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WRIT OF ERROR.

NEW JERSEY, TO WIT:

The State of New Jersey, to Henry B. Ware, Judge of the Court of Common (Seal) Pleas of Salem County, constituting the Court of Oyer and Terminer holden at Salem, in and for the County of Salem, of the December Term, 1930. 10

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against Charles Fithian, of the City of Salem, County of Salem.

For that Charles Fithian, Henry Green and Peter Giordano late of the City of Salem in the said County of Salem, on the 24th day of October, in the year of our Lord one thousand nine hundred and thirty, at the city aforesaid, in the County of Salem aforesaid, and within the jurisdiction of this Court, did wilfully and feloniously and with malice aforethought, kill and slay one, J. William MacCausland. To the evil example of all others in like case offending, 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. 20

*Pro ut* the said indictment, whereof before you he has been indicted and is thereof convicted by certain jury of the county, taken between the State of New Jersey and the said Charles Fithian, as it is said, manifest error hath intervened to the great damage of the said Charles Fithian, as from his complaint we have received information, we being 30

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 Charles Fithian, 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, to our Court of Errors  
10 and Appeals of the State of New Jersey, on the eighteenth day of February next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws of New Jersey ought to be done.

Witness, EDWIN ROBERT WALKER, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this thirtieth day of January in the year of our Lord one thousand nine  
20 hundred and thirty-one.

JOSEPH F. S. FITZPATRICK,  
*Clerk.*

DOUGLAS V. AITKEN,  
*Attorney.*

---

Presented in open court this fifth day of February, 1931.

30

HENRY B. WARE,  
*J.*

CONSENT TO RETURN OF WRIT  
OUT OF TIME.

COURT OF ERRORS AND APPEALS OF THE 10  
STATE OF NEW JERSEY.

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THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i>	}	Sur Indictment for Murder.
v.		
CHARLES FITHIAN, <i>Plaintiff-in-Error.</i>	}	Consent to Return of Writ Out of Time.

20

---

I hereby consent on this 13th day of February,  
1931, to the return of the writ of error in the above-  
entitled cause out of time, or within thirty days  
thereafter.

W. A. W. GRIER,  
*Prosecutor of the Pleas of  
the County of Salem.* 30

## RETURN.

The entire record of the proceedings whereof mention is within made, with all things touching the same, I certify to the Court of Errors and Appeals  
 10 in the Last Resort in all Causes, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

HENRY BURT WARE,  
*Judge of the Court of Common  
 Pleas of the County of Salem,  
 sitting alone, and constituting  
 the Court of Oyer and Ter-  
 miner of the County of Salem.*

20

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

Be it remembered that at the Court of Oyer and Terminer, held at Salem, in and for the County of Salem on the third Tuesday of September, in the year of our Lord one thousand nine hundred and thirty, before Honorable Ralph W. E. Donges, one  
 30 of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Henry Burt Ware, Judge of the Court of Common Pleas of the County of Salem, according to the form of the statute in such case made and provided, by the oaths of D. Stewart Craven, Lloyd W. Williams, Mrs. Lucius E. Hires, Joseph Finlaw, Mrs. Elsie

Pfeffer, Henry Mickle, John Dixon, Joseph Pancoast, Earl M. Boody, David P. Featherer, Mrs. Mary Hilliard, Harry Robbins, Paul Harris, Morris Smith, Samuel K. Shimp, Samuel Goldfein, Edward Kutz, Raymond Shreiber, Harry J. Strimple, Mrs. Anna F. Hires, and by the affirmation of Fred Bassett, those who affirmed having severally alleged themselves to be conscientiously scrupulous of taking an oath, and were severally affirmed according to law, good and lawful men and women of said County of Salem, duly summoned then and there sworn or affirmed and charged to inquire in behalf of the State of New Jersey and for the body of the County of Salem: 10

It is presented in manner and form following, to wit:

In the Court of Oyer and Terminer of Salem County, September Term, in the year of our Lord one thousand nine hundred and thirty. 20

SALEM COUNTY, TO WIT:

The grand inquest of the State of New Jersey, and for the body of the County of Salem, upon their respective oath and affirmation, those who affirmed having first alleged themselves conscientiously scrupulous of taking an oath, 30

Present that Charles Fithian, Henry Green and Peter Giordano late of the City of Salem, in the said County of Salem, on the 24th day of October, in the year of our Lord one thousand nine hundred and thirty, at the city aforesaid, in the County of Salem aforesaid, and within the jurisdiction of this

Court, did wilfully and feloniously and with malice, aforethought, kill and slay one, J. William Mac-Causland. To the evil example of all others in like case offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

10 And which said indictment was, by the Grand Jury aforesaid, returned into Court on November 7, 1930; and the Honorable Ralph W. E. Donges, Justice of the Supreme Court (nor any other Justice of the Supreme Court) not being present at the Court House in and for the County of Salem, on said day, the Court of Quarter Sessions of said county received said indictment so presented, and delivered said indictment to the Court of Oyer and Terminer of the County of Salem.

20 And afterwards, that is to say, on November 19, 1930, it still being of the September Term, at Salem aforesaid, in the county aforesaid, before the Honorable Ralph W. E. Donges, Judge of the Court of Oyer and Terminer of the County of Salem, cometh the said Charles Fithian in his proper person, and being asked in what manner he will acquit himself touching the premises in the said indictment above specified and charged upon him, says that he is not guilty thereof, and of this he puts  
30 himself upon the country; and W. A. W. Grier, Esq., who prosecutes for the State in this behalf, does likewise the same.

And later, to wit: on November 19, 1930, it was requested, in writing, by the Honorable Ralph W. E. Donges, Justice of the Supreme Court, within whose district the Salem County Oyer and Terminer Court

is, that the Honorable Henry Burt Ware, Judge of the Inferior Court of Common Pleas of said county, sitting alone, constitute and hold the Court of Oyer and Terminer of said county, for the purpose of arraignment of said defendant, Charles Fithian, and the trial of or other and further proceedings on said indictment as authorized by law. And a copy of said request was personally served upon the said 10 defendant, Charles Fithian, by the Sheriff of the County of Salem, on November 19, 1930; and no objection was filed within five days from date of such service.

And an application on affidavit being made to the Court by W. Orvyl Schalick, Esq., counsel for defendant, Charles Fithian, that said defendant, Charles Fithian, be allowed a trial separate from Peter Giordano, and the Court having considered the same and finding cause for granting the appli- 20 cation, it was, on December 1, 1930, ordered that the defendant, Charles Fithian, have a trial on said indictment separate from the trial of Peter Giordano.

Thereupon, to wit: on December 19, 1930, it now being of the December Term, 1930, before the Honorable Henry Burt Ware, Judge of the Inferior Court of Common Pleas of the County of Salem, sitting alone, and constituting the Court of Oyer and Terminer of the County of Salem, come the 30 jurors of the said jury, good and lawful men and women of the County of Salem, for this purpose empanelled and returned by the Sheriff of the said County of Salem agreeably to the statute in such case made and provided, to wit:

- |                         |                         |
|-------------------------|-------------------------|
| 1. Mrs. Nellie Franklin | 7. Elmer Scott          |
| 2. John Carmody         | 8. Vernon Harwood       |
| 3. Curtis Carll         | 9. William E. Lawrence  |
| 4. Mrs. Howard Miller   | 10. Mrs. Lucy Smith     |
| 5. Raymond Flitercraft  | 11. Mrs. Hattie Woodlin |
| 6. Raymond Hunt         | 12. Mrs. Mary Loscalzo  |

10 who were elected, tried and sworn to speak the truth of and concerning the premises; and Walter B. Crispin, William Moore and Mrs. Margaret Tuohy, three officers of the County of Salem, were sworn to attend them.

The following named persons were severally sworn to give testimony as witnesses:

For the State: Dr. Franklin H. Church, Roy J. Allen, Wallace E. Garvey, Oscar Lawrence, Harley Rader, Arnold Hewitt, George Abbott, Charles Ardis, Robert W. Kidd, Wilfred L. Dube, Helen I. Plasket.

20 For the defendant: Alice Thomas, Charles Fithian.

The following exhibits were offered and admitted: Bullet, coat, vest, shirt, undershirt, confession.

30 And all the testimony having been heard and summed up by the respective counsel, and the Court having addressed the jury, the jury retires with the aforesaid officers sworn to attend them; and after having considered of their verdict the jury returns into court, in charge of the aforesaid officers, and being called all appear, and being asked if they have agreed upon a verdict, reply that they have, and, in the presence of defendant and his counsel, say, by their forelady, Mrs. Nellie Franklin, that they find the defendant guilty of murder without recommendation of mercy.

The Court would not receive this verdict, and, in the presence and hearing of defendant and his counsel, told the jury "The Court cannot receive the verdict as rendered for the reason that it does not express the degree of murder which the jury say they have found the defendant guilty of. The jury must retire and return a verdict which expresses the degree, if they have determined the defendant guilty 10 of murder."

Whereupon the jury retires for further deliberation, and again returning into court, all appear, and being asked if they have agreed upon a verdict, reply that they have, and by their forelady, Mrs. Nellie Franklin, say that they find the defendant, Charles Fithian, guilty of murder in the first degree, without recommendation to life imprisonment. And being polled at request of counsel, so says each juror. 20

Whereupon, on December 22, 1930, it was ordered, on motion of the Prosecutor of the Pleas, that the defendant be placed at the bar for sentence, and he being accordingly set to the bar, it is considered by the Court, and it doth order and adjudge that Charles Fithian be taken to the county jail, a prison of this county from whence he came, and there kept in strict custody, and from thence taken by the Sheriff within ten days after the issuing of a warrant to him for that purpose, and deliver him the said Charles Fithian to the principal keeper of the State prison to be kept by him in solitary confinement until the week beginning February the eighth, 1931, and upon some day within said week, at his discretion as to time, within the walls of the building provided by the Board of Prison Inspectors of 30

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 Charles Fithian 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 said Charles Fithian is dead.

20

30

TESTIMONY.

SALEM COUNTY COURT OF OYER AND  
TERMINER.

	—————	10
THE STATE,	}	Murder.
v.		
CHARLES FITHIAN.		

—————

Salem, N. J., December 19th, 1930.

	—————	20
Before HON. HENRY BURT WARE, Judge, and a jury.		

APPEARANCES:

	—————	
For the State, W. A. W. GRIER, Esq., Prosecutor of the Pleas.		
For defendant, W. ORVYL SCHALICK, Esq.		

	—————	30
(The jury was impaneled and sworn.)		

	—————	
(Prosecutor Grier opens the case for the State to the jury.)		

DOCTOR FRANKLIN H. CHURCH, SWORN.

Direct examination.

By the Prosecutor:

10 Q. You are a practicing physician in the City of Salem?

A. I am.

Q. How many years have you been practicing medicine?

A. About 25.

Q. On the morning of October 24th of this year were you called upon to view the body of J. William MacCausland?

A. I was.

20 Q. Did you know Mr. MacCausland during his lifetime?

A. I did.

Q. Where did you see him that morning?

A. At the Salem County Memorial Hospital at about 6:30 A. M.

Q. When you arrived there, was he dead or alive?

A. He was dead when he was brought into the hospital.

Q. Did you make an autopsy on his body?

30 A. I did.

Q. What did you find?

A. Death was due to a gunshot wound, the point of entrance of the bullet being just slightly to the right of the middle line of the seventh dorsal vertebra in the middle of the back, and ranging upward and to the left, cutting the spinal cord, the left

auricle of the heart, the left lung, and lodging just under the left rib, just a little above the left rib.

Q. Was the wound about in the middle of the back?

A. Very exactly.

Q. Right exactly in the middle?

A. Just about.

Q. And you say the bullet wound was the cause of death?

A. Absolutely.

Q. Did you examine the clothing that Mr. MacCausland had on?

A. I did.

Q. Were there any burns or gunshot powder marks on the coat?

A. The bullet wound in the coat was exactly in the mid seam, in the middle seam of the coat. There was a small spot of powder burn, a little bit less than an inch in diameter, and exactly in the seam of the coat, in about the middle of the back, which was filled with powder. The shirt underneath had a much larger area, and the undershirt still larger. The wound and the skin about it for some distance from its edge was blown full of powder.

Q. From your experience, Doctor, would you say that that shot was fired close or at some distance?

A. In my opinion, the weapon was within half an inch, at least, and possibly actually pressing against the man's back when the shot was fired.

Q. Did you extract the bullet from his body?

A. I did.

Q. Do you know what calibre bullet it was?

A. Apparently a .38.

Q. Is that the bullet you removed?

A. Yes, that is the bullet.

The Prosecutor: I offer it in evidence.

(An envelope containing a bullet was marked Exhibit S1.)

10

Q. From a wound of that kind, Doctor, what would you say would be the probable length of life?

A. Death occurs practically instantaneously. Shock and hemorrhage.

Cross-examination.

By Mr. Schalick:

20 Q. You testified a week ago in the trial against Peter Giordano, didn't you?

A. I did.

---

ROY J. ALLEN, SWORN.

Direct examination.

30 By the Prosecutor:

Q. Mr. Allen, you are one of the coroners of Salem County, are you?

A. Yes, sir.

Q. Also an undertaker?

A. Yes, sir.

- Q. Were you called in this case?  
A. Yes, sir.
- Q. Where did you first see the body of Mr. MacCausland?  
A. In the hospital.
- Q. What time did you get there?  
A. Sometime after 7 o'clock, I think.
- Q. Did you know Mr. MacCausland during his 10 lifetime?  
A. I did.
- Q. Where did he live?  
A. On Craven Avenue, almost across from your house.
- Q. You had known him for a number of years, hadn't you?  
A. Yes, sir.
- Q. When you got down to the hospital, was Mr. MacCausland alive or dead? 20  
A. Dead.
- Q. Were you present when Doctor Church performed the autopsy?  
A. Yes, sir.
- Q. You were present when the bullet was removed?  
A. Yes, sir.
- Q. Did you remove the clothing from the body of Mr. MacCausland?  
A. I did. 30
- Q. Can you identify that clothing?  
A. Yes, sir.
- Q. Is that the coat that you removed from Mr. MacCausland?  
A. It is.

The Prosecutor: I offer it in evidence.

(The coat was marked Exhibit S2.)

Q. That is the bullet wound in it, or bullet hole?

A. Yes.

Q. Is that the vest that you removed?

10 A. It is.

The Prosecutor: I offer it in evidence.

(The vest was marked Exhibit S3.)

Q. Is that the shirt that you removed?

A. Yes, sir.

The Prosecutor: I offer it in evidence.

20

(The shirt was marked Exhibit S4.)

Q. Is that the undershirt?

A. Yes, sir.

The Prosecutor: I offer it in evidence.

(The undershirt was marked Exhibit S5.)

30 Q. Mr. Allen, do you know of whom Mr. MacCausland's family consisted?

A. Wife and three daughters.

Q. Do you know approximately the ages of the daughters?

A. The oldest I think is 16. I couldn't say how old the youngest one was.

Q. Do you know where Mrs. MacCausland is at the present time?

A. Craven Avenue.

Q. She is there?

A. Yes.

Q. You don't know whether she has gone away for her health or not?

A. I do not.

10

' Cross-examination.

By Mr. Schalick:

Q. It does happen that I live in the same neighborhood with Mr. Grier and Mr. MacCausland, doesn't it, Mr. Allen?

A. You live over up above Johnson Street.

Q. A block up?

20

A. Yes.

Q. You testified in the trial against Peter Giordano, did you not?

A. I did.

Q. Gave similar testimony as produced here this morning?

A. Yes, sir.

30

WALLACE E. GARVEY, SWORN.

Direct examination.

By the Prosecutor:

10 Q. Mr. Garvey, what position do you hold with Salem Glass Works?

A. Assistant secretary.

Q. What position did Mr. MacCausland hold down there?

A. Clerical position and paymaster.

Q. In connection with his duties as paymaster, did he, every Friday morning, have occasion to carry a payroll from the main office on 4th Street to the time-office on Griffith Street?

20 A. He did.

Q. What was the purpose of that?

A. To pay off the shift that was coming off at that time.

Q. What time of the morning did they come off?

Mr. Schalick: I enter an objection to the fixing of the time on the particular day in question.

30 Q. On the day in question, what time was the shift due to come off? On the day of this robbery, what time was that shift due to come off?

A. 7 o'clock.

Q. What time did Mr. MacCausland leave the main office to go down there?

A. He usually left between ——

Mr. Schalick: I enter an objection, and move it be stricken.

The Court: Yes, strike it out.

Q. You know that a robbery occurred there on 4th Street, that morning, don't you?

A. Yes, sir.

10

Q. How much money was taken from your payroll?

A. \$386.97.

Q. Approximately how much did the entire payroll contain?

A. Probably about \$2,500.

Q. And of the \$2,500, these men got \$386.97?

A. That's right.

Q. You know Mr. MacCausland's family, do you not?

20

A. Yes, sir.

Q. Do you know where Mrs. MacCausland, the widow, lives?

Mr. Schalick: I have no objection to this, but the purpose is so apparent and the evidence is so illegal that I do not want to detain the Court in listening to this and repeated testimony.

The Prosecutor: I will withdraw the question. 30

(No cross-examination.)

OSCAR LAWRENCE, SWORN.

Direct examination.

By the Prosecutor:

10 Q. Mr. Lawrence, are you employed at the Salem Glass Works?

A. Yes, sir.

Q. On the morning of October 24th of this year were you on the job early in the morning down there?

A. Yes, sir.

Q. What did you do when you first went down there that morning?

A. Unlocked the gate on Griffith Street.

20 Q. Then did you walk from the Griffith Street plant over toward the main office on Fourth Street?

A. Not at that time.

Q. Did you later?

A. Afterwards I did.

Q. About what time of the morning was it?

A. Twenty minutes after 6.

Q. When you eventually started towards the main office on Fourth Street, out of Griffith, did you see a car anywhere on Fourth Street?

30 A. Yes, sir.

Q. Where did you see the car?

A. Up above the main office somewhere to about that there barber shop.

Q. Somewhere between the main office and Broadway, was it not?

A. Yes, sir, towards Broadway.

Q. On which side of the street was this car standing?

A. On the right-hand side as you come down.

Q. On the same side as the main office?

The Court: What side is that with reference to the office?

Q. Was it on the same side of the street that the main office of the Salem Glass Works is located?

10

A. Yes, sir.

Q. Did you observe anything about that car when you first saw it?

A. I didn't see anything.

Q. You started to walk from Griffith Street towards the main office, did you not?

A. Yes, sir.

Q. On your route that you were covering, did you meet Mr. MacCausland?

A. Yes, sir.

Q. Which way was he going?

A. He was coming towards Griffith Street and I was going towards the main office.

Q. Was he carrying anything?

A. He said, "Good morning," to me and I said, "Good morning" —

Q. I didn't ask you that.

30

The Court: Was he carrying anything?

A. Yes, sir.

Q. What was he carrying?

A. Three boxes under his left arm.

Q. Three boxes?

A. Yes, sir.

Q. That was the payroll, was it not?

A. Yes, sir.

Q. When you got up to him, he said, "Good morning," to you, you say?

A. Yes, sir.

Q. And you said, "Good morning," to him?

10 A. Yes, sir.

Q. Right after that what happened next?

A. Why, the car came right up in front of me alongside of the curb.

Q. The same car you had seen parked down the street?

A. Yes. Well, I won't say. There wasn't any other car came by there at that time until after Mr. MacCausland was taken away.

20 Q. Right after you passed Mr. MacCausland and said, "Good morning," to him —

A. Just as I said, "Good morning," to him, this car came right down along the curb, right head into me. I looked at it, and there was two sat front and one sat back, and the one that sat back got up off his seat, pulled his cap, and opened the door and put his foot on the running-board as he went by me, and me going that way.

Q. Do you know who that man was?

A. No, sir.

30 Q. Do you know Fithian here?

A. No, sir.

Q. You didn't know him before this?

A. No, sir.

Q. Can you identify him as being one of the men in the car?

A. No, sir. I didn't take that much notice of them.

Q. Right after you saw this car pull up and the man on the back seat start to get out and pull his cap down, did you walk on towards the main office?

A. Yes, sir.

Q. How far had you gone before you heard something? 10

A. About 50 feet.

Q. Then what did you hear?

A. Why, I heard an automobile tire, I thought it was. Instead of that, it was a gun.

Q. When you heard this report, what did you do?

A. I turned around and looked over my right shoulder and there he laid flat on his back, and money all over the floor, the ground.

Q. What did you see when you turned around?

A. I seen Mr. MacCausland laying there. 20

Q. Mr. MacCausland was lying on the ground when you turned around?

A. Yes, sir, on the flat of his back, with his hands stretched right out.

Q. And these pay envelopes on the ground?

A. The envelopes were spread all over the ground.

Q. Did you see any other people around there at that time?

A. No, sir.

Q. Did you see this car? 30

A. I didn't see it until I got about 20 feet of him. I started to run, and said, "Oh, my God, he is shot and killed dead," or something or other, and I started to run and hollered, and just as I got about 20 feet of him the car started and run around the corner, and I kept on running until I got to the

corner, and the last I seen of the car it was pretty nigh to the ice factory.

Q. What kind of a car was it?

A. It was a dark car with a square body, as near as I can come at it.

Q. Did you see whether it had any license tags on it?

10 A. I looked and hollered to get the license, but I couldn't see any license.

Q. You couldn't see any rear tag on it?

A. No, sir.

Q. Could you see how many people were in the car when it went around the corner?

A. No, sir.

Q. Did you see any of them get in after this shooting?

A. No, sir.

20 Q. When you got to the corner, how far from Griffith Street was the car at that time?

A. It was the other side of the Italian's house, pretty nigh to the ice factory.

Q. After you saw it up there by the ice factory, what next did you do?

A. I turned right around and went right back and got down on my knees, and a lady came and asked me what happened, and I told her —

30 Mr. Schalick: That is objected to.

The Court: Strike it out.

Q. Did you go back to Mr. MacCausland?

A. Yes, sir.

Q. Was he dead when you got back there?

A. Surely was. Eyes set in his head.

Q. What?

A. His eyes set clean back in his head.

Q. What did you do then?

A. I raised him up first and told her to get a pillow and put under him before I let him lay down again, and I went to scraping up the money, scraping up the envelopes and put them in the boxes, and crying and yelling together. 10

Cross-examination.

By Mr. Schalick:

Q. Mr. Lawrence, when did you first see this automobile?

A. When did I see this automobile?

20

Q. First?

A. When I first seen it I looked up Fourth Street as I crossed Broadway, to see whether any cars was coming.

Q. It was moving at the time?

A. I won't say whether it was moving or whether it wasn't. It wasn't making no noise, but I heard when they give her plenty of gas.

Q. Where were you when you first saw it?

A. When I first saw that car was right after I stepped in the pathway to look up Fourth Street. 30

Q. Where was the car at the time?

A. The car at that time was up the other side of the office, somewhere near about that barber shop.

Q. Don't you know whether the car was moving or not at that time?

A. No, sir, I couldn't tell. I didn't take that much notice to it.

Q. When did you next see the car?

A. When did I not see it?

Q. When did you next see it?

A. I next saw it when it came head into me, that is, the car that came head into me.

10 Q. The car that came head into you was moving at that time, wasn't it?

A. I don't know whether it was moving or not up there.

Q. How could it come head into you, Mr. Lawrence?

A. It was away above the factory, above the office.

Q. It came on down to where you were; is that right?

20 A. When they came down, they came down with full speed and cut the speed off of her and come right head into me, right into the curb.

Q. Right into the curb?

A. Yes, sir, right straight front into me.

Q. Then where did the car go?

A. It went around the corner the last time I saw it, down Griffith Street.

Q. At all times that you saw the automobile was there someone driving it?

A. I didn't understand you.

30 Q. At all times that you saw the automobile was there someone driving it?

A. Above the factory, above the office?

Q. No. You saw the automobile several times, didn't you, Mr. Lawrence?

A. I saw the automobile twice. You can say three times, when it went around Griffith Street.

Q. Each of those three times was there someone in the automobile driving it, at the driving wheel?

A. I couldn't tell up above the office whether there was anybody in it or not.

Q. The other two times?

A. The other two times, two sat front and one sat back.

Q. There was someone at the driving wheel? 10

A. Yes.

Q. Then, so far as you know, each time you saw it there was someone driving the automobile?

A. Well, there must have been a driver or else it couldn't have got away from there.

Q. After the shot was fired where did you see the automobile the first time?

A. After the shot was fired?

Q. Yes.

A. In about 20 foot of him, before I got to him. 20

Q. Where was this automobile when you got 20 feet from them?

A. There is three big maple trees between me and them. From where I stopped, there is three big maple trees, and their car was right in back of the third tree, and the fourth tree was the last tree to Griffith Street.

Q. How long after the shot was fired did you see the automobile?

A. Half a minute. 30

Q. In other words, you mean almost instantly you saw the automobile?

A. Yes, sir. In twenty minutes—after he was shot I was in 20 feet of where the car went.

Q. Twenty seconds, you mean, don't you? Not twenty minutes. You mean twenty seconds after the

thing happened you were in 20 feet of where the car was, is that right, after the shot?

A. After the shot and I started to run, I ran to them and I got in about 20 feet of them as the car left there and went around the corner.

Q. At the time that you saw the car leave, was that car facing up above where this man was shot?

10 A. No, sir, it was facing towards Griffith Street.

Q. It was facing towards Griffith Street, but it was beyond him, wasn't it?

A. Beyond who?

Q. You were on this side of him, weren't you?

A. I was on the right side of Mr. MacCausland and he was on the left side of me, and he hadn't got three steps from where I met him until he fell.

Q. The automobile was on the other side of Mr. MacCausland from the side that you were on, wasn't  
20 it?

A. The automobile was on that side and I was here and Mr. MacCausland there.

Q. The automobile was on the other side?

A. Yes, sir.

Q. And you saw that automobile start from that position; is that correct?

A. I was in 20 feet of it when it left there.

Q. And there was someone driving it at that time?

A. I suppose so.

30 Q. I mean you saw someone in there driving it, didn't you?

A. No, because it was back to me.

Q. I see. Back to you? No further questions.

HARLEY RATER, SWORN.

Direct examination.

By the Prosecutor:

Q. Mr. Rater, you are employed at the Salem 10  
Glass Works, are you not?

A. Yes, sir.

Q. On the morning of this shooting were you on  
your way to work about 6:30 or sometime around  
that?

A. In that neighborhood, yes.

Q. You live on Fifth Street, do you not?

A. Yes.

Q. How far is your home from the home of  
Fithian's parents on Fifth Street? 20

A. About four or five doors, I judge.

Q. You have known Fithian for a number of years,  
haven't you?

A. Yes.

Q. Do you know what kind of a car he has been  
driving recently?

Mr. Schalick: I object to that as not material.

The Court: I will sustain the objection. 30

Q. On the morning in question, what route did  
you take from your home down to the Glass Works?

A. Down Griffith.

Q. Down Griffith Street?

A. Yes.

Q. Did you hear the report of a gun or something that morning?

A. I heard a report, yes.

Q. Where were you when you heard that report?

A. I wasn't quite to Fourth Street.

Q. How far from Fourth Street were you?

A. Probably 20 or 30 foot from the corner.

10 Q. After you heard this report, you kept right on walking toward Fourth Street, did you?

A. Yes.

Q. When you got to Fourth Street did you look down Fourth Street?

A. Yes, I looked down or up or whatever you call it.

Q. You looked across Fourth Street toward Broadway?

A. Yes.

20 Q. What did you see there?

A. Saw a car there and a man laying on the ground.

Q. Was the car standing still when you first saw it?

A. It had just started up.

Q. Which direction did the car proceed?

A. Up towards Market Street.

Q. It came toward you, did it not?

A. Yes, around the corner.

30 Q. You were standing right there when the car turned around the corner to go up Griffith Street?

By the Court:

Q. Where were you standing?

A. On Griffith Street.

Q. How near to Fourth Street?

A. Across the street.

Q. Then you were on Griffith Street looking down Fourth?

A. Looking down it or up.

Q. You were looking down Fourth Street, which would be in the direction of Broadway?

A. Yes.

Q. And you saw the form of a man on the ground and an automobile? 10

A. Yes.

Q. Which automobile was in the act of starting up? Is that what you mean?

A. It had started.

Q. Just getting in motion?

A. Yes.

By the Prosecutor:

20

Q. Did you stand there until the car turned around Griffith Street corner and went up Griffith Street?

A. Yes.

Q. Did you see the license numbers on the front of that car?

A. I seen some parts of the front one.

Q. What part did you see?

A. Y 12.

Q. There were some other numbers there that you didn't see? 30

A. There were other numbers there, yes.

Q. Was there any rear tag on the rear of the car?

A. I didn't see any.

Q. Did you look for it?

- A. Yes.
- Q. There wasn't any rear tag on there, was there?
- A. No.
- Q. How many men were in the car?
- A. Two is all I could see, the forms of a couple in there.
- Q. Where were the two that you saw?
- 10 A. One on the front and one on the back is all I could see.
- Q. Did you recognize that car?
- A. I thought I had saw it before, yes.
- Q. Whose car was it?
- A. It looked to me to be Fithian's.
- Q. The defendant here?
- A. Well, I don't know whether it belonged to him or his father.
- Q. The car he had been driving, wasn't it?
- 20 A. I had saw him in it before, yes.
- Q. Was he driving it?
- A. I don't know who was driving it.
- Q. Someone was driving it?
- A. Yes, somebody was driving it.
- Q. Did the outline of the driver of that car correspond to Fithian here?

Mr. Schalick: I object.

- 30 The Court: Tell what you saw about the person driving the car. In that form I think it is objectionable.

- Q. How was the man dressed?
- A. I couldn't say how he was dressed.

By the Court:

Q. Was he dark or light?

A. His clothes?

Q. Did he have clothes on, I suppose, in the first place, and were they dark or light?

A. I didn't pay no attention.

Q. Was he smooth faced or did he have a mustache 10  
or beard?

A. I couldn't see that.

Q. Did he have a hat on?

A. I couldn't see that.

Q. What could you see?

A. I could see the form of two men in there.

Q. What about these two men could you see? What  
about them?

A. One in front and one in the back.

Q. But you don't know how they were dressed? 20

A. No, I couldn't say.

Q. Don't know what color hair?

A. No.

Q. Don't know anything about their clothing?

A. No. That is, the color of it, no.

Cross-examination.

By Mr. Schalick:

Q. Mr. Rater, did you see the automobile after 30  
the shot was fired, at a standstill?

A. The car had just started when I got there.

Q. It started from a standing position; is that  
right?

A. Yes.

Q. Was that automobile at the time it started from a standing position between you and where Mr. MacCausland lay?

A. What?

(The question was repeated.)

10 A. Yes.

Q. The first instance that you saw the automobile was there someone at the steering wheel driving it?

A. Someone in front and someone in back.

By the Court:

Q. Did you stand there when this automobile came out into Griffith Street?

A. When it came around the corner.

20 Q. It had to come out of 4th Street, didn't it?

A. Yes.

Q. It came facing you?

A. Yes.

Q. You could see who was in the car, couldn't you?

A. No.

Q. Why not?

A. I could see the form of two men in there, but I couldn't recognize them.

30 Q. Don't you know whether they were young men or old men or how they were dressed?

A. No, I couldn't say that.

Q. How far did they have to travel on 4th Street to reach the position in which you were standing? How far did the automobile have to travel on 4th

Street from the point where you first espied it to the position where you stood on Griffith Street?

A. I judge they were about 20 foot on 4th Street off the corner.

Q. And your attention had been directed to this car by its sound, hadn't it?

A. Yes.

Q. The sound of some noise? 10

A. Yes.

Q. Which noise you ascertained to be what? What did you ascertain the noise to be?

A. The back fire of a car, or a gun.

Q. Did you see any smoke?

A. No.

Q. And your attention was centered on this car as it approached you?

A. Yes.

Q. How is it you couldn't see who was in the car? 20

A. They wasn't visible through the windows. The windows seemed to be sort of a moisture on them. Apparently been standing out all night.

Q. You mean the front window of the car?

A. Yes, the windshield.

Q. It wasn't open, any part of it?

A. No.

Q. You saw a man at the wheel?

A. Yes.

Q. Anyone alongside of him? 30

A. I didn't see nobody.

Q. And you saw one in the rear?

A. Yes. That is, after the car passed.

Q. Could you tell who he was?

A. No.

Q. Or how he was dressed?

- A. No.
- Q. Where he was a white man or colored man?
- A. No, I just saw his head.
- Q. Whether he wore a mustache or was smooth faced?
- A. I saw the back of his head.
- Q. What did you see about that? Was it dark or  
10 light hair?
- A. I didn't pay particular notice.
- Q. How do you know you saw the back of his head, if you didn't take notice?
- A. I seen the form of his head, anyhow.
- Q. Did he have anything on the back of his head, a covering of any kind?
- A. I didn't take particular notice. That is, no slouch hat.

20

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ARNOLD HEWITT, SWORN.

Direct examination.

By the Prosecutor:

- Q. Where were you living on the morning of Oc-  
tober 24th of this year, Mr. Hewitt?
- 30 A. Out on the Quaker Neck Road.
- Q. Where were you employed at that time?
- A. H. J. Heinz Company.
- Q. Are you still working for the Heinz Company?
- A. Yes, sir.
- Q. On the morning in question were you about to walk into your place of employment?

A. I was.

Q. Where you board out there at Quaker Neck, about how far is it beyond the bridge, the end of the city limits?

A. 100 yards or 150.

Q. Is there a bend in the road, or curve in the road, right near your house?

A. Yes, sir.

10

Q. When you came out of the house that morning, do you know what time it was?

A. Quarter or twenty minutes, maybe twenty-five after six.

Q. When you got out in front of your house, did you hear anything approaching?

A. Seen a car coming.

Q. What first attracted your attention to the car?

A. The car was coming a very good rate of speed. I saw the car around somewhere before. It looked— 20  
strangers to me.

Q. What kind of a car was it?

A. It was a Buick coach, painted blue, either one of the same type as the '26 or '27 Buick coach.

Q. Did you observe the license tag on the front?

A. I didn't pay much attention, but I thought it was a commercial tag.

Q. How many people were in the car?

A. Three.

Q. Where were they riding?

30

A. One on front and two in the back.

Q. Did you observe who was driving the car?

A. Well, I took a little glance at them, but not to take any particular notice.

Q. How was the driver dressed?

A. If I am not mistaken, he had a rather dark coat on, and a dark hat. Light complected fellow.

Q. Do you know Fithian here?

A. Yes, sir.

Q. Is he the man who was driving the car?

A. I couldn't say sure. It was a fellow a good deal on his build.

10 Q. Where were the other two riding?

A. In the back.

Q. What were they doing, if anything?

A. Well, they looked as if they had something in between them, working on it.

Q. About how fast was the car going when it got out there, do you know?

A. 50, anyway, probably more.

Q. After the car got by you, did you turn around to look at it?

20 A. If I remember right, I think I glanced around over my shoulder.

Q. When you glanced around, did you see either of the men on the back seat looking out of the back window?

A. I think one of them looked out the back window at me.

Q. You don't know which one?

A. No.

30 By the Court:

Q. You don't know who it was looked out the back window, do you? Is that true?

A. I don't know who they was.

Q. You didn't recognize the face you saw looking out the back window?

A. No, sir.

By the Prosecutor:

Q. Did you observe whether or not there was any rear license tag on the car?

A. I didn't notice.

Cross-examination.

10

By Mr. Schalick:

Q. There was only one person on the front seat of this automobile?

A. That's all I saw.

Q. How was he dressed?

A. I think he had rather a dark coat on, and hat.

Q. Any other physical indications that you know of?

A. Well, I didn't pay no exact attention to it, because you see several out here. 20

Q. Was he doing anything or undertaking to do anything except driving the automobile?

A. No, he was driving the car and he looked rather excited, was what drew my attention to it.

Q. You mean he appeared rather excited?

A. Yes.

Q. What were the indications to your mind, as to his excitement?

A. Well, sitting right up, taking exact notice, and I don't know exactly what you would call it. I would call it playing with the steering wheel. 30

Q. He was in an erect position, in a very excited manner; is that right?

A. Yes, sir.

Q. And the other two men, did they appear excited to you?

A. Well, no, not exactly.

Q. What were they doing?

A. They was working on something in between them.

10 Q. Were they doing it in a manner that would call it to your attention as an unusual occurrence?

A. No.

Q. They were very deliberate in what they were doing?

A. They were tending to what they were doing.

Q. The driver wasn't—his attention wasn't directed at all as to what was being done on the rear seat, was it?

A. It didn't seem to be.

20 Q. Could you identify the two riding on the back seat?

A. No, sir.

Q. Did you notice any of their physical indications, what they looked like?

A. No, I don't think so.

Q. You said after they got down the road, apparently one in the back seat saw you?

A. He must have or he wouldn't have looked around. He looked around at something.

30 Q. He looked around, and did he stare at you?

A. That I couldn't say. I suppose he was looking at me.

Q. He looked right directly at you?

A. He looked that way, anyhow.

Q. Did the driver of the automobile look at you?

A. No, I don't think he did.

GEORGE ABBOTT, SWORN.

Direct examination.

By the Prosecutor:

Q. Mr. Abbott, you are Under Sheriff of this County, are you not? 10

A. I am.

Q. As such you did some investigation on this matter?

A. I did.

Q. You are familiar with the Quaker Neck Road, are you not?

A. I am.

Q. During your investigation did you find anything along the hedge fence out that road? 20

A. I did.

Q. What did you find?

A. About a dozen or fifteen envelopes.

Q. What kind of envelopes?

A. They were manilla envelopes, with the Salem Glass Works stamp on them, and different names and amounts.

Q. A man's name on each one?

A. Yes.

Q. And a certain amount of money? 30

A. Yes.

Q. About how many of those were found, did you say?

A. About a dozen to fifteen.

Q. Where were they found?

A. They were found alongside of Driscoll's Farm

on the road leading to Fenton, and in and along the road.

Cross-examination.

By Mr. Schalick:

- 10 Q. Have you the envelopes, Mr. Abbott?  
A. No.  
Q. Are they in your possession?  
A. I gave them to the Prosecutor.  
Q. What type envelopes were they?  
A. Cash envelopes; coin envelopes.  
Q. Apparently sealed before the money was placed  
in them?  
A. Yes. Some of them had been torn open.  
Q. In what manner were they torn open?  
20 A. I don't know what manner. Some were torn  
unevenly and some had apparently come unstuck,  
you know.  
Q. Some had been evidently opened by means of  
undoing the flap of the envelope?  
A. Yes.  
Q. And others apparently had offered resistance  
and were torn?  
A. Right.  
Q. They had all been opened that you found?  
30 A. Every one.

By the Prosecutor:

- Q. There was no money in any of the ones that  
you found, was there?  
A. No, they were all empty.

CHARLES ARTIS, SWORN.

Direct examination.

By the Prosecutor:

Q. Where do you live? 10

A. Bridgeton.

Q. Do you know Charles Fithian, the defendant here?

A. Yes, sir.

Q. How long have you known him?

A. Nearly two years.

Q. Do you remember the morning of October 24th of this year?

A. Yes, sir.

Q. Where were you around between 7 and 8 that morning? 20

A. Between 7 and 8?

Q. Yes.

A. I went down and picked Charles Fithian up between 7 and 8.

Q. What time did you get up that morning?

A. I think I got up around 7 o'clock.

Q. Did or did you not receive a telephone call from Charles Fithian that morning?

A. I did receive one.

Q. About what time did he call you on the phone? 30

A. I don't know exactly. Between 7 and 8.

Q. Were you dressed when he called you?

A. No.

Q. You had just gotten out of bed?

A. Yes.

Q. What did he say to you over the phone?

A. He asked me if I would come down and take him over to the——

Mr. Schalick: I object. I think he should be called upon to give the exact words if he is testifying to any admissions that may have been made.

10

The Court: He can give them as nearly as he can.

By the Court:

Q. This was Charles Fithian calling?

A. Yes.

Q. You recognized his voice?

A. Yes.

20

Q. He had talked to you before?

A. Yes.

Q. And you to him, and in that way you were familiar with his voice?

A. Yes.

Q. When he called you up, endeavor to give the conversation to the best of your recollection, not add anything or guess at it, but the best you can.

By the Prosecutor:

30

Q. What did he say to you over the telephone?

A. Asked me if I would come down and take him over to Salem.

Q. Did he say where he was?

A. Yes, he told me to come down the other side of the station in Bridgeton.

Q. Did he tell you where he would be waiting for you?

A. Yes.

Q. Where?

A. First Street above the station.

Q. At that time did you know whether he had been in any trouble over here in Salem earlier that morning?

10

A. No, sir.

Q. You were pretty friendly with Fithian, weren't you?

A. Yes.

Q. And at his request you got a car and went around there to get him, did you not?

A. Yes, sir.

Q. After he got in the car, where did you drive?

A. We started for Salem.

Q. Did you stop anywhere before you got to 20 Salem?

A. At a gas station. Stopped at a gas station.

Q. Whereabouts was the gas station?

A. Robbins' Gas Station.

Q. Where is that?

A. Just a little ways out of Bridgeton.

Q. You stopped at Robbins' Gas Station and got some gasoline, did you?

A. Yes, sir.

Q. Did you have any money to buy gasoline with? 30

A. No, sir.

Q. Did Fithian have any money?

A. Yes.

Q. Did you see the money that he had?

A. Yes.

Q. How much did you see him have?

A. I don't know exactly. He had over \$100.

Q. He had over \$100? Did he pay for the gasoline?

A. Yes, sir.

Q. After you got the gasoline, did you go on towards Salem?

A. Yes.

10 Q. Were you stopped or did Fithian tell you to stop anywhere?

A. We were stopped by his sister.

Q. Whereabouts?

A. Somewheres around the Half-Way House.

Q. Who besides his sister was in this other car?

A. I think there was two sisters and a couple of men in there.

Q. Was one of the men his brother?

A. I don't know for sure.

20 Q. Do you know who the other man was?

A. No.

Q. When they stopped their car, did you get out of your car, or what did you do?

A. No. I parked on the other side of the street.

Q. What did Fithian do?

A. Got out of the car and went over and talked to them.

Q. He went over and talked to the four people in this other car?

30 A. Yes.

Q. Were you close enough to hear any of the conversation?

A. No.

Q. When he returned to the car again, what then did he tell you to do?

A. Asked me to take him to Philly.

Q. Did he say why he wanted to be taken to Philadelphia?

A. He said he was in trouble.

Q. Did he tell you what the trouble was?

A. Told me about the robbery.

Q. Did he tell you who participated in the robbery?

A. He told me Greenie and an Italian fellow. 10

Q. Did he tell you how much money he got out of that robbery?

A. No.

Q. But he asked you then to drive him to Philadelphia, did he?

A. Yes.

Q. Did you have any money with you at all?

A. Not a cent.

Q. Did he offer to pay you for taking him?

A. He wanted to pay me, yes. 20

Q. Did you drive him to Philadelphia?

A. Yes, sir.

Q. What route did you take from the Bridgeton-Salem Pike to get to Philadelphia?

A. Took the back road at the Half-Way House and came out above Deerfield and took the Pike straight in.

Q. Did you go over the Delaware River Bridge?

A. Went over the Kaighn Avenue Ferry.

Q. Of the Reading Railway? 30

A. Yes.

Q. Do you know about what time in the morning it was you got to the Kaighn Avenue Ferry?

A. Somewheres around 10 o'clock. I don't know exactly.

Q. And the two of you went across the river together, did you?

A. Yes, sir.

Q. After you got across to Philadelphia, did Fithian tell you where he wanted to be taken?

A. He wanted to try to meet Greenie.

Q. Did he try to find Green?

10 A. We knew it was too late. We tried to beat the bus up there.

Q. You didn't find Green in Philadelphia?

A. No.

Q. Then where did you go?

A. Went from there to Florida.

Q. What caused you to drive from Philadelphia to Florida?

A. He wanted me to take him there.

20 Q. Fithian wanted you to take him to Florida?

A. Yes, sir.

Q. What did he say about the cost of that trip?

A. Didn't say anything about the cost, outside of he would pay expenses.

Q. He said he would pay all expenses, did he?

A. Yes, sir.

Q. Did he tell you why he wanted to go to Florida?

A. On account of this robbery.

Q. You were in Philadelphia when he told you that?

30 A. Yes.

Q. At that time did he tell you anything about McCausland, the paymaster, having been killed?

A. Told me about him being shot.

Q. Did he tell you that he had died?

A. No, sir.

Q. When did he first tell you that, if he ever did tell you?

A. In Virginia.

Q. You drove from Philadelphia on down to Virginia? Did you get there that night?

A. Got there that Friday night around 11 o'clock.

Q. It was on a Friday morning when you got this telephone call, wasn't it? 10

A. Yes.

Q. Do you know what part of Virginia you went to?

A. I don't know exactly, no.

Q. Where did you stay all night?

A. We stayed at a little road camp.

Q. Was it at that time that he told you about Mac-Causland, the paymaster, being dead?

A. Told me about him being dead, yes, sir.

Q. After you got to Virginia, where did you go 20 then?

A. Went from Virginia to North Carolina.

Q. And then on down to Florida?

A. Yes.

Q. What city in Florida did you go to?

A. Jacksonville.

Q. Did you stop in Jacksonville? Did you go any further than Jacksonville?

A. We went about twenty miles from Jacksonville.

Q. After Fithian had told you in Virginia about the paymaster being dead, did he tell you why he wanted to go on to Florida? 30

A. He said he was going down there to get work.

Q. Do you know what time it was that you got to Jacksonville?

A. Somewheres around 4 o'clock, I believe it was.

Q. On what day?

A. I think it was on Sunday night.

Q. Sunday afternoon about 4 o'clock you arrived there?

By the Court:

10 Q. When did you start?

A. Started Friday morning.

By the Prosecutor:

Q. Did you cross the river there at Jacksonville in your car?

A. On the ferry, yes.

Q. How far did you drive after that below Jacksonville?

20 A. Went about 15 or 20 miles.

Q. Then what happened?

A. We stopped and got gas and turned back.

Q. And at that time did one or the other or both of you decide to come back north?

A. We both decided to come back.

Q. So then you turned the car around and started back north; is that right?

A. Yes, sir.

Q. When did you get back to Philadelphia?

30 A. Got back to Philadelphia Tuesday around 1 o'clock.

Q. Fithian was still with you, wasn't he?

A. Yes, sir.

Q. Where did you go in Philadelphia?

A. Stopped at my cousin's.

Q. What is his name?

- A. We stopped at Olney Station.
- Q. What is your cousin's name?
- A. Joseph Sykes.
- Q. Did you and Fithian both have a talk with him in reference to this matter?
- A. Yes.
- Q. As a result of that talk, did you and Fithian start back to Bridgeton? 10
- A. Yes, we decided to come back.
- Q. You decided to come back and give yourselves up, did you?
- A. Yes, sir.
- Q. When you left your cousin's at Olney Station, what route did you take?
- A. Came over the Palmyra Bridge.
- Q. Tacony-Palmyra Bridge?
- A. Yes.
- Q. Where did you drive from there? 20
- A. Drove from there to Mt. Holly and went from Mt. Holly in through Vineland, and Vineland to Millville, and Millville to Bridgeton.
- Q. What time was it when you got to Bridgeton?
- A. It was around half past 6 or quarter of 7.
- Q. Dark, was it?
- A. Yes.
- Q. When you got to Bridgeton did you and Fithian go to your home?
- A. No, sir. 30
- Q. Where did you go?
- A. I let him off down by the Crystal Laundry.
- Q. Where is the Crystal Laundry?
- A. South Laurel Street.
- Q. And you went on to your home?
- A. Yes.

Q. When you got there, who was there?

A. My mother, my brother-in-law, sister and father.

Q. Did Fithian later come to the house while you were there?

A. I don't know.

10 Q. When was the next time you saw him after you let him off at the Crystal Laundry.

A. I didn't see him any more until we was locked up.

Q. Did I understand you to say that Fithian told you this Italian and Green were with him in this hold-up?

A. Yes, sir.

Q. Did you know this Italian at that time?

A. No, sir.

Q. Did Fithian tell you what his name was?

20 A. No, sir.

Q. Did he tell you where he worked in Bridgeton?

A. Told me where he worked.

Q. And where he lived?

A. Didn't tell me where he lived.

Q. Did he tell you what his occupation was?

A. Said he worked in a baker shop.

Q. Did you know Green prior to this time?

A. Yes, sir.

30 Q. What did Fithian tell you when you got to Philadelphia about hunting up Green?

A. He wanted to find him so they could both go away together.

Q. Where did you go to look for him?

A. We started where the bus stops.

Q. But you didn't find Green at all?

A. No, sir.

Q. Did Fithian tell you why he wanted to go away with Green?

A. No, sir.

Q. After you got back to your home, you later went to the police department and gave yourself up, didn't you?

A. Yes, sir.

Q. Have you ever talked to Fithian since he has 10 been in jail here?

A. No, sir.

Cross-examination.

By Mr. Schalick:

Q. Charles, where do you live? In what part of Bridgeton?

A. In the 3rd Ward in Bridgeton. 20

Q. With whom do you live? Your mother?

A. Mother, yes, sir.

Q. Your father living?

A. Yes.

Q. Your father and mother have other relatives right in that vicinity, don't they?

A. Yes, sir.

Q. Has Charles Fithian, the defendant here, lived at your home?

A. Yes, sir. 30

Q. How long had he lived at your home?

A. Somewheres around eight months.

Q. Eight months?

A. Somewheres around there.

Q. He lived there continuously during that time, didn't he?

- A. Yes, sir.
- Q. You associated and were friendly with him during that period of time?
- A. Yes, sir.
- Q. How old are you?
- A. 20.
- Q. About the same age as he is?
- 10 A. I think he is 22.
- Q. You went out together?
- A. Yes.
- Q. You say he was there eight months before this happened; is that right?
- A. Somewheres around there, yes.
- Q. He was living at your home at the time this happened, wasn't he?
- A. No, sir.
- Q. How long had he been away?
- 20 A. Been away around about six or eight weeks.
- Q. Do you know where he was living then?
- A. With his mother.
- Q. In Salem?
- A. Yes.
- Q. Had you seen him during that period of time?
- A. A couple of times.
- Q. You had been out with him, hadn't you?
- A. Not out with him. I went over to the house to see how he was making out.
- 30 Q. Then you were a friend of his constantly?
- A. Yes.
- Q. Whose suggestion was it that you return from Florida? Did he want to come back?
- A. Yes, sir.
- Q. Did he tell you any reason why he wanted to come back?

A. Said his conscience was getting him.

Q. Did he say he wanted to come back and give himself up?

A. Yes, sir.

Q. Did he tell you in Florida that he was willing to give himself up?

A. Yes, sir.

Q. And he made that statement to you several 10 times on the way back?

A. Several times on the way back.

The Prosecutor: I object to the questions as leading.

The Court: He is on cross-examination. He can lead him.

Q. Did he tell you whether or not he shot the gun 20 that injured anyone?

A. No.

Q. Did he say who did shoot the gun?

A. Yes.

Q. Who did he tell you shot the gun?

A. The Italian.

Q. He told you that the Italian shot the gun; is that right?

A. Yes.

Q. Did he tell you whether or not he intended to 30 injure or kill anyone?

A. No, sir.

Q. Did he tell you that?

A. No.

Q. Did he say that he did intend to kill anybody?

A. No.

Q. Did he tell you that he did not intend to hurt anyone?

A. Yes. No.

Q. Just get my question. Just because I am a little bit rapid, don't you get that way.

10 The Court: What do you mean by, "Yes, no"?

A. I meant no.

Q. Did he say to you that it was his intention to kill anyone?

A. No.

Q. It wasn't his intention; is that right?

A. Yes. No.

Q. And he said that the Italian was the one who fired the gun; is that right?

A. Yes.

20 Q. Did you tell him that you had a cousin in Philadelphia or some relative in Olney Station?

A. Yes.

Q. Was he agreeable to go with you to your cousin?

A. Yes.

Q. And what purpose did you have between him and you in going to see your cousin? To get advice?

A. We went there to see what it was all about back here.

30 Q. To see what it was all about?

A. Yes.

Q. And by virtue of what your cousin said to you, you continued to return towards home; is that right?

A. Yes.

Q. In your path returning from Florida did you

come directly as near as you could towards Bridgeton and Salem when you were coming back?

A. Back in the car, do you mean?

Q. Yes.

A. Come right straight to Bridgeton.

Q. How long did it take you to come from Florida to Bridgeton.

A. Three days. 10

Q. Did you drive at night?

A. Day and night.

Q. You drove continuously,——

A. Yes.

Q. ——day and night, trying to get back home; is that right?

A. Yes.

Q. Did you stay at any place?

A. Just long enough to eat.

Q. Did one of you sleep while the other drove? 20

A. Yes.

Q. How long did you stay in Florida?

A. We wasn't in Florida over an hour or hour and a quarter. Just long enough to get out of the State.

Q. And Charles Fithian said he wanted to come back; is that right?

A. Yes.

Q. You knew you didn't have anything to do with this robbery, didn't you?

A. Yes. 30

Q. And you didn't have anything to do with it?

A. No.

Q. And the first time you heard about it was when he told you himself?

A. Yes.

Q. You hadn't received any information from any other person?

A. No.

Q. You thought it was a friendly act because he was in trouble, was the reason you took him?

A. Yes.

Q. When did he first tell you that there had been  
10 a robbery in Salem?

A. When we filled up with gas.

Q. What's that?

A. When we filled up with gas at the Robins station.

Q. He told you there had been a robbery?

A. Yes.

Q. Did he tell you anyone had been killed?

A. Not then, no.

Q. Did he tell you who was with him, at the  
20 Robins Gas Station?

A. I was with him.

Q. I mean did he tell you who was with him at the scene of the robbery when you were at the Robins Gas Station?

A. Yes, he told me all about it.

Q. Who did he say was with him?

A. Greenie and that Italian fellow.

Q. What did Charles Fithian say that he did?

A. He said he drove the car.

30 Q. Did he tell you whether or not he got out of the car?

A. Told me he didn't get out.

Q. He only drove the car?

A. Yes, sir.

Q. Did he tell you at that time whether he intended to bring his car originally?

A. To bring it?

Q. Yes.

A. I don't know anything about that.

Q. Did he tell you who carried the gun?

A. No.

Q. Well, did he tell you who had the gun?

A. He just told me who shot the guy.

Q. He just told you who shot it? 10

A. Yes.

Q. And he told you that the Italian shot him; is that right?

A. Yes.

Q. And did he tell you that he remained in the automobile throughout the whole time?

A. Yes.

Q. Did he tell you that he was sorry that anything like that happened?

A. Yes. 20

Q. Did you talk about the facts when you were in Florida?

A. Yes.

Q. And he said that his conscience hurt him and he wanted to return to his home; is that right?

A. Yes.

Q. And that is the reason you brought him back?

A. Yes, sir.

Q. You were willing at all times to take him wherever he wanted to go, weren't you? 30

A. Yes.

Q. You took him at his request to Philadelphia?

A. Yes.

Q. And you took him at his request to Virginia?

A. Yes.

Q. And you took him at his request to North Carolina and then to Florida; is that right?

A. Yes, sir.

Q. And then when you got to Florida, at his request you brought him back home?

A. Yes.

Q. Did you spend any of this money for luxuries  
10 or pleasure?

A. No.

Q. Did you only use this money for the purpose of your own benefit and expenses, gasoline and eating and lodging?

A. Yes, sir.

Q. So immediately when you got there, you turned back home?

A. Yes.

Q. What day did you start back?

20 A. Started back Sunday night.

Q. What time did you get in Bridgeton?

A. Got in Bridgeton somewheres around quarter  
of 7.

Q. You got in Bridgeton sometime about quarter  
of 7?

A. Yes.

Q. He came to Bridgeton with you, didn't he?

A. Yes.

Q. He asked you to come to Bridgeton, did he?

30 A. Yes.

Q. You would have taken him somewhere else if he had requested it, wouldn't you?

A. No.

Q. What?

A. No.

Q. You wouldn't have taken him anywheres else?

A. No. I was home to stay.

Q. I mean if he had said he wanted to come to Salem, you would have brought him here before you came to Bridgeton, wouldn't you?

A. No. Tell me that question again.

Q. He didn't ask to get out of your car up the road anywhere, did he?

A. No.

10

Q. He came on with you to Bridgeton?

A. Yes.

Q. What kind of a car did you have?

A. Ford.

Q. You had a Ford?

A. Yes.

Q. Ford coupe?

A. Yes.

Q. Where did you leave him out at Bridgeton?

A. I left him down by the Crystal Laundry on 20 South Laurel Street.

Q. Did he tell you what he was going to do?

A. He was going to stop at the Italian's house.

Q. And then did he tell you what he was going to do?

A. No.

Q. Did he say he was going to give himself up?

A. Yes.

Q. He told you he was going to give himself up?

A. Yes.

30

Q. What part of Bridgeton did you let him out?

A. South Laurel Street.

Q. The main street in the town, isn't it?

A. Yes.

Q. Laurel and Commerce Streets are the two main streets in the City of Bridgeton?

A. Yes.

Q. Left him out at South Laurel Street. Where did you live?

A. I lived on Vine Street.

Q. And you went directly from South Laurel Street to Vine Street?

A. Yes.

10 Q. Have you seen him since that time, except at the time of your arrest?

A. No.

Q. You haven't talked to him?

A. No.

Q. What reason did he assign for looking for Green? Did he tell you that Green promised to meet him in Philadelphia?

A. No, sir.

20 Q. Did he say anything why Green promised to meet him up there?

A. No, sir.

Q. Did he say where he and Green were going?

A. No.

Q. Did he say that he was going down to Florida to look for work?

A. Yes.

Q. Hadn't you during the time he lived with you in your home often talked about going to Florida?

A. Yes.

30 Q. You and he had talked about it?

A. Yes.

Q. Hadn't you sort of sat around there and planned out these trips where you might go?

A. No.

Q. Hadn't you talked about going to Florida?

A. Yes.

Q. I mean you had talked about it before this time, that you would like to go to Florida and get a job?

A. Yes.

Q. Where did you go when you first got in Philadelphia?

A. First got in Philadelphia?

Q. Yes.

10

A. We started right straight for Florida from Philadelphia.

Q. Where were you when you decided to go to Florida?

A. We was on the Camden ferry.

Q. Going across the Kaighn Avenue ferry?

A. Yes.

Q. When you were on the Camden ferry you decided to go to Florida; is that right?

A. Yes.

20

Q. Well, you didn't stay in Philadelphia then, did you?

A. No, we went right straight through Philly.

By the Court:

Q. Where did you go in Florida twenty miles the other side of Jacksonville?

A. We started for Miami Beach. We got about twenty miles down and we filled up with gas and we turned around and came back. 30

Q. What was your purpose in going there?

A. Going to Florida?

Q. Yes.

A. Going down to get a job.

By Mr. Schalick:

Q. What time did you arrive at the Olney Station in Philadelphia?

A. Somewheres around 1 o'clock.

Q. 1 o'clock what day?

A. Tuesday.

10 Q. What time did you get in Bridgeton?

A. Somewheres around between quarter of 7 and 7 o'clock.

Q. Between quarter of 7 and 7 o'clock?

A. Yes.

Q. What route did you take from Olney Station in Philadelphia?

A. We went out the Roosevelt Boulevard and over the Palmyra Bridge.

Q. Over the Tacony and Palmyra Bridge?

20 A. Yes.

Q. You came down through what cities?

A. Came down through Mt. Holly, Mt. Holly to Vineland, come from Vineland over to Millville, and Millville to Bridgeton.

Q. You haven't been in the same room while you have been in jail as Charles Fithian, have you?

A. No, sir.

Q. You have been in the second floor room?

A. Yes, sir.

30 Q. And he has been in the first floor room?

A. Yes, sir.

Q. After you came to Bridgeton, where did you go then?

A. Straight home.

Q. Well, you went home, and where did you go then?

A. From home I went over to Millville and give myself up.

Q. Who went with you to Millville?

A. My brother-in-law.

Q. Who is your brother-in-law?

A. John Lloyd.

Q. You went with him to Millville and gave yourself up to whom? 10

A. Sherry Wallace.

Q. Is Sherry Wallace the county detective of Cumberland County?

A. He is a detective.

Q. You know he is a detective, don't you?

A. Yes.

Q. You gave yourself up to him?

A. Yes.

Q. Driving from Bridgeton to Millville?

A. Yes. 20

Q. What time did you give yourself up to Sherry Wallace?

A. I don't know just exactly what time. It was before 8 o'clock. I went right straight from home over to Millville.

Q. You went right straight over to Millville?

A. Yes.

Q. At 8 o'clock?

A. Somewheres around 8.

Q. Were you in the custody of Sherry Wallace for a certain period of time? 30

A. The officer took me in first.

Q. Then afterwards you were in the custody of Mr. Wallace; is that right?

A. Yes, until they brought me to Bridgeton.

Q. They brought you back to Bridgeton?

A. Yes.

Q. How long were you with Mr. Wallace?

A. Not very long with him. I don't know. About four or five hours, I guess.

(A recess was taken until 1.30 P. M.)

10

AFTERNOON SESSION, 1.30 P. M.

CHARLES ARTIS, resumed.

Re-direct examination.

By the Prosecutor:

20 Q. You have testified to several things that you say Fithian told you on your way to Florida and while you were there and on your way back. Did he also tell you whose gun was used in this shooting?

A. Yes, sir.

Q. Whose gun did he say Giordano used in shooting Mr. MacCausland?

A. Said it was an old gun of his.

Q. Fithian told you it was his own gun that he had given to Giordano; is that right?

30 A. Yes, sir.

Q. This money that he showed you at Robins Garage when the gasoline was bought that morning, did he tell you where he got that money?

A. Said he got it from the robbery.

Q. Said he got it from this robbery here in Salem?

A. Yes.

Q. Did you ever hear him discuss holding up this paymaster prior to that morning?

A. No.

Q. You say that he told you that he wanted to come back and give himself up?

A. Yes, sir.

Q. Did he mention the names of any people around Bridgeton that caused him to do that? 10

A. No.

Q. Did you say that he has been living over at your home for about eight months?

A. Yes, sir.

Q. Who else live there?

A. Lived there with my mother and father, brother-in-law and sister.

Q. What is your aunt's name?

A. Alice.

Q. Alice what? 20

A. Thomas.

Q. Did she live at your house, too?

A. No.

Q. Where did she live?

A. With my grandfather.

Q. Did Fithian spend part of his time there?

A. Went over there once in a while.

Q. What?

A. He went there once in a while.

Q. During the eight months he was living there at your home he didn't have his wife there, did he? 30

A. No.

Q. He is a married man, isn't he?

A. Yes.

Q. But he wasn't living with his wife during that period, was he?

A. No.

Q. When you were down in Florida and before you decided to come back to Bridgeton, did he say anything about your aunt?

A. He wanted to come back and see her.

Q. He wanted to come back and see your aunt?

A. Yes, sir.

10 Q. That is what he told you he wanted to come back for, wasn't it?

A. He wanted to come back mainly to give himself up.

Q. And he also said he wanted to come back and see your aunt, didn't he?

A. Yes, sir, before he gave himself up.

Q. He has been quite friendly with your aunt for several months, hasn't he?

A. Yes.

20

Mr. Schalick: That is a conclusion. I object.

The Court: Yes, that is a conclusion.

Q. Do you know whether or not he and your aunt had been going around places together for several months?

A. No.

Q. You don't know anything about that?

30

A. No.

Q. Did he ever have his wife over at your house?

A. No, sir.

Q. You wanted to come back from Florida, too, didn't you?

A. Yes, sir.

Q. Did you tell Fithian that?

A. Yes, sir.

Q. Did he tell you that he planned this robbery?

A. No.

Mr. Schalick: I object to that on the ground it is a conclusion.

The Court: It is very leading. You might ask 10 him what he said.

Mr. Schalick: The witness has answered "No," anyway.

By Mr. Schalick:

Q. Did you know that there was another man living with Fithian's wife? Did you know that?

A. No.

20

The Prosecutor: I object to that.

Mr. Schalick: That has been brought into the examination.

The Court: I don't know that it matters.

Q. What was your answer?

A. No.

30

Q. You didn't know that?

A. No.

Q. Did he tell you why he gave the gun to the Italian?

A. No, sir.

Q. Did he tell you where he got the gun?

- A. No, sir.
- Q. Did he tell you whether or not the gun would go off?
- A. He told me it wasn't any good.
- Q. He said the gun wasn't any good?
- A. Yes, sir.
- Q. When did he tell you that?
- 10 A. When we got into Virginia he told me.
- Q. He told you the gun wasn't any good?
- A. Yes.
- Q. What else did he say about that gun?
- A. Said it wouldn't shoot or anything.
- Q. Said it wouldn't shoot anything?
- A. Yes, sir.
- Q. Did he tell you why he gave a gun that wouldn't shoot anything to the Italian?
- A. Said he didn't want the guy shot.
- 20 Q. Said he didn't want anybody shot; is that right?
- A. Yes, sir.
- Q. He said he was coming back to give himself up; is that right?
- A. Yes, sir.
- Q. And he also said he was going to see your aunt?
- A. He wanted to see her.
- Q. How old is your aunt?
- 30 A. I don't know exactly. About 28, I believe.
- Q. She is a sister to your mother, isn't she?
- A. Yes, sir.
- Q. She visits your house?
- A. Yes, sir.
- Q. You never heard him mention anything about committing a robbery, did you?

A. No, sir.  
Q. You were with him a lot of the time while you were in the house, living at the same house, weren't you?

A. Yes, sir.

Q. Did you work?

A. Yes.

Q. Where did you work?

10

A. I was helping my uncle.

Q. Helping your uncle?

A. Driving trucks.

Q. You were home at nights, weren't you?

A. Yes, sir.

By the Prosecutor:

Q. How many times did you hear Fithian say that he wanted to come back and see your aunt?

20

A. He told me several times.

Q. He told you that several times on the trip, didn't he?

A. Yes.

By Mr. Schalick:

Q. Did you see your aunt when you came back?

A. Yes, sir.

Q. How old is your mother, Charles?

30

A. 48.

Q. You are friendly with your aunt, aren't you?

A. Yes.

ROBERT W. KIDD, sworn.

Direct examination.

By the Prosecutor:

10 Q. You are county detective of this county, are you not?

A. I am.

Q. Were you present in the key room of the jail on the morning of October 30th last?

A. I was.

Q. Who else was present?

A. Yourself, your stenographer, Mrs. Plasket, and Detective Dube of the State Police.

Q. Was Fithian present?

20 A. He was.

Q. Was Fithian questioned or did he make any voluntary statement in reference to this robbery and murder?

Mr. Schalick: I would like to enter an objection. I suppose the point of the Prosecutor is apparent to the Court.

30 The Court: Yes. The jury will be excluded at this time. They will retire in the custody of the officers.

(The jury retired from the court room and the following testimony was taken in the absence of the jury.)

Q. Before Fithian made the statement that morning, was there any sort of threat or any violence offered toward him?

A. There was not.

Q. Was there any promise made, directly or indirectly?

A. There was not.

Q. Did he make this statement voluntarily? 10

A. He did.

Q. When he first made the statement, who was present?

A. Yourself, Dube, Fithian and myself.

Q. And after he made the statement, was it later reduced to writing?

A. It was.

Q. And after it had been reduced to writing, did you again return to the jail, together with Detective Dube? 20

A. I did.

Q. When you got there, what did you do?

A. I handed Mr. Fithian a copy, Dube had a copy and I had a copy. I read the statement and they both followed my reading.

Q. Did you tell Fithian to follow your reading with his own copy?

A. I did.

Q. And you read the entire statement to him, did you? 30

A. I did.

Q. After you had finished reading this statement, did Fithian sign it?

A. He did.

Q. And did you and Mr. Dube sign as witnesses?

A. We did.

Q. I show you a paper and ask if that is the statement which Mr. Fithian signed that morning and which was witnessed by you and Mr. Dube?

A. It is.

The Prosecutor: I offer it in evidence.

10 Mr. Schalick: I enter an objection to the offer.

The Court: You may cross-examine the witness at this time touching its admissibility. Have you any further questions to ask of this witness in your direct examination?

The Prosecutor: Not at the present time, no, sir.

20 By Mr. Schalick:

Q. Mr. Kidd, what time in the morning was this statement made?

A. I think probably about 10 or 11 o'clock. I couldn't be positive on the time.

Q. Do you know what time the defendant, Fithian, had voluntarily surrendered himself at the sheriff's office?

A. Not of my own knowledge.

30 Q. Was it the same day?

A. The same morning, yes.

Q. Who accosted the defendant first as to a statement?

A. I don't recall.

Q. Did you ask him to make a statement?

A. When I was talking to him, I did.

Q. Did you assign any reason for his making a statement?

A. No.

Q. Well, did you ask him any questions at all?

A. Asked him several questions with regard to the robbery.

Q. What questions did you ask him?

A. Well, I can't recall just what questions I asked. 10

Q. Was there any one question in particular that you recall that you asked him?

A. No.

Q. Is this statement in his words?

A. Practically, yes.

Q. Practically? Then the statement is not exactly as he told it?

A. The statement was started in his own words. The stenographer was having trouble getting his words. He repeated it to the Prosecutor and the Prosecutor repeated it to the stenographer. 20

Q. Well, did the Prosecutor repeat it in the exact words that he used?

A. I think that he did, as near as possible.

Q. Weren't any questions asked the defendant while this statement was being taken?

A. There may have been a question or two, but very few.

Q. But the questions were not incorporated in the statement? 30

A. In fact, I am not positive that there were any asked.

Q. Did he refuse to answer any questions which you directed to him?

A. He never refused to answer any questions.

Q. Do you know whether any promise of reward

or favor had been promised to him before you got there?

A. I do not.

Q. You say it was about 10 or 11 o'clock in the morning?

A. As I recall it.

10 Q. Did Mr. Grier ask the defendant any questions while you were there?

A. I think he probably did. I didn't note any particular question that was asked him. We were all there talking to him at the time.

Q. Did Mr. Dube ask him any questions while you were there?

A. He may have.

Q. Mrs. Plasket, of course, did not enter into the examination?

A. She did not.

20 Q. Then this statement as presented here is the statement of Mr. Grier repeating the essence of what the defendant said; is that correct?

A. He repeated it immediately after the defendant.

Mr. Schalick: No further questions.

By the Court:

30 Q. Now, I understand after the statement had been reduced to writing, a copy of it was given to the defendant?

A. That is correct.

Q. With an opportunity to read it?

A. Yes.

Q. And that he so did read it?

A. He read it. I read it aloud and he followed along and read it.

Q. After which he signed it?

A. That is correct.

The Court: Have you any further witnesses, Mr. Grier?

The Prosecutor: Yes, I have further witnesses.

10

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WILFRED L. DUBE, SWORN.

Direct examination.

By the Prosecutor:

Q. Mr. Dube, you are a detective connected with the New Jersey State Police, are you not?

20

A. Yes, sir.

Q. Were you in the key room of the jail on the morning of the 30th when Fithian made the statement?

A. I was.

Q. Who else was present?

A. Prosecutor Grier and County Detective Kidd and a stenographer.

30

Q. Before this statement was made, was there any sort of threats or any offer of violence made toward him?

A. Absolutely not.

Q. Was there any promise, directly or indirectly, made to him?

A. No, sir.

Q. You heard him make the statement, did you not?

A. I did.

Q. After the statement had been transcribed, did you return to the key room with Mr. Kidd?

A. I did.

10 Q. When you got there, did Mr. Kidd give one copy of this statement to the defendant?

A. He did.

Q. Did he give you a copy?

A. Yes, sir.

Q. And he retained a copy himself, did he not?

A. Yes, sir.

Q. After that what did Mr. Kidd do?

A. Mr. Kidd read the copy of the statement he retained, and Fithian followed the copy of the state-  
20 ment he had, and I followed my copy of the state-  
ment.

Q. After Mr. Kidd finished reading this statement, did Fithian say that anything in there was incorrect or untrue?

A. No, sir.

Q. Did he then sign it?

A. Yes, sir.

Q. And did you and Mr. Kidd each sign as witnesses?

30 A. Yes, sir.

Cross-examination.

By Mr. Schalick:

Q. Mr. Dube, did you ask the defendant any questions?

A. Before the written statement was made we were talking to Fithian orally, and we questioned him, and then the stenographer was brought in and he made the written statement. 10

Q. Did you ask him any questions after the stenographer was brought in to take his statement?

A. No, I didn't.

Q. Did Mr. Kidd ask him any questions?

A. I don't remember Mr. Kidd asking him any questions.

Q. Do you mean to say, then, that the defendant word for word dictated this statement to the stenographer? 20

A. No. As Mr. Kidd explained, he started to dictate the statement to the stenographer, and the stenographer couldn't get the substance of his words, and Prosecutor Grier then—Prosecutor Grier asked him the questions and he answered Prosecutor Grier and they were transcribed by the stenographer.

Q. Then Prosecutor Grier asked questions and then the answers were transcribed by the stenographer; is that correct? 30

A. I don't recall if there were questions asked, but Fithian made his statement to Prosecutor Grier and they were transcribed by the stenographer.

Q. Well, what is correct, then? How was this statement taken? I am not trying to confuse any-

body; I am trying to find out something. How was the statement taken? How did you get it?

A. Fithian made an oral statement earlier —

Q. No, I am asking about this written statement?

A. We asked him for a statement and he started to tell his story, and he started to tell just as it happened, and the stenographer couldn't get it, and  
10 then he told it to the Prosecutor and the Prosecutor told the story to the stenographer.

Q. The Prosecutor repeated the story to the stenographer?

A. That's right.

Q. Did you ask him any questions which he refused to answer?

A. No, sir.

20 By the Court:

Q. Did you tell him the purpose for which the statement was required or requested of him?

A. Yes, sir.

Q. What?

A. Why, he was warned that the statement would be used in court against him.

Q. He was particularly warned?

A. Yes, sir.

30 Q. Was he told that he wasn't obliged to say anything?

A. Yes, sir.

Q. But that if he elected to do so, it could be used against him?

A. Yes, sir.

By Mr. Schalick:

Q. What occasion, Mr. Dube, did you have to warn him that any statement he made might be used against him?

A. That is the usual heading of all statements.

Q. Not whether it is the usual heading. What occasioned you? 10

A. We always warn prisoners before we take a statement.

Q. Who gave the warning?

A. I think Prosecutor Grier did.

Q. Do you remember?

A. Yes, sir.

Q. Were you present during all of the time?

A. Yes, sir.

20

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HELEN I. PLASKET, SWORN.

Direct examination.

By the Prosecutor:

Q. Mrs. Plasket, on the morning of October 30th, at my request, did you come over to the key room 30 of the jail?

A. I did.

Q. When you got there, was Fithian there?

A. He was.

Q. Who else?

A. Mr. Kidd, yourself and Mr. Dube.

Q. Did you hear any threat of any kind made toward Fithian before he made the statement?

A. I did not.

Q. Was there any promise made by myself or either of the other officers present, any promise, direct or indirect, before the statement was made?

A. There was not.

10 Q. Was he warned that anything he might say might later be used against him?

A. He was.

Q. After that did Fithian start to make a statement in your presence?

A. Yes, he did.

Q. During the course of that would he make statements to me and I in turn dictate the matter to you?

A. Yes.

20

By the Court:

Q. What was the method you employed in taking this down? Stenography or longhand?

A. Stenography.

By the Prosecutor:

30 Q. And after the statement was finished, you went to my office and wrote it out, did you not, on the typewriter?

A. I did.

By the Court:

Q. Then what did you do after you had reduced it to longhand?

A. Why, I gave it to Mr. Grier and he read it over.

Q. Did you go back to the jail?

A. No.

Cross-examination.

By Mr. Schalick:

10

Q. Mrs. Plasket, would you say that Mr. Grier repeated in the exact words the statements of Fithian?

A. Well, yes.

Q. The exact words, without any variations?

A. No.

Q. Have you your stenographic notes?

A. Yes, I have.

Q. Have you them with you?

20

A. No, I haven't.

Q. How long did it take you to take down the statement?

A. Oh, I don't know. It took an hour, I suppose.

Q. How long did it take you to transcribe it?

A. I don't know that, either.

Q. Well, how long from the time you began to take the statement until the time it was in printed form?

A. It was around 10 o'clock when I started to take it, and I had finished before 12 o'clock.

30

Q. It wasn't signed when you turned it over to Mr. Grier, was it?

A. No.

Q. Were you sworn as a stenographer when you took this statement?

A. No, I guess not.

By the Prosecutor:

Q. Is that the original of the statement that you wrote out?

A. It is.

Q. Just look at all four pages, will you, please?

A. Yes.

10

Prosecutor Grier: I now offer the statement in evidence.

Mr. Schalick: I ask the privilege of rebuttal.

The Court: When was the statement signed? According to the testimony of the last witness, she took the statement stenographically, she then went to your office and reduced it to longhand on the  
20 typewriter. What evidence have you to show as to the time when it was signed?

The Prosecutor: My recollection is that Mr. Kidd testified sometime after noon that day he and Mr. Dube took the copies to the jail.

The Court: I think you had better put him back on the stand.

30

ROBERT W. KIDD, recalled.

Direct examination.

By the Prosecutor:

Q. Mr. Kidd, after this statement was dictated 10  
to the stenographer, later that day did I turn over  
copies to you?

A. I think around 12 o'clock you turned them over  
to me. Before 12.

Q. What did you do with them?

A. I had them in my possession until probably 1  
or between 1:30, and Mr. Dube and I then went to  
the jail and they were signed, I think, probably be-  
tween 1 and 1:30.

Q. On the same day? 20

A. On the same afternoon.

Q. Before they were signed, as I understand, a  
copy was given to the defendant and a copy to Mr.  
Dube and you read from one copy?

A. That is correct.

Q. And you read the whole statement aloud to  
him?

A. Yes.

Q. And after having done so and directed him to  
follow your reading on his copy, he then signed it, 30  
did he?

A. That is correct.

Q. Is that the statement that you read to him?

A. It is.

Q. And that is your signature on there?

A. It is.

Q. Did you see Mr. Dube sign it?

A. I did.

Q. And you saw Fithian sign it?

A. I did.

(No cross-examination.)

10 The Court: That is the offer of the State for the relevancy of this admission?

The Prosecutor: Yes.

The Court: Does the defense wish to offer any testimony in rebuttal, or in contradiction?

Mr. Schalick: I would like to.

20 The Court: You may do so.

---

ALICE THOMAS, SWORN.

Direct examination.

By Mr. Schalick:

30 Q. Miss Thomas, do you live in Bridgeton?

A. I do.

Q. After it was called to your attention of the robbery in the City of Salem, were you accosted by Sherry Wallace, County Detective of Cumberland County?

A. I was.

Q. Did he later bring you to Prosecutor Grier?

A. He did.

Q. Did Prosecutor Grier ask your aid in seeking out the whereabouts of the defendant?

The Prosecutor: I fail to see how that is any contradiction.

The Court: I don't see yet. I do not see its relevancy. 10

Mr. Schalick: I am laying the foundation.

The Court: Go ahead. If I do not see its relevancy, I will strike it out.

Q. Did Prosecutor Grier make a statement to you as to whether or not it would be easier for the defendant if he would give himself up and make a statement of the facts? 20

A. He said it would be better if Charlie Fithian would give himself up.

Q. Did you communicate that to the Fithian family?

A. I did.

Q. Mr. Wallace was with you at the time?

A. He was.

Mr. Schalick: Cross-examine. If I can prove by additional evidence that this was communicated to the defendant — 30

The Court: The defendant was not in custody at the time, was he?

The Prosecutor: No, sir, he was not.

The Court: The testimony was that it would be better for him to give himself up, wasn't it?

Mr. Schalick: Yes, it would be better for him to give himself up and make a statement of the facts.  
10 If that was communicated to the defendant, we submit it is important on the admissibility of this confession, as an indirect promise of reward under the circumstances, on the ground it is not necessary directly to make the promise.

The Court: What have you got to show where that has any bearing? I cannot see any analogy.

Mr. Schalick: I can show by additional evidence  
20 that this fact was communicated to the defendant.

The Court: Do you wish to cross-examine the witness?

Cross-examination.

By the Prosecutor:

Q. Miss Thomas, where did you and Wallace go  
30 when you came to Salem that day?

A. We went to Charlie Fithian's sister's house, Mrs. Thomas.

Q. Where does she live?

A. On Gibbon Street, I believe.

Q. Where did you and Mr. Wallace find me?

A. In front of the City Hall here.

Q. How much conversation did you and I have together about this case?

A. Mr. Wallace stopped you and told you that he wanted to make a report about having me to Salem, and by that you stepped in the car and Mr. Wallace told you that I was working with him, and that I had come over here to try to find Charlie Fithian or to get him word to give himself up, and then you said it would be better for him if he would give himself up. 10

Q. Didn't you tell me on that occasion that you wanted Fithian to give himself up so as to help your nephew out, Charles Artis?

A. I did not.

Q. Didn't you tell me that you could get Fithian to give himself up if you had a chance to talk to him?

A. I possibly might have said if I could get a chance to see him. 20

Q. Well, did you?

A. I don't recall saying that.

Q. Didn't you ask me to have detectives removed from watching your house, because that prevented you from getting any chance to see Fithian?

A. I don't remember saying that, no.

Q. Didn't you tell me that you couldn't move without detectives watching you all the time?

A. I did. 30

Q. And you couldn't get anywhere near Fithian to talk to him?

A. No, I didn't say I couldn't get anywhere near him, because I didn't know where he was.

Q. Didn't you tell me that the reason you came to Salem that afternoon was to try to find Fithian?

A. To get him to give himself up. I did.

Q. And isn't it a fact that you told me that you thought that you could get him to give himself up if you had an opportunity of seeing him?

A. I thought—I might have said if I saw him I might be able to get him to give himself up, yes, but you told me it would be easier if he would give  
10 himself up.

Q. You are sure about that now, aren't you?

A. Why, I am rather positive, yes.

Q. You are not so positive about the other conversation that went on?

A. What other conversation?

Q. You are not positive about your telling me about the police officers watching your home, that you couldn't move without them following you?

A. Yes, they did.

20 Q. And you asked me to have them removed so you could get hold of Fithian, didn't you?

A. I don't remember saying that to you, no.

By Mr. Schalick:

Q. Did Mr. Grier enlist your aid in seeking to find this man Fithian?

A. He told me to go to Fithian's house and find out what I could.

30 Q. Mr. Wallace was over here and conducted you around?

A. He did.

The Court: That only has to do with the capture of the defendant. That has nothing to do with the

statement made sometime later, when this man was in custody.

Mr. Schalick: I am submitting that if the prosecution has made a promise, which is indirectly communicated to the defendant, it must be shown that that promise has been overcome.

The Court: The promise did not emanate from the prosecutor, according to the testimony of this witness. If she made such a promise to this man which he believed, it has no tie-up with the prosecutor's office. 10

Mr. Schalick: Well, I say it is an indirect communication.

The Court: I do not see that it is.

Mr. Schalick: If it is not, I would ask for a ruling from the Court on it. 20

The Court: If the prosecutor makes a motion, I will strike out this testimony.

The Prosecutor: I make such a motion.

The Court: It will be stricken out.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly. 30

HENRY BURT WARE, (Seal)  
*Judge.*)

Mr. Schalick: No further evidence.

The Prosecutor: I now offer this statement in evidence.

Mr. Schalick: I ask for an exception on the grounds set forth before, for not receiving the confession in evidence.

10

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

HENRY BURT WARE, (Seal)  
*Judge.*)

20

The Court: It seems to the Court that the situation is very much like the situation disclosed in the case of State v. Murphy, 87 New Jersey Law, on page 523, where, in the opinion of Chancellor Walker, it was set out as to the alleged voluntary confession of the defendant: "This was made in jail to Prosecutor Atkinson, Sheriff Jordan and Mr. Powell, who took it down stenographically and testified to it, refreshing his recollection from his original notes. Powell testified that the prosecutor asked the defendant if he wanted to make a statement and warned him that anything he might say would be used against him and must be entirely voluntary on his part and of his own free will. The defendant said he did want to make a statement. It was taken stenographically by the witness Powell, reduced to typewriting, brought back to the sheriff's office, read by the prosecutor to the defendant, who then read it himself and signed it."

30

It seems to me that case is very much on all fours

with the present situation. A confession, to be admissible in evidence as against a defendant, must be what is termed voluntary. They must not be such as are extracted from a man by reason of threats or by any promises of any benefit accruing to him by reason of it.

There are four cases in New Jersey that are very much in point and absolutely controlling in the sense of being admissible as voluntary confessions. Those are what the Court feels are the leading cases, *Roesel v. The State*, 62 New Jersey Law; *State v. Young*; *State v. Dolan*, and the case I just referred to, that of *Murphy*. 10

In the case of *State v. Dolan*, the Chancellor, quoting the same in the *Murphy* case, says: "If it was the theory of counsel that the confession was not a voluntary one, the objection is without merit. By the decision of this Court in *Roesel v. State*, 62 New Jersey Law 216, the meaning of the term 'Voluntary Confession' has been definitely settled in this jurisdiction. By it is meant a confession not extorted by any sort of threats or violence, or obtained by any direct or implied promises. There is no suggestion in the proofs that the confession in the present case was induced by either the one or the other of these legally objectionable methods." 20

The *Roesel* case and the *Young* case are authorities for the proposition that before a confession can be admitted, the question as to whether it is a voluntary or an involuntary one must be passed upon by the Court, and, following the rule laid down in those two cases, the Court finds that the confession or admission made to Messrs. Kidd, Dube and Grier, and taken down stenographically by Mrs. 30

Plasket, and afterwards reduced to writing, which was subsequently verified in the presence of the defendant, read to him and by him signed, was a voluntary one, and it will be admitted.

(Whereupon the defendant, by his counsel, prays  
10 a bill of exceptions, which is hereby allowed and sealed accordingly.

HENRY BURT WARE, (Seal)  
*Judge.*)

(The paper referred to was marked Exhibit S6.)

(The jury returned to the court room, and the testimony taken with regard to the nature of the  
20 statement was read to the jury by the stenographer.)

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ROBERT W. KIDD, recalled.

Direct examination.

By the Prosecutor:

30 Q. Mr. Kidd, in your hands you hold what is known as Exhibit S6. Will you read it to the jury, please?

A. "October 30th, 1930.

By Mr. Kidd:

What is your name? Charles Fithian.

Your age? Twenty-two.

What is your address? 39 Fifth St., Salem, N. J.

Are you willing to tell what you know about this murder voluntarily and without any threat or fear or promise of any kind, knowing that anything you may say may be used against you? Yes.

When I first met Peter Giordani it was at the Linden Orchards near Shiloh, New Jersey, where we were picking apples. We both lost our jobs there. I saw him in Bridgeton, New Jersey, after that several times. It was on a Saturday night about two weeks ago I stayed at Peter Giordani's home in Bridgeton. I told him about this man carrying the payroll, so he said, 'Let's see if we can get it.' I says, 'All right, we will go see about it,' and we came over here. This was the Friday before the shooting. That was the 17th. We got over here about 5:45 on Friday, the 17th of October. Peter Giordani and myself drove to Salem, arriving about a quarter of six and went down to Fourth Street and saw MacCausland come out with the payroll. Giordani wanted to do it then. We stopped the car but I was afraid. We then returned to Bridgeton. On either Wednesday or Thursday, October 22nd or October 23rd, I met Henry Green in Salem and I mentioned to him about holding up the paymaster and getting the money, and Green says, 'All right, I want to get in on it.' I told Green I was afraid to do it but he said he wanted to get in on it. On Thursday, October 23rd, I met Green in Salem and drove to Bridgeton in my car, arriving there at about 6:30 P. M. We went to Giordani's house and both Green and myself stayed there all night and then the three of us drove to Salem in the morning. We got to Salem about 6:30. We

parked the car first on Broadway between Third and Fourth Streets. While the car was parked there Green took the rear license tags off. I drove the car around on Fourth Street and parked the car where we could see the main entrance to the office of the Salem Glass Works where we knew that MacCausland would come from with the payroll. After  
10 a while Green says, 'There he comes.' I then drove the car up to the curb in back of him and Green and Giordani got out. Green grabbed MacCausland around the neck and I then I heard a shot fired. Green and Giordani then jumped in the car. Before they got into the car I saw Green grab some of the pay envelopes and he had them in his hand when he got back into the car. I then drove the car out Griffith St., Grant St., thru Quaker Neck. Guinea  
20 Town to Alloway then to Cohansey and took a back road that Giordani showed me into Laurel St., Bridgeton. Right near the Illinois Glass Works Green got out of the car. Giordani got out about two blocks further down and I drove the car down to the next street and got out of the car and left it. We had all agreed to meet at Giordani's house which we did and divided up the money and I received either one hundred and nine dollars or one hundred and eleven dollars. Green then left Giordani's house saying that he was going to Philadelphia and would be back that night or the next day.  
30 Giordani and myself then went down to a barber shop on South Avenue and I called Charles Artis on the phone and asked him to take me to Salem. When we got about two miles outside of Quinton toward Bridgeton my brother, Alphonse, my two sisters and Harry Mathis met us. We stopped and

I got out of the car and my brother told me that the paymaster was dead and the authorities were looking for me. This was the first I knew that Mac-Causland was dead. I then asked Artis to take me to Philadelphia and we drove to the Reading Ferry in Camden, New Jersey, arriving there about 10 A. M. We crossed to Philadelphia and we then drove to Jacksonville, Florida. We arrived at Jacksonville on Sunday afternoon, October 25th, about 3 P. M. I then told Artis to take me back that we had killed a man and I wanted to give myself up. We got back to Philadelphia on Tuesday, October 28th, at about noon. We went to Olney Station where Artis had a cousin working and talked about the murder and he advised us to return to Bridgeton and give ourselves up to the authorities. We crossed the river on the Tacony-Palmyra Bridge and drove to Vineland, to Millville and then to Bridgeton. It was after dark when we got there and we went to the home of Artis on Vine Street. We had only been there a short time when officers arrived and I ran out of the back way across the fields and I then went to Aldine. I walked there. I stayed in a corn field near Aldine until dark last night, October 29th, when I walked to Salem and went to Claysville and stayed there until about six o'clock this morning when I went to the sheriff's office and gave myself up. The morning of the robbery on our way from Bridgeton to Salem Giordani gave Green his revolver and I gave Giordani my revolver. I got this revolver off of Frank Hyson three or four days before the robbery. Right after we got off the Ferry in Philadelphia the morning of the robbery I told Artis that I wanted to go to Florida and told him

about holding up the paymaster. On our way from Salem to Bridgeton after the robbery Giordani threw away the gun which I had given him along the road near Guinetown and Green gave Giordani back his revolver and Giordani took it with him.

Charles Fithian.

Witnesses

- 10 Robert W. Kidd, County Detective.  
Det. W. L. Dube, #288.”

Cross-examination.

By Mr. Schalick:

Q. Mr. Kidd, did Fithian tell you why he gave Giordano his revolver?

A. I don't recall that he did.

- 20 Q. Did you ask him?

A. I don't recall that I asked him, no.

Q. Did you ask him what kind of a revolver he got from Hyson?

A. No.

Q. Did you ask Fithian whether or not he held any of the revolvers at the time of the robbery?

A. Fithian said that he did not have a gun, said he did not hold any gun.

- 30 Q. Did Fithian say to you that the only thing he did was drive the automobile?

A. Yes.

Q. Did he tell you whether or not they intended to kill anyone or do anyone physical injury?

A. I don't recall that he did.

Q. Did you ask him whether or not he intended to

kill anyone, or any of them did, or do anyone physical injury?

A. No.

Q. You didn't ask him that?

A. No.

Q. Did he tell you whose suggestion it was that they come over and hold up the paymaster?

A. Yes.

10

Q. Whose did he say? Whose suggestion did he say?

A. In his statement here it says that.

Q. His statement says it is Giordano's suggestion, "Let us go over and do it." What did he say to you?

A. He said that he told Giordano about it.

Q. He told him about it?

A. Yes.

Q. And Giordano suggested they come over and do it? 20

A. Yes, that is what he said.

Q. He told him about there being a paymaster over here?

A. Yes.

Q. Did Fithian make a statement to you to the effect that he mentioned the fact that there was a paymaster over here that was unguarded and the public often said they wondered why he wasn't held up?

30

A. I didn't hear him say that, no.

Q. Did you ask him what occasioned him to mention it?

A. No.

Q. Did he tell you where this first was mentioned, what place?

A. I think he told me it was mentioned in Giordano's home first.

Q. In Giordano's home?

A. As I recall it.

Q. He told you he was at Giordano's home, didn't he, at the time?

A. Yes.

10 Q. Did he tell you any other conversation of that night when he was at Giordano's home?

A. No, I don't think he went into details.

Q. Didn't you when you took his confession, his statement, ask him any fact concerning his trip to Florida and back again?

A. I may have, because I thought they made the trip rather quick.

Q. Well, did you ask him any questions pertaining his trip to Florida and back again?

20 A. Not particularly, only about the time that they arrived, probably.

Q. Why weren't they incorporated in the statement?

A. They wasn't asked at the time of the statement.

Q. They weren't asked at the time of the statement?

A. No.

30 Q. They weren't asked pertaining to the gun at the time of the statement?

A. No.

Q. Nor they weren't asked concerning any statements made by Giordano at the time of the statement. What was the purpose of the statement, Mr. Kidd? Only to incorporate statements that were favorable to the prosecution?

A. No.

Q. Well, why weren't these other questions and answers and facts incorporated in your statement?

A. They weren't asked at the particular time of the statement. They were asked at some other times when we had conversations with him.

Q. Well, why weren't they asked at that particular time? 10

A. It wasn't necessary.

Q. It wasn't necessary?

A. No, not particularly.

STATE RESTS.

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DEFENDANT'S TESTIMONY. 20

CHARLES FITHIAN, SWORN.

Direct examination.

By Mr. Schalick:

Q. Charles, where have you been living before this occasion?

A. At Mother's house.

Q. Speak louder, will you please? 30

A. My mother's house in Salem.

Q. Had you been living at the home of Charles Artis' father and mother before that time?

A. Yes, sir, for over a year.

Q. Over a year?

A. Yes, sir.

Q. You had known Charles Artis?

A. Yes, sir.

Q. Been friendly with him?

A. Yes, sir.

Q. When did you first meet Peter Giordano?

A. When I was working on a farm last summer, apple orchard.

10 Q. Where was the apple orchard?

A. By Shiloh.

Q. Had you known him before that time?

A. No, sir.

Q. Did you ever go down to his house?

A. Not before that, no.

Q. You will have to speak louder. You said you never went down to his house?

A. I was to his house one night, yes.

20 Q. Is that when it first came up about the paymaster in Salem?

A. No.

Q. When did it first come up about the paymaster in Salem?

A. On Tuesday night the week before it happened.

Q. Did Giordano say anything to you about holding anybody up?

30 A. Well, he asked me if I would go to Gloucester with him, somewheres up there; there was a payroll up there, and he asked me if I would help him hold it up.

Q. Up at Gloucester?

A. Around Burlington somewheres.

Q. He asked you if you would go up around Gloucester and hold up somebody with a payroll?

A. Yes.

Q. What did you tell him?

A. Told him no.

Q. Told him you wouldn't do it?

A. Yes, sir.

Q. What other conversation did you have with him?

A. He was telling me about he robbed a store somewhere in Bridgeton. 10

Q. He told you that he robbed a store somewhere in Bridgeton?

A. Yes.

Q. What else?

A. He said he had some more stores he had planned out, and he wanted to know if I would go with him and help him, and I said no.

Q. Go ahead and tell the conversation?

A. He said he knew where there were two stores and he had been around looking them over and he thought he could get in them pretty easy, and asked me if I would go around with him and help him, and I said no, I didn't want to go. 20

Q. Go ahead and tell your conversation.

A. So he went to work. I was in his house, and he went out to work, and he came back again and he said, "Well," he says, "that payroll you were talking about over in Salem, let's go get that."

Q. When had you first mentioned it to him about the paymaster in Salem? 30

A. That was the Tuesday before.

Q. That was the time Legs Diamond was shot in Philadelphia?

A. Yes, sir.

Q. Was he talking about Legs Diamond?

A. Yes, sir.

Q. Did he say he knew him?

A. Yes, sir.

Q. Where did he say he had lived in the early part of his life?

A. Christian Street in Philadelphia.

Q. Said he lived in Christian Street in Philadelphia?

10 A. Yes, sir.

Q. Did he say he knew Legs Diamond and the other gangsters up there?

A. Yes, sir.

Q. Did he call them by name?

A. He named Jersey Kid and several of them I didn't know.

Q. You had never heard of them?

A. No, sir.

20 Q. Did you or did you not say to him that the public had often talked about this paymaster in Salem?

A. Yes, sir.

Q. You said that?

A. Yes, sir.

Q. Did you have any idea at the time of holding up the paymaster in Salem?

A. No, sir.

30 Q. And it was several days later when he suggested that you hold up this paymaster; is that right?

A. Yes, sir.

Q. You had never held anybody up?

A. Never.

Q. Did he tell you of other illegal acts that he had done before this time?

A. Said that he had burned up an automobile one time.

Q. Speak louder?

A. Said that he had burned up an automobile one time for a fellow to collect insurance on it.

Q. Said that he had burned up an automobile and got the insurance on it?

A. Yes, sir, for another fellow to collect the insurance. 10

Q. What other things did he say you done? Do you remember anything else?

A. He was telling me about a fellow coming around to get him to take his automobile out and burn it up for him.

Q. There in Bridgeton?

A. Yes.

Q. And he wanted you to go with him?

A. No. He was telling me about it. 20

Q. When did he first suggest that you come to Salem?

A. I went down to his house on Thursday night around 7 o'clock.

Q. Went down to his house?

A. Yes.

Q. Did he call you up on the telephone ever?

A. He had called me up three or four times, yes.

Q. Always calling you up on the telephone?

A. Threatened to shoot me. 30

Q. Why did he threaten to shoot you? Because you wouldn't go out and do these jobs with him?

A. Yes, sir.

Q. Was he always calling you up on the telephone?

A. Yes, sir.

Q. Did you go down there that Thursday night?

A. I went there on Wednesday night.

Q. Wednesday night?

A. Yes, sir.

Q. What did you talk about then? Let us hear the story. Go ahead and tell everything?

A. I went there on Wednesday night and he said  
10 he had another fellow to go with him.

Q. Who did he say he had to go with him?

A. I don't know his name. He called him the Turk.

Q. What did he say he was going to do?

A. He said the fellow was going to get an automobile and he would get a gun, if I would go, so I stayed there all night and got up the next morning and I says, "Pete, I am going to go to Salem," and he said, "What for? Stay here." I said, "No, I  
20 am going to go to Salem." He said, "Stay over. You don't have to go home today. You will have to come back tonight, anyhow." I said, "No, I am going to go over to Salem," and he said, "Stay and we will go the movies," so we went down to go to the movies. This Turk had brought us downtown.

Q. Do you know what the Turk's name is?

A. No, I don't.

Q. Do you know where he lives?

A. Yes, sir.  
30

Q. Where?

A. Bridgeton.

Q. What part?

A. Willow Street.

Q. And the Turk, the fellow they call the Turk, took you downtown?

A. Yes, sir.

Q. Then what did you do? Go on.

A. We stopped at a city lot, and when we stopped there I said, "Pete, I'm going to Salem," and I got out of the car, and he said, "Come back 6 o'clock tonight, I have got everything fixed up," so I came on to Salem.

Q. Speak louder.

10

A. I came on to Salem and went down home, and my mother told me that Henry was down to the house.

Q. Henry who?

A. Henry Green. The night before, and was asking where I was at, and he was down there that morning asking where I was at, said he wanted to see me.

Q. Speak louder, will you?

A. So my mother told me that he wanted to see me, so after I washed and dressed I went uptown and he was standing out here on the corner. 20

Q. You said your mother said Green was in Salem and wanted to see you; is that right?

A. Yes. So I came uptown and he was standing out here on the corner.

Q. You saw Green?

A. Yes, sir.

Q. What conversation did you have?

A. We stood there talking and I asked him where he had been, and he told me he had been up to New York. 30

Q. How long before that had you seen him?

A. About two weeks, I imagine.

Q. You had seen him about two weeks before that?

A. Yes.

Q. He had been away from town?

A. Yes.

Q. Go ahead.

A. So he says, "I am dry; do you know where I can get a drink?"

Q. Speak up.

10 A. He says, "I am dry; do you know where I can get a drink?" I said, "Yes, I think I have some down in the cupboard if anybody hasn't found it." I says, "Come down to the house and I will give you some," and we went down home and I went in the cupboard and brought it out and gave it to him, and I told him about this Italian fellow in Bridgeton, and he says, "What kind of a fellow is he?" and I says, "I don't know, I am afraid of him; he says he wants to hold up the paymaster and I came away."

20 Q. You say you told Green that the Italian wanted to hold the paymaster up and you came away?

A. I came away from Bridgeton. So he says, "Do you think the guy will shoot anybody?" I said, "I don't know, I don't think he will." I says, "You can't tell." He says, "Leave me in on it and take me over there, I want to talk to him." I says, "No, I'm afraid somebody will get shot." He said, "No, they won't." I said, "You don't know; maybe 30 the man will pull a gun out and shoot you; he is liable to shoot you or shoot me," and he says, "I'll take care of that," and he went up home and came back downtown and I got the car and went to Bridgeton.

Q. Had you been over here with the Italian the week before?

A. Yes, sir.

Q. You had been over here with Giordano the week before? Did you have a gun with you the week before?

A. No, sir.

Q. Did Giordano have one?

A. Yes, sir.

Q. What did you do the week before? 10

A. Came over here and waited until the paymaster went down the street, and he said, "When he comes out of there you drive up to him and stop and we'll jump out," and when the paymaster came out I started the car up and I went right on.

Q. You didn't stop?

A. No, sir. He said, "Why didn't you stop?" I said, "My brakes ain't any good, I can't stop."

Q. Were your brakes good?

A. Yes, sir. 20

Q. You didn't want to do it?

A. No, sir.

Q. Did he threaten to shoot you if you didn't go on with it?

A. Afterwards he called me up and told me, yes.

Q. And you took him on back home?

A. Yes, sir.

Q. Back to Bridgeton?

A. Yes, sir.

Q. Then you came back the following week and you went over to Bridgeton with Green? 30

A. Yes, sir.

Q. Did you have a talk with Giordano over there?

A. He and Greenie talked about it. I stood alongside of the stove and they sat at the table and talked about it.

Q. They sat alongside of the table and planned it out?

A. Yes, sir.

Q. You stood alongside of the stove?

A. Yes, sir.

Q. Where did you get the gun?

A. Frank Hyson gave it to me. He went by the  
10 house and I asked him about a gun, and he said,  
"Yes, I have got one that ain't no good; I will give it to you." I said, "All right," and he gave it to me.

Q. Would it shoot?

A. No, sir.

Q. Did you try it?

A. Yes, sir.

Q. Why did you give that gun to the Italian?

A. To keep from anybody getting shot.

20 Q. You had tried to see if it would go off?

A. Yes.

Q. And it wouldn't go off?

A. No, the gun wouldn't go off.

Q. Why wouldn't it go off?

A. I don't know why.

Q. Did you pull the trigger on it?

A. Yes, sir.

Q. And it wouldn't go off?

A. No, sir.

30 Q. Was it an old gun?

A. Yes, sir.

Q. Who took Giordano's gun?

A. Greenie. Henry Green.

Q. You came over here that next morning, didn't you?

A. Yes, sir.

- Q. What time did you get here?  
A. Around 6 o'clock.  
Q. You were driving the car?  
A. Yes, sir.  
Q. Did you ever get out of the car?  
A. No, sir.  
Q. Did you ever make a statement or tell Green or Giordano that you didn't want any shooting? 10  
A. Yes, sir.  
Q. When did you tell them that?  
A. When we started down the street.  
Q. What did you say, in your exact words?  
A. I told them, I says, "I don't want nobody to do no shooting." I says, "If we can't get the money without shooting, run."  
Q. Did you intend to shoot MacCausland?  
A. No, sir.  
Q. Did it ever come in your mind that these boys 20 intended to shoot him?  
A. No, sir.  
Q. You didn't get out of the car at all?  
A. No, sir.  
Q. What did you do? Did you pull your car up ahead of where the paymaster was?  
A. Just ahead of him.  
Q. Did you see these other two boys grab him?  
A. I seen Green when he jumped out and seen his arm go around him, but I didn't see no more 30 until I heard the shot.  
Q. After you heard the shot, what happened? You were up ahead of them, weren't you?  
A. Yes, sir.  
Q. After you heard the shot, what happened?  
A. Giordano jumped in the car and Green jumped

in the car with envelopes in his hand. Giordano had the gun in his hand and jumped in the car and Greenie jumped in the car and said, "Step on it."

Q. Green said to you to step on it?

A. He said, "Go up Griffith Street," so I turned and went up Griffith Street. I went out through Guineatown and I didn't know they had the envelopes out until they told me, and when they got to  
10 Guineatown they put the window down and threwed the gun out.

Q. Did you ask them who shot the gun off?

A. I turned around after my nerves had cooled off a little, and I said, "Who shot?" and Pete said, "I did." I said, "What did you want to shoot for?" He said, "I don't know; go ahead," and he done like that to me (illustrating), and I didn't say  
20 I got the other side of Aldine I didn't know which way to go, so he showed me which way to go into Bridgeton. On one of the roads there going in by farms over there they threwed the other gun out along the road.

Q. Then where did you go after that?

A. We came out on the highway and he told me, he says, "This is Laurel Street; turn to your right here," so I turned, and Greenie says, "You leave me out here and I will walk down, and you take  
30 Pete down a ways and leave him out and take the car down and go to his house and I will be there," which I did.

Q. Did you go on down to the house?

A. I went down to his house, and Pete came down the street and we went in the house and got in there talking, and I said, "Pete, where did you

shoot that man?" and he said, "I shot him in the shoulder."

Q. Peter Giordano said he shot him in the shoulder?

A. Yes, and he said, "What's the matter with you, scared?" I said, "Certainly I am scared. How about if that man dies?" He says, "He won't die," so he says, "Go down and report the car stolen," and I says, "No." 10

Q. Pete told you to go down and report the car stolen?

A. Yes, sir.

Q. What did you tell him?

A. I told him I wasn't going to do it.

Q. He told you to go down and report the car stolen to the police?

A. Yes, sir.

Q. What did you do? 20

A. I told him I wasn't going to do it, and he kept talking to me and acted kind of mad about it, and I said, "All right, I will, but I want to call up a friend of mine first," so we went down by the barber shop and I called up Charles Artis.

Q. What did you ask him to do?

A. I said, "Chick, come down here right away, I want to see you," and he said, "All right," so he came down there and I asked him to take me to Salem. I told Pete I was going to report the car stolen. I got in the car and told him to take me to Salem. 30

Q. You didn't report the car stolen?

A. No, sir.

Q. And you asked Charles Artis to bring you to Salem?

A. Yes, sir.

Q. On your way to Salem you met your sister?

A. Two sisters and brother.

Q. They were going over to Bridgeton to work?

A. I don't know where they was going.

Q. They did work in Bridgeton at the time?

A. My sister did, yes.

10 Q. You met them where?

A. A mile the other side of Quinton.

Q. Did you stop?

A. I turned around and seen the car and seen them looking out the back, so we turned around and stopped, and I got out of the car and went over and they put the window down, and my sister says, "Chick, what have you been doing?" and I says, "Nothing." She says, "There were five State cops down at the house after you this morning. Did  
20 you know the paymaster was shot?" and I couldn't answer. I jumped in the car and told him to take me to Philadelphia.

Q. Then you went on to Florida?

A. Yes, sir.

Q. Then what did you decide to do when you got down in Florida?

A. We got down in Florida and I was telling Chick about it after we got down there. I told Chick the man was dead and I was worrying about  
30 it, so we got to Jacksonville, Florida, and stopped to get some gas after we crossed the ferry four or five miles the other side of Jacksonville, and I told Chick, I said, "I'm going back and give myself up, I can't go no further."

Q. That is when you got beyond Jacksonville?

A. Yes, sir.

Q. So what did you do then?

A. We turned around and came back in to Philadelphia.

Q. Came to Philadelphia?

A. And he said, "We'll go around and see my cousin."

Q. Charlie Artis said he would go around and see his cousin. What did you do then?

10

A. We went out to Olney Station and was talking to his cousin, so his cousin says, "Do you want me to call up your mother and tell her you are coming down there?" and I said, "No, don't call them up, because if you call up there maybe we will get arrested here." I says, "We are going down there, anyway," so we came on down to Bridgeton; got in Bridgeton, I told Chick to go home, "And if the cops arrest you, tell the truth about it."

Q. You told Chick to tell the cops about it?

20

A. Yes, I said, "I'm going on up here to Bridgeton and get a ride home."

Q. You mean to say to come over to Salem?

A. Yes, sir.

Q. What did you do? You went to Aldine, didn't you?

A. Only when I came up Broadway I thought I would come around and tell his mother about it, and by the time I got there they had arrested him, and the officers had come back again, and I said, 30  
"I don't want to get arrested here," and I run out the back way and started towards Salem.

Q. You wanted to give yourself up in Salem?

A. Yes, sir.

Q. What did you do then?

A. I kept walking down the road, and when it got

light I was in Aldine, and I stayed there all that day, and the next night I walked in to Salem. I went out to Claysville, sat there until it got daylight, and my brother came along home from ducking, so I stopped them.

Q. Which one of your brothers came up? He was going home from ducking in the early morning?

10 A. Yes.

Q. Which one of your brothers was it?

A. Joe and Elmer, and they told me they had arrested this Italian in Philadelphia, and Miss Thomas and the detective was over to the house the night before and said if I would give myself up I would only get three or four years, it would make it easier on me, so that's why I came here.

Q. Did you walk in to the jail yourself?

A. Van Meter was setting at the desk reading a  
20 book.

Q. What did you say to him?

A. I said, "Ed, you are looking for me?" He said, "Yes, is your name Charles Fithian?" I said, "Yes." I asked if I could go up in the hospital room upstairs. I says, "My nerves is all broke up," and he says, "I can't take you up there, because we have a witness up there," and he brought me into the jail and put me in there.

Q. You later made a statement to the Prosecutor?

30 A. Yes, sir.

Q. This statement is true?

A. Yes, sir.

Q. You read it over?

A. Yes, sir.

Q. You signed it?

A. Yes, sir.

Q. And all of it that is in there is true?

A. Yes, sir.

Q. You answered the questions that they asked you, didn't you?

A. Yes, sir.

Q. You didn't refuse to answer any questions?

A. None.

Q. Did you suggest to Peter Giordano to come 10 over here and hold up this paymaster at any time?

A. No, sir.

Q. He kept insisting that you come over and do it?

A. Yes, sir.

Q. As a matter of fact, it is true that the people in the West Ward community had talked about this paymaster being unguarded?

A. Yes, sir.

Q. The boys had talked about it? 20

A. Yes, sir.

Q. Your father works at the Salem Glass Works?

A. Yes, sir.

Q. Has for a good many years?

A. Yes, sir.

Q. Your brothers work there?

A. Yes, sir.

Q. You live in this immediate neighborhood, don't you?

A. Yes, sir. 30

Q. It was not your intention to kill anybody, was it?

A. No, sir.

Q. Who planned it out how they should get out of the automobile and attack the paymaster?

A. Greenie and Giordano.

Q. How did they say it should be done?

A. At first they wanted me to jump out with them, and I told them I wouldn't have nothing to do with it. I says, "I won't get out." I says, "I will drive the car, but I won't get out of the car." I said, "I don't want no gun." So they said, "Well, we'll take care of it ourselves," and we got over to Salem  
10 and stopped, and Greenie jumped out and tore the license plate off the back and threw it under the back seat, so they got in the car and they said, "Drive around the corner," and I drove around the corner and parked, and they said, "We'll get on the back seat and we can get out easier."

Q. Those two got on the back seat?

A. Yes. Giordano said, "When you stop the car, don't you move it until we all get in." He said, "If you do, you will never get away from here."

20 Q. Did he tell you what he meant by that?

A. I had an idea what he meant by it.

Q. He meant he would shoot you down, too?

A. Yes, sir. He said if anybody run he would shoot them.

Q. What did they say then between themselves?

A. They didn't say anything, but I told Greenie, "Don't forget, don't shoot," and then he come out and he says, "Here he comes, go ahead," and I went on.

30 Q. And Green got out and grabbed the man; is that right?

A. Yes.

Q. And you didn't see the shot fired, did you?

A. No, sir.

Q. You were too far up ahead?

A. Yes, sir.

Q. Did they run back and get in the car?

A. Yes, sir.

Q. Then they wanted you to drive on; is that right?

A. Yes, sir.

Q. Who grabbed the pay envelopes?

A. Greenie.

Q. You told Artis about this man Giordano being part of it, didn't you? 10

A. Yes, sir.

Q. You told him about Green being part of it?

A. Yes, sir.

Q. You told the authorities about Giordano and Green being part of it, too, didn't you?

A. Yes, sir.

Q. You have been before this Court and convicted for not supporting your wife and child, haven't you? 20

A. Yes, sir.

Q. And, as far as you know, your wife is living with someone else, isn't she?

A. Yes, sir.

Q. You never have been in any trouble of any other kind before, have you?

A. No, sir.

Q. How old are you?

A. 22.

Q. How many brothers and sisters have you got? 30

A. Nine.

Q. Your father and mother live on Fifth Street, don't they?

A. Yes, sir.

Q. You have lived here in town all your life?

A. Yes, sir.

Q. Did you tell Charles Artis in Jacksonville that you were willing to give yourself up?

A. Yes, sir.

Q. That you wanted to come back home?

A. Yes, sir.

Q. Did you drive day and night on the way back home?

10 A. From the time we left Jacksonville until we got up there, we never stopped.

Q. Until you got ready to stop?

A. We drove from there to Philadelphia and never stopped, only time to get gasoline and eat.

Q. You have assisted the authorities and answered the questions they have put to you, haven't you?

A. Yes, sir.

Q. Have you seen Green since that time?

A. No, sir.

20 Q. You haven't seen him since that time?

A. No, sir.

Q. What did Green tell you when he left you?

A. He left the house and said, "I am going to Philadelphia, I will be back tonight; if I am not back tonight I will be back tomorrow morning."

Q. You have never seen him since?

A. Never.

Q. You have known him? He is a Salem boy?

A. Yes, sir.

30 Q. All of your life?

A. Yes, sir.

Q. He has been away the biggest part of the time?

A. Yes, sir.

Q. In the navy?

A. Yes, sir.

Q. Did you ever get letters from him?

A. The last time I got a letter from him, he was in Morris Heights.

Q. That was long before this happened?

A. Yes, sir.

Q. You went to school together?

A. Yes, sir.

Q. Known each other since childhood?

A. Yes, sir.

Q. Did Giordano tell you the reason why he shot this man? 10

A. No. I asked him why he shot the man and he says, "I don't know; go ahead."

Q. He never told you why?

A. No.

Q. He wouldn't give you any reason?

A. No.

Q. You received this money, and these other facts that are in this confession here? 20

A. Yes, sir.

Q. You were willing to give yourself up at the time?

A. Yes, sir.

Q. You knew what charge was against you, and that this man was killed, didn't you?

A. Yes, sir.

Q. And you were willing to give yourself up?

A. Yes, sir.

By the Court: 30

Q. You saw Green grab this man around the neck or body?

A. Yes, sir.

Q. Then you were looking right at him?

A. No, sir. When he jumped out of the car, he jumped out of the car and run right up to him, and I stopped the car.

Q. Then you must have been looking right at MacCausland at the time Green grabbed him by the neck, weren't you?

A. He hadn't grabbed him. He had his arm  
10 around his head.

Q. He was in front of you?

A. Yes, sir.

Q. The two of them were in front of you?

A. No; on the side of me.

Q. You were looking at them?

A. Yes.

Q. Where was the other man?

A. Pete Giordano?

Q. Yes. Where was he?

A. I don't know. There was a tree there.  
20

Q. He must have been alongside of you, too, wasn't he?

A. He jumped off. He must have been alongside of me, but there was a tree where I stopped.

Q. You were looking right at MacCausland?

A. No.

Q. How is it you didn't see this other man put the gun up against him?

A. You see, by the time I stopped there was a  
30 tree between where they was standing and me, and I was looking down the street, and I didn't turn around any more until I heard the shot, and when I heard the shot Giordano was jumping in the car.

Q. You don't know where the shot came from?

A. No, sir, only from what he tells me is all.

By Mr. Schalick:

Q. You said the car was moving when Green first jumped out?

A. Yes, sir.

Q. They both jumped out, Green ran up and grabbed the man, you saw that, and you pulled on up ahead, and there was a tree between you and these men? 10

A. Yes.

By the Court:

Q. Where was Giordano in the car immediately before he jumped out?

A. The back seat.

Q. Did you see him jump out?

A. Well, I seen him when he went past me. 20

Q. See whether he had anything in his hand?

A. He had a gun in his hand, yes, sir.

Q. You saw that?

A. Yes, sir.

Q. You knew what he was going to do, having a gun in his hand?

A. I didn't know he was going to shoot the man.

Q. Did you do anything towards withdrawing from this matter at that time?

A. I had, yes. I came away from there once. He called me up and told me if I didn't go on through with it he would shoot me. 30

Q. What did you do in the way of withdrawing from this affair when you saw this man spring out of the car with a revolver in his hand?

A. You mean did I try to keep on going?

Q. Try to get out of there? Try to run away?

A. No.

By Mr. Schalick:

Q. Giordano promised you if you did go away that he was going to shoot, didn't he?

10 A. Yes, sir.

Q. The first fellow that moved he said he would shoot?

A. Yes, sir.

Cross-examination.

By the Prosecutor:

20 Q. It is a fact, isn't it, that you knew that the gun that Giordano had, according to your testimony, wouldn't go off, anyhow?

A. I tried to shoot it and it wouldn't go off for me.

Q. It wouldn't go off for you?

A. No, sir.

Q. Why were you afraid that Giordano was going to do any shooting, then?

A. Well, he had a gun. I heard him talk about it.

Q. He had your gun?

30 A. Yes, sir.

Q. And you want this jury to believe that that gun was no good and wouldn't go off?

A. Yes, sir.

Q. And you want this jury to believe that this man Giordano is an outlaw who —

Mr. Schalick: I make an objection.

The Court: Wait until the question is asked.

Mr. Schalick: I am not going to wait until such a question as that is asked. That is not fair.

The Court: If you wish to finish your question, 10  
you may do so, or withdraw the present one and  
reframe it. The question in its present form is  
impossible to be passed on. It has no verb in it.

(The question was repeated.)

Mr. Schalick: I enter an objection to the question.

The Court: The question is incomplete. Do you 20  
wish to complete that question?

The Prosecutor: I do.

The Court: Well then, finish it. When he finishes  
it, Mr. Schalick, you may object.

Q. — who has robbed various places in and  
around Bridgeton and held up one or two other pay-  
rolls, and he so told you? 30

A. No, I didn't say he held up any payrolls.

Mr. Schalick: I object to that question.

The Court: I will rule that question out in that  
shape.

Q. When did he first tell you about some payroll up around Gloucester?

A. That Thursday night that I came over here.

Q. What Thursday night did you come over here?

A. We came over here and I stopped and drove him back to Bridgeton. Thursday morning, rather. It was the Thursday morning before that we came  
10 over here the first time.

Q. Did you come over here on Thursday morning the first time?

A. Friday morning.

Q. Which morning was it that he told you about this payroll up in Gloucester County?

A. It was the night before we came to Salem.

Q. Thursday night?

A. Yes, sir.

20 Q. Did he tell you that he had held up some paymaster up there?

A. No.

Q. What did he tell you about that?

A. He told me that he had a job up there where he had seen the payroll up there, knew where it was at and could get it.

Q. Is that the first time he ever told you about holding anybody up or knowing where it could be done?

A. Yes, sir.

30 Q. That was the night before the first Friday morning you came over to see about this job?

A. Yes, sir.

Q. When did he tell you about he had robbed a store or two around Bridgeton?

A. The same night.

Q. And that same night he told you about some others that would be easy to get into?

A. Yes, sir.

Q. And he wanted you to go along with him?

A. Yes, sir.

Q. And you said you wouldn't do it?

A. Yes, sir.

Q. In spite of the fact you knew you were going to bring him to Salem the next morning to see about this payroll here?

A. He hadn't said nothing about that yet.

Q. A while ago you testified that the statement here you signed, everything in there is true, didn't you?

A. Because I was afraid, yes.

The Court: Why are you saying it now? The question refers to your testimony on the stand. 20

Q. You have admitted, haven't you, that this statement that has been put in evidence, that everything in there is true?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And that you made that voluntarily, did you not?

A. Yes, sir. 30

Q. At that time didn't you tell the officers and myself that that is all that you knew about the case?

A. No, sir.

Mr. Schalick: Why such cross-examination, when

the Prosecutor has admitted that there were other questions?

The Court: He may answer.

Q. At that time did you tell the officers and myself anything about this story which you are now telling  
10 about Giordano telling you about this hold-up in Gloucester?

A. No, sir.

Mr. Schalick: Were you asked those questions?

The Witness: No, sir.

The Court: Wait, Mr. Schalick.

20 Q. Why didn't you tell us about that?

A. The questions you have got there is the questions you asked me that you wrote down there, and I told you from the time before.

Q. I am asking you if this is a fact, why didn't you tell us about Giordano telling you about a payroll up in Gloucester County he was thinking about getting?

A. Because I was afraid of him.

30 Q. At the time you made this statement, Giordano was in jail, wasn't he?

A. Yes, sir.

Q. You knew he was charged with murder?

A. I knowed he was coming to Salem, yes, sir.

Q. You knew he was locked up?

A. Yes, sir.

Q. And you were still afraid of him?

A. Yes, sir.

Q. Are you still afraid of him today?

A. Yes, sir.

Q. What do you think he is going to do to you?

A. I don't know.

Q. You know he was convicted of first degree murder, don't you, last week?

A. Yes, sir.

10

Q. You know the jury made no recommendation in favor of life imprisonment, don't you?

Mr. Schalick: That is all admitted.

Q. You know that, don't you?

A. Yes, sir.

Q. And still you are afraid of him and think he can do something to you?

A. Yes, sir. He has threatened three or four in 20 the jail already.

Q. What is that?

A. He has threatened three or four in the jail already.

Q. Has he threatened you in the jail?

A. No.

Q. And on that same Thursday night before you came over here he told you also about robbing a store in Bridgeton?

A. Yes, sir.

30

Q. And told you about two more that he was going to rob?

A. Yes, sir.

Q. And he told you about burning up an automobile to get the insurance?

A. Yes, sir.

Q. You knew that Thursday night, then, that he was a pretty bad man, didn't you?

A. He was telling me about it that Thursday night.

Q. I say you knew that Thursday night that Giordano was a pretty bad man, according to your testimony?

A. Yes, sir.

10 Q. And in spite of that fact, you agreed to come over here with him the next morning to hold up this paymaster?

A. Yes, sir.

Q. Why did you do that?

A. He kept after me about it to come over here with him.

Q. You didn't have to come, did you?

A. I thought if I would bring him over here and didn't stop, he wouldn't shoot the man and couldn't  
20 take the money, so I came over and didn't stop.

Q. Do you know whether Giordano had ever been in Salem prior to that time?

A. He had sold bananas here.

Q. You know that of your own knowledge?

A. From what he told me.

Q. You say that the first time that this was mentioned was that Thursday night?

A. Yes, sir.

30 Q. Let me read you a part of this statement: "When I first met Peter Giordano, it was at Linden Orchards, near Shiloh, New Jersey, where we were picking apples." When was that?

A. Last summer. That was last July.

Q. "We both lost our jobs there." When did you lose your job?

A. The stock market had dropped out and they wasn't selling no apples, so everybody was laid off.

Q. Do you know what time it was in the summer when you were laid off?

A. I don't recall. Somewhere around July.

Q. Did you do any work anywhere from that time on?

A. I was unable to find work. 10

Q. Then you say, "I saw him in Bridgeton, New Jersey, after that several times." Is that true?

A. Yes, sir.

Q. "It was on a Saturday night about two weeks ago I stayed at Peter Giordano's home in Bridgeton." Is that true?

A. Yes, sir.

Q. "I told him about this man carrying the payroll." Is that true, that you told him that Saturday night? 20

A. No, sir.

Q. Well, you said a few minutes ago the statement is true. Is it true or isn't it true?

Mr. Schalick: It does not say he told him that Saturday night.

Q. "It was on a Saturday night about two weeks ago that I stayed at Peter Giordano's home in Bridgeton. I told him about this man carrying the payroll, so he said, 'Let's see if we can get it.'" Was that on Saturday night, or wasn't it? 30

A. No, sir.

Q. What were you doing there that Saturday night?

A. I was downtown and I was trying to get a ride

home from the dance, and he went by and I stood talking to him, and he asked me where I was going, and I said I was going to Salem if I could get a ride home, and he said, "Why, you can come around to the house and stay there all night."

Q. At that time you told him about this payroll and he said, "'Let's see if we can get it.' I says, 10 'All right, we will go see about it,' and we came over here." Did you say that in your statement?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Then you were the one who said, "All right, we will go see about it"?

A. I didn't say nothing about we would come over and do it.

Q. You said, "We will go see about it"?

20 A. That was after he had told me we would get another guy to come over with us.

Q. He didn't know anything about this paymaster until you told him about him?

A. Not as I know of.

Q. You were the one who mentioned to him about how easy it would be to get the payroll?

A. No, sir.

Q. You have worked at various times down at the Salem Glass Works?

30 A. A number of times, yes, sir.

Q. Off and on.

A. Yes, sir.

Q. You never worked anywhere regularly, did you?

A. Yes, sir.

Q. Where?

A. Worked at the gas house.

Q. How long?

A. Over two years.

Q. Didn't you get laid off at any time during that period?

A. No, sir.

Q. You knew about the habits of this paymaster carrying this money down from the main office to the time office every Friday morning? 10

A. I never saw him do it, no.

Q. I didn't ask you that. You knew that he did it?

A. Yes, sir.

Q. You knew that was the regular practice every Friday morning?

A. Yes, sir.

Q. And you knew about how many men got through work on that 7 o'clock shift, didn't you?

A. No. 20

Q. Well, you knew the payroll amounted to several hundreds of dollars, didn't you?

A. Yes, sir.

Q. And you were the one who mentioned it to Giordano and told him about this payroll?

A. Not to come over here after it, no.

Q. You were the one who told him about it?

A. Yes, sir.

Q. He didn't know anything about it until you told him, did he? 30

A. Not that I know of.

Q. Well, now, after it says, "All right, we will go see about it, and we came over here," so you brought Giordano over here the Friday morning preceding the shooting, didn't you?

A. Yes, sir.

Q. That was on the 17th of October?

A. I don't know what date it was.

Q. How did you get over here?

A. Over in my brother's car.

Q. Whose car?

A. My brother's.

Q. Was that the same car you used the morning  
10 you held up MacCausland and shot him?

A. No, sir.

Q. You owned a car at that time, didn't you?

A. Yes, sir.

Q. What kind of a car?

A. Buick.

Q. Where was the Buick on the morning of the  
17th?

A. Home.

Q. How did you get to Bridgeton the night before  
20 that? You say now that this was first mentioned to  
you on Thursday, the night before you first came  
over here?

A. Yes, sir.

Q. How did you get to Bridgeton that Thursday  
night?

A. Used my brother's car.

Q. You used your brother's car the next morning  
to bring Giordano over to show him where the pay-  
master was?

30 A. Yes, sir.

Q. What time did you get to Salem that next  
morning?

A. Quarter of six.

Q. Why did you bring him over?

A. I don't know.

Q. You don't know why you brought him over?

A. I thought if I brought him over here and didn't stop, he would forget about it.

Q. What?

A. He kept asking me to bring him over here, and I thought if I brought him over here and kept right on going, I knew he couldn't hold the man up, and that's the reason I brought him.

Q. After this man having told you the night before about the various violations he had been engaged in, you brought him over here simply because he asked you to bring him; is that right? 10

A. He kept after me, yes, sir.

Q. You had no thought of participating in any of the proceeds of the robbery, did you?

A. What do you mean?

Q. You didn't want any of the money that the paymaster was carrying in the payroll, did you?

A. I would have took it. 20

Q. You would have taken it and you planned to get it, didn't you?

A. No, I didn't plan it.

Q. Who did plan it?

A. Giordano wanted to come over here and do it.

Q. How did Giordano plan this thing when he didn't know anything about this paymaster?

A. He told me, he says, "When the man goes down the street, you drive up to him and we will jump out."

Q. Giordano didn't know anything about this paymaster until you told him about him, did he? 30

A. No.

Mr. Schalick: We have gone over that a dozen times.

Q. When you got over here that Friday, the 17th, you say you got here about quarter of 6?

A. Yes, sir.

Q. Where did you and Giordano go then?

A. Went down Fourth Street.

Q. Did you park your car there somewhere?

A. Yes, sir.

10 Q. Did you talk about the weather then, or what?

A. No.

Q. Did you tell him where MacCausland would come from, the building he would come out of with the payroll?

A. He knew where it was.

Q. He knew where it was?

A. Yes, sir.

Q. How did he know that?

A. He had been there before.

20 Q. When was he there before?

A. I don't know. He had been in Salem before and knowed where the office was and knowed where Fourth Street was and knowed where the Glass Works was.

Q. He had no way of knowing from what building the paymaster came, did he?

A. No.

Q. Didn't you tell him that?

A. Yes, sir.

30 Q. You told him the paymaster would come out of the main office?

A. Yes, sir.

Q. And you pointed him out when he came out, didn't you?

A. Yes, sir.

Q. What direction did Mr. MacCausland take that morning?

A. Walked down Fourth Street.

Q. The middle of the street or on the sidewalk or where?

A. Sidewalk.

Q. On the right-hand side, the same side that the main office is on?

10

A. Yes, sir.

Q. And you told Giordano that that was the paymaster, didn't you?

A. Yes, sir.

Q. Was he that morning carrying the payroll under his arm?

A. Yes, sir.

Q. Did you notice how many boxes or envelopes he had?

A. No, sir.

20

Q. But you explained all that to Giordano, didn't you?

A. I didn't explain it to him. I brought him over and let him see it himself.

Q. Did you look at your watch to see what time it was he came out?

A. No, sir.

Q. Did Giordano?

A. No, sir.

Q. Do you know about what time it was that preceding Friday morning?

30

A. No, sir.

Q. That morning you let MacCausland walk on down to the time office? You didn't shoot him that morning, did you?

A. No, sir.

Q. Then you went back to Bridgeton with Giordano?

A. Yes, sir.

Q. Why did you go back there to Bridgeton with him?

A. To take him home.

Q. He couldn't get there by himself, I suppose,  
10 could he?

A. Not unless he walked, I don't suppose.

Q. Giordano was working during all this time, wasn't he?

A. Yes, sir.

Q. Working in a bakery in Bridgeton?

A. Yes, sir.

Q. And you were not working?

A. No, sir.

Q. You hadn't worked since July?

20 A. No, sir.

Q. Up to that time Green didn't know Giordano, did he?

A. No, sir.

Q. And you say that you were afraid of Giordano and the reason you brought him over here was because you were afraid of him?

A. Yes, sir.

Q. And you say he had told you of these various crimes he had committed?

30 A. Yes, sir.

Q. And then you say you met Green here on the street either on Wednesday or Thursday?

A. Yes, sir.

Q. And you say Green didn't know Giordano?

A. No, sir.

Q. You and Green had been chums since boyhood days, had you?

A. Yes, sir.

Q. Still you were willing to lead Green into the clutches of this bandit?

A. No, sir, I didn't lead him into it.

Q. You told him about what you had been talking over with Giordano about holding up the payroll? 10

A. Yes, sir.

Q. And he didn't know Giordano?

A. No, sir.

Q. And you say that you yourself were afraid of Giordano was the only reason you had anything to do with it; is that right?

A. Yes, sir.

Q. But still you were willing to lead your friend Green into the same difficulty; is that right?

A. I didn't lead him into it. 20

Q. You told him about this payroll and what you were proposing to do, didn't you?

A. Yes, sir.

Q. Then you took him over to Bridgeton to see Giordano?

A. Yes, sir.

Q. There was no understanding between you and Green here in Salem about holding up the paymaster, was there?

A. No, sir. 30

Q. That is true, is it?

A. Yes, sir.

Q. Let me read you a little more of this statement: "On either Wednesday or Thursday, October 22nd or October 23rd, I met Henry Green in Salem and I mentioned to him about holding up the paymaster

and getting the money, and Green says, 'All right, I want to get in on it.''' Which is true?

A. That is the truth.

Q. This is the truth?

A. Yes, sir.

Q. So that when you just testified a few minutes ago that you didn't say anything to Green here in  
10 Salem about holding up the paymaster, you were lying then, weren't you?

A. No, sir. I told you before I was talking to him down at the house about it.

Q. Didn't you just testify here a few moments ago you had no conversation with Green here about you and him holding up the paymaster?

A. I did not, no. I didn't say we had talked about it. I told him about Giordano and myself.

Q. Just what did you tell Green here in Salem?

20 A. I told him the same thing that I told Schalick.

Q. What?

A. I told him I told Green about Giordano wanting to rob this paymaster and I wouldn't go over.

Q. You told Green that Giordano wanted you to hold up the paymaster and you wouldn't do it?

A. That I came home.

Q. Now, is that true?

A. Yes, sir.

Q. What do you mean by saying in this statement  
30 then, "I met Henry Green and I mentioned to him about holding up the paymaster and getting the money and Green says, 'All right, I want to get in on it.'''?

A. I was telling him that down to the house, down on the step, when he asked me what kind of a fellow Giordano was and I told him he was an Italian fel-

low, and he says, "We will go talk to him and see what we can do with him."

Q. What time was it that you saw Green down at your home?

A. About 4 o'clock, half past 4.

Q. How long after that was it before you and Green started for Bridgeton?

A. He told me he was going up home and change his clothes. He said, "Come up to the house after me at 6 o'clock," so I did.

Q. He was all ready then to go over there and meet Giordano, and the three of you come back here and hold up the paymaster?

A. Yes, sir.

Q. And you were ready, too?

A. Yes, sir.

Q. You were just as ready as Green? That is correct, is it?

20

Mr. Schalick: That is a conclusion. I object.

Q. After you had this conversation with Green about half past 4 in the afternoon, he immediately told you he wanted to get in on it?

A. Yes, sir.

Q. And he would be ready to go over with you as soon as he went up home and got some clothes?

A. Yes.

Q. What did he want to go up and get some clothes for, did he tell you?

A. No, sir.

Q. He had some clothes on down at your house?

A. Yes.

Q. Did you get your car out then?

30

A. Yes, sir.

Q. And you drove up and met Green at his house?

A. Yes, sir.

Q. The two of you then went to Giordano's house?

A. Yes.

Q. And you were perfectly willing to go, weren't you?

10 A. I told them I would drive the car, that I wouldn't take no part in holding the man up.

Q. What did you take this gun along for?

A. I give the gun to Green.

Q. What did you take the gun for?

A. I didn't have the gun when I went to Bridgeton.

Q. I am referring to the night before the shooting occurred?

20 A. I didn't have the gun when he and I went there. We came back and got the gun.

Q. You drove to Bridgeton with Green without the gun, did you?

A. Yes, sir.

Q. What time did you get over there?

A. Around 6 o'clock. I left his house 6 o'clock and got over there about quarter of 7.

Q. Where did you go?

A. Went down by the lunch car and Giordano was going across the road.

30 Q. You had some talk there with Giordano, didn't you?

A. We got in the car and went on around to his house.

Q. And then you say that some time later that night you came back to Salem and got your gun?

A. Yes, sir.

Q. Why did you come back to Salem and get your gun?

A. To give it to Giordano.

Q. What?

A. Greenie wanted it to give to Giordano.

Q. Giordano had a gun of his own?

A. Yes, sir.

Q. And you mean to say you drove back from 10 Bridgeton to Salem just to get that gun?

A. Yes, sir.

Q. And to get a gun that you knew was no good and wouldn't shoot?

A. Yes, sir.

Q. What time did you come back to get that gun?

A. About 10 o'clock.

Q. How long did you stay in Salem when you came over on that visit?

A. About 11 o'clock.

20

Q. Green came with you?

A. Yes, sir.

Q. Giordano came with you?

A. No, sir.

Q. If you had wanted to, you could have backed out of this at that time, couldn't you?

A. Yes, sir.

Q. Why didn't you?

A. I was afraid Giordano would shoot me. He called me up and told me he would.

30

Q. You were still afraid of Giordano?

A. Yes, sir.

Q. And still you were coming all the way from Bridgeton to Salem to get a gun that you say wouldn't shoot?

A. Yes, sir.

Q. As a matter of fact, didn't you buy some bullets for that gun?

A. Yes, sir.

Q. When did you buy those bullets?

A. Tuesday night, I think.

Q. Why did you buy bullets for a gun that was no good and you knew it was no good?

10 A. I didn't know it was no good then. I took it down on the bank and tried it.

Q. Where did you buy the bullets?

A. Paul Ehrardt's.

Q. Here in Salem?

A. Yes, sir.

Q. How many did you buy?

A. Seven or eight.

Q. What calibre?

20 A. I don't know. I bought 32 bullets and they wouldn't fit, and I asked him what size the gun was and he took it and looked at it and gave them to me.

Q. He filled the chambers up, did he?

A. No. He just put one bullet in it and gave it back to me.

Q. The .32 bullets wouldn't fit in there?

A. No, sir.

By the Court:

30 Q. You mean less than 32?

A. I don't know.

Q. You say they wouldn't fit in there. You mean they wouldn't go in?

A. They wouldn't go in, no.

Q. Well, then, that would be less, wouldn't it?

(No response.)

By the Prosecutor:

Q. How did you and Green come to come back to Salem around 10 o'clock that night to get this gun that wouldn't shoot?

A. I told him the gun wasn't no good, and he said, 10  
"Well, we'll go get the gun and give it to Giordano, and I'll get Giordano's away from him, to keep anybody from getting shot."

Q. You were apprehensive, then, that Giordano might shoot somebody, were you?

A. Yes.

Q. Did you and Green talk this over in the presence of Giordano, or where?

A. No. When we were coming back to Salem. 20

Q. If you hadn't talked to Green before that, why did you and Green come back here to Salem?

A. We talked about it before. Henry had asked Giordano if he would go without using a gun, and he said no.

Q. Just take your hand away from your mouth, so the jury can hear what you say. What was that last answer?

A. He asked Giordano if he would use a blackjack, and Giordano says, "No, I won't use no blackjack." 30  
He says, "I want a gun."

Q. Green asked Giordano if he would use a blackjack?

A. Yes.

Q. And he says, "No, I will use a gun"?

A. Yes, sir.

Q. And you happened to think of this worthless gun over in Salem?

A. Yes.

Q. Why didn't you refuse to have anything further to do with it when he told you he was going to use a gun? Why didn't you stop right then?

A. I don't know.

10 Q. Well, the reason you didn't stop, you wanted some of that payroll, didn't you?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And you knew Giordano was going to bring a gun along with him?

A. Yes, sir.

20 Q. Before you came back to get this gun that wouldn't work, did you try to borrow a gun in two or three places in Bridgeton?

A. No, sir.

Q. Did Green try to?

A. No, sir.

Q. Didn't you come over to Salem and try to borrow one from two or three people?

A. For Henry, yes, sir.

Q. What did Henry want with a revolver?

30 A. He says did I know where I could get one, and I said, "I don't know; I know a man who has got one; I will see if he will let me have it."

Q. You say that your purpose in coming back was to get this worthless gun?

A. Yes, sir.

Q. And then you had planned on giving that to Giordano so there wouldn't be any shooting?

A. Yes, sir.

Q. And that Giordano in turn—you would get him to give his gun to Green?

A. Yes, sir.

Q. Now, the fact of it is that when you got to Salem you tried to borrow a revolver for Green?

A. No, that was before we went to Bridgeton.

Q. Why did you try to borrow a revolver for Green? 10

A. He asked me if I knew where he could get one, and I told him I knew a man who had one, I didn't know whether he would let me have it or not, I would go see him.

Q. Where was that conversation held? Down at your home?

A. Yes, sir, on the step.

Q. Did he ask you if you could get this revolver after you had told him about your proposal to hold up this paymaster? 20

A. Yes, sir.

Q. So that you right away started to help him to get armed, didn't you?

A. I went to see if I could get the gun for him.

Q. Why did you do that?

A. He asked me to go see if I could get one.

Q. Just because he asked you to go, you went as though you had to; is that right?

A. No.

Q. You were not afraid of Green, were you? 30

A. No, sir.

Q. But as soon as you told him about you and this Italian going to hold up the paymaster, and he said he wanted to get in on it, then he asked you to get a gun for him?

A. Yes, sir.

- Q. He wanted a gun right away, didn't he?  
A. Yes, sir.
- Q. And you wanted him to have one?  
A. No, I didn't care if he had any or not.
- Q. Why did you go try to borrow one for him, then?  
A. He asked me to see if I could get him one.
- 10 Q. You went out and tried to borrow him one?  
A. Yes, sir.
- Q. How many places did you go to try to get a gun for Green?  
A. An Italian fellow's house.
- Q. Down on Griffith Street?  
A. Yes, sir.
- Q. Did he let you have one?  
A. No, sir.
- 20 Q. Where else did you go to try to get a gun for Green?  
A. None.
- Q. That was the only place?  
A. That I remember, yes, sir.
- Q. That you remember?  
A. I didn't ask nobody for no gun, nobody else.
- Q. And you did that before you and Green went to Bridgeton?  
A. Yes, sir.
- 30 Q. After you got to Bridgeton couldn't you find any guns around there anywhere?  
A. Giordano said he would get me a gun.
- Q. What?  
A. Giordano said he would attend to that.
- Q. You didn't want any gun, did you?  
A. No.

Q. But Giordano told you that he would get you one?

A. Yes.

Q. Did he get you one?

A. No.

Q. When he told you that he would get you a gun, did you tell him whether or not you wanted one?

A. No.

10

Q. Why didn't you tell him you didn't want any?

A. He said, "I'll see if I can get you a gun." He says, "I know of a fellow that has got some and I will see them."

Q. He said that he would see some of the fellows and see if he could get you a gun?

A. Yes, sir.

Q. Why didn't you tell him you didn't want one?

A. I didn't say nothing to him.

Q. As a matter of fact, you wanted one, didn't you?

A. No.

Q. You had tried to get one for Green before you went to Bridgeton?

A. Yes.

Q. You say that Giordano had one over there in his house and that he was going to try to get you one. Did he get you one?

A. No, sir.

Q. Then you came back to Salem to get your own, didn't you?

30

A. That was before. I didn't have no gun the first time.

Q. You came back to Salem the second time around 10 o'clock to get your own gun, didn't you?

A. Yes, sir.

Q. And you got it?

A. Yes, sir.

Q. And you took this gun back to Bridgeton with you?

A. I brought it out and went back to Henry's house and give it to Henry.

Q. You gave it to Henry Green?

10 A. Yes, sir.

Q. Didn't you give it to Giordano?

A. No, sir.

Q. When did you give it to Giordano?

A. Henry give it to Giordano.

Q. Where was Henry when you gave him this revolver?

A. In the car.

Q. Coming from Bridgeton in the morning or going over the night before?

20 A. Going over the night before.

Q. The next morning when you came over, the gun that you had given to Green the night previously you say Green gave to Giordano?

A. Yes, sir.

Q. And that was the gun that killed this man, wasn't it?

A. As far as I know.

Q. Well, you say that it was?

30 A. I couldn't say. I didn't see nobody shoot. I didn't see the gun after it was fired.

Q. Didn't you say that Giordano, after you were trying to make your getaway, told you that he had?

A. Yes, sir.

Q. There is no question in your mind but that he shot Mr. MacCausland?

Mr. Schalick: I enter an objection.

The Court: I think that is a fair question for the purpose of realizing the situation.

(The question was repeated.)

A. No, sir.

Q. Now, that gun which belonged to you and which Giordano used to kill this man was thrown out of the car in two pieces, wasn't it?

A. I don't know.

Q. Didn't you see the revolver thrown away the next morning?

A. No, sir.

Q. You didn't see it thrown away?

A. No, sir.

Q. Again referring to this statement, "On our way from Salem to Bridgeton after the robbery, Giordano threw away the gun which I had given him along the road near Guineatown, and Green gave Giordano back his revolver and Giordano took it with him." Now, which is true?

A. That is the truth. I didn't see him throw the gun out.

Q. Well, if you didn't see him throw it out, why did you say in this statement that he did do it?

A. Because he said he threw it out the window.

Q. What?

A. He said, "I am going to throw mine out here."

Q. Didn't you see him do it?

A. No.

Q. You simply heard Giordano say that he was going to throw his out there?

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A. He put the window down, yes, sir.

Q. And that gun that he threw out was yours?

A. Yes, sir.

Q. The one that the murder was committed with?

A. Yes, sir.

Q. The one that didn't fire?

A. Yes, sir.

10 Q. But did?

A. As far as I know.

Q. Did I understand you to say that you had lived with Artis' family for about a year prior to this trouble?

A. Over a year.

Q. You haven't been living in Salem, then, have you?

A. I have been living there and working on a farm. No.

20 Q. You are very well acquainted with Alice Thomas, aren't you?

A. Yes, sir.

Q. She is the aunt of Artis?

A. Yes, sir.

Q. How long have you known her?

Mr. Schalick: I enter an objection on the ground there is no relevancy.

30 The Court: I don't know. We will see. I will admit the question.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

HENRY BURT WARE, (Seal)  
Judge.)

(The question was repeated.)

A. Over a year and a half.

Q. And during a year of that period you had been living there at Artis' home?

A. Yes, sir.

Q. Where did she live?

A. With her mother and father.

10

Q. In respect to the place where Artis lives on Vine Street, does she live somewhere in that vicinity?

A. About two blocks.

Q. You are a married man?

A. Yes, sir.

Q. You have a child?

A. Yes, sir.

Q. How long has it been since you have lived with your wife and child?

20

A. Since last April.

Q. You were put under an order of this Court to compel you to support them, weren't you?

A. Yes, sir.

Q. And for a year past you have been living over there with Artis and his family?

A. Yes, sir.

Q. Have you been living up to that order?

Mr. Schalick: I object. There is no relevancy whatever. 30

The Court: I will sustain the objection.

Q. Fithian, before you took Green to Bridgeton, or between the first trip to Bridgeton and the second

that Thursday night, did you have any conversation with him out here on the corner?

A. No, sir.

Q. You did not?

A. No. We came up to the corner and started walking down the street.

Q. Where did you meet him?

10 A. Out here on the corner.

Q. On this corner?

A. Yes, sir.

Q. Didn't you say to him or he say to you, "Let's not do that tonight, because we have got a big job to pull off in the morning"?

A. No, sir.

Q. You didn't say that to Green and Green didn't say that to you?

A. No, sir.

20 Q. Did you want to go out with some girls that night?

A. He asked me to, yes, sir.

Q. Green asked you to?

A. Yes, sir.

Q. Didn't you tell Green when he asked you to go out with these women, "Let's not do it, because we have got a big job to pull off in the morning"?

A. No, sir.

Q. You didn't make that statement?

30 A. No, sir.

Q. But he did ask you out here on the corner to go out with some girls that night?

A. We were going down the street when he asked me.

Q. You say you had had this revolver about four or five days before the murder?

A. Yes; got it the Monday before, Sunday or Monday.

Q. Why did you ask Nyson about a revolver?

A. He went by and I asked him about it.

Q. That isn't an ordinary question that you ask a passerby that goes by your house. Why did you ask him about a revolver?

A. Because I knowed him.

10

Q. You knew the police officers here in Salem, too. You didn't ask any of them about a revolver, did you?

A. No.

Q. Why not?

A. He went by and I asked him if he had a gun.

Q. What did you want with a gun?

A. To use. He said the gun wasn't no good, so I asked him for it.

Q. You wanted a revolver to use? What were you going to use it on the preceding Sunday or Monday? 20

A. No one.

Q. If you were not going to do anything, why did you want this revolver?

A. You asked me if I was going to use it, didn't you?

Q. I asked you what you wanted with the revolver, and you said to use. What were you going to use it for?

A. To rob the paymaster.

30

Q. That was the Sunday or Monday preceding the robbery, wasn't it?

A. Yes, sir.

Q. So that you were trying to get a gun that far in advance, to use in connection with the robbery of the paymaster?

A. Yes, sir.

Q. And you wanted that gun for yourself?

A. Yes, sir.

Q. What did you mean by saying then you didn't want anything to do with a gun, you didn't want any shooting in this thing?

A. Because the gun was no good and that's the  
10 reason I took it.

Q. You didn't know it was no good when you took it?

A. No.

Q. You wanted a good gun, then, didn't you?

A. No, sir.

Q. You said you wanted a gun because you wanted to use it in connection with this robbery?

A. Yes, sir.

Q. Then after you got it off of Hyson, you now  
20 say you figured it was no good?

A. Yes, sir.

Q. But when you got it off of Hyson you wanted it for the purpose of using it in this robbery?

A. Yes, sir.

Q. So you were all set to be armed, weren't you?

A. Yes, sir.

Q. Then you went up town on Tuesday or some other day and bought the bullets, didn't you?

A. Yes, sir.

30 Q. To put in the revolver?

A. Yes, sir.

Q. And that was the same gun that you came back to Salem the second time that Thursday night to get?

A. Yes, sir.

Q. To give to Giordano so he wouldn't shoot anybody?

A. Yes, sir.

Q. And the same gun that he shot him with? After you got to Bridgeton the following morning after this murder, you had already planned and agreed on meeting at Giordano's house, hadn't you?

A. Yes, sir.

10

Q. You all met there?

A. Yes, sir.

Q. And you divided up the money that was taken off of this dead man, did you?

A. Yes, sir.

Q. And you got \$109 or \$111 yourself?

A. Yes, sir.

Q. Was Green there when the money was divided?

A. Yes, sir.

20

Q. After you got that money, did you say that Green told you that he was going to Philadelphia?

A. Yes, sir.

Q. And that he would be back that night or the next morning?

A. Yes, sir.

Q. Do you know where Green is at the present time?

A. No, sir.

Q. Did you and Giordano do anything to Green 30 on the way to Bridgeton that morning?

Mr. Schalick: I object.

The Court: It is a proper inquiry.

A. No, sir.

Q. You didn't shoot him?

A. No, sir.

Mr. Schalick: Of all the tactics, that is the most nonsensical question. I cannot understand the tactics of the prosecution. I move it be stricken from  
10 the record.

The Court: It may stay in.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

HENRY BURT WARE, (Seal)  
Judge.)

20 Q. Now, you say that after Green had left Giordano's house, you and Giordano went down to some barber shop on South Avenue?

A. Yes, sir.

Q. Why did you call up Artis?

A. To bring me to Salem.

Q. You had a car there in Bridgeton. Why didn't you come in your own car?

A. I don't know.

Q. What?

30 A. I was scared.

Q. You were scared?

A. Yes.

Q. Of what were you scared?

A. Because we had held the man up and shot him.

Q. What you wanted to do was to get back here

to Salem to show yourself here in Salem as early as possible, didn't you?

A. No, sir.

Q. You did intend to have your car reported stolen over in Bridgeton, didn't you?

A. No, sir.

Q. But you were trying to get back to Salem just as quickly as possible until your sisters and 10 brothers stopped you and told you that MacCausland was dead?

A. Yes, sir.

Q. As soon as you found out he was dead, then you wanted to get as far away as possible, didn't you?

A. Yes, sir.

Q. And you told Artis to drive you to Philadelphia?

A. Yes, sir.

20

Q. You showed this money to Artis, didn't you, that you had gotten out of this payroll robbery?

A. I don't remember.

Q. You stopped at Robbin's Garage outside of Bridgeton that morning and got some gas?

A. Yes, sir.

Q. Paid for that?

A. Yes, sir.

Q. Didn't you show him the roll you had at that time?

30

A. No, sir.

Q. Show it to him when you got to Philadelphia?

A. Yes, sir.

Q. Did you tell him how much you had gotten?

A. I don't remember.

Q. And you told him, didn't you, that this was money that was taken off the paymaster?

A. Yes, sir.

Q. And you wanted him to drive you down to Florida?

A. I asked him if he wanted to go to Florida.

Q. So the two of you started?

10 A. Yes, sir.

Q. When you got down in Virginia, you told him that MacCausland was dead, didn't you?

A. I don't think I told him about that until I got to Florida.

Q. You don't think you told him the man was dead until you got to Florida?

A. No, sir.

Q. And when you told him that, Artis wanted to come back?

20 A. No, I told him I wanted to come back, I didn't want to go no further.

Q. You told Artis also that you wanted to come back to see his aunt, didn't you?

A. No, I didn't say I wanted to see her.

Q. Didn't you tell him on several occasions on the way down to Florida and back that you wanted to come back and see his aunt, Alice Thomas?

A. No.

30 Q. You did want to come back and see her, didn't you?

A. When we came to Bridgeton I said, "Before I go to Salem I would like to see her."

Q. You were in the habit of seeing her pretty regularly prior to this shooting?

A. Yes, sir.

Q. You went around places together, didn't you?

A. Yes, sir.

Q. Went around to road houses together?

A. No, sir.

Mr. Schalick: I object to that.

The Court: I will sustain the objection. We have gone far enough on that subject, I think. Its only 10 value, as far as I can see, would be to indicate the reason that motivated him for coming back, whether in order to see a woman or to give himself up. So far as his relations with her are concerned, I do not think they are relevant.

Q. Now, Fithian, if you wanted to give yourself up to the authorities, when you got to Bridgeton that Tuesday night you went to Artis' house, didn't you? 20

A. Yes, sir.

Q. And you hadn't been there long before officers came, had you?

A. About ten minutes, I guess.

Q. What?

A. About ten minutes, I guess.

Q. You had been there about ten minutes and some officers came to this house. If you wanted to give yourself up, why didn't you surrender then?

A. Because I wanted to come to Salem. 30

Q. You didn't want to surrender to the Bridgeton authorities?

A. No, sir.

Q. In spite of the fact that you had been living in Bridgeton for a year or more prior to this?

A. No, sir.

Q. But you ran away from the officers on that occasion, so that you could give yourself up in Salem; is that right?

A. Yes, sir.

Q. You would rather walk to Salem and put up in the fields during the night than you would have these officers from Bridgeton bring you over; is that  
10 right?

A. Yes, sir.

Q. I think you have testified that you were not afraid of Green, haven't you?

A. No, sir.

Q. When you stopped down here near Fourth and Broadway the morning of the murder, why did you let Green take the rear tag off of your car?

A. Because he wanted to take it off so nobody would see it.

20 Q. You didn't want anybody to see it, either, did you?

A. He didn't mention it until he jumped out. He said, "I will go out and take the license tag off."

Q. What?

A. I didn't say nothing about a license tag.

Q. You knew that he took it off?

A. Yes, sir.

Q. You didn't want anybody to see that license tag, either, did you?

30 A. No.

Q. At that minute you knew that you and these other two were going down there to rob this paymaster?

A. Yes, sir.

Q. And you knew that two of the men in the party were armed?

A. Yes, sir.

Q. And you had been trying to borrow a gun for the third member?

A. Yes, sir.

Q. And you permitted Green to take that tag off so that nobody could see the license tag on the rear of the car?

A. Yes, sir.

10

Q. You wanted to go down there and get that money and get away with it, didn't you?

A. Yes, sir.

Q. And you sat in the car with the motor running so you could start it up just as soon as they did this job, didn't you?

A. Yes, sir.

Q. As soon as they did, you stepped on the gasoline and pulled out Griffith Street and out Grant Street and out through Quaker Neck, didn't you? 20

A. When they told me to, yes, sir.

Q. Nobody had to tell you that?

A. They told me to go ahead.

Q. You knew they were through with their job and you wanted to get away as soon as possible, didn't you?

A. Certainly.

Q. Did you see this man Rater there on the corner that morning?

A. No, sir.

30

Q. See Oscar Lawrence?

A. No, sir.

Re-direct examination.

By Mr. Schalick:

Q. Did Prosecutor Grier ask you before whether you did anything to Green on the way to Bridgeton?

A. No, sir, never.

10 Q. Did Bob Kidd ask you before if you did anything to Green?

A. No, sir.

Q. You never heard of that before, did you?

A. No, sir.

Q. No, and no one else. Did you ever hear anything about that before? Has anybody ever asked you pertaining to it?

A. They had come in and asked me if I knew where he was.

Q. They didn't ask you anything else about him?

20 A. No, sir.

Q. They have asked you that several times, haven't they?

A. Yes, sir.

Q. The fact of the matter is that he left on the bus from Bridgeton to Philadelphia, didn't he?

A. Yes, sir.

Q. Did you try to shoot this gun off?

A. Yes, sir.

Q. And it wouldn't go off?

30 A. No, sir.

Q. You were afraid of this man Giordano, and you wanted him to have that gun; is that right?

A. Yes, sir.

Q. They both promised there wouldn't be any shooting?

A. Yes, sir.

Q. You had never held up anybody before?

A. Never.

Q. You came back from Florida to give yourself up, didn't you?

A. Yes, sir.

Q. Did you want a gun to shoot anybody with?

A. No, sir.

Q. But Giordano insisted on having guns; is that right?

A. Yes, sir.

Q. And you consistently did what they told you to do?

A. Yes, sir.

Q. There is one thing positive about it, you didn't shoot anybody, did you?

A. No, sir.

Q. And you say that Giordano and Green sat at the table and figured out how it should be done? 20

A. Yes, sir.

Q. Did Green want a gun?

A. Yes, sir.

Q. He wanted you to get him one, is that right?

A. Yes, sir.

Q. When you were sitting on this step talking about it, did Green say he wanted to get in on it?

A. Yes, sir.

Q. Did you tell him you came over here the Friday before and you wouldn't go through with it? 30

A. Yes, sir.

Q. And he immediately said he wanted to get in on it?

A. Yes, sir.

Q. And he told you to take him to Bridgeton is that right?

A. Yes, sir.

Q. And he would talk with Giordano?

A. Yes, sir.

Q. And you came back later, at Green's request, to get a gun?

A. Yes, sir.

Q. You didn't have any with you at the time?

10 A. No, sir.

Q. Either the first or the second time?

A. No, sir.

Q. You still admit that that confession and statement is true, isn't it?

A. Yes, sir.

Re-cross examination.

By the Prosecutor:

20 Q. A few minutes ago, in answer to a question of Mr. Schalick, you said that Green and Giordano both promised you there would be no shooting?

A. Yes, sir.

Q. When did the two of them promise you that?

A. In Bridgeton and when we got over here.

Q. The morning of the shooting?

A. Yes, sir.

Q. And you say that they did that in spite of the fact that you had been trying to borrow a gun for Green the night before?

30 A. Yes, sir.

Q. And in spite of the fact that you had made a second trip over to Salem to get your gun to turn over to Giordano?

A. Yes, sir.

(An adjournment was taken until 10 A. M., Saturday, December 20th, 1930.)

Salem, N. J., December 20th, 1930.

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(Trial of the cause resumed at 10 A. M.)

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Mr. Schalick: The defendant rests.

The Prosecutor: The prosecution rests.

(The prosecutor later opened the State's case to the jury.)

(Mr. Schalick replied for the defendant.)

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(The prosecutor summed up for the State.)

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COURT'S CHARGE TO JURY.

WARE, J.:

Ladies and gentlemen of the jury: The duty which you as citizens of this Commonwealth have been called upon to perform is the highest and the most solemn that you as men and women can be called upon to discharge within the sphere of your civic obligations, and one of the most grave and serious that men and women can be called upon to do within this secular existence. It is to sit in judg-

30

ment upon a fellow being charged with the highest infraction of our criminal law that man can be called upon to answer.

The voices of all laws, the most ancient as well as the most modern, the codes of primitive peoples at the very dawn of history, and following in uninterrupted succession to our present age, alike speak  
10 in common accord and that is to denounce the taking of human life as the highest grade of crime for which man can be held to answer to the tribunals of man.

Such being the case, I cannot point out to you too strongly that in dealing with the guilt or innocence of the defendant, you and each of you as a jury of his peers, sworn to do justly between him and the State of New Jersey, the prosecuting party, should, in the event you have not done so, eliminate from  
20 your minds all feeling of prejudice or favor that may have been engendered by what has been said to you, by what you may have read, by what has been told to you of the nature of the killing, the circumstances of it, the personality of the deceased and of the defendant and his fellows in crime; and approach the consideration of your duties in the spirit typified by the figure of Justice—a seated female figure with bandaged eyes, that she may not see the persons who come before her; but with up-  
30 lifted arm in which she holds a sword and in the other the scales of justice, as indicative of impartiality, showing the spirit of even justice between her suitors. And if you in the discharge of that duty shall carry into effect the spirit of the sense of justice to consider nothing but the oath you took before Almighty God that in dealing with this case,

in the consideration of the guilt or innocence of the prisoner at the bar, it should be based upon the evidence, and only the evidence you shall hear in this trial, then it may be said, having done so, that you have performed this grave duty as good and honest men and women in the upholding of our form of government and in the discharge of its laws.

This defendant, Charles Fithian, with one Green and one Giordano, stand indicted for murder, which means ordinarily and in the conception of the law, murder in the second degree, unless by your verdict you find it to be murder in the first degree. What is meant by that is that the finding of an indictment, the charge itself, carries with it the presumption of murder in the second degree, as set out in the indictment; but the jurors, by a consideration of the evidence, may find it to be murder in the first degree by their verdict.

This defendant elected to have a separate trial, whereupon, by order of the Court, a severance was had, that is, that the indictment so far as the three persons charged in it were concerned, was divided, and the defendant, Fithian, was accorded a separate trial, which he has just had and which the Court was satisfied, for the reasons offered, he was entitled to have.

The fact that this defendant or any man has been indicted for murder does not as a legal proposition create any presumption of guilt. We are a law-abiding people, and as a just principle of law regulating human rights and society, one of the first great principles of law for the protection of the citizen is that it presumes the innocence of a person charged with crime. There is no presumption,

as would appear in some of the countries of continental Europe, that merely because one is charged with crime it carries with it the presumption of his guilt to the extent that the accused person must maintain his innocence. Among English speaking peoples, to the contrary, as in the present case, no such rule ever obtained. It is said, in other words, to the prosecution: Having accused the defendant of  
10 crime, you must prove his guilt, and such proof as shall make his guilt appear beyond a reasonable doubt; upon you is cast the burden of making such proof.

By reasonable doubt is meant that it is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison  
20 and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound  
30 to act conscientiously upon it.

This defendant, with the other persons named in the indictment, has been indicted for the charge of murder, in that they did on the 24th of October, 1930, at the City of Salem, New Jersey, wilfully and feloniously, with malice aforethought, kill and slay

one, J. William MacCausland. Such an indictment is predicated upon Sections 106 and 107 of our Crimes Act, and by the 106th Section it is provided: "Any person who, in committing or attempting to commit arson, burglary, rape, robbery, sodomy, or any unlawful act against the peace of this State, of which the probable consequence may be bloodshed, shall kill another; or if the death of anyone shall ensue from the committing or attempting to commit any such crime or act as aforesaid; or if any person or persons shall kill any judge, magistrate, sheriff, coroner, constable, or other officer of justice, either civil or criminal, of this State, or the marshal or other officer of justice, either civil or criminal, of the United States, in the execution of his office or duty, or shall kill any of his assistants, whether specially called to his aid or not, endeavoring to preserve the peace or apprehend a criminal, knowing the authority of such assistant, or shall kill a private person endeavoring to suppress an affray, or to apprehend a criminal, knowing the intention with which such private person interposes, then such person or persons so killing as aforesaid shall be guilty of murder." 10 20

Section 107 specifically points out the degree of crime for which such a killing under the evidence in this case, if believed, can be invoked, and that reads: "Murder which shall be perpetrated by 30 means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree."

The effect of this statute is that if in an attempt to commit a robbery one man or any number of men kill another, even though they did not start out with that purpose in mind, but started with the single purpose of robbery, their acts under such circumstances, under the law I have just read to you, is denominated murder; murder in the second degree  
10 under the ordinary indictment for murder, but murder in the first degree if you shall see fit so to designate it in your verdict.

The law in the case comes within the province of the Court, but the responsibility of determining what are the facts in the case is wholly with you members of the jury. You are the sole judges of this evidence, of the weight of the evidence, of what facts you shall believe, of what facts you shall not believe, what witnesses you may credit, what witnesses you may decide not to believe, subject to and  
20 being guided by the principles applying to that state of facts that you shall believe as I shall give them to you. Any comment I may make upon the evidence will not be made for the purpose of controlling your view, but only to aid you in applying the principles of law to the facts as you may find them. You must not rely upon my quotations of that evidence as being accurate; but you must rely on your recollection of the evidence. In the application of  
30 the principles of law bearing on this case that I have heretofore and will hereafter charge you as applying to this situation are these facts, as the Court recalls, such as were testified to:

The unfortunate man whose unlawful killing is the subject of this trial was one J. William Mac-Causland. He was employed in the Salem Glass

Works, a manufacturing plant in the City of Salem, and was so employed in the capacity of a paymaster. The two conditions of facts which are essential in the proof of a criminal case are, first, what is known as the *corpus delicti*, the body of the crime, which proof consists in evidence showing that at a certain time the person whose death is the subject of the inquiry actually lived, that at a certain time 10 he died; that his death was caused by an unlawful agency; and what unlawful agency the proof shows it to be. If such factors all combine, then it may be said that the burden of the crime, that is, the *corpus delicti*, has been proven.

That condition of affairs having been proven, the next step is, having been shown that a human being has been unlawfully killed, your inquiry would be directed as to whose agency, if the proof warranted it and you so believed, was it occasioned by? 20

Briefly outlined, as the Court recalls them—and again calling the attention of the jury to the fact that they are not bound by any facts or statements of facts that the Court gives you, but solely by your recollection of those facts—it would appear that this unfortunate man, MacCausland, was on the 24th of October of the present year working at his employment in the Salem Glass Works; that it was known to the defendant that MacCausland was in the habit of paying sums of money constituting the 30 payroll back and forth between parts of the factory, and that with that knowledge he made known to one Giordano such condition, and that with Giordano he came to Salem some few days before the day of the actual killing and, as it would seem, surveyed the locus of the proposed crime, in order, if

you believe it, to familiarize themselves with the probabilities of an effective holdup. This situation coming to the attention of the man Green, who is the third of the trio named in the indictment, he suggested or requested the privilege of joining in the affair, and to all intents and purposes—not by any express language, as I recall, but by implication from his presence and conduct—was admitted, and there was formed then, to all intents and purposes, what, if believed, in the eyes of the law was a criminal conspiracy, with the design to perpetrate a crime denounced by our Crimes Act, which is that of robbery. Robbery, as you may know, is not mere ordinary larceny, that is, stealing something, but robbery carries with it something more severe, something of much more gravity. It is the act of stealing from the person of another or from the custody of another personal property in the control of that person, by force or violence; the force or violence being invoked for the purpose of destroying the force or protection that the owner or the custodian of the property may employ to guard his property, or to intimidate in such a way that he will raise no opposition to the taking of his property, through fear of personal injury. When a condition like that takes place, that, in the eyes of the law, is denounced as robbery, a very serious crime indeed, and, as I say, much more severe than that of larceny.

That these men formed this design in Bridgeton, that is, in the County of Cumberland, an adjoining county to this one, at the house of this man Giordano, and previously being supplied with arms, that is, in the shape of revolvers, they stayed at the

house of Giordano the night before, and the next morning in a car driven, I think, by Fithian and owned by him, they came to Salem, arriving at an early hour. This car was parked somewhere in the neighborhood of the scene of the proposed crime, and later was driven in to Fourth Street, Salem, where the affair actually took place, and when the deceased came from the office of the Salem Glass Works, carrying in his arm the boxes containing the envelopes which in turn contained the wages of the employes of the Salem Glass Works, the car driven by Fithian and containing himself, Giordano and Green, was driven up behind the walking figure of MacCausland, and Green and Giordano jumping out of the car, Green put his arm around MacCausland's shoulder for the purpose, you would naturally as reasonable men and women believe, of disarming him, controlling him; at the same time, from the testimony in the case, a revolver went off from some of them, which this defendant says, while he did not see it, it must have emanated from a revolver in the possession of Giordano. 10 20

This revolver, from the testimony of the doctor and the coroner, was held so close to the centre of the back of the deceased that the garments of the deceased were burned with powder, that the bullet which the doctor who performed the autopsy said he had reason to believe was of 38 calibre, entered the body of the deceased, severing the spinal cord, entering the left auricle of the heart and the left lung, from all of which he died, and that death was practically instantaneous; that this was determined, as they say, from an autopsy performed upon the deceased a very short period of time subsequent 30

to his death. Following the falling to the ground of this man, which had the effect of throwing loose the envelopes containing the pay of these men, a number of them were picked up by Green and thrown into the car, and the car was then driven into Griffith Street, the street running parallel with Market Street, and following out Griffith Street  
10 to the road which is known as Quaker Neck, in the Township of Mannington, and by various roads or routes to the City of Bridgeton, where the several parties separated, but met shortly after at the home of Giordano, where there was a division of this money from the envelopes which Green had thrown into the car, after which they separated and went various ways; the defendant securing a young man named Artis who drove him eventually to Florida, and while, I think, in the State of Virginia, he made  
20 known the fact that the victim of the robbery was dead, and that as a result of their conversations, it was decided to return and surrender.

That is the case that is testified to by Artis, which is based largely upon the very testimony of the defendant himself, and is as well contained in the written confession signed by the defendant which is part of the evidence, and goes to you as an entire question of fact whether you shall believe it. The Court makes no comment on it, because it is pecu-  
30 liarly within the province of the jury to decide the truth of all questions of fact. The Court has no right to take from the jury that duty. That is the jury's duty to determine the facts. The Court merely passes out the law and advises the jury, having reached the truth of the fact, how to apply the law to the truth of the fact as so determined.

Now, members of the jury, what is the nature of the criminal act in which this defendant and his associates engaged at the time MacCausland was shot and killed, of which I have given you a short outline, if you believe it? If you believe it, and it is your recollection as I have indicated to you, it would appear that this defendant, with Giordano and Green, were engaged in attempting to perpetrate the crime of robbery on the person of MacCausland, in furtherance of a common and mutual plan and design, planned by them in advance, and that the killing of MacCausland resulted in the consummation of the robbery. Therefore, the question for you to determine is whether or not the State has maintained the burden cast upon it. 10

Has the State overthrown the presumption of innocence and made proof beyond a reasonable doubt that this defendant is guilty of murder in the first degree or second degree or any degree? If it has, then under your oaths and conforming to your duty as jurors, there is no option left to you but to find the defendant guilty of murder in the first degree; or, if the State has not made that proof, then it becomes your duty to acquit him. 20

I charge the degree of the killing, if you believe the facts, as murder in the first degree, for the reason that, while the indictment is for murder, and ordinarily under such an indictment the jury might find the defendant guilty of murder in the first or second degree, still the Court charges you as the law under the facts in this case as they have developed, if you believe them, that you must find the defendant guilty of murder in the first degree or you must acquit him. There is no middle course. 30

It cannot be murder in the second degree and it cannot be manslaughter.

If you believe the theory of the State and you believe the State's witnesses, there is no alternative. The statute wholly and absolutely controls the situation, for, deleting from it all words and phrases and conditions not germane to the present  
10 situation as disclosed by the facts of this inquiry, it would read: "Murder which shall be committed in perpetrating or attempting to perpetrate any robbery shall be murder in the first degree."

The subject-matter of this statute and in it being made part of our statute law did not operate as an innovation. It added no new crime to the law, nor did it add to the penalty for this kind of unlawful killing. It was part of our common law, and its  
20 status is such as to be found in such lucid and admirable treatises as those of Sir Michael Foster and Francis Wharton. It is not necessary that the crime should be part of the criminal design. It is enough if it be one of the incidental, probable consequences of that design and should appear at the moment to one of the participants to be expedient for the common purpose.

If this defendant was engaged with this band of bandits on this day and committed this crime in attempting to rob MacCausland of the payroll he was  
30 carrying, there is no alternative to the verdict of murder in the first degree, except the verdict of acquittal.

Defendant, with Giordano and Green that day came to the locus of the crime under a conspiracy to rob the paymaster of the payroll he was carrying—was he one of those conspirators? Was he

aiding and abetting in this enterprise? If he were, he was a principal, and he and they are all alike guilty, from the highest to the lowest and if from the evidence you believe such a situation, everyone connected with the enterprise is guilty of murder in the first degree.

That is the policy of the law, indicated by decisions of the highest courts.

10

It is urged in the defendant's behalf that he was completely under the domination of the defendant Giordano, from the inception of the conspiracy to rob to its final culmination with the killing of MacCausland that Giordano had pictured himself to the defendant as the perpetrator of many crimes, of violations, the typical racketeer of this age, an associate of criminals; that upon Fithian's refraining from participating in the enterprise, he would have visited upon him the vengeance of the frustrated gangster; that his presence with his associates was due wholly to fear and threats of personal injury; and that, to prevent bloodshed, he had secured from the other conspirators the assurance that no shooting would take place, and that Giordano was furnished by him with a revolver that could not be effectively discharged.

20

From this outline, as well as the narrative from the defendant while on the witness stand, the Court assumes that it is sought to relieve the defendant of his criminal responsibility in the death of MacCausland by showing acts of the defendant that amount to what in the criminal law would be termed a voluntary withdrawal from further acts in the perpetration of the criminal design into which they had entered. The criminal design this man and his com-

30

panions had entered into was to rob the deceased of the payroll which he was known to carry—an act greatly different than that of mere larceny. One great factor of the crime of robbery is the employment of force and violence to overcome the victim's defense of his property or to intimidate him. The carrying of revolvers, an agency well  
10 known to take life, was an incident to this affair, and where robbery is attempted and one of the elements of the force employed is the use of revolvers, it may be said that loss of life would not be an unlikely, but, on the contrary, a very probable consequence flowing directly from and in the carrying out of the criminal scheme, which was to rob the victim.

It is true that one who enters into a criminal conspiracy of the nature and kind disclosed by the  
20 evidence, if believed, may voluntarily withdraw from his participation actually and effectively before the act in question has become so imminent that its avoidance is practically out of the question.

It is a question of fact for the jury to consider whether the defendant has satisfied you in this regard. It is not a theory, but a fact you may consider. You may consider his journey to Salem that morning, the parking of the car, awaiting the arrival of the victim at the scene, no attempt to flee or  
30 escape from his companions, the driving of the car both before and after the consummation of the crime with the money taken from alongside the dead body of MacCausland, and the going to Bridgeton and the division of the spoils among the conspirators. Are these acts indicative of the voluntary withdrawal by

this defendant before the criminal design was consummated?

To sit still and do nothing to avert the impending crime is somewhat analogous to the theological proposition of the non-acceptance of the Christian Doctrine of faith without works. The Court charges you in this regard that the rule laid down by the courts as determining a voluntary withdrawal from a criminal conspiracy to perpetrate any of the crimes denounced by the Crimes Act, and the effective abandonment of the criminal enterprise by one who is charged therewith must consist in some appreciable interval between the alleged abandonment and the act from responsibility for which escape is sought. The process of detachment must be such as to show not only a determination upon the part of the accused to go no farther, but also such as to give his co-conspirators a reasonable opportunity, if they desire, to follow his example and refrain from further action before the act in question is committed.

Lastly, should you members of the jury reach the conclusion that the burden of making proof of the defendant's guilt beyond a reasonable doubt has been maintained by the State, with the result that it becomes your duty under your oaths to find the defendant guilty of murder in the first degree, the final act attending such verdict is for you by your verdict to say what penalty shall be meted out to this defendant under such verdict. At the present time, under a verdict of guilty of murder in the first degree, the jury may attach to such verdict the recommendation that the punishment to be imposed by the Court on the finding of such verdict shall be

imprisonment for life, which recommendation, in the imposition of sentence, the Court must carry out. You, therefore, see that all this responsibility vests in and centers in you, and not in the Court. This is the most serious responsibility, as I have before adverted to, that can be cast upon a jury of men and women sitting on a fellow being. The taking  
10 of human life, even by the execution of the sentence of the law, is a serious problem. The Court is disinclined to give any disquisition on the subject as to the propriety of such legislation and what cases and what facts warrant the stay of the law in such cases by the rider or the recommendation of life imprisonment. It is enough that the Court direct the jury's attention to such a statute, and the jury in its serious consideration of the case advise the Court, in and by its verdict, of its finding in this  
20 phase of the case in this regard.

May God attend your deliberations.

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I hereby certify that the foregoing is a full and accurate transcript of the testimony taken in the trial of The State v. Charles Fithian, sur indictment  
30 for murder, tried at Salem, New Jersey, on December 19th and 20th, 1930.

CLAUDE W. MYROSE,  
*Official Shorthand Reporter*  
*First Judicial District of*  
*New Jersey.*

ASSIGNMENTS OF ERROR.

COURT OF ERRORS AND APPEALS.

OF THE STATE OF NEW JERSEY.

10

STATE OF NEW JERSEY,  
*Defendant-in-Error,*  
 v.  
 CHARLES FITHIAN,  
*Plaintiff-in-Error.*

In Error.  
 Assignments of  
 Error.

20

NEW JERSEY, ss.

Afterwards, that is to say, on the fourth day of March, A. D., nineteen hundred and thirty-one, before the Court of Errors and Appeals of the State of New Jersey, at Trenton, comes the plaintiff-in-error, Charles Fithian, by Douglas V. Aitken, his attorney, and says, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error:

30

1. In that the Court below, on the trial, etc., erred in striking out legal evidence over the objection of defendant's counsel in the examination of Alice Thomas, wherein defendant's counsel endeavored to

show by the testimony of said Alice Thomas that defendant was induced to give himself up to the authorities and make a statement by promises of the Prosecutor that said defendant would be shown leniency by so doing.

10 2. In that the Court below, on the trial, etc., erred in admitting the confession of defendant, Charles Fithian, because it was illegally obtained, and because it was not a voluntary statement. The Court in admitting said statement stated:

20 "The Court: It seems to the Court that the situation is very much like the situation disclosed in the case of *State v. Murphy*, 87 New Jersey Law, on page 523, where, in the opinion of Chancellor Walker, it was set out as to the alleged voluntary confession of the defendant:  
30 'This was made in jail to Prosecutor Atkinson, Sheriff Jordan and Mr. Powell, who took it down stenographically and testified to it, refreshing his recollection from his original notes. Powell testified that the Prosecutor asked the defendant if he wanted to make a statement and warned him that anything he might say would be used against him and must be entirely voluntary on his part and of his own free will. The defendant said he did want to make a statement. It was taken stenographically by the witness, Powell, reduced to typewriting, brought back to the sheriff's office, read by the Prosecutor to the defendant, who then read it himself and signed it.'

It seems to me that case is very much on all fours with the present situation. A confession,

to be admissible in evidence as against a defendant, must be what is termed voluntary. They must not be such as are extracted from a man by reason of threats or by any promises of any benefit accruing to him by reason of it.

There are four cases in New Jersey that are very much in point and absolutely controlling in the sense of being admissible as voluntary confessions. Those are what the Court feels are the leading cases, *Roesel v. The State*, 62 New Jersey Law; *State v. Young*; *State v. Dolan*, and the case I just referred to, that of *Murphy*. 10

In the case of *State v. Dolan*, the Chancellor, quoting the same in the *Murphy* case, says: 'If it was the theory of counsel that the confession was not a voluntary one, the objection is without merit. By the decision of this Court in *Roesel v. State*, 62 New Jersey Law 216, the meaning of the term "Voluntary Confession" has been definitely settled in this jurisdiction. By it is meant a confession not extorted by any sort of threats or violence, or obtained by any direct or implied promises. There is no suggestion in the proofs that the confession in the present case was induced by either the one or the other of these legally objectionable methods.' 20

The *Roesel* case and the *Young* case are authorities for the proposition that before a confession can be admitted, the question as to whether it is a voluntary or an involuntary one must be passed upon by the Court, and, following the rule laid down in those two cases, the Court finds that the confession or admission 30

made to Messrs. Kidd, Dube and Grier, and taken down stenographically by Mrs. Plasket, and afterwards reduced to writing, which was subsequently verified in the presence of the defendant, read to him and by him signed, was a voluntary one, and it will be admitted."

10 3. In that the Court below, on the trial, etc., admitted illegal evidence over the objection of defendant's counsel in the cross-examination of defendant, Charles Fithian, as follows:

"Q. You are very well acquainted with Alice Thomas, aren't you?

A. Yes, sir.

Q. She is the aunt of Artis?

A. Yes, sir.

Q. How long have you known her?

20 Mr. Schalick: I enter an objection on the ground there is no relevancy.

The Court: I don't know. We will see. I will admit the question."

4. In that the Court below, on the trial, etc., admitted illegal evidence over the objection of defendant's counsel in the cross-examination of defendant, Charles Fithian, as follows:

30 "Q. Do you know where Green is at the present time?

A. No, sir.

Q. Did you and Giordano do anything to Green on the way to Bridgeton that morning?

Mr. Schalick: I object.

The Court: It is a proper inquiry.

A. No, sir.

Q. You didn't shoot him?

A. No, sir."

Mr. Schalick: Of all the tactics, that is the most nonsensical question. I cannot understand the tactics of the prosecution. I move it be stricken from the record.

The Court: It may stay in."

10

5. In that the verdict of the trial Court was against the weight of the evidence.

And the said plaintiff-in-error prays that the said judgment of the Court of Oyer and Terminer in and for the County of Salem, for the errors aforesaid, and for the other errors in said record and proceedings being, may be reversed, annulled, and altogether held for nothing, and that he may be restored in all things which he hath lost by said judgment.

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DOUGLAS V. AITKEN,  
*Attorney for and of Counsel  
with the Plaintiff-in-Error.*

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[ENDORSED]

Service of the within Assignments of Error is hereby acknowledged this fifth day of March, 1931.

30

W. A. W. Grier,  
Prosecutor of the Pleas  
and Attorney of Defen-  
dant-in-Error.

SPECIFICATIONS OF CAUSES OF  
REVERSAL.

COURT OF ERRORS AND APPEALS.

10                      OF THE STATE OF NEW JERSEY.

STATE OF NEW JERSEY,  
*Defendant-in-Error,*

v.

CHARLES FITHIAN,  
*Plaintiff-in-Error.*

In Error.  
Specifications of  
Causes of  
Reversal.

20

Afterwards, that is to say, on the fourth day of  
March, A. D., nineteen hundred and thirty-one, be-  
fore the Court or Errors and Appeals of the State  
of New Jersey, at Trenton, comes the plaintiff-in-  
error, Charles Fithian, by Douglas V. Aitken, his  
attorney, and says, that in the record and proceed-  
ings aforesaid, and also in the giving of judgment  
aforesaid, the said plaintiff-in-error suffered mani-  
fest wrong and injury:

30

1. In that the Court below, on the trial, etc., erred  
in striking out legal evidence over the objection of  
defendant's counsel in the examination of Alice  
Thomas, wherein defendant's counsel endeavored to

show by the testimony of said Alice Thomas that defendant was induced to give himself up to the authorities and make a statement by promises of the Prosecutor that said defendant would be shown leniency by so doing.

2. In that the Court below, on the trial, etc., erred in admitting the confession of defendant, Charles Fithian, because it was illegally obtained, and because it was not a voluntary statement. The Court in admitting said statement stated: 10

“The Court: It seems to the Court that the situation is very much like the situation disclosed in the case of *State v. Murphy*, 87 New Jersey Law, on page 523, where, in the opinion of Chancellor Walker, it was set out as to the alleged voluntary confession of the defendant: 20  
‘This was made in jail to Prosecutor Atkinson, Sheriff Jordan and Mr. Powell, who took it down stenographically and testified to it, refreshing his recollection from his original notes. Powell testified that the Prosecutor asked the defendant if he wanted to make a statement and warned him that anything he might say would be used against him and must be entirely voluntary on his part and of his own free will. The defendant said he did want to make a statement. 30  
It was taken stenographically by the witness, Powell, reduced to typewriting, brought back to the sheriff’s office, read by the Prosecutor to the defendant, who then read it himself and signed it.’

It seems to me that case is very much on all

fours with the present situation. A confession, to be admissible in evidence as against a defendant, must be what is termed voluntary. They must not be such as are extracted from a man by reason of threats or by any promises of any benefit accruing to him by reason of it.

10      There are four cases in New Jersey that are very much in point and absolutely controlling in the sense of being admissible as voluntary confessions. Those are what the Court feels are the leading cases, *Roesel v. The State*, 62 New Jersey Law; *State v. Young*; *State v. Dolan*, and the case I just referred to, that of *Murphy*.

20      In the case of *State v. Dolan*, the Chancellor, quoting the same in the *Murphy* case, says: 'If it was the theory of counsel that the confession was not a voluntary one the objection is without merit. By the decision of this Court in *Roesel v. State*, 62 New Jersey Law 216, the meaning of the term "Voluntary Confession" has been definitely settled in this jurisdiction. By it is meant a confession not extorted by any sort of threats or violence, or obtained by any direct or implied promises. There is no suggestion in the proofs that the confession in the present case was induced by either the one or  
30      the other of these legally objectionable methods.'

The *Roesel* case and the *Young* case are authorities for the proposition that before a confession can be admitted, the question as to whether it is a voluntary or an involuntary one must be passed upon by the Court, and, follow-

ing the rule laid down in these two cases, the Court finds that the confession or admission made to Messrs. Kidd, Dube and Grier, and taken down stenographically by Mrs. Plasket, and afterwards reduced to writing, which was subsequently verified in the presence of the defendant, read to him and by him signed, was a voluntary one, and it will be admitted." 10

3. In that the Court below, on the trial, etc., admitted illegal evidence over the objection of defendant's counsel in the cross-examination of defendant, Charles Fithian, as follows:

"Q. You are very well acquainted with Alice Thomas, aren't you?

A. Yes, sir.

Q. She is the aunt of Artis?

A. Yes, sir. 20

Q. How long have you known her?

Mr. Schalick: I enter an objection on the ground there is no relevancy.

The Court: I don't know. We will see. I will admit the question."

4. In that the Court below, on the trial, etc., admitted illegal evidence over the objection of defendant's counsel in the cross-examination of defendant, Charles Fithian, as follows: 30

"Q. Do you know where Green is at the present time?

A. No, sir.

Q. Did you and Giordano do anything to Green on the way to Bridgeton that morning?

Mr. Schalick: I object.

The Court: It is a proper inquiry.

A. No, sir.

Q. You didn't shoot him?

A. No, sir.

10      Mr. Schalick: Of all the tactics, that is the most nonsensical question. I cannot understand the tactics of the prosecution. I move it be stricken from the record.

The Court: It may stay in."

5. In that the verdict of the trial Court was against the weight of the evidence.

6. In that the Court below, on the trial, etc., misdirected the jury upon both law and facts.

20      7. In that the sentence of the Court below is illegal and void.

8. In that it appears from the record that the plaintiff-in-error suffered manifest wrong and injury in the admission of testimony whether objection was made thereto or not, and in the charge of the Court.

30      9. In that there are divers other errors in the record and proceedings aforesaid, and in giving of judgment and passing of sentence aforesaid, by reason of which the said judgment and sentence should be reversed and set aside, wherefore, the said Charles Fithian prays that the said judgment and sentence may be reversed, annulled and for nothing

holden, and that he may be restored to all things which he lost by occasion thereof.

DOUGLAS V. AITKEN,  
*Attorney for and of Counsel  
with the Plaintiff-in-Error.*

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[ENDORSED]

Service of the within Specifications  
of Causes of Reversal is hereby ac-  
knowledged this fifth day of March, 1931.

W. A. W. Grier,  
Prosecutor of the Pleas  
and Attorney of Defen- 20  
dant-in-Error.

30

JOINDER IN ERROR.  
COURT OF ERRORS AND APPEALS.  
OF THE STATE OF NEW JERSEY.

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STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> v. CHARLES FITHIAN, <i>Plaintiff-in-Error.</i>	} } }	Sur Indictment for Murder. Joinder in Error.
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20 And now comes the defendant-in-error, and says that there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid; and, therefore, it prays that the said judgment may be affirmed, etc.

W. A. W. GRIER,  
*Prosecutor of the Pleas, of  
 Salem County, New Jersey,  
 and Attorney of Defendant-in-Error.*

30

[ENDORSED]

Service of the within Joinder in Error hereby acknowledged March 5, 1931.

Douglas V. Aitken,  
 Attorney for and of Counsel  
 with Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

v.

CHARLES FITHIAN,  
*Plaintiff-in-Error.*

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IN ERROR.

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BRIEF OF PLAINTIFF-IN-ERROR.

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This writ brings up for review a conviction in the Salem County Court of Oyer and Terminer upon an indictment (pp. 5-6) alleging that defendant, Henry Green and Peter Giordano on October 24, 1930, in the County of Salem did wilfully and feloniously and with malice aforethought kill one, J. William MacCausland.

Upon due application the trial Court granted defendant's application for a trial on said indictment separate from the trial of Peter Giordano (p. 7). Henry Green, the other person indicted with defen-

dant and Peter Giordano was not apprehended by the authorities nor brought to trial.

It is not disputed that the shooting of MacCausland, resulting in his death, was done by said Peter Giordano.

The entire record is brought up (pp. 183-187) on assignments of error, and specifications of causes of reversal (188-193).

One of the said causes of reversal is:

“In that it appears from the record that the plaintiff-in-error suffered manifest wrong and injury in the admission of testimony whether objection was made thereto or not and in the charge of the Court” (p. 192).

The assignments of error will be discussed in their proper order.

First: It would appear that the Court below erred in striking out the evidence of one Alice Thomas, wherein defendant's counsel endeavored to show that the defendant was induced to give himself up to the authorities and make a statement by reason of promises made by the prosecutor that said defendant would be benefited by so doing (pp. 86-91).

Second: *Roesel v. State*, 62 New Jersey Law 216, is authority for the statement:

“A confession by an accused to one in authority, to be admitted in evidence, must be voluntary. By this is meant that the confession must not be extorted by threats or obtained by any direct or implied promises. A confession

obtained either by the flattery of hope or by the impressions of fear is not admissible evidence." "The promise or hope excited must relate to some benefit to be derived by the prisoner in the criminal prosecution."

But the Court below in admitting the alleged statement of defendant in the present case entirely ignored the fact that it was the contention of defendant that not only his voluntary surrender to the authorities, but the making of the statement was induced and obtained by a direct or an implied promise of the prosecutor, which promise was communicated to defendant by Alice Thomas (pp. 86-91), and the testimony about said promise and the communication thereof to defendant was struck out by the Court below (p. 91).

The Court below apparently only considered the securing of the statement from one of the two legally objectionable methods of inducing and securing a confession, namely: whether or not it was extorted by any sort of threats or violence.

Was it not incumbent upon the Court below to have considered both of the objectionable methods? The Court below in admitting said statement cited several cases wherein the principal here argued in favor of the defendant is fully considered.

It is not conceivable that defendant would surrender to the authorities in a matter of this serious nature unless he expected leniency because of a communicated promise thereof, and if the testimony of said Alice Thomas is correct, her conversation with the prosecutor induced defendant to surrender him-

self. Nor is her testimony shaken on cross-examination.

If the statement was procured through any direct or indirect promise of any benefit accruing to him, it is not admissible in evidence.

*State v. Murphy*, 87 New Jersey Law 515;  
*State v. Dolan*, 86 New Jersey Law 192.

Third: The prosecutor in his conduct of the trial and especially in his cross-examination of the defendant, deliberately endeavored to prejudice the defendant to his disadvantage in the minds of the jurors, as is clearly shown in the testimony (pp. 152-153) objected to by defendant's counsel and admitted over his objection, by questioning defendant concerning his relationship with one Alice Thomas. The lack of relevancy of this line of questioning is apparent; it could accomplish but one end, injury to defendant's case, and the examination was pursued for this sole unfair and illegal purpose.

Fourth: Again in the cross-examination of defendant, testimony of no relevancy nor competency was adduced by the prosecutor and admitted by the Court below, over objection of defendant's counsel, which served no useful purpose, and could be construed only in one light, and that the studied effort to destroy the character of defendant, and to intimate that defendant killed and disposed of the missing Green, jointly indicted with defendant and Giordano (pp. 157-158).

Citation of cases proving that the admission of the testimony brought out by the prosecutor in cross-examination of defendant referred to above was

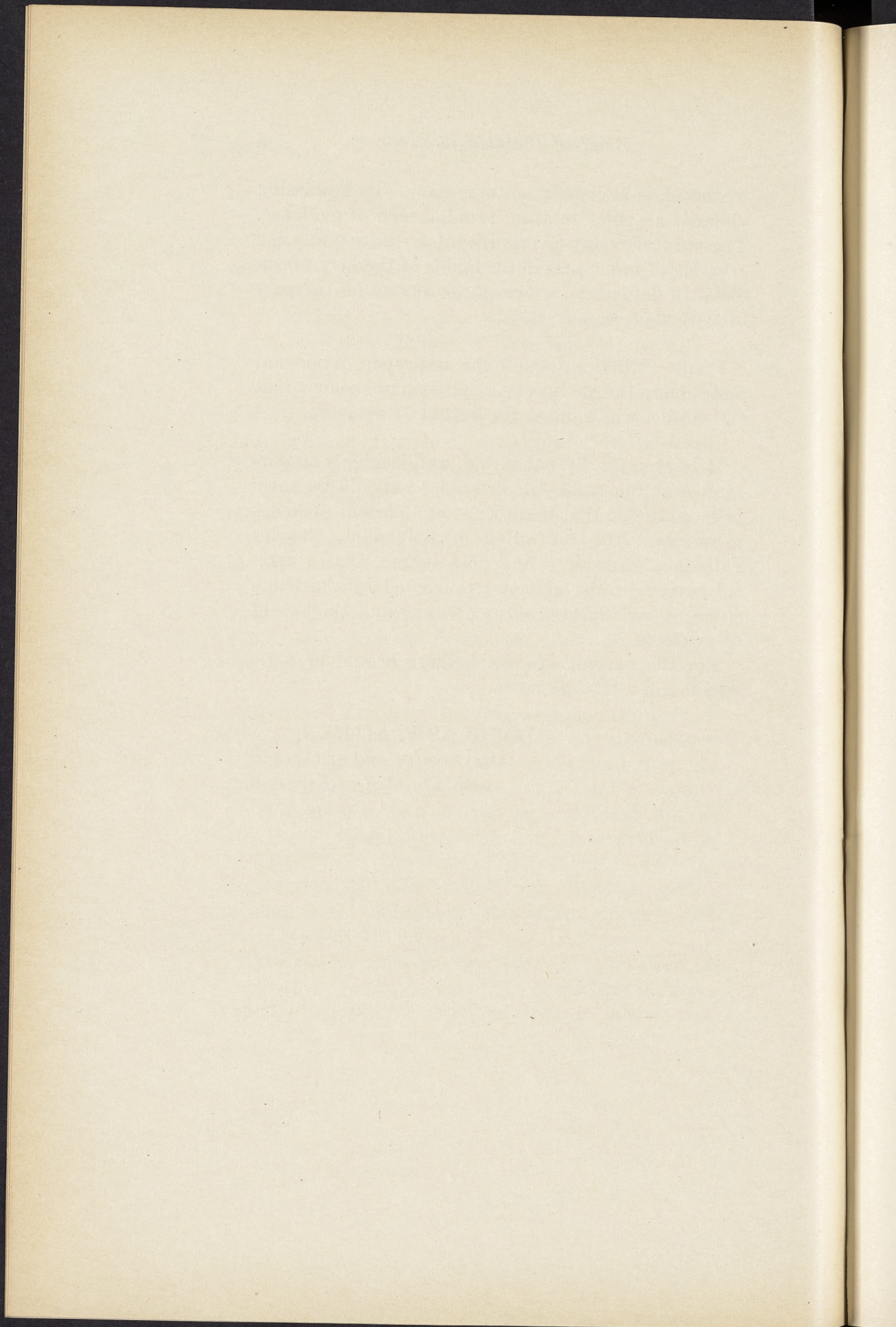
wrongful, is obviously not necessary. Its admission violated all rules relating to admission of evidence. The natural result of this illegal testimony was the creating of inferences in the minds of the jury prejudicial to defendant, which no testimony on the part of defendant could erase.

Fifth: Eliminating all the improper, irrelevant and immaterial testimony, what remains shows that the verdict was against the weight of evidence.

It is respectfully submitted, and is highly important, that the rights of an accused should be carefully guarded; that there was not sufficient evidence to warrant the conviction of defendant, Charles Fithian of murder in the first degree; that a careful review of the evidence presented by the State clearly shows that the verdict was against the weight of evidence.

For the reasons aforesaid, there should be a reversal and a trial *de novo*.

DOUGLAS V. AITKEN,  
*Attorney for and of Counsel  
with Plaintiff-in-Error.*



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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THE STATE OF NEW JERSEY,  
*Defendant-in-Error,*

v.

CHARLES FITHIAN,  
*Plaintiff-in-Error.*

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IN ERROR.

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BRIEF OF DEFENDANT-IN-ERROR.

---

This writ brings up for review a conviction in the Salem County Court of Oyer and Terminer upon an indictment (p. 56) alleging that defendant, Henry Green and Peter Giordano on October 24, 1930, in the County of Salem, did wilfully and feloniously and with malice aforethought kill one, J. William MacCausland. Defendant at bar was tried on December 19, 1930, and the jury returned a verdict of "guilty of murder in the first degree without recommendation."

The first point urged by the plaintiff-in-error is

that the Court below erred in striking out the evidence of one, Alice Thomas, wherein counsel endeavored to show that the defendant was induced to give himself up to the authorities and make a statement by reason of promises made by the Prosecutor that said defendant would be benefited by so doing (pp. 86-91). At the time of the alleged conversation between the witness and the Prosecutor the defendant was not then in custody and an examination of the testimony given by the witness fails to disclose that anything was said about the defendant making any statement. The witness simply testified that she called to see the Prosecutor and that the Prosecutor told her that it would be better for the defendant if he gave himself up, but nowhere in her testimony does she claim that anything was said about his making a statement of any kind. The testimony offered by this witness could have no bearing whatever on a statement later made by the defendant and was properly struck out by the Court below.

The second assignment of error urged by the plaintiff-in-error is based on the claim that the confession was improperly admitted in evidence because it was not voluntarily made. An examination of the records, pages 72-94, shows that the defendant, on the morning of October 30, 1930, in the "Key Room" of the Salem County Jail made a voluntary statement in the presence of Robert W. Kidd, Wilford L. Dube and the Prosecutor. Before making the statement defendant was warned that anything he might say could be used against him. After defendant had made an oral statement in the presence of the aforesaid persons, Helen Plasket was called

in and the defendant then repeated his oral statement which was taken down stenographically by the said Helen Plasket who then transcribed her notes making several copies of the statement, and later the same day a copy of the statement was given to the defendant in the "Key Room" and in the presence of Wilford L. Dube, Robert W. Kidd read from one copy of the statement while the defendant followed with a copy which had been given to him. After the statement was read to the defendant, the defendant signed it and it was witnessed by the two officers then present.

After a thorough examination as to the admissibility of the statement the Court below admitted it in evidence and the jury was then returned to the court room, they having been absent during the preliminary hearing as to the admissibility of said statement.

The facts in the present case are almost identical with the facts in the case of *State v. Murphy*, 87 New Jersey Law, page 515, where on page 523 in the opinion written by Chancellor Walker it is said in reference to the confession in that case:

"This was made in jail to Prosecutor Atkinson, Sheriff Jordan and Mr. Powell, who took it down stenographically and testified to it, refreshing his recollection from his original notes. Powell testified that the Prosecutor asked the defendant if he wanted to make a statement and warned him that anything he might say would be used against him and must be entirely voluntary on his part and of his own free will. The defendant said he did want to make

a statement. It was taken stenographically by the witness Powell, who reduced it to typewriting, brought back to the sheriff's office, read by the Prosecutor to the defendant, who then read it himself and signed it."

The above is substantially the same set of circumstances and facts as in the present case.

The other leading cases on this subject of whether or not a confession is admissible are *State v. Roesel*, 62 New Jersey Law 216; *State v. Young*, 67 New Jersey Law 223; *State v. Dolan*, 86 New Jersey Law 192.

In addition to the statement made by the defendant, defendant himself on the witness stand at page 127, testified as follows:

"Q. You have admitted, haven't you, that this statement that has been put in evidence that everything in there is true?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And that you made that voluntarily, did you not?

A. Yes, sir."

Again on page 166 the defendant was asked:

"Q. You still admit that that confession and statement is true?

A. Yes, sir."

The defendant also on the witness stand admitted that in October with one, Peter Giordano, one week

before the murder they came to Salem early in the morning and drove to the vicinity of The Salem Glass Works to observe the route taken by the paymaster when he left the office to take the payroll to the lower plant. He admitted that he knew that it was customary for the paymaster to take a considerable sum of money each Friday morning to pay off the employees of the lower plant, and that he brought Giordano over to look over the situation one week in advance, and the following Friday morning, the day of the murder, that accompanied by the said Peter Giordano and one, Henry Green, he drove from Bridgeton to Salem for the purpose of holding up the paymaster, that he gave his gun to Giordano and that Green also was armed, and that when the paymaster came out of the office he drove his car up along the curb and Giordano and Green jumped out and immediately thereafter a shot was fired and the other two jumped back into the car with pay envelopes taken from the dead paymaster. He admitted that it was the purpose of the three of them to rob the paymaster and after having done so that they went to the home of Giordano in Bridgeton, New Jersey, where the money taken from the deceased paymaster was divided among them, and that he then went to Florida and later returned and gave himself up.

It is respectfully urged that even if the confession is entirely excluded that the testimony of the defendant himself fully proves his guilt, as it shows conclusively that the robbery was deliberately planned at least one week in advance, that the participants were armed, that their purpose was to get the payroll, that they accomplished this purpose and in so

doing, shot and killed the paymaster, then divided up the money and disappeared.

For the reasons aforesaid it is respectfully submitted that the judgment below should be affirmed.

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*Prosecutor of the Pleas of  
Salem County, New Jer-  
sey, and Attorney for and  
of Counsel with Defen-  
dant-in-Error.*

