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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* vs. HARRY SCOTT, *Plaintiff-in-Error.*	*On Indictment for Murder.* *On Writ of Error to Essex County Oyer and Terminer.*

STATE OF CASE

J. VICTOR D'ALOIA,
Attorney for and of Counsel with
Plaintiff-in-Error.

JOSEPH L. SMITH,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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WRIT OF ERROR.

New Jersey, *ss.*

The State of New Jersey to Dallas Flannagan, Esquire, Judge of the (seal) Court of Common Pleas of the County of Essex, constituting the Court of Oyer and Terminer holden at Newark, in and for the County of Essex, of the term of September, in the year of our Lord, nineteen hundred and twenty-seven.

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

Witness, Edwin Robert Walker, Esquire, presiding Judge of our said Court of Errors and Ap-

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peals, at Trenton, the 12th day of November, in the year of our Lord one thousand nine hundred and twenty-seven.

JOSEPH F. S. FITZPATRICK,
Clerk.

J. Victor D'Aloia,
Elias A. Kanter,
Attorneys.

The within writ was presented in open court on the 14th day of November, 1927.

DALLAS FLANNAGAN,
Judge.

CERTIFICATE OF THE COURT.

State of New Jersey, } ss.
County of Essex. }

I, Dallas Flannagan, Judge of the Court of Quarter Sessions in and for Essex County New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the indictment, judgment record and proceedings had at the trial and all things touching and concerning the same as by the within writ to me directed, I am commanded.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said Court at Newark, N. J., this 2nd day of December, A. D. 1927.

DALLAS FLANNAGAN,
(seal) Judge of the Court of Quarter Sessions Essex County, New Jersey.

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State of New Jersey, } ss.
County of Essex. }

Be It Remembered, that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the first Tuesday in April, in the year of Our Lord one thousand nine hundred and twenty-seven, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Harry Friend, Walter J. Garrigal, Alexander Clark, William H. Martin, William J. Hodgkinson, Adrian R. Kristeller, Albin A. Lucius, Charles F. Conrad, Joseph E. Amorose, Asa Duckworth, Max Oppenheimer, Vito Verniero, Bernard Degnan, James A. Whalen, Henry Merritt, Matthias Stratton, C. Joseph Peabody, Morris Metsky, Edward S. Crain, George W. Fisher, Edward J. Quinn, Fred Dreitler, George L. Lang, good and lawful men of the said County of Essex, duly summoned and then and there duly sworn, and changed 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:

The Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath present that Harry Scott on the third day of July, in the year of our Lord one thousand nine hundred and twenty-seven, at the City of Newark in the County of Essex aforesaid did wilfully, feloniously and of his malice aforethought kill and murder Lorenza Robinson contrary to the form of the statute in such case made and provided, and against the

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peace of this State, the government and dignity of the same.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

And on the seventeenth day of September, A. D. nineteen hundred and twenty-seven, on which day the said indictment was presented by the Grand jury aforesaid to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be delivered to the Clerk of the Court of Oyer and Terminer in said County and then and there the said indictment was delivered and duly filed by the 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 at Newark on the twenty-ninth day of September, A. D. nineteen hundred and twenty-seven, before the Judge aforesaid, comes the said Harry Scott, in the custody of Conrad Deuchler, Sheriff of the County of Essex aforesaid, in the above 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 forthwith demanded of and concerning the premises in the above indictment specified and charged upon him how he would acquit himself thereof, says that he, Harry Scott, is not guilty thereof, and therefor, for good and evil puts himself upon the country and Joseph L. Smith,

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Prosecutor of the Pleas, for the County of Essex aforesaid, who prosecutes for the State of New Jersey in this behalf doth the like.

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 twenty-fourth day of October, in the year of our Lord, one thousand nine hundred and twenty-seven, 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 Harry Scott, to recognize upon their oath whether the said Harry Scott is guilty of the murder in this 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 Harry Scott 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 31st day of October, in the year of our Lord one thousand nine hundred and twenty-seven, at the same term of Oyer and Terminer, holden at Newark, aforesaid, in the County of Essex, before the Honorable Dallas Flannagan, 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 Harry Scott, in the custody of Conrad Deuchler, sheriff of the County aforesaid, being

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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 empanelled and returned, to wit; after the following challenges were made, by the State 6, Defendant 9, the Court 2 and by consent 3, Herman H. Stuber, Peter J. Coggan, Ulrich Beck, Jerome M. Hetheron, Clifton W. Murtland, William F. Gannon, Franklin H. Harris, Oliver J. Ross, Charles A. Erickson, Daniel J. Reilly, William M. Davis, Robert F. Braun, being called come and were sworn on that jury who to speak the truth of and concerning the premises and thereupon the trial of the issue commenced and continued before the said Court and jury, from day to day, until the third day of November, A. D. nineteen hundred and twenty-seven, at Newark aforesaid, the jury in the meantime being all that time kept together and in the care of officers of the said Court, who were selected and duly sworn by said Court for that purpose, at which last mentioned day the said issue after a charge from said Court was submitted to the said jury, and the said jury in charge of said officers of said Court for that purpose were taken to a private room to consider of their verdict, and afterwards, that is to say, on the day aforesaid, at Newark, the said jury returned into and before the said Court in charge of the said officers sworn to keep them in charge, and then and there in the presence of the said Prosecutor Joseph L. Smith, and the said Harry Scott, say that "We find the defendant, Harry Scott, Guilty of Murder in the first degree and recommend imprisonment at hard labor for life" and so they say all. By request of Elias Kanter, Esq., counsel for the defendant, Harry Scott, the jury was polled, each juror for himself answered,

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"Guilty of Murder in the first degree and recommend imprisonment at hard labor for life".

Whereupon, all and singular, the premises being seen, and by the Court now here fully understood, the Court (Hon. Dallas Flannagan) do order and adjudge that the said defendant Harry Scott, be imprisoned in the State Prison of this State at hard labor for life. And the defendant be in mercy, etc.

Judgment signed November 3, 1927.

DALLAS FLANNAGAN,
Judge.

ESSEX COUNTY COURT OF OYER AND TERMINER.

Monday, October 31, 1927.

STATE OF NEW JERSEY, *vs.* HARRY SCOTT.	*On Indictment. No. 211, September Term, 1927, For Murder.*

Before Hon. Dallas Flannagan, *J.*, and a jury.

For the State appears Joseph E. Conlon, Second Assistant Prosecutor of the Pleas of Essex County.

For the defendant appears J. Victor D'Aloia and Elias A. Kanter.

(A jury is called and sworn.)

Mr. Conlon opens for the State.

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

Direct examination by Mr. Conlon.

Q What is your business, Mr. Day? A Official photographer of the Newark Police Department.

Q Did you, at the request of the prosecutor's office, make some photographs of the premises at 76 Barclay street, Newark? A I did.

Q I show you four photographs and ask you to tell me what they are. A Photographs of the interior and exterior of the building situated at 74-6 Barclay street.

Q Now, I show you a photograph marked front of 74-76 Barclay street, photographed July 4, 1927, did you take that picture? A I did.

Q When? A On July 4, 1927. It is a view from the west side of the street looking in an easterly direction.

Mr. Conlon: I offer it in evidence.

(The same is marked Exhibit S. 1.)

Q I show you a photograph marked kitchen on second floor at 74-76 Barclay street. Did you take that photograph? A I did.

Q When? A July 4, 1927.

Q And that shows what? A It is a view looking into the kitchen from the hall entrance, the front hallway, looking into the kitchen on the second floor.

Q Do you understand this map? A I do.

Q Can you mark on that map where you stood when you took that picture? A The camera was in the door facing in an easterly direction or toward the back of the house, so marked C. S. 2.

Mr. Conlon: I offer this picture in evidence.

(The same is marked S. 2.)

Q And I show you a photograph marked bedroom on the second floor of 76 Barclay street. Did you take that picture? A Yes, sir.

Q When? A On the same day and the same time.

Q From where was that picture taken? A Taken from the kitchen doorway looking across the street, showing the middle bedroom.

Q Mark that please. A Looking in a westerly direction, so marked C. S. 3 on the map.

Mr. Conlon: I offer this in evidence.

(Same is marked S. 3.)

Q And I show you a photograph marked yard and rear of 74-76 Barclay street. Did you take that? A I did.

Q On the same day? A Yes.

Q What does that show? A This is a view looking in a southeasterly direction from the rear porch of the second floor and marked C. S. 4 on the map.

Mr. Conlon: I offer it in evidence.

(The same is marked Exhibit S. 4.)

Mr. Conlon: May I at this time ask counsel to stipulate that when we get this enlarged map from Mr. Bracken that these locations will be marked on there?

Mr. D'Aloia: Yes.

Q Mr. Day, I show you another picture and ask you if you took that? A I did.

Q When? A Sunday evening.

Q What day? A July 3rd.

Q And you took that picture where? A At the City Hospital Morgue.

Q Who was present? A Why, myself and the morgue-keeper and I believe Dr. Martland was there, I am not sure.

Q And that picture is what?

Mr. D'Aloia: I object to that, I object to a description of the picture and if the prosecutor offers it in evidence, I object to it—

The Court: Just describe it briefly, is it a man or a woman, or what may it be.

The Witness: It is a photograph of the deceased.

The Court: Strike that out, I did not ask you that, and you heard me distinctly. There is not the slightest excuse for that, you have been on the stand many, many times. Just answer that question properly, what is it a photograph of.

The Witness: Of a woman.

Q At the time that you took the picture, was the woman alive or dead?

Mr. D'Aloia: I object to that.

The Court: Overruled.

A Dead.

Q And as I understand you, this picture was taken in the morgue of the City Hospital?

Mr. D'Aloia: That has been testified to by the witness.

Mr. Conlon: I would like to have the picture marked for identification.

(The same is marked S. 5 for identification.)

Cross examination by Mr. D'Aloia.

Q Mr. Day, S. 2 represents the kitchen? A Yes, sir.

Q That is this rear room here? A Yes, sir.

Q And your camera was located in that door which comes from the hall and which leads directly to a stairway going out toward the street? A Yes, sir.

Q It represents the scene in that kitchen at the time you were there? A Yes, sir.

Q When were you there? A July 4.

Q What time? A In the morning.

Q Was that table overturned? A Yes, sir.

Q Well, just as it appears in the picture? A Yes.

Q You don't know who did that? A No, sir.

Q Was the tablecloth off it that way? A Yes.

Q Was there any other sign of disorder in that kitchen besides the overturned kitchen table that morning? A Not to my recollection.

Q Uh? A Not to my recollection.

Q I show you S. 2 and ask you from your recollection of the premises over here where these washtubs are there was a door. Was that open or shut in your presence at any time? A I don't believe it was.

Q On the lefthand side of the picture there is also a door. That shows a big light spot. Is that a light? A Yes.

Q Do you know where that door leads to? A Yes.

Q Where? A To the porch.

Q Now, here I show you S. 1. That is the front of the building. Will you say which is 74 Barclay street and which is 76? A 74 is to the left of the picture. It is marked on the awning, "Cleaning and dyeing No. 74."

Q So that, in order to understand the picture, the entrance to 76 is that door where there is a square light lace curtain that appears in the picture? A Yes.

Q That is 74? A 76.

Q Rather 76, yes. Now, S. 3 you say is a view of the middle room? A Yes.

Q Looking towards the front, the camera in the door going from the kitchen? A Yes.

Q The photograph being taken showing this little room and part of the front room? A Yes.

Q There was not any photograph taken of the front room, was there? A No.

Q Who was there with you at the time these pictures were taken pointing out to you what particular views were wanted? A I don't know as any one really pointed them out.

Q Was there anybody there from the prosecutor's office? A Yes.

Q Who? A Lieutenant Linarducci and Guerin.

Q The only photograph which we have of the front room is this bit which appears from the open door on S. 3, which would be this middle door in the living room in the front? A Yes.

Q And this shows the table over on the left-hand side of the front room as you go in from the rear, is that right? A Yes, sir.

Q Now, this S. 4, that you took from the back porch? A Yes.

Q A stairway leading down? A Yes.

Q There is a banister on the inside? A Yes.

Q You did not take the photograph from where that arrow is. You took it from back here, didn't you? A Yes.

Q You could not stand there? A No. The photograph was taken right at that point there.

Q Yes, but you were on the porch? A I was on the porch.

Q You would not be here? A No.

Q There is the well of the stairway? A That is the stairway going down.

Q Now, here is the porch. Now, where was your camera? A Right in the corner of the head of the stairway.

Q At the head of the stairway facing this way? A (Witness marks the map.)

Q Now, you know that neighborhood pretty well? A Fairly good.

Q The next street as you look off that porch, the next street to your right, which runs into Barclay street, is Spruce street? A Yes.

CARL A. WORKMANN, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your occupation? A Police officer.

Q City of Newark? A Yes.

Q Were you a police officer July 3rd of this year? A Yes.

Q What duty were you detailed on that day? A I was on reserve duty.

Q Were you called to Barclay street that day? A Yes.

Q What time? A About 9:50, Sunday night.

Q Where were you when you got the call? A In the precinct.

Q What precinct? A Fourth.

Q Who was there with you? A Officer Beck.

Q Where on Barclay street did you go? A 76.

Q Did you go into the house? A Yes.

Q On what floor did you go? A Second floor.

Q Tell us what you found? A Well, I went up with the stretcher and I found—I saw the body of the woman lying in the middle of the room, her head facing northwest, and I helped put her on the stretcher and I carried her down-

stairs, and that is all I did do with it in the building.

Q And when you brought her downstairs where did you bring her? A To the City Hospital.

Q Who did you see at the City Hospital? A Dr. Schrect.

Q And anybody else? A And the other attendent, in the receiving room.

Q Did you go to the hospital the next day? A Yes. I went there in the morning and identified the body before they performed the autopsy.

Q And did you identify the body? A I did.

Q I show you Exhibit S. 5 for identification and ask you if you know what that picture represents?

Mr. D'Aloia: I object to the use of the picture. It is not in evidence and it is not material. The description given by the photographer, the time or place he took it, cannot add to any information here.

The Court: Well, I will allow him to add whether it is a man or woman, or whatever it may be, but no further than that.

A It is a woman.

Q Do you know who the woman is? A Why, it was reported Doll Scott was the name.

The Court: Strike it out.

Q Answer yes or no. Did you know who the woman was? A No, I didn't know her.

Q Did you ever see her before? A Just the night I took her to the hospital.

Carl A. Workmann, cross.

Q Do not answer this question until counsel has an opportunity to object. Is that the same woman you brought from 76 Barclay street to the hospital?

Mr. D'Aloia: I won't object to that.

The Court: Allow it.

A Yes.

Q And is that the woman you identified to Dr. Martland before he made the autopsy? A Yes, it is.

Cross examination by Mr. D'Aloia.

Q What is your name? A Carl A. Workmann.

Q And you were on reserve duty this night? A Yes, sir.

Q And a call came in about 9:50? A 9:50.

Q Just about ten minutes to ten? A Ten minutes to ten.

Q And you were at what precinct? A The fourth.

Q How long did it take you to get to 76 Barclay street? A Well, I guess it was not over about ten minutes at the longest.

Q So you got to 76 Barclay street at 10 o'clock? A Somewhere around there.

Q The call came in about 9:50, that you know because when the call came in there was some kind of a dial that records the time? A I did not see the dial.

Q Where did you get the 9:50? A That is the time I went out. I looked at the clock.

Q Who went out with you? A Well, I went out alone and the wagon met me on the way down.

Carl A. Workmann, cross.

Q And you got to the premises about 10 o'clock? A About 10 o'clock.

Q When you went upstairs to the second floor were you alone? A No. Officer Beck was with me.

Q Now, you told the prosecutor and the Court and jury on your direct examination that there was the body of a woman lying in the middle room? A In the middle room.

Q You are sure about that? A Yes, right at the entrance, from the doorway.

Q Do you recognize this plan of the second floor? This is the front room. This is the bedroom and this is the kitchen. You came up the stairs here. What door did you go in, this one into the kitchen or this one in the middle room? A I went in the one in the middle room.

Q And you saw the body was lying in that room? A Yes.

Q Who was there at the time you got there? A Officer Betzner and Schumacher.

Q There were two police officers, was there anybody else there? A A few colored people, that's about all I can recall.

Q How many, you say a few, about how many? A I didn't take notice, I took the body out on the stretcher and went out.

Q Did you know at that time how the body got into that room? A No, sir.

Q Did you know at that time this woman had been shot somewhere in the kitchen? A No, sir, I did not.

Q Where were these few colored people? Were they in the room where the body was, or in another room? A There was a few in the same room.

Q Just how many were there? A I just can't recall that.

Q Was there a man there, a colored man there? A I can't recall that either.

Q Was there a colored woman there? A Yes, I can say there was a colored woman there.

Q What room was she in? A In the same room.

Q And a colored woman who was alive? A Yes, sir.

Q And how long were you there before you carried the body out? A Just about enough time to put her on the stretcher and carry her down.

Q But you are sure now there was a colored woman there alive? A Yes.

Q And did you look into the kitchen at all? A No, sir, I did not see no other part of the house.

Q Did you look into the kitchen? A No.

Q Did you notice the condition of those doors when you got there, was the door leading into that middle room from the hall open or shut or locked? A It was open.

Q You could look right into the dining room? A Yes, sir.

Q How about the door leading from the hall into the kitchen? A Well, I can't say about that, I just went into that room there, and that's about all.

Q You were in the room where there was a bed? A Yes, there was a bed there on the side.

Q And the woman you took out of there was still alive when you got her to the hospital? A Yes, sir.

Q Now, you are sure about this time, you cannot be mistaken about that, because you

looked at the clock when you left the station house and it was 9:50? A It was about 9:50.

Q And when you walked part of the way, the wagon picked you up? A Yes, sir.

Q What time did you arrive at the hospital? A I guess a little after ten.

Q About how much after ten? A About a quarter after.

Q So you got to the house at 10 o'clock and your recollection is that you got to the hospital at 10:15? A About 10:15.

Recess until 2 o'clock.

AFTER RECESS.

CARL A. WORKMANN, recalled in behalf of the State.

Direct examination (continued) by Mr. Conlon.

Q Officer Workmann, you testified this morning that when you went into this house at 76 Barclay street you found a woman lying on the floor of a bedroom. Is your recollection of that circumstance any better now? A Yes. I just come to recall that I just about stepped inside the door of the kitchen and I did not go into that room very far and I put her on the stretcher and carried her out.

Q What made you change your recollection? A Well, I just happened to think I walked into that second room a foot or so.

Q Is your recollection now clear where you found this woman? A Yes, sir.

Carl A. Workmann, cross.

Q Where was it? A Right inside of that door.

Q Which door, the door leading from the middle room into the kitchen? A Yes.

Cross examination by Mr. D'Aloia.

Q You now say the body of the woman was lying inside the kitchen? A Yes, just inside the door.

Q Yes, but in the kitchen? A Yes.

Q It was not in that little room at all? A No, sir.

Q You have been talking to someone since you left the stand? A Well, I happened to recollect it.

Q Who have you been talking to since you left the stand? A Nobody at all.

Q Did you talk to Mr. Conlon? A Well, I came in here and told him I would change it.

Q Before you came in and told Mr. Conlon you would change your testimony had you been talking to anybody else? A Well, I just saw—

Q Yes or no? A Yes.

Q Whom did you talk to? A To an officer.

Q Who was the officer? A The one who was with me. Beck.

Q So that your recollection has been corrected by your fellow officer? A Yes, but I just came to think of it then.

Q Just tell us the truth. You left the stand and you came out and you talked to your fellow officer who was with you that night and he corrected your recollection? A Well, in a way he did.

Q Well, he told you you were wrong and the body was in the kitchen? A And I happened to recollect.

Carl A. Workmann, cross.

Q And then you came in and told Mr. Conlon and that is why you are on the stand? A Yes.

Q That is right, isn't that a fact? A Yes.

Q You surprised me, too, this morning, when you said the body was in the middle room. Look at this picture S. 3. That is a picture of the middle room. That is this middle room? A Yes.

Q Now, the body was not in that room? A No.

Q Now, look at the picture of the kitchen, do you see it? A Yes.

Q And the body was in the kitchen? A Yes.

Q Now, this is S. 2. Now, you remember seeing the range over here? A Well, I just went inside the door and lifted the body on the stretcher and I took notice of that.

Q Do you remember this kitchen as you see it there in the photograph? A Well, I cannot recall it.

Q Will you look at the plan here, this map? A Yes.

Q Well, here is the stairway which you came up with your fellow officer? A Yes.

Q Did you come in this kitchen door? A No, I went in about there.

Q And you came in here? A Yes.

Q And the body was inside of here? A Yes.

Q Now, give us an idea of how the body was lying. Put a mark on there. A Right in here. There is the door. The head was up here and legs that way.

Q Now, do you say something like that? A I seen that.

Q Did you say it was something like that? A Yes, close to that there—

Q Well, you are not so very clear about that? A Well, the head was toward the door.

Q But the entire body was in the kitchen? A Yes. The head was toward the door.

Q Can't you give us an idea on this photograph where that body was lying? A I cannot recollect the kitchen, because I did not take any notice of the stuff in the kitchen. I just went in and picked the body up and went right out.

Q Here is where the door is that you came through. Now, give us an idea where the body was lying. Now, put the mark across as you have indicated with your finger. The door leading into the bedroom was right here. Now, show us where the body was.

The Court: Have you any recollection about it?

A Well, the head was facing the northwest.

The Court: Now, listen to the question and answer it. Have you any recollection now about it? Can you remember it now?

The Witness: I can remember that the body was lying just inside the door.

The Court: Are you calling it from your recollection or are you doing just what the officer told you?

The Witness: Yes, I know it now.

The Court: In your own mind?

The Witness: Yes. I did not think that I went through the other door.

The Court: Now, just show us where the body was lying.

Q Just put a mark on that picture indicating with a straight line where the body was lying.

Mr. Conlon: I object. The witness has indicated he does not know anything about that picture.

The Witness: I did not notice anything but put the body on the stretcher and went out again. The only way I can say by the picture I would have a hard job to place it the way it was lying, but the head was toward the northwest and the legs toward the southeast.

Q Now, since I showed you that picture S. 2 of the kitchen you have made two or three attempts to indicate to me where the body was lying. Now, can you look at it now with the pencil in your hand and make a mark how you saw that body lying there? A Well, I just recall by the directions.

Q Well, that is what we want you to go by, directions. You are talking about northwest and southeast.

Mr. Conlon: I object. This picture means nothing to the witness as visualizing the kitchen to him.

Mr. D'Aloia: Now, if he is going to look at that picture and it was in that kitchen, that is why the photograph is there.

Mr. Conlon: That is not the only reason the photograph is there, by any means.

Mr. D'Aloia: Why, certainly it is.

The Witness: You see, I did not look at none of the objects in the kitchen, and it is a hard thing to place it right.

The Court: If your recollection is such and your visulization of the situation is such

that you can mark the body on the picture, why, mark it, and if you cannot, why, say so.

The Witness: I don't think I can get it exactly right.

Q I don't want you to get it exactly right, I want you to give an idea of approximately where that body was in that room, and you have in your hand now a photograph of that room and you are looking into that kitchen from a position in the door as you come into that room. That is where the camera was, the camera is right on the line almost where you enter. Now, you can place yourself as though you were coming into the door. A That is from the dining room door?

Mr. Conlon: That is not from where the picture is taken, the picture was taken from the hall door.

Mr. D'Aloia: What is the difference, three feet?

Mr. Conlon: I don't know what the difference is, but I don't want the witness to be misled.

Mr. D'Aloia: If the Court please, I don't want the prosecutor to interrupt me, he can make his objections. This picture shows the whole rear wall of that kitchen and it shows the left and the right sides. I don't think it makes any difference if it was photographed from this door or that door, but the general direction of the camera is in the room.

Mr. Conlon: The only difference is that I care where the picture was taken from.

Q Now, Mr. Witness, looking at S 2, which shows you three sides of that kitchen, looking in

from the general direction of the door that you came through, will you please mark there where you recall the body was lying?

The Court: If you do recall it now, and if you don't recall it, just say so.

A I cannot exactly recall it now, I cannot.

The Court: I don't want you to just mark where the body was by Judge D'Aloia's description, because anybody can do that for him, but I am trying to get your recollection and if you can recall put it on there.

The Witness: I cannot recollect it there because I did not take notice of anything that stood in the kitchen or anything.

Q Then, the only purpose of your taking the stand again is because you found out you were mistaken when you thought the body was in the middle room and you came back to tell us it was in the kitchen?

Mr. Conlon: I object to what the purpose was of putting him on the stand, I put him on the stand.

Mr. D'Aloia: I know, but I am trying to find out.

Mr. Conlon: Then ask me.

Mr. D'Aloia: I am asking him—

Mr. Conlon: I object to the question.

The Court: The purpose of putting him on the stand is a different thing. He can answer his purpose of coming back and speaking to the prosecutor, but that is as far as he can go.

Q The only thing that you recall, since you were last on the stand, was that the body was not in the middle room when you got to this house but it was in the kitchen? A Yes, sir.

Q And every part of the body was in the kitchen? A Yes, sir.

Q And you were unable to place it by looking at that photograph what the exact position was, that is true too, isn't it? A Yes.

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

Direct examination by Mr. Conlon.

Q You are the chief medical examiner of Essex County? A I am.

Q And as such, did you make an autopsy on July 3 of a woman in the City Hospital? A I made an autopsy on July 4.

Q And at what time of that day, doctor? A At eleven o'clock in the morning of July 4.

Q Who was present? A There was present assistant medical examiner Dr. Berardinelli and the morgue attendant, and during the autopsy, officer Carl A. Workmann came in and identified the body as the body that he had brought to the City Hospital in the patrol wagon the night before.

Q Is that Officer Workman who was just on the stand? A I believe so.

Q I show you a photograph and ask you if you recognize the person of whom that photograph is? A Yes, sir, that is the body which I autopsied.

Mr. Conlon: Referring to Exhibit S. 5 for identification.

Q Doctor, you made this autopsy on July 4 at eleven o'clock in the morning? A At eleven o'clock on July 4 at the City Hospital morgue.

Q And will you tell the court and jury what you found as a result of your autopsy? A I found the body of a colored woman about twenty-six years of age, five feet five inches in height, and about 140 pounds in weight. She had black hair which had been artificially straightened. I found on the autopsy the body was cold and rigor mortis was present. I found on the body four bullet wounds entering the body and coming out, passing completely through the body. Two of these wounds were insignificant. One situated over the left hip, the point of entrance of this one was three inches below the anterior superior spine, that is, about here on the left side. This wound was a small wound one-quarter inch in size with no surrounding powder marks or brand. The point of exit of this bullet was situated a little lower in the anterior part of the thigh about two and a half inches from the point of entrance, that is, just passing beneath the skin, the subcutaneous fat—

The Court: Doctor, would you mind standing up, because I cannot see.

The Witness: The first wound entered about here and came past downward for about two and a half inches under the skin and came out here. The second wound, which was also insignificant, was situated about four inches below the right elbow here, where there was a clot of an inch in diam-

eter without any surrounding powder marks or brands. This wound passed also downward on the forearm and came out about here, the distance also being about two and a half inches from its point of entry. Neither one of these wounds produced sufficient damage to produce death or be serious. There were then two fatal wounds producing serious damage. One of them was situated on the right chest here, about one inch to the right of the super-sternal notch and about an inch below, making the wound of entrance about here. This wound passed downward, backwards and to the right. The opening in the skin of this wound was a quarter inch in diameter and its edges slightly blackened. There was no brand, no burning of the skin around the opening due to the gases of combustion, but there were powder marks, some of which were burns, scattered from the left face just beneath the eye, all over the left face, down over the lips, chin, then passing slightly to the right side and around the chest wall, and around the wound here. That is the distribution of the powder burns. This covered an area of about seven inches from the top to near the wound and about three inches in breadth. This wound, on autopsy, passed backwards, downward and to the right. It passed into the chest, through the first interspace, between the first and second ribs, without fracturing them, and then passed through the upper lobe of the right lung, and the middle lobe of the right lung, passing out of the chest in the back by fracturing the fifth and sixth rib in the mid-axiliary here and the posterior axiliary line

where there was a small wound of exist in the skin also a quarter of an inch in diameter. The wound on exit in this case was four inches below, lower than the wound of entrance, and about three and a half inches to the right, so the direction of the wound was backwards, downwards and to the right coming out about here (indicating). There was a pint and a half of blood between the right lung and the chest cavity due to the damage to the lung and to the ribs which produced death from hemorrhage and shock. There was another wound of entrance situated just beneath the breast plate, the lower end of the breast plate, or sternum here (indicating) and about a half inch to the left of the midline, situated in the abdomen. This wound also was a quarter inch in diameter and showed no surrounding powder marks or burns. This wound passed backwards to the right and downwards, passing through the left lobe of the liver, producing a through and through wound passing just above the upper border of the sternum and passing to the right and through the lower pole of the right kidney and coming out at the back on the right side in the middle of the right lumbar region, about here, about three and a half inches to the right or three inches to the right of the mid-spinal line, passing through the left lobe of the liver, producing a through and through wound, passing just above the upper border of the stomach, passing to the right of the vertebrae, through the lower lobe of the right kidney and coming out in the back on the right side in the middle of the right lumbar

region about three and a half inches to the right of the mid-spinal line, this wound passing backwards and downwards to the right, the same as the other wound, and its point of exit was about three inches lower than its point of entry and about three inches to the right. This produced bleeding into the abdominal cavity, where there was a pint of blood. There were no other bullet wound or wounds.

Q Are you able to form an opinion as to which of these wounds was preceded by these powder marks? A The powder mark which I have described is associated, in my opinion, with a wound in the first interspace on the right side and not with the other three.

Q Is that first wound the only one that was fatal, in your opinion? A Either that wound or the wound in the abdomen could be fatal. The first wound, I think, was, perhaps more dangerous for sudden death than the second wound in the abdomen.

Q When you speak of these as first and second, you do not mean chronologically as to the point of time? A No.

The Court: That was the third.

A I mentioned the one—this one first and this one second (indicating).

Q Both the third and fourth were fatal wounds? A Both the third and fourth were fatal wounds. The third wound was more certain of sudden death than the fourth. With the abdominal wound alone they usually live a little longer.

Q Did you notice anything about the face of this woman? A There was a bruise over the left lower lid and upper lid and purplish, and the left lower lid was changing color, a marked greenish and purplish discoloration. This I interpreted as a bruise of two or three days duration on account of a change of color.

Cross examination by Mr. D'Aloia.

Q When you call those wounds the first, second, third and fourth wounds you are simply telling us the order in which you described them? A Yes.

Q But you do not know which one was inflicted first? A No.

Q If the wound up here had been received first, the one that you said would be more fatal, would there be a tilting of the body either backward or forward? A Yes, either way.

Q And if an automatic pistol were a short distance away from this side of my body and I began to slip down if the position of this pistol is changed I am liable to catch this bullet through the hip, if I am standing on this side and I slip down, I am liable to get a bullet you describe here and the bullet you described here through the arm? A Oh, yes, perfectly possible.

Re-direct examination by Mr. Conlon.

Q Is it possible that these same wounds might have been incurred in numerous other ways than the one which Judge D'Aloia just described? A Yes.

The Court: But those wounds appear in that photograph.

The Witness: Yes, sir. There is wound No. 3, there is wound No. 4, there is the wound I described as No. 1; and here is part of the wound, the entrance—no, the exit of the wound I described as No. 2 (indicating on the S. 5 for identification).

LOUIS BECK, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q You are a member of the Newark police force? A I am.

Q What is your rank? A Lieutenant.

Q Out of what precinct? A Fourth precinct.

Q Do you remember the evening of July 3rd of this year? A I do.

Q Were you assigned to duty or sent on detail to Barclay street? A I was.

Q With whom did you go? A I left the precinct alone in the auto patrol and at Belmont avenue and Spruce street I picked up Officer Workmann, who had been sent to the same place previous to my being sent from the precinct.

Q And he got in the patrol? A Yes.

Q Where did you go? A 76 Barclay street.

Q What floor? A Second floor.

Q Who went into the house with you? A Officer Workmann and I entered the place together.

Q Did you have anything with you? A A stretcher.

Q You say you went to the second floor? A Yes.

Q What did you find? A Well, there I found Officers Bettman and Shoemaker and they told us that the woman shot—

Q Never mind what they told you. What did you find? A We found a woman lying on the floor of the kitchen.

Q Where abouts in the kitchen was she lying? A Well, I didn't pay very much attention to her position in the kitchen after I learned someone was shot, I heard—

Mr. D'Aloia: I move to strike out what he heard.

The Court: Strike it out.

Q What I want to know is this. Can you or can you not tell us where the body was lying in the kitchen? A Not exactly.

Q Can you tell us about where it was lying? A About two or three feet from the door leading from the bedroom to the kitchen.

Mr. Conlon: At this time I should like to offer in evidence the two maps that are on the board, the first being the map showing Spruce street and Barclay street and this house 76 Barclay street and the smaller map being an enlargement of the second floor plan of the second floor of the house.

Mr. D'Aloia: They are offered in evidence and there is no objection.

(Maps marked Exhibit S. 6 and Exhibit S. 7.)

The Court: The map is drawn to scale.

Mr. Conlon: Yes, sir.

The Court: And the scale is on the map.

Mr. D'Aloia: Yes, sir.

Mr. Conlon: And also the mark, the dimensions of the rooms are marked on it.

The Court: All right.

Q Do you remember anything, officer, as to the position of the body, that is which way it was lying? A No, I could not give any description as to how the body was lying, because I did not pay any particular attention to it.

Q I show you a picture, S. 5 for identification and ask you if you have ever seen the person in that picture? A Yes.

Q Who is it? A The woman—

Mr. D'Aloia: I object to that picture. It is not in evidence.

The Court: I know, but he may be laying a foundation to put it in evidence.

Mr. D'Aloia: He does not know who it is. He never saw this woman before. I object to the use of the picture.

The Court: If the answer calls for the naming of the woman, yes. If it calls for some other answer it may be proper. You might frame the question differently.

Q Where did you see her? A I saw her about a week previous to the night of this shooting.

Q Did you see her the night of this shooting? A Yes.

Q Where? A In this house.

Q Where was she? A She was lying on the kitchen floor, and then I saw her up in the hospital.

Q She was lying on the kitchen floor, is that right? A Yes.

Q What did you do with her? A I didn't touch the body in the house.

Q What did you do? A I collected the people in the house as witnesses.

Q What happened with the woman? A She was carried out by other officers and taken to the City Hospital.

Cross examination by Mr. D'Aloia.

Q You did not go to the City Hospital with the body? A I did.

Q What time did you get there? A Shortly after 10 o'clock.

Q How shortly after? A Probably ten minutes.

Q You got there ten minutes after ten and how long were you there? A I was in the hospital until after the woman—

Q Wait a minute. What time did you get to 76 Barclay street? A We got to 76 Barclay street around 10 o'clock.

Q What time did you get there? A Ten o'clock.

Q And how long were you there at Barclay street? A Probably two or three minutes.

Q You collected the names of witnesses? A I collected the witnesses themselves.

Q Well, how many did you collect? A Three.

Q Who were they? A Two colored people and a white man.

Q What were their names? A I don't know.

Q What did you do with them? A Took them to the hospital with us.

Q The three persons in the room? A Two men and a woman.

Q Well, when you got to the hospital did you make a report, do you know who they are now? A I do not recall their names. I did take the names but I do not recall what they are.

Q How long have you been on the police force? A Very nearly six years.

The Court: These witnesses you speak of, did you say two colored—

The Witness: A colored lady and a colored man and a white man.

Q Now, here is a plan of the second floor of this place. This is a stairway coming up from the street. When you get here they come to a little hall. There is a door going into this bedroom and there is a door going into the kitchen. When you got up here what door did you go in? This is going into the kitchen and this into the bedroom. When you came here you saw a bed there? A Yes.

Q How many people were in this room? A Two colored people.

Q Was one a woman and one a man? A Yes.

Q Where were they in this room? A In front of the bed.

Q You came to this kitchen door? A I looked in the door.

Q You saw this table? A I did.

Q And you saw a body lying there? A I did.

Q Put a mark there showing us the position of the body? A I could not say exactly how the body was lying.

Q Was the head near the door? A I do not recollect. It was by the door or away from the door. I saw the body, but I did not pay any particular attention how the body was lying. I looked in and saw the body on the floor.

Q You have no recollection now in that small room which way it was lying, either crosswise or diagonally? A I could not say exactly.

Q How near to this door did you come? A To the door.

Q How far from you was the nearest part of the body? A I should say about three or four feet.

Q You say the body was about here in the kitchen? A About there.

Q What part was there, the head or feet? A I did not pay any attention to the body.

Q Which way was the body lying, this way or this way? A On an angle.

Q Was the head near you? A I don't know.

Q Then would it be lying parallel to these wash tubs, look at the map, there is a range, and there is a sink, would it be lying parallel to the range? A On an angle.

Q This way? A Yes, sir.

Q Is that your best recollection? A Yes, sir.

Q Will you put that mark there which you say is your best recollection of the position the body was in? A I can't say by making this mark just which is the head or which is the feet.

Q Never mind which is the head and which the feet, give us the general position of the body. A What is an inch on this map?

Q One half inch represents a foot. One inch would represent two feet, two inches four feet. Which way was she lying, crossways? A She

was lying on an angle, I don't know whether her head was near the door or not, I would not say, the body was straight with the entrance of the door.

Q I told you the scale, didn't I? That body was not six inches long, was it? A No.

Q It was about five feet four or five feet six, was it not? A Yes, sir.

Q Well, give us the mark there to indicate it, two and a half inches long? A Two inches would be four feet from the door?

Q Yes. A (Witness makes mark.)

Q Mind you, every half inch on that map is a foot. A Yes.

Q And according to your mark the body was two feet from the door? A Yes, sir.

Q And that was in the kitchen, all of it? A Yes.

Q And the distance you say from the door to the nearest part of the body was four feet? A About that, probably three.

Q About four feet? A About that.

Q You were not called out on any other shooting affair that night or that morning, were you? A Any one besides this particular shooting? No.

Q Don't you recall the names of the people you wrote down? A No, sir.

Q The names of the two men and the one woman you found there? A No, sir.

Q Was there anybody in the front room? A No, sir.

Q Was there anybody in the kitchen? A The police officers were there.

Q How many? A Three of them were in there.

Q Was there any man or woman in the kitchen? A No, there was another white man there.

Q What is his name? A I don't know, he is one of the witnesses.

Q But your business was, you went there to round up the witnesses, didn't you? A Yes.

Q And you took them to the hospital? A Yes, sir.

Q And you made out a report? A Yes.

Q And you put in there the names, you asked them for their names, didn't you? A Yes, sir.

Q And you don't recall any of their names? A No, sir.

By the Court.

Q Have you the record that you put their names on, the report? A No, sir. I sent that in to the captain. I have a record in my pocket, but I don't think it has got names on it.

Q But you did send a report to the captain? A Yes, sir.

By Mr. D'Aloia.

Q You have a record in your pocket? A Yes, sir.

Q What is that? A Just briefly a record of it.

Q Look at it and read the names there. A There are none on there.

Q When did you write that? A The night it happened.

Q Read the names then. A There aren't any names on it.

Mr. Conlon: If the Court please, he told us before he took it out of his pocket that the names were not on there.

Mr. D'Aloia: If the Court please, I am trying to find out, to test his recollection.

The Court: You are not testing his recollection. He told you before he took it out of his pocket that the names were not on there.

Q What does that piece of paper contain? A It contains the woman's name that was given to me by another party.

Q A woman's name? A This woman's name that was taken to the hospital.

Q That's all? A Yes, and what she was treated for at the hospital.

Q Where did you get that information from at the hospital? A From the doctor at the hospital.

Q So that this paper that you have in your pocket with reference to 76 Barclay street has nothing except the name of the woman you took to the hospital?

Mr. Conlon: I object to that, he testified there are other things on it.

Q Well, what are the other things? A Well, the time she died and who pronounced her dead and things like that.

Q Then I am right in saying that that paper contains nothing but what you got at the hospital?

Mr. Conlon: I object to that if the Court please, he said already that it has the name

of the woman which he got at the hospital, and I don't see the purpose of this examination at all.

Mr. D'Aloia: If the Court please, this is cross examination.

The Court: Don't forget that he was not examined about this paper at all, he was not examined in chief—

Mr. D'Aloia: But if the Court asked the question and the answer to the Court's question shows he has something in his pocket, I am not precluded from finding out what it is. I will admit that the prosecutor did not ask a question but when your Honor questioned him, he said he had something in his pocket and this paper comes out and then I get up and ask some questions on it.

Mr. Conlon: No one is objecting to your asking the questions, but to the questions.

The Court: You have not been precluded from asking any questions so far.

Q You did not know the name of either man that you took to the hospital with you, and you did not know the name of the woman, did you? A I don't recall it.

Q But do you recall whether there were any people in the front room, the parlor? A There wasn't any.

Q You are sure about that? A That is to my knowledge; I did not find any in there.

Q Did you go into the parlor? A Yes, I looked in the parlor and there was nobody there when I looked in.

Q Did you go into the kitchen at all or just stand there? A I just looked in the kitchen, I did not go in.

Q When did you make the report of these things that you gave to the captain? A When we took this woman to the hospital to ascertain what her injuries were, I took different notes—

Q No, where did you make out the report that you gave to the captain of what happened? A In the Fourth Precinct.

Q The Fourth Precinct, and have you seen it since? A After I submitted it to the captain?

Q Yes. A No.

Re-direct examination by Mr. Conlon.

Q Can you secure that report, officer? A It must be in the captain's office in the Fourth Precinct.

Q Will you try to get it, please? A I will ask the captain; yes.

ROSIE LEE CHEESBAR, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Mrs. Cheesbar, where do you live? A I live 127 Wickliffe street now.

Q How long have you lived there? A Just moved there last Monday.

Q And where did you live before that? A 56 Barclay street.

Q When did you move to Barclay street? A Oh, about—I don't know when I did move there about, three weeks ago.

Q Have you ever lived at 76 Barclay street? A Sure.

Q When did you move there? A I moved there, I guess in May.

Q Of what year? A '27, this year.

Q How long did you stay there? A I stayed there about three months, I guess, not quite three, I don't think, I don't know whether it was quite three months or not.

Q When did you move from there? A I moved from there after Doll got killed, I did not stay there any more after she got killed that Sunday night.

Q Do you know Henry Scott? A Yes, I know him.

Q Harry Scott? A Yes, sir.

Q Is he in court? A Yes, sir, he is in court.

Q Will you point him out, please? A That is him right over there between those two men.

Mr. Conlon: Is it admitted that the witness is indicating the defendant?

Mr. D'Aloia. We cannot admit anything, it is the defendant—

The Court: (Addressing defendant.) Stand up.

(The defendant rises.)

The Court: What is your name?

Defendant: Harry Scott.

Mr. Conlon: I don't think the record shows it.

The Court: The record now shows that the Court directed the defendant to stand up and the defendant did stand up, and states his name is Harry Scott. The man that stood up is the man you refer to?

The Witness: Yes, sir.

Q When did you first meet Harry Scott? A I met Harry Scott on Monday, I believe, Monday around twelve o'clock or after twelve on a Monday.

Q What date? A I don't know what date it was.

Q Well, what month? A It was in July.

Q In July? A Yes, sir.

Q How long before the Fourth of July? A Why, I met him on a Monday.

Q I am asking you when you first met him? A Well, I told you on a Monday, I don't know the day of the month.

Q You don't know the day of the month? A No, I don't know what day it was.

Q Do you remember the 3rd of July of this year? A Yes, sir.

Q At that time, how long had you known Harry Scott? A I guess around three weeks, something like that.

Q Meaning that you met him about three weeks before the 3rd of July, is that right? A Yes, sir.

Q Where did you meet him? A At my house.

Q Who was with him? A Doll.

Q Who is Doll? A The girl what got killed.

Q Did you know her by any other name? A No, I did never know nothing but Doll.

Q Doll what, what was her last name? A Doll Scott, that is how she give it to me.

Q I show you Exhibit 5 and ask you if you know who that person is? A Yes, Doll.

Q That is who? A Doll.

Q Doll Scott? A Yes, sir.

Q You say you met them for the first time at your house? A Yes, sir.

Q Who was living at your house at the time? A Gertrude Wilson was living at my house at the time.

Q Anybody else? A No.

Q Where was your husband? A My husband was in the hospital.

Q What hospital? A City Hospital.

Q Where did Harry Scott and Doll live? A They lived with me, they moved in my house on Monday and stayed up until they had a fight on Wednesday night and Doll moved Thursday night and Harry moved the next morning.

Q You met them first on Monday at your house? A Yes, sir.

Q And they went to live with you on that same day? A Yes, sir, they moved in there Monday night.

Q And what room did they occupy? A A little side room right next to the sitting room, the living room.

Q In the front or the rear? A In the front.

Q The little room in the front next to the sitting room? Is that right? A Yes, sir.

Q Is this the sitting room you mean (indicating on map)? A Yes.

Q Indicating room in the front of the house on the north—you say they had a fight? A Yes, sir.

Mr. D'Aloia: I object to the question, if your Honor please, that is not in the form of a question. I object to it as leading and repetion.

The Court: She already said they had a fight, they had a fight on Wednesday night, she said that already.

Mr. D'Aloia: All right, she told us that.

The Court: Exactly.

Mr. D'Aloia: Well, then, why reiterate it in the question.

The Court: I cannot tell you why.

Mr. D'Aloia: But I am objecting to it.

The Court: I imagine it is preliminary to something else, I will allow it.

Q You say they had a fight? A Yes, sir.

Q When was that? A On Wednesday night.

Q Who was there? A There wasn't no one there, I was asleep at that time and Gertrude awakened me that night around twelve o'clock when the fight was and I was in bed and Gertrude waked me up and there wasn't nobody in the house but me and Gertrude and Harry and Doll, and they was not even in the house when I went to bed.

Q Tell us what happened.

Mr. D'Aloia: If the Court please, she hasn't said there was a fight yet, she said she was asleep and some girl awakened her.

The Court: He is asking her.

Mr. Conlon: If the Court please, I should like the Court to instruct counsel, when I am examining a witness, to do nothing else but object and not to argue with the witness or with me. He made no objection to the last question, but he simply got up and argued, and if there is an objection to my question it should be made to the Court.

Mr. D'Aloia: If the Court please, I made objection to the form of his question and your Honor allowed it over my objection.

The Court: Excuse me, there is nothing before the Court, so please don't talk. Is there any question?

Q (Last question read.)

Mr. Conlon: I will withdraw that question, if your Honor please.

Mr. D'Aloia: May I have the time fixed, if your Honor please.

The Court: The question was withdrawn.

Mr. Conlon: I am afraid by this time the witness does not know what we are talking about.

Mr. D'Aloia: What was that last remark?

Q Mrs. Cheesbar, on Wednesday night, following the Monday when Scott and Doll moved to your house, tell us what happened.

Mr. D'Aloia: Objected to as having no bearing at all on this issue.

The Court: Overruled.

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

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

DALLAS FLANNAGAN,
Judge.

A She wakened me up about twelve o'clock and Harry had hit Doll on one of her eyes and when I wakened up he had her in the front room and had her across his lap, and Doll was crying and he was trying to get her to hush, and when I wakened up Doll told me please to do something for her that Harry had put her eye out, and I

said, "Harry, what a shame, you just can't fight any more in my house, now, because my husband is in the hospital and I have no protection here and you have got to quit, you all have to move." And he said, "I ain't going to hit her any more," and I went to my room and he got up and slammed her on the floor and when he got her on the floor he commenced to beat her and I said I was going to get the police, but he had done beat her and cut her lip here, and they took her to the hospital—

Q What did you hear Harry ask her on that night, if anything?

Mr. D'Aloia: I object to that as leading.

The Court: Sustained.

Q Was there anything said that night? A Harry Scott asked her— I heard him say he would kill her if she didn't go back to him.

Q Where was he when he said that? A He done hit her in my bedroom.

Q Where were you? A I was in the bedroom, too.

Q Who else was in the bedroom? A Gertrude was in there.

Q Gertrude who? A Gertrude Wilson.

Q Did Doll live with you after that? A No, she left there that night, Thursday night. I went to church and we got a cab, I and Doll and Gertrude's mother, and Gertrude went to church over on Boyd street and Doll had told me she was going to leave there that night, and she went with me as a blind to him, and when we got back she told me where she would leave the key and everything.

Mr. D'Aloia: I move to strike out all these conversations.

The Court: Granted.

Q Do not tell us what anybody said to you or what you said to anybody unless Harry Scott was present. Where did Doll go to live then? A I don't know. She lived on Broome street. I do not know the number on Broome street.

Q But she did not live with you after this night? A No, she did not live there any more.

Q Did you see here after that Wednesday night? A Yes, I seen her most every day sometimes.

Q Where did you see her? A She would come over home.

Q Did you ever see her in your house after that when Harry Scott was there? A After that in my house?

Q Yes. A Yes.

Q When was the next time? A Well she was there several times. She was there most every day at home.

Q When did you next see Doll there at the same time that Harry Scott was there? A Well, I don't know. I do not know what date it was.

Q Well, about how many days after this that you have described? A I don't know. I don't know what date it was, but they were there. She was there. The last time I remember seeing him and her there together it was on a Saturday night. They were at my house. That Saturday she got killed that Sunday and they were there that Saturday night around 8 o'clock.

Q And were they there together before this Saturday night? A Yes.

Q What happened on any of those occasions? A Not anything, only he was trying to get her to go back.

Mr. D'Aloia: I move to strike out the conclusion.

The Court: Strike it out.

Q Did you hear him say anything to her?

Mr. D'Aloia: I object as leading.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you hear Harry Scott say anything to Doll? A No, only begging her to go back to him.

Q What did she say to him? A She told him she did not want to go back to him and he told her if she didn't go back he would kill her.

Q How many times did you hear him say that? A Twice.

Q Did Harry Scott ever speak to you about Doll?

Mr. D'Aloia: I object to that as leading, no place, no time is fixed.

The Court: Just answer it yes or no.

The Witness: No. He asked—

The Court: It is answered.

Mr. Conlon: I think the witness's full answer should be allowed. She started to say something.

The Court: Well, she has answered it. Do you mean that is your answer, that he never did speak to you about Doll?

The Witness: No. Only the first week he asked me did I know where she was, he would give me $20 if I told him where she was, and I told him I didn't know. That is the only time he ever spoke to me about it.

Q I show you an automatic gun. Did you ever see that before? A Yes, I have.

Q Well, when? A I kept it in my trunk for Harry.

Q For Harry who? A Scott.

Q When did he give it to you?

Mr. D'Aloia: I object to that. There is not any evidence that it was given to her.

Mr. Conlon: She said she kept it in the trunk.

Mr. D'Aloia: Well, that does not say it was given to her by him.

Q When did you get it? A He gave it to me one night before they had a fuss, before they had a fuss he gave it to me to keep. He was going out and he asked me to keep it for him, and I kept it in my trunk until the next day.

Q What did you do with it the next day? A I gave it to Harry.

Q What did he say, if anything? A He didn't say anything.

Mr. D'Aloia: Can we have the time fixed?

The Court: All right. Fix the time.

Mr. Conlon: The time is fixed. She says this was the day after the fight.

Mr. D'Aloia: You mean the fight—

Mr. Conlon: I will be glad to refer to the record, which will clearly show that this woman saw an actual fight.

The Court: That is my recollection, that he hit her and she described that she was on the floor. All right. Go ahead.

Q Did you ever see this gun after that, Mrs. Cheesebro? A No, I do not remember seeing it any more, no I do not remember seeing it again.

(Gun marked S. 8 for identification.)

Q What, if anything did Scott say to you when you gave him back the gun after you kept it all night?

Mr. D'Aloia: I object to that as leading.

The Court: No, that is not leading.

A He didn't say anything. He just told me he wanted his gun, he wanted to go out.

Q Did he ever say anything to you about the gun? A No, he didn't ever say anything to me about the gun.

Q Did he ever show you anything else beside the gun? A No.

Q Now, will you just think a minute and see if you can answer that question?

Mr. D'Aloia: I object. The question is leading.

The Court: It is not leading. He said did he ever show anything else and he said now will you kindly think and see if you do not recall.

Mr. D'Aloia: That is what I object to.

The Court: I overrule your objection.

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.

DALLAS FLANNAGAN,
Judge.

Q Can you think of anything else he showed you besides this gun? A No, I do not remember.

Q What do you mean, you do not know? A I do not remember him showing me anything else.

Q Now, you testified that Doll and Scott were in your house on the night before the shooting, is that correct? A Yes.

Q What happened that night? A Not anything. He asked her to go to his room with him and she said no, she couldn't go, and he asked us if she could meet him at my house at 10 o'clock that night at your house and I said no.

Q Anything else happen that night? A Well, no, because she went on home, I guess, and he went on and I went back upstairs after they left me.

Q Now, on July 3rd it was a Sunday, wasn't it? A Yes.

Q When did you first see Doll that day? A Around 12:30, I think.

Q Do you know where she went that afternoon? A She went to the City Hospital.

Q Who went to the City Hospital? A I did and Doll.

Q What did you do there? A Went to see my husband.

Q What time did you go? A We got to the City Hospital at around 2 o'clock, I guess, or a quarter to two.

Q What time did you get back to Barclay street? A We got back about a quarter after three.

Q Where did you spend the rest of the day? A Home.

Q In Barclay street? A Yes.

Q And where were you, what part of the house? A I was sitting in the front room asleep.

Q All the time? A No. I was in the front room sleeping.

Q What time did you go to sleep? A Around 5:30, I guess.

Q Who was in the house there at the time you went to sleep? A Doll and Gertrude Wilson and Johnny.

Q Johnny who? A I don't know his last name, and his friend girl. I do not know Johnny's last name.

Q John and who? A His friend girl.

Q Do you know her name? A No, I don't know her name. Eva is her name.

Q Eva is her name? A Yes.

Q Did you see them outside? A Yes.

Q She was there? A Yes.

Q That is Doll and Gertrude, John and Eva? A Johnny.

Q And Eva? A Yes.

Q Anybody else? A No.

Q And you fell asleep where? A In the front room.

Q Who was in the front room at the time you went to sleep? A Nobody. I was in the front room with Gertrude and Doll at the time I went

to sleep and I told them I had to go to church and I got dressed and was all ready and I told them to wake me up around 7:30, and I did not waken up until Gertrude wakened me up and told me that Harry had shot Doll.

Mr. D'Aloia: I move to strike that out.

The Court: Strike it out.

Q Who woke you up? A Gertrude Wilson.

Q Do you know now what time it was when she woke you up? A No, I do not know what time it was.

Q When you woke up, what did you do? A Well, that is where I was when they told me—

Mr. D'Aloia: I move to strike out these conversations.

The Court: Strike it out.

Q I didn't ask you what anybody said. I asked you what did you do when you woke up? A Well, I went into the kitchen—started into the kitchen where Doll was, and when I got to the foot of my bed she fell with her head mostly to my bedroom door and I did not go in and I went down the street and up Spruce street and got two cops.

Q Did you see anybody in the house? A There was not anybody in the house but Gertrude and Johnny and this girl, as I saw.

Q Those were the only ones you saw? A Yes, sir.

Q You say you started for the kitchen? A Yes.

Q And then you ran downstairs? A Yes.

Q Which door did you run out? A I ran out my bedroom door.

Q Did you see anybody on the stairs? A Well, there was a crowd of people outside. I did not stop. I went up until I found two cops on the corner of Broome and Spruce street.

Q Now, just look at this map a minute. This is the front room. This is the room that Scott and Doll were occupying? A Yes.

Q This is the bedroom, this is the kitchen? A Yes.

Q Do you understand that now? A Yes.

Q This is the hallway and here are the stairs. Now, just point out on the map where you were when you were sleeping? A Well, I was sitting in the chair in the front room.

Q And when you woke up, where did you go? A I come on through the bedroom, my bedroom, and I got to the door, the kitchen door, like this, the kitchen door, and I turned around and went down the stairs.

Q What, if anything, did you see when you got to the kitchen door? A I saw Doll lying on the floor rolling.

Q And whereabouts was she lying with reference to the door? A Just across like that, like this is the stove and her feet was towards the stove and her head was lying towards the bedroom door.

Cross examination by Mr. D'Aloia.

Q How long had Gertrude been living with you? A What do you say?

Q How long had Gertrude been living with you? A Gertrude had been living with me ever since I was in Newark.

Q How long is that? A Ever since January.

Q Did she work any where? A Yes, she worked.

Q Where? A She did day's work somewhere in Plainfield.

Q Who was this Johnny who was with Eva in the middle room, what was his last name? A I don't know.

Q How long had they been rooming with you? A They had not roomed with me a week.

Q Well, don't you know his last name? A No, I don't know his last name.

Q Do you know Eva's last name? A No, I do not know her last name.

Q Now, are you sure that you went to bed and went to sleep half-past five on the 3rd of January? A No, I didn't go to bed.

Q You went to sleep? A Yes.

Q And you went to sleep in the front room? A Yes.

Q And you were not awakened until Gertrude told you something? A No.

Q You heard nothing? A No.

Q Did not hear anything? A No.

Q Did you hear any argument? A No.

Q When you pointed to this front room, you pointed to a talking machine, do you remember a talking machine in the front room?

Mr. Conlon: I object, she did not point to the talking machine.

The Court: The question now is do you remember a talking machine in the front room.

Mr. D'Aloia: She can say she did not point to a talking machine—

The Court: The question that is allowed is was a talking machine in the front room.

Mr. D'Aloia: What did your Honor say?

The Court: I say I am allowing the question that is now asked, was there a talking machine in the front room?

Q Was there a talking machine in the front room? A Yes, sir.

Q Were you asleep on the settee or between the settee and the talking machine? A I was on the settee asleep.

Q Then you were on the settee asleep that is located in the bay window? A Yes, sir.

Q And that settee was big enough to have you lie down on it? A No, sir; I did not lie down on it, I was sitting on it asleep.

Q Did the settee have a back to it? A Yes, sir.

Q Did you have your feet on the settee? A No, I did not have no feet on the settee.

Q You fell asleep there? A Yes, I was asleep.

Q Who was in the front room when you went to sleep? A Doll and Gertrude was in the front room.

Q What time was it again? A About 5:30.

Q Did you hear anybody come into that room at any time while you were asleep? A No.

Q Don't you remember about seven o'clock some three colored men coming in there? A No, sir.

Q Do you know Essie Jones? A Yes.

Q Did you know Essie Jones on that day? A Essie Jones?

Q Yes, Essie Jones? A Yes, I know him.

Q Did you see him that day? A Yes, sir.

Q Where was he? A I saw him that morning.

Q Where was he? A He was home to my house.

Q Is that 76 Barclay street? A Yes, sir.

Q What time did you see him? A Around ten o'clock in the morning.

Q Did you see him in the afternoon? A No.

Q Didn't you see him just before you went to sleep at half-past five? A No, I did not see him at half-past five.

Q Now, after you went to sleep at half-past five on that day, don't you remember there were several parties of several men that came into that front room? A No, I do not.

Q Don't you remember three colored men coming in there? A No, I do not.

Q You did not see Harry Scott at all that night, did you? A No, I did not.

Q You did not see this defendant at all, did you? A No, I did not see Harry that night.

Q Now, let us see, do you remember this occasion when you told Mr. Conlon that there was a quarrel between them about three weeks before when they came to live at your place? A It was not no three weeks.

Q Two weeks before? A I told him they had a quarrel on Wednesday night.

Q Well, how long before the 3rd of July? A A week, that was on a Wednesday, yes.

Q How many weeks before the 3rd of July? A I don't know how long it was.

Q How long was it after they came to live with you? A They came on Monday and they did not stay to my house but a week, they did not stay in my house a week, Harry did, but Doll did not.

Q How long before the 3rd of July was it that they were at your house for a part of a

week? A I told you they had a fight on Wednesday night.

Q How many weeks before the 3rd of July? A I don't know.

Q Was it two weeks or three weeks? A It must have been a week, it would not have been no two weeks.

Q Was it on a Saturday night when the quarrel took place? A No.

Q Was it on a Wednesday night? A Yes.

Q Was there a party over in Essie Jones' house that night? A I don't know.

Q Don't you recall that the only quarrel that took place there was when there was a quarrel over at Essie Jones' house in Broome street? A No, I don't know anything about Essie Jones' house and the party.

Q You don't know anything about that? A No.

Q Did you see Doll that night before the fight? A That night before the fight? I told you I saw her on Saturday night.

Q I am talking about this Wednesday night, this Wednesday night that you were asleep? A Sure I saw her, when she stayed over to my house.

Q When you were asleep there was no argument that you know of? A No, sir.

Q And they were not there? A No, sir.

Q And while you were asleep you were awakened, weren't you? A Yes.

Q And you went into the little room off on the side and there you were told something by Doll, weren't you? A Doll had Harry sitting in a chair, yes; and Gertrude told me they were fighting.

Q You never saw anything happen between them, did you? A Yes, I did.

Q After you woke up? A Yes.

Q And then the next morning, what happened to both of them, did they move out? A She moved out the next night.

Q When did he give you this pistol to keep for him? A He gave it to me, it must have been on Friday night.

Q Well, was it after this Wednesday night. The Friday after this Wednesday night? A Yes, sir.

Q You say Wednesday night they had an argument and you were awakened and went into their room and Doll talked to you. That's right, isn't it? A I said what?

Q On Wednesday night you were awakened out of your sleep and you went into their room and they had an argument. A No, I did not go into their room, I went in my living room.

Q And there you saw Doll sitting on his lap? A Yes, sir.

Q And the next morning she moved out? A She moved out the next night.

Q And did Scott stay there? A Scott stayed there until Monday night.

Q Now, on Friday he gave you this pistol, you say, to keep for him, is that right? A Yes, he gave it to me.

Q Well, was it the Friday after this Thursday when Doll moved out? A Yes, sir.

Q He gave it to you and asked you to keep it for him? A Yes, sir.

Q And you put it in your trunk? A Yes, sir.

Q Now, when did you give it back to him? A I gave it back to him—no, he did not give

me that pistol after this fight, he give it to me before this fight, it was before this fight when I got that pistol.

Q So that Harry had this pistol when they had this fight, that you talk about? A Yes, he had that pistol the night that the cops came in for him, he had that pistol that night on him.

Q The night he had this argument that you say you found out about, after you were awakened, you did not have this pistol, but Harry had it? A Yes, Harry had it.

Q Doll was not shot that night, was she? A No.

Q Now, on this Saturday before the Sunday, you say Doll was killed that Saturday evening, that Saturday evening this defendant came to your house, didn't he? A Who?

Q Scott? A I did not see him when he came there, he came there Saturday evening, but I did not see him until Sunday afternoon when he came there.

Q I am talking about Saturday night now? A Yes, he came there Saturday.

Q And Doll was there on Saturday? A Yes, sir.

Q And Gertrude was there on Saturday? A Yes, sir.

Q And they were coming in and out with men? A No, sir.

Q Don't you remember two men that were brought in by Doll? A No.

Q And going through the rooms? A No, sir.

Q And giving you some money for the use of them? A No, sir.

Q Now, how long was Scott there that night? A What night?

Q The Saturday night before the Sunday? A It was not very long, I guess he would have been there long but I told him I was going away.

Q And how long was he there? A About a half an hour, I guess.

Q And was Doll there all the time you were there? A Yes, sir.

Q Was there any argument? A No.

Q And you were serving some drinks, weren't you? A No.

Q Who was? A No one was serving none.

Q What was he doing there the half hour? A There was no drinking.

Q There was no drinking and no men there, well, what was done? A They did not have to have drinking for anybody to be there.

Q They all sat down and had a nice chat, did they? A Yes, sir.

Q Gertrude and Doll and Scott and yourself? A Yes.

Q And Scott went home, didn't he? A I don't know where he went.

Q And when he left he did not say he was going to kill anybody, did he? A No.

Q He parted friends with all of your folks and with Doll and Gertrude, didn't he, that Saturday night? A Sure he did with me, but him and Doll did not part as friends, because they were down on the street squabbling after she got her coat out of the pressing place.

Q Did you hear Doll say, "Come around tomorrow night to see me?" A No, sir.

Q Didn't you hear Doll say to Scott, "Now, you come around tomorrow night and I will see you here?" A No, she did tell him she would see him tomorrow.

Q That was the next day, Sunday, wasn't it? A Yes, sir.

Q Did she tell him, "I will see you tomorrow?" A Yes, sir.

Q Where, at your house? A No.

Q But she said, "Come around, Harry, and I will see you." A Yes.

Q And they parted? A Yes, sir.

Q Friendly? A I don't know whether they were friendly or mad.

Q And that is the last time you saw Scott until now? A Just now, yes, sir.

Q Do you remember that you saw Essie Jones on that Sunday at your house about ten o'clock in the morning? A Yes.

Q And didn't you see him in the afternoon? A No, sir.

Q And when you got up you got into the kitchen and you saw Doll lying there? A Yes, sir.

Q You know Jones, don't you? A Sure I know him.

Q And you know him for some time? A Yes, sir.

Q After Harry moved away from your house and Doll kept coming there many times, didn't she, and she came there with Essie Jones? A Never a time.

Q And wasn't Jones in your house before that Sunday morning at any time? A Sure he came to my house.

Q Well, was he there at any time when Doll was there? A No, he never was there with Doll, never a time.

Q Did he ever come there and find Doll there? A No, he did not before this Sunday morning, he came there and Doll was not there, because Doll did not come until around 12:30.

Q But he came there looking for Doll, didn't he? A No, he did not.

Q Well, who was his friend there? A He did not have no friend there, his cousin was there.

Q Who was that? A Gertrude Wilson.

Q Now, you want to tell us here that you saw Essie Jones on that Sunday the 3rd of July and it was half-past ten in the morning and you did not see him there at any time during that week? A No.

Q And he did not come there to see Doll? A No.

Q And you don't know of Doll going over to his house to parties? A I don't know nothing about no parties.

Q Did you ever go over to Essie Jones' mother's house on Broome street to a party? A Yes, I have been to a party there one time.

Q And was Essie Jones and Doll there together? A No, sir; they were not even in Newark then, I don't guess, Doll wasn't.

Q What did Essie Jones come to your house for that Sunday at all, do you know? A He come because he wanted to.

Q And every time he came he came because he wanted to? A Yes, sir.

Q Now, what room did Doll use when she stayed at your house? A She used the side room in the front of my living room.

Q For what purpose? A When Harry was there, that is when she used it.

Q No, I mean after Harry had moved away? A Well, she never used it.

Q How many times did Doll come to your house after Harry had moved away? How often

did she come? A She came any time she wanted to.

Q How often was that? A I don't know.

Q How many times a week? A I didn't keep a record of it.

Q And you did not keep a record of how many times Essie Jones came there with her or to see her? A He has never been there to see her.

Q And you cannot tell us why he came on the 3rd of July, can you? A Because he wanted to, I guess, he had his cousin there and he was supposed to come when he was ready.

Q You know Eva, the girl who was in the middle room, Eva Raymo, you know her, the girl with the straight black hair? A Sure, I saw her a couple of times, but I don't know her personally.

Q I show you a photograph marked S. 3. Now, that is a picture of your middle room, the bedroom? A Yes, sir.

Q Looking out toward the parlor, isn't it? A Yes, sir.

Q And you see a bed in there, don't you? A Yes, sir.

Q Wasn't that bed occupied by Eva Raymo and Johnnie, her friend all day Saturday and Sunday? A No, Johnnie had my bedroom and I slept in that room with Gertrude what Doll slept in when she was there and that was Johnnie's room in there alone.

Q Who stayed with Eva on Saturday night, the 2nd of July? A Nobody stayed with her.

Q Who stayed with Johnnie in that room on the 2nd of July? A Nobody was with him.

Q Wasn't Eva with him? A No, if she was, I don't know it.

Q Wasn't Eva there on Sunday morning with Johnnie in that room? A Sure.

Q And where did she come from? A She come from her white lady's house.

Q Was she there Saturday night? A No.

Q Do you remember her going out for a bus ride with Johnnie on Sunday? A Sure.

Q Do you remember what time they came back? A I don't know.

Q Where were you when they came back? A In my front room.

Q And when did they come back? A I don't know.

Q How long before you went to sleep at half-past five, when you went to sleep? A I don't know.

Q Did they go to that middle room? A Sure, but they was not in bed, they was in the room.

Q I did not ask you whether they were in bed. A No.

Q On that Sunday afternoon about four o'clock or four-thirty, Johnnie and Eva came in and you were not sleeping yet, is that so? A No, I was not sleeping after they came in.

Q And they went into that middle room? A They stayed in the front room.

Q Yes, and then they went into the middle room? A Yes, but there was no door shut between them.

Q And that is the time you went to sleep? A No.

Q Well, how long were you in the middle room before you went to sleep? A I don't know.

Q And when you got up about nine o'clock, you say, you were awakened by Gertrude, where was Johnnie and Eva? A I don't know where they were.

Q Didn't you see them at all? A No, sir.

Q Well, where were they? A They was sitting in the middle room.

Q And when you went to sleep they were in that room? A Yes, sir.

Q And when you woke up about three or four hours afterwards, or you were awakened, they were in this room? A Yes, they were sitting in the front room when I got wakened up.

Q They were in this room when you woke up, weren't they? A Yes.

Q And they were taken away by the police, weren't they? A Yes, sir.

Q And you were, too? A No, I was not, I was not taken by no police.

Q You don't know what happened in this kitchen at all? A No, sir.

Q From half-past five on until you were awakened, there was nobody in the kitchen except Doll lying on the floor, and you didn't see anybody come into the kitchen or go out of the kitchen? A No.

Q You didn't see anybody come into the front room and go out of the front room? A No.

Q But you knew when you went to sleep that Johnnie and Eva were in this bedroom? A Yes, sir.

Q And when you woke up or were awakened by Gertrude, the only people that were in your house was yourself, Gertrude, Johnnie and Eva, isn't that so? A Yes, sir.

Q And Doll was in the kitchen? A Yes, sir.

Q And when you woke up, did you see a tray and some bottles anywhere in one of those rooms? A No.

Q Did you go into the kitchen at all? A No, I did not go in.

Q Did you see a tray and some bottles on the floor of the kitchen? A No, I did not look for any.

Q Did you look in the kitchen to see the table overturned? A No, sir.

Q Did you go into the room when you looked at Doll, and didn't you see that table? A No, I wasn't paying no attention.

Q But you looked into the kitchen? A Sure I did.

Q Did you see the table turned over—let me show you this picture (showing witness Exhibit S. 2). When you looked into that room, in that kitchen, when you saw Doll lying on the floor, didn't you see that table overturned like that? A No, I did not see it until I came back with those cops, I did not.

Q And when you came back with those cops, was that table overturned like this? A Yes, it was.

Q When did you move from 76 Barclay street? A I did not stay there nary another night.

Q What is that? A I did not live there nary another night, I got out of jail on Tuesday and I moved my things—I didn't move them, I turned them back to the man and he came and got them on Thursday or Wednesday, whenever he did get them, I don't know.

Q Where did you move to from there, did you go to Jersey City? A No.

Q Did you go outside of Newark? A No, I did not.

Q Well, where did you stay since you got out of jail on Tuesday after the 3rd of July? A I stayed down at Rev. Roger's house.

Q Where is that? A On Boyd street.

Q All the time? A No, I did not.

Q You haven't been doing any work since this thing happened? A No, I don't have to, I got a husband.

Re-direct examination by Mr. Conlon.

Q Mrs. Cheesbar, you testified that on Wednesday night after Scott and Doll came to live with you, that you went into the front room and Doll was sitting on Scott's lap? A Yes, sir.

Q And you spoke to Doll and Scott then? A Yes, sir.

Q Now, will you tell us what happened after that?

Mr. D'Aloia: I object to that, that was all gone over on direct examination.

Mr. Conlon: It was all gone over on direct examination, but Judge D'Aloia specifically denied that there was any testimony on it, and he deliberately kept away from it on cross examination.

(Argument.)

Mr. Conlon: I submit that Judge D'Aloia's statement before the jury that there was no fight justifies me in having this question cleared up.

Mr. D'Aloia: I don't believe in reiteration.

The Court: The only reason to object to the reiteration is to save time, I mean the consumption of time, and now as far as I can see, we will save time by having her repeat this conversation, so I will allow him to ask that question again, and you may cross examine her afterwards, if you see fit.

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.

DALLAS FLANNAGAN,
Judge.

Q After you had this conversation with Scott and Doll in the front room, tell us what happened this Wednesday night? A Why, Doll beat Harry—Harry beat Doll. He threw her down on the floor at the foot beside of my bed, and he beat her.

Q And what room did this take place in? A In my bedroom.

Q And which was your bedroom at that time? A The middle room.

Q Was that before or after you had the conversation in the living room? A That was after.

The Court: Now, have you any further re-direct?

Mr. Conlon: Yes, sir. Just one question.

The Court: Now, then, before you go in any further re-direct, I will allow Judge D'Aloia to further examine her in view of the fact of her reputation, if he sees fit.

Mr. D'Aloia: Very well, but I think it will save time to let him get through with all his questions.

Q Referring to the Saturday night before Doll was shot, can you repeat for us the conversation between Doll and Scott which was had in your presence?

Mr. D'Aloia: I object to that. That has been given twice by this witness, first in answer to direct and second in cross.

The Court: Which conversation was that?

Mr. Conlon: Saturday night, before the shooting.

The Court: Well, did not she testify to it already?

Mr. Conlon: It has been testified to partially, but I feel that it is not clear.

The Court: Well, I recall considerable of it. I do not think we want to repeat it, and if that is the only object I will sustain the objection.

Adjourned until Tuesday, November 1, 1927, at ten o'clock, A. M.

SECOND DAY.

Tuesday, November 1, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

GUSSIE WALKER, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 506 North Eighth street.

Q What city? A Philadelphia.

Q What city? A Philadelphia, Pennsylvania.

Q Are you married? A Yes.

Q What was your maiden name? A Robinson.

Q Did you have a sister? A Yes.

Q What was her name? A Lorenza Robinson.

Q I show you a picture, S. 5 for identification, and ask you if you can tell us whose picture that is?

Mr. D'Aloia: Is there any question as to the identification?

The Court: I do not say there is and I do not say there is not.

Mr. D'Aloia: Well, didn't we admit that the body was taken from 76 Barclay street to the hospital and was identified?

The Court: Well, it doesn't make any difference.

Mr. Conlon: The point is this, that at this stage of the case the only name this woman was known under was Doll Scott.

The Court: What was your sister's name?

The Witness: Lorenza Robinson.

Q And is that the picture of your sister? A Yes.

Cross examination waived.

Louis Beck, direct.

LOUIS BECK, recalled in behalf of the State.

Direct examination by Mr. Conlon.

Q Officer, I asked you yesterday to bring me the report which you filed with your captain in this matter. Did you bring it? A I did.

Q I show you a paper dated July 3rd, and ask you if that is your report? A Yes.

Q In whose handwriting is that? A My own.

Q Does that report contain the names of the witnesses you have? A It does.

Q You said yesterday that you could not remember the names of the witnesses? A I did.

Q Will you refer to that report and tell us now the names? A John Hudson, colored; giving his address as 76 Barclay street; Eva Raymond, also colored, 190 Montrose avenue, South Orange; Joseph Eisen, 134 Badger avenue; he is a white man. Those are the three witnesses I collected at the scene of the shooting. Rosie Cheesebro, 76 Barclay street, came to the precinct herself.

Mr. Conlon: I ask that Joseph Eisen be brought into the court room for the purpose of identification.

Mr. D'Aloia: We do not object to that, but we ask the prosecutor if Joseph Eisen will be brought in as a witness.

The Court: I will direct that he remain.

Q Do you know this man here? A Yes.

Q Who is that? A That is John Eisen, the man I took in as a witness—Joseph Eisen.

Cross examination waived.

Joseph Eisen, direct.

JOSEPH EISEN, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 18 Prince street.

Q Are you married? A No.

Q Do you remember the evening of July 3rd, of this year? A I do.

Q Where were you about nine and half-past nine that evening? A I was walking up.

Q Up where? A Barclay street.

Q Whereabouts on Barclay street? A Right near Spruce street.

Q And what happened? A I was walking up 76 Barclay street and I heard about six shots. I opened a door and I went upstairs and I tried the doors. They were all locked. I came down and I waited a while and then I went around the corner and I went in a drug store and I 'phoned up.

Q 'Phoned up where? A I 'phoned up headquarters and I told them the story.

Mr. D'Aloia: Do not give us any conversation.

Q Then what did you do? A Then I came out and met two officers coming down the street and I told them about it and the three of us went upstairs and when we come up one door was open and we went in and a woman was lying on the floor.

Q Whereabouts? A Between the kitchen and bedroom.

Q And then what happened? A And then one of the officers stayed upstairs and one went down to 'phone up.

Q Where did you go? A I stood inside with them. I stood inside with the officer in the room.

Q Where were you taken from the house? A I was taken to the City Hospital.

Q And from there, where did you go? A To the Fourth Precinct.

Q And then you made a statement? A No, down at headquarters.

Q That is all you know about it? A That is all I know.

Cross examination by Mr. D'Aloia.

Q You are sure when you went upstairs the doors were locked? A They were locked.

Q Look over here at this map. This is a large plan of the second floor of the premises 76 Barclay street. You came up the stairway? A I did.

Q From the front door? A Yes.

Q How many doors did you try? A I tried one, two, three doors.

Q And each one was locked? A Each one was locked.

Q You could not get in? A No.

Q And then you thought best to go downstairs to do some telephoning? A Right.

Q And you did do some telephoning? A Yes.

Q How long did you do the telephoning? A About two minutes.

Q And then you found two officers and they went up the same way you went up? A Yes.

Q Which door did you find open? A The side door.

Q Going into the bedroom? A That was open.

Q How many people were in this bedroom when you got there? A There was one woman in the bedroom and there was one colored man and there was one in the front room.

Q There was a woman in the front room and there was a colored man in the bedroom and a colored man in the front room? A A colored woman in the front room.

Q Of course, you do not know who opened that door? A No.

Q Now, when you got to that door of the bedroom the first time when you say it was locked, did you make any noise? A No, I just tried to open it.

Q And it would not open? A It would not open.

Q And you tried the kitchen door? A And that would not open.

Q And when you went to the door of the front room that would not open? A No.

Q And you shook the knob? A Yes.

Q Now, when you looked into the kitchen and saw the body lying there, will you give us an idea where it was lying—here is the kitchen and there is the door leading to the bedroom and the kitchen (indicating). Will you give us an idea of where it was lying, where the head was and where the feet were? A It was lying this way, the head was about over here (indicating).

Q Inside of the bedroom? A Yes, and her feet were over here (indicating).

Q You are pointing to a distance which on this map would be only about a foot. Now, she was taller than that. Do you understand the plan? The bedroom ends here, and here is the door beginning over here and over here is the kitchen (indicating). Did you see a stove in the

kitchen? A The stove was on that side (indicating).

Q Now, will you tell us where the body was lying with reference to the stove and the door? A It was lying between the bedroom and the kitchen.

Q Did you see a table in the kitchen? A No.

Q Did you see an overturned table? A No.

Q Now, here is a photograph of that kitchen looking in from the door which is just alongside of the door which you say you looked in. Did you see that scene? A I did.

Q Well, was that table there in the center overturned? A Yes, sir.

Q Will you please show us on this picture, if you can, where the body was lying? A Right over here, she was lying across (indicating).

Q Will you put a mark on there to indicate it? A (Witness marks.)

Q That way (indicating)? A Yes, sir.

Mr. D'Aloia: Mr. Prosecutor, he marks it that way (indicating).

Q Did you notice, as you looked into the kitchen, whether or not the door leading to the back porch was open? A I did not.

Q Would you say that it was not open? A No.

Q You know what I mean by the back porch, this door here, which is shown in this picture with a white curtain? A That was closed when I came in.

Q Do you know or are you simply guessing at it? A It was closed.

Q Well, this was the third of July, wasn't it? A Yes.

Q And you did not try that door? A No.

Q You did not go into the kitchen at all? A No.

Q Was it open or closed? A I don't know, I did not try it.

Q And that is all you know about this case? A That is all I know.

Re-direct examination by Mr. Conlon.

Q Eisen, where were you with reference to 76 Barclay street at the time you heard the shooting? A Just when the first shot was fired, I was about a few feet away from the door and they came one after another, I heard them right in a row, and when I stepped into the hall the last shot was fired already, and she was screaming, the woman was screaming, and I heard some noise in the kitchen and it looked like the table overturned or something—

Q Did anybody come down the stairs? A I did not hear nobody come down the stairs.

Q Did you see anybody coming down the stairs? A I did not see anybody coming down the stairs.

Q You went up? A Yes.

Q And nobody came down while you were going up? A No.

Re-cross examination by Mr. D'Aloia.

Q What was this sound that you say seemed like a table turning over? The sound of a scuffle—

Mr. Conlon: I object to that.

The Court: He is going to tell you, and there is no use putting words into his mouth.

Joseph Eisen, re-cross.

Q Did it sound like a scuffle?

Mr. Conlon: I object to that, I think that the proper thing to do is to have him describe the sound, whether it sounded like a scuffle, or whether it sounded like a table overturning.

The Court: Well, it is cross examination, not direct examination.

A It sounded like a table overturning, there was some noise in there, plenty of it.

Q How much noise, a great deal or a little? A A great deal, I heard it in the hallway.

By the Court.

Q You say when you went up there you saw how many people altogether? A I saw three, three in the room.

Q And were they in the same room where the body was? A No, sir.

Q They were not? A They were not.

Q Was there anybody in the room with the body? A No.

Q And these people were in another room? A Yes.

Q And what were they, men or women? A One man and two women.

Q And all colored? A All colored.

By Mr. D'Aloia.

Q And one man and one woman were in the middle room, the bedroom, and the other woman was in the front room? A Yes, sir.

Q Do you know these people if you see them? A I could recognize them.

Joseph Eisen, re-cross.

Mr. D'Aloia: May I have these people identified, if your Honor please, by this witness, they are outside.

The Court: Do you want them brought into the court room?

Mr. D'Aloia: I want them for the purpose of identification, Mr. Eisen was brought in.

The Court: I just asked you if you wanted them brought into the court room, I did not ask you the purpose.

Mr. D'Aloia: Please bring in Eva Raymo.

(Eva Raymo enters the court room.)

Q Do you recognize this woman? A I do.

Q Which room was she in? A She was in the bedroom.

Mr. D'Aloia: Bring in John Hudson.

(John Hudson enters the court room.)

Q Do you recognize this man? A I do.

Q He was in what room? A He was in the bedroom, too.

Mr. D'Aloia: Bring in Mrs. Cheesbar.

(Mrs. Cheesbar enters the court room.)

Q Do you recognize this lady? A I do.

Q What room was she in? A The front room.

Q In the parlor? A Yes, sir.

Q And there wasn't another person there outside of the body in the kitchen, was there? A No, sir.

EDWARD HIGGINS, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Higgins, where do you live? A 56 Barclay street.

Q Where did you live on July 3rd, of last year? A 168 Spruce street.

Q Are you married? A Yes, sir.

Q What is your wife's name? A Pearl Higgins.

Q Do you know Harry Scott? A I know him when I see him.

Q Do you see him now? A Yes, sir.

Q Where is he? A Right behind this gentleman sitting there (indicating the defendant).

Q Did you ever see him in your house in June of this year?

Mr. D'Aloia: I object to that. This man lives on Spruce street, and the month of June is rather remote, and I think the time ought to be fixed a little more specifically. I cannot understand a visit to this man's house on Spruce street in the month of June.

The Court: I don't see that it is relevant unless it is a preliminary question.

Mr. Conlon: Of course, your Honor, it is a preliminary question. If I fix a time, I will have to fix it myself in the question and I cannot ask two questions at once.

Q Did you ever see Scott in your house at 168 Spruce street in the month of June? A I am not positive about the month of June.

Q Well, when was it? A I have seen him in my house at different times, about three

times, I think, I don't know just the month or the date.

Q Well, just fix it as nearly as you can. Do you remember the 4th of July? A I remember the 4th of July.

Q How long before the 4th of July was it that he was in your house? A The last time he was in my house before the 4th of July was Saturday, one week previous of the 4th of July, before the 4th of July, which was in August.

Mr. D'Aloia: What is that? "Which was in August."

The Witness: The Saturday one week before the 4th of July.

Mr. D'Aloia: And you say this was in August?

Mr. Conlon: Your Honor, is he cross examining my witness or what?

The Court: You are constantly interrupting the examination, judge, and I will have to ask you please to stop. Your turn will come.

Mr. D'Aloia: Will your Honor hear me for a moment? Did you hear the remark he made?

The Court: I heard the remark and the stenographer wrote it, and it is not necessary for you to emphasize it by interruption. The jury heard it and you can refer to it on your cross examination or in your summing up.

The Court: Now, when is August, before July or after?

The Witness: That was where I was wrong. I meant the month before the 4th of July, which would have been June.

Q Do you remember what day the 4th of July was on? A I think it was on Monday; I am not positive.

Q And you are now referring us to the second Saturday before the 4th of July, is that right? A It was the second Saturday before the 4th of July.

Q You saw Scott on that day where? A In my house.

Q At what time? A It was in the morning before twelve o'clock; near twelve; I do not just remember now.

Q Who was present? A There was Gertrude Wilson, a fellow Lawney Griffin and Jim Wilson, Charlie Jones and Pearl Higgins.

Q That is your wife? A Right.

Q Will you tell us what Harry Scott did and said on that occasion?

Mr. D'Aloia: I object to that.

The Court: Why?

Mr. D'Aloia: Because of the remoteness of the time. This is two Saturdays before the 4th of July.

The Court: No, I will allow it.

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.

DALLAS FLANNAGAN,
Judge.

Q Higgins, will you please tell us what happened on that occasion; that is, what Scott did and said? A I was in bed in the room. You have to come up the stairway into the kitchen first and the bedroom leads right from the

kitchen. I and Gertrude and Jimmie Wilson and Charlie Jones were in the bedroom. I was in bed. I hadn't got up, and we were in there talking and he came in.

Q Who came in? A Harry Scott.

Q Yes. A And I heard a little noise; a noise like a person slammed the door. He shoved the door open and come in the room where I was.

Q What happened? A He asked me where was Doll. I told him I don't know where she was. She was not there. He said that he was looking for her and asked me the last time I seen her and I told him I didn't just remember. The last, I think, she left my house, she was with him, and he stood around a minute and he was not satisfied. He sees she was not in that room and wanted to go out to the other one and I told him she is not here, but if you want to search the house you can look for her, and he went out and looked all the rest of the rooms and found she was not there, and he and I started talking and he seemed to be excited and angry—

Mr. D'Aloia: I object and move to strike that out.

The Court: No, I will allow it. He appeared to be excited.

The Witness: He appeared to be excited and angry and he told me he was looking for her and she was off with some person and whenever he found her he was going to shoot the two of them, and so then I began to talk to him to try to change his mind and we talked along a while that he will not let up, and he began to listen to me, so he had pulled the gun out and showed me the gun and told me whenever he found her he was

going to empty the gun into her, and I told him how foolish it would be to kill a person where there was so many. I finally got him where he said he would take the gun and put it up. He offered to leave the gun with me and I told him no, to take it and put it up, because he might get himself in trouble if an officer saw the gun even though he did not do anything, he would go to jail just the same, and he stood around a while and talked and seemed to be better off.

The Court: He said he would put the gun up?

The Witness: Yes.

Q Was that the only time you saw the gun? A That was the first time I seen the gun.

Q Did you see it again? A Yes.

Q Where? A I seen it in police headquarters.

Q Did you recognize the gun? A I did at that time.

Q Would you now? A I guess I would.

Q I show you S. 8 for identification. Did you ever see that gun before? A That is the gun or one similar he showed me the day he said he was going to empty it into Doll. He pulled it out in his hand and I looked at it.

Mr. D'Aloia: This is all subject to my objection. I objected to it in the first place.

Cross examination by Mr. D'Aloia.

Q Do you know anything else about this case?

The Court: Would you like to move to strike that testimony out?

Mr. D'Aloia: I would like to make that motion.

The Court: I thought maybe you would like to save your rights.

Mr. D'Aloia: Yes, I would like to strike out the testimony given by this witness.

The Court: Motion denied.

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

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

DALLAS FLANNAGAN,
Judge.

Q Do you know anything about this case other than what you told the prosecutor? A No, other than the night of the murder I went down to this place.

Q You went to 76 Barclay street? A Right.

Q After the shooting? A Yes.

Q Do you know Essie Jones? A I do.

Q Was he there? A When I went up the stairs.

Q When you went up the stairs what time was it? A I don't know just what the time was.

Q Try to remember. A It would be useless.

Q Well, was it about 9:30? A Well, I would not say. I guess it must have been around nine o'clock.

Q Where was Essie Jones? A Essie Jones and two police officers.

Q Where were they? A They were standing in the room leading from the door just as I went in.

Q Which room now. Here is a plan of that place. You know Essie Jones very well, you got

there in the neighborhood of nine o'clock. Where was Essie Jones? Here is the middle room and here the front room and here the kitchen? A They were standing in the middle room.

Q That is the bedroom, is that right? A The house is built a little funny.

Q Come down here and let me explain it a little better. Here is the stairway going up from the street. A Right.

Q And there is a door right as you go up the stairs goes into this room. A Yes.

Q Now, you walk around this hall. A This is the room they were standing in.

Q In the middle room, was there anybody else there? A I and Larney Griffin went to the house together.

Q Was there anybody else you found there? A Two police officers and Essie Jones.

Q Was there any woman there? A No woman.

Q Any man? A Two police officers and Essie Jones.

Q Anybody else in the house? A That is all.

Q How long did you stay there? A About two minutes, I guess.

The Court: How did you happen to go?

The Witness: I was home and Larney Griffin come and Rosie Cheesbro came up the stairs and said, "Come right away," and with that information I went down there.

The Court: Then you went down there?

The Witness: Yes.

The Court: How far is your house from this place where the body was?

The Witness: About a block and a half.

Re-direct examination by Mr. Conlon.

Q Was the body of Doll Scott there when you got there? A It was not.

Q It was not? A No.

Re-cross examination by Mr. D'Aloia.

Q Did you hear any shots at all that night? A No, sir; I was a block and a half away.

PEARL HIGGINS, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Mrs. Higgins, where do you live? A I live now at 56 Barclay street.

Q Where did you live on July 3rd last? A 168 Spruce street.

Q You are the wife of Edward Higgins? A Yes, sir.

Q Do you know Harry Scott? A Yes, sir.

Q Do you see him in court? A Yes, sir.

Q Where is he? A Right over there (indicating the defendant).

Q Did you ever see him at your home at 168 Spruce street? A See him?

Q Did you ever see him at your home at 168 Spruce street? A Yes, sir.

Q When? A He came there one Saturday morning around about eleven or twelve o'clock.

Q About when was that? A Well, as near as I can remember, I don't remember the date, but it was about a week before, a week and a day before we heard of the killing.

Q And when did you hear of the killing? A We heard of the killing on a Saturday night.

Q Was that the same day that the killing happened? A No, it was a week—

Q No, I mean when you heard of it? A Yes, sir.

Q You heard of it the same day it happened? A We heard of the killing the same day it happened, yes, sir.

Q And Scott was at your house the Saturday before that, a week and a day before? A Yes, sir.

Q And who was at your home when he came there? A Why, it was Charlie, Gertrude Wilson's brother, and Gertrude, and there were her sister-in-law, and there were my husband and myself.

Q Just tell us what happened when Scott came in?

Mr. D'Aloia: I object to that.

The Court: That is the same question and I make the same ruling.

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.

DALLAS FLANNAGAN,
Judge.

Q Just tell us what happened when Scott came in there and what you saw and heard. A He knocked at the door and I went there to open the door and he came right on in and he asked "If my wife was in there", and I asked him, "Who is your wife?" and he said, "Doll," and I said, "No, she is not here," and before I can

get to say anything further, he came and he bust right by me and went right on through to the bedroom and my husband was in bed.

Q How long did he stay in the bedroom? A Well, about a half an hour or maybe a little more.

Q Were you in the bedroom at the time? A No, sir.

Q Then what happened? A He came out and sat and talked a little while and then went on out.

Cross examination by Mr. D'Aloia:

Q Did you ever see Essie Jones? A Yes, sir.

Q What is his real name, is Essie his real name? A That's all I know.

Q How long have you known him? A Oh, I have just known him maybe two or three months.

Q Did you know him two or three months before the 4th of July? A No, no more than I seen him about once, but I don't know him enough to say I know him.

Q But you knew Doll pretty well, didn't you? A No, I did not know her very well, I just seen her about twice.

Q Did you ever see her with Essie Jones? A No, sir.

MARY JONES, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live, Mrs. Jones? A 186 Broome street.

Q How long have you lived there? A Well, about five months, I moved there Christmas I think—I don't know really when I moved there, but I have been over there ever since before Christmas, I think.

Q Did you know Doll Scott in her lifetime? A Yes, I know her.

Q Do you know Harry Scott? A Yes.

Q Do you see him in court here? A Yes, sir.

Q Will you point him out please? A (Indicates the defendant.)

Q Did you ever see Scott in your home? A Yes.

Q When? A Now, I don't know what day of the month it was, but they was to my home one day, and I fixed dinner for them.

Q Do you know what month it was? A I sure don't really know to save my life, but I know I fixed dinner for them.

Q Do you remember the fourth of July of this year? A Sure, I remember the 4th of July.

Q Can you tell us whether it was before or after the 4th of July? A I cannot really tell you when it was, whether it was before the 4th or after the 4th, I can't tell you because I did not have it on my mind then.

Q Do you know when Doll died? A I don't know what day of the month she died, but I know she died on a Sunday, she got killed on a Sunday.

Q How long before that was it that you saw Doll in your home with Scott? A Well, to the best of my knowledge, I think it was two weeks or a week or so before she got killed.

Q And is that the only time that they were in your house? A No, that was not the only time, they had been there two or three times before she got killed.

Q Now, on this occasion that you speak of, just tell us what happened.

Mr. D'Aloia: If your Honor please, "On this occasion that you speak of" I object to that. She said she was there two or three times.

Mr. Conlon: I will withdraw the question.

Q Do you remember an occasion, Mrs. Jones, when you had a party for your little boy? A Yes, my sister did, I remember I gave a party, true enough, Harry came to my house that night.

Q Now, I want to know when that was, as near as you can fix it. A When it was?

Q Yes. A I cannot really tell you what night it was.

Q How long before— A (Interrupting.) It seemed like it was a week or two weeks, I don't know when it was before I heard about it, but it was about two weeks or one week before he killed Doll.

Mr. D'Aloia: I move to strike that out, if the Court please.

The Court: All right, strike it out.

Q Well, it was about a week or two weeks before Doll died? A It seemed like to me it was.

Q Tell us what happened that time. A I am going to tell the truth what happened, what Harry said to me the night of the party. He came to my house and he walked across to the table, and I was in the front room peeping out of the window, and Harry was to the table and he said, "Hello Cousin Mary," just like that, and I said,

"Hello Harry," and he said, "Is you seen Doll tonight?" And I said, "No, Harry, I ain't seen Doll," but Doll was then standing back behind the door to the ice box, I did not seen her, because my face was facing this away (indicating), but when I go to the ice box, as I turned around, I saw Doll just like this and I say, "Harry, here Doll now," that time Harry go to Doll and he shove her and he pull a pistol out of his pocket, just like this (indicating) and I said, "Harry, if you-all going to have a fuss in my house, get out," and I shoved Doll and Harry out of the door and what became of them, I don't know.

Cross examination by Mr. D'Aloia.

Q Do you remember Doll coming there that night—she had been drinking there? A I don't know whether she was drinking or no.

Q Weren't they all drinking? A I don't remember whether nary one of them was drinking or no, because I shoved them out of the door.

Q How long had Doll been there? A I don't know, when I came into the front Doll was standing to the ice box.

Q How many people were there? A Say what?

Q How many people were there? A Well, it was about four, just my family of people, I cannot tell you how many was there, but there was four or five peoples there.

Q What time was it? A I don't know, I did not look at the clock.

Q What kind of a party were you giving? A I was just giving a birthday party.

Q Whose birthday was it? A It was my little son's.

Q Which one? A My baby boy.

Q What is his name? A Charles James.

Q How old was he then? A I don't know.

Q You were giving a birthday party for your son and you did not know how old he was? A No, my mother keeps up with my baby's age, down South.

Q You only gave that party three or four months ago— A (Interrupting.) Well, I write to my mother, and my mother tell me.

Q Don't you know how old your baby was? A No, I don't know, my mother keeps up with that, and I don't even know my own age.

Q What time of the night was it when this occurred? A I cannot really tell you, but it was the first part of the night.

Q What time? A I don't know, but it seemed like it was the first part of the night.

Q How old is your son Essie? A I don't know none of my children's age, because I cannot keep up with it. He keeps up with his own age.

Q And where was Essie? A In the house.

Q What was he doing? A He was asleep.

Q Do you mean to tell me that you were giving a birthday party— A (Interrupting.) I don't know how old he was, it was a party and my mother down South send me my baby's age.

Q Was it in July? A I could not tell you. I do not even keep up with my own age. I do not even know how old I am.

Q You mean to tell us you were giving a party for one of your children and your grown son was— A He keeps up with his age.

Q And your grown son Essie wasn't there? A Sure he was there.

Q And he was not asleep? A Yes, he was asleep in the bed, asleep.

Q Now, didn't he go out and come in? A No.

Q Several times? A No, he was asleep.

Q Now, who did Doll go there with? A Who?

Q Yes. A I don't know who Doll come there with, but when Harry Scott asked me where was Doll my son was in the front room asleep, because I went there and woke him up.

Q What time was that? A I do not know what time it was.

Q How long had Doll been there? A I don't know. I know she could not be there long, because I was in the front room looking out the window.

Q How many children have you altogether? A Two.

Q Essie is one? A Yes.

Q Is Essie over twenty-one? A I don't know.

Q Does he vote? A I guess he is grown.

Q Does he vote? A No, he never votes, as I know; I don't know.

Q Now, listen. When you found that Doll had been killed who came to see you and who talked to you? A You want me to tell you that and I am telling you the truth, I was home in the bed asleep.

Q After Doll had been killed, as you say, will you please tell us who spoke to you first? A When I was home in the bed asleep—now, listen—there was a man come from Philadelphia by the name of Will—

Q No. What officer of the law spoke to you first and asked you to remember this party? A Let me see if I know him. The law come to me first.

Q Well, somebody come to you and asked you if you remembered a party where you saw Scott

come in and ask for Doll and you say Scott said something to you and you put them both out. A They didn't come that night.

Q No, not that night, recently. Did you get a paper to come here? A Yes.

Q Now, did you know that Essie was there at 76 Barclay street on the 3rd of July? A No.

Mr. Conlon: I object to that. It is immaterial. It is not cross examination.

The Court: Well, she was not there.

The Witness: I was not there.

Q Well, do you know where Essie was? A Where Essie was?

Q Yes. A When my Doll got killed?

Q Yes. Do you know where he was?

Mr. Conlon: I object to that.

The Court: Now, this does not appear to be cross examination.

Mr. D'Aloia: It will be cross examination to show her prejudice and tendency to remember this party, this episode, in order to shield someone who is near and dear to her.

The Court: Go ahead.

Q Do you know where Essie was on Sunday night, July 3rd?

Mr. Conlon: I object to this. This is not cross examination. The Judge may call this witness on his case, if he sees fit. I do not see any reason to go into it. He says he is bringing in an entirely new issue in this case, and I do not think this is any time to bring it in.

The Court: Well, he claims he has a right to do this in order to affect the credibility of the witness and show the witness—

Mr. Conlon: I think that is rather remote.

The Court: I think it is, too. The question is whether it is too remote.

Mr. Conlon: The only other point, unless the Judge is prepared to refute her testimony here he is not attacking her credibility. I think this witness should properly be called in the defendant's case. It is going into some entirely new phase of it.

The Court: No, I don't think so. I think I will allow it.

Q Now, where was Essie on the 3rd of July? A When was that? That was Sunday night the girl got killed?

Q Yes. A I do not know where Essie was that night.

Q What time did he leave the house? A What time did he leave the house?

Q That is the question. A I don't know what time he left there.

Q What time did he come back home? A It seemed that night he come around about 9 or 10 or 11 o'clock, or something like that; I don't know.

Q How long had he been away? A I don't know how long he had been away, because I went over to my sister's.

Q Now, isn't it a fact that Essie brought Doll to your party and that from the night of the party— A No.

Q Now, listen. —and from the night of the party until the 3rd of July your son Essie was Doll's fellow? A No, no, sir.

The Court: Oh, no. Now, stop.

Mr. D'Aloia: Well, she can answer no.

The Court: Well, no, I will not let her.

Mr. D'Aloia: I will reframe the question and withdraw it.

Q Don't you know between the night of the party and the 3rd of July Doll came to your house every night brought by your son Essie? A He did not bring her there.

Q She come there? A She come there.

Q How many times? A One time.

Q Where was Essie? A In the front room asleep.

Q No, I don't mean the night of the party. How many times did Doll come to your house? A She did not come there no more after that party was over.

Q How many times did Essie go out with her? A I don't know.

Q You don't know? A I don't know as he went out with her at all.

Q Now, isn't it a fact that you are telling this story about this party and the trouble between Scott and Doll because you know that Essie was Doll's fellow and Essie might get into trouble?

Mr. Conlon: I object to that as absolutely improper.

Mr. D'Aloia: This is cross examination.

Mr. Conlon: No, it is not. It is a little testimony by counsel.

The Court: Is there any foundation for it?

Mr. D'Aloia: Why, here is a woman who out of a clear sky—

The Court: No. Is there any foundation for it?

Mr. D'Aloia: Yes, this is cross examination. She comes here in a wishy-washy way.

Mr. Conlon: I object to that.

Mr. D'Aloia: She picks out a single episode where something was said antagonistic to this man. Now, how can we tell that she is not doing that to protect her son?

The Court: All right.

(Question read.)

The Court: Answer yes or no.

A No. Essie was not Doll's fellow. I am telling you the truth.

Q Now, you answer my question. Can you answer it?

Mr. Conlon: I object. She has already answered it.

The Court: She said no and Essie was not Doll's fellow.

Mr. D'Aloia: I move to strike that out.

The Court: No, I will not strike it out.

Q Now, isn't it a fact that you know that Essie said that if Scott would fuss around with Doll he was going to get shot?

Mr. Conlon: I object to that.

The Court: No. I will not allow that question.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: Anything she heard she can bring out.

Q Well, didn't you hear your son Essie— A No.

Q Please do not answer yet. Didn't you hear your son Essie at your house when Doll was there say to her— A That night?

Q Now, listen until I get through. Didn't you hear your son Essie at your house say to her, "You are my girl and if that fellow Scott fusses around you I will get him."

The Court: Now, wait a minute.

(Question read.)

Mr. Conlon: The only purpose of that question can be to attack this witness' credibility by contradicting her by the testimony of some other witness. Now, I think unless Mr. D'Aloia is prepared to state that he intends to do that that this question is absolutely improper. If Mr. D'Aloia is not prepared to contradict this witness, then the question can be asked for no other purpose than to get some extraneous facts before this jury which are not in the case.

The Court: I am going to allow the question.

Mr. D'Aloia: I want to ask your Honor to allow me to satisfy the prosecutor.

The Court: No. Now, read the question to her.

(Question read.)

A No, I didn't hear him, because he was asleep.

Q Didn't you hear him say to her that she was to have nothing to do with Scott? A He did not say that, because the child was asleep.

Q No, I am not talking about this one night. Please get your mind away from the party. A No, I never heard it.

Q After that? A No, if he had a woman he would not tell me about it.

Q Do you remember him going out shopping with Doll? A No.

Q And buying her clothes? A No.

Mr. Conlon: I object.

The Court: That is going entirely too far.

Mr. D'Aloia: The two people can leave the house in the presence of this woman.

The Court: Precisely, and you can bring out what was said before they left, but you cannot bring out what happened after they left.

Q Did you ever see them leave the house to go shopping? A No. If I see Essie take a woman out and buy her anything—I ain't got no husband myself—I would kill him; I would beat him to death.

Q How many times was Doll to your house? A I don't know how many times she was.

Q Was it so many that you cannot tell? A I know when she first come from Philadelphia.

Q How many times did she come to your house at 186 Broome street? A I cannot remember.

Q Well, was it about twelve times? A I don't know.

Q Was it about twenty times? A I don't know, because I thought both of them was a friend to me.

Re-direct examination by Mr. Conlon.

Q But you do remember how many times she come there after this party? A She did not come, because I run them out of there, and shoved them out of the door, and I drove both of them out of the house and they never did come back, any more.

Q They never did come back? A They never did. I ain't seen them, no.

Q I show you Exhibit S. 8 for identification and ask you if you ever saw that gun before? A That gun what Harry have, now I can't say that that was the gun, but the gun that Harry had, but the way he took the pistol and shoved Doll in the face, and said, "Come on out of here."

Mr. D'Aloia: I object and move to strike that out. She said she cannot say that is the gun Harry had.

The Court: It may stand.

(Last question and answer read.)

Mr. D'Aloia: I say the last part of the answer ought to be stricken out.

The Court: Why?

Mr. D'Aloia: The question is, "I am showing you Exhibit S. 5." And she said, "No" in the first part of the answer, "That is not the gun."

The Court: Why, give me a reason.

Mr. D'Aloia: Because it is absolutely prejudicial to us and it is no answer to make to a question of that kind.

The Court: Prejudicial to you, what is the prosecutor here to do, except to use matters prejudicial to you. You mean it is not responsive, is that what you are trying to say?

Mr. D'Aloia: Yes.

The Court: You have nothing in the world to do with that, that is with the prosecutor alone to say. If it is not responsive, the prosecutor may move to strike it out, and not you.

Mr. D'Aloia: But we can call your Honor's attention to it if it is prejudicial—

The Court: No, that is the prosecutor's business, not yours.

Mr. D'Aloia: I don't understand that.

The Court: You mean to say, Judge D'Aloia, that you don't understand that if the prosecutor asks a question and it is not responsive that he should move to strike it out and not you?

Mr. D'Aloia: Yes, but if the answer is prejudicial we have a right to call your Honor's attention to the fact that the answer is responsive in the first few words only. I ask an exception.

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

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

DALLAS FLANNAGAN,
Judge.

By Mr. Conlon.

Q Mrs. Jones, you say you don't know whether this was the gun? A Listen, it was one just

like this, I don't know one pistol from another when I see it, only a long barrel and a short barrel, but the pistol Harry had put me in mind of a pistol like that, it was automatic—

The Court: Now, stop talking. Answer the questions and when you answer them, stop, but don't keep talking all day.

Re-cross examination by Mr. D'Aloia.

Q You say when that happened, Essie was not awake, isn't it the truth that when this occurred Essie participated in it?

Mr. Conlon: I object.

The Court: Overruled.

Q Do you say to us now that when this fuss occurred and you saw the pistol at the party that Essie, your son, was not a participant in the quarrel? A What did you say?

The Court: Do you understand that or not?

Q Your own son Essie, wasn't he in this squabble with Doll and Scott? A No, sir, he was not, he was in the bed asleep.

Q The party was on, wasn't it? A There was two or three people there when Harry came in.

Q The party was in full blast, wasn't it? A No.

Q But it was on? A No.

Q They were drinking? A No, sir.

Q And the victrola was going? A No, sir, we was standing in the kitchen.

Mary Jones, re-cross.

Q Was the party on A Yes, but there was nobody there.

Q Did you have a piano there? A Sure I has a piano.

Q And was the piano being played? A No, there was no piano playing, we were all in the kitchen and Essie was in the front room sleep.

Q Was the party on? A Yes, but Essie was sleep and I was into the front room and Harry walks in there.

Q Will you give us the names of the people who were there? A I don't know who was there.

Q Were they friends of yours? A Sure I know one girl was there.

Q What is her name? A Her name was Mary Jackson, one girl was there.

Q Where was she when this fuss occurred? A All of us was in the kitchen and Essie was in the front room sleep.

Q Where were these other people? A All of us was in the kitchen but Essie he was in bed sleep.

By Mr. Conlon.

Q Does your son go to school, this boy that you had the party for? A Yes, sir.

Q What school does he go to? A He goes to Central Avenue school.

Q Is that a public school or a high school? A On Central avenue.

By Mr. D'Aloia.

Q Was he there at the party? A He was sleep, too.

John Hudson, direct.

JOHN HUDSON, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Hudson, where do you live? A I live at 292 Littleton avenue.

Q Newark? A Newark.

Q Did you ever live at 76 Barclay street? A I did.

Q When did you move there? A On Friday.

Q What say? A I just remember it was the Friday before the 4th of July, it was on the first, because this happened on Sunday.

Q Do you remember what day the 4th of July was on? A Monday.

Q And you moved there you say the preceding Friday? A The Friday just before that.

Q And who went there with you? A I went by myself.

Q What room did you occupy? A The middle room, her bedroom.

Q Do you know Eva Raymo? A Yes, sir.

Q Was she living there? A No, sir.

Q How long have you known her? A I have been knowing her, about, I came here last July and I have been knowing her about eight or nine months.

Q Did you know Harry Scott, the defendant in this case? A No, sir.

Q Have you ever seen him? A Never did.

Q Did not know him at all? A Never did; never did see him in my life.

Q Whose apartment was this at 76 Barclay street where you lived? A Mrs. Cheesbar's.

Q How long did you know this Eva Raymo? A Well, I knowed her about nine months; I met her at 75 Prince street.

Q Did you go out with her regularly? A No, sir, not regularly, because I worked nights, and I only went out once or twice a week; I worked at Hoboken, New Jersey.

Q And as I understand you, you did not know Harry Scott at all? A I did not know him at all, no, sir.

Q Did you know Essie Jones? A No, sir.

Q Do you remember the night of July 3 of this year? A Yes, sir.

Q What day of the week was that? A That the shooting occurred?

Q Well, July 3rd? A That was on a Sunday, wasn't it?

Q Where were you that evening? A I went out on the bus, I caught the bus right up here at the corner, and I rode out to where I worked here at the Lock Joint Company.

Q What time did you go out? A As near as I can remember, between half-past three and four o'clock.

Q Who went with you? A Eva Raymo went with me.

Q Anybody else? A Nobody else at all.

Q What time did you get back? A I got back around about half-past five, maybe six o'clock.

Q Who was in the house when you got back? A The little girl, the one that is in jail now, and Mrs. Cheesbar, and the girl who got shot.

Q What was the name of the girl who got shot? A Doll is all I know, and I just met her that Sunday.

Q And she was there, and who else? A And Mrs. Cheesbar and the other little girl.

Q What other little girl? A I don't know what her name was, the one who lived there with Mrs. Cheesbar.

Q You mean Gertrude Wilson? A Gertrude, yes, sir.

Q And she is the one you refer to as being in jail now? A Yes, sir.

Q Was anybody else there? A That's all I seen.

Q And did you stay there the rest of the evening? A Yes, sir.

Q And you don't know Essie Jones? A No, sir.

Q What happened that evening? A Well, when she came in her husband was in the hospital, that is Mrs. Cheesbar's, her husband was in the hospital, and she say, "Well—"

Mr. D'Aloia: I object to what she said.

Q Hudson, you cannot tell us anything that anybody said to anybody else unless Scott was present. I want to know what they did. A There wasn't anything happened.

Q Where did you go when you got back? Where were all these people in the apartment? A Just sitting around, laughing and talking.

Q Where was Mrs. Cheesbar? A She was in the kitchen.

Q And where was Doll? A She was in the kitchen, too; we all was in the kitchen.

Q And where was Gertrude Wilson? A Gertrude Wilson, she was there.

Q In the kitchen? A Yes, sir; washing dishes.

Q And where was Eva? A She was in the kitchen and I went out and got some watermelon and we were all eating.

Q And did you leave the kitchen? A No, sir.

John Hudson, direct.

Q Did you stay there all evening? A Yes, until along about seven o'clock and then we went into my room and we sat in my room talking.

Q Who was sitting in your room talking? A Me and Eva.

Q And where was Mrs. Cheesbar? A In the front room.

Q And where was Doll? A Doll, she went out in the street somewhere, I don't know where she went, but I know she went out in the street.

Q Do you know whether she went out alone? A I don't know whether she went out alone, but I know she went out on the street.

Q What time did she go out? A Around seven o'clock.

Q What time did she come back? A That I don't know.

Q And who was in the apartment there when Doll went out at seven o'clock? Anybody else besides the people that you mentioned? A That I don't know.

Q You were then in the bedroom? A In the bedroom.

Q And how do you know that Doll went out? A Because when she came back up the steps I heard somebody ask her where she had been.

Q When Doll went out, you don't know who was in the apartment? A No, I do not.

Q What time did she come back? A She must have come back, I suppose, around about quarter after eight or something like that, because she was not in there long.

Q And where were you when she came back? A Sitting in the bedroom.

Q And did you know then who was in the apartment? A No, sir.

John Hudson, direct.

Q Then what happened? A And then she asked me could she come through, and I said, "Sure, come on through," and they all came through the room and went into the kitchen and I guess they were in there about three or four minutes or maybe five minutes before the shooting took place.

Q Who came through what room? A Through my bedroom.

Q From what room? A From the front room, you see, it was only three rooms, this living room and the bedroom and the kitchen right straight through.

Q Who came in from the front room through your room into the kitchen? A It was four more men.

Q Meaning who? A The girl that got killed.

Q Doll? A Yes, sir.

Q And who were the four men? A I don't know who.

Q Did you ever see them before? A I never have seen them before in my life.

Q And when they went into the kitchen was the door open or closed? A It was open.

Q And was it left open when they went into the kitchen or closed? A It was closed, she closed the door with her left hand.

Q And they were all in there how long then? A I guess probably three or four minutes, or maybe five minutes before the shooting occurred.

Q And how do you fix the time as five minutes? A They was not in there long, that is as near as I can get at it.

Q What shooting did you hear? A Well, there is an alleyway coming down between the houses, like houses is built, and the house on the right-hand side going down from there, that

made an alleyway coming between the two houses and, well, I thought it was firecrackers in that alleyway, it being on Sunday, and I thought it was firecrackers in that alleyway going off. I did not know anybody was in the kitchen, until I heard the hollering.

Q How many shots did you hear? A About five.

Q What do you mean you did not know who was in the kitchen? A I did not say I did not know who was in the kitchen.

Q What did you hear after the shots? A I heard her hollering.

Q What did you do? A I jumped up and started to run, and I said, "There is no use of my running or going any place," and I started to run out of the house, and she fell by the door and hit the door with her hand, and the door come open, and Mrs. Cheesbar run in there and she said, "Doll, Doll—

Mr. D'Aloia: I object to the conversation.

Q She fell against the door of your room and knocked it open? A Knocked the door open.

Q And what did you do then? A I started to run out of the house, that's all I could do.

Q When the door was open, you could see in the kitchen? A I could see her laying down.

Q Was there anybody else in the kitchen? A There was nobody there then, everybody had run out or disappeared or done something.

Q When the door was knocked open by Doll's falling against it and you looked into the kitchen, was there anybody else in the kitchen besides Doll? A There wasn't nobody.

Q What did you do then? A I started to run, I run to the front room.

Q And then what did you do? A I waited until the policeman come.

Q Were you able to see into the kitchen from the bed on which you were sitting, or did you get up off the bed? A I don't understand you.

Q Were you able to see into the kitchen from the bed on which you were sitting or did you get up off the bed? A After she had fall?

Q Yes? A Yes.

Q Yes what? A I was able to see her, because she fall in the door, she was not in the door but cross-ways to the door and the door come open.

Q And when she fell against the door, the door opened? A And I was able to see her then.

Mr. D'Aloia: I object, if the Court please, that is a conclusion, she fell against the door, because she fell on the other side.

The Court: He said that the door was knocked open by her falling.

Mr. Conlon: He said she fell against the door.

Mr. D'Aloia: How could he see that if it happened on the other side?

Mr. Conlon: If the Court please, I object to counsel arguing with my witness. I object, when I am questioning a witness, because he has only one right and that is to object to my questions, and he has no right to make any remarks about my questioning or the answers of the witnesses.

Mr. D'Aloia: That is what I did, if your Honor please, I objected to the first part of the question, because it is a conclusion, and if the stenographer will read it, it will show

I am justified in objecting to it, to something which this witness could not have seen, and that is what I am objecting to—

The Court: Go right ahead, that is the best way.

Q You were sitting on the bed? A Yes.

Q And you say as Doll fell against this door, the door was opened, is that right? A It was opened.

Mr. D'Aloia: I object.

The Court: He said the door opened, that is his answer.

Q And you were then able to see Doll? A Yes, sir.

Q And could you then see the rest of the kitchen? A I could see the rest of the kitchen because the light was burning and the table was overturned in the kitchen.

Q Could you see the rest of the kitchen? A I could see it on this side and not on this side (indicating).

Q How much of the kitchen could you see? A Only one-half.

Q Was there anybody in there? A Nobody I seen in the half I was looking in.

Q And after the door opened and Doll fell to the floor there, did you hear any other noise in the kitchen? A No, I heard running and scrambling, and that is when the table turned over, because there wasn't no one in the kitchen when the door came open.

Q After the door opened, did you hear anybody in the kitchen? A No.

Cross examination by Mr. D'Aloia.

Q You saw that door open and the body fall, did you see this door leading on to the back porch? A That door there leading to the back porch?

Q You see the kitchen, there is a picture of it, do you recognize it? A Sure I recognize it.

Q Now, this was taken and it shows the back of the kitchen. Do you see the wash tubs here? A Yes.

Q And the table? A Yes.

Q And the range? A Yes.

Q And do you see the dish closet in the corner? A Yes.

Q And the door going out to the porch? A Yes, sir.

Q Now, that door going out to the porch, when you looked in there, was that open or closed? A I can't say that, I don't know.

Q What is your business? A Working for the Lock Joint Company, the pipe company that makes them big city pipes.

Q Do you understand this map or plan? A I don't know.

Q Here is a plan of that second floor where you were on that particular occasion. This is the stairway going upstairs. Here the landing on the second floor hall. This is the door going into the kitchen. Right over here is a line of a door going into that bedroom and into the bedroom from the kitchen. Here is a front room. There is a settee. There is a talking machine. There is a table. There is a door going in from the front room into the bedroom where you were. Do you understand it now? A Yes.

John Hudson, cross.

Q Here is the door going out to the back porch. You looked over this direction. Did you see whether that was opened or closed? A I wasn't in the bed. I was sitting on the bed.

Q Now, as you were sitting on the bed looking through this door and the door open did you see this door? A You cannot look through the door, because there is no glass in the door.

Mr. Conlon: He said you could not look through the door because it was not open.

The Witness: I could not look through the door until it was open, because there was no glass in it.

Q Now, I am talking about when the door was open? A I could see after the door was open.

Q Did you see this door? A I didn't pay any attention to this door.

Q When that door was open and you looked in the kitchen you could not see anybody in the kitchen. You came home from the bus ride at half-past five? Which door did you go in? A Through the front room door.

Q At that time who was in the front room? A Mrs. Cheesebro, Doll and Gertrude.

Q Were there any men there? A No.

Q And you went in the bedroom with Eva? A Yes.

Q And you sat down with Eva? A No, I went in the kitchen.

Q And these men were in the kitchen? A We all went in the kitchen.

Q How long were you in the kitchen? A About an hour and a half or two hours.

John Hudson, cross.

Q And all the women went in the front room with the exception of Eva? A Yes.

Q And you and Eva remained in the bedroom? A Yes.

Q How many men went in the front room? A That I don't know.

Q How long were you and Eva in the bedroom when the other woman went into the front room and some men came in the front room? A I guess about an hour.

Q Do you remember Doll coming in from the front room after these men had come into the front room, coming into your room and asking Eva where is Mrs. Cheesebro's box of liquor? A I don't remember.

Q You would not say that didn't happen? A No, I don't remember.

Q And don't you remember that she got a bottle out of her trunk in your room? A No, she didn't.

Q Now, did she come into your room for anything? A No.

Q Well, the first thing you know was when she came in and asked your permission to allow some men to go through the room? A Yes.

Q Come from the front room to the kitchen? A Right.

Q And Doll came from the front room to ask your permission and Eva's permission and she said yes. Now, how many men came from the front room into your room and into the kitchen? A Four.

Q You are sure it was not five? A I don't remember.

Q It may have been five? A I don't remember.

John Hudson, cross.

Q Well, there may have been five? A There may have been.

Q And they all came through this room? A Yes.

Q Wasn't Doll last? A Doll was first.

Q Well, she shut the door? A Well, she got in the kitchen and somebody told her to close the door and she closed the door with her left hand.

Q Now, after that isn't it a fact that Doll came through your room again and went out to the front and came through with a tray and some bottles on it? A No.

Q And Doll came through the door and there were four or five men in the kitchen? A Yes.

Q And for the next four or five minutes you did not hear any talk? A No.

Q Didn't hear any argument? A No.

Q Didn't you hear the table go over? A After the shooting I heard the table go over.

Q Well, these men were all in the room when you heard shots? A Yes.

Q And the shots sounded to you like firecrackers? A Out in the alley.

Q And did you hear the scuffling of feet as if four or five men were running out? A I would not say five, I say four.

Q Well, did you hear the scuffling of feet? A I went in the kitchen.

Q Well, when the door went open after these firecrackers and after this scuffling of feet, you did not see anybody in the kitchen? A Didn't see any one.

Q No man there? A Nobody.

Q None of those four or five men that had come through your room? A No.

Q Do you know Essie Jones? A I don't know any of them.

John Hudson, re-direct.

Re-direct examination by **Mr. Conlon.**

Q You said that you could see half of the kitchen? A Yes.

Q Now, you understand this map. Will you show the jury just which half of the kitchen you could see? Show us first where you were sitting on the bed? A This is the settee.

Q All I want to know is where the bed was that you were sitting on. Will you point that out? A You go in the front room and the bed was over like this.

Q Which room? A The middle room.

Q You are pointing to the middle room now? A Well, I come here. That is the only way I can get it.

Q This is a map of the kitchen. Do you understand? Here is the door into the hall. Here is the door that goes to your room. Here is the door to the back porch. Here is the gas stove. Here is the table. Just indicate on that map what part of that kitchen you can see from your bed as you were sitting there. A There (indicating).

Q How much of it? A Well, I could only see from the table over on that side.

Q You mean from here? A From here all on this side.

Q What about the gas stove? A I could not see the gas stove.

Q Did you see this door? A No. I could see the china closet.

Q Where is the china closet? A Sitting over in the corner.

Q The china closet was where with reference to the door? A On the left-hand side of the door in a kind of a corner like.

John Hudson, re-cross—re-direct.

Re-cross examination by Mr. D'Aloia.

Q In other words, looking at this picture—you see that picture? A Yes.

Q You can see this side of the kitchen? A I can see this side of the kitchen.

Q Now, could you see if that door leading out on the front porch was open? A I could not see.

Q Now, when that door went open who awakened Mrs. Cheesebro? A She awakened her ownself.

Q That was the first you saw her? A Yes.

Q And Gertrude was not in the house? A Gertrude was not in the house.

Re-direct examination by Mr. Conlon.

Q How do you know Mrs. Cheesebro woke herself? A Because she was sitting there and she shook herself and said, "What in the world is the matter?"

Q You were in the bedroom with Eva? A With Eva.

Q Where was Mrs. Cheesebro? A Sitting in the chair right on the side of the door leading to the kitchen.

Re-cross examination by Mr. D'Aloia.

Q You could see Mrs. Cheesebro because the door to the front room was open? A No, I could not see her.

Re-direct examination by Mr. Conlon.

Q You could not see Mrs. Cheesebro? A No. She was sitting on one of them big chairs.

Eva Raymo, direct.

Q At the time these shots were fired do you know whether or not she was actually asleep from what she told you? A I don't know.

Re-cross examination by Mr. D'Aloia.

Q But you do know that Gertrude was not in the house? A I do, because she come up the stairs.

Q Now, wait a minute. You do know that Gertrude was not in the house? A No.

Re-direct examination by Mr. Conlon.

Q You were in this bedroom how long? A I was in there about an hour.

Q Did you leave the bedroom for an hour preceding the shooting? A I never did leave it.

EVA RAYMO, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where do you live? A 190 Montrose avenue, South Orange.

Q You work there? A I work there.

Q Where did you live before you went there? A 203 Howard street.

Q Did you ever live at 76 Barclay street, Newark? A No.

Q Do you know who did live there? A Well, when I was there. I was there over night once when Mrs. Cheesebro lived there.

Q When were you there over night? A The Saturday night before the 4th.

Eva Raymo, direct.

Q The Saturday night before the 4th? A Yes.

Q Who was there that night? A Mrs. Cheesebro and another little lady, a little girl and Johnny.

Q You mean Johnny Hudson? A Yes. There was another gentleman there but I don't know him.

Q Do you know Harry Scott? A No, sir.

Q Do you know Essie Jones? A No, sir.

Q You stayed there over night on Saturday night? A Yes, sir.

Q What did you do the next day, Sunday? A The next day we got up and I stayed around there all day until around 2 o'clock in the afternoon and I went out for a bus ride.

Q With whom did you go for a bus ride? A Johnny and I.

Q Johnny Hudson and you? A Yes.

Q What time did you go out? A It was around two or three; after two, at any rate.

Q And what time did you get back? A We got back around anywhere from five to six-thirty something.

Q Who was in the apartment there when you got back? A When I got back there was Mrs. Cheesebro—when I got back there was not anyone in the house.

Q There was not anyone there at all? A Not that minute, no.

Q Who came in there? A Mrs. Cheesebro and the other two girls, the little short girl—I do not know her name—came in after we got there.

Q Did Mrs. Cheesebro come in alone? A Yes.

Eva Raymo, direct.

Q And then the other two girls came in later? A Only one girl came in first from next door and then Mrs. Cheesebro came in.

Q Who was the first girl that came in? A I don't know her name.

Q You do not know her first name? A No. The little—I don't know her name.

Q What did you say? A The girl that ran away. I do not know her name.

Q Well, she came in first? A Yes.

Q And then Mrs. Cheesebro came in? A Yes.

Q And then who came in? A Well, then later in the afternoon, Doll, the girl who was shot, she come in with the men.

Q Do you know Doll? A I don't know her, but I had met her.

Q Where did you go in the apartment when you came in? A I went into the center room.

Q Right away? A Yes.

Q Who went there with you? A Johnny.

Q Who else was in the center room? A No one.

Q Did you go to any other part of the apartment? A Well, later.

Q You went into the kitchen later? A I went to the bathroom later.

Q Well, when you went to the kitchen did you stay there any length of time? A I did not stay there, I went through to the bathroom.

Q Well, what time was that? A I do not know exactly. It was shortly after I got in the house.

Q You got in what time? A I got in any time from half-past five to half-past six.

Q Was there anybody in the kitchen when you went through? A No.

and Doll came to the room from the hall, to the door from the hall into the middle room where I was and said "May we go through here?" And I said, "Yes," so she came on through and the men went through to the front room and after she got into the front room a few minutes she came back and went through to the kitchen, and she stayed out there around five or ten minutes. She was gone.

Q Was she alone when she went back to the kitchen? A Yes. She went through to the kitchen and was out there five or ten minutes and pretty soon a man came into the room where we were and asked me did Doll come in here and I said she went through here but I don't know where she went.

Mr. D'Aloia: This conversation—I move to strike it out.

The Court: Strike it out.

Q Do not tell us what anybody said to anybody else. A So she went through to the kitchen and she was gone about five or ten minutes and she came back and then she went back into the front room. Will I tell you what he said?

Q What who said? A What they said after she went into the room?

Q Yes. A Then she went back into the living room.

Q After she went back into the living room what happened? A And after she went back to the living room after she got in a man asked her—

Mr. D'Aloia: I object.

Q We do not want you to tell any conversation. They were all in the living room now? A Yes.

Q Then what happened? A Then she come back and asked if I knew where Mrs. Cheesebro's bottle was and I told—

Q I don't want you to testify to any conversation. I just want to know about what they did and where they went. Now, they were in the front room? A Yes.

Q When did you next see them? A When she came back into the room where I was again.

Q And she spoke to you? A Yes.

Q Then where did she go? A Back into the front room.

Q Where did she go? A Then the crowd of men went back into the kitchen again.

Q Through your room into the kitchen? A Yes.

Q Was that the last time they went through your room? A Yes.

Q How many were there? A There was a crowd of men; at least four men went through first.

Q Do you know any of the men? A No.

Q Have you seen any of those men since? A No.

Q Did you know any of them at the time? A No.

Q When these four men and Doll went into the kitchen— A The four men went in first.

Q And did Doll go in? A Yes, later.

Q Did you see anybody else go in there? A No.

Q Was the door from your room to the kitchen open or closed? A Closed.

Q Who closed it? A Doll.

Eva Raymo, cross.

Q Doll closed it when? A When she went to the kitchen, the last time.

Q When she went into the kitchen the last time to close it, is that correct? A Yes.

Q How long did they stay in the kitchen before anything happened? A When she closed the door.

Q Then what happened? A And I heard fireworks, I thought it was fireworks.

Q How long after Doll went into the kitchen did you hear this— A (Interrupting.) When she went into the kitchen and closed the door.

Q How long after that did you hear what you thought were fireworks? A When she closed the door I heard the fireworks.

Q Then what happened? A I don't remember anything else until the policeman came.

Q Did you see Doll after that? A After the officers got there, I saw her.

Q Did you see Doll before the officers came there? A After she was shot?

Q Yes. A No.

Q You did not see her? A No, sir.

Q Where were you? A I went in the front room.

Cross examination by Mr. D'Aloia.

Q Do you remember her coming in with some men and going into the front room? A Yes, sir.

Q Can you tell us whether there were four or five men in that room? A I cannot.

Q When she came in the first time through your room, she came in through the hall door, didn't she? A Yes, sir.

Q Do you know anything about a map? A No, sir.

Eva Raymo, cross.

Q When she came in from the hall door, she went into the front room through your room? A Yes, sir.

Q And how many men were with her then? A There was at least four or five, I cannot just tell you.

Q After these men had gone into the front room with her, do you know whether or not anybody came to that parlor door, the front room door, that leads out to the hall? A I know this girl came in.

Q Yes, who besides this girl? Do you remember a man coming there after these three or four men? A No, I do not.

Q But you remember the girl coming there? A Yes, sir.

Q And after that the next thing you recall is that Doll came into the room where you were, leading the men in the front room and came and sought a bottle? A Yes, sir.

Q And she got the bottle? A Yes.

Q And she went out to the front room again? A Yes.

Q And out there you don't know what happened with that bottle, do you? A No.

Q But how long after that was it that Doll came in and asked if she could bring those men to your room? A Well, as near as I can remember it was at least fifteen or twenty minutes.

Q Now, during those fifteen or twenty minutes, the men were all in the front room, weren't they? A I don't know whether they were in there, but they closed the door when she went in with the bottle, but I don't know whether they were there or not.

Q So the front door was closed for twenty minutes? A Yes.

Q And if anybody had come in through the hall, another man, you could not have seen him? A No.

Q But after the front door had been closed for twenty minutes and after the bottle had been brought in by her, then she came in and asked permission to bring these men through? A Yes.

Q Isn't it a fact that the reason why this occurred was because this girl Gertrude Wilson called up from the street and announced that she had some more men she wanted to bring into the parlor?

Mr. Conlon: I object to that, in the first place, it calls for a conclusion, and in the second place there has been no foundation for that question and there is no indication that this girl heard anything.

The Court: He is asking her if she did.

Q Did you hear Gertrude Wilson come up from the street during the twenty minutes that that front room door was closed and that bottle had been brought in there? A Yes, sir.

Q Did you hear what she said?

Mr. Conlon: I object to the question.

The Court: She can answer yes or no.

A Yes, sir.

Q Now, after she said something, then Doll came into your room and asked for the men to go through? A Yes, sir.

Q Now, when the men went through from the front room to the kitchen was Doll last? A Beg pardon?

Q Doll, was she last? A Doll was last, yes, sir.

Q Don't you recall that she went back into the front room to get a tray with the bottle? A No, sir.

Q Well, there was a tray, wasn't there? A Yes.

Q And it was under your bed when the police came, wasn't it? A I can't tell you.

Q But it was in your bedroom? A I don't know, I did not see it there.

Q Where did you see it? A In the living room.

Q In this room? A The front room.

Q Wasn't it under your bed? A I did not see it under in there.

Q Don't you recall that when these men first came through from the front room to the kitchen, after they had been in the front room for twenty minutes and after the bottle had been brought in for 20 minutes, one of the men wanted his drink, do you remember that, that he had paid for, and it was still out there in the front room, do you remember that? A No, sir.

Q Now, anyhow, you say the door between your room and the kitchen was closed? A Yes, sir.

Q Did you hear any people come up into the parlor to take the room that had been vacated by these men who went into the kitchen?

Mr. Conlon: Objected to.

(Question withdrawn.)

Q Did anybody come up the stairs to go into the parlor with Gertrude? A I don't know, I heard her say something about it, but I did not see them.

Q When these men moved out of the parlor and went into the kitchen, did Gertrude come up the stairs and call some men and go into the parlor? A Gertrude was upstairs.

Q Did she have any men with her in the parlor? A I did not see it.

Q Did you hear any noise in there of any kind? A No, I did not hear any noise, I only heard what was said.

Q You heard that she had men? A No, sir, I did not.

Q What did she say?

Mr. Conlon: I object to that.

Mr. D'Aloia: I want to know what this witness heard.

Mr. Conlon: The only difficult part about that, Judge, is that you have no right to hear it.

Mr. D'Aloia: Why?

The Court: He is trying to ascertain whether there were any men in that front room, and if the conversation was such that would indicate that they were in there, he would be entitled to bring it out.

Mr. Conlon: I think that would be a very dangerous thing, to have this witness testify about the conversation, because the conclusions drawn from it might be entirely different from the fact.

The Court: If she heard the conversation in there, it seems to me she might be allowed to tell what she heard, I will allow it.

(Objection withdrawn.)

Q What did you hear Gertrude say? A When Gertrude came up the stairs, she ran into

my room, in the room where I was, and she said, "Oh, may I allow these people to go through?" So she said, and she turned around and whispered to Doll and then I said, "Yes," and then the men went through.

Q And they went into the kitchen? A Yes.

Q And who came up from the street into the parlor? A I don't know, this little girl was talking with Doll, she had whispered to Doll and all I could hear was "Seven," I don't know whether she said "Seven cents" or what it was, but she said "Seven."

Q You don't know whether she said seven men or not? A No.

The Court: Why did you say "Seven cents?"

The Witness: Because I heard her say "Seven."

Mr. Conlon: May I ask that that answer be stricken out, it was admitted for the purpose of showing the presence of people in that front room, and it doesn't show anything.

The Court: Yes, it was, and it doesn't show anything. You were asking her for a conversation in the front room and wanted to show that men were present there.

Mr. D'Aloia: I was trying to show a conversation between these two women, the deceased woman and this girl who came up, to this effect—

Mr. Conlon: Just a minute.

The Court. I heard the conversation, don't reiterate it.

Mr. D'Aloia: Yes, but you have to take the other facts into consideration with the conversation, that they vacated the front room immediately after that, and I say the conversation was heard there, and "Seven" may be absolutely material—

Mr. Conlon: Well, I will withdraw the objection.

The Court: After Doll went into the kitchen, and after the men went through to the kitchen, four or five of them, as the case may be, did you hear anything in the front room?

The Witness: No, sir.

The Court: You did not hear any people talking in there?

The Witness: No, sir.

Mr. D'Aloia: Is this in reference to the parlor, your Honor?

The Court: This is the front room; I call it the front room and you call it the parlor.

Q How about the kitchen, in the kitchen after these men had passed through and after the door had been shut by Doll, did you hear any conversation in there? A Not after the door was shut.

Q Did you hear any scuffling in there? A No, sir.

Q Did you hear a sound like a table being overturned? A No, sir.

Q Did you hear a sound like men running? A No, sir.

Q Will you please tell us how long a time elapsed between the time the men went into the kitchen, coming through your room, and the door

leading into the kitchen was shut, and then you heard the fireworks? A Well, I will tell you—

Q How long a time elapsed, how long a time passed? A Before I heard the shot?

Q Yes; before you heard the fireworks? A When Doll reached back and closed the door I heard the fireworks.

Q Did you hear anybody running? A I did not hear anything after that.

Q And after you heard the fireworks, how soon after that was the door opened? A I can't tell you.

Q But when the door was opened between your room and the kitchen, there was nobody in the kitchen? A I don't know.

Q Did you look in there? A I don't remember; I don't remember anything after the shots until the policeman came.

Q You say it sounded to you like fireworks? A Yes, sir.

Q Do you know whether there were four or five men that came in through that room? A I don't know; I say between four and five; I don't just remember how many.

The Court: Can you tell us how long it was after Doll and these men went into the kitchen before you heard shots or fireworks?

The Witness: When he told her to close the door, asked her to close the door and as she pulled the door with her left hand and it went together, I heard the shots.

The Court: You say "he," you heard a voice tell her to close the door?

The Witness: Yes, I saw him, when he was talking to her.

The Court: You did?

The Witness: Yes, I saw this man when he was talking to her; he had hold of her right hand.

The Court: There was one man who had hold of her right hand?

The Witness? A Yes.

The Court: And there were three or four other men who were in the kitchen?

The Witness: Yes.

The Court: When did he take hold of her right hand? Going through, or afterwards, or when?

The Witness: When she got to the kitchen door he was already in the kitchen, and when she got to the kitchen door she left it open; that was between my room and the kitchen, and he said to her, "Close the door," and as she reached back with her hand and pulled the door, then I heard the shot.

The Court: And he held her by the other hand?

The Witness: Yes.

The Court: And how quickly after the door was closed did you hear the shot?

The Witness: Right there and then.

The Court: Immediately?

The Witness: Yes.

Re-direct examination by Mr. Conlon.

Q Do you know whether or not the man who took Doll's hand was one of the men who went through the room? A I know he went through the room, because he did not move away until she came, he stood there until she got to the door.

Q Do you know now who that man is? A No, sir.

Q Do you see this colored man sitting here? A Yes, but I don't know him.

Mr. D'Aloia: I object to that; that is absolutely objectionable; she says she does not know the man who did that, and she doesn't know any of the four or five men.

The Court: She says she does not know him. Do you want me to strike it out? If you do, I will strike it out.

Re-cross examination by Mr. D'Aloia.

Q Do you know after that door was shut, or, rather, just before the door was shut, going into the kitchen, whether there was any man in the kitchen? A I don't know.

Q Do you know whether any man had come up on the back porch? A I don't know.

Q And that door was open before it was shut by Doll, wasn't it? A Yes, sir.

Q And you were sitting on the bed with Johnnie? A I was sitting near the bed; I was not on the bed; I was right near the bed.

Q Do you know whether there was any man in that kitchen before Doll shut that door? A I don't know.

Q Do you know whether there was anybody in the bathroom; the bathroom is back there, isn't it? A Yes.

Q Do you know whether anybody came up the back porch? A I can't tell you.

Q Do you know whether anybody came up the stairs and went through the hall door to the kitchen?

Mr. Conlon: I object to that, if the Court please; how could this witness see that?

(Argument.)

Q Did you hear anybody come up the stairs? A I did not.

Q That kitchen door or the door leading from your room into the kitchen was open all the time until she shut it, wasn't it? A Yes.

Q And before it was shut by Doll, was there anybody, any man, in the kitchen? A The men that went from the front room.

Q No, before these men went in. A Not that I know of; I did not see them.

EVA RAYMO, recalled in behalf of the State.

Direct examination by Mr. Conlon.

Q Eva, can you tell me whether or not this defendant Scott, sitting over there was one of the men who was in this house on this evening?

Mr. D'Aloia: I object.

A I could not tell.

Mr. D'Aloia: Just a minute. Because she has sufficiently answered that. At one time she said no. I objected to the prosecutor pointing out this defendant.

The Court: I do not know that he pointed him out. I will allow that. Stand up, Mr. Defendant.

Mr. D'Aloia: I object to this being done. I think this is highly improper. I think that

after the prosecutor has asked that question on two occasions and the witness answered no, counsel for the defense object to the Court asking the defendant to stand up, putting the same question apparently to the witness.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: Stand up. Now, look at that man that stood up, the defendant, and tell me whether or not you can say he is the man that had this girl Doll by the hand just before she closed the door?

The Witness: I cannot tell.

The Court: You cannot tell?

The Witness: No.

The Court: You cannot say he is and cannot say he is not?

The Witness: No.

GERTRUDE WILSON, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q Where were you living in the month of July, this year? A 76 Barclay street.

Q When did you go to live there? A I do not know when we moved there.

Q Will you speak up? A I do not know what month it was we moved there.

Q Do you remember the 4th of July, this year? A Yes.

Q Was it before or after the 4th of July you went to live at 76 Barclay street? A It was before.

Q And how long before? A Well, I do not know how long it was. It was in March or May.

Q How long did you live at Barclay street? A Well, from that time until the 3rd of July.

Q You moved out the 3rd of July? A Right after the 3rd of July.

Q How long had you been there? A Well, from that March or May some time.

Q Do you know Harry Scott? A Sure.

Q Do you see him in court? A No, I don't see him.

Q Well, look around, will you? A No, I don't see him.

The Court: Is Harry Scott white or colored?

The Witness: Colored.

The Court: Well, get up and look at all the colored men in the room and see if you can find Harry Scott. Is that he?

The Witness: Yes.

The Court: The witness identifies the defendant.

Mr. Conlon: Will the record show that the witness indicates the defendant?

Mr. D'Aloia: Indicating the defendant.

Q Did you know Doll Scott in her lifetime? A Yes.

Q Did you know her under any other name? A No.

Q When did you meet Doll? A Well, I met her in July—June.

Q What part of June? A About the third week in June.

Q Where did you meet her? A I met her at 76 Barclay street.

Q When did you meet Harry Scott? A At the same time I met her.

Q Where did they live when you met them? A Well, when I first knew them they were living at 93 Barclay street. They lived there a week and after that they lived at 76 Barclay street.

Q How long did they live at 76 Barclay street? A A week.

Q How long did Doll stay at 76 Barclay street? A One week.

Q How long did Harry Scott stay there? A A week.

Q Did you, during that week, hear Doll and Harry Scott have any conversation? A Not during that week, the Wednesday during that week I heard Harry say—he came Wednesday night.

Mr. D'Aloia: Is this the first week she met them? May I have this time fixed a little more definitely?

The Court: Yes. What week are you talking about? Is this the week of July 4th or some other week?

Q You say that he came there Wednesday night? A It was the week of July—the week before the 4th of July.

Q The week before the 4th of July? A Yes.

Q Where was Harry living at that time? A Well, he was living at Doll's home at that time.

Q Where was Doll living? A She was living on Broome street.

Q And this was the Wednesday before the 4th? A Yes.

Q You saw them come on that occasion? A Yes.

Q Now, had you seen them together before that? A Sure.

Q In this apartment? A Yes.

Q Whose apartment was this? A Mrs. Cheesbro's.

Q When did you see them together before? A Oh, they were there the 29th—the Saturday night before Doll was killed.

Q You mean the day before or the week before? A The day before.

Q And also the Wednesday before? A And also the Wednesday before.

Q Did you see them on any occasion before that? A Sure.

Q When? A Why, they lived there the week before.

Q And while they were living there the week before that did you see them have any conversation? A Yes, on the Friday before. I heard they had an argument the Friday before.

Q Where did they have the argument?

Mr. D'Aloia: She said she heard they had an argument.

The Court: Did you hear it yourself?

The Witness: I heard it.

Q Where did they have the argument? A In the kitchen.

Q And who was present? A Mrs. Cheesbro was present.

Q And who else? A And Doll and Harry.

Q Anybody else? A No.

Q Were you there? A I was there.

Q Tell us what happened?

Mr. D'Aloia: That is objected to as having no bearing on what happened on the 3rd of July, 1927.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

A The 3rd of July.

Q No, tell us what happened on the Friday night? A Well, the Friday before she got killed, the Friday about 1:30 they had an argument there and Harry smashed her—smashed Doll, and I heard Mrs. Cheesbro say to them if they did not stop fighting they would have to move, and then Doll took her trunk and moved to Boyd street.

Q How do you know she moved to Boyd street? A Well, we went to church and when we came back she had got her trunk and gone.

Q And you say you heard them having a conversation the following Wednesday? A They did not have no argument that following Wednesday.

Q What happened then? A He came there drunk that Wednesday night, and he had a knife on him and he made at Mrs. Cheesbro and asked

where is Doll and he said he is going to kill her wherever he see her.

Q He came there Wednesday? A The Wednesday night before the killing took place he came there drunk and he had a knife.

Q And who was there? A Mrs. Cheesbro was there, and another fellow come with him.

Q Do you know who that was? A I don't know the fellow who was with him.

Q Anybody else in the apartment? A I was in the apartment.

Q Anybody else? A No.

Q What did he have with him? A A knife.

Q What kind of a knife? A I don't know the kind of a knife it was.

Q Did you see it? A I see it, but I don't know what kind of a knife it was.

Q And what did he do and say on that occasion? A He said he was going to kill her wherever he seen her.

The Court: Who was he talking about?

The Witness: He was talking to Miss Cheesbro.

Q Who was he talking about? A About Doll.

Q And just what did he say? A And after then, shortly after then Doll, she came up in a taxicab and called up for me to bring her hat to her, and I carried her hat to her and told her she better not come in, because Harry was up there with a knife and he was going to kill her, and she asked me to go with her—

Mr. D'Aloia: I object to the conversation.

The Court: Strike it out.

Q Then where did you go with Doll? A I went to the Fourth Precinct.

Q What for? A First floor.

Q What for?

Mr. D'Aloia: I object to that, if the Court please, how can the defendant be bound by where she went after she had a conversation with this girl friend, what they did and what they said, how can we be bound by it.

The Court: What do you say, Mr. Prosecutor?

Mr. Conlon: I will not press it.

The Court: Sustain the objection.

Q When did you see them together again? A Well, after that Wednesday night I did not see them together no more until Saturday night.

Q Did you see them Saturday night? A Yes, sir.

Q What Saturday night was this? A This was Saturday night before the 4th of July.

Q Where did you see them then? A 76 Barclay.

Q What time? A Oh, it was about nine or ten o'clock.

Q Who was there? A There was a whole lot of fellows there, I don't know who they all was.

Q What happened that night? A There wasn't anything happened that night.

Q When did you see them next? A I did not see them together no more, I seen Harry that Sunday night.

Q Where did you stay Saturday night? A I stayed there Saturday night.

Q Where? A 76 Barclay street, Saturday night.

Q What did you do on Sunday? A Well, I don't do anything on Sunday.

Q What time did you get up? A I got up about nine o'clock.

Q What did you do in the afternoon? A I didn't do anything else, just stayed there laughing and had fun.

Q Did you leave the house Sunday afternoon? A Sure.

Q Where did you go? A I went on Broome street to a restaurant on Broome street.

Q What time did you go out? A About seven o'clock.

Q Were you in the house from noontime until seven o'clock? A Yes, sir.

Q Did you leave the house between noontime and seven o'clock? A Well, a little before then I and Mrs. Cheesbro and Doll we went on to Spruce street near Broome to a drug store, but we came right back.

Q What time was that? A It was about 6:30, I guess.

Q And you say you left the house at seven? A Yes, sir.

Q Who was in the house when you left? A Well, when I left Essie Jones and Acie Hill, Charlie Boston and my brother Jim Wilson.

Q Where does Acie Hill live, do you know? A Broome street.

Q What number? A 286.

The Court: Who did you leave there in the house, Essie Jones?

The Witness: Acie Hill and Charlie Boston and Jim Wilson.

Q There was Essie Jones and Acie Hill and who were the other ones? A Jim Wilson and Charlie Boston.

Q Is Jim Wilson related to you? A My brother.

Q He is your brother? A Yes.

Q They were in the house when you left? A When I left.

Q Anybody else? A Mrs. Cheesbro and Eva and Johnnie.

Q Now, where were Eva and Johnnie when you left the house? A They was in the bedroom.

Q Which bedroom? A The middle bedroom.

Q Where was Mrs. Cheesbro? A She was in the front room.

Q Where was Eva? A She was in the bedroom with Johnnie.

Q And where were the men? A They all was in the front room.

Q With Mrs. Cheesbro? A Yes, sir.

Q You went out, you say, at seven o'clock? A Yes, sir.

Q Where did you go? A I went out to Broome street to a restaurant.

Q What time did you come back? A About nine o'clock.

Q Who was with you, if anybody, when you came back? A Who was with me?

Q Anybody with you? A There was nobody with me when I came back.

Q And you came up the stairs to the second floor, did you? A Yes, sir.

Q What door did you go into the apartment through? A I went through the front door up into the front room.

Q And when you came up the front stairs, was the kitchen door open or shut? A It was open.

Q Who, if anybody, did you see in the kitchen? A I did not see anybody in the kitchen but Harry.

Q Harry who? A Harry Scott.

Q You mean this defendant? A Yes, sir.

Q And where was Harry Scott when you came up the stairs? A He was in the kitchen standing at the kitchen table when I came up the steps.

Q Standing on the kitchen table? A Standing with his hand resting on the table.

Q Did you see anybody else in the kitchen? A No, I did not see anybody else in the kitchen.

Q How much of the kitchen could you see as you came up the stairs? A Well, I could see the middle of the kitchen, the table was sitting in the middle and I could see it.

Q Was there anybody else in the kitchen? A I did not see nobody else in the kitchen.

Q Do you know whether or not there was anybody else in the kitchen? A I did not see nobody else.

Q Well, can you tell us whether there was or was not anybody else there? A I cannot, I cannot tell you for sure because I did not see anybody and I don't know whether anybody else was in there or no, I did not see anybody, but him.

Q And where did you go then, as you came up the stairs? A I go up in the front, the front room.

Q And then what happened? A Well, when I got in the front Mrs. Cheesbro, she was sitting beside the door, and she was asleep and Doll, she was sitting over on the davenette, and shortly

after that Doll, she walked out in the hall and went back to the kitchen and by the time she got back there, I heard a report from a gun.

Q When you got back from the kitchen, where was Mrs. Cheesbro? A She was asleep.

Q Where was Doll? A She was on the davenette.

Q And what did you do when you got back to the front room? A I sat on the davenette, too.

Q What did Doll do? A She got up and walked through the hallway to the kitchen.

Q She walked through the hallway? A Yes, sir.

Q She did not go through the middle room? A No.

Q Then what happened? A I heard a report from a gun, and when I first heard it I thought it was a large firecracker shooting.

Q When did you hear a report from a gun? A As soon as she got to the kitchen, by the time she got to the kitchen, no sooner did she walk to the kitchen when I heard the report from the gun.

Q How many shots did you hear? A About four or five.

Q And then what did you do? A I got to the kitchen and she was screaming then.

Q Which way did you go to the kitchen? A I went through the bedroom.

Q Who was in there? A Johnnie and Eva.

Q Where were they? A They was in bed.

Q Was the door from their room to the kitchen open or closed when you got in there? A It was open.

Q What did you find when you got into the room? A Well, Doll, she was lying on the floor.

Q Whereabouts on the floor? A She was lying with her head near the little door going out to the bathroom and the table was turned at the time up on the floor.

Q Was anybody in the kitchen beside Doll? A No. There was nobody in the kitchen but Doll.

Q Did you see the rear door of the kitchen leading to the porch? A Yes. It was closed.

Q What did you do then? A I ran and woke up Mrs. Cheesbro, and we went and got the cops.

Q Then what did you do? A Well, the cops come and carried her away.

Q What? A The cops come and taken her to the hospital.

Recess for one hour.

AFTER RECESS.

GERTRUDE WILSON resumes the stand.

Cross examination by Mr. D'Aloia.

Q You say on this Sunday afternoon, July 3rd, when you came in there was nobody in the parlor except Mrs. Cheesbro asleep? A Yes, and Doll.

Q Didn't you call Doll into the middle room? A In the middle room; they were in the front room.

Q Didn't you call Doll into the middle room when you came in at nine o'clock? A No.

Q Didn't you say something about seven men? A No.

Q Didn't you ask her to take the men out of the parlor and put them in the kitchen? A No.

Q You say you went away at seven? A Yes.

Q At that time, who was in the parlor? A Essie Jones.

Q Who else? A A. C. Hill, Charles Boswick and Jimmie Wilson.

Q These were the four men? A Yes.

Q Now, you left at seven and you came back at nine? A Yes.

Q When you came back at nine, there was nobody in the front room at all? A But Mrs. Cheesbro and Doll.

Q And Mrs. Cheesbro was asleep on the settee? A In the big chair.

Q You did not talk to Doll? A No.

Q You did not tell her that you wanted to use that parlor? A No.

Q You did not say a word to her? A No.

Q You did not see any man leave that front room and go to the kitchen? A No.

Q Are you sure about that? A Yes.

Q You are sure Essie Jones wasn't there? A Yes.

Q You are sure that Boswick wasn't there? A No.

Q You are sure A. C. Hill wasn't there? A No.

Q Did you go into the bedroom where Eva was with John Hudson? A No.

Q There was Doll in the front room with Mrs. Cheesbro and Eva and John in the middle room? A Yes.

Q And when you came up the stairs you saw who in the kitchen? A Harry Scott.

Q All alone? A Yes.

Q And any men in the kitchen? A No, I didn't see any men.

Q Did you look in the kitchen? A Sure as I passed the door.

Q Were you in a hurry to go and talk to Doll? A No, I didn't talk to Doll.

Q Didn't talk to her at all? A No.

Q You remember this Wednesday before Sunday? A Yes.

Q This was when you say Harry Scott came out with a knife? A Yes.

Q You went out automobile riding that night? A Well, I didn't. We went to the Fourth Precinct in a taxicab.

Q Didn't you go automobile riding with Doll and didn't you go to Elizabeth? A We went Thursday night.

Q Oh, the Thursday night after the Wednesday night when you saw Scott come up with the knife, the next night you went automobile riding? A Yes.

Q With Scott and Doll and you and a young fellow by the name of Smith? A I guess so.

Q You know his name was Smith? A No, that was the first night I met him.

Q Now, after this knife night, the next night you four went out riding? A Yes.

Q You and Doll and Harry Scott and Smith? A Yes.

Q And you went to Elizabeth? A Yes.

Q And you all stayed together that night? A Yes.

Q And Harry Scott did not bother Doll at all? A No.

Q He did not hit her with any knife? A No.

Q He did not shoot her with any gun? A No.

Q He did not say a cross word at all? A No.

Q You went down to Elizabeth and had some chop suey in a restaurant? A No, we didn't have nothing that night, but after we came back the boys went out and got something to eat.

Q What time did you leave 76 Barclay street that night? A About eleven o'clock.

Q What time did you come back down to Washington street, back from Elizabeth with Doll and Harry Scott, the man who had a knife up there? A About twelve o'clock midnight.

Q And you stayed there all night? A Yes.

Q You stayed with Smith? A Yes.

Q And Doll stayed with Harry? A Yes.

Q And you stayed there all the next morning which was Friday? A No, we left that next morning.

Q What time did you leave? A We left about nine o'clock.

Q Everything was peaceful? A Yes.

Q Well, come back to Sunday night, you are positive you came back at nine o'clock and there were no men in the parlor? A No.

Q And you are positive you left Essie Jones there at seven o'clock, when you went out? A Yes.

Q And you left him with these other three men you mentioned? A Yes.

Q But none of them were there when you came back? A No.

Q And Eva and Johnny Hudson were in the middle room? A Yes.

Q You have been locked up since this thing happened? A Yes.

Q You made a statement? A Yes.

Q When did you see it last? A I haven't seen it.

Q With whom have you been talking since you have been in the House of Detention? A Nobody.

Q You never told nobody about no men being in the front room when you came back? A Not until Saturday. I came down Saturday and the question was asked me.

Q That Sunday afternoon what time did Essie Jones go to 76 Barclay street? A At five o'clock.

Q And you went out at seven? A Yes.

Q And he was there those two hours with Doll? A Yes.

Q And Scott was not there then? A No.

Q You did not see Harry Scott at all that afternoon or evening until you came up the stairs at nine o'clock and there was nobody but those you mentioned? A No, sir.

Q Doll in the front room and no men in the front room? A No, sir.

Q And Johnnie Hudson in the middle room, Eva in the middle room, and as you came up, you saw Scott in the kitchen? A Yes.

Q But nothing had happened to Doll then? A No, sir.

Q And she had not been shot or hurt? A No, sir.

Q And you stayed in the front room with her? A Yes, sir.

Q You did not have any men with you? A No.

Q Sure about that? A Yes.

Q Did you see Essie Jones shortly after that? A No, I did not.

Q Was he brought in by two policemen later in the night? A No, I have not seen him, I have not seen him since.

Q You were taken right away when the police came? A No, I was not taken right away, I went to Philadelphia.

Q You don't know what happened in that kitchen at all, do you?

Mr. Conlon: I object.

The Court: She was not there.

A I was not there, I left there after that.

The Court: When was this you went to Elizabeth?

The Witness: Thursday night.

Q How many ways can you get out of that kitchen when you once get in? A There ain't but two ways to go, by the back door and the front door.

Q And the front door goes downstairs? A Yes, sir.

Q And there is only one way to go in the bedroom, isn't that correct? A Yes.

Q Did you notice, when you looked in, whether the rear door was opened? A No, the rear door was not open.

Q Did you hear and scuffling? A No, I don't remember any scuffling.

Q When you go out that back door from the kitchen you go downstairs to the yard, don't you? A Yes, sir.

Q The back yard? A Yes.

Q This is the kitchen and here is where you came up (indicating) anybody going out of that

door on to the porch of the second floor goes down those stairs and goes out to this back yard? A Yes, sir.

Q And you can go out this alley into Barclay street? A Yes.

Q And you can go to the rear of this house and out on to Spruce street, can't you? A Sure.

FRANK W. HEMMER, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q You are a member of the Newark Police Force? A I am.

Q And you are a sergeant in the detective bureau? A I am.

Q Were you assigned to duty on this case? A I was.

Q When did you first see this defendant? A On the 9th day of July.

Q Where? A At 19 Boyd street.

Q Where was he? A He was in the tailor shop.

Q Who was with you? A Detective Staats and prosecutor's detectives Gehring and Mayer.

Q Did you arrest him? A I placed him under arrest.

Q In the tailor shop? A In the tailor shop.

Q Then what did you do? A Took him to police headquarters.

Q And did you speak to him about this killing? A We questioned him on the killing at Barclay street.

Q What did he say? A He said that on that night he came there about nine o'clock, he had heard that Doll was in that house, and he went there looking for her; that he went upstairs and he got into the kitchen and there were four or five men there and Doll was there and he had spoken to Doll about leading the life she said she was leading there, taking in men or something, and that Essie Jones came up to him and questioned his right to speak to Doll about what kind of life she wanted to lead; Essie argued with him and finally pulled out a gun.

Q Who pulled out a gun? A Essie Jones and pointed it at Harry Scott, and that Scott took ahold of the gun and in the struggle for the possession of the gun between the two, Essie Jones and Scott, that the gun went off. Later he admitted that the gun was his and that when Essie struck at him he pulled this gun and pointed it at Essie, and that Essie took hold of the gun and that in the struggle for the gun, the gun went off striking Doll and causing her to be shot several times.

Q When did he tell you this, officer? A At police headquarters.

Q Is that the first time you asked him about it? A Yes, sir.

Q And the first time you spoke to him about this killing, that is the story he told? A He told us.

Q What did you do then? A We had spoken to him about where the gun was, and he said the gun was up in his trunk at 18 Boyd street, the home of his brother. We searched that trunk up in the house there and found no gun. We had to ask him the address where he was living and he said 114 Wickliffe, and we went

up to 114 Wickliffe and searched that room and under the mattress, on his side of the bed, we found an automatic Spanish make gun, which we showed to him and he admitted it was the gun he had down at 76 Barclay street.

Q I show you Exhibit S. 8 for identification and ask you if you have seen that gun before? A Yes, sir; that is the gun I found under the mattress in his room at 114 Wickliffe street.

Q After you found it under the mattress what did you do with it? A We marked it for identification, brought it down to headquarters and showed it to Scott, and Scott admitted it was his gun.

Q What else did he say about it? A We had asked him before that whether he owned the gun and he denied it, and when we told him about his brother and his brother's wife speaking about shooting off a gun on the 4th of July or the 3rd of July night, or that Sunday night, rather, where they were using blank cartridges, he said that was an old gun that his father had given him and it was in his trunk, and he had no gun down at 76 Barclay street, but when he was confronted with this gun he then admitted that was the gun he had down at Barclay street and then changed his story from Essie pointing the gun at him, that he pointed the gun at Essie.

Mr. Conlon: I offer the gun in evidence.

Mr. D'Aloia: No objection.

(The same is marked S. 8 in evidence.)

Q Was the gun loaded when you found it, officer? A Fully loaded.

Q And with what was it loaded? A Steel-jacketed cartridges.

Q How many steel jacketed cartridges? A Nine.

Q I show you nine steel jacketed bullets and ask you if you have seen those before? A Yes, sir; those are the bullets that we took out of the clip of the automatic gun.

Q Is there any mark on them that identifies them? A Yes, I marked each one of them.

Mr. Conlon: I offer those in evidence.

Mr. D'Aloia: I object to them, they are not at all material or binding in this case.

The Court: What difference does it make, Mr. Prosecutor, whether the gun was loaded at that time or not?

Mr. Conlon: I don't think it makes a great deal of difference except it would show the condition of the gun when it was found, the condition at the time it was found.

Mr. D'Aloia: That has nothing to do with what happened on the 3rd of July.

The Court: I don't think it makes a great deal of difference.

Mr. Conlon: It might also indicate, your Honor, that the gun was loaded, usually loaded.

The Court: No, I don't think it shows it was usually loaded, but it is part of the property found in his room at this time, and I think it is admissible in evidence, but as far as I can see, it is not of any great moment.

Mr. Conlon: I don't think it is either, the only reason I offered it was part of the gun when it was found.

The Court: I will admit it.

Mr. D'Aloia: I don't press the objection, but I do insist upon saying that after the officer's testimony showing that this particular pistol had been used for shooting blank cartridges on the 4th of July, the fact that four or five days later there is something else in it, is not material.

The Court: The weight of the evidence is for you to argue before the jury.

Mr. D'Aloia: Then why clog up the record.

(The cartridges are marked Exhibit S. 9.)

Q When you first arrested Scott was there anything said by you or him about his name? A I asked him his name.

Q Who asked him his name? A Staats asked him his name and he said his name was James Smith.

Q What else did he say? A We asked him who the girl was that was with him.

The Court: When? You mean that instant?

The Witness: At the time of the arrest at 19 Boyd street at the tailor shop and he said it was his wife.

The Court: I understand you asked him who the girl was who was with him at the time he was arrested?

The Witness: That is right.

Mr. D'Aloia: I would like to object to that particular question, because it does not make any difference who she was. It is not material to this issue.

The Court: No. I do not think it is material. Do you ask to strike it out.

Mr. D'Aloia: Yes.

The Court: Strike it out.

Cross examination by Mr. D'Aloia.

Q Now, all that you did was to arrest Scott up there in Boyd street?

Mr. Conlon: I object to the form of that question, all that you did was to arrest Scott. He told us a lot of things he did.

Mr. D'Aloia: If the prosecutor will let me finish.

The Court: All right.

Q All you did was to arrest Scott at 19 Boyd street and take him to Police Headquarters, that is right? A That day.

Mr. Conlon: I object to that.

The Court: He says that day.

Mr. D'Aloia: I am only talking about that one day.

Q That is all you did that day? A At that time.

Q What? A At that time.

Q At what time? A At the time of his arrest.

Q Well, when was that? A At five o'clock.

Q On the 9th of July? A On the 9th of July.

Q And you took him where? A To Police Headquarters.

Q You never asked him anything as to where he had been on the 3rd of July up there? A Not until we got him to Police Headquarters.

Q Up there did you ask him anything about the 3rd of July? A We did not question him there at all.

Q When you got him down to Police Headquarters who wrote the statement that he made?

Mr. Conlon: I object. It is not cross examination.

The Court: There is no evidence there was any statement.

Q Well, was there any statement taken from him?

Mr. Conlon: I object. It is not cross examination.

The Court: Sustained. Not cross examination. He was examined on the verbal statement.

Mr. D'Aloia: I cannot attack his credibility as to what happened when the verbal statement was taken if I am not allowed to go into the circumstances before and after the taking of that statement, and I think I am entitled to information that was taken down at Police Headquarters.

Mr. Conlon: I have not any objection to that, but I have an objection to a written statement, about which nothing was said on the direct testimony.

The Court: We must assume that the question applies to the particular time he testified to on cross examination, and I suppose you mean that?

Mr. D'Aloia: Yes.

The Court: All right. Go ahead and let us see what that question is.

Q Was there a statement taken from him in writing?

Mr. Conlon: I object, unless the time is fixed.

Q Well, when you brought him to headquarters, as you personally did, did you take a statement from him in writing? Why don't you answer instead of looking at Mr. Conlon?

The Court: Please do not lecture the witness.

Mr. D'Aloia: I know, but he is a police officer and there is no need of looking over there.

The Court: Wait a minute. The court is being run by the judge.

Mr. D'Aloia: Absolutely.

The Court: Now, then, confine yourself to the time you have already spoken of, that is the time he made this statement; was any written statement taken at that time?

A There was.

Q Where is it? A I don't know.

Q Where is it? A I turned it over to the prosecutor's office.

Q Do you mean that last answer you don't know? A I do.

Q You do not know where it is? A Not now.

Q What did you do with it? A Turned it over to the prosecutor.

Q Did you write it out? A I did.

Mr. D'Aloia: Now, I ask for the production of the statement.

The Court: It is up to the prosecutor. Does the prosecutor wish to produce it?

Mr. Conlon: Do I understand Mr. D'Aloia is asking me to produce a statement?

The Court: He is.

Mr. Conlon: I do not choose to produce the statement.

Mr. D'Aloia: Now, what is your Honor's ruling as to the refusal to choose on the part of the prosecutor?

The Court: What are you asking?

Mr. D'Aloia: I am asking for the production of the statement that this man says was taken from him.

The Court: I have no power to direct the prosecutor to produce it.

Q Does that statement contain any contradiction as between—

Mr. Conlon: I object.

Q Does the written statement show in your writing, the handwriting of the officer who took it down, any contradiction in this man's story?

Mr. Conlon: I object.

The Court: That is calling for a conclusion as to the contents of the statement.

Mr. D'Aloia: I am not calling for a conclusion. I am calling for his recollection of it. He wrote it. That is no conclusion.

Mr. Conlon: It is not a question of a conclusion, but it is asking for the contents of the statement that is not before us.

The Court: Objection sustained.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you take down in writing the fact that he said Essie Jones pointed a pistol at him? A I did.

Q And did you also take down in writing a statement that he made that he pointed a pistol at Jones? A I did.

Mr. Conlon: I object to that. This witness has testified on direct testimony and I think that is as far as it should go.

The Court: Well, it seems to me going pretty far, proving the contents of the statement. Go ahead and ask another question.

Q Did you put down there was a grappling for the gun?

Mr. Conlon: I object.

The Court: Sustained.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you put down there was a fight in there?

Mr. Conlon: I object.

The Court: Sustained.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you put down that he was attacked by Essie Jones?

Mr. Conlon: I object.

The Court: Sustained.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: I have ruled sufficiently on that. There is no use of going ahead with it any further.

Mr. D'Aloia: Your Honor will readily see I am at this point; you are going to respect the decision of the prosecutor not to produce the statement. I have this man down at Police Headquarters and he took down in writing what this man said.

The Court: You asked him did he put down one thing and then another, and another, and you have three exceptions from the refusal of the Court to allow you to bring out what he put down in that statement, and there is no use asking him did he put down something else.

Mr. D'Aloia: I want your Honor to understand me. My position is this: Here is the answer of this witness to each question of mine before I went into this particular subject that he took this defendant down to headquarters and took a written statement from him and at that point I go back to his direct examination. He testified—he told us that he contradicted himself.

The Court: No. I want you to stop pursuing that line. I am not going to allow you to prove it that way. You are going to examine him in the manner the Court directs you to. You have your exceptions on the record. The instruction of the Court is that you will not be permitted to prove the contents of this statement in the manner you are trying to. That is, asking this witness did he put down this until you have everything he took down in the statement.

Mr. D'Aloia: I may be absolutely dense and I think sometimes I am. How am I going to contradict this particular witness' direct examination where the tendency was to show that this defendant had contradicted himself at headquarters if I do not try to get from him what he put down in writing, because he is the man who wrote the paper, after the refusal to produce the paper? Now, if your Honor can point out to me how I am going to direct an officer if I do not ask him what he put down on the paper after the refusal to produce the paper by the prosecutor. Now, if you will show me that I will follow your instructions.

The Court: No; I am not going to show you.

Now, how many times have I got to rule this thing out. I have ruled it out. Now, don't continue to argue.

Mr. D'Aloia: All right, I will have to take your Honor's rulings and except to them.

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

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

DALLAS FLANNAGAN,
Judge.

Q How many cases have you been working on since the 3rd of July? A A good number.

Q Do you recall the details of any of them? A Well, the general details of most of them.

Q Do you recall the conversation you had with these people you brought down to police headquarters and with whom you talked orally? A In some cases word for word, others not so good.

Q And then, you go to the statement just before you testify, don't you, to find out just what happened?

Mr. Conlon: I object to what this witness usually does.

Q Do you ever have recourse to the statement you take in writing to refresh your recollection as to what the conversation was between yourself and a prisoner?

Mr. Conlon: I object to that unless the question is directed to that particular statement.

Mr. D'Aloia: Now, if I ask about the statement, your Honor will say I have no right to refer to it.

The Court: I have not ruled that way yet.

Q Did you look at the statement before you testified in this case? A No, sir.

Q You remember this, and everything that occurred, word for word? A Word for word.

Q How many cases have you investigated since then? A Well, I will say at least ten major cases.

Q Do you remember his telling you that Essie Jones attacked him? A I do.

Q Do you remember his telling you that Essie Jones ran out of the kitchen? A No.

Q Do you remember the men that were in the kitchen? A Four, there were four men in the kitchen.

Q Did he tell you that they ran out? A That they all ran out.

Q Including himself? A Yes, sir.

Q And including Essie Jones? A Yes, sir.

Q He told you that the quarrel in there with Essie Jones was over the woman? A That's right.

Q He told you that he was talking with the woman and he was sort of disapproving of her conduct? A That's right.

Q And Jones butted in? A Yes, sir.

Q And that Jones pushed the woman away and attacked him? A Yes, sir.

Q And didn't he tell you that Jones threatened his life the week before? A No.

Q Didn't he tell you that Jones had sent word to him that he would be killed by him if he

did not stop fussing around with this girl? A No, sir.

Q Didn't tell you that? A No, sir.

Q Sure about that? A Yes.

Q Did he tell you that Jones had attacked him by making a reach for his hip pocket? A He did.

Q Did he tell you that he then drew this pistol of his? A Yes, sir.

Q And that Jones pushed it away and that while they were struggling for this pistol, the girl was standing over there, having been pushed away, and she fell while the gun was shot? A Yes, sir.

Q And then they all ran out? A They all ran out.

Q Did he tell you that he went and tried to find a policeman after that? A No.

Q Didn't tell you that? A No, sir.

Q And did he tell you he went up to his brother's house? A Yes, sir.

Q Did he tell you he stayed in his brother's house that night? A Yes.

Q Did he tell you he was there the next day? A Yes, sir.

Q Did he tell you also that the pistol had been used the next day by his brother's son to shoot blank cartridges? A Not the next day.

Q The next day was the 4th of July? A That evening.

Q What evening? A Previous to the shooting.

Q That it had been used to celebrate the 4th? A Previous to the shooting.

Q And did he tell you he was at his brother's house on Tuesday? A Yes, sir.

Q And did he tell you he went to Philadelphia to see his mother on Wednesday? A He said he went to Philadelphia.

Q Didn't he tell you he was going to see his mother? A Yes.

Q Didn't he tell you that he and his brother discussed the advisability of surrendering to the police? A No, sir.

Q That is not down in writing either, is it?

Mr. Conlon: Objected to.

The Court: Sustained.

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.

DALLAS FLANNAGAN,
Judge.

Q Did he tell you that he came back to Newark from Philadelphia the day before you saw him, Thursday? A He came back Wednesday night late.

Q Did he tell you that he went up to his brother's house and found it closed? A Yes, sir.

Q And did he tell you that he was told by the tailor, in whose shop you arrested him, the tailor said, "The police have taken your brother and your brother's wife." A He did.

Q Did he tell you then that he found a room in Wickliffe street? A He had a room in Wickliffe street before he left Newark for Philadelphia.

Q And you asked him about the pistol, didn't you? A Yes, sir.

Q And he told you that if you went to his room you would find it? A In the trunk.

Q And instead of going to Wickliffe street, you went to Boyd street, didn't you? A He said that we would find the pistol that was used for discharging the blank cartridges in his trunk at Boyd street; we had already searched that trunk.

Q Didn't he say it was in his room? A The pistol he used the blank cartridges?

Q Didn't he say it was in his room? A He said at his brother's house.

Q Didn't he say it was in his room? A No, he said at his brother's house.

Q Didn't he say he kept it at his brother's house for a while and when he went to Wickliffe street he took it there? A No, he said if we went to Boyd street we would find the gun.

Q I know, you went to Boyd street. Didn't he tell you it was at his room? A At Wickliffe street, yes, sir.

Q And you found it at Wickliffe street? A Yes, sir.

Q And the minute you brought it down to him he said, "Yes, that's it?" A He admitted it was his gun, yes.

Mr. Conlon: At this time, if the Court please, I should like to offer in evidence Exhibit S. 5 for identification, which has been identified by several witnesses as being the picture of the body of the deceased in this case.

Mr. D'Aloia: And it is objected to, because it is not at all competent or material, nor relevant nor evidential in any way. There isn't any question about the body which was taken from 76 Barclay street to the City Hospital; there isn't any question

about the body that was taken to the hospital being the body that was autopsied the next day, and this particular picture has no evidential value and we object to it.

The Court: Overruled.

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

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

DALLAS FLANNAGAN,
Judge.

(The photograph in question is marked S. 5 in evidence.)

Mr. D'Aloia: And I would like to state a further ground that it is prejudicial in its appearance—

The Court: No, no further grounds.

Mr. D'Aloia: I would like to have the further ground, your Honor, you have made a ruling—

The Court: I ruled it out, and any ground that you have in the world why it should not be admitted—

Mr. D'Aloia: Can't I add a further ground?

The Court: No, indeed, you stated your ground.

Mr. D'Aloia: Supposing I left this one out. Is your Honor going to shut the door in my face—

The Court: No, but if you are going to argue on it, I will have the jury retire.

Mr. D'Aloia: I want to add the further ground that it is prejudicial to the defendant.

The Court: All right, add the further ground.

Mr. D'Aloia: And that, of course, is overruled and I get an exception.

The Court: Yes.

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

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

DALLAS FLANNAGAN,
Judge.

FRANK J. CARR, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q You are a member of the Newark Police Force? A I am.

Q Working out of detective bureau? A Yes, sir.

Q Were you assigned to duty in this case? A I was.

Q With whom were you assigned? A Detective Albe.

Q In the course of your investigation did you visit the premises 76 Barclay street? A I did.

Q And did you find anything there in the kitchen? A I did.

Q What? A I found seven empty, that is, discharged cartridge shells and three bullet slugs.

Q When did you find them? A About 11 P. M., on the night of July 3rd.

Q And where did you find them? A On the kitchen floor.

Q I show you seven empty shells and three bullets, steel jacketed bullets and ask you if you have seen them before? A Yes, sir, those are the bullets and slugs that I picked up on the kitchen floor.

Q Have you any mark on those to identify them, officer? A They have a cross on the shells and also on the bullets.

Mr. Conlon: I offer them in evidence.

Mr. D'Aloia: I object to them as being found at a remote hour, after 11 o'clock.

The Court: On that day, that is the same day, the 3rd of July?

Mr. Conlon: Yes, 11 o'clock at night.

The Court: I will admit them.

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

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

DALLAS FLANNAGAN,
Judge.

(The shells and bullets are marked Exhibit S. 10.)

Cross examination by Mr. D'Aloia.

Q You don't know who was in that kitchen that night, do you? A Not before I got there, no, sir.

Q What time did you get there? A About five to eleven, I would say.

Q Five minutes to eleven? A Yes, sir.

Q Who was there when you got there? A Officer Collins, fourth precinct, and Officers Wolfe, Schumacher and Betzner of the fourth precinct.

Q Will you please show us on this Exhibit S. 2, which is a picture of the kitchen, where you found the shells? A In this vicinity here (indicating).

Q Wait a minute. Take a pencil and make a circle there, please. A As I am looking at this, this is looking from the hall into where the kitchen—this would be the hall there where I am and this would be the dining-room?

Q Yes. A About in that section here, about on an angle with the end of the stove.

Q All in a row? A No, they were separated, that is to say, within a circle of approximately five feet in diameter.

Mr. D'Aloia: For the benefit of the record, marking on Exhibit S. 2 an ink line beginning at the end of the range and coming along in a curve past the overturned table, toward an object on the floor that appears to be a rug.

Q Now, where did you find the first one? A I don't know exactly where I picked up the first one, but I will say about, as I recall the room, between the sill of the door that you enter from the hall and the door that goes into the bedroom from the kitchen. That is, not here to the sill but say three feet from it.

Q And along the line of this curve that way (indicating)? A Yes, sir, if that door was on there I could do it better. I think I could show you better on that chart.

Q All right, do that, this is a map which shows the kitchen, this is the door coming in from the stairway and this is the door coming in from the bedroom, and this is the range which

you see on the picture, the right-hand side of the picture, and this is the table that you see overturned, and this are those wash tubs that you see over here in the corner. Look at both at the same time. A I will say about here (indicating).

Q This is where your ink line on the picture is, it would be on the diagram here, and there is one where the wash tub comes in and there is where the stove begins. Were there any shells found in there? A I cannot give you the exact spot where I picked up the shells.

Q Were there any shells between the wash tubs and the table? A Not that I recall.

Q You made your line begin away back here at the wash tubs, were there any shells at that point? A Not that I recall.

Q Were there any shells right there in front of the stove? A Yes, there was.

Q Well, put them there between the stove and the table. A I tell you I cannot.

Q How many shells were between this table and the stove? A About two.

Q How many shells were between the end of the stove nearer to the bedroom and the table? A Three and the other two over here somewhere.

Q Were any of these officers that you found there five minutes to eleven in the kitchen when you got there? A No, everyone was in the kitchen excepting Officer Collins.

Q Nobody had picked any of those shells up? A Well, I picked them from the floor.

Q They were on the floor when you got there? A When I got there.

Q Well, is it possible for anybody but an officer, a full grown man, who walked around, to kick them around?

Mr. Conlon: I object.

Q I understand there were five shells of the seven between the table and the stove? A Yes.

GEORGE GUERIN, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q You are a detective attached to the prosecutor's office? A I am.

Q Did you in the course of investigating this case visit the premises 76 Barclay street? A Yes.

Q When? A On July 5th.

Q About what time? A About a quarter after ten in the morning.

Q I show you a steel-jacketed bullet and ask you if you have ever seen that before? A Yes. I pulled that out of the table in the kitchen. There is an X marked in there. I put it in there with my penknife.

Q You pulled it out of the table in the kitchen? A Yes.

Q How did you come to do that? A I pulled it out with my knife. It was stuck in the table.

Q How far was it in? A Oh, about a half an inch. Imbedded right in the side of the table.

(Bullet marked S. 11.)

Cross examination by Mr. D'Aloia.

Q You went there on the 5th of July? A The second time. I had been there on the night of the 4th.

Q Where did you find that steel-jacketed bullet? A Imbedded in the leaf of the table in the kitchen.

Mr. Conlon: The State rests.

Mr. D'Aloia: I would like at this point to recall the witness Higgins for further cross examination. Some information has come to me during the noon hour which I did not have when he was on the stand.

The Court: Well, the State has rested.

Mr. D'Aloia: I did not know that the State was going to rest.

The Court: Of course, you didn't.

Mr. D'Aloia: I was going to make that request before the State rested, but I am making it now.

The Court: Who do you want to call?

Mr. D'Aloia: Higgins. That is the colored man who testified he lived on Spruce street and he said something about a visit made to him by Scott on direct examination and he and Scott had a conversation the Saturday before the 4th of July.

EDWARD HIGGINS, recalled.

Cross examination by Mr. D'Aloia.

Q Higgins, this morning when you took the stand you told us that you saw this defendant Scott at your house on the Saturday before the Saturday before the 4th of July and you were in bed. A That was two Saturdays before the 4th.

Q Two Saturdays before the 4th of July? A Yes.

Q And you told the prosecutor on that day you had a conversation with him about a pistol? A Right.

Q Now, isn't it a fact that Doll, the girl who is dead— A Yes.

Q —brought this to your house the day before or the night before? A She was not there the day before or the night before.

Q Where was it when she brought it there? A She never brought it there. I never seen Doll with it.

Q Well, wasn't this left by Doll at your house on that occasion? A No.

Q And didn't Scott come there to get it? A No.

Q And didn't he say, "I come to get the pistol because she left it here?" A He said no such thing.

Q Did you have anybody living there by the name of Jackson? A No.

Q Were you related to Doll? A Not related.

Q Did she have an uncle there in that same building? A Not that I know of.

Q Well, had you seen her the day before? A Not that I remember.

Q Well, try to remember. Didn't she leave a pistol there? A She never left a pistol at my home. I never seen her with it there.

Q Well, she may have left it there with somebody else? A Possibly.

Q You do not know anything about it? A I said she didn't leave it there.

Q Were you ever called up by Doll? A Was I ever called up by Doll?

Q Yes. A Not me.

Q Did she ever come to your house? A She did.

Q How often? A She was there three times in her life.

Q That was between the 14th of June to the 4th of July? A I have no way of fixing the date.

Q Anyhow, this talk you had with Harry, when you got through he wanted you to take the gun? A Well, he said he thinks it is best I should put it up.

Q You were going to do it? A Yes.

Mr. Conlon: No questions.

STATE RESTS.

Mr. D'Aloia opens for the defendant.

HARRY B. SCOTT, defendant, sworn in his own behalf.

Direct examination by Mr. D'Aloia.

Q Where did you live before the 14th of June, 1927? A How is that?

Q Where did you live before the 14th of June, 1927? A Philadelphia.

Q How long did you live there? A In Philadelphia?

Q Yes. A Oh, a good number of years.

Q Had you ever been to Newark? A Not before the 14th.

Q Not before the 14th of June, 1927. Who did you come to Newark with? A With Doll.

Q Who is Doll? A Lorenza Robinson.

Q And had you and she been together in Philadelphia? A Right.

Q What business were you in in Philadelphia? A I was a cement finisher.

Q Now, when you came here, at whose suggestion did you come to Newark? A Doll's.

Q Why? A She said she had some people over here, she wanted to come over and spend a month with.

Mr. Conlon: I object.

The Court: It does not make any difference.

Q Where did you go to live? A 93 Barclay street.

Q And how long did you stay there? A From June 14 to June 20.

Q Who lived there at 93 Barclay street? A The lady that we had the room from was named Addie Bailey.

Q Who knew her, did you know her or did Doll know her? A Neither one of us knowned her; we stopped in a restaurant just across the street from 93 Barclay street—

Q And then you went over there and got a room? A Yes, sir.

Q How long did you stay there? A From the 14th of June to the 20th of June.

Q And on the 20th, where did you move to? A To 76 Barclay street.

Q Whose place was that? A Mrs. Rosie Cheesbar.

Q That is the lady who took the stand yesterday? A Right.

Q Did you live there with Doll? A Yes.

Q How long did you live there? A We stayed there from the 20th of June until the 24th; on the 24th I go to Philadelphia, leaves Doll there and I returned back on Saturday, June 25th, and I finds Doll moved.

Q You found on the 25th when you came back from Philadelphia that she was not living at 76 Barclay street any more? A Doll had moved; yes, sir.

Q Did you find any message from her? A Yes, sir.

Q What kind of a message was it? A I found a note from her.

Q Now, you knew her handwriting? A Yes, sir.

Q And is this the note you found? A Yes, sir; that is the note, exactly.

Q Where was that note? A That note was folded, lying on the bed.

Q In what room? A In the room that we had.

Q And what else was on the bed besides the note? A Some of my clothes was thrown on the bed, that was all.

Q And you read the note, did you? A Yes, sir.

Q I notice that the note is in numbers, it is in a code; is that right? A Yes, sir.

Q Can you read it? A Yes, sir.

Q Is that the way she used to write to you? A Yes, sir.

Q And the figures represent a letter? A Yes, sir.

Q A is one and B is two and C is three and D is four? A Yes, sir.

Q Now, read the letter.

Harry B. Scott, cross.

The Court: Wait a minute; you had better offer it in evidence first, hadn't you?

Mr. D'Aloia: Well, I offer the note in evidence.

Q You can read that, can't you? A Yes, sir.

Q You have received lots of notes from her with that same writing? A Right.

Mr. Conlon: May I cross examine this witness on this?

The Court: Yes.

By Mr. Conlon.

Q How do you know this is in Doll's handwriting? A I have received enough notes from her to know her handwriting.

Q There is no writing on the paper, is there, just figures? A Yes, figures, that is the same.

Q Have you any other notes from her? A No.

Q Where are they? A I said no; that is the only one I found.

Q Then, you said you had some others? A I said no.

Q Is this the only note that you have from her? A That day that is the only one.

Q Is that the only note you ever got from her? A No; that is not the only one I ever got; I got letters from her in Philadelphia, notes from her before me and her was living together as man and wife.

Q And she would always write you this way? A Right.

Q And she never wrote you a letter in any other way but this way? A That is the only way.

Harry B. Scott, cross.

Q And did you save any other letters that you got from her? A No. It was not necessary to save them.

Q Just answer the question, did you save any other letters that you got from her? A No.

Q How many did you get? A I did not keep any record of them, sir.

Q How many letters did you get from her? A I did not get any, I think I told you before.

Q If you will just answer my questions, Scott, and not talk so much, we will get along better.

Mr. D'Aloia: If your Honor please, that is not proper cross examination.

The Court: Yes, but the witness also said, "I told you so and so." That is not your province; just answer the questions and don't lecture the prosecutor.

Q About how many letters did you get from her? A Why, I have no idea.

Q Did you get ten? A I would not say ten and I would not say five.

Q Well, did you get more than five? A I would not say, but I have received several letters from her.

Q Did you get more than two? A Oh, yes.

Q More than three? A Sure.

Q More than four? A I don't know; I am satisfied I got three.

Q Did you ever get a letter from her in handwriting? A No.

Q Never? A No.

Q When did you make up this code? A What did you say?

Q When did you make up this code? A When did I make up the code?

Q Yes. A I did not make it up.

Q Who made it up? A She wrote it.

Q When did she explain it to you? A She didn't have to explain it to me, for I knew it.

Q How did you know it? A I learned it in school.

Q Why did you use it?

Mr. D'Aloia: I object.

The Court: I will allow that.

Mr. D'Aloia: This is on a question now whether he recognized those figures and he said he received a lot of those from the deceased written in that way.

The Court: The present cross examination must be limited to the question of the admissibility of that letter, not the weight of it.

Mr. Conlon: I understand that, but I think the question of why he used the code has a bearing on the question of whether this woman wrote it.

The Court: I rather think that goes to the weight of it, and not the admissibility; the admissibility of the paper must be governed by his own statement.

Mr. Conlon: I know, but the difficulty with it is that there was no writing on it.

The Court: That goes to its weight and he says he received other letters from her written in the same way and he recognizes her handwriting.

Mr. Conlon: If the Court please, I object to the admission of this letter in evidence by reason of the fact that it is incapable of

being disputed in the form that it is made, and the fact that it might be a self-serving declaration made by this witness or by somebody under his direction and further that it is hearsay evidence.

The Court: Understand, I am not limiting your cross examination in regard to this letter insofar as the weight to be given to it is concerned; all I am limiting your cross examination is as to the question of the admissibility of this letter in evidence and whatever weight to be given to it is another question. The whole question now is as to its competency. If you have anything further on that cross examination, I don't want to interrupt you.

Mr. Conlon: No, I have nothing further; it is pretty hard to cross examine on it, but I object to the competency, and in view of the fact that I don't think it is proper proof of anything—in other words, here is a letter written by the deceased to this witness which he professes to put on the stand as proof of the facts which it contains.

The Court: Precisely.

Mr. Conlon: Now, it is not proof of the fact—

The Court: The weight to be given to the letter and all the things you are talking about now are questions for the jury; they must give it the weight. It is competent, and I will overrule your objection.

(The same is marked D. 1.)

By Mr. D'Aloia.

Q Now, read it.

The Court: You have given the code, one stands for A, two stands for B and so on down along the alphabet; is that correct?

The Witness: Yes, sir.

The Court: In other words, anybody can read the letter if they are given the code?

The Witness: Yes.

Q And Z is twenty-six? A Yes, sir.

The Court: Well, he doesn't need to read it; we can read it ourselves.

Mr. D'Aloia: Absolutely.

Q Now, I would like to have him read it?

The Court: Well, all right.

A Yes. On the 24th day. "Dear Harry. I am going. I will see you some time next week. Harry, go up to my Uncle Jackson on Spruce street and get your gun and some more things I left up there last night. From Doll."

The Court: Now, can you read the rest of them with equal facility?

The Witness: Yes.

Q Now, when you got that note when you came back from Philadelphia did you go up to her uncle Jackson? A Yes. I goes up there.

Q Is that the man whose name was called Higgins here? A Yes, that was the one.

Q And did you go there and get your gun? A Yes; I goes there and gets it.

Q What else did you do there? A I had a talk with him and also a drink.

Q Did you say you were going to shoot this girl? A No.

Q Did you get this gun at his house? A Yes.

Q How long did you stay there? A About a half an hour as near as I can guess.

Q And then you went away? A Yes.

Q This was Saturday morning? A This was Saturday around noontime.

Q Was he in bed at the time? A Yes; he was in bed.

Q Where did you go from there? A I went from there to Broome and Springfield avenue.

Q What time was it when you got there? A It was near one o'clock.

Q When you got there did you see anybody on the street? A Yes; I see Doll.

Q Who else? A And Essie Jones.

Q Did you know Essie Jones? A Yes.

Q Did you talk to the two of them? A I talked to Doll, but he was present.

Q Did you have a long conversation there? A Not very long.

Q What did you say to him?

The Court: I do not quite understand when this was.

Mr. D'Aloia: This was Saturday, the 25th of June.

The Court: All right. Go ahead.

Q You had been to Jackson's house in accordance with that note? A Right.

Q And you got to Broome street? A Yes.

Q And you met Essie Jones and Doll? A Yes.

Q And you talked to her? A Yes.

Q What did you say to her? A I said, "Doll, why did you leave when I was to Philly?" I said, "If you wanted to leave why didn't you wait until I came back?"

Q What did she say? A She said, "Go on down to the house and I will be there later." I goes on down the avenue to do a little shopping for myself.

Q Did you have any money when you came from Philadelphia? A Yes.

Q How much? A I had one hundred sixty some dollars.

Q After you did some shopping that afternoon, where did you go? A I returned back to 76.

Q What time did you get there? A Around four o'clock.

Q In the afternoon? A In the afternoon.

Q Did you see Doll? A No, she was not there.

Q What did you do then? A I went and took a bath, for I was up all night in Philadelphia, and I laid down to take a little rest.

Q What time did you see Doll? A When Doll come that Saturday evening, she promised me she would come to 76 Barclay street.

Q What time did she come? A She come there about 7:30 or a quarter to eight. I was in bed. She was heavily under the influence of liquor when she got there.

Q What did she say to you? A She said, "Harry, I want you to go to the party tonight."

Q What did you do? A I said, "Party? Where at?" She said, "At 186 Broome street." I said, "I don't want to go." Don't care to go, rather. She said, "If you don't go, I will raise hell here tonight." Well, in order to stop her

from raising hell in here, I gets up and dress and takes her to the party.

Q Where was the party? A 186 Broome street.

Q Whose house is that? A Mary Jones.

Q Was that Essie Jones' mother? A Right.

Q Was that the lady who took the stand here today? A Right.

Q Did you go there with Doll? A I did.

Q What time did you get to the party? A We got to the party between 9 and 9:30.

Q Was Essie Jones there? A I did not see him.

Q Were there a lot of people there? A Yes, the house was filled.

Q How long did you stay there? A Well, when we first got in Doll and three other girls she knew—I didn't know them—all sat at the table, they ordered up some drinks.

Q How long did you stay there altogether? A About an hour and three-quarters.

Q An hour and three-quarters? A Yes.

Q What did you notice there—did Doll have anything in her pocketbook? A Well, after we had a couple of drinks at the table she gets up and goes into the room where they were dancing and began to dance, but the whisky had so much influence on her—

Mr. Conlon: I object.

Q Well, she was drunk? A Yes.

Q What happened? A And these things they generally do—

Mr. Conlon: I object.

Q What did you do? A I go to her and takes her glasses and pocketbook.

Q When you took her glasses and pocketbook, what did you notice about the pocketbook? A I noticed the weight of the pocketbook being heavy.

Q Did you open it?

Mr. Conlon: I object.

Mr. D'Aloia: I will withdraw that particular question.

Q What did you do when you got the pocketbook? A I opened the pocketbook after finding out it was so heavy.

Q What did you find in it? A I found my gun in it.

Q Is this it? A Yes, that is the gun.

Q What did you do when you found it in the pocketbook? A Well, I turned from her and goes to Mary Jones.

Q The mother of Essie Jones? A Yes.

Q To the lady of the house at whose house the party was being given? A Yes.

Q What did you say to her? A I said, "Have you any place in the house we can put this gun?" I said, "This girl has this gun out with her," and she said, "No"; she said, "I have all my trunks packed up in one corner in order to make room for the party."

Q She did not take the gun? A No.

Q How long did you stay with Doll? A About fifteen minutes.

Q Where did you go? A Back to 76.

Q Where was this pistol when you went back to 76 Barclay street? A I had it in my belt.

Q Did you have any vest on? A No.

Q Did you carry it there all the time? A Yes.

Q When you got back to 76 what happened then? A Well, after I had taken her into the room she wanted to go back to the party.

Q Then what happened? A I said, "You can't go back." I said, "You are too intoxicated with whiskey." I said "The best thing you can do is to lay down and take a sleep," and she would not agree to that. She goes over to the bureau and she grabs a fingernail file. It is about so long, as near as I can guess. She strikes at me with this fingernail file. There is how I did in order to avoid the lick.

Q To parry the blow? A Yes. She struck me with the end of that fingernail file on this hand.

Q Then what happened; did she fall down?

Mr. Conlon: I object.

The Court: Please do not lead.

Q What happened next? A And after she lost her balance she fell. She strikes her face against the corner of the chair that was in that room.

Q What time was this? A That was around twelve o'clock.

Q Midnight? A Midnight.

Q This room that this all happened in? Now, look at this map. This is a map of the second floor of the Barclay street premises, and you came up this stairway to the second floor? A Yes.

Q This is the kitchen. This is the bedroom occupied by someone else. This is the parlor. Do you remember this little room? Were you in that little room? A That is right.

Q Is that where this happened? A That is where this happened.

Q What furniture was in that room beside the chair and bed? A Just a bureau stand.

Q After she fell and hurt herself, what happened? A I walked out of the room and called Mrs. Cheesbro up in the living room. I tells Mrs. Cheesbro to take care of her until I found an officer or a doctor.

Q Was she bleeding? A Yes.

Q From what part of her body? A From her mouth.

Q Did you go out? A I did.

Q Did you go back? A Yes, I went back.

Q Was she there when you got back? A No, she was not there when I got back.

Q When did you next see her? A The next morning about 5:30 or 6 o'clock.

Q Where had she been? A At the City Hospital.

Q Did she stay with you? A That day.

Q Where did she go from there? A I don't know.

Q Where did you remain? A I remained there until Monday.

Q Monday what did you do? A I moved down to Washington street.

Q What number Washington street? A I think it was 455 or 355; I do not remember now exactly the number.

Q What is the name of the place down on Washington street? A I do not know the name —Smith.

Q Smith? A Yes, Smith.

Q Is it anywhere near the colored Elks' home? A Just across the street from the colored Elks' home.

Q Did you get a room there? A Yes.

Q And you lived there how long? A I lived there from the 27th of June up until—

Q From the 27th— A Yes, until the first of July.

Q Now, during that time you were living down on Washington street, did you see Doll? A Yes.

Q Where? A Down in my room.

Q When did you see her down there? A I seen her down to my room on Wednesday, June 29.

Q What time did she come down? A She came down there about 5 o'clock in the afternoon.

Q What did she say to you? A She said, "Harry, I am hungry."

Q Hungry? A Yes.

Q What did you say? A I pulled a dollar out of my pocket and gives it to her. She says, "I don't want it that way."

Q Yes. A She says, "I want you to come and go to dinner with me."

Q Did you go to dinner with her? A I did.

Q Where did you go? A Downstairs to the restaurant.

Q How long did you stay with her at dinner that night? A The dinner lasted, you mean, when we went to dinner how long did we stay to dinner?

Q Yes. A Well, we stayed about three-quarters of an hour to dinner.

Q What else did she say to you, if anything? A Well, while we were to dinner together she said, "Harry, I left you for Essie Jones. I like you and I also like him. He told me to tell you

if you go bothering around me that he would kill me, and he carries a gun."

Q She told you that? A Yes, she told me that.

Q What did you do? A I said, "Well, if you are going with Essie Jones you can go ahead on with him and do as he tells you to, but that I am not going to give him no cause in any way, shape or form to bother with me about you."

Q How long were you together after that? A Well, she come back to my room and remained there until ten o'clock.

Q Then where did she go? A She bid me goodnight and left.

Q That night did you go to 76 Barclay street? A Yes.

Q What time was it? A Well, I and the Smith boy downstairs took the machine.

Q Whose machine was it? A His father's machine.

Q Where did you go? A 76 Barclay street.

Q What time did you start out? A Around a quarter to twelve.

Q Where did you go from Washington street to 76 Barclay street—who did you find there? A Doll.

Q Who else? A Mrs. Cheesbro.

Q And who else? A Gertrude Wilson.

Q What did you do there? A We goes in and buys a drink.

Q What did you do after you bought the drink? A Well, after we bought the drink Doll asked the question of something concerning going for a car ride.

Q Take an automobile ride? A Yes.

Q Then what was done? A I said, "I don't care to go." She said, "Why?" I said, "Because I might see Essie Jones." She said, "Don't worry about that, that we would not go where we can see him."

Q What did you do? A So we all decided to go for this automobile ride.

Q Which way did you go? A We goes to Elizabeth.

Q Did you go anywhere near Essie Jones' house? A No, we didn't.

Q How long were you on this automobile ride? A Well, no longer than we could go to Elizabeth and come back.

Q What time did you get back? A I guess around 1:30 or a quarter to two.

Q You, Smith, Doll and Gertrude Wilson? A Right.

Q Where did you go when you got back? A Down to the house where I had the room on Washington street.

Q And did the two women stay there that night? A Yes.

Mr. Conlon: I object.

The Court: Please do not lead.

Q Where did the women stay that morning? A They stayed down to the house at Washington street.

Q With you? A Doll stayed with me. Gertrude stayed with the Smith boy.

Q Now, that Wednesday or that Thursday morning did you have a knife with you? A No.

Q Did you have a knife? A I never owned a knife in my life.

Q Did you ever show a knife to the Wilson girl and say, "I am going to kill Doll with this?" A No.

Q Or words like that? A No.

Q What time the next morning did the girls leave? A Around 9 o'clock.

Q Did they leave together? A Doll had lived at 76 Barclay street, but she had moved.

Q Who told you that she moved? A I found her moved June 25th when I came back from Philadelphia.

Q They went away together on this Thursday morning? A Yes, they went away together.

Q When did you next see her? A I next see her Saturday night, July 2nd.

Q Where? A 76 Barclay street.

Q What did you go there for? A I went up there as a friend of Mrs. Cheesbro, and I knew I could get me something to drink and I stopped in order to get a drink.

Q What time was it? A Around 8 o'clock.

Q This was Saturday night, the 2nd of July? A Yes.

Q Was Doll there? A Yes, sir.

Q Did you have a talk with her? A Oh, that happened—just a minute. You say was Doll there when I got there?

Q Yes. A She was not there when I first got there.

Q How long were you there when she come in? A I was there for four or five minutes and in come Doll with two fellows which I don't know.

Q How long did you stay there that night? A I stayed there that night until 9:30 or a quarter to ten.

Q Did you talk to her before you left? A Yes.

Q What did she say to you about the next day? A Well, when I was getting ready to leave,

she said, "Harry, I want to see you tomorrow;" she said, "Will you come around?"

Q What did you say? A I said, "Yes, I will be around."

Q Did you at that time threaten her or say you were going to kill her or do something to her? A No, I didn't.

Q Was there any trouble or any quarrel there? A No.

Q Where did you go then, where were you living then? A Up to my brother's, 18 Boyd street.

Q When did you leave the Washington street address? A July 1st, on Friday.

Q On that Saturday night you got home to your brother's house what time? A You mean after leaving?

Q After leaving Doll? A I got to my brother's house about 11 o'clock.

Q Did you go to bed? A Yes.

Q What time did you get up Sunday morning? A Nine o'clock in the morning.

Q Where did you spend the day? A At my brother's home.

Q What time did you leave your brother's house? A I left my brother's house, as near as I can guess, at 5:30 or 6 o'clock in the afternoon.

Q Where did you go? A I take a walk first down the avenue, Springfield avenue.

Q Did you have this pistol with you? A Yes.

Q Why? A Why, at that time, my lock was on my trunk was broke and I was afraid that my brother's boy might go into that trunk and get ahold of that gun.

Q How old is your brother's boy? A He looks like around twelve or thirteen years of age.

Harry B. Scott, direct.

Q What is his name? A They call him Christian Scott.

Q Now, when you left the house you took this with you? A Right.

Q And you took this walk? A Right.

Q What time did you go to 76 Barclay street? A I got to 76 Barclay street, as near as I can guess, around 7:30 or a quarter to eight.

Q What did you go there for? A Because Doll told me to come back that day, that she wanted to see me she told me that night before.

Q When you went to 76 Barclay street, you got there around half-past seven or a quarter to eight, what room did you go into? A Into the front room.

Q And who was in the front room when you got there? A I found Mrs. Cheesbro sitting in one chair asleep. I found three other colored fellows were sitting on the settee. Also Doll had a tray serving those three fellows drinks, which I didn't know.

Q Did you get a drink? A Yes.

Q How long were you in the front room? A I was in the front room as near as I can guess after Doll had served these fellows with a drink, she set the tray down on the little table in the living room. One of those fellows I seen there when I went in the room said, "Give the gentleman a drink" which means me. Doll said, "If he wants a drink let him take it."

Q What did you do when that was said? A Well, the gentleman he gets up and pours out a drink for himself and pours out one for me. He tells me his name. I tells him mine.

Q What was his name? A I don't remember his name.

Harry B. Scott, direct.

Q All right. Did you have a drink? A We had a drink together.

Q In the front room? A In the front room.

Q Was Doll there then? A Yes.

Q How many men were there then? A Three men.

Q Three men you didn't know? A Three men I didn't know.

Q What happened there after that? A At about five minutes later Doll was setting on the arm of this settee where these three men was and near the big front baywindow Gertrude calls Doll from the street.

Q That is, this is the baywindow the settee is located in, and Doll was sitting on the arm of the settee? A Yes.

Q And Gertrude was in the street? A Yes. There sets the settee here. There is the three fellows on it. Doll sits here on this arm. Gertrude calls her from the street.

Q What did Doll do then? A Doll answers her from the window.

Q Then what happened? A Then Doll returns from the window and goes to the door to go down to see what Gertrude wanted.

Q Which door was that? A That was the door leading from the hall into the living room.

Q That is the parlor. Is this the door? A Yes, that is the door.

Q Going from the parlor into the hall? A That is right.

Q And did you see her go to that door? A Yes.

Q What happened then? A Well, when she opened the door on her way out, and she opened the door in walks Essie Jones.

Q Did you know him? A Yes.

Harry B. Scott, direct.

Q How many times had you seen him before this? A Oh, four or five times. Not that day, though. That is the first time I seen him that day.

Q When he came in what happened? A Well, he walked in and he did not say anything to anyone. He just walked over to the table and takes a drink. He did not know who bought it or nothing. He did not speak a word to no one.

Q What happened then? A Well, Doll at that time had come upstairs.

Q She had gone out? A Yes.

Q She had gone out of that door? A Yes.

Q Did you see her come upstairs? A Yes.

Q Then what happened? A She said, "I want you fellows to go out into the kitchen, for I have some company coming up I do not want to mix with you."

Q At that time how many people were in the parlor? A There were three fellows in there when I first went there and then there was Essie Jones and Doll and myself, which made five men.

Q And who else was there? A And Doll.

Q And who else? A Mrs. Cheesbro.

Q What was she doing? A She was asleep.

Q When Doll said that you men will have to go into the kitchen because I want to use this room where did you go? A Well, before she answered that question she goes into the room and says something to a couple there in that middle room in bed, and then she come back and she said "You fellows go right through this way." I was sitting in the chair beside Mrs. Cheesbro near the door leading from the parlor into the middle room.

Q Did the men go through that middle room into the kitchen? A Yes. I went first.

Harry B. Scott, direct.

Q Did Essie Jones come into that kitchen? A Yes.

Q Did the other men go in that kitchen? A Yes.

Q Did Doll go in that kitchen? A Yes.

Q Now, what did she do with that door between the middle room? A One of the three men I found in the living room when I first come to this house says I am going back to the living room and get the rest of our drinks.

Q Then what happened? A On his way between the kitchen and living room, which was in the bedroom, he meets Doll. Doll said to him, "Where are you going?" He said, "I am going back in the living room to get the rest of our drinks." Doll said, "You go back. I will bring the drinks out with me." So the fellow returned back to the kitchen. Doll returned back to the living room to get these things.

Q Did she go in the kitchen? A Yes, she goes in the kitchen with the drinks. As she entered into the kitchen Essie Jones said to her, "Close that door or I will throw you over the banister." Now, the door that he meant, that was the door between the bedroom and kitchen.

Q He told her to shut it? A Yes.

Q Before that had Essie Jones said anything to you or any of the men there? A No.

Q After that what happened? A Then she closed the door as he said. She set the tray down.

Q Where were you standing in the kitchen? A I was standing in the kitchen near the water sink.

Q Near the washtubs? A Yes, leading to—

Mr. Conlon: Wait a minute.

Q I show you Exhibit S. 2 a picture of the kitchen. Do you see the washtubs? A Yes.

Q Where were you standing? A I was standing over here.

Q Between the washtubs and the tray? A Yes, right over here in that corner.

Q This corner? A Yes.

Q Was that door closed leading into the bathroom? A Yes.

Q Where was Essie Jones? A He was standing over to the door leading into the bedroom.

Q Which side of the room? A I would say between that bedroom door and the door that led into the hall from the kitchen.

Q Was there a dresser there? A It was a little stand that fits right in between those two doors.

Q Is that where he was standing? A Yes.

Q And you were standing over here at the sink, near the door leading to the bathroom and then the table was by the center of the room? A Yes.

Q What happened? A Well, I called Doll to me.

Q Did she come around to where you were?

Mr. Conlon: I object.

Q What did she do when you called her? A Do you want me to show you on the plan?

Q Yes.

The Court: No. I would rather you would go right ahead and let us hear it.

Q Now, what did she do when you called her? A She comes around the table, between the table

and the range, and she comes to me. Well, when she come to me, I said, "Doll, what do you want with me; you told me to come back. Last night you told me to come over here." I said, "Now, I don't like the life you are living. I am surprised at your living this kind of a life," I said. "You also got too nice a people according to letters which you have received from your mother."

Q What happened next? A And that time Essie Jones walks up, shoves her away with his left hand, his right hand in his hip pocket, and grabs me under the arm.

Q With what hand? A With his left hand.

Q Come down here and show me how he grabbed you. I am you. You are Essie Jones.

The Court: Before we have the demonstration let us have the story. Then go down and demonstrate.

Mr. D'Aloia: I think the time is reached now.

The Court: No. I desire him to go ahead and tell in his own way.

Mr. D'Aloia: All right.

Q He grabbed you with one hand? A Yes.

Q With what hand? A He grabbed me with his left hand, and his right hand in his hip pocket.

Q Then what happened? A He said, "One of us is going to hell tonight."

Q What did you do? A At that time I was afraid of him. I pulled my gun this way. He grabs me with his left hand that way. The girl steps out to the right of him, to the left of me. While he was holding my hand the gun was going off and she got the shots from the gun.

Q The day after the 4th of July? A No—yes, the day after the 4th of July.

Q And when did you go back to Newark? A I came back on Wednesday.

Q What did you go to Philadelphia for? A What I went to Philadelphia for?

Q Yes. A I went to tell my mother what had happened.

Q Now, did you tell your mother? A No, I changed my mind after I got to Philadelphia.

Q Why? A Because I did not want to tell her for this reason: I did not want to worry her, because I know how mother's—

Q Then you came back to Newark? A Yes.

Q When you came back to Newark where did you go?

The Court: You changed your mind where?

The Witness: In Philadelphia.

Q When you came back to Newark where did you go? A To 114 Wickliffe street.

Q Who came back from Philadelphia with you? A A girl by the name of Anna James.

Q How long did you stay in Wickliffe street? A From Wednesday. Wednesday night and Thursday, and I was locked up on Friday—on Saturday, rather.

Q Did you go over to Boyd street where your brother lived? A Yes.

Q When did you go there? A I went there on Wednesday night, the same day I returned from Philadelphia.

Q Did you find your brother? A Yes.

Q On Wednesday night? A Yes.

Q Did you find him? A Yes.

Q Did you talk to him? A Yes, on Wednesday night.

Q After talking to him where did you go? A Where did I go after I got through talking to him?

Q Yes. A I went over to 114 Wickliffe street.

Q Did you go back to Boyd street? A I went back to Boyd street on Friday.

Q Where did you go? A To 19 Boyd street.

Q What kind of a place is that? A That is a tailor shop.

Q Did you find anybody home at your brother's house? A I didn't go to my brother's house. When I was on my way to my brother's house the tailor in the tailor shop—

Q All right. You got some information in the tailor shop? A Yes.

Q While you were in the tailor shop did somebody come in there? A Yes.

Q Who was it? A It was an officer.

Q What did he say to you? A He walked up to me and said, "Stand up," which I was sitting down in the tailor shop. He said, "Stand up." I did as he said. He said, "What is your name?" And at the same time he asked me what my name was he pulled my sleeve up, and I have also the tattoo mark on my arm.

Q At that time did you tell him your name was Smith? A And he said, "What is your name;" he said, "You are Harry Scott, aren't you," and I said, "Yes, that is my name. I am Harry Scott."

Q Did you tell him that your name was Smith? A No.

Q Did you ever mention the name Smith? A No.

Q Where did you go from there with the officer? A To headquarters.

Q And down there did you make a statement? A I didn't make it that day.

Q No, when did you make it? A I made it on Saturday evening.

Q And did you tell them all about it? A Yes.

Q Did you tell them what you have told us? A Yes.

Q Was it written down? A Yes.

Q And did you sign it? A Yes.

Q On each page? A Right.

Q Was the paper read to you? A Yes.

Q Does it say in there that when Jones and you were grappling with this pistol? A Yes.

Q Does it say in there that you were attacked by Essie Jones? A Yes.

Q Does it say in there that as you were talking to Doll he come up and pushed you away and grabbed you under the armpit? A Right.

Q Did you show the police your shirt? A Yes.

Q What was the matter with it? A It was torn underneath the arm.

Q Did you tell them when you made that statement that when Essie Jones attacked you he said, "One of us is going to hell tonight?" A Yes.

Q Did you tell them where your pistol was? A Yes.

Q Did you tell them how you got—what time you got to your brother's house after this happened at 76 Barclay street? A Yes.

Q Did you tell them what you did with the pistol? A I put it in the trunk, left it in the trunk on Tuesday.

Q Wait a minute. Did you tell the police that the night when you left Barclay street and went to your brother's house, that the pistol was used to shoot blank cartridges with? A Yes.

Q And did you tell the police that your pistol was in your room? A Yes.

Q What room did you tell them? A 114 Wickliffe street.

Q Did you ever tell the police that the pistol was in a trunk up in a room in your brother's house? A No.

Q Had you ever been to Newark before you came on the 14th of June, 1927? A No.

Q Did you know anybody in Newark? A I knew my brother was here, but where I don't know.

Q Do you know where your brother has been since you came back from Philadelphia? That day you went up there and the police got you?

Mr. Conlon: I object.

Mr. D'Aloia: We do not press the question.

Q Do you know where your brother is now?

Mr. Conlon: I object to that.

The Court: I will allow it.

Q Do you know where he is? A Yes.

Q Where? A He is in the House of Detention.

Q As what? A As a witness against me.

Q Do you know where Anna James is? A Yes.

Q Where? A In Philadelphia.

Q Where is she now? A She is in the House of Detention.

Q Why?

Mr. Conlon: I object.

The Court: Sustained.

Mr. Conlon: These two witnesses I do not intend to call now. If the defense think their testimony might be material I am perfectly willing to have them examine those witnesses and produce them if they wish.

Mr. D'Aloia: I am satisfied with the statement by Mr. Conlon that he will not make a point of the fact that we do not call this man's brother and we do not call this girl, Anna James. We admit with him that they know nothing about this case.

Mr. Conlon: Very well.

Adjourned until tomorrow, Wednesday, November 2, 1927, at 10 o'clock A. M.

THIRD DAY.

Wednesday, November 2, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

HARRY SCOTT, defendant, recalled.

Cross examination by Mr. Conlon.

Q Scott, how long had you lived in Philadelphia? A A great number of years. I just can't say.

Q About how long? A About twelve or thirteen years.

Q Who did you live with there? A Who did I live with?

Q Yes. A With my mother.

Q And who else? A And Lorenza Robinson.

Q Did Lorenza Robinson live with your mother, too? A No.

Q You lived with Lorenza Robinson and you lived with your mother? A I lived with my mother when I first came to Philadelphia.

Q How long did you live with your mother? A I guess, as near as I can guess, around seven years, I guess.

Q How long did you live with Lorenza Robinson? A Around nine or ten months, before coming to Newark.

Q You lived with Lorenza Robinson for the nine or ten months when you came to Newark? Is that right? A Yes.

Q And with whom did you live between the time you left your mother and the time you went to live with Lorenza Robinson? A I had rooms at different people's homes.

Q So it is some five years ago that you lived with your mother, is that right? A Yes.

Q Are you married? A No, sir. I have a common law wife.

Q You have a common law wife? A We have been parted about two years, as near as I can guess.

Q Who is your common law wife? A Her name was Annie Prior.

Q Where is she? A I don't know where she is.

Q When did you see her last? A When did I see her last? Christmas.

Q Please do not repeat the question. When I ask you do not repeat it. A Yes.

Q You saw her last Christmas? A Yes.

Q Where? A Philadelphia.

Q At that time were you living with Lorenza Robinson? A Yes.

Q What business were you in in Philadelphia? A Cement finishing.

Q And where is the last place you worked in Philadelphia? A It is 63rd and Cedar avenue, Philadelphia.

Q 63rd and Cedar? A Yes, sir.

Q For whom did you work there? A I didn't get that last word.

Q For whom did you work at that place? A A man named Mr. Freddie Side.

Q How do you spell it? A I don't know.

Q How long did you work there? A I worked there about nine months on that job.

Q When did you leave that job? A I could not tell you just when I left that job.

Q About when? A Well, I left that job some time in April of this year.

Q And you say that is the last place you worked in Philadelphia? A Yes.

Q At that time you were living with Lorenza Robinson? A Yes.

Q And you came to Newark about the 14th of June? A About the 14th of June, yes.

Q And you did not work between some time in April of this year and the 14th of June, did you? A No, sir.

Q How much money did you have when you came to Newark? A $180 and $190, as near as I can guess, when I come to Newark on the 14th.

Q Didn't you testify yesterday you had $160? A That was when I come back from Philadelphia, the following day on the 5th.

Q Have you any income beside what you make when you work? A I didn't get the last.

Q Have you any income beside what you make when you work? A No, sir.

Q How much did you make when you were working down there as a cement finisher? A $45 and $50 a week.

Q And you did not work from April until June? A No, sir.

Q Still on June 14th, when you came to Newark, you had $180 or $190? A Yes.

Q How much money did you have at the time Doll left you the first time? A The time she left me?

Q Yes. A Well, around $175. That is as near as I can guess.

Q And how much did you have at the time of this killing? A At the time of the killing?

Q Yes. A About $145.

Q And how much did you have at the time you went to Philadelphia to get—

Mr. D'Aloia: I object.

The Court: Sustained.

Mr. Conlon: I intend to connect this up, of course, to show the contact between this witness and the deceased.

Mr. D'Aloia: That does not show the contact.

The Court: Well, I think this is rather remote.

Mr. Conlon: Well, I will be not much longer about it and if it is remote it will not do us any harm.

Q How much money did you have at the time you went to Philadelphia and got Anna James?

Mr. D'Aloia: I object to that.

The Court: I will allow him to continue for a little while on the prosecutor's assurance.

Q Will you answer the question? A I had around thirty or thirty-five dollars at that time.

Q Now, you say you came to Newark at Doll's suggestion, is that right? A Yes.

Q You said that she wanted to visit relatives here? A Yes.

Q Did she visit them? A Yes.

Q Who were they? A First, it was her aunt living at 49 Lock street. She called her Aunt Mary. That is all I know of her.

Q Do you know her name? A Aunt Mary. That is all she called her.

Q Is that the only relative she visited? A Then she visited her Uncle Jackson on Spruce street.

Q Anybody else? A And also to the house we were living, Mrs. Cheesbro.

Q Was she related to Mrs. Cheesbro? A So she said.

Q What relation were they? A She told me that they were cousins.

Q Was that the only reason you came to Newark? A No, sir, that was not the only reason.

Q What other reason was there? A She said I could get work over here if I come over.

Q Did you get work? A Well, I have not found any work, but I was looking for work.

Q What kind of work were you looking for? A Cement work.

Q You went to Philadelphia on July 5, didn't you? A July 5?

Q Yes, that is the Tuesday after the killing. A Yes, sir.

Q And do you remember on that day you pawned a lady's diamond ring for $8 and gave your brother a dollar of the $8? A Yes.

Q And it was the $7 which you got from pawning that ring that you paid your carfare to Philadelphia and back? A Not all of it, no, sir; I had some money myself already.

Q How much did you have? A I pawned a ring for $8—well, I had the rest of the money in my pocket which would make around $30 or $35 which made the full amount when I put the $7 to it.

Q Made what full amount? A The money which I already had in my pocket.

Q What did you need the $7 for? A Because I figured I would not have enough money to go over to Philadelphia and back and also give my mother a couple of dollars, too.

Q So, you really pawned this ring so that you would have enough money to give to your mother, is that right? A Yes.

Q Did you see your mother when you went to Philadelphia? A No, sir.

Q Where did you live with Doll in Philadelphia from April until June 14? A I lived at 123 Mellon street, and I lived at 1231 Ogden street.

Q What did you do down there all the time from April to June? A Looked for work.

Q You spent all the time looking for work? A Yes, sir.

Q What was Doll doing? A She was a cigar maker.

Q Was she working steadily? A Yes.

Q And when you came to Newark, did she go to work? A No, sir.

Harry B. Scott, cross.

Q Did she have any money when she came to Newark? A Yes.

Q How much did she have? A I cannot tell you exactly how much she had.

Q Well, about how much did she have? A Around $50.

Q How long have you known Anna James? A About six months now.

Q You met her, then, about last May? A Yes, sir; she came to our house and got a room with us when we were living on Ogden street in Philadelphia.

Q She came to live with you and Doll? A Yes, sir.

Q And how many times have you seen her in the last six months?

Mr. D'Aloia: I object to that because it it absolutely irrelevant.

The Court: I don't see its relevancy.

Mr. Conlon: I want to show the disposition that this witness had to the deceased and I think that it is very material, in his contact with other people who are as closely connected with this thing as Anna James. I think it is material.

Mr. D'Aloia: There isn't any connection between this thing and Anna James at all, if your Honor please. The prosecutor stated yesterday she would not be called as a witness, although she has been detained in the House of Detention.

Mr. Conlon: I want to determine this witness' feelings toward this deceased, his attitude toward her as bearing on motive.

The Court: Proceed, objection overruled.

Harry B. Scott, cross.

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

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

DALLAS FLANNAGAN,
Judge.

Q How often have you seen Anna James in the last six months? A Well, I seen her when she was living with us, and also when I went to Philadelphia on July 5.

Q Did you see her in between at all? A No, sir.

Q You did not see her at all in between? A I did not see her in between the time I left Philadelphia on June 14th, until July 5th when I went to Philadelphia, I did not see her in between that time.

Q You were quite fond of Doll? A What does that word mean?

Q You liked her a great deal? A Yes.

Q Were you in love with her? A Oh, I cared for her the same as a man cares for his wife.

Q You considered her practically your wife? A In a way.

Q As far as your attitude was concerned? A Yes, sir.

Q And in spite of the fact that you already had a common law wife living? A Yes, but we have been parted for two years now.

Q And then two days after Doll died you go to Philadelphia and get Anna James to come up here and live with you, is that correct? A No, sir.

Q That is not right? A No, sir.

Q Well, what did you do? A I goes to Philadelphia to see my mother in order to tell her what had happened between Doll.

Q I am not asking you what you were going to do, I am asking you what you did do.

Mr. D'Aloia: If the Court please, I think he ought to be allowed to give that answer, the prosecutor is asking for this.

Mr. Conlon: The answer is not responsive.

The Court: I will let him go ahead with some of it, his motives were not asked for. He was asked what did he do, and he was starting to give his motives. He said, "I went to see my mother in order to tell her—" That part I will not allow.

Mr. D'Aloia: But, if your Honor will have that question read, you will see no answer can be made excepting the one the witness is making.

The Court: All right, read the question.

(Question read as follows: "Well, what did you do?")

The Court: You may answer what you did.

The Witness: What did I did when I got to Philadelphia, is that the idea?

Mr. Conlon: Yes.

The Witness: Well, I changed my mind on going to see my mother.

Q Well, now, will you answer the question, Scott, what did you do when you went to Philadelphia? I don't care anything about your mind. What did you do and where did you go? A

After I got to Philadelphia I changed my mind about going to see my mother and I goes to the Elks' Home, I spends a few hours in the Elks' Home, and then I drops around to the home of Anna James because I knew her as she was a tenant in our house, as long as I was in the city, I would stop around to see her, and when I called around to see her she says that she was going to Newark, and I said, "Well, I am going back to Newark tomorrow myself," and she said, "Well, I will go along with you."

Q And nothing was said about her coming to Newark until she told you she was coming? A No, she said a long time before after we got to Newark and got settled down and got a house, that she would come and live with us.

Q Meaning Doll and you? A Yes, sir.

Q But on this occasion, in Philadelphia, when you saw her down there, she suggested at that time coming to Newark, is that right? A What time do you mean?

Q When you saw her in Philadelphia, when you saw Anna James in Philadelphia she was the one who suggested that she come to Newark? A Yes.

Q In fact, she told you she was coming to Newark anyway? A Yes, she was coming anyway at the time I called to see her.

Q It was just a coincidence that you happened to call at the same time that she was thinking of coming up here? A Yes, sir.

Q And just for the sake of company she came along with you? A Yes, sir.

Q And where did she live when she got to Newark?

Mr. D'Aloia: If the Court please, this may all be very interesting, but I insist on

objecting because it is all absolutely immaterial and irrelevant. We are talking about the 6th or 7th of July, and what bearing has that on what happened on the 3rd of July?

The Court: It may have some bearing and I will overrule the objection.

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

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

DALLAS FLANNAGAN,
Judge.

Q Where did Anna James live when she came to Newark on the 6th of July? A 114 Wickliffe street.

Q Where did you live? A At my brother's.

Q Did you ever live with Anna here in Newark?

Mr. D'Aloia: I object.

The Court: I will allow that.

Mr. D'Aloia: Will your Honor please fix this time? This was after the 3rd of July.

The Court: It is after the killing.

Mr. D'Aloia: What difference does it make where she lived?

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

A Did I live with her? No, sir.

Q Did you live in the same house with her? A No, sir.

A Are you sure about that? A Yes.

Q Did you ever sleep in the same house with Anna James?

Mr. D'Aloia: That is objected to upon the same ground that it is incompetent, irrelevant, and immaterial.

The Court: I will allow that.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you ever sleep in the same house with Anna James in Newark? A I never slept in the same house, but I spent a night there, half a night, rather, from one o'clock until seven o'clock in the morning.

Q When was that? A That was on July 6th.

Q And where? A At 114 Wickliffe street.

Q Whose place was that? A I don't know the lady's name.

Q Where did you sleep before that? A Before that night?

Q Yes. A July 5th, you mean?

Q Yes. A I slept in Philadelphia, in the hotel.

Q July 6th you slept all night in Wickliffe street? A I did. I stayed from one o'clock up until about 7 or 8 o'clock.

Q And where did you stay? A I stayed at 114 Wickliffe street. We had a card game from that time up until that morning.

Q Where did you stay the night of July 7th?

Mr. D'Aloia: The same objection. It is absolutely immaterial and irrelevant and does not tend to help us at all as to what happened on the 3rd of July.

The Court: I will allow that.

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

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

DALLAS FLANNAGAN,
Judge.

Q Where did you stay on July 7th? A The night of July 7th?

Q Yes. A I went to New York.

Q You went to New York? A Yes.

Q With whom? A Myself alone.

Q And where did you stay on the 8th? A The night of July 8th?

Q Yes. A Newark.

Q Where?

Mr. D'Aloia: The same objection.

The Court: Now, I think we have gone far enough.

Mr. Conlon: I will connect this up. I think it is material. I propose to attack the credibility of this witness and further I want to show his relationship between this woman Anna James and his relationship with the deceased.

The Court: None of these answers seem to develop any such relation.

Mr. Conlon: Well, of course, I am not getting any answers, I am not through.

The Court: Well, go ahead.

Mr. D'Aloia: May I ask the object of the prosecutor in this questioning? How can it be a motive if this man meets another woman two or three days later, how can he have any affection for anybody he knew three or four days before. It is inconsistent. We are losing a lot of time.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

Q Will you answer the question? Where did you sleep on the night of July 8th? A July 8th?

Q Yes. A That was on Friday. I had taken Anna James to the picture show on Springfield avenue and the show was out at 11 o'clock. I take her back to the home at 114 Wickliffe street. I goes then to 19 Boyd street. That was the tailor and I was having a talk with the man that stays in the tailor shop and I spent the night there with him.

Q Were you in your brother's house that night? A No, sir.

Q Why not?

Mr. D'Aloia: I object to that question.

The Court: I will allow that.

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

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

DALLAS FLANNAGAN,
Judge.

Q Now, as I understand it, you and Anna James did not live together at all in Newark, is that right? A Yes.

Q And she did not come out to Newark with the idea of living with you? A No, sir.

Q She came out for some other reason, is that right? A She came—her motive was to live with both.

Q Well, when she come out she knew that Doll was dead? A No, sir, not to my knowing, until I told her after she come and got to Newark.

Q In other words, this was the 5th of July when you went to Philadelphia, when you went to see Anna James? A No, I went to see my mother.

Q And you changed your mind about that? A Yes.

Q And you did not see your mother? A No.

Q But you did see Anna James? A Yes, sir.

Q And you did not tell Anna James that Doll was dead? A Not in Philadelphia.

Q And she suggested she wanted to come to Newark? A Yes.

Q What for?

Mr. D'Aloia: He has been told the purpose.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

A Of living with us both.

Q Of living with Doll and you? A Yes.

Q And at that time in Philadelphia she did not know that Doll was dead? A No.

Q And at that time did she know that you and Doll had not been living together? A Yes, she knew that.

Q Well, then, how did she expect to live with you and Doll if you were not living together?

Mr. D'Aloia: I object to that. It calls for what some other person thought.

The Court: I will allow that.

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

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

DALLAS FLANNAGAN,
Judge.

Q How did Anna James propose to live with you and Doll when she knew you were separated? A Well, that is not the first time we separated.

Q Oh, I see; she thought you would get together again? A Yes. That is the idea.

Q So in Philadelphia you had told her you were separated? A Yes.

Q But you did not tell her Doll was dead? A No.

Harry B. Scott, cross.

Q And when you got to Newark and you told her Doll was dead what did she then decide to do?

Mr. D'Aloia: I object.

Q What did she say she was going to do?

The Court: He changed that question.

Mr. D'Aloia: Well, is that material as to what happened on the 3rd of July?

The Court: Yes, I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

A She said that she was going back home to her mother in Virginia.

Q And there was nothing said about her living with you? A No, sir.

Q So that from the time you saw Anna James back in April to the present time there was nothing said about her living with you? A She wrote a letter and said that she would come over to live with us.

Q You and Doll? A Yes, if we had got a place and settled down.

Q Is that the letter? A No, sir.

Q Well, is that a letter from Anna James? A What do you say?

Q Is that a letter from Anna James to you? A It does not look like her handwriting to me.

Q Is that her signature? A That is her signature, but I don't know—

Harry B. Scott, cross.

Mr. D'Aloia: I object to this particular paper, because it is not cross examination, in the first place, and, secondly, I do not know what is being driven at.

Mr. Conlon: I do not think I should be interrupted in my cross examination. There has not been an objection made that has been sustained.

Mr. D'Aloia: I objected to the questions he was asking at the proper time. I am objecting to the use of that paper. He said it does not look like a paper he recognizes.

The Court: The question is about the signature.

Mr. Conlon: Yes.

The Court: I will allow you to ask that.

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

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

DALLAS FLANNAGAN,
Judge.

Q Is that Anna James' signature? A It is her signature, but I could not swear that she put that signature, because I am not very well acquainted with her handwriting.

Q Now, I show you an envelope postmarked Philadelphia, July 21, 1927, addressed to Harry Scott, 355 Washington street, Newark, New Jersey. Did you get that envelope? A No, sir.

Q It was never delivered to you? A No, sir.

Q You never saw it before? A No, sir.

Q Now, you are sure about this? A Yes.

Q You are not confused, you know what I am asking you? A I know exactly what you are asking me.

Q You never saw that letter? A I never seen it.

The Court: Until this minute.

The Witness: No, sir.

The Court: You say in Philadelphia you told the girl James—the James girl that you and Doll separated, but you did not tell her that Doll was dead?

Mr. D'Aloia: May I get my objection?

The Court: Yes.

The Court: Now, will you tell us why you did not tell her Doll was dead?

Mr. D'Aloia: I object to that question.

The Court: Very well, the question will not be answered.

Q I show you a package of papers and an Elk's card, a pawn ticket and other papers and ask you if you recognize those. A Yes.

Mr. Conlon: May I have those marked all in bulk for identification?

Mr. D'Aloia: What are they?

Mr. Conlon: Well, they are papers he recognized.

Mr. D'Aloia: Well, if you tell what they are we will admit them in evidence and save a lot of time.

The Court: Please let the prosecutor go ahead as he sees fit.

Mr. D'Aloia: Is there any harm for asking what they are?

The Court: That is for him to say. He is trying his own case.

Mr. D'Aloia: I think he is.

Mr. Conlon: I object to that and ask that that remark be stricken out.

The Court: I did not hear the remark.

Mr. Conlon: I will ask the Court to instruct counsel to allow me to examine this witness.

Mr. D'Aloia: And I ask the Court to have him tell what those papers are.

The Court: I will not interrupt the prosecutor any more.

Q When did you see these papers last?

Mr. D'Aloia: I object.

The Court: Overruled.

Mr. D'Aloia: Will your Honor please explain to me the materiality of that question?

The Court: I will not. I have given you an exception and you will kindly sit down.

Q When did you see those papers last? A In my trunk.

Q They were in your trunk? A Yes.

Q And as a matter of fact, was this letter I showed you before in the trunk with them? A I never seen that letter before.

Q Are you sure of that? A Yes.

Mr. D'Aloia: I ask again to have him tell what they are.

The Court: Proceed.

Q You went to Philadelphia on the 24th of June? A Yes.

Q You came back on the 25th? A Yes.

Q And Doll had left? A Yes.

(Papers marked S. 12 for identification.)

(Envelope and letter marked S. 13 for identification.)

Q And it was then that you found this letter which was written in code? A Yes, sir.

Q You say you used that code quite frequently, Scott? A What do you mean by that word, frequently?

The Court: You don't understand what he means by frequently?

The Witness: No, sir.

Q How often did you use it? A Not very often.

Mr. D'Aloia: I object to this particular examination, because yesterday, when I offered that particular paper in evidence, your Honor permitted the prosecutor to cross examine at length as to how the code was gotten up, when it originated and how long it had been in use and all of that.

The Court: Very well, overruled.

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

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

DALLAS FLANNAGAN,
Judge.

Q You are quite familiar with this code, are you, Scott? A I would not say quite familiar; it is still more can be learnt to it; yes, sir.

Q But you knew the numbers and the letters the code used? A Yes, sir.

Q And you are quite familiar with it, are you? A No, not quite familiar with it; it is not as perfect to me if I was using it every day, that is what I mean by speaking that.

Q Now, as I call off these letters you tell me their numbers, will you? A I will do my best.

Q T. A 20.
Q G. A 7.
Q K. A 11.
Q W. A 23.
Q H. A 8.
Q C. A 3.
Q J. A 10.

Q Now, I show you a letter which has been written out in this code and I am going to ask you to read it.

Mr. D'Aloia: If your Honor please, I object to that unless the prosecutor states who wrote it and whether the man who wrote it or the person who wrote it used this code; it may be imperfect, a six may be used for a five or a seven for a ten, and it may have been done purposely.

The Court: That may be a fact, but it can be found out, if it is incorrect he may say so.

Mr. D'Aloia: I am asking your Honor to have the prosecutor tell us who wrote that letter and whether the person who wrote it understands the code.

Mr. Conlon: I have no objection. The letter was written by Lieutenant Linarducci.

Mr. D'Aloia: Is he an expert on this code?

Mr. Conlon: There seems to be no expert on this code?

The Court: What do you wish to show by this, Mr. Prosecutor? Do you want to get him to read that letter?

Mr. Conlon: Yes.

The Court: For what purpose?

Mr. Conlon: To test his ability to read this code the way he did it yesterday.

Mr. D'Aloia: In the case of the State *v.* Harris, if the Court please, this particular procedure was objected to and the upper court sustained it. You cannot experiment in a court room with anything unless it is something that is absolutely in evidence or something that is connected with this particular affair on the 3rd of July. I don't want to press my objection. Mr. Conlon may ask him to read that and we will go along, in order to get going, but I don't want to have anything irregular.

Mr. Conlon: Then, is there an objection?

The Court: The objection is not urged, so there is no objection before the Court, but the point with me is this, what purpose would be served by this? He said he could read this with facility and I asked him myself if he could read the other letters with the same facility as the one he read on the stand and he said he could. Now, what would be the purpose of this?

Mr. Conlon: I want to attack his credibility to show the extent of his knowledge on this subject. He brings here a letter with nothing on it but figures which is admitted as a letter written by the deceased.

The Court: Well, it does not seem to me that his ability to read this code is of sufficient importance to justify experimentation.

Q Scott, why did you use this code? A Why did she use that code?

Q Well, you used it, too, didn't you? A Yes, sir.

Q Then, why did you use it?

Mr. D'Aloia: I object to the question, that has no relevancy with this affair on the 3rd of July whatsoever.

The Court: Overruled.

A I used that—at the time she met me she was going with a fellow and she did not want him to understand the letters which was transferred between her and I and that was the purpose of using it that way.

Q Now, you produced this letter yesterday, did you? A Yes, sir.

Q Did you have it yesterday or did your counsel have it?

Mr. D'Aloia: We had it yesterday, if the Court please—if the prosecutor wants to put us on the stand—we got this letter from this man in the jail two weeks ago when it was explained to us.

Mr. Conlon: If the Court please, I don't want to put Mr. D'Aloia on the stand.

The Court: Just a moment Judge D'Aloia, you were not asked any questions and you are not called upon to answer for the witness. Let the witness answer and do not answer for him, if you please.

Q When did you have this letter last, Scott? A I have had the letter up until the day that I found it in the room at 76 Barclay street until I gave it to my attorney there in the jail two weeks ago.

Q Where did you have it? A I kept it in my stocking in order to keep the officers from taking it away from me when they arrested me.

Q And when did you put it in your stocking? A It put it in my stocking the day I was taken to the Police Headquarters of this city.

Q You mean the day you were arrested? A Yes, sir.

Q Then, the day you were arrested, where was the letter? A In the lining of my coat.

Q When did you put it in the lining of your coat? A It fell down through the lining of my coat with some other letters, fell down in there with it and by luck it happened to be with the letters that fell down through the lining of my coat, and after I found it in my cell at headquarters I folded that note and put it into my stocking in order that the officers might search me and find this code and take it away from me, and I would have no proof that this girl left that note in order for me to go to her uncle's and get the gun.

Q So, you had it in your possession up until two weeks ago? A Yes, sir.

Q Now, you came to Newark on the 14th of June, did you? A Yes, sir.

Q And Doll left you on the 24th? A Yes, sir.

Q Then, on the 25th you went to see Higgins? A I don't get you there.

Q On the 25th of June you went to see Higgins? A Yes, sir, after returning from Philadelphia.

Q And when you got back from Philadelphia you went to see Higgins? A Yes, sir.

Q And you say at that time Higgins had your gun? A Yes, sir.

Q Did he give it to you? A Yes, sir.

Q And you talked with Higgins, did you? A Yes, sir.

Q Higgins knew Doll? A He was supposed to be her uncle; yes, sir.

Q Did he know her? A Yes, sir.

Q And you talked with Higgins about Doll, did you? A Yes, sir.

Q And you talked to him about this gun? A No, sir, nothing concerning of the gun, only he gave it to me as she left it.

Q What do you mean by that? A She left the gun there on Friday night, June 24th, and just told me that she left the gun there.

Q What else was said about the gun? A There was nothing else said concerning the gun at that time.

Q Did you ask him for the gun? A When I first went there I asked him where was Doll, and he said, "I don't know where Doll is."

Q Did you ask him for the gun? A No, sir; I did not ask him for the gun.

Q What was the first thing that was said about the gun? A He said, "Doll left your gun here for you," and he pulls it out from under the pillow of the bed he was in and gives it to me.

Q Did you go there to get the gun or did you go there to ask him about Doll? A I went to ask him about Doll.

Q Not to get the gun? A Not particularly to get the gun.

Q But you did go there to get the gun; that was one of your reasons? A Not for the reason

of going to get the gun; my reason was to see could I find out where she was going to.

Q And incidentally you were going to get the gun? A I did not get that last word, sir.

Q Incidentally you were going to get the gun? A Yes, while I was there I was going to get the gun.

Q You knew that Higgins had the gun at that time? A I knew the note said he had the gun, yes, sir.

Q But you did not ask him for it? A No, sir; I did not ask him for it.

Q Did Higgins tell you where Doll was? A No, sir.

Q When did you next see Doll? A I see her about a half an hour later of that same day.

Q Where? A At Springfield avenue and Broome street.

Q Who was she with? A Essie Jones.

Q Did you know Essie Jones at that time? A Yes, sir.

Q How many times had you seen him? A Three or four times, as near as I can guess.

Q Three or four times? A As near as I can guess.

Q Had you ever seen him with Doll before? A Had I ever seen him with Doll before, you say?

Q Yes. A No, sir.

Q That was the first time you saw him with Doll? A Yes, sir.

Q Did you ever hear Doll talk about him up to that time? A No, sir.

Q You met her on the street and you had a talk with her? A Yes, sir.

Q When did you see her again? A I saw her again that same day, that same evening, rather, around 7:30 or a quarter to eight.

Q Where? A At 76 Barclay street.

Q Where, if any place, did you go? A Sir?

Q Where did you go, then? A We went to the party that night.

Q That was Mrs. Jones' party? A Yes, sir.

Q And did she want to go to that party or did you induce her to go? A She wanted to go to the party.

Q Was Essie Jones there? A Where, 76 Barclay street you mean?

Q Yes. A No, sir.

Q At the party? A At the party, I cannot tell you, I did not see him at the party, I don't know whether he was in the party or not.

Q What do you mean by that? A What I mean by that, I did not see him, I cannot say whether he was in the party or not, but I did not see him.

Q Why can't you say whether or not he was there? A Because he could have been in one part of the house which I did not go to, and I did not see him, he could have been in that part and could have been there.

Q He was not present at the party anyway? A No, not in my presence.

Q As far as you know he did not see Doll that night? A No, sir.

Q No, what was this gun that you found that night or had in your hand, whose gun was that? A That was my gun.

Q That was your gun? A Yes, sir.

Q And you found it in Doll's pocketbook? A Yes, sir.

Q Where did you last leave it? A I left it in the bureau drawer in my room at 76 Barclay street, and while she was standing at the bureau combing her hair, as I was getting ready to take

her to the party, that is just when she got the gun and put it in her pocketbook, as near as I can guess it.

Q So that it was your gun that Doll had in her pocketbook? A Yes, sir.

Q And you took the gun out of her pocketbook? A Yes, sir.

Q And put it in your belt? A Before doing that I had taken the gun and showed it to Mrs. Mary Jones and asked her to put this gun away for me and she says, "I have got all my trunks packed up in order to make room for the party tonight."

Q Isn't it a fact that at that time when you showed that gun to Mrs. Jones, that you told her that if Doll did not come back to live with you you were going to kill her? A No, sir.

Q You did not say that? A No, sir.

Q At any rate, you got the gun back then? A How is that?

Q You got the gun back that night? A Yes.

Q What else was in the pocketbook besides this gun? A She had two or three cards and some papers was in there and about $1.75 in change a pocket handkerchief and a powder puff, that is all I can remember was in there.

Q What about her glasses? A Her glasses I had taken them off of her face.

Q Were they in the pocketbook? A No, I had taken them off of her eyes.

Q This was on the 25th of June? A Yes, sir.

Q And up to that time you had seen Doll with Essie Jones only once? A Yes, sir.

Q Had there been any quarrel between you and Doll about Essie Jones? A No, sir.

Q Had there been any quarrel between Doll and you at all? A No, sir.

Q You are sure of that? A Yes, sir.

Q Do you know why she left you? A Do I know why she left me, you say?

Q Did you hear the question? A I did not get it.

Q Do you know why Doll left you? A No, sir, she loved him better than she did me, that is as near as I can figure it all out.

Q She left you two days before this party you are talking about? A No, she left me on Friday, June 24th, and the party was on Saturday, June 25th, the next day.

Q But the day of the party was the first time you had ever seen Doll with Essie Jones? A Yes, sir.

Q Did you ask Doll to come back to live with you on Saturday, the 25th? A No, sir, I did not.

Q Why not?

Mr. D'Aloia: I object to that.

The Court: Sustained.

Mr. Conlon: I do not know the grounds of the objection. There are no grounds stated.

The Court: I know there are no grounds stated, but I do not see why that is material. I do not see any reason why he should ask her to come back.

Mr. Conlon: Well, this man has testified that he was living with this woman and she was a common law wife and he wasn't in love with her.

The Court: No. Objection sustained.

Q When did you first ask Doll to come back to you?

Mr. D'Aloia: I object. There is no evidence he ever did.

Q Did you ever ask Doll to come back to you? A No, sir.

Q Never once from the time that she left? A No.

Q Did you ever talk about her coming back with you? A No, sir.

Q Did you care whether or not she come back to you? A Well, she come back it would be all right and if she didn't it would be all right with me.

Q It didn't make any difference in any way, shape or form? A No.

Q And you felt that way when you left? A Yes.

Q So when Essie Jones appeared on the scene you did not care? A No, sir; it did not take any effect on me.

Q It did not take any effect on you? A No.

Q When this girl turned to Essie Jones and turned you down it made no difference to you? A No, no difference at all.

Q And that was right to the 24th or 25th of June when she left you? A Yes.

Q Now, after that party you went home? A After the party at 186—

Q After the party at Jones' house? A Yes, we went home.

Q To where? A 76 Barclay street.

Q Tell us what happened there? A Well, when I takes her to 76 Barclay street she goes into the room. She wanted to go to the party—go back to the party. I said, "You are too much under the influence of whiskey to go out. The best thing for you to do is to lie down and take

a sleep." Well, she didn't agree to that. She reaches over to the bureau. She grabs a little finger nail file, about so long, as near as I can get it. She swings at me with it. I throws my right hand this way. I catches the blade from it. It gives a little cut there about an inch long, and, being under the influence of liquor, when she struck at me, she lost her balance. She fell. She struck her face against the corner of the chair.

Q Who was present at this time? A Mrs. Cheesbro was in the living room, but not in our bedroom.

Q This thing that happened was in the little room in the front of the house? A Yes.

Q What time was that? A That was around a quarter to twelve or 12 o'clock.

Q And where did Doll go then? A I called Mrs. Cheesbro. I said, "Take care of her until I go out and see can I find an officer or get some information to get a doctor." I seen she was bleeding at her mouth. I didn't know whether she was hurt bad or not. I did not take time to look.

Q What did you want to get a police officer for?

Mr. D'Aloia: I object.

The Court: I will allow that.

A Because I wanted to get a police officer. Possibly he could direct me to the nearest place of getting a doctor for her at that hour of night.

Q Well, you went out to get a police officer, or did you go out to get a doctor? A Either one, if I got it, a doctor or a police officer, either one.

Q Then you did not come back that night? A Oh, yes.

Q When? A When I goes out—

Q Just answer the question. Did you come back that night? A Yes.

Q When? A I come back an hour later.

Q Who was with you? A I was all alone.

Q Did you get an officer or a doctor? A No, sir; I didn't get an officer or a doctor.

Q Now, as a result of that Doll went to the City Hospital? A Yes, she went to the City Hospital.

Q And you say up to that time there had been no trouble between you and Essie Jones? A No.

Q No trouble between you and Doll about Essie Jones? A No, sir.

Q And on this night were you carrying a gun at the time Doll fell on the ground, you were carrying the gun that night? A The time she fell?

Q Yes. A Yes. I had it in my belt taking it from 186 Broome street, the party.

Q Now, after that did you ever bother Doll about Essie Jones? A No, I didn't.

Q Did you ever talk to Essie Jones about Doll? A No.

Q Did you ever talk to Doll about Essie Jones? A No, I didn't talk to Doll about Essie Jones, but Doll talked to me concerning Essie Jones.

Q As far as you were concerned you made no trouble whatever about the situation, is that right? A Yes, that is right.

Q Still on June 29th do you remember that day when you were living on Washington street? A Yes, I remember that day.

Q That was the time that Doll came to you and told you that Essie Jones was going to kill you? A Yes.

Q And that was in spite of the fact that you had never done anything to lead Essie Jones to care? A I didn't understand that.

Q She told you that Essie Jones was going to kill you? A Yes.

Q In spite of the fact that you indicated that you did not care in no way at all about what Essie Jones did? A No, sir; I didn't care.

Q And you so told her there, you told her you did not care? A Here is what I told her: I said, "If you are going with Essie Jones go ahead with him and do what he tells you to do. I am not going to give him any cause any way, shape or form to bother me about you."

Q And later you invited her on an automobile ride? A Later that night, yes.

Q Do you remember Saturday, July 2nd, when you came in to 76 Barclay street? A Yes.

Q What time was that? A Around 7:30 or a quarter to eight.

Q In the evening? A Yes.

Q You saw Doll there? A Not when I first got there I didn't see Doll.

Q But she came in soon after? A She come in five minutes later.

Q Anybody else with her? A Two other colored fellows—I do not know them—was with her.

Q She was entertaining them? A Yes, they come in with her.

Q Did you make any objection to that? A No.

Q You did not care anything at all about that? A No. She just come in from the street with them.

Q It did not make any difference to you? A Well, I seen something going on in the house

that night I was surprised at and I mentioned the question to her concerning that fact.

Q Who did you mention it to? A To Doll.

Q What did you mention to her? A I said, "Doll, I am surprised at the life you are living now." I said, "If we had remained at 93 Barclay street I do not believe you would be living the life that you are taking up now." Her answer to me, "It is not what I have been doing, it is what I am doing." I said, "You win."

Q In other words, you did not care? A It was all right with me.

Q It did not make any difference to you what Doll did? A No.

Q If Doll went out in the street it was all right with you? A It was all right. She had left me for Essie Jones, and what she had done it was all right with me, because I had nothing more to do with her.

Q And all you wanted to do was to keep out of Essie Jones' way to keep out of trouble? A That is right.

Q Now, Saturday night you had the gun on you, July 2nd? A Yes.

Q And on Sunday, July 3rd, what time did you get up? A Around nine or ten o'clock, as near as I can guess it. I could not say exact what time.

Q You spent Saturday night where? A Saturday night, July 2nd, you mean?

Q Yes. A At my brother's, at 18 Boyd street.

Q What time did you leave that house? A That night or the next day?

Q Sunday? A That Sunday I left there around 6:30 or a quarter to seven; Sunday evening, July 3rd.

Q Around 6:30 or a quarter to seven? A As near as I can guess it.

Q Are you sure about that? A As near as I can guess it.

Q Now, didn't you testify yesterday it was 5:30 or 6 o'clock? A It might have been, I cannot say exact what time. I do not take no notice of the time.

Q But it was some time in the neighborhood of six o'clock? A Somewhere around there, yes. I did not take no exact time.

Q Did you carry your gun when you left your brother's house? A Yes.

Q You had it under your belt? A Yes.

Q You went where? A Taking a walk first down Springfield avenue and after down Springfield avenue I goes to 76 Barclay street. That was then around 7:30 or quarter to eight in the evening.

Q Yes. A Yes.

Q And when you went into 76 Barclay street what room did you go? A Into the parlor.

Q That is into the front room? A Yes, front room.

Q Now, who was there? A Mrs. Cheesbro was there.

Q Where was Mrs. Cheesbro? A Sitting in the chair asleep.

Q Who else was there? A Three other colored gentlemen, which I do not know them, and Doll.

Q Anybody else? A That was all in the front room.

Q Who else was in the apartment? A It was a man and a woman in the middle room between the kitchen and the front room in bed.

Q Yes. A Yes.

Q Anybody else in the apartment? A That is all I know of.

Q And the man and woman in the middle room in bed were Johnny Hudson and Eva, who were on the stand yesterday? A I did not know their names to see them, but I know there was a couple in bed.

Q And when you got there there was Doll and Mrs. Cheesbro and these three colored men? A Yes.

Q And they were all in the living room? A Yes.

Q Would you recognize any of those men if you saw them now? A I could not say that for sure, because I did not pay much attention to them.

Q How long did you stay there? A I stayed there clear up until around 8:30 or until 9 o'clock, as near as I can guess. I did not pay any exact attention to the time.

Q You were in the living room all the time? A Not all the time.

Q When did you leave the living room? A I was asked by Doll to leave the living room to go to the kitchen.

Q Now, up to the time that Doll asked you to leave the living room you were in the living room from the time you got there? A Yes.

Q And these three men were there? A Yes.

Q And Mrs. Cheesbro? A Yes.

Q Mrs. Cheesbro was asleep? A Yes.

Q What were you doing? A How is that?

Q What were you doing? A Well, when I first come in Doll had the tray serving these three gentlemens drinks. After serving the drinks she set the tray down on the table. One of the gentlemens of the three said, "Give the

gentleman a drink," which means me. Doll's answer was, "If he wants a drink let him get it." The gentleman then gets up and pours out a drink for himself and one for me. He tells me his name and I tells him mine, and we have a drink together, and about a minute or two later Gertrude calls from the street.

Q Now, how long had you been in the living room there when Gertrude called Doll? A About fifteen or twenty minutes.

Q About fifteen or twenty minutes? A Yes.

Q You went in there at 7:30 or 7:45? A 7:45 or 7:50, something like that.

Q Well, you said before between 7:40 and 7:45. A Well, something like that. I cannot say the exact time.

Q How long were you in the kitchen before you ran out of the backway? A Well, about ten minutes—fifteen minutes, maybe.

Q Fifteen minutes? A Well, I would say fifteen minutes as a good guess.

Q And what time was it that you ran out of the kitchen? A I don't know.

Q Well, about what time? A I cannot say.

Q Was it after nine o'clock? A Yes, it must have been after nine o'clock.

Q How much after nine o'clock, do you know? A No, sir.

Q Well, then, you were then somewheres between an hour and a quarter and an hour and a half in that house, weren't you? A It may have been longer than that.

Q It may have been longer than that? A Maybe.

Q And you spent all the time but fifteen minutes in the living room, is that right? A Yes.

Q So that you were in the living room no more than fifteen minutes? A Yes.

Q In fact, you were there for possibly an hour or more? A It may be more and it may be less, I cannot say.

Q During this time, or before you went into the kitchen these three men were there, Mrs. Cheesbro and Doll? A Yes.

Q How many drinks did you have? A I only had that one drink.

Q Just one drink? A At that time.

Q What do you mean by that time? A At that present time that night.

Q Is that the only drink you had that night? A Oh, I had drank before I come to the house at 76 Barclay street.

Q Was that the only drink you had after you got to 76 Barclay street? A Yes, sir.

Q This man that was in the front room bought that drink? A Yes.

Q He paid for it? A Yes.

Q Did any of the other men buy drinks? A No, sir. He was the only one that bought drinks in my presence.

Q And you were there for about an hour and you had just this one drink? A That is all I had.

Q And when Doll said if he wants a drink let him pour it out for himself what did you say? A I didn't say anything at all.

Q You did not take any offense at that? A No.

Q And you did not care whether Doll wanted anything to do with you or not? A No.

Q It made no difference to you? A No, it made no difference.

Q What did you go to that house for that night? A Because when I left Saturday night she told me she wanted to see me.

Q And is that the only reason you came back? Yes.

Q And did she want to see you when you got there? A Yes.

Q About what? A She did not tell me what she wanted to see me for, but she said she wanted to see me.

Q When did she say she wanted to see you? A When I got there.

Q What did she say? A Well, she said, "You got here." I said, "Yes." She said, "Well, I have been looking for you all day."

Q She said, "I have been looking for you all day?" A Yes. And that was all that was said.

Q Did you talk any more to her during this hour that you were there? A Not in the front room I didn't.

Q You did not? A No, sir.

Q You did not speak to her at all? A No more after saying those words.

Q Well, what did you stay around there for? A Well, I was talking with the other three men. We were just talking over one thing and another, just as men will do, when they are together.

Q Now, during that hour did anybody else come into the apartment; I mean up to the time that Gertrude came in? A I do not quite understand you.

Q I mean up to the time that Gertrude came in. A I don't quite understand you, sir.

Q Do you remember Gertrude coming in? A I don't remember Gertrude coming in at all, no.

Q Well, calling upstairs? A I remember that she called upstairs.

Q Now, before Gertrude called upstairs, did anybody else come into the apartment? A Not before she called up, no, sir.

Q And that was some hour after you got there? A Yes, sir.

Q And that was somewhere in the neighborhood of nine o'clock that Gertrude called upstairs? A I can't say whether it was somewheres in the neighborhood of nine o'clock. If I said it I would be talking wrong, because I don't know the exact time.

Q I don't want you to talk wrong, but I want you to fix this time as nearly as you can. You say this shooting happened sometime after nine o'clock? A I guess it was sometime after nine o'clock.

Q Well, you know that you went there about half-past seven, a quarter to eight or eight o'clock? A Something like that, yes, sir.

Q And you know that you stayed there an hour in the living room, you know that? A As near as I can guess it, I would not know for positively whether I did or not.

Q Of course, you did not hold a watch on yourself, but you were in there an hour? A No, in fact I didn't have no watch.

Q You were in the living room about an hour? A As near as I could guess it.

Q And you were in the kitchen before the shooting about fifteen minutes? A Yes, sir.

Q Now, up to the time you went to the kitchen did anybody else come into the house? A Not until Gertrude called Doll from the window, nobody went in.

Q And that was just before you went to the kitchen? A Yes, sir.

Q Now, when Gertrude called up to Doll, Doll asked you to get out of the living room, didn't she? A Doll answered her through the living room.

Q Doll asked you to get out of the living room and go into the kitchen because she expected somebody to come upstairs? A No; she did not at that time.

Q What did she say? A She answered Gertrude from the window and she went down to see what Gertrude wanted of her, and when she opened the door to go out Essie Jones walks in, and he said, "I was just getting ready to knock," as she opened the door, and she walks down to Gertrude.

Q And you four men who had been in the living room and Essie Jones were in the room when Doll had gone downstairs to talk to Gertrude? A Yes, sir.

Q What did Essie Jones say to you? A He didn't say nothing to me, neither did the other three fellows.

Q What did you say to Essie Jones? A Nothing at all.

Q Did Gertrude or Doll or either one of them come back? A Doll came back.

Q How soon after she had gone out? A About a few minutes.

Q And it was then she asked you to go into the kitchen? A Yes; she asked us to go into the kitchen, but before we went into the kitchen she went into this bedroom and gets the consent from this couple that were there to come through the bedroom to the kitchen.

Q And you walked through the bedroom into the kitchen? A Yes, sir.

Q And at that time when you went into the kitchen the people in the house were Mrs. Cheesbar, Doll, these three colored men and yourself and Essie Jones? A Yes, sir.

Q Is that right? A Yes, sir.

Q Anybody else there? A In the front room?

Q Well, Johnnie Hudson and this girl were in the middle room? A That was in the middle room, yes.

Q And those were the only other people in the house? A At that time, yes, sir.

Q And before you went into the kitchen? A Yes, sir.

Q Now, these three men, you say, you cannot tell who they were, you would not know them? A Sir—no, sir, I would not know them if I saw them, to tell the truth about it, I would not know them.

Q You spent an hour with them? A Yes, I spent an hour with them, but that does not say I would have to know them if I saw them again.

Q Do you think you might know them? A No, I would not say I think I might know them.

Q Now, when you went into the kitchen was the door between the kitchen and the bedroom opened or closed? A Which one do you mean?

Q This door leading from the kitchen to the bedroom. A That door was open, it was open.

Q It was open when you went in there? A When I went in.

Q Who went in first? A I went in first.

Q And where was Essie Jones? A Essie Jones was left back in the parlor.

Q And he followed you? A No, sir, he did not follow me.

Q Well, did he come into the kitchen? A He came in after the rest of us came in.

Q Now, how long were you in the kitchen before the killing? A About fifteen minutes, ten or fifteen minutes, as near as I can guess.

Q Now, where was Essie Jones in the kitchen? A He was in between the bedroom door, the door leading from the bedroom in between the door leading from the kitchen out to the hallway, it was a little stand set there in between that space, and he was standing alongside of here.

Q Where were the three men? A The three men was around, I would say facing the door leading to the hallway from the kitchen around on this side of the kitchen.

Q And where were you? A I was standing over near the water sink near the door leading to the bathroom from the kitchen.

Q And where was Doll? A Well, when Doll came in and set the tray down on the table, she was there—

Q Go ahead. A When we first got into the kitchen one of these mens of the three that I found at that house when I first got there started back into the front room to get the rest of his drinks.

Q I want to know where Doll was in the kitchen.

Mr. D'Aloia: He is telling that, if your Honor please.

A I am trying to tell you as near as I can.

Q I want you to tell me where Doll was in the kitchen, I don't want to know about the man who went to get his drinks. When she finally came into the kitchen where was she.

Mr. D'Aloia: The last time she came into the kitchen.

A The last time she came into the kitchen, Essie Jones said, "Close the door." He meant the door between the kitchen and the bedroom, "If you don't close it, I will throw you over the banister," that was his answer to her. She closed the door and he said at that time—she was over just opposite of him, you understand, where he was standing between the two doors, one door leading to the bedroom and one door leading to the hallway, and she was standing opposite this way of him and at that time I called Doll to me.

Q You understand this plan here, do you, of the kitchen? A Yes.

Q Now, just make a cross there where Essie Jones was standing? A Jones was standing somewhere along here.

(The place indicated is marked E. J.)

Q And where were the three men? A The three men, this table was not placed as close to this as it is on the map. The place was on the further side—

Q Where were they in reference to the table? A They was over on this side facing this door leading to the hall.

Q How far from the table were they? A Well, they wasn't very far from the table, I will say about four inches or five inches, maybe a half a foot from the table.

Q They were some distance from the table, at any rate, they were not at the table? A No, sir, they were not at the table.

Q Was anybody sitting at the table? A No, sir.

Q You are sure of that? A Yes, sir.

Q Just mark on that where the three men—you will understand, of course, that your recollection is that the table was further over this way? A Yes.

Q Just mark where the three men were. A And in this kitchen was a trunk setting here over near this—

The Court: He asked you to mark where the three men were, never mind about the trunk.

The Witness: One of the men were leaning against this trunk.

Q Just make a mark there.

Mr. D'Aloia: Mark that 1 M.

(The witness marks as requested.)

Q And where were the others? A One was here and one along here.

Q Make a cross mark there.

Mr. D'Aloia: Mark that 1, 2 and 3.

(Witness marks as requested.)

Q And those three men you don't know? A No, sir.

Q And where were you? A I was standing between about half of this sink, I will say, as near as I can guess.

Q Mark that H. S.

(Witness marks as requested.)

Q Now, when Doll came into the kitchen the last time, where did she take her position? A

Just the opposite of Essie Jones, I will say, somewhere along here, facing me, while he was talking to her concerning the question of the door.

Q Mark that D.

(Witness marks as requested.)

Q Now, was she in that position right near the door? A Yes, sir.

Q Practically in front of the door? A Yes, sir.

Q Now, you were standing here and you called Doll over? A Yes, sir.

Q Now, where were you when the gun went off? A Where was I?

Q Yes. A Well, I was standing, as near as I can guess almost in front of this range, somewhere along here, but this table was placed a little further this way.

Q Just make a cross where you were standing at the time of the scuffle. A Right here, yes.

Q Mark that with a G.

(Witness marks as requested.)

Q That is where you were when the scuffle took place? A Yes, sir.

Q Didn't you testify yesterday you backed up to the sink? A That is where the scuffle started.

Q Did you back up before or after Essie Jones came to you? A I backed up after, before the gun was shot.

Q But you did not back up at the time he grabbed you? A No, sir, not at that time.

Q You are sure there were no men at the table? A Yes, sir, I am sure of it.

Q Tell me where Doll was at the time that she was shot, will you go down to the map and mark that? A Now, I can't tell you where Doll was at the time she was shot, but I can tell you I was here at the table, Essie grabbed ahold of me and shoved Doll between me, and the gun went off and Doll stepped from behind him to his right and also to my left, somewhere along in here, as near as I can explain.

Q Make a mark there, and we will understand it is as near as you can explain. A Yes, as near as I can explain somewhere along there.

The Court: Can you tell us where you were when the gun went off?

Mr. D'Aloia: He showed that, he marked that with a "G."

The Court: Is G where you were when the gun went off? Was fired?

The Witness: Yes, sir.

Q That is where Doll was when she was shot, as near as you can picture it? A Yes, sir.

Q I show you a paper and ask you if you have ever seen that before? A No, sir, I never seen this paper before—oh, beg your pardon, sir, I am wrong there. Yes, I have seen this.

Q Where did you see it? A This was at headquarters.

Q When? A On the 2nd day that I was arrested at the headquarters.

Q Who was present? A That gentleman sitting there.

Q Referring to Detective Gehring? A Yes, sir.

Q Was Officer Staats there? A Yes, sir.

Q Was Officer Hemmer there? A Yes, sir, he is the one who had the paper, the last one who stood up.

Q You mean he is the one who made it up? A Yes, sir.

Q He had the blank paper you mean? A He did, he had this.

Q Just tell us what happened, what was done about that paper? A Well, what was done about this? The only thing was done, he asked me to explain to him how this shooting was and what position that I was standing in that kitchen that night.

Q Did he ask you to show him the position of the other people in the kitchen? A No, sir, he didn't ask me that.

Q He only asked you to show him the position you were standing in? A Yes, sir, and where was Essie when he attacked me.

Q In other words, he asked you only where you were in the kitchen and where Essie was, is that right? A Yes, sir.

Q And he did not ask you where Doll was? A No, sir, I don't remember him asking me where Doll was.

Q And you, of course, told him that these other three men were in the kitchen? A Yes, I told him.

Q And he did not ask you where the three men were? A No, sir, I voluntarily told him myself.

Q Was this paper made up in your presence? A No, sir, it was not made up in my presence.

Q Was any part of that made up in your presence? A No, sir, the only thing he had this paper with the pencil, he only drawed the lines on this, you understand.

Q You mean the outlines of the room? A Yes, that is about the only thing I saw him draw.

Q You mean, for instance, this circle here, apparently indicating—

Mr. D'Aloia: If the Court please, I object to the prosecutor saying "Apparently indicating."

(Question withdrawn.)

Q What does this paper represent? A I don't know, sir.

Mr. D'Aloia: I object to that question, he did not draw it, the officer drew it.

The Court: He said he did not know.

Q You mean to say you don't know what that diagram is supposed to represent? A No, sir, I don't know what it is supposed to represent.

Q Were you told by Hemmer or Staats or Gehring what it was supposed to represent? A No, sir.

Q Isn't it a fact that that was made up in your presence and you were asked to point out on this plan the location of those people in the kitchen?

Mr. D'Aloia: I object to that because that paper referred to is not a plan and I think it is about time we looked at it after the prosecutor has been using it for the last ten questions.

Mr. Conlon: I don't know what purpose will be served by allowing Judge D'Aloia to look at it.

(Argument.)

The Court: I will let you look at it as soon as he asks him anything about the paper which calls for your knowledge of what it contains; then I certainly will have it shown to you.

Mr. D'Aloia: We object to the use of that particular paper unless the defense may look at it.

The Court: Overruled.

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

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

DALLAS FLANNAGAN,
Judge.

Q Scott, tell us what happened with reference to this particular piece of paper, will you? A Nothing happened with reference to that piece of paper, not to my knowing.

Q You saw it before at headquarters? A I remember that detective having this paper and asking me what position was I in and what position was Essie Jones, and he had a line also drawn around here, and that is all I can remember of this paper.

Q When you told him what your position was, did he make a mark on the paper? A No, not to my knowing he did not.

Q You did not see him make a mark on the paper? A No, sir.

Q When you told him where Essie Jones was in the kitchen, did he make a mark? A No, sir.

Q He did not ask you about the three men? A No, sir.

Q And he did not ask you about Doll? A No, sir.

The Court: Mark the paper for identification.

(The same is marked S. 14 for identification.)

The Court: Now, Judge, you may look at it.

Q Now, Scott, isn't it a fact that at police headquarters a day or two after this killing, in your presence, Sergeant Hemmer drew up this plan which he told you was a diagram of the kitchen at 76 Barclay street on the second floor, isn't that right? A No, sir, he only—

Q Just answer the question. A No, sir.

Q That is not a fact? A No, sir.

Q Isn't it a fact that he showed you this paper and told you that it represented the plan of the kitchen and part of the bedroom on the second floor, 76 Barclay street, and asked you to indicate on the map the relative position of the people in the kitchen; isn't that a fact? A No, not on that plan.

Q Isn't it a fact that he asked you to indicate where you were standing at the time of the shooting and you indicated this point which I am pointing to now and just marked Harry Scott, position at time of shooting, facing bedroom; isn't that a fact? A No.

Q Isn't it a fact that he asked you to mark the location of the three strange men in the kitchen and that you located them around the table and he marked them with a circle with lines in it and made this T in the corner, three unidentified men? A No, I didn't see him do that.

Q Isn't it a fact that he asked you to locate the position of Essie Jones in the kitchen and that you located Essie Jones as standing in front

of the sink and that he then made this square with crosses in it and said Doll's friend, Essie Jones; isn't that a fact? A No.

Q Do you remember making a statement at Police Headquarters? A I do.

Q And I show you eight sheets of paper, each one containing your signature, Harry V. Scott, and I ask you if that is your signature on each one of those sheets? A Yes.

Q There are two signatures on that paper. Are they both yours? A No.

Q I mean this one up here? A Yes.

Q That is the statement you made at headquarters? A Yes.

(Paper marked S. 15 for identification.)

Q This statement was made by you to Officers Staats and Hemmer, and Detective Guerin? A I do not know what the names was.

Q Well, those three men you just pointed out? A Yes.

Q And after you made them the statement, one of them wrote it out in long hand, did he? A After I had given him the statement?

Q After you told him what happened. A Did one of them write it out in long hand?

Q Yes. A I did not see him do it.

Q And wasn't he writing it as you were talking to him? A This one was writing.

Q Yes, Detective Guerin was writing it and you telling him? A Yes.

Q And after it was written it was read to you? A Some of it; not all of it.

Q Were you watching him write it? A After he wrote it, yes, as near as I could watch him.

Q Did you know when he got through what was in the statement? A I know some that was in the statement, but I don't know all that was in there, because I did not read it all. I could tell him one thing and he could write another.

Q You say it was not all read to you? A No, sir.

Q What part was not read to you? A I could not say what part, because several sheets were lying down there that never was picked up and read to me.

Q Did you say on that occasion, referring to the location of these people in the kitchen, did you say that Essie was standing against the sink near the door that leads to the bathroom?

Mr. D'Aloia: I object to the use of the statement and using excerpts therefrom until it goes in evidence, or the use of that statement in any way until it goes into evidence.

The Court: What do you say to that, Mr. Prosecutor?

Mr. Conlon: I do not care. I can get along without using the statement. It does not make any difference to me.

Mr. D'Aloia: All right.

The Court: Well, you examined him about the verbal conversation that occurred before the statement?

Mr. Conlon: Yes, sir.

The Court: And are you examining him now about what he put in the statement?

Mr. Conlon: Well, he denies what he said was put in the statement, that he knows whether what he said was put in the statement.

The Court: Yes. Well, if you are going to examine him about the contents of this statement you must put the statement in evidence.

Mr. Conlon: Well, I cannot put the statement in evidence on my case. I do not know what his answer is going to be.

The Court: Why can you not?

Mr. Conlon: In the first place, the statement is not admissible except to contradict his credibility.

The Court: I know, but you know what he testified to, what he told the officer. If the statement contradicts what he told the officer you can put it in evidence.

Mr. Conlon: I will put it in evidence at the end of the case, if I use it.

Mr. D'Aloia: We have Mr. Hemmer's testimony that was given on the direct case. Now, here is the man on the stand; why can't the prosecutor cross examine him as to what he said down at headquarters?

The Court: Well, he is cross examining him.

Mr. D'Aloia: This witness has not either affirmed it nor denied it.

The Court: Well, I do not think anybody did affirm that subject.

Mr. Conlon: I desire to examine this witness as to the contents of the statement, the understanding being, first, that at the end of the defense I will offer the statement in evidence.

Mr. D'Aloia: That is what I object to. Yesterday, in the State's main case, Mr. Hemmer was allowed to testify.

The Court: If I am going to rule with you do you need to argue? I am with you so far.

Mr. D'Aloia: All right. Thank you. I do not want that statement used at this juncture.

The Court: Now, if you are going to examine him about the contents of the statement it should go in evidence; in other words, the only evidence of value of that statement, so far as I know or see, that is, from your standpoint, is to contradict anything that this defendant has said that he told Sergeant Hemmer. Now, as I recall it, you examined him as to what he told Sergeant Hemmer and, if this statement differs from that, I think it may go in evidence to affect his credibility, provided it is properly proven.

Mr. Conlon: That is just the point. I cannot prove my statement until I put my witnesses on the stand. The statement is not proof, because this particular witness denies part of it. Now, all I propose to do is ask him as I find the statement must be so and so.

The Court: You want to ask him if he told the police or Sergeant Hemmer or whoever it may be, certain things verbally?

Mr. Conlon: And whether they were put in this written statement, whether he knows whether or not they are in the written statement.

The Court: Well, he says he does not know. Now, have you examined him as to what he told Sergeant Hemmer?

Mr. Conlon: I did in reference to this plan.

The Court: Yes, but Sergeant Hemmer testified to what he told him. Now, did you examine this witness as to what he told Sergeant Hemmer?

Mr. Conlon: That is what I am doing now.

Mr. D'Aloia: That can be done without the use of the statement.

The Court: Yes. I do not think you are entitled to use the statement unless you put the statement in evidence and you do not put the statement in evidence at this time, and I think you can examine him on anything he told Sergeant Hemmer.

Mr. Conlon: Well, your Honor is not now—I do not want you to prejudge the motion—you are not now precluding me from putting the testimony in evidence on my rebuttal.

The Court: No, not at all. If you want to cross examine him as to what passed between him and Sergeant Hemmer I think you may do so.

Q This plan that I showed you before, S. 14 for identification, that was produced before you in headquarters on July 9th, the day of your arrest, wasn't it? A It was produced to me on July 9th, the same evening.

Q You just answer the question. A Yes.

Q And the written statement you made to the police officer was made the next day? A On Sunday.

Q Now, referring to Sunday, did you tell Sergeant Hemmer, Officer Staats and Detective Guerin that the three strange men were at the table, two of them seated on one end of the table and the other standing at the other end of the table? A No.

Mr. D'Aloia: I object to that because Sergeant Hemmer's testimony as to that is here. There was not any reference made to it in direct examination or cross examination of Hemmer.

The Court: He may lay the foundation to impeach him. He is asking if he said that to Sergeant Hemmer at that time and place.

Mr. D'Aloia: Verbally.

The Court: Verbally, yes.

Q Did you tell him that? A No, I didn't.

Q Did you tell them that Essie Jones was standing at the sink? A No, sir. I was standing at the sink.

Q I am not asking you that. I am asking if you told them that Essie Jones was standing at the sink. Did you tell them, in reference to these three men, that the two fellows were siting at one end of the table, near the china closet, the other fellow was sitting at the other end of the table with his back to the stove?

Mr. D'Aloia: I object to that.

The Court: I will allow that as laying a foundation.

Mr. D'Aloia: I object to his reading those questions from that statement.

The Court: I cannot stop the prosecutor from using any memorandum he may need in his examination.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you tell these officers that you were standing at the kitchen door leading to the back porch?

Mr. D'Aloia: The same objection.

The Court: The same ruling.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you tell them that? A No, sir.

Q Did you tell them as Doll was on her way to the china closet that you called her over to you? A No, sir.

Q Scott, do you see this trunk here? A Yes.

Q Do you recognize it? A Yes, that is mine.

Q Where did you see it last? A Where did I see it last; at 18 Boyd street.

Q That was your brother's home? A Yes.

Q And is that the trunk that these papers that I showed you this morning, Exhibit S. 12 for identification, was that the trunk that these papers were in? A Yes.

(Trunk marked S. 16 for identification.)

Q Can you fix the time when this struggle between you and Essie Jones took place in the kitchen?

Mr. D'Aloia: I object to that question. It has been gone over four times. He said it was nine o'clock after they had been in the kitchen fifteen minutes.

The Court: I will allow it. I think it is preliminary.

A What was that question, sir?

Q (Question read.) A No, sir; I cannot exactly; no, sir.

Q How many times had you seen Essie Jones before that night?

Mr. D'Aloia: I object to that. That has been gone over. He said he had seen him at Broome and Spruce street the Saturday previous.

The Court: You have asked him that.

Mr. Conlon: I do not remember.

The Court: Well, you may repeat it.

Q How many times had you seen Essie Jones before this night? A You mean July—Sunday night, July 3rd?

Q Yes. How many times had you seen Essie Jones before in your life? A Well, I could not tell you; three or four times; maybe five times, but only seen him once with Doll.

Q Three or four or five times you had seen him before? A Yes.

Q Did you ever see a gun on him?

Mr. D'Aloia: I object to that.

The Court: I will allow that.

Q Did you ever see a gun on him? A No, sir; I never searched him.

Q Did you ever have any reason to think that he had a gun on him? A Not before Wednesday night, the 29th, I didn't.

Q And when you were standing there in the kitchen you called Doll over to you? A Yes.

Q And Essie Jones came to you? A Yes.

Q And he had his right hand in his right hip pocket? A Yes.

Q And he pushed Doll away with his left arm, is that right? A Yes.

Q And he grabbed you with his left hand? A Yes.

Q And all this time his right hand was in his right hip pocket? A Yes.

Q And you pulled your gun? A Yes.

Q And you pulled your gun with your right hand? A Yes.

Q And he grabbed your right wrist with his left hand? A Yes.

Q And his right hand was still in his right hip pocket? A I can remember it was in there when he grabbed my hand.

Q In other words, up to the time you pulled the gun and he grabbed your right wrist with his left hand Essie Jones still had his right hand in his right hip pocket? A When he grabbed my hand he had his right hand in his right hip pocket.

The Court: Is that the manner he grabbed your hand the way you are holding it?

The Witness: Well, he grabbed it, up near here. I cannot show you because this is my left and right hand.

Q Now, just put your hand right there again as you had it. Now, can you depict that position?

The Witness: He grabbed it this way and gave it a twist that way and just like that we were going.

Mr. D'Aloia: He grabs the defendant's right hand at the back of it with his left hand just above the thumb, back of the thumb with the fingers of the grabbed hand close over the upper part of the wrist, and the palm of the grabbed right hand.

The Court: Is that satisfactory to you, Mr. Prosecutor?

Mr. Conlon: That is satisfactory.

Q And up to that time, as you say, that is, up to the time he grabbed your right hand he still had his right hand in his right hip pocket? A When he grabbed ahold of me.

The Court: Now, were you trying to shoot Essie Jones?

The Witness: No, sir, not as I was going to shoot him, only was—

The Court: I want to know if you were trying to shoot Essie Jones?

The Witness: No, sir.

The Court: Were you trying to shoot anybody?

The Witness: No, sir.

The Court: You were not trying to discharge the gun at all?

The Witness: No, sir.

Q Why did you pull your gun? A To protect myself.

Q From Essie Jones? A Yes, in order to hold him back from me.

Q Did you expect him to pull a gun? A With his hand in his right hip pocket, yes, I expected him to pull a gun.

Q Then when you did pull the gun you were going to shoot him? A No, I was going to hold him off from me until I got out.

Q Now, up to this time, Scott, the people that you have already described to us are the only people that you saw in the house, are they? A Yes, I described are the only people was in the house.

Mr. D'Aloia: Are you through?

Mr. Conlon: No, I am going to bring in some witnesses for identification.

Mr. D'Aloia: The three men?

Mr. Conlon: Three witnesses.

(Argument.)

Mr. D'Aloia: If your Honor please, will you ask this question of the prosecutor for me, are these the three men who were in the kitchen that this witness was talking about during his examination?

The Court: No, now, let the witness answer.

Q Do you recognize any of these four men? A I knows him.

The Court: Which one do you mean?

The Witness: Acie Hill.

The Court: The one on the left?

The Witness: Yes.

The Court: Do you know his name?

The Witness: All I know is Acie.

The Court: That is the only name you know?

The Witness: Yes.

The Court: What is your name?

(The man in question answers: "My name is Clyde Hill.")

Q Do you know any of the others? A I know that man there with the black and white stripe, I know him when I see him, but I don't know his name.

The Court: Is that the one on the right?

Mr. D'Aloia: The third colored man in line?

The Witness: Yes.

The Court: What is his name?

The Witness: I don't know his name, but I do hear them call him Charlie.

The Court: What is your name?

(The man in question answers: "Charlie Boston.")

Q Do you know any of the others? A Yes, I knows Essie Jones.

Q Which is Essie Jones? A The one on the end.

The Court: His name is Essie Jones, is it?

The Witness: Yes.

The Court: What is your name?

(The man in question answers: "Essie Jones.")

Q And the other man you don't know? A No, sir, I don't know him.

Q Have you ever seen him before? A No, sir.

Q Or any of these four men in the kitchen at the time of the shooting? A Those three was not there, but Essie Jones was the only man, the other three was not there.

The Court: In other words those three men are not the men you are talking about who were in the kitchen?

The Witness: No, sir, they are not the ones.

Re-direct examination by Mr. D'Aloia.

Q Scott, when you saw this man Jones put his hand in his hip pocket, who had informed you that he had a gun?

Mr. Conlon: I object to that, it has already been testified to.

The Court: Who what?

Q Who had informed you that he had carried a gun?

The Court: He has not said anybody informed him.

Mr. D'Aloia: The prosecutor went over it on his cross examination.

A Doll.

Q What did he say to you when he came at you? A When he grabbed ahold of me he said, "One of us is going to hell tonight."

The Court: You testified before that Doll had told you that this man carried a gun,

do you mean anything else besides that, is that all you heard about it?

The Witness: Yes, sir; that was all I heard, that he would kill me.

Q What did you say to her? A I said, "If you go with him you go ahead and do what he tells you to do, for I am not going to give him no cause, no way, shape or form, to bother with me about you."

Q Since you were arrested, and since you were at that house at 76 Barclay street on the 3rd of July, 1927, have you ever seen any of the three men who were in that kitchen? A No, sir.

JOHN SMITH, sworn in behalf of the defendant.

Direct examination by Mr. D'Aloia.

Q Smith, where did you live the week before the 4th of July? A 8 Morris street, East Orange.

Q Did you ever go down to Washington street during that week? A Yes, sir.

Q Did your father keep a place there or your mother? A My father.

Q What kind of a place? A A restaurant.

Q During that week about Thursday, did you see Harry Scott down there? A Yes, I think so.

Q Did you go to 76 Barclay street?

Mr. Conlon: I object to that on the ground that it is leading.

The Court: Sustained.

Q Where did you go from Washington street with Scott? A I went to Spruce street.

Q Did you go to 76 Barclay street? A In front of it.

Q What time was it when you got there? A I will say around eleven or half-past.

Q Did you have an automobile? A Yes.

Q Where did you go with Scott after going to this place? A Well, I drove him around, drove him around through the park and through Elizabeth.

Q And who was with you? A Scott and two other girls.

Q Did you know a girl by the name of Doll? A I think that is what he called one of them.

Q Smith, look over here, is that one of the girls who went with you? (Indicating Gertrude Wilson.) A Yes, sir.

Q And during the time that you were with her, and the other girl, Doll, and Scott, was there any quarrelling at all? A No.

Q Did you all four stay together that night? A Yes.

Q Where? A At Scott's.

Q What time did the two women go away the next day? A I was not there.

Q What time did you go out? A About three or half-past.

Q In the morning? A Yes.

Q And the girls were there?

Cross examination waived.

DEFENDANT RESTS.

ESLEY JONES, sworn in behalf of the State, in rebuttal.

Direct examination by Mr. Conlon.

Q Jones, do you know Mrs. Cheesbro, who lived at 76 Barclay street? A Yes.

Q Did you go to her house on July 3rd, Sunday, this year? A Yes.

Q Who was with you? A At the time I went there?

Q Yes. A She was going to the hospital.

Q What time did you go there? A The first time I went there was around one o'clock.

Q Who was with you? A Charlie Bosley.

Q How long did you stay there that time? A We stayed there about a—about an hour and we left.

Q Did you go back? A We went back around about half-past three, four or five o'clock; something like that.

Q Who was with you the second time you went there? A Who was with me the second time we went there?

Q Who? A Charley Bosley.

Q Anybody else with you? A Nobody else with me.

Q Who was in the house when you got there? A I do not know who was in the rear part of the house. There was nobody in the front part but him and me and Mrs. Cheesbro.

Q Where is Mrs. Cheesbro? A She was sitting on the chair.

Q Who was there when you went there? A Johnny Wilson and Clyde Hill.

Q Is that the man who is known as A. C.? A A. C.

Esley Jones, direct.

Q What time did they come in? A I don't know. They come in right after we went in the second time.

Q Did they all stay there then? A A. C. went away.

Q How long was he there? A About fifteen minutes and he went away.

Q And you and Wilson and Bosley stayed on? A Yes.

Q Where were you? A We were sitting on the davenport.

Q Was Mrs. Cheesbro still there? A Yes, she was still there.

Q Was anybody else there? A Nobody else was there.

Q Did anybody come in while you were there? A No.

Q What happened—how long did you stay there? A We stayed there until half-past seven, me and Mr. Bosley went to move a trunk. Jimmie Wilson was with us when we went to move the trunk.

Q Where did you go to move the trunk? A From Morton and Prince street.

Q Whose trunk was it?

Mr. D'Aloia: I object.

The Court: It might be very important to show where he was. I will allow it.

Q Whose trunk was it? A Nona Jackson.

Q Where was the trunk? A On the corner of Morton and Prince street.

Q Where did you move the trunk to? A Back to 261 Broome street.

Q How did you move it? A On a little wagon, a Jewish fellow.

Esley Jones, direct.

Q Who is the fellow? A I don't know the fellow.

Q Who was with you when you moved the trunk? A Mr. Bosley and Wilson.

Q Where was Nona? A Nona was there, too.

Q When you moved the trunk to Broome street what did you do? A Well, I stayed there until she come and we took the trunk upstairs.

Q Until who came? A Bosley and Wilson come in a cab and Nona.

Q Bosley and Wilson and Nona came in a cab? A And I went along with the Jewish fellow in the wagon.

Q What floor did you place the trunk—

Mr. D'Aloia: I object to this. How can we be bound by the movements of this man and who paid for the cab. How does that bind us? Did any of our witnesses testify—

The Court: One of your witnesses testified this man was there.

Mr. D'Aloia: At nine o'clock this man was there in the room. That is not seven-thirty.

The Court: The prosecutor is entitled to trace out his whereabouts.

Mr. D'Aloia: I know, but we are not going to be bound by his movements up until the time he got there.

The Court: Well, I will allow him to have some leeway.

Q What time was it when you got to Broome street with the trunk? A It was about half-past ten I got there with the trunk.

The Court: At night? Was this at night or daytime?

The Witness: Night.

Q Where did you go from there? A I stayed there until I heard about the trouble.

Q Who told you about the trouble?

Mr. D'Aloia: I object to that.

The Court: It does not make any difference who told him.

Q Well, did anybody come to Broome street while you were there? A Nobody but the one who was with us, Gertrude Wilson and Bosley and Nona.

Q You say Gertrude Wilson came there while you were there? A Yes.

Q Where did you go then? A I went home, 213 Broome street.

Q Then where did you go? A I went back around there.

Q Around where? A Around to 76 Barclay street.

Q And who was with you? A Nobody was with me then. I was going home.

Q And what did you find when you got to 76 Barclay street? A I found the cops there.

Q Where were the cops? A At the head of the stairs.

Q Did you go up the stairs? A I got to the front of the stair steps.

Q And what happened then? A They asked me what I was doing there. I said, "My cousin is here, I have come to see about," and then my cousin Pickel came up.

Q What is his name? A Eddie Higgins.

Q Then what happened? A He told us to go away from there.

Q Did you go away? A I went away.

Q Now, just where were you when you were talking to these officers? A At the front of the stair steps—at the top of the stair steps.

Q On what floor of the house were you when you were talking to the police officers? A I was on the first floor.

Q That is, the ground floor? A Yes.

Q Did you go up any stairs? A I went up to the middle of the stair steps and he stopped us.

Q Going up to the second floor the officers stopped you? A The officer was standing at the door.

Q What door was he standing at? A He was standing at the back door, the kitchen door.

Q Did you go into the kitchen? A I did not go into the kitchen. He stopped us before we got to the kitchen.

Q Where did you go then? A I went home.

Q Where were you living at the time? A I was living 186 Broome street.

Q Who else lived there? A My mother was.

Q What time did you get home? A I got home around about one o'clock that night.

Q Is Officer Schumacher here and Officer Betzler here? Did you ever see these two men before? A I seen this one and that one, too.

Q Where? A Right at the top of the kitchen door.

Q Are they the officers that stopped you? A They are the officers that stopped me.

Q Did you ever threaten to kill Harry Scott? A Never in my life. I never had no word in my life.

Q Did you ever carry a gun? A Never carried a gun in my life.

Q Did you ever tell Doll that you were going to kill Harry Scott? A Never in my life.

Q Were you in the house at 76 Barclay street Sunday night, June 3, at the same time Harry Scott was there? A I was not there.

Q Were you in the premises 76 Barclay street, in the kitchen, and there have a struggle with Harry Scott? A I never had a struggle.

Q While he had a gun in his hand and it went off and shot Doll? A No.

Q Were you in the house when Doll was shot? A No.

Q When did you last see Doll before she was shot? A The last time I seen Doll was that Saturday night, I guess.

Q You mean the night before? A The night before.

Cross examination by Mr. D'Aloia:

Q Did you see Doll that Sunday night? A No, I didn't see her.

Q Now, when you and Bosley and Wilson left the front room of Barclay street— A She was not there.

Q What time was this? A I don't know what time it was.

Q What time was it? A We moved the trunk.

Q When you left the front room of these premises on Sunday, July 3rd, in the evening, what time was it when you left that front room, you and Bosley and Wilson? A Around half-past seven or eight o'clock.

Q And you want to tell us Doll was not there? A She was not there.

Q And you went out to move this trunk? A Yes.

Q And the trunk was to be moved from where? A From the corner of Morton and Spruce street.

Q To where? A To 261 Broome street.

Q How far is that? A I don't know how far it is.

Q And you say you did not go to the place where the trunk was to be moved until 10:30? A Well, we were looking to get change of $20 to give this guy.

Q And you left Barclay street at 7:30 or 8 o'clock? A Yes.

Q And you went over to Morton street? A Yes sir.

Q How many blocks? A I don't know how many blocks.

Q Well, try and think. You have been there before? A Sure. I don't count no blocks.

Q Was it one block? A More than one block.

Q Two blocks? A You know.

Q I am asking you. A I didn't count no blocks.

Q Well, you got to Morton street? A Yes.

Q The three of you? A Yes.

Q With the trunk? A Yes.

Q Where were you taking it? A 261 Broome street.

Q How many blocks is that? A You can count the blocks. There is Montgomery.

Q One. A Prince.

Q Two. A And then Broome street.

Q Three, and you got to the place where the trunk was going at 10:30? A We spent some time there corner of Morton and Prince streets.

Q You stood on the corner, is that right? A We stayed up in the house where the trunk was.

Q And you did not see Doll when you left 76 Barclay street? A I didn't see her.

Q Then you went back to 76 Barclay street about midnight? A No.

Q Well, you went home at 10:30 or this place where the trunk was going at 7:30? A I didn't tell you I was going home.

Q Yes, you did. You told the prosecutor when you brought this trunk to 261 Broome street, you said you went home.

Mr. Conlon: No, he did not say that.

Q Where did you go after leaving the place you brought the trunk, about 10:30? A I went to 213 Broome street.

Q How far is that from your house? A I don't know. I don't count them.

Q Well, what number were you living at at Broome street? A 186.

Q And you went to 213? A Yes.

Q What time did you get there after leaving Morton street at the other place? A Twelve or 1 o'clock.

Q When you got through delivering that trunk you did not go to anywhere but 213 Broome street? A I went around to the house.

Q What house? A The house at 76 Barclay street.

Q You told the prosecutor you went home?

Mr. Conlon: I object to the question as misquoting the evidence.

Q You say you went to 76 Barclay street? A Yes.

Q You got as far as half way up the stairs and you were told to go away from there? A I was told to get away.

Q And you went home? A I went home.

Q And you got home around 1 o'clock in the morning? A Yes.

Q That is right? A Yes.

Q Now, where were you between 10:30 and 1 o'clock in the morning? A I was hauling the trunk.

Q No, you moved the trunk before 10:30? A No, I didn't move no trunk before 10:30.

Q You did not move any trunk before 10:30. Now, did you mean what you just said? A I moved the trunk between 10 and 11 o'clock—half-past nine or 10 o'clock I moved the trunk.

Q So that you did not leave 76 Barclay street with Wilson and Bosley to go and move the trunk; you left about half-past nine to go and move the trunk? A I left the house to go and move the trunk.

Q At half-past nine? A No.

Q At 10 o'clock? A No.

Q You just said so.

Mr. Conlon: I object. He did not say so.

Mr. D'Aloia: He did say so.

The Witness: I did not say so.

Mr. D'Aloia: He said he moved the trunk between half-past ten and 1 o'clock in the morning, and then he said he moved the trunk between half-past nine and ten.

Q Now, listen. Where were you between half-past ten and 1 o'clock in the morning? A Where I was?

Q Yes. A I was moving the trunk.

Q Now, that is true, isn't it? A It is true. I was home about 1 o'clock, though.

Q You were moving a trunk between half-past ten and 1 o'clock? A It don't take me that long.

Q Well, you just told me— A I was moving the trunk between half-past ten and 11 o'clock.

Q Now, you know Higgins very well? A Sure I know him.

Q You met him there at 76 Barclay street? A Yes.

Q Sure about that? A I didn't meet him there.

Q Well, you saw him there. You just told the prosecutor you saw him there. A He come right behind.

Q Well, you saw him there? A Yes.

Q Now, do you know the middle room of the Cheesbro apartment? A The middle room?

Q Yes. A I know the middle room.

Q You looked into that middle room? A I don't look in no middle room.

Q Well, you were in there that afternoon until dark with Bosley and Jimmie Wilson? A Yes, but we do not go in no middle room.

Q Do you know who was in the middle room? A I was not in the middle room.

Q You went in there that day? A I didn't go in there that day.

Q Well, now, Higgins is a friend of yours? A He is a second cousin of mine.

Q Now, which cousin did you have at 76 Barclay street? A Gertrude Wilson was my cousin.

Q Well, now, you told the prosecutor that you had seen Gertrude Wilson. That is true? A No, I ain't told him I seen Gertrude Wilson.

Q Well, didn't you tell the prosecutor that when you went to that place to move the trunk, the first time you heard there was any trouble at 76 Barclay street, Gertrude Wilson came up to see you? Where were you when she told you that? A 261 Broome street.

Q What time was that? A I do not know. It was after the killing.

Q Was it midnight? A I guess so. I don't know what time midnight is.

Q Well, that is 12 o'clock at night. Now, you left the place where you heard about this trouble and you went right to 76 Barclay street? A No. I went to 213 Broome street first.

Q You heard about the trouble? A I heard about the trouble.

Q And you went to Barclay street? A I went to Broome street first.

Q How long did you stay there? A For half an hour.

Q And you went to Barclay street? A Yes.

Q And you were told to get away from there? A Yes.

Q And you did not go up to the second floor at all? A No.

Q And when you were told to go away from there you went home? A I went home.

Q And when you got home, it was 1 o'clock in the morning? A Yes.

The Court: Where did you come from?

The Witness: Georgia.

The Court: Now, try and remember some of the manners you learned there.

Q Now, you knew Doll? A Yes, I knew Doll as a friend.

Esley Jones, cross.

Q And you went out on Broome street to the corner of Springfield avenue the Saturday night before the 4th of July? A No.

Q What? A Never did.

Q Don't you remember going from your house on that Saturday with her? A No.

Q You do not remember that? A No.

Q You would not say that did not happen, you do not remember it? A I do not remember it.

Q Do you remember her going to your house party? A Sure.

Q You were pretty friendly with her? A No.

Q You were not friendly with her? A No. I was not friendly with her.

Q You did not have any girl at that time? A Sure I did.

Q Who was she? A Corrine Davies.

Q Where did she live? A 187 Prince street.

Q Didn't you try to make Doll your girl? A No.

Q Didn't you tell her if Scott was fussing around her you were going to get him? A No.

Q You did not go to 76 Barclay street this Sunday except to see your cousin? A No.

Q She was not there? A She was there.

Q When? A One o'clock in the afternoon.

Q Now, were you there at 10 o'clock in the morning? A No.

Q Were you there at 1 o'clock that afternoon? A I was.

Q Was Doll there? A No, she was not there.

Q Did you go back there that evening? A I went back about half-past four or five.

Q How long did you stay there? A I don't know how long I stayed there.

Esley Jones, cross.

Q When you left there it was dark? A It was dusk.

Q And you went to move the trunk? A Yes.

Q And you started to move the trunk at half-past ten? A No.

Q What time was it? A Nine o'clock, something like that.

Q Well, then, you started to move the trunk around nine o'clock? A I don't know what time we started to move the trunk.

Q Well, was it half-past ten? A I guess so. I don't know.

By the Court.

Q What was the time that you got to 76 Barclay street? A What time was it?

Q Yes, when you got to 76 Barclay street? A When the cops was there?

Q No, the first time. A Around one o'clock.

Q That was in the daytime? A That was in the daytime.

Q How long did you stay there? A We stayed there around about fifteen or twenty minutes.

Q And then you went on away? A We went away.

Q When was the next time you came back? A It was around about half-past four or five.

Q Now, when you got back about half-past four or five, how long did you stay? A We stayed there around about an hour, I guess, or two hours, about an hour and a half.

Q An hour and a half or two hours? A Yes.

Q Then you left? A We left.

Q You think the time you left was about? A About half-past seven.

Esley Jones, cross.

Q Now, where was the first place you went when you left there? A We went to Morton street.

Q Did you stop anywhere? A I didn't stop anywhere.

Q What time did you get to Morton street? A We got there around nine or half-past nine.

Q Now, did it take you from the time you left Barclay street to half-past nine to get to Morton street? A We were walking along talking.

Q Well, you must have left Barclay street around seven-thirty or eight o'clock? A We did that when we left there.

Q And you did not go anywheres else? A We did not go anywheres else. We stood outside about fifteen minutes before we could get inside of the door where this trunk was.

Q And then you went into that address? A Yes.

Q And what did you do in there? A Well, we stayed in there and talked and talked and they sent me outside to get a drayman, and as soon as I went out I walked across Prince street and picked up a Jewish guy to move the trunk.

Q And you brought him back for the trunk? A Yes.

Q Then what happened? A I goes up and bring the trunk down and put it in the wagon.

Q Then what did you do? A We carried it to Broome street.

Q What time did you get to Broome street? A Around about eleven o'clock.

Cross examination (continued) by Mr. D'Aloia.

Q You told the Court that you got to Morton street at half-past nine. That is right? A I got to Morton street at half-past nine.

Esley Jones, re-direct—re-cross.

Q That is right? A Yes.

Re-direct examination by Mr. Conlon.

Q Can you tell time? A I really cannot tell the time good.

Q What? A Not good.

Q Can you tell time by that clock there? A It is one o'clock.

Re-cross examination by Mr. D'Aloia.

Q Do you remember talking to this gentleman yesterday? A Yes.

Q Do you remember when he asked you if you had a gun and you said yes, sometime ago? A I told him nine or ten years ago I found a gun in a field plowing.

Q Did you tell him you once had a gun? A Not in New Jersey.

Q Did you tell him that you once had a gun in Georgia? A I had a gun and a lady gave me fifty cents for the gun.

Q Where is that now? A It is in Georgia.

Q How old are you? A I was twenty-two the 7th of October.

Q And you say you had this gun ten years ago? A Sure.

RECESS FROM 1:00 TO 2:00 P. M.

AFTER RECESS.

ANNA JAMES, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q Where do you live? A 114 Wickliffe street.

Q And where did you live before you lived there? A I lived in Philadelphia, 920 Brown street.

Q I show you a letter, S. 13 for identification, and ask you if you wrote that letter to Harry Scott?

Mr. D'Aloia: I object. That is not proper rebuttal.

Q Did you write that letter? A Yes, I wrote that letter.

Q Is that the envelope? A Yes.

Q Did you mail the letter? A Yes.

Q Where? A Where I mailed it from?

Q Yes. A I mailed it from Philadelphia.

Q And is that the letter you wrote to Harry Scott? A Yes.

Mr. D'Aloia: I move to strike out that testimony.

The Court: Not yet.

Mr. D'Aloia: I move to strike out the testimony.

The Court: Denied.

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

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

DALLAS FLANNAGAN,
Judge.

Q Did you come to Newark with Harry Scott?

Mr. D'Aloia: I object to that question because it is not proper rebuttal. It has been testified by him that she did come to Newark with Harry Scott.

The Court: Did he not testify that she came with him?

Mr. Conlon: Yes. Now, I am laying a foundation for another question.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

Mr. D'Aloia: Now, I want to call your Honor's attention that yesterday afternoon Mr. Conlon said that this woman was not to be called. Now, can I ask your Honor to ask him to keep to that stipulation.

The Court: No. I do not think that is a binding stipulation.

Mr. D'Aloia: This is all immaterial and it happened subsequent to the 3rd of July and not before, and on that date she was not here.

Q Did you come from Philadelphia with Harry Scott? A Yes.

Clyde Hill, direct.

Q Did you come from Philadelphia to Newark with Harry for the purpose of living with him?

Mr. D'Aloia: I object.
Mr. Conlon: I have not finished.
The Court: You want her purpose?
Mr. Conlon: Yes, sir.
The Court: I do not think that is proper.
Mr. Conlon: I won't press it.
Cross examination waived.

CLYDE HILL, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q Hill, do you know Esley Jones? A Yes, I know him.

Q Do you know Charles Bosley? A Yes, I know Charles Bosley.

Q Do you know Jimmie Wilson? A Yes, I know him.

Q Do you know where the house is at 76 Barclay street, Newark? A Yes.

Q Were you there on Sunday, the day before the 4th of July? A Yes, I was there.

Q Who was there? A Jimmie Wilson.

Q What time did you go there? A It was around six o'clock, I think.

Q How long did you stay? A I didn't stay there long; about twenty minutes, I guess.

Q Who was there when you left? A Well, I left Jimmie and Esley and Charlie there, I think.

James Wilson, direct.

Q You mean Jimmie Wilson? A Yes.

Q And Jones and who else? A Charlie Bosley.

Q And who else was in the house? A Well, there was a couple of strangers in there. I do not know who they were.

Cross examination waived.

JAMES WILSON, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q Where do you live? A I live 49 Locke street, Newark.

Q Are you related to Gertrude Wilson? A I am her brother.

Q You are her brother? A Yes.

Q Do you know Esley Jones? A Yes.

Q Do you know A. C. Hill? A Yes.

Q And do you know Charles Bosley? A Yes.

Q Do you know where the house is at 76 Barclay street, Newark? A Yes, I have been there.

Q You have been there? A Yes.

Q Were you at that house Sunday, July 3rd, the day before the 4th of July this year? A Yes.

Q What time did you go there? A Around six o'clock.

Q Who was with you? A Clyde Hill and I went together.

Q How long did Hill stay? A He was there about fifteen minutes.

Q How long did you stay there? A Until about dusk, dark, around sundown.

Q Who was there? A Esley Jones, Charlie Bosley, Gertrude.

Q That is your sister? A Yes, and Doll was there.

Q What time did you leave there? A I left there about dusk, dark.

Q Do you know what time that was? A Around eight o'clock.

Q Who went out with you? A Me, Charlie Bosley and Esley Jones.

Q Where did you go? A We went to Morton street.

Q What number? A 114 Morton street.

Q Whose house is that? A A fellow by the name of Sam.

Mr. D'Aloia: I object to this testimony because it is not rebuttal.

The Court: Why didn't your client say Jones was there?

Mr. D'Aloia: You cannot corroborate Esley Jones by these witnesses. How can we in the defense check up on the movement of these witnesses. It is proper for Esley Jones to come in rebuttal, but it is improper for these witnesses to come in rebuttal.

The Court: Well, they are proving that Esley Jones was there.

Mr. D'Aloia: Well, that is a collateral matter.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

Q You went from 76 Barclay street to what house? A 114 Morton street.

Q What did you do there? A We took a trunk from there to 261 Broome street.

Q Who took the trunk? A We got a drayman to take the trunk and Esley Jones and Charlie Bosley. We got the trunk and put it on the dray.

Mr. D'Aloia: That testimony goes to that same objection.

The Court: The same ruling.

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

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

DALLAS FLANNAGAN,
Judge.

Q Anybody else there? A Charlie Bosley's wife was there and a gentleman at the house, Sam.

Q Do you know who the drayman was? A No, I don't.

Q And you took the trunk where? A To 261 Broome street.

Q How did you get to 261 Broome street? A I went in a taxicab.

Q Who was in the taxicab with you? A Myself, Charlie Bosley and Charlie Bosley's wife.

Q And when you got to 261 Broome street was the trunk there? A The trunk came there after five minutes after we got there.

Q Who came in with the trunk? A Esley Jones came with the drayman.

Q Who brought the trunk in the house? A Esley Jones and Bosley brought the trunk up.

James Wilson, direct.

Q What happened then? A We went in and sat down and were laughing and talking and my sister came in.

Q Gertrude? A Gertrude. She came in and said—

Mr. D'Aloia: Just a minute.

Q Your sister came in and said something? A Yes, she did.

Q Then what happened? What did Esley Jones do? A He did not do anything.

Q Where did you go?

Mr. D'Aloia: I object to that because it tends to prove something absolutely collateral to this issue and is not rebuttal.

The Court: Allowed.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: If the prosecutor calls a hundred men and they say he was not at 76 Barclay street at the time your client says he was there, I will allow everyone to testify. I will allow the question.

Q What happened after your sister Gertrude came in and said something?

Mr. D'Aloia: The same objection.

A We went downstairs after she come in and said something.

James Wilson, cross.

Q What did you do? A She and I go downstairs and get a taxi and goes home.

Q What time was that then you left for home? A I left Mr. Bosley's house around 10:30.

Cross examination by Mr. D'Aloia.

Q You do not know where Esley Jones was until you arrived with a trunk?

Mr. Conlon: I object. I withdraw the objection.

Q Do you? A I know he left—

Q And went away with a cab.

Mr. Conlon: Just a minute.

A I know we left Esley.

Q You are a good friend of Esley? A No.

Q You have been discussing this case with him? A No.

Q Talking it over with him? A I cannot understand you.

Q Yes you can? A No, I haven't.

Q And you have not been checking up as to where he was and where you were? A No.

Q You say Gertrude, who was in this house at 76 Barclay street, was your sister? A Yes, she is my sister.

Q And you have not talked to Esley at all? A No.

Q He has not talked to you? A No.

Q You have not checked up with him as to where you were and what time you got the trunk? A No.

Q Talked it over and said, "Esley, don't you know we were over about half-past ten"? A No.

James Wilson, cross.

Q You have not talked with anybody? A Sure.

Q Who, Esley? A Not Esley.

Q Did you talk to the other man Charley Bosley? A I suppose I talked—

Q Have you talked to Charlie Bosley? A No.

Q You did not talk to any people who were with you that night? A Not over this case.

Q You did not ask them to find out whether they could remember correctly or you could remember correctly? A No.

Q What time did Esley come to this place with the trunk? A Well, he comes there around 9 o'clock.

Q Was it about 9:30? A About 9.

Q Would you say it was 9:30? A No, I will say it was 9 o'clock.

Q Why? A That is my opinion.

Q It might have been 10 o'clock? A In my opinion it was 9 o'clock.

Q It might have been 10? A That is my opinion.

Q It might have been? A My opinion is it was 9 o'clock.

Q I know, but it might have been 10 o'clock? Wasn't it possible? A I would not say. I do not know.

By the Court.

Q How long was it between the time that you seen Esley and the time you saw him come for the trunk? A About five or ten minutes, because it was not very far.

Q Where did you leave him last before you saw him? A We left him at 114 Morton street.

James Wilson, re-direct.

Q And what was he doing when you left him? A He was coming up on the dray when we left.

Q And the next time you saw him, what was he doing? A He was at Mr. Bosley's house.

Q What was he doing? A He was getting down off the dray and taking the trunk off.

Q How long was it between those two times? A About five or ten minutes.

Re-cross examination by Mr. D'Aloia.

Q And you do not think it might have been a half an hour? A It was not half hour.

Q It might have been? A I know it was not.

Q You did not have a watch? A I knew it was not that long.

Q How far is it from 76 Barclay street to 114 Morton street? A I don't know.

Q How many blocks? A I don't know. I have not counted them.

Q Well, it is a short walk? A A short walk.

Q A short walk? A Sure it is a short walk.

Q Yes. If you left 76 Barclay street around 8 o'clock and you got to Broome street around 10 o'clock, it would only take about ten minutes to get over to 76 Barclay street again? A Sure.

Re-direct examination by Mr. Conlon.

Q Do you know Harry Scott? A Yes, I know him.

Q Is he a friend of yours? A No, sir, no more than we have been together. We are not enemies. He never harmed me and I never harmed him. I have not anything against Mr. Scott.

Q Did you see him at 76 Barclay street at any time on this Saturday? A No.

Nona Jackson, direct.

Re-cross examination by Mr. D'Aloia.

Q Well, was he in the front room some time that afternoon? A I didn't see him.

Q Were you there when Mrs. Cheesbro was asleep on the settee? A I did not see her.

Q You do remember seeing Esley Jones and Doll there that afternoon? A Sure.

Q And that evening? A Sure.

NONA JACKSON, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q Where do you live? A 261 Broome street.

Q Do you know Esley Jones? A Yes, sir.

Q Do you know Clyde Hill? A Yes.

Q Do you know James Wilson? A Yes.

Q Do you know Charles Bosley? A Yes.

Q Did you see any of those men on Sunday the day before the 4th of July?

Mr. D'Aloia: I object as not proper rebuttal and applying to a matter absolutely collateral.

The Court: I would suggest that you start with Esley Jones.

Q Did you see Esley Jones on the Sunday before the 4th of July? A Yes.

Q Where? A He came to 114 Morton street.

Q Who lived there? A Sam Glover.

Q Was anybody with him? A Sure, Charley Bosley and Jim Wilson.

Q Anybody else? A That is all.

Nona Jackson, direct.

Q Do you know what time he got there? A Well, I could not say, I don't know, but as far as I remember it was around about nine or ten o'clock.

Q What did he do? A They moved the trunk.

Q Where did they move the trunk to?

Mr. D'Aloia: I object.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

Q Where did they move the trunk to? A 261 Broome street.

Q Did you go to 261 Broome street that night? A Yes.

Q And when you got there whom did you go there with? A Charley Bosley, Jim Wilson and myself was together.

Q How did you get to Broome street?

Mr. D'Aloia: I object.

A I went in a taxi.

Q When you got to 261 Broome street was there a trunk there? A Esley Jones and the trunk was ahead of me.

Q And when you got to 261 Broome street the trunk was there? A In the hall.

Q And where was Esley Jones? A Esley Jones was in the hall waiting for us.

Q What did Esley do? A Waited to take the trunk upstairs, Bosley and Jimmie and Esley.

Q What did they do after they got the trunk up there? A They stood and talked.

Q Did anybody come in? A Gertrude Wilson came in.

Q How long had you been there before she came in? A Five or ten minutes.

Q After Gertrude Wilson came in what, if anything, did Esley Jones do? A I did not see him do anything.

Q Did he stay there? A He stayed there awhile.

Q Then what did he do? A Well, when he left I do not know where he went.

Q What time was it? A I do not know what time it was, because I did not pay any attention to it.

Cross examination by Mr. D'Aloia.

Q He left at midnight? A No, it was not that late.

Q You told the prosecutor that he came there to get the trunk around nine or ten o'clock? A Yes.

Q Now, was it nine or ten? A I did not look at the clock.

Q Well, you said it was nine or ten o'clock? A Yes.

Q When the trunk was moved? A Yes.

Q And then you talked for twenty-five minutes? A Sure I did.

Q Now, you did not stay with Esley Jones? A No, he left before we did.

Q He just left? A Yes, we did not go with him.

Q You do not know where he was around nine o'clock? A He came around for the trunk.

Q And what time did he go around for the trunk? A I could not tell you exactly what time.

Q Well, was it ten o'clock? A Well, it was around nine or ten. I know it was some time around that time.

Q Around ten o'clock? A I do not know what time it was.

Q Well, now, isn't that the best answer because you do not know what time it was? A Because I did not look at the clock.

Q It could have been ten? A It could have been ten.

Q It might have been 10:30? A I told you I did not know what time it was because I did not look at the clock.

Q It might have been half-past ten? A It could have been later than that.

Re-direct examination by Mr. Conlon.

Q And it might have been nine o'clock? A No, I didn't look at the clock. My idea was it around ten or nine, nine or ten.

CHARLES BOSLEY, sworn in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q Where do you live? A 261 Broome street.

Q Do you know Esley Jones? A Yes.

Q Do you know Clyde Hill? A Yes.

Q Do you know Jim Wilson? A Yes.

Q Do you know the house at 76 Barclay street in the City of Newark? A Yes.

Q Were you there on Sunday this year the day before the 4th of July? A Yes, I was there.

Q And what time did you go there? A I was there mostly at 3 o'clock and I went away and came back again between 6 and 7 o'clock.

Q Who was with you the first time you went there? A Esley was with me the first time.

Mr. D'Aloia: The same objection goes to this witness upon the grounds previously mentioned.

The Court: The same ruling.

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

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

DALLAS FLANNAGAN,
Judge.

Q Esley who? A Jones.

Q And the second time you went there who was with you? A Esley was with me the second time.

Q Anybody else with you? A No.

Q You say you went there the second time between 6 and 7? A No, 3 o'clock.

Q No, the second time? A Between 6 and 7.

Q Who was with you when you got there between 6 and 7? A Well, there was the lady of the house, but I didn't see her. Jimmie Wilson was there was one and Gertrude was there and the girl they call Doll, but Gertrude and the lady called Doll goes out.

Q When did Gertrude and Doll go out? A A few minutes after we come in she goes out for a sandwich.

Q Did you see either one of them that night at 76 Barclay street? A No.

Q Who else was in the house, do you know? A No, sir.

Mr. D'Aloia: I object as improper rebuttal.

The Court: How is this part rebuttal? Of course, I am prepared to allow you to show that Esley Jones was not in the house at the time this killing is alleged to have occurred. I am doing that on rebuttal, but this seems to be something else.

Mr. Conlon: Well, I have got to pick up the different people and show where Esley was.

The Court: Strike out the part that says Doll and Gertrude went out for a sandwich.

Mr. Conlon: I am trying to fix the time. This is rebuttal. Of course, it fixes the place where Esley Jones was at the time this killing took place. Now, previous witnesses have testified, including Gertrude, to going out of the house. Now, statements by these witnesses showing that he was there fixes that time.

The Court: Fixes the time that Gertrude went out of the house?

Mr. Conlon: No, fixes the time when Esley Jones and this man were there.

The Court: I do not hardly think so. Now, Jones was with him, as I understand it, at the time?

Mr. Conlon: Yes, sir.

The Court: Well, he can go on and follow that out and show what Jones did if he did anything with him in company with him, where he was, and if he was in his company, but I think this is not proper rebuttal.

Mr. Conlon: I think I should be permitted to show who was there and when they were there.

The Court: Well, we are concerned with Jones. Now, anything that will show where Jones was at the time this killing is alleged to have occurred, I am perfectly willing to let it go in.

Q How long did you stay there? A At 76 Barclay street?

Q Yes. A Well, I only stayed there, I guess, about a half an hour.

Q And how long did Esley Jones stay there? A He went away with me.

Q He went away with you? A Yes.

The Court: Jones came with you and went away with you?

The Witness: Yes.

Q What time did you leave? A I guess around sun-down, a little after eight.

Q Who went with you? A Esley Jones and Jim Wilson.

Q Where did you go? A We went to 114 Prince street.

The Court: Now, did you go direct there or did you go anywhere in the meantime?

The Witness: No, we went to my house a few minutes and then went to 114 Prince street.

Q What did you do? A We went there to move a trunk.

Q Whose trunk? A Jackson's.

Q Where is 114 Prince street? A That is near the corner of Morton and Prince street.

Q Corner Morton and Prince? A Yes.

Mr. D'Aloia: He did not say corner Morton and Prince, he said near the corner.

A Near the corner.

Q Did you move the trunk? A Yes.

Q Who carried the trunk out of the house? A Well, Esley and Jim carried the trunk downstairs.

Q Where did you move it to? A 261 Broome street.

Q Who took it to 261 Broome street? A I don't know.

Q Well, what was done with the trunk after it was brought downstairs? A It was put on a dray.

Q Who got on the dray with the trunk? A Esley Jones.

Q Was there a driver of the dray besides? A Yes.

Q Did you go to 261 Broome street? A I did.

Q How did you get there? A In a taxi.

Q And who went in the taxi with you?? A Jackson and Wilson.

Q When you got to 261 Broome street, was the trunk there? A No, we beat them there, because we got a taxi.

Charles Bosley, direct.

Q How long were you there before the trunk arrived? A About five or ten minutes.

Q Who was with the trunk when it arrived at 261 Broome street? A Esley and the man driving the dray.

Q What did you do then? A Took the trunk upstairs.

Q What floor? A Third floor.

Q What did you do then? A Stayed there laughing and talking.

Q Did anybody come in? A Not then. Later somebody come in.

Q How much later? A Well, I guess around ten, or half-past ten.

Q Who came in? A Gertrude Wilson.

Q What happened then? A Well, she said that Harry Scott had killed Doll.

Mr. D'Aloia: I move to strike that out.

The Court: Strike it out.

Q Gertrude Wilson said something? A Well, I didn't hear her say anything. We were all laughing and talking.

Q What happened after Gertrude Wilson came in? A Not anything.

Q What did you do? A Not anything.

Q Did you stay there or leave? A I stayed at home.

Q That was your home? A 261 is where I live at.

Q What did Esley Jones do? A He stayed there for a while.

Q How long did he stay there? A I guess about a half an hour or more.

Q And do you know what time it was when Esley Jones left? A Well, somewhere between ten and eleven o'clock.

Charles Bosley, cross.

Q What happened to Jimmie Wilson?

Mr. D'Aloia: We object to that.

The Court: I will allow it.

Q What did Jimmie Wilson do? A He leaves, too, he and Gertrude went downstairs together.

Q They left together? A Yes, at the same time.

Q Did Esley Jones leave the house, 261 Broome street at any time between bringing in the trunk and the time that he finally left? A No.

Cross examination by Mr. D'Aloia.

Q What time did the trunk get there? A Well, I guess it was somewheres around nine o'clock, or something after nine.

Q Was it near ten? A It might have been ten o'clock. Yes, it might have been ten.

Q It might have been ten-fifteen? A Something like that.

Q It might have been half-past ten? A No.

Q Well, it might have been between ten and ten-thirty? You know what time ten-fifteen is? A Well, I didn't pay much attention to the time.

Q Well, you are talking about time here, and that is what you are taking the stand for. Now, it might have been half-past ten when the trunks come there? A It was not that late.

Q It might have been a quarter after ten? A It was not that late.

Q Well, it might have been ten o'clock? A Not when the trunks came.

Q Well, you told me that a moment ago. Now, you said it might have been a little after

ten. I am talking about the time the trunk arrived at Broome street. It might have been a quarter after ten? Uh? You are not so sure of that? A It was not that late.

Q Was it nine o'clock? A Between nine and ten.

Q Well, was it five minutes to ten? A I could not exactly tell.

Q And not being able to tell exactly, it might have been a quarter after ten? A It might have been a quarter to ten.

Q And it might have been a quarter after? A Yes.

Re-direct examination by Mr. Conlon.

Q And it could have been a quarter after nine? A Well, it was something later than that. It was between nine and ten.

GEORGE GUERIN, recalled in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q I show you this trunk. Have you seen that before? A Yes.

Q S. 16 for identification. Where did you see it? A 18 Boyd street, on the second floor.

Q When? A On the night of July 6th.

Mr. D'Aloia: Is that rebuttal? The defendant admitted that was his trunk.

The Court: I suppose this is preliminary to some other question.

Mr. Conlon: Exactly.

Q Who was there with you on that occasion? A Sergeant Hammer and Detective Staats.

Q What did you do with the trunk? A We jimmied it open and went through it.

Q I show you some miscellaneous papers which have been marked S. 12 for identification and ask you if you have ever seen those before? A This was taken from his pocket when he would not tell his right name in Boyd street. He said his name was Smith.

Mr. Conlon: I would like permission for the Court, then, to extract that from the envelope which was offered with some other miscellaneous papers.

The Court: Yes.

Mr. Conlon: This is a membership card in Catto Lodge, No. 20, of I. B. P. O. E. W. of Philadelphia.

The Court: You did not get that from the trunk?

The Witness: No, sir.

(Card offered in evidence and marked Exhibit S. 17.)

Mr. Conlon: And I also offer these for what they are worth. They are not material, really.

(Papers marked Exhibit S. 12.)

Q I show you an envelope with the name Mr. Harry Scott, 355 Washington street, Newark, New Jersey, containing a letter written in pencil and ask you if you have ever seen that before?

Mr. D'Aloia: That is objected to upon the ground that it is not proper rebuttal.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

A That was in the trunk at 18 Boyd street.
Q In this same trunk? A Yes.

Mr. Conlon: I offer it in evidence.

Mr. D'Aloia: I object.

The Court: I will allow it.

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

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

DALLAS FLANNAGAN,
Judge.

(Envelope marked Exhibit S. 13.)

Mr. D'Aloia: Upon seeing the letter, I object to it upon the ground that it is not at all binding on this defendant.

FRANK HEMMER, recalled in behalf of the State in rebuttal.

Direct examination by Mr. Conlon.

Q I show you a paper marked S. 14 for identification and ask you if you have ever seen that before? A I did.

Q Where? A At police headquarters.

Q When? A On the 3rd of July, or the 9th of July, rather.

Q That was on the 9th of July? A The 9th of July.

Q You questioned this defendant how many times down there? A Twice.

Q And was this the first or second time? A This was the first.

Q Who made the sketch on that paper? A I did.

Q In whose presence? A In the presence of Detectives Guerin and Staats.

Q Who else was there? A Harry Scott.

Q Well, now, just tell the Court and jury the course you pursued in making out that sketch.

Mr. D'Aloia: I object. That is not rebuttal.

The Court: You asked the witness about that statement and, as I recall it, he said it was not made in his presence. Now, I think you can show it was made in his presence.

Q Who made that sketch? A I did.

Q And who was present? A Harry Scott and Detectives Guerin and Staats.

Q Was the whole sketch made in the presence of those people? A It was.

Q What does the sketch represent? A It represents the kitchen, 76 Barcley street, the second floor, the scene of the crime.

The Court: Now, you asked him did he give these various locations and he said he didn't.

Mr. Conlon: Yes.

Q Did this defendant, Harry Scott, give you the location in that room of these three colored men at the time of the shooting? A He did. He placed each man around the table as indicated on that sketch.

Q How is that indicated? A Two men sitting at the narrow end of the table on the north side.

Mr. D'Aloia: I object to what is indicated on the sketch.

Q Did he tell you where the three strange colored men were? A He did.

Q And did you make a mark on the sketch indicating those persons? A I did.

Q Was that in his presence? A That was in his presence.

Q And those are which marks on the sketch? A The round circles are the three unidentified colored men.

Q Is that so marked on the side? A It is also marked off on the side.

Q When were those markings on the side put on there? A While the sketch was being drawn up.

Q Did the defendant tell you the location of Esley Jones at the time of the shooting? A He did. He placed Esley Jones at the sink.

Q Did you make a mark on the sketch in his presence to show that spot? A I did, I made a square, and also marked that off on the side.

Q Did the defendant tell you the location of Doll at the time of the shooting? A He did.

Q Where was that? A She had walked from the bedroom over to the closet—china closet—to get some glasses and he stopped her

just as she returned from the glasses and placed her here.

Q How far from the china closet? A I should say about three feet.

Q Did you make a mark on the sketch to indicate that spot? A I did.

Q And how is that marked? A That is a half circle.

Q Did the defendant locate for you the spot in the kitchen where he was at the time of the shooting? A He did.

Q And where was that? A That was with his back toward the rear kitchen door leading to the stoop, facing the table, the rear part of the kitchen.

Q Did you make a mark on the sketch to indicate that? A Yes.

Q What kind of a mark is that? A That is a half circle.

Mr. Conlon: I offer that in evidence.

Mr. D'Aloia: I would like to cross examine.

The Court: You may.

Cross examination by Mr. D'Aloia.

Q You made that sketch? A Yes.

Q Down at police headquarters? A Yes.

Q You have never been an architect? A I have had some experience at architectural drawings.

Q What is the scale of it? A No scale. It is a rough sketch.

Q You were drawing the kitchen from memory? A From memory.

Q From your memory? A Yes.

Q Not from the defendant's? A Yes.

Q The outline of the kitchen was your memory? A Yes.

Q The defendant did not give you the outline of the kitchen? A I did not ask him.

Q You just took it for granted he was going to accept your outline? A Yes.

Q Do you know how big the kitchen is? A I should say it is about ten or twelve.

Q Do you know what the distance is from the front end of the sink, the front part of the sink to the gas stove?

Mr. Conlon: I object. This witness said the sketch is not to scale.

The Court: It only purports to be a rough sketch.

Q Your sketch was pretty well crowded? A It was.

Q Tables and people and sinks and round circles? A If I had taken a little more time.

Q Well, you did not take much time? A No, not very much time.

Q He told you that there were three colored men and they were over near the table? A Sitting at the table.

Q There were three colored men? A Sitting at the table.

Q He told you Esley Jones was there? A Yes.

Q And he told you he was there and Doll was there? A Yes.

Q And he told you about a scuffle taking place in there? A He did.

Q This was the first time you examined him down at headquarters? A Yes. That was the first question.

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

Q And you never took him up to that kitchen? A No.

Re-direct examination by Mr. Conlon.

Q Now, officer, will you tell from your memory, or referring to this sketch, make an ink mark with the initials of each of these persons on the large sketch on the board.

The Court: What do you mean? Place them correspondingly on the large sketch?

Mr. Conlon: Yes, sir.

Mr. D'Aloia: I object.

The Court: I do not think so, because the big sketch is in evidence and so is the little one.

Mr. Conlon: It will save time.

The Court: Well, if there is no objection, I have none.

Mr. D'Aloia: I object.

Q On either that occasion, July 9th, or on the other occasion, July 10th, did Scott say to you that Esley Jones came toward him and he had his right hand in his hip pocket?

Mr. D'Aloia: That is not rebuttal. I object.

The Court: I will allow it.

A The first time he was questioned, he said Esley struck at him. The second time he said he made a pass for his pocket.

TESTIMONY CLOSED.

Mr. D'Aloia sums up for the defendant.

Mr. Conlon sums up for the State.

FOURTH DAY.

Thursday, November 3, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

Mr. Conlon: If the Court please, before you proceed to charge the jury I wish to call the Court's attention to a circumstance which as arisen. Yesterday in my summing up, I called to the attention of the jury the manner in which the gun which was used in this case was operated. I made a definite statement that in order for the gun to be discharged the trigger had to be pulled each time that it was discharged and I said in this case the trigger must have been pulled seven times because there were seven shots fired. Mr. Kanter questioned my right to make that statement in view of the fact that there had been no expert testimony or any testimony produced in the case to indicate how the gun was actually operated. My answer to that was that the jury might determine that fact for themselves in the jury

room. After consideration, I feel that possibly the situation is not fair. I don't mean, of course, that my statement was incorrect. I still stand on the statement I made, but if there is any doubt in the case as to the manner in which this gun was operated, I move that the case be opened for the purpose of allowing such proof as your Honor might see fit to allow as to the operation of the gun. I do it, as I say, not because I am retracting in any respect, the statement that I made before the jury, but for two reasons, one, possibly there might be some merit in Mr. Kanter's objection that I made the statement without testimony and secondly, the discussion between him and me during my summing up might have caused some doubt in the jury's minds on a matter which can be absolutely and positively determined.

Mr. D'Aloia: We object to the reopening of the case. We contend that this evidence could have been obtained before the State rested and when the State was aware of the evidence that was going to be introduced, when the question of self defense was first broached to the talesmen. Secondly, the defendant testified directly, and when he was through with his direct examination the Court adjourned until the next morning, and that they were then fully aware of what the defendant had stated and this evidence could have been procured, and therefore, we enter an objection at this time to the reopening of the case in order to preserve the defendant's right.

The Court: The Court feels that it would be unfair not to allow this evidence. The

Court feels that it would be unfair to the State and unfair to the defendant. If this gun is of such character that the chamber will empty itself, if pressure is maintained on the trigger, I think that fact should be known to the jury. If, on the other hand, it should be true that each discharge of the pistol must be produced by a separate pull on the trigger, I think that fact ought to be before the jury, so that I think there should be testimony on that subject, and the mind of the Court is dissatisfied with the condition of the testimony as it stands today. In view of the serious character of the case, I feel that the motion should be granted and it is granted.

Mr. D'Aloia: And may I have an exception, if the Court please on the record?

The Court: You may have an exception.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: Of course, counsel will be permitted, after the introduction of such testimony, as they may see fit on each side, to sum up the case afresh on each side so far as the case may be affected by the introduction of any further testimony and, as I have said before, of course each side may put in such testimony as they may see fit on the subject now under consideration.

ALBERT FOSTER, sworn in behalf of the State.

Direct examination by Mr. Conlon.

Q What is your business? A I am New York manager for the Colt's Patent Firearms Manufacturing Company.

Q They manufacture what? A Automatic pistols, revolvers, machine rifles, machine guns, and they have also recently gone into the hotel dishwashing machine.

Q What experience have you had in the use of automatic guns particularly? A For twenty-seven years I have been in the firearms business. The first ten with the Winchester Firearms Company. The last seventeen with the Colt Patent Firearms Company. I have had to make examinations of automatic pistols and revolvers, and I have been called into many cases as a firearm expert.

Q Where have you testified as an expert? A I have testified in this court, this county. I have testified in Paterson. I have testified in Somerville, Newton, New Brunswick.

Q Anywheres in New York? A I have not testified in New York State, but I have worked with the Police Department in New York State at the time Captain Jones was in the Homicide Department. I was consulted by Captain Jones.

Q Are you consulted at all by the various police departments in cities in this part of the country? A I am.

Q Are you thoroughly familiar with the different makes of automatic revolvers and methods in which they operate? A I am.

Q I show you Exhibit S. 8 in this case, which is an automatic revolver— A No, this is what is known as an automatic pistol.

Q What kind of an automatic pistol is it? A This is a Spanish make automatic pistol chambered for the ordinary caliber 32. It is the type of pistol commonly known as the blow back.

Q What do you mean by Spanish type? A The pistol is manufactured in Ebar, Spain, and known as a Spanish type. It is known as a blow back type of automatic pistol. There are two types, the blow back chamber and the lock breach type. The type I hold here is a pistol that has a barrel attached to the frame and at the explosion the barrel stays stationary and the slide goes back over the barrel and the cartridge is ejected and the slide coming forward brings the next cartridge from the magazine into the chamber, leaving the gun cocked, ready for firing the next shot. The pistol, either a blow back or the lock breach pistol has to be pulled each and every time to get the explosion. The slide has gone back. It comes forward, explosion takes place, and if the finger were held on the trigger and the slide then brought back and the slide coming forward it could not be pulled until I release my finger on the trigger allowing the trigger to engage and the explosion takes place.

Q Will you explain to the Court and the jury if there is any difference in the way the gun operates when it is loaded and when empty? A When the gun is fired with the cartridges, it is the explosion of the cartridge that throws this slide rearward, such as I am doing with my hand. It reaches its furthest point before it goes forward, the slide takes the cartridge from the

chamber of the magazine and presses it into the chamber.

Q In other words, the explosion does the same thing as you have done with your hand? A Exactly.

Q And the explosion cocks the pistol? A Yes, and it is ready for shooting and it has got to be pulled for every shot.

Q Now, if the gun were fully loaded and the trigger were pulled once and the hand and finger held steadily on the trigger, how many shots would be fired? A There would only be one shot. You would have to release your finger from the trigger so the trigger would be engaged again.

Q Where is the chamber? A This is the magazine. The chamber is the part that the cartridge goes into the barrel. That is the chamber, the interior of the barrel.

Q What is this? A That is the magazine.

Q And what goes in here? A The cartridges. There are nine cartridges, one, two, three, four, five, six, seven, eight, nine, and by putting the magazine in the pistol and bringing the slide back as far as it can and letting it go forward it takes the first cartridge and forces it into the chamber. If you wish to put the next cartridge in you can release the chamber, making ten in all.

Q Once the gun is loaded and this carriage is pulled back and released the gun is cocked? A Yes.

Q And it remains cocked at all times until the gun is emptied? A Yes.

Q You understand what I meant by that last question? A Yes.

Q That after each shot— A Yes, the gun is cocked.

Q Automatic? A Automatically.

Q So that at any time after the first shot it is always cocked and all it needs is the pressure on the trigger? A Yes. It is what is termed as a semi automatic.

Q Is there any kind of that type made which operates by one pressure on the trigger? A Yes.

Q Is there any gun made which will shoot more than one shot by one continuous pressure on the trigger? A Not in a pistol.

Q What is there? A There is a machine gun and machine rifle. They are made for full automatic and semi.

Q Is this what is known as a semi automatic pistol? A This is what is known as a semi automatic pistol.

Cross examination by Mr. D'Aloia.

Q Mr. Foster, you have made a great deal of study of the use of pistols, haven't you? A Yes, sir.

Q And you have a particular branch of that study which is known as grips, grips on a pistol? A Yes, sir.

Q And in your study and in your experiments there is a particular branch known as grips, what will a gun do when it is gripped by one or two hands, that is true, isn't it? A What will it do when it is gripped?

Q Yes, what it might do. A Yes, sir.

Q And it is a fact, and you know it, being an expert, that it is pretty hard to tell with a gun of this make what it will do when two hands grip it?

Mr. Conlon: I object, there is no testimony in this case that there was more than one hand gripping the gun.

Mr. D'Aloia: I beg your pardon, there was a hand gripping the other hand.

Q Will you please hold the gun in your right hand. Now, I am gripping this hand of yours this way, and this gun is pointed this way. Is it possible for my index finger to reach that trigger? A Yes, sir.

Q And as we are struggling with that gun that way, is it possible for that trigger to be released and pulled and pulled and released?

Mr. Conlon: I object.

The Court: On what ground?

Mr. Conlon: On the ground that the testimony is clear in this case—

The Court: Wait a minute. The question in my mind is whether this is a matter of expert testimony. I don't see that it is expert testimony, the number of fingers to be pressed on that gun. Of course, the expert can testify what would happen to the gun if pressure were applied at any particular point, but I don't see that he is any more able to judge of what the hands could do in a scrimmage than the jury is.

Mr. D'Aloia: Your Honor will remember that I asked him about the grips.

The Court: Yes.

Mr. D'Aloia: And these experts are having a great deal of trouble determining what guns will do when they are gripped, particularly a gun of the Spanish automatic type.

The Court: I don't know—

Mr. D'Aloia: I will ask him if that is not so.

Mr. Conlon: I object to the question because the evidence is that there was only one grip on this gun.

The Court: I am not regarding the question of whether there was any one grip on this gun, it is a question which perhaps differs from the evidence, but my mind is concerned with the question as to whether Mr. Foster is now testifying on a subject which requires any expert testimony at all.

Mr. D'Aloia: Well, he is called here as an expert. He had described in his direct examination the action of that gun. Now, my next question will be, how many times could that gun be fired under those circumstances I have described, within four seconds. He may tell us that as an expert.

The Court: I imagine he will tell us it can be fired just as many times as the trigger could be released and pulled.

Mr. D'Aloia: And I am going to ask him, under those circumstances, how many times it can be fired.

The Court: It doesn't make any difference as to who fired it. You have been asked, I believe, Mr. Foster about your expert study of grips. What do you mean by that?

The Witness: Well, as I take it from the question that he put to me, he wants to know if this arm is gripped and a finger is put on the trigger whether it can be exploded. That is my interpretation of the question that he put to me.

The Court: That is one man's grip would be as good as the other man's grip.

The Witness: Yes, and some fire a gun quicker than others.

Q And when a man is frightened by the recoil and the blow back, he would involuntarily pull the trigger again, would he not?

Mr. Conlon: I object.

The Court: That is not expert testimony.

Q In your study of grips and what an arm will do when gripped, haven't you studied the effect of the firing of the first shot on the nervous system of the person who was gripping the gun?

A No, sir; I have not, the nervous system would not come into the part of the firing of the gun.

Q No, but if the shot goes off, is it possible and haven't you found it to be a fact from your study that in this recoil there would be a pull by the hand?

Mr. Conlon: Now, I object to that, if the Court please, that is not the question in this case, it is not cross examination and it is not what we put this witness on for.

The Court: Mr. Foster is a pistol expert and I don't think that is within his province even if it is expert testimony at all.

Mr. D'Aloia: Now, if the Court please, I differ respectfully with the Court. This man says that there is a special study that these firearm experts make and that is called grips, everything that goes into the gripping of a gun, particularly any struggle, fits into this case and I am going to ask if a firing of a

first shot under those circumstances does not produce fright.

The Court: Ask him.

Q Isn't it possible that the first shot, after the blow back, isn't it possible that that will strike in the man who is holding the gun?

Mr. Conlon: I object.

The Court: Sustained.

Q Well, an individual being attacked by another man and his hand is gripped that has the gun, and the other man has his hand in his back pocket and the expression used is this—"One of us is going to hell tonight" and then as I showed you, that gun begins firing and I asked you if the first shot, the recoil and the blow back did not cause an involuntary contraction of the muscles and another pull.

Mr. Conlon: I object.

The Court: Sustained.

Q How can pressure be applied there under the circumstances that you hold that gun? A If anybody could get their finger in front of my finger, the pistol could be fired.

Q Can I get my finger in front of yours here if I hold the gun this way?

Mr. Conlon: I object to that, that question is a hypothetical question and it is based upon facts directly contrary to the testimony of this case.

Mr. D'Aloia: No, it is not, I am asking him now if my finger will fit over his.

The Court: That does not require expert testimony. The witness has testified that pressure applied to that trigger will produce a discharge of the gun. Now, whether that is applied to one finger or two fingers or from any other source whatever, it will discharge the gun.

Mr. D'Aloia: But if your Honor please, we have an illustration here of how this gun was held and I think this witness will answer that if a finger is in front of his finger on the trigger the finger in front will do the firing.

The Court: No, objection sustained.

Q Can two index fingers fit into that loop around the trigger?

Mr. Conlon: I object.

The Court: Whose fingers?

Mr. D'Aloia: His and mine.

The Court: That is of no importance.

Q How long will it take, what is the shortest possible time for six or seven shots to be fired from that gun? A They have been fired in two and one-fifth seconds.

Q Now, I understood you to say, Mr. Foster, that that gun has been fired, that type of gun has been fired, completely, the whole ten shots in two and one-fifth seconds? A No, I said six shots, you asked me about six shots. Well, that would be a fraction more.

Q Well, how many seconds? A I will say it will take the whole ten to be fired in probably three seconds.

William A. Jones, direct.

Re-direct examination by Mr. Conlon.

Q By whom could they be shot that way?

Mr. D'Aloia: I object to that, if I can't show whose index fingers fit in there, he cannot tell by whom it is fired.

The Court: Well, he simply said it is possible.

WILLIAM A. JONES, sworn in behalf of the defendant.

Direct examination by Mr. D'Aloia.

Q Captain, you are attached to the New York Police Department as instructor of pistol practice for how long? A From 1895 I was assigned to the school of pistol practice until 1911.

Q And how many men were in the department at that time? A Well, at the latter part I had over ten thousand men to instruct.

Q And since then, have you been doing any work concerning the study of firearms, the manner of firing them, and the effect of gun shot wounds? A In 1908, along with my duties as instructor, I was assigned to the homicide bureau of the detective bureau, to investigate firearm shooting cases. In that work I went to the scene of the crime, attended autopsies and followed the cases through the courts.

Q You know Mr. Foster? A Oh, yes, I know Mr. Foster a good many years.

Q Has Mr. Foster consulted you on a good many cases? A A great many. We have talked over a great many.

William A. Jones, direct.

Q I show you this pistol, which is Exhibit S. 8. Will you kindly tell us what kind of pistol that is? A This is what is known as 32 caliber automatic pistol.

Q Spanish make? A Made in Spain, yes.

Q Now, if that pistol is gripped in the right hand and that right hand gripping it is also gripped by another hand and there is a struggle to get the pistol or to wrest the pistol from the hand who gripped it first, in how many seconds could six or seven shots be fired?

Mr. Conlon: I object.

The Court: Sustained.

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

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

DALLAS FLANNAGAN,
Judge.

The Court: It is not necessary to introduce any second hand.

Mr. D'Aloia: That is the evidence here. This is an hypothetical question to an expert.

The Court: Sustained.

Mr. D'Aloia: Will your Honor kindly hear arguments?

The Court: Proceed. Ask another question.

Mr. D'Aloia: I cannot proceed.

The Court: I have given you an exception.

Mr. D'Aloia: No. I am going to give your Honor a question—

The Court: No, I will not permit it.

Mr. D'Aloia: Didn't the testimony—

The Court: I have instructed you to go ahead.

Q Now, assuming that that pistol is gripped in the right hand, will you please do it, and assuming that from over here another hand grips that right hand in that fashion, in how many seconds can seven shots be fired while wrestling that way for the pistol?

Mr. Conlon: I object.

The Court: Well, in how many seconds could it be fired, in any event?

Mr. D'Aloia: No, I do not want your Honor's modification. I want the evidence as it stands. This is an hypothetical question.

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

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

DALLAS FLANNAGAN,
Judge.

Mr. D'Aloia: Will you kindly let me have an exception to the modification by the Court?

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

DALLAS FLANNAGAN,
Judge.

A The ten shots on this could be fired in three and a half or four seconds.

The Court: Could it be fired—no, never mind.

Q Now, there is a particular branch in your study of firearms and Mr. Foster's study known as grips and the effect of grips on guns in struggles? A Yes. It all depends on the position a person is in at the time they are using the gun.

Cross examination by Mr. Conlon.

Q Now, in order for that gun to be discharged seven times, how many times is it necessary that pressure be exerted on the trigger? A Seven.

The Court: Let me see if I understand you correctly. In other words, for each discharge there must be a separate pressure exerted on the trigger.

The Witness: For each individual discharge there has to be pressure on the trigger.

The Court: In other words, if that gun is taken in the hands of a person individually and the pressure exerted on the trigger and maintained steadily, how many times will the gun discharge?

The Witness: Once. The trigger has to be released for the series to engage again. Now, I will pull the trigger.

The Court: Yes.

The Witness: Here is the blow back. Now, listen. Did you hear it click? When I released it it let that back to slide ahead so that the two points come in contact that you have to disengage to fire the pistol.

William A. Jones, re-direct.

Re-direct examination by Mr. D'Aloia.

Q In other words, for every discharge the pistol is cocked? A Yes.

Q And every slight pressure will set off the next shot? That is known as a blow back automatic? A Yes.

Q Do you know whether there is a hair trigger in that gun or not? A There cannot be a hair trigger in an automatic pistol like that.

The Court: The firing of the gun depends upon the pressure applied to the trigger and it does not make any difference from what source it is applied.

The Witness: It has got to be direct on the trigger.

The Court: And if it is direct on the trigger it would discharge the gun no matter from what source it comes?

The Witness: Yes.

Q And another man gripping the gun could be the source? A It could be discharged that way.

Mr. Conlon: There is one other matter I wish to call the Court's attention to. I understand there is some doubt in counsel's mind about Exhibit S. 5, which is a picture of the deceased taken up in the morgue in the hospital. I want to make it clear that that picture was not taken at the place the woman was shot. It was taken at the morgue at the autopsy.

Mr. D'Aloia: It was taken at the morgue before the autopsy was held, so that it does not show the woman in 76 Barclay street.

Charge to Jury.

Mr. Conlon: Well, it shows that woman.

Mr. D'Aloia: Well, not the woman at 76 Barclay street.

Mr. Conlon: No.

TESTIMONY CLOSED.

Mr. D'Aloia sums up for the defendant.

Mr. Conlon sums up for the State.

CHARGE.

The Court thereupon charged the jury as follows:

FLANNAGAN, *J.*

Gentlemen of the Jury: I have been requested by defendant's counsel to charge you as follows:

The defendant was not obliged to retreat unless you find that he, under the circumstances, had reasonable cause to believe that he could have done so with safety. I so charge you.

It is the law that a man may protect himself to the extent of taking the life of his adversary when that act appears to be reasonably necessary in order to preserve his own life or to protect himself from serious bodily harm. I so charge you, gentlemen.

A further request: Manslaughter is the intentional killing of a human being in a sudden transport of passion or heat of blood upon a reasonable provocation, without malice. I so charge you, gentlemen, being requested to do so by defendant's counsel.

The defendant does not say, however, that he was in any transport of passion or heat of blood

or that the killing was intentional. He says that the gun was discharged unintentionally while he was engaged in self defense.

Another request, gentlemen: You cannot convict the defendant of manslaughter if you believe that the defendant acted in self defense, but you must acquit him. I so charge you, gentlemen.

Another request: If you find that the defendant was acting in self defense and the fact that by accident the deceased was fatally shot, he must be acquitted. I so charge you, gentlemen.

There are four paramount instructions and my entire charge is to be understood as controlled by and subordinate to them.

First: The Court is the judge of the law and as such it is its function to pass upon all questions of law arising in the trial and to inform the jury of the law governing the case, and it is the duty of the jury to follow the law as it may be stated by the Court.

Second: The Court has no power to decide or to instruct the jury how to decide any questions of fact, but the jury are the sole and final judges of the facts, the weight of testimony and other evidence, the credibility of the witnesses, inferences to be drawn from the evidence, and of all inferences, issues and questions of facts whatever, including the ultimate conclusion of guilty or not guilty, as well as the degree of guilt, if any, to be reached on all of the evidence in the case. As judges of the facts it is their function, responsibility and duty to recollect what the evidence is and all the evidence, the occurrences during the trial, the appearance and conduct of the witnesses, whether evidence is or is not in the case, and whether it is disputed or undisputed and to be controlled by their own recollection alone in all such matters. If the Court should at any time make any statements of his recollection or should even go further and make definite affirmations, no matter how positive, in regard to any of such matters, it is the duty of the jury to disregard such expressions of the Court, except where the same coincide with their own recollection.

Third: The Court has the right to comment on the evidence, but in deciding the case the jury must do so not only on the evidence referred to by the Court, but on all the evidence. The Court has also the right, if he sees fit, to express his opinion on the evidence, pointing out what evidence, situations or circumstances seem to him salient, controlling or persuasive, and indicating any inferences or conclusions of fact which he would or may draw from the whole or from parts of the evidence, but the jury are not bound thereby and may disregard any or all of such expressions if they see fit.

Fourth: The defendant is presumed to be innocent, and he must be proved beyond a reasonable doubt guilty of the crime charged and of each and of all of its elements. The burden of so proving the defendant guilty rests upon the State throughout the whole case and never shifts. This rule is an ultimate one surviving all others; it is an independent and final protection to the defendant and, notwithstanding all other presumptions and burdens if any arise in the case, it remains upon the State until and after all the evidence is in, when the jury must consider upon all of the evidence in the case, whether or not this burden has been sustained. If the jury are then satisfied upon all the evidence that the de-

fendant is proven guilty beyond a reasonable doubt, the verdict must be guilty of the crime or degree of crime so proven; if not so satisfied, the verdict must be not guilty.

Reasonable doubt is not a mere possible doubt. It is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. That, gentlemen, is stated in a negative way. To state the same matter in a positive way: If, after an entire comparison and consideration of all the evidence you find you can say you feel an abiding conviction to a moral certainty of the truth of the charge, you are then satisfied beyond a reasonable doubt within the meaning of those words as they are used in the law.

The defendant, gentlemen, has been indicted by the Grand Jury of this county for murder. The indictment contains a single count and is in the form provided for by statute. You may take the indictment with you, gentlemen, into the jury room and read it there. The finding of an indictment is simply a step in the regular course of legal procedure which must be taken before any person can be put on trial for murder. An indictment is simply an accusation by the Grand Jury. It is of no evidential value against the defendant.

The Crimes Act provides, in part, as follows:

> "Murder which shall be perpetrated by means of poison or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, shall be murder in the first degree, and all other kinds of murder shall be murder in the second degree."

Now, the defendant contends that this killing was not unlawful, because, as he claims, it was done unintentionally, by accident, while he was engaged in self defense. If the defendant killed the deceased by accident while acting in self defense, then the killing was lawful and he is not guilty and your verdict must be not guilty.

A person may lawfully, in self defense, go to the extent of intentionally killing his assailant. Now, what is meant by self defense in the law? I have already charged you on that subject at the defendant's request, but I will add further: A person is justified in using force to defend his person only when force is necessary or reasonably appears to be necessary to accomplish that end. If the injury apprehended could be otherwise reasonably avoided with safety, the accused was bound to avoid the danger without resorting to violence. One who is attacked and unable reasonably to avoid the attack with safety may repel force with force, to such extent even to the extent of killing his assailant, as is reasonably necessary or reasonably appears to be necessary to defend himself. Even if the circumstances be such as to require the use of force to repel the assault, he will be inexcusable if he carried his defense beyond the bounds of reasonably necessity or the reasonable appearance of necessity. The danger must be immediate and must be actual or else apprehended on reasonable grounds, of all of which the jury is to judge.

The question that I would suggest that you first take up for consideration is, do you accept this contention of the defendant? If you accept

it, then the defendant is not guilty, and you must so find him. If, on the other hand, you reject the contentions of the defendant, you disbelieve them —if you disbelieve him, then I would suggest that you next take up the contentions of the prosecutor. The prosecutor contends that the defendant killed the deceased intentionally, wilfully, deliberately and with premeditation.

In this State the law presumes that all unlawful homicides are murder in the second degree. If the defendant's intent was to kill the deceased girl Doll and the killing was not wilful, deliberate and with premeditation, then defendant is guilty of murder in the second degree. If defendant's intent was to kill the deceased girl and the killing was wilful and deliberate and with premeditation, then he is guilty of murder in the first degree. By the killing being wilful, the law means only that the defendant's acts be voluntary, of his own will, as distinguished from someone else's will. By deliberate and premeditated the law does not mean any particular length of time need intervene between the formation of the design or purpose to kill and its execution. Time sufficient to clearly and fully conceive the design to kill, and purposely and deliberately to execute it, satisfies our statute. These things are acts of the mind and these mental acts may be performed with the degree of rapidity of which the human mind is capable of acting.

The State has produced witnesses who say they heard this defendant threaten to kill this girl Doll. The State claims that the testimony of those witnesses shows an intention, a state of mind on the part of this defendant. The State produces a witness who says she saw the defendant in the room with Doll quite shortly before

hearing these shots, or before they were heard, and she says that at that time she saw no one else in that room. The State shows, or, rather, produces witnesses who say that they saw this defendant with this gun before this shooting, and one of them, or more, perhaps—I do not know which—says that at the time he had the gun he threatened to kill this girl, and the State shows sexual relations between this girl and the defendant. As I recall it, the defendant himself testified to such facts—to sexual relations, I mean to say.

The State contends that all of its evidence justifies the conclusion that this defendant killed this girl and that he did so wilfully, deliberately and with premeditation, and the State asks you for a verdict of murder in the first degree.

The defendant, as I have already said to you, claims that this killing was done by accident; that is to say, he claims that he was in this room with this girl, that he was attacked by a man named Esley Jones, that Esley Jones came at him with his hand on his pocket, his back pocket. He claims that being in fear of Esley Jones, he drew his own gun in self defense; that Esley Jones grabbed his right hand, in which he had the gun; that he did not intend to discharge the gun, but that the gun was discharged accidentally, resulting in the shooting of this girl.

The State combats that contention. One of the ways in which the State combats it is to produce witnesses who swear to the whereabouts of Esley Jones at or about that time.

Esley Jones is produced and Esley Jones says he was not there at all at that time; he was not there when this girl was shot, he had no fight

with this defendant, he did not attack him at all. He says he was away from there and he undertakes to tell you where he was, and the State calls other witnesses which the State claims corroborate Esley Jones in his statement that he was elsewhere at the time this girl was killed.

And the State produces those witnesses and attacks the story told by the defendant and says that the testimony of those witnesses shows that his testimony is false. The State also produces an expert who testifies to the manner in which this gun may be discharged. He says that in order to discharge this gun a separate pressure or impulse is necessary for each discharge; in fact, both of the experts say that, the expert called for the State and the expert called for the defendant. And the State contends that it is improbable; indeed, I think, the State contends it is impossible or almost so that this girl could have been shot four times, as the doctor testified she was—four shots in that manner unintentionally. The testimony by the defendant was that he was attacked by this man Jones; this man grabbed hold of his right hand, the girl, he says, came on the spot, the gun was pointed over in the direction of the girl, and he says that she was shot in that way. As I say, the doctor shows four distinct pistol bullet wounds in this girl, and, if you believe him, you may regard it as four.

The State contends that it did not happen that way, that no four shots were fired by separate impulse on the trigger of this gun at that girl—or into that girl under such conditions.

There has been testimony in this case to the effect that the defendant fled after the alleged commission of this crime with which he is now

charged. If you believe from the testimony beyond a reasonable doubt that the defendant, fearing an accusation would be made against him for this crime, for the purpose of evading that accusation took refuge in flight, then you may consider that flight in connection with all other testimony in evidence in the case, because the flight of the defendant after the commission of a deed is a circumstance tending to prove a consciousness of guilt. It is well recognized that the flight of one accused of crime, or who anticipates and fears such an accusation, may be given in evidence upon the trial of an indictment for the crime charged, such evidence is deemed if and when unexplained to raise some inference of guilt, akin to the inference deemed to arise upon the fabrication of false evidence, or the suppression of true evidence.

The defendant, as I recall it, undertakes to explain his going away, or running away from the scene of the crime—scene of the killing, I mean to say—immediately after it occurred, and, of course, you will take his explanation into consideration with all the rest of the evidence in the case.

Now, gentlemen, I have outlined to you briefly the contention of the respective sides. It is for you to take the case upon all the testimony. The prosecution on the one hand maintains, claims, that the defense which the defendant has interposed, of accident while engaged in self defense, is entirely false; that the man who the defendant claims was attacking him was not there at the time the deceased was killed, and the State asks you for a verdict of guilty of murder in the first degree.

On the other hand, the defendant urges and claims that he killed this girl by accident while acting lawfully, to wit, in self defense, and he claims that he is entitled to an acquittal. It is for you to remember the other claims of the defendant and of the State, if any there be.

Now, the statute requires that the jury, if it finds a conviction of murder, shall designate whether they find murder in the first degree or murder in the second degree, so you will please remember that if you should find the defendant guilty of murder, you are to specify in which degree is your verdict. In case your verdict should be murder in the first degree you will also please remember that the law now provides that every person convicted of murder in the first degree shall suffer death, unless the jury shall, in their discretion and by their verdict and as 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 conclusion, gentlemen, bearing in mind first the four paramount instructions in the beginning of my charge, or near its beginning, and that they are paramount, and, second, also, the other portions of the charge, you may take the case upon the entire charge and upon all of the evidence in the case. You will remember, of course, as I have already emphasized, that the case is to be decided not only upon such considerations, evidence and circumstances as it has already occurred to the Court to mention in its charge, but upon all of the evidence, all of the considerations, all of the circumstances in the case.

Gentlemen, I leave the case with you.

Mr. Conlon: If the Court please, we are giving the jury a translation of the code letter by consent.

Mr. D'Aloia: May I have an exception to the Court's charge generally and specifically as to that part of the evidence quoted by the Court where he said the State had produced witnesses tending to show that Esley Jones was elsewhere, and Esley Jones himself, and that Esley Jones was corroborated by those witnesses. We except to the failure of the Court to mention that the witness Higgins had testified that Esley Jones was at 76 Barclay street shortly after nine o'clock in the middle room with two policemen and that the witness Higgins was a State's witness.

We also take exception to the Court's charge in that referring to the evidence adduced by the State the Court specifically mentioned the testimony of Gertrude Wilson as showing that the defendant was in the kitchen alone just immediately before the shooting and eliminated the other two witnesses called by the State, Eva Ramos and John Hudson, who were in the middle room and who testified for the State that immediately before the shooting four or five men went through that room into the kitchen, and we take a specific exception to each of the requests not charged by the Court, the defendant's requests to charge.

The Court: You may have a separate exception as to each request to charge, the Court declining any of the requests to charge except those already charged, and except as charged, and you may have the other exceptions you asked for.

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

Exceptions allowed; let them be sealed, and they are signed and sealed accordingly.

DALLAS FLANNAGAN,
Judge.

Mr. D'Aloia: I also pray an exception to the omission by the Court, in its charge, at the conclusion thereof, as to what the verdict might be. I take exception because the Court eliminated, left out, a possible verdict of manslaughter, and we except to the definition of the verdict that might be found under the evidence, the Court limiting itself to murder in the first degree with or without a recommendation; murder in the second degree or acquittal, and the Court did not say anything about manslaughter as a possible verdict.

DEFENDANT'S REQUESTS TO CHARGE.

1. The mere fact that the defendant has been indicted by the Grand Jury raises no presumption against the defendant. It is a mere step in the cause and is of no evidential value.

2. The defendant is presumed to be innocent and this presumption exists, until it is overcome by proof offered on the part of the State, which satisfied you of the guilt of the defendant of the crime charged in the indictment, in each and all of its elements, beyond a reasonable doubt.

3. The defendant was not obliged to retreat unless you find that he, under the circumstances, had reasonable cause to believe that he could have done so with safety.

4. The right of self defense may arise from circumstances which justify a reasonable apprehension of great bodily harm, and while the defendant may not have been in actual peril, yet he would have the right, if he had reasonable apprehension of great bodily harm, to use the weapon as he did in defense of himself.

5. It is the law that a man may protect himself to the extent of taking the life of his adversary when that act appears to be reasonably necessary in order to preserve his own life or to protect himself from serious bodily harm.

6. You should determine whether or not it reasonably appeared, by the action of Essie Jones, in attacking the defendant with his right-hand in his hip pocket, to the defendant that he was, in fact, in serious danger and that, in the heat of the trouble, it appeared reasonably necessary to pull his gun as the only means of preserving his life or protecting himself from serious bodily harm.

7. If you have a reasonable doubt as to whether the defendant did or did not draw his pistol in self defense, you must acquit him.

8. If you have a reasonable doubt as to the manner in which the automatic pistol was fired and the shells exploded during the struggle for the pistol, you must acquit the defendant.

9. In passing upon the acts and actions of the defendant, you, the jury, are not to hold him in the same cool and correct judgment which you are able to form, but should put yourselves in his place, and judge his acts by the facts and under circumstances by which you find he was surrounded.

10. If you believe that the defendant's life had been threatened by Essie Jones and that fact, under the surrounding circumstances created such apprehension in the mind of the defendant that it reasonably appeared to be necessary, as the only means of protecting himself from serious bodily harm to draw his pistol and then a struggle ensued for the pistol and the shots were fired under those circumstances, you must acquit the defendant.

11. Although the defendant is required to submit proof and circumstances sufficient to give rise to his defense of self defense, it still remains the duty of the State to prove beyond a reasonable doubt that what the defendant did, in drawing his pistol, was not in self defense, and if the State does not so satisfy you, there must be an acquittal.

12. The proof adduced by the defendant must not establish that the killing of the deceased was in fact absolutely necessary in order to save his own life, it is sufficient if it is established that the drawing of the pistol by the defendant reasonably appeared necessary in order to protect himself from serious bodily harm.

13. To find the defendant guilty of a greater offense than murder in the second degree, the State must prove beyond a reasonable doubt that the defendant wilfully, deliberately and premeditatedly intended to take the life of the deceased, and it is not sufficient if the State satisfies you that the defendant intended to do the deceased grievous bodily harm.

14. If, in considering this case and applying the principles of law given you by the Court, you should have a reasonable doubt as to whether

the defendant is guilty of manslaughter or murder in either degree, that doubt must be resolved in favor of the defendant.

15. Manslaughter is the intentional killing of a human being in a sudden transport of passion, or heat of blood, upon a reasonable provocation, without malice.

16. If you cannot convict the defendant of manslaughter if you believe that the defendant acted in self defense, but you must acquit him.

17. You must weigh the evidence from a viewpoint most favorable to the defendant, and give him the benefit of the reasonable doubt in all your considerations.

18. It is the duty of the State to prove beyond a reasonable doubt that the defendant was not acting in self defense; otherwise there must be an acquittal.

19. If you find that the defendant was acting in self defense, the fact that by accident the deceased was fatally shot, he must be acquitted.

20. If you believe that circumstances were such, that the defendant had reasonable cause to believe that he was in danger of bodily harm at the hands of Essie Jones and drew his pistol to protect himself and a struggle ensued, causing shots to be fired accidentally and some of them struck the deceased, the defendant must be acquitted.

Certificate of Stenographers.

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *vs.* HARRY SCOTT.	*On Indictment No. 211, Sept. T. 1927, for Murder.*

We HAROLD T. COOK and JOSEPH S. FISHKIND, official stenographers 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 us at the trial of the above-mentioned case, which trial was held before the Honorable Dallas Flannagan, presiding judge of the Essex County Court of Oyer and Terminer, and a jury, on Monday, October 31; Tuesday, November 1; Wednesday, November 2, and Thursday November 3, 1927, at Newark, N. J.

Dated November 21, 1927.

HAROLD T. COOK,
JOSEPH S. FISHKIND.

Certificate of Judge.

ESSEX COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *vs.* HARRY SCOTT.	*On Indictment No. 211, Sept. T. 1927, for Murder.*

I, DALLAS FLANNAGAN, presiding judge of the Essex County Court of Oyer and Terminer and the judge that 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 with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated November 21, 1927.

DALLAS FLANNAGAN,
Judge.

ASSIGNMENTS OF ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,*	*In Error.*
vs.	*Assignments of Error.*
HARRY SCOTT, *Plaintiff-in-Error.*	

AFTERWARDS, to wit, on the 20th day of December, 1927, before our said Court of Errors and Appeals in the last resort in all causes comes the said Harry Scott by J. Victor D'Aloia, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in said bill of exceptions and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness, Rosie Lee Cheesbar, to be asked and answer the following question:

> "Q Mrs. Cheesbar, on Wednesday night, following the Monday when Scott and Doll moved to your house, tell us what happended?" (Case, p. 47.)

2. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted Edward Higgins to be asked and answer the following question:

> "Q Will you tell us what Harry Scott did and said on that occasion?" (Case, p. 84.)

3. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to strike out the testimony of the witness, Edward Higgins, with reference to the episode two Saturdays before July 3rd, 1927. (Case, p. 87.)

4. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness Pearl Higgins to be asked and answer the following question:

> "Q Just tell us what happened when Scott came in." (Case, p. 90.)

5. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to permit counsel for the defense to ask the following of the witness Mary Jones:

> "Q Now, isn't it a fact that you know that Essie said that if Scott would fuss around with Doll he was going to get shot?" (Case, p. 100.)

6. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to strike out that part of the answer to the following question

asked of the witness Mary Jones by the prosecutor, as is italicized:

"Q I show you Exhibit S. 8 for identification and ask you if you ever saw that gun before? A That gun what Harry have, now, I can't say that that was the gun, *but the gun that Harry had, by the way he took the pistol and shoved Doll in the face and said, 'Come on out of here.'* " (Case, p. 103.)

7. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously ordered the plaintiff-in-error to stand up.

8. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously asked the witness Eva Ramos the following question:

"The Court: You cannot say he is and cannot say he is not?

Witness: No." (Case, p. 139.)

9. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness Gertrude Wilson to be asked and to answer the following question:

"Q Tell us what happened." (Case, p. 143.)

10. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to permit counsel for the defense to cross examine the witness for the State, Frank W. Hemmer.

11. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to permit the witness Frank W. Hemmer to be asked and answer the following questions:

"Q Does the written statement show in your writing, the handwriting of the officer who took it down, any contradiction in this man's story?" (Case, p. 164.)

"Q Did you put down there was a grappling for the gun?" (Case, p. 165.)

"Q Did you put down there was a fight in there?" (Case, p. 165.)

12. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously admitted in evidence the photograph of the nude body of the deceased taken at the morgue, marked Exhibit S. 5 (Case, p. 172.)

13. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously admitted in evidence certain empty shells, bullets and slugs found several hours after the alleged shooting, marked Exhibit S. 10 (Case, p. 175.)

14. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the prosecutor to cross examine the plaintiff-in-error about a person named Anna James and to ask and compel the answers to the following questions:

"Q And where did she live when she got to Newark?" (Case, p. 221.)

"Q Did you ever live with Anna here in Newark?" (Case, p. 222.)

"Q Did you ever sleep in the same house with Anna James?" (Case, p. 223.)

"Q And she suggested that she wanted to come to Newark. A Yes. Q What for?" (Case, p. 226.)

"Q Well, then, how did she expect to live with you and Doll if you were not living together?" (Case, p. 227.)

"Q And when you got to Newark and you told her Doll was dead what did she then decide to do?" (Case, p. 228.)

"Q Is that her signature?" (Case, p. 228.)

15. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the prosecutor to use a paper sketch in cross examining the plaintiff-in-error after the following testimony had been given in reference to it (Case, p. 261):

"Q What does this paper represent? A I don't know, sir.

Mr. D'Aloia: I object to that question, he did not draw it, the officer drew it.

The Court: He said he did not know.

Q You mean to say you don't know what that diagram is supposed to represent? A No, sir, I don't know what it is supposed to represent.

Q Were you told by Hemmer or Staats or Gehring what it was supposed to represent? A No, sir."

16. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the prosecutor to use and ask questions from a statement in writing alleged to have been made by the plaintiff-in-error at the time of his arrest, which statement was not in evidence. (Case, pp. 264-270.)

17. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness Anna James to testify in rebuttal as follows (Case, p. 294.)

"Q Where do you live? A 114 Wickliffe street.

Q And where did you live before you lived there? A I lived in Philadelphia, 920 Brown street.

Q I show you a letter S. 13 for identification, and ask you if you wrote that letter to Harry Scott?

Mr. D'Aloia: I object. That is not proper rebuttal.

Q Did you write that letter? A Yes, I wrote that letter.

Q Is that the envelope? A Yes.

Q Did you mail the letter? A Yes.

Q Where? A Where I mailed it from?

Q Yes. A I mailed it from Philadelphia.

Q And is that the letter you wrote to Harry Scott? A Yes.

Mr. D'Aloia: I move to strike out that testimony.

The Court: Not yet.

Mr. D'Aloia: I move to strike out the testimony.

The Court: Denied. (Exception.)"

18. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness Anna James to testify in rebuttal as follows (Case, p. 295.)

"Q Did you come to Newark with Harry Scott?

Mr. D'Aloia: I object to that question, because it is not proper rebuttal. It has been testified by him that she did come to Newark with Harry Scott.

(Argument.)

The Court: I will allow it."

19. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witnesses James Wilson, Nona Jackson and Charles Bosley to testify in rebuttal.

20. That the said Court before whom, &c., at and upon the trial of the said issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the witness Frank Hemmer, a detective, to be called in rebuttal and examined with reference to what purported to be a sketch or plan of the kitchen where the alleged shooting took place, drawn by the detective at police headquarters from his own memory, and upon which certain marks were made by the witness purporting to show the respective positions of persons in said kitchen at the time of the alleged shooting.

21. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously admitted in evidence Exhibit S. 14 (Case, pp. 316-321.)

22. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously permitted the case to be reopened and permitted the State to adduce further testimony to contradict the defense, after counsel for the defense and the prosecutor had both summed up on the previous day. (Case, p. 322.)

23. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to allow the expert witness, William A. Jones, in behalf of the defendant, to be asked of and answer the following question (Case, p. 335):

Q Now, if that pistol is gripped in the right hand and that right hand gripping it is also gripped by another hand and there is a struggle to get the pistol or to wrest the pistol from the hand who gripped it first in how many seconds could six or seven shots be fired?

Mr. Conlon: I object.

The Court: Sustained.

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

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

24. That the said Court before whom, &c., at and upon the trial of the issue so joined between

the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"Even if the circumstances be such as to require the use of force to repel the assault, he will be inexcusable if he carried his defense beyond the bounds of reasonable necessity or the reasonable appearance of necessity." (Case, p. 343.)

25. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"And the State contends that it is improbable, indeed, I think, the State contends it is impossible or almost so that this girl could have been shot four times as the doctor testified she was—four shots in that manner unintentionally." (Case, p. 346.)

26. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"If you accept it then the defendant is not guilty and you must so find him." (Case, p. 343.)

27. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"If on the other hand you reject the contentions of the defendant, you disbelieve them—if you disbelieve him, then I would suggest that you next take up the contentions of the prosecutor." (Case, p. 344.)

28. That the said Court before whom, &c., at and upon the trial of the issue so joined between

the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"If the defendant's intent was to kill the deceased girl, Doll, and the killing was not wilfull, deliberate and with premeditation, then defendant is guilty of murder in the second degree." (Case, p. 344.)

29. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"By the killing being wilful, the law means only that the defendant's acts be voluntary, of his own will, as distinguished from someone else's will." (Case, p. 344.)

30. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, eroneously charged the jury as follows:

"By deliberate and premeditated the law does not mean any particular length of time need intervene between the formation of the design or purpose to kill and its execution." (Case, p. 344.)

31. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"Time sufficient to clearly and fully conceive the design to kill, and purposely and deliberately to execute it, satisfies our statute." (Case, p. 344.)

32. That the said Court before whom, &c., at and upon the trial of the issue so joined between

the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"Now, the statute requires that the jury, if it finds a conviction of murder shall designate whether they find murder in the first degree or murder in the second degree, so you will please remember, that if you should find the defendant guilty of murder, you are to specify in which degree is your verdict?" (Case, p. 348.)

33. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"There has been testimony in this case to the effect that the defendant fled after the alleged commission of this crime with which he is now charged." (Case, p. 346.)

34. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"The State has produced a witness who says she saw the defendant in the room with Doll quite shortly before hearing the shots, or before they were heard, and she says that at that time she saw no one else in that room." (Case, p. 344.)

35. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously charged the jury as follows:

"And the State calls other witnesses which the State claims corroborate Essie Jones in his statement that he was elsewhere at the time this girl was killed. And the State produces those witnesses and attacks the story told by the defendant and says that the testimony of those witnesses shows that his testimony is false." (Case, p. 346.)

36. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"The defendant is presumed to be innocent and this presumption exists, until it is overcome by proof offered on the part of the State, which satisfies you of the guilt of the defendant of the crime charged in the indictment, in each and all of its elements, beyond a reasonable doubt."

37. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"The right of self defense may arise from circumstances which justify a reasonable apprehension of great bodily harm, and while the defendant may not have been in actual peril, yet he would have the right if he had reasonable apprehension of great bodily harm, to use the weapon as he did in defense of himself."

38. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"You should determine whether or not it reasonably appeared, by the action of Essie

Jones, in attacking the defendant with his right hand in his hip pocket, to the defendant that he was, in fact, in serious danger and that, in the heat of the trouble, it appeared reasonably necessary to pull his gun as the only means of preserving his life or protecting himself from serious bodily harm."

39. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"If you have a reasonable doubt as to whether the defendant did or did not draw his pistol in self defense, you must acquit him."

40. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"If you have a reasonable doubt as to the manner in which the automatic pistol was fired and the shells exploded during the struggle for the pistol, you must acquit the defendant."

41. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"In passing upon the acts and actions of the defendant, you, the jury, are not to hold him in the same cool and correct judgment which you are able to form, but should put

yourselves in his place, and judge his acts by the facts and under the circumstances by which you find he was surrounded."

42. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"If you believe that the defendant's life had been threatened by Essie Jones and that fact, under the surrounding circumstances created such apprehension in the mind of the defendant that it reasonably appeared to be necessary, as the only means of protecting himself from serious bodily harm, to draw his pistol and the shots were fired under those circumstances, you must acquit the defendant."

43. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"Although the defendant is required to submit proof and circumstances sufficient to give rise to his defense or self-defense, it still remains the duty of the State to prove beyond a reasonable doubt that what the defendant did, in drawing his pistol, was not in self-defense, and if the State does not so satisfy you, there must be an acquittal."

44. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry

Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"The proof adduced by the defendant must not establish that the killing of the deceased was in fact absolutely necessary in order to save his own life, it is sufficient if it is established that the drawing of the pistol by the defendant reasonably appeared necessary in order to protect himself from serious bodily harm."

45. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"To find the defendant guilty of a greater offense than murder in the second degree, the State must prove beyond a reasonable doubt that the defendant wilfully, deliberately and premeditatedly intended to take the life of the deceased, and it is not sufficient if the State satisfies you that the defendant intended to do the deceased grievous bodily harm."

46. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"If, in considering this case and applying the principles of law given you by the Court, you should have a reasonable doubt as to whether the defendant is guilty of manslaughter or murder in either degree, that doubt must be resolved in favor of the defendant."

47. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"You must weigh the evidence from a viewpoint most favorable to the defendant, and give him the benefit of the reasonable doubt in all your considerations."

48. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"It is the duty of the State to prove beyond a reasonable doubt that the defendant was not acting in self-defense; otherwise there must be an acquittal."

49. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously refused to charge the jury the following request to charge of the defendant:

"If you believe that the circumstances were such, that the defendant had reasonable cause to believe that he was in danger of bodily harm at the hands of Essie Jones and drew his pistol to protect himself and a struggle ensued, causing shots to be fired accidentally and some of them struck the deceased, the defendant must be acquitted."

50. That the said Court before whom, &c., at and upon the trial of the issue so joined between the State of New Jersey and the said Harry Scott, erroneously omitted and refused to instruct the jury that, under the indictment a verdict of "manslaughter" might be found.

There are divers other errors in the record and proceedings aforesaid and in the giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside.

WHEREFORE, the said Harry Scott prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing, and that he may be restored to all which he has lost by occasion thereof.

J. VICTOR D'ALOIA,
Of Counsel for Plaintiff-in-Error.

REASONS FOR REVERSAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,*	*In Error.*
vs.	*Reasons for Reversal.*
HARRY SCOTT, *Plaintiff-in-Error.*	

And now comes the said Harry Scott by J. Victor D'Aloia, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the said writ of exceptions and also in giving the verdict and judgment aforesaid, there is manifest error, and the said Harry Scott says that said judgment should be reversed and assigns the following reasons or causes:

1. Because the Trial Court permitted the witness Rosie Lee Cheesbar to be asked and answer the following question:

> "Q Mrs. Cheesbar, on Wednesday night, following the Monday when Scott and Doll moved to your house, tell us what happened."

2. Because the Trial Court permitted the witness Edward Higgins to be asked and answer the following question:

> "Q Will you tell us what Harry Scott did and said on that occasion?"

3. Because the Trial Court refused to strike out the testimony of the witness Edward Higgins.

4. Because the Trial Court permitted the witness Pearl Higgins to be asked and answer the following question:

"Q Just tell us what happened when Scott came in."

5. Because the Trial Court refused to permit counsel for the defense to ask the following question of the witness Mary Jones:

"Q Now, isn't it a fact that you know that Essie said that if Scott would fuss around with Doll he was going to get shot?"

6. Because the Trial Court refused to strike out that part of the answer to the following question asked of the witness Mary Jones by the prosecutor as is italicized:

"Q I show you Exhibit S. 8 for identification and ask you if you ever saw that gun before? A That gun what Harry have, now, I can't say that that was the gun, *but the gun that Harry had, by the way he took the pistol and shoved Doll in the face and said, 'Come on out of here.'* "

7. Because the Trial Court ordered the plaintiff-in-error to stand up.

8. Because the Trial Court asked the witness Eva Ramos the following question:

"The Court: You cannot say he is and cannot say he is not?

Witness: No."

9. Because the Trial Court permitted the witness Gertrude Wilson to be asked and to answer the following question:

"Q Tell us what happened."

10. Because the Trial Court refused to permit counsel for the defense to cross examine the witness for the State Frank W. Hemmer.

11. Because the Trial Court refused to permit the witness Frank W. Hemmer to be asked and answer the following questions:

"Q Does the written statement show in your writing, the handwriting of the officer who took it down, any contradiction in this man's story?

"Q Did you put down there was a grappling for the gun?

"Q Did you put down there was a fight in there?"

12. Because the Trial Court admitted in evidence the photograph of the body of the deceased taken at the morgue.

13. Because the Trial Court admitted in evidence certain empty shells, bullets and slugs found several hours after the alleged shooting.

14. Because the Trial Court permitted the prosecutor to cross examine the plaintiff-in-error about a person named Anna James and to ask and compel the answers to the following questions:

"Q And where did she live when she got to Newark?"

"Q Did you ever live with Anna here in Newark?"

"Q Did you ever sleep in the same house with Anna James?"

"Q And she suggested that she wanted to come to Newark? A Yes."

"Q What for?"

"Q Well, then, how did she expect to live with you and Doll if you were not living together?"

"Q And when you got to Newark and you told her Doll was dead, what did she then decide to do?"

"Q Is that her signature?"

15. Because the Trial Court permitted the prosecutor to use a paper sketch in cross examining the plaintiff-in-error after the following testimony had been given in reference to it:

"Q What does this paper represent? A I don't know, sir.

Mr. D'Aloia: I object to that question; he did not draw it; the officer drew it.

The Court: He said he did not know.

Q You mean to say you don't know what that diagram is supposed to represent? A No, sir, I don't know what it is supposed to represent.

Q Were you told by Hemmer or Staats or Gehring what it was supposed to represent? A No, sir."

16. Because the Trial Court permitted the prosecutor to use and ask questions from a statement in writing alleged to have been made by the plaintiff-in-error at the time of his arrest.

17. Because the Trial Court permitted the witness Anna James to testify in rebuttal as follows:

"Q Where do you live? A 114 Wickliffe street.

Q And where did you live before you lived there? A I lived in Philadelphia, 920 Brown street.

Q I show you a letter, S. 13 for identification, and ask you if you wrote that letter to Harry Scott?

Mr. D'Aloia: I object. That it not proper rebuttal.

Q Did you write that letter? A Yes, I wrote that letter.

Q Is that the envelope? A Yes.

Q Did you mail the letter? A Yes.

Q Where? A Where I mailed it from?

Q Yes. A I mailed it from Philadelphia.

Q And is that the letter you wrote to Harry Scott? A Yes.

Mr. D'Aloia: I move to strike out that testimony.

The Court: Not yet.

Mr. D'Aloia: I move to strike out the testimony.

The Court: Denied." (Exception.)

18. Because the Trial Court permitted the witness Anna James to testify in rebuttal as follows:

"Q Did you come to Newark with Harry Scott?

Mr. D'Aloia: I object to that question, because it is not proper rebuttal. It has been testified by him that she did come to Newark with Harry Scott.

(Argument.)

The Court: I will allow it."

19. Because the Trial Court permitted the witnesses James Wilson, Nona Jackson and Charles Bosley to testify in rebuttal.

20. Because the Trial Court permitted the witness Frank Hemmer, a detective, to be called in rebuttal and examined with reference to what purported to be a sketch or plan of the kitchen where the alleged shooting took place, drawn by the detective at police headquarters from his own memory, and upon which certain marks were made by the witness, purporting to show the respective positions of the persons in said kitchen at the time of the alleged shooting

21. Because the Trial Court admitted in evidence a sketch known as S. 14.

22. Because the Trial Court permitted the case to be reopened and permitted the State to adduce further testimony to contradict the defense, after counsel for the defense and the prosecutor had both summed up on the previous day.

23. Because the Trial Court refused to allow the expert witness William A. Jones to be asked of and answer the following question:

> "Q Now, if that pistol is gripped in the right hand and that right hand gripping it is also gripped by another hand and there is a struggle to get the pistol or to wrest the pistol from the hand who gripped it first in how many seconds could six or seven shots be fired?
>
> Mr. Conlon: I object.
>
> The Court: Sustained.
>
> Defendant's counsel prays an exception to this ruling the Court.
>
> Exception allowed; let it be sealed, and it is signed and sealed accordingly."

24. Because the Trial Court improperly charged the jury as follows:

> "Even if the circumstances be such as to require the use of force to repel the assault, he will be inexcusable if he carried his defense beyond the bounds of reasonable necessity or the reasonable appearance of necessity."

25. Because the Trial Court improperly charged the jury as follows:

> "And the State contends that it is improbable; indeed, I think, the State contends it is impossible or almost so that this girl could have been shot four times as the doctor testified she was—four shots in that manner unintentionally."

26. Because the Trial Court improperly charged the jury as follows:

> "If you accept it then the defendant is not guilty and you must so find him."

27. Because the Trial Court improperly charged the jury as follows:

> "If on the other hand you reject the contention of the defendant, you disbelieve them —if you disbelieve him, then I would suggest that you next take up the contentions of the prosecutor."

28. Because the Trial Court improperly charged the jury as follows:

> "If the defendant's intent was to kill the deceased girl, Doll, and the killing was not wilful, deliberate and with premeditation, then defendant is guilty of murder in the second degree."

Reasons for Reversal.

29. Because the Trial Court improperly charged the jury as follows:

"By the killing being wilful, the law means only that the defendant's acts be voluntary, of his own will, as distinguished from someone else's will."

30. Because the Trial Court improperly charged the jury as follows:

"By deliberate and premeditated the law does not mean any particular length of time need intervene between the formation of the design or purpose to kill and its execution."

31. Because the Trial Court improperly charged the jury as follows:

"Time sufficient to clearly and fully conceive the design to kill, and purposely and deliberately to execute it, satisfies our statute."

32. Because the Trial Court improperly charged the jury as follows:

"Now the statute requires that the jury, if it finds a conviction of murder shall designate whether they find murder in the first degree or murder in the second degree, so you will please remember, that if you should find the defendant guilty of murder, you are to specify in which degree is your verdict."

33. Because the Trial Court improperly charged the jury as follows:

"There has been testimony in this case to the effect that the defendant fled after the alleged commission of this crime with which he is now charged."

Reasons for Reversal.

34. Because the Trial Court improperly charged the jury as follows:

"The State has produced a witness who says she saw the defendant in the room with Doll quite shortly before hearing the shots, or before they were heard, and she says that at that time she saw no one else in that room."

35. Because the Trial Court improperly charged the jury as follows:

"And the State calls other witnesses which the State claims corroborate Essie Jones in his statement that he was elsewhere at the time this girl was killed. And the State produces those witnesses and attacks the story told by the defendant and says that the testimony of those witnesses shows that his testimony is false."

36. Because the Trial Court refused to charge the jury as follows:

"The defendant is presumed to be innocent and this presumption exists until it is overcome by proof offered on the part of the State, which satisfies you of the guilt of the defendant of the crime charged in the indictment, in each and all of its elements, beyond a reasonable doubt."

37. Because the Trial Court refused to charge the jury as follows:

"The right of self defense may arise from circumstances which justify a reasonable apprehension of great bodily harm, and while the defendant may not have been in actual peril, yet he would have the right, if he had reasonable apprehension of great bodily

harm, to use the weapon as he did in defense of himself.''

38. Because the Trial Court refused to charge the jury as follows:

''You should determine whether or not it reasonably appeared, by the action of Essie Jones, in attacking the defendant with his right hand in his hip pocket, to the defendant that he was, in fact, in serious danger and that, in the heat of the trouble, it appeared reasonably necessary to pull his gun as the only means of preserving his life or protecting himself from serious bodily harm.''

39. Because the Trial Court refused to charge the jury as follows:

''If you have a reasonable doubt as to whether the defendant did or did not draw his pistol in self defense, you must acquit him.''

40. Because the Trial Court refused to charge the jury as follows:

''If you have a reasonable doubt as to the manner in which the automatic pistol was fired and the shells exploded during the struggle for the pistol, you must acquit the defendant.''

41. Because the Trial Court refused to charge the jury as follows:

''In passing upon the acts and actions of the defendant, you, the jury, are not to hold him in the same cool and correct judgment which you are able to form, but should put yourselves in his place, and judge his acts by the facts and under the circumstances by which you find he was surrounded.''

42. Because the Trial Court refused to charge the jury as follows:

''If you believe that the defendant's life had been threatened by Essie Jones and that fact, under the surrounding circumstances created such apprehension in the mind of the defendant that it reasonably appeared to be necessary, as the only means of protecting himself from serious bodily harm, to draw his pistol and then a struggle ensued for the pistol and the shots were fired under those circumstances, you must acquit the defendant.''

43. Because the Trial Court refused to charge the jury as follows:

''Although the defendant is required to submit proof and circumstances sufficient to give rise to his defense or self-defense, it still remains the duty of the State to prove beyond a reasonable doubt that what the defendant did, in drawing his pistol, was not in self-defense, and if the State does not so satisfy you, there must be an acquittal.''

44. Because the Trial Court refused to charge the jury as follows:

''The proof adduced by the defendant must not establish that the killing of the deceased was in fact absolutely necessary in order to save his own life, it is sufficient if it is established that the drawing of the pistol by the defendant reasonably appeared necessary in order to protect himself from serious bodily harm.''

45. Because the Trial Court refused to charge the jury as follows:

"To find the defendant guilty of a greater offense than murder in the second degree, the State must prove beyond a reasonable doubt that the defendant wilfully, deliberately and premeditatedly intended to take the life of the deceased, and it is not sufficient if the State satisfies you that the defendant intended to do the deceased grievous bodily harm."

46. Because the Trial Court refused to charge the jury as follows:

"If, in considering this case and applying the principles of law given you by the Court, you should have a reasonable doubt as to whether the defendant is guilty of manslaughter or murder in either degree, that doubt must be resolved in favor of the defendant."

47. Because the Trial Court refused to charge the jury as follows:

"You must weigh the evidence from a viewpoint most favorable to the defendant, and give him the benefit of the reasonable doubt in all your consideration."

48. Because the Trial Court refused to charge the jury as follows:

"It is the duty of the State to prove beyond a reasonable doubt that the defendant was not acting in self-defense; otherwise there must be an acquittal."

49. Because the Trial Court refused to charge the jury as follows:

"If you believe that the circumstances were such, that the defendant had reasonable

cause to believe that he was in danger of bodily harm at the hands of Essie Jones and drew his pistol to protect himself and a struggle ensued, causing shots to be fired accidentally and some of them struck the deceased, the defendant must be acquitted."

50. Because the Trial Court omitted and refused to instruct the jury that, under the indictment a verdict of manslaughter might be found.

51. Because the verdict rendered was contrary to the weight of evidence.

WHEREFORE, because the aforesaid reasons or some of them constitute error prejudicial to the said Harry Scott, the plaintiff-in-error, and he prays that the said judgment and sentence be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost by occasion thereof.

J. VICTOR D'ALOIA,
Of Counsel for Plaintiff-in-Error.

STIPULATION.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HARRY SCOTT, *Plaintiff-in-Error.*	*On Error.* *Stipulation.*

It is stipulated by Joseph L. Smith, Esquire Prosecutor of the Pleas, and the plaintiff-in-error, as follows:

The following is a summary of the Exhibits admitted in evidence upon the trial of said cause:

S. 1. Photograph showing the front of premises, known as 76 Barclay street, Newark, New Jersey.

S. 2. Photograph of the kitchen on the second floor of 76 Barclay street, Newark, New Jersey.

S. 3. Photograph of middle room and part of front room of second floor of premises, 76 Barclay street, Newark, New Jersey.

S. 4. Photograph showing the rear of premises, 76 Barclay street, Newark, New Jersey.

S. 5. Photograph of the body of the deceased taken at the morgue on July 4, 1927.

S. 6. Plan of the second floor of premises and also showing buildings adjacent to 76 Barclay street, Newark, New Jersey.

S. 7. An enlarged plan of the same second floor of said premises.

S. 8. Automatic pistol.

S. 9. Cartridges and shells.

S. 10. 3 slugs.

S. 11. Bullet found imbedded in kitchen table.

S. 12. Papers found in trunk belonging to Harry Scott.

S. 14. Paper sketch drawn by detective at police headquarters.

S. 17. Card of membership in colored Elks.

D. 1. Note in code written by deceased to Harry Scott.

It is hereby stipulated that none of the exhibits need be printed except S. 14, of which exhibit the State will furnish a photostatic copy for the use of the Court.

JOSEPH L. SMITH,
Prosecutor of the Pleas.

J. VICTOR D'ALOIA,
Attorney for Plaintiff-in-Error.

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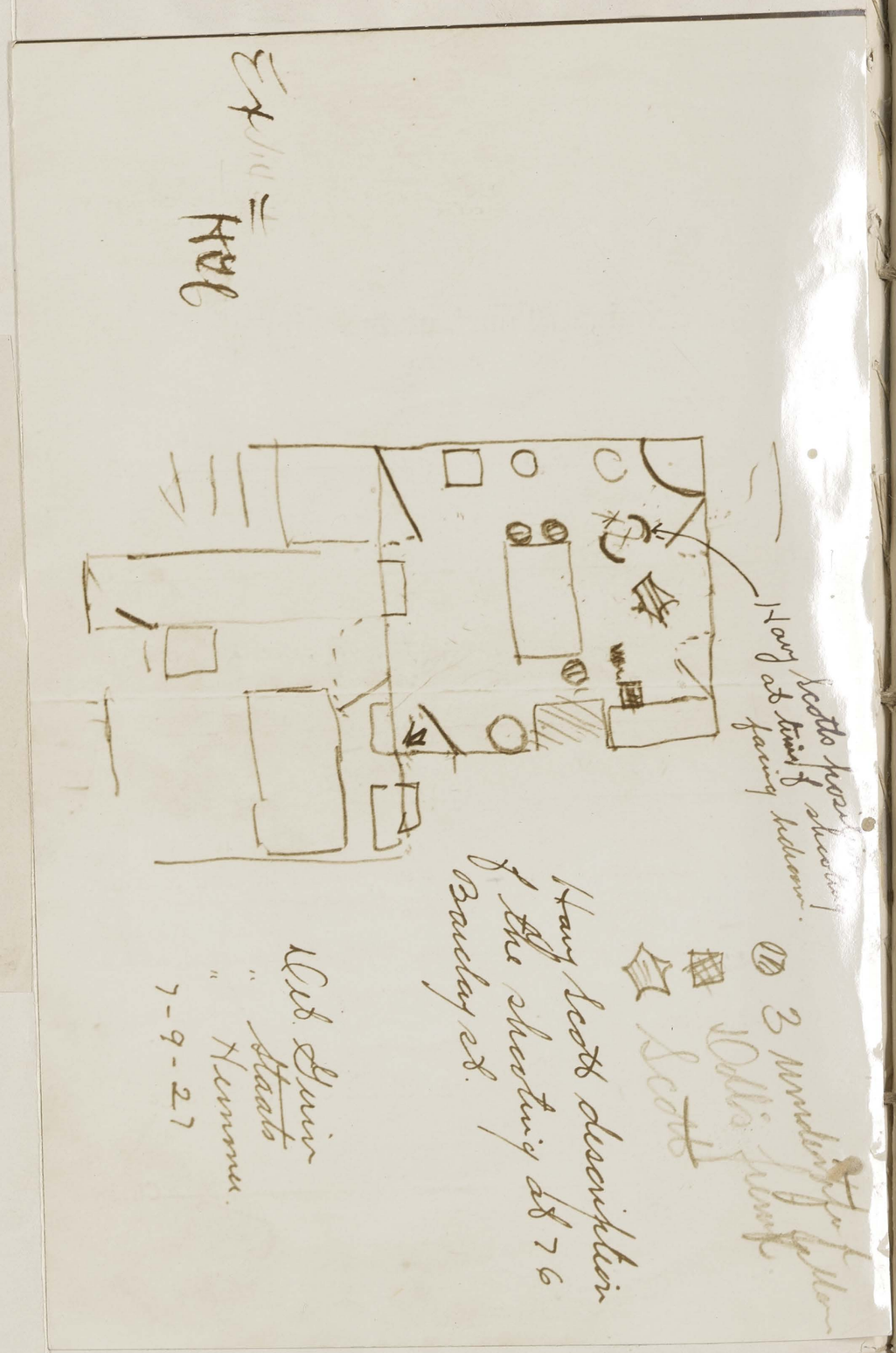

EXHIBIT
S-14

62. FEB.T.1923

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

State of New Jersey, *Defendant-in-Error,* *vs.* Harry Scott, *Plaintiff-in-Error.*	*In Error.*

BRIEF FOR PLAINTIFF-IN-ERROR.

Statement Under the Rules.

Harry Scott, a colored man, was convicted of murder in the first degree in the Essex County Court of Quarter Sessions, the Honorable Dallas Flannagan presiding.

He was presented on a charge alleging, that he did wilfully, feloniously and of his malice aforethought kill and murder one Lorenza Robinson, on the third day of July, 1927. The jury rendered a verdict recommending life imprisonment and the Court on the third day of November, 1927, did sentence the defendant Harry Scott to State's Prison, at hard labor for life. To review this judgment, this writ was taken.

The case will be argued under four separate points. Under Point I will be argued the assignments and reasons for reversal dealing with erroneous admission and rejection of evidence by the trial court. Under Point II will be argued errors in the charge of the Court. Under Point III will be argued the refusal of the Court to charge certain requests of the defendant. Under Point IV will be argued, that the verdict was against the weight of the evidence.

Facts.

Since the facts in this case will be argued at length under Point IV of the brief, a repetition thereof under this heading is deemed unnecessary.

POINT I.

Under this heading will be argued assignments addressed to the erroneous admission and rejection by the trial court of evidence at the trial.

Assignments and reasons Nos. 17-18.

The testimony with respect to these assignments appears on pages 294-295 of the case, and deals with the testimony of a witness, Anna James, who testified sur-rebuttal.

Under the cross examination of the defendant Harry Scott on pages 221-224, testimony, with respect to the relationship of the defendant with one Anna James, was brought into the case by the prosecutor. On page 224, after a series of objections by the defendant's counsel, the prosecutor stated that the testimony, among other things, was for the purpose of *showing the defendant's relationship with Anna James.* It is contended that the attempt was to show illicit relationship with Anna James after the crime was committed. Having obtained certain information with respect to a letter, Exhibit S. 13, alleged to have been written by Anna James to the defendant, and also evidence of his relationship with Anna James, on rebuttal, over objections of the defendant, Anna James, on behalf of the State, was permitted to testify with respect to the letter and also with respect to her intimacy with the defendant. This was purely a collateral matter brought out on cross examination, and

transgressed the familiar rule of evidence that a collateral matter elicited on cross examination cannot be subsequently rebutted by the party thus introducing it in evidence. The testimony was clearly incompetent, and the witness should not therefore have been permitted to testify.

The Court committed error in permitting the witness Anna James to testify under the circumstances herein outlined.

Assignment of Error 23, Reason for Reversal 23:

> "Q Now, if that pistol is gripped in the right hand and that right hand gripping it is also gripped by another hand and there is a struggle to get the pistol or to wrest the pistol from the hand whom gripped it first, in how many seconds could six or seven shots be fired?
>
> Mr. Conlon: I object.
>
> The Court: Sustained.
>
> Defendant's counsel pray an exception to this ruling of the Court.
>
> Exception allowed; let it be sealed, and it is signed and sealed accordingly."

The testimony, with respect to this assignment, appears on page 335. William A. Jones was called in behalf of the defendant and qualified as an expert on firearms and the use of firearms. There was testimony in this case offered by the defendant (see p. 273) that Essie Jones had seized the hand in which defendant had the gun, and had applied pressure to it, sufficient to discharge it.

The witness Jones testified that he had studied the effect of grips on guns in struggles and was of the opinion that the rapidity of its discharge depends on the position of the person at the time he is using the gun. The hypothetical ques-

tion was clearly competent to show whether or not the gun could be quickly fired in rapid succession, if another person grips the hand containing the gun and there is a struggle. *The Court was of the opinion that it was unnecessary to introduce a second hand* (see p. 335).

However, evidence in this case fully supported the hypothetical question. No question as to the qualifications of the witness to testify having been raised, the question was proper. State v. *Powell,* 7 N. J. L. 244.

The defendant was entitled to have this testimony considered by the jury as it would have the tendency to support and corroborate his theory.

The question was entirely proper, and the Court committed error in refusing to permit the witness to answer.

POINT II.

The following assignments and reasons for reversal are all addressed to errors contained in the judge's charge to the jury.

Assignment of Error 24, Reason for Reversal 24:

> "Even if the circumstances be such as to require the use of force to repel the assault, he will be inexcusable if he carried his defense beyond the bounds of reasonable necessity or the *reasonable appearance of necessity.*"

Objection is made to the portion of the charge which is in italics. It is contended that this part of the charge is erroneous.

The defendant is inexcusable if he carried his defense beyond the bounds of reasonable neces-

sity, but the qualifying language places him in a position where he is inexcusable, if he carried his defense beyond the reasonable *APPEARANCE* of necessity. This language is not only confusing, but is not the law in this State.

State v. *Lionetti,* 107 Atl. 47; 93 N. J. L. 24.

Assignment of Error and Reason for Reversal 29:

> "By the killing being wilful, the law means only that the defendant's act be voluntary, of his own will, as distinguished from someone else's will."

By this instruction, the Court permitted the jury to determine the "wilfulness" of the killing on the mere determination of whether or not the killing was the product of the defendant's will or under duress. This is clearly contrary to this court's definition of the word "wilful" when applied to murder in the first degree.

In the case of *State* v. *Deliso,* 69 Atl. Rep. 218, 75 N. J. L. 808, this court defined the word "wilful" when applied to murder in the first degree, in the following manner:

> "And in this connection it should furthermore be pointed out that the 'wilfulness' requisite to murder in the first degree and the 'intent' essential to murder at common law differ widely in this, viz, that the latter is the assent of the will to the doing of an act which when done is murder in the broad common law sense, *whereas the former is the adoption by the will of a like design characterized in addition by the premeditation and deliberation that are required by our statute to constitute the crime of murder in the first degree.*" (Italics mine.)

In the case of *State* v. *Mangano,* 77 N. J. Law 544, 72 Atl. 366, this court defined the word "wilful" as follows:

> "It should be evident, from what has been said, that an intent to kill carried out does not constitute murder in the first degree unless coupled with the premeditation and deliberation prescribed by the statute, and which, as we have seen, require time; not a long time, not necessarily an hour or a minute, as was said in Donnelly case, but still an appreciable time, and *not until after such premeditation and deliberation have taken place does the act become 'wilful' in the sense intended by the statute.*" (Italics mine.)

This court held in the case of *State* v. *Clayton,* 83 N. J. L. 673, 85 Atl. 174, that any instruction of the Court which eliminates some part of the legislative definition and to that extent, detracts from the prescribed condition for which alone the law reserves its supreme penalty is error.

In this case, the defendant was convicted of murder in the first degree. The mere fact that the trial court defined the crime in the words of the statute in nowise minimizes the error, for as was said in the case of *State* v. *Clayton, supra,*

> "It is argued that this error was harmless because in the body of the charge the degrees of murder had been accurately defined. So they had; but how were the jury to know which was the law? Our theory of jury trials proceeds upon the fundamental assumption that the jury will take the law from the court, not that they shall be judges of its correctness or that as between two conflicting statements of the law they will unerringly single out the correct one."

To permit a jury to determine the "wilfulness" of a murder, solely upon its determination of whether or not the murder was the product of the defendant's own will or the result of duress, not only detracts from the statutory definition of the crime of murder in the first degree, but also placed the defendant in a position, where, if he was unable to show that the killing was the product of another man's mind, was liable to conviction of murder in the first degree, notwithstanding the murder was undeliberated and unpremeditated.

This instruction, like the instruction contained in the case of *State* v. *Deliso, supra,* entirely left out of consideration the elements of premeditation and deliberation which must have entered into the "wilfulness" of the act before the mandate of the statute was satisfied.

In declaring such a definition error, this court said in *State* v. *Deliso, supra:*

> "So that, even if the circumstances rehearsed in the instruction in the present case fully satisfied the word 'wilful' in the statutory description, it would still be fatally inadequate, in that it is no way apprised the jury that *into such wilfulness* the elements of premeditation and deliberation must have entered." (Italics mine.)

It is respectfully urged that for this error, harmful to the defendant in his defense on the merits, the judgment should be reversed and a new trial awarded.

Assignment of Error 32 and Reason for Reversal 32 and Assignment of Error 50 and Reason for Reversal 50 are argued together.

> "Now the statute requires that the jury after it finds a conviction of murder shall designate whether they find murder in the

> first degree or murder in the second degree, so you will please remember, that if you should find the defendant guilty of murder, you are to specify in which degree is your verdict."

In conjunction with this assignment and reason for reversal, it is deemed wise to argue assignment and reason 46, which is addressed to the refusal of the Court to charge:

> "If, in considering this case and applying the principles of law given you by the Court you should have a reasonable doubt as to whether the defendant is guilty of manslaughter or murder in either degree, that doubt must be resolved in favor of the defendant."

It is argued, that by the instruction complained of, the trial court excluded from the consideration of the jury, the degree of manslaughter. It is the law, that under an indictment for murder, the defendant might be convicted of murder in the second degree or of manslaughter: *State* v. *Kubaszewski,* 86 N. J. Law 260, 92 Atl. Rep. 387, and in cases where manslaughter is a tenable theory on the evidence, the charge should so declare. *State* v. *Palmieri,* 107 Atlantic Reporter 407.

While the trial court, at the request of the defendant, did define manslaughter (see Case, p. 339) he continued by saying:

> "The defendant does not say, however, that he was in any transport of passion or heat of blood or that the killing was intentional. He says that the gun was discharged unintentionally while he was engaged in self-defense."

This to a great degree nullified the instruction requested.

Even though the defendant in so many words did not say he was in a passion, yet there was evidence and circumstances that he was in fear and was excited and had engaged in a struggle and believed that Jones was about to kill him. It is a recognized trait of human nature, that a man, who believes his life is in danger and thus enters a conflict to defend himself, is undoubtedly aroused and in passion. At least it was for the jury to decide, whether or not under the circumstances he was. In this connection, the case of *John Stevenson* v. *United States,* 162 U. S. 313, 16 S. C. R. 839, 40 Law Ed. 980, is entirely in point. In that case, Mr. Justice Peckham, in behalf of the United States Supreme Court, said:

> "It is objected that while the evidence above set forth was proper to be submitted to the jury upon the issue of self-defense, it was not of that character to even raise an issue as to the grade of the crime, if the theory of self-defense were not sustained. We do not see the force of the objection. *The fact that the evidence might raise an issue as to whether any crime at all was committed is not in the least inconsistent with a claim that it also raised an issue as to whether or not the plaintiff-in-error was guilty of manslaughter instead of murder.* It might be argued to the jury, under both aspects, as an act of self-defense, and also as one resulting from a sudden passion and without malice. The jury might reject the theory of self-defense, as they might say the shot from the pistol of the deceased had already been fired and the plaintiff-in-error had not been harmed, and, therefore, firing back was unnecessary and was not an act of self-defense. But why should the other issue be taken from the jury and they not be permitted to pass upon it as upon a question of fact?"

and continuing in the same opinion, that Learned Justice said:

> *"Is is difficult to think of a case of killing by shooting, where both men were armed and both in readiness to shoot, and when both did shoot, that the question would not arise for the jury to answer, whether the killing was murder or manslaughter, or a pure act of self-defense."* (Italics mine.)

After the Court had concluded his charge, counsel for the defendant called the Court's attention to the fact, *that the Court had left out of consideration a possible verdict of manslaughter* (Case, p. 350). Nowhere in the Court's charge is there an instruction that the jury could return a verdict of manslaughter.

In this case, there was evidence upon which the jury could base a verdict of manslaughter.

Frank W. Hemmer, on page 157, said:

"Q What did he say? A He said that on that night he came there about nine o'clock, he had heard that Doll was in that house, and he went there looking for her; that he went upstairs and he got into the kitchen and there were four or five men there and Doll was there and he had spoken to Doll about leading the life she said she was leading there, taking in men or something, and that Essie Jones came up to him and questioned his right to speak to Doll about what kind of life she wanted to lead; Essie argued with him and finally pulled out a gun.

Q Who pulled out a gun? A Essie Jones and pointed it at Harry Scott, and that Scott took ahold of the gun and in the struggle for the possession of the gun between the two, Essie Jones and Scott, that the gun went off. *Later he admitted that the gun was his and that when Essie struck at him he pulled this gun and pointed it at Essie, and that Essie took hold of the gun and that in the struggle for the gun, the gun went off striking Doll and causing her to be shot several times."*

The testimony of Harry Scott on pages 204-205 of the case, is as follows:

"Q I show you Exhibit S. 2, a picture of the kitchen. Do you see the washtubs? A Yes.

Q Where were you standing? A I was standing over here.

Q Between the washtubs and the tray? A Yes, right over here in that corner.

Q This corner? A Yes.

Q Was that door closed leading into the bathroom? A Yes.

Q Where was Essie Jones? A He was standing over to the door leading into the bedroom.

Q Which side of the room? A I would say between that bedroom door and the door that led into the hall from the kitchen.

Q Was there a dresser there? A It was a little stand that fits right in between those two doors.

Q Is that where he was standing? A Yes.

Q And you were standing over here at the sink, near the door leading to the bathroom and then the table was by the center of the room? A Yes.

Q What happened? A Well, I called Doll to me.

Q Did she come around to where you were?

Mr. Conlon: I object.

Q What did she do when you called her? A Do you want me to show you on the plan?

Q Yes.

The Court: No. I would rather you would go right ahead and let us hear it.

Q Now, what did she do when you called her? A She comes around the table, between the table and the range, and she comes to me. Well, when she come to me, I said

'Doll, what do you want with me; you told me to come back. Last night you told me to come over here.' I said, 'Now, I don't like the life you are living. I am surprised at your living this kind of a life.' I said, 'You also got too nice a people according to letters which you have received from your mother.'

Q What happened next? A And that time Essie Jones walks up, shoves her away with his left hand, his right hand in his hip pocket, and grabs me under the arm.

Q With what hand? A With his left hand.

Q Come down here and show me how he grabbed you. I am you. You are Essie Jones.

The Court: Before we have the demonstration, let us have the story. Then go down and demonstrate.

Mr. D'Aloia: I think the time is reached now.

The Court: No. I desire him to go ahead and tell in his own way.

Mr. D'Aloia: All right.

Q He grabbed you with one hand? A Yes.

Q With what hand? A He grabbed me with his left hand, and his right hand in his hip pocket.

Q Then what happened? A He said, 'One of us is going to hell tonight.'

Q What did you do? A At that time I was afraid of him. I pulled my gun this way. He grabs me with his left hand that way. The girl steps out to the right of him, to the left of me. While he was holding my hand the gun was going off and she got the shots from the gun."

Page 272 of the testimony shows the defendant testified as follows:

"Q And when you were standing there in the kitchen you called Doll over to you? A Yes.

Q And Essie Jones came to you? A Yes.

Q And he had his hand in his right hip pocket? A Yes.

Q And he pushed Doll away with his left arm, is that right? A Yes.

Q And he grabbed you with his left hand? A Yes.

Q And all this time his right hand was in his right hip pocket? A Yes.

Q And you pulled your gun? A Yes.

Q And you pulled your gun with your right hand? A Yes.

Q And he grabbed your right wrist with his left hand? A Yes.

Q And his right hand was still in his right hip pocket? A I can remember it was in there when he grabbed my hand.

Q In other words, up to the time you pulled the gun and he grabbed your right wrist with his left hand, Essie Jones still had his right hand in his right hip pocket? A When he grabbed my hand he had his right hand in his right hip pocket.

The Court: Is that the manner he grabbed your hand the way you are holding it?

The Witness: Well, he grabbed it, up near here. I cannot show you because this is my left and right hand.

Q Now, just put your hand right there again as you had it. Now, can you depict that position?

The Witness: He grabbed it this way and gave it a twist that way and just like that we were going.

Mr. D'Aloia: He grabs the defendant's right hand at the back of it with his left hand just above the thumb, back of the thumb with the fingers of the grabbed hand close over the upper part of the wrist, and the palm of the grabbed right hand.

The Court: Is that satisfactory to you, Mr. Prosecutor?

Mr. Conlon: That is satisfactory."

And the testimony further showed that he did not intend to kill Essie Jones (see p. 273):

> "The Court: Now, were you trying to shoot Essie Jones?
>
> The Witness: No, sir, not as I was going to shoot him, only was—
>
> The Court: I want to know if you were trying to shoot Essie Jones?
>
> The Witness: No, sir.
>
> The Court: Were you trying to shoot anybody?
>
> The Witness: No, sir.
>
> The Court: You were not trying to discharge the gun at all?
>
> The Witness: No, sir.
>
> Q Why did you pull your gun? A To protect myself.
>
> Q From Essie Jones? A Yes, in order to hold him back from me."

The fact that a deadly weapon was used does not conclusively create a presumption of malice. Malice must be determined as a fact upon all of the evidence and circumstances attending the use of the weapon. In the case of *State* v. *Maionai,* 78 N. J. Law 339; 74 Atl. 527, the Court speaking of the presumption created by use of a deadly weapon, said:

> "Whether or not such a presumption does or does not arise must ordinarily depend upon the facts of the given case."

In *State* v. *Mount,* 72 N. J. L. 365, 61 Atl. 259, the Court said:

> "It has been held in this State that a blow accidently delivered upon one while defending against an attack of another is a blow struck in self-defense." [Syllabus.]

"Manslaughter" in this State has also been defined:

> "Manslaughter is the unlawful and felonious killing of a human being made without malice express or implied."
>
> *State* v. *Agnew,* 10 N. J. L. J. 165.

Under the testimony, therefore, and the surrounding circumstances, there was a jury question as to whether or not the defendant was guilty of manslaughter. There was no eyewitness to the shooting. There was evidence of a struggle. The evidence disclosed that Jones was the aggressor. There was evidence that he had threatened the life of the defendant, and that the defendant feared him. There was evidence that he laid hands upon and seized the defendant in a menancing attitude with his hand in his pocket, as if to withdraw a gun, saying: "One of us is going to hell tonight." There was evidence that the defendant was excited. There was evidence that Jones' previous threats had been conveyed to the defendant. There was evidence that the defendant did not intend to shoot anyone and that the gun was discharged not by reason of any pressure applied by him, but either by the force used by Jones to gain possession of the gun and the defendant's attempt to retain it, or through the deliberate pressure applied by Jones in attempting to empty the gun. All of these circumstances under the law, were sufficient from which a jury, if they believed them, could find that there was no malice.

Mr. Bishop in his New Criminal Law, No. 2, Secs. 698 and 699 on page 299, says:

> "The books are not quite clear how much further the leniency of the law extends. In the facts of most cases, the passion of the assaulted person is excited; *then, his mind,*

being thus clouded, if he kills his adversary, though with a deadly weapon, his offense is only manslaughter.'' (Italics mine.)

29 *Corpus Juris,* page 1127, is authority for the proposition:

> ''For example, viz, where the killing was done because the slayer believed that he was in great danger, but the facts do not warrant such a belief, it may be murder or manslaughter according to the circumstances or, where the slayer, although acting in self-defense was not himself free from blame, the crime may be manslaughter.''

and continuing:

> ''So, although the right to kill in self-defense may have terminated, nevertheless a heat of passion created by the attending circumstances may continue, so that the killing will be manslaughter and not murder.''

This case is not different from the situation presented in the case of *State* v. *Hermann,* 77 N. J. L. 534; 76 Atl. 1087. Although in that case the defendant had not requested the Court to charge a possible verdict of manslaughter, this court concluded:

> ''In this case there was language employed which must be held to have prejudiced the defendant by excluding from the consideration of the jury the degree of manslaughter. The trial judge, after leaving to the jury, the question whether defendant inflicted the wound, and whether death resulted from the wound, proceeded to speak of the degree of defendant's criminality. After defining the degrees of murder, he concluded his remarks as follows: 'On this point, too, gentlemen, I charge you that under the law of the State it is your duty, when you render your verdict, if you find the defendant guilty, to declare the grade of the offense, either murder in the first degree or second degree. Or, if you find the defendant not guilty, then he is entitled to a verdict of acquittal.' The trial judge afterward defined the law of self-defense, but nowhere *intimated that, if the defendant was guilty, he could be convicted of any degree of homicide other than murder in one of its degrees.''* (Italics mine.)

It is therefore urged that the trial court in excluding from the jury a possible verdict of manslaughter, was in error, prejudicial to the defense on its merits.

POINT III.

These assignments and reasons for reversal are all addressed to the refusal of the trial court to charge as requested by the defendant.

For convenience, assignments of error and reasons for reversal 38, 42, 44 and 49 are argued together. They present defendant's request to charge No. 6, 10, 12 and 20, found on pages 351, 352 and 353 of the case.

These requests all presented accurate statements of the law and were designed to make clear to the jury, that if the defendant acted under a reasonable apprehension of danger, he acted in self-defense, whether there was in fact danger or not. This was not made clear to the jury in the Court's main charge. The requests being correct statements of the law and pertinent to the issue, the Court's refusal to charge them was error.

State v. *Lionetti,* 93 N. J. L. 24; 107 Atl. 47.

Assignment of error 41, reason for reversal 41:

> "In passing upon the acts and actions of the defendant, you, the jury, are not to hold him in the same cool and correct judgment which you are able to form, but should put yourselves in his place, and judge his acts by the facts and under the circumstances by which you find he was surrounded."

This brings up the refusal of the Court to charge the ninth request to charge of the defendant, found on page 351 of the case.

Nowhere in the charge was the jury instructed as to the mode by which they were to determine the reasonableness of the belief of the accused in the apprehension of danger. This request was pertinent to the issue. In some jurisdictions, *it has been held necessary to instruct the jury that in determining the question, they should view the facts and circumstances from the standpoint of the defendant.*

30 *Corpus Juris* 378, section 624, states the rule, viz:

> "Subject to the rules already stated as to the mode by which the reasonableness of the belief of accused in the imminence of danger is to be determined, it has been held proper and necessary in some jurisdictions to instruct the jury that in determining the question they should view the facts and circumstances from the standpoint of the defendant; this is true, although the issue is raised by the testimony of accused alone, although there may be some evidence of self-defense; and an instruction is erroneous which presents the issue from the standpoint of the jury, and leaves it to them to determine from their own view of the facts and circumstances whether the apprehension of danger was such as to justify defendant in using the force or means he did to protect himself."

In this connection, the Court is referred to the cases of *Scott* v. *The State,* 42 S. 184; *Trapp* v. *New Mexico,* 225 Fed. 968; *Brownlee* v. *The State,* 87 So. Western 1153.

In the case of *Scott* v. *The State, supra,* the Supreme Court of Mississippi held that the Court erred in refusing the following instruction:

> "The Court instructs the jury that in passing upon the action of the defendant, the jury should not try him by the light of after-developed events—*not hold him to the same cool and correct judgment, which they are able to form. They should put themselves in his place and judge of his acts by the facts and circumstances by which he was surrounded."* (Italics mine.)

This request was vital to the defendant's case and would have assisted the jury in properly performing their duty. It was in accord with the law as laid down in the case of *State* v. *Lionetti,* 107 Atl. 47; 93 N. J. L. 24.

The rule stated in the request is sound in law and was applicable to the issue, and the Court's refusal to charge the same was error prejudicial to the defense on the merits.

Assignment of error 45. Reason for reversal 45:

> "To find the defendant guilty of a greater offense than murder in the second degree, the State must prove beyond a reasonable doubt that the defendant wilfully, deliberately and premeditatedly intended to take the life of the deceased, and *it is not sufficient if the State satisfies you that the defendant intended to do the deceased grievous bodily harm."*

While the trial court did tell the jury that an undeliberated and unpremeditated intent to take life was second degree murder, nowhere did the

Court inform the jury that a wilful, deliberate and premeditated intent to do the deceased grievous bodily harm, was also second degree murder.

The law as stated in this request is sound. *State* v. *Kabaszewski,* 86 N. J. L. 250.

It is contended that this instruction was a proper one under the issue presented by the case, and the Court's refusal to so instruct the jury under the circumstances was error harmful to the defense on the merits.

Assignment of error 46. Reason for reversal 46:

> "If, in considering this case and applying the principles of law given you by the Court, you should have a reasonable doubt as to whether the defendant is guilty of manslaughter or murder in either degree, that doubt must be resolved in favor of the defendant."

This proposition has already been argued under Point II, in conjunction with the assignments and reasons Nos. 32 and 50.

POINT IV.

The verdict was against the weight of the evidence.

The scene of the shooting was the kitchen of an apartment on the second floor of a house at No. 76 Barclay street, Newark, New Jersey, conducted by one Rosie Lee Cheesbar. The shooting occurred on July 3, 1927, between nine and nine-thirty at night.

The deceased was a colored girl, called "Doll," with whom the defendant had been intimate.

The only witness who testified as to what occurred at the exact moment of the shooting was the defendant, although the testimony indicates others were there.

All the witnesses agree that Eva Raymo and John Hudson, both witnesses for the State, were occupying a bed chamber located between the front room (parlor) and the kitchen.

Mrs. Cheesbar says, and all the witnesses agree, she was in the front room asleep until awakened after the shooting.

There was evidence that the defendant and the deceased had quarreled previous to the day of the shooting and that the defendant had threatened her, if she did not return to live with him.

The testimony indicated that one Essie Jones was to some extent a rival of the defendant for the affections of "Doll."

Mrs. Cheesbar's establishment was a place where immoral acts were engaged in by men and women.

On the evening in question the defendant came in the front room of the apartment and found "Doll" there, entertaining three male companions who were drinking and he also imbibed with the others. Essie Jones came in and at this point Gertrude Wilson called from the street to "Doll" that she had a party of men to bring up. "Doll" went to the stairs to talk to Gertrude and then returned and asked the party of men she was entertaining, as well as the defendant, to step into the kitchen. They had to pass through the room occupied by Hudson and Eva Raymo and "Doll" asked for and received permission to allow the men to proceed through, which they did. Thus far there is little dispute. (See testi-

mony John Hudson, Case, p. 111; testimony Eva Raymo, Case, pp. 130-134.) The testimony of Gertrude Wilson cannot be said to be contradictory of this version for on page 148, line 27, she says:

> "Q Well, can you tell us whether there was or was not anybody else there? A I cannot, I cannot tell you for sure, because I did see anybody and I don't know whether anybody else was in there or no, I did not see anybody but him."

At this point Jones, by his testimony and the testimony of alleged corroborating witnesses, conflicts with the main story of the defendant. He admits his presence there until some time in the evening; others saw him there when the police arrived. (Testimony of Edward Higgins, Case, pp. 87-88.)

He said he moved a trunk but a few blocks from the scene of the shooting. His testimony is so conflicting, unreasonable and untruthful, that it is not worthy of credence.

The defendant says that he upbraided "Doll" for leading an immoral life; that Jones then pushed her aside and attacked him seizing him with his left hand in an attitude of drawing a weapon from his hip pocket and saying, "One of us is going to hell tonight." The defendant drew his gun, which Jones grabbed and tried to twist out of defendant's grasp; in the struggle for the weapon, either from pressure applied on the hand of the defendant by Jones, or through the efforts of the defendant in attempting to retain possession thereof, the gun discharged into the body of "Doll" who was close by. The defendant ran from the house together with the other occupants of the kitchen. That there was a struggle is corroborated by the testimony of

Eisen, who was passing by when he heard the shots and immediately entered the building. He testified (Case, p. 80) that he heard plenty of noise and it sounded like a scuffle, as he entered the hallway.

Defendant went directly to his brother's house and the next day learned of "Doll's" death. They discussed the advisability of surrendering to the police and after deciding to do so he went to Philadelphia intending to see his mother before giving himself up. He returned to Newark the following day; he was later apprehended by the police, at Newark, while inquiring for his brother's whereabouts.

There is no evidence justifying a verdict of murder in the first degree.

The contradictions, conflicts of testimony and absence of direct testimony appearing in the case of the State, as compared with the corroborated and frank story of the defendant, leave no other conclusion to be drawn, than that the jury, in their deliberation, were swayed by passion and prejudice.

It is respectfully urged that the verdict should be set aside as being against the weight of the evidence.

For the divers reasons herein argued it is respectfully urged the judgment under review should be reversed and a trial *de novo* awarded.

Respectfully submitted,

J. VICTOR D'ALOIA,
Of Counsel for Plaintiff-in-Error.

HAROLD SIMANDL,
On the Brief.

62 FEB.T.1928

New Jersey Court of Errors & Appeals

STATE OF NEW JERSEY, Defendant-in-Error, *vs.* HARRY SCOTT, Plaintiff-in-Error.	IN ERROR.

BRIEF FOR DEFENDANT-IN-ERROR.

Harry Scott, the plaintiff-in-error, was indicted for the murder of one Lorenza Robinson on July 3rd, 1927. He was tried before Judge Flannagan and a jury in the Essex County Court of Oyer and Terminer and found guilty of murder in the first degree with a recommendation of life imprisonment. In accordance with this verdict on November 3rd, 1927, he was sentenced to State's Prison, at hard labor, for life.

The defendant, the deceased and all their associates were negroes. Defendant and deceased had been living together for some time and until a week or two before the killing. They quarrelled and she left him after he had assaulted her. He tried to induce her to come back and threatened her life if she refused. She did refuse. On Sunday night July 3rd, 1927 defendant came to Mrs. Cheesbar's house at 76 Barclay Street in Newark ostensibly looking for Lorenza Robinson or "Doll" as she was commonly called. She wasn't there. He was in the kitchen alone when she came in. She first went to the front room and then to the kitchen where he was. He fired seven shots from an automatic pistol which he had been carrying—four of which

entered her body, as a result of which she died. Defendant escaped but was apprehended about a week later.

POINT I.

Assignments and Reasons Nos. 17-18.

These assignments have to do with the admission of testimony of Anna James as to her relations with defendant before and after the killing.

Defendant had testified without objection on cross-examination as to this relationship (Case P. 220, L. 36). He admitted that Anna James came to Newark with him, but denied that it was at his request. On rebuttal the State endeavored to prove that this was untrue, and for this purpose (apparently) identified (but did not prove) a letter from her to him which was found in his trunk after the killing. After asking Anna James preliminary questions—the allowance of two of which is the basis of these assignments—the court sustained objection to a question "Did you come from Philadelphia to Newark with Harry for the purpose of living with him?" The examination ended there, and the letter was never offered in evidence.(Case P. 294-295-296).

The exceptions argued under these assignments were clearly to preliminary questions, the answers to which did not even contradict the defendant.

Assignment and Reason 23

The question which was the subject of this assignment was clearly propounded to bring out the speed with which the particular gun in this case could be fired. The question included within it facts as to the manner in which the gun was held which

were not the subject of expert testimony and the question was excluded. The court, however, asked the question in a modified form with the following result (Case P. 336, L. 18):

> The Court: Well, in how many second could it be fired, in any event?
>
> (Objection overruled—Exception)
>
> A. The ten shots in this could be fired in three and a half or four second.

and later (Case P. 338, L. 14.)

> The Court: The firing of the gun depends upon the pressure applied to the trigger and it does not make any difference from what source it is applied.
>
> The Witness: It has got to be direct on the trigger.
>
> The Court: And if it is direct on the trigger it would discharge the gun no matter from what source it comes.
>
> The Witness: Yes.

The impression created in Plaintiff-in-Error's brief that the question was excluded because it was not a proper hypothetical question is incorrect. As the Court had already indicated in ruling on a similar question put to the State's expert, Albert Foster, it was of the opinion that the question was not within the bounds of expert testimony. At any rate the point sought to be brought out by the plaintiff-in-error was clearly adduced by the Court.

POINT II.

Assignment of Error 24

The charge excepted to is not erroneous. What can reasonable necessity mean unless it mean reasonable appearance of necessity. If A points an unloaded gun towards B, at a range close enough to shoot, although there be no actual danger, and no actual necessity of self defense, B will be justified in resorting to means of preventing the apparent danger because there is appearance of necessity. The charge is favorable to defendant because it gave the defendant the right to use force to repel the assault not only if there was an actual reasonable danger,—when there would be reasonable necessity,—but if there was apparant reasonable danger.

13 *R. C. L., p.* 815,#120. "The law of self-defense is a law of necessity, and that necessity must be real, or bear all the semblance of reality, and appear to admit of no other alternative, before taking life will be justified or excusable. Whenever it is set up, the case will call for most careful and searching scrutiny, to be sure that it rests, where alone it can rest, on the ground of real or apparently real necessity." Cited *State v. Reed,* 53 *Kas.* 767. *Logue v. Com.* 38 *Pa. St.* 265.

This charge of the court was in direct fulfillment of the request to charge jury to place themselves in the place of defendant at the time of the shooting. The effect of the charge is not to judge the reasonableness of necessity from actual facts; but to allow defendant the right of self-defense if there was reasonable appearanc of necessity of resort to self-defense.

The law given in *State v. Lionetti,* 93 N. J. L. 24,

cited by plaintiff in error, is entirely in support of the charge excepted to; The Court in that case said:

"(2) The vice in the charge is that it leaves out of account a situation where the husband was not in fact in serious danger as the jury, in the deliberation of the trial upon evidence of all the circumstances, might find, but where the force used in defense 'reasonably *appeared*' in the heat of the trouble to be necessary to preserve the husband's life or to protect him from serious bodily harm."

There is absolutely no difference between "Reasonably appeared to be necessary" and "Reasonable appearance of necessity".

Assignment of Error 29.

The portion of the charge brought up under this assignment is a part of the paragraph defining murder.

That paragraph reads as follows:

"In this State the law presumes that all unlawful homicides are murder in the second degree. If the defendant's intent was to kill the deceased girl Doll and the killing was not wilful, deliberated and with premeditation, then defendant is guilty of murder in the escond degree. If the defendant's intent was to kill the deceased girl and the killing was wilful and deliberate and with premeditation, then he is guilty of murder in the first degree. By the killing being wilful, the law means only that the defendant's acts be voluntary, of his own will, as distinguished from someone else's will. By deliberate and premeditated the law does not mean any particular length of time need intervene between the form-

ation of the design or purpose to kill and its execution. Time sufficient to clearly and fully conceive the design to kill, and purposely and deliberately to execute it, satisfies our statute. These things are acts of the mind and these mental acts may be performed with the degree of rapidity of which the human mind is capable of acting."

The case of *State v. DeLiso,* 75 *N. J. L.* 808, cited by plaintiff in error, distinguished between "Intent" of murder at comomn law and "Wilfulness" under New Jersey Statute; and it further holds that "Wilfulness" alone is not enough; that there must be premeditation and deliberation.

The same court, in *State v. Mack,* 90 *Atl.* 1120, (N. J. Court of Err. & App.) explained its ruling in the *DeLiso* case, saying:

"That the order (in which the three elements are given) is not the controlling feature appears from our opinion in *State v. DeLiso.* * * * We do not understand that either in those cases or in *State v. Mangano,* 77 *N. J. L.* 544, where we adopted the order stated in the *DeLiso* case, the court meant to make the correctness of a charge to the jury depend upon the correctness of the psychological analysis which this court has itself made in two distinct ways; *our object was rather to emphasize the need of each of the three mental processes required by the statute to constitute murder in the first degree.*" (Italics ours).

The court held that, the trial court having called the attention of the jury to all the necessary elements, there was no error.

In the case at Bar, the court distinguished between intent and the elements necessary under the

statute. It held intent alone was not sufficient. That it must be wilful, deliberate and with premeditation. Then it defined each of these three elements separately. Thus, it completely satisfied the requirements made in the *Mack* case.

State v. Lang, 66 *Atl.* 942 (*N. J.*)

"An instruction on a trial for homicide that murder in the first degree consists in the taking of a human life with intent to kill and with deliberation and premeditation; that it is not necessary that deliberation and premeditation should continue for an hour or for a minute, but that it is enough that the design to kill be fully formed and purposely executed; and that the elements constituting the crime are an intent to kill and an execution of that intent with deliberation and premeditation, properly defined murder in the first degree."

The holding of the cases cited by plaintiff-in-error is simply this: that wilfulness alone is not enough, and that it must be coupled with deliberation and premeditation. That all three elements must be present. The charge of the Court in the case at bar was in accord with these rules and there was no error in it.

ASSIGNMENTS OF ERROR 32, 50 AND 46.

There was no evidence on which the degree of manslaughter could have been found.

The case at bar is widely different from the several cases of self-defense cited by plaintiff-in-error in support of the contention that the jury may not believe the theory of self-defense and may conclude that the shot was fired in the heat of passion.

In the cases cited by plaintiff in error, the defendant admitted the intentional shooting and then tried to justify it on the ground that it was in self-defense. Thus, in *United States v. Stevenson,* the defendant admitted that he himself fired back; he did not claim an accidental discharge; it was for the jury to decide whether he fired it in self-defense, or in the heat of passion. In either aspect, there is the actual intent to shoot. The question being, whether it was premeditated, in the heat of passion, or in self-defense.

In the instant case the defendant's testimony is as follows: (Case P. 273, L. 21).

> The Court: Now, were you trying to shoot Essie Jones?
>
> The Witness: No, sir, not as I was going to shoot him, only was—
>
> The Court: I want to know if you were trying to shoot Essie Jones.
>
> The Witness: No, sir.
>
> The Court: Were you trying to shoot anybody?
>
> The witness: No, sir.
>
> The Court: You were not trying to discharge the gun at all?
>
> The Witness: No, sir.

The court did actually define manslaughter to the jury (Case P. 339, L. 33). He then, however, properly called to the jury's attention the fact that

the defendant's own testimony did not come within that definition.

The State's evidence tended to prove murder; defendant's evidence tended to prove accidental death. There was no evidence on which a verdict of manslaughter could be based.

In respect to the comment of the trial judge to the effect that defendant did not say that he was in heat of blood, or that the killing was intentional, it is an undisputed rule that a trial judge has the right to express to the jury his opinion as to the grade of the prisoner's crime under the evidence, in case the jury shall find the prisoner guilty. *State v. Fiore,* 93 *N. J. L.* 362.

It is not open to the jury, in a case of criminal homicide, to find the prisoner guilty of manslaughter, or assault and battery, when the record is barren of any proof tending to support such a finding. It is not error for the trial judge to so state in the charge to the jury. *State v. Fiore,* 93 *N. J. L.* 362.

In *State v. Sage,* 99 *N. J. L.* 229, the testimony of the defendant was that he was standing at the dresser when the door flew open. "As the door flew open I seen a form there, a man's arm came up with a revolver. I bent over and reached for the drawer for my gun. * * * I pulled it out quick as the form seemed to move and I fired one shot."

The Court said:

> "It was not error for the court not to charge on the crime of manslaughter under the facts of this case."

The case of *State v. Mount,* 72 *N. J. L.* 365, cited

by the plaintiff in error, is not in point because in that case the blow struck in alleged self-defense was intentional. Whereas, in the case at bar, all through the trial, defendant insisted that the shot was accidental. He does not claim that while shooting at Eisley Jones in self-defense he accidentally shot "Doll."

It is therefore urged that no error was committed on this point.

POINT III.

ASSIGNMENTS OF ERROR 38, 42, 44 AND 49.

The assignments present requests to charge Nos. 6, 10, 12 and 20, all of which are in respect to self-defense.

The charge of the Court fully covered these. The charge of the court on this point are given below:

"Gentlemen of the Jury: I have been requested by defendant's counsel to charge you as follows:

"The defendant was not obliged to retreat unless you find that he, under the circumstances, had reasonable cause to believe that he could have done so with safety. I so charge you."

"It is the law that a man may protect himself to the extent of taking the life of his adversary when that act appears to be reasonably necessary in order to preserve his own life or to protect himself from serious bodily harm. I so charge you gentlemen."

"A further request: Manslaughter is the intentional killing of a human being in a sudden transport of passion or heat of blood upon a reasonable

provocation, without malice. I so charge you, gentlemen, being requested to do so by defendant's counsel.

"Now, the defendant contends that this killing was not unlawful, because, as he claims, it was done unintentionally, by accident, while he was engaged in self-defense. If the defendant killed the deceased by accident while acting in self-defense, then the killing was lawful and he is not guilty and your verdict must be not guilty.

"A person may lawfully, in self defense, go to the extent of intentionally killing his assailant. Now, what is meant by self defense in the law? I have already charged you on that subject at the defendant't request, but I will add further: A person is justified in using force to defend his person only when force is necessary or reasonably appears to be necessary to accomplish that end. If the injury apprehended could be otherwise reasonably avoided with safety, the accused was bound to avoid the danger without resorting to violence. One who is attacked and unable reasonably to avoid the attack with safety may repel force with force, to such extent even to the extent of killing his assailant, as is reasonably necessary or reasonably appears to be necessary to defend himself. Even if the circumstances be such as to require the use of force to repel the assault he will be inexcusable if he carried his defense beyond the bounds of reasonable appearance of necessity. The danger must be immediate and must be actual or else apprehended on reasonable grounds, of all of which the jury is to judge."

The charge of the Court having clearly and fully stated the law on self defense, it was not error to refuse the defendant's request.

On this point see State vs. Skillman, 76 N. J. L. 464.

ASSIGNMENT OF ERROR NO. 41.

The trial court in the case at the bar instructed the jury to the same effect as the request brought up on exception.

The court, in his charge, says:— (C. 343).

"A person is justified in using force to defend his person only when force is necessary or reasonably *appears* to be necessary."

"One who is attacked and unable reasonably to avoid the attack with safety may repel force with force, to such extent even to the extent of killing his assailant, as is reasonably necessary or reasonably *appears* to be necessary to defend himself."

Both of these base reasonableness on appearance of necessity from point of view of the defendant.

In State vs. Lionetti, 93 *N. J. L.* 24, cited by Plaintiff in Error, the court criticizing the instructions of the trial judge, says:—

"The vice in the charge is that it leaves out of account a situation where the husband was not in fact in serious danger as the jury, in the deliberation of the trial upon evidence of all circumstances, might find, but, where the force used in defense "reasonably appeared" in the heat of the trouble to be necessary . . . . . ."

The charge in the case at bar fulfilled the requirement of this case, that is, reasonable appearance of necessity.

ASSIGNMENT OF ERROR 45.

There was no evidence in the case to support a finding that the defendant intended to do the deceased grievous bodily harm; so, a charge based on such imaginary facts would have been superfluous.

The rule of *State vs. Kabaszewski,* 86 *N. J. L.* 250, is simply this: that a criminal homicide without premeditation, but where there is at the time of committing the act an intent to do grievous bodily harm, is murder in second degree.

There is absolutely no evidence in the case to support the theory of an intent to do grievous bodily harm. Therefore, refusal to charge on that point was no error.

ASSIGNMENT 46.

This point has already been argued under Point II.

POINT IV.

THE VERDICT IS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

The trial of this case took over three days. The testimony covers about 330 printed pages. The plaintiff-in-error, in his brief, summarizes the facts in two pages and from that summary argues that the verdict of the jury is against the weight of the evidence.

As a matter of fact, the testimony disclosed a clear case of premeditated murder. It was proved that the defendant and deceased were living together until a few days before the murder; that they had been quarrelling; that four days before the murder defendant assaulted deceased so that

she went to the police precinct for the purpose of making a complaint against defendant; that after the separation he tried to get her to return to him; that she refused; that defendant during all or most of this period carried on his person the gun with which he eventually killed deceased; that on at least three occasions within a week of the shooting defendant expressed his intention of killing deceased; that he was alone in the kitchen with deceased on July 3rd, 1927, at the time of the shooting; that defendant's gun was shot seven times—four of the bullets entering deceased's body; and that the trigger of the gun had to be pulled seven times in order that seven shots might be fired.

The defense was that deceased was unintentionally shot by defendant in self-defense while he was in a struggle with one Estley Jones over the possession of the gun and hence a distinct question of fact was raised by the defendant which was found against him by the jury.

The testimony of Estley Jones to the effect that he was not in the kitchen at the time of the shooting was overwhelmingly corroborated by the testimony of James Wilson, Nona Jackson and Charles Bosley.

A brief analysis of the testimony of the witnesses will substantiate the accuracy of the above statements. Rosie Lee Cheesbar testified that defendant and deceased had a quarrel four days before the murder as a result of which deceased was assaulted by defendant (case p. 47, L. 32). Edward Higgins testified that two weeks before the murder defendant showed him the gun with which he committed the murder and said "whenever he found her (deceased) he was going to empty the gun into her" (case p. 85, L. 39). Mary Jones testified that a week

or two before the murder defendant came into witness's house looking for deceased and when he found her shoved her and pulled a pistol out of his pocket. Witness then interposed and put them both out of the house. (Case p. 94, L. 1).

Gertrude Wilson testified that on the Wednesday before the murder defendant came to Mrs. Cheesbro's house, "and he had a knife on him and he made at Mrs. Cheesbro and asked where is "Doll" and he said he is going to kill her whenever he see her" (case p. 143, L. 37).

She also described the actual scene of the murder. She came into the house about 7 P. M.; came up the front stairs; saw the defendant alone in the kitchen; saw the deceased in the front room; saw the deceased leave the front room and walk back through the hallway to the kitchen; "as soon as she got to the kitchen, no sooner did she walk to the kitchen when I heard the report from the gun"; that she heard four or five shots; (case p. 147, L. 3 & seq).

After the murder, defendant made his escape, went to Philadelphia, stayed there for some days, returned to Newark and was apprehended by detective who had been looking for him since the murder. Sergeant Hemer testified that defendant denied his name when arrested (Case P. 160, L. 20), and claimed that Estley Jones had pulled the gun. Later he admitted this was not true. (Case P. 157, L. 1). Defendant first denied ownership of the gun with which the killing was done, and later admitted it. (Case P. 158 L. 18).

On his cross-examination, defendant located the positions of all the persons he claimed were in the kitchen at the time of the killing. (Case P. 256). While his locations are rather difficult to follow

from the testimony because of constant reference to the map ,it is also clear that later on in his cross-examination, defendant categorically denied Exhibit S-14, which is inserted in the last page of the State of Case. This was a map made by Sergeant Hemmer in the presence of defendant and of other detectives on which defendant indicated the relative positions of all these persons who were supposed to have been present at the time of the murder (Case P. 316, & seq.) The version of the killing given by the defendant at the trial and to the police officers upon his arrest was then shown to have been grossly at variance, and hence it was that the jury must have inevitably been led to the conclusion that they could not accept defendant's testimony in this respect; and that the version of the State's witnesses must be true.

The guilt of the defendant was proved beyond a reasonable doubt.

Respectfully submitted,

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Prosecutor of the Pleas.

JOSEPH E. CONLON,
Assistant Prosecutor of the Pleas.