

New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY,

Defendant in Error,

vs.

DOMINIC MANGANO,

Plaintiff in Error.

*On Writ
of Error.*

BRIEF OF DEFENDANT IN ERROR.

The defendant, Dominic Mangano, was indicted at the Union County Oyer and Terminer, and tried on the eighth day of September, nineteen hundred and eight, for the murder of one Dominic Cervasi, and convicted of murder in the first degree. He was sentenced to be electrocuted during the week commencing the twenty-sixth day of October. On the twenty-fourth day of October a writ of error was sued out.

Defendant in error has assigned ten assignments of error four of which are to parts of the Judge's charge and the others are to the Court's refusal to charge as requested. Of the latter the Seventh and Eighth Assignments are not discussed in the brief of plaintiff in error.

I will follow the order and grouping of the assignments as treated in plaintiff's brief.

I.

As to the First Assignment.

First. The Court below charged the jury as follows:

“Now, gentlemen of the Jury, premeditation does not require any length of time, a moment of time is sufficient. If you find, from the evidence, that this defendant had formed in his mind an intention to kill, and then *instantly* he deliberately perpetrated the act to carry out the intention, that is the deliberation and premeditation which the law requires in order to make it murder in the first degree.”

The learned trial justice in instructing the jury as to the lapse of time necessary for deliberation after the formation of an intent, not requiring any length of time, a moment of time being sufficient, followed that portion of the opinion in *Donnelly vs. State*, 12 Dutcher, 463, which has been approved of in this court.

State vs. Bonofiglio, 38 Vr., 239.

State vs. Zdanowicz, 40 Vr., 619.

Criticism, however, is directed to the use of the word “instantly,” in the First Assignment.

It is submitted that the word “instantly” as here used, is modified by “deliberately,” and that the true sense and meaning of the sentence is not that upon the intent being formed he instantly perpetrated the act, but that upon the intent being formed instantly he deliberated (that is to say the deliberation as previously explained, not requiring any length of time, a moment of time being sufficient) and then perpetrated the act.

The word instantly does not necessarily imply, especially in the sense in which it was used, that no time need elapse between the intent and the perpetration.

“An *instant* is not to be considered in law, as in logic, a point of time, and no parcel of time. By intendment of law it may be divided and applied to several purposes.”

Jackson vs. Eddy, 2 Con. (N. Y.) 601.

Lord Denman, C. J., in speaking of an inquisition of a coroner's jury, describing the cause of death and nature of injuries “of which the said A. B. instantly died,” said, “instantly means some time after, that is, instantly upon and immediately following, but not at the same moment.”

Reg vs. Brownlow, 8 Dowl., 157.

3 Per & Dav. 52, 11 Ad. & El. 119, 39, E. C. L. 34. A. & E. E. of L., Vol. 16 (2nd Ed.) page 821.

There was evidence in the case showing that the defendant, some two hours before the assault, in consequence of a previous quarrel with the deceased, premeditated upon and formed an intent to kill the deceased, (case pp. 40, 41 and 42, 48, l. 10, 49, ll. 10 to 20, and pages 60, 61 and 62), and that just preceding the assault he sounded a warning to his victim to “draw,” showing his deliberation, (case, p. 87, ll. 20, 30 and 40).

It is submitted, that applying the instruction to the time afforded for premeditation and deliberation, as shown by the proofs in the case, and above referred to, the word “instantly,” as used, did not

injure the defendant, or prejudice him in maintaining his defence.

II.

As to the Second and Third Assignments.

Second. "Now did this man stab this deceased, did he do it with an intent to kill, did he do it *deliberately*? These are the questions committed to you, and if you find that the act was done *deliberately*, then it is your duty to declare him guilty of murder in the first degree."

Third. "If you find, according to the rules of law that I will lay down for your guidance, that *premeditation* does not sufficiently appear, then the crime will have to be reduced to murder in the second degree."

In these several assignments the statutory words with reference to deliberation and premeditation are not conjoined.

A general exception to the charge having been taken we are not confined to a portion of the charge in considering whether the defendant has been prejudiced in maintaining his defense.

State vs. Zdanowicz, 40 Vr., 619.

The trial judge had previously instructed the jury as to the elements necessary to constitute murder in the first and second degrees, (case page 197, line 20, and page 198, line 10), in language so clear and intelligible as to leave nothing lacking in order

to guide them in determining the legal constituents of both degrees of murder.

The word "deliberately" as used in the second Assignment included the premeditation required as a constituent element of murder of the first degree.

The word "deliberately" contains all that is meant by premeditatively.

A. & E. E. of L. (2nd Ed.), Vol. 9, pages 191-192.

A finding that a defendant had time sufficient to fully and clearly conceive in his mind an intent to kill, and that he did then conceive the intent and proceeded purposely and deliberately to execute it, satisfies the provision of our statute as to both premeditation and deliberation.

State vs. Zdanowicz, 40 Vr., 619.

Deliberation is a generic term, including both premeditation and malice aforethought.

Wharton on Homicide, page 163 (3rd Ed.).

The phrases "wilful killing," "deliberate killing" and "premeditated killing" are synonymous with relation to the offense of murder, each embracing essentially the legal idea of the other.

People vs. Pool, 27 Cal., 573.

Whether "premeditation" embraces "deliberation," or whether the two words are synonymous or not, it is submitted that the trial judge having charged the jury (case, page 197, line 20) that deliberation and premeditation were necessary to a

conviction for murder in the first degree, the omission to mention deliberation, in the Third Assignment, in connection with premeditation, did not prejudice defendant in maintaining his defense, inasmuch as the instruction in the Second Assignment, that "if the act was done *deliberately*, then it is your duty to declare him guilty of murder in the first degree," (of which degree defendant was convicted) included "premeditatively;" and that the charge in the Third Assignment viewed as excluding the absence of deliberation in order to convict of murder in the second degree, was in defendant's favor, as it might have enabled the jury to find in the second degree if premeditation did not sufficiently appear, without being called upon to consider whether deliberation, as an element of greater import did or did not appear.

III.

As to the Fourth, Ninth and Tenth Assignments.

Fourth. The court below charged the jury as follows: "But when he sets up this defense of intoxication, he must prove the defense he sets up, by a preponderance of evidence; he must by the evidence create such a doubt as to his mental capacity, as to convince you that he was unable to reason or deliberate."

Ninth. The Court below refused to charge as follows: "That while voluntary intoxication is no excuse or palliation for the commission of the crime, yet if upon the whole evidence in this case,

the jury shall have a reasonable doubt, whether at the time of the killing (if they find from the evidence that the accused did kill the deceased) the defendant had sufficient mental capacity to deliberately think upon and rationally determine so to kill the deceased, then they cannot find him guilty of murder of the first degree, although such inability was the result of intoxication."

Tenth. The Court below refused to charge: "That a particular or specific intent is absolutely essential in the commission of murder, and if the mind of the person doing the killing is unable, because of intoxication at the time of the killing, to form this particular or specific intent, there can be no conviction of murder in the first degree."

It is submitted that the judge's charge fully and correctly covered this subject and met the requests to charge so far as they were legally proper. (Case page 199, lines 30, 40 and at top of page 200).

Wilson vs. State, 31 Vr., 171.

As an excerpt of the charge the phraseology, "he must, by the evidence *create such a doubt as to* his mental capacity *as to convince* you that he was unable to reason or deliberate" might be considered an inaccurate instruction as requiring convincing proof, and leaving out of question proof beyond a reasonable doubt. There could, of course, be no such thing as a convincing doubt. While standing alone the language might seem inappropriate, yet from the whole charge it is apparent that the meaning intended to be conveyed, and the only sense in which it could have been understood, was that he

must convince the jury by raising a doubt as to his ability to reason and deliberate, or in other words, convince them beyond a reasonable doubt, as the judge had just previously charged, viz.: "If you find in this evidence that he was so intoxicated, as to raise in your mind a reasonable doubt as to his mental condition, and ability to form, and deliberately and premeditatedly, carry out an intent to kill, then there would be such a doubt as he would be entitled to the benefit of, and he should not be convicted of murder in the first degree. But, when he sets up this defence of intoxication he must prove the defence he sets up by a preponderance of evidence." (Case, page 199, line 30.)

It is also submitted that the trial judge correctly charged that the burden of proving beyond a reasonable doubt and by a preponderance of evidence, that the defendant, by reason of intoxication was mentally unable to form an intent to kill and deliberately and premeditatedly carry it out, rested upon the defendant, and not upon the State.

Intoxication in the sense that the person intoxicated was bereft of his reasoning power is akin to insanity.

"Evidence of intoxication at the time of the offence, or prior thereto," is admissible under a plea of insanity, caused by over-indulgence of intoxicating liquors. The burden of proof is on the defendant to show such intoxication as will negative malice."

Underhill on Criminal Evidence, page 206.

"The law prima facie presumes mental sanity, and that when in the given case the prisoner would

overcome such presumption he must exhibit a clear preponderance of such proof in favor of such defense, and in such case the burden is not on the State to satisfy the jury of the sanity of the person, beyond a reasonable doubt.

Graves vs. State, 16 Vr., 203-347.

State vs. Spencer, 1 Zab., 196.

IV.

As to the Fifth and Sixth Assignments.

Fifth. That the court below refused to charge, "that if the evidence fails to show any motive on the part of the accused, to commit the crime charged, this is a circumstance in favor of his innocence, which the jury ought to consider, together with all other facts and circumstances, in making up their verdict."

Sixth. That the court below refused to charge: "The absence of an inducing cause, or motive to commit the crime, when the fact is in reasonable doubt as to who committed it, affords a strong presumption of innocence."

Plaintiff in error, in his brief, says that the failure of the court to charge as above is reversible error, but does not point out the reasons for his insistence.

As to the Fifth Assignment the trial judge charged substantially as requested: "Now, gentlemen of the jury, is it necessary that the State should prove motive. If no motive is shown *that is a circumstance which you may consider, and ought*

to consider, but if the act charged and the criminal agency of the accused be clearly shown, it is not necessary that there be proved a motive." Case, page 200, line 30).

"While on a trial of an indictment for homicide, a charge that the absence of a probable motive is a circumstance favorable to accused, or at least a circumstance to be considered in weighing the evidence of guilt, is proper, yet, where the offence is clearly established, it is unnecessary to prove the motive, and the court may properly so charge, or refuse a request to charge to the contrary.

21 Cyc., 1040-1.

Motive is not an essential element, requiring proof.

A. & E. E. of L. (2nd Ed.) Vol. 8, page 290.

Wharton on Homicide (3rd Ed.) pg. 200.

State vs. Jagers, 42 Vr., 281.

Nor is absence of motive to be considered as a strong presumption of innocence.

"When there is evidence of motive, an instruction as to the effect of the absence of motive is improper, and should be refused.

"It will be seen, however, that in the absence of controversy as to the killing, an inference of malice may arise from absence of motive for the killing, so that it cannot be regarded as a strong circumstance in favor of the accused, as matter of law."

Wharton on Homicide (3rd Ed.) page 915.

A refusal to charge that absence of motive ought to operate strongly in favor of the accused is not error."

Clough vs. State, Neb. 320.

“And an instruction that the failure of the State to prove a motive for the killing is a circumstance in favor of the accused, is properly refused as giving undue prominence to one phase of the case.”

Carvile vs. State, (Ala.) 39 So., 220.

Wharton on Homicide (3rd Ed.) p. 915, note 13.

The only case where absence of motive might be considered as a strong presumption of innocence, is where conviction depends solely upon circumstantial evidence, there the lack of motive might be considered as negating the other circumstances.

As was said by Clark, J., in *Preston vs. State*, 8 Tex. App., 38, “while in cases depending upon circumstantial evidence, the existence or want of motive is sometimes of vital importance, yet the vindication of the law is not made to rest upon so narrow and frail a foundation, nor can the demands of justice be met and foiled by an averment that no motive for the prisoner’s conduct has been made to appear.

A. & E. E. of L. (2nd Ed.) Vol. 8, page 291, note 1.

While plaintiff in error omits to argue in favor of his requests to charge, he complains of the court charging as follows: “But if that evidence fails to satisfy you, that that was a motive for the crime, still if the crime has been clearly proven to your satisfaction, beyond a reasonable doubt, the necessity for proving a motive does not exist, because motive in many cases is concealed in a man’s mind.

He may have a motive for committing the offence which he never disclosed."

This portion of the charge is not the subject of any assignment of error, or notice of causes relied upon for reversal.

Following the part of the charge complained of, the trial judge added, "And if the State is required in all cases where an offence is clearly proven to establish some motive, a defendant, if able to conceal his motive, would never be convicted. Then, gentlemen, motive is not absolutely essential when the crime is clearly proven. Now, if the crime was proven in this case, that this man did commit this crime, then the necessity for the proof of motive does not exist." (Case, page 201, lines 10 and 20.)

While the trial judge explained to the jury the logical reason why proof of motive was unnecessary, not only in this, but all similar cases, he, in no sense, instructed them that they were to imagine the existence of a motive, but on the contrary, that, if they were not satisfied with the proof of motive, as made out by the State's case, they were not to regard the existence of a motive as a necessity.

The case of *People vs. Enright*, 134 Cal., 527, 66 Pac. Rep., 726, is relied upon by plaintiff in error.

This case is not in point. The defendant admitted the homicide but testified that while passing along the street a sudden and unprovoked assault was made upon him, and that he shot in self-defence; he testified that he had no quarrel with the deceased, no grudge against him, and no desire or motive to injure him; the State's testimony tended to show an unprovoked assault by the defendant.

The case turned upon the judge's error, in charging as to a question of fact, contrary to the provision of Article 6, Section 19 of the Constitution of California, which declares that judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law, and it was held that the judge's charge was not a statement of a rule of law, but an argument against defendant on the facts.

It is submitted that there was no error in this, or in any other part of the charge, assigned for error, to the prejudice or injury of the defendant, in maintaining his defence.

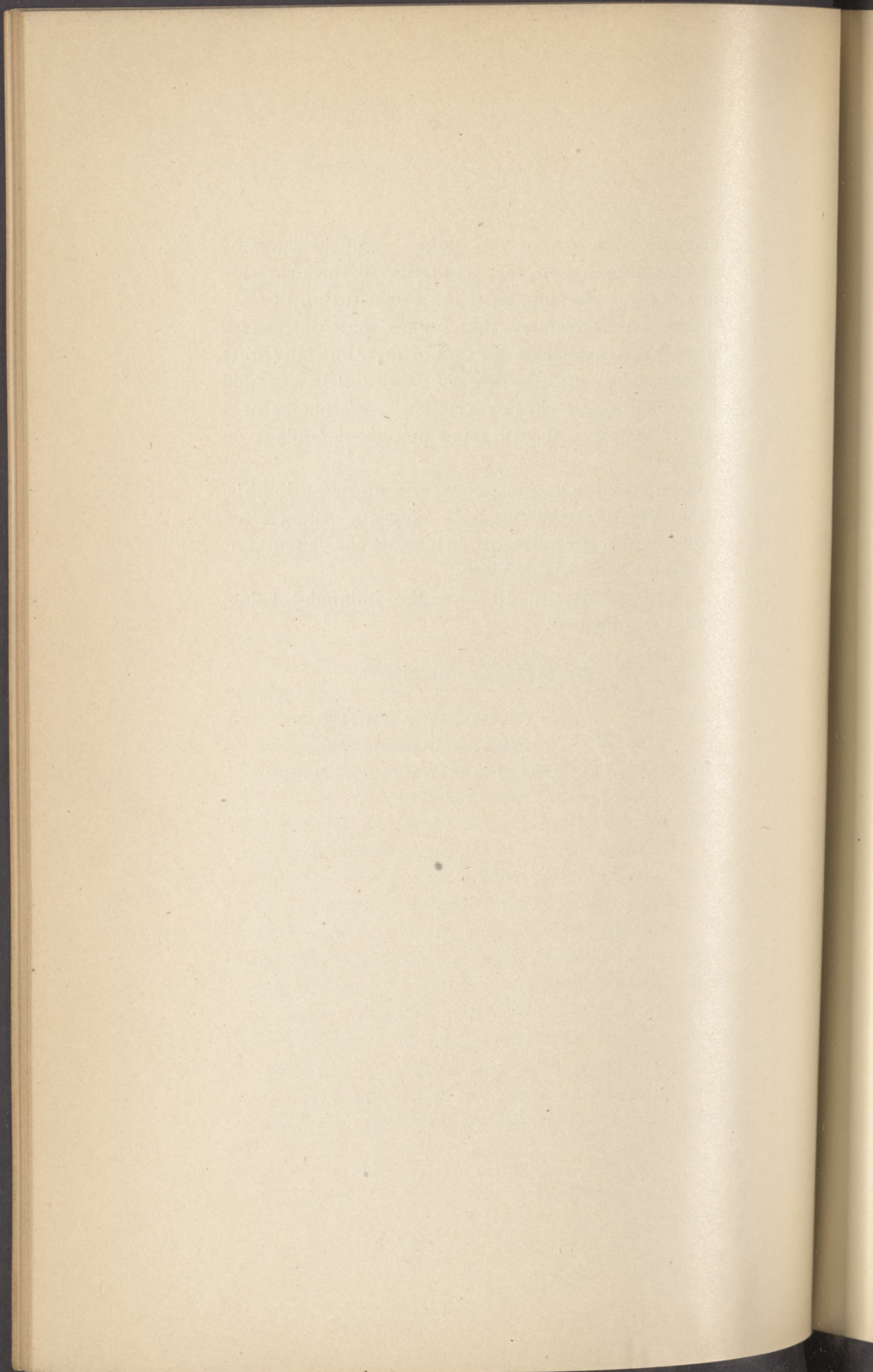
I respectfully submit that the judgment below should be affirmed.

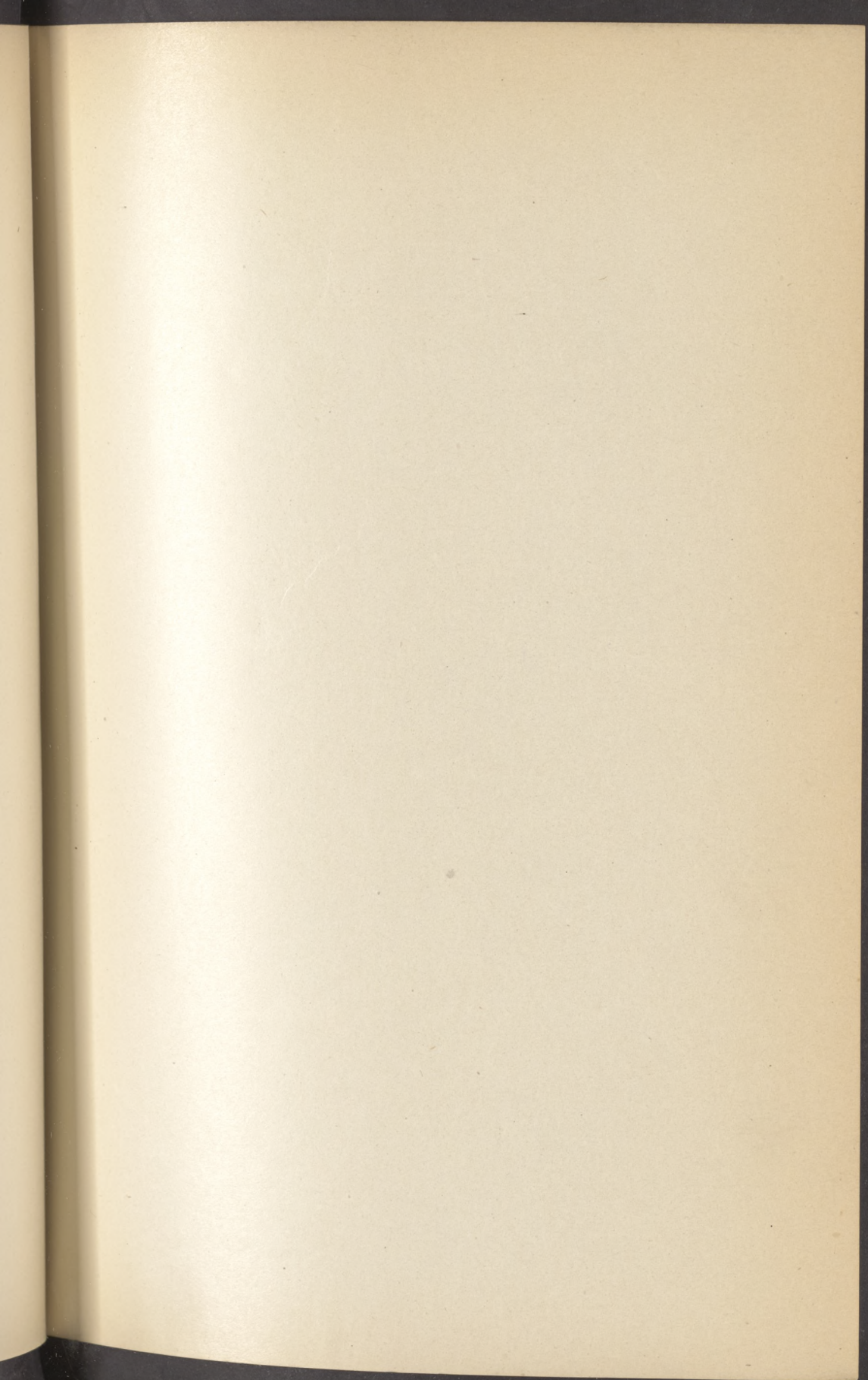
Respectfully submitted,

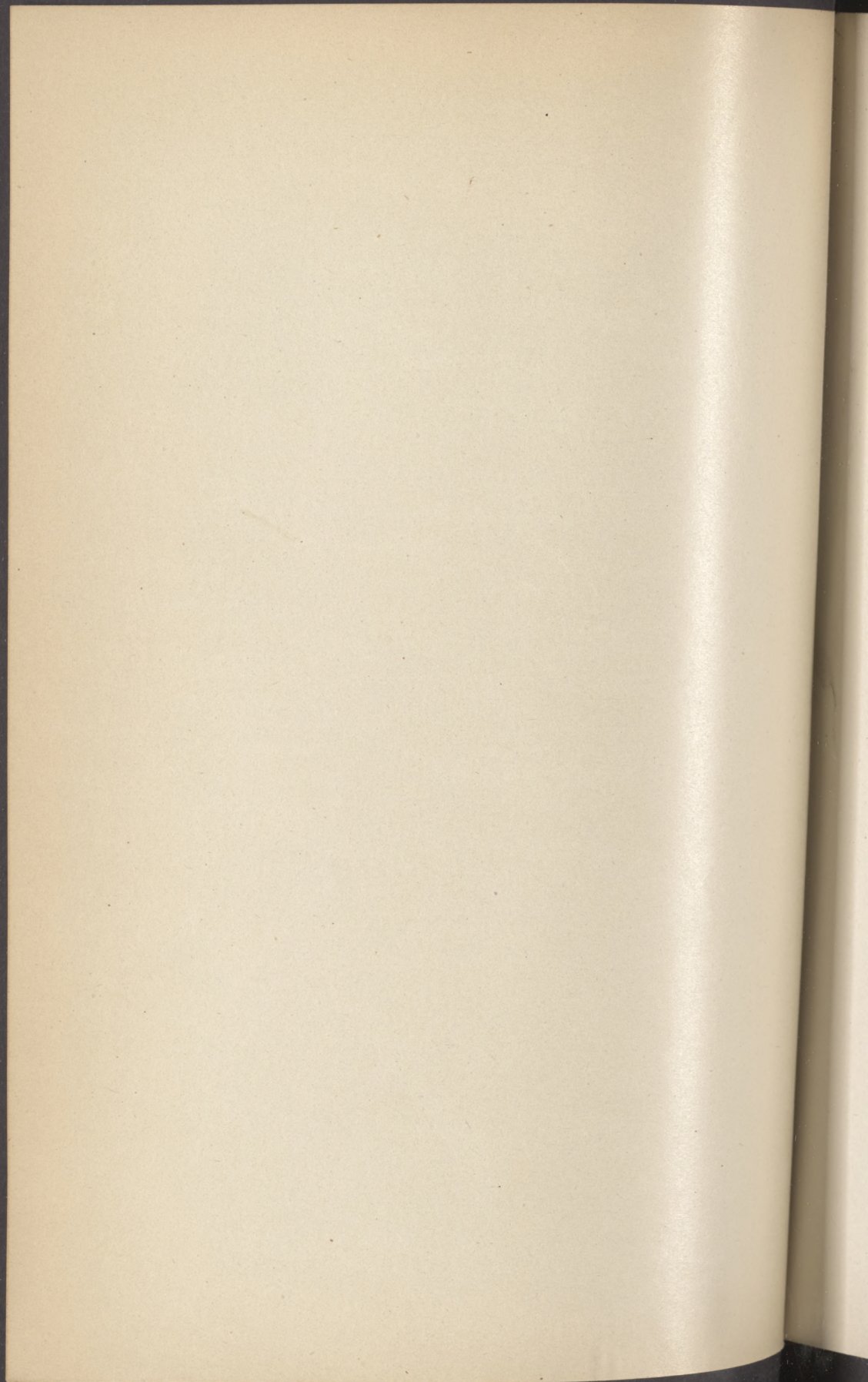
C. ADDISON SWIFT,

Prosecutor of the Pleas.

Attorney for Defendant in Error and of Counsel.







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New Jersey Court of Errors and Appeals.

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THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

DOMINIC MANGANO,
Plaintiff in Error.

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NEW JERSEY, ss.

The State of New Jersey to Honorable
James J. Bergen and Honorable Edward
S. Atwater, Judges of the Court of Oyer
(SEAL) and Terminer of the County of Union, 30
holden at Elizabeth in and for said
County of the Term of May, Nineteen
hundred and eight.

Because in the record and proceedings and also in
the giving of judgment upon a certain indictment
against Dominic Mangano, late of the City of Eliza-
beth, in the County of Union, for wilfully, feloniously, 40

and of malice aforethought, killing and murdering Dominic Cervasi, whereof, before you he hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said Dominic Mangano, as it is said, manifest error hath intervened to the great damage of the said Dominic Mangano, as from his complaint we have received information we being willing, in his behalf, to correct the error in due manner, if any there shall
 10 be, and that speedy justice be done him, the said Dominic Mangano, 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 and Appeals, the last resort in all causes of the law, to be held at Trenton on the ninth day of November, nineteen hundred and eight, and this writ, that the record and proceedings aforesaid
 20 being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness the Honorable Mahlon Pitney, our Chancellor and President Judge of our Court of Errors and Appeals, at Trenton this twenty-fourth day of October, nineteen hundred and eight.

S. D. DICKINSON, *Clerk,*

30 WILLIAM R. WILSON, *Attorney,*

The answer of James J. Bergen and Edward S. Atwater, Judges of the Court of Oyer and Terminer of the County of Union within named.

The record and proceedings of the plea whereof mention is within named, with all things concerning the same, to the Court of Errors and Appeals in the
 40 last resort in all causes within specified, at the day and

place within contained, we certify in a certain schedule to this writ annexed, as we are within commanded.

J. J. BERGEN,
EDWARD S. ATWATER,
*Judges of the Union County
Court of Oyer and Terminer.*

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

IN TESTIMONY WHEREOF, I, JAMES C. CALVERT, Clerk of the County of Union and of the Oyer and Terminer holden therein have hereunto set my hand and the seal of said County, which is the seal of said Court, this seventh day of November in the year of Our Lord Nineteen hundred and eight.

JAMES C. CALVERT, *Clerk,*

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New Jersey Court of Errors
and Appeals.

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THE STATE,

vs.

DOMINIC MANGANO,

20

Sur Indictment for Murder.

WRIT OF ERRORS.

W. R. WILSON, *Att'y. of Def't.*,

207 Broad Street, Elizabeth, N. J.

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

Be it remembered, that at the Court of Oyer and
Terminer, holden at the City of Elizabeth, in and for
the County of Union, on the first Tuesday of May in
the year of our Lord, one thousand nine hundred and
40 eight, before the Honorable James J. Bergen, one of

the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Edward S. Atwater, Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of Charles P. Russ, Robert Helfenstein, Frederick A. Bickel, William F. Marsh, Robert Senskowsky, Frederick H. Pierson, Jr., Patrick J. Ryan, Coe W. Smith, Edward W. Connell, J. Fred McDonald, Frederick Zior, Frank W. Morse, Charles W. Runyon, George C. Oliver, William H. Wright, Enoch D. Miller, William P. Bonnell, 10
Chester M. Smith, William Jeffrey, Benjamin P. Holmes, Francis J. Palmer, John I. Howe, and Henry J. Schmidt, good and lawful of the said County of Union, then and there sworn and charged to inquire on behalf of the State of New Jersey, in and for said County of Union, it is presented by at least twelve of said jurors, in manner and form following, to wit:

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UNION OYER AND TERMINER.

May Term, A. D., Nineteen hundred and eight.

UNION COUNTY, *to wit*:

The Grand Inquest for the State of New Jersey and for the body of the County of Union, upon their oath 30
Present, That Dominic Mangano, late of the City of Elizabeth, in the County of Union, on the sixteenth day of February in the year of our Lord, one thousand nine hundred and eight, at the City of Elizabeth, in the said County of Union and within the jurisdiction of the Court, with force and arms one Dominic Cervasi then and there being in the peace of God and this State, feloniously, willfully and of his malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided, and 40

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

And the jurors aforesaid, upon their oath aforesaid, further present that said Dominic Mangano, on the sixteenth day of February, in the year of our Lord, one thousand nine hundred and eight, at the City of Elizabeth, in the County of Union aforesaid, and within the jurisdiction of the Court, with force and arms in and upon the body of one Dominic Cervasi, in the
 10 peace of God and of the said State, then and there feloniously, wilfully and of his malice aforethought, an assault did made, and with a certain knife or sharp instrument to the jurors unknown, which he, the said Dominic Mangano then and there had and held in his hand, did then and there unlawfully feloniously and wilfully and of his deliberately premeditated malice aforethought strike, stab, thrust and cut at, upon and into the said Dominic Cervasi, inflicting on the said
 20 Dominic Cervasi, in the left breast of the said Dominic Cervasi, one mortal wound, of which said mortal wound the said Dominic Cervasi then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said Dominic Mangano, did, in manner and form aforesaid, unlawfully, feloniously, wilfully and of his deliberately premeditated malice aforethought, kill and murder the said Dominic Cervasi, contrary to the form of the statute in such case made and provided, and against the peace of this State, the
 30 government and dignity of the same.

And the jurors aforesaid, upon their oath aforesaid, further present that on the sixteenth day of February, in the year of our Lord, one thousand nine hundred and eight, at the City of Elizabeth, in the County of Union, aforesaid, and within the jurisdiction of this Court, with force and arms in and upon the body of one Dominic Cervasi, in the peace of God and of the said State, then and there feloniously, wilfully and of his malice aforethought, an assault did make, and with a
 40 certain pistol then and there charged with gunpowder

and one leaden bullet, which said pistol, he, the said Dominic Mangano, in his hand, then and there had and held, then and there feloniously, wilfully and of his deliberately premeditated malice aforethought, did discharge and shoot off, to, against and upon the said Dominic Cervasi and that the said Dominic Mangano, with the leaden bullet aforesaid, out of the pistol aforesaid then and there, by force of the gunpowder aforesaid, by the said Dominic Mangano discharged and shot off as aforesaid, then and there feloniously, 10 wilfully and of his deliberately premeditated malice aforethought, did strike, penetrate and wound him, the said Dominic Cervasi, in and upon the left breast of him, the said Dominic Cervasi, giving to him, the said Dominic Cervasi, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said Dominic Mangano, in and upon the left breast of him, the said Dominic Cervasi, one mortal wound, of which said mortal wound, he, the said Dominic Cervasi, then and there instantly 20 died. And so the jurors aforesaid, upon their oath aforesaid, so say, that the said Dominic Mangano did, in manner and form aforesaid, unlawfully, feloniously, wilfully and of his deliberately premeditated malice aforethought, kill and murder the said Dominic Cervasi, contrary to the form of the statute in such case made and provided and against the peace of this State, the government and dignity of the same witnesses :

C. ADDISON SWIFT, 30

Prosecutor of the Pleas.

And afterwards, that is to say, at the same term of the Court of Oyer and Terminer, holden at Elizabeth on Wednesday, the twenty-seventh day of May, in the year of our Lord one thousand nine hundred and eight, 40

before the Honorable James J. Bergen, Justice of the Supreme Court and the Honorable Edward S. Atwater, Judge of the Court of Common Pleas, constituting the Court of Oyer and Terminer in and for the said County of Union, according to the form of the statute in such case made and provided, comes the said Dominic Mangano, in his own proper person and now here touching the premises in the said indictment above specified and charged upon him being asked in
 10 what manner he would acquit himself thereof, says he is not guilty thereof and of this he puts himself upon the County, etc, and C. Addison Swift, Esquire, who prosecutes for the State in this behalf, doth likewise the same.

And afterwards, that is to say, at the same term of the Court of Oyer and Terminer holden at Elizabeth aforesaid before the Honorable James J. Bergen, Justice of the Supreme Court and the Honorable Edward S. Atwater, Judge of the Court of Common Pleas, constituting the Court of Oyer and Terminer in and for
 20 said County of Union, according to the form of the statute in such case made and provided, the said Dominic Mangano being set to the Bar, C. Addison Swift, who prosecutes for the State moves the trial of the indictment aforesaid,—Wherefore let a jury thereupon come on this day last aforesaid before this Court of Oyer and Terminer aforesaid of good and lawful men of the County of Union aforesaid by whom the truth
 30 of the matter may be better known and who are not of kin to the said Dominic Mangano to recognize upon their oaths whether the said Dominic Mangano be guilty of murder in the indictment aforesaid specified or not guilty, because as well the said C. Addison Swift, who prosecutes for the State in this behalf as the said Dominic Mangano have put themselves upon the jury and the jurors of the said jury by William H. Lawrence, Esq., Sheriff of the said County of Union for this purpose impanelled and returned agreeably to
 40 the statute in such case made and provided, to wit:

1—Otto Roggenkamp, 2—John M. Norr, 3—Robert B. Cleveland, 4—Lewis W. Kingsley, 5—Robert W. Morrell, 6—Matthew D. Decker, 7—George M. Freize, 8—Charles A. Coyne, 9—William H. Winter, 10—Thomas K. Wheeler, 11—Augustus Jenkins, 12—Edward Willis, who were chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of said issue before the said Court and jury was commenced and continued until the ninth day of September, in the year last aforesaid, when the jury 10
returned into Court in charge of the officer sworn to attend them and then and there in the presence of the Court, the Prosecutor of the Pleas, and the Prisoner, do say upon their oaths that they find the said Dominic Mangano guilty of Murder in the first degree as the said indictment is charged upon him and so say they all.

And afterwards, that is to say at the same term of the said Court of Oyer and Terminer, holden at Elizabeth aforesaid, in the County aforesaid, on Wednesday, 20
the ninth day of September, in the year of our Lord one thousand nine hundred and eight, before the Honorable James J. Bergen, Justice of the Supreme Court, and the Honorable Edward S. Atwater, Judge of the Court of Common Pleas, constituting the Court of Oyer and Terminer in and for said County of Union, according to the form of the statute in such case made and provided, the said Dominic Mangano being set to the Bar, C. Addison Swift, Esquire, who prosecutes 30
for the State in this behalf, moves for judgment on the said Dominic Mangano.

Whereupon all and singular the premises being seen and by the Court now here fully understood. It is ordered and adjudged as follows: "The penalty which the law fixes for the crime of which you have been convicted is death. It remains for the Court to announce and fix the week during which the judgment of the law is to be executed, which is the week beginning with Monday, October 26th, 1908. 40

And the said defendant in mercy, etc.
Judgment signed September 9, 1908.

J. J. BERGEN,
EDWARD S. ATWATER,
*Judges of Union County
Court of Oyer and Terminer.*

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Union County Oyer and Terminer

May Term 1908.

(Ind. No. 37.)

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THE STATE

VS.

DOMINIC MANGANO

Sur.

Indictment for Murder.

Transcript of stenographer's notes evidence, taken in the above entitled cause, before his Honor, JAMES J. BERGEN, Supreme Court Justice, at the Court House, in the city of Elizabeth, N. J., September 8th, 1908, at 9.45 A. M. 20

APPEARANCES:—MR. C. ADDISON SWIFT, Prosecutor of the Pleas for the State.
MR. WILLIAM R. WILSON, for the defendant.

MR. WILSON: Before the case commences, I will ask the court that the witnesses for the defendant, and for the State, be separated, that said witnesses be seated apart at some place outside the court-room, and that they shall be called singly, as they are sought to give their testimony. 30

COURT: For what reason?

MR. WILSON: For this reason, your Honor; I think that they can testify very much better if that course is adopted by the court. The witnesses called on either side will not then hear 40

each other give their testimony, and there will then be a greater likelihood, perhaps, of the truth coming out, than otherwise would be the case.

COURT: If it were not for the inconvenience and the delay that might arise to the case, the court would permit it without hesitation, but—do you insist Mr. Wilson?

10 MR. WILSON: I would much rather insist upon it, if your Honor please, for the reasons I have given.

COURT: Then that order may be made, and the witnesses will be seated outside the court-room, in some suitable place—

MR. SWIFT: Then if your Honor please, I would suggest that the witnesses for the defense and the witnesses for the State be kept in separate rooms.

20 COURT: Yes, let the Sheriff arrange for places so that the witnesses for the State and the witnesses for the defendant may be kept in separate rooms outside of the court-room, where the witnesses shall be and remain until they are called.

(Opening for the State by MR. WALTER L. HETFIELD, Assistant Prosecutor).

WILLIAM H. LUSTER, JR., a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

30 EXAMINED BY MR. SWIFT.

Q. What is your occupation?

A. Civil engineer and surveyor.

Q. What position do you hold in this city?

A. I am city surveyor in the city of Elizabeth.

Q. Have you, at my request, made a diagram of the locality of 3rd and 4th Avenues, Amity and Palmer Streets?

40 A. I have.

Q. Produce it?

A. (Produces.)

Q. Was this made from actual surveys?

A. Yes, sir, it is.

Q. And it shows Amity Street, 4th Avenue, 3rd Avenue, and Palmer Street, with the numbers and locations of the buildings on Palmer Street and on the west side of Third Avenue, between Palmer and Amity Streets?

A. Yes, sir. 10

Q. And it also shows the side-walk and curb-line?

A. Yes, sir.

Q. At the corner of Third Avenue and Palmer Street?

A. Yes, sir.

Q. What scale is the map drawn on?

A. 20 feet to one inch.

MR. SWIFT: I offer that map in evidence.

Marked Exhibit P. 1.

20

Q. Have you also made another map or diagram?

A. Yes, sir.

Q. Also made from actual survey?

A. Yes, sir.

Q. And it shows South Street, Centre Street, High Street, South 7th Street, Christian Street, John Street, Amity Street and Palmer Street between 3rd and 4th Avenues?

A. Yes, sir, it does. 30

Q. It also shows the location of the saloon of Matthew Wade at the corner of South Street and Fourth Avenue?

A. Yes, sir, the saloon is indicated by a circle with a cross in the middle of it.

MR. SWIFT: I offer that diagram in evidence.

Marked Exhibit P. 2.

Q. Have you also, at my request, made a diagram 40

of the interior of Matthew Wade's saloon at the corner of South Street and 4th Avenue?

A. Yes, sir, I did.

Q. Is this it? (Handing diagram to witness.)

A. Yes, sir, that is the one.

Q. That is drawn to a scale of four feet to one inch?

A. Yes, sir.

Q. And it shows the side entrance on South Street and the hall-way and part of the stairs?

10 A. Yes, sir.

Q. It shows a room off the hall-way in front of the bar with a door opening into the hall-way and a door opening into the bar-room?

A. I should say it was at the side of end of the bar, between the bar and South Street there is a small room partitioned off from the main room.

Q. Between the end of the bar, the back and the front bar?

A. Yes, sir.

20 Q. It also shows the bar, and the back bar?

A. Yes, sir, it does.

Q. What else does it show?

A. In the room is the piano, which is between two windows, which is also located here on the map. It also shows the position of the wash-stand in the room, and the direction in which the door is opened into the room and the chimney which is situated in the partition between the bar-room, and the room back of the bar-room.

30 Q. What is the room back of the bar-room?

A. It is used as a pool-room, it has a pool-table in the room?

Q. Do you indicate the position of the pool-table on the diagram?

A. Yes, sir, the pool-table is indicated as it was last Saturday.

Q. Does it show anything else?

40 A. Yes, sir, in the bar-room, there were two circular tables, three feet six inches in diameter, one place near the window on South Street and the other was

placed between the wash-stand and the piano on the 4th Avenue side.

Q. Why did you not designate them in this map?

A. They were not fixtures.

Q. Then what you have designated in the map were fixtures in the room?

A. Yes, sir, the practically the things which I have designated in the map were fixtures. In the back room there was a wooden bench and a whiskey barrel besides clothing there. 10

Q. Those you have not designated, because they were easily removable?

A. Yes, sir, I did not designate them on the map because they were removable.

Q. These locations are made from actual measurements?

A. Yes, sir, the location of everything there is from actual measurement.

MR. SWIFT: I offer that diagram in evidence. 20

Marked Exhibit P. 3.

(NO CROSS-EXAMINATION).

JOHN G. HALL, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

30

Q. You are a photographer of this city?

A. Yes, sir.

Q. How long have you been a resident of this city?

A. 28 years.

Q. Where is your gallery located?

A. 915 Elizabeth Avenue.

Q. You are also a resident of Elizabeth?

A. Yes, sir.

Q. Have you, at my request, made views and pho- 40

tographs of the locality at the corner of Palmer Street and Third Avenue?

A. I have.

Q. I show you a photograph and ask you if that was made by you on the ground?

A. They were all made by me on the ground.

10 MR. WILSON: We will admit these photographs, I have examined them, and they are excellent work and good photographs of what they purport to show.

Photograph marked Exhibit P. 4.

Q. I show you another photograph which I have marked *Exhibit P. 5*, did you also make that photograph?

A. Yes, sir.

Q. I show you another photograph which I have marked *P. 6*, did you also make that photograph?

A. Yes, sir.

20 Q. I show you another photograph which I have marked *P. 7*, did you also make that photograph?

A. Yes, sir.

Q. I show you another photograph which I have marked *P. 8*, did you also make that photograph?

A. Yes, sir.

Q. I show you another photograph which I have marked *P. 9*, did you also make that photograph?

A. Yes, sir.

30 Q. That shows the saloon building of Matthew Wade at the corner of South Street and Fourth Avenue?

A. Yes, sir.

Q. And this photograph was made by you on the ground?

A. Yes, sir.

MR. SWIFT: I offer the photographs in evidence.

40 *Marked Exhibit P. 4, P. 5, P. 6, P. 7, P. 8 and P. 9 respectively.*

(NO CROSS-EXAMINATION.)

FRANK CISTARO, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT. (By Interpreter.)

- Q. Where do you live?
 A. 203 Niles Street. 10
- Q. Do you know the defendant Dominic Mangano?
 A. Yes, sir.
- Q. Did you also know Dominic Cervasi?
 A. Yes, sir.
- Q. Do you remember Sunday the 16th of February?
 A. Yes, sir.
- Q. Did you see Dominic Mangano and Dominic Cervasi on that day?
 A. Yes, sir.
- Q. Where did you see them? 20
 A. At the saloon of Mattie Wade.
- Q. How came you to go to that saloon?
 A. I and my townsmen, Joseph Caputo went there to get a drink.
- Q. Where did you go from?
 A. From 3rd Avenue.
- Q. Whereabouts on 3rd Avenue?
 A. When we went from the saloon, we went from 3rd Avenue.
- Q. Did you go from your house there? 30
 A. From my house to go to the saloon—yes, sir.
- Q. You and Joseph Caputo?
 A. Yes, sir.
- Q. Did you and Joe Caputo go to the saloon alone or was someone with you?
 A. No, sir, only us two.
- Q. What time was it when you went to the saloon?
 A. Around four or five o'clock.
- Q. Who were in the saloon when you got there?
 A. There was no one that I knew there? 40

- Q. Did you see Dominic Cervasi there at any time, while you were there?
- A. They came after we did.
- Q. Who came?
- A. This Dominic Cervasi.
- Q. Who did he come with?
- A. I saw him come in alone, and he came and sat down near us, and we had a drink amongst the three of us.
- 10 Q. What part of the saloon were you in at that time?
- A. In the saloon.
- Q. In the saloon proper, how many rooms compose the saloon?
- A. Two rooms.
- Q. One is the front room called the bar-room, and the other is a back room called the pool-room?
- A. Yes, sir.
- Q. What part of the saloon were you in, the bar-room or the pool-room?
- 20 A. In the place they play billiards.
- Q. The pool-room?
- A. Yes, sir.
- Q. That is back of the bar?
- A. First you go in the saloon, and then there is the pool-room—
- Q. Who was in the pool-room with you?
- A. I, Dominic Cervasi, and Joe Caputo, we were drinking all together.
- Q. While you were there did anyone else come in
- 30 that you knew?
- A. Afterwards came Alexander and Dominic Mangano.
- Q. Alexander who?
- A. Alexander Londino, Nicolo Londino, and Francisco Ferro.
- Q. And who else?
- A. I did not see anyone else.
- Q. Did you see Vincenzo Zbarra there?
- A. I do not know him.
- 40 Q. What part of the saloon were Dominic Mangano

and the rest of them in, after they had entered the saloon?

A. Where the others drank.

Q. Where is that—the front room or the back room or the pool-room?

A. The front room.

Q. Where were they in reference to the bar?

A. They were near the bar, the counter.

Q. Which end of the bar, the front end of the saloon or the back part of the saloon? 10

A. They were all in there together.

Q. Did, at any time, Dominic Cervasi go into the front-room, the bar-room?

A. He went in the front room, and then he came and sat down with me, and we drank together.

Q. Did he go in the front room again after that?

A. Yes, sir.

Q. Where did he go, what part of the bar-room?

A. The front part.

Q. Where with reference to the bar, did he go to 20 the bar?

A. Near the counter, and he got a drink, because I treated once and I went and got the glass and he treated once, and he went and got the glass.

Q. Where were you then—when he treated once and you treated once, where were you, in the front room or in the back room?

A. We were where they play billiards.

Q. Now, when Dominic Cervasi went out in the main bar-room, from the billiard room, what part of the 30 bar-room did he go, with reference to the bar?

A. In the front.

Q. Was he near the bar—could you see from where you were, could you see where Cervasi went up to the bar?

A. Sure I could see him, because it was all full.

Q. How long did you stay there?

A. Around an hour or an hour and a half.

Q. And during that time did you see Dominic Man-
gano in the saloon? 40

A. Yes, sir.

Q. Where was he, what part of the saloon?

A. Right in the saloon near the counter.

Q. How near was Mangano to Cervasi at the counter?

A. He was in one room, and we were in another room.

10 Q. I am speaking now of when Dominic Cervasi went out to the bar-room—where was Dominic Mangano and Cervasi standing, in the bar-room, after Cervasi went out of the pool-room, into the front room—where did he Cervasi, and Mangano, stand in the bar-room?

A. He was in the other room.

Q. Was Mangano and Cervasi at any time out in the front room at the bar?

A. We were all united in the saloon, we were in one room and they were in another.

20 Q. When you left, who did you leave with, if any one?

A. I, Dominic Mangano, Joseph Caputo, Alexander Londino and Dominic Cervasi

Q. Five of you?

A. Yes, sir.

Q. How did you go out of the saloon, what door did you go out of?

A. From the first floor.

Q. What door of the saloon?

A. The front door, the little door.

30 Q. What do you mean by the "front door"—what door did you go out of, with reference to the hall-way?

A. There is a little hall there, and there is a small door—that was the door we went out of.

Q. Is that the door that leads on South Street?

A. I think it is South Street.

Q. Who went out first?

A. We went out altogether, one after the other.

Q. Who went out first and who was out first?

40 A. I think it was I, and Alexander Londino, and the rest followed us.

Q. Wade's saloon is on the corner of South Street and Fourth Avenue is it not?

Q. Which way did you go when you came out of the saloon, which direction did you take?

A. Down Fourth Avenue.

Q. Down Fourth Avenue?

A. Yes, sir, all the time down Fourth Avenue.

Q. And then you turned the corner and went down Fourth Avenue to what street?

A. To John Street. 10

Q. Down to John Street?

A. Yes, sir.

Q. From what point there did you go?

A. We went to Third Avenue, and then we went to my home.

Q. What, if anything happened when you got—or where did you go from John Street—down what street?

A. We got to Third Avenue and turned around and went down Third Avenue. 20

Q. What became of Mangano and Cervasi?

A. I, and Alexander Londino and Joe Caputo, were walking ahead and Dominic Cervasi, and Dominic Mangano were about 15 steps behind us, talking together.

Q. Did they stop anywhere?

A. They were talking and following us.

Q. When you got down to Palmer's Street, were the three of you together?

A. Yes, sir.

Q. Did the whole three of you, that is you, Joseph Caputo, and Alexander Londino, go on down Palmer's Street, or did you go on down from the corner of Third Avenue, and Palmer's Street to Niles Street? 30

A. We went to Palmer Street.

Q. What happened in Palmer Street?

A. Nothing.

Q. What became of Alexander Londino?

A. He found his wife, and his wife says "come on, let's go to bed."

Q. I asked you what became of Alexander Londino? 40

A. His wife came there.

Q. Whose wife?

A. The wife of Alexander Londino, and she said to him "come on, let's go to bed," and I left them there, and I went from there.

Q. Then you left Alexander Londino at the corner of Palmer Street and Third Avenue, is that right?

A. Yes, sir, I left Alexander Londino at the corner of Palmer Street and Third Avenue.

10 Q. Now when Alexander Londino left you at the corner of Palmer Street and Third Avenue, where were Dominic Mangano and Dominic Cervasi?

A. At the corner of Amity Street.

Q. Then you went home as I understand you, you and Joe Caputo?

A. Yes, sir.

Q. Did you see any trouble between Mangano and Cervasi, or hear any shots fired at all that night?

20 MR. WILSON: I object to the question on the ground that there are two questions there.

COURT: You had better divide your question.

(MR. SWIFT)

Q. Did you see any trouble between Mangano and Cervasi?

A. No, sir, no trouble.

Q. Did you hear any shots fired?

30 A. I was in bed, asleep.

Q. Did you hear any shots fired?

A. No, sir.

CROSS-EXAMINATION BY MR. WILSON:

Q. What time was it, on this night, that you and the rest were in Mattie Wade's saloon?

A. Around half past four or five o'clock.

Q. What time did you leave the saloon with the
40 others?

A. Half past six.

Q. And then you went home?

A. Yes, sir.

Q. And you did not know where the rest went?

A. Who?

Q. Dominic Mangano, Dominic Cervasi, and Alexander Londino?

A. Alexander Londino went with me, and they were left at the corner of Amity Street.

Q. Do you know where Nicolo Londino's house is? 10

A. Sure.

Q. It is on Third Avenue between Amity and Palmer Streets, is it not?

A. Yes, sir.

Q. The third house from the corner?

A. The middle.

Q. Did Nicolo Londino live next to Capezza's saloon?

A. There are two other houses, and afterwards comes Londino. 20

Q. Do you know whether Londino that evening had a little party there?

MR. SWIFT: I object to the question on the ground that it is not cross-examination.

COURT: As the evidence now stands, the deceased and the defendant were at Amity Street and Third avenue, and you account for the disappearance of the other three in this wise—two of them went home, and the third man met his wife, at Palmer Street, I think it is proper cross-examination and I will allow the question. 30

A. No, sir, I do not know.

Q. Did he have a party there?

A. Well, when one is asleep, you cannot see anything.

JOSEPH CAPUTO, a witness produced in behalf of the 40

State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT. (By Interpreter)

- Q. Where do you live?
 A. In Jersey City.
 Q. On the 16th of February where were you?
 A. Here in Elizabeth.
 10 Q. Whereabouts?
 A. In the saloon of Mattie Wade.
 Q. Where were you before you went to the saloon?
 A. At my house.
 Q. Where was that?
 A. 4th Avenue, I don't remember the number, it is
 a house on 4th Avenue, where—
 Q. 4th Avenue near Niles Street?
 A. Yes, sir.
 Q. You lived in Elizabeth at that time, did you?
 20 A. Yes, sir.
 Q. Did you see Frank Cistaro, that day?
 A. Yes, sir.
 Q. Where did you see him?
 A. We were together.
 Q. Where were you?
 A. We went out of his house, and went together
 to the saloon.
 Q. Which way did you go from his house to the
 saloon?
 30 A. We went up Third Avenue and then turned
 around John Street and then went up to 4th Avenue.
 Q. Who was with you?
 A. We were alone, I and Cistaro.
 Q. What time was it you got to Wade's saloon?
 A. Around two or half past two.
 Q. Two or half past two o'clock in the afternoon?
 A. Yes, sir.
 Q. How long did you stay there?
 A. We staid there two or three hours, I don't re-
 40 member the exact time, it is five or six months ago.

Q. Do you remember the time exactly when you went there?

A. Yes, sir, it was around two or half past two o'clock when we arrived at the saloon.

Q. Who was there at the saloon?

A. When we got there, there was no one there, after we had been there, then came the deceased Dominic Cervasi.

Q. Did you know Dominic Cervasi?

A. Yes, sir.

10

Q. Did you know the defendant Dominic Mangano?

A. Yes, sir.

Q. Who came with Cervasi, if anyone?

A. He came alone when he came.

Q. Was he with you in the saloon, if so, what part of the saloon?

A. He was with us and he was right in front of the billiard table.

Q. Then you were in the back room as I understand it?

20

A. Yes, sir, we were in the back room.

Q. Did you have anything to drink there?

A. Sure, we drank together, I, Cistaro, and Cervasi.

Q. Well, you were there in the back room—while you were there did Cervasi go out of the back room at any time?

A. No, sir, he never went out only when he went out and got three glasses of beer, he went to the counter and brought them over to us.

Q. Did you see Mangano there?

30

A. They came after.

Q. Who are "they"—give their names?

A. He came, Alexander Londino and others.

Q. You mean Mangano when you say "he"?

A. Yes, sir.

Q. And with him was Alexander Londino?

A. Yes, sir, and his brother, Nicolo Londino, and others, and I don't know, there were lots of people that I did not know.

Q. What part of the bar-room were they, after they 40

had entered the bar-room, what part of the room did they go in?

A. They went right near the counter, divided from us—

Q. You mean by the "counter" the bar?

A. Yes, sir.

Q. And which end of the bar were they, if you know?

A. The rear part where you entered.

10 Q. Where you enter what?

A. Where you get in back of the counter.

Q. That is you enter the bar from the back, that is near the pool-room is that what you mean?

A. Right back here (indicating).

Q. That is the back end of the bar?

A. Yes, sir.

Q. Did you see Mangano and Cervasi talking together in the bar-room?

20 MR. WILSON: I object to the question as leading.

Question withdrawn.

(MR. SWIFT)

Q. What, if anything, did you see Mangano and Cervasi do in the bar-room?

30 A. They looked to be friends and were talking together.

Q. And when you went out of the bar-room, who went with you?

A. Cistarò and Londino went out with me, and afterwards Mangano and Cervasi came out last.

Q. Did you hear anything that Mangano and Cervasi said when they were talking together, as you have said?

40 A. No sir, because they were about twelve steps from us, but they seemed to act friendly.

MR. SWIFT: I ask to have the portion of the answer where the witness says "but they seemed to act friendly" stricken out as not responsive.

COURT: That portion of the answer should be stricken out.

(MR. SWIFT)

Q. What door did you go out of to go out of the bar-room? 10

A. The side of the counter, there are two steps up when you want to go up stairs—

Q. You mean the side entrance?

A. Yes, sir.

Q. How many doors do you have to go through?

A. Two doors.

Q. And is there one door goes into the little room?

A. Yes, sir.

Q. And then you go through the hall-door on South street? 20

A. Yes, sir.

Q. And then you walk how—from that point where do you go?

A. Down that way.

Q. Now here is Matthew Wade's saloon (indicating),

A. Yes, sir.

Q. Then you went around here, down to Fourth avenue (indicating)? 30

A. Yes, sir.

Q. To where?

A. To John Street.

Q. And from there you went where?

A. To Third avenue.

Q. And from there you went where?

A. To Amity street.

Q. Did anything happen there?

A. No, sir.

Q. From there where did you go? 40

A. We went to go home, me and Cistaro went on home; Mangano and Cervasi, we left at Amity street.

Q. At the corner of Amity street and Third avenue?

A. Yes, sir.

Q. What did they do, did they stop there?

A. Yes, sir, they stopped there, I called to Dominic Cervasi to come on home, and he said, "All right, go on, I will come right away."

10 Q. Where did you want him to go to, what home, where did he live?

A. He lived in my house.

Q. He lived at the same place you did?

A. Yes, sir.

Q. You boarded together?

A. Yes, sir.

Q. On Fourth avenue?

A. Yes, sir.

Q. And then went on your way?

A. Yes, sir, down Third avenue.

20 Q. And you left them talking at the corner of Amity street and Third avenue?

A. Yes, sir.

Q. And then you went on down to Palmer street?

A. Yes, sir, we went on down to Palmer street.

Q. When you got to Palmer street, how many of you were there?

A. Three of us, Alexander Londino, Frank Cistaro, and myself.

30 Q. What became of Alexander Londino when you got to Palmer street?

A. He went home to the house.

Q. Where did he live?

A. On Third avenue near the corner.

Q. You turned around Palmer street to get to it, did you?

A. Yes, sir.

Q. And you and Cistaro went on down Third avenue to Niles street?

A. Yes, sir.

40 Q. And you went home with Cistaro?

A. Yes, sir.

Q. Did you hear what Cervasi and Mangano were saying to each other, on the corner of Amity street and Third avenue?

A. Yes, sir.

Q. You heard them talking?

A. Yes, sir.

Q. What did they say—when you called to him and said, "Come on home," and he said, "Go on and I will come right away"—where were you? 10

A. We were at Amity street.

Q. You were ahead of Mangano—where were you when you called to him?

A. About the middle of the block towards Palmer street on Third avenue.

(COURT)

Q. So you mean that Mangano and Cervasi were left on the corner of third avenue and Amity street, 20 is that what you mean?

A. They were left there, they were talking together, but we did not know what they were talking about, but they were talking in a friendly manner.

(MR. SWIFT)

Q. What were you and Cervasi and Cistaro doing when in the saloon that afternoon, for two or three 30 hours, as you have said?

A. We drank beer.

(COURT)

Q. Was it light or dark when you left the saloon?

A. It was starting to get dark, it was seven or half past seven when we went out.

(MR. SWIFT)

Q. It was getting dark then?

A. It was commencing to get dark.

CROSS-EXAMINATION BY MR. WILSON.

Q. Commencing to get dark?

A. Yes, sir.

10 Q. Mr. Cistaro says that they left the saloon at half past six, and you say seven or half past seven?

COURT: That ought to be corrected, I have it in my notes half past seven.

(MR. WILSON)

Q. What time did you leave the saloon?

20 A. I don't remember whether it was six, half past six, or seven o'clock, when we got home it was about seven o'clock, I know that.

Q. Was it light when you left the saloon?

A. I don't remember, I don't believe there was much light.

Q. When you came out of Mattie Wade's saloon to go home, when you got on the street, it was light, was it not?

A. I don't remember.

Q. And there were no lights in the street when you were going home, were there?

30 A. The lamps had been lit.

Q. The lamps had been lit in the saloon?

A. No, sir, the street lamps, and the saloon lamps I don't remember, we were half drunk anyway.

Q. You don't remember then what did happen at all, do you?

A. In the saloon nothing happened.

ALEXANDER LONDINO, a witness produced in behalf of the State, being duly sworn according to law on his
40 oath saith:

EXAMINED BY MR. SWIFT. (By Interpreter).

- Q. Where do you live?
 A. Third avenue.
 Q. What number?
 A. 560 Third avenue.
 Q. Where did you live on the 16th of February?
 A. Third avenue.
 Q. What number?
 A. 560. 10
 Q. Where is that with reference to Palmer street?
 A. That is Third avenue and the other is Palmer street.
 Q. That is on the corner, is it not?
 A. Yes, sir, I live in the rear where the yard is.
 Q. No. 560—yes that is right?
 A. Yes, sir.
 Q. You live over Capezza's saloon, in the rear?
 A. Yes, sir.
 Q. How do you get to your apartments, where is 20 the entrance?
 A. I have two entrances, one from Third avenue, and the other from Palmer street.
 Q. Do you remember the 16th of February, Sunday?
 A. Yes, sir.
 Q. Did you know Dominic Cervasi and Dominic Mangano?
 A. Yes, sir.
 Q. Did you see them or either of them on that day? 30
 A. Yes, sir.
 Q. Where did you see them?
 A. At the saloon of Mattie Wade.
 Q. How came you to go there, and with whom?
 A. I and my brother and Frank Cistaro, Joseph Caputo and Dominic Mangano went there.
 Q. Did you all go there together?
 A. Yes, sir.
 Q. You are sure Cistaro and Caputo were with you?

- A. No, sir, Cistaro we found there.
- Q. And Caputo, did he go with you?
- A. Cistaro Caputo and Cervasi, we found there, they were drinking on their own account when we got there.
- Q. Then there was with you Nicolo Londino, Vincenzo Zbarra, Francisco Ferro, Dominic Mangano, and yourself?
- A. Yes, sir.
- Q. Where did you meet?
- 10 A. We got together at the corner of Third avenue.
- Q. And from there you went to Mattie Wade's saloon, did you?
- A. Yes, sir.
- Q. What time did you get to Wade's saloon?
- A. Five or half past five or six o'clock in the evening.
- Q. When you got there?
- A. Yes, sir.
- Q. And to what part of the saloon did you go?
- 20 A. To the side of South street, we entered there.
- Q. You entered on the side entrance?
- A. Yes, sir.
- Q. Where did you go when you got to the saloon?
- A. In the bar.
- Q. Did you go up to the bar?
- A. Yes, sir, we went right near the counter.
- Q. Where were they, all of you, standing with reference to the bar—at the middle of the bar, or at one of the ends of the bar?
- 30 A. When they were there five or six, they were all in a row.
- Q. What part of the bar did you stand at?
- A. I was in the rear.
- Q. You mean by the rear the end towards the pool-room?
- A. Yes, sir.
- Q. Who were standing there at the bar?
- A. I, Francisco Ferra, Joseph Caputo, Dominic Mangano, and Nicolo Londino.
- 40 Q. Did you see Cervasi at the bar?

A. When we entered the saloon, Frank Cistaro and Joe Caputo were drinking together on their own account in the billiard room in the back.

Q. Did you see Cervasi go from the back room into the bar-room at any time?

A. When we said "Let us go home," then Frank Cistaro, Joe Caputo and Dominic Cervasi came out, and we all went home.

Q. And then do I understand you that you did not see Cervasi at the bar? 10

A. At the counter, I did not see him, he did not drink there.

Q. What time did you go out of the saloon?

A. Seven or half past seven, we went out of the saloon.

A. Was it light or dark?

A. It was daylight.

Q. Was it light or dark in the saloon?

A. It was daylight.

Q. This was late Sunday afternoon—how about 20 the blinds in the saloon, were they up or down?

A. They were down.

Q. That is the shades were down?

A. Yes, sir.

Q. Who went out of the saloon first?

A. We all went out together.

Q. Who went out first, in what order did they go out?

A. Dominic Cervasi, Dominic Mangano, Joe Caputo, Frank Cistaro, and after them I. 30

Q. Just five of you?

A. Afterwards I went back to the saloon.

Q. Who went back?

A. I went back.

Q. When afterwards—what do you mean by "afterwards" you went back?

A. Because my brother had not come with Francisco Ferro, and I went and called him in there.

Q. Did he come with you? 40

A. No, sir, he told me to go, and after he would have another drink, he would come home.

Q. You left in the saloon, whom, when you came out?

A. Francisco Ferro, Vincenzo Zbarra, and my brother, the whole three of them.

Q. Now of the five of you, who went out last?

A. I went out last.

Q. You went out last?

10 A. Yes, sir.

Q. Where was Dominic Mangano and Dominic Cervasi when you went out?

A. They were out on the sidewalk with Joe Caputo and Frank Cistaro.

Q. Which way did you go after you left the saloon?

A. We went down Fourth avenue, and then I don't remember what street, whether it was John street or Smith street or some other street, but I know we went to Third avenue.

20 Q. Where was Dominic Mangano or Dominic Cervasi, when you got to Third avenue, were they ahead of you or behind you?

A. They were in the rear of us.

Q. And then you and Joe Caputo and Frank Cistaro were ahead of them?

A. Yes, sir, we were a little way in front of them.

Q. Then what became of Dominic Mangano and Dominic Cervasi?

30 A. The three of us were ahead, and we were talking together, and the two others they were in the rear of us, and they were talking together.

Q. Where did you go?

MR. WILSON: I do not want to interrupt the witness, but he said that the two men were behind and that they were talking and laughing together.

COURT: You may ask the question again.

Q. Were the two men that were behind you talking and laughing together?

A. Yes, sir, while they were together.

Q. Were they both laughing or only one?

A. They were both laughing as they were talking.

Q. What was Cervasi's condition as to sobriety?

A. We all went out sober, out of the saloon.

Q. After reaching the corner of Amity street and Third avenue, where Dominic Mangano and Dominic Cervasi stopped and talked, where did you? 10

A. I went to the corner of Palmer street. I, Frank Cistaro and Joe Caputo.

Q. And from there where did you go?

A. I found my wife at the corner, and she told me that my sons were waiting, that they wanted to have supper, and we stepped into Sebastian Capezza's and got my sons and from there we went home.

Q. Where was Capezza's place?

A. On Palmer street, No. 311. 20

Q. And how long did you stay there?

A. Around ten minutes, we staid a little while there.

Q. And from there where did you go?

A. To my home.

Q. Did you go out of your house again that night?

A. We had supper and we went to bed at eight o'clock.

Q. Did you hear any noise or the shot of a gun or pistol that night?

A. No, sir. 30

Q. Where did Frank Cistaro and Joe Caputo go, from the corner of Palmer street and Third avenue?

A. They went to their homes.

Q. How long have you known Dominic Mangano?

A. I knew him in Italy and I knew him here.

Q. Is he any relation to you?

A. He married my niece.

Q. Did you see Dominic Mangano and Dominic Cervasi go into Nicholo Londino's house that night?

A. No, sir, at eight o'clock I went to bed, I do not know nothing about that.

Q. When you left Mattie Wade's saloon, did you leave Vincenzo Zbarra there?

A. No, sir.

Q. Is Vincenzo Zbarra in Elizabeth now?

A. Yes, sir.

10 Q. Where is he?

A. He is retained as a witness.

Q. Do you know Frank Capezza?

A. Who is Frank Capezza?

Q. Do you know a man by that name?

A. I don't know Francisco Capezza.

Q. Well, do you know the man that lives in Dominic Mangano's house?

A. If you don't tell me the name, I don't know.

Q. Frank Cutsola, who boarded with Mangano?

20 A. That I don't know.

Q. Francisco Cutsola?

A. There was a boarder with him, but I don't know what his name was.

Q. Did you see him at Mattie Wade's saloon that night?

A. That night, no, sir.

30 MATTHEW WADE, JR., a witness produced in behalf of the State being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

Q. You conduct a saloon, I think, at the corner of South street and Fourth avenue?

A. Yes, sir.

Q. Whereabouts do you live?

A. 332 South Spring street at the corner of Fourth
40 avenue.

Q. Did you conduct the saloon there on the 16th of February last?

A. Yes, sir.

Q. Do you remember that day?

A. Yes, sir.

Q. Do you know Dominic Mangano?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I guess two or three years.

Q. And do you know Dominic Cervasi?

10

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. Did you ever see them in your place?

A. Yes, sir.

Q. More than once?

A. Yes, sir, hundreds of times.

Q. Do you remember seeing them there on the 16th of February?

A. Yes, sir.

20

Q. Who came there first of the two men?

A. Dominic Cervasi.

Q. And what time did he come there?

A. He came there I guess about half past eight in the morning, or something like that.

Q. And staid there, continuously, how long?

A. Oh, I guess until about half past seven at night—well, it was after seven o'clock.

Q. What was he doing there during that time?

A. He was drinking.

30

Q. Drinking?

A. Yes, sir.

Q. While he was there who else came in?

A. Dominic Mangano.

Q. Did he come in first?

A. No, sir, he came in with three or four other men.

Q. Frank Cistaro and Joe Caputo and others were there?

A. Yes, sir.

40

Q. Were they there before Dominic Mangano?

A. They were all drinking there, altogether.

Q. Did they come there before Mangano came there?

A. Yes, sir.

Q. What time did Mangano get to the saloon?

A. I think it was in the afternoon about half past three or four or half past four or something like that.

Q. Who came there with him?

10 A. He came there with Frank Cistaro and Frank Ferro, Nicolo Londino and Alexander Londino.

Q. He came there with Cistaro?

A. Yes, sir, Nicholo Londino, Alexander Londino and Frank Ferro.

Q. You are sure Cistaro was with him?

A. Yes, sir.

Q. Or do you mean Zbarra?

A. Zbarra, that is the name.

Q. The man who is held in jail as a witness here?

20 A. Yes, sir.

Q. You mean Vincenzo Zbarra?

A. Yes, sir.

Q. What did they do when they came into the saloon?

A. They ordered up drinks.

Q. What part of the saloon did they go into?

A. They were drinking on the end of the bar.

Q. Which end?

30 A. On the right side at the end of the bar, as you go into the closet.

Q. You mean the end of the bar towards the pool-room?

A. Yes, sir, right there (indicating).

Q. And at the end of the bar there is a closet or door there for a closet, under the stair-way?

A. Yes, sir.

Q. Did they sit down or stand up?

A. They were standing up.

Q. They were standing up at the bar?

40 A. Yes, sir, they were standing up at the bar.

Q. What did they do there?

A. They were drinking there, and each one was treating one another there, by rounds, same as everyone else does.

Q. Where was Dominic Cervasi with reference to them?

A. He was drinking in the back room, in the pool-room, sitting on a bench there.

Q. Did you see Cervasi and Mangano together at any time, or talking together?

10

A. Yes, sir, Cervasi got up and wanted to treat Mangano.

Q. You mean got up from where he was in the back room?

A. He got up from where he was in the back room and came to the bar and wanted to treat him.

Q. What did he say?

A. He asked him what he was going to have.

Q. Who?

A. Cervasi, and Mangano said "he would not drink 20 with him."

Q. Where was Mangano standing?

A. At the bar.

Q. Where with reference to the others?

A. At the end of the bar.

Q. Was he at the end of the bar?

A. No, sir, he was at the side, he was the last man at the end of the bar on that side.

Q. And the rest of them were at the back of him?

A. Yes, sir.

30

Q. And you were where?

A. I was tending bar.

Q. You were back of the bar?

A. Yes, sir.

Q. You were in the space between the front and the back bar?

A. Yes, sir, I was in the middle of the bar.

Q. And you heard Cervasi ask Mangano to have a drink?

A. Yes, sir.

40

Q. Now tell us exactly what he said?

A. He asked him if he was going to have a drink and he said, "No, I will treat you," and he said, "No, no, come up here to the other end of the bar," and when we went up to the other end of the bar, they ordered a drink, and Cervasi wanted it put down to his name, and Mangano said, "No, here is ten cents and you will never see ten cents any more—

Q. What was that?

10 A. Mangano pulled out of his pocket ten cents, and he said to Cervasi, "You will never see this ten cents any more," and Cervasi asked him, "What do you mean by that?" And he said, "That is all right, come on and drink." And then Cervasi said "Well I am going home, I am pretty well filled up," and Mangano said, "Wait a minute and I will go with you, wait a minute, until I finish my beer," and Cervasi went out, and then Mangano went out after him.

20 Q. When Cervasi asked Mangano to have a drink, exactly what was it he said to Mangano about having a drink?

A. What do you mean—when he asked him to have a drink?

Q. You say Cervasi came out of the room and up to the bar?

A. Yes, sir.

Q. And he asked Mangano to have a drink?

A. Yes, sir, and he would not drink with him.

Q. I want you to tell exactly what Cervasi said?

30

COURT: I understand that Cervasi was asked to have a drink and he refused.

WITNESS: No, sir, Cervasi first asked Mangano to have a drink, and then Mangano said no—

(MR. SWIFT)

40 Q. I want to know exactly what it was Cervasi said

to Mangano when he was asking him to have a drink—is that all he said “have a drink” or something else?

A. Yes, sir, he said “have a drink.”

Q. Is that all he said—did he talk about anything else except to have a drink, did he speak of anything else that occurred?

MR. WILSON: I object to the question—to the form of the question—you should ask him what did he say.

10

Question withdrawn.

(MR. SWIFT)

Q. Yes, what did he say—can you answer that question?

A. I do not remember.

Q. How did Mangano act when he refused to have a drink?

20

MR. WILSON: I make the same objection—ask him what did he say?

Question withdrawn.

(MR. SWIFT)

Q. Did he do anything?

A. In the saloon?

30

Q. Yes, when Cervasi asked him to have a drink, and Mangano said no—what did he do then?

A. He lit a cigar, he cut the end of the cigar off with a knife.

Q. With a knife?

A. Yes, sir.

Q. What kind of a knife?

A. One of those long knives that you shut up like a stiletto, a black handled knife.

Q. What did he do with it?

40

A. He had it in his hand, he had it up his sleeve and he cut a cigar, and then turned the knife and put it up his sleeve again.

Q. What did you do?

A. I said to him, "here you want to cut this out here, put that knife in your pocket, you don' want to raise no trouble in here, or I will knock your head off." And he said "oh, no, I will not raise any trouble in here, I am only cutting my cigar, I am not going to raise
10 any trouble, cannot I cut my cigar if I want to," and I said, "If you want," and he said, "I want to cut my cigar off," and I said, "cut it off then, and put your knife away," and he put the knife up his sleeve, and I said, "your knife is open there, and you want to put it in your pocket—

Q. What did he do then?

A. He shut it up.

Q. And put it in his pocket?

A. Yes, sir.

20 Q. About this time, they were standing about the middle of the bar, and the others were back of them?

A. Yes, sir.

Q. What were the others doing?

A. Drinking.

Q. Is that all they were doing?

A. They were drinking at the end of the bar.

Q. Was there anyone talking?

A. They were all talking.

30 Q. And how did Mangano stand at this time—when he was talking about the ten cents, and about cutting the cigar, how did he stand with reference to the bar?

A. He stood side-ways to the bar.

Q. With his back towards the bar?

A. Just side-ways.

Q. This is the bar here, and he stood that way (indicating)?

A. Yes, sir.

Q. Which way was his back?

A. Towards the others.

40 Q. What time of the day was this?

- A. This was a little after seven I guess.
- Q. Now do you know about the time?
- A. No, sir, I don't know exactly just the time, but I think it was a little after seven o'clock.
- Q. What makes you think it was after seven o'clock?
- A. It was dark, it was going dark.
- Q. It was dark?
- A. Yes, sir.
- Q. How much light was there in the saloon?
- A. No light at all, only a candle behind the bar. 10
- Q. A candle?
- A. Yes, sir.
- Q. Did Cervasi say anything when Mangano spoke about the ten cents or drew the knife?
- A. No, sir, he didn't see him draw the knife.
- Q. How do you know he didn't see it?
- A. He was not paying no attention, the man was drunk.
- Q. Cervasi was drunk?
- A. Yes, sir. 20
- Q. Did he say anything about the ten cents?
- A. No, sir, he said, "here, here, I am going to finish this up, and go away," and Mangano said "wait a minute until I finish my beer." And Cervasi said he was going home, he had to go to work and get out early, and he went away, and then Mangano went out after him.
- Q. Who paid for the beer?
- A. Mangano, and Cervasi went out through the little hall-way to South street. 30
- Q. What did they have to pass through first, before they got to South street?
- A. They had to pass through a little room.
- Q. How did you come to see them?
- A. I saw them.
- Q. Did you go out to see them?
- A. No, sir, I didn't go out to see them, after they went out Cervasi came back and said that a boy took his hat off and chucked it out in the street, and I told the boy to go outside and give him his hat and I went 40

outside and I got him his hat, and my wife said what did you chuck his hat off for, and Mangano said—

Q. What was that about the boy's taking his hat?

A. The boys chucked his hat off in the street, and the two of them came in the saloon again. This was after Cervasi went out first and Mangano went out after him, and then he came in again, and Mangano came in again, and then Cervasi went out again, and then Mangano followed him out—

10 Q. I want to know what you know about this?

A. Then I came out and I seen Mangano on the front stairs, and Cervasi was in the hall-way down stairs and coming out of the little room, and I asked him what he was doing there, and he said the boys are playing with Cervasi down stairs, and I am just hiding myself—

Q. Where was Mangano?

A. Half way up stairs.

Q. And where was Cervasi?

20 A. Down stairs going out of the door.

Q. And this was the second time they had started to go?

A. Yes, sir, this was the second time.

Q. Where did they go then?

A. Then they went out together, and went around Fourth avenue.

Q. Did you go outside to watch?

A. No, sir, I didn't go outside to watch, I watched to see that the boys did not take his hat off any more, and I saw them go right out then.

30 Q. And you saw them go around to Fourth avenue?

A. Yes, sir.

Q. Who went out of the crowd that was in the saloon, who went out first?

A. Cervasi.

Q. Who next?

A. Mangano.

Q. And then they came back, as you have said, and they went out again?

40 A. Yes, sir.

Q. When they went away who else went out?

A. The whole bunch went out about five minutes after, I knocked on the bar I wanted to get them out, and they all went out of the back way, I put them out of the back door.

Q. Who went out of the back door?

A. Nicolo Londino, Alexander Londino, Francisco Ferro, and this Frank Cistaro.

Q. Did they all go out together?

A. Yes, sir. 10

Q. All together?

A. Yes, sir.

Q. Did they all go out together out of the same door?

A. Yes, sir, out of the back door.

Q. Where does the back door lead to?

A. The back yard.

Q. Is there any gate there that leads to somewhere else?

A. Yes, sir. 20

Q. Where?

A. Out in the street in Fourth avenue.

Q. That is the street they turned down?

A. Yes, sir.

Q. How did the others come to go out?

A. I put them out, they started an argument—Mangano was starting an argument, and I put them all out.

Q. You mean the argument between Mangano and Cervasi? 30

A. Yes, sir.

Q. And after they had gone you put the rest out?

A. Yes, sir.

Q. And the crowd that were left after Mangano and Cervasi went out, who was the last one that went out?

A. Frank Ferro and Nicolo Londino.

Q. When did Zbarra go out?

A. He was the one that went out ahead.

Q. Ahead of those three? 40

A. Yes, sir.

Q. Did the others with the exception of those three—did the others go out sometime before?

A. No, sir, no one went out at all.

Q. I mean before the last three went out, Nicolò Londino, and Cistaro and Ferro—was there some little time between the time they went out and the time the others went out ahead of them?

A. Yes, sir, there was some little time, because I
10 would not leave them all out at once.

Q. You say these men have been in your place a good many times?

A. Yes, sir.

Q. Were they in there together any time during the month of January?

A. Yes, sir.

Q. Do you remember any particular day in January?

A. No, sir, not exactly the date, I cannot tell you
20 the date—they came home from work one day, It was raining.

Q. One day it was raining, and they were not at work?

A. Yes, sir, they came about half past ten or eleven o'clock and they started to play cards there.

Q. Some time in January?

A. Yes, sir.

Q. Was there any trouble between them?

A. Yes, sir.

30 Q. Between Cervasi and Mangano?

A. Yes, sir.

Q. You say they were both there that day?

A. Yes, sir, playing cards.

Q. Because it was raining, and they did not work?

A. Yes, sir.

Q. And they were playing cards?

A. Yes, sir.

Q. Together?

A. No, sir, four of them were playing.

40 Q. Well, what happened?

A. They were playing cards, and this Mangano, Cervasi and two other fellows were there, and Mangano was trying to cheat Cervasi—

Q. What was said and done?

A. They were playing cards.

Q. What was said?

A. Well, he said he would not live to the end of—

Q. Was there anything said about cards?

A. He was trying to cheat him.

Q. What was said?

10

A. What did Mangano say?

Q. Yes?

A. Well, he wanted to cheat—

Q. We want to know what Cervasi said and what Mangano said to him?

A. He said he would not live to the end of—

Q. Did Cervasi say anything about the cards?

A. Oh yes, sir, Cervasi said something in Italian, I don't know what it was.

Q. What did he say about the cards?

20

A. He told him to stop cheating him.

Q. Why didn't you say so—now tell us exactly what it was he said, about the cards?

A. To stop cheating him with the cards, he said, "If you want to cheat me, come up to the end of the bar and I will treat you, if you want to cheat me, I will treat you."

Q. Were they playing for drinks?

A. Yes, sir.

Q. As I understand they sat at the table playing 30 cards?

A. Yes, sir.

Q. And Cervasi got up and said that Mangano was cheating him?

A. Yes, sir, he got up and said that Mangano was cheating him, and he said, "I will pay for your drink at the bar all you want to drink, you need not cheat me, I will give you all you want to drink."

Q. What did Mangano say, if anything?

A. He said he would not cheat at all, and he said, 40

"I have seen him cheating me, and if we have to play like that, I won't play at all," and Cervasi started up to curse him in Italian.

Q. Do you know what the word was or words?

A. I cannot say it very good in English, but it was in Italian, "Acrona A'Christa."

Q. What did Mangano say?

A. Mangano got up and says to him, "Well, you are lucky you are in this saloon here, but if you were any-
10 where else, I will show you what you mean by that," and then he said, "You won't live until the end of February, or until March."

Q. Which was it?

A. "The end of February, or the first of March, you won't see that day out yet I will get you before that day."

Q. What day?

A. The first of March.

Q. Was he angry?

A. Oh, yes, sir.
20

Q. What did he do with his hands, if anything?

A. He got up and wanted to hit him, and I parted them.

Q. And that was the end of it?

A. Yes, sir.

Q. Did you hear at any time after that, did you hear Cervasi refer to that little trouble between them at cards, in talking to Mangano, did you hear Cervasi refer to that time when they had a little trouble at cards, and
30 were unfriendly?

A. No, sir, they never made up anything like that.

Q. He never said anything about it?

A. No, sir, he never did, he went right on home.

Q. I mean later on?

A. No, sir, they never made up anything like that, they never referred to it, as far as I remember.

Q. On the 16th of February, did they say anything about it, did they refer to this card trouble?

A. Well, they wanted to make up.

40 Q. Who wanted to make up?

A. Mangano and Cervasi wanted to make up.

Q. When was that?

A. That Sunday night.

Q. That Sunday night on the 16th of February?

A. Yes, sir, he wanted to treat him "you are angry at me because I told you you wanted to cheat me, but we will have a drink," and he said "no you cannot drink with me."

Q. Who said this?

A. Cervasi wanted to treat him, and Mangano said "I cannot drink with you, I will treat myself," and Mangano treated. 10

Q. Mangano was the one that referred to the cards, was he?

A. Mangano was the one that tried to cheat him.

Q. Who referred to the cheating in January on the 16th of February, was it Mangano or Cervasi?

A. Mangano.

CROSS-EXAMINATION BY MR. WILSON.

20

Q. You say Dominic Mangano and Dominic Cervasi were at the end of the bar and drinking?

A. Yes, sir.

Q. Who else was there?

A. Frank Ferro, Nicolo Londino and Alexander Londino and Vincenzo Zbarra.

Q. And they were all there at the time this conversation about the ten cents took place?

A. No, sir, that was at the other end of the bar. 30

Q. Who was present at the other end of the bar when the conversation took place between Dominic Mangano and Dominic Cervasi when they spoke about the ten cents?

A. No one, only me.

Q. You and Cervasi and Mangano were there, when you say this alleged talk about the ten cents took place—no one else?

A. No, sir.

Q. The others were so far away, they could not 40

hear the conversation, could they,

A. No, sir.

Q. And Mangano insisted on that evening in treating Cervasi?

A. Yes, sir.

Q. And Cervasi drank with him?

A. Yes, sir.

Q. And Cervasi asked Mangano to wait until he went out with him?

10 A. Yes, sir.

Q. And when they went out, they went out into the back yard together?

A. No, sir, they went out the front way.

Q. What is the front way?

A. On to South street.

Q. And the other people went out what way?

A. They went out Fourth avenue way into the back yard.

Q. The others went out into Fourth avenue?

20 A. Yes, sir.

Q. And this man, Cistaro and the two Londinos and Frank Ferro, went out into the yard and went on to Fourth avenue and on their way home?

A. Yes, sir that was afterwards.

Q. And they came out that way, after Cervasi and Mangano had gone out?

A. Oh, yes, sir, they had been gone 15 minutes, I guess.

30 Q. Then Cervasi and Mangano came out first?

A. Yes, sir.

Q. And these other four men came out afterwards?

A. Yes, sir.

Q. Did they take the same direction as the others?

A. Oh, I don't know.

Q. Did you see these four men go down Fourth avenue in the direction of Palmer street?

A. I don't know, I cannot see that far.

40 Q. When they went out they didn't go towards South street, did they?

A. No, sir, hey did not go towards South street when I shut the door they were out on Fourth avenue together.

Q. And you did not see Cervasi or Mangano with these men?

A. No, sir.

Q. They had gone ahead, they had gone out before them?

A. Yes, sir, they had gone out before them, they were ahead of these men. 10

Q. And I understand you to say that when you went out on South street you came towards Fourth avenue, and you saw Cervasi and Mangano going down Fourth avenue?

A. Yes, sir.

Q. In the direction of Palmer street?

A. Yes, sir.

Q. And when you went out afterwards and saw the four or five men out on Fourth avenue, Cervasi and Mangano were not there at all? 20

A. No, sir.

Q. And your recollection about that is as good as anything you have told us, or testified about to-day?

A. Yes, sir.

Q. And you are positive about it?

A. Yes, sir.

Q. What time of the night was it?

A. I think about half past seven or eight o'clock.

Q. Between half past seven or eight o'clock?

A. Yes, sir between half past seven or eight o'clock or somewhere about that time. 30

Q. Now, you refer to the time when Cervasi and Mangano went out, or was this the hour when the four men were there?

A. No, sir, no, it was when Cervasi and Mangano went out.

Q. And then these other men going out later, it must have been between half past seven or eight o'clock when the other four came out of your place? 40

A. They stood there together, about ten or fifteen minutes to—I didn't pay any attention, I went up stairs again.

Q. When the four men went out, did that empty your saloon, or was there someone else there?

A. No, sir, there was no one else there.

Q. Did you see Vincenzo Zbarra there?

A. Yes, sir.

Q. And he was the last in the saloon, was he?

10 A. No, sir, he went out with the other people.

Q. And then there were five people on Fourth avenue?

A. Yes, sir, four or five.

Q. And you did not see Joseph Caputo there at all?

A. I did not see him.

Q. He was not there at all that day?

A. I don't think he was.

Q. Don't you know that he was not?

A. He might have been there in the morning before

20 I got up.

Q. He was not one of the party that went out with Frank Cistaro?

A. No, sir.

Q. He was not there at that time in the afternoon?

A. I think he was not there.

Q. But you don't know when he went out?

A. No, sir, I cannot tell you, I think he went out ahead of them; I know he was there.

30 Q. Then you don't know whether he was there or not?

A. I think he was there.

Q. Do you know when he went out?

A. No, sir, I do not.

Q. He did not go out with the four or five men you have told us about?

A. No, sir, he did not go out with them at all.

Q. He did not go out with them at all?

A. No, sir, he did not go out with them at all.

40 Q. When did Cistaro come in—do you remember his coming in?

A. He came in in the afternoon about half past two or three o'clock.

Q. Did he come in alone?

A. I don't know, there was two or three more came there after him.

Q. Did he remain there all afternoon?

A. Yes, sir, pretty near.

Q. You have a good knowledge of all who were there that afternoon?

A. Pretty nearly all.

Q. I suppose these men drank a good deal that afternoon, didn't they? 10

A. They drank a little bit.

Q. A great deal, didn't they?

A. Not there, they might have drunk some somewhere else.

Q. I mean while they were with you, in your place?

A. No, sir, not very much.

Q. I suppose you drank with them occasionally yourself?

A. No, sir, I do not drink at all. 20

Q. And this card game which you say was some time in January being played there, in which Mangano and Cervasi took part, who were the others that took part in the game?

A. Frank—I don't know them all, they work for my father, I don't know their names at all.

Q. You don't know either of the names?

A. No, sir.

Q. And they work for your father now? 30

A. No, sir.

Q. Where are they now?

A. One went to the old country, and I don't know where the other one went to.

Q. I suppose it is pretty hard to find either one of them now?

A. Yes, sir, I guess so.

Q. Well, are you sure the card game took place?

A. Sure.

Q. Who saw it besides you? 40

A. I don't know, there was plenty more in there in the saloon besides me.

Q. Who besides you saw this card game?

A. There was Frank Londino or the two Londinos were there and saw it, no sir, Nicolo Londino, he was there.

Q. He was there and saw this card game in January?

A. Yes, sir.

10 Q. And are you sure of that?

A. Yes, sir.

Q. He was right by the table when the game was going on?

A. I don't know whether he was or not, he might have been on the other table, but there was two of them, he was partners with the fellow that went to the old country, I don't know his name.

Q. Was Londino a partner of the man who went to Italy?

20 A. No, sir, he was not playing with them at all.

Q. There was no excitement caused by this alleged cheating, was there, everything quieted down at once?

A. Oh, no, sir, he got up and wanted to hit Dominic Cervasi, and I stopped him.

Q. Were there many people in the saloon at the time?

A. Yes, sir.

Q. Who were they?

A. I don't know their names.

30 Q. What was the game they were playing?

A. It was a game they call "brishk."

Q. Who was Mangano's partner?

A. I don't know who he was.

Q. You don't know Cervasi's partner?

A. I know them, that is I know them by sight, but I did not take their names, my father and my brother are the ones that took the names.

Q. Did he say anything about this alleged cheating?

A. Sure.

40 Q. What did he say?

A. Well, I thought he had it in for him—

Q. Did the other men say anything about it?

A. Yes, sir, they got up and told him they would not play any more.

Q. They did play though?

A. No, sir, Cervasi got up and would not play any more, and he went home that afternoon.

Q. And Mangano staid there?

A. No, sir, he followed him out, he was looking for him.

Q. How do you know that he was looking for him?

A. That is what they say.

10

MR. WILSON: I object to the answer given by the witness, and I move that the answer "that is what they say," and the portion of the answer to the last question "he was looking for him" be stricken out.

COURT: They may be stricken out.

20

RE-DIRECT BY MR. SWIFT.

Q. I don't know that I can understand what you said in answer to Mr. Wilson, about Mr. Caputo—did you say he did not go out with the others?

A. I don't know whether he went out with the others, but I know he was there.

Q. You said the last three to go out were Nicolo Londino, Zbarra and Ferro?

A. Yes, sir.

Q. So that the others, did they go out before them?

A. Yes, sir.

Q. Did you mean to be understood that Cistaro came to your place alone?

A. I don't know, there were other men came there just after him, I don't know whether he came with them or not.

Q. In your direct examination, did you say it was Mangano who first referred to the card game of February 16th, and wanted to make up?

40

A. No, sir, it was Cervasi.

Q. It was Cervasi?

A. Yes, sir, Cervasi wanted to make up and Mangano would not have it.

MATTHEW WADE, SR., a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

10 EXAMINED BY MR. SWIFT.

Q. Whereabouts do you live?

A. 336 they call it, but it is 332 to 336 South street

Q. At the corner of Fourth avenue?

A. Yes, sir.

Q. Is that your property there?

A. Yes, sir.

Q. What is your business?

A. Contractor.

20 Q. How long have you lived here?

A. In Elizabeth?

Q. Yes?

A. About 33—nearly 34 years.

Q. Have you been in the contracting business all that time?

A. No, sir, I was in the ice business before.

Q. Do you remember the 16th of February last?

A. Yes, sir.

Q. Where were you in the evening of that day?

30 A. At the house.

Q. In the house?

A. Yes, sir.

Q. Your son is it, that was the last witness on the stand?

A. Yes, sir.

Q. He conducts a saloon on the corner in your building there?

A. Yes, sir.

Q. Were you in the building that day?

40 A. Yes, sir.

Q. Do you know Dominic Cervasi?

A. Yes, sir.

Q. And Dominic Mangano?

A. Yes, sir.

Q. Did you see them in the saloon that day?

A. Yes, sir.

Q. What time?

A. I cannot tell you exactly what time it was, but it was around about six o'clock or something like that.

Q. Whom did you see come into the saloon about 10 that time?

A. What I see first?

Q. Yes?

A. Why I see Dominic Cervasi come in first.

Q. What time did he come in?

A. I cannot tell you exactly the time.

Q. What next did you see?

A. Dominic Mangano came in afterwards.

Q. You know Dominic Cervasi?

A. Yes, sir.

20

Q. How long have you known him?

A. I have known Dominic Cervasi about three or four weeks, he was working for me.

Q. Three or four weeks from when—February 16th?

A. Oh, before the 16th of February.

Q. He was working for you?

A. Yes, sir.

Q. Where did Dominic Mangano work?

A. Mangano worked for me too, on Pennsylvania 30

avenue.

Q. He worked for you too?

A. Yes, sir.

Q. Who came into the saloon after Cervasi?

A. Dominic Mangano.

Q. Was anyone else in the saloon when he came there?

A. Yes, sir.

Q. Who?

40

A. I think Frank Cistaro was in the saloon, and Nicolo Londino.

Q. Do you know Joseph Caputo?

A. Joseph Caputo, Nicolo Londino, and his brother Alexander, I cannot tell you exactly what others.

Q. Where was Dominic Cervasi, what part of the saloon was he in?

A. When I seen him Cervasi was in the end of the door.

10 Q. What door?

A. The door where he came in.

Q. Where is that with reference to the bar—here is a diagram—this is the side street, and that is the door that goes in here through a little room, and here is the entrance to the bar-room, and here is the bar-room, and here is the pool-room (indicating on the diagram)?

A. He was in this end here (indicating).

Q. And he was there when you first saw him?

20 A. Yes, sir.

Q. Where was Mangano?

A. Along side of him.

Q. What doing?

A. I could not tell you exactly, they been talking about having a drink.

Q. Where were you, what part of the saloon were you in, when you saw them standing there?

30 A. I was a little way from them, and I went away, I saw Cervasi first, and then Mangano afterwards along side of him.

Q. What did you see them do or hear them say?

A. I heard Dominic Cervasi offer Mangano a drink, and he said, "he no want a drink, I going to treat myself," and he got the ten cents out of his pocket, just this way (indicating) and he said, "I got ten cents," and he said, "I will treat you."

Q. Anything else?

A. That is all.

Q. I went outside, I did not stay there long.

40 Q. And you did not hear him say anything more

than that, except that, "Here is ten cents, I got ten cents and I will treat myself"?

A. Yes, sir.

Q. Did you go out of the saloon then?

A. Yes, sir, I went out of the saloon then.

Q. Where did you go?

A. I went up stairs.

Q. Did you go back again in the saloon?

A. Yes, sir.

Q. How soon after?

A. Do you mean —

10

Q. I mean back into the saloon, after you went out and went up stairs— did you go back again into the saloon?

A. No, sir, I was going back again, and was right in the hall-way—interrupted—

Q. You were in the hall-way?

A. Yes, sir.

Q. And going back again?

A. Yes, sir.

20

Q. Into the saloon?

A. After a little while I went into the saloon.

Q. When you went back did you see Cervasi and Mangano there?

A. Yes, sir, I seen Cervasi go out first, and Mangano went out afterwards.

Q. What door did they go out of?

A. They went out by the hall-way.

Q. Did you see him again?

A. Yes, sir, and then I see them standing there about three or four or five minutes, and then they came back again in the saloon again, and then Cervasi went out first, and Mangano go out after him.

Q. They went out in the hall-way?

A. Yes, sir, beside the hall.

Q. And in a little while they came back again?

A. Yes, sir.

Q. Where did they go when they came back?

A. That is all, I did not pay any more attention.

Q. What did they do after that?

40

A. I cannot tell you exactly, I was away, I don't remember.

Q. You went away?

A. I went away and I went up stairs, and I paid no more attention when I went down stairs.

Q. You don't know where they went or anything about it?

A. No, sir.

Q. Were you in this saloon some time in January?

10 A. Yes, sir.

Q. When there was any trouble between Mangano and Cervasi?

A. Yes, sir.

Q. Do you know what time in January it was?

A. Yes, sir, the 29th of January.

Q. Are you pretty certain about that date?

A. Yes, sir.

Q. How do you fix it?

20 A. I fix it because Mangano and Cervasi was working over at the Central Railroad with the Water Company, and Mangano was working half a day over in New York avenue. And then it was raining that day and he quit work about half past eleven, because it was raining here, and then he came back.—

Q. And both these men were working for you at that time?

30 A. Yes, sir, and then he came back, and Mangano came first, and Cervasi was coming afterwards, he was working on the Central Railroad, and then they both got together and wanted to play cards.

Q. They sat down to the table together playing cards?

A. Yes, sir, they sat down together playing cards, and it was at a round table, and they sat one at one side of the table, and the other at the other side of the table.

Q. Well, what happened?

40 A. Mangano sat at the right in front of the door, and Cervasi was right at the side of the door, and

after they play awhile they commence to quarrel, and Cervasi said Mangano stole the cards from Cervasi.

Q. What then occurred?

A. And then there was a quarrel, and Cervasi was up and he said, "If you want a drink, come on I will give you a drink, but don't steal the cards, I won't play any more," and he took the cards and chucked them down on the table. And then Mangano got them and cut them again, and commenced playing again, and Cervasi said, "I don't want to play any more," and Mangano said, "I won't do any more cheating at cards," and then they sat down and commenced to play the game again. 10

Q. And after playing about seven or eight or ten minutes again, then Cervasi got up and said to Mangano, "Acrona A'Christa," and when he said that, he jumped up and said, "Who is Acrona A'Christa?" and then there was a quarrel, and my boy stopped the quarrel, and he Mangano, he said, "You will never see the first of March," and he clapped his hand in that way (indicating). 20

MR. WILSON: You were pointing at me—you did not mean me, did you?

(MR. SWIFT)

Q. Who said that?

A. Managno said that.

Q. You won't see the 1st of March, is that what he said? 30

A. Yes, sir, that is what he said, I did not know what he mean.

Q. Did he say anything else?

A. No, sir.

Q. Was there anything else said or done?

A. No, sir.

Q. Well, what became of them after that?

A. He went away and Cervasi sat there a little while and then he went away too. 40

Q. Do you know what Acrona A'Christa means, what sort of word or expression it is?

A. Well, I cannot explain it to you in English.

Q. It is pretty hard to explain in English, is it?

A. Yes, sir, it is very hard to explain it in English.

Q. Is it an expression that is a slur on anyone?

A. It is an expression that means that the family are not all—you know what I mean.

10 (COURT)

Q. What does it mean?

(Not answered)

(MR. SWIFT)

Q. Let me ask you—is the word or expression a slur on the female members of the family?

A. Yes, sir.

20 Q. Well, what member of the family?

A. Suppose I got a daughter or a wife or a sister—

Q. It is a reflection on the women relatives of the man?

A. Yes, sir, it is a reflection on the women relatives of the man on the mother or the sister or the daughter.

(MR. WILSON)

30 Q. You are alluding now to that expression of Cervasi to Mangano?

A. Yes, sir.

CROSS-EXAMINATION BY MR. WILSON.

Q. Mr. Wade, the building on the corner of Fourth avenue and South street—you are the owner of the saloon?

A. I own it, but the boy runs it.

Q. You are the owner?

40 A. Yes, sir.

- Q. The license is in the boy's name?
- A. Yes, sir.
- Q. And the boy is your partner?
- A. Yes, sir.
- Q. Now in this side-hall, there is a toilet there—you know what a toilet is?
- A. Yes, sir.
- Q. Is there a toilet there?
- A. No, sir, that is an extra entrance from the hall.
- Q. You come from the side hall to go into the toilet, don't you? 10
- A. No, sir, that is a side door that runs into a kind of an office, and if you go in the hall-way you go up stairs.
- Q. The side hall-way you say goes up stairs—where is that?
- A. Here (indicating). This is the little office, and when they come in here, that is the hall-way (indicating).
- Q. You go from the bar to the office, and then when you go outside you go into this hall-way? 20
- A. Yes, sir.
- Q. The front entrance is right at the corner there?
- A. Yes, sir.
- Q. They would hardly come in that way on Sundays, at the corner of Fourth avenue and South street, that was closed, that entrance on Sunday?
- A. Yes, sir.
- Q. Of course you don't know how these people went out at all that day, the order in which they went out, you don't know that? 30
- A. No, sir, I don't know nothing at all about that.
- Q. You saw Dominic Mangano take out ten cents and put it in his hands, and he said—
- A. "He could treat myself," he said.
- Q. He said he could treat himself?
- A. Yes, sir.
- Q. Did you stay long enough to see the beer given out to Mangano and Cervasi?
- A. I cannot tell you about that, I don't know 40

whether they were drinking beer together or not, I only see the ten cents, and he said, "I going to treat myself," and then he said, "Here is the tea cents," when he pulled the ten cents out.

Q. And you only saw them standing together there and heard them say this when he pulled the ten cents out?

A. Yes, sir.

Q. And that is all that was said?

10 A. I don't know.

Q. If anything further was said by Dominic Mangano to Cervasi, you would have heard it, would you not?

A. I did not stay there very long.

Q. If anything more had been said you would have heard it?

A. Sure.

RE-DIRECT BY MR. SWIFT.

20

Q. What part of the saloon were you in when they were talking about that?

A. I went in the back door, and I—

Q. You went in at the back?

A. Yes, sir.

Q. And they might have said a great deal that you did not hear?

A. Oh, yes.

30

FURTHER CROSS-EXAMINATION BY MR. WILSON.

Q. But just as soon as that expression was made use of, about the ten cents, did you immediately go into the yard or into the hall-way?

A. I was fixing up around there, and I went around into the back yard.

40 RE-DIRECT BY MR. SWIFT.

Q. Is there any way to get up stairs from the back yard?

A. Yes, sir.

Q. Where is it?

A. There is another stairs from the back yard right back here.

Q. Right back here, and it goes in here and down the other way (indicating on the map)?

A. Yes, sir.

10

FURTHER CROSS-EXAMINATION BY MR. WILSON.

Q. When Dominic Mangano talked about that ten cents, was there anyone else there at the time?

A. There was someone there, I think there was three or four people there, but I paid no more attention.

Q. Were you serving out beer yourself?

A. No, sir.

Q. Who was behind the bar?

A. Mattie, my boy.

20

Q. Was he serving the beer on this end of the table (indicating)?

A. He was running the saloon.

Q. At the time you heard Mangano say that, Mattie was serving beer at the other end of the bar, was he not?

A. No, sir, I cannot tell you about that.

FRANCISCO FARO, a witness produced in behalf of the State, being duly sworn according to law on his oath saith: 30

EXAMINED BY MR. SWIFT. (By Interpreter).

Q. Where did you live?

A. 566 Third avenue.

Q. Are you married?

A. Yes, sir.

Q. Where did you live on the 16th of February? 40

- A. In the same house.
- Q. Did you keep house there or board?
- A. I boarded there.
- Q. Who with?
- A. Nicolo Londino.
- Q. Do you remember the 16th of February last, which was a Sunday?
- A. Yes, sir.
- Q. Were you at Wade's saloon that day?
- 10 A. Yes, sir.
- Q. Who did you go with?
- A. I, Vincenzo Zbarra, Dominic Mangano, and Alexander Londino and Nicolo Londino.
- Q. What time of the day?
- A. I don't know, it may have been six o'clock.
- Q. Whom did you see or meet in the saloon when you got there?
- A. We found Dominic Cervasi, Francisco Cistaro, and Joseph Caputo, three of them there.
- 20 Q. Whereabouts in the saloon were you?
- A. Right near the counter.
- Q. By that you mean the bar, do you not?
- A. Yes, sir.
- Q. What part of the bar?
- A. At the side where you enter.
- Q. Do you mean the end of the bar—which end or part of the bar with reference to the pool-room—here is the pool-room and this is the bar, and this is the bar-room, and then it goes in here to the pool-
- 30 room (indicating) do you understand that?
- A. Yes, sir.
- Q. Which end of the bar were you at?
- A. From where you enter at the side—where you enter.
- Q. Here (indicating).
- A. Yes, sir.
- Q. Do you mean that you enter from the hall or from the pool-room?
- A. Right near where they play billiards.
- 40 Q. Did you see Dominic Cervasi in the bar-room?

A. Yes, sir.

Q. Did you see him near Dominic Mangano?

A. No, sir.

Q. Did you see him talking to Mangano?

A. No, sir, I did not see him.

Q. You did not see him talking to Mangano?

A. No, sir.

Q. Did you see Mangano say anything to him?

A. No, sir.

Q. Did you hear anything said about ten cents? 10

A. The ten cents—yes, sir.

Q. What did you hear about the ten cents?

A. I heard when Dominic Mangano and Dominic Cervasi said—when Cervasi offered to treat Mangano, Mangano said, "I got ten cents to drink also."

Q. Who offered to treat?

A. Dominic Mangano.

Q. When did he speak about the ten cents?

A. He said it to Cervasi, "I got ten cents and I can treat also." 20

Q. Where were they standing when this conversation took place?

A. They were right near the door-way where you want to get out.

Q. That is over here (indicating)?

A. Yes, sir.

Q. They were here by the door (indicating)?

A. Yes, sir.

Q. And this is the door where you go out through (indicating)? 30

A. Yes, sir.

Q. Did you see Cervasi and Mangano go out?

A. No, sir.

Q. When did you go out, with reference to the time that they went out?

A. Half an hour afterwards.

Q. Half an hour after they went out?

A. Yes, sir, after they went out.

Q. Half an hour exactly, or is it only a guess about the half hour? 40

- A. I don't know, sir.
- Q. After the others went out you started up?
- A. I, Nicolo Londino, and Vincenzo Zbarra—
- Q. Where did you go?
- A. We went home.
- Q. Where is home?
- A. But not at the house.
- Q. Where did you go?
- A. To Sebastian's.
- 10 Q. What did you do at the house No. 566 Third avenue?
- A. I didn't say that we went to the house, we went to Sebastian's house.
- Q. Where is that?
- A. On Palmer street.
- Q. Did you go anywhere or stop anywhere, before you got there?
- A. No, sir, no place.
- Q. Did Nicolo Londino stop anywhere, before you
- 20 got there?
- A. No, sir.
- Q. How did you come to go to Sebastian's on Palmer street?
- A. Nicolo Londino said, "Let us see if Alexander is here yet?"
- Q. Alexander did not live there, did he?
- A. He did not live there, but his son had told us that he was there.
- Q. Well, did you go in there?
- 30 A. Yes, sir.
- Q. How long did you stay?
- A. We were only there a little while when we went away.

RECESS.

(MR. SWIFT)

- 40 Q. You and Nicolo Londino and Vincenzo Zbarra I understand went out of Sebastian's house together?

- A. The three of us, yes, sir.
- Q. Where did you go?
- A. At the house of Nicolo Londino.
- Q. Is that No. 566 Third avenue?
- A. Yes, sir.
- Q. Whom did you find there?
- A. Dominic Cervasi, Dominic Mangano and the one who boarded with Mangano.
- Q. You found there Dominic Cervasi, Dominic Mangano, and a boarder of Mangano's? 10
- A. Yes, sir.
- Q. And who else?
- A. And the boss, the boarding-mistress.
- Q. Mrs. Nicolo Londino?
- A. Yes, sir.
- Q. Who else besides you three?
- A. That is all I see.
- Q. So that there were six of you men there?
- A. With us, yes, sir.
- Q. Was there a man there playing any music? 20
- A. We didn't find anybody there.
- Q. What were Dominic Cervasi and Dominic Mangano doing in Londino's house, when you got there?
- A. They were sitting down.
- Q. They were sitting down?
- A. Yes, sir.
- Q. What were they doing or saying?
- A. They were sitting down, they were talking, but I cannot tell what they talking about.
- Q. Were they drinking? 30
- A. No, sir.
- Q. How long did they stay there after you got in there?
- A. Four or five minutes.
- Q. What did they do then?
- A. They went out.
- Q. Who went out?
- A. Dominic Mangano said to Dominic Cervasi, "Will we go god-father," and he said, "yes, let us go." 40

Q. Cervasi said that to Mangano?

A. No, sir, Mangano said that to Cervasi.

Q. Who went out after that?

A. Nicolo Londino.

Q. Who next went out?

A. Vincenzo Zbarra.

Q. Who else?

A. After that the one who boarded with Mangano.

Q. And then yourself?

10 A. Afterwards I.

Q. You went out last?

A. Yes, sir.

Q. Why did Nicolo Londino and the rest go out with Dominic Cervasi?

A. For to companion them, for they were drunk.

Q. Were they both drunk?

A. Yes, sir.

(COURT)

20

Q. Who do you mean by "both"?

A. Dominic Mangano and Dominic Cervasi.

(MR. SWIFT)

Q. Which was the most drunk?

A. That I cannot say who was the most drunk.

Q. Did you see where they went?

A. Yes, sir, sure.

30 Q. Where did they go, that is Dominic Cervasi and Dominic Mangano?

A. They went as far as on the side-walk in front of the saloon, of Nicolo Capezza.

Q. They went to the corner of Third avenue and Palmer street, is that so?

A. Yes, sir.

Q. When they got to the corner of Third avenue and Palmer street, what, if anything, happened?

40 A. It happened that they got at the corner of Third avenue and Palmer street, and he fired at him.

- Q. Who fired?
- A. Dominic Mangano.
- Q. Dominic Mangano fired at Dominic Cervasi?
- A. Yes, sir.
- Q. Is that the first thing he did?
- A. Yes, sir.
- Q. What else did he do?
- A. Nicolo Londino went to separate them, and then he stepped backwards and shot at him.
- Q. Who stepped back? 10
- A. Dominic Mangano.
- Q. He stepped back and shot whom?
- A. He stepped back and shot Cervasi.
- Q. Now you saw who shot—then what was it he did—the first time before Londino separated them—what was done then—why did Londino separate them?
- A. First, he struck him with a knife, Nicolo saw it and went to separate them.
- Q. Then the first thing that was done was that Dominic Mangano struck Cervasi with a knife, is that right? 20
- A. Yes, sir.
- Q. Did you see the knife?
- A. Yes, sir.
- Q. Did you see whereabouts upon Cervasi's person, he was struck with the knife?
- A. No, sir, I did not see that, I saw the blow struck, but I did not see where he was hurt.
- Q. What did Cervasi do when he was struck with the knife? 30
- A. He didn't do anything, as Nicolo Londino went to separate them, he shot at him.
- Q. How far back of Cervasi and Mangano was Nicolo Londino, before he separated them?
- A. Two or three steps.
- Q. Now this is Capezza's saloon, on the corner of Third avenue and Palmer street (indicating)?
- A. Yes, sir.
- Q. Now where is the door to that saloon?
- A. At the corner. 40

Q. Does it cut off a piece of the corner—I show you the photograph marked Exhibit P. 10, that is the door of the saloon as shown there, is it?

A. Yes, sir.

Q. That is it (indicating)?

A. Yes, sir, that is the door I refer to.

Q. That is the front door?

A. Yes, sir.

Q. Alongside the door on Palmer street, there is a
10 show-window?

A. Yes, sir, right there, as shown in that photograph.

Q. In reference to that side window, where was Cervasi and Mangano, when Mangano, as you say, drew a knife and struck him?

A. Mangano was on the inside of the street, and Cervasi was on the outside.

Q. When you say it was at the corner, do you mean
20 that it was right on the corner, or was it more up Third avenue, or more up Palmer street, when the knife was drawn?

A. It was right near the corner, nearer Palmer street.

Q. How near was it to that side window on Palmer street?

A. Right near on the side-walk.

Q. What, if anything, did Mangano say before he struck Cervasi?

A. I did not hear anything.

30 Q. How soon was it after Mangano struck Cervasi with the knife, that he was shot?

A. It was very little time, Nicolo Londino went to separate them, and Mangano stepped back and shot him.

Q. Where was Cervasi and Mangano at the time the shot was fired?

A. On the side of the street was Cervasi, and Mangano was near the saloon, right near the side-walk.

40 Q. And do you mean by that that Cervasi was nearer Third avenue, than Mangano?

- A. He was a little further off when he shot him.
- Q. Did Cervasi say anything, when he was shot?
- A. I did not hear anything.
- Q. What did he do?
- A. Who?
- Q. Cervasi, when he was shot?
- A. As we went away, Cervasi ran along the fence, and went into the house of Nicolo Capezza.
- Q. Went where—in the house, or along the house?
- A. Near the house of Nicolo Capezza. 10
- Q. Which part of the house, at Third avenue or Palmer street?
- A. At Third avenue.
- Q. Do you say that Cervasi did not say anything when he was either stabbed or shot?
- A. I did not hear him say anything.
- Q. After the shot, where did Mangano go?
- A. He went up Palmer street, going towards Elizabeth avenue.
- Q. Did anyone go with him? 20
- A. The one that boarded with him.
- Q. Where did you, Nicolo Londino and Vincenzo Zbarra go?
- A. At the house of Nicolo Londino.
- Q. Did you see anything of Cervasi after that, after you went to Nicolo Londino's house?
- A. No, sir.
- Q. You went home, in other words, that was your home, was it not?
- A. Yes, sir, I went home with Nicolo Londino and Vincenzo Zbarra. 30
- Q. That was your home?
- A. Yes, sir, that is where I boarded.
- Q. Did you see where Mangano got the knife from with which he stabbed Cervasi?
- A. Yes, sir.
- Q. Did you see what kind of knife it was?
- A. No, sir, I did not see it.
- Q. Now, was it light at that corner?
- A. Yes, sir. 40

Q. What made it light?

A. There was an electric light.

Q. I show you the photograph, *Exhibit P. 5*, does that show where the electric light was?

A. Yes, sir.

Q. It was lit then, at the time?

A. Yes, sir.

Q. Did anyone besides Mangano have a knife, so far as you know?

10 A. I did not see no one.

Q. Did anyone else have a pistol so far as you know, or a revolver?

A. I did not see nothing.

CROSS-EXAMINATION BY MR. WILSON.

Q. You went to Mattie Wade's that Sunday afternoon, did you not, February 16th, I refer to?

A. Yes, sir, on a Sunday.

20 Q. What time did you go there?

A. I cannot tell you what time it was, if I had a watch and looked at the time I could have told you.

Q. How long did you stay there that afternoon?

A. I cannot tell you what extent of time I was there, I may have been an hour or more there.

Q. Who did you go there with?

A. Vincenzo Zbarra, Nicolo Londino, Dominic Mangano, Alexander Londino and I.

Q. Did you all go back home together?

30 A. No, sir.

Q. Did you leave the saloon of Mattie Wade's, before the others, or after?

A. After.

Q. How much longer after that, after they left, did you stay in Mattie Wade's saloon that evening?

A. I believe half an hour, and then we went away.

Q. Who did you go home with?

A. I, Nicolo Londino and Vincenzo Zbarra.

Q. And Vincenzo Zbarra—where is he?

40 A. Now?

Q. Yes.

A. He is retained as a witness.

Q. In jail?

MR. SWIFT: Yes, he is retained as a witness in jail.

(MR. WILSON)

Q. Then you, Vincenzo Zbarra and Nicolo Londino came home half an hour after the others, is not that so? 10

A. Yes, sir, half an hour afterwards.

Q. And was anyone left in the saloon when you left?

A. How can I know; there may have been someone left.

Q. Do you know?

A. There was some left there.

Q. Then everybody had not been turned out of the saloon when Francisco Cistaro and the rest left? 20

A. The others I did not see when they went, but I know we went afterwards.

Q. And Mattie Wade, Jr., was in the saloon when you left?

A. Yes, sir, he was in the saloon.

Q. You had drunk a great deal that afternoon, hadn't you?

A. No, sir.

Q. How much had you drunk about? 30

A. Four or five glasses of beer, small beers.

Q. You were sober, were you?

A. Yes, sir.

Q. And Nicolo Londino was sober also, was he not?

A. We all had drunk about equal.

Q. And you were all sober when you came out, is that so?

A. No, sir.

Q. They were all sober, were they not, not drunk, 40

I mean; that is Londino, Cistaro and yourself, you were all sober?

A. No, sir.

Q. Then they were drunk—were you drunk?

A. No, sir.

Q. What time was it when you came out of the saloon, if you know?

A. I believe it was around seven or half past seven, but I cannot tell.

10 Q. When you came out, did you go right down to Nicolo Londino's house?

A. No, sir.

Q. Where did you go to?

A. We went to find out if his brother Alexander Londino had come home.

Q. Then after that, did you go to Nicolo Londino's house?

A. Yes, sir, after we went to the house of Sebastian, then we went to the house of Nicolo Londino.

20 Q. When you got there did you hear music in Nicolo's house?

A. I did not hear any.

Q. Well did you go inside the house?

A. Yes, sir, in the kitchen.

Q. Didn't you see Vincenzo Patura there?

A. I did not see him.

Q. Didn't you see Frank Cistaro there?

A. No, sir.

30 Q. Didn't you see a nephew of Frank Cistaro, and was he not playing the guitar there?

A. No, sir.

Q. Was not the nephew of Cistaro playing there?

A. I did not see him.

Q. When you got there, did you see Cervasi and Mangano in Nicolo Londino's house?

A. Yes, sir.

Q. Did you see Vincenzo Zbarra there too?

A. Vincenzo Zbarra came in with us.

40 Q. That is what I want—when you all came in to-

gether, did you see Mangano and Cervasi in the house there?

A. Yes, sir.

Q. And were they not singing and playing and dancing?

A. From hearsay—

Q. Do you know Vincenzo or Frank Cutsola, the boarder, I mean?

A. His boarder?

Q. Yes.

10

A. Yes, sir.

Q. Was he there?

A. Yes, sir.

Q. Do you know Mrs. Mangano?

A. Yes, sir.

Q. Did you see Mrs. Mangano that night?

A. Yes, sir, she was in the house.

Q. At Londino's house, was she not?

A. Yes, sir.

Q. And was not Mrs. Mangano in Londino's house 20 when you and Nicolo Londino and Mangano and Cervasi were there?

A. Yes, sir.

Q. And was it not at seven o'clock about that she was there?

A. It was after seven o'clock.

Q. She came for her husband, didn't she?

A. I don't know what she came for.

Q. She went out with her husband, didn't she?

A. No, sir.

30

Q. She took her husband home, didn't she?

A. She remained at the house of Nicolo Londino.

Q. Did she remain at the house after Mangano went away?

A. Yes, sir.

Q. Was she at the house when you went back?

A. Yes, sir.

Q. Was she at the house when Nicolo Londino came back?

A. Yes, sir.

40

Q. Do you remember Nicolo Londino coming out and then going back to the house while you were there?

A. No, sir.

Q. Mrs. Mangano did not stay all night there, did she?

A. No, sir.

Q. After Mangano went out, didn't you and Londino and Vincenzo Zbarra go to bed?

A. Vincenzo Zbarra went home with the wife of
10 Mangano.

Q. Didn't you and Londino go to bed?

A. Yes, sir, we went to bed.

Q. And didn't you turn out all the lights?

A. I didn't put out any light.

Q. Didn't Londino put out the lights?

A. I cannot say that, but I know I did not put out any lights.

Q. Didn't you go to bed?

A. Yes, sir.

20 Q. Didn't the police come in there that night after you had got to bed?

A. Yes, sir; they came.

Q. Did you see them?

A. Yes, sir.

Q. Did you see George Novello?

A. Yes, sir.

Q. Did Nicolo Londino see George Novello?

A. Yes, sir.

30 Q. Did George Novello ask you or Nicolo Londino about this matter.

A. He asked us whether Dominic Cervasi lived there.

Q. Didn't he ask you if you had seen this trouble?

A. He only came and asked whether Dominic Cervasi lived there and we answered him "No."

Q. Didn't you tell him you did not know anything about the trouble?

A. Before the justice we told him, but not to the agency.

40 Q. Didn't you tell George Novello this, that you did not know anything about it?

* A. No, sir; we told him where he lived, and we were willing to show him where he lived.

Q. Didn't you tell George Novello that you did not know anything about the trouble that night?

A. He didn't ask us that; he only asked if Cervasi lived there or not.

Q. Did George Novello tell you that Cervasi had been killed?

A. Yes, sir.

Q. Did George Novello ask you who had killed him? 10

A. No, sir.

Q. Did you tell George Novello who had killed him?

A. No, sir; I had said nothing to him.

Q. Why not?

A. I can't tell you who likes you and who don't like you ———

Q. If you saw Cervasi killed, and George Novello asked you who killed you, why didn't you tell George Novello that night? 20

MR. SWIFT: I object to the question—he said that George Novello did not ask him that.

Question allowed.

A. George Novello didn't ask me that, he asked Nicolò Londino, he did not ask me.

(MR. WILSON)

30

Q. Were you present when George Novello was speaking to Nicolò Londino that evening?

A. We were there, we were walking one after another.

Q. Did Nicolò Londino tell George Novello who killed Cervasi?

A. I don't know whether he said it or not.

Q. Did George Novello ask Nicolò Londino, when you were present, who killed Cervasi? 40

A. He might have said it to him, but I did not hear it.

Q. Did Cervasi live at Londino's house?

A. No, sir.

Q. Did you say anything about the killing to George Novello or anybody else that evening?

A. I said nothing to nobody.

Q. Did you see where Cervasi fell on Third avenue?

A. Yes, we saw where he fell.

10 Q. Did you go to Cervasi when the fell?

A. No, sir.

Q. How soon after he fell, did you see where he fell, where he finally died, or how soon after he fell, did you see him?

A. We saw him when he was standing up and when he fell.

Q. He fell on Third avenue, didn't he?

A. Yes, sir.

20 Q. About here, was it not (pointing to the third house from Amity street on the map)?

A. At the house of Capezza, and for a signal there is a window there.

Q. When you saw him fall, did you go to pick him up?

A. No, sir.

Q. Where did you go?

A. To bed.

30 Q. Do you know whether Cervasi went up Third Ave. at all?

A. I said where he went.

Q. He went to Paul Capezza's?

A. At the house of Paul Capezza, not at the saloon.

Q. At the house of Paul Capezza?

A. Yes, sir, I said at the house of Paul Capezza, not at the saloon.

Q. That is where he died?

A. Yes, sir.

40 Q. Then it was not on the corner where the thing happened?

A. It was at the corner they fired at him, but he did not die there, he died at the house of Capezza.

Q. Did you follow him up to see that he died there?

A. We saw that he stopped there, and he fell there.

Q. Who saw this man when he stopped and fell there, besides yourself?

A. Nicolo Londino and there was Vincenzo Zbarra.

Q. Then there was Nicolo Londino, yourself, and Zbarra there?

A. Yes, sir.

10

Q. Was anyone else there?

A. No, sir.

Q. Only you three?

A. Yes, sir.

Q. Were you around him when he died there?

A. No, sir.

Q. Was he alone when he died there?

A. Yes, sir.

Q. How do you know?

A. There was no one else there.

20

Q. How do you know?

A. I know it because the people that lives in the house with Paul Capezza, they found him dead there.

Q. When Cervasi left Londino's house to go home, why did you go out of Londino's house and go in the direction of Cervasi?

A. No.

Q. "No,"—no what?

A. No one came out.

Q. When Cervasi came out of Londino's house, you say nobody came out after him?

A. I told you before who came out, Mangano, Cervasi and Londino.

Q. And who else?

A. Vincenzo Zbarra.

Q. And who else?

A. His boarder and I.

Q. Why did you come out after Cervasi had left Londino's house?

A. Because they were drunk.

40

Q. Is that the reason you came out, because these men were drunk?

A. Yes, sir, sure.

Q. Didn't Mangano go home with his wife first?

A. No, sir.

Q. And didn't Frank Cutsola and Cervasi remain in Londino's house, after Mangano went home with his wife?

A. No, sir.

10 Q. After Cervasi walked from the corner where Paul Capezza's saloon is, up to Paul Capezza's house, did you go up to see where Cervasi was going?

A. No, sir.

Q. Where did you go?

A. To our house.

Q. How then do you know that Cervasi went up there and fell down by Paul Capezza's house, if you went into your own house?

A. As we went in we saw Cervasi was going along
20 the line of the fence up to Capezza's house.

Q. Cervasi did not live in Capezza's house, did he?

A. (By interpreter) "he says when blood is streaming out of a man, he does not know where he is going."

Q. You saw the blood coming from Cervasi, did you?

A. In the morning we saw the blood on the fence and on the sidewalk.

Q. When you saw Cervasi going up Third avenue to
30 Capezza's house, why didn't you take him into your house?

A. If we brought him in our house, we would have paid for it?

Q. That is the reason, is it, that you did not take him into your house, because you would have paid for it?

A. Because if you see a dead person you would not even touch them.

Re-Direct,

40 By MR. SWIFT:

Q. When you testified that he died up here at Paul Capezza's house (indicating), were you telling about something you heard of, or something that you knew?

A. They said the next morning, but we did not see him go there.

Q. Whereabouts on Third avenue was Dominic Cervasi when you and Nicolo Londino and Vincenzo Zbarra ran?

A. He was in the rear of us, but when we heard the shot we ran away. 10

Q. So that he was in the rear?

A. Dominic Cervasi was in the rear of us.

Q. Cervasi was in the rear of you?

A. Yes, sir.

Further Cross-Examination,

By MR. WILSON:

Q. Did Joseph Forca, who had been charged with the murder, was he not at Londino's house that night? 20

MR. SWIFT: I object to that on the ground that it is leading.

Question withdrawn.

(MR. WILSON)

Q. I will ask you if Joseph Forca was not also at that house that night? 30

A. I did not see him that night.

(MR. SWIFT)

Q. Do you know Joseph Forca?

A. Sure, he is a boarder with Nicolo Londino.

VINCENZO ZBARRA, a witness produced in behalf of the State, being duly sworn according to law on his oath saith: 40

EXAMINED BY MR. HETFIELD (By Interpreter).

Q. Where do you live?

A. Here now—I am in jail.

Q. Where did you live on the 16th of February last?

A. At the house of Dominic Mangano.

Q. Did you know Dominic Cervasi?

A. Yes, sir.

10 Q. Did you see Dominic Cervasi and Mangano on the 16th of February last?

A. Yes, sir.

Q. Where did you see them?

A. At the saloon of Mattie Wade.

Q. Who did you go to Mattie Wade's saloon with?

A. I, Dominic Mangano, Nicolo Londino, Frank Ferro, Alexander Londino, Chicco Vrigando, ——

Q. Who?

A. Nicolo Londino, Alexander Londino, Dominic
20 Mangano, Frank Ferro and Nicolo—I don't know his last name.

Q. Was Dominic Cervasi in the saloon when you got there that Sunday?

A. Yes, sir.

Q. Did Dominic Mangano and Dominic Cervasi converse with one another that day?

A. In the saloon they talked together, but I did not see them.

Q. What part of the saloon were you in while
30 Dominic Mangano and Dominic Cervasi were talking?

A. We were at the side of the counter, part of the counter.

Q. How far away were you from Dominic Mangano and Dominic Cervasi while they were talking?

A. From here to Mangano (indicating about twelve feet).

Q. What time did you leave Wade's saloon that evening?

A. When we left it was after seven.

40 Q. Who did you leave with?

A. I, Nicolo Londino and Frank Ferro.

Q. When did Mañgano and Cervasi go out?

A. We did not see them.

Q. Did they go out before you?

A. Yes, sir.

Q. Where did you go after you left Wade's saloon that evening?

A. We went to the house of Alexander Londino and we did not find them, and we then went to the house of Sebastian. 10

Q. Who did you find at Sebastian's?

A. There was Alexander Londino and his wife there.

Q. Anyone else?

A. There was Sebastian there.

Q. Where did you then go?

A. We went to the house of Nicolo Londino.

Q. Where does Nicolo Londino live?

A. On John Street, I don't know the streets much. 20

Q. I show you the photograph marked Exhibit P. 4.—can you show me Nicolo Londino's house on that picture, where Nicolo Londino lives?

A. (Witness points to a house on the picture).

Q. Look at the picture and see if you can tell which house Nicolo Londino lived in at that time?

A. This house (pointing to Joseph Capezza's house).

Q. That is the saloon?

A. Yes, sir. 30

Q. Is that the house you mean, which I have marked with a cross?

A. Yes, sir.

Q. Do you know who lives in that house that I pointed to?

A. The shoemaker lives there.

Q. Do you know who lives in back of the shoemaker?

A. The Greek, also a shoemaker, and a store is there. 40

- Q. Who was with you when you went to Nicolò Londino's house?
- A. I, Nicolò Londino and Frank Ferro.
- Q. Who did you find there when you arrived?
- A. Dominic Mangano and Dominic Cervasi.
- Q. Anyone else?
- A. There was also boarders that lived in the house there.
- Q. Did you know his name?
- 10 A. Joseph Forca, and another one by the name of Tony.
- Q. What were Dominic Mangano, and Dominic Cervasi doing when you arrived at Londino's house?
- A. Dancing.
- Q. Dancing together?
- A. Yes, sir.
- Q. How long did you stay in Londino's house?
- A. Half an hour.
- Q. Who did you go out with?
- 20 A. When we came out of the house with Londino?
- Q. Yes.
- A. First went out Dominic Mangano and Dominic Cervasi, afterwards I, and Nicolò Londino, Frank Ferro, and then the other fellow that ran away.
- Q. Did Dominic Cervasi and Dominic Mangano have any conversation just before they left Londino's house?
- A. We did not say anything.
- Q. Did you hear anything?
- A. Nothing.
- 30 Q. Who left the house first Dominic Mangano or Dominic Cervasi?
- A. Both of them together.
- Q. What was their condition as to sobriety?
- A. They had drank a little.
- Q. Which seemed to be in the worst condition, as to drink?
- A. Dominic Cervasi.
- Q. Which way did they go after they came out on Third avenue?
- 40 A. The way of going towards Palmer street.

Q. How far were you from Dominic Mangano and Dominic Cervasi walking down Third avenue?

A. A couple of steps.

Q. Did anything happen between Cervasi and Mangani on Third avenue that night?

A. I did not see anything.

Q. Did you see Mangano do anything to Cervasi?

MR. WILSON: I object to the question, he says he did not see anything. 10

Question allowed.

A. He struck him a blow with a knife.

(MR. HETFIELD)

Q. What was said by Mangano, if anything, before he struck him with the knife?

A. He said, "Let us pull out." 20

(COURT)

Q. Who said that?

A. Dominic Mangano.

(MR. HETFIELD)

Q. Where was Dominic Mangano and Dominic Cervasi when Mangano said that—what part of Third avenue? 30

A. At the corner of the saloon.

Q. What did Dominic Mangano do, as he said, "Let us draw?"

A. He struck a blow with his knife.

Q. Did you see where he got the knife from?

A. I saw he went in the direction of his pocket (illustrating as though to draw a knife from his breast pocket on the left side). 40

Q. What did Dominic Mangano do, if anything, after he had struck Cervasi with the knife?

A. Londino came and separated them, and Mangano stepped back and shot him.

Q. Shot at who?

A. Dominic Cervasi.

Q. Did you hear Cervasi say anything after he had been struck with the knife?

A. Nothing.

10 Q. What did Cervasi do after he had been struck, if anything?

A. He ran.

Q. After he had been struck with the knife, or after he had been shot at?

A. After he got shot.

Q. Which way did Cervasi run?

A. Towards the house of Nicolo Londino.

Q. What did Dominic Mangano do, after he had shot at Cervasi?

20 A. He ran away.

Q. Was anyone with him?

A. His boarder ran away with him.

Q. Whose boarder?

A. His name was Frank—Mangano's boarder.

Q. Where did you go after Cervasi and Mangano had gone away?

A. At the house of Nicolo Londino.

Q. Who did you find there when you returned?

A. In the house of Nicolo Londino?

30 Q. Yes.

A. The ones who were there, the boarders and the wife of Dominic Mangano was there.

Q. Did you see where Cervasi ran to after he had been shot at?

A. We saw that he ran, but we did not see where he went.

Q. Did you see Cervasi fall?

A. No, sir.

40 Q. Do you remember how Mangano dressed on the night of this shooting?

A. I do not remember how he was dressed—he was dressed like we are now.

Q. Do you remember whether or not he had on an overcoat?

A. He did not have a coat.

Q. Was it light or dark at the place where this shooting occurred?

A. There was light, because there was a lamp there.

Q. A lamp where?

10

A. On Palmer street.

Q. Have you seen or talked with Dominic Mangano since the night of the shooting?

A. No, sir.

Q. Has Dominic Mangano talked to you since you have been in the county jail?

A. Yes, sir.

Q. In reference to this case?

A. Yes, sir.

Q. What did Mangano say, if anything?

20

A. He asked me "what did I say when they examined me," and I told him "nothing." He said to me "did you say that I shot at him," and I said "no," and he said, "Vin, if I get twenty years, when I come out I will cut off your head."

Q. Who said that?

A. Dominic Mangano.

Q. Why did you say "no," when Mangano asked you if you had said anything?

A. Because when they first examined me, the first 30 time, they told me not to say anything to nobody.

Q. Who told you that?

A. There was George Novello and somebody else, I cannot remember now.

Q. Were you present in Wade's saloon in the latter part of January, when Mangano and Cervasi were playing cards?

A. Yes, sir.

Q. What happened, if anything?

A. They were playing cards.

40

Q. Who were playing cards?

A. Dominic Mangano and Dominic Cervasi, and I don't know who else were there—there were three or four others.

Q. Playing cards in the saloon?

A. Yes, sir.

Q. What happened between Mangano and Cervasi, if anything, that day?

A. I don't remember anything, but I remember that
10 Cervasi—I heard Cervasi say, "By the horns of the cross, I ain't going to be robbed, when playing cards, if you want a drink, let us go to the counter and drink."

Q. Did Dominic Mangano say anything?

A. I don't remember anything, what Dominic Mangano says, I didn't pay any attention to him.

CROSS-EXAMINATION BY MR. WILSON.

20 Q. What led you to go out of Nicolo Londino's house that night, with Nicolo Londino and Frank Ferra?

A. I came out because I wanted to go home with Mangano.

Q. Were you living at his house?

A. Yes, sir.

Q. Did you go home to Mangano's house that night?

A. Yes, sir.

30 Q. What time?

A. It might have been half past eight.

Q. You and Nicolo Londino did not pick up Dominic Cervasi at all, did you?

A. No, sir.

Q. Why not?

A. We did not see him.

Q. Where was he?

A. Who?

Q. Dominic Cervasi.

40 A. In front of the saloon of Paul Capezza.

Q. Was it in the front of Third avenue that you saw Cervasi?

A. Yes, sir.

Q. And off from Palmer street?

A. At the side of it.

Q. At the side of Palmer street.

A. Yes, sir, at the corner.

Q. Not in the street, was it?

A. It was on a part of the side-walk.

Q. When Dominic Cervasi was stabbed, did he run down Third avenue? 10

A. Yes, sir; he stepped a little back, and after that he ran.

Q. After he was stabbed did he start to run?

A. No, sir, he stepped a little back.

Q. Did you see Cervasi go down Third avenue?

A. No, sir.

Q. When you saw the stabbing what did you do?

A. I didn't do anything, Nicolo Londino was with us, and he stepped forward and tried to separate them, 20 and as he did that, Mangano stepped back and shot at him.

Q. What did you do then, and what did Londino do?

A. We didn't do nothing, both of them ran away.

Q. Did you run away too?

A. No, sir, we remained there, and we went to the house of Nicolo Londino.

Q. After Cervasi was stabbed and shot at, you say Mangano and this boarder, they both ran away—is that so? 30

A. Yes, sir.

Q. And then Cervasi was left there near the corner, and you and Frank Ferro and Nicolo Londino were there, is that so?

A. Yes, sir.

Q. When you and Frank Ferro and Nicolo Londino and Dominic Cervasi were there, why didn't you take the man, Cervasi, home?

A. We didn't see him, because he had run away. 40

Q. Who had run away?

A. Dominic Cervasi.

Q. Which direction did he take?

A. He took the street in the direction towards the house of Nicolo Londino.

Q. And you followed him, didn't you?

A. He ran away, and we were left there; afterwards we went to the house of Nicolo Londino.

Q. And you followed in the same direction in which
10 Cervasi went?

A. Yes, sir.

Q. And Nicolo Londino did too?

A. Yes, sir.

Q. And Frank Ferro did too?

A. Yes, sir.

Q. You went into Londino's house with the other two, did you not?

A. Yes, sir.

Q. Where was Cervasi found, if you know?
20

COURT: Ask him if he knows of his own knowledge.

(MR. WILSON)

Q. Do you know of your own knowledge where Cervasi was found?

A. No, sir, I don't know where they found him.

Q. Were you in there when the ambulance from
30 the hospital came?

A. No, sir.

Q. Did you hear the ambulance come?

A. No, sir.

Q. Where were you when the officers came to Londino's house that night?

A. I had gone to the house of Dominic Mangano where his wife lived—

Q. Did you go right back?

40 A. Yes, sir.

Q. Right away?

A. Yes, sir.

Q. Did you see anybody there near Londino's house when he came back?

A. Mike the Greek who keeps the store there.

Q. Didn't you go with Mike up to where Cervasi was lying?

A. No, sir.

Q. Did you see any crowd there when you came back from Mangano's house? 10

A. When I went home from the house of Londino I did not come out any more.

Q. That is you did not come back to Londino's house any more?

A. Yes, sir, I came back.

Q. To Londino's, didn't you?

A. Yes, sir.

Q. And staid at Londino's all night, didn't you?

A. No, sir, I went to the house of Mangano. 20

(MR. SWIFT)

Q. You mean that you went home to your boarding house with Mrs. Mangano, to Mangano's house, and staid at Mangano's house all night, didn't you?

A. Yes, sir.

(COURT)

Q. Was Mangano there when you got there? 30

A. No, sir.

(MR. WILSON)

Q. You saw Mrs. Mangano at Nicolo Londino's house that night, did you not?

A. Yes, sir.

Q. And you were dancing and having music there that night? 40

A. Cervasi and Mangano were dancing together, and Mrs. Mangano came after we got there.

Q. Cervasi and Mangano were dancing when you came in and Mrs. Mangano came afterwards?

A. Yes, sir.

Q. And Vincenzo Pudea was playing the guitar, was he not?

A. Yes, sir.

Q. And Frank Cistaro's nephew was playing the
10 guitar, too, was he not?

A. I don't know that one.

Q. But there was a second one playing there, was there not?

A. It was Joseph Forca who was playing the other.

Q. And everything was pleasant and nice, was it not?

A. Yes, sir.

Q. And everybody was in good humor?

20 A. Yes, sir.

Q. They were happy, were they not, all these men?

A. Yes, sir.

Q. Were they all drinking there that night at Londino's house?

A. They had taken a little wine, and they were drinking there.

Q. After you took Mrs. Mangano home, as you have said, tell us whether you told her that he, Dominic Mangano had killed Cervasi or not?

30 A. Nicolo Londino told her.

Q. Did you tell her?

A. I told her when we went home.

RE-DIRECT BY MR. HETFIELD.

Q. When did Nicolo Londino tell Mrs. Mangano that her husband had killed Dominic Cervasi?

MR. WILSON: I object.

40

Objection sustained.

NICOLO LONDINO, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. HETFIELD.

Q. Where do you live?

A. 566 Third avenue?

Q. Did you live there last February?

A. Yes, sir.

10

Q. Do you know Dominic Mangano?

A. Yes, sir.

Q. Did you know Dominic Cervasi?

A. Yes, sir.

Q. Were you with them on the 16th of February last?

A. No, sir, on the 16th of January.

Q. On the 16th of February?

A. No, sir.

20

Q. Were you at Wade's saloon with them on that day?

A. Yes, sir.

Q. Didn't you see them there, Dominic Mangano and Dominic Cervasi?

A. Yes, sir.

Q. What time did you go to Wade's saloon upon that day?

A. It might have been half past four or five o'clock.

Q. With whom did you go?

30

A. I, my brother, Alexander Londino, Frank Ferro, Dominic Mangano and Vincenzo Zbarra.

Q. Did you find Cervasi in Wade's saloon when you got there?

A. Yes, sir.

Q. Did you and Cervasi have any conversation?

A. No, sir.

Q. How long did you stay in Wade's saloon?

A. I might have staid an hour or an hour and a half or something like that.

40

Q. Who left first, Cervasi or Mangano or you?

A. Mangano went out first, Cervasi after, Joseph Caputo, Frank Cistaro and Alexander Londino.

Q. Did they all go out together?

A. Yes, sir.

Q. Who went out first of that crowd, if you know?

A. Who went out first, I did not see.

Q. How long after they had gone out did you go out?

10 A. It might have been three quarters of an hour, I don't remember very well.

Q. Who staid in Wade's saloon with you?

A. I, Frank Ferro, and Vincenzo Zbarra remained.

Q. Where did you go from Wade's saloon?

A. To the home.

Q. Did you stop anywhere before you went to your house?

A. We went and see if my brother had come home, and he was not there, and then we went to Sebastian's
20 to see if he was there, and we found him there.

Q. Where did you go from Sebastian's?

A. At my house.

Q. Who went with you to your house?

A. Vincenzo Zbarra and Frank Ferro.

Q. Who did you find there when you got to your house?

A. We found Dominic Mangano and Dominic Cervasi.

Q. Who else?

30 A. None others.

Q. Were there no other men in your house excepting Mangano and Cervasi?

A. There was no one there, before there might have been someone, I don't know whether there was or not.

Q. What was Mangano and Cervasi doing when you arrived home?

A. They were talking together, conversing.

Q. What were they talking about, if you know?

A. Talking about nothing, Mangano was saying,
40 "Let us go, god-father."

Q. How many times did Mangano say, "Let us go, god-father," to Cervasi?

A. A couple of times.

Q. Did Cervasi answer him or say anything to him?

A. Yes, sir, "Let us go."

Q. What did you say, if anything, when you arrived at the house, to Cervasi and Mangano?

A. Nothing.

Q. How long after you arrived there did Mangano and Cervasi leave the house?

10

A. Nearly five minutes.

Q. Did you say anything at all to either Cervasi or Mangano, after you had got inside the house?

A. In the house, no, sir.

Q. What was their condition, as to sobriety?

A. They were a little drunk.

Q. Which was in the worst condition?

A. Do you think I have measured the amount of liquor they had drunk?

Q. Which seemed to you to have been the most drunk?

20

A. They were both drunk.

Q. Did you say anything to them, by reason of this condition?

A. I told them to go home direct. It was enough how much they had drunk.

Q. Who left your house first, Mangano or Cervasi?

A. Both of them together.

Q. Who left after they left?

A. I, myself.

30

Q. Who else?

A. Frank Lusso, he was a boarder with Mangano.

Q. Who else?

A. Vincenzo Zbarra and Frank Ferro.

Q. Why did you leave your house when Cervasi and Mangano went out?

A. We went out to companion them until they bid good-bye to each other for home.

Q. How far did you walk with them or in their company?

40

A. On the side-walk until the corner.

Q. The corner of what?

A. Of Palmer street.

Q. How far were you behind Cervasi and Mangano when they arrived at the corner of Palmer street and Third avenue?

A. Around Fourth avenue.

Q. What happened, if anything, on the corner, when they reached the corner?

10 A. Dominic Mangano and Dominic Cervasi were walking together, and Dominic Mangano, as he bid me "good-night," drew his knife and struck at him twice, and then I stepped in front of them to separate them, and Mangano stepped back and shot at him.

Q. Shot at you?

A. At Cervasi.

Q. Did Mangano say anything that you heard, just before drawing the knife, or while he was drawing the knife?

20 A. No, sir, he did not say nothing to him.

Q. Where did Mangano strike, what part of the body did Mangano strike Cervasi?

A. The front part.

Q. Did Cervasi say anything when Mangano struck him?

A. All he said, "God-father, you have traduced me, been a traitor to me."

30 MR. WILSON: What word did he use Mr. Interpreter?

INTERPRETER: He used the word "been a traitor to him."

(MR. HETFIELD)

Q. What did Mangano do after he had fired the shot?

A. He ran away.

40 Q. Did anyone run with him?

A. Another ran away with him, but he did not "fire any blows."

Q. Who was that one if you know?

A. He was a boarder of his.

Q. Of whose?

A. Dominic Mangano's.

Q. How far away from Mangano and Cervasi were Vincenzo Zbarra and Frank Ferro, and the boarder and you, at the time Dominic Mangano stabbed him?

A. I was four feet, the others were about four or 10 five feet, they were right near me.

Q. Then you were nearer to Cervasi and Mangano at the time the stabbing was done, than the other three were?

A. Yes, sir.

Q. And you were about four feet away?

A. Yes, sir, not four steps, but four feet.

Q. What did Cervasi do after he had been stabbed and shot at?

A. Cervasi ran right on the side-walk near the 20 fence, and went right along straight up along the fence

Q. On what street?

A. Third avenue.

Q. Did he go up Third avenue ahead of you?

A. Yes, sir.

Q. Did you see Cervasi when he fell?

A. Yes, sir.

Q. Where were you when Cervasi fell?

A. In the hall-way, where we live now. 30

Q. Where were you when Cervasi fell?

A. We were right in front of the house, near the hall.

Q. In front of whose house?

A. My house, where I live.

Q. Did you go up to where he fell?

A. No, sir.

Q. Why not?

A. If anybody should have come, we would have to account for it. 40

Q. When you returned to your house, who did you find there?

A. No one, I found my wife and Domniic Mangano's wife.

Q. Did you have anything to say to Mangano's wife?

A. Yes, sir.

Q. What?

10 MR. WILSON: I object to that question—what he said in the absence of Mangano would not be proper.

Question withdrawn.

(MR. HETFIELD)

Q. Did Mangano return to your house that night, after the stabbing and shooting?

20 A. No, sir.

Q. When did you next see Mangano?

A. I did not see him at all.

Q. You see him now, don't you?

A. Yes, sir.

Q. Do you mean that this is the first time you have seen Dominic Mangano since that night?

A. From that night this is the first time, except the first Thursday that he was in jail.

30 Q. Did you meet Dominic Mangano and Dominic Cervasi in Wade's saloon, about three weeks before this night in question, and see them playing cards there?

A. Yes, sir.

Q. What was said at that time?

A. Dominic Cervasi said, "By the horns of Christ"—he swore, "By the horns of Christ," and Dominic Mangano took it as an insult with him.

Q. What did Dominic Mangano say, if anything?

40 A. I don't know what Mangano says, I didn't want to be in it, and I went out.

Q. Did you hear Mangano say anything?

A. No, sir.

Q. Are you any relation to Dominic Mangano?

A. No, sir.

Q. Is Mangano's wife any relation of yours?

A. Yes, sir, she is my niece, she is a daughter of my sister.

CROSS-EXAMINATION BY MR. WILSON.

10

Q. When you went out, when you say Cervasi went home, who went out of your house with you that night?

A. What night?

Q. The night that Cervasi was killed?

A. Who went out with Cervasi?

Q. Yes?

A. I, Frank Ferro, and Vincenzo Zbarra.

Q. You saw Dominic Cervasi go up Third avenue when you went into your house, is that so?

20

A. In the way of Palmer street or Third avenue?

Q. No, when you saw Cervasi going up Third avenue, and you went back into your house, who went in with you?

A. Vincenzo Zbarra, Frank Ferro and I went in.

Q. And then when Cervasi was dead on Third avenue, Vincenzo Zbarra and Frank Ferro and yourself were in your house, is that so?

A. Yes, sir.

Q. Did you see Dominic Cervasi that night again, after you went into your house?

A. No, sir.

Q. After the stabbing, I mean, did you see Cervasi that night again, after you went into your house?

A. No, sir.

Q. You knew Cervasi had been stabbed and shot at, didn't you?

A. Yes, sir.

Q. Why did you let him die out on the street alone then?

40

A. What was I going to do? Bring him in my house? A dead man—not even the law will take him.

Q. A police officer came there that night, after you went in to your house, didn't he?

A. Yes, sir, two of them came.

Q. About half an hour after this thing happened, was it not?

A. Yes, sir.

Q. And these two officers, who were they?

10 A. One was George Novello and the other I don't know.

Q. They asked you, didn't they, about this affair?

A. Yes.

Q. And you told them about it, didn't you?

A. No, sir.

Q. Didn't they tell you that Cervasi was dead?

A. Yes, sir.

Q. Didn't George Novello tell you that Cervasi was dead?

20 A. Yes, sir.

Q. When he came to your house this night with the officers, you and the others had all gone to bed, hadn't you?

A. Yes, sir.

Q. You were all in bed?

A. Yes, sir.

Q. The lights were all turned out?

A. No, sir.

30 Q. You were all undressed when you were in bed, were you not?

A. No, sir, we were just going to bed.

Q. Did you tell George Novello anything about this affair?

A. I didn't tell him anything because I was afraid—when you come to court, that is the time you tell the facts.

Q. Did you tell him that Antonio Chippani was the man that did the deed?

A. No, sir.

40 Q. Did you know that after they had been to your

house that they went to Antonio Chippani's house and arrested him?

MR. SWIFT: I object to that question as immaterial.

Question withdrawn.

(MR. WILSON)

10

Q. Did you see George Novello that evening?

A. Yes, sir.

Q. How soon after the first time that he saw you, did you see him again?

A. Half an hour or so.

Q. Did you know then, that is the second time when you saw George Novello that Antonio Chippani had been arrested?

A. Yes, sir, and Paul Capezza, yes, sir.

Q. Charged with this crime?

20

A. No, sir, I did not know.

Q. You knew that Paul Capezza and Antonio Chippani had been arrested?

A. Yes, sir.

Q. And it was about this crime, too, was it not?

A. No, sir.

Q. What did George Novello tell you they were arrested for?

A. He brought them along to get information.

Q. He brought who along?

30

A. Paul Capezza and Antonia Chippani.

Q. Were you taken to police headquarters the next morning about this affair?

A. No, sir.

Q. Were you taken to police headquarters the next morning?

MR. SWIFT: I object to the question as immaterial, and also on the ground that it is not cross-examination.

40

COURT: If he has made any statement which contradicts the testimony here given you may ask him about that.

(MR. WILSON)

Q. When George Novello came to your house, did you tell him who had committed the deed?

10 MR. SWIFT: I object to the question, he has not testified to any conversation with George Novello.

Question allowed.

A. No, sir.

(MR. WILSON)

20 Q. Why not?

A. I did not want to tell him because in justice you must tell all, then he was outside, and he might have locked me up too.

Q. When you, as you say, and Vincenzo Zbarra and Frank Ferro went back to your house, and went to bed was Mrs. Mangano there?

A. Yes, sir.

Q. Were you not at Police head-quarters the following day?

30

MR. SWIFT: I object to the question as immaterial, and also as not cross-examination.

Question allowed.

A. No, sir.

(MR. WILSON)

Q. Were you not at police head-quarters after this
40 affair?

A. No, sir.

Q. Do you know where police head-quarters are?

A. No, sir.

Q. Were you not taken to Chief Tenney or one of the officers of the law, after this affair took place?

MR. SWIFT: I object to the question as not being cross-examination.

Question allowed.

10

A. Yes, sir, I was there once.

(MR. WILSON)

Q. Where?

A. Where the little court is there, they kept me there two days.

Q. Was that the time that Antonio Chippani and Paul Capezza were also kept there? 20

A. No, sir.

Q. Was that afterwards?

A. Yes, sir, afterwards.

JOHN S. STINER, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

Q. You are in the undertaking business in this city? 30

A. And a keeper of the morgue, yes, sir.

Q. Do you remember the 16th of February?

A. Yes, sir.

Q. Did you get the body of a man known by the name of Dominic Cervasi?

A. Yes, sir.

Q. Where did you get it from?

A. The Alexian Brothers Hospital in this city.

Q. Where did you take the body?

40

A. To my morgue.

Q. Was there a post-mortem held on that body?

A. Yes, sir.

Q. The next day?

A. I think the next day, but I am not positive.

Q. By whom?

A. By Dr. Milton A. Shangle, and Dr. Frederick H. Pierson.

Q. Was there a photograph of this dead man taken
10 at your morgue?

A. Yes, sir.

Q. I show you this photograph, do you recognize it?

A. Yes, sir.

Q. Is that the photograph of the man, whose body
you got at the Alexian Brothers hospital?

A. Yes, sir, and the box I put him in.

Q. I suppose he was dead when you got him?

A. Yes, sir.

Q. And was he buried?

20 A. Yes, sir.

Q. By you?

A. Yes, sir.

MR. SWIFT: I offer that photograph in evidence.

Marked Exhibit P. 10.

30 (NO CROSS-EXAMINATION.)

JOHN REDELL, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

Q. You are otherwise known as "Brother Prosper"?

40 A. Yes, sir.

Q. And connected with the Alexian Brothers hospital?

A. Yes, sir.

Q. It is one of your duties to drive the ambulance?

A. Yes, sir.

Q. Do you remember being called on to act on the 16th of February to go to John street?

A. Well, I don't exactly remember what time it was, it was at night time, I cannot tell the date it was.

Q. It was in the evening? 10

A. Yes, sir it was in the evening.

Q. Do you remember getting the body?

A. Yes, sir, I remember getting the body.

Q. Do you remember where you got it from?

A. Not exactly, it was some avenue that was above—

Q. Third avenue?

A. I think so.

Q. And who was the hospital surgeon at that time?

A. Dr. Kershaw.

Q. Is he here now? 20

A. No, sir, he is in Illinois.

Q. Practicing?

A. Yes, sir.

Q. You drove the ambulance containing the body?

A. Yes, sir.

Q. What did you do with him?

A. When I first got him I took him to the hospital; he was still alive.

Q. Did you see his body while at the hospital?

A. No, sir. 30

Q. He was taken out of your wagon?

A. Yes, sir, when I got to the hospital he was taken out of the ambulance.

Q. Where did you see him last?

A. In the hall-way.

CROSS-EXAMINATION BY MR. WILSON.

Q. What time in the evening was this? 40

A. I cannot tell you, but I think it must have been between nine and ten o'clock.

ANDREW TYSON, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

- 10 Q. You are also known as "Brother Cayatan?"
 A. Yes, sir.
 Q. Are you connected with the Alexian Brothers' Hospital?
 A. Yes, sir.
 Q. Do you remember the night of the 16th of February?
 A. Yes, sir.
 Q. And do you remember the body brought in by Brother Prosper and the surgeon?
 20 A. Yes, sir.
 Q. What was done with the body?
 A. I helped carry him in.
 Q. Did you do anything with the body since then?
 A. I helped take him in to put into the undertaker's wagon.
 Q. Was he dead then?
 A. So the doctors then said.
 Q. Did you examine the body?
 A. I did not, the doctors examine the bodies.

30

(NO CROSS-EXAMINATION)

MILTON A. SHANGLE, a witness produced in behalf of the State, being duly sworn according to law on his oath saith:

EXAMINED BY MR. SWIFT.

- Q. Dr. Shangle, you are a physician and surgeon
 40 of this city?

A. Yes, sir.

Q. And how long have you been located here?

A. About or between seven and eight years.

Q. Were you called in to perform the autopsy on the body of a man at Stiner's Morgue upon the 16th or 17th of February?

A. Yes, sir.

Q. What date was it?

A. The 17th of February.

Q. Would you recognize the photograph of the 10 man?

MR. WILSON: I will admit that that is the man.

COURT: You had better prove it.

(Photograph *Exhibit P. 10.* shown the witness)

A. Yes, sir, that looks very much like the body of the man. 20

(MR. SWIFT)

Q. It is the man that Dr. Stiner turned over to you for that purpose, and he said it was the man?

A. Yes, sir.

Q. Let us know the result of your autopsy?

A. To begin with, the inspection of the injuries that we saw— 30

Q. Make it as short as possible?

A. He was a man we should judge of about forty years of age; height, five feet nine inches, and weight, about 150 pounds, as we judged. Very well nourished and had the appearance of an Italian. On inspection of the external injuries we found a bullet wound on the dorsal aspect of the left fore-arm, about three inches below the external epicondyle of the humerus, and a similar wound on the internal aspect of the arm.

Q. Where is that? 40

A. The arm in that condition (illustrating) the inner side, as it lies against the body—it was above the external wound, about an inch above the external wound. These wounds had the appearance of entrance and exit wounds respectively. The external wound had the appearance of an entrance wound, and the internal wound the appearance of an exit wound.

Q. As if it went right through the arm?

A. Yes, sir, as if the bullet had gone right through
10 the arm.

Q. What else did you find?

A. On the face there was an incised wound of one inch long, over the outer side of the left eye-brow.

There was also an incised wound about half an inch long extending obliquely over the top of the nose. There was an incised scalp wound one inch long, over the left temporal parietal junction, that is about this point (indicating).

Adjourned to September 9th, 1908, at 9.15 a. m.

20

COURT OF OYER AND TERMINER,

UNION COUNTY, MAY TERM, 1908.

	STATE	}
30	vs.	
	DOMINIC MANGANO,	

40 Transcript of stenographer's notes of evidence taken in the above entitled cause, before HON. JAMES J. BERGEN, Justice of the Supreme Court, and HON. EDWARD S. ATWATER, Common Pleas Judge, and a jury, at the Court House in the City of Elizabeth, N. J., on the ninth day of September, A. D., 1908, at 9.15 A. M.

APPEARANCES:—HON. C. ADDISON SWIFT, *Prosecutor of the Pleas, for the State.*

MR. WILLIAM R. WILSON, *for the Defendant.*

MILTON A. SHANGLE, resumes the stand.

DIRECT-EXAMINATION (Continued)

10

By MR. SWIFT.

Q. I think you have testified about having found some incised wounds on the face?

A. Yes.

Q. And on the forehead?

A. I think I had finished the description of most of the wounds about the head, and also the flesh wound of the arm.

Q. Well, what else did your post-mortem reveal? 20

A. The next mark that we found externally was an incised penetrating wound of the chest, about three-eighths of an inch in diameter, between the third and fourth ribs, and two inches to the left of the mid sternal line, that is, the middle line of the chest. We followed this wound internally, and in the first place we found an incised penetrating wound at the junction of the pericardium and diaphragmatic pleura, slightly to the left of the median line. The pericardium is the sack covering the heart, and the pleura the sack in which the lungs are situated. It was just at the junction of those two that we found his penetrating wound internally. Secondly: There was an incised penetrating wound of the extreme apex, or the extreme point of the heart, piercing the heart muscle, but not entering any of the heart cavities. Third: An incised penetrating wound of the diaphragm, or the muscle separating the chest from the abdomen, closely to the left of the vertebral or spinal column. Fourth: An incised pene- 30 40

trating wound of the interior margin of the left lobe of the liver. That wound went right straight through the left lobe of the liver, from above downward, and slightly toward the right. Fifth: An incised wound penetrating the peritoneal and muscular coats of the cardiac end of the stomach. All of these wounds were approximately the same diameter. That is, an incised wound about three-eighths of an inch in length, with the exception, of course, of the stomach wound, which was

10 somewhat smaller than the others. They were all obliquely in a line from above, from the left downward and to the right; that is, from the wound in the chest wall there was a slanting toward the median line of all these wounds from the left to the right going down. There was a small quantity of fluid blood and serum in the left pleural cavity. There was a large quantity of fluid blood, serum, and also blood clots in the right pleural cavity. There were two discs between the upper lobe

20 of the left lung and the corresponding parietal pleura, showing evidence that the man had, at some previous time, had some attack of pleurisy, that is all that means. The pericardium, that is, the sack in which the heart is situated, contained a considerable quantity of fluid blood and serum. All of the thoracic, or all of the organs of the chest, and abdominal organs were removed and examined, and with the exceptions as stated, were found to normal.

Q. Now, Doctor, how many wounds did you find? One on the arm, as I understand it?

30 A. The flesh wound of the arm.

Q. Yes.

A. There was an incised wound over the left eyebrow. Scalp wound over the temporo parietal junction; and an incised wound of the face. That gives us three incised wounds of the head, beside the wound in the chest.

Q. Now, this wound in the chest which you have described as showing several wounds was all one

40 wound, was it not? That is, there was but one wound in the chest?

A. Yes; there was but one wound in the chest.

Q. And that wound extended from the point of entrance to where?

A. To the stomach.

BY THE COURT.

Q. What did you say, about, the length of that was?

A. Well, probably in an upright position that 10 would mean about six or seven inches.

BY MR. SWIFT:

Q. The wound in the head, the incised wounds, how were they caused, if you know?

A. Well, they had the appearance of being caused, I should say, at least two of them, by a cutting instrument. The wound over the scalp, over the bone, might have been caused by a fall, or anything of that kind, 20 because we frequently see that.

Q. Might have been caused by a fall?

A. Might have been caused by a fall.

Q. Yes.

A. We see that frequently; owing to the proximity of the bone to the skin, it is split.

Q. Could they all have been caused by coming in contact with, say, some sharp instrument or sharp implement?

A. Yes. 30

Q. In falling, perhaps?

A. Might, if the sharp instrument were present.

Q. Now, from your examination, what do you say was the cause of this man's death?

A. Well, evidently the stab wound of the heart and of the viscera.

Q. Was the gun shot wound in any way fatal?

A. No; no, sir.

Q. In your opinion, what kind of a wound was that in the breast which you say caused the death? 40

A. It was a stab wound, probably caused by some long, narrow, probably double-edged knife.

Q. That you think was the cause of death?

A. Yes.

BY THE COURT.

Q. Was there any other evidence of a wound, or physical condition, to show that he might have died from something besides this wound?

10 A. No.

Q. And was this a fatal wound?

A. Yes.

CROSS-EXAMINATION

BY MR. WILSON.

Q. What did I understand you to say the wound, at the point of entrance, how wide was that?

A. About three-eighths of an inch.

20 Q. Very small?

A. Yes.

Q. And you say by a double edged instrument; must have been sharp on both sides?

A. Very likely. I presume a knife, possibly with one blunt edge and one sharp edge might have produced such a wound, but it had the appearance—it was a clean cut, both edges. It was nothing but a slit in the external parts.

30 Q. And would have been caused—by an instrument causing that must have been—handle must have been solid in the instrument to have caused all that?

A. Well, that is a question.

Q. I mean, from the nature of the wound?

A. Not necessarily. The blade was evidently thrust through with some little force, but it is impossible to say as to how the handle was attached to the blade.

Q. Yes, but a knife could have come together in your hand, couldn't it? ?

40 A. Well, I don't know.

FREDERICK H. PIERSON, JR., a witness produced on behalf of the State, being duly sworn according to law on his oath, saith:

DIRECT-EXAMINATION BY MR. SWIFT:

Q. Doctor, you are a practicing physician and surgeon in this city?

A. I am.

Q. And have been for how long? 10

A. About eight years.

Q. Did you assist Doctor Shangle in the post-mortem held over the body of one Dominic Cervasi?

A. I assisted at an autopsy on a man whose name was given as that.

Q. I show you Exhibit P 10, and ask you if you can identify that photograph?

A. That looks like the man.

Q. What was the result of your autopsy? State it as shortly as you can, Doctor? 20

A. Well, if I am to give details I will have to refer to the notes which I took at the time, which Doctor Shangle has.

Q. Can you give us in a general way?

A. It is some time ago and I don't remember the details.

Q. Make it as short as you can, Doctor?

A. Do you wish the specifications as to height, and all that?

Q. No, I think not. Doctor Shangle has given the 30 full thing, has he not?

MR. WILSON: I suppose just his result is all.

Q. Just give us the result of what you found; the wounds that you found, and the nature of them?

A. Well, the result of our first inspection was a flesh wound on the back of the left forearm, three inches below the external condyle. That is the projection of the elbow joint. 40

BY MR. WILSON.

Q. Which arm?

A. The left forearm. I am simply quoting from these notes. There was a similar wound on the internal side of the forearm—same forearm—an inch above the elbow joint.

Q. Doctor, they indicated the point of exit and entrance, did they not?

- 10 A. They had every appearance of that—having gone through the muscle. We further found some comparatively slight wounds—clean-cut wounds. The first one, one inch in length, over the outer side of the left eyebrow. Second: one-half inch in length, extending obliquely over the top of the nose. That is down this way (indicating). Third: A similar wound about one inch in length over the left temporal region. That is up about here (indicating). Then, passing to the chest there was discovered a wound of small
20 diameter; we measured it and it measured three-eighths of an inch, between the third and fourth ribs, two inches to the left of the middle line of the chest. That would be in this direction (indicating). In following this wound down, that is, below the surface of the skin, we found that it penetrated the junction of what is known as the diaphragm; that separates the chest from the abdomen, and also the covering of the lung at about that junction; slightly to the left of the middle line. Next we found an incised wound which
30 penetrated the extreme apex of the heart.

Q. Was that a continuation of the other wound that you have been talking about?

- A. Evidently so. Same approximate diameter, and following, so far as we had gone, in the same oblique direction from above downward. The next wound discovered was a similar wound of the diaphragm; that is, the muscle separating the chest and abdomen. This occurred closely to the left of the spinal column. Next came a similar wound at the—on the front mar-
40 gin of the left lobe of the liver.

Q. Next came; is that a continuation of the line of the—

A. That is the next wound we found.

Q. Yes.

A. And following down.

Q. You say that was a continuation of the wound that you have already described?

A. Evidently so. Still further below that there was—in still the same line—there was a similar wound to the ones described, piercing the outside and middle coats of the stomach. That is, the peritoneal and muscular coats, at the upper or cardiac end of the stomach. I had noted here at the time that all of the above wounds were of approximately the same diameter and were obliquely in line from above to the left and downward to the right with the wound in the chest wall. Now, we further found a small quantity of fluid blood in the left lung cavity; that is to say, the cavity between the chest wall and the lung, where one of the wounds penetrated. There was a large quantity of fluid blood and some blood clots in the right cavity. 10
20

Q. Was that all, Doctor?

A. Shall I repeat that last?

(Part of answer repeated.)

The pericardium; that is, the sack enclosing the heart, contained a considerable quantity of fluid blood and serum; that is part of the blood which separates when it clots. All of the organs of the chest and abdomen were removed and examined and, with the exceptions stated above, were found to be normal. 30

Q. Now, Doctor, from your examination, what was the cause of death?

A. Unquestionably this penetrating wound of the chest wall, which extended down through the organs mentioned.

Q. And that wound, in a direct line, was how long, about?

A. Well, it would be impossible to measure it 40

exactly, but, as Doctor Shangle stated, about six inches in length.

Q. In your opinion, how was that wound inflicted?

A. It appeared to be inflicted by a flat, narrow knife and, as the previous witness very correctly stated, most likely a double-edged knife, because the wound lay perfectly flat. The edges came together equally on both sides.

Q. It was not a gun shot wound?

10 A. No, sir.

Q. Was the gun shot wound at all fatal, that you found?

A. No, that was a flesh wound in the arm that passed through the muscles.

Q. Were the other wounds that you found in the head at all fatal?

A. Not at all.

Q. How, in your judgment, were the other wounds in the head—the small incised wounds caused?

20 A. From the direction of them it would look as though it was a slash by some sharp instrument, beginning up here (indicating) and going down across the nose.

Q. Could that equally have been—been done equally as well by coming in contact with something that was sharp, in falling or scraping?

30 A. I hardly think so. It could have been done by scraping across a sharp—by a person drawing the face across a sharp instrument, but not by falling, because there was no evidence of bruising. The wounds were clean cut.

Q. Suppose he fell on a nail, or across the front of a nail?

A. Then he would have had lacerations.

40 Q. I want to ask you, with the wounds such as you have described, which you say was the cause of death, the fatal one, whether this man, after receiving the stab, could have gone a distance from the corner of Third avenue and Palmer street to nearly the corner of Amity street?

- A. How far is that?
 Q. It is twenty feet to one inch.

MR. WILSON: That would be four hundred feet.

MR. SWIFT: Oh, no, it isn't as long as that. It is about a distance of one hundred and seventy-five feet—one hundred and fifty to one hundred and seventy-five feet.

10

- A. I think he could in all possibility.

CROSS-EXAMINATION BY MR. WILSON.

Q. There is a strong probability that a man receiving the wound that you described, as Cervasi had received, that it was almost instant death?

A. Not necessarily so. A wound entering the heart, that is, piercing the heart, pierced only the top; it didn't enter the heart cavity. If it had, I should say that that would have made it impossible, practically, to go that distance, but as it was, the other organs pierced would not cause instant death necessarily. 20

Q. Not necessarily, you say?

A. Well, possibly; I will admit the possibility.

Q. A man receiving a wound of that kind, through the end of the heart, you say, and the pericardium filling up, wouldn't the shock be so great that the man would fall almost in his tracks? 30

A. It would, after the hemorrhage had taken place.

Q. Do you know that the hemorrhage didn't at once take place?

A. I should say that it would take some few moments for sufficient bleeding to take place to cause that amount of shock.

Q. Is it a moment? A man receiving a blow of that kind through the heart, wasn't the shock to his system so great that he would have at once fallen?

A. May I ask what you mean by shock? 40

Q. Well, doctors can sometimes describe it and I will do the best I can. I mean, a man receiving a severe blow through the heart, wouldn't the effect on his system be so great that the man naturally would drop in his tracks?

A. It would, if it went through the cavities of the heart, unquestionably.

Q. Well, I mean perforating the heart, as this wound you say perforated this man's heart?

10 A. This wound, as stated in the notes we took, pierced the apex of the heart through the muscles of the apex, and didn't enter the cavities of the heart.

Q. But, it entered the other vital organs. If the man's heart hadn't been pierced, wouldn't that blow have been sufficient to kill him without piercing his heart?

A. I think it would.

20 Q. Are not the symptoms such from a wound of that kind as to cause, I don't say paralysis exactly, but a limp feeling in the limbs, that the man almost drops?

A. As soon as the amount of blood lost has been sufficient. That takes some few moments to accumulate the quantity of blood which we found escaped.

Q. Isn't there a heaviness, or a dizziness that comes over the man at that time?

A. I think it depends on the individual. I never have had a victim describe their sensations to me, so I am not able to state.

30 Q. I might relate this incident: Two men are fighting. A man is struck a blow over the heart by a prize fighter. His death ensues immediately.

A. In a case like that, sir—

Q. Well, now, what caused the death in that case; is it the shock or the severe blow that he received?

A. It is a shock to the large nerve centers back of and surrounding the heart.

40 Q. Now, a blow that a man receives from a knife, where it penetrates a portion of the heart, and enters

the vital parts of the man, isn't the effect greater than a blow of that kind?

A. I don't think it is so great.

Q. A blow received by a man that way affects his mental powers, doesn't it?

A. Do you mean the stab blow?

Q. Yes. I don't know what you call it exactly. Perhaps his sensibilities.

A. I don't see why it should, sir.

Q. When you performed your operation on this man, Doctor, was the man clothed? 10

A. No, sir.

Q. Had garments on, or was he disrobed, practically naked?

A. He was naked.

Q. And where the wound entered there, you say, on the naked body, it was between six and seven inches through the body?

A. From the upper wound, that is, the outside wound in the chest— 20

Q. Yes.

A. (Continued)—to the last point of entrance which we found, I should say was about six inches.

Q. You didn't know the man had had on shirts and vest and coat and overcoat, did you?

A. I don't know what he had on.

Q. Did you notice—did you see the garments?

A. Didn't see them at all, sir.

Q. Well, you don't know how far through the garments the knife went before it reached the body, do you? 30

A. I don't know.

Q. Whether it was two inches or three inches?

A. I couldn't say how far it went through the garments.

Q. Making a wound of ten or eleven inches. That is, from the point of entrance in the garments to the interior, in the body itself, you don't know that?

A. I don't know anything about it, sir. 40

Q. What was the cause of the man's death; the wound was the cause, but I mean, what would physicians describe as the cause of the man's death?

A. I should say, from the findings at the autopsy, that the death was caused by the great amount of hemorrhage, coupled with the shock, to some extent, and the shock following the hemorrhage.

Q. The hemorrhage would come first and then the shock afterwards?

10 A. Yes, yes. There is a certain amount of shock always following any extensive hemorrhage.

Q. What I want to get at is this. The man's—how would a blow of this kind affect a man's power of locomotion?

A. I don't see why it should affect it at all as long as he has strength enough to move, because none of the organs of locomotion were interfered with, and none of the nerve centers.

20 Q. Doesn't a blow of this kind, on a man's heart, affect his powers of locomotion?

A. I never knew it to until the hemorrhage was sufficient to cause death.

Q. And then he sinks?

A. Yes.

Q. Wouldn't a blow of this kind cause almost instant death?

A. I think hardly what you would call instant death. No, sir.

30 Q. Suppose a man had received a blow of this kind, and the force of the blow was so strong as to cause him to fall on the ground, would he have sufficient power after that to have got up on his feet and walked one hundred and seventy-five feet?

A. I think that is entirely likely.

Q. No, that is not what it is. That is not my question?

A. Did you say, would he?

Q. Yes.

40 A. I cannot answer.

Q. Isn't it a strong probability that if a man had received a blow of that kind, which would cause him to fall on the ground, would it be possible for him afterwards to rise from the ground and walk one hundred and seventy-five feet?

A. It would.

Q. What is that?

A. It would.

Q. Do you think a man then that had received a blow of this kind, it was possible for him to have risen from the ground, after he had received a blow of that kind, and walked one hundred and seventy-five feet? 10

A. I think it is entirely possible.

Q. Do you think it is at all probable?

A. Well, I cannot cite you authorities. I have heard instances of blows entirely piercing the cavities of the heart, where the victim went even further.

Q. Isn't there a strong probability that he would not be able to do it?

A. The probability is against it. 20

Q. Yes, that is the point, the probability is against it.

MR. SWIFT: Against what?

MR. WILSON: His walking one hundred and seventy-five feet after he had received the blow. We are not alluding now to the performances of Mangano.

30

THE COURT: I understood your question to relate to getting up off the ground after he was on the ground.

A. That is the question I was answering.

Q. After a blow had been struck, and the man had fallen on the ground, the strong probability is that he would not have been able to have walked one hundred and seventy-five feet? 40

MR. SWIFT: That is a hypothetical question, because there is no evidence that the man fell on the ground after he was struck

THE COURT: There is no evidence that the man did fall; not yet.

MR. WILSON: That is all.

MILTON A. SHANGLE, recalled.

10 DIRECT-EXAMINATION BY MR. SWIFT:

Q. Doctor, in your opinion, could this man, after having received the stab wound in the chest, which you say was the result of his death, have walked a distance of about one hundred and seventy-five feet?

A. Yes, sir.

THE COURT: He said that before.

20 MR. SWIFT: No, sir. That was the other witness.

CROSS-EXAMINATION BY MR. WILSON.

Q. The strong probability would be against it, wouldn't it?

A. Not necessarily. I should say that the probability was that the man would do it.

Q. You mean walk one hundred and seventy-five feet after he got that?

30 A. Yes.

Q. Why?

A. Because the hemorrhage from that portion of the heart is rather slow. None of the cavities which contain the blood which is in actual circulation through the body were entered by that instrument at all. The only wound was through the—through one of the branches with which the heart supplies the muscles itself.

Q. Wouldn't the shock be sufficient?

40 A. No, there is not so much shock in a blow of

that kind as there would be by hitting a man directly over the heart.

Q. You think he would not feel it quite as much?

A. No.

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

DIRECT-EXAMINATION BY MR. SWIFT:

10

Q. Mr. Mazuka, you are a special officer, are you not, in the city of Elizabeth?

A. Yes, sir.

Q. Do you remember the night of February 16th last?

A. Yes, sir.

Q. Were you on duty that night?

A. Yes, sir; I was outside that night, yes.

Q. Did you hear of some man being hurt or killed on Third avenue?

A. Yes, sir; I heard of the business, yes.

Q. Somebody told you?

A. Yes, somebody told me.

BY MR. WILSON.

Q. In the morning?

A. No, in the night.

30

BY MR. SWIFT.

Q. What time of night?

A. About half past eight or quarter to nine.

Q. And what did you do?

A. Well, I went up to see him—to see what it was.

Q. Did you know Dominic Cervasi in his lifetime?

A. Yes, sir; I did.

Q. I show you photograph *Exhibit P. 10*, and ask you if you can identify that?

40

A. Yes, I know him.

Q. Is that the photograph of Dominic Cervasi?

A. Yes, sir.

Q. Do you know the defendant here, Dominic Mangano?

A. Yes, I do.

Q. You know him?

A. I know him.

Q. This is he, is it not, here in Court?

10 A. Yes.

Q. What did you find, Mr. Mazuka?

A. Well, I found the boys—I went and I found the boys and they told me—

Q. Never mind that. What did you do?

A. I go right to the gate.

Q. Where?

A. Capezza's place.

Q. The one he owns?

A. The one he owns.

20 Q. Is that it?

A. Yes.

Q. 572?

A. 572 Third avenue.

Q. And what did you find there?

A. I find this Dominic Cervasi dead.

Q. This Dominic Cervasi you found there?

A. Yes.

Q. Where was he?

A. Inside of the gate.

30 Q. Inside of the gate?

A. Yes, inside of the gate, near the stoop.

Q. I show you photograph Exhibit P 6, and ask you if that shows about where he was found, or where you found him?

A. I found him here (indicating).

Q. This is the gateway here, and that end—

40 THE COURT: Let him mark it the gateway.
(Gateway marked X by the Prosecutor.)

Q. This is the gateway, there is a little offset comes in from the stoop. Where did you find him?

THE COURT: Let him tell.

A. Here (indicating).

Q. That is—

THE COURT: He said he found him inside of the gate near the stoop.

10

A. About eleven feet from the gate.

Q. Where was he with reference to the fence?

A. This is the gate; he was just up like this—just had his head this side of the fence.

Q. His head alongside of the fence?

A. Yes.

Q. And where were his hands?

A. He had his hands here (indicating on the face).

Q. Both hands?

20

A. One hand—one hand had him this way and the other hand had him this way.

Q. Was he dead then?

A. He was pretty near dead. He can't speak.

Q. Did you look at his face to identify him?

A. Yes, I did.

Q. What next did you do?

A. Well, the ambulance came and took him out.

Q. Did you assist in putting him in the ambulance?

A. I did.

30

Q. You did?

A. I did.

Q. What ambulance was it?

A. Saint Joseph, the Brothers.

Q. That is the Alexian Brothers?

A. Yes.

Q. I suppose there was a crowd around there, wasn't there, at that time?

A. Oh, yes big crowd, yes.

Q. You identify this picture as the same man that 40

you found there and that you helped put in the ambulance?

A. Yes, indeed.

Q. As Dominic Cervasi?

A. Yes, indeed.

CROSS-EXAMINATION BY MR. WILSON.

10 Q. You say you are a police officer of Elizabeth?

A. Special officer.

Q. That is a little different from the other, isn't it?

A. Yes.

Q. On this night, you say, you saw Cervasi?

A. I saw him, yes.

Q. Did he live in Paul Capezza's house?

A. No live there, just dropped there.

Q. Now, where did Dominic Cervasi live, do you know?

20 A. He lived some place on Fourth avenue; I didn't know the number.

Q. Near Niles street?

A. Pretty near Niles.

Q. And Niles street is beyond Palmer street towards the Port, isn't it?

A. No, near to the bridge there near Center street.

Q. You come first to Palmer street if you want to go down there first, and then you come to Niles street, and Spencer street, and then you walk down that way?

A. Yes, sir.

30

MR. SWIFT: What has that got to do with it?

MR. WILSON: I will tell you when my case comes up.

Q. You saw this man lying there. Was he lying on his back?

A. No, that way (indicating side).

Q. Which hand, the left or the right?

A. This hand—the left hand.

40 Q. With his face up this way?

A. Well, just stayed this way (indicating).

Q. Were his legs all stretched out?

A. Pretty near down.

Q. And his other hand down this way (indicating)

A. Yes.

Q. This hand was down on the ground, was it?

A. Pretty near the ground. He just got below of the gate in the fence and then he stayed this way.

Q. And he was right near the stoop?

A. Near the stoop.

10

Q. And about eleven feet from the front entrance of the gate?

A. Yes.

Q. Then he was inside of the gate off from the street?

A. Off from the stoop about eighteen inches.

Q. You don't know how he got in there, do you?

A. No, I don't know.

Q. Did he look as if he had been carried in there?

A. I don't know. I can't tell.

20

Q. You would not say that he hadn't been carried in there by somebody, would you?

A. I can't tell. I can't say. I never saw him fall.

Q. Did you see any people at the gate?

A. Yes, sir; I did.

Q. Did you see the people where he was inside by the stoop?

A. Yes, sir; I did.

Q. And that is the only place you saw the people, wasn't it?

30

A. No, I saw the people all over.

Q. People all around there?

A. People all around there.

Q. And there was a crowd of people all around there, wasn't there?

A. Quite a bit.

Q. Did you notice, or could you see that there was any indications that there had been a scuffle there this night?

A. I don't know anything that way.

40

- Q. You couldn't see that?
 A. No.
 Q. Was the gate off its hinges and broken down?
 A. No, the gate wasn't broken down at all.
 Q. The gate was open?
 A. Maybe it was open; somebody left it that way.
 Q. But the gate was all open, wasn't it?
 A. Well, it was open while I was there.
 Q. And did you know whether the gate had been
 10 broken off its hinges, or not?
 A. Well, it was broken off, not before.
 Q. You noticed that yourself, didn't you?
 A. No, sir. It was broken while I was there.

RE-DIRECT-EXAMINATION BY MR. SWIFT.

- Q. You were talking about this gate?
 A. Gate, yes.
 Q. Do you know anything about whether it was
 20 broken before, or not?
 A. No, I can't say.
 Q. You don't know anything about it, do you?
 A. No.

THE COURT: He said he didn't know anything about it, but it was broken when he was there.

- Q. How was it broken?
 30 A. Well, because a lot of people in there; maybe some people broke it in there.
 Q. Well, I say, how was it broken?
 A. It was a little broken on the bottom.
 Q. Were the hinges broken?
 A. Yes, the hinges broken just a little bit there.
 Q. Do you know how long that had been that way?
 A. Oh, just that time.
 Q. How do you know? You didn't see anybody
 break it, did you?
 40 A. No.

Q. Well, then, you don't know anything about it, do you?

A. No, of course not.

RE-CROSS-EXAMINATION BY MR. WILSON.

Q. Did you see how Cervasi was dressed that night?

A. Yes.

Q. What did he have on, Cervasi—what clothing?

A. What clothes he had?

10

Q. He had an overcoat on, didn't he?

A. I no see if he had an overcoat on.

Q. But he had an outer coat, like an overcoat?

A. I no see overcoat at all.

Q. He wasn't in his shirt sleeves, was he?

A. He had a coat, but no overcoat.

Q. And he had a vest on too, didn't he?

A. I no see. I no could tell you on that.

BY ELEVENTH JUROR.

20

Q. Was there any blood on the sidewalk in front of the house, outside of the gate?

A. Yes, sir.

CASTACIPHARRO LONDINO, a witness produced on behalf of the State, being duly sworn according to law on her oath, saith:

DIRECT-EXAMINATION (Through Interpreter)

30

BY MR. HETFIELD.

Q. Are you the wife of Nicolo Londino?

A. Yes, sir.

Q. Did you know Dominic Cervasi?

A. Yes, sir.

Q. Do you know Dominic Mangano?

A. Yes, sir.

Q. Do you see him here in the court-room?

40

A. Yes, sir.

Q. Where is he?

A. That one (indicating defendant).

Q. Did you see Cervasi and Mangano on February sixteenth last?

A. Yes, sir.

Q. Whereabouts, and about what time of the day?

A. I don't remember what time; it was in the evening when they came over to me.

10 Q. You mean over to your house?

A. Yes, sir.

Q. What did they do, if anything, at your house that day, or evening?

A. When they came they came together, Dominic Cervasi and Dominic Mangano, and another one that I didn't know. When they came there was two people playing music and they started to dance and they talked with each other.

20 BY MR. WILSON.

Q. Who started to dance with each other?

A. Cervasi and Dominic Mangano. Afterwards Dominic Mangano and Cervasi went out both together and they came back with six bottles of beer.

BY MR. HETFIELD.

30 Q. Who carried the beer—who had the beer?

A. Both of them.

Q. Tell her to proceed.

A. After a while they danced again and they went out and they got some wine.

BY MR. WILSON.

Q. Pardon me. When she says they, does she mean Cervasi and Mangano?

40 A. Yes, sir. After they drank together, as the

room was small and my husband was there, I told them to go away. After a while came Frank Ferro, Vincenzo Zbarra, my husband, and then they went out.

Q. By they, you mean these two went out?

A. Dominic Cervasi and Dominic Mangano, the one that boarded with them, my husband, Frank Ferro and the other one, Vincenzo Zbarra.

BY MR. HETFIELD.

10

Q. Ask her in what manner Mangano acted toward Cervasi, that is, before her husband came in?

MR. WILSON: I object. Is she describing what they did?

A. They were drinking together, dancing together and talking together.

Q. Did you hear any of the conversation? 20

A. I didn't see anything. They were dancing and talking.

Q. What was their condition as to sobriety?

A. They were drunk. They were certainly drunk.

Q. Who seemed to be leading in the dancing—wanting to dance the most, Mangano or Cervasi?

A. They were both dancing.

Q. That doesn't answer the question. (Question repeated).

A. They were dancing both together. I don't know 30
who wanted to dance the most.

CROSS-EXAMINATION BY MR. WILSON.

Q. Wasn't Mangano pleasant and happy towards Cervasi?

A. Sure.

MR. WILSON: That is all.

40

JOHN T. HINEY, a witness produced on behalf of the State, being duly sworn according to law on his oath saith:

DIRECT-EXAMINATION BY MR. SWIFT:

Q. Mr. Hiney, you are Sergeant of Police of the City of Elizabeth?

A. I am.

10 Q. Do you remember, on the seventeenth of February, having made any investigation of the locality of Palmer street and Third avenue?

A. I did.

Q. For what purpose?

A. Sent there by Chief Tenney to see what we could find out in regards to a man that was killed the night before.

Q. What did you find around on the sidewalk in front of Capezza's place?

20

MR. WILSON: Objection. That was the day after; I don't see how that is material.

MR. SWIFT: I only want to show blood spots.

MR. WILSON: How does he know they were blood spots?

THE COURT: Do you object?

MR. WILSON: I object.

THE COURT: What grounds?

30 MR. WILSON: Because it is the next day, and he is going to describe that he found blood spots in front of Paul Capezza's place.

THE COURT: I will admit the question.

MR. WILSON: Prays exception.

Exception allowed—sealed accordingly.

A. Found blood spots on the side of Palmer street.

Q. Where?

A. On Palmer street side.

Q. Point out where you found the spots?

40 A. Found the spots here, (indicating).

Q. Was that on the sidewalk?

A. On that sidewalk; yes, sir. Also on the curb. Then leading from here, and then to the corner of the house, and then all the way up Third avenue, zigzag up, like this here, and then up along the picket fence there was blood on there all the way up to 572, until we got here. (Indicating)

Q. Spots on the fence, did you say?

A. Yes, sir.

Q. And also on the sidewalk?

10

A. On the sidewalk leading up to 572.

CROSS-EXAMINATION BY MR. WILSON.

Q. What time of the day was this on the seventeenth?

A. About ten o'clock in the morning.

Q. How do you know they were blood spots?

A. Pretty sure; they were pretty heavy spots of blood, and I would know that from a drop of water, I should think. 20

Q. What is that?

A. I would know it from a drop of water.

Q. Could you tell it from stains of any kind?

A. Pretty sure it was stains of blood.

Q. Do you know whether Paul Capezza had been having his house painted at that time, or not?

A. I don't think he was.

Q. It has been re-painted; wasn't it; newly painted 30

A. I couldn't say. I didn't think of it then.

Q. The time you got there you have noticed that there were a great many people around there?

A. Not when we went down.

Q. Nobody down there at all?

A. Oh, yes, a few.

Q. Well, there had been a great many people the night before, hadn't there?

A. Yes, sir.

40

Q. Tramping up and down all over that part?

A. I couldn't say; I wasn't there.

Q. Well, you didn't take up and examine whether these were blood stains, or not, did you? You merely inferred from what you saw there, and the fight having taken place, that they were blood stains?

A. I was almost positive that they were blood stains.

10 Q. You judge that they were blood stains because of there having been a fight? You heard that there had been a fight?

A. Well, they led to where the man's body was found, and there was nothing but blood leading from that corner right up to the house, even on the picket fence that stood upright, where he must have fallen against it.

Q. Well, now, that is your inference of it.

RE-DIRECT-EXAMINATION BY MR. SWIFT.

20

Q. Anybody with you?

A. Patrick Brogan and Officer Novello.

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

DIRECT-EXAMINATION BY MR. SWIFT:

30 Q. Mr. Novello, you are a police officer of the city of Elizabeth?

A. Yes, sir.

Q. Do you remember the night of February sixteenth?

A. Yes, sir.

Q. Were you called to Third avenue that night?

A. No, sir. I wasn't out that night.

Q. You were not there?

A. No, sir.

40 Q. Were you there the next day?

A. Yes, sir.

Q. With whom?

A. With Officer—Detective Brogan and Sergeant Hiney.

Q. Did you make any examination of the locality there at the corner of Third avenue and Palmer street, and up Third avenue?

A. Yes, sir.

Q. What did you find?

A. We found some spots of blood on the corner of Third avenue and Palmer street, leading half-way on Third avenue—half-way the block near Amity street. 10

Q. And how far up?

A. Well, I should judge from the corner about one hundred and fifty feet, or two hundred or so. Not exactly to the foot, I don't know.

Q. How far up towards Capezza's house where he lives—not where he lives, but that he owns?

A. On Third avenue?

Q. Yes. 20

A. Well, it was the second house up towards Amity street.

Q. Did you find any blood spots on the fence?

A. Yes, sir. Found a blood spot on the sidewalk, and some between the fence and the sidewalk, and some of it up against the fence picket.

Q. What fence are you speaking of?

A. On Third avenue.

Q. I know, but whereabouts, up here or down here, (indicating)? 30

A. Up here, (indicating).

Q. That is the fence that encloses the property you mean?

A. Yes, sir.

Q. What else did you do down there in that neighborhood? What did you go there for?

A. Well, we went to see where this—look around those blood spots.

Q. Do you know the defendant here, Dominic Mangano? 40

A. Yes, sir.

Q. Did you see him that day?

A. No, sir.

Q. Did you look for him?

A. Yes, sir.

Q. That day?

A. Yes, sir.

Q. Where did you look for him?

A. Well, went to—I went to his house and I went
10 to his uncle's.

Q. Speak out louder?

A. Went to his uncle's house, that is, Alexander
Londino.

Q. And you didn't find him there?

A. No, sir.

Q. Did you afterwards find him anywhere?

A. Yes, sir.

Q. Where?

A. Nutley, New Jersey.
20

Q. When was that?

A. That was February twenty-second.

Q. That is, the following Saturday, wasn't it?

A. Yes, sir.

Q. Where did you go in Nutley, New Jersey, to
find him?

A. Well, I don't know the name of the place, but
it was—

Q. What was it?

A. A saloon.
30

Q. Who went with you, if anybody?

A. Detective Brogan and Chief of Police.

Q. What did you do? Go ahead?

A. We went—

Q. Speak out louder?

A. We went to the Chief of Police of Nutley. He
led us to this Italian saloon. It was away up on a
hill. I don't know the name of the place exactly.
When we got there near to the place Detective Brogan
40 and the Chief of Police of Nutley walked in and I

stayed outside, and I have seen Mangano run from the back way.

Q. You knew Mangano?

A. Yes, sir.

Q. That is this defendant here?

A. Yes, sir. As I run in the back of him Detective Brogan and Chief of Police of Nutley came out and we run after him; a few minutes after we missed him. We couldn't seem to track him.

Q. You say you missed them.

10

A. We couldn't see where he went.

Q. Who do you mean by them?

A. Missed him. We searched for him all around and finally we were nearly to give up, and we searched at the house and we seen a track in the snow leading into a cellar window, and we looked in there and the ice was broke and had started to freeze again, and we went through the hall, went downstairs from inside and I looked around and I have seen him standing in the ice and water; I should judge it would be about eighteen or twenty inches of water.

20

Q. Water?

A. Yes, sir.

Q. What kind of a building was that?

A. It was a frame building; two-story house, but there was nobody living into it at the time.

Q. Well?

A. I have seen him standing in the corner, and I called him out and he come out. I asked him what he run for. Well, he says, I didn't run. Well, I says, what do you want to go in that water. He says, I went in there to wash my feet. I says, there was snow there, why didn't you take your shoes off. I says, what did you want to run for. Well, he says, I seen you and I run; I was afraid of you because my wife told me that you had been at my house and you were looking for me. We brought him back to the saloon and had a drink and we brought him to Elizabeth.

30

40

Q. Now, officer, is this saloon located right in the heart of Nutley?

A. No, sir.

Q. Where was it?

A. Well, I should judge it would be about a mile, or a mile and a half away, from the heart of Nutley.

Q. Was it on the line of any trolley road?

A. No, sir.

Q. You had to either drive or walk to get to it?

10 A. Had to walk to get there. I should judge it would be about a mile away from the trolley line.

CROSS-EXAMINATION BY MR. WILSON.

Q. I understood you to say that after you caught Mangano you went to this same saloon and you all drank; is that so?

A. Yes, sir.

20 Q. You all drank beer?

A. Yes, sir.

Q. Are you sure of that?

A. Well, I drank beer. Some of them drank something else.

Q. Do you know what you gave Mangano to drink?

A. He asked for water.

Q. You said that he couldn't drink beer, didn't you?

30 A. I didn't say that he couldn't drink beer; I didn't know whether he could, or not.

Q. And didn't you tell the bartender to give him the dirtiest water he had?

A. No, sir.

Q. And didn't the bartender give him a glass of dirty water and put it before him?

A. No, sir.

Q. And didn't you say, damn you, drink that, or I will kill you?

A. I did not.

40 Q. And didn't he drink that dirty water?

A. He did not.

Q. You swear that he didn't?

A. He didn't.

Q. Didn't you hit the man across the face?

A. I didn't.

Q. Didn't you strike him on the body with your fists?

A. I did not.

Q. You say that you went on the seventeenth to find Mangano? 10

A. Not on the seventeenth, no. We went there on the twenty-second.

Q. I understand, but this offence was committed on the 16th of February?

A. Yes, sir.

Q. Didn't I understand you to say that you went down with Brogan and Hiney?

A. No.

Q. To Third avenue?

A. Third avenue; yes, sir. 20

Q. With reference to this affair?

A. Yes, sir.

Q. You took a good part of the day there, didn't you?

A. Sir?

Q. A good part of the day was consumed by you in looking the matter up?

A. Part of it.

Q. You must have reached some conclusion about it then, didn't you? 30

A. What is that?

Q. You reached some conclusion about what the affair was, and who had committed the crime, didn't you?

A. Yes.

Q. Did you know that Antonio Chippani and Paul Capezza, the saloon keeper had been arrested, charged with this crime?

A. No, sir.

Q. Don't you know that at the time you were going 40

down there that these two men were locked up in police headquarters?

A. I do not.

Q. Do you mean to say that you didn't know, at this time, that Antonio Chippani and Paul Capezza were confined at police headquarters?

A. I did not know?

Q. Did you know at any time that these two men were confined at police headquarters, charged with the
10 this crime?

A. Yes, after they were discharged.

Q. They were not discharged until Tuesday morning, were they?

A. I don't remember.

MR. SWIFT: He says he knew it after they were discharged.

Q. Didn't you know on Monday that these two men
20 were charged with the crime?

A. I knew after they were discharged that these two men were held, but I didn't know anything about it before.

Q. When were they discharged?

A. What is that?

Q. What day were they discharged?

A. I don't know; I told you I don't know.

MR. SWIFT: It seems to me that this is not
30 cross-examination.

THE COURT: I will let the evidence stand. Proceed.

Q. You know they were discharged finally?

A. Yes, sir.

Q. That is, bailed out, weren't they?

A. I don't know whether they were bailed out; I
know they were discharged and that is all.

Q. While they were in jail there—
40

MR. SWIFT: In jail?

Q. (Continued) in police headquarters you were looking around too, weren't you?

A. I don't know whether they were in police headquarters, or not. I told you I didn't know nothing about when they were discharged. When they were discharged, I don't know the hour or the day.

Q. Wasn't it on your suggestion that Antonio Chippani and Paul Capezza were held with regard to this 10 affair?

A. I didn't know nothing about it. I say that before.

Q. Didn't you know anything about this affair on Sunday night?

A. On Sunday night—I knew it the next morning.

Q. February sixteenth?

A. Yes, I knew it next morning.

Q. I mean on Sunday night. Weren't you on duty Sunday night?

A. The night after? 20

Q. No, the night of the affair.

A. Why, I say I wasn't out; I said that before; I wasn't out that night.

Q. What is that?

A. I wasn't out on duty that night?

Q. You weren't out on duty that night?

A. Yes, that is it.

PATRICK J. BROGAN, a witness produced on behalf of the State, being duly sworn according to law, on 30 his oath, saith:

DIRECT-EXAMINATION BY MR. SWIFT:

Q. Mr. Brogan, you are on what part of the police force in Elizabeth?

A. Detective.

Q. Do you remember being at the corner—in the neighborhood of the corner of Third and Palmer 40

Streets on the morning of the seventeenth of February?

A. Yes, sir.

Q. With what officers?

A. Novello and Hiney.

Q. Hiney and Novello?

A. Yes, sir.

Q. What, if anything, did you find there?

A. Saw some blood spots along the sidewalk, and
10 also on the fence, and also in the alleyway of five.

Q. Where did the blood spots commence from?

A. From Palmer Street or Amity Street—lets see
—Palmer street.

Q. Just point out here about where it was?

A. There was a spot of blood here, that was the
first spot we saw. Right on the curbstone was the
first spot we saw, and then there was a spot just here,
about opposite that window; and then we came here
towards the curb and then along into Third Avenue.
20 Started up along this way to about this fence here.
Along on these fence pickets there we seen blood.
Also up here there was blood on another fence railing
there, and then it led into 572 about here, that is, near
the stoop.

Q. Did you accompany Officer Novello to Nutley?

A. Yes, sir.

Q. The following Saturday?

A. Yes, sir.

Q. What did you do there?

30 A. We found the Chief of Police, Mr. Booth, and
we explained our mission there, and he accompanied
us over to Mr. Ciccone's saloon, Harrison and Sixth
street I think it is, and we went up there to see what
we could learn, and in going in the saloon, I think I
went in first and the Chief after me, and Officer No-
vello was the third that went in. Just as we were
about to close the door, Officer Novello—I was inside
and Officer Novello called me and he says, there goes
Mangano; so we started—pursued Mangano.

40 Q. Do you mean this day?

A. Yes, sir. I just saw him turning into some little alley, or short street, and he disappeared very suddenly. So we hunted around by the sheds, and houses, and different places there for fully an hour, and we thought there must have been something funny, how he could disappear so quick, and finally there was a house there used as an old distillery and in the cellar—there is a stoop that leads to the front of the house and the window leading into the cellar was open. We looked in there and we see that it was coated with ice and the ice had been broken; so we didn't think hardly that he would go in there. We looked around again and finally I decided the best thing to do was to get into that cellar. So we goes into the hall, and it is some barrel and pieces of wood away from the cellar door. We go down into the cellar steps. I was looking on one side while Officer Novello was looking on the other. Officer Novello saw Mangano standing in the corner of the bin. We drew our revolvers and he surrendered. There must have been all of a foot and a half of water there that he was standing into. Ice just started to freeze around his pants legs. 10

Q. Did he say anything about why he went there?

A. Sir?

Q. Did he say anything to you as to why he went there?

A. No, sir.

Q. You arrested him then, I suppose, and brought him to Elizabeth?

A. Yes, sir; brought him to Elizabeth. 30

Q. What part of Nutley was this place, this saloon that you found him in from which he ran?

A. Why, it was away on the outskirts of the town of Nutley.

Q. On the outskirts?

A. Yes, sir.

CROSS-EXAMINATION BY MR. WILSON:

Q. When you came back you all went to the saloon? 40

- A. Yes, sir.
- Q. And had something to drink, all I suppose?
- A. Yes, sir.
- Q. Do you know what Mangano drank?
- A. No, sir; I do not.
- Q. Don't you know that he drank water?
- A. No, sir.
- Q. You don't know that?
- A. No, sir.
- 10 Q. The conversation was carried on in what, English or Italian?
- A. Italian.
- Q. And you are not acquainted with that language?
- A. No, sir.
- Q. When you went down that morning, that is, on the seventeenth?
- A. Yes, sir.
- Q. You had been informed by, I suppose, your superior officer, that a murder had taken place down there?
- 20 A. Yes, sir.
- Q. And then you and Officer Hiney and Novello went down?
- A. Yes, sir.
- Q. I suppose it was described to you by the officer that sent you? He told you what had happened?
- A. Yes, sir.
- Q. Without going into the details, and from that you went down to investigate the premises?
- A. Yes, sir.
- 30 Q. The men that were supposed to have been guilty of the murder were in custody at police headquarters then, weren't they?
- A. No, sir.
- Q. On Monday morning?
- A. No, sir.
- Q. Well, there were two men there that were detained with reference to this murder, weren't there; Chippani and Capezza, before you went down?
- 40 A. I don't recollect whether they were, or not.

Q. Don't you know these two men were at police headquarters, confined there, Antonio Chippani and Paul Capezza, at the time you went down there?

A. I know they were taken to the hospital, but I won't say about being confined.

Q. These two men were taken to the hospital?

A. Yes, sir.

Q. That is, to identify the man?

A. I don't know what they were taken there for. I wasn't there; there was other officers. 10

Q. Weren't they afterwards brought to police headquarters?

A. I don't know whether they were, or not.

Q. Wasn't your attention called to the fact, after you had reported to your superior officer that you had been to Third avenue?

A. What was that?

Q. Wasn't that fact of the arrest of these two men called to your attention after you made a report, after you visited Third Avenue? 20

A. No, were sent right to Third Avenue

Q. You made your report after you came back from Third Avenue, didn't you?

A. Well, we spent there all day that day.

Q. Do you mean all of Monday?

A. Yes, sir.

Q. You went there in the morning?

A. Yes, sir.

Q. Didn't you come back and report to the officer?

A. No, it was in the evening when we reported back. 30

Q. You reported to Chief Tenney?

A. Yes, sir.

Q. The result of your observations there—what you had found out?

A. Yes, sir.

Q. When you made your report that evening to Chief Tenney, didn't you know that Antonio Chippani and Paul Capezza had been arrested, charged with that crime?

A. No, sir. 40

Q. Didn't you know that they were there at that time?

A. No, sir.

Q. Didn't you know that they were in custody?

A. Not any more than I knew they were going to the hospital. Anything further I did not know.

Q. Do you mean to say that you didn't know these two men were at police headquarters?

A. No, sir.

10 Q. In your investigation down there you found some drops of blood?

A. Yes, sir.

Q. How large was the drop, the first one, you found?

A. Oh, I suppose—

Q. Size of your thumb nail?

A. A little larger.

Q. Little larger than your thumb nail?

A. Yes, sir.

20 Q. And all those little drops up Third Avenue were just about the same size?

A. No, they seemed to increase.

Q. About the size of two thumb nails?

A. Yes, as big as the end of your thumb.

Q. How did you arrive at the conclusion that they were blood spots?

A. I suspected that they were.

Q. You suspected?

A. Yes.

30 Q. You made no examination as to that?

A. No.

Q. But when you saw those things on the sidewalk up there, you suspected that they were blood spots?

A. Yes, sir.

Q. And they were on the pavement itself, weren't they?

A. On the pickets—on the fence.

Q. And a great many people had been up and down there, hadn't they?

40 A. Yes, sir; I suppose they had.

Q. But when you got to this place—this house of Paul Capezza, you found a crowd of people out there, didn't you?

A. In the alleyway.

Q. And a crowd of people where the man had laid?

A. I suppose he had laid; yes, sir.

Q. Did you notice about the appearance of the gate, whether it was off the hinges or broken, or not?

A. No, sir; I did not.

Q. You didn't notice that?

10

A. No, sir.

Q. And did you notice that there was an appearance of a scuffle inside of that place?

A. No, sir.

Q. Could you tell whether there had been a scuffle, or not?

A. Well, you couldn't very well, because there was flagstones there, and just a small space from the flagstones to the fence.

Q. There wasn't any snow on the ground then, was there?

20

A. No, sir.

BY FIFTH JUROR.

Q. Was there spots of blood, or a pool of blood at Third Avenue and Palmer Street?

MR. WILSON: No, just a spot.

THE COURT: Let the witness answer.

30

Q. I understand spots of blood at Third Avenue and Palmer Street?

A. A spot there on the curb stone.

Q. No pool of blood?

A. No.

BY MR. WILSON.

Q. Did you say spot, or spots?

40

A. A spot with spaces between them.

Q. I understood you to say they found a spot of blood?

THE COURT: Ask him what he said.

BY MR. SWIFT.

Q. Describe exactly what you mean by the spots of
10 blood?

A. There was a spot of blood right on the curbstone here. First spot that we saw. Next spot was about here, and then there was a spot here which was a little larger. It increased going along up here to this fence and there was blood on the fence. Also blood here to here, into this alley, and about here is where there was a pool of blood.

DOMINIC CICCONE, a witness produced on behalf of
20 the State, being duly sworn according to law on his oath, saith:

DIRECT-EXAMINATION BY MR. SWIFT:

Q. Mr. Ciccone, where do you live?

A. Nutley, New Jersey.

Q. What is your business there?

A. My business is shoemaker and I do different—

30 Q. Speak louder.

A. A shoemaker.

Q. Do you have any other business?

A. I have a candy store; yes, sir.

Q. A what?

A. A candy store.

Q. What about the saloon?

A. Saloon is in Belleville.

Q. That is very near Nutley, isn't it?

A. It is about fifteen minutes walk.

40 Q. On the outskirts there?

A. Yes, sir.

Q. Do you recognize this man here (Indicating defendant)?

A. No, sir.

Q. You never saw him before?

A. Never.

Q. What?

A. I saw him when he come in the saloon.

Q. That is what I asked you. You have seen him before?

A. Never seen him before.

10

Q. But you have seen him before today?

A. Oh, well, I can't tell either.

(Interpreter used here).

Q. Ask him if he has ever seen this man before today?

A. I didn't take a good look at him before. Now I see him, and I saw him when he came into my saloon.

Q. When did he come to your saloon?

A. I can't say, because I wasn't there at that time. 20

Q. When did you first see him at your saloon?

A. When I was called by my bartender that he wanted to hire the rooms.

Q. When was that?

A. The seventeenth of February.

Q. What time of the day?

A. Around eleven o'clock.

Q. Did I understand you to say you were called by your bartender. What for?

A. They wanted to hire some rooms.

30

Q. Who do you mean by they?

A. These two. Himself and another one was with him.

Q. This man here (Indicating defendant) and another man who was with him. What did they want?

A. They wanted to hire three rooms.

Q. What if anything, did this man tell you about it—why he wanted them?

A. He asked me if I had any rooms to hire, and I said yes.

40

Q. Did he say what he wanted to use them for?

A. For living purposes.

Q. Did he say for whom?

A. For himself. He wanted to move his family there.

Q. Did he say anything about where he come from?

A. He told me that he came from New York.

Q. Did he say why?

A. I asked him why, and he said that there wasn't
10 any work there and he wanted to move out here.

Q. Ask him if he knew this man, or had ever met him before that day?

A. No, sir; never.

Q. Did his family move there?

A. No, sir.

Q. Ask him if he remembers the following Saturday, when the officers were there?

A. Yes, sir.

Q. Was he there at the time the officers were
20 there?

A. Yes, sir.

Q. You were there?

A. Yes, sir.

Q. Where was this defendant at the time the officers approached the building?

A. Playing cards.

Q. Whereabouts?

A. In the saloon.

Q. Could they see the street from where they sat
30 playing cards?

A. Yes, sir. They have a window against the table so they see anybody come along the street.

Q. Did you see this man run out?

A. Yes, sir.

Q. How soon before the officers came in?

A. Well, only in about twenty seconds, I guess.
Not any more than that.

Q. Ask him if it wasn't the other man that rented the rooms, instead of Mangano?

INTERPRETER: I don't understand. Put the question to him again.

Q. Wasn't it the other man that was with Mangano that rented the rooms—hired the rooms?

A. He hired he rooms from me, but they both came together. They always talked together. 10

Q. And didn't the other man do the talking?

A. Yes, every once in a while they talked to themselves, too. They asked me a question because they see a bed in the room and said if I want that bed for sale. I say yes, and so they asked me how much I wanted and I said three dollars. Well, all right, I going to board with this man, as I need a bed, so if you got that for spare to sell I buy it of you. I says, alright, any time you move I let you have the bed for 20 three dollars.

Q. You told the other man that?

A. Yes, sir.

Q. Didn't the other man pay for the rooms?

A. Yes, sir; that man gave me two dollars on deposit.

Q. For the rooms? Not this man, but the other man?

A. I told the man, because this fellow been talking in the saloon, I says, here, if you want the room I want something on it. Yes, he says, I get a bed, I will give you two dollars. When we come to move, he says, we will give you the balance. 30

Q. Then the other man gave the two dollars?

A. Yes, sir.

Q. And he said he was from New York?

A. And he said he was from New York.

Q. This man came back on the twenty-second of February, to your saloon; did Mangano and all the rest drink there? 40

- A. Yes, sir; every one.
- Q. Were you present? You were there?
- A. Yes, sir; I was there.
- Q. Do you know what Mangano drank?
- A. Why, they drink once in a while.
- Q. What did he drink, beer, or what?
- A. Beer.
- Q. Mangano?
- A. Yes, sir.
- 10 Q. Were the policemen there?
- A. Oh, well, I tell you. My bartender was there; I don't know if he drinks beer. I don't think they drink no beer, no.
- Q. When the two policemen were there and the other people, and Mangano was up before the bar, what did he drink? What did the officers let him drink? What did they say he must drink?
- A. Take a drink of water.
- Q. Who did that—who told him to drink the water?
- 20 A. One of the officers was there.
- Q. Was he the Italian, or not? Did he speak Italian?
- A. Yes, he speak Italian.
- Q. With the broken nose?
- A. Yes, sir.
- Q. And what kind of water did this Italian officer tell you to give to this man?
- A. Exactly I don't know what kind of water it was. I know he did drink water. I won't sell over the bar, but my bartender was there.
- 30 Q. Was it clean water or dirty water?
- A. I couldn't tell, because I wouldn't notice it.
- Q. Did you notice what the officer did to Mangano? Did he hit him?
- A. Well, I don't know; they shake him a little bit when they brought him; they said, you must not do that. They said, you left the man with five children on the street. He says, you killed the man.
- Q. (Repeated. Did you notice what the officer did
- 40 to Mangano? Did he hit him?

A. I didn't see whether they hit him, or not. When they got a hold of him they shook him.

RE-DIRECT EXAMINATION BY MR. SWIFT:

Q. You say that the other man said he was from New York. What did this man say about where he was from?

A. Both say from New York.

Q. When you speak of water in connection with the saloon, when you serve water you serve seltzer water, don't you, as a rule? It isn't plain water, is it? 10

A. I don't know, because I don't wait. It is my bartender.

RE-CROSS-EXAMINATION BY MR. WILSON.

Q. Didn't Mangano say he was from Elizabeth—this man (Indicating defendant)?

A. No, he says he was from New York. 20

FRANK FERRO, re-called,

DIRECT-EXAMINATION BY MR. SWIFT.

Q. You have testified already as to the stabbing of Dominic Cervasi?

A. Yes.

Q. And you also testified that the stabbing was done by Dominic Mangano? 30

A. Yes, sir.

Q. Is Dominic Mangano in court?

A. Yes, sir; he is here.

Q. Where is he? Is it this defendant here?

A. Yes, sir.

Q. How long had you known Dominic Cervasi?

A. I knew him in Italy and I knew him here.

Q. I show you photograph Exhibit P' 10, and ask you if you can identify that photograph? 40

A. It is Cervasi. I saw it also yesterday.

Q. And he was the one that was stabbed on the night of February sixteenth by Dominic Mangano, the defendant here?

A. Yes, sir.

Q. Do you remember being in Matty Wade's saloon on the twenty-ninth of January?

A. When the murder was committed?

Q. No, before the murder was committed, when
10 Cervasi and Mangano were playing cards on a rainy day?

A. I don't remember.

Q. You don't remember what, the day, or you don't remember their playing cards there before the sixteenth of February?

A. The day I don't remember.

Q. Yes, well, were you in Wade's saloon some time before the sixteenth of February, when Mangano and Cervasi had any trouble over cards?

20 A. Yes, sir; I was there.

Q. What did you see and hear as to any trouble?

MR. WILSON: I object. Here we are going over the direct testimony.

MR. SWIFT: No, I didn't bring it out on his direct. I forgot to ask him about it at the time.

THE COURT: Proceed.

30 A. I saw that they had a little quarrel on account of the playing of the cards.

Q. What was said?

A. They were talking—mad with one another.

Q. Can't you tell us what was said?

A. They were talking about the Primari, who was the boss. That is what it was.

(NO CROSS-EXAMINATION.)

DOMINIC MANGANÒ, the defendant, being duly sworn according to law on his oath, saith :

DIRECT-EXAMINATION (Through Interpreter)

BY MR. WILSON.

Q. How old are you?

A. Twenty-eight years old.

Q. How long have you been living in Elizabeth? 10

A. Three years.

Q. What is your business?

A. To dig dirt in ditches.

Q. And for whom did you work before you were arrested?

A. With Matty Wade.

Q. The old man, or the young man?

A. With his son, Tony.

Q. Tony is the foreman for his father Matty, isn't he, the Sr.? 20

A. Yes, sir.

Q. And Matthew Wade is a contractor in the city?

A. Yes, sir.

Q. And a saloon keeper?

A. Yes, sir.

Q. Where did you get your pay for the work that you did when you worked for Matty Wade? Where did he pay you?

A. In the saloon. 30

Q. Were other men paid that way, too, in the saloon?

A. Yes, all was paid in the saloon.

Q. Did you know Dominic Cervasi?

A. Yes, sir.

Q. How long had you known him?

A. I know him ever since I remember. We were raised together in the old country, and here.

Q. Were you always good friends?

A. Sure; yes, sir. 40

Q. Did he visit your house?

A. Yes, sir.

Q. Did you go out together?

A. We always went out together. We worked together also.

Q. Was he related to you, or your family.

A. He was God-father of mine, and my wife stood up for one of his children.

Q. Did you like Cervasi?

10 A. Sure.

MR. SWIFT: That is a conclusion. Is that a fact of evidence?

MR. WILSON: He says so.

Q. Did you stab Cervasi on Sunday, February sixteenth, on Third avenue?

A. No, sir.

20 Q. Did you stab him anywhere?

A. Never. How would I stab him?

Q. Did you shoot him?

A. No, sir.

Q. Did you shoot at him?

A. No, sir.

Q. It is said that you killed him on the corner of Third avenue and Palmer street on Sunday evening, February sixteenth. Is that true, or false?

A. No, sir.

30 Q. Did you see Cervasi on Sunday, February sixteenth, in the afternoon?

A. Yes, sir.

Q. Where did you meet him that afternoon?

A. The first time I saw he was coming out of the door of Frank Cistaro's.

Q. Where did you next see him?

A. In the saloon of Matty Wade.

Q. And what time did you see him in the saloon of Matty Wade?

40 A. Around four o'clock, or half-past four.

Q. And how long did you stay in the saloon with him?

A. We stayed in scarcely an hour.

Q. What time did you come out of the saloon?

A. Nearly half-past five—not six o'clock.

Q. And did anybody come out with you?

A. Six of us came out. I, Alexander Londino, Frank Cistaro, Joseph Caputo and Dominic Cervasi.

Q. Did you come out together, or not?

A. Yes, sir. 10

Q. Where did you go to?

A. We went home.

Q. Where else did you go that evening?

A. We got as far as the house of my uncle, Nicola Londino. Alexander Londino, Frank Cistaro and Joseph Caputo went away. We were in front of the sidewalk. He says, God-father, let us go to the God-mother, I have got something to say to you. I said, go and do what you have got to do; I will wait for you, and then we will go home together. He told me— 20

Q. He says he. That is Cervasi, is it?

A. Cervasi says, well, you come too. Let the both of us go together.

Q. To where?

A. In the house of Nicolo Londino.

Q. Go on?

A. In the house of Nicola Londino we found that they were playing a guitar and a mandolin. The nephew of Cistaro was playing the guitar. Vincenzo Puta was playing the mandolin. Frank Forka was also there sitting right beside him. Also a boarder that lived in my house was also there. As we entered we found that they were playing. He says, god-father, we found just what we were looking for. He says, some on, let us dance together, and we started to dance. 30

Q. Who said that?

A. Cervasi.

Q. Cervasi said what?

A. He says, let us dance together, I and he. We started to dance and I asked the musician did they have any beer to drink. Haven't you got any beer? We haven't got any beer, they replied, and even ain't got any money. I took a dollar out of my pocket and I gave it to Joseph Forka, and he brought six bottles
 10 of beer. After there were so many people there, there wasn't beer enough to give each one a bottle, we divided by the glass. Mrs. Nicola Londino was also there. Then he told me, he says, isn't there any more beer.

BY MR. WILSON.

Q. Who says that, Cervasi?

A. Cervasi, and I said, where he went for the beer
 20 they said that they didn't have any more. I said to Forka, see if you can get some beer elsewhere, and if you can't get any beer, get wine if you can find it. Joseph Forka brought half a gallon of wine, including the jug. We took a glass and we started to drink. Everyone that was in the place. I with Cervasi as we were dancing. He had a glass in his hand and I had another one, and we grabbed a hold of our hands—locked arms, and we drank in this manner (indicating); half a glass of his I drank, and half a glass of
 30 mine he would drink.

Q. What did that evidence? Was that a feeling of friendship, or not?

A. Showing that we were at the same time a god-father and friends.

Q. Go on. What next happened after you danced?

A. We were dancing, then came Nicola Londino, Frank Ferro, also Vincenzo Zbarra, that is in jail. After came in the brother of Frank Pudeo. When they came in I said, see if there is any liquor and give
 40 them a drink—let them drink. Then they took the

glasses and each one got a half a glass apiece. After they had drank the wine my wife came. My wife said to me, you went out this morning and you never came back, and I said, I am here with my god-father, here with my uncle, here with my townsmen; there is no danger of me getting lost, and she said to me, let us go home because I left my son Alexander on the bed. He might wake up and roll to the floor. Then Nicolo Londino said, stop playing music, it is late. He says that because his son might fall out of 10
bed, and tomorrow we have to go to work. Then my wife went out first, and I said to the god-father, let we go. I said to Cervasi, god-father, let we go. He replied, yes, let us go. My wife went out ahead, I after, Cervasi after I. When Cervasi went out after me, Cervasi said to me, let god-mother, your wife, go a little ahead, I want to urinate right near this fence. Saying that my wife went in front, when she had reached near the sidewalk, and all the others that were in, they 20
came out also. Then I said, god-father, are you through. My uncle, Londino, replied what do you want. He says, let him go. He lives away down there, and I will companion him where he lives.

Q. What is that?

A. I will companion him to where he lives.

Q. Who said that?

A. I said that. He says, let him go, because he has to go away down there, I will companion him to where he lives.

30

By MR. SWIFT.

Q. Who said that, Mangano?

A. I.

By MR. WILSON.

Q. Go ahead?

40

A. Then Nicolo Londino replied—said, you go away with your wife, I will take him home.

Q. Londino said that?

A. Yes, sir. I left him. Some were standing against the fence, some were urinating, and I left them with my wife and went home.

Q. Who did you find urinating near the fence?

A. Dominic Cervasi, the one that boarded at my house, Frank, and the others were standing up there
10 also.

Q. Mention their names?

A. Nicolo Londino, Frank Ferro, Frank Pitsolo, Dominic Cervasi, and the others were inside.

Q. Where is Frank Pitsolo?

A. That I don't know. He didn't come home that night.

Q. Have you ever seen him since?

A. No, sir.

Q. Did he leave the town that night?

A. How do I know whether he left, or not. I
20 didn't see him.

Q. When you went home from Londino's house, where did you leave Cervasi?

A. Near the house, near the door of Nicolo Londino; there was a little fence right near there, and he was right against it.

Q. And who else did you leave with Cervasi when you went home?

A. Frank Pitsolo, Frank Ferro, Nicolo Londino,
30 and Cervasi. Frank Ferro was inside. He didn't come out.

Q. Is Frank Ferro, that you have described, and Nicolo Londino, the men you describe, the two men that have been on the witness stand here?

A. Yes, sir.

Q. Did you ever see Cervasi after you left him at Nicolo Londino's house that night?

A. No, sir. I didn't see him any more.

40 Q. Did you go home with Cervasi?

A. No, sir. Cervasi I left in there with them.

Q. What was your condition that night as to sobriety? Were you drunk or sober?

A. I was drunk.

Q. What was the condition of Londino and the others?

A. When I went home the lamp was lighted and the stove was lit and it took a little effect on me because I had drank so much.

Q. Made you sick? 10

A. It made me throw up.

Q. What was the condition as to sobriety of Londino, and Frank Ferro, and Vincenzo Zbarra that night?

A. How can I tell. I am not in their memory. I don't know.

Q. Were they drunk or sober?

A. They were more drunker than us.

Q. Did he have any knife that night?

A. I don't know whether they had one, or not. 20

Q. No, he (indicating witness)?

A. I never carried a knife, never.

Q. Did you have a stiletto that night?

A. No, sir; never.

Q. Did you have any pistol?

A. No, sir. I never carried one. You can ask George Novello, that he had an eye on me, and he used to search me every night, to see whether I carried a weapon, or not, and he never found anything on me. 30

Q. George Novello isn't a good friend of yours, is he?

MR. SWIFT: Objected to as leading.

(Question withdrawn).

Q. Did you have any pistol or knife when you 40

were at Matty Wade's saloon that afternoon of February sixteenth?

A. I never had a gun or a knife.

Q. Did he cut a cigar with a knife at Matty Wade's saloon that afternoon?

A. I never cut a cigar with a knife. I didn't need a knife to cut a cigar; I can do it with my hands.

Q. Did he use a knife to cut a cigar that afternoon? I want that answered.

10 A. No, sir.

Q. Did you ever threaten Cervasi's life in Matty Wade's saloon?

A. No, sir.

Q. On the evening, or the afternoon of February sixteenth, did you treat Cervasi that afternoon?

A. As we entered the saloon, on one bench was sitting down Cervasi, Joseph Caputo, Francesco Cistaro. As we entered, Frank Ferro, he had fourteen checks for drinks. They were sitting down on that
20 side. We hadn't seen them. There were so many people there that we couldn't see them. When we got together near the stove where the pool-room is and we saw that they were sitting down, the three of them together, and I said to him, hello, god-father, and he replied, hello, god-father, and he says to me, god-father, I didn't see you before; he says, have a drink, have a glass of beer.

Q. That is, Cervasi says to him?

A. Yes, sir.

30 Q. What was that?

A. Cervasi says to him, I didn't see you before; have a drink.

Q. Go on?

A. I replied, I can't drink with two mouths, as I had a glass of beer in my hand. After I finish this I will have another one. As I took the glass then we all got together, there was six and three is nine altogether, right near the billiard table. We were all drinking together, god-fathers at the same time, and
40 uncle. As we were drinking Matty Wade came—

Q. Which one, the old or the young man?

A. The old man. The one with the beard. He says, I am happy to see all you townsmen all well fixed. He says, because we are all townsmen and god-fathers and uncle and nephews, sure we all stay together and drink together.

Q. Mangano says that?

A. I and the others also. Matty Wade said, of all the townsmen that there is here of your house, the best of the lot is Alexander Londino and you. 10

Q. That is, meaning Mangano?

A. Of all the townsmen that you are all here, Alexander Londino is the best one. And we all replied, why is he the best one. Matty Wade replied, because he is old and he married a young woman. We all laughed at him, because we said that he was an old man and he still talked about the women.

Q. Referring to Matty Wade?

A. Yes, sir. Then we started to drink and he says, we want to drink with all, for to each one pay 20 for a turn apiece. Then they all replied, we all pay for whatever we get—each one pay for whatever he gets. As we were getting together near the counter, we were taking a glass of beer by the hand, we sat down near the pool-room, and wherever we as, he was right near us.

Q. Who was?

A. Nicolo Londino, Frank Ferro, I, Dominic Cervasi, Frank Degalo, the one who is in jail, Zbarra, in whole there were nine persons. 30

Q. Matty Wade, Jr., says that you said to Cervasi, when you were angry with him at one time in the saloon, that he would not live to see the first of March. Did you ever say that?

A. I never said that. I never threatened him. We were four or five persons that we worked with him; when we worked, and when we were not working we were always playing cards together every day.

Q. Were you ever charged with cheating at cards by Cervasi? 40

A. No, sir, never.

Q. Did you ever cheat at cards in Matty Wade's saloon?

A. No, sir. He says, how can you cheat.

THE COURT: We are not trying that question. It don't make any difference whether he cheated at cards, or whether he didn't.

10 MR. WILSON: No, it is the fact of what Matty Wade said.

A. How could I cheat cards, as they could see when I got out the cards with my hands, they would all have eyes.

BY EIGHTH JUROR.

20 Q. Was this the morning of the 17th this happened? He made a statement there that his little boy was in home. Let us hurry home, I have got to get home. He was in Nutley the next morning, wasn't he?

THE COURT: That is a question of fact.

BY MR. WILSON.

Q. Were you in Nutley on the 17th of February?

A. Yes, sir.

30 Q. Why did you go to Nutley?

A. I went to Nutley for the reason that I heard that my god-father got killed, and I went to my uncle, Nicolo Londino, and I asked him who had killed him, and he didn't know, and he replied, he says, there is so much trouble around here, you had better go and live somewheres else. Let us go out to Elizabeth.

Q. Who said that?

A. I said that.

40 BY EIGHTH JUROR.

Q. I want to know if he was out of work, and if he went to Nutley to go to work or to seek work?

MR. WILSON: I will get at that.

Q. Did Londino tell you to go?

A. No, sir.

Q. Were you working for Matty Wade on September 17th, or had you finished your work in the city—I mean February?

10

A. No, sir.

Q. No, sir, what? You were not working for Matty Wade?

A. Do you want to know if he was working on the 17th of February?

Q. Had you completed all your work for Matty Wade, or were you employed there?

A. His son had discharged me from the work.

Q. Had all the work been completed?

20

MR. SWIFT: That is leading.

A. No, sir.

Q. You had been discharged by the son; which son?

A. Tony.

Q. What was the reason given?

A. Because the ones had drank and hanged up in the saloon.

Q. Speak a little louder?

A. Because the ones that hanged up in Matty Wade's saloon and run up a big bill, when pay day would come, why they would take it out and there wouldn't be much coming to them, and he would let them work; but the ones that they wouldn't hang up and wouldn't buy much beer off him, he would discharge.

30

Q. And was Mangano one of those men that was discharged?

A. I, and there were a lot of other persons.

Q. And was that the reason you were discharged, because you didn't drink all your money in the saloon?

40

A. Sure, that is what it is for. When I worked there for fifteen days, and we played cards every evening there, and when pay day would come, all was coming to me was \$1.10.

Q. Then did you go to Nutley?

A. Yes, sir.

Q. Did you get employment in Nutley?

A. I found out whether there was any work and they told me that nobody does when there isn't any
10 work, but as soon as the spring comes there will be plenty of work, and that is why I looked for the house, because I had to pay the month—this month for Elizabeth, and I wanted the house for the next month to move in.

Q. Did you tell the people that you rented it from where you came from?

A. They didn't ask me where I come from, or anything.

20 CROSS-EXAMINATION BY MR. SWIFT.

Q. Now, on February 15th, where were you working?

A. No place.

Q. How long before February 15th had you worked?

A. One week before.

Q. What was your work?

A. To dig dirt in ditches.

30 Q. When was it you say that Matty Wade's son discharged you?

A. I can't remember when it was, but it was a week before the—this thing happened.

Q. Did he discharge you because he had no more work?

A. They had plenty of work. He told me that the one that gives me I will let him work, and the one that don't give me I will send him away.

Q. What do you mean by "give me"?

40 A. The ones that drinks liquors in the saloon.

Q. Who told you that?

A. Matty Wade, when he paid us.

Q. Which Matty Wade, Sr. or Jr.?

A. The old one with the beard.

Q. Did Matty Wade tell you that a week before February 16th?

A. Yes, sir; the night that he paid us.

Q. Did he discharge anybody else?

A. Lots of persons—a whole lot.

Q. Did he discharge Cervasi?

10

A. He didn't send him away because Cervasi still owed him two dollars.

Q. How do you know that?

A. Because when his son Matty would make the account, I would see it with my own eyes.

Q. Whose accounts?

A. The accounts of the beer that they would play for, and the accounts of the beer that they drank.

By MR. WILSON.

20

Q. That is the saloon book?

A. Yes, sir.

By MR. SWIFT.

Q. Then you kept tab of how much Cervasi was owing, did you?

30

A. Two and a half dollars Cervasi still owed Matty.

Q. When did you see that?

A. That night that he paid us—pay night.

Q. Did you say anything to Matty Wade about that that night?

A. I said to him, what is the use of working just for the beer. We can't pay the rent of the house, and we still owes you.

Q. Is that all?

A. That is all.

40

Q. You say that Cervasi was your god-father. What do you mean by that?

A. It means that my mother stood up for one of his children.

Q. One of his children?

MR. WILSON: His wife, you mean.

10 A. Yes, his wife.

Q. What?

A. My wife stood up for one of his children.

Q. His wife stood up for one of Mangano's children—Cervasi's children, I mean?

A. He stood up, not at the christening, but when he was confirmed.

Q. Then Cervasi had some children, did he?

A. Sure.

Q. And a wife?

20 A. Yes, sir.

Q. Where are they, do you know?

A. In Italy.

Q. How many children has he, do you know?

A. Four or five he has.

Q. Where first did you see Cervasi on Sunday afternoon?

A. In front of the house of Frank Cistaro.

Q. Where is that?

30 A. I know all the streets that I walk in Elizabeth, but I don't know the names.

Q. How long have you lived there?

A. Three years; but I don't know what the names of the streets are.

Q. Three years, and you don't know the names of the streets down in Peterstown?

A. Because I don't know how to write.

Q. You went with him to Wade's saloon, did you?

A. No, sir.

40 Q. Do you mean to say that you saw Cervasi in the afternoon in front of Frank Cistaro's house?

MR. WILSON: What afternoon is that?

MR. SWIFT: February sixteenth.

A. I saw him come out of the house of Cistaro, and I asked him did he live there, and he says, no, I don't live there.

Q. Didn't you know where he lived?

MR. WILSON: I object. What has that got to do with the case. 10

MR. SWIFT: I want to know why he asked him that.

THE COURT: Do you object to the question?

MR. WILSON: I object.

THE COURT: I will overrule the objection. Answer the question.

Q. (Repeated) Didn't you know where he lived?

A. I knew where he lived, but I thought that he had moved away, and that is why I asked him. 20

Q. Yet you say that you and he were friends and visited each other. Didn't you say so?

A. Yes, sir.

Q. How did you visit if you didn't know where he lived?

A. I knew where he lived—where his residence was.

Q. And yet you asked him if he lived at Frank Cistaro's. Is that right? 30

A. When he came out I asked him. I thought he had moved away, because it was only fifteen days before that that he had moved out of Nicolo Londino's house.

Q. Do you smoke stogies?

A. In my mouth never entered a cigar or tobacco of any kind.

Q. Do you know what a stogie is?

A. Yes, sir.

Q. What is it? 40

A. Cigars that they cost one cent, that long (indicating).

Q. How do you know that they cost one cent?

A. The ones that boarded with me smokes them and buys them.

Q. And do they generally cut them in two and smoke half of them at a time?

A. Some smokes the whole at once and others that cuts them in half.

10 Q. You say you never smoked any?

A. No, sir; tobacco never entered my mouth.

Q. Does Matty Wade sell them?

A. He has them in the saloon, and they cost five cents apiece what he has.

Q. During the several treats that you had there in Matty Wade's saloon, didn't you take a cigar once?

A. I never, never; I always took beer. What is the use of my taking a cigar, I never smoke.

20 Q. I ask you as a matter of fact if you didn't take a cigar?

THE COURT: He says he didn't; he took beer.

Q. What did you and Cistaro talk about in Wade's saloon?

A. He was making fun of my uncle because he had married a young woman. That is what he was talking about.

30 Q. Who was making fun, Cistaro or Cervasi?

A. Cistaro.

Q. Not Cistaro—Cervasi?

A. We were all talking—we were laughing. The whole of us.

Q. Were you and Cervasi talking to each other in Wade's saloon?

A. Sure we talked. Why not?

40 Q. Did Cervasi say that they had had some trouble sometime before, and they would like to make up and be friends and ask him to have a drink?

A. I never had any trouble with Cervasi. Every time we met he treated me to a drink, and I treated with a drink.

Q. Did he want to treat you on this Sunday afternoon?

A. Sure he wanted to give me a drink.

Q. Did he treat?

A. No, sir; he didn't give me a drink in there.

Q. Why not?

A. He invited me to drink, but I had drunk so 10
much, where was I going to put it.

MR. WILSON: Wait a minute. That is not exactly the answer, if the Court please. He said something about having two glasses in his hand, didn't he.

MR. SWIFT: Put the question to him, and I want to know what he said.

MR. WILSON: So do I. Why he refused the invitation to drink. 20

MR. SWIFT: Ask him the question why.

A. I didn't refuse Cervasi to drink.

Q. What?

A. I didn't refuse a drink from Cervasi.

MR. WILSON: What else did he say?

Q. Did he have a drink on Cervasi? 30

A. Never more I said—we said.

Q. That is the time he showed up the ten cents, wasn't it?

A. I never showed the ten cents in Matty Wade's saloon.

Q. Didn't you say so on direct examination?

THE COURT: No.

Q. Did you go out of the saloon with Cervasi? 40

A. When we went out all went out together.

Q. And you all went down to the corner of Amity street, as I understand it?

A. Yes, sir.

Q. What did you do when you got to the corner of Amity street.

A. Nothing we done.

Q. What become of the others?

A. There was nothing done of the others.

10 Q. What became of the others is what I asked you?

A. The ones who were with us that came out?

Q. Yes, you say you all came out together?

A. Three persons remained in the saloon.

Q. I am talking about the corner of Amity street and Third avenue. When they stopped there, this witness and Cervasi, what became of the other people?

A. There was nothing done.

Q. What became of Nicolo Londino—not Nicolo, Alexander Londino, Cistaro and Caputo?

20 A. Nicolo Londino was left in the saloon; Frank Ferro also, and Vincenzo.

Q. That is Zbarra?

A. Yes.

Q. Where was Cistaro, Caputo and Alexander Londino?

A. He was with us.

Q. Where did you and Cervasi go from the corner of Amity street?

30 A. Along the sidewalk to go to the corner of Palmer street. We didn't arrive at the corner. We got right at the house of my uncle, 566.

Q. 566 Third avenue?

A. Third avenue; yes, sir.

Q. What do you mean by saying that you went to Palmer street, or near to Palmer street?

A. We didn't go there. The sidewalk that goes to the corner of Palmer street.

Q. Where did you go? How far to Palmer street?

40 A. It might be about ten steps from the house to the corner.

Q. What house?

A. Of Nicolo Londino. There is between two houses and a saloon. I don't know how many steps there is.

Q. Did you go in that house of Londino's then?

A. Yes, sir.

Q. And the other men, that is, Alexander Londino, and Cistaro, and Caputo, they went off home, didn't they?

A. Yes, sir; they went home. 10

Q. Then Cistaro didn't go in Londino's house with them, did he?

A. No, sir.

Q. I understood him to say he did.

MR. WILSON: No, he said he found Cistaro's nephew.

Q. How long were you in Londino's house before Nicolo Londino, Frank Ferro and Zbarra came there? 20

A. It might have been half an hour, or three-quarters of an hour.

Q. And during this time you bought and paid for beer and wine, did you?

A. Yes, sir.

Q. And how many were there to drink it?

A. The house was full of people.

Q. Were there any more there than those that you have already mentioned? 30

A. No, sir.

Q. Who went and got this beer and wine?

A. Frank Forka.

Q. Did you or Cervasi go out at any time for it?

A. No, sir.

Q. Did you pay for all of it?

A. Yes, sir.

Q. What was the first thing said or done after Nicolo Londino came home?

A. Nicolo Londino says, tomorrow is a working 40

day, stop playing the music and go home, because I have to get up early tomorrow.

Q. That was Sunday. Did he say it was Sunday? Remind him that it was Sunday?

A. He said that next day was Monday.

Q. Then did they get ready to go home after that?

A. We were ready to go and my wife came and called me.

10 Q. Was that the first your wife was there? Wasn't she there when you went there in the first place?

A. No, sir.

Q. Who went home first?

A. My wife in front, and I after her. Us two went home first.

Q. Did she—did you go home with your wife then?

A. Yes, sir.

Q. Did she go out of the house again that night?

20 A. No, sir.

Q. Did she see Vincenzo Zbarra that night?

A. How could she see him? I went to bed that I was drunk, and he went to bed that he was drunk. How could she see him?

Q. How do you know he went to bed drunk?

A. I went home drunk. I don't know whether he was drunk, or not.

Q. You don't know whether Zbarra was drunk, or not?

30 A. He was a little full when I saw him. Whether he drank any more I don't know.

Q. How drunk were you? Did your wife have to help you home?

A. I was so fixed that I could walk. I didn't fall or anything—I didn't stagger.

Q. Did you see Vincenzo Zbarra at Nicolo Lodi-

no's?

A. Yes, sir; why not?

Q. Did he go home with you and your wife?

40 A. No, sir. He remained there with them.

Q. Did he board at your house at that time?

A. Yes, sir. I said to him, are you coming—I said to him, are you coming, and he said, leave the door open and I will come soon.

BY THE COURT.

Q. Did he come?

A. I didn't see whether he came or not.

Q. What time did you get up the next morning? 10

A. Eight—half-past eight; I didn't have to go to work; what was the use of getting up early. I don't remember what time it was; it might have been a little later.

BY MR. SWIFT.

Q. Where was Cervasi when you left Nicolo Londino's house?

A. He was laying near a fence right near the door, all together. 20

Q. Laying near a fence?

A. He was staying near a fence; some were urinating and others were standing up.

Q. I thought you said you and your wife went out and went home before any of the rest went out?

A. We came out in front, and they came out after us. They remained to urinate and I asked—I said, god-father, are you coming, and he replied, as soon as I urinate. 30

Q. Did you wait for him then?

A. Nicolo Londino—

Q. Did you wait for him?

INTERPRETER: Do you want the answer?

A. Nicolo Londino—

THE COURT: We are entitled to have an an- 40

swer to the question, not to the explanation this witness makes. He doesn't answer questions. He undertakes to do it, and then he gives his own explanation after, all the time. He ought to be told by the interpreter that he must answer the questions when he is cross-examined.

10 Q. (Repeated) Did you wait for him then? When Cervasi said he would be right along, that he wanted to urinate, did you wait for him?

A. No, sir.

Q. Why not?

A. Because Nicolo Londino replied, what do you want of him.

Q. Nicolo Londino said that, what do you want of him?

A. Yes, sir.

Q. Well, what next was said?

20 A. I says, we will go together until we reach my house.

Q. Who said that?

A. I said that.

Q. What was it you said now? Let us have it again?

A. I said, let him come as far as my house and then he can go to his own house.

Q. Who did you say that to?

A. To Nicolo Londino.

30 Q. Where was your wife then?

A. She was on the sidewalk.

Q. Did Cervasi go with you then as far as your house?

A. No, sir.

Q. Why not?

A. Because Nicolo Londino says to me, go ahead home with your wife, I will bring Cervasi and myself to his home.

40 Q. Where did you go then, and what did you do then?

A. I went home to my house.

Q. Where is your house?

A. Palmer street, 508.

Q. That is between Third and Fourth avenue?

A. It is near that coal yard below the saloon of Pabalo Capezza.

Q. You live on the other side from Capezza?

A. Where the coal yard is.

Q. Did you and your wife turn Capezza's corner?

A. There is where we had to pass. Where was we 10
going to pass?

Q. Did you turn the corner around Palmer street?

A. Yes, we turned there.

Q. On the same side of the street as Capezza's saloon?

A. On the other side we passed.

Q. When you turned there and you went down Palmer street to go to your house, where were the other men?

A. They were in yet. They hadn't come out on the 20
sidewalk yet.

Q. How do you know?

A. I didn't see them on the sidewalk. They must have been there. How do I know?

Q. Did you look?

A. I didn't put my mind to it, but I didn't see them.

Q. You were not so drunk but what you could see then, were you?

A. If they were outside I could see them with my 30
eyes.

Q. Then, as a matter of fact, you say that you didn't see Nicolò Londino, Zbarra, or Ferro, or the other men, Frank Pistolo, again that night?

A. I didn't see them any more that evening.

Q. Where were they when you last saw them, at Londino's house? Is it not Londino's house where they were when you last saw them?

A. In front of Londino's house; yes, sir; near the fence.

Q. What do you mean by in the front? A while ago you said you couldn't see them on the sidewalk.

MR. WILSON: He said on the fence.

MR. SWIFT: On the sidewalk, he said.

Q. Where were they?

A. They were in the hallway as you went to enter the house.

10

MR. WILSON: In the gateway.

INTERPRETER: He said the hall.

MR. WILSON: I would like to explain and ask you what cordura means in Italian?

THE INTERPRETER: He was in the hallway.

THE COURT: If you challenge the Interpreter, that he don't interpret correctly, I will get somebody else.

20

MR. WILSON: No, I don't do that.

Q. What hallway do you mean?

A. The sidewalk when you went to enter the house.

MR. SWIFT: That is what he means—it is an alleyway what he means, isn't it?

MR. WILSON: Yes, an alleyway inside of a hallway.

30 Q. How soon did you go to bed after you got home?

A. When I arrived I found the fire was hot—stove was hot, I just went to bed.

Q. Did you hear any shots fired?

A. I didn't hear anything.

Q. Didn't hear a shot fired. Did you fire a shot yourself?

A. I never shot.

40 Q. I am talking about on the night of the sixteenth of February. Didn't you fire off a revolver or a pistol?

A. No, sir.

Q. Have you ever told anyone that you did?

A. Even if I had shot at them, who was I going to tell it to?

Q. Have you told anybody that you did fire off a revolver the night of the sixteenth of February?

A. No, sir.

Q. You say you didn't have a knife that night?

A. No, sir. I didn't have any knife.

Q. Did you see anybody have a knife?

10

A. I don't search in anybody's house; no, sir—pockets; no, sir.

Q. Did you see anybody attacking Cervasi with a knife?

A. No, sir.

Q. Have you ever said that you did?

A. No, sir; never.

Q. When did you first hear of Cervasi being killed?

A. In the morning when I got up they told me that.

Q. The next morning?

20

A. Yes, sir.

Q. When did you go to Nutley?

A. Eight o'clock—half-past eight.

Q. Monday morning?

A. Yes, sir.

Q. Had you heard of the murder before then—before you left?

A. I heard, and I asked my uncle who had shot my god-father, and he replied, I don't know; and then I said, there is anything good left in Elizabeth for me. There is always trouble; it is better that we move.

30

Q. How did you hear of this murder?

A. In the morning everybody was saying it.

Q. Who told you?

A. In front there they were all talking about it. I went to my uncle and he told me.

Q. In front of where, they were talking about it?

A. In front of his house—Nicolo Londino's house.

Q. Nicolo Londino's house?

40

A. Yes, sir.

Q. Why were they in front of his house?

A. I went to find out information from him how is it that Cervasi was killed.

Q. You went to find out information as to how it was that Cervasi was killed. Is that right?

A. Yes, sir.

Q. Then it wasn't your uncle that first told you about the murder, was it?

10 A. Yes, sir; he told me. I asked him about it, and how they killed him, and he didn't know.

Q. Where was it he told you?

A. In front of his house.

Q. And you went to the house to find out about it? Is that right?

A. Yes, sir.

Q. Then somebody must have told you about it before you got there, didn't they?

20 A. No one told me before.

Q. Who else besides your uncle, Nicolo Londino, did you talk to about the murder?

A. There was so many people there; how can I remember who they were and who they were not?

Q. So many people where?

A. They were looking near the fence where he had fallen. There was enough blood there.

Q. Well, can't you recall anybody at all outside of your uncle?

30 A. There were enough. How can I remember?

Q. Then you mean to say that you don't remember a single person that you talked to about this murder except your uncle, Nicolo Londino, that morning?

A. I don't remember no one.

Q. How soon after you talked to your uncle, Nicolo Londino, did you go to Nutley?

A. Not even a quarter of an hour passed.

Q. How did you go to Nutley?

A. I went with the trolley car to Nutley.

40 Q. Who went with you?

A. No one.

Q. Went all alone?

A. Yes, sir.

Q. How did you come to go to Nutley?

A. One day I happened to go and see a cousin of mine in Paterson and as I passed Nutley I saw that they were cutting down some trees—

MR. WILSON: Pardon me. His cousin told him that they were cutting trees at Nutley. His 10
cousin told him that.

A. I saw it as I was passing in the trolley car. I went and visited there, thinking that there would be work for me there.

Q. How long before this seventeenth of February was it that you had been in Nutley before and saw the cutting of trees?

A. In December.

Q. Did you know of any work that you could get 20
in Nutley when you went there?

A. I didn't know nothing. I get information from the people who was there.

Q. Did you pass through Newark in order to get there?

A. Certainly.

Q. You didn't stop at Newark to look for work, did you?

A. You change cars at Newark.

Q. You didn't think of stopping at Newark to look 30
for work in Newark, did you?

A. In Newark I didn't know of anything, and I had seen at Nutley that they were cutting wood, and my mind was made after Nutley.

Q. Seen them cutting trees two months before?

A. Yes, sir.

Q. Where were those trees, alongside of the road?

A. No, far away from the road.

Q. Where did you go in Nutley to look for work? 40

A. Went where they were cutting down those trees.

Q. Were they cutting any trees in February?

A. No, sir. They got through there; there was none.

Q. Of whom did you inquire for work at Nutley?

A. The people that were there. The ones that lived near there.

Q. Who were they?

10 A. I don't know what their names. How can I know? The ones that live near there.

Q. How near Ciccone's saloon was that?

A. Near the saloon. In the saloon also we tried to find out for work.

Q. Of whom did you inquire in the saloon?

A. The people who was in there. I don't know whether they were bartender—

Q. People who came in to drink, do you mean?

A. Yes, sir.

20 Q. Was anybody at the saloon—at Ciccone's saloon staying there with you?

A. There was lots of people there, and there was one, I asked him if he could let me find a house to rent some rooms to live in there. He says, in that saloon over there, there is three rooms empty; come on, let us go to the barkeeper and find out about them.

Q. What was the name of that man, the man that was there near the saloon?

30 A. I don't know what is his name.

Q. Do you know a man by the name of Frank Luso?

A. He slept at my house. He was a boarder.

Q. He was a boarder of yours?

A. Yes, sir.

Q. Was he at Nutley with you?

A. No, sir.

Q. Did you see him on the night of February 16th?

A. In the house of my uncle I saw him.

Q. What uncle?

40 A. Nicolo Londino.

Q. Where is he now?

A. I don't know.

Q. When did you see him last?

A. That night when I left him with them.

Q. You know George Novello, don't you?

A. Yes, sir.

Q. You know Patrick Brogan too, don't you?

A. I don't know who Patrick Brogan is.

Q. Don't you know officer Brogan?

A. Two I know. I don't know him by name, if I 10
see him I might know him by sight.

Q. Well, you saw Novello in Nutley, didn't you?

A. Yes, sir.

Q. Where were you when you first saw him in the
saloon?

A. Yes, in the saloon.

Q. Did you know the man that was with him? Did
you know he was a policeman, at least?

A. There was two or three people with him dressed
like ourselves. I don't know who they were or who 20
they were not.

Q. But you saw Novello, didn't you, as he was com-
ing up to the saloon?

A. Yes, sir.

Q. Why do you say that Novello searched you every
night to find out whether you had any weapon on you?

A. Because one day he brought me to the station
house, without me comprehending what for, by force.

Q. Took you to the station house one day by force,
is that it? 30

MR. WILSON: Yes, without giving any rea-
son.

A. Because I had been out on two hundred dollars
bail, and he asked me how I got out, and I told him
that it was somebody had bailed me, and he says, no,
you have to come with me.

Q. Is that the only answer he has to make then as 40

the reason why Novello searched him every night to find out whether he had a weapon on him?

A. No, there is lots of others yet.

BY MR. WILSON.

Q. What is that?

A. There is a lot of others yet.

10 BY MR. SWIFT.

Q. Where did he examine you? Whereabouts?

A. All the parts. All over.

Q. And how often would he do that?

A. When I would come home nights he always would search me.

Q. Where did Novello live?

A. Amity street. I know where the house is, but
20 I ain't sure about the name of the street.

Q. What country do you come from?

A. Misoraca, Province of Cantazara.

Q. Is that the name of the Province?

A. Province of Catazara.

Q. That is in Italy, I suppose?

A. In Italy; yes, sir.

Q. What state?

30 THE COURT: Is this cross-examination?

MR. WILSON: I was going to object.

THE COURT: If there is some reason for this I am willing to sit here and hear it.

MR. SWIFT: I will withdraw it and put the question I am going to put.

Q. Were you convicted of a crime on the fifteenth day of December, 1905?

40 MR. WILSON: I object.

Q. And sentenced to imprisonment?

MR. WILSON: I object.

Q. Two years and eight months in Italy?

MR. WILSON: I will withdraw that objection.

THE COURT: The objection is withdrawn.
Put the question.

A. Never. This is the first time that I have been 10
in jail.

RE-DIRECT-EXAMINATION BY MR. WILSON.

Q. Vincenzo Zbarra says that he had a talk with you in jail, and you told him that if he testified against you that you would cut his head off, even if you got twenty years. Is that true or false?

A. I talked with him, but I didn't say it in that 20
manner.

Q. Did you ever say that you would chop his head off—cut his head off?

A. No, sir.

MR. SWIFT: Are you giving the language?
I object. It seems to me the question should be what he did say.

THE COURT: That wasn't what the other witnesses testified to. That wasn't all of it. This witness may very well say that he never 30
said he would cut his head off, because that wasn't what the other witness said. It was a condition, if he did something.

MR. WILSON: If your honor is going to adjourn, I will get the stenographer and give it this afternoon.

THE COURT: The jury may now retire until two o'clock.

RECESS.

DOMINIC MANGANO, recalled in his own behalf, saith:

RE-DIRECT BY MR. WILSON (By Interpreter).

Q. Vincenzo Zbarra says that in the jail one day he had a talk with you, and that you said to him, "Vin, if I get twenty years when I come out, I cut your head off," did you say that?

10 A. No, sir.

Q. Did you have a talk with him?

A. Yes, we talked.

Q. What did you say?

A. As I heard him sing at another part of the jail, I recognized his voice, and I asked him "are you there," and he answered "yes." He said to me "are you locked up too, do they pay you for being locked up there," he said to me. I said "no." He said "They pay me fifty cents a day." I asked him "how he examined himself for me, how did he do it,"—I examined myself saying that I did not see him."

20

Q. Zbarra answered "I examined," that is "I testified?"

A. Yes, sir.

Q. And Zbarra said "I testified that I did not see you?"

A. No, sir.

Q. He answered what—"he did not see him?"

A. Saying "that he did not see me."

30 Q. Go on?

A. And I told him "That if you testified that way, always testify that way, because if they find you contradict yourself, you will get twenty years, the laws are the same in Italy."

Q. What else did he say?

A. Nothing more, I did not see him any more.

Q. Did you see Zbarra's face at this time?

A. No, sir.

40 Q. Where was Zbarra with respect to you, what part of the jail?

A. I was working in the jail and I heard him sing, and I saw him on a window a little higher from where I was.

Q. In another part of the jail?

A. The other side of the jail.

(NO CROSS-EXAMINATION.)

Defendant rests.

10

NICOLO LONDONI, recalled in behalf of the State in Rebuttal saith:

EXAMINED BY MR. SWIFT.

Q. Nicolo Londino—Mangano has testified that at your house, you said to Mangano, "you go ahead with your wife," and that Mangano and his wife went home together?

20

A. No, sir.

Q. It is not true?

A. No, sir.

Q. Mangano also testifies that he saw you the next morning, on the 17th of February, and ask you if you knew who had killed Cervasi?

A. I did not see him at all.

Q. Mangano has testified that he never has carried a pistol or knife?

30

MR. WILSON: I object to that general question—this is the point, I think it ought to be confined to this particular day of February 16th.

COURT: Did he not testify that he never had a knife and never carried a pistol?

MR. WILSON: Yes.

Question allowed.

A. With his mouth, he can say anything he likes, but he always carried weapons on his person.

40

MR. SWIFT.

Q. What kind of weapons?

A. All kinds.

Q. What kind of weapons have you seen him have?

A. I saw him have weapons that long, and that thick, and a revolver (illustrating by holding his fingers apart five or six inches).

10 Q. By a weapon that long—do you mean a knife?

A. A knife, and also a knife that did not close.

CROSS-EXAMINATION BY MR. WILSON.

Q. You were all friendly on this occasion of the 16th of February—they were all friendly, were they not?

A. Yes, sir, we were all friendly at that time.

20 Q. Was he not a frequent visitor at your house?

A. Who?

Q. Dominic Mangano?

A. Yes, sir.

Q. And you and he were good friends then on the 16th of February?

A. We always been friends.

30 (As Nicolo Londino, the witness was leaving the stand, he made some remark as he passed the defendant and his counsel).

MR. WILSON: I wish to recall Nicolo Londino to the stand again.

NICOLO LONDINO, recalled.

EXAMINED BY MR. WILSON.

40 Q. When you left the stand a moment ago, and went by Dominic Mangano you said something to him, did you not?

MR. SWIFT: I object.

Question allowed.

A. No, sir.

MR. WILSON.

Q. Didn't you say "If it was necessary for you, to say anything more, you would say it?"

A. I told him that it was enough, I had sat down 10 twice, and that they wanted me to sit down again.

BY MR. SWIFT.

Q. Did you stop on your way to speak to this man (the defendant) when you left the stand—I did not notice you?

A. No, sir.

Q. When you went off the stand to go outside, did you stop to talk to Mangano?

20

MR. WILSON: No, as he went by, he did not stop, but as he went by he spoke to Mangano.

BY MR. SWIFT.

Q. I want to know if he stopped to talk to him?

A. No, sir.

Q. Did you address yourself to Mangano at all?

A. No, sir.

Q. Or were you talking to the other men there just as much as to Mangano?

30

A. I talked on my own account.

Q. Just as you were passing by?

A. Just as I was passing by I said, "this is twice they called me, and they can call me a third time if they want."

Q. And did you say that just as you were passing by the defendant?

A. Yes, sir; I said that just as I was passing by. 40

MR. WILSON.

Q. As you were passing by Mangano?

A. No, sir; I said it as I was passing you.

GEORGE NOVELLO, recalled in behalf of the State in rebuttal:

EXAMINED BY MR. SWIFT.

10

Q. Mangano testified that you used to search him every night, that you could not find any weapon on him, is that true—did you have to search him every night?

A. I never searched him.

Q. Did you ever arrest him?

A. I arrested him once on a warrant.

Q. He says that you arrested him without cause or
20 reason?

A. I had the warrant and I arrested him on the warrant.

Q. A warrant sworn out before the Judge?

A. It was a warrant sworn out by Paulo Capezza the saloon-keeper.

Q. For what?

A. For assault.

Q. That is the only time you arrested him?

A. That is the only time.

Q. And you did not make it a habit of searching
30 him?

A. No, sir.

Q. Mangano has testified that on the night of February 16th, he did not have a pistol or a knife, and that he did not shoot off a pistol, and that he did not see anybody else either Nicolò Londino or Frank Ferro or Vincenzo Zbarra have a knife or a revolver—since the 16th of February has Mangano made any statement to you with reference to the occurrence of February 16th
40 —since the 16th of February has Mangano made any

statement to you with reference to what occurred on the 16th of February?

A. I do not remember exactly the date, but he sent word that he wanted to see the chief while he was in jail—

MR. WILSON.

Q. Not for you—he sent for the chief?

A. He sent for the chief—well now I am not sure of 10
that, he might have sent for me.

BY MR. SWIFT.

Q. In consequence of some information you had that he wanted to see you, did you go to the jail?

A. We went to the jail, yes, sir.

Q. Who went there?

A. Me and the chief, I don't exactly remember who else was with us, there was someone else with us, but 20
I do not remember exactly who.

Q. But you and chief Tenney were there?

A. Yes, sir.

Q. Did Mangano make any statement to you, that is with reference to what occurred?

A. He said that he was going to tell the truth how it happened, now he says that all that day—

Q. Did he make this statement voluntarily—did you ask him any question, or was any warning given to him before he made a statement? 30

A. What do you mean?

Q. Was he cautioned that anything that he might say or would say, would be used against him?

A. Why I have told him when he started to tell, for him to tell the truth, that is "all the words you say now will be used against you, when you are called in the court," and he said "why sure."

Q. And then he was going to tell the truth?

A. Yes, sir, he said that he was going to tell the truth. 40

10 MR. WILSON: I object to this for the reason that it is not a statement made out of court. The Court will see that the jail is in connection with the court-house, but it is not within the court. This is something that George Novello should have told, if it is the truth, he should have told us this, on his direct examination, and I do not think my objection now conflicts at all in any way with the case of McClean vs. The State. This man is an officer, and he goes to the jail where this man is confined, and gets an alleged statement from the man, which he says, or I suppose he will say, is different from what the man has testified to. Now this man was in court to all intents and purposes, it was in the jurisdiction of the court, and it is not the same as if it was made outside the Court. I think the statement is improper if there was a confession made at that time, then when George Novello was on the stand, he ought to have stated it on his direct examination. They had a perfect right at that time to ask him this question then—that is whether this man did not confess or make a statement to him with reference to the crime. But they did not do that. And now they call this man again on the stand without having called the attention of Mangano to the matter; they call George Novello again, and he stated that at one time while he was in the jail and within the jurisdiction of the Court—because the man was certainly within the jurisdiction of the Court, or under the control of the Court, to all intents and purposes, and I insist your Honor, that they cannot do that now, and I object to the testimony, because it is not competent on rebuttal for the reasons I have given.

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COURT: I will hear you on that point Mr. Swift?

40 MR. SWIFT: In the Rossell case, the confession that was given in evidence was a confession

made while the defendant was in the county jail.

COURT: The point Mr. Wilson makes is, that you are now seeking to introduce evidence that ought to have been introduced as part of your main case, and he objects to it on the ground that it is not rebuttal.

MR. SWIFT: My answer to that is, that under the Bunn case, we are not confined or bound down to ordinary rules of evidence that would apply to a witness other than a party to the case. Now this defendant is a party to this case, and of course I assumed if he had made a statement heretofore that he would probably make the same statement here. But at any rate under that case, as I understand the ruling in that case, so far as this part of the case is concerned, it was not necessary to call his attention to the contradictory statement to contradict him. 10

COURT: You would have a perfect right to call his attention to a statement to show that he has made a statement contradictory to the statement he has made today. But Mr. Wilson's objection is that it should not have been introduced now; that it ought to have been introduced as part of your main case, so that he would have had an opportunity to meet it. 20

MR. SWIFT: I asked him when he was on the stand, if he had not made a statement different from what he has made today, as to whether he had a revolver, and he said that he had not made any statement. 30

COURT: I think you should have laid a foundation for the contradiction by asking him the question directly. But if you limit it to contradicting him on what he has testified to today, I will admit it, but I will overrule the confession.

MR. SWIFT: I only want to confine my examination to the one point.

Question allowed.

MR. SWIFT.

Q. Did he make any statement to you as to whether or not he had a pistol on the 16th of February?

A. Well, he did, and he says that his uncle—when they came out of his uncle's house, his uncle turned round back and he seen that Nicolo Londino was wanting to cut him with a razor, and then Frank Lusso, he says he seen him with a knife, and that god-father Dominic Cervasi he hollered to him and said "shoot him" and he says, "I fired one shot" but he says, "I don't know who that I hit."

Q. He said that Londino used the razor?

A. Nicolo Londino, his uncle, used the razor on Cervasi.

Q. Did he say he cut him across the face?

A. That he used the razor on Cervasi.

Q. That Nicolo used the razor on Cervasi and cut him across the face?

A. He did not say, "across the face," he did not say where.

Q. And that Frank Lusso did what?

A. That he "seen Frank Lusso with the knife."

Q. Oh, Cutsola?

A. Yes, sir.

Q. The man that ran away?

A. Yes, sir.

Q. And the man they testified about was in Londino's house that day?

A. He says that he was there.

Q. And he says Frank Cutsola did what?

A. He says, "That he seen him with the knife, and meantime he heard Cervasi say, "god-father," he says, "I am killed, shoot him," and he says, "I fired a shot and when I fired the shot I did not know who that I hit," he says.

STATE RESTS.

(CASE CLOSED.)

(Arguments.)

Charge to the Jury by HON. JAMES J. BERGEN,
Justice of the Supreme Court of New Jersey.

Gentlemen of the Jury:

This defendant stands charged, under an indictment presented by the Grand Jury of this County, with the crime of murder, in that on the 16th day of February last in the City of Elizabeth, he unlawfully took the life of Dominic Cervasi. 10

In order to convict this defendant of the crime of which he stands charged, we must first consider the rules of law that you are to apply to the evidence.

The unlawful killing of a human being, without justification, is, under the law of this State, murder. If the killing was done with intent to take life, if the act that perpetrated the crime is done with deliberation and premeditation, then it is murder in the first degree. If the element of premeditation and deliberation be lacking, then it is murder in the second degree. 20

Now gentlemen, the first thing you will have to consider is, did this defendant, if he was present and stabbed the deceased, intend by his act to take his life? That is a question of fact which you are to pass upon and determine. It is, of course, somewhat difficult in many cases, to determine the intent, because intent is an operation of the mind, and therefore, you must arrive at the intent by what the man says, or what he does. As an illustration—if one points a loaded pistol at a vital part of a human being, and then discharges it, you would be justified in saying that he intended to take the man's life by that act, because the taking of the life would be the natural result of the act he was perpetrating. So, if in this case, you find that 40

10 the defendant drew a knife or dagger and struck the deceased in a vital part, you would be justified in finding that he intended to take his life by that blow. It all depends, of course, upon the part of the body he aims at, or where the blow is struck. If he cut the man's leg there would be no inference that he intended to kill; but if he thrusts a knife into a man's heart, there is then a fair presumption that it was his intention to take life.

If you reach the conclusion that the defendant, on the 16th day of February last, stabbed this man in a vital part, just as these physicians have described, you must next determine whether it was done deliberately, and with premeditation.

20 Now, gentlemen of the Jury, premeditation does not require any length of time, a moment of time is sufficient. If you find from the evidence that this defendant had formed in his mind an intent to kill, and then instantly he deliberately perpetrated the act, to carry out the intention, that is the deliberation and premeditation which the law requires in order to make it murder in the first degree.

30 Now did this man stab this deceased; did he do it with an intent to kill; did he do it deliberately? Those are the questions committed to you, and if you should find that the act was done deliberately, then it is your duty to declare him guilty of murder in the first degree.

If you find, according to the rules of law that I will lay down for your guidance, that premeditation does not sufficiently appear, then the crime will have to be reduced to murder of the second degree.

40 The defendant must also be proven guilty, if guilty at all, not only guilty of the offence, but also as to the grade, beyond what the law calls a reasonable doubt. That is, if a reasonable

doubt exists in your minds, as to the premeditation, he is entitled to the benefit of that doubt. If a reasonable doubt exists in your mind, as to whether he committed the act at all, he is entitled to the benefit of that. But, gentlemen, a reasonable doubt is not a doubt which any timid mind might raise. It does not mean that every uncertainty must be dispelled; it only means this: that you must have in your mind an abiding conviction, after carefully considering and comparing all this evidence, that this defendant is guilty of either the first or the second degree, as you may find it. If you have such an abiding conviction under this evidence, then no reasonable doubt, as the law defines it, is present. Criminals are not to be acquitted and excused upon some possible doubt, it must be a condition of mind when, after considering all the evidence, you have not an abiding conviction of his guilt. Of course, if that condition exists in your mind, then this defendant is entitled to an acquittal. If it does, then the reasonable doubt which the law intends to be applied, does not exist.

It is apparent in this case, gentlemen, that some of these persons were intoxicated, and it appears that the defendant had been drinking, and that he was intoxicated. Well, gentlemen, if you find in this evidence that he was so intoxicated, as to raise in your mind a reasonable doubt as to his mental condition, and ability to form, and deliberately and premeditatedly, carry out an intent to kill, then there would be such a doubt as he would be entitled to the benefit of, and he should not be convicted of murder in the first degree. But, when he sets up this defence of intoxication he must prove the defence he sets up by a preponderance of evidence; he must, by the evidence, create such a doubt as to his mental capacity, as to convince

10 you that he was unable to reason or deliberate. What is the evidence in this case? The defendant himself was a witness; he told everything that happened or undertook to tell all that happened at this saloon; he describes the journey home; he tells you all that took place in the house of Nicolo Londino; of his dancing with the deceased, of his furnishing the money to buy the beer, and to buy wine; he is able to detail all that took place there, of his wife's coming, of his going home with his wife, of the house being heated with a stove, so as to affect his stomach, or at least, as I recall it, he said it made him sick in his stomach—if, gentlemen, I am wrong about this, according to your recollection, then you will pay no attention to it, but that is my recollection; and then he says he went to bed.

20 Now, gentlemen, it is a question for you to pass upon, whether a man that has such a distinct recollection of everything that took place, and in some things he is corroborated, particularly about the dancing, and the sending out for the beer—whether, if he was able to recollect all that, he was in such a mental condition, from the use of intoxicants, that he was not able to rationally reason and deliberate when he committed this offence. I say, gentlemen, that is a question of fact for you to determine.

30 Nor, gentlemen of the Jury, is it necessary that the State should prove motive. If no motive is shown, that is a circumstance which you may consider, and ought to consider, but if the act charged and the criminal agency of the accused be clearly shown, it is not necessary that there be proved a motive. Motive is sometimes an important aid in completing proof which might otherwise be in doubt; but it is not a necessary means of explaining the reason
40 for a criminal act which has been clearly proven.

If the criminal act has been clearly proven and no doubt remains about it, the proof of motive would be unnecessary. The State claims in this case, that they have proved motive, and you have heard the testimony, and you will properly consider it. But if that evidence fails to satisfy you that that was a motive for this crime, still if the crime has been clearly proven to your satisfaction beyond a reasonable doubt, the necessity for proving a motive does not exist, 10 because motive in many cases is concealed in a man's mind. He may have a motive for committing the offence which he never disclosed, and if the State is required in all cases where an offence is clearly proven to establish some motive, a defendant, if able to conceal his motive, would never be convicted. Then, gentlemen, motive is not absolutely essential, when the crime is clearly proven. Now, if the crime was proven in this case, that this man did com- 20 mit this crime, then the necessity for the proof of motive does not exist.

The State claims that it has proven that this defendant committed this crime, and you are to take the evidence and apply to it the rules of law, as I have laid them down, because if I make a mistake in the law, the defendant has the right to appeal to a higher Court to have that remedied, so that it is your duty to accept the law as I give it to you, but upon all ques- 30 tions of fact, whether I refer to them or not, in any analysis that I may make of them, you are to judge of them, and if I am in error, then discard what I say, upon the questions of fact.

The evidence produced in behalf of the State, as I recall it, is substantially this: These parties met on the 16th day of February last, at a saloon; some drinking took place there. There is some discrepancy in the testimony, between that of the defendant, and the other witnesses, 40

as to what took place. That, gentlemen, is not very important; however, it is your duty to consider all the facts. When they reached the house of Nicolo Londino, they were all there, and this defendant and the deceased left the house together, and went down Third avenue until they reached the corner of Third avenue and Palmer street. The witnesses who testify to that are Frank Ferro, Nicolo Londino, Vincenzo Zbarra, they three were behind the defendant and the deceased, and, as I recall the evidence, a boarder with defendant, whose name has since been given to be "Frank," but who was not called as a witness. These three witnesses, who appear to be disinterested, all testify that this defendant drew a knife, or some kind of a sharp instrument, and stabbed the deceased; that Nicolo Londino undertook, after the stabbing, to separate them, when the defendant stepped back and shot the deceased in the arm. That wound, however, the physicians say was not fatal, but it is proper to take it into account, as indicating what was in the mind of the defendant at the time. These three witnesses after the stabbing went part of the way up the block and entered Nicolo Londino's house, but not until after they had seen the deceased go up the block towards Amity street, and when he was near that corner, he fell, they did not go there—you heard what one of the witnesses gave as a reason for not going—he said that the law did not take in a dead body, and they did not have to take in a dead body; they did not want to be found there because they were afraid they would get into trouble, and be arrested. It is not proved that they went up there, and there is no evidence to show that they went near the place where the man was found, from whence he was taken to the hospital where he died, and where the post-mortem was performed.

The next thing shown is this: that the defendant and the boarder ran away—they did not stay in Elizabeth—they disappeared. The officers were looking for the defendant the next day, and could not find him until they discovered him over at, or near Belleville or Nutley.

Now, gentlemen, you have a right to take into consideration the circumstances and fact that this man immediately left this place; that he went over to Nutley, and when these officers came there—and he knew one of the officers at least—he saw them approaching through a window in the saloon where he was, and then he undertook to escape. The officers pursued him and found him finally hiding in a cellar, standing in water—one of the witnesses says “six inches of water” was in the cellar, and the other one says “from one foot to eighteen inches,” and he went in there, apparently, to avoid arrest by these officers, one of whom he knew came from Elizabeth.

Now what is the answer to all this? The answer as testified to by this defendant is practically a denial of the offence. The defendant testified that he left Nicolo Londino's house, and went home with his wife; that he did not go down to the corner of Third avenue and Palmer street, but went directly home with his wife. It has not appeared here gentlemen, whether his wife is living or not, or where she is, but the defendant is not corroborated by a single witness on this branch of the case. He says, that the boarder did not go with him to Nutley; that there was some strange man there, and that the defendant and this other strange man made some arrangement to rent, in a house or saloon, rooms. Well, gentlemen, the boarder disappeared with him down the street that night, if the State witnesses are to be credited, and has never been seen since, nor has the defendant produced here

the person, or given us any explanation why he did not produce him, who was in company with him over at Nutley when he undertook to rent the rooms from this saloon-keeper. The saloon-keeper testified that this defendant and the other man both told him they came from New York

10

Now gentlemen, if this defendant was innocent of any offence, if he left Elizabeth to go to Nutley for the purpose he states, to find a place to live, and to get work because he had been discharged here in Elizabeth, why did he say to this saloon-keeper that he came from New York, was there any reason why he should not have told the truth and said that he came from Elizabeth?

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The case gentlemen, is within somewhat narrow limits; it is very largely a question of fact; you must take up the case, starting of course with the presumption that the defendant is innocent, and that it is the duty of the State to make out its case, beyond such a reasonable doubt as I have described to you. If in your judgment, the man is guilty of murder in the first degree, if that is the conclusion you reach, beyond a reasonable doubt, under all the evidence in this case, it is your duty to so declare. If you think he did not commit this crime, he then ought to be acquitted. If you think that he committed the crime, but without premeditation, that is, that premeditation has not been shown, then the crime would be reduced to murder in the second degree. You have heard the evidence, and you are to find the facts and apply the law. The penalty you have nothing to do with, the law of the State fixes the penalty for all offences, and jurors are to pass upon the question of fact only, applying the rules of law, laid down for them by the Court, and when they exercise that judgment, conscientiously and up-

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rightly, then they have performed their duty, in conformity with their oath.

Have you any other requests to charge?

MR. WILSON: None but those which I have handed to your Honor.

COURT: I decline to charge as requested, other than as I have charged. 10

Gentlemen, Mr. Wilson calls my attention to what he thinks is an error in fact stated by me. I have already said that if I make any errors in referring to or reciting the evidence you must correct it by your recollection of the evidence. I said in my charge, as I now recall it, that the boarder went out with the defendant and Cervasi the deceased. Mr. Wilson says that Mangano said, "that the boarder remained in the house that may be so." But my recollection is that the evidence shows that Mangano and the boarder ran away from Elizabeth, after the commission of the crime—but if I am wrong about that, then you need not pay any attention to it. 20

Requests to charge, by counsel for the Defendant.

(1) That is the evidence fails to show any motive on the part of the accused, to commit the crime charged, this is a circumstance, in favor of his innocence, which the jury ought to consider, together with all the other facts and circumstances, in making up their verdict. 30

(2) The absence of all evidence of an inducing cause, or motive, to commit the crime, when the fact is in reasonable doubt, as to who committed it, affords a strong presumption of innocence.

(3) That if the Jury have a reasonable doubt as to whether the killing was done deliberately, or as to whether it was done *premeditatedly*, 40

then they cannot find the defendant guilty of murder in the first degree.

(4) That if the Jury have a reasonable doubt as to whether the killing was done in malice, then they cannot find the defendant guilty of murder in either degree.

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(5) That while voluntary intoxication is no excuse or palliation for the commission of the crime, yet if, upon the whole evidence in the case the jury shall have a reasonable doubt, whether at the time of the killing (if they find from the evidence that the accused did kill the deceased), the defendant had sufficient mental capacity to deliberately think upon and rationally determine so to kill the deceased, then they cannot find him guilty of murder of the first degree, although such inability was the result of intoxication.

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(6) That a particular or specific intent, is absolutely essential in the commission of murder, and if the mind of the person doing the killing is unable, because of intoxication at the time of the killing, to form this particular or specific intent, there can be no conviction of murder in the first degree.

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MR. WILSON: I except to your Honor's charge, and I also except to your Honor's refusal to charge except as your Honor has already charged—I except generally to your Honor's charge. Exception allowed—sealed accordingly.

40

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, <i>Defendant in Error</i>	} <i>Assignment of Errors.</i>	10
vs.		20
DOMINIC MANGANO, <i>Plaintiff in Error</i>		

Afterwards to wit, etc., in the Court of Errors and Appeals, in the last resort in all causes, comes the said plaintiff in error by William R. Wilson, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions, and in the charge of the Court, to which a general exception was taken, allowed, and signed and sealed accordingly, there is manifest error in this, to wit: 30

First: That the Court below, upon the trial of the indictment in this case, charged the jury as follows: "Now, gentlemen of the Jury, premeditation does not require any length of time, a moment of time is sufficient. If you find from the evidence, that this defendant had formed in his mind an intention to kill, and then instantly he deliberately perpetrated the act, 40

to carry out the intention, that is the deliberation and premeditation which the law requires in order to make it murder in the first degree."

Second: That the Court below, upon the trial of the indictment in this case, charged the jury as follows: "Now, did this man stab this deceased; did he do it with an intent to kill; did he do it deliberately? Those are the questions committed to you, and if you should find that the act was done deliberately, then
10 it is your duty to declare him guilty of murder in the first degree.

Third: That the Court below, upon the trial of the indictment in this case, charged the jury as follows: "If you find, according to the rules of law that I will lay down for your guidance, that premeditation does not sufficiently appear, then the crime will have to be reduced to murder in the second degree."

Fourth: That the Court below, upon the trial of the indictment in this case, charged the jury as follows:
20 "But when he sets up this defence of intoxication, he must prove the defence he sets up, by a preponderance of evidence; he must, by the evidence, create such a doubt as to his mental capacity, as to convince you that he was unable to reason or deliberate."

Fifth: That the Court below refused to charge as requested by the defendant, as follows: "That if the evidence fails to show any motive on the part of the accused, to commit the crime charged, this is a circumstance, in favor of his innocence, which the jury
30 ought to consider, together with all the other facts and circumstances, in making up their verdict."

Sixth: That the Court below refused to charge as requested by the defendant, as follows: "The absence of an inducing cause, or motive to commit the crime, when the fact is in reasonable doubt, as to who committed it, affords a strong presumption of innocence.

Seventh: That the Court below refused to charge
40 as requested by the defendant, as follows: "That if

the jury have a reasonable doubt as to whether the killing was done deliberately, or as to whether it was done premeditatively, then they cannot find the defendant guilty of murder in the first degree."

Eighth: That the Court below refused to charge as requested by the defendant, as follows: "That if the jury have a reasonable doubt as to whether the killing was done in malice, then they cannot find the defendant guilty of murder in either degree."

Ninth: That the Court below refused to charge 10
as requested by the defendant, as follows: "That while voluntary intoxication is no excuse or palliation for the commission of the crime, yet if upon the whole evidence in this case, the jury shall have a reasonable doubt, whether at the time of the killing (if they find from the evidence that the accused did kill the deceased), the defendant had sufficient mental capacity to deliberately think upon and rationally determine so to kill the deceased, then they cannot find him 20
guilty of murder of the first degree, although such inability was the result of intoxication."

Tenth: That the Court below refused to charge as requested by the defendant, as follows: That a particular or specific intent, is absolutely essential in the commission of murder, and if the mind of the person doing the killing is unable, because of intoxication at the time of the killing, to form this particular or specific intent, there can be no conviction of murder in the first degree."

WILLIAM R. WILSON, 30
*Attorney for Plaintiff
in Error.*

COMMON JOINDER IN ERROR FILED.

