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CERTIFICATE OF THE CHANCELLOR.

**In Chancery of New Jersey**

STATE OF NEW JERSEY, Complainant, vs. WILLIAM GIMBEL, Defendant.	} On Indictment and Conviction for Murder. Certificate of the Chan- cellor.	10
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*On Indictment and conviction in the Essex County Court of Oyer and Terminer of the Crime of Murder in the First Degree:*

This is to certify that application has been made to me for an allowance of a writ of error to be issued out of the New Jersey Supreme Court for the review of the Essex County Court of Oyer and Terminer convicting the said William Gimbel of the crime of murder in the first degree and that I have refused to order a writ of error out of the New Jersey Supreme Court for the review of said judgment. 20

Dated at Trenton this 25th day of March, 1930. 30

E. R. WALKER,  
Chancellor.

*Writ of Error*

WRIT OF ERROR.

**New Jersey Court of Errors and Appeals**

The State of New Jersey to William  
 10 (L. s.) S. Gummere, Esquire, one of the Jus-  
 tices of the Supreme Court of the  
 State of New Jersey, and to Walter D.  
 Van Riper, Judge of the Court of  
 Common Pleas of Essex County, constituting  
 the Court of Oyer and Terminer, holden at New-  
 ark, in and for the County of Essex, of the De-  
 cember term, 1929.

20 GREETING: Because in the record and proceed-  
 ing and also in the giving of judgment upon a cer-  
 tain indictment against William Gimbel, late of  
 the Town of Belleville, in the County of Essex,  
 aforesaid:

“For that the said William Gimbel on the 16th  
 day of January, 1930, in the Town of Belleville,  
 in the County of Essex aforesaid, did wilfully,  
 feloniously and of his malice aforethought kill  
 and murder Paul Bohrer, contrary to the form  
 of the statute in such case made and provided,  
 and against the peace of this State, the govern-  
 ment and dignity of the same.”

30 *Pro ut* the said indictment whereof, before you,  
 he, the said William Gimbel has been indicted,  
 and is thereof convicted by a certain jury of the  
 County, taken between the State of New Jersey  
 and the said William Gimbel, as it is said, mani-  
 fest error hath intervened to the great damage of  
 the said William Gimbel, as from his complaint  
 we have received information, we being willing,  
 in his behalf, to correct the error in due manner,  
 if any there shall be, and that speedy justice be  
 40 done to him, the said William Gimbel, command

*Writ of Error*

you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the 14th day of April next, and this writ, that the record and proceedings as aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done. 10

WITNESS, EDWIN ROBERT WALKER, Esq., our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton, New Jersey, this twenty-fifth day of March, 1930. 20

JOSEPH F. S. FITZPATRICK,  
Clerk.

JOHN A. BERNHARD,  
JOSEPH E. DEGNAN,  
Attorneys for Defendant.

Presented in open court this 26th day of March, 1930. 30

WALTER D. VAN RIPER,  
Judge.

*Return to Writ, Indictment***RETURN TO WRIT.**

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

10 I, WALTER D. VAN RIPER, Judge of the Court of Common Pleas of Essex County, New Jersey, holding Court of Oyer and Terminer, Essex County, New Jersey, do hereby certify and return to the Court of Errors and Appeals being the Court of last resort in all causes in the State of New Jersey, the indictment, judgment record and proceedings with all things touching and concerning the same, together with the entire record of the proceedings had at the trial as by the within writ to me directed, I am commanded.

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, this        day of April, A. D. 1930.

WALTER D. VAN RIPER,  
 Judge of the Court of Common Pleas  
 Holding the Court of Oyer and  
 (SEAL) Terminer, Essex County, New Jersey.

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

40 BE IT REMEMBERED, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the second Tuesday in December, in the year of Our Lord, one thousand nine hundred and twenty-nine, 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,

*Return to Writ, Indictment*

in and for the County of Essex, New Jersey, by the oath of William L. Blanchard, Frank K. Jennings, Fred W. Jung, Charles T. McGinnis, Patrick J. Farrell, David A. Kraker, Gerald Hannay, William J. Burke, Harry F. Snyder, Thomas Harding, Andrew Isenberg, Charles Kirkpatrick, Frank E. Davenport, Bernard Lewis, August Roemmele, Samuel Drabble, William B. Stein, H. Roy Van Ness, Joseph R. Mueller, Ronald O. Gubelman, Frank T. Shepard, Leroy M. Hanlon, Noah Bruford, good and lawful men of the said County of Essex, duly summoned 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:

10

Essex County, to wit:

20

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that William Gimbel, on the sixteenth day of January, in the year of Our Lord one thousand nine hundred and thirty, at the Town of Belleville, in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought, kill and murder Paul Bohrer, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

30

JOSEPH L. SMITH,  
Prosecutor of the Pleas.

40

*Return to Writ, Plea*

And on the eighteenth day of January, A. D. nineteen hundred and thirty, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, the said Justice did then and there order the said indictment to be delivered to the  
 10 Clerk of the Court of Oyer and Terminer in 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 the statute in such case made and provided.

And afterwards, that is to say, at the same session of the Court of Oyer and Terminer holden  
 20 at Newark on the twentieth day of January, A. D. nineteen hundred and thirty, before the Judge aforesaid, comes the said William Gimbel in the custody of Harry L. Huelsenbeck, Sheriff of the County of Essex aforesaid, in the custody in the jail of the County aforesaid, he has 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 forth-  
 30 with demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, says that he William Gimbel is Not Guilty thereof, and therefore, for good and evil he puts himself upon the Country and Joseph L. Smith, Prosecutor of the Pleas, for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

*Return to Writ, Judgment Record*

Therefore, let a jury thereupon come before the Judge aforesaid, at Newark aforesaid, in the County of Essex, at the same session of the Court of Oyer and Terminer aforesaid on the third day of February, A. D. nineteen hundred and thirty, 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 William Gimbel, to recognize upon their oath, whether the said William Gimbel is guilty of the murder in the indictment aforesaid specified or not guilty, because as well the said Joseph L. Smith, Prosecutor of the Pleas of the County of Essex aforesaid who prosecutes for the State of New Jersey in this behalf as the said William Gimbel has put himself upon the jury, and the same day is given to the parties aforesaid, at the same place, at which day, to wit, the third day of March, A. D. nineteen hundred and thirty, at the same Term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Walter D. Van Riper, Judge of the Court of Common Pleas, holding the Court of Oyer and Terminer, in and for the said County of Essex, comes as well the said Joseph L. Smith, Prosecutor of the Pleas who prosecutes aforesaid, and the said William Gimbel, in the custody of Harry L. Huelsenbeck, 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 and returned to wit, after the following number of challenges were exhausted, by the State eleven, by

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*Return to Writ, Judgment Record*

the Court one, by the defendant nineteen, by consent three and for cause eighteen, 1, John L. Dean; 2, John T. Daniels; 3, Harry L. Brown; 4, Norman F. Brydon; 5, Carl F. Andrus; 6, Jerry A. Dolan; 7, Thomas L. Corwin; 8, Peter E. Buck; 9, Joseph J. Carey; 10, Alfred M. Doughty, being called come and were sworn on that jury, whereupon the Court was adjourned.

And afterwards, that is to say on the fourth day of March, A. D. nineteen hundred and thirty, to which day Court was adjourned, the jury being called all appeared and juror 11, Stanley Bedford was sworn, at this stage the special panel becoming exhausted, the Court order the Sheriff to draw the balance of the jury from the general panel, whereupon the balance of the jury was drawn from the general panel and sworn as jurors: 12, Austin C. Deate was sworn, and the jury being called come and were sworn 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 seventh day of March, A. D. nineteen hundred and thirty, 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 the purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the said jury, and the said jury in charge of said sworn 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

*Return to Writ, Judgment Record*

said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Joseph L. Smith, and the said William Gimbel, say that "We find the defendant William Gimbel, guilty of murder in the first degree" and so they say all.

10

By request of defendant's counsel, the jury was polled and each juror for himself, said, "I find the defendant guilty of murder in the first degree."

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, it is, on this tenth day of March, A. D. nineteen hundred and thirty, ORDERED and ADJUDGED that the defendant, William Gimbel, suffer death sometime within the week beginning Sunday, April 20, 1930.

20

"And may God have mercy upon your soul."

30

40

*Drawing of Jury***TESTIMONY.**ESSEX COUNTY COURT OF OYER  
AND TERMINER.

Monday, March 3, 1930.

10

STATE OF NEW JERSEY,

*vs.*

WILLIAM GIMBEL,

*On Indict-  
ment No. 588  
Dec. T., 1929,  
for Murder.*

Before Hon. Walter D. Van Riper, Judge.

For the State appear Joseph L. Smith, Prose-  
cutor of the Pleas, and Joseph E. Conlon, Second  
Assistant Prosecutor of the Pleas.

For the defendant appear John A. Bernhard  
and Joseph M. Degan.

The Court: Gentlemen, do I understand it is  
stipulated in this case between counsel that the  
jurors may be called to the Book and sworn on  
their *voir dire* and questioned on their *voir dire*?

Mr. Bernhard: Yes, it is entirely satisfactory.

Mr. Smith: Before the imposition of any chal-  
lenge.

The Court: Yes, without having any challenge  
interposed.

Mr. Smith: Yes, I understand that is satis-  
factory and consented to and not objected to by  
counsel for the defendant.

The Court: Yes.

Mr. Bernhard: On advice.

(After one juror is sworn.)

40

*Drawing of Jury, Clarence F. Conway*

CLARENCE F. CONWAY, sworn on his *voir dire*.

*By Mr. Smith.*

Q Mr. Conway, do you know of any reason arising from any source why you could not sit and serve as a juror in this case? A I do not. 10

Q You live in Belleville? A I do.

Q Does the fact that you reside in Belleville, where this crime is alleged to have been committed, prejudice you in any way so that you could not sit and serve fairly and impartially as a juror in this case? A No.

Q Do you know the defendant? A I do not.

Q Have you any conscientious scruples against capital punishment? A No. 20

Q Would you in a proper case, from the evidence and the law as the Court gives it to you, vote to convict the defendant guilty of murder in the first degree? A Yes.

Q Even though as a result of that verdict the penalty would be electrocution? A Yes.

Q That would not affect or influence you in serving under your oath as a juror, would it? A No, it would not.

Q If the Court were to instruct you that it is the law of this State that if a human life were taken in the perpetration or attempted perpetration of a robbery and that such a killing is murder in the first degree, would you have any difficulty in following the Court's instructions? 30

Mr. Bernhard: I object, if your Honor please, for the very same reason, only with double force, that Mr. Smith advanced when he objected to my question when I included 40

*Drawing of Jury, Clarence F. Conway*

in it some evidence which had not yet been presented.

The Court: The question includes a correct statement as to what is defined.

10 Mr. Bernhard: No question about that, but it has to be a question in connection with all other evidence in the case, has it not? You cannot lay a single element of law or a single bit of law or iota of testimony and premise a question upon that part of the case alone.

The Court: You cannot when it comes to the question of a recommendation, but I think you can when it comes to the degree of the guilt, can't you?

20 Mr. Bernhard: You are absolutely right and I am wrong about that. I will withdraw my objection.

A No.

Q You would bring in such a verdict even though as a result of that verdict the penalty would be electrocution? A Yes.

Q Well, now, you hesitated, Mr. Conway. May I just ask you the reason for that hesitation? A Capital punishment.

30 Q You have no reason to oppose capital punishment, have you? A I don't like it.

Q You don't like capital punishment? A No.

40 Q You know none of us like capital punishment but we are all charged with the duty to administer the law. Now, is that dislike for capital punishment such that under no circumstances would you vote to bring in a verdict of murder in the first degree where the penalty would be the imposition of death in the electric chair? A Yes.

*Drawing of Jury, Clarence F. Conway*

Q So that under no circumstances would you bring in such a verdict on account of your dislike for capital punishment? Do I understand you correctly? A No, I haven't got that quite clear, plain to me.

Q You say that you don't like capital punishment? A I disapprove of it. 10

Q You disapprove of it? A Yes.

Q Now, upon what is your disapproval based? A I simply don't like capital punishment. That is all.

Q Is it due to your conscientious scruples against it? A Yes, absolutely.

Q So that under no circumstances—I do not want to confuse you. I just want to have it understood? A Yes, I understand. 20

Q Mr. Conway, so that under no circumstances would you, from the evidence and the law as the Court gives it to you vote to bring in a verdict of murder in the first degree where the penalty was death in the electric chair, would you? A No, I would not.

Mr. Smith: I challenge for cause.

*By Mr. Bernhard.*

30

Q Is your position, Mr. Juror, that you have a conscientious disinclination to by your verdict condemn a man to the electric chair? A Yes.

Q Is that the feeling that you entertain, sir? A Yes.

Q And that is the meaning that you tried to convey? A Yes.

Q But you do not mean to say, do you, sir, that you will not conform to the law of this State and to your oath in a proper case and 40

*Drawing of Jury, Clarence F. Conway*

bring in such a verdict as you think the facts of the case warrant? A Yes.

Q Isn't that what you are willing to do? A Yes.

Q That is all that any man can do, isn't it?

A Yes.

10

Mr. Bernhard: How can the challenge stand, if your Honor please, in the face of the witness' answer?

The Court: The juror did say a minute ago that under no circumstances would he return a verdict that carried with it the death penalty.

*By the Court.*

20 Q Did you say that, Mr. Conway? A I did, yes.

30

Mr. Bernhard: To be sure, sir, but the question did not embody—and perhaps I should have objected—all the fundamentals which are necessary to be set out to a witness in order for him to fairly and conscientiously determine the answer to the question. The bald bare fact that he would not bring in a verdict carrying the death penalty was based, I assume, from his subsequent answers, upon the question directed to him. So far as the question itself was limited to the facts therein stated the question was perhaps unobjectionable, but upon further examination it appears that he is disinclined to do it, but that if the Court says that in a proper case after a specified set of facts, if he believes those facts he will follow the direction of the Court and

40

*Drawing of Jury, Clarence F. Conway*

bring in a verdict accordingly. Now, what more can any juror do?

The Court: I think that a juror's mind must be in such a condition that he can openmindedly approach the question as to which of two penalties he would vote to impose. This juror, as I understand it, says there is one of those penalties that is out of the picture. 10

Mr. Bernhard: I do not so understand the witness' attitude at all.

The Court: Suppose we examine him further.

*By the Court.*

Q Mr. Conway, when you go in the jury room and decide the question of the guilt or innocence of this defendant, should you decide he was guilty then you should have to fix the penalty, which would be one of two. It would be life imprisonment or death in the electric chair. Would you consider fixing the penalty of death in the electric chair? A No. 20

Mr. Bernhard: May I object to your Honor's question? 30

The Court: Certainly.

(Argument.)

The Court: I would like to have you put it.

*By Mr. Bernhard.*

Q Mr. Conway, if accepted as a juror in this case and there is evidence presented which satisfies you that one of two verdicts might be 40

*Drawing of Jury, Clarence F. Conway*

brought in, either a verdict of murder without a recommendation or a verdict of murder with a recommendation, would your mind be open, would your conscientious scruples permit you to bring in either one of those two verdicts under the evidence as presented and the charge of the Court? Is that question clear? A That is clear, but I don't believe in capital punishment. Life, all right.

Q Of course I am questioning you in view of the possibility that you might be a juror? A I know.

Q I do not mean to be indelicate about it, but I ask you—

Mr. Smith: If your Honor please, I object to going back over the record again.

The Court: As a matter of fact, counsel is entitled to an answer and the answer the juror has given is not an answer to the question.

Mr. Smith: But the question that Mr. Bernhard put to the juror was exactly the same question.

Q (Read by stenographer.) Mr. Conway, if accepted as a juror in this case and there is evidence presented which satisfies you that one of two verdicts might be brought in, either a verdict of murder without a recommendation or a verdict of murder with a recommendation, would your mind be open, would your conscientious scruples permit you to bring in either one of those two verdicts under the evidence as presented and the charge of the Court? A I would say yes to that.

40

*Drawing of Jury, Clarence F. Conway**By the Court.*

Q Now you say yes to that. Did you understand, Mr. Conway, that Mr. Bernhard's question, when he talked about with a recommendation or without a recommendation? Do you understand the meaning of that? A Yes.

10

Q Do you understand what recommendation means? A I understand.

The Court: All right.

Mr. Bernhard: Satisfactory to the defendant.

The Court: There is a challenge pending for cause.

*By the Court.*

20

Q Let me get you clearly on this, Mr. Conway. I do not want to confuse you, but I have to rule on the basis of your answer. You just said in answer to Mr. Bernhard's question that your conscientious scruples were such that it would permit you to bring in a verdict either with a recommendation for mercy, which would mean life imprisonment or it would permit you to bring in a verdict without a recommendation for mercy, which would mean death in the electric chair. Now, is that so? A Now you have got it two ways. I don't approve of one. The other way I do approve of.

30

Q I know, but could you as a juror bring in a verdict that meant death as the penalty? A No, I could not.

Q Then you did not mean the answer you gave before? A No. I simply was all filled up at the time and I answered wrong.

40

*Drawing of Jury, Austin Bailey*

The Court: I will allow the challenge.

Mr. Bernhard: I except to your Honor's ruling.

Defendant's counsel prays an exception to this ruling of the Court.

10 Exception allowed; let it be sealed and it is signed and sealed accordingly.

WALTER D. VAN RIPER,  
Judge.

Before adjournment ten jurors were accepted and sworn.

Adjourned until Tuesday, March 4, 1930, at ten o'clock A. M.

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SECOND DAY.

Tuesday, March 4, 1930.

Before Hon. Walter D. Van Riper, Judge.

Continued pursuant to adjournment.

Present, counsel as before stated.

(After ten jurors are sworn.)

30 AUSTIN BAILEY, sworn on his *voir dire*.

*By Mr. Smith.*

Q You have heard the questions I have asked the other men as they have been called to the Book, have you not? A Some of them.

Q This is a murder case. You know that, Mr. Bailey? A Yes, sir.

40 Q Do you know of any reason why you cannot serve as a juror in this case? A I have

*Drawing of Jury, Austin Bailey*

doubts in my own mind as to the legality or—that is not the right word; the right and wrong of capital punishment.

Q You don't believe in it? A I wouldn't say that. I think it depends on circumstances.

Q In certain cases you would vote, would you not, to bring in a verdict of murder in the first degree where the punishment was death in the electric chair, or would you vote in no case under any circumstances to bring in a verdict where the penalty would be death in the electric chair? A I really don't know, sir. 10

Q I would like to just try and find out from you, if I can, Mr. Bailey, what your thought is, what your belief is. As I understand you, you say that you are doubtful about it? A I am.

Q So that to overcome such a doubt as you may have, it would require greater evidence, more evidence than to satisfy you as to the guilt of the defendant beyond a reasonable doubt, would it not? A I believe so. 20

Q Well, can you tell me whether it would or it would not? A Repeat the question, please.

Q (Read by stenographer.) So that to overcome such a doubt as you may have, it would require greater evidence, more evidence than to satisfy you as to the guilt of the defendant beyond a reasonable doubt, would it not? A Yes. 30

Q Therefore, if the Court were to charge you that if you were satisfied as to the guilt of the defendant beyond a reasonable doubt, you would not follow the Court's charge but you would require evidence greater than what the Court charged was the law; that is, evidence to satisfy you more than beyond a reasonable doubt? A I believe so. 40

*Drawing of Jury, Austin Bailey*

Q Is that correct? A Yes, sir.

Q So that you could not follow the law as the Court would give it to you on that question? A I believe that is true.

Q Well, is it true, Mr. Bailey? A Yes, sir.

10 Mr. Smith: I challenge for cause.

*By Mr. Bernhard.*

Q Mr. Bailey, is that conclusion based upon some conscientious scruples against imposing the death penalty? Is that what you are driving at?

A Yes.

Q You have conscientious scruples, have you?

A I don't know exactly what you mean by conscientious scruples.

20 Q I can tell you very briefly, Mr. Bailey, exactly what I mean—when the dictates of your conscience make you feel it wrong to impose the death penalty. That is as brief and as succinct as I can make it. Is that what you mean? A Under certain circumstances.

Q But I do understand your answer to intend that if the Court charges the law of the State and you take the oath to serve as a juror, regardless of your own feeling about the matter, 30 you will follow the directions of the Court as to the law in reaching a conclusion, will you not? Is my question clear, Mr. Bailey? A No, sir; it is not.

Q I am sorry. I will try to make it clear. If you take an oath to serve as a juror and the Court charges you as to the law of the State, in reaching a conclusion upon the evidence will you apply the law as charged to the evidence? Is that any clearer to you? Tell me if it is not. A

40 No it is not really.

*Drawing of Jury, Austin Bailey*

Q I will make one more effort at it. If accepted as a juror you are required to take an oath to be guided by the evidence and the charge of the Court in reaching a conclusion. You have had that experience in this panel, haven't you? A Yes.

Q Now, if the Court charged you as to the law, would you attempt to apply the facts of the case to the law as the Court charged it to you in reaching a conscientious conclusion? A I will attempt to.

Q I am sure you will, sir. My question, however, permit me to express it further—to the best of your ability? A To the best of my ability.

*By the Court.*

Q Do I understand, Mr. Bailey, that despite your objection to capital punishment, that there are some cases where you would vote to convict where the verdict carried with it capital punishment? Is that so? A I believe so; yes, sir.

Q So that your position is not to all cases, is that it? A That is true.

Q Is your mind open to conviction depending upon the circumstances in a particular case as to whether or not you would vote for capital punishment? A I believe it is, sir.

Q You say you believe it is. Does that mean that it is? A Well, I don't believe that a person can definitely state whether their mind is open or not to a particular issue. Persons' ideas are deeper than—they never know whether they can say definitely, answer a question like that definitely or not.

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*Drawing of Jury, Austin Bailey*

Q Until you are actually confronted with the facts, is that what you mean? A That is what I mean.

10 Q All we are trying to do is to try to find out as definitely as we can what your state of mind is. Is your state of mind such that you can say, or do you say under certain circumstances you would vote to convict a person of murder in the first degree if that meant death in the electric chair? A I can't answer that question definitely.

The Court: I will allow the challenge.

Defendant's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is signed and sealed accordingly.

20

WALTER D. VAN RIPER,  
Judge.

(The empanelling of the jury is completed.)

Mr. Smith opens in behalf of the State.

Adjourned until tomorrow, Wednesday, March 5, 1930, at ten o'clock A. M.

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*John J. Bracken, direct*

THIRD DAY.

Wednesday, March 5, 1930.

Before Hon. Walter D. Van Riper, Judge.

Continued pursuant to adjournment.

10

Present, counsel as before stated.

JOHN J. BRACKEN, sworn in behalf of the State.

*Direct examination* by Mr. Smith.

Q Mr. Bracken, what is your profession, please? A Civil engineer and surveyor.

Q And you have been such for how many years? A Twenty-eight years.

20

Mr. Smith: Is there any question, if the Court please, relative to the qualifications of Mr. Bracken?

Mr. Bernhard: We have no objection.

Q Mr. Bracken, did you make a map of the Atlantic & Pacific Tea Store on the northeast corner of Cortlandt street and Holmes street, Belleville? A I did.

30

Q Where is that map, please? A That map is the map over on the other side of the wall with the yellow coloring on the side of it.

Mr. Smith: I offer the map in evidence, if your Honor please.

The Court: Any objection?

Mr. Bernhard: Do you intend to interrogate the witness?

40

*John J. Bracken, direct*

Mr. Smith: Yes, I expect to have him explain it.

Mr. Bernhard: I have no objection.

(The same is received in evidence and marked Exhibit S. 1.)

10 Q Is that map drawn to scale, Mr. Bracken?

A It is, yes.

Q What is the scale of it, please? A The scale of the map is one inch on the map is equal to one foot on the ground.

Q Is there anything there to indicate where the north is? A The north, yes. The pointer is pointing north, shown on the top of the map.

20 Q Will you take this pointer, please, and just explain the map to the jury? A The map is a chain store of the Great Atlantic & Pacific located on the northeast corner of Holmes street and Cortlandt street in Belleville, New Jersey.

Q Where is Cortlandt street and Holmes street and what directions do those two streets run? A Well, for all purposes, you would say Cortlandt street runs north and south and Holmes street east and west.

30 Q All right. Go ahead. A The front portion here shows the windows of the entrance into the store. The different objects here—

Q Will you just indicate the windows? A I point to them.

Q They are the display windows? A Display windows in front of the store, and this is the entrance into the store. The different objects you see marked here are marked on the map. There are the radiators, the counters.

40 Q Will you please show them to us? A Radiators, counters, fruit stands (indicating).

*John J. Bracken, direct*

Q You said radiators and you pointed to one. Isn't there more than one radiator? A There is two there.

Q Will you please point to every article that is on the map? Tell us what it is. A This is a counter. This is a fruit stand. These here striped lines are the shelves, the cash register, so marked here. This is another small counter, another small counter as you go to the rear, fruit stand in front of it. There is a cake basket here. There are also marked the ice box. That is in the rear. This is an entrance into the back of the store going into what I consider store rooms. There are potatoes and different things (indicating). 10

Q The room as you walk toward the rear of the store, that is a store room? A Yes. In on this side is the toilet. 20

Q On the left as you walk toward the rear? A Is a toilet, so marked, wash basin. Then you enter into another store room. Then as you go farther back you enter into the way to go out into the yard in the back of the store.

Q Now, I have you got you back in the rear, in the store room. Will you show us that on the map, please? A Store room is here (indicating). 30

Q What else is shown on the map with reference to the rear store room in respect to an exit? A The exit is right here, shown.

Q Going to that door what do you enter? A You enter into a hall and out into the rear yard.

Q When you enter that hall, Mr. Bracken, do you go to another hall to the rear door? A You go into the platform right here (indicating). 40

*John J. Bracken, direct*

Q What are those lines there to the rear? A These are the stairs going up and down the cellar and up the stairs.

Q Going up and down the cellar and upstairs over this store? A Over the store.

Q What are the yellow marks on the map?

10 A The yellow marks are the side lines that are put in yellow to note that the building is of frame construction.

Q Are there any windows in this building? A There are windows as I have told you here, and then there is windows in the rear as I have got down on the sides, in the rear and on this side. Those windows are so shown.

Q What else is shown on the map there at the rear when you go out the rear door of the building? How do you get out of the yard? A You get out of the yard by gates out here on the side.

Q What is that mark up there to the rear? A That is the curb line.

Q No, the line up there (indicating). A That is the distance between the curb line and the building.

Q But there is a gate going out in the rear of the yard out into Holmes street? A Out on to Holmes street.

30 Q What is the distance of the building right to the curb line? A The distance from the curb line on Cortlandt street is nineteen feet and Holmes street twelve feet in front and ten and a half feet in the rear.

Q Any lights in this building? A Yes.

Q Are they indicated? A No. They are not indicated.

40 Q What is this on the left (indicating)? A That is the hall door going upstairs.

*John J. Bracken, direct*

Q So that the entrance upstairs is in the front and also the stairs in the rear? A That is it.

Q The rear stairs? A Yes.

Q Now, how far is it from the door going into the toilet to the door going out to the back? Strike it out. How far is it from the center of the door of the toilet to the door in the rear of the store room on the left side going out to the hall which leads then out into the yard? A The bend in there? X. 10

Q No, straight? A Ten feet.

Q Will you mark it please, on the map? How far is it from the center of the hall going out in the rear to the rear door? A Do you mean here?

Q That is right. From the center of that hall out to the rear door? A Fourteen feet and a half. 20

Q Put that down. So that from the door into the toilet to the door going out into the yard it is fourteen feet and a half? A Yes.

Q How long is this door from the front door to the rear of the store? A It is so marked there. 25 feet and 3 inches.

Q That is the depth of the store proper? A The depth of the store proper. 30

Q What is the width of this counter to the right on the map? A It is 190—

Q Will you mark that counter? A 12 feet, 1 $\frac{1}{4}$  inches.

Q The depth of it? A That is 190; 1 foot, 10 $\frac{1}{4}$  inches.

Q What is the length of it? A 12 feet, 1 $\frac{1}{4}$  inches.

Q What is the length of that counter? A That is 5 feet, 1 $\frac{1}{4}$  inches. 40

*John J. Bracken, direct*

Q What is the width? A The same as the other.

Q You have marked here cash register? A Yes.

Q You have another counter. What is that the cash register is resting on? A A little shelf.

10 Q What are these black lines broken up? A Those are the shelves along the wall.

Q Did you notice whether there was any lock on that toilet door? A There was not any lock when I was there. It was just about as I have shown it, partly open.

Q When did you make that? A That map was made as of January 16, 1930.

20 Q Now, I refer, Mr. Bracken, to another map that is up there on the wall. What does that show? A Why, that shows a section of Belleville lying between Holmes street and Belleville and Nutley lying on the north, the Passaic River on the east and Washington avenue on the west, Belleville, New Jersey, showing streets along there.

Q That map was prepared by you? A Yes.

Q What date? A The date was made partly the same time and some after, but the map was not made until January 30, 1930.

30 Q Is that drawn to scale? A Yes.

Q What is the scale? A One inch on the map is equal to 100 feet on the ground.

Q And the arrow? A Indicates pointing north.

(Map offered in evidence and marked Exhibit S. 2.)

40 Q Referring now to Exhibit S. 2, will you explain that map to us, please? A That map shows the streets that are in Belleville. The

*John J. Bracken, direct*

black lines are the property lines of the streets. Along there the different avenues. This blue line shows the Passaic River. This line on the west is Washington avenue. These are the other streets in between. Those objects in yellow—

Q Just let me interrupt you. On the bottom of the map you have a yellow mark. What is that? A That indicates the Great Atlantic & Pacific Tea store on the corner of Holmes street and Cortlandt street. 10

Q That is the same store as Exhibit S. 1? A Exhibit S. 1.

Q Is that an enlargement of that store which is indicated on S. 2 of the map on the corner of Holmes street and Cortlandt street? A Yes.

Q Now, next to that on Holmes street you have some numbers? A Those are the lots in the rear of the store. The numbers of the houses are marked. 20

Q Now, referring to Stephens street on this map, just north of Holmes street on the East side of Stephens street you have something there in yellow? A That is a little store building with a street number marked on it.

Q Going up Stephens street you have what? A A vacant lot and some houses.

Q Now, the vacant lots up there ran all the way through from Stephens street to Cortlandt street? A They do. 30

Q North of the vacant lot both on Stephens street and Cortlandt street you have some yellow marks? A Those are frame houses.

Q The numbers are marked? A The numbers are marked.

Q Where north of those houses you have lines that are broken up what are those lines? A There is a driveway going through. 40

*John J. Bracken, direct*

Q Going right through from Stephens street to Cortlandt street? A Yes.

Q Now, going up to a mark here on Stephens street south of Joralemon street, what are these yellow marks? A Those show the frame houses along the westerly line of Stephens street, between Joralemon street and Terry street.

Q And you have given the houses up to and including 293 Stephens street. That is the last house? A No. There are houses all along.

Q What is this red line? A That is a driveway.

Q A driveway along what number Stephens street? A That would be No. 293.

Q Now, on Cortlandt street, north of Joralemon street, you have also numbers in there. What do they indicate? A They indicate the house numbers along the street line.

Q Now, going up to the top of this map on River Road, do you indicate that is a tree up there? A Why, no. There is a road way running through, L. Sonneborn Manufacturing Company.

Q What else? A There is a driveway in there out to Hancock avenue and then I denoted the Belleville & Nutley line.

Q Well, do you note the Federal Leather Company up there? A It is down here. The Federal Leather is down in here (indicating).

Q Is it right up there near the Sonneborn? A Yes, right next to it.

Q Then you have got Hancock avenue on the left of that? A I have, going into Austin avenue.

Q That runs out and meets Washington avenue? A It does as shown.

*John J. Bracken, direct*

Q Now, Mr. Bracken, will you tell me how far it is from the corner of Cortlandt street and Holmes street to the corner of Cortlandt and Joralemon. How many feet is that? A From center to center of the streets there it is 1,100 feet, and you take 25 feet off to the corner—

Q Let us say to the center. A Center to center of the streets, 1,100 feet. 10

Q What is the length of the Cortlandt street block— A Between center of the streets?

Q The length of Cortlandt street block between Holmes street and Joralemon street is what? A 1,100 feet.

Q That is the length of this block I am indicating, the block I have just referred to? A Yes, that is it.

Q What is the distance between the block between Cortlandt street and Stephens street on Joralemon street? That is marked, is it not? A It is, yes. That goes to the center of Clarence street where there is a jog. 20

Q To the center of Stephens street? A It jogs here.

Q What is that distance between Cortlandt street and Stephens street on Joralemon street, the centers? A It is 410 feet over to here (indicating) then there is a change, there is a jog in it here. 30

Q It is 410 feet from the corner of Cortlandt street and Joralemon street, or the center of that street, to the center of Joralemon street and Stephens street as it is continued north of Joralemon street? A That is right.

Q Now, how far is it from the center of Joralemon street and Stephens street to No. 293 Stephens street? A Do you want that from the center, Mr. Prosecutor? 40

*John J. Bracken, cross*

Q Please. A To about the center of the house?

Q Yes. A It would be 350 feet.

Q What is the depth of the block at 293 Stephens from Stephens street to Cortlandt street? A Right in the center of the block there?

10 Q At No. 293. A 247 feet. That is from property line to property line.

*Cross examination by Mr. Bernhard.*

Q You have referred to display windows fronting on Cortlandt street, have you not, in your testimony? A I have, yes.

Q Do you recall whether or not at the time you took these measurements— Did you take the measurements of the front windows? A Yes.

Q Will you let us have them, please? One at a time, the southerly one first. A It is 6 feet and the other one is of the same size. The door is in the center of the store.

Q Do you recall, Mr. Bracken, whether or not it is one plate glass window or one large window, or whether or not it is divided? A One plate glass window, I am almost sure.

30 Q So there is a plate glass window six feet wide to the south of the entrance, and a plate glass window approximately the same dimensions to the north of the entrance, is that right? A That is right.

Q The door is set in, is it not? A The door is set in as shown, counsellor.

Q How many feet in? A There is a step here, and then from the front of the building the door sets in three feet.

40

*Nicholas S. Kaufman, direct*

Q Do you recall whether or not there is a plate window in the door way? A There is a plate window. It is a long store door.

Q About three or four feet wide, is it? A The width of the door there is three feet wide.

Q So to all intents and purposes, the entire front of that store is of glass? A Yes, it is open. 10

Q You say there was one step? A Yes, sir, one step, so shown here.

Q Onto the level of the floor of the store, is that right? A Yes.

Q What is that, eight or nine inches? A That is not quite that. I would say it is an eight inch tread.

Q So that the floor of the store is seven or eight inches higher than the sidewalk, is that right? A Yes, sir. 20

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NICHOLAS S. KAUFMAN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Kaufman, what is your business, please, sir? A Photographer. 30

Q Did you, at the request of the Prosecutor's office, take certain pictures of an A. & P. store on the northeast corner of Cortlandt street and Holmes street? A Yes.

Q In Belleville, New Jersey? A Belleville, New Jersey.

Q When did you take them? A January 16, 1930.

Q I show you a photograph and ask you if you took that picture, please? A Yes. 40

*Nicholas S. Kaufman, direct*

Q That is a picture of what? A It is the interior of an A. & P. store, northeast corner of Holmes street and Cortlandt street, Belleville, looking southeast.

Mr. Smith: I offer it in evidence.

10 Mr. Bernhard: Let me look at it please. Let it appear, will you, Mr. Smith, that that is an interior of the store?

Mr. Smith: I was going to have him show where the counter was.

Mr. Bernhard: That is not necessary. The picture shows for itself. I have no objection if you let it appear that that is an interior view of the store.

20 *By Mr. Smith.*

Q This is an interior view of this store on the corner, the A. & P. store on the corner of Cortlandt street and Holmes street? A Yes.

Mr. Smith: I offer it in evidence.

(The photograph referred to is received in evidence and marked Exhibit S. 3.)

30 Q Will you kindly mark on the map with an arrow CS. 3 where your camera was pointing when the picture was taken? A (The witness marks on the map.)

Mr. Smith: May I show this to the jury, if your Honor please?

The Court: Yes.

40 Q I show you another photograph and ask you if you took that picture, please, Mr. Kaufman? A Yes.

*Nicholas S. Kaufman, direct*

Q What does that show? A Looking north from the rear room of an A. & P. store in Belleville.

Mr. Smith: I offer it in evidence.

Mr. Bernhard: All right, Mr. Smith.

(The same is received in evidence and marked Exhibit S. 4.) 10

Q Will you indicate by an arrow where your camera was pointing when this picture Exhibit S. 4 was taken? CS. 4, if you will. A (Marking the map.)

Q That is looking into the rear room, looking north from the rear room? A Yes.

Q I show you another photograph and ask you if you took that, Mr. Kaufman? A Yes. 20

Q What does that show? A It is a narrow entrance from the rear of the store of an A. & P. store, Belleville, looking east.

Q What is that again? A A narrow entrance from the rear of store of the A. & P. grocery store in Belleville.

Q The rear entrance? A Looking from the rear.

Mr. Smith: I offer that in evidence. 30

Mr. Bernhard: No objection.

(The same is received in evidence and marked Exhibit S. 5.)

Q Will you mark with an arrow where your camera was pointing, and mark it CS. 5, please, when that picture S. 5 was taken? A (The witness marks the map.)

Q I show you another photograph and ask you if you took that, please? A Yes. 40

*Nicholas S. Kaufman, direct*

Q What does that show, please? A Looking north of Holmes street showing entrance of an A. & P. store.

Q That shows the exit? A The rear door to the A. & P. store, yes.

10 Mr. Smith: I offer it in evidence.

Mr. Bernhard: All right, Mr. Smith.

(The same is received in evidence and marked Exhibit S. 6.)

Q You mark the map C-S-6 where your camera was pointing. I show you another photograph. Did you take that? A Yes. That was looking east on Holmes street from the rear of the A. & P. store.

20 Q That is looking east on Holmes street from the rear of the A. & P. store? A Yes.

Q That is looking in the direction of Stephens street? A Yes.

(Photograph offered in evidence and marked Exhibit S. 7.)

30 Q I show you another photograph and ask you if you made that? A Yes.

Q What does that show? A Looking north on Stephens street, corner of Holmes street.

Q Looking north on Stephens street? A Corner of Holmes street.

(Photograph offered in evidence and marked Exhibit S. 8.)

40 Q I show you another photograph and ask you if you made that? A Yes.

*Nicholas S. Kaufman, direct*

Q What does that show? A That is looking northwest on Stephens street, showing an empty lot looking toward Cortlandt street.

(Photograph offered in evidence and marked Exhibit S. 9.)

10

Q I show you another photograph and ask you if you took that? A Yes. That is looking north on Cortlandt street.

Q To what point? A About 200 feet from Holmes street.

(Photograph offered in evidence and marked Exhibit S. 10.)

Q I show you another photograph. Did you take that, too? A Yes.

20

Q What is it? A That is looking east on Joralemon street, from the corner of Cortlandt street.

(Photograph offered in evidence and marked Exhibit S. 11.)

Q I show you another photograph. Did you also take that one? A That is looking north on Stephens street, corner of Joralemon street.

30

(Photograph offered in evidence and marked Exhibit S. 12.)

Q Now, I show you another photograph and ask you what that photograph shows? A That is a driveway on the right of the residence of 290 Stephens street.

Q And also shows the residence? A Shows the residence.

40

*Nicholas S. Kaufman, direct*

(Photograph offered in evidence and marked Exhibit S. 13.)

Q I show you another photograph. Did you take that? A Yes. That is the residence 293 Stephens street.

10 Q Belleville? A Belleville, New Jersey.

(Photograph offered in evidence and marked Exhibit S. 14.)

Q I show you another photograph. Did you also take that? A Yes.

Q What does that show? A That is looking west at the intersection of River Road and Main street, Belleville.

20 (Photograph offered in evidence and marked Exhibit S. 15.)

Q I show you another photograph. Did you also take that one? A Yes. That is looking northwest showing a taxicab on Washington avenue and Hancock avenue, Belleville.

Q I guess that is Nutley? A Yes, Nutley.

30 (Photograph offered in evidence and marked Exhibit S. 16.)

Mr. Bernhard: I object to that, but I have no objection to having it marked for identification, the one which I just handed to Mr. Smith.

Q I now show you another photograph and ask you if you took that? A Yes.

40 Q What is that a picture of? A That is a truck marked—

*Nicholas S. Kaufman, direct*

Mr. Bernhard: I object to what it is marked.

The Court: The photograph speaks for itself.

Q You took that picture, did you not? A  
Yes. 10

Mr. Smith: I offer it in evidence. I will state to the Court and counsel I will connect it up.

Mr. Bernhard: Will you ask the witness at what hour he took it?

Mr. Smith: Certainly.

Q When was this picture taken by you? A  
It was taken in the morning or the afternoon. 20

Q What date? A That was taken what date—

Mr. Smith: I ask to have it marked for identification.

(Photograph marked S. 17 for identification.)

Q I show you another picture. Did you take that? A Yes. 30

Q Is that the same picture of the truck marked S. 17 for identification? A Yes.

Q That was taken by you at the same time? A Yes.

(Photograph marked S. 18 for identification.)

*John L. Day, direct*

*Cross examination by Mr. Bernhard.*

Mr. Bernhard: How many photographs were there altogether, Mr. Smith?

The Clerk: Sixteen.

10 Mr. Bernhard: Including those marked for identification?

The Clerk: From S. 3 to S. 16.

Q I understand that the record shows, Mr. Kaufman, you took sixteen photographs altogether, is that right? A Yes.

Q Referring to Exhibit S. 10, this is the only photograph that you took of any part of the outside of the building, is that right? A Yes.

20 Q You have no photograph showing a view of the front of the building except this slanting view of the front of the building, is that right? A That is right.

Q You have no photographs showing the front of the building and the door? A That is right.

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JOHN L. DAY, sworn in behalf of the State.

30 *Direct examination by Mr. Smith.*

Q What is your occupation? A I am official photographer, Newark Police Department.

Q Are you a member of the Newark Police Department? A I am.

Q For how many years have you been a member of that department? A Ten years.

40 Q Did you at the request of the Prosecutor's office make this photograph which I now show you? A I did.

*Harrison S. Martland, direct*

Q And where did you make it? A I made it at the Bohrer home.

Q When? A January 19th.

Q Of this year? A Of this year.

(Photograph marked S. 19 for identification.) 10

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HARRISON S. MARTLAND, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Dr. Martland, you are the Chief Medical Examiner of Essex County, are you not? A I am. 20

Q As a part of your duties as chief medical examiner of this County do you perform autopsies? A I do.

Q Did you perform an autopsy on one Paul Bohrer? A I did.

Q When did you perform that autopsy? A January 17, 1930, at 10:45 in the morning at Huelsenbeck's morgue, Newark, about six hours after death. 30

Q Will you fix about the hour of the death of Mr. Bohrer? A Mr. Bohrer was admitted to St. Michael's Hospital January 16th, at about 1 P. M., by the Belleville Police. He died January 17th, at four o'clock in the morning.

Q Will you kindly tell the Court and jury what your autopsy disclosed? A I found the body of a man about forty-four years of age, about five feet, six inches in height, and weighed 155 pounds, about, light brown hair and blue 40

*Harrison S. Martland, direct*

eyes; teeth were all perfect. The body showed a surgical incision in the right abdomen extending about two inches above the naval downward, about an inch to the right of the midline—

Q Will you kindly stand up? A Showed a surgical incision made by the surgeon passing  
 10 downward for about seven inches. This was closed by interrupted sutures and contained at its top gauze drain. In the upper part of this wound just below the rib and near the midline, about here (indicating) was a little incision, extra incision on the edge of the wound where the bullet wound of entrance had been cut out by the surgeon and closed with a drain in it. The autopsy showed that this bullet passed almost  
 20 directly backward, downward and to the right passing through the right lobe of his liver, producing a large tear about an inch and a half in size, passing out on the under surface of the liver between the gall bladder, producing a wound to the gall bladder, passing backwards, striking the large intestine about its middle and producing a small wound in that intestine, and then passing backwards, passing through the lobe of the right kidney, which was lacerated and torn almost across and the bullet passing out on  
 30 the right side in the back about four inches to the right of the mid spinal line about two inches above the course of the ilium and about two inches back of the posterior axillary line.

Q May I interrupt you, Doctor? Would you mind indicating for me the course of that bullet?  
 A The surgical incision is just to the right of the mid line—starting about here. The wound of entrance, as I have described, has been dissected out in the skin by the surgeon, but is approximately about there. Beneath in the muscles  
 40

*Harrison S. Martland, direct*

you can pick up the wound of entrance and follow it through the liver, through the gall bladder, through the colon, through the kidney. The wound of exit is about four inches to the right of the mid spinal line and about two inches above the top of the bone. That would be about here. The wound of exit is about four inches to the right of where it entered and about an inch and a half lower, showing the direction of the wound is backward, slightly downward and to the right. The wound on the back of the chest, the wound of exit where the bullet came out is a large wound about a half of an inch in size with slight eversion of the skin and edges of the wound—that is, where it has blown out. There are no other marks of injury on the body. There is no evidence of any chronic disease. The man died from shock and beginning peritonitis and hemorrhage into the abdominal cavity.

10

20

Q Doctor, what in your opinion was the caliber of the bullet that caused that wound? A From the extensive—you see, I am unable in this case to measure the accurate size of the wound of entrance in the skin. That has been removed by the surgeon. But from the extensive destruction and the size of the wounds in the liver and the size of the exit and the fact that it passed for a distance of some six or seven inches through the body makes me suggest—makes me have the opinion that the caliber of the bullet was a .38 or over, possibly a .45.

30

Q You mean a large bullet? A Yes, large bullet.

Q Did you, Doctor, find in your autopsy the bullet? A No, the bullet passed completely through the body in this case.

40

*Harrison S. Martland, cross*

Q It went right through the body? A Right through the body.

Q What, Doctor, then do you ascribe as the cause of death of Mr. Bohrer? A The cause of death, in my opinion, is a bullet wound of the abdomen penetrating the liver, gall bladder, large intestines, and right kidney, producing hemorrhage, shock and beginning peritonitis.

Q I show you, Doctor, Exhibit S 19 for identification and ask you if you can tell us who the person represented in the picture is? A Yes, that is Paul Bohrer.

Q The gentleman upon whom you performed the autopsy? A Yes, there is a duplicate picture here.

20 Mr. Smith: That is all, Doctor.

*Cross examination by Mr. Bernhard.*

Q Doctor, can you tell us how much lower the point of exit was than the wound of entrance? A Yes, I have already said, and—

Q Slightly, Doctor, as I understood you, you said it was slightly lower, did you not? A Yes. I have the exact measurement. I think it is an inch and a half lower, the exit. If you will pardon me I will just check that up.

Q Certainly. Glad to have it. A The total distance through the body is six to seven and a half inches, through the body. That is not including the overlying skin. That is through the cavity, the direction of the wound being downward, to the right and backward, the point of exit in the back being an inch and a half lower than the point of entrance and four inches over to the right, which I have already testified to.

40

*Fanny Bohrer, direct*

FANNY BOHRER, sworn in behalf of State.

*Direct examination by Mr. Smith.*

Q Mrs. Bohrer, on January 16th of this year, where did you reside, please? A 160 Stephens street, Belleville. 10

Q Whom did you live there with? A My husband with four children—

Mr. Bernhard: I object.

The Court: Sustained.

Mr. Bernhard: I object to the number of children, if your Honor please. It has no materiality to the issue to be tried here.

Mr. Smith: If your Honor please— 20

Mr. Bernhard: If the question is to be argued, then I desire to have it argued in camera.

The Court: I cannot see how it is material, Mr. Prosecutor. I know what you are attempting to bring out. I know the full scope of your question. I know what the question is about to bring out, and I have no objection to her answering as to her husband, but I will deny your bringing it out in detail. I cannot see the materiality of that testimony. 30

Mr. Smith: If your Honor, please, my question is whom did this woman live with?

The Court: I know, and perhaps your question was not designed to bring forth the information that was about to come forth, but you know what the objection is based to, and I will sustain an objection as to that. I am perfectly willing, of course, to permit you to show the relationship with Mr. Bohrer 40

*Fanny Bohrer, direct*

and the fact that he was living there at the time.

Q Mrs. Bohrer, at 160 Stephens street, on January 16, was your husabnd, Mr. Bohrer, living there with you? A Yes, he was.

10 Q When was the last time on January 16th of this year that you saw Mr. Bohrer alive? A At noon time. We were having our lunch.

Q Do you know how old Mr. Bohrer was? A Forty-four years old past.

Q You were having lunch at home with him? A Yes.

Q When next after noon hour did you see your husband, Mrs. Bohrer? A About one-thirty in St. Michael's Hospital.

20 Q In Newark? A In Newark.

Q When after that did you again see Mr. Bohrer? A I stayed there with him until he died.

Q He died where? A In St. Michael's Hospital, four o'clock the next morning.

Q You were with him all the time? A I was with him.

Q You were with him when he passed away? A I was with him.

30 Q I show you a photograph marked Exhibit S 19 for identification, Mrs. Bohrer, and ask you if you can tell me, please, and the Court and jury, who that is. A That is my husband, Paul Bohrer.

Mr. Smith: That is all, thank you.

Cross examinationg waived.

40 Mr. Smith: I now offer Exhibit S 19 for identification in evidence.

*Colloquy*

Mr. Bernhard: I object, if your Honor please.

The Court: I do not see the materiality of it, Mr. Prosecutor, and I think these cases are terrible enough without having pictures of that kind. I do not think that they help any, and I do not think it is fair to submit them to the jury. I do not think it is fair to the jury to ask that they be put in evidence. 10

Mr. Smith: If your Honor please, your Honor has not seen this particular picture. This is a picture—

Mr. Bernhard: If your Honor please, I object.

The Court: I know what the picture is. I saw just enough of it as you presented it, Mr. Prosectuor. I know that it is not the picture that I referred to you privately about. I know that it is not in that condition, and a different picture, but I do not see how in any way it helps to prove the case. I do not think that it is essential in any way, and to my mind it is purely a matter of gruesomeness. I am frank to admit that I am too chicken-hearted to look at it, too-weak-hearted if you want to put it that way. 20

Mr. Smith: It seems to me it is entirely admissible for the purpose of identification. 30

Mr. Bernhard: The identification is admitted by the defense.

The Court: There is not any question about the identification. There is not any question as to the man who died as the result of a bullet wound was Mr. Bohrer. He has been so identified by Mrs. Bohrer, and it is admitted by the defense, I assume. 40

*Edwin E. Rainey, direct*

Mr. Bernhard: Absolutely.

Mr. Smith: If your Honor please, we are not concerned with any admissions. We feel that the State is entitled to prove its case as we believe the evidence requires it.

10

The Court: You certainly are, and I am going to give you every opportunity to prove it, Mr. Prosecutor. I am frank to say that the admission of this, I think, is purely discretionary. I do not think that it is incompetent at all; I am not contending that. I do not say that it is incompetent evidence or testimony, but I say that it adds another unnecessarily gruesome feature to the case that in my administration I am not going to permit.

20

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EDWIN E. RAINEY, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Rainey, on January 15th of this year, were you employed by the Mono Service Company in Newark? A Yes, sir.

30

Q Where is their plant located, Mr. Rainey? A Why, it is at the corner of Verona and Orton streets.

Q What was your work there? What was your position? A I am a night man there; night watchman.

Q As a night watchman did you have occasion to have a revolver? A Yes, sir.

Q Did you have anything besides a revolver? A No.

40

*Edwin E. Rainey, direct*

Q What went with the revolver? A Why, the case, chamber.

Q Now, I show you a gun, Mr. Rainey, and ask you if you recognize that gun I show you? A It looks like the one. I can't swear to it.

*By the Court.*

10

Q What is that? A It looks like it.

Q It looks like what? A Looks like the revolver that I had.

*By Mr. Smith.*

Q Well, now, will you look over it and see if there is any mark on it which you placed there at any time? A There is no mark on this that I know of.

Q Didn't you put a mark on it? A No, sir.

20

Q After it was in the hands of the police of Belleville?

Mr. Bernhard: I object to what he did after when it was in the hands of the police.

The Court: He said he didn't.

Mr. Bernhard: Oh, I did not hear his answer.

Q That looks like the gun you had at the Mono Service plant? A Yes. 30

Q Everything about it is exactly the same as the gun you had? A Yes.

Q Now, when you had it was it loaded? A No, sir.

Q Were there shells for it; did you have shells for it? A Yes.

Q What calibre shells did you have? A .45.

Q And the gun you had was a .45 gun? A Yes.

40

*Ivanson D. Rowland, direct*

Q And how did you keep the shells? A (Not answered).

Mr. Smith: I ask to have the gun marked for identification.

(Gun marked S 20 for identification).

10

Q Now, the shells you had for this gun that has been marked S 20 for identification, what were those shells in? A They were in the box that they were bought in, in a square box.

Q Now, I show you a box and ask you if you can tell me whether or not that is the box with the shells that you had for this gun. A No, sir.

Q Is that the box? A No, sir.

20 Q Where did you leave the gun in the Mono Service plant? A The gun I brought to the Mono Service plant about eight years ago and I left it on the desk in the office and I never used the gun.

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IVANSON D. ROWLAND, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

30

Q Were you employed by the Mono Service Company in January of this year? A I was.

Q Do you know the defendant Gimbel? A I do.

Q Will you point him out to the Court and jury? A There (indicating).

Q Indicating the defendant Gimbel? A In between the two officers.

40 Q The man sitting between the two officers?  
A Yes.

*Ivanson D. Rowland, direct*

Q Were you his foreman? A I was.

Q Now, in November, 1929, do you know what work the defendant was doing? A He was on several jobs at that time. Helper on a press; one of them working in the stock room; down in the shipping room and general handy-man.

Q I understand you to say he had worked in the stock room? A He was in the stock room as relief man and on a special job. 10

Q You mean inventory and things of that nature? A Inventory and things of that nature.

Q He did many kinds of work? A Many kinds of work. His steady job was helper on a press.

Q In November was he working in the stock room? A Yes. 20

Q On January 15th, that was Wednesday, 1930, was this defendant working there that day?

A He worked a half a day and asked his foreman who was under me if he could go home after lunch, and he did go home after lunch, which was after one o'clock.

Q On Thursday, January 16th, did the defendant come to work that day? A We have no record there that he was at work that day.

Q You use a clock system? A We use a clock system and I have a card which shows his last week with us. 30

Q Does that show he punched in on the 16th? A No. It shows we did not pay him for any time on the 16th and we paid him for a half a day on the 15th.

Q He has been employed by this company how long? A Almost two years.

Cross examination waived.

*Edmund Herman, direct*

EDMUND HERMAN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

10 Q You are employed by the Mono Service? A Yes.

Q On January 15th, of this year, were you employed by the Mono Service? A Yes.

Q In what capacity? A Plant engineer.

Q Do you know this defendant Gimbel? A Yes.

Q Where is he in the court room? A Sitting between the two officers.

20 Mr. Smith: Identifying the defendant Gimbel, counsel?

Mr. Bernhard: Yes.

Q Did your work bring you in the stock room of that plant? A Yes, I had charge of the stock room, under my supervision.

Q You are in charge of the stock room? A Yes.

30 Q Now, when you have been in charge of the stock room have you seen a revolver and equipment connected with a revolver in that room? A Yes.

Q Where did you see it? A It was kept on a shelf in a very out-of-the-way corner, in a part of the stock room that no one but our chief of the plant was permitted to go to.

Q But if any one was working in the stock room they could go there? A They had no right there, but they could likely go back there.

40 Q You mean there was nothing to stop them? A Nothing to stop them.

*Edmund Herman, direct*

Q I show you a revolver marked S-20 for identification, and ask you if you recognize that particular gun. A Well, that looks like the gun.

Q That looks like what gun? A The gun that was in our stock room.

Q Can you definitely state whether or not that is the particular gun or not? A No, I could not. 10

Q But in every particular it looks like it? A It certainly does.

Q Now after January 16th, of this year, did you have occasion to see the gun that was in the stock room at your plant? A After the 16th?

Q Yes, of January. A No, sir; I had not seen the gun for some time.

Q Did you look for it? A I did on the morning of the 17th.

Q Of January? A Yes. 20

Q Did you find the gun in the stock room on the 17th of January? A No.

Q What made you go over there to look for it?

Mr. Bernhard: I object. It is immaterial as to why he went to look for it.

Q But you looked for it and it was not there, is that a correct statement? A Yes. 30

Q What was on the shelf besides the gun when you had previously seen the gun on the shelf? A Well, there were many articles, it being a stock room.

Q I mean as relates to the gun. A The gun was in a holster. There was an army belt, regulation belt. The holster was not attached. There were two magazines of bullets that laid beside the gun, not in the gun, and I believe there was one or possibly two boxes of bullets. 40

*Edward Battenfeld, direct*

Q Mr. Herman, when you went there on the morning of the 17th, to look for the gun and that was gone, was there anything there that you had previously seen connected with the gun? A Yes.

Q What was there? A One magazine of bullets; one box of bullets and a belt.

10 Q And did you take this into your possession? A Yes.

Q Have you got that with you? A Yes.

Q May I see that please? (Witness hands package to the prosecutor.) And the box of bullets. A I did not bring the bullets.

Q This magazine and this belt which you now show us is the magazine and belt which was alongside of this gun when you had seen the gun in the stock room, is that correct? A Yes.

20

(Marked Exhibit S 21).

Cross examination waived.

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EDWARD BATTENFELD, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

30

Q On January 16th, this year, by whom were you employed? A By the Erie Railroad.

Q And what was your work with the Erie? A Gateman on a crossing.

Q What crossing? A Holmes street, Belleville.

Q Holmes street, Belleville? A Yes.

40

Q Now, will you refer to Exhibit S. 2, this map, and show the Court and jury at what crossing you were the gateman? This here is Holmes

*Edward Battenfeld, direct*

street (indicating). Here is the A. & P. store (indicating). This is Holmes street and here is the Erie Railroad crossing (indicating). Do you understand the map now? A Yes. Right here at the corner (indicating).

Q You were stationed right at the corner— what corner? A The northeast corner. 10

Q At the northeast corner of Holmes street of the Erie railroad crossing, where you were employed that morning? A Yes.

Q Did you have a little shanty there to protect you from the weather and what-not? A Yes.

Q Now, that morning what time did you get to work? A 5:45.

Q Did you see a man there on Holmes street that morning? A Yes. 20

Q Do you see him here in court, and if you do, will you step down from the stand and go and place your hand on him? Do it from the rear of him.

The Court: Indicating the defendant.

Mr. Smith: Indicating the defendant Gimbel. All right. Take the stand.

Q Now, what time that morning did you first see Gimbel? A Sometime after nine. 30

Q And where was he when you first saw him? A He came up as far as the railroad.

Q He came up as far as the railroad? A Yes.

Q From what direction did he come to the railroad? A He came from east to west.

Q That is he came from the direction of the A. & P. store? A Yes.

Q On Holmes street? A Yes. 40

*Edward Battenfeld, direct*

Q That was the first time you saw him that morning? A Yes.

Q About what time was that? A Well, it was after nine.

10 Q Now, as he walked up Holmes street, from the direction of the A. & P. store, toward your crossing, what did he do the first time you saw him? A He didn't go any further than the shanty and back.

Q He went to the shanty? A Yes.

Q And then he went back? A Yes.

Q What do you mean? A Down the hill toward the A. & P.

20 Q And was he on the same side of the street or opposite side of the street from you? A The same side.

Q And then he went back toward the A. & P.? A Yes.

Q And you are on the same side as the A. & P.? A The same side.

Q Now, when was the second time, if you did see the defendant again, where was it you saw him? A The same side.

30 Q Will you tell us where you saw him and what he did? A I only saw him in front of the shanty. He walked as far as the railroad and then down.

Q And back again? A Back again.

Q That was the second time you saw him and the second time he was going back toward the A. & P.? A Yes.

Q Did you see him again after that? A He came again, altogether five times.

40 Q You saw him walk back and forth about five times from your shanty in the direction of the A. & P. on Holmes street? A That is right.

*Edward Battenfeld, direct*

Q Now, during any of the times he came up to your shanty was there anything in particular that attracted your attention to him? A Well, freight was going up and down and I had to watch that, but he came up about five times to the crossing.

Q Well, at any time did he ever cross the Erie tracks? A No. 10

Q At any time did you ever put the gates up for him to cross? A Yes, once.

Q Now, when you put the gates up for him to cross, what, if anything, did the defendant do? A He shook his head and he did not want to go over.

The Court: Strike out, "he did not want to go over." 20

Q Did he speak to you? A No.

Q Did he speak to you? A No. He just shook his head.

Q In what way did he shake his head? In a negative fashion, is that right? A Just shook his head; didn't want to go off.

Q Shook his head in a negative fashion? A Yes. 30

Q Now, after the defendant was arrested did you see him again? A That evening.

Q Where? A In Belleville jail.

Q The first time you said you saw him, Mr. Battenfeld, was sometime around nine o'clock that morning? A Yes.

Q Sometime around nine o'clock? A Yes.

Q About what hour was the last time you saw him? A I can't tell the exact time. He wasn't around after eleven o'clock. 40

*Edward Battenfeld, direct*

Q He wasn't around after eleven o'clock? A No.

Q But for how long a period of time was he around there? A He was between nine and eleven. I couldn't tell the time.

10

EDWARD DZACOVSKY, sworn in behalf of the State.

*Direct examination by Mr. Simth:*

Q Mr. Dzacovsky, on the 16th of January of this year, where were you employed? A Atlantic & Pacific Tea Company.

20 Q Where was that located? A At 282 Cortlandt street, corner Holmes street and Cortlandt street.

Q In Belleville? A Belleville, New Jersey.

Q In what capacity were you employed there? A As the manager.

Q On that morning what time did you get to work? A Oh, about seven-ten.

Q Was there anyone else employed in that store with you? A Frank Conklin.

Q What was his work there? A As a clerk.

30 Q Now, sometime that day did a man come in your store? A We have them coming in and out all day long.

Q About noontime of that day did a man come in your store? A Any particular time. There was one about—oh, I should judge about 12:35.

Q Where were you when he came in your store, this particular man? A This particular time I was in the window, just below the window.

40 Q Will you take the pointer and, referring to Exhibit S. 1, tell the Court and jury where you

*Edward Dzacovsky, direct*

were standing when this man came into your store? A Just about here on the side of the radiator.

Mr. Smith: Indicating on S. 1 by the radiator by the front show window on the right as you enter.

10

Q Is that correct Mr. Dzacovsky? A Yes, sir.

Q Just tell us, if you will, what happened? A Standing by the window, a lady customer just left the store, a young lady. I said good-bye to her and placed new tickets on the window—

Q Speak a little louder and a little slower. A It was about 12:35. A young lady just left the store, and I was placing price tickets in the right window going in the store. The young man walked in the store, placed the gun underneath my nose.

20

Q What kind of a hat did he have on? A I think he had a derby black hat.

Q All right. He placed the gun under your nose, as you say. A Yes, sir.

Q Go right ahead. Tell us what was said. A And he swayed the gun toward me. He told me to step on it. I hesitated for a moment, not realizing what was going on. So he said if I don't make it snappy he will plug me full of lead. I went toward the cash register. He told me to bring out everything and put the cash in the bag.

30

Q Just a minute, will you please, Mr. Dzacovsky? The best that you can recall exactly the words that this defendant said to you. A The exact words at this present, they were repeated

40

*Edward Dzacovsky, direct*

three times, so just at this moment, I was, "Make it snappy or I will plug you full of leads."

Q Now, before he said that to you did you see where he took the gun from? A He already had his hand in his righthand pocket.

10 Q Righthand overcoat pocket? A Because when I put my head up he had the gun underneath my nose.

Q Now, the man that you saw come in, if he is in the room, will you step down from the witness chair and place your hand on him? A Yes.

Q From the rear, please, Mr. Dzacovsky.

(The witness leaves the stand and indicates the defendant.)

The Court: Indicating the defendant.

20 Mr. Smith: Indicating the defendant.

Q Now, is the defendant's personal appearance the same today as it was that morning? A No, sir.

Q What is different about him? A He had a mustache and a long sideboard.

Q A mustache and— A And a long sideboard down to below his ear.

30 Q And as he came in you say he had his hand in his righthand coat pocket, is that right? A As far as the first thing I noticed was the gun underneath my nose.

Q Underneath your nose? A Yes.

Q And he said what then to you, using his words? A "Stick them up."

Q Then what happened? A And he swayed the gun and ordered me towards the cash register.

40 Q What did he say about the cash register? A He says, "Give me all the cash you got."

*Edward Dzacovsky, direct*

Q Now, I show you a gun marked Exhibit S. 25 for identification, Mr. Dzacovsky, and ask you if you recognize that particular gun or not.

A Yes, sir. I recall the face of the gun.

Q What makes you recall the face of the gun? A The size of the gun and the handle.

Q And what is this gun, S. 20, I show you? A That is William Gimbel's gun. 10

Q Is that the gun you say he had in his hand and he stuck under your nose on this morning?

A Yes.

Q And then he ordered you to go to the cash register and told you to make it snappy or he would plug you full of holes, is that right? A Yes.

Q Now, when he told you to go to the cash register, do you know exactly what he said, what words he used? A Well, after I handed the cash over to him? 20

Q Wait a minute. You went to the cash register. A "Make it snappy."

Q Did you go to the cash register? A Yes.

Q Go ahead. A I went to the cash register and started taking out the cash and put the cash in a bag and placed it on the counter. I hesitated a bit. 30

Q What kind of a bag did you place the cash in? A An A. & P. bag. I judge a size five, either three or five.

Q Well, I show you a bag—apparently it is broken—and I ask you to look at it and tell us whether or not that is the bag and the money that you put in it from the cash register? A Yes.

Q Do you identify it in what way? A Marked A. & P. on top. Our bag. 40

*Edward Dzacovsky, direct*

Q Now, when you put the money in this bag out of this cash register, what did you do with the bags? A I left them on the counter.

(Bag and cash marked S. 22 for identification.)

10

Q Now, after you put the bag with the money in it on the counter, what did you do and what did the defendant do? A He told me to hand over all the cash. He told me he had a wife and child in the hospital and, "You ought to have more cash than that." I said, "That is all the cash I have just now." He said, "I have been watching your store all the morning. You should have more money than that." I said, "No, that is all I have." He told me to turn around and empty out my pockets.

20

Q Now, during the time the defendant was talking to you, where was the gun? A The gun was pointed right at me.

Q In the hand of the defendant? A In the hand of the defendant, about three inches away from the defendant.

30

Q Where was your helper, Frank Conklin? A Frank Conklin was toward the rear of the store.

Q What was he doing? A He just finished waiting on a customer. I do not know what he was doing.

Q I mean while the defendant was talking to you. A He had his hands up.

Q And he told you to empty your pockets? A He told me to empty my pockets. As I had the apron on I emptied my right pocket first. There was about \$60 or \$65.

40

*Edward Dzacovsky, direct*

Q Will you stand up and show the Court and jury how you emptied your pockets. How were you dressed? A I had a white coat on and a long apron; a coat about like this, and the apron covered the pocket, and he told me to empty out the pocket, so I dumped it out that way (illustrating) and he told me to put all the cash on the counter. 10

Q And you emptied your pockets out and put your cash on the counter? A Yes.

Q From what pocket was that taken from? A The cash came from out the left hand pocket.

Q After you did that, what was done? A He ordered me to take off my wrist watch, which I did.

Q What did you do with the wrist watch? A I placed the wrist watch on the counter. 20

Q I now show you a wrist watch and ask you do you identify that wrist watch? A Positively.

Q It is your wrist watch? A Yes.

(Wrist watch marked S. 23 for identification.)

Q Now, after you placed the wrist watch on the counter, what happened? A He grabbed the bag and ordered us toward the back room. As he ordered us toward the back he threatened us. 30

Q What do you mean, you and Conklin? A Yes.

Q What were his threats? A His exact words were either, "I will bump you off," or "Make it snappy," or "I will plug you." It was either one. I do not really recall.

Q And he ordered you in the back room? A Yes. 40

*Edward Dzacovsky, direct*

Q Where was his gun during that time? A He had his gun in his right hand and swayed his gun pointing toward the back room.

Q Now, will you point to Exhibit S. 1 and show us exactly in that store what you and Conklin did when he ordered you in the back room?

10 A Conklin was standing about here (indicating).

Q That is toward the rear of the last counter?

A Yes, and I was standing here (indicating).

Q You were standing near the cash register?

A Yes.

Q And Gimbel, the defendant, was standing out in front of the counter? A Yes, about there (indicating).

Q Just show us and tell us what happened.

20 A He told us to go down toward the back room, which we did. He went through this door here and we got as far as this door here and he got us in the back and put us in here, and he put us in the toilet—

Q When he put you in the toilet, all the time he had his gun on you? A He had his gun in his hand.

30 Q Now, when he put you in the toilet, did he say anything about the lock on the door? A Yes. He asked us if there was a lock, whether from the inside or from the outside, and I told him there was no lock, and the only way you can lock it from the outside is to place a piece of string there to close the door.

Q He ordered you in the back room. What did he say to you after he got you in the room?

A He said if we leave the room within five minutes he will poke us full of holes—full of lead.

40 Q Do you remember anything else he said to you at that time? A No, not at that moment. I do not recall.

*Edward Dzacovsky, direct*

Q Go ahead. A There was a back room door here (indicating), that being Thursday, the door is generally closed on Thursday. The boy pulled out the garbage and the door was only opened on the top latch, which I had open. It was only a matter I remember of two or three minutes. I did not hear any move of the door or the back door, and about three minutes later I heard the back door slam and I got out from the bathroom right out in the store, to the front of the window and looked out the window and went back to the counter again, and in the corner of this counter was kept a .38 revolver. 10

Q Your revolver? A Yes.

Q I show you a revolver and ask you if you can tell us what kind that is, please. A That is my property. 20

Q Your revolver? A Yes.

(Revolver marked S. 24 for identification.)

Q Now, when you came out of that toilet, did Conklin come out with you? A I don't recall.

Q When you came out, Mr. Dzacovsky, did you go to the back? Did you notice the back door? A No, sir.

Q You came right out to the front in the store? A Right out to the front. 30

Q Then you were telling us that you went over to the counter where you kept your revolver? A Yes, sir.

Q What did you do then, please? A Came out in the front of the store down toward—get down to the corner of the store and looked up Holmes street. Didn't see anything in sight; ran down; just about two houses past the store is a big tree. 40

*Edward Dzacovsky, direct*

Q May I interrupt you there? Will you now refer please to Exhibit S. 2? A Yes, sir, came out in the front of the store and ran past I believe it is 54 Holmes street; got as far as the corner; looked both ways.

10 Q To the corner of what street? A Stephens street and Holmes street; looked both ways; didn't see anything in sight. Just as I was about to leave the corner a fellow by the name of Dan Peck walked up, came running.

Q Where did Peck live? A Peck lives, I believe at 54 Holmes street.

Q Can you show it to us on the map? A Right in here, about the second house (indicating).

20 Q Dan Peck came running up. Go right ahead. A Dan Peck came running up. As he got here, I was turning back again toward the store.

Q Going on Holmes street toward the store? A Going back on Holmes street again towards the store, and then Peck said to me—

The Court: Never mind what he told you.

30 Q Mr. Dzacovsky, then you went back up Holmes street. As you look north on Stephens street is there a store on Stephens street on the east side of Stephens street? A There is a small confectionary store.

Q Is that shown on the map? A Shown right here.

Q Did you notice anything at that point as you looked up the street? A I really did not.

40 Q Now, then, you were walking back up Holmes street towards the store and Peck was at the corner? You left him there? A Yes.

*Edward Dzacovsky, direct*

Q Just answer this yes or no. Did Peck call to you as you were walking up Holmes street? A Yes, sir.

Q Now, as Peck called to you, what did you then do? A I went up Cortlandt street.

Q You went north on Cortlandt street? A I went north on Cortlandt street. 10

Q You were alone at that time? A I was alone at that time.

Q Now, as you were going up Cortlandt street, just tell us what you saw and what you did. A I was going up Cortlandt street, just about reaching the vacant lot, looked at my right.

Q You looked over toward Stephens street? A Toward the vacant lot.

Q Across the vacant lot? A Across the vacant lot. 20

Q What did you see, if anything? A I just saw Gimbel coming out of the vacant lots.

Q That is, out of the driveway? A Out of the driveway right over here (indicating).

Q North of the lots, past the houses? A Yes, sir.

Q Do you see the driveway here on the map marked driveway? A Yes, sir. 30

Q Is that where you saw Gimbel come out of? A I believe I saw him at that end of the vacant lots.

Q You are not sure? A Positive I am not.

Q But you did see him coming back onto Cortlandt street? A Yes, sir; back on Cortlandt street.

Q How far behind him were you when you saw him come back onto Cortlandt street? A I would estimate 250 feet. 40

*Edward Dzacovsky, direct*

Q Tell us what happened and what you did.  
A As he was going up there is a bunch of fellows playing baseball here (indicating).

10 Q In the street? A In the street; quite a few cars parked on this side down by the Thompson Machine Shop and a battery factory there; quite a few fellows playing ball there. As I just about got in the center of the vacant lot I fired two shots in the air, which took the attention of these fellows here, and as I got in front of the battery place I was picked up in a Dodge delivery truck by Eddie Maurer and Paul Bohrer.

Q Who was driving the Dodge truck? A Eddie Maurer was driving the Dodge truck.

20 Q I show you Exhibit S. 17 for identification and ask you if that is a picture of the Dodge truck that picked you up. A Yes, sir.

Q Is that truck as shown in that picture substantially in the same condition as it was when you got on? A I believe it is.

Q And I show you another picture marked Exhibit S. 18 for identification and ask you if that is another picture of that Dodge truck. A I believe it is.

30 Q Is that in about the same condition as shown on this picture that the truck was on the day you got on it? A Yes, sir.

Q Who was driving this truck? A Eddie Maurer was driving the truck.

Q Who was riding with him? A Paul Bohrer.

Q In the front seat? A In the front seat.

40 Q Just continue. A They rode apast me and Eddie Maurer backed the car up again and picked me up. We started off and got around as far as Joralemon street.

*Edward Dzacovsky, direct*

Q Did you see the defendant ahead of you as you went North? A At that time I did not, at the corner.

Q But when you came to about Joralemon street? A When I came to Joralemon street.

Q How did you turn? A We turned left.

Q No, Joralemon street. A Into Stephens street. 10

Q First if you will start here at the corner of Cortlandt street and Joralemon street. You got on the truck with Eddie Maurer and Paul Bohrer? A Eddie Maurer and Paul Bohrer.

Q When you got to Joralemon street where did you go? A Joralemon street.

Q You turned right, did you? A Turned right and then left.

Q And went east on Joralemon street? A East on Joralemon street, and we turned left on Stephens street. 20

Q Just the three of you on this truck, is that right? A That is all I recall on the truck, the three of us.

Q Now, when you turned north on Stephens street past Joralemon street, what did you do then? What did you do with the truck? Did you keep on going? A I jumped off the truck when I saw Gimbel running through a driveway. 30

Q You saw the defendant Gimbel running through a driveway. A I saw him running through a driveway.

Q In what direction from Stephens street was he running? A Running through back yards into Cortlandt street.

Q In the direction of Cortlandt street? A In the direction of Cortlandt street.

Q You jumped off the truck? A I jumped off the truck just as I saw Gimbel run. 40

*Edward Dzacovsky, direct*

Q He was then running back? A Back of the houses, yes.

Q What was done with the truck? A The truck, I lost track of the truck just then because I jumped off and his motor was running yet.

10 Q When you jumped off what did you do? A I jumped off and I chased—there was a few others chasing. I took notice of Gimbel shooting in between the houses. I went after him, and as I came out he went into one house, and I didn't see him going in or anything.

Q He went into a house on what street? A He went into a house on Cortlandt street.

Q Can you indicate on the map there about what house it was he went in on Cortlandt street? A I judge it is about—it was a house on the side slant, the number I really can't recall.

Q About how many houses in from the corner? A I believe it is between three and five.

Q Around 390 Cortlandt street, around that number? A Yes, between three and five houses.

Q You saw him do what? A I saw him run on the porch. After that I lost track of him.

Q Did you see anyone on the porch? A Just then a door opened and a woman was there and she made a scream and came off the side of the house, off the porch on the side, and I saw Willie Gimbel running from the back door.

Q May I just interrupt you? At that time did you know it was Gimbel? Did you know the defendant by name? A By name; no, sir.

Q Then what did you do? You saw him coming off the back of that porch where the woman had previously screamed, did you? A On the back of the house I saw him. I didn't see him come off the front of the house.

40

*Edward Dzacovsky, direct*

Q On the back of the house. What did you then do? A I ran through the driveway there, ran down, and just as I was about—

Q Just a minute, please. You ran? A Ran toward Stephens street.

Q Towards Stephens street? A Yes.

Q Did you come out on a driveway? A Yes. 10

Q To what house does that driveway belong?

A Where I was really running the ground was soft. It seemed more like a garden next to a driveway .

Q Did you finally come out on a driveway?

A Finally hit the driveway, yes.

Q Do you know to what house that driveway belongs? A I really don't. There is this house toward Terry street.

Q You came out then on this driveway, did you not? A Yes, sir. 20

Q Just tell us what happened from then on as you came out on the driveway. A As I got about 75 feet away from the gutter and saw Willie Gimbel from a side view, I judge about this way, and Eddie Maurer was right toward the gutter and Willie Gimbel was on the street.

Q You are talking now about Eddie Maurer?

A Yes, sir.

Q Now, I will ask you, Mr. Dzacovsky, to tell us what you saw as you came out of that driveway only as it relates to Gimbel and Paul Bohrer. 30

A I judge about that time I must have been—I will estimate about 65 feet away from where Willie Gimbel was. Well, Gimbel was out in the street, Paul Bohrer out in the street. Alongside of him was another young fellow, which at that time I did not know, and Paul Bohrer standing toward the back of the truck and Gimbel toward the front of the truck. From the side view I saw the re- 40

*Edward Dzacovsky, direct*

volver that was just pointed out to me, and I heard a shot and a jerk of the hand, and everything seemed to have gone blurred on me. I made a stumble and tripped there. Before I knew the engine of the truck was started. This young fellow that was alongside of Paul Bohrer was out of the picture at the time that the shooting was on, I saw him again go in and he was hanging on the back of the delivery truck. As he jumped off—

10 Q May I interrupt? When this defendant Gimbel had this gun, as you say, down by his side, did you see Gimbel shoot the gun? A His hand made a jerk and I heard a shot.

Q And who, if any one, did that shot hit? A Paul Bohrer, I believe. I saw him in agony, 20 grabbed his stomach and went down to the ground.

Q Now, after Bohrer was hit, will you go on and tell us what then saw? A I saw the truck was in motion, going, and this young fellow was hanging on the back of the door. He stayed on about ten or fifteen feet. He jumped off and I fired two shots at the truck.

Q Do you know who was driving the truck? A Willie Gimbel was in the truck driving. I fired 30 two shots at the truck and started running and ran about a half a block up as far as Terry street. From here I ran up as far Terry street (indicating) and got down to the corner and I dropped from exhaustion and I really recall being picked up by a Buick coach or Buick coupe car driven by an elderly man and a girl sitting on the side of the car, and I jumped on the right— left running board of the car.

Q May I interrupt you. Before you started 40 to run up after Gimbel got in the truck and

*Edward Dzacovsky, direct*

started up that street, did a man by the name of Lewis come out. A Yes. Just as I dropped at Terry street a man by the name of Lewis was up as far as me and I handed the gun to him. I do not know what I said.

Q Oh, you handed the gun to Lewis? A I handed the gun to Lewis and went up the street here (indicating) and I remember turning into this street (indicating) and the fellow let us off the car and said he did not want to follow any more. 10

Q That is corner of Little street and Ralph street? A Yes.

Q You and Lewis were together then? A I do not recall if Lewis was with me.

Q What happened? A I got picked up by a friend named Place in a Studebaker touring car, I believe 1923 model, and we started to give chase. 20

Q Up Ralph street? A Up Ralph street.

Q You went north on Ralph street? A Went north on Ralph street and got as far as Greylock avenue and did not see a car in sight.

Q To the west? A Toward Washington avenue, and turned right on Greylock avenue.

Q To the east? A To the east into Main street; rode up Main street. 30

Q That is the old River road? A It is the old River road. They call it Main street.

Q You went north on the River road? A Went north on the River road toward the Nutley boundary line.

Q Now, let me take you back a minute. Did you see Police Officer Gross? A At the moment I do not recall.

Q But you rode up with Place in this Studebaker? A Yes. 40

*Edward Dzacovsky, direct*

Q That is the only thing you are sure of? A I am positive Place was driving the car.

Q You went up River road. Proceed from there. A I went up River road up as far as what they call the Federal Leather Company, just past the Federal Leather Company a little ways when  
10 we took notice the truck was parked out in the street.

Q You mean what truck? A The Dodge delivery truck, the truck that was stolen by Gimbel, and jumped off the car and looked around the truck and I thought he was some place in the vicinity and I ran up to the office of the Federal Leather. As I walked in the door of the Federal Leather, the door was open to the entrance to the main office—I opened the door and asked the  
20 young lady there to call up the Belleville police station. As I said that I noticed somebody, and as soon as I turned my head around it was Willie Gimbel in back of the door in the office.

Q What did he do? A He had his hand—in my estimation it occurred so quick I cannot recall whether he had his gun. He hit my left side and went out of the door.

Q The door of the office? A The door of the office, and I gave chase and as I gave chase he  
30 was pulling something out of his pocket and I dropped and I saw him heading up toward the barrels.

Q Why did you drop? A I was out of wind from running up the hill and excited and it almost knocked me out.

Q Did anybody come up to you? A I hollered and I believe Place and Lewis started off.

Q Do you recall Gross, the police officer? A I really do not recall Gross.  
40

*Edward Dzacovsky, direct*

Q Do you remember that there was another man there? A I really do not.

Q What did you all then do? A We started running up as far as around the barrels, some factory across the lane there—

Q Are there lots of factories up there? A A lot of factories.

10

Q What direction did Gimbel start to run? A The Federal Leather Company about this way, in between here. I lost track of him around the barrels, and I believe I started off similar to this direction here.

Q In the direction of Washington avenue? A In the direction of Washington avenue and there is an aeroplane motor factory alley running off Washington avenue. I recall running through that alley, and just as I turned my head I saw a police officer point at a man out of the car, who was Willie Gimbel.

20

Q And that car was parked where? A That car was parked on Hancock avenue, facing—the rear was in Washington avenue.

Q Did you then go up to the car? A I then ran up to the car and just as I got to the car Lewis—I recall Lewis came over and grabbed for the man in the front seat. Dan Peck was in it, too. I do not recall just what he was doing at the moment. Officer Leighton had him on the side, on the roadside, not toward the gutter, but toward the roadside, facing the direction from which I was coming, and taking the gun out of his pocket, which I believe he was, and I made an attempt to swing at him, and Leighton made a swing with his arm and I believe he smashed the window of the taxi that moment.

30

Q Do you remember seeing the police officer, Gross, there at that time? A At that moment I did.

40

*Franklin Conklin, direct*

Q And the man that was there was this defendant Gimbel? A Yes.

Q That is the man who held you up? A Yes.

Q Do you know how much money you gave Gimbel from the cash register? A Our general balance after I got back to the store was \$57.81.

10 Q Well, how much did you give Gimbel? A That is what we estimated we gave to Gimbel.

Q You have no way of definitely telling? A The only way was when the cash register was balanced. There was \$57.81 out.

(Paper bag and money marked S 22 for identification offered in evidence and marked Exhibit S 22.)

20 (Wrist watch marked S 23 for identification offered in evidence and marked Exhibit S-23.)

(Revolver marked S 24 for identification offered in evidence and marked Exhibit S 24.)

Cross examination waived.

At 12:53 the Court takes a recess until two o'clock p. m.

30

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AFTER RECESS

FRANKLIN CONKLIN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

40 Q Mr. Conklin, on January 16th were you employed by the Atlantic & Pacific tea store at the

*Franklin Conklin, direct*

northeast corner of Holmes and Cortlandt streets, Belleville? A Yes, sir.

Q You were the clerk where Mr. Dzacovsky was the manager of that store? A Yes, sir.

Q About 12:30 that day did you see a man coming in your store? A Yes, sir.

Q Will you come down off the witness chair and place your hand on the man you saw in the store, if you see him in the room. (The witness leaves the stand and indicates the defendant.) 10

The Court: Indicating the defendant.

Q Where were you, Mr. Conklin, when the defendant Gimbel came in the store? A I was in the rear of the counter. 20

Q Now, you saw Exhibit S-1? A Yes, sir.

Q Do you understand it? A Yes, sir.

Q Take the pointer and show us where you were standing when the defendant entered the store. A Right about there (indicating.)

Q Right at the rear of the long counter? A Yes, sir.

Q Tell us in your own way, will you, just what happened? A On Thursday, the 16th of January, 1930, about 12:30, the manager was just putting tickets in the store window. This defendant came in, told the boss to stick them up. The boss didn't know what it was for a time, tried to dally along. The defendant motioned with his pistol to hurry up and said, "Snap into it or I will plug you." The boss took his time going to the register. The defendant again threatened him he would fill him full of holes if he did not snap out of it. The boss went to the register, started taking the change out. The de- 40

*Franklin Conklin, direct*

10 defendant said, "Put it in a paper bag." The boss got the bag and put the money in it. Then the defendant said, it seemed there was a small amount of money in the bag, he said, "Is that all you have?" The boss said, "Honest, Buddy, that is all. It is a slow morning." The defendant said, "That is a lie. I have been watching  
your store all morning, watched the people come in and out." The boss said that was all he had and the defendant said, "Give me that wrist watch." The boss handed over the wrist watch. Then he told him to turn around and empty his pockets. The boss did so. I don't know how much money he took out of his pockets at all. After the boss put the money in the bag the defendant motioned us to the back room with his  
20 revolver.

Q With his revolver? A Yes, sir. We were taking our time. He threatened us again for the third time.

Q What did he say when you say he threatened? What did he say? A He said, "Snap into it and get in the back." Then he asked the boss if there was a back door, and the boss told him there was.

30 Q Did the defendant say what if anything he would do if you did not make it snappy? A Plug us.

Q Plug you? A Yes, sir. We went to the back. He told us to get into the toilet.

40 Q Will you take the pointer and show us on Exhibit S 1 what room that is? A He motioned us over here into the toilet there (indicating). Then he told us, asked the boss if there was a lock on the door, which there is not. It is only a piece of string which we close the door with. He told us if we came out of that bathroom for

*Daniel J. Peck, Sr., direct.*

five minutes he would plug us. That is the fourth time he has told us. There was one— The boss came out first, after about three minutes in the toilet. He came out, came down the front of the store. I came out after him. I seen him run out the store, and that is all. I stayed in the store after he went after the man.

10

Q I now show you Exhibit S-20 and ask you if you recognize that revolver as having seen it before, or any revolver similar to it. A That is the revolver he had. I only seen it a side glance.

Q That looks like the revolver the defendant had? A Yes, sir.

*Cross examination by Mr. Bernhard.*

Q Mr. Conklin, the defendant asked the manager if there was a back door or where was the back door? Which did he ask? A Where was the back door.

20

Q If there was a back door? A Was there a back door.

Q And he asked the manager also if the lock on the toilet locked or worked, did he not? A Yes, sir.

30

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DANIEL J. PECK, Senior, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Peck, you live on Holmes street, in Belleville? A Yes.

Q About noon—half-past twelve on January 16th, were you at your home? A Yes.

40

*Daniel J. Peck, Sr., direct.*

Q And will you refer to Exhibit S. 2, if you will, and show the Court and jury where your house is on Holmes street? (Witness indicates.) Indicating what number? A 54.

The Court: At the corner?

10 The Witness: No, sir.

Q About how many doors up Holmes street do you live from the back gate that goes out of the back entrance of the A. & P. store? A The second house from the rear of the yard.

Q I now show you Exhibit S. 7, which is a picture looking east on Holmes street from the rear of the A. & P. store, and ask you if you can tell us on this picture which stoop is the stoop to your house? A The second one.

20 Q The second stoop? A Yes.

Q Now, will you mark this with ink, if you will, the stoop that indicates your house? (Witness marks.) Where you have made the cross? A Yes.

Q Now, that morning were you home at noon time? A Yes.

Q Where were you sitting? A Sitting right in the bay window.

30 Q And while you were sitting there did you observe a man go down the street? A Yes.

Q If that man is in court will you come down and put your hand on him for me, Mr. Peck? A Yes.

The Court: Indicating the defendant.

Q Now, you were sitting in the bay window of your house? A Yes.

40 Q And the defendant Gimbel ran out, is that correct? A Yes.

*Daniel J. Peck, Sr., direct.*

Q And will you tell us what you then did? A Well, I was sitting in the bay window and from my bay window looking west on Holmes street, I can see about 75 or 100 feet up the street.

Q You are looking now in the direction of the back yard of the A. & P.? A Yes, and I see this defendant running down the street. That drew my attention more than anything else, when his hair was all disheveled, and as he went apast, I turned around and followed him apast the house and I took a description of him. 10

Q And he was running east on Holmes street? A Yes.

Q Toward the corner of Stephens street? A Yes.

Q Then what? A He no sooner got down to the corner of Stephens and Holmes street when I noticed the A. & P. manager running out with a gun in his hand and as soon as I seen him I told my wife "They stuck up the A. & P. and tell the cops the A. & P. has been stuck up." As I got to the corner— 20

Q What corner was that? A The corner of Holmes street and Stephens street.

Q As you got out to the corner— A As I got out to the corner, Ed was just stopped running and he turned back. 30

Q You mean— A The A. & P. manager. I hollered to him, "You take Cortlandt and I will take Stephens," and he took Holmes and I chased him over Stephens.

Q You chased who? A The defendant. I went north on Stephens.

Q Now, is there a store on Stephens street, on the east side of Stephens street? A Yes.

Q And is there a sign on the outside of that store indicating whether or not there is a public 40

*Daniel J. Peck, Sr., direct.*

telephone in there? A I do not know. I have never been in that store.

Q Did you see the defendant in relation to that store? A I did not see him on that side of the street.

10 Q Where did you see him when you got to the corner of Holmes street and Stephens street? A He was north on Stephens street, about the center of the old playground.

Q Is that a vacant lot? A Yes, it runs from Stephens street to Cortlandt.

Q It runs right straight through? A Yes. As I was chasing him apast there.

Q Did you see the defendant running into that lot? A No, sir.

20 Q Go ahead. A As I was running apast that lot on Stephens the A. & P. manager was running apast the same lot on Cortlandt street and Fred DelGrosso—I did not know who it was at the time—was running toward the defendant, and I hollered to—

The Court: Do not tell us what you said.

Mr. Smith: I am asking him what he did.

30 The Court: I know you are. Just tell us what you did.

Mr. Smith: The defendant is now between DelGrosso and this witness, in between them and this witness now hollered.

The Court: How far away was he when you hollered.

The Witness: He was probably 200 feet.

40 The Court: Well, I think that is pretty far, Mr. Prosecutor.

*Daniel J. Peck, Sr., direct.*

Q Well, then tell us what happened, if you will. A Well, I cannot go any further.

The Court: Well, you said something to DelGrosso.

The Witness: I hollered to DelGrosso.

The Court: Then what happened. 10

The Witness: Then when I hollered to Del Grosso the defendant come through this driveway from Stephens street to Cortlandt.

Q Would you mind showing us on the map?

A Through this driveway from Stephens over to Cortlandt street.

Q Then what happened; what did you do?

A Then I hollered through the lot to the A. & P. manager. Do you want me to say what I hollered? 20

Q No. The A. & P. manager was then there?

A On Cortlandt street. He continued over and I heard two shots fired, after I hollered at him. I seen the crowd running down Joralemon street. I continued right straight over Stephens street to DelGrosso.

Q Will you step up at that map and indicate?

A I continued over to Stephens street and Del Grosso and we continued over Stephens street and we got a distance of 200 feet off the corner of Joralemon street when I heard four shots fired, two reports and two more. That quickened my pace and I went up and met this fellow here and went over and got over in time to see them picking up Paul Bohrer who was between two men. They were holding him up, and I seen the pained expression on his face. They put him in a car and I did not bother doing 30 40

*Daniel J. Peck, Sr., direct.*

anything there, because I seen there was two men that had ahold of him. There was another party on the stoop and I picked him up and got him into a peddler wagon.

Q What if anything did you then do with Bohrer? A I didn't do nothing with Bohrer.

10 Q Then did you go back to the vicinity of the Belleville police station? A Yes, sir.

Q How did you get back there? Did you walk or did you ride? A No, sir. I got back on a peddler truck.

Q Who went back with you? Who was on that truck that went back with you? A Eddie Maurer, Fred DelGrosso, and the boy whose father owned the truck.

20 Q Now, where did you go? A I stopped the truck. I didn't stop it. I had the driver stop the truck in front of Dr. Flynn's, and I run across the street to police headquarters.

Q Who, if anyone, went with you over to police headquarters? A I was alone when I went to police headquarters.

Q When you went over to police headquarters what did you do? A I notified Sergeant Sullivan—

30 The Court: Don't tell us what you said or to what effect you notified him.

Q You notified the police department? A I notified the police there had been a shooting.

Q And after you notified them what then did you do? A Sergeant Sullivan—Patrolman Leighton, I don't know whether he was coming in or going out, but Sergeant Sullivan said to Patrolman Leighton—

40 Mr. Bernhard: I object.

*Daniel J. Peck, Sr., direct.*

*By the Court.*

Q Don't tell us what he said. Don't tell us what anybody said. Did Patrolman Leighton and you then do something? A Yes.

Q What did you two do? A Patrolman Leighton asked me if I seen the defendant. I said yes. He said, "Will you take— 10

Mr. Bernhard: I object.

The Court: Don't tell us what he said. Tell us what you did.

The Witness: I got in the car with Patrolman Leighton and we cruised up the avenue.

*By Mr. Smith.*

Q How did you and Leighton go, in a police automobile, is that right? A I don't know whether it was a police automobile or a private vehicle. We were in a car anyhow. 20

Q Where did you go? A Cruised on up Washington avenue here slowly on our way up here as far as Washington avenue and Hancox avenue (indicating).

Q While you were riding up what were you doing? A I was watching the right hand of the street. 30

Q What for? A Watching for the defendant.

Q Did you know him then by name? A Not by name; no, sir.

Q While riding up the avenue in the car with Patrolman Leighton, you were watching the right hand side of the street to see, if you could, the defendant, were you not? A Yes, sir. 40

*Daniel J. Peck, Sr., direct.*

Q Just tell us what happened as you were driving up there. A When we got up the avenue, I was watching the right hand side of the street. I noticed a blue car parked on the northeast corner of Hancox avenue and Washington avenue.

10 Q Is that about opposite the Public Service car barn? A About opposite, yes, sir.

Q I show you Exhibit S. 16 and ask you if that is a picture of the car in the position and location where you saw it parked. A That is the same car.

Q Is it about in the same position? A About in the same position; yes, sir. It was more on an angle, though.

20 Q Now, just what happened then? A As soon as I spotted the car, I noticed the way it was parked and the license number onto it. It seemed it was an omnibus license, an O L license, and as I noticed the license I noticed the defendant at the same time. It wasn't a run; it wasn't a walk. It was between—came like south on Washington avenue and made for this car, and as I seen him I hollered to Leighton, "There he is." Leighton stopped the car and jumped right out, didn't pull on no emergency brake or  
30 shut the door or nothing. I pulled on the brakes, shut the doors, got out on the opposite side of the car. As the defendant was getting in the left hand door of the car he was crouched down in the tonneau of the car.

40 Q Did he have a hat on or not? A He had a hat on when he got in; yes, sir; and he crouched down in the tonneau of the car. Leighton got around on the opposite side of the car and pulled the door open, and by the time Leighton had the door open I was just getting

*Daniel J. Peck, Sr., direct.*

out of the car, but I got over there in time to hear Leighton say, "Stick them up," and as Leighton said, "Stick them up," the defendant came to a crouching position in the tonneau of the car and made for his right hand overcoat pocket, and as he did Leighton clouted him one or two in the mouth and grabbed the gun out of the pocket at the same time. It had caught there—I don't know whether it was the handle or not, but it kind of caught there. 10

Q Caught where? A In his coat pocket; and when Leighton got the gun he said, "Now, stick them up and stick them up high." So Leighton pulled him out of the car, and in the meantime I was getting the driver, because I didn't know whether he was into it or not; and we got him out and I frisked him as Lewis and DelGrosso came running up, and Lewis had the gun at the time. 20

Q Lewis had a gun? A Lewis had a gun that belonged to the A. & P. man. Patrolman Leighton at that time, Sergeant now, asked me—

Mr. Bernhard: I object to what he asked him unless it was in the presence of the defendant. 30

*By the Court.*

Q Where was the defendant? Where was Gimbel when Leighton asked you this? How far away from you? A Oh, probably six or seven feet.

Q All right. Did he say it in a loud or a normal tone of voice? A Normal tone.

Q All right. Go on. A He said, "Can you drive my car?" I asked him, "What kind of 40

*Daniel J. Peck, Sr., direct.*

car is it?" He says, "A Dodge." I said, "Yes," He says, "All right. Get it rolling." So I got in the front seat, and Leighton—

*By Mr. Smith.*

10 Q May I interrupt you, please? When you went over to the car and Patrolman Leighton was there with this defendant, did the defendant then have his hat on or off? A I didn't notice. They got into the car and got it started Leighton was in the back with two prisoners at that time.

Q You mean the driver of the car? A The driver of the car.

20 Q And this defendant? A Yes, sir. So Lewis and the A. & P. manager, they were in the car, and there was another cop there.

Q Do you know Officer Gross? A I know Officer Gross; yes, sir.

Mr. Smith: Stand up, please, officer. (A man stands up in the court room.)

30 Q Do you know whether that is the man? A At the time I couldn't say because he was in back of me; and I started the car around and we got rolling, and on the way down, why, had an accident—we ran out of gas.

Q You changed cars and went to the police station? A Yes.

Q I show you a gun Exhibit S. 20 and ask you if that looks like the gun that Officer Leighton took out of the right-hand pocket of this defendant's overcoat. A It is a duplicate of the gun, but whether it is the same—

40 Q Did you mark it yourself? A No, sir; I did not.

*Alfred Delgrosso, direct*

Mr. Smith: Take the witness.

Mr. Bernhard: No questions on the part of the defense.

ALFRED DELGROSSO, sworn in behalf of the State. 10

*Direct examination by Mr. Smith.*

Q Now, Mr. DelGrosso, around 12:30 to 12:45 of January 16th were you walking south on Stephens street in Belleville? A Yes, sir, I was.

Q Will you tell the Court what happened as you were walking south on Stephens street between Holmes and Joralemon streets? What side of the street were you walking on? A On the west side—south. 20

Q All right. Tell what happened. A I was walking down Stephens street toward Holmes, and I seen the defendant coming up the street running.

Q You mean the defendant Gimbel? A Gimbel.

Q Do you know Gimbel? A Yes, sir, I know him personally. 30

Q Where is he here in the court? A Right between the two guards.

Mr. Smith: Indicating the defendant Gimbel. May I have that on the record?

The Court: Yes.

Q All right. Proceed. A And I seen him running up the street with Dan Peck quite a ways behind him. 40

*Alfred Delgrosso, direct*

Q What way was Gimbel running? A Toward Joralemon street, and then Dan Peck hollered something at me. I didn't quite get him until Gimbel passed me and ducked through an alleyway that goes between Stephens and Cortlandt.

10 Q Will you refer to that map and show the Court and jury what direction you were walking and what happened as relates to that map at that point? Just tell us. This here is Holmes street and here is Stephens street and here are the lots (indicating). Now, will you take your pointer and show us what way you were walking first on Stephens street? A I was walking down this way toward Holmes street, right at this point here (indicating).

20 Q Just past the vacant lots? A An alleyway between the two streets.\*

Q An alleyway between the two streets. Yes, go ahead. A Gimbel passed me and shot in that alleyway and then Dan Peck catches up with me, and he says to me—

The Court: Never mind what Peck said to you.

Q He said something to you. A Yes.

30 Q Then what did you do? A So, I said to Dan Peck—

Mr. Bernhard: I object.

The Court: Don't tell us what you said either.

Q The defendant wasn't there, was he, when you said this? A No, he wasn't

Q He had gone over to Cortlandt street? A He had gone through that alleyway.

40

*Alfred Delgrosso, direct*

Q Then you said something to Mr. Peck?

A Yes.

Q What did you then do? A Then I started chasing too. So I went through the alleyway, ran up Cortlandt street and up to Joralemon street. Then Gimbel, he was past Joralemon street on Cortlandt and ducked through one of them houses up there, oh, about four or five doors in from Joralemon street on Cortlandt. So I went down Joralemon street over to Stephens street. Just as I was on the corner of Stephens street and Joralemon I seen a truck go by, a Dodge truck, with Maurer and the A. & P. man on the seat, and Bohrer alongside of the driver. 10

Q Who was driving the truck? A Eddie Maurer. Well, the truck came around the corner and stopped in the center of the block between Terry street and Joralemon on the left-hand side. So the first thing you know I was about four doors away from the shooting, seen Eddie get out of the truck. 20

Mr. Bernhard: I object as to the other man.

Mr. Smith: If your Honor please, I think it is perfectly proper. This witness testified at this time that Eddie Maurer got out of the truck. 30

The Court: Yes.

Mr. Bernhard: To that extent I have no objection.

The Court: All right. Go ahead.

The Witness: I seen Eddie get out of the truck.

Q That is Eddie Maurer? A That is Eddie Maurer; yes, sir; and there was a shot fired. 40

*Alfred Delgrosso, direct*

Mr. Bernhard: I object.

*By the Court.*

Q Wait a minute. Tell us what happened now with reference to Bohrer. A Well, with reference to Bohrer, I don't know anything—  
10 You know I seen that thing happen first, my mind went to the fellow that went down, and we picked him up.

*By Mr. Smith.*

Q No, wait a minute. After you say you heard a shot, saw a shot, did you see Bohrer after that? A Yes, sir. I just seen him going around.

20 Q Going around what? A The truck, the back part of the truck, but that is all, and then I heard another shot.

Q Now, after you heard that shot, did you see Mr. Bohrer? A I seen him when he picked him up, because the truck had pulled away.

30 Q Where was Mr. Bohrer when he was picked up? A In the street, about, oh, a short ways from the curb. There were two fellows picked him up, and he was crouched down from the pain he had, and they took him away in an Oldsmobile car.

Q What happened? Go ahead and tell us what happened? A Well, they pulled away with Bohrer, Me and Peck, we went back to Flynn.

Q Who else went with you? A Dan Peck, myself and Copola, the fellow that owned the truck.

40 Q And anybody else? A No, sir; nobody else.

*Alfred Delgrosso, direct*

Q Well, who else, if anyone, was with you at this time, besides Copola, Peck and yourself?

A Oh, Eddie Maurer, he was in the truck.

Q Now, after the second shot was fired, the Dodge truck then pulled away? A Yes.

Q Who, if anyone, was on the Dodge truck?

A I did not notice.

10

Q Did you see the defendant Gimbel fire the shot at Bohrer? A No, not at Bohrer. I seen—

Q Just a minute. After you heard the second shot did you see the defendant Gimbel at the place where that shooting—where the—strike it out. Did you see Gimbel at the place where the truck was after the truck went away, that is, the Dodge truck? A Did I see Gimbel in the truck?

Q Was he there when the Dodge truck pulled away? A No, he was not there. No, sir. The Dodge truck had pulled away.

20

Q And you went back to Dr. Flynn's? A Yes.

Q Now, then, what did you do next after that? A Well, we took Eddie up to the doctor.

Q No, after you left Dr. Flynn's? A Yes.

Q Did you leave Dr. Flynn's? A Yes.

Q Where did you then go? A To the police station.

30

Q What did you do when you went to the police station? A I didn't do anything. I went and seen Gimbel.

Q And when you went into the police station—when you got over there—Gimbel was there, is that right? A Yes.

Q And you knew Gimbel? A I did.

Q Now, will you just tell us what conversation, if any you had with Gimbel? A In the police station?

40

*Frank Reider, direct*

Q Yes. What did he say to you and what did you say to him? A I said, "Hello, Gimbel." He just said, "Oh, go on, get out of here, leave me alone." That is all he said.

Q How long had you known Gimbel? A Oh, possibly six years—seven years.

10 Q You went around with him at times? A Yes, I went around with him.

Q Now, at that time was his physical appearance the same as it is today? A No.

Q How did he look then, any different than he does now? A He had sideboards and a little mustache.

Cross examination waived.

20

FRANK REIDER, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Reider, where do you live? A 153 Union avenue, Belleville.

Q And on January 16th, by whom were you employed. A The Lyon Storage Battery, Stephens street.

30 Q What street? A Cortlandt street.

Q Now, did you check out that day for your lunch? A Yes.

Q What time did you check out? A Twelve o'clock.

Q During your lunch time, were you over on Cortlandt street? A Yes.

Q Now, while you were there, did you see any man go up Cortlandt street? A No, sir.

40 Q Well, will you tell us just what you saw when you were out there on Cortlandt street?

*Frank Reider, direct*

A Well, we were playing ball and were just about to go back in after eating lunch and all we saw was the A. & P. manager.

Q How was he dressed? A He had a white apron and coat on.

Q What happened? A When he come up the street he fired two shots in the air and told us to chase Gimbel and we picked up big stones and started chasing and went up North on Cortlandt street to Joralemon street and then went east and then went north on Stephens street. We followed him about five or six houses in and he ran in a driveway and just as he got in the driveway a truck come up. 10

Q He turned in between the houses, about five or six houses up from Stephens street? A Yes, to Joralemon street. 20

Q Now, did you see him do anything? A Well, he had his hand in his inside coat pocket and as he turned around we ducked behind a tree.

Q What happened then? A As soon as he come in the driveway the three fellows got off the truck.

Q Do you know who they were? A I do now. I did not know at the time.

Q Who were they? A I think it was Paul Bohrer and the A. & P. manager and when the A. & P. manager come in the driveway somebody told us he went around the next block and Paul Bohrer told all the fellows around to jump on and go around the next block, and I was the only fellow who got on the truck and went up Stephens street about 100 yards and I told him to stop and he come out on the street again and he come toward us and told us to get away from the truck, and I went around the back and 40

*Frank Reider, direct*

Paul went to go around the front and they both met in the front and he shot Paul in front.

Q That is Bohrer? A Yes.

Q Did you see Gimbel fire the shot? A I seen the gun jump back in his hand.

10 Q What happened to Bohrer right after Gimbel pulled the gun? A Paul held his stomach and walked over to the sidewalk and laid down on the bank and Gimbel got in the truck and I hid.

Q And when Gimbel got in the truck, what did he do with the truck? A As soon as he got in the truck he started going and as soon as he started, the A. & P. manager fired a couple of shots at the truck and I went over and picked up the fellow who was shot and a car was coming up and we hailed the car and took him to the hospital.

20 Q What hospital? A St. Michael's.

Q I show you Exhibit S. 20 and ask you if that looks like the gun you saw in Gimbel's hand that night? A Yes, that looks like the gun.

Q Now, when you and Bohrer were at the truck, I show you a picture—two pictures, Exhibit S. 17 and S. 18 and ask you if those are pictures of the truck and do they depict the truck in about the same condition as it was that day? A Yes.

30 Q Now, as I understand you and Mr. Bohrer were somewhere near that truck. Just where were you? I am not quite clear. A I was right at the front door and he was at the front fender on the right-hand side.

Q And were you at the door going into the driver's seat? A Yes.

40 Q And Mr. Bohrer was at the right front fender? A Yes.

*Frank Reider, direct*

Q About how many feet from you was Mr. Bohrer? A He was about five or six feet away from me.

Q And that truck was standing still, was it not? A Yes.

Q And do you know in front of about what number house on Stephens street you were? A I could not tell you. 10

Q Well, was there a driveway alongside of the house about where you were? A I think there was a driveway.

Q About how many houses in from Joralemon street was this truck parked? A It was about five more houses up from where you went in the driveway.

Q Now, you have explained where you were standing and where Mr. Bohrer was standing? A Yes. 20

Q Now, will you tell us whether he was standing there when you first saw the defendant Gimbel? A Well, when I first saw him he was on the opposite side of the truck, coming around toward where we were.

Q How did you see him? A I noticed him when he was running up the street and I endeavored to go on the right-hand side of the truck. 30

Q Did you notice his feet underneath the truck? A Yes. I laid down on the ground to notice what way he was running.

Q What way did you and Bohrer run in relation to the way in which you saw Gimbel running by looking at his feet? A Gimbel was running toward the front and I seen him run toward the front and Bohrer went toward the front.

Q Did Bohrer go with you? A No. 40

*Bertha Schenck, direct*

Q You were then running away from Gimbel?

A Yes.

Q And Bohrer, when you started running was still standing in front of the truck? A Yes.

10 Q Now, how many feet was Gimbel from Bohrer when he shot him? A Well, I could not tell you exactly. He was on the other side of the truck.

Q And how many shots do you know did Gimbel fire at Bohrer? A He fired one shot.

Cross examination waived.

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20 BERTHA SCHENCK, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q On January 16th, of this year, where did you reside? A 390 Cortlandt street, Belleville.

Q 390 Cortlandt street? A Yes.

30 Q And do you know where Mrs. Sammis lives on Stephens street? A Yes. She lives—well, it is not directly in back of me. It is the next house directly in back of me, sort of diagonal.

Q Your houses back up to one another? A Well, her house is more diagonal to mine.

Q You live on Cortlandt street and Mrs. Sammis lives on Stephens street? A Yes.

Q Now, around 12:30 or 12:35 January 16th, did you see a man come up to your stoop? A Yes, I did.

40 Q Now, if you see that man here in court, will you please come down from the stand and place your hand on him from the rear? Will

*Bertha Schenck, direct*

you get down from the stand, if you see him, and place your hand on him from the rear?

The Court: Indicating the defendant.

Q Will you tell the Court and jury, please, Mrs. Schenck, under what circumstances you saw the defendant on that day? A Well, I was standing at the front door of my house with the door about half-way open, and I noticed a young man run up the side of the house. There is a sort of an alleyway, at my right hand it was, and he ran up the steps and brushed right by me into the house, and I remarked— 10

*By the Court.*

Q What do you mean you remarked? You said something to him? A I said to him, "Get out of here. What do you think this is?" As I said that he ducked behind the front door and said, "Let me hide." At the same time he displayed a revolver and he seemed to glance out at the street. He looked out from behind the door at the street and apparently saw someone giving him chase, and he watched and then he ran through my home into the dining room, and as he got there he darted to one side of the room where my baby was lying in his little crib, and I called out to him, "Oh, don't hurt my baby." And just as I said that another young fellow came running through the house. I did not wait any more but ran to the baby's crib, and wrapped the blanket around him and ran out to the sidewalk. 30

Q What did this defendant do? Where did he go? A I didn't see him run out of the house. He ducked to the side of the room, where 40

*Helen L. Sammis, direct*

the baby was lying in his crib, and then he went out into the kitchen, but I didn't see him leave through the back door.

Q Out past the kitchen is there a back door leading out? A There is a back door to the kitchen, yes. You can run directly through from  
10 the front right out the back door.

Q I show you a gun, Exhibit S. 20, and ask you if that looks like the gun that you say this defendant had in his hand that morning? A Yes, I would say it was just like the gun that he had.

Mr. Smith: That is all.

Mr. Bernhard: Cross examination waived.

20

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HELEN L. SAMMIS, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mrs. Sammis, you live on Stephens street in Belleville, do you not? A Yes, sir.

Q You lived there on January 16th of this year? A Yes, sir.

30 Q What number Stephens street do you live? A I live at 293.

Q I show you a map, Exhibit S. 2, Mrs. Sammis. Will you indicate on that map your house? A (The witness indicates.)

Q No. 293? A Yes.

Q Alongside of your house is there a driveway? A Yes, sir; to the south.

Q Now, do you know, Mrs. Sammis, Mrs. Schenck, the last witness? A Yes, I know of  
40 her.

*Helen L. Sammis, direct*

Q Where does Mrs. Schenck live? A Diagonally behind my house.

Q Her house is on Cortlandt street? A On Cortlandt street.

Q Now, on January 16th, did you see a man come through your driveway? A Yes, sir.

Q Where were you at that time? A In the bay window in the dining room at the south side of the house. 10

Q I show you Exhibit S. 13, and ask you if that shows a picture of your house and the bay window of your dining room? A Yes, sir.

Q Will you just put a cross on the window that you were looking out of? A (The witness marks the exhibit.)

Q Now, were you standing at that window? A Yes, sir. 20

Q Now, looking out of that window what did you see? A I saw a man running through the yard into the driveway out in front of the house.

Q Can you describe that man? A No, sir.

Q Now, did you see whether he had anything in his hand as he ran by? A No, sir.

Q Now, after he ran by, did you hear anything? A Well, I heard a shot and I called the police, left the window and called the police.

Q You heard a shot? A Yes. 30

Q Then you called the police? A Yes.

Q Did you hear any other shot after the first shot? A Yes, sir. When I was going to telephone I heard the second shot.

Q Now, after you heard the second shot what then, if anything, did you do? A Why, I was telephoning for the police then.

Q Then what did you do? A Then I went out on the front porch.

Q Did you know Mr. Bohrer? A Well, I didn't know him personally, but he had passed. 40

*Peter Lewis, direct*

my house. Two men were walking him by my house.

Q Do you know who the two men were that were walking by your house? A No, sir; I don't.

10 Q When you came out on your porch after you heard the second shot and went to the telephone, did you see Mr. Bohrer? A I just saw him walking past with the two men.

Q That was after? A After the telephone.

Q After the telephone you saw him? A Yes.

Q What were the two men doing with him, if anything? A Well, they had him between them. They were walking him past.

20 Q Where did they go to? A Well, then a machine came along and they got in a sedan.

Q And they drove away? A Drove away; yes, sir.

Mr. Smith: Take the witness.

Cross examination waived.

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PETER LEWIS, sworn in behalf of the State.

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*Direct examination* by Mr. Smith.

Q Mr. Lewis, on January 16th, where did you live? A 277 Stephens street.

Q Belleville? A Yes, sir.

Q How many doors do you live away from Mrs. Sammis? A I don't know. I don't know the person.

40 Q Will you refer to Exhibit S. 2 and indicate to the jury where you live on Stephens

*Peter Lewis, direct*

street? Do you understand the map? A No, sir.

Q Well, I will explain it to you. Here is Stephens street up here, and at the corner is Joralemon street. This is Stephens street. What number Stephens street do you live? A 277, right there (indicating).

10

Q Where 277 is indicated on the map, that is where you live? A Yes, sir.

Q Now, on January 16th, were you home? A Yes, sir.

Q What had been the condition of your health? A Why, I had a bad cold. I was home for five days.

Q Now, when you were home will you tell us what happened that day? A Well, I was laying down at the time. My mother had come in and she told me to get up and see what is going on—

20

The Court: Don't tell us what your mother said.

Q What you saw? A And I lift up the window in the parlor.

Q You lifted up the window in the parlor? A Yes, sir. I stuck my head out and there is a bunch of fellows came out of the yard, and there was a pass word that he must have hopped over the fence. At the time there is a man who come out of the third house driveway. He had a derby hat on.

30

Q If you see that man in the court room, will you step down and put your hand on him from the rear? A Yes, sir. (The witness leaves the witness stand and indicates the defendant.)

The Court: Indicating the defendant.

40

*Peter Lewis, direct*

Mr. Smith: Indicating the defendant.

Q Go on and please tell us what you saw?

A Came out the yard, came out the driveway, ran out in the middle of the street, and he had a derby hat and a light coat on.

10 Q That is, the defendant Gimbel? A Yes, sir; there was a remark made—

The Court: Never mind.

The Witness: There was a word passed.

The Court: Never mind about the word that was passed. Just tell us what you saw. Don't tell us what was said.

20 The Witness: He ran out in the middle of the street as a bunch of fellows was around. So he stuck his hand in his pocket to draw the gun out, and the gun he drew out, it seemed to me it was an army forty-five he took out. He took perfect aim.

The Court: Wait a minute.

Mr. Bernhard: I object. I move to strike it out.

The Court: Confine your questions with reference to the deceased Bohrer.

30 Mr. Smith: Do you understand the Court?

The Witness: Yes.

The Court: I was just making a suggestion to you, Mr. Prosecutor, so you can ask him the question. Tell us what you saw this defendant Gimbel do with reference to Bohrer? Only with reference to Bohrer.

40 The Witness: He met and the fellow fired a shot and the fellow went down on his knees, caved right in, and he hit the lawn where he was.

*Peter Lewis, direct*

Q Then what did you do? A Then the fellow which was doing the shooting took steps to the delivery wagon.

Q You mean the defendant Gimbel? A The defendant Gimbel. He hopped in the truck and he started off. As he started off I leaped out of the second story window and dropped myself to the lawn. As I did, I picked myself up, and as I did there was a fellow in the middle of the street with a white coat and apron and with my right hand I snatched the gun and there was a truck coming down and I signaled for the truck to smash in this little one, but the truck driver did not understand and there was a man came down with a Ford coupe. I stopped him and as I stopped him I told him—

The Court: Do not tell us what you told him.

Q What did the man do? A A cop came around.

Q Was that Officer Gross? A I do not know. There was an officer and another man got in the car. I got in the back of the coupe, one leg on the car and one leg on the fender, my left hand holding the top of the car and the gun in my right, and we went up Stephens street and got lost and did not know where the man went with the truck, and we come back and asked the school children and the school children said he went down to the River Road, and down to the River Road we went.

Q Did you catch the truck on the River Road? A Yes.

Q Where was that? A That was stopped right across the street from the factory.

*Peter Lewis, direct*

Q The Federal Leather Company? A I do not know the name of the company. So I went off the Ford and went to the truck and put the gun in the truck and hollered, "Put your hands up," and there was no answer, and there was a chap on one side of the street and one on the other, so up the street I went to that factory and I met a man and I asked the man did he see a fellow pass—

The Court: Do not tell us what you said.

Q Well, what did you do? A I went right up where I started through the field. So I went apast the railroad—

20 The Court: Past the what?

The Witness: Railroad. So then I went through a aeroplane factory, through the yard, and I came out through Washington avenue, so when I hit Washington avenue—

Q May I interrupt you? What other man, if you know his name was with you up there around the leather factory? A Why, he was an officer, and another fellow the way I know now, and he was an A. & P. manager.

30 Q They were there with you? A Yes.

Q Will Officer Gross stand up? Is that the officer? A Really, I did not pay attention to know the officer.

Q All right. Go ahead. A So I went up there and there was a lot of barrels on one side of the factory and on the other side was fields, a lot of bodies of cars lying around there, and I went around there with my gun in my hand and went across the railroad and went through the

40

*Peter Lewis, direct*

yard of the aeroplane factory until I hit Washington avenue. When I hit Washington avenue I walked up a little ways. I stuck the gun underneath my shirt—up toward Nutley, and I walked up about 25 feet and I saw a man sitting in a car. He had no hat on.

Q Was that the front or back seat? A The back seat, and a man in the front seat. The fellow I looked in the back at had little whiskers on and a long sideboards and he looked like the same fellow I took to be a gypsy. So I sneaked up there quiet with a gun under my shirt and about four feet away I made one leap for the car and right through the glass window and told both them to stick their hands up before I blew their bloody brains out. Gimbel tried to reach for his pocket and at that time an officer came and the officer opened the rear door of the car and took the fellow from the back and I took the man out from the front. The man in the front I was afraid of. He looked sleepy, and I did not trust him as much as I trusted the other fellow. So when I took him out of the car I asked him to put his hands up and he would not, and when he would not put his hands up, I smacked him on the back of the neck and he put his hands up, and at that time there was a few men come around and we searched him and he did not have no gun. So at that time we marched him across the street into another car. As we marched him across the street, one of the officers asked him where he lived. He said he lived in Belleville. I felt like blowing his brains out then.

The Court: No. Go ahead and tell us what happened.

*Anthony Gross, direct*

10 The Witness: So then I got out of the car, but the horn of the car did not blow very good, so the officer gave me his whistle and I stood out blowing the whistle all the way down the avenue. So a block ahead of headquarters we ran out of gas. I hopped off the running board and stopped traffic and public service cars until we got them in another car.

Q And so they went down to headquarters?

A They went to headquarters, and when I got to headquarters I turned my gun over to one of the men at headquarters.

Q I show you a gun marked S 24 and ask you if that is the gun you received from the A. & P. man and turned over to the man at headquarters.

20 A Well, really I could not say that is the gun, but it is the same thing I was using.

Q Now, I show you S 20 and ask you if that looks like the gun Gimbel had in his hand when he fired the shot at Mr. Bohrer. A Exactly the same thing.

Q And you say you believe it was an Army .45 automatic? A I believe it was an Army .45.

Cross examination waived.

30

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ANTHONY GROSS sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q You are a member of the Belleville police department? A Yes.

Q On the early afternoon of January 16, 1930, did you have occasion to be in the vicinity of Stephens street? A Yes.

40

*Anthony Gross, direct*

Q North of Joralemon street? A Yes.

Q Now, will you tell us how you came to be there and exactly where you were on that street?

A I was sent out from the Belleville headquarters on a telephone call, there was a holdup of the A. & P. store. Going north on Cortlandt street to the A. & P. store, I was told—

10

The Court: Never mind what you were told.

The Witness: I proceeded north to Cortlandt street just above Joralemon. I heard two shots fired which drew my attention to the next street.

Q That is Stephens street? A Stephens street.

20

Q What did you then do? A I stepped out of the car and ran across the lot east to Stephens street. When I got there I seen a man lying on the grass that was shot and an automobile truck pulled away.

Q Do you know what kind of an automobile truck it was pulling away? A I just had a rear view of it.

Q All right. A So I proceeded after this truck.

30

Q Do you know the man who was lying there on the grass? A Paul Bohrer. I proceeded after this truck on foot as far as the next corner where we got into a Ford coupe and took the chase up from there, but this Dodge truck had a little run on us by that time and we went north on Stephens street to Little street, east on Little street to Ralph street, north on Ralph street to Greylock avenue, east on Greylock avenue to Main street, north on Main street to Roosevelt,

40

*Anthony Gross, cross.*

west on Roosevelt up to a short street—I just forget the name of it, and back into Greylock and come to the public school and asked the children if they had seen this truck and they said that they did and we turned around and went north on Main street as far as the Federal  
 10 Leather and went directly across the street from the Federal Leather, and we came upon this truck. There was no one in the truck and we went around up through the property of the Federal Leather there and looked in and about the sheds and on up through where the aero-  
 plane factory is.

Q Who was with you? A Why, I believe it was this fellow Lewis.

20 Q And did you see the A. & P. man? A I did not take notice of him. I went in and out the shed there and Lewis and some other fellow they got a little lead on me and when I got to Washington avenue I turned north on Washington avenue, and seen a Dodge car with Officer Leighton and Lewis, Mr. Peck and somebody else came around there and they stopped for me and picked me up and Mr. Gimbel was in it.

Q The defendant? A Yes.

30 Q That is the man sitting here between the two guards? A Yes.

Q They were then going in the direction of the police station in Belleville? A Going south, yes.

*Cross examination by Mr. Bernhard.*

40 Q Then, officer, did you go into the police station? A Yes. I had my handcuffs on him going in.

*Clarence Place, direct.*

Q And did you observe the time of the day when you went into the police station with Gimbel? A About one o'clock.

Q Do you recall what time it was that you left the police station? A Just about 12:30.

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10

CLARENCE PLACE, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Place, you live in Belleville, do you not, sir? A Yes, sir.

Q On the 16th of January, were you going down Stephens street in a southerly direction with your automobile? A Yes, sir. 20

Q About what time? A Somewhere around 12:30.

Q Now, what did you observe as you were proceeding on that street at that time? A Why, I heard about this before that. That is what took me up that way.

Q All right, sir. Don't tell us what you heard, but you went up there on account of what you heard? A Yes, that is what took me up there. When I got up there to Stephens street opposite this house of Sammis's I saw a car pulling away with Mr. Lewis standing on the back of it with a gun in his hand, and up until that time I did not know what had happened, and I followed them. 30

Q You turned your car around, didn't you? A No, I was already going the same direction, north. 40

*Clarence Place, direct.*

Q Now, as you were going north did anyone jump on your car or get into your car? A No, not until Greylock avenue. I was riding alone up to that time.

10 Q What happened when you got to Greylock avenue? A Greylock avenue, the manager of the A. & P. and another man jumped on my car, one on each side of it. I don't know who the other fellow was.

Q Was he in civilian clothes, the other fellow? A Yes.

Q Would you recognize him if you saw him, do you think? A Yes, I would, but I don't think he is in court today.

20 Mr. Smith: Officer Gross, stand up.  
The Witness: No.

Q That is not the man? A He was in a coupe. I saw him in a coupe.

30 Q All right. You were on your way up after this defendant Gimbel? What did you do? A I went as far as Greylock avenue where the A. & P. manager and this other man jumped on my car, and I turned right on Greylock avenue, went down the Main street and River road, and proceeded north until we came across the butcher's car, the butcher's truck, Dodge truck, and we stopped there.

Q I show you Exhibits S 17 and S 18 for identification, and I ask you if that is the truck that you saw and if it was, was it in the same condition then as it is in that picture. A Yes, sir.

40 Q Now, you saw this truck. Where was it parked or standing? A Why it was practically in the middle of the road on the right-hand side, a little bit to the right.

*Clarence Place, direct.*

Q Opposite what plant? A Opposite the driveway that goes up to the Federal Leather.

Q Tell us just what you did, please. A The Federal Leather lays up about 200 feet, probably 300 feet from River Road. There is a lane going up to it. The A. & P. manager went up to me, and I had pulled around the truck there for a little while, looked at it and was going to shut the motor off in it. The motor was running there standing, open door. I looked that over first. By the time I got through and turned around I was started up the lane, left my car standing there. As I did, why, I saw the defendant run out of the office of the Federal Leather.

10

Q That is Gimbel? A Yes, sir.

Q Do you recognize him here in court? A Yes, sir.

20

Q Where is he sitting? A Between the two officers here (indicating).

Mr. Smith: Indicating the defendant Gimbel, if your Honor please, for the record?

The Court: Yes.

Q You saw him doing what, Mr. Place? A He ran out of the Federal Leather, and about a hundred feet from the office is a little lane that goes north again. I saw him turn that corner there going north.

30

Q Now, when he came out did he have anything in his hand? A Yes. He had a gun in his hand.

Q I show you a gun marked Exhibit S 20 and ask you if that looks like the gun that he had in his hand when he came out of the Federal Leather office? A Well, it looks like it, but I was so far away from it—

40

*Clarence Place, direct.*

Q All right. It looks like it. Go ahead. Tell us what you then did. A Then, I saw the A. & P. manager come out of the Federal Leather office, wave to me to come up, so I started back. I was going to go back after my car, and changed my mind again and went up again. By that time  
10 Officer Gross had arrived, and Lewis had come up. And we looked around the sheds there, and I went back in the Federal Leather and phoned down to the police station for to send some officers up, thinking that he was hiding in some of the sheds.

The Court: Never mind what you were thinking.

A (Continuing) So when Officer Gross arrived there, why, I went back down again and got my car.  
20

Q Where did you then drive to? A I drove right up through the lane of the Federal Leather and right through this little alleyway just the way the defendant went. By the time I got up there, why they had caught the defendant and was starting down Washington avenue already with him.

Q How did the defendant look that day? A Why, he had a derby hat on and he had a mustache, and sideboards very rough looking.  
30

Q What is that? A Sort of rough looking fellow.

Q Rough looking? A Yes.

Mr. Smith: I think that is all.

Mr. Bernhard: That is all. Before you call the next witness, may I interrupt, your Honor, to ask if Mr. Bracken is still in court or available?  
40

*Ernest Gardi, direct.*

The Court: I do not think so.

Mr. Smith: If he is not we will be glad to get him.

Mr. Bernhard: Any time tomorrow morning will be all right, unless it appears in evidence. If it does I am sure the prosecutor will inform me of the fact. Didn't he testify this morning as to the distance between the store and the railroad crossing where the shanty was located? Did he testify as to that distance? 10

Mr. Smith: No, he did not.

The Court: If he did I did not hear him.

Mr. Bernhard. There are some things in my mind, and I would like to have the distance indicated, by either counsel or Mr. Bracken, at any time before the case is closed. 20

Mr. Smith: If your Honor please, I will compute that. The map is scaled. I will compute that and counsel, I think, can agree as to the distance. It is a simple matter; and then place it on the map.

Mr. Bernhard: All right. We will do it after adjournment, Mr. Smith. 30

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ERNEST GARDI, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q How old are you? A Fourteen.

Q Now, on the 16th of January, Ernest, were you on Stephens street, north of Joralemon? A I was south.

Q What? A South of Joralemon. 40

*Ernest Gardi, direct.*

Q Do you go to school? A Yes, sir.

Q What school do you go to? A No. 1.

Q Where is that located, Ernest? A On Academy street and Rutger.

10 Q Now, do you know the defendant Gimbel in this case? A No, sir.

Q Did you see a man that day on Cortlandt street? A No, sir.

Q Did you see a man that day on Stephens street? A Yes, sir.

Q Did you see a man on Stephens street that day with a derby hat on? A Yes, sir.

Q When you saw him first what was he doing? A He was running with his hands in his pockets.

20 Q He was running with his hands in his pockets? A His right hand in his pocket.

Q His right hand in his right-hand pocket? A Yes, sir.

Q Of his overcoat? A He had a light overcoat on.

Q What kind of hat did he have on? A Black derby hat.

Q In what way was he running, Ernest? In what direction? A He was running north on

30 Stephens street.

Q North on Stephens? A Yes, sir.

Q Now, did you follow him? A Yes, sir.

Q Now, when you followed him what then did you see? A I heard two shots. Then I went over Cortlandt, then down Joralemon, then I heard two more, and I saw Paul Bohrer fall on a lawn.

Q Now, did you see who fired the shots that hit Paul Bohrer? A No, sir.

40 Q Do you know Eddie Maurer? A Yes, sir.

*Stella Rogers, direct.*

Q Did you see Eddie Maurer that day? A  
Only when the shooting occurred.

The Court: Just answer that yes or no.

Q Did you see Eddie Maurer that day? A  
Yes, sir. 10

Q Where was it you saw Paul Bohrer that  
day, Ernest? A Stephens street.

Q Do you know in front of what house, what  
number? A No, sir.

Q About how many doors up Stephens street  
from Joralemon was it you saw him? A Five  
doors.

Q About five doors up? A Yes, sir.

Q Now did you see any one pick up Paul  
Bohrer? A Yes, sir. 20

Q Just tell us what they did with Paul. A  
They picked up Paul Bohrer in an automobile  
that was passing and they put him in and took  
him away.

Q And they went away with Paul? A Yes,  
sir.

Mr. Smith: That is all.

Cross examination waived. 30

STELLA ROGERS, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mrs. Rogers, you live on Stephens street,  
Belleville, do you not? A Yes, sir.

Q What number, please? A 287.

Q Do you know Mrs. Sammis? A Yes, sir. 40

*Stella Rogers, direct.*

Q Now, where do you live in reference to Mrs. Sammis's house? A Alongside. There is a lot separates her house from mine.

Q I show you Exhibit S. 13 and ask you if you recognize what that is a picture of. A That is Mrs. Sammis's house and her driveway and the lot, and my house is next to it.

Q So your house, if it was in this picture, would be here? A Yes.

Q Next to that lot? A Yes.

Q Now, on this day, the 16th of January, where were you? A I was in my kitchen window, and I saw a man jump over from the lot into my yard and jump over—Then run to the back of my yard and jump over the back fence and run into Cortlandt street.

Q If you see that man here in court— A Yes.

Q Do you see that man in court? Will you come down and indicate who the man is by placing your hand on his shoulder from the rear? A (The witness leaves the stand and indicates the defendant.)

The Court: Indicating the defendant.

Q Now you say you saw the defendant Gimbel going from over the back fence toward Cortlandt street? A Yes.

Q Just tell us what else you saw as you were in your house. A Then I saw a lot of men run the same direction. When they got out of sight he came running out of the back door of Mrs. Schenk's house, back into my yard, and when I saw him in my yard I run to close my door. I was afraid he would run in my house too.

Q What did he have, if anything, in his hand? A He carried a revolver.

*Stella Rogers, direct.*

Q I show you Exhibit S. 20 and ask you if that looks like the gun he had in his hand? A Well, he wasn't close to me, but it was a black gun I know.

Q Go ahead. Tell us what you saw. You closed your door? A I went to close my door and I ran to my front window, and just then I saw him running toward the truck that was parked, and I noticed two men alongside the truck. 10

*By the Court.*

Q Tell us what you saw him do with reference to Bohrer. A Well, he ran around the truck toward the front and he fired a shot, and I saw a man run toward the lawn and dropped and he jumped into the truck. 20

*By Mr. Smith.*

Q You saw the defendant fire a shot at Mr. Bohrer? A Yes, sir.

Q And after he fired the shot Mr. Bohrer went to the grass and dropped down? A He ran a little. Then somebody tried to help him, and then I saw him fall on the lawn.

Q Then what happened? A Then he jumped into the truck and rode away and I heard a lot more shooting, but I don't know who done it. 30

Q Is that all you saw? A Yes, sir.

Q Now, do you know what was done with Mr. Bohrer? A No, I do not, because they brought Eddie Maurer on my porch. I was on my porch looking at him. I saw nothing else regarding Mr. Bohrer.

Q Nothing else regarding Mr. Bohrer? A No. 40

*Anna Baker, direct.*

ANNA BAKER, sworn in behalf of the State.

*Direct examination by Mr. Smith:*

Q Miss Baker, on January 16th, this year,  
were you employed at the Federal Leather Com-  
10 pany at their plant in Nutley, New Jersey? A  
Yes.

Q About 12:45 or 12:50 on that day did a  
man come to your information window? A Yes.

Q What is your employment there? A  
Switchboard operator.

Q What is that? A Switchboard operator.

Q And information clerk? A Yes.

Q Now, will you describe to the Court and  
20 jury just how the layout of your office is with  
respect to the telephone switchboard and the en-  
trance after you go in the front door? A The  
entrance to the office is facing north and then  
there is a door there that says "No Admittance"  
that leads on into the hallway and leads into the  
main office. The switchboard—

Q Will you speak up? A As I sit in my  
position I face north. That is the front of the  
30 building and the information window is to my  
right. At the time when the defendant came in  
I was facing west across the room. He tapped  
on the window and I went over to it and he told  
me to call a taxi in a hurry.

Q And what was his condition? A He did  
not appear to be very nervous, but I thought  
probably he was in a hurry to go somewhere and  
had an appointment or something and wanted to  
get there in a hurry. He had a quarter in his  
40 hand, which he fumbled around, and had both  
hands up on the window on the information win-

*Anna Baker, direct.*

dow. I looked up the number, Belleville, 2000, the Yellow Cab.

Q Did you see the man who came in and asked you to call the taxi? A Yes.

Q Do you see him in the courtroom? A Yes.

Q Will you indicate him from the stand? A Sitting between the two guards. 10

Mr. Smith: Indicating the defendant Gimbel.

Q Go on. A He told me he was in a hurry, and as I turned I called Belleville 2000, Yellow Cab, and when I turned to the window to tell him his cab would be there in a hurry he was not there, he was in the main office.

Q How do you get to the main office? A You go through the door. It says no admittance on it. 20

Q You go through the door that has the word "No Admittance" on? A Yes. And about two feet to the right is the door entrance to the main office.

Q So when you turned around to tell the defendant the cab would be there shortly, where was the defendant at that time? A He was not at the window. He was in the office standing in the doorway. 30

Q That is, he had gone through the door that has on it no admittance and opened another door to the main office? A Yes, but that door was open.

Q You mean it was not lock? A No. It was not closed either. It was ajar.

Q It was open at that time? A Yes. He came in there and he stood there and he said to me, "Do you mind if I wait here?" And I said, "No," we did not allow strangers in the office, 40

*Anna Baker, direct.*

“would you mind waiting in the hall,” and he turned to go out, and as he turned to go out, the manager from the A. & P. came in.

Q How was he dressed? A He had a white coat and apron and he came in and as the defendant saw him come in he got down behind the door  
10 lower than the glass so he would not be seen.

Q You mean the defendant stooped below the the glass of the door? A Yes, so you could not see him, see his shadow on the glass when you come in and the man—the manager of the store, after he got in, he was pretty well excited, panted for breath, and after he got in a few feet away from the door, the defendant was behind the door and he crouched out from behind the back and outside again, and when I saw him go, I was  
20 pretty well excited, I didn't know what it was all about, and I told him if he was looking for that fellow, there he goes, and he ran out of the door, and as he did he told me to call Police Headquarters.

Q Now, I understand the defendant pulled open a door that had a glass like that door there (indicating door in courtroom) he pulled this door open as I am here and as he opened it he stooped down behind it? A Yes, and had both  
30 hands on the knob.

Q And the A. & P. man walked in the door?  
A Yes.

Q And then the defendant walked around and back out the door? Is that the way in which he did it? A Yes.

Q And he went out of the door still crouched and stooped over? A Yes.

Cross examination waived.

40 Adjoined until tomorrow, Thursday,  
March 6, 1930, at ten o'clock A. M.

*James J. Ferraro, direct.*

FOURTH DAY.

Thursday, March 6, 1930.

Before Hon. Walter D. VanRiper, judge.

Continued pursuant to adjournment.

Present, counsel as before stated.

10

JAMES J. FERRARO, sworn in behalf of the State.

*Direct examination by Mr. Smith:*

Q Mr. Ferraro, on January 16th about one o'clock were you in the vicinity of Washington avenue and Hancox avenue, Nutley? A Yes, sir.

20

Q Did a man come up and speak to you while you were there? A I was in the store, not outside—in the store.

Q What store were you in? A Nick Mar-  
rone's, the taxi driver.

Q You were in a taxicab store, as you call it?  
A Yes, sir.

Q Was there a sign on the front of that store showing what kind of a place of business it was?  
A Yes, sir.

30

Q What is the sign on the outside of it? A  
Nutley Taxi, 1000.

Q Where is that located? Will you indicate on this map about where that taxi stand is? This is Washington avenue that I am indicating. There is Hancox avenue up there (indicating). A  
Northeast corner.

Q Northeast corner of what streets? A Of  
Washington and Hancox avenues.

40

*James J. Ferraro, direct.*

Q Now, Mr. Ferraro, while you were in that store just tell us what happened, will you? A I was just going out and I met this defendant, William Gimbel, coming in.

Q At that time did you know what his name was? A No, sir.

10 Q Do you see him here in court? A Yes, sir.

Q Where is he sitting? A Right in between the two officers.

Mr. Smith: Indicating the defendant Gimbel?

The Court: Yes.

20 Q Go right ahead, please. A And he asked for a taxi. I said, "Yes, sir. Right here." And I woke the taxi man in the back room. He was partly sleeping, you know, on the table, and I hollered for him.

Q Whom did you holler for? A This Nick Marrone, the taxi driver, and he woke up. He says, "What do you want?" He walked over to the defendant, Gimbel, and he said, "What do you want?" He said, "A taxi." Sure enough he rubbed his eyes.

30 Q Who rubbed his eyes? A This Nick Marrone at the time he says all right. Out they went, and I remained in the place.

Q Did anybody go out of the store, will you state, at any time? A Yes.

Q Who went out of the taxi store? A Taxi driver and this William Gimbel, the defendant.

Q Did you see where they went? A No, sir.

Q You stayed in the store? A Yes, sir.

40 Q Did you leave the store a few minutes later? A Yes, sir.

*James J. Ferraro, cross.*

Q How did you come to leave it? A Because I have heard there was a rumpus on the outside, you know; that is, in the front of it, you know, there was a whole lot of them accumulated there, and out we went, and I seen nothing else there.

Q When you got out there was Marrone and the defendant still there? A No, sir. 10

Q They had gone away? A They had gone away.

Q Been taken away? A Yes, sir.

*Cross examination by Mr. Bernhard:*

Q Have you stated as accurately as you can, according to your recollection, all the conversation that took place between you and Mr. Gimbel in your office? A That is all was asked me, for a taxi— 20

Mr. Smith: I object to the question. It was not this man's office.

The Court: Well, wherever it was that it took place.

Mr. Smith: It was a taxicab office, but this man had no connection with the office. 30

Mr. Bernhard: Oh, we will withdraw the question.

Q In the office in which you were about one o'clock on January 16th, at which time you saw Mr. Gimbel come in? A About that.

Q Have you stated all the conversation between you and Mr. Gimbel at that time as nearly as you recollect it? A Yes.

Q Your answer is yes, sir? 40

*James J. Ferraro, re-direct.*

*By the Court.*

Q What is the answer? A Yes.

Mr. Smith: I overlooked one question.

10 *Re-direct examination by Mr. Smith.*

Q When you came out did you find a hat? A Yes, sir.

Q What kind of hat did you find? A Black derby hat.

Q Where did you find that hat? A Right under the taxi.

20 Q Where was the taxi standing under which you found the derby hat? A Right on the north-east corner of the side of the building there, by the curb.

Q In what direction was the taxi facing? A The opposite way; that is, with the back end toward Washington avenue and the front part of the taxi—

30 Q I show you Exhibit S. 16, and ask you if that is a picture of the taxi you refer to, and is it in approximately the same position in that picture as it was when you saw it about one o'clock on the 16th? A Exactly.

Q And it was under that automobile that you found the derby hat? A Yes, sir.

Q What did you then do with the hat? A Why, I was asked to take it down to the Belleville police.

*By the Court.*

40 Q What did you do with it? Not what you were asked. What did you do with it? A Picked it up.

*Alice M. Welling, direct.*

Q Whom did you give it to? A Edward Fleischauer.

*By Mr. Smith.*

Q A police officer? A A police officer.

Q You brought it down to Belleville police?

A I brought it to the police station. I went with it. 10

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ALICE M. WELLING, sworn in behalf of the State.

*Direct examination by Mr. Smith:*

Q Mrs. Welling, on January 16th, this year, where did you reside? A 413 Cortlandt street, Belleville. 20

Q Do you know Mrs. Rogers? A Yes.

Q And where does she live? A 287 Stephens street.

Q And do you know Mrs. Sammis? A Yes.

Q Where does Mrs. Sammis live? A Next door to Mrs. Rogers. I do not know the exact address.

Q But right next door? A Right next door. 30

Q And separating them is there a lot? A Yes.

Q And there is a driveway, is there not, alongside of Mrs. Sammis' house? A Yes.

Q Now, around 12:30 or 12:35, the 16th of January were you in the vicinity of their home?

A Yes, I was visiting my mother-in-law, who lived upstairs from Mrs. Rogers.

Q Your mother-in-law lives above Mrs. Rogers? A Yes. 40

*Alice M. Welling, direct.*

Q Now, will you tell us just where you were and from where you were, what you saw? A Well, I had just come out the driveway visiting my mother-in-law with the baby carriage.

10 Q Would you mind speaking louder? A I had just come up the driveway visiting my mother-in-law. I was taking the baby carriage out and I heard a lot of confusion coming from the rear of the house and I saw Gimbel with a crowd of people chasing him.

Q Now, when you saw the man Gimbel, will you just come down and put your hand on him in the courtroom from the rear? A Yes.

Mr. Smith: Indicating the defendant Gimbel.

20 Q Just proceed? A I saw Gimbel in this melee and the crowd of men chasing and I stood there and he put his hand out and he had a gun in his hand.

Q You stood where? A In the driveway at 287.

Q And as he went by you what did he do? A Put his gun out, but he did not say anything to me.

30 Q Did he touch you? A Just lightly.

Q And then what did he do? A He ran to the front of the house and I also ran to the front of the house. The crowd of men was chasing him. He ran from the driveway of Mrs. Sammis' and Maurer made an attempt to stop him.

Q You mean Eddie Maurer? A Yes.

40 Q Was he there? A He made an attempt to stop him. I could not say if he was at the driveway, but as I got to the front of the house.

*Alice M. Welling, direct.*

Q Now, may I interrupt you? Now, will you confine your testimony, if you will, to what the defendant did in relation—in connection with Bohrer? A Who, Bohrer?

Q Yes. A He proceeded down the street to the truck.

Q The defendant? A Yes, this young man— 10  
to the truck and it appeared that Bohrer tried to stop him from going to the truck and he turned and shot Bohrer. He fell backwards to the grass there.

Q Who fell backwards? A Mr. Bohrer.

Q And then where did Mr. Bohrer go? A He fell backwards.

Q He fell backwards? A Yes, and Gimbel went away with the truck.

Q I show you a gun, Exhibit S. 20, and ask 20  
you if that looks like the gun you saw in the hands of Gimbel? A Yes, I remember it was black.

Q And how many shots did you see the defendant fire? A Two. There were two more fired after the shooting, but I do not know who fired those, but I saw him fire two.

Q After the truck started you heard two more? A I heard two more, yes.

Q But before the truck started? A There 30  
were two.

Q Now, how many shots did this defendant fire at Bohrer? A One.

Cross examination waived.

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*Nicholas Marrone, direct.*

NICHOLAS MARRONE, sworn in behalf of the State.

*Direct examination by Mr. Smith:*

10 Q You are the man that runs the Nutley Taxi Company? A Yes.

Q Where is your place of business? A 18 Washington avenue.

Q Nutley? A Yes.

Q Now, on January 16th, did you see Mr. Ferraro, who was just on the witness stand? A Yes.

Q Did Mr. Ferraro say something to you in your place of business that day? A Yes.

20 Q About what time of the day was it? A About one o'clock.

Q Now, after—where were you when he spoke to you? A I was lying down.

Q Now, when he spoke to you, what did you do? A I got up.

Q You got up? A Yes.

Q And where did you go to? A I come out and he told me—somebody wanted a cab.

Q Now, if you see the man who wanted a cab here will you indicate him? A Yes.

30 Q Where is he? A Right between the officers.

The Court: Indicating the defendant?

Mr. Smith: Indicating the defendant.

40 Q All right, now. Tell us what happened after you got up and went in the room and this boy was there? A Why, I got up and went out in the taxi office and I met this defendant and I asked him, "Where do you want to go?"

*Nicholas Marrone, direct.*

he said, "To Belleville." So we both walked outside and he was walking over toward the car in front of my place that was my brother's car and I said, "Not that car, this is the car on this side."

Q Won't you speak louder? I cannot hear you. A I walked out in the office from the back room and I asked this defendant, "Where do you want to go." and he said, "To Belleville," so we both went out the door and he goes for a car out in front of the place that was my brother's car, so I told him not that car, I told him over on the side here, so he come over on the side with me and he got in the back way; he opened the door himself and I got in the front. Do you want me to go ahead? 10

Q Yes. What happened after you two got in the car? A Well, I got in the front and as I was taking my keys out of my pocket to put in the switch I heard somebody say, "Stick them up," in back of me, and I seen this fellow Lewis come up the street with a gun in his hand. I thought he was a maniac or something. A few kids chasing him, and a couple more men, so Leighton said, "Stick them up." 20

Q That is Patrolman Leighton of the Belleville police? A Patrolman Leighton. 30

Q Do you know where he came from? A Why, no. I just heard him from the back.

Q All right. Go on. A So I goes ahead and I didn't make no move at all. So by that time this Lewis got up there, and Peck, and they all started hollering, "stick them up. Stick them up." So I gets off on the left-hand side of the street, on the left-hand side of the car, and this Patrolman Peck—so Peck searched me. So they started pushing me and shoving me and 40

*Nicholas Marrone, cross.*

they got us in the car and they brought us down to police headquarters.

Q You didn't see what Leighton did with the defendant, did you? A No, sir.

Q I show you Exhibit S. 16 and ask you if that shows your car in about the same position as it was that morning on Hancox avenue? A  
10 Yes, sir.

Q Now, is Hancox avenue a dead street going east? A Well, it is as far as down as the oil works.

Q As far as the oil works. So to go to Belleville in your car if you were to back it out of Washington avenue and then go south on Washington avenue, you would go to Belleville? A  
20 Yes.

*Cross examination by Mr. Bernhard.*

Q Mr. Marrone, is your office within the limits of or is it on the Nutley side? A It is on the Nutley side, but right near the Belleville line.

Q Is your office or was your office in January on the right-hand or the easterly side of Washington avenue? A It is on the east side of  
30 Washington avenue across from the car house.

Q And the car to which you have referred was headed toward Nutley, was it not? A No, sir. It was headed east on Hancox avenue.

Q It was in from Washington avenue? A Yes, sir.

Q And Belleville, then, would be in a southerly direction from your office? A From the south side.

Q Mr. Gimbel in reply to your question said that he wanted to go to Belleville, did he not? A  
40 Yes, sir.

*William Brown, direct.*

Q Do you know on what street the Belleville police station is located in Belleville? A On the east side of Washington avenue.

Q That is the same avenue on which your office is located? A Yes, sir.

Q And then when he said he wanted to go to Belleville, that would be in the direction of the police station, would it not? A Yes, sir. 10

*Re-direct examination by Mr. Smith.*

Q Did Gimbel say to you where he wanted you to take him in Belleville? A No, sir.

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WILLIAM BROWN, sworn in behalf of the State. 20

*Direct examination by Mr. Smith.*

Q You are the Chief of Police in Nutley, are you not, Mr. Brown? A Yes, sir.

Q On the 16th of January of this year did you have occasion to go to the vicinity of the Federal Leather Works on River road or Main street, Nutley? A Yes, sir.

Q Did you see a car parked there in the roadway? A Yes, sir. 30

Q What was it parked near? A Parked opposite the Federal Leather driveway on River road facing north.

Q What kind of car was it? A Dodge business butcher truck.

Q What was done with the car? A I drove it to police headquarters in Nutley.

Q I show you two pictures, Exhibits S. 17 and S. 18 for identification, and ask you if 40

*Elmer Leighton, direct.*

these are pictures of that car, and is the car as shown in the pictures in about the same position as it was when you drove it from the point you have indicated to the Nutley police station.

A Yes, sir.

10 Cross examination waived.

Mr. Smith: I offer these in evidence now.

The Court: Let them be marked.

(The photographs previously marked Exhibits S. 17 and S. 18 for identification are received in evidence and marked Exhibits S. 17 and S. 18, respectively.)

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20 ELMER LEIGHTON, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Officer, on the 16th of January of this year, were you connected with the Belleville police department? A I was.

Q What was your rank that day? A Patrolman.

30 Q What is your rank now? A Sergeant.

Q You have been promoted since the 16th to Sergeancy? A Yes, sir.

Q Were you at your police headquarters around 12:30 or 12:45, between 12:00 and 1:00, on the 16th of January? A Not at the police headquarters. I was reporting to work.

Q Will you tell us what you did from the time you started to report for work on that day?

A Why, it was about 12:50. I parked my machine out opposite the Town Hall, and I got

40

*Elmer Leighton, direct.*

ready to go in the police headquarters to report, and I heard the alarm sound at that time in front of the Town Hall. It is a police alarm. So, I got out of the machine and my attention was called in back of me. I looked across the street there. They were putting a fellow in Dr. Flynn's office. So I went over there and tried to get a statement off him, but he was too far gone to get it from him. 10

Mr. Bernhard: I object to that.

The Court: Don't tell us what happened there.

Mr. Bernhard: I ask that it be stricken out.

A (Continuing) So I came out of here and I met Mr. Peck. He explained everything to me. We got in my machine. We went north on Washington avenue to the Nutley line. 20

Q Where did you meet Mr. Peck? A Right out in front of the doctor's place; and we got to the Nutley line and Hancox avenue, we noticed—

Q On your way up with Mr. Peck what was Mr. Peck doing, on your ride up? A Well, he was watching along the avenue going up for the defendant. 30

Q And you were watching, were you, some other place? A The best I could; yes, sir.

Q All right. Continue. A So when we got to Hancox avenue I noticed—Mr. Peck noticed Gimbel. He said, "There he is." So we stopped the machine as quick as possible, got out.

Q Who got out of your machine first? A I guess I was out of it first. I went down to the left side of the taxicab; that is, on the north 40

*Elmer Leighton, direct.*

side of Hancox avenue; and then crossed back over to the right-hand side of the cab, and when I went to the door there I noticed Gimbel in there.

Q Where was he? Where was he sitting?

10 A Well, he was crouched forward like that (indicating) with his hands in his pocket. So when I looked in I seen the gun and I grabbed him and pulled him out, took the gun off him.

Q What was he doing if anything, when you opened the door and went to the door and saw him in there in the back of the car? A Well, it looked to me as if he was trying to get the gun out of his pocket, the way it looked to me.

20 Q Can you indicate by your arm the motion he was making? A I will show you. His coat pocket was up that way, and his hand was on it just in that manner (indicating).

Q I show you Exhibit S. 20 and ask you if you recognize, or can you tell us what gun that is. A That is a gun that Gimbel had. I have it marked there.

Q Is that the gun that you took away from him? A Yes.

Q You marked it? A Yes.

30 Q Will you with that gun show the Court and jury exactly how Gimbel had it when you saw him in the car? A My pocket isn't quite large enough, I don't think, but it was in that manner there (indicating). The butt of the pistol was in the pocket in that manner. His hand was on it.

40 Q Now then, when you got him there in the car like that, what did you do? A Well, the first thing I could do was to strike him. I couldn't get my own pistol.

*Elmer Leighton, direct.*

Q After you did that what did you do with the defendant? A I grabbed his pocket, and held on to the gun when it was in his pocket and dragged him out where I could get hold of it, and took the gun out the pocket and put it in mine.

Q When you got him out what did you do then with him in relation to the gun? A I took the gun out of his pocket. 10

Q When you got the gun from Gimbel, was the gun cocked or not? A Yes, sir.

Q Was the safety on or off? A The safety was off.

Q And the gun was cocked? A Yes, sir.

Q You mean, by saying the gun was cocked, that the gun was in the condition that I now show it to you, is that right? A Yes. 20

Mr. Bernhard: The question is leading and I object to it, your Honor.

The Court: I think it is very leading. He can explain what he means by the gun being cocked.

Mr. Smith: I withdraw the question.

Q Will you explain to the Court and jury what you mean by saying that the gun was cocked? A Well, the hammer was back in that position there, just as it is now (indicating). The safety was thrown off it. 30

Q Will you show us where the safety is on the gun, show the jury and the Court? A Right there (indicating).

Q Will you indicate how the safety goes on? Hold it up, sergeant. A That way (indicating).

Q Was the safety on or off? A In that manner (indicating). 40

*Elmer Leighton, direct.*

Q Off? A Yes.

Q Was the gun ready to be fired or not? A It was from the way I took it off him, yes.

Q It was all ready to be fired? A Yes.

Q What did you then do, sergeant, with the defendant? A Why, put him in my car and we  
10 took him down to police headquarters with Mr. Marrone.

Q While you were there at this car, did any other man come up to the car, sergeant? A First one I saw was after we had him out of the machine.

Q And while you were there at this car did any other man come up to the car? A First one I see was when we had him out of the machine.

Q Who did you see up there? A The manager of the A. & P.  
20

Q Did you see anybody else? A After him there was an officer came up. I think Officer Gross.

Q Do you know Lewis? A I do.

Q Did you see him up there, too? A Well, sometime after.

Q You were too busy with the defendant? A Yes.

Q You brought him down to police headquarters? A I did.  
30

Q That is, the Belleville police headquarters? A Yes.

Q I show you Exhibit S. 16 and ask you if that is the car and approximately the position the car was in on that day. A That is. This is about it.

Q And can you tell me which side of the rear seat Gimbel was in? A Why, he was on the right side. He was crouched on the right side.  
40

*William B. Sullivan, direct.*

*Cross examination by Mr. Bernhard.*

Q Officer, was this what is commonly known as a regular taxi or a car used as a taxi? A It was more of a limousine type taxi.

Q Windows on all sides? A Yes.

10

(S. 20 for identification offered in evidence and marked Exhibit S. 20.)

WILLIAM B. SULLIVAN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Sergeant, you are a member of the Belleville police department? A Yes. 20

Q On the 16th of January did you search a man named Gimbel? A I did.

Q Do you see him here in court? A Yes.

Q Will you indicate him from your chair? A Yes, sitting between the two officers.

Q Indicating the defendant? A Yes.

Q In searching the defendant did you find anything on him? A I found \$28.70 in change. 30

Q What was that in, if anything? A It was an old envelope—an old paper bag, an old A. & P. paper bag, and \$6 in bills. All one dollar bills and one wrist watch.

Q Now, I show you a wrist watch, Exhibit S. 23, and ask you if this looks like the wrist watch? A Yes.

Q I show you a paper bag, Exhibit S. 22, containing some bills and change and ask you if that is the paper bag. A This is the paper 40

*Thomas McBride, direct.*

bag. That was partly broken. That was in his pocket, and this is the bills and money.

Q Now, what else, if anything, in searching him, did you find? A An order for groceries.

Q An order for groceries? A A list.

Q A list? A Yes.

10 Q I show you a list. A piece of paper and ask you to tell us what that is. A He had a list of groceries.

Q Well, is that the list of groceries? A Yes.

Q Is that the list you refer to that you took off the defendant's person? A Yes.

Q How do you identify that list? A From the mark on the bottom here (indicating).

Q You put a mark on it, sergeant? A Yes.

20 (List of groceries marked Exhibit S. 25.)  
Cross examination waived.

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THOMAS McBRIDE, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

30 Q Officer, on January 16, this year, were you in the vicinity of 293 Stephens street? A Yes.

Q You are a member of the Belleville police department? A Yes.

Q And did you find anything in the vicinity of that house? A Yes, an empty shell.

Q An empty shell? A Yes.

Q Can you tell me if either of these two shells is the shell that you found. A Yes, this is.

40 Q What number shell is that? A 45.

*Sebastian Phillips, direct.*

Q You identify that as the shell you found?

A Yes.

Q How do you identify it? A By the mark on it.

(Shell offered in evidence and marked Exhibit S. 26.)

10

Cross examination waived.

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SEBASTIAN PHILLIPS, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q Mr. Phillips, you live in Belleville? A Yes.

20

Q Did you find something in the vicinity of 293 Stephens street? A Yes.

Q What is it you found? A I was in the cellar chopping wood and about five o'clock I go a little bit outside, I find a piece of stuff, I think it is a brass.

Q Now, I show you this piece of brass. Does that look like what you found? A Well, it looks a little like that. I thought it was a piece of cement or piece of brass.

30

Q Is this what it looks like? A Brass.

Q Did it look like that? A I do not know if he tried to shoot somebody. I do not know nothing about it.

Mr. Bernhard: I move that be stricken out.

The Court: Strike it out.

Q It looks like this? A Yes.

40

*Daniel Phillips, direct.*

Q Who did you give it to? A I picked it up and put it in my pocket.

Q And who did you give it to? A I keep it a couple of days in my pocket and give it to my son.

10 (Shell marked S. 27 for identification.)  
Cross examination waived.

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DANIEL PHILLIPS, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

20 Q Mr. Phillips, the last witness on the stand was your father, was he not? A Yes.

Q Did you receive from your father, a few days after January 16, a shell? A Yes.

Q I show you a shell marked S. 27 for identification and ask you whether or not that is the shell? A That is the one.

Q What did you do with the shell? A Well, I had it and I showed it to my friend and I was working with it and he told me—

30 The Court: Never mind. Tell us what you did.

The Witness: I brought it down to police headquarters.

Q Who did you give it to? A Chief Brex.

Q And it looked like this shell? A It looked like it.

Cross examination waived.

40

*Michael J. Flynn, direct.*

MICHAEL J. FLYNN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q You are the Chief of Police of Belleville, New Jersey? A Yes. 10

Q How long have you been connected with the Belleville Police Department? A Twenty-three years the first of this month.

Q How long have you been chief of that department? A The same time.

Q Twenty-three years? A Yes.

Q I show you Exhibit S. 27, chief, and ask you if you can identify S. 27 for identification, which is a shell? A Yes.

Q From whom did you receive it? A Officer McBride. 20

(Shell offered in evidence and marked Exhibit S. 27.)

Q Chief, I show you Exhibit S. 20 and ask you if you can tell us whose gun that is? Look it over? A This is the gun I received from Sergeant Leighton.

Q Now, when you received the gun, what did you do with it? A The gun was cocked and I worked it up and threw the five shells out of it. 30

Q You threw five shells out of it? A Five loaded shells.

Q Now, will you tell me if you can identify five of these six shells as the five shells that you took out of the gun? What caliber is that gun? A That is a forty-five. Those five here on the right (indicating). 40

*Michael J. Flynn, direct.*

Q You marked them, did you, when you took them out? A Yes, sir.

Q And these are the five shells that you took out of the Exhibit S. 20? A Yes.

10 Mr. Smith: I offer them in evidence as one exhibit, of course.

The Court: Let them be marked.

(The articles referred to are received in evidence and marked Exhibit S. 28.)

Q I show you Exhibit S. 24, chief, and ask you if you can tell us what you know about that gun? A Yes, got that from a man named Lewis at police headquarters.

20 Q You turned that gun over to me? A I turned that over to you.

Q What did you do with it when you received it yourself? A I put it in an envelope and kept it there and turned everything over to Detective Callahan.

Q Did you take anything out of this gun? A The one loaded shell.

Q Will you look at these shells? A And four empty ones.

30 Q And four empty ones? A Yes.

Q Will you tell me if those are the shells, the four empty shells and one loaded shell that you took out of Exhibit S. 24? A Those shells I did not mark, but they look very much like the shells. Those I did not mark.

Q They look like them? A They look like them, yes.

Q And you turned them over to Detective Callahan of the prosecutor's office? A Later on I did.

40

*Michael J. Flynn, cross—re-direct.*

Mr. Smith: I offer them in evidence.

The Court: Let them be marked as one exhibit.

(The articles referred to are received in evidence and marked Exhibit S. 29.)

Mr. Smith: That is all. If your Honor please, I would ask permission to recall the chief on another phase of the case. 10

The Court: All right.

*Cross examination by Mr. Bernhard.*

Q How long has the police station been located in its present situation at the corner of, I think—was it John and Washington avenue, is that right? A Seventeen years.

Q It is about a block away from the Erie railroad, is it? A Yes, sir. 20

Q Do John and Cortlandt streets run in the same direction? A No, sir.

Q Do John and Holmes streets run in the same direction? A John and Holmes streets.

Q Is Holmes street north or south of John street? A They both run the same.

Q In the same direction? A In the same direction.

Q Yes, sir. My question now is, chief, is Holmes street to the north of John street or is it to the south? A North. 30

Q How many blocks north? A Three.

*Re-direct examination by Mr. Smith.*

Q Chief, referring to Exhibit S. 25, an order for groceries and what not with the name on it Mrs. Todea, 136 Joralemon street, Belleville, can you tell us whether or not there are any build- 40

*Frank Lacoviac, direct.*

ings, houses at 136 Joralemon street, Belleville?

A Vacant lot.

*Re-cross examination by Mr. Bernhard.*

10 Q Chief, between the Erie railroad, intersection of the Erie railroad and Holmes street and the intersection of Holmes street and Cortlandt street on the easterly side of Holmes street are there any houses? A On the easterly side of Holmes street?

Q Yes. A Yes, sir.

Q So that between the Erie railroad and the store of the A. & P. located at Cortlandt and Holmes streets there are houses on the easterly side of Holmes street, are there? A Yes, sir. Easterly side?

20 Q Yes, easterly side? A Of Holmes street?

Q Yes, sir. A Cortlandt street.

Mr. Smith: You mean the northerly side.

Mr. Bernhard: Northerly side. I do mean the northerly side.

Q I did not mean to confuse you. It is on the northerly side. There are houses, are there?

30 A Yes, sir.

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FRANK LACOVIAIC, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

Q You are police sergeant of the Town of Belleville? A Patrolman.

40 Q Patrolman? A Yes.

*Frank Lacoviac, direct.*

Q On the 16th of January, were you a member of the Belleville police department? A Yes.

Q Do you know the defendant Gimbel? A Yes.

Q Will you indicate from your seat if he is here in the court room? A He is.

Q Where is he? A (Witness indicates.) 10

Mr. Smith: For the purpose of the record indicating the defendant Gimbel sitting between the two guards.

Any objection, counsel?

Mr. Bernhard: No.

Q Did you search the defendant Gimbel? A I searched his coat.

Q What coat do you refer to, the coat of his suit, or overcoat? A Overcoat. Grey overcoat. 20

Q And in searching his overcoat, did you find anything? A I found one bullet, steel jacketed bullet.

Q Where did you find that bullet? A Inside pocket.

Q You mean where? Up in here (indicating)? A Yes.

Q An upper inside pocket of his overcoat? A Yes.

Q Now, what calibre bullet was it? A I believe it was 45. 30

Q I show you a bullet and ask you if you can tell me whether or not that was the bullet you found in the inside overcoat pocket of the defendant? A Not this one.

Q Yes. A Not this one.

Q You are sure about that? A That is marked differently.

Q Now, I show you four bullets and see if the bullet you took out of his overcoat pocket is 40

*Michael J. Flynn—William J. Callahan, direct.*

among those four. You now have a bullet in your hand that you took out of his overcoat?

A Yes.

Q How do you identify it as the bullet? A I have my initials on it, F. L.

10 (Bullet marked Exhibit S. 30.)  
Cross examination waived.

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MICHAEL FLYNN, recalled in behalf of the State.

*Direct examination by Mr. Smith.*

20 Q Chief Flynn, I show you Exhibit S. 26, which contains four bullets, which you testified you took out of the gun, Exhibit S. 20, the gun of the defendant, and I show you another bullet and ask you whether or not you can identify this bullet as being the same bullet that came out of that gun? A Yes, that is.

Q Was what? A The other one was wrong.

30 Mr. Smith: Now, I offer in evidence as part of Exhibit S. 28, the bullet the chief has now referred to.

---

WILLIAM J. CALLAHAN, sworn in behalf of the State.

*Direct examination by Mr. Smith.*

40 Q You are a detective connected with the prosecutor's office of this county? A I am.

*William J. Callahan, direct.*

Q On January 16, this year, were you a detective connected with the prosecutor's office?

A I was.

Q Did you receive a call to proceed to Belleville, New Jersey, on that day? A I did.

Q About what time? A About 12:40, noon.

Q Did you proceed to Belleville Police Headquarters accompanied by anyone from the prosecutor's office? A Accompanied by Detective Afflitto of the prosecutor's office. 10

Q You are connected with the homicide bureau of the prosecutor's office, are you not?

A I am.

Q Assigned to that bureau? A I am.

Q Now, upon arriving at the Belleville police station, did you join in the investigation of an alleged murder that was reported to you? A I did. 20

Q And in the course of the investigation of the crime that you went there to investigate, did you meet the defendant Gimbel? A I did.

Q Will you indicate the defendant Gimbel from the chair? A Sitting between the two guards in the court room.

Mr. Smith: For the purpose of the record the defendant Gimbel between the two guards? 30

The Court: Yes.

Q Does this defendant have the same personal appearance as at the time you saw him?

A No.

Q What was his personal appearance when you saw him on the 16th of January? A He had a small black mustache and long sideboards; apparently the same clothes; dark clothes; and white shirt. 40

*William J. Callahan, direct.*

Q Now, among other things that you did in connection with your investigation of this crime, I show you a statement and ask you whether or not—

10 Mr. Bernhard: I object to the word  
“statement.”

Q I show you six pieces of paper and ask you if you can tell us what they are?

Mr. Bernhard: The papers speak for themselves. There is just one way to prove the papers.

The Court: Yes. I think that question is probably objectionable.

20 Q Well, while you were at Belleville police headquarters did you see the defendant and were you speaking to him? A I did.

Q And did you write down anything that the defendant said to you? A After a conversation, I reduced the conversation to writing.

Q Now, in what room was this done in the Belleville Police Headquarters? A In the judge's office on the second floor.

30 Q Will you just explain to the Court and jury who was in that room and where each person there was at the time you reduced to writing what the defendant said to you? A Gimbel was sitting in a chair to the left, Detective Affilitto was sitting opposite him, Chief Flynn was standing in front of him and I was sitting at the judge's desk.

Q The judge's office is right off the chief's office? A Yes.

40 Q Now, just tell us what you did there, if you will, please? A I asked the defendant in

*William J. Callahan, direct.*

regard to the happening of that crime. I told him I was up to take a statement from him and I wanted him to answer me in truth. He replied, "I will as I can remember it." I said, "That is what I want you to do." So he proceeded and I wrote the conversation.

Q Then as the defendant told you his story you put it down in writing, is that right? A I did, yes, sir. 10

Q Now, after it was all written by you, what if anything did you do with the writings? A I asked the defendant to sign it, which he did. I asked the chief to witness it, and I asked Detective Afflitto to witness it.

Q Before that was done, who, if anyone, read it? A The defendant read it. I read it to him aloud, he read it himself. 20

Q Did you first read the statement aloud to the defendant? A Yes.

Q Then after you read the statement aloud to the defendant what did you then do with the statement? A Handed it to him and permitted him to read it.

Q You gave it to the defendant and then he read it? A With Detective Afflitto looking over his shoulder.

Q Did the defendant read it to himself or did he read it out loud? A He read it aloud. 30

Q He read it aloud? A Yes.

Q Then after he read it aloud what was then done by the defendant with respect to the statement? A He then signed it.

Q Who was present when he made the statement which you wrote down? A Chief Flynn and Detective Afflitto.

Q And after the defendant signed the statement, did Chief Flynn and Detective Afflitto wit- 40

*William J. Callahan, direct.*

ness his signature to the statement? A Yes, sir; and signed their names as witnesses.

Q And did the defendant sign the last sheet or did he sign all of the sheets of the statement? A He signed all of the sheets of the statement.

10 Q How many sheets did the statement consist of? Do you know? A Six.

Q Are these the six sheets, the sheets that you have referred to? A Yes, sir.

Q Each sheet has the defendant's signature on it? A Yes, sir.

Q And each sheet has the signature of yourself, Chief Flynn and Detective Afflitto? A Yes, sir.

20 Mr. Smith: I ask to have the statement marked for identification.

(The papers referred to are marked Exhibit S. 31 for identification.)

Q About what time on the 16th was this that you wrote this statement? A About 11:30 in the evening.

30 Q Now, Mr. Callahan, after this statement was taken and signed, did you then have a conversation with the defendant? A I did.

Q That was after the statement had been signed? A After the statement had been taken and signed.

Q Will you please tell us what that conversation was?

Mr. Bernhard: I object. I ask for an opportunity to cross examine.

40 The Court: All right. You may cross examine on that.

*William J. Callahan, cross.*

*Cross examination by Mr. Bernhard.*

Q Who were there? A Chief Flynn and Detective Afflitto.

Q How long was this conversation after the statement had been signed? A Immediately after. 10

Q The other persons who were there had left the room in the meantime, had they? A No, sir.

Q I understood you, Mr. Callahan, to say that just Chief Flynn and you and someone else were there? A Detective Afflitto.

Q Were they there before? A Those are the only three that were in the room at any time.

Q Did you reduce to writing the conversation that you held after this statement had been signed? A No, sir. 20

Mr. Bernhard: That's all.

The Court: Now, do you object to the question?

Mr. Bernhard: Yes, sir. I object to the question.

The Court: Why? 30

Mr. Bernhard: If your Honor please, it seems to me that you have a statement here which was made by the defendant at the time, apparently a comprehensive statement including everything that the statement then said, which was then made by the defendant. If it was not reduced to writing it must appear, must it not, that what was said subsequent to the written statement was not included in the written statement? In other 40

*William J. Callahan, cross.*

words, there may be no opportunity to assert an effective objection to something that was said orally which may or may not be prejudicial to the defendant.

10

The Court: I think I can take care of that phase of the objection if it is based only on that. It seems to me that the statement made by the defendant after the written statement is perfectly admissible assuming that the statement itself is admissible.

20

Mr. Bernhard: Yes, sir; but we want to leave ourselves in the position whereby we can protect the rights of the defendant as to anything, any statement that was made subsequent to what now appears to be a comprehensive written statement.

The Court: You do not contend merely because it was a statement made afterward that it is objectionable.

30

Mr. Bernhard. No, I do not. I am making my objection now for the purpose of protecting the defendant's interests.

The Court: The question is admissible providing it is confined to a conversation with the defendant or a statement by the defendant with reference to the death of the deceased named in this indictment.

Mr. Smith: It is, your Honor.

The Court: If the witness understands that it is confined to that. The question is what?

(The question is read by the stenographer as follows: Will you please tell us what that conversation was?)

40

The Court: With reference to the death of Bohrer. Does that meet your question?

*William J. Callahan, cross.*

Mr. Smith: No, if your Honor please, but I say to the Court that this conversation does not relate to anything other than the subject matter of this indictment.

The Court: And it is in accordance with the rulings that have heretofore been made on it? 10

Mr. Smith: Yes, your Honor.

The Court: Then it is perfectly all right:

*By the Court.*

Q All right. Go ahead, Mr. Callahan. A I asked the defendant what he intended to do if when he reached the Atlantic & Pacific store there had been people there making purchases. He said he had an order written for groceries with a false name and address on. He said, "I was going to give that to the manager and kind of delay him and in that time probably the people would leave." I said, "Well, who are you sending the order to?" He said some name and address. I don't know. 20

Q Now, at the time that you put down in writing what the defendant said to you did you know anything at that time about the existence of Exhibit S. 25? A No, I did not. 30

Q Why was it that you did not? A It was under lock and key with the money in the chief's office.

Q Now, from the time that you got there around one o'clock, until the time you took this defendant's statement around eleven o'clock, that night, what had you been doing? A When I arrived at Police Headquarters, I went to Detective Afflito in Headquarters to take some statements and went to the scene of the crime. 40

*James Afflitto, direct.*

Q So that all that time you were busy with your investigation? A Until about 5:30 that evening I went to headquarters.

Q And then did you continue to interview several witnesses? A I did, yes.

10 Q And it was not until eleven o'clock that you got down to the question of what the defendant would say in reference to this case, is that right? A That is right.

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JAMES AFFLITTO sworn in behalf of the State.

*Direct examination by Mr. Smith:*

20 Q You are a detective connected with the Prosecutor's office of this County, are you not? A I am.

Q And you are assigned to the Homicide Bureau of that office? A I am.

Q On January 16th, did you accompany Detective Callahan to Belleville pursuant to a call? A Yes, I did.

30 Q And you arrived there about what hour? A About one, or 1:05.

Q And then were you busy in the investigation you then had in hand from that time on until around eleven o'clock that night? A I was. I took statements from various witnesses.

Q I show you now—do you know the defendant? A I do.

Q Did you see him there at police headquarters that day? A I did.

40 Q Will you indicate him here in court? A Sitting between the two guards.

*James Afflitto, direct.*

Mr. Smith: Indicating the defendant Gimbel for the purpose of the record.

Q I show you now S. 31 for identification and ask you if you were present while that statement was being taken by Detective Callahan. A I was. 10

Q Where was it taken, please. A In the Judge's office at Belleville Police Headquarters.

Q Who was present? A Chief Brex, myself, Detective Callahan and the defendant.

Q And after it was taken did the defendant sign his name on each page of that? A He read it first.

Q Then did he sign his name to every page? A Yes.

Q And after he signed his name, did you then sign your name? A I then signed my name. 20

Q What did you do with respect to the defendant while he was reading it? A I was looking over his shoulder.

Q Now, after the statement was taken and reduced to writing, S. 31 for identification, did Detective Callahan, in your presence, have a conversation with this defendant? A He did.

Q And can you tell us the substance of that conversation? A Relative to some paper where an order for groceries were marked on and he asked the defendant what he intended to do with the paper in his hand and he said if there were any people in the store he intended to give it to the clerk. 30

Cross examination waived.

*Michael J. Flynn, recalled, direct.*

MICHAEL FLYNN recalled in behalf of the State:

*Direct examination by Mr. Smith:*

Q Chief, you advised the Prosecutor's office  
10 on January 16th, did you not—

Mr. Bernhard: Please do not lead. I object.

A Yes.

The Court: Well, it is leading.

Mr. Smith: I will reframe it.

Q Chief, did you notify the Prosecutor's office  
20 of this County of an alleged murder in Belleville on January 16th? A I had them notified through the Sergeant, yes.

Q Did then Detective Callahan and Detective Affitto of the prosecutor's office come to Belleville? A They did.

Q What time did you first see them there that day? A In the neighborhood of one-ten—1:15.

Q And the defendant was brought into headquarters about what time? A About 1:10; 1:05.  
30

Q Then the investigation continued, did it not? A Yes.

Q By your department and by the men of the prosecutor's office? A Yes.

Q Now, that evening was the defendant Gimbel interrogated by you or by Detective Callahan in your presence? A He was in the presence of the three of us.

Q In what room was that? A In the judge's  
40 office.

*Michael J. Flynn, recalled, direct.*

Q At about what time? A Well, between 11 and 11:30.

Q And what did Mr. Callahan do at that time? A Talked to this young man and wrote his statement out.

Q You were present? A Yes.

10

Q Who else? A Detective Afflitto.

Q I show you Exhibit S 31 for identification and tell us whether or not you can tell us if that was a statement written by Detective Callahan and given to him by the defendant Gimbel at that time. A Yes.

Q After Detective Callahan completed writing the statement what, if anything, did Detective Callahan do? A Why, he spoke to the young man with regard to a note—

Q No. Pardon me. You do not understand my question. Withdraw it. Did the defendant Gimbel read this statement. A Yes.

20

Q And did he sign it before or after he read it? A After he read it.

Q And then you signed each page, did you not? A Yes.

Q And the defendant signed each page? A Yes.

Q Detective Callahan and Detective Afflitto also signed each page? A Yes. Detective Callahan also read.

30

Q Who read it first, the defendant or Callahan? A Callahan.

Q Was it read out loud? A Read out loud.

Q That is, Detective Callahan read it out loud to the defendant and the defendant read it and after that it was then signed by the defendant, is that correct? A Yes.

Q After the statement was reduced to writing was there then a further conversation in your

40

*Michael J. Flynn, recalled, direct.*

presence between the defendant and Detective Callahan? A There was.

Q What was it? A In regard to a slip of paper.

Q Will you tell us what the conversation was? A Well, he asked him what he was going to do with it and he told him in case there was people  
10 in the store he was going to hold off a little while.

Q I refer now to Exhibit S. 25. Is that the piece of paper that you refer to? A Yes.

Q Did the defendant say anything about the name and address on the paper? A Detective Callahan asked him about the name and he said he did not know the name; he put any name on it.

Q What did he say with reference to the address, 136 Joralemon street. A That was what  
20 was on the paper.

Q And you previously testified that 136 Joralemon street are vacant lots, or is a vacant lot? A Vacant.

Cross examination waived.

Mr. Smith: I offer this statement in evidence.

Mr. Bernhard: I have not had an opportunity to read the paper.

30 The Court: You are entitled to that.

Recess from 11:28 until two o'clock P. M.

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*William J. Callahan, recalled, direct.*

AFTER RECESS

Mr. Smith: If the Court please, I overlooked asking Detective Callahan one question. With the Court's permission may I recall him?

The Court: Yes, sir. 10

WILLIAM J. CALLAHAN recalled in behalf of the State.

*Direct examination by Mr. Smth.*

Q Mr. Callahan, did you go to the home of the defendant? A I did.

Q When? A The following day, the 17th.

Q And there did you find anything in his room, in the room of the defendant? A I spoke to the defendant's father and asked permission to search— 20

Mr. Bernhard: I object.

Q When you went to his house whom did you meet? A His father.

Q Did you go and see the father about going to the defendant's room? A As a result of that conversation I went to the boy's room. 30

Q You went to the defendant's room? A Yes, sir.

Q Did you search that room? A I did.

Q I show you a box and ask you if you found that box in that room. Open it up. A Yes.

Q Where did you find this box? A In the drawer of his dresser.

Q What is it a box of? A A box of loaded forty-five cartridges. 40

*William J. Callahan, recalled, cross—re-direct.*

Q How many in the box? A Eighteen.

Mr. Smith: I offer those in evidence.

Mr. Bernhard: No objection.

(The articles referred to are received in evidence and marked Exhibit S. 32.)

10

*Cross examination by Mr. Bernhard.*

Q Mr. Callahan, what was the number where you went? A I am not sure. I think it was 46 New street, counsellor.

Q In Belleville? A In Belleville; yes, sir

Q Do you know the general location of 46 New street with reference to the corner of John and Washington avenue? A You mean in reference to distance?

20

Q Whether it is north or south or that corner east or west of it. A It is west of that corner. It is more a southwesterly direction, the A. & P. store.

Q And it is west of the Erie railroad? A It is west of the Erie railroad.

*Re-direct examination by Mr. Smith.*

30 Q Did you inquire from the defendant whether or not he was married or single? A Yes.

Q What did he say to you? A He said he was single.

40 Mr. Bernhard; Before you go into the question of the statement, Mr. Smith, I asked you yesterday if Mr. Bracken was here so that we could determine that distance. We measured it last night after

*Colloquy.*

the adjournment of court. Mr. Bracken said it was 312 feet, I think.

Mr. Smith: 325.

Mr. Bernhard: May that go on the record?

Mr. Smith: It is on Exhibit S. 1.

10

Mr. Bernhard: As being the distance between the store and the railroad track at the shanty, is that right?

Mr. Smith: That is correct, 325 feet.

If your Honor please, before we adjourned at noon recess the State offered in evidence the statement of the defendant Gimbel.

The Court: Is it objected to?

Mr. Bernhard: It is objected to. The Court gave me an opportunity to examine the statement so as to be prepared to offer any objections that might seem sound against its admission. I raise no point about it now. At that time the statement was not bound together. Since then a clip has been put in. I have no objection to the 1st, 2d, 3d, 4th and 5th pages. I have a very strenuous objection to the 6th page. I submit it to your Honor to read upon my objection.

20

The Court: I have already read it.

30

Mr. Bernhard: Upon my objection that it is immaterial and irrelevant and it cannot possibly have any relation to the charge upon which the defendant is now being tried. So as not to defeat the purpose of my objection, if the matter is to be argued I desire to have it argued in camera, or at any rate outside the presence of the jury.

Mr. Smith: I certainly desire to argue this question. I submit that the entire

40

*Colloquy.*

statement is evidential and I would like to be heard, and I submit to the Court that the statement with the last page is proper and should be admitted.

The Court: I will hear the argument. The jury may be excused.

10

(The jury retires.)

(Counsel argue.)

The Court: I denied the admission of the statement as it was. Now you reoffer the statement exclusive of the last paragraph beginning with the words, "I have carried," do you?

20

Mr. Smith: I still leave the statement before your Honor with the offer of it being admitted, which I understand your Honor will not permit.

The Court: Which offer I refuse.

Mr. Smith: Unless there is something done with respect to the last paragraph.

The Court: I refuse to admit it the way it is. Do I understand you reoffer it now, just for the purpose of the record? Do you reoffer it exclusive of the last paragraph?

30

Mr. Smith: Yes.

The Court: I will admit it. Now it is simply this if counsel wants to agree to having it taken out by having a paper pasted over it, that is all right, or do you want to have this one line which is admissible, copied on a piece of paper and attached to the last page?

40

Mr. Smith: Your Honor, I believe we should have that particular page attached

*Colloquy.*

on account of the proof as it stands before the jury that there were six pages, and also on account of the signatures at the end of it.

Mr. Bernhard: The mechanics of the situation can be very easily solved. Cut it out and then repaste. Cut out the deleted part and repaste the signature onto the first line. 10

Mr. Smith: Your Honor, I certainly object to the statement being mutilated. It may be at some future time I will want to introduce that particular statement. There is still another—I do not think the State should be asked to in any way have the actual instrument changed or altered or destroyed or mutilated. 20

The Court: If this part is excluded, as it is excluded, it ought to be excluded in such a way that so far as the statement is concerned when it reaches the jury room it is really excluded.

Mr. Smith: Of course the Court so ruled and that is my entire purpose.

The Court: Exactly. It is just a matter of determining upon a method of procedure and mechanics in the way in which it can be done. Well, I think we can settle that by the time the case goes to the jury, as far as that is concerned. It is now admitted with the exception of the last paragraph and may be read to the jury exclusive of that if you want it. 30

Mr. Smith: If your Honor please, may I understand? Is this line, the last line on page six, that is not excluded?

The Court: The last line? 40

*Colloquy.*

Mr. Smith: Yes, sir.

The Court: No. That is admissible. I will admit that. Do you know what that line is, Mr. Bernhard?

10 Mr. Bernhard: Perfectly admissible and I have no objection.

Mr. Smith (addressing the stenographer) Will you mark it?

Mr. Bernhard: Of course, it is being marked with the rulings of the Court controlling.

20 The Court: It is admitted in evidence under the conditions that I prescribed, and I said to the Prosecutor—I don't know whether you heard it or not—that before it physically went to the jury we would take care of that last page.

Mr. Bernhard: Yes, I heard that.

(The statement heretofore marked Exhibit S. 31 for identification is received in evidence and marked Exhibit S. 31.)

(The jury returns to the jury box.)

30 Mr. Smith: Now, if your Honor please, I understand that the statement is now marked and permitted in evidence with the exception of the last paragraph on page six.

The Court: That is correct.

Mr. Smith: That has been excluded by your Honor. May I proceed now to read it to the jury?

The Court: Yes, you may read it with the exception of the last paragraph, excepting the last line.

40

*Colloquy.*

(Mr. Smith reads Exhibit S. 31 to the jury.)

## STATE RESTS.

Mr. Bernhard: The defendant waives his opening and calls as his first witness Charles E. Gimbel. 10

Mr. Smith: I have not any desire to state that the defense must necessarily under the law, open to this jury, but I do feel that the State is entitled to know what the defense may be and we absolutely do not know at this time. The State is certainly entitled to have the traverse joined and the defense stated. I think the Court also for its guidance, and the jury are entitled to know what the defense relies upon, too. 20

Mr. Bernhard: I believe in this case there is a plea of not guilty and the right and prerogative of the defense—

The Court: I believe it is not mandatory.

Mr. Smith: It may be that if the defense does not state what the defense is, it may be embarrassing to the jury. For the State to meet a case, we do not have to— 30

The Court: Well, of course, the State will have all the time it needs to meet the case of the defense by way of rebuttal.

Mr. Smith: Of course, but I do not desire to embarrass the Court and jury by any delay.

The Court: It seems to me the matter of opening is a matter of right on the part of the defendant and a matter of demand. 40

*Charles E. Gimbel, direct.*

I will permit the defendant to waive his opening.

---

10 CHARLES E. GIMBEL, sworn in behalf of the defendant.

*Direct examination by Mr. Bernhard.*

Q You reside where? A 46 New street, Belleville, New Jersey.

Q And is William Gimbel, the defendant, your son? A He is.

Q How old is he? A He was twenty last August.

20 Q How long have you lived at your present address? A About six years.

Q Do you know where your son has been living for the past six years? A At home.

Q With you? A Yes.

Cross examination waived.

DEFENDANT RESTS.

30 Adjourned until tomorrow, Friday, March 7, 1930, at ten o'clock A. M.

40

*Charge to Jury.*

### CHARGE TO JURY.

The Court thereupon charged the jury as follows:

VAN RIPER, J.:

Gentlemen of the jury, it is the province of the jury to decide the facts in the case in accordance with the law as charged to them by the Court. It is the province of the Court to charge you as to the law in a case. It is your duty as jurors to accept the law as charged to you by the Court as being a correct statement of the law. 10

This defendant, like all defendants in criminal cases, comes into court presumed to be innocent. That presumption of innocence continues throughout the case until the State has proven to you the guilt of the defendant beyond a reasonable doubt. 20

The burden of proof is always upon the shoulders of the State. That burden never shifts, and the burden is to prove to you the guilt of the defendant beyond a reasonable doubt.

By reasonable doubt in law is not meant any mere possible or imaginary doubt. As you may well conceive, everything connected with human affairs is susceptible of some possible or imaginary doubt; but by a reasonable doubt is meant such a doubt that, after a consideration of all the evidence in the case, the minds of the jurors are left in such a state that they cannot say to a moral certainty that they have an abiding conviction as to the truth of the charge. In other words, if after a consideration of all the evidence in the case you are not morally certain 40

*Charge to Jury.*

as to the truth of the charge, you have a reasonable doubt; and if you have a reasonable doubt as to the guilt of the defendant he is entitled to the benefit of that doubt by a verdict of acquittal. Of course, if after a consideration of all the evidence you are satisfied beyond a reasonable doubt as to the guilt of the defendant, then

10 he should be convicted.

This defendant is presented here on an indictment. Of course, the fact that the grand jury has found an indictment in a case is not evidence of guilt. It is merely a step in the machinery so that the defendant may be placed on trial before a jury such as yourselves.

He is on trial here on an indictment which charges that he did on January 16, 1930, in the

20 Town of Belleville, kill and murder Paul Bohrer. The State alleges, and the testimony in the case is to the effect that the defendant committed a robbery in the grocery store of the A. & P. on Holmes street or Cortlandt street, whichever street it was in Belleville, that he ran out of that store and was being pursued, and that in the course of his flight he shot and killed Paul Bohrer. Now, the law of this State says with reference to a killing which is murder committed

30 in the perpetration of a robbery, the following:

“Murder which shall be perpetrated by means of poison, or by laying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, robbery, rape or sodomy, shall be murder in the first degree.”

If you believe the testimony of the witnesses for the State, Gentlemen of the Jury—and that

40 testimony is uncontradicted—then you must come

*Charge to Jury.*

to the conclusion that this defendant committed a robbery in the grocery store of the A. & P. and that while he was attempting to escape from his pursuers, who were pursuing him as a result of that robbery, he shot and killed the deceased Paul Bohrer. I charge you now as a matter of law that if he killed Paul Bohrer while he was attempting to escape from the perpetration of this robbery, that is murder, and it is murder in the first degree. 10

Now, your province in this case is a very simple one, and I do not say that at all belittling the significance of the case. The case itself is of the utmost importance because it involves the greatest of all things, a human life. I say your province is simple because there does not seem to be any difficulty in determining the true state of facts as they existed on the day in question. The testimony of the State's witnesses, as I said a moment ago, has been uncontradicted; and from the viewpoint of finding out and determining for your own satisfaction just what the truth is as to what happened there that day, it ought to be a very simple question to determine just what the truth is, because there has been an abundance of witnesses who have testified to the various events that took place during the day. 20 30

The defendant has not taken the stand, gentlemen. Under our law the defendant cannot be compelled to take the witness stand in his own behalf. However, the defendant, while not compellable, is competent to be a witness in his own behalf, but his failure to do so, to take the stand, raises no presumption of his guilt, nor should it be considered as prejudicial in respect to your determination as to whether or 40

*Charge to Jury.*

not you should attach to your verdict a recommendation of life imprisonment in case you find him guilty. However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises  
10 a strong presumption that he cannot truthfully deny those facts.

In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State's witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away and in  
20 the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.

Now, in a case of this kind the jury has two provinces. The first is, of course, to determine the guilt or innocence of the defendant; and the second is, in case you determine his guilt, to fix the penalty. It is the one kind of criminal case in this State where the jury has the right to fix the penalty, being limited, of course, to a choice  
30 of two penalties. Our law says that every person convicted of murder in the first degree shall suffer death unless the jury shall by their verdict and as a part thereof, upon and after a consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. In other words, Gentlemen of the Jury, if you find this defendant guilty of murder in the first degree, then you must decide whether or not that  
40 verdict shall carry with it the penalty of death

*Exceptions to Charge.*

or whether it shall carry with it the penalty of life imprisonment. That is a matter that is solely and entirely within the discretion of this jury. That is a responsibility that is solely and entirely the responsibility of this jury. And the law says that they shall arrive at that judgment, which is their judgment and their responsibility, upon and after a consideration of all the evidence in this case. 10

So you see you have two provinces, first to determine the guilt or innocence of the defendant; and if you find him guilty of murder in the first degree, then to determine what the penalty will be. If you should return a verdict simply of guilty of murder in the first degree the death penalty would be imposed. If you should return a verdict of guilty of murder in the first degree with a recommendation of life imprisonment, a penalty of life imprisonment and no greater penalty could be imposed. So if you find the defendant guilty of murder in the first degree you will designate by your verdict in the manner in which I have just indicated that penalty which you desire to have imposed. 20

(The jury retires.)

Defendant's counsel prays an exception to the Court's denial of each and every request to charge except so far as they are charged. 30

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,  
Judge.

Defendant's counsel prays a general exception to the charge of the Court. 40

*Defendant's Requests to Charge.*

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

WALTER D. VAN RIPER,  
Judge.

10 The defendant respectfully requests the Court to charge the jury:

1. The killing by a person who was attempting to escape along a public street from the store in which he committed the offense of robbery, from one who attempts to hold such person, is not murder in the first degree unless it was the result of a premeditated design, deliberation and intent to kill.

20 2. If the jury find that the accused had committed a robbery or felonious larceny, and after completion of his felonious act was seeking to escape by running away upon the public streets, the death of a person seeking to capture him would not be the killing of a human being engaged in the commission of the felony of robbery.

30 3. If the jury find that the accused had completed the felonious offense of robbery and was no longer engaged in that offense at the time of the shooting of the deceased, that the jury under such circumstances must first find that the accused deliberately and with premeditation shot the deceased, before they can convict the accused of murder in the first degree.

4. If the jury find that the homicide was committed without premeditation, deliberation and design, then the defendant cannot be convicted of murder in the first degree.

*Defendant's Requests to Charge.*

5. If, upon the evidence presented, the jury find that the defendant had completed his felonious act and was running away at the time of the shooting and that he was not then engaged in the commission of a robbery, and that he did not intend to kill, then he is not guilty of murder in the first degree, but of murder in the second degree. 10

6. If, after the crime of robbery, as a felony, defendant was escaping and the shooting occurred not in the commission of a felony, but upon the public streets and after the crime had been completed, the defendant would be only guilty of murder in the first degree, if he shot with premeditation and deliberation.

7. If the jury find from the evidence in the case that the accused did not intend to shoot the deceased, the defendant cannot be found guilty of murder in the first degree. 20

8. That the failure of the defendant to be sworn as a witness cannot be considered by the jury as prejudicial to the defendant in reaching a verdict as to whether that verdict should not carry with it a recommendation of life imprisonment. 30

9. That the failure of the defendant to take the stand as a witness in his own behalf cannot be considered by the jury in reaching a conclusion as to whether or not they should make life imprisonment a part of their verdict in the event that they find the defendant guilty as charged. 40

*Exhibit S. 31.*

COPY OF EXHIBIT S. 31.

Belleville, N. J.  
January 16, 1930.

State *v.* William Gimbel.

10 Voluntary statement of William Gimbel, 20  
years old.  
Residence, 46 New St., Belleville.

Statement taken by Det. William Callahan,  
Det. James Afflito and Chief M. Flynn.

I have worked at the Mono Service Company at  
Verona Ave. and Oration St., Newark, N. J. for  
the past two years on a printing machine. I  
work on time work and earn from \$20 to \$30 per  
week.

20 On Wednesday, January 15, 1930, I took the  
afternoon off, and just hung around Ferrara's  
bowling alleys, between twelve and one o'clock at  
night. I went home and went to bed. About  
6:30 this morning I got out of bed and left my  
home about seven o'clock a. m. and went to a  
lunch wagon which is located on Washington  
Ave. near Verona Ave., Newark. I stayed there  
until about 7:30 to 8:00 a. m. when I came to  
30 Belleville and hung around Williams St., Belle-  
ville, from about 8:30 to 9:00 a. m. When I left  
I went to Cortlandt St. and wasted time by  
walking around Cortlandt St., Holmes St.,  
Stephens St. and Joralemon St. At about 11:25  
a. m. I went back to my home at 46 New St.  
and changed my clothes. I had a gun with me all  
morning and when I changed my clothes I took  
the gun from one suit and put it in the pocket of  
the suit I had put on. I was carrying this gun  
with the intention of sticking up the A. & P.  
40 store at the corner of Cortland and Holmes Sts.,

*Exhibit S. 31.*

Belleville. After changing my clothes I left home about 12:15 noon and went directly to the A. & P. store at Cortlandt and Holmes Sts. I was carrying the gun in my right overcoat pocket. When I reached the corner of Cortlandt and Holmes Sts. I went into the store. As I entered the

10

Michael Flynn, James Afflito, William J. Callahan, Pros. Office. Signed, William Gimbel.

store, there was a girl in there, but as I came in the door she came out. When the girl left I was inside the door. The manager was standing at the right of the door fixing the window. I drew the gun out and pointed it at him and said hands up or something like that. I told him to hand over the money he had and also to empty the cash register. He went to the cash register and opened the drawer and said there. I said take it out. I meant the money but he tried to detach the drawer, but I told him to take the money out, not the drawer. He took the money out of the drawer and put it in a paper bag as I told him to do. I then told him to empty his pockets. He took two bills from his pocket and threw them on the counter. I then told him to take the wrist watch off his wrist. This he did and put it into the bag which held the money. He then closed the bag and handed it to me. I told the manager and his clerk to go into the back room. This they did.

20

30

As they were going into the back room I noticed one or two small rooms and I ordered them to get into one of them, which they did. He pulled the door of this room closed but it came opened again. I then went to a back door and waited a minute to be sure they did not come out.

40

*Exhibit S. 31.*

I then left by the back door which led me into the back yard and from the yard I went into Holmes St. I started to

Michael J. Flynn, James Afflito, William J. Callahan, Pros. Office. Signed, William Gimbel.

10 walk down Holmes St. to Stephens St., and started to run over Stephens St. to a small candy store. I intended to call a taxicab from there. As I was closing the door of the store I saw the fellow from the A. & P. on the corner of Holmes St. I thought he saw me go into the store and he turned back toward Cortlandt St. on Holmes St. I ran right out of the store. I ran over Stephens St. to an open space. I went about half way over the lot toward Cortlandt St., when  
20 I thought there would be a lot of people on Cortlandt St. as there are some factories there. I then turned and returned to Stephens St. I went a short way on Stephens St. and I noticed there was some people following me. I noticed a driveway that runs from Stephens St. to Cortlandt St. I went through this to Cortlandt St. I ran past some men playing ball on Cortlandt St. and went to Joralemon St. As I was running down this street I heard some shots fired. I  
30 turned down Joralemon St. to Stephens St. and over Stephens St. I was about half way down the street when a butcher truck came down the street with a couple of fellows on it. One of them was the fellow in white from the A. & P. store. That is what drew my attention to the truck. I went in between some houses and ran from one back yard to another. I noticed men running from one yard to another. I came through one yard and I noticed they were close to me. I came to the front  
40

*Exhibit S. 31.*

Michael J. Flynn, James Afflito, William J. Callahan, Pros. Office. Signed William Gimbel.

to a house on Cortlandt when I noticed a woman standing at the front door. I ran past her into the house and out the back way, and ran back to Stephens St. When I reached Stephens St. I noticed the truck. I ran over to it and went around it. I then noticed two fellows around the side of the truck. I thought the driver would be on the truck as I intended to make him drive it if he had been there, but when I saw he wasn't on the truck I came around to the front where the wheel was. One fellow dove under the truck and another started running toward me. I jumped on the running board. I swung around with the gun in my hand and I fired one shot. I don't know if it hit anyone or not. I then jumped behind the wheel of the truck and drove it to the Federal Leather Company on Main St. a distance of about a mile or two. I left the truck and went to the office of this company and asked the girl there to call a cab. This she did. I then heard a commotion outside of the office. I saw the door open and the fellow from the A. & P. come in and I stepped behind the door, and as he came in I ran out and went over the back lots to Washington Ave. I went around the corner. I passed a cab station and did not see any cabs, so I went into one store for a telephone and someone was using it so I asked a man where I could a cab.

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He replied

Michael J. Flynn, James Afflito, William J. Callahan, Pros. Office. Signed, William Gimbel.

next door. I passed by the place next door and went into a store on the corner and asked where

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*Exhibit S. 31.*

I could get a cab. He also said next door. I then went next door again and noticed Nutley Cab on the window. I went into the store and they did not seem to know what I wanted, but someone woke some fellow up. He was a cab driver. He said all right and started out the door and  
 10 came to the corner and I got into a Cadillac sedan and took my derby hat off and sat in the back seat. The driver had not started the car when an officer came to the car and opened the door and took the gun from me while I was in the car. He then took me out of the cab and took me to police headquarters at Belleville.

From the time I held up the A. & P. store to the time the officer took me out of the car I know I fired two shots from my gun. I recall where the  
 20 second shot was fired but I don't recall where the first one was fired.

The gun I am being shown by Det. William Callahan and Det. James Afflito in the presence of Chief M. Flynn is the gun I used in the stick up at the A. & P. store and also the gun I fired the two shots from while making my get-away. I marked an X on the barrel of the gun as my identification mark. This gun was stolen by me from a man who is a boss at the Mono Company  
 30 where I worked.

I took it from a large holster.

Michael J. Flynn, James Afflito, William Callahan, Pros. Office. Signed, William Gimbel.

the early part of December, 1929. I don't recall having seen any of the men who chased me today.

Signed, William Gimbel.

Witnesses, Michael J. Flynn, James Afflito, Det. William Callahan, Pros. Office.

*Certificate of Stenographer.*ESSEX COUNTY COURT OF OYER  
AND TERMINER.

STATE OF NEW JERSEY,

*vs.*

WILLIAM GIMBEL.

*On Indict-  
ment No. 588,  
Dec. T., 1929,  
for  
Murder.*

10

I, JOACHIM WICHMANN, an official stenographer of the Essex County Court of Oyer and Terminer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by myself and Harold T. Cook, also an official stenographer connected with the above court, at the trial of the above mentioned case, which trial was held before the Honorable Walter D. Van Riper, presiding Judge of the Essex County Court of Oyer and Terminer, in and for the County of Essex, and a jury, beginning on March 3, 1930, and ending on March 7, 1930, at Newark, New Jersey.

20

JOACHIM WICHMANN.

April 21, 1930.

30

40

*Certificate of Trial Judge.*ESSEX COUNTY COURT OF OYER  
AND TERMINER.

10	STATE OF NEW JERSEY,  <i>vs.</i>  WILLIAM GIMBEL.	}	<i>On Indict- ment No. 588, Dec. T., 1929, for Murder.</i>
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I, WALTER D. VAN RIPER, presiding Judge of the Essex County Court of Oyer and Terminer 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 there-  
 20 in with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

WALTER D. VAN RIPER,  
Judge.

April 21, 1930.

30

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*Assignments of Error.***ASSIGNMENTS OF ERROR.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> WILLIAM GIMBEL, <i>Plaintiff-in-Error.</i>	}	<i>On Indictment for Murder.</i>	10
		<i>On Writ of Error.</i>	
		<i>Assignments of Error.</i>	

Afterwards, to wit, on the return day of said Writ of Error before our Judge of our Court of Errors and Appeals, in the last resort, at Trenton, comes said William Gimbel, the plaintiff-in-error, by John A. Bernhard and Joseph M. Degan, his attorneys, and says that: In the record and proceedings aforesaid, and also in the giving of judgment as aforesaid, there is manifest error in this, to wit:

1. Because the Court erroneously refused to charge the first request of the defendant, which read as follows:

“The killing by a person who was attempting to escape along a public street from the store in which he committed the offense of robbery, from one who attempts to hold such person, is not murder in the first degree unless it was the result of a premeditated design, deliberation, and intent to kill.”

*Assignments of Error.*

2. Because the Court erroneously refused to charge the second request of the defendant, which read as follows:

10            “If the jury find that the accused had committed a robbery or felonious larceny, and after completion of his felonious act was seeking to escape by running away upon the public streets, the death of a person seeking to capture him would not be the killing of a human being engaged in the commission of the felony of robbery.”

3. Because the Court erroneously refused to charge the third request of the defendant which read as follows:

20            “If the jury find that the accused had completed the felonious offense of robbery and was no longer engaged in that offense at the time of the shooting of the deceased, that the jury under such circumstances must first find that the accused deliberately and with premeditation, shot the deceased, before they can convict the accused of murder in the first degree.”

4. Because the Court erroneously refused to charge the fourth request of the defendant, which read as follows:

30            “If the jury find that the homicide was committed without premeditation, deliberation and design, then the defendant cannot be convicted of murder in the first degree.”

5. Because the Court erroneously refused to charge the fifth request of the defendant, which read as follows:

40            “If, upon the evidence presented, the jury find that the defendant had completed his felonious act and was running away at the

*Assignments of Error.*

time of the shooting, and that he was not then engaged in the commission of a robbery, and that he did not intend to kill, then he is not guilty of murder in the first degree, but of murder in the second degree."

6. Because the Court erroneously refused to charge the sixth request of the defendant, which read as follows: 10

"If, after the crime of robbery, as a felony, defendant was escaping and the shooting occurred, not in the commission of a felony, but upon the public streets and after the crime had been completed, the defendant would be only guilty of murder in the first degree, if he shot with premeditation and deliberation."

7. Because the Court erroneously refused to charge the seventh request of the defendant which read as follows: 20

"If the jury find from the evidence in the case that the accused did not intend to shoot the deceased, the defendant cannot be found guilty of murder in the first degree."

8. Because the Court erroneously refused to charge the eighth request of the defendant which read as follows: 30

"That the failure of the defendant to be sworn as a witness cannot be considered by the jury as prejudicial to the defendant in reaching a verdict as to whether that verdict should not carry with it a recommendation of like imprisonment."

*Assignments of Error.*

9. Because the Court erroneously refused to charge the ninth request of the defendant which read as follows:

10           “That the failure of the defendant to take the stand as a witness in his own behalf cannot be considered by the jury in reaching a conclusion as to whether or not they should make life imprisonment a part of their verdict in the event that they find the defendant guilty as charged.”

10. Because the Court erroneously charged the jury as follows:

20           “In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State’s witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.”

30                           JOHN A. BERNHARD,  
                                  JOSEPH M. DEGNAN,  
                                  Attorneys for and of Counsel  
                                  with Plaintiff-in-Error.

*Specification of Causes.***SPECIFICATION OF CAUSES.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>On</i>	10
<i>vs.</i>		<i>Indictment</i>	
WILLIAM GIMBEL, <i>Plaintiff-in-Error.</i>	}	<i>for Murder</i>	
		<i>on Writ of</i>	
		<i>Error.</i>	
		<i>Specification</i>	
		<i>of Causes.</i>	

And the said plaintiff-in-error, William Gimbel, by John A. Bernhard and Joseph M. Degnan, attorneys, hereby specifies the causes in the record relied upon for relief in reversion in the aforesaid cause as follows: 20

1. Because the Court erroneously refused to charge the first request of the defendant which read as follows:

“The killing by a person who was attempting to escape along a public street from the store in which he committed the offense of robbery, from one who attempts to hold such person, is not murder in the first degree unless it was the result of a premeditated design, deliberation and intent to kill.” 30

2. Because the Court erroneously refused to charge the second request of the defendant which read as follows:

“If the jury find that the accused had committed a robbery or felonious larceny, and after completion of his felonious act was seeking to escape by running away upon the 40

*Specification of Causes.*

public streets, the death of a person seeking to capture him would not be the killing of a human being engaged in the commission of the felony of robbery."

- 10 3. Because the Court erroneously refused to charge the third request of the defendant which read as follows:

"If the jury find that the accused had completed the felonious offense of robbery and was no longer engaged in that offense at the time of the shooting of the deceased, that the jury under such circumstances must first find that the accused deliberately and with premeditation shot the deceased, before they can convict the accused of murder in the first degree."

- 20 4. Because the Court erroneously refused to charge the fourth request of the defendant which read as follows:

"If the jury find that the homicide was committed without premeditation, deliberation and design, then the defendant cannot be convicted of murder in the first degree."

- 30 5. Because the Court erroneously refused to charge the fifth request of the defendant which read as follows:

"If, upon the evidence presented, the jury find that the defendant had completed his felonious act and was running away at the time of the shooting and that he was not then engaged in the commission of a robbery, and that he did not intend to kill, then he is not guilty of murder in the first degree, but of murder in the second degree."

*Specification of Causes.*

6. Because the Court erroneously refused to charge the sixth request of the defendant which read as follows:

“If, after the crime of robbery, as a felony, defendant was escaping and the shooting occurred not in the commission of a felony, but upon the public streets and after the crime had been completed, the defendant would be only guilty of murder in the first degree, if he shot with premeditation and deliberation.” 10

7. Because the Court erroneously refused to charge the seventh request of the defendant which read as follows:

“If the jury find from the evidence in the case that the accused did not intend to shoot the deceased, the defendant cannot be found guilty of murder in the first degree.” 20

8. Because the Court erroneously refused to charge the eighth request of the defendant which read as follows:

“That the failure of the defendant to be sworn as a witness cannot be considered by the jury as prejudicial to the defendant in reaching a verdict as to whether that verdict should not carry with it a recommendation of life imprisonment.” 30

9. Because the Court erroneously refused to charge the ninth request of the defendant which read as follows:

“That the failure of the defendant to take the stand as a witness in his own behalf cannot be considered by the jury in reaching a conclusion as to whether or not they should make life imprisonment a part of their ver- 40

*Specification of Causes.*

dict in the event that they find the defendant guilty as charged.”

10. Because the Court erroneously charged the jury as follows:

10 “In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State’s witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.”

20

JOHN A. BERNHARD,  
JOSEPH M. DEGNAN,  
Attorneys for and of Counsel  
with Plaintiff-in-Error.

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## New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	<i>On Indictment for Murder.</i>
<i>vs.</i>		
WILLIAM GIMBEL, <i>Plaintiff-in-Error.</i>	}	<i>On Writ, &amp;c.</i>

### BRIEF FOR PLAINTIFF-IN-ERROR.

#### Facts.

The indictment charges that William Gimbel "on the 16th day of January, 1930, at the Town of Belleville, County of Essex aforesaid, did wilfully, feloniously and of his malice aforethought, kill and murder Paul Bohrer, 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."

Gimbel is twenty years of age. For two years prior to the offense he had been employed by the Mono Service Company, Belleville, New Jersey. He did not work that day. At about 12:15 noon, he walked into an Atlantic & Pacific Tea store at Cortlandt and Holmes streets, Belleville, New Jersey. During the morning he had surveyed the neighborhood. His statement on this phase of the case which was not disputed, is:

"As I entered the store, there was a girl in there, but as I came in the door she came out. When the girl left I was inside the door. The manager was standing at the right of the door fixing the window. I drew the gun out and pointed it at him and said hands up or something like that. I told him to hand over the money he had and also to empty the cash register. He went to the

cash register and opened the drawer and said there. I said take it out. I meant the money but he tried to detach the drawer, but I told him to take the money out, not the drawer. He took the money out of the drawer and put it in a paper bag as I told him to do. I then told him to empty his pockets. He took two bills from his pocket and threw them on the counter. I then told him to take the wrist watch off his wrist. This he did and put it into the bag which held the money. He then closed the bag and handed it to me. I told the manager and his clerk to go into the back room. This they did.

As they were going into the back room I noticed one or two small rooms and I ordered them to get into one of them, which they did. He pulled the door of this room closed but it came opened again. I then went to a back door and waited a minute to be sure they did not come out. I then left by the back door which led me into the back yard and from the yard I went into Holmes St."

He then attempted to escape.

"I started to walk down Holmes St. to Stephens St., and started to run over Stephens St. to a small candy store. I intended to call a taxicab from there. As I was closing the door of the store I saw the fellow come from the A. & P. on the corner of Holmes St. I thought he saw me go into the store and he turned back toward Cortlandt St. on Holmes St. I ran right out of the store. I ran over Stephens St. to an open space. I went about half way over the lot toward Cortlandt St. when I thought there would be a lot of people on Cortlandt St. as there are some factories there. I then turned and returned to Stephens St. I went a short way on Stephens St. and I noticed there was some people following me. I noticed a driveway that runs from Stephens St. to Cortlandt St. I went

though this to Cortlandt St. I ran past some men playing ball on Cortlandt St. and went to Joralemon St. As I was running down this street I heard some shots fired. I turned down Joralemon St. to Stephens St. and over Stephens St. I was about half way down the street when a butcher truck came down the street with a couple of fellows on it. One of them was the fellow in white from the A. & P. store. That is what drew my attention to the truck. I went in between some houses and ran from one back yard to another. I noticed men running from one yard to another. I came through one yard and I noticed they were closed to me. I came to the front, to a house on Cortlandt when I noticed a woman standing at the front door. I ran past her into the house and out the back way, and ran back to Stephens St. When I reached Stephens St. I noticed the truck. I ran over to it and went around it. I then noticed two fellows around the side of the truck. I thought the driver would be on the truck as I intended to make him drive it if he had been there, but when I saw he wasn't on the truck I came around to the front where the wheel was. One fellow dove under the truck and another started running toward me. I jumped on the running board. I swung around with the gun in my hand and I fired one shot. I don't know if it hit anyone or not. I then jumped behind the wheel of the truck and drove it to the Federal Leather Company on Main St. a distance of about a mile or two. I left the truck and went to the office of his company and asked the girl there to call a cab. This she did. I then heard a commotion outside of the office. I saw the door open and the fellow from the A. & P. come in and I stepped behind the door, and as he came in I ran out and went over the back lots to Washington Ave. I went around the corner. I passed a cab station and did not see any cabs, so I went into one store for a telephone and

someone was using it so I asked a man where I could a cab. He replied next door. I passed by the place next door and went into a store on the corner and asked where I could get a cab. He also said next door. I then went next door again and noticed Nutley Cab on the window. I went into the store and they did not seem to know what I wanted, but someone woke some fellow up. He was a cab driver. He said all right and started out the door and came to the corner and I got into a Cadillac sedan and took my derby hat off and sat in the back seat. The driver had not started the car when an officer came to the car and opened the door and took the gun from me while I was in the car. He then took me out of the cab and took me to police headquarters at Belleville."

The evidence does not materially differ from Gimbel's statement except as to what occurred at about the time of his attempted capture by the deceased Bohrer and another man named Maurer. As to that, Gimbel says:

"I then noticed two fellows around the side of the truck. I thought the driver would be on the truck as I intended to make him drive it if he had been there, but when I saw he wasn't on the truck I came around to the front where the wheel was. One fellow dove under the truck and another started running toward me. I jumped on the running board. I swung around with the gun in my hand and I fired one shot. I don't know if it hit anyone or not."

The evidence tended strongly to prove that Gimbel fired two shots, one of which struck Bohrer and the other Maurer. Question to Reider:

"Q And how many shots do you know did Gimbel fire at Bohrer? A He fired one shot" (p. 98, l. 13).

This testimony was corroborated by other witnesses.

While the proofs show that Maurer was shot, the result of the wound was not disclosed. Defendant contended that the consequences of the injury to Maurer was not relevant or material to the crime charged in the indictment.

Gimbel did not testify. The jury returned this verdict:

“We find the defendant, William Gimbel guilty of murder in the first degree.”

upon which verdict judgment was formally entered.

This appeal rests upon:

- (a) Exceptions to the charge of the Court, and
- (b) Refusals to charge defendant's request.

#### A.

#### Charge of the Court.

It is contended that the Court erred in two instructions as follows:

1. “The defendant has not taken the stand, gentlemen. Under our law the defendant cannot be compelled to take the witness stand in his own behalf. However, the defendant, while not compellable, is competent to be a witness in his own behalf, but his failure to do so, to take the stand, raises no presumption of his guilt, *nor should it be considered as prejudicial in respect to your determination as to whether or not you should attach to your verdict a recommendation of life imprisonment in case you find him guilty.* However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts.”

The italicized words, we assume, were in response to the defendant's request. However, as this same point is involved in the refusal of the Court to charge specifically as requested, our contention will be in the argument on that refusal. Assignment 10, Specifications 10.

2. "In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State's witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree."

This instruction, it is contended, was erroneous and highly prejudicial to the defendant, in view of the evidence in the case, as reflected in Gimbel's statement.

"One fellow dove under the truck and another started running towards me. I jumped on the running board. I swung around with the gun in my hand and I fired one shot. I don't know if it hit anyone or not. I then jumped behind the wheel of the truck and drove it to the Federal Leather Company on Main Street, a distance of about a mile or two."

The jury was justified in finding that this "one shot" killed Bohrer. There is no proof that the deceased was a witness to the robbery nor is there any evidence that Bohrer knew that a robbery had been committed. Moreover, the State did not contend that Mr. Bohrer was an officer of the law with power to arrest. From these circumstances, the jury, under a proper charge would have been entitled to determine the question of degree of guilt. We realize, of

course, that the law presumes that a person intends the natural and probable consequences of his act, but restricted in their considerations of all the evidence, the jury was not permitted, because of the limited charge, to determine whether the natural and probable consequences of the shot was to kill the deceased. While the evidence to which I have referred is silent upon the question of intent, it is an element of proof which the jury should have had the right to consider in reaching a conclusion as to the degree of guilt. The instructions of the Court, therefore, were tantamount to a direction of guilty in the first degree. The guilt, therefore as found by the jury, must have been predicated upon the Court's charge; viz

“In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty,” 2 supra

despite the charge of the indictment that the defendant wilfully, feloniously and of his malice aforethought, killed and murdered Paul Bohrer.

This contention may seem to be met by *State v. Turco*, 99 Law, 96. That decision was carefully analyzed before the request was submitted, while the indictment, there, was for murder, it appeared that the inception of the offense was a conspiracy to rob and that the murder was committed in an attempt to escape with the stolen merchandise. The similarity between the *Turco* and the instant case, is that both defendants had the booty in their possession at the time of the crime. The killing in the *Turco* case, however, occurred at the locus of the robbery. The distinction between that and the instant case is clear from the evidence that the crime there had

not been completed. The trial judge in the Turco case charged:

“That the effect of the statute, which provides that if, in an attempt to commit robbery, one man, or any number of men, kill another, even though they did not start with that purpose in mind but with the single purpose of robbery, either act in such circumstances, under the law, is denominated murder.”

This court on appeal held:

“This was correct, the facts of the case clearly brought the homicide within the statutory description.”

but the fact is, in the present case the Court did not charge the jury that if they had any reasonable doubt the crime of robbery had been concluded at the time of the shooting that they could then determine the degree of guilt. We think that the Turco decision is not specifically dispositive of this issue.

The same point is involved in assignments and specifications one, two, three, four, five, six and seven respectively:

1. “The killing by a person who was attempting to escape along a public street from the store in which he committed the offense of robbery, from one who attempts to hold such person, is not murder in the first degree unless it was the result of a premeditated design, deliberation and intent to kill.

2. If the jury find that the accused had committed a robbery or felonious larceny, and after completion of his felonious act was seeking to escape by running away upon the public streets, the death of a person seeking to capture him would not be the killing of a human being engaged in the commission of the felony of robbery.

3. If the jury find that the accused had completed the felonious offense of robbery and was no longer engaged in that offense at the time of the shooting of the deceased, that the jury under such circumstances must first find that the accused deliberately and with premeditation, shot the deceased, before they can convict the accused of murder in the first degree.

4. If the jury find that the homicide was committed without premeditation, deliberation and design, then the defendant cannot be convicted of murder in the first degree.

5. If, upon the evidence presented, the jury find that the defendant had completed his felonious act and was running away at the time of the shooting, and that he was not then engaged in the commission of a robbery, and that he did not intend to kill, then he is not guilty of murder in the first degree, but of murder in the second degree.

6. If, after the crime of robbery, as a felony, defendant was escaping and the shooting occurred, not in the commission of a felony, but upon the public streets and after the crime had been completed, the defendant would be only guilty of murder in the first degree, if he shot with premeditation and deliberation.

7. If the jury find from the evidence in the case that the accused did not intend to shoot the deceased, the defendant cannot be found guilty of murder in the first degree."

By refusing to charge these requests, the Court in effect, instructed the jury that the circumstances of the shooting were a part of the *res gestae* of the robbery regardless of the lapse of time and the distance which separated the two acts. If the jury had been permitted to find that the robbery had been completed at the time Gimbel fired "one shot" then the Court would have been under a legal duty to charge that the

defendant could not be convicted of murder in the first degree because the elements of wilfulness, premeditation and deliberation necessary to such a crime, dissociated from robbery were not indicated to the jury by the Court. Because the Court therefore, found as a fact that the robbery had been completed, defendant suffered from prejudicial error.

Because the facts in *State v. Vertchey*, 77 Law 640, seem to be somewhat similar, we call it to the attention of the Court, even though it may not sustain our contention.

## B.

### The refusal of the Court to charge Specifications and Assignments, 8 and 9.

8. "That the failure of the defendant to be sworn as a witness cannot be considered by the jury as prejudicial to the defendant in reaching a verdict as to whether that verdict should not carry with it a recommendation of life imprisonment.

9. That the failure of the defendant to take the stand as a witness in his own behalf cannot be considered by the jury in reaching a conclusion as to whether or not they should make life imprisonment a part of their verdict in the event that they find the defendant guilty as charged."

As has been stated, defendant was not sworn as a witness. The Court charged:

"The defendant has not taken the stand, gentlemen. Under our law the defendant cannot be compelled to take the witness stand in his own behalf. However, the defendant, while not compellable, is competent to be a witness in his own behalf, but his failure to do so, to take the stand, raises no presumption of his guilt, nor should it be considered as prejudicial in respect to your

determination as to whether or not you should attach to your verdict a recommendation of life imprisonment in case you find him guilty. However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts."

It is not contended that the Court did not respond to these requests but that the instruction as charged was nullified by the statement.

"However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts."

The rule as to the failure of the defendant to take the stand is well settled. It will be noted that the language of the request is a departure from the well settled principle. The request was intended to inform the jury that the failure of the defendant to be sworn as a witness could not be considered prejudicial to his interest as to whether the verdict of the jury should not carry with it a recommendation of life imprisonment. In other words, the Court's instruction to the jury so limited the request that the jury had the right to conclude that as the defendant did not under oath, deny the accusations against him, his failure so to do, raised a strong presumption that he could not truthfully deny those facts. Since the act of 1919:

"Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by their verdict, and as a part thereof, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and

no greater punishment shall be imposed; and every person convicted of murder in the second degree shall suffer imprisonment at hard labor not exceeding thirty years."

the jury has had the right "to recommend imprisonment at hard labor for life" as a part of their verdict.

In *State v. Martin*, 92 Law, 436, this Court held that under the Act of 1916:

"The facts upon which the recommendation rests have no necessary connection with the recommendation, and an instruction to the jury that they may consider the testimony, to which their attention is specifically called, tending to show the character of the crime and also its effect upon society if a recommendation be made, in determining the question of recommendation is not a permissible comment on evidence, for the recommendation is discretionary and requires no consideration of the facts upon which the conviction is based."

If then, under the Act of 1916, the jury had discretionary right to recommend life imprisonment without support in the evidence, as that right does not rest on the finding of the fact, then it seems to us that the Act of 1919 conversely permits the jury to attach a recommendation to their verdict with or without evidence to support such a recommendation. The instruction by the trial Court, however, confined the request to the extent indicated, viz:

"However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts."

While the failure of the defendant to be sworn as a witness should not be considered prejudicial in respect to their determination as to whether

they should attach a recommendation of life imprisonment to their verdict, they had no right to do so, as instructed if defendant's failure to be sworn raised a strong presumption in the mind of the jury that he could not truthfully deny the facts. A fortiori because he did not, under oath, deny the accusations against him, the jury was precluded from exercising their discretion to affix life imprisonment as a part of their verdict.

Moreover, the legal rule in this State, as we understand it, is that an erroneous instruction to the jury is not cured, although the Court also correctly charged the law, because the jury are not to be allowed to judge which is right between two conflicting statements of the law. *State v. Clayton*, 83 Law, 673.

"So, if in this case, the Court, having charged in substance, the request, subsequently, by further instructions, detracted from the request by charging as the law of the case an incorrect rule, the effect of which was to minimize the application of the legal principle requested, the accused suffered a manifest wrong."

That covers our contention.

Assuming that the Court charged the proper principles of law with respect to the presumption which would arise from the fact that the defendant was not sworn as a witness, the subsequent instruction last above quoted detracted from the request to such an extent that the accused suffered manifest wrong.

The situation may be viewed from another angle. If the intent of the statute of 1919 was to endow the jury, regardless of any evidence in the case, with the right to exercise their discretion as to whether they should include life im-

prisonment as a part of their verdict then it seems to us, the intent of that statute was to afford the defendant all of the benefits which could be derived from it. One of the benefits as has just been observed flows from the right of the jury to determine the penalty. The defendant was entitled to a proper charge as to the principle of reasonable doubt. The propriety of the charge on that phase of the law is not challenged. In completing the charge as to reasonable doubt, the Court said:

“If you have a reasonable doubt as to the guilt of the defendant, he is entitled to the benefit of that doubt by a verdict of acquittal.”

This rule of reasonable doubt applies to all the evidence in the case. The fact that the defendant did not take the stand is evident from the record. The jury may have had some reasonable doubt as to whether the defendant's failure to submit himself as a witness did not raise the presumption that he could not truthfully deny the accusation made against him. His failure to appear as a witness may have been considered as prejudicial by the jury in their deliberation of all the evidence in the case. It was for the purpose of avoiding just such a development that the request was presented. By limiting the charge in the manner indicated, the Court deprived the defendant of the advantage of the principle of reasonable doubt as applied to the failure of the defendant to take the stand. In other words, it is our contention that the principle of reasonable doubt applies equally to the negative as well as the affirmative evidence. If the Court had extended the principle of reasonable doubt to the failure of the defendant to take the stand, he would have then received the full benefit of the statute of 1919.

For these reasons it is respectfully requested that the judgment should be reversed.

All of which is respectfully submitted this 6th day of May 1930.

JOHN A. BERNHARD,  
JOSEPH M. DEGNAN,  
Attorneys and of Counsel with  
Plaintiff-in-Error.

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The following is a list of the  
names of the persons who  
were present at the meeting  
held on the 12th of the month  
of 1880.

JOHN A. BROWN,  
WILLIAM A. BROWN,  
and others to be named  
hereinafter.

## New Jersey Court of Errors and Appeals

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

*vs.*

WILLIAM GIMBEL,  
*Plaintiff-in-Error.*

*On Error.*

### BRIEF FOR THE STATE.

The plaintiff-in-error, William Gimbel (hereinafter called the defendant), was tried and convicted in the December term, 1929, of the Essex County Court of Oyer and Terminer, of murder in the first degree for the murder of Paul Bohrer on January 16, 1930, in the Town of Belleville. There was no recommendation for life imprisonment and, accordingly, the defendant was sentenced to death.

The trial consumed five days, during which the State called thirty-five witnesses, among whom were many actual eye witnesses to the shooting resulting in the death of Paul Bohrer. The defendant did not take the stand and no defense was offered in his behalf. From the beginning of the taking of the testimony to the conclusion thereof, there was not a single ruling made by the Court against an objection interposed by the defendant, and there is not a single exception in the entire record on the admissibility of evidence.

This appeal was taken solely on the exceptions taken by the defendant to the charge of the Court and to the refusal of the Court to charge certain requests of the defendant.

There is no argument presented by the defendant as to the verdict being against the weight of the evidence but in order properly to argue the exceptions taken to the charge, it will be necessary to set forth a brief summary statement of the evidence produced at the trial.

### Statement of Facts.

William Gimbel was twenty years old and resided at 46 New street, Belleville. He had been employed at the Mono Service Company of Newark, New Jersey for two years prior to the date of the crime. On January 15, 1930, he went to work in the morning, but did not work in the afternoon nor did he work at all on Thursday, January 16, 1930.

Some time in the early part of December, 1929, the defendant had stolen from the factory of the Mono Service Company, a 38-calibre revolver, and on January 16, 1930, he left his house about 6:30 in the morning carrying on his person the gun fully loaded. He was carrying this gun with the intention of robbing the Atlantic & Pacific Tea Store at the corner of Cortland street and Holmes street, Belleville. About 11:25 A. M. he went back to his home at 46 New street and changed his clothes. He took the gun from the suit that he had been wearing and put it in the pocket of the suit that he then put on. After he left the house, he was carrying the gun in his right overcoat pocket. The gun was fully loaded. (The facts so far stated were contained in the written confession of the defendant. Exhibit S. 31, Case, p. 176, *et seq.*).

From nine o'clock in the morning on January 16th, and continuing thence for about two hours, Gimbel was seen by the flagman at the Erie

Railroad crossing at Holmes street, Belleville, walking up and down the block between the railroad crossing and the A. & P. store (Case, p. 54). He entered the A. & P. store at about 12:45 P. M. At that time he had with him a bogus order for groceries which he had previously prepared. This list contained a fictitious name and address and he had prepared it to use in case other people should be in the store when he went in, in which case he intended to give it to the manager and thus obtain a delay until the people who might be in the store should leave (Case, p. 155, l. 15). In the store at the time were Edward Dzacovsky, the manager, and Frank Conklin, a clerk. As Gimbel came in a young lady customer was leaving. Dzacovsky, the manager, was near the front of the store arranging something in the window, and Conklin, a clerk, was in the rear of the store. When he came in the store, Gimbel had his hand in his right overcoat pocket. He then drew the gun and held it underneath Dzacovsky's nose, and said "Stick 'em up," and also "Make it snappy or I'll plug you full of leads." Dzacovsky then, under orders from Gimbel, went to the cash register and emptied the contents of the register on the counter, and placed the money in a bag and placed the bag on the counter. Gimbel then said, "You ought to have more cash than that," whereupon Dzacovsky replied, "That is all the cash I have just now," and Gimbel said, "I have been watching your store all morning. You should have more money than that." Gimbel then ordered Dzacovsky to turn around with his back to the counter and empty out his pockets on to the counter. During all this time the defendant held the gun in his right hand and pointed it at Dzacovsky. The defendant then ordered Dzacovsky to take off his wrist watch which he had on and place it on the

counter. During this time Conklin, who was Dzacovsky's helper, was standing in the rear of the store with his hands up in accordance with orders from Gimbel. After Gimbel had taken the money and the wrist watch, he ordered Dzacovsky and Conklin to the rear of the store, where he put them in a small toilet adjoining the store and then closed the door and told them that if they left within five minutes, he would "plug them full of lead" (Case, p. 64).

Gimbel made his escape through the back door of the store, and proceeded to run away. He then had in his possession the paper bag containing fifty-seven dollars and eighty-one cents, which was cash belonging to the A. & P. store, the wrist watch which he had taken from Dzacovsky, and the gun which he had used in the robbery. These were in his possession when he was arrested and were in evidence at the trial.

After Gimbel ran out of the A. & P. store he walked down Holmes street to Stevens street, which is the next block east. He then ran over <sup>the</sup> street to a small candy store where he intended to call a taxicab. As he entered the store for this purpose he saw Dzacovsky, who had then approached the corner of Holmes and Stevens streets. Thinking that he had been seen, Gimbel ran out of the store and across the street and started to run away. He ran through several streets and lots in the vicinity of the A. & P. store, the names of which it is unnecessary to repeat and during his flight he was pursued by Paul Bohrer (the deceased named in the indictment), Edward Maurer (who was also shot by the defendant), Dzacovsky, Daniel J. Peck, Alfred Del Grosso, Frank Reider and several others. Dzacovsky, during his pursuit of Gimbel, got on a Dodge delivery truck driven by Edward

Maurer. At the time Dzacovsky got on the truck, Paul Bohrer (deceased named in the indictment) was already on the truck, and these three gave chase. When the truck had proceeded north on Stevens street, passed Joralemon street, Dzacovsky saw Gimbel, the defendant, running through a driveway through the back yards and into the other block, which was Cortland street. Maurer stopped the truck, and Maurer, Bohrer and Dzacovsky got off the truck and Dzacovsky gave chase. The Dodge truck in the meantime was in Stevens street near the house known as No. 293 where the witness Helen Sammis lived (Case, p. 100).

After Gimbel had run from Stevens street through to Cortland street, he ran into the house No. 390 Cortland street, where the witness Bertha Schenk lived (Case, p. 98). At that time he had the revolver in his hand and asked Bertha Schenk to let him hide. Her baby was in the room in a crib. She became frightened, and the defendant ran out of the back door of her house through the rear yard and back eastward through the yards of the houses fronting on Stevens street. He then ran back to Stevens street through the driveway adjoining Mrs. Sammis' house. Bohrer and Maurer were standing near the Dodge truck. The defendant approached the truck, thinking the driver would be on the truck and intending to make the driver drive the truck away, and make his escape. (See his confession, Case, p. 179, l. 11.)

Edward Maurer was in the street near the truck and Paul Bohrer was in the street to the rear of the truck. Gimbel approached the front of the truck with his revolver in his hand. There was no one sitting on the truck at the time. Gimbel fired two shots, one of which

struck Edward Maurer, but under a ruling of the Court made at the request of the defendant, the witnesses were not allowed to state what happened to Maurer as a result of this shot. While Bohrer was around the rear of the truck Gimbel shot at him, the bullet entering the abdomen, passing backward and downward and to the right through vital organs and out of the body on the right side of the spine, as a result of which Paul Bohrer died.

The defendant then mounted the truck and continued his efforts to escape. He drove off through Belleville and turned into the River Road along the Passaic River, and abandoned the Dodge truck near the building of the Federal Leather Company at the northern boundary of Belleville. Dzacovsky and several others pursued him in another automobile, but lost sight of him for a while. Gimbel entered the office of the Federal Leather Company and asked the girl at the information desk to call a taxicab for him. While he was in the office, Dzacovsky entered, still in pursuit of the defendant. The defendant hid behind a door and as Dzacovsky came in, the defendant ran out again and continued his flight through the factory yards in the vicinity, and finally ran up to Washington avenue near Hancock street, which is just on the line between Belleville and Nutley. There he ran into an office and engaged a taxicab. The taxicab was then parked on Hancock street, facing ~~west~~ <sup>East</sup> at the corner of Washington avenue. The defendant got into the rear seat of the cab, and the driver, Nicholas Marrone, was in the driver's seat. At this moment, Officer Leighton, of the Belleville police force, proceeding north on Washington avenue in pursuit of the defendant with the witness Peck in a police automobile, saw the

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defendant sitting in the taxicab. Officer Leighton jumped out of the police car, ran over to the taxicab, and grabbed the defendant and placed him under arrest. As Leighton grabbed the defendant, the latter was making an effort to get his gun out of his right overcoat pocket. The witness, Leighton grabbed the pocket and held on to the gun. After he succeeded in getting the gun from the defendant he found that the safety of the gun was off, and that the gun was cocked. Gimbel was then placed under arrest, and on the same day made a written statement, which was admitted as evidence (Case, p. 176, *et seq.*).

When Gimbel was arrested, there was found on him the paper bag containing the money which he had taken from the A. & P. store, the wrist watch which he had taken from the witness Dzakovsky of the A & P store, and the gun, which he admitted having stolen from the Mono Service Company and with which he admitted having shot the deceased, Paul Bohrer.

It is, of course, the contention of the State that the murder was committed in the perpetration of a robbery and is, therefore, murder in the first degree.

The reading of the State of the Case will disclose the fact that the confession made by the defendant corresponds exactly with the stories related by the many eye witnesses to the series of events beginning with the preparation of the robbery and culminating in the arrest of the defendant. The defendant made no effort to deny or contradict any of the evidence presented against him, and bases his appeal in this case, as above stated, only on exceptions taken to the charge of the Court (Case, p. 169), and to ex-

ceptions taken to the refusal of the Court to charge certain requests of the defendant (Case, p. 174).

### A.

#### Charge of the Court.

The Court charged the jury the correct principles of law as to the burden of proof and the benefit of reasonable doubt. It then charged the jury the provisions of the Statute to the effect that a murder committed in the perpetration of a robbery is murder in the first degree.

The Court then charged as follows (Case, p. 170, l. 38):

“If you believe the testimony of the witnesses for the State, Gentlemen of the Jury—and that testimony is uncontradicted—then you must come to the conclusion that this defendant committed a robbery in the grocery store of the A. & P. and that while he was attempting to escape from his pursuers, who were pursuing him as a result of that robbery, he shot and killed the deceased, Paul Bohrer. I charge you now as a matter of law that if he killed Paul Bohrer while he was attempting to escape from the perpetration of this robbery, that is murder, and it is murder in the first degree.”

and later the Court charged on this point as follows (Case, p. 172, l. 12):

“In view of the testimony that this murder was committed in the perpetration of a robbery, the defendant is either guilty of murder in the first degree or he is not guilty. As I said to you a moment ago, if you believe the testimony of the State’s witnesses, which testimony is uncontradicted, that the defendant Gimbel held up and robbed this grocery store and ran away and in the course of being pursued shot and killed Paul Bohrer, he is guilty of murder in the first degree.”

The defendant contends that the Court thus removed from the jury the province of determining the intent of the defendant as bearing upon the degree of the murder of which he was guilty. Section 107 of the Crimes Act provides:

"Any person who, in committing, or attempting to commit, robbery, shall kill another, or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as shall be murder in the first degree, shall be guilty of murder."

It is submitted that the Court's charge was precisely in line with the law of this State as provided in the Statute above quoted pertaining to murders committed in the perpetration of a robbery and the decisions as to just exactly what constitutes the "perpetration of a robbery." In other words, the charge of the Court was correct because:

- (a) the period of escape is, under our law, a part of the robbery; and
- (b) the defendant killed Bohrer in an effort to escape after the robbery.

The first proposition was definitely settled in this court when Chancellor Walker voicing the unanimous opinion of the Court, decided the case of *State v. Turco* (99 N. J. L. 96).

In that case the facts were as follows:

On the night of June 13, 1921, the defendant, Turco, with ten others, came to Byram Township, Sussex County, with the intention of holding up and robbing a truck of the Sussex Print Works, and he, Turco, and the other conspirators, went to a point on the highway leading from Newton to Stanhope, and lay in wait until Tuesday morning, June 14th. The locality is known

as the "Cat Swamp" and is a lonely place. A truck of the print works, containing silk and copper rollers valued at upwards of \$9,000, left Newton and was proceeding to Passaic in charge of a driver and his helper, when six armed and masked men, including Turco, rushed from the underbrush, about six-thirty A. M., and at the point of their pistols, compelled the driver to stop. They took him and the helper from the truck and four of the men rushed them off the road and up the steep bank of a hill and into the woods, where they held them captive for several hours. After the two men had been removed from the truck the defendant, Turco, and one of the conspirators, took charge of the truck and drove it to an open space where they backed it off the road with the intention of turning around. While it was stationary, Albert Koster, the deceased, appeared, coming along the road riding a motorcycle on his way to work in Stanhope. Turco, the defendant, was at this time standing on the ground near the truck. He stepped out into the road with a pistol in his hand and ordered Koster to stop. He applied his brakes and made every effort to stop, and as he approached the defendant the motorcycle was moving slowly; but when he reached a point in front of the truck Turco fired his pistol at him. The first shot was apparently not fatal, and Turco then placed his left hand on Koster's shoulder, and bringing his motorcycle to a complete stop, fired at him twice, the last bullet passing through his heart and killing him. Immediately after the murder the other man, under the directions of Turco, drove the truck away in the direction of Easton.

The Court says in reference to the question as to whether or not the robbery was completed at the time Koster was shot (p. 102):

“The killing of Koster by Turco was clearly part of the *res gestae* of the robbery, which, in contemplation of law so far as the murder is concerned, was not completed. The purpose of Turco was clear. Koster had unintentionally come upon the robbers in his passage along the road to his work. Turco, the leader, undoubtedly believed that if Koster was allowed to pass and go on to the next town he would give the alarm, and he shot him in an attempt to conceal the crime for the time being and enable the robbers to make their escape unpursued.”

It is not considered necessary to argue the applicability to the instant case. The two cases are alike. Gimbel at the time of the killing of Bohrer was in possession of the loot which he had acquired as a result of the robbery. He was in a position of having been discovered and would undoubtedly have been apprehended shortly unless he made his escape. He shot Bohrer in order to get possession of the Dodge truck and thus effect his escape. He carried out this intention not only by shooting Bohrer, but by stealing the truck and fleeing in it.

It is respectfully submitted that the murder in this case was committed during the escape from the scene of the robbery for the purpose of preserving the loot and avoiding detection and that as a result it was actually and in the law committed during the perpetration of the robbery. It is further submitted that the Court's charge in this respect is a correct exposition of the law.

**B.**

The refusal of the Court to charge the 8th and 9th requests.

The trial court refused to charge any of the defendant's requests to charge except insofar as they were generally charged. The defendant has abandoned all his exceptions to the Court's refusal to charge excepting as to the 8th and 9th requests. The 8th request to charge is as follows:

“That the failure of the defendant to be sworn as a witness cannot be considered by the jury as prejudicial to the defendant in reaching a verdict as to whether that verdict should not carry with it a recommendation of life imprisonment.”

The 9th request to charge is as follows:

“That the failure of the defendant to take the stand as a witness in his own behalf cannot be considered by the jury in reaching a conclusion as to whether or not they should make life imprisonment a part of their verdict in the event that they find the defendant guilty as charged.”

These requests are practically identical and sought to obtain a charge from the Court to the jury, in effect, that the failure of the defendant to take the witness stand in his own behalf should not be considered prejudicial to the defendant by the jury in determining whether or not to attach to its verdict a recommendation of life imprisonment.

The defendant has offered no authority for this proposition nor has any been found in this State, but the trial court did charge the requests as is very frankly admitted in the defendant's

brief. It is expressed as follows in the Court's charge (Case, p. 171, l. 32):

"The defendant has not taken the stand, gentlemen. Under our law the defendant cannot be compelled to take the witness stand in his own behalf. However, the defendant, while not compellable, is competent to be a witness in his own behalf, but his failure to do so, to take the stand, raises no presumption of his guilt *nor should it be considered as prejudicial in respect to your determination as to whether or not you should attach to your verdict a recommendation of life imprisonment in case you find him guilty.* However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts." (Italics ours.)

The defendant does not contend that the Court did not charge as requested, but apparently contends that the instruction was nullified by reason of being followed with a statement of the law as to the presumption raised by the defendant's not taking the stand. In his brief on page 11 the defendant says as follows:

"It is not contended that the Court did not respond to these requests, but that the instruction as charged was nullified by the statement":

"However, if facts are testified to which are accusations against the defendant which he could by his oath deny, and he fails to take the stand in his own behalf, it raises a strong presumption that he cannot truthfully deny those facts."

In other words, the defendant takes no exception to the Court's charge as to the effect of the defendant's not taking the stand in his own behalf, and he admits that the Court complied with his request to charge the 8th and 9th

see ST vs Lennon.  
decided May 19 '30.  
no. 7042.  
not yet reported

requests above set forth, but on the other hand, claims that the effect of his requests was nullified.

It is difficult to understand in what respects the request was nullified, but whether it was or not the fact remains that the charge of the Court in this respect was a correct pronouncement of the law—assuming, of course, that the request was proper. The defendant's argument is, in effect, that his request did not receive proper emphasis. There is no principle of law which endows the defendant with the right to have any particular principles of law emphasized over any other principle of law.

Attention is also called to the defendant's contention that the jury had a right to make a recommendation of life imprisonment "regardless of any evidence in the case." The case of *State v. Martin* (92 L. 436) quoted by the defendant in his brief was decided in 1918 under the Act of 1916 which gave the jury such a prerogative, but the Act of 1919 (P. L. 1919, p. 303) expressly provided "that every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall, by their verdict, and as a part thereof, *upon and after the consideration of all the evidence*, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

The Court properly left to the jury the determination of guilt or innocence and also the determination as to whether they should or should not recommend life imprisonment, and the Court, very properly, did not comment on any specific features of the case which should

bear upon the latter determination. The jury attached no recommendation to their verdict. It is difficult to see upon what grounds they could have. No defense was interposed. The evidence against the defendant was clear, succinct and corroborated in every detail. He made a written confession of all the aspects of the crime which confession he neither denied nor attacked.

Not a single element was brought into the case upon which the defendant could reasonably base any plea for life imprisonment. The case disclosed a deliberately planned hold-up with a loaded gun, a desperate attempt to escape, the shooting of Edward Maurer during the escape (the fate of Maurer not having been admitted in evidence), the deliberate killing of Paul Bohrer and a renewed effort to escape in a stolen car.

It is respectfully submitted that the requests of the defendant were properly charged by the trial court.

It is respectfully urged, therefore, that the judgment of the Essex Court of Oyer and Terminer should be sustained.

Respectfully submitted,

JOSEPH L. SMITH,  
Prosecutor.

JOSEPH E. CONLON,  
Assistant Prosecutor.





