Do you remember whether or not any opiate was administered to Baker that day; I mean from the time you went on duty to the time he died. A There wasn't any given at night, after 7 o'clock, when I went on duty.

Q You do not know what took place before that? A No, I do not.

Q Do you remember when he came out of the ether? A Yes, I do.

Q When was that? A No, sir; I don't. He was operated on in the evening.

Q He was operated on at 1 o'clock?

Mr. McDermit. I object to your telling her when he was operated on.

Q Do you remember whether or not you were on duty when he was operated on? A Yes, I was. He was operated on at night.

Q You are a night nurse? A Yes.

Q Was he operated on at night? A He was.

Q Do you remember about the time? If you don't remember, all right. A I think it was after 1 o'clock.

Q At night? A Yes.

Q (*By the Court*). What time do you leave in the morning, go off duty? A 7 o'clock.

Q (*By Mr. Van Blarcom*). Can you remember or not he had come out of the ether when you went off duty the same night he was operated on? A Yes, he came out of the ether.

Cross examination by Mr. McDermit.

Q How would you know when he came out of the ether? Are you a physician? A No, I am not a physician.

Q You made no—

The Court. Just a moment. You asked the witness, "How would you know when he came out of the ether?" Before the witness had an opportunity to answer you put another question. Now Miss Field, you may answer the first question. How do you know? A You tell by the pupils of the eyes.

Q Did you examine the pupils?

The Court. One moment, go on and finish your answer. Take your time.

A (Continuing). The respiration changes, general condition changes as they come out of the ether.

Q Did you make a record of that? A I did not.

Q You testified in this case before? A I did, yes.

Q You testified that you were present when he was dying? A I did.

Q You testified that he died between 11 and 12? A I did.

Lulu M. Field, cross.

Q You testified that the record showed that he died at 1:30, didn't you? A No, I don't think I did.

Q Didn't you testify that the record never showed his death until after the doctor pronounces the patient dead? A Yes, I did say that.

Q And didn't you say he was examined at 1:30 and that is what the book showed that you produced here? A No, I did not.

Q What did the book show? A 12:45, I believe.

Q Then he had been dead how long? How long had he been dead ahead of the record of the book? A He had ceased breathing, as I recall it, at 12 o'clock.

Q You were present when the detectives talked to him? A Yes, I was.

Q You described in court, as a witness, what took place here?

The Court. That is an improper question. You can not mix these two trials. You have to ask her what the fact is.

Q You testified in this case before? A I did.

Q Now, just tell what took place at the bedside of the dying man? A The six or eight officers came in and there was some statements between the officers and the dying man. I do not know the statements.

By the Court.

Q Go on. The question was, "Describe what happened at his death bed," or something like that. A That is all that did happen, except his dying, that is all.

By Mr. McDermit.

Q You were within a couple of feet of where the dying man lay dying? A I was.

Q You could hear the conversation between the police officers and the dying man, isn't that so? A I could hear it, but not distinctly enough to know what was being said.

Q I understand you to be within a couple of feet where the dying man was dying, is that right? A Yes, I was.

Q You were there giving him attention as a nurse. A Yes.

Q These officers were all talking to him? A Yes.

Q You can't recall what took place between them? I did not hear.

Q Then, the voice must have been a very low tone, wasn't it? A It was not a low tone.

Q So you were unable to hear that voice two feet away from where he was talking, is that right? A Yes, that is so.

Q Do you remember using a basin there, a round basin that was for expectoration, when persons expectorate? A Yes.

Q There was one there? A Yes.

Q And the patient was vomitting blood? A No, I would not call it vomiting.

Q He was expectorating blood? A A little, not much.

Q Who was holding the pan for him to spit in to or pass this blood to? A I can't say that, I don't know.

Q Someone was holding the pan? A I don't know, I couldn't tell you.

Q Then, you don't remember? A No.

Q You don't know so that you were not holding the pan at that time? A I would not say because I don't remember.

Q Was any other nurse there beside you that time? A No; there was not.

Q You are the nurse in charge of that patient? A Yes.

By Mr. Van Blarcom.

Q At the time these officers came what were you doing, I mean when they were talking to him, what were you doing? A I was at the head of the bed, which was elevated.

Q The bed was elevated? A Yes.

Q What were you busying yourself about, if anything? A Nothing in particular, simply standing there and looking after the general condition of my patient.

Q There was some conversation between those men and the officers? A Yes, there was.

Q Which end of the bed did you stand at? A At the head of the bed.

Q (*By Mr. McDermit*). That is the same place where the patient's head was raised? A Yes, sir.

Q So that the patient's head was within a few inches of where you stood? The patient's head was raised on the bed within a few inches of where you stood? A Yes, but the head of the bed was elevated.

Q I know the head of the bed was elevated. A Yes, sir.

Q (*By the Court*). What do you mean by elevated. A Elevated on chairs, perhaps two feet.

Q The head was up so that the bed made an incline plane? A Yes.

Q (*By Mr. McDermit*). That would shove his head up nearer to you; than if you were standing right at the head of the bed? A Yes, it would throw his head.

Q (*By the Court*). Which way was he facing? Which side of the bed were the policemen? A The policemen were on the righthand side of the bed.

Q Which side were you on? A I was at the back, the lefthand side.

Q Which way was the patient facing, you or the policemen? A He was facing the policemen. He was not facing me.

Q (*By Mr. McDermit*). How wide is that bed? A Why, it must be two and a half or three feet wide.

Q How long? A About six feet long.

Q You were standing immediately back of the head of the bed on the lefthand side? A Yes.

Q And the patient's head was resting on an angle, is that right, towards the police officers? A Yes.

Q You were then within a half a foot about where the patient's head was, is that right? A No, it was more than that.

Q It wasn't over two feet? A Might be two feet.

Q The officers were not rolling down on the floor? A No, they were not.

Q They were sitting down on chairs, were they? A I don't remember that.

Q How close was the first officer to the dying man—how close was the first officer to him when these statements were going on? A He was right next to the bed.

Q Six inches, eight inches? A Foot, perhaps.

Q How near was the next officer? A I can't remember.

Q Couple of feet? A I can't remember.

Q Back of him? A I can't remember.

Q But the conversation was so low that it was in a whisper? A No, it wasn't a whisper.

Q But very low? A A low voice, yes, sir.

Q So that you couldn't distinguish a single thing that was said? A No, I could not distinguish; in

fact, I wasn't paying attention to what was being said.

Q (*By Mr. Van Blarcom*). You could hear what the officers said, couldn't you? A Yes, I could hear what the officers said.

Q But you do not remember what was said? A No, I don't remember what was said.

Q Your atttention was concerned with the physical condition of this man, I suppose? A Yes, it was.

REGINA FURST, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q You are a trained nurse? A Yes, sir.

Q Where are you located now? A Essex County Isolation Hospital.

Q Were you in the Newark City Hospital on the 14th of April? A Yes, sir.

Q Did you have anything to do with this man, Frank Baker, during the day time? A I was in charge of the ward where he was a patient.

Q You went on duty what time? A Seven in the morning.

Q How long did you continue? A Until 7 P. M.

Q During the time that you were on duty was he conscious or unconscious? A Conscious.

Q During that time had any opiate been administered to him? A No, sir.

Cross examination by Mr. McDermit.

Q Any complaint of any pains to you? A The complaint of abdominal pains.

Q You administered nothing for that? A No.

Q Why? A I had no orders from the doctor.

Q Isn't there a standing order in the hospital when a person complains of pain to administer an opiate? A Not without the doctor's order.

Q Is there any standing order of that kind? A No, sir.

Q Then, when he complains of pain you have no right to give him an opiate unless you have a special order from the doctor? A No, sir.

The Court. Didn't Dr. Staehlin refer to the interne and not to the nurses?

Q Isn't there a rule there to administer an opiate to a person in pain? A No, there is no order.

Q So that no matter how intense the pain may be you can't do anything for him unless the doctor gave you a special order? A Yes, sir.

Q Did you make any report of the condition of this patient upon the chart at the hospital after he told you about it? A The doctor always makes them himself.

Q Did you make any report to the doctor at that hospital of this patient telling you he had those pains? A That I don't remember.

Q (*By Mr. Van Blarcom*). There is a house surgeon to look after those things? A Yes, sir.

Q And if he thought the patient was bad enough for the condition warranted it there would be something said about opiates? A Yes, sir.

Q (*By Mr. McDermit*). You didn't make any report about this pain? A That I don't remember.

Q You may have reported it? A Yes, sir.

Q And he may have received opiates? A He didn't receive any.

WALTER BYRNE, sworn for the State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q In April, 1914, where were you? A I was driving the Third Precinct patrol.

Q Chauffeur? A Yes, sir.

Q How long had you been on the police department at that time? A Well, I was on at that time close to two years, I guess.

Q Did you go to the City Hospital with the other officers? A Yes, sir.

Q Whom did you see there? A I seen Baker, the fellow that was shot.

Q He was in bed, I suppose? A Yes, sir.

Q Tell the jury what took place? A Why, we went up stairs and went over to his bedside and Jimmie Bell asked him did he know him. He said, "Yes, you are my friend, Jimmie Bell." He asked him did he know Jack Miller. He said, "Yes, you are my friend Jack Miller." So Jimmie says, "Did you have the priest," and Baker says, "Yes." "You know you are going to die, Frank." He says, "I know I am." Bell says, "Do you know who shot you." He says, "Yes, Jimmie Bennett shot me." Bell says, "Are you sure?" He says, "Yes." He laid there a couple of minutes and I guess he died.

Q How did you come there that night? A Why, I was driving the machine. I got a call to go down to Harburger's hall to get the men and go up there.

Q What was going on up at Harburger's hall? A Banquet for Captain Christie.

Q Do you remember the time that you left the station house? A No, I do not. It was after 11.

Cross examination by Mr. McDermit.

Q You remember testifying in this case before, don't you? A Yes, sir.

Q Do you remember in testifying to any one dying there, any conversation about someone dying? A I don't remember.

Q You didn't say that statement here in the last trial? A What statement was that?

Q That he was dying, that Bell said to him, "You know you are dying?" A He said, "Do you know you are going to die?"

Q Did you say that statement in the last trial in regards to what took place? A I used words to that effect.

Q You testified, did you not, that Baker was in a stupor? A I don't say he was in a stupor. I said he seemed to be.

Q You testified also that he was coughing a lot, did you not, yes or no? A I don't remember.

Q Didn't you say he coughed a lot and that he was coughing and that the nurse was holding the pan while he was spitting blood? A I might have said that.

Q Didn't you say that? A I ain't sure.

Q Isn't it a fact? A I can't swear to it.

Q Didn't you swear to it before? A I don't remember.

Q Didn't you swear before that he was coughing blood and the nurse was at the bedside holding the pan that he was spitting into? A No, sir.

Q Will you say that you didn't? A Yes, sir.

Q Will you say you didn't swear here—

The Court. You have to ask him what the fact is first.

Q Didn't you say that he was coughing a lot at the last trial?

The Court. You have to ask him the question whether or not he was coughing.

Q Was he coughing? A Well, I can't exactly say he was coughing. He might have been spitting, something like that.

Q Was he spitting blood? A Well, yes, as far as I remember.

Q Didn't you say at the last trial that the only conversation you heard was that this is Bell, "My

friend Jimmie Bell, my friend Jack Miller," and that you didn't hear the rest of the conversation? A No, sir.

Q Did you in your last testimony use the word. the term, "die" or that anyone told you that he was dying? A Yes, sir.

Q You are positive about that? A As far as I can remember what I said.

Q Don't you remember what you testified here to two weeks ago? A I do to a certain extent.

Q You do remember that you said that he was coughing? A I might have said that.

Q Now, you say he was spitting blood? A Between coughing and spitting, I can't exactly designate what he was doing.

Q He was spitting up blood? A Might have been a little bit. I couldn't see it very good.

Q Into the open pan, into a basin? A I can't swear there was a pan there. I thought there was.

Q Didn't you swear at the last trial that a nurse was standing at the bed holding the pan while he was spitting in the blood? A No, sir.

FRANK A. O'NEIL, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q You are a police officer? A Yes, sir.

Q In April, 1914, where were you? A In police headquarters.

Q You were a stenographer there? A Yes.

Q Do you know the defendant, James Bovino? A Only by seeing him there as a witness or as the defendant.

Q I show you this statement or a paper, dated October 14, 1915, and ask you if that was typewritten by you? A Yes, sir; it was.

Frank A. O'Neil, cross.

Q There were other people there at the time? A Yes, sir; several.

Q Police officers? A Yes, sir.

Q And the defendant? A Yes, sir.

Q Before the statement was taken by you—before you began to typewrite, what was said to the defendant, if anything? A Why, he was asked to give a true statement as to what occurred the night of this shooting, saying what he would say would be used as a statement against him and to tell the truth and nothing but the truth.

Q When that was done what did he do and what did you do? A Then, he sat down at the typewriter and started to relate his story of the occurrence.

Q What did you do? A I took it down verbatim on the typewriter.

Q You didn't take it down in shorthand notes? A No, sir.

Q After it was typewritten, what was done then to it? A He was given the statement to read—no, I read the statement off to him first and then he was given the statement to read himself and he agreed it was just as he had given it and he signed it in the presence of the witnesses there?

Q That is his signature on it? A Yes, sir; it is.

Cross examination by Mr. McDermit.

Q Did you hear anyone tell him that Dago Frank, of New York, was locked up and in custody of the police? A No, I did not.

Q Did you hear anyone make a statement to him that Frank, New York Frank, had told the whole story and had implicated him? A No, I did not.

Q Didn't hear anything of that kind? A No, I did not.

Q No such conversation there at all? A Not while I was present.

Q No voice calling to him from the cells, "Hello, Jim, I am here; this is Frank?" A No, I didn't hear that.

Mr. Van Blarcom. I offer in evidence the statement bearing date October 14, 1915.

Statement marked Exhibit S. 8.

TIMOTHY F. SCALES, sworn in behalf of State.

Direct examination by Mr. Van Blarcom.

Q Mr. Scales, you are clerk of the grand jury? A I am.

Q And have been for how long? A Twenty-five years.

Q Did you take the testimony in the case of State *v.* Bodino in the April term, 1914? A I did.

Q Have you the testimony?

The Court. What grand jury do you refer to?

Mr. Van Blarcom. April term.

The Court. Of this court.

Mr. Van Blarcom. Essex County grand jury.

The Court. Court of Oyer and Terminer of this county.

Q Do you find on the record of the testimony of a woman named Mae Gilling? A Mae Gilling.

Q Turn to the last part of her testimony, have you got that, the last six or eight questions? Do you find there this question and answer: "When you heard the noise of a shot didn't you look in the direction of the noise? A Yes, sir; but there was a crowd there, you couldn't see they were all around Baker at that time."

Mr. McDermit. I object to this testimony on the part of the clerk of the grand jury on the ground that the grand jury is a secret inquest and that its minutes are not permitted to be presented in a court of law for this purpose.

The Court. Objection overruled.

Q "When you heard the noise of the shot didn't you look in the direction of the noise," that is the question and the answer, "Yes, sir; but there was a crowd there and you couldn't see. They were all around Baker at that time."

Mr. McDermit. That is also objectionable. He didn't lay any basis for the contradiction. She said she didn't remember what she testified.

The Court. That laid the foundation. The trouble is that the question is framed wrong.

Q Was she asked this question and did she give this answer: "When you heard the noise of the shot didn't you look in the direction of the noise," and answered "Yes, sir; but there was a crowd there and you couldn't see. They were all around Baker at that time." A That is a question that was asked and the answer given.

Q Was this question asked and did she give this answer: "Didn't you look in that direction when you heard the shot?" A Yes, sir." A That is a question and answer.

Q Was she asked this question and did she give this answer? "Q Who did you see there? A I saw Sue alongside of Baker. She is the woman supposed to be his wife." A That is a question and answer.

Q Was she asked this question and did she give this answer: "Q What men were standing there? A I couldn't tell." A "What men were standing there, I couldn't tell" is the answer.

Q Was she asked this question, "Where was Bennett? A He was standing at the saloon door." A That is a question and answer.

Q Was she asked this question and did she give this answer: "Q How far away? A Three or four feet." A That is a question and an answer as I have it here.

Mr. McDermit. I desire to take an objection seriatim to all the answers.

The Court. Yes, your objection will be allowed. Defendant's counsel prays an exception to this ruling of the court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Cross examination by Mr. McDermit.

Q As a result of the investigation by the grand jury you are reading from the minutes of the April term, 1914? A April term, 1914.

Q Was there an indictment found upon the testimony at that term of court against James Bovino, the defendant?

Mr. Van Blarcom. I object to that question. It is absolutely immaterial.

The Court. Objection sustained.

Defendant's counsel prays an exception to this ruling of the court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Mr. McDermit. I also ask to strike out this testimony because there isn't any part of it con-

tradictory of any testimony given by her in court today.

The Court. Motion denied.

Defendant's counsel prays an exception to this ruling of the court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q Was she subsequently subpoenaed before any other grand jury in this county and gave testimony again in this case?

Mr. Van Blarcom. I object to that.

The Court. Sustained.

Defendant's counsel prays an exception to this ruling of the court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

STATE RESTS.

Mr. McDermit Opened.

VINCENZO BOVINO, sworn in his own behalf.

Direct examination by Mr. McDermit.

Q Where do you live? A I live 226 Jefferson street.

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

Q How long have you lived in the City of Newark? A About twelve or thirteen years.

Q Does your father live at that address? A Yes, sir.

Q Is your mother living there? A Yes, sir.

Q You know Chick Collins? A Yes, sir.

Q You knew a man in his lifetime whose name was Meserintino, but who was known as Frank Baker? A Yes, sir.

Q What was the relationship between you and him? A Just friends, that is all.

Q You know a woman by the name of Susan Brown Clark? A Yes, sir.

Q Were you ever employed at No. 238 Oliver street, the dance hall of Chick Collins? A Yes, sir.

Q Do you remember the night of April 22d, is it, 21st of April, 1914? A Yes, sir.

Q What time in the evening did you go to the place? A About 7 o'clock.

Q I show you a map and ask you to look at it. You are familiar with all the surroundings there, are you? A Yes, sir.

Q I am pointing to B, that is the bar room on the map. A Yes, sir.

Q A is the hallway? A Yes, sir.

Q C is a room in between G and A? A Yes, sir.

Q And D is a room in between the saloon and the dance hall? A Yes, sir.

Q And G is the dance hall? A Yes, sir.

Q Where were you, just show us where you were when you went in first that evening, what room were you in? A Right here (indicating).

Q In the saloon? A Yes, sir.

The Court. Witness indicated room B, near the partition between A and B.

Q How long did you remain in the saloon there? A Why, for about three hours, about two hours.

Q Had you gone into the dance hall from the saloon? A Yes, sir.

Q What had you been doing in the room B, in the saloon? A I was reading the newspaper.

Q Playing any games? A I had a few games; yes, sir.

Q Whom did you play with? A I remember two of them. I played with Joe Broad and with a fellow named Tony Fresco.

Q What time did you go into the dance hall? A I don't exactly remember who they were. I know Little Hutch, that is Tony Fresco.

Q What occurred after you played your game of cards, did you go into the dance hall? A Yes, sir.

Q Just tell the jury what occurred in the dance hall, after you went in? A Why, I went in the dance hall and they were playing an Italian finger game and I had a couple of games. The game broke up and I went outside to the bar room again. I sat down and started reading the newspaper again and then the piano starting playing and I went in the hall and I was looking for a girl to dance with. They were all out on the floor dancing. I couldn't see nobody. Finally, I heard somebody talking in the back; that is the dressing room, I was walking towards it. I heard a couple of girls in a conversation. I was walking towards them and Lucy came out.

Q Lucy, that is one of the girls that testified here today? A Yes. I asked her for a dance. She gave me a dance.

The Court. Yesterday.

A (Continuing). I had a dance with her; after the dance I walked out into the bar room again. Then, I sat down on a chair and about two or three minutes after, why, Lucy came walking out and called Chick aside.

Q Where did Lucy come walking out to, where did Lucy come? Did she call Chick aside there? A Room B.

Q That is the saloon? Designate what it is? A Yes, sir.

Q After she called Chick aside what did you do? A Why, Chick stood up against the bar and I sat down and started reading the newspaper again and finally I laid down my newspaper. Chick said he was going to take a walk to the corner. I says, "I will be with you, too." We went out and we stopped at the hall door there and Joe the Kid was with us, too. That is Donato Colachio, and finally we stood there talking—

Q You were standing at this door, point it out, which door, the door of the saloon or the door of the hall? A Right down here, the door of the hall.

The Court. On the street in front of the hallway A?

Witness. We were standing right on the stoop.

Q Just tell the jury what occurred out in the street there at that time, who was there and what occurred, what was said and done. A Why, standing there, we were talking and finally we was going to take a walk. We were going to go on the corner. We were just ready to start and Lucy come walking out. I says, "What, are you going home so early?" She says, "No," and she goes over on the other side and she comes back with Frank.

Q Frank who? A Frank Baker.

Q The man who was killed? A Yes, they passed us and they went in the hallway.

Q Was there any conversation between them before they went in, what took place outside? A I don't know.

Vincenzo Bovino, direct.

Q Was Chick there? A Yes, he was with me and Donato Colachio. We were talking there and finally Lucy—I don't know, she had a conversation, she told something to Frank Baker, and I says, "Well, what are you afraid of; nobody ever bothered you before." She got kind of sore so Frank answered me back—that is, I was talking to Lucy at the time. He says, "I ain't afraid of no so and so." Finally they went in, so I, Chick and Tony; that is, Joe the Kid, we walked down to the corner. We stood there for awhile. I think Chick was talking to somebody at the window.

Q Go ahead. A We stood there for about seven or ten minutes, eight or nine minutes, I can't exactly tell you. We heard a shot; that is, I heard a shot, and I told Chick, I says, "Chick, didn't that sound like a shot?" He says, "I think not," so Joe the Kid says, "Well," he says, "I don't think so." He says, "It might be, the boys must be fooling around there and a chair must have fallen over. They must be throwing a chair around or something." As we were walking down we seen a whole crowd jump out of the hallway, so we started running down towards the others and as we got up towards the saloon door stoop we seen Frank Baker and Joseph Miller coming down the steps and Chick got up to him. He says, "What is the matter?" He says, "Chick, call up an ambulance, I am shot." Chick says, "Who done it; who done it?" He says, "I don't know." The whole crowd got around there, so finally Mr. Miller says, "Chick, I am going to hold you responsible for this man. I am going around to the box and telephone." Chick says, "There is a telephone in my place. Go on in and telephone here. What is the use of going all the ways around to the park." He says, "That is right, too." I got on one side and Chick on the

other and we brought Frank inside the bar room and he stood up against the bar for a little while. I don't know, he got hold of a glass of something and he broke it up against the wall, so we sat him down on a chair. So, finally there was a little conversation going on with Sue and Lucy.

Q Tell the jury what was the conversation between Sue and Lucy after he had been brought back, after the dead man had been brought back from the street into the barroom. A Well, Officer Miller was talking to Chick again about the special policeman. Joe the Kid said, "Let me see your gun." So the officer took the gun, looked at it and it was all right. I don't remember what he done with it. Frank sat down then, and they were arguing; that is, Lucy and Big Sue were arguing. Big Sue says, "This is all on account of you."

Q Did you fire any shots that night? A No, sir; I did not.

Q Did you have any revolver in your possession? A No, sir; I did not.

Q Do you know who shot Baker? A I can't tell you, no, sir.

Q Did you have any quarrel with Baker that night? A No, sir; I did not.

Q Did he strike you or did you attempt to strike him? A No, sir.

Q When were you arrested? A That is that night?

Q Yes. A What is it, the time you mean?

Q Yes, what time were you arrested? A About two in the morning, later than that.

Q Where were you taken? A I was taken to the Third Precinct.

Q How long did you remain in custody, how long did you remain locked up? A About a month.

Q What was then done? A Why, I came out on bail.

Q When were you locked up again? A On October 7th or 8th.

Q Of this last year? A Yes, sir, 1915.

Q When you were at the police station or at police headquarters did you make up some statement in writing—did they ask you some questions? A The second time?

Q The first time? A No, sir; I made up a statement; yes, sir.

Q Made a statement the first time? A Yes, sir.

Q That statement was in writing, was it? A In writing, yes, sir.

Q Who did you make the statement to? A Captain Tuite.

Q Who else, some other officers there when you made the statement? A I think there was. There was Frank Donnelly, Jim Bell, I don't remember who else was there.

Q Just look at that statement and see whether this is the statement you made at that time, just look at the date and see whether your signature is there.

The Court. Showing the witness Exhibit S. 6.

A Yes, sir; that is my signature.

Q That is your statement? A Yes, sir.

Q They called upon you to make another statement later? A Yes, sir.

Q What were the circumstances under which you made that statement? A Why, I thought I heard somebody hollering that Jim Bennett done it, Jim Bennett done it, and somebody was hollering that. They had this Frank, some fellow by the name of

Frank that was down there that night, so I says, "Well, he must have done it himself."

Q When you were locked up the second time where were you locked up? A Down at headquarters.

Q Where is that? A Downstairs.

Q Downstairs here, downstairs where, police headquarters, City Hall? A Yes, sir.

Q City Hall, Newark? A Yes, sir.

Q Someone was shouting what, what was he shouting?

The Court. He didn't say that. He said he thought he heard somebody say—

Witness. I heard somebody say it.

The Court. You just said you thought you heard somebody say it.

Witness. Somebody was hollering it out. Someody hollered out, "All ready for court." I went upstairs. "Why, Jim Bennett done it."

Q That is when you were locked up in the cell? A Yes, sir.

Q After they heard that they took you out to get a statement? A They took me out at 6 o'clock at night, something like that.

Q Was anything said to you about the other fellow being locked up at that time?

The Court. You better let him tell it.

A I thought it was myself. I thought it was myself by the way they were talking.

Q And what did you think? A That this Frank was locked up.

Q Who was Frank? The jury don't know who Frank is. A Some fellow that was around there that night.

Q Where did this man come from, what is his connection with the dance hall? A I don't know; I can't tell you.

Vincenzo Bovino, cross.

Q How long did you know this fellow? A For about a month.

Q Was he at the dance hall that night? A Yes, sir.

Q Was that the man that you thought was locked up there? A That is the man I thought was locked up.

Q It was upon this occasion that you made this second statement? A Yes, sir; that is why I made that statement.

Q In that statement you made a declaration that he was the man that had done the shooting down there? A Yes, when I heard him say that.

Q How did you come to make such a statement as that if it wasn't true? A I don't know why, I must have been all excited.

By the Court.

Q Are you sure of that, that in that statement you made that declaration that New York Frank did the shooting? A I didn't say New York Frank.

Q Or Frank. A Frank, I ain't sure that I said that he done the shooting. He is going to blame me for it. I says he must have done it himself.

By Mr. McDermit.

Q You didn't know in point of fact who did the shooting? A No, sir; didn't see it.

Q You don't know now? A I can't say who done it.

Cross examination by Mr. Van Blarcom.

Q Where did you live at the time of this trouble? A At the time of that trouble I had a room.

Q Whereabouts? A On Cottage street.

Q What number on Cottage street? A I don't know the number; I don't know.

Vincenzo Bovino, cross.

Q How long had you had the room? A About two weeks.

Q Why were you not living home at that time? A I don't know why I wasn't living at home. I used to go—I used to stop with almost everybody, all my friends—I used to stop, maybe sometimes I used to stop a week, that is, with a different friend of mine.

Q Were you stopping with a friend on Cottage street? A No, sir; I was there, I was living with my girl, that is my wife today.

Q She is now your wife. A Yes, sir.

Q When were you married? A I was married in—I forget the month; I can't tell you.

Q About when was it? A I forget the month.

Q Last summer? A Yes, sir; it was last summer. I think it was in June.

By the Court.

Q Don't you know when you were married? A No, sir; I do not; I don't remember the month.

Q It was last June, last summer? A Last summer.

By Mr. Van Blarcom.

Q How long had you been living with her that time, the time of this shooting? A I don't know; I think two weeks.

Q Had you lived with her before that? A Yes, I did; on and off.

Q How long had you known her? A Why, about a year or something like that, before that.

Q Met her at Chick's? A Yes, sir.

Q After you were released—you say you were in custody about a month after you were released? Where did you go? A I went home.

Q Did you live there right along up to the time you were arrested last? A Yes, sir.

Q At the time you were arrested first were you working or not? A Not then, then I wasn't; no, sir.

Q How long had you been out of a job? A About a month.

Q Where did you work before that month? A Why, I was a waiter. I used to work three or four nights a week, any time there was a show there; that is, in Colucci's place. I used to do anything.

Q You were a waiter in Colucci's place? A Yes, sir.

Q Three or four nights a week? A Sometimes three nights a week, two nights a week; whenever there was weddings there I used to get a job.

Q How long had you been doing this work at Colucci's place? A Since he opened up the place.

Q When was that. A About four years ago.

Q About four years ago? Did you work there from the time he opened the place as a waiter? A Yes, sir.

Q Up to a month before the shooting? A No, not up to a month before the shooting; about three or four months.

Q Three or four months? A Yes, sir.

Q You worked at Chick's for three years altogether? A About three years; that is, as a waiter. I worked different places, too.

Q Well, you didn't work very steadily at any other places? A No; not very steadily.

Q Your main place was living at this dance hall? A Not then, I was off then.

Q You had been off about three months? A About that.

Q Had you done any work during that three months? A Yes, sir.

Q Whereabouts? A For Anthony J. Bruno, over in New York. He lives here in Newark.

Q Where is that? A He lives here on North Sixth street.

Q What work did you do for him? A I was a helper for him.

Q What is his business? A Truckman.

Q How long did you work for him? A I worked for him on and off for about a year.

Q I don't mean on and off; I mean at that time after you ceased to be a waiter at Chick's, how long did you work for him? A Then, two months.

Q For two months? A Two months.

Q Every day ? A No, not every day.

Q How often? A About three, four days a week. He had no work, but just gave me a chance, that is all.

Q You were a helper? A Yes, sir.

Q What was your salary there? A $2 a day.

Q Did you live home at that time? A I used to stop with friends of mine.

Q What friends, girls or men? A No, men.

Q Whereabouts? A I used to stop with a fellow by the name of Big Tom.

Q Where does he live? A He used to live right next to the saloon.

Q Near Chick's? A Yes, sir.

Q Why didn't you live home? A I don't know. There was a little cousin of mine there and my little brother, he was living then.

Q When you came out of jail after you were arrested the first time, did you start in living again with, what is your wife's name, Eleanor? A Did I start living? Yes sir.

Q The same place? A No, I had her down to the house with me.

Q What? A Down to my house.

Q How long did you stay there? A I don't know, about two or three months, I guess.

Q And then she left, did she? A Yes, sir; she left.

Q How long was she gone before you started to live with her again? A I used to meet her once in awhile; I used to meet her once in awhile.

Q Did you live with her as man and wife during that time? A Yes, sir.

Q Off and on, as you say? A Well, off and on, yes, sir.

Q How long had you known her at the time of this shooting? A Couple of years.

Q Was she there that night, the night of the shooting? A No, she came around after.

Q How long after? A About, maybe an hour.

Q What time did she get there then? A I can't exactly tell you; I don't remember.

Q Do you know what time the shooting took place? A About twenty minutes to 11; I think it was about that time.

Q It wasn't half past 11? A I don't know.

Q You are not sure? A I am not sure.

Q What time did you go in the dance hall that night? A I went in the dance hall about half past 9.

Q You were living then on Cottage street, you say? A On Cottage street, yes, sir.

Q What did you go in there for that night? A In where? In Chick's? In the dance hall?

Q Yes. A I am often down there.

Q Every night? A Well, not every night; majority of nights I was.

Q Practically every night? A Yes, sir.

Q You went in there you said, about what time? A About half past 9.

Q Was the dance going on at that time? A In the bar room or in the dance hall?

Q In the dance hall. Was the dance going on when you first went in there? A There was no dance going on, but there was a dance there at the time.

Q You sat down in the bar room and played cards? A Yes, sir.

Q Who were the players? A I don't remember, only one there, Little Hutch; I don't remember anybody else.

Q You remember Hutch? A Yes, sir.

Q What is his right name? A Tony Fresco.

Q How many players were there? A Having a game of finger. I don't remember the other fellow.

Q The three of you? A The three of us; yes, sir.

Q How long did you stay out in the bar room? A How long did I stay out in the bar room; that is, before the shot? About two hours and a half.

Q And then you went in the dance hall? A Yes, sir.

Q When you went in the dance hall, where did you go? A They were playing an Italian finger game there and I joined it.

Q That was at the big table by the women's toilet? A Yes, sir.

Q Who were playing? A I don't remember everybody there.

Q Give me the names of the ones you remember? A I know it was me, Donato Colachio.

Q Is that Chick, you mean? A No, that is Joe the Kid. There was Little Hutch, he was there; there was Joe Broad, he was there. I don't remember everybody that was there.

Q You have named two besides yourself, Joe the Kid and Joe Broad. Who else was there? A Frank was there.

Q This man Frank? A Yes. I don't remember everybody.

Q Joe Serratelli? A Well, that is him, Joe Broad.

Q That is Joe Broad? A Yes, sir.

Q Was Chick there? A I don't remember.

Q What women were sitting at this table? A I think Big Sue sat there.

Q May Gilling? A I don't remember her sitting there; no, sir.

Q How long did you continue to play this finger game? A Had two games.

Q You played for drinks? A For drinks; yes, sir.

Q Had you had the second drink when you quit? A No, sir.

Q And then what happened? A Why, I walked out in the bar room.

Q What did you do that for? A Well, I didn't want to stay in the dance hall and I just walked out in the bar room, that is all.

Q You walked out in the bar room? A Yes, sir.

Q Did you get up right from the table and go to the bar room? A I was standing up, I had my beer and I walked out. The whole game busted up then.

Q When was it you heard these two women talking together in the dressing room? A I walked out in the bar room, and when I heard the piano starting again I walked in. I was looking for a girl to dance with. I seen the door open. I heard voices back in the dressing room. There was a little argument there. I seen Lucy coming out

and I asked her for a dance and I got a dance with Lucy.

Q Were these people dancing at the time you heard these voices back in the dressing room? A What people?

Q All the girls? A Yes, sir; I didn't see no girls around.

Q How long had you known Lucy at that time? A I only knew Lucy since she started to come down there.

Q How long had she been coming down there? A About a year or so.

Q She wasn't married at that time? A No, sir.

Q Did you know her well? A I don't know her well. I only used to see her when she come down there.

Q You never went out with her? A No, sir.

Q While the dance was going on you heard two women talking together in this dressing room? A Yes, sir.

Q What did you do? A While the dancing, what did I do?

Q Yes. A I was just walking up there. That is how I come to hear it, and before I got up there Lucy came walking out.

Q What did you hear? A I didn't hear nothing. I just heard talking, that is all.

Q Were they talking loud? A Well, that is, they were talking pretty fast.

Q Why did you walk down there towards the dressing room? A Because I didn't know who was there. I thought there was some girls, of course; I wasn't going in there; I was going to wait.

Q You told the police officers that you drew the curtain aside, didn't you? A No, sir; I did not.

Q In this statement, which is marked Ex. S. 6, this appears: "About 10 o'clock on Tuesday, the night Frank Baker was shot, I walked into the hall and I seen Big Sue call Lucy inside the dressing room. I was outside. I heard them quarreling. I pulled the curtain back and I got a hold of Lucy by the shoulder, and said, 'What is the matter with you girls?'" A No, sir; I didn't say that.

Q Did you make that statement to the police? A I don't remember making that statement.

Q Will you say you didn't make it? A I didn't make it; no, sir.

Q Did you say at the last trial you did make this? Yes, sir.

Q Did you testify at the last trial that you did make this statement to the police. A No, sir; I didn't make that statement.

Q Now, you say you didn't pull the curtain back? A No, sir; I did not.

Q Did you walk up there to the dressing room? A I just heard, I heard, I thought there was a girl in there. I didn't really know who they were. I didn't know who was in there. I thought there must be some girls in there, so I was walking up there when Lucy came out.

Q How many girls were there in the hall before Lucy came out? A I don't know, I can't remember very well.

Q About how many? A I didn't count them; I don't know.

Q Everyone was dancing? A I don't know that anyone was dancing, I can't tell you. Some of them was talking with fellows. Few of them were dancing.

Q Why didn't you ask some of the girls who were not dancing? A How could I ask them for a dance if they were dancing?

Q The ones that were not dancing? A Because they were talking around with fellows.

Q As you walked in from the saloon, I understand you to say, you heard these two girls talking way back in the dressing room. A I couldn't hear them there, but as I was walking up I heard voices, and before I reached there Lucy came out.

Q How far did you get before Lucy came out? A Right from here to where you are.

Q Within about ten or twelve feet? A About that, about ten feet.

Q It is divided off by a curtain? A The dressing room?

Q Yes? A Yes, sir; by a flag.

Q And then Lucy walked out? A Yes, sir.

Q Who came out with her? A I didn't see nobody else come out.

Q See Big Sue come out? A No, sir.

Q Then you danced with Lucy? A Yes, sir.

Q After the dance was over what occurred? A Walked out into the bar room again.

Q Why did you go out then? A Why did I go out then?

Q Yes? A Because I don't want to stay in the dance hall. I ain't used to staying in.

Q Did Lucy stay in. A Yes, sir; she stood there.

Q Meet anybody in the saloon when you went out? Did you meet anybody when you went outside in the bar room? A I sat down in a chair all by myself.

Q Who was there? A I remember Officer Miller being up against the bar. He was talking there about some Italian oil. There was Vito, the bartender, there was a few more fellows. I don't exactly remember. I know when I was sitting

down there Officer Miller was talking about some Italian oil.

Q What happened next? A I read a newspaper and Chick came up against the bar. He stood there for awhile and then I seen Lucy run out.

Q Lucy spoke to Chick? A Yes, sir.

Q What did Chick do? A Nothing; he stood up against the bar again. Then, he says, "I am going to take a walk on the corner." I says, "I am going to go with you." I says, "I will be with you." We walked out, the two of us, and Joe the Kid comes out and he stands there and we start talking, and while we was there, just ready to start away, Lucy comes running out. Chick says, "Where are you going; are you going home so early?" She said, "No, I am going on the other side," and finally she comes back with Frank.

Adjourned until tomorrow morning at 10 o'clock.

THIRD DAY.

VINCENZO BOVINO resumes the stand for

Further cross examination by Mr. Van Blarcom.

Q And then did you and Chick walk out of the saloon together? A Yes, sir.

Q You were going down to the corner? A Well, he says, "I am going outside for a little while."

Q You were not going to the corner? A That I do not know; we walked down afterwards.

Q With that you said, when Chick spoke to you, he said, "I am going to take a little walk down to

the corner," and he said that to you in the saloon? A He said, "I am going to take a walk outside."

Q Didn't you testify a moment ago that Chick spoke to you in the saloon and said, "We will take a little walk down to the corner?" A No, sir.

Q Didn't you so testify at the last trial that you went out to take a walk down to the corner? A I don't think I did say that.

Q Was this boy, called Tony the Kid or Joe the Kid, did he go out of the saloon with you and Chick? A He came right after.

Q How soon after? A About half a minute.

Q But, at all events, when you and Chick got outside you didn't turn down towards the corner, but you turned the other way and stood by the door leading into the hallway? A No, sir.

Q Where did you go? A We stood right there.

Q Now, in this direction, east, that leads down towards the next street, doesn't it, Adams street? A Yes.

Q When you came out of the saloon door on Oliver street and then didn't you— A We came out of that hall door there and stood right in front.

Q Then you came out of the hall A and stood there? A Yes, sir.

Q How did you get from the saloon into A? A We got out of the saloon and walked right there, the hall.

Q You were in the saloon? A Yes, sir.

Q How did you get into the hall through this doorway? A Yes, we walked right out of these.

Q Leading from B to A? A Yes, sir.

Q Did you and Chick go out together? A Yes, sir.

Q There was some story about some gunmen coming over from New York to shoot up the saloon? A Yes, sir.

Q When had you heard that story? A Chick told me that. He says, "Come on, we will take a walk on the corner." He says, "I don't see why them fellows want to come over here and do anything like that."

Q You told the police you heard these men were coming out to take some girl out of the saloon and if they didn't get her they were going to shoot up the place? A Yes, sir.

Q Did Tony the Kid, what is his name? A Donato Colachio.

Q What is his right name? A Donato Colachio.

Q Had he heard this story about the gunmen also? A I can't say.

Q But, at all events, you and Chick had heard it? A Well, I didn't hear it. Chick told me walking down to the corner.

Q Did you have a revolver that night? A No, sir.

Q Do you know whether Chick did? A I can't say.

Q Do you know whether Donato did? A I don't know; I don't think he had.

Q What were you going to walk down to the corner for? A I just simply took a walk down there. I often walk down to the corner.

Q On this particular night you were going down to interview these gunmen? A No, not so at all.

Q Weren't you going down to have a little talk with them? A No, I just walked down there; that is all.

Q Wasn't Chick going down—hadn't Chick told you he was going down to have a talk with them? A Why, yes. "If they ever come down we will see them; we will try and stop them," he says. "I want to know the reason why they would do that to my place."

Q You say none of you had a revolver, you didn't? A I didn't.

Q And you don't believe the others did? A I don't know.

Q And they were coming in an automobile, is that what you told the police. That is what Lucy is supposed to have said.

Q You told that to the police, they were supposed to have come in an automobile? A Yes, sir.

Q You didn't take much stock in that, did you, about the gunmen coming? You didn't believe it? A I don't know; one way, I did.

Q But still, without a weapon in your hand you walked down there to speak to them about it, without a weapon in your pocket? A I didn't have no weapon; no, sir.

Q You walked down to meet these people without being armed? A I don't know whether they came or not.

Q At any rate, you went down to meet them if they did come? A I didn't go down to meet them, just walked down there.

Q About how far is it from the dance hall down to the corner of Oliver and Adams street? A About 200 feet.

Q Do you think it is any more than that? A I don't know; maybe it is.

Q How many houses are there? A About five

Q When you heard what you thought was the shot you were standing on the corner of Oliver and Adams street? A Yes, sir.

Q You think about 200 feet away from the dance hall? A We had just walked back when he heard the shot.

Q I know, but you were on the corner? A Yes, sir.

Q How long had you been there before Lucy came out? A In front of the door?

Q Yes. A We hadn't been there long.

Q Were all three of you there then when Lucy came out? A Yes, sir.

Q Who spoke to Lucy first? A Why, Chick said, "What, are you going home so early? She said, "No," she says, "I am going on the other side," so she ran right over and she came walking back with Frank. Frank shook hands with Chick and Chick said, "How are you, Frank? How are things?" He said, "All right; how are things with you?" and with that he walked right in the hallway, and then Lucy started in to crying. She says she is afraid to go in. I said, "What is the matter, nobody ever bothered you before. What are you afraid of?". Frank hollered back at me, "I ain't afraid of no so and so."

Q He used some rough language? A Yes, sir.

Q I thought you said Frank had gone right in? A He was walking in as he said that.

Q How long did Lucy stay outside? A She walked right in with him.

Q They went in there together? A Yes, sir.

Q Did you address a remark to Baker to this effect, "What is the matter, are you afraid of her?" Meaning Big Sue? A No, sir.

Q Did you tell the police that in your statement of April 14, 1914? A I don't know whether I did or not.

Q In this statement of April, 1914, you said this, after Frank Baker had gone into the dance

hall: "Me and Chick was left there outside, and the Kid, Tony Colachia, comes walking out." Did he come walking out or had he been there before? A I can't say, I don't remember that.

Q You testified a moment ago when Lucy came out you three stood there. Are you sure the three of you stood there, or just two. A I think we were there, the three of us, but I don't remember for sure.

Q There is a reference in your statement of April, 1914, to the effect that Chick told you those guys that was over in Klein's that Friday night were going to come down here and get that girl? A Lucy was supposed to have told that.

Q Did you know the guys up in Klein's hall? A No, sir; I did not.

Q You know where Klein's hall is, I suppose? A I did know.

Q On Washington street? A It used to be Klein's hall.

Q It is over Patsy Klein's saloon on Washington street? A No, sir; that was down on Madison street, I think.

Q Oh, Klein's hall is on Madison street? A Yes, sir; they used to call that Klein's hall down there.

Q Did you know these men that had been in Klein's hall the previous Friday night? A No, sir; I did not.

Q How long had you known Lucy? A About a couple of years.

Q You had met her there in Chick's place? A Yes, sir.

Q How often did she come there? A I can't tell you. She came there once in awhile; that is, when they held dances there.

Q How well did you know her? A I very seldom spoke to her.

Q Ever take her out? A No, sir.

Q Was she a prostitute? A I cannot say. I don't think she was.

Q Did you see her frequenting that place with different men? A No, I always seen her coming in there alone with girl friends.

Q She met men in there? A Sometimes she sat down with men and sometimes she sat down with girl friends.

Q She was a Polish girl, wasn't she? A Yes, sir; I think she is.

Q In your last statement or second statement to the police you said: "Chick asked Baker to have a drink?" A I don't remember saying that.

Q Do you remember telling the police that? A No, sir.

Q It says in this last statement, referring to when Chick came across the street, "Then, Chick said to Baker, "Come on and we will have a drink anyway," so he says, "All right," and came over and shook hands." A No, sir; Chick didn't talk to him until he got up there. He just shook hands and said, "How are you?"

Q Did you know what this trouble was about Lucy being afraid to go in the hall? A No, sir; I did not.

Q Did you inquire? A No, sir.

Q Didn't interest you? A No, sir.

Q Why not. A Why, it was none of my business.

Q I understand that might be, but still you knew or had reasons to suppose that there was going to be some trouble in the hall when Baker went in? A I did not know.

Q Why did you make the remark to Lucy, "Don't be afraid to go in, nobody will bother you?" A I don't know. I seen her starting in and saying that, and I just said that.

Q What did she say? A She didn't say nothing to me. Frank is the only fellow. While he was walking in he says, "I ain't afraid of no so and so." Then they walked right in, the two of them.

Q I thought you said that Lucy said she was afraid to go in. A I heard her say something. She said that.

Q Then you said, "Don't be afraid, nobody will hurt you?" A I said, "No, what are you afraid of? Nobody ever bothered you before."

Q Didn't you take any interest and find out what the trouble was? A Why, no.

Q You had heard quarreling or you had heard a quarrel between Big Sue and Lucy in the back room? I often heard girls talking in the back room.

Q I am not talking about girls. You had heard these two girls. A I didn't know whether it was an argument or not.

Q You heard them, you said to the police that they were quarreling? Was that true? A I don't know whether it was an argument or not.

Q Had you heard anything to indicate that they were quarreling? A No, sir.

Q In the dressing room? A No, sir.

Q Then, did you make this statement to the police in April, 1914: "I walked into the hall," it refers to the time you went in at 10 o'clock, "and I seen Big Sue call Lucy inside the dressing room. I was outside. I heard them quarreling." A No, sir.

Q You didn't make that statement? A No, sir.

Q Are you sure now you didn't say that? A Yes, sir.

Q Now at the last trial you were asked this question, "On April 23, 1914, did you say to Captain Tuite, Capt. Cordano, Sergeant Godfrey and Patrolman Donnelly, Police Headquarters at Newark, that about 10 o'clock on Tuesday night, Frank Baker was shot. I walked in the hall and I seen her call Lucy inside the dressing room," and you answered, "I don't know whether I did or not." At the last trial you answered that question, "I don't know." Are you now sure you didn't say that to the police? A That I saw Frank Baker shot?

Q No, that you saw Big Sue call Lucy into the dressing room? A No, sir, I never seen Sue call Lucy in.

Q Were you asked this question at the last trial and did you give this answer. Did you say this to the same officers at the same time and place: "I was outside. I heard them quarreling. I pulled the curtain back. I got hold of Lucy by the shoulder and said, 'What is the matter with you girls? Come on out and have a dance,'" and you answered this, "I don't remember saying that for I know I got hold of Lucy and started to dance with her." A Got Lucy?

Q No, do you remember testifying that way at the last trial where you said you didn't remember saying that? A That I got hold of Lucy. I don't remember saying I got hold of Lucy.

Q No, you were asked this question about your statement to the police where you said, "I was outside. I heard them quarreling. I pulled the curtain back and I got hold of Lucy by the shoulder and said, 'What is the matter with you girls; come on out and have a dance,'" and when you were

asked that question before whether you told that to the police you answered, "I don't remember saying that for I know I got hold of Lucy and started to dance with her." A Yes, sir; I don't remember saying that.

Q At the last trial you were asked this question: "Do you remember pulling the curtain aside and asking, 'What are you girls quarreling about,' " or words to that effect, and you answered, "I didn't do that." And the next question you were asked this: "You didn't tell the police that?" and you answered, "I don't know whether I did or not?" A Yes, sir.

Q Do you remember whether you told the police that you pulled this curtain back or whether you didn't tell that? A I don't think I told them anything like that.

Q Did you run back to the saloon after you heard this shot? A Yes, sir.

Q And you say when you came out Baker was standing on the sidewalk? A As we got there he was then coming down.

Q Coming down where? A From the stoop.

Q Who else was outside? A There was quite a few fellows. I don't remember all of them.

Q What did you do? A We got hold of Frank and brought him inside.

Q What happened next? A Well, he stood up against the bar while Officer Miller was telephoning? He got a drink there and he broke the glass up against the wall.

Q Then, what happened? A We sat him down and there was a little argument there between Big Sue and Lucy.

Q What was that argument? A I can't tell you. Big Sue just said, "This is all on account of you."

Q She said that to Lucy? A Yes, sir.

Q You didn't know what she meant by that? A I don't know what she meant by that; no, sir.

Q What did Lucy say, if anything? A Lucy was crying.

Q How long did these women stay there? A Until the patrol wagon came.

Q You were not arrested until quite late that night, were you, or early the next morning? A Yes, sir.

Q How long did you stay there in the saloon and dance hall after the patrol wagon took Baker away? A Until about 12 o'clock.

Q Then you and Joe Broad left? A Yes, sir.

Q You went where? A I took a walk with Joe.

Q Where did you walk to? A I walked as far as Washington street.

Q Newark? A Yes, sir.

Q Where did you live at that time? You had a room on Cottage street? A No, not then.

Q Where were you then? A I had a room on Union street.

Q Yesterday you told us Cottage street. Were you mistaken about that answer? A I had a room there before that.

Q I understood yesterday you told us you had at the time of this shooting, you and Lucy lived together on Cottage street. A Me and Lucy?

Q I mean Eleanor? A Yes.

Q It was Union street? A I hired the room that day.

Q Had you moved to Union street? A Yes, sir.

Q You had lived on Cottage street, though? A Yes, sir.

Q At all events you were living on Union street, near what other street? A Between Lafayette and Elm.

Q How near is that to the dance hall? A I don't know.

Q You walked all the way up to what street? A I told you I was going up for something to eat.

Q That is a couple of miles from Chick's place? A I don't know.

Q It is way up past Broad street, is it? A About three or four blocks.

Q Past Broad street? A Yes, sir.

Q It is right down by the courthouse, just below the courthouse? A Yes, sir.

Q You walked up there to get something to eat? A Yes, sir.

Q Did you get it? A Yes, sir.

Q Whereabouts? A Newark Lunch.

Q Did Broad walk up with you? A He left me at Washington and Market.

Q Where did he live? A I think he lived on Somerset street.

Q His right name is Serratelli? A Serratelli; yes, sir.

Q Was he a frequenter of that place, Chick's place? A He used to come down there quite often.

Q How often did he come, once or twice a week? A I don't know; I can't say.

Q You had some lunch there. It must have been about 1 o'clock, wasn't it? A Yes, it must have been about that.

Q After you had finished having something to eat, where did you go? A I went down to Chick's, I got a Springfield avenue car.

Q And went down to Chick's? A Yes, sir.

Q What did you do down to Chick's for? A I don't know. I intended to go on home. Then, I was there and I wanted to find out and I went down to Chick's again.

Q When you got down to Chick's who was there? A Why, I think there was Mr. Schmidt, the night watchman, there was Chick, there was Colachio, there was Vito, there was a couple of more fellows, I don't exactly remember.

Q Who was this Schmidt, the night watchman? A Mr. Schmidt, some watchman that watches around there.

Q Did he stay all the time? A He was there, yes, sir.

Q All the time you were there? A I think he was all the time.

Q He wasn't doing much watching that night? A I don't know whether he was or not.

Q Where is he now? A He wasn't there all the time. He just came in there. I don't know where he is.

Q Then, there was you and Vito, that is Chick's brother? A Yes, sir.

Q And this man called Joe the Kid, Donato Colachio? A Yes, sir.

Q Anyone else? A Chick was there.

Q No one else was there? A Yes, there was somebody else there, they was around. I don't remember all of them.

Q Where were you sitting? A Right up against the wall.

Q In the bar room or the dance hall? A In the bar room.

Q How long did you stay there? A I stayed there until I came in the restaurant.

Q That was 4 o'clock. A I don't know what time it was.

Q What were you doing all the time there from 1 o'clock on? A I have often done that.

The Court. Answer the question. What were you doing, not whether you often did it.

A Just sitting down there and listening.

Q Listening to what? A Joe the Kid telephoned up to find out how Frank was getting along, so the doctor told him to call up a little later.

Q What time did Joe the Kid call up? A It must have been about 2 o'clock.

Q When did you learn—did you learn that night he was going to die? A That who was going to die?

Q Baker. A Did I learn that night that he was going to die?

Q Yes. A I didn't learn nothing.

Q What do you mean you didn't know anything? A I didn't know he was going to die.

Q Did Joe the Kid call up later or did the police arrest you before he called up? A I think he did call up.

Q Did you go to your father's house and sit on the back stoop for a half an hour? A No.

Q Did you tell the police that? A I told them that; yes, sir.

Q Why did you tell them that? A I don't know why; I was a little excited.

Q Did you go to your father's back stoop and sit there for some time? A No, sir.

Q You don't know why you told the police that? A I don't know. I must have been excited.

Q Were you excited when you made this statement in April, 1914? A I don't think I was. I must have been.

Q This was two days after this shooting? A Yes, sir.

Q You think you were so excited you didn't know what you were saying? A Most of the time.

Q Were you excited in October, 1915, when you made this other statement? A Yes, sir.

Q Still excited. Did you know what you were saying to the police that time? A I don't think I did, I don't think I do.

Q Are you excited now? A No, not now.

Q It is easier for you now than it was when you made these two statements to the police? A Yes, sir.

Q In this other statement you made in October, 1915, you tried to put this murder off on New York Frank, didn't you? A I thought I heard somebody talking down there—I heard somebody talking down there trying to blame me for it.

Q No, I say in your statement in October, 1915, you tried to put this murder on New York Frank, didn't you?

Mr. McDermit. Hasn't he answered that; and explained it?

The Court. No. Answer the question.

A That I tried to blame him for it?

Q Yes. A I thought he was trying to blame me for it.

The Court. Answer the question whether or not you, in this statement, of October, 1915, tried to blame him for it, put it off on him.

Witness. I think I did.

Q You did that simply because you heard a voice in police headquarters saying, "Bennett shot him?" A Yes, sir.

Q Did you know whether it was New York Frank's voice or not? A I thought it was. I heard, "Frank, Frank."

Q What did you hear? A He said, "I didn't do it, Bennett shot him." I thought I heard that.

Q Where were you at that time? A Down at police headquarters.

Q Whereabouts, downstairs in the cells or where? A Yes, sir.

Q Where did this voice come from, upstairs somewheres? A I don't know; I don't know where it came from.

Q You must be able to tell what direction this voice came from? A I don't know.

Q You just heard that? A Yes, sir.

Q So you proceeded to tell the police what took place at the time of this shooting? A What took place at the time of the shooting? I wasn't in the hall.

Q You proceeded to tell the police that you heard this shout, "Frank Bennett did it," proceeded to tell the police about what took place? A Yes, sir.

Q Did you tell the police this in your statement of October, 1915: "Then, Chick said to Baker, 'Come on and we will have a drink anyway,' so he says, 'All right?' and came over and shook hands with me and Joe the Kid." Did you tell the police that? A No, sir.

Q Sure about that? A I am sure I didn't say that.

Q Did you say this to the police: "Lucy was afraid to go into the hall because, she says, 'I am afraid there is going to be a fight?'" A That I don't remember. She might have said that.

Q Did you say this?

The Court. No; the question is, did you say that to the police?

Witness. I don't remember.

Q Did you say this to the police, "So I said to Frank Baker, 'Go on in, Frank; don't be afraid.'" A No, sir.

Q Did you say this to the police after you came back from the corner: "While we were talking on

the sidewalk Jack Miller, the cop, said to Chick, 'I will hold you responsible for this man?'" A Yes, sir.

Q Did you tell this to the police in your statement of October, 1915: "N. Y. Frank said, 'What does that guy mean? Did you hear what he said,' and with that he pulled out a blue steel gun and pointed it at the back of Officer Miller?" A No, sir; I didn't say that.

Q Did you tell that to the police? A I don't think I did.

Q Will you say you didn't say that to the police? A I didn't say it; no, sir.

Q At the last trial you were asked this question and you gave this answer in this statement, marked Ex. S. 8. You say this: "While we were talking on the sidewalk," that is after the shooting, "Jack Miller, the cop, said to Chick, 'I will hold you responsible for this man.' N. Y. Frank said, 'What does that guy mean? Did you hear what he said?' and with that he pulled out a blue steel gun and pointed it at the back of Officer Miller?" Do you remember saying that to the police last October? And you made this answer, "I may have said it, but it wasn't so." In view of your answer made at the last trial, do you still say you didn't say that to the police. A I don't think I did.

Q But if you did say it, it was a lie, wasn't it? A Yes, sir.

Q And part of your arrangement to put this killing, this shooting on New York Frank? A I didn't put it on nobody. I didn't see it. I don't know who done it.

Q You don't know who did it, but still you want to put it on this man, New York Frank? A I thought I heard somebody say he wanted to put

it on me and I thought this fellow was saying I was the one that done it.

Q Did you say this to the police in October, 1915: "Joe Broad and myself grabbed his hand and said, 'What are you going to do? Don't do that,' and he says, 'What do you mean? Didn't you hear what he said? He is going to hold Chick responsible for him,' pointing at Baker?" Did you tell the police that? A Well I heard him say that. He said, "What do you think? Did you hear what he said?"

Q That actually happened? A He said, "Did you hear what he said?" Joe Broad, I don't remember what Joe says, he says, "He don't mean nothing."

Q Did you tell this to the police in October, 1915: "So then Joe Broad and myself managed to get the gun off of him, and he says to me, 'Let it alone or I will put one through you.' Then Joe Broad got the gun and gave it to Lame Joe and told him, 'Don't let him see it no more and get rid of it?'" A I didn't say nothing like that.

Q Did you tell the police that happened? A I says I don't remember.

Q Did you say this to the police in October, 1915, "He was taken away to the hospital. I remained in the saloon with Chick Collins, Joe Broad, Joe the Kid and Vito Collins?" A Yes, sir.

Q Did you also say this to them, "So about a quarter to twelve me and Joe Broad said good night to Chick and the rest and went out?" A Yes sir.

Q Did you say this, "We went as far as Union street where I had a room at No. 142?" A Yes, sir.

Q Did you say this: "This New York Frank was standing in the doorway and I said to him,

'What did you want to do that for, Frank; suppose that guy dies, won't we all be in trouble?' '' A No, sir.

Q Did you say that to the police? A No, sir.

Q Are you sure about that? A I am sure I didn't say nothing like that.

Q It wasn't true that you did say it? A No, sir.

Q Did you say this to the police: "And then Joe Broad, this Frank and myself walked up as far as Somerset street. I left Joe Broad and Frank there and I came back to Chick's?" Did you tell the police that? A I don't remember telling them that. I didn't walk up no Somerset street.

Q If you told the police that it wasn't so? A It was a lie; yes, sir.

Q Why didn't you tell them about walking up to the Newark Lunch that night about one o'clock, in either of these statements? A I was so excited I didn't know what I was saying most of the time.

Q Why did you want to say you sat on your father's stoop for half an hour or so? A I stopped there in front of the gate.

Q You did stop there? A With the intention of going in, but then I walked down to Chick's place.

Q What did you stop there for? A You lived on Union street? A I didn't want to go there that night. I generally used to stop home.

Q Where was Eleanor? Did she have a fellow at the house that night.

By the Court.

Q This Eleanor, that is referred to, Bovino, is Eleanor Cunningham—or what was your wife's name? A Cunningham.

Q She is now your wife? A Yes, sir.

By Mr. McDermit.

Q (Question read.) A I don't know. She didn't have no party there.

Q Why didn't you go on home where you were living? A I don't know. I intended to go there after.

Q After what? A After I left Chick's.

Q Now, I understand you to say when you came back from the Newark Lunch, you stopped at your father's gate to go in his house? A I wanted to go home. Then, I changed my mind. I said, "I will go down to Chick's awhile and then I will go to my room."

Q Where was your home, at your father's or Eleanor's? A I used to stop almost any place.

Q Was Eleanor Cunningham in prostitution at that time? Was she a prostitute? A That I do not know.

Q You had no reason to suppose that she was? A No, sir.

Q Was she going around with other fellows beside you? A I don't know.

Q You said you had lived with her off and on? A Yes, sir.

Q When you were not living with her, was she living with other men? A Other men; no, sir.

Q What was she doing then? A She told me she used to be working.

Q Who paid the board for the room on Union street? A I did.

Q Where did you get the money? A I used to borrow money when I didn't have it; when I wasn't doing anything I used to borrow.

Q Had you been borrowing for about three months, then? A I was borrowing; yes, sir.

Q Who were your friends you borrowed from? A I used to generally borrow off Chick.

Q Chick altogether? A Borrow off everybody.

Q How long had you known Big Sue? A Two or three years.

Q You didn't meet any gunmen down at the corner of Oliver and Adams streets, did you? A No, sir.

Q How long had you been down there before you heard this shot? A About seven or eight minutes, ten minutes.

Q What time was it you went down? A I don't remember what time it was.

Q How many people ran out of the dance hall after the shot? A I don't know; there was a big crowd ran out of the hall.

Q Who was in the bar room when Baker was finally taken back in? A I don't remember who was in there. The place was filled up. I don't remember who was there.

Q Did Big Sue try to strike Lucy in the bar room there? A I didn't see that.

Q What did she say? Did she say, "It is only for you, you bum, this wouldn't have happened?" A I heard her say that.

Q And did Frank Baker say, addressing Big Sue, "I have got to die on account of you?" A I didn't hear him say that.

Q Did you hear him say it to Lucy then? A I heard him say, "I am only twenty-four; I got to die."

Q Didn't he say, "I got to die on account of you?" A I didn't hear him say that.

Q Well, now, at the last trial you were asked this question by Mr. McDermit: "What was it she said?" referring to Baker, and you said this, "She says, 'Only for you, you bum, this wouldn't have

happened' so Frank Baker says 'I got to die on account of you'; he says, 'On account of you I got to die?' " Is that true or not? A I don't know. I don't remember.

By the Court.

Q What do you mean you do not remember what was said or you don't remember what you swore to at the last trial? A I don't remember what I swore to at the last trial.

Q What is the fact? A That I don't remember him saying that.

By Mr. Van Blarcom.

Q What time did you go to the dance hall that night, day; was it early in the day or late? A I was there once, that was in the afternoon, then I stayed there until about seven. Then, I went home and out and came back again.

Q Where did you have your meal that night? A Home, my father's house.

Q Why didn't you go to Union street, back with Eleanor? A Why didn't I go there with Eleanor?

Q Yes; you had engaged this room on Union street? A Why, I didn't want to go there.

Q Why not? A What was the use of my going there then?

Q I mean for your supper? A I never used to cook in my room.

Q You never used to go to the room for supper?

The Court. Never used to cook in the room, I thought he said.

A Never used to cook or have anything to eat in the room.

Q Where did she get her meals? A I don't know where she got them. Whenever she seen me I used to give her money to get them.

Vincenzo Bovino, cross.

Q What was the arrangement you had with her? A We had no arrangements at all.

Q After you had this dance with Lucy, where did you leave her? A Where did I leave Lucy?

Q Yes. A. I left her right in the hall.

Q Whereabouts in the hall? A Must have been right around here somewhere.

By the Court.

Q In the dance hall? A Yes; in the dance hall.

By Mr. Van Blarcom.

Q Leave her standing on the floor. A I left her standing and then she walked towards that direction.

The Court. Indicating A.

Witness. I just left her, turned my back and walked out.

Q Walked right out in the bar room? A Walked right out in the bar room; yes, sir.

Q When she came out and spoke to Chick where did she speak to him? A She spoke to him right about here (indicating). Chick was standing here (indicating).

The Court. Chick was located at the bar, north end of the bar. She was standing in the doorway, D to B.

Q Could you hear what she said to him? A No, sir.

Q Then you and Chick went out in the hall, through the bar room and out into the hallway? A We walked out, right outside; we walked right out.

Q Where did Lucy go after she spoke to Chick? A I do not know. She went back in the hall, I suppose.

Q Did you see her go? A No, sir; I didn't take notice. I was sitting on a chair.

Q Are you sure you went out in the hall and not right out of the door into the saloon into the street? A Went right out through the hall door.

Q How long had you been out there when Lucy appeared? A I can't say how long we were there.

Q I suppose it was a minute or two? A No; it wasn't that long; it must have been about a minute; it might have been about a minute.

Q She came out almost right away? A She came out; yes, sir.

Q Then Frank Baker appeared on the other side of the street, almost right away? A I didn't see Frank Baker. She ran over.

Q He came from the other side of the street? A Yes, sir.

Q She wasn't gone very long, was she, when she ran over? A Yes, sir; she ran over and came right back with him.

Q Who spoke first when she came back? A I don't remember.

Q Do you remember what was said? A Why, Frank came right over with her and Chick says, "Hello, Frank; how are you getting along?" and Frank said, "How are you; how is business?" and so on, and he walked right up the steps.

Q What was said next? A Lucy said something "I am afraid to go in," or something. I said, "What are you afraid of?" I said, "Nobody ever bothered you before," so Frank hollered back to me while he was walking in, "I ain't afraid of no so and so."

Q Then, Lucy and he went in together? A Yes, sir.

Q You were not interested in what was going to take place inside? A No sir; I didn't know nothing.

Q Chick was the proprietor of this place, wasn't he? A Yes, sir.

Q And, apparently, he was interested in what was going to take place inside? A I don't know; I suppose he thought there would never be anything like that happen.

Q Isn't it true that you and Chick and Joe the Kid walked right in, after Baker and Lucy, into the hall? A No, sir.

Q Are you sure about that? A Positive.

Q You say you didn't go in? A No, sir.

Q But you three walked down to the corner? A Yes, sir.

Q Did you walk down slowly? A Yes, sir; we walked down slowly.

Q What kind of a noise was it that you heard? Can you describe it? A Well, describe it; I heard like a shot.

Q There wasn't any doubt about it in your mind? A It was dull. There wasn't any doubt what it was. Chick says, "I don't think it was." I says, "Didn't that sound like a shot?"

Q You heard it plainly; you heard this noise plainly down at the corner? A Yes, sir; I heard this noise.

Q How long had you been standing on the corner when you heard this noise? A About seven or eight minutes, maybe ten minutes.

Q Then you walked back towards the dance hall? A Yes, sir; started to walk back.

Q Have you got any accurate idea of what time it was when you got in the bar room after Baker had been shot? A What time; no, sir. I didn't take notice of the time.

Q When you walked down to the corner of Adams and Oliver streets, you didn't cross any street, did you? A No, sir.

Vincenzo Bovino, cross.

Q Did you go in the dance hall after the shooting? A I think I walked in there after they were looking for something. I don't know what they were looking for.

Q Was it after you had been uptown and came back? A Yes, sir.

Q Were you sitting at a table when you came back from uptown, or standing up at the bar? A I was sitting between the tables.

Q How many tables are there? A There was two of them there.

Q What police officers came and arrested you? A There was Mr. Bell, Mr. Chenowith and Miller.

By the Court.

Q Jacob Miller? A Jacob Miller.

Q Not Joseph Arthur Miller, the other Mr. Miller? A The other Mr. Miller; yes, sir.

By Mr. McDermit.

Q You have been asked by the prosecutor in regard to some testimony given by you at the last trial, in which he asked you whether or not you testified in that trial that you are the cause of this trouble, you are the one that caused this trouble—caused the shooting. Do you know to what he refers when he asked that question?

Mr. Van Blarcom. I object.

The Court. Sustained.

Q What was the trouble between Sue and Lucy in the bar room after the shooting?

The Court. How can he state his conclusions? Why can't he state what he saw or what he heard?

Q What did Lucy say to Sue or what did you say to Lucy in the bar room and when Baker was present, after the shooting? A That is all I

heard. After I heard Sue say to Lucy, say that this is all on account of you, you bum.

Q That was a remark that was made by Big Sue to Lucy? A Yes, sir.

Q No remarks were made to you? A No, sir.

Q You hadn't been accused by anybody there of doing any shooting? A No, sir.

Mr. Van Blarcom. I didn't ask him anything about that.

Mr. McDermit. I will now read the first statement to the jury if it is agreeable to the Court.

By the Court.

Q Your name is Vincenzo Bovino, is it? A Yes, sir.

Q Have you been properly known as James, Jimmie Bennett? A Yes, sir.

Q Did you know that the man you have called Frank Baker was actually Francisco Meserintino? A I didn't know his name until I got arrested.

Q At the table where you played this game, which you call an Italian finger game, was Big Sue sitting A Sue was sitting, yes, sir.

Q How long were you and Big Sue at this table together? A How long was I there together?

Q Yes. A I was there with everybody.

Q How long were you there at the same time that Big Sue was there earlier in the evening before this alleged shooting? A Well, about maybe —about twenty minutes.

Q You weren't there an hour? A No, sir.

Q Did she play any of these games? A I think she did, I think she was in a game; yes, sir.

Q Did she sit next to you? A No, sir.

Q Were there only two games played? A That is all I played.

Q Did she talk to you at all at that table? A No, sir.

(Mr. Van Blarcom reads to the jury statement of James Bovino, dated April 23, 1914.)

(Mr. Van Blarcom reads statement of James Bovino, dated October 14, 1915.)

SUSAN BROWN CLARK, sworn for the defense.

Direct examination by Mr. McDermit.

Q Where do you live? A 178 Runyon street, Newark.

Q Do you know James Bovino, the defendant here? A Yes.

Q By what name did you know him? A Jimmie Bennett.

Q How long prior to April 21, 1914, had you known him? A A couple of years.

Q You know where Collins' dance hall is, at 238 Oliver street? A I do.

Q Had you been in the habit of going there during the year of 1914 prior to this shooting? A Yes, sir.

Q You were present that night at the dance hall, I understand, were you? A I was.

Q How long had you known Frank Baker? A Between two and three years.

Q Had you kept company with him? A I had.

Q You know a girl named Lucy? A I do.

Q How long had you known her? A I had only known her a couple of weeks.

Q Couple of weeks prior to the night of the shooting? A Yes, sir.

Q Did Baker come there that night to the dance hall? A Yes, sir.

Q Was Lucy there? A Why, Lucy had come in before Baker come in.

Q Were you sitting at a table in the inside room there before the shooting? A Yes, sir.

Q Where was this table located in the dance hall? I show you the map and I show you the dance hall marked on the map G. I am pointing to G on the map. Whereabouts in that dance hall were you sitting? These are the dressing rooms in the rear, H and K; these are the pianos, one near the ladies' toilet and one over in the corner near the ladies' room? A The table was located right near the piano, right near the ladies' room.

Q Right near the ladies' toilet? A Yes, sir.

Q Do you recall who was sitting at that table that evening in the dance hall before this shooting? A Why, I was in first. I was talking to Lucy and after talking to Lucy I was dancing and paid no attention to the table and then I paid all attention to Baker after he had come in.

Q Did you talk to Baker after he came into the hall? A Yes, sir; I did.

Q Will you say what Baker said to you or you said to Baker or what took place there? Just describe to the Court and jury what happened. A Why, I walked over to him and I called him a name in Italian which I had very often heard him call me. He wanted me to get away from him and I said "No." He warned me again and I said, "No," and he still insisted and I would not go away. No more than I would not go away he slapped me in the face. I walked about three steps away from him so he wouldn't see I was crying and I was about to go back and quarrel with him again and no more than I had walked

the three steps away from him and put my hands to my face and tried to dry the tears away he hollered, "Sue, Sue, I am shot."

Q Did you hear a report of any shooting there or anything? A Well, the sting on the face and my hands were holding my face that I didn't pay no attention to nothing. The slap on the face just stunned me so.

Q What took place after that, after he said, "I am shot," what took place? A Why, I said, before I had known whether he was shot I said, "Frank, take your gun out of your pocket," because I thought probably in the excitement he was taking his gun out of his pocket and was going to pull it on me.

Q Did he take his gun out of his pocket? A Yes, sir, he did, and went to lay it on a chair and it slipped from the chair to the floor.

Q What became of the revolver after it slipped from the chair to the floor? A Some one picked it up and handed it to Officer Miller.

Q You mean Officer Joseph Arthur Miller? A I just know him by Miller.

Q Mr. Miller, stand up. A Yes, that is him.

The Court. Referring to Joseph Arthur Miller.

Q What else took place in the dance hall? A Why, I had went to get my hat and coat. In the meanwhile Baker had walked outside to the saloon. I had got my hat and coat and walked out of the saloon in back of him. Baker walked out of the place with Chick and Jim and Joe Kid. They called him and came back again and I stood over Baker fanning him with his hat while he had a glass of water or whiskey; I don't know what it was, and he said, "I am only twenty-six years

old and I have got to die," or something like that.

Q What else took place? A After he sat there a little while the ambulance came or the police patrol, I don't know which. They helped him out to the ambulance and then the patrol came back and took two other girls and two fellows and myself.

Q While the deceased Baker was in the saloon, did you have any talk with the girl Lucy? A I did.

Q Will you just tell to the jury what that talk was, just give us the contents of it, what you said and what she said? A I was so excited for the minute I turned around, I said, "Only for you, you little bum, this would have never happened."

Q Where was she at that time? A She was in the saloon, the same place I was.

Q Where was Baker at that time? A He was sitting on a chair.

Q Where was Chick at that time? A In the saloon.

Q Where was Bennett at that time? A In the saloon.

Q When you came from the dance hall after the shooting to the street just indicate to me or to the jury what rooms you passed through to get to the street. Take the pointer and show me—you understand this map? A is the hallway, B is the saloon, D is a room leading from B into G and C is a room or small opening between the hallway marked A and G the dance hall. Show us in what way you came out from the dance hall after the shooting, where did you go? A I walked from the dance hall right straight through a door into the hallway.

Q Then where did you go? A And as Baker went outside I stood right on the steps of the saloon.

Q You stood on the steps of the saloon, you mean the room B? A Yes, right at the front door of the saloon.

Q Front door of the saloon, not the front door of the hallway, B or A? A There is a saloon, there is an entrance into the hallway that goes right from here, goes right into the dance hall and right from the saloon you can get into the dance hall.

The Court. The question is where you went after the shooting.

Q What part of the front of the building were you? A Right in the saloon.

Q On the saloon steps outside? A Yes, sir.

Q In Oliver street? A Yes, sir.

Q Who was out there at that time; you say Baker and who else? A Why, when Baker walked down he says, "Chick, Chick, I am shot," when he met Chick and Bennett and Joe the Kid.

Q At the time of the shooting was Bennett there? A Not to my knowledge.

Q When had you last seen Bennett prior to the shooting? A Why, after I had had a little quarrel with this Lucy. I asked Chick for permission to use the 'phone to call up a cafe on Ferry street, to get Baker on the 'phone.

Q Did you get that permission and did you use the telephone? A I did.

Q Who did you call up? A I called up Frank Baker.

Q Did you get Frank Baker on the telephone? A I did not. I got a fellow by the name of Steve Lordi.

Susan Brown Clark, direct.

Q What was your idea in calling up Frank Baker, why did you want Frank Baker down there? A I was going to meet him at Madison and Ferry street at one o'clock the next morning.

Q Prior to the shooting did you have any words with Lucy, prior to the shooting, before the shooting? A Yes, sir; I did.

Q What was the matter with you and Lucy before the shooting? A I asked her if she was going with Baker and she said, "No." I said, "Oh, yes," because he had teased me with a letter from her and described who she was.

Q Then what? A She was all alone the time I was talking to her. There was no quarreling of any kind. There were merely a conversation between us.

Q What did you say to her? A I had warned her to keep away from Baker. I told her to keep away from Baker because I said I was married to him.

Q Were you, in point of fact, married to Baker? A No, sir; I was not.

Q Why did you tell her that you were married to him? A Because I was living with him as a common law wife.

Q How long after the shooting was it that the patrol wagon or ambulance took Baker away from there? A I don't quite understand.

Q How long after the shooting about was it that the patrol wagon came there and took Baker away? A I just can't remember.

Q Were you arrested that night? A I was.

Q What time of the night were you arrested? A About half past twelve.

Q Where were you taken? A To the Third Precinct.

Q You were downtown in the Third Precinct how long? A I was downtown in the Third Precinct from Tuesday until Thursday.

Q During the time that you were there did you make any statement to the police or statement in writing about this affair? A I don't believe I did in the Third Precinct, but afterwards I did.

Q You remember making it. Was that after you made any statement in regards to what occurred down there?

The Court. Are you going to impeach your own witness?

Q You know a special officer there, an Italian man called Mike with a heavy mustache?

The Court. Michael Tanzola.

A I have seen him. I never had a conversation with the man.

Q Were there any pistols examined in your presence in the saloon? A Why, Baker's revolver was examined right in front of me no more than Officer Miller picked it up.

Q Was there any other revolver beside the revolver of Baker's examined there? A I believe this special officer's, too.

Q Did you see it yourself? A That I can't say positively.

Q How long had Bennett been in the hall before the shooting, do you know? A Why, when I went to 'phone I had seen Bennett and Joe the Kid and Chick, they were going towards the door. Where they went I don't know.

Q Was there anything going on inside at the table where the folks were sitting, the large table? A The only thing that was going on was a finger game that they were playing while I was in there.

Q Were you playing the game too? A I was.

Susan Brown Clark, cross.

Q About how many were playing the game there? A Between twelve and fifteen.

Q What was it being played for? A Just for sociable drinks.

Cross examination by Mr. Van Blarcom.

Q You are how old? A Twenty-three.

Q You have been engaged in prostitution for a number of years? A Yes, sir.

Q How many years? A Three.

Q Did you ever live with Baker? A I did.

Q Whereabouts? A With a Mrs. Miller at 361 Washington street.

Q When? A 1914.

Q How long before this time in April? A Well, we were away from each other at the time of the shooting.

Q Had you been going with any other man in the meantime? A Why, no.

Q No one? A Had I been what?

Q You had no regular man after that? A No, sir.

Q Now, what time was it that you went in this place that night? A Between half past nine and ten o'clock.

Q And you went immediately in the dance hall? A I did.

Q Take your hat and coat off and left them in the dressing room? A No, I laid them on top of the piano.

Q Which piano, the one by the dressing room? A The one by the ladies' toilet.

Q Then you sat down around this large table, I understand? A Yes, sir.

Q Were there any other women there? A No, I was the only woman sitting at the table.

Q Will you tell me some of the men that sat there? A There was Bennett, Chick, Joe the Kid.

Q What is his name, Donato Colachio? A I can't say his right name. That is all I know him by and a little fellow they call Lame Joe, George Pollicastro and there was some fellow that they call Frank, and the rest of the fellows that I know to say hello to, don't know them by name.

Q How many altogether? A Between twelve and fifteen.

Q When was it that you first noticed Lucy? A Why, right after I was dancing and Lucy had just come into the hall and as she came into the hall I went over and met her and asked her if I could speak to her.

Q How long had you been in there? A Couple of hours.

Q Then you took Lucy into the dressing room? A Yes, sir.

Q You had some difficulty there with her, didn't you? A Just a few words. There was no quarrel of any kind.

Q There was an argument about her going with Baker? A Yes, sir.

Q Do you remember Mr. Bovino coming and pulling the curtain aside and interrupting you? A No, sir; I do not.

Q What happened in connection with Mr. Bovino at that time, anything? A Why, I didn't notice him at all.

Q He had been playing the finger game at the table? A Yes, sir.

Q Did you leave him at the table when you walked over to meet Lucy? A I was dancing when I met Lucy.

Q With whom? A With some fellow I don't know.

Q When you started that dance had you left Bennett at the table? A It wasn't that dance that I spoke to Lucy. I went to call Baker up on the 'phone for I figured if I met him at one o'clock I would tell him I met this Lucy.

Q Were you dancing at the time you met Lucy after you left Bovino at the table when you started that dance? A That I cannot remember.

Q Did he stay near you? A No, sir; he didn't.

Q Where did he stay with relation to where you sat at this big table? A Alongside me.

Q Did you sit with your back to the dancers or facing them? A I was sitting sideways watching the dancing, and looking at the table at the same time.

Q Do you remember May Gilling sitting at that table? A I have seen the girl.

Q Was she sitting at that table that night? A No, sir; she wasn't.

Q Did you see Mary Weber that night? A I did not.

Q Was she there?

The Court. Do you mean there at the table or in the dance hall?

A No, I do not remember seeing her.

Q How many women were there in the dance hall? A I just can't say.

Q What was said between you and Lucy in the ladies' dressing room? A I asked her if she was going with Baker and she admitted it. I told her it was true because he had teased me with a letter and described who she was and I told her I was married to Baker and to keep away from him.

Q When she walked out of the dressing room did you walk out at the same time? A I did.

Q Right after her? A Right after her.

Q Did you see Bovino and her start to dance? A I didn't pay no attention to it because I had my nerves all up after talking to her because different girls said to me, "Don't hit her," and I didn't want to hit her.

Q Did you come near hitting her? A No, I just wanted to talk to her and ask her if it was true.

Q Why were your nerves up? A Because I couldn't get satisfaction.

Q In what way? A To hit her.

Q Did you want to hit her? A Certainly I wanted to hit her.

Q So you were all keyed up to hit her and didn't do it? A Yes, but I didn't do it.

Q You spoke in loud tones? A No, sir; we didn't.

Q Quiet conversation? A Yes, sir.

Q How long did you talk to her in there? A Just a couple of minutes.

Q When you came out where did you go? A I walked back over to the table.

Q Sat down? A I did.

Q Who was there then? A Why, I just can't remember, but there was a couple of the fellows that I don't know by name were sitting there and I believe Chick was sitting there.

Q Had the dance stopped when you came out of the dressing room? A Yes, sir.

Q Where did Lucy go then? A Lucy, I don't know where she went then as I didn't look for her after that.

Q You didn't see Bennett dancing with her? A No, I didn't.

Q Where did you next see Bennett? A After he first—I first see Bennett after using the 'phone was when Chick and Joe the Kid and him met Baker and Baker said, "I am shot, Chick."

Q You saw him at that time? A Yes, sir.

Q After you had this talk with Lucy did you go right out and telephone? A After that, yes, sir.

Q What for? A Why, I was going to tell Baker to meet me and I was going to tell him that I met her because he had an idea when he thought I was giving him a call he thought it was a big honor for a girl to give him a call.

Q Did you make an appointment with him for one o'clock? A I told Steve Lordi to give him a message.

Q Did you have an appointment? A I did.

Q You made this appointment over the telephone? A Yes, sir.

Q You didn't talk with Baker over the telephone? A No, sir.

Q They started another dance? A Yes, sir.

Q And while you were dancing you say Baker came in? A Yes, sir.

Q You were not sitting at the table? A No, sir.

Q And then you walked over to Baker and called him a son-of-a-bitch in Italian? A Yes, sir.

Q What did he do? A He told me to get away from him and warned me about three times and I would not do it and I still insisted on talking to him.

Q What did you say to him? A I called him a figlio di pottana in Italian.

Q That is that name that you called him? A Yes, sir.

Q You called him that in Italian? A Yes, sir.

Q You say he warned you to get away three times at least? What did you say after that first time? A I said, "No, I won't get away."

Q What did he say to you, just get away? A He says to me, "Go on, keep away from me, you bum." I said, "No, I won't," and, of course, after the third time he told me to get away he took his

hand and slapped me on this side of my face and I had his whole five fingers on my face, it stung so.

Q He hit you after you would not get away from him? A Yes, sir.

Q Then you say you walked back two or three feet? A To the side, about three feet and put my hand up to my eyes and dried my tears quick and was going back and quarrel with him again.

Q Did you have both hands up to your eyes? A Yes, sir; I did.

Q Did you hear this shot? A No, sir; I was so excited at the time that I didn't.

Q It wasn't very loud then? A No, sir.

Q Was it very low? A That I couldn't say because I didn't pay no attention to it. I was holding my face and drying my eyes at the same time that I didn't know until he said, "Sue, Sue, I am shot?"

Q You can't remember having heard the shot? A I cannot.

Q The first you heard was his statement, "Sue, Sue, I am shot?" A Yes, sir.

Q Who was right at the spot at the time? A There was nobody but him and I.

Q Who was the first man? A I can't say.

Q Can't you say? A Well, I can't say whether there was anybody around as I was telling you I was talking to Baker at the time, telling him to take his gun out of his pocket and so forth.

Q You could see some of the men that were around there? A I didn't pay no attention to none of the men after he said that. My attentions were all paid to him.

Q Did he take his own revolver out of his pocket? A He did.

Q And put it on the chair and it fell to the floor? A Yes, sir.

Q Also his blackjack? A Yes, sir.

Q What happened next after he had done that? A Why, I had went to get my hat and coat and he had walked in as far as the bar room and as soon as I got my hat and coat I walked in in back of him.

Q Did a lot of these people run out after the shooting? A Why, yes, everybody made a get-away for the door. I could have even, if I wanted to.

Q That is after they got him out in the bar room? A He walked from the bar room to the street first and came back in the bar room and sat on a chair.

Q So you have got him out in the street? A He walked as far as the street and came back and sat down again.

Q You testified at the last trial for the defendant? You were a witness for the defendant at the last trial of this case, weren't you? A Yes, sir.

Q Didn't you testify in that trial you didn't see him go out in the street? A No, sir; I did not.

Q How did he go to the street, through the saloon or through the hallway? A Through the saloon.

Q You followed him? A Yes, sir.

Q Did you go out in the street too? A I walked as far as the steps and stood on the steps of the saloon.

Q Then, in a little while they came back, is that right? A I stood out there about a minute or two.

Q When was this talk that you had with Lucy, after Baker came back in the saloon? A Yes, sir.

Q You said to her—what started the conversation? A Why, I was standing over Baker fanning him with his hat. Lucy had come somewheres

near him. I said, "You little bum, keep away from me. All for you this trouble is."

Q What did you mean by that remark? A I meant the slap in the face I got, in general.

Q You mean the shooting was the result of the trouble between you and Lucy? A I thought so.

Q Why did you think that? A Why, I had no reason at all but in general I meant the slap in the face that I had got.

Q Why did you think the trouble between you and Lucy had resulted in Baker being shot? A I didn't give that a thought at all but I just said that the trouble, that he would not even hit me if it wasn't for her.

Q You didn't mean to say when you made that remark to Lucy, "You little bum, if it wasn't for you this wouldn't have happened," you didn't refer to your getting the slap? A I figured all the trouble was for her. If I hadn't given her the talking that I did Baker wouldn't have hit me and there wouldn't have been nothing done.

Q And he would not have been shot, isn't that the proposition? A I didn't know at all about the shooting. That is what I meant in general the slap in the face I got.

Q But you said you were fanning this man with his hat and that this remark followed, "If it wasn't for you, you little bum, this would not have happened." Now, do you want the jury to understand the slap in the face that you got? A That is what I meant.

Q When you addressed that remark to Lucy? A Certainly, I meant all the confusion in general.

Q You referred to being slapped and not to Baker being shot? A I meant all the confusion in general. If she hadn't went back and told Baker all that stuff he probably would not have hit me.

Q She went back and told that to Baker? A Yes.

Q How did you know that? A She told me.

Q When? A Told me that night.

Q In the dressing room? A When I was with her in Newark street in the witness room she told me she had walked outside and told Baker.

Q That was after you were locked up? A Yes, sir.

Q In April or last October? A Both in April, no, last October it was.

Q But at the time, the time you made this remark you didn't know that she had told Baker? A No, I didn't.

Q When you addressed this remark to Lucy, "If it hadn't been for you, you bum, this never would have happened," you didn't refer to Baker being shot? A Well, I referred in a way to Baker being shot and that everything was in a mix-up there.

Q Why did you lay that to the trouble between you and Lucy? A Because I thought maybe somebody just thought they was smart and was just going to shoot off a revolver just to see some excitement there.

Q You thought that? A Well, that is probably what one of those wise fellows thought they were doing, never thinking they were going to hit anybody.

Q Who were they that might have done that that night in your opinion? A I can't say because I didn't mix in with those fellows.

Q You went in there? A Chick was the only one that I had anything confidential with.

Q How long had you been friendly with Chick? A Whenever I went down there Chick would ask me to sit down and have a drink.

Q Did you go out with Chick? A Go out with Chick?

Q Yes? A No, sir.

Q Did you ever have relations with him, sexual relations? A No, sir.

Q You made a statement to the police in October, 1915? A Yes, sir.

Q Told them about what you knew about this thing? A Yes, sir.

Q I show you this paper, which is dated October 14, 1915, and ask you if that is the statement that I have just asked you about? A They say everybody scattered like a lot of Indians.

Q *(By the Court).* No, the question is whether that is the statement you made to certain people, is it? A Yes.

The Court. Marked Exhibit S. 9 for identification.

Q *(By Mr. Van Blarcom).* Do I understand you to say that Bennett wasn't in the room at the time of this shooting, at least you didn't see him there? A At least I don't remember seeing him in there.

Q You mean to say you didn't see him in there right after this shooting? A I don't remember seeing him in there.

Q You say in this statement, which has been identified S. 9, "Then he slapped me and no more than he slapped me I held my face," is that true? A Yes, sir.

Q Did you tell them this, "I was standing right by him when he hollered out, 'Sue, Sue, I am shot?'" A Yes, sir.

Q Did you tell the police this, "Everybody there scattered like a lot of Indians, Bennett, Collins, Joe the Kid, Lame Joe and Frank from New York?"

A That statement was—

Q Did you tell the police that? A No, sir.

Q How do you explain it then? A I said that everybody made their getaway. That is just the way I explained it to the police. I could have if I wanted to. Then, that is supposed to have been the end of the sentence, and the end of the paragraph. They then asked me to name some of the people I was sitting at the table with and then they got—

Q Didn't you mean Collins and the rest of them made their getaway? A No, that is the end of the sentence, end of the paragraph. They then asked me to name some of the people I was sitting at the table with and I mentioned Chick and Bennett.

Q It doesn't say anything about table in any part of this statement? A No, sir.

Q How did you come to sign without seeing that? A At the time I didn't think of that, I was so excited.

Q You were excited then? A Yes, sir.

Q You testified before the grand jury at one time? A I did.

Q Were you excited then? A A little bit nervous.

Q Did you testify before the grand jury in the case of State vs. Bovino in the April term, 1914? A Yes, it was 1914.

Q You were sworn as a witness? A I was.

Q Were you asked this question and did you give this answer?

Mr. McDermit. Counsel for the defense objects to the prosecutor using any of the records of the grand jury containing the testimony taken before the April term of the grand jury, 1914, in which he states that the present witness now under examination was examined before that body and made certain statements to that body concerning the occurrence at 238

Oliver street at the night of the shooting. Counsel contends that any evidence taken before the grand jury cannot be used either by the State or by the defense either by way of contradiction or otherwise, that the statements are made to a secret body, that the defense has no right to produce such statements and cannot inquire into such statements and has no right as counsel understands it to admit such statements to be used in the course of the defense whether such statements are contradictory of the State's case or not of this witness or other witnesses.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the court, the same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q Were you asked this question before the grand jury and did you give this answer, "Do you know Bennett? A Yes, sir." A I do.

Q You are being asked now about what you testified to before the grand jury. You understand that? A Yes, sir.

Mr. McDermit. I want it to be noted upon this record that this objection applies to every question and answer.

The Court. Not to every question and answer but to the grand jury proceedings.

Q Were you asked this question and did you make this answer, "How long had you known him? A About a year." A Yes, sir.

Q Were you asked this question and did you give this answer, "Was he there? A Yes, sir." A They asked me was he there that evening?

Q Yes? A Yes, sir.

Q Were you asked this question and did you give this answer, "Where was he? A He had been there all along. I didn't see him?" A Yes, sir.

Q Were you asked this question and did you give this answer, "You didn't see him there at all? A He was sitting at a table where I was drinking all the evening. There were about ten or twelve around the table." A Yes, sir.

Q Were you asked this question and did you give this answer, "Have any talk about Baker there? A No, sir." A Yes, sir.

Q Were you asked this question and did you give this answer, "How soon after the shooting did you see him? A He was in the hall." A I cannot remember that.

Q You can't remember that? A No, sir.

Q Was he in the hall? A Not to my knowledge, no, sir.

Q If you testified to that before the grand jury were you telling the truth or not? A I can't say.

Q You can't say? A That day I tried to tell them what I knew.

Q If you told the grand jury that you saw him in the hall at the time of this shooting were you telling the truth or not? A I can't remember whether I told them or not.

Q If you told them that he was there, that you saw him in the hall at the time of the shooting were you telling the truth or not? A No, sir; I wasn't.

Q You were not? A No, sir.

Q Are you telling us the truth now, when you say he wasn't there? A Yes, sir; I am.

Q Do you know whether he was there or not? A When Baker met them outside.

Q No, at the time of this shooting did you know whether Bennett was in the hall or not? A No, sir.

Q You don't know? A No, sir.

Q You won't say that he wasn't there? A Well, my own sense tells me of him and Chick and Joe the Kid being outside.

Q How does your sense tell you that? A Well, he met them outside. He couldn't have been inside.

Q How do you know he met them outside? A Why, I walked as far as the door and stood on the step of Chick Collins' saloon.

Q Suppose he did, couldn't they have run out of the door and down there? Is that your only reason for telling he was outside, the fact that when you came out of the saloon you saw him standing on the steps? A Well, then I went to 'phone when I asked Chick for permission to use the 'phone.

Q What about that? A That Baker and Bennett and Joe the Kid were going towards the door.

Q That was ten or fifteen minutes before this shooting? A Yes, sir.

Q Now, I understand you to say finally about Bennett being in the hall that you didn't know whether he was there or not, is that so, is that your final testimony? A Yes, sir.

Q A little while ago you testified that this statement in regard to these people scattering like Indians refers to these people who were sitting at the table with you? A Everybody in general there, all the tables.

Q You did tell the police that everybody scattered? A I said everybody made their getaway. That is the way I said it.

Q So that sentence refers to everybody making their getaway? A Yes.

Q And you explain that fact, that these people are named as the ones that made their getaway, you explained that by saying that it refers to some who were sitting at the table? A Yes, they said to me, "Give us the name of those who were there."

Q Were you asked this question and did you give this answer: "A I was sitting at the table with Chick Collins, Jimmie Bennett, Joe Broad, Lame Joe, Joe the Kid and some others. We were all drinking." A Yes.

Q Was it at that time that you told the police that you were sitting at the table with them when they put it down on page one? A Yes, sir.

Q Have you explained this statement on page two about everybody scattering when the shot was fired and Bennett's name being named there? A Well, that is the only account that I can give for it.

Q You can't explain why Bennett's name appears among those who scattered when this shot was fired? A No, sir; I cannot.

Q You were arrested in October, 1915, as a witness in this case? A Yes, sir.

Q You were in jail how long as a witness? A A week.

Q And then you were bailed out by Mr. McDermit? A I was.

Q Who engaged him as your lawyer? A Not me, my sister.

Q What is her name? A Mrs. Worburt.

Q She lives where? A 178 Runyon street.

Q Why did you pick him out? A Because my brother-in-law used to work for Mr. McDermit.

Q You are still out on bail as a witness? A Yes, sir.

Susan Brown Clark, cross.

By Mr. McDermit.

Q You were subpoenaed by the State as a witness in this murder trial two weeks ago? A Yes, sir.

Q Were you called as a witness? A No, sir.

Q When were you subpoenaed by the defense as a witness? A After the trial had been going three or four days.

Q Had you had any conversation with Mr. McDermit, Mr. Frank McDermit, in regard to this case at the time you were bailed or after as to the facts? A No, sir; I have never held a conversation with Mr. McDermit in my life.

Q Were you served with a subpoena for the defense in this case when it was tried before? Where were you served with a subpoena? A Right outside the door.

Q Was that after the State has rested in the case or do you know what that means? A No, sir; I don't quite understand you.

Q You were in attendance upon the entire trial which lasted five days before, you were served with a subpoena for the defense? A It was either Wednesday or Thursday of that week.

Q Had you had any talk with Mr. Godfrey, the prosecutor's detective, as to what your testimony was to be in this case at any time down to the present time? A When I was in headquarters I had a conversation with Mr. Godfrey.

Q Has anybody attempted in any way to get you to testify other than you have testified here today? A No, sir.

Q Is every statement you have made on the witness stand today true or false? A True.

Donato Colucci, direct.

By Mr. Van Blarcom.

Q Then you permitted perjury before the grand jury?

Mr. McDermit. I object to that remark and ask that it be stricken off the record.

Mr. Van Blarcom. I will withdraw it.

Q Then when you said before the grand jury that you saw Bovino in the hall at the time of this shooting you were telling an untruth, weren't you? A Why, I can't recall whether I told that or not.

Q If you did tell them that you were telling them an untruth? A Yes, sir.

Q And you had been sworn there as a witness to tell the truth? A Yes.

Q Didn't you tell one of the police officers that came to interview you about what you were to testify in this case that you would not tell him what you would say? A One of the police officers what?

Q That came to ask you whether you were going to stand up to your statements, didn't you tell him you would not tell him what you would say? A I told him I would not talk to anybody about the case on the outside.

Q And when the police officer asked you if you were going to stand by your statement or go back on it you would not talk to him, you would not tell him what you were going to say? A No, sir; I said I would not talk to anybody about the case.

DONATO COLUCCI sworn in behalf of defendant.

Direct examination by Mr. McDermit.

Q You are more familiarly known by the name of Chick Collins? A Yes, sir.

Q You are proprietor of the saloon conducted at 238 Oliver street? A Yes, sir.

Q You are familiar with this map of the premises there, A indicating on the map the hallway from Oliver street into the dance hall through room C? A Yes, sir.

Q G is the dance hall? A Yes, sir.

Q B is the saloon? A Yes, sir.

Q And D is a room between B, the saloon and G, the dance hall? A Yes, sir.

Q And H indicated upon this map is a dressing room, J is a stage, and K is another dressing room? A Yes, sir.

Q And these are two doors leading out in the bar room? A Yes, sir.

Q There are two doors that lead out from the front, one from the hallway and one from the saloon? A Yes, sir.

Q Do you remember the night of the shooting at your place of Frank Baker? A Yes, sir.

Q Where were you at the time of the shooting? A On the corner of Adams and Oliver.

Q How far from your place of business is the corner of Oliver and Adams streets? A About 175 feet away.

Q What were you doing there? A I was talking to Jimmie Bovino and Tony Gratch.

Q Is Jimmie Bovino, the man who is the defendant here in this case? A Yes, sir.

Q What first attracted your attention to the shooting, if anything? A Why, to tell the truth, Jimmie was the first one that spoke, after we heard the shot.

Q What did he say? A He says, "What was that, a shot?" Tony Gratch turned around. He said, "No, I don't believe so." He says, "Some of the boys is fooling around with some of those chairs," and as we stood there on the corner a few seconds or so I happened to turn around and sure

enough we seen people running out from the hall—entrance of the hall.

Q What did you do? A When we saw that, of course, we ran up towards the saloon. As we did we seen Officer Miller had this Frank Baker and he was about to take him to the police box and as got to him I asked him what was all the trouble. Frank Baker turned around. He said, "Chick, I am shot." I says, "Why, Frank, what are you doing, trying to kid me?" He says, "No, Chick, I am shot." I said, "Who shot you?" I asked several times. He says, "Chick, I don't know." And at the same time, then, Officer Miller was going to take him to the box, as I said before and I said, "What is the use of your taking him to the police box"; that is the police box is on the corner of Kinney and Adams. I said, "What is the use of taking him down there." I said, "I have a telephone in my place." I said, "Why not call right from my place?" which he did, and as he was going in he says, "Will you hold Frank while I go in and telephone?" He says, "I hold you responsible for this man." We waited there for a little while and being the man was shot I seen no excuse for keeping him there outside, so Jimmie Bovino and I walked Frank Baker into the bar room. As we walked into the bar room, I told the bartender to give Frank a drink, and we cheered him up and still we asked him who shot him and he says he didn't know.

Q What else took place there? A Why, of course, in the meantime, there was a quarrel between some ladies, that was Sue Brown and this Lucy girl.

Q What was that, tell that to the jury? A Well, I was so excited after that to tell you the truth, I didn't pay much attention, but I heard

Big Sue say, "If it wasn't for you this wouldn't happen," and, of course, then I got them to cut that out. I told them it was bad enough without having any more quarrel there, and we put a stop to it until the patrol wagon came down and took Frank Baker away and Jimmie Bennett, I remember well, was one of the first that got Frank Baker and walked him out to the patrol wagon.

Q Did you see any exhibition of any pistols in the saloon that night? A Yes, sir.

Q Who did the pistols belong to? A One of the pistols belonged to Frank Baker, which they claimed, and the other was the special officer's that was working there that night.

Q How did these pistols come to be exhibited in the bar room after the shooting? A Well, Frank Baker was up against the bar, and we asked him who shot him, and he turned around, he says, "Nobody else could have done it except the special officer. He hasn't any use for me." The special officer didn't quite understand, I think. I said, "Frank, have you got a gun in your pocket?" He said, "Yes." I said, "You hand that gun to Officer Miller." I said, "Give your gun to Officer Miller," which he did. Officer Miller was about to put it in his pocket when I said, "Wait a minute and show everybody in this place whether that gun was discharged or fully loaded," which he did. He takes the gun and he opens the gun and leans over the bar and showed the bartender over the bar that the gun was fully loaded and he showed the rest of the people in the bar room that the gun was fully loaded.

Q Prior to the time that you heard this shot had you been in the bar room or in the dance hall that evening? A Before the shot?

Q Yes? A Yes, sir.

Q Do you remember whether there was a big table in the dance hall? A I got several tables; yes, sir.

Q Do you remember whether a large table that sits adjacent or near the women's toilet, the piano there? A Right next.

Q That is the room G, dance hall? A Room G, yes, sir.

Q Had you been sitting at that table? A I was for a little while.

Q Was Bennett or Bovino there that evening? A Yes, he was.

Q Just tell the court and jury what took place at that table there? A Why, there was several people sitting around the table and we joined that finger game, what they call an Italian game and we had quite a few drinks.

Q Who was all playing there that you can remember, describe all the people that were there during the course of this evening at the table? A I don't remember everybody, but Sue Brown was sitting there, Hutch, Fresco, Vito Colucci, Tony Gratch.

Q Donato there? A Donato, he was there, myself.

Q Were they all playing in the game? A They were all playing in the game, yes, sir.

Q Was there dancing going on in the hall that night? A There was dancing going on while we were sitting there right along.

Q Was there an admission charge for people to go into the hall? A Yes, sir.

Q By ticket or cash or what? A Cash.

Q Who collected the cash, who was in charge of the door? A Why, of course, I didn't have a steady man or men. I usually take anybody, any of the boys; I trust any of the boys there that helps me out.

Q I understand you conduct dances there Tuesday and Saturday nights? A Yes, sir.

Q How long had you known Sue Brown? A For a little over a year or so.

Q Prior to the night of the shooting? A Prior to the night of the shooting; yes, sir.

Q How many people were there that evening at the dance? A I imagine about fifty people.

Q What kind of music did you have at that particular dance? A At that particular dance my music disappointed me that night and I wasn't to have any dance at all, and I had everything set down until a piano player, some young fellow that hangs around down there, used to come down to dances regularly, and he was known to be a piano player and as I had everything shut down he comes walking in the bar room and some of the boys said, "Chick, here is a fellow that can play a piano. You might as well open up," which I did, but I have violin and piano at the weekly dance.

Q Do you know a girl named Lucy? A I do.

Q How long had you known her prior to this trouble? A For about three years.

Q Was she there that night? A She was.

Q Did you have any talk with her that night? A Yes, sir.

Q Will you just state to the jury what that talk was? A The talk was that she told me that while she was coming home from Proctor's Theatre with this Frank Baker that they seen a big brown car with a lot of negro fellows in the car and she says they were coming over to my place to get a girl by the name of May Gilling, out of my place and if I was to stop them from taking the girl out why they were going to start some trouble.

Q You know this May Gilling, do you? A Yes, sir.

Q Is she here in court? A Yes, sir.

Q After Lucy had told you that did Lucy do anything; did she request you to do anything or did Big Sue do anything? A No, they did not. They stayed right there in the hall.

Q Do you remember anything about anybody using a telephone? A I remember Sue Brown calling up Frank Baker on the telephone.

Q About what time was that? A I can't exactly say, but I judge around half past ten.

Q Did you see Frank Baker that night before the shooting? A Yes, sir.

Q Where was it you seen him? A Out in front of the dance hall.

Q Did you say anything to him or did he say anything to you? Just describe what took place, if anything, when you met him? A After this Lucy girl told me about these negro fellows coming over I goes out and I call Jim Bovino out with me. I told him about what this Lucy girl had told me, and we stood in front of the place in case they came along to see if we could avoid trouble, not to have any trouble around the place or to scare the people that was in the place, and I wanted to try to get what was the reason they was going to come over there to start any trouble, if we tried to stop them from getting this girl out of the place and taking her away. As we stood there in front of the place this Lucy girl come out and I said, "Going home so soon," and she said, "Yes, Frank is waiting for me up the street," but I don't know which Frank she meant. As we stood there she comes down on the other side of the street with Frank Baker, and as they come down on the other side of the street Frank Baker hollers over to me, "Hello, Chick," and I looked over, I said, "Hello, Frank," I said, "Hello." He comes walking over

across and shook hands with me, asked me how was business and so forth and we had a little conversation there and as we did he told this Lucy girl to go in and she didn't want to go in because she knew she was going to cause trouble, being that this Sue Brown was in there.

Q What did Lucy say, what did anybody say? Don't give us your deduction, but give us the talk that took place. What did you say, and what did Lucy say—what did Baker say? A I said, he asked me, "How is business?" like he genahead in and she didn't want to go in—she hesierally did and as he says that he told her to go tated because she knew it was going to cause trouble.

Q What did she say? A She didn't want to go in. He said, "You go in. You needn't be afraid. Everything will be all right." She goes in and he stayed out there for a few minutes and he went in after her, and as he went in Jim, Tony Gratch and myself walked down to the corner.

Q Was there any trouble between Jim and you before you walked down to the corner, with Baker? A No.

Q Tell me where it was you were talking to Bennett and Lucy? A My understanding is we were in front of the entrance of the hall.

Q Room A, hallway? A Yes, sir.

Q Were you down on the sidewalk? A Down on the sidewalk? Yes, sir.

Q How many steps are there there? A Two.

Q Are there the same number of steps in the saloon or more steps? A The same amount.

Q Just two steps down to the street from this room? A Yes, sir.

Q I understand you were in front of the hallway, having this conversation on the street? A Yes, sir.

Donato Colucci, cross.

Q Did you say Bennett was there with you? A Yes, sir.

Q Bennett and Baker talking together, were they? A He said, "Hello," to Jim, and Jim says, "Hello," to Frank.

Q After you and Bennett, as you say, had brought Baker in from the sidewalk the time the officer went in to telephone for the patrol and he was actually in the saloon did Baker say anything about who shot him? A No.

Mr. Van Blarcom. I object to leading questions.

The Court. Sustained.

Cross examination by Mr. Van Blarcom.

Q How long have you known Bovino? A About twelve years.

Q Friendly with him? A Yes, sir.

Q And he had worked for you? A He did.

Q How long? A Well, about three years.

Q What work did he do? A He used to be a waiter for me in the dance hall.

Q When did he stop waiting? A About two years or so.

Q About two years ago? A About two years.

Q Before the shooting? A Yes, before the shooting.

Q Then he didn't work for you during 1914? A I don't think he did, I don't quite remember, to tell the truth.

Q I know, that is only two or three months before the shooting in 1914? A He didn't work there at the time.

Q You think that it was about two years that he worked for you? A I judge about two years, I said. I am not quite sure.

Q Did he do any work at all that you know of? A Yes, I knew him to do a little work a few days, two or three days for a fellow by the name of Bruno, truckman.

Q Would he come in there about every night? A Mostly every night, yes, sir.

Q What time did he come that night? A What time he come in the place that night?

Q Yes. A About seven o'clock, I imagine 7 o'clock.

Q You were there, of course? A Yes, sir.

Q You live there, I suppose? A Yes, sir; I lived right upstairs.

Q Tony Gratch is related to you? A Cousin of mine.

Q He is also known as what? A Tony the Kid, they generally call him.

Q Tony or Joe? A Joe the Kid.

Q And Vito is your brother? A Vito Colucci is my brother.

Q He was a waiter there? A He was working for me that night.

Q Who was this boy that was playing the piano, do you know? A I don't know that fellow. He used to hang around down at one of those pool parlors. He used to come down to dances, but then I wasn't acquainted with him.

Q Who were the people that were sitting around this big table? A As I said before Sue Brown, Bovino, Tony Gratch, George Policastro, Hutch, Fresco, Vito Colucci.

The Court. Fresco?

Mr. Van Blarcom. Yes, sir.

The Court. Is he the barkeeper?

Mr. Van Blarcom. No, sir.

Q Yourself? A Myself.

Q And Bovino? A Bovino was there, yes, sir.

Q Was there any other women beside Big Sue sitting there? A Not as I remember.

Q Did May Gilling sit there? A Not as I remember.

Q Was she in the place at all? A I don't remember.

Q Do you remember whether Mary Weber was there? A No, sir; I do not.

Q You don't remember about how many women were there? A Sir?

Q You don't remember very much about the women? A No, sir; I do not.

Q Were you in the dance hall when Lucy and Bennett danced together? A No, I didn't remember that at all.

Q When did you go out, what was going on when you went out? A When I went out?

Q Yes. A Well, I got up from the table here we were sitting that evening, we had been drinking, playing that finger game, and I walked out into the bar room. Somebody came in and called me out and told me this Sue girl wanted to speak to me and it was very important.

Q Sue? A This Lucy girl.

Q Where did you talk to her? A In the dance hall.

Q Did you dance with her? A Yes, sir.

Q She didn't come out in the bar room? A No, sir.

Q Are you sure about that? A I am quite sure.

Q What? A I am positive that she didn't come out to the bar room to tell me this. Somebody called me from the bar room into the dance hall.

Q When she told you this was Bovino around? A Yes, sir. It was I that called Bovino out.

Q Out where? A Out from the dance hall.

Q Out where? A Out from the dance hall.

Q He was in the dance hall? A Yes, sir.

Q When Lucy told you this, about the desperadoes coming over from New York, was Bennett in the dance hall? A Yes, sir; he was.

Q So then you called him out? A I did, yes, sir.

Q And you two went out in the bar room together? A We didn't go in the bar room, we went right out the entrance of the hall in front of the place.

Q You went out through the hallway? A Through the entrance of the hall.

Q You told Bennett about these gunmen coming over? A Yes, sir.

Q Where was Tony the Kid or Joe the Kid? A He comes walking out from the dance hall, out from the entrance of the dance hall where we were standing.

Q Did he come through room C or through the saloon? A That is something I really can't answer, whether he came through room C or room D, but when I turned around I seen he was right where that letter A is, right in the center of the entrance of the hall.

Q Did you tell Bennett about these people coming? A Yes, sir.

Q Did you think they were going to shoot the place up? A According to this Lucy's story.

Q Were you armed that night? A No; I was not.

Q Didn't have any revolver? A No, sir.

Q Did you see the young fellow Tony have one? A No, sir.

Donato Colucci, cross.

Q What did you go down to the corner for? A We thought maybe these fellows that came along; why we could get to them in a nice way and avoid trouble; didn't want any trouble around the place.

Q Wouldn't you have been more sure of getting to them if you had stayed up to the place? A I didn't want them to come near the place.

By the Court.

Q Couldn't they come down Jefferson street? A They could, but we stood on the corner of Adams and Oliver streets.

Q Adams is the nearest street to Jefferson? A Yes, sir.

Q And the East Side Parkway is there? A Yes, sir; East Side Parkway.

By Mr. Van Blarcom:

Q How did you figure you were going to stop these people if you were not armed? A How did I figure?

Q Yes. A I figured I was to stop them and ask them not to go over to the place and cause any trouble.

Q There was a member of the Newark Police force in your saloon that night? A So there was. I seen him before the shooting.

Q You knew Arthur Miller? A Yes, sir.

Q You knew he was a police officer? A I did; yes, sir.

Q And he was in your place? A Yes, sir.

Q Why didn't you tell him about this raid? A At the time I didn't know whether he was in the place or not because he went over across the street to buy some Italian spagetti, which he came down for that night.

Q Did you try to find out if he was there? A No, sir; I did not.

Q Did you believe this story about the gunmen coming out? A I didn't know what to believe. I didn't want to take any chances.

Q Weren't you taking a very big chance to walk down there? A I was. I was taking the chance of my life.

Q Still you didn't want to take any chance—you said a moment ago you didn't want to take any chance? A In what way?

Q I don't know. A I took a chance of going down to the corner to see, in case they came along, so I could get to them and stop them and avoid trouble.

Q What did you have in mind to say to them? A I wanted to know the idea of getting this girl out and if we stop them what was the idea of shooting up the place. I never had any trouble; never knew anybody from New York that I was well acquainted with, and I didn't know why they wanted to come over to shoot my place up.

Q When you came down, out of the saloon, why didn't you go down to the corner instead of standing there at the door? A We stood there in front of the door for a few minutes or so.

Q For what? A I don't know what for, but we were standing there.

Q How long were you standing there before Lucy came out? A I can't say, about five minutes, five or ten minutes.

Q Who stood there? A I, James Bovino, and Joe the Kid.

Q Then, Lucy came out? A Yes, sir.

Q You asked her if she was going home? A Yes, sir.

Q Then Frank Baker appeared? A No; she says, "I have got to go. Frank is waiting for me up the street," but I didn't know which Frank she

meant. I didn't know Frank Baker or any other Frank.

Q Frank Baker appeared finally? A Why, on the other side of the street.

Q You talked to him across the street? A No; he talked to me first.

Q The two of you talked together. What was said? A I said he asked me how was business and how I felt and so forth.

Q Did that all take place across the street? A Not across the street, in front of the entrance of the dance hall.

Q What was said before he got to the entrance of the dance hall? A He said, "Hello Chick," from the other side of the street.

Q What did you say? A I looked over and I seen it was Frank, and I hollored back, "Hello Frank."

Q What did you say—anything else? A No, sir; not until he came across the street.

Q Then what did you say? A He shook hands and he asked me how is business and how I am.

Q Did you ask him to have a drink? A Not outside. I don't remember of telling him to have a drink that night.

Q You didn't ask him to have a drink? A Only when he was shot, and I walked in and told the bartender to give him a drink.

Q What was said outside between the party there, consisting of Baker, Lucy and you three men? A Sir?

Q What was the conversation outside between you five people? A Come to think of it, about this Lucy girl, over what she had told me; I asked Frank is that was true.

Q What was true? A About this big, brown automobile with these fellows in the car. He said,

"Yes"; he said, "It was right." He even turned around and said to me, "Don't be afraid."

Q Go on.

By the Court.

Q Was Lucy there, then? A Yes, sir.

Q Heard that? A Yes, sir.

By Mr. Van Blarcom.

Q You have never told that before, have you? A I don't believe I did.

Q Go on, tell us the rest of the conversation. A If I ain't making mistake, I believe I made that statement, in that statement I made in headquarters.

Q Go on, tell us the rest of the conversation. A Well, as they stood there for awhile, I says, "Well, I suppose you are going to stop in for awhile." He says, "Yes; that is just why I came down, Chick." And he told Lucy to go ahead in. Lucy hesitated a few minutes. She didn't want to go in. She knew Sue Brown was in there. Knew Sue Brown was going with this Frank and she thought it would cause trouble, and he said, "You go ahead in; there ain't going to be no trouble. Everything will be all right," and she did and in a few minutes he followed, and as he did we walked down to the corner.

Q Did you know what this trouble was between Big Sue and Lucy? A No, sir.

Q Knew nothing about it? A I don't know anything about that affair at all.

Q Did you inquire? A No, sir.

Q Didn't interest you? A No, sir.

Q You thought there might be trouble in your place? A I didn't have the least idea, no sir; not from the way things was going. Everything was so

quiet and lovely, didn't expect no trouble whatsoever.

Q Here is a situation where this girl Lucy was afraid to go in this place. A She stated that she didn't want to go in. She didn't say, "I am afraid." She said, "I don't care about going in there."

Q She knew why she was afraid? A I suppose she did, on account of Sue being in there.

Q Hadn't you heard about this trouble they had in the dressing room? A No, sir; I didn't know anything about that at all.

Q Knew nothing about it? A No, sir.

Q Bovino hadn't told you anything about it? A No, sir.

Q You knew that Big Sue had been going with Baker, didn't you? A Well, I have heard it; I have never seen them together only now and then. I see them in and out of the dance hall.

Q You don't seem to know much about what your people do? A I do not; no, sir.

Q Don't take much interest in them? A Only take care of my own business.

Q It is your business to know your patrons, isn't it? A I don't understand you.

Q It is your business to know the people who come to your place? A Of course, as far as that is concerned; yes.

Q But still you took no interest in this case? A No, sir.

Q Did you know that Lucy was going with Baker at the time of this trouble? A I never knew that Lucy was going with Baker until I seen them together that one night.

Q Was there any man she went with beside Baker? A Not as I know of; I don't know anything about that at all.

Donato Colucci, cross.

Q How long had Lucy been coming to your place? A About three years, on and off; I will say about two years ago she used to come down quite often, but then she stopped coming down.

By the Court.

Q With reference to what three years—before to-day or three years before this shooting; how long before the shooting? A She had not been down, your Honor, for a year or so before the shooting. Of course, I can't give the exact date.

By Mr. Van Blarcom.

Q You mentioned making a statement to the police. Is this it, paper dated April 23, 1914? A Yes, sir.

Paper marked for identification, S. 10.

Q In this statement which is marked S. 10 for identification did you say this to the police, this is after Frank came across the street and you were standing in front of the dance hall, "And I said to Frank, 'Are you going inside,' and he says, 'I would like to for a short time' "? A Yes, sir; I believe so.

Q Did you say this, "Lucy then said she did not like to go in on account of Big Sue being in there and she was afraid there would be trouble because she was going with Frank Baker"? A Because Lucy was going with Frank Baker?

Q Yes. A I said, if anything, she was out with him that night.

Q Did you tell the police what I have read in this statement? A Yes, sir; I did.

Q That Frank then said, "You need not be afraid." Frank then said to Lucy 'Go ahead,' she walked in and Frank stood there while she

went in and I then said to Frank, 'Sue is in there,' and he said, 'What do I care for her.' "

Q Did you tell that to the police, as I have read it to you? A Yes, sir.

Q "And he remained there for a short time and I said, 'Are you getting cold feet?' " A That I said he was getting cold feet?

Q Did you tell the police that? A Not as I remember.

Q Will you say you didn't say it? A I would not say but I don't quite remember. I will say that I don't think I would say that at the time, no.

Q If it is down here is it the truth or not, or did you tell the truth? A It must be the truth if it is down there. I don't quite remember.

Q You don't remember whether you said that or not? A No, sir.

Q Do you still, after my reading this paper, say that you knew nothing about the trouble between Baker and Big Sue and Lucy? A I don't know anything about their business at all.

Q Why did you say to Baker, "Big Sue is in there?" A There is no doubt about that at all. Because I knew from what I had heard from different parties that Frank Baker was going with Big Sue and she had so stated that she was married to this Frank.

Q Then, you knew something about them? A I didn't know anything about the trouble, about their affairs at all.

Q Why did you think there would be trouble if Baker went in there with Lucy? A Well, as I said before, I have heard that they were married and I thought it was a good thing for me to tell him that she was in there. I thought may-

be it would help him out. That he would not go in there at all.

Q His only remark was, "What do I care for her?" A I don't remember that.

Q Can't you remember what you told the police? A Not all, no, sir; not at the time.

Q You didn't expect any trouble there in the dance hall between Big Sue and Baker? A Not at all.

Q But you had warned Baker about Big Sue being in there? A I did.

Q And then put it up to him and asked him if he was getting cold feet? A I don't remember saying that.

By the Court.

Q What do you mean that you don't remember, that you said it to Baker or that you said it in the statement? A I don't remember telling that to Frank Baker.

Q The question is, which do you mean, you don't remember seeing that or saying that? I don't know which you said. Do you mean that you said that to Baker or you did not say that in the statement? A I don't remember saying that to Baker.

Q But you did say it in the statement? A Your Honor, I don't remember saying that in the statement, because I know from my heart I would not tell that to Frank, I would not speak that way to Frank Baker.

By Mr. Van Blarcom.

Q I understand you to say that Big Sue said to Lucy after the shooting, "If it wasn't for you, it wouldn't have happened?" A He says that, on the outside, pointing at Sue.

Donato Colucci, cross.

Q Baker said that to Sue? A Yes. Then, he says, "Don't tell my mother that I am shot." When I made that statement I told the police at headquarters that I wasn't quite positive, that is, quite sure whether he says, "You shot me," or "Don't tell my mother."

Q What do you testify to today about it? A Same thing.

Q You are not sure? A No, sir.

Q I am talking about something else. Did Baker say to Big Sue, make the remark to Lucy, "If it wasn't for you it wouldn't have happened?" A Baker said to Lucy?

Q Yes. A In the bar room after the shooting, yes, sir.

Q And they had a little trouble? A They had a quarrel there. I didn't pay much attention because I was so excited myself.

Q You quieted them down? A Why, yes, why, of course, and a great many more that was in the place.

Q How long were you down at the corner before you heard this noise? A About ten, fifteen minutes, or so.

Q What time was it you heard the noise? A I can't give you the exact time, but I should imagine around half past eleven or so. It was after eleven o'clock.

RECESS.

Q Bovino left and same back after the shooting? A Didn't see him leave, paid no attention.

Q But after you had taken Baker into the bar room he was finally taken away in the police patrol? A Baker was.

Q Then, they took some of the other people to the police station? A They did.

Q Who was left after that happened? A I can't quite remember who was left in the place. I know the brother was there, Joe the Kid, myself.

Q And Bennett? A Bennett was there when the police came first.

Q I am talking after the police took these two women and George Policastro away? A He was there, but I didn't notice whether he went out or not.

Q Was Lame Joe or Joe Broad there? A I don't remember.

Q You remember Joe Broad and the defendant saying "Good night" and going out? A I don't remember that.

Q Do you remember Bennett coming back there? A Yes, sir.

Q What time did he come back? A I can't give the exact time, I think about two o'clock or so.

Q How long did he stay there? A He stayed there until he was taken away by the police.

Q What were you talking about? A Talking about what had happened.

Q Who was there talking about what had happened? A There was nobody there but Vito Colucci.

Q That is your brother? A That is the brother, Joe the Kid, Jim Bovino and myself.

Q You four? A Yes, sir.

Q You were there until the police came at four o'clock? A Until about four o'clock in the morning.

Q What were you keeping open for? A Because Officer Donelly told me to keep open. He said, "Well, I suppose you are going to close down?" I said, "Well, I don't see anything else

for me to do." I said, "No use of my keeping open." He said, "If I were you I would not close because we might get orders from the night captain at headquarters and we might have to take you in and save us the trouble of getting you out of bed," so that is why I kept open.

Q When did he say that to you? A About an hour after the shooting.

Q Was Bennett there at the time? A I don't remember.

Q How long had he been away? A I don't know how long he was away.

Q You were talking over this shooting about two hours before the police came? A We wasn't exactly talking it over, we just stayed there figuring the police would come. There was no doubt of what Donnelly said.

Q You were talking over this affair? A Not exactly, no, sir.

Q What do you mean by not exactly? A As I mean, we stood there and undoubtedly talking about little odds and ends and so forth, just to pass the time away.

Q Were you present when this bullet was found in the dance hall? A Yes, sir.

Q Did you look for a revolver in there? A No, sir.

Q Did you see a revolver? A In the dance hall?

Q Yes. A No, sir.

Q You didn't see any revolver except these two? A The two that were displayed in the bar room.

Q Do you remember what kind of a night it was, whether it was warm or cold, rainy or clear? A The night of the shooting?

Q Yes. A It was a pretty fair night.

Michael Tanzola, direct.

By the Court.

Q Did you say that Lucy told you that these New York gunmen, as they have been described, or whatever the expression was, were after May Gilling? A Yes, sir.

Q Didn't you then find out whether May Gilling was there? A Well, I didn't exactly, your Honor.

Q You know you said you didn't know whether May Gilling was there or not on the stand? A Yes, sir.

Q You remember that, didn't you? A I did.

Q I am calling your attention to this specific matter and ask you if that does not recall to your mind the fact of whether or not May Gilling was there? A According to that she must have been.

Q No, not as to whether or not she must have been there, but as to whether or not you took the trouble to find out if she was there, did you? A No, I did not.

Q So you don't know really whether she was there or not? A No, sir.

MICHAEL TANZOLA resumes the stand for

Direct examination by Mr. McDermit.

Q You were a special police officer that night of the shooting at Collins' hall in April, 1914? A Yes, sir.

Q Were you in the hall at the time of the shooting, dance hall? A I was in the toilet.

Q Were you in the toilet at the time that you heard the shot? A No, when I heard a noise.

Q What did you do when you heard a noise? A As I heard the noise when I came out I

saw this man that is dead now, he slapped the woman.

Q Who did he slap? A That woman.

Q Stand up, Miss Brown. Is that the lady?

The Court. Referring to Susan Brown Clark.

A Yes, sir.

Q Who was it that slapped the lady? A The man that is dead.

Q What took place after he slapped the lady? A He slapped that woman and I was buttoning my pants. I went over to him. I put my left hand on his right shoulder.

Q On whose right shoulder? A The dead man.

Q Then, what next took place? A As I said, "What is the matter," he shot.

Q Who shot? A If I had seen him I would have grabbed him.

Q You had your hand on the right shoulder of Baker, the deceased. You must have been standing right alongside of him then? A Yes, sir.

Q Then, why can't you tell us who it was that fired the shot at Baker? A I was talking to him face to face, and I didn't see. If I know I would grab him.

Q What did he do, what did you do after the shot was fired; what did you say or do? A As the shot was fired the gun fell on my foot.

Q What became of the gun that fell on your foot? A As I picked up the revolver Jack Miller was right there and I said, "Here, Jack Miller, I got the gun."

Q Do you mean Jack Miller or Joseph Arthur Miller? A Jack Miller.

Q Stand up, Joseph Arthur Miller. Do you mean that man? A Yes, sir; that is the man.

Q What became of the revolver after you handed it to Mr. Miller, do you know? A Miller opened the revolver and he saw that it was fully loaded.

Q Did you examine the revolver to see whether it was full loaded or not? A He did.

Q Did you see him do it? A I did.

Q Did you have a revolver that night? A Yes, sir.

Q Was your revolver taken away from you or out of your pocket? A Miller took it away from me to see whether it was loaded or not.

Q Did Miller, the police officer, examine the revolver in your presence? A In the presence of everybody.

Q What, next, took place after the shot was fired, what did you next do? A We grabbed him and he said, "I am shot."

Q Who grabbed him? A Me and Miller.

Q What became of Baker after he was shot? A We took him outside to bring him over to the box.

Q How far did you get outside with him? A In front of the saloon.

Q What occurred there? A There everybody came. Chick said, "Telephone inside."

Q Who else was outside there? A Many people.

Q Do you know this man here?

The Court. Indicating the defendant.

A Yes, sir.

Q What is his name? A Jimmie Bovino.

Q Did you see Jimmie down there the night of this shooting? A In the hall?

Q Yes. A Before, yes; not after.

Q What do you mean by after, the shooting? A Before he was in there when I went in the toilet. When I came out he wasn't there.

Q Was this shot fired after you came out of the toilet? A Yes, sir.

Q Why do you say that Bennett wasn't there? How do you know that? A Because, I didn't see him.

Q What part of this dance hall were you standing with your hand on the shoulders of Baker when the shot was fired? A This is the door I came out through. I say he was here.

The Court. Indicates near the piano, in the southwest corner of the room.

Q (*By the Court.*) Come out of the men's toilet, did you? A Men's toilet.

Q (*By Mr. McDermit.*) Please explain to him these two toilets, if you will, Mr. Interpreter. Toilet E has two entrances, one into room D and one into the bar room. The ladies' toilet has an entrance only into the dance hall? A Yes, sir.

Q When you left the toilet, which entrance did you pass into the room G, indicating on the map? A This door here.

The Court. Indicating the door from E to D.

Q And then from D into the bar room, into the bar room, did you? A Yes, sir.

Q After you had got into the bar room, where was Baker standing? A I found him right here and Big Sue was here.

The Court. He points first for the position of Baker in front of the show case and Big Sue further north.

Q About how far was she from Baker? A As far as he could reach to slap her.

Q Did Sue have a fight with anybody there? A No.

Q Did you see her take hold of anybody's hand there? A No.

Q Did you see her have hold of Bennett, trying to keep him back from Baker? A No.

Q Did Sue have hold of Bennett there at the time that you had hold of Baker; any other person? A No; I didn't see.

Q How long did you have Baker out in the street before you took him into the saloon? A Three, four, five minutes. I didn't have the watch in my hand.

Q Which way did you take Baker into the street? Did you take him in through the hallway which is marked A, down those steps, or did you take him out through the saloon doors down into the street? A Hall marked A.

Q Do you remember any of the rest of the people that were there that night? A Before.

Q Yes; before the shooting? A Two or three girls that are here.

Q How many people were in the hall altogether that night, in the saloon and after, about? A About twenty; I don't know.

By the Court.

Q Did you say the two or three girls that are here in the court room now? A Yes, sir. If it was more there, I don't know who they were.

Q Do you refer to Susan Brown Clark, and May Gilling and Mary Weber? A The three over here and one down below and others.

Q And Anna Gurtler? A There was more there. I don't know who they were.

By Mr. McDermit.

Q Were you on duty there as a watchman or as an officer? A Police officer.

Q What time did you go into the hall—dance hall that night? A Nine o'clock.

Michael Tanzola, cross.

Q Why didn't you go in there earlier? A That was my regular time.

Q How many people were there in the bar room altogether, men and women? A I didn't count them.

Q Did you remain in the bar room until the patrol had come there or the ambulance had taken Baker away? A No; we were searching all over to see if anybody was hiding.

Q Where were you searching? A In the basement, me and the police officer, George.

Q What part of the premises were you searching? A In the basement and back yard with a searchlight.

Q For what—what were you trying to find? A If anybody hide himself after the shooting.

Q Whose revolver was it that dropped on your foot; do you know? A Baker's, the dead man.

Q How did that revolver come to drop on your foot; do you know? A No; I don't know.

Q Did you see a blackjack there? A The police officer found the blackjack.

Q Did you have more than one revolver in your pocket? A Only one. What should I want more than one for?

Cross examination by Mr. Van Blarcom.

Q How long had you known Bovino? A Long time.

Q How many years? A Four or five years.

Q Know his father, too? A I have known his father.

Q How long have you known his father? A Some time.

Q Live near them? A Not very far.

Q How did you come to know the defendant? A Well, through the respects of his father, and then sometimes we played together.

Q Played what? A Played for beer.

Q What did you play? You mean you played the finger game? A Yes.

Q Were you playing that night? A No.

Q What time did you go on duty that night? A Nine o'clock.

Q Was Bennett sitting at the big table during the evening? A Yes, sir.

Q They were playing this game there, weren't they? A Yes; with the finger.

Q What time was it you went into the toilet? A About 11:20; I don't remember.

Q Isn't it true that you heard this shot when you were in the toilet and ran out? A No; the noise; they were hollering—

Q Who was hollering? A I heard this woman screaming and then I went out.

Q You ran out then? A Right away.

Q What was taking place when you went out? A I saw him hitting this woman and I asked, "What is the matter?"

Q How many times did he hit her? A Only once.

Q Did she say anything? When did she scream? At the time you heard her in the toilet? A No; I heard noise. I didn't hear what was said.

Q Was the noise of somebody screaming or talking? A People talking.

Q They were talking loud, is that right? A Yes.

Q When you put your hand on Baker he was standing with his back to this flag case? A Yes, sir.

Q This flag case is standing between the doors leading from the hallway into the saloon? A Yes, sir.

Q When you put your hand on his shoulder, did you stand directly in front of him or to his side? A In front of him.

Q Directly in front of him? A Yes, sir; I put my hands this way (indicating).

Q You put your left hand on which shoulder? A Left shoulder.

Q Where was Big Sue standing? A Not far away, but she stepped back about a step or so and was crying.

Q You heard the noise of this shooting, did you? A Yes, sir.

Q What direction did the sound come from? A I don't know. I only heard this go bang.

Q Can't you tell what direction it came from? A No, sir; because the revolver fell on my foot. I though it was him that done the shooting.

Q When you had your hand on his shoulder, you spoke to him, didn't you? A I spoke to him, but he didn't answer me.

Q That was before the shot was fired? A As I put my hand on him, the shot was fired.

Q Was it after the shot was fired that you spoke to him? A As I put my hand on him and spoke to him, the shot was fired.

Q Did he have any revolver in his name at the time you spoke to him? A I didn't look because I went right in front of him.

Q Isn't it true that after this shot was fired, somebody said, "You must have shot yourself," and didn't Baker then take his revolver out of his pocket? A No.

Q Nothing like that happened? A No; I didn't hear that.

Q Yet you stood facing this man with your hand on his shoulder and say you didn't see who shot? A No.

Q Did anybody run out of the hall after this shooting? A No; didn't look.

Q Did you see anybody run out of the hall after the shot was fired? A No.

Q Do you mean to say nobody ran past you down this hallway and passed this dance hall? A No; because he was showing us where he was hit. I didn't see.

Q Didn't look to see if anybody ran out? A No.

Q Were the same number of people in the hall before you went in the toilet as were there when you came out? A I didn't look.

Q Did you know who was in the hall when you came back? A I didn't look.

Q What was your business there? A To look.

Q Did you make a statement to the police? A Yes, sir; as I am saying now, I say then.

Q Look at this statement dated April, 1914, and see if that is the statement you made? A I can't read.

Q Do you know whether that is your mark or not? A The cross, yes.

Q Did you make this statement to Mr. Godfrey?

The Court. Mark the statement as identified.

Marked S. 11 for identification.

Q Did you give this statement to Mr. Godfrey, "I heard a shot and Frank say, 'Oh, my! I got shot.' He lifted his vest and I saw a little hole and he dropped his gun and it just struck my foot, and I picked it up and said, 'Here, Miller; I got the gun.' Miller opened the gun and I said, 'No,' for it was loaded. There were a lot of people there in the hall. I saw Colucci, Bennett and others there."

Mr. McDermit. I submit that that should be divided into sentences and not a long statement.

The Court. You want it to be split up.

Mr. Van Blarcom. He can specify if he said part of it.

Q Did you say this to Mr. Godfrey at the time you made this statement, "I heard a shot and Frank say, 'Oh, my! I got shot.'" A Yes, sir.

Q Did you say this, "He lifted his vest, and I saw a little hole." A Yes, sir.

Q "And he dropped his gun and it struck my foot?" A Yes, sir.

Q "I picked it up and said, 'Here, Miller; I got the gun?'" A Yes, sir.

Q "Miller opened the gun and I said, 'No,' for it was loaded?" A Yes, sir.

Q "There were a lot of people there in the hall. I saw Colucci and Bennett and others there?" A No, no, no; I didn't say it.

Q Did you say that to Mr. Godfrey? A No.

Q So all of this is true except the fact that you told Godfrey that you saw Bennett, Colucci and others there? A He wasn't there. I said he wasn't there. I didn't see him.

Q Is it true that this gun didn't drop out of Baker's hand until after he had lifted his vest and showed you where he was shot? A Before.

Q It dropped out of his hand before he pulled up his vest? A Yes, sir.

Q You talk some English? A A little bit; I can't explain.

Q How long have you been in this country? A Twenty-nine years.

Michael Tanzola, cross.

By the Court.

Q Are you a citizen? A Sure.

Q (*By Mr. McDermit.*) I want to ask you a few questions in English. You went in the toilet? A Yes.

Q What did you do when you came out of the toilet? A What do you mean?

Q What did you do when you came out of the toilet? A I came out of the toilet—I came in the hall.

Q What did you do when you got in the hall? A Attend to my work. I see this trouble. I ask them people to see the trouble; see the slap in the face. "Big Sue." I said, "What is the matter?" He no answer me at all; then, bang.

Q After the bang what happened? A I don't know.

Q You called to Baker? Were you standing when this bang came? (Through interpreter). A About two feet away as I remember.

By Mr. McDermit.

Q Just indicate by placing your hand on Officer Federici. Stand up and show the position that you and the deceased were in in the hall, face to face with Mr. Federici, only the way as you were facing him in the hall? A As I come up this way, I said, "What is the matter." Bang.

Q So there was no one between the witness and the deceased? A No.

The Court. The witness has indicated that he faced Baker and Baker faced him and that their bodies were front to front and that the witness' left hand was on the shoulder between the shoulder joint and the neck of Baker.

Michael Tanzola, cross:

Q Could you see Big Sue from the position in which you stood? A No, because I was facing this man here.

Q Which way was that man facing? Was he facing east. north, south or west in the hall? Which was was Baker facing? This side of the dance hall? I am indicating to you room G. This point that I am indicating to you is the westerly side, this point that I am indicating now is the northerly side and this is the southerly side. Just show in the hall which way they faced? A I was here and he was here (indicating).

Q Which way was his face? Was he facing around west or north? A Which face?

Q The face of the deceased Baker, looking toward the northerly part of the hall? A Yes.

Q Which way was your face looking when you put your right hand on his shoulder? A Facing me.

Q Was he facing north or south? A He was looking towards the woman and I was looking towards his face direct.

Q Was he standing back of this case here where the flags are with his back against a case facing north? A Yes, sir.

Q Had you got fully in front of him and faced to the south? A On this side.

Q Did you hear the shot as you placed your hand on his shoulder?

The Court. Let him tell when he heard the shot. This is your witness.

Q You were subpoenaed by the State at the last trial?

The Court. Are you going to cross examine him now?

Mr. Van Blarcom. He is subpoenaed this time and testifies for the State.

Q (Question repeated). A Yes, sir.

The Court. It is a question of who put him on the stand. He is called by you now, and he is now your witness.

Mr. McDermit. I will have to put this question in this shape.

Q At the time that the shot was fired was your hand actually upon the shoulder or wasn't it right there yet? A As I was putting the hands on.

Q (*By Mr. Van Blarcom*). You said a moment ago you had your hand on his shoulder and talked to him and said, "What is the matter," and then the shot came? A As I was putting my hand on his shoulder, as I was saying, "What is the matter," the shot was fired.

Q Didn't you say a moment ago you had put your hands on his shoulder and asked him, "What is the matter," when the shot came? A Yes, sir; I always say the same thing.

Q I understand you to say now that you were standing by this man's side instead of directly in front of him? A Yes, I was standing with Federici.

Q Do I understand you to say now you were standing in front of this man?

The Court. When?

Q At the time you put your hand on his shoulder? A Direct in front of him. He was looking towards the people, I was looking towards him.

Q You said a minute ago you were standing at his side? A He was standing sideways to me and I was facing him.

Q (*By Mr. McDermit*). As I understand the statement now of the witness is that he was standing sideways and you were facing him on his right?

A He was facing the way I am facing now and these people was facing him and he was looking direct to me. Suppose that I was the man that was dead, then the judge would come towards me, put his hand on my right shoulder.

Q Was the judge facing you when you went towards Baker? A No, if I was Baker I was looking towards the people and the judge was looking towards me.

Mr. McDermit. Permit an illustration once more of just exactly how they stood.

A I was standing this way. I say, "What is the matter." Bang.

The Court. Now, the witness illustrates by getting further around toward the right side of the person who is alleged to be Baker.

Q (*By Mr. Van Blarcom*). There didn't any bullets go through your clothes, did there? A No.

DONATO COLACHIO, recalled.

Direct examination by Mr. McDermit.

Q You remember the night of this trouble down there? A Yes, sir.

Q Collins' place? A Yes, sir.

Q You know James Bovino or Jim Bennett, the defendant? A Yes, sir.

Q Do you know Chick Collins? A Yes, sir.

Q Do you know Susan Clark Brown? A Yes, sir.

Q Did you know in his lifetime a man by the name of Frank Baker? A Yes, sir.

Q For how long a time had you known Frank Baker? A Several years.

Q Prior to the night of this trouble down there how long had you known Bennett or Bovino? A About seven years.

Donato Colachio, direct.

Q Where do you live? A 160 Malvern street.

Q How far is that from Oliver street, about? A Six blocks.

Q Do you remember what time you came into Collins' place on the night of April 21, 19'4? A Around nine o'clock.

Q Can you recall who was present there at the time you went there? A What is that.

Q Can you recall who was present at nine o'clock when you went to the dance hall? A I can't very well recall all.

Q Was Chick there? A Yes, sir.

Q Was the defendant there? A James Bovino, myself, Tony Fresco.

Q What were you doing there?

Mr. Van Blarcom. I don't know that the witness has finished yet.

Q Anybody else? A I can't very well recall who else was there.

By the Court.

Q What were you known as down there, by what were you know as? A I have several nick names.

Q Is one of them Joe the Kid? A Yes, sir.

By Mr. McDermit.

Q Had you been playing a finger game in the dance hall? A Yes, sir; we had been playing a game throwing the fingers for drinks.

Q You heard about this shooting down there that night? A Yes, sir.

Q Where were you when the shot was fired, if you heard it? A On the corner of Adams and Oliver streets.

Q How far is Adams and Oliver streets away from where this dance hall is? A Close to 175 feet.

Q Who was with you there, if anybody? A James Bovino, Chick and myself.

Q You mean the defendant in this case, Bennett? A Yes, sir.

Q How long had you been on the corner before the shot was fired? A From five to ten minutes. I can't very well say.

Q How did you come to get down to the corner away from the dance hall? A Why, I was going to the toilet from the dance hall. I overheard a conversation so I followed them out. They got out of the saloon ahead of me and I followed them out and I walked down to the corner after them.

Q When you came out into the street which way did you go through? Do you recollect, through the doorway A or was it through the saloon into the street? A Through the saloon into the street.

Q Did you see anybody out there besides this Chick and Bennett? A No, sir.

Q Do you know a girl named Lucy? A Yes, sir.

Q Did you see her? A No, sir.

Q Do you know a man named Baker? A Yes, sir.

Q Did you see him? A No, sir.

Q Did you see Baker in the hallway that night or in the dance hall? A I didn't see him either until after he was shot.

Q Did you see Lucy, do you know which one is Lucy? A Yes, sir; I do.

Q Did you see her that night? A Yes, sir.

Q Before or after the shooting? A Before and after.

Q Did you see Susan Brown Clark there before the shooting? A Yes, sir.

Q And Lucy after the shooting? A Yes, sir.

Q Were both of them there after the shooting? A They were.

Q Just tell us what occurred at the corner of Adams and Oliver streets after you heard the shooting? Did you make any remarks or anybody make any remarks? A While were were standing on the corner there was a shot. Chick says, "What was that?" No, I can't very well remember who said it, but they said, "What is that, a shot?" I said, "No, it must be one of them chairs flapped together and the boys must be fooling." And one of the others said, "It must be one of them railroad bums." A few seconds after, that is a minute or so after we seen a crowd coming out of the dance hall through the hall.

Q How could you see them coming out of the dance hall from the corner of Oliver and Adams street? A Well, we seen them coming out the hall to the street.

Q A, that is on this map here? A Yes, sir.

Q Coming out through the door here? A Yes, sir.

Q Into the street? A Into the street.

Q What did you folks then do? A When we seen them rushing out, Chick says, "It must be a shot," so we walked up. When we got within ten feet of the steps in front of the saloon door, that is, within ten feet of it, why Frank Baker and Arthur Miller was with them, was taking him to the box to ring up for an ambulance.

Q What occurred when you met Miller and Baker, what took place outside there, if anything? A Why, Chick says, "Take him inside and call up an ambulance from inside," so Officer Miller says, "Well, I will hold you responsible for him," so we walked Baker into the saloon and in the meantime Arthur Miller called up for the ambulance. While

we were there we asked him who shot him. He says, "I don't know." Then, after we asked him again, he says, "Why, the special cop." He never liked me any how, so we got the special cop. Arthur Miller asked the special officer for his revolver and took the revolver and was putting it in his pocket. We asked him to open the revolver and show us the bullets and the revolver was fully loaded so Arthur Miller took the revolver and put it in his pocket. In the meantime the ambulance came down.

Q You testified, I think, in this case that you were the young man that found the bullet? A Yes, sir.

Q And described where you found it. Were you there after the ambulance had taken Baker away? A Yes, sir.

Q How long did you stay there? A I stayed there until the morning.

Q Were you arrested in the morning? A No, sir.

Q Were you arrested at any time? A No, sir.

Q Did you hear anything between Sue and Lucy after the shooting in the bar room? A No, sir.

Q Didn't hear any conversation between them? A I don't remember if I did.

Q Was anything said about the deceased, about anybody else outside of the special officer's declaration he made as to who shot him? A No, sir.

Q Did he make any claim there of any kind as to who did shoot him? A No, sir; he only accused the special officer.

Q Was Bovino or Bennett in the bar room at that time? A Yes, sir.

Q Who came in, if anybody, after Baker from the outside when he came in from the bar room after he had been shot? A Into the bar room?

Donato Colachio, cross.

Q From the street? A Why, Chick, myself, there was a whole crowd of us walked into the saloon with him.

Cross examination by Mr. Van Blarcom.

Q You had been there all the evening? A Yes, sir.

Q And sitting at this table? A Yes, sir.

Q Who sat at the table and played the game? A James Bovino, Chick Collins, myself, Tony Fresco, several others. There were fourteen of us altogether. I don't remember them all.

Q Lame Joe there? A I believe he was.

Q What is his right name? A Joseph Politto.

Q Was Serratella there? A Yes, sir.

Q That is Joe Broad? A Yes, sir.

Q How many women? A Well, one as I can remember.

Q That is Big Sue? A Yes, sir.

Q How long were you playing this game? A We played it from about half past nine to eleven o'clock.

Q Where was it you overheard this conversation? A While I was going through the door D to G.

Q Where were they talking? A From outside here from the saloon.

Q Who was talking? A Chick and James Bovino.

Q What was their story about the New York gangmen coming out? A About some brown automobile coming down to take some girl out.

Q So you wasn't in the party to look out on that score? A Well, I walked down to the corner with them, yes, sir.

Q Did you all leave the saloon together? A Yes, sir.

Q Who left first? A James Bovino and Chick.

Q Where did you meet them when you went outside? A They had not got over twenty feet away from the saloon when I walked out.

Q Walked out towards the corner? A Yes, sir.

Q You didn't walk out right after them? A Right after them, yes; that is, they were out of the door before I got out of the door.

Q Didn't you wait sometime before you went out? A No, sir.

Q Went right out? A The lead they had on me. I followed them right out. They were about twenty feet away.

Q When you heard this conversation they had a lead of twenty feet? A Yes, sir.

Q You saw them go out of the saloon? A Well, yes, while I was opening the door between D and G.

Q While you were opening the door between D and G you saw them pass out of the saloon door into the street? A Yes, sir.

Q And you followed immediately? A Yes, sir.

Q When you got outside you saw them coming towards the corner? A Yes, sir.

Q You caught up with them. Before you went out through the door did you see Lucy and Chick having a dance together? A No, sir; not as I saw.

Q Did Chick dance with her at all during that evening? A I can't very well say.

Q Did you see Chick go out of the dance hall? A We were drinking. I didn't pay any special attention whether he did or not.

Q You are a relation of Chick's? A Yes, sir.

Q And a friend of Bovino's? A Yes, sir.

Q How long have you been a friend of his? A I have known him.

Q How long is that? A Close to seven years.

Q You work where? A Belmont Square Cigar Factory.

Q How long have you worked there? A Two years and three months.

Q Where do you live? A 160 Malvern street.

Q You were a long time in the saloon after the shooting? A Yes, sir.

Q What did you stay for? A When they came down and took Chick out of the place there was nobody to take care of the place and I took care of the place.

Q They didn't take Chick out until four o'clock in the morning? A It was earlier than that.

Q What time was it? A It was around three o'clock, I should judge.

Q Why did you stay until three o'clock for? A I didn't have to go any place in particular, just stood around and kept them company.

Q Were you accustomed to staying there as late as that? A No, sir; not that late.

Q Who was there until that time in the morning? A James Bovino, Vito Colucci, Chick and myself.

Q What were you talking about? A The usual conversation, talking over the affairs that had occurred there.

Q Talking over who did it? A We were trying to find out and figure out who did do it.

Q Trying to figure it out of anything else? A No, sir; not as I can judge.

Q What time was it you walked down to the corner? A Well, when we got down, when the finger game was over about half past eleven, that is when we walked down to the corner.

Q As you came back from the corner I understood you to say that Baker and the police officer

was just coming out of the saloon? A No, they were about fifteen feet away from the saloon door.

Q They were out? A They were out.

Q This shot you heard plainly? A Like a cap shot, far away.

Q No trouble to hear it? A No.

Q Was the saloon door open, the door from the store? A Yes, sir.

Q You walked out? A Yes, sir.

Q So you saw Bovino and Chick walk out of that door? A Yes, sir.

Q And you followed right straight out? A Yes, sir.

Q There wasn't a delay of a minute, was there? A You can figure on a little delay, a minute or so.

Q They were not standing in front of the hall door, talking then? A This here occurred after, as I come to understand, when they walked down to the corner as they walked out to the saloon door they had already had the conversation with Baker.

Q You understand that, do you? A Why, certainly I do.

Q Where did you get that understanding from? A Because, Chick had told me when he came in the saloon afterwards, that Baker had said hello to him.

Q Told you when? A The same night.

Q When did he tell you that Baker had said hello to him? A The same night, the night Baker got shot.

Q How long before you walked down to the corner? A I can't say, five or six minutes, or so.

Q You were not standing outside in the hall before talking with Lucy and Baker? A No, sir.

Q You didn't see Baker at all until the shooting? A No, sir.

Q Did you see Lucy before the shooting? A Yes, sir.

Q Whereabouts? A In the hall.

Q Who was she with? A Sitting down. I don't know who she was with.

Q Bovino went out about twelve o'clock with Joe Broad? A That is something I can't very well remember. During the confusion there were so many people, I didn't know who was there and who wasn't there.

Q Did you look for a revolver in the dance hall? A Certainly, we looked for a revolver and we looked around the hall for the revolver and bullets at the same time.

Q You didn't find the revolver? A No, sir.

ARTULO SCOLA, sworn for defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 275 Adams street.

Q What is your business? A Barber.

Q How long have you been in this country? A Three years.

Q Do you know James Bennett or Bovino here? A Yes, sir.

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

Q Do you know Chick Collins, a man called Chick Collins? A Yes, sir.

Q How long had you known him? A Seven years.

Q Do you know where his place is on Oliver street? A Yes, sir.

Q Do you remember the night of April 21, 1914? A Yes, sir.

Q Where had you been that night? A On the corner of Oliver and Adams streets.

Artulo Scola, direct.

Q What time is that you were on the corner of Adams and Oliver streets? A About eleven o'clock.

Q Was there anybody else on the corner then? A Yes, sir.

Q Who? A James Bovino, Chick and Tony the Kid.

Q What corner were they on? A Oliver and Adams streets.

Q Which corner? There are four corners there. A Same corner where the saloon is.

Q Was there anybody else around? A No, sir.

Q Were you with anybody else?

The Court. Which corner is the one that the saloon is on?

Mr. McDermit. I assume on the same corner that his saloon is on.

By the Court.

Q One corner is the park? A Yes, they were not on that corner.

Q Were they on the corner, that is on the same side of Oliver street as the park? A Yes, sir.

Q That is the northwest corner of Adams and Oliver street.

Q *(By Mr. McDermit).* What corner were you on? A Opposite.

Q Were you alone or was somebody with you? A With Patsy Lafragola.

Q How did you come to meet him there, what were you doing there? A I was coming back from the moving pictures.

Q Just tell us what took place? A While I was on the corner I heard a shot.

Q What then took place? A I looked to see where that shot came from and then I saw in front of the saloon there was some people there.

Q What did you do? A Then Chick, Bovino and the other fellow ran the same way and the whole five of us were running up there.

Q You came across from the opposite corner, didn't you, on an angle towards the saloon? A Yes, sir.

Q Did you know a man named Baker, Frank Baker? A No, sir.

Q Did you know a party by the name of Susan Clark Brown? A No, sir.

Q Do you know any of these ladies over there?

The Court. Indicating Susan Clark Brown, May Gilling and Mary Weber.

A I know them now but not before.

Q Did you frequent the dance hall yourself? Did you ever go to dance? A No, sir.

Q What did you see after you got up towards the dance hall? Just tell the court and jury what took place there? A I saw people coming out of the hall there. As I went in the hall I found this man sitting on a chair.

Q You say hall, what do you mean when you say hall, where the dance was? Room A on this diagram is the hallway in from the street in through room A and through C into G, the dance hall? A Yes, sir.

Q The room B represents the saloon and this mark on the easterly side represents the door and this mark on this end represents the oyster counter and D is a room that connects up the saloon B with the dance hall G. E represents the gent's toilet with two entrances, one into the bar room, saloon, and the other into the room D. F represents the ladies' toilet off the corner of the ball room G. Take the pointer and show us on this diagram where it was that Baker, the man who got shot, was sitting down? A In the saloon.

Q A moment ago you said dance hall? A No, he was coming out from the dance hall and was sitting here.

Q Whereabouts in B, in this room, was he sitting down?

The Court. Towards the partition between A and B.

Q It is the door that enters into the saloon from the street? A Yes, sir; he was near that.

Q This is the entrance from the street into the saloon? A He was sitting right here.

Q How long did you remain in the saloon? A About two minutes. As soon as the ambulance came then I went away.

Q You were in that neighborhood from the time that the shot was fired until after the ambulance took the man, Baker, away, is that right? A Yes, sir.

Q How many people were out in the street at the time that you reached Collins' place? A I cannot say. I did not count.

Q When you started to run from the corner of Adams and Oliver street to the dance hall did you notice anybody coming out, either through the saloon or the room A? A No, night. I can't tell which way they came out. I saw people coming out.

Q Did you see in which way when you were running towards the dance hall or towards Collins' building, towards the saloon, did you see people coming out of the saloon and the hallway A? A There comes, there was so many people there.

Q About how many people were there out in the street? A Twenty or thirty people.

Q Will Officer Arthur Miller stand up? Do you know this man? A No, sir.

Artula Scola, cross.

Q Did you see him there that night? A No, sir.

Cross examination by Mr. Van Blarcom.

Q These people that came out of the saloon, did they run away? A Sure.

Q When you got to the saloon with these other three men nobody was there at all, isn't that true? A Sure, there were other people in there.

Q In the saloon, but not outside of it? A Outside and in the saloon.

Q You didn't stop outside when you arrived at the saloon at all? A Yes, I did.

Q How long did you stop outside? A Two minutes.

Q What were you doing? A Looking.

Q At what? A I was looking at the man that was shot sitting in a chair.

Q Inside the saloon? A Yes, sir.

Q I asked you when you got to the saloon door if you went outside or did you go right in? A I went right in.

Q And Chick, Joe the Kid and Bovino went right in, too, didn't they? A Yes, altogether.

Q All five of you went in together? A They went in first because they were near.

Q You went right in afterwards? A Yes, sir.

Q You first saw the man that was shot sitting in the saloon in the chair? A Yes, sir.

Q You didn't see him outside? A No, sir.

Q Wasn't this a loud revolver shot you heard? A No, sir.

Q How low was it? A I can't describe it.

Q Were you certain it was a shot? A Yes sir.

Q No question about it at all? A No, sir.

Q Was it loud or soft or what? A Not very loud. I was far from there.

Q You are a barber? A Yes, sir.

Q Have you a shop of your own? A No, sir.

Q Whom do you work for? A 280 Adams street.

Q How near is that to Collins' place? A Half a block.

Q Does Chick get shaved at your barber shop? A Once in awhile.

Q What conversation did you hear in the saloon after you went in there? A That man that had been shot.

Q What conversation was there; what talk was there? They were talking in English? A I can't understand it all.

PASQUALE LAFRAGOLA, sworn for defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 240 Oliver street.

Q How old are you? A Twenty years old.

Q How long have you lived there? A Six months.

Q You remember the night of the 21st of April, 1914? A Yes, sir.

Q Where were you that night? A I got done work and I went in the hall.

Q Do you know a barber by the name of Scola? A Yes, sir.

Q Were you with him that night? A Yes, sir; I met him on the corner.

Q What corner? A Corner of Adams and Oliver.

Q How did you come to meet him there? A I was going home that night and I met him on the corner.

Q Where do you live as to the corner? A On Chestnut street.

Q How far? A Next to the house on the corner, Chestnut and Adams.

Q How far is that away from the corner of Adams and Oliver? A One block.

Q Is Chestnut southerly from Oliver street? A Yes, sir.

Q You were on your way from where you had been to the dance hall? A Yes, sir.

Q Did you notice anybody on any other corner around there? A Yes, sir.

Q Who did you notice? A I seen Chick, Tony the Kid and Bovino.

Q What corner were they on? A On the other side of the corner.

Q On the opposite corner from where you were? A Yes, sir.

Q Did anything occur while you were on the corner with Scola? A I heard a shot.

Q Then what did you do? A I saw the three of them run over from the corner; run over to the saloon. We ran over to see what it was.

Q Who went with you? A Me and Scola.

Q What became of the other three people that were on the corner? A They ran over to the saloon before we did.

Q Were they on the corner at the time the shot was fired? A Yes, sir.

Q Positive about that? A Yes, sir.

Q What did they do? A Were talking on the corner.

Q What did they do after the shot was fired? A They ran over to the saloon.

Q How long after that did you go down? A Right after.

Q Do you know a man named Baker? A Yes, sir.

Q Do you know what business he was in? A No, sir.

Q You knew he was a special officer? A I know he was a special officer.

Q Did you know he was known by the name of Meserintino? A No, sir.

Q How long did you know this Frank Baker? A About a year.

Q Did you know a girl named Lucy? A I saw her a couple of times.

Q Know a girl known as Susan Brown Clark? A Yes, sir.

Q Had you been in the hall that night? A Yes, sir.

Q How long had you been in there? A About an hour and a quarter, hour and twenty minutes; something like that.

Q How long was it after you left the hall that you got to the corner of Adams and Oliver street? A Around ten minutes, something like that.

Q What kept you so long getting from the hall over to the corner of Adams and Oliver streets? A Took me so long?

Q Yes. How long did it take you to walk? A About two minutes.

Q How long did it take you to go back from the corner of Oliver and Adams streets to the saloon when you heard the shot? A About a minute.

Q Who did you see when you got up there? A I seen Baker was shot.

Q Where was Baker when you got there? A When I got there he was sitting on the chair.

Q Had he been on the street? A No, sir; I saw a crowd walk into the saloon.

Q How many people were there out in the street when you were there? A About fifteen, twenty.

Q When you were coming back from the corner of Adams and Oliver street, were you looking all the time there where the shot came from, looking towards Collins' place; did you? A Yes, sir.

Q Did you see anything? A No, sir.

Q Did you see whether anybody was coming in or out of there?

Mr. Van Blarcom. I object to this as leading.

The Court. Sustained.

Q You were looking towards this place all the time weren't you? A Yes, sir.

Q You testified you saw Collins and the others start for the place? A Yes, sir.

Q Was there anybody outside of the place when you got there? A There was a bunch outside.

Q How many? A I don't know? I can't tell how many was there.

Q Did you hear any conversation between Baker and those people in the saloon? A No, sir.

Q Did you see any revolvers examined there? A No, sir.

Q Did you hear any conversation between Susan Brown Clark and Lucy? A No, sir.

Q How long were you in the saloon, altogether? A Over an hour.

Cross examination by Mr. Van Blarcom.

Q Didn't you hear Big Sue say to Lucy, "You are the cause of all this?" A No, sir.

Q And you were there all the time? A Yes, sir.

Q Didn't you hear Frank Baker say, "The police officer shot me?" A No, sir.

Q Nothing like that? A No, sir.

Q You followed right in after Bovino and Chick? A Yes, sir.

Q And went in at the same time? A When I reached the door everybody was in.

Q And Chick and Bovino came up last? A No; they was before me.

Q How far ahead of you? A I can't tell how far.

Q Did you go right in back of them? A I stopped right in front of the door.

Q Did you and your friend go right in back of these other three? A Yes, sir.

Q You all started at the same time, two from one corner and three from the other? A They started before we started.

Q How long before? A I can't tell how long.

Q Why not? A I can't remember.

Q Did you run up? A No; we was walking up.

Q You walked up? A Walked up fast.

Q How long after, were you, behind Collins and his men? A Pretty near block. They run there when we start.

Q It is only 175 feet from the corner? A I don't know.

Q As soon as this shot was fired, did the three of them go immediately, Collins and his friend? A I seen them run. I don't know if they started right away or not. I saw them turn around and start to run over to the saloon.

Q What happened in the saloon when you got there? A I don't know. I went home right away; as soon as I heard somebody was shot, I went home.

Q You were in there an hour, you said? A Before; yes, sir.

Q How long were you in there when you saw Baker shot? A Couple of minutes.

Pasquale Lafragola, cross.

Q What happened when you were in there? A I didn't see nothing happen. I just see him sitting on a chair.

Q Did you hear anything said? A No, sir.

Q Why did you leave? A Why do I want to stay there.

Q Where do you work? A 109 Pacific street.

Q What is your business? A Barber.

Q Barber for yourself? A No, sir.

Q You live nearby there? A Now.

Q Live next door? A Yes, sir.

Q You go in this dance hall frequently? A Yes, sir.

Q Every night? A They ain't got dance there every night.

Q You are in the saloon every night? A When I got no place to go.

By the Court.

Q Answer the question. Did you go in there every night? A No, not every night.

Q (*By Mr. Van Blarcom.*) How many times a week? A About two or three.

Q How long have you known Bennett? A Couple of years.

Q How long have you known Chick? A Couple of years.

Q How long have you been in this country? A Ten years.

Q What time was this shot fired? A After eleven.

Q Wasn't this shot low? A It sounded like when a guy throwed some chairs on the floor.

Q Sounded like a chair, did it? A Well, it went pop. That is all we heard.

Q Did it sound like a chair? A When a guy throw a chair on the floor.

Q Who did you hear mention chair in this case? A Nobody.

Q Did it sound like a chair? A When somebody throw a chair on the floor.

Q Did you ever speak to Young Joe about this case? A No, sir.

Q Hear him say it sounded like a chair? A No, sir.

Q He told you that it sounded like a chair? A No, sir.

Q It made a little noise, a little bit of a noise? A Yes, sir.

Q He told you that it was a chair? A No. sir.

Q What did you think it was? A I thought it was somebody throw something on the floor.

Q Did you see many people come out of this hall? A Yes, sir.

Q What did they do? A Some stayed there, some went home.

Q Did any people pass you on Adams street? A No, sir.

Q They all went the other way? A They all went up Oliver street.

Q Did people that came out of the dance, did they come in the direction you came or the other way? A The other way.

Q All of them? A I can't remember that.

Q At the same time that Chick started for the dance hall, did you and your friend start? A They started before we started.

Q Your friend said that all five of you went in the saloon at the same time? A We see Chick walking in the saloon. Chick stop in front of the saloon and walked in. We followed him.

Q What happened in front of the saloon? A I don't know.

Q When you saw Chick stop in front how far away was he? A To the door there.

Q Do you know Officer Arthur Miller? A Yes, sir.

Q Did you see him there that night? A Who, Baker?

Q No, Miller, the police officer? A There was too many around, I don't think I know.

Q Did you see him there that night? A Yes, sir; in the hall.

Q Before the shot? A Yes, sir.

Q How long were you in the hall? A About an hour, over an hour.

Q You sat at this big table? A Yes, sir.

Q Who sat at this big table? A I don't remember now.

Q Who was one? A Tony the Kid.

Q Chick? A Chick.

Q Bennett? A Bennett. I don't know who else, I can't remember all.

Q Are you sure Bennett was there? A He was there before. I see him in the hall.

Q What time did you go out? A From the hall? After 11.

Q Was Big Sue at the table? A Yes, sir.

Q Lucy there? A I not see Lucy at all.

Q Do you know her? A I know her by her looks.

Q Did you know Mary Weber? A Yes, sir.

Q Was she there? A I don't remember. I never remember seeing her in there.

Q Did you go home right away when you left the saloon? A Yes, sir.

Q Did you go before the police came? A Yes, sir.

Q Do you know Mary Weber? A Yes, sir.

Pasquale Lafragola, cross.

Q Did you see her one night on Mulberry street last October? A No, sir.

Q Aren't you one of the men that threatened her in this case and told her if she went on talking about Bennett she would get shot? A No, sir; I never speak to the girl before.

Q Before what? A I never speak to the girl before since I know her.

Q You say you never spoke to her before. What do you mean by that? A I never speak to that girl at all.

Q You said you spoke to her before. What did you mean by that? A I don't explain myself good that time.

Q Then you mean to say you didn't see her on Mulberry street? A No, sir.

Q At any time last October? A No, sir.

Q Are you wrong? A No, sir.

Q Where do you live? A Oliver street, 240.

Q Who with? A Me and another guy.

Q Who is the other man? A Young fellow.

Q What is his name? A Fredo Batfardo.

Q Is he a barber, too? A No, sir.

Q (*By Mr. McDermit*). There seems to be some confusion as to the time you were in the hall. How long were you in the hall before you heard this shooting; that is, in the hall playing? How long had you been in the premises there? A I don't understand that.

By the Court.

Q How long had you been in the dance hall and the saloon before any shooting happened at all? A Over an hour.

Q (*By Mr. McDermit*). You made a response that you were there an hour. Do you mean that you

meant to say after the shooting you remained there an hour? A No, sir.

Q How long did you remain in the place after the shot? A Couple of minutes.

Q And then you left there? A I left there and went home.

Q As I understand you when you got in there Baker was in there? A Yes, sitting on a chair.

Q You mean you remained about two minutes altogether? A Something like that.

Q Did you remain there until the patrol wagon came? A No, sir.

Q You didn't remain until they took Baker away? A No, sir.

GEORGE POLICASTRO, sworn for defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 173 Oliver street.

Q How old are you? A Twenty-one.

Q How long have you lived in Newark? A All my life.

Q What do you work at? A Leather worker.

Q Who do you work for? A I was working down E. S. Ward & Company.

Q Who were you working for on the night of April 21, 1914? A Nobody.

Q Hadn't you been working that day? A No, sir.

Q What time of the evening did you go to Collins' place? A I was there in the afternoon from about four o'clock on.

Q Went in there 4 o'clock in the afternoon? A Yes, sir.

Q How long did you remain there? A Until I got arrested.

Q What were you doing between 4 o'clock and 6 o'clock? A In the bar room.

Q Doing what? A Playing cards.

Q What were you doing up to 6 o'clock there? A In the bar room.

Q You know where the dance hall is off the bar room, don't you? A Yes, sir.

Q Were you there at 9 o'clock that night? A Yes, sir.

Q Can you give us the names of some people that were there either in the bar room or dance hall at that time, nine o'clock? A In the dance hall there was Hutch.

Q Who is Hutch? A Frank Fresco, I think his name is.

Q Who else was there? A Patsy.

Q What Patsy? A Patsy the barber, we call him.

Q Who else was there? A I don't remember. There was a bunch of them in the hall.

Q Are you the boy that is known as Skinny, Joe, or the Kid? A Skinny they call me.

Q Were you sitting at this big table? A Yes, sir.

Q What were you doing? A I was playing a finger game.

Q What is that? A You throw your finger out.

The Court. I don't think the game is very interesting.

Q How many games did you play? A I played a good many games.

Q What time did you stop playing games? A About 10 o'clock.

Q What else did you do? A I stayed in the dance hall.

Q Did you do any dancing? A Yes, sir.

Q Who did you dance with? A Different girls.

Q Do you know a girl named Lucy? A Yes, sir.

Q Did you dance with her? A Yes, sir.

Q Do you know a girl named Sue? A Yes, sir.

Q Did you dance with her? A No, sir.

Q Do you know a girl named Weber? A Yes, sir.

Q Did you dance with her? A No, sir.

Q Whom did you dance with? A A girl by the name of Carrie, the last dance I had.

Q What took place there, what did you see? A While the dancing was going I seen Frank Baker walking into the hall there and Big Sue walked over and Frank Baker slapped Big Sue in the face.

Q How close were you to them? A Up the other end of the hall.

Q When the slap took place? A Up the other end of the hall.

Q What were you doing up there? A Dancing.

Q Who were you dancing with, Carrie? A Carrie.

Q Then what took place after the slap? A The shot was fired.

Q Where was you when the shot was fired? A Dancing. Here is where I was when the shot was fired. Couple of seconds after that the shot was fired I was about 10 or 15 feet away from Frank Baker.

Q Where was Sue, if you know at that time? A Why, standing right near Baker.

Q Do you know this Italian special police officer, Michael Tanzola? A Yes, sir.

Q Was he there? A I don't remember seeing him there. But he came there after the shot was fired, I know.

Q Who fired the shot? A I don't know.

Q You know Bennett here? A I didn't see Bennett in the hall the time the shooting was done.

Q How long before the shot was fired did you see him in the hall? A Between an hour and three-quarters of an hour.

Q Did you see any trouble between Sue and Baker other than the slapping? A No, sir.

Q Did Sue take hold of anybody's hand or try to keep them back from slapping Baker? A I didn't see it.

Q Was there any great rush toward Baker to assault him? A No, sir; the crowd rushed through the door to go outside of the hall.

Q Which way did the crowd rush out? A They rushed out the hall door, out of the saloon door. Here is the hall door and they rushed out through this door (indicating).

Q Show us on the map where Baker was standing at the time he was shot or the shot was fired? A Between the hall door and the window. There was a small table. He was standing right up against the wall near the table.

Q Who was along there that you recognized? A When the shot was fired?

Q Yes. A I was there, Sue was there, special officer was there, too. Couple of others was there, I don't remember just who they were.

Q Was Chick Collins there. A No, sir.

Q Was Joe the Kid there? A No, sir.

Q Sure about that? A Yes, sir.

Q Where was Lucy at that time? A Why, standing alongside of Sue.

Q Where did Carrie go? A Why, she ran out.

Q Did Baker make any remark? A Why, he passed, the crowd, he said, "Please don't tell my

mother you shot me, Sue." He said that three times.

Q Who did he say that to? A To Sue. Sue says, "You shot yourself." Frank Baker took the gun in his hand, then he dropped the gun.

Q Did he have the gun in his hand? A Yes, sir.

Q Did he throw the gun on the floor? A Yes, sir.

Q What was Sue doing? A Why, standing in front of Baker crying.

Q Was Baker on the ground at any time? A No, sir.

Q Did you see anybody throw a revolver away? A The only revolver I seen was the revolver Frank Baker dropped.

Q You know this Weber girl there? A I see her a couple of times.

Q Look at her now. She said she saw Bennett throw a revolver away on the floor there. A No, Bennett wasn't in the hall.

The Court. You are asking this witness to characterize the other witness' testimony.

Q At the time the shot was fired, you say, indicating on the map G, that you were where? Just point that out with the pointer. A I was dancing, coming down. I was about over here (indicating) when the shot was fired and they all ran out.

Q Whereabouts do you say Baker was at the time the shot was fired? A Between this hall door and the window, right about here, near the table (indicating).

Q On the westerly side of the building? A Yes, sir.

Q Did you have a chance to see from where you stood all that happened in that section as to who

was present there? A Well, who was present, there was a bunch rushing out the door. He was standing there (indicating).

Q Did you see Bennett in that bunch? A No, sir.

Q Did you see anybody get hold of Bennett's arm and turn him, prevent him from going at Baker? A No, sir; Bennett wasn't in the hall during the shooting.

By the Court.

Q Did you say during or doing? A During the shooting. An hour before the shot was fired he wasn't there.

By Mr. McDermit.

Q Did you see anybody put their hands down in their pocket and lift out a revolver while somebody held their left hand and shot directly at Baker? A No, sir.

Cross examination by Mr. Van Blarcom.

Q Where do you work? A E. S. Ward. I was working there last.

Q That is a year and half ago or two years? A Two years, I don't just remember.

Q You haven't done any work for the last two years? A No, sir; been sick.

Q Where do you live? A 173 Oliver street.

Q With whom do you live? A My mother.

Q Father dead? A No, sir.

Q Does he live there? A Yes, sir.

Q You are how old? A Twenty-one.

Q How often did you go in this dance hall? A Why every time they had a dance there I was down there, two or three times a week, four times a week.

Q Been doing that for how many years? A Two years.

Q That doesn't interfere with your health any? A I ain't able to work.

Q What time did you go in there that night? A I was in there from 4 o'clock on until I got arrested.

Q Did you go home for dinner, supper? A No, sir.

Q Did you hear any conversation between Lucy and Big Sue and Baker before this shot was fired? A No, sir.

Q First thing you heard was this slap? A When I was dancing, yes, sir.

Q Pretty loud slap? A Yes, sir.

Q At the time of the shooting where were you, facing Baker or turning the other way? A Facing Baker, coming down this way.

Q Did you have your face towards Baker at the time the shot was fired? A No, sir.

Q Why couldn't you see who fired it? A How could I see who fired the shot? I was dancing.

Q Where did the noise come from? What direction? A I don't know.

Q Was it a loud shot or not? A It wasn't so loud.

Q Was it low? A Like a revolver shoots off.

Q Was it a loud revolver shot, did it make a lot of noise or what? A It made a pretty good noise.

Q There wasn't trouble to tell what it was? You knew what it was? A I know it was a shot, somebody fired the shot.

Q Did you smell the smoke? A No, sir.

Q Did you see the smoke? A No, sir.

Q Did you see the special officer there at all before the shot was fired? A After the shot was fired I seen him coming in through the door.

Q After the shot was fired he came in through the door that you go through into the men's toilet? A Yes, sir.

Q He wasn't there when the shot was fired? A No, sir; I don't remember.

Q What men were near Baker at the time this shot was fired. A I don't remember.

Q Who was around this table playing this game? A Why, Frank Fresco, Joe, Tony the Kid, me, Jimmie was there, Sue was there, lots more. I don't remember who.

Q Joe Broad? A I don't remember.

Q Lame Joe there? A Yes, he was there, too.

Q Lame Joe and Joe Broad. You haven't seen them outside the court room? A No, sir.

Q Do they live down there in that neighboorhood? A I don't know where they live.

Q Have you seen them lately? A No, sir.

Q When did you see them last? A I seen Little Joe last week, two weeks ago.

Q Is that Lame Joe? A That is Little Joe.

Q When did you see Joe Broad last? A Two weeks ago, the time of the trial.

Q He was here? A Yes, sir.

Q What is his right name? A That is all I know him by, Joe Broad.

Q What is Lame Joe's name? A Joe Politto.

Q Who is Serratella? What is his nickname? A I don't know.

Q How many men were in the hall at the time the shot was fired? A I don't remember how many.

Q Who ran out? A I don't remember.

Q Did you see who ran out? A Why, so many ran out I don't know who they were.

Q You don't know. Did Bovino run out? A He wasn't in the hall.

Q If you don't know who ran out how do you know he wasn't in there? A I know he wasn't.

Q How do you know? A Because he said, "I am going outside," after we got done playing a couple of finger games and I didn't see him then.

Q How do you know whether he came back or not? A No, sir; he didn't come back.

Q How do you know he didn't come back? A Because I was sitting at that table.

Q That wasn't the only table in the room? A That was the only table near the door where we were playing.

Q How long had you been dancing when this shot came? A I had three or four dances.

Q How long had you been dancing when this shot came; dancing right straight ahead? A I was dancing when Sue got slapped in the face and about two seconds after she got slapped somebody fired the shot.

Q Yes, but how long had this particular dance been going on when Sue got slapped? A It was the first half of the dance.

Q About three or four minutes? A I don't know.

Q Were you paying any attention as to who came in the room and who went out? A No, sir.

Q Where did you see Bennett first after the shooting? A It was after I brought Frank Baker out in the saloon.

Q You took him out, did you? A I didn't take him out alone.

Q Who else took him out then? A I think a special cop and couple of others. We walked him outside.

Q Where was Miller, the police officer? A I seen Miller there took in the bar room.

George Policastro, cross.

Q Didn't you see him in the dance hall? A After we walked Frank Baker out he was with us, too.

Q Was Miller in the dance hall after this shot was fired? A Everybody ran in, Miller ran in the dance hall.

Q Was Miller in the dance hall after the shot was fired? A Yes, sir; he was there.

Q Was Vito Colucci, Chick's brother there? A I don't remember seeing him there.

Q Don't remember seeing him in the dance hall? A No, sir.

Q Was he in the bar room afterwards? A He was in the bar room afterwards.

Q Did you hear the conversation between Big Sue and Lucy in the bar room? A No, sir.

Q Were you out there? A Yes, sir.

Q Did they say anything to each other? A I don't know.

Q Said nothing? A I didn't hear them.

Q Where did you first see Bennett after the shot? A Just when I was getting arrested.

Q When you were getting arrested? A Yes, sir.

Q Baker was taken outside, wasn't he, after he was taken to the bar room? A The last I seen of Baker was in the bar room?

Q Didn't you walk in the bar room with him? A I walked in the bar room and stood him up against a table.

Q Didn't they take him outside? A I don't know where they took him because I got arrested.

Q Before you were arrested didn't they take him outside? A I don't remember seeing them take him outside out in the street.

Q Did Bovino and Chick come in the dance hall or the saloon? A When I was getting arrested

they were right at the door from the street, the first door in the saloon.

Q That was the first you saw them? A Yes, sir.

Q You had been out of the bar room? A Yes, sir.

Q Then, they didn't come in until the patrol wagon came? A That is when I seen them, when the patrol wagon came down.

Q That was when Frank Baker was taken away? A I was the first one taken away.

Q Were you taken away before Baker? A I don't remember.

Q You don't remember very much about this, do you? A No, sir.

Adjourned until tomorrow morning, January 27, 1916.

FOURTH DAY.

January 27, 1916.

STATE,
v.
VINCENZO BOVINO. } *Murder.*

Appearances as Before Stated.

THOMAS MISTRETTA, sworn for the defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 105 Warwick street.

Q Newark? A Yes, sir.

Q How long have you lived in Newark? A About twelve years.

Q You know where the saloon of Chick Collins' is on Oliver street? A Yes, sir.

Q Do you remember the night of the 21st of April, 1914? A Yes, sir.

Q Were you in the saloon or dance hall that night? A Yes, sir.

Q What time did you go there? A About 9 o'clock.

Q How long did you remain there? A Until about 12.

Q Were you there at the time of the shooting? A I was in the saloon at the time of the shooting.

Q What did you do, did you hear any shot fired there? A Yes, sir.

Q What did you do after you heard the shot fired? A Why, Mr. what's his name—Miller, policeman, him and I was talking; we were arguing about spaghetti matters, you know, and there was a shot fired. Miller said, "What is that?" He went back and he ran inside and I follows him in and there stood Baker pulling a gun out of his pocket and he had it in his hand and Mr. Miller held on him and he dropped the gun and the special policeman there, he picked it up and handed it to Miller. Miller said, "You are the man I want," and Baker says, "Let me go." He says, "You are the man I want," and they walked him through the hallway into the street and I remained in the hall, right in the hall into the saloon. I was afraid to budge to tell the truth. I didn't know what happened, you know, and just about a minute or so I seen Baker and Mr. Miller, James Bovino and Chick Collins and Joe the Kid, as he is known, come in to the saloon door with Miller and they stood up against the bar. As they stood up against the bar Mr. Collins said, "Give him a drink, give him a drink," and he gave him a glass of soda. As he gave him a

glass of soda this Meserintino, took the glass and he fired it up against the wall. I don't know where he hit.

Q You say Meserintino, you mean Frank Baker? A Yes.

Q What then took place? A Then Miller 'phoned up for the patrol wagon and they took him away and I stood there a minute or two, and I went home.

Q This is a map that represents the premises at 238 Oliver street. A is the hallway leading from the street into room C, which is a little room between G and A. G is the dance hall. H is the dressing room on the map on this corner, J is the stage, K is the dressing room. This blue print here, near H is a piano and this blue print here near F is a piano. F is the ladies' toilet, E is the men's toilet, D is the room that leads from the saloon to G, the dance hall. These are tables and chairs there. You know that location, very well, do you? A Yes, sir.

Q You have been in on the premises there a number of times, have you? A Yes, sir.

Q Will you just take the indicator please and point to where you were at the time the shot was fired, at the time you heard the shot? A You say this is the saloon?

Q Yes, B. A I was standing—this is the bar room—against the end of the door with Jack Miller, and this is the door that leads to the saloon in the hallway, and as the shot was fired, Mr. Miller ran in, into the hall.

By the Court.

Q Which way, in the hallway or in the dance hall? A In the dance hall that leads to the saloon into the dance hall.

Thomas Mistretta, direct.

Q (*By Mr. McDermit*). Then, he passed through the room D? A Yes, that goes into the dance hall. This is the hallway from the dance hall, I think you said, and there stood Baker right here, right in front of the hall.

Q But in the dance hall? A And in the dance hall and there stood the cop alongside of him.

Q What cop? A The special policeman. There stood Big Sue and another girl, two other girls rather in there, and a man there, rather dark complexion fellow and as Mr. Miller runs in he took this man and walked him out through the hallway that leads to the street. When he went in the street I remained in the door that leads into the saloon? I really was afraid, I stood there, I was afraid to budge. I stood there and that door was wide open and as I stood there I seen Mr. Chick Collins, James Bovino, Joe the Kid and Meserintino and Jack Miller walking him into the saloon.

Q From where? A Into the saloon that leads from the street, from the saloon door to Oliver street. The policeman there, he went to the 'phone.

Q This is the door here, this is the door of the saloon into the street. This is the hallway? A This is the door I walked in and he went to the 'phone and 'phoned for the patrol wagon and the patrol wagon came down.

By the Court.

Q The man with the dark complexion which you said stood in the dance hall, as I understand, the way you have indicated, was near the westerly side of the dance hall, is that right, near the wall on the west side, on the left, on the south as you come in? A Standing on the left-hand, yes.

Q Which way was Baker facing at that time? A He was facing when I went in the same way.

Q He was facing you? A No, he wasn't facing me, he was facing towards the hall.

Q The stage? A Towards the stage.

By Mr. McDermit.

Q How close was this special officer, this Italian special officer, to him, you say? A Right alongside of him when I got to him, just about like Baker was standing here and he was standing here (indicating).

Q Did you see any revolvers there? A Only Baker's.

Q Did you see it? A Yes, sir.

Q Where did you see it? A In his hand when he was holding it out.

Q What became of it? A I believe Mr. Miller took care of that.

Q Did you see anything of the special officer's pistol there? A No, I didn't.

Q Did you go into the saloon after these people came in from the street, Baker and Chick and Bovino? A I remained in the saloon.

Q You never went into the street at all? A No, sir; only I went home after that, I went home.

Q Who was it you said took out Baker to the street? A Mr. Miller.

Q Did you see anything of Susan Clark and a girl named Lucy in the saloon after the shooting? A They were there.

Q Did you hear anything said between them? A No, sir.

Q Who can you remember was in the hall at the time that you and the officer went in there? A Susie.

Q Outside of those you have designated, you have designated Baker and Susie? A One dark complexion fellow.

Thomas Mistretta, cross.

Q You know Bennett, the defendant here? A Yes, sir.

Q Did you see him in the hallway at that time? A No, sir.

Q Or upon any part of the premises when the shot occurred? A No, sir.

Q When you and the officer passed through room D into the dance hall did anybody pass you coming out through room D? A To room D I don't remember.

Q I think I understand that testimony, that after the shooting—is this correct—that Baker was taken by officer Miller through the doorway A into the street, is that correct?

The Court. He said that twice.

Cross examination by Mr. Van Blarcom.

Q I understand you to say that after Baker was shot he was not taken through the saloon to the street, but through the hallway? A Through the hallway.

Q You can't be mistaken about that? A No, sir.

Q Certain of it? A Pretty sure he went through the hallway.

Q You are not certain but pretty sure? A I am certain.

Q Had you been in the habit of going in that place? A Once in awhile, not very often.

Q How often? A Maybe once a week or so when they run a dance.

Q Once or twice a week? A No, sir; very seldom.

Q How old are you? A Twenty-six.

Q What is your business? A Jeweler.

Q Where do you work? A Schleckser & Wigand.

Q How long have you worked there? A I worked there for about two years.

Q Working there now? A Yes, sir.

Q Where is your place? A On Emmett street.

Q How long have you been going in this dance hall? A About two years.

Q Do you live in that neighborhood? A Just about the time I left there I lived about three years in that neighborhood; I lived next door once.

Q You did live next door? A Yes, sir.

Q How long did you live next door? A I lived there about a year or so.

Q Did you dance with the women in the back room that night? A No, sir.

Q Were you in there drinking with them? A I wasn't drinking with them, in there I was drinking by myself.

Q You went in the dance hall and sat down and drank by yourself? A Yes, sir.

Q You didn't dance? A I didn't dance.

Q What did you stay in there for? A I just stayed there drinking and watching them dancing.

Q You didn't know who fired the shot? A No, sir, I wasn't there. I was in the hall, in the saloon when they fired the shot.

Q Was it a loud shot or low? A Wasn't very loud.

Q Was the doors leading from the bar room into the dance hall closed? A I didn't notice whether it was open or closed.

Q You went in there immediately? A I went in too. I didn't notice whether the door is open or closed.

Q You heard this shot. Of course, you looked immediately towards the dance hall? A Yes, that door was closed.

Q Didn't you remember whether that door was open or shut? A That door was closed.

Q Was the door closed leading from the bar room into the hall? A This one—I don't remember whether it was closed or open.

Q Did you hear people running out after the shot was fired? A There was a few people there.

Q Did you hear people running out after the shot was fired through the hallway? A No.

Q No people went out? A Not that I heard any.

Q Where did the people go to? A After the shot was fired the special policeman took them out. A few people there; they walked out.

Q There were hardly any people in the dance hall when you went in there after the shot was fired? A There was a few.

Q How many? A About twenty-five or so.

Q Twenty-five? A About that. I should judge about twenty-five or thirty.

Q How many were there before the shot was fired? A I don't know; I wasn't in there at the time.

Q How long was it since you had been in there? A About five minutes or so.

Q Did you see Lucy that night? A Yes, sir.

Q Where did you see her? A No, sir.

Q Did you see Mary Weber? A Saw Mary Weber. I know the girls if I see them, but I don't know their names.

Q The one on the end over there (indicating)? A No, I don't remember seeing her.

Q Big Sue was there? A Yes, sir.

Q Anna Gurtler—was Anna Gurtler, that girl there (indicating)? A I don't remember seeing her either.

Thomas Mistretta, cross.

Q Do you know her name? A I don't know her name. I know by looks, you know.

Q What did you go in there for that night? A The same as usual, once in awhile, go in and take a drink, pass the time.

Q What time was it the shot was fired? A I should judge around half-past eleven or so.

By Mr. McDermit.

Q Were you arrested at any time in connection with this matter? A Was I arrested?

Q Yes. A No, sir; I was called but I wasn't arrested.

Q Called by whom? A I believe I talked to the prosecutor man, but I don't know his name.

Q Make any statement about this matter down there to the prosecutor?

The Court. You don't want to impeach your own witness.

Q Did you make any statement in writing at the prosecutor's office about this affair? A Yes, sir.

Q Do you remember who you made it to? A I really don't know the man.

Q Look at this gentleman here.

The Court. Indicating Mr. Godfrey.

A I believe it looked like him.

Q What table were you sitting at, if any, when you were drinking? A On the right-hand going in.

Q How many people were there at that table? A I was all alone.

Q Was it a big table or little one? A Big table.

Q Was it in the saloon or the dance hall? A In the dance hall.

Q How near the big table was that? A Big table?

Thomas Mistretta, cross.

Q Yes, there was one big table with twelve or fourteen people at it all the evening playing some game around there, a lot of people. A I don't play any games.

Q You don't remember that? A I don't remember anybody playing games there.

By Mr. McDermit.

Q Did you see anything of Bennett before the shot took place, the defendant? A Yes, sir.

Q Where did you see him? A Outside.

Q Outside where? A In the hall, the hallway that leads to the street and also with Chick Collins.

Q Is that in hallway A? A A few other boys there, I don't know where they are.

Q Where were they, in hallway A, where were they, going or coming? A When Mr. Baker came from across the street he came to the hallway leading to the dance. He said, "Good evening, boys," and Baker he shook hands with Mr. Collins. He said, "I am going in for a minute." And Mr. Collins said, "Sure, go ahead." I didn't go in the hallway, I went in the saloon door. I left Mr. Collins and Jimmie Bennett walking out that way towards Adams street. I don't know how far or where they went. I went in the saloon and that is the last I seen of them until they walked in the saloon with Baker.

Q How long after you saw Collins and Bovino walking towards Adams street was it the shot was fired? A Just about seven or eight minutes.

By Mr. Van Blarcom.

Q When you spoke about this to Mr. Godfrey you didn't tell him anything about seeing Bennett outside, did you? A I did, yes, sir.

Thomas Mistretta, cross.

Q Did you tell him about seeing Bovino and Chick Collins coming in the saloon? A Yes, sir.

Q Can you read English? A Yes, sir.

Q Look at this statement. First, tell me if that is your signature? A This is not my statement, I am pretty sure.

Q Is that your signature?

The Court. Answer the first question. Is that your signature, is that your name, did you write your name?

Witness. That is my name.

By the Court.

Q Did you write it? A Never remember whether I did or not.

Q The question is did you write your own name there? A This doesn't look like my writing. I can try and see. I don't believe this is my writing.

By Mr. Van Blarcom.

Q Can you read? A I can read my name.

Q Can't you tell whether that is your name or not? A That is my name.

Q You can't remember now whether you put your name there or not? A I don't remember whether I did or not.

Q But you can remember all about this affair that night? A Yes, I remember.

Q Now, read that over and see if there is anything in the statement about your seeing Bovino outside. A That is not here.

Q Why didn't you tell Mr. Godfrey about seeing Bovino outside? A I believe I did tell him.

Q You think you did tell him? A I believe I told him.

Paper marked Exhibit S. 12 for identification.

Q What were you doing outside? A I was to go home.

Q Why didn't you go home, then? A I went back to the saloon, because they said there was going to be trouble. The girls, spread it around, they had a fight in some hall and there is going to be trouble.

Q And you wanted to hang around and see it? A And when I see Lucy run and run out and the boys went out I went out myself to go home. Then I see there is only Mr. Baker and I thought—

Q You wanted to escape this trouble? A I didn't escape. I thought if anything should happen I would go home.

Q You wanted to be away if anything should happen, you didn't want to see it? A Certainly not.

Q Why didn't you go on home? A Because, I only see Mr. Baker.

Q You saw Mr. Baker come in and you knew there was trouble between Lucy and Big Sue? A No, that trouble, the girl told me she had a fight at the hall.

Q You heard about the gunmen coming down? A No, sir.

Q What was it you heard? A The girl told me she had a fight in some hall and some fellow is going to come down and hit me.

Q Some fellows is coming down to hit a girl, is that it? A Yes, sir.

Q Wasn't Frank Baker coming down to hit Big Sue? A Not that I know of.

Q You hadn't heard of any trouble between Baker and Big Sue? A No, sir.

Q You had been in the dance hall all the evening and you hadn't heard of any trouble between Lucy and Big Sue? A No, sir.

Q Is that true? A Yes, sir.

Q You say you had been there since 9 o'clock? A Since 9 o'clock.

Q You hadn't heard any argument between these women? A Yes, sir.

Q And then you say Lucy ran out and then you went out? A Yes, sir.

Q Who was outside when you heard it? A Chick Collins, Jim Bennett and a few other boys.

Q Who were they? A I can't remember.

Q Why can't you remember them as well as Chick Collins and Jim Bennett? A I don't know. They went outside and stood around and then in the hallway to the saloon there, and that is all.

Q Where did these boys that you mean come in from? A They were inside.

Q Inside of where? A In the hall.

Q How did they get out? A They followed them.

Q Through where? A Through the hallway.

Q You saw these men all walking through the hallway when you were in the bar room? A I wasn't in the bar room.

Q Where were you? A I was in the hall myself, first.

Q You were in the dance hall? A Yes, sir.

Q You didn't walk out to the saloon? A No, sir.

Q When these people walked out they were not in the bar room at all, Chick Collins and Bennett were not in the bar room when they walked out to the street? A When Chick Collins—they were in the dance hall and they walked through the hallway, too.

Q You are pretty sure about that? A I am pretty sure.

Q Are you sure they went out the hallway? A The hallway.

Q Sure about that? A I am pretty sure.

Q You are pretty sure now. What is it, do you know anything about it at all? A I told you what I know about it.

Q You told us you followed them out through the hallway. Is that true or not? A They went out and I went out right after them.

Q Is that true, you followed them out right through the hallway? A The hallway.

Q Can't you answer that question? A They went out through the hallway and I followed them.

Q That is true? A Yes, sir.

Q They didn't go through the bar room? A Not that I remember. I don't remember them going through the bar room.

Q You just told us you followed them out through the hallway, so they must have gone that way? A When I went out?

Q Answer one question at a time. Is it true or not you followed them through the hallway to the street? A That I followed them?

Q Yes. A They were right in front of me. They went out. They made a break to go out and just as they made a break to go out I went out myself, and when I got in front of the door I seen them.

Q You got in front of the door leading into the street? A In front of the doorway leading into the street.

Q And then they never went back into the bar room until you saw them coming down towards Adams street, is that right? A Yes, sir.

Q In this statement you never told Mr. Godfrey anything about that? A I believe I did tell him. I don't know whether I did or not.

Q At all events, if you didn't tell him, you saw it of course? A I saw it.

Q Then, you went back in the bar room and who was there? A Why, Mr. Miller, he just going out.

Q Where was Vito? A I don't remember seeing him.

Q Was he in the bar room? A I don't remember seeing Vito.

Q Was he there when the shot was fired? A In the bar room?

Q Yes. A I don't remember. I was sitting talking to Mr. Miller.

Q That was Chick's brother, Vito? A Yes, sir.

Q He was a waiter that night? A Yes, sir.

Q You don't remember seeing him in the bar room? A No, sir.

Q Did he come in right with you and Mr. Miller when the shot was fired? A He wasn't right after me and Mr. Miller. I was right in back of Mr. Miller and I don't know whether anybody else came in there or not.

Q You didn't hear anybody run out when the shot was fired in the hallway? A No, sir.

Q What was said about this when you were there? A When Mr. Baker came in?

Q Yes. When Baker appeared what was the conversation? A He just came in. He came from across the street. He said, "Hello, boys." We said, "Hello." He shook hands with Chick and then he said, "I am going inside for a minute," and Chick said, "Go ahead."

Q What else did he say? A That is all I heard.

Q Are you certain about that? A Yes, sir.

Q You was there all the time until they walked down towards Adams street? A Until they walked down towards Adams street.

Q All that was said was "Hello, boys," and Baker said, "I want to go in," and he went in? A Yes, sir.

Q Was Lucy there? A Lucy came after him.

Q And nothing else was said? A Nothing else that I heard.

Q You heard everything that was said there? A That is all he said, that is all I heard.

Q That is all Lucy said? A Lucy didn't say anything.

Q Did Chick say anything? A He said, "Hello, hello, how is the business?"

Q That is all he said? A That is all.

Q What did Bennett say? A I don't hear him say anything.

Q So nothing was said, about "What are you afraid of?" A No, sir.

Q Nothing was said about Big Sue being in there? A No.

Q Bennett didn't say to Lucy, "Don't be afraid to go in, nobody has bothered you?" A Not that I heard. That is all I heard him say, because it was real late and then, they went in.

Q What about Lucy? A That is all I heard.

Q You were standing right there? A I was standing right there.

Q Stand up, Mr. Miller. Is that the police officer you mean? A Yes, sir.

The Court. Referring to Joseph Arthur Miller?

Q You were talking to him that night in the bar room? A I was talking to him at the time.

VITO COLUCCI, sworn for defense.

Direct examination by Mr. McDermit.

Q You remember the night of April 21, 1914, when the trouble was down there at the dance hall? A Yes, sir.

Q What were you doing there that night? A I was the waiter of the place.

Q What time did you go on duty? A Eight o'clock in the evening.

Q How long did you stay there? A Stayed there until 4 o'clock in the morning.

Q Did you hear anything about the shooting while you were there, did you hear the sound of the shot? A I was in the bar room at the time of the shooting.

Q This room, bar room, designated by B on the map here diagramed as the premises, this mark here indicates the door, this entrance here is the entrance from the street to the saloon, this place I am pointing to you, I am indicating is the door leading out into A, the hallway; this represents the double doors leading to room D, the room D being between B and G. This represents the door going into there (indicating). You were serving drinks there? A Yes, sir.

Q You know Officer Miller? A Yes, sir.

Q Joseph Arthur Miller, was he there that night? A Yes, sir.

Q What part of the bar room were you in when you heard this shot. A I was standing right there.

By the Court.

Q At the corner of the bar? A Yes, sir.

Vito Colucci, direct.

By Mr. McDermit.

Q Where had you come from; had you been into the dance hall? A No, sir; I was outside first and then I went into the bar room and I had a tray of empty glasses and I put them in front of the bartender.

Q Somebody else was working there that night, the bartender? A Yes, sir.

Q What was the bartender's name? A Joe Pepe.

Q How long had he been working down there? A About two years.

Q How long after you heard the shot was it you went to the dance hall, if you went to the dance hall? A We went right in.

Q Who went right in? A Myself, Arthur Miller and Tony Fresco.

Q What did you find when you got into the hall? A I seen Frank Baker standing there, the special, and Sue Clark, Anna Gilling and Lucy.

Q What part of the dance hall? Just show the jury in room G where these people were standing? A Right about there (indicating).

Q Indicating the westerly wall of the dance hall and near the door of room C leading to the dance hall? A Yes, sir.

Q Just tell us what you saw there; just tell us what took place when you got in there? A When we went in I heard Frank Baker say, "I am shot," and somebody said that he shot himself, so he draws the gun out of his pocket and it drops on the chair.

Q Well, who got possession of that gun, if anybody? A I don't very well remember who picked it up.

Q Who was it that was standing? You say Lucy, Sue and who else. A Special officer.

Q What was the special officer doing there, if anything? A I don't remember just what he was doing.

Q Did he do anything? A He was trying to find out who done the shooting.

Q Did the special officer have a gun himself or a revolver? A I don't get you.

Q Did the special officer have a pistol, a revolver or gun? A He didn't have none in his hand at the time.

Q Did you see any revolver or gun in the possession of the special officer afterwards? A After we went in the bar room Arthur Miller asked for his gun.

Q When who went into the bar room? A When they brought Frank Baker into the bar room.

Q You say brought him in, brought him in from where? A Out from the hall into the bar room.

Q Who else was in the hall at the time you went in there? A People dancing, but I don't just remember who they were.

Q Do you know James Bennett, or Bovino, here? A Yes, sir.

Q Did you see him in the dance hall when you went in there? A No, sir.

Q When did you last see Bovino, if you saw him at all, before the shooting? A About 11 o'clock.

Q Where? A In the dance hall.

Q How long was that before the shooting that you saw him in the dance hall? A Why, we were outside before the shooting.

Q Who was outside before the shooting? A James Bovino, Tony Colucci and Tony Gratch, and I was standing out there with them?

Q Where? A In front of the bar room.

Q You mean in the street or in the door? A Out in the street in front of the saloon.

Q What were they doing out there? A I don't just know what they were doing. I know they were talking there for awhile and I seen them go toward the corner and I went inside.

Q Did you see Mr. Baker come there that evening? A Yes, sir.

Q Where were you when you saw him first? A Outside.

Q Was he alone or anybody with him? A No, sir, had Lucy with him.

Q Did they go into the building, Lucy and Baker? A Yes, sir.

Q How did they go in? A Through the hallway.

Cross examination by Mr. Van Blarcom.

Q How long have you worked there? A I don't very well remember how long I worked there. It was only during the evenings.

Q Do you work anywhere else? A Yes, sir.

Q Whereabouts? A For the Board of Works.

Q How long have you worked for the Board of Works? A Two years.

Q From when, from now or in April, 1914? A From April, 1914.

Q How old are you? A 21.

Q Were you working for them when you were about 17 years old? A Yes, sir.

Q What were you doing? A No, sir; I wasn't working with them when I was 17 years old.

Q You said you worked for them two years prior to April, 1914; were you working for them at all in April, 1914? A I was working for the brother for the Board of Works.

Q What is that? A I was working for my brother then for the Board of Works, with a hired wagon.

Q You were the driver? A Yes, sir.

Q Are you married? A No, sir.

Q Where do you live? A With my parents, 116 Auburn street.

Q Tony Gratch lives here? A Yes, sir.

Q In the same place that you do? A He lived there at one time.

Q How many other witnesses in this case live there? A No one but myself.

Q Who was in the saloon when the shot was fired? A Well, there was the bar attender, myself, Tony Fresco and Arthur Miller.

Q Anybody else? A I don't remember anybody else.

Q Who ran in the dance hall? A Arthur Miller, myself and Tony Fresco.

Q Who was outside the door when you saw Baker and Lucy go in? A James Bovino, Tony Colucci and Tony Gratch.

Q That is all? A Yes, sir.

Q Sure about that? A Yes, sir; that is all I seen out there.

Q Do you know Thomas Mistretta, or something like that? A Yes, sir.

Q Was he there that night? A He was there in the evening, but I don't remember where he was afterward.

Q Was he outside talking to your brother and you? A I don't very well remember.

Q Was he in the bar room at the time the shot was fired? A I didn't see him.

Q The bar room is a little room, isn't it? A Sir?

Q No trouble to see everybody in the bar room? A No, sir.

Q Only three or four people in there at this time? A Yes, sir; that is all I seen.

Q Had you seen him at all there that night? A Yes, sir.

Q When? A During the evening.

Q Before this thing happened at all? A Yes, sir.

Q What time did he go home? A I don't remember.

Q Why did you go outside? A Because it is kind of warm, there was nothing doing in the place and I thought I would go outside for awhile.

Q Just happened to go out, that is all? Had you heard the story about the gunmen coming to clean this place up? A No, sir.

Q Wasn't there such a story going around? A Not that I heard of.

Q Didn't you hear that story? A No, sir.

Q Hadn't your brother told you anything about it? A No, sir.

Q Hadn't you heard Bennett talking about it? A No, sir.

Q Didn't Lucy say anything about it? A Not that I heard.

Q You hadn't heard a thing about it? A No, sir.

Q What were you talking about in front there? A I wasn't talking with anyone.

Q Who was talking? A I don't remember who was talking.

Q What did Baker say when he came up? A He says, "Hello" to Chick and "Hello" to the boys.

Q Anything else? A No, sir; didn't say nothing else.

Q Did Lucy say anything? A I don't remember.

Q Did Bennett say anything? A No, sir.

Vito Colucci, cross.

Q Did Chick say anything? A I don't remember about what they said.

Q How near were you standing to these people? A Right in front of the door.

Q The saloon door? A Yes, sir.

Q How far away from them were you? A About four feet away.

Q You had no trouble to hear what was said, did you? A No, sir.

Q Isn't it a fact that Lucy said she was afraid to go in? A Didn't hear her say it.

Q Didn't Bovino say, "Don't be afraid to go in, nobody ever bothered you?" A I don't know about that.

Q Was anything like that said? A I don't know.

Q Did you hear it? A No, sir.

Q Why didn't you stay outside? A Well, my business was inside.

Q When Baker and Lucy went in you got an idea your business was inside? A Well, I went in the bar room then.

Q What for? A I had a tray of empty glasses and I put them in front of the bar attender and told him to wash them.

Q Did you carry those out in the street with you? A No, I left them on the bar first.

Q You suddenly thought about those glasses? A Not suddenly, I just thought I would go in.

Q Had you heard about any trouble between Big Sue and Lucy that night? A No, sir.

Q Nothing at all? A No, sir.

Q Had you heard about any expected trouble between Baker and Big Sue? A No, sir.

Q As far as you knew, everything was perfectly calm and lovely in the dance hall? A Yes, sir.

Q Just a coincidence that at the same time Lucy and Baker went in you went in? A Yes, sir.

By Mr. McDermit.

Q Do you know what coincidence means? A No, sir; I don't get you right.

By Mr. Van Blarcom.

Q Was it just by chance that you went in the same time that Lucy and Baker went in? A I didn't go in the hall the time they went in.

Q You say you didn't go in the hall? A No.

Q It was just by chance you went in the bar room the same time that Lucy and Baker went in the hall? A Just happened to go in the bar room.

Q And your brother and Bovino just happened to walk down to the corner the same time? A They were fifty feet away from me when I went in the bar room.

Q What did they go down to the corner for? A Something I can't tell you.

Q Did you hear what they were going down for? A No, sir.

Q Who went down? A James Bovino, Tony Colucci and Tony Gratch.

Q You were up in the bar room until 4 o'clock that night? A Yes, sir.

Q What were you talking about with Gratch, Chick, Joe the Kid? A I wasn't talking about anything. I fell asleep at the table.

Q Before you fell asleep what was said? A We were thinking about how such a thing could happen.

Q Talking it over, weren't you; talking the case over, weren't you, what had happened? A We wasn't talking it over, just wondering who could ever done it.

Q You were talking it over, weren't you? A I didn't stay there to listen a whole lot about it because I fell asleep.

Q You made a statement to the police, didn't you? A Yes, sir.

Q Two days after this happened? A Yes, sir.

Q Were you asked to tell anything you knew about the case? A I don't remember. I know I answered everything they asked me.

Q Did you tell the police that you had been outside with your brother, Bovino and Joe the Kid? A I don't remember very well.

Q Is this your signature? A Yes, sir.

Marked S. 13 for identification.

Q Did you see your brother and Bovino go out of the hall to the street? A Did I see them go out?

Q Did you see them go out when they were standing there talking to you in front? A No; I just happened to go out, and they were out there.

Q They were out already? A Yes, sir.

Q You didn't know whether they went out through the bar room or through the hall? A No, sir.

TONY FRESCO sworn in behalf of defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 245 Adams street.

Q How long have you been in this country? A Twenty-two years.

Q Are you married or single? A Married.

Q Do you remember one night in April, 1914, being at Chick Collins' place? A I do.

Q Do you recall the hearing of shooting at the place, were you there that night? A I was.

Q What time in the evening did you go there? A Nine o'clock.

Q What time did you leave there? A I left there about 12 o'clock.

Q Do you know Jim Bennett, or James Bovino, the defendant? A I do.

Q How long have you known him? A About five years.

Q Do you know Colucci, who was known as Chick Collins, the proprietor of the dance hall? A I do.

Q How long have you known him? A Since I was a boy.

Q Known him a good many years? A I do.

Q You and he live in the same neighborhood? A I do.

Q Tell us what you know about what took place there that night? A Well, I was in the bar room. We was playing a game. We was in the dance hall playing an Italian finger game. Then, we got through and I went into the bar room; we was all through with the game and I went into the bar room and there was Miller there and another fellow.

Q What Miller? You say there was Miller there; you mean Mr. Miller, the police officer? A The police officer, in the bar room, taking a drink, and all at once we heard a shot and we ran in.

Q When you got in the hall, what did you see? Just explain in your own words what you saw in there and what was said. A I ran in, I ran alongside, on the right hand side of Frank Baker, on the right side of him; that is all I seen, and they got him in the bar room; that is all I seen.

Q Did you see any gun there? A No, sir.

Q Did you see any pistol at all? A No, sir.

Q Did you see any pistol in the bar room or any gun in the bar room at any time? A I don't remember seeing it.

Q Did you see Officer Miller take the gun away from Baker or away from the special officer? A I don't remember seeing him.

Q Do you remember seeing Sue or Lucy in the bar room at any time after the shooting? A I don't remember them. They were inside, but I don't remember who else was there.

Q Was Bennett in the bar room at the time that you went in after the shooting there? A No, sir.

Q How do you know that? A Because I went in; I didn't see him there.

Q Was Chick Collins in there? A No, sir.

Q When had you seen Bennett before that? A After we got through playing a game I went in the bar room; I didn't see him.

Q Do you know who did that shooting down there? A No, sir.

Q How many people were in the bar room at the time that you heard the shot? A I don't remember now how many was in. There was a few of us in there, but I don't remember.

Q Were you scared that night? A Well, why should I be scared? I wasn't doing anything.

Q Were you frightened? A I went in, and I don't know who it was. I wasn't frightened because I didn't know nothing.

Q How did the shot sound to you; was it loud or low or how? A It was a pretty loud shot.

Q Did you see the patrol wagon there? A No, sir.

Q Didn't you see the ambulance there? A Oh, yes; I remember seeing the ambulance there.

Tony Fresco, cross.

Q Did you see Baker go away from the saloon to the ambulance? A I stood inside in the bar room.

Q Was there much of a crowd in the bar room there? A Quite a few of us.

Q How many? A I don't remember how many there was; I should say about ten or eleven.

Q Were you there at all that night? A In the bar room?

Q Yes. A I was.

Q How long were you in the bar room? A As soon as the patrol went away then I went home.

Q What time did the patrol go away? A I don't remember the hour now.

Q What time was the shooting that you heard? A I don't remember what time it was.

Q You don't seem to have much of a recollection of that night? A I don't remember.

Cross examination by Mr. Van Blarcom.

Q What were you doing there? A I went there to play a game of cards.

Q What time did you come? A Nine o'clock.

Q Were you married at that time? A No, sir.

Q How long have you been married? A Five or six months.

Q Married an Italian girl? A Yes, sir.

Q Who helped Baker out of the dance hall after he was shot? A I don't remember who helped him. I seen Miller and a special officer.

Q Take him out in the bar room from the dance hall? A Yes, sir.

Q You testified in the last trial here, didn't you? A I was.

Q Did you testify at the last trial that you saw Chick and Jim Bennett and Arthur Miller take

Baker from the dance hall to the bar room? A What is it?

Q (Question read). A Yes, sir.

Q Is that true? A As I seen.

Q You saw it? A Yes, sir.

Q When did Bennett and Chick come into the dance hall? A Dance hall?

Q Yes. A Why, after Baker was taken in the bar room and then they come in.

Q You said a minute ago you saw Chick and Bovino and Miller take Baker from the dance hall to the bar room? A No, I thought you meant to the front door.

Q (Question read). "Did you testify that you saw Chick and Jim Bennett and Arthur Miller take Baker from the dance hall to the bar room? A No, sir.

Q Baker taken out into the street? A I don't remember.

Q You were there, weren't you? A I don't remember him going out.

Q He didn't go out? A I don't remember.

Q Did you hear any conversation between Lucy and Big Sue in the bar room? A No, sir.

Q Did they say anything? A I don't remember listening to them say anything.

Q Were you there at all? A I was.

Q Who was out in the bar room when the shot came? A There was me, Miller was standing at the other end of the bar talking to another fellow, and I was on this other side of the bar.

Q Who was there? I don't care where they were standing. A I don't remember who was there.

Q How many people were in the bar room at the time this shot came? A Three or four of us.

Q Can't you name them? A I don't remember who they was. I know it was Miller and another fellow talking at the end of the bar. I don't know who it was.

Q Was Vito there? A He was a waiter. He was coming in.

Q Coming in from where? A From in the dance hall.

Q He was coming out of the dance hall? A Yes, but he was there, he was a waiter.

Q Where was he when the shot was fired? A He was in the hall, in the bar room.

Q Are you sure about that? A I know I was there.

Q I am not talking about whether you were there, I want to know whether Vito was in the bar room when the shot was fired? A Vito was in the bar room.

Q Was he? A Yes, sir.

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

Q Do you know Thomas Mistretta? A Yes, sir.

Q Was he there? A Yes, sir; he was talking with Frank Miller, the officer.

Q Have you talked with him outside this morning? A No, sir.

Q Have you seen him outside this morning? A Out here?

Q Out in the hall, right out of the court room? A Not to talk to him.

Q Have you seen him outside this morning? A I did see him.

Q And yesterday? A No, sir.

Q You haven't spoken to him, have you? A No, sir.

Q Why not? A Speak about what?

Q Talk about everything else but this? A Yes, sir.

By Mr. McDermit.

Q Did you see anybody throw a glass there at Baker? A I don't remember.

ELEANOR BOVINO, sworn in behalf of defendant.

Direct examination by Mr. McDermit.

Q You are the wife of the defendant here, James Bovino? A Yes, I am.

Q You have been married to him since the trouble at the dance hall? A Yes, I have.

Q Do you know James Bell, the detective there? A Yes, I do.

Q You remember having a conversation with him at police headquarters, you remember hearing a conversation at police headquarters at the time of the first arrest of your husband between your husband and Bell? A Yes, I do.

Q Did this conversation take place: Bovino said, "How does Baker say I shot him," and then did Bell say, "Baker didn't say you shot him but that you knew who shot him?" A Yes, he did say that.

Q Positive about that? A Positively sure.

Cross examination by Mr. Van Blarcom.

Q Where did that take place? A At police headquarters.

Q When? A On a Saturday afternoon, the same week as the shooting.

Q What date was it? A I don't know what date it was.

Q How long have you been married? A Since last June.

Q What was your right name before you were married? A Eleanor Cunningham.

Q Was it Conroy? A Cunningham.

Q Were you known under the name of Conroy? A Yes, I was.

Q I understand you were engaged in prostitution before you were married? A Never since I have been with Bovino.

Q How long before you were married to him? A Never for a whole year I wasn't.

Q Before you married him? A No.

Q You were living with him before you married him, weren't you? A Yes, but I was never subject to prostitution while I was with him.

Q Never subject to it? A Whatever you call it.

Q What are you living on now? A I have work.

Q Whereabouts? A 149 William street.

Q Who for? A For Mrs. Skipp.

Q How much work do you do there? A About four days a week.

Q That is all you have to live on? A What I can't get from my expense, I get it by my father-in-law.

Q Where were you living at the time of this shooting? A On Union street.

Q How long had you lived there? A I can't tell you that, I don't remember how long.

Q Living with Bovino at that time? A No, I wasn't living with him, no.

Q You weren't living with him at the time of the shooting? A I never really did live with him.

Q What do you mean by that? A I never lived with him, but he often came to see me.

Q Did you ever live on Cottage street? A Yes, I did.

Q When? A That is over two years ago, I can't remember when it was.

Q What did you live on after you were married? A He was working.

Q Where? A He took up the census, and he was working in New York.

Q Whereabouts in New York? A I don't know the name of the street; anyway he was a driver.

Q How long did he have this job? A Quite awhile. He had it all the time. He was working since we got married.

Q He was always a steady worker? A Yes, sir.

Q Before he was married and after? A Yes; he was always working when he was with me.

DONATO COLUCCI, recalled by Mr. McDermit.

Direct examination by Mr. McDermit.

Q At the time of the first arrest did you ask Officer Miller or Sergeant Bell to take you and Jimmie Bennett up to see Baker? A Yes, sir.

Q Did he say to you in response to your request, "There is no use, Chick, of taking you and Jim up to see Baker. He doesn't accuse any of you." Did he say that? A That is just what he said.

Cross examination by Mr. Van Blarcom.

Q When was that, Chick? A That was the following day, that was on the 22d of April.

Q Before he died, wasn't it? A Before he died; yes, sir.

ANGELINA SCRIA, sworn through the interpreter in behalf of the defendant.

Direct examination by Mr. McDermit.

Q Where do you live? A 275 Adams street.

Q Is that on the corner of Adams street and Oliver street? A Yes, sir.

Q You know James Bennett here, James Bovino? A Yes.

Q How many years do you know him? A Since the time I came to this country.

Q Do you know Chick Collins? A Yes.

Q Do you remember the night of February 21, 1914? A Yes, sir.

Q Are you married? A Yes, sir.

Q Any family? A Yes.

Q What floor of this corner house do you live on? A The top floor.

Q Do you remember that night whether your husband was home or not? A No, he wasn't home.

The Court. How is this relevant.

Mr. McDermit. Just to show the circumstances while she was waiting.

The Court. Yes, you can ask her as to the night of February 21st.

Q What night are you talking about? A What question you asked me, I am answering your question.

By the Court.

Q What night do you refer to? A Whatever you asked me I answered you.

Q (Question repeated). A You didn't mention any evening or night. Whatever question you asked me I answered you.

Angelina Scria, cross.

By Mr. McDermit.

Q Do you remember the night of the trouble at Collins' hall on Oliver street? A Yes.

Q Where were you that night? A At the window.

Q What did you see, if anything? A I didn't see anybody, only I saw three persons talking.

Q Who were they? A Chick Collins, Jimmie and another young man. I did not know him.

Q Where were they talking? A On the corner where the coffee house is.

Q How long did you see them there? A As soon as I looked out the window I saw them.

Q Did you hear anything? A After awhile they were on the corner I heard a shot fired.

Q What did they do after the shot was fired? A After they heard the shot they turned around and they ran toward the saloon.

Q Why were you at the window so late at night time for? A Nothing; I was waiting for my husband.

Q How do you know that was a shot? A Think I am a baby?

Mr. McDermit. I ask to strike that out.

The Court. Tell her to answer the question how she knows it is a shot, and not to ask questions.

A Don't you think I heard shots before? I heard many times shots.

Cross examination by Mr. Van Blarcom.

Q Lots of shooting down in that neighborhood? A No, I heard many shot 4th of July.

Q Was it a loud shot you heard that night or a low shot? A Not very loud.

Q No trouble to tell what it was away down to the corner of Adams street? A Sure, I imagine so.

Q Was there any doubt in your mind about this being a shot? A Sure, I imagine right away it is a shot.

Q What time was it? A I don't remember what time it was; 11, half past 11 or midnight.

Q What were you sitting up for? A I was waiting for my husband.

Q What for? A Don't you think the wife has to wait for the husband?

Q Do you always wait up for your husband when he goes out? A When I felt like waiting for him I did, and when I didn't I didn't.

Q That night you felt like it? A Yes; I was sewing there and I waited for him.

Q What time did you start to sew? A After supper right away.

Q What time did you have supper? A Half past five, when my husband came home.

Q Then you started to sew and you sewed until this shot came; is that right? A No; I felt sleepy.

Q What did you do when you felt sleepy? A I looked out of the window.

Q Then you say those three men standing on the corner? A Yes, sir.

Q Who were they? A Jimmy, Chick and another man. I don't know who he was.

Q You didn't know Tony Gratch? A I know now, after they told me, but I did not know then.

Q Who told me? A Everybody, because I know him; he is a neighbor of mine.

Q Who is everybody that told you? A All the people; all the population.

Q What did they tell you? A They asked me who were the three fellows on the corner. I said

I only know two fellows, Jimmie and Chick, and then they mention this one's name.

Q Then everybody told you Tony Gratch was the third one? A Yes, sir.

Q Name one person that told you Tony was the third one. A It was a woman, women talking together.

Q Who were they? A I don't remember these things.

Q Don't remember the name of anybody that told you, do you? A No, I don't remember; they were talking.

Q You live on the third floor, don't you? A The last floor.

Q Is that the third floor; is the building three stories high or two? A Three.

Q You lived on the third floor? A Yes.

Q Right at the corner? A Yes.

Q Were these men standing on the same corner as your house or on a different corner? A No, where the coffee house is.

Q Is that straight across the street from where you live? A Yes.

Q Did you see anybody else running toward Chick's place except these three men? A When the shot was fired these three people started to run, and other people passing by them started to run also.

Q How many people? A I didn't count them.

Q Did you look out of your window? A Yes, I did, but then I went in.

Q What did you see when you looked out? A When I saw these people going in the saloon I got frightened and I went in the house.

Q Did you watch Chick go in the saloon? A Yes.

Q Did you see Bennett go in? A Yes.

Anna Gurtler, direct.

Q How long did they stop outside before they went in? A Nothing, they went right in.

Q They didn't stop outside at all? A No.

Q Sure about that? A Yes.

ANNA GURTLER, recalled for

Further direct examination by Mr. McDermit.

Q When you were sworn as a witness before in the court room I asked you some questions. Among the questions I asked you was this question: "Who did the shooting?" And the answer was, "I don't know." Didn't you so testify at the trial before Judge Martin several weeks ago? A No, sir.

Q You did not. This question, "What?" "A I don't know who done the shooting, but the gun—the shot was thrown and the gun was fired on the floor—it was dropped." Didn't you testify to that? A The gun was dropped; yes, sir.

Q Didn't you testify in this language just as I have used it here?

By the Court.

Q The question is not what the fact is, but the question is, did you say in answer to this question the answer that has been read to you? Did you say that at the other trial, two weeks ago? A I said, I seen the gun dropped on the floor.

Q Did you say precisely what has been read to you? A Read it over again.

By Mr. McDermit.

Q The first question is, "Who did the shooting?" and the answer is, "I don't know." Did you make such a response as that at the last trial? Did you answer that way? A No, sir.

Q And then did I put this question to you, and did you answer as follows: "I don't know who

done the shooting, but the gun—the shot was thrown and the gun was fired on the floor—it was dropped." Did you use that language.

By the Court.

Q Were you asked that question, and did you give that answer? Did you give that answer the same as it is here? A Yes, sir.

By Mr. McDermit.

Q The next question was asked you, "Who fired the gun on the floor or dropped it?" And the answer is, "I couldn't tell." Did you give that testimony, or didn't you, in the other trial?

The Court. The question ought to be specifically, "Were you asked that question, and did you give that answer?"

Q Were you asked that question, and did you give that answer?

The Court. Answer yes or no.

A I said I didn't know.

By the Court.

Q Answer the question, yes or no. Were you asked that question, and did you give that answer? A What is that?

By Mr. McDermit.

Q "Who fired the gun on the floor or dropped it?" That question was asked you at that trial and the answer is, "I couldn't tell." Did you make such an answer? A No, sir.

Q That isn't so? A No, sir.

Q And then another question was put to you, "What?" And the answer was, "I don't know." Did you make such an answer as that to me, was the question put to you, and did you make such an answer? A What is that?

Q I said to you, "What?" and the answer you said, "I don't know." Did you make such a reply as that? A I don't know who done the shooting.

Q Yes. Did you? A I don't know if I did or not.

Q Did you make this answer or response to a question put to you at the other trial? "Did she talk to anybody," that means Big Sue, "when she sat down," and then this answer, "She spoke to somebody; I don't know who." Was such a question put to you, and did you make such an answer? A No, sir.

Q Now, then, this question: "Now, who was it that dropped this gun?" "A I don't know who dropped it." Did you make such an answer in response to the question I have just read? A I said I didn't know who dropped it.

Q You did say that?

The Court. Answer the question, yes or no.

Q Did you say, "I don't know who dropped it." A Yes, sir.

Q And in response to a question from the Court, the Court said to you: "Did you see who dropped the gun?" and did you make an answer, "No, sir?" A Yes, sir.

Q "When did you tell that to Mr. Godfrey?" "A Mr. Godfrey has got my statement?" Do you remember that question and answer at the last trial? A No; I gave Mr. Godfrey—

Q Do you remember that question and answer at the last trial? Did you make such an answer? A What is it?

Q "When did you tell that to Mr. Godfrey?" "A Mr. Godfrey has got my statement."

The Court. How does that contradict anything she said?

Mr. McDermit. I am giving her the benefit of what follows it.

A No; I never gave that thing to Mr. Godfrey.

By the Court.

Q No; that is not the question. Did you answer that way at the other trial?

By Mr. McDermit.

Q Did you? A I don't remember.

Q The next question, "Yes. He told you if you didn't tell the truth he would lock you up, didn't he?" A Yes, sir." A He said—

Q Did you testify at the last trial that way? A Yes, sir.

Q "When did he tell you he would lock you up if you didn't tell the truth today?" And you answered this: "This is the truth—nobody told me the other time—if I wouldn't tell the truth on the jury I would get locked up." A At the time I made my statement?

Q Did you answer that question that way at that time? A Yes, sir; if I would not say the truth I would have been locked up.

The Court. What does that contradict?

Mr. McDermit. It doesn't contradict anything.

The Court. The question you asked this witness was whether or not Godfrey told her if she didn't say Bennett shot Baker that she would be locked up. Now, you are saying that Godfrey told her that if she didn't state the truth she would be locked up.

Q Didn't you swear that the girl, Mary Weber, wasn't there? "You swore this girl wasn't there," meaning one Mary Weber. "*The Court.* (indicat-

cating Mary Weber.) A Yes, sir." A She was there.

Q Didn't you swear she wasn't there? A No, sir; I said she was there.

Q "You swore this girl wasn't there?" "A Mary Weber, yes, sir." A No, sir; I said she was there.

Q I ask you whether you didn't make that response to that question.

The Court. Read the question.

Q "You swore this girl wasn't there?" "A Mary Weber, yes, sir." A I said she was there.

Q You say you didn't say that? A I said she was there.

By the Court.

Q Did you say that or not at the last trial? A No, sir; I said she was there.

By Mr. McDermit.

Q Now, didn't you say this, "You told us a minute ago that after the slapping—" A "The shooting occurred."

"Q No, after the slapping that Sue came over and sat down at the table. Is that so or not?" "A Sue was sitting with us at the table." A I was sitting with Sue.

Q Then your statement there isn't true? A I hadn't been sitting with Sue all the night. I never bothered with anybody there.

Q Didn't you testify at the last trial the following in answer to the following questions: "She was sitting at your table when the actual shooting occurred, wasn't she? Yes or no. A Yes, sir." A Sue was sitting at our table?

Q Didn't you say, "Yes, sir?" A No, sir; Sue was sitting at the other table.

Anna Gurtler, direct.

Q Didn't you say that in answer to the question? Listen to the question: "She was sitting at your table when the actual shooting occurred, wasn't she? Yes or no. A Yes, sir." A No, sir; I didn't say that at all.

Q Didn't you say this: "Did they tell you that Mary had sworn that Bennett had shot Baker and that he had dropped the revolver?" And did you answer, and say, "Yes, sir?" A No; they told me—

Q I asked you whether or not you heard that question at the trial, and did you answer the same as it is here? A They told me—

Q No. Did you or did you not answer as I have read from this question? A Yes, sir; I heard that.

Q You heard it? A Yes, sir.

Q Did you testify to it that way? A That I testified that way?

Q Yes. A I haven't testified that; no, sir.

By the Court.

Q Were you asked that question at the last trial, and did you make the answer read to you? Please answer that yes or no? A No, I haven't made that.

Q (*By Mr. McDermit.*) Then, this question: "They told you that? A Yes, sir." Did you make that?

The Court. Don't you understand what you are answering?

Witness. Yes, sir.

By the Court.

Q The question is not what the fact is or what happened on the night of April 21, 1914, but the question is, were you asked at this other trial when

you appeared as a witness this particular question, and did you make the answer that is read to you; that is the question, whether you made that statement in answer to that question. A No, I haven't made that.

Q (*By Mr. McDermit.*) Then the question, "And they told you you must tell them that? A Yes, sir." A They said I must tell them what I know.

Q Did you make such an answer to that question as I have just read to you? A No, sir.

Q Then the question was, "And if you didn't tell them you would be locked up? A Yes, sir; they told me."

Q Did you make such answer to the question I have just read to you during the last trial in court here?

By the Court.

Q Answer yes or no. A No, sir.

Q (*By Mr. McDermit.*) "Now, then you believed you would be locked up if you didn't tell it, didn't you? A Yes, sir; I know that." A Yes, I know I would be locked up.

Q Did you answer such a question as that the last time? A I knew I would be locked up.

The Court.—Answer whether or not you said that in answer to that question?

Witness. No, I did not.

Q "Now, tell us the truth. No one will lock you up. The Court will take care of you. Now, tell us the truth. You don't know anything about this shooting, do you? A Will I start from the first and tell it? Q You don't know anything about this shooting, do you? A I just seen the shot fired and the gun dropped. Q That is all you

know about it? A Yes, sir." Is that what you testified to before?

The Court. Did you say these several answers to the different questions?

Witness. I said that I seen the gnn dropped.

Q Did you say what I have read to you here in response to those questions?

The Court. Did you say those answers at the last trial in answer to the questions respectively?

Witness. No, I have never said anything like that.

By Mr. Van Blarcom.

Mr. Van Blarcom. It seems to me the only way the jury can get this intelligently before them is to have the entire record read so they can see what questions were read and what answers given.

The Court. You offer to read the entire testimony of this witness at the last trial?

Mr. Van Blarcom. Both the direct and cross examination. Without asking the witness any questions I offer to read the testimony at the last trial of this witness, both the direct and cross examination.

The Court. I don't hear any objection.

(Testimony of Anna Gurtler at the former trial read to the jury.)

Q Do you live in Newark? A Yes, sir.

Q Where do you live. A 73 Lister avenue.

Q How long have you lived in Newark? A All my life.

Q Were you acquainted with the defendant here, who is known as Bennett? A Sir?

Q Do you know James Bennett, the defendant? A Yes, sir.

Testimony of Anna Gurtler, read in evidence.

Q Do you know him under that name or under the name of Bovino? A James Bovino.

Q How long have you known him? A Not so very long; only going down to the dancing hall.

Q Collins' dance hall, 238 Oliver street? A Yes, sir.

Q Were you there the night of this shooting? A Yes, sir.

Q How many times had you been there before that? A I had been there quite often.

Q And what time did you go in three that night? A I went there between 8:15 and 8:30; I don't know which.

Q And did you see Bovino in there that night? Did you see Bovino there that night? A Yes, sir.

Q Did he come before or after you did? A He was there before I was there.

Q And did you know a man named Baker? A Yes, sir.

Q Also known under some other name, was he? A Yes, sir.

Q What was his right name? A They used to call him something else in Italian.

Q Was it Meserintino, or something like that? A Yes, sir; something like that.

Q When did Baker come? A He came after I came.

Q Can you say about what time he came in? A No, sir.

Q Anything happen that night that you saw? A Shooting occurred.

Q Now, tell the jury here all about the shooting. A Well, I left my house about 8:20 o'clock. I went over to Chick Collins' saloon; the girls asked me to come over and have a drink and I went over and had a drink. Frank Baker came in with Lucy; then Susan Brown went over—

The Court. Do you know Lucy's last name?

Witness. No, sir.

A (Continuing.) Then Susan Brown goes over to Baker and either he or her slapped him in the face—I don't know which first—then he slapped her in the face; then Mr. Bennett goes over there and argues or something—I don't know which—and then Susan goes over and holds Mr. Bennett back; and then the shot was fired and the gun dropped; then Mr. Baker said, "I am shot;" then the crowd gathered out and I gathered out with the crowd, because I wouldn't come up here to tell any lies, because I got a crippled brother and poor father to take care of and there is no one home to take care of them.

The Court. You were not asked that. Strike it out.

Q How long have you known Sue Brown? A Susan Brown? I don't know her very long. I only know her through going to the dances, that is all.

Q At the time of this shooting how long had you known her? A About two or three months, that is all I know her.

Q Who did the shooting? A I don't know.

Q What? A I don't know who done the shooting, but the gun—the shot was thrown and the gun was fired on the floor—it was dropped.

Q Who fired the gun on the floor or dropped it? A I couldn't tell you.

Q Where were you sitting when the shooting took place? A Sitting?

Q Whereabouts were you sitting when the shooting took place? A Down that way like (indicating).

Q Well, now, turn around and look at that map and see if you can recognize it. A Not very far down from the door.

Testimony of Anna Gurtler, read in evidence.

Q From which door? A From the dance hall door.

Q From the door that goes out into the hall? A Yes, sir.

Q And who was at your table? A Susan Brown and Lucy—

Q At your table? A Yes, sir.

Q Who else was at your table? A Lucy and Cooper.

Q Did you know Mary Weber? A Yes, sir.

Q Where was she? A I haven't seen Mary Weber there.

Q You mean the girl that sits over there (indicating) you didn't see in the dance hall that night? Answer the question, please. A Yes, she was there.

The Court. What do you call this girl (indicating Mary Weber)?

Witness. I don't know her last name. I didn't know her last name.

Q Where was Mary. A She was sitting down.

Q With whom? A With us.

Q Now, who struck the first blow between Sue and Baker? A Who struck first, did you say? If I am not mistaken I think Sue struck him first.

Q Did Baker strike a blow. A Sue struck at Baker and Baker struck her back.

Q Where did he strike her. A On the face.

Q What was the very next thing that happened then? A The shooting occurred.

Q Well, what happened just before the shooting took place? A What happened?

Q Just before the shooting took place? A They each slapped each other in the face.

Q Then what did Big Sue do? A What did she do?

The Court. Answer the question. Do not take so much time, please.

A Sue? I don't know what Sue done. I am telling you just what I told you first off; that is all I know.

Q Why, you saw her, didn't you? A Yes, sir; I seen her.

Q Why can't you tell us what she did after Baker slapped her? A Then—I left my house about 8:30 o'clock—

Q Now, wait a minute. You saw this woman called Big Sue? A Yes, sir.

Q And you saw Baker slap her? A Yes, sir.

Q What did she do right after she was slapped? A She went away.

Q Where did she go? A She went back to her place and sat—

Q Yes, and Bennett was sitting there, too, wasn't he? A Yes, sir.

Q And what happened when she went back and sat down? A The shot was fired.

Q How long was she sitting there before the shot was fired? A Didn't sit any longer; I just went out when the crowd gathered out.

Q I am not asking you what you did. How long did this Big Sue sit down at the table before this shot was fired? A She didn't sit down very long at all.

Q Did she talk to anybody when she sat down? A She spoke to somebody; I don't know who.

Q Who was it she spoke to?

Mr. McDermit. She says she don't know who.

Q Who was it she spoke to? A To some man.

Q Who was the man? Who was the man? Don't take so much time. A Some man goes down to Chick's. I don't know who.

Testimony of Anna Gurtler, read in evidence.

Q Was it Bennett? A Yes, sir.

Q Why did it take you so long to answer that? A I get nervous. I never was in front of a jury in my life.

Q After she spoke to Bennett what did Bennett do? A Bennett got up.

Q What did he do? A Then the shot was fired and the gun was dropped on the floor.

Q How long after Bennett got up was the shot fired? A About ten minutes.

Q What happened between the time Bennett got up and the shot was fired? A The fellow was shot.

Q No. Before he was shot and after Bennett got up what took place? A The shooting occurred then.

Q No. Just before the shooting took place what happened? A There was an argument.

Q Who had the argument? A Mr. Bennett with Mr. Baker.

Q And Baker? Yes. How near to you were these men when they were arguing? A They were near the door and I was down further from the door.

Q Yes, and I understand, but about how far away were you from them? A Way down far.

Q Indicate in the room some distance. A Here is the door (indicating) and a little ways down I was sitting.

Q Well, about how far? As far as the partition there? A No, about as far as, now, to the door; I was sitting right down there.

Q You were only sitting two or three feet away from them then? A About three or four feet, where the dressing room is with a long curtain.

Q Now, who was it that dropped this gun? A I don't know who dropped it.

Q What? Who was it dropped the gun? Who dropped the gun? What reason is there that you can't answer that question?

Mr. McDermit. She has already answered it, I submit, your Honor.

The Court. Did you see who dropped the gun?

Witness. No, sir.

Q Why was it you could not see who dropped the gun? Why was it you could not see who dropped the gun? Is there any reason you do not want to testify? A I want to testify.

Q Are you afraid of anything? A No, sir.

Q Anybody been talking to you about this case? A No, sir; nobody at all.

Q Why is it you cannot tell us why you didn't see? A Mr. Bennett dropped the gun.

Q Mr. Bennett dropped the gun? A Yes, sir.

Q Why didn't you say that before? A You see, I get nervous. I never was in a place like this in my life.

Q What are you nervous about?

The Court. Did you see him drop the gun?

Witness. Yes, sir.

Q Has anybody said anything to you about testifying in this case? A No, sir; nobody at all. There is no one ever comes to my house, because I got a poor father and poor crippled brother to take care of.

The Court. Never mind about that. That was stricken out before.

Q Now, who fired the shot? A Mr. Bennett.

Q And after the shot was fired where did the people go? A They gathered out. I gathered out with the girls—I went home.

The Court. What do you mean "I gathered out?" You mean you went out or stayed in?

Witness. I went out.

Cross examination by Mr. McDermit.

Q Why did you lie here a few moments ago and say you didn't know who dropped the gun? Why did you lie here a few minutes ago and say you didn't know who dropped the gun? You lied then, did you? A I told the truth now, didn't I?

Q You lied then, did you? You lied then, did you? Yes or no. You understand the question? A Yes, sir.

Q You lied then, didn't you? Yes or no. Or are you lying now? Which is the truth and which is the lie? A The truth.

Q Well, then, why did you lie here? A Well, I tell you I get nervous; I never was in front of a Court like that. If I was it would be different.

Q That is the reason you commenced to lie and commit perjury, was it?

The Court. Now, which do you say is the truth?

Witness. What I just told that man (indicating).

The Court. The last time?

Witness. Yes, sir; what I told him.

The Court. What is that?

Witness. That I seen the shot.

Q Is this the first time that you ever said you seen the shot? Who did you tell that to before you came on the witness stand today? This gentleman here, Mr. Godfrey? A Yes, sir.

Q You told him that today, didn't you? You are playing your part well. What time of day was it today you discovered that Bennett fired the shot

and dropped the gun? What time did you tell Mr. Godfrey that today?

Mr. Van Blarcom. I don't think she said she told it to him today. I don't remember any such testimony. She said she told it to him.

Q You know this gentleman here, Mr. Godfrey? A Yes, sir.

Q And you had told him before you took the witness stand? A That I was going to tell the truth.

Q That Bennett had dropped the gun, didn't you? Did you tell him that? Yes or no. A Yes, sir.

Q And you told him that Bennett had shot at Baker, didn't you? A Yes, sir.

Q And yet, notwithstanding that, you take the stand here and you lie and say that is not true, that Bennett did not shoot him and Bennett did not drop the gun? Now, which story do you want us to believe?

The Court. She did not say that. She said the true statement is that she did see who did the shooting and who dropped the gun, and it was Bennett.

Q Then, you were lying to the jury when you made the statement that you didn't know who dropped the gun, weren't you? A I did tell it now, didn't I?

Q But weren't you lying to the jury—you know what a lie is, don't you? A Yes, sir.

Q And you know that you lied to the jury when you said he didn't drop the gun, is that right, or is it that your conscience troubles you and you are trying to tell the truth that he didn't drop the gun, is that it?

The Court. Which question do you want answered?

Mr. McDermit. The last question I put.

Q Can't you answer that? A What is that?

The Court. Do you understand what he means? Did you understand what that last question means? Do you know what he means? What he says—what he asked you?

Witness. What is it you asked me, please?

Q (Question read.) A No, I am trying to tell you the truth. I am telling the truth because I wouldn't come here and swear like that—I wouldn't come here—I am telling the truth.

Q You are trying to tell the truth? A No; I am telling the truth.

Q Why didn't you tell it first? A I told Mr. Godfrey I would tell the truth.

Q When did you tell that to Mr. Godfrey? A Mr. Godfrey has got my statement.

Q Yes. He told you if you didn't tell the truth he would lock you up, didn't he? A Yes, sir.

Q When did he tell you he would lock you up? When did he tell you he would lock you up if you didn't tell the truth today? A This is the truth—nobody told me the other time—if I wouldn't tell the truth on the jury I would get locked up.

Q How long ago was it he told you that? A When I went and gave my statement.

Q You put nothing in your statement that Bennett had dropped the gun, had you? A Yes, sir; in the statement I gave—

Q When did you give the statement that Bennett dropped the gun? A When I give the statement the last time.

Q You were before the Grand Jury, were you, and you swore that Bennett didn't drop the gun, didn't you? A No.

Q What? A I said Bennett dropped the gun.

Q Only to Godfrey?

Mr. Van Blarcom. You are talking about the Grand Jury now. She said—she testified that she said that before the Grand Jury.

Q You were before the Grand Jury, weren't you?

The Court. Do you know what that means? Were you in before the Grand Jury two times?

Witness. I was once before up here and once down the other place.

Q You were called upon to make a statement at the Third Precinct Police Station, when you were under arrest, is that right? A Yes, sir.

Q And in the Third Precinct Police Station you made the statement that you didn't know who did the shooting, is that right? A They took me up to the detective bureau.

Q Did you or did you not make the statement that you didn't know who did the shooting when you were brought to the Third Precinct?

Mr. McDermit. I ask the Court to direct her to answer that question.

The Court. Answer the question.

Witness. He asked me did I make a statement in the Third Precinct.

Q Did you? A No. They took me up to the detectives' office from the Third Precinct.

The Court. Now answer the question. Do not take so much time.

Witness. They took me up from the Third Precinct up to the detectives' office—bureau.

The Court. You made a statement there, not at the Third Precinct?

Witness. Yes, sir.

Q Didn't you tell the officers at the Third Precinct that you didn't know anything about the shooting? A They took me to the detectives' office.

Q Did you tell the officers at the Third Precinct that you knew nothing about the shooting? Don't you want to answer any questions? A Yes, sir.

The Court. Did you tell them?

Q Don't you understand what you are testifying? A Yes, sir; I understand what you mean.

The Court. Answer the question. Did you tell them anything?

Witness. No—I told them I didn't know who—

Q Yes; and you told that to a half a dozen people, is that right? Yes or no. A Yes, sir.

Q Yes; but when you met Mr. Godfrey three months ago and he threatened to put you in jail, then you told him Bennett did the shooting, didn't you? A Yes, sir.

Q And then, when you were sworn here today you swore that he didn't do the shooting, is that right?

Mr. Van Blarcom. She did swear to that.

Witness. I swore he did do the shooting.

Mr. McDermit. She says she didn't know who did the shooting and didn't know who dropped the revolver.

Q And you also swore he didn't do the shooting here today?

The Court. We all know what she swore to.

Q And you swore that Sue wasn't there that night, didn't you? A I swore that Sue was there.

Q You swore this girl wasn't there.

The Court. (Indicating Mary Weber.)

A Mary Weber; yes, sir.

Q You and Mary were sitting down together with a fellow named Fowler at the table, were you?

A Yes, sir.

Q And a fellow named Cooper, is that right? Where is Cooper and Fowler now?

The Court. If you know, answer the question.

Q Oh, you heard that question. A Where is Cooper and Fowler?

Q Where is Cooper and Fowler? Who are they? A Cooper and Fowler? I don't know where they are.

Q Well, who are they? How did you come to pick them people up? A I know Cooper.

Q What is Cooper's business? A He used to work in the Westinghouse. I don't know where he is working now.

Q How old is he? A I don't know.

Q How often did you keep company with him? A Not long.

Q How often did you meet him down in this dance hall? A Not very much.

Q Did you give Cooper's name to Mr. Godfrey as being one of the boys that was sitting there with you?

The Court. Answer the question.

Witness. I didn't know his name.

Q How do you know it now?

The Court. Just take off that veil you have on and you proceed and answer the questions as quickly as you possibly can. Don't take so much time.

Q Now, what is Cooper's first name, the fellow that sat at the table there with you? A I couldn't tell you his first name.

Testimony of Anna Gurtler, read in evidence.

Q How long did you know him? A I didn't know him very long at all.

Q How long was it? A About two months; that is all—two or three months.

Q Had you been out with him? A No, sir.

Q Danced with him? A Danced with him; yes, sir.

Q Danced with him that night? A No, sir.

Q Drank with him? How many drinks did you have? A Three drinks.

Q Drinks of what? A Soda.

Q Soda, was it? A Yes, sir.

Q Any beer? A No, sir.

Q Any whiskey? A No, I don't drink.

Q Sure about that? A Yes, sir.

Q Now, tell us what first transpired there at the table—your table.

The Court. Put it in simpler language. What happened? What did you first see?

Q What did you first see there? A At the table?

Q Yes. A I didn't see nothing at the table.

Q You told us a moment ago that after the slapping— A The shooting occurred.

Q No. After the slapping that Sue came over and sat down at the table. Is that so or not? A Sue was sitting with us at the table.

Q Oh, she was sitting with you? A Yes, sir.

Q When the shooting occurred? A She was sitting—was at the table all the while.

Q When the shooting occurred, is that right?

The Court. Do you know what the word "occurred" means?

Witness. Yes, sir.

The Court. Answer the question.

Q She sat with you right along? A Yes, sir; she sat at the table with us.

Q When the shooting took place she was sitting at the table with you people? A Yes, sir; she came over at the table.

Q She was sitting at your table when the actual shooting occurred, wasn't she? Yes or no. A Yes, sir.

Q Why do you hesitate to answer my questions when you so readily answer the questions of other people?

Mr. Van Blarcom. They were not mine.

Q Was your back turned towards the door—entrance—or was your face towards it? A My back was turned towards the entrance.

Q Your back was turned towards the entrance? Now, turn around here. You know where the dressing room is? A Yes, sir.

Q Now, that is the place where you and these people were sitting at the table (indicating)? A At the table.

Q Right near the dressing room? A Yes, sir.

The Court. Indicating the dressing room in the northwest corner of the dance hall G on map S. 1.

Q And you were sitting alongside of the piano there? A Yes, sir.

Q And who was playing the piano? A The musicianers what play there.

Q What was the name, Cooper—Cooper a musician? A I couldn't tell you what their names are.

Q Cooper was sitting at the table with you and three other girls?

The Court. Did you say that he was or was not?

Witness. I said I don't know the musicianer's names.

Q But Cooper—was Cooper sitting at your table? A He was sitting at our table.

Q You know Cooper? A Yes, sir.

Q Is he here to-day? Yes or no. Do you know? A I don't know if he is or not.

Q The shooting took place down the hall where you come in from Oliver street? A Yes, sir; from Oliver street there.

Q You were back then a distance of 50 or 60 feet? A Yes, sir; way down that way (indicating).

Q Way down at the rear. Bennett was sitting at your table? A No, sir.

Q Bennett and those people were sitting at a table near the other piano? A By their ownself.

Q Isn't that so? A Yes, sir.

Q Their table was up near the other piano, in the extreme end of the room, near the ladies' toilet; isn't that right? Yes or no. A Yes, sir.

Q And there was about how many people there, altogether, dancing — everything altogether? A There was quite a good crowd there.

Q 150 or more. A There was a good crowd there.

Q How many was there, 150 or more? A About 150.

Q About 150. The hall was pretty well crowded, wasn't it? A Yes, sir; it was crowded.

Q And they were all dancing—plenty of excitement there—all dancing? Yes or no. A Some were dancing and some were sitting.

Q Some were sitting down. Plenty of tables and chairs there? A Yes, sir; lots of tables and chairs.

Q Lots of people sitting down there? A There is lots can sit at tables.

Q And between where these people sat and where you people were there were a number of tables and chairs—practically 100 chairs there; is that not so? A There is lots of chairs there and stuff; yes, sir.

Q About 100 chairs and lots of tables? And these people, when they were dancing, I suppose—what were they dancing, all sorts of round dances or what? A Waltzes.

Q I suppose they were dancing all around the room, possibly sixty or sixty-five couples; is that right, at a time? Won't you please answer that question? A Yes, sir.

Q There were sixty or sixty-five couples dancing, and while this dancing was going on and the music was playing, this shot was fired, wasn't it? A Yes, sir; and the gun was dropped.

Q Yes; that was during the time they were waltzing around—dancing? A Dancing.

Q The music wasn't stopped? A No.

Q Everything was in full play, wasn't it? A Yes, sir.

Q Are you sure about that? Are you? A Yes, sir; because I was sitting down at the time. I wasn't dancing then.

Q You were not dancing and you knew the rest of them were all dancing. And you were attracted by a shot, weren't you? A Yes, sir.

Q There must have been a good many people between you and this door from where you sat. Look at the map again.

Q This is the end of the dance hall (indicating) and this is the hallway coming into the dance hall, letter C there—there must have been a great many people between you and where this room is—this hallway—wasn't there? Yes or no. A Yes, sir.

Q So that you wouldn't be able to say absolutely

who had fired that shot, would you? A Bennett.

Q How could you say Bennett fired the shot when you say Bennett was sitting over here at this other table? You said you were sitting up here facing directly towards this door and these people were all waltzing and dancing? A I was sitting at the time the people were dancing and when the shot was fired.

Q You were sitting by the piano while the piano was playing, with the Gurtler girl and Cooper and another fellow and Sue when the shot was fired; that is so, isn't it? A Yes, sir.

Q You know now what you are talking about? A Yes, sir.

Q Get this, so there won't be any mistake about it. At the time the shot was fired you sat with Cooper, another fellow, the Gurtler girl—your name is Gurtler? A Yes, sir.

Q Weber girl and Sue Brown? A Yes, sir.

Q You five people were sitting at that table?

The Court. She says she does not know a man by the name of Cooper.

Witness. I know Cooper; yes, sir.

The Court. You do know Cooper?

Witness. Yes, sir; I said I knew Cooper.

Q What is the other fellow's name? A I don't know the other fellow's name.

Q Cooper and the other fellow and you three people sat at that table? A Yes, sir.

Q Now, there is no mistake about that, is there? A No, sir.

Q That is the corner of the room near the dressing room? A Yes, sir.

Q And this shooting took place down at the hall? A Yes, sir; right at the hall.

Q At the time this shooting took place the music was playing and there was waltzing? A Yes, sir.

Q And other people were sitting at this table (indicating)? A Yes, sir; and I was sitting at the time the dancing and shooting occurred; yes, sir.

Q Drinking anything at that time? A It was on the table.

Q Of course, you couldn't have heard any conversation between Sue and Bennett, could you? A No, sir.

Q Sue and Bennett had no conversation—no talk together before this shooting, did they? A Mr. Bennett went over and had an argument or something with Mr. Baker.

Q They went over and had some argument and sat down again? A Yes, sir.

Q Never came near your table? A No, sir.

Q And it was fully half an hour after this argument was had with Baker that this shot was fired; isn't that so? A Yes, sir.

Q Didn't you say it was nearly an hour after the argument, at the police station that the shot was fired? Now, which is it, hour or half an hour? A About half an hour.

Q About a half an hour? A Yes, sir.

Q Sue had come down and remained with you people and you people were drinking together down on the end of the dance hall, and had been there about half an hour, then the shot was fired and you looked up and saw Bennett fire the shot and throw the pistol on the floor? That is your story? A Yes, sir.

Q That same story you denied all the way through and denied again here today, and the first time you made that statement was to Mr. Godfrey, and Godfrey only; is that right—to the gentleman that was sitting over there a minute ago?

The Court. The first time you made that statement to Mr. Godfrey—what was the question?

Mr. McDermit. Was to Mr. Godfrey.

Q Did you write out your statement to Mr. Godfrey? A Yes, sir; Mr. Godfrey—

Q In your own handwriting? A No, sir; they wrote it out theirselves.

Q They wrote your statement out? A Yes, sir.

Q You can read? A Yes, sir.

Q You can write? A Yes, sir.

Q How often did you see the Weber girl from the 22d day of April, 1914, down to the present day, the day of this trial? A Down at the hall, you mean?

Q Yes. How often have you seen her? A I haven't been down there myself.

Q How often have you seen her? A I haven't seen her very often there.

Q No, but elsewhere? Did you and the Weber girl ever have any talk about who did the shooting down there? A Yes, sir.

Q About when was it you had a talk with her about who did the shooting down there? A Oh, quite awhile after that.

Q About how long? Two or three months afterwards—two or three weeks after? A Two or three weeks or—two, three weeks, I met her; yes, sir.

Q And you talked to her about the shooting down there? A Yes, sir.

Q Then you talked to her again about that shooting, three or four months later, did you? A Yes, sir.

Q And you talked to her a number of times about the shooting? A Every time I met her.

Q And how many times have you met her since the shooting—about 100 times? A Quite often.

Q How many times? Estimate— A About a hundred times.

Q Did she ever tell you that Bennett was dead or that he had been electrocuted? A No; she hasn't told me that.

Q Did she mention his name? A Yes, sir; she mention his name; yes, sir.

Q Never told you that he was dead or electrocuted? A She told me he was dead but she never told me that he was electrocuted.

Q She said he was dead? A Yes, sir.

Q Say how he died? A She said through a shot.

Q Then he was shot to death? A Yes, sir.

Q When was it she told you that Bennett was shot to death?

The Court. Of course you are making this your witness?

Mr. McDermit. I am making her my witness and I am willing to take the responsibility.

The Court. You cannot make her your witness because it is a collateral issue.

Mr. McDermit. I understand the situation, your honor.

Q Who was present when you signed your statement in the prosecutor's office? A Mr. Godfrey was there, I know.

Q You made your statement to the prosecutor's office about the circumstances of this matter after this girl had been arrested on Mulberry street—after the trouble on Mulberry street, is that right?

The Court. Referring to Mary Weber?

Mr. McDermit. Yes, sir.

Testimony of Anna Gurtler, read in evidence.

Q Now, you know when you made that statement, don't you? Won't you please answer these questions? A Yes, sir; I am answering them.

The Court. When did you make your statement? Do you know when Mary was arrested —Mary Weber?

Witness. No. I read it in the paper.

The Court. Do you know whether you talked to Mr. Godfrey before or after Mary was arrested?

Witness. Yes, sir; when they took me down to the office down there.

The Court. Was that before or after Mary was arrested?

Witness. After Mary was arrested.

Q And you read of Mary's arrest in the paper a short while ago? A Yes, sir.

Q She was arrested in August, wasn't she? A I don't know which month.

Q How long back is the time about of your memory—how long is it since she was arrested?

The Court. Which one do you want answered?

Witness. She was arrested in some part of the month—I don't know which part it was.

Q What month was it? A Either June or August; I don't know which now.

Q Either June or August? Are you in or out of jail now, yourself? A Me? I wasn't in jail.

Q You are not in jail? A No, sir.

Q You are out on bail, are you? A No bail at all.

Q Who brought you to the prosecutor's office in August to make this statement? A Detective Chenowith took me down.

Q Where did he take you, to the police headquarters or prosecutor's office here? A Down at the detective office I was.

Q Was Mr. Godfrey down there? A Yes, sir; he was down there.

Q Was Mary Weber there at the same time? A I didn't see her at the time because I was in alone in the room.

Q Did they tell you that Mary Weber was there? A Yes, sir; they said she was there.

Q Did they tell you that Mary had sworn that Bennett had shot Baker and he had dropped the revolver? A Yes, sir.

Q They told you that? A Yes, sir.

Q And they told you you must tell them that? A Yes, sir.

Q And if you didn't tell them you would be locked up? A Yes, sir; they told me.

Q You believed you would be locked up though if you didn't tell it, didn't you? A Yes, sir; I know that.

Q Now, tell us the truth. No one will lock you up. The court will take care of you. Now, tell us the truth. You don't know anything about this shooting, do you? A Will I start from the first and tell it?

Q You don't know anything about this shooting, do you? A I just seen the shot fired and the gun dropped.

Q That is all you know about it? A Yes, sir.

Q That is the truth? A Yes, sir; what I am telling you is the truth, yes, sir.

Q Now, you believe if you do not testify for the State that you will be locked up in jail, don't you? A I know that, yes, sir.

Q You know that positively? How old are you?

A Twenty-five.

Testimony of Anna Gurtler, read in evidence.

Q Are you married? A No, sir.

Q Where do you live? A 73 Lister avenue.

Q How were you got from your home to the detective headquarters? How did they come to get you? Who came after you? A They came after me first and they told me to come over to the Third—one night I was walking home and I met Detective Bell and he told me to meet him the next morning.

Q When was that? A That was a good while after that.

Q That was long before you made this last statement to Mr. Godfrey? A Yes, sir; then he brought me to the Third.

Q You went over to the Third Precinct Police Station? A Yes, sir.

Q And they asked you some questions over there? A No; they only asked me my name, how old I was and where I live. From there they took me up to the detectives' office.

Re-direct.

Q Well, is this the statement that you signed? (Showing witness paper). A Yes, sir.

Q This is dated October 12th. Is that the date you made it? A Yes, sir.

Q And where did you make it? Where was it? A Up in the court house.

Q Here? A Yes, sir; or either down in the other place. I don't just remember.

Q Down at the city hall, wasn't it, at police headquarters? A Yes, sir. I know I was up here too, once before.

Q Before the grand jury then? A Yes, sir.

Q At that time did you know that Mary Weber had been arrested? A Yes, sir.

Q And what was it the police officers told you about telling the truth? A That if I didn't tell the truth I would be locked up.

Q When was that told to you? A Mr. Godfrey told me that.

Q When? A He told me that the last time I was up here.

Q That was a month ago? A Yes, sir; when I was up here.

Q That was a month ago? A Yes, sir; when I was up here at the grand jury the last time.

Q What did the police officers say to you at the time you made this statement, if anything? A They said the same thing as Mr. Godfrey. They said if I don't tell the truth that I would be put away for perjury.

Q Was that after you made this statement and signed your name? A Yes, sir.

Q Did you tell them in this statement what happened down there that night? A In that there statement—

Q Yes? A —I told the—everything; I told everything what I can because I never was in a scrape before—

Q All right. And as you told them this did they write it down? A They wrote it down, yes, sir. I didn't write it, only I signed my name.

Q Did you read it over after it was written? A Yes, sir; they gave it to me to read over.

Q Was it correct? A Yes, sir.

Q Then they told you if you didn't tell the truth that you might get in trouble or you would be locked up? A I have told you the truth. I wouldn't lie because—

Q Wait a minute. After you signed the paper they told you if you didn't tell the truth you might

be locked up or would be locked up? A Yes, sir —because I have a poor father and crippled mother.

Mr. McDermit. I move to strike that out.

The Court. Motion granted.

Re-cross.

Q You knew when you swore to a lie on the stand here today that you committed perjury, didn't you? Don't you?

The Court. She has got to have a good deal of technical knowledge to answer that.

Mr. McDermit. I would like to offer that first statement of Mary Weber for identification.

Paper marked Exhibit D. 1 for identification.

Cross examination by Mr. Van Blarcom.

Q I show you this paper, dated October 12, 1915, and ask you if this is the paper that you signed at the detective bureau? A You mean I signed my name?

Q Yes? Is that the paper you made down there?

The Court. Why cannot you agree that the testimony at the other trial refers to paper marked D. 2?

Mr. Van Blarcom. I am willing to agree to that.

The Court. The testimony referring to D. 2 in the other trial and that is the paper that is shown here now?

Mr. McDermit. Yes, sir; that is correct.

Q Is that it? A Yes, sir.

RECESS.

Testimony of Walter P. Byrne, read in evidence.

Mr. McDermit. Alluding to the testimony of Officer Walter P. Byrne at a trial before your Honor, same defendant and same indictment, the question was asked by counsel to Mr. Byrne: "Q He was wide awake? A He seemed to be in a stupor. Q He was in a stupor? A That is the way it seemed to me. Q He didn't seem to have possession of all his faculties? A I don't know. He seemed to know the officers." Page 155, the question is, "Who was holding the pan he was spitting in? A There was a nurse there Q And immediately before the statement was taken he was spitting blood into a pan? A Yes, sir."

Mr. Van Blarcom. Is that any contradiction?

Mr. McDermit. It is a contradiction.

The Court. I will let it stand in evidence what you read up to this point.

By Mr. McDermit.

"Q Yes. What he said to Bell? Was the pan taken away? Was the pan removed that had the blood in? A No, the pan was kept there. Q While he was talking he coughed? A Yes. Q And when he coughed he coughed up blood? A Yes. Q It was during this conversation the blood was coming up? A Yes, he did spit blood. Q So that the conversation he had with you was between these coughs, is that right? A Yes, sir. Q How long did it take him to vomit this blood, the length of time that he had this blood? A While he was there he was coughing it right along."

Mr. Van Blarcom. I offer to read the testimony of this witness both direct and cross examination, Walter P. Byrne.

Mr. McDermit. No objection.

Testimony of Walter P. Byrne, read in evidence.

(Mr. Van Blarcom reads examination of Walter P. Byrne, both direct and cross examination).

"Q Mr. Byrne, are you connected with the Newark police force? A Yes, sir.

Q How long have you been in the department? A Three and a half years.

Q Where were you located in April, 1914? A Third Precinct.

Q You drove the automobile? The patrol wagon? A Yes, sir.

Q Do you remember going to the City Hospital to see Baker one night late? A Yes, sir.

Q You were with what other officers? A With Officers Miller, Bell and a court interpreter. I don't know his last name. Pete something and Officers Feldman and Green.

Q Did you hear any conversation between Baker and anyone else in the hospital that night? A Yes, sir.

Q Who did the talking? A Jimmie Bell.

Q He is another officer? A Yes, sir.

Q With whom did he talk? A To Frank Baker.

Q What was said as near as you can remember? A Why, we went up there and Jimmie Bell walked over to the bedside. He asked Baker did he know him. He says, "Yes, you are my friend Jimmie Bell," and he says, "Do you know this fellow here?" He says, "Yes, that is Jack Miller, my friend, Jack Miller," and Jimmie says, "You are going to die, Frank," and Frank says, "I know it." He says, "Did you see the preist?" He says, "Yes." Jimmie says, "Do you know who shot you, Frank?" He says, "Yes, Jim Bennett shot me."

Q What happened after that, anything? A Why, yes, he kind a turned over and they said he died.

Q Did what? A He died.

Q That is the only time you saw Baker at the hospital? A Yes, sir.

Cross examination by Mr. McDermit.

Q How did you come to go there? A I was a chauffeur on the machine, on duty that night. Got a call to meet these officers down at a banquet and take them up there to the City Hospital.

Q What part of the City Hospital was this? What floor of the City Hospital? A I ain't sure whether it was the third or fourth.

Q How did you get up there? A We went up in the elevator.

Q Sure about that? A No, I ain't sure. I can't remember that long.

Q You go to the City Hospital a good many times. The elevator stops running at eleven o'clock? A I don't know.

Q You drive there, bring a good many people there? A Yes, but we don't go upstairs.

Q This particular case you went upstairs. Do you remember whether you went up that staircase three or four floors or whether you took the elevator? A Well, I don't remember.

Q Why can't you remember that circumstance? Can't remember? A No, sir.

Q When did you read Bell's memorandum in this case? A I never read Bell's memorandum.

Q Did you know he made a memorandum? A Yes, I did.

Q When did you first know he made a memorandum? A Right after the shooting occurred.

Q Did he tell you about it? A No, sir.

Testimony of Walter P. Byrne, read in evidence.

Q How long after was it Bell told you he made a memorandum? A He didn't tell me.

Q You said he told you? A No, I didn't say he told me.

Q Didn't you say a few moments ago that he told you about it?

The Court. No, he did not.

Q When did you know he made a memorandum? A Probably two or three days later.

Q Who did you know it from? A I asked him for a date, if he was going to keep a record of the date.

Q Then he did tell you about it? A After I asked him.

Q Did he tell you about it? A After I asked him.

Q Didn't he tell you about it?

The Court. He has answered it twice.

Q What was the date? A The date of the shooting?

Q Yes? A Or the date we was up to the hospital?

Q What was that date? A We was up to the hospital the 22d of April, 1914.

Q Wasn't 22d of April, was it? Are you sure about that date? A Yes, sir.

Q Sure it wasn't the morning of the 23d of April? A Yes, sir.

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

Q Do you know what night it was that you went up there? A No, I cannot say.

Q You keep a patrol call at the police station of the time that the patrol wagon goes on these calls? A Yes, sir.

Q Will you produce that patrol call here to-day? A I don't know whether I can get it or not. I suppose I can have it here.

Q Who had charge of the patrol calls, of the wagon at the time you left? A The lieutenant in charge.

Q Has he a memorandum of the time the patrol wagon comes back? A Yes, sir.

Q You made the report yourself? A Yes, sir.

Q Who makes the report of that trip? A The officer in charge of the wagon.

Q Don't you have any system of indicating in your stable or garage there of the time of the calls? A No, sir.

Q You don't keep any books yourself? A No, sir.

Q You rely upon the books kept at the lieutenant's desk? A Yes, sir.

Q Just tell us again what declaration and statements, the things that occurred in your presence before this fellow died? A Why, when we went upstairs—

Q Who is "we?" A Was Officer Miller and Bell, Officer Green and a court interpreter.

Q Why was the court interpreter along? A I can't say.

Q Was he around there to interpret in Italian? A That I can't say.

Q Who invited him to go along? A That I don't know.

Q Where did you bring him from, Hensler's? A Yes, sir.

Q What was the first thing said? Who was there in the City Hospital? A I think there was one or two nurses there.

Q Do you know what their names are? A No, sir.

Q You are sure there was one or two nurses there? A Yes, sir.

Q Are you? A Yes, sir.

Testimony of Walter P. Byrne, read in evidence.

Q What conversation took place between the nurses and Bell, if any? A I don't remember that. I wasn't near to them.

Q You were not near to the bed? A Yes, sir.

Q Were the nurses near to the bed? A They were at one time.

Q Were the nurses put out of the room while you people were talking to the deceased? A That I don't know.

Q Don't you know who was present in the room at the time these declarations were made? A All I seen was the officers and the court interpreter.

Q You saw the nurses? A I saw them up there.

Q They were at his bedside? A They was up there.

Q Then they moved away from his bedside? A I don't know.

Q You don't know what became of them? A No, sir.

Q What was the conversation between Bell and the nurses? A There was a few words but I didn't pay any attention.

Q All you paid attention to was what you testified about in Bell's conversation to him? A Yes, sir.

Q Who brought you to this room where this dying man laid? Who brought you there? Who directed you there, what nurse? A I don't know who it was. I don't remember that.

Q There was some nurse directed you to the room? A I don't remember.

Q How many other people were there in bed in this room? A I can't say.

Q Forty or fifty other beds there? A Maybe that many there, might have been less.

Q You haven't a very good memory of the situation there that night, have you? A I have a fair—

Q Can't tell us whether it was male or female attendants or whether you were up three or four floors, whether it was on the third floor, whether it was on the third floor or fourth floor? A Yes, sir.

Q You can't tell us what the conversation was between Bell and this nurse? A No, sir.

Q All you can remember is that he made the declarations you stated before and then he turned over and died? A Yes, sir.

Q Tell me what he said when he died? A Just before he died?

Q Yes, how long did the conversation take? A Three or four minutes.

Q How did you arouse this man? A I didn't arouse him at all.

Q Who did arouse him? A He wasn't asleep.

Q He was wide awake? A He seemed to be in a stupor.

Q He was in a stupor? A That is the way it seemed to me.

Q He didn't seem to have possession of all his faculties? A I don't know. He seemed to know the officers.

Q But he did appear to be in quite a stupor? A He was talking also.

Q You have seen dying men before? A Yes, I have.

Q The man was dying when you got there? A I can't say.

Q He was spitting, coughing? A He was coughing quite a little.

Q Coughing all the time you were there? A Not all the time; no.

Q He was only there about three minutes? A He coughed a couple of times.

Q And seemed to be in a stupor? A I don't say exactly a stupor.

Q You just explain to the jury and Court what you mean by a stupor. You have used the word. He was having a hemorrhage while you were taking the statement. Tell us about that now. A I don't know whether it was a hemorrhage or not.

Q He was throwing up into a pan of blood while he was talking to you people? A He was spitting.

Q Who was holding the pan he was spitting in? A There was a nurse there.

Q You finally have the nurse at the bed? A That was before the statement was taken.

Q And immediately before the statement was taken he was spitting blood into a pan? A Yes, sir.

Q He died within three minutes after you got through? A I don't know whether it was three minutes or not.

Q The whole statement, the whole spitting of blood into the pan and the death came within three minutes? A I can't say.

Q About how long? A I would not make—I can't say just how long it was. I can't say.

Q Can't you give us any idea? A Well, I will say between three and ten minutes.

Q Have you any idea about time? A Yes, sir.

Q Would you be kind enough to turn your face towards the wall and keep it there during the time that this thing went on?

Mr. Van Blarcom. What thing went on. I don't think that question is hardly clear.

The Court. Objection sustained.

Q From the time you entered the room until the time that you left there, during the time you entered the bedroom at the City Hospital where the deceased laid until the time you said he died. Just give us an illustration of that by turning around and keeping your back to the wall until the time he expired, the whole time the thing took place. Do you understand that? A I will try to make it as close as I can.

(Witness turns around.)

Q That is about it, is it? A Yes, sir.

The Court. Twelve and a half minutes.

Q That was about that time, was it; the length of time that you have just indicated to the jury you were in the death chamber? A What do you mean?

Q Up at the City Hospital in the dying man's chamber, the dying man's room? A I think that is the time we went in until we came out.

Q The man's bedroom? A In the hospital.

Q You figured at the time you reached the hospital, up in the room and out again? A Yes, sir.

Q That is what you figure now? A Yes, sir.

Q So that the time consumed in the hospital, when you meant between three and ten minutes, what did you mean? A I meant while he was taking the statement.

Q That was between three and ten minutes, while he was taking the statement? A No; I mean we might have been in that room where he was for ten minutes.

Q You might have been in there for three minutes? A No, while he was taking the statement.

Q The whole time you paused upon the witness stand and didn't talk was the full time covered when you got in the hospital up to the third or fourth floor into the room and back down to the

wagon again; is that right? A That is near as I can remember.

Q Tell us what the deceased said? A Well, you mean the whole conversation?

Q Yes. What he said to Bell. Was the pan taken away? Was the pan removed that had the blood in it? A No; the pan was kept there.

Q The pan was kept there by the nurse? A No; I don't think the nurse stayed there, but I ain't sure.

Q Who was it kept the pan with the blood in while he was talking to you? A I can't say.

Q While he was talking he coughed? A Yes.

Q And when he coughed he coughed up blood? A Yes.

Q It was during this conversation the blood was coming up? A Yes; he did spit blood.

Q So that the conversation he had with you was between these coughs; is that right? A Yes, sir.

Q How much blood did he cough up in your presence, at that time, approximately? A I can't say.

Q A large bottle, spoonful or a gill of blood or a half a glass? A I don't know whether it was that much or not. I didn't look at it much.

Q How long did it take him to vomit this blood —the length of time that he passed this blood? A While he was there he was passing it right along.

Q Was he lifted up at any time in bed while you were there for the purpose of having him throw this blood up? A I think he was, but I ain't sure.

Q Who lifted him up—who set him up? A I don't remember.

Q Was he sitting up? A No; he wasn't sitting all the way up.

Q He sat part of the time? A He wasn't sitting up. I think there was somebody that lifted him so he could spit, but I ain't positive.

Q Who was it lifted him so he could spit? A I don't remember.

Q You didn't pay very strict attention to what was going on? A No; I didn't.

Q You wasn't interested in hearing this statement merely to come into Court and talk about that here? A No, sir.

Q When have you talked this case over with Bell since this occurrence? A I wasn't talking to him.

Q Yesterday, wasn't you? A I was talking the case over with him?

Q Yes. A No, sir.

Q To-day? A No, sir.

Q Did you see him last night? A No, sir.

Q Talk the matter over with Mr. Godfrey? A No, sir.

Q Talked to him at all about the case? A No, sir.

Q At no time? A No, sir.

Q Get a subpoena from him? A I got a subpoena. I don't know whether it was from him or not.

Q Never talked with Bell about the case since the night of that memorandum when you got the date? A I asked him the date. That was all.

Q When was that? A I asked him if he was going to keep a record of it.

Q You haven't talked with Bell since? A I have talked with him on different occasions.

Q You never talked to him about this case since? A I asked him when it was coming up, something like that.

Q Never had any talk with Bell or anybody else about what evidence you were to give in this case? A Yes; I spoke to Officer Miller.

Q When did you speak to Officer Miller, yesterday? A Yes, sir; I spoke to him yesterday.

Q When was it you spoke to him? A I asked him yesterday about the date.

Q And told him what you knew about it? A No.

Q Did he ask you anything about what you knew about it? A No; he didn't.

Q Did he ask you if you remembered what took place at the hospital? A He didn't ask me that yesterday.

Q Did he ask you what you would be expected to testify here? A No, sir.

Q Call your attention to the visit to the hospital? A No, sir.

Q Did he read to you what conversations he had between himself and Baker at the hospital in your presence? A Not yesterday.

Q When did he do that? A He had a statement.

Q How long ago did he do that? A The last day he was here.

Q When was that? A The 6th of December.

Q He read the statement to you? A He didn't read—he let me look at it.

Q Then in December, this last December, within a month of the present time he showed you a statement that he made at that time and you read it? Yes or no? A Yes.

Q So you are testifying from the statement, are you not? A No, sir.

Q Would you have been able to give this testimony without the statement? A Yes, sir.

Q Is there anything said about the time in that statement? A Yes, sir.

Q The time you were at the City Hospital? A Now, I don't remember whether there is or not.

Q Isn't there anything in that statement to show that the ambulance was called from Hensler's

or the call came into the police station to go to Hensler's at 12:30? A I can't say that. I looked only for the date; that is all.

Q You didn't read the statement all the way through? A No; I didn't read the statement all the way through.

Q How much of a statement was it—how many pages did it consist of? A I don't know just how many pages there were.

Q Five or six? A That I can't say.

Q Eight or ten? A I don't know.

Q Don't you know whether it consisted of more than one page? A I only looked at one page. I don't know whether there was two or three or four.

Q Was that written on the back? A I don't know whether it was written on the back. I only looked for the days.

Q You only wanted to find out the date? A Yes, sir.

Q How long did you have the statement in your possession? A About two minutes.

Q Who were the other officers that had the statement there? A I was with him alone.

Q Where were you when this took place—what part of the court house? A Upstairs.

Q In what room? A Men's toilet.

Q Took you out in the toilet to show you the statement? A No; he didn't take me out there.

Q You went out in the toilet and he went out in the toilet and he showed it to you? A I asked him to show me the date. I told him I wanted the date.

Q You couldn't get that date without looking at the statement? A I don't know whether he remembered it or not.

Q Did he read the statement, too? A While I was there?

Q Yes. A No; he did not.

Q That was the day the defendant was to have been tried, in December, wasn't it? A Yes, sir.

Q You were under subpoena for a trial at that time and the case was adjourned over until to-day; is that right? A Yes, sir.

Q Were you called as a witness in examination in this case? A No, sir.

Mr. Van Blarcom. Do you want the officer to produce the police record?

Mr. McDermit. Yes; I make the request now."

VINCENZO BOVINO, recalled in rebuttal for

Further cross examination by Mr. Van Blarcom.

Q Officer Bell was asked about a conversation he had with you and your wife? A Where was that, in police headquarters?

Q Yes. A Yes; I remember that.

Q There was a conversation at police headquarters? A Yes, sir.

Q Your wife has stated that Bell told you in her presence that Baker had made a statement to Bell that he didn't know who shot him? Was there ever such a conversation as that? A That Bell said he didn't know who shot him?

Q Yes. A No; he claimed he didn't say that you shot him, but that you know who did.

Q When was that? A I can't tell you when that was.

Q Right after you were arrested? A Yes, sir; right after I was arrested.

Q Right after you were arrested the first time? A First time.

Q Was it the same night? A No, sir; it wasn't the same night.

Q Didn't you say at the last trial there was no such conversation as that? A I told you there was.

Q Now, were you asked this question, and did you give this answer: "Isn't it true that right after you were arrested and Bell came back from the hospital; at least the next night after Baker died, didn't they come right down to police headquarters where you were confined?" and you said, "Yes." A I said yes to what?

Q This question, "Isn't it true that right after you were arrested and Bell came back from the hospital; at least the next night after Baker died, didn't they come right down to police headquarters where you were confined?" A Yes, sir.

Q And didn't Bell and Chenowith say this to you; Bell and Chenowith and another officer said this, "Baker says that you are the man that shot him," and didn't you throw up your hands and say, "Oh, my God, how can he say that," or words to that effect? A Yes, I says that.

Q Then, were you not asked this question and didn't you give this answer, "Then, isn't it true that Bell never stated to you that Baker told you he didn't know who shot him?" A He told me that too.

Q Did he tell you that? A Yes, he says that; that is, he told me that after.

Q Told you what after? A Told me that after he didn't say it was you but you know who done it.

Q You remember these questions and answers at the last trial, "It isn't true that Bell ever stated to you that Baker told him he didn't know who shot him," and didn't you answer, "Baker told me he didn't know who shot him," the next question, "That Bell told you Baker came to him and said,

whatever he called you, 'Bennett told me he didn't know who shot him?' " and you said, "He told me that in the ambulance, yes, sir." A Yes, he told me that, that is, Frank Baker told me that.

Q Bell didn't tell you that? A What?

Q About Baker saying he didn't know who shot him? A I don't remember that.

Q Here is a question and answer at the last trial, "Now, your wife says that Bell stated to you that Baker didn't know who shot him." "Was there any such thing said as that last?" and your answer was, "No, sir." A I don't remember that.

Q You don't remember whether you testified that way at the last trial or not? A No, sir; I did not.

By Mr. McDermit.

Q What is your memory now as to the conversation between Bell and yourself and your wife at police headquarters? A I can't exactly remember.

DEFENSE RESTS.

Mr. Van Blarcom. I offer in evidence the statement of Anna Gurtler, dated October 12, 1915.

Mr. McDermit. I object.

Mr. Van Blarcom. Then I withdraw it.

Marked S. 14 for identification.

JOSEPH A. MILLER recalled in rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q There was a witness produced by the defense this morning whose name was Thomas Mistretta,

who testified he was out in the bar room at the time this shot was fired. Was he there or not? A No, sir.

Q There is also a witness, named Tony Fresco who says he was in the bar room at the time the shot was fired. Was he there? A I don't know the names, but there was the bartender, if that is the bartender, Chick's brother and myself were in the bar room at the time the shot was fired.

Q The bartender's name is Pepe. Is Tony Fresco in court? Was that young man in the bar room at the time the shot was fired? A No.

Mr. McDermit. Referring to Tony Fresco.

Cross examination by Mr. McDermit.

Q What time was it that you came into the bar room first that night? A 9:45, 9:50.

Q Had you been off duty? A Yes, sir.

Q How long ahead of that? A I got off duty, report off duty that morning—Tuesday morning—about eight o'clock, 7:55.

Q Where did you eat your supper that night? A Home.

Q Did you have anything to do that night? A No.

Q Do you remember any discussion about spaghetti? A I went down there for the purpose of buying that.

Q Do you remember any discussion in the bar room about spaghetti? A I went down there with the intention of buying it.

Q Who were you talking with about spaghetti? A Tony Gratch.

Q He was in the bar room? A He was in the bar room, yes.

Q Had you been drinking that night? A Couple of glasses of beer.

Q How many? A Three, to my knowledge.

Q Any whiskey? A No, sir.

Q How many people were in the bar room? A At the time of the discussion of the spaghetti?

Q Yes? A I don't remember just how many were in the bar room, but Tony and I went across the street to buy this spaghetti, to the wholesale place.

Q Some discussion there between Tony and you about some spaghetti being imported? A It wasn't that. I wanted the imported stuff and I didn't want to pay the price for the domestic.

Q Did you get the spaghetti? A I got it. It was delivered the next day.

Q How long were you in Mr. Collins' dance hall to get the spaghetti? A Long enough to walk across the street, order it and walk back again.

Q How long was it? A As long as it would take you to walk across the street, order it and come back again.

Q Five minutes? A You can guess at it as well as I can. That was a couple of years ago.

Q Did you bring the spaghetti back with you? A No, there was a box of it.

Q Who went with you to get the spaghetti? A Tony Gratch.

Q Who else was in the bar room besides you and Tony before you went for the spaghetti? A There was quite a few there, I don't remember.

Q Half a dozen? A There could be.

Q You didn't particularly charge your mind with anybody that was in the bar room at that time? A I had no occasion to.

Q There was no excitement or shooting at that time? A No, very quiet.

Q So who ever might have been in the bar room at that time didn't interest you? A No, outside of the one party I ordered it with.

Q How long after the spaghetti was it the shot took place? A I went over and ordered some spaghetti about ten o'clock. That took place about 11:30.

Q You had been in the dance hall several times that night? A Right after I got the spaghetti I went in the dance hall and stayed there.

Q You went in the dance hall and stayed an hour? A Yes.

Q You were in there over an hour? A Yes.

Q You were at this big table? A I was standing.

Q You were in there over an hour? A Yes, sir.

Q How many people were in there? A About forty.

Q Can you give us the names of twenty of them out of the forty? A No, I don't know any of them people.

Q Why are you willing to say these people were not in there?

The Court. Didn't he say that Tony Fresco and Mistretta were not in the bar room at the time of the shooting?

Mr. McDermit. Yes, sir.

The Court. Now, you are asking him to tell us something about what happened earlier.

Q Give us the names of the people who were in the bar room when you went out for the spaghetti? A I can't say it.

Q Why? A Because I didn't pay any attention to them. They didn't interest me. I didn't hear who was in that bar room. Why should I look around the bar room?

Q Before or after the shot was fired did you stop before you rushed into the dance hall to look and see who was in the dance hall? A At the time

the shot was fired was an hour after I ordered the spaghetti.

Q Then you ordered the spaghetti after the shot was fired and not before? A I ordered the spaghetti, went back to the dance hall and stayed in the dance hall until about ten minutes before the shot was fired. I said, "Good night," to all and passed into the saloon. While standing in the saloon conversing with the bartender this Vito, the proprietor's brother, walked in with a tray of glasses and set them on the bar. He hadn't been there a minute when the shot was fired.

Q How many people were in the bar room when that shot was fired? A Two besides myself.

Q How do you fix that? A I had my eyes with me.

Q When the shot was fired what attracted your attention most, the shot or who was present in the bar room? A When I walk into the bar room?

Q. No? A When I walk in the bar room there was nobody in there except the bartender.

Q What attracted your attention most at the time the shot was fired, the shot or who was present in the bar room? A The two things, at the one time, but I know just a second before the shot was fired there was two besides myself in the bar room.

Q Was Bennett in the bar room? A No, sir.

Q Was Chick in the bar room? A No, sir.

Q Where was Chick and Bennett? A I don't know.

Q What were you doing in the bar room at that time? A Standing there conversing with the barkeeper. I was going to get a Bergen car to go home.

Q Did you see the waiter there, Collins' brother? A Yes, sir; he came in with a tray of glasses.

Joseph A. Miller, cross.

Q Do you say that man was not there (indicating Fresco)? A No, sir.

By the Court.

Q Just say whether or not he was there. Was this man who was indicated as Tony Fresco in the bar room at the time you heard the shot? A No, sir.

By Mr. McDermit.

Q Did you see him there that night at all? A I did, yes, sir.

Q How long a time was he there? A I don't know.

Q Do you know that man? A Know of him.

The Court. What is the name?

Mr. McDermit. Mistretta.

Witness. I know him but I don't know his name.

Q You saw him testify here in court this morning? A Yes, sir.

Q You were sitting over here when he testified? A Yes, sir.

Q Who did you tell at the time he testified in court here this morning that he wasn't there, any of these officers? A No, sir.

Q Any of them talk about it? A No, sir.

Q Call their attention to it? A No, sir.

Q You mean to say you sat here in court this morning and heard this man testify he was there and you have been recalled to testify he wasn't there and you haven't talked with the assistant prosecutor or anybody about being recalled? A No, sir.

Q Talk with Mr. Bell, did you? A No, sir.

Q I am asking you? A No.

Q Was Mistretta there that night. Thomas Mistretta? A Oh, yes, he was in the dance hall.

Q Then he was there in the building? A Why, sure.

Q Both of those people were there? A Sure, in the building.

Q Your statement first at the time the shot was fired that they were in the dance hall and not in the bar room, is that right? A My statement is they wasn't in the dance hall at the time the shot was fired—in the bar room—they were not in the bar room at the time the shot was fired.

Q They were in the dance hall? A I don't know where they were. I was in the saloon.

Q Do you know whether they were in the room known as D? A No.

Q Do you know whether they were in room B? A No.

Q Or room G? A No.

Q Did you see them there after the shot was fired? A No; I don't remember.

Q Did you say that you don't? A I don't remember. There has been a lot of confusion. I can't say whether I did see them or whether I didn't see them.

FRANK O'NEIL, recalled in rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q You testified you were in police headquarters on October 14, 1914? A Yes, sir.

Q I show you this statement which has been marked S. 9 for identification, and ask you if you typewrote that? A Yes, sir; that is the statement.

Q Were you present when this was made? A Yes, sir.

Frank O'Neil, cross.

Q The witness, Susan Brown Clark, has testified in explanation of this statement in the exhibit, "Everybody there scattered like a lot of Indians—Bennett, Chick, Joe the Kid, Lame Joe and Frank from New York"; that at that time she was referring to the people who sat around the table and that something was left out of the statement at that point. Is that so or not? A I don't quite remember whether there was something left out. Did she say that?

Q She says this statement is not correct as it is here. A That statement is correct as she gave it.

Q As she gave the statement who wrote it? A I took the statement down verbatim, word for word, on the typewriter.

Q Did she make any objection later? A No, sir.

Q Do you know whether she read it over or not? A She did read it over, and it was also read to her.

By the Court.

Q By whom? The last statement made, you say it was also read to her By whom? A I read it to her.

Q Did you read it correctly or otherwise? A I read it as it appeared on that paper.

Cross examination by Mr. McDermit.

Q I understand the statement was not taken stenographically and then transferred to a typewritten statement, but it was taken down on the typewriter as she went along? A Yes, sir.

Mr. Van Blarcom. I offer this in evidence.

The Court. Received in evidence by striking out the word "for identification."

WALTER GODFREY, recalled in rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q Mr. Godfrey, did you take the statement of a witness who was produced here this morning by the defendant by the name of Thomas Mistretta? A I did take a statement of such a person.

Q This is the statement? A That is the statement; yes, sir.

Q Did you ask him to tell you all he knew about this case? A I did.

Q Did he say anything about having been outside of the hall and having seen Bennett and Chick Collins and other people outside? A Outside of the building?

Q Outside of the building. A He did not.

Q Did you put down everything he said? A Everything as he gave it to me, sentence for sentence, and I wrote it down.

Q And after you had finished what did he say? A He said that was correct; it was read to him and he signed it in my presence.

Q Did you take a statement of Michael Tanzola? A Yes, sir; I did.

Q Which has been marked Exhibit S. 11 for identification. Mr. Tanzola has testified that he didn't make this statement to you. I read first the part that he admitted, "I heard a shot and Frank say, 'Oh, my! I got shot'; he lifted his vest and I saw a little hole and he dropped his gun and just struck my foot. I picked it up and said, 'Here, Miller, I got the gun.' Miller opened the gun and said, 'No,' for it was loaded." Then he denies making this part of the statement, "Then there were a lot of people there in the hall. I saw Colucci and Bennett and others there." A Those are his words, just as he gave them to me.

Walter Godfrey, cross.

Q Did you take a statement of Vito Colucci? A I did, sir.

Q Marked Exhibit S. 13 for identification. Is this the statement?

The Court. What date?

A Dated April 24, 1914, and is in my handwriting.

Q Did Vito, in that statement, make any reference to his having been outside and seen Bennett and his brother and other people? A No, sir; he speaks of seeing Bennett, but not outside.

Q Did he say anything to you about having been outside at all that evening? A Everything he told is in that statement, word for word.

Cross examination by Mr. McDermit.

Q You have had Mistretta here under subpoena, haven't you, for the State? A No, sir.

Q You had his statement of what took place down there in your possession all the time? A Yes, sir.

Q He stated to you in that statement that he was in the bar room at the time the shot was fired, didn't he? A I can't tell you without reading the statement over.

Q Look at it and see whether Mistretta, when he made that statement to you, placed himself in the bar room after the shot was fired. Suppose you read the statement. A April, 25, 1914.

The Court. What are you going to do?

Witness. Read it aloud.

The Court. You both agree that it should be read out loud.

Witness. April 25, 1914. Statement made by Thomas Mistretta, 105 Warwick street, city. About eleven P. M., Tuesday, April 21, I went to Chick's saloon on Oliver street and had a

few drinks in the dance hall, then went out to bar room and stood at bar talking to Officer Miller. Saw some few people run out, but there was no trouble and they went back into the dance room. Baker was not there at that time, but came from across the street about five minutes later and went into the dance room. While standing at the bar, heard a shot, and Miller said, "What the hell is that?" and put his hand to his back pocket and ran into the back room and I followed him. Saw Baker standing by the hall door with his gun in his hand, and he dropped it on the chair. Big Sue and the special officer were standing by Baker when I heard the shot. It sounded as if it came from the hall that heads into the street. Thomas Mistretta.

By Mr. McDermit.

Q Any reference in that statement to Bennett at all? A No, sir.

Q Whether Bennett was in the hall, in the street, or in the bar room? A No, sir.

Q But it does say he was talking to Officer Miller in the bar room? A It does; yes, sir.

Q It does say that at the time the shot was fired he went into the hall from the bar room? A Yes, sir.

Q You took a statement from Tanzola? A I did.

Q Is that statement from Officer Tanzola in English, or is it in Italian? A It is in English.

Q That is the same witness that was upon the stand here and testified? A It is, sir.

Q You didn't have any Italian interpreter to take down the statement he made? A No; we didn't need one. He could speak English.

Q He understood it? A Perfectly.

TIMOTHY SCALES, recalled in rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q You are clerk of the Grand Jury? A I am.

Q Did you, in taking the minutes of the proceedings before the Grand Jury in the matter in April, 1914; did you take the testimony of a woman named Clark, Susan Brown Clark? A I did.

Q Was she asked this question and did she make this answer, near the end of her testimony? The question is: "Do you know Bennett?" A—

Mr. McDermit. I shall object to any testimony on behalf of Mr. Scales in this case that is being testified to from the minutes of the Grand Jury, and I make the further objection that it seems that the policy of the law should be for the exclusion by a court of evidence of this character for the reason that it endangers the sanctity of the Grand Jury room and puts people in a position where, if they were brought before a Grand Jury and gave testimony in a particular case, they might be confronted with that or be compelled to go in some other court and testify in relation to it.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

Q Was she asked this question and did she give this answer, "Do you know Bennett?" "A Yes, sir." A Yes, sir.

Q Was she asked this question and did she give this answer: "How long have you known him? A About a year." A She did.

Q "Was he there? A Yes, sir." A Yes, sir.

Q This question and answer, "Where was he? A He had been there all along. I didn't see him?" A When the shot occurred, I didn't see him.

Q Did she give this answer, "You didn't see him at all?" "A He was sitting at a table where I was drinking all the evening. There were about ten or twelve around the table." A She did.

Q Was she asked this question and did she give this answer, "Have any talk about Baker there?" A No." A Yes, sir.

Q Was she asked this question and did she give this answer, "How soon after the shooting did you see him? A He was in the hall." A Yes, sir.

Mr. McDermit. I ask that the entire record be read.

The Court. You may read the testimony of Susan Brown Clark before the Grand Jury.

By the Court.

Q I suppose, Mr. Scales, that you have caused this to be written out? A I have.

Q And is the testimony that Mr. McDermit has in his hands a correct copy? A As far as I know.

Q It was written out under your supervision? A My supervision.

Q Did you compare it? A I did not.

Q Were you present in the Grand Jury when Susan Brown Clark testified? A I was.

Q Did you take her testimony stenographically? A I did.

Q And the paper you hold in your hands is the original stenographic notes? A Original stenographic notes.

Cross examination by Mr. McDermit.

Q Is this part of the testimony that was taken, "What time did the shooting take place?"

The Court. That refers to something concerning this particular point.

Mr. McDermit. It refers to the description of what took place in the hall there. We are entitled to have this entire record as I understand is your Honor's ruling—

The Court. You are entitled to have the entire record of Susan Brown Clark as to what she said in the Grand Jury room for the purpose of seeing whether or not she said anything else by way of change or modification or amplification of the things that the prosecutor has read into the record.

Q "Q What time did the shooting take place? A Between 11:30 and 11:45." A Yes.

Q "Q Where were you at the time of the shooting? A About three feet away from Baker." A Yes.

Q "Q Where was Baker standing? A About six or eight feet from the entrance to the dance hall." A Yes.

Q "Q Just state what happened there that night? A I and another woman, and I was treated by Chick, who asked me to sit down and have a few drinks with him and some friends. I stayed there until 11:30 when Lucy came in and I asked her if she had been going with Frank. She said, 'No.' I said, 'Yes, you have.' Finally, she said she had been going with her and I said—"

The Court. The only point that there is any attempt of contradiction that has been made is with reference to what she said that at the time of the shooting, Bovino, or Vincenzo Bo-

vino, Bennett, was in the hall. The question is whether she qualified that statement, amplifies it or changes it or modifies it.

Q I call your attention to this, "Do you know Bennett?" A Yes, sir. Q How long have you known him? A About a year. Q Was he there? A Yes, sir. Q Where was he? A He had been there all along. I didn't see him—" No. "When the shooting occurred I didn't see him."

The Court. You read the correct answer?

Mr. McDermit. "A He had been there all along. When the shooting occurred I didn't see him."

Q "You didn't see him at all? A He was sitting at a table where I was drinking all the evening. There were about ten or twelve around the table. Q Have any talk about Baker there? A No, sir." A Yes, sir.

By Mr. Van Blarcom.

Q The question and answer Mr. McDermit just asked you, I didn't see him at the time of the shooting; right after that does this question and answer appear: "Q How soon after the shooting did you see him? A He was in the hall." A That is the question and answer.

MARY WEBER, recalled in rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q Now, did you see a witness produced by the defendant whom you met on Mulberry street that night? A Yes, sir.

Q Which one was it? A The one that was on the stand here.

Q Do you remember his name? A No; I don't remember his name.

Q Pasquale Lafragola, is that the one? A Yes, sir; he said to me, "Did you say anything about Bennett?" I said, "Yes sir."

Q He was the one that made that remark? A Yes; him and another fellow.

Q He was one of the men that made this statement to you that you testified to on your direct examination? A Yes, sir.

STATE RESTS.

The Court. I think Ex. 10, 11, 12, 13 and 14 for identification have not been introduced in evidence.

Mr. Van Blarcom. 11 is Tanzola's statement, which I am willing to have go in if there is no objection.

Mr. McDermit. No objection.

The Court. It will be admitted in evidence by striking out the words, "For identification."

Mr. Van Blarcom. The others have been read here to the jury. I suppose they ought to go in; that is, S. 12 and S. 13, two statements.

Mr. McDermit. I consent to that.

The Court. They will be admitted in evidence by striking out the words, "For identification."

PATSY LAFRAGOLA, recalled in sur-rebuttal in behalf of the defendant.

Direct examination by Mr. McDermit.

Q Did you ever make any attempt or attempt in any way to injure this Weber woman on Mulberry street, Newark, at night time, since the shooting?

Mr. Van Blarcom. I object. He was asked that question and denied it.

DEFENSE RESTS.

Walter Godfrey, direct.

The Court. Are there any statements, in evidence, that have not been read?

Mr. Van Blarcom. Susan Brown Clark's probably was not. I will read that.

WALTER GODFREY, recalled in sur-rebuttal for defendant.

Direct examination by Mr. McDermit.

Q Did you take a statement from Susan Brown Clark shortly after the shooting? A There was a statement taken. I did not take it.

Q Who took it? A I am not positive. I think one of the officers at headquarters.

By the Court.

Q Now, you are talking hearsay. You have to tell us what you know. A I know there was a statement taken.

Q Were you there? A Yes, sir.

By Mr. McDermit.

Q Where is that statement now? A That is in the prosecutor's office.

Mr. McDermit. I ask the court to direct the prosecutor to produce that statement.

The Court. I have no power to require the prosecutor to produce it. You can serve a subpoena *duces tecum* on him.

Q What is the date of that statement? A 23d day of April, 1914, at 11:40 P. M.

Q Where was that taken? A Down at police headquarters, taken by Captain Tuite.

Mr. McDermit. I will offer it in evidence.

Mr. Van Blarcom. No objection.

Statement admitted in evidence and marked D. 1.

The Court. Do you want Mr. Gregory to read it in assisting you?

Mr. McDermit. Please.

(Mr. Godfrey read Susan Brown Clark's statement, D. 1).

"About quarter to ten o'clock on Tuesday night, April 21st, last, when I got into Chick Collins' dance hall I was greeted by a few friends, that I know who asked me to drink. Chick and some other men were at a table drinking. I joined them until 11:30 when I went to a telephone in the bar room. I asked for a cafe near 125 Ferry street. I wanted to locate Frank Baker. Just as I came out of the bar room a young man asked me for a dance. After a few steps I saw Frank come in the door, I left the man in the middle of the floor and went over to talk to Frank. He warned me to get away from him. I refused and continued to talk until he slapped me in the face. I turned around to get my hat and coat. When I had my back turned I heard a shot. I then made my way back to talk to Frank. I asked him what was the matter, I had heard him say I am shot, I am shot. When I got to him he said, Sue, I am shot, tell my mother you didn't do it. I got my hat and coat. They had walked Frank into the bar room. I made a remark while in the bar room, to think all over a little bum all this trouble should be caused. I made a grab for this little girl named Lucy. I couldn't reach her because the men stopped me. I sat down and tried to be quiet. An officer in citizen's clothes ordered us to remain in the place after Frank Baker was taken away. Myself and two women and a man were taken to the police station. When the shot was fired I was within three feet of Frank Baker. After the shot was fired I said to Frank, 'Take your gun out of your pocket, maybe

it went off.' He took his gun and blackjack out and the gun fell on the floor and the special officer picked it up and gave it to a policeman who was in citizen's clothes. Susan Brown Clark.

"FRANK DONNELLY,

"*Patrolman.*

"WALTER GODFREY."

Q You haven't any other statement made by Susan Brown Clark? A Those are the only two statements made by Susan Brown Clark made to the best my knowledge.

By Mr. Van Blarcom.

Q Did she make another statement which she didn't sign? A Yes, sir.

Q Why didn't she sign that? A She made that statement to Officer O'Neil, a clerk in our office and for some reason or other the lady got away without her signing it.

Q Why didn't she sign it? A He said he was going to show it to me first.

Mr. McDermit. I ask to strike that testimony out.

The Court. Motion granted.

Q Were you there at any time when she made the statement, the one she didn't sign? A No, I was not.

CHARLES P. O'NEIL, recalled in sur-rebuttal for the State.

Direct examination by Mr. Van Blarcom.

Q Mr. O'Neil, you are a stenographer in the prosecutor's office? A Yes, sir.

Q And have been for how long? A For about three years.

Charles P. O'Neil, direct.

Q Do you know the woman named Susan Brown Clark? A Yes, sir.

Q Did you ever take down a statement that she made? A Yes, sir.

Mr. McDermit. I object to this.

Q Do you remember about when it was? A Yes, it was in the afternoon; it was about 2:55.

By the Court.

Q When? A I don't recall the date.

Q About when was it? A About a month ago.

Q That would be in the neighborhood of the 27th of December, 1915? A Before that. It was longer than a month ago.

By Mr. Van Blarcom.

Q About how long ago was it? A About a month and a half ago.

Q How did you take that statement without going into the contents of it? A I took the statement by notes, stenographic notes.

Q How did you make your notes, from what? A From what she said.

Q Anybody else excepting you and her?

Mr. McDermit. I object to this testimony. It is irrelevant and immaterial, what the conversation was between him and her.

Mr. Van Blarcom. I will withdraw the witness.

The Court. All witnesses discharged by consent?

Mr. McDermit. Yes, sir.

Adjourned until tomorrow morning at ten o'clock A. M.

FIFTH DAY.

Friday, January 28, 1916.

STATE
vs.
VINCENZO BOVINO. } *Murder.*

Appearances as before.

Mr. McDermit. I have been apprised only a few minutes ago that a material witness, who, in my judgment ought to be presented for consideration in the way of evidence, and he can be produced here as I understand in a very few minutes. He claims to have been at the City Hospital undergoing an operation when a leg or an arm was taken off and claims to have been in the same ward with and close to Baker.

The Court. Something about the death statement?

Mr. McDermit. Yes.

Mr. Van Blarcom. I don't object.

WILLIAM H. BUENGENER sworn in behalf of the defense.

Direct examination by Mr. McDermit.

Q Where do you live? A I live 787 Hunterdon street.

Q How old are you? A Twenty-six.

Q What do you work at? A I am driving for the Alderney Dairy Company.

Q Were you confined at any time in the City Hospital of Newark? A Yes, sir.

Q What was the matter with you? A I lost four fingers and the palm of my hand.

Q And when was it you entered the hospital? A The 1st of April.

Q When were you discharged from the hospital? A The 3d of May.

Q During that time do you know whether there was a patient there whose name is known as Frank Baker? A Yes, sir.

Q What ward were you in? A Ward Eight.

Q What ward was he in? A Ward Eight.

Q Do you know anything of any conversation had by him with anybody coming there to see him? A Yes, sir.

The Court. He cannot say what he knows. He can state where he was and what he saw and what transpired in his presence.

Q Where was Baker located in the ward? A Right at the door as you come in.

Q Where were you located? A When he came in he took my bed. I had to get up out of my bed and give him my bed.

By the Court.

Q Where were you located then? A Right at the door coming in.

Q When he got your bed where did you go? A I was sitting on a chair next to the bed. They had no more room and I had to give the man my bed so he could be operated.

By Mr. McDermit.

Q What took place?

Mr. Van Blarcom. I object unless the time is fixed.

Q Do you know when it was that Baker was brought there to the hospital? A The 21st of April.

By the Court.

Q When? A Right after twelve o'clock.

Q When? A 1914.

By Mr. McDermit.

Q How long did Baker remain there? A If I ain't mistaken he was only there that night, next day, and that night and the next morning I think he died, pretty sure.

Q While you were there did any people come to see him? A Yes, sir.

Q Who? A His brothers, father, friends and there was some officers that came to see him.

Q When did the officers come to see him? A They were there the next morning and right before he died.

Q Were you there right before he died? A Yes, sir.

Q Did you hear the conversation between these people or what took place there? A Yes, sir.

Q Will you just tell his Honor and the jury what you heard there.

Mr. Van Blarcom. Let us have the people.

Q Who was there, what people were there? A There was some police officers and if I ain't mistaken his parents were there.

Q How many officers were there? A I think there were three.

Q Do you know who the officers are, what their names are? A No, sir; I do not.

Q About what time of day or night was this when the officers were there? A If I ain't mis-

taken he died in the morning and they were there together right in the morning before he died.

By Mr. Van Blarcom.

Q What time in the morning? A I can't say what time in the morning.

By Mr. McDermit.

Q Did you hear what was said by the officers to the man or what the man said to the officers? A Well, yes, sir.

Q Now, what did you hear? A They were asking him if he—

By the Court.

Q Not, "They were asking him," who asked him? A The officers asked him.

Q All three in a chorus? A No, sir.

Q All four in a chorus? A No, sir.

Q Which one? A I do not know the name. They asked him who shot him and he says, no, he was quarreling with a woman and when the shot was fired he could not say what happened and that is all he knows about it. He says he didn't know who done the shooting at all, and then he was like unconscious and he passed away.

Cross examination by Mr. Van Blarcom.

Q Where were you? A When he died?

Q Yes? A At the head of the bed.

Q What were you doing there? A Standing listening to what he was saying.

Q Who else was there? A The nurse was standing about three feet away from him.

Q About what time was this? A I can't say just what time it is any more because quite a time passed.

Q Why is it that you remember so much if it has been such a long time? A I had been following up in the paper and last night I happened to go down and I was introduced to Mr. Chick and we got talking and he asked me how I lost my hand and where I was hurt and he mentioned this, he said this was the dance hall where a man was shot. I said, "Well, I remember when he came in. I gave him my bed."

Q Now, you haven't told us yet about what time it was that this man died? A I should judge about half past ten.

Q In the morning? A Yes, sir.

Q You had your breakfast? A Yes, sir.

Q Sure about that? A I would not be positive about it. I am only guessing at the time.

Q Where did you sleep that night? A Slept on a cot on the floor.

Q Where was the cot? A Standing about fifteen feet from Frank's bed.

Q What time did you go to bed that night? A I went to bed, it was about half past seven.

Q What time did you get up? A We had to get up five o'clock.

Q Did you get up five o'clock? A Yes, sir.

Q Did you see him operated on? A I did not see him be operated on. They took him to the operation room.

Q You say you followed this case in the papers. Did you follow the first trial in the papers? A No, sir; until here of late. I only saw it in the paper here the other evening. I says to my wife, "This man is not getting justice at all because he never made a statement which they are putting in the paper today."

Q You never saw anything about the first trial? A No, sir; I did not. As I said before—

The Court. Don't say anything else; just answer the questions.

Q You say you went down to Chick's? A Yes, sir.

Q How did you know his name was Chick? A I was introduced to him.

Q By whom? A William McGrath.

Q Who is it? A I know him as a saloon-keeper's son.

Q Where is the saloon, his father's saloon? A Corner of Scott street and Mulberry.

Q What were you doing in there? A I work right across the street from the place.

Q Who do you work for now? A Alderney Dairy Company.

Q How did you happen to see McGrath? A I have an automobile and I was out with it last evening and he was going home with his girl. I saw him. I said, "Come on, Bill, I will take you down," and his girl lives not far away from Chick's, and he said, "Come on down; I will introduce you to a friend of mine," and he introduced me to Mr. Chick.

Q You didn't know that was the place when you went down? A No, sir; I did not.

Q When did you read this in the newspapers? A I think it was Monday—no it was Tuesday.

Q If you thought this man wasn't getting justice why didn't you go right away to the court here and tell about it? A I tell you I only saw it in the paper. I was working nights. I just got through before and I met Chick and he got me to do that favor, come up with him and go on the stand.

Q It wasn't because you wanted to see justice done. It was because you wanted to help Chick? A No, not because Chick is a friend of mine. I wanted to see the man get what is right.

Q You didn't want to do it until last night? A That was because I was working night work.

Q You couldn't stay up until half past eight or nine o'clock and come up and tell the judge about it? A I could if I thought about it.

Q You didn't think very much about it? A No, I was not, not at that time.

Q Who is this girl that lived in that neighborhood? A I do not know.

Q Where does she live? A I can't tell you the number of the house. She lives on Oliver street if I ain't mistaken.

Q Near what other street? A Near Jefferson.

Q How near? A I should judge about 300 feet.

Q What kind of a car do you drive? A A Crit, touring car.

Q Whose car was it? A Mine.

Q Your own car? A Yes, sir.

Q How long have you owned it? A Well, this coming October will be one year.

Q Where did you meet McGrath? A Corner of Winans avenue and 18th avenue.

Q And he was there with this woman? A He was going home. He was walking down 18th avenue.

Q Did you know him before that? A Yes, sir.

Q And he suggested taking you down to Chick's? A No, he was taking his girl home, and I suggested taking him home in the car.

Q I thought you said you worked at night? A I was working nights. I started half past twelve.

Q At night? A That is, rather morning.

Q You started half past twelve in the morning. Then nothing would interfere with your coming at night and telling what you knew? You could have come any night this week? A I worked every

night. Last night we got through early. I went home and slept until morning and I took the car out in the evening.

Q I thought you worked every night? A I do work every night.

Q Started at half past twelve in the morning? A Yes, sir.

Q When did you first tell anybody you were at the hospital? A When I first told anybody I was at the hospital?

Q Yes? A Everybody knew it when I was taken there.

Q When did you first tell anybody you heard this statement at the hospital? A Until I heard Bill McGrath talking about it and then when I was down to Chick's I was talking to him and then we got into a conversation and talked about the hospital. Then it first comes to my mind what I read in the paper and then I told him what I heard.

Q How did you remember the date was April 21st he was brought in there? A Because the next day I was promised to get up out of bed and I got out of bed the 22d.

Q I thought you said they got you out of bed the night he came? A I know. I was supposed to get up the 22d. The doctor gave me the privilege I could get up on the 22d.

Q You remember that on that account? A Yes, sir.

Q Did you sleep well the night he died? A No, sir; I didn't sleep at all.

Q What occurred to keep you awake? A I had bad pain in my hand.

Q Anything else? A No, sir.

Q It was daylight then when he died? A I am not very sure it was.

Q You say he died about half past ten. It must have been? A I am only guessing at that. I can't say positive.

Q Were you up between seven o'clock at night, 7:30 when you went to bed and five o'clock A. M. when you got up? A I can't think back that far.

Q How far was your cot away from his bed? A About fifteen feet.

Q Did you see anybody else come besides the police officers? A I saw his folks and his brother.

Q Anybody else? A Not as I can remember.

Q Did you see the priest? A Yes, sir; I did see the priest.

Q Sure about that? A I would not say positive because I told you so many came in there, so many fellows that time.

Q What time did the priest come? A I can't say what time he came.

Q Day or night? A Day time.

Q Sure about that, are you? A I would not swear to it.

Q You would not swear to any of these things? A Certainly.

Q Why won't you swear to the time the priest came? A Because I can't think back that far.

Q You talked all these other things over with Chick, didn't you? A No, sir; not all.

Q Did Chick tell you anything that happened up at the hospital? A No, sir; he did not.

Q Tell you anything that has been testified to here in court? A No, sir.

Q You don't know whether the priest came at day or night? A I can't say.

Q You don't know whether he died day or night? A I can't swear to that. In my opinion—

William H. Buengener, cross.

By the Court.

Q You have already testified he died in the morning? A I think he passed away in the morning.

Q About ten o'clock? A Yes, sir.

Q It was daylight, was it? A I am pretty sure.

By Mr. Van Blarcom.

Q When did you leave the hospital? A The 3d day of May.

Q When did you enter there? A April 1st, 1914.

Q The night Baker was brought in you were taken from your bed? A Yes, sir.

Q Where did you sleep that night? A I was sitting in a chair and then they got a cot and I laid about fifteen feet away from him.

Q When was he operated on? A About half an hour after he was brought in.

Q When did the officers first come in? A I am pretty sure it was the next evening.

Q They didn't come right immediately after he was brought there? A No, sir.

Q Sure about that, are you? A I can't say. There are so many comes in that way, I just can't think back that far.

Q You have remembered all about everything else? A Well, some things I do remember very well, but other things has kinda slid my memory.

Q How long were you down to Chick's last night? A I was there about half an hour.

Q What time was it? A It was about quarter after ten or half past ten.

Q What time did you get home? A I got home just about a quarter to eleven.

William H. Buengener, cross.

By Mr. McDermit.

Q Show us where your injuries are that you say you were operated for? A My hand.

By the Court.

Q Were you in the chair or in the cot when you heard this? A I was standing at the head end of the bed.

Q You were fifteen feet away? A Not when I heard this, I was standing at the head end of the bed.

By Mr. McDermit.

Q Head of the end of the bed that Baker was in? A Yes, sir.

Q *(By Mr. Van Blarcom).* Are you positive now that this wasn't the first night that Baker was brought there that you heard a conversation? A It wasn't the first night I heard about it.

Q You are sure about that, are you? A Yes, sir.

Q Sure couldn't be any mistake? A No, sir.

Q How long after he made this remark did he live? A Only a short while. He was unconscious and then he died.

Q What do you mean "by a short while?" A I believe about two or three minutes.

Q Anybody tell you that? A No, sir; nobody told me that.

Q Do you remember that yourself? A Because I remember a nurse was standing right near by.

Q You are positive that when he died you stood at the head of the bed? A Yes, sir.

Q And that he died about three minutes after he made this statement? A Yes, sir.

Q And that it wasn't the first night he was brought in? A No, sir; not the first night he was brought in.

Q Was there a screen around his bed? A Yes, sir.

Q You were inside that screen? A The screen was around. I was standing right here (indicating) between the bed and the screen, the head of the bed.

Q Were you inside of that screen? A Not just inside, standing where it comes up to the bed.

Q Could the nurse see you? A Yes, sir.

Q Did she know you were there? A Yes, sir.

Q Did she talk to you? A She didn't talk to me, no.

Q How do you know she thought you were there or knew you were there? A She looked at me.

By the Court.

Q What is the name of the nurse? A Miss Higgins.

Q What is the name of your day nurse? A Miss Higgins.

Q What is the name of your night nurse? A Miss Burns.

Q You were not in the ward where Miss Field and Miss Furst were? A Yes, sir.

By Mr. Van Blarcom.

Q You were in that ward? A Ward Eight.

Q Was Miss Field in that ward? A No, Miss Field was the night nurse at that time.

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

Q How many night nurses do they have? A One.

Q Who was the day nurse? A Miss Higgins. She was the head nurse.

Q It wasn't Miss Furst? A Miss Furst was in the ward.

Q She wasn't the head nurse? A No, they had changed the nurses; Miss Higgins was the head nurse.

The Court. You are asked only about this time that you heard this conversation between the police officers and Baker.

Q Who was the head day nurse at the time of this conversation, that you heard? A Miss Furst was the head nurse at that time.

Q Why didn't you mention her name before instead of Miss Higgins? A Miss Higgins was standing there.

Q Miss Higgins was standing where? A At the bed, about three feet away from the bed.

Q At the time Baker died? A Yes, sir.

Q And Miss Furst was there also? A I do not know Miss Furst was there. I didn't see her.

DEFENSE RESTS.

JAMES D. BELL, recalled for the State.

Direct examination by Mr. Van Blarcom.

Q I believe you testified you went to the City Hospital with these other officers? A Yes, sir.

Q There has been a witness produced on the stand this morning by the name of William H. Buengener. Did you see him at the hospital that night? A No, sir.

Q Was he at the bed? A No, sir.

Q You saw him this morning on the witness stand? A Yes, sir.

Q Saw anything of him that night? A No, sir.

Cross examination by Mr. McDermit.

Q You were not looking to see him, were you? A If he was there I would have seen him.

Q You didn't know him? A Never saw him before today.

Q You didn't notice any other patients that were in the ward? A Noticed patients when I went in?

Q You were only interested in getting the statement? A Yes, sir.

Q At that time there was a screen around this bed? A Yes, sir.

Q That is placed around the bed of dying people only? A It was placed there that night.

Q That screen is only placed there when the patient is dying? A I don't know.

JOHN L. MILLER, recalled for the State.

Direct examination by Mr. Van Blarcom.

Q Mr. Miller, you were here this morning when the last witness for the defense testified? A Yes, sir.

Q The man that sits over there? A Yes, sir.

Q You were at this hospital this night when Baker died? A I was.

Q Did you see this witness there? A No, sir.

Q Ever see him before today? A Never.

Cross examination by Mr. McDermit.

Q You don't know that he was there, or he wasn't there excepting the dying man? A I was right at the head of the bed. I could have seen him if he was there.

Q Who did you see there, how many nurses? A One.

Q Any other nurse in the room? A No, sir.

Q Sure about that? A Positive.

Q What was the name of the nurse that was there, did you know her? A I do not.

Q Do you know how many patients there were in the room that night? A I do not.

Q How many bodies or how many people there? A I do not.

Q You were not interested in any one other than the patient talking to the man who was dying? A That is all.

PETER REMONDALLI, recalled for the State.

Direct examination by Mr. Van Blarcom.

Q You were in court when this last witness testified? A No, sir.

Q See that gentleman over there, his name is Buengener. Was he up to the City Hospital that night? A I didn't see him.

Q Did you ever see him before? A No, sir.

Cross examination by Mr. McDermit.

Q You can't say he wasn't up there? A If he was there I would have seen him.

Q You simply didn't see him, that is all you can testify about? A That is all.

Q You were not interested in interviewing any other patients there were up there, you were only interested in going to see this man that was dying? A That is all.

WALTER P, BYRNE, recalled for the State.

Direct examination by Mr. Van Blarcom.

Q Were you in court when this last witness for the defense testified, Mr. Buengener? A No, sir.

Q See that man over there (indicating Buengener)? A Yes, sir.

Q That night when you went to the hospital, the night that Baker died, did you see him there? A No, sir.

Q Ever seen him before? A No, sir.

Cross examination by Mr. McDermit.

Q Didn't go there to see him, did you? A No, sir.

Q Didn't know that he was there? A No, sir.

Q Didn't know he was also a patient in the hospital? A No, sir.

Q You had no interest in anybody except the person you went to see with those other officers, isn't that all? A Yes, sir.

Q You were asked the question once before in regard to the nurses, I think, weren't you? A Yes, sir.

Q How many nurses did you testify were there? A I only seen one before we got the statement.

Q Was she there when he was dying? A I didn't see her around the bedside. I can't say where she was.

Q You didn't see her around the bedside? A I didn't pay no attention to her.

Q You didn't pay much attention to anybody excepting the man who was dying? A That is all I was looking at.

Q You wasn't looking around to see who was standing there, were you? A No, sir.

LULU M. FIELD recalled for the State.

Direct examination by Mr. Van Blarcom.

Q In April, 1914, you had a man in the City Hospital by the name of William H. Buengener? A I did.

Q Is that the man (indicating Buegener)? A Yes, sir.

Q Were you night nurse? A I was.

Q Was there a Miss Higgins? A There was not.

Q I mean was she a nurse at that time? A She was a nurse, yes.

Q Was she a day or night nurse? A There is no record of her being on night duty.

The Court. Do you move to strike it out because it is hearsay?

Mr. McDermit. Yes.

The Court. Motion granted.

Q Did you ever see her on duty at night?

Mr. McDermit. That is objected to because it is immaterial whether she was on duty at night or day.

Mr. Van Blarcom. I withdraw the question.

Q This patient that you have seen in court this morning was a patient the night that Baker died? A He was in the ward, yes.

Q Was he in the immediate—was he standing by the bedside? A I did not see him.

Q Where was his bed located, do you remember? A I cannot remember exactly, but I know it wasn't near the dying man.

Lulu M. Field, cross.

Q He has testified that you had looked at him and saw him the night that Baker died. Do you remember seeing him at all? A I do not.

Q How was this screen arranged around the bed? A Why, the screen has three sides, a back and then two sides that open out and one side—There was two beds perhaps three or four back the beds were. The screen was put directly around Baker's bed and the long end, side of the screen was pushed to the other bed and pinned to the head of the other bed.

Q This witness wasn't in that bed to which the screen was pinned? A No, he was not.

Mr. McDermit. What do you mean by that? Referring to whom?

Mr. Van Blarcom. Buengener.

Q How many nurses were on duty that night in the ward? A There was two nurses, one nurse at Ward 12 and one nurse at Ward 8.

Q This was Ward 8? A Yes, sir.

Q What was the name of the other nurse? A Miss Bigett, she was between the two wards.

Q Was she there at the time Baker died? A she wasn't there at the time Baker died.

Q You were the only one? A I was.

By the Court.

Q You were the only nurse? A I was the only nurse.

Cross examination by Mr. McDermit.

Q You testified in this case that you were—you testified as follows in this case, "I was not doing anything particular at the time that Baker was dying." Is that so? A That is so.

Q You were paying no attention to any conversation, is that so? A That is so.

Q You said this bed was lifted and the head was up two and a half feet near to you where you were standing? A Yes, sir.

Q This young man had been in the hospital how long, the witness Buegener, or whatever his name is? A I do not know the exact amount of time, quite awhile.

Q What was he there for, what was he a patient for? A I believe he had an accident to his right arm.

Q To his arm or to his hand? A The arm and hand were both injured.

Q This bed that Baker occupied had been occupied by somebody else before Baker was put into it? A Yes, sir.

Q Who occupied it? A I could not say.

Q Will you say that he didn't occupy it and that he didn't get up for the purpose of giving Baker the bed Mr. Baker had been operated on? A I could not say. He may have occupied it.

Q You have some cots there besides beds? A When we are overcrowded, yes.

Q When the patients are convalescent do they get up and walk around there? A During the day.

Q During the day or during the evening? A During the day, yes.

Q During the evening too? A Sometimes.

Q Sometimes sit around on chairs, alongside of the beds, don't they? A Not late in the evening.

Q Sometimes they do? A Not late in the evening, no.

Q Do you know how long after Baker died that this boy was discharged, this witness was discharged from the hospital? A No, I do not.

Q Was he there after Baker died? A I am not sure.

Q Where is Miss Higgins now? A I do not know.

Q She was connected with the hospital at that time? A She was.

Q And sometimes the day nurse shifted to the night force? A But there is always a record of it.

Q Don't they sometimes shift—don't they switch around sometimes, the day nurse stays over night and the night nurse stays in the day? A Never.

Q That never occurred to your knowledge? A No.

By Mr. Van Blarcom.

Q Do you ever remember an incident of any patient getting up at midnight and walking around? A If they want a drink they go out and get it, that is all.

Q They were not walking around? A They do not walk around.

Q Have you a record here of the nurses who were on duty that night? A I have.

Q Just turn to it, please. Who were they, and name each ward? A Miss Owens, special on Ward 12.

Mr. McDermit. I have to object to her reading from that record.

Q What is that record? A It is the record that is kept of the night nurses.

Q That wasn't kept by you? A It was not.

Q It is a hospital record, is it? A It is a hospital record.

REGINA FURST, recalled for the State.

Direct examination by Mr. Van Blarcom.

Q Miss Furst, was there a nurse in the hospital by the name of Higgins at the time Mr. Baker died there? A Not the time he died.

Q Was she a day nurse or night nurse? A She was a day nurse.

Q You were a day nurse also? A Yes, sir.

Q Did Miss Higgins work under you or you under here? A Miss Higgins worked under me.

STATE RESTS.

Counsel summed up.

The Court charged the jury.

Charge to Jury.

Gentlemen of the jury. The Court desires at the outset of the charge to express its appreciation of the careful and painstaking manner in which the members of the jury have patiently listened for several days to the presentation of the evidence and the arguments of counsel. The Court has particularly noticed that jurors have been giving great attention to the proceedings, which have been carried on here before them.

The function of the Court is to instruct the jury in reference to the principles of law governing the case. The principles of law as charged should be accepted as a correct statement of law. The jury, however, is the sole judge of facts, weight of testimony, credibility of witnesses, inferences to be drawn from the evidence and the ultimate conclusions to be reached upon all of the facts. The Court in referring to the evidence is not to be understood as deciding any facts but merely attempting to illustrate or explain the application of principles of law. If the Court errs in its statement of any evidence or assumes the existence of evidence that is not before the jury, the jury is to rely upon its

recollection and not upon the recollection of the Court. If any part of the evidence is referred to, seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all the evidence and pertinent proof bearing upon the question of the guilt of this defendant, not only that mentioned by the Court, but all of the evidence in the case. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or evidence has been offered and excluded, or evidence has been presented and subsequently stricken out, the jury should disregard all such suggestions, statements, offers and excluded matter. The verdict can lawfully and properly be based upon the evidence remaining in the case only.

The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of defendant, and defendant is entitled to the benefit of the reasonable doubt, not only as to the commission of the crime and the nature of the offense, but also as to the degree of the offense. The State must likewise show all of the essential elements of the crime beyond a reasonable doubt and of the grade or degree of the offense which is charged. The burden of proving the guilt of defendant beyond a reasonable doubt is upon the State and does not shift from the State throughout the case.

> "Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the

minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is taken to be proof beyond a reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether."

The defendant is presented upon an indictment, found by the grand jury, which contains a single count, charging that this defendant, Vincenzo Bovino, did, on the 21st day of April, 1914, at the City of Newark, wilfully, feloniously and of his own malice aforethought, kill and slay one Francisco Miserintino. The finding of an indictment is merely a step in the regular course of legal procedure, which must be taken before any person can be put upon trial for certain offenses and is of no evidential value against the defendant. The charge is in the statutory form, and under the indictment defendant may be found guilty of murder in the first degree or murder in the second degree or manslaughter; otherwise, he must be acquitted.

Murder is the unlawful killing of a human being with malice aforethought by a person of sound mind and discretion. The Crimes Act, Sec. 107, insofar as it relates to this matter is as follows:

"Murder which shall be perpetrated by means of poison or by lying in wait or by any

other kind of wilful, deliberate and premeditated killing shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree, and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or in the second degree."

Manslaughter is the killing of another upon a sudden transport of passion or heat of blood *upon a reasonable provocation and without malice.*

The jury is to determine the guilt or innocence of the defendant and if it finds that the deceased met his death at the hands of the defendant with a deadly weapon used by him for that purpose, the presumption of law is that the murder was murder in the second degree. To raise the grade of such offense to murder in the first degree the jury must be satisfied beyond a reasonable doubt that the distinguishing features of that grade of crime exist, that there was present in the defendant an intent to take life and that such intent was wilfully, deliberately and premeditatedly executed. Normally premeditation comes first; that is, entertainment by the mind of a design to kill; then follows deliberation, the weighing of considerations pro and con, after which the killing, being determined on, becomes wilful, deliberate and premeditated in the sense intended by the statute. The forming of such a design and its deliberate execution necessarily take some appreciable time—not a long time, not necessarily an hour or a minute, but still an appreciable time. It is true that these words, "wilful, deliberate and premeditated," do not import any prescribed period of time. The mental acts to which they severally refer are capable of being per-

formed with that degree of celerity with which the human mind is proverbially capable of acting.

To reduce the crime to the grade of manslaughter the evidence must show the lack of what the law calls malice. Malice, as the law uses the term in defining these crimes, consists in the intent to do serious bodily harm. Intent to do serious bodily harm is malice. Manslaughter is a criminal homicide, but manslaughter is without intent to do serious bodily harm. Murder is a criminal homicide with malice—that is, with intent to do serious bodily harm. Of course, intent is an act of the mind which cannot be seen but can properly be inferred from the conduct and actions of the party.

In this case, if the jury finds that the death of the deceased ensued upon a wound or wounds inflicted by defendant with a deadly weapon or under such circumstances that the jury draws the inference of intent to do serious bodily harm, there is present the evidence of malice and it is murder in the first degree or murder in the second degree, according to the principles heretofore charged, and not manslaughter.

The Court will refrain from attempting to outline the testimony of all of the witnesses in the case. It will merely refer to certain evidence which may be mentioned within the limitations of a charge.

The State contends that many witnesses produced by the State and the defense have testified to certain facts which support the charge laid in the indictment.

Mary Weber, twenty years of age, a visitor at the dance hall of "Chick Collins," 238 Oliver street, Newark, testified that on the evening of Tuesday, April 21st, 1914, she was seated at a table near the piano in the northwest corner of the room, that she

saw Susan Brown Clark seated at a large table with twelve or fourteen persons in the southeast corner of the room, that Susan and the defendant talked an hour together; that later Susan was in the dressing room in the northwest corner of the dance hall; that Francisco Miserintino or "Frank Baker," as he is known, and Lucy Ens were talking at the end of the hall near the doorway to the room C that leads to the street through the hallway A on the diagram; that Lucy went into the dressing room; that Susan came out, went over to Baker and said, "You keep away from Lucy, you are married to me," or something to that effect; that Baker said something that the witness did not hear; that Susan slapped Baker and he slapped her, whereupon Susan went over to the defendant, said something to him; that defendant arose from the large table, went over to Baker, tried at first to hit him with his fists, then shot him, holding the revolver about the level of the waist; that Baker cried out, "Bennett shot me," and fell; that the defendant threw his revolver on the floor and that an uproar ensued and witness left the dance hall. The defendant, Vincenzo Bovino, was known as "Bennett" or "Jim Bennett."

Anna Gurtler testified that Baker came in the dance hall with Lucy; that Susan slapped Baker and Baker slapped her and Susan talked with the defendant. Later, she said, Baker and defendant had an argument and defendant shot Baker.

Joseph Arthur Miller, a police officer off duty while in the bar room heard a noise that did not sound to him like a shot. He hesitated for a short time and then went into the dance hall; Baker was in front of the door in the dance hall from the room G to C on the diagram and Baker had his revolver in his hands and that there were about ten

people in the dance hall left of the thirty or forty who had been there before.

James D. Bell, John L. Miller, Walter F. Byrne and Peter Remondalli, all police officials except the last, who is a court interpreter, heard what was said at the deathbed scene; that Bell went in front of the rest and said to Baker, "Do you know me?" and Baker said, "Yes, you are my friend, Jimmie Bell." Bell said, "Do you know this man?" indicating John L. Miller and Baker said, "Yes, that is my old friend, Jack Miller." Then ensued some conversation with reference to the fact that Baker thought he was going to die and that the priest had been there and then Bell said, "Who shot you?" and Baker said, "Jimmie Bennett," and expired within a few minutes.

Of course, this is not the testimony of the officers that defendant shot deceased, but if the jury believes that Baker, in the presence of impending death, said the defendant shot him the jury in its discretion may consider the statement of Baker as evidence against defendant, because the law permits it to be presented as a dying declaration, not made under oath nor subject to cross examination, but under a sense of impending death an abiding impression of almost immediate dissolution.

Miss Lulu M. Field testified that she was present at the death bed and that Bell did ask questions of Baker and that Baker said something, but she did not distinguish the words; that her principal concern at that time was about the physical condition of the patient.

Dr. William H. McKenzie, the county physician, testified to the result of the autopsy; that Baker was a man five feet eleven inches in height, probably one hundred and eighty pounds in weight, that in the opinion of the county physician the deceased

died of peritonitis caused by a bullet wound; that the bullet entered the body two and one-half inches above and one inch to the right of the navel, proceeded all the way through the body, from the front to the left side, coming out one inch below the lower rib and one inch back of the posterior line on the left side. From his description and the illustration the witness made upon his own person of the points of what he said in his opinion were entrance and exit of the bullet, the bullet took a course which was almost horizontal, probably going downwards slightly towards the back.

Donato Colachio testified to finding a bullet in the dance hall an hour and a half after the shooting.

Walter Godfrey testified to the finding of holes in the vest and shirt in front and a hole in the shirt on the left side, apparently opposite the bullet wounds described by Dr. McKenzie.

Donato Colucci, or "Chick Collins," a witness produced by defendant, testified to the arrival of Baker and of Lucy and a conversation with them in the presence of defendant in front of the hallway.

Susan Brown Clark, a witness produced by defendant, said she had known Baker and defendant; that she had lived with Baker as his wife, although not married, and said she was such wife; that before the night in question she learned he had been with Lucy; that she went to the dance hall, had drinks with "Chick Collins," called upon the telephone trying to get Baker; that she saw Lucy in the dance hall, went with her into the dressing room and warned her to keep away from Baker and stated that she was married to him and that it was with difficulty she restrained herself from striking Lucy. Susan also said that she went over to Baker, called him an exceedingly vile name in Italian and

he struck her, and afterwards she says—after the shooting which she says she did not hear nor see—that she told Baker to place his gun on the chair.

Vito Colucci, brother of "Chick Collins," said he followed Miller into the dance hall and saw Baker throwing his gun on the chair.

The defendant testified or admitted in one or the other of the statements that he saw Lucy go into the dressing room with Susan, that he pulled the curtains aside, directed Susan to stop; admitted that he signed the statements Exhibit S. 6 and S. 8, in which a New York Frank was pointed out as a very suspicious person connected with the transaction because the defendant said he heard someone whom he believed to be a New York Frank had been trying to accuse him, the defendant, and defendant thought that he would try to make a false accusation against this New York Frank to divert suspicion from himself.

The State contends, therefore, by reason of this and other evidence that is said to be before the jury that the jury should arrive at the conclusion beyond a reasonable doubt that this defendant fired the fatal shot.

The defendant contends that the witnesses produced by the defense, and some of those by the State, have testified to facts which show that defendant did not fire the shot, or that, at all events, raise a reasonable doubt of the guilt of defendant.

The defendant, himself a witness, testified that after playing a few games or looking at a few games at the large table in the dance hall and talking with Susan and dancing with Lucy, he went to the corner of Adams street and Oliver street with "Chick Collins" and "Joe the Kid" (Donato Colachio) and while there heard the shot; that he was then 200 feet away from 238 Oliver street; that he

returned after the shooting and remained a considerable time with Baker and others in the saloon; and that he never had anything to do with Susan Brown Clark and that he had no reason whatever for killing Francisco Miserintino.

Donato Colachio said he saw the defendant get up from the table and leave the dance hall and go out of the building before the shooting and that he went with defendant to the corner and was there a few minutes when the sound like a shot was heard.

Donato Colucci or "Chick Collins," Artulo Scola, Pasquale Lafragola also testified that they saw the defendant at the corner at the time the shot was fired or when they saw a large number of people come out of the saloon.

Angelina Seria, the woman who lived diagonally across from where these witnesses have placed the defendant, said that she saw "Chick Collins" and "Jim" Bovino, referring to this defendant, at the corner at a certain time which, it is contended by the defendant, was at the time of the shooting.

Colucci and Tony Fresco, who followed Miller into the dance hall, said that the defendant was not there immediately after the shooting.

George Policastro testified that Baker said in the dance hall immediately after the shooting, "Susan, don't tell my mother you shot me."

Susan Brown Clark and Michael Tanzola both testified for the defense that, although present at the shooting, they did not see who fired the shot, the former because she said she was crying with both hands over her face, and the latter because he was not in a position to see who shot the decedent. The defense further contends that Baker was semi-conscious after the operation and probably continued so until his death.

The defense therefore contends that the evidence shows that the defendant did not fire the shot and that at all events the facts proved show that the State has failed to sustain the burden of proof that the defendant beyond a reasonable doubt fired the fatal shot.

The State contends in reply to these matters presented for your consideration that the nurses, Miss Field and Miss Furst, said that Baker was conscious, one of them during the afternoon of April 22d and the other during the evening, and that no opiates were given to him, and Miss Field testified to an intelligent request at the time a message was delivered by him to her and the policemen, three of them, and the Court interpreter, testified to the conversation which Bell had with Baker, and that at the time he spoke and acted in a manner that indicated that he was conscious and did know what he was talking about; that the testimony of the defendant cannot be relied upon, that the witnesses who saw defendant in the bar room after the shooting probably saw him immediately after the shooting, and that defendant could easily have gone around through the hallway A directly into the bar room or around through the door to the street and back into the bar room; that if defendant was at Adams and Oliver streets that night at all it was not at the time of the shooting; that the evidence that those who stood on the corner heard the shot is inaccurate because they were 175 feet away, and even Miller, a policeman, in the next room to the dance hall, was not sure at first that it was the noise of a shot fired from a revolver; that defendant has falsely accused New York Frank of connection with this offense to divert suspicion from himself and that the witness, Mary Weber, is corroborated, in part at

least, in her description as to the manner in which the fatal shot was fired; that this defendant fired it on a level with the waist, by the course the bullet actually took in the body of Baker as described by Dr. McKenzie, and that Michael Tanzola cannot be relied upon as to his description of the shooting, because the illustration of his position with relation to Baker at the time the shot was fired, places him in a position, where the bullet must have come from, to go through Baker's body in the manner described by Dr. McKenzie. The State also contends that defendant on the witness stand under oath has contradicted himself in important matters; that in many respects the statement of April 23d, 1914, contradicts what he said under oath and what he said in his later statement, and that the contents of the later statement of October 14th, 1915, contradict many of the things said by him upon the witness stand and some of the things which he said in his former statement, and that these contradictions, inconsistencies and the false accusation against another without any foundation strongly tend to connect this defendant with the alleged offense; particularly as the false accusation was apparently intended to divert suspicion from himself The State finally contends that this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself in his own favor may be considered by the jury as showing a consciousness of guilt on the part of the defendant.

If the jury arrives at the conclusion that the defendant fired the fatal shot it seems to be murder in the first degree or in the second degree. The jury should then consider the circumstances in which the shot was fired.

The State contends that the defendant conceived the design to kill and wilfully, deliberately and pre-

meditatedly carried it out, under the principles of law governing murder in the first degree, because of the deadly weapon used and the vital part of the body in which the bullet entered, and that any person using such a weapon purposely firing into a vital part of the body would naturally intend the ordinary and natural consequence of his act.

The defendant contends, as to this feature of the case, that the facts as presented under the evidence of the State and the defense lack all evidence of any wilfulness, premeditation or deliberation, and that the shooting, if done at all, was done practically on the spur of the moment.

There are in evidence numerous alleged contradictory statements of various witnesses made on occasions other than those under oath before this Court and this jury in this trial. Some of the statements are oral, not under oath, some oral under oath before the grand jury or at the former trial, and some in writing signed by the witness and not sworn to under oath. It is desirable to consider the effect which may be given to these statements by the jury and to state the limitations upon the jury in considering the statements. There are three classes of statements to which the Court will particularly refer. Some merely efface the effect of certain evidence; some may be accepted as evidence and some relate particularly to credibility only.

The first class includes the facts or statements referred to in the questions of examining counsel to his own witness upon the witness stand. For example, the prosecutor called Mae Gilling, and she testified that she did not observe defendant in the dance hall at the moment of the shooting. She made an oral statement under oath before the grand jury and a written statement that she saw the defendant at that time in the dance hall. The jury in this class

of statements is permitted to consider as evidence only the testimony given here before it under oath. The statement elsewhere was not subject to cross examination and the State cannot impeach its own witness. The statements made elsewhere were permitted to go in evidence merely for the purpose of tending to efface and neutralize the effect of the failure to testify of the witness under oath here that defendant was present at the shooting. The statements of the witness made elsewhere should be entirely disregarded as in any way tending to prove the truth of the fact which it assails, which in this instance is that the defendant was present at the shooting. The jury may, however, if it believes the statements made elsewhere are worthy of that effect, conclude that they withdraw from the case the evidence of that witness which it tends to discredit just the same as if that evidence had never been introduced, but beyond this the jury cannot give it any effect whatsoever. In other words, the jury may permit it to wipe the slate clean so that there is no evidence of that witness upon that subject before the jury.

The second-class of contradictory statements includes the statements of witnesses made elsewhere and introduced by the opposing party for the purpose of being considered by the jury as to whether or not it discredits the testimony of the witness here in this trial. For example: Susan Brown Clark testified when called by the defense that the defendant was not in the hall at the time of the shooting. The prosecutor examined her and showed that in the grand jury room and under oath she testified that he was in the hall. Here again the jury may in its discretion reject the testimony made under oath before it by testimony that the defendant was not in the hall because she said to the grand

jury he was in the hall at the time of the shooting but it cannot consider the statement before the grand jury as evidence here against the defendant that he was in the hall.

The alleged contradictory statements of some of the witnesses which were introduced both by the State and the defense are introduced by the parties for the purpose of contradicting the statement of the witness and they cannot be used as evidence of the truth of the facts set forth in such statements. They are introduced to affect the credibility of the witness and to show that the witness made statements contradictory of the evidence given on the stand. If a person takes the witness stand and makes a statement under oath the jury may or may not decide to rely upon that statement, but if the statement is contradicted by some other statement made elsewhere the jury cannot rely upon the statement made elsewhere because it is not made under oath before this jury, but the jury may use the statement made elsewhere for the purpose of determining what credibility, if any, the jury will give to the statement of the witness made here.

The rule, however, is different as to the statements or admissions of a party to the case, and this brings us to the third class of statements. The statements, admissions, and accusations of a party, the defendant, may, however, be used not only in relation to credibility and to contradict his testimony upon the stand but as evidence of the facts therein set forth and may be used against him as any other admission by a party.

The other statements in evidence were introduced by consent or without objection and it is contended that they amplify, change or make clear the alleged contradictory statements. They cannot be used as

evidence of the facts therein stated for the reasons herein above referred to.

It is the duty of the jury to search through all the evidence that has been presented in the case and ascertain where the truth lies. The jury may consider amongst other matters in ascertaining, weighing and determining what weight, if any, it will give to the statements of a witness, the demeanor, manner of testifying, appearance of a witness, mental capacity, power of observation, closeness of attention, the probability of the statements, their inconsistencies and contradictions, and all such other considerations that may be evolved from experience or which the jury may deem proper under the circumstances. Amongst all of the other ways of ascertaining, weighing and determining the credibility of a witness the jury may consider the interest of a witness in testifying and whether or not that interest has affected the truthfulness or credibility of his or her statement. This consideration may be applied to all of the witnesses in the case, those presented by the State and those presented by the defense, and, of course, it may be applied to the defendant himself because he has been a witness on the stand, and in that connection the jury has a right to consider the very grave interest which this defendant has in any verdict which it may render and whether or not that interest has affected the truthfulness or credibility of the testimony of defendant.

If the jury finds that the defendant is guilty beyond a reasonable doubt of murder in the first degree the verdict should be guilty of murder in the first degree. If the testimony falls short of this and the jury finds beyond a reasonable doubt that the defendant is guilty of murder in the second degree, then the verdict should be guilty of murder

in the second degree. If the testimony falls short of this and the jury finds beyond a reasonable doubt that the defendant is guilty of manslaughter, then the verdict should be guilty of manslaughter. If the jury does not find the defendant guilty as stated, then, of course, the verdict must be not guilty.

No sympathy should be permitted to sway the jury. Probably the duty of a citizen to act as a juror in a murder case is the highest duty which one may be called upon to perform purely as a citizen. For the consequences that may follow the verdict neither the jury nor this Court is responsible. When they have discharged their duty fairly, conscientiously and firmly their responsibilities are at an end and the consequences are left to the law. The law fixes the penalty and the responsibility is not the jury's nor even the Court's; it belongs to and rests upon the law.

The defendant has requested the Court to charge certain propositions to which it will now direct its attention.

4. "That the jury may not at their pleasure and without regard to the elements of credibility, which the evidence of the accused may possess, reject it because of his interest or because they are not satisfied that he has been corroborated. It is the duty of the jury to always consider the evidence of the accused with all the evidence in the case."

I so charge you.

5. "That if the transaction is susceptible of more than one discussion the jury must adopt the construction most favorable to the accused."

I so charge you.

7. "The defendant's presumption of innocence is itself a piece of evidence to be weighed with the

other evidence favorable to the accused in determining the question of his guilt."

I so charge you.

8. "Since the jury to convict must be satisfied of the defendant's guilt beyond a reasonable doubt the jury is bound to find the defendant not guilty if they have a reasonable doubt arising from the proof touching the defendant's alibi."

That is to say touching the question as to whether or not he was personally in the dance hall at the time of the alleged shooting.

The jury retires.

Mr. McDermit. I ask for a general exception.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN. [L. S.]

The Court. Allowed. Do you wish a special exception to each refusal of the Court to charge each proposition of law as requested?

Mr. McDermit. Yes, sir.

The Court. I will grant such separate exceptions.

Defendant requested the Court to charge:

1. "Before the jury can convict, they must find that the cause of the death of the deceased has been beyond a reasonable doubt proven to be murder committed by the defendant." (Refused).

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

2. "That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a belief of the guilt of the party charged to the exclusion of all reasonable doubt." (Refused).

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

3. "That if the jury have a reasonable doubt derived from all the evidence, they are bound to give the defendant the benefit of such doubt." (Refused).

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

6. "That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some other person for which he is lawfully responsible; and if the death of the deceased was caused by the act or omission of some other person, other than the defendant who was not acting for or in concert with the defendant, then the defendant is not guilty." (Refused).

Exceptions to Charge.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, [L. S.]
Judge.

New Jersey Court of Errors and Appeals

STATE, *v.* VINCENZO BOVINO,	*On Writ of Error. Certificate.*

I, F. Lamar Watson, one of the stenographers of the Essex County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey *v.* Vincenzo Bovino on an indictment for murder, which trial was held before the Hon. William P. Martin, President Judge of the Essex County Court of Oyer and Terminer in and for the County of Essex, and a jury on Monday, January 24th, 1916, at Newark, New Jersey.

F. LAMAR WATSON.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error.*	*On Writ of Error.*
v.	
VINCENZO BOVINO, *Plaintiff in Error.*	*Certificate.*

I, William P. Martin, Presiding Judge of the Essex County Court of Oyer and Terminer, in and for the County of Essex, and the Judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated June 16th, 1916.

WM. P. MARTIN,

Presiding Judge of the Essex County Court of Oyer and Terminer.

Exhibit S. 3.

Exhibits.

EXHIBIT S. 3.

[he said, "Hello." I asked him how he felt and he said he was going to die. I said, "Yes, I have been told you are going to die." I asked him if he wanted to make a confession and he said yes. I said, "Who shot you?" and he said, "Jimmy Bennett." I am a little ahead of my story. I asked him if he knew who was with me, and he said "Yes, that is my friend Jake Miller." Then I asked him who shot him, and he said Jimmy Bennett. I asked if he was sure and he said yes. I asked him when, and he said, "Last night." I asked him where and he said, "In Chick Collin's Hall on Oliver street." He fastened his hands together and died a few minutes after.

Q Do you know Bennett?

A Yes, sir.

Q And know of any reason why Baker should have said he shot him if he handn't?

A No, sir.

Q Where is this dance hall?

A 238 Oliver street.

Q That is all.]

MAY GILLING, sworn.

Q How old are you?

A I was seventeen in December.

Q Where do you live?

A 220 Elm street.

Q How long have you lived in Newark?

A I was born in Newark.

Q Live with your parents?

Exhibit S. 3.

A Yes, sir.

Q Did you ever go to a dance hall known as the "East Side Dance Hall," run by cCollins?

A Yes, sir.

Q Chick Collins?

A Yes, sir.

Q Were you there the night Frank Baker was shot?

A Yes, sir.

Q What time did you go there?

A About 9:30.

Q There is a saloon in connection with the dance hall?

A Yes, sir.

Q Were you dancing?

A No, sir; I don't know how.

Q What happened in there?

A I was sitting opposite the door where Frank Baker was sitting. I went down to see my girl friend but she was not there. Then she came in alone. She told me to wait a minute and said she wanted to tell me something. I sat there and waited. She had a dance. She wasn't there very long. She said she wanted to tell me something. I waked to the door and she said there was going to be trouble. I had a little trouble with a fellow at the corner of Downing and Madison st. at another dance hall. I thought they were coming to the East Side Dance Hall and I got scared.

Q Who told you there was going to be trouble?

A Lucy Evans. Her name is Lucy Evanoski. She went out and I went back in the Hall again. Suddenly Baker came in and sat down at a table. Another girl names Sue who I went around with, came in. She started to dance. She took two steps and saw Baker and walked up to him. I saw them disputing. Baker went outside in the hall and came

Exhibit S. 3.

back again, and I heard a little report and ran to the middle of the hall where Lucy was dancing and said somebody was shot. A fellow came up, supposed to be an Officer, and said, "Who did you shoot?" He said that to Baker, and Baker said "I got it myself." They brought him out to the saloon and they examined him and found he was shot through the stomach.

Q You know Bennett?

A I know him to see him.

Q Did you see him in the Hall?

A He was standing at the saloon door.

Q How far away from Baker when you heard the shot?

A There is a piano on one side of the entrance to the hall. He stood by the saloon door. That is not far away because the Hall is not very big.

Q Did you make a report to Bennett when Baker first came in?

A No sir, I didn't speak to him at all.

Q Was Bennett drunk or sober?

A He was always drunk.

Q Was he drunk that night?

A I don't know. I never saw him sober.

Q You made a statement?

A Yes sir.

Q Just look at that and see if that is your name? (Shows witness a paper).

A Yes, sir.

Q In that statement you say that you remarked to Bennett, "There is Baker"—?

A I didn't remark that to Bennett, I said that to the crowd. I didn't say anything to Baker. I never had any conversation with him.

Q What other women were in there?

Exhibit S. 3.

A Some woman by the name of Annie Gettler; Josie Cooper and another girl by the name of Florence.

Q How many people in the room?

A Ten girls and about fifteen fellows.

Q Did you see a revolver at all?

A No, sir.

Q How far from Baker were you when you heard the shot?

A Seven or eight feet.

Q Which way were you facing?

A Sideways.

Q You were not looking towards Baker?

A No sir, I was watching them dancing.

Q You turned when you heard the noise?

A I ran to the middle of the Hall; I ran up to Lucy.

Q When you heard the noise of the shot, didn't you look in the direction of the noise?

A Yes sir, but there was a crowd there and you couldn't see. They were all around Baker at that time.

Q Didn't you look in that direction when you heard the shot?

A Yes sir.

Q Who did you see there?

A I saw Sue alongside of Baker. She is the woman supposed to be his wife.

Q What men were standing there?

A I couldn't tell.

Q Where was Bennett?

A He was standing at the saloon door.

Q How far away?

A Three or four feet.

Q That is all.

Exhibit S. 3.

SUSAN BROWN CLARK, sworn.

Q Where do you live?
A 178 Runyon Street.
Q What is your age?
A Twenty-one.
Q Did you know a man named Frank Baker?
A Yes sir.
Q Did you live with him?
A No sir.
Q Were not married to him?
A No sir.
Q Do you know where Chic Collins' dance hall is?
A Yes sir.
Q You were in there the night he was shot?
A Yes sir.
Q How long had you been there?
A Since nine thirty.
Q What time did the shooting take place?
A Between 11:30 and 11:45.
Q Where were you at the time of the shooting?
A About three feet away from Baker.
Q Where was Baker standing?
A About six or eight feet from the entrance to the dance hall.
Q Where does that entrance lead to?
A To the street.
Q Just state what happened there that night?
A I and another woman went in and I was greeted by Chic who asked me to sit down and have a few drinks with him and some friends. I stayed there until 11:30, when Lucy came in and I asked her if she had been going with Frank and she said no. I said, "Yes you have." Finally she said she had been going with him, and I said he was a good friend of mine and asked her to keep away from

Exhibit S. 3.

him. After talking nice to her she didn't pay any attention, and I said "Now I am married to Baker, and I wan't you to keep away from him." That was all right and she said she would. She was with him the same night. About fifteen minutes later I went to the phone to get Cope of 125 Ferry Street where Frank Baker went. A fellow named Lord came to the phone and I asked him to deliver a message that I would meet Frank at Ferry and Madison Sts. at one o'clock. I had come from the bar room where the phone was and went into the dance hall when some fellow came up and asked me to dance. I went out with him to dance. I had taken not more than four steps on the floor when I saw Baker sitting at a table. Whether or not he was sitting there before, I can't say. I deliberately left the fellow on the floor and went over to Baker and spoke to him. He had warned me to keep away from him and I said no. He would warn me and I said no. Then he slapped me and I walked away about two feet from him and tried to stop a crying when the shot was fired.

Q Your back was turned then?

A Yes, sir.

Q What did you do when you heard the shot?

A I turned around and said, "What is the matter Frank?" and he said, "Sue I am shot." He turned around and said, "Tell my mother you didn't do it." I then said to him "Take the gun out of your pocket and see if the gun went off in your pocket." The shot was so silent you could just hear it. He took out his blackjack and gun and laid them down and a special officer picked them up and handed them to an officer who was there in civilian clothes.

Q What business did he have to carry a black jack and a revolver?

Exhibit S. 3.

A He was a special officer. The boys walked him out to the bar room and I got my hat and coat, and walked to the bar room. Then I made a grab for Lucy and I said, "To think of this trouble over a little bum like you."

Q How did that make any trouble with Frank?

A That I couldn't say. There was nobody that I was with. I went there alone.

Q How could Lucy make this trouble?

A She said she hadn't been with him but she was with him that night. What I said to her she went out and told him.

Q What did that have to do with his being shot?

A I couldn't say.

Q Why did you say the trouble came from Lucy?

A He had sent Lucy into the Hall to see if I was there.

Q What did that have to do with his being shot?

A I couldn't say.

Q Why did you make that remark?

A Frank was with her that night and she had told him all I said to her, before he came back into the Hall. I suppose she was looking for an argument with me.

Q He slapped you in the Dance Hall?

A Yes, sir.

Q Did you have a revolver with you?

A No, sir.

Q Did you shoot him?

A No, sir.

Q Who was standing by when the shot was fired?

A The special officer was near by.

Q Do you know Bennett?

A Yes, sir.

Q How long have you known him?

A About a year.

Q Was he there?

Exhibit S. 3.

A Yes, sir.

Q Where was he?

A He had been there all along. When the shooting occurred I didn't see him.

Q You didn't see him at all?

A He was sitting at a table where I was drinking all the evening. There were about ten or twelve around the table.

Q Have any talk about Baker there?

A No, sir.

Q How soon after the shooting did you see him?

A He was in the Hall.

Q When you turned around, as this shot was fired, who did you see right by Baker?

A There were quite a few fellows who rushed up to him.

Q When you heard the shot you turned around?

A Yes, sir.

Q Did you see anybody with a revolver?

A No, sir.

Q He had been shot by someone standing outside the room?

A I think it was done in the room.

Q Was Baker standing in a position where he could be shot by someone outside?

A Yes, sir.

Q As you turned around, did you see anybody run away?

A No, sir. Anybody could have gotten in or out of the Hall.

Q Do you mean out of the side door?

A That door or the door leading to the bar room.

Q Was Bennett a friend of Lucy?

A Yes, sir.

Q The special officer took the revolver and black-jack?

A Yes, sir. Every bullet in the revolver was full.

Q Was there anybody there who would be apt to shoot Baker because he slapped you?

A No, sir.

Q How long have you been friendly with Baker?

A About two years.

Q Where did you first meet him?

A He worked at the Krueger Auditorium as special officer.

Q Did you have a talk with Bennett about Baker that night?

A No, sir.

Q Never talked to Bennett about your troubles with Baker?

A Different people down there thought I was married to Baker.

Q Bennett knew of the relationship between you?

A Yes, sir.

Q He knew you were peeved because the other girl got the affections of Baker?

A Yes, sir. Lucy was more a friend of Bennett than I was.

Q That is all.

EXHIBIT S. 6.

POLICE DEPARTMENT.

Newark, N. J., April 23, 1914.

10:04 P. M.

Statement of Vincenzo Bovino,
Residence, 226 Jefferson Street,
Made to Captains Tuite, Cordano, Serg't Godfrey and Patrolman Donnelly.

I am Captain Frank W. Tuite of the Newark, N. J., Police Department. I am going to ask you some

questions in reference to the crime for which you are arrested; you may answer them or not just as you wish, but what you do say must be of your own free will, a voluntary statement, as it will be taken down in writing and used at your trial.

Q What is your name?

A Vincenzo Bovino.

Q Where do you live.

A 226 Jefferson St., Newark, N. J.

Q How old are you?

A Twenty-six years.

Q What is your occupation?

A Driver for Frank Usilino—Van Buren St.

Q How long have you worked there?

A About one year.

Q You are charged with murder.

About ten o'clock on Tuesday, the night Frank Baker was shot I walked in the hall and I seen big Sue call Lucy inside the dressing room, I was outside, but I heard them quarreling. I pulled the curtain back and I got a hold of Lucy by the shoulder and said what is the matter with you girls. Come out and have a dance to Lucy I says so when the dance was over I seen Lucy run out finally I goes in the saloon I meets chick in there. Lucy comes back again and says come here Chick I want to see you. You know what I heard I heard that them fellows that were over in Klines hall that Friday night in that automobile that was trying to take that girl away over to New York I heard they were coming down here to get that girl out of here or clean out the joint dump one of the two. Chick didn't say no more then Lucy didn't say no more. She went away. Meantime Chick went out through the hall door to the stoop I went out too right after I went out Lucy comes running out Chick says where are you going She says there is Frank

Exhibit S. 6.

over there he was just walking over Chick says come on over Frank come on in then Frank shook hands with Chick he said hello to me and went up the steps, then I said what is the matter are you afraid of her meaning big Sue in a joking way, Frank says I don't give a fuck for no cock suckers he went right in the hall. Me and chick was left there outside and the Kid Tony Colacio comes walking out. I asked chick what Lucy had to say to him in the saloon, he told me those guys that was over in Klines hall that Friday night were going to come down here and get that girl out and break up the place he says come we will walk to the corner they might be due here it was then about half past eleven, he says let them try to put it on the bum if they want to, We looked up Adams Street, we looked both ways there was nothing in sight just as soon as we started to turn around we heard a shot. I said Jesus Chick wasn't that a shot. He says I don't think so, the Kid says that must be a chair the boys might be fooling around about five seconds went by nobody came out and all of a sudden there was a big crowd a whole lot of them were out on the sidewalk they came out of the hall door Chick started to run, Me after him the Kid after me Chick gits to the end of the tenement house and Frank Baker is just coming down the stoop and says to Chick Jesus Chick hurry up get an ambulance I am shot Arthur Miller the Policeman takes hold of Baker he says her Chick you hold him I'll hold you responsible for him. Arthur goes inside and calls up the ambulance in the meantime me and Chick take him into the saloon so he leans on the bar Chick says who done it I think he shot me Baker pointed to the Special Policeman Arthur Miller says to the Special Officer

Exhibit S. 6.

Mike give me your gun Mike handed him the gun Miller started to put it in his pocket when the kid says I want to see that gun. Miller opened the gun and found the gun all loaded Miller said to Baker this gun is all right there are no shots out of here. We sat Frank down, then he got up all alone and went to the door, I took hold of his left shoulder and helped him down the stoop, the ambulance was there and two or three policeman were there. Frank was hollering for them to take him away in the ambulance. I helped him to get in the ambulance. When it drove away I went back into the saloon. Everybody was gone out but four of us. Chick, Joe Seritella, Joe the Kid and Myself; the others had been taken away by the Police. I mean the two girls and Geo Polscaston I staid there for awhile then Joe Broad and me left going to Pacific Street. I came back to Jefferson Street I went in the yard and sat on the back stoop I went back to the saloon a half hour later. The Kid told me they were going to operate on Frank. I staid there until three or four o'clock when I was arrested. Before Baker was taken away to the Hospital and while in the saloon this is all on account of you to big Sue. She says no it is on account of this God damned bum then she swung at Lucy she says I found one of her letters in your pocket. I was not in the dance hall during any time that Baker was in there

April 23d 1914

Vincenzo Bovino
226 Jefferson St.

Frank Donnelly
Patrolman

Lieut. Fred'k J. Kuhn

Walter Godfrey

Exhibit S. 8.

EXHIBIT S. 8.

POLICE DEPARTMENT

Newark, N. J., October 14, 1915.

Statement of James Bovino, Alias Bennett
Residence No. 226 Jefferson St.

Made to Captain, Thomas F. Connell, Dets. Donnelly, Bell, Chenoweth, Conlon and O'Neill.

I am Detective Frank Donnelly of the Newark, N. J., Police Department. I am going to ask you some questions in reference to the crime for which you are arrested; you may answer them or not just as you wish, but what you do say must be of your own free will, a voluntary statement, as it will be taken down in writing and used at your trial.

Q What is your name?
A James Bovino.
Q Where do you live?
A 226 Jefferson St.
Q How old are you?
A 28 years of age.
Q What is your occupation?
A Driver.
Q How long have you worked there?
A On or off five or six years.
Q You are charged with Murder.

On April 21st, 1914, about 7 P. M., I went to Chick Collin's Dance Hall, No. 238 Oliver Street. I sat around for a little while until about 9 or 10 o'clock. I had one Italian finger-game with the crowd that sitting around the table in the Dance-hall. There was Yuck, Big Sue and an Italian named Frank, Joe the Kid, Chick, Jack Miller the Officer and Joe Broad and some others, who I can't remember just now. I had a *dr*nk

Exhibit S. 8.

THERE and walked out into the Barroom and sat down again. About 10:30 o'clock P. M. Chick came out and started talking to me. Then Lucy came out after him and called Chick aside and talked with him I asked him what Lucy had to say. This was about 10 o'clock P. M. Chick said she tells me there is going to be a mob here in an Automobile to clean out the Place. So he says "Come on and we will take a walk." So we walked out to the front of the door, a small hall door and we met Joe the Kid there and he asked us where we were going and Chick told him the story about the automobile coming to clean up the place. We stood there for a little while and this N. Y. Frank come to the door then, right after Lucy came out, in front of Hall door and while passing Chick asked Lucy Where she was going, home? She said: "No, there is Frank Baker on the other side of the Street." And Chick said: "Tell him to come over and have a drink." Lucy called over and told him to come over and he said no I am only drinking soda. Then Chick said Baker: "Come on and we will have a drink anyway so he says all right and came over and shook hands with Chick first and then he shook hands with me and Joe the Kid. Lucy was afraid to go into the Hall because she says I am afraid there is going to be a fight. So I says to Frank Baker, "Go on in Frank, don't be afraid. He said to me "You know I ain't afraid of no cock-sucker and finally they walked in and as they walked in they walked up to the corner, Chick, Joe the Kid and Me. We stood there for about two minutes and were starting to turn around to come back when I heard a shot. I said to Chick, "Jesus Christ, Chick, there goes a shot." Joe the Kid, said:

Exhibit S. 8.

"No, I don't think so, I think it was a chair that dropped. Chick says, "I hope the Christ it wasn't *s* shot." The crowd then come running out and we started to run towards the Hall and as we neared the Saloon Frank Baker came running down the stoop holding his sides. Chick reached him first and said: "What is the matter Frank and Frank said: "Jesus, I'm shot, call an Ambulance." Chick says, who done it, who done it, and he says I think it was a Special Cop, because he don't like me. While we were talking on the side-walk Jack Miller, the cop, said to Chick I'll hold you responsible for this man. N. Y. Frank said "What does that guy mean did you hear what he said and with that he pulled out a blue steel gun and pointed it at the back of Officer Miller. Joe Broad and Myself grabbed his hand and said "What are you going to do, don't do that," and he said "what do you mean didn't you hear what he said he is going to hold Chick responsible for him, pointing at Baker. So then Joe Broad and myself managed to get the gun off of him and he says to me let it alone or I'll put one through you. Then Joe Broad got the gun and gave it to lame Joe and told him don't let him see it no more and get rid of it.

Baker picks up a glass that was standing on the bar and slams the glass against the wall. He says "Jesus, I am only 24 years old and have got to die and in the meantime Sue and Lucy was having a fight. Sue says to Lucy this is all on account of you, you bum. Then the patrol come around and Baker started to walk down the stoop alone. So when he reached the side-walk me and Chick got a hold of him and we carried him as far as the patrol where he laid down on the seat. He was then taken away to the Hospital. I remained in

Exhibit S. 9.

the saloon with Chick Collins, Joe Broad, Joe the Kid and Vito Collins. So about a quarter of twelve me and Joe Broad said, "Goodnight to Chick and the rest and went out." We went as far as Union St. where I had a room at #142. This New York was standing there in the door-way and I said to him "What did you want to do that for Frank, suppose that guy dies, won't we all be in trouble and he says, "You prick, are you sore too."

And then Joe Broad, this Frank and myself walked up as far as Sommerset St. I left Joe Broad and Frank there and I came right back to Chick's, #238 Oliver St. and there I found Chick, Vito and Joe the kid. I stayed there for awhile until the police come and took Chick, Vito and myself to the 3rd Precinct.

JAMES BOVINO,
226 Jefferson St.

Witnesses:

JAMES D. BELL,
D. A. O'NEIL,
F. F. CONNELL,
FRANK DONNELLY,
GEORGE CHENOWETH.

EXHIBIT S. 9.

Statement taken by Off. F. A. O'Neill, 5 P. M.
POLICE DEPARTMENT.

Newark, N. J., Oct. 14, 1915.

Statement of Susian Brown, alias Clark.

Residence 178 Runyon Street.

Made to Captain, Thomas F. Connell, Dets. Donnelly, Bell, Chenoweth and Conlon.

I am Detective, Frank Donnelly.

of the Newark, N. J., Police Department. I am going to ask you some questions in reference to the

Exhibit S. 9.

crime for which you are arrested; you may answer them or not just as you wish, but what you do say must be of your own free will, a voluntary statement, as it will be taken down in writing and used at your trial.

Q What is your name?
A Susian Brown.
Q Where do you live?
A 178 Runyon St.
Q How old are you?
A 22 years of age.
Q What is your occupation?
A House worker.
Q How long have you worked there?
A 6 years.
Q You are charged with Material Witness.

I went into chick Collin'—Hall about 8:00 o'clock P. M., April 21st., 1914. I no more than entered the Hall when Chick Collins asked me to sit down and have a drink, which I did with a crowd around the table. I sat there with them until about 11:00 P. M. drinking. Then I went out to the telephone and called up the cafe corner Madison St. & Ferry St. I asked them to send to the Lunch Room for Frank Baker. He was not there and they sent a fellow by the name of Steve Lordi to the telephone. He came to the 'phone and I asked him if he would tell a messenger in the Lunch Room to tell Baker to meet me at Madison St. and Ferry at 1:00 o'clock A. M. the next morning. I then walked back inside. Some fellow had come up to me, I don't know his name and asked me to have a dance. Which I did. I no more than was through half the dance when I met Lucy coming into the Hall and I broke away from the fellow and I called her into a place where the girls have their hats and coats and I asked her if she was running

Exhibit S. 9.

around with Baker (Frank) and she denied it and I told her it was true. A couple of girls there asked me not to hurt her because I was so big and I did not want to hurt her. I told her the 13th of February was my brother's birthday and on that day we got married. She then went outside to meet Baker and she told him all about it. I was sitting at the table with Chick Collins, Jimmie Bennett, Joe Broad, Lame Joe, Joe the Kid and some others. We were all drinking. Then I went to dance again with a fellow and I left him in the middle of the dance because I seen Baker coming into the Hall and I went over to Baker and I called him a Waopp, in Italian. He said, "Go away before I hit you, you bum. I said "No I won't go away from here. Then he hit me and no more than he hit me, I held my face. I was standing right by him when he yelled out, Sue, Sue, I am shot. Everybody there scattered like a lot of Indians, Bennitt, Collins, Joe the Kid, Lame Joe, and Frank from New York. Chick Collins no more than the shot was fired came towards Baker. Chick walked into the bar-room with Baker after the shot was fired. Baker said: "Tell my Mother you didn't do it (Sue) Bennett, Chick, Joe the Kid, Lame Joe, collins and myself stayed there until the ambulance and police come.

SUSAN BROWN CLARK,
178 Runyon Street.

Witnesses:

THOMAS F. CONNELL,
GEORGE CHENOWETH,
JAMES D. BELL,
FRANK DONNELLY,
FRANK A. O'NEILL.

Exhibit S. 11, S. 12.

EXHIBIT S. 11.

April 24. 14.

STATEMENT MADE BY MICHAEL TANZOLO,
153 Malvern Street City

Tuesday evening April 21*th* was acting as a special ooicer at the East Side Park Hall. Had just come from the toilet and was standing by the door buttoning my pants when I saw Frank (Baker) slap the big woman Sue in the face. I went right over and said Frank what is the matter he did not answer me and just then as I stood by him I heard a shot and Frank say Oh my I got shot He lifted his vest and I saw a little hold and he dropped his gun and it just struck my foot I picked it up and said here Miller I got the gun Miller opened the gun and said no for it was loaded There were a lot of people there in the hall. I saw Collucci and Bennett and others there. Looked around to see who shot but could find nobody. Miller o Pepe helped Baker out and I went later with the others to the police station. Miller phoned for the police.

his
MICHAEL X TANZOLO.
mark

WALTER GODFREY,
JAMES D. BELL.

EXHIBIT S. 12.

April 25/14.

STATEMENT MADE BY THOMAS MISTRELL,
105 Warwick St., City.

About 11 P. M. Tuesday April 21st I went to Chick's saloon on Oliver Street and had a few drinks in the dance hall then went out to barroom

and stood at bar talking to officer Miller. Saw some few people run out but there was no trouble and they went back into the dance room. Baker was not there at that time but came from across the street about five minutes later and went into the dance room. While standing at the bar heard a shot and Miller said what the hell is that and put his hadn to his back pocket and ran into the back room and I followed him. Saw Baker standing by the hall door with his gun in his hand and he dropped it on the chair. Big Sue and the special office were standing by Baker. When I heard the shot it sounded as if it came from the hall that leads into the street.

THOMAS MISTRELL.

WALTER GODFREY.

EXHIBIT S. 13.

April 24/14.

STATEMENT MADE BY VITO COLLUCCI,
160 Malvern St., Newark, N. J.

On Tuesday evening April 21st, 1914, about 11:15 P. M., went into the barroom with a tray of empty glasses and stood at the bar talking to the bartender (Joseph Pepe). While talking we heard a noise in the hall and Miller (the officer) and myself went into the dance hall to see what it was on our way there, and before we reached the door I heard some one say I am shot. I found Baker standing over on the side of the room with his right side turned towards the door leading to the street and as I came into the hall I saw Bennett coming into the hall from the street. My brother and Tony Gratch were with Bennett. I stayed there until I was arrested. Bennett was there up to the time I fell asleep, which was about two

o'clock, and when the officers came Bennett was still there.

VITO COLLUCCI.

WALTER GODFREY,
JAMES D. BELL.

EXHIBIT D. 1.

POLICE DEPARTMENT.

Newark, N. J., April 23, 1914.
11:40 P. M.

Statement of Susan Brown Clark
Residence 178 Runyon Street
Made to Captains Tuite Cordano Sergt Godfrey and Patrolman Donnelly.

I am Captain Frank W. Tuite of the Newark, N. J., Police Department. I am going to ask you some questions in reference to the crime for which you are arrested; you may answer them of not just as you wish, but what you do say must be of your own free will, a voluntary statement, as it will be taken down in writing and used at your trial.

Q What is your name?
A Susan Brown Clark.
Q Where do you live?
A 178 Runyon Street.
Q How old are you?
A Twenty-one years.
Q What is your occupation?
A None.
Q How long have you worked there?
A
Q You are charged with

About quarter to ten o'clock on Tuesday night April twentyfirst last when I got into Chick Collin's dance hal I was greeted by a few friends that

Exhibit D. 1.

I know who asked me drink Chick and some other men were at a table drinking I joined them until eleven thirty when I went to a telephon in the bar room I asked for a cafe near 125 Ferry Street I wanted to locate Frank Baker Just as I came out of the bar room a young man asked me for a dance, after a few steps I saw Frank come in the door I left the man in the middle of the floor and went over to talk to Frank, he warned me to get away from him I refused and continued to talk until he slapped me in the face I turned around to get my had and coat when I had my back turned I heard a shot I then made my way back to talk to Frank I asked him what was the matter. I had heard him say I am shot I am shot When I got to him he said Sue I am shot tell my Mother you didn't do it. I got my hat and coat they had walked Frank into the bar room. I made a remark while in the bar room, to think all over a little bum all this trouble should be caused I made a grab for this little girl named Lucy. I couldn't reach her because the men stopped me I sat down and tried to be quiet. An officer in Citizen's clothes ordered us to remain in the place After Frank Baker was taken away Myself and two women and a man were taken to the Police Station. When the shot was fired I was within three feet of Frank Baker. after the shot was fired I said to Frank take your gun out of your pocket maybe it went off, He took his gun and black jack out and the gun fell on the floor and the Special Policeman picked it up and gave it to a Policeman who was in citizan's clothes.

SUSAN BROWN CLARK.

FRANK DONNELLY,
Patrolman.
WALTER GODFREY.
SUSAN BROWN CLARK.

Assignment of Errors.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* VINCENZO BOVINO, *Plaintiff in Error.*	*On Writ of Error.* *Assignment of Errors.*

Afterwards, that is to say, on the third Tuesday of June, in the year of our Lord, nineteen hundred and sixteen, at the June term of the New Jersey Court of Errors and Appeals in the last resort in all causes, comes the said Vincenzo Bovino by McDermit & McDermit, his attorneys, and says that in the entire record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions and also in the giving of the verdict and judgment aforesaid there is manifest error in this, to wit:

1. Because the verdict is contrary to the weight of the evidence.

2. Because the trial court erred in curtailing the proper cross examination of counsel for the defendant when said counsel was cross examining the State's witness, Mary Webber.

3. Because the trial court erred in refusing to allow the State's witness, Anna Gurtler, to answer the following questions on cross examination:

> "Q You deny you swore under oath first that you didn't know anything about the shooting at all?"

"Q Didn't you swear to a half dozen different lies on the witness stand the last time and admit it?"

4. Because the trial court erred in permitting the State's witness, James D. Bell, to testify to hearsay evidence, that is, to statements, declarations and conversations had between this witness and Frank Baker, the deceased.

5. Because the trial court erred in permitting the State's witness, John Miller, to testify to hearsay evidence, that is, to statements, declarations and conversations heard by this witness between the State's witness, James D. Bell, and Frank Baker, the deceased.

6. Because the trial court erred in permitting the State's witness, Peter Remondalli, to testify to hearsay evidence, that is, to statements, declarations and conversations heard by this witness, between the State's witness, James D. Bell, and Frank Baker, the deceased.

7. Because the trial court erred in permitting the State's witness, Walter Byrne, to testify to hearsay evidence, that is, to statements, declarations and conversations heard by this witness between the State's witness, James D. Bell, and Frank Baker, the deceased.

8. Because the trial court erred in permitting the prosecutor to ask the State's witness, Mae Gilling, as to what she testified to before the grand jury.

9. Because the trial court erred in permitting the prosecutor to put in evidence, testimony as to what the State's witness, Mae Gilling, testified to before the grand jury.

10. Because the trial court permitted the prosecutor to impeach his own witness to wit, State's witness, Mae Gilling.

11. Because the trial court erred in not permitting the State's witness, Dr. Edward Staehlin, to answer the following question on cross examination:

> "Q The amount of liability on a statement made by a person who is within three minutes of his demise and was vomitting, would you consider an absolutely correct statement?"

12. Because the court erred in permitting the State's witness, Lulu M. Field, to testify to hearsay evidence, as to what the deceased Frank Baker said to her, and as to what she heard the deceased say when the defendant was not present.

13. Because the trial court erred in permitting the State's witness, Timothy F. Scales, to testify as to the testimony that was given before the grand jury by State's witness, Mae Gilling.

14. Because the trial court erred in refusing to strike out testimony of the State's witness, Timothy F. Scales.

15. Because the trial court erred in sustaining the objection of the prosecutor to the following question asked by defendant's counsel to the State's witness, Timothy F. Scales, on cross examination:

> "Q Was she subsequently subpoened before any other grand jury in this county and gave testimony in this case?"

16. Because the trial court erred in permitting the prosecutor to question the witness, Susan Brown Clark, as to what she testified before the grand jury.

17. Because the trial court erred in permitting the prosecutor to put in evidence, testimony as to what the witness, Susan Brown Clark, testified to before the grand jury.

18. Because the trial court erred in permitting the State's witness, Timothy F. Scales, to testify and read from his stenographic notes, as to what the witness, Mae Gilling and Susan Brown Clark testified to before the grand jury.

19. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

> "Of course, this is not the testimony of the officers that defendant shot deceased, but if the jury believes that Baker in the presence of impending death, said the defendant shot him, the jury in its discretion may consider the statement of Baker against defendant. * * *"

20. Because the trial court erroneously charged and instructed the jury a mistatement of the facts and the evidence, as follows:

> "Defendant thought that he would try to make a false accusation against this New York Frank to divert suspicion from himself."

21. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

> "That this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself in his own favor may be considered by the jury as showing a consciousness of guilt on the part of the defendant."

22. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

> "If the jury arrives at the conclusion that the defendant fired the fatal shot it seems to be murder in the first degree or in the second degree."

23. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

> "The statements, admissions and accusations of a party, defendant, may however be used not only in relation to credibility and to contradict his testimony upon the stand, but as evidence of the facts therein set forth and may be used against him as any other admission by a party."

24. Because the trial court erroneously charged and instructed the jury, among other things, as follows:

> "The jury has a right to consider the very grave interest which this defendant has in any verdict which it may render and whether or not that interest has affected the truthfulness or credibility of the testimony of defendant."

25. Because the trial court erred in refusing to charge the jury as requested by defendant's counsel as follows:

> "Before the jury can convict, they must find that the cause of the death of the deceased has been beyond a reasonable doubt proven to be murder committed by the defendant."

26. Because the trial court erred in refusing to charge the jury as requested by defendant's counsel, as follows:

> "That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a belief of guilt of the party charged to the exclusion of all reasonable doubt."

27. Because the trial court erred in refusing to charge the jury as requested by defendant's counsel, as follows:

> "That if the jury have a reasonable doubt derived from all the evidence they are bound to give the defendant the benefit of such doubt."

28. Because the trial court erred in refusing to charge the jury as requested by the defendant's counsel, as follows:

> "That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission, or the act or omission of some person for which he is lawfully responsible and if the death of the deceased was caused by the act or omission of some other person, other than the defendant, who was not acting in concert with the defendant, then the defendant is not guilty."

And the plaintiff in error Vincenzo Bovino prays that the judgment aforesaid be reversed and altogether held for nothing and that he may be restored to all things he has lost by reason of the said judgment, etc.

McDERMIT & McDERMIT,
Attorneys for Plaintiff in Error.

FRANK M. McDERMIT,
Of Counsel for Plaintiff in Error.

Specification of Causes.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* VINCENZO BOVINO, *Plaintiff in Error.*	*On Writ of Error.* *Specification of Causes.*

Vincenzo Bovino, by McDermit and McDermit, his attorneys, hereby specifies the causes in the record relied upon for relief or reversal in the aforesaid cause as follows:

1. That the verdict is contrary to the weight of the evidence.

2. That there is no evidence to sustain the crime charged in the indictment.

3. That the trial court in curtailing the proper cross examination of the State's witness, Mary Webber, erred to the prejudice of the defendant.

4. That the trial court refused to allow the State's witness, Anna Gurtler, to answer the following questions on cross examination, to wit:

> "Q You deny you swore under oath first that you didn't know anything about the shooting at all?"
>
> "Q Didn't you swear to a half dozen different lies on the witness stand the last time and admit it?"

As the same was proper cross examination and was being conducted for the purpose of laying a foundation for contradiction.

Specification of Causes.

5. That the trial court permitted the State's witness, James D. Bell, to give evidence of statements, declarations and conversations had between this witness and the deceased Frank Baker, when the same was hearsay and illegal as the defendant was not present at the time said conversation and statements were had between this State's witness and the deceased.

6. That the trial court permitted the State's witnesses, John Miller, Peter Remondalli and Walter Byrne, to give evidence of statements, declarations and conversations heard by these witnesses between the witness, James D. Bell, and the deceased, Frank Baker, when the same was hearsay and illegal as the defendant was not present at the time said conversation and statements were had between the witness, James D. Bell, and the deceased, Frank Baker.

7. That the court permitted the State's witnesses, James D. Bell, John Miller, Peter Remondalli and Walter Byrne, to testify and give evidence with reference to an alleged dying declaration made by the deceased, Frank Baker, which alleged dying declaration was not made under the sense of impending death.

8. That the court improperly permitted the prosecutor to question the State's witness, Mae Gilling, as to what she testified to before the grand jury.

9. That the court improperly permitted the State to put in evidence, testimony as to what the State's witness, Mae Gilling, testified to before the grand jury.

10. That the court improperly permitted the prosecutor to impeach his own witness, to wit, State's witness, Mae Gilling.

Specification of Causes.

11. That the court improperly refused to allow the State's witness, Dr. Edward Staehlin, to answer the following question, to wit:

"Q The amount of reliability on a statement made by a person who is within three minutes of his demise and was vomitting, would you consider that an absolutely correct statement?"

Which was proper cross examination.

12. That the court permitted the State's witness, Lulu M. Field, to testify and give evidence as to what the deceased, Frank Baker, said to her, and as to what she heard the deceased say when the defendant was not present.

13. That the court permitted the State's witness, Timothy F. Scales, to testify as to the evidence that was given before the grand jury, by State's witness, Mae Gilling.

14. That the court refused to strike out the testimony of the State's witness, Timothy F. Scales, as the same was illegal, improper and erroneous.

15. That the court sustained the objection of the prosecutor to the following question as asked by the defendant's counsel to the State's witness, Timothy F. Scales:

"Q Was she subsequently subpoened before the grand jury in this county and gave testimony in this case?"

As the same was proper cross examination.

16. That the court improperly permitted the prosecutor to question the witness, Susan Brown Clark, to as what she testified to before the grand jury.

17. That the court permitted the State to put in evidence, testimony as to what the witness, Susan Brown Clark, testified to before the grand jury.

Specification of Causes.

18. That the court permitted the State's witness, Timothy F. Scales, to testify and read from his stenographic notes and grand jury minutes, as to what evidence the witnesses, Mae Gilling and Susan Brown Clark, gave before the grand jury, which was illegal, improper and erroneous.

19. That the court erred in its charge to the jury, by instructing them that the jury in its discretion could consider against the defendant, the statement of Baker, that the defendant shot him. Because the defendant was not present when the deceased made the statement and was therefore illegal and hearsay, and that the statement was not made under the sense of impending death.

20. That the court erred in its charge to the jury by instructing them a mistatement of the facts and evidence, as follows:

> "Defendant thought that he would try to make a false accusation against this New York Frank to divert suspicion from himself."

21. That the court erred in its charge to the jury by instructing them:

> "That this alleged attempt in the nature of a fabrication of false evidence by the defendant for himself in his own favor may be considered by the jury as showing a consciousness of guilt on the part of the defendant."

22. That the court erred in its charge to the jury by instructing them that if the jury found that the defendant had fired the fatal shot, that then it would be either murder in the first degree or in the second degree.

Specification of Causes.

23. That the court erred in its charge to the jury by instructing them as follows, to wit:

"The statements, admissions and accusations of a party defendant may however be used not only in relation to credibility and to contradict his testimony on the witness stand, but as evidence of the facts therein set forth and may be used against him as any other admission by a party."

24. Because the court pointedly charged the jury that they had a right to consider the interest which the defendant had in any verdict which the jury might render, and that that interest was very grave and that probably it had affected the truthfulness or credibility of the defendant's statements.

25. That the court refused to charge the jury as requested by counsel for the defendant, to wit:

"Before the jury can convict, they must find that the cause of the death of deceased has been beyond a reasonable doubt proven to be murder committed by the defendant."

26. That the court refused to charge the jury as requested by defendant's counsel as follows, to wit:

"That neither preponderance of evidence nor any weight of preponderant evidence is sufficient in a criminal case, unless it generates a belief of the guilt of the party charged to the exclusion of all reasonable doubt."

27. That the court refused to charge the jury as requested by defendant's counsel as follows, to wit:

"That the defendant is not responsible for the death of the deceased unless it was caused by his own act or omission or the act or omission of some person for which he is lawfully

responsible, and if the death of the deceased was caused by the act or omission of some other person, other than the defendant, who was not acting in concert with the defendant, then the defendant is not guilty."

McDERMIT & McDERMIT,
Attorneys of Plaintiff in Error.

FRANK M. McDERMIT,
Of Counsel with Plaintiff in Error.