INDEX

	Page
Certificate of Chancellor Denying Writ of Error	1
Writ of Error	3
Return to Writ	5
Judgment Record	7-14
Indictment	7
Plea	11
Judgment	11
Charge to Jury	341
Defendant's Exceptions to Charge	356
Defendant's Requests to Charge	360
Further Instructions to Jury	366
Verdict	368
Stipulation re Exhibits	370
Assignments of Error	371
Causes for Reversal	389
Joinder in Error	407

TESTIMONY.

Drawing of Jury	16

Witnesses for the State.

Harold J. Seymour,	
direct examination	24
cross "	26
Louis J. Atwood,	
direct examination	36
cross "	38
re-direct "	41
George F. Freeman,	
direct examination	42
cross "	43
Richard B. Reilly,	
direct examination	45
(recalled) direct examination	123, 126
cross "	123

New Jersey State Library

PAGE

Emma A. Dodds,
direct examination..... 47
cross " 52
George W. H. Horre,
direct examination..... 56
cross " 60
William Morozow,
direct examination..... 63, 69
cross " 66, 79, 80
William G. Harris,
direct examination..... 108
cross " 112
S. Ralph Andrews,
direct examination..... 113
Harvey M. Jones,
direct examination..... 115
cross " 116
John H. Marsh,
direct examination..... 119
cross " 122
re-direct " 122
Roy A. Martin,
direct examination..... 129
cross " 131
Raymond E. Grymes,
direct examination..... 133
Albert Foster,
direct examination..... 135
cross " 137
William A. Jones,
direct examination..... 138

Witnesses for Defendant.

George B. McMurray,
direct examination..... 142
cross " 142
re-direct " 143

		Page
Rosaline McCready Campbell,		
	direct examination.....	144
	cross "	155
Roland P. Blythe,		
	direct examination.....	156
	cross "	160
Christopher A. Brokaw,		
	direct examination.....	162
	cross "	164
Leo Ward,		
	direct examination.....	166
	cross "	180
Jack Blumberg,		
	direct examination.....	183
	cross "	188
	re-direct "	190
Thomas J. Griffin,		
	direct examination.....	191
Henry Colin Campbell,		
	direct examination.....	193
	cross "	219
	By the Court.....	258
Guy Payne,		
	direct examination.....	263
	cross "	270
	re-direct "	270

State's Rebuttal.

Lawrence M. Collins,		
	direct examination.....	271
	cross "	288
Emil Stein,		
	direct examination.....	289
	cross "	296
	re-direct "	297

PAGE

Joseph L. Holmes,
direct examination.....298, 300
cross " 300
(recalled) 336
Rowland P. Blythe,
direct examination..... 310
William H. Armstrong,
direct examination..... 316
cross " 322
re-direct " 322
Frank C. Ard,
direct examination..... 323
Arthur P. Robinson,
direct examination..... 325
cross " 327
Evelyn L. Ratner,
direct examination..... 329
cross " 334

Defendant's Sur-rebuttal.

Leo J. Ward,
direct examination..... 336

Court's Certificate of Record..... 369

EXHIBITS.

For the State.		Off'd	P't'd
S. 1.	Map	26	
S. 2.	Box of Clothes	44, 47	
S. 3.	Envelope Containing Jewelry	44, 45	
S. 4.	Picture	56	
S. 5.	Bullet	63	
S. 6.	Statement	69	71
S. 7.	Yellow Sheet	70	71
S. 8.	Note Book	83	
S. 9.	Letter, October 4, 1928	86	90
S. 10.	Letter, October 12, 1928	86	91

	Off'd	P't'd
S. 11. Letter, October 17, 1928	86	92
S. 12. Letter, October 19, 1928	87	92
S. 13. Letter, October 22, 1928	87	93
S. 14. Letter, October 26, 1928	87	94
S. 15. Letter, November 6, 1928 ...	87	96
S. 16. Letter, November 9, 1928 ...	88	97
S. 17. Letter, January 14, 1929	88	99
S. 18. Letter, ...	88	100
S. 19 Letter, January 2, 1929	88	100
S. 20. Letter, October 16, 1928	88	101
S. 21. Letter, November 13, 1928 ..	89	103
S. 22. Letter, November 16, 1928 ..	89	104
S. 23. Letter, November 23, 1928 ..	89	105
S. 24. Letter, December 27, 1928 ..	89	107
S. 25. Marriage License	110	110
S. 26. Sheet of Hotel Register.....	116	
S. 27. Check	120	
S. 28. Signature Card	120	121
S. 29. Revolver	126	
S. 30. Three Bullets and Shells	128	
S. 31. Wrist Watch	131	
S. 32. Frame of Bag	131	
S. 33. Ledger Sheet—New Brunswick Bank	134	
S. 34. Application, American Friendship Society of Detroit, Michigan 223, 338		223
S. 35. Application, Sincere Friendship Club of Medina, New York 223, 338		225

For Defendant.

D. 1. Photograph	145
D. 2. Morphine Outfit	152
D. 3. Box of Hypodermic Needles..	152
D. 4. Box of Codein Tablets	153
D. 5. X-Ray of Head	169

		Off'd	P't'd
D. 6.	X-Ray of Head	170	
D. 7.	X-Ray of Head	172	
D. 8.	X-Ray of Head	174	
D. 9.	Skull	174	
D. 10.	X-Ray of Head	177	
D. 11.	X-Ray of Pelvis	178	
D. 12.	Five X-Ray Plates of Lower Jaw	178	
D. 13.	Five X-Ray Plates of Upper Jaw	179	
D. 14.	Leaflet	199, 408.	

CERTIFICATE OF CHANCELLOR DENYING WRIT OF ERROR.

Filed June 18, 1929.

In Chancery of New Jersey

THE STATE OF NEW JERSEY, *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Defendant.*	*On Application for Writ of Error to the Supreme Court on Conviction at Union Oyer and Terminer.* *Certificate of Chancellor Denying Writ of Error.*

On indictment and conviction in the Union County Court of Oyer and Terminer of the crime of murder in the first degree without a recommendation of life imprisonment, upon which defendant has been sentenced to death.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for the review of the judgment of the Union County Court of Oyer and Terminer, convicting the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell of the crime of murder in the first degree without a recommenda-

tion of life imprisonment, and that I have refused to order a writ of error out of the New Jersey Supreme Court for the review of said judgment.

Dated at Trenton, New Jersey, this 18th day of June, 1929.

E. R. WALKER,
Chancellor.

Original filed Chancery Clerk's office June 18, 1929. Certified copy of original Filed clerk's office, Court of Errors and Appeals June 18, 1929.

WRIT OF ERROR.

Filed July 8, 1929.

NEW JERSEY, *ss.*

The State of New Jersey to Clarence E. Case, Esquire, one of
(L. S.) the Justices of the Supreme Court of Judicature of New Jersey, to Alfred A. Stein, Esquire, Judge of the Common Pleas of the County of Union, and to Lloyd Thompson, Esquire, Judge of the Common Pleas of the County of Union, constituting the Court of Oyer and Terminer, holden at Elizabeth in and for the County of Union, of the Term of May, in the year of our Lord, one thousand nine hundred and twenty-nine:

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, of the Township of Cranford in the said County of Union aforesaid:

"On the twenty-third day of February in the year of our Lord one thousand nine hundred and twenty-nine at the Township of Cranford in the said County of Union, and within the jurisdiction of this Court with force and arms, one Mildred Mowry, also known as Mildred Mowry Campbell, also known as Parmelia Elizabeth Mowry then and there being in the peace of God and of this State, did willfully and feloniously and of his malice aforethought, kill and murder."

Pro ut the said indictment and the several counts therein, whereof, before you, he the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton

Campbell, hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, as it is said, manifest error hath intervened to the great damage of the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, as from his complaint we have received information, we being willing, in his behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, command you that if judgment be thereon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid, with all things touching the same, and the entire record of the proceedings had upon the trial, to our Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the eighth of July, next, and this writ that the record and proceedings as aforesaid being inspected we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, Edwin Robert Walker, Esq., our Chancellor and the President Judge of our said Court of Errors and Appeals, at Trenton, New Jersey, this 18th day of June, 1929.

JOSEPH F. S. FITZPATRICK,
Clerk.

Francis A. Gordon,
Attorney for Defendant.

Received, Union County Clerk's office, June 24, 7:39 A. M., 29, Elizabeth, N. J.

WILLIAM B. MARTIN,
Clerk.

RETURN TO WRIT.

In obedience to the command of the writ to me, Clarence E. Case, Justice of the Supreme Court of Judicature of New Jersey, holding the Oyer and Terminer Court in and for the County of Union, New Jersey, directed, I Do Hereby under my seal and hereunto annexed send the Indictment against Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell and the record and proceedings of the plaint whereof mention is made within, with all things touching and concerning the same, to our Court of Errors and Appeals the Court of last resort in this State, the Indictment, Judgment Record and Proceedings, as within I am commanded as appears by the schedule hereto annexed.

(Signed) CLARENCE E. CASE,
Justice of the Supreme Court Holding the Oyer and Terminer of the County of Union.

(SEAL)

Return to Writ.

The execution of this Writ appears by the schedule hereto annexed.

In Witness Whereof, I, William B. Martin, Clerk of the Court of Quarter Sessions in and for said County, have hereunto subscribed my name and affixed the seal of said Court this 6th day of July, A. D. nineteen hundred and twenty-nine.

(Signed) W. B. MARTIN,
Clerk.

JUDGMENT RECORD.

UNION OYER AND TERMINER.

May Term A. D. Nineteen hundred and twenty-nine.

UNION COUNTY: TO WIT:

THE GRAND INQUEST for the State of New Jersey, and for the body of the County of Union upon their oath

PRESENT, that Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, late of the Township of Cranford in the said County of Union, on the twenty-third day of February in the year of our Lord one thousand nine hundred and twenty-nine at the Township of Cranford in the said County of Union, and within the jurisdiction of this Court with force and arms one Mildred Mowry, also known as Mildred Mowry Campbell, also known as Parmelia Elizabeth Mowry then and there being in the peace of God and of this State, did willfully and feloniously and of his malice aforethought kill and murder, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same.

WITNESSES:

ABE J. DAVID,
Prosecutor of the Pleas.

Judgment Record.

No. 1

UNION OYER AND TERMINER.

May Term, A. D. 1929

Indictment for Murder

The State

vs.

Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell,

ABE J. DAVID,
Prosecutor of the Pleas.

A TRUE BILL

BURR A. TOWL,
Foreman.

Union Co. Clerk's Office
Filed
May 14, 1929
WM. B. MARTIN,
Clerk.

Judgment Record.

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

BE IT REMEMBERED, That at the Court of Oyer and Terminer, holden at the City of Elizabeth, in and for the County of Union, on the second Tuesday of May in the year of our Lord one thousand nine hundred and twenty-nine, before the Honorable Clarence E. Case one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Alfred A. Stein, Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of

Burr A. Towl
Vincent J. Kerstring
Royal T. Phillips
Abram B. Koyler
John E. Keron
William W. Goddard
M. H. Wood
James S. Green
Robert F. Cook
Fred Baker
John J. Brown
William S. Coeyman
Annie D. Brearley
John W. Titus
Caleb C. Pruden
Julius Walthier
Thad Doane, Jr.
Rose K. Stamler
Gus Apostolas
Ruby K. VanBuren
Herbert A. Stine
Charles E. Fee
Daniel J. Leonard

good and lawful men and women of said County of Union, then and there sworn and charged to inquire on behalf of the State of New Jersey, in and for said County of Union, it is presented by at least twelve of said Jurors in the manner and form following, to wit:

The bills herewith presented are true bills.

BURR A. TOWL,
Foreman.

ABE J. DAVID,
Prosecutor of the Pleas.

Union Co. Clerk's office, filed May 14, 1929.

WM. B. MARTIN,
Clerk.

And afterwards, that is to say, at a Court of Quarter Sessions, holden at Elizabeth, in said County of Union, on Tuesday, the fourteenth day of May, in the year of our Lord, one thousand nine hundred and twenty-nine, before Honorable Clarence E. Case, Presiding, Justice of the Supreme Court holding the Oyer and Terminer Court in and for the County of Union, Honorable Alfred A. Stein and Honorable Lloyd Thompson, Judges of the Common Pleas Court in and for said County of Union, according to the form of the statute in such case made and provided, the Grand Jury presented the Indictment aforesaid, which said Indictment was thereupon ordered by the Court of Oyer and Terminer of said County to be delivered to the Clerk of the Court of Quarter Sessions of said County who is directed to affile the same in the Court of Quarter Sessions according to the form of the statute

in such case made and provided, and thereupon the said Indictment is delivered to the Clerk of said Court of Quarter Sessions of said County.

And afterwards, that is to say, at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Tuesday, the fourteenth day of May, in the year last aforesaid, comes the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, in his own person and now here touching the premises in the said Indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says that he is "Not Guilty" thereof, and of this he puts himself upon the Country, etc., and Abe J. David, who prosecutes for the State in this behalf doth likewise the same.

And afterwards, that is to say, at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, on Monday, the tenth day of June, in the year last aforesaid, before Honorable Clarence E. Case, Presiding, Justice of the Supreme Court holding the Oyer and Terminer Court and Honorable Lloyd Thompson, Judge of the Court of Common Pleas aforesaid, the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell being set to the Bar, Abe J. David, who prosecutes for the State moves the trial of the Indictment aforesaid. Wherefore let a jury thereupon come on this day last aforesaid, before this Court of Oyer and Terminer, aforesaid, of good and lawful men of the County of Union aforesaid, by whom the truth of the matter may be better known and

who are not of kin to the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell to recognize upon their oaths whether the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell be guilty of Murder as in the Indictment aforesaid specified or not guilty, because as well as the said Abe J. David, who prosecutes for the State in this behalf as the said Henry Campcell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell has put himself upon the said Jury and the Jurors of the said Jury by Samuel H. Tool, Sheriff of said County of Union for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit:

1. Clifford A. Meeker
2. Fredk. J. Ottley
3. J. Ellis Robinson
4. Spencer M. Mahen
5. August A. Engel
6. Frank M. Darnes
7. Fred H. Bitter
8. William E. Brown
9. William J. Kennedy
10. Chas. C. Mulliken
11. Chas. W. Forbes
12. Edwin F. Colgan

who being chosen, tried and sworn to speak the truth of and concerning the premises, on the thirteenth day of June, in the year last aforesaid, returned into Court, in charge of the officers sworn to attend them and then and there upon their oaths say they find the said Henry Campbell Close, alias H. Colin Campbell, alias Richard

M. Campbell, alias Richard Morton Campbell "Guilty of Murder in the First Degree" and so say they all. The attorney for the defendant asked that the Jury be Polled, whereupon, each Juror as his name was called said, "I find the defendant Guilty of Murder in the First Degree," and so said they all.

And afterwards, that is to say, at the same term of the Court of Oyer and Terminer holden at Elizabeth aforesaid, in the County aforesaid, on Thursday, the thirteenth day of June, in the year of our Lord, one thousand nine hundred and twenty-nine before Honorable Clarence E. Case, Presiding, Justice of the Supreme Court, holding Oyer and Terminer Court, and Honorable Alfred A. Stein, and Honorable Lloyd Thompson, Judges of the Common Pleas Court in and for said County of Union, according to the form of the statute in such case made and provided the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell being set to the Bar, Abe J. David, who prosecutes for the State in this behalf moves for judgment on the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell.

Judgment signed, July 6th, 1929.

(Signed) CLARENCE E. CASE,
Justice.

WHEREUPON, all and singular, the premises being seen, and by the Court now here fully understood, it is, on this thirteenth day of June, A. D., nineteen hundred and twenty-nine, ORDERED and adjudged that Henry Campbell Close, alias

H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell be taken to the County Jail from whence he came, and there to be kept in strict custody and from thence that he be taken by the Sheriff within ten days after the issuing of the warrant to him for that purpose, and delivered to the principal keeper of the State Prison to be kept by him in solitary confinement until the week beginning Monday, July fifteenth, A. D. nineteen hundred and twenty-nine, and upon some day within the said week, at his discretion, as to the time within the walls of the building provided, by the Board of Inspectors of the State Prison for that purpose, or within the yard or enclosure adjoining thereto the principal keeper of the State Prison shall execute the punishment of death upon the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell by causing to pass through his body a current of electricity of sufficient intensity to cause death as speedily as possible, the application of such current to be continued until the body of the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell be dead.

And may the Lord have mercy upon his soul.

TESTIMONY.

COURT OF OYER AND TERMINER,

UNION COUNTY.

May Term, 1929.

STATE OF NEW JERSEY, *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL.	*Indictment for Murder.*

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. Clarence E. Case, Justice of the Supreme Court, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the tenth day of June, A. D. 1929, at 9:30 A. M.

Appearances:

Abe J. David, Esq., Prosecutor of the Pleas, John B. Walsh, Esq., Assistant Prosecutor of the Pleas, attorneys for the State of New Jersey.

Francis A. Gordon, Esq., attorney for the defendant.

The Clerk: These good men whose names have just been called have been returned as jurors who are to pass between the State of New Jersey and you upon your life and death upon the indictment for murder. You are entitled to challenge twenty of them without cause; if, therefore, you will challenge them, or any of them, you will do so when they come to the book to be

sworn, and before they are sworn, and you shall be heard.

Mr. David: I move the trial of indictment Number 1, May Term, 1929, against Henry Campbell Close, alias Richard M. Campbell.

Mr. Gordon: The defendant is ready.

CLIFFORD A. MEEKER, called.

The Clerk: Prisoner, look upon the juror. Juror, look upon the prisoner. Does the State challenge?

Mr. David: It does not.

The Clerk: Does the prisoner challenge?

Mr. Gordon: He does not.

(Juror sworn.)

FREDERICK J. OTTLEY, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: He does not.

The Clerk: Does the State challenge?

Mr. David: It does not.

(Juror sworn.)

PETER L. MACK, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: It does not.

The Clerk: Does the prisoner challenge?

Mr. Gordon: He does.

Drawing of Jury.

J. ELLIS ROBINSON, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: He does not.

The Clerk: Does the State challenge?

Mr. David: It does not.

(Juror sworn.)

SPENCER M. MAHEN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: It does not.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

GEORGE S. LEACH, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

AUGUST A. ENGEL, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

New Jersey State Library

Drawing of Jury.

FRANK M. DARNES, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: No.

The Clerk: Does the State challenge?

Mr. David: No.

(Juror sworn.)

FREDERICK S. CONKLIN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: Yes.

JOHN H. HAMPSON, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

FRED H. BIDDER, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

Drawing of Jury.

WILLIAM V. FLANAGAN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

WILLIAM E. BROWN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

The Juror: If the Court please, I have certain fixed convictions which I feel disqualify me to act as a juror in a case of this kind and I beg to be excused. I have certain fixed convictions. I am opposed to capital punishment, which I feel would disqualify me as a juror.

The Court: Is that all that you have to say?

The Juror: That is all.

The Court: There is nothing that you have said that seems to disqualify you from serving as a juror and you have already been sworn.

Mr. David: I ask leave at this time to withdraw my consent to this juror being sworn, for the purpose of interposing a peremptory challenge.

Mr. Gordon: The defendant objects to that upon the ground that the juror has already been sworn.

The Court: The oath was administered to you, Mr. Juror, and in saying you had been sworn I assume you had answered to it. Had you answered to the oath?

The Juror: Yes, I did.

The Court: Then, your objection should have been stated prior to your being sworn as a juror.

The Juror: That was due to my lack of knowledge as to when to make that statement.

The Court: Notwithstanding what scruples you may have, you, of course, would be governed by the laws of the State, would you not?

The Juror: Yes, I respect the law.

The Court: And you would respect your oath, wouldn't you?

The Juror: Yes. Notwithstanding that I still have certain mental reservations.

The Court: What are your mental reservations? What reservations can you make mentally when you have taken an oath?

The Juror: Simply on what I said originally that I feel opposed to capital punishment.

The Court: That is your personal conviction. But at the same time you are ready to support the laws of the State, aren't you, and your oath?

The Juror: Yes, your Honor.

The Court: I think honest men may have personal convictions, but nevertheless sink their personal convictions in their service of duty to the State, and under the obligations of their oath, and I think, Mr. Prosecutor, that your request has come rather too late. The juror has been sworn and will take his position in the box.

JACOB BENZING, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

ROY H. KLINGEL, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: Yes.

JOEL C. JONES, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: No.

The Clerk: Does the State challenge?

Mr. David: Yes.

WILLIAM J. KENNEDY, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

JAMES B. KERR, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

Drawing of Jury.

CHARLES J. HOPKINS, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: Yes.

CHARLES J. KLASEK, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: No.

The Clerk: Does the State challenge?

Mr. David: Yes.

CHARLES C. MULLIKEN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

CHARLES HOFFMAN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: No.

The Clerk: Does the State challenge?

Mr. David: Yes.

Drawing of Jury.

PHILIP STANGER, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: Yes.

HARRY W. BETZ, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

CHARLES N. FRANK, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: Yes.

GEORGE W. DURLING, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

LESLIE FUNKE, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: Yes.

EDWARD J. MACK, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: Yes.

CHARLES W. FORBES, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the State challenge?

Mr. David: No.

The Clerk: Does the prisoner challenge?

Mr. Gordon: No.

(Juror sworn.)

EDWARD F. COLGAN, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Does the prisoner challenge?

Mr. Gordon: No.

The Clerk: Does the State challenge?

Mr. David: No.

(Juror sworn.)

(Jury complete.)

(Mr. David opens the case for the State.)

HAROLD J. SEYMOUR, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q What is your business, Mr. Seymour? A I am a civil engineer and land surveyor.

Q And have been for how many years? A Twenty years.

Q At my request did you make a survey and a sketch of location shown on this map? A I did.

Mr. David: I offer it in evidence.

Mr. Gordon: I object to it because it does not at the present time show that it correctly represents this locality at or about February 23, 1929.

Mr. David: I will go into the detail of proof.

Q When did you make this survey, Mr. Seymour? A April 29, 1929.

Q Are you familiar with this locality? A Why, I pass through there probably once a month.

Q Do you know whether there is any change in the physical appearance of these roads and the various things that you have shown on this map since the twenty-third of February, last? A I don't think there has been.

Q Now, will you explain the map? A It is a map showing a section of Springfield avenue and the boulevard in Cranford, New Jersey. It shows the roadway, the gutter, culverts, trees; Springfield avenue running this way, north and south; Pawnee Road running westerly from Springfield avenue. It shows an apple orchard on each side of Springfield avenue where it intersects the boulevard. It shows the ball field, an open field, the rail fence along the boulevard concrete pavement. It shows the entrance to the Nomahegan Gun Club. It shows a branch of the Rahway River. The bridge. It also shows the Rahway River, the boundary line between Cranford and Kenilworth. It shows the direction to Kenilworth, to Westfield, and also to Cranford. Also shows part of the Cranford Nomahegan Golf Club.

Mr. David: I offer it in evidence.

Mr. Gordon: No objection.

The Court: It will be admitted.

(Map entered in evidence and marked Exhibit S. 1.)

Cross examination by Mr. Gordon.

Q Mr. Seymour, I notice that you have indicated Rahway River? A Yes, sir.

Q And over the river there are some markings here indicating what? A The walk, there is a bridge there with a walk.

Q That is a bridge across the river? A Yes, sir.

Q Now, the river naturally has a river bank, hasn't it? A Yes, sir.

Q And when you made this map, did you have occasion to examine the physical conditions in that locality at the time? A No. I just noticed that it was the river or brook or whatever you call it.

Q Do you know whether or not adjoining the river bank there is any support to the bridge made of concrete? A Yes, sir. There are wing walls.

Q From the wing wall to the river proper, is there any river bank there? A Why, no.

Q Are you sure about that? A To the best of my recollection there is not.

Q How wide is it across this river here? A From which point?

Q From the east to the west. A From the extreme end?

Q We will call it from the river edge. A From here to here (indicating)?

Q Yes, sir. The scale is one inch equals forty feet.

Harold J. Seymour, for the State, cross.

By the Court.

Q Is the map drawn to scale? A It is, your Honor.

Q And what is the scale? A One inch equals forty feet. The bridge proper measures about seventy feet.

Mr. Gordon: May I have that marked on the map?

The Court: Any objection to that, Mr. Prosecutor?

Mr. David: No objection.

Q Just draw a line. A From there to there is about seventy feet. I will put seventy feet more or less.

Q Now, then, when you cross the bridge, as I understand it, on each side of this concrete pavement there is a wooden fence, is that correct? A That is true, yes.

Q That wooden fence is how high? A Four feet.

Q With spaces in between the planks constituting the fence? A Yes. There is a top rail and a middle rail.

Q Do you know the distance in space between the top rail and the middle rail? A Approximately two feet. I didn't measure the height of the fence.

Q You have marked here "Woodland"? A Yes.

Q That is part of a park reservation, is that correct? A I believe so.

Q The Union County Park Reservation? A I think so.

Q And was so at that time? A At the time I made the map I believe it was part of the

Union County Park Reservation. There was nothing there to tell me that it was.

Q Do you know whether or not in February, 1929, it was part of the park reservation? A I think so.

Q I noticed you have indicated on the bridge here the words "Light standard"? A Yes, sir.

Q What do they indicate? A Why, they are a fixture for an electric light that would be lit if there was any light there, but at the time I was there why the globes were all broken. There were no lights. That is why I put light standard. The standard is there.

Q You say the globes were broken? A Yes, sir.

Q What is the distance from the westerly side of the Rahway River line to the easterly side of what is marked here "Branch of Rahway River"? A About 430 feet.

Mr. Gordon: With your Honor's permission may I have that marked on the map?

By Mr. Gordon.

Q Now, you have indicated on the southerly side of this concrete pavement showing the road to Kenilworth, the southerly side here, open fields? A Yes, sir.

Q Am I correct in inferring that it is completely flat ground without any tree foliage there? A For a distance back on the road of several hundred feet, except up here on the corner, that is an apple.

Q I am referring now to that portion of the boulevard between the ball field and the bridge crossing the branch of the Rahway River? A Yes, it is open field.

Harold J. Seymour, for the State, cross.

Q This concrete pavement that you have here is a county road? A Yes, sir.

Q And it runs easterly towards Cranford? A Towards Kenilworth.

Q It is known as the Kenilworth Boulevard? A Known as the boulevard; I don't know whether it is the Kenilworth Boulevard.

Q What is the distance from the easterly side of the bridge crossing the branch of the Rahway River to a point marked "Culvert" on your map here at the westerly side of the map? A You said the easterly side of it?

Q From the easterly side of the bridge to this point here (indicating)? A 1,620 feet more or less.

Mr. Gordon: May I have that marked, if your Honor please?

By Mr. Gordon.

Q Now, then, as you proceed along Kenilworth Boulevard in a westerly direction and you continue above this triangle here on the map, you come to Westfield, is that correct, the main road to Westfield? A That is a road to Westfield.

Q Is it a county road? A Yes.

Q And if you turn in a southerly direction, you are going towards Cranford, is that correct? A That is true.

Q Along a county road known as Springfield avenue? A It is known as Springfield avenue; I don't know whether it is a county road or not.

Q It is paved? A It is a paved road.

Q What is the distance from the point indicated "Culvert" to a point which would be

south—the southerly side line of Pawnee Road? A 760 feet about.

Mr. Gordon: May I have that marked, if your Honor please?

By Mr. Gordon.

Q Continuing south of Pawnee Road, are you familiar with the concrete pavement there as to its width? A Yes, 22 feet wide, the concrete itself.

Q Does that width extend uniformly with the same dimensions or are there points where the spread of the concrete is even wider than 22 feet and into what might be the gutter? A The concrete pavement I believe was originally laid 22 feet wide. Since then, I suppose, they found out it was too narrow, and they have put bituminous shoulders on each side. Those shoulders are approximately three feet. They may measure an inch more or less at different points.

Q In addition to the concrete pavement, there are three feet of bituminous shoulders more or less? A Yes.

Q Then your marking here is what? A 22 feet.

Q Where are the three feet? A Between the two lines here, between the heavy line and the faint line, 22 feet, and then there is six feet, makes 28 feet.

Q From the east line to the west line, the dark lines on this map, of Springfield avenue, the calculation of the width is 28 feet? A That's true.

Q And from the thin black line east to west it is approximately 22 feet? A Yes, sir.

Q That is correct? A Yes, sir.

Harold J. Seymour, for the State, cross.

Q From the point marked "Culvert" to a point south of Pawnee Road on the easterly side of Springfield avenue, is there any foliage or is it open land? A There is foliage, trees, and so on.

Q On the westerly side from a point north of Pawnee Road to a point where you have indicated "sign" is it open ground? A Why, there is one stretch in there that is open, and then from this point (indicating)—these places I have marked "trees," there is clumps of trees.

Q When you made this map in April, were there leaves on the trees? A Some were and some weren't.

Q You know whether there were leaves on the trees there in February, 1929? A I wasn't there in February, 1929.

Q This road marked Pawnee Road, how far does that extend westerly? A Oh, the cinder roadway, I should say extended westerly about a thousand feet.

Q How many feet west of Springfield avenue are there buildings, if any? A I should say there is one building up in here (indicating), a thousand feet more or less.

Q When you are going southerly along Springfield avenue, there is practically a straight road, is that correct? A Yes, from the point of curve, it runs straight for some distance.

Q With an undisturbed view of about how many feet? A Do you mean from the point of curve or from Pawnee Road?

Q From the point of curve as you would get into Springfield, when you are facing southerly, what is the extreme length of viewpoint? A Oh, between a thousand and fifteen hundred feet I should say.

Q That is, if a person or persons were coming westerly on the boulevard and they turned southerly on Springfield avenue, as they turned and were facing southerly, they would have an unobstructed view along the road of approximately a thousand feet? A Yes, sir.

Q Do you know whether there are any electric light poles on this Springfield avenue road? A I only noticed one.

Q Which side of the road? A The easterly side.

Q Isn't it a fact that there is an electric light pole south of the one that you have marked here on the map? A South of where?

Q South of the pole marked on the map. A I didn't notice it.

Q Do you know whether it carries a light? A It does not—this pole do you mean? No, that does not. That is just a power pole.

Q You have marked here "electric light"? A That is the pole with the electric light on it.

Q And that carries an illuminating light? A Yes.

Q For the roadway? A Yes.

Q Are there any other lights on this road, on this section of the map? A Not that I noticed. I went up there one night to make sure, and that is the only one that was lit.

Q Are there any other facilities for lighting? A No, sir.

Q Approximately how far from the place marked "Cranford Nomahegan Golf Club" would Cranford Center be? A Why, two miles.

Q And do you know how far it is from Pawnee Road to Westfield? A Do you mean the center of Westfield?

Q Yes, Westfield Center. A Why, three miles.

Harold J. Seymour, for the State, cross.

Q Calling your attention once again to the section between the two rivers, do you know how the land, the slope of the land is, whether there is a gradual decline towards the river? A This roadway, I believe, was built on a fill, and that is an elevation above the surrounding land. The land on each side of the boulevard is practically level, but the boulevard itself, as I was saying, was built on a fill through the swamps.

Q I asked you whether or not there is a slope, this land here (indicating) between the two river bodies towards the river as you get off the boulevard. A The land is practically level.

Q Can a person getting off the boulevard walk immediately onto the adjoining land? A No, the road was built on a fill, and that slopes down to the adjoining land, which is practically level. Can I mark on this what I mean?

Mr. Gordon: If your Honor has no objection.

The Court: No, I think it is perfectly clear what he says. He says the land itself is level, but there is a slope running from the roadway down to the land, a slope from the boulevard to the field, and that the field itself, or the land, is level.

By Mr. Gordon.

Q Then a person walking off the boulevard can walk gradually down the land adjoining the boulevard? A He walks off the boulevard and then he goes down to a level stretch, and then he can walk—

Q How far a descent from the boulevard to the woodland adjoining the boulevard? A Oh, I should imagine that that boulevard was built on a fill of six to seven feet in here.

Harold J. Seymour, for the State, cross.

The Court: Six to seven?
The Witness: Yes.

By Mr. Gordon.

Q Is there a point where the wooden fence and the boulevard and the land adjoining the boulevard are practically on the same level? A Yes.

Q So that a person could walk off the boulevard and get over the fence and be on the woodland adjoining? A He could without going down the slope, you mean?

Q Without going down the slope. A No. The woodland is in here and that is where the fill is. Down in here the roadway is slightly higher than the adjoining land but as it goes down it comes level with the adjoining land. The road slopes, the grade of the road itself. The land does not.

Q At what point west of the bridge crossing the branch of the Rahway River is the land and the concrete pavement almost on the same level? A Right about here (indicating).

Q Will you be kind enough to mark that, please? A Roadway and adjoining land same elevation you mean?

Q Yes, sir.

By the Court.

Q You are indicating a spot at approximately the entrance to the Gun Club, aren't you? A Yes, sir.

By Mr. Gordon.

Q From this spot which you have indicated approximately at the entrance to the golf club, going easterly towards the branch of the Rahway

River, does the land gradually make a decline or slope? A Yes. The road, I think, slopes up and the ground probably slopes down and makes a fill.

Q Is the slope such that a person could easily walk down it without being precipitated suddenly? A As you get towards the branch of the Rahway River the slope gets steeper.

Q What is the distance from this point marked "Entrance to the branch of the Rahway River"? A Center line of the bridge?

Q Westerly line? A The easterly line of the entrance to the Gun Club to the westerly line of the branch of the Rahway River, is that it?

Q That is it. A 310 feet.

Mr. Gordon: That is all.

Mr. David: That is all.

By the Court.

Q Mr. Seymour, what is the material of the road that is marked "Pawnee Road"? A That is just a cinder roadway. It was a street but it was just rough graded, and then they were building a house in about one thousand feet and they filled it in with cinders so that they could haul materials into the house that is being built.

Q It is not a hard finished road? A No. It is just a cinder roadway.

Q And what is the character of the land adjoining the concrete pavement of the boulevard? A In here it is undeveloped land. Some day it will be a park probably.

Louis J. Atwood, for the State, direct.

LOUIS J. ATWOOD, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q You are Sergeant of Police of the Town of Cranford? A No, I am not.

Q What is your position? A Patrolman.

Q Where were you on the early morning of February 23 last? A I was assigned patrolling the town in a car, the entire township.

Q On instructions did you go to Springfield avenue, Cranford? A I did.

Q At what time of the day was that? A Between 5:30 and 5:45 A. M.

Q Was it dark or light? A Just breaking daylight.

Q And where did you go on Springfield Road? A Just this side of Pawnee Road, that is on the Cranford side of Pawnee Road.

Q On the Cranford side of Springfield Road, when you say this side do you mean south of Pawnee Road? A South of the Pawnee Road and west of Springfield avenue.

Q When you got there what did you find? A Found a body of a woman laying on the shoulder of the road and the body was on fire. Her clothes were on fire.

Q Will you indicate on the map as nearly as you can just the spot where you saw that body? A Well, I should say it was just about ten feet from the Pawnee Road, south of the Pawnee Road and west of Springfield avenue.

Mr. David: Is there any objection to the witness marking the spot?

Mr. Gordon: Not at all if your Honor has none.

A Shall I mark it with an "X"?

Q Yes.

(Witness marks map.)

By the Court.

Q You say that was ten feet south of Pawnee Road? And west of Springfield avenue? A It was about ten feet south of Pawnee Road and on the shoulder of Springfield avenue.

Q The west shoulder? A On the westerly shoulder, yes.

By Mr. David.

Q How long did you remain there, officer? A Well, I remained there until we had put out the fire, which was, say, two or three minutes.

By the Court.

Q What fire? A The fire in the woman's clothes, your Honor.

By Mr. David.

Q Were you there when the wagon from the morgue came and took the body away? A I was.

Q Was the body taken away by George Freeman? A I recollect that name.

Q Of Martin's Morgue? A Of Martin's Morgue.

Mr. David: Cross examine.

Louis J. Atwood, for the State, cross.

Cross examination by Mr. Gordon.

Q Mr. Atwood, did you go there alone? A I went there alone in the Chevrolet car, yes, sir.

Q Who was there when you got there? A Sergeant Martin and a man in a roadster and I arrived practically simultaneously.

Q Then you went there with Sergeant Martin? A No, sir. I went there alone in the Chevrolet car.

Q But you met Sergeant Martin there? A And we met at that spot.

Q Where did Sergeant Martin come from? A The center of the town.

Q He is connected with the police department of Cranford? A He is sergeant of the Cranford police force.

Q Were there any other officers or officials there while you were there before the body was moved? A No, sir.

Q Was there anyone else there other than Sergeant Martin and yourself? A He had commandeered a car in the center of the town and drove out there.

Q Was there a person in that car? A A person was in that car.

Q What was his name? A I think it was Rose but I am not sure.

Q Did you make a report of his name on the police blotter? A Sergeant Martin made that report.

Q On the police blotter of Cranford? A Yes, that is my belief.

Q With his address? A Yes, sir, I think so.

Q You say you arrived there just about daybreak? A It was breaking daylight as I recollect.

Louis J. Atwood, for the State, cross.

Q Don't you know that daybreak on the morning of the twenty-third was 6:38 A. M., or about twenty minutes of seven? A As soon as the sky starts to lighten up I call it daybreak.

Q It was light enough for you to see a form on the road as you approached there? A No. I had to have my lights for that, but the sky was lighting up. First indication of daylight.

Q Was there a moon out? A I do not recollect any moon.

Q Had you been out that night? A Been out from midnight.

Q Do you know whether the moon was out that night? A I do not remember.

Q Don't you know that it was a full moon? A I do not know that fact. It did not make an impression on me.

Q There was heavy snow there two days before the twenty-third, that is correct, isn't it? A Yes, there was snow there.

Q And the snow blew down over Springfield avenue some between the twenty-first and the twenty-third? A Correct.

Q And so Springfield avenue proper, the concrete part was clear of snow? A Correct.

Q And on each side of the road there were snow banks? A Correct.

Q This form that you saw there was on a snow bank? A The upper part of her body was on the snow bank.

Q And the feet? A The feet were out on the shoulder of the road, on the edge of the concrete.

Q On the edge of the concrete? A Yes, sir.

Q When you came along with your car you say you had lights on the car? A I did.

Q Headlights? A Headlights, bright headlights.

Q And you saw these feet sticking out on the concrete? A No, sir. I saw the body in flames first.

Q You saw a form there in flames? A Yes.

Q Did you put the flames out? A I did.

Q And after you put the flames out could you see this form lying on the road and on the snow? A Oh, yes.

Q Didn't have any trouble seeing it, did you? A No trouble at all. I could see in the dark.

Q You could see it in the dark? A Yes, sir, I could see it.

Q You could see it in the dark. Are you sure it was only ten feet south of Pawnee Road? A It was more or less, ten feet more or less.

Q How did you get information that there was an unusual condition on Springfield avenue at that hour of the morning? A Lieutenant Greiss called me to headquarters.

Q Did Sergeant Martin stay there until the morgue keeper came? A That is my belief.

Q Well, weren't you there? A I was sent away on several errands.

Q Well, then, you left the body and didn't stay until the morgue keeper came, did you? A I didn't stay until he came, but I was there when he arrived.

By the Court.

Q You mean you didn't stay until he came but you were there when he arrived, did you say? A I was sent to the Chief's house and I was sent to headquarters.

Q But you were there when he came? Perhaps I misunderstood you. Were you there when

the morgue keeper got there? A I was, yes, sir.

By Mr. Gordon.

Q Then you had left the spot from time to time from the time you first reached there up to the time the morgue keeper came. A Correct.

Q And when you left who was there? A Sergeant Martin.

Q So far as you know the only one who was there was Sergeant Martin? A No. Mr. Rose was with him, to the best of my knowledge and belief.

Q Was Rose there up to the time the morgue keeper got there? A I believe he was but I cannot positively state.

Q You put out the flames with snow, I believe? A That is what we did.

Q Did you notice the appearance of the head? A I did.

Q Did it indicate whether or not it had been crushed with a blunt instrument? A Why, our first impression was that it had been crushed by being hit on top.

Mr. Gordon: That is all.

Re-direct examination by Mr. David.

Q Where is Sergeant Martin this morning, officer? A I do not know.

Q He has been sick? A He has reported sick, yes, sir.

By Mr. Gordon.

Q Isn't it a fact, officer, he is down at White House, New Jersey? A I do not know.

Mr. David: That is all.

George F. Freeman, for the State, direct.

GEORGE F. FREEMAN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q What is your business, Mr. Freeman? A I am assistant in the establishment of M. M. Martin & Sons.

Q What kind of an establishment is that? A Undertaker.

Q Is that the morgue? A The morgue, yes.

Q Did you, on the morning of February 23 last, drive up to Springfield Road, Cranford, near or at Pawnee Road? A I did, yes, sir.

Q When you got there what did you find? A The body of this woman.

Q Did you see Officer Atwood there, the last witness? A Yes, sir.

Q What did you do with the body that you found there? A Why, we took it to the morgue. Picked it up.

Q Did you? A One of our other men, our manager, Mr. Schwartz.

Q Were you there? A Yes, sir.

Q Did you help bring it down to the morgue? A Yes, sir, I was driving the car.

Q The body was kept at the morgue how long? A Until about April 15 or 16th.

Q Was there an autopsy performed on that body? A Yes, sir.

Q In your presence? A Yes, sir.

Q By whom? A Dr. Horre.

Q Was that body identified in your presence?

Mr. Gordon: I object to that as calling for a legal conclusion on the part of this witness.

George F. Freeman, for the State, cross.

Mr. David: I will withdraw the question.

Q What became of the body, Mr. Freeman? A Why, it was shipped by Mr. Martin to Beaver Cemetery, Beaver, Pennsylvania, place of burial. Date of burial was April 16, 1929.

Q When you took the body down was there clothing on it? A Yes, sir.

Q Did you remove the clothing? A We did, yes, sir.

Q I show you a box of clothing and ask you whether that is the clothing that you removed from the body? A It was.

Q To whom did you deliver that? A To the Prosecutor's detective.

Q Do you know the name of the detective? A Detective Reilly.

Q The gentleman sitting there? A That is the one.

Mr. David: I ask the box be marked for identification, unless there is no objection, and then I will offer it in evidence, if there is no objection at this time.

Mr. Gordon: I want to ask one or two questions.

Special cross examination by Mr. Gordon.

Q These articles that are in this box were kept where? A Why, they were taken off at the morgue and turned over to the detective.

Q How long were they in the morgue? A Part of that morning of the twenty-third.

Q You were with them constantly? A Yes, sir.

Q There had been no change in their condition from the time you first saw them until the

time they left you? A Well, that I could not say.

Mr. Gordon: I object.

Mr. David: I will withhold the offer until the detective is put on the stand. I will ask that they be marked for identification.

(Box of clothing marked S. 2 for Identification.)

By the Court.

Q These are the garments that were taken from the body? A Yes, sir.

Q You know that? A Yes, sir. Positive of that. I have a copy of the certificate of death. I have a certificate of death here, Prosecutor, that we carry on hand, a copy.

Q Did you remove these articles from that body (handing envelope containing jewelry to the witness)? A I did.

Q To whom did you deliver those? A To the detective.

Q Mr. Reilly? A Mr. Reilly.

The Court: Now, referring to some jewelry?

Mr. David: Referring to a chain, two rings and a pair of earings. I ask they be marked for identification.

(Envelope marked S. 3 for Identification.)

By the Court.

Q You know they are the articles that you took from the body? A Yes, sir.

The Court: Is there objection to them?

Mr. Gordon: No.

Mr. David: Cross examination.

The Court: There is no objection to the jewelry.

Mr. David: I will offer them in evidence, if there is no objection.

Mr. Gordon: None at all.

Mr. David: I offer the clothing.

Mr. Gordon: I object to that.

The Court: The clothing is marked for identification but this last parcel containing some jewelry is admitted.

(Envelope containing jewelry entered in evidence and marked Exhibit S. 3.)

RICHARD B. REILLY, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Mr. Reilly, I show you—

The Court: Mr. Prosecutor, hadn't you better identify this man?

By Mr. David.

Q Mr. Reilly, you are connected with the County Prosecutor's office of this County? A Yes, sir.

Q And you are a county detective? A Yes.

Q And you have been for how long? A Four years.

Q For the past four years continuously? A Yes, sir.

Richard B. Reilly, for the State, cross.

Q I show you a box of clothes, marked for identification Exhibit 2 for the State, and ask you whether those clothes were delivered to you by Mr. Freeman, the last witness? A They were.

Q And they have been in your possession ever since? A They have.

Q And produced by you this morning? A Yes.

Mr. David: I offer them in evidence.

Mr. Gordon: They are objected to, subject to a few preliminary questions, which I should like to ask the witness now.

The Court: You may ask them now.

By Mr. Gordon.

Q You say these have been in your possession? A Yes, sir.

Q Where? A Upstairs in the vault in the Prosecutor's office.

Q The vault is open? A No, it is locked.

Q When was it locked? A Locked all the time.

Q Was it locked on the afternoon of April 11? A Well, there is many times that the members of the Prosecutor's office, and the Prosecutor himself, has to use the vault and opens it himself.

Q Then the vault is not always locked? A Not permanently locked, no.

Q Have you made a list of these articles? A No, I haven't.

Q Have they been in anything other than this pasteboard box? A No, they have not.

Q Have they ever been sealed? A No, they have not.

Mr. Gordon: I object on the ground that the State has not precluded the possibility

of these articles changing in appearance or changing in number or contents.

By the Court.

Q Do you know that those articles were given to you from the last-named witness? A I do, your Honor.

Q All of them that are there? A All that are in the box.

The Court: They will be admitted.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(The articles referred to were received in evidence and marked Exhibit S. 2.)

EMMA A. DODDS, a witness produced on behalf of the State, being duly sworn according to law, on her oath saith:

Direct examination by Mr. David.

Q Where do you live, Mrs. Dodds? A Greenville, Mercer County, Pennsylvania.

Q How old are you? A Sixty-six years old.

Q Did you sometime in the month of April last come to Martin's morgue in this city? A Yes, sir.

Q And did you identify a body? A Yes, sir.

Q Did you view a body there? A Yes, sir.

Q Whose body was it? A The body of Mrs. Benjamin Mowry.

Emma A. Dodds, for the State, direct.

Q What was Mrs. Mowry's first name? A Small—maiden name do you mean?

Q Her maiden name was Small before she married Mr. Mowry? A Yes.

Q What was her Christian name? A Parmelia was her baptized name.

Q Was she also known as Mildred? A Yes.

Q Can you give me the date that you were at Martin's morgue? A No, sir, I cannot.

Q Can you tell me who were there when you identified the body? A Well, there was a lady came with me from Greenville and I can tell you her name.

Q Can you tell me who were there of the Martin establishment A No, there was a lady with the corpse.

Q You recognize Mr. Reilly here, the last witness, as one of the men who were there at the time? A Yes.

Q Who was Mrs. Mowry? A Who was she?

Q Yes. A Well, she was just Mrs. Mowry. Do you mean what was her occupation?

Q Yes. A Well, for her livelihood she was a nurse.

Q How long did you know her? A About ten years.

Q Did you know her well? A Yes, intimately.

Q Do you know whether Mr. Mowry was alive at the time you identified this body, Mr. Mowry, the first husband? A Why, only hearsay.

Q Well, was he living or dead? A Dead.

Mr. Gordon: I move to strike that out, if your Honor please. The witness has already disqualified the answer she has been giving as hearsay.

Emma A. Dodds, for the State, direct.

The Court: The witness has said that she only knew by hearsay.

Mr. David: I won't waste any time on it, your Honor.

By Mr. David.

Q How long did you know Mrs. Mowry? A About ten years.

Q In Greenville? A Yes.

Q During that time did Mrs. Mowry live with you? A Part of the time.

Q How much of the time? A A year.

The Court: The motion was to strike the testimony that he was dead. That will be done. You understand that, Mr. Prosecutor?

Mr. David: Yes, sir.

The Witness: About one year.

By Mr. David.

Q Was there anything about Mrs. Mowry's physical appearance that you recall in particular? A Yes, sir.

Q What? A Well, she had a crooked finger on the right hand.

Q Yes. Anything else? A Yes, she had a large wart, rather large wart near—in the center of her back near the waist line.

Q The body that you viewed and which you identified as Mrs. Mowry's, did that have a crooked finger? A Yes, sir.

Q And this wart on the back? A Yes, sir.

Q I show you a picture and ask you whose picture that is? A That was her picture after she had married this last man.

Emma A. Dodds, for the State, direct.

By the Court.

Q A picture of whom? A Mrs. Mowry, just a new one. It was just a late picture. It was along about that time taken.

Q By this last man, you refer to whom? A Well, to a man by the name of Campbell, that I know of.

Mr. Gordon: I object to that statement and move that the answer be stricken out, unless the witness knows of her own knowledge of the marriage.

The Court: That is a matter that you may develop on cross examination. She said that this was a picture taken after the woman's recent marriage to Mr. Campbell, or about that time. I have no reason to suppose she does not know. You may develop it on cross examination.

By Mr. David.

Q At the time that you viewed the body at the morgue, did you also see the clothes, Exhibit S. 2? A Yes, sir.

Q I ask you now if you recognize those as clothes the clothes belonging to Mrs. Mowry? A If I may pick them up?

Q You may do that. I will do it for you. A That was one of the articles (indicating), and the dress is another.

By the Court.

Q Are you identifying those as you go along, Mrs. Dodds? (No answer.)

The Court: I don't know how important this clothing may be as part of your case,

Mr. Prosecutor, but there should be some enumeration of the items so that we know what there is in this exhibit.

Mr. David: Yes, the witness has just said she recognizes—

The Witness: A coat.

Mr. David: (Continuing.) A coat.

By the Court.

Q That piece of goods that you are looking at is the remains of what is left of a coat, and that coat you recognize as having belonged to Mrs. Mowry? A Yes, sir, very distinctly, the sleeve and the trimming.

By Mr. David.

Q The sleeve and the trimming? A No, the sleeve separately. There is one sleeve—

Q You have not found it yet? A It is on the dress.

Q Is that it (indicating)? A There it is (indicating), the piece around the sleeve.

Q You recognize that? A Yes, sir.

By the Court.

Q You have just indicated a garment. What was that? A This is a dress.

Q Of whom? A Of this Mrs. Mowry Campbell.

Q And you indicated something that seemed to be significant to you about it. What was it? A Well, there was a sleeve. There was a piece put around the sleeve that is not like anything else. It seems as though it had been put around it some time, and it is a long sleeve instead of a short sleeve.

Emma A. Dodds, for the State, cross.

By Mr. David.

Q Do you recognize that part of it? A Yes, sir.

Q Do you recognize these shoes (indicating)? A Yes, sir.

Q As those of Mrs. Mowry? A Yes, sir.

Q What is there in particular about these shoes? A Well, these—(indicating).

Q Are you pointing now to metal clasp? A Yes; now turn over.

Q On the bottom of one of the shoes between the heel and the sole? A Yes, sir.

Q And what else? A The tie, Oxfords.

Q I show you Exhibit S. 3 and ask you if you recognize any of this jewelry? A Yes, the rings, one is a wedding ring, and one is a ring that she had before. Well, a wedding ring, and one of these is a diamond and one is an imitation of a diamond. I don't recognize the beads.

Q Those rings you recognize as having belonged to Mrs. Mowry? A Yes.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Mrs. Dodds, when had you seen Mrs. Mowry alive last? A Tuesday evening after Thanksgiving. I can't give you the date.

Q That is in November, 1928? A Yes.

Q And at that time do you know what kind of a dress she was wearing? A No, sir, I don't.

Q Or what kind of a coat she was wearing? A No, sir.

Q Or what kind of jewelry she was wearing? A No, sir.

Q Do you know how old Mrs. Mowry was? A No, sir.

Q Can you approximate her age, whether it was fifty, fifty-five or sixty? A You mean guess at it? Approximate?

Q As nearly as a woman can guess another woman's age. A Well, I would guess it at fifty-nine, about there, fifty-eight or fifty-nine.

Q Could you give us her approximate height? A No, sir.

Q Would you say she was taller or shorter than I am? A I couldn't tell you that.

Q You have seen her frequently? A Yes.

Q And you don't know how tall she was? A No.

Q Was she a portly lady, stout? A No.

Q Slight? A No.

Q About medium build? A I think.

Q And what is there distinguishing about these slippers that make you believe they belong to Mrs. Mowry? A Well, she showed me shoes, the slippers that she got down the street, and they look like the shoes. They are an Oxford tie, what we call an Oxford tie.

Q Have you seen similar slippers in the same shop or store? A No.

Q Did you ever visit the store? A No.

Q That store was located where? A On Main street as you go down towards the river on the right-hand side.

Q You say she lived with you how long? A Well, I couldn't give you the exact date.

Q I mean the period of time, but not the time. A Oh, about a year, a little over a year.

Q Was that during the year 1928? A Yes.

Q Did you see her then every day? A Why, unless she was out on a case. If she was at home, I saw her, and if I was at home, and if we were both at home, I saw her.

Q You know where she came from before she started to live with you? A Yes.

Q Where? A In Mr. Mowry's home.

Q Where was that? A In Greenville.

Q She was not related to you in any way? A No, sir.

Q Have you ever seen Mrs. Mowry in the nude before? A Yes.

Q You mentioned something about a bad right finger? A Yes.

Q Do you know which finger it was? A Yes, sir.

Q Which one? A The fourth finger of the right hand.

Q Do you know how that was occasioned or caused? A Why now that would only have to be hearsay, just what she told me.

Q What did she tell you?

Mr. David: I object to that.

Mr. Gordon: Withdrawn.

By Mr. Gordon.

Q Then you never saw her from November, 1928, up to the time you identified a body at a morgue in Elizabeth? A No, sir.

Q When you were brought into the morgue, did you know whose body you were going to be asked to identify? A Yes.

Q Up to that time did you know before you got here? A Yes, sir.

Q Then when you got here, you went into the morgue? A Yes, sir.

Q Were there any other bodies there? A I didn't see any.

Q Do you know if there were any others there? A I don't know.

Emma A. Dodds, for the State, cross.

Q There was one body presented to you? A Yes, sir.

Q That was the body you inspected? A Yes, sir.

Mr. Gordon: That is all.

Mr. David: I offer the picture in evidence.

Mr. Gordon: I should like to ask a question on that, if your Honor please.

The Court: All right.

By Mr. Gordon.

Q Do you know where this picture was taken? A No.

Q Do you know what year it was taken? A 1928.

Q Do you know whether it was in the spring, summer or fall? A No, I couldn't say.

Q You have made a statement that it was taken after Mrs. Mowry was married? A After or near the time.

Q That is based on something told to you? A Yes, she told me.

Mr. Gordon: If your Honor please, I object to the introduction of the photograph and also move to strike out that portion of this witness' testimony referring to the time when the picture was taken, and the objection to the introduction of the photograph is that it does not yet have attached to it the time when it was taken.

The Court: Have you something to say to that, Mr. Prosecutor?

Mr. David: Yes. The object in offering the photograph is merely to offer in evi-

dence a picture of the person whom the witness has testified she identified.

The Court: I understood you to say and I assume that whether it is after or near the time of her re-marriage is not significant in the case.

Mr. David: It was not proven on the direct case at all. It was merely volunteered.

The Court: That particular testimony, which is what I understand the motion is to strike out, will be stricken out, as to when it was taken about or after the time of the marriage. She did say that this was a recent picture.

The Witness: Yes, I did, a recent picture.

The Court: The picture will be admitted.

(The photograph referred to was received in evidence and marked Exhibit S. 4.)

GEORGE W. H. HORRE, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q What is your profession, doctor? A Physician.

Q And you have been practicing for how long? A Eight years.

Q Are you a graduate of any college or institution of learning? A Yes, sir.

Mr. David: Are the doctor's qualifications admitted?

George W. H. Horre, for the State, direct.

Mr. Gordon: Yes, sir.

By Mr. David.

Q Are you an assistant to the county physician of this county? A Yes, sir.

Q And as such, did you perform an autopsy on the body of Mrs. Mildred Mowry? A I believe that was the woman's name.

Q Where did you perform the autopsy? A Martin's morgue, Elizabeth.

Q Showing the witness S. 4, is that a picture of the body on which you performed the autopsy? A Well, I couldn't say it was exactly the body, from the picture.

Q The face was disfigured? A Yes, sir.

Q Who pointed out the body to you, doctor?

Mr. Gordon: I object to that, if your Honor please, "Who pointed out the body?"

By the Court.

Q Where did you perform the autopsy? A At Martin's morgue, Elizabeth.

Q When? A February 23, 1929.

Q Who requested you? A Mr. Schwartz, the mortician in charge, and I believe the young man that testified here, first, Mr. George Freeman.

By Mr. David.

Q In their presence did you perform the autopsy? A Yes.

Q Will you give me the result of the autopsy? A This is an unknown female about forty years of age, brown hair tinged with gray, matted and burned. The height was five feet five and

one-half inches. The weight was about 125 pounds.

External appearances: The face was charred, black over the eyes, nose and upper lip. The upper lip was retracted upwards, as the result of a third-degree burn. The rest of the face was a second-degree burn.

Q What do you mean by a second-degree burn, doctor? A Well, a second-degree burn is a burn through the superficial tissues, probably down to the fascia.

Q What is a third-degree burn? A Down to the muscle.

Q Go ahead. A There was evidence of blood coming from the left ear. There was a second-degree burn on the left side running from the left shoulder down side to three inches below the left thigh; left arm second-degree burn. There was some blue dye or color left on the left arm. The hands, left was a third-degree burn, and a yellowish color burn on the back of the left thigh. There was a burn on the right leg where the garter encircled it just above the knee. The skin over the right shoulder was burned and blistered. There was a contraction of the fourth right finger. There was an obliteration from the creases of blood on the surface. The chest, free blood found in the left chest cavity about one pint. The left lung, there was a hole through the upper left lobe. The lower left lobe was negative. The right lung was negative. The heart was negative.

Q When you say the right lung was negative, doctor, by that you mean it was normal? A No pathology.

Q And by the heart being negative, you mean it was normal? A Yes.

Q There was no disease or infection of these organs? A That's right. The abdomen, the stomach, was normal. The intestines were normal. The liver was normal. The spleen was normal. The kidneys were normal. The uterus was about one-half the normal size. Examination of the vagina showed that there was no bleeding and otherwise normal. The ovaries and tubes were normal. There was a bullet wound through the top of the head in center line anterior posterior and on a line drawn from top of external acustic meatus.

Q Doctor, you say there was a bullet wound through the top of the head to the center line anterior posterior. What do you mean by that? A From the front to the back. That is the anterior (indicating) and that is the posterior.

Q You say a line drawn from top of external acustic meatus. What did you mean by that? A That is a line drawn from—you can say the ear-hole upward over the skull down to the other. That is the line.

Q Just go ahead with the result of your autopsy. A The track of the bullet was downward through the brain substance to three-quarter inch to left of the foramen magnum. That is a hole in the bottom of the skull where the cord goes through, through the base of the skull. The bullet split in greater wing of sphenoid stellate in character.

Q What do you mean by that, doctor? A The floor of the skull is divided into three parts, anterior, middle and posterior. In the middle where the bullet had went through, it split the floor of the second compartment.

There was a large amount of bleeding at the base of the skull, and there was a hematoma.

That is a collection of blood, over the side of the neck on the left side. The bullet entered the chest, passed through the upper lobe of the left lung and was found imbedded in the chest wall at the level of the eighth rib at the posterior maxillary line.

The cause of death was a bullet wound through the skull and brain; punctures of the lung; second and third degree burns of the body.

Q Did you remove the bullet from the body, doctor? A Yes, sir.

Q What did you do with it? A Gave it to Detective Reilly.

Q The gentleman at the table here who was a witness earlier in the morning? A Yes, sir.

Q Did you make any mark on that bullet for the purpose of identifying it? A Yes, sir.

Q Is this the bullet? A Yes, sir.

Q How do you know it is the bullet, doctor? A Because I made a mark on it.

Q What mark did you make on it? A The letter "H."

Q Do you now identify that bullet as the one that you handed to Detective Reilly? A Yes, sir.

Mr. David: I offer it in evidence.

Mr. Gordon: I object to it.

The Court: Hold it until after cross examination.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Dr. Horre, you say the body upon which you performed an autopsy appeared to be that of a woman forty years of age? A Well, I

couldn't tell you the exact age. I said about forty years.

Q You did state that? A Yes.

Q Do you know how tall this person was? A Yes, five feet, five and one-half inches.

Q From your examination of the body upon which you performed the autopsy are you in a position to state whether or not death was instantaneous? A Death from the bullet wound was instantaneous.

Q Have you the original findings with you? A These were made at my request.

Q Are these the papers you read from? A Yes, sir.

Q Did you say anything in your direct examination under cause of death about a contraction of fourth finger? A Not in the cause of death.

Q Is not that listed there under cause of death? A Yes, sir.

Q Well, it wasn't the cause of death? A Absolutely not.

Q You say the stomach was negative? A Yes, sir.

Q Did you make any examination of the contents of the stomach to ascertain whether or not there was any chemical in there? A No, sir.

Q Do you know whether or not the stomach contained any cyanide of potassium? A No, sir.

Q Do you know whether it contained any other death-dealing drug? A No, sir.

Q Did you make any examination of the kidneys for that purpose? A For what purpose?

Q To ascertain whether or not they had, or contained any death-dealing drugs? A No, sir.

Mr. Gordon: That is all.

George W. H. Horre, for the State, cross.

By the Court.

Q Doctor, was there more than one bullet wound that you observed? A There was only one bullet wound. The point of entrance was at the top of the head and the exit—of course, it didn't come out; it went into the chest wall on the side.

Q Will you indicate on your own head about where that wound of entrance was? A Well, if a line is drawn from the front to the back of the head, that is the center of the skull this way; and if a line is drawn from this point over the top of the head to this point, it bissects the anterior posterior line, and that was the point.

Q Then it was about the middle of the top of the head? A Yes, sir.

Q Where the wound was? A That is where the bullet hole was.

Q And the course of the bullet as you traced it was downward? A Down.

Q Through what organs? A Well, it went through the brain, it went to the left of the median line.

Q That means it went to the left of the middle line? A That is right. Through the brain.

Q Yes. A Through the bottom of the skull, down through neck, and through the lung and into the chest wall.

Q And there you found it and from that part of the body you took it out? A Yes, sir.

Mr. Gordon: May I ask another question which I forgot?

William Morozow, for the State, direct.

By Mr. Gordon.

Q Doctor, who was present when you made your initials on the bullet, or your initial on the bullet? A Mr. Reilly.

By the Court.

Q Had you performed any other autopsy at anywhere near that time in the presence of either Mr. Reilly or Mr. Freeman? A I didn't perform any autopsy in the presence of Mr. Reilly. Mr. Freeman is always present at the morgue.

Q Was there any other autopsy on that day or about that time that you made? A Not that day, no.

The Court: Very well, that is all.

Mr. David: I renew the offer of the bullet in evidence. The witness has positively identified it as the bullet.

The Court: Yes. It will be admitted.

(Bullet entered in evidence and marked Exhibit S. 5.)

WILLIAM MOROZOW, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q What is your business? A I am confidential clerk in the prosecutor's office.

Q Of this county? A Yes, sir.

Q And have been for how long? A Approximately five years.

William Morozow, for the State, direct.

Q Are you a stenographer? A Yes, sir.

Q Take dictation in shorthand? A Yes, sir.

Q And typewrite? A Yes, sir.

Q Where were you on the evening of April 11, last? A I was in the prosecutor's office.

Q With whom did you enter the prosecutor's office about sometime after supper that night? A With you.

Q And when you say the prosecutor's office will you tell me just which room you have reference to? A I was in the ante room, or the first room where the files are kept, the entrance room to the prosecutor's office, after the lobby or the waiting room.

Q When you say you went into the prosecutor's office, do you refer to my private office? A Yes, sir.

Q When you got there, whom did you find there? A I saw Mr. Campbell.

Q What Mr. Campbell? A Henry C. Campbell, that gentleman there.

By the Court.

Q The defendant in this case? A The defendant in this case.

By Mr. David.

Q Who else? A Mr. Walsh, the assistant prosecutor.

Q Who else? A Mr. William Wagner.

Q Who else? A Mr. Richard Reilly, county detective, Michael J. Tevlin of the Elizabeth police, and Detective Louis Lombardi of the prosecutor's office.

Q When you entered in company with the prosecutor in the presence of the defendant what was the first thing was said and by whom? A

Mr. Wagner said, "Prosecutor David, this is Mr. Campbell, he has confessed to killing Mrs. Mowry."

Q What next was said? A You asked him to make the statement and you sat down alongside of him.

Q What did I say to Mr. Campbell, the defendant? A If he was willing to make a confession.

Q And what did he say? A He said yes.

Q What more did I say? A You asked him if he was making it freely and without any promises or threats.

Q And what did he say? A He said yes.

Q Did he then make a statement? A Yes, sir.

Q And did you take that statement down in shorthand? A I did.

Q And did you transcribe it on the typewriter? A I did.

Q After you did that, what did you do with it? A I brought it into your private office where Mr. Campbell was and the rest of the gentlemen I named before.

Q And what was done with it at that time? A It was handed to Mr. Campbell to read.

Q And did he read it? A He did.

Q And after he read it, what did he do? A He signed each individual page and then the last page.

Q I show you a paper and ask you what that is? A That is the confession that I typed and which he signed.

Q And that he made? A Yes, sir.

Mr. David: I offer it in evidence.

Mr. Gordon: I object to it at this time until I cross examine the witness.

William Morozow, for the State, special cross.

Special cross examination by Mr. Gordon.

Q Mr. Morozow, did Mr. Campbell dictate the last two lines: "I am making this statement voluntarily and freely and without any promises of any kind or any threats?" A No, sir.

Q Who dictated that? A The question was asked him by the prosecutor, Mr. David, and he answered yes.

Q Then this statement is not the result of what he dictated, is it? A He didn't dictate anything.

Q Who dictated this statement? A He just answered the questions that were propounded by Prosecutor David and I incorporated the question and the answer in my transcript.

Q Have you the original questions that were asked by the prosecutor? A Yes, sir.

Q And have you the original answers that were given by Mr. Campbell? A As I said before the questions and answers are incorporated.

Q Have you the original questions? A No, I have not.

Q Did you make a note of the questions as they were asked? A I did, in my mind.

Q Not in your notes? A Yes, it was incorporated right there.

Q This is a reduction by you of the question and the answer, isn't it? A That is right.

Q As you understood what the answer was to the question. A That is right.

Q Now, then, where had you been before going to the prosecutor's office that evening.

Mr. David: Objected to as immaterial and not cross examination.

Mr. Gordon: I will withdraw the question.

Q When you got to the prosecutor's office who was there with Campbell? A Assistant Prosecutor Walsh, William F. Wagner, Michael—

Q Who is William F. Wagner? A He is a detective connected with the Pinkerton outfit.

Q Who else? A Michael J. Tevlin of the Elizabeth police.

Q Who else? A Louis T. Lombardi, a county detective.

Q Yes. A Richard B. Reilly, a county detective, and I think Roy A. Martin, a county detective, were there.

Q Did you know how long they had been with Walsh before you got there?

Mr. David: Objected to as not cross -examination.

Mr. Gordon: It goes to the question as to the manner in which this paper was obtained.

The Court: How could he know how long they had been there before he got there?

Mr. Gordon: They may have told him. Well, I will not press the question.

Q You, at no place in this statement put the words in there that it was a true statement, did you?

Mr. David: If counsel desires to examine this witness on the statement I ask that it first be marked in evidence.

The Court: Well, the question that is now before us is whether or not this statement was taken properly, whether or not the safeguards were provided that should surround the taking of a statement that amounts to a confession.

Q Do you know whether or not the defendant had any marks on his face? A Yes, I do.

Q Where? A He didn't have any.

Q He didn't have any mark on his upper lip? A I didn't notice any.

Q Do you know what his condition was with reference to his being at ease or nervous at the time he presented—he offered his signature to the statement? A His condition?

Q Yes. A He seemed all right.

Q Wasn't he smoking cigarettes continuously? A He was smoking. I don't know how fast. He was smoking, yes.

Q Quite a number of cigarettes were consumed by him? A Oh, I wouldn't say quite a number. Maybe three or four.

Q How long did it take for this statement to be written? A To be typed up?

Q Yes. A About an hour.

Q When was it finished? A It was finished about 10:30, I think.

Mr. Gordon: I object to the introduction of this statement upon the ground that the witness has already stated that the statement represents the witness' reduction of the answer to the question as he understood it. And not what the defendant answered to the questions.

Mr. David: Does your Honor wish to hear me on that?

The Court: Yes.

Mr. David: The statement is signed by the defendant. Under the cases in this State it is not necessary that questions and answers be solicited from a defendant who makes a confession, but that a statement or

resume, or, as the witness has already testified, a combining of question and answer into a statement, signed by the defendant, is admissible.

The Court: Did he read the paper over?

Mr. David: The witness has so testified that he read the statement over and signed each page.

By the Court.

Q Well, that was what happened, was it? A Yes, sir.

Q You read it or he read it? A I read it after I did it, and then he read it.

Q He read it? A Yes, sir.

The Court: I think the rule has been complied with.

Mr. Gordon: May I note an exception?

The Court: Yes, you may have an exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(Statement entered in evidence and marked Exhibit S. 6.)

Direct examination (continued) by Mr. David.

Q After Campbell made his statement and before you reduced it to typewriting did he write any other paper? A Yes, he did.

Q I show you a paper and ask you what that is? A That is a note he wrote and asked that it be delivered to his wife.

Q Was it written in your presence? A Yes, sir.

Q And with reference to the time that he made the statement Exhibit S. 6 when was this note or letter written to his wife? A Before he made the statement.

Q Just tell me at what stage, at what time in the conversation, or interview with Campbell was this letter written in your presence? A Immediately, I will say, a few minutes after you and I came into the room, and before he made the confession, he asked if he could send a note to his wife, and if we would deliver it, and that is what was done.

Q Was that before or after I asked him whether he was making his statement voluntarily and freely without any threats or promises? A That was after.

Q What was after? Do you mean this writing that is on this yellow sheet that the prosecutor holds in his hand was made after the prosecutor had asked the question? A That question with reference to whether he made the statement freely and without any promises or threats.

Q This writing was made afterward? A Yes.

By Mr. David.

Q And before the statement which was reduced to writing and which has been offered in evidence as Exhibit S. 6? A Before that, yes.

Mr. David: I am about to offer this in evidence.

Mr. Gordon: No objection.

(Sheet of yellow paper entered in evidence and marked Exhibit S. 7.)

Mr. David: I desire to read into the record Exhibit S. 7, before Exhibit S. 6, because although it is offered in evidence later, it was in the sequence of events written before the Exhibit S. 6.

Mr. David: Exhibit S. 7 is as follows:

"Thursday night, April 11. My dear wife: I will not be home tonight and after this trouble you will not want to see me again and I don't want you or the children to come. Telegraph to Lovelle to come to you. I am sending the check book. There is $147.17 balance. You can go up to Westfield to get it. This is the end of everything and I can't say any more. I wish I could see you all once more but it is best not. Harry."

Mr. David: May I now read Exhibit S. 6?

(Reading.)

"April 11, 1929, 9:00 P. M. Statement of Henry C. Campbell, 471 Madison avenue, Elizabeth, New Jersey.

"My full name is Henry C. Campbell. I am sixty years of age. My business is advertising. I now live at 471 Madison avenue, Elizabeth, New Jersey, and have lived there going on the second month. Before that I lived at 349 Tuttle avenue, Westfield and lived there for about eight months. Before that I lived at Maryland, Salisbury, Maryland. I am married and was married on the third day of May fifteen years ago.

"I met Mrs. Mowry through a matrimonial agency. I think it was some time early in February of last year. My name was registered in a matrimonial paper in Detroit

and my name must have been forwarded to her. She wrote to me first. At that time I was living at Maryland. I answered her letter. Before we met I can't say how many letters passed between us, possibly eight or ten. We met in Washington, D. C., at the club house of the Women's Party. To the best of my recollection, I think it was sometime in May. I spent about three or four hours with her and she went home two or three days later. She had some friends in Washington, D. C., she was going to see. I next met her in Philadelphia the latter part of August. She wrote to me and I don't remember if I wrote or telegraphed her. My recollection is that she came on and it was not a case of postponing, it was a case of might-as-well be-married now than wait until later. That was the last of August in Philadelphia. That was on the second meeting. We were married in Elkton, Md. I met her in Maryland with the car and we drove from Philadelphia to Elkton. A minister of the Gospel married us.

"After we were married we drove around for a couple of days and stopped for two nights at roadhouses and then I told her I had no place to take her and she didn't have anything with her but a small traveling bag and she thought best, and I agreed to go back home again for awhile until things could be fixed up. I went to my home and she went to hers. The day after or the second day, I don't remember which, we drove to New Brunswick and she deposited a check in the New Jersey National Bank at New Brunswick. We opened a joint account there,

in our joint names. The check was for one thousand dollars. I drew that money out of that account, two or three different times, during the month of September, I think. Of that money I sent her at different intervals, $30, $25 and $10, something like that until it came to about a couple of hundred dollars. That was from August until she died.

"After we went to our homes, we next got together the twenty-first of February this year. I did not see her from the latter part of August until the latter part of February this year. We corresponded. I haven't any idea how many letters, but we corresponded once or twice a week and sometimes once in ten days. During that time she was living in Greenville and I was living in Westfield.

"I went to New York where I had been receiving my mail and I had been told that my wife was inquiring for me. That was ten days before that. I guessed that she was inquiring for me a couple of days before I got there. The clerk there told me where she was stopping at New York. It was the Laura Spellman Y. W. C. A. I heard she was inquiring for me at 110 West 42nd street where I had a mailing address. I gave her that address to write to me, in one of my letters. After I found out she was at the Laura Spellman home I went there to see her but she wasn't there. I waited about half a day. I went there another time, several days apart, I don't remember just how far, but I went there to meet her.

"Two or three days before I met her at Philadelphia, I sent her a note asking her

to meet me and she met me on February 21st at the Broad street station in Philadelphia. I was driving my car. I had driven it to Philadelphia. After I met her we went to Dover, Delaware, and the two of us stayed there one night. We stayed at the hotel there, I think it was the Richardson house. From there we started to drive back this way the next day. For awhile we drove around miscellaneously. I had trouble with the car, with the ignition and we both got in Philadelphia about eight or nine o'clock at night, had something to eat there first and then started to drive this way, back up to New Jersey. I finally got to Cranford and Westfield, that is Cranford. I got to Cranford along about three or four o'clock in the morning. I stopped once for about an hour before I could get the car started, there was some trouble with the spark and I couldn't get it started. I had trouble all the way from Wilmington on the way up. We stopped to eat at nine o'clock in Philadelphia that night. We stopped at a restaurant on Broad street. I had a fellow in one of the wayside filling stations look at the car, near Wilmington. The rest of the time I fooled with the car myself and when it got cooled off it got started again.

"We got to Cranford between three and four o'clock in the morning. I didn't know what to do with myself or her. She wanted me to take her somewheres where we could go to bed. I didn't know where to go or what to do. She got kind of cold and drowsy in the car. I made up my mind there was no way out of it but simply to get rid of

her. There was only one seat in the car, except the rumble seat. I then shot her. At this time I was just around the bend in the road from where she was found, about two or three hundred yards away. I don't remember the name of the street. It wasn't a street, it was a road. She was sitting in the front seat at the time. She was dozing, she was not sleeping. I held the gun up over her head and fired one shot. It went in the top of her head. She had a hat on. I then started up the car and drove about three or four hundred yards, turned into the other road, and decided I ought to get rid of her. I drove the three or four hundred yards because I didn't know what to do. I again stopped and dragged her out of the car. I threw a lot of gasoline over her and set fire to her with a match. I got the gasoline from the rumble seat of my car. I kept it there in case I ran out of gas when out driving. Before this I realized it was going to be daylight before long when I got to Cranford and I wanted to get home and I couldn't take her anywheres with me.

"There was nothing between us that prompted me to do this except for the reason that I could not maintain two establishlishments.

"After I set fire to her I went home to Westfield. I stayed home because I was not working. I stayed home every day except that I was going into New York occasionally to see if I could get some work to do. I moved from Westfield the first week of March, the fourth or fifth, to 471 Madison avenue, Elizabeth.

"I took her grip and threw it in the furnace in my home without looking into it. Nobody in the house knows I did that. This I did after I got up the next morning.

"I do not know where Mrs. Mowry bought the shoes she had on.

"As near as I can tell the shooting occurred about five o'clock in the morning. At the time I first parked there were two or three cars passed in a period of half or three-quarters of an hour but I don't know what they were. First off I didn't pay any attention to them. It was dark. The second time there weren't any cars that passed. I didn't notice any cars coming near me.

"I own a gun. A Colt automatic, manufacturers No. 267222. It is a 32 calibre. I bought it years ago in the West, I should say about fifteen or eighteen years ago.

"On being shown the gun by Prosecutor David, I identify the gun as the one I had on my person tonight and the one with which I shot Mrs. Mowry. My wife knew I had the gun. We got it because when we lived in Chicago, there were burglaries and things of that sort going on and she wanted one in the house.

"I never met any of the relatives or friends of Mrs. Mowry. I never saw any of her folks or friends. She was never in the company of any friends when I met her.

"I did not intend to marry this woman originally, but I married her thinking it might relieve me of some of my financial difficulties. I had been in financial difficulties for the past two years or more. I recognize the picture which you show me as that of

Mrs. Mowry and I also recognize the two rings you show me as being hers.

"I am making this statement voluntarily and freely and without any promises of any kind or any threats.

"HENRY COLIN CAMPBELL.

"Interrogations by A. J. David, Prosecutor.

"Transcript by William Morozow, April 11, 1929.

"Witness: Abe J. David, Richard B. Reilly, John R. Walsh, William Morozow, Louis T. Lombardi."

Q Now, after Mr. Campbell, the defendant, made his statement, do you recall my showing him a package of letters? A Yes, I do.

Q On being shown those letters what did Campbell say? A He said those were his letters in his handwriting.

Q Is this the package of letters? A That is the package.

Mr. David: I offer them in evidence.

Mr. Gordon: I think I ought to have been given the opportunity of looking at them.

The Court: Is there any objection to that?

Mr. David: No.

By the Court.

Q You prepared this statement that has been read? A Yes, sir.

Q And in the statement there is a reference to a photograph being shown—

Mr. David: I am about to examine him about that.

The Court: Proceed to that, will you? If counsel wishes to examine these letters meanwhile, we will be adjourning for the noon recess soon, which will be an hour and a quarter in length, at half-past twelve, and perhaps in the presence of some representative of your office, if you desire it, with or without, as you choose, counsel may have the opportunity during the recess hour of inspecting them.

Mr. David: I will leave those with counsel during the recess hour. We will return them when court convenes.

The Court: Proceed with your examination meanwhile.

By Mr. David.

Q I show you Exhibit S. 4 and ask you whether that is the photograph which was shown to the defendant that night and which, in his statement, he says he identifies as that of Mrs. Mowry. A That is the photo.

Q I show you a revolver and ask you whether that is the revolver that was shown to Campbell, the defendant, that night and which he, in his statement, identifies as the one that was taken from his person that night and the one with which he shot Mrs. Mowry?

Mr. Gordon: That is objected to, subject to a preliminary question or two that I would like to ask the witness.

William Morozow, for the State, special cross.

Special cross-examination by Mr. Gordon.

Q Mr. Morozow, when was the last time you saw that revolver before this morning, the one that is in your possession now? A Oh, I saw it several times, but I can't recall just when.

Q At various places in the prosecutor's office? A Always in one place.

Q Are there a number of automatics up there? A Not in that particular place. I have never seen any where that was kept.

Q Did you identify—is the number on that revolver the same number that is in the statement that you offered? A I think it is.

Q Will you examine it, please?

Mr. David: Suppose you have him read the number?

A The number on here is 267229.

Q 229? A Yes.

Mr. Gordon: I press the objection. The statement has a different number on it.

Mr. David: I will withhold offering it in evidence.

By Mr. David.

Q To whom did you deliver the revolver that night, or did you see it delivered to anybody that night after it was shown to Campbell? A It was delivered to Detective Reilly.

Q The witness earlier in the day who sits at the table? A Yes, sir.

The Court: Was there any jewelry present referred to in the statement?

Mr. David: Yes, they have already been offered in evidence.

The Court: Yes, but it hasn't been identified by this witness.

By Mr. David.

Q I show you Exhibit S. 3 and ask you whether that is the jewelry that was shown to Mr. Campbell, the defendant, that night and which he identified as belonging to Mrs. Mowry? A Yes, sir; that is the jewelry.

Cross examination by Mr. Gordon.

Q Mr. Morozow, were Tevlin and Wagner in the office at the time that Mr. Campbell signed the statement? A I don't think they were.

Q When did they leave? A I don't remember when they left. I was preparing the statement.

Q Now, you have mentioned a number in the statement of the revolver. A Yes, sir.

Q Where did you get that number from? A From that gun.

Q The number in the statement is different from the number on the revolver, you know that? A Yes, I do now.

Q Do you know if this revolver that has been shown you is the revolver that has been taken out of the prosecutor's office? A That I don't know.

The Court: What is the number that is in the statement?

Mr. David: The number in the statement is 267222.

The Court: What is the number on the revolver?

William Morozow, for the State, cross.

Mr. David: The number on the revolver is 267229.

The Court: In other words, the numerals are all the same except there is a two instead of a nine?

Mr. David: The numerals are all the same except there is a two instead of a nine.

By Mr. Gordon.

Q Where are the numbers on your typewriting machine, what row? A Top row.

Q Where is the number two, to the left side of the machine or the right side? A To the left.

Q And where is the number nine? A To the right.

Q When Mr. Campbell was in the prosecutor's office were there any other articles taken from his possession besides a revolver? A Yes.

Q What? A I think a wallet, a stick pin, and a penknife and things.

Q Any bottle or vial? A I didn't see any.

Q Was there any there? A I didn't see any.

Q Isn't it a fact that at the time this statement was prepared among other articles found in Mr. Campbell's possession was a vial of morphine tablets? A I never saw them there.

Q Were they in the prosecutor's office? A I didn't see them.

The Court: The witness, of course, is scarcely able to say what may be in the prosecutor's office. You are examining him now upon what was produced at that time. He says he did not see them. If you want to ask him whether he has any knowledge aside from that gained from the organ of sight, I do not know.

William Morozow, for the State, cross.

Q Do you, of your own knowledge, know whether or not there was produced from the person of Mr. Campbell a vial of morphine tablets? A I don't know.

Mr. David: You demanded the production of that. It is here and will be produced if you wish it.

Mr. Gordon: Yes, sir.

Mr. David: It was not found in his possession. It was found at his home.

Mr. Gordon: Very well, sir. I will take that statement.

Adjourned until 1:45 P. M.

Mr. Gordon: No further questions on cross examination.

By Mr. David.

Q I call your attention to the fact that on the gun the number is 267229 and on the statement offered in evidence, the gun is numbered 267222. Can you explain that discrepancy? A The nine on the end looks just like a two before it. It looks like a two.

By Mr. Gordon.

Q Did you get the number on the statement from the gun or were you taking down answers to questions that were asked by the Prosecutor? A Both. I took the statement and then took the gun and wrote the number from the gun to check it.

Q Didn't the Prosecutor ask the defendant if this gun numbered 267229 belonged to him? A Yes, he did.

William Morozow, for the State, cross.

Q Then why did you look at the gun? A Because I wanted to check it in my notes.

Q Where are your notes? A In my pocket.

By Mr. David.

Q Produce them. A (The witness produced a notebook.)

Mr. David: I offer them in evidence.

Mr. Gordon: I have no objection. Now I should like to have the original statement, please.

(The notebook referred to was received in evidence and marked Exhibit S. 8.)

Mr. David: Your Honor, the stenographer is copying them into the record.

The Court: Counsel wants it in his examination.

Mr. David: I have a copy.

By Mr. Gordon.

Q Will you be kind enough to read your notes?

The Court: At what point?

Mr. Gordon: From the beginning, Mr. Morozow, please.

A "Nine P. M., April 11, 1929. My full name is Henry C. Campbell. I am fifty years of age. My business is advertising. I now live at 471 Madison avenue, Elizabeth, and have lived there going on the second month."

Q Will you go to that part where it starts out with the words "Two or three days before I met her at Philadelphia"? A I have it.

Q Read over, not aloud, to about ten lines where it says "I got to Cranford along about three or four o'clock in the morning." Do you find that? A Yes, I have it.

Q Now, just read over there to the end of that paragraph. A "I stopped once for about an hour before I could get the car started. There was some trouble with the spark and I couldn't get it started."

Q Right before you say "I stopped." What is before that? A "I got to Cranford about three or four o'clock in the morning."

Q Start the next paragraph after that. A "I stopped once for about an hour."

Q No. Read the next one after that. A "I had trouble all the way from Wilmington—"

Q Read after that. A "We stopped to eat in Philadelphia nine o'clock that night."

Q Read after that, the paragraph. A "We got to Cranford between three or four o'clock in the morning."

Q I notice that you have in here "That we got to Cranford along about three or four o'clock in the morning" twice. Was that question asked twice? A I guess it was.

Q Don't you know? A Yes, I do know.

Q Have you questions there that were asked? A I have not.

Q Then your notes do not show the questions that were asked that evening, do they? A Yes, they do.

Q They do show the questions? A Yes.

Q Where was the question before that statement was reduced "I got to Cranford along about three or four o'clock in the morning," the first time it is in the statement? A From my notes, he was asked that question, and that was his an-

swer, "I got to Cranford,"—I incorporated the question and the answer.

Q Where is the question—

The Court: The witness' testimony has been consistently that he took the question and answer and consolidated it into the recital.

By Mr. Gordon.

Q Then am I correct in assuming that nowhere in your notes are there any questions as such? A You are right. There are none.

Q And have you made any corrections in your notes as you went along writing the statement? A Only when the defendant made a correction, I made it.

Q Are there corrections there? A Yes, there are.

Q That you changed with your pen and ink? A Yes.

Mr. Gordon: That is all.

Mr. David: Your Honor, I am about to offer again these letters. Is there any objection?

The Court: I assume there is no objection?

Mr. Gordon: No objection.

The Court: How are you going to offer them? Letter by letter or what?

Mr. David: I thought I would offer them as one exhibit.

The Court: That is a very indifferent way of marking, because who is to know whether one envelope has been taken out and a letter has been put in or so forth?

You may do as you please, but that is not a very accurate way of marking.

Mr. David: I will offer them one by one then, your Honor.

I offer in evidence letter, envelope addressed to "Mrs. Richard M. Campbell, box 424, Greenville, Pa.," mailed Jersey City, October 4, 1928, and the letter contained therein.

The Court: Consisting of how many sheets?

Mr. David: Two. The letter is dated "Room 605, 507 Fifth avenue, New York, October 4, 1928," to "Dear sweetheart wife."

The Court: You have identified it.

(The letter referred to was received in evidence and marked Exhibit S. 9.)

Mr. David: The next is addressed "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Hudson Terminal station, New York, October 12, 1928, consisting of two sheets.

The Court: Is the letter dated?

Mr. David: The letter is dated "Room 605, 507 Fifth avenue, New York, October 12, 1928."

(The letter referred to was received in evidence and marked Exhibit S. 10.)

Mr. David: The next is envelope addressed "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Hudson Terminal station, New York, October 17, 1928, dated Wednesday, October 17, one page.

(The letter referred to was received in evidence and marked Exhibit S. 11.)

Offer of Exhibits S. 9 to S. 24.

Mr. David: The next is "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Grand Central Station, New York, October 19, 1928, letterhead Friday, October 19, 1928, Room 605, 507 Fifth avenue, one page.

(The letter referred to was received in evidence and marked Exhibit S. 12.)

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed New York, New York, October 23, 1928, Monday night, Room 605, 507 Fifth avenue, October 22, 1928.

(The letter referred to was received in evidence and marked Exhibit S. 13.)

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Grand Central Station, October 26, 1928, Room 605, 507 Fifth avenue, New York, dated October 26, 1928, three pages.

(The letter referred to was received in evidence and marked Exhibit S. 14.)

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Hudson Terminal station, New York, November 7, 1928, Room 605, 507 Fifth avenue, New York, November 6, 1928.

The Court: Consisting of how many pages?

Mr. David: Three pages, your Honor.

(The letter referred to was received in evidence and marked Exhibit S. 15.)

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Grand Central Station, November 9, 1928, letter consisting of four pages,

headed Room 605, 507 Fifth avenue, New York, November 9, 1928.

(The letter referred to was received in evidence and marked Exhibit S. 16.)

Mr. David: The next, addressed "Mrs. Richard M. Campbell, 147 Main street, Greenville, Pa.," mailed Grand Central Station, January 15, 1929, letter two pages, headed Monday night, January 14.

(The letter referred to was received in evidence and marked Exhibit S. 17.)

Mr. David: The next, addressed "Mrs. Richard M. Campbell, 147 Main street, Greenville, Pa.," mailed Hudson Terminal station, New York, January 10, 1929. Endorsement on the back of the envelope from R. M. Campbell, Mirel Service, 110 West 42nd street, New York, one page, headed Wednesday night.

(The letter referred to was received in evidence and marked Exhibit S. 18.)

Mr. David: The next, "Mrs. Richard M. Campbell, 147 Main street, Greenville, Pa.," mailed Grand Central Station, January 2, 1929, letter two pages, headed Wednesday, January 2, 1929.

(The letter referred to was received in evidence and marked Exhibit S. 19.)

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed New York, October 16, 1928, letter consisting of four pages, headed October 16, 1928, Room 605, 507 Fifth avenue, New York.

(The letter referred to was received in evidence and marked Exhibit S. 20.)

Offer of Exhibits S. 9 to S. 24.

Mr. David: The next, "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Grand Central Station, November 13, 1928, two pages, headed Room 507 Fifth avenue, November 13.

(The letter referred to was received in evidence and marked Exhibit S. 21.)

Mr. David: Next, addressed to "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Philadelphia, November 16, 1928, consisting of eight pages, headed Philadelphia, Pa., November 16, 1928.

(The letter referred to was received in evidence and marked Exhibit S. 22.)

Mr. David: The next, addressed to "Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.," mailed Times Square station, New York, November 23, 1928, four pages, headed Friday, November 23, 1928.

(The letter referred to was received in evidence and marked Exhibit S. 23.)

Mr. David: The next, addressed to "Mrs. Richard M. Campbell, 147 Main street, Greenville, Pa.," mailed New York, December 27, 1928, consisting of two pages, headed 110 West 42nd street, Mirel Service, Room 404, Thursday, December 23, 1928.

(The letter referred to was received in evidence and marked Exhibit S. 24.)

Mr. David: Your Honor, at this time may I read these letters? Mr. Walsh, will you read them, please? Just a moment, your Honor, until we arrange the order of the letters.

Reading Exhibit S. 9.

(Exhibit S. 9 was read as follows:)

"Mrs. Richard M. Campbell, Box 424, Greenville, Pa.

"Room 605, 507 Fifth avenue, N. Y., October 4, 1928.

"Dear Sweetheart Wife:

"Wrote you a couple of days ago so haven't much to say now. Only I don't want you to be without a letter over Sunday. I am tired from running around and impatient because things go so slow, but I am trying to do all I can and the best I can. I guess I would feel better if I could be with you for awhile for I think lonesomeness is mostly what is the matter. But it can't be helped so I'll make the best of it. We had several cold days and frosts here, too, but today is warm again and getting ready for rain. I do hope you won't be too lonesome and will be as patient and happy as you can. My worst trouble comes from having no friends who can help me pass the time when evening comes so my wildest excitement is reading the newspapers. Dear, I love you lots and always will and think of you so many many times every hour. I know we will be very happy together. Oceans of love and kisses, darling sweetheart, from your loving husband.

"Dick."

"Hope the toe is well or nearly so. Don't get blood poisoning."

Reading Exhibit S. 10.

(Exhibit S. 10 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"Room 605, 507 Fifth avenue, N. Y., October 12, 1928.

"My own darling one:

"I wrote you Tuesday and got a letter from you Monday but haven't had one since. In my last letter I told you I had had a little billious attack but was better. Am all O. K. now and feel like a fighting cock. It is awful hot here this week. Almost like when we were married but it can't stay that way long. I felt rather blue and downhearted last week but it has passed away. I miss you, dearie, and want you, and I get blue when I think too much. But it won't be long now. Things look brighter. *At last* a contractor has agreed to build on the lots. I may have to go down there next week to sign a contract but if it can be done by mail I will save a five day trip and the expense. Things look brighter. If he builds what he says he will we will get about $800 out of each lot as the houses are sold. It took a long time to get things started but we will come out better than I thought at first. That last letter of yours, darling, was the dearest, sweetest one you ever wrote. I've read it over several times and it is so full of love and makes me feel like you do. How far is Youngstown from Greenville? You might get some things you don't need, packed and ready to ship—that is boxes, and I will tell you when and where to send them later. But you need not do it in a hurry. That is I can let you know plenty of time before I come. It seems a long time since I was with you and it was all too short, yet on the other hand the weeks seem to fly away. I suppose it is because I have had to run around so much. I

do hope the toe is all well and you are also well. I don't ever seem to get enough sleep, yet I go to bed early most of the time. Maybe I'll get slept out with you. My little darling I long for you. All my love and kisses. Your affectionate, longing husband.

"Dick."

(Exhibit S. 11 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"Wednesday, October 17.

"Dear Sweetheart:

"Thought sure I would have a letter from you today. But I'm not all excited over it for I know one will come in a day or two. As I wrote you only Monday there isn't anything to say. Came back this morning and it is as hot as summer here. I do so want to get things fixed the way I want but it takes more than I thought. But I'll soon have some money out of the lots. Will write my darling on Friday again. And *never* worry. I am all right and love you always.

"Your own

"Dick."

(Exhibit S. 12 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"Friday, October 19, 1928, Room 605, 507 Fifth avenue.

"My dear sweetheart:

"You must be mad at me and that makes me blue. No letter today and I sure thought I would have one. I can't get any now until Monday because work takes me away tonight and I won't be back until Monday afternoon. I have written

you three times now (this letter is third) this week. True they haven't been long ones but there wasn't anything to write. I can't write because I am kind of blue. Things don't seem to go as fast as I want. And I do want to have you but not until I can keep you as a lady. I do love you dear and want you so much. But you mustn't be anxious nor get all worked up if a letter doesn't come the very day you think it will. Whatever may be I am always thinking of my lover girl. Couldn't sleep last night and that is why I'm not so good today. *Please* don't get so worried again. Your last letter and telegram upset me completely. All my love and kisses dear one, from your own loving sweetheart husband.

"Dick."

(Exhibit S. 13 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"*Monday night.* Room 605, 507 Fifth avenue, October 22, 1928.

"My darling sweetheart wife:

"My pen ran dry after I addressed an envelope and wrote the above. So excuse pencil, also writing, for I am writing on my lap. Got a sweet letter from you yesterday and it sounded just like your *real* dear self so I know you are feeling better. Yes, I think it would be a lot better for you to take a case for a little while because you would be happier. When we haven't anything to occupy ourselves everything seems twisted. I am glad you feel willing for it will be such a relief to me to feel you are more contented until I come and it would be easy to get someone to relieve you, when I come for you, because I can

Reading Exhibit S. 14.

give you plenty of notice. And it would be better to be in Youngstown than in your home town so that the old busybodies wouldn't have so much that was none of their business to talk about. I didn't sleep well last night and am dead for sleep now, so this is only a short note which I will post in the morning. Will write you again on Wednesday or Thursday. Take good care of my girl for me and think nice things of me. Love and kisses forever, from your own

"Dick."

(Exhibit S. 14 read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"Will write you again *Monday.* Room 605 507 Fifth avenue, N. Y., October 26, 1928.

"My darling:

"Expected to write you last night but had to work. Sometimes they keep me on night work where the gang's working, are in 8 hour shifts, and I never know where they are going to send me because they are putting up several large buildings. It is because of this uncertainty that I have only a small hall room and also the reason why I didn't want you, for no matter what you say, you wouldn't be happy without your own clean bath room, etc.

"Your letter surprised me and worries me. I am sending $25.00 by telegraph today. Will send more next week. As I have had to run to Maryland several times. I don't get pay while I am away. Have to go again tomorrow. Since you went home I have paid out the following:

Reading Exhibit S. 14.

"Life Insurance $362.00
"Interest on Mortgage..... 224.00
"Taxes for 1928 on lots..... 223.00
"Renewal of Mortgage, so builder can work 125.00
"Automobile Insurance..... 92.00

$1,026.00

"Besides living and traveling expense. Now I am caught up for awhile and things ought to be better. I know you have some reason to complain, but you told me you would use some savings temporarily. You also said you were going to take a case which I agreed to and now you seem surprised that I agreed to it. Everything will come out all right. You couldn't get work here where you are not known for the doctors only use nurses with diplomas and there are hundreds more than can find work. I have a lot of calls to make today, then have to get some sleep, so I can't write more now. Why do you let people start stories? No, I haven't left you and aren't going to. You are among friends or they would be if they were any good. Cheer up, dear, and wait a little more. Something good is going to happen any minute and I'll come for you. In the meantime try a case. You need something to keep your mind busy. Keep on loving me. You won't be sorry. But such letters break me all up. Forever your

"own Dick."

"Love and kisses."

Reading Exhibit S. 15.

(Exhibit S. 15 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

"Tuesday night. Room 605, 507 Fifth avenue, N. Y., November 6, 1928.

"My own sweetheart:

"No letter from you for nearly a week. I do hope nothing I might have said unintentionally hurt your feelings. I wouldn't do that, on purpose. I have stayed up late tonight until I heard Hoover won the election. I am tired and sleepy and caught a little cold, too. Nothing much. I worked last night a stretch of 16 hours. That is why I am so tired. Things have been looking a little brighter the last few days. I have had several inquiries about better positions and maybe one of them will go through. I hope so, for I want to be with you. One asked me if I would go to Pittsburg. I will if the pay is enough so we can set up a home. Then we can take our own time to work out our other plans. Maybe you are working and that is why I haven't heard from you. I hope I may get a letter tomorrow. The candy is nearly all gone. It is awful good, but rich. You ought to go into the candy business. Well, pet, I hope you are well and are not having the blues. I know how you feel but we'll have Thanksgiving Dinner together I am sure, unless I can't prevent something from happening and I don't know what it is now. I wrote you twice last week but this letter won't be posted till Wednesday morning because I am not going out again tonight. I always think a lot of you when bed time comes so this is one of the good night letters.

"Love and kisses from your own

"Dick."

Reading Exhibit S. 16.

(Exhibit S. 16 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pa.

Room 605, 507 Fifth avenue, N. Y., November 9, 1928.

"My sweetheart wife:

"Got your letter of November 7 this morning. That is the first letter I had from you for eight days. I know I wrote you twice last week and this is the second letter this week. Either I don't make myself plain or you don't read and remember what I write and say. I told you the diamonds were worth about $5,000. I borrowed about $1,100 on them and the interest is two per cent. a month. How can I make them over to you until I get them back? I told you I would *give* them all to you except my own ring and I will as soon as I can get them. I had to pay interest on part of them to keep from losing them, and the interest on the others is due November 16, and it amounts to $128. I can't sell them either till I get them back. You don't seem to understand they are held as security for the loan. I did tell you a contractor had started a house on one of the lots and that is true. Then you asked me if we couldn't live in it. You don't suppose a house can be built in a couple of weeks, do you? I had to pay taxes and renew a mortgage so the contractor would take the risk of building, and by having a house on the lots it seemed the best way to sell them one at a time, and he has promised to start a new one each time one is sold. Now I am going to have a deed made transferring the lots to you. Will that suit you? I don't see why you keep on saying I can't care for you or I wouldn't stay away from you. I'll have you with me within the next couple of weeks or

so. I have been trying to work and make something and fix a place for you. Some people wanted me to take work in Pittsburg, but if I were to go there how far would I be away from the Baltimore property and how could I dispose of it? Why won't you *think straight* and try to understand. Mrs. Dodds should mind her own business and so should others. It seems to me that people where you have lived all your life would trust you and mind their own business. If the work I have been doing hadn't kept me moving around in New York, Brooklyn, Philadelphia, etc., I would have had you here, but how would you feel to be alone here half the time. Then when I thought I was going to come for you I couldn't get away for six days, which it will take me to go and get you and come back, or I would have lost the work I had, and I couldn't do that. The way to shut up gossips is to tell them to mind their own business and if you will give me the names and addresses of people who are gossiping about me or you I'll write them something that will make their ears ring for many a day. If you don't know I love you better than anything, I don't know how I can make you believe it. I've told you so time and time again, and *repeat it now.* The fact I have lived alone for years doesn't mean I always want to, but I know you well enough now to know you want a nice decent place to live and that is what I want. About living in one of the houses on the lots, what is the use of living where you can't get work or make a living. Why don't you try to think things out straight. You might ask me to live in Greenville, and it don't make any difference to me where I live, but I've got to live where I am sure to make a living, haven't I? You don't love me any more than I love you, but you get hyster-

ical over things that don't mean anything and are always looking at the dark side of everything instead of the bright side. Why don't you get something to do for a couple of weeks and get your mind off of a lot of imaginary troubles. You said you were going to then as soon as I said that would be good you stopped talking about it. Well, it won't be but a couple of weeks or so now, but it would be better if your mind was occupied instead of idle. One thing is sure and that is I can't be happy either if you are always finding fault with me. I do love you darling one, and remember it. All will be right soon. All my love and kisses, and stop talking of doing something desperate. Hugs and love from your ever own husband.

"Dick."

(Exhibit S. 17 was read as follows:)

"Mrs. Richard M. Campbell, 147 Main street, Greenville, Pa.

"Monday night, January 14.

"My own wife:

"Was glad to get your letter this afternoon because I was worried that you might be sick. My flu attack has left me with bad cough and pain in side so I have had to keep indoors. It has been so bitter cold and lots of snow. In a day or two I will send you something more—more than last time and then will try hard to get you or have you come on. Luck has been all against me for so long I am losing heart, but as long as you stick to me I feel things will come out all right. Have to take care of myself. The trouble seems to have settled where I was hurt inside in the auto smash last spring, but don't you worry. Love and kisses and cheer up. Your own

"Dick."

Reading Exhibits S. 18-S. 19.

(Exhibit S. 18 was read as follows:)

"Mrs. Richard M. Campbell, 147 Main street, Greenville, Pennsylvania.

"Wednesday night. My dear wife:

"Flat on my back for several days at Laurel in the Old Hotel with flue or grippe, whatever you call it. Sent for mail but there was none. Doctor just let me out this morning. Would have written but didn't want to worry you. Be all right in a couple of days. Don't worry and cheer up. Go to work tomorrow. Will write more in a day or two. Your lover husband,

"Dick."

(Exhibit S. 19 was read as follows:)

"Mrs. Richard M. Campbell, 147 Main street, Greenville, Pennsylvania.

"Wednesday, January 2, 1929. My dear one:

"Got your letters of the 27th and 29th this morning when I got back in a snow storm and terrible cold. I am glad you got the package. It was awful to spend such a holiday season as we have gone through and I am glad the days have passed. Never have been like I have for weeks past, just struggling from hand to mouth. I believe it will end soon unless more people think I am too old. That has been the trouble every time I thought I had something. They wanted a younger man. And this part of the country too, is crowded with people out of work, yet the papers are all the time talking of what a good year it has been and how good the outlook is. But I have hopes now, and something must come soon or I will be all in. I have felt so terrible as the way you have been situated yet I couldn't keep anything. I haven't been able to

Reading Exhibit S. 20.

take out a new car license but will in a day or two. Keep up your spirits a little longer and it will come out all right. Thank you for the love in your last letter. No one would pay me enough to live on at office work. That is where all the people are out of work. And as for helping a doctor I tried to get such a chance but couldn't. All my love and kisses, from your lonesome but lover husband,

"Dick."

(Exhibit S. 20 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pennsylvania.

"October 16, 1928, Room 605, 507 Fifth avenue, New York.

"My dear sweetheart wife: Your telegram came into my hands only yesterday because I just got back from Maryland where I told you in my last letter I was going to fix up with a contractor about building. Of course, I couldn't answer it until I got it so I wired you right away. Then in a little while I got your letter of the eleventh which took four days to come. There is something wrong with the mails somewhere. I wrote you Monday night last week and on Friday. I have always written you twice each week. I couldn't write every day because I couldn't think of anything to say. I will try to write oftener but there isn't any news. It has been hard to have you feel that I am neglecting you when the truth is that I am thinking of you all the time. So please, dear, don't reprove me for something I haven't done. You say that something could happen to me and you would never know. That isn't so because I carry in two places on my person your name and address telling anyone if

Reading Exhibit S. 20.

anything should happen to me to notify you at once, and one of these is an identification card of the insurance company. But nothing is going to happen. I was out of sorts last week a couple of days with a billious attack but a physician fixed me up. Am O. K. now but tired, because I have been up nights traveling back and forth and trying to work at the same time. It makes me feel bad to have my wife accuse me of neglect. There must be something wrong in the P. O. at your place. You know I didn't get a letter you said you wrote a couple of weeks ago. I thought you said you were going to take a case in Youngstown. You would be happier if you were occupied for a few days. You probably are getting a lot of sympathy gossip from old busybody and that isn't fair to me. I'll get even with them some day. Now, please, please, darling, try not to worry me. I get all fussed up when you blame me for making you unhappy. There simply has been too much to do in too short a time, but it won't last much longer now that I have got someone started on the lots. The people I am doing a little work for keep me jumping from one job to another and first I am in New York a couple of days and then somewhere else. They want me to go to Boston tomorrow for a day and look over some work there but they don't allow me enough for expenses. I'm trying as hard as I can but if I think you are blue then I get blue too, and I am no good when I feel that way. I love you, dear one, and always want you. I'll have you soon, my own darling. Here are kisses, forever and forever, your own

"Dick."

Reading Exhibit S. 21.

(Exhibit S. 21 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pennsylvania.

"Room 605, 507 Fifth avenue, November 13.

"My dear sweetheart: Excuse this paper. I can't find any other at the minute. Got back from Baltimore after midnight last night. Tired out from the drive. Was going to write you but it was too late. Went down Saturday to see how the contractor was getting along. I had also advertised some of the lots and had three inquiries and thought I might sell some as they are but don't believe the parties were very serious. They only wanted to pay a few dollars down and the rest in small amounts monthly and I couldn't do that because of the mortgage on them. This morning I got your letter of the ninth. Four days getting here. I can't understand it. The picture also came and I don't blame your friends for criticising it. You are much better looking, and it makes your face and features look coarse, and they are not. If I were you I wouldn't have paid for them. But thank you anyway, for it looks a little like you. Going to Baltimore made me lose two days and it costs about $30 every time I go down. No, I couldn't vote because I had just moved. But, I am glad Hoover won. He will be a good president. I am hoping to have you with me by Thanksgiving, but if not then, it will only be a few days later. In the meantime if you can get a case for two or three weeks or so, you can give it up on short notice and you wouldn't have to let them know when you took it, that it wasn't for long. I didn't mean to scold you, but when you write as you sometimes do it gets me all fussed up. If I didn't care for you I wouldn't be that way, but because

Reading Exhibit S. 22.

I do care it worries me no end, and I have had a hard time doing things, much harder than I could make you understand. This is a short letter but I'll write you more next time. I have an awful cold. Love and kisses, my darling, from your own

"Dick."

(Exhibit S. 22 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pennsylvania.

"Philadelphia, Pa., November 16, 1928.

"Dear sweetheart: Just after I wrote you last they sent me to Philadephia. I thought it would be only a couple of days but I guess I will be here till Monday. So if you wrote me again I won't be in New York to get the letter till Monday. My cold, which kept me coughing half the time and most of the night is better. Yesterday there were thunder showers and today it is so warm I can't wear an overcoat. Things are going along better with me and I feel better. I have been awful blue back several weeks and most of the feeling came from your unhappy feeling which I couldn't help while I was doing the best I could. Too many things that I had to take care of came all at once in October. Over $1,000 as I told you, but now there isn't much except a little interest and insurance, about $200 altogether until next April, and long before then I'll be all right, especially when you are with me and I know you are happier. It won't be but a couple of weeks or so now. So many people who are under obligations to me in one way or another, haven't kept their promises, but it is all coming out right. I know it has been hard for you in some ways but I haven't told you even

Reading Exhibit S. 23.

half of how hard it has all been for me. I love you dear and want you always, and I know you love me, so cheer up, sweetheart, and just keep on loving me. Your own true husband,

"Dick."

(Exhibit S. 23 was read as follows:)

"Mrs. Richard M. Campbell, 81 Shenango street, Greenville, Pennsylvania.

"Friday, November 23, 1928.

"My dear sweetheart wife: Your letter November 21st just received. It is hard to answer everything but I will try. I think I have always answered all your questions but you either never pay attention to them or you are always thinking I am doing something I am not. Why should I send any man from Philadelphia to see you? What kind of a crazy idea is that? I know I haven't supported you. I've told you several times in detail where the money has gone and what a hard time I have had keeping things going. All I have made and more has gone to keep the little I had in property from getting away. I didn't tell you before but I will now. I sold the car to get enough more money to pay interest and clear up things so I could get a contractor to start building. I got a cheap small one on small down payment and $50 a month. I thought that change would help tide things over till I could get more. You did tell me you had a little more money and could get along. You said you were saving it for us. Just what was the truth? Now, you say you have to borrow money. That is what I have had to do too, and I was promised $150 yesterday that was owing me and was going to send you some. Now I won't get it until the early part of next week.

Reading Exhibit S. 23.

(You also told me in the first letter you ever wrote me that you were 44 years old, and when we were married you gave it as 50.) But I don't care about that and am not throwing it up. Age makes no difference in love, but you never write me the same thing twice alike. Sometimes it all sounds crazy to me, for half the time you don't finish what you start to say. You told me to telegraph you money and now you find fault because I sent it that way. People there must have little to do. I still thought I could come for you. I told you why I might not. It takes five days. You ask why I am away week ends. I am away here and there half the time. Get sent from one job to another. Have even given up a room I had because the concern pays expense of room when they send me away. I told you why I was away part of the week end. I can leave for Baltimore Saturday and have Sunday without losing any pay. Last week I was kept in Philadelphia as I wrote you, I couldn't do better and though I have been trying I didn't want you in a strange place alone with me away most of the time. The address where you write me is an office where they will keep and forward my mail if I ask them to. When I am here one day and somewhere else for several days I would never get letters that way. I want to send you money to come the first of the week. I am afraid I can't have you here by Thanksgiving, but it will only be a few days later. I want to send you money. I know my duty but I am helpless when my intentions are the best. I can't have you come except on a day and time that I tell you, so I can meet you. For I would not know where you were and you would not know where to go. I had some letters sent to where I had a room some weeks ago and I know some of them were opened and

Reading Exhibit S. 24.

you know these were a couple of your letters I did not get. Why do you accuse me of "having someone else"? You will never love me right if you always suspect and accuse me, and I can't love you that way either. I'll send you enough to come next week. You'll have to wait a few days and if you can't get here as soon as you expect, remember you will at last be here in a few days. I think I may have to take Thanksgiving Day to again go to Baltimore. I have got to keep things going. Then when you do get here and find I am sent away here and there for several days at a time, I suppose you will say I am deserting you. When I send money next week I will send bills in a registered letter. Then no one will know the details. You seem to think I might beat you or swear at you. Don't you think I am respectable? You must wait a few days. Then you will be here. I never thought a minute it would be so long. Don't accuse me as you do. I am still your lover husband,

"Dick."

(Exhibit S. 24 was read as follows:)

"Mrs. Richard M. Campbell, 147 Main street, Greenville, Pennsylvania.

"110 W. 42nd street, Mirel Service, Room 404, Thursday, December 27.

"My sweetheart: Am back here for mail but none came. Leave for Delaware tonight to be gone until Monday or Tuesday. The proceedings won't be over till then. Believe I will soon get the money coming to me. Also I am promised a good position here on January 8. Have not worked for a week. They have had a strike and shut down on all buildings.

"This has been the most terrible Christmas and holiday time I ever knew. I am all but a nervous wreck worrying and about you. But I have had an awful stretch. I am half sick. I couldn't do any better hard as I tried. Write me dear, and tell me you can stretch out the next two or three weeks and I will send or come for you between the 10th and 15th of January. I will sure have some money, in a few days, and will send you some. Don't think I have caused you pain and worry on purpose. I have been helpless and could hardly get along myself. Do believe that I love you and all will be all right. Your own, Dick.

"Did you get the stockings? Maybe I should have sent what they cost instead. But I did think of you. Mailed you a card from Delaware. Did you get it?"

WILLIAM G. HARRIS, a witness produced on behalf of the State, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. David.

Q What is your profession, doctor? A Clergyman.

Q How long have you been a clergyman? A Since 1906.

Q Where do you live? A Elkton, Maryland.

Q I call your attention to the defendant Campbell in this case and ask you have you seen him before. A Yes. I saw him on August 28, 1928.

Q Where, doctor? A In my home.

Q Was there anyone with him? A Mrs. Mowry.

William G. Harris, for the State, direct.

Q I show you picture Exhibit S. 4 and ask you if you recognize that picture? A Yes, I do.

Q A picture of whom? A Mrs. Mowry. Very good.

Q What happened, doctor, when Campbell and Mrs. Mowry came to your studio or your office or your home? A My home. Why, they presented a license for marriage and represented themselves as widow and widower, or widower and widow, and I had no one in the home at the time and I had to go out and secure a witness and she came in and witnessed the ceremony.

Q Did you perform the ceremony? A I performed the ceremony.

Q Marrying Campbell the defendant, and Mrs. Mowry? A Yes.

Q At that time, doctor, did you, in the presence of Campbell fill out a return or a report of the marriage? A I did.

Q Have you it with you? A No. The clerk of the court has the return. I filled out the two certificates, two for Mr. Campbell. A floral certificate and also a small certificate, that is always given in Maryland. I have the original license that I always keep. I filed the record. This is part of my record. This is my record, in file, and there is my record on there.

Q Doctor, did you fill this out in the presence of the defendant and Mrs. Mowry? A I did. And the witness.

Q And from whom did you get the information that you put in this license? A Beg pardon?

Q From whom did you get the information that you put in this license? A From Mr. Campbell, or Dr. Campbell and Mrs. Mowry.

Mr. David: I offer it in evidence.

Mr. Gordon: No objection.

Mr. David: Now, if it is agreeable to your Honor, and there is no objection, I would like to read this into the record and not impound it, or offer it, so that the doctor may take it home with him.

A You are perfectly welcome to that. I have another one.

Mr. David: I will withdraw that statement.

(Marriage license entered in evidence and marked Exhibit S. 25.)

Mr. David: (Reading Exhibit S. 25.)

"Marriage License. State of Maryland, County of Cecil. To any Minister of the Gospel, or other officer authorized by the laws of this State to solemnize marriage:

"You are hereby authorized to join together in the Holy Estate of Matrimony according to the rules and ceremonies of your church, society or religious sect and the laws of this State, Richard M. Campbell, whose place of residence is Balto, Maryland, whose age is sixty, color white, and who is widower, and Parmelia E. Mowry, whose place of residence is Greenville, Pennsylvania, age fifty, color white, and who is widow, and who are not related.

"In testimony whereof, the seal of the comptroller's office is hereto affixed. Given under my hand and the seal of the Circuit Court for Cecil County, this twenty-eighth day of August, Anno Domini, one thousand nine hundred and twenty-eight. S. Ralph

William G. Harris, for the State, direct.

Andrews, Clerk of the Circuit Court for Cecil County.

"To the Reverend Mr. W. G. Harris. Fee $2.00.

"Married twenty-eighth day of August, 1928.

"Witness: Jane Gilmour, Balto, Maryland."

Q Now, doctor, who gave you the name Richard M. Campbell? A It is right on there.

Q But who told you the name Richard M. Campbell? A How do you mean?

By the Court.

Q Was this brought to you? A This is the license coming from the court.

By Mr. David.

Q But who gave you the name Richard M. Campbell as one of the parties to the marriage? A That license. The clerk of the court.

Q Did Campbell say what his name was? A No. I should not think that he would.

Q Did you ask him his name? A No, I did not. I copied it from there and I called him Mr. Campbell, or Richard when I married him.

Q Did you ask him whether he was a widower or not? A That is his oath. I had no priviledge to ask him that.

Q Well, but did you? A No, I did not.

Q And did he tell you? A I think I did ask him. I am sure I did. I asked him because of his age, I said, "Are you divorced"; and he said, "No, I am a widower."

William G. Harris, for the State, cross.

By the Court.

Q You say that in the marriage ceremony he answered to the name of Richard? A Richard, yes.

By Mr. David.

Q You are a duly ordained minister of the Gospel? A I am.

Q Of what denomination? A Of the Methodist Episcopal Church in the Wilmington Annual Conference.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Doctor, in answer to a question of the Prosecutor did you say something about Dr. Campbell? A Yes, sir.

Q What is the reason for that expression? A You will find in a few moments, if the clerk of the court of Cecil County is called, that I had to fill in this return and I was compelled to ask him his occupation and he said physician and Mrs. Mowry a nurse.

Q From the day of the ceremony up to today have you seen the defendant Campbell? A No, I have not seen him between the two times.

Q Looking at him today do you notice any marked change in his appearance? A Yes. Very unusual. He was stout, quite stout.

Mr. Gordon: That is all.

Mr. David: That is all, doctor.

S. RALPH ANDREWS, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Andrews? A Elkton, Maryland.

Q What official position do you hold? A Clerk of the Circuit Court of Cecil County.

Q And have been for how long? A About three years, two years and a half.

Q And you were on the 28th of August last? A Yes, sir.

Q Have you the official and original records of marriage applications, and applications for marriage license? A Yes, sir.

Q Will you turn to one Richard M. Campbell and a Mrs. Mowry? A Yes, sir.

Mr. David: There is no objection, and instead of offering in evidence the original record, I will read the record into this case.

The Court: You are offering it in evidence? You are offering it without objection and in lieu of the document itself being left here, you are reading it into the record?

Mr. David: Yes.

Mr. David: (Reading) "Application for License. I, the undersigned, do hereby make application for marriage license for the following named parties:

"Name: Man, Richard Morton Campbell.

"Residence: 3707 Yosemite street, Baltimore, Md.

"Age: Sixty years.

S. Ralph Andrews, for the State, direct.

"Color: White.

"Married or single: Widower.

"Name: Woman, Parmelia Elizabeth Mowry.

"Residence: 81 Shenango street, Greenville, Pa.

"Age: Fifty years.

"Color: White.

"Married or single: Widow.

"The above parties are not related.

"(Signed) Richard M. Campbell, applicant.

"Sworn to and subscribed before me this 28th day of October, A. D., 1928, S. Ralph Andrews, Clerk of the Circuit Court for Cecil County."

By the Court.

Q That is your signature there? A No, sir, that is a reproduction.

By Mr. David.

Q It is a stamp of your signature? A Yes, sir.

Mr. David: Cross examine.

Mr. Gordon: No questions.

Mr. David: That is all, Mr. Andrews.

Harvey M. Jones, for the State, direct.

HARVEY M. JONES, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Jones? A I live in Woodside, Delaware. I work in Dover, Delaware.

Q Where do you work in Dover, Delaware? A Hotel Richardson.

Q In what capacity are you employed there? A Clerk.

Q Were you so employed in February of this year? A Yes, sir.

Q On February 21, 1929, were you at the hotel? A Yes, sir.

Q Do you recognize the defendant in this case as a man you had seen before, Campbell? A I think I seen him before; I couldn't swear to it, but I think so.

Q On the 21st of February, was there registered at your hotel a Mr. Campbeli and wife? A Yes, sir.

Q Have you the register with you? A Yes, sir.

Mr. David: There is no objection, and I therefore offer, if your Honor please, to read into the record extracts from the paper now offered as a sheet of the hotel register, of the Hotel Richardson of Dover, Delaware.

By Mr. David.

Q Do you mind leaving this here? A No, sir, just so we can get it back, if you will send it back to me.

Mr. David: I then offer in evidence a leaf from the hotel register of the Hotel Richardson, Dover, Delaware, under date of February 21, 1929, particularly the signature admitted by the defendant to be his, Richard M. Campbell, and wife, Greenville, Pa.

The Court: When you say "admitted," by whom is it admitted?

Mr. David: The defendant admits it to be his.

The Court: Let that come from the other side, Mr. Prosecutor. You represent the defendant, Mr. Gordon. Do you admit that that is his signature?

Mr. Gordon: Yes, sir, after consultation with the defendant.

(The paper referred to was received in evidence and marked Exhibit S. 26.)

By Mr. David.

Q Do you recall or can you tell from your register when the couple came and when they left? A They left on the twenty-second, and they came in on the 21st. I don't know just what time of day. We don't make a note of the time of day they come, but it was after lunch.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Mr. Jones, how many hotels are there in the town? A Well, there is three fair sized ones.

Harvey M. Jones, for the State, cross.

By the Court.

Q May I see that exhibit, please? A Yes, sir (handing the Court Exhibit S. 26.)

By Mr. Gordon.

Q And is there a sleeping place there, an inn, known as Swerners? A Never heard of it.

Q Is there a place nearby your hotel, a hotel nearby your place? A Not close to it, not within a block.

Q A couple of blocks away? A About a block or a block and a half away.

Q What is the capacity of your place? A How many rooms, do you mean?

Q Yes. A Fifty-five.

Q Do you know how many people were there on the 21st of February, 1929? A No, sir, I don't, I couldn't tell you offhand.

Q There were a couple of dozen there? A Oh, yes, more than that, yes, sir.

Q And your occupation at the place was clerk? A Yes.

Q You didn't keep track of those who came in and those who went out as to the time when they came in? A Not the hour, no, sir.

Q Do you know what hour of the day this registry occurred? A Sometime between two and I should say six.

Q In the afternoon? A In the afternoon.

Q Did you see the defendant? A I think I have seen him, yes, sir.

Q Just a moment, please. Did you see him and a lady go into a room? A No, sir, I didn't see him go into a room because I don't room the people.

Q And you do not of your own knowledge, know whether or not Mr. Campbell slept that night in a room assigned to him, do you, of your own knowledge? A I think so.

Q Were you there? A I wasn't there, no, sir, I wasn't there.

Q Did you see it? A No, sir, I didn't see it.

Q Do you know whether or not after leaving the lady there he went out to another place? A He ate his dinner there with the lady. I do know that.

Mr. Gordon: I ask that the stenographer read the last question, please.

(The stenographer read the last question as follows:)

"Question: Do you know whether or not after leaving the lady there he went out to another place?"

A No, sir, I don't. I couldn't say he did or didn't.

Q Then all you do know of your own knowledge is that Mr. Campbell signed the register with a lady present, that he was assigned a room, that thereafter they dined in the evening, and that is all you know except that there was a bill paid for the room? A Yes, sir.

Q Have you seen this defendant from February, 1929, up to today? A No, sir, I haven't.

Q Do you notice any change in his appearance from the time you saw him until today? A I think he is a little thinner, not quite as full in the face.

Q Are you sure you are looking at the same man that signed the register? A I think so, I think so.

John H. Marsh, for the State, direct.

Q Approximately how many people come in and out of your place as transients during the week? A During the week? Do you mean to sleep?

Q To sleep, yes. A Oh, I should say 250 to 300.

Q And so, from February, 1929, until today, there have been approximately 3,000 people. A I should say so.

Mr. Gordon: That is all.

By the Court.

Q Will you make a pencil mark opposite the signature that you have been referring to in your examination? A Yes, sir.

The Court: Mr. Gordon, that check mark is opposite the signature that you also referred to in your admission of the signature?

Mr. Gordon: Yes, sir.

The Court: Very well.

JOHN H. MARSH, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Mr. Marsh, where do you live? A New York City.

Q And have lived there for how long? A About ten years.

Q On August 29, 1928, where were you employed? A At the National Bank of New Jersey, in New Brunswick.

Q In what capacity? A Assistant cashier.

Q On that day did you open an account in which the initial deposit was this check? A Yes, sir.

Q And at that time did you have signed by persons opening an account a signature card? A Yes, sir.

Q And is that it? A That is the card and that is my writing.

Mr. Gordon: It is admitted by the defendant that the signature on this signature card of Richard M. Campbell was made by the defendant. It is further admitted that the words "Mildred Campbell" were signed by Mildred Mowry.

The Court: And referring to the check?

Mr. Gordon: Referring to the check that name on the back of the check "Mrs. B. F. Mowry," and the words "Mrs. R. C. Campbell" are in the handwriting of the lady purporting to be Mrs. Campbell or Mrs. Mowry.

Mr. David: I offer the check in evidence.

The Court: It will be admitted and marked.

(Check entered in evidence and marked Exhibit S. 27.)

Mr. David: I offer the signature card.

Mr. Gordon: No objection.

The Court: It too will be admitted and marked.

(Signature card entered in evidence and marked Exhibit S. 28.)

Mr. David: May I read the contents of this at this time?

(Exhibit S. 28 read to the jury by Mr. David.)

John H. Marsh, for the State, direct.

By Mr. David.

Q "C. Carey." Is that an abbreviation for check? A Let me see it.

Q Yes. A That is the check.

(Mr. David continues reading Exhibit S. 28, as follows:)

"Authorized signature of—for National Bank of New Jersey, New Brunswick, N. J.

"Signature—Richard M. Campbell, Mildred Campbell. Temporary address—Greenville, Pennsylvania. (Will give us new address.) Business—Physician. Date opened 8/29/28. Initial deposit $1,000. Introduced by check on Farmers & Merchants Trust Company, Greenville, Pa., to order Mrs. B. S. Mowry (now Mrs. R. M. Campbell.)

"Campbell, Richard M. & or Mildred."

Q Who wrote the portion that I have just read to you on this? A I did.

Q And from whom did you get the information that you wrote on this card? A I got it from them jointly because I talked with them both.

By the Court.

Q Together? A Together.

By Mr. David.

Q Do you recognize Mr. Campbell as the Richard M. Campbell? A I am quite sure that is the gentleman.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Mr. Marsh, you haven't seen Mr. Campbell since the day the account was opened, have you? A No, sir.

Q Have you any other records in connection with this account? A Well, I believe the bank has, but I have not.

Q Are there any records of withdrawal? A I haven't. The bank probably has.

Q What is your occupation at the bank? A I am no longer with the bank.

Q Then what was your occupation? A I am with a private banking firm in New York.

Q I mean then when your occupation was with the bank, what was your occupation? A Assistant cashier.

Q Do you notice any change in the appearance of Mr. Campbell since you saw him last? A Yes, sir.

Q And what is that change? A Well, he is a lot thinner, I should say. Not so well.

Q As to his color, is there any change? A Paler, I should think.

Q That change is a marked change, isn't it? A Yes, sir.

Mr. Gordon: That is all.

Re-direct examination by Mr. David.

Q I show you, Mr. Marsh, Exhibit S. 4 and ask you do you recognize that picture? A I couldn't say. I couldn't be sure.

Mr. David: That is all.

Richard B. Reilly, recalled, direct—cross.

By the Court.

Q That check went through in the due process of banking and was honored, was it? A Yes, sir. I wrote the bank afterwards and tried to confirm that the two were the same people.

RICHARD B. REILLY, recalled.

Direct examination by Mr. David.

Q Mr. Reilly, were you present in the Prosecutor's office on the evening of April 11 at the time that the defendant Campbell made his confession and signed his statement? A I was.

Q Were you there when I showed him a gun and asked him whether that was the gun that was found on his person that night and whether it was the gun with which he shot Mrs. Mowry? A I was.

Q What then became of that gun? A It was placed in my custody by the Prosecutor.

Q And has it been either in your custody or in your sight ever since? A At all times.

Q And is this the gun? A Yes, sir.

Mr. David: I offer it in evidence.

Mr. Gordon: I object to it until I ask a question or two.

Special cross examination by Mr. Gordon.

Q Mr. Reilly, has this gun ever been out of the Prosecutor's office? A It has.

Q Was it in your custody while it was out of the Prosecutor's office? A Yes, in my presence.

Q Now, I direct your attention to the para-

Richard B. Reilly, recalled, cross.

Q That was at the Colt Arms Company? A No, it was not.

Q Where? A On October 16 there were three test bullets fired out of it here in Elizabeth.

Q Who held the gun when a picture was taken of a revolver upstairs? A I don't know.

Q Don't you know that a picture of a revolver appeared in the public press? A I do not.

Q At the time the gun or a revolver was found on the person of Mr. Campbell were you present? A No, I was not.

Q Then you do not know of your own knowledge whether or not this gun is the gun that came from the person of Mr. Campbell, do you? A I didn't see it removed from his person. All I saw was him identify it as the gun that he had and the gun that he used.

Q You witnessed the confession? A I did.

Q Did you read it when you witnessed it? A I did.

Q Did you read the figures in the confession ending in a "2"? A I don't recall that I did. I figured that it was a "9."

Q When was the first time that you figured it was a "9"? A At the time when the statement was made first.

Q Did you mark the gun in any way? A No, I did not.

Q Have there been any markings on this gun from the night of April 11 up to now to identify it from any other gun? A Only the tags that are on it at the present time.

Q Tied with a piece of cord? A One on there with a wire on the trigger guard.

Q And seal on it? A No seal.

Richard B. Reilly, recalled, cross.

Q Are there any other automatics upstairs in the Prosecutor's office similar to this? A None at all.

Q No Colt automatics .32? A None at all.

Q Are you sure about that? A Positive.

Q Are there any automatics up there? A Not that I know of. I never saw any up there.

Q How many bullets were in the chamber when you first saw this gun? A None in the chamber. Eight in the magazine.

Q How many were in the magazine? A Eight.

Q What is the capacity of the gun? A Eight.

Q It was fully loaded? A It was.

Q Where did you first see it, in those hands? A Prosecutor David's hands.

Q Did you arrive at the Prosecutor's office before Prosecutor David got there that evening of April 11? A I did.

Q Up to that time had Mr. Campbell been searched?

Mr. David: I object to it as not cross examination.

Mr. Gordon: Tracing the whereabouts of this gun for the purpose of identifying it.

Mr. David: The question is directed, if your Honor please, to a time prior to the first testimony given by this witness.

The Court: His testimony as given on direct examination, as I recall it, was that he was present when the statement was taken and heard the defendant say that that was his gun and that he had had it either in his custody or in his sight since that time. Now, he did not go back of the period of the taking of the statement.

Richard B. Reilly, recalled, further direct.

Mr. Gordon: My purpose of that is to eliminate, if circumstances should present themselves from which it may be inferred that there might have been another gun there in that office, and even the defendant may have been mistaken.

The Court: The Prosecutor objects and I think you may properly be limited to a cross examination of the main subject.

Mr. Gordon: May I respectfully note an exception?

Exception allowed. Sealed accordingly.

CLARENCE E. CASE.
J. S. C.

By Mr. David.

Q What is the calibre of the gun? A .32 calibre.

Mr. David: That is all.

Mr. David: I renew my offer, if your Honor please.

Mr. Gordon: I press the objection upon the ground that insufficient premises have been established for the identification of this particular revolver.

The Court: It will be received in evidence and may be marked. You may have an exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(Revolver entered in evidence and marked Exhibit S. 29.)

The Court: Does this offer include the magazine and the bullets?

Richard B. Reilly, recalled, further direct.

Mr. David: The revolver itself and the magazine with bullets.

The Court: There has been nothing to connect the bullets with the exhibit.

Mr. David: Except the witness has testified there were eight bullets in the magazine.

The Court: But he has not testified they were the bullets. I do not know how many there may be. He said the revolver was fired a couple of times.

By Mr. David.

Q Is this the magazine that was turned over to you at the same time the gun was turned over? A Yes.

Q And are the bullets that are in the magazine the same bullets that were in at that time? A They are.

Q And has the magazine and these bullets since that night when they were turned over to you been either in your possession or in your sight ever since? A They have.

Mr. David: Now I offer in evidence with the gun the magazine and bullets.

The Court: I suppose your objection runs to the additional parts of the exhibit as well, Mr. Gordon?

Mr. Gordon: Yes.

The Court: They will be admitted. Exception will be allowed. The exhibit will include the revolver, the magazine and the bullets.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,

J. S. C.

Richard B. Reilly, recalled, further direct.

By Mr. David.

Q Mr. Reilly, were you present when one Albert Foster of the Colt Firearms Company discharged three bullets from this gun, Exhibit S. 29? A I was.

Q Do you recall when that was done? A On the morning of April 16 at 11:45 A. M.

Q And were the three bullets discharged from that gun taken in possession by you at that time? A They were.

Q And kept in your possession ever since? A They were,

Q Are these the three bullets? A They are.

Mr. David: I offer the three bullets in evidence as one exhibit.

The Court: Is there any objection?

Mr. Gordon: No objection.

The Court: Let them be admitted and marked.

Mr. David: Could they be marked as one exhibit?

The Court: Yes.

By Mr. David.

Q Are these the shells from those three bullets? A Yes, sir.

Mr. David: I offer them as one exhibit.

The Court: The shells and bullets will be admitted in evidence.

(Three bullets and empty shells entered in evidence as one exhibit and marked Exhibit S. 30.)

Q Were you present at the laboratory with Mr. William A. Jones of New York, when the

bullet, Exhibit S. 30, the bullet that was found in the body of Mrs. Mowry Campbell, and the three test bullets, Exhibit—

I withdraw the question.

Q Were you present at the office or laboratory of Mr. William A. Jones of New York, when the bullet, found in the body of Mrs. Mowry, Exhibit S. 5, and the three test bullets, which have been offered in evidence and marked Exhibit S. 30, were examined and photographed? A I was.

Q And that was done in your own presence? A Yes, sir.

Mr. Gordon: No questions.

ROY A. MARTIN, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Martin? A 442 Grier avenue, Elizabeth.

Q What position do you hold in this county? A County detective, Union County.

Q How long have you been such? A Nine years.

Q On the 12th of April last were you at the County Jail in this county in this city, in a room in which the defendant was? A I was.

Q At that time did you have with you certain articles? A I did.

Roy A. Martin, for the State, direct.

Q And did you show those articles to the defendant? A I did.

Q What were those articles? A The articles was the wrist watch of Mrs. Mowry, and also the top, the metal top of her leather bag.

Q Did you at that time exhibit this watch to Mr. Campbell, the defendant? A I did.

Q What did he say? A He said that was Mrs. Mowry's wrist watch.

Q And did you at the same time exhibit this handle— A I did.

Q (Continued.) —to Mr. Campbell, the defendand, and what did he say? A He said that was her—the top of the bag, her bag, Mrs. Mowry's bag.

Q Where did you get these articles? A Underneath the breakfast nook in the former home of Mr. Campbell at 349 Tuttle Parkway, Westfield.

Q What do you mean by breakfast nook? Just describe where it was you found these articles. A It was not excavated, underneath a breakfast nook off of the cellar, in the rear of the house.

Q Just where were these? A These were in the left-hand corner.

Q Were they in full view? A No, they were with a lot of rubbish in there.

Q How did you come to find them? A I had to crawl in underneath the breakfast nook.

By the Court.

Q From the cellar? From the street or from how? A From the cellar, the rear of the cellar.

By Mr. David.

Q And at whose request did you do that? A Your request.

Roy A. Martin, for the State, cross.

Q And you identify this as the watch and the frame that you showed to Campbell that day? A Yes, sir.

Mr. David: I offer the watch in evidence.

Mr. Gordon: No objection.

(The article referred to was received in evidence and marked Exhibit S. 31.)

Mr. David: I also offer the frame.

The Court: The frame is not objected to?

Mr. Gordon: No.

(The article referred to was received in evidence and marked Exhibit S. 32.)

Cross examination by Mr. Gordon.

Q Did you have the defendant identify any other articles in connection with this case? A As to the license plates.

Q And did you ever have a vial of morphine tablets that you presented to him for identification? A No, sir, not I.

Q Do you know who did? A I can't tell you.

Q Have you seen a vial of morphine tablets in this case? A Yes, sir.

Q Where? A At the home of Mr. Campbell on the night that we searched the house.

Q Did you search the house? A With Mr. Wagner and Detective Tevlin.

Q And you found there a vial of morphine tablets? A A vial of morphine tablets.

Q Where? A In the bedroom.

Q Not in the bath room? A No, sir.

Q Not in the medicine chest? A No, sir.

Q Where in the bedroom? A In the second drawer of the bureau.

Q Where collars were kept? A Yes, sir.

Q Where linen collars were kept? A Yes.

Q Men's collars? A Yes, sir, men's collars.

Q Mr. Martin, did you find any other articles there pertaining to the use of morphine? A No, sir.

Q Did you find a morphine outfit there with a needle? A Yes, there was a morphine outfit there.

Q At Mr. Campbell's house? A In the second drawer.

Q Where you found the vial? A Yes, sir, the vial, yes.

Q That was there when you came into the house? A Yes, sir.

Mr. Gordon: That is all.

Mr. David: Your Honor, any witness that I might call now, would take some little time, and I thought possibly your Honor would like to adjourn at this hour.

The Court: In any event we would be adjourned within the next ten minutes, and if your witness will take longer than that, and you prefer to have an adjournment at this time, I will adjourn now. It is your wish that you prefer to adjourn now?

Mr. David: Yes.

The Court: The adjournment will be until nine-thirty o'clock tomorrow morning. The jury may first be taken from the room.

(A recess was had until nine-thirty o'clock Tuesday morning, June 11, 1929.)

SECOND DAY.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. Clarence E. Case, Justice of the Supreme Court, and a Jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the eleventh day of June, A. D. 1929, at 9:30 A. M.

Appearances:

Abe J. David, Esq., Prosecutor of the Pleas, John B. Walsh, Esq., Assistant Prosecutor of Pleas, attorneys for the State.

Francis A. Gordon, Esq., attorney for the defendant.

RAYMOND E. GRYMES, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Grymes? A New Brunswick.

Q What is your business? A Auditor of the National Bank of New Jersey.

Q How long have you been connected with the National Bank of New Jersey? A Fifteen years.

Q Have you your original ledger sheet of the National Bank of New Jersey of New Brunswick showing withdrawals of the account of Richard M. or Mildred Campbell? A I have.

Q Will you produce it? A Yes, sir.

Mr. David: I offer it in evidence.

Mr. Gordon: No objection.

The Court: It will be admitted and marked.

(Bank ledger sheet entered in evidence and marked "Exhibit S. 33.")

Q I show you your original ledger sheet marked "Exhibit S. 33" and ask you to please read the date and amount of withdrawals in that account? A There was a $700 withdrawal under date of September 4, 1928; $100 withdrawal under date of September 8, 1928; $200 withdrawal under date of September 17, 1928, which closed the account.

Mr. David: Cross examine.

Mr. Gordon: No questions.

Mr. David: That is all, Mr. Grymes.

Mr. David: Is there any objection to having marked in evidence a duplicate instead of the original?

Mr. Gordon: No.

Mr. David: Counsel for the defendant agrees that there be marked in evidence a duplicate of the original ledger sheet so that the original may be taken away.

The Court: You have examined it, Mr. Gordon?

Mr. Gordon: Yes, sir. That is true.

Albert Foster, for the State, direct.

ALBERT FOSTER, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Foster? A 405 Walton Road, South Orange.

Q What is your business? A I am manager for the Colts Patent Firearms Manufacturing Company of New York City.

Q Have you had any experience in the examination of firearms and bullets and the testing of firearms for the purpose of determining calibre of firearms and bullets, and whether bullets have been discharged from certain guns or not? A I have.

Q How much experience have you had? A Covering a number of years, about twenty-seven years.

Q And what kind of experience have you had? A The first ten years I was with the Winchester Repeating Arms Company, and since 1910 I have been with the Colts Firearms Company, and during that time I have served as a firearms expert in several of the counties of this State, New York, Massachusetts, and Montana.

Mr. David: Any question about the qualifications of the witness?

Mr. Gordon: No.

Q Mr. Foster, did you, at any time, make an examination of this gun Exhibit S. 29 for the State? A I did.

Q And when and where? A On October 16 I went with—

Q What year? A This year. I went with Detective Reilly from the Prosecutor's office and I fired three test shots from this arm, in one of the garages near the court house.

Q Are these the three bullets which you fired? A Yes, sir.

Q Showing the witness Exhibit S. 30 for the State.

The Court: I assume that the cartridge chamber and the bullets are not in that exhibit at this time, are they?

The Witness: No, sir.

Q Did you also examine this bullet, showing the witness Exhibit S. 5? A I did.

Q Now, will you just tell, Mr. Foster, the Court and the jury just what you did at that time and what you found? A I took the arm and three of the loaded catridges which were a part of the ammunition turned over to me by Detective Reilly, and I fired three shots into a container of cotton to catch the bullet. After I had gotten the bullet out I examined them with a microscope to find out if there were any marks of identification which would link up with the original bullet which was given to me by Lieutenant Reilly, and on my microscope I found that there were marks of identification there that linked the three test catridges up with the bullet that had been supposed to have been fired out of the defendant's pistol. I then took the pistol and the three test bullets, along with the original bullet with Lieutenant Reilly to New York to Captain Jones' laboratory, on the eighteenth, and there I had it placed on a machine known as the comparison microscope, and on the comparison microscope it verified my findings. I might

explain at this time regarding the land and grooves, or the rifling, so that the jury will understand. When the firearm is made the barrel, there is what is called the first boring, that makes a complete round hole through the barrel. It is then put on a rifling machine which cuts a spiral groove. In the Colt arm there are six lands and six grooves. The groove is called the rifling, and the surface, the original surface of the bore between the rifling is known as the land. When the bullet is shot through the pistol the marks on the bullet become superimposed.

Q What do you mean by that, Mr. Foster? A The land becomes the groove, and the groove becomes the land. It simply changes the form on the bullet so that we have the marks which are picked up in the barrel on the bullet. This particular barrel had a great deal of corrosion in it and that left these marks of identification in the rifling, and also in the land, as the comparison microscope shows.

Q Can you, from your examination of the gun, Exhibit S. 29, and the examination of the bullet, Exhibit S. 5, tell me whether or not the bullet Number 5 was fired from the gun, Exhibit S. 29? A It was.

Q I say, can you tell me whether it was or not? A Yes.

Q In your opinion was it fired from that gun? A It was.

Mr. David; Cross examine.

Cross examination by Mr. Gordon.

Q You have been with the Colt people, I believe, since 1910? A Yes, sir.

Q Do you know the serials of these guns as to years when they were made? A Approximately.

Q Could you tell me when Exhibit S. 29 was made? A I would say approximately that this gun was made about sixteen years ago, fifteen or sixteen years ago, according to the serial number.

Mr. Gordon: That is all.

Mr. David: That is all.

WILLIAM A. JONES, a witness produced on behalf of the State, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Jones? A 329 East 201st street, New York City.

Q What is your business? A Firearms expert.

Q How long have you been a firearms expert? A Since 1895.

Q What do you mean by a firearms expert? A I was a member of the New York Police Department from 1887 until 1919. In 1895 when President Roosevelt was Police Commissioner, he organized a school for pistol practice, and I was selected as instructor. In that we reloaded our old cartridges, and I was in charge of the school for pistol practice. While it was in operation until 1911, and during the latter part of my time in the school for pistol practice, I had ten thousand men to instruct, and I reloaded all of our cartridges, and I used on an average of six thousand cartridges a day. Soon after I was

assigned to it, the District Attorneys of New York City used to call on me to consult on homicide shooting cases. In 1908 I was assigned along with my duties as instructor, to the Homicide Bureau of the Detective Bureau, and in that I went to the scene of the shooting, observed conditions there, and attended the autopsies and made experiments in many, many cases for powder stains on the body or clothing or markings left on the bullets or shells by any condition of the arm used. I have made hundreds and hundreds of experiments, and thousands of experiments, in that.

Mr. David: Is there any question about the qualification of the witness, Mr. Gordon?

Mr. Gordon: None at all.

By Mr. David.

Q In connection with your tests, Mr. Jones, do you make tests for the purpose of determining the calibre of a bullet? A Yes, sir.

Q And also the calibre of a gun from which a bullet is shot? A Yes, sir.

Q And have you any machine that you use in connection with these tests? A Yes, sir, I have what is called a comparison microscope. It is—

Q Have you it here in court? A Yes, sir.

Mr. David: With the permission of your Honor, I should like to have that put up and the witness examined concerning the tests.

(The witness left the stand and assembled a machine.)

William A. Jones, for the State, direct.

By Mr. David.

Q Will you please go back on the stand now, Mr. Jones? A Yes, sir.

Q With this comparative microscope, did you make tests of the bullet, Exhibit S. 5, which was shot from this gun, Exhibit S. 29, and the three test bullets, Exhibit S. 30, which were also fired from this gun by Mr. Foster? A Yes, sir, I did.

Q When did you make that test? A On the 18th of April.

Q Where? A At my home in 329 East 201st street, New York City.

Q In whose presence? A Mr. Foster and Mr. Reilly.

Q Mr. Jones, will you just tell us what that test consisted of and what you found? A I took the fatal bullet—I will call it—and I placed in on the right-hand side, the right-hand stand of the microscope, that is when I am facing it, and I put one of the tests in the left-hand side. Now, when they are set in the microscope—all of the microscope is not there yet. I focus the microscope on it first and then put on the comparison eye-piece. The comparison eye-piece fits on the top of the two microscopes and a prism throws the object to the center piece, so that it fuses two images, an image of the two bullets into one image, like half an half of each bullet. Then in rotating them, it brings the land and grove marks opposite each other. You can hold one and rotate the other, and when you find any comparison lines meeting each other in the microscope, then you can revolve them both together and continue around the circumference of the bullet and it shows every scratch that is left by any condition of the barrel of the arm that it is shot through. It shows plainly in the microscope.

William A. Jones, for the State, direct.

Q From your test were you able to determine whether or not the fatal bullet, Exhibit S. 5, and the test bullets, Exhibit S. 29, were fired from one and the same gun? A They were.

The Court: Mr. David, didn't you refer to the test bullets as Exhibit S. 30 a minute ago?

Mr. David: I withdraw that question and will reframe it.

By Mr. David.

Q From your test, were you able to determine whether or not the fatal bullet, Exhibit S. 5, and the three test bullets, Exhibit S. 30, were fired from one and the same revolver? A They were.

Q Were you able to determine it? A Yes, sir.

Q Tell me whether, in your opinion, they were fired from the same gun? A They were fired from the same gun, yes, sir.

Mr. David: Cross examine.

Mr. Gordon: No questions.

Mr. David: If your Honor please, there are three witnesses under subpoena from the Westfield Trust Company who have not arrived as yet, and the State is about ready to close. They were here yesterday afternoon.

The State rests.

THE STATE RESTED.

GEORGE B. McMURRAY, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Dr. McMurray, you are a physician and surgeon in the State of New Jersey? A I am.

Q You are connected with what institution? A New Jersey State Hospital, Greystone Park.

Q What is your status there? A Senior physican.

Q Did you at the request of the Prosecutor of the Pleas of this county on the 15th day of April, 1929, make an examination of the defendant, Mr. Campbell? A I did.

Q Tell us what you found. A I found Mr. Campbell sane.

Q Also what was his mental condition otherwise? A I found him of a psychopathic make-up.

Q That is—what does that mean, doctor? A A psychopathic personality deals with that group who show some impairment of volition or emotional reaction. Under that class we have the criminals, pathological liars, vagrants, and so forth, but without psychoses, that is, without insanity.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q From your examination of Campbell at that time could you determine whether or not he could distinguish between right or wrong? A I think he could.

Q And whether he knew the nature and consequences of his acts? A Yes.

George B. McMurray, for defendant, re-direct.

Q And whether he knew on the 23rd of February last, he could distinguish between right or wrong? A I think he could.

Q And whether on the 23rd of February last he knew the nature and consequences of the acts that he committed? A I believe he did.

Q And whether he could or did act with deliberation and premeditation at that time? A Yes.

Mr. David: That is all.

Re-direct examination by Mr. Gordon.

Q Your knowledge of his conditions of the morning of February 23, does it take into consideration any knowledge as to the quantity of morphine that he may have used that day?

Mr. David: I object to that. There is no proof in this case that the defendant at that time or any other time used morphine.

The Court: I think that is so, Mr. Gordon.

Mr. Gordon: May I withdraw the question?

By Mr. Gordon.

Q Assuming that the defendant had been using morphine on the day of February 23, 1929, can you tell us whether or not your conclusion as to the opportunity to premeditate and deliberate would have been different than it was in answer to the Prosecutor's question?

Mr. David: I object to the question on the ground that it is a hypothetical question and it is not founded on proof or facts in the case.

Mr. Gordon: I am calling the doctor out of order, it is true, because he wants to get away.

The Court: I assume in calling him out of order that you need to take him subject to such handicaps as follow in that situation. The objection is sustained.

By Mr. Gordon.

Q Are you familiar with the effects of drugs? A I am.

Q Have they any effect on the mentality of a person that uses them? A They have.

ROSALINE McCREADY CAMPBELL, a witness produced on behalf of the defendant, being duly sworn according to law, on her oath saith:

Direct examination by Mr. Gordon.

Q Mrs. Campbell, you are the wife of H. Colin Campbell? A Yes.

Q Please raise your voice so we can hear you back to this end of the jury-box. A Yes, I am, yes.

Q How old are you? A I am thirty-four.

Q You were married to Mr. Campbell in Chicago? A On the 6th of May, 1914.

Q And you have with him how many children? A Three.

Q And they are what ages, respectively? A Fourteen, eleven and two.

Q When you married Mr. Campbell, did you start housekeeping? A Very soon after we were married.

Q How long did you live in Chicago? A For, well, more than thirteen years.

Q And during the time that you have lived with Mr. Campbell, has your married life been a happy one? A Yes, it always was happy.

Q What was his general course of conduct toward the children and yourself? A Oh, he was wonderful to all of us, always. He could not have been better.

Q When you left Chicago that was in what year? A That was the 2nd of October, 1926.

Q And at that time do you recall the general physical appearance of Mr. Campbell? A Yes, he was in good—

Q I show you a photograph and ask you if that correctly represents his general appearance at that time? A That was taken just shortly before we left Chicago.

Mr. David: I can't hear the answer.

(The stenographer read the last answer as follows:

"Answer: That was taken just shortly before we left Chicago.")

By Mr. Gordon.

Q Is that an accurate representation of his characteristics at that time? A Yes.

Mr. Gordon: I offer it in evidence.

(The picture referred to was received in evidence and marked Exhibit D. 1.)

By Mr. Gordon.

Q What was the general mental condition of Mr. Campbell when he left Chicago?

Mr. David: I object to that on the ground that it is a very indefinite question and that the witness is not qualified to testify as an expert as to a general mental condition, until the question is made more specific.

The Court: How can you justify that question to this witness, Mr. Gordon?

Mr. Gordon: It is my understanding that a lay witness may characterize the actions of another lay person.

The Court: Upon the statement of facts which are laid before the jury.

Mr. Gordon: I am not asking this witness to give an expert opinion, but I am merely asking as to his general mental condition. I included in the question the word "general."

The Court: Yes, but you are asking for a conclusion, for her opinion.

Mr. Gordon: I withdraw the question.

By Mr. Gordon.

Q How was his conduct toward you? A His conduct—

The Court: You are asking this witness to describe what she observed. That is one question, but that is not what you are asking, and you have laid no facts from this witness before the jury from which she is being asked to give her conclusions. There are no facts produced.

Mr. Gordon: I would not attempt to ask her for a medical conclusion.

The Court: No, I understand.

Rosaline McCready Campbell, for d'f'nt, direct.

By Mr. Gordon.

Q Did you have occasion to observe his conduct in general? A I surely did.

Q Did you notice anything strange in his conduct when you left Chicago? A Absolutely not.

Q Shortly after you arrived at Salisbury, Maryland, did Mr. Campbell commence the erection of a new home? A A week after we got there.

Q I show you a photograph and ask you what that represents? A That was one view of our home in Salisbury.

Q A view of your home in Salisbury? A Yes.

Mr. Gordon: I offer it in evidence.

Mr. David: I object because it is immaterial and irrelevant.

The Court: What is the relevancy of it?

Mr. Gordon: It goes by way of corroboration to a state of mind that existed before mental stress set in.

Mr. David: May I reply to that, if your Honor please?

The Court: It is not necessary. The offer is refused, and you may have an exception, Mr. Gordon.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

By Mr. Gordon.

Q Did you notice any change in the physical condition of Mr. Campbell after getting to Salis-

bury? A Well, do you mean immediately or after the trouble?

Q Did he have any difficulties in Salisbury, financial difficulties? A Well, yes, of course, not immediately after we got there. We thought, you know, that everything—

Q Not what you thought, Mrs. Campbell, but what happened after you had been there for some period of time?

Mr. David: Just a moment, if you please, I object to that question as being too broad and indefinite. What this witness knows from her own knowledge she may testify to, but I submit that what she may have heard from either her husband or someone else would be hearsay, and until a question is framed that would be competent, I object to the question.

The Court: Mr. Gordon, you are going into a situation there which perhaps may arise from time to time during the case, and which we might as well approach at this time. Of course, you do not contend that what happened then was relevant or directly related to the events of this crime?

Mr. Gordon: Yes, sir.

The Court: I assume that you consider that it has some bearing upon the man's mentality?

Mr. Gordon: Yes, his mental state.

The Court: Now, then, what happened is hardly of importance at this time, and you are not asking about the man's mental state. You are asking about something else.

Mr. Gordon: I withdraw the question.

The Court: Anything under the sun could happen.

Mr. Gordon: I withdraw the question.

Q Did you notice any change in Mr. Campbell some time after your residence in Salisbury? A Yes.

Q And how was that change evidenced to you? A Well, after he realized that everything had fallen through down there—

Mr. David: I object.

By the Court.

Q The question is what you observed. What did you observe about your husband that was different? A Well, his health began to fail after he began to worry about money all the time, and he began to have terrible headaches, and he lost about twenty-five pounds in weight. He just got worse.

The Court: I assume it would be well for you to turn around and face the jury so that they can hear you.

A You spoke to me so I thought I should face you.

By the Court.

Q Repeat what you said and face the jury. I appreciate that it is a little difficult to have questions coming to you from one side and the other. A I said that after he realized that everything had fallen through in Salisbury, his health began to get very—well, it began to fail right away. He worried and he had headaches,

and oh, he lost weight, and we were both just frantic, and I had a nervous breakdown after the baby—

Mr. David: I object to that and ask that it be stricken out, and that the witness be directed to answer the questions.

The Witness: Well, I was answering the question that you asked me.

Mr. Gordon: Please don't argue, Mrs. Campbell.

By the Court.

Q The question is what you observed about your husband. Have you anything further to say in response to that question, what you observed about him? A Well, only that he began to lose his health right away after that, and he gradually got worse and worse and lost weight and began taking something for his headaches.

By Mr. Gordon.

Q Did you notice anything particularly about the appearance of his forehead at times? A Oh, yes, when he had those terrible headaches, the veins would stand out like ropes on his forehead. I knew when he had headaches without his telling me, by his appearance.

Q Do you know how he slept at nights? A He didn't.

Q How frequently did you see him take this stuff for his headaches? A Well, at first not very frequently, and then later on he—well, he had to take it oftener later on. I used to worry about it and—

Rosaline McCready Campbell, for d'f'nt, direct.

The Court: Mrs. Campbell, the question was not whether or not you worried, but what he did do and what you observed.

The Witness: Well, he had to take it oftener as it went on. Sometimes he would take a dose and then in just a little while he would have to take another, because he said it didn't take any hold on him, unless he did.

By Mr. Gordon.

Q Do you know where he kept this medicine? A Yes.

Q Where? A He kept it in a drawer of his chifforobe where he kept his collars.

Q Where did you keep the other medicines in your house? A In the cabinet in the bathroom.

Q Did you ever see any morphine outfit at your home? A Yes.

Q What did it consist of? A Well, it was a little case that held needles.

Mr. Gordon: I ask the State to produce it, please.

By Mr. Gordon.

Q I show you a blue box containing some apparatus and tubes, and ask you if you have ever seen this box in your house and the contents thereof? A Yes, all of them.

Q When? A Do you mean when did I last see them?

Q When did you first see them? A I first saw them in Salisbury.

Q In Salisbury, Maryland? A Yes.

Mr. Gordon: I offer them in evidence.

Mr. David: No objection.

The Court: It may be received and marked.

(The article referred to was received in evidence and marked Exhibit D. 2.)

By Mr. Gordon.

Q I show you a box marked "hypodermic needles," containing several hypodermic needles, and ask you if that box and the needles were in your home? A Yes, they were.

Q Do you know whether or not you have seen similar boxes to that in your home other than that one? A Well, I don't know whether that was the only one.

Q Do you know how long there has been such a box in your home? A Well, never before we were in Salisbury.

Q Not before you were in Salisbury? A No.

Q Was it there before February, 1929? A Yes.

Mr. Gordon: I offer it in evidence.

The Court: It will be received and marked.

(Box entered in evidence and marked Exhibit D. 3.)

Q I show you a box labeled "White & Leonard Drug Store, Salisbury, Maryland," dated December 5, 1927, with a pencil inscription on it "Codein, one-quarter," and ask you whether or not that box was in your home? A Oh, yes, it was.

Q And what was in that box? A Well, Codein tablets.

Q And who used them? A My husband used them.

Q And when did he use them? A Well, he used them when he had those headaches.

Mr. Gordon: I offer the box in evidence.

The Court: Let it be marked.

(Box entered in evidence and marked Exhibit D. 4.)

Q When you lived in Chicago do you know whether or not your husband purchased a Colt automatic? A I know that he did.

Q Referring to Exhibit S. 29, is that the automatic gun which your husband owned in Chicago? A It looks like it.

Q And has he always had an automatic gun? A Yes.

Q What was the occasion for his purchase of an automatic?

Mr. David: Objected to as immaterial.

The Court: What is the materiality?

Mr. Gordon: To rebut any presumption that this gun was handled, or obtained and handled for the specific act of which the accused is being called upon to answer.

The Court: Well, it was acquired at a period before he knew the woman.

Mr. Gordon: I want to go into the point as to his method of use of the gun, how it came to be in that car that morning, what his usual and customary proceedure was with this gun.

The Court: That is not the question you are asking.

Mr. Gordon: I was leading up to it.

Q Have you frequently been on automobile rides at night with your husband?

Mr. David: Objected to as immaterial.

A I have.

The Court: I assume every woman has or ought to have been. I will admit the question.

Q On those occasions do you know whether or not Mr. Campbell carried the automatic with him?

Mr. David: Objected to as immaterial.

A We always carried it.

Mr. David: I ask the Court to instruct the witness not to reply before the question is finished and until counsel has an opportunity of objecting.

The Court: Yes. Of course, Mrs. Campbell, you will not follow your answer too rapidly upon the question because opposing counsel may desire to interpose an objection. The question is admitted.

A I was going to say we always carried it when we were out late at night. We used to have it between us on the front seat when we took rides at night. We always carried it when we were out late.

Q Do you know whether or not prior to February, 1929, there was an extra can used for an

emergency supply of gasoline in your automobile? A We always carried a gallon can full of gasoline because we used to ride sometimes—

The Court: The question is not why. The question is did you do that. Your answer has been given.

A Yes.

Q Did you, during the years of your marriage with Mr. Campbell, know of his past? A No, he never told me anything.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q You knew, Mrs. Campbell, that your husband had been a physician in some state or other of the United States? A Yes, he told me that he had been a physician.

Q And he treated you for some ailments during the last few years, didn't he? A No.

Q Isn't it so that he treated you with drugs during the last few years? A Treated me with drugs?

Q Yes. A No.

Q You are sure about that? A I am sure about that.

Q Never used? A He never treated me for anything. He always called a doctor in for me when I was—

Q And never used any morphine or any other drug on you? A For me? Absolutely not. Just once, when we were in Westfield, when I had neuralgia, he gave me a tablet and he told me never to touch them because they were morphine and dangerous to anybody who didn't know how to use them.

Q That was only once? A Yes.

Mr. David: That is all.

Mr. Gordon: That is all.

ROLAND P. BLYTHE, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Doctor, you are a physician and surgeon in the State of New Jersey? A I am.

Q Your office is located where? A 210 Walnut avenue, Cranford, New Jersey.

Q Do you occupy any official position in the County of Union? A I do.

Q What? A Physician to the County Jail.

Q And in connection with your duties as physician to the County Jail have you had occasion to administer to the defendant Campbell? A I have.

Q How frequently since April 11, 1929? A Well, I can't tell you the exact number of times. Quite frequently.

Q For what purpose? A Because of his general poor physical condition.

Q On those occasions did you have a need for prescribing medicines and drugs? A I did.

Q What kind of drugs did you prescribe? A He had great difficulty in sleeping and we used to prescribe some bromides for him, that seemed to help him very much. On one occasion he complained of severe headache and he told me that he used to take a little codein, so I prescribed on one time a capsule containing a little

codein and some phenacetin, a half a dozen is all he had.

Q Did you observe any conditions as to his organic condition? A Yes.

Q What did you find there? A He had several chronic organic conditions.

Q Mention those conditions. A He has a poor heart.

Q I can't hear you. A He has a poor heart.

Q And in what way is that evidenced? A By the fact that occasionally he has pain in the heart region.

Q Now, you say that is one of several chronic conditions? A Yes.

Q That means it is of long standing? A Yes.

Q In your opinion, dating back not less than six months? A Oh, yes.

Q What other conditions did you observe? A He has a chronic bronchitis.

Q How is that evidenced? A Well, he coughs off and on.

Q And that is a condition that has been of long standing? A Yes.

Q What else have you ascertained? A He has a chronic bladder condition.

Q And how is that evidenced? A By the fact that he has to get up very frequently at night to urinate, and at times he has great difficulty in urinating.

Q Of how long standing is that, in your opinion? A Oh, several years.

Q Does that have accompanying pains or headaches? A Pains, yes. Not necessarily headaches.

Q What would the effect be if he were suddenly unable to function through the bladder? A He would have pain and distress.

Q Do you know whether or not he had suf fered such pain? A He has.

Q Do you know whether those pains have been frequent? A He has pain more or less all the time in the bladder region when he can't pass his urine freely, yes, frequently.

Q What other condition did you observe there? A He has a marked hyperthrophy, or enlargement of the prostate gland.

Q The prostate gland is located where? A At the base of the bladder, the neck of the bladder.

Q And what happens if that get clogged? A Well, it does not get clogged. It enlarges and causes a stoppage of the opening from the bladder.

Q What happens when that stoppage ensues? A If it is completely stopped he can't pass his urine.

Q And then what happens? A The bladder distends.

Q And then what happens? A Well, if it is not relieved it ultimately overflows, so to speak, he can't retain it, it reaches a certain point and then the bladder muscle sort of gives way, and it leaks out all the time, although the bladder is filled.

Q This condition of the prostate gland, is that a condition chronic in its nature? A Yes.

Q And in your opinion has it been in existence for any lengthy period of time? A Yes.

Q In excess of six months? A Yes.

Q Have you noticed any other condition? A He has bad pyorrhea.

Q What is that an evidence of? A Well, it is an infection of the edge of the teeth, infection of the gums.

Q This pyorrhea condition, does that produce a systemic or toxic poisoning? A If it is bad enough it may, yes.

Q Do you know whether or not in his case the condition is light or severe? A Well, I think it is fairly severe.

Q What is the effect of such poison on the system? A Well, it might cause infection in other parts of the body. In his case I should say it probably upsets his stomach more than anything.

Q Do you know whether or not it could permeate into the brain? A No, I don't.

Q Does it get into the blood supply? A Frequently, yes.

Q Does the blood supply ultimately reach the brain? A Well, naturally.

Q Do you know of any other conditions that he is suffering from? A He has a hernia, a rupture.

Q How is that evidenced? A Well, he has had that for a long time; it is just a lump that comes and goes. He can push it back.

Q It is accompanied by pain? A I don't think so.

Q Now, what other condition do you know of? A That is all that I know of.

Q Doctor, in your observation of the defendant in the County Jail do you know whether or not he passed blood for any period of time? A He did for a day or two, yes.

Q Did he pass blood for ten days just recently? A I don't think it was quite ten days, but he did pass blood for several days quite recently.

Q He did? A Yes.

Q And where did that blood emanate from? A The bladder.

Q And passed through how? A With the urine.

Q That was an evidence of what? A Of disease of the bladder.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q Doctor, you say you saw him frequently since April 11 last until today? A Yes, sir.

Q How many times a week did you see him, doctor? A Well, laterally I saw him nearly every day.

Q What do you mean laterally? A I mean for the past two or three weeks.

Q And prior to that how often did you see him? A Oh, three, sometimes four times a week.

Q And each time you saw him how long were you with him? A Oh, it depended, sometimes I would be with him maybe ten minutes, sometimes less, sometimes more.

Q And did you talk with him during those times? A I did.

Q Was he sane or insane? A Sane.

Q Was he able to distinguish between right and wrong?

Mr. Gordon: I object to the question. There is no contention in this case that this man is unable to distinguish between right and wrong.

The Court: No question that on the twenty-third of February he was able to distinguish between right and wrong?

Mr. Gordon: That is the question.

The Court: I say, you say there is no dispute about that?

Mr. Gordon: At the time of the offence there is a dispute. His mental state at that time, if your Honor please, we contend was such that his mental faculties were prostrated. But so far as his condition in April, 1929, there is no issue presented in this case. It is not brought out on direct examination.

Mr. David: I respectfully submit it is proper cross examination, if your Honor please, as to the mental state of the defendant ever since the commission of the crime, it has bearing in his mental condition at the time of the commission of the crime.

The Court: Was this witness asked regarding the mental condition of the defendant, on his direct testimony?

Mr. Gordon: No, sir.

The Court: Well, is this cross examination?

Mr. David: I take it it is, your Honor. He was asked about his physical condition. I take it I have a right to inquire as to all that he observed and concluded and found in his examination of the defendant.

The Court: I doubt whether you can extend the examination relating to a man's physical condition into one relating to not merely his mental condition but to expert opinions deduced therefrom, as of a period some months prior to the examination. I will overrule the question.

Mr. David: If your Honor will bear with me a little further: In the first place I am not asking the witness as an expert.

The Court: How otherwise can you ask him what the man's condition was on the twenty-third of February?

Mr. David: I have not so asked him.

(Question repeated by stenographic reporter.)

Mr. David: I will withdraw the question. That is all, doctor.

Mr. Gordon: That is all.

CHRISTOPHER A. BROKAW, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Doctor, you are a physician and surgeon in the State of New Jersey? A I am.

Q With offices located where? A In Elizabeth, New Jersey.

Q And are you connected with any institutions? A I am connected with the Elizabeth General Hospital, St. Elizabeth Hospital.

Q In what capacity? A Attending physician at Elizabeth General Hospital.

Q Do you occupy any official position in the County of Union? A I do.

Q What? A County Physician.

Q Did you, at my request, make a physical examination of the defendant Henry C. Campbell? A I did.

Q When? A Yesterday.

Q State the result of your examination. A Adult, white male, age approximately sixty. Appearance pale, emaciated. In the mouth there

was a marked pyorrhea about the teeth. The neck there was enlarged glands beneath the jaw. The heart, the rate was rapid, the sounds distant. There was an enlargement of the heart.

Q When you mention the heart was rapid and the sound was distant, what, in your opinion, is that an evidence of? A Muscular weakness of the heart, I should say.

Q And is that a condition of long or short duration? A Probably long.

Q Not less than how many years or months? A That I cannot state.

Q Can you say whether or not such condition existed for a period of at least six months? A Yes, I can.

Q Does it? A It does.

Q Now, then, proceed with the rest of your findings, A The lungs showed evidence of a chronic bronchitis.

Q And when you say chronic of what period of duration, minimum duration, does such condition exist? A I should say that existed for years.

Q What is the next finding? A The abdominal organs, the abdominal examination, rather, was essentially negative, except he has a right inguinal hernia.

Q And then what else did you find? A Upon rectal examination he has an enlarged prostate gland.

Q Is that of long or short duration? A That probably is of long duration.

Q What is the effect of the enlargement of the prostate gland on the functioning of any other organ, if any? A The enlarged prostate gland tends to stop the outflow of urine from the bladder.

Q What is the effect of such stoppage? A The effect is this: The urine, the bladder, rather, is not able to be emptied. In other words, there is some remaining urine in the bladder at all times. This urine which remains in there becomes infected. He then sets up what we term a cystitis which means an inflammation of the bladder. The next step is infection of the kidney, extending from the bladder through the urethra into the kidney, setting up a kidney condition.

Q Is that a condition that is accompanied by any mental stress? A No, sir.

Q Does it produce any systemic or toxic poison in the system? A It can.

Q Does that in turn find its way into the blood? A Yes, sir.

Q The blood, as part of the circulatory system, enters the brain? A It does.

Q What else did you find? A Well, the blood pressure was 136 over 80 systolic pressure of 136, which shows the condition of the heart. He also had at that time of the examination a distended urinary bladder, due to blockage of urine from passing out of the bladder.

Q In your opinion, from your examination of this man and the conditions you found, what is his general physical condition? A I should say poor.

Cross examination by Mr. David.

Q Is he sane or insane?

Mr. Gordon: I object to that as not part of the cross examination and further on the ground that the witness has not been

qualified as a neurologist to give expert opinion on the subject.

Mr. David: I submit, if your Honor please, that it is a proper question to ask a lay witness who has personally talked with and examined and had dealings with the defendant.

The Court: You may present him as such, I presume when the time comes, but it is hardly cross examination.

Mr. David: If your Honor please, I think it is even proper cross examination, because it is founded on the very things that counsel has elicited on direct examination, his personal examination by this witness of the defendant.

The Court: The question is overruled.

Mr. David: I now ask permission to make the witness my witness and I now ask you doctor as a result of your talk with Campbell at the jail yesterday and your examination of him, whether or not he is sane or insane.

Mr. Gordon: I object to that on the ground that the witness has not been qualified as a neurologist.

The Court: Counsel has a right, if he so wishes, to object to your making your rebuttal in the midst of his case, and the question at this time is overruled.

Mr. David: Counsel has not made that objection, and I submit, if your Honor please, that it is within the discretion of your Honor.

The Court: I will overrule the question. If you wish to use this man in rebuttal on the question, that is not cross examination,

and you may have your opportunity to do so by proceeding at that time.

Mr. David: That is all, doctor.

LEO WARD, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

The Court: Of course, Mr. Gordon, the question naturally arises what relevancy has evidence of a man's physical condition.

Mr. Gordon: As to whether or not the effect of such physical condition would produce a mental stress, and as to that, I expect to supply evidence. I am now laying the foundation for additional evidence.

Direct examination by Mr. Gordon.

Q Doctor, you are a physician and surgeon in the State of New Jersey? A Yes, sir.

Q And you have been engaged in the practice of your profession for how long? A Twelve years.

Q And have you during your experience specialized in any particular field of medicine? A Yes, sir.

Q What? A X-ray.

Q Are you connected with any institutions in the State of New Jersey? A Yes, sir.

Q What? A Bayonne City Hospital in Bayonne, Greenville Hospital in Jersey City, Alexian Brothers Hospital of Elizabeth, and St. Elizabeth Hospital in Elizabeth.

Q In what capacity? A I have charge of the X-ray departments of those four hospitals.

Q Being in charge of such departments do you have occasion to make X-ray pictures of various people, of various parts of the human body? A Yes, sir.

Q Do you also conduct a private practice? A Yes, sir.

Q In connection with your activities in your private practice, do you have occasion to take numerous X-rays for various other practicing physicians? A Yes, sir.

Q Do you also take X-rays for neurologists? A Yes, sir.

Q For what purpose? A To determine whether or not there is any evidence of any pathology in the head as shown by X-ray.

Q Did you take any X-ray pictures of the defendant, Mr. Campbell? A I did.

Q When? A The date is on the pictures. I don't recall the date.

Q Did you on April 17, 1929, take any pictures of the defendant, Mr. Campbell? A If that is the date on the pictures, I did.

Q Where? A In jail.

Q I show you an X-ray picture and ask you what that represents? A This represents a normal skull.

Q Is it that of Mr. Campbell? A It is not.

Q Have you a label on it marked "normal"? A I have.

Mr. Gordon: I offer it in evidence.

Mr. David: I object to it as incompetent, irrelevant, and immaterial.

The Court: I see no relevancy at this time, Mr. Gordon.

Mr. Gordon: I desire to use it as a standard of comparison with other pictures which

I intend to present to the witness. Perhaps it is a little out of turn as to order of procedure on the other pictures.

The Court: There is nothing at this stage of the proceedings that justify its use, in my opinion.

Mr. Gordon: I did not hear your Honor's remarks.

The Court: There is nothing at this stage of the proceedings that justify its admission, in my opinion

Mr. Gordon: Very well; I withdraw the offer.

Q I show you a picture marked "1" and ask you what that picture is? A It is a picture of the head of Campbell.

Q What conditions, if any, does it show? A The thing that first attracts my attention is the shape of the head. This is the shape of a head that under average circumstances you would associate with a negro. The diameter of the head is not that of the average white man. The right frontal sinus, which I point out with my finger, over the right eye, is cloudy. The left ethmoid, which is the area pointed out with my finger here (indicating) reaching the nose, is also cloudy. This is a condition known as inflammation of the right frontal sinus and inflammation of the left ethmoid sinus.

Q And such inflammation is caused by what? A Infection.

Q Of what duration is that condition? A That I do not know.

Q Has it been there for a period in excess of six months? A It probably is of long duration.

Leo Ward, for defendant, direct.

By the Court.

Q How are you able to say that? A The recent condition —infection of either sinus with the presence of pus in the sinuses would show an obliteration of the sinuses. The sinuses can be seen in this case. They are not entirely obliterated. They can be seen.

Q How are you able to say that? How are you able to say how long the condition has been maintained? A That is approximate. That cannot definitely be stated. That you can see, is just a thing that comes from seeing a lot of pictures and people giving information that they have had infection over a long period of time, and then seeing this appearance when you take the pictures, and that is approximate. It is not exact.

Q Is there anything in that picture that you can point to and say that is evidence of long duration? A I believe the infection that I have mentioned in the right frontal sinus and the left ethmoid has been standing quite some time.

Q What is there that enables you to say that? A The appearance of those sinuses.

Q What appearance? A The lack of proper illumination of them.

The Court: Proceed.

Mr. Gordon: I offer this in evidence.

Mr. David: No objection.

(The X-ray referred to was received in evidence and marked Exhibit D. 5.)

By the Court.

Q Doctor, is sinus infection an unusual condition? A No, sir.

Leo Ward, for defendant, direct.

By Mr. Gordon.

Q Doctor, I show you an X-ray picture marked "2" and ask you what that represents? A That is just the same as number "1"; no difference.

Q Is it a different side view? A No.

Q The same thing? A Same view.

Mr. Gordon: I offer it in evidence.

Mr. David: No objection.

(The X-ray referred to was received in evidence and marked Exhibit D. 6.)

By the Court.

Q That is of the defendant?

By Mr. Gordon.

Q That is of the defendant, Mr. Campbell? A Yes, sir.

Q I show you an X-ray picture marked "3" and ask you what that represents. Is it a picture of the head of the defendant Campbell? A This is a picture of the head of the defendant Campbell.

Q What does that represent? A This is a side view, gentlemen, and that is taken by putting the X-ray film under the head, and having the head on the side, and the X-ray tubes above the head. It is a side or lateral view of the skull.

Q Are there any unusual conditions there? A The unusual thing that first attracts me is the size and shape of the head and the projection of the jaw. The jaw is unusually large and projects in an abnormal manner.

Q And does the picture present any condition of blood vessels or thickness of the skull? A

The skull is very irregular in its thickness. In the region of the occipita—that is the back of the skull, you might say, indicated by my finger—the skull seems to be very thick, and then at the vortex or top of the skull, the skull is very thin, so there is a very marked alteration in the density of the skull.

Q As to the blood vessels, is there anything in the picture to indicate a condition of the blood vessels? A The blood vessels are those lines, these straight lines indicated by my finger, going across the skull. They are unusually large and unusually prominent. They are not near as large or as prominent in the average skull as they are shown here. They are these black lines shown by my finger.

Q What accounts for such prominence, if you know? A I do not know. I just know that it is unusual.

By the Court.

Q Doctor, you have called attention to certain abnormalities there. Are they of long or short duration? A That cannot be said. I imagine that is of a long period of time. That question could not be answered one way or the other.

Q The skull does not re-form itself, does it, doctor? A No, I think that is of long standing.

Q The jaw does not re-form itself, does it? A No, sir.

Q It is of long standing? A I think so.

Q Is there any doubt about that? A Well, there is a condition in the pituitary gland of the brain that might have some effect or change the shape of the jaw, but I am not in a position to say what condition this pituitary gland is in. I do not know.

Mr. Gordon: I offer this picture in evidence.

Mr. David: No objection.

(The X-ray referred to was received in evidence and marked Exhibit D. 7.)

By Mr. Gordon.

Q Doctor, I show you a picture marked "4" and ask you if that is a picture taken of Mr. Campbell's head? A This is a picture of Mr. Campbell's head of the left side. The left side of the picture was taken with the right side of the head down and in this fashion (indicating), whereas this picture (indicating) is taken with the left side of the head down, in this fashion (indicating.)

Q What does that picture show? A This picture shows that the cellaturcica, the posterior processes of the cellaturcica is not present. It is destroyed; it is not there.

Q Just where is the cellaturcica in the human skull? A It is in the superior surface of it. It is rather hard to describe without using technical names.

Q Point out on the picture where it would be located, should be located. A Here (indicating.)

Q That is equivalent to the region of what external part of the head? A Well, it is above and a little in front of the ear.

Q But inside of the skull? A In the middle of the skull, deeply in the skull.

Q This cellaturcica, is that present in this man's head on that side of his head? A There is some very indefinite outline of the cellaturcica which can be seen, very indefinite. The posterior clinoid processes of the cella is not there. It is destroyed; it is not present.

Q What is the substance of the cellaturcica? A It is a bony cavity.

Q And it is shaped how? A U-shaped.

Q And the end of this U-shape are known as what part of the cellaturcica? A The clinoid processes. The one in front is the anterior clinoid process, and the one behind is the posterior clinoid process.

Q What is the function of the cellaturcica? A It houses the pituitary gland, the pituitary body.

Q Do you have in this court room a human skull where you can show us with more definite precision the location of the cellaturcica on a normal being? A I have.

Mr. Gordon: May I refer to it, if your Honor please?

Mr. David: No objection.

By Mr. Gordon.

Q The object which we have before us is a human skull? A It is.

Q Normally, in general characteristics? A Yes.

Q You have removed from the top of it a section, or there has been removed a section? A The bony section has been taken off just as if by means of a saw above the ears and above the eyes. The bony top of the skull has been taken off.

Q Will you be kind enough to point out to the jury on this object what the cellaturcica is? A The cellaturcica is this bony cavity where I have my finger in (indicating.) That is the cellaturcica, that bony cavity, in the upper surface of the sphenoid bone into which I have my finger (indicating.)

Q What does that house? A The pituitary gland.

Q Referring to this bony cavity, is this the U-shaped object which you referred to in the picture, (indicating a U-shaped object in the form in the hands of the witness)? A No, sir.

Q Will you be kind enough to tell us? A The X-ray picture with the skull, the U-shape, that I referred to, in this region here (indicating) is a side view of the cellaturcica, this view here (indicating,) not the back part, but the side view of the cellaturcica. When we take an X-ray picture we get a picture of the cellaturcica in this region (indicating,) in the form of a U-shape, and that is a side view.

Q What are the ends of the cellaturcica, the U-ends, how are they designated? A Those pointed ends are the clinoid process.

Q In the picture marked "4" of the head of Mr. Campbell, is there any condition represented by that picture of an abnormal nature in the cellaturcica and clinoid process? A In the first place, it is pretty difficult to define the cellaturcica on the X-ray picture. In the second place, these posterior clinoid processes are not there. You cannot see them. They are not present, those bony projections, and the whole cellaturcica itself on the X-ray picture is very indefinite.

Mr. Gordon: I offer this picture in evidence.

(The X-ray referred to was received in evidence and marked Exhibit D. 8.)

Mr. Gordon: I should like to have the skull marked as an exhibit.

Mr. David: No objection.

(The skull referred to was received in evidence and marked Exhibit D. 9.)

Leo Ward, for defendant, direct.

By Mr. Gordon.

Q You have mentioned that the picture, referring to Exhibit D. 8, does not show the clinoid processes, is that correct? A That is correct.

Q Is that by reason of the nature of the picture itself or by reason of what the picture is expected to represent? A Those pictures are very clear pictures; they are very good pictures. It is not due to any fault of the pictures whatsoever.

Q Calling your attention to the Exhibit D. 8, do you notice the mastoid? A The left mastoid cells are not present. There is no mastoid cells seen.

Q Where would they originally appear if they were present in a picture? A Behind the opening of the ear, which is designated by this black spot, below and behind the ear in this region, (indicating.)

Q What is the mastoid process? A It is a portion of the skull of the temple bone consisting of cells. Under normal conditions, bone cells, a network of bone cells and—

Q Can you indicate on Exhibit D. 9 where the normal location is of the mastoid processes? Point it out to us, please. A This region here behind the opening of the ear is the mastoid process (indicating), looking at it from the inside. You see that the mastoid process is a network of cells, a network of—like a mesh of superfine cells.

Q Is that condition evidence in the picture represented as Exhibit D. 8? A There aren't any cells there.

Q What is that an indication of? A Infection.

Q How do you account for the lack of cells there? A They have been destroyed.

Q Is that condition covering any period of time? A That covers a long period of time. The mastoid infection is a chronic infection over a long period of time, and when you get as much destruction as there is here.

Q Referring you to the clinoid processes, to their lack of appearance, is that a condition of any long period of time? A That does not come on quickly. That is long standing.

Q I call your attention to defendant's Exhibit 7 and ask you to examine that again and tell us whether or not there is any unusual condition about the teeth that appear in the mouth of Mr. Campbell. A There is a large abscess in the jaw, a large abscess about one tooth that is diseased.

Q Can you point out that abscess to the jury? A This circular area indicated by my finger in the lower jaw (indicating.)

Q That is a condition representing what? A Infection.

Q Of a long period of duration? A Quite a long period of duration.

Q At least in excess of six months? A Yes.

By the Court.

Q What do you mean by a long period? A I think it is an infection that has been there quite a long time, in excess of six months.

Q By a long time, over what period do you range that expression, when you say a long time? A In excess of six months.

Q Then it could be a shorter period than six months ago? A Yes, that is possible.

Q Have you used the expression a long time merely to reach over a period of six months? A I meant a minimum of six months.

Leo Ward, for defendant, direct.

By Mr. Gordon.

Q I show you a picture and ask you what that represents. A This is the picture of the right side of Campbell's head.

Q Defendant's Exhibit D. 7? A Yes, sir.

Mr. Gordon: I offer it in evidence.

Mr. David: No objection.

(The X-ray referred to was received in evidence and marked Exhibit D. 10.)

By Mr. Gordon.

Q I again direct your attention to defendant's Exhibit 8 and ask you whether or not you noticed any unusual condition in the cervical vertebrae? A There is a condition of productive arthritis in the cervical vertebrae.

Q And that is an indication of what? A Infection.

Q Infection? A Yes, sir.

Q Now, you have on "X" mark, I believe, on that film, and what portion of the human anatomy is represented there? A That is the front portion of the neck.

Q And what condition of an unusual nature is revealed there? A There is a tumor formation; this rounded appearance here is a tumor formation.

Q I call your attention to the left jaw and ask you whether or not the picture reveals any unusual condition there? A It shows a large abscess in the left jaw at the point where I have marked it "X."

Q Now, I show you plate and ask you what that represents? A This represents the pelvis of Campbell.

Q Can you tell us whether there is anything abnormal in his spine and pelvis? A There is a condition of productive arthritis.

Q That condition of productive arthritis is due to what? A Infection.

Mr. Gordon: I offer it in evidence.

(X-ray photograph entered in evidence and marked Exhibit D. 11.)

Q Now, I show you a set of X-ray pictures on a card, or attached to a card, and ask you what that set represents? A This represents the portion of the teeth of Campbell.

Q And what do the pictures reveal of an abnormal nature? A Reveal severe pyorrhea in all teeth; reveals a decayed root in this region, and reveals two abscesses.

Q Can you tell me whether or not those conditions are conditions of long or short duration? A In excess of six months.

Mr. Gordon: I offer it in evidence.

(Set of five X-ray plates entered in evidence and marked Exhibit D. 12.)

Q I show you another set of pictures attached to a card and ask you what they represent? A These are the teeth of the upper jaw. The other ones were the pictures of the lower jaw. These teeth represent the upper jaw of Campbell.

Q Do the pictures present any abnormal condition in the mouth of Mr. Campbell? A Shows marked pyorrhea of all teeth.

Q Are those condition or is that condition of short or long duration? A And it shows one abscess. Of long duration. In excess of six months.

Q What is the effect of pyorrhea upon the human system? A Well, that is a very general question.

Q Well, does it produce a poisoning? A It does.

Q What kind of poisoning?

The Court: Are you prepared to answer questions? You have qualified this man as an expert.

Mr. Gordon: Yes, your Honor. Well, I will withdraw the question. I offer this set of X-rays.

(Set of five X-ray plates entered in evidence and marked Exhibit D. 13.)

Q Now, when you took these X-ray pictures of Mr. Campbell on April 17, 1929, did you make any examination of anything else pertaining to Mr. Campbell? A Yes, sir.

Q What? A His urine.

Q And as the result of your examination of his urine what did you find? A I found evidence of albumen and pus in his urine.

Q Why are X-rays taken of the skull, doctor?

Mr. David: Objected to as immaterial.

Mr. Gordon: This is part of this man's life work, and I want to show the purpose.

The Court: What is your question?

Mr. Gordon: Why are X-rays taken?

The Court: I suppose the answer is X-rays are taken in this case to show these very things he has demonstrated. Why X-rays are taken generally, what relevancy has that to this case? We are not indulging especially in the art of X-ray. We are

concerned with what the art produced in this particular case, and you have shown, I assume, or at least will show, if you have not already, what you wish to show by the X-ray, and that is the reason why they were taken in this case, of course.

Mr. Gordon: I will withdraw the question, your Honor.

Q From your findings of destroyed mastoid, diseased frontal and ethmoid sinuses, erosion of the cella, diseased abscessed teeth, arthritis of the spine, and albumen and pus in the urine, what is your diagnosis, and what is its significance?

Mr. David: I object to the question as to what his diagnosis is. The defendant is not here being treated for a disease.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q Doctor, as far as pyorrhea was concerned, there are thousands of people affected by pyorrhea, are there not? A Yes, sir.

Q They had it from six months to six years, and longer than that? A Yes, sir.

Q Tell me, doctor, just what cells you say were missing as shown by your pictures, from the mastoid. A All of the mastoid cells. The left mastoid.

Q That is quite a usual thing in adults, isn't it? A Very unusual.

Q Very unusual? A Very unusual.

Q Don't you know, doctor, that in most adults that condition appears? A That is not true.

Leo Ward, for defendant, cross.

Q That is your judgment, doctor? A In my judgment that is not true.

Q Now, doctor, did you inform Mr. Campbell of these conditions? A I have had no conversation with Mr. Campbell from the date of taking the pictures. I had no conversation with him at that time.

Q So, so far as you know this condition had no effect on his mind?

Mr. Gordon: Objected to. It is not cross examination.

The Court: I think that is not cross examination. This witness is here to testify regarding these X-rays and to interpret in understandable language what the X-rays show.

Mr. David: Is the question overruled, your Honor?

The Court: I think that the question is not a proper one and not cross examination and therefore it will be overruled.

Mr. David: That is all, doctor.

By the Court.

Q Doctor, you were saying a little while ago in a number of answers you said this or that was of long duration, and you said that you based your opinion in that respect upon what you saw in the picture. How can you tell how long the particular condition which you observed there existed? I am not now asking you about how long the cause of what you now find, or the beginning of it may date back, but how can you tell how long the particular stage of condition which you observe has been there? A In general, acute

conditions are sharp and clear cut on X-ray pictures. Whereas, chronic conditions, conditions of long standing, are hazy and indistinct and grayish in appearance.

Q How can you tell how long that hazy or grayish appearance has been there? A That is merely a matter of experience, taking a lot of pictures and discussing with patients how long they have had their conditions, and then looking at your pictures and applying the history to the pictures.

Q Well, did you have a history in this case? A No, sir.

Q So that, of course, that did not give you any help, did it? A No, sir.

Q Then I come back to my question which is, how can you undertake to say how long the particular condition which you observed, the particular aspect shown in the picture has endured? Might it not have come into that condition a few weeks ago, or a few weeks before you took the picture, or quite recently before you took the picture? A The only answer to that question is the one that I gave, and that is that in general acute conditions as shown by X-ray, particularly where bones are involved, are sharp and clear cut and distinct. Whereas, old conditions are indistinct and hazy and grayish in appearance.

Q Well, there is a period at which it changes from the acute to the chronic, is there not? A Well, all individuals differ, and different diseases—the same diseases differ in different individuals. You can't lay down an absolute rule for saying this is chronic and that is acute. It is a general statement.

The Court: Very well. That is all.

Mr. David: That is all.

JACK BLUMBERG, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Doctor, you are a physician and surgeon of the State of New Jersey? A Yes, sir.

Q How long have you been engaged in the practice of medicine? A Since 1916.

Q Have you specialized in any particular field? A Diseases, illnesses and injuries pertaining to the head.

Q Did you have any particular experience in connection with that field of medicine? A Yes. I have taken post-graduate study on the head. I am a graduate of the New York Post-Graduate Hospital on that particular subject. I had special experience in the army and I have specialized in that for the last eight years.

Q In your experience in the army were you in charge of any hospitals? A I was operating surgeon for Base Hospital 114, and operating surgeon at United States General Hospital No. 9 at Lakewood, New Jersey.

Q Do you hold any rank in the army? A I am a Lieutenant Colonel in the reserve.

Q Do you hold any official position in the State of New Jersey? A I am consulting surgeon for the State Industrial Commission on head injuries, and for the Commission I examine cases of head injury which the various referees and the Compensation Boards refer to me, and rate their disabilities, if any.

Q And are you consulted by general practitioners of medicine throughout the State? A I am, sir.

Q And are you connected with any hospitals or institutions? A Yes, sir. I am connected with the three hospitals in Elizabeth, the Elizabeth General, the St. Elizabeth, and the Alexian Brothers.

Q In what capacity? A I am assistant attending oto-laryngologist at the Elizabeth General. I am attending at the Alexian Brothers and assistant attending at St. Elizabeth's.

Q Assistant attending surgeon? A Yes.

Q You performed head operations? A Yes, sir.

Q And have been performing such for how long? A For a minimum of eight years.

Q In the course of your experience have you had occasion to become familiar with the structure of the human cells, the bony structure? A Yes, sir.

Q And also with the organs encased in the skull? A Yes, sir.

Q Where there is an ethmoiditis, what is that? A An ethmoiditis is an inflammation of certain cells in the upper part of the nose immediately underlying the table which separates the brain from the nasal cavity.

Q What is the nature of that? Is it an infection? A Generally is an infection, in the extreme majority of instances it is an infection.

Q Is that infection one of a chronic nature? A Generally is chronic.

Q And when it is chronic over how long a period of time does it cover? A I don't understand the question, sir.

Mr. Gordon: I will withdraw the question.

Q What is the effect, if any, where there is an ethmoiditis? A The primary effect is an irri-

tant effect on the nose, and its principal secondary effect is as a focus of infection.

Q Can that infection permeate into other parts of the skull? A It can.

Q And is it possible for it to reach into the brain? A It is possible.

Q Where there is a sclerosis of the mastoid what is that? A A sclerosis of the mastoid is that condition where the normal cellular structure of the mastoid has been replaced by solid or almost solid bone.

Q And what is that an indication of? A It is generally an indication of chronic infection.

Q What is the nature of that infection? A The nature of the infection is the same as an infection anywhere. It generally follows an infection of the middle ear.

Q And where does that infection reach? A Well, that infection, of course, can reach any of the adjacent structures which are there. The mastoid proper is separated from the middle fossa of the skull by a very thin bony plate, and in the posterior portion of the mastoid is the large return vein of the skull, the lateral sinus, and it can reach there, and the infection can reach in the front portion of the mastoid, the Eustachian tube.

Q Is that a condition where there is a sclerosis of the mastoid which is usual? A No. A sclerosis of the mastoid is not usual.

Q What is the function of the cellaturcica? A The cellaturcica has no function, we may say, except insofar that it houses a certain structure called the pituitary body.

Q What is the function of the pituitary body? A Well, the pituitary body has a function on the general human organizm.

Q And reaches all parts? A By way of the blood stream it does. That is a medical proposition purely and strictly. The activity of the pituitary on the general organizm. But pituitary, in the medical practice, is a direct outgrowth of the brain proper.

Q It is connected with the brain? A Directly connected by a stalk.

Q Where there is an erosion of the cellaturcica and a destruction of the posterior clinoid processes, what is that an indication of? A Where there is an erosion of the cellaturcica and the posterior clinoid process, it is a clear indication first that something must have existed to erode it, because erosion of those parts is not normal, and if something existed sufficient to erode those particularly mentioned parts, there must have been a severe intra-cranial disturbance of some sort.

Q What is the effect on the pituitary gland where there has been an erosion of the clinoid processes, or a destruction, rather, and the erosion of the cellaturcica? A I would say any condition which existed within the cranium sufficient to erode a bony structure was sufficient to cause a marked disturbance on the soft structures.

Q Connected with the brain? A Certainly.

Q What is the effect on the appearance of the pituitary gland where there has been that erosion and destruction which we have discussed? A I can't answer that question.

Q Well, does the gland enlarge in any way? A The gland, it may enlarge and on the other hand it may get smaller. For instance, if the force which causes this erosion acted in such a way to obstruct the circulation of this pituitary

gland, in the first stage it would become swollen. Secondly, it would atrophy and become small.

Q Where there is an erosion and a destruction of the clinoid process is that a condition that comes about within a short period of time, of a few months, or does it cover a period of many months, or even years? A Erosion of bone takes a long time to occur, and it could not occur in any short space of time.

Q Now, when you refer to the times long time and short space of time, what do you mean? A Well, my minimum time would be a period of eight to ten months for bone erosion of that sort.

Q Where there has been such conditions as you have testified to in the erosion and destruction of clinoid processes, what effect, if any, does that have on the physical nature of the individual? A Well, it would have a very marked disturbing effect on the physical nature, depending on first whether the pituitary gland had been activated, and secondly, if the pituitary gland had become atrophied it would have an opposite effect.

Q Is there any relation between the cellaturcica and the brain? A Well, the cellaturcica houses the pituitary body which has a direct connection with the brain.

Q Where there is a destroyed mastoid and a diseased frontal and ethmoid sinus, an erosion of the cella, and diseased abscessed teeth, and arthritis of the spine, and albumen and pus in the urine, what is the significance of those conditions?

Mr. David: Objected to as to what the significance of those conditions is, and as immaterial, and irrelevant, and incompetent in this case.

The Court: What bearing has it?

Mr. Gordon: I want to show the general physical condition as these conditions indicate. In other words, what they, as a collection, indicate on the general physical condition.

The Court: What has the man's physical condition—suppose he had all of these diseases, would it justify him committing murder?

Mr. Gordon: No, but I promise to connect that with other evidence. I can't get it all at once.

The Court: It will be admitted on that statement.

Mr. Gordon: Yes, sir.

Q What is the significance? A Why, the conditions enumerated signify a chronic focus of infection from which obnoxious substances are entering the general system.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q Then the conditions that have been described by you would affect a man's general condition? A Yes, sir.

Q Doctor, you specialize really on the nose, throat, and ear? A No, sir.

Q Just what do you specialize on? A I specialize on everything pertaining to the head.

Q Are you an alienist? A No, sir. Not the functioning condition.

Q Just a minute, now, doctor. The brain pertains to the head, doesn't it, doctor. A Yes, sir.

Q But you have not and do not profess to specialize on the brain? A Not in psychiatry; no, sir.

Q What do you mean by psychiatry? A Psychiatry is the diagnosis and treatment of the functional conditions, and I deal more with the organic conditions. I deal very extensively with brain injuries, with head injuries.

Q In other words, doctor, you are a physician and surgeon and you treat a man who receives a wound or something from the outside? A That is right.

Q That may affect his skull? A That is right.

Q But you have never specialized on a study of the brain? A Not in psychiatry, but I have specialized on a study of the brain; yes, sir.

Q Well, in the sense that anything other than objective symptoms to the— A That is all. Objective.

Q In other words, only things that have happened from the outside? A No. That does not exactly cover it, because, for instance, my field would cover a blow on the head.

Q Yes. A And a hemorrhage resulting then. I mean, that would be absolutely within my province.

Q That is what you mean to say, doctor, that your study of the brain, your treatment of the brain followed a blow or something of that kind from the outside? A That is right.

Q That may have caused a disturbance on the inside? A That is right, yes, sir.

Q But you have never specialized on alienism? A No, sir; positively not.

Q I mean as an alienist? A No, sir.

Jack Blumberg, for defendant, re-direct.

By the Court.

Q As I understand alienism, it means the study of the reasoning power of the brain? A That is right. I am not an alienist.

Q You treat something that is physically wrong like a bleeding or a hemorrhage? A That is right.

Q But so far as mental operations and power of reasoning goes you do not concern yourself with that at all? A No, sir.

By Mr. David.

Q And you do not profess, doctor, to qualify as a person who can say what the physical—what effect the physical disabilities of a person may have on his mental condition? A Only in so far that I know from my general medical knowledge, I can definitely say that certain conditions will affect them. I would not attempt to go into detail and say how.

Q You could not say how they could affect him? A I would not.

Q How far they would affect him? A I would not attempt to; no, sir.

Re-direct examination by Mr. Gordon.

Q That is, within the sphere of what has been mentioned as an alienist? A That is right.

Q Or a psychiatrist? A Yes, sir.

Q You handle the surgical part of the organ itself, the brain? A Yes, sir.

Q You have operated on the brain? A Yes, sir.

Mr. Gordon: That is all, doctor.

Mr. David: That is all, doctor.

THOMAS J. GRIFFIN, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Mr. Griffin, where do you live? A 1175 Gresham Road, Plainfield.

Q What is your business? A I am a building contractor.

Q In March, 1929, did you see Mr. Campbell? A What was that date again?

Q Did you see Mr. Campbell in the early part of the year 1929? A Yes.

Q Can you tell us the date? A The last time I saw him?

Q The first time. A In 1929 I saw him around the first of the year.

Q What was the occasion of that meeting? A We had—there was a contract to close on the sale of a house. Mr. Campbell agreed to take title on the house January 2, 1929, and about that time he notified me that he was not in position to take title to the house as he was in financial difficulties.

Q Did you see him when he made the purchase of the house? A I did.

Q When was that? A I met Campbell June 11, 1928.

Q Now, when he made the purchase of the house was there any discussion about the price? A Mr. Campbell wanted to rent the house.

The Court: What is the relevancy of that, Mr. Gordon?

Mr. Gordon: Generally to show the mental state of the defendant within a few months preceding the event.

Thomas J. Griffin, for defendant, direct.

The Court: Well, but what he wanted, he wanted to rent the house—

Mr. Gordon: I appreciate that is not responsive.

Q Answer the question yes or no wherever you can, please. Was there a discussion about the purchase of the house at that time? A Yes.

Q Was there any discussion about the price of the house before Mr. Campbell decided to purchase it? A No. Not with me.

Q What was the cost of the house? A $25,000.

Q Did he ask you the cost of the house before he purchased it?

Mr. David: Objected to as immaterial and leading.

By the Court.

Q Who conducted the negotiations? A The real estate salesmen, Herbert B. Smith's office, Westfield. His name was Mr. Lamont.

Mr. Gordon: I will withdraw the last question. That is all of this witness.

Mr. David: No cross examination.

Adjourned until 1:35 P. M.

AFTERNOON SESSION.

(The trial was resumed.)

HENRY COLIN CAMPBELL, the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q You are the defendant in this case? A Yes.

Q How old are you? A I will soon be sixty-one; I am about sixty-one.

Q And you were married to Rosalie Campbell? A Yes.

Q When? A I think it was the 8th of May. It might have been April, fifteen years ago it was, anyway. I think it was—I think it was May.

Q Prior to your marriage to Rosalie Campbell, had you ever studied medicine? A Yes.

Q Had you ever been a physician? A I had never had an office and practiced as a physician. I had conducted a home where I had patients living with me.

Q Had you taken any State examination to qualify as a physician? A Yes.

Q Where? A I took an examination in Michigan and Connecticut, I think.

Q And had you ever studied any other branch of education? A Why, engineering.

Q Did you ever study civil engineering? A Civil and mining engineering, both.

Q Now, before your marriage to Mrs. Campbell, what was your occupation? A Do you mean just before I married her?

Q Yes. I withdraw the question. Had you at any time written any books? A Yes, numbers of them.

Q On what subjects? A They were partly technical and partly popular books on the use of cement and concrete.

Q Who used these books on the use of cement and concrete? A Well, one of them was really a series of lessons for the International Correspondence Schools. That was one of them.

Q Prior to your marriage to Mrs. Campbell, had you been married before? A Three times.

Q And had you before 1914 ever been in a penal institution? A Yes.

Q How many times? A Two or three—three, I think.

Q Were you in California? A Yes.

Q How old were you then? A Well, it is so long ago I can't remember. I think I was between twenty-one and twenty-two. I think I—

Q Were you ever in a Mexican jail? A Yes.

Q And then brought to the United States? A Yes.

Q And then you were incarcerated in a penal institution in New York State? A Yes.

Q In 1914 when you married Mrs. Campbell, shortly thereafter what kind of work did you do? A I was a promotion engineer for a cement company in Chicago.

Q Then did you become connected with any organization? A Some time afterwards, yes.

Q What organization? A The Portland Cement Association.

Q That association is composed of various cement concerns from all over the country? A Yes.

Q And in what capacity were you connected with that association? A Well, I was advertising and publicity manager, and I had charge or supervision over the preparation of all of its publication matters and all its literature.

Q During the years 1914 up to the end of 1925 and part of '26, did you make progress in your field of work? A I should say I did.

Q Did you live during all of that time with Mrs. Rosalie Campbell? A Yes.

Mr. Gordon: May I now ask the Prosecutor's office, through the Prosecutor, to produce the copy of an income tax return for the year 1925?

(Mr. David handed Mr. Gordon a paper.)

By Mr. Gordon.

Q For the year ending December 31, 1925— A I didn't understand that.

Mr. Gordon: I withdraw the question.

By Mr. Gordon.

Q Do you know what your income was during the year 1925? A Why, it was more than $30,000. I don't remember exactly, but it was more than $30,000.

Q I show you a paper and ask you whether that will refresh your recollection in any way? A That is my writing, but I thought it was more than that.

Q Does it refresh your recollection, this paper? A Yes.

Q What is the amount? A It seems to be $26,000.

Q That is what you paid a tax on? A Yes.

Q That was income earned through your personal efforts? A Yes. When you asked me the other question, I guess I must have been thinking of the gross income. I don't know.

Q Living together with Rosalie Campbell, was your life regular and happy? A Oh, yes.

Q Did you have any children? A Yes.

Q How many? A Three.

Q When did you leave Chicago? A It was in October, 1926.

Q Where did you go? A To Salisbury, Maryland.

Q What was the occasion for your going to Salisbury, Maryland? A I had been asked to come down there to take charge of an association.

Q For what purpose? A They were going to do agricultural and industrial promotion work.

Q And did you leave Chicago? A Yes.

Q With Mrs. Campbell and the children? A Yes.

Q How much money did you have in cash when you left Chicago? A Why, I had over $40,000. I think it was about $41,000.

Q Did you own a car? A Yes.

Q What kind? A It was a straight eight custom Packard.

Q It cost how much? A $6,800.

Q Fully paid for? A I paid cash for it when I got it.

Q Did you settle down in Maryland? A Yes.

Q Built a home? A Yes, I built a nice home down there.

Q At approximately what cost? A Why, I had somewheres an itemized list of the cost, but I think it was between twenty-nine and thirty thousand dollars. It was a little over $29,000.

Q Were any furnishings placed in the home? A Why, it was very handsomely furnished, according to my idea. It probably had $15,000 or $18,000 worth of furniture in it.

Q After you built this home and furnished it, what happened to the advertising and land project? A Why, it seemed to be falling through. I couldn't seem to get any final action on it. They seemed to be dwindling to nothing. It just went to pieces, I might say.

Q At that time what was the condition of Mrs. Campbell? A She was about to have a child.

Q How did that situation affect you? A Well, I was very much worried because I had all my money where I could not get any of it out, and the prospect that I had had of connections seemed to have faded away, and I began to get nervous, and I had awful headaches and could not sleep nights. I had a lot of trouble with my bladder, and it seemed that whatever was the matter with me affected my heart. I used to have a terrible shortness of breath. I just felt all—as if I was going to pieces.

Q What did you do toward employment? A Well, before I—advertised in several publications. I advertised in newspapers. I spent several hundred dollars in advertising that way, and I wrote scores of letters to people who had known me, and who I knew knew of me and what work I had done. I tried every way I could think of to uncover some connection.

Q Did you purchase any particular apparatus at that time for a new employment? A Why, years back I had done a good deal of commercial, and I suppose I might call it scientific photography, and I thought maybe if I could take up

New Jersey State Library

photography again that I might be at least able to make a living, and I bought several thousand dollars worth of—I bought several thousand dollars worth of cameras and lenses, and I rented a place in Salisbury and spent several hundred dollars in having it fitted up as a work room and did everything that went with that to try to start picture work and the advertising I was going to do, to see if I could not do advertising photography.

Q After this investment did you realize any moneys from that form of activity? A I never got enough out of it the whole year to pay the rent of the rooms I occupied.

Q Did you raise any money then on the house? A I mortgaged—I put a mortgage on it of $5,000.

Q What became of that money? A Well, I owed bills down in Salisbury. I don't remember how much, but there was a family to keep and—

Q Then did you raise an additional loan on the property? A Yes, a few months later I got a second mortgage of $5,000.

Q And in the spring of 1927 did you try to sell the house? A I don't remember when I tried to sell it, but I was trying to sell it while I was trying—

Q The house was finished in March, 1927? A Yes, I was—

Q Thereafter did you try to sell the house? A Very soon afterwards I began to sell it.

Q In connection with your efforts to sell the house, did you prepare a leaflet showing particulars of the house and a photograph of the house? A Yes.

Q And did you have a number of these leaflets printed? A I had, oh, fifty or sixty thousand of them printed.

Mr. Gordon: I desire to offer this in evidence.

Mr. David: No objection.

The Court: There being no objection it may be admitted.

(The paper referred to was received in evidence and marked Exhibit D. 14.)

Q What finally became of the house? A Why, I was trapped or tricked into a deal to trade the equity I had in it for some other property in Baltimore. It was a case of equity for equity.

Q Did you finally get a two-family house and some lots? A Yes.

Q Did you raise money on that house that you got in exchange? A I finally succeeded in getting $3,000 second mortgage on it.

Q And of which you received in cash— A Well, I had to pay a thousand dollars brokerage. I got $2,000 for myself.

Q What happened to the lots? A I tried to sell them and did have offers for them from time to time, but none of the offers were more than a few hundred dollars over the mortgage that was on them and I ultimately lost them. I couldn't pay the interest or taxes.

Q In the early part of the year of 1928 what was the condition of your funds? A I didn't have any money except what was left out of what I borrowed on the Baltimore house—maybe I didn't understand your question.

Q Did you have occasion to raise any money on any jewelry? A Oh, I pawned my own jewelry and pawned my wife's jewelry.

Q And at that time what was your general physical condition? A Oh, I was—I was just

a wreck. I was taking medicine to make me sleep and I had—I had a neuritis, a soreness all over my head, so there were many nights I could not bear to rest my head against the pillow and could not touch my head, and I had had a discharge from my left ear, and that lasted for several months or more. The trouble I had with my bladder, whatever that was, was very much worse, and I frequently passed blood. I remember that on two occasions I was in bed from it for several days. I can't tell you any more.

Q What was the condition of your nerves? A Oh, I had to take something all the time to keep myself steady. I couldn't—

Mr. Gordon: May I now call upon the State to produce a vial of morphine tablets referred to by Officer Martin on cross examination?

Mr. David: Yes.

The Witness: I would like a drink of something.

(A cup of water was handed to the witness.)

By Mr. Gordon.

Q Did you have occasion to use any apparatus for the purpose of injecting any drugs into your system? A I frequently took morphine that way.

Q What method did you employ to take morphine? A I had a hypodermic outfit.

Q Did you also take morphine tablets by way of the mouth? A Yes.

Q And how frequently did you take morphine when you first started? A Well, I think my

first use of it was confined to trying to make me sleep nights.

Q How frequently in the beginning? A I don't think there was a day passed when I started that I didn't take it, and occasionally I guess I took a dose because of the pain I would have in my head and in my bladder, which—

Q Did you take any other drugs beside morphine? A Oh, I took codein. I took bromides. I took chloral. I took some of those things in rotation just because I couldn't seem to get the effect from some one or the other of them after a little while.

Q Did you find any unusual resistance in your own system in connection with the use of drugs? A Why, I always seemed to have to take more than what was called the usual dose to get any effect from it.

Q When you did take morphine and codein, bromides and chloral, what effect did these have on your nerves and mental state? A Sometimes I would have to take several doses before I would feel any effects on my nerves at all, and then it would seem to kind of dumb me or put me in a sort of stupor for a while and then it would soon wear off, though.

Q Did you have any relief from the headaches? A Only temporary. They seemed to get worse all the time.

Q Since you started the use of morphine and other drugs of similar effect, did you stop using those drugs up to the time of your arrest? A No.

Q Where did you keep the morphine outfit, the hypodermic and the needles? A It was in a dresser drawer in my bedroom.

Q Did you keep it in the regular medicine chest in the bathroom? A No.

Q When you were arrested on April 11, 1929, did you have in your possession at that time any morphine tablets? A I had—I had a vial of tablets in my pocket.

Q Do you know what your weight was when you first reached Salisbury, Maryland? A Well, just about the time I left Chicago I had weighed about 170, 172 pounds, and that had been my usual weight.

Q Where did you meet Mrs. Mowrey? A I met her in Washington.

Q How did you come to meet Mrs. Mowrey? A She wrote me a letter. She had my name from some correspondence club which had it.

Q Try to keep your voice up so that I can hear you. How did this correspondence club get your name? A Why, I got—somehow, I don't remember, some circular matter or I saw an ad somewheres, and I wrote to them for some of their literature.

Q Do you know when you first wrote to the correspondence club? A It was some time early last year, I guess. I don't know when, though.

Q When you received a letter from Mrs. Mowrey, did you reply to it? A Yes.

Q What was your purpose in corresponding with Mrs. Mowrey originally? A Well, I had thought from some of the literature which I had from this concern that I might find somebody that would go in business with me and lend me some money, and if I could just get started in business again, maybe I could recover some of my—maybe I could make some money, make a living. I didn't have anything at all.

Q Why didn't you correspond with a man for a business connection? A Well, I went—I tried to get a number of people that I knew to finance me, men, but they all seemed to think that I was too old and that I probably would not make a success of it because of my age, and they weren't interested in anybody except someone younger.

Q You wrote several letters with endearing terms to Mrs. Mowrey? A Yes.

Q How did you come to write such letters? A Oh, I don't know. I got some money from her and I was trying to pay her back. I wanted to have her think that I was not trying just to get money away from her and then desert her or was not trying to swindle her.

Q Do you know why you wrote affectionate letters to her in the beginning? A Why, she seemed to think in some of her letters that I didn't care for her as much as she cared for me and I don't know what I was doing most of the time.

Q Now, when you wrote her did you give her an address when you expected to receive a reply? A Yes. I always let her know where she could write to me.

Q And did she write you? A Yes.

Q And then did you reply and give her a legitimate address? A Yes.

Q When you received a thousand dollars and deposited that money in the New Brunswick bank did you return any of those moneys to Mrs. Mowrey? A I had been sending her money all the time, as I could.

Q Did you move to Westfield? A Yes.

Q When? A Sometime in June last year. I don't remember just the date.

Q Did you attempt to purchase a home in Westfield, New Jersey, last year? A Why, I signed a contract to purchase one.

Q For how much? A $25,000.

Q At that time did you have any moneys? A I had about a thousand dollars or somewhere about that. It might have been a little more.

Q You married Mrs. Mowrey in August, 1928? A Well, I don't remember just when it was. I guess it was August. I can't remember.

Q How did you come to marry Mrs. Mowrey? A Well, she seemed very much interested in me and when I told her what I wanted some money for, and what I hoped to do, she seemed willing to help me. She said she had enough to do what I wanted to do and would help me.

Q After marriage you wrote her letters? A Yes.

Q How did you come to write letters with affection towards this woman in view of the fact that you were living with Rosaline Campbell and three children? A I don't know, unless it was because I was so full of drugs I didn't know what I was doing half of the time, or any of the time. I can't remember them.

Q Were you shown a bundle of letters in the Prosecutor's office the night of your arrest? A No.

Q You arranged to meet Mrs. Mowrey in February of this year? A Why, I met her in February, yes.

Q Why did you go to see Mrs. Mowrey in February of this year? A Well, she had come to New York without my knowing about it until I got a letter from the place where she always wrote me, and I tried to get in touch with her, and the reason why I went to see her was because I thought she had a right to see me. I

had only just recently sent her some more money, just a day or two before she came, and I had sent her altogether three or four hundred dollars, and I wanted her to know that if it was the money she was thinking about that I was going to give her the money back again. That is all. I made up my mind that she wasn't the kind of a person that could help me in the way I wanted help. She wasn't capable, she didn't have any education, or the kind of help that I wanted in a business way, and I thought that I must pay her what I got from her, and get rid of her that way, and see if the rest wouldn't work itself out all right in the end.

Q Now, in using the term "get rid of her" did you ever contemplate in your mind an intent to kill her? A Oh, my God, I never thought of killing anybody in my life.

Q At the time when you went down to meet her in Februray, 1929, were you still taking morphine? A I hadn't stopped it since I started.

Q Now, you left Cranford on February 21, 1929, to go to Philadelphia, is that correct? A Cranford?

Q Or Westfield. Where were you living in February, 1929? A Westfield.

Q Did you leave on the day before Washington's birthday to go to Philadelphia to meet Mrs. Mowrey? A I didn't hear that.

(Question repeated by stenographic reporter.)

A Yes.

Q How did you leave Westfield? A In my car.

Q What kind of a car? A Pontiac coupe.

Q Was it your intention to be away over night? A Yes.

Q On that occasion did you have with you a Colt automatic, number S. 29, an exhibit in this case? A I had a Colt automatic. I don't know anything about numbers.

Q Where did you place the Colt automatic in your car when you left? A It was up on the back of the seat, where the kind of a pocket or shelf there.

Q Had you carried that gun on previous occasions? A I had it when I went off on automobile trips where I thought I was going to be out nights, and night riding. I had done it in Chicago when we went out riding at night. I didn't make a habit of carrying it on my person if that is what you mean.

Q How long was it that you had had this Colt automatic? A I bought it when I first went to Chicago.

Q Did you take the Colt automatic with you on the day of February 21 when you left Westfield for the purpose of using it to shoot Mrs. Mowrey? A I didn't take it for any purpose in my mind except a habit of having it when I was out night driving.

Q Now, when you owned the Packard car did you later change that to another car? A Yes.

Q And then the second car was a Nash, is that correct? A After I got rid of the first Packard.

Q And then that was exchanged, or you later procured the car that you used going from Westfield to Philadelphia on February 21? A No. I had another Packard.

Q Bought that somewhere second hand? A I bought it down in Maryland. It wasn't second hand but it was the cheapest model they make.

Q Did you have occasion during the time you owned these various cars to carry that extra can

of gasoline? A I carried gasoline only when I knew I was going to be away late at night or I might run out.

Q Did you purchase expressly for the trip that was started on February 21, 1929, a can with which to carry a reserve supply of gasoline? A No.

Q Had you been the owner of that can for sometime past? A I had had that can for a long time.

Q Now, what time was it when you left Westfield on your trip to Philadelphia on February 21, 1929? A Well, it was in the morning. I don't know how early because I had a habit when I was home of going downtown and getting any groceries that were needed, and I don't know whether I did that morning or not, but I left after I had had breakfast, I left early in the morning, before noon.

Q Do you know how many miles you drove before you reached Philadelphia on February 21? A Well, I drove from Westfield to Philadelphia.

Q Do you know what the mileage was? A Why, I think it is about eighty miles.

Q Now, when you reached Philadelphia did you meet Mrs. Mowrey? A Yes.

Q What time was that? A Why, I think it was about noon.

Q Where then did Mrs. Mowrey and yourself go? A Well, I took her to the car and we started to drive towards—to drive out of Philadelphia south.

Q Where did you then drive? A We drove all the afternoon and went to Dover.

Q How many miles did you cover from Philadelphia to Dover? A I don't know exactly how far it is but I think it is between eighty and one hundred miles.

Q When you reached Dover what happened? A Why, I decided to—I stopped and registered at the hotel.

Q I can't hear you. A I stopped at a hotel there.

Q Did you register? A Yes.

Q With Mrs. Mowrey present? A I don't know whether she was—she was with me. I don't know how close to me.

Q Now, then, did you dine there with Mrs. Mowrey? A Yes.

Q And what happened after that? Did you retire in a room with Mrs. Mowrey that night? A No. I left the hotel along about, I don't know, three or four hours after supper; I didn't want to stay there with her; I was thinking of my wife and children and I told her that—I had told her that I was coming down that way to see if I could get some money, and that I wanted to see somebody that night, or see somebody early the next morning, and maybe it would be better if I tried to see them at night and if I couldn't I would come back early in the morning. So I left along about nine or ten o'clock, took my car and left the hotel.

Q Leaving Mrs. Mowrey in the hotel, where did you go? A I went up the road to a town they call, I think they call it Smyrna, only about eight or ten miles, or something like that, and stopped at one of these houses that had a sign out that said "Tourists accommodated"; there were lots of them along the road there; I had never stopped—well I drove until I found a place to stop at.

Q Did you sleep that night? A I didn't sleep at all. I didn't go to bed for hours, didn't try to go to bed for hours.

Q Why didn't you sleep that night? A Oh, I was all unstrung from taking bromide and morphine, and I had all those old troubles with my head and all the other things that had been bothering me all the time, and wondering whether I was going to be able to get the money that I wanted to give her; all mixed up.

Q Now, in the morning did you go back to Mrs. Mowrey the morning of Washington's birthday? A I went back in time to have breakfast with her.

Q Where? A To Dover where she was stopping.

Q I can't hear you. A To the hotel at Dover.

Q Where did you leave for, when you left Dover? A Well, I told her I thought I could get money, that I wanted, down in Salisbury, and I started for Salisbury.

Q Did she go with you? A Yes.

Q Do you know what time you started driving in the daytime on February 22, 1929? A Well, I think I must have left Dover along about eight o'clock in the morning.

Q In the morning? A In the morning.

Q What is the distance that you drove from Dover to Salisbury? A Well, that is about—it is somewhere between sixty-five and seventy, or seventy-five miles, or sixty-five or seventy, something like that.

Q When you reached Salisbury, Maryland, did you know what time it was in the daytime? A No, I don't know exactly what time it was. The way I usually drove, though, it must have been somewhere around about half-past ten or eleven o'clock, if I left Dover when I thought I did. It was before noon when I got to Salisbury.

Q When you got to Salisbury where did you go and what did you do? A Well, I went to the office of the man that I got this Baltimore property from.

Q I can't hear you. A I went to the office of the man that unloaded this Baltimore property on me to see if he wouldn't loan me some money on the lot, which he promised he would do at one time.

Q And how long did you stay in Salisbury? A I was there—he wasn't in his office when I got there and I had to wait a little while and I think I was in Salisbury probably a couple of hours altogether before I finally saw him and got through with him.

Q Was Mrs. Mowrey with you? A She was in the car.

Q When you left Salisbury did she leave with you? A Yes.

Q And then where did you go? A Well, I went to Baltimore.

Q How long a ride was it from Salisbury to Baltimore? A I think it is about 125 or thirty miles. I don't remember.

Q Do you know what time you reached Baltimore? A I got there late in the afternoon.

Q Was Mrs. Mowry with you? A Yes.

Q What kind of a car had you been using on this trip? A The only car I had. Pontiac.

Q Where did you sit in the Pontiac? What side? A The wheel side, left side at the wheel.

Q And where did Mrs. Mowrey sit on this trip? A Alongside of me.

Q How long did you stay in Baltimore? A Well, I went to—I don't know how long I was there because I tried to make—tried to meet some people who had been negotiating for the purchase of the lots and I made three or four calls; I must

have been in Baltimore a couple of hours or more.

Q And then did you leave Baltimore to go anywheres else? A Well, I just left Baltimore. That was all. I was—

Q Where were you bound for? A I don't know as I had anything particular in mind except that I had failed in what I had tried to do in the way of raising money, or selling the lots, and I spent some time—

Q When you left Baltimore what was your general physical and mental condition? A I was exhausted physically and I don't know much about my mental condition. I couldn't think very well, I guess. I know that I had been talking with her quite a good deal and trying to tell her that I hadn't succeeded in getting the money that I wanted to give her, and I was trying to get her to go back home until I could get some more—could get things straightened in some way or other. I don't know what.

Q While driving from Baltimore to Philadelphia at any time did you conceive in your mind the taking of the life of Mrs. Mowrey, or shooting her? A Never thought of that at any time, or anybody.

Q What was the mileage from Baltimore to Philadelphia? A I think it is between eighty and one hundred miles, but I couldn't tell you.

Q Reaching Philadelphia, do you know what time you arrived there? A I didn't get there until late at night. It must have been along about nine o'clock, eight or nine o'clock.

Q Did you have any discussion with Mrs. Mowrey in Philadelphia? A Why, I had discussion all the way up to Philadelphia and in Philadelphia. I finally decided to tell her that I had—that I was married, and showed her a

picture of my wife and children that I had in my pocket; and she wouldn't believe me, and I don't know whether she did believe me or not, but she didn't want me to leave her, instead of wanting to go home herself, she wanted me to go home with her, wanted me to go to where she lived. She said that she had a home and we could get along for awhile until something, I don't know what, could be fixed up. She didn't want to leave me at all, nor she didn't want me to leave her.

Q At that time did Mrs. Mowrey say anything to you about your maintaining for her a separate establishment? A No. She wanted me to come and live with her. She said that she had enough —she had a house, she said, and I think she said it was rented, and she said she had some more money, some kind of stocks, or savings, or something, I don't know what; she said she had, I think she said she had eight or ten or twelve thousand dollars and a home. In fact, she told me before that, that she had her home.

Q Did you take any more drugs in Philadelphia? A I told you that I had been taking them all the time without stopping. I took them all that day. And I was taking them constantly to keep the pain out of my head and my bladder and to keep from going to pieces.

Q What time did you leave Philadelphia? A I don't know. I spent—we had something to eat there somewhere, and I spent an hour or so, maybe more, talking to her, trying to convince her that I was married and I wanted her to—

Q No. Just tell me, please, what time, if you recall, that you left Philadelphia. A Well, it must have been between ten and eleven.

Q Where were you going? A I was going home, trying to.

Q Was Mrs. Mowrey with you? A Yes.

Q Now, what is the mileage from Philadelphia to Cranford? A Cranford?

Q Or Westfield, if you know? A Well, I guess it is about seventy-five or eighty miles.

Q Do you remember reaching Trenton that night or morning? A I don't know. I think I do. I think I remember Trenton.

Q Do you know whether or not you had fallen asleep at any time along the trip from Philadelphia in? A Me?

Q Yes. A I don't think I had or I couldn't drive. I know I was sleepy, and that on account of trouble with my bladder, and the car—

Q What was the weather that night? Was it cold? A It was cold and there was snow on the ground but I don't remember anything else about it.

Q How did you feel when you left Philadelphia? A Well, I was just worn out for want of sleep and rest and I don't know as I can tell you anything else.

Q Did you intend to kill Mrs. Mowrey at any time that night? A I had no thought of ever killing her.

Q Did you ever intend to shoot her that night? A I had no thought of ever shooting her that night.

Q Or any other time? A Or any time.

Q Did you recall shooting her that night? A I don't recall any shooting. I can't remember anything.

Q Did you consider and deliberate and premeditate on the thought of shooting Mrs. Mowrey or taking her life? A I just told you that I never thought of doing anything like that. I never—

Q Did you, in your own mind, ever get a mental picture of shooting Mrs. Mowrey and burn-

ing her afterwards at or about a time when she must have been shot?

The Court: Well, now, you have been, up to this point, going pretty largely with leading questions.

Mr. Gordon: I will withdraw the question.

The Court: Would not it be well to let this man, when you now have approached what apparently is the scene and the time of what happened, tell, in his own way, what his recollections of the event were?

Q Have you any independent recollection of shooting Mrs. Mowrey? A No.

Q Or of burning her body? A No. I don't remember.

Q What happened that caused you to believe that anything occurred? A I don't know that I understand your question.

Q When was the first time that you realized that something had happened in the morning of February 23? A Why, I don't seem to remember how I got home that day. I say I don't seem to remember how I got home that day, but I must have got home. The first thing I remember is when I got up in the morning seeing my car outside alongside of the house.

Q Had you left your car on other occasions outside of the house? A It was not my habit of doing it. I don't think I ever did, not every night.

Q Then did you see anything in the car? A Why, I opened the door and I saw a handkerchief, I think, and a pair of gloves and a grip, and then I remembered that I had been with somebody, but I couldn't remember when.

Mr. Gordon: May I have the confession, please, Mr. Prosecutor?

Mr. David: Yes. (Handing paper to Mr. Gordon.)

By Mr. Gordon.

Q While we are at this point, what became of a vial of morphine that was in your possession on the night of your arrest in April, 1929? A I don't know what became of it. They went through my pockets and took everything I had out.

Q What was your purpose of going to Baltimore with Mrs. Mowrey? A I wanted to see if I could not close that offer that I had to sell those lots to get the money.

Q From whom in Baltimore? A There was a real estate—one real estate concern there that had been corresponding with me for several weeks and felt pretty sure they had a purchaser.

Q Do you recall the last time you spoke to Mrs. Mowrey on the way in from Philadelphia?

The Court: Just before you ask that question, if you please—

By the Court.

Q Did you go to this person that you had in mind in Baltimore? A I went to the office but because of it being a holiday, I didn't see him.

Q What time of the day was it? A It was late in the afternoon.

Q About what time? A It must have been around about four or five o'clock, somewhere around then.

Q That was in Baltimore? A Yes.

Q And what was the name of the person? A The name is on some letters which I had in the house. I am not very good at remembering names, but the name of the office was the Realty Mart.

Q Where was it? A In Baltimore.

Q Where in Baltimore? A I think it was on—I think the street was called Utah street, I think. That is on the letters that I had. I think that may have been taken from the house. I don't know. There were several letters discussing the transaction.

Q That is where you went? A Yes.

Q This real estate office in Utah street? A Yes.

Q And you went there? A Yes.

Q And found it closed? A No, the office was not closed; there was a girl there, but the man who had been writing to me wasn't there and nobody could do anything that I wanted done.

Mr. Gordon: I call upon the Prosecutor to produce any stationery with the address of the Realty Mart on it in Baltimore.

Mr. David: We will be glad to produce it, if we have it. It will be impossible to just put our hands on it. We have to search through some envelopes around here.

The Witness: I got to be excused.

(The witness retired.)

(The witness resumed the stand.)

By Mr. Gordon.

Q Mr. Campbell, I call your attention to some letters that have been given to me by the Prosecutor and ask you if they will refresh your rec-

ollection as to the name and address of the person that you were looking for in Baltimore on February 22, 1929. A Those are the letters I had in mind.

Q And can you, by looking at those letters, tell me the name and address of the man in Baltimore that you were looking for at the Realty Mart. A G. R. Coffart, I think his name is. I never met him, and I didn't know how to pronounce his name.

Q What is the address of the Realty Mart? A 100 North Utah street.

Q Where? A Baltimore.

Q Did you have any stops coming from Philadelphia on account of engine trouble? A I had engine trouble before I got to Philadelphia and after, all the rest of the day.

Q Do you remember when and where was the last time you spoke to Mrs. Mowrey? A Well, I think it must—

By the Court.

Q The question is, do you know? A Do I know?

Q Do you remember when and where you spoke to Mrs. Mowrey? A It was where I stopped at some filling station to get gas and get her a drink. I believe she wanted to take some tablets that she had for something the matter with her head or something else.

By Mr. Gordon.

Q And then what happened to her? A A while afterward—she had been sleeping all the evening—a while afterward, I think she must have gone to sleep, because I tried to rouse her once or twice, maybe more, I don't know, and

she seemed to be sleeping or in some kind of a deep—well, I would say sleep or dose or something. She didn't—she could not answer me—she did not answer me. That is all I can remember.

Q Do you know where that was? A That was after I got gas the last time, got filled up with gas, and it must have been somewheres around Trenton or after I passed Trenton. I don't remember any other—I think I remember stopping for gas at the outskirts of Trenton after I had gone through the town.

Q You signed a paper in the Prosecutor's office on April 11, 1929, consisting of five sheets. Is that your signature (indicating)? A That is my writing, yes.

Q I am referring now to Exhibit S. 6. At the time when that paper was signed, did you tell what your thoughts were on the night of the shooting? A Will you repeat that, please?

(The stenographer read the last question as follows:)

I am referring now to Exhibit S. 6.

"Question: At the time when that paper was signed, did you tell what your thoughts were on the night of the shooting?"

A I have no recollection of doing so.

Q After February 23rd, did you hide any personal effects of Mrs. Mowrey?

The Court: The questions are all very leading, Mr. Gordon. They relate to very direct and relevant matters.

Henry Colin Campbell, for defendant, cross.

By Mr. Gordon.

Q Did you find anything belonging to Mrs. Mowrey in your car? A Yes, I found a grip, and I think there was a pair of gloves and a handkerchief, and I will say—that's all I think I found.

Q What became of those? A I threw them in the cellar and burned them up.

Q Did you ever go to the police and tell them that something had happened? A No, I never could get—things collected in my head. I seemed to once in a while have a kind of a flash or something like and I seemed to see a kind of a bridge or something or other, and then I would see a fire, and I couldn't—I couldn't complete a picture at all. My head was—I just kept taking morphine and bromide and once or twice I got kind of a nightmare. I don't know; I thought I saw a bridge, and I thought I saw something on fire by my car or in my car. I couldn't tell which it was. I couldn't get the picture straightened out in my head at all. I was just in a daze.

Mr. Gordon: Cross examine.

Cross examination by Mr. David.

Q Mr. Campbell, you have talked over this case a number of times with your counsel since you have been arrested, haven't you? A No, I have not talked over my case at all.

Q You have not talked with Mr. Gordon, the gentleman who just examined you about this case? A I talked to Mr. Gordon once—once or twice, a day or two after I was arrested, and have not talked to him since.

Q Have you talked a number of times with a representative of his office? A I have talked to one man from his office, but—

Q A number of times? A No, not a number of times.

Q How many times? A Well, I couldn't tell you; not more than three or four times, I think.

Q And you went all over the story that you have recited today, didn't you, Mr. Campbell? A No.

Q Never went all over that? A No.

Q Never went over it with Mr. Gordon or his representative, your trip to Philadelphia and to Dover and to Baltimore and back to Philadelphia and up through Trenton to Cranford? A I answered some questions about where I had been, but I haven't gone over anything like what I have just been asked here.

Q Are you always just as deliberate in your answers to questions as you have been on the stand today, Mr. Campbell? A I don't know what you mean by deliberate.

Q Don't you know the meaning of the word "deliberate"? A Yes, I know the meaning of the word "deliberate," but—

Q Well, I mean, if you don't quite understand me, I mean that you listen and take your time before you answer. Now, you are quite deliberate in the things that you have said, aren't you, Mr. Campbell?

Mr. Gordon: I object to that as asking the witness to qualify a condition which is a question for the jury.

The Court: The question is asking him what his practice is. How is that unfair to the witness to ask him what his practice is?

Mr. Gordon: The Prosecutor implies in his question that the witness is deliberate, and it may be that his manner is due to other things than a mental deliberation.

The Court: That is what the question goes to, as I understand it.

Mr. David: I will withdraw the question.

By Mr. David.

Q You are quite deliberate in things that you say, are you not, Mr. Campbell, as a general rule? A I don't know that I ever—I don't know how to answer you. I don't know that I—I try to answer a question. I don't study. I don't—I try to answer your question that is asked me.

Q Yes, but before you answer a question, you make it a practice of listening and making sure you understand the question before you answer it, isn't that so? A Why, I would not want to try to answer something that I didn't understand. I would want to understand it before I answered it.

Q And in order to do that, you are quite deliberate about the answers you give to the questions, are you not? A I don't know that I am any more than—I don't know that it is anything but myself, that's all. I don't know that I am—I don't know just exactly what you are inferring, but I don't think I am any different than I am.

Q What you mean to say is that you are no different today and now on the stand than you usually are, is that right? A What do you mean by "usually are"?

Q That you usually are deliberate just as you are now? A I don't know that I am any different at any time.

Q What is the answer? A I say that I don't know that I am any different at any time.

Q And as a matter of fact you are quite a deliberate man in things that you do, are you not? A Well, you will have to tell me just what you mean, in things that I do. I don't know—of course, I understand what you say, but I don't know just what you expect me to say.

Q Why, I merely expect you to answer the question. That is a very simple question for an intelligent man, isn't it, Mr. Campbell? A If you mean am I intelligent, why, I think I am and I try to be. I can't—

Q You are a man who does not act a great deal on impulse but more—you are more deliberate? A I never studied myself that way. I don't know.

Q You have never made a study of yourself in that regard? A No.

Q And therefore, at this time, you cannot answer that question? A I am doing the best I can with you.

Q Now, your intentions, when you met Mrs. Mowrey with reference to her, were to interest her in some business venture, is that right? A Yes.

Q And to get her financial assistance in such business venture? A Yes.

Q And before you met her, and in order to meet such a woman, you say you registered your name with an agency? A I sent my name to some agency, yes.

Q One agency? A I don't remember; I think I answered two or three such ads.

Q Is this your handwriting, Mr. Campbell (indicating)? A Yes.

Henry Colin Campbell, for defendant, cross.

Q Did you fill out and sign that paper? A Yes.

The Court: You are now referring to the yellow sheet, I expect?

Mr. David: Yes. I ask that it be marked for identification.

The Court: It may be marked for identification.

(The paper referred to was marked Exhibit S. 34 for identification.)

By Mr. David.

Q Did you also fill out and sign that paper (indicating)? A Yes.

Mr. David: I ask that it be marked for identification.

(The paper referred to was marked Exhibit S. 35 for identification.)

Q After you signed or filled out and signed paper dated January 21, 1928, marked S. 34 for identification, did you send it to the American Friendship Society of Detroit, Michigan? A Well, I have forgotten the name of the concern.

Q Will you look at the paper now and refresh your memory and tell me whether that is the concern you sent it to? A It must have been, with my name on it, and printing at the top there. They seem to connect. I couldn't remember the name though.

Q And on that paper you gave your name as Richard M. Campbell, and your post office box 192 City of Laurel in the State of Delaware; your age at 59; your weight 165; your height five foot

seven and one-half inches; color of hair, gray; answered the question, "Are you handsome?" no; form, good; crippled or deformed, no; disposition, good; nationality, American; religion, protestant, but not bigoted; education, college; occupation, civil engineer and physician; income from $7,000 up; total value of your property both real and personal, six to seven thousand; will you inherit and how much, no; were you ever married, yes; were you ever divorced, no; are you free to marry, yes; are you healthy, yes; do you like farm or city life, a little of each; are you fond of home, yes; have you legal right to marry, yes; would you marry if suited, yes; can we have the privilege to send your name with brief description to those we think would suit you, yes; do you faithfully promise to answer all letters containing postage, yes; do you promise to notify our office as soon as suited, yes; do you solemnly promise that your motives for engaging our services are honest and sincere, yes; under "remarks," no objection to a widow if she is without dependent children. Do not care to help bring up someone else's children. Please send names of ladies in the east, New Jersey, Pennsylvania, New York, Maryland, Virginia. Those things you wrote in yourself in this application, those answers to the questions, did you not? A Yes.

Mr. Gordon: May I have the date fixed?

Mr. David: January 21, 1928.

Q And at that time the application that you filled out was not with the intention of meeting some woman for the purpose of engaging in business, or having financial assistance, but for the purpose of marrying, was it not? A No.

Henry Colin Campbell, for defendant, cross.

Q But you so said in the answers to the questions, didn't you? A Yes, but I wanted to find somebody that would go in business with me. I didn't intend to marry anyone.

By the Court.

Q Why did you make the remark that you didn't wish to bring up someone else's children, that you didn't object to widows if they were without children? A I can't tell you, your Honor. I wanted to find somebody that had some money that might help me go in business, go in with me.

By Mr. David.

Q Is the application S. 35 for identification, which you say you filled out and signed, did you mail that to the Sincere Friendship Club of Medina, New York? A Well, I have forgotten the name but that is my writing.

Q Well, don't you recall having sent such an application to the Town of Medina? A I can't recall the town, no.

The Court: Is this the paper you have just been examining about?

Mr. David: No, your Honor. It is the second one.

Q And the answers to the questions on that application which you filled out and signed, "Name in full, Richard M. Campbell, Post Office Box 192 Laurel, State of Delaware; age 59; height five feet seven and three-quarters; weight 165; color of hair, gray, eyes, hazel; complexion, fair; nationality, American; religion, Golden Rule,

education, college graduate; musical, yes; sing, no; occupation, civil engineer and physician; income, varies seven thousand up; value of property real and personal, about six thousand, if you own a home would you care to describe it, no; expect to inherit, no; health, best; appearance, good; ever married, yes; any children, no; fond of home, yes; what is your disposition, the best ever if well treated; are you joining with a view to marriage, yes; I do hereby state that I am of the white race, signed, Richard M. Campbell." You enclosed with this application three dollars? A I can't remember that.

Q I ask you to look at the application and refresh your memory? A It says I did.

Q Do you recall now that you did send three dollars with the application? A Yes.

Q "No objection to widow without children. Prefer age between thirty and forty-five and small person. No objection if she has some means. Please send me ladies' names and addresses of ladies especially in New Jersey, Pennsylvania, near me." Now, when you signed and sent that application was it with an idea of merely meeting some ladies for the purpose of engaging in business with them? A That was my sole purpose in trying to meet somebody with some money to help me in business.

Q You had no intention of meeting any of such ladies for the purpose of marriage? A No.

Q And you wilfully set out in these applications that your intention was to marry when you had no such intention, is that right? A What do you mean by wilfully?

Q Don't you understand the meaning of the word "wilfully"? A Yes, but I wanted to get in touch with the people myself and then tell my story to them.

Q You mean ladies you wanted to get in touch with? A I wanted, yes.

Q And your whole intention was for the purpose of meeting them and engaging them in business with you and getting their financial assistance? A I wanted help to start in business.

Q Now, as a result of this—of one of these applications, rather, Mr. Campbell, you did hear from Mrs. Mowrey? A Yes.

By the Court.

Q Did you understand that these were matrimonial agencies with whom you were listing your name? A I didn't until I got the literature back after answering their ad.

Q When you sent in these blank forms did you realize that you were listing your name with matrimonial agencies? A I knew that from the form, yes.

Q However, you knew it, at the time you sent in these applications I understand you to say that you knew you were listing your name with matrimonial agencies, is that right? A They called themselves that, and they called themselves correspondence clubs.

Q Well, you understand what is meant by a matrimonial agency, do you not? A Yes, sir.

Q Agencies that undertake to bring a man and woman, each desirous of marriage, together? A Yes.

Q You understood that it was with one of those, or two of those agencies that you were listing your name? A Yes.

Q You knew that it was the fair inference from that fact that you were holding yourself out as a man who desired to marry a woman? A Yes.

Henry Colin Campbell, for defendant, cross.

The Court: Very well. Proceed.

By Mr. David.

Q Well, as a matter of fact, you read the prospectus on the back of the application, didn't you, Mr. Campbell? A I read it, of course, if I had it. I don't remember what was in it now. But I read it.

Q You did read it before you signed the application on the front, didn't you? A Yes.

Q And you knew that that said—

Mr. David: I offer these in evidence at this time.

The Court: Are they objected to?

Mr. Gordon: At this time.

The Court: You have a right to object to them. It is the defendant's case.

Q You did read, and you read the following on this application, didn't you, Mr. Campbell? I am now referring to Exhibit S. 35 for identification: "Your copy of Friendship Magazine has been mailed to you, and we trust it has reached you safely by this time. We believe you will enjoy your membership in our club, and also appreciate the fact, that we are about to count you in our vast number of life-long friends, because we shall do our utmost to bring you to a happy station in life. Look over the magazine carefully—note that all our work is clean and dignified—and that Friendship Magazine is published for the one purpose of making lonely people happy—and not for advertising in-respectable and indecent merchandise. Should you not see the exact type of lady desired, listed in our magazine, will say—that is no reason why you

should not join at once, as every day, we receive from five to ten new lady applicants, and also have many lady members who are in the private class—for which we must personally select suitable gentlemen correspondents, privately.

"So do not hold up your application, but send in at once—telling us just what type of a companion you desire. It will be to your advantage to do so, as we have so many desirable ladies, of all ages and circumstances—located in every state and Canada—'from the Golden Wheat Fields of the Great North West—to the Balmy shores of sunny Florida.'

"Just a word about ourselves. Which do you prefer to do business with—a concern with Service as its motto—or a concern of Promises? We make you no startling offers, but tell you in plain and simple English—We Render Service.

"This is what we have been doing for 10 years—and each year to a great number of people.

"You made a wonderful start my friend, when you wrote for our literature. Act on it, my dear sir. Our registration fee for membership, is, at the present time—reduced from $5.00 per year to $3.00, payable in advance. We have no charge after marriage."

Now, when you signed that application you knew that the place that you were sending this to was a business organization to arrange marriages, did you not? A I knew it was what you call a matrimonial agency, but I had no intention of marrying anyone?

Q And you knew that as the result of one of these applications that you made you heard from Mrs. Mowrey, didn't you? A Yes.

Q And when you met her you had no intention of marrying her? A No.

Q Now, do you mean that, Mr. Campbell? Do you mean to tell me and the Court and this jury that when you signed that application you had no idea of marriage and that when you met Mrs. Mowrey you had no idea of marriage?

Mr. Gordon: I object to the question because the witness has already answered that question by two answers to two other questions.

The Court: He has said that.

Mr. David: This is entirely within your Honor's discretion and I submit that the witness—

The Court: He said that is what he did, and I assumed his answer would be yes, that is what he meant to do, because he means to say that because apparently he knows what he is saying, so you have his testimony that he did those things.

Q What became of the can that you had the gasoline in after you threw it on the body of Mrs. Mowrey? A I don't know what became of the can. I don't know where the can is.

Q Well, what did you do with it? A I can't tell you.

Q Later the same day on February 23 you took your car to a garage to have it cleaned, didn't you, Mr. Campbell? A No.

Q When did you take it next after that morning? A I didn't have it washed for some time. I don't remember how long but it was all—it seems to me it was stormy. I don't know. I don't know how long it was before I had it washed. It was dirty quite a while.

Q You said, Mr. Campbell, that you never had any thought of shooting anybody, didn't you? A Yes.

Q You bought the gun some fifteen or sixteen years ago in Chicago, is that right? A I have said. Something like that. Yes.

Q And you made the practice of carrying the gun in the car, is that right? A Not all the time.

Q No. Only when you were going long distances or were going to be out late at night? A That is all.

Q What did you carry the gun for? A Well, when we lived in Chicago one of our neighbors was killed at his garage just a half a block from us; people were held up in the town we lived in and robbed of their personal effects and clothing right—

Q So you carried this gun in your car at night in case you were held up, is that right? A I carried it for protection, yes.

Q Well, and so in case you were held up at night? A Yes.

Q And if you were, you were going to use it, is that right? A I suppose I would have. I never was held up.

Q Well, when you say you would have, what you would have done would have been to kill anybody who was going to hold you up, is that right? A Try to keep them from killing me.

Q And in order to do that you would not have hesitated to kill such person? A I don't know. I have never killed anybody.

Q But that was the intention, that was the purpose of carrying the gun, wasn't it? A It was for protection.

Q Now, do you mean to say, Mr. Campbell, that from the time you left Westfield on the 21st of February and drove to Philadelphia and to Dover and to Baltimore and back, on the 22nd, and until the early morning of the 23rd, that you had that gun on the seat of your car? A It wasn't on the seat. I didn't say on the seat of the car.

Q Where did you have it? A I said I put it on—put it back of the seat on a shelf that was there. When I got out of the car I took it out.

Q Took it out where? A Took it out of the car.

Q And put it where? A I had it in my pocket, in my overcoat pocket.

Q Do you remember saying to me, Mr. Campbell, in my office in the presence of four or five witnesses that on the night and early morning of the fatal shooting, that you had that gun in your pocket until a short time before the shooting, when you put it on the ledge of the automobile? A No, I don't remember saying that.

Q You don't remember saying that. Will you say you did not say that?

Mr. Gordon: I object to the question unless the Prosecutor will direct the witness to specific language in the confession, or alleged confession.

The Court: This is going into a condition—he may have said orally what is not in writing. He is being asked whether he didn't say that. I think you are entitled—you have fixed the time and place.

Mr. David: Yes, your Honor.

The Court: The Prosecutor has complied with the rule. The question is permitted.

Mr. Gordon: May I note an exception?

The Court: Yes.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(Question repeated by stenographic reporter.)

A I can't say that I did not say that because I don't remember what I said. I don't remember your question.

Mr. David: At this time I am going to ask your Honor to adjourn for the day. I think I can conduct a more intelligent examination, along the line of sequence, if I were to have a little time to prepare my notes.

The Court: We have about reached the hour of adjournment and I think there is no objection to that. We will adjourn at this time until nine-thirty tomorrow morning.

(Adjourned until tomorrow, Wednesday, June 12, 1929, at 9:30 A. M.)

THIRD DAY.

Transcript of stenographer's notes of evidence in the above-entitled case, taken before Hon. Clarence E. Case, Justice of the Supreme Court, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the twelfth day of June, A. D., 1929, at 9:30 A. M.

Appearances:

Abe J. David, Esq., Prosecutor of the Pleas.

John B. Walsh, Esq., Assistant Prosecutor of the Pleas, attorneys for the State.

Francis A. Gordon, Esq., Attorney for the Defendant.

HENRY COLIN CAMPBELL, resumed.

Cross examination (continued) by Mr. David.

Q Mr. Campbell, do you recall that you were arrested on the eleventh of April last? A I don't know what the date was.

Q Do you recall it was on a Thursday night? A No.

Q Do you remember two days later getting in an automobile in company with the warden of the jail and others and going up to the scene of the crime? A I remember going out in an automobile.

Q Do you remember meeting me there? A No, I don't remember you were there.

Q You don't remember, Mr. Campbell, that you said that you were not very familiar with that road, that the night that you shot this woman the road was covered with snow, you could not point out the exact spot but that you could indicate about where the car stopped, or you

stopped the car at the time? A I didn't say any such thing that I remember. I don't think anybody asked me anything.

Q You don't recall me asking you if you could point out about the spot and you said not the exact spot but about it? A I can't remember you were there.

Q Do you remember a picture being taken of your Pontiac car up on that road? A I saw them taking a picture.

Q Is that a picture of your Pontiac car? A I can't see that.

Q Look at it. A I couldn't recognize it. My glasses aren't very good and it doesn't look clear.

Q I show you another picture of it. Is that a picture of your Pontiac car? A I don't know whether that is.

Q I show you another picture. A I wouldn't know my car. There are lots of cars like it, I guess. I don't know whether that is it or not.

Q Do you recall after stopping at a spot on the road and the picture taken of your car, being driven around the bend of the road and stopping at another spot on the road? A No, I don't remember.

Q Do you remember my asking you whether you would get out of the car and indicate the spot, and your saying that you preferred not to get out of the car? A I don't remember you were there.

Q Do you remember my saying that I would not insist on your doing anything that you didn't want to do, that you didn't have to get out of the car? A I don't remember you were there. I don't remember you asking, or anyone asking me such questions.

Q Mr. Campbell, what is your right name?

Mr. Gordon: I object to that as immaterial in this case. And not going towards the issue of the case. This man has not a right name. He undoubtedly is preserving a very fine attitude towards the family that should not be dragged into this case. And on the further ground any man may assume any name, and that is his right name.

The Court: The question will be admitted.

Exception allowed.

Mr. Gordon: May I note an exception?

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Q How many different names have you used—

The Court: Do you wish to follow up the question?

Mr. David: I understood your Honor—

The Court: I allowed the question.

Mr. David: Pardon me, your Honor.

Q What is your right name? A My right name is Henry Colin Campbell.

Q How long have you used that name? A More than twenty years or so.

Q Have you used any other names during the last twenty years? A Just recently I used Richard Campbell.

Q And before you used the name Henry Colin Campbell did you use any other name? A I had another name, yes.

Q Now, you said yesterday that you have been in three penal institutions, is that right? A Yes.

Q That is prisons you mean, don't you? A I was in prison, yes.

Q One in San Quentin, California? A No, that wasn't the name of it.

Q What was the name of it? A It was Fulsome, I think.

Q Fulsome Prison, California? A I think so.

Q How long ago were you in that prison?

Mr. Gordon: I object to that as immaterial.

The Court: Question allowed. Exception given.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Q How long ago? A I can't remember. It is a good many years ago.

Q You were in prison in Mexico? A I was in jail in Mexico.

Q And in Auburn, New York? A Yes.

Q You were also in Sing Sing, weren't you? A I don't think so.

Q You first denied when I talked with you about this case that you had been in prison, didn't you? A I don't remember you asking me.

Q And it wasn't until several days later that I told you that I found out that you were in prison that you admitted it? A I don't remember that.

Q You said in your direct testimony yesterday that for several years you continually used morphine and that you never stopped until the time of your arrest. Do you recall that? A I don't know just what words I said. I have used morphine for several years.

Q Up to the time of your arrest? A Yes.

Q Did you use a needle? A I have used a needle.

Q How long were you in jail before you used any, or had any drug, morphine, given to you? A How long was I in jail? Where?

Q In Elizabeth. A I don't know. I don't know what they gave me. I asked for some. I asked for medicine all the time. My head ached and I don't know what they gave me. I asked for morphine, or something, to relieve me, and I couldn't tell what they gave me. I had been taking medicine and the doctor has been taking care of me ever since I have been here.

Q From the time of your arrest for a period of four days you had no medicine of any kind, did you, Mr. Campbell? A I don't know. I asked some of the jail guards, or whatever they were, to give me something. I don't know anything about time. I know I was in pain all the time.

Q Do you recall on the fifteenth of April, four days after you were in jail, being examined by several doctors? A I don't know when it was but I know that doctors were all the time, it seemed there were a lot of doctors going over me, but they didn't give me anything.

Q And did you not on some four days after you were in the jail here say to Dr. Emil Stein, Dr. Collins and Dr. McMurray that you used narcotics very infrequently? A I don't remember the names of the people you are talking about, and I don't remember saying that. I have used them, and did use them.

Q Did you not say that you only occasionally used them for headaches? A I don't know that I did.

Q And did you not say that you did not use a hypo or a syringe? A I don't know that I said that, because I had one and used it.

Q Did the doctors examine you? A They did all sorts of things to me. They went all over me. I don't know. They asked me a lot of questions and—

Q Did they go over your body? A Yes, I think so.

Q You said yesterday, Mr. Campbell, that you gave Mrs. Mowrey a legitimate address. What address did you give her? A I had—I gave her an address where I could get letters from her.

Q What was that address? A It was a place on Fifth avenue.

Q What was the number? A I can't remember now.

Q That was just a place that you rented a mail box from, a place where you could get mail? A Yes.

Q And that is what you mean by a legitimate address? A Did I say legitimate.

Q Yes, you said legitimate. A I said an address where she could write.

Q You said yesterday, Mr. Campbell, that you wrote the letters which have been offered in evidence, to Mrs. Campbell or Mrs. Mowrey because you did not know what you were doing and you were full of drugs. As a matter of fact, you wrote those letters to keep her from coming after you, isn't that so? A No, I wanted to pay her back what she had given me, and I tried to do it. I was trying to do it.

Q You wrote her not to mind what the busybodies where she lived were saying, didn't you? A I can't remember some of the things when

those letters were read, because they don't sound like me.

Q Didn't you send her this telegram (indicating)? A I don't remember that.

Q You did use the name "Dick" in your correspondence with Mrs. Mowrey, didn't you? A Yes.

Q You don't remember on January 21—

Mr. Gordon: I object to the Prosecutor reading from a paper which is not in evidence and which the witness has already stated, after being shown the paper, that he does not remember sending the telegram.

The Court: There is no question thus far which justifies the objection, Mr. Gordon. Complete your question, Mr. Prosecutor.

By Mr. David.

Q (Continuing.) —sending a telegram from New York to Mrs. R. M. Campbell, 147 Main street, Greenville, Pa.—

Mr. Gordon: If your Honor please, I object to the Prosecutor reading—

The Court: No. Complete your question, Mr. Prosecutor.

By Mr. David.

Q (Continuing.) "Wait for letter as I will not be in New York Wednesday." Signed "Dick." You don't remember sending that?

Mr. Gordon: I move that the question be stricken out. I object to the form of the question on the ground that the witness has

already been shown this paper and has already stated he does not recall sending this particular telegram.

The Court: I have no means of knowing that was the telegram that was shown to the witness, and the question will be allowed.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

By Mr. David.

Q Mrs. Mowrey did come to your—

The Court: Do you want the last question answered?

Mr. David: Yes, your Honor, I misunderstood the ruling.

Q Will you answer that question, please?

(The stenographer read the last question as follows:)

"Question: You don't remember on January 21 sending a telegram from New York to Mrs. R. M. Campbell, 147 Main street, Greenville, Pa., 'Wait for letter as I will not be in New York Wednesday,' signed 'Dick.' You don't remember sending that?"

A No, I don't remember.

Q She finally did come to New York without your knowing she was coming, didn't she? A Yes.

Q Now, you said that because she did not have any education and could not help you in

your business you decided to get rid of her. Was that the reason?

Mr. Gordon: If your Honor please, I object to the question because it says "Is that the reason?" and I don't know what the Prosecutor means by that. Is that the reason for what?

The Court: Make it clear what the reason is for, Mr. Prosecutor.

By Mr. David.

Q Is that the reason that you decided to get rid of her, because she had no education and could not help you in your business? A I had been sending her money to pay her back what she had given me, and I knew that she could not help me at all, and I wanted to square up with her and not have any more to do with her.

Q But was it because she did not have education and could not help you in your business? A Because she wasn't able to help me as I wanted help.

Q You did say yesterday on the stand it was because she didn't have education, is that the reason? A She wasn't educated, yes.

Q But when you got in touch with her, you merely wanted to meet her to interest her in your business and get her financial help, that is so, isn't it? A I wanted some help to start in business, yes, from someone.

Q Some money? A Some money, yes.

Q You didn't say anything to her or in your application about education, did you? A No.

Q You say that you made it a practice of carrying a can of gasoline when you were out in

your car and expecting to be out all night, is that right? A If I expected to be out very late, I carried some in case I could not get any, yes.

Q Did you make it a practice of being out very late at night in your car? A I wasn't very often out, no.

Q You know that there are many gas stations along the roads that you drive, didn't you? A Yes.

Q Now, as a matter of fact, on the night of February 22nd or early morning of February 23rd you stopped at a gas station this side, coming this way from Trenton, didn't you? A Somewhere there; I don't know just where.

Q What time was that? A I don't know anything about time. I couldn't tell you.

Q Have you any idea? A Well, it was late, but I always—I always made it a practice to keep the tank pretty full or to take some when it would hold some.

Q At that point you didn't use the gasoline you had in the rumble seat in that can, did you? A No.

Q You stopped at a filling station and had your tank filled? A I don't know whether I had it filled or not, but I got some more.

Q You said yesterday you had a discussion with Mrs. Mowrey all the way up to Philadelphia. What was that discussion about? A I was trying to get her to go back home.

Q And she would not go? A I tried to tell her that I wanted to give her back the money and that I had sent her quite a lot and that I didn't believe that she could help me the way I wanted help.

Q And she would not go back home? A She wanted me to go with her.

Q And you refused? A Yes.

Q And she insisted that you take her some place where she could stay? A Well, I wanted—I wanted her to go some place, yes, I wanted her to go home.

Q But she would not go home? A She didn't want to leave me.

Q She insisted on staying with you? A She said she wanted to be with me.

Q And that day is the day you told her you were married? A At that time. I don't know what day it was.

Q And you also told her that you could not keep two establishments? A No, I didn't say that.

Q Is that your signature (indicating)? A Yes.

Q On each page, showing the witness Exhibit S. 6? A Yes.

Q You said something in your testimony yesterday about the last time you spoke to Mrs. Mowrey that night or early that morning. Just where was that? A I can't remember where I was. I know I got her a drink to take some medicine with, and she said she was cold and sleepy, and I don't remember where I was.

By the Court.

Q What was the medicine for? A I don't know. She had some tablets of some kind in her handkerchief.

By Mr. David.

Q You didn't give her any medicine? A No, I didn't.

Henry Colin Campbell, for defendant, cross.

Q What did you do, get out of the car and go into some place and get some water for her? A Got a drink for her, yes.

Q What kind of a drink? A Drink of water.

Q Where did you get it? A I think it was where I got gasoline.

By the Court.

Q When you gave her the drink and she took these tablets, was there nothing said as to the reason why she was taking the tablets? A Why, she said she had something the matter with her, she had a headache, or her head hurt, or something of that kind.

Q Where did the tablets come from, if you know? A I don't know. She had them. I don't know where they came from.

Q You say she had them tied in her handkerchief? A I think she took them out of her handkerchief.

Q Had she had them in her handkerchief constantly since you had been with her on that occasion? A Well, I wouldn't know that. I don't know that. I didn't know for sure whether she did take them out of her handkerchief but I thought she did.

Q What was the appearance of those tablets? A I didn't—I wasn't close enough to see what they were. I didn't see them.

Q How did you know that she wanted water? A She said she wanted to take some medicine and asked if I could get her some.

The Court: Proceed.

Henry Colin Campbell, for defendant, cross.

By Mr. David.

Q Now, you drove all day on the twenty-second and into the early morning of the twenty-third, as you have already outlined, without any accident of any kind to your car, didn't you? A I don't remember having any accident.

Q You don't remember running into anybody or anybody running into you? A No.

Q Well, as a matter of fact you did finally drive your car home to Westfield that early morning and leave it out, and you know you had no accident, don't you? A I don't remember any accidents.

Q You say, Mr. Campbell, you don't remember signing that paper?

The Court: What paper are you referring to?

Mr. David: Exhibit S. 6.

A I remember signing paper after I had been talked to a lot by I don't know who. It seems to me there were—was it in your office or where was I?

Q You just answer my question. A I remember signing several sheets of paper.

By the Court.

Q The question is do you remember signing that paper? A Well, that is my signature there. I signed several sheets of paper.

Q The question is do you remember signing that paper? Examine it if you wish to more closely. The question is do you remember signing that paper? A I would not. I have no way of knowing whether that paper—I have no way of identifying that paper. I don't know.

Henry Colin Campbell, for defendant, cross.

Q Either you do or you do not remember. Do you or do you not remember signing that paper? A No, I don't.

By Mr. David.

Q I ask you now to read it and tell me whether or not you said to me the things that are in that paper? What is your answer? A To what?

(Question repeated by stenographic reporter.)

A I have said to somebody some of the things that are in there. I can't remember saying a lot of things that I read in there.

Q Your full name is Henry C. Campbell, isn't it? A Yes.

Q And you are sixty years of age? A Yes.

Q Your business was advertising? A Yes.

Q And on the eleventh of April, 1929, you did live at 471 Madison avenue, Elizabeth, N. J.? A I don't remember about the date, nor place.

Q Before that you did live on Tuttle avenue, Westfield? A Yes.

Q And you lived there for about eight months? A I don't know how long I was there.

Q Before that you lived at Maryland, Salisbury, Maryland? A Yes.

Q And you were married, and you were married in May, fifteen years ago? A Those were the things I said yesterday.

Q Yes. You did meet Mrs. Mowrey through a matrimonial agency? A Yes.

Q And it was early in February of last year? A I don't remember when it was.

Q Your name was registered in a matrimonial paper in Detroit? A Yes.

Q Mrs. Mowrey wrote to you first? A I think she did.

Q You so said yesterday, didn't you? A Well, I am sure she did.

Q Before you met you don't know just how many letters passed between you, do you? A No, I haven't any recollection.

Q You met in Washington, D. C.? A Well, it was either there or Philadelphia.

Q You met her in Philadelphia the latter part of August? A I can't remember dates or times.

Q Well, I say, the latter part of August of last year? A I don't remember whether that was it or not.

Q You said so yesterday, didn't you? A I don't remember whether I did.

Q You don't remember what you said yesterday? A I don't remember.

Q But you do remember things that happened many years ago. How do you account for that, Mr. Campbell? A Well, some things I can remember and some things I can't remember. Different things. I don't know what they are.

Q You were married in Elkton, Maryland? A Yes.

Q You drove your car from Philadelphia to Elkton, didn't you? A Why, yes.

Q You were married by a minister of the Gospel? A Yes.

Q After you were married you drove around for a couple of days and a couple of nights, didn't you? A I drove around, I don't remember much about it.

Q And then you went to your home and she went to hers? A She left me, yes.

Q On your way you stopped at New Brunswick and deposited a check for $1,000? A Yes.

Henry Colin Campbell, for defendant, cross.

Q In your joint account? A She put it in that way, yes.

Q I say in your joint account? A Yes.

Q Well, you also put it in that way, didn't you? A Well, I was with her.

Q You signed a signature card, didn't you? A I signed the card, yes.

Q You drew that money out of that bank? A Yes.

Q And you sent her, at different intervals, sums of thirty dollars, twenty-five dollars, and ten dollars? A I sent her a great deal more than that. I sent her—

Q I say in sums of twenty-five dollars, thirty dollars and ten dollars? A Yes. Even larger.

Q And you did meet her again on the twenty-first of February last year, or this year, 1929? A Yes.

Q And in the meantime you had corresponded with her? A Yes.

Q And while that was going on you lived in Westfield and she lived in Greenville? A Yes.

Q You had been receiving your mail in New York, hadn't you? A Yes.

Q And where you were receiving your mail about a few days before February 21 you heard she was inquiring for you? A Yes. I got a letter there saying she was in New York.

Q You heard she was stopping at the Laura Spellman Y. W. C. A? A I don't remember the name of the place but it was a Y. W. C. A., I think.

By the Court.

Q Didn't you say yesterday what the Y. W. C. A. was, or didn't you? A Sir?

Henry Colin Campbell, for defendant, cross.

Q You have not told us yet what the name of this place was where she was staying? A I don't remember saying so.

By Mr. David.

Q You did meet her on February 21, 1921, at Philadelphia? A Yes.

Q You had driven your car to Philadelphia? A Yes.

Q And then you went to Dover, Delaware? A Yes.

Q And you went to the Richardson Hotel there? A Yes.

Q And you registered there? A Yes.

Q On your way back you had trouble with your car with the ignition, didn't you? A Yes.

Q And you stopped at a gas station and had it fixed? A I don't remember. They couldn't do anything to it.

Q Yes, but they tried to do something to it. A Somebody tried to help me with it, yes.

Q Several times during the day you tried to do something to the engine? A Well, I had trouble with it all the time.

Q And as you got up in New Jersey, Mrs. Mowrey wanted you to take her some place where she could go to bed, isn't that so? A I can't remember what—I wanted her to go home.

Q You can't remember that she wanted you to take her some place where she could go to bed? A I was so dazed, I don't know.

Q I say, you can't remember now that she wanted you to take her some place where she could go to bed? A No.

Q She was cold and drowsy in the car, wasn't she? A She was cold and asleep, I think.

Q There was only one seat in the car, except the rumble seat? A Yes.

Q You don't remember the name of the street that you were on or the road where you parked your car? A I don't know where I was. I got lost that night.

Q There was nothing between you and Mrs. Mowrey that prompted you to shoot her, was there? A I don't know just what you mean.

Q I say there was no trouble or nothing between you two at all? A I had no reason for killing anybody.

Q I say, there was nothing between you and her that prompted you to do that? A Why, no.

Q At that time you could not maintain two establishments, could you? A Why, I could—I had barely enough money to live on. I knew—

Q After you left her that night you went to your home in Westfield, is that right? A I got home somehow.

Q At that time you were not working, were you? A No, I had not had any work.

Q And you stayed home every day except occasionally you went into New York to look for work, is that right? A It seems to me I went into New York nearly every day.

Q And the first week in March you moved from Westfield to Elizabeth? A I can't remember just when it was.

Q How long after the 23rd of February did you move to Elizabeth? A I don't remember how long it was.

Q Now, you threw her grip in the furnace at your home, didn't you? A Yes.

Q You did not throw that part of the grip in the furnace, did you (indicating)?

The Court: Showing him what?

Mr. David: Showing the witness Exhibit S. 32.

A No, I didn't. I didn't—

Q Why didn't you throw that part of the grip in the furnace? A I thought I threw it all in.

Q Was it because it would not go in or because it would not burn? A I don't know what happened. I can't remember. I can't answer you.

Q You threw it under the breakfast nook, didn't you? A I really don't remember what I did with it.

Q You did own this gun, showing the witness Exhibit S. 29? A I had one—

Q You did own that gun? A I had one like that.

Q Well, it was a Colt automatic, wasn't it? A Yes.

Q .32-calibre? A Yes.

Q You had that on your person the night you were arrested, April 11 last, didn't you? A Yes.

Q Did you have a permit to carry it? A No.

Q What did you have it on your person for? A Because I was afraid to leave it around the house. My wife—

Q What's that? A I said I was afraid to leave it around the house.

Q You had left it around the house for fifteen years, hadn't you? A The last year or so I had hid it even from my wife. She was in a terrible state because I had lost all my money and she threatened to kill herself several times.

Q And the reason you carried that gun on your person on the night of April 11 when you were arrested was because you were afraid your wife would kill herself, is that it? A I carried it frequently. I don't know.

Henry Colin Campbell, for defendant, cross.

Q The reason you had it on your person that night was because you were afraid your wife would kill herself with it? A I was afraid she would kill herself. She said she was going to.

By the Court.

Q The question is, was that the reason you had it in your pocket at that time? A That was the reason I carried it.

Q What pocket did you have it in? A I don't remember whether I had it in my hip pocket. I think I had it in my hip pocket.

Q Where did you ordinarily carry it? A Well, when I carried it, which I did frequently, I either carried it there or in one of my front trousers pockets, usually in my hip pocket.

Q Where was it when you did not carry it on your person? A Sometimes I had it in a bureau drawer and sometimes I hid it under a mattress. My wife had gotten into a terrible state, and she threatened to commit suicide several times and even threatened to kill herself and the children because we were in such terrible financial difficulties.

Q You left poison around the house within her reach, didn't you? A There was some—sometimes.

Q Wasn't there regularly poison around the house within her reach? A Yes, I guess she could have always found something of that kind. I carried—

Q She could have taken that, couldn't she, had she wished to commit suicide? A Yes, but she was always threatening to shoot herself.

By Mr. David.

Q You never met any of the relatives or friends of Mrs. Mowrey, did you? She was never

in the company of any friends when you met her, is that so? A I am trying to think. It seems to me she had some friend with her in Washington.

Q When you first met Mrs. Mowrey, you did not intend to marry her? A No.

Q And you did marry, her, thinking it might relieve you of some of your financial difficulties? A I can't tell you why I married her.

By the Court.

Q How long after you met her did you marry her? A Well, I can't remember just when I met her, just what time it was, but it was—I don't remember when I met her first. I had only met her once, I think. It was several months after before I married.

Q You met her once, and the next time you met her you married her? A Yes.

By Mr. David.

Q You had been in finincial difficulties for two years or more, hadn't you? A Yes. I have got to be relieved.

Mr. David: If your Honor please, the witness desires to leave the room.

The Witness: I got the most terrible pains.

(The witness left the room.)

(The witness resumed the stand.)

Q Mr. Campbell, is this a picture of you? A I never saw it before.

Q I say, is it a picture of you? A I would say no.

Q Is this a picture of you? A I would say no.

The Court: Do you want these marked as you go along?

Mr. David: No, your Honor. The witness denies that they are his pictures. I will not press it any further.

Q You said yesterday, Mr. Campbell, you were not shown this bundle of letters marked Exhibit S. 9 to Exhibit S. 24 in my office on the night of April 11 last, didn't you? A Yes.

Q How do you remember that you were not shown those letters? A I said I didn't remember being shown any. I don't remember being shown any.

Q You said in your testimony that you didn't remember being shown any yesterday? A I can't remember my exact wording.

Q Didn't you say that you were not shown those letters? Didn't you? A I can't remember my exact wording. I am sure I was shown no letters in your office. I don't remember what I answered yesterday, what words I used I can't—

Q When were you shown that bundle of letters? A I see them with you here.

By the Court.

Q Mr. Campbell, how can you be sure that you were not shown those letters if you have the faulty memory that you speak of? A Well, what I have been trying to say was that I can't remember being shown them, that I have no recollection of having been shown them.

Q That is not what you said just a minute ago. You said you were sure that you had not been shown those letters. How can you be sure? A I can't say what I am trying to say. I can't get the words. They won't come. I am in such—

By Mr. David.

Q You can't get words out to express your thoughts, is that what you mean to say, Mr. Campbell? A I can't think quick and straight. I am in intense pain and have been all night.

Q The reason that you can't express just what you want to say is because you are in intense physical pain, is that it? A I can't collect myself. I can't think. I can't talk what I want to say.

Q I show you paper Exhibit S. 7 and ask you if you wrote that? A Yes, I wrote that.

Q When? A I wrote that when I was arrested.

Q Where? A I don't know just where I was. Some room I was in.

Q In whose presence? A I couldn't tell you. There were quite a number of people coming and going where they took me.

Q Was I there? A I don't remember whether you were there when I wrote that or not.

Q Don't you recall, Mr. Campbell, asking me whether you could write a note to your wife and I said that you could and that we would send it to her to read? A I asked somebody if I could but I don't remember who it was I asked.

Q And this is the note that you sent to your wife? A I wrote that note, yes.

Q And that note was dated Thursday night, April 11th, addressed "My dear wife, I will not

be home tonight and after this trouble you will not want to see me again. I don't want you or the children to come." You wrote your wife that that night, didn't you? A I didn't read that just now, but is that what it says in there? I mean—

Q Well, read it. A I didn't see that wording. Yes, I didn't see it when I had it before.

Q You wrote that that night, didn't you? A Yes.

Q You wrote, "Telegraph to Lovell to come to you." Who was Lovell? A That is one of my wife's sisters.

Q "I am sending check book." Which check book did you refer to when you said "I am sending check book"? A Oh, I had my check book in my pocket. Did I say "the" there?

Q Yes. A I had only one.

Q On which bank? A It was on the Westfield Bank.

Q And you said, "There is a balance of $147.17." Do you recall where you got that balance from, the amount you put in this letter? A I suppose I must have looked at the check book.

Q You said, "You can go to Westfield and get it." You meant to the bank in Westfield, is that right? A Yes.

Q You said, "This is the end of everything, and I can't say any more." What did you mean by that? A Well, my wife had never known me to be in any trouble before, and knew nothing about—I had always led an honorable and respected life, as far as she knew, and she was such a good woman and always thought so well of me that I was sure she would not want any more to do with me.

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Q And that is why you said, "This is the end of everything," is that right? A It must have been the reason why I wrote that. I was sure she would not want to come and see me and would not want any more to do with me. She had never known me to be in any trouble.

Q When you said that, what you had in mind was that you thought your wife would never want to see you again, is that right? A I thought she would not want to be suffering with disgrace.

Q Then why did you say, "I wish I could see you all once more but it is best not"? Why did you express that thought? A I can't tell you, of course, why I used any certain words but—I didn't want to cause her any more grief. I honestly was so fond of her and had been so happy with her that I was so dazed I—

Q When you married your wife you didn't tell her that you had been in these prisons, did you? A No.

Q You never told her? A No.

Mr. David: That is all.

By the Court.

Q Mr. Campbell, do you remember marrying Mrs. Mowrey? A Yes, sir.

Q You spent two nights with her after the marriage? A Yes.

Q You occupied the same room with her? A No, I wasn't with her. I didn't stay with her.

Q What did you do? A I went to another place. I told her I was sick and had bladder trouble.

Q Where did she stay? A I left her at a roadhouse.

Q Where? A I can't remember either night just where it was, but I think—I think it was in New Jersey both nights.

Q Where did you go? A I went to another place. I just can't—I couldn't stay with her after I thought of my wife and children.

Q But you were perfectly aware that you were marrying her, weren't you? A I knew I had married her, but I seemed to be doing first one thing and then another without really knowing what I was doing.

Q You say that you arranged with her for marriage without knowing what you were doing? A I was just full of morphine or some other drugs all the time on account of the way I was suffering from the different things that were the matter with me.

Q Do you say that you went to the official of the county or the municipality, whatever it may be, and got a marriage license without knowing what you were doing? A No, I did that. I must have known something of what I was doing. I remember going with her and getting it.

Q You don't mean to say that you went to a minister and got married without knowing what you were doing? A They told me in the office where I went with her to go. I didn't know any place.

Q Did you ask them there where to go? A Yes.

Q Then you must have known what you were doing? A I did know that I was getting married, yes. I didn't know lots of things that I did.

Q What you may not have known is not the question. I am asking you what you did know, and you did know that you were doing that? A Yes.

Q You knew then that you were married to another woman, didn't you? A Yes, I knew it, but—

Q You knew that you had children by this other woman? A Yes.

Q You knew that you were not authorized by the law to marry a woman, having a wife living, didn't you? A I guess I didn't think about right or wrong.

Q What was this address in New York that you gave as your mailing address to Mrs. Mowrey? A Well, I can't remember numbers. I had one place and then another. I don't remember what the numbers were. One was on Fifth avenue, but I don't remember the number of the place.

Q Why did you have more than one? A I didn't, at one time.

Q Why did you change? A I don't remember just why I did change, except that one was—I can't remember. I didn't have but one at a time.

Q How did you secure those mailing addresses? A I saw an advertisement in one of the New York papers.

Q What kind of an advertisement? A About desk room and office space. I really was going to rent desk room and try to see if I could not do some business.

Q Did you have desk room there? A I didn't use it, but I had that privilege.

Q Did you have a desk there? A No.

Q Then you procured this simply for the purpose of a blind mailing address? Is that what your purpose was? A Well, I was going to try to do some kind of a mail business. That was my first intention.

Henry C. Campbell, for defendant, by the Court.

Q Why not conduct that from your real address? A Because I wanted an office where someone could come to see me. I lived out of the city and I didn't think I could do it in the country out at home.

Q What kind of an office did this look to be where you had your mailing address? A Why, it was just—one of them was just one room with several desks in it.

Q Who had those desks? A I really don't know who.

Q What was the name of the tenant of the rooms? A I can't remember that. There were quite a number of names on the door, if I remember.

Q With whom did you conduct your negotiation? A Why, with a girl or woman that was in the office.

Q What was the name of the person affixed to the advertisement that you answered? A I don't recall that there was a name. It seems to me it was just a room and a street address, but I don't remember the name.

Q And you can't remember either the room or the street address? A It was on Fifth avenue. I can't remember the number, no.

Q You can't even recall the street on which your other address was which you used as a mailing address? A I think it was on 42nd street.

Q How did you procure that address? A I think it was advertised like the other was. I think they were both in the same paper. I think I had an ad that I had cut out of the paper.

Q Did you pay for the privilege? A Yes.

Q What did you pay? A I don't remember whether it was two or three dollars. It was something like that, two or three dollars.

Q For how long a time? A A month.

Q You didn't expect to be able to procure facilities for doing business, actual business, for that price, did you? A Well, I was told that I could use a desk whenever I wanted to.

Q To write at? A To write at, and that I could hire the service of a stenographer.

Q How long had you had the automobile that you speak of, the Pontiac that you had on the 23rd of February? A I don't remember when I got it, but there was papers at home that would tell. I don't remember myself.

Q You don't recall approximately how long you had it? A No, I couldn't—I—

Q From whom did you procure it? A I bought it in Westfield.

Q From whom? A I don't remember the name of the concern. I didn't know many places or people up there—an agency where they sold it. I don't remember what.

Q A new car, was it? A Yes, a new car.

Q And you bought it from the regular agency in Westfield? A Yes.

Q How long had you had the gas can that you had the surplus gas in your rumble seat? A Oh, I had that three or four years. I think it was the can that had—I had had it a long time. I don't remember just how long.

Q Where had you gotten it? A I had it in Chicago. I think it had radiator solution in it when I got it.

GUY PAYNE, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Gordon.

Q Doctor, you are a physician and surgeon in the State of New Jersey? A I am.

Q How long have you been engaged in the practice of medicine? A Twenty-seven years.

Q And during that time have you specialized in any particular field of medicine? A During the entire time I have been connected with the Essex County Hospital for Mental Diseases. First as assistant for nine years, and for the past seventeen years as superintendent of the hospital.

Q And in connection with your activities what do you do? A Well, at first I was ward physician, had charge of patients on the ward, and for the past seventeen years conducted the staff meetings through the hospital and conducted—reviewed examinations of practically all patients that have been admitted to our hospital.

Q Have you made a special study of mental diseases? A I have.

Q Afflictions of the mind? A Yes, sir.

Q Mental states? A Yes.

Q Have you had occasion to come in contact with the mentally afflicted? A Yes, sir.

Q And during your twenty-seven years have you seen many cases of persons who have been mentally afflicted? A I have.

Q And examined them? A I have.

Q And diagnosed their condition? A Yes, sir.

Q And treated them? A Yes, sir.

Q What is the name of the institution you are with? A Essex County Hospital.

Q How many inmates are there at that institution? A We have 2,300 patients.

Q Are they all under your supervision? A They are, yes, sir.

Q Are you familiar with the various types of mental disorders? A Yes, sir.

Q Mental afflictions? A Yes, sir.

Q And disturbances of mental state? A I am, yes, sir.

Q Did you examine the defendant, Mr. Campbell? A I did, yes.

Q When? A Why, I have not the exact date.

Q Sometime in April of this year? A It was, yes, sir.

Q At the Union County Jail? A Yes, sir.

Q Who was with you at that examination? A Dr. Dowd and Dr. Cotton.

Q And at that examination tell us what you did and what you found? A We questioned Mr. Campbell on his life history from the beginning of his childhood and found that all through his life he had had difficulty in adjusting himself. He had, you might say, habitually misbehaved—

The Court: Well, do not draw conclusions as to what he told you, if you are relying upon information he gave you, and you are going to testify about that. The thing to do, I assume, is to tell what he told you and give the history of the case as it was given to you.

Q Did you get a history of his case? A I did, yes.

Q Make a physical examination of him? A We did, yes, sir.

Q Did you study the man? A We did, yes, sir.

Q Did you come to a conclusion as to his mental state? A We did.

Q And what is it?

Mr. David: I ask that that answer be stricken out "We did."

Q Did you? A I did, yes, sir.

Q And what was your conclusion? A My conclusion was that he was a psychopathic personality, and had been all through his life; constitutionally defective, individually, he had been in constant trouble.

Q Is that a well-recognized form of mental disturbance? A It is.

Q And have you seen numerous cases of that kind? A I have.

Q Where? A Some in our hospital and there are many on the outside.

Q In that type of individual—

The Court: Let me make a suggestion, Mr. Gordon. Do not lead this witness.

Q Do you know what is the effect on the state of mind of a man sixty-one years of age, who has suffered a sudden reverse of civic conditions and thereafter suffers great worry?

Mr. David: I object on the ground that this is a hypothetical question and does not include the facts proven in the case, but merely a smattering of those facts.

Mr. Gordon: It is not offered for the purpose of a hypothetical question. It is offered to lead up to certain individual causes of mental stress, and then I am going to submit the hypothetical question.

The Court: Of course, whether you mean it to be or not, it is, isn't it, Mr. Gordon, a hypothetical question?

Q Do you know whether or not worry affects the mental state? A It does.

Q Do you know whether or not affliction from bodily disease, consisting of weak heart action, distant sound of heart beat, and enlargement of the heart, chronic bronchitis of the lungs, a right inguinal hernia, an enlarged prostate gland, and a chronic bladder disorder which has existed for a period of a time not less than six months, affects the mental state? A I think all of those physical defects have more or less influence upon the mental state of the individual; render them more and more mentally unstable.

Q Do you know whether or not a marked pyorrhea condition affecting all the teeth in the mouth, a retained diseased tooth root, an apical abscess affects the mental state? A It would all tend to irritate the nervous system and render the patient more emotionally unstable.

Q Do you know whether or not a condition of ethmoiditis, of not less than six months in standing, and a sclerosis of the cellaturcica, and destruction of the clinoid processes produces any evidence of an exciting cause that affects the mental state? A I would give the same answer, that all of these physical conditions tend to irritate the nervous system and to render the patient more emotionally unstable and irritable.

Q Do you know whether or not extreme physical and mental exhaustion on a psychopathic personality affects the mental state? A I would say it does, yes, sir.

Q Do you know whether or not that acts in any way on the volition of the individual? A It does.

Q To what extent? A Well, it is difficult to say to what extent. I would only—I can say that it would impair a man's emotional stability.

Q Do you know whether or not the continued use of morphine in quantities of not less than a quarter of a grain, taken frequently throughout the day, extending over a period of approximately two years, would have any effect on the mental state of a psychopathic personality? A It would.

Q In what way? A Well, especially when the patient is off of the morphine he would be in an irritable emotional condition and he would be impaired in his ability to carry on. That is about all.

Q Now, doctor, can you tell the Court and jury whether or not a man sixty years of age, who has been worrying for approximately two years on account of financial reverses, and who, during that period of time has been taking morphine tablets daily and in doses of never less than a quarter of a grain, and who has been taking doses of morphine by injection with a hypodermic needle, who has been using codein, bromides, and chloral, over a period of approximately two years; who, during that time, has been suffering from weak heart action and distant sound of heart, of an enlargement of the heart, chronic bronchitis of the lungs, a right inguinal hernia, an enlarged prostate gland, a

chronic bladder disorder, and who has had these conditions all during the period of time of not less than six months prior to February 23, 1929, and who has also had a marked pyorrhea affecting all the teeth in his mouth, has also had a retained diseased root, an apical abscess, and who shows an ethmoiditis of not less than six months in standing, and a sclerosis of the cella-turcica, a destruction of the clinoid processes of not less than six months in standing, and an arthritic condition of the cervical vertebrae to his spine and pelvis, and who is a psychopathic personality that shows an impairment of volition, or mental reaction, and who, on February 21, 1929, at or about eight o'clock in the morning left the town of Westfield, New Jersey, and drove to Philadelphia, a distance of approximately eighty miles; and thereafter and on the same day drove to Dover, Delaware, from Philadelphia, another distance of approximately eighty miles; and during the night of February 21, 1929, did not sleep, and who had taken regular doses of morphine in tablet form at various times that day, and who, on February 22 drove from Salisbury, Maryland, to Baltimore, Maryland, a distance of approximately 125 miles; and thereafter on the same day drove from Baltimore, Maryland, to Philadelphia, a distance of approximately one hundred miles; and thereafter drove from Philadelphia to Cranford, New Jersey, a distance of approximately eighty miles; and that during that day, evening, and night time of February 22, 1929, such individual was physically and mentally tired and exhausted, whether or not that person was in such a state of mind, at or about the hour of three o'clock or four o'clock in the morning on February 23, 1929, as to possess the capacity for mental deliberation and premedi-

tation and sufficient volition to make a choice, think, and reflect, and by the use of his mental powers at such time, refrain from doing a homicidal act? Do you know that? A I would say it would be only fair to say that a normal man who had been through such—

The Court: You are not being asked about the normal man, doctor. Answer the question.

Q Go on. A I would say that his ability to consider the consequences of his act, or to evaluate the consequences of his act would be certainly very much impaired.

Q Doctor, what is the effect of morphine in connection with volition and mentality in its use by an individual? A What is the question again?

Q What is the effect of morphine when used by an individual on his volition and mentality? A It impairs the volition of the individual.

Q What is the effect of dis-function, or disarrangement of any of the ductless gland influences? A Well, impairment, for instance, of the thyroid gland renders them more emotional and less able to control their conduct.

Q How about the pituitary gland? A Well, the pituitary gland, as I understand it, has more influence upon the growth, bodily growth of the individual.

Q Does that impair the normal stability of the organs? A Yes.

Q Doctor, do you think a man, under the conditions which I have recited in my hypothetical question could deliberate and premeditate? A He might be able to deliberate and

premeditate but I think his ability to deliberate and premeditate would certainly be very, very much impaired.

Cross examination by Mr. David.

Q And that is as far as you will go, doctor, in answer to that hypothetical question? A Yes, sir.

Q And such a man described to you by that hypothetical question could well know the nature of his acts? A I think he might.

Q And could well know the consequences of his acts? A I think he might.

Q And could well distinguish between right and wrong? A I think so.

Q Now, doctor, you examined Campbell, the defendant in this case, in the county jail sometime in April for the purpose of determining whether or not he was sane? A Yes, sir.

Q Did you come to a conclusion about it at that time? A I did.

Q What was it? A My conclusion was that he was sane.

Mr. David: That is all.

Re-direct examination by Mr. Gordon.

Q Have you noticed any change in his physical appearance now from the time that you examined him in April? A I would say there is considerable change. He has apparently lost weight. He looks apparently more anaemic than he was.

Mr. Gordon: That is all.

Lawrence M. Collins, in rebuttal, direct.

By the Court.

Q His condition is worse now than it was then? A I would say so; yes, sir; Judge.

The Court: That is all.

Mr. Gordon: That is all.

Defense rests.

Mr. Gordon: I would like to make a statement, to notices that have appeared in the public press with reference to the intention of the defense to call Dr. Dowd. Dr. Dowd was unfortunately called away to the City of Rochester at one o'clock this morning on account of very serious illness of his sister.

STATE'S REBUTTAL TESTIMONY.

LAWRENCE M. COLLINS, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, doctor? A At Greystone Park.

Q That is in this State? A It is the New Jersey State Hospital.

Q And are you connected with the New Jersey State Hospital at Greystone Park? A I am the senior resident physician.

Q What is your profession? A I am a physician.

Q How long have you been a physician? A Seventeen years.

Q Have you specialized, doctor, in your profession? A I have.

Q In what way? A Mental disease.

Q For how long? A For the past twelve years.

Q During that time have you examined many patients? A Many hundreds.

Q Many hundreds? A Many hundreds.

Q For the purpose of determining their mental status? A Yes.

Q Whether they were sane or insane? A True.

Q And are now occupied in that same profession? A I am.

Q Did you examine the defendant Campbell? A I did.

Q When? A April 15 of this year.

Q Where? A At the Union County, or at the Elizabeth jail, Union County Jail here in Elizabeth.

Q In whose presence? A Presence of Dr. McMurray, Dr. Stein, and Detective Reilly.

Q And of what did your examination consist, doctor? A I made a long lengthy mental examination, including the physical examination. The mental examination included the defendant's attitude and general behavior at the time that he came into the room where my mental examination took place, he was quite orderly, very agreeable man; he sat slowly down in the chair, folded his hands, and voluntarily answered questions; answered questions voluntarily. He was not spontaneous, however. He seemed to weigh every question that was asked him; he was very deliberate, and at times he refused to answer at all; he would hide behind the question, is it necessary for me to answer; which was a per-

fectly natural reaction, because I asked him along the lines of people with whom he worked, and he did not wish to bring their names in his trouble. Mentally he appeared bad, worried, depressed; he was apprehensive, and he was fearful, which was a natural reaction—

Mr. Gordon: I object to "which was natural."

The Court: Isn't it proper for a man who is testifying as an expert on mental diseases to say that which is natural and that which is abnormal?

Mr. Gordon: I submit that is part of the conclusion, when the question is asked for his conclusion, and it is not responsive as to what he found.

By the Court.

Q You are now testifying as to your observations, and what you observed? A Yes. I examined his mental trend, his line of thought, in relation to his every-day environment, his contacts with his fellow men, and tried to find out if there was any evidence of a psychosis. He made an absolute denial of any ideas of persecution, or any ideas that would lead me to believe that he was actively psychotic.

Q What do you mean by psychosis or psychotic? A It is nothing more than formulated ideas which are unnatural, delusions, which are false ideas.

Q But he had none of those? A He had none. I examined his sensorium, that is, his intellectual capacities, and he showed neither a permanent nor temporary disorganization of his mental faculties. He was acute, clever, he an-

swered questions promptly and relevantly; he was oriented as to time, place, person, and surroundings.

Q When you say oriented what do you mean, doctor? A That is, he knew his time, he knew the person; if he was disoriented he would not have known the time nor the place. He was oriented, that is, he realized the time, the place, and the person, and surroundings. He had a good grasp on the remote past. He remembered dates fairly accurately; he had a good grasp on the recent past. Of course, I went into his judgment, and his judgment was poor. And insight, I could not tell whether he had any insight into his condition or not.

By the Court.

Q What? A Insight, whether he realized the nature of his act. He denied that to me. I examined him physically and I was suspicious of morphine, drug poisoning, and he made an absolute denial, was quite upset when I asked him if he used morphine. He said, "Of course not." And he told me why he had had that little hypodermic case. He said he used it for his wife for menstrual disturbances, and once when she had a bad case of neuralgia. I examined his body for the evidence which would be necessary evidence of the fact that he had taken hypodermic injections, and I would have found scars, marks, abrasions on his arms, forearms, or on his body somewhere. I did not. He had been in the jail then several days. He did not present the attitude or the behavior of a pronounced drug addict in any form. He had no abdominal distress. He had no abdominal tenderness. No diarrhoea, no constipation. His pupils, if he had been a

pronounced morphine addict, would have been pinpoint. They were not. They were equal, regular, and reacted to light and accommodation. As far as bromides were concerned, a pronounced bromide addict has a bromide rash, an acne.

Mr. Gordon: I submit this part of the answer is not responsive as far as bromides are concerned.

The Court: I suppose if it is not responsive that is for the questioner. It otherwise is material. Why is that a ground of objection on your part?

Mr. Gordon: I submit that I should be permitted to present my cross examination in a sequential and orderly fashion, which I am deprived of doing when the witness injects into a question which pertains to observations, matters which are not responsive to the question.

Q Will you continue with the examination that you made, doctor? A I got a history from Campbell himself, and from the history the fact that he has been maladapted to his—

Mr. Gordon: If your Honor please, the witness has said that he got the history, but now he is offering something in addition to what he found. I submit it is not responsive. If he is answering a conclusion, it should be in response to a question regarding the conclusion.

Mr. David: I don't know what this witness is going to say. Counsel continually interrupts the witness in the middle of his answer.

The Court: I cannot tell what his answer is going to be.

Mr. Gordon: He is now volunteering something that he got from the history.

The Court: I don't know and nobody knows until the answer is in. Proceed with your answer.

Mr. Gordon: Might I note an exception?

The Court: To what?

Mr. Gordon: To the motion to strike out anything further than what the witness said that he obtained.

The Court: He has not said anything yet. The stenographer's notes show nothing.

Mr. Gordon: He says from the history.

The Court: He is telling what the history was. That is exactly what he is being asked about.

Mr. Gordon: I will withdraw the objection.

The Witness (Continuing): The fact that he had been maladapted to infamy throughout the greater part of his life led me to believe that he was a psychopathic personality.

Q What do you mean by that? A It is a very inaccurate word, but for purposes of classification, those people who are unable to get along with their daily contacts with their fellowmen, we place them in that pigeon-hole called psychopathic personality. It means one who is emotionally unstable.

Q And by that psychopathic personality you apply that title to every hardened criminal, do

you not? A Well, yes, as a rule they are psychopaths.

Q All characters, habitual criminals, people who commit crime are in that category? A The ones who habitually misbehave.

By the Court.

Q Has an habitual criminal a psychopathic personality? A Your Honor, they classify them that way.

By Mr. David.

Q And is a person who has a psychopathic personality one who is able to realize intelligently the nature of his acts? A As a rule, intellectually they may be superficially brilliant. They are.

Q And are they people who know what they are doing? A They do.

Q They simply do things that are wrong or against the law?

Mr. Gordon: I object to that as leading.

The Court: I guess it is leading.

By Mr. David.

Q Doctor, will you go on with the examination? A Well, that completed my examination, that he was a psychopathic personality without psychoses, and that he was sane.

Q What do you mean "without psychoses"? A Without any false ideas, delusions, or hallucinations.

Q Did you ask him concerning the things that he did on the 22nd and 23rd of February? A That was the day of the murder?

Q Yes. A I did.

Q And did he tell you where he had been on the 21st and 22nd and the early morning of the 23rd? A He did.

Q And what he had done? A He did.

Q And did you come to a conclusion as to whether or not he was sane on the night of the 22nd and or the early morning of the 23rd of February?

Mr. Gordon: I object to that on the ground that the conclusion of the doctor is only premised upon certain matters that he asked or obtained from the defendant, but does not include all the facts in this case. It is a conclusion as to sanity.

The Court: I suppose this question is preliminary and is not vital. The question is whether or not he formed a conclusion.

By the Court.

Q Doctor, the question is not what your conclusion was but did you come to a conclusion? Your answer should be yes or no. A Yes.

By Mr. David.

Q And did you come to that conclusion from your examination of Campbell on the 15th of April and the statements that he made to you concerning his doings on the 21st, 22nd and 23rd of February last? A Yes.

Q And did you come to the conclusion as to whether or not at that time, that is on the night of the 22nd of February and the early morning of the 23rd of February, Campbell could distinguish between right and wrong? A I did.

Q Did you come to the conclusion as to whether or not he knew the nature and consequences of his acts? A I did.

Q What conclusion did you come to and what is your opinion, doctor, as to whether or not Campbell was sane on the night of February 22nd and the early morning of February 23rd?

Mr. Gordon: I object to the question on the ground that it is immaterial to the issue involved in this case. The question in this case of the mental state of the defendant is not whether or not he was insane. The question in this case, so far as the defense in this case is concerned, as the issues are raised by the defense, is whether or not at the time the alleged act was committed the mental state of the defendant was affected so that he was deprived of the capacity to premeditate and deliberate.

By the Court.

Q What is insanity, doctor? A Insanity is the legal and sociological concept of those members of society who are so maladapted to the laws and customs of the community that the community has to segregate them, forcibly perhaps, and take away their rights as citizens, and it may mean social inadequacy. It is a disease of the mind due to a disorder of the brain.

The Court: Mr. Gordon, you do not contend that the defendant was suffering from any disease of the mind?

Mr. Gordon: No, sir, not within the term of legal insanity as it has been laid down by the cases in this State, in the case of

the State versus Spencer, the State versus Grave, the State versus Macoom, and the State versus Noel, which require as a test to distinguish between right and wrong the proposition of legal insanity.

The Court: Now you are modifying your answer, and your attitude has a bearing upon the ruling of the Court. Are you prepared to state for the purposes of the record and for the consideration of the jury that the defendant was mentally sound at the time of the commission of this crime?

Mr. Gordon: I cannot say that. That is a question for this jury to determine.

The Court: Then this is a question for the jury to determine.

Mr. Gordon: May I note an exception?

The Court: Your ground being, as I understand it, that insanity is not an issue?

Mr. Gordon: Yes, sir.

The Court: You may note an exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

The Witness: The conclusion was, that I came to, was that he was sane.

By Mr. David.

Q What conclusion did you come to as to whether on the night of February 22nd and the early morning of February 23rd Campbell could distinguish between right and wrong?

Mr. Gordon: Same objection.

The Court: Objection overruled.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

A My opinion was that he could distinguish the difference between right and wrong.

Q What is your opinion as to whether or not on the night of February 22nd and the early morning February 23rd Campbell knew the nature of his acts and the consequences of them?

Mr Gordon: Same objection.

The Court: Your objection being that it is not at issue whether he knew the consequences?

Mr. Gordon: I desire to interpose an additional ground at this time and that is that the conclusion of the witness is based upon insufficient premises as far as anything in the case already in the case.

The Court: What have you to say to that, Mr. Prosecutor?

Mr. David: Here is a witness who has qualified as an expert, who made a personal examination of the defendant, and who elicited from the defendant his actions during the night of February 22nd and the early morning of February 23rd.

The Court: You are basing your question entirely on what the defendant told him?

Mr. David: And also the expert's examination of the defendant. If your Honor please, I am not—

The Court: Your question will speak for itself. You had better frame your question

in such a way as to make it clear that you are bringing into play the witness' knowledge from various sources that you wish him to rely upon.

Mr. David: This question will be withdrawn.

Q Did Campbell on the 15th of April when you examined him at the jail tell you what he had done on February 21st, 22nd, and 23rd? A He did.

Q Will you repeat what he said to you? A He told me about going to Philadelphia—I can't tell it in directly the same words he told me—about going to Philadelphia and meeting this woman, and then as he started back, he started to drive toward New Jersey, and he had ignition trouble. He stopped at a gas station and obtained some gasoline and it was getting near dawn. He stopped in a place that he said he was not familiar with, but he thought it was near his home. This woman was slumped down in the car at his side. The automobile was stopped. He took a revolver. He placed it at her head and killed her. He said he drove on for a short distance and then took a can of gasoline, poured it over the body, threw a match upon it, watched the body spurt into flames, got back into the car, watched the body for a moment or two, and then drove toward his home in Westfield or Cranford, whatever it was. I asked him, "Did you go to sleep?" He said, "Of course not."

Q Doctor, as a result of your examination and the statement made to you by Campbell, will you tell me whether or not in your opinion late at night February 22nd and early in the morning

of February 23rd Campbell knew the nature of his acts and the consequences of them? A My opinion was that he did know the nature of his acts.

The Court: And the consequences?

The Witness: The consequences, your Honor, I can't say. He has a psychopathic personality.

By Mr. David.

Q And whether at the time as he says he shot the gun, whether the condition of mind was such that he knew the difference between right and wrong?

Mr. Gordon: I object to the question on the ground that it is not an issue in the case.

Mr. David: I submit that a test under the cases cited by Mr. Gordon in this State is the very thing.

(The stenographer read the last question as follows:)

"Question: And whether at the time as he says he shot the gun, whether the condition of mind was such that he knew the difference between right and wrong?"

The Court: This is not a full question. Make your question in full so that it embraces—reframe your question and make the entire question.

By Mr. David.

Q Whether in your opinion—

The Court: Ask him. Do you want him to tell you something?

Mr. David: Yes, sir.

The Court: Well, put that in your question.

By Mr. David.

Q I am asking you, doctor, whether in your opinion late at night February 22nd or early in the morning of February 23rd, when, as Campbell told you, he shot this woman in the head, he knew the difference between right and wrong?

The Court: Are you basing your question upon knowledge that the witness obtained by his mental and physical examination insofar as that examination went and upon the statements that Campbell made to him?

Mr. David: Yes.

The Court: Embrace that in your question, Mr. Prosecutor.

By Mr. David.

Q As a result of your examination, doctor, of Campbell in the Union County Jail on April 15th last and the statement made to you at that time by him among other things that he shot this woman in the head, will you tell me whether in your opinion at that time when he shot the woman in the head on the late night of February 22nd and early morning of February 23rd he understood the difference between right and wrong?

Mr. Gordon: The question is objected to on the ground that it is incompetent and

irrelevant and not pertinent to the issue involved in this case.

By the Court.

Q Are you able to form such an opinion, doctor? A I am.

The Court: The question will be admitted.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,

J. S. C.

The Witness: I am of the opinion that he did know the difference between right and wrong, but I don't know whether he could evaluate.

By Mr. David.

Q What do you mean by evaluate? A By that I mean could he weigh it? Did he know the result? Was his volition such, was his power, his weakness of power, was it such that he realized the nature of his act? I could not say as to that.

By the Court.

Q What do you mean by did he know the nature of the act? A These psychopathic personalities are some of the most—

The Court: We are talking about this man, and when you use the language that you used in your answer, what do you mean by that?

The Witness: Will you repeat your question, please, your Honor?

Q I want to know what you meant by your answer, giving it in a little more ordinary language. You talk about evaluating. That is quite clear to you, but some of us do not get just what that means. A It is a difficult thing to explain. It is an inherent constitutional defect. There is a lack of endowment in these individuals somewhere.

Q Not "in these individuals"; we are only talking about this one. A Well, there has been a lack of endowment in this man somewhere, and while intellectually he has been apparently superficially brilliant, his acts throughout his life are shown that he has used poor judgment. He has done things, and why, he cannot explain.

Q What is wickedness? A Wickedness, well, it is a disturbance of the emotional field. It is cruelty.

Q Is any man who is an habitual criminal within the category that you are now enumerating? A He is.

Q Then you mean that a man who gives himself up to a life of crime is one—you cannot say whether or not he knows the nature and consequences of what he does? A While he may realize and know the nature of his acts, whether he can evaluate them, I do not know.

Q What do you mean by evaluate? A Well, that is the feeling, the feeling, the feeling that is in back of it, his judgment. His judgment is warped some place, I can't say and I can't explain. It is one of the most difficult problems to explain.

Q Do you mean that he did not know that the probable consequences of pulling that trigger was to kill the woman? A I think he did. I think that he knew that when he pulled that gun that he was going to take a life.

Q In that way you understand—it is your opinion that he knew the consequences of his act? A Yes, yes.

Q And what is your opinion as to whether or not he knew that it was wrong to take a life? A I can't say as to that. I don't know what was in his mind.

Q But that is because he had done wrong before that? A Yes.

Q Is that the only thing? A That is based on his whole life history.

Q The fact that he had been a more or less habitual wrongdoer makes you unable to say whether or not he knew right from wrong? A That is true.

Q And if that had been the first time that he had done wrong, what then? A If it probably had been an acquired thing, I would have said yes. I could have probably given an opinion on that, that he did evaluate it and he would know the consequences.

Q Does your line of thought lead you to the conclusion that those who are regular trespassers against the law are mentally deficient? A Mental deficiency is a deficiency of the intellectual field, and this is a defect, a constitutional lack of response to the social demands of honesty, truthfulness, decency, and consideration of others, whereby these patients cannot direct their line of thought into any one directed capacity.

Q Do you say cannot or do not? A Well, do not.

Q There is quite a difference between the two. A Well, I would say cannot. I change that and say cannot.

Q You mean that they know what is right and wrong but they are unable to resist the impulse to do wrong? A That's what I mean.

Q Applying it, for instance, to a person who regularly steals and is called a kleptomaniac? A That is true. The same with pathological liars who will lie with the same idea, when telling the truth would have been better for them.

Q A kleptomaniac is a person who regularly steals? A Yes, that is true.

Q But seems to be unable to resist the impulse to steal? A That is true.

Q Is that the sort of personality that you are injecting? A It is the same type of personality.

Q The same mental and emotional operation? A Yes, that is true, it is the same feeling.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Doctor, where did you in your experience come acrsos psychopathic personalities? A While at the New Jersey State Hospital at Greystone Park and in my everyday life, my treatment of patients on the outside.

Q These psychopathic personalities are usually patients in the asylum? A There are 70,989 first admissions to the State hospitals, and there is only one and two-tenths per cent. of psychopathic personalities admitted to the State institutions.

Q But they are sick people? A They are sick people when they become psychoted.

Q And they are in a group that show impairment of volition? A That is true.

Q And volition means the ability to exercise the will? A True.

Q And to exercise the will implies a capacity to reflect and deliberate? A That is true.

Mr. David: That is all.

Mr. Gordon: That is all, doctor.

EMIL STEIN, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Doctor, what is your profession? A Physician and surgeon.

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

Q And practiced where? A Elizabeth, New Jersey, all the time.

Q Are you a graduate from any colleges or institutions? A New York University, Bellevue Hospital Medical College.

Mr. Gordon: I will concede the doctor's qualifications as a general practitioner and as a surgeon.

The Court: Mr. David, is it within those lines that you wish to examine him?

Mr. David: I should like to go a little further, if the Court please.

Q Have you also had experience in examining persons with reference to their mental condition? A I have.

Q How much? A In the course of twenty-three years I have had occasion many times at the request of a family or the police to commit people to insane institutions.

Q Did you examine them for that purpose? A I did.

Q As a result of your findings, were they from time to time committed?

Mr. Gordon: I object to this as immaterial, whether it was as a result of the doctor's findings on other people.

The Court: Well, that is not important. The question is the commitment of persons.

Mr. David: I say as a result of his examination and findings.

The Court: Well, the outcome of his passing an opinion is not so important, is it?

Mr. David: I will withdraw the question.

Q Doctor, on the 15th of April last did you examine the defendant Campbell? A I did.

Q Will you just tell me the examination that you made and in whose presence? A Dr. Collins, Dr. McMurray, and there was a technician there, the one that was ready to take the blood. There was Officer Reilly and myself, and at one part of the examination the Warden stepped in the room.

Q Will you tell what your examination consisted of? A The examination began with the history from his infancy on, going into his family history, his personal history and all his illnesses and then into his mental status all the time with observation as to his accuracy of answering, how well he oriented and how well he spoke up, and to note whether there was anything in his make-up that marked him away from the normal.

Emil Stein, in rebuttal, direct.

Q Did you ask him about and did he reply concerning his connections on the night of t' 22nd of February and the early morning of February 23rd? A I did and he replied.

Q What did you say and what did he say? A We asked him—I asked him that distinctly, why he began with the ride back from Dover, Delaware, to Cranford, and he said he wanted to put her in a hotel, and he said she would not go, Mrs. Mowrey would not go into a hotel. Then he says that he pulled the gun on her and I asked him if he knew it was sure to go off, and he says he did. I asked him then, I asked him about, "Why did you throw gasoline on her?" and he said he knew he was in trouble and wanted to hide the identity. I asked him if he knew it was murder and he said he did.

Q As a result of your examination of him and your questions and his answers, did you form an opinion as to whether or not at the time on the night of February 22nd and the early morning of February 23rd when he shot this woman, whether or not he was sane?

Mr. Gordon: I object to the question in the first place on the ground that the witness has not been qualified as a psychiatrist or neurologist, and in the second place, that it is not pertinent to the issues involved in this case.

By the Court.

Q Doctor, what experience have you as a neurologist? A In this town we have had no expert neurologists, and I was attending physician in two hospitals before—

Mr. David: Would you mind talking up, doctor, so the jury can hear you?

The Witness: (Continuing.) This town, until recently, had no neurologists and before I was attending surgeon in two hospitals; I was attending physician at two hospitals, that is, St. Elizabeth and the Alexian Brothers, and that took in all phases of medicine, of which mental diseases is just a branch, and during that time I had to make my observation with regard to the mental statuses and also the neurological statuses, and from there I gained what experience I possess.

Q How considerable is that experience? A In the ward service, I was on service in each hospital four months of the year, and ward service usually runs from twenty to forty patients for medical service, and out of that there would be about five per cent. neurological, and then I have had a vast private experience where my practice amounts to seeing anywheres from seventy-five to a hundred and fifty patients a day out of a general practice, and that is until recently when I went into the surgical field.

Q And those cases were not all neurological? A No, just what naturally comes in them, a small percentage of them become neurological.

Q How large a percentage? A I would say five per cent., and when I say five per cent., I include the neurosis type.

Q By that you mean? A Those types of neurasthenia, anxiety, obsession, hysteria, that is included in the five per cent.

Q And that means seven or eight a day? A Yes, absolutely.

Q And over a period of how many years? A That is a period of about twenty years.

Q By reason of that training and knowledge that you have, do you feel qualified to speak as an expert on neurological matters? A I can't say whether I am an expert; I say I feel qualified to judge.

The Court: Mr. Prosecutor, you are here asking this man not what his opinion was of the man as he found him, as he saw him, but as of the period some six or seven weeks prior, and I do not understand from the witness himself that he holds himself out as an expert in such matters.

Mr. David: But whether he holds himself out as an expert or not, I submit, and it is within your Honor's ruling, that he is qualified from his experience, whether he is an expert or whether he practices only that special profession. I say that he has qualified himself as a physician and as an expert able to form such an opinion and to give it.

The Court: I am not quite sure that you have qualified him to that extent. I am not sure that the man is himself quite comfortable in being held up as an expert, and it is only as an expert that he could give such testimony.

Mr. David: I so offer him.

The Court: He does not qualify himself as one.

Mr. David: But I submit it is immaterial what he qualifies himself as. A man may be an expert and still not practice it or hold himself out as such. I submit that it is within your Honor's ruling.

The Court: I think that if I were in your place I would not urge that.

Mr. David: Does your Honor hold that he is not an expert to whom such a question could be asked?

The Court: Do you want me to rule?

Mr. David: Yes.

The Court: I will overrule the question.

By Mr. David.

Q Doctor, as a result of your examination that you made on April 15 of Campbell and your questions and his answers, did you come to a conclusion whether or not at that time he was sane or insane?

Mr. Gordon: Same objection, if your Honor please.

By the Court.

Q You have given us your questions and his answers, have you? A Yes, I haven't given my conclusion, though.

Q You have given your questions and his answers, and based upon what his questions and answers were as you have related them to us here, you formed an opinion as to his mental condition at that time? A I did.

The Court: What objection can there be to that, Mr. Gordon?

Mr. Gordon: I press the objection.

The Court: Objection overruled.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

By Mr. David.

Q What was that opinion, doctor?

Mr. Gordon: Same objection.

A That Campbell was sane at the time that he committed the deed.

Q At the time you examined him on April 15? A Whether or not he was sane at that time?

Q Yes. A Yes, he was sane on April 15.

Q Did you make a physical examination of Campbell that day? A I did.

Q For the purpose of determining whether or not he had used a needle on his body? A We did.

Q Give me the result of that examination. A We stripped him, had all his clothes off and looked at every part of his body for puncture wounds that may be caused by a needle, and found no such evidence. I examined his eyes and found no contraction of the pupils, showing that there was no morphine in him, and he did not act with tremors or otherwise as an addict would when he is in want of morphine. We also went into his history, and he deliberately denied and said he was adverse to using morphine and admitted that he used codein occasionally for a cough and used bromides sometimes with camphor.

Emil Stein, in rebuttal, cross.

Cross examination by Mr. Gordon.

Q Doctor, isn't it customary for morphine addicts to deny that they use morphine? A No, because after four days—

Q You have answered the question, no. A No.

Q You have answered Judge David that from his statements to you that he laid the body out to burn in an open roadway to hide a crime, that from that you conclude he was sane?

Mr. David: Just a minute. I object to the question in that the statement of facts were not made on which the question is based.

Mr. Gordon: I will withdraw the question.

By Mr. Gordon.

Q As part of the conversation that you had with Mr. Campbell, he told you that he laid the body of Mrs. Mowrey out on the highway and set it on fire, didn't he? A He did.

Q The reason he did that was to hide a crime? A To hide her identity.

Q Her identity? A Yes.

Q And he laid her in the snow? A That's what he said.

Q He told you he laid her in the snow? A Yes.

Q And from that you conclude that he was sane in connection with the other questions and answers? A In connection with the other questions and answers.

Q He told you that he had shot Mrs. Mowrey some distance away from where he laid the body? A He did.

Emil Stein, in rebuttal, re-direct.

Q Did he tell you where? A Two to three hundred feet away.

Q Two to three hundred feet away? A Yes.

Q Are you sure of that? A Absolutely.

Q Positive? A That's what he said.

Re-direct examination by Mr. David.

Q Did he say feet or yards?

Mr. Gordon: I object to that. The witness has said feet.

The Court: I will admit the question.

A I don't really recall. I believe he said feet. In the figures I have from two to three hundred.

Mr. David: That is all.

Mr. David: If your Honor please, all the witnesses whose names I have just called I believe are under subpoena not only yesterday but today, and I don't understand the reason why none of them has answered. If your Honor will adjourn at this hour, so that I might find out why these witnesses are not here—

The Court: This is rather unusual that there should be so many of them.

Mr. David: It certainly is, and I don't understand it. This is a list of witnesses that were subpoenaed.

Mr. Gordon: May I ask, if your Honor pleases, if those witnesses have been subpoaed?

Mr. David: That is my understanding, that those witnesses have all been subpoenaed.

Mr. Gordon: I would like to have that clarified. If they have been subpoenaed, and they have not appeared, then I have no objection. Of course, I do not control the situation, but I have no objection if they have been subpoenaed and attachments issued for them.

The Court: Are they important witnesses, Mr. Prosecutor?

Mr. David: I consider them so, some of them.

The Court: We will adjourn at this time until 1:25 P. M.

(A recess was taken until 1:25 o'clock, P. M.)

AFTERNOON SESSION, 1:25 P. M.

JOSEPH L. HOLMES, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, doctor? A New York.

Q What is your profession? A Psychologist.

Q Where do you practice? A In New York.

Q Are you connected with any institution? A I teach at Columbia University and my practice is private.

Q What do you teach at Columbia University? A My specialty is criminal psychology.

Q What do you mean by criminal psychology, doctor? A Well, it is that branch of psy-

chology that deals with the behavior and mental states of offenders against the law.

Q How long have you practiced that, doctor? A Before I began teaching at the university I was employed by New York City as a psychologist in the prison department. Then after that I was in the army, doing psychological examining at the hospital for mental cases. And after that I returned to the university and studied some more and began teaching there and have been teaching there for six years, in addition to doing the private work that I do.

Mr. David: Do you wish to examine the doctor as to his qualifications?

Mr. Gordon: I do not know for what purpose the doctor is being qualified.

The Court: He is being qualified as a psychologist, am I right?

Mr. David: Yes, your Honor.

Special cross examination by Mr. Gordon.

Q Doctor, have you made a study of the brain as an organ? A Yes.

Q Studied medicine? A No.

Q You are not admitted to practice medicine? A No. I am not a physician. I am a psychologist.

Q Do you know the effects of physical conditions on mental processes? A Yes.

Q How did you acquire a knowledge of that? A In the course of my training at the university I studied physiology, and neurology, and courses supplementing my courses in psychology.

Q And the effect of organic disarrangement on mental state? A Yes.

Joseph L. Holmes, in rebuttal, direct.

Q And the effect of toxic infection on mental state? A Yes, I have been all through the courses in psychiatry.

Q And the effect of the use of morphine on the mental state? A Yes. I have not only—

Q You have answered. The effect of bodily and mental exhaustion on the mental state? A Yes.

Mr. Gordon: That is all.

Direct examination (continued) by Mr. David.

Q Did you, doctor, at my request, examine the defendant, Campbell? A Yes.

Q When? A On the twenty-sixth and the thirtieth of April.

Q Where? A In the detention room at the jail.

Q In this city? A Yes.

Q How long did your examination last on the twenty-sixth? A From eleven o'clock in the morning until noon, and then from about half-past one until nearly four.

Q And on the other day how long did it last? A About an hour and a half in the afternoon.

Q And at that time when you made the first examination did you get from him a history of his life? A Yes.

Q And on the second occasion did you submit questions to him from which you got answers? A Yes, I did on both occasions.

Q As a result of your examination, doctor, were you able to determine it at the time you examined him he was sane or insane?

Mr. Gordon: I object to that question, if your Honor please, upon the ground that

this witness is not qualified to express an opinion of sanity or insanity as an expert. He is not qualified as a neurologist or a psychiatrist.

Mr. David: I submit that the witness has qualified in the fullest degree. He has made a particular study and specialty of the brain, of the mind, of the workings of persons' minds. He is fully qualified.

By the Court.

Q What practical experience have you had? A In the prisons and in the army and since then in my private work I have examined probably two thousand people. Further as to my qualifications, in New York State the State Department of Mental Hygiene determines who is qualified to pass upon the mental status of people and give testimony to that effect in court, and I am registered with the State Commission as a qualified psychologist.

Q Of those two thousand persons, if I understood you correctly, you have examined, you examined them in what way and for what purpose? A To determine their mental status and determine their intelligence, their sanity, and so on.

Q For what purpose? To what result? A Well, in the prison it was a question as to what was to be done with the inmate, whether he is to be kept there.

Q Inmate of what? A Of the prison, whether he was to be kept there or sent to an asylum.

Q What prison? A The New York County Penitentiary.

Q Have you professionally served there? A Yes, sir.

Q You have not told us just what your work is in that connection. A Well, as psychological examiner, for example, going into the history of the patient, giving the tests similar to those that the psychiatrists use, and that the psychologist himself has worked at, to distinguish between the normal and the abnormal.

Q What is the distinction between a psychologist and a psychiatrist? A Well, the psychiatrist is a man who has a medical degree and has received his training after he has graduated from medical school, in a state hospital. While the psychologist—it is a profession that has recently grown up, one who has studied at the university psychology in particular, normal, and abnormal, and then in New York State I say we have professional status conferred upon us by the State Commission of Mental Hygiene.

Q How do the two professions differ? What do they do after they have been admitted to the profession? A Well, they don't differ so much as they co-operate and supplement each other.

Q In what way? A The psychologist has certain technique of testing and of dealing with people of all ages, taking into consideration individual differences, such as not embraced in a physician's study.

Q What, for instance? A Well, just such subtle differences as we find between the offender and the one who is not an offender.

Q What is psychology? A Well, the derivation of the term means the science of the mind. Today it is more broadly defined, not only as a science of mind and consciousness, but the science of behavior.

Q What is a psychologist? A Well, the psychologist, the usual meaning of the term is

one who practices it in the clinic, or privately, or does research work in any university, and the final test is as to whether a man belongs to the American Psychological Association.

Q How do you become admitted to practice? Do you call it practicing? A Getting professional status is a matter of becoming registered with the State Commission of Mental Hygiene and the proceedure is this: I appeared before a Supreme Court Justice and was examined as to my qualifications. He signed the papers certifying that I was qualified, and they are on record in the county seat of Oswego County in New York, and with the State Commission in Albany.

Q What is a psychologist being admitted and registered, authorized to do? A Well, he is authorized to make examinations and to go—

Q To make what examinations? A Mental examinations.

Q For what purpose? To what end and in what way? A Well, it is not specified how he shall examine. But the purpose is to determine what the person's mental status is.

Q What do you mean by mental status? A Well, his intelligence, and his sanity, and, of course, there are different degrees of mental.

Q And degrees of intelligence? A Yes.

Q For what end? To ascertain that mental status for what purpose? A To determine what is to be done with him by society.

Q How is such a person brought before you? I know nothing about this, this is all new to me, and you are not very informative in what you are telling us. A I am sorry. I mean to be. How a person is brought before us officially in that manner, you see, is by one of us being summoned by a court.

Q As a witness? A Yes.

Q Have you testified in court? A My previous experience, of course, has been with the juvenile court, where I merely made an examination and submitted my report to the judge.

Q You have not testified as a witness in court? A No, I have never been called on in a case like this before.

Q What character of examination and report have you been making to the juvenile court? A Well, as a matter of going into the history of the offender, his family history, what his intelligence was, what his school standing was, whether any functional nervous ailments indicated, and so on, any mental aberrations, and what his experience had been. His habits and so on.

Q You never have diagnosed mental troubles for treatment? A Oh, yes.

Q Who has treated on your diagnosis? A Well, in the course of my private practice as a matter of psycho-therapy that I use.

Q What is psycho-therapy? A As the word indicates, treating mental difficulties.

Q Treating mental difficulties? A Yes. I use that word in a broad sense. I do not like to use the term "disease," because many of the people who come to me are not diseased.

The Court: This witness says he has never testified in court, never given testimony of any character, so far as I am able to determine.

Mr. David: I submit that is not the test of an expert. The most expert physician, or expert surgeon, or expert alienist of many years practice may never have been called to court, or may never have wanted to go

to court. I submit that does not affect his knowledge, or his expert opinion on the subject.

The Court: I am not clear—it may be all very clear to you, Mr. Prosecutor—but I am not clear just what this man's status in court here today is.

Mr. David: His status in court now as a witness is as an expert in the study and diagnosis of a mental state of persons, over years of experience, both for the purpose of treatment and for the purpose of deciding whether or not a person should be committed to a penal institution or to an insane asylum.

The Court: Is there any such profession recognized in this state that you know of?

Mr. David: I think the profession is recognized in this state, your Honor, and in every state. I do not know that there is any society in this state, or whether we have practitioners in this state, except those that are known as psychiatrists.

The Court: What do you propose to prove, I mean, what is the course of proof that you are going through with this man?

Mr. David: I propose to prove by this man that he made two examinations of the defendant and has formed an opinion as to his mental status, as to whether the defendant is sane or insane, whether he knew the difference between right and wrong, whether he knew the nature and consequences of his acts, both at the time of his examinations and on the evening of February 22 and the early morning of February 23.

The Court: I think you had better show more fully than you have yet shown the experience of this man for that purpose. I am not fully informed. He says he is a psychologist and practices psycho-therapy and so on, under some form of licensing that exists in New York State, and that he does certain work there. But how final his conclusions are, to what extent they are accepted, how numerous they are, in just what situation they arise, does not appear. I think you had better develop your questioning more fully, if you wish to use him as an expert witness on mental conditions.

By Mr. David.

Q Now, doctor, how many persons have you examined for the purpose of determining their mental status? A About two thousand.

Q During a period of how many years? A About ten years.

Q The last ten years? A Yes, sir. Well, there was a period when I was inactive because of illness.

Q How long, doctor? A Oh, about six months, and then a period when I did nothing but study and taking graduate work at the university.

Q How long was that? A Oh, that was about two years.

Q And have you made any particular study of the subject of psychology and the subject of the condition of person's minds? A Yes.

Q How long have you made such a study? A My undergraduate work, and all my graduate work, three degrees, I majored in those subjects. First in taking a Bachelor, the Master's,

and the Doctor's Degree in the course of six years.

Q Have you examined persons for the purpose of determining whether or not such persons should be committed to an insane asylum? A Yes.

Q How many persons have you examined for that purpose? A Oh, perhaps twelve to fifteen hundred. In that connection I might explain that my recommendations, after examination, were made to the parole commission in New York, and they were the ones who determined, on the basis of the recommendations that came to them, as to what was to be done with the patient—with the inmate of the prison. Or, if there was a question of his sanity or imbecility, then because of the legal arrangement, a commission had to be appointed by the court, who came and examined the records of the examination, saw the patient briefly, and reported back to the court.

By the Court.

Q A commission consisting of what sort of persons? A The court would usually appoint some physicians from a neighboring asylum.

Mr. David: I submit that the witness has fully qualified in this particular profession.

The Court: I do not know that I can agree with you, Prosecutor. What law can you give me to sustain this witness as an expert witness on mental conditions?

Mr. David: I have no cases. I had no idea that the question would be raised. But, under the general law, and the line of cases that a person who has made a particular study of a particular subject, and has spe-

cialized on that particular subject, becomes, if he has made sufficient study, an expert in that particular line, and as such may testify as an expert.

The Court: Well, this witness apparently is subject to some supervision in his conclusions as to insanity, by a commission, or Board of Medical Examiners, or persons occupying that position. Do you feel that you have qualified him as one who is prepared to testify himself as an expert on mental diseases, sanity or insanity?

Mr. David: I certainly do, your Honor. A man who has made a specialty of that particular subject for at least eight years and has examined some two thousand persons for that purpose.

The Court: Well, he has been assisting in coming to that conclusion, but his examinations have not been the determining factors, as I understand his testimony, in determining whether or not a person is insane and, therefore, should be taken to an insane asylum, or is not insane and, therefore, should not.

Mr. David: I had not stated, and I do not mean to say that on the witness' report of itself the person is committed to any institution. That is not a requirement, I take it, in qualifying an expert. The requirement is that he has made a particular study and practice of that profession. I submit that the biggest alienist in the country, of many, many years' experience, may practice his profession many years, and yet never commit a person to an asylum. And that, I submit, if your Honor please, would not

be the test as to whether or not he is an expert.

The Court: What is the test as to whether or not he is an expert?

Mr. David: The test, in my judgment, as to whether he is an expert is based on his experience and study of that particular subject. In other words—

The Court: Do you call an interne in a hospital an expert on surgery?

Mr. David: I would not because an interne in a hospital is merely getting his experience. He has not had it. He has not gone far enough to be admitted as a physician.

The Court: That is just exactly my difficulty, Prosecutor. I cannot ascertain that this man, at any time, has been burdened with the responsibility of finally determining upon the sanity or insanity of individuals, without supervision by those who presumably have superior power.

Mr. David: I do not think that his testimony at all elicits the thought that his experience and his practice have not qualified him. I have not attempted to show that on his report any persons are committed. But I say that he has had experience for eight years on this very subject of determining what a person's mental status is, whether he is sane or insane, and the various degrees or standards of his mental calibre, or aberrations, which is the very thing that I wish to elicit testimony from him about.

The Court: I think you had better defer this examination for a time.

Rowland P. Blythe, in rebuttal, direct.

Mr. David: Doctor, just come down from the stand.

(Witness withdrawn from the stand.)

ROWLAND P. BLYTHE, recalled.

Direct examination by Mr. David.

Q Doctor, how many times have you seen the defendant Campbell since his arrest on the eleventh of April last? A When he first was admitted to the jail probably two or three times a week, but for the past two or three weeks, daily.

Q Did you make examinations of and did you treat Campbell? A I did.

Q In your examinations of him did you ask him anything with reference to the use of morphine or narcotics? A I did.

Q What did you ask him and what did he say? A I asked him if he had been in the habit of using any drugs.

Mr. Gordon: I may be a little late with my objection, but I object to this question upon the ground that the doctor has already answered this very same question on re-direct examination, or cross examination, when he was called as my witness.

The Court: If so, it may be answered again. Proceed.

Q And what did he say?

The Court: The question is there, isn't it?

The answer is there, isn't it?

Mr. David: No, your Honor. The answer to part of the question is there.

The Court: Your objection is that it has been answered before?

Mr. Gordon: Yes, your Honor, and that it is not rebuttal.

The Court: Has it been answered before?

Mr. David: I do not recall that it has been asked or answered, your Honor, and with reference to the second objection that it is not rebuttal, I call your Honor's attention to the fact that the defendant has just testified, this morning, that he was—

The Court: This is the witness who was on the stand when you wished to make him your own witness?

Mr. David: And counsel objected.

The Court: He was a defendant's witness and you desired to make him your own witness and ask a question, and counsel objected to that, during his case?

Mr. David: Yes. And I am now putting him back as my witness.

The Court: I will permit the question.

Q And what did he say, doctor? A He told me that for the past two years he had suffered with severe headaches, and for that occasionally he had taken a little codein, which was the only thing that seemed to relieve the headache.

Q Did you ask him whether he had had morphine? A I did.

Q What did he say? A No.

Q He said no? A Yes, sir.

Q Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?

Mr. Gordon: I object to the question on the ground, first that the witness has not been qualified as a neurologist or a psychiatrist, and second, on the ground that the question calls for an answer to a matter which is not within the issue involved in this case. We are not presenting a defense of legal insanity.

The Court: You are presuming a defense which is apparently not sharply defined, because you have at no time stated that you admit the man to have been sane mentally at the time this murder was committed. Therefore, it must be within your mind to contend that he was not sane, I assume. Isn't that so?

Mr. Gordon: I am not contending either way because I do not know. That is one of the issues perhaps which may be presented, but we have not offered any evidence along those lines which can be rebutted.

The Court: You have put the man on the stand and witnesses on the stand who have been giving testimony as to the man's mental condition. One of the relevant issues, when mentality is raised, is the question whether or not a man was sane or insane; if insane, the degree of insanity; and whether or not that degree of insanity or that phase of insanity is a recognized defense.

Mr. Gordon: This witness is being asked as to the mental state of the accused when the witness visited the accused in the County Jail and at a time subsequent to the alleged offense.

The Court: When did Dr. Blythe testify?

Mr. David: Yesterday morning.

The Court: Can you find his testimony in the transcript?

Mr. David: Yes, sir, here it is (handing book to the Court).

The Court: Mr. Gordon, do you object to your man being proven sane? Have you any objections to your client being proven sane?

Mr. Gordon: I object to this question, if your Honor please.

The Court: I know, but I am asking you your reasons for the objection.

Mr. Gordon: Because, in the first place, it is not within the issue, and in the second place, it is not rebuttal testimony.

The Court: What was the last question?

(The stenographer read the last question as follows:)

"Question: Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?"

The Court: One of your questions, Mr. Gordon, was this: "What is the effect of poison on the system? Answer: Well it might cause infection in other parts of the body. In his case, I should say it probably upset his stomach more than anything.

"Question: Do you know whether or not it could permeate into the brain?

"Answer: No, I don't."

You were questioning him as to whether or not this could permeate into the brain, and there is only one function in that, and that is to note the effect. I will admit the question.

Rowland P. Blythe, in rebuttal, direct.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

The Witness: Sane.

By Mr. David.

Q Could he comprehend the nature of the acts which he committed?

Mr. Gordon: That is objected to on the same grounds, particularly on the ground that the witness has not been qualified as a psychiatrist.

The Court: Do you want to qualify him as to mental—

Mr. David: No, I don't.

The Court: How can he testify?

Mr. David: I did not attempt to press that. I have not attempted to qualify the witness as an alienist or a psychiatrist, so I will rest if your Honor overrules that.

By the Court.

Q What is your practice, doctor? A Physician.

Q Do you have occasion to examine persons for mental troubles? A Occasionally, yes, sir.

Q How long have you practiced? A I graduated fourteen years ago, and I practiced in New Jersey for ten years.

Q And your practice includes the observation of persons mentally affected? A It does occasionally, yes, sir.

Q And by reason of that, have you reached a degree of knowledge that enables you to testify

as you have been testifying? A I think so, as I have been testifying, yes, sir.

The Court: All right.

Mr. Gordon: May I note an exception to the ruling?

The Court: Do you mean the ruling allowing the question over your objection?

Mr. Gordon: Yes.

The Court: Yes.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(The stenographer read the last question as follows:)

"Question: Could he comprehend the nature of the acts which he committed?"

The Court: That question was not pressed. He is not pressing that question.

By Mr. David.

Q At the time you examined him, doctor, was he able to comprehend the difference between right and wrong?

Mr. Gordon: I object to the question.

The Court: If you are not using him as an alienist, Mr. David, why do you pursue these questions?

Mr. David: I understood, your Honor, that I was to examine him further.

The Court: He said he felt he was qualified to testify to the extent that he had gone, but I did not pursue the question further than that as to these additional questions,

and I think that if you are not going to qualify him as an alienist, you had better not pursue that line of questions.

Mr. David: Cross examine.

Mr. Gordon: No questions.

WILLIAM H. ARMSTRONG, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q You are the Warden of the County Jail of this county? A I am.

Q And you have been for how long? A Sixteen months.

Q During the period from April 11th last until today, have you seen the defendant Campbell? A Every day.

Q And for how long a time each day? A Well, it varies at different times. Sometimes he would entertain me a little longer, and sometimes five minutes and sometimes ten minutes a day.

Q Each day? A Each day.

Q And have you conversed with him during those times? A At times. Sometimes he would be sleeping when I would look at him.

Q How often would he be sleeping? A Well, I have known him to sleep, well, once or twice a day. He was not sleeping; he would be resting very much like a person that was sleeping, slumbering.

Q How many days since April 11th last did you actually talk with him? A Every day pretty much.

William H. Armstrong, in rebuttal, direct.

Q From your observation of him and your conversations with him, what is your opinion as to whether he is sane or insane?

Mr. Gordon: That is objected to on the ground that it is a conclusion and that the witness is not competent and has not been sufficiently qualified.

Mr. David: I submit that under the cases in this State a layman may testify as to his judgment whether a person is sane or insane following business transactions or conversations with such person, not as an expert but as a layman.

Mr. Gordon: May I also interpose a further objection that it is not within the issues involved in this case, and it does not go into the mental state of the accused on the night of the alleged offense?

The Court: Mr. Prosecutor, wasn't it a part of the new rule that where you are going to have a layman express his views as to the mental condition, that you shall anticipate that by having him testify to the acts and statements upon which he has formed his opinion?

Mr. David: I have not heard any objections on those grounds from counsel, if your Honor please, but I will go into a more lengthy examination of the witness as to what he said and did each day.

By Mr. David.

Q Warden, will you tell us just what your conversations were with Mr. Campbell during that time?

Mr. Gordon: I object to that on the ground that it is not strict rebuttal and upon the further ground that it is as to matters subsequent to the time when the alleged offense was committed.

The Court: What is the purpose of the question?

Mr. David: The purpose, if your Honor please, is if the defense in this case is to be that the defendant was not in a mental condition at the time of the commission—

The Court: That is understood, but what do you expect to do with this testimony?

Mr. David: I propose to show by the proof that he was sane at this time.

The Court: The idea of producing testimony of what was said to this man is to use that as a rebuttal to the intimations regarding the man's mental condition? Is that it?

Mr. David: Yes.

The Court: Why isn't that proper, Mr. Gordon?

Mr. Gordon: I submit that the issue in this case is not the man's mental condition subsequent to the time when the alleged offense was committed.

The Court: Isn't a man's mental condition assumed to continue?

Mr. Gordon: Not necessarily, if your Honor please. Where there is a well-defined type of insanity, a legal insanity, that is one proposition, but where there is a situation from which the mental facilities are prostrated and the accused is unable to premeditate by reason of lacking the capacity to possess the power of premeditation, power

of volition, that is another situation, and the courts of this State have recognized that where there is insanity, legal insanity, that is in complete exculpation of the effects, but where there is this prostration of the mental faculties, caused by intoxication or other causes, then the defendant must appear before the Court and come within the definition of having perpetrated an offense which is recognized by presumption of the law as murder in the second degree, and the only way the evidence that has been offered is competent is not by way of excuse or extenuation of the crime but merely circumstances from which the jury may say whether or not at the time the alleged offense was committed there was premeditation and deliberation.

The Court: Do you mean to limit the condition of a man's mind to the particular few minutes at which this tragedy was committed?

Mr. Gordon: That is the whole proposition of premeditation and deliberation.

The Court: Is that what you are arguing?

Mr. Gordon: Yes.

The Court: And it is not within the realm of this trial to go into his mental condition either before or after that time?

Mr. Gordon: Before and after only as it may affect that particular moment.

Mr. David: Counsel is merely arguing what he will probably sum up to the jury as to the degree of the crime.

Mr. Gordon: I withdraw the objection. May we ask for a short recess at this time?

The Court: Very well.

(The defendant retired.)

(The defendant returned.)

Mr. David: May I have the last question read, please?

(The stenographer read the last question as follows:)

"Question: Warden, will you tell us just what your conversations were with Mr. Campbell during that time?"

A Do you want from the evening, Mr. Prosecutor, in which he was received into the jail?

Q Yes, sir. A On April 11 about five minutes to twelve P. M., Mr. Campbell was received at the Union County Jail in company with two of your detectives. I received him myself at that time and he complained that evening about wishing to be placed in a room in which there would be a toilet very handy. I told him there was a toilet in every room in the Union County Jail for that convenience. He said that he was suffering with kidney or bladder trouble, and I made Mr. Campbell comfortable for that night. He seemed to be very nervous and shaky. He bid me good night that night and I made him still more comfortable the next day.

Q Will you please raise your voice a little, Warden? A I made him more comfortable the next day, for which he was thankful for. During our conversations in the jail, he wanted to have reading matter, and I gave him some reading matter out of my own library. After he was through reading the book, I would ask him how he liked the story which he read, and he said, "It was very nice but I don't remember a word of it. My mind seems to wander." Then

he would ask at times for the doctor. He would always complain about headaches, heart affection and bladder. That was mostly his conversation at different times. Sometimes he might ask for some fruit, and I said, "If the doctor has prescribed for you fruit or whatever medicines, I will see that you get it," which I did.

Q As a result of these conversations daily, what is your opinion as to whether or not he was sane or insane? A Well, if I was to judge by a man being sane or insane from perspective views in the jail, Mr. Campbell, I would place as a model prisoner. He has never given me any trouble and has always answered me in a sane way.

Q Were you present in an automobile with him on Saturday afternoon, April 13? A I was.

Q And did you hear the questions that I asked him in the automobile in which you were sitting when the automobile reached the boulevard between Kenilworth and Cranford? A I did.

Q Did you hear me ask him to point out the spot where he had shot the woman? A I did.

Q And did you hear him say that he could not point out the exact spot but he could point out about the spot? A I did.

Q Did you see a picture taken of an automobile at the spot which was pointed out? A Yes.

Q And did you also hear me ask him to point out the spot where he had thrown gasoline and burned the body of the woman? A Yes, I did. I don't just remember them was the exact words, but it was words to that effect.

Q Did you hear him say that the ground was covered with snow and he could not point out the exact spot but he could point out about the spot? A Yes.

Q And did you see a photograph taken of an automobile at that spot? A Yes, I saw the camera right there and the photographer taking a picture.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Did he point out any spots or did somebody just take a picture of spots? A He said he thought that that spot resembled something like it, but as the night was dark and snow on the ground he couldn't tell exactly, but he thought it resembled the spot.

Q Did he go out of the car? A He did not.

Mr. Gordon: That is all.

Re-direct examination by Mr. David.

Q Did I ask him to go out of the car and did he reply that he didn't want to go out of the car, and did I say that "you don't have to do anything unless you want to do it voluntarily, and you may stay in the car"? A You did. Them is the words you used.

Mr. David: That is all.

Frank C. Ard, in rebuttal, direct.

FRANK C. ARD, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q What is your profession, doctor? A Physician.

Q Practicing where? A Plainfield, New Jersey.

Q For how many years, doctor? A Since—I have been there about thirty-five or thirty-seven years.

Q Do you specialize in anything? A Eye, ear, nose and throat.

Q Did you ever see the defendant Campbell before? A Yes.

Q When? A According to my records, in October, 1928, October 18.

Q Where did you see him? A In my office.

Q In company with whom? A With his wife.

Q Who were you treating? A His wife.

Q And did you have any conversation with the defendant Campbell at that time? A Yes, the ordinary conversation in connection with the examination of the case. He was present in the office with her.

Q What was the conversation, doctor?

Mr. Gordon: I object to that, if your Honor please. It is a confidential communication.

By Mr. David.

Q You were not treating the defendant Campbell, were you, doctor? A No.

Frank C. Ard, in rebuttal, direct.

Q You were treating his wife? A Yes.

Mr. David: I will withdraw the question for the purpose of interposing another question and see whether or not counsel objects to that.

Q As a result of your conversation with the defendant Campbell and your observation of him, what in your opinion was his condition as to sanity?

Mr. Gordon: I object to that on the ground that the witness has not been qualified as a psychiatrist.

Mr. David: He is offered as a lay witness.

The Court: If he is offered as a lay witness, that requires that the statements made by the party concerning whom he is testifying should be stated. Counsel objects to his relating what was said.

By Mr. David.

Q I now repeat the question. Will you tell us what the conversation was that you had with the defendant Campbell?

Mr. Gordon: That is objected to on the ground that it already appears—

By the Court.

Q Were the statements that were made to you by Mr. Campbell of a professional character? Are they confidential communications? A They were in connection with the examina-

tion of his wife's eyes, if that is considered—it is medical, in reference to her ailments, yes.

Q Did you talk with him outside of her presence? A I don't recall that I did. I think my conversation with him was in the office while she was present. There wasn't—I couldn't recall all the conversation. It was simply—

Q Do you recall talking with Mr. Campbell about anything except the wife's illness? A I have no recollection of having talked with him on any subject.

The Court: Mr. Prosecutor, that sounds like a professional commuunication.

Mr. David: I submit that it is not, on the ground that in the first place it is not a conversation with the person who was consulting him, who makes no such claim. The wife is not here making any claim that—

The Court: The ruling of the Court is that it is a professional communication.

Mr. David: That is all, doctor.

ARTHUR P. ROBINSON, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on his oath saith:

Direct examination by Mr. David.

Q Where do you live, Mr. Robinson? A Plainfield.

Q What is your business? A Sales manager of the Ransom Concrete Machinery Company.

Q Do you know the defendant Campbell? A Yes.

Q How long have you known him? A Twelve or thirteen years.

Q During the last twelve or thirteen years how often did you see him? A Oh, probably twenty or thirty times.

Q When did you see him last? A Some time in March; I can't say what day.

Q Of what year? A This year.

Q Where? A In the advertising manager's office in New York.

Q Did you have any conversation with him? A Yes, sir.

Q What was it? A He was discussing our advertising copy and layout.

Q Just tell us what you said and what he said. A Well, I could hardly do that, but we discussed with the advertising managers the layout of the copy and the copy itself.

Q How long did you talk with him and see him that day? A Oh, possibly forty-five minutes or an hour.

Q When did you see him before that? A Well, I think I saw him two or three times in March in our advertising manager's office.

Q In New York? A Yes, sir.

Q Did you see him in February? A Yes, sir.

Q What conversation did you have with him? About what time in February did you see him? A Well, I think he was in our office two or three times in February.

Q Can you give me the time of the month? A No, I couldn't give you the exact time.

Q Was it in the latter part of the month or the middle of the month? A He was in the latter part of the month, yes, sir.

Q And at that time what conversation did you have with him? A We were talking about the advertising that he was working on in connection with our advertising managers, and he stated he was hard-up and wanted some money.

Q In reply to that what did you do or say? A He said he wanted $100 to pay his advance rent.

Q What did you do? A I told him I could not loan him company money but I would be glad to give him my personal check, and I gave him my personal check for $100.

Q As a result of those talks and transactions, Mr. Robinson, tell me whether in your opinion at those times, whether Campbell was sane or insane? A Sane.

Mr. David: Cross examine.

Cross examination by Mr. Gordon.

Q Did you get your $100 back, Mr. Robinson? A Yes, sir.

Q At the time you spoke to Mr. Campbell in March did you know that he had been involved in a shooting? A No, sir.

Q Did you know that he had a weak heart? A No, sir.

Q Did you know that he had marked erosion of the bony substance in his skull? A No, sir.

Mr. David: I object to the question on the ground that it is not cross examination and it is immaterial. The witness has not qualified or been asked any questions as an expert, and therefore the cross examination is immaterial and irrelevant.

The Court: What is the materiality of it, Mr. Gordon?

Mr. Gordon: I want to know if his conclusion would be any different if he knew of these conditions.

The Court: He has given his conclusions as a result of what he saw and heard, but I cannot see the materiality. Shorten it as short as you can. These things are purely outside of what the lay observer would know, and whether it would affect his opinion or not, ask him. I think that the questions are not material, but I do not want to shut you off with them. I am suggesting that you shorten them and come direct to the point.

By Mr. Gordon.

Q Would your opinion be different as to his sanity if you were told that in the early morning of February 23, 1929, Mr. Campbell had been involved in the shooting of a woman, that he had bigamously married, that thereafter her body had been left in the open highway, drenched with gasoline, and burned?

Mr. David: I object to the question as clearly incompetent, irrelevant and immaterial and not proper cross examination.

The Court: Proceed.

Mr. David: May I note an exception?

The Court: Yes.

(The stenographer read the last question as follows:)

"Question: Would your opinion be different as to his sanity if you were told that

in the early morning of February 23, 1929, Mr. Campbell had been involved in the shooting of a woman, that he had bigamously married, that thereafter her body had been left in the open highway, drenched with gasoline, and burned''?

A I would be.

By the Court.

Q What difference would it make to you if you had known what he had done? A I would not think a normal man could have done that.

Q Do you think that a normal man could not kill somebody else? A Yes.

Q Is that the only reason you would have for changing your mind? Do you think that every murder is committed by an insane person? A No, not necessarily, but what I mean is that as far as my conversation and his conversation with me goes, he was normal, and that's all I can say.

Q I expect that is all you could say, naturally. A Yes, sir.

The Court: Very well.

Mr. David: That is all.

EVELYN L. RATNER, a witness produced on behalf of the State, in rebuttal, being duly sworn according to law, on her oath saith:

Direct examination by Mr. David.

Q Where do you live, Miss Ratner? A Elizabeth.

Q What is your business? A Real estate.

Q You are connected with whom? A Myself.

Q Do you know the defendant Campbell? A I have met him.

Q When and where did you meet him? A At my office.

Q When? A Some time the end of February, the first time; the middle of February, the latter half.

Q Of what year? A This year, 1929.

Q What conversation or business did you have with him at that time? A He—before I saw him, he called me on the 'phone and asked me if I had a four-room furnished apartment, and I said I had, and he said he would come to see it. Several mornings later he came and I took him to see this furnished apartment, this apartment on Madison avenue, and he liked it very, very much. He said he was sure it was just exactly what Mrs. Campbell would want. I asked him if he would mind going up to Mr. Bender's office—Mr. Bender owned the apartment house—to sign the lease, and he went up with me and he signed the lease, and when I asked him for the check— we never rent an apartment without a month's rent in advance—he said he was sorry but he only had fifteen dollars with him, because he really did not think he would see just what he wanted the first time without Mrs. Campbell with him, and so he took many letters out of his pocket and told Mr. Bender he would be glad to give them to him as letters of recommendation, and Mr. Bender took the fifteen dollars, and he was to leave the other eighty-five dollars at my office or Mr. Bender's office. Then he told me he was going to Philadelphia on business and he would be gone several

days, and he would have the rest of the money when he came back. At the time I suggested that he take the apartment unfurnished, because the rent would be cheaper, but he said that because of his wife's ill health and poor eye-sight, he thought it was too much of a strain for her to do the packing, and that is the reason he would rather pay the fifteen dollars difference and have the apartment furnished. Several days later he called me and said that he had taken my advice inasmuch as he had to pack the children's toys and the washing mangle, or something like that, that he might just as well take his own furniture, and if I could have a new lease written up, he would be glad to stop in my office and sign a new lease and bring the balance of the rent. He came on—I think it was Saturday night with Mrs. Campbell.

Q How long after his first visit? A Well, within a week. About a week or perhaps a day or two less.

Q And can you give me about that date? A It was the last Saturday in February.

By the Court.

Q What was the last Saturday in February? A That he came to my office on Saturday night with Mrs. Campbell.

The Court: Can it be noted from the calendar the date of that Saturday night?

Mr. Gordon: Has your Honor the date there?

The Court: February 23 is the last Saturday night in February.

A No. Then it was the following Saturday. It was right around the first of March.

The Court: Then the following Saturday was the second of March.

A I think that is when it must have been.

By the Court.

Q When did he first come, do you know? A It was between the fifteenth of February and the day that he brought the rest of the money.

Q Do you know when he brought the rest of the money? Was it on this last mentioned date you have been speaking of that he brought the rest of the money? A Yes.

Q Sometime between the fifteenth of February and then? A Around the first of March.

Q What way have you of fixing the fifteenth of February? A Well, the reason I know, he wanted it from the first, he wanted to rent the apartment from the first of March, from the following first.

Q And his first conversation with you was for renting it furnished? A Renting it furnished at one hundred dollars from the first day of March.

By Mr. David.

Q On this Saturday night that he called with Mrs. Campbell will you tell us what the conversation was? A He merely asked for the old lease, at one hundred dollars, which I destroyed in his presence, and gave him the new lease at $85, with his own furniture, at $85, and he signed the lease, and he kept one copy and returned the other copy to me.

Q Did you see him at any time after that? A He called me on the 'phone once after that.

Q And do you know when he moved into the apartment that he rented? A That I do not know. He called me to tell me he had been over to the apartment and it had not been cleaned up and put in the condition that had been promised to him, and he certainly would not take his wife into such a dirty apartment. Whereupon I got in touch with Mr. Bender to have the apartment fixed up for him. That was the last time I saw him.

Q From your observation of him and your conversation and business transactions with him, what is your opinion as to whether, at those times, he was sane or insane?

Mr. Gordon: Objected to upon the grounds previously urged as to the other witnesses.

The Court: Answer the question.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

A I think he was absolutely sane. In fact, a perfectly model husband. All his transactions he considered only his wife. He wanted a ground floor apartment so the baby could play in the park, and his wife would not have to go up and down the steps. And he wanted light, sunny rooms, just so she should have the sunlight, because of her poor health.

Mr. David: Cross examine.

Evelyn L. Ratner, in rebuttal, cross.

Cross examination by Mr. Gordon.

Q Have you got a record of the first payment you received from Mr. Campbell? A Mr. Bender has the check. He would have the record of it.

Q Didn't you keep any? A Did I keep any? No.

Q Where were you on Washington's Birthday of last year? A Of this year?

Q Of this year, yes. Pardon me. A I don't recall.

Q Where were you the day before Washington's Birthday? A Well, I worked every day during the month of February, so I must have been in the neighborhood of Elizabeth.

Q You don't know where you were Washington's Birthday this year? A No special place that I can recall.

Q Now, are you sure Mr. Campbell didn't see you the day after Washington's Birthday? A It may have been. If I had had more time when I had to be called here I would have looked that up, but I didn't have time.

Q Are you sure he didn't see you the day before Washington's Birthday? A He might have. I don't know.

Q He may have seen you the day before Washington's Birthday? A I saw him once—I saw him twice altogether; the day he came to look at the apartment and the day he came to sign the new lease.

Q And because of his solicitude for his wife and children you have come to the conclusion that he is a perfectly sane man? A Absolutely.

Q Would your opinion be different if you had known at that time that he had been involved in a shooting on the early morning of February 23,

1929, of a woman whom he had bigamistly married, and who, after such shooting had been left on the highway drenched with gasoline and burned?

Mr. David: I object to that question on the ground that it is not proper cross examination and is incompetent and irrelevant. And for the further objection that it is attempting to put the witness in the place of the jury.

The Court: How can you justify questions of that kind? This witness is not giving her opinion except on matters that were brought to her attention. How can she say, or how can anyone say, what would have happened had she known at that time things which certainly, at one of these visits, could not have been known, if she is correct in her understand as to the date, about the fifteenth of February, when the first visit was made, or shortly after that, none of these things had happened. I do not want to forestall you from any proper cross examination but it seems to me that is a far call.

Mr. Gordon: May I note an exception to your Honor's ruling?

The Court: I will overrule the question.

Mr. Gordon: Exception.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. David: That is all.

Leo J. Ward, in sur-rebuttal, direct.

JOSEPH L. HOLMES, recalled.

Mr. David: I renew my offer of this witness as a qualified expert.

The Court: I have forgotten what the question was. But it was in effect, as I recall it, his opinion as to the defendant's sanity, was it not?

Mr. David: Yes, sir.

The Court: Am I safe in assuming, without looking it up, that that was the question?

Mr. David: Yes, your Honor.

The Court: It is the opinion of the Court the witness has not been qualified as an expert to testify on that subject in accordance with the rules and practices of this State. Therefore I shall overrule the question.

Mr. David: That is all, doctor.

STATE RESTS.

DEFENDANT'S SUR-REBUTTAL TESTIMONY.

LEO J. WARD, recalled.

Direct examination by Mr. Gordon.

Q Dr. Ward, on April 17th, when you saw Mr. Campbell, do you know whether he had tremors? A Mr. Campbell was shaking so violently—

The Court: Well, now, Mr. Prosecutor, have you anything to say about this question?

Mr. David: I object to the question as not sur-rebuttal.

The Court: How is it, Mr. Gordon?

Mr. Gordon: Dr. Stein testified when he examined the man he said the man was normal and had no tremors.

Mr. David: This question is directed to an examination on April 17th. The testimony of Dr. Stein had reference to an examination on April 15th.

The Court: Oh, well, if it is directed to that, I will admit the question.

Mr. Gordon: That is the only question I am going to ask.

A In taking X-ray pictures it is necessary—

Mr. David: I object.

The Court: The question is did he or did he not. You may answer that yes or no.

A Yes.

Mr. Gordon: That is all.

Mr. David: That is all.

The Court: You have finished?

Mr. Gordon: Yes, your Honor.

The Court: And the State has finished?

Mr. David: Yes, your Honor.

The Court: The case is then closed. Have you all your exhibits marked?

Mr. David: I will ask your Honor to open the case. I have two exhibits that I think were only marked for identification and I would like to have marked in evidence. I offer in evidence Exhibit S. 34 for identification and S. 35 for identification.

Mr. Gordon: That is objected to upon the ground that the exhibit was shown to the witness and he denied any recollection with reference to the exhibit. And then counsel for the State read to him the contents of the exhibit, and there was an admission as to certain parts of the exhibit, but no independent recollection as to the sending of the exhibit.

Mr. David: Counsel does not recall the testimony. The witness identified his signature and said he filled that paper out.

Mr. Gordon: I will withdraw the objection and consent they both go in evidence.

The Court: Let them be marked.

(Paper heretofore marked S. 34 for identification entered in evidence and marked Exhibit S. 34.)

Mr. David: I now offer S. 35 for identification.

(Paper heretofore marked S. 35 for identification entered in evidence and marked Exhibit S. 35.)

The Court: Gentlemen, how long do you want to sum up?

Mr. Gordon: This is a three-day, capital case, and I would not like to have a feeling that I was going to be limited, although I will try to confine myself to a reasonable time.

The Court: My purpose in asking is to know what to do with reference to the jury, as to arrangements for the jury and the like. Can you give me an approximate idea?

Mr. Gordon: Somewhere between an hour and a half and two hours.

The Court: Will you need as long as that?

Mr. Gordon: I think so.

The Court: How much do you want, Mr. Prosecutor?

Mr. David: Half of that time, your Honor, not over half of that time.

The Court: That means an hour?

Mr. David: Three-quarters of an hour to an hour. Not more than that.

The Court: I do not think you will need as long as two hours. If you have an hour and a half you ought to be able to do in that time.

The Court: That means that the case will not close tonight, unless the jury wants to sit late, and I do not assume that is so. I will take the wishes of the jury. It seems to me the better plan is to go on to the usual hour, possibly a few minutes later, but continue over until tomorrow and finish then. I think that is what we had better do, unless you gentlemen have some better suggestions.

(Mr. Gordon sums up the case for the defendant.)

(Mr. David sums up the case for the State.)

Mr. Gordon: I object to that statement that nobody in the world but this man knows what that tablet was. I submit it is an unfair comment upon the evidence in this case.

The Court: I do not know that it was in evidence that he knew what it was.

Mr. David: No. I say what that tablet was. I will withdraw the remark so that nothing I say in this case shall not be warranted by the evidence.

(Mr. David continues summing up the case for the State.)

Mr. Gordon: I object to that statement. The only evidence in this case with reference to any tablets on that night is that Mrs. Mowrey had some tablets in a handkerchief, as the defendant thought she had, or he thought she took it out of her pocketbook, and that she thereafter asked for a drink of water, and I submit that these remarks of the Prosecutor are unfair and prejudicial to the defendant's rights and I ask for the withdrawal of a juror.

Mr. David: I said to the jury that it is a fair inference from the evidence in this case that the defendant gave to Mrs. Mowrey the tablet that she took.

The Court: That is an argument. What objection have you to that?

Mr. Gordon: The evidence in the case is distinct that Mrs. Mowrey produced some tablets in a handkerchief.

The Court: The jury hears that, but the jury may not believe it.

Mr. Gordon: There is no evidence in the case.

The Court: Counsel has a right to argue upon the testimony that is in. He has a right to draw the inference from it, which his mind produces. Proceed.

Mr. Gordon: May I note an exception?

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(Mr. David continues summing up the case for the State.)

FOURTH DAY.

Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. Clarence E. Case, Supreme Court Justice, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the thirteenth day of June, A. D. 1929, at 9:30 A. M.

Appearances:

Abe J. David, Esq., Prosecutor of the Pleas; John B. Walsh, Esq., Assistant Prosecutor of the Pleas, attorneys for the State.

Francis A. Gordon, Esq., attorney for the defendant.

CHARGE TO JURY.

Charge to the jury by Honorable Clarence E. Case, Justice of the Supreme Court, as follows:

Gentlemen of the Jury: A terrible thing happened in this county on the twenty-third day of last February. The body of a woman was found ablaze, along a public highway, much as though it had been a heap of rubbish. Subsequent examination disclosed that the woman had been shot through the head, the bullet entering the crown of the skull, passing down through the neck and becoming imbedded in the lower portion of the body, where it was found and whence

it was removed. Later by some weeks this defendant was arrested charged with the crime of murder, and was indicted for that serious offense, and he is here before you on trial for the crime of murder, committed on the twenty-third day of February, 1929, upon one Mildred Mowrey, known also as Mildred Mowrey Campbell; and it is for you to determine the guilt or the innocence of this defendant on this charge, and if guilt, then the degree of guilt, under the rules of law as I shall pronounce them to you.

He has been well defended, ably defended; the State has well and ably presented its case. The facts are now in your hands for your finding. Sympathy should play no part, gentlemen, in this case, or in any case where crime is charged. Campbell stands face to face with the State of New Jersey, which means with organized society under the protection of which he has lived, you and I have lived, and under the protection of which we hope our children will live, and which cannot exist unless law and order are preserved. If he is innocent he should be found innocent; if he is guilty he should be found guilty, and the degree according to the facts. It is the facts of the case, and the law pertinent thereto, that must control. What the sad effect upon others may be is not for you to consider. I suppose that in almost every case there are those outside connections which are more or less tragic; but it is the facts of the case which control, the evidence that is before you.

At the beginning I may say that I have been given some requests to charge and I will charge them in manner following: The defendant has asked that these charges be made:

Charge to Jury.

"1. If you reach the conclusion that the defendant is guilty of a criminal homicide, then the presumption immediately arises that such crime, of which you find him so guilty, is murder in the second degree."

I so charge you.

"2. In order for the defendant to be convicted of murder in the first degree, the State must prove beyond a reasonable doubt that the killing was perpetrated by the means of lying in wait or by some other kind of wilful, deliberate, or premeditated killing."

I so charge you.

"3. The burden of proof of establishing murder in the first degree beyond a reasonable doubt is upon the State and that burden never shifts."

I so charge you.

"4. A reasonable doubt as to whether or not the crime of murder in the first degree has been established by the State may arise in your minds after a full consideration of all the evidence in the case, either out of the evidence presented or from the lack or want of evidence."

I so charge.

"5. A reasonable doubt as to whether or not defendant is guilty of murder in the first degree may be defined as that doubt which makes you hesitate as to the correctness of the conclusion which you reach. If, under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourselves: 'I doubt if he is guilty of murder in the first degree,' then that is reasonable doubt; it is a

doubt which settles in your judgment and finds a resting place there."

I so charge.

"6. Murder in the first degree cannot be predicated on the mere existence of an intent to kill at the time of committing the crime."

I so charge.

"7. 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 required time —not a long time—not necessarily an hour or a minute, 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."

I so charge.

"11. The defendant is not obliged to convince the jury that he was unable to reason or to deliberate, but the rule is, that all that the defendant is required to do to satisfy the jury is, by a preponderance of the evidence, that he was unable to reason or deliberate or premeditate."

I so charge you.

"12. If you find that the evidence has convinced you beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you may, as a part of your verdict, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment can be imposed."

I so charge.

Charge to Jury.

Upon all questions of law the jury must take what I say and they must apply the facts they find to the rules which I lay down, because if I commit an error in laying down these rules, the defendant has a remedy. He can take this case up by writ of error to the Court of Errors and Appeals and have it reviewed. But if you make a mistake there is no way to review that. So you must, in the administration of justice, accept the rules of law as I give them to you, but as to all questions of fact you are in control. So, it does not make any difference what I may say to you on the facts, in the hope of helping you to a proper conclusion. If I make a mistake in the facts, if I omit any facts, or if I should add something that the evidence does not warrant, you must disregard all that as to the facts. If my recollection or statement of the facts does not coincide with yours, you must disregard what I say as to the facts. You must find your verdict of guilt or innocence upon the facts as you find them, and not as I state them, although I hope to state them correctly.

As to the crime, our statute provides that murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, or premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape or sodomy, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict whether it be murder in the first degree or murder in the second degree. Therefore, if you find this de-

fendant guilty of murder, you will need to determine whether it is murder in the first degree, or murder in the second degree, and you will need to state that finding in your verdict.

If a human life be taken under circumstances which justify an inference that the act which occasioned the killing was perpetrated with intent to inflict a serious bodily injury, the probable consequence of which would be bloodshed, and no justifiable excuse for the act appears, the person proven to have perpetrated the act is guilty of murder in the second degree. If, however, the killing was perpetrated by means of poison, or by lying in wait, or by any other wilful, deliberate, and premeditated act, then the offense would be murder in the first degree. Before you will be justified in finding a defendant guilty of murder in the first degree, the State must satisfy you beyond a reasonable doubt that before slaying his victim, the accused had formed in his mind a specific intent to take life, that he premeditated it and that he then, after considering whether he would carry out such premeditated intent, finally determined to and did wilfully and intentionally execute it.

No particular time need elapse between the formation of the design to take life and its wilful and deliberate execution. All that is required is that there be sufficient time to fully and clearly conceive the design to kill and then to consider and deliberate the question whether to kill or not, and, thereafter, to determine to execute the previously formed intent. If there was a sufficient time for the accused to consider and decide each of these requirements, it is enough. If the evidence does not convince you that the act which resulted in the killing was wilful and premeditated, with the premeditation and deliberation

necessary to constitute murder of the first degree, but does satisfy you that the defendant intended to do a serious bodily injury to the deceased, the probable consequence of which would be bloodshed, but in carrying out his intention acted without deliberation and premeditation, then the grade would not rise above that of second degree.

In this connection I should also call your attention to the following: If you should determine that the accused is guilty of murder in the first degree, you are authorized by an act of the Legislature, if you so agree, upon and after consideration of all of the evidence, to recommend by your verdict, and as a part thereof, that the punishment be imprisonment at hard labor for life, in which case no greater punishment can be inflicted. Without such recommendation the punishment would be death, if you find the accused guilty of murder in the first degree. So, if you find this defendant guilty of murder of the first degree, you thus have the authority to add to that a recommendation of imprisonment for life.

It is, at all times, to be remembered that the burden of proving the guilt of the accused is upon the State, and that burden is to prove guilt beyond a reasonable doubt. You must start with the presumption that the defendant is innocent of any crime, and that presumption continues until it is overthrown, and his guilt is established beyond a reasonable doubt.

So also as to the grade of the offense. If you reach the conclusion, as thus instructed, that the defendant is guilty of a criminal homicide, the presumption arises that the crime is murder of the second degree. The burden of raising the crime to first degree murder is upon the State to establish it beyond a reasonable doubt. If

you have a reasonable doubt the defendant is entitled to the benefit of that doubt.

That leads us to the question of what is reasonable doubt. A reasonable doubt does not mean that every uncertainty must be dispelled. Nor does the rule as to proving beyond a reasonable doubt refer to a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all of the evidence leaves the minds of the jurors in that condition that they cannot say they have an abiding conviction to a moral certainty of the truth of the charge.

The contention of the State is that the defendant Campbell not only killed this woman, but that he did so with that degree of wilful intent, deliberation, and premeditation which brings the case within first degree murder. I do not understand that the defense seriously denies that the deceased met her death at the hands of the defendant. This is a question of fact and you are in control of the facts. Of course, you may find, if you do so find from the evidence, that the deceased did not meet her death at the hands of the defendant, but my conception of the arguments advanced by counsel is that there is not a serious charge that Campbell did not kill the deceased. The defense is rather of a different character which goes to the degree, apparently.

Nevertheless, there has been some evidence in the case which seems to make expedient that I charge you to some degree on the question of insanity. Counsel for the defendant has said more than once quite clearly that the defense is not that of legal insanity. Insanity is not easily de-

fined. Questions put to one or two of the witnesses as to what constituted insanity, did not elicit very satisfactory answers, but, in a general way, we know, as common, ordinary citizens, what insanity is, and what it means to be out of one's mind. Now, that line shades off gradually and there has been some evidence which, while not given with the idea or with the announced purpose of raising a defense of emotional insanity, may raise some question in your minds as to its significance. For instance, Dr. Payne, one of the witnesses called by the defense, was asked some questions as to the effect of certain physical conditions upon the mind, and he testified, according to my recollection—and you will correct me if I am wrong—that he thought that all of those physical defects might have more or less influence upon the mental state of the individual, rendering the individual more and more mentally unstable, that was his expression, I think, "mentally unstable"; and continuing I think he used the expression, "more emotionally unstable"; and again, certain conditions would tend to irritate the nervous system and render the patient "more emotionally unstable and irritable"; and again, that conditions "would impair a man's emotional stability." That evidence goes more or less to a mental condition and I, therefore, feel constrained briefly to charge you on the defense of insanity. Of course, if this defendant was insane, legally insane, at the time he committed this crime, he is guiltless. That should be said to you. But I do not understand—and it is the specific statement of counsel—that the contention is made that he was legally insane. The insanity, to be effective as a defense, must be such as to render the defendant incapable of committing crime.

Whatever the insanity of the person may amount to, if he is conscious at the time of committing an atrocious act, and has reason enough to know that he ought not to do it, he is guilty in the eye of the law. If the evidence makes it clear to your minds that the prisoner, at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not.

The law does not recognize a form of insanity in which the faculties are so affected that the person suffering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them and is urged by some mysterious pressure which he cannot resist, to their commission. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty in respect to it, has no place in the law. The law regards insanity as a disease of the mind, implying fixedness and continuance of mental condition. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act and ends when it is consummated. The law also utterly repudiates, in criminal prosecutions, the defense of insanity when based on a defective or perverted moral sense, generally known as moral insanity. A person who steals the property of another, knowing the nature of the act he is doing, whose moral sense is so perverted that he cannot restrain his capacity to steal,

is sometimes called a kleptomaniac, but in law he is regarded as a thief and is punishable as such.

As to the burden of proving the defense of insanity and to the extent that it may be raised: The law presumes that every man is sane until the contrary be proved and that therefore, if when the accused sets up the defense of insanity, the burden of proof is upon him, and to make effectual such a defense the proof of the prisoner's insanity must be satisfactory. The accused must overcome the legal presumption of sanity by a clear preponderance of proof. The law presumes or assumes that at the time of the committing of the act for which he is tried, he was sane, and the State is, therefore, not called upon to prove that he was sane. If he sets up in his defense the plea of insanity, it is incumbent upon him to establish it, and if he fails to do so, the presumption or assumption of sanity still holds, for it has not been overcome or shown to be false. While, for obvious reasons, the defense of insanity is not disfavored by the law, yet, in view of its peculiar character, and in order that it may not serve as a screen for guilt, it is regarded with jealousy, and in the interest of public justice, and in accordance with the sound dictates of a wise and necessary public policy, subject to a close and careful scrutiny. The defense must be proved to the satisfaction of the jury, and may be established by the preponderance of proof. In other words, it must be sustained by the evidence.

I understand the defense to be more seriously directed toward the proposition that Campbell, while not insane at the time the alleged crime was committed, nevertheless was suffering such

a breaking down of his physical and mental stability that he was unable to deliberate or to premeditate in the manner required by the laws of the state, incident to first degree murder. For instance, there is other testimony, much of it, but as an instance of the character of testimony to which I have reference, I may refer to Dr. Payne's testimony again. My recollection is that at one place he said that the defendant, under the conditions enumerated in rather a long hypothetical question which was stated by defendant's counsel, and which you doubtless will recall, might be able to deliberate and premeditate, but the witness thought that his ability to deliberate and premeditate would certainly be very, very much impaired. It is to that general phase of the case that I shall address myself for a few moments. If the accused was sane and committed the homicide, but the jury finds from the evidence that the mental faculties of the accused were so prostrated at the time of the homicide as to render him incapable of forming the specific and wilful intent to kill which is an essential ingredient of murder in the first degree, and to deliberate and premeditate, which are also essential ingredients, the accused would not, of course, be guilty of murder of the first degree; nevertheless, he would not be entitled on that account to an acquittal, but his offense would be murder in the second degree. You should, however, carefully distinguish between, on the one hand, a wavering condition of the mind, which is not incapable of forming an intent, or of deliberating, or of premeditating, but determines an act on slight provocation, and on the other hand, such prostration of the faculties as put the accused in a state wherein he is incapable of performing the essential functions which I have mentioned.

In determining the extent of the defendant's mental prostration, if such there was, you are entitled to recall all the testimony. For instance, there is the testimony regarding the man's physical condition, various points of poisoning, his habits as to drugs, or otherwise, the strain that he was under. On the other hand, you are entitled to recall the testimony as to the way in which the deceased was killed; the effort to consume her clothing and body by flame; the burning of her belongings; the secreting of such unburnable articles as the watch and the metal satchel top, and to consider whether a mind incapable of forming an intent and a deliberating and premeditating thereon, would be capable of directing those actions. And conversely, whether a mind capable of directing those activities, was not also capable of the intent, the deliberation and the premeditation essential to the crime of first degree murder.

I have been using the words "wilful, wilfully, deliberate, premeditate, intent," and you may be helped somewhat by an effort on my part to expound the law to some extent regarding these expressions. I am using the language of a court charge made many years ago, and which has been approved by the highest court in the state: "In order to constitute murder in the first degree and to justify a conviction of that crime, it must appear by evidence beyond a reasonable doubt, not only that there was an unlawful killing, but that the defendant intended to take the life of the deceased and that the intent was carried into execution wilfully, deliberately, and with premeditation. The term "wilfully" as here used means the same as intentionally, the inquiry being, "Did the defendant intend to take the life

of the deceased?'' The next inquiry is, ''Was the killing done deliberately and with premeditation?'' By ''deliberately'' and ''premeditation,'' however, the law does not mean that any particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premeditation should continue for a day, or for an hour, or for a minute; it is enough that the design to kill be fully and clearly conceived in the mind and purposely and deliberately executed.''

I do not wish to go at length into the testimony, but you have in mind better than I have, doubtless, the testimony of Campbell himself, as to what he did, and you may make your inferences from his testimony as to what he did at, just prior to, and just subsequent to the alleged time of the homicide, as to whether or not he was in a frame of mind that enabled him to form intents and purposes, and whether he did form intents and purposes, and whether he deliberated on them and premeditated on them and carried them out. According to my recollection part of his testimony relating to his going to meet this woman just prior to the fatality was that she had come to New York, without his knowing it, that is to say, without his knowing it in advance, without his knowing it until he got a letter from her, and then he tried to get in touch with her, and my recollection is that he said that the reason why he went to see her was because he thought she had a right to see him. Of course, this was prior to the time that the tragedy occurred, but the mind, and life, and events are continuous, and you are entitled to get what you can from a sequence of the man's actions, physically and mentally. It is my recollection that he said, ''I

wanted her to know if it was the money she was thinking about that I was going to give her the money back again." What do you think about that as an indication of normal mental process at that time? You must give your construction to these matters. I think he said, "I made up my mind that she wasn't the kind of person that could help me in the way I wanted help, that she wasn't capable, that she didn't have any education, or the kind of help that I wanted in a business way." If I am not recalling the testimony properly, you will, but what bearing, to your minds, has this as to his mental condition and his ability to reason and to think and to form intents and plans to execute and carry out purposes at that time? I think he added in his testimony that he thought that he must pay her what he got from her and get rid of her in that way, and see if the rest wouldn't work itself out all right in the end. Well, was that reasoning, was that intent? Did he proceed to carry out his purposes? If he had the power then, when did that power cease? Did he have a conception of right and wrong? Does he now have a conception of right and wrong? Did he, before the homicide, have a conception of right and wrong? My recollection is that his counsel asked him a question something like this? "Now, in using the term 'Get rid of her,' did you ever contemplate in your mind an intent to kill her," and my recollection of the answer is that he said, "Oh, my God, I never thought of killing anybody in my life." Now, does that exclamation, does that form of language, do those words carry to your mind anything as to whether back of it lay a conception on his part as to whether it was or was not right to kill? So within the evidence you may search for the reasons pro

and con for believing or disbelieving that the man had the power to form a design, to deliberate on it, premeditate on it, and to carry it out.

Just a few words from another case in our books, using the language of our highest court: "This extreme penalty,"—referring to first degree murder and its penalty—"the Legislature has declared in unmistakable language shall not be visited upon anyone who has committed the crime of murder, unless it be found by a jury that he contemplated its commission (*i. e.*, premeditated it,) then determined upon its commission (*i. e.*, intended it), and then weighed such intent before carrying it into effect (*i. e.*, deliberated)." So, gentlemen, the definition as given in this decision is that to premeditate means to contemplate—these are important words and I am therefore dwelling upon them—to premeditate means to contemplate, to intend means to determine, to deliberate means to weigh the intent before carrying it into effect.

You have the evidence, and you have the law, and you will go to your room and before God on your oath you will find a verdict that is right.

Mr. Gordon: May I, before I note exceptions to your Honor's charge, without any attempt to curry favor with the Court, or to consider myself presumptuous, or to be considered to be presumptuous, to congratulate your Honor on the fairness and thoroughness with which the charge was delivered. However, I feel that in the first place I should note a general exception, which I do now note.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Defendant's Exceptions to Charge.

Mr. Gordon: I desire to note a specific exception to the omission and refusal of the Court to charge request Number 8 in the language submitted by the defendant.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note a specific exception to the refusal to charge request Number 9.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note a specific exception to the refusal to charge request Number 10.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note a specific exception to the refusal to charge request Number 13.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note a specific exception to the refusal to charge request Number 14.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note a specific exception to the refusal to charge request Number 15.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Defendant's Exceptions to Charge.

Mr. Gordon: I also desire to note an exception to the specific language of the Court wherein the Court mentions that the evidence goes to a mental condition and therefore the Court feels constrained to charge on the defense of insanity.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note an exception to the specific language in the charge where the Court states "insanity must be such to be effective as a defense, as to render defendant incapable of committing the crime," and the language immediately following that language.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note also an exception to the specific language in the charge where the Court says, "The law does not recognize a form of insanity," and the immediate language succeeding those words.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note an exception to the language in the charge wherein the Court says the law regards insanity as a disease of the mind, and the language immediately succeeding that.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Defendant's Exceptions to Charge.

Mr. Gordon: I desire to note an exception to the language in the charge of the Court wherein the Court says: "The burden of proving the defense of insanity is upon the defendant."

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note an exception to the specific language wherein the Court makes this remark: "Well, what do you think of that process at that time?"

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: I desire to note an exception to the specific language in the charge of the Court wherein the Court says: "What bearing do you think as to mental capacity to carry out the purposes at that time," it is not the exact language, but sufficient to identify the wording.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

Mr. Gordon: Other than that I have nothing to say.

Mr. Gordon: I know you have substantially charged some of those requests in other words.

The Court: Your eighth request to charge, for instance, comes very close to emotional insanity.

The Court: In your ninth request you limit the consideration to the evidence submitted by the defendant, while the jury would—

Mr. Gordon: Your Honor is right, and I will withdraw the exception to the refusal to charge the ninth request.

The Court: On the tenth charge you include in your request the words "what the evidence is offered to show." Of course the Court had no means of putting itself in the position of counsel.

The Court: And in the thirteenth you assume that it is an obligation upon the jury to consider the question of life imprisonment, whereas I do not so read the statute.

The Court: As to the fourteenth you include the assumption that there was a continuation of some drugs and other like effect, while it is for the jury to decide whether that is the fact or not the fact. The facts are subject to dispute.

The Court: The same may be said of the fifteenth. I simply indicate some of those observations on my part to indicate to you why I did not charge them.

Mr. Gordon: I appreciate that very much.

DEFENDANT'S REQUESTS TO CHARGE.

(1)

"If you reach the conclusion that the defendant is guilty of a criminal homicide, then the presumption immediately arises that such crime, of which you find him so guilty, is murder in the second degree.

"Brown *v.* State, 33 Vroom, 62 N. J. L., 666."

Defendant's Requests to Charge.

(2)

"In order for the defendant to be convicted of murder in the first degree, the State must prove beyond a reasonable doubt that the killing was perpetrated by the means of lying in wait or by any other kind of wilful, deliberate or premeditated killing.

"Section 107, Crimes Act as amended by the laws of 1917."

(3)

"The burden of proof of establishing murder in the first degree beyond a reasonable doubt is upon the State and that burden never shifts."

(4)

"A reasonable doubt as to whether or not the crime of murder in the first degree has been established by the State may arise in your minds after a full consideration of all the evidence in the case, either out of the evidence presented or from the lack or want of evidence.

"State *v.* Andrew, 77 N. J. L., 108 at page 110."

(5)

"A reasonable doubt as to whether or not defendant is guilty of murder in the first degree may be defined as that doubt which makes you hesitate as to the correctness of the conclusion which you reach. If, under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourselves: 'I doubt if he is guilty of murder in the first degree,' then that is reasonable doubt; it is a doubt which settles in your judgment and finds a resting place there.

State *v.* Brown, 62 N. J. L., 666 at page 715."

(6)

"Murder in the first degree cannot be predicated on the mere existence of an intent to kill at the time of committing the crime.

"State *v.* Mangano, 77 N. J. L., 544 at page 546."

(7)

"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 required time—not a long time—not necessarily an hour or a minute, 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.

"State *v.* Mangano, 77 N. J. L., 544 at page 547."

(8)

"Deliberation and premeditation imply a capacity at the time of the crime of a homicidal act to think and reflect, sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act.

"13 Ruling Case Law, page 767.

See also State *v.* Deliso, 75 N. J. L., 808 at pages 819 and 820:

'For it cannot have escaped observation that while the statute, in its enumeration of the three mental states essential to murder in the first degree, places the word "wilful" before "deliberate" and "premeditated," these mental states normally suceed each other in the inverse order, premeditation,

both as a mental process and by force of its prefix, necessarily preceding that weighing of the mental content that is implied by the figurative term "deliberate," both of which must precede *the adoption by the will of the matter thus previously meditated upon and weighed.*'"

(9)

"If, from the evidence submitted by the defendant, it appears that the defendant's mental state at the time of the commission of the homicidal act was such that he was incapable of deliberation and premeditation, then the crime of murder in the first degree has not been committed.

"State *v.* James, 96 N. J. L., 132 at page 152."

(10)

"In considering the mental state of the defendant, for the purpose of determining whether or not he was capable of deliberation and premeditation, you should consider, in connection with all the testimony submitted, the circumstances and facts presented by the defendant and offered to establish that the state and condition of mind of the defendant was affected, by reason of various causes, and such evidence in itself is not an excuse or an extenuation of the crime of murder, but is offered to show lack of premeditation and deliberation."

(11)

"The defendant is not obliged to convince the jury that he was unable to reason or deliberate,

but the rule is, that all that the defendant is required to do to satisfy the jury is, by a preponderance of the evidence, that he was unable to reason or deliberate, or premeditate.

"State *v.* Mangano, 77 N. J. L., 544 at page 550."

(12)

"If you find that the evidence has convinced you beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you may, as a part of your verdict, upon and after consideration of all the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment can be imposed.

"Section 108 of the Crimes Act as amended by the Laws of 1919, page 303."

(13)

"In considering the character of the punishment to be meted out to the defendant, in the event that your verdict is guilty of murder in the first degree, you should consider the facts and circumstances which have been proved in the case both on the part of the State and on the part of the defendant.

"State *v.* Carrigan, 93 N. J. L., 268 at page 270. Confirmed 94 N. J. L., page 566: It was not declared and we do not think it was intended to be suggested that the jury had no right in determining the character of the punishment to consider the facts and circumstances which had been proved in the case."

(14)

"In considering the mental state of the defendant as to whether or not he was capable of deliberation and premeditation when the crime was committed in connection with all of the other facts and circumstances in the case, you should also take into consideration the age of the defendant, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed."

(15)

"In the event the state establishes beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you have a right in considering all the facts and circumstances in this case, in connection with recommending the punishment to be imposed, to consider the facts and circumstances in connection with the defendant's age, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed."

AFTERNOON SESSION. 1:40 P. M.

(Jury returned to court room.)

The Court: I understand that the jury has come for some instructions from the Court.

The Foreman: Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name I do not recall.

The Court: I would be glad to afford you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own recollection as to what that testimony was. Is there any other instruction that you desire from the Court?

The Foreman: That is all, I believe.

Mr. Gordon: I desire to note an exception to your Honor's statement.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J. S. C.

(Jury retired from court room.)

(Jury returned to court room.)

The Court: Gentlemen of the Jury: I understand that you have sent me, and wish me to reply to this question: "What was the purpose of the Legislature in providing the alternative of life imprisonment at hard labor as penalty for first degree murder?"

According to my recollection my charge to you in this respect was as follows:

"If you should determine that the accused is guilty of murder of the first degree, you are

authorized by an act of the Legislature, if you so agree, upon and after consideration of all the evidence, to recommend by your verdict, and as a part thereof, that the punishment be imprisonment at hard labor for life, in which case no greater punishment can be inflicted. Without such recommendation the punishment would be death, if you find the accused guilty of murder of the first degree. So, if you find this defendant guilty of murder of the first degree you thus have the authority to add to that a recommendation to imprisonment for life."

That portion of my charge had its basis in the statute, with which, of course, no explanation is given as to the purpose, further than is contained within the wording of the statute itself, and I shall read you the statute: "Every person convicted of murder of the first degree, his aiders, abettors, counsellors, and procurers, shall suffer death, unless the jury shall, by their verdict, and as a part thereof, upon and after consideration of all of the evidence, recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed."

Now, I have repeated to you my charge to refresh your memory with respect to it, and I have read you the statute itself, and I think that is about as complete an answer as I can make to your inquiry.

(Jury retired from court room.)

(Jury returned to court room.)

The Officer: Gentlemen of the Jury, please answer your names as called.

(Jury called by Clerk Mr. Runyon.)

The Clerk: Gentlemen of the Jury, have you agreed upon a verdict?

Verdict.

The Jury: We have.

The Clerk: Who shall say for you? Mr. Foreman, how say you, do you find the defendant guilty or not guilty?

The Foreman: Guilty of murder in the first degree.

The Clerk: You say you find the defendant guilty of murder in the first degree and so say you all?

The Jury: We do.

Mr. Gordon: I ask that the jury be polled.

The Clerk: Each juror, as his name is called, will answer and say what he finds.

(Jury polled.)

COURT'S CERTIFICATE OF RECORD.

UNION COUNTY COURT OF OYER AND TERMINER.

STATE OF NEW JERSEY, *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL.	*On Indictment No. May Term, 1929, for Murder.*

I, CLARENCE E. CASE, Justice of the New Jersey Supreme Court, presiding as Judge of the Union County Court of Oyer and Terminer and the Judge who presided over the aforesaid cause, certify that the above-printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff-in-error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated: July 6, 1929.

CLARENCE E. CASE,
Judge.

STIPULATION.

Filed July 12, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Plaintiff-in-Error.*	*Stipulation.* *On Error at Union Oyer and Terminer.*

It is hereby stipulated and agreed that where the original of any exhibit in the above case cannot be included in the State of Case because of the peculiar nature thereof, the same may be used in the argument of the appeal herein by either side with the same force and effect as if the same were physically produced or representations thereof included in the State of Case.

Dated: July 11, 1929.

ABE J. DAVID,
Prosecutor.

FRANCIS A. GORDON,
Attorney for Plaintiff-in-Error.

ASSIGNMENTS OF ERROR.

Filed July 12, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Plaintiff-in-Error.*	*Assignments of Error.* *On Error at Union Oyer and Terminer.*

Afterwards, to wit, etc., comes the plaintiff-in-error, by Francis A. Gordon, his attorney, and assigns error in the following respects for the reversal of the judgment in this cause:

1. That the judgment aforesaid was given against the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, whereas by the law of the land judgment should have been given for him.

2. That the charge of the Court as a whole, and in each and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury.

3. That on the trial of the said plaintiff-in-error he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff-in-error in maintaining his defense upon the merits.

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff-in-error was guilty of the crime of murder in the first degree, and did not justify the verdict found against him.

5. That the evidence in the cause is of such a nature that when full and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused of the crime of murder in the first degree, and that upon said evidence the said plaintiff-in-error was not guilty of a crime greater in degree than murder in the second degree.

6. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting articles to be marked in evidence as Exhibit S. 2, contrary to the objection of the plaintiff-in-error.

7. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain statement to be introduced in evidence and marked Exhibit S. 6, contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff in error in allowing said statement in evidence in the following language: "I think the rule has been complied with."

8. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to permit Richard B. Reilly, a witness for the State, to be asked by the attorney for the plaintiff-in-error and to answer the following: "Up to that time had Mr. Campbell been searched?" and because the Court erred to the prejudice and injury of the plaintiff-in-error in overruling said question in the following language: "His testimony as given on direct examination, as I recall it, was

that he was present when the statement was taken and heard the defendant say that that was his gun and that he had had it either in his custody or in his sight since that time. Now, he did not go back of the period of the taking of the statement.

"Mr. Gordon: My purpose of that is to eliminate, if circumstances should present themselves from which it may be inferred that there might have been another gun there in that office, and even the defendant may have been mistaken.

"The Court: The prosecutor objects and I think you may properly be limited to a cross-examination of the main subject."

9. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain revolver to be admitted in evidence and marked Exhibit S. 29.

10. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain magazine and bullets to be admitted in evidence and marked as part of Exhibit S. 29.

11. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness produced on behalf of the State in rebuttal, to answer a question of the Prosecutor of the Pleas which is as follows: "What conclusion did you come to and what is your opinion, doctor, as to whether or not Campbell was sane on the night of February 22nd and the early morning of February 23rd?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "The Court:

Mr. Gordon, you do not contend that the defendant was suffering from any disease of the mind?

"Mr. Gordon: No, sir, not within the terms of legal insanity as it has been laid down by the cases in this State, in the case of the State versus Spencer, the State versus Grave, the State versus Maccom, and the State versus Noel, which require as a test to distinguish between right and wrong the proposition of legal insanity.

"The Court: Now you are modifying your answer, and your attitude has a bearing upon the ruling of the Court. Are you prepared to state for the purposes of the record and for the consideration of the jury that the defendant was mentally sound at the time of the commission of this crime?

"Mr. Gordon: I cannot say that. That is a question for this jury to determine.

"The Court: Then this is a question for the jury to determine.

"Mr. Gordon: May I note an exception?

"The Court: Your ground being, as I understand it, that insanity is not an issue?

"Mr. Gordon: Yes, sir.

"The Court: You may note an exception."

12. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "What conclusion did you come to as to whether on the night of February 22nd and the early morning of February 23rd Campbell could distinguish between right and wrong?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of

the plaintiff-in-error in allowing said question in the following language: "Objection overruled."

13. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "As a result of your examination, doctor, of Campbell in the Union County Jail on April 15 last and the statement made to you at that time by him among other things that he shot this woman in the head, will you tell me whether in your opinion at that time when he shot the woman in the head on the late night of February 22nd and early morning of February 23rd he understood the difference between right and wrong?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "By the Court: Are you able to form such an opinion, doctor?

"A I am.

"The Court: The question will be admitted."

14. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Emil Stein, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "Doctor, as a result of your examination that you made on April 15th of Campbell and your questions and his answers, did you come to a conclusion whether or not at that time he was sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said

question in the following language: "By the Court: Q You have given us your questions and his answers, have you? A Yes, I haven't given my conclusion, though.

"Q You have given your questions and his answers, and based upon what his questions and answers were as you have related them to us here, you formed an opinion as to his mental condition at that time? A I did.

"The Court: What objection can there be to that, Mr. Gordon?

"Mr. Gordon: I press the objection.

"The Court: Objection overruled."

15. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Rowland P. Blythe, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language:

"Mr. Gordon: I object to the question on the ground, first that the witness has not been qualified as a neurologist or a psychiatrist, and second, on the ground that the question calls for an answer to a matter which is not within the issue involved in this case. We are not presenting a defense of legal insanity.

"The Court: You are presuming a defense which is apparently not sharply defined, because you have at no time stated that you admit the man to have been sane mentally at the time this

murder was committed. Therefore, it must be within your mind to contend that he was not sane, I assume. Isn't that so?

"Mr. Gordon: I am not contending either way because I do not know. That is one of the issues perhaps which may be presented, but we have not offered any evidence along those lines which can be rebutted.

"The Court: You have put the man on the stand and witnesses on the stand who have been giving testimony as to the man's mental condition. One of the relevant issues, when mentality is raised, is the question whether or not a man was sane or insane; if insane, the degree of insanity; and whether or not that degree of insanity or that phase of insanity is a recognized defense.

"Mr. Gordon: This witness is being asked as to the mental state of the accused when the witness visited the accused in the County Jail and at a time subsequent to the alleged offense.

"The Court: When did Dr. Blythe testify?

"Mr. David: Yesterday morning.

"The Court: Can you find his testimony in the transcript?

"Mr. David: Yes, sir, here it is (handing book to the Court).

"The Court: Mr. Gordon, do you object to your man being proven sane? Have you any objections to your client being proven sane?

"Mr. Gordon: I object to this question, if your Honor please.

"The Court: I know, but I am asking you your reasons for the objection.

"Mr. Gordon: Because, in the first place, it is not within the issue, and in the second place, it is not rebuttal testimony.

"The Court: What was the last question?

"(The stenographer read the last question as follows:)

"'Question: Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?'

"The Court: One of your questions, Mr. Gordon, was this: 'What is the effect of poison on the system? Answer: Well, it might cause infection in other parts of the body. In his case, I should say it probably upset his stomach more than anything.

"'Question: Do you know whether or not it could permeate into the brain?

"'Answer: No, I don't.'

"You were questioning him as to whether or not this could permeate into the brain, and there is only one function in that, and that is to note the effect. I will admit the question."

16. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Evelyn L. Ratner, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "From your observation of him and your conversation and business transactions with him, what is your opinion as to whether, at those times, he was sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "Answer the question."

17. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to permit Evelyn L. Ratner, a witness for the State, produced on rebuttal, to answer a question of the attorney for the plaintiff-in-error, which was as follows: "Would your opinion be different if you had known at that time that he had been involved in a shooting on the early morning of February 23, 1929, of a woman whom he had bigam*istly* married, and who, after such shooting had been left on the highway and drenched with gasoline and burned?" in accordance with the objection of the Prosecutor of the Pleas and because the Court erred to the prejudice and injury of the plaintiff-in-error in overruling said question in the following language: "How can you justify questions of that kind? This witness is not giving her opinion except on matters that were brought to her attention. How can she say, or how can anyone say, what would have happened had she known at that time things which certainly, at one of these visits, could not have been known, if she is correct in her *understand* as to the date, about the fifteenh of February, when the first visit was made, or shortly after that, none of these things had happened. I do not want to forestall you from any proper cross-examination but it seems to me that is a far call.

"Mr. Gordon: May I note an exception to your Honor's ruling?

"The Court: I will overrule the question."

18. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct the withdrawal of a juror on motion of the attorney for defendant (plaintiff-in-error) after the Prosecutor of the Pleas had made certain prejudicial remarks in his closing summation to

the jury, included in which remarks were: "Nobody in this world knows what this tablet was." And further, the Prosecutor of the Pleas, stated: "I said to the jury that it is a fair inference from the evidence in this case that the defendant gave to Mrs. Mowrey the tablet that she took," contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct such withdrawal of a juror in the following language: "The Court: That is an argument. What objection have you to that?

"Mr. Gordon: The evidence in the case is distinct that Mrs. Mowrey produced some tablets in a handkerchief.

"The Court: The jury hears that, but the jury may not believe it.

"Mr. Gordon: There is no evidence in the case.

"The Court: Counsel has a right to argue upon the testimony that is in. He has a right to draw the inference from it, which his mind produces. Proceed."

19. That the Court charged the jury as follows: "Upon all questions of law the jury must take what I say and they must apply the facts they find to the rules which I lay down, because if I commit an error in laying down these rules, the defendant has a remedy. He can take this case up by writ of error to the Court of Errors and Appeals and have it reviewed. But if you make a mistake there is no way to review that."

20. That the Court charged the jury as follows: "No particular time need elapse between the formation of the design to take life and its wilful and deliberate execution."

Assignments of Error.

21. That the Court charged the jury as follows: "Nevertheless, there has been some evidence in the case which seems to make expedient that I charge you to some degree on the question of insanity. Counsel for the defendant has said more than once quite clearly that the defense is not that of legal insanity. Insanity is not easily defined. Questions put to one or two of the witnesses as to what constituted insanity, did not elicit very satisfactory answers, but, in a general way, we know, as common, ordinary citizens, what insanity is, and what it means to be out of one's mind. Now, that line shades off gradually and there has been some evidence which, while not given with the idea or with the announced purpose of raising a defense of emotional insanity, may raise some question in your minds as to its significance. For instance, Dr. Payne, one of the witnesses called by the defense, was asked some questions as to the effect of certain physical conditions upon the mind, and he testified, according to my recollection—and you will correct me if I am wrong—that he thought that all of those physical defects might have more or less influence upon the mental state of the individual, rendering the individual more and more mentally unstable, that was his expression, I think, 'mentally unstable'; and continuing I think he used the expression, 'more emotionally unstable,' and again, certain conditions would tend to irritate the nervous system and render the patient 'more emotionally unstable and irritable'; and again, that conditions 'would impair a man's emotional stability.' That evidence goes more or less to a mental condition and I, therefore, feel constrained briefly to charge you on the defense of insanity. Of course, if this defendant

was insane, legally insane, at the time he committed this crime, he is guiltless. That should be said to you. But I do not understand—and it is the specific statement of counsel—that the contention is made that he was legally insane. The insanity, to be effective as a defense, must be such as to render the defendant incapable of committing crime. Whatever the insanity of the person may amount to, if he is conscious at the time of committing an atrocious act, and has reason enough to know that he ought not to do it, he is guilty in the eye of the law. If the evidence makes it clear to your minds that the prisoner, at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not.

"The law does not recognize a form of insanity in which the faculties are so affected that the person suffering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them and is urged by some mysterious pressure which he cannot resist, to their commission. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty in respect to it, has no place in the law. The law regards insanity as a disease of the mind, implying fixedness and continuance of mental condition. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act and ends when it is consummated. The law also ut-

terly repudiates, in criminal prosecutions, the defense of insanity when based on a defective or perverted moral sense, generally known as moral insanity. A person who steals the property of another, knowing the nature of the act he is doing, whose moral sense is so perverted that he cannot restrain his capacity to steal, is sometimes called a kleptomaniac, but in law he is regarded as a thief and is punishable as such.

"As to the burden of proving the defense of insanity and to the extent that it may be raised: The law presumes that every man is sane until the contrary be proved and that therefore, if when the accused sets up the defense of insanity, the burden of proof is upon him, and to make effectual such a defense the proof of the prisoner's insanity must be satisfactory. The accused must overcome the legal presumption of sanity by a clear preponderance of proof. The law presumes or assumes that at the time of the committing of the act for which he is tried, he was sane, and the State is, therefore, not called upon to prove that he was sane. If he sets up in his defense the plea of insanity, it is incumbent upon him to establish it, and if he fails to do so, the presumption or assumption of sanity still holds, for it has not been overcome or shown to be false. While, for obvious reasons, the defense of insanity is not disfavored by the law, yet, in view of its peculiar character, and in order that it may not serve as a screen for guilt, it is regarded with jealousy, and in the interest of public justice, and in accordance with the sound dictates of a wise and necessary public policy, subject to a close and careful scrutiny. The defense must be proved to the satisfaction of the jury, and may be established by the preponderance of

proof. In other words, it must be sustained by the evidence."

22. That the Court charged the jury as follows: "You should, however, carefully distinguish between, on the one hand, a wavering condition of the mind, which is not incapable of forming an intent, or of deliberating, or of premeditating, but determines an act on slight provocation, and on the other hand, such prostration of the faculties as put the accused in a state wherein he is incapable of performing the essential functions which I have mentioned."

23. That the Court charged the jury as follows: "On the other hand, you are entitled to recall the testimony as to the way in which the deceased was killed; the effort to consume her clothing and body by flame; the burning of her belongings; the secreting of such unburnable articles as the watch and the metal satchel top, and to consider whether a mind incapable of forming an intent and a deliberating and premeditating thereon, would be capable of directing those actions. And conversely, whether a mind capable of directing those activities, was not also capable of the intent, the deliberation and the premeditation essential to the crime of first degree murder."

24. That the Court charged the jury as follows: "It is my recollection that he said, 'I wanted her to know if it was the money she was thinking about that I was going to give her the money back again.' What do you think about that as an indication of normal mental process at that time? You must give your construction to these matters."

25. That the Court charged the jury as follows: "Did he have a conception of right and wrong? Does he now have a conception of right and wrong? Did he, before the homicide, have a conception of right and wrong?"

26. That the Court charged the jury as follows: "My recollection is that his counsel asked him a question something like this: 'Now, in using the term "Get rid of her," did you ever contemplate in your mind an intent to kill her?' and my recollection of the answer is that he said 'Oh, my God, I never thought of killing anybody in my life.' Now, does that exclamation, does that form of language, do those words carry to your mind anything as to whether back of it lay a conception on his part as to whether it was or was not right to kill? So within the evidence you may search for the reasons pro and con for believing that the man had the power to form a design, to deliberate on it, premeditate on it, and to carry it out."

27. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "Deliberation and premeditation imply a capacity at the time of the crime of a homicidal act to think and reflect, sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act." Which the Court refused to charge.

28. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the mental state of the defendant, for the purpose of determining whether or not he was capable of deliberation and premeditation, you should consider, in connection with all the testimony submitted, the

circumstances and facts presented by the defendant and offered to establish that the state and condition of mind of the defendant was affected, by reason of various causes, and such evidence in itself is not an excuse or an extenuation of the crime of murder, but is offered to show lack of premeditation and deliberation." Which the Court refused to charge.

29. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the character of the punishment to be meted out to the defendant, in the event that your verdict is guilty of murder in the first degree, you should consider the facts and circumstances which have been proved in the case both on the part of the State and on the part of the defendant." Which the Court refused to charge.

30. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the mental state of the defendant as to whether or not he was capable of deliberation and premeditation when the crime was committed in connection with all of the other facts and circumstances in the case, you should also take into consideration the age of the defendant, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed." Which the Court refused to charge.

31. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as

follows: "In the event the state establishes beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you have a right in considering all the facts and circumstances in this case, in connection with recommending the punishment to be imposed, to consider the facts and circumstances in connection with the defendant's age, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed." Which the Court refused to charge.

32. That the jury, by its foreman, requested of the Court as follows: "Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name I do not recall," which the Court refused in the following language: "I would be glad to afford you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own recollection as to what that testimony was. Is there any other instruction that you desire from the Court?" to the prejudice and injury of the plaintiff-in-error and to which the plaintiff-in-error noted an objection in the following language: "I desire to note an exception to your Honor's statement."

And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled

and altogether holden for nothing, and that he may be restored in all things in which he has lost by reason of said judgment.

FRANCIS A. GORDON,
Attorney for and of Counsel with
Plaintiff-in-Error.

Due and timely service of a copy of the within assignments of error is herewith acknowledged this 11th day of July A. D. 1929.

ABE J. DAVID,
Prosecutor.

CAUSES FOR REVERSAL.

Filed July 12, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Plaintiff-in-Error.*	*Causes for Reversal.* *On Error at Union Oyer and Terminer.*

Afterwards, to wit, etc., comes the plaintiff-in-error, by Francis A. Gordon, his attorney, and specifies the following errors and causes in the record and proceedings therein relied upon for the reversal of the judgment in this cause:

1. That the judgment aforesaid was given against the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, whereas by the law of the land judgment should have been given for him.

2. That the charge of the Court as a whole, and in each and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury.

3. That on the trial of the said plaintiff-in-error he suffered manifest wrong and injury in the admission of evidence and the charge of

the Court, which prejudiced the said plaintiff-in-error in maintaining his defense upon the merits.

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff-in-error was guilty of the crime of murder in the first degree, and did not justify the verdict found against him.

5. That the evidence in the cause is of such a nature that when full and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused of the crime of murder in the first degree, and that upon said evidence the said plaintiff-in-error was not guilty of a crime greater in degree than murder in the second degree.

6. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting articles to be marked in evidence as Exhibit S. 2, contrary to the objection of the plaintiff-in-error.

7. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain statement to be introduced in evidence and marked Exhibit S. 6, contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said statement in evidence in the following language: "I think the rule has been complied with."

8. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to permit Richard B. Reilly, a witness for the State, to be asked by the attorney for the plaintiff-in-error and to answer the following: "Up to that time had Mr. Campbell been searched?" and because the Court erred to the prejudice and in-

jury of the plaintiff-in-error in overruling said question in the following language: "His testimony as given on direct examination, as I recall it, was that he was present when the statement was taken and heard the defendant say that that was his gun and that he had had it either in his custody or in his sight since that time. Now, he did not go back of the period of the taking of the statement.

"Mr. Gordon: My purpose of that is to eliminate, if circumstances should present themselves from which it may be inferred that there might have been another gun there in that office, and even the defendant may have been mistaken.

"The Court: The prosecutor objects and I think you may properly be limited to a cross examination of the main subject."

9. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain revolver to be admitted in evidence and marked Exhibit S. 29.

10. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting a certain magazine and bullets to be admitted in evidence and marked as part of Exhibit S. 29.

11. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness produced on behalf of the State in rebuttal, to answer a question of the Prosecutor of the Pleas which is as follows: "What conclusion did you come to and what is your opinion, doctor, as to whether or not Campbell was sane on the night of February 22nd and the early morning of February 23rd?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and

injury of the plaintiff-in-error in allowing said question in the following language: "The Court: Mr. Gordon, you do not contend that the defendant was suffering from any disease of the mind?

"Mr. Gordon: No, sir, not within the term of legal insanity as it has been laid down by the cases in this State, in the case of the State versus Spencer, the State versus Grave, the State versus Maccom, and the State versus Noel, which require as a test to distinguish between right and wrong the proposition of legal insanity.

"The Court: Now you are modifying your answer, and your attitude has a bearing upon the ruling of the Court. Are you prepared to state for the purposes of the record and for the consideration of the jury that the defendant was mentally sound at the time of the commission of this crime?

"Mr. Gordon: I cannot say that. That is a question for this jury to determine.

"The Court: Then this is a question for the jury to determine.

"Mr. Gordon: May I note an exception?

"The Court: Your ground being, as I understand it, that insanity is not an issue?

"Mr. Gordon: Yes, sir.

"The Court: You may note an exception."

12. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "What conclusion did you come to as to whether on the night of February 22nd and the early morning of February 23rd Campbell could distinguish between right and wrong?" contrary to

the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "Objection overruled."

13. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Lawrence M. Collins, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "As a result of your examination, doctor, of Campbell in the Union County Jail on April 15 last and the statement made to you at that time by him among other things that he shot this woman in the head, will you tell me whether in your opinion at that time when he shot the woman in the head on the late night of February 22nd and early morning of February 23rd he understood the difference between right and wrong?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language:

"By the Court: Are you able to form such an opinion, doctor? A I am.

"The Court: The question will be admitted."

14. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Emil Stein, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "Doctor, as a result of your examination that you made on April 15th of Campbell and your questions and his answers, did you come to a conclusion whether or not at that time he was sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the

prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "By the Court: Q You have given us your questions and his answers, have you? A Yes, I haven't given my conclusion, though.

"Q You have given your questions and his answers, and based upon what his questions and answers were as you have related them to us here, you formed an opinion as to his mental condition at that time? A I did.

"The Court: What objection can there be to that, Mr. Gordon?

"Mr. Gordon: I press the objection.

"The Court: Objection overruled."

15. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Rowland P. Blythe, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language:

"Mr. Gordon: I object to the question on the ground, first that the witness has not been qualified as a neurologist or a psychiatrist, and second, on the ground that the question calls for an answer to a matter which is not within the issue involved in this case. We are not presenting a defense of legal insanity.

"The Court: You are presuming a defense which is apparently not sharply defined, because you have at no time stated that you admit the

man to have been sane mentally at the time this murder was committed. Therefore, it must be within your mind to contend that he was not sane, I assume. Isn't that so?

"Mr. Gordon: I am not contending either way because I do not know. That is one of the issues perhaps which may be presented, but we have not offered any evidence along those lines which can be rebutted.

"The Court: You have put the man on the stand and witnesses on the stand who have been giving testimony as to the man's mental condition. One of the relevant issues, when mentality is raised, is the question whether or not a man was sane or insane; if insane, the degree of insanity; and whether or not that degree of insanity or that phase of insanity is a recognized defense.

"Mr. Gordon: This witness is being asked as to the mental state of the accused when the witness visited the accused in the County Jail and at a time subsequent to the alleged offense.

"The Court: When did Dr. Blythe testify?

"Mr. David: Yesterday morning.

"The Court: Can you find his testimony in the transcript?

"Mr. David: Yes, sir, here it is (handing book to the Court).

"The Court: Mr. Gordon, do you object to your man being proven sane? Have you any objections to your client being proven sane?

"Mr. Gordon: I object to this question, if your Honor please.

"The Court: I know, but I am asking you your reasons for the objection.

"Mr. Gordon: Because, in the first place, it is not within the issue, and in the second place, it is not rebuttal testimony.

"The Court: What was the last question?

"(The stenographer read the last question as follows:)

"'Question: Doctor, in your opinion at the time that you examined and treated the defendant Campbell was he sane or insane?'

"The Court: One of your questions, Mr. Gordon, was this: 'What is the effect of poison on the system? A Answer: Well, it might cause infection in other parts of the body. In his case, I should say it probably upset his stomach more than anything.

"'Question: Do you know whether or not it could permeate into the brain?

"'Answer: No, I don't.'

"You were questioning him as to whether or not this could permeate into the brain, and there is only one function in that, and that is to note the effect. I will admit the question."

16. That the Court erred to the prejudice and injury of the plaintiff-in-error in permitting Evelyn L. Ratner, a witness for the State, produced on rebuttal, to answer a question of the Prosecutor of the Pleas, which is as follows: "From your observation of him and your conversation and business transactions with him, what is your opinion as to whether, at those times, he was sane or insane?" contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in allowing said question in the following language: "Answer the question."

Causes for Reversal.

17. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to permit Evelyn L. Ratner, a witness for the State, produced on rebuttal, to answer a question of the attorney for the plaintiff-in-error, which was as follows: "Would your opinion be different if you had known at that time that he had been involved in a shooting on the early morning of February 23, 1929, of a woman whom he had bigam*istly* married, and who, after such shooting had been left on the highway and drenched with gasoline and burned?" in accordance with the objection of the Prosecutor of the Pleas and because the Court erred to the prejudice and injury of the plaintiff-in-error in overruling said question in the following language: "How can you justify questions of that kind? This witness is not giving her opinion except on matters that were brought to her attention. How can she say, or how can anyone say, what would have happened had she known at that time things which certainly, at one of these visits, could not have been known, if she is correct in her *understand* as to the date, about the fifteenth of February, when the first visit was made, or shortly after that, none of these things had happened. I do not want to forestall you from any proper cross examination but it seems to me that is a far call.

"Mr. Gordon: May I note an exception to your Honor's ruling?

"The Court: I will overrule the question."

18. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct the withdrawal of a juror on motion of the attorney for defendant (plaintiff-in-error) after the Prosecutor of the Pleas had made certain

prejudicial remarks in his closing summation to the jury, included in which remarks were: "Nobody in this world knows what this tablet was." And further, the Prosecutor of the Pleas stated: "I said to the jury that it is a fair inference from the evidence in this case that the defend-
10 and gave to Mrs. Mowrey the tablet that she took," contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct such withdrawal of a juror in the following language: "The Court: That is an argument. What objection have you to that?

"Mr. Gordon: The evidence in the case is distinct that Mrs. Mowrey produced some tablets in a handkerchief.

20 "The Court: The jury hears that, but the jury may not believe it.

"Mr. Gordon: There is no evidence in the case.

"The Court: Counsel has a right to argue upon the testimony that is in. He has a right to draw the inference from it, which his mind produces. Proceed."

19. That the Court charged the jury as follows: "Upon all questions of law the jury must
30 take what I say and they must apply the facts they find to the rules which I lay down, because if I commit an error in laying down these rules, the defendant has a remedy. He can take this case up by writ of error to the Court of Errors and Appeals and have it reviewed. But if you make a mistake there is no way to review that."

20. That the Court charged the jury as follows: "No particular time need elapse between

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the formation of the design to take life and its wilful and deliberate execution."

21. That the Court charged the jury as follows: "Nevertheless, there has been some evidence in the case which seems to make expedient that I charge you to some degree on the question of insanity. Counsel for the defendant has said more than once quite clearly that the defense is not that of legal insanity. Insanity is not easily defined. Questions put to one or two of the witnesses as to what constituted insanity, did not elicit very satisfactory answers, but, in a general way, we know, as common, ordinary citizens, what insanity is, and what it means to be out of one's mind. Now, that line shades off gradually and there has been some evidence which, while not given with the idea or with the announced purpose of raising a defense of emotional insanity, may raise some question in your minds as to its significance. For instance, Dr. Payne, one of the witnesses called by the defense, was asked some questions as to the effect of certain physical conditions upon the mind, and he testified, according to my recollection,—and you will correct me if I am wrong,—that he thought that all of those physical defects might have more or less influence upon the mental state of the individual, rendering the individual more and more mentally unstable, that was his expression, I think, 'mentally unstable;' and continuing I think he used the expression, 'more emotionally unstable;' and again, certain conditions would tend to irritate the nervous system and render the patient 'more emotionally unstable and irritable;' and again, that conditions 'would impair a man's emotional stability.' That evidence goes more or less to a mental condition and

I, therefore, feel constrained briefly to charge you on the defense of insanity. Of course, if this defendant was insane, legally insane, at the time he committed this crime, he is guiltless. That should be said to you. But I do not understand,—and it is the specific statement of counsel,—that the contention is made that he was legally insane. The insanity, to be effective as a defense, must be such as to render the defendant incapable of committing crime. Whatever the insanity of the person may amount to, if he is conscious at the time of committing an atrocious act, and has reason enough to know that he ought not to do it, he is guilty in the eye of the law. If the evidence makes it clear to your minds that the prisoner, at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not.

"The law does not recognize a form of insanity in which the faculties are so affected that the person suffering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them and is urged by some mysterious pressure which he cannot resist, to their commission. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty in respect to it, has no place in the law. The law regards insanity as a disease of the mind, implying fixedness and continuance of mental condition. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of

the criminal act and ends when it is consummated. The law also utterly repudiates, in criminal prosecutions, the defense of insanity when based on a defective or perverted moral sense, generally known as moral insanity. A person who steals the property of another, knowing the nature of the act he is doing, whose moral sense is so perverted that he cannot restrain his capacity to steal, is sometimes called a kleptomaniac, but in law he is regarded as a thief and is punishable as such.

"As to the burden of proving the defense of insanity and to the extent that it may be raised: The law presumes that every man is sane until the contrary be proved and that therefore, if when the accused sets up the defense of insanity, the burden of proof is upon him, and to make effectual such a defense the proof of the prisoner's insanity must be satisfactory. The accused must overcome the legal presumption of sanity by a clear preponderance of proof. The law presumes or assumes that at the time of the committing of the act for which he is tried, he was sane, and the State, is, therefore, not called upon to prove that he was sane . If he sets up in his defense the plea of insanity, it is incumbent upon him to establish it, and if he fails to do so, the presumption or assumption of sanity still holds, for it has not been overcome or shown to be false. While, for obvious reasons, the defense of insanity is not disfavored by the law, yet, in view of its peculiar character, and in order that it may not serve as a screen for guilt, it is regarded with jealousy, and in the interest of public justice, and in accordance with the sound dictates of a wise and necessary public policy, subject to a close and careful scrutiny. The de-

fense must be proved to the satisfaction of the jury, and may be established by the preponderance of proof. In other words, it must be sustained by the evidence."

22. That the Court charged the jury as follows: "You should, however, carefully distinguish between, on the one hand, a wavering condition of the mind, which is not incapable of forming an intent, or of deliberating, or of premeditating, but determines an act on slight provocation, and on the other hand, such prostration of the faculties as put the accused in a state wherein he is incapable of performing the essential functions which I have mentioned."

23. That the Court charged the jury as follows: "On the other hand, you are entitled to recall the testimony as to the way in which the deceased was killed; the effort to consume her clothing and body by flame; the burning of her belongings; the secreting of such unburnable articles as the watch and the metal satchel top, and to consider whether a mind incapable of forming an intent and a deliberating and premeditating thereon, would be capable of directing those actions. And conversely, whether a mind capable of directing those activities, was not also capable of the intent, the deliberation and the premeditation essential to the crime of first degree murder."

24. That the Court charged the jury as follows: "It is my recollection that he said, 'I wanted her to know if it was the money she was thinking about that I was going to give her the money back again.' What do you think about that as an indication of normal mental process at that time? You must give your construction to these matters.'

Causes for Reversal.

25. That the Court charged the jury as follows: "Did he have a conception of right and wrong? Does he now have a conception of right and wrong? Did he, before the homicide, have a conception of right and wrong?"

26. That the Court charged the jury as follows: "My recollection is that his counsel asked him a question something like this: 'Now, in using the term "Get rid of her," did you ever contemplate in your mind an intent to kill her,' and my recollection of the answer is that he said 'Oh, my God, I never thought of killing anybody in my life.' Now, does that exclamation, does that form of language, do those words carry to your mind anything as to whether back of it lay a conception on his part as to whether it was or was not right to kill? So within the evidence you may search for the reasons pro and con for believing that the man had the power to form a design, to deliberate on it, premeditate on it, and to carry it out."

27. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "Deliberation and premeditation imply a capacity at the time of the crime of a homicidal act to think and reflect, sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act." Which the Court refused to charge.

28. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the mental state of the defendant, for the purpose of determining whether or not he was capable of deliberation and premeditation, you should consider, in connection with all the testimony submitted, the cir-

cumstances and facts presented by the defendant and offered to establish that the state and condition of mind of the defendant was affected, by reason of various causes, and such evidence in itself is not an excuse or an extenuation of the crime of murder, but is offered to show lack of premeditation and deliberation." Which the Court refused to charge.

29. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the character of the punishment to be meted out to the defendant, in the event that your verdict is guilty of murder in the first degree, you should consider the facts and circumstances which have been proved in the case both on the part of the State and on the part of the defendant." Which the Court refused to charge.

30. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as follows: "In considering the mental state of the defendant as to whether or not he was capable of deliberation and premeditation when the crime was committed in connection with all of the other facts and circumstances in the case, you should also take into consideration the age of the defendant, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed." Which the Court refused to charge.

31. That the defendant, (plaintiff-in-error), by his counsel, requested the Court to charge as

follows: "In the event the state establishes beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you have a right in considering all the facts and circumstances in this case, in connection with recommending the punishment to be imposed, to consider the facts and circumstances in connection with the defendant's age, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed." Which the Court refused to charge.

32. That the jury, by its foreman, requested of the Court as follows: "Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name I do not recall." which the Court refused in the following language: "I would be glad to afford you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own recollection as to what that testimony was. Is there any other instruction that you desire from the Court?" to the prejudice and injury of the plaintiff-in-error and to which the plaintiff-in-error noted an objection in the following language: "I desire to note an exception to your Honor's statement."

And the said plaintiff-in-error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing, and that he may be

restored in all things in which he has lost by reason of said judgment.

FRANCIS A. GORDON,
Attorney for and of Counsel with
Plaintiff-in-Error.

Due and timely service of a copy of the within causes for reversal is herewith acknowledged this 11th day of July A. D. 1929.

ABE J. DAVID,
Prosecutor.

JOINDER IN ERROR.

Filed July 13, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL. *Plaintiff-in-Error.*	*In Error.* *Joinder-in-Error.*

And thereupon, afterwards, to wit, on the 12th day of July, 1929, the said State of New Jersey, by Abe J. David, Prosecutor of the Pleas of the County of Union, comes into Court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

ABE J. DAVID,
Prosecutor of the Pleas,
Union County.

Exhibit D. 14.

EXHIBIT D. 14.

(Photograph of House.)

COUNTRY HOME FOR SALE

Sudden and unexpected change in business plans make it necessary that owner quickly sell his new, modern home. This is located one mile from the City of Salisbury, Maryland, on the shore of the Wicomico River.

The house is brick Colonial, with variegated cement asbestos shingle roof. It sets one hundred feet from the river bank on a pleasing knoll among majestic oaks and pines from fifty to one hundred years old. An acre of handsome lawn surrounds the house. The entire property comprises twenty-five acres, more or less, seventeen of which are in a fine state of cultivation. This land is known throughout the community as being unexcelled for early truck, such as cantaloupes, cucumbers, sweet potatoes, strawberries and tomatoes. Part of the land is flat, but drains well, the remainder has a gentle slope. The place would be ideal for a high-class poultry enterprise.

The house was finished in March, 1927. There is also a two-car garage.

On the first floor the house has a living room 15x29, with natural fireplace; a center hall and stairway, with laundry room at rear of hall; a dining room 15x21, with built-in Curtis china cabinets, and a large kitchen, with built-in cabinets, pantry, and Frigidaire alcove. French doors from the dining room open on a large screened porch, commanding a beautiful river view and a view of Salisbury.

Second floor has three bedrooms, heated sleeping porch, sewing room with linen closets, and

Exhibit D. 14.

two tile baths. These bathrooms have built-in porcelain fixtures in the tile walls. One of the baths, serving a large master bedroom, has also a Speakman shower. The toilets and other fixtures are the finest, the former being equipped with the well-known Church white seats. All bedrooms have ample closet room with shelves, and the closets are painted on the inside.

Back stairs lead from kitchen to second floor. The front stair landing has built-in seat, which is used as a receptacle for soiled linen. There is a trap in the bottom from which linen may be dropped to the laundry room. There is an extra toilet in the laundry room, also with white seat.

The attic is the full size of the house and completely plastered. In the attic is a maid's room and private maid's bath. Two extra rooms may be finished in the attic, as there is plenty of room, and the heat has been brought up in anticipation of this some time in the future. The maid's bath has inlaid linoleum floor. The kitchen also has inlaid linoleum floor.

All doors and windows are screened with copper bronze screen cloth in cypress frames. Windows and doors also are weather stripped with Chamberlain metal weather strips. Exterior woodwork throughout, such as window frames, doors, trim, etc., is Southern cypress. All windows are glazed with plate glass.

Located as the house is, on a bend of the river, the view is beautiful, because its shores are heavily wooded. The river can be seen from every room in the house. The City of Salisbury is also visible from the grounds, as it is only half a mile distant by water.

This house was built with the thought that it would be the owner's permanent home. It was,

therefore, built as a home and not as a speculative house. Workmanship and everything in it are of the very best.

The cellar under the house is 7 feet deep by 30x41 feet. These latter figures are the dimen-

(Photograph of House.)

sions of the house exclusive of the screened porch. Cellar has concrete floor. Coal bin and furnace room are partitioned off to keep the cellar clean. The heating plant is an oversize American Radiator Company Ideal hot-water boiler. The house hot-water system is connected to a coil in the furnace. For summer requirements there is an auxiliary hot-water heating plant. The house water system consists of a 750-gallon tank with a 450-gallon Myers electric pump operating on deep driven well, providing the purest of water.

There is city electric service. Every room in the house has from two to eight electric outlets, exclusive of fixed lighting fixtures. The fixtures are of the latest polychrome type. Side lighting is in the living room.

Woodwork throughout is finished in flat buff enamel. The kitchen is enameled; the living room and hall are finished in buff sand-float plaster; while other rooms are expensively papered. Two of the bedrooms have 6-foot plate-glass mirrors in closet doors. Hardware throughout the house is Sargent's solid bronze.

Among minor but important details which have been included to make this a home rather than a house, are details of plumbing, such as valves on all separate water lines in the basement, so that in case of accident any bathroom or other water supply line may be cut out without throwing the whole water system out of commission. Two-

Exhibit D. 14.

way and three-way electric switches are installed where they are most convenient, such as lighting the garage from the house, the upstairs hall from kitchen or front hall, the attic from stair landing, etc.

A Walker electric dishwasher is permanently connected with the plumbing. This and a Westinghouse automatic electric range are to be sold with the house. Both are less than six months old.

The living room, hall, stairs and dining room are carpeted with seamless Bigelow-Hartford broad-loom chenille carpet laid on quilted carpet lining. This carpet is brand new and was especially woven for this house. It is a neutral taupe color, with which any and every kind of furnishings harmonize. The carpet also is to be sold with the house.

Mention should have been made of other details, such as double laundry tubs in laundry; extra electric circuit to light the grounds; large septic tank to take care of household wastes, and two outside hose connections for lawn sprinkling.

Three boundary lines of the place are set with 300 Concord and Moore's Early grapes. Posts and wires strung for trellis. There is a small orchard of 3- and 4-year-old apples and peaches in fine condition; 100 Delicia apples and 50 Grimes Golden apples and 50 Elberta peaches, peaches three years old. All have made more than a 4-foot growth this year. There are also about 25 pears, cherries, quinces and crab apples.

River frontage is about 800 feet. There is another fine building site on river front so located that the place could be divided. River front is tidewater marsh. There is one place where channel comes in to within 100 feet of actual shore

Exhibit D. 14.

line immediately back of house, where boat landing could be made easily and cheaply. This was an intended improvement, but has not yet been made. There is a good road in to the house, which is less than one-half mile from county and State paved roads. Can drive from house into center of Salisbury in five minutes without hurrying.

For price, terms and other particulars, address

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Plaintiff-in-Error.*	*On Indictment for Murder.* *On Writ of Error to Union County Oyer and Terminer.*

BRIEF OF DEFENDANT-IN-ERROR.

The facts in the case are set forth in the brief filed on behalf of the plaintiff-in-error in this cause under the heading of Facts and Defense, and the State does not deem it necessary to repeat those facts in this brief.

POINT I.

The entire evidence showed lack of premeditation and deliberation.

Specifications.

"1. That the judgment aforesaid was given against the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, whereas by the law of the land judgment should have been given for him. Assignments, Case, page 371; Causes, Case, page 389.

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff-in-error was guilty of the crime of murder in the first degree, and did not justify the verdict found against him.

Assignments, Case, page 372; Causes, Case, page 390.

5. That the evidence in the cause is of such a nature that when full and fairly considered, it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused of the crime of murder in the first degree, and that upon said evidence the said plaintiff-in-error was not guilty of a crime greater in degree than murder in the second degree." Assignments, Case, page 372; Causes, Case, page 390.

The verdict of first degree murder was according to law and the evidence in the case.

The Court said in its charge on page 353, line 10, the following: "On the other hand, you are entitled to recall the testimony as to the way in which the deceased was killed; the effort to consume her clothing and body by flame; the burning of her belongings; the secreting of such unburnable articles as the watch, the metal satchel top, and to consider whether a mind incapable of forming an intent and deliberating and premeditating thereon, would be capable of directing those actions."

The confession of the plaintiff-in-error which was offered in evidence (Exhibit S. 6, at Case, p. 71) contained the following:

Case, page 75, line 10: She was sitting in the front seat at the time. She was dozing, she was not sleeping. I held the gun up over her head and fired one shot. It went in the top of her head. She had a hat on. I then started up the car and drove about three or four hundred yards, turned into the other road and decided I ought to get rid of her. I drove the three or four hundred yards because I didn't know what to do. I again stopped and dragged her out of the car. I threw a lot of gasoline over her and set fire

to her with a match. I got the gasoline from the rumble seat of my car. I kept it there in case I ran out of gas when out driving. Before this I realized it was going to be daybreak before long when I got to Cranford and I wanted to get home and I couldn't take her anywheres with me.

On cross examination the plaintiff-in-error made the following admissions:

Case, page 219, line 1: Q Did you find anything belonging to Mrs. Mowry in your car? A Yes, I found a grip and I think there was a pair of gloves and a handkerchief * * * Q What became of those? A I threw them in the cellar and burned them up.

Case, page 242, line 15: Q Is that the reason that you decided to get rid of her, because she had no education and could not help you in your business? A I had been sending her money to pay her back what she had given me and I knew that she could not help me at all and I wanted to square up with her and not have anything more to do with her.

In the case of *State* v. *Schilling,* 95 N. J. L., page 145, Errors and Appeals, this Court held:

> "When a person twenty-eight years of age kills an officer to escape from arrest and sets up as a defence that he had not sufficient mentality to form in his mind an intent to take life, or to deliberate and determine to execute that intent by a premeditated act, the burden is on him to show his lack of sufficient mental power to conceive and execute the crime. There is a vast difference between a child at the age of eleven years and that of a man of twenty-eight, and while perhaps there is a presumption that an infant of tender years is incapable of committing a crime that presumption does

not extend to one of advanced years, requiring the state to rebut it. When a man reaches manhood the presumption is that he possesses the ordinary mental capacity normally pertaining to his age, and it is for him to overcome that presumption, and whether he has done so is for the jury to determine. Deficiency of intellect is a species of insanity, and when that is set up as a defence for crime the burden is on the accused to prove it, the presumption being that he is sane.

"The responsibility of an adult charged with a commission of a crime is not to be measured by a comparison of his mental ability with that of an infant of twelve years, or in any other way. The true test is, does he appreciate the nature and quality of his act and that it is wrong, and if he does he is responsible to the law without regard to his other mental deficiencies."

In *State* v. *Ehlers,* 98 N. J. L., page 236, Errors and Appeals, this Court said:

"6. Where it is claimed that the defendant in a murder trial was not sufficiently sane or conscious at the time he committed the murder to know the quality and nature of his act or that it was wrong, this is a matter of defense and the burden of maintaining it is upon the defendant.

7. Where, in answer to clear, direct and uncontradicted proof of a willful, premeditated, deliberate killing, the defense of an epileptic seizure of the 'petit mal' type at the time of the crime is set up and the other evidence thereof is of so unconvincing a character as to have little if any weight, the mere absence of proof of motive will not suffice to justify a setting aside, as against the weight of the evidence of a jury's verdict of murder in the first degree."

In *State* v. *James,* 96 N. J. L., page 132, Errors and Appeals, at page 152, this Court said:

"It is not the law that a defendant's mental condition must be such as to enable

him to realize the *fullest* extent of his acts. The full extent of the result of a murder extends far beyond the fact itself, and the immediate parties. * * * In the case at bar intoxication was not interposed as a defense to the degree of the prisoner's crime, and, furthermore, there was no proof that the defendant was intoxicated. To reduce the grade of the crime reliance is probably rested, in the exception under consideration, upon the theory that the jury might have found that the prisoner was not of sound mind. But this could not be because no evidence was laid before the jury tending to show insanity in the prisoner. The law presumes a man to be sane, and if the contrary exists thereby defeating this natural presumption, it must be shown by the party who alleges it. State *v.* Hill, 65 N. J. L. 626. Even if insanity had been set up as a defence in this case, the test of responsibility would be the capacity of the defendant at the time of the doing of the act complained of, to distinguish between right and wrong, with respect to that act. Mackin *v.* State, 59 N. J. L. 495. By the right and wrong test, which is firmly imbedded in the settled law of our State (*Id.* 497) the prisoner was clearly guilty, if the facts of the case made against him were true, and they were so found by the jury upon abundant evidence."

Dr. George B. McMurray, senior physician at the New Jersey State Hospital, Greystone Park, a witness produced on the part of the plaintiff-in-error, on cross examination testified as follows:

Case, page 142, line 33: Q From your examination of Campbell at that time could you determine whether or not he could distinguish between right or wrong? A I think he could. Q And whether he knew the nature and consequence of his acts? A Yes. Case, page 143, line 10: Q And whether he could or did act

with deliberation and premeditation at that time? A Yes.

Dr. Guy Payne, a specialist in medical diseases, superintendent of the Essex County Hospital for Mental Diseases, a witness produced on the part of the plaintiff-in-error, on cross examination testified as follows:

Case, page 270, line 20: Q Now, doctor, you examined Campbell, the defendant in this case in the county jail some time in April for the purpose of determining whether or not he was sane? A Yes, sir. Did you come to a conclusion about it at that time? A I did. Q What was it? A My conclusion was that he was sane.

Dr. Lawrence M. Collins, senior resident physician at the New Jersey State Hospital, Greystone Park, a witness produced on the part of the plaintiff-in-error, on cross examination testified as follows:

Case, page 277, line 30: Q Doctor, will you go on with the examination? A Well, that completed my examination that he was a psychopathic personality without psychoses and that he was sane.

The State submits that no doctor or specialist who testified said that the plaintiff-in-error could not or did not deliberate and premeditate and wilfully commit this crime.

The plaintiff-in-error drove the deceased in his automobile and during the night of February 22nd until the time he shot her, in the early morning of February 23, 1929.

At Case, page 74, line 33, the confession of plaintiff-in-error (Exhibit S. 6, p. 71) states: "We got to Cranford between 3 and 4 o'clock

in the morning, I didn't know what to do with myself or her. She wanted me to take her somewheres where we could go to bed. I didn't know where to go or what to do. She got kind of cold and drowsy in the car. I made up my mind there was no way out of it, but simply to get rid of her. There was only one seat in the car except the rumble seat. I then shot her."

Case, page 90, to Case, page 108, contain the exhibits, being the letters sent by the plaintiff-in-error to the deceased, which letters were written subsequent to his marriage to her in August, 1928. All of these letters indicated that the plaintiff-in-error avoided and was seeking to avoid meeting the deceased.

The State repeats at this point the charge of the Court at the trial as set forth, *supra,* page 353, line 10.

The State submits that the plaintiff-in-error did deliberate and premeditate the killing and knew the difference between right and wrong, which is further evidenced by his letter to his wife as follows, Case, page 71, line 10: "Thursday night, April 11. My dear wife: I will not be home tonight and after this trouble you will not want to see me again and I don't want you or the children to come. Telegraph to Lovelle to come to you. I am sending the check book. There is $147.17 balance. You can go up to Westfield to get it. This is the end of everything and I can't say any more. I wish I could see you all once more but it is best not. Harry."

The plaintiff-in-error showed further evidence of his ability to deliberate and premeditate the crime when he was taken to the scene of the crime (Case, page 321, line 37) and William H.

Armstrong, warden of the county jail, testified as follows: "Q Did you hear him (plaintiff-in-error) say that the ground was covered with snow and he could not point out the exact spot but he could point out about the spot? A Yes. (Case, p. 322, l. 12): Q Did he point out any spots or did somebody just take a picture of spots? A He said he thought that that spot resembled something like it, but as the night was dark and snow on the ground he could not tell exactly but he thought it resembled the spot."

In *State* v. *Bonofiglio,* 67 N. J. L., page 239, Errors and Appeals, this Court said:

> "To constitute murder in the first degree there must be an intention to take life. No particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and premeditation should continue for an hour or a minute. It is enough that the design to kill be fully conceived and purposely executed."

Citing

Donelly v. *State,* 26 N. J. L., at page 616.

The State respectfully submits that this crime was not committed because of worry, failure and confusion. The plaintiff-in-error committed the crime because it was an easy and subtle way for him to get rid of financial troubles, and also an easy way to get rid of the deceased and keep secret his marital affairs and bigamous marriage, and his plans were so well conceived that the plaintiff-in-error almost succeeded in concealing the commission of the crime.

Counsel for plaintiff-in-error has set up in his brief, excerpts from the letters written by the plaintiff-in-error, to the deceased (Case, p. 90,

to Case, p. 108), but these excerpts are only portions of the letters and do not show the purpose and intent of the plaintiff-in-error in writing them. The State submits that the contents of each of the letters indicates that the plaintiff-in-error wanted to avoid meeting the deceased.

Drugs.

There is no testimony in the case by anyone to the effect that the limited use of narcotics by the plaintiff-in-error affected his mind.

The plaintiff-in-error denied that he had used morphine (Case, p. 311, l. 35): Q Did you ask him whether he had had morphine? A I did. Q What did he say? A No. (Case, p. 311, l. 30): He told me that for the past two years he had suffered with severe headaches, and for that, occasionally, he had taken a little codein which was the only thing that seemed to relieve his headache (Case, p. 156, l. 34).

It was not testified by any of the doctors called as witnesses that the plaintiff-in-error had used morphine, and, in fact, it was denied by them that he had used it.

Bodily Disease.

The plaintiff-in-error did prove physical disability, but he did not establish any mental disability.

Physical Disability.

Physical disability is not a defense. *State* v. *Schilling, supra. State* v. *Ehlers, supra.*

Mackin v. *State,* 59 N. J. L., page 495, Errors and Appeals, at page 497, this Court said:

> "To establish defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know that he was doing what was wrong."

In *State* v. *Treficanto,* 146 Atl. Rep., page 314 (syllabus by the Court):

> 5. "So long as the mind of a criminal is capable of conceiving the purpose to kill he must be held to the responsibility of one who is sober."

The defense interposed by the plaintiff-in-error to save his life was false and manufactured, and is not sufficient in law.

State v. *Schilling, supra;*
State v. *Ehlers, supra.*

He was worn out for want of sleep and rest.

The plaintiff-in-error by his own statement confession (Exhibit S-6, p. 71): "I made up mind there was no way out of it, but simply to get rid of her. There was only one seat in the car, except the rumble seat. I then shot her." "I drove three or four hundred yards because I did not know what to do. I again stopped and dragged her out of the car. I threw a lot of gasoline over her and set fire to her with a match"—clearly indicates that he committed the crime of murder with deliberation

and premeditation and wilfully, and that he deliberated and premeditated upon the plan for killing the deceased both before and after the commission of the crime.

State v. *Bonofiglio, supra.*

As to the crime itself.

The manner of execution of the crime did distinctly show the presence of premeditation and deliberation.

State v. *Schilling, supra;*
State v. *Ehlers, supra;*
State v. *Treficanto, supra;*
State v. *Bonofiglio, supra;*
State v. *James, supra.*

The plaintiff-in-error did not drive with the deceased, after he had shot her, half a mile, as stated in brief of plaintiff-in-error, but he drove from the place where he had shot her a distance of three or four hundred yards to a more secluded spot where he covered her with gasoline and set her on fire.

In *State* v. *Spencer,* 21 N. J. L., page 196, the Court said: "This partial insanity on other subjects does not excuse crime."

The plaintiff-in-error could evaluate and he could distinguish between right and wrong. He wrote to his wife, Exhibit S. 7, Case, page 71, line 10: "this is the end of everything and I can't say any more."

In *State* v. *Carrigan,* 93 N. J. L., page 268, at page 273, the Court said:

> "but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty in respect to it, has no place in the law."

SPECIFICATION.

2.

That the charge of the Court as a whole, and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury. A general exception was noted, allowed and sealed (Case, p. 356) (Assignments, Case, p. 371) (Causes, Case, p. 389).

The plaintiff-in-error in his brief, states: "The accused was charged with murder. The homicide was not disputed. There was a single issue: Was the mental state of the accused at the time of the shooting affected so that he was deprived of the capacity to premeditate and deliberate?

This comes under the case of *State* v. *Schilling, supra,* and *State* v. *Ehlers, supra,* wherein the plaintiff-in-error under the law of these cases is held responsible for his crime.

The evidence adduced by the plaintiff-in-error regarding his physical condition and his state of mind was evidence coming within the scope of insanity and the State was called upon to meet the defense set up by the plaintiff-in-error whether it was a defense of insanity or a defense of the indicia of insanity. This is so because the jury was to determine whether the plaintiff-in-error could distinguish between right and wrong and the State was obliged to meet the defense set up by the plaintiff-in-error, and show that the physical condition and the alleged mental status of the plaintiff-in-error was merely a defense and did not in any degree establish lack of mental responsibility.

State v. *James, supra;*
Mackin v. *State, supra.*

In *State* v. *Barone,* 96 N. J. L., page 417, at page 423, the Court said:

> "Undoubtedly, in such a case where the Court comments upon such testimony it is its duty to explain to the jury the limitation and effect of such proof, but where as in the present case, the trial judge did not refer to the contradictory testimony of either Carpola or Ross, there was no good reason why there should have been a departure from a long line of cases, decided by our Court of Errors and Appeals, uniformly holding that a failure to charge a proposition even though applicable to the facts of the case cannot be made a basis for an assignment of error or a specification for a cause for reversal without a request to charge."

In *State* v. *Dichter,* 95 N. J. L., page 203, at page 210: "the error alleged is that it is argumentative. Assuming that it is, it is the settled law of this State that a Court has the right to comment upon the evidence."

State v. *Hummer,* **73 N. J. L., page 714.**

Request of jury to further instructions.

The jury made the following request at Case, page 366, line 10: The Foreman: "Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name we do not recall." The Court: "I would be glad to offer you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own recollection as to what that testimony was. Is there any other instruction that you desire from the Court?"

The jury is the judge of the facts and evidence. The Court was zealous in its desire

not to mislead or interfere with the jury in its consideration of the facts, and the State submits that it is discretionary with the Court whether or not the facts shall be repeated to the jury in accordance with its request.

Here follows a synopsis of the testimony which the jury requested be read:

Guy Payne, the doctor produced as a witness for the plaintiff-in-error, in reply to the hypothetical question, page 267, line 25, answered (Case, p. 269, l. 14): "I would say that his ability to consider the consequences of his act or to evaluate the consequences of his act, certainly are very much impaired. (Case, p. 269, l. 40): "He might be able to deliberate and premeditate, but I think his ability to deliberate and premeditate would certainly be very, very much impaired.

(Case, p. 270, l. 28): "My conclusion was that he (plaintiff-in-error) was sane."

Lawrence M. Collins, a specialist on rebuttal, said (Case, p. 277, l. 30): "Well, that completed my examination, that he was a psychopathic personality without psychoses and that he was sane."

George B. McMurray, a specialist on direct, testified as follows (Case, p. 142, l. 19): "Q Tell us what you found? A I found Mr. Campbell sane." Cross examination by Mr. David: "Q From your examination of Campbell at that time could you determine whether or not he could distinguish right or wrong? A I think he could." "Q And whether he knew on the 23rd of Feruary last, he could distinguish between right or wrong? A I think he could." "Q And whether he could or did act with de-

liberation and premeditation at that time? A Yes."

The reading of this testimony could not have benefitted the plaintiff-in-error, and the refusal of the trial judge to have it read was certainly not an abuse of his discretion.

SPECIFICATION

3.

In *Clifford* v. *State,* 60 N. J. L., page 287, at page 289, the Court said: "It is conceded that a non-expert witness may state facts and express an opinion in respect to the sanity of a defendant."

Regarding the testimony of Dr. Collins (Case, p. 279) the State submits this question was pertinent under the cases of *State* v. *Schilling, supra, State* v. *Ehlers, supra* and *Mackin* v. *State, supra.*

The evidence of Dr. Stein was admissible under *Clifford* v. *State, supra.*

The testimony of Dr. Blythe (Case, p. 310) was admissible under *Clifford* v. *State, supra.*

The evidence of Evelyn Ratner was admissible under the case of *Clifford* v. *State, supra.*

It is true that counsel for plaintiff-in-error stated at various times during the trial that the defense was not insanity (Case, p. 312, l. 10), Mr. Gordon said: "We are not presenting a defense of legal insanity." The Court said: "You are presenting a defense which is apparently not sharply defined, because you have at no time stated that you admit the man to have been sane mentally at the time this murder was committed. Therefore, it must be within your

mind to contend that he was not sane, I assume. Isn't that so?" Mr. Gorden: "I am not contending either way because I do not know. That is one of the issues perhaps which may be presented, but we have not offered any evidence along those lines which can be rebutted." The Court: "You have put the man on the stand and witnesses on the stand who have been giving testimony as to the man's mental condition. One of the relevant issues, when mentality is raised, is the question whether or not a man was sane or insane; if insane, the degree of insanity, and whether or not that degree of insanity or that phase of insanity is a recognized defense."

At no time during the trial did plaintiff-in-error testify or say that he at or about the time of the commission of the crime could not and did not deliberate and premeditate.

SPECIFICATION

18.

In *Baunach* v. *Liebman,* 98 N. J. L., page 554, Errors and Appeals, this Court said:

> "It is enough to say, in disposing of this ground of appeal, that the general rule with relation to this subject is that the refusal to withdraw a jury and thereby produce a mistrial, is a matter that rests in the discretion of the trial judge and is not assignable as a ground for reversal."

The plaintiff-in-error testified that the deceased wanted to take some tablets (Case, p. 217, l. 30).

The remarks of the prosecutor when summing up the case regarding the tablets were based on the testimony of the plaintiff-in-error and only made reference to a fair inference from the testimony (Case, p. 340, l. 21).

The prosecutor of the pleas did not express his opinion concerning the taking of the tablets by Mrs. Mowry, but merely argued to the jury that from the evidence it was a fair inference that the plaintiff-in-error had given her the tablets.

The jury could use its own judgment as to that and the Court so said (Case, p. 340, l. 31).

The case of *State* v. *McCormick,* 93 N. J. L., page 287, does not sustain the contention of the plaintiff-in-error. This case was sustained by the Court.

The case of *State* v. *Lang,* 75 N. J. L., page 1, affirmed *Ibid,* page 502, sustains the contention of the defendant-in-error.

REQUESTS TO CHARGE.

27.

This assignment of error refers to No. 8 of request to charge of plaintiff-in-error. The Court charged this request in effect in the charge to jury (Case, p. 346, l. 20, and again at l. 38). The Court also charged this request at page 353, lines 23 to 40, and again at Case, page 354, line 1.

28.

This assignment in error refers to No. 10 of request to charge of plaintiff-in-error. The Court charged this request in effect in charge to jury in Case, page 348, line 35.

30.

This assignment in error refers to No. 14 of request to charge of plaintiff-in-error. The Court

charged this request in effect in charge to jury in Case, page 348, line 35.

31.

This assignment in error refers to No. 15 of request to charge of plaintiff-in-error. The Court charged this request in the charge to jury, in Case, page 338, line 35, and Case, p. page 347, line 11.

The State submits that the Court effectively covered the requests to charge of the plaintiff-in-error in its charge to jury, and that the requests to charge so submitted were fully charged to the jury.

The specific requests to charge of the plaintiff-in-error were directed more to arouse the sympathy of the jury.

Weight of Evidence.

The weight of evidence was clearly with the State. The plaintiff-in-error did not say his mind was so confused that he did not know what he was doing, nor that he acted without deliberation or premeditation or intent. At the trial he said "he didn't remember (1) the shooting, (2) the burning, (3) his confession," but the proof negatives all three of his defenses. The plaintiff-in-error identified the gun; he pointed out the spot where he ignited the body with gasoline. This is verified in the evidence of Mr. Armstrong, supra. He also signed each page of his confession, and when aware that he was under arrest for the crime, he wrote his wife and in effect admitted his guilt. The entire evidence showed preparation and premeditation for the commission of the crime. The plaintiff-in-error was equipped to commit the crime. He had a

revolver; a can of gasoline; he waited until the deceased was asleep in the car; he drove around all night until 4 A. M. waiting for her to become sleepy; it was a lonely road; he wanted to get rid of her; he had financial difficulties; he destroyed her effects which were found in his car when he got home after the crime. The plaintiff-in-error did not deny the commission of the crime.

The State proved the commission of the crime charged in the indictment. The jurors saw the witnesses both for the State and the defense and had a right to determine which witnesses they would believe. The number of witnesses is immaterial (*State* v. *Grace,* 99 N. J. L., p. 341).

In *State* v. *Karpowitz,* 98 N. J. L., page 546, Errors and Appeals, this Court said:

> "To justify a Court in setting aside a verdict in a criminal case on the ground that it is against the weight of evidence, the verdict must so clearly appear that it is against the weight of evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality."

In *State* v. *Sage,* 99 N. J. L., page 228, Errors and Appeals, this Court said:

> "In addition to the existence of error in law, in a criminal case, it must be shown that such error was, or might have been prejudicial to the defense on the merits to constitute a ground for reversal of the judgment."

In *State* v. *Treficanto,* 146 Atl. Rep., page 313, Errors and Appeals (syllabus by the Court), 3 (e):

> "The competency of the evidence is not to be considered; it is not to be weighed after eliminating such testimony as the Court, upon review, might feel was improp-

erly admitted, but is to be weighed as it was presented to the jury in its totality."

We respectfully submit that the verdict of the jury was justified by the evidence adduced.

It is respectfully submitted that no error was committed either in the charge of the Court or in the entire proceedings had upon the trial by which the plaintiff-in-error suffered manifest wrong or injury.

We respectfully submit that the conviction should be sustained.

ABE J. DAVID,
Prosecutor of the Pleas,
Attorney for the Defendant-inError,
Of Counsel.

WALTER C. TENNEY,
Assistant Prosecutor of the Pleas,
Of Counsel.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* HENRY CAMPBELL CLOSE, alias H. COLIN CAMPBELL, alias RICHARD M. CAMPBELL, alias RICHARD MORTON CAMPBELL, *Plaintiff-in-Error.*	*On Indictment for Murder.* *On Writ of Error to Union County Oyer and Terminer.*

BRIEF OF PLAINTIFF-IN-ERROR.

Plaintiff-in-Error was convicted June 13, 1929, at the Union County Court of Oyer and Terminer of murder in the first degree (Case, p. 13). The jury did not recommend life imprisonment.

Hon. Clarence E. Case, Justice, presiding at the trial, imposed the death penalty (Case, p. 14).

Application was duly made to the honorable Chancellor of the State of New Jersey for a writ of error and refused and a certificate accordingly was duly filed with the Clerk in Chancery.

A certified copy thereof was filed in the office of the Clerk of the Court of Errors and Appeals (Case, p. 1) and thereupon a writ of error was duly issued to the Union Court of Oyer and Terminer (Case, p. 3).

The case is before this court on bill of exceptions, assignments of error and causes for reversal on the entire record of the proceedings had at the trial in accordance with Section 136 of the Criminal Procedure Act.

The causes for reversal and assignments of error are argued together.

A stipulation as to Exhibits not printed appears in the State of Case (Case, p. 370).

FACTS.

Henry Colin Campbell, age sixty-one (Case, p. 193) married (Case, p. 193), and the father of three children (Case, p. 144) was indicted May 14, 1929, for the murder of Mildred Mowry (also known as Parmelia Elizabeth Mowry).

On February 23, 1929, about 5:30 A. M. a woman's body was found in flames on a public highway known as Springfield avenue, Cranford, New Jersey (Case, p. 37).

In April, 1929, the body was identified as that of a Mrs. Benjamin Mowry, age about fifty-nine (Case, p. 53), a nurse of Greenville, Pennsylvania (Case, pp. 47 and 48) who had been married to Campbell August 28, 1929 (Case, p. 111). April 11, 1929, Campbell signed a typed statement at the Union County Prosecutor's office, Exhibit S. 6 (Case, pp. 71-77 inclusive), wherein he admitted shooting Mrs. Mowry in the head (Case, p. 75) and then pouring gasoline over her and setting her on fire (Case, p. 75). The statement contains the following:

> "There was nothing between us that prompted me to do this except for the reason that I could not maintain two establishments" (Case, p. 75). * * *
>
> "I did not intend to marry this woman originally, but I married her thinking it might relieve me of some of my financial difficulties. I had been in financial difficulties for the past two years or more" (Case, p. 76).

DEFENSE.

Evidence was offered to establish the mental state of the accused at the time of the shooting to prove that the homicide lacked premeditation and deliberation and therefore the crime was not above second degree murder. Insanity was not the defense.

The facts are elaborated upon in the argument.

1.

The entire evidence showed lack of premeditation and deliberation.

Specifications.

"1. That the judgment aforesaid was given against the said Henry Campbell Close, alias H. Colin Campbell, alias Richard M. Campbell, alias Richard Morton Campbell, whereas by the law of the land judgment should have been given for him. Assignments, Case, page 371; Causes, Case, page 389.

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff-in-error was guilty of the crime of murder in the first degree, and did not justify the verdict found against him. Assignments, Case, page 372; Causes, page 390.

5. That the evidence in the cause is of such a nature that when full and fairly considered, it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused of the crime of murder in the first degree, and that upon said evidence the said plaintiff-in-error was not guilty of a crime greater in degree than murder in the second degree." Assignments, Case, page 372; Causes, Case, page 390.

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The verdict of first degree murder was contrary to law and the evidence in the case.

Where murder is perpetrated, it is presumed to be second degree murder—*Brown* v. *State*, 33 N. J. L. 666 at pages 699 and 700.

In first degree murder, the law requires evidence to satisfy beyond a reasonable doubt that the accused contemplated the commission of the crime (*i. e.* premeditated it) then determined upon its commission (*i. e.* intended it) and then *weighed such intent before carrying it into effect* (*i. e. deliberated*). (Italics mine.)

State v. *Clayton*, 83 N. J. L. 673 at page 675.

They are three distinct mental acts.

Premeditation (Contemplation) — *Determination* (Intention)

Weighing Intention (Deliberation)

The Statute says wilful, deliberate and premeditated killing.

As the State contends that the killing was wilful, deliberate and premeditated, the character and extent of the crime is made by law to depend upon the state and condition of the defendant's mind at the time and with reference to the act done. Deliberation and premeditation therefore, are essential elements. If the mental state of the accused is such that he is incapable of such deliberation and premeditation, then the crime of murder in the first degree has not been committed.

In *State* v. *James*, 96 N. J. L. 132 at page 152, this Court said:

> "In Wilson *v.* State, 60 N. J. L. 171, one question was as to the effect of voluntary

> intoxication on the degree of the crime committed by the defendant, and this court held (at p. 184) that if by law deliberation and premeditation are essential elements of the crime (and they are in murder), and by reason of drunkenness *or any other cause* it appears that the prisoner's mental state is such that he is incapable of such deliberation and premeditation, then the crime has not been committed; there is a failure on the part of the state to prove the crime into which premeditation must enter." (Italics by Court of Errors and Appeals.)

The evidence clearly showed that the mental state of the accused at the time of the shooting precluded the ability on his part to deliberate.

These conditions were not shown to excuse or extenuate. They were proven as establishing lack of premeditation and deliberation.

Wilson v. *State*, 60 N. J. Law 171;
Warner v. *State*, 56 N. J. Law 686.

It has been recognized as a definite medical proposition that all *states of mind* have efficient causes (p. 11, Outlines of Psychiatry by William A. White, Sixth Edition, 1918).

Ideas, or, better, *mental* states do not arise *de novo* (see p. 13, White).

The accused is a psychopathic personality, incapable of exercising deliberation and premeditation.

Dr. George B. McMurray, Senior physician at the New Jersey State Hospital, Greystone Park, *at the request of the Prosecutor of the Pleas,* examined plaintiff-in-error on April 15, 1929 and, called as a witness in behalf of accused, testified (Case, p. 142, folios 20-30):

> "I found him of a psychopathic make-up." * * *

> "A psychopathic personality deals with that group who show *some impairment of volition or emotional reaction.* Under that class we have the criminals, pathological liars, vagrants, and so forth but without psychoses, that is, without insanity." (Italics mine.)

Dr. Guy Payne, a specialist in mental diseases (Case, p. 263) and Superintendent of the Essex County Hospital for mental diseases, in behalf of plaintiff-in-error, made an examination of accused and was called in his behalf.

At Case, page 265, he says:

> "My conclusion was that he was a *psychopathic personality, and had been all through his life; constitutionally defective, individually*, he had been in constant trouble."

Dr. Lawrence M. Collins, Senior resident physician at the N. J. State Hospital at Greystone Park (Case, p. 271) and a specialist in mental disease (Case, p. 272) made his examination with Dr. McMurray (Case, p. 272) another alienist *for the State.*

Dr. Collins, called by the Prosecutor of the Pleas, on *direct examination*, testified:

> "The fact that he had been maladapted to infamy throughout the greater part of his life led me to believe that he was a *psychopathic personality.*"

On cross examination, he stated psychopathic personalities are in a group that show impairment of volition.

Volition means the ability to exercise the will, and to exercise the will *implies a capacity* to *reflect and deliberate* (Case, p. 289). (Italics mine.)

For the State on rebuttal, he says:

"* * * but I don't know whether he (the accused) could evaluate" (Case, p. 285).

"*By Mr. David.*

Q What do you mean by evaluate? A By that I mean could he *weigh* it? Did he know the *result*? Was his *volition* such, was his power, his weakness of power, was it such that he *realized the nature* of his act? I could not say as to that" (Case, p. 285) * * *

"Well, there has been a lack of endowment in this man somewhere, and while intellectually he has been apparently superficially brilliant, his acts throughout his life are shown that he has used poor judgment. He has done things, and why, he cannot explain" (Case, p. 286).

The accused suffered a great *change of civil condition, which caused him a long period of worry and mental stress.*

(1) Prior to 1914, this elderly psychopathic personality had studied medicine (Case, p. 144) and civil and mining engineering (Case, p. 193). He had written many books on the use of cement and concrete (Case, p. 194). He had been in three penal institutions (Case, p. 194) and had been married three times (Case, p. 194). May 6, 1914 (then 46 years old) he married Rosalie McCready Campbell at Chicago, Ill. (Case, p. 144). She is now 34 years old (Case, p. 144) (then 19). They have three children. Very soon after marriage, they started housekeeping, and lived happily (Case, p. 145).

From 1914 to 1926 he made progress (Case, p. 195).

His 1925 taxable income was $26,000 (Case, p. 195, ll. 30-40, and Case, p. 196, ll. 1-10).

He was advertising and publicity manager, and had charge or supervision over the preparation of all the publication matters and literature of the Portland Cement Association, which is composed of various cement concerns from all over the country (Case, pp. 194 and 195). In October, 1926, with $41,000 in cash and a Packard car costing $6,800 he left Chicago. With him were his wife and children. He went to Salisbury, Maryland, to take charge of an association to do agricultural and promotion work (Case, p. 196).

He then weighed about 172 lbs. (Case, p. 202).

He settled in Maryland and built a home costing over $29,000 (Case, p. 196). The furniture cost over $15,000 (Case, p. 197).

The house was completed in March, 1927 (Case, p. 198). Mrs. Campbell was about to have a child (Case, p. 197).

After building and furnishing the home, the advertising and land project fell through (Case, p. 197).

Worry.

He was very much worried because he had all his money where he could not get any of it out. The prospect of connections faded away (Case, p. 197).

His health began to fail after he began to worry about money all the time and he began to have terrible headaches. He lost about twenty-five pounds in weight (Case, p. 149).

He had terrible headaches (Case, p. 150).

The veins would stand out like ropes on his forehead (Case, p. 150).

Failure and Confusion.

He invested monies in an endeavor to establish himself in photography and advertising work (Case, p. 198). This failed. The house was mortgaged and the money used to pay bills (Case, p. 198).

He was tricked in a trade for other property (Case, p. 199). In the early part of 1928, he had no money other than the proceeds of a second mortgage (Case, p. 199). His wife's jewelry and his were pawned (Case, p. 199).

In January, 1928, he was corresponding with matrimonial agencies.

January 21, 1928, he wrote applications to the American Friendship Society of Detroit, Michigan (Case, p. 223) and the Sincere Friendship Club (Case, p. 225).

His purpose was to find somebody to go in business with him. He did not intend to marry anyone (Case, p. 225).

He had tried to get a number of people he knew to finance him (men), but they all seemed to think he was too old, and that he probably would not make a success of it, because of his age and they were not interested in anybody except someone younger (Case, p. 203).

As a result of one of these applications, he heard from Mrs. Mowry (Case, p. 229). She wrote him first (Case, p. 248). He replied (Case, p. 202). They met in Washington (Case, p. 202). August 28, 1928, Campbell and Mrs. Mowry were married at Elkton, Md. (Case, p. 111). August 29, 1928, they opened an account with a deposit of $1,000 with her check (Case, pp. 119, 120, 121).

Then they separated, she going home to Greenville, Pennsylvania, and he to Westfield. He corresponded with her. His letters are State's Exhibits 9 to 24 inclusive and appear Case, pages 90 to 108 inclusive. They were written between October 4, 1928, and December 27, 1928.

In *October, 1926, a success.* He had outlived a criminal past and domestic complications. He had risen above them. He was happily married —had three children, position, $41,000 in money and an expensive automobile.

In *October, 1928, worry, failure and confusion.*

At 61—with a psychopathic personality, penniless, worried, he was desperately trying to rehabilitate himself.

He, a psychopathic personality all his life, has lost all sense of evaluation. He bigamously marries. He writes endearing love letters to the woman he shot. Throughout, they show he is then (October, 1928, to January 14, 1929) struggling with himself and circumstance.

Exhibit S. 9, October 4, 1928 (Case, p. 90, ll. 10-20):

> * * * "I am tired from running around and impatient because things go so slow, but I am trying to do all I can and the best I can."

Exhibit S. 10, October 12, 1928 (Case, p. 91, l. 20):

> * * * "things look brighter." * * * "things look brighter."

(ll. 20-30):

> * * * "I don't ever seem to get enough sleep, yet I go to bed early most of the time."

Exhibit S. 11, October 17, 1928 (Case, p. 92, ll. 20-30):

* * * "I do so want to get things fixed the way I want but it takes more than I thought."

Exhibit S. 12, October 19, 1928 (Case, p. 93, ll. 1-10):

* * * "Things don't seem to go as fast as I want." * * * "Couldn't sleep last night and that is why I'm not so good today" (ll. 10-20).

Exhibit S. 13, October 22, 1928 (Case, p. 93, ll. 30-40):

* * * "When we haven't anything to occupy ourselves, *everything seems twisted.*" (Italics mine.) * * * (Case, p. 94, ll. 1-10.)

"I didn't sleep well last night and am dead for sleep now, so this is only a short note which I will post in the morning." * * *

Exhibit S. 15, November 6, 1928 (Case, p. 96, ll. 10-20):

* * * "I am tired and sleepy and caught a little cold too. Nothing much. I worked last night a stretch of 16 hours. That is why I am so tired. Things have been looking a little brighter the last few days. I have had several inquiries about better positions and maybe one of them will go through." * * *

Exhibit S. 16, November 9, 1928 (Case, p. 98, l. 1):

* * * "I have been trying to work and make something and fix a place for you."

Exhibit S. 17, January 14, 1929 (Case, p. 99, ll. 30-40):

* * * "Luck has been all against me for so long I am losing heart, but as long as you stick to me I feel things will come out all right."

Exhibit S. 19, January 2, 1929 (Case, p. 100, ll. 20-40):

> * * * "Never have been like I have for weeks past, just struggling from hand to mouth. I believe it will end soon unless some people think I am too old. That has been the trouble everytime I thought I had something. They wanted a younger man. And this part of the country, too, is crowded with people out of work, yet the papers are all the time talking of what a good year it has been and how good the outlook is. But I have hopes now, and something must come soon or I will be all in." * * *

Exhibit S. 21, November 13, 1928 (Case, p. 104, ll. 1-10):

> * * * "and I have had a hard time doing things, much harder than I could make you understand." * * *

Exhibit S. 22, November 16, 1928 (Case, p. 104, ll. 30-40; p. 105, l. 1):

> * * * "So many people who are under obligations to me in one way or another, haven't kept their promises, but it is all coming out right. I know it has been hard for you in some ways but I haven't told you even half of how hard it has been for me." * * *

Exhibit S. 23, November 23, 1928 (Case, p. 105, ll. 20-40):

> * * * "I know I haven't supported you. I've told you several times in detail where the money has gone and what a hard time I have had keeping things going. All I have made and more has gone to keep the little I had in property from getting away. I didn't tell you before, but I will now. I sold the car to get enough more money to pay interest and clear up things so I could get a contractor to start building. I got a cheap small one on small down payment and $50 a month. I thought that change would help

tide things over till I could get more." * * * (Case, p. 107, ll. 10-20).

* * * "I have got to keep things doing."

Exhibit 24, December 27, 1928 (Case, p. 108, ll. 1-10):

> * * * "This has been the most terrible Christmas and holiday time I ever knew. I am all but a nervous wreck worrying and about you. But I have had an awful stretch. I am half sick. I couldn't do any better Hard as I tried." * * *
>
> (At ll. 10-20.)
>
> * * * "Don't think I have caused you pain and worry on purpose. I have been helpless and could hardly get along myself." * * *

Containing truth and deception throughout, they all exhibit a state of mind and mental stress which, with other conditions discussed later, demonstrated that the faculties of the accused were prostrated when the homicide occurred.

Each and every letter reveals the psychopathic personality, his financial condition, his difficulties and his state of mind.

They were written shortly prior to the homicide, and were produced by the State.

Dr. Guy Payne testified that worry affects the mental state (Case, p. 266).

Stress caused by physical state due to toxic causes and bodily disease.

Drugs.

Codein
Bromides
Chloral

Mrs. Campbell testified that her husband began taking something for his headaches after he began to lose his health (Case, p. 150). At first, not very frequently, then oftener (Case, p. 150).

A box containing Codein tablets was marked in evidence (Exhibit D. 4, Case, pp. 152 and 153). Campbell used these Codein tablets (Case, p. 153).

Campbell testified that in the early part of 1928, he was just a wreck (Case, pp. 199 and 200).

> "I was taking medicine to make me sleep." * * * (Case, p. 200, ll. 1-10).
>
> "Q Did you take any other drugs beside morphine? A Oh, I took codein. I took bromides. I took chloral. I took some of those things in rotation just because I couldn't seem to get the effect from some one or the other of them after a little while."
>
> * * * "I always seemed to have to take more than what was called the usual dose to get any effect from it." * * * "Sometimes I would have to take several doses before I would feel any effects on my nerves at all, and then it would seem to kind of dumb me or put me in a sort of stupor for a while and then it would soon wear off through" (Case, p. 201, ll. 10-30).

He had no relief from the headaches. He did not stop using drugs up to the time of his arrest (Case, p. 20). Since Campbell's arrest, Dr. Roland P. Blythe, the Union County Jail physician quite frequently administered to the plaintiff-in-error (Case, p. 156).

On these occasions bromides, codein and phenacetin were prescribed for Campbell for sleep and headache (Case, pp. 156-157).

William H. Armstrong, Jail Warden called by the State, testified Campbell always complained of headaches (Case, p. 321).

Morphine.

Mrs. Campbell testified her husband kept his medicine in a drawer of his chifforrobe where he kept his collars (Case, p. 151).

Roy A. Martin, County Detective, called by the State, on cross examination testified he searched the Campbell house with Mr. Wagner and Detective Tevlin and found a vial of morphine tablets in the second drawer of the bureau (Case, p. 131), where the men's linen collars are kept (Case, p. 132). He also found a morphine outfit with a needle (Case, p. 132). The State produced it (Case, p. 151). The outfit was marked Exhibit D. 2 (Case, p. 152). A box of morphine needles was marked Exhibit D. 3. Mrs. Campbell identified the outfit and the needles and said she first saw them in Salisbury, Md. (Case, p. 151, ll. 30-40, and p. 152, ll. 20-30).

Campbell testified he frequently took morphine by injection with the hypodermic outfit (Case, p. 200) and tablets by mouth (Case, p. 200). He took morphine up to his arrest (Case, p. 201). When arrested, he had a vial of tablets in his pocket (Case, p. 202).

Dr. Payne testified that the use of morphine impairs the volition of an individual using it.

Dr. McMurray, examining for the State (Case, p. 269) testified that the use of drugs affects the mentality of those using them (Case, p. 144).

Bodily Disease.

Dr. Roland P. Blythe, the Jail Physician found Campbell suffering from a chronic poor heart, chronic bronchitis, chronic bladder condition (Case, p. 157), a marked hyperthropy or en-

largement of prostrate gland of a chronic nature (Case, p. 158).

He also found a pyorrhea condition (Case, p. 158) of a fairly severe condition (Case, p. 159). Campbell had pain in the heart region (Case, p. 157). He coughed (Case, p. 157). He had to get up frequently at night to urinate and at times had great difficulty (Case, p. 157). He suffered pain and distress because of inability to function through the bladder (Case, p. 157). The pain is more or less *all the time* in the bladder.

The pyorrhea condition might cause infection in other parts of the body (Case, p. 159).

Campbell has a hernia. He passed blood from the bladder several days while in the County Jail (Case, p. 159).

The doctor had been visiting Campbell nearly every day for the two or three weeks preceding the trial (Case, p. 160).

Dr. Christopher A. Brokaw, the County Physician who examined Campbell and called in his behalf, testified accused was a man approximately sixty, pale and emaciated (Case, p. 162).

Campbell has a marked pyorrhea about the teeth. Enlarged glands in the neck beneath the jaw. Enlargement of the heart. Muscular weakness. Chronic bronchitis. Right inguinal hernia. Enlarged prostrate gland (Case, p. 163).

His general physical condition was poor (Case, p. 164).

Dr. Leo Ward, an X-ray specialist, connected with various hospitals, testified he took several X-ray pictures of Campbell on April 17, 1929 (Case, p. 167).

Exhibit D. 5 shows a picture of Campbell's head.

The thing that first attracted Dr. Ward's attention was the shape of the head. The shape, he testified, was that which under ordinary circumstances you would associate with a negro. The diameter is not that of the average white man. There is a condition showing an inflammation of the right frontal sinus and inflammation of the left ethmoid sinus (Case, p. 168). These infections have been standing quite some time (Case, p. 169).

Exhibit D. 7 is a side view of the head.

The unusual thing that attracts is the size and shape of the head and the projection of the jaw. The jaw is unusually large and projects in an abnormal manner (Case, p. 170).

The skull is very irregular in its thickness. At the back, it seems very thick. At the top, very thin (Case, p. 171).

The blood vessels are indicated on the picture as unusually large and unusually prominent. The skull and jaw conditions are of long standing (Case, p. 171).

There is a large abscess in the jaw, a large abscess about one tooth that is diseased (Case, p. 176). The condition represents infection of a long duration. In excess of six months (Case, p. 176).

Exhibit D. 8 is a picture of the left side of the head. It shows that the cellaturcica, the posterior processes of the cellaturcica is not present (Case, p. 172). The posterior clinoid processes are not there.

One cannot see them. They are not present, those bony projections, and the whole cellaturcica itself on the X-ray picture is very indefinite (p. 174, ll. 20-30). The condition is of long standing (Case, p. 176, ll. 10-20).

The cellaturcica is a bony cavity U shaped (Case, p. 173). It is above and a little in front of the ear but deeply in the middle of the skull (Case, p. 172).

Each end of the U shape is known as the clinoid processes. The one in front is the anterior clinoid process and the one behind the posterior clinoid process. The cellaturcica houses the pituitary gland (Case, p. 173).

The pictures are very clear and very good pictures (Case, p. 175).

The exhibit also shows the left mastoid cells are not present. There is no mastoid cells seen (Case, p. 175).

The mastoid process is a portion of the skull of the temple bone consisting of cells. The absence of the mastoid cells in the picture indicate infection. They have been destroyed (Case, p. 175). The mastoid infection is a chronic infection over a long period of time.

It also shows a condition of productive arthritis in the cervical vertebrae indicating infection (Case, p. 177). The front portion of the neck shows a tumor formation (Case, p. 177). There is a large abscess in the left jaw (Case, p. 177).

Exhibit D. 11 shows a condition of productive arthritis due to infection in the spine and pelvis (Case, p. 178).

Exhibit 12 is a picture of the teeth of the lower jaw. It shows severe pyorrhea in all teeth; a decayed root and two abscesses.

The conditions are in excess of six months' duration (Case, p. 178).

Exhibit D. 13 shows marked pyorrhea of all upper teeth, and one abscess of long duration in excess of six months (Case, p. 178).

Pyorrhea produces poisoning (Case, p. 179).

Dr. Ward made an examination of Campbell's urine and found evidence of albumen and pus (Case, p. 179).

Dr. Jack Blumberg, a specialist in diseases, illnesses and injuries pertaining to the head and a head surgeon of considerable experience (Case, pp. 183 and 184) possessing a knowledge of the bony structure of the head and the organs encased in the skull was called in behalf of the plaintiff-in-error.

He testified that an ethmoiditis is an inflammation of certain cells in the upper part of the nose immediately underlying the table which separates the brain from the nasal cavity. Generally it is a chronic infection (Case, p. 184).

A sclerosis of the mastoid is that condition where the normal cellular structure of the mastoid has been replaced by solid or almost solid bone. It is an indication of chronic infection. Such infection generally follows an infection of the middle ear.

It can reach any of the adjacent structures which are there. The mastoid proper is separated from the middle fossa of the skull by a very thin bony plate, and in the posterior portion of the mastoid is the large return vein of the skull, the lateral sinus, and it can reach there, and the infection can reach in the front portion of the mastoid, the eustachian tube. A sclerosis of the mastoid is not usual.

The cellaturcica houses the pituitary body. This body has a function on the general human organism (Case, p. 185).

Pituitary is a direct outgrowth of the brain proper. It is directly connected with the brain by a stalk.

Where there is an erosion of the cellaturcica and the posterior clinoid process, it is a clear indication first that something must have existed to erode it, and if something existed sufficient to erode those parts, there must have been a severe intro-cranial disturbance of some sort.

Any condition which existed within the cranium sufficient to erode a bony structure was sufficient to cause a marked disturbance on the soft structures, connected with the brain (Case, p. 186). Erosion of bone takes a long time to occur (Case, p. 187).

A destroyed mastoid and a diseased frontal and ethroid sinus, an erosion of the cellaturcica, diseased abscessed teeth, arthritis of the spine and albumen and pus in the urine (Case, p. 187), signify a chronic focus of infection from which obnoxious substances are entering the general system (Case, p. 188).

Campbell stating his physical condition testified,

> "I had a lot of trouble with my bladder, and it seemed that whatever was the matter with me affected my heart. I used to have terrible shortness of breath. I just felt all—as if I was going to pieces" (Case, p. 197, ll. 20-30).
>
> * * * *
>
> "I was taking medicine to make me sleep and I had—I had a neuritis, a soreness all over my head, so there were many nights I could not bear to rest my head against the

> pillow and could not touch my head, and I had had a discharge from my left ear and that lasted for several months or more. The trouble I had with my bladder, whatever that was, was very much worse, and I frequently passed blood. I remember that on two occasions I was in bed from it for several days'' (Case, p. 200, ll. 1-20).

Dr. Ward testified that Campbell had tremors when he took X-ray pictures of him on April 15, 1929 (Case, p. 337).

William H. Armstrong, the warden at the Union County Jail, testified that Campbell always complained about headaches, heart affection and bladder (Case, p. 321).

Dr. Payne testified that the physical defects enumerated have more or less influence upon the mental state of the individual, render them more and more mentally unstable (Case, p. 266, ll. 10-30).

The pyorrhea and abscessed conditions in Campbell's mouth would all tend to irritate the nervous system and render the patient more emotionally unstable (Case, p. 266).

Exhaustion immediately preceding the homicide, affecting the mental faculties.

Campbell left Westfield, New Jersey, on February 21, 1929, in his Pontiac car.

It was early in the morning before noon (Case, p. 207).

	miles	Case page
He drove from Westfield to Philadelphia about ..	80	207
From Philadelphia to Dover between	80-100	207
Dover to Smyrna	8-10	208
From Smyrna to Dover..	8-10	209 lines 10-20
Dover to Salisbury	65-70	209 line 30
Salisbury to Baltimore ..	125-130	210 lines 20-30
Baltimore to Philadelphia	80-100	211 lines 30-40
Philadelphia to Cranford	75-80	213
	521-580	lines 1-10

He drove most of the day and part of the evening of the 21st.

He did not sleep at all that night.

> Case, p. 209—"Q Why didn't you sleep that night? A Oh, I was all unstrung from taking bromide and morphine, and I had all those old troubles with my head and all the other things that had been bothering me all the time, and wondering whether I was going to be able to get the money that I wanted to give her; all mixed up."

He drove about all of the 22nd into the early morning of the 23rd.

On the 22nd when he left Baltimore he was exhausted physically. He couldn't think very well (Case, p. 211).

He had been taking drugs all that day (Case, p. 212, folios 20-30).

He was taking them constantly to keep the pain out of his head and bladder and to keep from going to pieces (Case, p. 212, ll. 20-30).

Along the trip from Philadelphia in he was sleepy. It was cold and there was snow on the ground.

HE WAS WORN OUT FOR WANT OF SLEEP AND REST (Case, p. 213).

The mental state of the accused at the time of the homicide did not show premeditation and deliberation.

The statement signed by the accused shows lack of premeditation and deliberation. The wording of the statement is as follows:

> "We got to Cranford between three and four o'clock in the morning. I didn't know what to do with myself or her. She wanted me to take her somewheres where we could go to bed. *I didn't know where to go or what to do.* She got kind of cold and drowsy in the car. I made up my mind there was no way out of it but simply to get rid of her. *There was only one seat in the car, except the rumble seat. I THEN SHOT HER.* At this time I was just around the bend in the road from where she was found, about two or three hundred yards away. I don't remember the name of the street. It wasn't a street, it was a road. She was sitting in the front seat at the time. She was dozing, she was not sleeping. I held the gun up over her head and fired one shot. It went in the top of her head. She had a hat on. I then started up into the other road, and decided I ought to get rid of her. *I drove*

> *the three or four hundred yards because I didn't know what to do.* I again stopped and dragged her out of the car. I threw a lot of gasoline over her and set fire to her with a match. I got the gasoline from the rumble seat of my car. I kept it there in case I ran out of gas when out driving. Before this I realized it was going to be daylight before long when I got to Cranford and I wanted to get home and I couldn't take her anywheres with me.
>
> "There was nothing between us that prompted me to do this except for the reason that I could not maintain two establishments" (Case, pp. 74 and 75).

Campbell says he never had any idea of shooting Mrs. Mowry (Case, p. 213). He did not recall the shooting (Case, p. 213). If we analyze his mental processes and mental re-actions to ascertain his mental state from the language of Campbell in the statement we find he says: "I didn't know where to go or what to do" (Case, p. 74, l. 30). *Then* he says: "I made up my mind there was no way out of it but simply to get rid of her" (Case, p. 74, l. 40).

Assuming that there was the entertainment in his mind of the design to kill, as set forth in the statement, the manner of the execution dispells the conclusion that the intent ripened into design as the result of deliberation. He says, after the language to get rid of her: "There was only one seat in the car except the rumble seat. I *then* shot her." (Italics mine.)

Between the time the accused is supposed to have formed an intention to kill (if to get rid of her meant killing), and the statement of the shooting, there is nothing to show operation of mind of the accused or mental state. Nothing to show reflection or consideration of the matter. No explanation excepting the statement, "There

was only one seat in the car except the rumble seat."

Then "I made up my mind there was no way out of it but simply to get rid of her" (Case, p. 74, l. 40).

Assuming that here was intention to kill, the presence of a specific intent to take life is not, standing alone, conclusive that the homicidal act was done with deliberation and premeditation.

> *State* v. *Bonofiglio*, 67 N. J. Law 239, at page 244.
>
> "There must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time. But the time need not be long. It must be sufficient for some *reflection and consideration upon the matter for the choice to kill or not to kill* and for the formation of a definite purpose to kill."

And see also *State* v. *Mangano*, 77 N. J. Law 544, at page 547.

The statement, if anything, shows a mental state that was confused and blurred, not only at the time of the homicide but also at the time the statement was taken. It lacks logical sequence of mental operation. What the rumble seat had to do with making up his mind to get rid of her and then shooting her does not bridge the hiatus that exists between the entertainment of the thought to kill and the actual killing itself. Such hiatus under the law, must be bridged by deliberation and premeditation. The accused himself need not be relied upon to detail the operations of his own mind.

In the absence of an express declaration on the part of the accused, it is almost impossible for any person to tell the thoughts or operation

of his mind particularly on the question of deliberation. Resort must be had to reasonable inference from the physical and mental condition of the accused, the nature of his acts at the time of the shooting, and all of the circumstances surrounding the shooting.

We can judge his mental state by two things, the picture of the accused as an individual and the surrounding circumstances.

As to the accused and his surrounding circumstances. We find a man sixty-one years of age, a psychopathic personality all his life, a constitutional defective with unquestioned impairment of volition or the ability to exercise a will, thereby lacking the capacity to reflect and deliberate.

An elderly man concededly very sick physically and mentally, full of drugs and other poisons in the system, afflicted organically, in great pain most of the time, worn out by worry and completely exhausted at the time of the shooting.

This accused who had risen above the ineradicable experience of incarceration in penal institutions and who had also emerged from the turbulence of numerous domestic complications, became a man of rectitude, enjoying domestic tranquility and financial success for over twelve years. Then within a period of *two* years, he slipped to financial ruin, drugs, disease in body and such disease in mind, that he contracted a bigamous marriage, while living happily with a good wife and three children.

In the early morning of February 23, 1929, this old man, tired, worn, handicapped as a constitutional defective, debilitated by years of circumstance that would ordinarily send a normal man to a premature grave, enmeshed

in the coils of drug producing devastating effects, his physical suffering immense, worn with family responsibility, became weighted with a super-problem.

He was at the threshold of his home in Westfield, where awaited him his wife and three children.

He was on a lonely road with a bigamously married woman, who wanted him to take her somewheres.

From February 21, 1929, to the early morning of February 23, 1929, he had driven upwards of five hundred miles without sleep.

The powers of mental resistance had gone.

He did not know where to go *or what to do.*

As Dr. Payne said, after considering all the salient facts in the case, the ability of Campbell to deliberate and premeditate would be very, very much impaired (Case, p. 270). The ability of Campbell to consider the consequences of his act would be certainly very much impaired (Case, p. 269).

The State did not meet the issue as presented. The evidence was not *contradicted* that compelled the conclusion that the accused, at the time of the homicide, lacked the ability to premeditate and deliberate.

The testimony of the witnesses for the State shows:

(a) No denial that Campbell was an elderly man;

(b) Admissions that he was a psychopathic personality in a class that showed impairment of volition; volition being the ability to exercise the will; to reflect and deliberate (Case, p. 289).

(c) No denial that his physical condition was very poor;

(d) The admission that the use of drugs was suspected by the doctors for the State;

Dr. Collins says: "I examined him physically and I was suspicious of morphine, drug poisoning and he made an absolute denial; was quite upset when I asked him if he used morphine" (Case, p. 274).

(e) Doubt that Campbell on February 23, 1929, knew the consequences of his act (Case, p. 283) or the nature thereof (Case, p. 285).

As to the Crime Itself.

The manner of execution of the crime distinctly showed a lack of premeditation and deliberation.

If the mind of the accused was entertaining a design to kill, he did not have to wait to do it until he reached Cranford, a few minutes from the door-step of his home in Westfield.

He had travelled many miles. He had many opportunities.

He had a knowledge of poison (having studied medicine) and could have secretly administered it to Mrs. Mowry.

At the time of the shooting, the deceased and Campbell were just around the bend in the road from where the body was found (Case, p. 75).

The State does not locate the exact place of the shooting.

The statement says Campbell drove three to four hundred yards and turned into the other road (Case, p. 75, ll. 10-20).

Officer Atwood says he found the body on Springfield Road just this side of Pawnee Road,

that is on the Cranford side of Pawnee Road (Case, p. 36, ll. 20-30). It was about ten feet south (Case, p. 37, ll. 10-20). It was breaking daylight (Case, p. 36). The body and clothes were on fire (Case, p. 36). The concrete of Springfield avenue was clear (Case, p. 39). On each side of the concrete were snow banks (Case, p. 39). The feet were on the edge of the concrete (Case, p. 39). He saw the body in flames. He could see it in the dark (Case, p. 39). The bend in the road is known as a boulevard. It runs easterly towards Kenilworth (Case, p. 29), and westerly towards Westfield. Springfield avenue runs southerly towards Cranford (Case, p. 29) and northerly towards Westfield. From a culvert at the bend into the Kenilworth Boulevard to a point south of Pawnee Road on Springfield avenue, is seven hundred sixty feet. Campbell says he seemed to see a bridge and then a fire (Case, p. 219). If the shooting occurred at the bridge on the boulevard, the distance from there to Springfield avenue is sixteen hundred twenty (1620) feet. If it occurred three hundred to four hundred yards away from Springfield avenue, it was nine hundred to twelve hundred feet. In other words, Campbell drove along the boulevard to Springfield avenue and then down Springfield avenue below Pawnee Road an additional distance of seven hundred sixty feet. *In all, he drove about a half a mile.*

In the early morning, this accused drove with a woman shot in the head, a half a mile.

He drove from a *park reservation* into a *main highway.* He drove into a traffic area. Along Springfield avenue, running between Westfield and Cranford, there is traffic going to and from Cranford, Kenilworth, Westfield and adjoining places.

At and near the place where the body was burned there was an undisturbed viewpoint of between one thousand and fifteen hundred feet in length (Case, pp. 31 and 32). Campbell placed the body in the open highway and then *illuminated* the highway. He set the body on fire with gasoline poured over it.

Undoubtedly the crime had to come to the attention of travellers on the highway.

The very manner of the homicide indicates the killing was not the result of deliberation—the very place he left the body, the manner in which it was left, everything connected with it, all show a mind lacking the power of volition, of deliberation—even thought itself.

As to the Gun.

The accused did not carry a gun for the deliberate purpose of committing a homicide. In the statement taken in the Prosecutor's Office (Case, p. 76) he says:

> "I own a gun. A Colt automatic, manufacturer's No. 267222. It is a .32 calibre. I bought it years ago in the West, I should say about fifteen or eighteen years ago.
>
> "On being shown the gun by Prosecutor David, I identify the gun as the one I had on my person tonight and the one with which I shot Mrs. Mowry. My wife knew I had the gun. We got it because when we lived in Chicago, there were burglaries and things of that sort going on and she wanted one in the house."

Mr. Albert Foster, a witness for the State, identified it (Exhibit S. 29) as having been made fifteen or sixteen years ago (Case, p. 138).

The accused explains the presence of the Colt automatic more in detail (Case, p. 206).

> Q Where did you place the Colt automatic in your car when you left? A It was up on the back of the seat, where the kind of a pocket or shelf there.
>
> Q Had you carried that gun on previous occasions? A I had it when I went off on automobile trips where I thought I was going to be out nights, and night riding. I had done it in Chicago when we went out riding at night. I didn't make a habit of carrying it on my person if that is what you mean.
>
> Q How long was it that you had had this Colt automatic? A I bought it when I first went to Chicago.
>
> Q Did you take the Colt automatic with you on the day of February 21 when you left Westfield for the purpose of using it to shoot Mrs. Mowry? A I didn't take it for any purpose in my mind except a habit of having it when I was out night driving."

and on cross examination to the same effect (Case, pp. 231-232).

Mrs. Campbell testified as to the automatic as follows (Case, p. 154):

> "A I was going to say we always carried it when we were out late at night. We used to have it between us on the front seat when we took rides at night. We always carried it when we were out late."

As to the Can of Gasoline.

The statement says (Case, p. 75):

> "I got the gasoline from the rumble seat of my car. I kept it there in case I ran out of gas when out driving."

The defendant further testified (Case, pp. 206-207):

> "Q Did you have occasion during the time you owned these various cars to carry

that extra can of gasoline? A I carried gasoline only when I knew I was going to be away late at night or I might run out.

Q Did you purchase expressly for the trip that was started on February 21, 1929, a can with which to carry a reserve supply of gasoline? A No.

Q Had you been the owner of that can for sometime past? A I had had that can for a long time."

and on cross examination (Case, p. 262):

"Q How long had you had the gas can that you had the surplus gas in your rumble seat? A Oh, I had that three or four years. I think it was the can that had—I had had it a long time. I don't remember just how long.

Q Where had you gotten it? A I had it in Chicago. I think it had radiator solution in it when I got it."

Mrs. Campbell testified (Case, pp. 154 and 155):

"Q Do you know whether or not prior to February, 1929, there was an extra can used for an emergency supply of gasoline in your automobile? A We always carried a gallon can full of gasoline because we used to ride sometimes—

The Court: The question is not why. The question is did you do that. Your answer has been given.

A Yes."

There was no Deliberation.

In *13 Ruling Case Law*, page 767, the text says: "Deliberation and premeditation imply a capacity at the time to think and reflect—sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act."

In *Clifford* v. *State,* 60 N. J. L. 287 at page 291.

> "Deliberate" within the meaning of an instruction that to constitute murder in the first degree the killing must be wilful, deliberate and premeditated, indicates the purpose *formed in a mind capable of conceiving a purpose.*"

The Law Summed up Would indicate that,

> ~~[illegible]~~
>
> "By the use of the word 'deliberate' in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or the things connected with his intention, with a view to a decision thereon; that he carefully considers all these, and that the act is not suddenly committed. It implies that the perpetrator must be capable of the exercise of such mental powers as are called into use by deliberation, and the consideration of motives and consequences."

It has been said that the object of legal punishment is principally to prevent crime and preserve the peace of society and that wrongdoers *should reflect* on the object of punishment. (Italics mine.)

State v. *Spencer,* 21 N. J. L. p. 196.
(Hudson Oyer & Terminer.)

The *uncontradicted testimony of the State* and the testimony for the accused, shows Campbell could not evaluate—that is, weigh the consequences of his deed. He could not reflect on punishment. He had a tissue paper mentality that was saturated beyond resistance by mental stress, and physical breakdown. It is the exception who rises above the average even in a normal life. For a *constitutional defective* to reach the position and life Campbell led for twelve years in Chicago, was very unusual. The will to achieve had strengthened and then gave way. At 59 he snapped again. He came down fast.

At the fatal moment of the homicide he had no volition—*no ability to deliberate.*

The mental state of Campbell showed his faculties prostrated. He undoubtedly loved the woman who had borne him three children. He had become adjusted to normal contact after an abnormal past and had earned in responsible position upwards of twenty-five thousand dollars a year. Despite all this he sought a matrimonial agency as a haven for financial security.

He wrote deceitful love letters while living at home with his wife and children.

No one disputes he lacked the ability to deliberate. Yet he stands convicted of first degree murder.

It is respectfully submitted that the weight of the evidence is in favor of the following findings and conclusions:

As to mental state and ability to deliberate.

(a) Campbell was an old man.

(b) He was a psychopathic personality.

(c) He suffered from numerous physical ailments.

(d) The structure of his head and the contents thereof were unusual.

(e) He presented evidences of poisons at and near the brain.

(f) He suffered from the use of drugs.

(g) He suffered from great mental stress caused by worry.

(h) He was exhausted physically and mentally.

As to deliberation.

(i) The statement does not show deliberation and premeditation in the shooting.

(j) The crime itself fails to show deliberation and premeditation.

THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

As to the Charge.

Specification 2.

"That the charge of the Court as a whole, and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury." A general exception was noted, allowed and sealed (Case, p. 356). Assignments, Case, p. 371; Causes, Case, p. 389.

Specification 21.

"That the Court charged the jury as follows: '*Nevertheless, there has been some evidence in the case which seems to make expedient that I charge you to some degree on the question of insanity.*' Counsel for the defendant has said more than once quite clearly that the defense is not that of legal insanity. Insanity is not easily defined. Questions put to one or two of the witnesses as to what constituted insanity, did not elicit very satisfactory answers, but, in a general way, we know, as common, ordinary citizens, what insanity is, and what it means to be out of one's mind. Now, that line shades off gradually and there has been some evidence which, while not given with the idea or with the announced purpose of raising a defense of emotional insanity, may raise some question in your minds as to its significance. For instance, Dr. Payne, one of the witnesses called by the defense, was asked some questions as to the effect of certain physical conditions upon the mind, and he testified, according to my recollection—and you will correct me if I am wrong—that he thought that all of those physical defects might have more or less

influence upon the mental state of the individual, rendering the individual more and more mentally unstable, that was his expression, I think, 'mentally unstable'; and continuing I think he used the expression, 'more emotionally unstable'; and again, certain conditions would tend to irritate the nervous system and render the patient 'more emotionally unstable and irritable'; and again, that conditions 'would impair a man's emotional stability.' That evidence goes more or less to a mental condition and I therefore, feel constrained briefly to charge you on the defense of insanity. Of course, if this defendant was insane, legally insane, at the time he committed this crime, he is guiltless. That should be said to you. But I do not understand—and it is the specific statement of counsel—that the contention is made that he was legally insane. *The insanity, to be effective as a defense, must be such as to render the defendant incapable of committing crime. Whatever the insanity of the person may amount to, if he is conscious at the time of committing an atrocious act, and has reason enough to know that he ought not to do it, he is guilty in the eye of the law. If the evidence makes it clear to your minds that the prisoner, at the time of the act, was unconscious that he ought not to do it, he is to be acquitted; but if not, then he cannot be acquitted on the ground of insanity, whether he was partially insane or not.*

"The law does not recognize a form of insanity in which the faculties are so affected that the person suffering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them and is urged by some mysterious pressure which he cannot resist, to their commission. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appre-

ciate his legal and moral duty in respect to it, has no place in the law. The law regards insanity as a disease of the mind, implying fixedness and continuance of mental condition. It therefore rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act and ends when it is consummated. The law also utterly repudiates, in criminal prosecutions, the defense of insanity when based on a defective or perverted moral sense, generally known as moral insanity. A person who steals the property of another, knowing the nature of the act he is doing, whose moral sense is so perverted that he cannot restrain his capacity to steal, is sometimes called a kleptomaniac, but in law he is regarded as a thief and is punishable as such.

"As to the burden of proving the defense of insanity and to the extent that it may be raised; *The law presumes that every man is sane until the contrary be proved and that therefore, if when the accused sets up the defense of insanity, the burden of proof is upon him, and to make effectual such a defense the proof of the prisoner's insanity must be satisfactory. The accused must overcome the legal presumption of sanity by a clear preponderance of proof.* The law presumes or assumes that at the time of the committing of the act for which he is tried, he was sane, and the State, is, therefore, not called upon to prove that he was sane. If he sets up in his defense the plea of insanity, it is incumbent upon him to establish it, and if he fails to do so, the presumption or assumption of sanity still holds, for it has not been overcome or shown to be false. While, for obvious reasons, the defense of insanity is not disfavored by the law, yet, in view of its peculiar character, and in order that it may not serve as a screen for guilt, it is regarded with jealousy, and in the interest of public justice, and in accordance with the sound dictates of a wise and necessary public policy, subject to a close and careful scrutiny. The defense must

be proved to the satisfaction of the jury, and may be established by the preponderance of proof. In other words, it must be sustained by the evidence." (Italics mine.)

Assignments (Case, pp. 381 to 384 inc.); Causes (Case, pp. 399 to 402 inc.).

The language of the charge is at Case, pages 348 to 351 inclusive.

Specific exceptions to portions of this language in Court's charge were noted, allowed and stated.

They appear in the record (Case, pp. 358 and 359).

This assignment and cause embraces all of the language forming the basis of the specific exceptions.

The language referred to in the specific exceptions is italicised in the assignment.

Specification 22.

That the Court charged the jury as follows: "You should, however, carefully distinguish between, *on the one hand,* a wavering condition of the mind, which is not incapable of forming an intent, or of deliberating, or of premeditating, *but determines an act on slight provocation,* and on the other hand, such prostration of the faculties as put the accused in a state wherein he is incapable of performing the essential functions which I have mentioned." At Case, p. 352, ll. 30-40. See also Assignments of Error (Case, p. 384 and Causes for Reversal, Case, p. 402). (Italics mine.)

Specification 25.

That the Court charged the jury as follows: "Did he have a conception of right and wrong? Does he now have a conception of right and wrong? Did he, before the homicide, have a conception of right and wrong?"

At Case, p. 355, ll. 20-30. (Is in the Assignments of Error Case, p. 385 and Causes for Reversal Case, p. 403.)

Specification 26.

That the Court charged the jury as follows: "My recollection is that his counsel asked him a question something like this: 'Now, in using the term "Get rid of her," did you ever contemplate in your mind an intent to kill her,' and my recollection of the answer is that he said 'Oh, my God, I never thought of killing anybody in my life.' Now, does that exclamation, does that form of language, do these words carry to your mind anything as to whether back of it lay a conception on his part as to whether it was or was not right to kill? So within the evidence you may search for the reasons pro and con for believing that the man had the power to form a design, to deliberate on it, premediate on it, and to carry it out." At Case, p. 355, ll. 30-40 and Case, p. 356, ll. 1-10 and is in the Assignments of Error Case, page 385 and Causes for Reversal, Case, p. 403.

These assignments and causes are argued together.

The learned Trial Court erred to the prejudice and injury of the accused by charging on the law of insanity. Such charge

(a) presented an irrelevant issue;

(b) imposed on the accused a burden he did not and was not obliged to assume;

(c) eliminated from the consideration of the jury the question of second degree murder;

(d) caused the jury to be uncertain in their deliberations.

The accused was charged with murder. The homicide was not disputed. There was a single issue:

> Was the mental state of the accused at the time of the shooting affected so that he was deprived of the capacity to premeditate and deliberate? (Case, p. 279, ll. 10 to 22).

Insanity was not the defense (Case, p. 279, ll. 10 to 20). The learned Trial Court so understood it. In the charge it was stated:

> "Counsel for the defendant has said more than once quite clearly that the defense is not that of legal insanity"

(Case, p. 348, ll. 38-40 inclusive. The learned Trial Court on the defense of insanity says:

> "*That* evidence goes more or less to a *mental condition* and *I therefore,* feel constrained, briefly, to charge you on the *defense of insanity*" (Case, p. 349, ll. 30-33). (Italics mine.)

The evidence referred to is that of Dr. Payne. Charge (Case, p. 349, ll. 14 to 33).

The evidence of Dr. Payne does not present a defense of legal insanity. There was, it is respectfully submitted, no necessity for the charge on the law of insanity as a defense.

In *State* v. *James,* 96 N. J. L. 132, where insanity was *not* the defense the learned Trial Judge refused to admit evidence of the prisoner's family history to show an inherited taint of insanity for the jury to take into consideration on the question of recommending punishment under the 1919 amendment to the Crime Act. This court held at page 150 that it was a *collateral issue* as insanity had not been pleaded and at page 151.

> "It is a general principle that an issue must be single and certain and that an irrelevant one will not be permitted to be tried."

I respectfully submit that insanity was not an issue.

By presenting it as an issue the jury were requested to consider all of the circumstances required under the defense of legal insanity.

The learned Trial Court said:

> "Whatever the insanity of the prisoner may amount to, if he is conscious at the time of committing an atrocious act and has reason enough to know that he ought not to do it, he is guilty in the eye of the law." This in Specification 21, Charge Case, p. 350, ll. 1-15.

The learned Trial Court in the first place states the proposition that the accused "is *guilty* in the eye of the law." The natural question is, guilty of what? Murder in the first degree or murder in the second degree? By this proposition the jury had their attention focussed on an issue between innocence and guilt of murder in the first degree.

The learned Trial Court says:

> "*Whatever the insanity of the prisoner may amount to,* if he is conscious at the time of committing an atrocious act and has reason enough to know he ought not to do it, he is guilty."

But even if he were conscious at the time and had reason enough to know he ought not to do it he was not *per se* guilty of murder in the first degree. There was still the single issue of mental state involving the capacity to deliberate and premeditate.

In the Spencer case, *supra*, at page 201, the Court held:

> "If he was conscious of this, he cannot be excused on the score of insanity—he is then amenable to the law—and in that case, if such is your opinion from the evidence of

the case, you will have to go on to the consideration of the circumstances attending the act, in order to distinguish to what kind of homicide it belongs according to the law of the land."

As stated by Justice Kalisch in a dissenting opinion in the case of *State* v. *Martin*, 102 N. J. L. 388 at pp. 402 and 403.

"The trial judge practically instructed the jury that, unless the insanity was to such an extent as would warrant an acquittal on the ground of insanity, the jury could not, even if it found that the defendant was suffering from a diseased mind, convict him of the lesser degree of murder. This is not only absurd, but a barbarous proposition. This court held, in Wilson *v.* State, 60 N. J. Law, 171, at page 184 the following:

'When the character and extent of a crime is made by law to depend upon the state and condition of the defendant's mind at the time, and with reference to the act done, intoxication, as a circumstance affecting such state and condition of the mind, is a proper subject for inquiry and consideration by the jury. If, by law, deliberation and premeditation are essential elements of the crime, and, by reason of drunkenness *or any other cause,* it appears that the prisoner's mental state is such that he is incapable of such deliberation and premeditation, then the crime has not been committed. There is a failure on the part of the State to prove the crime into which premeditation must enter.'

In the same case, at page 185, this court approved what was said by Judge Depue in his charge to the jury in that case, which was as follows:

'If the evidence is sufficient to satisfy the jury that the intoxication of the accused, at the time of the homicide, was so great as to prostrate his faculties and render him incapable of forming the specific intent to kill, which is the essential ingredient of

murder of the first degree, the prisoner will not be entitled to acquittal, but his offense will be murder in the second degree. You should carefully discriminate between that excitable condition of the mind produced by drink, which is not incapable of forming an intent, but determines to act on a slight provocation, and such prostration of the faculties by intoxication as puts the accused in such a state that he is incapable of forming an intention from which he shall act.'

"It is an abhorrent idea to contemplate that, in a case of intoxication resulting, even from the voluntary act of the person, if by reason of such intoxication his mind is in such a state that he cannot form an intent to take life, or to deliberate or to premeditate, a jury should take that factor into consideration and may convict him of murder in the second degree, whilst if a person is afflicted with a mental diseae, the act of God, a jury may not take that factor into consideration on the question of premeditation, deliberation, willfulness, or intent, and must convict the defendant of murder in the first degree if he fails to satisfy the jury that his mental condition was such that at the time of the commission of the act he did not understand the nature of the act which he was doing and was unable to distinguish right from wrong."

I respectfully submit that by the language in the charge the issue of the *degree* of murder was subordinated to an issue as to the entire *innocence* of the accused. This the accused did not claim. He was not obliged to face the test that a claim of innocence required.

"If the evidence makes it clear to your minds that the prisoner at the time of the act was *unconscious* that he *ought not to do it,* he is to be acquitted; but if not, then he could not be *acquitted* on the ground of insanity, whether he was partially insane or not." Specification 2, Case, page 350, ll. 8-13.

Here again is the test of what was required for an *acquittal,* and failing to meet *such requirement* the accused could *not be* acquitted.

Could not be acquitted of what?

The issue as to second degree murder is subordinated again.

> "The law does not recognize a form of insanity in which the faculties are so affected that the persons suffering from it, although he perceives and appreciates the moral quality of his acts, he is unable to control them and is urged by some mysterious pressure which he cannot resist to their commission." Specification 21, Case, page 350, ll. 14-20.

This language in the charge is in accord with *State* v. *Carrigan,* 93 N. J. L. 268; affirmed 94 N. J. L. 566, but not applicable, I respectfully submit, to the evidence. No claim was made that accused was "urged by some mysterious pressure."

No such form of insanity was urged. The idea of irresistible impulse due to mental disease was not involved.

It is not and was not contended in the case at bar that the act of the accused should be excused or mitigated upon the notion of an irresistible impulse to commit a homicide. The defendant made no such claim as an issue in the case. The evidence in the case was not offered for that purpose. The simple question presented by the accused was whether or not his *mental state* was such that *he could deliberate and premeditate* and if, from all of the facts and circumstances in the case, *he did deliberate and premeditate.* The charge of the learned Trial Court refers to the testimony of Dr. Payne, but it is respectfully submitted that there was nothing in

that testimony to warrant the inference or to establish as a premise that the defendant was contending with the State *on the issue* that the shooting was the result of his suffering an *irresistible impulse* to commit a murder where he, at the same time, had the mental capacity to appreciate his legal and moral duty in respect to it.

The learned Trial Court said:

> "As to the burden of proving the defense of insanity and to the extent that it must be raised; the law presumes that every man is sane until the contrary be proved and that, therefore, if when the accused sets up the defense of insanity, the burden of proof is upon him and to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory. The accused must overcome the legal presumption of sanity by a clear preponderance of proof." Specification 24, Case, page 351, ll. 1-10. Charge.

The accused was not urging insanity as a defense. Any evidence as to mental state showing any form of mental derangement only went to the question of the degree of the crime committed. There was no necessity of assuming *the burden of proof* as if it were the defense. If that were desired then complete exculpation was available.

> "Did he have a conception of right and wrong." Specification 25, Charge, Case, page 355, l. 26.

Here is the right or wrong test. Clearly and particularly applicable where insanity as a defense is offered.

> "* * * did those words carry to your mind anything as to whether back of it, lay a conception on his part as to whether it was or was not right to kill?" Specification 26, Case, page 355, ll. 36 and 37.

The same as above.

By submitting to the jury the concrete questions as to the conception of the accused of right and wrong and of an appreciation of his legal and moral duties and of his consciousness of what he ought or ought not to do, the learned Trial Court in effect placed the accused in the position of carrying the defense of insanity and therefore imposed upon the accused the duty of meeting all of the legally required conditions that such defense demands. This, I submit tended to mislead the jury.

In the case of *State* v. *Noel,* 102 N. J. Law 659, a somewhat similar situation arose by reason of the language of the learned Trial Court in the charge. In the printed State of Case in the Noel case, the learned Trial Court charged on the law of murder in the second degree. (Noel case, State of Case, p. 762.) At page 764 in the charge of the Noel case, the learned Trial Court said:

> "The question raised by this defense is not whether the defendant was ever insane at a former time in his life, but whether he was insane at the time of the killing of Pierce, whether the accused at the time of the doing of the act was conscious that it was an act which he ought not to do. If he was not conscious of this he ought to be acquitted. If he was conscious of this, he cannot be exculpated on the ground of insanity and he is then amenable to the law."

The language in the opinion of Mr. Justice Minturn, in the *Noel Case, supra,* at pages 684-685, is particularly appropriate to the particular facts of the case at bar. It reads:

> "The later adjudications in this court have so moulded the formula as to reduce the test to the simple inquiry whether the defendant at the time he committed the act knew the difference between right and wrong. Mackin *v.* State, 59 N. J. Law, 495, 36 A.

1040. The rule thus established after a legal analytical examination and test of years, is now too firmly inbedded in the law of this State to be changed or disturbed by any command short of a legislative mandate containing a different formula. Its application, however, in any case, must be made in view of section 107 of the Crimes Act (2 C. S. p. 1780), which defines murder in the *first* degree as an act both 'wilful, deliberate and premeditated' so that a defendant, to be held responsible, must not only possess sufficient mental ability to be able to distinguish right from wrong, but must also be able mentally to so utilize that ability as to possess will power sufficient to inaugurate or resist its perpetration. If it be in evidence, therefore, that at the time he did not possess these faculties, his deed must be reduced *ex necessitate* to murder of the second degree, or to manslaughter, but he cannot be convicted of murder in the first degree.

The charge of the learned Trial Court in the case at bar, after an exhaustive presentation of law and fact, left no discretion to the jury upon that question, but in effect *while defining the crime correctly, elaborated as the crucial test of guilt upon the moral and legal test of defendant's consciousness of right and wrong.* Thus the Court declares:

> 'The question raised by the defense is not whether the defendant was ever insane at a prior time of his life, but whether the accused at the time of the doing of the act was conscious that it was an act which he ought not to do. If he was not conscious of this, he ought to be acquitted. If he was conscious of this, he cannot be exculpated on the ground of insanity and he is then amenable to the law.'

We thus have the judicial test as expounded by the cases, fairly applied without the presence at the same time of the necessary statutory test, which, in fact, defines and creates the crime, and includes the

will power, the power of deliberation and premeditation as *sine qua non* to its commission. In consonance with this test of legal responsibility, as the essential basis of conviction, is the testimony of the entire array of alienists, all of whom had their attention *directed and limited to the single inquiry whether the defendant at the time was conscious of the difference between right and wrong.*

The jury, practically, by this testimony and the whole trend of evidential procedure had their minds dominantly focused upon that inquiry, as the basic and essential test of defendant's mental and legal responsibility, and of *all opportunity for any verdict, except that of guilty in the first degree or acquittal as the alternative, was thus, inferentially at least obliterated from the record.''* (Italics mine.)

In the opinion of Mr. Justice Kalisch in the same case is the following language:

"I am also of the view that the trial judge erred in limiting the jury, on the evidence in the cause, to a finding of a verdict of murder in the first degree if the jury found the defendant guilty of murder.

In Warner *v.* State, 56 N. J. Law, 686, at page 690, 29 A. 505, 506 (44 Am. St. Rep. 415), Reed, *J.*, speaking for this court says:

'The exceptional immunity extended to the drunkard is limited to those instances where the crime involves a specific, actual intent. When the degree of intoxication is such as to render the person incapable of entertaining such intent, it is an effective defense.'

In the later case, Wilson *v.* State, 60 N. J. Law, 171, 37 A. 954, this court, in an opinion by Van Syckel, *J.*, declared:

'If, by law, deliberation and premeditation are essential elements of the crime, and, by reason of drunkenness or any other cause, it appears that the prisoner's mental state is such that he is incapable of

such deliberation and premeditation, then the crime has not been committed.'

The law is not the creation of such barbarous and insensible animal nature as to extend a more lenient legal rule to the case of a drunkard, whose mental faculties are disturbed by his own will and conduct, than to the case of a poor demented creature afflicted by the hand of God. This subject was fully discussed by me in a dissenting opinion in State *v.* Martin (N. J. Err. & App.) 132 A. 93. Moreover, a review of the cases cited on this topic clearly indicate that the legal rule as applied to the drunkard charged with the commission of murder, relating to the degree of guilt, is equally applicable to the mentally afflicted. If the case of State *v.* Martin holds a contrary view, it is a distinct and deplorable departure from the legal rule enunciated by this Court in Wilson *v.* State and Warner *v.* State, *supra.*''

The language in Specification 22, Case, page 352 is:

''You should, however, carefully distinguish between, on the one hand, *a wavering condition of the mind*, which is not incapable of forming an intent, *or* of deliberating, or of premeditating, *but determines an act on slight provocation*, and on the other hand, such prostration of the faculties as put the accused in a state wherein he is incapable of performing the essential functions which I have mentioned.'' (Italics mine.)

There was no evidence to support as an alternative in the question submitted that a *wavering condition of mind* determined the act of homicide on *slight provocation.*

The evidence shows Mrs. Mowry was asleep or dozing. She did not do anything that could be construed from the evidence in the case that caused Campbell's mind to act on slight provocation.

The state of mind was not one of irresistible impulse or frenzy. It was a state of mind of *prostration.* Hence the evidence, I respectfully submit, did not support this language in the charge.

The jury were given as an alternative fact in the case to be found that Campbell had either *determined* to shoot *on slight provocation,* or shot, as was contended, when the faculties were prostrated.

Again at page 355 in the charge is interwoven with the issue of premeditation and deliberation the test required on a legal insanity defense.

The learned trial court says in the charge at Case, p. 355, ll. 20-30, the language in Specification 25, Case, p. 385:

> "Did he have a conception of right and wrong? Does he now have a conception of right and wrong? Did he, before the homicide, have a conception of right and wrong?"

and at p. 355, ll. 30-40 the language in Specificaiton 26, Case, p. 385, the Court charged the jury as follows:

> "My recollection is that his counsel asked him a question something like this: 'Now, in using the term 'Get rid of her,' did you ever contemplate in your mind an intent to kill her? and my recollection of the answer is that he said 'Oh, my God, I never thought of killing anybody in my life.' Now, does that exclamation, does that form of language, do those words carry to your mind anything as to whether back of it lay a conception on his part as to whether *it was* or was *not right to kill?* So within the evidence you may search for the reasons pro and con for believing that the man had the power to form a design, to deliberate on it, premeditate on it, and to carry it out."

Even if the question of deliberation was included in the charge it was so interwoven with the dominant issue of insanity that the effect of it was destroyed.

See *State* v. *Clayton*, 83 Law, 673, at pages 675 and 676.

The effect of this charge, I respectfully submit, cannot be measured and hence any additional instructions in the charge that may embrace the law defining the various degrees of murder do not eliminate the injury to the plaintiff-in-error.

I respectfully submit that by the language of the learned trial court in charging the law of insanity and the test required as contained in the specifications, the accused suffered prejudicial error.

The jury showed they were uncertain. The learned trial court referred to the testimony of Dr. Payne upon which the defense of insanity as charged was predicated. The jury was charged on the fourth day of the trial. At 1:40 P. M. of that day the jury returned to the court room and the following appears in the record Case, p. 366:

> "Afternoon Session 1:40 P. M.
>
> (Jury returned to court room.)
>
> The Court: I understand that the jury has come for some instructions from the Court.
>
> The Foreman: Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name I do not recall.
>
> The Court: I would be glad to afford you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own

recollection as to what that testimony was. Is there any other instruction that you desire from the Court?

The Foreman: That is all, I believe.

Mr. Gordon: I desire to note an exception to your Honor's statement.

Exception allowed. Sealed accordingly.

CLARENCE E. CASE,
J.S.C"

I submit that what was in the minds of the jurors was the language of the learned trial court with reference to the testimony of Dr. Payne, as it referred to the law of insanity as charged. The jury with their uncertainty may have interpreted the testimony that a defense of insanity or partial insanity was based on irresistible impulse.

Their deliberations and their verdict must have taken into account the charge of the Court on this phase of the case.

In refusing the request of the jury error is assigned, and discussed hereafter under a separate specification.

32.

"That the jury, by its foreman, requested of the Court as follows: 'Your Honor, we would like to hear again the testimony of Dr. Payne, and the physician from Greystone Park, whose name I do not recall,' which the Court refused in the following language: 'I would be glad to afford you the opportunity of inspection of the testimony if I were permitted to do so, but I do not understand that that is the practice. You have heard the testimony and you will need to determine upon it from your own recollection as to what that testimony was. Is there any other instruction that you desire from the Court?' to the prejudice and injury of the plaintiff-in-error and to which the plaintiff-in-error noted an

objection in the following language: 'I desire to note an exception to your Honor's statement.'" Case, p. 366. Assignments of Error, Case, p. 387. Cause for Reversal, Case, p. 405.

The jury by their request indicated that the testimony of Dr. Payne and of either Dr. McMurray, a witness for the accused (State Case, p. 142), or Dr. Collins, a witness for the State (Case, p. 271), was necessary to be re-read in order for them to come to a proper determination of the issues involved in the case.

Drs. Collins and McMurray were the physicians from Greystone Park. The testimony of Dr. Payne emphatically stated that the ability of the accused to deliberate and premeditate would be *very, very much impaired* (Case, p. 270). The testimony of Dr. McMurray was to the effect that the accused was of a group that showed impairment of volition or emotional reaction (Case, p. 143). The testimony of Dr. Collins showed that the accused was a psychopathic personality (Case, p. 276) and that a psychopathic personality is one of a group that shows impairment of volition. Volition means the ability to exercise the will (Case, p. 289). The doctor also testified at Case, p. 285, that he did not know if the power of volition of the accused was such that he realized the nature of his act. The jury undoubtedly were *speculating on thee evidence as to the mental state of the accused.* The issue was too narrow to permit of any doubt on the subject. The importance of the jurors' arriving at a verdict as a result of well-retained impressions of the testimony in a four-day trial cannot be over-emphasized where a human life is at stake. (Italics mine.)

Counsel has failed to find any case in New Jersey where as an absolute rule it has been

held that the failure to have testimony read to the jury would have been error, or that there is any *prohibition* to having testimony re-read. While it has been held to be discretionary with the trial court, it is respectfully submitted that if the jury is in doubt on an important phase as to what the evidence is *in a capital case,* they should be informed so that they can decide the case according to the evidence.

In *State* v. *Bavier,* 89 N. J. Law 214, at page 216, certain of the jurors in the early part of the examination of the accused, declared they had not heard more than half of what he said and others said that they had not heard the last part of his testimony. The stenographer without instructions read the last two questions and answers. Claim was made on the appeal that the learned trial court should have directed the whole of the testimony of the accused to be read. There was no request made and this court held, "If counsel considered that there should be a further reading, he should have applied to the Court to direct that this course should be pursued." I therefore take it by analogy that if a further reading were desired and it was applied for, the Court in the middle of a case would have directed or *should have directed* the testimony to be re-read. It is respectfuly submitted that where a jury, through forgetfulness or lack of ability to fully comprehend the nature of testimony when it is offered, are unable to determine the testimony in a capital case *during their deliberation after a lengthy trial,* that they should have the opportunity during such deliberations of obtaining definite knowledge of the testimony on the most important phases in the case, that is, the medical evidence as to mental state.

Is has been held in Montana where a statute existed therefor, that a re-statement of testimony at the request of a jury is compulsory on the Court. (*Freezer* v. *Sweeny,* 21 Pacific, p. 20.)

See also *People* v. *Zentgraf,* 193 Pacific 274, at p. 276, referring to Section 1138 of Penal Code of California.

In a trover case, in *Blackley* v. *Shelden,* 7 Johnson (N. Y.) 32 at page 34, the Court said:

> "So when the jury are retired under the charge of the officer, they may come back into court to hear the evidence of a thing of which they are in doubt." (Citing 2 Roll Abr. 676.)

In this, a capital case under the circumstances as they developed I respectfully submit the refusal of the learned trial court was error to the prejudice of the accused.

Specifications.

Rulings as to Testimony.

3.

"3. That on the trial of the said plaintiff-in-error he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff-in-error in maintaining his defense upon the merits." Assignments of Error, Case, p. 371; Causes for Reversal, Case pp. 389, 390.

11.

Assignments of Error, p. 373. Causes for Reversal, p. 391. Ruling, Case, pp. 279-280.

12.

Assignments of Error, p. 374. Causes for Reversal, p. 392. Ruling, Case, pp. 280-281.

13.

Assignments of Error, p. 375. Causes for Reversal, p. 393. Ruling, Case, pp. 284-285.

14.

Assignments of Error, p. 375. Causes for Reversal, p. 393. Ruling, Case, pp. 294-295.

15.

Assignments of Error, p. 376. Causes for Reversal, p. 394. Ruling, Case, pp. 311-314.

16.

Assignments of Error, p. 378. Causes for Reversal, p. 396. Ruling, Case, p. 333.

17.

Assignments of Error, p. 379. Causes for Reversal, p. 397. Ruling, Case, pp. 334-335.

The learned trial court permitted Dr. Lawrence M. Collins, Dr. Emil Stein, Dr. Rowland P. Blythe and one Evelyn L. Rattner, a lay person, to answer questions on rebuttal that were objected to by counsel for the accused. The questions that were objected to and the rulings thereon are each the basis of a separate assignment of error and cause for reversal but as they embrace generally the judicial error complained of, they will be argued together. All of the questions were objected to and exceptions were duly taken to the rulings of the learned trial court.

The question under specification 11 addressed to Dr. Collins appears in the record Case, p. 279.

The issue in the case was as to the mental state of the defendant at the time of the alleged homicide. The question that was objected to was immaterial to the issue involved. The question called for an opinion from Dr. Collins as to whether or not Campbell was *sane* on the night of February 22nd and the early morning of February 23rd. The accused did not plead insanity.

The learned trial court inquired of counsel for the defendant whether or not it was the contention that the defendant was "mentally sound" at the time of the commission of this crime. The defendant did not contend that he was mentally unsound so as to render him insane and the question of mental soundness was not involved in the question as to whether or not the accused was *legally sane* or *insane*. A person may be *mentally unsound* and yet not be *legally insane* and so, if the faculties are prostrated to the extent where resistance is lowered in the mind to a point where it cannot reflect, deliberate or meditate, there may be an unsoundness which may not be a diseased brain disorder recognized as insanity.

As there was no foundation laid by defense for the introduction of evidence on the question of the defendant's sanity, as the defendant merely presented a state of facts and contended from such state of facts that there was a lack of ability to premeditate and deliberate, the issue was not between innocence and murder. If the defendant were insane, under the law he would be innocent and entitled to an absolute acquittal. The issue was whether or not the defendant was guilty of murder in the first or murder in the second degree. By the introduction of the testimony in the form in which it was permitted, there was thereby imposed upon the accused the burden of meeting a line of testimony which was designed to create the impression that by being *legally sane,* he thereby was *legally capable of possessing the powers to premeditate and deliberate.*

The question was allowed on the theory that the opinion of Dr. Collins as to the *sanity* of Campbell at the time of the homicide was within the issue presented by the evidence as to whether

or not the defendant was *"mentally sound"* at the time of the commission of the crime (Case, pp. 279 and 280). The ruling of the learned trial court in permitting this evidence was prejudicial error to the defendant.

The evidence was not rebuttal testimony. It is true that the admission of rebuttal testimony is largely a matter in the discretion of the learned trial court and that the exercise of such discretion will not result in a reversal except in a case of abuse. *State* v. *Genese*, 102 New Jersey Law, 134, at p. 141. The evidence that the accused was *sane* presumed that the accused by possessing the ability to distinguish right from wrong, was therefore able mentally to so utilize that ability as to possess will-power sufficient to inaugurate or resist a perpetration of the homicide. It required the accused to show that such evidence of sanity did not eliminate such mental unsoundness as precluded the ability to exercise the will in premeditation and deliberation.

> "* * * A defendant to be held responsible must not only possess sufficient mental ability to be able to distinguish right from wrong, *but he must also be* able mentally to so utilize that ability as to possess will-power sufficient to inaugurate or resist its perpetration. If it be in evidence, therefore, that at the time he did not possess these faculties, his deed must be reduced ex necessitate to murder of the second degree, or to manslaughter, but he cannot be convicted of murder in the first degree." (Italics mine.) Opinion of Minturn, *J.*, *Noel case, supra,* p. 684.

The accused had an additional burden not assumed by law.

By the introduction of this rebuttal testimony, the jury was left with the impression that the prosecution met the issue raised by the accused,

whereas, in fact, there were no questions submitted to any of the experts or lay witnesses called on rebuttal which included all of the salient facts in the case or the general theory of the defense in such a manner as to properly formulate a hypothetical question that rebutted the evidence on the part of the accused on the issue presented by the proofs. The situation in the case at bar was such that this evidence offered as rebuttal later became the premise of a charge by the learned trial court on insanity which is assigned as error and argued herein. The jury was undoubtedly diverted in their deliberations from the main issue involved in the case. By the evidence of sanity offered as rebuttal:

> "The jury, practically, by this testimony, and the whole trend of evidential procedure had their minds dominantly focused upon that inquiry, as the basic and essential test of defendant's mental and legal responsibility, and all opportunity for any verdict, except that of guilty in the first degree or acquittal as the alternative, was thus inferentially at least obliterated from the record." (*Noel Case, supra,* p. 685.)

In connection with the questions propounded to Dr. Collins (Case, pp. 278, 279 and Case, p. 280), objection is made upon the ground that the conclusion of the doctor was based upon certain matters that he ascertained as the result of his examination of the accused and statements made by the accused, and that such conclusion was not based upon all the facts in the case.

It is respectfully submitted that the hypothetical question of the defense included within it substantially and generally the salient facts and the theory of the case as tried, and therefore, a question intended to be rebuttal testimony to the answer to such hypothetical question should also embrace substantially all of

the facts or generally the salient facts embracing the theory upon which the case was tried. The question objected to was not sought to elicit rebuttal testimony because it excluded entirely the issue as to whether or not the accused deliberated and premeditated. The question and answer *diverted* the issue but did not *meet* the issue. The same is true of the question propounded to Dr. Stein and in addition to the objection raised to the testimony of Dr. Collins, it appears that Dr. Stein was giving an opinion as the result of which he found on April 15th, which was in no way pertinent or germane to the issue as to what occurred on February 23rd, or what the mental state of the accused was at that time.

Dr. Blythe was asked whether Campbell, at the time he treated him, was sane or insane (Case, p. 311). This was objected to on the ground that Dr. Blythe had not qualified and that the answer called for a matter not within the issues (Case, p. 312). It was further objected to upon the ground that it was not rebuttal testimony (Case, p. 313) and the question was allowed and exception noted (Case, pp. 313 and 314).

The witness, Evelyn Ratner, a lay witness, was asked from her observations, conversations and business transactions with the accused, what her opinion was. This was objected to upon the grounds previously urged as to the other witnesses (Case, p. 333).

Among the grounds previously urged as to the other witnesses, was the lack of qualification of the witness, Dr. Blythe.

It is held to be error that is reversible if the illegal evidence *may have been* harmful. *Ryan* v. *State*, 60 N. J. L. 552.

The evidence undoubtedly was understood by the jury as meaning that it was of value as bearing on the present indictment, when in fact it it was immaterial and irrelevant, and being immaterial and irrelevant and having heard the learned trial court say the testimony was proper, the defendant suffered manifest injury. *State* v. *Young,* 93 N. J. L. 396.

Mrs. Ratner was asked as a lay witness to testify from facts that she gathered by observation and contact, on the sanity or insanity of the accused. On cross examination, she was asked if her opinion of the sanity of the accused, would be different had she known of the shooting, the *bigamous* marriage and the burning of the deceased (Case, pp. 334 and 335). On the objection of the Prosecutor of the Pleas, the learned trial court overruled this question. An exception was duly noted allowed and sealed (Case, p. 335), and the ruling is respectfully challenged by Assignment of Error 17, Case, p. 379, and Causes for Reversal 17, Case, p. 397.

It is respectfully submitted that if a lay witness gives an opinion of sanity of an accused based upon a detached portion of the entire facts of the case, that such conclusion on the part of such witness is subject to a cross examination which embodies within it salient facts pertaining to the mental state of the accused as they may be inferred from all the actions of the accused, as the evidence showed such actions.

The question should have been allowed, as the test of relevancy of a question on cross examination, is whether the testimony sought to be elicited conduces to the proof of a pertinent

hypothesis which if sustained will influence the issue. See *Smith* v. *State* (Alabama, 1915) 69 Southern Reporter 406, at page 407.

18.

"18. That the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct the withdrawal of a juror on motion of the attorney for defendant (plaintiff-in-error) after the Prosecutor of the Pleas had made certain prejudicial remarks in his closing summation to the jury, included in which remarks were: 'Nobody in this world knows what this tablet was.' And further; the Prosecutor of the Pleas stated: I said to the jury that it is a fair inference from the evidence in this case that the defendant gave to Mrs. Mowry the tablet that she took,' contrary to the objection of the plaintiff-in-error and because the Court erred to the prejudice and injury of the plaintiff-in-error in refusing to direct such withdrawal of a juror in the following language: 'The Court: That is an argument. What objection have you to that?

Mr. Gordon: The evidence in the case is distinct that Mrs. Mowry produced some tablets in a handkerchief.

The Court: The jury hears that, but the jury may not believe it.

Mr. Gordon: There is no evidence in the case.

The Court: Counsel has a right to argue upon the testimony that is in. He has a right to draw the inference from it, which his mind produces. Proceed.' " Assignments of Error, pp. 379, 380. Causes for Reversal, pp. 397, 398.

The Prosecutor of the Pleas in his summation referred twice to certain tablets that the deceased had on the night of her death. At Case, p. 339, the prosecutor made the remark, which counsel for the accused objected to, as unfair

comment, and the learned trial court questioned as a fact in evidence that the accused knew what the tablet was (Case, p. 339). At Case, p. 340, the Prosecutor of the Pleas withdrew the remark and continued summing up for the State, and thereupon, at a later point in the summation, stated as a fair inference from the evidence in the case, that the accused gave to the deceased the tablet that she took, thereby claiming as a reasonable inference from the testimony, that the accused had given to the deceased a tablet in connection with the crime. That this was a reasonable inference of such claim is indicated in the previous statement, which counsel for the accused objected to that nobody in the world but the accused knew what the object was (Case, p. 339). The learned trial court overruled the objection of counsel to the repetition of comment with reference to the tablet, which comment was unsupported by the evidence in the case and which was prejudicial in its nature to the accused. It created the impression, atmosphere and inference that the accused had administered a tablet to the decedent of a poisonous nature. The application for the withdrawal of a juror was proper at that point after repetition of the comment.

As to the Tablets.

The defendant testified (Case, p. 217):

"Q Do you remember when and where was the last time you spoke to Mrs. Mowry? A Well, I think it must—

By the Court.

Q The question is, do you know? A Do I know?

Q Do you remember when and where you spoke to Mrs. Mowry? A It was where I stopped at some filling station to get gas

and get her a drink. I believe she wanted to take some tablets that she had for something the matter with her head or something else.

By Mr. Gordon.

Q And then what happened to her? A A while afterward—she had been sleeping all the evening—a while afterward, I think she must have gone to sleep, because I tried to rouse her once or twice, maybe more, I don't know, and she seemed to be sleeping or in some kind of a deep—well, I would say sleep or dose or something. She didn't—she could not answer me—she did not answer me. That is all I can remember."

On cross examination (Case, pp. 244 and 245):

"Q You said something in your testimony yesterday about the last time you spoke of Mrs. Mowry that night or early that morning. Just where was that? A I can't remember where I was. I know I got her a drink to take some medicine with, and she said she was cold and sleepy, and I don't remember where I was.

By the Court.

Q What was the medicine for? A I don't know. She had some tablets of some kind in her handkerchief.

By Mr. David.

Q You didn't give her any medicine? A No, I didn't.

Q What did you do, get out of the car and go into some place and get some water for her? A Got a drink for her, yes.

Q What kind of a drink? A Drink of water.

Q Where did you get it? A I think it was where I got gasoline.

By the Court.

Q When you gave her the drink and she took these tablets, was there nothing said as to the reason why she was taking the tablets? A Why, she said she had some-

thing the matter with her, she had a headache, or her head hurt, or something of that kind.

Q Where did the tablets come from, if you know? A I don't know. She had them. I don't know where they came from.

Q You say she had them tied in her handkerchief? A I think she took them out of her handkerchief.

Q Had she had them in her handkerchief constantly since you had been with her on that occasion? A Well, I wouldn't know that. I don't know that. I didn't know for sure whether she did take them out of her handkerchief but I thought she did.

Q What was the appearance of those tablets? A I didn't—I wasn't close enough to see what they were. I didn't see them.

Q How did you know that she wanted water? A She said she wanted to take some medicine and asked if I could get her some."

I respectfully submit that counsel for the State had the right to comment, in his closing argument, upon every pertinent fact adduced and upon every proper inference therefrom which had a bearing upon the issue the jury was called upon to decide. Justice permits a wide latitude to counsel in presenting his argument, but I respectfully contend that under the law, the Prosecutor of the Pleas cannot go beyond the evidence which has been presented in the case, or any legitimate inferences to be drawn therefrom.

In the case at bar, there was no evidence that the accused gave to the decedent, the tablet which she took, and in view of the evidence in the case that after she did take such tablets she dozed off, the only inference that is to be gained by the assertion that the accused gave the decedent a tablet, was to put her to sleep. This remark was not a chance utterance on the part of the learned Prosecutor of the Pleas be-

cause objection had been made and the Prosecutor withdrew the previous remark regarding the tablets and the statement that it was a fair inference that the accused gave Mrs. Mowry the tablet was such that it tended to prejudice the jury against the defendant.

In *State* v. *McCormack*, 93 N. J. L. 287, at page 289, the Supreme Court held that it was improper for a prosecutor of the pleas in his summing up to the jury to declare his individual opinion or belief that the defendant is guilty, in such a manner that the jury may understand such opinion or belief to be based on something which the prosecutor knows outside the evidence.

I respectfully submit that in the case at bar, the remark of the learned Prosecutor of the Pleas was more serious in its effect than in the McCormack case, and the motion for withdrawal of the juror is respectfully submitted, should have been granted.

REQUESTS TO CHARGE.

27.

> "That the defendant (plaintiff-in-error) by his counsel, requested the Court to charge as follows: 'Deliberation and premeditation imply a capacity at the time of the crime of a homicidal act to think and reflect, sufficient volition to make a choice, and by the use of the mental powers to refrain from doing the homicidal act.' Which the Court refused to charge." Assignments of Error, Case, page 385. Causes for Reversal, Case, page 403.

This request was submitted (Case, p. 362) and with it is a reference to *13 Ruling Case Law*, page 767 and *State* v. *Deliso*, 75 N.J.L. 808 at ~~supra~~, pages 819 and 820.

Referring to psychopathic personalities and it was conceded that the accused was such, Dr. Collins testified (Case, page 289) on cross examination:

> "Q And they are in a group that show impairment of volition? A That is true.
> Q And volition means the ability to exercise the will? A True.
> Q And to exercise the will implies a capacity to reflect and deliberate? A That is true."

This testimony clearly shows that the language in the request is formulated upon testimony of the case and is based upon law applicable to such testimony. It was fairly within the issue and it was legally essential.

I respectfully submit that the request was clearly material to the defendant's case and that he was entitled to have it distinctly charged and that in its refusal the accused suffered manifest wrong and injury. *State* v. *DeGeralmo,* 83 N. J. Law 135, at page 138.

28.

> "28. That the defendant (plaintiff-in-error) by his counsel, requested the Court to charge as follows: 'In considering the mental state of the defendant, for the purpose of determining whether or not he was capable of deliberation and premeditation, you should consider, in connection with all the testimony submitted, the circumstances and facts presented by the defendant and offered to establish that the state and condition of mind of the defendant was affected, by reason of various causes, and such evidence in itself is not an excuse or an extenuation of the crime of murder, but is offered to show lack of premeditation and deliberation.' Which the Court refused to charge." Assignments of Error, Case, pages 385, 386. Causes for Reversal, Case, pages 403, 404. Requests, Case, page 363.

30.

"30. That the defendant (plaintiff-in-error) by his counsel, requested the Court to charge as follows: 'In considering the mental state of the defendant as to whether or not he was capable of deliberation and premeditation when the crime was committed in connection with all of the other facts and circumstances in the case, you should also take into consideration the age of the defendant, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed.' Which the Court refused to charge." Assignments of Error, Case, page 386. Causes for Reversal, Case, page 404. Requests, Case, page 365.

31.

"31. That the defendant (plaintiff-in-error) by his counsel, requested the Court to charge as follows: 'In the event the State establishes beyond a reasonable doubt that the defendant is guilty of murder in the first degree, you have a right in considering all the facts and circumstances in this case, in connection with recommending the punishment to be imposed, to consider the facts and circumstances in connection with the defendant's age, his physical condition, how such physical condition may have acted upon his mental functioning, worry resulting from a change of civil condition, focal and other infections, stress of physical state caused by a continuous use of drugs and bodily and mental exhaustion at the time the offense was alleged to have been committed.' Which the Court refused to charge." Assignments of Error, Case, pages 386 and 387. Causes for Reversal, page 404. Requests, Case, page 365.

The language in these requests is predicated upon the facts in the case at bar.

I respectfully submit that these requests contained a correct statement and were applicable to the testimony and material to the defendant's case, and he was entitled to have them and each of them charged distinctly and by their refusal the accused suffered manifest wrong and injury.

The judgment of conviction should be reversed.

Respectfully submitted,

FRANCIS A. GORDON,
Attorney and of Counsel
for Plaintiff-in-Error.